

Stronger than Justice

Armed Group Impunity for Sexual Violence

ANGELA MUVUMBA SELLSTRÖM



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UNIVERSITET

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Abstract

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What conditions lead to confidence among civil war combatants that they will not face accountability for perpetrating sexual violence? This study investigates the causes of impunity for sexual violence among armed actors. It develops a theoretical framework which identifies three explanations for armed group impunity for sexual violence, namely (1) flawed prohibitions inside an armed group; (2) negligent enforcement by its authorities; and (3) pardons in the form of amnesties during the peace process. Adopting a two-pronged approach, the study first explores the associations between amnesties arising from concluding peace agreements and post-settlement levels of sexual violence in Burundi, the Democratic Republic of Congo, Liberia, Mozambique, Sierra Leone and South Africa. A small-scale, events-based dataset of sexual violence by governments and rebel groups in the first three years after war was constructed. The second and main part of the study is a comparison between two rebel groups in Burundi's civil war (1994-2008), CNDD-FDD (National Council for the Defence of Democracy-Forces for the Defence of Democracy) and Palipehutu-FNL (Palipehutu-Forces for National Liberation) and their practices of prohibition and punishment of wartime sexual violence, taking into account also the possible influence of amnesties. Based on original data from 19 focus groups of ex-combatants from these rebel organisations, it is found that flawed prohibitions and negligent authorities are the main explanations for armed group impunity. The findings do not support amnesties as a cause of armed group impunity for sexual violence. Moreover, additional findings suggest that accountability for sexual violence is triggered by dependency on civilian support, while impunity is facilitated by an armed group's ability to secure recruits, material and other resources without the help of local communities.

Keywords: conflict; civil war; armed actors; sexual violence; impunity; accountability; justice; human rights; international criminal law; liberal peacebuilding; rebels; ex-combatants; Burundi; Africa

Angela Muvumba Sellström, Department of Peace and Conflict Research, Box 514, Uppsala University, SE-75120 Uppsala, Sweden.

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Till Tor

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Abbreviations

AFDL	Alliance of Democratic Forces for the Liberation of Congo
AFL	Armed Forces of Liberia
AI	Amnesty International
ANC	African National Congress
AU	African Union
CNDD-FDD	National Council for the Defence of Democracy-Forces for the Defence of Democracy
CNDP	National Congress for the Defence of the People
CNDP	National Congress for the Defence of the People
DDAA	Disarmament and demobilization assembly area
DPKO	Department of Peacekeeping Operations
DRC	the Democratic Republic of Congo
ECOWAS	Economic Community of West African States
EU	European Union
FARDC	Armed Forces of the Democratic Republic of Congo
Frelimo	Front for the Liberation of Mozambique
Frolina	National Liberation Front
GoB	Government of Burundi
GoDRC	Government of the DRC
GoL	Government of Liberia
GoM	Government of Mozambique
GoSA	Government of South Africa
GoSL	Government of Sierra Leone
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
ICG	International Crisis Group

INPFL	Independent National Patriotic Front of Liberia
MINUSTAH	UN Stabilization Mission in Haiti
MK	Umkhonto we Sizwe
MLC	Congolese Liberation Movement
MONUC	UN Organisation Mission in the DRC
NGOs	non-governmental organisations
NPFL	National Patriotic Front of Liberia
OHCHR	Office of the High Commissioner for Human Rights
Palipehutu	Party for the Liberation of the Hutu People
Palipehutu-FNL	Palipehutu-Forces for National Liberation
PBC	Peacebuilding Commission
PRIO	Peace Research Institute of Oslo
PSSV	post-settlement sexual violence
RCD	Congolese Rally for Democracy
Renamo	Mozambican National Resistance
RUF	Revolutionary United Front
TJRC	Truth, Justice and Reconciliation Commission
TRC	Truth and Reconciliation Commission
UCDP	Uppsala Conflict Data Program
ULIMO	United Liberation Movement for Democracy in Liberia
ULIMO-J	ULIMO-J (Roosevelt Johnson faction)
ULIMO-K	ULIMO-K (Alhaji Kromah faction)
UN	United Nations
UNAMID	African Union/UN Hybrid Operation in Darfur-Sudan
UNGA	UN General Assembly
UNMIL	UN Mission in Liberia
UNPBSO	UN Peacebuilding Support Office
UNSC	UN Security Council
UNSG	UN Secretary-General
USSD	United States Department of State
WOAT	World Organisation Against Torture

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Indeed, doctoral research is a collective process. But it is foremost a solitary rite of passage. In the end, the outcome and all of its mistakes and misfires, belong to the author alone.

Angela Muvumba Sellström
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1. Introduction

IMPUNITY, n. Pronunciation: /ɪm'pju:nɪ/
Exemption from punishment or freedom from the injurious consequences
of an action:
the impunity enjoyed by military officers implicated in civilian killings;
protestors burned flags on the streets with impunity
(Oxford English Dictionary 2014).

... When you arrived at a place and they wanted a drink then it was difficult to control soldiers. (Former members of the Armed Forces of Burundi).

...if they could see you talking to girls, that simple suspicion equalled death... (Former CNDD-FDD member and Palipehutu-FNL).

... When you are fighting, one soldier may stay behind and commit the crime and the chief wouldn't know or didn't know... (Former member of the Armed Forces of Burundi and CNDD-FDD).

If you spend a year with no leave and you see your commander raping, you would also rape. (Former member of the Armed Forces of Burundi).

The way that combatants of civil wars consider the consequences for sexual violence is a compelling, yet under-researched topic. One interpretation of the four statements above is that members of armed groups view the impact of sexual violence differently. Some former combatants mention when wartime rape is possible and why it happens. They speak of the banality of rape and the limited sexual opportunities during wartime. Others focus on how perpetrators might be viewed negatively by fellow fighters and superiors. They describe such acts as coming with deadly consequences. These differences are not simply individual conceptions of right and wrong. They exemplify armed group beliefs about the consequences for sexual violence. What explains this variation?

The main research question in this study asks which conditions lead to armed group impunity for sexual violence. It addresses and seeks to understand the diversity of impunity among armed groups. A fuzzy concept, impunity is generally understood as exemption from punishment or penalty. However, this study observes and measures impunity as confidence in the absence of negative consequences. While a range of possible explanations could guide our understanding of the causes of impunity, I set out to explore and examine the link from weak enforcement and pardons to beliefs about the consequences of committing harmful acts.

Puzzling aspects of impunity for sexual violence are evident among formally organised armed actors. Though composed of individual preferences, cumulatively every armed group has its own versions of impunity. Below follow examples of how armed groups vary with respect to using, restraining and controlling violence, including sexual violence. These differences are worth considering since in the most commonsensical manner, they can signal to an external observer a variation in impunity across a range of dimensions. To exemplify, most victims of sexual violence in Sierra Leone's civil war reported members of the Revolutionary United Front (RUF) as the main perpetrators of wartime rape and other abuses (Cohen 2013, 14). Yet, the RUF instituted ideological education which stressed the illegitimacy of rape (Marks 2013). Despite this, eventually, the RUF attained a reputation for wartime sexual slavery. The group openly tolerated practices of forced sexual relationships with commanders keeping wives and girlfriends. Many women and girls have described these relationships as based on the use of violence and control (Marks 2013). However, junior members of the RUF did not engage in such practices and feared retribution by the RUF high command and mid-level leadership since "the SBU [small boys unit] did not have wives" (quoted in (Marks 2013, 75).

Impunity may also be of relevance for armed groups which have maintained reputations for treating civilians well. In the armed resistance against South Africa's apartheid government, the African National Congress's (ANC) armed wing, Umkhonto we Sizwe's (MK) military code specifically cited rape as a punishable offence (ANC 1996). There are no widespread allegations against MK fighters for wartime sexual violence against civilians. However, in 1996, former MK commander Teddy Williams (Wellington Sejake) testified before the South African Truth and Reconciliation Commission (TRC). He stated that he and others witnessed female members of the armed wing experiencing sexual abuse by their comrades in the group's military camp in Quibaxe, Angola (SAPA 1996). Joe Modise, the ANC army commander between 1965 and 1984 and then Defence Minister in post-apartheid South Africa admitted to the TRC that there had been a pattern of abuse by MK members. However, he underscored that the ANC's National Executive Committee and its Women's League eventually ad-

dressed the matter and commanders who were responsible for the abuses were ultimately “removed from their posts”(SAPA 1997).

Many armed groups put in place practices for prohibition and punishment, yet their members are confident that there will be no liability. Other groups, using similar rules, may have members who are less confident. At times impunity seems to emerge in relation to some types of sexual violence, but not all forms of abuse, coercion and exploitation. At other times, impunity may exist alongside accountability, with members of armed groups more fearful of the consequences for sexual violence if it is committed against certain types of victims, such as non-combatant civilians. Indeed, there appears to be variation *across* armed groups as well as *within* armed groups. Finally, impunity may vary across time.

This variation indicates a rich research gap. The concept of impunity is relatively under-researched, and there is a need to develop a more concrete and differentiated way of observing it in the real world. It is a term employed by policymakers to mobilise support for actions that will result in penalties for harmful acts, or to deter future commission of these acts. As such, ending impunity is often intuited as ensuring that groups, individuals and communities believe that consequences are probable. The concept also speaks to tendencies for people to perceive risks and opportunities or to gauge the costs and benefits or the likelihood of being punished for a harmful act. This suggests a need to define impunity pointedly in terms of a subject’s confidence in the absence of negative consequences. Previous research has not investigated impunity in this way; it has not taken up combatant beliefs about the consequences for sexual violence. A micro-foundation approach is therefore needed to begin explaining how beliefs about consequences arise. At the same time, to my knowledge there are only a small handful of studies which contribute to the empirical record on aspects of this problem, even if these are not framed as investigations of armed group impunity for sexual violence. These studies, discussed below, are focused more on the variation in sexual violence, than on impunity.

Overview

The overall purpose of my study is to address this research gap by carrying out a theoretically-guided empirical study of the micro-foundations of impunity for sexual violence among contemporary civil war belligerents. It focuses on armed actors that have been exposed to settlement processes in the post-Cold War period. The unit of analysis is the armed group. This condition of the study is explained in greater detail in the following sections of this chapter. The research I have undertaken centres on some of the possible explanations for impunity, which I characterise as the higher-order concepts

of weak enforcement and pardons. In the study's theoretical framework, weak enforcement is typified by two explanatory factors, namely flawed prohibitions and negligent authorities, and pardons are exemplified as amnesties.

Empirically, the study is comprised of two components, one smaller quantitative study and one qualitative investigation, with the latter forming the main contribution. The first part begins with a small-scale, aggregate exploration of amnesties and sexual violence after settlement in 6 African countries, including a total of 23 armed actors. This cross-country part of the study addresses one part of the causal story: the association between pardons and post-settlement sexual violence. In this part, I assume that amnesty will lead to impunity which results in sexual violence. It is a preliminary exploration that is relevant for developing insights to the causal chain and it considers one cause and possible consequence of impunity. It serves as a first cut to get at the issues of impunity and sexual violence beyond analyses of single cases.

The second and main part of the study compares two rebel armed groups, CNDD-FDD (National Council for the Defence of Democracy-Forces for the Defence of Democracy) and Palipehutu-FNL (Palipehutu-Forces for National Liberation) from Burundi. The analysis of these two cases is focused on group-level beliefs rather than individual perceptions. The within-country comparison concentrates on the relationships between three explanatory factors (flawed prohibitions, negligent authorities and amnesties) and impunity. In contrast to the small-scale cross-country exploration, the assessment of the rebel groups in Burundi addresses all the factors in the theoretical framework. The study concludes with a revisit and revision of the theoretical framework and I assess the viability of the weak enforcement and pardon theses for explaining the outcome of armed group impunity for sexual violence.

Definitions

There are several key concepts and terms in this study; this section is focused on describing how these are used. The first and most important concept is impunity. The *Oxford English Dictionary* defines impunity as “exemption from punishment or freedom from the injurious consequences of an action” (Oxford English Dictionary 2014) and an etymological articulation of impunity states that it is “freedom from punishment” (Harper 2010). The United Nations (UN) has its own definition for the concept, which I introduce in this chapter. However, in this study I define impunity as confidence in the absence of negative consequences. This meaning of impunity corresponds to the cognitive understanding or sense of certainty about the

outcome of ‘criminalised’ harms. Rather than defining impunity according to the presence or absence of human rights laws and rules or actual violations, the definition in this study simulates ‘believing’ in freedom from accountability. To my knowledge, no other international law, international relations or peace and conflict studies have approached impunity in this way. The following types of phrases are used interchangeably to represent impunity: confidence in a lack of negative consequences; impunity; exemption; a lack of accountability; belief (s) in a lack of consequences; fear of retribution; freedom from injurious consequences; and freedom from accountability. I am not trying to confuse the reader, but to break up the monotony and repetitiveness of using the same phrase in every sentence.

The study is limited to state armed actors or formally organised non-state armed groups that are engaged in violent armed conflict. By formally organised, I mean that the group has given itself a name; and that it has established civilian and military institutional structures to organise the use of arms to meet its objectives. This definition is based on the Uppsala Conflict Data Program’s (UCDP) classification of state actors (UCDP 2014i) and formally organised non-state groups actors (UCDP 2014e).¹

The investigation focuses on armed group impunity for sexual violence, thus requiring a specified and explicit designation of the types of acts I will include in the study. Sexual violence is defined as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, as recognised by the 1998 Rome Statute of the International Criminal Court (ICC). Since this study deals with armed group actors, all sexual violence events which I refer to will be acts that are reported or alleged or proved to have been committed by force, or by the threat of force or coercion, with fear of violence, duress, abuse of power or detention a prevalent aspect of the commission of the act. Similarly, reports, allegations and evidence must focus only on perpetrators that are members of, or have a recognizable association with a state or non-state armed group.² Another type of violence of particular interest is post-settlement sexual violence (PSSV) which is also committed by armed groups. By post-settlement, I mean the period of time after a negotiated conclusion of an armed conflict whereby the resolution or regulation of the incompatibility is addressed through a peace agreement. The differentiation between PSSV and sexual violence is important because I will also explore

¹ The UCDP defines any non-governmental group of people having announced a name for their group and using armed force as formally organised. The definition in this study differs slightly by including the criteria of civil and military institutional structures (UCDP 2014e).

² See the definition used by the UN Secretary-General, whereby the “term ‘conflict-related sexual violence’ is used to denote sexual violence occurring in a conflict or post-conflict setting that has a direct or indirect causal link with the conflict itself” (UNSG 2010, 2).

the association between pardons and sexual violence in the period after the end of conflict. It is important to determine when these acts were reported and if they took place by armed actors during or after conflict.

Positioning the study: previous research

In this section, I outline two literatures – the ‘liberal peacebuilding’ policy and practice paradigm and research on sexual violence – that are building blocks for this research endeavour. These literatures shed light on different aspects of my project. The liberal peacebuilding literature anchors the study. It provides a historical basis for the concept of impunity and the paradigm involves efforts to construct peace, for example through the UN peacebuilding agenda, and justice through institutions such as the International Criminal Court (ICC). My discussion below deals with the way this paradigm emphasises impunity through policies and practices to establish the rule of law and accountability in post-war settings. This emphasis is of interest to this study. It illustrates the understanding of impunity as a major obstacle to addressing and preventing wartime mass atrocities and humanitarian and human rights violence, including sexual violence. As this study hones in on the micro-foundations of armed group impunity for sexual violence, it will uncover some empirical realities at the local level. This study should therefore have some bearing on our understanding of the potentials and pitfalls of the liberal peacebuilding paradigm. The literature on sexual violence provides a different context. It assembles a wide array of insights into the practices of controlling sexual violence within armed groups. I draw upon this literature in order to address the conditions that give rise to confidence in the absence of negative consequences. As is laid out briefly below, research on violence in civil wars has broadened to address the causal dynamics of the variation in sexual violence. Many of the proposed and theorised causes of this variation underpin this study’s ideas about impunity. Moreover, I suggest that armed group impunity for sexual violence is a part of the bigger puzzle of sexual violence. Impunity is a mid-point in the causal chain and lies between control of sexual violence and variation in these acts.

Liberal peacebuilding

In an ‘everyday’ or ‘commonsensical’ way, impunity is a fundamental concept. Even so, liberal peacebuilding actors from different arenas have brought the concept front and centre, making impunity particularly important for policy development and implementation in conflict resolution, post-war peacebuilding and transitional justice. The study borrows from Roland Paris

to define what is meant by liberal peacebuilding. It is both the Wilsonian notion that “democratization and marketization will foster peace in war-shattered societies” (Paris 2004, 6) and it is entrenched in the UN’s “comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people” (UNSG 1992, para. 55).³ Liberal peacebuilding prioritises certain tasks: establishing the rule of law and accountable governance in order to address past atrocities and prevent their recurrence; building traditions of justice based on a social contract; and protecting human rights. Although empirically impunity is under-theorised, in normative terms it is clearly delineated. The UN Commission for Human Rights defined impunity in 1996 as “the impossibility, *de jure* or *de facto*, of bringing the perpetrators of human rights violations to account...” (Joinet 1997, para. 13)

To exemplify, the United Nations Security Council’s 10 resolutions on women, peace and security (between 2000 and 2014), all propose a need to counter impunity. Resolution 1960 calls upon member states to investigate and prosecute war crimes and atrocities, including sexual violence. These activities are described as important steps in the fight against impunity. The resolution also reaffirms that ending impunity “is essential if a society in conflict or recovering from conflict is to come to terms with past abuses ... and to prevent future such abuses” (UNSC 2010a, 2). The 2010 European Union (EU) policy in 2010 emphasises links between impunity and torture, violence against women, prosecution of human rights activists and more. The EU and other actors describe the International Criminal Court’s primary objective as ending impunity for mass crimes and atrocities (EU, 2010).⁴ And NGOs clearly blame impunity for continued human rights abuses, including sexual violence. For example, following a surge in incidents of rape and sexual harassment in Egypt’s Tahir Square in January 2013, Amnesty International (AI) wrote: “Until the pervasive climate of impunity for such acts of gender-based violence ends, women will continue to face violent attacks while their attackers brazenly go unpunished” (AI, 2013:5). The ICC and UN agencies adopt conflict resolution and post-war recovery and peacebuilding practices to confront impunity. With a vast peacebuilding multi-agency framework, the UN undertakes a range of activities to address impunity, not least through the Peacebuilding Commission (established in 2005) and the UN’s human rights missions and blue-helmeted multidimensional peacekeepers. It also supports and promotes trials, truth commissions, national consultations, reparations, vetting, institutional reform, demilitariza-

³ See also James Waldron who lays out philosophical foundation of liberalism, stipulating that it consists of social arrangements that support individual freedoms—for everyone (Waldron 1987).

⁴ The 1998 Rome Statute entered into force in 2002, establishing the ICC.

tion, reintegration and memorialisation in post-war settings (Fletcher and Weinstien, 2009:164).

In the study, I will review some of the liberal policies and practices to end impunity for wartime violence against civilians. Policymakers and practitioners expect state and non-state armed actors to adhere to international humanitarian and human rights law. The UN and other actors stimulate armed group adherence to international norms through the refusal to pardon and the threat of punishment. The inclusion, exclusion and eligibility criterion of amnesties in peace agreements is a notable illustration. As late as 1999, the Lomé Accord of Sierra Leone included an amnesty for the Revolutionary United Front (RUF) and its leader, Corporal Foday Sankhoh. The pardon was incorporated into the agreement because amnesty had been part of a prior pact signed by the major parties in 1996 (Author Interview 2013; Hayner 2007). Since then, amnesties are no longer automatically inserted into negotiated settlements. The situation following the 1999 agreement included further violence carried out by Sankhoh. In part, the recurrence of conflict and its impact on civilians led to a normative consensus between UN authorities and Sierra Leonean civil society members that wartime abusers should not be eligible for amnesty. Today, the UN prohibits amnesty for international crimes of mass atrocity (OHCHR 2009b). International and national criminal justice also puts into place legal obstacles for perpetrators of conflict-related abuses. Together, Articles 5 and 25 of the Rome Statute of the ICC holds individuals liable for genocide; crimes against humanity; war crimes; and the crime of aggression (UNGA Court 1998). Transitional justice institutions for mass atrocities in Yugoslavia and Rwanda have not recognised amnesty for these crimes.

Liberal proponents have thus argued that amnesties fuel injustice, since they would exempt combatants from liability for war-time atrocities. This is the reason that the UN excludes genocide, mass crimes and crimes against humanity from amnesty clauses it supports (Mallinder 2008, 122). The same paradigm informs the UN's actions to stop sexual violence. The UN Secretary General's 2008 report on women, peace and security underscored concerns that impunity for perpetrators of sexual and gender-based violence continues in war-torn societies (UNSG, 2008). In June 2008, the UN Security Council stressed the need for excluding sexual violence from amnesty provisions in peacemaking processes by brokers of peace (UNSC, 2009 and 2009b). Underlying the arguments against amnesty is the concern that these pardons will contribute to future sexual violence. This concern gains traction when considering the levels of sexual violence in the Kivus in eastern DRC or continued rape and sexual abuse of protesters in Egypt. Yet, some would argue that amnesties are not as harmful as feared and presumed.

Melander, for instance, finds that amnesties in peace agreements may actually benefit peace, particularly if they are part of post-civil war contexts

where a strong, authoritarian government is in place (Melander 2013). Indeed, his statistical analysis demonstrates the pacifying effect of amnesties and how they reduce the likelihood of resumptions in armed violence. Other scholars have critiqued the diametric opposition erected between the concept of amnesties and concepts such as justice, truth and reconciliation. Amnesties are so often linked to injustice that it is not always apparent that they need not even be considered an obstacle but an enabler of some kinds of justice. On truth commissions – sometimes referred to among practitioners as truth-seeking mechanisms – Priscilla Hayner (2002) made the argument that transitional justice does not necessarily mean criminal prosecution. Truth commissions, such as in South Africa, are critical for addressing the past, with institutions formally taking responsibility for past violations, hearing out survivors and making recommendations for the future. Truth-seeking would often not be possible without amnesties, since these often motivate perpetrators and participants to come forward. Going even further, Mallinder calls for a more generous interpretation of accountability. Her work describes amnesties as alternative forms of forgiveness and she argues that they are not entirely incompatible with justice (Mallinder 2008; McEvoy and Mallinder 2012).

A number of appraisals of the liberal agenda in peacebuilding, such as Paris (Paris 2004, 2010), Richmond (2013; 2006); Orentlicher (2007) O'Rourke (2013); MacGinty (2008); Jarstad and Sisk (2008) Jarstad and Belloni (2012); and Björkdahl and Höglund (2013) have identified significant gaps in the implementation of the liberal peacebuilding agenda. In various ways, they note that liberal peacebuilding sometimes misses the local perspective, and its imposition from the heights of international organisations and world powers brings with it contradictions. MacGinty (2008) and Richmond (2013; 2009) raise theoretical and empirical concerns about peace projects and post-war reconstruction conceived beyond the local context. Orentlicher (2007), who first made calls for maximalist application of international norms of human rights standards in the 1990s, has since augmented her thinking, highlighting the importance of promoting victims' wishes and their participation, despite discrepancies between international norms of justice and local practices. This study will speak to this perceived gap between the international and local dimensions, since it includes analysis at the level of armed groups and thus offers insights based on the views of local actors.

Research on sexual violence

The study's focus is on impunity. Nevertheless, I derive important insights from research on sexual violence, which provides useful clues about the relationships between internal armed group institutions and disciplinary

practices. The examination of civil war has turned its attention to the micro-level dynamics of armed group behaviour in the realm of violence against civilians (Tarrow 2007). Scholars have addressed a range of questions about the variation in violence in general (Kalyvas 2005, 2006; Weinstein 2006; Wood 2003) including one-sided violence against civilians (Eck and Hultman 2007). Violence against civilians which is particularly brutal, seemingly unwarranted and unreasonable puzzles us. This line of research seeks to elucidate why an armed group, particularly an insurgent, would commit atrocities against defenceless people, especially “given that civilian support is a pre-condition for its [the armed group’s] very existence” (Kalyvas 1999, 244).

Increasingly, using fine-grained data, scholars have learned more about how the micro-dynamics of violence in civil wars work, yielding answers that might have been different if they probed the causes of civil war violence only at the national level. Micro-level research examines what forces are driving the individual, the group or the community (Verwimp, Justino, and Bruck 2009). This turn has been embodied in theses about the organisational structure of armed groups, including whether armed groups deploy seemingly indiscriminate violence to demonstrate their ability to hurt (Hultman 2009) or to the economic and social endowments (Weinstein, 2007) which shape an armed organisation’s ability to control the use of violence by its members. Humphreys and Weinstein (2006) conclude that cohesion and reliance on material benefits to discipline or incentivise members are explanations for brutality. The important aspect of these studies is that they contribute to knowledge about variation in violence.

Finally, following this trend, research on sexual violence in armed conflict research has found complementary findings. This literature now concludes that sexual violence in armed conflict is puzzlingly varied (Cohen, Hoover Green, and Wood 2013; Wood 2006b, 2009). Cohen’s cross-national research and fieldwork in Sierra Leone demonstrates (Cohen 2009, 2013) that recruitment mechanisms have a strong relationship to the types and severity of sexual violence. Wood’s work on the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka and Hoover Green’s study on repertoires of violence and armed group institutions and ideologies suggest that internal factors of an armed group are indicative of its propensity to commit sexual violence (Green 2011; Wood 2009). Wood’s analysis of the absence of sexual violence by the LTTE is based on observations about the armed group’s ban of these harms and its strong and robust enforcement of the prohibition (Wood 2009). She argues that enforcement is dependent on the strength of an armed group’s hierarchy and the power and willingness of commanders to inflict punishment. Hoover Green demonstrates that disciplinary action by commanders does not explain why some armed groups limit their repertoire of violence. Her theoretical contribution is that armed groups must build

institutions which place a premium on controlled violence and that they narrow the repertoire of their members' violence when they use indoctrination and political education (Hoover Green 2011). These studies focus on explaining variation in violence as the dependent variable, and not impunity. Nevertheless, I bring along the clues these researchers have provided in order to develop this study's theoretical framework.

I relate to these two literatures in several ways. Insights about internal armed group institutions and disciplinary practices are helpful to this study. To analyze variation in impunity, I dig deeper into how these factors play out and influence beliefs in freedom from accountability. I therefore use qualitative, fine-grained exploration of codes of conduct as well as the relationships between commanders and a follower, emphasizing that impunity is the dependent variable. Finally, it seems unlikely that only internal armed group institutions and their disciplinary practices would be determinants of impunity. External factors are also influential. My research approach thus acknowledges this by including analyses about the possible factors of impunity arising from amnesties. These clauses are manifest in peace agreements, which evolve in part through the international community's investment in ending war peacefully and building a liberal peace in the aftermath of war. My strategy therefore, has been to include factors that are internal and external to the armed group as explanatory variables. I utilise theoretical clues from two important literatures which each, in their respective areas and contributions, say something about armed group impunity for sexual violence.

The research design

This study is focused on the micro-foundations of impunity for sexual violence among contemporary civil war belligerents. It raises two different research questions. In the first empirical part of the study, my question is: What is the relationship between pardons and impunity for sexual violence? Here I observe impunity indirectly, getting at the relationship from the beginning (pardon) to the end (sexual violence) of the causal path, thereby also helping to answer the main research question (see below). Consequently, in answering this first empirical portion, my dependent variable is post-settlement sexual violence by an armed group actor. My second and main research question is: Which conditions lead to armed group impunity for sexual violence? This is the overall question guiding the comparative study of rebel groups in Burundi. Thus, armed group actor confidence in the absence of negative consequences for sexual violence is the main issue to be explained in the comparative analysis.

The study's unit of analysis is the armed group. While it would be fascinating to gather individual-level evidence of impunity, this was not the main

focus of the study and it posed ethical considerations. I presumed that individuals would be unlikely to share or explore their own private perceptions of the consequences for sexual violence. Insights about individual notions and experiences also place a unique responsibility on the researcher, such as moral and legal duties when in possession of information about criminal acts. Furthermore, the mechanisms I examine are at the level of armed groups. This level of analysis was important because it is possible to ensure the independence of cases by comparing armed groups. This would not be so with individuals, who are likely to be influenced by one another in their respective armed groups.

The focus of this study is between 1989 and the end of the first decade of the twenty-first century, 2011. This is an era with rapid democratization taking place between 1989 and 1997, particularly in Africa (Joseph, 1997) and Eastern Europe. It is a period in which civil strife featured increasing international attention and external intervention in the form of conflict resolution and peacekeeping. Eighty-one percent of all UN peacekeeping operations were deployed beginning in 1988 (UN Peacekeeping, 2014). Thus, the cases in this study have all been exposed to liberal expectations for political liberalization, rule of law, justice and accountability. The study is focused on addressing the problem of armed group impunity in state-based internal armed conflict⁵, whereby an incompatibility is contested between a government of a state and a non-state actor, and results in at least 25 battle-related deaths in one calendar year (UCDP 2014a; Wallensteen and Sollenberg 2001).

Finally, the countries studied are limited to Africa. A significant proportion of state-based internal conflicts in the period following the Cold War took place in Africa. I estimate that Africa was the stage for 37 percent of the world's armed internal conflicts between 1989 and 2011 (UCDP/PRIO 2013) with approximately 48 percent of battle-deaths taking place in this region (UCDP 2014k). Furthermore, Cohen and Nordås report that the region has a greater rate of high prevalence for conflict-related sexual violence than Asia or Europe (2014:423). Africa's record of civil strife indicates that the region is extreme in levels of violence. Jason Seawright and John Gerring explain that extreme cases are particularly suitable for qualitative exploratory purposes (Seawright and Gerring 2008). As I began the research for this study with a small-scale, aggregate exploration and not a large cross-national dataset, it seemed logical to select cases in a purposive fashion and to concentrate on evidence within this region. In other words, I anticipated that case selection within Africa would yield theoretical insights, since when

⁵ Defined in the UCDP as "a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year" (UCDP 2014a).

compared with Asia, Latin America and Europe there was more violence in civil war. Subsequently, the study concentrates on rebel groups in Burundi (as discussed below), using the most-similar design for case study research.

The study utilises a two-pronged methods approach. First, I carry-out a small-scale, aggregate exploration of the associations between amnesties in concluding peace agreements and post-settlement levels of sexual violence in Burundi, the Democratic Republic of Congo (DRC), Liberia, Mozambique, Sierra Leone and South Africa. This part of the study serves as a first cut to get at the issues of impunity for sexual violence beyond analyses of single cases. It is small-scale because it is limited to 23 armed actors and it is aggregate because it observes PSSV by armed actor-year. Comparable and reliable empirical evidence of internal disciplinary practices of armed groups and these actors' confidence in the absence of negative consequences do not yet exist. There are no consistent sources for quantitatively measuring the character of armed group prohibitions or the behaviour of authorities in these organisations. Therefore, I have limited this part of the study to the relationship between amnesties (one possible explanatory factor) and sexual violence after war (a presumed outcome of impunity). Amnesties were traceable through a review of peace agreements. Though not entirely satisfactory as a source for such data, sexual violence was gauged through a collection of media and US State Department and NGO reports of post-settlement sexual violence events. Thus, I focused on the causal path from one explanatory variable of impunity directly to sexual violence. The small-scale, aggregate exploration is the only portion of this study that assesses sexual violence. It therefore offers a useful preliminary overview of the theoretical implications from one cause to one consequence of impunity.

A dataset based on reports on sexual violence in the first three years after war for 23 armed groups was constructed for the aggregate exploration of amnesties and post-settlement sexual violence. This is why Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa are the countries featured in this part of the overall project. At the time, there were no systematic and comparable sources of evidence about post-settlement sexual violence. The solution was to select conflicts based on what was then known about wartime sexual violence patterns, a subject covered in media sources, country case studies and reports by non-governmental organisations. Although these sources are imperfect, I assumed that wartime sexual violence was a reasonable gauge for the levels of these harms in the post-settlement period. It was assumed that the differences between the countries in sexual violence during conflict, would translate into a similar type of variation in post-settlement sexual violence.

The second and main part of the study is a comparison between two rebel groups in Burundi's civil war (1994-2008), CNDD-FDD (National Council for the Defence of Democracy-Forces for the Defence of Democracy) and

Palipehutu-FNL (Palipehutu-Forces for National Liberation). In this part of the study, the conditions leading to impunity for sexual violence are explained. I examine collective beliefs of confidence in the absence of negative consequences for sexual violence. Burundi was identified as a viable location for this part of the study for a number of reasons. In observing the magnitude and dimensions of sexual violence during wartime, media sources and NGO reports emphasised that the country had prominent and widespread sexual abuse perpetrated by the armed groups. In my view, sexual violence in Burundi was not known to be as high or as obvious as in the DRC or Sierra Leone, which are countries that often feature in reports on sexual violence in armed conflict. Burundi is still understudied, particularly in relation to sexual violence in the English language. At the level of the armed group, early pilot fieldwork revealed that Palipehutu-FNL fighters seemed to view sexual violence unforgivingly and their organisation was known for prohibiting sex, smoking and drinking during the civil war. Selection of FNL as one case was therefore a starting point. Choosing CNDD-FDD as the second case was based on the similarities between the rebel groups, which shared political goals, culture, and language and similar pools of the civilian population for recruitment.

Data collection for the comparative study entailed conducting 19 focus groups in Burundi in November and December 2011 and in January 2013. A total of 74 individuals (10 female, 64 male) participated in the focus groups, all ex-combatants of CNDD-FDD or Palipehutu-FNL. The average age of participants was 31. Eighty-eight percent of the participants described themselves as Hutu. Since CNDD-FDD and FNL had varied loyalties, wartime activities and levels of armed violence in different areas, focus groups took place in four different parts of the country, namely Bujumbura, Rumonge, Gitega and Bujumbura-Rural.

The focus groups were a vital tool for collecting empirical information. Since the study is geared toward armed group level beliefs, focus groups could draw out the composite ideas, considerations, memories and perceptions at the group level. Each focus group would not be influenced by one single respondent's experience or memory; participants could agree, disagree, be silent, respond, provide social cues to one another and to the researcher etc. Analyzing each focus group, these dynamics yielded what I call that particular sub-set of ex-combatants' truth. And, when cumulated with other focus groups and triangulated with other sources, I could approximate the beliefs of each armed group.

I formally convened some focus groups with ex-combatants that were affiliated to only one armed group. Thus I could assemble homogenous focus groups for both CNDD-FDD and FNL. However a few focus groups included ex-combatants from different armed organisations and therefore were heterogeneous. This facilitated comparison of the viewpoints from different

compositions of the focus groups, enabling analysis of any differences (there were none) if armed group ex-combatants were in sessions with ex-fighters of a different armed organisation. Respondents were purposely selected to participate based on their involvement in one or the other of these armed groups. I was assisted by former combatants who were also staffers of a Burundian civil society group. These individuals knew other ex-combatants who I wished to involve as respondents in the focus groups. Thus, a few key individuals helped in many ways: they found and introduced me to respondents; negotiated with owners of pre-determined and neutral focus group sites (various empty roadside bars and restaurants in the daytime and, for one or two days, the offices of the civil society group); and gave directions to participants to arrive at a certain time and date. The average focus group took between 120 to 135 minutes. Participants were each given the equivalent of about 5 USD for their transportation costs. I discuss the rationale for this in the study, but should here highlight that a number of ethical and practical considerations led to my decision to work with this civil society group and to provide travel reimbursement. I do explain that working with interlocutors and compensation offered is not expected to significantly bias the information used in this study.

As I was soliciting highly sensitive material and asking individuals to contribute to a focus group discussion in front of others, all the participants were guaranteed anonymity and the discussions were not recorded. As the focus groups were conducted in Kirundi, a language I do not speak, I relied on interpreters over the course of the project. I systematically posed a set of the same questions, in the same order, to each group. In the first set of focus groups, conducted in 2011, I used an ice-breaker exercise which entailed a discussion about a cartoon by the South African satirist Zapiro, which dealt with Nelson Mandela's mediation in the Burundi peace talks (Zapiro 2001). There were no differences between responses from groups which began with the ice-breaker and those that did not. All the focus groups whether with an ice-breaker or not, followed the same structure: introductions, sexual violence events and punishment and penalties before, during and after the war; and the peace process and amnesties.

Finally, the focus group material is supplemented with information from other sources, including interviews and secondary literature. I conducted 20 (19 individuals) semi-structured interviews with former combatants from the rebel groups and the national army; key leaders and senior officials in these organisations; representatives of civil society organisations and journalists and academics.

Findings

The study concludes with theory-building implications for armed group impunity for sexual violence. The findings of the small-scale aggregate exploration run counter to expectations about impunity in the liberal peacebuilding paradigm. It is shown that amnesties do not have an association with reported post-settlement sexual violence. Strikingly, blanket amnesties, as opposed to partial amnesties were more closely linked to a lower number of reports of sexual violence. This counters the assumption that a factor outside of the armed group and part of the peace process has much impact. It appears from the exploration of the reports of post-settlement sexual violence that amnestying war-related violence will not lead to future atrocities and violence.

The within-case and comparative analyses show that of the two groups, only CNDD-FDD had evidence of armed group impunity for sexual violence. And although it is not possible to be completely certain, interviews and secondary sources support the view that the group's members have committed sexual violence. On the other hand, FNL is found to have accountability for sexual violence, with its members fearing retribution and believing that it will lead to dire consequences. Interviews and secondary sources conclude that FNL had slightly lower numbers of reports for sexual violence and also a reputation of not committing these harms. For example, the group was not known for sexual assaults in its most violent attacks on civilians such as on a refugee transit centre in Gatumba in Bujumbura Rural Province in 2004.

Applying evidence from ex-combatants of CNDD-FDD and FNL, it is possible to eliminate amnesty as an explanation for armed group impunity. This complements the findings of the small-scale, aggregate quantitative study, where it is shown that amnestying war-related violence did not correspond to more reports of post-settlement sexual violence. This suggests that amnesties may not lead to future atrocities and violence. The comparative study finds that at the level of the foot soldier, rebel groups have very little information about amnesties and they interpret these parts of a settlement as merely opportunities for a new beginning. They seemed to understand that amnesties are for the past, and not a free ticket to carry on violence of any sort, but particularly sexual violence, with impunity. These perceptions were particularly insightful when reviewed in tandem with findings on flawed prohibitions and negligent authorities in creating armed group impunity for sexual violence.

The study shows how repetitive and clear prohibitions interact to prevent impunity. I found that unless armed group members have a clear and constant code that is shared across the organisation and part of its indoctrination and socialization, fighters do not internalise it and do not believe that their

leaders will punish perpetrators. Even more importantly, they will not develop a culture of mutual accountability.

In addition to these results, which were derived from using the theoretical framework, additional insights emerged. The empirical material also indicates that dependency on the civilian population is the main reason that armed groups implement effective prohibitions. Armed groups require supplies, equipment, arms, material and recruits. If they are able to access these without the meaningful cooperation from civilians, then they are free to ignore or invest little in prohibitions against sexual violence. When armed group-civilian dependency is low, armed organisations can pay less attention to rules and regulations of sexual behaviour. They do not need to promote abstinence or restraint. Eventually, this generates armed group impunity for sexual violence.

As a result of the findings from the exploration and examination of flawed prohibitions, negligent authorities and amnesties, the study revises the original theoretical framework. I argue that the explanations for armed group impunity reside in the quality of prohibitions and importantly, their formulation and dissemination within the armed group. This factor, which is internal to the armed group, is furthermore affected by the quality of leadership and if, why and how authorities apply the penalties for sexual violence. When armed group members hold one another accountable and this standard is applied to authorities as well as foot soldiers, by leaders themselves, then impunity does not have a chance. Furthermore, the additional insights emerging from the study indicate why armed groups develop effective prohibitions and authorities implement punishment. In this regard, the dependency between the armed group and the civilian population plays a role. If armed actors can use force or and bypass the efforts needed to nurture cooperation with the population, they will not rely on civilians for food, recruits, information or other types of support. They can then invest less time and resources in enforcing restraint and therefore, develop flawed prohibitions against sexual violence and authorities will perform their punitive responsibilities negligently. The steps leading to impunity for sexual violence thus begin with the degree to which an armed group is dependent on the civilian population and move from there to whether or not it imposes effective prohibitions and its authorities apply penalties; thereafter, the armed group develops a rationale for the consequences for sexual violence and whether or not perpetrators can get away with these crimes.

Consequently, in the final parts of the study I revise the original theoretical framework and arrive at a new preliminary theory, which states that when armed groups do not depend on voluntary support and recruits from the civilian population, they are likely to put in place unclear and inconstant prohibitions of sexual violence, which, if reinforced by authorities, generates armed group impunity for sexual violence.

Outline

The study consists of 10 chapters. This introduction, chapter 1, presents the main research problem. In Chapter 2, I discuss the liberal peacebuilding paradigm. The chapter's purpose is to anchor this study within contemporary liberal peacebuilding's approach to ending impunity and present the approach of the UN and other actors in terms of international justice, the rule of law and accountability. Importantly, one of the explanatory factors of impunity in this study that I explore is amnesty – an instrument that presents problems for the realization of justice. The chapter therefore introduces some of the debates on amnesty and argues that a missing piece in previous research is the effect of amnesty on impunity.

Chapter 3 refines the main theoretical arguments of interest. I integrate the various insights from liberal peacebuilding and research on sexual violence. Thereafter, I consider the micro-foundation aspects of impunity, noting the role of the psychological processes of social learning. The chapter ends with a discussion of the main types of propositions for armed group impunity for sexual violence and presents a preliminary theoretical framework with three different explanatory factors of armed group impunity for sexual violence: flawed prohibitions, negligent authorities and amnesties.

In chapter 4, I present the research design and methodology. The chapter begins by explaining the motivations for a theory-building approach and introduces the two-pronged methods strategy of the project. It frames the small-scale aggregate exploration of post-settlement sexual violence and the comparative case study of the non-state (also referred to as rebels) armed group actors in Burundi, CNDD-FDD and Palipehutu-FNL (also referred to as FNL). The chapter describes the reasons for using these two methods and sets out the procedures for data collection and analysis. Chapter 4 also contains the specification of the variables for each part of the study and introduces the theoretically-derived key indicator questions for each variable in the comparative case study. It concludes with a discussion of the ethical demands of data collection for a project of this type, and the challenges of conducting field research on the treatment of armed group perpetrators of sexual violence in a politically sensitive environment.

Chapters 5, 6, 7 and 8 contain the empirical analyses. The first of these, chapter 5, is the small-scale, aggregate exploration of post-settlement sexual violence. The chapter introduces the post-settlement sexual violence events dataset. It briefly includes background information about each conflict context. A summary of each conflict context and my coding guidelines for the dataset are included in the appendices to this study. The chapter presents a narrative of the patterns of PSSV using descriptive statistics. It then proceeds with my preliminary analysis of the association between amnesties and post-settlement sexual violence.

Next, the study turns to the comparison of the two rebel groups of Burundi. First, in Chapter 6, I provide an eclectic overview of Burundi's civil war between 1994 and 2008 and the peace negotiated. Readers who have a limited knowledge of Burundi will find this chapter useful. The final part of this chapter is however particularly relevant to the empirical material on armed group impunity for sexual violence. I describe Burundi's general response to sexual violence. The chapter concludes with a summary of the patterns of sexual violence events that are attributed to CNDD-FDD and FNL. I have used the same methods as in the small-scale, aggregate component of the study to assess what is known about the rebel groups and tracked down sexual violence events reported in news sources and NGO reports. Since the methods and data are imperfect, the results should be viewed with caution. However, the chapter concludes that CNDD-FDD had a wider and more extensive record of committing sexual violence, and that this is a reasonable assumption based on the existing evidence.

Thereafter, the within-case analyses of CNDD-FDD (Chapter 7) and Palipehutu-FNL (Chapter 8) are carried out. Each of these chapters begins with a brief discussion of the rebel organisation and introduces the participants in the focus groups for each rebel group. Next, the main analysis entails a presentation of variation in beliefs about the consequences for sexual violence and each explanatory factor: flawed prohibitions, negligent authorities and amnesties. The findings are offered in the form of focus group responses. Subsequently, I conduct a formal within-case analysis, examining the relationships between the independent variables and the dependent variable. These two chapters are also foundations for the cross-case comparison of CNDD-FDD and Palipehutu-FNL, which is carried out in chapter 9. The chapter initially analyses the formation of armed group impunity within CNDD-FDD and Palipehutu-FNL and compares the evidence garnered from the focus groups with ex-combatants. It contrasts the different experiences of CNDD-FDD and Palipehutu-FNL, focusing on the independent variables. The aim is to evaluate the original theoretical framework, presented in Chapter 3. Some additional observations, not originally identified in the theoretical framework, are also discussed. Cumulatively, I am able to propose whether and how flawed prohibitions, negligent authorities and amnesties relate to confidence in the absence of negative consequences for sexual violence.

The final and concluding part of this study is chapter 10. I present the main findings, followed by reflections for future research. The chapter concludes with a commentary on the implications of the study for policy efforts to address sexual violence by armed groups in contemporary civil wars.

2. The Setting: Liberal Peacebuilding and Impunity

The aim of this chapter is to anchor the study within the liberal peacebuilding paradigm, arguably the dominant, contemporary model for promoting the rule of law and using justice to build peace. The study borrows from Roland Paris to define what is meant by liberal peacebuilding. He reasons that it is based on the Wilsonian notion that “democratization and marketization will foster peace in war-shattered societies” (Paris 2004, 6). As does Paris, I refer to the UN’s policy and practice in relation to peacebuilding as an array of “comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people (UNSG 1992, para. 55).”⁶ The chapter includes a short discussion of some of the model’s post-Cold War developments, including efforts to address impunity and its approach toward preventing and punishing sexual violence in armed conflict. It shows that impunity is a value-laden, negative term used for normative purposes. I will note that liberal peacebuilding, through the UN and other actors, focuses on the international arena or on the role of the state. While this is a reflection of the state-based nature of international law, contemporary international criminal justice also holds individuals accountable for mass atrocities. Yet increasingly, non-state armed groups are also important recipients of expectations of accountability for serious crimes, including sexual violence. I suggest that a lacuna exists between these demands for accountability and understanding of the micro-level perspectives of non-victims. The gap raises obstacles to understanding the causal dynamics of impunity, particularly at the sub-national level and among non-state actors.

As stated in Chapter 1, although impunity is a common concept, it has taken on particular importance among liberal peacebuilding actors. The first section of this chapter is an introduction to the idea that rule-based, non-arbitrary accountability is part of the social contract, which itself is a foundation of the political philosophy of liberal, democratic governance. Moving quickly forward, I then focus on the post-Cold War period and the UN’s

⁶ See also James Waldron who lays out philosophical foundation of liberalism, stipulating that it consists of social arrangements that support individual freedoms—for everyone (Waldron 1987).

promotion of the rule of law and post-war accountability. The second part of this chapter also covers aspects of international justice, highlighting the increasing focus on individual responsibility for atrocities. Finally, the third section explains the working definition of impunity through the UN and illustrates how liberal peacebuilding actors pursue efforts to address sexual violence through the lens of accountability. I conclude by discussing avenues for social science inquiry.

Fundamentals: rule-based, non-arbitrary accountability

The literature on liberal peacebuilding is huge and its debates take place across a wide variety of scholarship on international relations. Space and time preclude a comprehensive engagement with these debates. However, one way to understand the characteristics of accountability within liberal peacebuilding is to consider the fundamental roots of liberal governance, through political philosophy. The next few paragraphs are a modest attempt to do so, offering a glimpse backwards to the philosophical foundations of liberal peacebuilding and its emphasis on rule-based, non-arbitrary accountability.

Classical roots of justice and accountability

To begin with, in this section I ask which liberal peacebuilding ideas are relevant to the concept of impunity. Undoubtedly, political philosophers would guide my rudimentary stab at this question and tell me to begin with Plato and the *Crito* and the *Republic*, both of which pose social contract arguments for justice. As Celeste Friend explained, Plato (through the Socratic dialogues) argues that justice is obedience to the laws of the state as well as a moral ideal that generates (some kind of) happiness for the individual (2004). In a later period, Thomas Hobbes, John Locke and Jean Jacques Rousseau each augmented and amended the ideals of justice through treatises on the social contract.⁷

⁷The tenets of fairness and non-arbitrariness as part of the rule of law may be evident in precursor traditions, such as the Babylonian Code of Hammurabi (Agrast et al. 2013). However, see also Simon Chesterman who provides an important perspective on the global roots of the rule of law. Among other many important points, he briefly discusses a number of traditions around the world and through history. The Code of Hammurabi, for example, is not viewed as having the same meaning as it is portrayed in contemporary rule of law, since a Babylonian ruler could govern arbitrarily (2008, 4). There is also a record of conflict about the Chinese traditions of rules dating to the 6th century B.C. This conflict is evident in the struggle between Legalism and Confucianism, each of which defined the rule of law differently (Chesterman 2008, 10).

Hobbes argues for the importance of political power for managing social instability (S. Freeman 2000) and in so doing shaped the discourse about the rational choice of individuals and why they would submit themselves to a governing authority. In this discourse, the individual gives up her or his own absolute powers. She or he cedes a measure of freedom to the state, which is then responsible for enforcing laws. This reasoning also assumes that the application of the law will be fair. If the governing authority were despotic or tyrannical, the rational individual would not submit to it.

Locke's exposition on the social contract underscored the value of institutional mechanisms to redress injustice in a predictable manner. The compact between individuals would prohibit arbitrary practice of law. Lawmakers and enforcers should not "pronounce or punish in an arbitrary manner for whatever form the commonwealth is under, the ruling power ought to govern by declared and received laws, and not by extemporary dictates and undetermined resolutions"(Locke 1690, sec. XI, para 137).

Rousseau closed Book One of his *Of the Social Contract* by arguing that the social contract was meant to transform inequality into equality. It was a leveller between the powerful and the weak; the rich and the poor; and the talented and talentless so that each was protected from the other's infringement by legal rights (Rousseau 1762, bk. I, IX). By exclaiming the importance of judicial impartiality and efficiency he also belaboured the point that fairness was an expected outcome of a healthy social contract. Later crafters of liberal foundations such as John Stuart Mill (Waldron 2002) and Immanuel Kant, who articulated the notion of having a fair legal system as critical to peace (Guyer 2002; Paris 2004, 49) further formed ideas of the importance of restraints on power and the ideal of fairness.

The social contract renders its members equals. Thus social contract discourse accentuates the role of laws *or rules* in generating security between individuals and groups. It moreover pronounces on the quality and enforcement of these rules. Rules must not be arbitrarily enforced and they must safeguard fairness. For the purposes of the study, rule-based, non-arbitrary accountability is thus an important counterpoint to impunity. One way to think about impunity, do so is to be aware of the quality of rules. It is also worth considering how impunity is a problem that some consider undermines the efficacy of rules. It might defer justice but also entrench the preferences of perpetrators above the innocent. Impunity generates too much uncertainty, unfairness and unpredictability.

The International Bill of Rights

There are several ways this thinking has translated into international norms. Preclusion of non-arbitrariness is a useful illustration. The International Bill of Human Rights is in effect the 1948 Universal Declaration of Human

Rights and the 1966 International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights (and their Optional Protocols), both of which entered into force in 1976. The Universal Declaration of Human Rights makes explicit the value of shielding individuals from arbitrary infringements on basic human rights. Articles 9, 12, 15 and 17 each prohibit arbitrariness in the treatment of an individual. No one shall be subjected to arbitrary arrest (Article 9) or arbitrary interference in one's private life or one's reputation (Article 12) or arbitrary deprivation of nationality (Article 15) or arbitrary seizure of one's property (Article 17). The Declaration's stipulations against arbitrariness seek to protect civil and political liberties. They stress the high value on an individual's right to know what to expect as a member of society, including being able to live without fear of capricious edicts and interventions. The 1966 International Covenant on Civil and Political Rights echoes these sentiments, prohibiting arbitrary arrest and detention in its Article 9 and unlawful interference with privacy in Article 17. Two out of three important components of the International Bill of Human Rights uphold the protection of individual freedoms by explicitly banning arbitrariness. This illustrates the importance of predictability in the rule of law. Our world hopes that states will not only protect individual liberties, but universally stipulates how these rights should be upheld. In this regard, the codification of human rights places an emphasis on legal and political systems that are rule-based, but also predictable and equal.

Rule of law and post-war accountability

This section focuses on the UN's approach to the rule of law and its increasing emphasis on accountability for war atrocities.⁸ I underscore that liberal peacebuilding places demands on countries emerging from conflict (and the international community) to protect humanitarian and human rights. These demands are intensified in pursuit of accountability for wartime atrocities and human rights violations. The section provides a brief overview of the UN's ambitions in this regard and also introduces the International Criminal Court.

Democracy and peace agendas

Although published four years apart, UN Secretary-General Boutros Boutros-Ghali's *An Agenda for Peace* (1992) and *An Agenda for Democrati-*

⁸ Paris and others discuss liberalism's role in the establishment of the League of Nations and the UN, mainly through Wilsonian international liberalism (Paris 2004; Slaughter 1995). Except to note here that contemporary liberal peacebuilding in its emphasis on intervention into countries in political crisis and war is linked to Wilsonian international liberalism, this chapter will move forward to the post-Cold War era.

zation (1996) captured the two main facets of the post-Cold War liberal peacebuilding paradigm. Boutros-Ghali voiced the era's emerging agenda, which would equate peace with democracy and bring together "democratic practices - such as the rule of law and transparency in decision-making - and the achievement of true peace and security in any new and stable political order" (UNSG 1992, para. 59).

The *Agenda for Peace*, published barely three years after the fall of the Berlin Wall in 1989, equates illiberal governance with the causes of war. As supportive scaffolding, the *Agenda for Democratization* promotes participatory rule, equality before the law and a social contract between the sovereign and the people. In the UN Secretary-General's view, political liberalization should become the definitive system of all states since "democracy can and should be assimilated by all cultures and traditions" (Boutros-Ghali 1996, para. 10; see also Paris 2004).

Both agendas were launched in the early post-Cold War period, following the collapse of the Soviet Union and towards the end of what Samuel Huntington christened "the Third Wave of democracy" (Huntington 1991a, 1991b). Thirty countries had become democratic between 1974 and 1990. Indeed, the collapse of Cold War rivalry between the US and the Soviet Union, seemed to coincide with (more) democratization. Between 1989 and 1997, over 47 sub-Saharan African states adopted competitive and pluralist systems of democracy. Many actors saw the post-Cold War era as one where diverse political systems – whether statist, competitive, communist, socialist, authoritarian, developmental, or a hybrid of these – would each turn, overnight, into liberal democracies. Perhaps widespread democratization in developing countries signalled a consensus that democracy was "a response to a wide range of human concerns" which was "essential to the protection of human rights" and therefore the natural culmination in a linear process of political and economic development (Boutros-Ghali 1996, para. 15). But such an optimistic reading of the rising tide of democracy would be questioned by researchers. For instance, Richard Joseph theorised that many of these changes in Africa only culminated in the repositioning of authoritarian tendencies and that political liberalization was partly driven by external pressures. Indeed, for many democracies in Africa the outcome would be "new authoritarianism in a liberal guise" rather than a fully participatory, pluralistic political culture (Joseph 1997, 378).

While it is composed of different institutions,⁹ which with its own mandate and orientation, it is worth considering the UN system's diverse func-

⁹ For instance, the UN Security Council's mandate from the UN Charter gives it primary responsibility for international peace and security, which it carries out on a case-by-case basis. Under the Charter, the General Assembly is the body's main deliberative organ. Another important institution discussed in this chapter is the Office of the High Commissioner for Human Rights (OHCHR) which obtains its

tions in liberal peacebuilding and how it aims to promote democracy. Remarkably, the *Agenda for Democratization* allocated democratization as a core UN activity.¹⁰ Given the interests of its most powerful states, the agenda for democracy is an impressive aspiration. For instance, Mats Berdal (2003) argues that the Security Council is affected by the different outlooks of its permanent five members. After the end of the Cold War, Russia, France and the UK used their membership as armour: it maintained their international standing as Great Powers. However, Russia also shared an affinity with China, (which is at least in economic terms, a great post-Cold War power). Both of these countries seek to protect the principle of non-intervention in the internal affairs of member states (Berdal 2003). Finally, the US mainly used the Security Council as a “means of managing, containing or simply putting on the backburner difficult issues and challenges to which its military might is of limited relevance ...but it cannot ignore” (Berdal 2003, 15). As David Bosco states, the Council’s members “are, above all, powerful states with their own diverging interests” and it has repeatedly “dashed hopes that its members would somehow rise above their narrow interests and work together to establish a more peaceful and just world” (2011, 442).¹¹ It is thus important to qualify a discussion of the UN’s peacebuilding agenda, particularly in relation to democratization.

Although there are important differences within the UN, the international organisation has increasingly focused on rule of law and government accountability issues, most notably in connection to post-war peacebuilding, managing failed states, development and other related matters. The *Agenda for Peace* was for the most part a blueprint to go beyond traditional military causes of war and insecurity and for the UN to intervene within states in order to build up liberal, democratic governance. This was based on a sentiment, albeit one driven by universal aspirations for liberty, that democracy was a universally accepted preference by the world’s peoples and nations (UNSG 1992, para. 15). Furthermore, it was presumed that democracy and the rule of law were more capable of preventing conflict recurrence than other governance systems. Having introduced the policy background, the

mandate to prevent human rights violations on the basis of the Charter but more importantly, as a result of its establishment under a UN General Assembly resolution A/RES/48/141 of 20 December 1993. These different mandates partly explain the respective orientations within the UN system.

¹⁰ The basis for merging the UN’s organisational identity with a global democratization agenda is language and principals set out in the UN Charter, the Universal Declaration of Human Rights and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (Boutros-Ghali 1996, para. 31).

¹¹ Bosco also argues that the original intention of the Council was to maintain peace between the great powers and he stresses that the permanent five have managed to so, albeit in a minimalist sense, for over half a century (Bosco 2011).

following section presents some of the concrete actions undertaken by the UN and its agencies and affiliates.

Rule of law and peacebuilding

The UN's peace agenda was to include the building of capacity of local security actors, monitoring post-war elections, promoting and advancing human rights and reforming state institutions (UNSG 1992, para. 55). The next UN Secretary General, Kofi Annan would further render indisputable the links between peace, democracy and the rule of law. For example, under Annan the Report of the Panel on United Nations Peace Operations of August 2000 (otherwise known as the Brahimi report) integrated rule of law and human rights into peacekeeping and peacebuilding operations, prescribing deployment of technical expertise for civilian police, judicial, penal and human rights reform.

The UN's conceptualization of the rule of law is contained in the August 2004 report by Annan to the UN Security Council. The report defines the rule of law as:

...a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (UNSG 2004, para. 6).

The UN Security Council held thematic debates on the rule of law in 2003, 2004, 2006, 2010 and 2013 (Security Council Report 2011, 2, 2013). The Security Council Report (SCR), an international NGO based in New York, has analyzed the Council's use of rule of law rhetoric, assessing to what extent it has addressed the issue in its resolutions. SCR has weighed whether or not rule of law was addressed in relation to substantively-related issues "such as human rights, judicial reform and establishing state authority" (Security Council Report 2013, 6), finding that the Council's attention to rule of law issues rose from 69 percent in 2003 to 82 percent both in 2009 and in 2010, dipping down again to 66 percent in 2011 and then rallying to an unprecedented 93 percent of resolutions in 2012 (Security Council Report 2013, 7).

The content of these resolutions, however, varies widely and provides an impression of uneven application of the UN's democratization and rule of law agenda. A December 2010 resolution on Somalia, for example, simply authorises the fairly uncontroversial establishment of security and institu-

tional reform capacities within the UN Political Office in Somalia (UNSC 2010b). Resolutions on Afghanistan are more confrontational, including a sanctions regime against the Taliban (UNSC 2011). In addition, there is an absence of coherent criteria for addressing rule of law issues within the Council. A striking example of rule of law action by the Council took place in 2005, when it referred the situation in the Darfur region to the International Criminal Court. By resolution, it invoked Chapter VII of the UN Charter, stating that the conflict in Sudan was a threat to international peace and security (UNSC 2005b). The decision was critical, since the ICC had no jurisdiction over Sudan – which is not a state party to the Court’s founding treaty, the Rome Statute (Neuner 2005; UNSC 2005b).

Multi-agency liberal peacebuilding

Turning to other actors within the UN family, I briefly present some of the rule of law efforts by the Peacebuilding Commission (PBC), multidimensional peacekeeping, and the Office of the High Commissioner for Human Rights (OHCHR). My point is to highlight activities conducted within the liberal peacebuilding paradigm which are geared toward the establishment of the rule of law. Of the two actors, OHCHR appears to be the more focused on justice issues. Surprisingly, multidimensional peacekeeping operations have undertaken a wide number of activities in the rule of law arena.

The Peacebuilding Commission (PBC) was established in 2005 through a UN General Assembly resolution (UNGA 2005) and authorised by the UN Security Council (UNSC 2005a) to coordinate and mobilise resources and attention for the reconstruction and institution-building needs of post-conflict countries.¹² Originally focusing on peacebuilding in Sierra Leone and Burundi, the PBC now has country arrangements for Guinea, Guinea-Bissau, Liberia and the Central African Republic. It supports projects in peace implementation, economic revitalization, rebuilding administrative services in 24 post-conflict countries. The PBC Fund’s Business Plan highlights a large number of commitments, from management of natural resources and security sector reform, to employment generation and public service delivery. Rule of law is one of its many priorities.

Increasingly the UN Security Council has included provisions on strengthening the rule of law and justice and/or corrections systems in the mandates of new multidimensional UN peacekeeping operations. The Department of Peacekeeping Operations (DPKO) has deployed hundreds of judicial and correctional affairs officers to its missions in Afghanistan, Chad, Côte d’Ivoire, Darfur, the Democratic Republic of the Congo, Haiti, Kosovo, Liberia, Sudan and Timor-Leste (East Timor) (UN Department of

¹² The Peacebuilding Fund has raised USD\$ 527 million (250US\$ million more than its original target) and allocates funds to other UN agencies and institutions to carry-out the ambitious goals of peacebuilding (UNPBSO 2012).

Peacekeeping 2010). A 2010 DPKO update highlights the diverse and ambitious peacekeeping activities in this area. In Afghanistan, DPKO worked to improve legal aid services. It has sought out coordinated donor support for building the capacity of Côte d'Ivoire's legal and judicial system. In the DRC, the UN has carried out workshops for civilian and military justice personnel. In West Darfur, the African Union/UN Hybrid Operation in Darfur-Sudan (UNAMID) advisors worked on integrating justice and security issues into other programs, such as the Jonglei State Stabilization Plan. The UN Stabilization Mission in Haiti (MINUSTAH) provided technical assistance to judiciary members, to address irregularities, procedural delays, political interference, high detention rates and corruption. The UN Mission in Liberia (UNMIL) was tasked by the Security Council with assisting in the consolidation of the country's national judicial system. In Timor-Leste, DPKO officers worked to build the state's justice sector (UN Department of Peacekeeping 2010).

The OHCHR maintains that the numerous judicial and non-judicial elements of transitional justice must comply with international standards of international law (OHCHR 2014).¹³ Mainly, international interventions for transitional justice have been direct outcomes of peace settlement negotiations. The OHCHR mandate for the rule of law and transitional justice is geared to implementing peace agreements. In several cases, the UN has acted as a watchdog, coach, planner, donor and activist in order to ensure that post-war government authorities implement international standards of accountability.

