



A Partnership of the **University of Illinois College of Law**  
and the **American Bar Foundation**



## **Second Hague Colloquium Systematic Sexual Violence and Victims' Rights**

**7 April, 2011- Opening Session**

**Lionel Veer** (Ambassador for Human Rights, Dutch Foreign Ministry)

**Elisabeth Rehn** (Minister of State, Finland Chair, Board of Directors, Trust Fund for Victims, International Criminal Court)

**Charlotte Ku** (University of Illinois College of Law and Center on Law and Globalization)

The Second Hague Colloquium was a two-day meeting to discuss various topics related to systematic sexual violence and victim's rights.



Lionel Veer, the Ambassador for Human Rights from the Dutch Foreign Ministry, opened the Colloquium. Ambassador Veer first noted that while sexual violence used to be hidden, it has now become front page news. As example, Veer offered the case of Iman al-Obeidi, the Libyan woman who made international news when she described the details of her gang rape at the hands of Muammar Gaddafi's government troops. Ambassador Veer noted that while perpetrators of sexual violence still mostly go unpunished, there are signs of hope on the horizon, as high ranking officers in the Democratic Republic of the Congo (DRC) have been charged with rape in their domestic courts. Additionally, in some countries, as part of their military training, soldiers are being taught how to prevent sexual violence.

In her Keynote Address, Elisabeth Rehn, Minister of State from Finland, first discussed how men are frequently the victims of sexual violence. In an odd way, she noted, men seem to be more miserable than women, as they aren't used to being victims of sexual violence. Ms. Rehn also discussed her personal interactions with victims of sexual violence. What struck her the most was that victims of sexual violence didn't want to be called victims; they wanted to be called survivors, as that better describes the gravity of what they had to endure. Ms. Rehn next talked about the increase in sexual violence in recent conflicts. Before, she noted, states fought against states, but now, in many countries, the conflicts are city wars about economic and political power. In these wars, 80-90% of the victims are civilians, as most attacks are directly focused on them. Accusations of sexual crimes, however, far outnumber actual killings.

Although sexual crimes are now something that is relatively common in times of conflict, this was not always the case. Shockingly, the local language in the DRC didn't include a word for rape before the war.

To help craft peaceful solutions that protect women from sexual violence, women should be sitting at the negotiation tables when peace is being negotiated because they know what is needed for lasting peace. The "Trust Fund for Victims" wants women to play an upfront role. The Trust Fund has two mandates: 1) Victims should be a part of the reparation system ordered by the International Criminal Court; 2) The Trust Fund should assist victims within the jurisdiction of the Court. So far, the Trust Fund has benefited over 75,000 victims in the Democratic Republic of the Congo and Uganda. Going forward, Ms. Rehn believes that two things need to happen in order for the Trust Fund to be successful.



First, gender needs to be included as a factor in addressing reparations, as sexual violence affects men and boys differently than women and girls, especially psychologically and socially. Secondly, people must understand that victims of sexual violence suffer differently, and therefore, require different reparations. For instance, in one village in the DRC, the Trust Fund bought a boat for the women so that they could transport their goods to a market. These types of practical solutions need to be incorporated in order to help these victims in their daily lives.

Elisabeth Rehn concluded her remarks by noting that many victims say that there is no point in making a fuss about sexual violence because they will never see justice. We must break the silence and get public support in order to empower the victims to reclaim their dignity and their lives. Nobody should have to say that there is no justice; through international efforts we can get people to victims of sexual violence to believe once again.

### **Session I: Causes of Systematic Sexual Violence**

**Chair: Terrence Halliday** (American Bar Foundation and Center on Law and Globalization)

#### **Darfur: Race-Based Violence**

**Wenona Rymond-Richmond** (University of Massachusetts, Amherst)

Wenona Rymond-Richmond spoke on the race-based violence that occurred around Darfur. After the massive genocide, violence continues to occur, especially at the refugee camps. Wenona offered many quotes from victims illustrating the atrocities that occurred. For instance, one victim said that "the Janjaweed wouldn't allow males to get water from the well. Only women could go and they were beaten and attempts were made to capture them." These actions were part of a pattern of intentional sexual violence perpetrated against the women of Darfur. Militia groups such as the Janjaweed were heard saying things like "we want to change the color. Every woman will deliver red. We will take your women and make them ours. We will change the race."

