

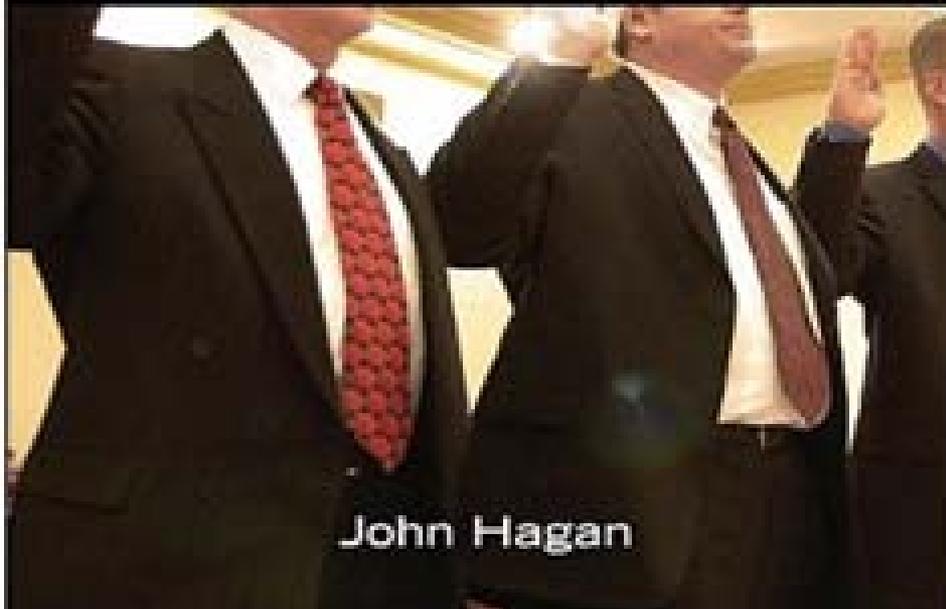
State Rape: Government-Led Sexual Victimization and Torture in Darfur and Pre-Invasion Iraq

John Hagan
Northwestern University
American Bar Foundation



WHO ARE THE CRIMINALS?

The Politics of Crime Policy
from the Age of Roosevelt to the Age of Reagan



John Hagan

With Sexual Violence:

This Issue is Denial

U.S. Denials & Admissions from Guantanamo to Abu Ghraib

- “I've said to the people that we don't torture, and we don't.” - George W. Bush
- “We also have to work, though, sort of the dark side, if you will It's going to be vital for us to use any means at our disposal, basically, to achieve our objective. - Richard Cheney
- “Yeah, we waterboarded Khalid Sheikh Mohammed.” “Dam Right!” - George W. Bush





Consequences of Denial

- Justice Department's Office of Professional Responsibility concluded that the CIA has a "demonstrated interest in **shielding its interrogators** from legal jeopardy" – i.e., the denial of torture
- "By holding no one accountable for past abuse, and by convening no commission ..., President Obama has left the telling of this dark chapter in American history to those who most want to whitewash it."
- Jane Mayer, New York Times, March 29, 2010

Denial & International Criminal Law

- Accountability for war crimes includes “**superior responsibility.**” Writing centuries ago, Grotius observed that, “he **who knows of a crime**, and is able and bound to prevent it but fails to do so, himself commits a crime.”
- UN High Commissioner Navi Pillay (2009:8) notes participation “does not require the direct hand”: “The responsibility lies not just with the military leaders, but with their **political masters** as well.”
- Yet **denials often** successfully **immunize military and political leaders** from criminal prosecution.

UN on Rape as War Crime

- It took until October 2007 for the UN to consider a resolution officially repudiating state-led sexual violence for political/military objectives
- In June 2008, the UN Security Council finally adopted a resolution that *implied* state involvement by asserting that, “sexual attacks in conflict zones may be considered war crimes”

Comparing State Rape in Darfur & Pre-Invasion Iraq:

- Darfur
- Denial Through Racial Dehumanization
- Race Key in Sudan
- ICC: Genocide Warrant Emphasized Role of Rape
- Addresses Denial of Racial Protected Group Status – Challenges “Enabling Norm” [Elisabeth Wood]
- Pre-Invasion Iraq
- Denial Through Arrests & Trials
- Religion & Gender Key in Iraq
- IHT: Genocide Charge Without Explicit Recognition of Rape
- Allows Denial of Victim Protection in Iraq courts – “Ideological Normalization” of Sexual Violence [Stan Cohen]

International Criminal Court Prosecutor Luis Moreno Ocampo:

“our goal is ... a case with ***no witnesses, no victims***. We want to use methods [social scientists] are developing, such as statistical analysis. We must refine how to use your tools.”

