



Protection measures for survivors of sexual violence as an international crime

Project Partner: TRIAL International

Trial International

TRIAL International is a non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice. TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable sufferings. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward.

Background rationale for the project

Sexual violence has been widely used as a weapon during situations of conflict or widespread and/or systematic human rights violations, especially against vulnerable parts of the civilian population.

International tribunals, such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda (ICTY and ICTR respectively) were responsible for important developments in the field of international criminal law prosecuting sexual violence crimes as international crimes. The inclusion in the Rome Statute of various form of sexual violence (rape, sexual slavery, forced pregnancy, forced sterilization, forced prostitution and other forms of sexual violence) and the most recent jurisprudence of the International Criminal Court (ICC) gave a further push to the fight against impunity for those crimes. However, the increase in prosecution of sexual violence as an international crime posed new challenges to Courts, Tribunals and prosecuting authorities, in terms of how to ensure the safety and well-being of survivors of those crimes in the most problematic settings.

Project overview

The project will focus on identifying protection measures for survivors of sexual violence as an international crime derived from international legal standards and evidenced by cases at the international and domestic level; and other practices of select courts, tribunals and offices of the prosecutor. There is no existing comprehensive study on this topic. The project will culminate in a research paper on the topic, which would be helpful in order to have an overview of the existing framework and allow comparison among different systems in order to identify the most protective approach for survivors.

Hence, the focus of this research will be protection measures of survivors of sexual violence as an international crime (war crimes and crimes against humanity). Protection measures



refer to any measure taken to ensure especially but not exclusively the physical and psychological welfare, safety and security of survivors taken at the pre-judicial, judicial and post-judicial phase of proceedings, including at the reparation stage. They include all the protective aspects of precautionary measures taken by Courts and Tribunals and the specific measures taken during investigation by the Office of the Prosecutor.

In particular, the research will focus on four aspects:

1. The jurisprudence of international criminal tribunals relating to the issue of protection measures for sexual violence survivors in all phases of the proceedings (especially ICC, ICTY, ICTR, Special Court for Sierra Leone – final list to be established). The phases to be considered include: investigation, trial, measures taken after the end of proceedings (if applicable). The main topics to be examined include: forms of protection measures given; criteria used to issue them – e.g. specific type of crime, personal situation, age etc.; balance between protection measures and rights of the accused. A quality approach would be preferable, giving particular attention to the cases where the jurisprudence has been more protective regarding survivors. The same section should include an analysis of policy papers and guidelines developed by Courts and Tribunals (if applicable).
2. The jurisprudence of selected national tribunals (common and civil law systems: list of countries to be established).
3. The existing international standards on types of protection measures and criteria for issuing them (other than the ones developed by Courts and Tribunals).
4. Relevant doctrine (on best practices, challenges etc.)

The research method will include database research on case law; a desk review of policy papers and any secondary literature; and interviews with experts and practitioners who have relevant experience.

The results of the research will be used as a basis for cases TRIAL International will litigate at the national and international level in order to ensure that the protection of sexual violence survivors meets the highest possible standards, and to push jurisprudence forward.

Project Output

At the end of the project a 30 page report will be presented to TRIAL International. The report will include the output of the research undertaken, structured in a thematic way (exact themes to be determined at a later stage as a part of the project) and on the basis of the source (international tribunals, national courts, international standards and guidelines, relevant doctrine and experts' opinion). The report will end with conclusions and recommendations on possible avenues to push the jurisprudence forward. The annexes to the report, which are not included in the word count, will consist of a bibliography, a table of cases (jurisprudence at the national and international level), the questionnaire designed to interview the experts, the notes and/or recordings of the different interviews.



TRIAL International will use those as a basis for protection measures requested on behalf of sexual violence survivors both at the national and international levels.

Project Outline

Phase 1: (November-December)

- Preliminary research, understanding the project, developing an outline, list of cases, bibliography and literature review. The outline, bibliography and a 6-8 page literature review will be submitted for review by Trial by the last day of the autumn term, and comments will be received in response by the first day of the spring term.
- Identifying a list of experts and practitioners on the topic
- Developing a questionnaire for the experts and practitioners
- Draft and submit ethical approval application to the University of Essex before the end of term
- Draft a communications strategy to cover internal communications within the team, and, in agreement with TRIAL, external communications with the partner and other actors

Phase 2: (January-March)

- Continue with review of jurisprudence, guidelines and literature
- Develop the bibliography
- Conducting the interviews of experts and practitioners
- Draft the report, and submit it for review by TRIAL before the end of term
- Development of the annexes

Phase 4: (April-June)

- Revision of the report



Project Bibliography:

The following texts are not comprehensive, rather they provide an initial orientation for students working on the project.