Women stuck in these refugee camps didn't feel like they could return home. They believed that "the government wants to kill everyone, they have destroyed our houses, and now they will build Arab houses. They want to change all the towns to Arab towns." According to the statistics Professor Rymond-Richmond provided, more than 400,000 Black African Darfurians had been killed, with 2-3 million displaced by the Sudanese government and the Janjaweed due to racial and ethnic hatred. 29% of interview subjects reported that other villagers were sexually victimized during the genocide, while 7% of refugees reported being raped. But as she noted, victimization and sexual violence resulting from a genocidal attack continues for survivors long after the attack is over. For instance, children of raped Black Africans are considered Arabs, ensuring that they are forever ostracized by their communities.

### **Iraq: Religious-Invoked Violence**

**John Hagan** (Northwestern University and Center on Law and Globalization)



John Hagan's topic of discussion was State Rape: Government-Led Sexual Victimization and Torture in Darfur and Pre-Invasion Iraq. As he discussed, one of the main issues with sexual violence is the denial that it is occurring."

According to Hugo Grotius, famous Dutch jurist, "he who knows of a crime, and is able and bound to prevent it but fails to do so, himself commits a crime." These denials can be seen at the highest levels of government. George W. Bush stated, "I've said to the people that we don't torture, and

we don't," while Saddam Hussein once stated "I can't sit down and remain silent when it is said that Iraqi women are raped. This couldn't happen while Saddam Hussein is alive." These denials often successfully immunize military and political leaders from criminal prosecution.

While Sudan outsourced rape in Darfur, Iraq incorporated genocidal violence within State institutions. In Iraq, as the violence against the Kurds was declining in the 1980's, it was increasing against the Shiites. Much of this violence took the form of rape. Iraq's denial was accomplished by personal degradation through arrests, trials, and forced confessions organized predominantly by the General Security Directorate, an agency outside the military chain.

While the Iraqi government under Hussein failed the victims of sexual violence in Iraq, John Hagan believes that the Iraqi High Tribunal ("IHT"), charged with prosecuting gender-based crimes within the Hussein regime, failed the victims as well. The IHT chose to prosecute the rapes as torture, failing to set an example for Iraq's national courts. In Darfur, on the other hand, the role of rape within the genocide has been explicitly included in charges against perpetrators of sexual crime. Iraqi courts turn out to be another source of denial to the existence of sexual violence.

## **Democratic Republic of the Congo**

**Lynn Lawry** (U.S. Department of Defense and Harvard University)

Dr. Lynn Lawry's discussion was on Dispassionate Objectivity in the Search for the Truth. Dr. Lawry first noted that everyone brings a set of assumptions to the table that we may not recognize; such as that sexual assault is always penetration and committed by men; men can't be victimized and women can't commit assault because they are nurturers, etc. A closer look at what actually occurs shows that these common assumptions are often wrong. In El Salvador, 76% of male political prisoners suffered Sexual and Gender-Based Violence ("SGBV"), while 80% of male camp detainees suffered SGBV in the Bosnian War. Often times, women who receive monetary compensation are more likely to be victims of SGBV, as they have a higher status in the community after receiving the money.

Other oddities involve the fact that the perpetrators of sexual violence are often not of the gender one would assume. For instance, in the DRC, 40% of female survivors reported female perpetrators, while 15% of male survivors report female perpetrators. According to Lynn Lawry, all of us have to adjust our assumptions of SGBV in order to conduct appropriate investigations and craft suitable responses.

## **Rwanda: Race-Based Conflict**

**Jens Meierhenrich** (London School of Economics)



Jens Meierhenrich sought to discover how prevalent and systematic sexual violence was in Rwanda. Professor Meierhenrich believes that there are three things that drive perpetrators of sexual violence. 1) **Strategic**: Used as a means and furtherance of a collective instrumental objective, such as furthering a genocidal campaign; 2) **Opportunistic**: Uses as a means and furtherance of an individual objective, such as in order to satisfy group loyalty or sexual cravings; 3) **Expressive**: Used because the perpetrators deem it an appropriate message in a certain situation, such as to enact revenge or to humiliate women.

Professor Meierhenrich believes we must understand these differences in motive before enacting policy. One of the problems with Rwanda is that we don't possess any useful data in systematic form. For instance, rape was calculated in Rwanda based upon rape-related pregnancies: 1 in 100 cases of rape leads to pregnancy; there were 5000 pregnancies, so there must have been 250,000-500,000 cases of rape. Although this figure may be accurate, the information still doesn't tell us what caused the rape. Professor Meierhenrich doesn't believe that there was a strategic strategy to rape the women of Rwanda. Rather, evidence suggests that extensive rape in Rwanda was opportunistic and expressive in character. In order to help craft solutions to solve the problem of rape, Professor Meierhenrich believes we must first gather information to discover why the rapes happened in the first place.

