

# Accountability for conflict-related sexual and gender-based violence: Successes, challenges, narratives, and omissions



A report on a symposium, Pretoria  
15-17 March 2017



Kingdom of the Netherlands

**BELOW:**  
Welcome reception



It was our aim, through the symposium, to bring together various stakeholders in accountability for ‘conflict-related’ sexual and gender-based violence.

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The richness of the presentations, the openness, and the challenging feminist space made for what we believe to be important conversations, observations of several serious gaps in current approaches, and a celebration of the successes of many in the room who have been working tirelessly for justice.

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# A LETTER FROM THE SYMPOSIUM ORGANISERS

*Dear friends and colleagues,*

It is our pleasure to present to you the report on a symposium entitled *Accountability for conflict-related sexual and gender-based violence: Successes, challenges, narratives, and omissions* which took place at the University of Pretoria from 15–17 March 2017. The symposium was jointly organised by the Institute for Justice and Reconciliation, and the Department of Political Sciences at the University of Pretoria.

It was our aim, through the symposium, to bring together various stakeholders in accountability for ‘conflict-related’ sexual and gender-based violence with a view to engaging with histories, processes and operational successes and challenges as well as displacements, narratives and accountabilities potentiated by contemporary approaches towards, and policies for, sexual and gender-based violence. Indeed, ‘conflict-related’ sexual and gender-based violence has received a lot of attention in legal, media, and policy circles in recent years. We were interested in facilitating discussions about how this attention was manifesting in actual change, in whose name the authors of legal and policy changes were speaking, and what – and, most pointedly, *who* – is being included and excluded from this conversation.

We purposefully had little by way of agenda for what, explicitly, should come out of the symposium; our hope was that the insights of those we brought together would guide the symposium and, indeed, the committed and thoughtful people in the room allowed the symposium to take on a life of its own and to engender critical and original ideas about how

to approach sexual and gender-based violence – ideas that often fall by the wayside in much of the literature and activism surrounding the issue.

We did, however, make some very deliberate decisions regarding the symposium, which we thought would best foster the kinds of conversations required. First, the symposium happened under the Chatham House Rule. This enabled us to have challenging, honest and critical conversations in ways that provided space for exploration and held each of the participants accountable. Each of the symposium participants approved the sections on their presentations in this report prior to publication. The openness with which some very difficult conversations took place is a tribute to our participants, and we are grateful for their spirit of engagement.

We also made the deliberate decision that the delegates we invited would be predominantly black women. Despite the fact that black women are doing some of the most significant research, legal work and activism on sexual and gender-based violence, bear the brunt of sexual violence globally, and constitute the majority of the International Criminal Court (ICC)’s recognised victims in its current open investigations, very often conversations about sexual violence globally take place without the presence of black women. This was at once a political decision that sought to counteract the hegemonic white dominance in many international justice spaces, as well as a substantive one in recognition of the obviously limited narrations and discourses on international justice absent the theoretical, practical, and empirical contributions of black women.



Most profoundly, we believe, the symposium produced many unanswered questions. Rather than viewing this as an obstacle, we believe this is a deeply significant factor. We believe that too much wrong has been done in the name of easy solutions without enough questions.

In a similar spirit, we were particular about inviting delegates from ICC situation countries and other contexts where recent developments in transitional justice have occurred. We were privileged to be joined by survivors of sexual and gender-based violence, lawyers, prosecutors, academics, civil society actors, and activists from Chad, Kenya, Côte d'Ivoire, Uganda, and the Democratic Republic of the Congo, who generously shared their insights, research, and experiences. At the same time, we sought to reject the patriarchal distinctions between war and peace in recognition of the fact that sexual violence is a global phenomenon, and we self-consciously included presenters on contexts that were not explicitly situations of war, armed conflict, or mass violation, to challenge these methodological distinctions and in acknowledgement of the fact that, regardless of the existence of armed hostilities, a global war on the bodies of women and people of marginalised sexual identities exists perpetually.

Finally, we were deliberately interdisciplinary, and included those who advocate different approaches to addressing sexual and gender-based violence methodologically and practically. In many respects, with the advent of the Women, Peace and Security Agenda, as well as the work of the ICC, a prosecution-centric approach to gender-based violence has proliferated globally. We were delighted to include approaches that focus on prosecution, but also looked at other approaches, including those focused on restorative justice, reparative justice, memorialisation, and communal accountability, and the interactions between processes. In this regard, we were able to examine unintended consequences, narratives, inclusions, exclusions and impacts on victims and

survivors of these different approaches. Ultimately, here, it was emphasised by many participants that the homogenisation of victims and their preferences often advocated by those of us who hold positions of power can be violent, and that truly victim-centric justice requires listening to what victims want from a justice process – which may also include approaches that practitioners, prosecutors, activists or academics focusing on particular individual mechanisms are not themselves advocating.

We believe that the result was a profoundly engaging, at times difficult, and altogether inspiring series of discussions. The richness of the presentations, the openness, and the challenging feminist space made for what we believe to be important conversations, observations of several serious gaps in current approaches, and a celebration of the successes of many in the room who have been working tirelessly for justice.

Most profoundly, we believe, the symposium produced many unanswered questions. Rather than viewing this as an obstacle, we believe this is a deeply significant factor. We believe that too much wrong has been done in the name of easy solutions without enough questions. As such, we present 46 questions that emerged in the course of the symposium at the end of this report. Some of them are partially answered in the report's sections on the various presentations. Many are unanswered. We hope you, our readers, will take them up. In this way, we hope the symposium and its report will function as a series of thoughts, possible directions, and question marks in a broader and ongoing push for justice for sexual and gender-based violence.

# A LETTER FROM THE SYMPOSIUM ORGANISERS

We would like to thank several people who made this symposium possible, and who have supported our work in important ways over the years. Indeed, this symposium is the culmination – and, we hope, a moment in the continuation – of a series of significant feminist collaborations and working partnerships.

We are very grateful to our organisations, the Institute for Justice and Reconciliation, and the University of Pretoria, as well as partner organisations for their support in producing the symposium. We thank Prof. Tim Murithi, Mr Stan Henkeman, Prof. Siphamandla Zondi, Prof. Sandy Africa, Prof. Maxi Schoeman, Ms Rina Du Toit and Ms Kirsty Agnew for their support on many levels for the symposium. We are also thankful to the Centre for Governance Innovation at the University of Pretoria for the use of their wonderful seminar venue and the insights of their researchers who joined us for parts of the programme. We make special mention of Ms Anthea Flink from the Institute for Justice and Reconciliation, whose unparalleled support regarding logistics, bookings and administration was integral to the smooth running of the symposium. We are also deeply grateful to four brilliant young women – Ms Mamello Mosiana from the Institute for Justice and Reconciliation, and Ms Mellissa Mlambo, Ms Janice Saunders and Ms Jesuloba Ilesanmi from the University of Pretoria – who were not only superb rapporteurs and assistants at the symposium, but for whom nothing was too much in supporting it and who excelled at every level of their contributions.

We also thank Ms Mosiana, Ms Mlambo and Ms Saunders for the drafting of this report, which they did with finesse and professionalism. We

thank Mr Armand E.G. Goutondji and his team at AEG Communications for the seamless simultaneous translation at the symposium as well as the translation of this report into French, and Ms Felicity Gallagher of COMPRESS.dsl, whose professionalism, humour and excellence as an editor, publisher, and project manager make it all seem so effortless. Our particularly enormous thanks go to Ms Eleanor du Plooy, a remarkable feminist activist and facilitator, who has facilitated some extremely difficult conversations in the South African context and who generously gave her time to facilitate the final open session of the symposium, during which she probed and guided us, synthesised our ideas and fostered a space for provoking and important questions, which was invaluable to the symposium.