Keynote Address to Conference on Prosecution of Sexual Violence in International Criminal Courts, The Hague, June, 2009.

Yet there are few scientific studies of sexual violence in international conflicts.

Important exceptions are studies in Sierra Leon, southern Iraq, Congo.

Past studies tend to focus on *medical* rather than *legal* questions.

Sudan's al-Bashir & Iraq's Hussein: Denials of Rape

- “It is not in the Sudanese culture or people of Darfur to rape. It doesn't exist. We do not have it.”

President Omar al-Bashir
International Herald Tribune,
March 20, 2007.

- “I can't sit down and remain silent when it is said that an Iraqi woman was raped ... This couldn't happen while Saddam Hussein is alive.”

Former President Saddam
Hussein, New York Times,
August 22, 2006

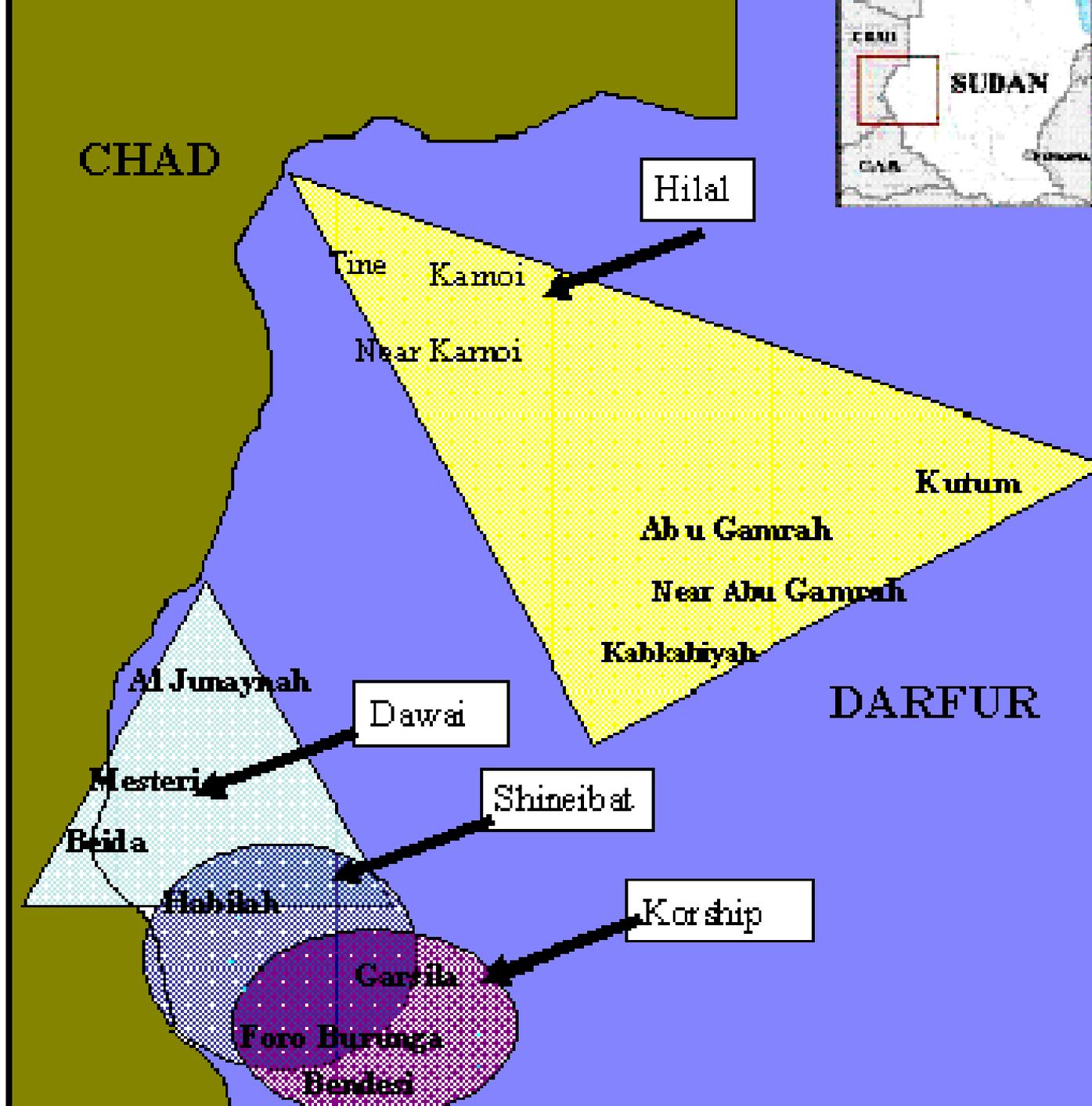
Differences in State-Led Organized Crime in Darfur & Iraq