As a result of the power-sharing agreement between political parties after the electoral violence in Kenya in 2007, the Commission of Inquiry into Post-Election Violence documented human rights and physical integrity abuses and recommended the establishment of a special tribunal to address the wrongs committed. The Kenyan parliament however, did not authorise the necessary constitutional amendment to establish a special tribunal. In February 2009, the OHCHR reacted to this failure and called on the need for a Truth, Justice and Reconciliation Commission (TJRC) to “amend clauses granting amnesty and jeopardizing the independence of the Commission” (OHCHR 2009a, para. 10). In Nepal, the OHCHR reacted to the government's failure to carry-out national consultations prior to drafting the legal text for establishing a truth and reconciliation commission. It provided information to the Nepalese Ministry of Peace and Reconstruction on other TRC processes and relevant international human rights and humanitarian law standards. And it financially and logistically supported ‘new’ consultations

¹³ The OHCHR is the UN's lead agency for transitional justice issues (Office of the United Nations Commissioner for Human Rights 2014)

and promoted the organisation of additional consultations at the district-level (OHCHR 2009a, para. 16).

The OHCHR has worked with the International Commission Against Impunity in Guatemala to provide police training in human rights and the establishment of criminal investigation and analysis at the national level, while at the same time providing support to the Public Prosecutor's Office for witness protection (OHCHR 2009a, para. 18) In Colombia, the OHCHR has endorsed examinations under the *Justice and Peace Law*, initiated by the Supreme Court of Colombia, which has investigated the relationships between high-level public officials and illegal armed groups. The UN also organised a seminar on the ICC. In Cambodia, the UN is monitoring the Extraordinary Chambers which are trying crimes committed under the Khmer Rouge between 1975 and 1979 (OHCHR 2009a, para. 24).

This section has presented a sample of the wide array of rule of law activities of the UN. The world body works on multiple fronts and its various agencies and institution influence the entrenchment of the rule of law and accountability in many different ways. These activities are, however, limited mainly to state actors. This is logical, since the international system and the UN are founded on the power and sovereignty of states. Since the bulk of liberal peacebuilding takes place in relation to government, the work of shoring up liberal ideals for rule-based accountability is limited to the arena of states. However, as the next section indicates, liberal justice also holds non-state actors accountable to international standards of humanitarian and human rights law.

International justice

In 2012, the UN General Assembly, which has instituted a regular report on rule of law issues in peace and security from the UN Secretary-General, adopted a "Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels" (UNGA 2012). It commits member states to ensure that "impunity is not tolerated for genocide, war crimes and crimes against humanity or for violations of international humanitarian law and gross violations of human rights law" (UNGA 2012, para. 22). Any suspected perpetrators should be brought to justice through domestic judicial processes, and if necessary through regional and international mechanisms (Security Council Report 2013, 5).

Through the UN Security Council's *ad hoc* international criminal tribunals intolerance for impunity for mass atrocities and human rights violations has grown. The Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994 to address ethnic cleansing and genocide in the respective conflicts. In both tribunals, the UN would institute important precedents which saw individuals personally accountable for the notorious

acts of mass atrocity committed by, or on behalf of, armed groups. The 1998 Rome Statute resulting in the formation of the International Criminal Court (ICC) in 2002 was a historical outcome of the conflict and scale of human rights violations in former Yugoslavia and Rwanda, as well as the lessons learned in trying to establish the *ad hoc* tribunals (Benedetti and Washburn 1999).

Article five of the ICC statute defines four types of acts as falling under its jurisdiction: (1) the crime of genocide; (2) crimes against humanity; (3) war crimes; and (4) the crime of aggression (UNGA 1998, 5).¹⁴ The Statute describes these acts as “the most serious crimes”(UNGA 1998, art. 5). Serious crimes of mass violence are viewed as violations of customary international law, and are well-established in treaty law such as in the 1949 Geneva Conventions. The ICC has jurisdiction over serious crimes when a national court is incapable or indisposed to prosecution, thus effectively putting a burden on states to take legal action or face legal intervention at the international level. As noted earlier, the Rome Statute provides for referrals of cases of serious crimes to the Court by the UN Security Council. This is one example of the shift in the international system to universal jurisdiction for serious crimes. Governments cannot shield themselves from criminal liability even when a violation is committed by a state representative inside its own national territory (Werle 2005). This places two important ideas – state sovereignty and universal jurisdiction – at loggerheads.

Perhaps the most important tenet of the international system is the idea that states are sovereign. They have absolute and supreme power to make their own laws and to regulate their own affairs without interference from foreign actors and institutions. However, the existence of a treaty-based, permanent, international criminal court with powers to prosecute serious crimes advances a new order that appears to trump sovereignty. While there are distinct limits to the Court’s jurisdiction which thus still protect sovereignty, a popular concern is that its existence has changed things for states. For instance, the ICC appears to make more inviolable obligations to prevent and punish serious crimes under other treaties such as the Geneva Conventions and their Additional Protocols adopted in 1977 and the 1948 Genocide Convention. To many critics, it strengthens accountability even if that means that “people who commit the most severe human rights crimes can be tried wherever they are found” (Roth 2001, 150). The issue of state sovereignty is furthermore complicated by the fact that justice at the international level does not necessarily result in accountability within states that have experienced heinous human rights violations.

¹⁴ As will be noted elsewhere, the Rome Statute classifies sexual violence as a crime against humanity (UNGA 1998, 5 para. g).

Chandra Lekha Sriram (2003) addresses this big debate and expounds on the pitfalls and potentials for prosecuting serious crimes through universal jurisdiction. She considers reasons for prosecution and punishment in the context of societies that have been affected by war crimes. In these settings, the benefits of prosecution for serious crimes can include retribution, deterrence, reconciliation and education. Her arguments point to the likelihood that international prosecution can dilute these benefits for local audiences and actors (Sriram 2003). Indeed, the literature on which mechanisms are ideal for addressing serious crimes is vast; accountability in a number of recent examples has included hybrid courts, traditional justice; national commissions and prosecution, international tribunals and the ICC's adjudication.

Finally, the rise of accountability for serious crimes, as exemplified through the ICC, suggests that mass human rights violations are not a default of war. They are not inevitable aspects of war. They are avoidable (and therefore inexcusable) on the part of governments and indeed, all armed actors. As will be discussed below, the expectation of accountability for serious crimes plays out most clearly in the fact that individuals are increasingly held responsible for wartime atrocities.

Individual responsibility

Individual leaders are now liable for a range of serious crimes even if these acts are committed during war. The Rome Statute defines individuals – and not just states—as liable for punishment. Article 25 introduces individual criminal responsibility of persons that commit the crimes listed in the statute. Persons are held liable for ordering, soliciting or inducing serious crimes; or for contributing to their occurrence in any other way (UNGA 1998).

In 1943 Hans Kelsen authored an essay on the legal underpinnings of individual responsibility for war crimes (Kelsen 1943).¹⁵ It was written before the Nuremberg and Tokyo tribunals, which marked the beginning of a new trend culminating in the ICC's Rome Statute. He underscored that until the looming end of World War II, international law had not held individuals, but collective groups or states responsible for criminal acts. International politics had up until then responded to injurious actions through retaliation such as a 'just war' reprisals. Holding individuals responsible, however, involves limitations to a person's freedom, life and liberty (Kelsen 1943, 533). A just war has a collective consequence, since an entire government from the head

¹⁵ Kelsen makes a number of unsettling points. For instance, he questions the boundary between international and domestic legality and the protections afforded by war in the international context. Killing, destruction and capture are not violations of the laws of war in certain conditions. But in any other context, they are criminal: "the acts of legitimate warfare, constitute crimes according to criminal law, since acts of war are acts of forcible deprivation of life, liberty, property" (Kelsen 1943, 547) .

of state to the infantry soldier, pays the price. Reading Kelsen provokes the concern that with the onset of individual responsibility for war crimes, states are no longer held responsible for the violence committed in their names. This is another way of assessing the dilemmas of individual responsibility for serious crimes. It challenges the assumption that holding government leaders and military commanders responsible will deter future serious crimes during periods of political crisis and war. Liberal peacebuilding proponents of international justice, however, appear confident that holding individuals accountable could result in a gradual shift in acceptable conduct within a state or society, and have a deterrence effect in the long-term. This is exemplified in the ICC's record.

As of the end of 2013, the ICC's caseload included 21 individuals in nine situations and/or countries. The Court's 2013 report to the UN General Assembly states that 122 states had ratified the Rome Statute and that its caseload was growing (ICC 2013). The cases were at various stages, with two appeals (Lubanga and Katanga); one acquittal (Mathieu Ngudjolo Chui); a pre-trial (Simone Gbagbo); trials for Jean-Pierre Bemba Gombo and the start of trials for Bana and Jerbo from Kenya. The ICC was seized with the situations of Libya and Darfur, Sudan (which were referred to the Court by the UN Security Council). A small group of individuals are wanted at the Court for allegations of serious crimes in the DRC, Uganda, Kenya, Côte d'Ivoire and Libya. Arrest warrants were outstanding for Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen of Uganda since 2005; Sylvestre Mudacumura for the DRC situation since 2012; Saif Al-Islam Gaddafi and Abdullan Al-Senussi from Libya since 2011; and Simone Gbagbo of Côte d'Ivoire since 2012. One individual, Bosco Ntaganda (for the situation in the DRC) had surrendered himself to the Court (ICC 2013).

The crimes vary. Individuals are alleged to have criminal responsibility for crimes against humanity and war crimes. There are multiple counts for murder, rape, sexual enslavement; intentionally attacking civilians, including peacekeeping personnel and their equipment; pillaging; and cruelty against civilians, to name a few. Individual liability is based on direct and indirect commission of these acts. Thus far, only one individual has been sentenced, namely Thomas Lubanga Dyilo, alleged leader of the Union of Congolese Patriots (UCP) for war crimes involving child soldiers in the DRC in March 2012 (ICC 2013).

However, the rigors of meeting objective and subjective legal standards when trying crimes committed during conflict and crisis have been a challenge. Kenneth Roth summarises the bleak record of the ICC Prosecutor's Office, which by early 2014 had instituted 31 prosecutions, winning only one conviction and with six cases being "withdrawn, dismissed, or led to acquittal due to lack of evidence" (Roth 2014, para. 12). For instance, Callixte Mbarushimana of Rwanda was arrested and went to the pre-trial

stage for five counts of crimes against humanity and eight counts of war crimes in eastern DRC. He was alleged liable as Executive Secretary of the Democratic Forces for the Liberation of Rwanda-Abacunguzi Combatant Forces (FDLR-FCA). In December 2011 the pre-trial chamber of the Court declined to confirm the charges against Mbarushimana on several grounds, including lack evidence which met the statutory threshold of substantial grounds (*Prosecutor v Callixte Mbarushimana* 2011). In essence, the Prosecutor's Office failed to muster and provide clear evidence that Mbarushimana's actions led to the crimes. Such outcomes pose considerable challenges also in relation to sexual violence. As discussed below, despite the legal basis for greater accountability, observers of the ICC have been disappointed in its track record for proving and punishing sexual violence in armed conflict.

Accountability for sexual violence in armed conflict

Trends toward accountability have included the criminalization of sexual violence during armed conflict (Hayes 2013) and international law is advancing the way these harms are investigated, prosecuted and punished. The process has been largely positive, but there have been detours on the road to greater accountability.

The 1949 Geneva Convention (IV), an international instrument that protects civilians in war, also prohibits rape, enforced prostitution and other forms of sexual violence (Carter 2010, 344). The Tribunal for the Former Yugoslavia reformed rules of evidence precluding admission of a victim's past sexual conduct, the need for particular types of testimony and limiting the use of arguments of consent as part of the defence. This increased the likelihood of charges for these crimes (Bell and O'Rourke 2007). It also found three men guilty of rape, torture and enslavement in 2001 (*Prosecutor v. Kunarac, Kovac & Vukovic* 2001). In 1998, the Tribunal for Rwanda generated the first international conviction for rape as an act of genocide (*Prosecutor v. Akayesu* 1998). The Rome Statute included sexual violence as a crime against humanity and war crimes.

Observers of the ICC have criticised the way it has failed to prosecute and convict sexual violence crimes. The Lubanga case, mentioned above, is often used to illustrate this point. Experts have argued that the Prosecutor, then Luis Moreno Ocampo, should have charged Lubanga with sexual violence crimes, and are angry and puzzled as to why this did not happen, given a preponderance of preliminary evidence of rape and sexual slavery (Hayes 2013, 11). Nonetheless, it is worth noting that other individuals have been accused of sexual violence crimes by the Prosecutor. By June 2014 charges had been made against Jean-Pierre Bemba (DRC), Omar al-Bashir (Sudan) and Uhuru Kenyatta (Kenya) with individual responsibility for war crimes

and crimes against humanity, rape by forces and rape in the context of electoral violence (Evans-Pritchard 2014).

I have introduced the UN's interpretation of the rule of law and provided examples of the organisation's attempts to build national capacities for accountability. This section highlighted the dilemmas and experiences of holding individuals responsible for serious crimes through the ICC. As an expanding civil society and like-minded policymakers seek to solve the problem of sexual violence, they turn even more directly to law and order solutions. The next section of this chapter will draw out the linkages between efforts to address sexual violence and the fight against impunity.

Ending impunity for sexual violence

The policy and practice of the UN is constantly evolving. This section focuses more closely on the concept of impunity and efforts by liberal peacebuilding actors to prevent and punish sexual violence. I will provide some information about the concept as it is used within the liberal peacebuilding paradigm. The section will thereafter cover the issue of sexual violence, illustrating how impunity is framed as a problem for those seeking to end these harms. Finally, I will introduce the issue of amnesties in peace agreements, which is another example of how liberal peacebuilding seeks to close off any opening for the onset of impunity.

Defining impunity

The United Nations' definition of impunity, drafted by French scholar Louis Joinet in his 1996 report to the UN Commission for Human Rights reads:

Impunity means the impossibility, *de jure* or *de facto*, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims. (Joinet 1997, 13)

The UN Commission's rationale for ending impunity is intricately linked to the rights of victims and the need to deter future human rights violations. Three outcomes of impunity which violate victims' rights are: (a) The victims' right to know; (b) The victims' right to justice; and (c) The victims' right to reparations (Joinet 1997, 4). These rights continue to influence ideas about justice in post-conflict or political transition contexts. Victims of mass atrocities and war crimes are entitled to learn the truth about the crimes of the war; to find the bodies of their murdered or disappeared relatives and

friends; and to receive compensation from perpetrators. Moreover, the right to justice is not just a matter for individual victims, but for the entire society, which deserves remedy, truth and healing (Burke-White, 2001). Perpetrators are not required to disclose the truth or pay a price for their deeds. When perpetrators are not held accountable, so the reasoning goes, victims' rights are not met.

Another important outcome of impunity is that it undermines deterrence. The UN Commission includes a principle for the "Guarantee of Non-Recurrence". Guaranteeing non-recurrence speaks to the aspiration that human rights violations should never happen again. It presumes that when perpetrators are free from accountability, they or others will carry-out similar violations in the future. Efforts should thus be made to dismantle pre-existing structures that may reproduce the same injustices (Joinet 1997, 11).

The guidelines and principals above (but not the definitions) were updated by Diane Orentlicher in 2004 and 2005. The revisions were crafted with a view toward reflecting advancements in international law, jurisprudence and state practice in the fight against impunity (Orentlicher 2004, 2005). The problem of recurrence was included once more, but this time with advice regarding specific activities that could be undertaken to break the cycle of impunity. Human rights training and improved standards of civilian oversight were considered integral to transforming patterns of impunity. The revisions also reflect an effort to incorporate the concept of non-recurrence into national legislative reforms, particularly during periods of post-conflict changes and to safeguard democratic institutions in times of political transitions (Orentlicher 2005).

This liberal peacebuilding definition of impunity evolved from doctrinal influences as well as political events on the ground (Joinet 1997; Penrose 1999; Roht-Arriaza 1996; Silva Sanchez 2008; Vinuales 2007). From 1991, the UN Commission for Human Rights attempted to develop lessons from past efforts to address human rights violations and apply new principles of justice in the period following the Cold War. As notes by Joinet in his report, the 1970s was a period of rising domestic yet internationalised struggles for human rights protection, particularly in Latin America (Joinet 1997, 1–2). Initially, amnesty was a useful tool for protecting political prisoners who were at the mercy of authoritarian regimes. As Gwen Young explained, state actors used to believe that amnesty was a way to end war (Young 2003, 212). The second Protocol of the 1949 Geneva Conventions asks authorities to provide the broadest possible amnesty to all armed conflict actors (ICRC 1977, Protocol II Geneva Conventions, Art. 6, para 5). The Protocol entered into force on 7 December 1978. However, by the 1980s, Latin American military dictatorships-in transition-to-democracies turned amnesties and other immunity mechanisms upside down. These regimes used amnesty laws to shield officials who had taken part in, or organised atrocities and mass

crimes. Thus, amnesties which were designed to return combatants to civilian life, free political dissidents or appease political opposition in anticipation that they would “wither away” (Speck 1987, 496), became tools for creating impunity for military leaders. The manipulation of these instruments led to legal action in the Inter-American system, culminating in a new framework that questioned the legitimacy of amnesty (Penrose 1999, 287).

Penrose and others describe how Argentinean president, Raúl Alfonsín failed to realise justice for victims of the country’s so-called ‘Dirty War’ (1976-1983) and the disappearance of some 30,000 people (Speck 1987, 500). The Trial of the Argentine Junta in 1985 for 700 cases of violations led to indictments and important convictions, including of the head of the first junta, army chief Jorge Rafael Videla (Speck 1987). Importantly, the verdict assigned blame to individuals rather than collectively to the juntas (Speck 1987, 503) and it was based on the opinion that the junta leaders had ordered the crimes and guaranteed impunity for perpetrators further down the chain of command. The judgment furthermore cast aside the defence’s arguments that the internal conflict in Argentina justified suspension of constitutional rights and safeguards (Speck 1987).

However, in December 1986 the government through Argentina’s congress passed the *Full Stop Law*, which limited the civil trials of former officers. The *Law of Due Obedience*, passed in 1987, further granted immunity to officers who had been implicated in war crimes during the ‘Dirty War’. These measures sheltered former military officers and others directly responsible for atrocities, leading to pardons of the Trial of the Junta sentences by the following administration. In Uruguay the same effect was rendered when voters passed the 1989 *Law on the Expiration of Punitive Claims of the State*, which granted military officials immunity from prosecution under the democratic, civilian rule National Party government (Penrose 1999, 288). Subsequently, these countries’ laws were challenged by petitioners before the Inter-American Commission on Human Rights. In October 1992, the Inter-American Commission found that amnesty provisions in Argentina and Uruguay violated fundamental obligations under the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights to ensure that persons within their jurisdiction could exercise their rights and freedoms (Penrose 1999, 288).

The UN Human Rights Commission’s attention to the concept of impunity arose from the experiences of the previous decades and hopes for the future, post-Cold War world. The 1997 definition of impunity is a legal testament to the turn toward more liberal governance and justice, and the anticipation that the lessons of the past had been learned. I have highlighted the Commission’s focus on victims’ rights and the threat of recurrence. Both of these areas resonate with the survivors of serious crimes in Latin America, where thousands were taken or tortured and the truth about their disappear-

ance went unaddressed. The following section will move forward to impunity in relation to sexual violence.

Sexual violence and impunity

In the last decades, sexual violence by armed groups has become the focus of considerable international action by the UN and other multilateral and bilateral actors. In June 2008, the UN Security Council adopted resolution 1820, which, among other key normative claims, recognised sexual violence as a security problem (UNSC 2008). Two additional UN Security Council resolutions, 1888 and 1889, went further to deal with the mechanisms for implementation of 1325 (UNSC 2000, 2009a, 2009b). The resolutions have led to important steps including the creation of the post of UN Secretary-General's Special Representative on Sexual Violence in Conflict. Margot Wallström current Minister of Foreign Affairs of Sweden was the first to hold this position. She was succeeded in 2012 by Zainab Hawa Bangura, former Foreign Minister of Sierra Leone. Resolution 1820 recognised sexual violence as a security problem that required a more robust approach during all phases of conflict resolution.

The UN Security Council's resolution 1960 firmly established an international process of naming and shaming perpetrators by assigning the UN Secretary-General with the task of listing "parties to armed conflict that are credibly suspected" of carrying-out rape and other forms of sexual violence (UNSC 2010a, 3). In 2012, the UN Secretary-General's report on conflict-related sexual violence for December 2010 to November 2011 listed 14 armed groups (government forces, rebellions, militia forces etc.) as credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict. All the parties listed were in Africa (UNSG 2012, 32). The next report, for the period covering December 2011 to November 2012 listed, 28 groups from the Central African Republic, the DRC, Côte d'Ivoire, Mali and Syria, namely "the Syrian Government forces, including the Syrian Armed Forces, the intelligence forces and the Shabbiha militia" (UNSG 2013, 31–32). Finally, UN Security Council resolution 2016 further sought to implement the fight against impunity by stressing the need to sanction armed groups for sexual violence. Importantly, this resolution also sought to normatively link with the 2013 Arms Trade Treaty and to obligate states from transferring arms to conflicts with a risk of sexual violence (UNSC 2013).

The imperative to prevent sexual violence is not limited to the UN¹⁶. The African Union (AU) has appointed a Special Envoy for Women, Peace and

¹⁶ As with other UN rule of law and international reform and justice processes of the liberal peacebuilding paradigm, there is a contiguous implementation of similar offices and institutions at the regional level, particularly in Africa.

Security, Bineta Diop of Senegal, who will seek out opportunities to address sexual violence in conflict. The International Conference of the Great Lakes Region (ICGLR), an inter-governmental organisation working in Africa's Great Lakes region, held a special session on sexual and gender-based violence in December 2011.¹⁷ The member states of the ICGLR adopted a declaration on sexual and gender based violence which affirms the regional body's pre-existing legal and political commitments from 2006. The 2011 declaration specifically set out time-bound targets for ending impunity for sexual violence in the Great Lakes region (Ndinga-Muvumba 2012, 3).

The United Kingdom's (UK) Foreign Office hosted the Global Summit to End Sexual Violence in Conflict (ESVC) in June 2014. The summit examined a wide range of issues that relate to the persistence of sexual violence in conflict. Importantly, the summit addressed gaps in law, order and justice in war-torn or post-conflict societies which generate impunity. The summit ended with a Statement of Action which was coordinated with the launch of an International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.

An overriding rationale for these initiatives is the argument that sexual violence in armed conflict is a 'weapon of war'. This reasoning is traceable to the high numbers of sexual violence events which took place during the Rwandan genocide¹⁸, and to ethnically-targeted wartime rape in Bosnia-

¹⁷ The International Conference of the Great Lakes Region (ICGLR) has 11 member states: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of the Congo, Kenya, Uganda, Rwanda, Sudan, Tanzania and Zambia. The organisation evolved out of chronic armed violence which engulfed the region from 1994 with the Rwandan genocide and included civil war in the DRC. In 2000 the UN Security Council called for an international conference on peace, security, democracy and development in the region. The conference was formalised by its members as the ICGLR in the 2004 Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region. In 2006, these same governments adopted the Pact on Security, Stability and Development in the Great Lakes Region, which came into force in June 2008.

¹⁸ After the Rwanda genocide, the UN Special Rapporteur of the Commission on Human Rights, René Degni-Ségui, reported the number of rapes as between 250,000 and 500,000. He also notes that health authorities had recorded only 15,700 cases of women raped during the massacres. But that the medical community had a way of calculating rape during wartime by referring to the number of pregnancies traceable to the war, which were between 2,000 and 5,000 for the genocide. He asserts that a credible statistical principle for arriving at a more accurate estimate of wartime rape would mean that 100 cases of rape are linked to one pregnancy. Hence, an estimate of 2,000-5,000 pregnancies would mean that the genocide was associated with between 250,000 and 500,000 cases of rape (Degni-Ségui 1996, para. 16). This is the number most frequently cited. However, in 2009 Catrien Bijleveld, Aafke Morssinkhof, and Alette Smeulers estimated the number of rape victims during the genocide at 354,440. Their methods entailed triangulation of estimates of surviving rape victims and victims who did not survive. The sources of their findings included written testimonies and back-calculations from rape-incurred pregnancies (Bijleveld, Morssinkhof, and Smeulers 2009).

Herzegovina. As notes above, the tribunals for Rwanda and Yugoslavia have issued judgments for sexual violence crimes. In particular, as Letitia Andersen suggests, the ICTY stressed that rape was an instrument of terror (Anderson 2010, 249; *Prosecutor v. Kunarac, Kovac & Vukovic* 2002). The argument made is that wartime sexual violence functions within a logic of conflict strategy on the part of perpetrators and armed groups. Dorothy Thomas and Regan Ralph wrote in 1994 that “rape is neither incidental nor private...it routinely serves a strategic function in war and acts as an integral tool for achieving particular military objectives” (Thomas and Ralph 1994, 83). As do other scholars, activists and policymakers, they referred to sexual violence in the former Yugoslavia, the Rwandan genocide, and the 1971 genocide in Bangladesh as key illustrations of the weapon of war thesis. In policy terms, saying that sexual violence is a weapon of war helps to elevate the problem of sexual violence within the hierarchy of threats to peace and security (Carter 2010). However, scholars are increasingly sceptical about this framework (Kirby 2012). Some academic researchers on sexual violence have demonstrated that sexual violence in conflict is varied showing that some wartime violations are not necessarily ordered but tolerated and thus, the opposite of strategic (Cohen, Hoover Green, and Wood 2013). Based on fieldwork in the DRC, a location that is typically associated with widespread sexual violence, Maria Eriksson Baaz and Maria Stern concluded that the weapon of war thesis isolates other types of violence from the analysis of war (Eriksson Baaz and Stern 2013). Their examination of narratives from members of the new national army (the *Forces Armées de la République Démocratique du Congo* or *FARDC*) expounds on different narratives of sexual violence, with soldiers testifying that rape was also based on lust and masculine heterosexuality discourses (Baaz and Stern 2009, 514).

Reading sexual violence as a weapon of war also makes it more extraordinary, further solidifying the interpretation of its occurrence as an extreme and yet pervasive function of war. This is a strategy that might backfire. Perhaps perpetrators who rape as part of an armed collective cannot be held responsible in the way envisaged by activists. In 2007 Mark Drumbl made the incisive argument that international criminal law had to grapple with an incongruity. Paradoxically, by punishing individuals, the ICC and the tribunals were holding them accountable for acts which were committed in a context of permissiveness (Drumbl 2007). He argues that international crimes are ‘extraordinary’ and that the international criminal law was woefully under-equipped to address the ‘collective’ nature of these atrocities (Drumbl 2009). This section has highlighted how various actors at the international, regional and national level have focused on the extraordinariness of wartime sexual violence. At the same time, the concept of impunity is increasingly an

add-on to the law and order approach for preventing and punishing sexual violence. The next section turns to the role of amnesties in perpetuating impunity.

Limiting amnesties

A powerful illustration of liberalism's efforts to prevent impunity is its position on amnesties for individuals suspected of serious crimes. Accountability for serious crimes is exemplified in the UN's prohibition of amnesty for international crimes of mass atrocity (OHCHR 2009b). Proponents argue that amnesty clauses in peace agreements or amnesty laws in the post-settlement period have undermined justice, since war-time perpetrators are made exempt for atrocities. Indeed, following the 1999 Lomé Accord for Sierra Leone, the UN excluded serious crimes – genocide, mass crimes and crimes against humanity – from amnesty clauses in UN-supported peace agreements (Mallinder 2008, 122).

The Lomé Accord provided for a transitional government between the Kabbah government and the Revolutionary United Front (RUF). The agreement also established an amnesty, which was considered a first order for the negotiations. Amnesty was offered by the government to the RUF and its leader, Corporal Foday Sankhoh. At the time, amnesty seemed to be uncontroversial. It was included in the 1999 accord based on its existence in a prior agreement which was signed by the major parties in Abidjan in 1996 (Author Interview 2013; Hayner 2007). Moreover, the government negotiators were committed to ending the war at all costs. However, UN officials and Sierra Leonean civil society actors were deeply critical of the amnesty “on the basis of international human rights standards and basic principles of combating a culture of impunity” (Hayner 2007, 14)

Indeed, various activities occurred (involving civil society and the UN and its agencies) to limit the eligibility and applicability of an amnesty. First, the humanitarian committee of the negotiation process developed language for a provision in the accord for a Truth and Reconciliation Commission (TRC). Second, UN officials prepared a formal position on amnesties which was seemingly affirmed as an official guideline on negotiations and conflict resolution. Finally, statements inserted into the Lomé agreement by the UN Special Envoy, Frances Okello, read that crimes under universal jurisdiction (i.e. serious crimes) were not part of the amnesty. Nevertheless, a form of unconditional amnesty was negotiated into the final Lomé Accord because “the political class in Sierra Leone could not imagine a peace agreement being reached in 1999 that would not include an amnesty for all crimes of the war” (Hayner 2007, 31). Foday Sankhoh led an attack on UN officials as early as 2000, which seemed to affirm the concerns among critics of amnesty who believed it would create impunity and therefore, recurring violence.

Although amnesty continued to be offered at least on a partial basis, over the next years, these types of pardons were interpreted as illicit acts when it came to serious crimes and as a cause of recurring human rights violations. The UN General Assembly passed a resolution on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which placed an obligation on member states to investigate and address serious crimes (UNGA 2006). The UN has interpreted this requirement to mean that states are obligated to undertake investigation, prosecution and pursuit of redress for victims. Thus, amnesties are to be avoided (OHCHR 2009b). To underscore this new reality, transitional justice courts at both international and national levels – such as the ICTR and the Special Court for Sierra Leone – have not recognised amnesty for serious crimes.

The UN argues that “peace agreements secured at the price of amnesty for atrocious crimes may not secure a lasting peace and will not secure a just peace” (OHCHR 2009a, 29). In 2010 UN Secretary General Ban Ki-moon reported that “any amnesty ordinance reached at the end of a conflict must, as a matter of consistent United Nations policy, exclude international crimes and gross breaches of human rights. This helps to ensure that parties who commit acts of sexual violence cannot escape liability and that there is no impunity for such conduct” (UNSG 2010, 2).

The preceding section has highlighted the UN’s use of instruments, structures, guidelines and policies that will consolidate peace and ensure justice through a liberal peacebuilding model (UNSG 1992, para. 55). The fight against impunity and efforts to establish peace or end sexual violence, have been merged and intertwined. Amnesties in peace agreements are precluded for serious crimes. Armed groups that are credibly suspected of sexual violence are barred from receiving amnesty. Yet, peace agreements are signed by individuals, who may be uncertain about their status as potential war criminals. If they stop fighting, they may be arrested and sent to the ICC. Alternatively, this standard may deter perpetrators from committing violence in the first place. It might be that signatories of peace agreements in the future will be less likely to commit war crimes. For example, as Sriram notes, prosecution may contribute to the full entrenchment of the rule of law and democracy, making recurrence of human rights violations all the more unlikely (Sriram 2003). These different scenarios are worth considering, and with the help of social science, addressing.

Toward social science inquiry: issues for the study

The concept of impunity in the liberal peacebuilding paradigm has a wide scope. The liberal model is a useful device for understanding the UN's rule of law activities as well as international justice. The UN and its agencies try to prevent a breakdown in rule-based, non-arbitrary accountability; or to reform and strengthen national legal, judicial, penal and security capacities for the rule of law. It is assumed that such reforms will prevent impunity. In the pursuit of international justice, the ICC and other actors (hybrid courts and transitional justice mechanisms, for example) strive to hold perpetrators accountable. International justice is linked to deterrence and accountability, to sending clear signals to future perpetrators that they will be caught and punished. It is also meant to address victims' rights and to bring out the truth. However, as many have observed however, the liberal peacebuilding paradigm may attempt to do too much. In terms of justice, as Robert D Sloane expresses it in his review of Mark Drumbl's book *Atrocity, Punishment, and International Law*:

the tragic, but regrettably not infrequent, phenomenon of extraordinary crime demands that responsible international lawyers and statesmen reflect on the assumptions of the liberal paradigm, including, for example, its exclusive focus on individual agency; the nature and extent of moral choice available to the perpetrators; bystander innocence; and perhaps above all, the relative value of international criminal justice institutions that drain astonishing amounts of all-too-scarce international resources in the service of largely unproven assumptions about their benefits (Sloane 2008, 200).

This chapter has brought to light three interlinked points which I will draw upon for this research endeavour. There is a lacuna in liberal peacebuilding policy, practice and research. This gap emerges from the tension between increased efforts to hold individual members of armed actors accountable for their direct and indirect commission of serious crimes on the one hand, and the limited knowledge of the causes of impunity among these individuals, on the other hand. First, the fight against impunity within the liberal peacebuilding paradigm weaves together the absence of laws, the failure to prosecute, the inability to punish, the assault on the rights of victims and impotence in preventing recurrence (Joinet 1997; Kaiser 2005; Orentlicher 2005; Penrose 1999; Roht-Arriaza 1995a; Young 2003). Yet, the way people think about the consequences of serious crimes has not yet been addressed. It is not clear how impunity arises among groups that are operating in multiple contexts or whether or not international norms and standards influence fighters on the ground. How they respond to their liability at the international level surely matters in the fight against impunity. There is room to empiri-

cally examine the way that people come to believe that they will not be held accountable for harms.

Second, liberal peacebuilding has pilloried amnesties while increasingly exalting prosecution for atrocities (OHCHR 2009b; Vandeginste 2011). This is a reason to investigate the relationship between these types of factors and impunity. To my knowledge, the causal relationship remains unresolved. Hunjoon Kim and Kathryn Sikkink (2010) carried out a large cross-national study of the effects of human rights prosecutions and truth commissions, on human rights protection. They were testing the deterrent effects of justice and accountability. Their study generated the first quantitative support for the argument that human rights prosecutions have a deterrent effect (Kim and Sikkink 2010, 957). It shows that prosecutions lead to improvements in protection; and it predicts that trials during war also reduce levels of repression. It is not clear how Kim and Sikkink's findings would match up with other research. Andrew Reiter, Tricia Olsen and Leigh Payne (2013) conducted a cross-national study which finds that amnesties may aid in securing peace when used during conflict. Their study demonstrates that half of conflicts terminating with a peace agreement included an amnesty for rebels. Most strikingly, it demonstrates that "transitional justice—regardless of the particular form it takes—does not jeopardise the peace process, and that amnesties may be an effective tool to help end conflict" (Reiter, Olsen, and Payne 2013, 138).

The two sets of findings, one emphasizing prosecution and the other amnesties seem to ask different questions. One is concerned with investigating deterrence, making repression the outcome of interest (Kim and Sikkink 2010) and the other focuses on different mechanisms used to transition from war to peace (Reiter, Olsen, and Payne 2013). My aim is not to resurrect a scholarly divide between 'justice' and 'peace', but to draw attention to the limits of research which while relevant, does not examine prosecution and amnesty as causal explanations of impunity.

As will be discussed in the following chapter, impunity has been addressed by a few scholars. But amnesty has been more widely examined in the peace versus justice debates; the role of amnesties in truth-seeking and their relative import for peace, reconciliation and peacebuilding (Cobban 2007; Mallinder 2007, 2008; McEvoy and Mallinder 2012; Melander 2013; Reiter, Olsen, and Payne 2013; Sriram 2007, 2013). Additional research should explore the relationship between these instruments of conflict resolution and negotiation, and impunity.

Finally, there is a discordant, divisive bearing that continues to burden the liberal peacebuilding paradigm. Scholars of the model have highlighted a 'distance' between the international and local levels when it comes to peacebuilding (Mac Ginty and Richmond 2007; Mac Ginty 2008; Oliver P. Richmond 2006, 2009). Others have called for more nuanced interpretations

of what liberal peacebuilding is, how it works and its obvious hybridity, diversity and complexity (Björkdahl and Höglund 2013; Höglund and Kovacs 2010; Jarstad and Belloni 2012; O'Rourke 2013). For instance, while it is right to address the rights and needs of victims, the limited scholarly literature has not captured the experiences of people who may not identify themselves as victims but as bystanders or inadvertent perpetrators (Skjelsbæk 2013). This is another example of a gap, both between policy and reality and between the aspirations of fighting impunity and knowledge of its causes. Non-victim viewpoints will shed light on the way that impunity arises. In particular, although liberal justice is state-centred, its move toward individual accountability suggests that micro-level insights might be valuable. The dynamics which lead to impunity at the sub-national level, as well as among non-state actors, could contribute to our understanding. New research can make a contribution to this gap by examining non-victim perspectives.

Based on these interlinked points, the next chapter will develop the theoretical framework for the study.

3. The Propositions: Theorizing Impunity

This chapter presents the theoretical framework for the study of the conditions which lead to armed group impunity for sexual violence. A function of this study is to build theory. However, the concept of impunity is elusive. There have been few studies on the topic which explain its causes using empirical material. Therefore, in order to construct a relevant theoretical framework, I draw on different scholarly literatures. I seek to integrate 1) liberal peacebuilding's focus and scholarly engagement with what makes the rule of law and engenders justice and accountability; and 2) research on the explanations for variation in sexual violence. I discuss the way other scholars have addressed the inter-related problems of impunity, restraint and control of violence within armed groups and amnesties in order demonstrate what has already been achieved and to indicate this study's contribution to scholarship on these issues. However, neither literature measures impunity in a way that explains its causes. Liberal peacebuilding does not focus on measuring the causal links between failures in the rule of law and impunity and the sexual violence literature is primarily concerned with explaining sexual violence, not impunity. This lack of precise specification and analysis of the causes of impunity is understandable since both literatures have different objectives when they assess problems of accountability or the variation in sexual violence. In contrast, the purpose of this study is to carry out a fine-grained examination to determine the key causes of impunity. Later on in the study, I deal with the research problem of impunity indirectly, by looking at the associations between pardons and post-settlement sexual violence; but in the main, I focus on the factors that generate armed group impunity. The chapter begins by introducing the key concepts of the study. The second section outlines the central propositions about the conditions which lead to impunity. The final part summarises the framework.

The key processes giving rise to armed group impunity for sexual violence, I will argue, are weak enforcement and pardons. First, impunity should be contingent upon the quality of enforcement within the armed group itself. This is a reason that should lead to some armed actors and not others believing they are exempt from punishment. If the armed group has flawed prohibitions against sexual violence, then the fighting force maintains the belief that its members will not be held accountable. Similarly, if the authorities within the organisation are negligent in implementing punish-

ment, its members will become more assured in freedom from accountability. Second, impunity should arise when crimes are pardoned within the wider context. Since the study focuses on conflict and its aftermath, armed actors need to be confident that victorious enemies and the post-war political status quo will not prosecute for wartime sexual violence. Thus, they weigh the likelihood of being held liable on the basis of whether or not they have secured amnesty in the peace agreement. Importantly, the effects of weak enforcement and pardons may not be limited to the conflict period, but could endure into the transition and the post-war stage.

I further assume that armed group impunity is related to social learning. Weak enforcement and pardons are events and processes which contribute to beliefs among armed group members. The framework posits that different types of weak enforcement and pardons, namely amnesties, flawed prohibitions and negligent authorities, contribute to a sense that sexual violence is unlikely to be punished.

Confidence in the absence of negative consequences is observable when members of an armed group diffuse responsibility for harms; rationalise or romanticise sexual violence; or dismiss the likelihood of consequences. During conflict such confidence can be detected in presumptions that sexual violence is unavoidable and simply part of the war. It may also be evident in the recollection that wartime rape and other abuses by co-combatants were frequent or commonplace. It is also possible that during transitions and in the aftermath of war, coercive sexual relations may be assumed to be a banal fact of life. Having summarised the chapter's aims, components and conclusion, I turn to a presentation of the main concepts of the study.

Key concepts

This part of the chapter discusses the main concepts of the study. It focuses on defining impunity and the nature of sexual violence in armed conflict. Understanding these will be critical to ensuring clarity of the scope and objectives of the framework and the research design in Chapter 4. The presentation of concepts includes a discussion of previous research, particularly in relation to the concept of impunity but also to a lesser degree, the variation in sexual violence. In this way I use previous research to help identify how this study will build on the work of other scholars while departing from earlier definitions of impunity.

Before continuing, it is important to explain that the theory is provisional at this point in the study. There is no apparent consensus in the academic literature on the concept of impunity. Yet, impunity has negative connotations. It is used in everyday language and in the policy and practice of the liberal peacebuilding agenda. As will be discussed below, the causes of im-

punity are easily confused with its definition, making social science inquiry difficult. Furthermore, definitions of impunity never encompass beliefs about the likelihood of being punished for a harmful act. This dimension is important if we are to understand one meaning of impunity, namely whether or not a subject believes that he or she is free from accountability. Indeed, previous research has not taken up armed group combatant beliefs about the consequences for sexual violence. Therefore, a contribution of this study is to begin developing theory for the concept. The first step is to construct a theoretical framework to guide the collection of empirical material and the analysis. Following the analysis, in the concluding chapter, the study will put forward a revised preliminary theory for armed group impunity for sexual violence.

What is impunity?

The Online Etymology Dictionary states that impunity is the opposite of punishment and describes it as “freedom from punishment” (Harper 2010). The Oxford English Dictionary defines it as “exemption from punishment or freedom from the injurious consequences of an action” (Oxford English Dictionary 2014). The use of the term is wide and varied. Impunity describes settings where justice and accountability are not present. It is associated with government abuses, such as when police in Afghanistan were accused of “committing crimes with impunity” (Harding 2011). Or it is used to characterise widespread patterns in breaches of the rule of law. For example, in relation to unsolved murders of journalists and activists in the Philippines “impunity... has been correctly called a culture, a way of doing things to which a particular community has become accustomed” (Teodoro 2010). And, in an everyday sense, impunity also conveys privilege or “no care or heed for such consequences” (Collins English Dictionary 2012).

The previous chapter described the liberal peacebuilding definition of the concept of impunity. As noted, the UN Commission for Human Rights Commission defines impunity as:

the “impossibility, *de jure* or *de facto*, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims” (Joinet 1997, 13).

The definition is clearly meant to assist lawmakers, politicians and policy-makers in the pursuit of justice and accountability. The inclusion of four different types of proceedings (criminal, civil, administrative and disciplinary) is a cue that accountability should take place in various social and organisational contexts.

However, for the purposes of social science inquiry, such a definition presents challenges. The Commission's parameters for impunity are broad. For instance, it is not clear what is meant by 'impossibility'. More importantly, the above definition includes events which might cause impunity. Logically, the absence of policing, investigation, prosecution and sentencing of perpetrators contributes to impunity. Independently and collectively, such absences are failures in the rule of law. However, put differently, failed rule of law also takes place *prior to* impunity and is therefore causal in nature. John Gerring illustrates the problem of including causes in the definition of a phenomenon: "if I propose to explain the causes of ideology, for example, I ought not define ideology so as to include characteristics that I am using to explain ideology" (Gerring 2001a, 61). For this study, it is important that the definition of impunity does not include characteristics which should be used to explain it.

The Commission's definition does not capture another aspect of the meaning of impunity, namely that perpetrators will think they can get away with harms. It does not convey an everyday sense of freedom from accountability. Yet, it seems reasonable to assume that actors develop maps of what is likely to occur in the future based on the present and past. They ascertain how likely certain scenarios or events will be, adapting and evolving their beliefs over time. A viable conceptualization for impunity, for this study, should depict actor beliefs in the likelihood of punishment. This is the meaning of impunity which this study focuses on, otherwise impunity would not influence future behaviour.

International law scholars have also addressed impunity. When doing so, they incorporate the UN Commission's specification of the concept in their work. Naomi Roht-Azaria, for example, has written about an anti-impunity agenda and the need to address deficits in justice, victims' rights and reparations at the international and national levels (Roht-Arriaza 1995a, 1996). Some scholars interpret impunity widely, assigning various other connotations to it. Payam Akhavan suggested that it is an implication of "political acceptability of massive human rights abuses" (Akhavan 2001, 8). Overall, scholars rarely examine the causes of impunity. Instead, on one hand, they depict it as a lack justice. On the other hand, they explain it as a result of failures in the rule of law.

Jorge Vinuales (2007) and Nick Jorgensen (2009) each carried-out an empirical examination of the concept. Both studies define the concept similarly to the UN Commission for Human Rights. Jorgensen associates impunity with human rights violence and a break in the rule of law. He states that "impunity, then, implies a political and social climate or culture in which laws against human rights violations are ignored or insufficiently punished by the state" (2009, 386). Yet, he also describes impunity as resulting from "discriminatory legal practices" (Jorgensen 2009, 386). Impunity is biased

rule of law while it is also caused by flawed legal practices. In this way, Jorgensen appears to enfold impunity within its own causes.

Vinuales explains that a useful strategy for defining impunity would be to analyze “a large amount of cases that have been characterised in part or in whole as impunity cases while trying to derive, through aggregation and condensation, a more empirically based concept of impunity”(Vinuales 2007, 123). He assesses a sample of 98 reports out of a pool of 3,000 Amnesty International (AI) documents that are categorised under the heading of "Impunity" in AI's public online library (Vinuales 2007, 123). The events vary widely. They include armed militia violations of human rights; abuse and torture of prisoners; and non-functioning justice systems. Based on these different events, impunity is defined as a “loosely circumscribed set of practices involving different types of actors” (Vinuales 2007, 124). Impunity is thereafter described as an intersection between two dimensions. The first dimension is composed of institutional or legal measures that fail to implement accountability through judicial, security, legislative, executive, penal processes. The second dimension is whether or not the act labelled ‘impunity’ is carried out by a state or non-state actor (Vinuales 2007, 126). Thus, Vinuales also integrates the causes and concept of impunity.

Based on the preceding information about previous research, defining impunity poses conceptual challenges. Jorgensen (2009) and Vinuales (2007) also appear to interpret human rights violence or failures in the rule of law as indicators of impunity. This seems reasonable, but it also poses two clear risks. The first is that the research endeavour could result in ‘impunity’ being used to explain ‘impunity’. The second risk is that the observation of impunity will not take into account beliefs. A flaw in a legal statute or pattern of human rights violations might be a reasonable causal step toward impunity, but it does not tell us if the actor presumes to be free from accountability. An alternative approach, which this study takes, is to define *impunity* as *confidence in the absence of negative consequences*. This definition does not include a lack of justice, human rights violence or failures in the rule of law as a property of impunity. Rather, it focuses on the degree to which an actor believes that there will be no repercussions for a harm they and others commit. Thus, I avoid equating causal conditions with impunity.

Scholarly work on sexual violence, based on social learning theory, provides justification for this study’s definition of impunity. Social learning theory states that individuals develop beliefs about their accountability through environmental cues. The theory originates from Albert Bandura’s psychological studies on aggression (Bandura 1978, 1991). Research on sexual violence in armed conflict has begun to take up this logic. For instance, among many factors of wartime rape, Henry et al. (Henry, Ward, and Hirshberg 2004) describe the impact of socio-cultural situations in framing the consequences of sexual aggression. Conflict is one context where re-

straint may be diminished. If this occurs, combatants become aware of reduced possibilities of detection and retribution and the low cost of aggression (Henry, Ward, and Hirshberg 2004). Since observing the absence of negative consequences “conveys information about the circumstances under which aggressive behaviour is safe” (Bandura 1978, 22), an awareness of a low cost for sexual violence means that combatants are more likely to diffuse their responsibility, rationalise harmful acts, or even, blame the victims (Henry, Ward, and Hirshberg 2004). The definition of impunity that is used in this study builds on these ideas.¹⁹

What is sexual violence in armed conflict?

The following aims to introduce the study’s formulation of sexual violence in armed conflict. For the purposes of this study, *sexual violence* is *rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity*, as recognised by the 1998 Rome Statute of the ICC. The act must have been committed by force, or by the threat of force or coercion, with fear of violence, duress, abuse of power or detention a prevalent aspect of the commission of the act. The perpetrator must have membership in, or have a recognizable association with a state or non-state armed group.²⁰ When these acts take place after the end of a war, this study refers to them as post-settlement sexual violence (PSSV) by an armed actor. By post-settlement, I mean the period of time after a negotiated conclusion of an armed conflict whereby the resolution or regulation of the incompatibility is addressed through a peace agreement. Moreover, in order to address harms committed among co-combatants, I do not omit abuses internal to the armed group actors. The inclusion of a

¹⁹ With regard to the importance of psychological conditions, it is worth noting the contribution of Johan Galtung’s “Conflict Triangle” (Galtung 1969) to peace research. The triangle is composed of three elements of a conflict: the interests at stake; the attitudes that develop between the parties; and the actions of the parties to the conflict. These three elements interact and can bolster or weaken one another. They have reinforcing and/or deteriorating effects. Attitudes are a psychological condition which can also be viewed as an intermediate step between interests and actions. In this study, the focus on the psychological condition of a ‘belief’ while not synonymous with an ‘attitude’ may also play an intervening capacity. A belief is defined as an acceptance that something is true or false; while an attitude is a feeling or an outlook. Armed group impunity is based on whether or not armed actors believe they will be punished, i.e. if consequences are likely or not. See also Kristine Höglund and Mimmi Söderberg Kovacs and their discussion of Galtung’s “Conflict Triangle” (2010, 375).

²⁰ See also the UN Secretary-General’s *Report of the Secretary-General on the Implementation of Security Council Resolutions 1820 (2008) and 1888 (2009)*. The report states that “‘conflict-related sexual violence’ is used to denote sexual violence occurring in a conflict or post-conflict setting that has a direct or indirect causal link with the conflict itself” (UNSG 2010, 2).

wide array of harms contributes to the understanding of impunity for different types of sexual violence.

In this study, defining sexual violence is straightforward. I will adhere to the established understanding of what sexual violence in armed conflict is. Indeed, the diverse nature of this violence is evident in the study's empirical chapters. Wood (2006b, 2010) shows, sexual violence differs in prevalence; in gender, age and the armed actor affiliation of victims and perpetrators; in location and duration; by the number of perpetrators; in incidence according to the patterns of the conflict or war; as retaliation or revenge; and finally, in whether or not it increases or decreases over time.

The classical historian Kathy L. Gaca suggests that sexual violence in armed conflict is as old as war (Gaca 2011, 87). Towards the end of World War II, advancing Soviets re-took German occupied territories and in the process committed countless sexual violence acts which have never been prosecuted (Beevor 2002; Dack 2008). During the 1994 Rwandan genocide, rape was a systematic function of the genocide (UN Commission on Human Rights 1996). Sexual violence is not merely a product of high intensity armed violence but also present during less regular warfare. In late July and early August 2010, militias in North Kivu committed sexual assaults on 387 civilians (Office of the UN Commissioner for Human Rights 2011, 4). Women and girls are not the only victims of war-related sexual violence. Sandesh Sivakumaran has underscored that sexual violence against males has occurred in the past in "for example in Ancient Persia, and the Crusades", as well as in contemporary conflicts in Europe, the Middle East, Latin America, Asia and Africa (Sivakumaran 2007, 257–258). Indeed, at a global, cross-national level, the Sexual Violence in Armed Conflict (SVAC) dataset shows differences between the regions of the world while "only 13 percent of armed actors are reported as perpetrators" in the five years following the end of conflict (Cohen and Nordås 2014, 423, 425). It is unlikely that a single cause can cover this wide variation. Going further, Wood states that "we do not adequately understand the conditions under which armed groups provide effective sanctions against their combatants engaging in sexual violence or those under which groups effectively promote its strategic use" (2006b, 330).

Previous research: The building blocks of this study

In this section, central work in previous research is used to identify possible causes of armed group impunity for sexual violence. The section notes that while it is worthwhile to utilise previous research on sexual violence, this literature does not deal directly with impunity. However, in my view, there is some overlap between research on sexual violence and the liberal

peacebuilding literature on impunity. This overlap is embodied in the theoretical idea that breaches, flaws and suspensions in rules can lead to armed group impunity for sexual violence. Another way to convey this argument is that weak enforcement or pardons are determinants of impunity. This is the contribution of the theoretical framework in this study, which builds on several strands in previous research. It should be noted that my aim is not test liberal peacebuilding, but to arrive at a theoretical framework which accommodates the model's attention to rule-based accountability. Finally, this part of the chapter will specify three explanatory factors of impunity.

Processes leading to armed group impunity for sexual violence

The academic literature on violence in civil war has turned toward examining the explanations for sexual violence in armed conflict. One strand, dealing with armed group institutions and instruments of control and restraint, is of particular interest to this study on impunity, and I will use ideas from this literature and apply them to explaining impunity. Wood's research on the Liberation Tigers of Tamil Eelam (LTTE) and Amelia Hoover Green's study on repertoires of violence and armed group institutions and ideologies suggest that internal factors of an armed group are indicative of its propensity to commit sexual violence (Green 2011; Wood 2009). Wood's analysis of the absence of sexual violence by the LTTE combatants is based on observations about its ban of these harms and robust enforcement of the prohibition (Wood 2009). She begins her analysis by posing several explanations for the absence of sexual violence. One explanation might be that an armed group exercises restraint on other forms of violence against non-combatants. If they are not committing large-scale or wide-ranging lethal violence, for example, then they will also be less likely to carry-out sexual violence. This is a claim that can be traced to Macartan Humphreys and Jeremy M Weinstein's (2006) conclusions about the factors of civilian abuse. Yet, states Wood, "some insurgent groups, such as the LTTE in Sri Lanka and many Marxist-Leninist groups, engage in significant levels of other forms of violence against civilians but rarely engage in sexual violence" (Wood 2009, 134). Wood's own theoretical framework states that a number of motivations drive armed actors to institute and enforce bans on sexual violence. She contends that military leaders must control their combatants' use of violence and manage the principal-agent relationship between senior officers and foot soldiers. Armed organisations must also create cohesion and unity, although it is not clear how this would lead to prohibitions on sexual violence.²¹ Finally, armed ac-

²¹ As discussed later in this chapter, Dara Kay Cohen's cross-national study and analysis of the RUF in Sierra Leone would appear to confirm this argument. She found that recruitment mechanisms have a causal relationship to the types of severity of sexual violence (Cohen 2009, 2013). Her findings demonstrate how members

tors may be need civilian support for logistics, recruits and supplies (Wood 2009, 136–140). These ideas are relevant to this study, as will be shown in the comparison between armed groups in Burundi.

Wood finds that the top-down hierarchy of the LTTE resulted in a high level of control and effective enforcement of its decision to prohibit sexual violence. A central point of this conclusion is that there is a causal path whereby the LTTE took a decision to prohibit sexual violence, its hierarchy was sufficiently strong and its leadership was willing and able to carry-out punishment, culminating in low or rare sexual violence. Importantly, Wood contrasts the story of the LTTE with the *Frente Farabundo Martí para Liberación Nacional* (FMLN) which was restrained in several types of violence against civilians. She underscores her argument of institutional strength: FMLN, just as LTTE, was able to maintain a pattern of highly selective use of violence. There appears to be little in the way of sexual violence incidences in its history (Wood 2009, 152).

Hoover Green's research continues this line of investigation. Her study on repertoires of violence in El Salvador confirms what Wood indicates about FMLN. However, she expounds on the logic. Armed actors face what Hoover Green calls the "commander's dilemma", whereby their leaders "must institutionalise programs that change preferences, creating intrinsic rewards for controlled behaviour", namely the use of violence for the purposes of the armed group and not for the preferences of individual fighters (Hoover Green 2011, 3). The solution is to provide the rank and file with standard operating procedures, or to prime them with messages of restraint which legitimise certain kinds of identities, beliefs and values. She demonstrates that previous explanations for variation in violence, such as resource endowments of the armed group, are not as viable as previously thought. Her study of armed actors in El Salvador finds important differences in the repertoire of violence of FMLN groups and the state's armed actors. These differences are explained by political education, specifically training and indoctrination as well as rules to instil controlled violence among soldiers in FMLN. She explains that FMLN "valorised" education as a means of self-determination (Hoover Green 2011, 185). Notably, Hoover Green underscores that 'political education' is not necessarily ideological as much as it is a device for controlling violence. A key conclusion of her work is that training plays an important cognitive role in "rendering some acts literally unthinkable, despite the general acceptance of violent conduct that is necessary in combat" (Hoover Green 2011, 34).

Wood and Hoover Green argue that institutional factors are critical. They conceive of a causal path from the internal hierarchy, the strength of authori-

of insurgent groups that are forcibly recruited use gang-rape, in particular, as a way to build social cohesion. From this finding, it can be argued that the lack of prohibitions is indicative of forcible recruitment.

ties and the organisation's political education, to its repertoire of violence. Their theoretical insights highlight the preconditions for violence. However, other research has pointed to different causal paths. For example, armed groups may also attack civilians in order to send a signal to their opponents that they are still strong (Hultman 2009). They may also use violence to strengthen an organisation that is dependent on opportunistic followers rather than 'believing' cadres (Weinstein, 2007). These are incentives for expanding the repertoire of violence. Indeed, Cohen's research complements these additional explanations. She provides evidence that recruitment mechanisms have a strong relationship to the types and severity of sexual violence by armed groups (Cohen 2013). Her cross-national data and case study of Sierra Leone's Revolutionary United Front (RUF) leads to the conclusion that armed actors that forcibly recruit their members tolerate or even promote sexual violence as a means of socialization. Her argument points to the idea that the needs of the organisation, such as recruitment, are the genesis of the lack of internal constraints on sexual violence. One point of agreement within this scholarship, however, is that armed actors that do not restrain their members, for whatever reason, have wider variation in sexual violence.

Empirical, theoretical research on sexual violence in armed conflict is relatively new. Yet, there seems to be a consensus in the previous research explaining sexual violence noted above: the quality of internal discipline contributes to the propensity for violence. However, it is unclear how this causal argument relates to variation in impunity. In what follows, I will adapt these ideas to explaining impunity. Hoover Green, for example, interprets political education as affecting the sorts of violence that an armed group will use. But there is an intervening step between internal restraint and the commission of violence. Humphreys and Weinstein (2006) and Cohen (2013) respectively determine that organisational demands for resources and recruits, affect the use of violence. What is missing is the step in between. The progression between these factors and a belief among combatants that they will not be punished for abuses, such as sexual violence, remains obscure. Thus, although this study borrows from the sexual violence research noted here, it focuses on the quality of internal restraints in order to assess the strength of enforcement against sexual violence, for the purposes of examining impunity. The causal path of interest will encompass the links between restraints, enforcement and confidence in the absence of negative consequences.

A criminological study offers a complementary perspective on the importance of beliefs. In 2011, Leana and Jeffrey Bouffard (2011) examined beliefs about the consequences of sexual violence. They asked US college men about the perceived risks and rewards of sexual aggression and linked these to self-reported attitudes toward date rape and hypothetical behavioural intentions. While 81 percent of the respondents were aware of the possible

legal consequences for date-rape, 23 percent of this majority also believed that date rape could lead to future romance or sexual benefits (Bouffard and Bouffard 2011, 634–635). This sub-group was also well-disposed to agree that date rape was also well-disposed to statements of rape-supportive attitudes such as “women have an unconscious wish to be raped” (Bouffard and Bouffard 2011, 633). None of the groupings in the study were demographically different. They were not significantly (at least statistically) dissimilar to the larger group in terms of race, age, income and other factors. And yet, even if some respondents knew they would be answerable for sexual aggression, they also found ways to justify it (Bouffard and Bouffard 2011, 636). In other words, despite knowing about the negative consequences for date rape, some people shift the blame to the victim or rationalise the act. This is an illustration of diffusion, a cognitive ‘move’ that I referred to earlier in this chapter when I explained the role of social learning in generating confidence in the absence of negative consequences.

The above example demonstrates that there can be a mismatch between the reality of legal accountability and beliefs. Most of the subjects understood the possibility of being punished for date rape and did not justify sexual aggression. But others also endorsed rape myths (Bouffard and Bouffard 2011, 640). The threat of legal repercussions could have been mediated by peers who positively reinforced sexual aggression (Schwartz et al. 2001). Or perhaps the tangible threat of negative consequences was minimal, given that “so few acquaintance rapes are even reported to the police” (Bouffard and Bouffard 2011, 640). The research on perceptions of risks and rewards of date rape concentrates on the beliefs held by individuals. Still, it is established that there is variation at the sub-group level. While Bouffard and Bouffard are uncertain about the factors leading to these differences they draw attention to the potential roles of real costs and peer support in shaping these beliefs.

This study builds on these insights to explore similar variations in the context of armed conflict. It asks what causes impunity for sexual violence. The key processes, I argue, are weak enforcement or pardons. Perhaps the quality of actual repercussions has an effect on the beliefs of armed actors. The liberal peacebuilding literature suggests that weak enforcement of the rule of law undermines accountability and justice. At the same time, the UN has arrived at the point whereby pardons such as amnesties are considered determinants of impunity. Previous research on sexual violence makes the claim that internal restraints limit abuses. Thus, there is some congruence in liberal claims and research on sexual violence. Both literatures contend that rules must be enforced, either by the state or by the armed group. However, neither set of scholarly literatures focuses on enforcement or pardons as determinants of impunity in the sense of confidence in the absence of negative consequences. Despite the rich contributions of liberal scholars, they focus

on impunity as a dimension of ‘failed’ rule of law or injustice and not as its outcome. And in the meantime, sexual violence researchers concentrate on sexual violence as the outcome of interest, and therefore dependent variable. In both sets of work, attention to the conditions that lead to beliefs in the freedom from accountability, with impunity as the outcome of interest, is missing.

The theoretical framework

The previous section highlighted the ‘black box’ that is the focus of this study. It formulated the gap, the conditions leading to armed group impunity for sexual violence. As discussed above and in Chapter 2, the liberal peacebuilding paradigm equates failures in the rule of law with lack of accountability. Borrowing from this logic, this following theoretical framework proposes that breaches, flaws or suspension of rules explain the variation in armed group impunity for sexual violence. Put more succinctly, weak enforcement and pardons cause armed groups to develop confidence in the absence of negative consequences. However, weak enforcement and pardons are abstract ideas, which the section will make more concrete. It will identify three explanatory factors: flawed prohibitions, negligent authorities and amnesties. Weak enforcement also corresponds to notions of internal restraint in armed groups while pardons arise within the dynamics of the conflict to peace transition, and thus affects the armed group from the outside.

Explanatory Factor I: Flawed Prohibitions

The first explanatory factor is *flawed prohibitions*. The proposition is that flawed prohibitions for sexual violence lead to impunity. In the context of armed conflict, codes of conduct would need to ban sexual violence. However, if these rules were flawed they would signal or signify that sexual violence was of no consequence. I define flawed prohibitions as *the absence of relevant rules or inconsistent procedures for banning illegitimate acts*. Training practices, codes of conduct and structures of sanctions and sentencing can effectively communicate the risks of sexual violence. However, if armed actor combatants do not know that violence is prohibited; perceive that rules do not apply consistently; or are aware that investigation, reporting, prosecution and punishment is tentatively formulated, they will not believe that there are risks that are associated with sexual violence. Flawed prohibitions thus would nurture confidence in the absence of negative consequences.