We are deeply grateful to our partner, the Embassy of the Kingdom of the Netherlands in Pretoria. It goes without saying that we are grateful for the generous funding the Embassy has provided for the entire project on accountability for sexual and gender-based violence at the Institute for Justice and Reconciliation. We are equally deeply grateful, however, for the flexible and spirited way in which the Embassy has approached the partnership relationship. The balance between providing total latitude to us and allowing us the independence to pursue research and activities in our own way, coupled with an interest in and commitment to our work, is rare to find. In particular, we are grateful to HE Ambassador Marisa Gerards for her visionary leadership and her iconic approach to women in leadership, HE Deputy Head of Mission Jan Huesken, and Ms Bregje Wijzenbeek for their thoughtful project partnership. We note, in particular, the hard work of Ms Wijzenbeek in



We are deeply grateful for feminist friendships and collaborations, and we are struck by how much support we received for the symposium in informal ways.

organising contracts, and we thank her for opening the symposium. We are also grateful to former Deputy Head of Mission Robert-Jan Siegert, whose commitment to international justice continues to shape global policy spaces.

We are deeply grateful for feminist friendships and collaborations, and we are struck by how much support we received for the symposium in informal ways. In particular, we thank Dr Yassin Brunger and Ms Katy Hindle, both of whom have written excellent policy briefs for the Institute for Justice and Reconciliation, and both of whom acted as springboards for our (sometimes bad) ideas and who were instrumental in helping us shape the programme. We are grateful to Ms Ottilia Anna Maunganidze, Ms Zamandlovu Ndlovu, and Mr Alioune Seck, whose thoughtful guidance on the symposium and beyond, wise counsel, and friendship have meant inordinate amounts to us.

Finally, and critically, we thank the participants of the symposium, whose humility, brilliance, generosity of spirit and ideas were remarkable. The participants, as you will see, included prosecutors, lawyers, survivors of conflict-related sexual violence and activists, and delegates from international organisations including the ICC and UN Women. The openness to discussion, thoughtfulness, insight and engagement was tremendous.

In Sara Ahmed's *Living a Feminist Life*, she remarks: 'There is no guarantee that in struggling for justice we ourselves will be just. We have to hesitate, to temper the strength of our tendencies with doubt; to waver when we are sure, or even because we are sure' (2017: 6-7). It is our view that the symposium provided us and many in the room

with the challenges, the question marks, and the diversity of approaches to go forward in our struggles for justice with the kinds of humility, reflexivity and commitment to holding ourselves accountable that such an expansive project requires. We hope this, the report of this symposium, and particularly the questions, unanswered and answered, will be of value for you in the continued struggle for justice.

Sincerely,

**Kelly-Jo Bluen**

*Project Leader, International Justice  
Institute for Justice and Reconciliation*

**Sithembile Mbete**

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# CONCEPT NOTE

The Institute for Justice and Reconciliation and the Department of Political Sciences at the University of Pretoria are jointly hosting a symposium on accountability for sexual and gender-based violence in armed conflict at the University of Pretoria from 15 to 17 March 2017. The symposium begins with a welcome reception on the evening of 15 March and continues throughout 16 and 17 March 2017.

Sexual and gender-based violence has been a feature of war since the advent of war itself. Rape was endemic to the barbaric logic of colonialism. People of all genders have been victims of rape and sexual violence inside and outside of armed conflict throughout history.

Thus, while sexual and gender-based violence in conflict is not a new phenomenon, what is new is the shift in legal and political frameworks for addressing it. Historically, while there was ample knowledge about the scourge of sexual violence in conflict, it was frequently regarded as 'collateral damage', or, perversely, as a form of just reward for soldiers. During the Nuremberg Trials, despite evidence of sexual violence, no Nazi leaders were prosecuted for sexual and gender-based violence.

The International Criminal Tribunal for Rwanda (ICTR), in the landmark Akayesu case, for the first time recognised rape as an instrument of genocide, thus marking a laudable interruption in jurisprudential history. The role of the ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY), as well as a broad range of actors around them, in producing jurisprudence and attracting global attention to the scourge of sexual violence in war is significant.

It is against this historical trajectory that the Rome Statute, the founding document of the ICC emerges, with its clear criminalisation of sexual and gender-based violence. At the same time, UN Security Council Resolution 1325 and the subsequent resolutions related to the Women, Peace and Security Agenda have done much to concretise the importance of accountability for sexual and gender-based violence in conflict. Moreover, the efforts of gender advocacy group initiatives are to be noted as important steps towards the dismantling of the inherently patriarchal notion of rape as a regrettable error, or as a necessary act of war, unworthy of recognition. In March 2016, in the Bemba case, the ICC had its first conviction for sexual and gender-based crimes and, in the same year, the Extraordinary African Chambers convicted former Chadian President Hissène Habré of sexual violence as a crime against humanity. The move towards the recognition of the importance of accountability for sexual violence is a critical interruption of histories of legal and policy ambivalence to the issue.

At the same time, there have been many operational challenges to the prosecution of sexual and gender-based violence. Additionally, an increasing body of literature and activism examines the limitations and omissions of a central focus on prosecutorial approaches to sexual and gender-based violence. Some suggest that a legalistic focus that sees the prosecution of perpetrators of sexual and gender-based crimes as the ultimate source of justice may define an agenda both about what justice looks like, and what sexual and gender-based violence in conflict looks like, in turn potentiating hierarchical approaches to sexual violence and its victims. In light of this, at this significant point in the history



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of prosecution of sexual and gender-based crimes, this symposium seeks to bring together academics, activists, lawyers, policymakers, and international justice practitioners with a view to engaging with histories, processes and operational successes and challenges – as well as displacements, narratives and accountabilities – that are engendered by contemporary approaches and policies towards sexual and gender-based violence in armed conflict.

The symposium will feature panels on the Women, Peace and Security Agenda, around policies and jurisprudence related to the prosecution of sexual and gender-based violence under the rubric of war crimes, crimes against humanity, and genocide, and the developments from the ICC and complementary jurisdictions.

In this regard, it will look at the histories of prosecution of sexual violence, as well as the operational successes and challenges involved in the prosecution of sexual violence, and its concomitant processes. The symposium will also examine broader conceptions and incidence of sexual violence inside and outside of armed conflict. It will look at the incidence of sexual and gender-based violence in armed conflict outside of the conceptualisation of war crimes, crimes against humanity and genocide to consider the gendered structural violence of conflict, as well as sexual violence that is not encompassed by war crimes, crimes against humanity and genocide. It will examine critically mechanisms for redress for sexual and gender-based violence in war, and will look at emerging issues in the framework of prosecuting sexual and gender-based crimes. It seeks, thus, to situate contemporary processes around accountability within a broader context of international justice and international relations.

The symposium forms part of a project at the Institute for Justice and Reconciliation on accountability for gender-based violence. The Institute acknowledges the generous support of the Embassy of the Netherlands in Pretoria for the project.



**FOR MORE  
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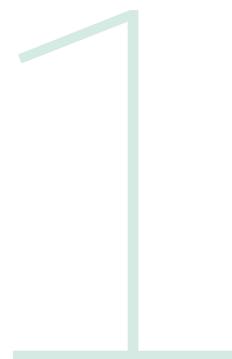
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## PANEL 1

# Recent developments in international accountability for conflict-related sexual and gender-based violence



The first panel looked at recent developments globally in terms of accountability for conflict-related sexual and gender-based violence. Panellists from the ICC, UN Women and civil society discussed developments in terms of the Women, Peace and Security Agenda, the ICC Office of the Prosecutor's *Policy Paper on Sexual and Gender-based Crimes*, and broader successes, challenges and directions going forward in terms of accountability for sexual and gender-based violence. Highlighting the effects of conflict on women, panellists spoke to the need to foster peace globally and spoke to the distinctions between sexual and gender-based violence. The panellists emphasised the importance of the involvement of multiple stakeholders (victims, states, NGOs, international government organisations) so as to address sexual and gender-based violence holistically.



### SHAMILA BATOHI

Senior Legal Advisor, Office of the Prosecutor (OTP), International Criminal Court

#### **The International Criminal Court's *Sexual and Gender-based Crimes Policy Paper* and developments regarding accountability for sexual and gender-based violence at the International Criminal Court**

Batohi's central focus was on the perspectives of the Office of the Prosecutor of the ICC (OTP) and its *Sexual and Gender-based Crimes Policy Paper*, adopted in 2014. Batohi spoke on the evolution of the provisions for sexual violence in international criminal law instruments. She highlighted that, although the Nuremburg trials were the first instance of international accountability for atrocity crimes, their Charter contained no provisions criminalising sexual and gender-based violence. The International Criminal Tribunal for Rwanda and International Criminal Tribunal for the former Yugoslavia created a precedent in which rape was considered a crime against humanity. Batohi highlighted that the Rome Statute includes many other sexual offences as crimes against humanity and is the



Panel 1: Loveness Jambaya Nyakujarah, Shamila Batohi, Yassin Brunger and Tamara Naidoo.

first instrument to recognise sexual violence crimes as war crimes.