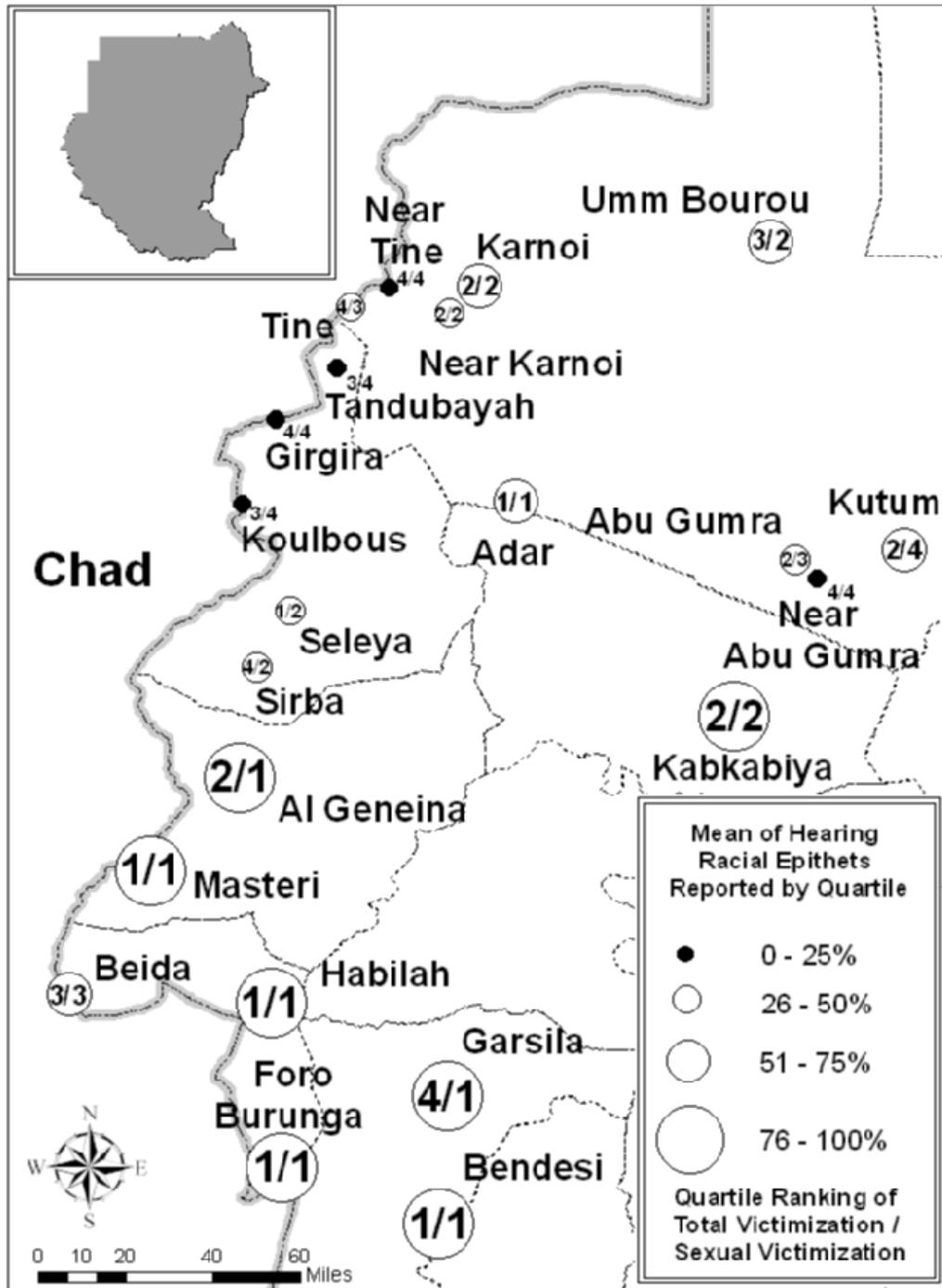
- Sudanese ***outsourced*** while Iraq ***incorporated*** genocidal violence within the state
- Sudan used ***proxy*** forces (i.e., Janjaweed) while Iraq used ***state institutions*** (i.e., General Security Directorate)
- Sudan used ***racial/ethnic dehumanization*** while Iraq used ***personal degradation*** through arrest, trials, and forced confessions