Most armed actors have some rules to restrain or narrow the repertoire of violence (Hoover Green 2011). These rules may be disseminated explicitly through training or political education. They may also be promoted implicitly through socialization. For the purposes of this study, the degree to which rules or procedures are flawed prohibitions depends on their quality and consistency. For instance, procedures which make it difficult to report violations, in actuality, undermine bans on sexual violence. Hoover Green describes different types of tools for restraint (2011), framing these as implicit and explicit. It is probably true that armed actors rely on one or another of these framing techniques for disseminating the content and scope of rules. Large militaries or armed groups may have more resources and can invest in formal, explicit training or socialization. Weaker or more inferior groups, such as insurgencies, may have to operate in secrecy and rely on underground political education since they cannot operate in the open. This is not a concern for this framework. What is important is whether or not and how armed actors forbid sexual violence, communicate this prohibition and make it possible to follow through on the penalties of their ban. Alternatively, even if an armed actor does not explicitly maintain a prohibition, it might be that through other methods it communicates or promotes values against sexual violence. Hoover Green indicates that such implicit approaches seek to valorise particular types of violence, and thus to imbue fighters with particular types of identities that comprise a narrow repertoire for violence (2011). As she notes, Wood demonstrated that the LTTE is one example of an armed actor which promoted an ideal of self-denial (Wood 2006b, 2010).

This explanatory factor is relevant even in situations where sexual violence has been associated with impunity in the past. Consider how the liberal peacebuilding paradigm positions itself in relation to the social contract and to basic human rights. It assumes that equality and liberty must be protected in order to maintain the social contract (Locke 1690). The same liberal paradigm also upholds as universal the International Bill of Rights²² and a range of norms such as the right to life or freedom from being enslaved. Thus some values are universal. For example, although the “‘Enlightenment Rights’” enshrined within the International Covenant for Civil and Political Rights (ICCPR) are not always promoted or protected by governments, ratification of this treaty “stimulates domestic organisation and mobilises locals to claim the rights [it] contains” (Simmons 2013, 479). Sexual violence is increasingly viewed as a serious crime. Rape is interpreted as a form of torture and gender discrimination. It is unlawful under the 1949 Geneva Conventions

²² As noted in Chapter 2, the International Bill of Human Rights is composed of the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights (and their Optional Protocols), both of which entered into force in 1976.

and the Rome Statute of the ICC and through the customary law of *ad hoc* tribunals and UN Security Council Resolutions (Eriksson 2010). Consequently, states are obligated to prevent and punish this violence. In the context of conflict, non-state armed groups are also accountable under international criminal law.

Going further, this framework assumes that prohibitions should be present even in instances of unequal gender power relations. Despite the popular perceptions, there is no scientific consensus that gender inequality generates sexual violence in the same way and in all contexts. Although there may be a significant relationship between the two, there are also many examples of variation in sexual violence in societies that foster unequal relations between men and women. Gender inequality does not explain why in countries such as Burundi, some actors commit sexual violence, when other actors do not. The empirical record also includes men and boys as victims of sexual violence (Sivakumaran 2007). It is also likely that sexual violence would be unacceptable to *all members* of a group or society. Most individuals perceive sexual violence as harmful. It hurts them, and they would not want their family members, friends or kinfolk to experience it. It is often a source of shame for the victim and his or her family and community. Indeed, it might be difficult to find a contemporary society whereby a perpetrator of sexual violence – regardless of the existing formal laws – would claim responsibility for committing rape unless other group dynamics valorised this violence. Still, after the war, or outside of the sub-group, being identified as a rapist is a liability and it is unusual. Therefore, it is conceivable that flawed prohibitions, even in the most patriarchal contexts, could still promote impunity.

Explanatory Factor II: Negligent Authorities

The second explanatory factor is *negligent authorities*. The proposition is that armed groups led by authorities that do not punish perpetrators will develop impunity. The claim is based on the notion that authorities are directly responsible for implementing punishment. Therefore, I define negligent authorities as a factor and as *leaders who fail to execute punishment for crimes*. Even in cases where prohibitions are flawed, authorities may play a crucial role in the conditions leading to impunity. In situations where prohibitions are well-articulated and there exist systematic tools for justice, leaders and politicians may still find ways to violate laws through the exercise of their own power and authority. They may protect their allies or clients or shield their own culpability. Exercising undue influence, authorities can send signals that sexual violence is not costly. And in the midst of war, civilian and military officials, rebel commanders and other leaders may ignore or abrogate existing rules.

This explanation focuses on the agency of individuals to compel other individuals and therefore groups. It centres on the Hoover Green's "commander's dilemma" (Hoover Green 2011) which specifies the dynamics of the principal-agent challenges of controlling violence (Butler, Gluch, and Mitchell 2007). The proposition holds that agents who are either unable or unwilling to punish their cohorts or subordinates to consequences for their actions, are responsible for creating impunity. Moreover, the role of authorities has been discussed in relation to impunity. Vinuales (2007) shows that despite the presence of relevant laws perpetrators still commit violations of human rights with impunity. Impunity events reported by Amnesty International that were claimed to result from the inaction of state officials. In fact, the results of Vinuales' study showed that most infractions took place when the legal framework would punish human rights violations, but enforcers were negligent, either for their own interests or lack of political will. Finally, it is important that this theoretical framework delimits the relationship between negligent authorities and flawed prohibitions. In this study, observations of authorities are limited to their implementation of punishment and not to the creation and promotion of prohibitions. This is an important distinction, since authorities may also formulate and endorse rules. I distinguish between these roles, and focus on how authorities punish. This enables a fine-grained differentiation of the two explanatory factors.

Explanatory Factor III: Amnesties

The third explanatory factor is *amnesties*. The proposition is that armed groups that have experienced amnesties for sexual violence during war will develop impunity. When governments pardon perpetrators they effectively suspend or abrogate their liability. In the context of armed conflict, a salient example of a pardon would be when an armed actor's combatants are exempted from prosecution for violence committed during the war. In this study, I define amnesty as *a formal commitment to exempt individuals from legal, penal and other disciplinary liability, for acts generally considered prosecutable and punishable*.

The logic of this proposition is that armed actors will feel that they are above the law. Combatants who have observed or benefited from a provisional immunity or an amnesty clause in a cease-fire agreement are generally demobilised and reintegrated into society. These combatants may perceive that there is no individual accountability for particular violent acts, regardless of whether or not the acts are crimes under international criminal law or national legislation. Arguably, former combatants of these same armed groups could calculate that similar types of violence will go unpunished during post-settlement. For particular types of human rights such as sexual violence, this might hold even more, as peace processes tend to ignore these

types of abuses (Daley 2007b; Sjoberg 2010). This calculation can be embodied in a perception of impunity driven by *de facto* as well as *de jure* amnesty for sexual violence.

There is however, some doubt about the role of amnesties in the conditions that lead to impunity. Amnesties may contribute to peace in a number of ways (Cobban 2007). They may provide fighters with the security to put down arms and enter into a post-settlement phase. Amnesties may serve as a guarantee, under the right conditions, that the more powerful party to a conflict will not seek retribution (Hayner 2007). Melander demonstrates that amnesties in peace agreements are beneficial to peace processes, since they signify an end to violence. His cross-national study indicates a pacifying effect of amnesties, when a strong, authoritarian government is in place (Melander 2013). Louise Mallinder has made even stronger arguments for the positive contribution of amnesty, namely that it is essential for truth-seeking in transitional justice. Since crimes of war are acknowledged in transitional justice process, actors are still held to some measure of accountability (Mallinder 2008; McEvoy and Mallinder 2012). These alternative views of amnesty serve to challenge the prevailing assumption that amnesties have a negative impact. However, there remains a gap in understanding how amnesties are interpreted by combatants or if they know about their ineligibility for serious crimes under the UN's guidelines and international criminal law (UNGA 1998; Office of the United Nations Commissioner for Human Rights 2009b).

To sum up, at the level of armed groups and in the context of conflict and post-settlement societies, this explanation presumes that a formal commitment, whether in a cease-fire agreement, an amnesty law or in provisional immunity for armed combatants, will translate into freedom from accountability.

Summarizing the theoretical framework

The theoretical framework is summarised in this final section. Armed group impunity is defined as confidence in the absence of negative consequences for sexual violence. In this study, an assumption is that armed group impunity for sexual violence is socially learned, through exposure to weak enforcement and pardons. These contribute to impunity by 'teaching' combatants that there is a low risk for committing sexual violence and that consequences will not be severe. As a result, combatants develop the belief that they will be free from accountability for future sexual violence. In particular, three explanatory factors are identified as conditions that lead to impunity.

The first explanatory factor is flawed prohibitions. When armed combatants are not introduced to prohibitions against sexual violence, they do not

believe there will be consequences for these acts. Similarly, if rules against these harms are confusing or inconsistent, soldiers and fighters will have little reason to expect retribution. Flawed prohibitions perpetuate the belief in the absence of negative consequences for sexual violence. The second explanatory factor is negligent authorities. When authorities do not mete out punishment for sexual violence, armed combatants can estimate low risks for committing these harms. They will interpret silence, favouritism or manipulation of penalties on the part of their commanders as a sign that sexual violence will not always be punished. They may develop ways to gain favour with the authorities or even mimic the lack of accountability coming from the top at other levels within an armed group. In failing to punish perpetrators, negligent authorities show the arbitrariness of consequences. This furthermore undermines the sense of accountability that is important to preventing the onset of impunity. Finally, the third explanatory factor is amnesties. Contrary to the other factors, amnesties represent an effect from outside or beyond the armed group. In the conflict context, amnesties are a feature of negotiated settlements. Although perpetrators of serious crimes are ineligible for amnesties, they can be implemented *de facto*. In any event, amnesties for wartime harms are akin to pardons. Combatants welcome amnesties as a sign that they will not be held liable for crimes committed in the war. But they also interpret these pardons as a sign that sexual violence was not an egregious harm, warranting punishment or prosecution. In the main, amnesties show combatants that they are exempt from liability and bolster confidence in the absence of negative consequences for sexual violence.

The theoretical framework states that when armed group combatants are not exposed to effective prohibitions, or their leaders fail to punish perpetrators, or they are exempted for wartime harms through amnesties in the peace process, they believe that there are no negative consequences for sexual violence. Using this theoretical map, the following chapter introduces the research design.

4. The Road Ahead: Research Design and Methods

In the previous chapters, I introduced the setting and theoretical framework. Chapter 2 anchored the study within the liberal peacebuilding paradigm. In Chapter 3, I presented the theoretical framework for exploring and examining the conditions which lead to armed group impunity for sexual violence. In addition to defining this concept, it proposed three explanatory factors: flawed prohibitions, negligent authorities and amnesties. This framework will guide the collection and analysis of the empirical material.

The empirical phase of the study unfolds through two different methods. First, the study includes a small-scale, aggregate exploration of the association between amnesties and post-settlement sexual violence. It is a quantitative component which explores this relationship across 23 armed actors in six civil wars in Africa. Second, the main empirical contribution is a comparison of two armed groups in Burundi, the non-state armed groups CNDD-FDD and Palipehutu-FNL (I will also refer to this group as ‘Palipehutu’ or ‘FNL’ throughout the text). This is the qualitative part of the study, which examines the interaction of each of the three explanatory factors and their relationship to armed group impunity. The comparison of the rebel groups is carried out in a within-case and cross-case analysis.

This chapter outlines the research design and describes the methods of the study. It begins with an introduction of the research strategy and explains the rationale for the selection of the cases. The following sections discuss the research design for the methods. I present each method’s respective data collection and analytical techniques. I also discuss the limitations of each method and its sources and their limitations. The analytical techniques are cross-tabulation for the quantitative component and focus group and process-tracing for the qualitative part. The final sections of the chapter introduce the ethical issues of the study.

Research strategy

This section expounds on what type of research strategy would lead to the relevant empirical material and analysis, which would in turn, answer the

key questions. To reiterate, I defined armed group impunity for sexual violence as confidence in the absence of negative consequences for sexual violence. The first two explanatory factors, flawed prohibitions and negligent authorities, are rooted in the notion that weak enforcement leads to impunity. The last factor, amnesties, is based on the idea that pardons lead to impunity. To be able to collect empirical material on these different factors, I have divided the study into two different research questions. My first question is: *What is the relationship between pardons and impunity for sexual violence?* My second and main research question is: *Which conditions lead to armed group impunity for sexual violence?* These questions are important prerequisites for the research strategy.

To be able to formulate the strategy, I focused on the theory-building orientation of the study. As discussed in the preceding chapters, previous research has not yet captured impunity in the way that this study does. The sexual violence literature focuses on the implications of armed group restraints for variation in sexual violence, and does not explicitly address the differences in beliefs about the consequences for these harms. At the same time, while amnesties are addressed in previous research, most studies have yet to explore the causal relationship between these pardons and beliefs in freedom from accountability. The study faces multiple demands for different types of empirical material which spans the causal path and a range of factors. It requires new evidence about confidence in the absence of negative consequences for sexual violence among armed groups. Thus, the research strategy is two-pronged and uses different methods for data collection and analysis.

Multi-methods strengths and weakness

Multi-methods in the social sciences has been used by scholars to build knowledge in relation to a range of problems. Thaler asserts that beyond the increased popularity of such approaches, multiple methods are “particularly well-suited to the study of violence” (Thaler 2012, 4). He makes particular mention of Kalyvas (2006), Wood (2003) and Weinstein (2006) as illustrative of this trend (Thaler 2012). Multi-methods expand opportunities for balancing hypothesis testing with more nuanced assessments of causality. In addition to overcoming the limitations in generalisability of comparative narratives, using different quantitative and qualitative methods can also ameliorate and explain the uncertainty of surprising, possibly spurious correlations (Collier, Brady, and Seawright 2010; Fearon and Laitin 2008; Thaler 2012).

However, the pitfalls of using different methods in one study are also plentiful (Bennett 2007). Errors in one method can be repeated and amplified in another. One or all methods may be used minimally: the quantitative

method may not be particularly innovative or state of the art and the qualitative part of a study might ignore important area studies or historical archives literature, or other types of sources. For example, despite praise for Jeremy Weinstein's *Inside Rebellion*, Stathis Kalyvas, himself a multi-methodologist, identifies important measurement problems in Weinstein's large-N analysis of insurgent violence (Kalyvas 2007). And yet, Weinstein's contribution to the civil war/violence research agenda is indeed, important and worthwhile.

To address these problems, a well-developed multi-method study will not aim to achieve exemplary proficiency over all of its methods. The best advice is to aim for mastery of one method (Bennett 2007). Most importantly, multi-method studies should use definitions that are particularly clear and variables which are well specified. Finally, the multi-method researcher can and should be content with capturing "different aspects of a phenomenon" (Thaler 2012, 17).

Using two different methods, as this study does, should help connect the gaps I identified earlier. The concept of impunity is particularly ideal for new social science inquiry accumulation and systematization. Yet, since armed group impunity as I define it, is uncharted territory, there is still a need to explore the concepts in an open-ended manner and to gather diverse types of inferences. This is the theory-building demand of the problem of armed group impunity for sexual violence. Thus, although to a lesser extent than other multi-method designs, this study adopts the combination of "large-N designs for identifying empirical regularities and patterns, and the strength of case studies for revealing the causal mechanisms that give rise to political outcomes of interest" (Fearon and Laitin 2008, 758).

The two-pronged approach of the study was carried out concurrently. It involved collection of quantitative and qualitative data; independent analyses; and interpretation to meet the study's overall purpose. Both methods focus on armed group actors, in contemporary, state-based internal conflicts, which have arrived at settlement through a negotiated peace agreement. I have undertaken concept and proposition formation for each part of the study, simultaneously. This allowed the study to have a unified logic, using the same definitions for concepts and variables. The procedures for data collection and analysis are presented in greater detail below, beginning with the small-scale, aggregate exploration of amnesties and post-settlement sexual violence and followed by the comparative study of the CNDD-FDD and FNL rebel groups of Burundi.

Case selection

The quantitative and qualitative elements of the study share the same case selection criteria. In the small-scale, aggregate exploration, 23 armed groups

from Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa were chosen for variation in sexual violence during conflict, presuming such variation would also be true for the study's dependent variable, post-settlement sexual violence. From this sample, Burundi was further used as an entry-point to identify cases for the comparative case study. Non-state armed groups Palipehutu-FNL and CNDD-FDD from Burundi were chosen for comparison because of their different outcomes concerning the dependent variable, armed group impunity for sexual violence.

The theoretical framework in Chapter 2 deals with armed actors, their formation of impunity and the commission of sexual violence. It guides case selection for the small-scale, aggregate exploration as well as for the comparative case study. The unit of analysis for the entire study is the armed actor. The theoretical framework guides this design decision. First, the explanatory factors and the outcome of armed group impunity are not at the individual-level. And the mechanisms of interest are at the level of armed groups. Secondly, an individual-level study would require information about psychological or cognitive decision-making of armed combatants. Not only is this very difficult to research, it creates ethical problems. Finally, it might be possible to design a method for collection of data, such as a survey instrument. However, the research community will first, I submit, need to develop more theoretical and empirical expertise on the problem.

Based on the Uppsala Conflict Data Program (UCDP 2012), I limit the study to formally organised armed actors, which I define as an entity that has given itself a name; and established civilian and military institutional structures to organise the use of arms to meet its objectives (UCDP 2014e).²³ In line with UCDP, actors can fruitfully be divided into state armed forces or non-state armed groups. The study focuses on contemporary conflicts where armed actors are particularly exposed to and/or espouse liberal peacebuilding ideals such as democratic governance, the rule of law, justice and accountability. It is centred in civil wars, essentially over who governs or controls a population and a territory within a state. Thus, cases were chosen only if the actors used armed violence over “the type of political system, the replacement of the central government, or the change of its composition” or “secession or autonomy (internal conflict)” (UCDP 2014f). Inclusion in the study was accordingly based on whether or not actors were engaged in state-based internal conflict, defined in the UCDP as “a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year” (UCDP 2014c). Next, an

²³ The UCDP defines any non-governmental group of people having announced a name for their group and using armed force as formally organised. The definition in this study differs slightly by including the criteria of civil and military institutional structures (UCDP 2014e).

implication of the theoretical framework is that the study should examine the effects of pardons emerging from the transition from war to peace. I therefore focus on armed actors that have settled their incompatibility through negotiated settlement, leading to the cessation of armed violence. Finally, although the study's main focus is impunity, it nonetheless explores patterns in post-settlement sexual violence. Indeed, selecting cases for comparison was partly based on whether or not there was variation in sexual violence across differed armed actors. The rationale for this is the underlying assumption that impunity leads to higher levels of sexual violence.

Africa

The study limits case selection to countries in Africa. I estimate that Africa was the stage for 37 percent of the world's armed internal conflicts between 1989 and 2011 (Uppsala Conflict Data Program/Peace Research Institute of Oslo 2013) with approximately 48 percent of battle-deaths taking place in this region (UCDP 2014k). Cohen and Nordås report regional variation in patterns of prevalence in sexual violence during conflict. The Sexual Violence in Armed Conflict data shows that "63% (26 of 41) of the active conflicts in Africa reported at least one year at either of the highest two prevalence levels of sexual violence, while the comparable figures for Asia and Europe are 39% (15 of 38) and 26% (6 of 23)" (2014:423). These levels of violence justify studying armed actors from this region.

The time period

The study is limited to the time period between 1989 and the end of the first decade of the twenty-first century, 2011. Rapid democratization took place between 1989 and 1997, particularly in Africa (Joseph, 1997) and Eastern Europe. The time period featured much civil strife. In addition, internal conflicts were well covered in the international media and they were exposed to external conflict resolution, peacekeeping and peacebuilding. Following the end of the Cold War, there was a surge in UN peacekeeping operations. A review of the list of peacekeeping operations between 1948 and 2013 shows that 78 percent of the organisation's missions took place from 1989 (UN Department of Peacekeeping 2013).

The study gathers observations about the periods of conflict and post-settlement. By post-settlement, I refer to the time after a negotiated conclusion of an armed conflict whereby the resolution or regulation of the incompatibility is addressed through a peace agreement. In the quantitative study this will cover three years after settlement. However, as discussed in later sections of this chapter, the nature of the empirical material in the comparative case study prevents a precise control of the time period for observations in the years after settlement.

State-based internal conflict and settlement

Using the UCDP's peace agreements dataset, it is possible to determine with relative precision that 28 state-based internal conflicts in Africa between 1989 and 2011 ended through a negotiated settlement (Högbladh 2011). These conflicts were all categorised as driven by an incompatibility of government that concerned the "type of political system, the replacement of the central government, or the change of its composition" (Högbladh 2011). The 28 armed conflicts took place in 15 countries: Angola, Burundi, Central African Republic, Chad, Congo, Djibouti, DR Congo (Zaire), Ivory Coast, Liberia, Mozambique, Sierra Leone, Somalia, South Africa, Sudan and Uganda.²⁴ In order to capture sexual violence in post-settlement era, only actors whose respective settlements held at least for the year following the signing of a 'final' peace agreement were included in the study. This means that the conflict had to remain out of the UCDP/PRIO dataset, not exceeding the threshold of 25 battle-related deaths. So far, these criteria provide the study of armed group impunity with plenitude, since 50 actors are categorised as participating in the 28 conflicts. Six out of the 28 conflicts were selected for the study, namely Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa. It deserves to be noted that many actors were parties to other types of conflict in these six countries, and fit into the UCDP's other categories of one-sided violence or non-state armed conflict.

Case selection for the quantitative component

Due to limitations in precise evidence about post-settlement sexual violence, selecting cases was also based on purposive sampling according to preliminary knowledge of sexual violence during conflict. I reasoned that the only way to assure some variation in the dependent variable was to choose cases with different patterns in sexual violence. In all likelihood, six countries – Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa

²⁴ Government of Angola – UNITA; Government of Burundi - CNDD–FDD; Government of Burundi - Palipehutu, Government of Burundi - CNDD, Government of Burundi – Frolina; Government of Burundi - Palipehutu–FNL; Government of Central African Republic – UFDR; Government of Chad – FARF; Government of Chad – FNT; Government of Chad – FUCD; Government of Chad – MDJT; Government of Congo - Ninjas, Government of Congo - Cocoyes, Government of Congo – Ntsiloulous; Government of Cote D'Ivoire – FN; Government of Cote D'Ivoire - MPIGO, Government of Cote D'Ivoire - MJP, Government of Cote D'Ivoire – MPCJ; Government of Djibouti – FRUD; Government of Djibouti - FRUD – AD; Government of DR Congo (Zaire) – MLC; Government of DR Congo (Zaire) - RCD, Government of DR Congo (Zaire) – MLC; Government of Liberia – INPFL; Government of Liberia - MODEL, Government of Liberia – LURD; Government of Liberia – NPFL; Government of Mozambique – Renamo; Government of Sierra Leone – RUF; Government of Somalia - ARS/UIC; Government of South Africa – ANC; Government of Sudan – JEM; Government of Sudan – NDA; Government of Sudan - SPLM/A; and Government of Uganda - UNRF II.

promised some variation in sexual violence during conflict. Moreover, they are in different regions across Africa. Three conflicts, the DRC, Burundi and Sierra Leone are commonly recognised as having high levels of sexual violence committed by various parties to conflict. There are hundreds of reports on conflict-related sexual violence in these countries. Liberia too is widely believed to have featured sexual violence during civil war, although to a lesser extent than its neighbour, Sierra Leone. Finally, Mozambique and South Africa are perceived to have relatively low levels of wartime rape and other sexual abuses related to the armed conflict. Another way to assess the potential variation in these countries is by comparing types of sexual violence, with non-state armed groups in Sierra Leone and Mozambique having records of sexual slavery; rebels in the DRC carrying out strategic wartime rape; and Liberia and Burundi assumed to have high levels of rape. Finally, although I was aware of transitional processes in South Africa, at the time of case selection, I had no knowledge about variation in the main independent variable of the study, amnesties. Thus, this was truly an exploratory design.

Based on the purposive sampling of these six countries, the number of cases in the study came to 23 armed group actors, 9 of which are state actors and 14 are non-state armed groups. At the aggregate level of actor-years, the quantitative study results in 63 observations.

Case selection for the comparative study

The comparative case study is a most-similar design, prioritizing non-state armed groups “that are as similar as possible in all respects except the outcome of interest, where they are expected to vary” (Gerring 2001b, 210). A most-similar design is based on John Stuart Mill’s method of difference (George and Bennett 2005) and is akin to matching in statistical analysis. Seawright and Gerring explain that:

In its purest form, the chosen pair of cases is similar on all the measured independent variables, except the independent variable of interest...the two cases are similar across all background conditions that might be relevant to the outcome of interest, as signified by X^2 , the vector of control variables. The cases differ, however, on one dimension— X^1 —and on the outcome, Y . It may be presumed from this pattern of co-variation across cases that the presence or absence of X^1 is what causes variation on Y . (Seawright and Gerring 2008, 304)

Widely applied in qualitative research, most-similar designs are nonetheless subject to problems (George and Bennett 2005; Gerring 2001b, 2007). The first difficulty lies in the challenges of identifying empirical examples which meet the design’s conditions. It is unlikely that all control variables can be the same in two or more cases, thus undermining the ‘quasi-experimental’ aspect of this design. The comparison of CNDD-FDD and FNL is an exami-

nation of independent cases that are as similar as possible, and thus follows advice to approximate the similar-case design as much as possible (Lijphart 1971). Secondly, there is the problem of omitted and/or unobserved variables, which may have an effect on the outcome variable. As discussed later on in this chapter, these considerations are dealt with through within-case and cross-case analysis techniques.

To begin with, Burundi was identified as a viable conflict country for selecting cases. A review of secondary material suggested that the civil war had not featured the same levels of sexual violence as in Sierra Leone or the DRC, but that armed actors had committed wartime abuses. A final motivation for focusing on Burundi is that sexual violence is understudied in previous research. Overall, in English language sources, Burundi has not received the same type of attention as other wars in Africa.

Burundi's major conflict parties have been documented by human rights organisations and media sources as perpetrators of sexual violence during conflict.²⁵ Mainly from 2003, reports of rape increased. The country's state actors and non-state armed groups, in varying degrees, were implicated in this violence. A peak in conflict-related sexual violence seems evident during the period between 2003 and 2004. For example, Human Rights Watch reports how sexual violence continued after a December 2002 ceasefire between armed groups, noting that "Burundian civilians suffered from the same deliberate killings, armed attacks, rapes, pillage and destruction of their homes that have been their lot for nearly a decade" (HRW 2003a, 1).

Preliminary fieldwork provided limited, tentative information about different state and non-state actors. Pilot focus groups with ex-combatants from CNDD-FDD, Burundi Armed Forces (FAB), FNL, and the government-affiliated Guardians of Peace suggested that the FNL members held the clearest views against sexual violence, while their organisation was known for prohibiting sex, smoking and drinking during the civil war. A reasonable assumption was that FNL members had some level of accountability. Selection of FNL as one case was therefore a starting point.²⁶ Choosing CNDD-FDD as the second group was based on the similarities between the two groups. They shared a language, socio-cultural and economic background. Their rebellions were both mobilised to fight an ethnic minority government.

²⁵ The data on this violence is still difficult to report with certainty. In some reports of sexual violence, survivors are not sure if the perpetrator was a rebel or government actor. In one report (USSD, 2007) one group, the FNL is first cited but all the named perpetrators are attributed to "FDN", making it unclear if these were rape incidents perpetrated by FNL fighters or even, CNDD-FDD (which is sometimes described as FDD) members.

²⁶ The SVAC data on reports of prevalence from the US State Department show that Palipehutu-FNL had no levels of prevalence for conflict-related sexual violence but that this violence became more common from 2003. The data also show that CNDD-FDD sexual violence events were mainly in the years 2003 and 2004.

Both began as pro-Hutu rebel groups, with similar pools of the civilian population for recruitment.

For a number of interrelated reasons, the comparative study intentionally focuses on non-state armed groups and not government actors. The Burundian government was in a period of uncertainty from at least 1993 to 2005, changing and evolving as it engaged in conflict and negotiation with the armed opposition or rebel groups. This means that examination of impunity of the Burundi military would need to devote considerable efforts to distinguish between different military leadership across time. Preliminary fieldwork suggested this would be difficult. Securing interviews and gaining access to ex-combatants from the government would pose challenges. Moreover, the most-similar design dictates selection of a comparable case. Choosing a government actor would require either selecting another state military, or limiting this study to a within-case analysis of the Burundi government army. Finally, this type of study prioritises comparison and contrast. As such, it seems logical to choose two similar rebel groups. These various methodological concerns explain why the comparative study does not include the Burundi government. The comparison of CNDD-FDD and FNL is an examination of independent cases that are as alike as possible, and thus follows advice to approximate the similar-case design as much as possible (Lijphart 1971).

Method I: Quantitative Component

The quantitative component of the study asks: what is the relationship between pardons and sexual violence by armed groups. This section proceeds as follows. I introduce the dataset which is the basis of the small-scale aggregate exploration of amnesties and post-settlement sexual violence. The dataset is specifically designed to explore the implications of the theoretical proposition that armed actors who are beneficiaries of amnesties will believe they are free from accountability. This component of the study is based on the argument that impunity leads to recurrence or new violence. By examining the relationship between amnesties and post-settlement sexual violence, this part of the dissertation will thus contribute indirectly to resolving the over-arching puzzle of the study; in other words, what conditions lead to armed group impunity for sexual violence? This is why the core of the dataset is a collection of reports of post-settlement sexual violence events. The following sections describe the construction of the dataset; operationalisation of the variables; the sources used to collect information and the techniques used to analyze the associations between amnesties and post-settlement sexual violence.

Despite the limited and preliminary nature of the dataset in the study, I devote space to providing a presentation of it in this section. The dataset used for this part of the study focuses on 23 armed group actors in internal, state-based conflicts in Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa between 1989 and 2011 (See Table X, List of Armed Groups). It is a collection of 137 reported post-settlement sexual violence events.

Construction of the dataset was limited to a small-scale effort, meaning a reduced number of armed actors. This is why this is not a large-N quantitative study, but an aggregate exploration. From the beginning, it was uncertain that the relationships proposed by previous research or in the theoretical framework could be examined cross-nationally, thus this dataset remains a preliminary exploration. For instance, reliable, comparable data on sexual violence in armed conflict or its aftermath did not exist. The Sexual Violence in Armed Conflict Dataset was released in May 2014 (Cohen and Nordås 2014).

To be included in the dataset, the actors had to have fought in a contemporary armed conflict, followed by a peace settlement. They had to meet the criteria of settlement and battle-related violence. The dataset provides information about each peace agreements signed by the armed actors. For the time span of 1,095 days or 36 months following the date of the agreement, the dataset captures by yearly aggregation different sexual violence attributed to each armed group actor. It was assumed that after 36 months, most conflict actors would have already disbanded. If an armed actor returns to war after more than one year but within the three-year period, the remaining actor-years for that actor are excluded. The armed actors and the events in the study could thus be affected by a number of transition-to-democracy issues that are beyond the scope of the study.

Data collection began in August 2011. Since the study was focused on the three years following a settlement, the cut-off date for the concluding peace agreement was 31 December 2007. Thus any peace agreements after this period are not included. This means that armed actors who signed or settled after this cut-off were excluded from the dataset.

Dependent variable

In the quantitative component of the study, the dependent variable is post-settlement sexual violence by an armed actor. Post-settlement sexual violence (PSSV) was recorded in the dataset as rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization and any other form of sexual aggression of comparable gravity. The study includes victims within an armed group as well as non-combatants. Entry into the dataset required that the PSSV event be reported as taking place within the 36 month

period following the settlement agreement. Although there may have been numerous reports of PSSV in a conflict, only those events which are clearly described and distinguished have been included in the dataset. Most reports describe sexual violence behaviour, events which may have taken place during the conflict, or speculate based on previous incidences. In order to be recorded in the dataset, a report had to identify the armed actor. Finally, combatants and civilians can commit sexual violence. Thus, it was crucial to identify the perpetrator of each reported event in terms of which armed group was involved. In other words, I only include PSSV that was reported as attributable to a specific armed actor. Each event had to be clearly identified as perpetrated by an armed actor, identified as government authorities, military personnel, non-state groups or 'soldiers', 'security forces', 'police' or 'rebels'. Finally, reports would need to include other types of details, such as timing (with a particular month, day or period identified) or location.

Events that occurred over a long time, such as sexual slavery or widespread continuous atrocities, were recorded as a single incident. This was helpful for the purposes of comparison, but it poses important questions about the optimal measurement of different types of sexual violence. It seems illogical to equate forced marriage with violent mass rape that is accompanied with looting and killing. It is important to consider variations in time, the number of perpetrators and victims and the scale or magnitude of violence. Yet, because of the quality of the reports on sexual violence, it is not possible to identify these differences systematically. To address this, I created a range of variables in the dataset which helped to distinguish the variation in PSSV. Coding included location, if any was recorded; the armed actor; and where possible, I counted the number of victims described in each report, resulting in different variables: 1) 1 victim; 2) more than 1 victim; 3) up to 15 victims; 4) between 16 and 100 victims; 5) more than 101 victims; and 6) unknown numbers of rape victims. In addition to rape, each reported event was recorded for abduction/slavery; detention/prison; torture/mutilation; gang-rape; and/or 5) forced prostitution. Despite this level of detail, the nature of reports and coding PSSV still created uncertainty about the variation in this violence. Another approach was necessary to capture the intensity of post-settlement sexual violence. By doing so, the dataset could lead to more nuanced understanding of the variation above.

Each event was also coded for intensity. This variable was furthermore aggregated to the actor-year. The criteria for measuring intensity were: the number of victims; the level of involvement of armed group members, in other words, how large or small in numbers were perpetrators; and how long had the event been going on, i.e. the pattern of occurrence and recurrence. Events that were reported as taking place repetitively; on a wide-scale; over a long period of time; or involving many members of the armed group were recorded with a value of three (=3), as extremely intense. Some events in the

sources were reported as sexual slavery or described as a mixed pattern of abduction and forced marriage. These events were also considered extremely intense. Reports of events did not always include the precise number of perpetrators and victims, therefore extremely intense events were identified if they were described as “widespread”, “large scale”, “mass”, and “weapon of war”. If an event’s description did not include these extremely intense qualities, it was given a value of two (=2). Two-type events were not necessarily widespread or systematic, but they had multiple armed group members and several or an indeterminate number of victims. Generally, these types of events are reported as indiscriminate or isolated, but with significant involvement on the part of the armed group. Gang-rape events were classified with this level of intensity. Several value-two events are described as taking place along with other types of concentrated violence against civilians such as robbery, ambush and banditry. Events described simply as ‘rape’ or with a few victims and perpetrators were given a value of limited intensity or one (=1). Finally, events that were reported vaguely or where there is an ambiguous or loose affiliation between alleged perpetrators and an armed group, were considered to be of very low intensity and given a value of zero (=0).

The main independent variable: amnesties

The association between amnesties and PSSV was the focus of exploration. The independent variable is *amnesties*, which is specified as a formal commitment to exempt individuals from legal, penal and other disciplinary liability for war-time acts. In the dataset, an amnesty would have to have been explicitly included in a negotiated peace agreement (partial or full) or a ceasefire agreement. Separate variables for key characteristics of amnesty provisions, including specifications about scope and other forms of eligibility and applicability provide further information. Amnesties were furthermore differentiated as either blanket, having no limitations on serious crimes or conditions for truth-telling or prosecution; or if they were partial, with conditions or restrictions in time, eligibility and applicability.

Additional variables

The quantitative component of the study also explores whether or not three other factors were associated with PSSV. A first consideration is if pre-settlement sexual violence behaviour would be associated with the levels of reported PSSV. Theoretically, if combatants are free from accountability during war they may be prone to carrying on their sexual violence behaviour after settlement. Relying on a wide reading of secondary sources and news reports, a dichotomous variable for reputation – whether or not an armed group was a well-known perpetrator of sexual violence during conflict – was

constructed. This variable will be used to examine whether the same groups that seemed to be responsible for the most sexual violence during wartime also commit the most sexual violence in the post-settlement period.

The second factor of interest arises from previous research on sexual violence. It explores whether or not the type of armed actor is associated with different levels of sexual violence. Cohen and Nordås (Cohen and Nordås 2014; Cohen 2013; Nordås 2011) have shown that state actors have higher prevalence levels for sexual violence. While this relationship does not appear to pose a great deal of interest for the theoretical framework of this study, it is possible that the type of actor influences the conditions of settlement and thus, amnesty provisions in a peace agreement. Governments do grant amnesties to rebels, and they may also have greater influence on the negotiation process. A dichotomous variable was constructed for whether or not an actor belonged to the category of state or non-state. The pattern of state actor involvement in sexual violence will provide additional background understanding.

The state/non-state variable has implications for the measurement of PSSV in the study and for other, similar research. For instance, in the study, following elections in three conflicts – Burundi, Liberia and South Africa – the post-settlement state was governed by a former non-state actor, i.e. a rebel or opposition movement became the ruling government. However, it is not possible to distinguish between former rebels and state agents: rebels become government soldiers after integration. News media and other sources may commit an attribution error. Thus, in this study, and likely in others, governments are more likely to be identified as perpetrators as a result of the news reporting. The higher prevalence of PSSV among state actors should be considered in light of this reporting problem.

The third factor of interest was state capacity. In the post-settlement context, the strength of the legal system constitutes an important context for how impunity arises and plays out. This is an argument that is not addressed in the theoretical framework, yet it must be considered. For example, if the state's capacity to prosecute perpetrators is low, it may matter less what organisations teach their members since perpetrators are unlikely to be punished anyway.

Having provided an overview of the content of the dataset, this chapter will now turn to the sources for the reports on post-settlement sexual violence in Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa.

Sources and limitations

The sources of information for the generation of the dataset were varied. The Uppsala Conflict Data Program was the source for coding conflict, armed

groups and settlement through peace agreements. It included data on all the cases, period of time and peace agreements in this study. As such, the UCDP ensured a standardization of the information in the dataset. I coded directly from the UCDP/PRIO Armed Conflict Dataset, UCDP Dyadic Dataset, UCDP Actor Dataset and UCDP Peace Agreements Dataset. This means that conflict dyads, actors and peace agreements were clearly and consistently defined.

The coding of the variables for sexual violence was based on searches of news articles in the Dow Jones Factiva Database and reviews of reports by Amnesty International (AI), Human Rights Watch (HRW), the International Crisis Group (ICG) and annual country human rights reports of the United States Department of State (USSD). Events described more than one time (news reports in particular, tended to rehearse previous events of a conflict if these were large-scale or widespread) were only included once in the PSSV dataset. Other sources were used to code information about conflict, settlement and the armed groups in this study. The variable independent judiciary is from the Cingranelli-Richards (CIRI) Human Rights Data Project (Cingranelli and Richards 2010).

The USSD, AI and HRW sources on sexual violence are also used in the Sexual Violence in Armed Conflict (SVAC) Dataset.²⁷ Cohen and Nordås reported on their assessments of the reliability of the USSD, AI and HRW sources (Cohen and Nordås 2014; Cohen 2013). They found consistency in the reporting across these three sources. In particular, the USSD source seemed relatively unbiased. It did not seem to under-report sexual violence prevalence based on political or ideological interests. Rather, the US State Department reports seem to include more specific events, overall, than the AI and HRW sources.

It must be underscored that sexual violence events are difficult to capture and record (Alcorn 2014, 2033–2035). Sexual violence is not systematically reported, its definition varies across different states and legal systems and there is a lack of reliable, comparable data. Most importantly, victims of sexual violence are reluctant to come forward. Even in population based surveys, researchers have found that victims are more likely to attribute sex-

²⁷ Despite using some of the same sources, the dataset in this study differs from SVAC in several ways. It is event-based and small-scale. The SVAC dataset is cross-national and large and uses an ordinal-scale for prevalence. My data collection is limited to sexual violence events in the first three post-settlement years only, while SVAC covers the periods during war and five years after conflict. The names of some armed actors are different in the two data collections. Finally, this study's definition of sexual violence is much broader and includes also abuses committed by members of armed groups on their co-combatants or cohorts. This does not mean that it is more comprehensive, as there are few reports of violence within an armed group that are recorded in this dataset. The SVAC dataset is ambitious and would have been a good source of information. However, it was only available well after the start of this study.

ual violence to a stranger than an intimate partner, relative or neighbour (Alcorn 2014, 2035). This under-reporting (or over-reporting in some instances), affects the quality and consistency of reports from government authorities, UN agencies, NGO advocacy efforts and public health officials (Cohen and Hoover Green 2012). Creating an events-based dataset, no matter how tentative, was motivated by this lack of consistent and comparable information.

There are also several disadvantages from the news sources for sexual violence events during conflict, which can only partially be corrected in the study. Magnus Öberg and Margareta Sollenberg (2011) write about the challenges of gathering information about conflicts from news sources and many of their points are particularly relevant when considering the challenges of recording sexual violence in armed conflict. As they explain, to some degree, all news sources may have inherent biases (Öberg and Sollenberg 2011, 55). Events and processes reported in the news is not subject to systematic reporting since journalists, news agencies and news organisations select which items to cover based on many factors. They may be restricted in the number of reports they can cover in an issue of a newspaper. Culture, political and national interests of audiences can influence what event or process is covered (Öberg and Sollenberg 2011, 56). This has an even greater bearing on sexual violence in armed conflict.

Considering the various criteria for newsworthiness that are presented by Öberg and Sollenberg, it is clear that wartime sexual violence reporting could be prone to a number of biases. These events compete for space with other news. A news source can be biased against coverage of sexual violence, framing it as tangential to 'hard' news or minimizing it as only a 'woman's issue'. This might influence whether or not an event is presented in the news and circulated in a news wire service. And yet, if a conflict has been widely understood to have high levels of sexual violence, news wires may be more inclined to pick up a report for the purposes of continuity. For example, Cohen suggests that after large-scale sexual violence took place in Bosnia Herzegovina, human rights groups may have devoted more time and effort capturing further abuses, thus increasing the scale of magnitude for these acts in other sources (Cohen 2013, 466) Also, shocking and unexpected events can be interpreted as more news-worthy, which might explain the reason graphic and horrific sexual violence events are reported. There may also be a threshold of horror which motivates news sources to report on sexual violence events that have a high magnitude. Some of these biases may have influenced AI, HRW and USSD reports. Investigators from the NGOs and US officials may have had particular expertise and capacity to thoroughly cover sexual violence in one conflict, and their counterparts in another country may have been less inclined or capable. Finally, as found during the coding of events for the dataset, re-circulation is a problem for conflict re-

porting of all types. Information from a single original source can be re-circulated many times, giving the impression that the event or process or statistic is a verified fact (Öberg and Sollenberg 2011, 60). This is a danger with sexual violence events, which are difficult to verify because of the challenges of collecting evidence of the crime. It is likely that journalists would be unable to validate and authenticate each event they reported.

Finally, events data is difficult to code. For instance, Kristine Eck's comparison of the Uppsala Conflict Data Program Georeferenced Events Dataset (UCDP GED) and the Armed Conflict Location Events Dataset (ACLED) shows significant differences in violence recorded (Eck 2012). These differences can be understood on the basis of which types of violence were included, how events are weighted and the quality control over coding (Eck 2012). In this study, the problem of attributing the same weight to very different types of violence is addressed by variables for intensity, which are discussed above. The question of quality control was addressed, as much as possible, by having two different coders work through the reports and record events. Nevertheless, there is still space for improvement. As this component of the study is preliminary and small-scale, further checks were not prioritised. However, the challenges of coding this type of information remain clear.

Description and analysis

The analytical approach for the quantitative component of the study is statistical description. Frequencies or percentages will be calculated to describe larger patterns, such as differences between state and non-state actors. I will highlight differences in PSSV over time, between armed groups and across different conflicts. The second, analytical technique will be to look for associations between the independent variables and post-settlement sexual violence. These bivariate cross-tabulations should be viewed as a way of looking for interesting patterns in the data and adding background understanding to the subsequent comparative case studies. Full tests of effects would require multivariate analysis controlling for potentially confounding variables, and would draw more on the full variation in the data, for example by using event-counts regression models. However, given the very low number of observations, and the tentative nature of the coding-effort, using multivariate analysis and more demanding methods would mean stretching the data too far.

Method II: Qualitative Study

The qualitative part of the study asks: which conditions lead to armed group impunity for sexual violence. As the principal empirical and analytical contribution of the overall study, it focuses much more explicitly on theory development. As noted earlier, the qualitative study is a comparison of two armed groups in Burundi, the non-state armed groups CNDD-FDD and Palipehutu-FNL. I examine each of the three explanatory factors presented in Chapter 2, and their relationship to armed group impunity for sexual violence, the outcome of interest. The comparison of the rebel groups is carried out in a within-case and cross-case analysis. The design is based on case study research methodology, an approach that George and Bennett describe as belonging to “building block studies” (George and Bennett 2005, 76). Alternative explanations, identification of intervening variables and other causal relationships can be uncovered in this type of design, creating further specification and detail. As such, the theory-building contribution of such studies facilitates future research.

The causal focus of the study is to understand the steps leading to impunity. The study is guided by John Gerring’s minimal definition of cause, which states that “causes may be said to refer to events or conditions that raise the probability of some outcome occurring (under *ceteris paribus* conditions). X may be considered a cause of Y if (and only if) it raises the probability of Y” (Gerring 2005, 170). In Chapter 3 of the study, I explained that the scholarly literature on the concept of impunity tended to explain ‘impunity’ in terms of ‘impunity’. For instance, researchers may define impunity as failure in the rule of law, or the lack of accountability. This poses challenges for establishing the causes of impunity, at least from a social science perspective. Gerring would describe research such as this as failing to meet two criteria, namely “differentiation” or “whether or not X is differentiable from the Y” and “priority” meaning “how much temporal or causal priority does X enjoy vis-a-vis Y” (Gerring 2005, 171). A principal aim of the theory-building in this study will be to untangle these issues of differentiation and priority.

To summarise, this section has introduced the theory-building and causal focus of the qualitative study. I will now turn to a presentation of the variables and their indicators. These specifications will guide the empirical analysis.

The dependent variable

Once more, the dependent variable is armed group impunity for sexual violence. It is defined as confidence in the absence of negative consequences for sexual violence. Using this particular definition should generate new theoretical insights about the logical and empirical order between cause and ef-

fect, avoiding problems with differentiation and priority between the explanatory factors and the dependent variable.

The dependent variable is based on the notion that some groups have confidence that they will not bear any negative consequences for sexual violence. This specification aligns with what is seemingly known about the world. “Confidence” is “the feeling or belief that one can have faith in or rely on someone or something” (Oxford English Dictionary, 2014). The study does not assume that all individuals in an armed group will have a uniform sense of impunity. Rather, it presumes that groups may develop a degree of impunity, depending on the effects of the explanatory factors. Confidence in the absence of negative consequences might be higher among armed actors which had excessively weak enforcement. Another army or rebellion might have a lower level of confidence because its disciplinary measures were particularly strong. Finally, confidence is also observable in the extent to which combatants do not fear social shaming. Anxiety about getting caught by a comrade or co-combatant might actually suggest that fighters are aware that there will be a high cost for committing sexual violence. When this fear is less established, armed group members may diffuse responsibility for sexual violence by blaming victims or describing wartime rape as common. They may be more likely to rationalise or even romanticise these acts since they do not believe there are consequences, even from their fellow fighters, for sexual violence. Two key questions are posed as indicators to the cases: *Do members believe their armed group is willing to mete out consequences for sexual violence? Do members of an armed group view cohort perpetrators of sexual violence negatively?* The proximity, frequency or intensity of the different explanatory factors can influence the responses to these questions.

The explanatory factors – flawed instruments, negligent authorities and amnesties – likely occur prior to the quality of confidence described above. Cause is differentiated from, and prior to the effect. To return to the issues of differentiation and priority, consider one of Gerring’s examples of a poorly formulated causal argument, that of a fetus as the cause of a child. He points out that the fetus and child are in fact the same object, “observed at different points in time” (2005, 138–139). Armed group impunity for sexual violence is not the same thing as the enforcement of rules or the pardons of acts. Again, ‘confidence’ is a psychological condition. It is a different referent-type and not part of a self-maintaining process of weak enforcement and pardons.

The independent variables

This section presents the explanatory factors as independent variables. It was argued that weak enforcement and pardons generated armed group im-

punity for sexual violence. The following main questions are thus posed to each case: *Was sexual violence weakly enforced within the armed group during the civil war? Did the group receive a pardon for sexual violence?* Elucidated for each independent variable, this question was broken down accordingly.

The first independent variable is *flawed prohibitions*, defined as the absence of relevant procedures for punishing illegitimate acts or inconsistent framing of legal, penal and disciplinary measures to address crimes. It was argued the armed groups which had flawed instruments in the form of codes of conduct would create an environment of impunity for their members. Several indicators will be examined, and captured through the following questions to the cases: Did the armed group have a prohibition against sexual violence? Was it clear? Could members recall how the prohibition was described and disseminated? Was it written down? Did it have depth and constancy? Were there members who did not remember the prohibition? Did members know the prohibition? Was the prohibition costly? Did the armed group change the prohibition within its units or in particular times and circumstances? Did armed group members think it applied to leaders as well as foot soldiers?

The second independent variable is defined as *negligent authorities*, leaders who fail to execute proceedings of accountability for crimes. The theoretical framework suggests that authorities who do not punish perpetrators will develop confidence in an absence of negative consequences for future, similar offenses. The key indicator questions for gathering evidence about this independent variable are as follows: Were there internal differences between the likelihood of punishment for sexual violence? Did some commanders prefer not to punish perpetrators? Did armed group members fear their leaders' implementation of the punishment? Did members know of leaders who changed the punishment practice? Was there agreement within the leadership about punishment? Did some members enjoy special privileges which precluded their commanders' punishment?

The third independent variable is *amnesty*, defined in the case study as a formal commitment to exempt individuals from legal, penal and other disciplinary liability, for acts generally considered prosecutable and punishable. The following indicators are meant to convey the presence of an amnesty: Was the armed group eligible for amnesty? Did members know about the amnesty? Did the amnesty have provisions which restricted its application? Were the members aware of other armed groups receiving amnesty? Did members have access to the same information about the amnesty provision? Did this result in a common view of amnesty? Did the group's leadership negotiate specifically for amnesty for war-related violence? Notably it was argued that amnesty would facilitate confidence that post-settlement sexual violence would go unpunished. Therefore additional indicators will be con-

sidered, including: do members of the armed group believe they have benefited from amnesty? Do armed group members relate post-settlement sexual violence events to amnesty or post-settlement? Are there subsequent pardons for sexual violence which have benefited the armed group or its members? Do members think the amnesty applied to the post-settlement era?

The design may be seen as diverging from general comparative method ideals in one aspect. Whereas a controlled case comparison should have fewer variables than cases, this study has three independent variables and two cases. Yet in all research designs there are trade-offs. The problem of too many variables applies more acutely when using statistical techniques to evaluate hypotheses in small-N case comparisons. In such instances it makes sense to limit independent variables or make assumptions of unit homogenization in order to solve this design problem. Another alternative is to increase the number of observations by examining different levels of analysis. Other options would be to abandon the most-similar design and adopt a most-different case comparison. However, this study of armed group impunity is fortunate in that the particular cases are both independent and nearly ideal in terms of their similarity. The analytical techniques chosen are not statistical, and focused not on co-variation but causal processes. The design will allow for a wealth of points of information to influence the analysis when tracing and comparing the causal processes. Put differently, this comparative study's over-arching objective of developing theory means that comparing the number of variables to the number of cases is of little relevance. The chosen design also facilitates identifying any formerly unknown, influential factors. As will be described below, the use of within-case analysis and process tracing helps to sharpen the inferences from the observations of the variables. In my view, these analytical techniques are as important to the study's conclusions, as the criteria for case selection and variable specification. Process-tracing will be essential to "affirming or discrediting" the inferences drawn (George and Bennett 2005, 165), even if these are burdened by a design of cases with too many independent variables.

Empirical analyses

This section presents the analytical techniques of the qualitative study. Chapters 7, 8, 9 and 10 of the study constitute the empirical analyses of the study. The main task will be to pose each of the key indicator questions described above, to each of the cases. The answers to the questions will determine the values on the dependent variable and the independent variables, and thus form the ground for drawing causal inferences. Successively, each chapter advances the comparison by using the analytical procedures, building up a whole description of the causal relationship between the independent variables and the outcome of interest, armed group impunity and finally, the

collective implications for the theoretical framework. The following section outlines the structure of the empirical analyses.

The study adopts a systematic approach with cumulating analyses leading to the findings (George and Bennett, 2005). It begins with attention to the key indicator questions, which reflect the research objective and theoretical framework. These questions will be posed to the cases of CNDD-FDD and FNL. This follows the structured focused comparison model of case study research (George and Bennett 2005). The empirical chapters are structured as first, a within-case comparison for each rebel group, followed by a cross-case comparison. At each stage of the comparison, I utilise historical explanation and process tracing as the procedures for analysis.

For each case, historical explanation is used to make clear the process leading to the outcome of armed group impunity for sexual violence. This analytical technique will involve identifying the influence of the independent variables on the dependent variable. By assessing the connection from X to Y in this way, it will be possible to explain the outcome of each case. Historical explanation entails balancing between fine-grained detail and the essential information necessary for a “causal account of the outcome in the case” (George and Bennett 2005). It is organised as a chronological narrative. The procedure goes beyond simply writing up a case. It relies on causal imputation which is a historian’s method for explaining a case by formulating his or her interpretation based on available data, existing generalizations and alternative explanations (George and Bennett 2005). In the study, the comparison between CNDD-FDD and FNL is cautious. Conclusions and insights are questioned on the basis of the available evidence. In addition to addressing alternative explanations, I take into account existing generalizations from different sources. However, it is important to remember that the explanations in the study may prove difficult to reconcile with competing generalizations or evidence outside the scope of this study. In such instances, I follow the advice of George and Bennett and mention any findings that cannot be resolved or reconciled with previous research.

Closely related to, but different from historical explanation is the other analytical procedure of the comparative case study, namely, process tracing. In this technique, the researcher “examines histories, archival documents, interview transcripts, and other sources to see whether the causal process a theory hypothesises or implies in a case is in fact evident in the sequence and values of the intervening variables” (George and Bennett 2005). The technique has been alluded to earlier, but it is important to explain its use in greater detail. Several scholars suggest that process-tracing is particularly attuned toward assessing causal mechanisms (George and Bennett, 2005; Bennett, 2010; Collier, 2010). In the context of comparative case study empirical analysis, process-tracing is akin to detective work (Brady and Collier, 2010) and involves diagnostic examination of sequences between the values

on the variables. This step-by-step sleuthing across time within a case is why process-tracing is utilised for assessing causal mechanisms by many case study researchers. This analytical procedure helps the researcher uncover omitted variables and thus is an ideal approach for exploratory studies.

The appeal of process-tracing is its suitability for determining causal mechanisms. Yet, as with all methods, process tracing can become problematic if it is applied to the wrong type of evidence or problem. One concern is ensuring that the detective work is at the level of detail required for arriving at reliable conclusions. Given the nature of the problem, it might be that detailed analyses will require impossible-to-collect data. For example, absolute certainty of the confidence-levels of armed group members with regard to consequences for sexual violence would require psychological assessment during each causal sequence. This was not possible given the conflict-context and the sensitivity of the issue. Moreover, this study does not require psychological detail or fine-grained evidence of an individual's cognitive decision-making process. Since the study is a first attempt to establish the sequential steps from cause to effect, not all data is equally necessary for arriving at relevant conclusions. It is not necessary to trace, from event to event and in detail, the level of each individual's psychological or cognitive decision-making.

In sum, there are two stages of empirical analysis. The first stage will be to introduce a brief summary of each case's history in the context of the conflict, followed by the main body of empirics which is the within-case analysis. This analysis will blend historical explanation and process-tracing and cover the main issues of substance, discussing each case up to and including the outcome of interest. In this way, the study observes the values on each independent variable and the sequence of events relating to the outcome of armed group impunity; it will also assess if there are alternative explanations or omitted variables which should be considered. The second stage is the cross-case analysis, which evaluates the theoretical framework in light of what is known about each case. This is the comparative analysis of the two cases under study. In this part of the study, I will assess how the patterns observed between the variables and their causal mechanisms compare between CNDD-FDD and FNL. In this stage, the empirical analysis will adopt a more abstract level of investigation. In this way, the study will meet the theory building ambitions of the study. To my knowledge, the analytical procedures above, and the methods of focus groups described below, have never before been used for assessing beliefs about the consequences for sexual violence among civil war combatants.

Sources and limitations

The study's empirical analysis draws on primary and secondary sources, with an emphasis on the former. Focus groups and semi-structured interviews are the main primary sources, while scholarly books and journal articles; and reports from NGOs, think-tanks and news sources provide additional information.

The study relied on the procedure of convening focus groups to collect information and insights about the causes of armed group impunity for sexual violence. This type of violence is rarely covered in the secondary literature. As discussed in the quantitative component of this study, when wartime rape and other violence are reported, prevailing biases can create imbalances and unreliability. Because of these biases, a vital step in this research design was to identify viable and varied ways to gather evidence from different sources. The chosen strategy would hopefully enable triangulation between primary and secondary sources. Moreover, although I could read some French-language secondary sources, limited language skills hampered the capacity for studying and assessing the general explanations of the cases in the French-language scholarly literature. It was furthermore apparent that many of the questions about the dependent and independent variables would not be addressed in secondary literature, whether in French or English. Thus, a lack of available information about sexual violence strengthened the resolve to conduct focus groups with former combatants of Burundi's armed groups. Indeed, since the problem and design was at the level of the armed group, using focus groups for data collection seemed to be an ideal choice.

Focus groups "is a research method devoted to data collection" (Morgan 1996, 130). Focus group methodology provides a fruitful technique for gathering evidence of group-level perceptions and insights (Söderstrom 2011). Focus groups help to refine nuances and motivations and are a useful tool for understanding the production of meaning of groups. In the main, this study sought information about a sensitive topic at the level of the armed organisation. To get this information it is not necessary to gather individual observations and subjective meanings, but to understand the group-level reasoning processes. Thus, while interviews with individuals or secondary material could substantiate this information, it would be a less efficient means to understand how each armed group conceived of punishment practices, which types of sexual violence was punished, why or ultimately the conditions under which beliefs about accountability or impunity were formed. Gathering together a homogenous group of former combatants was a way to get the information. Moreover, the focus group discussions would generate knowledge about dominant interpretations of the past from the participants. Even if biases and distortions of reality would arise, these could be checked by other members in the focus group; the researcher could observe the dy-

namics between different opinions and who and why these were stated and gauge what was an acceptable conclusion or ‘truth’ for the group; and finally, questionable information could be re-assessed over time by comparing the statements from different focus groups. In this regard, I systematically posed the same questions to each focus group. This created the leverage for comparing different answers between different focus groups, and between different armed groups.

It is important to distinguish focus group methodology in this study from other data collection techniques which may involve more than one or two respondents. In the study, the focus groups were conducted purposively and with significant structure. The respondents were selected through purposive snow-ball sampling, based on their affiliation to a particular armed group. And again, differently from group interviews, each focus group underwent the same pre-determined order of discussion and set of questions. Finally, although focus groups were not organised in classrooms or offices, a formal setting was identified for meeting with the group and the researcher. The data collected was comparable and systematic and collected specifically to meet a research objective.

About the focus groups

I conducted 19 focus groups in Burundi in November and December 2011 and in January 2013. A total of 74 individuals (10 female, 64 male) participated in the focus groups. Eight out of the ten women participated in the 2011 focus groups of the study, which took place in Bujumbura. Mainly, as with the men, these women were ex-combatants from CNDD-FDD and FNL.²⁸ All the women who participated were based in Bujumbura, and were part of the study because I specifically asked to involve women ex-combatants. During my second and third visits to the field, I did not explicitly seek out women or ask my interlocutors for female contacts. That may have contributed to the fact that the final seven focus groups did not have any female participants.

The participants in the focus groups reflected the interests of the study. The majority of focus groups, 42 percent or 8 out of 19, were composed entirely of former FNL combatants. Five or 26 percent of the groups featured only CNDD-FDD ex-combatants. A further 6 groups or 32 percent of the

²⁸ Two other women started with CNDD-FDD, were demobilised under the Arusha process, but later joined FNL in the mid 2000s because the rebel army had influence in their home areas, and because the war continued (G3:P3). Another woman, unlike the rest of her ex-FAB (a minority group in this study) male counterparts in other focus groups, had participated in the war first in the 2002 Burundian army and then in the new Burundi National Defense Force (FDN) which was created as part of the Arusha process. Integration between the old military and some rebels began in January 2004, while she left armed service in 2007.

focus groups were made up of respondents with different armed group affiliations. Out of these groups, participants would either be FNL, ex-FAB or former CNDD-FDD. One participant is counted as a former Guardian of Peace civil defence member. None of the respondents in the focus groups were currently serving in Burundi's new army, the National Défense Forces (FDN) although less than 10 percent of the 74 participants had been at one time integrated into the army before 2009 (in some cases before all the conflict-dyads of the conflict had been resolved). Between 4 and 8 individuals participated in each group. All respondents were forthcoming about their ethnic backgrounds. Respondents from FNL and CNDD-FDD were mainly Hutu or mixed Hutu-Tutsi (with one parent from each ethnic group). These classifications seemed unimportant to each respondent, and in several groups which included Tutsi participants, there appeared to be no problem in explaining ethnic origins. All the focus groups conducted outside of Bujumbura, 6 out of 17 or 35 percent of the focus groups, had homogenous ethnic compositions, with the respondents reporting as Hutu. In total, 88 percent of the participants in this study identified as Hutu. Anonymised lists of the focus groups and of the participants are included in the appendix to the study. The focus groups were comprised of the key sources of information for the study: former combatants of the CNDD-FDD and FNL rebel groups.

It is important to understand how I convened the focus groups. Respondents were purposely selected to participate based on their involvement in one or the other of the armed groups. I was assisted by former combatants who were also staffers of a Burundian civil society group.²⁹ These individuals knew former fighters whom I could involve as respondents. These interlocutors were young men, aged between 25 and 33 years old. They used their formal and informal social networks to invite the participants. In particular, one key individual in this civil society group was crucial to helping with the study. I assess that a third of the participants had been exposed to the civil society organisation. This exposure should not create any significant bias in the findings. Burundi has had a government ministry to deal with the demobilization, disarmament, integration and reintegration of ex-combatants into society. And many international and non-governmental organisations have contributed to these processes. During my first fieldwork visit in 2011, I also organised a focus group with assistance from another ex-combatant organisation. There are no evident differences in the composition or outcome of the results from this other focus group and the rest of the study. Thus, it is likely that the use of one interlocutor from one civil society group and access to his network did not create any biases in the findings.

With my input and his expertise, my key interlocutor identified and located sites for the focus groups. All the sessions took place in the daytime, usu-

²⁹ The civil society group's leadership has requested anonymity in the study.

ally in empty roadside bars and restaurants and for a few days, in the spare and frugal offices of the civil society group. My contact and others at the civil society organisation negotiated with owners of these venues and gave instructions to participants to arrive at a certain time and day. At first, participants were not always sure about who was convening the gathering. They may have assumed that the civil society group was the organiser of our sessions. However, immediately upon their arrival and our introductions, my key contact and any other friends and contacts of his, would leave us. They also made it clear, as did I, that our discussions were to aid my research at Uppsala University, an entity separate from the work of the civil society group. Indeed, I am certain that within five minutes of our meeting, participants understood that the focus groups were separate from the civil society organisation, and part of a separate exercise.

