

Voices from the Field

About Prosecution of Sexualised Violence in an International Context



KVINNA TILL KVINNA

WOMEN'S EMPOWERMENT PROJECTS

Voices from the Field

About Prosecution of Sexualised Violence
in an International Context

The Kvinna till Kvinna Foundation addresses the specific needs of women in areas affected by war and armed conflict. The Kvinna till Kvinna Foundation cooperates with women's organisations in Albania, Bosnia and Herzegovina, Croatia, Georgia, Israel/Palestine, Kosovo, Macedonia and in Serbia and Montenegro.

Voices from the Field
About Prosecution of Sexualised Violence in an International Context
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Summary

THIS REPORT IS a follow-up to The Kvinna till Kvinna Foundation seminar *Prosecuting Sexualised Violence in an International Context: Voices from the Field*, which was held in Stockholm, Sweden, on October 16, 2003. It explains the ideas and intentions behind the seminar, which in particular strove to provide an opportunity for participants of different backgrounds and experiences to share knowledge on working with victims of sexualised violence in international legal procedure. This report summarizes the speakers' presentations as well as the discussions in smaller working groups. Concluding the report is a set of recommendations and priorities intended for use by governments, inter-governmental and non-governmental organisations as well as others interested and involved in the support of victims of sexual violence in armed conflict when working in international legal procedure.

Acknowledgments

THE KVINNA TILL KVINNA FOUNDATION wants to state its gratitude for the women who in spite of hardship have gone through the process of witnessing at different international courts and tribunals.

The Kvinna till Kvinna Foundation is grateful for the support and cooperation it received in order to plan and carry out a half-day meeting for national experts and the seminar *Prosecuting Sexualised Violence in an International Context: Voices from the Field*, including: financial funding from the Swedish Ministry for Foreign Affairs and the Swedish Institute; the Swedish NGO Foundation for Human Rights; speakers Bill O'Neill, Brid O'Toole, Sevdie Ahmeti and Urusaro Alice Karekezi; experts from national NGOs; the seminar's moderator Christian Åhlund; the discussion groups' moderators and rapporteurs; and Annette Lyth, whose idea it was to arrange the seminar.

A Word from The Kvinna till Kvinna Foundation

THE KVINNA TILL KVINNA FOUNDATION decided to hold the seminar, *Prosecution of Sexualised Violence in an International Context: Voices from the Field* for several reasons. Primarily we wanted to bring together a diverse group of participants, including practitioners from national non-governmental organisations who have experience in working practically with victims of sexualised violence, to discuss whether international prosecution of sexualised crime has actually helped the female victims.

We have previously worked with different women's organisations to lobby for the inclusion of sexualised violence in international law. Impunity for these types of crime must end. In the recent past there have been many developments. Most notable is the inauguration of the International Criminal Court (ICC) in 2003, which can try sexualised violence as a crime against humanity and as a war crime. However, now it is time to stop and look back. Are the female victims actually better off because such violence is recognised under the law? What has the process achieved? We wanted this seminar to be an opportunity for actors already engaged in the discussion to meet and to bring others into it. If we do not dare to question how women have been treated in this process we cannot begin to make it better for the future.

As a part of the international community, the Kvinna till Kvinna Foundation will continue to work towards an international justice system that tries all crimes against international law, including sexualised violence, and therefore view the development of the International Criminal Court with its progressive crime definitions as a step in the right direction. However, without programs for protection and funding for such

initiatives, the international community must consider if it is really fair to involve these victims in the legal process.

The participants at The Kvinna till Kvinna Foundation's seminar came with different experiences from working with victims of sexualised violence, and represented different geographical areas. By sharing experiences and ideas they were able to develop a number of recommendations and priorities to be considered by all actors involved in post-conflict reconstruction and transitional justice; they appear at the end of this seminar report.

The Kvinna till Kvinna Foundation is devoted to continuing the struggle for justice for women, and the message is clear: if international courts and tribunals want to engage victims and witnesses in the judicial process, then there have to be mechanisms in place to support and protect them.

Introduction

SEXUALISED VIOLENCE¹ HAS been used and still continues to be used as a weapon in most armed conflicts around the world. However, it is only recently that the international community has begun to seriously see such acts as crimes against international law. Significant developments occurred in the late 1990's when the ad-hoc tribunals for Rwanda and former Yugoslavia prosecuted rape as crimes against humanity² for the first time. The Rome Statute for the International Criminal Court (ICC), which was adopted in 2002, is the first international treaty to define sexualised crimes as crimes against humanity and as war crimes.

While there should be no doubt that international law has been strengthened to protect female victims of sexualised violence³, there needs to be an ongoing analysis of whether the process has actually benefited the women themselves. With an overbearing legal focus on international prosecution there has been a lessened interest in the persons behind the statutes: the victims and witnesses. Some have argued, as a rationale for holding judicial proceedings, that it can be therapeutic for the victim or witness to participate and that it will contribute to post-conflict reconciliation. However, experiences from both the international and national level have proven that this is often far from the truth. In fact, the process has often proven to be a source for re-traumatisation. It has to be recognised that the problems facing victims of this type of violence are different than any other kind of violent crimes. This is in part because it is taboo to discuss such crimes, and also because the stigma is attached to the victim rather than to the perpetrator. It is crucial that the international community develop more than a legal framework to

protect victims and witnesses. There must be proper protection and support mechanisms for the victims and witnesses before, during and after the trial, and added efforts to understand the particular situation of female victims of sexualised violence must be made.

PURPOSE AND AIM OF THE SEMINAR

On October 16, 2003 the Kvinna till Kvinna Foundation organised a one day seminar to address how advancements made in international law, to jurisprudence and new statutes, have affected a national level. Issues for discussion included:

- does the international legal process actually convey dignity and respect to the victims and witnesses,
- does it account for their safety from the initial onset of their participation, during the course of the trial and after,
- has the development of protection mechanisms for victims and witnesses followed this aforementioned development of international legal standards,
- what are the potential risks that may face the victim or witness that participates in the procedure, and are these risks evenly evaluated for men and women?

It was important for this seminar that the discussions were held in an open and transparent manner and that they did not shy away from difficult questions. Issues related to victims and witnesses are complex as they encompass more

than one discipline (including but not limited to medical, legal, anthropological, psychological matters), and therefore require an approach to mirror this diversity. Participants⁴ that attended the seminar came from several different disciplines; amongst them were psychologists, women's and human rights' NGO practitioners, criminal investigators, field mission staff, judges and lawyers, and academics.

THE STRUCTURE OF THE SEMINAR

The program⁵ was structured with two panels of speakers, one in the morning and one in the afternoon and an equal amount of time designated for discussion in smaller groups⁶. The morning panel, entitled *Reporting and Investigating Sexualised Violence*, had an international focus with **Bill O'Neill**, who has worked in UN field missions to post-conflict areas, and **Brid O'Toole**, a former investigator at the International Criminal Tribunal for the former Yugoslavia (ICTY). The afternoon session examined a national perspective, entitled *The Relationship between International Tribunals and National NGOs*, with **Sevdie Ahmeti** and **Urusaro Alice Karekezi**, who have experience of working alongside the International Criminal Tribunal for Rwanda (ICTR) and the former Yugoslavia through national NGOs respectively.

Expert participants from National Non-governmental Organisations

A POINT OF CENTRAL importance in arranging the seminar was our specific aim to include women who have worked with victims of sexualised violence in a national context. We sought out experts who, through their work with national NGOs, could talk about what really happens with victims of sexualised violence on the national level – away from the legal spotlight – and about what international developments have meant. Of the group, some had direct experience from working with the ICTY and ICTR, whereas others came from conflict areas where there is currently no international judicial remedy to be sought.

Participants from national organizations included: **Sevdie Ahmeti**, Co-founder of the Centre for Protection of Women and Children, in Pristina, Kosovo; **Carine Baptita**, President of Femmes et Enfants pour les Droits de L'homme (FEDHO, Women and Children for Human Rights), in Kinshasa, Democratic Republic of the Congo; **Urusaro Alice Karekezi**, co-founder of the Center for Conflict Management at the National University of Rwanda, and Head of its Justice, Human Rights and Governance program, in Butare, Rwanda; **Nino Makhashvili**, Medical Director of the Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims, in Tbilisi, Georgia; and, **Mirha Poski**, Psychologist and expert on violence against women at Medica Zenica in Zenica, Bosnia and Herzegovina.

HALF-DAY MEETING WITH EXPERT PARTICIPANTS

The day prior to the actual seminar, The Kvinna till Kvinna Foundation organised a half-day workshop for this group of experts to meet and exchange experiences. The meeting also provided an opportunity to review their own objectives for the next day's seminar. During the actual seminar, these experts were resource persons for the discussions held in the working groups where their insight was crucial in providing concrete examples of how theory and ideas look in practice.

The meeting's moderator was **Annette Lyth**, and the rapporteur was **Azra Hromadzic**. Below are the main thoughts and summaries of the discussions on each point:

International courts with a weak link to the local context is a problem. There is a need for the building of **a bridge between the local society and the international court** in order for the local people to get information of what the court is about.

NINO MAKHASHVILI, MEDICAL DIRECTOR,
GEORGIAN CENTRE FOR PSYCHOSOCIAL AND MEDICAL
REHABILITATION OF TORTURE VICTIMS, TBILISI, GEORGIA.



Advance the position of female war victims

The discussion focused on the ways female victims of sexualised violence have been made invisible in the context of international law and legal institutions. Impunity for these crimes is only one problem in the context of advancing the role of these female victims within the legal process. In this context, the victim should not be used merely as a tool in the name of upholding legal justice. The specific conditions that affect a female victim of sexualised violence must be looked at from a broader and more holistic perspective so that she can be supported in a better way than what has been the case so far.

It is crucial that all parties involved grasp the particulars of the victims' precarious situation in order to establish a fairer justice process. Risk-assessment, for example, must be sensitive to understanding sexualised violence and be aware of the specific stigma, which is associated to the crime. There are too many examples where women have told their stories to investigators and reporters without receiving the support and assistance to be able to process the emotions and trauma associated with recounting violations.

Ensure that all actors take their responsibilities of protection seriously

The topic of protection was of major concern. It was pointed out that protective measures are not always implemented in an adequate way, particularly not after the prosecution is terminated and witnesses are meant to go on with their lives. In this context it is imperative that protection is adjusted to the context where the victims and witnesses come from and that all details are covered. This may for example include the chance for witnesses to debrief before they return home including discussing ways to keep their confidentiality once home again.

In order to provide support in a holistic manner, it is crucial that all different actors engaged in the process are identified and their responsibilities conclusively outlined and recognised. These actors include the staff of international tribunals and others thereto connected (for example, defence counsel), but also development aid agencies, intergovernmental organisations, international and national NGOs, as well as governments in all countries. Considering in detail roles, responsibilities and duties, and their relationship to each other facilitates cooperation. A deeper understanding for each other strengthens trust. Experiences have shown that the level of trust between NGOs and legal institutions has varied, and in some contexts there is virtually none. Lobbying and pressuring the international legal institutions to contribute in enforcing this responsibility for cooperation was discussed.

Increase the participation of national NGOs in international legal procedure

Many of the experts' suggestions were focused specifically on the role that NGOs, particularly national NGOs, play in relation to international courts and tribunals. It was underlined that they can play a very important role by forging direct contact with the victims, and thus work as a channel between the investigators and the witnesses. NGOs are best suited to alert other relevant actors of the particular needs of victims and to advise on issues related to the development of international law and legal institutions. NGO representatives with experience from the two ad-hoc tribunals voiced concern about the lack of transparency of the work of the tribunal and that national NGOs are often not considered more than information providers.