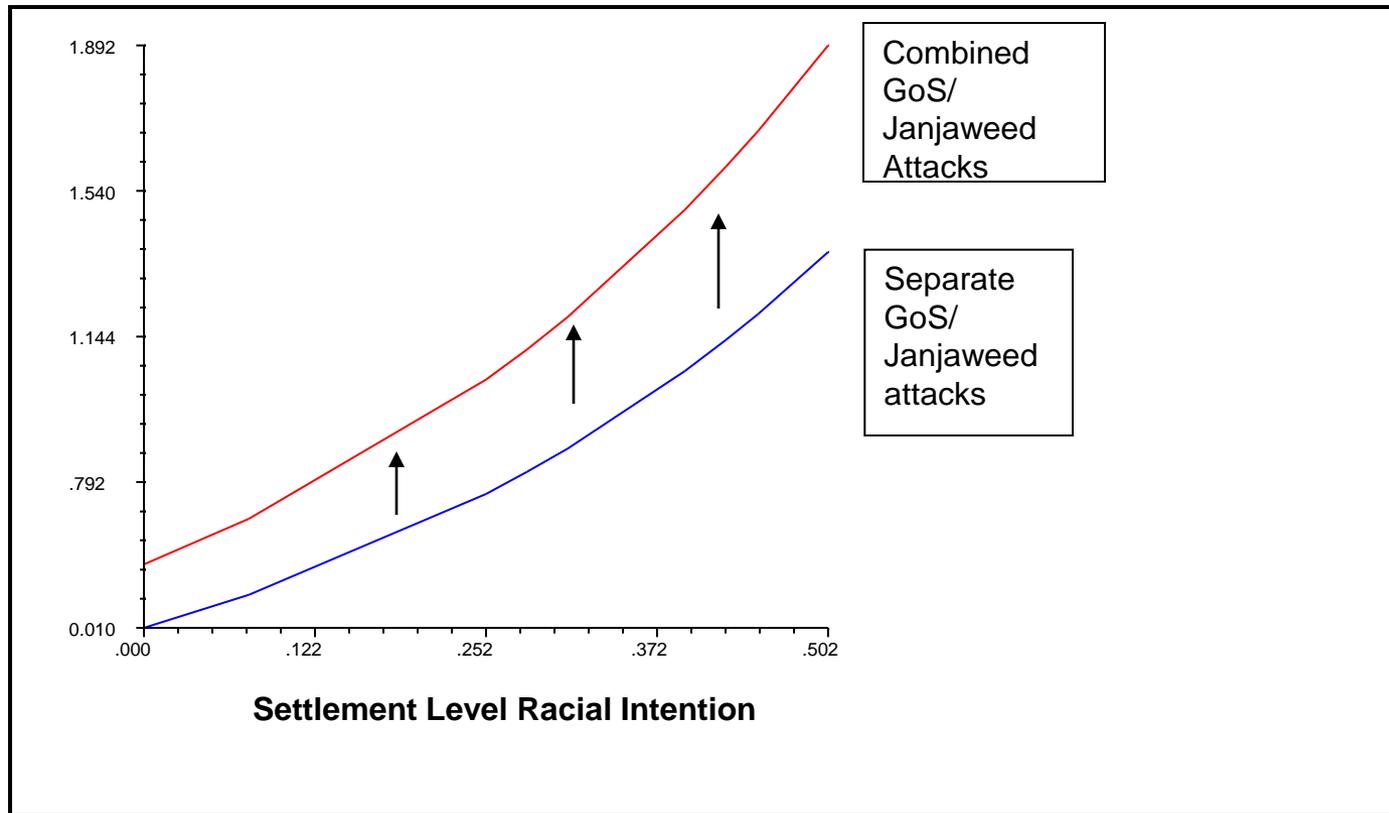
Examples of Racial Epithets and Sexual Victimization

- “Masalit- you are dirty; you deserve to be raped. you are black- you deserve to be tortured like this.”
- Janjaweed said to women they raped after cutting their arms to brand them, “You are now Arab wives. There are no men here.”
- In August, some women return and were raped by Arabs who said to them, “You will have Arab babies.”
-
- They said that they would kill as many Masalit as they could and that the rest would never live there again. They also said, “We will take your women and make them ours. We will change the race.”
- 10 men raped her and said –“You are black people’s wives and you bear black children but now you have to bear white people’s children.”