Beyond the extensive provisions for sexual violence in the Statute, Batohi noted that there have been some challenges in the prosecution of sexual violence by the ICC. Although over 70 per cent of perpetrators indicted by the ICC were charged with sexual violence crimes, it was only in 2016, with the conviction of Jean-Pierre Bemba Gombo, that the ICC achieved its first conviction for sexual violence crimes. Batohi indicated that this emphasised the importance and the need for the *Sexual and Gender-based Crimes Policy Paper* adopted in 2014. The policy clarifies the OTP's commitment to addressing sexual and gender-based violence, informs good investigation and prosecution of such crimes and, through its implementation, contributes to the development of international jurisprudence. Batohi noted that it may also serve as a reference for domestic and international investigations prosecutions.

Batohi noted that the uniqueness of the OTP's Sexual and Gender-based Crimes Policy, is the conducting of a gender analysis which that requires an examination of the underlying differences, inequalities and power relationships between women and men, and girls and boys, and other dynamics which that determine and shape gender roles in a society, and give rise to assumptions and stereotypes, thus unveiling the need understand how gender dynamics impact on the commission of sexual and gender-based violence. Batohi also highlighted a need to unpack further the existing definitions of gender. The Rome Statute presently recognises gender as male or female; Batohi noted that the recognition of a

'third gender' and gender neutrality in India and Australia, are crucial for the development of understandings of gender.

Batohi concluded her presentation by reiterating the recurrent theme: the need to include victim-centred approaches, particularly in the implementation of the OTP's Sexual and Gender-based Crimes Policy. She encouraged a 'do no harm' approach in engaging with victims and managing their expectations, urging states to conduct genuine proceedings that employ a victim-responsive approach. In conclusion, Batohi encouraged multiple stakeholders, including states parties to the Rome Statute, victims' groups and NGOs, to support the OTP in implementing its policy, as it is a crucial development in the prosecution of sexual and gender-based violence as international crimes.



### LOVENESS JAMBAYA NYAKUJARAH

*Programme Specialist, Women Peace and Security, UN Women*

#### **Developments around the Women, Peace and Security Agenda**

Loveness Jambaya Nyakujarah's presentation provided an overview of efforts surrounding

Drawing further on the Global Study, Nyakujarah noted that only 9 per cent of peace negotiators are women, while only 3 per cent of personnel in UN peace missions are women, who serve mostly in support roles. Nyakujarah highlighted that increasing the number of women judges and other front-line justice sector officials can create more conducive environments for women in courts and make a difference to outcomes in sexual violence cases.



the implementation of the Women, Peace and Security Agenda. The presentation examined the implementation of UNSC Resolution 1325, the first formal and legal Security Council document that requires parties to conflict to prevent violations of women's rights, to support women's participation in peace negotiations and post-conflict reconstruction, and to protect women from sexual and gender-based violence, as well as subsequent resolutions related to the Women, Peace and Security Agenda.

Nyakujarah focused on the key findings of the 2015 Global Study commissioned by then UN Secretary-General Ban Ki-moon, *Preventing conflict, Transforming justice, Securing the peace: A Global Study on implementation of UNSCR 1325*. The report confirms what is already widely known - that there is progress in implementing the resolution, but that progress is painstakingly slow.

Other highlights from the report noted by Nyakujarah, include the UN secretary general's appointment of a Special Representative on Sexual Violence in Conflict, that peace agreements that have reference to women have increased from 11 per cent to 27 per cent, that there is an international roster of experts to support the investigation into international crimes, and that monitoring and evaluation mechanisms are in place to report on sexual and gender-based Violence. Nyakujarah however emphasised that there are few actual prosecutions of SGBV cases at national level.

Drawing further on the Global Study, Nyakujarah noted that only 9 per cent of peace negotiators are women while only 3% of personnel in UN peace missions are women who serve mostly in support

roles. Nyakujarah highlighted that increasing the number of women judges and other front-line justice sector officials can create more conducive environments for women in courts and make a difference to outcomes in sexual violence cases. To emphasise this point, she noted that from 1993 to 2004, in every case before the International Criminal Tribunal for the Former Yugoslavia resulting in redress for sexual violence crimes, there were women judges on the bench.

Criminal justice alone cannot bring about the social transformation required to ensure that violations do not occur again. Post-conflict justice must also include transformative truth-seeking, reparations, institutional reform and memorialisation, which seek to recognise and address underlying gender inequalities.

In conclusion, Nyakujarah highlighted that criminal justice alone cannot bring about the social transformation required to ensure violations do not occur again. Post-conflict justice must also include transformative truth seeking, reparations, institutional reform and memorialisation, which seek to recognise and address underlying gender inequalities.



Bregje Wijsenbeek



**TAMARA NAIDOO**

*Programme Manager, Friedrich-Ebert-Stiftung, Johannesburg*

**Towards peaceful and inclusive societies:  
The UN 2030 Agenda's Goal 16 and gender,  
peace and security**

Naidoo's presentation focused on gender and peacebuilding in the context of the 2030 Agenda for Sustainable Development, the global development framework with goals and targets covering economic, social development and environmental protection. For Naidoo, the UN 2030 Agenda is one of the most progressive international commitments to eradicating poverty in its seeking to address poverty through a multitude of intersectional issues.

Using the 2030 Agenda's intersectionality as a tool to examine conventional peacebuilding efforts, Naidoo spoke about how it exposes the extent to which patriarchal gender norms are institutionalised and continue to reproduce narrowly defined, unjust programmes and insecurity, despite the good intentions of the peacebuilders. For Naidoo, with the key resources directed to high-level state-building and military

strength, gender-based violence remains endemic, yet secondary. By linking Goal 5 (gender issues) and Goal 16 (conflict and gender violence), Naidoo examined the ways in which conflict exacerbates gender inequality and the double burden of women in the productive and reproductive function within times of conflict.

Naidoo highlighted several key opportunities in streamlining peacebuilding goals to contribute to a multi-pronged approach able to protect and promote the rights of women and empower women and their families through measures of accountability, which include aid effectiveness, dialogue and effective financing. For Naidoo, the 2030 Agenda potentiates the mix of state and non-state actors in peacebuilding to re-align energy and resources

Ultimately, for Naidoo, there is a need to rethink conventional peacebuilding strategies that omit gendered analysis. Naidoo notes, though, that a gendered analysis is not a straightforward task. She attributes this to the change in beliefs held by what she terms 'millennial feminists' who, she argues, have removed the binary asks of traditional feminists, and assert a full plate of rights in the gendered analysis of peacebuilding. Environmental, developmental, socio-economic and democratic interests are all relevant in the upliftment of women. In conclusion, Naidoo noted that, while UN norm-setting activities like the 2030 Agenda are useful for inspiring common action, the UN and related bodies can perpetuate the fixation with state-level peacebuilding. To address gender-based violence and the host of ills related to it, a sustainable peace is dependent upon 'bottom-up nation-building processes'.

## PANEL 2

# Case studies on accountability for sexual and gender-based violence in conflict



Panel Two examined recent case studies in accountability for sexual and gender-based violence in the Hissène Habré case at the Extraordinary African Chambers, the case of Jean-Pierre Bemba Gombo at the ICC, and various cases in the Democratic Republic of the Congo. The panellists included Delphine Djiraïbé, Jean-Jacques Badibanga, and Séraphine Kilongozi Musambi, three legal practitioners who have been integrally involved in each of the respective cases. While the panellists spoke to the specifics of the cases on which they worked, all panellists highlighted the importance of victim-centred approaches, particularly in the prosecution of sexual violence, as the possibility for re-traumatisation and transgenerational trauma transfer is high.