A request for clearer and binding guidelines on how legal institutions can work with NGOs was voiced, for example in suggesting guiding principles for the national NGOs' cooperation in preparing a prosecution. Such transparency can help develop the NGOs' capacity beyond being merely information providers and also make the roles clearer. Furthermore, it is necessary that NGOs are supported in their efforts to help witnesses. This can include training for NGOs, as well as for media and other relevant institutions. Training, however, should not merely be a one-way process but should be an opportunity for sharing and spreading stories and experiences in order to develop best practices. It became obvious at the meeting that the experts who had worked with the ad-hoc tribunals had much to learn from each other and to share with the representatives from regions where such institutions do not yet exist.

Reflections from the Speakers at the Seminar

The process has become **too legal.**

BILL O'NEILL, FORMER HEAD OF THE HUMAN RIGHTS
FIELD MISSION TO RWANDA.

THE SPEAKERS WERE divided into two panels with the morning session focusing more on the experience of international practitioners whereas the afternoon considered national practitioners.

Bill O'Neill opened the morning's panel by focusing on some general points of how work with victims of crimes, such as sexualised violence, has developed. He stated that the process has been too dominated by lawyers, and the focus has been overly legalistic with a focus on prosecutions and gathering evidence. In this rush to prosecute at international courts and tribunals, where in fact only a small number of cases are resolved, the victim is often overlooked. In building the existing ad-hoc tribunals, commented O'Neill, a real opportunity was lost. Both institutions could have contributed more to help reform and strengthen the national judicial systems, but this was not achieved. A real development has been achieved at the Special Court for Sierra Leone, which presents a new approach that offers a lot of potential. The Special Court employs a number of Sierra Leone nationals and takes an active initiative in improving the national judiciary, including in areas of

victim assistance, witness protection, counselling, investigative and other specialized skills related to sexual violence which was rampant in the conflict. It is important, stated O'Neill that there is a non-judicial aspect to the problem since only a very small number of cases involving sexualised violence will actually be resolved in the courts.

O'Neill then turned his focus to Liberia and the Democratic Republic of the Congo, where sexualised violence has been an enormous problem. Meanwhile, the judiciaries are devastated, no social services exist, and support systems are very weak. The United Nations and the European Union, amongst other international actors must be aware of this as they face questions of transitional justice and legal reform in both areas. Budget and staffing should be allocated to specialized investigations and prosecutions, victim support and assistance programs, witness protection, HIV/AIDS testing, and shelter needs. O'Neill concluded by noting that there can be a lot learned from the ad-hoc tribunals and Special Court. It's not too late, he said, for the ad-hoc tribunals to work on what their legacy can be in strengthening the national judiciaries in the regions they are working to affect.

Following O'Neill, **Brid O'Toole** spoke of her experiences as an investigator at the International Criminal Tribunal for the former Yugoslavia. Poignantly, she began her presentation by reading a quote from the witness testimony in the ICTY's first case, Prosecutor v. Dusko Tadic: "When the rapes started, everybody lost hope, everybody in the camp, men and women. There was such fear, horrible."⁷ This quote, she explained, summarised so much of what she en-

countered working in the ICTY's field office in Bosnia and Herzegovina. O'Toole said she was unprepared to meet witnesses whose statements were so full of energy, emotion and suffering and to feel like she left them humiliated and deprived of their dignity. She described her own frustration when she saw the defendant sitting in the court room looking healthy in a new suit and with a new set of teeth, while the victims she had interviewed barely had enough to eat. Better tools and mechanisms are important in order to be able to work with witnesses and to be sensitive when taking their testimonies, remarked O'Toole. Investigative techniques need to be revisited and witnesses should be approached with greater sensitivity and understanding.

On the afternoon panel, the focus was based on experiences from national practitioners who have worked with victims and witnesses in relation to the ad-hoc tribunals. **Alice Karekezi** began by describing her work as an NGO liaison at the ICTR in Arusha. She focused on examining whom the ICTR has actually benefited and suggested that often the female victims who went to Arusha to witness were actually used as pawns. To illustrate the impact of what it meant for women from Rwanda to go to Arusha, Karekezi explained the fear and discomfort many experienced simply by boarding an airplane for the first time. For these women going to a new place, away from the home they most likely had never left before was also a shock. She explained how she felt embarrassed in front of the women for having led them to testify, when the process could not help them in reconciling what had happened to them. She felt they were made to tell their stories and then just left to deal with the distress on their own.

Following Karekezi, **Sevdie Ahmeti** concluded the afternoon panel by speaking of lessons learned from her work with witnesses who have testified at the ICTY. Ahmeti has worked in Kosovo through the NGO she helped to start, the Centre for Protection of Women and Children (CPWC) since 1993. In her presentation, she focused on what it is that holds victims of sexualised violence from testifying in a court of law, what is needed to enable them to do so and conclusively how national NGOs are a part of

the process. Victims, she stated, are reluctant to report sexualised crimes when the criminals are connected to a government structure: "What is the use?" they ask themselves. Furthermore, the fear of re-victimization weighs heavier than the potential access to justice. Culture and tradition, said Ahmeti are additional barriers holding women from speaking out of crimes committed: "It [reporting] affects the woman, the family, and the community." The victim is afraid of the reaction she will face from her family and community when they find out of the violence she has been exposed to. She is also afraid, explained Ahmeti, that if she tells of what happened to her, she will reveal other victims who are trying to keep their own victimization covered. Ahmeti elaborated that often victims think that, even in smaller communities, they can hide stories of victimization.

NGOs, such as her own, have played a part in assisting the ICTY in Kosovo. CPWC was one of a small number of NGOs operating in Kosovo during the late 1990's, when the armed conflict was at its worst. Through her work, she met numerous victims and traumatised survivors and gained their trust, which was a major feat she explains. In addition to providing humanitarian assistance at that time, Ahmeti documented war crimes against women and girls. Having recorded accurate details of the massive violations that took place, including specifics on dates and places, she was able to offer concrete evidence to the ICTY. However, she feels that her NGO was limited to acting like an information provider for the tribunal and excluded from other phases of the investigation. She says they became something of a buffer zone between the ICTY and the victims, when she would have wanted to play a stronger part.

Ahmeti is critical of the limited protection measures she saw allotted victims who went to witness at the ICTY. Protective measures must be enacted before, during and after the trial, she said, yet this is not how it happens now. Before the trial, she says there was a total silence from the ICTY's side. She has concerns with the ICTY's methods for maintaining confidentiality and recounts how in one case an obvious, international four-wheel drive vehicle drove into a

small village to meet a female victim. Protection was limited to during the trial. She concluded by stating that "NGO interference is unwanted – but needed." She explained her statement and that NGOs need to stay involved in the judicial process – although sometimes it seems unwanted and is labelled as "interference." Finally, she added that in addition to supporting victims and witnesses, NGOs must lead a progressive campaign to make sure sexualised violence is included in international prosecution.

Reports from the Discussion Groups

SPEAKERS, EXPERTS AND participants alike were divided into five working groups. Each group was assigned a moderator to lead discussions and a rapporteur to record the dialogue. The groups met twice over the course of the day, once following the morning session and then following the afternoon session. Each group presented a short summary of its discussions at the end of the day.

GROUP 1: ACTORS IN THE JUDICIAL PROCESS AND THEIR RELATIONSHIP TO VICTIMS

MODERATOR: ANNETTE LYTH, ORGANISATION FOR SECURITY AND COOPERATION IN EUROPE

RAPPORTEUR: SUSANNA NYSTRÖM, NOHA, UPPSALA UNIVERSITY

Group 1 focused on who the actual actors in the international judicial process are and their relation and responsibilities vis-à-vis the victim and witness. Based on recommendations from the previous half-day meeting of the national practitioners, the group examined the actors in detail and also weighed their relationship, thinking about questions of trust and cooperation.

The dignity of the victim and the witnesses in the judicial procedure

The group's discussion focused on the role of the victim in the judicial procedure. There are several reasons why many female victims of sexualised violence are afraid of testifying in court. As was highlighted by the morning panel's

speakers, testifying is in most cases connected to insecurity and changes. There is also a fear that those who go to testify will be humiliated or re-traumatised by the proceedings in court. Unfortunately, this fear has been proven to be well-founded in too many cases. It was concluded that the concept of a fair trial has been traditionally focused unevenly on the defendant and thereby ignoring the plight of victims and witnesses. A Swedish participant explained that there have been some steps taken in the Swedish court system to make the courtroom less intimidating for the victim and witness; for example, the judges, prosecutors and lawyers are dressed in their normal clothes and everyone present in the courtroom sits on the same level.

Another crucial element in ensuring that the trial is fair for victims and witnesses is that they are well informed about all steps in the judicial process and their own role therein. The dominating factor is the right to legal representation at all stages of the process as it is the most important safeguard against abuse of the victim. It was concluded in the group that legal representation should be obligatory during the entire process to lend support to the victim. One participant noted that since a victim's representative had been introduced in Sweden there have been some major improvements in the protection of victims. This stems mostly from the fact that the prosecutor now can focus on the crime, and the lawyer who is serving as the victim's representative can focus on the victim.

Problems connected to cross-examination were raised and one participant stated that: "you can't tell the defence not to ask too many questions. The woman should not be tortured in a trial, but it is a right for everyone to have a fair

trial.” However, it is vital that the judge is active and makes use of their authority when the dignity of the victim is infringed upon to stop aggressive questioning.

The different actors and their roles

The group moved on to scrutinize the different actors involved in the international judicial process and their respective tasks. In terms of legal representation for the victim it was concluded that: “the role of the lawyer is to help the woman with whatever she decides. The lawyer should not force the woman to speak in court.” One participant pointed out that the court and the prosecutor sometimes think that it is the legal representative’s job to force the victim to do so. However, this is not necessarily the case. Legal representatives have an important task in informing women of their possibilities. At the same time all the different actors involved must take responsibility for different areas or information might fall by the side.

Understanding the laden testimony that victims of sexualised violence carry is essential. “Women surviving sexualised violence are so traumatised and are the most difficult cases to deal with in court, therefore it is important that professionals become aware of how these women can give testimonies,” said one participant. This may create problems in the synergy

between the victim’s need and the judicial procedures. Such thinking is not evident in the timing of the investigation and court case vis-à-vis the time victims need for recovery. “It takes months for some of the women before they are able to talk about what happened to them,” explained a psychiatrist participating in the group’s discussions. This may put the legal professionals (for example investigators) in a critical situation as they are often working under pressure to complete the investigations in a specific timeframe. There is an obvious temptation to pressure victims in order to obtain the necessary information.

Vicarious traumatisation

During the course of discussion, the group raised the topic of vicarious traumatisation. One reason that international legal procedure has focused too much on the legal aspects is because meeting human suffering can be too difficult, concluded one participant. One psychiatrist who participated in the discussion said “it is a way of cutting off and distancing oneself, to look at the facts, papers and paragraphs just to avoid suffering as a human being.” A fellow group participant commented that it can be difficult for legal actors to handle their work objectively.