Guidelines

Policy Paper on Sexual and Gender-Based Crimes, the Office of the Prosecutor, International Criminal Court, June 2014

[Guidelines](#) issued by the Office of the Prosecutor of the ICC in order to define best practices with regard to the investigation and prosecution of sexual and gender-based crimes, including measures to protect the well-being of victims and witnesses at the prosecution stage.

Prosecution of Sexual Violence, Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda, 30 January 2014

[Manual](#) that focuses on the management of victims and witnesses during the investigation and prosecution phases, with specific developments on sexual violence crimes prosecuted as international crimes.

Best-Practice Recommendations for the Protection and Support of Witnesses: An Evaluation of the Witness & Victims Section, Special Court for Sierra Leone (SCSL), 2008

[Recommendations](#) made in relation to the Witness and Victims section of the SCSL from a general perspective and which tackle the issue of survivors of sexual and gender-based violence as witnesses.

International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Best practice on the documentation of sexual violence as a crime or violation of international law, March 2017 (Second edition)

[Guidelines](#) which consists in a set of best practices on how to document and investigate conflict-related sexual violence.

Investigation Manual for War Crimes, Crimes Against Humanity and Genocide in Bosnia and Herzegovina, OSCE, October 2013

[Manual](#) which provides information and methods to conduct investigations into international crimes, with specific chapters on the protection of sexual and gender-based violence survivors.

Case law

ICC

Prosecutor v. Jean-Pierre Bemba Gombo, Corrigendum to Prosecution's Request for Protective and Special Measures for Prosecution Witnesses at Trial, ICC-01/05-01/08-800-Corr-Red4, 6 July 2010

[Prosecution's](#) request to implement in-court protective measures especially dedicated to victims of sexual violence who had to testify in the course of the trial.



Prosecutor v. Dominic Ongwen, Decision on the 'Prosecution's application for in-court protective and special measures ICC-02/04-01/15, 29 November 2016

[Decision](#) issued by the ICC following the Prosecution's request to implement protective measures especially dedicated to victims of sexual violence.

ICTY

Prosecutor v Tadic, Decision on the Prosecutor's Motion Requesting Protective measures for Victims and Witnesses, Case No. IT-94-1-T, 10 August 1995

[Decision](#) issued by the ICTY following the Prosecution's request to grant protective measures for victims of sexual violence, specifically requiring that some victims and witnesses testified behind a screen and the use of pseudonyms (full anonymity granted to the sexual violence victims whose identities were withheld indefinitely from the accused and his counsel).

Prosecutor v. Furundzija, ICTY-95-17/1-T, Decision on Defendant's Motion to Strike the Testimony of Witness A Due to Prosecutorial Misconduct or, in the Event to a Conviction, for a New Trial, 16 July 1998 (see also Prosecutor v. Slobodan Milosevic, ICTY-02-54-T, 8 April 2002)

Decision issued by the ICTY in the course of the Furundzija [trial](#), relevant as for the balance made by the judges between a sexual violence victim's right to privacy and disclosure obligations concerning personal victim information (here, the Trial Chamber ordered the OTP to disclose the records of Witness A's medical record and re-opened the case).

Prosecutor v. Kunarac et al., ICTY-96-23/1-T, Testimony of Witness 51, 29 March 2000 (see also Prosecutor v. Stanisic and Zupljanin, ICTY-08-91-T, Testimony of Witness ST-56, 1 October 2009 and Prosecutor v. Kvočka et al., ICTY-98-30-1-T, Testimony of Witness AT, 3 October 2000)

Intervention of the judge, in the course of Kunarac [trial](#), in order to ensure the victim was not identified in open session by one of the testifying witnesses (or the names of persons from the witness' hometown that could expose her identity).

Also, in the same case: *Prosecutor v. Kunarac et al., ICTY-96-23-I, Testimony of Witness 105, 13 June 2000 (as an example contrary to Defendant's Motion to strike in Furundzija case)*

Decision issued by the ICTY, in the course of Kunarac [trial](#), which denied to the Defence access to the medical records of a sexual violence victim regarding victim's privacy concerns.