As I was soliciting highly sensitive material and asking individuals to contribute to a focus group discussion in front of others, all the participants were guaranteed anonymity and the discussions were not recorded by audio or video. I took notes by hand. Each session was conducted in Kirundi, a language I do not speak. I relied on interpreters over the course of the project. I systematically posed a set of the same questions, in the same order, to each group. In the first set of focus groups, conducted in 2011, I used an ice-breaker exercise which entailed a discussion about a cartoon by the South African satirist Zapiro, which dealt with Nelson Mandela's mediation of the Burundi peace talks (Zapiro 2001). There were no differences between responses from groups which began with the ice-breaker and those that did not. All the focus groups followed the same structure: introductions, sexual violence events and punishment and penalties before, during and after the war; and the peace process and amnesties.

Any interview or focus group is a discursive event which requires the exchange of information but more importantly, of meaning (Briggs 1986). The social setting, rhetorical phrasing, identity and demeanour of all those participating has some bearing on the outcome of the discussion. It cannot be overstated that the focus groups I conducted were prescribed and formal. I asked questions, they were interpreted by a translator and the respondents provided an answer, which was interpreted back to me. The process of interpretation took time and effort, so that participants were unable to interrupt one another. However, the pacing of the sessions also nurtured a thoughtful and measured communication style.

There were moments of communicative exchange during the focus groups which should be mentioned. Sometimes, the same responses were repeated by every other participant. Other times, there was some hesitation and often there was an elaboration of a point made by another participant. Several times, I invited a more silent participant to share his or her views. But shy or passive participants were not required to express their opinions, nor pres-

sured by anyone in the sessions. Participants rarely showed impatience with the process. They seemed comfortable with the formality, and this might have strengthened the reliability of the information they shared. Briggs (1986) explains that the way interviewees categorise interactions with researchers influences their speech choices and the information they are willing to share. The focus groups sessions seemed to be understood as semi-official. For most ex-combatants, this was the first time an outsider, or semi-outsider, had asked the questions I posed. As they were sharing information with other former combatants, they also seemed to need to remain factually consistent and coherent.

When necessary, I truthfully acknowledged that I did not support sexual violence acts. But I emphasised that the discussion was for research purposes. I declared that there were no right or wrong answers and that everyone should feel free to discuss how these acts may or may not have occurred, whether or not they were considered wrong and anything else they recalled. However, to avoid bias and meet scientific standards of rigor (triangulation), I underscored to respondents that their answers would be weighed against other information. I explained this briefly in the beginning and sometimes toward the end of the sessions. I also highlighted that I was not interested in acquiring sensitive information about an individual's participation in sexual violence. Finally, I explicitly advised the ex-combatants not to talk about any event, person or feeling unless they wished to do so, and that information of a sensitive nature would be treated carefully and confidentially.

A number of ethical and practical reasons led to my decision to provide travel reimbursement to the participants in the focus groups. At the conclusion a focus group session, participants were each given the equivalent of about 5 USD for their transportation costs. Arguably, each participant would not have had to use all or even any of this money if they walked to our meeting place. However, I was persuaded that the time and effort – with some participants travelling hours to meet me or using their own funds to pay mobile SMS costs to other potential participants or my interpreter and the interlocutor – was fair. Moreover, there is a minimal chance that the participants will ever experience any direct benefits as a result of publication of the study. The funds for transportation were also sourced through a fieldwork grant. And at no time in the process were these funds described as a 'payment' by myself or any of the participants.

This presentation of the focus groups closes by addressing the potential limitations, namely biases which may have influenced the comparative study. Overall, the processes and procedures preclude the introduction of significant biases. The composition of participants in the study would not differ greatly from similar studies by other researchers. It seems unlikely that a replication of the study could avoid relying on respondents who may have known one another beforehand or been exposed to similar organisations. It is

possible that my association with the civil society group increased my legitimacy in the eyes of the focus group participants. But this would have been the case with another researcher. Finally, I carried out focus groups with the help of different interpreters, two of whom were not ex-combatants. They also estimated no differences in the quality of the focus groups. Indeed, after about twelve focus groups had been conducted, the responses by different sets of participants became very familiar to us. It became necessary to hold back my interpreters, who felt they could anticipate the responses that we would receive. This suggested that the collection of data had reached a point of saturation. In general, the structure of the study, whereby focus groups were systematically organised and the same questions were posed to all focus groups, facilitated the collection of reliable data on the research problem.

Ethics

There are risks with any study that focuses on sensitive topics such as conflict, human rights violence, sexual violence and armed group behaviours and beliefs. In conflict settings, vulnerability to security threats and continued violence are a part of reality for combatants and non-combatants. Before undertaking any fieldwork for the study, I applied for and received authorization for the fieldwork from the Swedish Regional Review Board in Uppsala, Sweden. This body is mandated under Swedish national law to vet the ethics of research that involves human beings.

The literature on the ethical dimensions of field research in conflict zones argues that it is fraught with many opportunities for 'doing harm', particularly because of the complex dynamic of power relations, interests and attitudes that unfold as a result of the encounter between researcher and 'the researched' (Clark 2008; Sriram, King, Mertus et al. 2009; Wood 2006a, 2008). Concerns about communities or individuals feeling over-researched (Clark 2008) diminished quickly. While having had previous experiences talking about the civil war in Burundi, the ex-combatants and interviewees I interacted with had very little opportunity to contribute to research that illuminates their perceptions of the consequences of sexual violence or to discuss issues such as amnesty. For most of the respondents, the study was a unique opportunity to set the record straight about their respective armed groups. This might have been especially important for former FNL members, who may have seen their group as a moral actor in the civil war. Finally, as Wood (2006a, 2008), Julie M. Norman (2009) and others have shown, it was important to recognise the expertise of local contacts, from various sectors, whose experience of the political and social dynamics of Burundi far

exceeded mine. Many of them provided important advice on safety and security matters.

Nevertheless, my enquiries about the treatment of perpetrators of sexual violence required precautions in order to meet ethical principles. First, I have taken into consideration the safety and security of the participants in the study. Inadvertently, respondents could have been vulnerable to threats because of their interaction with the researcher, or because of the information they shared. Individuals who did not want to be associated with the conflict or a particular armed actor could have been exposed to repercussions. Relying on local expertise was central to avoiding this kind of harm. On the basis that in smaller towns, ex-combatants would know one another better, I mainly convened homogenous focus groups in areas outside of Bujumbura city. I reasoned that if an individual participated in the sessions with other, similarly-affiliated persons, he would be safer. In other words, other individuals from the community would be equally vulnerable. Additionally, sharing insights about the past with people from the same rebel group would reduce the insecurity of divulging information to an outsider.

A verbal consent procedure was used in the focus groups and before each interview. It consisted of careful, systematic presentation of the study's purpose, process and outcomes. It was put forward in Kirundi through the interpreter in the focus groups. The informed consent guidelines avoided persuading potential respondents to participate in the study. I explicitly stated that respondents may, at any point in interviews, decline to participate or answer any questions. Identities of focus group participants and interviewees were anonymised to ensure that information cannot be linked to a specific individual or to a group of individuals. All information was kept and controlled by me. Indeed, most participants, including senior government officials, heads of NGOs and journalists, requested confidentiality. Thus, most of the information in the study is presented as anonymous, with an identity code date listed in the references of the study.

Finally, the treatment of evidence and the conclusions of the study should to be considered carefully. The Uppsala Code of Ethics for Scientists (Gustafsson et al. 1984) serves as a guide. The findings at the end of the study must be interpreted with caution, so as to avoid endorsing human rights violations committed by Palipehutu-FNL, CNDD-FDD or any other actor. For example, the results will indicate that certain practices are more costly for perpetrators and consequently, suggest greater restraint of sexual violence. But practices that violate one human rights principle for another should be interpreted with caution. It is also against ethical principles to fail to consider the consequences of research for future generations (Gustafsson et al. 1984). For these reasons, findings related to amnesty should remain constrained by other considerations such as the rights of victims. Moreover,

the conclusions of the study which touch on how armed groups operate should be interpreted minimally, as incentives for respect for human rights practices by these types of organisations. In the study, impunity is never seen as an issue that can be easily solved. It is a dynamic and troubling problem in need of genuine engagement by people from all walks of life. The role of social science is to provide some insight, without overstating certainty or contributing to misconceptions. Therefore, in order to avoid misinterpretation, when it is necessary, I include uncertainty and caveats in the text.

Wrapping up this presentation of the ethical issues of the study, this chapter has provided information about the research design, methods and limitations of the study. The next chapter is the first step in presenting empirical material. It is focused on the association between amnesties and post-settlement sexual violence.

5. Amnesty and Post-Settlement Sexual Violence

What is the relationship between pardons and impunity for sexual violence? If pardons give rise to impunity, and impunity drives post-conflict sexual violence, one should expect to find an association between pardons and subsequent sexual violence, all else equal. Previous research has shown that some armed actors continue to commit sexual violence in the first five post-conflict years (Cohen and Nordås 2014; Nordås 2011). In Chapter 3, the theoretical framework included the proposition that armed actors who are beneficiaries of amnesties will believe they are free from accountability. Therefore, this part of the study is based on the assumption that amnesties are a determinant of impunity, and impunity is a precipitant of post-conflict sexual violence. A small-scale, aggregate exploration of the associations between amnesties and post-settlement sexual violence will be undertaken. This part of the study will hence contribute to understanding the overall puzzle of what causes impunity indirectly by examining this association. Its aim is to deepen understanding of the research problem by focusing on the causes of impunity (in this chapter mainly amnesty) and the consequence of impunity (which is assumed to be post-settlement sexual violence). The methods and sources for this exploration render it tentative and worth considering with caution. However, as the first attempt to aggregate events of sexual violence by armed actors, it provides important insights. First, it highlights the complexity of sexual violence events and the tenuous nature of analysis of reports on this violence. Second, the chapter draws out the puzzle of impunity more starkly, since the analysis shows how theoretical assumptions about amnesty are not easy to prove. Finally, it deepens and opens up the demand for further examination of other theoretical explanations for armed group impunity for sexual violence.

The basis for the analysis is a small-scale dataset which focuses on 23 armed actors in internal, state-based conflicts in Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa between 1989 and 2011. Of the 23 actors, 9 are states and 14 are non-state armed groups. I recorded sexual violence events which the sources attributed to these actors for a time span of 1,095 days or 36 months, following the signing date of the concluding peace agreement. A total of 137 sexual violence events were identified for

the period under review. The PSSV event-level data is aggregated to an armed actor-year for the purposes of analysis. The analysis is thus based on 65 observations.³⁰

Following this short introduction, the chapter begins with background information about the dataset. The information is meant to address questions about the conflict, armed actor and settlement criteria and to describe the coding procedures. Additional information about the construction of the dataset is provided in the appendix to this study. This presentation is followed by descriptive results of the reported patterns of post-settlement sexual violence. The chapter then centres on a series of simple tests for the causes of PSSV. Amnesties are the main independent variable. However, the chapter also expounds on other possible explanations for post-settlement sexual violence, namely: an armed actor's reputation for wartime sexual violence; the state's capacity for implementing justice and security; and whether or not an actor is a state or non-state armed group. The final parts of the chapter include an analysis and a discussion of the limitations of this small-scale aggregate exploration.

The data

The dataset was constructed for exploratory purposes. This has implications. Since it did not entail a large collection of information on thousands of armed actors in hundreds of civil wars, some awareness and understanding of each conflict was necessary. Thus, cases were selected purposively. As discussed in Chapter 4, criteria for inclusion in the dataset was as follows: 1) the conflict was state-based and internal, thus excluding non-state conflict actors or candidates in the UCDP known mainly for violence against civilians; 2) the actor had settled for peace with its adversary through a negotiated agreement; and 3) the post-settlement period was relatively pacific, with cessation of violent warfare measured as less than 25 battle-related deaths in a year for the actors.

Any systematic study calls for strict and equal measurement. At times, the criteria above result in surprising comparisons. There were important differences between the conflicts themselves; the qualities of settlement and peace; and the political goals, social organisation, military capabilities and size and scale of the armed actors. For example, the dataset includes the

³⁰ Two actors, the government of Burundi (from 2006) and Palipehutu-FNL, are only included in the dataset for their first year of settlement. They signed the Comprehensive Ceasefire Agreement between the Government of Burundi and the Palipehutu-FNL (2006-09-07), which held for the rest of the year, and for 2007, but was breached in early 2008 when the parties reached a level of fighting that exceeds the threshold for the study.

African National Congress (ANC), the Congolese Rally for Democracy (RCD) and the Revolutionary United Front (RUF), as well as the governments of South Africa, the DRC and Liberia. Alternatively, it excludes some groups which might be assumed to belong, but do not meet the criteria. For instance, the Inkatha Freedom Party (IFP), the Mayi Mayi in the DRC, and the Kamajors in Sierra Leone, are not included because they were not classified in the state-based conflict but as non-state conflict actors.³¹ The dataset is oriented dyadically, meaning that it follows the pair of actors which are in significant conflict with one another. This orientation is also important since it means the dataset is compatible with other datasets such as the UCDP Dyadic and Peace Agreements datasets. The study does not include armed actors from conflicts where victory for one party ended the conflict. It does not observe parties that may have fought but did not sign a peace agreement. Finally, since the dataset focuses on the period following a settlement, some of the actors that were once non-state became states. This reflects the settlement transition to elections. This is so for Burundi after August 2005; Liberia after elections in July 1997 and November 2005; and South Africa after April 1994. However, there are only 7 armed actor-years that fit into this category. Thus, only 11 percent of observations in the dataset were years during which the state actor was a former non-state armed group.

In order to demonstrate how the dataset was constructed, this section will provide information about the conflicts. The information is based on the Uppsala Conflict Data Program (2014d).³² Table 1 should also serve as a guide for understanding more about the construction of the dataset. I then present the descriptive analysis of the reported sexual violence events.

Conflict and settlement background

The state-based internal conflicts in Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa are dramatically varied in history, size, social and political characteristics and post-war status. Table 1 lists the actors and the years of coverage in the dataset.

³¹ The Kamajors did fight against the Sierra Leone government in 1997 and 1998 (UCDP 2014h).

³² The coding instructions are specified in a guide and can be found in the appendix to this study.

Table 1 The Actors and the Post-settlement Years

	COUNTRY	ARMED ACTOR	ACTOR TYPE	FULL NAME	YEARS
1	Burundi	Palipehutu	Non-state	Party for the Liberation of the Hutu People	2000/08/28-2003/08/28
2	Burundi	Frolina	Non-state	National Liberation Front	2000/08/28-2003/08/28
3	Burundi	CNDD	Non-state	National Council for the Defence of Democracy	2000/08/28-2003/08/28
4	Burundi	GoB1	State	Government of Burundi	2000/08/28-2003/08/28
5	Burundi	CNDD-FDD	Non-state	CNDD-Forces for the Defence of Democracy	2003/11/16-2006/11/16
6	Burundi	GoB2	State	Government of Burundi	2003/11/16-2006/11/16
7	Burundi	GoB3	State	Government of Burundi	2006/09/07-2007/09/07
8	Burundi	Palipehutu-FNL	Non-state	Palipehutu-Forces for National Liberation	2006/09/07-2007/09/07
9	DRC	RCD	Non-state	Congolese Rally for Democracy	2003/04/02-2006/04/02
10	DRC	MLC	Non-state	Congolese Liberation Movement	2003/04/02-2006/04/02
11	DRC	RCD-ML	Non-state	Congolese Rally for Democracy (the Uganda-supported breakaway from RCD)	2003/04/02-2006/04/02
12	DRC	GoDRC	State	Government of the Democratic Republic of the Congo	2003/04/02-2006/04/02
13	Liberia	NPFL	Non-state	National Patriotic Front of Liberia	1996/08/17-1999/08/17
14	Liberia	GoL1	State	Government of Liberia	1996/08/17-1999/08/17
15	Liberia	LURD	Non-state	Liberians United for Reconciliation and Democracy	2003/08/18-2006/08/18
16	Liberia	MODEL	Non-state	Movement for Democracy in Liberia	2003/08/18-2006/08/18
17	Liberia	GoL2	State	Government of Liberia	2003/08/18-2006/08/18
18	Mozambique	Renamo	Non-state	Mozambican National Resistance	1992/10/04-1995/10/04
19	Mozambique	GoM	State	Government of Mozambique	1992/10/04-1995/10/04
20	Sierra Leone	RUF	Non-state	Revolutionary United Front	2000/11/10-2003/11/10
21	Sierra Leone	GoSL	State	Government of Sierra Leone	2000/11/10-2003/11/10
22	South Africa	ANC	Non-state	African National Congress	1993/11/18-1996/11/18
23	South Africa	GoSA	State	Government of South Africa	1993/11/18-1996/11/18

Burundi

Beginning in 1991, Burundi's civil war mainly involved five different actors: 1) the CNDD and its armed wing, eventually a breakaway group; 2) the CNDD-FDD (CNDD-Forces for the Defence of Democracy); 3) Frolina (National Liberation Front); 4) Palipehutu (Party for the Liberation of the Hutu People); and 5) Palipehutu-FNL (Palipehutu-Forces for National Liberation).

In August 2000, settlement terms between some of the actors culminated in the signing of Arusha Peace and Reconciliation Agreement for Burundi (2000-08-28). The conflict dyad between the government and Frolina and CNDD was settled. However, armed conflict continued.³³ The rebel groups CNDD-FDD and Palipehutu-FNL refused to settle with the government. A negotiation process, which was supported by international organisations and organised by regional governments continued to pursue peace. The CNDD-FDD subsequently concluded further partial agreements with the government, culminating in the Global Ceasefire Agreement between Transitional Government and the CNDD-FDD of Mr. Pierre Nkurunziza (2003-11-16). Consequently, Burundi held local and national elections. The national assembly elections took place on 4 July 2005 and the presidential poll was held on 19 August 2005, with CNDD-FDD claiming the majority and Nkurunziza elected as president. Palipehutu-FNL and the now CNDD-FDD-dominated government continued to fight. These parties eventually signed the Comprehensive Ceasefire Agreement between the Government of Burundi and the Palipehutu-FNL (2006-09-07), which held for the rest of the year, and for 2007, but was breached in early 2008, reaching the level of minor conflict.

The dataset includes actors from three conflict dyads: a) between the government of Burundi, Palipehutu, Frolina and CNDD; b) between the government of Burundi and CNDD-FDD and c) between the government of Burundi and Palipehutu-FNL. However, the conflict dyad between these two actors resumed on 2008-03-01 until 2008-12-04, thus this dyad is only included in the dataset for one year after its concluding settlement agreement, for the period of 2006-2007/09/07. The agreements which were examined for coding amnesties were the Arusha Peace and Reconciliation Agreement for Burundi (2000-08-28); the Global Ceasefire agreement between Transitional Government and the CNDD-FDD of Mr. Pierre Nkurunziza (2003-11-16); and the Comprehensive Ceasefire Agreement between the Government of Burundi and the Palipehutu-FNL (2006-09-07).

³³ Best estimate deaths recorded by the UCDP were 1,955 in 2001; 1,114 in 2002; and 972 in 2003 (UCDP 2014b).

The DRC

In May 1997, an armed rebellion led by AFDL (Alliance of Democratic Forces for the Liberation of Congo) overturned the Zairean government. As early as August 1998, the new government (now the DRC), was embroiled in another war with the non-state armed actors, RCD (Congolese Rally for Democracy) and MLC (Congolese Liberation Movement). The MLC launched its rebellion in November 1998. The government lost units of the state military, the FAC (Congolese Armed Forces), who developed alliances with Mayi-Mayi militias and other insurgents in the eastern part of the country. The 1999 Lusaka Accord (1999-07-10) was signed to guide an inter-Congolese dialogue for settlement. Importantly, violence between the armed actors, including the extra-state conflict actors of Rwanda and Uganda, did not abate at first.³⁴ However, the conflict became inactive after 2001. From March 2002, the Inter-Congolese Dialogue brought together a wide cross-section of civil society, political and military actors, including representatives of the rebels. They reached settlement in two steps, with the Global and Inclusive Agreement on the Transition in the Democratic Republic of Congo (2002-12-16) and the Inter-Congolese Political Negotiations - The Final Act (2003-04-02). A long transitional process was established from the December 2002 agreement, which saw a period of relative peacefulness. After elections in 2006, further violent conflict arose between the government and former RCD-Goma commander, Laurent Nkunda. Refusing to integrate into the new national army FARDC (Armed Forces of the Democratic Republic of Congo), General Nkunda brought together renegade soldiers and launched an attack on the South Kivu city of Bukavu in 2004. In addition, he formed a new rebel group, the CNDP (National Congress for the Defence of the People).

The dataset records the post-settlement reports of sexual violence for the government of the DRC and RCD, MLC and RCD-ML.³⁵ The main conclud-

³⁴The UCDP records show that in 1999 the conflict dvads between RCD, RCD-ML (the Uganda-supported breakaway from RCD), MLC and the government of the DRC continued with best estimates of fatalities reaching 2,493 in 1999; 1,980 in 2000; and stopping at 590 in 2001(UCDP 2014j).

³⁵ The conflict between the government and CNDP is recorded as reaching over 25 battle-related deaths in 2006, with a start date of 2006-11-28 in the UCDP/PRIO Conflict Database (2014, v4). Any sexual violence events recorded from 2006-04-02 (the cut-off date for the three years after the 36 month period under review), are not included in the dataset. Mainly events are coded as reported, where reports focus on the ex-RDC identity of perpetrators, the RCD after the 2003 Final Act, is identified as the perpetrator. If sources focused on the perpetrators as ex-FARDC or ex-army, for example as soldiers who refused to integrate and were led by Nkunda under those circumstances, then the identity of perpetrators is coded as government of DRC. This coding guideline is in the main, a marginal issue, since the cut-off date of 2006-04-02 is after Nkunda's defection from the integration process but it is also six months before the establishment of the CNDP, the predecessor to CNDP and is thus

ing settlement for the armed groups of the DRC in this study is the Inter-Congolese Political Negotiations - The Final Act (2003-04-02).

Liberia

The first Liberian civil war was between 1989 and 1996.³⁶ It entailed armed opposition between the government of Liberia and Charles Taylor's NPFL (National Patriotic Front of Liberia) and its splinter group INPFL (Independent National Patriotic Front of Liberia) headed by Prince Johnson. The state military, the AFL (Armed Forces of Liberia) rapidly disintegrated into a collection of different armed bandits and ethnically-based factions. Other permutations of war emerged such as the ethnically Krahn and Mandingo group ULIMO (United Liberation Movement for Democracy in Liberia) which equally split into ULIMO-J (Roosevelt Johnson faction) and ULIMO-K ULIMO - K (Alhaji Kromah faction). This group and its future factional progeny was run by former politicians and military, formed with the support of the Economic Community of West African States' military intervention force ECOMOG, and organised to attack Taylor's NPFL in neighbouring Guinea. Nevertheless, serious negotiations began in 1991 with the government, NPFL, INPFL, and the Economic Community of West African States (ECOWAS). Charles Taylor took over the Liberian government as president through elections, which were held on 19 July 1997 under the conditions set first in the Cotonou Peace Agreement (1993-07-25) and finalised in the Abuja II Peace Agreement (1996-08-17).³⁷

The second Liberian civil war, from 2000 to 2003, can be conceived of as a continuation of the earlier conflict. From 2000, the Taylor was in conflict with LURD (Liberians United for Reconciliation and Democracy). He would

earlier than the official start of the new conflict dyad. These coding differentiations are consistent with the guidelines of the entire dataset.

³⁶ The UCDP Conflict Encyclopedia states that "The first phase is the armed conflict between the government of Liberia and the NPFL and the INPFL faction, from 1989 to 1995, following which NPFL leader Charles Taylor became president" (UCDP 2014g). The parties signed a partial peace agreement, the Abuja Peace Agreement, in August 1995. However, the conflict between the government and NPFL and INPFL is only recorded in the UCDP peace agreements information as entering into full settlement in 1996, which is more consistent with what is widely understood about the end of the first civil war in Liberia. The dataset considers the period after the signing of the Abuja II Peace Agreement (1996-08-17).

³⁷ A period of minor, low level violence followed, although this had already been in place since 1990. The UCDP reports 1990 as the last year of recorded battle-deaths over 25 in relation to the conflict dyad between the government of Liberia and NPFL and the INPFL. The UCDP provides a best estimate of 1,330 fatalities in 1990 (UCDP 2014g). Killings that are attributed to one-sided violence against civilians, non-state fighting between the different factions and rebellions, ECOMOG troops or attacks coordinated between the two, are not included in this particular figure. Heavy fighting involving ECOMOG in particular continued for the years 1991-1996.

also fight MODEL (Movement for Democracy in Liberia) from 2001.³⁸ While LURD was a renewed and re-organised version of ULIMO-K, MODEL emerged as a splinter group from LURD. From 2003, ECOWAS and the Inter-Religious Council of Liberia led negotiations which culminated in the Accra Peace Agreement (2003-08-18) and a transitional government without Taylor. The 2003 settlement held. National elections were held in Liberia on 10 October 2005, with a run-off election held on 8 November to decide the president and vice president.

The dataset covers two conflict dyads: a) between the government of Liberia and NPFL; and b) between the government of Liberia and LURD and MODEL.³⁹ The dataset begins coding the actors after the two different state-based, internal conflicts, following the Abuja II Peace Agreement (1996-08-17); and the Accra Peace Agreement (2003-08-18).

Mozambique

Civil war in Mozambique began in 1977, two years after the country won independence. The independence movement-turned government, Frelimo (Front for the Liberation of Mozambique) and the armed opposition group Renamo (Mozambican National Resistance) were the main actors in state-based armed conflict.⁴⁰ The conflict was only resolved in 1992. Direct talks between Frelimo and Renamo began in July 1990 and continued with the support of the Community of Sant'Egidio, among other third party actors. The settlement of the conflict is based on the General Peace Agreement (1992-10-04). General elections were held in October 1994, resulting in the re-election of Frelimo's Joaquim Chissano as president.

Inclusion of the armed group actors in Mozambique was based on the post-settlement period after the General Peace Agreement (AGP) (1992-10-04). The exploration followed the government of Mozambique and Renamo,

Sierra Leone

The state-based conflict between the RUF (Revolutionary United Front) and the Sierra Leonean government began in March 1991, when the RUF, led by Foday Sankhoh, launched a rebellion with the support of then president of

³⁸ The UCDP records best estimate fatalities of 61 in 2000; 77 in 2001; 662 in 2002; and 1,627 in 2003.

³⁹ Notably, with regard to the first period of civil war, INPFL disbanded in 1991 and was not a signatory to the concluding agreements and the conflict dyads involving ULIMO and ULIMO-K or ULIMO-J, are not considered state-based internal conflict actors, which is why these armed groups were not included in the PSSV dataset. Both are categorised for non-state conflict against NPFL and for one-sided violence against civilians.

⁴⁰ The civil war in Mozambique was significantly internationalised, with direct foreign involvement from then Rhodesia and South Africa in support of Renamo. Frelimo also supported to the anti-apartheid movements in these other countries. These dimensions are not included in this study.

Liberia, Charles Taylor. There are two specific stages of the civil war in Sierra Leone, 1991-1996 and 1998-2000. This study focuses on the latter stage of the war, which is the phase that resulted in a longer term cessation of conflict that was based on a concluding, negotiated settlement.

For a short time in the first stage, the Sierra Leone government seemed to make advances against the rebels, with the help of ULIMO (see above on Liberia) and Guinean troops. Nevertheless, in April 1992 a coup inside the country overturned the government and formed the National Provisional Ruling Council (NPRC). The NPRC government contained the RUF and held the country's first multi-party elections in March 1996, leading to the appointment of Ahmed Tejan Kabbah, the Sierra Leone Peoples' Party (SLPP) candidate, as president.

In May 1997, other members of the Sierra Leonean military, commanded by Major Johnny Paul Koroma took over the government in a military coup. They welcomed the RUF in a new military junta, the AFRC (Armed Forces Revolutionary Council). In turn, the Kabbah government, now in exile, was supported by a range of civil society and regional actors, including ECOWAS. In October 1997, the two sides agreed to settlement in the Conakry Peace Plan, although it was not implemented. However, the plan enabled deployment of ECOWAS peacekeepers to the country, which reinstated Kabbah in March 1998. International efforts to solve or stop the civil war in Sierra Leone accelerated. The RUF and the government signed the Lomé Peace Agreement (1999-07-07) in Togo. Eventually, under a UN peace-keeping presence and active British military presence, the RUF rebels cooperated with the Lomé process. The Abuja Ceasefire Agreement (2000-11-10) was signed. It reaffirmed the Lomé Peace Agreement. Civil war violence, i.e. state-based conflict, has not been recorded since 2000. In May 2002 general and presidential elections were held in Sierra Leone, with President Kabbah once again emerging victorious.

Coding is limited to Sierra Leone's second stage of state-based, internal conflict, 1998-2000. The armed actors in the dataset are limited to signatories of the Abuja Ceasefire Agreement (2000-11-10). There was one conflict dyad to follow after the concluding settlement, between the government of Sierra Leone and the RUF (Revolutionary United Front).⁴¹

⁴¹ Coding Sierra Leone's armed group actors presented challenges, including whether or not to include different armed group actors that would appear to be important. For example, there was some confusion about whether or not to include the AFRC/RUF junta as a separate actor. After all, the UCDP defines government as *control of the capital of the state*. However, I analyze sexual violence events attributed to the government as headed by Kabbah (and not the AFRC/RUF juntas *as well as* the Kabbah government). This is to ensure consistency with the research criteria, whereby groups have settled their conflict through a negotiation and there are less than 25 battle-related deaths in a conflict dyad. The dataset does not include groups such as the AFRC. The conflict dyad between the government and AFRC

South Africa

In December 1961, the ANC (African National Congress) formed an armed wing, MK (Umkhonto we Sizwe /Spear of the Nation). The liberation movement justified the use of violence as a response to the South African apartheid government's relentless and intensifying repression. Despite a number of sabotage attacks by the ANC, armed fighting between these actors did not become a full state-based internal conflict (according to the definitions used by UCDP) until 1981. Umkhonto we Sizwe intensified its guerrilla activities in the early 1980s, beginning with coordinated attacks on oil installations of SASOL (South African Coal, Oil and Gas Corporation) on the night of 31 May/1 June 1980, Republic Day. In 1988, talks for a negotiated settlement began. The year 1988 was also the last year of battle-related deaths exceeding 25 (the UCDP's best estimate for fatalities in 1988 was 78). On 21 August 1989, the ANC issued its Harare Declaration, detailing its requirements for settlement talks. The government under F.W. de Klerk would go on to implement these conditions or declare their willingness to do so in the Groote Schuur Minute (1990-05-04) and the Pretoria Minute (1990-08-06). The Convention for a Democratic South Africa (CODESA) was launched in December 1991, culminating in the CODESA Declaration of Intent (1991-12-20). It was not until the end of 1993 that the state-based internal conflict was concluded, with the signing of the Interim Constitution of the Republic of South Africa Act 2000 (18 November 1993). The interim constitution was adopted in the South African parliament on 22 December 1993 and came into force on 27 April 1994, on the election of a transitional government of national unity, with Nelson Mandela as president.

The conflict dyad included in the PSSV dataset is between the government of South Africa and ANC. While there were many other armed actors, these other dyads were in the UCDP categories of non-state conflict or one-sided violence. The Interim Constitution of the Republic of South Africa Act 2000 (1993-11-18) that was adopted in parliament on 22 December 1993 serves as the beginning of the post-settlement period. This is important to note, since the state-based internal conflict appeared to end after 1988, the last year of battle-related deaths exceeding 25. But according to the parameters of the aggregate exploration, the settlement period is defined as the beginning of both the end of armed violence and the resolution of the incom-

ended in 1999, with best estimate fatalities at a high 1,149 but not reoccurring thereafter. The government takeover by the AFRC involved alliance with the RUF. The AFRC welcomed the RUF as a partner in the coup. Indeed, Foday Sankhoh was designated vice president of the AFRC junta. This means that coding the AFRC separately from the RUF would duplicate RUF-sanctioned post-settlement conduct. Similarly, another conflict actor that might appear in this dataset, but does not are the Kamaiors, since they too were not signatories to the Lomé (1999) or Abuja (2000) agreements.

patibility through negotiation. This section concludes the presentation of the actors and agreements of the dataset.

Patterns of post-settlement sexual violence

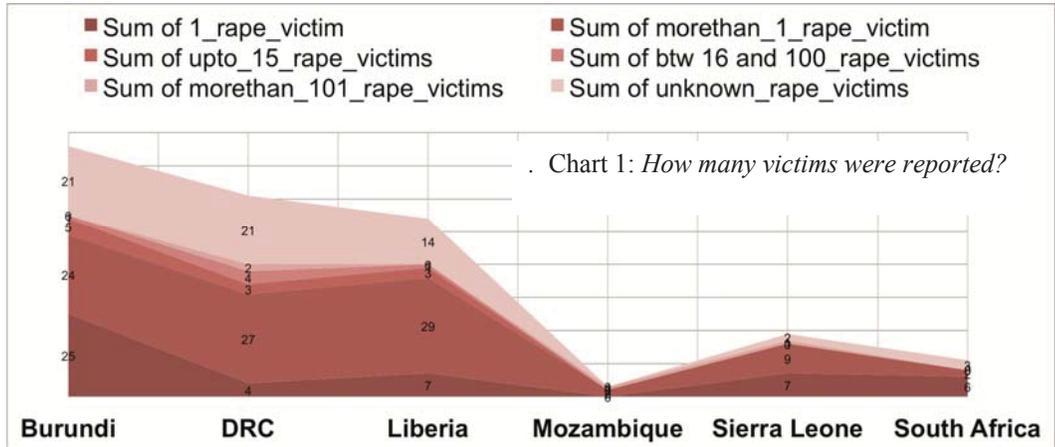
The chapter now turns to some of the descriptive findings. First, post-settlement sexual violence is extremely varied, with many armed actors committing little or no sexual violence and others doing so at a greater level. Out of 23 armed group actors, five actors did not have any sexual violence attributed to them following settlement. These were CNDD, Frolina, NPFL, Palipehutu and Palipehutu-FNL.

Just over one-third of the armed actors were named as the perpetrators of the majority of the events in the PSSV data. Four armed actors, the government of South Africa; the government of Sierra Leone; the Congolese Rally for Democracy; and the Revolutionary United Front, were each attributed as perpetrators of seven percent of the sexual violence events in the dataset. While the governments of Burundi (GoB1, from 28 August 2000-2003 and GoB2, 16 November 2003-2006); GoDRC 2; and the armed group LURD were each linked to 10 percent of the reported sexual violence events in the dataset. This means that 8 actors are reported as responsible for 68 percent of the sexual violence reported.

Variation

Many of the 137 events recorded involve more than one type of sexual violence. Approximately 30 combinations of violence were identified, ranging from single incidents of rape; to combinations of multiple rapes with variations on gang-rape, mass rape, sexual slavery, torture or harm to children. Since the variation in combinations was so widespread and complex, I created dummy variables to distinguish if an event involved a particular type of violence. Thus, the exploration was able to determine that 89 percent of the events (119 out of 137) were reported as rapes; that 39 percent (53 out of 137) were events of multiple rapes and that 17 percent were described as gang-rape (22 out of 137). Although rape was the main type of event reported, the number of rape victims and perpetrators was at least implicitly, much higher than single-victim-single-perpetrator sexual violence. However, it is important to remain cautious about the number of victims per incident. This is a feature of the reporting problems for sexual violence. The majority of events did not include descriptions of the number of victims. Incident reports might report one victim but indicate that there were multiple or mass rapes, thus signalling an unknown number of victims. Or they did not report a par-

ticular number of victims. Thus 44.5 percent (61 out of 137) PSSV events had an unknown number of victims.



Victims

I also coded dummy variables for each event where a number of victims were reported, even if that number was an estimate open to revision since an unknown number of rape victims were also implied in the source. With this variable, it is possible to estimate that 36 percent (49 out of 137) of reports involved 1 victim; 8 percent (11 out of 137) cited over 1 and up to 15 victims; 4 percent (6 out of 137) referred to over 15 and up to 100 victims; and a small number of reports, 3 percent (4 out of 137) recorded 101 or more rape victims. Chart 1 illustrates the number of victims that were reported. The small percentage of particularly large-scale PSSV events was linked to MLC, Renamo and RUF, all in the first post-settlement year. For instance, an event in the DRC was described as involving gang-rape in central Equateur of approximately 120 women and girls in December 2004. A Renamo incident in Mozambique is attributed to evidence that the group continued to hold kidnapped women and children in the thousands, for sexual slavery in their areas of control. The report for the RUF is also a holdover from the conflict, and was based on the slow release of women and children who had been forcibly recruited or kidnapped and continued to be held in forced marriage or some other form of sexual slavery.

Intensity

Since there were some clear differences in the number of victims, it is also worth exploring post-settlement sexual violence intensity. Overall, a surprising number of events in the dataset could be described as intense, but for different reasons. To exemplify, 40 percent of events were extremely intense (55 out of 137); 37 percent (50 out of 137) were intense; 17 percent (23 out of 137) had low intensity; while a small number 7 percent (9 out of 137) were of very low intensity.

The extremely intense events all involved mass rape, large-scale gang-rape or sexual slavery. This extremity should also be interpreted with some nuance. These type of events encompassed organised sexual violence in relation to other human rights violence as well as PSSV that occurs over a long time, such as sexual slavery. As such, they differed in the scale and number of victims. However, the distinguishing characteristic of these events is that they implied coordinated involvement on the part of the armed actor. Many of the extremely intense events took place in conjunction with other attacks on civilians. In Burundi, most of the reports of rape cited one victim or an unknown number of victims. However, the same events were described as involving many agents of the state – for example – in arbitrary searches of homes and communities. In contrast, there were more reports of mass rape and multiple rapes for actors in the DRC, where forces were reported to have attacked villages.

Chart 2 represents intensity at an aggregate, armed actor-year-level. For each actor, each part of the bar signifies the number of reports which were rated as either very low intensity; of low intensity; intense; or extremely intense. These approximations capture issues such as the level of involvement of armed actor members; the scale of organisation involved; the recurrence; and the number of victims. It is a useful way to assess differences in the reports of sexual violence for each actor, over time. And it helps identify any patterns of intensity between different types of actors. While most of the government actors have different types of intensity, non-state actors seem to be linked repeatedly to one particular type of intensity. For instance, the events attributed to rebel actors in the DRC, Mozambique and Sierra Leone were all mainly extremely intense.

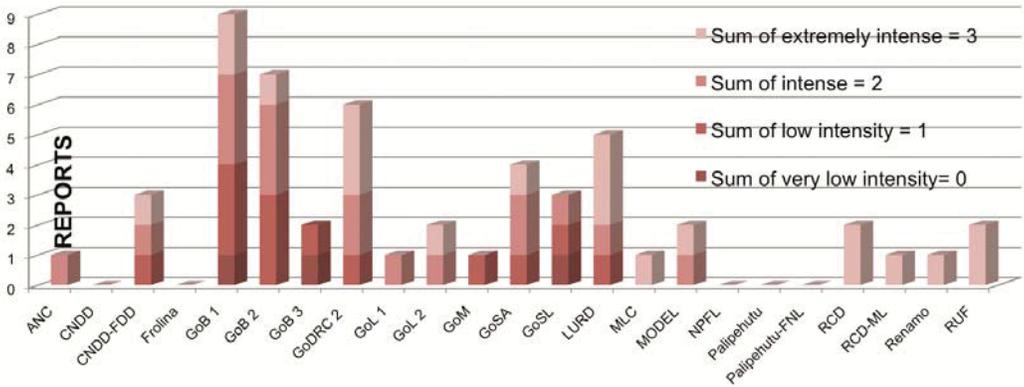


Chart 2: *How Intense Were the Sexual Violence Events?*

The chart also shows that all three governments of Burundi had a large share of reports attributed to them. There appears to be a decrease in reports over time. However, the reports attributed to the third government (GoB 3) were rated as low intensity and very low intensity. In other words, it looks like sexual violence by the Burundian state diminished in organisation, involving fewer government agents and victimizing fewer people.

Location

The exploration of the data can differentiate between locations and intensity. Coding for location provided some clear ideas about where armed actors' post-settlement sexual violence is most pervasive (or visible). Most of the violence reported, that is 71 percent was described as taking place (97 out of 137) in homes, villages, schools, marketplaces and in other areas considered to be civilian spaces of work and life.

Change over time

The pattern of reported PSSV events changed over time. Most of the armed actors in this study reduced their levels of sexual violence within the three years after settlement. In terms of the fraction of actors engaging in sexual violence, the general pattern was a decrease, from 35 percent (23 out of 65) in year 1; and 32 percent (21 out of 65) in years 2 and 3.

Against this background of the patterns of post-settlement sexual violence, the chapter now turns to exploring the association between amnesties and PSSV as well as other explanations for this violence.

Hypotheses

The theoretical framework proposed amnesties as one explanatory factor of armed group impunity for sexual violence. At the same time, policy, practice and research make the assumption that impunity causes sexual violence, which can be visualised in three steps 1) amnesties as a determinant of; 2) impunity as a precipitant of; and 3) PSSV. This component of the chapter captures what the small-scale dataset tells us about amnesties and PSSV. It does so by tabulating the relationships between these two ends of the causal chain. This is the main purpose of the first hypothesis of this small-scale aggregate exploration. Amnesty is defined as a formal commitment to exempt individuals from legal, penal and other disciplinary liability, for acts generally considered prosecutable and punishable. The first hypothesis contends that negotiated settlements which remove liability for conflict-related violence generate impunity among armed actors and thereby facilitates further violence. The argument does not distinguish between amnesty for sexual violence and exemptions for other types of violence, but merely surmises that amnestying armed actors sends a signal to leaders and followers that there will be no consequences for their wartime acts. Armed actors come to believe that they are above the law. Consequently, they are more likely to be associated with post-settlement sexual violence. Theoretically, the pardon implicit in an amnesty of a peace agreement should correlate with violence. The hypothesis is thus:

H1: Armed actors that are subjects of blanket amnesties are more likely to commit post-settlement sexual violence.

If armed actors are pardoned without conditions, they would have even greater levels of impunity and thus are more likely to carry out sexual violence. Thus, the data on the peace agreements in this study differentiates between *blanket* amnesties which have no temporal, provisional applicability

or eligibility and *partial* amnesty which includes conditions or restrictions for how long actors are exempt from prosecution, which crimes may be forgiven and which must be addressed through an accountability mechanism and finally, if all or some armed actors and organisations have any immunity. A typical blanket amnesty would not include truth-seeking conditions, forbid pardon for serious crimes under international law or explicitly include provisions for a tribunal to investigate and hold accountable perpetrators of war-related human rights violations. A partial amnesty in a peace agreement has all or some of these conditions that limit the amnesty. Thus, the hypothesis reasons, actors that have had greater leniency, such as a blanket amnesty, will be associated with more post-settlement sexual violence events.

This chapter also addresses other factors which may affect the patterns of post-settlement sexual violence. The first of these is pre-settlement reputation for sexual violence. It was argued in Chapter 4 that one might be able to infer that an armed actor's pre-settlement reputation for sexual violence could give rise to more post-settlement sexual violence. It was not feasible to find and identify one or two core measures of internal enforcement for all 23 actors in the study. Instead, using secondary sources and news reports, I constructed a dichotomous variable for reputation – whether or not an armed group was a well-known perpetrator of sexual violence against civilians during conflict – to analyze this possibility. Actors that did not restrain their fighters during the war will be linked to more sexual violence events. This argument can be captured in an alternative hypothesis:

H2: Armed actors that have a reputation for committing sexual violence during the phase of active armed conflict are more likely to commit post-settlement sexual violence.

Finally, a third explanation to explore is whether or not state capacity has an impact on the outcome of PSSV. In this regard, the argument is that armed actors which operate in a climate of weak policing, judicial and penal institutions are more likely to have impunity and to carry-out sexual violence in the post-settlement period. Since there are no sources, to my knowledge, of comparable measures of state capacity such as strength of policing, judicial and penal institutions, I measure this concept by the extent to which a country's judiciary is independent from the government or the military (Cingranelli and Richards 2010). The hypothesis is:

H3: Armed actors in contexts without independent judiciaries are more likely to commit post-settlement sexual violence.

Having presented the dataset in terms of armed actors and the hypotheses, the chapter now turn to the particular types of settlement and the coding of

amnesties. The coding for blanket or partial amnesty involved assessing the settlement terms in the concluding peace agreement or in some instances, the final settlement conditions. Peace agreements which had some form of restriction or conditionality or stated preference to limit eligibility to amnesty were coded as *partial amnesty*. Agreements without this coding were categorised as *blanket amnesty*. Peace agreements were reviewed to identify whether or not conditions had been introduced for prosecution of war crimes, truth-seeking through a truth and reconciliation commission or the establishment of an international or national commission of inquiry. Such measures would put a legal constraint on the eligibility of armed actors to amnesty. While many agreements incorporate clauses in order to limit amnesty, some did not. Importantly, the coding for amnesties included a review of previous agreements, transitional justice arrangements and amnesty laws which were initiated during the settlement. Previous agreements may have had an impact on the conditions of the final, concluding settlement. And an amnesty that may not be in the final agreement may still be binding. Thus even in instances where the amnesty was not mentioned explicitly, previous agreements were invoked as applicable. Coding thus involved examining these other agreements before deciding on whether or not the concluding agreement provided blanket or partial amnesty.

Table 2: The Concluding Agreements

COUNTRY	AGREEMENT	BLANKET AMNESTY	PARTIAL AMNESTY	RESTR. SERIOUS CRIMES
Burundi	Arusha Peace and Reconciliation Agreement for Burundi (2000-08-28)	0	1	1
Burundi	Comprehensive Ceasefire Agreement between the Government of Burundi and the Palipehutu-FNL (2006-09-07)	0	1	1
Burundi	Global Ceasefire agreement between Transitional Government and CNDD-FDD of Mr. Pierre Nkurunziza (2003-11-16)	0	1	1
DRC	Inter-Congolese Political Negotiations - The Final Act (2003-04-02)	0	1	1
Liberia	Abuja II Peace Agreement (1996-08-17)	1	0	0
Liberia	Accra Peace Agreement (2003-08-18)	0	1	1
Mozambique	General Peace Agreement (AGP) (1992-10-04)	1	0	0
Sierra Leone	Abuja Ceasefire Agreement (2000-11-10)	0	1	1
South Africa	Interim Constitution of the Republic of South Africa Act 2000 (1993-11-18)	0	1	1

An important descriptive finding is the ubiquity of amnesties in peace agreements. My original suspicion was that some of the peace agreements used to settle these major internal state-based conflicts would have no amnesty at all. This was based on the view within the international community that amnesties should not be given armed actors suspected of committing violations of international human rights and humanitarian law. Nonetheless, it was found that all nine agreements included some form of amnesty. In 18 percent of the 65 armed actor-years in this study, the armed group benefited

from a blanket amnesty. In the majority of observations, 82 percent, the armed group was only eligible for partial amnesty.

Results

In what follows I will present a series of bivariate cross-tabulations as a way of looking for interesting patterns in the data. A full test of the role of amnesties would require multivariate analysis controlling for potentially confounding variables, and would draw more on the full variation in the data, for example by using event-counts regression models. However, given the very low number of observations, and the tentative nature of the coding-effort, using multivariate analysis and more demanding methods would in my view have meant stretching the data too far. Such analysis is therefore left as a task for future research at a point in time when a full-scale coding effort can be undertaken.

Amnesty

In order to analyze the associations between amnesties and PSSV, I carried out a simple two-by-two cross tabulation between settlement with blanket amnesty and occurrence of post-settlement sexual violence. To do so, I focused only on actor-years which were linked to two or more reported sexual violence events. All armed actor-years with 2 or more sexual violence events were then coded with a dummy variable. Although a general principle is that sexual violence is under-reported, it seemed necessary to have certainty that the behaviour represented was based on more than one report. It was found that only 35.38 (23 out of 65) armed actor-years had 2 or more PSSV events in each year.

Table 3 shows the association between amnesties and reports of PSSV. The dependent variable is a dummy indicating whether 2 or more PSSV events were recorded for the actor-year, and the variable for blanket amnesties is the independent variable. There is a surprising result. None of the observations containing 2 or more PSSV events are associated with blanket amnesty. This means that those observations with 2 or more PSSV events were more closely associated with partial amnesty. In other words, blanket amnesties co-vary with a lower number of post-settlement sexual violence reports.

Table 3: Blanket Amnesties and PSSV2+

pssv_2plus	blanket_amnesty		Total
	0	1	
0	30 56.60	12 100.00	42 64.62
1	23 43.40	0 0.00	23 35.38
Total	53 100.00	12 100.00	65 100.00

Pearson chi2(1) = 8.0593 Pr = 0.005

As indicated by the Chi-square value of 8.05, this difference between blanket and partial amnesties is statistically significant at the value of 0.005. This pattern contradicts the hypothesis that blanket amnesties would increase PSSV. It goes against the argument that greater leniency and freedom from accountability leads to post-settlement sexual violence. According to the data, armed actors with less restrictive amnesties seem to commit less post-settlement sexual violence.

These results are driven by four actors, the NPFL and government in Liberia and Renamo and the Frelimo-led government in Mozambique. The dataset records the Abuja II Peace Agreement (1996-08-17) for the Liberian actors. The agreement explicitly affirmed earlier settlements in their entirety, notably the 1993 Cotonou Peace Agreement which granted amnesty for all actions by the parties during combat. Post-settlement sexual violence is not reported for NPFL. Recalling that the cut-off for comparison was two or more events in a year, it is found that neither actor has an association with PSSV in this tabulation. Although there was one report of abuses by government soldiers in Dambala, near the Sierra Leone border (AllAfrica Newswire Service and Star Radio 1999) in the third year, the government had no reported events associated with it in the first two years after settlement.

The General Peace Agreement (AGP) (1992-10-04) is the concluding settlement for the Mozambican parties. It did not use the term amnesty explicitly. Rather, it called for all parties to demobilise and it granted all parties equal status before the state. After the signing, Mozambique's parliament ratified an amnesty law which also paved the way for release of prisoners.

Both parties to the agreement did not have two or more sexual violence events classified in an armed actor-year. To illustrate, the non-state armed group, Renamo, had only one report of sexual violence linked to it, in the first year after settlement. On the government side, in 1995, during the third year after settlement, a report included allegations of police detaining and raping Renamo members in Sussenga district, Manica province (BBC Monitoring Service: Africa 1995). In both Liberia and Mozambique, the armed actors from the government side were connected to one PSSV report. Still, the numbers of reports were low enough to contribute to a negative association between blanket amnesties and PSSV.

Reputation

The explanation of whether or not an armed group was a well-known perpetrator of sexual violence during conflict, also has an important bearing. Using the same dependent variable of armed actor-years with 2 or more sexual violence events and running a cross-tabulation with the variable for reputation for pre-settlement sexual violence, it was found that 43 percent of observations with 2 or more PSSV events were for armed actors that had a reputation for committing conflict-related sexual violence. This finding is also statistically significant, with a Chi-square value of 4.86, statistically significant at the Pr value of 0.027. Table 4 speaks to the argument set out in H2, and confirms the argument that armed actors which do not have a reputation for committing wartime sexual violence against civilians, are less likely to commit this violence in the post-settlement period. The results were driven by four armed actors in Burundi (Palipehutu and Frolina); Sierra Leone (GoSL) and in South Africa (ANC).⁴²

⁴² Some actors, such as the Frelimo government in Mozambique, might be presumed to not to have a reputation for committing sexual violence. However, there was a report of rape being committed by police against Renamo affiliates, at border posts between Mozambique and South Africa and Swaziland in early 1991 (HRW 1992, 58). The report suggested that the government forces were feared, at least in this area, for committing some sexual violence.

Table 4: Reputation and PSSV2+

pssv_2plus	crsv_rep		Total
	0	1	
0	14 87.50	28 57.14	42 64.62
1	2 12.50	21 42.86	23 35.38
Total	16 100.00	49 100.00	65 100.00
Pearson chi2(1) = 4.8615 Pr = 0.027			

The state

An important finding in previous research is that state actors are more likely to commit sexual violence during conflict (Nordås 2011, 2012). I wanted to explore this finding in this dataset using a simple cross tabulation, and also as a way to understand any findings related to state capacity, measured as the extent to which a country's judiciary is independent. When testing the association between actor type and observations with 2 or more PSSV events, it was found that 65.22 percent (15 out of 23) observations with 2 or more PSSV events were state actor years. In other words, government security agents, police, military and others were more likely to be associated with reports of PSSV than were members of the rebel groups. This is illustrated in Table 5, supporting the view that state actors are more likely to commit post-settlement sexual violence. The result has a high Chi-square value of 10.76 and a p value of 0.001.

Table 5: State or Non-state and PSSV2+

pssv_2plus	state		Total
	0	1	
0	32 80.00	10 40.00	42 64.62
1	8 20.00	15 60.00	23 35.38
Total	40 100.00	25 100.00	65 100.00

Pearson chi2(1) = 10.7660 Pr = 0.001

One final simple test relates to the last hypothesis in this part of the study. I wondered whether or not armed actors that operated in contexts without independent judiciaries were more likely to commit PSSV. This is the argument of hypothesis three, and the notion that state capacity is the missing link and the cause of post-war sexual violence by armed actors. I conducted a cross-tabulation between more than 2 sexual violence events in an armed actor-year and the variable for an independent judiciary. The results showed that there was no association between independent judiciaries and reports of PSSV. It must however be noted that there is a very small variation in the independent variable. Only South Africa was coded with a value of having a full independent judiciary during all of the observation period. While the DRC and Sierra Leone had some years coded as having partially independent judiciaries, 70 percent of the armed actor-years in the dataset were coded as having no independent judiciary.

Nevertheless, the two tests discussed here tell an interesting story. The SVAC data for Africa estimates that “64 percent of government actors were reported as perpetrators of sexual, as opposed to 31 percent of rebel groups and 29 percent of militias”(Cohen, Hoover Green, and Wood 2013, 4). This small-scale aggregation of events seems to come to a similar conclusion.

Furthermore, state actors had a more varied range of intensity in the reports (see above) attributed to them, while rebel groups had a more limited range of violence. Again, it is possible that reporting is more concentrated on the state, or at least, state abuses are more visible to the press and to human rights organisations. There might be some clear reason, such as access to information or visibility of state actors, which explains these patterns. That

might be why there are higher levels of PSSV attributed to governments. Alternatively, if state capacity is weak, why should police, army and other state actors be particularly vulnerable to reporting? Instead, corrupt judiciaries would ensure a privileged status for state agents and thus less reporting of their abuses. This would mean that victims were less willing to come forward to report soldiers, police and other government authorities. If victims of state agents dare not report abuses and assaults, but still there are more reports of government violations, then these results are valid. The larger and more diverse reports attributed to state actors means that indeed, governments do commit more post-settlement sexual violence than non-state actors.

Limitations

The results from the dataset should be noted with caution. As discussed in Chapter 4, there are limitations to the methods and sources of this small-scale, aggregate exploration. A first precondition for carrying out the exploration was finding sources of information about specific sexual violence events. I relied on news sources, US State Department reports and AI and HRW documents. These were easily accessible and covered all the conflicts and the entire time period of the study. However, it is clear that for a number of reasons, sexual violence is under-reported in these sources. For example, the absence of PSSV events for NPFL is striking, while the amount of sexual violence reported for the Burundi government actors is relatively high. In Chapter 4, I explained that sexual violence reporting can be affected by biases in reporting. Different degrees of interest covering sexual violence or in monitoring these events may skew the comparability of the data. It is possible that in comparative terms some conflicts are better covered, than others. Thus, the level of PSSV reported for Burundi, on the whole, in comparison to the DRC or Liberia, might be attributed to diligent and knowledgeable attention on the problem by observers, who were more precise in their reporting.

Even though these types of events are likely to go unreported by victims, there are also likely to be many more reports which go unreported at the level of the international press. A more thorough, but time-consuming and expensive way to get this information would be to carry-out archival research of local newspapers and police and court records. Since I could not do this for this study, it should be understood that these findings are tentative and uncertain.

More specifically, the lack of a wider net of sources is evident in many cases, with doubts about why some actors are reported to have committed sexual violence and others are not. For instance, it is perplexing that no events in the study are attributed to NPFL in Liberia. Yet, many observers

recall sexual violence perpetrated by the NPFL throughout the first Liberian war and in its aftermath (AI 1995). But my multiple searches have not produced any events that meet the criteria of the study. The low numbers of sexual violence by the government of Liberia government between 1996/08/17 and 1999/08/17 is equally surprising.

The Liberia events provide a useful avenue for understanding the difference between the dataset and the experiences and knowledge from other studies or country expertise. There were several high profile events which did not appear in reports and sources of the study. Other events may not have been as high profile, but were nevertheless possible to find with some further investigation. For example, sometime in the first half of 1997, a man named Yousuff Dukuly was targeted by national security officials. Dukuly was a soldier responsible for VIP service for a local councilman. He had tipped off ECOMOG about a weapons cache being kept by the man he was guarding. He claimed that he was tortured and interrogated by a national security official for this act. Moreover, he alleged that in retaliation for his betrayal, a Liberian general raped his wife and his sister was gang-raped by soldiers in a separate incident. I did not find this information in my sources. I was alerted to missing events for Liberia by Mats Utas (2003, 2007, 2012) who recollected events that were not represented in the dataset. I found the information about the above rape events in Dukuly's application for asylum and withholding of deportation in the US (Dukuly v. Atty Gen USA. 2004). As such it represents Dukuly's allegations and not a third party report. Nevertheless, once I knew about the events, I did another search in my sources, for 'Dukuly'. I found one news source which stated that the government had complained about a Liberian newspaper's coverage of "a rape incident involving one Dukuly" (AllAfrica Newswire Service and Star Radio 1998). This event could not have been included in the dataset based on this statement, as it did not provide any details. It is not clear from the report if the rape incident involved Dukuly as a victim or as a perpetrator.⁴³ Moreover, without the input from other sources, I would have never searched for this particular item.

A number of strategies could be undertaken to strengthen the data and the face validity for each case. Combining country expertise and information from local news archives and police and court records would increase the likelihood of generating a more comprehensive and useable dataset, and

⁴³Clearly, without more knowledge about each country and conflict, it is difficult to gauge and weigh the face validity of the data. Another example can be traced to the classification of the Mozambican state as having a reputation for sexual violence, as discussed above. How likely is it that the report of the Mozambican border police committing rape is true? A country specialist would be better equipped to make that assessment. On the other hand, memories and perceptions can also be influenced by other factors.

therefore more certain findings. Another strategy could entail widening the scope to a much larger cross-national data collection. This could create many more observations. Supplementary observations would thus be ideal for more robust and sophisticated tests. A third strategy would be collection of data in one country, focusing on all the actors and a much longer time period. This latter type of collection would require country expertise, but it would generate a highly valid dataset. Finally, any further data collection will need additional quality control. While this study involved two different coders, it was a first attempt to use new methods on a problem that has been relatively understudied. Coding for intensity of sexual violence events, or deciding how much information is essential for inclusion is a complicated and difficult process. It requires effective and tested protocols to achieve consistency. Future efforts should revisit the coding guidelines and develop more rigorous ways to ensure that coding decisions are reliable.

Conclusions

To my knowledge, this tentative and small-scale aggregate exploration is the first to trace sexual violence events among different armed actors. As such, the preliminary nature of the study also motivates for qualitative, comparative work, which is taken up in the rest of the study. Bearing in mind the caveats above, the conclusion of the chapter will briefly return to the outcomes of the hypotheses.

The construction of this dataset has created more questions about the explanations for armed group impunity for sexual violence. The theoretical framework proposed that amnesties were a determinant of post-settlement sexual violence. This chapter addressed this proposition, together with a number of alternative explanations. It was found that despite theoretical assumptions, amnesties do not have an association with post-settlement sexual violence. In fact, blanket amnesties (as opposed to partial amnesties) were more closely linked to lower levels of sexual violence. The main cases of blanket amnesty were the first agreement between the government and NPFL in Liberia, and the parties to the Mozambican civil war. Both peace agreements were signed in the early nineties, before the UN and other actors introduced more conditionality of amnesties in peace agreements. Surprisingly, the less restrictive amnestying, the more likely that armed actors will not commit post-conflict sexual violence. This counters the assumption that amnestying war-related violence will lead to future atrocities and violence.

One expects a greater association between lower rates of sexual violence in circumstances with partial amnesty. This is not the case. The type of settlement for the Liberian and Mozambican counterparts may be different in another important way. As previous research suggests (Cobban 2007;

Melander 2013; Vinjamuri and Boesenecker 2007) amnesties have other meanings and outcomes. It is possible that blanket amnesties represent a new beginning and signal that actors should not fear retribution for their wartime activities. Their pardon may set into motion the construction of a new status quo, or a new peace. At the minimum, it might provide assurance that armed actors will not be harassed or harmed for their previous actions or organisation. Members can intuit that they will have some opportunity for reintegration into society and even, into job programs in the state structures or elsewhere.

It appears that pardons arising from the peace process do lead to sexual violence – blanket amnesties were not associated with PSSV. This chapter also explored the association between reputation for wartime sexual violence and post-settlement sexual violence. It was found that there was an association. This suggested that the way an armed actor behaved during the war was a good indication of its post-settlement conduct. In sum, the findings thus far point to a need for close examination of the other explanations for armed group impunity for sexual violence.

The rest of the study will focus on examining these implications and compare the relationships between flawed prohibitions, negligent authorities and amnesties and armed group impunity for sexual violence.

6. The Conflict: Burundi's War and its Postponed Peace

Just before the Rwandan genocide in 1994, René Lemarchand concluded that “nowhere else in Africa has so much violence killed so many people on so many occasions in so small a space as in Burundi” (Lemarchand 1994, xxv). The country's long road to settlement has created a new government, dominated by the CNDD-FDD, one of the groups in this study. The other group, Palipehutu-FNL, has not yet emerged from the legacy of the war or its extremities of violence.

Chapters 7, 8 and 9 of this study comprise the within-case analyses and cross-case comparison of these armed groups. In order to situate the empirical results and analyses contained in those chapters, this chapter provides an eclectic overview of Burundi. The chapter includes information about the country's political history, the civil war fought between 1994 and 2008⁴⁴ and the negotiated peace. Readers who are familiar with the civil war in Burundi should instead focus on the final parts of the chapter, where I describe some of the country's legal background in relation to sexual violence and discuss commission of these acts by CNDD-FDD and FNL.⁴⁵

A history of violence

Burundi's civil war of 1994-2008 followed a long succession of warfare and mass violence. As one part of Ruanda-Urundi within German East Africa, Burundi was a German colony from 1897 to 1916. From 1916 to 1962 it belonged to Belgium, first as an occupied territory (until 1924), then under a League of Nations class-B mandate (until 1945) and finally as a UN trust territory until independence in 1962.

⁴⁴ Generally, the civil war is described by scholars and policymakers as taking place between 1994 and 2006 or even 2003. Since the conflict continued between two of the parties after 2006, I prefer to describe the war period as 1994-2008 when the last rebel group, Palipehutu-FNL registered as a political party and settled its conflict with the government.

⁴⁵ A summary of the conflict and settlement of the civil war can also be found in the previous chapter.