Effects of Combined Attacks and Racial Intent on Number of Rapes in Settlements





Iraq History Project

- Based on 6,982 interviews in 19 governorates
- Qualitative & quantitative data recorded in the field and input with Martus software
- Developed with Human Rights Program at Benetech Inc. - technology to support social justice

Genocide as State-Led Organized Crime in Iraq

- The Iraq state *incorporated* rape and other forms of genocidal violence – Brought Rape within the State Apparatus
- This violence was organized from within and through *state institutions* (i.e., the General Security Directorate)
- Used personal *degradation* through arrests, trials, and *forced confessions*

Protection & the Security State

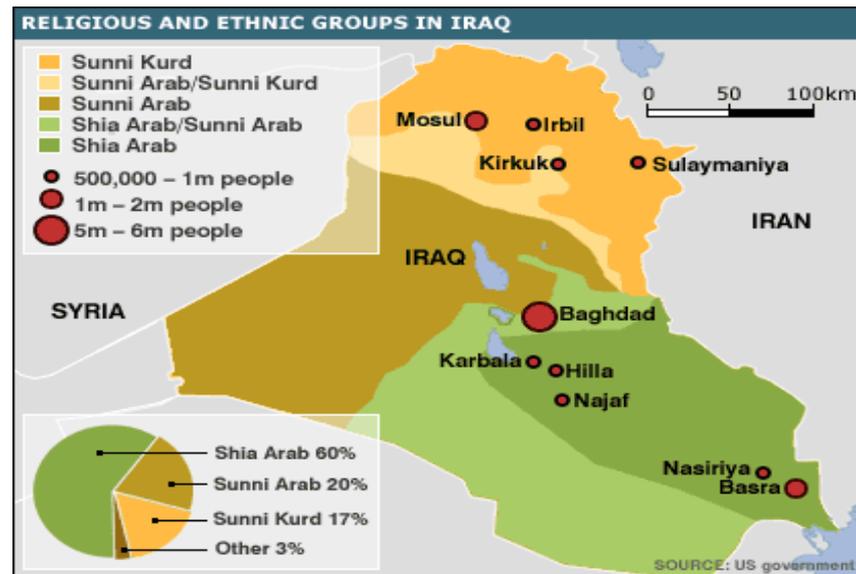
- ❖ 5 security agencies outside military chain of command & controlled by Saddam:
- ❖ Special Security (al-Amin al Khas)
- ❖ *General Security Directorate (al-Amin)*
- ❖ General Intelligence (al-Mukhabarat)
- ❖ Military Intelligence (al-Istikhbarat)
- ❖ Military Security (al-Askari)

- ❖ Iraq's 29 million inhabitants are mostly Muslim. They are divided along both religious (Shia and Sunni) and ethnic (Arab and Kurdish) lines. Under Saddam Hussein, the Sunni Arab minority dominated political and economic life.

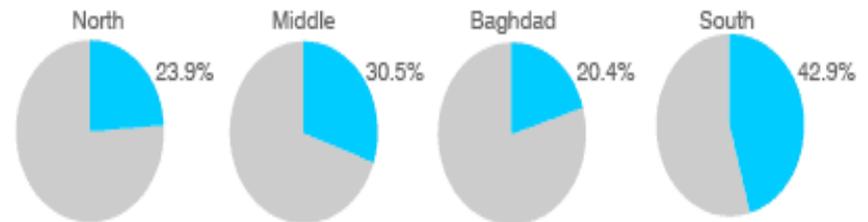
- ❖ As Shia leaders gained power in the wake of the invasion, many Sunnis boycotted the political process.

- ❖ The Sunni vote grew in national elections in December 2005, however, and Shia parties fell short of an absolute parliamentary majority. After months of deadlock, Shia politician Nouri Maliki was appointed prime minister.

- ❖ The Kurds live mainly in the north where they are largely autonomous. Hundreds of thousands of people have been displaced within Iraq. Figures range from 300,000 to 1.9 million.



