

SECOND HAGUE COLLOQUIUM SYSTEMATIC SEXUAL VIOLENCE AND VICTIMS' RIGHTS

**Opening address: Elisabeth Rehn
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It is a great honour for me to be invited to give the key note speech at this timely and important event that brought us all together today, the Second Hague Colloquium which will focus on sexual violence and victims' rights.

I am especially honoured because the topic of this colloquium is very close to my heart. As someone who herself has experienced war and met with victims and affected communities around the world the rights of victims and in particular the rights of victims of sexual violence have been so very important to me.

Only recently, in October 2010, as a member of a high level panel organized by the High Commissioner for Human Rights, I again personally met with victims of sexual violence in the Democratic Republic of Congo, or as they prefer to be called, survivors. During this visit, I have listened to survivors of sexual violence, ranging from a girl raped when she was three years old to a 61-year-old grandmother. These survivors told us about their actual needs, and what they felt about the remedies and reparations currently available to them. Many of them described in detail what had happened to them and to other victims in their neighbourhoods.

For these and countless more, the International Criminal Court represents the latest development in the movement towards ending impunity for sexual violence and other gender-based crimes. The ICTY, ICTR and SCSL have all contributed to this fight. Sexual violence has been an integral part of the process of destruction during wars and conflicts, as tactic of war.

Today, 12 of the 17 accused before the International Criminal Court are charged with crimes of sexual violence including rape both as a war crime and a crime against humanity. And in the Prosecution's investigation strategy, the particular plight of victims of sexual violence is now acknowledged. In the first case concerning the Central African Republic, allegations of sexual crimes far outnumber alleged killings.

The inclusion of sexual violence in the Prosecution's investigation strategy and the attention paid to the use of rape in war both represent significant progress toward making UNSCR Resolution 1325 a reality. Resolution 1325, as well as those that have followed – 1820, 1888 and 1889 – recognized both the adverse impact of violence against women and girls, but also the key role that they play and should play in establishing durable peace and security and lasting institutions.

But the ICC represents progress toward 1325's goals in one other key dimension as well. The Rome Statute established several groundbreaking institutions for the inclusion and recognition of victims, as participants as witnesses and also as deserving recipients of assistance and reparation.

I speak to you also today as chair the Board of Directors of the Trust Fund for Victims, a concrete manifestation of the Rome Statute's groundbreaking inclusion of victims. In resource-poor settings, where violence, including sexual violence, against women, men, children and youth has eroded the most basic of norms, justice requires a complex set of tools. The Trust Fund for Victims is just one of these, but it is a new, important and unique one.

I would like to share with you some experience that I made in the capacity as chair of the Trust Fund. The Executive Director will speak on a panel on Friday and I will keep myself away from being too technical and talk about my personal views.

I am not sure how much you know about the Trust Fund but it was created under the Rome Statute and has two mandates. The first mandate is to be a part of the reparations system ordered by the International Criminal Court for victims in the cases that it decides and the second mandate is to assist victims of the crimes within the jurisdiction of the Court.

Under this second assistance mandate the Trust Fund started operating in the field in 2008. At the moment there are 29 TFV approved projects active in the DRC and Uganda which currently benefit 75,000 people. These projects benefit victims of war crimes, crimes against humanity and genocide. Categories of survivors who are currently supported include, former child soldiers, survivors of SGBV & child mothers (whose children were born as a result of the sexual violence), affected communities, widows/widowers, surviving family, disabled persons & amputees, disfigured and tortured persons and vulnerable persons such as widows, war-affected youth.

The combination of assistance and reparation is unique in the world of international criminal law, and it provides the Trust Fund with key strengths for meeting the needs of victims of the gravest crimes in international law, particularly victims of sexual violence.

- On the one hand, the TFV is timely. Throughout most of its brief history the TFV has provided assistance to the most vulnerable victims – including thousands of victims of sexual violence – before trials have started before the Court.
- The TFV is also flexible, especially in its ability to target victims of crimes beyond those defined by particular trials. In Ituri district in Eastern Congo for example, the TFV has been supporting girls forcibly conscripted into and sexually abused by armed groups. Such crimes are not included in the charges against Thomas Lubanga.
- The TFV is also valuable source of operational knowledge for the Court, especially vis-à-vis the design and implementation of awards for reparation.
- I hope this conference might help us move toward a better understanding of both *what* victims of sexual violence need and are entitled to as rights-bearing citizens, but also – and I believe as importantly – *how* the ICC can best engage with victims of sexual violence and give them a voice in the process of justice.

A topic very timely and much discussed these days, is reparations. Victims of crimes, and this includes crimes of sexual violence, have a right to remedies and reparations. They do have this right under international human rights law and they now also have a right to reparations in the Rome Statute.

The High Commissioner for Human Rights high level panel which I mentioned, visited the DRC in the aftermath of the horrible mass rapes that have taken place has addressed this question in a recent report. And in fact, the report is aptly titled "Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo". The report calls for establishing a mechanism for reparations for the victims of sexual violence in the DRC.

At the same time, the first cases progress before the International Criminal Court. And it can be expected that in the foreseeable future the Court will hold hearings on reparations after the conviction of an accused person and after these hearings also issue an order for reparations.

A lot of questions are still open how this judicial process will work. From the law it is clear that the Trust Fund will have a very important role to play to make reparations real, in particular with respect to their implementation.