### JEAN-JACQUES BADIBANGA

*Senior Trial Lawyer, International Criminal Court*

#### **The ICC's first conviction for sexual and gender-based violence: *The Prosecutor v. Jean-Pierre Bemba Gombo***

Badibanga's presentation focused on the 2016 conviction in *The Prosecutor v Jean-Pierre Bemba Gombo*, which was the first conviction for sexual and gender-based crimes at the International Criminal Court. Speaking with insights from his position as senior trial lawyer for the prosecution on the case, Badibanga spoke to its challenges and possible issues to consider in future prosecutions. Jean-Pierre Bemba was charged with rape both as a crime against humanity and as a war crime, as well as with murder as a crime against humanity and as a war crime. Charges of pillaging as a war crime and, subsequently, bribery were added during the trial. His trial lasted six years and, in 2016, Bemba was sentenced to 18 years' imprisonment.

Badibanga highlighted four significant issues related to the case. First, the extension of criminal responsibility to a military commander-in-chief based in another country. Second,



Panel 2: Séraphine Kilongozi Musambi, Katy Hindle, Jean-Jacques Badibanga and Delphine Djiraïbé.

When working in complex cultural contexts, there is a need to consider how to approach victims or survivors of sexual and gender-based violence as potential witnesses, particularly when cultural contexts make the subject taboo.

Badibanga highlighted that this case was about the responsibility of the superior, and touched on the question of accountability of the superior, where rape has been used as a technique or as a method by his soldiers against the civilian population. Third, he highlighted that, in most cases, the rape of men is qualified as torture or as an inhumane act, but in this case, it was classified as rape, which is unique. He noted, however, that only two men would testify in this case and these were the two counts admitted by the chamber, but simply qualifying it as rape was a challenge. Finally, Badibanga noted the generational impact that Bemba's crimes would have. He argued that these types of crimes have the tendency to impact communities as a whole, as well as future generations. For him, the weight of this impact and its emphasis by the prosecution in the sentencing phase was one of the crucial factors in securing Bemba's conviction of 18 years, which is a *grand premier* at the ICC.

Badibanga further discussed some of the logistical challenges in securing and working with witnesses for the trial. Securing witnesses was made difficult by the time lapse between the event, which took place in 2002 and 2003, and the trial's commencement in 2010. It was important, then, to take into consideration the person's good health

as well as victims who may have moved on from the experience with no intention of bringing it up again. It was also important to take into consideration security concerns as, for witnesses, talking to investigators or NGOs might mean that there are consequences for taking part in the trial. Badibanga further discussed the challenges involved in the fact that the case had more than 5 000 victims, represented by two legal representatives. This was the first time that this number of victims was represented. Badibanga noted that, unfortunately, this was only the number of victims who could get access to the legal proceedings; there were many more victims in the Central African Republic conflict who could not get access to the court case.

Badibanga concluded his presentation by highlighting several prevailing issues in terms of the prosecution of sexual and gender-based violence cases. These include the following:

- When working in complex cultural contexts, there is a need to consider how to approach victims or survivors of sexual and gender-based violence as potential witnesses, particularly when cultural contexts make the subject taboo;
- Badibanga raised the challenge of eliciting all the elements of the crimes as defined by the Rome Statute during the witness's testimony in court. Questioning can be intrusive and a balance needs to be found between protecting the witness and being sensitive on one hand, and the legal requirements for establishing the crime on the other hand. A good interview of the witness during the investigation phase could

serve as preparation by giving the witness an idea of what is expected during the trial;

- Badibanga then emphasised that, in this case, approaching victims ‘was a slow process with maximum safeguards’, which means that there many considerations to make about questioning victims – for instance, the issue of re-traumatisation and whether victims preferred to be interviewed by a man or a woman; and
- Finally, Badibanga noted that as there is renewed conflict in the Central African Republic, this conflict makes it likely that the victims of the crimes in this case will be re-traumatised as they are more vulnerable and could be exposed again to the same kind of violence.



### **DELPHINE DJIRAÏBÉ**

*Chief Attorney, Public Interest Law Centre, N'Djamena*

#### **Accountability for sexual gender-based violence in the Hissène Habré case at the Extraordinary African Chambers**

Djiraïbé, in her presentation, discussed the 2016 conviction of former Chadian president, Hissène Habré, at the Extraordinary African Chambers in Dakar, and the challenges, trauma and processes involved in including sexual violence charges in the case. In particular, she addressed the role of women and legal practitioners, their importance in the prosecution of sexual and gender-based violence, and the ways in which women can apply gender-sensitive approaches when dealing with survivors. Her presentation made special mention of the remarkable women who testified in Hissène Habré case and the courage this entailed.

Djiraïbé described how she worked with women survivors of the police force responsible for much of the abuse in the course of the Habré presidency, the Documentation and Security Directorate (DDS). She described some of the difficulties in working with issues of sexual and gender-based violence in

the Chadian context, in light of the fact that there are very few experts on sexual and gender-based violence in Chad. Despite the significant challenges, and the protracted trial, she noted how remarkable it was that justice prevailed, and that gender-based violence was included in the conviction.

Djiraïbé noted the immense trauma that survivors went through in the process of testifying and during the investigations, and highlighted the risk of re-traumatisation involved in prosecution of sexual and gender-based violence. Additionally, she highlighted the prevalence of reprisal attacks by Hissène Habré supporters on those who testified. Despite this, she noted the courage and determination of those who testified. In her own words, ‘the women that we brought decided that they did not even want to hide their faces anymore, they wanted to look [Hissène Habré] in the eye and ask him why he did that to them’.

In light of the significant trauma, Djiraïbé emphasised the importance of survivors’ working with women attorneys and investigators. She further highlighted the importance of building trust, and detailed the ways in which this was accomplished through sharing rooms and spending a lot of time together – moving the relationships beyond the attorney–client relationship to a trusting, shared space. As she put it: ‘Because this was a do or die situation, you were no longer a normal attorney doing your job, you are accompanying these women and sharing the social lives of the victims on a daily basis, it’s important to build trust so that they can open up and testify.’

Djiraïbé further highlighted the importance of the trial’s taking place outside of Chad, on account of limited trust in the Chadian justice system. She noted the insufficiency of legislation in Chad, specifically as it pertains to the definition of rape – which means that very few cases actually go before a judge, and often leads to protracted and unconcluded trials when they do. The trial’s location in Dakar, for Djiraïbé, provided a sense of confidence and protection for survivors and victims. She concluded by highlighting the importance of accountability and the danger of impunity in the fight against sexual and gender-based violence.



### SÉRAPHINE KILONGOZI MUSAMBI

*Deputy Representative of the NGO Action Contre L'Impunité pour les Droits Humains/ACIDH, Deputy Public Prosecutor at Kinshasa Kalamu Prosecutor's Office and Coordinator of the specialised cells in the fight against sexual and gender-based violence at the Kalamu Prosecutor's Office, Democratic Republic of the Congo.*

#### **Accountability for sexual and gender-based violence in the Democratic Republic of the Congo**

Séraphine Kilongozi Musambi's presentation focused on the challenges surrounding accountability for sexual and gender-based violence in the Democratic Republic of the Congo. Her presentation drew on her experience as a human rights activist, a consultant who collects data on cases of mass rapes that took place in conflict areas in the DRC, as well as Public Prosecutor responsible for monitoring cases of sexual and gender-based violence recorded at her office.

She began by providing some background to the scourge of sexual violence in DRC. She highlighted the role played by the media in bringing to light sexual and gender-based violence cases, which led to the involvement of various actors and, ultimately, to the amendment of laws related to sexual violence. She highlighted that specialised cells have been created in the fight against sexual and gender-based violence at all levels of the national jurisdictions following a circular issued by the Public Prosecutor's Office. The cells have one objective: to handle cases of sexual violence expeditiously and responsibly. The PGI/Kalamu cell published statistics on data recorded at its level for the period 2006–2013. It also indicated that NGOs play a big role in collecting data that enable matters to be referred to regional human rights mechanisms.

She then turned to some challenges associated with justice for sexual violence in the Democratic

Republic of the Congo. In this regard, she highlighted the following:

- Judges and magistrates who deal with sexual violence cases experience challenges due to the lack of medical certificates in most cases, which hinder both the determination of proof and the medical assistance of victims.

Access to justice for victims in rural areas is difficult due to the remoteness of defendants, cultural attitudes, the lack of financial resources, the cumbersome justice system, the fear of retaliation, the lack of confidence in the justice system and the perpetuation of rape culture through magical-mystical beliefs.