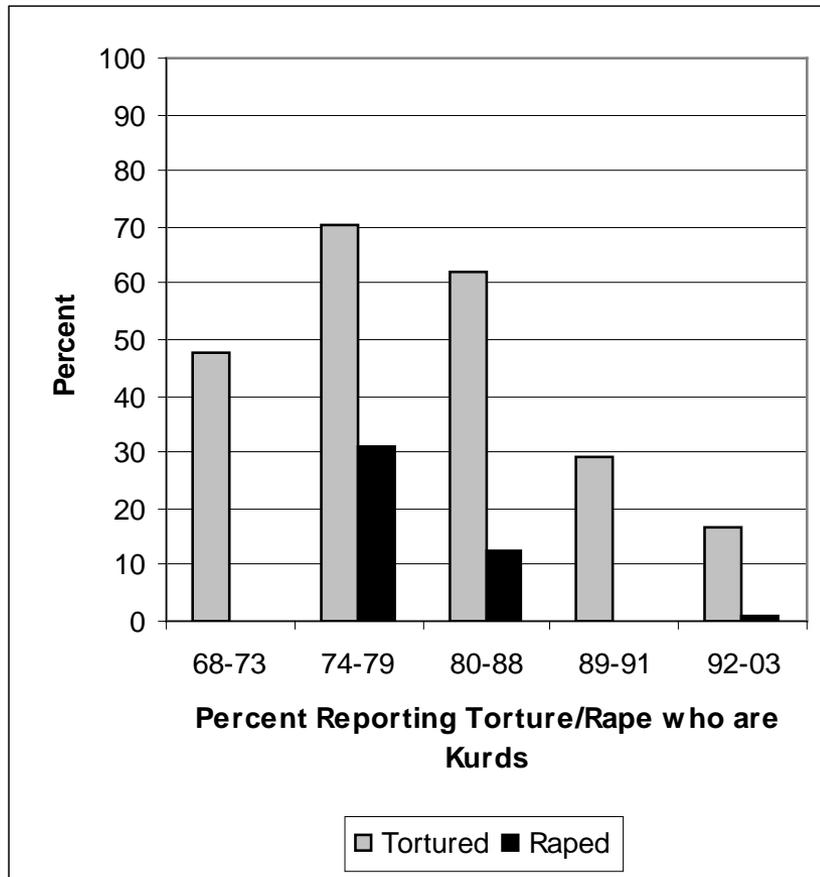
DEPRIVED HOUSEHOLDS IN AREAS OF IRAQ %



SOURCE: UNDP

Figure 2. Distribution of Torture and Rape Reports by Period, Iraq History Project, 1968-2003

2a.



2b.

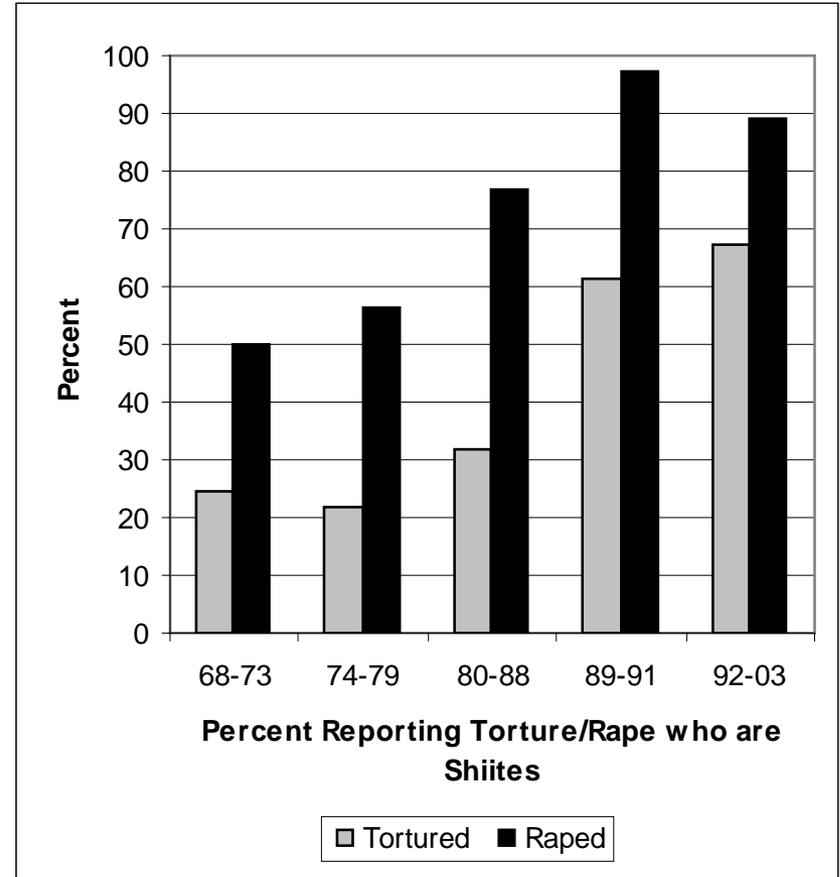


Chart 2. Institutional Affiliations of Perpetrators of Forcible Rape, Iraq History Project, N=6982