**Bosnia:**

**Sanja Kutnjak Ivkovic** (Michigan State University)



Sanja Kutnjak Ivkovic discussed the prevalence of rape during the wars in the former Yugoslavia, as well as what is being done to assist the victims. Statistics show that there were over 20,000 cases of rape, with the victims mostly consisting of Muslim offenders and the perpetrators mostly consisting of Serbian men. Of these victims, 64% were raped more than once; 26% were forced to witness rapes, and 30% were raped every day. To seek justice for these victims, the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) and the Court of Bosnia and Herzegovina were set up to prosecute these types of crimes.

For the victims of these crimes, over 80% support the ICTY over other options. However, the ICTY is closing their doors in a few years, leaving the question of what will be done to seek justice for these victims. Professor Ivkovic believes that the ICTY must train local courts to handle these cases, or transfer cases to the Court of Bosnia and Herzegovina and other trustworthy courts.

**Session II: Developments from the Field on Addressing Systematic Sexual Violence**

**Chair:**

**W.J.M. van Genugten** (Tilburg University)

**Nature of Sexual Violence in the DRC and CAR and the ICC Charging Practices**

**Mariana Goetz** (Director of Programs, REDRESS Trust)

Mariana Goetz’s presentation was on the International Criminal Courts’ charging practices related to SGBV in the DRC and the Central African Republic (“CAR”). The atrocities that occurred in these areas are almost unspeakable: public rapes, gang rapes, forced incest, disemboweling of pregnant women; and the forced insertion of objects, such as batons covered in chili peppers. Victims of these crimes may seek remedy and reparation through the ICC; however, the court’s charging behavior has a direct impact on the victim’s right to access justice.

In Ituri, DRC, Thomas Lubanga, the head of the Union of Congolese Patriots (“UPC”), was charged with enlisting, conscripting, and actively using children under the age of 15 in hostilities. There were no sexual violence charges despite the fact that multiple witnesses say that the commanding officers of the UPC authorized troops to rape women and girls in the civilian population. Alternately, Mathieu Ngudjolo Chui, senior commander of the National Integrationist Front (“FNI”) and the Patriotic Resistance Force in Ituri (“FRPI”), and Germain Katanga, former leader of the FRPI, were charged in 2007 for a range of counts, including rape and sexual slavery. These charges were limited to acts related only to an attack on Bogoro Village in Ituri.

Similarly, in the CAR, Jean Pierra Bemba oversaw systematic rape committed by his troops. In his case, rape and torture were charged for the same acts, with rape subsuming the torture charges. Ms. Goetz highlighted these cases to show how the charging of crimes has a huge impact in victims' rights to remedies and reparations. In Lubanga's case, there were no sexual violence charges, while charges against Chui and Katanga were limited to one village. Because of these charging strategies, many people who are victims are completely left out of the reparations process. Ms. Goetz believes that charges should cover the different aspects of sexual violence. She believes that cumulative charging can portray the full extent of the horror and malice that took place.

### **The South Kivu Mobile Gender Justice Court**

**Kelly Askin** (Senior Legal Officer, International Justice, Open Society Justice Initiative)

Kelly Askin spoke of the effect the Mobile Gender Justice Court has had in South Kivu, DRC, an area also known as the rape capital of the world. Mobile courts such as these have both military and civilian jurisdiction to operate in the country. Courts are held in the open so that the community can attend. This Mobile Gender Justice Court has heard 115 rape cases and has issued 95 convictions. Key among these was the conviction of Colonel Kibibi Mutware.

On New Years Day in Fizi, DRC, a drunken soldier shot the friend of a woman he was abusing. In response, the local population lynched the soldier in public. Colonel Kibibi Mutware, commander of the troops stationed outside of Kivu, ordered the town attacked, asking for 100 men to be killed and the women to be raped. More than 30 women were raped and attacked. Within a few weeks, 11 men were arrested and brought to the Mobile Gender Justice Court. In this local court, the men were charged with rape as a crime against humanity, with over 60 women testifying against them. Hundreds of people turned up to watch the trial each day, with the UN bringing cartloads of people. The image below shows the crowd's reaction as the guilty verdicts were announced.



Of the 11, 9 were convicted for either rape or rape and torture, including Kibibi. Colonel Kibibi Mutware was sentenced to 20 years in prison, marking the first conviction of a commanding officer for rape in the DRC. As can be seen by the quick action and conviction, as well as the public support for the trial, mobile justice courts can be a huge benefit to remote locations, as they bring the Court's justice to areas that rarely see it.