- Circuit court or mobile court hearings (courts that move to where the victims are) are hamstrung by inadequate financing. The provision of security and transport of detainees, victims and magistrates to the courts especially when those crimes were committed in remote areas is especially costly. This substantial cost has an impact on the number of mobile courts that can be instituted.
- A further challenge relates to the protection of the anonymity of the victim, which is difficult in the context of open-door mobile court sessions. This is particularly important for avoiding marginalisation of the victim.
- Access to justice for victims in rural areas is difficult due to the remoteness of defendants (both perpetrators and victims, the distance between houses and police stations), cultural attitudes, the lack of financial resources, the cumbersome justice system, the fear of retaliation, the lack of confidence in the justice system and the perpetuation of rape culture through magical-mystical beliefs.
- She further highlighted that, in areas not affected by armed conflict, cases of rape are often dealt with through amicable settlements between the parties at judicial level (especially in cash or kind) in order to close the cases.

## PANEL 3

# Accountability gaps in approaches to sexual and gender-based violence

# 3

Panel Three highlighted some of the gaps pertaining to prosecutorial approaches to accountability for sexual and gender-based violence and the omissions that play out in various contexts of accountability. In this regard, panellists Oryem Nyeko, Sufiya Bray, and Brenda Muturi noted that accountability goes beyond legal processes for the redress of sexual and gender-based violence. Panellists highlighted the fact that most conflicts involve complex victims and complex perpetrators, thus emphasising the importance of thinking through the ways in which socio-economic justice, traditional justice mechanisms, and memory can address some of the accountability gaps in approaches to sexual and gender-based violence.



### **ORYEM NYEKO**

*Communications and Advocacy Team Leader,  
Justice and Reconciliation Project, Uganda*

#### **Contextualising prosecutions for sexual violence in northern Uganda**

Nyeko's presentation explored the complexities of the Ugandan conflict in which he detailed the ways in which perpetrators and victims do not often fit into the neat binaries that are often assumed in justice processes. In this regard, he highlighted the complexity of the case of Dominic Ongwen, a former child soldier and commander of the Lord's Resistance Army (LRA), who occupies both perpetrator and victim identities. For Nyeko, this is arguably why ICC Chief Prosecutor Fatou Bensouda stated, '[w]e cannot hope to write a comprehensive history of northern Uganda', epitomising the complexity of Uganda, which has undergone a decade of latent and blatant conflict related to the LRA.

Nyeko expanded further on these complexities, noting the entanglement of conflict and society in northern Uganda. He noted how the survivors of forced marriages, sexual slavery and forced



Panel 3: Oryem Nyeko, Brenda Muturi, Sufiya Bray and Jaqueline Mutere.

labour have a complex relationship with the perpetrators of these crimes. Many women have borne children from perpetrators, making relationships and inheritance difficult in a context in which identity is rooted in paternal lineage. In this regard, he detailed how many women willingly continue to live with perpetrators of these crimes.

Nyeko further highlighted a key critique of the way in which ICC processes are unfolding in northern Uganda. He argued that there is a need to look beyond the LRA as the sole perpetrator as forced marriage, exploitation and slavery were perpetrated by both the government and the rebels. In the case of the government, these crimes were committed by those charged with protecting victims. Unfortunately, there were very few avenues for accountability as victims feared reporting and implicating the perpetrators in a context of potential intimidation and stigmatisation of those who identify perpetrators.

Many women have borne children from perpetrators, making relationships and inheritance difficult in a context in which identity is rooted in paternal lineage.

For Nyeko, these complexities indicate the importance of discussing issues of sexual and gender-based violence with a view to challenging the stigma associated with it, which often prevents victims and witnesses from speaking out. Finally, for Nyeko, they speak to a need to go beyond prosecution as means of redress, particularly in light of the trans-generational impacts of these crimes.



**SUFIYA BRAY**  
*Project Manager, Advocacy Programme: Centre for the Study of Violence and Reconciliation*

**Accountability gaps: Addressing sexual and gender-based violence crimes within transitional justice**

Bray’s presentation examined the challenges related to reporting, investigating and prosecuting sexual and gender based violence crimes in conflict and post-conflict states. She highlighted the lack of comprehensive, holistic approaches to providing redress to victims. In this regard, she identified several accountability challenges and gaps currently facing the redress and prosecution of sexual violence and gender-based crimes.

Bray began by highlighting some terminological challenges related to addressing gender-based violence. She noted that understandings of victims’ rights are often based on the perspectives of those in control. Bray thus questioned whether legal and transitional justice practitioners and others in the NGO sector consider the implications and consequences of how these processes affect the victims’ lives.

Bray highlighted the lack of women's voices in the design and implementation of transitional justice accountability mechanisms and processes. Bray raised concerns that women are rarely included in either formal or informal peace processes.



Bray then turned to challenges related to access to justice. She noted that, in many rural contexts, there is a lack of access to justice mechanisms. She highlighted the need to reconcile legal systems with traditional justice mechanisms. She also noted that sexual and gender-based violence must continue to be addressed after conflict, as genuine peace cannot exist if patriarchy goes unaddressed.

Thereafter, Bray focused on challenges related to inadequate reporting, documentation, and preservation, and the importance of creating enabling environments for reporting. She highlighted the importance of improving survivors' ability to report sexual and gender-based violence crimes as this can assist access to essential medical and psychosocial care and support. Addressing the challenges that arise from the social stigma and ostracism, the threat of honour killings, and rampant impunity need to be prioritised, as these leave women and men at ongoing risk of attacks and with little hope of ever achieving justice.

For Bray, documentation serves three key purposes. First, it contributes to the creation of a historical record. Second, it is important for purposes of advocacy and awareness. Third, documentation can be used in criminal justice processes. In this regard, Bray emphasised that those involved in documentation processes should be clear about the purpose and objectives of documenting. Bray argued that there is a gap exists in storing and protecting evidence and documents during conflict, and that better strategies need to be developed to address this gap while improving the capacity and expertise of those doing the work.

Bray then detailed some challenges related to prosecuting sexual and gender-based crimes in many contexts. These include:

- the lack of capacity among police, health and legal professionals, and the judiciary;
- the lack or inadequacy of legislation that criminalises sexual and gender-based crimes;
- the absence of specialised investigative and prosecuting units and/or specialised courts to address sexual and gender-based crimes, which often leads to the non-prioritisation of these cases; and
- corruption and mismanagement in justice sectors, which results in widespread distrust in statutory institutions, especially as it relates to their capacity for justice delivery.

Finally, Bray highlighted the lack of women's voices in the design and implementation of transitional justice accountability mechanisms and processes. Bray raised concerns that women are rarely included in either formal or informal peace processes. They are often underrepresented, whether as civil society participants, representatives of warring factions, or mediators of peace negotiations. The norm has been to include women in criminal justice processes after they have begun. For Bray, women should be included from the start, and civil society should reflect on whether it is doing enough to facilitate this process.



Panel 3: Kelly-Jo Bluen, Séraphine Kilongozi Musambi, Delphine Djirabé, Fanta Doumbia, Tshogofatso Semne and Sithembile Mbete.



### BRENDA MUTURI

*Independent Consultant*

#### Policy structures and gaps in terms of accountability for sexual violence in South Sudan and Nigeria

Drawing on work in South Sudan and Nigeria, Muturi's presentation started from the premise that women are treated poorly at all levels within the continuum of armed conflict, which she attributes to deeply entrenched patriarchy and cultural norms. She noted that these are not isolated to conflict, but rather escalate during conflict. For Muturi, there is a need to eradicate the root causes of conflict if women's rights are to be fostered. She emphasised that civil society needs to engage in this process in a collaborative manner with government.