From independence in 1962 until the end of the twentieth century, tensions between the ruling Tutsi minority and the excluded Hutu majority led to violent rebellions by the latter and ensuing retaliation by the former. Large-scale massacres occurred in 1965, 1972, 1988, 1991 and 1993, followed by internal displacement and exile of hundreds of thousands of mainly Hutu refugees. While there are no precise numbers, some estimate that “over the past fifty years, more than 500,000 Burundians have been killed or maimed and over one million have been displaced” (Mthembu-Salter, Elana, and Kikoler 2011, 2). None of the organisers of the ethnic massacres or the actors in the country’s most recent internal conflict have been brought to justice. Each government has seemingly resisted accountability for the past (Lemarchand 1994; Vandeginste 2009a, 2011). The following sections provide a summary of the post-independence conflict and violence in Burundi, focusing on the watershed events of 1972 and 1993, which, respectively, led to the formation of the two armed groups in this study.

Independence and a failed coup

Decolonization in Burundi was largely peaceful and under a constitutional monarchy. The first post-independence government seemed set to balance Hutu and Tutsi interests. However, in October 1961, the prime minister designate, the nationalist Tutsi prince Louis Rwagasore was assassinated. This undermined prospects for national cohesion on both sides of the ethnic divide (Daley 2007a).⁴⁶ In October 1965, the Hutu premier Pierre Ngendandumwe was killed by a Rwandan Tutsi refugee, tensions rose dramatically. Following legislative elections which had resulted in a landslide for Hutu representatives further undermined the prospects of national cohesion and the premiership was instead granted to a Tutsi by the king. Hutu army and gendarmerie officers reacted by attempting a coup that sent the king into exile and ended the monarchy. However, in the following weeks, the defence minister, Captain Michel Micombero and the Tutsi military leadership retaliated, purging the government of Hutu leadership and setting into motion the killing of an estimated 5,000 Hutu civilians. As noted by Lemarchand, the failed Hutu coup thus resulted in “the physical elimination of the entire first generation of Hutu leaders” with political power becoming “the exclusive monopoly of Tutsi elements” (Lemarchand 1994, 71–72).

⁴⁶ The son of the *mwami*, Rwagasore is still considered Burundi’s national and independence hero. He led the country’s anti-colonial movement. A *ganwa* married to a Hutu, he downplayed the ethnic divisions in favor of a nationalist outlook. As leader of the Union for National Progress (UPRONA). After Rwagasore’s death, UPRONA developed into a Tutsi-dominated party.

1972 genocide

Despite the repression under the Micombero's subsequent military regime (1966-76), underground Hutu groups continued to operate. Initially, they committed acts of terror in the southern part of Burundi, targeting Tutsi officials and civilians, resulting in between 2,000 and 3,000 deaths (Bentley and Southall 2004, 43; Lemarchand 1994, 92). This time the Tutsi military's response was even more repressive. It moved the army into rural areas, and what subsequently followed slaughter of the Hutu population and in particular, targeting of educated Hutus. It is estimated that between 100,000 and 200,000 were massacred. A further 150,000 fled the country, notably to Tanzania (Lemarchand 1994). International and regional actors and powers did not address the violence (Daley 2007a, 71). Thereafter, surviving Hutus were systematically excluded from the army, the civil service and higher education.

A Tutsi military state

Micombero was overthrown by Col Jean-Baptiste Bayaza on 21 November 1976. By 1985 the army was "96 percent Tutsi, two thirds of the University of Bujumbura students were Tutsi, Hutu held four ministries out of the twenty-two in government" (Daley 2007a, 73). At the same time, investment in education and donor funds for development were diverted to Bururi in the southern part of the country. This area was the home region of many Tutsi political elites. And it was understood that Bayaza's eventual banning of 'ethnicity' was a way to disguise his regime's unfettered preference for building up the power and prestige of Tutsis from Bururi (Ndikumana 1998; Prunier 1994; Watt 2008, 39). Indeed, such preferential treatment reflected intra-Tutsi cleavages and competition for power.

As Tutsi exiles from Rwanda did, Burundi's victimised population organised itself into armed groups and carried out insurgent attacks on the state. Rebel incursions took place in 1988 and, again, in 1991. On both occasions, the retaliation by the army was heavy-handed. Thus, 1988 confrontations led by Palipehutu, resulted in around 20,000 Hutu deaths, with some 50,000 going into exile in Rwanda (Bentley and Southall 2004, 44; Lemarchand 1994, 126). In 1991, the death toll was smaller, or around 3,000 (Lemarchand 1966, xxv).

By the mid-1980s internal Tutsi divisions had deepened, eventually leading to a military coup by Major Pierre Buyoya in 1987. Although a Tutsi⁴⁷, he embarked on a reconciliatory course, moving the country towards a new constitution and democratic elections. Remarkably, the elections eventually

⁴⁷ Significantly, Micombero and Buyoya were from the same clan in the south in Bururi; while Bayaza and Buyoya were sons of the same administrative *colline*, Rutovu also in Bururi (Daley 2007a, 66 and 75).

held in June 1993 were conducted in an atmosphere of peace and calm. Buyoya, representing the Union for National Progress (UPRONA) party, lost to Melchior Ndadaye, the leader of the Hutu-dominated Front for Democracy in Burundi (FRODEBU). With 65 percent of the vote, Ndadaye also managed to mobilise the followers of the outlawed Palipehutu party.

1993 and civil war

The democratic opening was to be short-lived. After only three months in office, in October 1993 Ndadaye and two prominent FRODEBU leaders (one Tutsi and one Hutu) were brutally slaughtered by a group of Tutsi officers. In turn, the assassinations marked the beginning of a creeping Tutsi counter-coup and the worst ethnic violence experienced in the history of Burundi. Thus, “the announcement of Ndadaye’s death hit the countryside with the force of an earthquake. A blind rage suddenly seized FRODEBU militants and peasants alike”, killing “every Tutsi in sight” (Lemarchand 1994, xiii). The Tutsi response was no less savage. Described by Lemarchand as Burundi’s “descent into hell” (Lemarchand 1994, xi), as in earlier massacres the exact number of fatalities may never be known. By mid-1996, an estimated total of 150,000 people - Hutu and Tutsi in roughly equal numbers - had lost their lives. Meanwhile, other forces within society were promoting fears of Hutu reprisals against Tutsis, or alternatively of Tutsi-led attacks against Hutu peasantry.

The rebels

The previous decades’ purges and conflicts involved oppositional groups within and outside the country. It was in the refugee settlements in the DRC, Rwanda and Tanzania that the most uncompromising Hutu ideology developed and the most intransigent movements were formed to fight the minority government. This was the case with Palipehutu-FNL in 1980 and in 1994 with CNDD-FDD (Lemarchand 1994; Nindorera 2012; Prunier 1994; Reyntjens 2008; Southall 2006; Watt 2008).

The emergence of Palipehutu-FNL

The practices of ethnic differentiation and exclusion, coupled with outright targeting of Hutus, precipitated the founding in 1980 of the Party for the Liberation of the Hutu People by Rémy Gahutu in Tanzania. Gahutu was a member of a group known as Tabara, which was founded by Hutu activists as a political party after the 1972 genocide (Watt 2008, 85). From the outset, Palipehutu’s purpose was to socialise Hutus about their rights and claims and to pursue a more democratic form of government. Gahutu’s ideological viewpoint emphasised that the Tutsis were foreigners in Burundi. It deployed ethnic stereotypes and maintained that Hutus needed to liberate themselves

from the inferiority complex they had been taught by the Tutsi-minority system. His views took on a cult status, and were spread across the Hutu exile communities in the rest of Central Africa, Canada and Europe (Watt 2008, 86). Gahutu was imprisoned and killed in a Tanzania prison in 1990, and Etienne Karatasi, a Hutu southerner, became the movement's leader (Watts, 2008). A small group of defectors would leave the rebel group in 1990 and form the National Liberation Front (FROLINA), establishing a largely inactive armed wing.

Palipehutu was not permitted to participate in the 1993 elections because of its stated mono-ethnic, Hutu power ideology. The 'party' had a youth, women and armed wing, the Forces for National Liberation (FNL). In 1991, Palipehutu split. Most members abandoned Karatasi's leadership and followed Cossan Kabura under a new banner of Palipehutu-FNL. It maintained that Burundi's majority Hutu population would never be free to enjoy their fundamental rights if the Tutsi political and military class was left to its own devices. Indeed, Palipehutu-FNL refused to negotiate with "any [Tutsi] government" (Watt 2008, 86). It carried out a series of terrible attacks, including the infamous Titanic Express incident in 2000. In 2004, Palipehutu-FNL claimed responsibility for killing 153 Congolese Tutsis (Banyamulenge) in Gatumba, on the border with the DRC (HRW 2004; UNSC 2004; Watt 2008, 86). Despite collaboration with Rwanda's *Interahamwe* after the 1994 genocide, Palipehutu-FNL was mainly reliant on the civilian population in and around Bujumbura, along the DRC-Burundi border and in the northern provinces. Palipehutu-FNL "raised funds by collecting a tax from villagers and residents of suburbs such as Kamenge, as well as from the businessmen whose trucks and buses ran through its fiefdom" (Watt 2008, 87).

Eventually, Palipehutu-FNL succumbed to internal disputes about the direction and conduct of the peace process and further fragmented. Kabura and his supporters were accused of seeking to acquiesce to the Tutsi elite structures by participating in the Arusha talks. In October 2005, a splinter group convened a General Assembly led by a Jean-Bosco Sindayigaya and expelled Agathon Rwasa (Watts, 2008:88). However, the Sindayigaya Palipehutu-FNL failed to remain viable and Rwasa maintained his hold over the group. The Rwasa-led FNL was reluctant to settle the war until 2006, and despite signing the 18 June 2006 Agreement of Principles towards Lasting Peace, Security and Stability with the CNDD-FDD led government, continued fighting until 2008.

The birth of CNDD-FDD

The 1993 stillbirth of democracy precipitated the civil war, but it also fuelled the founding of the CNDD-FDD. Willy Nindorera describes how the assassination of Ndadaye was the catalyst for this new armed actor. Indeed, it

cemented the view among Hutu moderates that an armed struggle was essential. The killing of Ndadaye illustrated that the Burundi state was being held hostage to a mono-ethnic, mono-regional Tutsi army (Nindorera 2012, 13).

One of FREDEBU's founders, Léonard Nyangoma organised a new rebellion from exile in late 1993. A network of activists, intellectuals and Hutu military trainees from the Higher Institute of Military Officers (ICSAM) thereafter formed resistance networks inside and outside of Burundi, leading to the founding of the National Council for the Defence of Democracy (CNDD) on 24 September 1994. Nyangoma was first based in then Zaire, and had alliances with the Mobutu regime as well as Rwandan *Interahamwe*. He was criticised for favouring other southern Hutus and alleged to have embezzled organisational funds (Nindorera 2012, 15). The group would undergo several internal upheavals.

The armed wing of CNDD was established as the Forces for the Defence of Democracy (FDD) and became indistinguishable from one another (Lemarchand 2006, 7). Nyangoma was removed from power in May 1998 (Watt 2008, 88), but the group had by then already launched a widespread effort to secure arms, lobby the international and African community and fight a war. Nindorera (2012) explains that there were important religious, regional, doctrinal and even ideological tensions within the CNDD. The armed struggle was in the main, heterogeneous. However, this mix of people created problems about "how to run a war" (Nindorera 2012, 16). Some members felt that discipline and a strict hierarchy was essential, others refused this approach. Others were part of religious or regional cliques. Some felt that the war should end soon through negotiations. Still others wanted to wait until the armed group was stronger.

The CNDD experienced its first splintering in 1998 when the then movement strongman, Hussein Radjabu ousted Nyangoma for Jean-Bosco Ndayikengurukiye. Originally with Palipehutu, Radjabu became a CNDD-FDD stalwart in the 1990s, general commissioner for mobilization and propaganda in 1994 and finally, Executive Secretary. Radjabu was furthermore responsible for advancing Pierre Nkurunziza's power inside the organisation (Lemarchand 2006; Nindorera 2012, 16). Under this new leadership, the group formerly became the CNDD-FDD while Nyangoma continued to lead a smaller political grouping called CNDD. However, Ndayikengurukiye would also be overthrown for many of the same failures as his predecessor. Despite strong links with Zaire, he was not trusted and removed in favour of Nkurunziza in October 2001 (Nindorera 2012, 17).

Unlike Palipehutu-FNL, CNDD-FDD enjoyed international support and had extensive networks. It also organised collection of food and cattle from families in refugee camps in Tanzania, sale of Burundi-grown coffee and tea, and "substantial income from weapons and other goods that were confiscated from the Burundian armed forces" (Nindorera 2012, 18). It is possible

that the rebel group also received financial support from the wider Hutu diaspora, traders and “private corporations” (Nindorera 2012, 18).

Postponed peace

Whereas the 1972 genocide had gone unaddressed, the internal armed conflict which began in 1993 garnered attention from the region and the world. The UN and the Organisation of African Unity (OAU) were central actors in trying to stop the 1993 violence, settle the conflict and put Burundi onto a path toward democracy. The settlement talks centred on re-engineering Burundi’s “*rentier* and neo-patrimonial state” (Daley 2007b, 338). International mediators pursued power-sharing arrangements between Tutsi and Hutu and sought to establish institutions for liberal, competitive politics. Tutsi political and military elites and Hutu rebels sought to control the tenor of the talks and the narrative of ethnicity.

In 1993, the UN appointed Mauritanian diplomat Ahmedou Ould Abdallah as the Secretary-General’s Special Representative to Burundi. The OAU appointed Papa Louis Fall of Senegal, to monitor the situation. The OAU sent an observer mission to the country, the International Observation Mission in Burundi (MIOB) in February 1994. Abdallah was able to facilitate an agreement between the military and FRODEBU. In February 1994, Cyprien Ntaryamira was appointed president by parliament. This resolution of the crisis was brief. Together with Rwanda’s president, Juvénal Habyarimana, Ntaryamira was killed in the plane explosion of 6 April 1994.

“Ruled by the street”

Abdallah’s subsequent mediation between April and September 1994 led to a “Convention of Government,” which established a power-sharing agreement between the various sides and the military (Buyoya 2011; Mthembu-Salter, Elana, and Kikoler 2011). And a transitional government headed by FRODEBU’s leader Sylvestre Ntibantunganya, was established in September 1994. The new dispensation granted Tutsi parties 11 out of 23 cabinet posts and 40 percent of local government positions (Mthembu-Salter, Elana, and Kikoler 2011). However, the Tutsi political parties remained acutely suspicious of the FRODEBU leadership. The Convention of Government stipulated that a National Council of Security would advise the president, such were the controls that UPRONA and other Tutsi political parties insisted on (Buyoya 2011, 164). In this climate, FRODEBU petitioned the international community, through a visit by then US Secretary of State Madeleine Albright, for the deployment of an international peace enforcement mission, based in eastern Zaire (Buyoya 2011, 70) but essentially, to act as a guaran-

tee against another Tutsi putsch. The idea of an international force to guarantee power-sharing seemed untenable to the Tutsi elite.

Yet, the situation was critical, with armed insurgency on the part of non-state armed groups and increasing pressure on the part of Tutsi extremists to undo the delicate balance achieved under the Convention of Government. On 23 July 1996, allegedly, armed groups attacked and killed 304 civilians in a displaced persons camp in Bugendana, which is approximately 100 km east of Bujumbura and close to the centre of the country. Mourners threw grass at President Ntibantunganya and his delegation when they attended the funeral. Buyoya writes that “from then on, the country was ruled by the street” (Buyoya 2011, 72). Certainly of greater significance to the stability to the Tutsi military elite were the rebel insurgencies of Palipehutu and Frolina which each launched attacks from eastern Zaire. Furthermore, CNDD-FDD was operating in 13 out of 15 Burundi provinces (ICG 1999, 3–4).⁴⁸

Embargoed

With a stated aim to resolve the impasse of conflict and political immobilization, Pierre Buyoya assumed power on 25 July 1996, through another coup.⁴⁹ Regional governments responded to Buyoya’s second coup with an economic embargo, through the OAU. The embargo was viewed as unfair by many inside and outside Burundi, but Tanzania’s former president, Julius Nyerere had grown increasingly sympathetic to the rebels, many of which recruited from refugee camps in places such as the Kigoma and Ngara districts in Tanzania (ICG 1999). Indeed, International Crisis Group (ICG) observed that many Tanzanian authorities came to view the Hutu rebellions in a pan-Africanist light as ‘liberators’ in the tradition of the armed movements of southern Africa (1999, 5). Buyoya’s 1996 coup furthermore coincided with the OAU’s move toward delegitimizing unconstitutional changes of government. The region maintained the total economic embargo from October 1996 to January 1999 (Daley 2007b, 339). Tanzania was the first to imple-

⁴⁸ In 1996, the government created regroupment camps, which it claimed would shield civilians from attack by Hutu militias. These camps were however a cover for cutting off rebel groups such as Palipehutu-FNL from civilian support and a measure of appeasing Tutsi extremists. The camps were particularly hated by the Hutu majority who were sometimes forcibly removed from their homes, prevented from working their land, dependent on foreign humanitarian assistance and subject to criminality and abuse, including sexual violence from the Burundi military (Daley 2007a; Lemarchand 2006). The camps were eventually disbanded in 2000, largely because of pressure from the region, including the international mediator at the time, Nelson Mandela.

⁴⁹ He (2011) calls the coup the “Change of July 25, 1996” (Buyoya 2011, 135) and argues that he was willing to negotiate with the rebel armed groups and that the Burundian political class and civil society supported his mission (Buyoya 2011, 73).

ment the sanctions with boats and trucks prohibited from transporting fuel, other cargo and passengers to Burundi. Buyoya calls it a blockade which was “dictated brutally and unilaterally” and brought about by Nyerere’s inability to “tolerate a restoration of the peace that disregarded his command” (Buyoya 2011, 40). The embargo had mixed results, since it was principally a regional effort, not supported by non-African governments. There were daily flights to Belgium and France, and other parts of the European Union (EU) (Daley 2007b, 339). Buyoya reports that one of a number of measures developed by his government to get around the economic embargo was the development of “importation via air route” (Buyoya 2011, 147).

The Arusha peace process

Nyerere was the mediator of the inter-Burundian negotiations from April 1996 to October 1999. The talks were financed by the UN and the EU and countries such as the US and Canada. Regional governments of Uganda, Tanzania, Kenya, Zaire/DRC and eventually, South Africa also supported the peacemaking process (Daley 2007b). At first, according to Buyoya (2011), the mediation under Nyerere sought to “simplify the process” with only FRODEBU and UPRONA participating. Nyerere put pressure on Buyoya to negotiate, but wanted to keep the rebel groups CNDD-FDD and Palipehutu-FNL out. Initial steps were two rounds of talks held in Mwanza, Tanzania in 1996. But these negotiations failed since they did not involve the Hutu rebel groups. In the meantime, Buyoya sought accommodation with internally-based opposition among Hutu and Tutsi political parties and reopened the National Assembly on 25 January 1997, followed by a lift of the ban on political parties. A three year transitional process was agreed to by the parties within the country under an Internal Partnership for Peace (Daley 2007a, 200).

Arusha became the next staging ground for settlement negotiations. In June 1998, the first All Party Peace Talks (Arusha I) took place in Arusha, with all political parties and most external actors represented. The CNDD-FDD and Palipehutu-FNL were not invited, as they had refused to accept the terms of the latest cease-fire. The second all-party talks (Arusha II) occurred at the committee level and began in July of that year. The committees were mandated to consult on, and set out agreed terms in five areas: “the nature of the conflict, democracy and good governance, peace and security, reconstruction and development and guarantees of implementation of the agreement” (Daley 2007b, 343). There were many problems with the composition of the committees, their chairs and vice-chairs as well as the content in the draft agreement, which was submitted to the parties in March 2000.

Nyerere died on 14 October 1999, leaving behind many admirers but an unfinished peacemaking process. Important actors, the Buyoya regime in-

cluded, strove to bring former South African president Nelson Mandela in as the new mediator. Mandela's mediation from 1999 until 2000 was considered principled and passionate, for he exhorted the participants to end their ethnic polarization and intransigence. South Africa's role, too, was vital, since as a powerful regional power it would serve as a useful guarantor to the outcome. Finally, Mandela's tactics proved to create clear benefits for moving the negotiations forward. As a "bulldozer" (Buyoya 2011, 185), Mandela presided over the all-party talks, directly negotiating with parties such as the Buyoya government and some of the rebel parties in order to speed up the process. Nevertheless, Palipehutu-FNL and CNDD-FDD remained outside of the Arusha process.

Despite this weakness of the negotiations, on 8 August 2000, the political actors signed the Arusha Peace and Reconciliation Agreement for Burundi.⁵⁰ The Arusha accord prescribes a consociational power-sharing government (Reyntjens 2005; Vandeginste 2011, 193). It is based on the concept of ethnic equilibrium, a blend of over-representation of the Tutsi minority in some instances and ethnic quotas in most, in order to balance the composition of the state. Arusha's signatories were the then government of Burundi, and the two distinct coalitions of UPRONA and the Tutsi parties (the G10) and FRODEBU and Hutu groups (the G7) (Daley 2007b; Vandeginste 2009a, 2011). The agreement dictated highly specific terms for balancing ethnicities within state institutions. For example, it stipulated that not more than 50 percent of the national defence would be drawn from one ethnic group and that political parties must be multi-ethnic. The agreement established a three-year transitional period divided into two shorter periods of 18 months. A new constitution would be drafted and passed before a National Assembly and its Senate, which also would have equitable representation of Tutsi and Hutu. In April 2003, Buyoya, the first Arusha-appointed transitional president was replaced by the second, Domitien Ndayiseye, of FRODEBU.

⁵⁰ The agreement is over 60 pages long and there were 19 signatories: The Government of the Republic of Burundi; The National Assembly; The Alliance Burundo-Africaine pour le Salut (ABASA); The Alliance Nationale pour le Droit et le Développement (ANADDE); The Alliance des Vaillants (AV-INTWARI); The Conseil National pour la Défense de la Démocratie (CNDD); The Front pour la Démocratie au Burundi (FRODEBU); The Front pour la Libération Nationale (FROLINA); The Parti Socialiste et Panafricaniste (INKINZO); The Parti pour la Libération du Peuple Hutu (PALIPEHUTU); The Parti pour le Redressement National (PARENA); The Parti Indépendant des Travailleurs (PIT); The Parti Libéral (PL); The Parti du Peuple (PP); The Parti pour la Réconciliation du Peuple (PRP); The Parti Social-Démocrate (PSD); The Ralliement pour la Démocratie et le Développement Economique et Social (RADDES); The Rassemblement du Peuple Burundais (RPB); and The Union pour le Progrès National (UPRONA).

Final settlements

The main criticism of the Arusha agreement is that it did not include the main rebel groups. The political signatories of the August 2000 agreement could not represent Palipehutu-FNL and CNDD-FDD. Daley (2007a, 2007b) and many others agree that ensuing negotiations with these rebel groups were complex.

CNDD-FDD's negotiations

Having foregone settlement in 2000, the rebellion of CNDD-FDD under Nkurunziza continued to project increasing strength on the battlefield while developing wider relations with regional actors and enhancing its negotiation skills. For example, from July 2002, the South African government and partners provided specialised conflict resolution training for CNDD-FDD members (Buyoya 2011, 100). The fragmentation and internal power struggles of CNDD-FDD had undermined the group's capacity to maintain a coherent platform and to formulate its "goals and ideology, which had evolved over the years" (Nindorera 2012, 20). The group also implemented a military campaign and "heightened violence on the field in order to demonstrate that it was a prominent partners in the restoration of peace" (Buyoya 2011, 102).

Meanwhile, international actors also applied pressure for the group to sign and then respect cease-fires and the Arusha process. While the CNDD-FDD could not simply append its signature to the 2000 agreement, it sought opportunities to address its own lingering issues with the transitional government. After several aborted ceasefires, the CNDD-FDD subsequently concluded further partial agreements with the government, culminating in the Global Ceasefire agreement between Transitional Government and CNDD-FDD of Pierre Nkurunziza on 16 November 2003.

The settlement of November 2003 covers all the main areas of agreement from previous accords ("Global Ceasefire Agreement between the Transitional Government of Burundi and the National Council for the Defence of the Democracy-Forces for the Defence of Democracy (CNDD-FDD)" 2003). The CNDD-FDD negotiated entitlements to 40 percent of Burundi National Defence Force (NDF) officer corps positions; 35 percent of the national police force positions; four ministerial posts, including a ministry of state; leadership of 20 percent of the state's public enterprises; 2 ambassadorships; and explicit temporary immunity. Importantly, the 2003 agreement was framed as a last chance for gaining political concessions. Indeed, CNDD-FDD saw the 2003 settlement as its final opportunity to leverage its own interests and priorities for Burundi's future. This framing, would however, result in significant difficulties for future negotiations with

Palipehutu-FNL and undermine the legitimacy of the Arusha process (Eck 2007; Southall 2006).

A key step in the 2003 settlement was an integration process, which involved assembling rebel armies at cantonment sites and merging them with the existing FAB into integrated units. Between 2004 and 2005, approximately 7,000 CNDD-FDD combatants were integrated with 40,000 government army soldiers. Beginning in late 2005, a rationalization stage focused on training and mixing of former national army and an additional 10,000 former rebels. This stage sought also to reduce the number of military and police personnel to roughly 25,000 and 20,000, respectively (Samii 2013, 561).

2005 elections

The Arusha Peace and Reconciliation Agreement placed elections as the final act of alteration from military dictatorship and war to peace and competitive democracy. The transition would “culminate upon the election of the new President. The presidential election shall take place after the first democratic election of the National Assembly. Both elections shall take place within 30 months of the commencement of the transition period” (Arusha Peace and Reconciliation Agreement, 2000: Prot. II, Ch.1, Art.13, para 2: 40). However, since important rebel actors had not signed onto the Arusha agreement, it took approximately 5 years to elect a new president. Burundi held a constitutional referendum on 28 February 2005, followed by a string of elections: municipal (3 June), parliamentary (4 July), indirect Senate (29 July) and indirect presidential (19 August) (Lemarchand, 2006). With CNDD-FDD claiming the majority, Nkurunziza was elected president.

The difficulties of securing peace with Palipehutu-FNL

Nevertheless, Palipehutu-FNL continued its military campaign and persisted to persecute a civil war against the (now CNDD-FDD dominated) government. At first, Agathon Rwaswa easily resisted various pressures to negotiate. The rebel movement continued to follow a hard-line interpretation of the causes of the civil war and maintained that Burundi should be governed by the Hutu majority. This branded the group as mono-ethnic. Furthermore, Palipehutu-FNL was declared a terrorist organisation by the Great Lakes Regional Peace Initiative in 2004 and was alleged to have assassinated Monsignor Courtney, the Apostolic Nuncio, in December 2003 (UNSG 2005,

10).⁵¹ Yet, it continued to insist on maintaining a political agenda of Hutu majoritarian rule and that ethnic balancing was absurd and unfeasible.

Yet, the overwhelming victory of CNDD-FDD in the 2005 election and its subsequent consolidation of power over the functions of the state fundamentally changed the entire political landscape of Burundi. Rwasa's FNL did not expect its main rival to attain and sustain such a victory (ICG 2007, 2).

After the 2005 elections, the CNDD-FDD government originally sought to negotiate with the last remaining rebels. At the same time, observers presume that Palipehutu-FNL calculated that the new government might not last. Although only 2,000 – 3,000 strong, it was still supported by many Burundians in the western provinces as well as in the recruiting grounds of Tanzania's refugee camps. Many of its supporters were descendants of 1972 refugees.

After elections, CNDD-FDD offered negotiations to Palipehutu-FNL. Without a favourable response from the rebels, the new government immediately pursued other options. On 5 October 2005 Nkurunziza gave FNL "three weeks to either lay down its arms voluntarily or be forced to do so" (ICG 2007, 2). After three weeks, the National Intelligence Service and national police arrested FNL affiliates and Nkurunziza "instructed the defence and security forces to render the FNL harmless in under two months" (ICG 2007, 3). The new government also urged the international community to place the FNL under sanctions and as a negative force.

The combination of international pressure and local repression weakened Palipehutu-FNL. It signed the Comprehensive Ceasefire Agreement between the Government of Burundi and the Palipehutu-FNL on 7 September 2006. Contrary to stated limits set by the South African facilitators, the agreement addressed some key substantive issues. It added the word "forgiveness" in the name of the official TRC established under the Arusha agreement of 2000. It also provided Palipehutu-FNL with provisional immunity and the right to register as a political party. Importantly, it explicitly denounced institutional discrimination against repatriated populations (a major source of support to the FNL).

Return to conflict, renewed settlement and uneasy peace

The 2006 settlement held for the rest of the year, and for 2007, but was broken in 2008. The government had taken over three months to grant FNL combatants temporary immunity after the 2006 ceasefire agreement (J. van Eck 2007, 114). The South African facilitator had undertaken to the FNL

⁵¹ The Palipehutu-FNL's leadership denied this accusation (IRIN News Service 2003).

that additional issues which had not been addressed prior to the cease-fire would be negotiated, and they were not. The CNDD-FDD led government stripped Domitien Ndayise a former president and leader of FRODEBU, of his temporary immunity and jailed him on accusations of coup-plotting. These events cast doubts on the good faith of the government. Finally, many civilians were accused by CNDD-FDD members and security agents of being FNL sympathisers. These people were harassed, arbitrary jailed and in some instances tortured and killed (van Eck, 2007). It is possible that, as van Eck argues, Palipehutu-FNL doubted the guarantees of political positions and immunity from the government, but it is also likely that Rwaswa and other FNL leaders still hoped that the repatriation of refugees and other factors would grant them greater leverage once they put down arms.

In December 2008 the regional community made another push for a negotiated settlement. The resulting declaration for peace, signed on 4 December at a regional Great Lakes Summit, is the final peace agreement in the long civil war in Burundi (“Declaration from the Summit of the Heads of State and Governments of the Regional Initiative for a Negotiated Peace in Burundi” 2008). The agreement covered a few key issues: that Palipehutu-FNL would change its name in order to become a political party, which would not be based on ethnic affinity; that the disarmament, demobilization and reintegration (DDR) process would proceed swiftly and not subordinated to further conditions; that FNL would have 33 posts as part of political integration; and that political prisoners will be freed and the combatants reassembled.

However, in the period before elections in 2010, dissidents, opponents and in particular, FNL supporters were targeted for harassment. Allegedly, 17 FNL supporters were murdered by state agents or CNDD-FDD affiliates (IRIN News Service 2010). Thirteen opposition groups, including the FNL, boycotted the elections. CNDD-FDD won by a landslide. Pierre Nkurunziza was the only presidential candidate.

Settlement terms

A major aspect of the Arusha process and Burundi’s post-settlement status were issues about the transition from war-to-peace. This section focuses on some of the core issues negotiated in the Arusha peace process. I focus on the issues of disarmament, demobilization and reintegration; truth, justice and reconciliation; and amnesty. The section also presents how some of these issues evolved following the signing of the 2000 peace agreement.

DDR

The settlement terms of the 2000 agreement specified conditions for demobilization, disarmament and reintegration (DDR) in Protocol V of the Arusha

agreement. The DDR program did not begin until December 2004 (Boshoff 2006), although it would continue for many years and include all the rebel movements. According to Boshoff, the objective was to disarm nearly 80,000 combatants, 45,000 from the government side and 35,000 from the non-state actors, although it would become evident that the program would be “unable to demobilise 35,000 combatants” (Boshoff 2006, 142). The process of DDR was financed through multilateral donor aid. The World Bank committed an estimated 33 USD million; a Multi-Country Demobilization and Reintegration Program (MDRP) involving 30 donors and international agencies partnered with the Bank to spend 36 USD million to the overall process approximately and 5.1 USD million for the demobilization of child soldiers and another; UNICEF making available an estimated 3.6 USD million; and bilateral governments contributing another estimated 6 USD million (Boshoff 2006, 142 and 148–49). The MDRP reports that the programs it was responsible for used a total of 76 USD million, inclusive of the UNICEF funds for child soldiers. The program closed on 31 December 2008.

The DDR program provided demobilization allowances to combatants based on rank, with approximately 500 USD paid to low level combatants and 3000 USD generals (Daley 2007a, 277). Boshoff (2006) reports however that the demobilised ex-combatants were paid 180 USD and about one year’s salary, and that over 1.7 USD million was paid to ex-combatants who were returning to civilian life. Qualifying candidates for DDR would have to prove membership in the government military, the paramilitary Guardians of Peace (state), or the rebel movements which signed the peace agreement and subsequent ceasefire. The other parties would not have access to demobilization and reintegration until they agreed to peace. Armed groups were motivated to inflate their numbers in advance of DDR; and some individuals rushed to cantonment sites to join rebel groups in order to access the financial opportunity (Daley 2007a, 226–227).

Truth, justice and reconciliation

Stipulations for an International Judicial Commission of Inquiry and National Truth and Reconciliation Commission were formulated in Protocol II of the 2000 Arusha accord. Signatories seemed to welcome these transitional justice mechanisms, with each group of political actors preferring accountability for different periods of Burundi’s history of mass atrocities. They did however all agree that “acts of genocide, war crimes and other crimes against humanity have been perpetrated since independence against Tutsi and Hutu ethnic communities in Burundi” (“Arusha Peace and Reconciliation Agreement for Burundi” 2000, Prot I, Ch I, Art.3). The elemental acceptance that serious crimes had been committed against civilian

Hutus in 1972 and Tutsis in 1993 was a fundamental part of the Arusha negotiation process and a significant concession on the part of all parties.

In order to activate the transitional justice arrangements, a number of steps would have to be taken. The transitional government would need to invite a UN commission to assess the procedures for creating a national judicial commission. The country's National Assembly would need to enact legislation to create the truth and reconciliation commission. The eventual implementation of both institutions would require sustained political support from the Burundi government. Some of these steps were carried out. The UN received a request for establishing a judicial commission from the government in July 2004, and an assessment mission provided a report to the UN Security Council in March 2005. However, there was an obvious delay in generating a proposal for judicial enquiry into crimes of the past. This signalled various actors' preferences for prioritizing security and stability issues (Vandeginste 2011, 196). The transitional government favoured awaiting the conclusion of the settlement process with the CNDD-FDD and Palipehutu-FNL (Buyoya 2011). Meanwhile, the National Assembly passed Law 1/021 on December 2004 which promulgated the establishment of a National Truth and Reconciliation Commission (TRC).

Despite these steps, transitional justice in post-settlement Burundi has never been implemented (Vandeginste 2009b, 2011). At first, a central problem was the absence of all the rebel parties in the Arusha accord dispensation. After elections in 2005, however, it appeared that the ruling CNDD-FDD should have proceeded to negotiate terms for the national judicial commission. The UN's 2005 report posed some difficulties, for contrary to the government it recommended creating a special tribunal and providing a prosecutor with autonomous powers to pursue crimes which it identified, even if those cases had already been subject to the truth and reconciliation commission (Vandeginste 2011). The government preferred to make any further investigation and judicial process contingent on the findings of the TRC. It was not until 2009 that a national consultation process was organised, to gather public views about the mandate, objectives and functions of the National Truth and Reconciliation Commission. A report on the outcome of the national consultations was submitted to the government in 2009 and released in December of that year. By 2013 it was clear that the government also wanted to foreclose the option of a Special Tribunal, that it sought to maintain the possibility of amnesties and provisional immunities, even for serious crimes; and that a TRC would not be mandated to refer cases to a special independent prosecutor (AI 2013).

After much civil society pressure and lengthy delays, the ruling CNDD-FDD pushed through national legislation in April 2014 to establish a Peace (not Truth) and Reconciliation Commission. Controversially, the vote was boycotted by the opposition (IRIN News Service 2014). The CNDD-FDD,

particularly President Pierre Nkurunziza, are designated the authorities for appointing the commissioners for the new body. Civil society and opposition groups argue that the new commission ignores important recommendations from civil society, from the outcome of the national consultation and from the international community (IRIN News Service 2014).

According to the Arusha agreement, identifying acts of genocide, crimes against humanity and war crimes is dependent on the special tribunal and a TRC instrument. Without either of these in place, there have been no legal grounds for addressing serious crimes which may have been committed by any of the governments or rebel armies of Burundi. This is particularly critical since amnesty and provisional immunity were considered to exclude such crimes. As long as those crimes are not identified, all conflict parties continue to be free from liability or exemption from conviction or sentencing.

Amnesty

As noted above, the 2000 Arusha accord granted conditional amnesty and temporary immunity for combatants. The transitional National Assembly was mandated to pass legislation for a framework granting amnesty, although it would have to be consistent with international law. Acts of genocide, crimes against humanity or war crimes were not eligible for amnesty or immunity. However since other processes of justice and truth-seeking would have to be put in place to identify these crimes, those responsible for these serious crimes have enjoyed *de facto* blanket amnesty. Subsequent settlement agreements in 2003 between the government and CNDD-FDD and between the CNDD-FDD government and Palipehutu-FNL in 2006 reaffirmed the Arusha principles, including particular language to address the amnesty-related issues. The 2003 agreement provides the CNDD-FDD and government with temporary immunity and establishes a joint commission to study individual cases of civilians in prison who may be eligible for immunity (“Global Ceasefire Agreement between the Transitional Government of Burundi and the National Council for the Defence of the Democracy-Forces for the Defence of Democracy (CNDD-FDD)” 2003). In 2006, Palipehutu-FNL was also granted provisional immunity and the release of political prisoners and prisoners of war was highlighted in their agreement with the government (“Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and Palipehutu-FNL” 2006).

On 8 May 2003 the National Assembly passed national legislation that solidified the amnesty provisions created by the Arusha agreement. The new law prohibited prosecution of international crimes committed before May 2003. Three further temporal immunities were passed by the legislative body in 2002, 2003 and 2006 (Vandeginste 2011, 204).

Sexual violence

The final part of this chapter discusses sexual violence. Its aim is to provide information about the broader social context in relation to these crimes and their formal, legal criminalization. Although rape has been punishable, other evidence suggests that perpetrators were not regularly tried and convicted in the formal legal system. The section also introduces the limited information about the commission of sexual violence by the armed groups in this study.

Sexual violence in the broader context

References to sexual violence are found in the Arusha Peace and Reconciliation Agreement; in subsequent agreements between CNDD-FFDD and the government in 2002; and between the government and Palipehutu-FNL in 2006.⁵² However, although the Burundi penal code also denounced rape as punishable, sexual violence is not explicitly excluded in the clauses granting amnesty or immunity.

Burundi's 1981 penal code punished rape with imprisonment of 5 to 15 years (Government of Burundi 1981) but it is not evident that there were many investigations, prosecutions and sentences served for rape before the new code was promulgated in 2009 (Author Interview 9, 2011; Author Interview 17, 2013).⁵³ The 1981 penal code framed rape as part of a panoply of so-called indecent acts such as adultery. The sentence was proportional, culminating in a death sentence if the rape caused the death of the victim (GoB 1981, Art.386).

Within the broader social context, forced marriage appeared prominent before the war (Seckinelgin, Bigirumwami, and Morris 2011; Skloot 2009). Victims were stigmatised for reporting sexual violence (Author Interview 10, 2011). Gender relations were not equal, with women and girls discriminated against in most spheres of political, social and economic life (Daley 2007a). This context is relevant for interpreting the overall pre-conflict treatment of sexual violence.

Despite reports that there is no word for rape in the Kirundi language (Skloot 2009, 21) there is a phrase for sexual violence in the Kirundi language. Sexual violence is "sexual activity carried out with the use of force" (G1-G19, 2011 and 2013). The term used in the Kirundi language was

⁵² References to sexual violence can be found in the Arusha Peace and Reconciliation Agreement (2000-08-28) Prot III, Ch I, Art 5 and Ch III, Art 25, Para 1c; in the CNDD-FDD ceasefire agreement (2002-12-02) Art II, 1.7 and Annex 1, para E, definitions, 1.2.6.; and in the Palipehutu-FNL Comprehensive ceasefire agreement (2006-09-07) Art 2, para 1.1.5 and Art 4.2

⁵³ A reform of the law against sexual violence is currently in the process of promulgation. The new code will address sexual violence as well as other forms of gender-based violence (Author Interview 9, 2011 and Author Interview 10, 2013).

gufata ku nguvu, meaning “to force sexual intercourse” or “penetration through rape” (G2 and G5, 2011; G9 and G13, 2013). Forced marriage is considered a common form of sexual violence (G1 and G5, 2011). Forced marriage proceeds as follows: usually, young men would rape a woman, or kidnap her and have sex with her. To them, such acts were common before the war, as there was no prohibition in the law. However, “beers would be given to the girl’s family, as a remedy” (G1, G5, 2011). The practice of paying for beer is a symbolic payment for having taken a female from another household. Other research in anthropology and feminist studies describes forced marriage as “culturally legitimate abductions” (Soucie 2011). Bride abduction or forced marriage has an economic dimension, in many cases reducing the cost for a dowry. The culture of forced marriage, as described by veterans of CNDD-FDD and FNL appears similar to *ukuthwala* in KwaZulu-Natal and the Eastern Cape of South Africa (Mwambene and Sloth-Nielsen 2014; Soucie 2011), or *ala kachuu* in Kyrgyzstan (Agadjanian and Nedoluzhko 2013; Pannier 2004).

Nevertheless, participants in the focus group in this study stressed that forced marriage caused harm to the girl and to her family. Its victims were forced to keep silent about incidents of rape associated with the abductions. A former FNL fighter explained that “...it was taboo to say one was raped and if it happened then the two families would arrange a solution; if elders heard reports they tried to stop talking about it” (G2:P2, 2011).

The levels of sexual violence in Burundi are generally observed to be high, although to my knowledge, exact longitudinal figures based on a baseline do not exist. In 2006, civil society groups reported 1,930 cases of sexual violence, an average of 37 victims a week. They argued that sexual violence had become rampant during the conflict and used deliberately by armed groups to “humiliate and terrorise the women and their communities” (ACAT and WOAT 2008). In 2013, the police’s national coordinating office for Women, Ethics and Welfare found that the majority of perpetrators of rape and domestic violence were ex-combatants of Burundi’s civil war (A17 Interview, 2013).

The 2009 penal code is considerably more specific and robust in criminalizing rape as a distinct crime. It uses similar language as international texts and rape is defined as a criminal act within the broader legal territory of sexual violence (GoB 2009). Its punitive sentencing is also proportional, but in greater detail than the 1981 law. Domestic violence is defined, and perpetrators are liable for eight days of jail and a small fine (2009, 554). Violent, coercive or penetrative rape is punishable with a sentence of 5 to 15 years of prison and a slightly higher fine (GoB 2009, Art.555). The law explicitly states that individuals cannot use their position within a hierarchy or command of a civil or military authority to absolve her or himself of responsibility for rape (Art.562)

Yet, in post-war Burundi, consistent punishment is not yet a new norm. Many individuals in this study could refer to new legislation that required perpetrators be tried and sent to prisons. However, many also acknowledged that “these crimes are being punished but not so many cases are being treated. Sexual violence [is] in daily life, sexual crimes are permitted because of poverty and the judiciary is corrupted” (G7, 2011).

The rebel groups and sexual violence

It is nearly impossible to obtain absolute proof about levels of sexual violence committed by CNDD-FDD and FNL during the civil war. However, through an examination of the sources used in Chapter 5, it is reasonable to assume that of the two, CNDD-FDD committed more sexual violence throughout the war and afterwards.

Following the same method used in the small-scale, aggregate exploration, I reviewed sexual violence events that were reported by international non-governmental sources such as Amnesty International and Human Rights Watch; newspapers and media agencies; and the US State Department from 1998 to 2011 for the government of Burundi, CNDD-FDD and Palipehutu-FNL. As noted in Chapter 4 and 5, this approach has its limits. Out of 56 reports from 1998 to 2011, only two events were attributed to FNL and three to CNDD-FDD in 2003 and 2004 respectively. Specific reports of sexual violence carried out by their members did not appear until 2003 (for Palipehutu-FNL) and 2004 (for CNDD-FDD). This does not mean that prior to 2003 these armed groups did not commit sexual violence. It seems unlikely that this could be possible.

However, the sources provide 25 different reports of sexual violence by government soldiers before 2003. This could mean that sexual violence was reported, but that for some reason, the rebels in the Burundi conflict were less widely known as perpetrators of sexual violence. Alternatively, until 2003, sexual violence by the rebel groups was under-reported by human rights advocates and news reporters, at least in the international sources available from that time.

Bearing in mind the significant limitation of these sources, this method for uncovering patterns in sexual violence by armed groups does point to something else. The CNDD-FDD concluded a partial agreement for war-termination and settlement with the transitional government of Burundi in November 2003 (the Global Ceasefire agreement on November 16). National assembly elections took place on 4 July 2005 and the presidential poll was held on 19 August 2005, with CNDD-FDD claiming the majority and Pierre Nkurunziza elected as president. From 2003 to 2004 (a transitional period and precursor to elections) sexual violence events for both armed groups

appear more frequently in the sources. And after CNDD-FDD's democratic ascension to power, between 2005 and 2011, reports of the Burundi government's sexual violence acts were more numerous than that of FNL. Since the two armed groups continued to be in conflict (despite a number of peace agreements) until 2008, this difference is arresting. The government was linked to 16 reports of events between 2005 and 2011 while FNL was attributed to three. Most strikingly, FNL was not associated with reports of sexual violence from 2004 to 2007.

Recall that at this point, CNDD-FDD would have been in control of the Burundi military and caught up in the challenges of demobilization and integration. At the same time, it would still be in conflict with FNL. This scenario might explain why there are so many reports for the government and CNDD-FDD. One such report from 2004 highlights government security forces as the perpetrators, including CNDD-FDD members. The report states that government and CNDD-FDD fighters attacked civilians and raped young girls, allegedly as a reprisal for suspected collaboration with Palipehutu-FNL (US State Department 2005, 3,4,6,7,14).

In 2005, the UN Mission in Burundi (UNOB) reported over 100 human rights abuses, including rape cases. It alleged that many of these acts took place in areas controlled by FNL, but Ismail Diallo, who was representing the UN High Commissioner for Human Rights, was reported to believe that many of the abuses in the area were not by rebels but by government or state military members (Agence France-Presse 2005). Reports for 2005 and 2006 described single rape incidences by government soldiers and in 2007 an army soldier raped a minor (US State Department 2007, 1,2,6,7,14). But by 2007 there were some instances of prosecution and sentencing of state agents (US State Department 2008, 2). In October 2010 Burundi's police were accused of summarily executing FNL dissidents. In turn, the police authorities alleged that the killings took place in the midst of a pitched battle to take by force the FNL dissidents who were committing politically motivated looting, killing and rape of civilian (Agence France-Presse 2010).

Again, one can question the quality of the sources and how consistent and credible they are. The reports on Burundi illustrate the murkiness and laxity of rape accusations in conflict settings. Actors on opposing sides may blame human rights violence on one another. Representatives of international organisations and other observers may not have the resources, skills or authority to investigate crimes. Finally, armed group members may not always be easily identifiable by their affiliation to one or another armed group. This translates to uncertainty about the precise levels of sexual violence by armed actors.

Nonetheless, the foregoing reports show a striking tendency. The biases and inconsistencies in these reports cannot explain all of the differences in reported levels of sexual violence between CNDD-FDD as a rebel group or

as a government actor on one hand, and Palipehutu-FNL on the other. The lower numbers of reports of FNL commissions of sexual violence indicate that this group was less likely to commit rape against civilians. Moreover, there is no evidence that Palipehutu-FNL used sexual violence in its more infamous assaults on civilians, such as the August 2004 attack on a refugee transit centre in Gatumba (in Bujumbura Rural Province). The FNL is also operating in Uvira, South Kivu, DRC, and its fighters have not been reported to commit sexual violence as part of their operations (Correspondence Van Acker, 2014).

This chapter has provided an eclectic overview of the civil war in Burundi, the key aspects of the settlement process and finally, the overall response to sexual violence and the commission of these acts by the rebels in this study. The above has highlighted the history of violence in Burundi and the presence of the question of ethnicity in fuelling mass violence. The legacy of ethnic radicalization has been a continued emphasis on power-sharing and ethnic equilibrium. The rebel groups in this study have fared differently over the course of Burundi's civil war. One actor, CNDD-FDD, has emerged the ruling party of the country. The other, FNL, remains on the sidelines and in an uneasy peace with the government. In the next chapters, the study focuses on the empirical material about armed group impunity for sexual violence.

7. The Rebels: CNDD-FDD and Impunity for Sexual Violence

This chapter is the within-case analysis of CNDD-FDD. It provides a detailed account of the results of the focus group of ex-combatants in Burundi. In the previous chapter, I described briefly some important aspects of Burundi's civil war, CNDD-FDD's engagement in the conflict and the events leading to its becoming the ruling party of the country. This chapter takes up this narrative by beginning with a short discussion of the rebel organisation and a brief introduction to the participants in the focus groups who had served in CNDD-FDD. Thereafter, the main analysis entails a presentation of findings for the dependent variable, armed group impunity for sexual violence and the three explanatory factors, or independent variables: flawed prohibitions, negligent authorities and amnesties. These findings are offered in the form of focus group responses. Subsequently, I conduct the within-case analysis, exploring the relationships between the independent variables and the dependent variable. This chapter is a foundation for the cross-case comparison of CNDD-FDD and Palipehutu-FNL, which is carried out in chapter 9.

CNDD-FDD

As a result of the October 1993 coup and assassination of President Ndadaye, Hutu intellectuals, students, workers, military trainees and refugees began to systematically mobilise and organise an armed struggle against the Tutsi oligarchy. Ndadaye's party, FRODEBU was the antecedent of a multi-ethnic, pro-democratic tendency responding to Burundi's decades of minority rule and military dictatorship. This strand of Hutu opposition was influenced and in part, channelled through, refugee organisations such as the Party of Burundi Labourers (Lemarchand 1994).

Nindorera (2012, 13) explains that FRODEBU party members had also been part of a historical movement in pursuit of an inclusive, multi-ethnic democracy. They then became part of the first democratically elected government. The October 1993 military coup included a hunt for, and harassment of these individuals associated with FRODEBU and the remaining

Hutu opposition. On 24 September 1994, Léonard Nyangoma led this loose coalition of fugitive democrats in the founding of the National Council for the Defence of Democracy (CNDD). Almost immediately, the organisation established an armed wing, the Forces for the Defence of Democracy (FDD) and launched an armed rebellion.

There would be many changes to come for the organisation, the most important of which would be the split with Nyangoma in May 1998 and Pierre Nkurunziza's take-over of leadership from Jean-Bosco Ndayikengurukiye in October 2001 (HRW 2003a). Marginally, each split also affected, at least temporarily, the numbers in the group. I consider that Nyangoma kept a small unarmed faction of men under the banner of CNDD when he signed the 2000 Arusha Peace and Reconciliation Agreement. Civil society groups noted that the minority wing of Ndayikengurukiye maintained approximately 100 men when he signed the Ceasefire Agreement between the Transitional Government of Burundi and Armed Political Parties and Movements in October 2002 (HRW 2003a; Lemarchand 1994). Importantly, the overall dominance of Hussein Rujabur, a Muslim from southern Burundi, former agricultural assistant and community organiser would be critical to keeping the larger body of fighters and supporters together (Lemarchand 2006). A strongman and astute and effective mobiliser, as Secretary-General, from 2001 Rujabur supported Nkurunziza and helped him to consolidate the organisation's political oversight over its military component (Lemarchand 2006, 20; Nindorera 2012).

Thus, CNDD-FDD continuously evolved while purging itself through internal divisions, splintering and struggling to develop and maintain a coherent vision (Dilworth 2006, 1). The history of the movement suggests that under the leadership of Jean-Bosco Ndayikengurukiye, the group would no longer be satisfied with simply opposing the Tutsi military oligarchy of Burundi. CNDD-FDD demanded reform of the national army and a return to governance that was in conformity with the election results of June 1993 (Dilworth 2006; Nindorera 2012). Despite this position, Ndayikengurukiye signed the 2000 Arusha Peace and Reconciliation Agreement and Ndayikengurukiye followed his predecessor by agreeing to a 2002 settlement. The Arusha accord did not return the country to the 1993 electoral outcome. Instead, it and subsequent agreements involved a formula for sharing positions in the state's institutions, first through ethnic equilibrium and then through power-sharing by distributing positions and places in the government and military to members of the rebel organisation. Nkurunziza's own agreement with the transitional government in 2003 also pivoted on the idea of power-sharing (Curtis 2012; Daley 2007a, 2007b; Vandeginste 2009a). Indeed, the final agreement with the CNDD-FDD required new rationalization of the military and police; and the reshuffling and creation of government posts. In each stage of power-sharing, the distribution of positions had to avoid undermin-

ing the ethnic equilibrium. It would therefore be of particular importance that any Hutu armed group become more ethnically diverse as time went by (Vandeginste 2009a, 72). This was of benefit to CNDD-FDD which from the outset was multi-ethnic, and became more so over time. Based on these subsequent agreements, I believe that although CNDD demands may never have receded entirely, they became less tied to the results of the 1993 elections and more accommodating of other formulas for change.

The armed group relied on support from a range of sources (Dilworth 2006) from taxing the Burundi population in areas it controlled and support from exiled and refugee groups, to cooperation with governments in Kinshasa and Dar es Salaam. Under Nyangoma and Ndayikengurukiye arms, funds, travel documents and safety were provided by neighbouring countries. Presidents Mobutu, Kabila Sr. and Kabila Jr. exchanged support for CNDD-FDD's involvement in fighting on their behalf inside the DRC (Nindorera 2012). Nindorera (2012, 15) reports that Nyangoma was viewed as corrupt by many inside his organisation as he seemed to support other CNDD-FDD members based on regional affiliation and patronage. But he was also able to galvanise recruitment from within the country and in refugee camps in Tanzania; and to develop a system of taxing the peasantry inside Burundi and securing resources of those in exile (Nindorera 2012). Some of these efforts were realised through the use of force, intimidation and attacks on the population. It is telling then, that Ndayikengurukiye's period of leadership, from 1998 to 2001, was a time of consolidation of these practices. While Ndayikengurukiye was mainly based in the DRC, in this period, CNDD-FDD established parallel policing and local administrations inside Burundi; launched and sustained its guerrilla-scouts contingent; developed a way to secure more financial support from the Hutu diaspora; engaged in systematic ransoming of vehicles; carried out forced recruitment through abductions and diverted humanitarian support, including food, from refugees (A19, Interview, 2013). These practices were, however, arranged within an organisation struck by divisions. Nindorera found that there were ethnic, religion, regional and class divisions, with these differences causing (2012, 16) tensions about how to organise and which aims to pursue. Importantly, he also notes that members of the movement who had been part of the Burundi armed forces or held military backgrounds disagreed with more "informally trained fighters" about the importance of a military hierarchy and methods for discipline (Nindorera 2012, 16).

Nonetheless, described as "all-powerful" by Lemarchand (2006, 10), it is likely that Radjabu's continued control of the CNDD-FDD after the break with Ndayikengurukiye allowed a measure of incremental change mixed with continuity in terms of political ideology, military tactics and organisational behaviour. For example, Dilworth (2006) underscores that the practice of recruitment of child soldiers was prominent under Ndayikengurukiye but

that forcible recruitment of children through abductions in schools continued under Nkurunziza from 2001. Moreover, In 2003 FDD rebels were known for abducting local administrators “to demonstrate that government officials could not or would not protect the people of a given area” (HRW 2003a, 33). The group was reported to forcibly recruit young men in the area of Bujumbura that same year (HRW 2003a, 34).

At the same time, under Radjabu and Nkurunziza, CNDD-FDD cultivated structures for transmitting its *raison d’être* more widely among the rank-and-file and securing material and resources from the Burundian population, particularly in the rural areas (Dilworth 2006, 4). The organisation imposed its taxation policy, convened trials at the local level and carried out efforts to socialise its cause through information sharing. While some of these activities would be considered propaganda, a number of them were coercive and violent. The CNDD-FDD also modelled itself on a military structure. Probably this was as a result of the fact that some of its members were former military trainees, as noted earlier. Dilworth’s interviews with CNDD-FDD insiders revealed that the group claimed to punish its members for human rights violations against the civilian population and to have installed military discipline (Dilworth 2006, 4). She also states that Ndayikengurukiye was a former member of the national army (2006, 4). Nindorera (2012) notes that “under Ndayikengurukiye” the internal organisation of the CNDD-FDD was made up of an:

office of the general coordinator; a political bureau with five committees (political and ideological, diplomatic, legal affairs, defence and security, economy and finance); the executive secretariat with six commissioners (organisation of the masses, foreign relations, ideological training, fund-raising, financial management, social affairs, information and communication); the high command organised on the basis of the Burundi army general staff; and the war council” (2012, 17).

It is also important to note that the organisation had a women’s league, although there were no women represented on its high command, although less than 5 percent of the CNDD-FDD was made up of women (Nindorera 2012, 16). It is reasonable to presume that the combination of propaganda and the threat and use of force, organised through these CNDD-FDD structures, and influenced by outsiders in the international talks for the final settlement contributed to the adaptation of CNDD-FDD’s agenda into negotiable demands and ultimately, into a victory at municipal, parliamentary and presidential elections in 2005.

In terms of political and moral culture, Pierre Nkurunziza’s wife, Denise writes that he told her

...about the misadventures of a movement that still believed, until 1999, in fetishes, soothsayers and other witchcraft. Then one morning the leaders of the CNDD-FDD with Nkurunziza at its head sent an envoy to the priest of Mubimbi [45-50 km from the southeastern tip of Kibira National Park and 48 km from Bujumbura] ordering him to pay his contribution. The old priest took a Bible, gift-wrapped it, and sent it in return as his reply.

My husband decided right then to read the whole book (Bucumi-Nkurunziza 2013, 82–83).⁵⁴

Nkurunziza had been a university assistant lecturer at the University of Burundi, teaching at the Institute for Sports and Physical Education (IEPS) and captain of its football team at a time when there were only two Hutu teachers. It is unclear how Nkurunziza would have managed to lead a military institution that also housed a wide mix of religions, beliefs and cultural practices. In particular, although he was not always a strict born-again Christian, the tenets of the belief dictate that salvation from purgatory and sin can only be attained through submission to Jesus Christ. The value-system also prescribes sexual purity outside of marriage.

Known as the “unifier”, Nkurunziza’s leadership style was to stay close to his fighters and refrain from travelling away from the armed camps (Bucumi-Nkurunziza 2013; Nindorera 2012, 18). It is widely understood that he introduced new activities to CNDD-FDD in the form of sports, prayer and social dialogue. Under previous leadership, there had been a division between the movement’s political figures and military units, but from the end of 2001, under Nkurunziza, the CNDD-FDD’s political leaders became more important, with greater oversight of the military direction of the organisation (Nindorera 2012, 17–18). Finally, Nkurunziza was known to promote ideas of unity and a single Burundian identity, which would have assured the Tutsi members of the movement of their security and representation within CNDD-FDD.

Radjabu and Nkurunziza also began to court international credibility. Having refused to participate in the Arusha talks and to sign the 2000 agreement, CNDD-FDD members faced pressure and scrutiny from regional powers and civil society actors. This pressure would increase as time went on. As CNDD-FDD leadership became more active in negotiations, its prosecution of armed war with the government and then its rival, the Palipehutu-FNL would have to be carefully balanced. Thus, in my view, two tendencies of organizing the CNDD-FDD existed in parallel. The first was re-

⁵⁴ Nkurunziza is widely believed to be a Born-again Christian. Thus, the interpretation of how he came to accept this faith and how he perceived non-Christians inside CNDD-FDD should be reliable. However, whether or not the organisation was filled with soothsayers, fetishists and witchcraft is uncertain. Bucumi-Nkurunziza’s recollection of these details could be biased.

pressive, demanding resources and loyalty of the population and requiring the use of force to maintain the movement. The second, a softer approach aimed to build morale and establish institutional loyalty, appeal to the electorate and build credibility with international actors.

In terms of the CNDD-FDD's record of sexual violence, women are reported to have been raped in circumstances of forced labour during 2003, by either government forces or CNDD-FDD (HRW 2003a). Before effective demobilization in February 2004, members of the CNDD-FDD reportedly raped some young girls and women (US State Department 2005, 4). Amnesty International (AI) reported that combatants during 2003 raped hundreds of women, "often in looting operations" and that "numerous women and girls have been abducted and held hostage in return for relatively large ransoms" (AI 2004, 10). CNDD-FDD was active in the ongoing conflict against Palipehutu-FNL in Bujumbura Rural during 2004 and together with FAB, killed civilians, looted and raped women, thus carrying out serious human rights crimes (US State Department 2005). Despite testimony to AI representatives that CNDD-FDD punished rape with execution, the rebel organisation had never publically admitted or punished any of its members. Thus, in 2004 it seemed that accountability was "the exception rather than the rule" (AI 2004, 9).

The CNDD-FDD was made up of between 8,000 and 12,000 armed soldiers (Nindorera, 2012:15). The majority of fighters were male, with a small number of women combatants. Nindorera's research finds that women were less than 5 percent of the armed group, and that they were not represented on the CNDD-FDD high command (2012:16). I have not found any reliable estimation of how many members existed at any one time. However, Nkurunziza claimed that 13,000 CNDD-FDD combatants were killed (or died of natural causes) during the entire civil war (Nindorera 2012, 21). It is possible then that the group was much larger than 12,000 or that it was able to recruit actively and aggressively in order to maintain its numbers.

In this study, 32 participants had been fighters in CNDD-FDD between 1993 and 2006. Of these, 31 percent (10 out of 32) were women and 69 percent (22 out of 32) were male. Importantly, four of the women from CNDD-FDD left the group to join Palipehutu-FNL and demobilised in 2008. Most of the ex-combatants from CNDD-FDD had served under Nkurunziza. Based on the date of demobilization or exit from CNDD-FDD into FNL, 84 percent (27 out of 32) of the CNDD-FDD members were with Nkurunziza; 16 percent (5 out of 32) had been in the group when Ndayikengurukiye was the leader; and none were under Nyangoma.

Armed group impunity for sexual violence

Armed group impunity for sexual violence is defined in this study as confidence in the absence of negative consequences for sexual violence. The key indicator questions posed to the cases are: Do members believe their armed group is capable and willing to mete out consequences for sexual violence? Do members of an armed group view cohort perpetrators of sexual violence negatively? In order to answer these questions, I turned to the data from the focus groups.

Ex-CNDD-FDD members assumed that their organisation could punish perpetrators of sexual violence but they believed that accountability was not an organisational priority. They claimed that punishment was possible, since the CNDD-FDD used laws to control its members (G11, 2013). And yet, they assumed that the consequences for sexual violence in wartime and in peacetime would not always be negative. During war, other circumstances precluded harsh consequences. In the post-settlement era, corruption would protect perpetrators from going to prison. They espoused criteria for the likelihood of punishment, for example “if you raped a child” (G16, 2013: P4). Thus, while they thought that CNDD-FDD would be capable of implementing a penalty, it was possible to beat the system. The current weakness of the judicial system and the political situation, with CNDD-FDD’s dominance in government would furthermore reduce the chances for a rapist to be caught and punished. Overwhelmingly, they did not share a sense of mutual accountability. They could not recollect any peer-to-peer negative response to rape during the war. There were no clear differences between the responses from female ex-combatants and male former fighters.