### **Discussant:**

**Anne-Marie de Brouwer** (Department of Criminal Law and the International Victimology Institute Tilburg (INTERVICT), Tilburg University)

Anne-Marie de Brouwer noted that while the Mobile Courts were specifically designed for the Congo, they are transferable to other areas of the world. The reason these mobile courts are

so effective is that they provide ordinary citizens in remote areas access to justice, which is the most pressing problem in seeing that perpetrators of sexual violence are held accountable.

### **Session III: Updates from the Hague Tribunals**

#### **Chair and Discussant:**

**John Hagan** (Northwestern University and Center on Law and Globalization)

**Michelle Jarvis** (Senior Legal Adviser to the Prosecutor, International Criminal Tribunal for the Former Yugoslavia)

Michael Jarvis discussed how the ICTY's final phase before it reaches the end of its mandate has the potential to contribute significantly to the prosecution of sexual violence. This is because of the 15 cases remaining on the ICTY's docket, 9 include charges of sexual violence. The ICTY bases its prosecution on three theories: 1) Aiding and Abetting: If sexual violence was a natural and foreseeable consequence of the criminal objective, and if the superior knew or had reason to know about the violence, he can be charged; 2) Sexual Violence as genocide: although there are no convictions of genocide based on sexual violence, it is not difficult to see how this theory could work; 3) Sexual Violence as persecution: if sexual violence is part of an ethnic cleansing methodology, it can possibly be charged as persecution.

**Justice Teresa A. Doherty** (Special Court for Sierra Leone)

Judge Doherty of the Special Court for Sierra Leone discussed the one case dealing with sexual violence she has seen in her court since 2009. In that case, the Appeal Chamber confirmed the Trial Chamber's finding that sexual violence can constitute an act of terror. Judge Doherty believes that there is a tendency to drop rape and other gender-based crimes in the course of plea-bargaining, not that there is a reluctance of women to come forward to provide testimony. She believes that this plea-bargaining tactic sends the wrong message to the perpetrator and community.

**Cynthia Chamberlain** (International Criminal Court)

Cynthia Chamberlain of the International Criminal Court talked about the Rome Statute and its impact on gender justice. Although people who have committed sexual crimes are being brought to justice, there is still a failure at the ICC to charge these perpetrators to the full extent of the law. Cases previously discussed such as Bemba and Katanga are illustrative of this point. Ms. Chamberlain pointed out that there is hope for the future, as upcoming cases in the ICC, such as the case against Callixte Mbarushimana, a former UN employee alleged to have directed and participated in the murder of 32 people, contains sexual violence charges.

## Session IV: New Evidentiary Standards for the International Criminal Court

### Sexual Violence Beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases

**Xabier Agirre** (International Criminal Court)

Xabier Agirre discussed using patterns evidence in charging sexual violence cases. He believes that we can and should be using these types of evidence, but that it's not happening enough. Mr. Agirre stated that, in his opinion, sexual violence is not prosecuted as much as other crimes for two main reasons. First, there is a predominant male culture at the decision-making level that underestimates sexual violence. For instance, in a much used computer program for criminal investigations, there is no icon depicting rape or sexual violence, yet there are icons for many other crimes, such as theft, murder, and even arson. Secondly, the victims feel much shame and embarrassment about what happened to them, often making it difficult for them to testify, or to testify fully to the terrible nature of what happened. Currently, in person testimony is important to secure convictions and indictments, not just videos and pictures of what happened.

**Catrien Bilievelde** (University of Amsterdam)

Catrien Bilievelde next spoke about sexual violence in the context of international crimes. Professor Bilievelde stated that sexual violence is very difficult to prove when it comes to prosecution, as it's often "his word versus hers". In order to address these underlying problems, Professor Bilievelde believes that people in the statistics field need to start agreeing upon and establishing widespread research/investigation methods. "After all," she said, "if statisticians don't agree, how can judges look at them reliably?" Secondly, lawyers need to be trained to handle complex statistics. In order to help solve this, Professor Bilievelde suggested four things that need to be done in this field. 1) Professionals should explore advanced methods for conflicts where you have good baseline data; 2) Develop a "state of the art" method, where many researchers studying sexual crime can make an agreement about standards that work; 3) When coming up with estimates, try to use as much data from as many independent sources as possible; and finally, 4) Translate your findings to the legal audience by using the lowest estimates. That was, you can have a baseline that you feel very certain about, while being able to express that these baselines allow you to feel comfortable about higher estimates.