Muturi called for the mapping of conflict-prone areas to ensure gender-sensitive preparedness and the cultivation of safe spaces. In particular, she argued the importance of the availability of dignity kits and rehabilitation. She articulated the importance of the engagement of more women in peace processes, as various studies have illustrated that including women in negotiations has ensured longer-lasting peace. Muturi further argued that

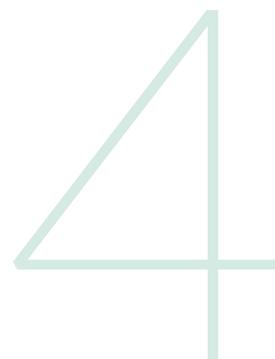
the 'justice system needs to communicate how to better and more effectively provide access to justice to victims and survivors'. Muturi noted that the increase in the number of women in leadership roles in several countries has seen a prioritisation of physical and mental health initiatives, which are key elements of the rehabilitative process for survivors. She also highlighted the role of women in conflict prevention, and particularly in the disarmament process.

Muturi also emphasised the challenges, and the importance of reintegration, of victims into society, as survivors are often shunned.

Muturi highlighted several ways in which accountability gaps related to sexual and gender-based violence might be addressed. She noted that, while soldiers should protect civilians, there have been instances where the agencies that are meant to protect also perpetuate the crimes they are mandated to prevent. This impunity should be addressed and government must work with the UN to impose zero tolerance of these types of crimes. Muturi also emphasised the challenges, and the importance of reintegration as victims and survivors are often shunned. In this regard, Muturi emphasised the importance of sensitisation programmes specific to the plight of sexual and gender-based violence victims and survivors.

## PANEL 4

# The relationships between narratives around sexual and gender-based violence and accountability processes



This session expanded on the power behind narratives around sexual and gender-based violence and the ways in which narratives and patriarchal discourses have the power to include and exclude narratives that do not conform to dominant perspectives. Often, this paints narrow pictures of conflict, which can be detrimental to achieving accountability for those who have been left out of dominant narratives. Panellists in this session thus cautioned the over-simplification of conflict and sexual and gender-based violence, and considered theoretical and empirical arguments about gender, institutional cultures of patriarchy, violence, and conflict.



### CHRISTI KRUGER

*Researcher, Centre for Sexualities, AIDS and Gender, University of Pretoria*

#### **Sociological perspectives on gender-based violence**

Kruger's presentation addressed the sociological aspects of gender-based violence, stemming from two issues: the anatomy of violence after war, and how cultural relativity and universalism can be applied to specific contexts.

Kruger noted that the anatomy of violence after war speaks to the assumption that violence ends when conflict ends. She highlighted the many forms of violence that continue on many different levels, the narratives of which are often left behind. The norms of society during war are usually suspended when atrocities happen. These knowledges, cultures and norms are reproduced over time, which, if not addressed, often lead to reproduction of violence and the warping of identity, including masculinity and what it means to be a man in society.

For Kruger, a way in which these identities might be challenged is through reforming the ways in



Panel 4: Sithembile Mbete, Yassin Brunger, Kelly-Jo Bluen, Claire Kahunde and Christi Kruger.

For Kruger, a way in which these identities might be challenged is through reforming the ways in which memory is preserved. Memory, for Kruger, often has lasting impacts on the kinds of narratives produced in post-conflict countries.

which memory is preserved. Memory, for Kruger, often has lasting impacts on the kinds of narratives produced in post-conflict countries. Kruger emphasised that preventing people's right to remember is itself a form of violence and that memories must be allowed to be carried over to the next generation to avoid the perpetuation of violence. This is often reflected in the discourse of colonial Africa and conflict. Thus, in essence, Kruger emphasised the importance of addressing atrocities at a social and psychological level to address the ways in which violence reproduces itself in post-conflict societies.

Kruger then highlighted that the tension between cultural relativity and universalism is often misunderstood in an unhealthy way. She thus advocated for a de-essentialisation of cultural relativity and universalism, particularly in the application of human rights. In this regard, Kruger emphasised that, in approaches to addressing sexual and gender-based violence, there needs to be an understanding of the tensions of universality and cultural relativism and an openness to turn to local forms of knowledge and experience.



#### CLAIRE KAHUNDE

*Project Officer - Legal Affairs, Justice and Reconciliation Project, Advocate of the High Court of Uganda*

#### Re-victimisation of survivors of conflict-related sexual and gender-based violence

Drawing on a project on which she worked with the Justice and Reconciliation Project that sought to assess the extent of re-victimisation of sexual and gender-based violence survivors in northern Uganda, Kahunde detailed the extent and nature of re-victimisation revealed by the project's findings, which sought to inform further transitional justice processes in northern Uganda in providing holistic support to victims and survivors of sexual and gender-based violence.

Some of the key findings from the assessment include:

- that there were manifestations of ongoing re-victimisation among survivors of conflict-related sexual and gender-based violence. It was established that there is ongoing psychological re-victimisation from family members and

Many victims believe they are re-victimised due to their inherent qualities, including their physical qualities (disability, lack of medical or psychological support), their economic situation (poverty, lack of education, lack of male figures for protection and economic support, missed opportunities), and their psychological qualities (resentment, trauma, isolation, perception of helplessness).



communities, including insults, stigma and rejection, which manifested in trauma, depression and suicide attempts;

- that re-victimisation manifested in significant economic effects, including the burden of raising children alone, poverty, loss of property, and lack of opportunities, mostly attributed to a lack of formal or vocational training. She noted that some women moving forwards sought relationships not only for companionship, but also for financial support, which, she argued, is a form of economic support but also exposes many women to exploitation and abuse;
- that there are substantial socio-cultural effects for both survivors and, in the cases in which survivors had children borne of rape, the children. In particular, she identified the lack of access to land and inheritance rights of many children borne of rape, particularly in cases where the fathers are unknown, as these rights are tied to paternal lineage; and
- that some women are targeted for rape, including marital rape, and domestic violence because they have previously experienced sexual and gender-based violence.

Kahunde then discussed some of the perceptions of victims and survivors of sexual and gender-based violence regarding their re-victimisation. She noted that many victims believe they are re-victimised due to their inherent qualities, including their physical qualities (disability, lack of medical or psychological support), their economic situation (poverty, lack of education, lack of male figures for protection and economic support,

missed opportunities), and their psychological qualities (resentment, trauma, isolation, perception of helplessness). In cases where victims or survivors were married, some of the respondents noted that they had no desire for sex, which led to further victimisation. The effect of this is that many victims and survivors felt hopeless, embarrassed, unloved, suicidal, stressed, and sad.

Kahunde then discussed responses to re-victimisation and what was being done to address and prevent it. In many cases, Kahunde noted, local leaders are aware that re-victimisation is happening, but their approach is a 'blanket' intervention – as opposed to addressing the victims' specific experiences – which precludes authorities' following up on the victims. She noted that there are varying responses in terms of how individuals prefer the issues to be addressed, noting that, in some cases, families prefer to settle the matter informally. She also noted that some cases are not reported to authorities on account of lack of access to transportation, which excludes some victims and survivors from reaching the relevant authorities.

In terms of better responses to re-victimisation, Kahunde argued that support provided should be in the form of health services, livelihood, and economic support for women. She emphasised that there should be mechanisms for redressing past injustices, which offer reparations and social assistance through community sensitisation. Ultimately, she noted the importance of the specific needs of each victim or survivor, emphasising that the needs related to redress are unique to each person.



## **KELLY-JO BLUEN**

*Project Leader, International Justice, Institute for Justice and Reconciliation*

### **The inclusions and omissions of narratives of rape as a weapon of war**

Bluen's presentation focused on the ways in which sexual violence is discussed in conflict, and noted that the notion of 'rape as weapon of war' has become the dominant way of discussing sexual and gender-based violence in conflict. She drew on academic literature, media and policy representations, as well as the Institute for Justice and Reconciliation's work on gender, to look at some of the inclusions, exclusions, and narratives involved in this framing.

For Bluen, on one hand, there is a power behind this narrative. For much of history, traditional notions of acts, crimes or 'weapons' of war did not include sexual and gender-based violence, which were omitted from broader considerations of accountability. The impact of its inclusion is evident in such developments as the ICC's work, the UK's Preventing Sexual Violence initiative and the Women, Peace and Security Agenda resolutions. One of the significant impacts of this is that sexual and gender-based violence cannot be easily excluded from crimes to consider in conflict, and from investigations and accountability, a feature further cemented by the ICC OTP's *Policy Paper on Sexual and Gender-based Crimes*. Bluen, however, argued that it is important to consider where the narrative comes from and the roles it plays, and whose stories or experiences of violence are told and considered relevant.