Importantly, the CNDD-FDD groups conveyed different versions of how sexual violence was addressed during the war. As is shown below, their descriptions of prohibitions and punishment practices were multifarious. With regard to sexual violence, in general, these members characterised wartime rape as furtive, opportunistic and sometimes, unavoidable. In combat operations, for example, a fighter could end up in skirmishes, fighting, securing supplies or reconnaissance on his own, thus creating an opportunity to commit sexual violence (G4, 2011). They noted that the commission of rape was a distraction from operations in wartime. And yet, a female lieutenant, who left CNDD-FDD to join FNL, emphasised that sexual violence happened often in the group, particularly during attacks (G3, 2011). When discussing rape in peacetime before the war, one respondent explained that although forced marriage was harmful to its victims, “there were cases only of love, not rape” (G1, 2001: P1).

This observation captures a familiar viewpoint of many CNDD-FDD ex-combatants. While they acknowledged that sexual violence had been unlawful, the CNDD-FDD focus group discussants also expressed perspectives

that seemed to justify forced, non-consensual sex. They recognised that sexual violence created stigma, shame, illness and chaos in all sorts of ways. Still, they also found excuses for it, either evoking a romantic characterization of sexual violence, such as love; or justifying its commission due to the physical needs of men who are under great stress and isolated from their regular sexual partners.

Explanatory factors

The three explanatory factors, operationalised as independent variables, are explored below. Over the course of our structured discussions, CNDD-FDD ex-combatants addressed how the group treated sexual violence committed by its members and discussed the outcome of the negotiated settlement. The discussions were organised according to my research design, with specific questions posed by me to each focus group. Over the course of the discussions, I solicited viewpoints in order to answer the key indicator questions for flawed prohibitions, negligent authorities and amnesties.

Flawed prohibitions

Did CNDD-FDD have flawed prohibitions against sexual violence? The key indicator questions were: Did the armed group have a prohibition against sexual violence? Was it clear? Could members recall how the prohibition was described and disseminated? Was it written down? Did it have depth and constancy? Were there members who did not remember the prohibition? Did members know the prohibition? Was the prohibition costly? Did the armed group change the prohibition within its units or in particular times and circumstances? Did armed group members think it applied to leaders as well as foot soldiers? The overall results to these questions fell into four categories, namely: clarity, costliness, depth and constancy.

Clarity

Despite a wide range of responses from CNDD-FDD's ex-combatants, the focus group results show that the armed rebellion did not have a clear instrument for prohibiting sexual violence. Repeatedly, respondents would explain that sexual violence was banned, but rarely could they elucidate the conditions of this prohibition consistently across focus groups of various compositions. Indeed, they often provided contradictory descriptions of the penalty for sexual violence. More instructive, the ex-combatants reported that there was no written code of conduct which addressed these issues. They did not present any systematic information about the investigation and prosecution of sexual violence perpetrators. When they noted that sexual vio-

lence was prohibited through an instrument of the armed organisation, they described the instrument differently:

You went into [jail] which was a trench (G16, 2013).

No [there was no code].... (G19, 2013).

There was no written rule, it was elaborated according to the culture. It was *gufata konguvu* [forced sex] (G16, 2013).

No, but it was a rule of leadership, they had to consider every lady like their children. You were punished if you were caught (G15, 2013).

The code was verbal, and punishment was not that often, so many soldiers still did it. (G11, 2013).

Sexual violence happened in CNDD-FDD, there were no strict laws against sexual violence (G7, 2011: P2).

Several features of these statements should be noted. The respondents were able to articulate a view that sexual violence was wrong, some even iterating a perception that it was unlawful or at least, could be considered a violation. These respondents moreover contended that sexual violence was punishable within CNDD-FDD. However, the difficulty with confirming the prohibitive functions of the group's instrument is that there are very few comments from the focus groups which suggest that a clear code or sanction existed. In some instances, respondents made the claim that sexual violence was prohibited, with the penalty of death or execution. In other examples, they remarked that punishment was limited to detention, beating or some other deprivation. Some individuals viewed sexual violence as an inevitable by-product of war-time or the primitive desires of men with guns, with statements such as, "when in the bush, men are like animals" (G19, 2003). They asserted that such impulses were held in check through the benevolence of their leaders, and not through a written code of conduct. Respondents who had served with CNDD-FDD could not agree that the group's prohibition was written down or codified in any manner. Finally, although several participants believed that sexual violence was a violation, they also attributed its illegality to the whims and preferences of their leaders. These views portray CNDD-FDD as having a flawed instrument to prohibit sexual violence.

Costliness

The insights provided by CNDD-FDD ex-combatants on the costs of sexual abuse augment the aforementioned conclusion about clarity. If sexual violence was prohibited, what was the stipulated cost? From the views provided by the focus groups, the stated penalty varied enough to make it difficult to gauge the value placed on punishment. In many circumstances, the penalty

was severe, although it was formulated as any of a combination of things. It could entail corporal punishment, deprivation, killing or detention. The statements, however, suggested that these penalties were severe since many respondents felt that physical beatings or starvation had a high cost, since they were painful and put one's life in danger. And yet, there was a tendency in the statements regarding these penalties that suggested that members of CNDD-FDD could not predict what the penalty would be. Among similar accounts, one particular explanation provided by a former combatant from Gitega:

Punishment depended on the mistake you had done, you could spend time in the trench, this was a punishment. It depended on the region you were in, and then you would make an agreement to the victim (woman) and if you were caught they made an investigation, if it is found you used her, you could be killed, if it was found that it was a genuine agreement between you and the victim you would be beaten or put in jail (trench, cave) held by ropes and/or the prisoner spent time in isolation [with limited food and water](G16, 2013: P1).

The ex-combatant who provided this explanation was a 31 year old who had left CNDD-FDD when he was 20, in 2001, having spent just one year in the war. However, this description does correspond to other views within the focus groups (including his own, G16) and to insights provided by other respondents from CNDD-FDD.

Moreover, the observation that the penalty was negotiable adds another dimension to this insight on the prohibitions for sexual violence. If this was the case, then members of CNDD-FDD could, to some extent, mitigate the costliness of the armed group's instruments for prohibiting sexual violence. At the minimum, they had an incentive for intervening to alter or influence the results of any investigations. Suspected perpetrators could use their power, leverage or resources to change testimony, forge marriage-like relationships with victims or influence their commander's judgment.

Contrary to the lengthy quotes provided here which may signal a deep knowledge of instruments, many respondents were unable to describe, consistently, the significant aspects of sexual violence prohibition. Although they presented insights about sexual violence events and varied applications of prohibitions, their views were diverse. This leads to the conclusion that CNDD-FDD had neither a consistent or costly instrument for sexual violence.

Depth

Despite the limits of the CNDD-FDD's prohibition of sexual violence, in relation to depth, the respondents in the focus groups provided a number of views which are useful and interesting. I wondered about the rules against

sexual violence, in units which recalled sexual violence events. Did these rules, as confusing as they seemed, also apply to commanders or higher-ranking soldiers? The ex-combatants responded to my questions with insights about the kinds of cases which would warrant punishment, for example that of child rape. Violence against civilians was known to be particularly bad, since the group relied on the local population for support. The status of the victim, for example if s/he was a child of a CNDD-FDD leader, would also lead to punishment.

Mainly however, ex-combatants agreed that the law against sexual violence was not applicable to commanders. One respondent pointed out that the rules did not apply to leaders:

Who will make a judgment against him? A chief was a chief, you must accept such rules. It was [also] very difficult because we were in the bush. If the civilians reported it, he [the perpetrator] could be beaten or killed, but this did not happen because we left the bush so rarely... (G19, 2013).

Typically, CNDD-FDD-only focus groups would posit that leaders were not as law-bound as their counterparts at the frontlines. Foot-soldiers, however, could be held accountable. Also, this statement echoes views that violations against civilians were taken more seriously than others.

Constancy

Recognizing that the CNDD-FDD instruments for prohibiting sexual violence were not clear, only sometimes costly and limited in depth, how did these instruments change over time? Did the CNDD-FDD evolve its approach to sexual violence? Former CNDD-FDD combatants contended that prohibitions became more definitive as the armed organisation got closer to conflict termination. First, during the period before 2002, respondents claimed that sexual violence was punished “rarely” (G19, 2013), and “not a lot of people were punished” (G16, 2013). However in the transitional stages after the 2003 ceasefire agreement with the government of Burundi, CNDD-FDD began to become more vigilant. Several respondents agreed that “...these rules came after the ceasefire. They came from the government and the rebel army”. (G19, 2013) Over the course of a long period of time, noted ex-combatants, the armed group began to directly address sexual violence. The instruments to prohibit conflict-related sexual seemed to grow more rigid after the war. Although the death penalty was never universally a consequence for sexual violence in the armed group, for some, “... the [CNDD-FDD] force became bigger and things became more disciplined. [And,] things were the most disciplined at demobilization” (G16, 2013).

For some respondents the reasons for these changes were linked to the way that they were living, their new role in the country and their location. CNDD-FDD ex-combatants explained to me that the demobilization period

was a period when they had little to do but to wait for the end of the war, and for their hoped-for new positions. In one instance, a respondent contended that:

[Sexual violence] happened more when we were not fighting. We were allowed to drink, but were forbidden to get drunk. There were changes, and more punishment and you could not move as much (G16, 2013).

This period of waiting appeared to coincide with some flux in rules and norms. Foot-soldiers argued that they had greater license, but they appeared to also face higher expectations of good conduct. Many respondents claimed vaguely that they were under 'military law'. One reason for this increased attention of good conduct, might be that CNDD-FDD was no longer the outsider rebel organisation, but was beginning to develop its own political machinery in order to contest political elections, one day. As one respondent put it,

CNDD-FDD had the job of protecting the population. The victims were some women and girl civilians. There was some punishment from the civilian population and some consensual relationships, but this was viewed as illicit by the chiefs who made the decisions (G16, 2013).

Thus, as CNDD-FDD grew more engaged in the post-settlement realities it became more self-conscious of its relationship with civilians. Indeed, a significant aspect of this self-consciousness comes through in the view that these respondents had about their role in protecting civilians from violence.

Negligent authorities

The focus group information on negligent authorities provides some answers about whether or not leaders implemented penalties for sexual violence. The key indicator questions for gathering evidence about this independent variable are as follows. *Were there internal differences between the likelihood of punishment for sexual violence? Did some commanders prefer not to punish perpetrators? Did armed group members fear their leaders' implementation of the punishment? Did members know of leaders who changed the punishment practice? Was there agreement within the leadership about punishment? Did some members enjoy special privileges which precluded their commanders' punishment?* The results are clustered into three categories of information: hierarchies of authority; minimizing enactment; and transformation of norms.

Hierarchies of authority

According to what some referred to as the military culture, authorities within CNDD-FDD were the only ones empowered to punish sexual violence. Mainly, “section commanders” were designated responsible for instituting punishment procedures (G11, 2013). Cases of sexual violence were expected to be addressed at a high rank and according to some respondents, by regional battalion leaders. Information which suggested that those responsible for punishing sexual violence included statements that:

Sergeants, chiefs made the decisions, but they moved the case up by a higher rank. It was not at the section level of leadership but at the regional battalion leader level [that a decision was taken]. A battalion was made up of 3-5 companies, and each of these was made up of 3 *pelotons* [platoon], and each *peloton* had 3 sections, and each section had a group *equipe* [team] (G15, 2013).

When there was a case, then you chief would report up the hierarchy, to the chief of section [who would report to the] chief of a platoon [who would report to the] chief of the company (G1, 2011).

The chiefs made the decisions. When a crime was committed the case could go up the chain of command. The chief could decide (G19, 2013).

In general all the CNDD-FDD focus groups confirmed that:

The battalion leader made the decision about punishment (G16, 2013).

If it is the case that battalion or even company leaders⁵⁵ determined the punishment for violations at the lowest team level, then sexual violence punishment originated at a distance from low-echelon followers. Not only were judgments implemented by the higher-ranks, it appears that decision-makers were not intimately involved with members of the infantry at these lower levels. This might be a positive aspect of the CNDD-FDD punishment process. Higher-ranked authority figures might have more objectivity if they were not directly responsible for the foot soldiers they punished. Alterna-

⁵⁵ The respondents of the focus groups in this study used different titles to describe rank-designated authorities and the units under these leaders. Whereas, a few individuals used military titles, many respondents employed the ubiquitous and catchall term ‘chief’. This can be illustrated by considering an example. Focus group 15, for example, took place in Gitega and was composed of men who had all served together. One individual integrated into the police services in 2004. Such individuals must have lived through the integration process, which was also an exercise in assessing and harmonizing the ranking systems of different armed organisations. It is worth noting here, that out of the overall pool of focus groups, more former CNDD-FDD respondents had undergone the post-settlement integration process. And so there were more instances where they used specific military titles to describe the rebel organisation’s authorities.

tively, it might be problematic, since the commanders who were responsible for punishment had to rely on fact finding and reporting up the chain of command. Judgment and punishment might take a long time.

Power-relations and the value-system of the organisation may have featured in creating social distance between perpetrators in the lower ranks, and adjudicators at senior levels. The CNDD-FDD ex-combatants described authority figures in a way that did not suggest they were comrades in a collective endeavour of communal armed struggle. Indeed, authorities were “people with high grades” who “were responsible for everything” (G7, 2011: P3). This suggested that there was some social distance, probably related to how commanders were ranked, their unquestioned authority and the reasons that the foot soldiers joined CNDD-FDD. Few CNDD-FDD affiliated individuals in this study asserted the political values of the organisation. They did not describe an organisation that had a popular movement identity, with particular social values that were shared across the rebel army or from the top to bottom of the chain of command. One claimed being forcibly recruited to CNDD-FDD (G4, 2011: P2). Others indicated that they had to fight for the purposes of surviving the general civil war and destitution or because their family members had already been killed (G1, G2, 2011; G7, 2013). A few asserted that the group was fighting an ethnic monopoly imposed by the Tutsi military and that this was a reason to fight. However, overall, it was apparent that the lower level foot soldiers of CNDD-FDD saw themselves as socially subordinate and ideologically unimportant in relation to the ‘commanders’ that were responsible for punishment. It is, however, important to consider that the way respondents spoke about CNDD-FDD does not necessarily mean that there was no shared political ideology. The respondents in this study may have been biased as very few were still serving in the CNDD-FDD as party members and only 9 percent (3 out of 32) had served actively in the new integrated BPDF.

The important aspect of this differentiation between foot soldiers and authorities is a certainty that CNDD-FDD’s leadership controlled the punishment practices of the organisation. Team level soldiers were not involved in initiating punishment, investigation or claims. And at least in the case of sexual violence, it did not appear that they were particularly moved to single out violations at their level.

Power and responsibility for initiating and carrying out investigations were also specialised according to the hierarchy of authority within CNDD-FDD. Some respondents who had participated in CNDD-FDD and left the group before Pierre Nkurunziza had taken over in October 2001, stipulated that the organisation had a section or military service (G1, 2011), that dealt with judicial matters. Another focus group spoke of an investigative procedure which included medical examinations (G19, 2013).

Overall, the impression is of an armed organisation with clearly designated hierarchies and authorities responsible for implementing punishment for sexual violence. For the CNDD-FDD ex-combatants, the power to punish belonged solely to these authorities.

Minimizing enactment

Moving to the consequences of the hierarchy, the focus groups of former CNDD-FDD fighters described differences in liability and the enactment of penalties. They noted that it was more difficult to escape punishment if rape was committed during an operation; and that assaults or coercion for sex was a practice of those with power and authority (G19, G15, 2013).

Commanders often escaped the consequences for committing sexual violence entirely or at least in part:

There were differences between chiefs and foot soldiers. The foot soldiers were always at risk of punishment but when the chiefs were having intercourse the foot soldiers would guard the chiefs (G7, 2011:P1).

Another example would be the Lycée Kayanza [a boarding high school in Kayanza] where they [another team] were sent to take people to the bush. When they arrived in the boarding school, some chiefs went into the girls' dormitory and maybe they were raping (G7, 2011:P1).⁵⁶

Most focus groups shared similar reminiscences. They recalled that foot soldiers had been required to bring women and girls to CNDD-FDD commanders. Infantry soldiers and child soldiers watched over these new companions, who might remain with the commander and the group for many hours, days, weeks or years. They stressed that commanders ordered followers to procure and protect women and girls for them.

Despite the clarity of these observations and their repetition over and over again by CNDD ex-combatants, it is important to note that one focus group; a Rumonge-based cohort which had been demobilised in 2005 stated that:

The punishment covered the whole armed group. We liked it because if we weren't that harsh, the country would not have arrived at peace where it is now. The section chief would report to his superior, to the top, for every case of punishment. The laws came from the top (G11, 2013:P3).

⁵⁶ This example was provided by focus group G7 (conducted in Bujumbura in 2013). All three participants had been members of CNDD-FDD, and demobilised at platoon-level leadership ranks of sergeant (2) and lieutenant (1) in 2005. Two had been from Kayanza, and therefore recalled, one with first-hand knowledge, sexual violence which took place at the boarding school there. This description matches reports of arson, looting, abductions and sexual violence committed by CNDD-FDD rebels on 9 November 2001 at Musema High School in Kayanza (United Kingdom, 2002; USSD, 2002:5).

They indicated that punishment was applicable and uniform up and down the chain of command, thus having depth. This is an alternative characterization, different from the other ex-combatants of CNDD-FDD. And yet, in other respects, the respondents in G7 corroborated the sense of minimised enactment of punishment for commanders:

...those laws are ineffectual, people have their own interests, and punishment depended on the group. And it depended on where you were (G11, 2013).

Despite a few differences in the recollections of ex-combatants of CNDD-FDD, it is difficult to overstate the perception that the organisation minimised sentences for some and not others. This begs the question of how the rebel army could maintain legitimacy when it did punish perpetrators. The focus group information does not explain how members of CNDD-FDD felt about their leaders when these same authorities (who carried on sexual violence on one hand, and minimised its punishment on the other) inflicted lashings, starvation, prison or death to a follower who had committed sexual violence. The only clarity from the data is that rape of children was viewed as horrific and sexual activity during an operation was questionable. This suggests that fighters would be critical of commanders that punished perpetrators outside of these two scenarios.

Transformation of norms

Finally, some ex-combatants from CNDD-FDD explained that the practice of punishing sexual violence changed over time. Several focus groups remarked upon this, citing that during the cease-fire following the signing of the November 2003 agreement with the transitional government, and prior to the elections in 2005 (thus sometime from the end of 2003 to the end of 2004), the armed organisation's authorities adopted a more inflexible sanction against sexual violence. One incident was shared which demonstrates this shift:

I recall an incident [when someone was caught, convicted and punished] when we were waiting for integration in a camp in [ca.] 2003. The victim was a four year old, raped by a 15 year old and the child was the child of the major. The fighters were still gathering in camps, so reports arrived to the Minister of Good Governance, [Pierre] Nkurunziza, who responded by taking the perpetrator to jail. [Then] the other battalion chiefs proposed a sentence and because we [CNDD-FDD] were not integrated yet, he was not integrated but imprisoned (G1, 2011: P2).

Although this story is anecdotal, it illustrates the perception among ex-combatants that the CNDD-FDD began to actively punish sexual abuse. It is telling that punitive action seems based on the victim's identity, who was the

child of a higher-ranking member. Timing of the event is important since this was a period of political transformation for CNDD-FDD. Pierre Nkurunziza had been appointed in 2003 as Minister of Good Governance during the transitional government and in advance of elections. The organisation had already moved toward repositioning itself as a political party.

The ex-combatants from CNDD-FDD could not always specify why their authorities grew more responsive to sexual violence over time. To be clear, they maintained that there was a continued bias against foot soldiers and some CNDD-FDD authorities were already complicit in sexual violence. While it is worth maintaining some uncertainty that the transformation which took place inside CNDD-FDD was a complete turnaround, some respondents felt that by 2003, CNDD-FDD was more focused on integration (G19, 2013). This explanation was introduced at the same time as the view that more systematic prohibitions on sexual violence followed the ceasefire (G19, 2013). They interpreted this period of transition as one during which the CNDD-FDD could become more careful about deterring sexual violence.

Amnesty

The third and final explanatory factor of armed group impunity is amnesty, and the focus group findings include insights about formal commitments to exempt individuals from past crimes. The following key indicators are addressed in the focus group data: *Was the armed group eligible for amnesty? Did members know about the amnesty? Did the amnesty have provisions which restricted its application? Were the members aware of other armed groups receiving amnesty? Did members have access to the same information about the amnesty provision? Did this result in a common view of amnesty? Did the group's leadership negotiate specifically for amnesty for war-related violence? Notably it was argued that amnesty would facilitate confidence that post-settlement sexual violence would go unpunished. Therefore additional indicators will be considered, including: do members of the armed group believe they have benefited from amnesty? Do armed group members relate post-settlement sexual violence events to amnesty or post-settlement? Are there subsequent pardons for sexual violence which have benefited the armed group or its members? Do members think the amnesty applied to the post-settlement era?* These questions led to answers in three categories: new beginnings; applicability and beneficiaries; and sources of information.

New beginnings

Some of the focus groups which were made up of former CNDD-FDD members did not know what amnesty was. Two out of the five CNDD-FDD-only focus groups did not immediately recognise the concept of amnesty.

These two groups were based in Bujumbura Rural and Rumonge. To move the discussions along, one participant from Rumonge ventured that amnesty entailed a collective pardoning of an individual:

...when a person is guilty you could pardon him without considering justice, it is when ten to twenty people ask pardon for someone and then he is pardoned. It could be three or more groups of people that do the crime (G11, 2013: P4).

This response reflects a tendency within all the focus groups for a few individual respondents to influence the discussions about amnesty. Some participants appeared insecure or uncertain about their contributions on this topic, and were hesitant or silent. Other respondents would then launch the deliberations, encouraging further contributions. Thus, one person's remarks do not negate the overall finding that knowledge of amnesty was uneven.

Despite these nuances, overall, the CNDD-FDD focus groups seemed comparable with other respondent sets, such as those composed of members from different armed groups. Generally, CNDD-FDD ex-combatants associated amnesty with the transition from war to reintegration (G1, 2011; G15 and G16, 2013). They coupled amnesty with forgiveness and in many cases, with integration and opportunities for new positions in the Burundi National Defence Forces (BNDF) or police (G4, 2011).

Applicability and beneficiaries

Although the minority of CNDD-FDD-only focus groups were unable, initially, to respond to questions about amnesty, following statements such as the one cited earlier (G11, 2013:P4), respondents could provide further relevant insight. As discussions progressed they talked about who benefited from amnesty and what it meant. For instance, the same Rumonge-based group also stated that amnesty was applied differently to various armed groups. They explained that they had limited information about the origins, scope and applicability of amnesty:

It [amnesty] seemed to apply to different groups in different ways. When we left the army they were told how to live with others and about reintegration. We did not know if this arrangement was available to all armed group members, perhaps it depended on whether they were in different *rassemblement* (assembly) camps. All crimes should have been punished, including sexual violence, but all [crimes] were forgiven (G11, 2013).

This particular focus group was interesting because its four respondents all knew one another and had been demobilised together in 2005. They felt that even though they were amnestied, perpetrators of sexual violence crimes

should not have had the same benefits from the Arusha peace process as other combatants.

Still, CNDD-FDD ex-combatants were unsure about who had amnesty, and why. Indeed, as evinced in the statement from another focus group, some countered that only CNDD-FDD had received amnesty, thus stressing the view that their organisation was particularly privileged and in some respects, the 'victor' of the Burundi civil war:

...CNDD-FDD has not received judgment ...when chiefs were pardoned all of us were pardoned. CNDD-FDD is pardoned because Pierre Nkurunziza is pardoned. (G19, 2013)

As in the CNDD-FDD groups, in the mixed-association focus groups, for example, the discussions drew out distinctions about the beneficiaries of amnesty, for example claiming that only individuals who were politically connected to the government could benefit from amnesty:

With amnesty there were some who committed crimes. They were released. If you had no connection in the army you could be expelled, while others demobilised and others reintegrated. And you do the same crime but have no connections. Punishment was not the same for everyone. If you and I do the same crime but have connections, some would get better benefits after amnesty (G4, 2011:P2).

Statements like this also conflated amnesty with integration into the post-settlement military institutions.

Ex-combatants of CNDD-FDD also expressed a view that amnesty was temporary, with limitations of exemption from future legal or other formal accountability. One group (G7, 2011) put it that:

...we were told that it was a [sic. Addendum] partial amnesty (G7, 2011). Partial amnesty... [sic] was for crimes during the war and only for the war period. (G7, 2011: P3).

A few respondents described the limits of amnesty under the Arusha process, noting that it was an outcome of the mediation undertaken by former presidents of South Africa and Tanzania, Nelson Mandela and Julius Nyerere, respectively (G15, 2013). This same group also described amnesty as prohibited to perpetrators of sexual violence:

Amnesty was not available for people who committed sexual violence, because those [who were] released as political prisoners who committed sexual violence were not released (G15, 2013).

Such comments affirm that amnesty for CNDD-FDD was not a ‘free ticket’ for all acts of violence, but a transitional pathway for political crimes. Moreover, the transitional period would include efforts to address the violence of the war:

Everything was pardoned but there was a part of Arusha which called for an investigation into some crimes (to know the truth and then to pardon) which would come later (G15, 2013).

In this regard, even though amnesty was instrumental to establishing the political status quo that would facilitate accountability, some former CNDD-FDD members noted the limitations to amnesty, in particular for sexual violence or general violence against civilians. One participant, a male who had been part of CNDD-FDD for nearly 10 years and integrated into the police force in Gitega in 2003, claimed that amnesty did not apply to “crimes of rape, killing people....which you can find in the international rules”(G,15, 2013: P3). It should be noted that detailed, specific statements such as this were rare.

Secret information

Some CNDD-FDD focus groups also described how they received news about the amnesty, indicating that this was related to the Arusha peace talks and the post-2000 negotiations in Tanzania, since they:

...heard about it when they were in the bush, when Mandela made the mediation. Our leaders told [us] when they came from Arusha. And, [we] heard from negotiators in Arusha. It was about 2000, it was reported to the colonels, and [we] assembled and everyone was briefed (G15, 2013:P3).

On the face of it, this statement typified how CNDD-FDD members acquired knowledge of amnesty and its relationship to the negotiated settlement. It is interesting that these fighters were informed of the outcome of the 2000 Arusha Peace and Reconciliation Agreement, even though they were part of the Nkurunziza-led CNDD-FDD which refused to participate in the talks and sign the agreement. Still, they knew about the negotiations and understood that peace talks were led by external actors. Furthermore, some units were collectively informed about the results of the talks. Their knowledge of the talks and the way they attributed it to the 2000 process suggests that immediately after the Arusha agreement was signed, CNDD-FDD was already cognizant of the importance of a negotiated settlement and the benefits of amnesty. This understanding filtered down to some of the low-level fighters.

Others, however, were less informed and interpreted the outcome of negotiations in 2003 as proof of the CNDD-FDD’s dominance and the authority and privilege of their leaders. For these other ex-combatants, their leaders

withheld information about the negotiations, and treated the specifics of amnesty as secret:

[During the peace process period]... most information was secret, field commanders did not give information when [the leaders] were signing...[We] had no information about the amnesty when the final ceasefire was signed (G1, 2011).

Top leaders had the information; Arusha negotiators had some meetings (G16, 2013).

We knew about it only when [we] left CNDD-FDD. [We] heard about it on radio, especially on the news (G19, 2013).

Commenting on the secret nature of information, some foot soldiers were not privy to the progress of the talks, as well as to the specific outcomes of the negotiations. The secrecy of information was a strategic decision by their commanders and in their view, part of normal military culture. They seemed unconcerned that they had not been briefed about the terms of amnesty. Another way to interpret these views is that the CNDD-FDD ex-combatants simply followed orders, and understood the settlement of conflict as a highly political process which was carried out by higher-ranking, more powerful leaders within the organisation. At the same time, by explaining to me that information about amnesties was secret and the purview of their commanders, they could also thus justify why they could not express strong views, one way or another, about the amnesty received by CNDD-FDD.

Within-case analysis

Former fighters of CNDD-FDD were fairly confident that there would be no negative consequences for committing sexual violence. Unless they raped a child or failed in an operation, perpetrators could reasonably believe that they would not be punished. What were the conditions under which CNDD-FDD generated armed group impunity for sexual violence among its commanders and followers?

A flawed prohibition

CNDD-FDD put in place a prohibitive instrument for wartime rape. What then explains the outcome of armed group impunity for sexual violence? Some causality can be attributed to the quality of its prohibition. The rebel organisation originated among a group of intellectuals, military trainees and politicians preoccupied with the restoration of the political aspirations of

Burundi's majority. From the beginning, CNDD-FDD was thus established to take on important functions of the state, and it prepared itself to govern Burundi one day. This explains the group's formulation of a prohibition for sexual violence. The pre-1993 army was a state structure, and thus would have incorporated national legislation in its code of conduct. The military trainees who founded CNDD-FDD would thus presume that sexual violence should be penalised. This explains why many of the armed group's ex-combatants in this study cited a penalty for this violence. However, although they knew that CNDD-FDD could punish perpetrators, this knowledge was fragile and fragmented. Despite a military culture, with an ethos of discipline, CNDD-FDD failed to keep in place a clear and consistent prohibition. The ex-CNDD-FDD members had no recollection of being trained or briefed about the penalty for sexual misconduct or sexual violence. There was no written code of conduct. Perpetrators could not be certain of what type of penalty they would pay. Some ex-combatants understood that the penalty was detention; others presumed it was corporal punishment; and still others believed perpetrators were executed.

While each of these penalties could be considered costly, it would have been possible that individuals could estimate the price for sexual violence based on a range of other factors. The depth and constancy of the prohibition varied considerably. For instance, some members of CNDD-FDD could be careful to avoid detection during operations. It can be construed that fighters who were active and in command of operations thus had greater reason to avoid detection. This might have diminished their interest in committing rape. At the same time, a commander, who already had some type of privilege that enabled him to take women and girls as sexual partners with force if necessary, would not be faced with negative consequences for rape while in operations. Meanwhile, their cohorts in other teams and sections might not have the same opportunities. If commanders were also engaging in sexual violence, foot soldiers could be more assured that punishments would not be severe. Finally, only those perpetrators who violated children or relatives of higher-ranking officers were viewed as likely to face a penalty.

Considering these reservations, it is reasonable to conclude that CNDD-FDD's instrument of prohibition was flawed. Furthermore, there is evidence from the focus groups that the prohibition changed over time. I have already noted that the majority of fighters were deployed after having served under Nkurunziza. Several focus group discussions included statements that the prohibition became more defined and rigid after the conclusion of the 2003 ceasefire between CNDD-FDD and the transitional government. The period which followed afterwards entailed demobilization at assembly points and integration into the new national army, the BDNF. I have suggested that the rebel army began to see itself as a government-in-waiting. In this regard, the CNDD-FDD would have sought also to have better control of its members

and to manage relations with the electorate. However, it might be assuming too much to conclude that the leadership within the CNDD-FDD was immediately capable of creating greater order and discipline. Achieving total control of foot soldiers seems even more unlikely given the armed group's record of committing sexual violence in 2003. As noted earlier in this chapter, this was also a period in which Amnesty International reported an alarming number of rapes and abductions by combatants, including a campaign of looting and rape as part the CNDD-FDD cooperation with the Burundi military against Palipehutu-FNL.

What can then be made of the claim by some respondents that CNDD-FDD was actually stricter when it came to sexual violence after the ceasefire of 2003? It contrasts with the view of a former child soldier in the 1990s who reported that rape was "used to bring communities to accept the ideology" (A1, Interview, 2011). One explanation is that stricter prohibitions were isolated or contingent upon which unit the respondent participated in. The groups that most clearly iterated the claim that prohibitions were clearer or more costly after the ceasefire were all based in Bujumbura. However, the majority of responses these groups gave to other questions fit the overall patterns of the entire set of information from ex-CNDD-FDD members. Another explanation is that in some instances, the leadership sought to deter sexual violence for the purposes of credibility with the local population and the international community. Indeed, without additional information, the change in prohibitions remains enigmatic.

So, turning to interviews, a civil society academic (A11, Interview, 2013) stated that sexual violence became an issue with the international community at about the same time as the ex-combatants began to notice the stricter prohibitions. The academic recalls that the UN made vigorous entreaties to Nkurunziza about the level of wartime rape in early 2004 and that this intervention may have prompted greater attention to sexual violence in assembly areas (A11, Interview, 2013). Another source (A14, Interview, 2013), a top-ranking CNDD-FDD officer, currently an authority-figure in the state security apparatus, explained to me that CNDD-FDD always had a prohibition in place. However, the organisation had evolved over time, developing clearer rationales and implementation of its code of conduct (A14, Interview, 2013). This transformation was coupled with the CNDD-FDD's efforts to gain support from the population. He noted that the organisation's leaders felt that "you cannot keep the population behind you, you must make it beside you" (A14, Interview, 2013). These two perspectives suggest that despite the commission of rape by its members, from 2003, leaders within CNDD-FDD attempted to sanitise external perceptions of impunity, whether within the country or outside it. One way to do so was to put in place a stricter prohibitive instrument.

Authorities that didn't punish

Despite efforts to correct the prohibitions of sexual violence, the focus groups concluded that the authorities within CNDD-FDD still did not punish perpetrators consistently. As a military organisation, CNDD-FDD mirrored other armed groups, with progressions of authority and leadership. The earlier parts of this chapter included a description of the group's size and structures. With an approximate average of 10,000 members, CNDD-FDD must have had to rely on an elaborate structure for keeping discipline. Clearly, the organisation established a military hierarchy, which meant that commanders were responsible for implementing punishment. The focus group response about a decision-making body for adjudication corresponds to reports that one structure of CNDD-FDD was a legal affairs commission, although its main function may have been to deal with international partners and support the negotiations. The rebel army also had commissioners for social affairs and its high command would have dealt with or been privy to information about discipline. Based on these structures, only commanders at the top of each battalion meted out punishment. They seemed to have significant power and autonomy in this responsibility.

However, as underscored by Nindorera (2012), from its earliest days, CNDD-FDD's leaders found it difficult to ensure that the hierarchy was respected and operational. Fighters with less formal training challenged the military strictures of order as they were defined by former government officers, soldiers and trainees. This tension between formality and informality would have resulted in fraught disciplinary practices. It could be possible that military superiors chose to focus on operational matters, rather than issues such as sexual violence since ensuring order for the purposes of military victory would have been a priority. Focusing on operational matters of the battlefield would have been easier than imposing penalties for breach of sexual mores. Thus, authorities could concentrate their disciplinary actions on punishing men who failed to achieve their operational duties, rather than punishing perpetrators of wartime rape. In the period of demobilization, this practice of failing to discipline sexual violence would have been difficult to transform entirely. Given Burundi's history of patriarchy and a broader culture which seemed to tolerate forced marriages, authorities without formal military training might not have been motivated to implement punishment for perpetrators of sexual violence. Finally, it is worth noting that Nkurunziza (Bucumi-Nkurunziza, 2012) stated that the organisation he led had been imbued with superstition, witchcraft and other beliefs that seemed to be the antithesis of his own subsequent adoption of Christianity. This suggests that the heterogeneity described by Nindorera (2012) in religion and class was another challenge, for proscriptions of sexual mores could have been influenced by different orientations and perspectives. Overall, it seems

plausible that the authorities within CNDD-FDD faced a variation in beliefs and practices which they would have had difficulty in controlling.

Returning to the evidence from the focus groups, the catalyst for establishing a case for punishment might have originated at the level of commanders on the ground. However, I think it is reasonable to interpret the evidence as suggesting that leaders of teams or sections could also instigate an investigation or counsel their superiors to punish a perpetrator. Moreover, CNDD-FDD had significant interaction with civilians and would have been informed by locals of abuses. Despite this, a conclusion to be drawn from the information from focus groups is that authorities minimised punishment for some perpetrators because they were also complicit in sexual violence. The interviews with ex-combatants support this claim. Foot-soldiers saw many of their commanders coerce sex from girls and women. A former CNDD-FDD combatant who was a child soldier with the rebel army noted to me that commanders would rape their own subordinates. The ‘small’ soldier was witness and party to this, and could then be tasked with escorting the victim of sexual violence away from camp; integrating her into the irregular parts of the rebel army; or ordering or escorting her to her official post. It is worth noting here that some of these commanders made their conquests into wives. In the post-settlement era, some of these men left their wives destitute with children born during the war, while others officially married their wartime women (A9, Interview, 2011)

At the same time, CNDD-FDD’s leaders could and would punish perpetrators if they wanted to. The evidence here should not obscure reports by some former fighters who recalled punishment being meted out. But these cases of penalties seemed contingent on many other factors: the victim’s age and identity, the timing and location and the character and position of the authority figure. It is not clear if beatings, detention or death were determined by the high command, commissioners, or the officers in charge of legal affairs. Many cases of punishment seemed inscrutable and arbitrary. In one instance the punishment described seemed to be determined solely on the basis of Nkurunziza’s intervention.

Amnesty does not apply to sexual violence

While CNDD-FDD had a flawed prohibitive instrument for sexual violence and its authorities were known for failing to punish perpetrators, there is no evidence that amnesty for wartime involvement had any bearing on accountability for sexual violence. This is an important finding. Ex-CNDD-FDD members did not develop a sense that amnesty formerly exonerated perpetrators of sexual violence. Many respondents understood that sexual violence was not a part of the amnesty, with some even considering that these were crimes which should have been prosecuted after the war.

None of the focus groups believed that the benefits of amnesty applied to peacetime. Amnesty was a door that had opened and through which they walked into the post-war era, but it was shut behind them. In this regard, no matter how little they understood of amnesty, some ex-combatants had assumed that amnesty was conditional on the implementation of a truth-recovery process or tribunal. Such views correspond to reality. The amnesty for CNDD-FDD was never meant to supersede the transitional justice mechanisms of a special tribunal and the TRC, and moreover, it was never meant to apply to serious crimes.

The association of amnesty with new beginnings was illustrative of the view that the negotiated settlement would lead to CNDD-FDD's assumption of parts of, and positions within, a new government in Burundi. Thus, amnesty enabled them to join the army or police, take up positions in the government or simply return to civilian life in a country no longer governed by the 'other side'. Perhaps a more illuminating observation is that the low level fighters in some CNDD-FDD units understood, early on, that negotiation would be critical to obtaining the right conditions for their re-entry into society and access to opportunities in the country. For these ex-combatants, amnesty was viewed as a result of the negotiations. Although CNDD-FDD was not party to the 2000 Arusha Peace and Reconciliation Agreement, they associated these talks with the idea of amnesty. They understood that any future settlement with the government must provide their organisation with the same or better terms of settlement as the Hutu parties that signed the 2000 accord. This coincides with much of the literature on the peace talks and negotiations (Curtis 2012; Daley 2007a, 2007b; Vandeginste 2009a). Arusha's emphasis on ethnic equilibrium and redistribution of power (in the form of positions in the state's institutions) to the armed groups was important. Although CNDD-FDD would emphasise that it did not recognise Arusha, it negotiated further power-sharing in 2003 with similar conditions and secured several positions for its leaders and integration for its soldiers.

Conclusion

This exploration of the focus group information and analysis of CNDD-FDD encompassed several observations about the explanatory factors of armed group impunity. Exploring these causes, it seems apparent that amnesty was mainly associated with new beginnings. The views of the ex-combatants of CNDD-FDD reflected a poor understanding of amnesty while at the same time including generally benign assumptions of its applicability and intention. They did not interpret amnesty as a permanent condition. They seemed to appreciate its temporality and even ascribed limits to its application for sexual violence. Indeed, according to the respondents, perpetrators of sexual

violence could have been held accountable for war-related abuses, even under an amnesty.

The role of negligent authorities in CNDD-FDD should also be considered. This independent variable was observed in relation to punishment practices. The commanders of CNDD-FDD had absolute control over whom should be punished and when. This particular privilege is a by-product of the organisation's military hierarchy and structures. It resulted in an asymmetry in standards of conduct between the rebel group's leaders and followers, particularly since these authorities also committed sexual violence.

The within case analysis shows that the rebel army, despite its elaborate structures, had a flawed prohibitive instrument for sexual violence. Tracing the relationship between this independent variable and the dependent variable, it is evident how the lack of a clear, consistent prohibition would have nurtured impunity. The armed group's prohibition, moreover, was also applied unevenly and it was inconstant. It did not apply to leaders and followers equally, and it changed over time. It became more rigid, partly as a result of the organisation's transition from rebel group to political party, and CNDD-FDD's desire to win over the population and maintain credibility with the international community. Still, this finding is perplexing, since CNDD-FDD should have instituted such policies earlier on in its campaign and during its efforts to build up a mass movement. Moreover, the rebel army carried out sexual violence simultaneously.

However, by bringing together the focus group data, interviews and secondary sources this counterintuitive claim seems to make sense. CNDD-FDD's structures and conduct were imbued with contradictions from the outset. The group was founded by intellectuals and former military trainees as a mass armed rebellion, but from the outset it used coercive tactics such as abductions and forced recruitment of child soldiers. It instituted a complex military structure designed to maintain order within and among the civilian population. But it also taxed the poor rural population and turned to violence to muster resources. These contradictions are replicated in its attitude to sexual violence. Thus, while CNDD-FDD had a code prohibiting sexual violence, that instrument was flawed and its authorities openly flouted application of penalties. Ultimately, the opportunity to assume power in Burundi as a political party or even, ruling party, proved critical to changing these practices. Even if it was too little, too late, it was only after settlement that CNDD-FDD seemed more serious about its prohibition of sexual violence.

The next chapter turns to Palipehutu-FNL, where I carry-out a similar examination of focus group information and conduct a within-case analysis.

8. The Believers: Palipehutu-FNL and Accountability for Sexual Violence

This chapter is the within-case analysis of Palipehutu-FNL⁵⁷. The narrative includes a comprehensive overview of the results for FNL based on the focus groups of ex-combatants in Burundi. As with the previous chapter on CNDD-FDD, I begin with a short discussion of the armed group and a brief introduction to the participants in the focus groups who had served in the organisation. The following section provides an analysis of the main findings for the dependent variable, armed group impunity for sexual violence and the three explanatory factors, or independent variables: flawed prohibitions, negligent authorities and amnesty. These findings are derived from the focus group responses. Thereafter, I present a formal within-case analysis, exploring the process and relationships between the independent variables and the dependent variable. Together with chapter 8, this chapter is a foundation for the cross-case comparison of CNDD-FDD and Palipehutu-FNL.

Palipehutu-FNL

The history of Palipehutu-FNL as a Hutu rebel movement began after the 1972 genocide in Burundi. At that time, an organisation dedicated to self-help and mobilization called Tabara was founded in Tanzania by Hutu refugees. Subsequent massacres and the Burundi government's exclusionary practices and violence against its Hutu citizenry bolstered more militant elements within the organisation. Thus, in 1980, Rémy Gahutu found the Party for the Liberation of the Hutu People (Palipehutu) in Tanzania (Palipehutu, 1996 and 2005). The movement would come to establish an armed rebellion, the Forces for National Liberation (FNL).

Palipehutu was originally formed with three aims. First, the organisation sought to inform the world of the social injustice faced by the majority Hutu people by the Tutsi regime. Second, it strived to educate the Hutu and Twa peoples of the nature of the oppression they had and continued to endure. Finally, Palipehutu claimed that it would fight against a system of mono-

⁵⁷ Although the rebel group did not change its name to FNL until January 2009, I will use the designations Palipehutu-FNL and FNL interchangeably in this chapter.

ethnic power, with the purpose of establishing a democratic political system that protected human rights (my translation⁵⁸, Palipehutu, 2005:2). The movement established three separate wings: the Patriotic Hutu Youth (JPH), the Women's Patriotic Hutu Movement (MFPH) and the FNL (Palipehutu 2005, 2).

From the outset, Palipehutu conceived itself as a liberation movement. Draconian laws during Michel Micombero's regime had effectively reduced the Hutu population to second class citizens. The system which Gahutu sought to fight had created an oppressed class. While Jean-Baptiste Bagaza's government instituted some reforms, the overall effect of half a century of ethnic discrimination had already created significant cleavages:

By 1985 there were still only four Hutu cabinet ministers out of 20, 17 Hutu MPs in the designated 'Parliament' (out of 65), two Hutu members in the UPRONA Central Committee (out of 52). Only one ambassador out of 22 was a Hutu and two provincial governors out of 15, while members of the majority social group represented only 10 percent of the teachers and 20 percent of the students at the 'National' University (Prunier 1994, 10).

In the years that followed, the Tutsi establishment was determined to maintain its political, military and socio-economic supremacy. Furthermore, Palipehutu and other Hutu parties had a viable and large constituency of disadvantaged and fearful Hutu peasants, aspiring intellectuals and marginalised students and workers.

This large sub-class was manipulated by the Tutsi and pro-Hutu sides in 1988. At the time, Pierre Buyoya had sought to institute corrective measures, for example by freeing political prisoners (Prunier 1994, 13). But the ethnic composition of his government was not much of an improvement from previous regimes and Hutu power groups such as Palipehutu were already mobilised. At the same time, Buyoya's Tutsi rivals, the elites who felt threatened by any further reforms, were anxious to undermine his government. In May 1988, Palipehutu issued a call to arms and on 14 August, Hutu activists organised by Palipehutu "scoured the *collines* killing the local Tutsi. On the third day, the Army arrived and massacred indiscriminately all the Hutu they could find" (Prunier 1994, 14). The violence resulted in thousands of casualties and "over 60,000 refugees fled to Rwanda" (Prunier 1994, 14). Prunier (1994, 16–17) claims that the period that followed, during which Buyoya would strive to stop the country from heading toward full-scale civil

⁵⁸ Few scholars have examined the Palipehutu-FNL. Primary sources of memoranda, letters and declarations related to the civil war in Burundi have been collected by the University of Antwerp's Institute of Development Policy and Management (IOB). The IOB's Centre of the Study of the Great Lakes Region is thus a depository of archival material from the political parties and armed movements of the conflict. From some of these sources, it is possible to learn much about Palipehutu-FNL.

war, was a time of multiple tactical manoeuvres by Palipehutu. The movement rallied militants in public demonstrations in April 1991 and tried to mobilise the masses in a tax boycott. In November 1991 it carried out several terrorist attacks. Finally, some of its members infiltrated the more moderate FRODEBU party in order to undermine peaceful reforms, which Palipehutu fundamentally distrusted (Prunier 1994, 17). Lemarchand (2006, 20) claims that Hussein Radjabu (later of CNDD-FDD) was instrumental in converting Palipehutu cells into FRODEBU groups, thus suggesting that at least for some time, the conversion was genuine. Indeed, Radjabu would also become a core member of FRODEBU until after Ndadaye's assassination. Nevertheless, and perhaps because of the failure of the 1993 transition, Palipehutu-FNL remained vehemently opposed to conciliation. From 1993 it would commit to an intransigent approach, weaving in and out of settlement talks after 2001 but with significant reservations. As its spokesman, Pasteur Habimana said to Lemarchand (2006, 22) in 2003: "...how can anyone agree to a 50/50 sharing with the Tutsi when they represent 15 percent of the population?"

As with CNDD-FDD, Palipehutu-FNL would undergo numerous internal challenges. The first was the death and murder of Gahutu in 1990 (Palipehutu 2005; Watt 2008). It is probable that an internal power struggle overcame the organisation, at least for one year. In 1991, two men, Etienne Karatasi and Cossan Kabura, fought for control, which ended in further splintering. Under Kabura, the armed group FNL would become the primary entity in the liberation movement. In 2001, Kabura was ousted by Agathon Rwasa on the basis of the former's 'illicit' negotiations for peace.

It cannot be overstated that for many years the FNL rebellion was compelled by the idea that any steps toward peace must be based on the Tutsi minority acknowledging the injustice inflicted on Hutu Burundians. This principle for recognition of wrongdoing by a minority against a majority, would influence decisions. Palipehutu-FNL would remain outside of the negotiations for peace in Arusha; it would refuse to sign the 2000 peace and reconciliation agreement; and indeed, to meet with the transitional government on an equal footing. In 1998, FNL attacked a military base, killing 150 people, many of whom were civilians. On 28 December 2000, a bus called the Titanic Express was transporting civilians from Kigali to Bujumbura. It was stopped and attacked in Bujumbura Rural, which was an area that was dominated by Palipehutu-FNL (AI 2010, 1). The passengers were separated according to ethnicity and the 'identifiable' Tutsis and one British tourist were killed. The FNL never accepted responsibility for the Titanic Express massacre, but neither did the armed group denounce or deny it (AI 2010, 1). In 2001 the rebel group carried out an extensive two-week attack on Bujumbura. Again, in 2003, the rebellion battled in the hills and avenues of Bujumbura (Lemarchand 2006).

On August 13, 2004 a refugee transit centre in Gatumba, Bujumbura Rural Province, run in part by the UN High Commissioner for Refugees, was attacked with approximately fewer than 100 men (HRW 2004, 22), who were accompanied by women and some child soldiers. The attackers targeted Banyamulenge, Congolese refugees from South Kivu. They killed 152, wounded 106 and possibly abducting eight (HRW 2004, 1; UNSC 2004, 3). The refugee camp housed Burundians as well as Congolese, but it was mainly the Congolese who were attacked, with survivors and witnesses recalling that their attackers warned one another to avoid entering the area of the camp housing Burundians (HRW 2004, 15–16). The camp was also located near a Burundi military base and a police centre. There were reports that these were attacked at the same time, although investigators were sceptical about the fact that the government’s security personnel did not attempt to intervene to protect the refugees (HRW 2004, 18). The Gatumba massacre likely involved Palipehutu-FNL as well as other armed groups involved in the eastern DRC conflict. An investigation carried out by the UN Operation in Burundi and the UN Organisation Mission in the DRC (MONUC) found that although Palipehutu-FNL claimed responsibility for the massacre, it was “unlikely to have done so on its own” (UNSC 2004, 4). Nevertheless, Palipehutu-FNL claimed responsibility, asserting that it was avenging past injustice and that the massacre had been precipitated by the rebel group’s attacks on the Burundi government’s military and police installations (HRW 2004, 20–21). The Gatumba massacre however spurred the international community to at least temporarily suspend peace talks with the FNL.

Each major FNL campaign appears timed with disrupting the peace process or reasserting the strength and relevance of the armed group. Unwilling to sign the Arusha agreement in 2000 and at pains to defeat its rival, the CNDD-FDD, Palipehutu-FNL would continue to espouse its views that negotiations must first establish the truth of Tutsi oppression against Hutu. The movement refused to recognise the transitional government under the Arusha agreement. From 18 to 21 January 2004, president of the transitional government, Domitien Ndayiseye met with a delegation of Palipehutu-FNL in Oisterwijk in the Netherlands. The meeting was facilitated by the Netherlands’ ministry of development cooperation. It is telling that the Palipehutu-FNL delegation stated that it was meeting with Ndayiseye as an individual and not as the president of Burundi (US Government 2004). The Gatumba massacre took place almost a full year after the CNDD-FDD had signed the 2003 global ceasefire with the transitional government.

The settlement between Palipehutu and the government of Burundi proved elusive, even as that government changed. After CNDD-FDD won elections in 2005, negotiations continued, albeit with a number of interruptions and interregnums. At the start of talks with Ndayiseye and the transitional government, FNL was not prepared for its rival CNDD-FDD to be the

first to negotiate a separate settlement and win elections. The ruling CNDD-FDD was impatient with the Palipehutu-FNL movement and anxious to defeat it militarily. The FNL movement overestimated how much time it had to takeover of the country, and only reluctantly participated in negotiations mediated by South Africa. It would eventually agree to a comprehensive ceasefire in 2006 (ICG 2007, 2–6). The most important criteria for these talks would be the freeing of political prisoners and the integration of FNL fighters into the Burundi state security forces.

An integral aspect of Palipehutu-FNL was its religious orientation. Survivors and witnesses recalled that its fighters would be singing and praying as they descended upon enemies. The Gatumba survivors heard women singing hymns and shouts that the fighters were “the army of God.” (HRW 2004, 13–14). The rebel group’s correspondence and official documents highlight this religious tenor as does the testimony from focus groups of ex-FNL.

Exploring where and how the movement secured resources results in different outcomes. Palipehutu-FNL is often depicted as a genuine mass movement which depended on its solidarity with the people. Watt (2008, 87) believes that the group relied on its system of taxing the population, particularly in its areas of control. FNL-held territory changed over time, but was concentrated around Bujumbura Rural and Bujumbura and parts of east-central Burundi such as Muramvya (IRIN News Service 1999). In these areas, the movement set up a taxation system and relied on the population for food. It is also likely that the group secured some support from actors inside the DRC, at least until CNDD-FDD’s election in 2005.

In 2005, a group of Palipehutu-FNL dissidents met in Bujumbura, under the leadership of Jean-Bosco Sindayigaya. They issued a declaration denouncing Rwsa and accusing him of human rights violence against the Burundi population and abrogation of the movement’s constituent documents. The dissidents furthermore accused Rwsa of orchestrating gruesome murders of his opponents inside the movement. They list death by ax, by burning, by assassination of high-ranking Palipehutu party members and military squadron leaders (Palipehutu 2005, 3–4). Gahutu’s close relatives are included, as is an affiliate member who also worked for an NGO based in Switzerland (Palipehutu 2005, 3). The crimes committed by these dead include counselling peace, criticizing killings of civilians and promoting the idea of negotiation. This image of a ruthless leader equates with reports of Rwsa’s absolute control over rivals inside FNL.⁵⁹ Following a failed assas-

⁵⁹ Rwsa’s background remains somewhat obscure for a rebel leader-turned-politician. When I asked him about his background he said “I was born in 1964 and lived in a village. I went to secondary school and in 1984 I entered university. In 1984 the Maragara massacres happened and I had to flee to Tanzania. In Tanzania we were forced to farm – we were given this little piece of dead rock – and I learned that in life nothing should be taken for granted. I spent 28 days in jail in Tanzania. In

sination attempt on his life in May 2002 Rwaswa was reported to have ordered the killing of two of his bodyguards and the spokesman of FNL was starved to death on his orders (US State Department 2003, 3). The Sindayigaya dissidents sent an open letter to the UN Special Representative of the Secretary General, requesting the international community to persuade Rwaswa. The dissidents also established the National Council of Members of Founders for the Renovation of Palipehutu-FNL (CNMFR.PH) to lead Palipehutu-FNL (Palipehutu 2005). The action was in fact a break with Rwaswa and further fragmentation of the movement. The timing of the break is crucial. On 5 October Nkurunziza's government gave Palipehutu-FNL a three-week deadline to voluntarily stop fighting. For many fighters and non-combatants in Burundi, the war had gone on long enough. The Sindayigaya dissidents would have been war weary and perhaps even convinced that with a multi-ethnic government in place and international support, their concerns for social justice could be satisfied through political competition. Their declaration against Rwaswa is dated 8 October.

The rebel movement appears to have had a comprehensive, although unorthodox, organisational structure. From the 2005 meeting in Muriya of Palipehutu-FNL dissidents, it appears that the structure of the group included a national constituent assembly which had periodic meetings and was responsible for taking major decisions. It also seems likely that it had a board for directing matters and provincial administrative executives. The organisation had a number of key positions, including President/Chief of Staff, a position held successively by Gahutu, Karatsi, Kabura and Rwaswa. The Muriya dissidents appointed individuals to designated portfolios for military questions, mobilization, youth mobilization, women's mobilization, outreach (spokesperson) and international liaison (Palipehutu 2005, 6–7). The military structure appears simple, with peloton (platoon or squadron commanders) and company commanders. It is possible that this organisational configuration approximates the Palipehutu-FNL's decision-making, planning and military structures. Finally, other documentation suggests that Palipehutu-FNL had a constitution (Karatasi 1996).

Although FNL committed numerous human rights abuses, including the massacres described earlier, its track-record of sexual violence was limited. The rebel movement did commit rape. In 2003, Human Rights Watch reported that rape had increased, with CNDD-FDD actors committing several rapes in FNL-held strongholds in Bujumbura Rural. That same year FNL "combatants raped four women" (HRW 2003b, 42). Human Rights Watch attributes these rapes and others by CNDD-FDD to the conflict with Palipehutu-FNL. There appears to have been a pattern of reprisal-attacks,

1991 I came back to Burundi but I had to flee back into exile very soon after..." (A20, 2013)..

with rape cited within this context in reports by the US State Department during 2001-2004 (US State Department 2003, 2004, 2005). Following CNDD-FDD's integration into the Burundi National Defence Force (BNDF) in 2005, reports of sexual violence seemed to decrease, with the main targets of rape civilians who were alleged to be FNL sympathisers (US State Department 2007). Overall reports of the conflict dating from the establishment of Palipehutu-FNL, suggest that the movement's members did not commit violations in the same manner or at the same level as government and CNDD-FDD combatants.⁶⁰ Finally, as presented below, the FNL banned "even consensual sexual relations for its combatants, believing this is God's decree" (HRW 2003b, 43).

It is difficult to establish the total number of armed fighters or members of the FNL. In 2001, Rwsa was reported to lead 2,000 fighters in the western part of the country, and this was "most of the group's total manpower" (IRIN News Service 1999). Indeed, an estimate of 3,000 seems more in line with insider reports. However, by the time the organisation had entered demobilization, it had been alleged that it once had 21,000 combatants with 8,500 reporting for DDR (Think Security Africa 2012).

In this study, 44 participants had been fighters in Palipehutu-FNL between 1994 and 2009. Of these, 14 percent (6 out of 44) were women and 86 percent (38 out of 44) were male. As noted in chapter 7, four of the women in FNL originally entered the conflict as members of CNDD-FDD, but left the group to join Palipehutu-FNL. These four women were demobilised in 2008; while the remaining women were demobilised in 2002 and 2008. Examining the year of joining FNL of both men and women, 64 percent of the participants (28 out of 44) became members of the rebel movement between 2002 and 2006. All of the ex-combatants served under Agathon Rwsa. Based on the date of demobilization or exit from FNL, 93 percent (41 out of 44) of the ex-FNL participants in this study demobilised in between 2008 and 2009.

Armed group impunity for sexual violence

The research design stipulated that armed group impunity for sexual violence is confidence in the absence of consequences for sexual violence. The key indicator questions posed were: Do members believe their armed group is capable and willing to mete out consequences for sexual violence? Do

⁶⁰ There may also be a reporting bias. Survivors, witnesses and external observers such as international and local NGO monitors may have increased their focus on sexual violence as human rights violence as the conflict went on. The stigma of rape may have also played a part.

members of an armed group view cohort perpetrators of sexual violence negatively?

In order to ascertain the value of armed group impunity for sexual violence, I rely on the information provided by the focus groups. The ex-FNL members were clearly of the view that the rebel organisation could and would punish perpetrators. All recalled incidents of punishment with specificity, citing examples of wartime penalties. All respondents, in various configurations of the focus groups, recollected how Palipehutu peers would shame one another if someone was suspected of having violated the FNL code against sexual violence.

One group recalled that in FNL there “was a prohibition of love relationships and sexual intercourse, if it happened, girls could make false claims that they were raped” (G5, 2011). This statement stands out in a larger body of testimony that FNL members were certain of being punished and therefore avoided all sexual activity but particularly coercive and violent sexual transgressions. It is difficult to imagine that consensual sexual partners would denounce one another given the certainty of punishment. However, one explanation is that the fear of stigma for having broken the tenet against consensual sex created greater fear. Another explanation is that these girls were, in fact, raped. And finally, the females in these circumstances may also have feared punishment and were ready to save themselves at the expense of their partners. Another possible explanation is that this statement reflects a bias of the speaker and of other members of FNL, who would blame the victim rather than admit that coercive sexual practices were not ‘love relationships’ but punishable offenses. Finally, all these explanations seem likely. It is however worth underscoring that this statement illustrates a certainty that offenders would be punished because the armed organisation could and would inflict penalties.

Finally, in the course of explaining forced marriage, the former FNL members were consistent in describing it as a crime, albeit a violation that was resolved through a settlement with the family of the victimised girl. They explained that other culturally-derived practices were also, in a contemporary sense, sexual violence. These included practices such as forced sex after birth, forced sex to induce birth and forced sex as a right of the father-in-law from the daughter-in-law (G5, 2011). These practices were described by a representative of a women’s law association in an interview as well (A10, 2011) and are the target of much civil society actions to eradicate sexual violence. Describing the post-settlement context, former FNL participants also cited the work of civil society to address sexual violence (G10 and G18, 2013). Nevertheless, the FNL cohorts understood that these practices were *gufata ku nguvu*, the Kirundi term for sexual violence, while at the same time acknowledged that these were acts committed within a context of older cultural norms. They saw them as coercive and cruel yet com-

mon. Simultaneously, they recognised the value of the new Burundi penal code and the existing punishment for *gufata ku nguvu*. They were comfortable straddling between the past's impunity for sexual violence and a more contemporary process of change. Finally, in describing sexual violence, beyond the examples cited here, the ex-FNL members did not use any romantic or euphemistic descriptions of wartime or peacetime rape. Always, it was *gufata ku nguvu*.

Explanatory factors

Following the design of this study, this section explores the three explanatory factors, operationalised as the independent variables flawed prohibitions, negligent authorities and amnesty. I report the content and results of the focus group discussions. Respondents were questioned within structured discussions about how FNL addressed sexual violence committed by its members and about the conditions of the armed group's settlement. The section is organised according to the independent variables, and the key indicator questions.

Flawed prohibitions

Did Palipehutu-FNL have flawed prohibitions? The key indicator questions were: Did the armed group have a prohibition against sexual violence? Was it clear? Could members recall how the prohibition was described and disseminated? Was it written down? Did it have depth and constancy? Were there members who did not remember the prohibition? Did members know the prohibition? Was the prohibition costly? Did the armed group change the prohibition within its units or in particular times and circumstances? Did armed group members think it applied to leaders as well as foot soldiers? Subsequently, the responses from the focus groups fell into four categories: clarity, costliness, depth and constancy.

The respondents who had been members of FNL confirmed some of the key messages and information about their organisation's tough prohibition against sexual violence. Through interviews and secondary literature, we know that FNL had a reputation as a religious born-again Christian popular rebel movement, and that its code of conduct strictly prohibited sex, alcohol and smoking. Undisputedly, the FNL cohorts recalled that the penalty for sexual violence was death, even as they noted that sometimes perpetrators of higher rank faced gentler consequences. The prohibition was confirmed by ex-combatants in the focus groups, even across armed group affiliation. The investment in this prohibitive instrument was evident through indoctrination, embodied in a written code of conduct and supported by peer pressure.

Before continuing, it is worth addressing one question I often had about the differentiation between sexual activity violations of the FNL code. I asked the focus groups specifically about sexual violence during the war. At several intervals, I would question whether or not the focus group participants were describing prohibition of all sexual activity such as consensual relationships and encounters by FNL members or if they were referring to the ban on sexual violence. In these incidences of my follow up questioning, respondents stressed that the punishment for sexual violence was death, whereas there could be different types of punishment for sexual liaisons. According to them, rape or sexual abuse would warrant death, while liaisons which were considered distracting for FNL members could receive severe demotion, detention, corporal punishment and other forms of deprivation. These were considered minor or insignificant sexual dalliances and could be ignored or punished severely only if the offender was a low-ranking soldier (G3, 2011; G9, G12, G14, G17, 2013). Typically, respondents would assert that,

Punishment was death for *gufata ku nguvu* [forced sex] (G10, 2013)

The majority of these individuals reflected on FNL experiences which took place after Agathon Rwasa took up the leadership of the group in 2002, with most fighting CNDD-FDD/BNDF forces and witness to the internal chaos and political dispiritedness facing FNL after the 2005 elections, when CNDD-FDD became the ruling party. Indeed for many, the elections precipitated a desultory signing of the September 2006 cease-fire agreement with the government (G2, 2011; G9, 2013) and set in place a period of unclear direction for the organisation. By 2007, many of the FNL's cadres were anticipating the conclusion of their armed struggle so that they could be reintegrated into a new post-settlement national military force.