### Day One Closing Reflections

**Chair:**

**Renée Römken** (Professor of Interpersonal Violence INTERVICT, Tilburg University)

Professor Römken closed the first day of the Colloquium by noting that the limitations of the formal legal system are problematic to fighting sexual violence. Like many of the speakers from Day One, Professor Römken discussed that individuals need to develop a proper perspective on gender and gender sensitivity, a task that requires reliable information and appropriate training.

*"Although victims want their perpetrator to be brought to justice, they also need personal help in getting their lives back together. Tailoring the justice system to address both of these needs is imperative in helping these victims."* Renée Römken

**Patricia Viseur Sellers** (Fellow, Kellogg College, University of Oxford)

Patricia Sellers closed Day One saying that out of this Pandora's Box of problems, we find hope through the discussions brought out in our Colloquium. As we look to the future we must bear in mind the synchronicity of sexual violence in order to develop a practical solution. This involves three steps. First, we must ask what kinds of events like happening together. Ms. Viseur Sellers believes that the tendency of these abuses to occur together is not a coincidence. By looking at the underlying conditions, we can predict patterns. Secondly, what is the pattern for informing leaders about sexual violence. A decade ago you might be able to plausibly deny that you didn't know what was going on during a conflict but now there is too much information out there for a leader to deny that he knew about the possibility of sexual violence. Lastly, where have we failed? It is important to analyze history because what we lose in not understanding previous patterns stops us from developing legal precedence to fix those very same mistakes.



### **8 April 2011 - Day Two Opening Session**

**Carsten Stahn** (Programme Director, Grotius Centre for International Legal Studies, Leiden University/Campus – The Hague)

**Rianne Letschert** (Deputy Director INTERVICT and Professor of Victimology and International Law, Tilburg University)

### **Session V: Victims, Victimhood, Victims' Narratives**

**Chair:**

**Sara Kendall** (Grotius Centre for International Legal Studies, Leiden University/Campus – The Hague)

**Thanh-Dam Truong** (Women/Gender and Development Studies, International Institute of Social Studies, Erasmus University, Rotterdam)

Professor Thanh-Dam Truong sought to explore the notion of victimhood in sex trafficking. Human trafficking involves giving up your free will in an indentured relationship through deceit and other forms of power. Although there are lots of anti-slavery campaigns and legal reform initiatives, Professor Truong stated that they aren't working. So far, there is a three-fold response to human trafficking. 1) Criminal prosecution; 2) Protection through administrative and civil law; 3) Prevention and deterrence. Although these are effective to various degrees, in the future trafficked persons must be directly included in policy deliberations seeking conflict resolutions and consensus.

**Renifa Madenga** (Appeals Counsel International Criminal Tribunal for Rwanda, Member of the Sexual Violence Committee, former Executive Director, Musasa Project, Zimbabwe)

Ms. Madenga discussed the violence that occurred in Rwanda. She spoke about the problems involved in the investigation of sexual violence. When investigations started, the assumption was that only Tutsi women were victims. Only later did it become clear that people married to Tutsi were targeted, people who looked like Tutsi, and even men were victims of sexual violence. These are lessons that we can learn from going forward as we investigate future sexual crimes.

*“When you are getting raped, your rapist is the “big fish,” yet they often go free.”*



What we also learn, Ms. Madenga states, is how difficult justice actually is to achieve for victims of sexual violence. Victims of the genocide in Rwanda actually felt like the trial was disempowering for them. This is because they were giving testimony to try and convict the general in charge of the troops, while the soldier who actually raped them is still walking the streets.

Additionally, the victims are still living in abject poverty. Their lives are so hard that they actually feel like the criminals are the lucky ones, because they get to fly on a plane to prison. As Ms. Madenga explained, it is disempowering to victims that prosecutors think that the “big fish” are the military leaders. When you are getting raped, your rapist is the “big fish” to you, yet they often go free.

**Marlies Glasius** (Senior Lecturer in International Relations at the Department of Politics, University of Amsterdam)

Marlies Glasius also spoke about the difficulty encountered in providing victims with a sense of justice. In the Central African Republic, victims were uninterested in the perpetrators being put to jail, and even less interested in them being put to death. Instead, they were more focused on the perpetrators being “named and shamed,” as this gave victims a sense that they weren't

being forgotten. Additionally, victims don't want reparations for reparations' sake, but want to be supported so that they can really recover. Overall, the fact that the ICC interviewed the victims was a positive development. It boosted victims' self-esteem and gave them a sense of legitimacy. Some victims really felt part of the procedures. As can be seen, achieving justice for victims is not something that is easy or uniform. It takes a personalized approach to really understand what the victims desire.