The need for reparation is enormous. The ICC deals with mass crimes that shock all of humanity and often take place on an unimaginable scale. In the field of sexual violence alone, the dimensions are hard to imagine. To stay with the example of the DRC, an estimated 200,000 women have been raped in the Democratic Republic of the Congo during the past 12 years of war, and unfortunately it still continues. The tactic of war has been transferred to the civilian life. The number shows both the need for reparations and the limitations of reparations before the International Criminal Court. In view of these limitations that are both legal but also factual, because there will likely be only limited funds available if compared with the enormous scale of the need of victims, it will be important to manage expectations.

The International Criminal Court can only address cases after 1 July 2002 and only with regard to specific and often very limited cases. In the first case before the ICC, the Lubanga case, the issue of sexual violence is not addressed because of the narrow charges brought by the prosecution which focuses only on the recruitment of child soldiers. But as I noted, the TFV has through its assistance mandate provided support to over 100 girls abducted and sexually enslaved by armed groups, and their babies.

Should the right to reparations be based entirely on the charges of which the accused has been found guilty? What should be done in situations – likely the majority of those before the Court – where the majority of eligible victims left out of the confirmation of charges? Unfortunately I have not the answers to these important questions.

Rather, I would like to conclude with some of what we have learned about the provision of assistance and reparations to victims of crimes under the jurisdiction of the Court.

In its latest report in fall of last year, the TFV reported on some of the results of its 2,600 interviews with victims receiving assistance in both northern Uganda and eastern Congo, including several hundred victims of sexual violence of all ages in both countries. The results are illuminating, and they offer three important lessons with which I will conclude:

1. First, in addressing reparations, a gender dimension related to the impact of violence will need to be included in the considerations. Because violence impacts men and boys differently than it impacts women and girls. In our conversations with men, women, girls and boys, victims of sexual violence repeatedly expressed more severe psychological trauma and social stigma stemming from the violence they suffered. This was particularly true for girls who had given birth as a result of the violence: many reported being insulted by peers at school and being rejected by their families at home. As a Chair of the Board of Directors of the Trust Fund I will try my best to ensure that this message is listen to by the Court.
2. Second, victims of sexual violence experience an extremely diverse range of atrocities and consequences: some are displaced, some are violently injured, some carry lifelong illnesses, some give birth to children, some suffer daily stigma, abandonment and rejection from their families, peers at school and communities. And some, we must remember, are men and boys. To understand how best the Rome Statute system can engage with victims of sexual violence, we must understand this diversity.

To help illustrate this, I will share with you one key example that touches on the debate between “individual” and “collective” forms of reparations.

In reparation proceedings before the ICC, the Court will have to find an answer to balancing the need for collective and individual reparations. The Court could also order a combination of both. In order to address also victims of sexual violence who are often stigmatized, and afraid to identify themselves publicly, collective reparations if designed well could be a response. But there is a need to ensure that they reach the most vulnerable victims, including women.

For me, understanding the strengths and limitations of individual and collective reparations is necessary if practitioners are to combine them in a culturally appropriate and creative manner.

Individual reparations serve as recognition of specific harm to an individual, and of an individual's worth as a rights-bearing citizen. Such recognition, which is integral to (re)gaining civic trust, may not be otherwise satisfied. Collective reparations may serve other, albeit overlapping, functions: to respond to collective harms and harms to social cohesion (especially in places with a strong sense of collective identity), to reestablish social solidarity, and to maximize the effectiveness of existing resources.

The relative advantages and limitations of each approach changes depending on the particular local context. In our conversations with women in Bukavu who had been displaced by mass rape, for instance, many expressed a desire for *individual* reparation. For them, the collectivity that would benefit from a “collective” reparations order is Bukavu, a new and foreign city to which they do not belong.

Rather, they highlighted their need for *individual survival*.

For other survivors of sexual violence with whom we spoke, however, a more *collective* form of reparation was preferred. This was particularly important to those women and girls who were still living in their home village and for whom reintegration into the community is a part of their rehabilitation.

An interesting example on collective reparation comes from a remote village in DRC. A court order for individual reparation has never been followed in practice. Through Unifem the women of the village got a boat to transport goods to the market, necessary for them to be able to sell.

It will be important to do a delicate balancing of both collective and individual elements when designing meaningful reparations.

In the Trust Fund's experience overall, collective forms of rehabilitation where the victims have a say of how the process is run work particularly well.

3. And this, finally, brings me to my third and final point: on the importance of consultation and engagement with victims, and their ability to have ownership of the process of reparation. Engagement with victims and giving them a voice in the process of reparations will be crucial, be it judicial reparations before the International Criminal Court or reparations based on human rights law obligations in a national context. And this is in particular true for victims of sexual violence who often do not raise their voice because of fear of stigmatization. We must ensure that it is not the victims but the perpetrators who feel ashamed.

On this note, I would like to add one last personal observation. In my role as the chair of the Board of the Trust Fund, I have visited projects in the Democratic Republic of Congo and Uganda, including projects that address victims of sexual violence. I have seen how a school uniform given to a survivor of rape who had a child as a result of the rape has given back pride and hope to this young mother.

I say this because I know and you all are aware that many victims never report the rapes, either due to fear of stigmatization or lack of faith in the judicial system. "There is no point in making an accusation," one woman said. "I learned by example from most people raped before me that there is no justice."

I call on all of us that we must break the silence and mobilize public support for victims of sexual violence. And we must work together to shift the stigma from the victims to the perpetrators and empower the victims to reclaim their dignity and rebuild their lives. I hope that this colloquium will give us the opportunity to discuss how we can increase our efforts to restore the lives and dignity of these most vulnerable victims.

Thank you.