Clarity

Regardless of their respective geographical settings, experiences during the war, or composition, the study's focus groups presented a clear view that the FNL prohibition. The movement's instruments for prohibiting sexual violence, namely its recorded code of conduct; leaders' documentation of the code and those who violated it; and its established penalty were described consistently among all the FNL ex-combatants. Over and over, the precise punishment for sexual violence was explained. Participants however provided additional information about the way this code was transmitted, bringing up interesting information which highlights how Palipehutu-FNL formalised its instruments to prohibit sexual violence.

In FNL, the prohibitions governing sexual activity, sexual abuse and sexual violence were disseminated and documented through a code of conduct.

Overall, respondents agreed that the rules were written down. The sexual prohibitions were disseminated through the organisational hierarchy and chain of command and passed on from leader to leader and to followers verbally as well as through documentation. Participants described this documentation, explaining that their leaders recorded the values, aspirations, decisions and objectives of the overall group and the unit in notebooks. Alternatively, some suggested that commanders simply used these notebooks for recording activities, violations and various sentences. Hence, some focus groups agreed that:

There was a rule book and it was interpreted to determine the punishment. (G8, 2013)

Yes, there was a well-written code that existed. It was hand written by chiefs in their own books. (G9, 2013)

FNL rules were written in a small notebook when they joined. We were taught the rules. (G13, 2013)

You were told the rule when you joined the group. (G12, 2013)

The code was repeated many times. It was written in a small book. When you joined the code was read by the chief to the group. (G17, 2013)

This information sheds particular light on the codification of the FNL's organisational culture, which would not permit sexual violence. Considering other contextual factors such as the historic pattern of forced marriage within Burundi, this investment in the explicit prohibition on sexual violence is noteworthy. Indeed, among other armed groups, FNL had a reputation for prohibiting sexual violence. Again, for all FNL ex-combatants, the instruments within their organisations provided the same information, the same message, every time.

Costliness

Turning to the high cost of the penalty for sexual violence in Palipehutu-FNL, for most of the combatants, their period of service coincided with changing outcomes in the punishment for sexual violence. But before describing this variation, it is worth noting that these ex-combatants stated that the consequence for sexual violence exacted, was the ultimate price of capital punishment. Again, respondents provided similar information about this outcome, for example illustrating the deterrent effect of the death sentence.

It [sexual violence] happened very little since the law was so harsh, most likely [a] strategy of perpetrators who were caught was to try to escape, to run away. (G12, 2013)

Rape happened, but rarely because of the fear that something would happen, you would be punished with death (G8, 2013:P2).

Some respondents described incidences of stoning perpetrators to death, or capital punishment by blunt instrument:

You would be killed, and death was the punishment. A hoe was used to beat perpetrators to death and they were killed. (G12, 2013: P4)

You would be killed and they used a hoe, it was a less expensive instrument and they used it to kill the guilty. (G13, 2013)

For ex-FNL cadres, sexual violence was a fairly straightforward route to death. For some individuals then, fighting a civil war entailed a less certain outcome of death. While many respondents did not seem particularly enamoured of this type of punishment, they still emitted a self-congratulatory pride that their organisation had dealt so harshly with perpetrators of sexual violence. For many, such a drastic punishment had significant costs. Members, particularly of a low rank, felt that their lives were not worth the commission of sexual violence. And those individuals that could not abide by this prohibition were unlikely to remain in the group. Many concurred that sexual violence incidents were uncommon, largely because of this high cost on such violations. The coercive aspect of the prohibition instrument of FNL is also evident in the fact that those members who did commit these violations were likely to run away and defect since they were fairly certain that they would be killed.

Finally, for many particularly those who were based outside of Bujumbura and Bujumbura-Rural (the movement strongholds), the consequences of committing sexual violence was unequivocal. Regardless of my probing questions, the focus groups conducted in Gitega and Rumonge with FNL ex-combatants were adamant about the prohibition of sexual violence. They had never experienced a situation of an armed group member getting away with sexual violence and indeed, had difficulty recollecting any acts of rape by their fellow fighters or superiors. For these particular ex-combatants, probing from me and reformulations of the questions, were at first amusing and then mildly bizarre. They did not understand why I did not understand that sexual violence had dire consequences inside Palipehutu-FNL.

Depth

The variation in the Palipehutu-FNL instruments to prohibit sexual violence is evident in terms of who was likely to be punished with death, as opposed to receiving some other type of sanction. While the death sentence applied,

technically, to every member of FNL, as discussed above, there were exceptions. Participants asserted that you would receive the death penalty:

It happened that FNL members raped as did members of the national army. But the difference was the punishment. If you were caught [in FNL] you would be killed (G4, 2011: P3)

Thus, incidences of rape and other forms of sexual violence were low, since the cost was too high. Overall, the respondents concurred that the instruments prohibiting sexual violence applied across the chain of command. Some respondents claimed that they knew of perpetrators who were commanders and who had been killed noting that “some sergeants were killed for sexual violations” (G8, 2013: P2).

However, as is shown below, not every perpetrator was punished by the same method, nor was the FNL’s prohibitions the same over the course of the conflict and negotiation settlement. Participants shared these nuances more or less over the course of discussions. They would introduce this caveat with statements that perpetrators could escape punishment because, sometime “people broke the rules despite the prohibition” (G6, 2011: P1). Following such statements, the focus group discussion would peel away at the assorted layers of variation. Some perpetrators were not determined to be killed, despite being guilty. And still others might not be acknowledged as perpetrators because of their status. Some respondents hinted that their commanders were not vulnerable to the same rules as the foot soldiers, and that it was expected that higher-ranking officers would be demoted. This incongruity in the Palipehutu-FNL instrument was not corroborated through instructions out of the rule book, but rather, was intuited by the corps and officers.

Constancy

The issue of constancy refers to the content of prohibition instruments and whether or not these were the same over time. For most of the ex-FNL members, the instruments for prohibiting sexual violence changed when the armed organisation entered into, awaited or exited negotiated settlement. Although they asserted that the informal consequences for sexual violence were revised, respondents did not cite changes in the recruitment code *per se*, and instead seemed to base their views on observations of events. Across the FNL-only focus groups, and indeed, even among respondents who had served with FNL but were in mixed focus groups, changes in the consequences for sexual violence clearly emerged as the group entered into its final stages of negotiation. For example, participants highlighted the way that individuals were more likely to find sexual partners after the May 2008

ceasefire agreement between FNL and the Burundi government, which followed a period of uncertainty within the leadership:

After the 2008 ceasefire there were unplanned pregnancies on the increase among the combatants. Also, in the *rassemblement* camps there was more sexual violence reported, and perpetrators were beaten, not killed (G8, 2013:P2).

What explains this shift? For many, the period of assembly for demobilization had implications for the organisation's structures and cohesion. There was speculation about the diminishing chances for political dominance by FNL, and its ability to command allegiance and reliable loyalties. Respondents claimed that the group was forced to reduce the harshness of the rebel group's prohibition because of a need to recruit more members:

Then when there was negotiation with the peace process we tried to reduce the sentence to save lives, because so many people were being killed for this act (G3, 2011: P3).

.... they saw how to increase the number of soldiers and they tried to reduce the punishment to beating [sticks, sic. Addendum] of 500 or 200 (G3, 2011:P2).

For those demobilised in 2009, several factors stand out:

Rigor was abundant before the ceasefire, for example when the Rwsa group entered into ceasefire negotiations in 2007, which failed, and then again in April 2008, when there was a more effective ceasefire in the camps... And the rigor of punishment was modulated by different times, when we were gathered in ceasefire camps, sexual violence happened more, [but the] punishment was supposed to be the same. But again, it was not the same... And in the ceasefire camps, we had already handed in our weapons and there was a lot of interaction with civilians. In other words it was more commercialised and some married. The chiefs relocated and there was chaos and unfamiliarity in the camps. It reduced rigor of the law as time went on, there was a lifestyle change and female and males were living side by side. Punishment was no longer death. Rather, the punishment was reduced to a beating (G9, 2013: P1).

This rich description by a 30 year old male ex-combatant highlights a number of critical points. The period of awaiting the conclusion of negotiation was filled with uncertainty. There may have been a leadership vacuum within the FNL high command as well as within the camps. Leaders and followers of FNL were awaiting the outcome for the future, but they were also not fighting.

It was not likely that *soldats* [soldiers] or others would do such things, except after the ceasefire then some began to do such things (G12, 2013).

The Palipehutu-FNL leadership stopped investing in its instruments for prohibiting sexual violence. The ex-combatants, once languishing in temporary processing centres, awaiting the outcome of negotiations or a final, concluding demobilization, witnessed this transition from a zero tolerance for sexual violence, into an irregular, abridged prohibition. Indeed, one has the impression that many of the FNL members, from its commanders to its rank and file foot soldiers, were occupied with the challenges and prospects of the war's end. Respondents in this study alerted me to some of the concerns facing them then, ahead of FNL's settlement with the government. These concerns included worries about finding a job and work, safety and security, reuniting with communities and families and simply, survival. In the meantime, they were also concerned about enduring and overcoming material hardships while they awaited the outcome of the war. In such a setting, it seemed to them, that the rules of the FNL were transformed.

Negligent authorities

The second explanatory factor or independent variable of interest is negligent authorities. Focus group information was mined for evidence that addressed the following key questions: *Were there internal differences between the likelihood of punishment for sexual violence? Did some commanders prefer not to punish perpetrators? Did armed group members fear their leaders' implementation of the punishment? Did members know of leaders who changed the punishment practice? Was there agreement within the leadership about punishment? Did some members enjoy special privileges which precluded their commanders' punishment?* As with the CNDD-FDD data, the results for FNL are arranged into three categories: hierarchies of authority; minimizing enactment; and transformation of norms.

Hierarchies of authority

As discussed earlier, Palipehutu-FNL developed a prohibition of sexual violence that was closely related to religious practice. Inside the rebel group, suspected perpetrators were shamed by their peers to confess during prayers sessions (G5, 2011). And for some members, the beliefs about sexual violence were rooted in a wider ideal for change in Burundi. As one member stated, FNL "had a good social message about justice for change" (G3, 2011: P1). Despite the prominence of such ideals and FNL's well-known and costly penalty for sexual violence, individuals still committed violations and perpetrators still had to be punished. Nevertheless, responding to sexual violence in the form of the death penalty could be viewed by its members as an

extreme way to control sexuality, a particular area of sensitivity and autonomy. Thus, authorities would need to be irreproachable, and to legitimise the high price of killing members. On many levels, discussions with FNL ex-combatants circled these issues of irreproachability and legitimacy.

The respondents explained that the organisation used its hierarchy to assign authority for punishment to particular classes of soldiers:

A case was heard by the group at troop-level, up to the higher levels. If it was at a higher level, they reported to Rwsa (G12, 2013)

Some respondents in the focus groups could describe hierarchical levels of authority, which seemed to begin at the unit level, and move to troop-level. Notably, FNL focus groups could not provide detailed and consistent specifications of rank titles and duties. Instead, they provided an overall impression that the rebel organisation had graded ranks. Their views portray a pyramidal stratification: foot soldiers organised into units, units accumulated into troops, troop leaders reporting to a high command. At each level, a commander, (inter-changeably called a commander) would handle the cases of sexual violence. Notably, although the highest commander, Agathon Rwsa, seemed to make the final decision, FNL combatants at the unit level could initiate a case or claim. Their unit commander would report the case to the troop commander at the local or even regional level. In turn, he or she would bring it to the attention of the high command, either directly to Rwsa or to a number of commanders reporting to him. A few ex-combatants in the FNL-affiliated focus groups provided particular titles for different designations of authority:

The typical rank of the decision-makers were [sic.] the chiefs. He would report to his superior who was a lieutenant, who reports to the commander of the battalion, then to the Lt. Colonel, then to the colonel, who is likely to make the decision (G18, 2013).

For some of the respondents, it was important to articulate that their commanders had a procedure for judging the guilty. This viewpoint seemed to support concerns that the authorities' life-taking powers were legitimate. For these respondents, FNL had designated individuals with these responsibilities, based on a military ranking of authority.

In addition to the particular stratification of punishment procedures, authorities were responsible for investigations:

There was an investigation. After, the major or another leader decided to punish you according to the ranks [sic.]. He [the chief] would go bit by bit until the top. It was immediate punishment if the evidence was obvious. It took a week for the punishment if there were more investigations (G17, 2013).

This statement, from an FNL focus group in Bujumbura Rural, provided exceptionally clear guidance on the hierarchical power of authorities. The Bujumbura Rural cohorts articulated a vision of the armed organisation's punishment practices that differentiated the procedures of investigation, prosecution and execution. However, as the participants in this focus group fought in the same unit together, I was also intrigued about whether or not similar distinctions in investigations were remembered in other parts of FNL. Indeed, very few of the FNL ex-combatants in other focus groups corroborated this precise description.

Although most armed organisations must designate the power to investigate, adjudicate and punish according to military rank and grading, I was simultaneously aware that many of the FNL ex-combatants had limited insight to these procedural aspects or even, to the stratified system of authority within FNL. Too often, respondents talked about their leaders in general and vague terms. Despite the recollections above, they rarely refer to generals or lieutenants or majors, but called all leaders 'chiefs' or occasionally, commanders. In fact, one FNL group of ex-combatants asserted that military ranks were not used in their organisation:

There were no grades in the FNL and we were ranked by work.... (G9, 2013).

It should be noted that out of all the focus groups, this was a very minor contribution to discussions on hierarchies of authority. However, it is important to consider this view, since it points to an aspect of the culture within Palipehutu-FNL. Having already established that foot soldiers exercised peer pressure on their cohorts, it is worth noting that for some, FNL was a loose, armed social movement rather than a military organisation. There were leaders at the level of Rwsa who appeared to hold significant power and titled authority. However, for the ex-combatants in these focus groups, some of whom claimed to have served as commanders at the unit level, it seemed that members often identified themselves in equal terms and that they felt that the leadership was fairly approachable and even, that they themselves could have been leaders of the armed group, with time. This does not mean that they believed that a hierarchy did not exist, or that they held deep-seated doubts about the compatibility of their vision of Palipehutu-FNL with the factual existence of its hierarchies. Instead, there was a strong preference within the movement to define its authorities' power and prestige according to individual records of combat success, skills they brought to the organisation or their relationship to the population.

A final point should be addressed with regard to the territorial dispersal of the armed group. I did not gather from the ex-combatants that there were

great distances to travel for a consultation on the punishment outcomes for specific claims of sexual violence. The ex-combatants however conveyed that decisions were rapid and did not take very long. This suggests, either that leaders of the high command travelled constantly between rebel areas and thus could deal with problems quickly, or that the distance between FNL locations was not very large. Alternatively, their overall responses suggested that in fact, for particularly egregious or obvious violations of the prohibitions on sexual violence and other acts, locally-based authorities could exercise total control over punishment and did not, in fact, always have to consult up the chain of command.

In any event, a heterogeneous representation of Palipehutu-FNL's hierarchical authorities and the punishment for sexual violence emerges. First, the movement had a hierarchy akin to many other rebel organisations, with the power to punish based on ranking within the stratification. Secondly, in some cases, FNL foot soldiers played a prominent role. In many instances, the lowest-ranking members of FNL could single out or identify perpetrators. They could provide evidence and testimony. The decision to punish perpetrators however, was taken at a higher level, mainly by lower ranking commanders for cases that were deemed clear cut. Finally, cases or claims that were more complex or had various connotations were channelled through the FNL's loosely-configured chain of authorities and a final determination would be made by the high command, sometimes involving someone as central to the movement as Agathon Rwasa.

Minimizing consequences

To some extent, ex-combatants of Palipehutu-FNL contended that the harsh penalty for sexual violence was reduced for some perpetrators. They explained this in several ways. First, perpetrators who held positions as commanders would not necessarily face the same type of punishment as foot soldiers. In specific cases where commanders were reported as having taken part in a sexual relationship, they would be demoted or deprived of food, shelter or face other hardships. In these cases it was intimated by the respondents that those in violation in such instances were male, and that their female partners were more likely to be punished:

The chiefs were not punished but some of the girls were punished. This was done confidentially but *kadogos* [child soldiers] were involved as they were the ones that got the girls for the chiefs (G10, 2013).

This contention however corroborated other remarks that in some instances, commanders attempted sexual liaisons with civilians or other members of FNL before, during and after demobilization. Such an action however, was widely viewed as a lower form of violation than the commission of rape. In

the cases of sexual violence committed by commanders, and there were few, the respondents asserted that only in some cases did authorities remain penalty free. However, the examples cited suggest that the consequence of sexual violence, for commanders, was not death, but a minimised sentence. In such instances violent sexual aggression on the part of FNL leaders was addressed by other higher-ranking commanders, who saw to it that punishment was minimised:

Punishment would depend on the grade, when you are a chief other chiefs and foot soldiers would say nothing and vice versa, depending on how familiar you were with the chief (G4, 2011:P3).

It was clear from responses such as this that the fact that the power to punish having been invested at a higher ranking, also afforded FNL authorities with the latitude to address sexual violence with some leniency. Focus groups from Gitega and Bujumbura Rural were less likely to have similar stories, but the groups composed of members from Bujumbura asserted that there was a double standard when it came to dealing with higher-ranking members. Indeed, in some cases, it was suggested, a lower-ranking soldier could escape punishment because of his relationship and value to a higher ranking leader. In this way, the hierarchy of authorities precipitated a different standard of accountability between the FNL foot-soldier and his or her leaders. In fact, in terms of punishment outcomes, foot soldiers were more likely to be punished:

...low ranked soldiers would be punished, low ranked soldiers were not informed of senior chiefs' punishment (G8, 2013).

However, some respondents were unclear about the procedures relating to their commanders. These respondents stated that in a few cases, the meting out of justice was a 'secret' affair, and that their leaders were not always transparent about the claims and investigations of perpetrators who had a higher rank. Typically, in a focus group that had this type of discussion, some respondents would stress that reports of violations were sent up the chain of command, all the way to Agathon Rwasa. This would follow by a collective assertion that the determination of guilt was required to be taken by much higher-ranking soldiers.

While respondents in the focus groups seemed to circle around this issue, they still pointed to these divergences and limitations in the depth of punishment practices of Palipehutu-FNL. Still, for some participants, the applicability of punishment was a consequence of your rank and your location, or whether or not your commander was vigilant in protecting you from the consequences for sexual violence (G10, 2013).

Transformation of norms

The Palipehutu-FNL focus group material shows that authorities' response to sexual violence constituted a temporal variation in punishment norms. Respondents from FNL concurred that the armed organisation grew less comprehensive and exacting in its sexual punishment practices over time. This is based on perceptions of FNL's reduction in sentences during the post-2005 elections in Burundi, the victory of CNDD-FDD, settlement talks, ceasefires and demobilization. It was between 2004 and 2009 that FNL ex-combatants in these focus groups witnessed an increase in unplanned pregnancies and commanders engaging in sexual relations in the open:

[I recall] one chief who had sex with another chief and so yes, it would happen even at a high level. But in the case of that chief....he was downgraded then dismissed without rank (G8, 2013:P2).

After the ceasefire was signed, there were internal relations between some girls and some commanders... the chief commander tried to make a survey among the regional commanders about the number of pregnancies and there were so many pregnancies and some births and most were demobilised and expelled and there was no follow-up to these commanders. For example, there were no cases where commanders were punished (G3, 2011:P2).

Indeed, some of the FNL leadership would increasingly take up intimate relations, marry or in some instances purchase sex. Moreover, civilians were part of temporary processing camp life. Many combatants had new opportunities to interact with civilians. Men and women had more time together.

This period of time also coincided with a softening of FNL's prohibition from death to beatings and deprivation. For some FNL members, even foot soldiers could now flout the prohibitions on sexual violence.

During the first part of the war, [commanders] gave advice and applied the death penalty...They took the decision [that] some would be killed and then they stopped this.... (G4, 2011).

Some ex-FNL contended that this behaviour was negative, and that it was not universally accepted by the movement's fighters. For many, a shift in the Palipehutu-FNL culture did not make sense. Some countered that it was necessary to relax the penalty in order to grow the numbers of recruits and members. This was understood as a tactic to enhance its opportunities for integration. Nevertheless, for some, reducing the penalty of the rebel group was questionable.

... Rwaswa was in our [sic.] and he was very strict and he disputed the idea of pardoning some offenders. Some companies were [even] more strict than

others. But this meant that sexual violence happened more rarely (G8, 2013: P3).

The respondent who claimed that Rwaswa objected to minimization in sentences of FNL perpetrators of sexual violence was based in a unit in Bujumbura and demobilised in 2009. All the other respondents in this focus group had similar records and left FNL at the same time. They agreed that the change was precipitated by some figures within the organisation. This group claimed the armed organisation was keen to increase its members. They suggested that in order to do this, the FNL became more tolerant and less controlling of the sexual behaviour of its members. Importantly, they did not believe this loosening of control meant that the movement ignored sexual violence. Indeed, they and others stressed the importance of maintaining good relations with the population. What was at stake, however, was a perception that FNL members faced a harsh life, that its rules were costly and intolerant and that the rebel group's authorities could exercise total power over its membership.

A fundamental concern was the need to place Palipehutu-FNL in a stronger negotiating position with the government, the other political parties and later, the CNDD-FDD-ruled government. The ex-combatants reasoned that by increasing membership and popularity with Burundians, the FNL could claim more positions when it came time to integrate with the state's military and police.

Amnesty

Amnesty is the third and final explanatory factor of interest. The following key indicator questions are addressed in the focus group data: *Was the armed group eligible for amnesty? Did members know about the amnesty? Did the amnesty have provisions which restricted its application? Were the members aware of other armed groups receiving amnesty? Did members have access to the same information about the amnesty provision? Did this result in a common view of amnesty? Did the group's leadership negotiate specifically for amnesty for war-related violence? Do members of the armed group believe they have benefited from amnesty? Do armed group members relate post-settlement sexual violence events to amnesty or post-settlement? Are there subsequent pardons for sexual violence which have benefited the armed group or its members? Do members think the amnesty applied to the post-settlement era?* The results of the focus group are clustered in three categories: new beginnings; applicability and beneficiaries; and sources of information.

The Palipehutu-FNL focus group participants provided varied but significantly limited responses and commentary on the legal and political implica-

tions of the settlement-derived provisional immunity and subsequent amnesty laws of Burundi. Two out of the eight FNL-only focus groups began the discussion on amnesties with bewildered questions about what it was I was referring to, and required further probing in order to provoke responses about amnesty. One focus group was in Bujumbura and one in Gitega. Both sets of groups were unclear about the concepts of amnesty and provisional immunity. They could barely converse about amnesty, requiring further input in the form of questions I posed to them about whether or not any kind of pardon existed for those who fought in the war. The remaining FNL-only focus groups iterated that the settlement process and subsequent cease-fires and agreements emerging from the Arusha Peace and Reconciliation Agreement created a provisional immunity and, or amnesty for their rebel group.

For most respondents, the specific provisional immunity was interpreted as a blanket amnesty for acts of war as part of the overall settlement between rebels and government troops. A typical response among focus group members who had served with FNL was that “under Arusha or similar to Arusha...they would be reintegrated into the army and would be demobilised and reintegrated” (G12, 2013). For some, the amnesty provided for the parties to the conflict facilitated their reintegration and “you could live under a new situation and take up a position of responsibility” (G8, 2013:P3). They were, however, vague about their individual liability for acts committed during the war. They noted that they were free to return to civilian life after their demobilization from Palipehutu-FNL and that this was an outcome of the negotiations between respective leaders of FNL and the CNDD-FDD ruling party (i.e. the Burundi government).

Interpreting whether or not amnesty applied to sexual violence was a central feature of the focus group discussions. Each group responded to questions and discussed whether or not sexual violence acts committed during the war were prohibited under the amnesty. Ex-FNL respondents provided a disparate interpretation of the applicability of amnesty to sexual violence.

Amnesty applied because no one was prosecuted for [the war]. No one is even alleged to be accused, what we know is no one was accused. We do not know if amnesty applies to sexual violence or not. Once the [agreement] was signed we knew that amnesty was available (G9, 2013).

Although the same individuals clearly knew that amnesty emanated from the war negotiations and was part of its settlement, they were less clear about whether or not it should have been withheld for acts of sexual aggression.

Applicability and beneficiaries

Some participants clearly stated that sexual violence should have been prosecuted even if it had not been, or such acts should have been addressed afterwards. Several groups arrived at hesitant conclusions about whether or not

sexual violence should have been or was punishable, even after an amnesty, for acts committed during the war:

People who raped were not punished, and they [the armed group members] were not informed if amnesty applied to rape. But yes, rape was a crime (G8, 2013).

According to these viewpoints, sexual violence was a crime that should have been considered punishable, despite the existence of a provisional immunity as part of the settlement of the war. One FNL focus group further supported this by collectively claiming that perpetrators of rape during the war did not benefit from amnesty while several echoed the view that perpetrators of sexual violence, after settlement, should be punished for sexual aggression if it was committed in the post-settlement period (G12 and G17, 2013).

Many respondents in mixed and FNL-only focus groups posited views that seemed to fuse the moment of war termination and settlement with amnesty, and to view amnesty as a process or mechanism for integration of their armed movement into the national military. As such, particularly among FNL members, this did not mean that they or their commanders were exempt from liability for atrocities or violence committed during the war, particularly if specific acts had been prohibited by their own leadership. Sexual violence fit into a category of acts which could have been punished during the war, by their own leaders. In this regard, the FNL ex-combatants seemed to believe that perpetrators of such acts during the war could have been or should have been punished. However, they did not maintain that the new government or an integrated national military organisation should punish past perpetrators. They declared that sexual violence was somehow not exempt from punishment. This somewhat foggy ideation of amnesty's limits is further clouded by views among some respondents from FNL that amnesty only applied to CNDD-FDD and other armed actors.

I have explained how the FNL focus groups depicted the provisional immunity, but who did they think benefited from this particular type of amnesty? Those participants that had been FNL, as well as others, held several contradictory views. While several groups proposed that all combatants were beneficiaries of amnesty, an equal or greater number of respondents contended that only leaders of FNL and other groups, or that only CNDD-FDD was eligible for amnesty. Some of these groups made statements about the totality of amnesty and made emphatic statements that "all benefited" (G8, 2013) or that "amnesty applied to all, but if he committed a crime after then the law would be applied" (G12, 2013). However, for other participants, particularly in the groups which were convened with only FNL ex-combatants, only "chiefs benefited as they had to integrate, this was the same logic for why no one was prosecuted" (G9, 2013). One group, based in

Bujumbura contended “CNDD-FDD ideological sympathisers” benefited (G10, 2013). One participant, a *Bashingantahe* (traditional leader) emphasised that the length of service in an armed group was the key criteria for amnesty (G8, 2013:P3) but it seemed to others that he was in fact suggesting that it was the length of service that corresponded to eligibility for integration into the national military. In this particular focus group, the exchange and expression of views about amnesty was quite high. Yet even in this instance the discussion seemed to confuse amnesty, as a formal exemption, with the process of integration and qualification for a “position of responsibility” (G8, 2013:P3). Finally, another set of respondents, those who participated in mixed armed-group affiliated focus groups, were less inclined to pronounce a particular beneficiary identity to amnesty. However all ex-FNL participants, and indeed in the other armed groups, agreed that they did not have much information about amnesty or similar formal exemptions.

Sources of information

Given the foggy or confused responses to my questions about amnesty, how did the respondents explain their knowledge of the concept? Where did their ideas about amnesty come from? Among FNL-only focus groups, information about amnesty was directly linked to negotiations for peace and instructions for demobilization and integration. For some of these respondents, amnesty was taken for granted as a condition of any negotiated settlement,

They knew about the amnesty, because the leaders would not negotiate without it, and once they moved to Bujumbura they had access to more information (G9, 2013).

As such, amnesty was clearly a product of the successful conclusion of the war, and was a featured condition on the part of the FNL leadership for putting down arms. However, it was striking that most FNL members only learned about amnesty, or the conditions of settlement, when they left the bush. In this regard, the FNL ex-combatants also confirmed that they understood the terms of the peace when they were provided with instructions to leave the field of battle, or were released and instructed to enter disarmament and demobilisation assembly areas (DDAAs). Once ensconced in these areas, they heard about the terms of settlement and perhaps any aspects of amnesty or provisional immunity. Mainly, the information about their return to civilian life pivoted around the idea of their integration into the national military, or to demobilization, permission to go home and reinsertion into society. For many, this information was garnered through radio and among their cohorts (G14, 2013). For example, for one group, which was composed of men who had all served in the same unit in Bujumbura Rural, there was no specific information about amnesty or the terms of the settlement,

either during their cantonment in a DDAA, except through radio broadcasts (G17, 2013). However, even the quality and specificity of this information might not have directly addressed the key conditions of amnesty under the 2000 Arusha Peace and Reconciliation Agreement or Palipehutu-FNL's provisional immunity, except in terms of general news bulletins.

For former FNL fighters, the lack of information was not strange or unusual, for they seemed to believe that the concept of amnesty was a technical specification of the terms of settlement and the entry-point for integration. They did not express strong emotive views about not being briefed on this so-called technicality. Amnesty was not an idea that had produced much consideration prior to our meetings, and it was not really relevant to them, except as an outcome of the end of their war. On this note, most of the ex-combatants of FNL concluded the discussion of this particular topic (G18, 2013).

Within-case analysis

Members of the armed group Palipehutu-FNL believed they would experience negative consequences if they committed sexual violence. The armed group was able and willing to punish sexual violence. The ex-combatants of FNL expressed a common view that they could experience negative consequences by their peers and cohorts, if they committed wartime rape. Which conditions led to this outcome of armed group impunity for sexual violence among former FNL fighters?

Effective prohibition

The focus group information pertaining to Palipehutu-FNL results in the confirmation that the armed movement invested time, human resources and energy in an instrument to prohibit sexual violence. The mechanism in place was a code of conduct, shared through indoctrination and in written form. Ex-FNL members told of training and prayer sessions which inculcated a principle against consensual as well as coercive sex. Importantly for this finding, they also underscored that sexual violence was also a prohibited act and could differentiate between the two types of sexual activity and the application of the prohibition. The prohibition not only applied to foot soldiers, but also to commanders. While many respondents indicated that their leaders would not be executed but instead demoted, this admission still conveys that the highest ranking leaders of the group did not enjoy some kind of special status. They too were prohibited from wartime rape. Even this reduction in costliness resonates as a genuine effort to ban sexual abuse. Demotion in the midst of a peasant rebellion can be costly, resulting in fewer avenues for

survival, access to information, material rewards and power. The shame of demotion would almost certainly have come across as worth avoiding. The practice of sexual partnerships imbued with coercion and exploitation – forced marriages or taking bush wives – only became more common as the group entered into demobilization and cantonment. Indeed, for the greater part of the civil war in Burundi, the FNL’s prohibitive instrument had depth and was constant. The presence of strong prohibitions is confirmed in secondary sources (HRW 2003b) but it is also recognised by civilians and ex-CNDD-FDD members (A21, 2013; A18, 2013).

It is not clear what led the FNL to establish such a rigid prohibition. The pre-war context allowed for sexual violence, albeit with a cost paid to families of victims and the imposition of forced marriage in some cases. But the overall asymmetry between women and men and the general chaos of war and conquest should have contributed to softer and more flexible prohibitions. It might be, as Agathon Rwaswa stated:

Discipline is instrumental for achieving a common goal. [In FNL] we had to sit down and determine our objective, for example it could be ‘today go to Kigali’. We then had to analyze the conditions which would get us there, such as cost, time and this and that. Then we had to have rules in order to do so [reach the goal]. Having a common set of disciplines and rules allows the group to live together (A20, 2013).

Importantly, Rwaswa (Interview, 2013) never claimed that the prohibition cited death as a penalty. At the same time, he did not choose to dispel my understanding that perpetrators were put to death (A20, 2013). His ambiguous responses can be explained in several ways. Rwaswa might have felt that outsiders would criticise execution as a punishment, or he may have chosen to focus his answers only the period under demobilization when FNL revised its prohibition. Indeed, he took pains to emphasise that “the rules were established by consensus and they were revised also by consensus” (A20, 2013).

The fact that Palipehutu saw itself as a religious liberation movement might have had some influence on the prohibition. A former CNDD-FDD combatant now journalist, believes that the FNL code was not driven by genuine religious beliefs on the part of its members, but rather, used as a rhetorical tool and socialization mechanism in order to keep the organisation alive (A18, 2013). The religious rationale also appealed to the Hutu masses. Perhaps more accurately, the rebel group’s identity was dualistic but complementary. Palipehutu saw itself as a political actor, and developed an ideology of liberation on that basis (Palipehutu 2001) bringing together international norms of human rights with a reading of Burundi’s history and the international community’s complicity in maintaining minority-rule. The group was also, at the same time, deeply religious and evangelical. Its mem-

bers were born-again Christians of one faith or another. Its members referred to themselves as God's army. The group established a women's wing as well as a youth movement. Similar institutional configurations may have existed in other armed rebellions in Burundi, but the structures of Palipehutu seemed to strive for a wider inclusion of marginalised sub-groups. While Palipehutu was a racist Hutu power group that committed human rights violations against its enemies, the rebellion relied heavily on the population in its area of control. In the beginning, much of the violence was directed at military and economic targets. A combination of these aspects may explain why the prohibition was so rigid: it allowed members to coexist fraternally, to remain ideologically and mentally pure and to avoid entanglements with the civilians they depended upon. The cult of sexual purity corresponds to a premium placed by the organisation on temperance and discipline. As Rwasa explained, the FNL "rules were also based on the reality that 'you can control your mind when you are sober' (A20, 2013). Palipehutu-FNL's prohibition for sexual violence contributed to accountability, and not to armed group impunity for sexual violence.

Authorities punished but also adapted

Palipehutu-FNL's leaders normally punished individuals for sexual violence. They could mete out swift sentences which were so assured that members of the group preferred to defect. The information from ex-FNL includes testimonies of executions, although these did not happen frequently. Presumably, the respondents who were ex-FNL attributed the infrequent event of punishment to the deterrent effect of the prohibition. Finally, the leaders of FNL were not always punished in the same way as their subordinates. They could be demoted, rather than killed.

The results of the focus groups, however, indicate that the FNL revised or transformed its punishment practices. This is exemplified in testimonies about transformation of punishment norms after CNDD-FDD's electoral victory in 2005 and in assembly sites for demobilization. It is underscored in the findings that although there had been an earlier lack of depth, with leaders likelier to be demoted than executed, the post-2005 reality for FNL leaders was even more lenient. Indeed, several ex-FNL remembered their commanders taking wives and girlfriends while the group waited out various ceasefires.

The respondents in this study provided particular explanations for the transformation in punishment practices. The first explanation is related to numbers. Punishment as it existed before 2005 was final and costly. It required coherence and commitment by leaders and it effectively deterred members from breaking ranks. Some individuals used sexual violence to denounce rivals within the group. Others defected if they were afraid of be-

ing caught and killed. And finally, even consensual partners could prefer to accuse their lovers of rape if it saved them from the shame, stigma and certain death of the group's censure and prohibition. These circumstances indicate that the FNL was a difficult organisation to be a part of. Considering that CNDD-FDD was already in a position of power as the first multi-ethnic, democratically-elected government, why would combatants remain with Palipehutu? Indeed, the Sindyigaya dissidents prove that for many, continued fighting on behalf of an all-controlling, demanding, war-committed organisation was untenable. From 2005, God's Hutu army would have to establish alternative ways to secure and keep its members in line.

As the pressure to settle with CNDD-FDD mounted, Rwaswa was alleged to have to acquiesce to demands from other leaders in the group to soften the punishment practices. The focus groups attribute the changes in FNL's punishment as a feature of these pressures. The rebel group's leaders wanted to increase the numbers of members for the purposes of securing the maximum number of positions in the eventual integration into the state's security and political apparatus. Thus there was an incentive to increase its membership base while at the same time remaining popular with the local population. Describing internal decision-making inside Palipehutu-FNL as by consensus, Rwaswa himself noted that "sometimes you had to adapt due to politics, particularly during negotiations" (A20, 2013). Finally, the reduction of the punishment over time seems to correspond with observations from NGOs. Human Rights Watch noted that "in the past, the FNL has exercised tight control from the centre. However, this control decreased in late 2007 and early 2008, when increased numbers of rapes, cases of assault, and robberies were also attributed to FNL members, many of them [by] recent recruits" (HRW 2009, 48–49). Somehow it seems likely that the changes in punishment by authorities had an effect on armed group impunity, even if it was only in the later periods of the war, during ceasefires and in the period of demobilization and integration.

Amnesty does not apply to sexual violence

If prohibitions were fairly rigid and punishment severe in relation to authorities (at least in the earlier years of Palipehutu) how did amnesty influence ex-FNL members' belief that they or others would experience negative consequences as a result of committing sexual violence? Importantly, the results of the FNL focus group discussions are that most ex-combatants did not have much information about the provisional immunity they were entitled to, nor did they understand with any consistency, if sexual violence was part of this conditional amnesty. This does not mean they thought sexual violence was exempt from punishment in the post-settlement era. Rather, wartime rape was perceived as an egregious and punishable offence. Post-settlement

rape and abuse was equally problematic, and it should be punished. There is no evidence that the immunities were conceived of as anything beyond a condition of war termination. Rwasa confirmed this view, emphasizing that the provisional immunity “allowed us to begin moving forward and to avoid having to accuse one another all the time. It was a provision to overcome an impasse” (A20, 2013).

Conclusion

This exploration of the focus group information and analysis of Palipehutu-FNL underscores the effects of prohibitive instruments on armed group impunity for sexual violence. Amnesty was not associated with anything other than the conditions for peace, if it was known or interpreted at all by the ex-combatants. Although they had a limited understanding of its precise meaning, they could differentiate between its applicability to the conflict and the post-settlement legal regime. Negligent authorities in FNL existed, although they too were accountable to the group’s prohibitions. However, after 2005, the rebel movement began to decrease its propensity for costly punishment, and this can be explained by considering its incentives to increase its membership base and integrate as many fighters as possible into the state’s security structures. The next chapter is the cross-case analysis of CNDD-FDD and Palipehutu-FNL, where I also attempt to further interrogate these explanatory factors of armed group impunity for sexual violence.

9. Comparative analysis: Conditions leading to armed group impunity for sexual violence

Based on the empirical results presented in Chapters 7 and 8, a cross-case comparison of the two rebel groups is the focus of this chapter. My aim is to evaluate the theoretical framework in light of what is known about each case. This chapter specifically sets out to explore the general causal relevance of each the three explanatory factors of armed group impunity. I will stipulate whether, how and in which combinations each of the explanatory factors relates to the outcome of interest. The chapter will thus assess how flawed prohibitions, negligent authorities and amnesty related to armed group impunity by comparing the empirical results of CNDD-FDD and Palipehutu-FNL. I will explore the relevant causal paths or mechanisms which generated armed group impunity, and to what degree. This will cumulate in a preliminary theory of armed group impunity for sexual violence.

The chapter begins by more closely examining the formation of armed group impunity within CNDD-FDD and Palipehutu-FNL, and compares the evidence garnered from the focus groups with ex-combatants. The chapter then proceeds by comparing the different experiences of CNDD-FDD and Palipehutu-FNL, focusing on the three explanatory factors.

The comparative analysis furthermore generates additional observations which relate to the theoretical propositions. Two operational incentives, a need for international credibility and dependency upon the civilian population for support, motivate authorities in the diffusion of prohibitions and application of punishment within armed groups. However, another operational incentive, the demand for more recruits, dampens armed group efforts to prevent and punish sexual violence. The chapter concludes with a preliminary theory of impunity for sexual violence among contemporary civil war belligerents.

Armed group impunity for sexual violence in Burundi's rebel groups

This study's definition of armed group impunity for sexual violence is confidence in the absence of negative consequences for sexual violence. The em-

irical exploration in the previous chapters, thus, focuses on the beliefs of armed group members. In order to collect evidence of these beliefs, the research design called for gathering views from ex-combatants through focus groups. This strategy sought to ensure that the perspectives garnered from ex-CNDD-FDD and ex-FNL members were representative of group-level ideas, interpretations and intuitions about the consequences of sexual violence. The definition of armed group impunity, the study's dependent variable, was further specified to whether or not the armed group was capable and willing to mete out consequences for sexual violence and if members viewed cohort perpetrators negatively. I did not further specify the dependent variable. This omission was intentional, as it would facilitate maximization of the empirical and theoretical contribution of the study. The exploration of the cases were probed on numerous levels and various ways, cumulating in details about sexual violence, pre-conflict, conflict and post-settlement practices, information management and armed group organisation and culture.

The exploration of the focus group information and the formal within-case analysis identified a variation in armed group impunity for sexual violence. While CNDD-FDD cohorts exhibited a tendency to estimate marginal and situation-specific circumstances for experiencing negative consequences as a result of sexual violence, the Palipehutu-FNL groups were certain that sexual violence would result in harmful penalties. Although there were degrees and gradations in these beliefs within each set of actors, overall, the major difference is that CNDD-FDD (and not FNL) expressed and therefore fostered armed group impunity for sexual violence. What does the variation in armed group impunity mean? In most respects, the two rebel organisations were similar. They shared the same cultural background, political situation and grievances of the Hutu majority. Yet, impunity among CNDD-FDD former combatants was present, while FNL ex-combatants articulated a belief in the negative consequences of sexual violence. Indeed, a striking aspect of this study is that Palipehutu-FNL, an extremist and racist armed rebellion fostered accountability for sexual violence.

One notable observation of interest is the different ways that the two sets of rebel ex-combatants expressed their understanding of sexual violence. Of the two, CNDD-FDD former fighters were prone to describe sexual violence in war and in peace with euphemistic language. The concepts of love and romance were iterated in their descriptions of rape and forced marriage. The ex-FNL members however, more comfortably travelled between a depiction of rape as illicit and harmful, and their simultaneous comprehension of its frequency and cultural practices. In the former group, sexual violence was a common mode of securing sexual partners, and desire was a motivation for it. In the latter group, sexual violence created victims and perpetrators; it was not as frequently attached to desire as it was to weakness and opportunism. The differences between these two frameworks of conceptualizing sexual

violence may be marginal. However, considering research on social learning mechanisms and their role in preventing sexual aggression (Henry, Ward and Hirsberg, 2004), the two frameworks are worth noting. As discussed in Chapter 3 of this study, Henry et al suggest that impunity co-varies with individuals' diffusion and displacement of responsibility, distortions of consequences and euphemistic labelling (Henry, Ward and Hirsberg, 2004: 550). The different ways of labelling sexual violence, on one hand as a fact of life driven by romantic desire and on the other hand as a form of weakness and opportunism, indicate that CNDD-FDD ex-combatants were likelier to euphemistically label and distort the responsibility for sexual violence. Not always but more frequently than ex-FNL, CNDD-FDD members formulated sexual violence as motivated by uncontrollable forces that were human, unavoidable and therefore, required an outlet. Former FNL foot soldiers recognised these same forces, but believed that giving into them was a sign of human frailty, sin, selfishness and indiscipline. These differences are important. Whereas Palipehutu-FNL's comradely, peasant movement identity fostered a group identity that placed a premium on discipline, the military architecture of CNDD-FDD failed to transmit the hazards of sexual violence.

Another observation is that impunity is not necessarily 'absent' or 'present', and therefore it is not a dichotomous outcome. Among CNDD-FDD, impunity was situational. Negative consequences were limited to perpetrators who had violated young children or the relative of a powerful member of the organisation. In some instances, armed group accountability would be activated by sexual violence that might jeopardise an operation of the rebel army. These situations, however, seemed remarkably contingent, given the otherwise common belief that sexual violence would not result in any negative consequences. Significantly, contingency was not as evident among FNL fighters, who had a more consistent sense that sexual violence would also result in dire circumstances for higher-ranking perpetrators. The FNL fighters did not distinguish between coercive sex with minors, relatives of commanders or comrades. This might explain why ex-FNL respondents, mainly, did not provide caveats or conditions for accountability. Contrasting these two outcomes, it appears that accountability has a dichotomous quality, while impunity is manifest in various gradations and guises.

The variation in armed group impunity for sexual violence is also striking in assessing evidence of capability and willingness of each armed group to mete out consequences for sexual violence. The two cases differed only in one sense: uniformity in establishing willingness. Both rebel groups clearly had the capacity to inflict negative consequences. They each did, at one time or another. However, while some ex-CNDD-FDD members suggested that sexual violence would lead to harmful results whether in war or peace, they were fairly confident that their organisation would not be willing to inflict these harmful consequences on their members. It is true that this was mainly

contingent on the type of sexual violence committed. But even in describing punishment in the post-settlement period, CNDD-FDD cohorts tended to identify different scenarios for negative consequences. They did not recognise that CNDD-FDD would be willing, in most circumstances, to mete out punishment. The opposite, with some exceptions, can be said about Palipehutu-FNL. Even in circumstances of peacetime, these ex-combatants were cognizant of the negative results that emanate from sexual violence. In the context of the conflict, they recalled numerous ways and means of ugly outcomes for perpetrators of sexual violence, even if the consequences were mainly breaches in the fraternal, communal culture of 'God's army'. The religious zeal of some ex-FNL focus groups may have played a role in this estimation of their group's willingness to mete out punishment. Also, recall that four of the women in FNL originally entered the conflict as members of CNDD-FDD, but left the group to join Palipehutu-FNL. Furthermore, Palipehutu-FNL had an active women's group, which was known for engaging in combat and had its own structure in the movement. These aspects of the FNL indicate that the group tried to accommodate female agency, the gender that is usually the main victim of sexual violence in Burundi. It is plausible that the willingness of FNL to mete out negative consequences for sexual violence was pronounced, in a way that it seemed absent in CNDD-FDD.

A final observation of the variation in the dependent variable is that armed group impunity for sexual violence is more excessive when cohorts do not view perpetrators of sexual violence negatively. In the two cases, CNDD-FDD was less prone to policing by peers. Foot-soldiers were unlikely to censure one another for sexual violence. In contrast, ex-FNL combatants inflicted harms on their brothers-at-arms, horizontally. Many of the Palipehutu focus group responses outlined how members prayed together, and would denounce one another if they committed or suspected sexual violence. They encouraged confessions for disciplinary infractions, including for sexual violence. It is true that these exercises in public shaming could be based on a desire to harm a rival for other malignant reasons. Female combatants could, for example, declare that a consensual sexual relationship was actually sexual violence. Other situations are plausible, whereby a rape did not take place but a member wanted to 'get rid' of another combatant or higher-ranking individual. Regardless, the pressure to conform to a sexual ideal, to refrain from sexual activity but more importantly from sexual violence, emanated also from cohorts. The evidence of this peer pressure was missing in the testimonies from the CNDD-FDD ex-combatants.

Explanatory factors

In the following sections, I assess to what extent flawed prohibitions, negligent authorities and amnesty can explain the variation in armed group impunity for sexual violence within CNDD-FDD and Palipehutu-FNL. The comparison is divided into three parts. In the first three sections I systematically compare each factor and what role it had in creating, weakening or intensifying armed group impunity for sexual violence. The fourth and final part addresses and highlights additional observations of operational incentives, which appeared to act as catalysts for the explanatory factors of armed group impunity.

Flawed prohibitions

In the two cases, the presence or absence of flawed prohibitions of prohibition determined the occurrence of armed group impunity for sexual violence. Without an instrument of prohibition, the armed actors could not gauge the consequences of sexual violence. In this study, each armed group's instrument was explored for its clarity, costliness, depth and constancy. These elements of the prohibition existed in various forms in CNDD-FDD and Palipehutu-FNL. In what ways did their existence and interaction shape the prohibition and facilitate the occurrence of a 'flawless' or 'flawed' instrument? Was it clarity, costliness, depth or constancy which was the most important in generating the outcome of armed group impunity for sexual violence?

A significant finding of the study is that a prohibition must be clear in order for armed group members to believe that there will be negative consequences for sexual violence. The prohibitions of CNDD-FDD and Palipehutu-FNL were similar in many respects. However, a prominent difference between them was that CNDD-FDD's code of conduct was mainly transmitted informally and in an ad hoc manner. The ex-combatants of CNDD-FDD did not recall, with any uniformity, the prohibition's parameters. They cited different types of penalties for sexual violence. Many thought prohibition was calibrated according to any failure to meet operational duties. Some believed the negative consequences were quite high, while others thought they were marginal. The penalty could be applied to commanders but not to foot soldiers. The nature of investigation and adjudication was reported differently. The code of conduct was not documented. New recruits and members were not given its content orally. In contrast, Palipehutu-FNL had a written code of conduct and a culture of documentation. Even though more powerful authorities might have faced reduced sentences, the death penalty was known uniformly. All ex-FNL members could recite the rationale and content of the armed group's prohibition. This sug-

gests that combatants require prohibitions that are uniform and clear, in order to understand the particular liabilities and responsibilities they face as members of a fighting force. Lacking clear instructions about the parameters of their prohibitions creates uncertainty. Thus an unclear prohibition generates armed group impunity for sexual violence.

A second important finding is that a prohibition must be constant in order for armed group members to believe that there will be negative consequences for sexual violence. Both CNDD-FDD and FNL's prohibitions changed over time. The armed groups each had their different periods of transition. Former fighter of CNDD-FDD believed that the group's prohibition became more rigid over time. However, FNL's code changed too. It became less costly, with penalties changed from execution to deprivation, incarceration or more often, demotion. Both of these changes occurred in the context of the settlement. Ex-CNDD-FDD members reported that the transition happened as the group began demobilizing and integrating into the national army. Palipehutu, on the other hand, also experienced a transition with each successive cease-fire, demobilization and especially in the context of anticipating integration. If these two groups both experienced changes in their prohibitions, how can constancy be a factor in armed group impunity for sexual violence?

There is one plausible explanation. In each armed group, the message of the prohibition was transmitted according to the structures and internal disciplinary practices of the armed group. In the case of CNDD-FDD, these structures were of a military nature, although there were members inside the organisation that felt repelled by the hierarchy and its enforcement. In the case of FNL, the structures were also hierarchical, but the armed group also had camaraderie, with shared religious values. The fact that its FNL cohorts denounced one another for sexual violence suggests that a peer culture developed horizontally. These members could police one another. The distinctive characters of each armed group played a part in the transmission of the prohibition, even when it changed. Thus, although both groups experienced changes in their prohibitions, FNL's code was more constant. The importance of this in the process of generating armed group impunity is that constancy fostered the impression that there was a particular outcome that would arise if sexual violence occurred. If an FNL member committed sexual violence, the constancy of its prohibition, facilitated by its peer-to-peer culture, indicates that the perpetrator had clear knowledge of the consequences.

Given the foregoing, how did the other aspects of the prohibitions, costliness and depth influence the formation of armed group impunity for sexual violence? In each of the two cases, codes of conduct existed for prohibiting sexual violence. Each code was costly, although FNL's prohibition carried a higher price in term of its death penalty. Both armed groups had codes that

granted greater leniency to higher-ranking chiefs and commanders. Of the two, however, Palipehutu's commanders were equally liable to the prohibition against sexual violence, at least for much of the civil war. While they faced, in some circumstances, demotion or incarceration rather than death, they still had to pay a high cost. This was not the case for CNDD-FDD. This vulnerability of leaders sent an important signal, reinforcing the clarity and constancy of the prohibition. It is thus credible that the costliness in FNL and relative depth contributed to deterrence.

Comparing clarity, costliness, depth and constancy shows that there were differences in their relative importance. In the case of CNDD-FDD, even if summary execution had been a possibility, it would not matter if that penalty was known by some members and not others. Similarly, CNDD-FDD chiefs and foot soldiers who understood that the prohibition for sexual violence placed them equally under liability, would have been free of accountability if the prohibition weakened over time. Thus, Palipehutu-FNL's code of conduct although providing a death penalty and applying to the leadership, would not have been effective if it had not been widely disseminated and applied consistently over a long period of time. This suggests that while important, armed group impunity for sexual violence is not solely determined by cost or depth. Instead, the cases suggest that cost and depth of a prohibitive instrument reinforce clarity and constancy.

Negligent authorities

As has been shown, CNDD-FDD and FNL each had authorities that were at one time or another, in one way or another, negligent. The leaders in each of the armed groups shared some similar characteristics. In the two cases authorities held tremendous power over who would receive a penalty. And yet, given these similarities, the armed groups diverged in some interesting ways. An analysis of the cases suggests that negligent authorities cannot, on their own, generate armed group impunity. This finding is based on observations of each case's authorities in relation to hierarchies, the way they minimised enactment of punishment and the transformation of norms.

Armed group leaders must, as Weinstein states "create and rely on an internalised set of professional norms" (Weinstein, 2007: 135). Weinstein identifies the organisational challenges that rebel leaders face. The CNDD-FDD and Palipehutu cases provide insights to the disciplinary procedures of rebel authorities. A noteworthy observation is that each armed group was able to use their hierarchy to implement punishment practices. In CNDD-FDD authorities were negligent about the frequency of punishment. Since they also engaged in various forms of sexual violence, they were in fact complicit in undermining the punishment norms of the group. Combatants could deduce whether or not a commander would punish a perpetrator based

on if that authority was also engaged in sexual violence, even if it was a 'non-violent' type of sexual coercion involving the taking of a 'bush' wife. Such actions highlighted any hypocrisy in implementing a penalty for an act that one also committed. Even if commanders did not use outright violence, they utilised their power and authority to ensure submission and deployed their subordinates to guard or get rid of the women and girls. To be clear, these same practices occurred within FNL. However, the Palipehutu leadership mainly took on sexual partners toward the end of the conflict, after the transformation of the prohibition. Even if they could use their power and authority to carry-out sexual violence or be lenient in carrying out executions, leaders in FNL still faced demotion if they broke the tenets of the prohibition. In this regard, the exercise of power in pursuit of discipline was not undermined by the hierarchy, but strengthened by it. Both armed groups had hierarchies, but Palipehutu's structure had a top level and a bottom level and its members sense of shared religious values also fostered some equality horizontally. This meant that leaders enjoyed an elevated status but it also meant that foot soldiers were equally invested in fostering cohesion and discipline. In some ways then, Palipehutu-FNL authorities outsourced their task of creating internal norms to the women, men and children they led.

Despite these similarities and differences, the cumulative reality is that negligent authorities in each case manipulated the hierarchy to protect themselves from punishment. They did exercise their authority unfairly at times to ensure some members were shielded from negative consequences for sexual violence. This means that they minimised enactment of the punishment. Since both cases 'present' with this factor, negligent authorities cannot be a sufficient cause of armed group impunity for sexual violence.

Turning to the transformation of norms, authorities in CNDD-FDD and FNL were important in one respect: they could change the culture of each organisation's application of punishment. In CNDD-FDD this transformation increased discipline by carrying out punishments during demobilization and integration. In FNL, the transformation reduced discipline during ceasefires and in demobilization and integration, since former fighters could vividly recount the greater frequency of sexual violence. These distinctions are important. First, while the study focuses on the role of authorities on punishment practices, a finding that is clear is that authorities are just as important in the formulation and transmission of prohibitions as punishment. This finding creates a challenge for the conceptualization of the explanatory factors of armed group impunity.

The CNDD-FDD ex-combatants explicitly remembered Pierre Nkurunziza's intervention in 2003 to punish a senior commander during demobilization. This recollection was focused on the execution of a penalty. And yet, by taking an active and public stance against sexual violence, the leader of CNDD-FDD transformed the norms which allowed members to

feel they were not liable for sexual violence acts. This move signalled a change in the prohibitions. Arguably, the manoeuvre was limited to punishment because the prohibition was not revised formally. Still, it challenges conceptual definitions which distinguish punishment from prohibition. It might be that the two are more intricately related as enforcement. Another, contrasting experience of a normative shift is provided by FNL. Ex-FNL members collectively remembered that senior members of Palipehutu forced Agathon Rwasa to reduce the cost of sexual violence and sexual activity. The transformation occurred sometime around 2005. The reasons put forward were the group's need to increase the number of its members, in advance of settlement with the government and eventually, integration. However, insiders may have been motivated by much more. It is clear from the various sources that Rwasa had tremendous influence and control over members of FNL, and that the group would have also been concerned that an authoritarian style would undermine group expansion. The pressure to change the prohibition may have been based on this deeper consideration. Indeed, a general reduction in using violence to control members of FNL may have coincided with the motivation to lessen penalties for sexual violence.

The differences in the armed group's authorities are interesting. But they do not provide a definitive and convincing reason to attribute causality to negligent authorities, by themselves. It is true that Vinuales (2007) found that even in societies where laws were in place to prohibit human rights violations individual agency played an important contributing factor in the creation of cultures of impunity. However, authorities must interact with prohibitions in order to foster impunity. Their neglect, in and of itself, may be critical. But they must be strategically involved in the development of a prohibition and their undermining of a punishment only sends signals that the prohibition is flawed.

Amnesty

Concerning amnesty, a main finding is that amnesties are not a determinant of armed group impunity for sexual violence. The cases in this study shared a common experience of having been recipients of amnesty. While CNDD-FDD was the first party to an amnesty in 2003 and FNL had to negotiate hard for provisional immunity in 2005 and 2006, the two groups have enjoyed *de facto* blanket amnesty ever since. The fact that Burundi has not undergone any of the transitional justice processes outlined in the 2000 Arusha Peace and Reconciliation Agreement supports this finding. The ex-combatants from each armed group had limited or poor understanding of the amnesty. They did however share common views that amnesty was a condition for ending their respective pursuits of a military victory. In each case,

amnesty was described as a new beginning, an opportunity to put down weapons. More importantly, for several of the ex-combatants, whether former CNDD-FDD or FNL, the amnesty was part of a settlement which facilitated integration into the state security structures. So, for many there was a conflation of amnesty with the prospect of securing jobs as members of the police or army.

An important observation is that even though the ex-combatants in both cases understood little about the specifics of each group's amnesty conditions, they had similar ideas about its applicability to perpetrators of sexual violence. For some, the question of sexual violence in relation to amnesty was unexpected. It had never occurred to them that perpetrators of sexual violence would be eligible for an amnesty that was part of the settlement of the conflict. They distinguished between wartime and peacetime sexual violence. They understood the potential for imprisonment in contemporary time. Furthermore, neither ex-CNDD-FDD nor ex-FNL overwhelmingly felt that perpetrators of sexual violence during the war were free of liability. This is a significant finding, particularly in relation to policy formation.

What explains this process, whereby amnesty is not attributed to future lack of negative consequences for sexual violence? It is worth underscoring that the interpretation of the ex-combatants in this study reflects the legal limits of their respective amnesty conditions. So, in this respect, the ideas and intuitions of ex-CNDD-FDD and ex-FNL represent a reality which aligns with international norms and law. The most serious crimes committed during the war will be eligible for prosecution, a view shared by some ex-combatants. Sexual violence committed in contemporary Burundi is punishable and many of the members of each armed group could recite a feature of the sentencing as it is set out in contemporary Burundi's penal code.

Another explanation for the harmless nature of amnesty (in relation to armed group impunity for sexual violence), could be that these ex-combatants knew very little about the technical conditions of the amnesty. Some information about amnesty came from national media and leaders of armed groups. However, as an aspect of the settlement negotiations, information about the amnesties was 'secret' and the remit of the political and military leadership of each armed group. In both cases, the knowledge about amnesty was modest since commanders acted as gatekeepers of information about the legal meaning and technicalities of amnesty. This suggests that leaders would have a different, perhaps more informed understanding of amnesty than foot soldiers. Perhaps the commanders of each group would interpret amnesty in a way that suggested a sense that the group had escaped liability, thus signalling some causal process between amnesty and longer-term armed group impunity. I was particularly interested to assess whether this was so. One would expect this difference in understanding to come through in the data collected from interviews and other sources.

Yet, the authorities interviewed from CNDD-FDD and Palipehutu-FNL were conscientious in their depictions of the amnesty conditions for their particular groups. Agathon Rwaswa was particularly careful in formulating his responses; for him, FNL and the other parties to the civil war were only entitled to a limited, conditional amnesty and the implementation of a TRC was critical to finalizing transitional justice. For CNDD-FDD authorities, including former high-ranking commanders, the amnesty was also limited and bound. This suggests that armed group members on all levels distinguish between the wartime absolution and the conditions for long-term accountability and justice. It also suggests that contrary to policymakers' views that amnesty facilitates impunity, other factors outside of the settlement process are more important. It is plausible that post-settlement issues, such as corruption, play a more significant role. It is possible that these same authorities engineer or partake in post-settlement factors which generate a sense of legal entitlement and reduce the likelihood that perpetrators will face negative consequences. The ex-combatants in this study pointed out, with some uniformity, the widespread corruption of the police and courts in Burundi; they provided examples of individuals escaping punishment through bribery; and they noted that powerful individuals in government, particularly CNDD-FDD officials, benefited from this system of corruption. It seems much more likely that these post-settlement factors carry greater blame in the generation of impunity, than amnesty. It is also noteworthy that many of these problems were present before the war, and hence cannot be attributed to amnesties in peace agreements.

Additional observations of theoretical interest

While the points presented above comprise the study's key findings, there a number of additional observations to be made, which provide richer understanding of the conditions that lead to armed group impunity for sexual violence. They concern 1) a need for international legitimacy and credibility; 2) dependency upon the civilian population; and 3) the demand for more recruits. The theoretical framework of this study did not highlight these issues, although they were noted as potential areas of interest based on previous research.

The two cases differed in their responses to several operational incentives. Following the conclusion of the 2003 ceasefire between CNDD-FDD and the transitional government, a principal incentive of CNDD-FDD was to establish legitimacy and credibility with the international community. I have noted in chapter 7 that the rebel organisation would have anticipated its participation in elections in 2005. The transition into a political party cast significant scrutiny on the group. Along with other CNDD-FDD leadership,

Pierre Nkurunziza assumed positions in the transitional government. Nkurunziza's position was Minister of Good Governance. In this context, CNDD-FDD was still fighting FNL, and there are reports of rape committed by its officers. International NGOs such as Amnesty International, together with the AU and UN, levelled criticisms against CNDD-FDD for these abuses. At the same time, together with members of the transitional government, the CNDD-FDD lobbied against FNL. In response to the Gatumba massacre, FNL was declared a terrorist organisation by the Great Lakes Peace Initiative in August 2004. These events, taken together, suggest that CNDD-FDD was somewhat sensitive to perceptions within the international community. It is likely that FNL was equally alive to the challenges of international condemnation. Yet, given that CNDD-FDD had received support in terms of negotiation training and the opportunity to win the elections, the cost of international censure seemed more prominent. It may be an overstatement to say that CNDD-FDD was the darling of international actors such as the UN and AU, but it is clear that the South African government had invested considerable time and effort in bringing the rebel organisation in from the conflict. Finally, CNDD-FDD, poised to participate in elections, would have coveted maintaining the space to manoeuvre. For these reasons, it is plausible that a need to maintain international credibility motivated CNDD-FDD to carry-out punishments for sexual violence.