**Discussant:**

**Niamh Hayes** (Irish Centre for Human Rights)

Niamh Hayes discussed the difficulty involved with dealing with victims. First, these victims are often victims of many things all at once, whether it be victims of physical violence, sexual violence, poverty, etc. Because of this, it is difficult for one legal representative to advocate on behalf of thousands of people with divergent interests, goals, and needs.

*“What is needed is a combination of a broad approach with personalized elements.” Niamh Hayes*

**Session VI: The Criminal/Civil Dichotomy: Victims' Reparations in International Criminal Court**

**Chair:**

**Pieter W.I. de Baan** (Executive Director of the Trust Fund for Victims, International Criminal Court)

**Mia Swart** (Grotius Centre for International Legal Studies, Leiden University/Campus – The Hague)

Dr. Swart believes that the main issue the ICC will face as a result of the introduction of the Rome Statute of the victims reparation system is the question of how to settle human suffering. According to Dr. Swart the answer could be found in the United States' Alien Tort Claims Act (ATCA). ATCA serves as an example of the successful domestic legal process of awarding damages, punitive damages, or other forms of reparations for torts resulting from breaches of international law. ATCA works irrespective of the nationality of the victim or the perpetrator, or the place the civil wrong was committed. Only some factual link with the US is needed to trigger the procedure. Through these judicial proceedings, ATCA brings traditionally criminal law constructs to the civil law litigation.

Kadic v. Karadzic, Doe v. Unocal and Ken Saro-Wiwa v. Shell are examples of cases adjudicated based on the ATCA that dealt with the problem of reparation for harm suffered by individuals as a result of non-state actors activities. The most recent one against Shell for the pollution in the Niger Delta in 1991, the destruction of homes and the use of military for the pursuit of business activities ended up in \$15.5 million settlement without the formal recognition of guilt by Shell. In fact throughout that recent history of the 'human rights' ATCA cases only four times victims manage to gain some money, namely in the Holocaust litigation, Goa v. Unocoal, Ken Saro Wiwa v. Shell and in the South Africa apartheid cases. Only the reparation obtained in the Holocaust litigation is assessed as fair in comparison to harm suffered.

*Kadic v. Karadzic*, 74 F.3d 377 (1996)  
*Doe v. Unocal*, 248 F.3d 915 (9th Cir. 2001)

Similarly to judges using ATCA, the ICC judges would have to face the difficulties resulting from bringing civil suits in an essentially criminal procedure. That blurs the traditional dichotomy between the private and public law requiring new qualifications from the judges. The ATCA jurisprudence, although not perfect and recently even questioned in the U.S. Supreme Court, can nevertheless serve as an example.

Lastly, Dr. Swart discussed an unusual drawback to using ATCA, that being settlements. Although settlements are traditionally seen to be a good thing for victims, victims don't receive the satisfaction of seeing the defendants being held guilty. Furthermore, ongoing jurisprudence, as well as the public at large, doesn't benefit from knowing the truth of the atrocities that went on, as settlements aren't usually seen as an admission of guilt, especially from the defendant's perspective.

**Liesbeth Zegveld** (Boehler Advocaten and Leiden University)



Professor Liesbeth Zegveld sought to discover what are the procedural lessons learned from domestic legal systems in terms of the reparation to victims of international crimes. The ICC as well as the two internationalized criminal courts, namely the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Tribunal for Lebanon, have a system of civil law reparations for victims of international crimes introduced to their statutes. Although the concept itself is noble and worth developing, the problem is however that the new mechanism might cause more problems in terms of the efficiency and integrity of the proceedings and might as a result not be as cheap and simple as expected.

What are the procedural implications for the ICC? Parallel hearings would cost time and additional difficulties for the judges. Even in national jurisdictions, where the civil party system functions, criminal law judges, usually not used to civil law adjudication, tend to refer cases to a more suitable forum. The ICC does not have a comparable option, and because it is highly unlikely that in the near future the international civil law tribunal will be established, the best advice for the ICC would be to draw lessons from the national jurisdictions and human rights courts in search of principles and best practices to give the procedural body of law to the reparation system.

The international law as such does not offer a consistent body of law for dealing with victims' claims. What is the legal nature of such claims? Should the law on civil liability be decisive? If so, of which state? Or maybe more general principles common to all private law systems in the world should be taken into account? The relevant articles of the ICC statute seem to serve only as a framework for law, not the exact body of law that could be applied. The careful analysis of the ECHR and the IACHR jurisprudence together with the national case law on private compensation claims seem to be the only source of responses to those questions.