Bluen raised four concerns about the narrative of rape as a weapon of war:

#### **1. The idea that sexual violence needs to be strategic to make it relevant**

Bluen argued that the requirement that sexual and

gender-based violence be committed as part of a widespread attack, or in pursuit of strategic conflict-related goals, for it to be considered in most international criminal law spaces means that many victims and survivors are excluded. In light of the ways in which this narrative has gained traction, it risks suggesting that those who experience sexual violence outside of these frames are not seen as 'real victims', despite the fact that sexual and gender-based violence happens in many different ways and contexts. There is some complexity, since most recent jurisprudence notes that sexual and gender-based violence does not need to be widespread to be considered; however, linking sexual violence to broader strategy means that many cases are omitted. There is no evidence to suggest that an experience of sexual violence in the context of a strategic instance of mass violence is different from an experience outside this context. In this regard, current frameworks risk marginalising many survivors and victims.

#### **2. The binaries between victims and perpetrators**

Bluen noted that sexual and gender-based violence is a global phenomenon, as part of patriarchy. In this regard, the distinctions between victims and perpetrators that international criminal law prefers mean that those who experience sexual and gender-based violence from the 'perpetrator' or 'enemy' side are often excluded from justice. Bluen drew on the work of Mibenge (2008) and Buss (2009) to look at how Hutu women who were victims and survivors of sexual violence were not considered 'real victims' in the Rwandan genocide. For Bluen, the experiences of sexual violence are diverse; so, there is no one way to be a victim or a perpetrator. Consequently, it is important to consider how to pursue accountability without using essentialised, gendered, radicalised identities when talking about sexual violence.

#### **3. Gender-based violence extends beyond sexual violence**

The multiplicity of ways in which women and individuals of marginalised gender identities experience conflict is vastly different. Therefore, gender-based violence should not be reduced to sexual violence. The problem is that patriarchy manifests in many ways – as a globalised, white, hetero-sexist, trans-antagonist patriarchy. This means that there is a risk of creating these figurative tropes that are advocacy- and donor-friendly, which are generally an agency-less

The problem is that patriarchy manifests in many ways – as a globalised, white, hetero-sexist, trans-antagonist patriarchy. This means that there is a risk of creating these figurative tropes that are advocacy- and donor- friendly, which are generally an agency-less African victim and a barbaric, usually black, African combatant; and this becomes the ‘usual’ story.



African victim and a barbaric, usually black, African combatant; and this becomes the ‘usual’ story. The risk is that everyone who does not fit into that picture or context is automatically excluded from the conversation.

#### 4. Gendered notions of war and justice

Finally, Bluen noted that notions of both war and justice are defined by patriarchy. She drew on feminist literature to note that the notion of ‘conflict’ is defined by parameters of patriarchy to argue that there is a need to unpack when conflict *starts* and *ends*. Much violence happens prior to the mobilisation of forces and after their disarmament. Those who bear the brunt of this violence are often women and those who are marginalised. Bluen further noted that much of the criminal justice system is constructed by and for men, which has repercussions for how victims and survivors experience it and how their experience of gender-based violence is acknowledged. In light of the intersection between these patriarchal constructions, Bluen noted that the narratives of sexual violence as a weapon of war may perpetuate patriarchy in sometimes unintended ways.

In conclusion, Bluen reflected on the multiple approaches to addressing sexual and gender-based violence and the importance of creating spaces for multiple conversations and actions. Patriarchy is a global phenomenon, and sexual violence happens during wartime and peacetime. Accountability and justice, for Bluen, should be reflected as societal conditions, not just as processes.



#### YASSIN BRUNGER

*Lecturer in Human Rights Law, Queen's University Belfast*

#### Institutional responses to narratives around sexual and gender-based violence

Brunger's presentation highlighted the importance of developing gender-sensitive institutional cultures of justice, at national and international levels.

At the ICC level, Brunger argued that this ought to extend beyond the work of the Office of the Prosecutor, to encompass the entire Court and Rome Statute system. Brunger framed her discussion around unveiling the institutions and noted that, when many victims and survivors of sexual and gender-based violence see the personnel of the ICC, they see the Court as whole.

Brunger posed the question: Are the individuals who constitute the institutions themselves gender sensitive, inclusive, and reflective? Brunger used the example from a national context, likening it to the example of a police officer interviewing a victim of sexual violence. In this context, it is important to recognise that this is a relationship between the officer and another human being.

It is a human-to-human interaction that is shaped by social and cultural norms. Brunger asserted the importance of considering the gender competency and sensitivity of the people who conduct and are more broadly involved in institutional operations. She asked participants to consider whether individuals involved in driving accountability for sexual and gender-based crimes – not just at the ICC, but at a national level and within civil society – reflect upon whether their interactions are gender sensitive and gender inclusive.

Brunger then discussed the policy brief<sup>1</sup> on investigations and prosecutions of sexual and gender-based violence at the ICC that she wrote as part of the Institute for Justice and Reconciliation's project on accountability for sexual and gender-based violence. Brunger noted that the aim of the policy brief was to facilitate the creation of more gender-sensitive institutions. It is a blueprint for how to move forwards to create a wider institutional culture of gender sensitivity at the ICC, extending beyond the Office of the Prosecutor, which includes the Judiciary and the Registry of the ICC.

International criminal processes should be gender sensitive and gender inclusive, and this inclusivity should extend beyond prosecutors to all those who encounter and advocate for sexual and gender-based violence victims and survivors.

For Brunger, this is about creating a culture of engendering the crimes within the ICC's jurisdiction. Again, Brunger drew analogies to some national jurisdictions where police forces and prosecutors have specialised units and personnel to deal with sexual and gender-based crimes, and the personnel who encounter these victims have relevant sensitivity training. Brunger argued that the international system should mirror the best examples and follow suit. International criminal processes should be gender sensitive and gender inclusive, and this inclusivity should extend beyond prosecutors to all those who encounter and advocate for sexual and gender-based violence victims and survivors.

Highlighting the ways in which, without adequate resourcing for such developments, they will continue to be deprioritised, Brunger then discussed the need for the Assembly of States Parties to the Rome Statute to consider, seriously, how to incorporate gender-sensitive processes within the budget of the court. Such budgetary considerations can be inspired by processes from national and international institutions. Ultimately, Brunger stressed the importance of resource allocation matching any gender action plan for institutional development. In this way, those involved in working or in contact with victims and survivors of sexual and gender-based violence would be sensitive to gender issues.

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1 Yassin Brunger, 'Investigations and Prosecutions of Sexual and Gender-based Violence by the International Criminal Court', *Institute for Justice and Reconciliation Policy Brief* (No. 23), March 2017. Available at <http://www.ijr.org.za/home/wp-content/uploads/2017/03/IJR-Brief-No-23-Updated-version.pdf> [accessed on 23 April 2017].

## PANEL 5

# The impacts of accountability processes for sexual and gender-based violence

# 5

Panel Five examined the impacts of prosecutions and investigations of sexual and gender-based crimes, and the ways in which these processes affect victims and survivors of sexual and gender-based violence. Panellists Otilia Anna Maunganidze, Fanta Doumbia, and Jaqeline Mutere highlighted that gender-sensitivity gaps in criminal and other justice mechanisms mean that many victims and survivors often feel apprehensive about engaging with these processes, highlighting a need to develop gender sensitivity in available mechanisms for the redress of sexual and gender-based violence. The panel and discussions that followed looked at the ways in which victims, despite often being the rhetorical centre of criminal justice mechanisms, are often sidelined in actual justice processes.



### **OTILIA ANNA MAUNGANIDZE**

*Head of Special Projects, Institute for Security Studies*

#### **An overview of prosecutions of sexual and gender-based violence and their global impacts**

Maunganidze's presentation focused on gender sensitivity and what justice for sexual and gender-based violence entails. Maunganidze firstly offered a critique of current criminal justice processes, arguing that the often-adversarial process can often be damaging to victims of sexual violence crimes. She noted that criminal justice is, indeed, necessary, but that there is a need also to be sensitive and cognisant to the needs of the victim in this process.