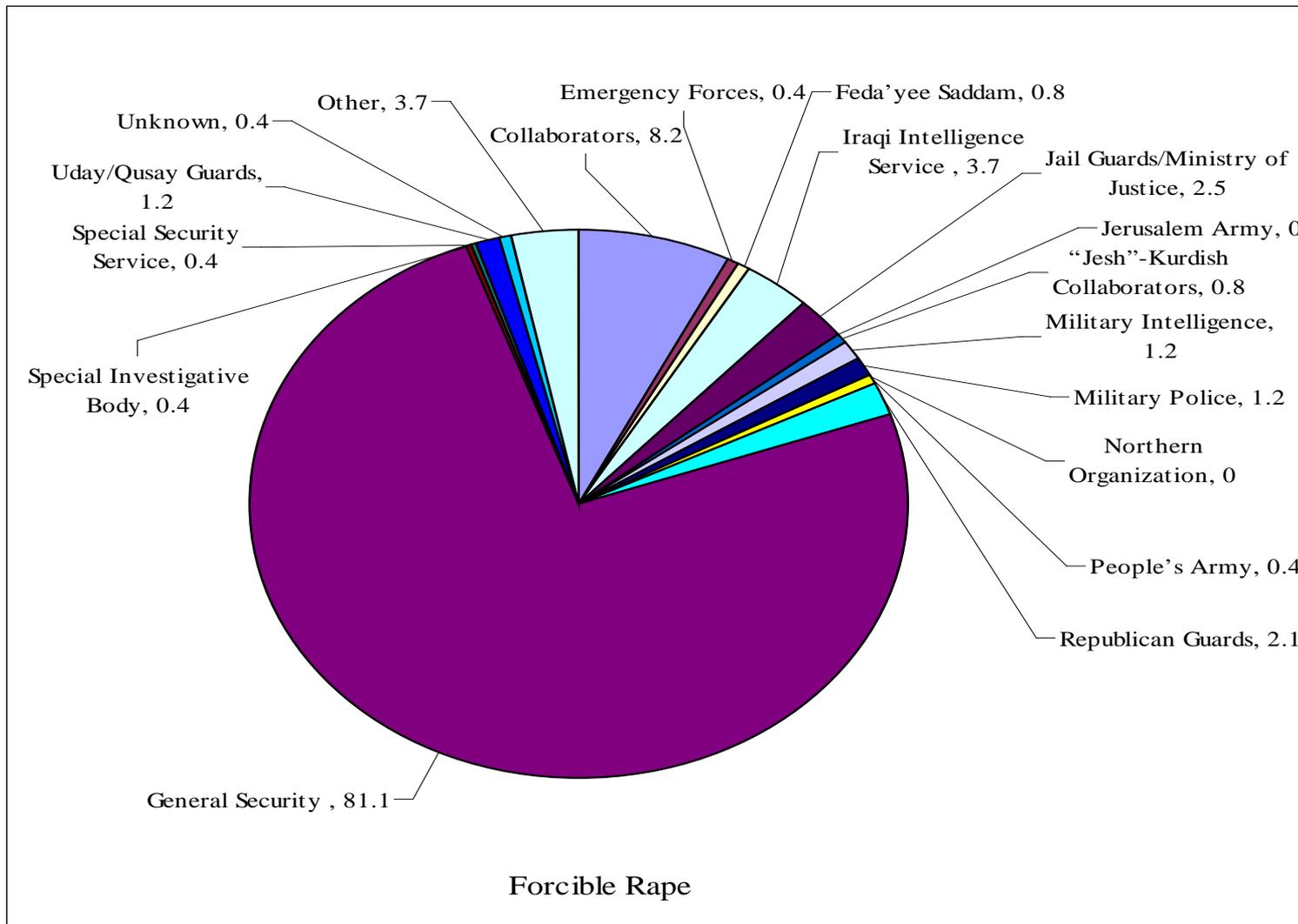


Table 2. Use of Arrest and Trial Procedures by General Security Perpetrators in Forcible Rape and Other Rights Abuse Cases, Iraq History Project, N=6982