The future separation of the both legal regimes criminal law and civil law in the ICC could be recommended. It might take the form either of a separate legal forum to deal exclusively with the reparation claims or a separate stage within the ICC proceedings, when the victims could appear as participants bringing their claims for reparation after the accused is convicted. Otherwise the system as it currently looks like would make the ICC paralyzed.

**Pieter W.I. de Baan** (Executive Director of the Trust Fund for Victims, International Criminal Court)

Mr. de Baan, describe the creation and function of The Trust Fund for Victims, which is an innovative legal body, separate from the ICC, that was established under the Rome Statute with a function to offer help for victims of situations recognized by the court (the “general assistance mandate”) and to assist the judges in implementing reparation orders from the accused to the victims (the “reparation mandate”). Operating on voluntary contributions from states, the Fund may start to engage even if no formal investigation against a particular accused is launched by the ICC.

The reparations awarded to victims might have one of the traditional forms known from international law, namely restitution, rehabilitation (satisfaction) and compensation. Besides the direct victim to the crime, the family members of the direct victim or the affected community as a whole (collective types of reparations) can participate in the reparations scheme. Help to victims of gender based violence is among the priorities of the Trust Fund and will constitute a large group of the beneficiaries.

According to Mr. de Baan, the challenge for the Trust Fund will be to balance the scarce resources against the huge needs. For example, the Bemba case has as many as 1300 people registered as victims. The gap between expectations and reality might be a difficult burden to bear, owing to the necessity of adequately dividing the limited budget between the two operational mandates. Mr. de Baan believes that other international or national victims’ assistance programs to support the Trust Fund in this enterprise would be helpful.

**Discussant:**

**Christine Schwöbel** (Grotius Centre for International Legal Studies, Leiden University)

Dr. Schwöbel discussed the reparation system introduced by the Rome Statute and its intended purpose as a tool to help the victims in a difficult fight with the stigma of victimization and to respond timely and adequately to the needs on the ground. We are still left, however, with certain conceptual and management difficulties unresolved by the drafters of the Rome Statute that need to be addressed for the benefit of the victims.

In terms of the conceptual issues the following problems can be identified: 1) the overlap between different branches of law; 2) the criminal law vs. civil law; 3) the domestic jurisdiction vs. the international jurisdiction; 4) the state responsibility vs. the individual criminal responsibility. Dr. Schwöbel believes that solving these issues are paramount to fully benefit the victim of sexual violence.

## **Session VII: Participation and Protection of Victims of Sexual Violence in International Criminal Law**

### **Chair and Discussant:**

**Rianne Letschert** (Deputy Director INTERVICT and Professor of Victimology and International Law, Tilburg University)

There are different views on the role of victims in international criminal proceedings. In certain domestic legal systems, mainly the common law ones, the victim, although enjoying the right to protection, privacy and dignity from a procedural point of view, does not have any standing on their own. Opposite regulations can usually be found in the civil law countries, in which the victim enjoys the procedural rights and can seek civil redress in the criminal case by presenting its own views and evidence.

The Rome Statute reflects a difficult marriage between those two main legal systems. It tends to be called the masterpiece of victimology, but after considering the exact content of the ICC participatory and protection right, one might start to have doubts on what is the real position of a victim in the ICC proceedings.

### **Participation and Protection of Victims of Sexual Violence before the ICC**

**Paolina Massidda** (Principal Counsel of the Office of The Public Counsel for Victims, ICC)

Paolina Massidda gave an overview of the ICC participatory rights. Art. 68 of the Rome Statute establishes the legal regime of protection for the victims and witnesses as well as their right to participate in the legal proceedings. The court is obliged to protect the safety, dignity, and privacy of victims and witnesses irrespective of the age, gender, or the nature of the crime committed.

According to paragraph 3 of the same article, victims have a right to have their views presented and considered at any stage of the proceedings, namely on pre-trial, trial, and appeal stage. But the practice of the ICC shows that judges are more willing to listen to the victim's voice at the trial stage, when they have the actual legal duty to assess all arguments establishing the guilt or innocence of the accused.

The practice of the court with regard to gender crimes is not so extensive. Only one of the current cases, namely the Bemba case, included the charge of rape, even though 2,000 people were registered as victims, half of them male. The inclusion of the sexual charges was unsuccessful in the Lubanga case, although legal efforts were made to demonstrate to the court that the essential part of the conscription of the child soldiers, the main charge in the case, was constituted by the gender crimes component. Of roughly 500 victims of child soldier conscription, 15-17% were reported raped or obliged to commit rape.