GROUP 2: WITNESS AND VICTIM PROTECTION – PHYSICAL SECURITY

MODERATOR: AGNETA JOHANSSON, INTERNATIONAL LEGAL ASSISTANCE CONSORTIUM (THE KVINNA TILL KVINNA FOUNDATION BOARD OF DIRECTORS)

RAPORTEURS: MICHELLE AZORBO AND LAURA HÄYRINEN, NOHA, UPPSALA UNIVERSITY

Group 2 focused on discussing physical protection for witnesses and victims who become involved in international legal procedure. They began their discussion by considering a working definition of victims and witnesses. During this dialogue, the situation of witnesses who were not victims was also discussed, as well as the vic-

I read an article about women in Kenya who organised against the sexualised violence to which they had been exposed. There was a picture of them walking down the street with a sign that said “UN soldiers raped us.” **There needs to be a change in attitude** so that more women can access the strength and support to speak out about the violence they’re exposed to.

LINDA ÖHMAN, THE KVINNA TILL KVINNA FOUNDATION, STOCKHOLM, SWEDEN.

timisation associated with the perpetrator who is forced to commit a crime.

The participants worked to develop a deeper understanding of what being a victim of sexualised violence encompasses. Often, the female victim is not actually treated like a victim, since there is a notion that she is in part to blame for the crime. Yet in fact, sexualised violence is premeditated like any other crime, and indiscriminately directed towards all women; "The act of rape is not about sexual will," said one participant. Age or physical features, for example, do not play a part in singling out the women who become victims.

The stigma attached to being a victim of sexualised violence

The stigma attached to sexualised violence is so strong that it keeps women from speaking out. One of the group's participants told of how she heard reports of Israeli soldiers using rape to blackmail women for information. The soldiers took pictures of the women being raped and then threatened to show the pictures to the women's relatives. Even the photos were a threat to the women.

Sexualised crime, both in times of peace and conflict, builds on existing discrimination of women in society. When sexualised violence occurs in peacetime it is an act of power over one individual while during an armed conflict it is an act of domination over an entire group. This discrimination becomes an additional barrier in trying to help the woman to overcome the violence. Since there is no collective understanding or community support for a victim of sexualised violence, they often become excluded from their community and have to carry their shame alone.

The legal process of testifying can become a very traumatic experience for witnesses. The group discussed how it can be a risk for the victims' family or fellow villagers if there is disagreement over the victim giving testimony. For example, others might be concerned that if one victim reveals the crime and testifies, then cases that other victims have tried to keep hidden could be uncovered. One participant recounted how many women ask investigators not to reveal the crime to their husband and families. Another

There is a vicious legal circle making it difficult for the witnesses to remain anonymous. The perpetrators are often aware of the victims' last name and due to the premeditated nature of these crimes where the identity of the planned victims was often known. When the commanding trial receives the name of the witness, as part of a fair trial, he can easily pass on this information and the witness may become a target when returning home. In some cases, a perpetrator might defend himself and will then get access to all information on the witness, due to their right of finding out who is prosecuting them. Further it can be extremely traumatising for the witness to give his or her testimony facing the perpetrator or a high commander who has given the order to commit the sexualised crime.

SEVDIE AHMETI, CENTRE FOR PROTECTION OF WOMEN AND CHILDREN, PRISTINA, KOSOVO.

er participant added that trying to hush the events increases the stigma attached to the crime.

Meeting the perpetrator in court can be particularly difficult. In the UK, explained one participant, the perpetrator's right to defend themselves has been reduced so to lessen this concern. In the same way there are restrictions on how many questions can be asked about the victims' previous sexual history. Similar rules exist at the international criminal tribunals as well.

Witness protection

It is not enough for witness protection to only cover the period of the actual trial, rather it must be sustained before, during and after it is concluded. Protection programs must be able to offer women and men the possibility of continuing to lead their lives after the trial. In situations where this means moving to a third country, it

In cases of sexual assault:

- (i) no corroboration of the victim's testimony shall be required;
- (ii) consent shall not be allowed as a defence if the victim...;
- (iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;
- (iv) prior sexual conduct of the victim shall not be admitted in evidence.

RULE 96 "EVIDENCE IN CASES OF SEXUAL ASSAULT," OF THE RULE OF PROCEDURE AND EVIDENCE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA⁸

ought to be a possibility. One participant raised an important point in relation to this recommendation, stating that not all people have the adequate background to enable them to relocate from a country like Rwanda to a country such as Canada, for example: "They have to be able to work and live."

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, ARTICLE 22 (1993)⁹

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

ROME STATUTE FOR THE INTERNATIONAL CRIMINAL COURT, ARTICLE 68 (1) (2002)¹⁰

In relation to guaranteeing protection, how a witness is deemed to be high risk must be further discussed so that the process of protection is fair and answers the witness' true needs for protection and aid. Factors like gender and the nature of the crime must be evenly evaluated.

The burden of protection cannot fall on NGOs. In many cases they are not sufficiently prepared to provide protection for victims and witnesses. It must also be the responsibility of the state, including a range of actors, such as the police for example. Yet this can also be difficult since victims do not always trust their government or the state has collapsed.

The group recommended that investigatory staff must be more sensitive not to re-traumatise the victim or witness. Retelling the story several times, for example, should be avoided. The witness should receive support throughout the entire process and even have the chance to be accompanied by someone whom they trust. At the same time, one participant pointed out that not all victims become witnesses and these victims, who do not testify, should still have access to social, psychological and medical assistance, through NGOs for example.

Informing the victim or witness of how the legal process unfolds is essential; often their expectations do not correspond with reality, and this can mean a growing reluctance to testify. In this capacity, NGOs can serve an important role by communicating to the victims and witnesses, and even help realise honest expectations of the judiciary process. For example, victims and witnesses need to be informed that even when a perpetrator is released without charge it does not necessarily mean that the court does not believe their story.

Support to national institutions as a way to assist victims and witnesses

Strengthening existing national institutions was one way the group envisioned witness protection. "Focus must be put on building the capacity of the individual and the community to cope," said one participant. International courts and tribunals have a responsibility to consider their legacy and what can be left behind to strengthen the national system. An example from the Special Court in Sierra Leone was recounted where the court's judges hold workshops with the national judges.

GROUP 3: WITNESS AND VICTIM PROTECTION – HUMANITARIAN ASSISTANCE

MODERATORS: SARA KITABWALLA AND YLVA STRÖMBERG, MÉDECINS SANS FRONTIÈRES

RAPORTEURS: LENA SALLIN AND ANNA-KLARA GRANSTRAND, NOHA, UPPSALA UNIVERSITY

Group 3 concentrated on victims' and witnesses' need for humanitarian assistance. The dialogue began by asking a very direct question: "Where do you start when you can't even convince victims to come for treatment?" The group's moderators spoke of their own experiences in Sierra Leone where women who have been enslaved by rebel soldiers do not stay for counselling, medical treatment or education, but rather chose to go back to their enslavers as they do not see a future on their own.

By way of this question, the participants began discussing the need for a community based approach in working with victims of sexualised violence. "The whole community should be involved," said one participant, "Women are afraid of reactions from their families. Men's reactions are obstacles for women coming forward." Organising an educational programme over the radio was mentioned as one possible way of sensitising the public to the problem, and particularly in reaching men. It was proposed that both long term and short term solutions are needed. Since changing attitudes can take so

Until 1999 the victims received support when they went to the International Criminal Tribunal for Rwanda. In particular, a person was assigned to the witness in order to help the person get familiarised with various issues. However, this support was not institutionalised. Now the victims' assistance has more staff in the prosecutor's office, but they seem to lack the relevant experience for the job. This means that they have not staffed these units properly.

URUSARO ALICE KAREKEZI, CENTRE FOR CONFLICT MANAGEMENT, BUTARE, RWANDA.

We must build on the existing national institutions. The tribunals have not made attempts to anticipate how to help the community and the individual by providing training and guidance.

BILL O'NEILL, FORMER HEAD OF THE HUMAN RIGHTS FIELD MISSION TO RWANDA.

The ICTY's Victims and Witnesses Section (VWS) launched in 2003 a program to work with health and welfare professionals from the former Yugoslavia. It is envisioned that strengthening national organisations will build up a support mechanism, available for witnesses who return home after testifying in The Hague, and will complement the VWS' services.¹¹

In Africa a raped woman has no future. Her husband will not accept her. Whether raped in war or in a chance meeting – whatever the circumstances – she will not be accepted by her husband or by her community. A girl has no chance to marry again if people know. ... for men to understand that women are victims, that they did not want the rape, is only one aspect of the repair work.

CARINE BAPITA, FEMMES ET ENFANTS POUR LES DROITS DE L'HOMME, KINSHASA, DEMOCRATIC REPUBLIC OF THE CONGO.

[In Sierra Leone] First, we only spoke [to the women], we did not interview. They had been abducted by rebels. We asked general questions and approached the issue carefully... Later we gave information on **the opportunity to take the case to court.** We offered medical assistance in the clinic. ... We told them that a crime had been committed against them and informed them that they could take the case to court if they wanted. The purpose was to give them the opportunity to tell their story and to give them medical assistance.

SARA KITABWALLA, MÉDECINS SANS FRONTIÈRES, STOCKHOLM, SWEDEN.

long, there is also a need to provide immediate help for women in need. The needs, agreed the participants, depend very much upon the location and situation, and therefore require different approaches. "When there are obstacles, we need to be proactive," said one participant, "if women do not come to the clinic, we need to find out why and act accordingly."

The group also considered that educational programs must address different groups of men. The group's moderators explained that many men in Sierra Leone have become involved in programmes to help women, for example in planning to lessen the risk of women being attacked in refugee camps. One participant from the Democratic Republic of the Congo stated that perpetrators must understand the consequences of their actions, both the physical and psychological effect on the victim, as well as the risk of being indicted by a judiciary institution: "it is really important that men know the consequences of their acts."

In discussing short term plans, participants looked at how immediate needs for humanitarian assistance can be answered. In Sierra Leone, the women who escaped their enslavers must have an alternative so they do not feel that they have to go back to the rebel soldiers. One participant brought up the example of approaches used to reintegrate soldiers and combatants: "reintegration for victims is crucial," he concluded. He continued to suggest that a legal approach must be developed to do so where awareness raising also becomes an important aspect. One point to consider, however, is that sometimes such programs can create hostility for seeming to award the "bad guy." There must be an effort made to circumvent such consequences.

Reintegrating women who have been forcefully moved from their homes raised another concern. "How do we deal with Liberian women in the camps in Sierra Leone," asked one participant. Health care, suggested another, must be made available when people are home as well as displaced. Since international organisations often come in contact with displaced victims of sexualised violence they must be aware of this, and be trained in how to handle it.

Experiences from the group's participant who had worked in Sierra Leone illustrated how international NGOs working in conflict areas can address victims' needs. Combining medical assistance with an opportunity to inform and sensitise victims was recognized as a good strategy.

Following this, the conversation turned to addressing responsibilities for humanitarian protection. One participant noted that during a conflict it is a matter of reparation and compensation, which she stated must be a responsibility of the state. As was voiced earlier in the discussion, women must have an alternative in order to be able to continue their lives after having been victims of crime: "What are these women going back to? She needs to start working again but does she have that possibility? There is a need for her to get her confidence back and for the society to accept her as she is," said one participant who works for human rights in the Democratic Republic of the Congo. Her insistence on a law to protect witnesses led to some questioning as to whether this would actually change the situation. The participant answered that whereas a law would not help right away, it was a necessary step; but when governments ratify laws, they must be properly implemented and followed to be effective.