It is not clear if the same can be concluded about Palipehutu-FNL. Observers noted that from 2007, FNL leaders seemed to reduce the level of control over their members. This would have been the period during which the armed group could have expressed its desire to renovate its image with the international community. And yet, there is no evidence that FNL sought to showcase its control of its members in relation to sexual violence. Indeed, it is telling that ex-combatants of the rebel organisation recognised that the group's prohibitions for sexual violence had already been revised to lessen the penalty of death. There are several plausible explanations for the FNL's evolution in relation to sexual violence during the post-2006 settlement with the government of Burundi. The first possibility is that the central leadership had lost its power to influence internal discipline. Recall that Rwaswa explained to me that he had to accommodate other leaders' viewpoints, particularly during negotiations. Recall also that he had faced a significant fragmentation when the Sindayigaya dissident group formed the Renovation of Palipehutu-FNL (CNMFR.PH) in October 2005. The cumulative effect of this fissure indicates that the leadership of the old Rwaswa-dominated FNL had dissipated. Also, the Palipehutu was caught unawares by CNDD-FDD's success at the polls in 2005. The CNDD-FDD victory eliminated a Hutu-power armed rebellion, since most members had joined FNL in order to eradicate Tutsi minority rule. As the CNDD-FDD's rule progressed, it would become more and more obvious that the rationale for fighting the govern-

ment no longer existed. Thus, it makes sense to consider the inability to control sexual violence by FNL, as a sign of its dissolution and steady decline.

Another explanation for Palipehutu-FNL's failure to court international legitimacy harks back to its original political ideology and formation. Documentation of the group, such as Etienne Karatasi's letter to the Arusha mediator, Tanzania's former president Julius Nyerere, elucidates the rebellion's view that the international community had abandoned the Hutu people. Palipehutu-FNL had from its founding in the Tanzanian refugee environment, a profound sense of alienation from the international community. The group had links to earlier Hutu-power and a pro-democracy movement dating back to earlier purges and massacres, including the 1972 genocide. The 1996 letter recounts a history of international abrogation of its duties to correct the historical injustices faced by the Hutu population. It is an ideological viewpoint that did not abate as the civil war progressed. Indeed, for some, the group had a hardliner, extremist position. It had difficulty acknowledging Domitien Ndayiseye as the president of the transitional government during its talks facilitated by the government of the Netherlands in January 2004. In its January 2009 agreement to drop the term 'Palipehutu' from its name, the group described the change as tantamount to changing its identity. If these aspects of FNL are taken into consideration, it seems unlikely that the rebel organisation would prioritise adapting its behaviour in order to secure international legitimacy. Indeed, in relation to sexual violence, the armed group had its own internal image of itself as a group that did not permit these acts.

The transition from a rebel group to a political party came at a different time and context for FNL than for CNDD-FDD. The differences between CNDD-FDD and FNL suggest that the operational incentive of international legitimacy is not a crucial component of the causal process leading to armed group impunity for sexual violence. Nevertheless, there is reason to consider this factor in future research, since, depending on the timing and context of the armed group, international actors can leverage their influence on armed groups.

Perhaps a more promising and striking operational incentive worth considering is each armed group's dependency upon the civilian population's support. In some respects, the rebel groups had alternative sources of support. In the case of CNDD-FDD, dependency on external support was particularly evident before Nkurunziza took over. Jean-Bosco Ndayikengurukiye, as head of CNDD-FDD from 1998 until 2001, was based in the DRC. Palipehutu-FNL seemed to rely less on external support, at least until after the signing of the Arusha accord in 2000. There is indeed little evidence of external support to the FNL until later. There are reports of collaboration with ex-Rwandan Armed Forces (ex-FAR) and the *Interahamwe* which launched attacks on the post-genocide Rwandan government. But the reports of this collaboration also implicate CNDD-FDD. In fact, the two

cases highlight how reliance on the civilian population relates to armed group impunity for sexual violence. Both armed groups needed access supplies of goods, services, food and arms. In both cases, the armed organisations established policies of taxing the local population. They put in place roadblocks to control the population's movement and instituted informal tax collection. Such measures could not have been popular with the civilians in CNDD-FDD or FNL-held territory. And yet, it is evident, from interviews and other sources, that FNL was more dependent on the civilians in their areas of control.

Palipehutu-FNL is recognised as having a closer relationship to civilians, by virtue of its more mass-based orientation. Although founded by refugees in Tanzania, Palipehutu became concentrated in the eastern parts of the country, mainly Bujumbura Rural and Bujumbura and parts of east-central Burundi such as Muramvya. This limited territorial control seemed to correspond to a deeper reliance on the locals in these areas, and indeed, a striking feature of the violence conducted by the CNDD-FDD in its fight against FNL from 2005, are the reprisal attacks, assassinations and rape targeting FNL sympathisers. Furthermore, FNL ex-combatants in this study seemed more willing to attribute the origins of the groups prohibitions to the relationship the group tried to maintain with the civilian population. This view is corroborated by perceptions of local experts. For example, a former government civil servant (in the Buyoya regime, before the Arusha accords in 2000), reported to me that “CNDD-FDD was known by locals as raping their mothers and as using forced recruitment. FNL was viewed by locals as good, and that Rwasa was not a criminal. People thus contributed to FNL...” (A20, 2013).

What does this indicate about armed group impunity for sexual violence? One possibility is that armed groups enforce prohibitions and punishment for sexual violence if they are dependent upon the civilian population. The case of CNDD-FDD demonstrates two inter-related features. The first is that it was not dependent upon the civilian population – at least entirely— until after 2001. This is illustrated by the way critics of Ndayikengurukiye underscored his dependency on the DRC governments and distance from fighters and the local situation. For whatever reason, this situation changed over time, with a more concentrated engagement at the local level, and Nkurunziza's own interventions from 2003 to increase accountability for sexual violence. A more plausible interpretation of the CNDD-FDD's increased 'vigilance' is increased dependency on the civilian population. Indeed, the group may not have sought international legitimacy in advance of the 2005 elections, as much as local support and votes. In contrast, the FNL case illustrates how much civilian support can sustain a group that is losing momentum in the dynamics of a conflict. At the same time, Palipehutu's harsh prohibitions were known by many outside the organisation. The group

had some credibility with civilians in their area, for much of the war. This signals its much longer dependency on the civilian population. The timing of these needs for civilian support matches with periods of stronger prohibitions and punishment for the commission of sexual violence. In the case of CNDD-FDD this occurred after settlement, in Palipehutu-FNL it took place before settlement. Still, the timing with accountability for sexual violence suggests there is reason to consider dependency upon the civilian population in future studies of accountability for sexual violence.

An observation about the demand for more recruits arises from the observation of ex-FNL fighters explaining the softening of the armed group's prohibitions in the anticipation of settlement, demobilization and integration. Consider that the two cases had different numbers of ex-combatants: CNDD-FDD had an average, approximately of between 8,000 and 12,000 armed soldiers, and Palipehutu-FNL had a smaller number of members, about 3,000. Many report that FNL attempted to increase its membership with some urgency after CNDD-FDD won the 2005 elections. Indeed, FNL may have delayed and frustrated negotiations for a settlement because, as ICG noted, Rwasa was calculating that the return of refugees from Tanzania would increase Palipehutu's chances of recruiting more members. There is further evidence, with Burundians and external experts suggesting that Palipehutu sought to increase its membership in advance of, and during demobilization. Indeed, among the ex-combatants in this study, it was well-known that the leadership of FNL relaxed its prohibitions in order to gain more members. For many in Burundi, the end of the war and the lack of jobs or land for cultivation created desperation for the opportunity to secure employment in the military or police through integration. Others were motivated by the demobilization and reinsertion and reintegration fees. It is possible then, that Palipehutu-FNL would have strived to attract more members both through reduction in violent and coercive control and by the promise of money or jobs. These issues were not evident in the CNDD-FDD within-case analysis. The CNDD-FDD was a larger force, which may have meant that it did not need to recruit as many members. Also, the CNDD-FDD was known for abducting recruits. In this study, several ex-combatants recalled that they were kidnapped and forced to join CNDD-FDD. One interviewee was invited, along with about 80 young men, to a social gathering in a Tanzania refugee camp. The lorry they were transported in had UNHCR logos. But the boys never made it to their event, they were kidnapped into the CNDD-FDD (A19, 2013).

This observation should be juxtaposed with Cohen's (2013, 475) argument that fighters who are forcibly recruited are more likely to engage in sexual violence. Abduction addresses the recruitment needs of an armed group without it having to win over the hearts and minds of the civilian population. By doing so, however, armed groups may create another problem for

themselves. They cannot create internal cohesion and discipline based on the more traditional means of training and political indoctrination. If Cohen's argument is right, then the armed group's members would generate their cohesion through gang-rape and other forms of collective sexual violence. This intriguing insight suggests that further research should investigate the possibility that a lack of reliance on the civilian population contributes to armed group impunity.

Explaining armed group impunity for sexual violence

The previous section established that the most important explanatory factors of armed group impunity are unclear and inconstant prohibitions. The relationships between other factors were also highlighted, such that the role of authorities represents an important link in the reinforcement of prohibitions. Since amnesties proved to have very little effect on impunity, the study rules out this explanation. Yet, it is still necessary to understand how these factors interact and their relationship with the other observations of theoretical interest. The following section attempts to do this, by identifying the causal mechanisms of armed group impunity for sexual violence. My aim is to combine the findings above, to provide a preliminary theory of armed group impunity for sexual violence, for future research.

Based on the comparison of CNDD-FDD and Palipehutu-FNL, flawed prohibitions are a necessary and sufficient explanatory factor of armed group impunity. Negligent authorities also present as relevant, although mainly in the transmission of a clear and constant prohibition. Here, it should be underscored that the negligence in implementing punishment is secondary and complementary to the transmission of rules and procedures that signal prohibitions of sexual violence. While authorities that punish are necessary, they are not sufficient. The case of CNDD-FDD presents evidence for this. When prohibitions are not clear or constant, armed group impunity still arises, regardless if authorities become more vigilant and exacting in their implementation of punishment. When prohibitions are clear and constant (even if punishment is executed irregularly or disproportionately at some point in time) as in the case of FNL, armed group members still believe that there are negative consequences for sexual violence. In the FNL analysis, authorities could minimise punishment but would mainly adhere to the stated prohibitions. Despite only a provisional understanding of the underlying triggers that lead to flawed prohibitions, the study finds that operational incentives such as a need for civilian support are important catalysts. Two operational incentives were observed, the need for information, materials, political allegiance, money or food from civilians; and the demand for recruits. These incentives arise from the operational incentives of armed groups to secure material and

recruits and their capacity for securing these ‘goods’ from the civilians they seek to liberate, win-over or control. If they are able to fulfil these tasks through other means, such as by using force to recruit members or relying on other avenues for resources, then they will not need civilian support. While CNDD-FDD could rely on international training, political support and funding from external sources as well as forced recruitment thus reducing its dependency on the civilian population, FNL had fewer options and relied on civilians for these goods. This distinction, in my view, encouraged the former armed group to put in place flawed prohibitions and the latter to create a clear and constant code of conduct. These findings and arguments require further refinement in order to introduce a preliminary theory. Nevertheless, the main factor for the development of armed group impunity for sexual violence, as shown in this study, is from the explanatory factor of flawed prohibitions.

The previous section presented the finding that the cost and depth of a prohibition is less important than its clarity and constancy. The catalyst for the causal process is low armed group-civilian dependency. This catalyst captures the observation of a group which can secure recruits, material and other support without the voluntary support of civilians. In a conflict setting, the depth of voluntary cooperation might change over time and across space but it nonetheless could have a cumulative effect on the rationale and interest armed groups would have to institute clear and constant prohibitions of sexual violence. This is why the next step in the process is the explanatory factor of unclear, inconstant prohibitions. Although CNDD-FDD and FNL had codes in place, the most striking difference is that CNDD-FDD did not clearly elucidate its rules and penalties, nor did it apply these consistently over time. The prohibition was not part of indoctrination or training. Among its members, changes in punishment by CNDD-FDD, were perceived as a mere trend. This was evident in the way that ex-combatants of CNDD-FDD expressed their views about sexual violence euphemistically, after the conflict.

Whether they were punishing perpetrators harshly, ignoring offenses or protecting themselves, their subordinates or colleagues, authorities in CNDD-FDD were minimizing or maximizing punishment without adherence to a clear and constant prohibition. They did this irregularly, thus creating a perception among other combatants that the punishment was at their whim and not an organisational objective. In this regard, the role of authorities in maximizing or minimizing penalties with irregularity, acts as a reinforcement of flawed prohibitions. Further means of reinforcement are the failure to correct instruments by putting in place better codes of conduct and enforcing these regularly. If this had happened, then the armed group would have reformed the flawed prohibition. This would have had to involve a wide-spread dissemination of information and rationale of the code. Authorities

that implemented the new, clearer rules would need to punish perpetrators regularly, but only according to the prohibition in place.

I suggest that consolidation follows reinforcement or reform. This stage of the causal process features the transmission of the cost of sexual violence and equal liability. More so than FNL, leaders in CNDD-FDD had a greater chance of escaping punishment themselves, since the code did not seem to apply to them. This together with the lower cost in CNDD-FDD, further consolidated the mechanism leading to impunity. Transmission of costly prohibitions, applied equally to all members of the armed group, cultivates a belief in the negative consequences of sexual violence. If the consolidation stage leaves in place prohibitions that are flawed and authorities' responses are irregular, then this costliness and equal liability will not be transmitted, and the final outcome will be armed group impunity for sexual violence.

This causal process can be summed up in a preliminary theory of armed group impunity for sexual violence: when armed groups do not depend on voluntary support and recruits from the civilian population, they are likely to put in place unclear and inconstant prohibitions of sexual violence, which, if reinforced by authorities, generates armed group impunity for sexual violence.

To illustrate how this theory operates, it is worth contrasting the different experiences of CNDD-FDD and Palipehutu-FNL after their respective conclusive settlement agreements. Both armed groups had the opportunity to gather their members in assembly areas and prepare for demobilization, integration and reinsertion into civilian life. In the instance of CNDD-FDD, this process began in 2003 and FNL entered into demobilization from approximately 2007. Reports of NGOs and other experts cite examples of sexual violence during each group's demobilization: there are reports of spikes in sexual violence around 2003 and a reduction in control of armed group members of FNL in 2007. In the CNDD-FDD case, the story of Nkurunziza's intervention to imprison a commander while his group was awaiting integration and demobilization is noted in this study. However, CNDD-FDD's transition to more costly punishment was not preceded by a correction to its code of conduct. The impression given by ex-CNDD-FDD members is that the leadership simply began paying more attention to sexual violence abuse, perhaps to improve its reputation among Burundians. So, Nkurunziza and other CNDD-FDD leaders did not reform the prohibition against sexual violence, they simply carried out another version of irregular punishment. The rebel group was awaiting the political process, but it also seemed to increase its responses to sexual violence because of its interest in being credible before the international community. It was not motivated by a dependency on the population. Indeed, it believed that it would have a good chance of winning power through elections from a war-weary population. Thus, CNDD-FDD was not able to systematically impose costlier or more

equal punishment. In the end CNDD-FDD ex-combatants in this study demonstrated their affinity for armed group impunity for sexual violence.

In the case of FNL, the rebel organisation channelled energy into increasing its members for integration purposes. The group is not recorded as intensifying punishment but rather, revising the prohibition. However, the revision did not seem to change the armed group's overall tendency to apply costs equally to its members. Mostly, all members faced less costly penalties. Indeed, many ex-FNL were aware of a change, signalling that it was not an ad hoc revision which merely accommodated leaders' own preferences but one taken organisationally. The group's desperation for greater numbers for the integration into the national army could have driven it to recruit members forcibly. Instead, FNL continued to seek voluntary support: Rwasa seemed more willing to drag out the post-2006 process in the hopes that more refugees would return to Burundi and join Palipehutu. Palipehutu-FNL's members continued to believe in the negative consequences for sexual violence.

To summarise, this comparative analysis of CNDD-FDD and Palipehutu-FNL has culminated in a new theory of armed group impunity for sexual violence. The argument I have made is predicated on the interaction between armed group-civilian dependency, coherent prohibitions and the role of authorities in reinforcing or reforming prohibitions. There are aspects of this study which may challenge the certainty of these conclusions. The nature of armed group-civilian dependency is still tentative, although there is significant previous research (Cohen 2013; Hoover Green 2011; Weinstein 2006; Wood 2006a) which could be used as a starting point for exploring this condition. The study would have benefited from a comparison with other armed groups, which would have led to more robust and less tentative findings. Nevertheless, the study highlights the striking role played by prohibitions. The strengths and contributions of the overall study will be discussed in more detail in the following chapter.

10. Conclusions

This study evolves on the basis of my argument that in order to understand the variation in armed group beliefs about the consequences for sexual violence, it is necessary to establish an empirically-based knowledge of the relationships between 1) flawed prohibitions inside an armed group; (2) negligent enforcement by its authorities; (3) pardons in the form of amnesties during the peace process; and armed group impunity for sexual violence. I reasoned that social science inquiry should examine these explanatory factors and their outcome at the level of the armed group. In order to accomplish this, I carried out a theoretically guided empirical study of the micro-foundations of impunity for sexual violence among contemporary civil war belligerents. I defined impunity as confidence in the absence of negative consequences and sought to conduct a research inquiry which simulated 'believing' in freedom from accountability.

The first component of the study explored reported events of sexual violence during the first three years after conflict settlement in Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa. The second part of the study concentrated on the beliefs of armed groups in Burundi. The aim of this second component was to examine the determinants of impunity, which I defined as confidence in the absence of negative consequences for perpetrating sexual violence. I strived to identify the interplay and causal relationship between flawed prohibitions, negligent authorities and amnesties and impunity. This was done through a within-case comparison over time of CNDD-FDD and Palipehutu-FNL, as well as an in-depth comparison between the two armed groups. I collected the empirical material for the comparison through focus groups of ex-combatants of these armed groups. This material is the central basis for my analysis, but it is supplemented with interviews and secondary sources. In this final concluding chapter, I begin by summarizing the study's main conclusion and contributions. The chapter then turns to some potential areas for future research. The final section of the chapter addresses the implications of the findings for policymakers.

Conclusions and contributions

This study employed a novel definition of impunity. Impunity is generally described as freedom from accountability in the everyday sense. It would have been impossible to gather comparable measurements of this ephemeral idea. The study's empirical and causal focus required a definition of impunity that did not include its causes. I noted that scholars and policymakers have tended to define impunity on the basis of its actual, theoretical explanations. For international criminal law practice as well as for empirical studies, failures in the rule of law or a lack of accountability are described as causes of impunity (Akhavan 2001; Joinet 1997; Jorgensen 2009; Roht-Arriaza 1995b, 1996; Vinuales 2007). This may be viable for legal practice or policymaking, but I argued that for the purposes of causal logic, it is necessary to avoid explaining 'impunity' with 'impunity'. Thus, this study defined armed group impunity for sexual violence as confidence in the absence of negative consequences for sexual violence. Thereafter, the study framed the explanatory factors of impunity as flawed prohibitions (the absence of relevant procedures for punishing illegitimate acts or inconsistent framing of legal, penal and disciplinary measures to address crimes); negligent authorities (leaders who fail to execute proceedings of accountability for crimes); and amnesty (as a formal commitment to exempt individuals from legal, penal and other disciplinary liability for war-time acts). By constructing a theoretical framework based on these concepts, it was possible to explore a number of important gaps in previous research. Importantly, these concepts facilitated the examination of non-state armed groups and the micro-level perspectives of non-victims.

The findings of the study are diverse. Not all of the theoretically derived explanations in Chapter 3 held up to empirical scrutiny, providing unexpected results. As this is a theory building study, the anomalies between the original provisional theory and the empirics are welcome and useful. They have been claimed in a new preliminary theory of armed group impunity for sexual violence.

To sum up, the study finds that the most important determinants of armed group impunity for sexual violence are whether or not prohibitions are flawed in their clarity and constancy. Armed group members need clear, repetitive and highly disseminated prohibitions in order to assess the predictability of negative consequences for sexual violence. Another prominent but supporting cause of armed group impunity for sexual violence is whether or not authorities reinforce flawed prohibitions, such as by maximizing or minimizing punishments irregularly. Combatants need costly penalties implemented. However they also require such measures to be taken systematically and to indicate an organisational tendency rather than a preference of individual chiefs and commanders. In essence, the explanation for armed group

impunity is mainly found inside the organisational ethos and daily activities of these actors. The way that armed groups transmit prohibitions is critical. When members are not repeatedly and collectively exposed to an organisation's code of conduct, they cannot internalise it and believe that their leaders will punish perpetrators. Even more importantly, they will not develop a culture of mutual accountability.

Based on additional insights from the empirical material, I suggested that dependency on the civilian population is in turn the main reason that armed groups implement effective prohibitions. Armed groups require supplies, equipment, arms, material and recruits to accomplish their objectives. Intuitively, they should foster voluntary cooperation with the civilian population if possible. This creates armed group-civilian dependency. However, if rebels and other insurgents are able to access these goods in other ways, then the importance of cultivating a charitable exchange with local communities will diminish. The armed group becomes less dependent: this is low armed group-civilian dependency. This is the case if the armed group's leadership is able to rely on external support for arms and supplies; or if it can easily carry-out forced recruitment. By having addressed these needs by other means, armed groups can pay less attention to rules and regulations of sexual behaviour; they do not need to promote abstinence or restraint. Moreover, when armed group leaders do not have to pay attention to prohibitions, they can also engage in sexual violence and maximise or minimise penalties irregularly. This in turn reinforces the flaws in the prohibition and consolidates an atmosphere of low-cost penalties applied unequally. Eventually, this mechanism generates armed group impunity for sexual violence.

This notion of dependency corresponds to, and yet questions some previous research. The relationship with the civilian population is rooted in the lack of material resources. Put differently, dependency arises because an armed group cannot secure material resources without support from locals. This inability may be structural, meaning an absence of easy access to money, material and therefore, recruits. It may also be that external support for the group is limited. Or it could mean that the armed group has relied on people, mainly poor people, from the outset. Since the role of dependency in the causal path leading to impunity arises inadvertently from the empirical material and not as part of my original theoretical framework, these precise conditions are not addressed in this study. However, the empirical material does indicate that armed group members interpreted their freedom from accountability for sexual violence partly on the basis of the degree to which their organisation relied upon cooperative and voluntary relations with non-combatants. Thus, I argue that armed groups invest in prohibitions and their leaders implement penalties more diligently because of dependency on the civilian population. This resonates with Jeremy Weinstein's (2006) examination of insurgent violence. However, it contradicts Macartan Humphreys

and Weinstein's (2006) findings on fighting groups in Sierra Leone. They find that no strong relationship between community-combatant relations and abuse by armed groups. They do note that community relations may correlate with other factors. However, more importantly, they suggest that the "inability of groups to police their members reduces their ability" to have good relations with civilians (Humphreys and Weinstein 2006, 444). This study cannot dispute these claims, but I propose that this too is a question of how the causal order is formulated. It is plausible that a lack of dependency on civilians leads to weak restraint of armed group members which in turn results in even worse relations with civilians and ultimately, higher levels of abuse. Moreover, the relationships between these steps in the causal chain can be reflexive and iterative or varied in space and time.

Finally, other aspects of previous research which was not discussed at the beginning of this study, may be important. Findings on FNL in this study, in particular, link to Wood and Gutiérrez Sanín's (2014) work on ideology and violence. They suggest that ideology is a fruitful avenue for examining the reasons for restraint. They suggest that different ideologies may play a role in shaping social preferences for restraint and conditioning choices by leaders (Gutiérrez Sanin and Wood 2014). This normative role is evident in the socialization aspects of FNL's Christian practices in this study. While their Christian values may not be classified as ideology, the normative function of their religious practices created a shared belief structure and contributed to the methods of their armed rebellion. For instance, confessions of breaches in sexual conduct featured in communal prayers. Indeed, the prohibition against sexual violence was forged within these parameters and the code against these abuses was diffused across the organisation as part of the group's moral value-system. A common value-system also influenced what Hoover Green (2011) calls the 'commander's dilemma' since Palipehutu's leaders could exploit the group's religious values to discipline its followers. However, in some respects, whether or not religion was used instrumentally seemed not to matter. Since FNL's members participated in the value-system collectively, it was easier, simply, to maintain FNL's code of conduct jointly.

While the small-scale aggregate exploration in Chapter 5 led to the tentative conclusion that armed groups with reputations for wartime sexual violence were more likely to have more reports of post-settlement sexual violence, it also eliminated blanket amnesty as an explanation for post-settlement sexual violence. This suggests that ex-combatants do not associate amnesty with the absence of negative consequences for future sexual violence crimes. Moreover, the aggregated patterns uncovered suggest that state and rebel actors that were beneficiaries of blanket amnesties were less likely to commit post-settlement sexual violence. Together, these observations strengthened the relevance of the argument that internal factors should

be examined – and that other factors besides amnesty played a more important role in generating impunity. The comparative case study, then, showed that combatants seem to delineate between the amnesties offered as part of the settlement of the conflict, and future crimes. For many of them, the amnesty within a settlement was a way to start over. They saw it as an integral part of the disarmament, demobilization and reintegration stages of ending the war. Importantly, many of the ex-combatants that participated in the focus groups did not know the specifics of the amnesty provisions. This has a bearing on how armed groups channel information from peace talks and whether or not ideas about external liability for serious crimes in the international arena have any bearing on combatants on the ground. Nevertheless, despite a lack of information about amnesties, the participants in this study were able to distinguish the terms of the conditional amnesty from future crimes. It was evident that both CNDD-FDD and Palipehutu-FNL ex-combatants interpreted amnesty as a one-time opportunity and not as justification for post-settlement impunity. Finally, armed group members perceived sexual violence committed in peacetime as deserving of punishment despite the existence of amnesty.

By establishing a theoretical framework from previous research in a number of literatures, the study provides a workable definition of impunity, an otherwise fuzzy concept. The idea of focusing on beliefs about negative consequences captured the sense of freedom which is a matter of perception. The study demonstrated that impunity is not necessarily ‘absent’ or ‘present’ and therefore is not a dichotomous outcome. It highlighted how impunity is observable in gradations; the most extreme version being when there is a strong belief that all acts are considered fair game and that an armed group is incapable and unwilling to mete out consequences; and when members do not care or even rationalise the commission of sexual violence by their co-combatants. In this study, combatants were not ‘either/or’ confident. It makes more sense to say that they had high, medium or low confidence levels, or some other gradation of levels. Thus, while the study offers a concrete definition of impunity—confidence in the absence of negative consequences—it also offers up a way to differentiate impunity. What makes this definition and differentiation of impunity unique? Vinuales (2007, 121) highlights the ambiguity of the impunity concept (121). In his study, he however utilises a concept that is large and flexible and linked to the variation found in his empirical study. I find that a non-dichotomous definition of impunity also serves these purposes. The strength in the definition and differentiation in this study is that it is parsimonious and yet observable in a number of situations and contexts, and that it can capture the varying degrees to which combatants were confident in the absence of negative consequences. I would argue that it should be relevant in relation to impunity for other types of harms and acts, other than sexual violence.

These findings speak to other aspects of previous research, which were described in Chapter 3. The comparative case study, in particular, is an original contribution to what is known about how and why armed groups limit or promote impunity, and thereby control sexual violence in conflict. The conclusions about prohibitions and the supporting role played by authorities complement sexual violence in armed conflict research such as Wood's (2006b) findings on the disciplinary structures and motivations of armed groups and the commission of wartime rape. Wood's (2006b, 2010) research underscores the importance of internal dynamics in armed groups and the different logics (top-down or bottom-up) which drive sexual violence. In particular, she recommends key areas for future policy intervention and (implicitly), research. These areas include the hierarchy of armed groups. My study shows that strong armed group hierarchies need to be able to generate horizontal accountability as well as vertical disciplinary strength. It is true that combatants at the level of foot soldiers are kept restrained through a military hierarchy. I demonstrate that a 'strong' hierarchy should not replace a foot-soldier's capacity to judge, shame and police his or her cohorts. An effective prohibition should apply to commanders and foot soldiers vertically. These findings follow and support Wood's (2006b) recommendations for further work.

The construction and collection of an events-based dataset on post-settlement sexual violence is another empirical contribution. I am not aware of any other similar event-based data collection. It covers events over a period of time that has not been addressed with such precision before. Although the dataset is not a larger cross-national statistical analysis, the coding guidelines and methods for data collection laid the groundwork for global coverage. The second empirical contribution is related to the study of CNDD-FDD and Palipehutu-FNL. While this study is causally oriented and not intended as a comprehensive overview of these armed groups, I do not know of any studies which capture the internal mechanisms for addressing sexual violence in these rebel organisations.

Finally, one other contribution from this study should also be highlighted, as it points to future research. The small-scale, aggregate exploration found that government security agents, police, military and others were more likely to commit post-settlement sexual violence than members of rebel organisations. And yet, there was no clear association between state capacity (measured as the independence of the judiciary) and reports of post-settlement sexual violence events. In other words, I could not find that the capacity for the state to pursue, prosecute and punish perpetrators correlated to the levels of sexual violence after settlement. Instead, almost all of the post-conflict situations explored can probably be viewed as lacking in state capacity.

Future research

Although there have been significant strides to understand sexual violence by armed groups, this research area is still quite new. The preliminary theory of armed group impunity for sexual violence in this study is based on a comparison of only two cases. A fruitful avenue for future research is therefore to apply the model presented to a larger number of cases. This must be done in order to assess its ability to explain the conditions which enable combatants to have confidence that there will be few if any negative consequences for sexual violence. Expanding the model to more cases would facilitate further scrutiny of a number of the conclusions from this study, while also enhancing the quality of empirical evidence about armed group prohibitions and punishment for sexual violence.

Some key areas of further inquiry include: Why do some rebels-turned-to-governments, fail to prohibit and punish sexual violence when they govern the state? Are armed groups which are dependent on civilians more likely to establish effective prohibitions of sexual violence? Beyond the death penalty, what are the high costs for sexual violence within an armed group? Which wartime prohibitions and punishment practices correlate with post-settlement sexual violence by former combatants? What are the conditions that give rise to a social value-system that prohibits sexual violence? What is the relationship between armed group impunity for sexual violence and sexual abuse and exploitation committed by peacekeepers? How would the theoretical framework perform in societies that have endured repeated cycles of armed conflict, such as Palestine? Also, how would the framework perform in non-conflict settings and in formal militaries, where there might be well-elaborated prohibitions that are transmitted widely? Finally, considering the prevailing lack of empirical insight into the concept of impunity, it may be productive to replicate this study in relation to other types of crimes and abuses. Would the same conclusions be found in an exploration of corruption, arbitrary arrests or torture?

Considering the infancy of theory testing through cross-case comparative and statistical research on this topic, a priority of future research would be to undertake wider data collection. Such efforts could approach several key questions, gathering information about the organisation and prohibition and punishment practices of armed groups, as well as events-based data on sexual violence events. Giving special attention to this type of data collection would however require addressing a number of challenges faced in this study. It should be noted that enforcement practices within armed groups pose a challenge in terms of arriving at viable conceptual definitions and finding reliable and comparative information about codes of conduct and rates of punishment. In this respect, Hoover Green's data project on armed group institutions should provide an important avenue for large-scale, quan-

titative studies (Hoover Green 2014). Her project aims to gather data on recruitment, training, education, indoctrination and disciplinary practices on armed groups that were parties to conflicts between 1980 and 2010.

Similarly, the Sexual Violence in Armed Conflict data collection by Cohen and Nordås (2014) presents a viable opportunity for replicating and expanding this study's exploration of amnesties and post-settlement sexual violence. However, this study's experience of using similar sources should guide future endeavours. While the Sexual Violence in Armed Conflict data focuses on reports of prevalence levels and not events, the data can nevertheless suffer from biases in reporting on sexual violence. Cohen and Nordås have invested important resources in checking the quality of coding and have taken many of the reporting biases into consideration. Nevertheless, as discussed in this study, since sexual violence reports are not reported systematically, researchers should leverage different data collection techniques to augment the information from the US State Department, NGOs and news services and agencies. Biases in reports may arise because sexual violence does not meet newsworthy criteria, or journalists and their media outlets do not recognise that an event is worth investigating and reporting. At the same time, sexual violence may become part of a prominent feature of descriptions of a conflict, and there may be uneven reporting on events by different actors. The evidence for sexual violence may be difficult to access and record because of stigma, time or resources. Perpetrators may be difficult to identify in relation to their armed group affiliation.

One solution to some of these problems lies in collaboration with local actors and country experts. A related strategy for gathering credible evidence entails conducting research in-country and gathering data from police and court records, as well as local news media. In all future research endeavours, it will be necessary to carefully specify the armed actors and their roles in the conflict. Finally, future research must take into account the circumstances of victims and bystanders. They face incentives to shield relatives, neighbours and other persons whom they may have to continue to interact with. If justice is not managed consistently and the circumstances of victims and bystanders are not taken into consideration, it may make sense for these individuals to avoid reporting perpetrators accurately.

Lessons for policymakers

The following section conveys some central lessons derived from the findings that I have presented above. As this study has emphasised, amnesty is a significant condition for settlement and not a conduit for impunity. However, in order to prevent impunity for example, of armed groups, the international community opposes amnesties for individuals suspected of serious crimes.

Following the 1999 Lomé Accord for Sierra Leone, the UN excluded serious crimes – genocide, mass crimes and crimes against humanity – from amnesty clauses in UN-supported peace agreements (Mallinder 2008, 122).

This policy position, in the context of the study's findings, warrants further reflection. On one hand, these serious crimes are abhorrent and the victims of genocide or mass rape deserve justice. On the other hand, armed groups expect some form of amnesty as a way to guarantee their safety and opportunity for transitioning into post-settlement positions of power. Since it is preferable to settle conflicts through negotiation, these actors will continue to expect some type of pardon, even if it is conditional. And yet, the Burundi case highlighted that regardless of the provisional or limited aspects of an amnesty, the parties may still work to prevent full-scale justice from taking place. The CNDD-FDD-ruled government's manoeuvres to put off the establishment of a tribunal and a TRC are illustrations. In the end, the TRC has been adapted into a Peace and Reconciliation Commission, seemingly obliterating the spirit of transitional justice and accountability set out in the 2000 Arusha Peace and Reconciliation Agreement.

And yet, it is worth noting that the technicalities of amnesty are mainly unknown to ex-combatants. The nature of settlement negotiations and rebel organisations precludes their gaining access to information about amnesty conditions. Finally, mediators and guarantors of negotiated settlement have to deal with the challenges of political transition after civil war or armed conflict (Carter 2010; Mallinder and McEvoy 2011; Mendez 1997; Sriram 2013; Vandeginste and Sriram 2011). In their efforts to get armed groups to say yes to peace, they face the problem of withholding amnesty when that may be a necessary condition for settlement (Cobban 2007; Melander 2013; Vinjamuri and Boesenecker 2007; Vinjamuri 2010). It is worth underscoring that the groups in Burundi negotiated actively for power-sharing and positions in the military for their combatants. It is unclear if they would have ever given up armed battle if these conditions were not met. Amnesty is a part of this dynamic, for as the ex-combatants in this study highlighted, it is a new beginning.

The exploration of Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa focused on blanket and partial amnesties, but there are various permutations of conditions on these instruments. Moreover, although blanket amnesties do not seem to be associated with higher levels of reported sexual violence events, this does not necessarily mean that full exemption for serious crimes is preferable. Indeed, there are different components that must be assessed from various perspectives. On a related aspect, Sriram expounds on the different components of peace and stability, rule of law, victims' rights, reconciliation and education of society, which are part of transitional justice arrangements (Sriram 2003). Amnestying serious crimes could also impact different aspects, and the demands for peace, vic-

tims' rights and truth should be balanced. Thus amnesty should be assessed in relation to these different and key aspects of peacemaking, justice and peacebuilding for different members of a society – the ex-combatants, the survivors and future generations.

I have not found evidence to suggest that limiting amnesties achieves deterrence for sexual violence. Limiting an amnesty can send a signal of accountability, but the post-settlement processes that lead to justice are more important. The justice mechanisms which follow a settlement (whether at the international level, through national courts and TRCs or by a hybrid approach), probably matter more in terms of leveraging partial amnesty. Overall, however, this study's findings indicate that policymakers should carefully question the assumption that blanket amnesties generate impunity.

However, the study clearly motivates for future policies that would increase the likelihood of armed group enforcement of norms against sexual violence. A strategic policy approach would concentrate on the ways armed groups are organised, offering carrots for effective prohibitions in the form of codes of conduct, such as the opportunity to negotiate. It would implement protection of civilians as a first priority and follow this with robust and coordinated efforts to limit the chances of an armed group using violence to recruit combatants and secure weapons and financing.

The implications of these findings touch on the issue of civilian protection. Significantly, this study has demonstrated that armed groups have incentives for controlling sexual violence. It is not clear whether or not these incentives are properly integrated into policy formulations to address sexual violence in conflict. The UN Security Council has taken significant steps to include sexual violence in operational resolutions – linking these abuses to the war-related context. It has begun listing armed groups that are credibly suspected of sexual violence. Policy development on how these efforts can be integrated with civilian protection mandates would be useful. The observation that armed group-civilian dependency is a catalyst for effective prohibitions suggests that efforts to both secure and support civilians, and only thereafter limit access to external support for rebel groups should be explored. It might be that sequencing policy action would be preferable, such that protection of civilians would be followed by international economic sanctions and arms embargoes against armed groups.

The international community's strategies to strengthen security sector reform dovetail with some of the results of this study. Based on the above presentation, it is reasonable to argue for greater attention to two areas: civilian oversight and accountability on the part of security actors in the earliest years after settlement. The comparative study also reported a perception that corruption permeates post-settlement Burundi. Such views were exacerbated by the role of the CNDD-FDD as the ruling party in the government. One lesson of this study is that the international community is not always sensi-

tive to the underlying culture of armed groups. Surprisingly, Palipehutu-FNL (and not CNDD-FDD) had to a greater extent, cultivated a type of social contract with its members and civilian population. Although the armed group was notoriously adamant about a solution to the conflict that would not include sharing power with the Tutsi minority, its ability to nurture a mass movement was not recognised. Negotiators could have recognised the implications of this anomaly and strived to bring Palipehutu-FNL into a more meaningful post-war transition. The CNDD-FDD created and took advantage of opportunities to negotiate a settlement before FNL. These negotiations made it possible to enter into the political arena at the right time. The international community is not always able to control the various factors that influence the evolution of corrupt practices, absence of rule of law or weak state capacity that might emerge after civil war. Still, policymakers could strategise about how to hold post-settlement governments accountable, early on, for unreformed rule of law institutions or slow security sector reform. The problem may also be that international NGOs, which are often the ones responsible for setting up and supporting these programs, may not have the resources or authority to act more decisively and quickly.

Ex-combatants appeared to view their return to civilian life as a new beginning. However, previous research (Nilsson 2011) demonstrates the extent of remarginalisation these former fighters face. The pressure on the state to accommodate new combatants, the struggle for a chance to integrate into positions in the police or military, the lack of economic opportunities and the psychosocial reverberations of the chaos and danger of conflict cannot be easy to deal with. In many post-settlement contexts, these problems seem insurmountable, for the combatants, civilians and even, for policymakers. And yet, there should be continued emphasis on creating sustainable opportunities for new livelihoods, even if it requires years of international support. This final point exceeds the implications of this study. However, many of the ex-combatants in this study emphasized the stark contrast between their original post-settlement expectations and the realities of living in a post-conflict, poor country. Instead of vying for the limited opportunities in a post-settlement national military, they and their communities would have been glad to work for projects that built Burundi's transportation infrastructure and its electricity and water sanitation. Ex-combatants could have also taken on new tasks and be trained as 'barefoot' agricultural assistants, community crime-watchers or medical practitioners. Indeed, among many of these ex-combatants, informal networks to guard neighbourhoods or share limited resources for social development have developed organically. Such activities may not stop post-settlement sexual violence, but they more accurately reflect the new beginnings anticipated by fighters. And they are geared to rebuilding and recovery, which might also contribute to reconciliation between combatants and the civilian population.

To conclude this study, this research inquiry has contributed some novel and striking findings about the concept of armed group impunity for sexual violence. It has explored and examined the conditions that lead to confidence that perpetrators will not be held accountable. The conclusions of this study should be of relevance to both researchers and policymakers concerned with understanding why some armed groups believe that they will not face negative consequences for sexual violence.

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Appendix I

Coding Guidelines for Dataset on Amnesties and Post-Settlement Sexual Violence

Coding for the study's dataset entailed a number of procedures. The main criteria and guidelines are reflected in Chapters 4 and 5. As an addition to the information contained there, this appendix provides information about the sources; the searches for post-settlement sexual violence events; limits in the collection of information and the steps taken to assess these limits; and finally, the variables in the dataset.

Sources

The sources for post-settlement sexual violence were Dow Jones Factiva Database and reviews of reports by Amnesty International (AI), Human Rights Watch (HRW), the International Crisis Group (ICG) and annual country human rights reports of the United States Department of State (USSD). The sources for peace agreement information were the UCDP Armed Conflict Dataset (See: Uppsala Conflict Data Program/Peace Research Institute of Oslo. 2013. "UCDP Armed Conflict Dataset v4_2013.") and UCDP Peace Agreement Dataset v. 2.0, 1975-2011 (See: Höglbladh, Stina. 2011. "Peace Agreements 1975-2011 - Updating the UCDP Peace Agreement Dataset." In *States in Armed Conflict 2011*, eds. Therése Pettersson and Lotta Themnér. Uppsala: Uppsala University: Department of Peace and Conflict Research Report 99.). Other sources of data included the UCDP Dyadic Dataset v. 1-2012, 1946 – 2011 (See: Harbom, Lotta, Erik Melander and Peter Wallensteen. 2008. "Dyadic Dimensions of Armed Conflict, 1946-2007." *Journal of Peace Research* 45(5): 697-710)

Searches

News article searches were carried out on Dow Jones Factiva Database to retrieve articles according to the following full-text search form:

1. [variations of a conflict party's names] AND "sex*" OR "sexual violence" OR "rape*" OR "raping" OR "tortur*" OR "mutil*")
2. Time span: either [date peace agreement] or [conflict end] – 36 months after [date peace agreement] or [conflict end]
3. Country: specified to the particular country in question
4. Note that due to more than 1000 article hits and limited amount of time to save and read through these articles, the behaviour of the following actors has not been studied in Factiva articles or have only-been studied from restricted search forms:
 - GoDRC (2001–06) only "Headline and first paragraph"-search
 - RUF only "Headline and first paragraph"-search
 - GoSL only "Headline and first paragraph"-search

A comparison was made between searches for "Headline and first paragraph" and full article searches. The actors used in the comparison were NPFL and ANC. For the NPFL, I found 0 events in both the headline and first paragraph and full article searches. For ANC, I found 0 events based on the search for headline and first paragraph and 3 events in the full article search. It is possible that more events could be found for the three actors that have only been coded based on headline and first paragraph searches. However, after reviewing the sexual events in these two cases, for NPFL and ANC (above) and comparing the headline, first paragraph results and the full article results, it seems that there is a marginal difference in the number of sexual violence events. A full article search for all the conflict actors in the dataset might produce a few more events, but key events should be picked up already in the search of headlines and first paragraphs. The Factiva searches have a number of idiosyncrasies: 1) the bulk of news articles refer to rape at a highly aggregate level and rarely describe an event in specific terms of date, time, type, victim etc. 2) news articles are highly repetitive and regurgitate stories so that a large number of reports repeat the same information, statistics, sentiments and general observations; 3) moreover, victim views are rarely included; and furthermore 4) reports of some possible instances of sexual violence, such as torture, are difficult to identify as reports on torture will not always mention whether or not the violence had a sexual nature.

Additional search forms were tested to establish whether or not there was a substantial difference in results without the use of quotation marks in the search strings. The tests were carried out for the ANC party. While there does appear to be a larger number of articles that come up as a result of searches without the quotation marks, the larger volume of articles did not result in more events.

Variables

The dataset is composed of two related groups of variables: 1) post-settlement sexual violence events; and 2) aggregate armed actor-year post-settlement. The latter data group includes variables covering amnesties.

Group 1 Data: Post-settlement sexual violence events

1. *Ob*-Observation
1. *ID* - Identification
2. *Ctry*-Country
3. *armed_group_actor_yr*-Actor and year of event, for example: CNDD-FDD-Y1-2003-2004/11/16
4. *postsett_yr*-Year of event after settlement, either 1, 2 or 3.
5. *yr_event*-YYYY
6. *month_event*- Month
7. *date_event*-DD
8. *post_sett_sv*-No (0)/Yes (1)
9. *perp*-Name alleged perpetrator in the study, for example: Palipehutu-FNL
10. *pssv_count*-1
11. *comm_perp*-Any specific information about the perpetrator, such as: “Police”; “ex-MLC”; “government forces”
12. *type*-Description of event, for example: “rape”; “gang-rape”; “mass rapes”
13. *intensity*- Were there a large number of victims? Was the actor heavily involved with a large number of its members alleged to commit or organize the sexual violence event? Was the event a single incident, or reported as taking place repeatedly?
 - a. Extremely intense: Events that are reported as taking place repetitively; on a wide-scale; over a long period of time; or involving many members of the armed group record value of three (=3), as extremely intense. Examples of which include events of sexual slavery, or which are described as “widespread”, “large scale”, “mass”, and “weapon of war”.
 - b. Intense: If an event’s description does not include these characteristics, record value as two (=2). Examples may include gang-rape that are single incidents or that are associated with robbery, ambush and banditry.
 - c. Low intensity: If an events is described simply as ‘rape’ or with a few victims and perpetrators record value as one (=1).

- d. Very low intensity: Events reported vaguely or loose affiliation between alleged perpetrators and an armed group, record value of zero (=0).
14. *location*-Which of the following places are reported as the site of the sexual violence event?
- a. Actor territory;
 - b. Civilian;
 - c. Government detention;
 - d. Internally Displaced Person (IDP) camp; or
 - e. Regroupment camp.
15. *comm_type*-Excerpt from source, for example:
- a. “Human Rights Watch researchers met two women who sought medical attention on February 12 after having been raped by soldiers the week before. A woman who tried to assist the victims said she had reported the cases of rape to the commander of the military post at Bikobi, commune Nyabitsinda, and had even identified the perpetrators. The commander apparently did nothing, but the troops were sent away and replaced by others soon after.”
16. *source*- Newspaper, US State Department or NGO report, name, title and date.
17. *1_rape_victim*- No (0)/Yes (1)
18. *morethan_1_rape_victim*- No (0)/Yes (1)
19. *upto_15_rape_victims*- No (0)/Yes (1)
20. *16_upto_100_rape_victims*- No (0)/Yes (1)
21. *morethan_101_rape_victims*- No (0)/Yes (1)
22. *unknown_rape_victims*- No (0)/Yes (1)
23. *abduction/slavery*- No (0)/Yes (1)
24. *detention/prison*- No (0)/Yes (1)
25. *torture/mutilation*- No (0)/Yes (1)
26. *gang-rape*- No (0)/Yes (1)
27. *prostitution*- No (0)/Yes (1)

Group 2 Data: Armed actor-year post-settlement

- 1. *ID*- Identification
- 1. *Ctry*-Country
- 2. *party*-Name of armed actor
Source: UCDP
- 3. *state*- No (0)/Yes (1) state actor
Source: UCDP
- 4. *nonstate*- No (0)/Yes (1) non-state actor
Source: UCDP

5. *armed_group_actor_yr*- Year of observation
6. *post_sett_yr*- Year after concluding settlement, i.e. 1,2,or3
7. *crsv_rep* – Armed group actor had a reputation for wartime sexual violence- No (0)/Yes (1)
8. *comm_crsv_rep*- Comment on reputation.
9. *ind_jud*- Country ranked as having an independent judiciary
Source: Cingranelli-Richards (CIRI) Human Rights Data Project
ciri_injud Independence of the Judiciary
This variable indicates the extent to which the judiciary is independent of control from other sources, such as another branch of the government or the military.
Not independent judiciary.
Partially independent judiciary.
Generally independent judiciary.
Cross-Section Dataset Time-Series Dataset
Years: 2009 **Years:** 1981-2010
N: 192 **N:** 199 **n:** 5289 **N:** 176 **T:** 27
10. *0-pssv_very low intensity* - No (0)/Yes (1)
11. *1-pssv_low intensity*- No (0)/Yes (1)
12. *2-pssv_intense*- No (0)/Yes (1)
13. *3-pssv_extreme intensity*- No (0)/Yes (1)
14. *pssv_sum* – total number of events in armed actor-year
15. *pssv_2plus* – 2 or more events in armed actor-year - No (0)/Yes (1)
16. *pssv_5plus* –5 or more events in armed actor-year- No (0)/Yes (1)
17. *pssv* – in armed actor-year - No (0)/Yes (1)
18. *pa* – peace agreement - No (0)/Yes (1)
19. *pa_date* - YYYYMMDD
20. *signatories* – eg. Government of Burundi and Palipehutu-FNL
21. *pa_name*- 2000 Arusha Peace and Reconciliation Agreement
22. *ended*- Agreement did not hold- No (0)/Yes (1)
23. *rebelgov*-Armed actor-year is for a state that was a formal non-state group- No (0)/Yes (1)
24. *elections*- Armed actor-year is after elections
25. *natl_elect_date*-YYMMDD
26. *amnesty*-No (0)/Yes (1)
27. *amnlaw*- Legislation for amnesty-No (0)/Yes (1)
28. *blanket_amnesty* –No conditions for applicability and eligibility, no restrictions-No (0)/Yes (1)
29. *partial_amnesty* –Conditions for applicability and eligibility, restrictions-No (0)/Yes (1)

- 30. *restr_seriouscrimes*-Restrictions for serious crimes-No (0)/Yes (1)
- 31. *comm_seriouscrimes*- Comment
- 32. *truth-seeking_cond*-Truth-seeking mechanism-No (0)/Yes (1)

Appendix II

Focus Group Guide

Verbal consent procedure

The following information was imparted as part of the verbal consent procedures for each focus group. An abbreviated version of this information was also shared with semi-structured interviewees.

The purpose of this study

The research project seeks to find out information about the war and about sexual violence. I am gathering information for my doctoral research or advanced studies.

The method

I will ask you some questions, which you can answer based on your experience. I am not interested in learning about specific incidents of sexual violence, except if you think knowing about them will help me understand the other information you give me. I will take notes in order to help me remember the information you give me. Afterwards, I will write out my notes in my computer, and put it together with other information from other interviews or focus groups. I will use the combined results to form conclusions. These will be published in papers and articles.

Confidentiality and anonymity

All information, even our association, if necessary, will be treated confidentially. If there is some information you provide that you *do not* wish to be included in the study, you may tell me, and I will not include it.

Voluntary participation

You may, at any point, decline to participate or answer any questions.

Contact and follow up

If you are interested in seeing the information I have written up, or to see any of the results and papers that are published, you may feel free to contact me. You always have the right to have access to the results of the study, when such is available.

Responsible

The responsible research body is the University of Uppsala. Any questions can be directed to me however, as the PhD candidate and principal researcher. I will leave my contact information with [name of local contacts].

Consent

By consenting to participate in this study, you are saying that you understand what we have just discussed, that you understand the benefits, risks, the nature and method of the study. Do I have your consent to begin the interview, or would you rather end the conversation now?

Focus Group Note-taking key

In order to ensure collection of relevant data for the comparative analysis, I developed a note-taking key, which I used to guide the order of questions and discussions in each focus group. The key also facilitated my recording of information as I could glance at each point before continuing onto the next one, mark a comment with a number that represented the question, and afterwards, use the key to collate my notes.

1. ID given to focus group fieldwork.
2. Number of males in group.
3. Number of females in group.
4. Total number of participants.
5. Date of the focus group.
6. Which armed actor(s) the focus group represents?
7. ID given to focus group participant based on the total number of focus groups.
8. For each participant: Which armed group was he/she a member of?
9. Which year each participant joined the armed group.
10. Which year each participant left the armed group.
11. The age of each participant.
12. The gender of each participant.
13. The ethnicity of each participant.
14. City/town of focus group location.
15. Comments about the participants' identity or views and/or response to the Zapiro cartoon.
16. Wartime sexual violence was punished? Yes or no and comments.

17. What was the punishment for wartime sexual violence? How was it executed?
18. Perceptions of punishment for wartime sexual violence? Comments.
19. Was the punishment for wartime sexual violence in a written code? Comments.
20. How frequently was wartime sexual violence punished? Comments.
21. What was the rank of suspected perpetrators? Comments.
22. How frequently was wartime sexual violence committed by members of the group? Comments and views of participants.
23. Description of types of victims and their identity/role. Comments.
24. Who were the decision-makers or judges meting out punishment? Comments.
25. What type of amnesty was available to the armed group? Comments.
26. What are participants' perceptions of amnesty? Comments and views of participants.
27. Was amnesty available for those who committed wartime sexual violence? Comments and views of participants.
28. What information did they have about the amnesty? How was it given to members of the armed group? Comments.
29. Who benefited from the application of amnesty? Was it for everyone? Comments?
30. Did participants know about amnesty? When did they find out about it? How?
31. What do participants think about post-war sexual violence? Comments and views of participants.
32. Is sexual violence punished in these times? Comments.
33. How often do they hear about sexual violence being committed? Comments and views of participants.
34. What types of punishment for sexual violence exist in the law? Comments.
35. How often are crimes of sexual violence punished? Comments and views of participants.

Appendix III

Focus groups

- Group 1 (G1). 2011. Focus group of CNDD-FDD former combatants. Bujumbura 29 November.
- Group 2 (G2). 2011. Focus group of FNL and CNDD-FDD former combatants. Bujumbura, 30 November.
- Group 3 (G3). 2011. Focus group of CNDD-FDD and FNL former combatants. Bujumbura, 30 November.
- Group 4 (G4). 2011. Focus group of EX-FAB and FNL former combatants. Bujumbura, 1 December.
- Group 5 (G5). 2011. Focus group of FNL former combatants. Bujumbura, 1 December.
- Group 6 (G6). 2011. Focus group of FNL and CNDD-FDD former combatants. Bujumbura, 2 December.
- Group 7 (G7). 2011. Focus group of CNDD-FDD former combatants. Bujumbura, 2-December.
- Group 8 (G8). 2013. Focus group of FNL former combatants. Bujumbura, 20 January.
- Group 9 (G9). 2013. Focus group of FNL former combatants. Bujumbura, 20 January.
- Group 10 (G10). 2013. Focus group of FNL former combatants. Bujumbura, 20 January.
- Group 11 (G11). 2013. Focus group of CNDD-FDD former combatants. Rumonge, 21 January.
- Group 12 (G12). 2013. Focus group of FNL former combatants. Rumonge, 21 January.
- Group 13 (G13). 2013. Focus group of CNDD-FDD and FNL former combatants. Rumonge, 21 January.
- Group 14 (G14). 2013. Focus group of FNL former combatants. Participants 1-4, Gitega, 23 January.
- Group 15 (G15). 2013. Focus group of CNDD-FDD former combatants. Gitega, 23 January.
- Group 16 (G16). 2013. Focus group of CNDD-FDD former combatants. Gitega, 23 January.
- Group 17(G17). 2013. Focus group of FNL former combatants. Kabezi, 24 January.
- Group 18(G18). 2013. Focus group of FNL former combatants. Kabezi, 24 January.
- Group 19(G19). 2013. Focus group of CNDD-FDD former combatants. Kabezi, 24 January.

Focus group participants

ID	Armed Group	Year Joined	Year Out	Age	Gender	Ethnicity	Location
G1-1	CNDD-FDD	1997	2000	31	m	Mixed-Hutu/Tutsi	Bujumbura
G1-2	CNDD-FDD	1997	2000	26	f	Hutu	Bujumbura
G1-3	CNDD-FDD	1997	2000	22	f	Tutsi	Bujumbura
G1-4	CNDD-FDD	1997	2000	33	f	Tutsi	Bujumbura
G2-1	FNL	1998	2008	35	m	Tutsi	Bujumbura
G2-2	FNL	2005	2008	27	m	Hutu	Bujumbura
G2-3	CNDD-FDD then FNL	1997	2008	30	f	Hutu	Bujumbura
G2-4	CNDD-FDD then FNL	1996-2003	2008	34	f	Hutu	Bujumbura
G3-1	FNL	1998	2008	35	m	Tutsi	Bujumbura
G3-2	FNL	2005	2008	27	m	Hutu	Bujumbura
G3-3	CNDD-FDD-FNL	1997	2008	30	f	Hutu	Bujumbura
G3-4	CNDD-FDD-FNL	1996-2003	2008	34	f	Hutu	Bujumbura
G4-1	FNL	1999	2002	30	f	Hutu	Bujumbura
G4-2	FAB-CNDD-FDD-BNDF	1996-2000-2004	2008	32	m	Hutu	Bujumbura
G4-3	FNL-BNDF	2004	2007	28	m	Hutu	Bujumbura
G4-4	FAB-BNDF	2002	2007	25	f	Hutu	Bujumbura
G5-1	FNL	2002	2008	38	m	Hutu	Bujumbura
G5-2	FNL	2002	2008	30	m	Hutu	Bujumbura
G5-3	FNL	2002	2008	26	m	Hutu	Bujumbura
G6-1	FNL	2003-2006	2008	28	f	Hutu	Bujumbura
G6-2	Guardians of Peace (GoPB)	-	2006	26	m	Tutsi	Bujumbura
G6-3	CNDD-FDD	-	2005	25	f	Hutu	Bujumbura
G6-4	CNDD-FDD	-	2006	25	m	Hutu	Bujumbura
G7-1	CNDD-FDD	2000	2005	28	m	Hutu	Bujumbura
G7-2	CNDD-FDD	2002	2005	29	m	Hutu	Bujumbura
G7-3	CNDD-FDD-BNDF	2002	2005	24	m	Hutu	Bujumbura
G8-1	FNL	2004	2009	27	m	Hutu	Bujumbura
G8-2	FNL	2003	2009	25	m	Hutu	Bujumbura
G8-3	FNL	2003	2009	34	m	Hutu	Bujumbura

G8-4	FNL	1994	2009	25	m	Hutu	Bujumbura
G9-1	FNL	2004	2009	30	m	Hutu	Bujumbura
G9-2	FNL	2006	2009	26	m	Tutsi	Bujumbura
G9-3	FNL	1997	2009	33	m	Hutu	Bujumbura
G9-4	FNL	2004	2009	29	m	Mixed- Hu- tu/Tutsi	Bujumbura
G10-1	FNL	2006	2009	27	m	Hutu	Bujumbura
G10-2	FNL	2004	well past demob	31	m	Hutu	Bujumbura
G10-3	FNL	2000	2009	27	m	Hutu	Bujumbura
G10-4	FNL	2001	2009	32	m	Mixed- Hu- tu/Tutsi	Bujumbura
G11-1	CNDD-FDD	-	2005	61	m	Hutu	Rumonge
G11-2	CNDD-FDD	-	2005	35	m	Hutu	Rumonge
G11-3	CNDD-FDD	-	2005	34	m	Hutu	Rumonge
G11-4	CNDD-FDD	-	2005	36	m	Hutu	Rumonge
G12-1	FNL	1999	2009	30	m	Hutu	Rumonge
G12-2	FNL	1998	2009	32	m	Hutu	Rumonge
G12-3	FNL	2000	2009	33	m	Hutu	Rumonge
G12-4	FNL	2002	2009	28	m	Hutu	Rumonge
G13-1	FNL	2002	2009	41	m	Hutu	Rumonge
G13-2	FNL	2002	2009	28	m	Hutu	Rumonge
G13-3	CNDD-FDD	1998	2005	34	m	Hutu	Rumonge
G13-4	CNDD-FDD	1994	2006	33	m	Hutu	Rumonge
G14-1	FNL	2006	2009	31	m	Hutu	Gitega
G14-2	FNL	2004	2009	51	m	Hutu	Gitega
G14-3	FNL	1995 and 2008	1998 and 2009	38	m	Hutu	Gitega
G14-4	FNL	2003	2009	30	m	Hutu	Gitega
G15-1	CNDD-FDD	1993	2004	35	m	Hutu	Gitega
G15-2	CNDD-FDD	1996	2004	45	m	Hutu	Gitega
G15-3	CNDD-FDD	1993	2004	37	m	Hutu	Gitega
G15-4	CNDD-FDD	1997	2004	33	m	Hutu	Gitega
G16-1	CNDD-FDD	1999	2001	32	m	Hutu	Gitega
G16-2	CNDD-FDD	2001	2004	29	m	Hutu	Gitega
G16-3	CNDD-FDD	2002	2003	27	m	Hutu	Gitega
G16-4	CNDD-FDD	2000	2004	30	m	Hutu	Gitega
G17-1	FNL	2005	2009	30	m	Hutu	B-Rural
G17-2	FNL	2005	2009	29	m	Hutu	B-Rural
G17-3	FNL	2005	2009	42	m	Hutu	B-Rural
G17-4	FNL	2005	2009	25	m	Hutu	B-Rural
G18-1	FNL	2004	2009	27	m	Hutu	B-Rural

G18-2	FNL	2005	2009	24	m	Hutu	B-Rural
G18-3	FNL	2004	2009	25	m	Hutu	B-Rural
G18-4	FNL	2004	2009	28	m	Hutu	B-Rural
G19-1	CNDD-FDD	1997	2005	32	f	Hutu	B-Rural
G19-2	CNDD-FDD	2000	2005	20	f	Hutu	B-Rural
G19-3	CNDD-FDD	1994	2005	32	m	Hutu	B-Rural
G19-4	CNDD-FDD	1996	2004	34	m	Hutu	B-Rural

Interviews

- A1. 2011. Bujumbura, 25 November.
A2. 2011. Bujumbura, 28 November.
A3. 2011. Bujumbura, 28 November.
A4. 2011. Bujumbura, 28 November.
A5. 2011. Bujumbura, 28 November.
A6. 2011. Bujumbura, 28 November.
A7. 2011. Bujumbura, 20 November.
A8. 2011. Bujumbura, 1 December.
A9. 2011. Women's Law Association staff member. Bujumbura, 6 December.
A10. 2013. NGO consultant and researcher. Bujumbura, 19 January.
A11. 2013. Association for the Protection of Human Rights and Prisoners in Burundi (APRODH) project leader. Bujumbura, 25 January.
A12. 2013. Former FNL soldier. Bujumbura, 25 January.
A13. 2013. Former CNDD-FDD general. Bujumbura, 25 January 2013
A14. 2013. Former CNDD-FDD integrated into army as captain at demobilisation. Bujumbura, 26 January.
A15. 2013. Christine Sanibiomba, Chief National Commissioner for Police Unit for Women, Ethics and Welfare. Bujumbura, 28 January.
A16. 2013. Journalist and former CNDD-FDD fighter. Bujumbura, 30 November.
A17. 2013. Former Palipehutu-FNL fighter. Bujumbura, 30 November.
A18. 2013. Agathon Rwasa/FNL leader. Bujumbura, 2 December.
A19. 2013. Former government official. Bujumbura, 2 December.
A20. 2013. Christine Sanibiomba, Chief National Commissioner for Police Unit for Women, Ethics and Welfare. Bujumbura, 3 December.

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