## **Participation and Protection of Victims of Sexual Violence before the ECCC**

**Silke Studzinsky** (Legal Representative for Civil Parties, Extraordinary Chambers in the Courts of Cambodia)

Ms. Studzinsky spoke about the system established for the purpose of the Extraordinary Chambers in Cambodia (“ECCC”), which has allowed victims’ involvement in the proceedings as a civil party, with a position similar to the one enjoyed by the prosecution and the defense. The victim does not have to show a particular interest to participate, but they have access to all documents related to the trial, might call witnesses and experts, and can request particular investigative activities from the court. Victims giving testimony as witnesses can benefit from similar safety measures as previously described in terms of the ICC Statute. However, the actual use of those depends on the victims’ ability to show that a specific and real risk of harm exists. For instance, the general concern that the Khmer Rouge could come back in power is not enough.

Initially no sex crimes were covered by these investigations, due to the fact that the gravity of the sexual crimes was not recognized by the Prosecutor as high enough in comparison to other crimes committed. Only one case of a rape during the interrogation in the presence of the superior was accepted by the court. The intervention of the civil party at the trial stage, however, led to the successful inclusion of the sex charges to the indictment, although the court tried to blur their scope by using the narrow definition of rape from the ICTY Kunarac case.



The forced marriage charges followed a similar path of recognition. Had the civil party not raised the issue of forced marriage, it would not have received any attention from the court. Although the forced marriages might have seemed less grave in comparison to the thousands killed, the social consequences of this crime might be equally or even more grave. In terms of procedure, there are some important challenges still remaining. First, the Prosecutorial strategy from the beginning should be oriented to investigate and prosecute sex crimes. Lastly, the ICC should learn more from the best practices of other international courts and tribunals and adopt what practices they can.

### **Session VIII: Support and Outreach to Victims of Sexual Violence**

#### **Chair and Discussant:**

**Renée Römken** (Professor of Interpersonal Violence INTERVICT, Tilburg University)

Professor Römken noted that there is a reluctance to charge sexual violence, which explains why there are even fewer convictions of sexual violence. She believes that if we want to understand the dynamics of sexual violence in war times, it is imperative that we understand the dynamics of sexual violence during peace time.

## **Support and Outreach to Victims of Sexual Violence in Kenya**

**Kim Thuy Seelinger** (Director, Sexual Violence and Accountability Project, University of California at Berkeley Human Rights Center)

In Kenya, 12% of women reported that their first sexual encounter was forced, while 29% reported having experienced some form of sexual violence. During the violence that occurred during the 2007 election, CSI Nairobi estimated that there were over 40,000 cases of rape, including the rape of men.

In order to support these women, there are many problems that need to be overcome. First of all, there are many cultural taboos regarding talking about sex. This makes it difficult to identify and treat victims. Additionally, there are many ethnic groups, languages, and a high rate of illiteracy. Kenyatta National Hospital tried to provide medical and psychological support to these victims through peer counseling, both at the hospital and through mobile counseling groups.

Outside of counseling, Kim Thuy Seelinger believes that Kenya should have more women police officers stationed at complaint desks. Often times, women that come in to report a rape feel intimidated to tell a male police officer what happened, whether through embarrassment or the fear that she will not be believed. This is one area that certain activist groups in Kenya have tried to address. MENGEN (Men for Gender Equality) is a group of men who help female victims of rape. They do this by showing up to the scene soon after it is reported to give the females a sense of security, as well as escorting the victims –if they wish-- to the hospital and later to the police station.

## **Support and Outreach to Victims of Sexual Violence in Cambodia**

**Duong Savorn** (Project Coordinator, Cambodian Defenders Project (CDP))



During the Khmer Rouge, people were forced to leave their homes and move to communal work camps. Much of the sexual violence that took place was in the form of forced marriages (at least 250,000 couples). The Khmer Rouge would call people, without any notice, and then marry them. After the marriage, the newly wed couples were ordered to have sexual intercourse. Refusing was punished severely.

An outreach program started in 2009 to talk to survivors and educate younger generations with the help of documentaries, radio programs, publications, seminars, workshops, and international conferences. The key message during these discussions was that gender-based violence happened during the Khmer Rouge and that all of these acts are crimes. This has been a difficult message to get across to the people of Cambodia, as Cambodians don't believe that forced marriages are a crime. It is clear that more outreach needs to be done to the people of Cambodia to get them to understand the gravity of the crimes that occurred during the Khmer Rouge.