The problems associated with confidentiality

The issue of confidentiality was raised in the context of how to encourage victims to seek assistance. The group heard examples of how interviews conducted with trafficking victims in Macedonia were much more successful when investigators moved the interview location to a more private, calmer and quieter place. However, in some situations confidentiality is not a possibility. One participant recounted how when working in southern Sudan, the whole family – sometimes the whole village – would accompany the victim to the clinic. In these situations, another participant stated, it is important to develop alternatives in order to be able to be sensitive to cultural diversity.

Governments' responsibility in

How is protection organised today? What protection can she [the female victim] have if she goes to testify? And how is a state responsible for providing protection? The perpetrators may be in power and have all possibilities to strike back!

There is a judicial void here. ... There is protection for the accused. Why not take the same measures to protect the victim/potential witnesses?

CARINE BAPITA,
FEMMES ET ENFANTS POUR LES DROITS DE L'HOMME,
KINSHASA, DEMOCRATIC REPUBLIC OF THE CONGO.

witnesses' and victims' protection

The group's discussion turned to looking at the different actors who share a responsibility in providing protection for witnesses. The victims and witnesses unit at the international courts and tribunals have such responsibilities, and victims must be informed of what they can claim from such units. Trust becomes a difficult issue since in many instances people do not trust the government and do not want to turn to such institutions for assistance. A lot of work is driven by NGOs, in lieu of governments.

The complexity of dealing with the stigma associated to sexualised violence

Speaking based on experiences from Sierra Leone, two of the group's participants explained how in some situations the stigma associated to sexualised violence has been so great that only women who have lost their husbands, and thus their social standing, are willing to tell their stories and possibly testify of the crimes to which they have been exposed. The stigma connected to the crime, and to becoming a witness, said an-

It lies in the nature of the crime

and the psychological repercussions **not to tell**

[of the crime] until it is absolutely necessary.

SEVDIE AHMETI, CENTRE FOR PROTECTION OF WOMEN AND CHILDREN, PRISTINA, KOSOVO.

other participant, can actually affect the security of the victim's entire family.

In discussing the risks associated to witnessing, the group began to discuss the possibility of repatriation. One participant noted that it is very difficult for a victim of sexualised violence, who has testified at a court or tribunal, to find asylum in a third country. One participant pointed out that in Sweden the system does not work; it becomes up to the individual asylum seeker to prove that she would be rejected if she returns home. This raised another concern with the system in Sweden, where the woman's asylum status is dependant upon her relationship to her husband. In order to change her status and get a new permit, if for example she gets divorced or wants to leave her husband, she often needs very conclusive evidence of abuse. This creates a catch 22 situation where she would need to stay with the abusive partner in order to obtain evidence for leaving. The group noted that this shows a lack of creating praxis for specific problems.

A woman's threatened asylum status is sometimes the cause for her to bring up issues like having been a victim of sexualised crime. However, this casts doubts on why she waited to tell, and does not make her look credible in a court of law.

The group concluded its dialogue by revisiting the question of how states and civil society – including both national and international – interact with a focus on donor politics. There was a shared understanding that both actors need to be involved in the process for helping victims: "We need governments to create acceptance for these women [who have been victim of sexualised violence] as well," said one participant,

"Work on the community based level is not enough, acceptance of the survivors has to come from all levels of society."

GROUP 4: TRAUMA AND RE-TRAUMATISATION

MODERATOR: MARIA ERMANNO, DEPARTMENT FOR UNIVERSITY SERVICES (THE KVINNA TILL KVINNA FOUNDATION BOARD OF DIRECTORS)

RAPPORTEURS: CAROLINA GRELSSON AND CHARLOTTE JACOBSSON, NOHA, UPPSALA UNIVERSITY

Group 4 focused on questions related to the psychological affects of victimisation and the process of testifying. The dialogue began by reflecting on who benefits of the international legal process. One participant, with experience from working with the ICTR, remarked that the international legal process has a clear political dimension, and that there are two problems in this; the first is that there has been too much emphasis on the legal approach, and the second that victims have become pawns in this process.

Another participant added that there are similar problems at the national level in Sweden. Many victims are hesitant to go and testify at a court or tribunal: "The process of healing is very long," explained a participant who has worked with women who have come to Sweden as refugees and bear the trauma caused by sexualised violence, "these are people without basic security who are traumatised. They just want a bit of life and leave the difficult experience [behind]."

The trauma associated to being raped, stated Alice Karekezi can be seen on three levels. First, it occurs on an abstract level as it is a human rights violation. Second, the crime often occurs in one's community, putting it out in the open: "It's a stigma as everybody knows. You are deprived from the status of 'victim' and become 'the one who was raped.'" And conclusively it occurs on a private, intimate level: "something that is yours, your body, has been invaded."

How to sensitise victims to the legal process

A participant, who works with victims of sexualised crime in Sweden, explained that on the national level, the team of investigators appear for only a few weeks and then leave. "Other parts [of the process in resolving the violence] are important too," she said, "not only to talk to women about going to court, but also to give them shelter, to fulfill basic human needs." She recommended that if national women's organisations are involved the victim would have somewhere to turn once the investigators leave.

Strengthening the victim so that she can make her own decision and begin to understand what the judicial process entails was another suggestion that the group raised. Thereby the woman can better understand of how the process will help her and others. It must be ascertained that the victim has rights in the procedure, and that she is aware of them. At the same time, the investigative team must be educated to ensure that they take every step necessary to try and not re-traumatise the victim. This goes for all staff at international (and national) courts and tribunals. One participant recounted an example from the ICTR where the judges began laughing at the witness who was testifying about having been raped. Such occurrences can not be repeated.

Support for the victims

Psychologist and support teams must be available to assist victims throughout the process, agreed the group. Yet in order to be able to provide this type of support, funding for such programs need to be worked into bilateral donors' agendas, stated one participant. NGOs, she added, can only offer assistance if provided with financial support.

In Rwanda witnesses were recommended not to go to the ad-hoc tribunal in Arusha and chose to boycott the trials. While it may seem like a drastic measure to take, several national human rights practitioners and NGOs felt that the female witnesses would not gain anything from the process and therefore advised them not to go.

We have to take care of people before and after [the trial]. **There are still only a few organisations to take care of traumatised people.** Most victims are often pleased just to learn how to handle trauma.

KRISTIINA NYKVIST, RED CROSS CENTRE FOR TORTURED REFUGEES, STOCKHOLM, SWEDEN.

In the afternoon session, talk focused more on mechanisms for reporting crimes and the importance of fighting against impunity for sexualised violence, whether the perpetrator is part of a national, international or occupying group. One participant stated that when victims of sexualised violence see that the perpetrators are not apprehended and remain free in their communities, they start to think that there is no use in accusing the men since they will not be prosecuted anyway. But there are mechanisms in place to fight impunity, and states that have ratified such conventions must follow them. Increased national awareness of the existing legal tools, including ratified conventions and treaties, are one way to achieve this: "they should be used as living instruments."

Should we stop telling women to go to court?

We have to have a legal system for the crimes. But maybe one solution is to give women's centres money at the same time.

LISA PLOUG, ROKS (THE NATIONAL ORGANIZATION FOR WOMEN'S SHELTERS AND YOUNG WOMEN'S SHELTERS IN SWEDEN), STOCKHOLM, SWEDEN.

GROUP 5: TOOLS FOR ACTION AND CONTRIBUTION OF NGOS

MODERATOR: EVA ZILLÉN, THE KVINNA TILL KVINNA FOUNDATION

RAPORTEURS: INGER BRODAL AND SOFIA WENNERSTRAND, THE SWEDISH PEACE AND ARBITRATION SOCIETY, STOCKHOLM, SWEDEN

The fifth group discussed how non-governmental organisations (NGOs) can become involved in the international judicial process, and how they can make a contribution that lends support to victims of sexualised violence. Initially, discussions focused on the social stigma attached to sexualised violence and the shame victims live with, causing widespread reluctance to give testimony. This brought up the question of how to raise awareness that sexualised violence is a grave breach against human rights and not merely a women's issue. This is complicated by the particular impact that sexualised violence can have on its victims, which is quite different than that of other types of violence.

Experiences from a Bosnian NGO

Mirha Pojsic, who has worked through a national NGO with victims of sexualised violence that have testified at the ICTY recounted some of her experiences. She said that of the approximately three hundred victims that came to her centre, only three agreed to go to The Hague to testify at the ICTY. They were held back by the concern that they would not be protected and

that they would be re-traumatized by the process. The victims are afraid of perpetrators that are still free who could potentially harm them or their families. The opportunity to be repatriated to another country after the prosecution, and thereby uprooted from one's home and family, was seen by many victims as a sacrifice too big to make, explained Pojsic. Furthermore, they worry about being humiliated in court and that the newspapers where they come from would write about them: "the social stigma and the shame make it impossible to talk about it [sexualised crime] even in peacetime," she said.

The organisation at which Pojsic works, Medica Zenica, has recognized the importance of involving the state in the tasks that they carry out. Female victims need moral support, access to food and shelter, and assistance in finding employment. In addition, they need psychological counselling. Currently, explained Pojsic, only NGOs are offering such type of assistance in Bosnia and Herzegovina.

National NGOs' work with victims and witnesses

One reason for why witnessing can possibly lead to re-traumatisation is that it requires leaving the familiar and going somewhere new. The group discussed how NGOs can play a role in easing this process. One solution is for the witness to be accompanied to the trial by someone that they trust; this person could be a NGO representative and does not have to have legal knowledge.

NGOs, both national and international, can play an important role in informing victims of the existence of international courts and tribunals. Often, people do not have access to all information channels, such as the Internet or television, and have difficulties in getting information in general. Even people working through national NGOs might not always have access to good information about the international courts and tribunals, how they work and how they can be of use to victims. By linking together NGOs and individuals on national and international levels such information can pass more efficiently.

We've had a good mode for cooperation with the ICTY, giving them material in the form of collected testimonies without reporting the names of the witnesses – and thus making it the witnesses' decision whether to give testimony in court or not.

MIRHA POJSIC, MEDICA ZENICA, ZENICA, BOSNIA AND HERZEGOVINA.

Information should not pass from the international to the national level only. The knowledge and skills gathered by national NGOs should also be shared. National NGOs play an important role in providing information on the national situation and can comment on such topics as the current conditions for victims of sexualised violence and possible threats to their security. One participant suggested that in order to support these national NGOs, programs like the OSCE's legal aid programme could be expanded to include NGOs in their operations. Besides funding, noted another participant, NGOs that work on the national level in monitoring sexualised violence and other human rights abuses sometimes need support and protection from those who do not agree with their work.

The victim and the witness in the legal process

To better understand the victims' role in the legal process, the group revisited some particulars of being a victim of sexualised violence.

Several participants noted the improvements that have been made in the Rome Statute for the International Criminal Court in including provision for victims' participation, compared to previous international tribunals that lacked such structures. Women should be able to pick their own legal representation said one participant. It is stronger, noted another participant, when victims organise and press their case together. Together, they can build confidence and face the domestic prejudices in a group.

One participant suggested that NGOs need to stay involved by monitoring how victims' participation develops at the ICC, just as they must continue to monitor other areas of the ICC, such as witness protection.

Even though these advancements, it seems that in some respect the international community has only recently become aware of the needs of victims of sexualised violence. One participant described a refugee camp for Kosovo Albanians in Macedonia where there was no gynaecological or psychological support. Such services, she stated, should be covered on par with food and water. Another participant concurred that sexualised violence has long been ig-

Witnesses should not be treated only as victims, but as parties in the process.