	Arrest/Trial		N	X ²	DF	P
	No	Yes				
<i>Forcible Rape</i>	57.4%	42.6%	197	5.761	1	.010
	[-2.4]	[2.4]				
<i>Other Abuse</i>	71.8%	28.2%	1016	222.41 4	1	.000
	[-15.6]	[15.6]				

Forced Confessions by General Security Directorate Agents

- “They tore down my wife’s clothes and burned her in front of my eyes and she confessed to whatever they wanted and I was crying, and she was crying also. I signed blank pages for them and told them to write whatever they wanted on the papers but to leave my wife alone and not to harm her”

» -- Iraq History Study

Table 3. Binary Logistic Regression of Reported Forcible Rapes, Iraq History Project, N=6982

Predictor Variables	Single Rapes (N=62) Logit(SE)	Multiple Rapes (N=67) Logit(SE)	Gang Rapes (N=60) Logit(SE)	Rapes in Presence of Families (N=23) Logit(SE)
Young Child	-16.103(2143.459)	-.124(.742)	-.783(1.024)	.481(1.048)
Child/Adolescent	.285(.341)	-.774(.475)	-.436(.441)	.542(.516)
Gender	1.677(.264)***	1.944(2.262)***	2.066(.284)***	1.346(.423)***
1980-88	.359(.326)	.481(.334)	.083(.349)	.533(.552)
1989-91	-.576(.356)	-1.235(.414)**	-1.427(.467)**	-.969(.641)
1992-03	.918(.333)**	.504(.344)	-.327(.391)	.144(.579)
Shiites	2.09 (.344)***	3.016 (.394)***	2.746 (.363)** *	3.350 (.757) ***
Constant	-8.695	-9.528	-9.129	-10.129
-2 Log likelihood	599.265	596.002	554.534	259.865

State Bureaucracy as Weapon

- The man started telling me about the prison and the torture my father might face if a document was issued and sent to the Security Directorate He said “I want you Your father will be released and in return you will be my secret mistress. I’ll send a note recruiting you as a typist You will leave your studies because they are useless. You’ll work here in the day and afternoon, so you’ll be mine I couldn’t sacrifice my father, so I sacrificed my honor with that low, vulgar man.”

The ICC Prosecutor & Judges

- In July, 2008, the ICC prosecutor asked that the ICC judges to issue a warrant for genocide against Sudanese President Bashir
- In February, 2009, the ICC judges issued a warrant for Bashir's arrest for crimes against humanity, extermination, rape – but not genocide. Remanded one year later.
- The decision *not* to charge *genocide* took the focus away from the *racial dehumanization* that is perhaps the key source of denial in the raping and killing in Darfur
- In July 2010, the ICC issued a warrant for Bashir's arrest for Genocide, including rape

The IHT Prosecutor & Judges

- In 2007, in the Anfal case the IHT heard and accepted evidence about rape and the prosecution explicitly asked for a rape charge
- The IHT judges prosecuted and punished genocide but did *not* charge a single defendant in Anfal with *rape*
- **The IHT chose to prosecute the rapes as torture, thus failing to set an example for Iraq's national courts to prosecute rape - These courts are a key source of denial that allows rape in Iraq**

Comparing State Rape in Darfur & Pre-Invasion Iraq:

- Darfur
- Role of Racial Dehumanization
- Race in Sudan
- ICC: Genocide Warrent including rape
- Addresses Denial of Racial Protected Group Status – Challenges “Enabling Norm” [Elisabeth Wood]
- Pre-Invasion Iraq
- Role of Gender in Arrests & Trials
- Gender in Iraq
- IHT: Genocide Without Rape Charge
- Allows Denial of Victim Protection in Iraq courts – “Ideological Normalization” of Sexual Violence [Stan Cohen]

Conclusion

- Comparative analysis reveals the possibilities involved in recognition of rape and sexual violence as international crimes, but ...
- **The challenge is to break through the state based denials reflected in the quotes from Bush/Cheney, Bashir & Saddam Hussein**
- **These denials are a form of “ideological normalization” or “enabling norms”** - recognizing state rape as war crime and appropriate charges are keys to exposing the denials

Framing processes have the power to both deny and denounce criminality – and in this important sense, framing processes have the capacity to both cause and deter crime – depending by whom and how they are used.

This is an argument for why it is important that the United States itself apply principles of international law to conduct of its own leadership for sexual violence at Abu Ghraib prison in Iraq, and in relation to the War on Terror more generally.