Prosecutor v. Stanisic and Simatovic, ICTY-03-69-T, Decision on Motion by Radovan Karadzic for Access to Confidential Materials in the Stanisic and Simatovic Case, 16 July 2009

[Decision](#) issued by the ICTY which granted the access to confidential materials upon showing a legitimate forensic interest in the confidential material, except OTP's request to maintain confidentiality for certain materials, including those relating to sexual violence victims (protection of the rights of sexual violence victims in the context of cross-case access requests).

ICTR

Prosecutor v. Akayesu, ICTR-96-4, Decision on the Prosecution's urgent motion filed in order to protect witnesses from the disclosure of the names of 12 of them required by the Defence, 13 March 2000



Decision issued by the ICTR, in the course of the Akayesu [trial](#), which maintained the anonymity of 12 witnesses, some of whom were covered by witness protection in order not to disclose their identity to any member of the public or to any person involved in the appeal proceedings.

SCSL

Prosecutor v Sesey et al., Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses, Case No, SCSL-04-15, 5 July 2004

[Decision](#) issued by the SCSL which allowed use of pseudonyms to all witnesses and testimony behind a screen with voice distortion for the sexual violence and insider witnesses.

Literature

The Protection of Women as Witnesses and the ICTR; Paper prepared for the Coalition on Women's Human Rights in Conflict Situations, Coalition for Women's Human Rights in Conflict Situations, Eva Gazurek & Anne Saris, 2002

[Recommendations](#) for policies and procedures for respecting the rights, addressing the needs and effectively involving women in the ICTR process

Supranational Criminal Prosecutions of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR, Anne-Marie de Brouwer, 2005

[Study](#) which assesses the supranational criminal prosecution of sexual violence and the adequacy of supranational criminal law and procedure from the perspective of victims of sexual violence in order to formulate recommendations for a more comprehensive framework of the international justice to prosecute sexual violence

Protecting Rape In International Criminal Tribunals: The Need to Balance Victim's Rights With The Due Process Rights Of The Accused, St John's Journal of Civil Rights and Economic Development (Legal commentary), Vol.23, Issue 1, Article 5, Amanda Beltz, Spring 2008

Legal [commentary](#) which examines the cultural history of rape in warfare, outlines the current measures taken to protect victims and witnesses of gender violence by the ICC, ICTR and ICTY, and the specific approach required to ensure due process

Prosecuting Conflict-Related Sexual Violence at the ICTY, Serge Brammetz and Michelle Jarvis (eds.), Oxford University Press, 2016

[Book](#) which examines the experiences, achievements, challenges, and insights of the OTP in prosecuting conflict-related sexual violence crimes at the ICTY over the past two decades.

Experts

Victims and Witnesses Unit - International Criminal Court

United Nations Team of Experts on Rule of Law and Sexual Violence in Conflict



United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict

United Nations Committee on the Elimination of Discrimination Against Women

United Nations Committee Against Torture (in case of rape or other forms of sexual violence qualified as torture)

UN Women

Michelle Jarvis – Deputy Head of the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic (former Deputy to the Prosecutor of the ICTY)

Patricia Sellers – Special Advisor for Gender to the Office of the Prosecutor of the ICC

Serge Brammertz – Chief Prosecutor of the ICTY until 2017, current Chief Prosecutor of the IRMCT

Maxine Marcus – international criminal prosecutor with particular expertise in the investigation and prosecution of sexual violence crimes under international law (worked as a prosecuting attorney at the ICTY; as an investigating attorney for the Civil Defence Forces prosecution team in the SCSL)

Priya Gopalan – human rights and international law practitioner with expertise in gender issues and sexual violence; has worked at the ICTY and OHCHR

Justice Rapid Response-UN Women SGBV Justice Experts Roster (*mostly for access to experts*):
Federica Tronchin – SGBV Programme Manager, Justice Rapid Response (f.tronchin@justicerapidresponse.org)

Risks and confidentiality policy

There is no particular risk associated to this project for the students or experts and practitioners interviewed.

Regarding confidentiality, students will agree not to share information on this project and/or TRIAL International's mandate, job and purpose with any third party not implicated in the project itself.

As for the experts and practitioners, TRIAL International will not openly divulgate their names and position. A specific consent form, explaining confidentiality of the data,



archiving policy, sharing and utilisation of all the information regarding the interviews will be developed in accordance with the University of Essex standards and TRIAL International policies.