CHRISTIAN ÅHLUND, INTERNATIONAL LEGAL ASSISTANCE CONSORTIUM, STOCKHOLM, SWEDEN.

The dilemma is in how to treat rape like a **real human rights crime** and not as something that is an accepted by-product of war, and at the same time maintain an understanding of how it affects the victims and how it is related to gender perceptions.

EVA ZILLÉN, THE KVINNA TILL KVINNA FOUNDATION, STOCKHOLM, SWEDEN.

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

THE ROME STATUTE FOR THE INTERNATIONAL CRIMINAL COURT, ARTICLE 68 (3)

nored by humanitarian aid organisations, and that it is a positive development that recently more attention has been focused on the issue. However, in some cases psychological care is mentioned more than basic needs such as food and shelter; assistance programs must aim to see the whole picture.

We have all these examples, and we have the reports on the lessons learned – but **where are the reactions, the emergency response mechanism?** We have to find a way to give the victims of sexualised violence the voice to speak up... some are not in a position to speak. They have no shelter, no food or water, their families may be murdered, they have no social network and they are deeply traumatised. ... We must remember that this is not a women’s issue, but a crime. Especially male investigators need to be more sensitive to this fact.

BRID O’TOOLE, FORMER INVESTIGATOR, ICTY FIELD OFFICE IN SARAJEVO, BOSNIA AND HERZEGOVINA.

Considering both setbacks and developments, one participant concluded that the strain it might impose on witnesses is not enough to lay down the international justice system and allow criminals to go free. Yet it does call on building better mechanisms, than the existing practices, to support and protect the witnesses. The potential to seek refuge in a third country is one protective measure that she called on to be strengthened, adding that countries have to be more open to providing victims of sexualised violence asylum. More European countries need to consider this alternative seriously and be more acceptant of refugees that have been victims of sexualised violence. Another participant pointed out that a major hindrance today is that

The secrecy is poisonous. We must create an environment where victims of sexualised violence can speak more freely about their trauma – otherwise, it can never heal.

NINO MAKHASHVILI, MEDICAL DIRECTOR, GEORGIAN CENTRE FOR PSYCHOSOCIAL AND MEDICAL REHABILITATION OF TORTURE VICTIMS, TBILISI, GEORGIA.

the asylum seeker bears the burden of proof and that they have to demonstrate that their government is unable to protect them.

Training international actors on sexualised crime

The group took up the question of how to best label sexualised crime in the context of training. Some have called sexualised violence gendered, but since gender can connote feminism this might turn some professionals away. This led to a discussion on finding the courage to be able to call things by their proper name, like for example feminism. Nonetheless, convincing top legal practitioners, such as international judges, that they need training – particularly on gender issues – can be difficult. Although the ICC has been more approachable with respect to hearing civil society, than its predecessors, noted one participant, the difficulty has been in putting forth practitioners with concrete examples from working on a national level. National NGOs play an important role as experts since they can contribute with contacts and experience from actual work in a very specific context.

In the afternoon session, the group returned to discussing the specific case of a victim of sexualised violence. Nino Makhashvili who works with victims in Georgia spoke of what she has seen. She explained how many of the refugees that come to Georgia are from Chechnya. She says that in both Georgia and Chechnya a female victim will try to cover up what has happened to her.

”Victims of sexualised violence are the most traumatised group and the slowest to heal because their personal integrity has been damaged. They have no social support and can find no meaning or purpose. Perhaps a judicial process can be a way out of that,” said Makhashvili. The possibility of trials has not been considered in Georgia and the ICC has never been discussed, but she sees that it can be useful both for the women and for the entire community. Even education on these issues gives people a lot and is in itself a large contribution, she concluded.

One participant asked what could be done in places like Georgia, where there is no tribunal to

deal with the crimes that have been committed during its recent civil wars. Makhashvili answered that a lot could be done by educating NGOs and engaging the media to change peoples' attitude towards sexualised violence. This, she said, would make it easier for the victims to continue their lives. To be able to do this national NGOs need support. In conclusion, she added that international personnel, such as ICC staff including both investigators and judges alike, must receive training on vicarious traumatisation so that they do not depersonalise the witnesses by creating barriers between themselves and them.

Linking the national and the international judiciary systems – NGOs' role

One participant raised the point that the ICC will make an important contribution through its connection to national legal systems: "The greatest contribution of the ICC will be the implementation of its jurisdiction and its statute into national legal systems," she explained. In this context NGOs are important as a link that can spread information about the court to people and give them an opportunity to have easier access to the legal, and reconciliatory, processes, she suggested. She added that seeing civil society's role in this context is important, even in cases where there seem to be restrictions put on their participation.

Following up on her comment, the group's moderator raised the question of what responsibility do national courts and the ICC have towards NGOs. Responses varied. Some pointed out that the ICC has a better relationship with NGOs; they were essential in building it. Another participant felt that NGOs have to understand that they are not the central actors in the judicial process.

In discussing NGOs' roles, one participant noted the complexity that arises when courts and tribunals are to deal with NGOs: "an independent body able to work more freely with NGOs should be established in connection to the judicial body. This body should be a kind of *connecting unit*."

The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court.

ARTICLE 44(4)
THE ROME STATUTE FOR THE INTERNATIONAL CRIMINAL COURT (2002)

The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

ARTICLE 15(2)
THE ROME STATUTE FOR THE INTERNATIONAL CRIMINAL COURT (2002)

We should encourage governments to communicate with the ICC and establish a contact between them and relevant NGOs to make sure that the victims are sent home to a safe situation where they are being taken care of. There is a need to work out an agreement between NGOs and the ICC about their future cooperation since there is a tie of mutual dependence between these actors.

BIRGITTA ALBONS, JOURNALIST, STOCKHOLM, SWEDEN.

Conclusion: Recommendations and Priorities

THE FOLLOWING IS a list of recommendations and priorities for how to work with questions related to victims of sexualised violence in the context of international courts and tribunals. These have been put together by The Kvinna till Kvinna Foundation and are based on the half day meeting with the national NGO practitioners as well as discussions held in the seminar's working groups.

RECOMMENDATIONS ON UNDERSTANDING SPECIAL VICTIMS¹²

Recognize and understand what separates female victims of sexualised violence from victims of other crimes. That which primarily separates a victim of sexualised violence from other victims, of torture for example, is the stigma associated with the crime and the risk that the victim faces of becoming an outcast in her own community.

Support: the female victim needs psychosocial care, but her access to such support is strained because of her own inability to talk about what happened, and the lack of an aware and gender-sensitised staff of practitioners,

Blame: Society blames the victim for the crime, and the woman then internalises this blame, forming a major obstacle for her to access any kind of recovery,

Sexually transmitted diseases (STDs): She might have been infected with a sexually transmitted disease, and needs medical care,

Pregnancy: She might have become impregnated as a result of the violence and birthed a child for whom she needs to provide a livelihood; besides being an outcast herself, the baby that is borne out of the crime might not be accepted by society either,

Outcast: In patriarchal societies, rejection from a husband or potential marriage as a cause of the sexualised violence, can be a matter of life and death for the victim. Becoming an outcast means the demise of her social network and near insurmountable challenges in building a future,

Change in attitude: Programs and educational frameworks are important tools in preventing stigmatisation and marginalisation of women; a change of attitude concerning women's rights and their sexuality is vital.

RECOMMENDATIONS ON BILATERAL ASSISTANCE

Bilateral assistance to projects targeted at transitional justice should not focus only on the overly legal aspects, but must work to broaden its understanding so it can be of benefit to the victim.

Bilateral assistance in rule of law projects for assisting transitional justice systems have been targeted at helping to educate legal personnel, including judges and lawyers, training the police on human rights, and assessing legal structures. There has, however, not been enough effort put into supporting and strengthening victims' services. International actors must be aware that when reforming devastated judiciaries, attention must also be allotted in rebuilding social services and support systems. Bilateral assis-

tance must adapt a broader understanding of what legal assistance can entail and think about what victims of sexualised crimes need, adding both preventive and rehabilitating measures to their agendas.

International bilateral assistance to transitional justice projects ought to incorporate a victims' rights perspective with funding and staffing set aside to strengthen victims' support and assistance services including, specialized investigations and prosecutions, witness protection, HIV/AIDS testing, and shelter needs.

Target of aid: Bilateral aid ought to be directed at victims' support institutions such as shelters and counselling centres; women's NGOs play an important role in this context and their contributions should be supported,

ICC and national institutions: Focus on the ICC should not take away bilateral support to strengthen the national judiciary systems,

Victim's access to aid: since not all victims of sexualised violence become witnesses, money should not be focused exclusively on witnesses; a broader perspective must be adopted that does not only see the victims connected to the international legal mechanism,

National actors: The capacity of national actors must be strengthened so that they too can play a role in the development of mechanisms and procedures for international courts and tribunals.

RECOMMENDATIONS ON REPORTING MECHANISMS

Reporting mechanisms need to ensure that victims of sexualised violence will report the crimes.

The existing ad-hoc tribunals have not been prepared to meet female witnesses who put all their energy, sorrows, and pains into their testimony, and have often left the witnesses feeling humiliated. Better structures to address such shortcomings are essential in making international trials fair to victims and witnesses. The current mechanisms need to be revisited in order to improve them.

Time and resources: Staff of international courts and tribunals, particularly investigators, must have sufficient time and resources to be able to work with female victims of sexualised violence to gain their confidence when interviewing them,

Confidentiality: Extreme care to maintain confidentiality is a must when working with victims of sexualised violence. Bad examples like noticeably foreign vehicles arriving in small villages need to be avoided. When it is not possible to maintain confidentiality, other strategies for protecting the victim must be enacted,

Multi-disciplinary teams: Investigations ought to be carried out by a multi-disciplinary team that is sensitive to the victim of sexualised violence; the team should still be careful so that the victim does not need to retell the story several times since this can make the process more difficult,

Vicarious traumatising: Training on vicarious traumatising for staff of international courts and tribunals is particularly important when working to strengthen the staff's ability to meet victims.

RECOMMENDATIONS ON VICTIMS' AND WITNESSES' PROTECTION

Victim and witness protection measures must be made a priority before, during and after her participation in the trial. A program for reintegrating witnesses into society upon their return home is particularly important for victims of sexualised violence. Such programs for protection and support can not be limited to the victim's actual participation at international courts and tribunals, but must be extended after, when she is to continue her life.

Medical and psychological support: Assistance provided to the victim or witness must include both medical and psychosocial support. Victims of sexualised violence need to be tested for sexually transmitted diseases and should have the same access to medication as the accused. The

victim should be able to bring someone whom she trusts to the trial, but this should not keep the court or tribunal's staff from also providing assistance to the victim,

Dynamic schemes: Plans for protection can not be tailored to individuals, but must be systematised; however, it is equally important that they take the national context into account and are flexible to different situations,

Asylum in a third country: Agreements with state parties to accept witnesses who require repatriation to a third country must be negotiated. Risk assessment programs that weigh repatriation decisions must be equal for men and women. Countries should revise their laws so that a victim of sexualised violence can get asylum.

RECOMMENDATIONS ON CIVIL SOCIETY'S INVOLVEMENT

Engage and maintain the involvement of national civil society. National NGOs have a much broader capacity to gain the confidence of victims and witnesses. Experiences of national NGOs differ – all have not had the same potential to cooperate with the tribunals. Some NGO practitioners, who have worked nationally in cooperation with the ad-hoc tribunals, state that their work of collecting testimony and supporting victims have been used and that there is a lack of transparency in investigations. International courts and tribunals need to be proactive in assuring that more bilateral support goes to national NGOs.

NGOs on different levels should form a network with each other in order to better spread information effectively, both from the national to the international level and vice versa. NGOs play an important part in conducting outreach and ensuring women understand their rights under the ICC's Rome Statute.

Guidelines: National NGOs need to get clear guidelines from the international legal institutions dictating their cooperation in order to better be able to support victims and witnesses,

Outreach to NGOs: The international court or tribunal must provide outreach to NGOs that become involved in an investigation so that they may follow the development of the case,

National NGOs can form a direct link to victims and witnesses. Often NGOs that have been working in a particular region have built up experience and trust of working directly with the victims. They know how to speak to the victims and how to reach out to give support,

Contact: International courts and tribunals must work through NGOs while identifying and contacting victims and witnesses,

Support: National NGOs can be engaged in helping to provide psychosocial support once the victim returns home, as they have a clearer understanding of what she needs. National NGOs can also work to support the victims that are interviewed by international courts and tribunals' investigators but not selected to testify in the courtroom.

RECOMMENDATIONS ON TRAINING AND OUTREACH

Reconsider what training can entail in order to foster cooperation. Training should not be a one-way process of one group teaching the other – rather it ought to be structured as an opportunity for sharing experiences between different parties (including national and international NGOs, state actors, intergovernmental structures). All the actors involved in and around international trials have information to share with each other.

Outreach: Training on both the national and international laws and treaties that exist is important so that victims understand what rights they have. The victims for whom international courts and tribunals are to serve must have a better understanding of the legal process so to better understand the role of the court and where their testimony fits in,

Information sharing: Training of national NGOs should not be a one-way process but

should be an opportunity for sharing and spreading experiences amongst all parties involved; This is a better method for fostering cooperation between different individuals and organisations,

Shared understanding: A better understanding of the other actors who are involved in the process, whether individuals or organisations, makes sharing responsibility clearer and lessens the potential for misunderstandings; it also helps strengthen trust.

RECOMMENDATIONS ON RESPONSIBILITY

Consider the implications that international courts and tribunals can have, which actually exceed their institutional mandate. The international courts and tribunals must recognize the impact they may have that extends beyond the legal decision. As they engage victims and witnesses, they must also take responsibility for the impact this imposes on the persons' potential to continue to lead their lives after the actual trial has been concluded. International courts and tribunals have a responsibility to consider their legacy and what can be left behind to strengthen the national system.

Notes

1. As per the Rome Statute for the International Criminal Court, these crimes include: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity as crimes against humanity and war crimes in article 7, paragraph 1(g) and article 8, paragraph 2 (b)(xxii) and (2)(vi).
2. The prosecution of rape as crimes against humanity occurred in the cases of Prosecutor vs. Jean-Paul Akayesu (ICTR-96-4-T) at the ICTR, and Prosecutor vs. the Kunarac, Kovac, and Vukovic case (IT-96-23 and IT-96-23/1), the so called "Foca" case, at the ICTY. See Appendix C for The Kvinna till Kvinna Foundation's background document to the seminar.
3. The Kvinna till Kvinna Foundation recognises that even men can become victims of sexualised violence, but in line with our mandate and working focus, we only focus on female victims and witnesses. Furthermore, women are the predominant target group for sexualised crime during armed conflict.
4. See Appendix A for the participant list.
5. See Appendix B for the seminar program.
6. These discussions are detailed in section four of this report.
7. Par. 175 of Opinion and Judgment of ICTY/Tadic IT-94-1; 7 May 1997, and is available at <http://www.un.org/icty/tadic/trialc2/judgement/index.htm>.
8. Available at <http://www.un.org/icty/legaldoc/index.htm>.
9. The Statute of the ICTY is available at <http://www.un.org/icty/legaldoc/index.htm>
10. The Rome Statute for the ICC is available at <http://www.icc-cpi.int/php/show.php?id=basicdocuments>
11. ICTY press release on the initiative, number CC/PI.S./805-e, dated 02 December 2003, is available at <http://www.un.org/icty/latest/index.htm>.
12. *Special victims* is a term used by the Rome Statute for the ICC to denote victims of sexualised violence, children and the elderly.

APPENDIX A

Participant List

Name	Organisation	Location
Sherin Abdel Hamid	Kvinnoforum	Stockholm, Sweden
Sevdie Ahmeti	Centre for Protection of Women and Children	Prishtina, Kosovo
Michelle Azorbo	NOAH, Uppsala University	Uppsala, Sweden
Carine Bapita	Femmes et Enfants pour les droits de l'homme/ Women and Children for Human Rights	Kinshasa, DRC
Katarina Bergehed	Amnesty International	Göteborg Sweden
Benedicte Berner	Swedish Helsinki Committee, Board of Directors	Stockholm, Sweden
Maria Bexelius	Amnesty International	Stockholm, Sweden
Per Bjälkander	Frivilligorganisationernas Fond för Mänskliga Rättigheter/NGO Foundation for Human Rights	Stockholm, Sweden
Sofia Björkstén	Sju Advokater Law Firm	Stockholm, Sweden
Inger Brodal	Svenska Freds och Skiljedomsförening/Swedish Peace and Arbitration Society	Stockholm, Sweden
Eugene Bushayija		Stockholm, Sweden
Åsa Carlman	The Kvinna till Kvinna Foundation	Stockholm, Sweden
Maria Ermanno	The Kvinna till Kvinna Foundation, Board of Directors	Stockholm, Sweden
Susanne Gerland	Svea Hovrätt/Svea Court of Appeal	Stockholm, Sweden
Martin Gillå	Ministry for Foreign Affairs	Stockholm, Sweden
Anna-Klara Granstrand	NOAH, Uppsala University	Uppsala, Sweden
Kerstin Grebäck	The Kvinna till Kvinna Foundation	Stockholm, Sweden
Carolina Grelsson	NOAH, Uppsala University	Uppsala, Sweden
Becky Hay	Victim Support	London, United Kingdom
Azra Hromadzic	University of Pennsylvania	Pennsylvania, USA
Laura Häyrinen	NOAH, Uppsala University	Uppsala, Sweden
Charlotte Jacobsson	NOAH, Uppsala University	Uppsala, Sweden
Agneta Johansson	The Kvinna till Kvinna Foundation Board of Directors	Stockholm, Sweden
Urusaro Alice Karekezi	Center for Conflict Management, University of Rwanda	Butare, Rwanda
Sara Kitabwalla	Médecins sans Frontières	Stockholm, Sweden
Mark Klamberg	Svenska FN Förbundet/Swedish UN Association	Stockholm, Sweden
Mia Lehdal	The Kvinna till Kvinna Foundation	Stockholm, Sweden
Lennart Lindgren	The Kvinna till Kvinna Foundation , Board of Directors	Stockholm, Sweden
Anna Lithander	The Kvinna till Kvinna Foundation	Stockholm, Sweden
Annette Lyth	OSCE-ODIHR	Stockholm, Sweden
Nino Makhashvili	Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims	Tbilisi, Georgia
Erika Neiglick	Migrationsverket/Migration Board	Stockholm, Sweden
Kristiina Nykvist	Röda Korsets Center för Torterade Flyktingar/ Red Cross Center for Tortured Refugees	Stockholm, Sweden
Susanna Nyström	NOAH, Uppsala University	Uppsala, Sweden
Bill O'Neill	Consultant	New York, USA

Brid O'Toole	Investigator	Galway, Ireland
Lina Ploug	ROKS/National Organization for Women's Shelters and Young Women's Shelters	Malmö, Sweden
Mirha Pojskic	Medica Zenica	Zenica, Bosnia and Herzegovina
Betty Rhodin	Police University, Växjö University	Växjö, Sweden
Lena Sallin	NOAH, Uppsala University	Uppsala, Sweden
Inger Stenberg	Amnesty International – Juristgrupp	Stockholm, Sweden
Ylva Strömberg	Médecins sans Frontières	Stockholm, Sweden
Lena Svenaeus	The Kvinna till Kvinna Foundation , Board of Directors	Stockholm, Sweden
Petra Tötterman	Women's International League for Peace and Freedom	Stockholm, Sweden
Susanne Wadstein	Sida	Stockholm, Sweden
Sofia Wennerstrand	Svenska Freds och Skiljedomsförening/Swedish Peace and Arbitration Society	Stockholm, Sweden
Anna Wigemark	Frivilligorganisationernas Fond för Mänskliga Rättigheter /NGO Foundation for Human Rights	Stockholm, Sweden
Prudence Woodford-Berger	Ministry for Foreign Affairs	Stockholm, Sweden
Eva Zillen	The Kvinna till Kvinna Foundation	Stockholm, Sweden
Christian Åhlund	International Legal Assistance Consortium	Stockholm, Sweden
Brigitta Åhman	Interpreter	Stockholm, Sweden
Linda Öhman	The Kvinna till Kvinna Foundation	Stockholm, Sweden
Hans Ölvebro	Rikskriminalpolisens Folkrätt och Krigsbrott Kommission/ Police Commission on International Law and War Crimes	Stockholm, Sweden

APPENDIX B

Seminar Program

8:00 **Registration**

9:00 **Introduction and welcome**

Moderator: Christian Åhlund
Director, International Legal Assistance Consortium

Kerstin Grebäck
President, The Kvinna till Kvinna Foundation

Morning Panel
Reporting and investigating of sexualised violence

Bill O'Neill
Former Head of Mission of the High Commissioner to the UN Human Rights Mission for Rwanda
Brid O'Toole
Former investigator at the International Criminal Tribunal for the former Yugoslavia

10:15 **Workshops** (and coffee)

12:15 **Lunch** (at Sjöfartshuset)

13:15 **Afternoon Panel**

The relationship between international tribunals and national NGOs

Alice Karekezi
Centre for Conflict Management, Rwanda

Sevdie Ahmeti
Center for Protection of Women and Children, Kosovo

14:30 **Workshops** (and coffee)

15:30 **Presentation of group discussions from the workshops**

16:45 **Concluding remarks**

18:00 **Reception**

Utrikespolitiska Institutet, Lilla Nygatan 23

APPENDIX C

Background Document

This is a background document for participants of **the Kvinna till Kvinna Foundation seminar Prosecution of Sexualised Violence in an International Context: Voices from the Field.**

It seeks to cover four particular issues: victimization in war and armed conflict, developments in international prosecution of sexualised violence, reporting and witnessing sexualised violence and the needs of those who participate in the international judicial process, including: protection, humanitarian and legal resources, and restitution.

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Victimization in war and armed conflict

The very act of rape, in my opinion – I spoke to these people, I observed their reactions – it had a terrible effect on them. They could, perhaps, explain it to themselves when somebody steals something from them, or even beatings or even some killings. Somehow they sort of accepted it in some way, but **when the rapes started they lost all hope**. Until then they had hope that this war could pass, that everything would quiet down. When the rapes started, everybody lost hope, everybody in the camp, men and women.

There was such fear, horrible.

VASIF GUTIC, PRISONER AT THE TRNOPOLJE CAMP,
BOSNIA HERZEGOVINA

WITNESS IN PROSECUTOR V.
DUSKO TADIC (ICTY/TADIC IT-94-1) PAR. 175

ARMED CONFLICTS HAVE a severe effect on its victims that manifests itself in both physical and psychological hurt. Civilians have become the central target. Their material possessions are destroyed and people lose their homes and belongings. Loved ones are lost and social relations and trust is strained. Furthermore, conflict makes physical safety uncertain. And in the midst of this, when needs are many, support mechanisms are few or not available at all.

Being the female victim of sexualised violence¹ in the context of such conditions creates additional concerns to those listed above. Beyond the worries that anyone who lives in a war or conflict suffers, these women face other concerns. Whereas both men and women can be victim of sexualised violence, this paper – and seminar – focuses specifically on women. Sexualised violence has long been an actuality, but international law has turned the other side and not acknowledged these crimes sufficiently. Unable to recognize sexualised violence as a war crime or crime against humanity, crimes such as rape were deemed just an unfortunate by-product of war and conflict. Yet the implementation of law, which initially equated sexualised violence with an attack on a woman's honour, has developed and is moving towards addressing such violence as violations of human rights and humanitarian law.

Whether these developments have in fact benefited the victims of sexualised violence, however, must be discussed. Has the process of investigating, documenting and prosecuting sexualised crimes been able to give anything back to the women whose stories it reports? Or has it been a one sided process?

If the international community decides to involve these women in the process of investigating or reporting on sexualised crimes, what measures must be available to meet their specific needs for assistance and protection? Understanding the level of victimization is important when we begin to discuss the needs of women who come to play a role in the international judicial process, from the point they are questioned as part of an investigation to their eventual testifying in court, and the return to their lives after their participation is deemed over.

Physical and mental care is a primary need of victims of sexualised violence. Besides concern that they might have been infected with sexually transmitted diseases, including HIV/AIDS, many women suffer physical ills and some have also become pregnant in the course of being subjected to sexualised violence. Access to medical treatment and testing, to first ascertain whether they actually contracted disease and then, if necessary, to treat those conditions is essential. In addition, to providing physical health care, victims of sexualised violence also need access to mental support. Victims can feel trauma, which needs to be addressed through immediate care and professional support.

As many others victimized by war, victims of sexualised violence may have trouble to find basic sustenance. However, their worries can be compounded if as a result of rape or forced pregnancy they birthed a child. Inability to provide for themselves and the baby can be compounded when she is rejected by society because of the crimes committed against her. While some victims try to hide their victimization, for example by refusing to speak about the past, a baby makes this near impossible. Pregnancy also puts added pressure on finding reproductive and prenatal care.

Fear for one's safety is another issue magnified by the stigmatising effect that sexual violence carries. In many patriarchal societies, losing a husband or father in the conflict makes survival even more difficult. Women often depend on the assistance of men for protection and livelihood and when widowed by war they are left alone

and find it harder to provide for themselves. Survivors of sexualised violence often live in fear that their aggressors will return and commit the same crimes again or take revenge on those who agreed to witness. Under these circumstances not feeling a guarantee for protection from either their community, as such structures are often unstable, or family creates uncertainty.

International justice

WITHIN JUST THE past decade, the international community has aimed to tackle the legacy of violence committed during armed conflicts by setting up judicial institutions to seriously investigate and prosecute those responsible for such human rights abuses. The first such tribunal to be instituted since the World War II Nuremberg Trials, that were held in 1945–46, has been the International Criminal Tribunal for the former Yugoslavia, which was set up in 1993.

The international community has since continued to establish fora to try alleged perpetrators of serious human rights and humanitarian law violations, by setting up courts and tribunals in response to the atrocities committed in Rwanda, Sierra Leone, and East Timor. In 2002, the ambitious efforts of a number of states and nations paid off when the Rome Statute for the International Criminal Court (ICC) entered into force². With universal jurisdiction not yet a reality the ICC is at this time the only apparent commitment to international justice; a forum for prosecuting war crimes, crimes against humanity, and genocide³. In the context of these rapid developments, jurisprudence on sexualised violence has seen a row of developments.

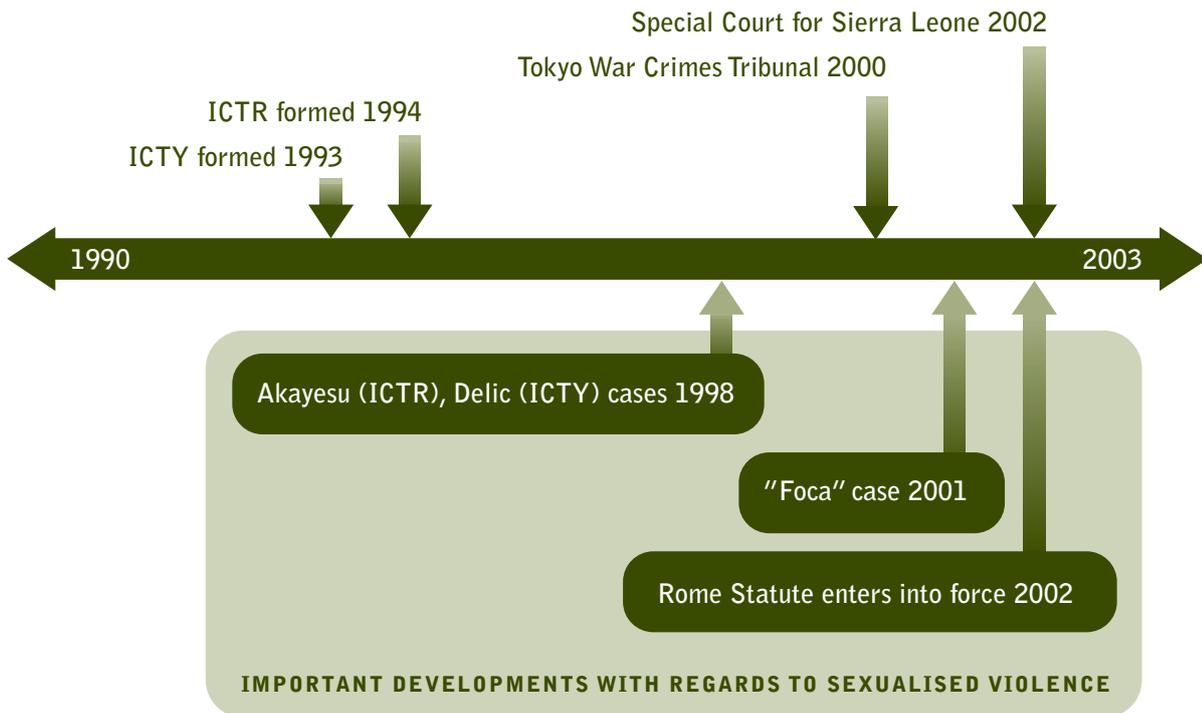
Recent Developments of Law on Sexualised Violence

In line with the recent developments in international law, so too have definitions on sexualised crimes developed. This does not mean that they are actually new crimes, but rather have not received equal attention before. This section describes the evolution from near negligence of sexualised violence under international law to where we stand today.

Rape and other forms of sexualised violence occur in the context of most armed conflicts, but remain significantly underreported in international criminal procedure. Although the victims' shame and fear is one aspect of why the crimes are not reported, the international community's lack of interest and unwillingness to consider sexualised violence on par with other grave breaches against human rights has also been an key factor.

The Fourth Geneva Convention (1949), Article 27 states: "[W]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." Additional Protocol 1 provides a similar definition, referring to women as "the object of special respect."⁴ Such thinking has enforced the idea that sexualised violence is a less serious violation, and rather an unfortunate by product of war and conflict. Over the past decade, however, quick strides have been taken to define sexualised violence as a violation of human rights and humanitarian law rather than a breach against morality.

It was not until the war in the former Yugoslavia that sexualised violence really began to receive widespread attention. This was in large part thanks to efforts made by women's organizations to document reports of sexualised crime and to ensure that their reports received international attention. Yet – at the time – the international community had only limited resources to prosecute sexualised crime under international law and it is largely thanks to the innovation of a handful of individuals at the ad hoc tribunals that new definitions were set.



Security Council Resolution 808 was adopted in February 1993 to establish the International Criminal Tribunal for the former Yugoslavia, to try grave breaches of the 1949 Geneva Convention, violations of the laws and customs of war, genocide and crimes against humanity. Although there are provisions under the Geneva Conventions for trying sexualised violence, the ICTY did not pass judgement on such crime until November 1998. This was the case of Prosecutor v. Zejnil Delalic, Zdravko Mucic (a.k.a. "Pavo"), Hazim Delic, and Esad Landzo (a.k.a. "Zingy"), Hazim Delic was charged with raping two women judging sexualised violence as torture and cruel treatment (Counts 18 and 21)⁵.

The judgement in the Delalic et. al. case came only months after the Akayesu case at the International Criminal Tribunal for Rwanda (ICTR), which is upheld as a landmark decision for prosecuting sexualised violence. Prosecutor vs. Jean-Paul Akayesu (ICTR-96-4-T) sets the first definition of rape as a crime under international law, where it does not need to be equated with torture but can stand on its own as a crime against humanity:

...rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. ...Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁶

This definition noted a clear departure from how sexualised violence had been viewed by international law before. The cruelty that motivates such violence and the physical and psychological damage that it leaves should not be reduced to a reference to a woman's honour, as it is stated in the Geneva Conventions. The Akayesu judgment clearly concludes that sexualised violence is not about love or sex; as Catherine N. Niarchos states in her study *Women, War, and Rape*: "Rape is not passion or lust gone wrong. It is first and foremost an act of aggression with a sexual manifestation."⁷

Moving beyond the Akayesu definition of rape, another important step was taken in February 2001 when the decision in the Kunarac, Kovac, and Vukovic case (IT-96-23 and IT-96-23/1), the so called "Foca" case, was dealt with by the ICTY. In the "Foca" case, rape was recognized as part of a larger system of ethnic cleansing, and that it can amount to a crime against humanity and not only a war crime, as in the Akayesu case. The "Foca" case regards rape:

force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal⁸

This updated definition includes situations beyond those that incorporate a coercive use of force. As such it places rape in the context of human rights rather than within the context of protection, which have previously suggested that women are objects that have to be protected. The "Foca" case also defines enslavement by defining sexual enslavement as a crime against humanity for the first time. It deems enslavement the "exercise of any of all or the powers attaching to the right of ownership over a person."⁹

July 2002, when the Rome Statute for the International Criminal Court (ICC) entered into force, constitutes another milestone in the advancement towards recognizing and prosecuting sexualised crimes. Under article 7, paragraph 1(g) and article 8, paragraph 2 (b)(xxii) and (2)(vi), the Statute recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other sexual¹⁰ violence of comparable gravity as crimes against humanity and war crimes. As such, the ICC has the jurisdiction to try such crimes, meaning greater opportunity for more documentation of sexualised violence and more international legal precedents to help drive future prosecutions.

However, these instruments have no teeth if the crimes go unreported. Besides developing better protection and assistance, which is necessary for victims to come forward to witness, continued pressure to allot sexualised crimes the same weight as other grave breaches against human rights is also of importance.

Reporting and witnessing

TO BE ABLE TO use the tools set up by the international community for sexualised violence, the crimes need to be documented: "documentation can help to establish the magnitude of rape in war and hold perpetrators accountable.¹¹" No matter what the end purpose, be it for use in a court of law, a reconciliation plan or in a memorial project, reporting in a sensitive manner is the first step to recognizing the extent to which these crimes take place.

There are many reasons for why women choose not to come forth and report on the crimes they have been exposed to. Understanding why can better contribute to implementing the measures that need to be built up along side investigative missions in order to reduce the effects of re-traumatisation. Victims of sexualised violence often feel shame as a result of what they have been exposed to. They fear that by making their past experiences known they will be rejected by their communities. Many feel a great desire to put the incident behind them and to move on instead of revisiting events that might have taken place several years ago and suffering the effects of re-traumatisation.

Sensitivity on the part of the investigative team is of central importance when reporting on sexualised violence¹². A lot of factors as to how the victim is treated can have a serious effect on their well being. How questions are asked and under what conditions is important and having guidelines and training to prepare the interviewer a must. Interpreters who are to translate testimony must also be prepared so that they share an understanding of the situation. Ideally an investigative team should be multi-disciplinary to include, for example, investigators, psychologists, interpreters, anthropologists and gynaecologists.

Being sensitive and careful is not only a prerequisite for the investigators whose task it is to ask questions, but even for other staff involved in the investigation process. Everyone must learn to approach the victim with respect. Whether a medical health practitioner or an interpreter, those working with victims they ought to be properly prepared to be more sensitive and be able to interpret distress in various ways as it is dependant upon the victims' cultural background.

Some witnesses do not even make it to the court room, but can still be affected by the way that an investigator treats them¹³. When victims are approached in the field, particularly for collecting evidence to be used in prosecuting a case in international courts or tribunals, their victim *status* is immediately classified. When interviewed with the intent of finding potential witnesses to prove a case, individuals can become classed as necessary or useless. The actual needs of the victim and how this can contribute to reconciliation are not the particular concern, but rather to find the witness that has the ability to articulate the evidence and appears credible. Undoubtedly, many interviewed are left in the field without an explanation for why their testimony would not be *good enough*. Sensitive investigation demands better outreach and communication to clarify to people what can possibly happen once they provide testimony so that they are not left feeling rejected and unable to make an impact in the process. Those questioned must be made aware that in some cases their witness testimony will not be used in the actual trial, and that this does not reflect on the meaning or importance of their statement.

Measures for Assistance

THE FOLLOWING SECTION considers areas of the assistance that ought to be provided to victims and witnesses of sexualised violence who become involved in international criminal process. An important part of the seminar on October 16 will be to discuss these ideas further, elaborate on them and consider new ones.

Protection

The need for protection begins when the victim or witness is first contacted by the reporter or investigator and does not end when their actual participation is concluded. Even after a testifying, when a witness is to resume daily life, measures to guard their psychological and physical well being are essential.

How to do fair risk assessment on potential danger, and whether it is carried out equally for men and women witnesses at international courts and tribunals, needs to be explored. At the ICTY and the ICTR protective measures are deemed necessary on the basis of whether the persons¹⁴ are ‘at risk’ or ‘in danger’ or otherwise vulnerable to re-traumatisation.¹⁵ Yet the question that must be asked is how this translates into practice. It has often been implied that the risk that women might face is not balanced equally to men, particularly those who have been in positions of military or political power. This is an area that requires further research to really pinpoint cases, and measure how gender and other aspects actually factor in risk-assessment.

In some cases providing actual protection for returning witnesses is a must. In these cases relying on national means for protection is not always an option. There are many instances when

the national police is the least likely organization to which the victim would want to turn for assistance. Besides fear that information can seep into the community, police are not always trusted. This holds particularly true when, as in many post-war and conflict areas, the police force is actually made up of former soldiers who have been reintegrated into society.

Repatriation to a third country needs to be taken seriously. In some situations, it might just not be possible to protect a witness, and in these conditions repatriation should be an alternative. The international community that has involved these witnesses must be ready to take up the responsibility of protecting them, which can mean providing a new home for them.

Humanitarian

Medical

Individuals who are victims of sexualised violence need immediate access to medical services, including both physical and psychological care. Physical care can include screening for “sexually transmitted diseases, access to abortion, and obstetric and gynaecological services.¹⁶” Gaining a better understanding of ones’ physical own health adds to a feeling of self-worth and strengthens ones’ confidence. Although a medical examination is often necessary to collect evidence for prosecution, the primary intent should be to provide a woman with knowledge of her own state of health and help her to reclaim control over her body. Several women who were interviewed for a study on sexualised violence in Sierra Leone conducted by the Physicians for

Human Rights expressed fear that they might have contracted AIDS¹⁷. The uncertainty, first, of not knowing, and then, the concerns and worries related to being sick further complicates a victim's ability to return to normalcy. Quick and responsive care, including adequate testing, can serve to calm such fears.

Livelihood

Humanitarian assistance in the form of livelihood and housing is another need of victims of sexualised violence. Many who were raped were also impregnated and therefore have added responsibility. A victim in Sierra Leone told Physicians for Human Rights: "I am homeless, bankrupt, and where can I get help to take care of my unborn child?"¹⁸ Their report goes on to make recommendations for what type of activities international donors ought to fund; these include: shelters, mental and physical health, and job training skills for survivors of sexualised violence. In general, programs that focus on women and girls are also particularly important. Likewise work with combatants who are being reintegrated into society, who have committed sexualised violence during the course of the conflict, must strive to ensure that crimes are not repeated during peace times.

Legal

Another reason for why victims of sexualised crime are often hesitant to tell their stories is that they fear no one will believe them and that they will be accused of provoking the crime themselves. But, as stated this is in no way a case of lust gone wrong, and it is important to combat this idea. An important step is Rule 96 of the Rules of Procedure and Evidence of the ICTY on Evidence in Cases of Sexual Assault. It states that no questions about the victim's prior sexual history may be asked, no corroboration is required, and the defence may not use the question of consent, if the victim

(a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or

(b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear¹⁹.

By these provisions, the crime is equated more with cruel punishment and aims to rid the victim of shame for possibly having brought on the crime themselves. As in the judgement for Prosecutor vs. Dusko Tadic²⁰:

...this Subrule accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something long denied to victims of sexual assault by the common law.

Another legal provision that deems particular attention in this context is the specification for when names of witnesses must be made available to the defence. In some cases the witnesses' fear stems from being identified. This is particularly relevant for victims of sexualised violence who can feel that if their communities learn of their situation they will be stigmatized or ostracized. When witnesses are to testify under protected measures, with their names and identities hidden, there are particular guidelines for how long the prosecutor can keep names concealed before handing them over to the defence. Under Rule 69(C) of the ICTY Rules of Procedure and Evidence the prosecutor is obliged to disclose the identifying information to the defence in sufficient time prior to the trial to allow adequate time to prepare for the defence (i.e. cross examination)²¹. How the notion of sufficient time is interpreted, however, varies. This highlights a particular dilemma between the need for protection vis-à-vis holding a fair trial, where the defendant has the opportunity to prepare and build a proper defence.

Restitution²²

Victims of crime ought to have the opportunity to seek compensation²³ for their suffering. Yet how to compensate for crimes such as sexualised violence is a difficult question; how can pain be measured financially and how is it expected that money can repair wounds? But money can help to pay for medical and psychological help, finding livelihood and housing. Women should have the same access to compensation as men. For this to occur, the national government or international community that officiates the fund for war victims, must see sexualised violence on equal par with other war crimes. Should there be an imbalance in this respect, and all focus on war-veterans for example, then there can not be an equal distribution.

Notes

1. As per the Rome Statute for the International Criminal Court, these crimes include: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other sexual violence of comparable gravity as crimes against humanity and war crimes in article 7, paragraph 1(g) and article 8, paragraph 2 (b)(xxii) and (2)(vi).
2. As of September 5, 2003 the Rome Statute had 93 signatory states.
3. And the Crime of Aggression, once defined.
4. Additional Protocol 1, Article 76 (1).
5. <http://www.un.org/icty/celebici/trialc2/judgement/index.htm>.
6. The Prosecutor versus Jean-Paul Akayesu, Case No. ICTR-96-4-T. paragraph 597.
7. Catherine N. Niarchos. Women, War, and Rape: Challenges Facing The International Tribunal for the Former Yugoslavia. *Human Rights Quarterly* 17.4 (1995) pp. 649–690.
8. <http://www.un.org/icty/foca/trialc2/judgement/index.htm>. Paragraph 442.
9. <http://www.un.org/icty/foca/trialc2/judgement/index.htm>. Paragraph 539f.
10. Although we prefer to use the term sexualised violence, the Rome Statute refers to it as sexual.
11. Swiss, Shana and Joan Giller. Rape as a Crime of War – A Medical Perspective. *Journal of the American Medical Association*, August 4, 1993, Vol. 270, No. 5.
12. How questions are asked is even applicable to once the victim/witness comes to the actual court room. The manner in which the prosecutor and defence attorneys hear the witness plays a decisive role in how the court room experience plays out. An example of guidelines for how interviews with victims of sexualised crime ought to be carried out are available from Human Rights Watch, written by the Women’s Rights Division and Europe and Central Asia Division: “Documenting Rape as a War Crime,” at www.hrw.org/women/docs/rapewarcrime.htm.
13. The divide between prosecutorial vis-a-vis humanitarian aspects translates into other areas of a judicial investigation. For example, in the context of grave exhumations, identifying names of the remains is not as relevant to the Prosecutor who cares more about numbers and in some cases ethnicities. For the victims whose loved ones might be in the graves, however, identifying actual identities extremely important.
14. While this primarily entails the person who will report or witness on the crime, whether they are a victim or not, it must also consider the people attached to the witness (i.e. friends, family, etc.) who could be affected by their participation.
15. Rule 69 of the ICTY Rules of Procedure and Evidence, and Rule 69 of the ICTR Rules of Procedure and Evidence, and Rule 75(b) (iii) of the ICTY and the ICTR Rules of Procedure and Evidence, quoted from Jessica M. Almqvist. Individual Participation in the International Judicial Process: Responding to the Challenges Posed by Human Fear. A paper presented at the ACUNS Conference “A World Free from Fear”, New York, June 12–14, 2003: Panel 14: Identity, Territory and Conflict in International Law.
16. Swiss, Shana and Joan Giller.
17. Physicians for Human Rights. War Related Sexual Violence in Sierra Leone. www.phrusa.org/research/sierra_leone/report.htm.
18. Ibid.
19. Rule 96. ICTY Rules of Evidence and Procedure. <http://www.un.org/icty/legaldoc/index.htm>.
20. <http://www.un.org/icty/tadic/trialc2/judgement/index.htm>.
21. Jessica M. Almqvist. Individual Participation in the International Judicial Process: Responding to the Challenges Posed by Human Fear.
22. “Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, inter alia, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property.” Van Boven/Bassiouni Principles on the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms.
23. “Compensation shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as: (a) Physical or mental harm, including pain, suffering and emotional distress; (b) Lost opportunities including education; (c) Material damages and loss of earnings, including loss of earning potential; (d) Harm to reputation or dignity; (e) Costs required for legal or expert assistance.” Van Boven/Bassiouni Principles.

Articles and reports

Works cited, relevant readings and other resources

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- International Criminal Tribunal for the Former Yugoslavia: www.itycy.org.
- International Criminal Tribunal for Rwanda: www.ictcr.org
- NGO Coalition for the ICC: www.iccnw.org.
- Special Court for Sierra Leone: www.sc-sl.org.
- Truth and Reconciliation Commission for Sierra Leone: www.sierra-leone.org/trc.html.
- Women's Caucus for Gender Justice: www.iccwomen.org.



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