Maunganidze noted the continuities of sexual and gender-based violence in pre-conflict, conflict, and post-conflict situations. She argued that the battleground for war is often the bodies of women and children that are instrumentalised and often treated as tools, rather than as autonomous beings. This battle, Maunganidze argues, is the hardest to address. Thus, it is important that the adversarial process of criminal justice is careful not to perpetuate similar patterns of violence in the justice process.



Panel 5: Jaqueline Mutere, Fanta Doumbia, Ottilia Anna Maunganidze and Brenda Mutere.

Maunganidze highlighted the high statistics of gender-based violence in South Africa, a state that is not in conflict. In South Africa, four out of nine women will be raped in their lifetime. However, fewer than 15 per cent of the perpetrators are arrested and, of those prosecuted, most are not convicted. Indeed, just under 0.15 per cent of all perpetrators are convicted. South Africa, however, is 'at peace'; the statistics for countries in conflict are much worse. Maunganidze highlighted that the criminal justice system alone cannot address this problem, particularly in conflict-ridden or post-conflict nations. For Maunganidze, this highlights the fact that very few victims will experience justice. Maunganidze raised concerns about how most sexual violence goes unreported on account of how it is dealt with by officials – particularly during conflict. She also emphasised the need to ensure that actions taken do not ignore the root causes of the problem.

Maunganidze thus proposed that justice should be framed in a manner akin to an analogue clock, with all the parts moving together in unison. She emphasised the need to listen to, and understand the needs of the victims and assess the impact of general accountability mechanisms, as well as the need to work on mechanisms that require, assert and promote peace – including economic vitalisation, community rebuilding and inclusive politics (personal, public, and private). For Maunganidze, this can result in a system that reproduces itself in society. Maunganidze concluded by highlighting the need for holistic care for victims, including provision of basic services and safe spaces, while maintaining justice as a process that can restore people's dignity and lead to sustainable peace.



### FANTA DOUMBIA

*President, Organisations de Femmes Actives de Côte d'Ivoire*

#### **Impact of judicial and non-judicial processes of accountability for sexual violence in Côte d'Ivoire**

Doumbia's presentation focused on the impact and actions of victims' organisations in dealing with post-electoral violence in Côte d'Ivoire in 2010. Doumbia's organisation, *Organisations de Femmes Actives de Côte d'Ivoire*, investigated the violence to which women were subjected in the course of the post-electoral violence and documented 766 cases of violence, of which 217 were physical attacks and 75 were cases of rape. Doumbia noted the manner in which Ivorian women were instruments of this conflict. This resulted in nationwide investigations and the creation of a truth and reconciliation commission. A special cell for these investigations was created to determine and prosecute perpetrators of the violations that took place.

Despite the widespread proliferation of gender-based violence, none of the documented crimes were gender-based crimes. On account of this, the *Organisations de Femmes Actives de Côte d'Ivoire*

Ultimately, Doumbia reaffirmed the importance of accountability, stating that ‘the impunity of today is the crime of tomorrow’.



- together with the International Federation for Human Rights (FIDH), the *Ligue Ivoirienne des Droits de l'Homme* (Ivorian League for Human Rights), the *Mouvement Ivoirien des Droits de l'Homme* (the Ivorian Movement for Human Rights) and the *Association des Femmes Juristes de Côte d'Ivoire* (Women Lawyers Association of Côte d'Ivoire) - lodged a civil party petition to accompany 43 women victims before the Special Investigation Cell (CSE).

This cell, created by the government of Côte d'Ivoire, had a one-year mandate. At the end of its mandate, the authorities announced the termination of the cell. However, significant advocacy by Ivorian human rights organisations led to the continuation of the special cell. Ultimately, a presidential decree allowed it to continue, and it morphed into a Special Investigations and Prosecutions Cell (CSEI).

Two legal proceedings have been instituted within the CSEI and relate to the most serious crimes committed during the crisis. Doumbia noted that, while the CSEI's work was delayed by the announcement of its termination in 2013 and by the challenges in making it operational in 2014, today it has the necessary resources to conduct its investigations. She noted that many human rights organisations are pleased by the reinstatement of the cell, but that substantial investigative work needs to be done for trials to be acceptable.

During the special cell's tenure, it encountered several challenges, which include the following:

- Victims faced stigma and reprisals from their communities;

- The lack of communication and the cost of medical certificates affected the judicial process;
- Rape is not clearly defined in the Ivorian jurisdiction, leaving the High Court discretion to decide whether rape has occurred;
- In 2014, the special cell was not operational and cases had to be adjudicated by other courts. In many instances, perpetrators were incarcerated for short periods; many of the cases are still pending;
- There were difficulties related to the identification of perpetrators, especially in cases of collective and mass rape;
- The protracted process of justice has a significant impact on survivors; and
- Doumbia suggested interrogating possibilities regarding alternative justice and the potential for creating jurisdiction for reparations. Ultimately, Doumbia reaffirmed the importance of accountability, stating that ‘the impunity of today is the crime of tomorrow’.



## **JAQUELINE MUTERE**

*Founder and Director, Grace Agenda, Kenya*

### **Impact of International Criminal Court processes on survivors of gender-based violence in Kenya**

Mutere's presentation focused on the impact of the ICC on the survivors of the post-election violence in Kenya. She argued that, initially, many survivors felt that the ICC was their only hope for justice and that there was much support for the ICC, largely on account of a lack of trust in domestic courts. The phrase 'Don't be vague, go to The Hague' became a common slogan among Kenyan civil society organisations.

Mutere then outlined the trajectory of the ICC cases in Kenya. She noted that, after the cases began to collapse, rape survivors were not acknowledged. In light of the immense hope that the ICC had offered initially, this was deeply disappointing to survivors who were left without access to justice and whose experiences of sexual violence and its impact have been neither acknowledged nor addressed. The best options currently available to the victims in Kenya are the Alternative Justice System and the Justice Restoration Fund. Mutere critiqued the ICC for its

failure to get back to survivors and report on why the cases fell through, noting that the ICC ought to pursue the well-being of survivors of sexual and gender-based crimes with the same fervour with which it pursues perpetrators of violence.

In light of the absence of accountability for sexual violence, Mutere established Grace Agenda, an organisation that brought women and girls in the same position as her (survivors of rape and women who have borne children as a result) together to help one another and assist with one another's children. In her own words, 'once you start to heal the women and mothers, the healing [is] passed on to the children too'.

Mutere stressed the importance of memory and the ways in which it means different things to different people. In this regard, she highlighted the importance of survivors' going through the process of memory themselves. Ultimately, for Mutere, the question is about who can remember, how they can remember, and when they can remember, and that this process cannot be dictated by others. Mutere noted that, if she had not initiated her own agency to get answers from people, she would not have any of the information she shared in her presentation. Ultimately, for Mutere, it is not just about taking the perpetrators to court, but also about support, especially since justice is subjective and means different things to different people.

# QUESTIONS ANSWERED AND UNANSWERED

In the final session of the symposium, Eleanor du Plooy, Project Leader for the Ashley Kriel Youth Desk and Project Leader for Gender Justice and Reconciliation at the Institute for Justice and Reconciliation, facilitated a challenging and critical discussion with all the symposium's participants. The objective of the discussion was to distil the key lessons, encounter ourselves and the gaps in our various approaches, think through what was working and what was not, and consider what gains, successes, exclusions, and forms of violence and power were being engendered in our varying approaches and perspectives.

The questions below emerge from both the discussion sessions after each panel and the final session. They find some answers in the above reports on the presentations, but, of course, in light of the complexity of the issues discussed, the prospect of singular, unambiguous answers is necessarily unlikely. The questions form an interrogative recap of the discussions at the symposium on one hand, but also represent the symposium organisers' belief that the symposium is part of ongoing collaborative conversation and activism towards justice for sexual and gender-based violence. The questions are organised under broad headings, but there is, of course, substantial overlap between the different sections. While some of the questions lay out the trajectory of our discussions, they do not seek to synthesise, but rather to share some reflections, disruptions and question marks, in the hope that this contributes to ongoing humble, reflexive activism in pursuit of accountability for sexual and gender-based violence.

## Power, positionalities, and complicities

1. Who has the right to speak for victims? What power relations are at play when those with positions of power grant themselves the right to represent and determine who is left out?
2. How do civil society actors, particularly established civil society actors, contend with the positions of power they occupy?
3. How do the interactions between transitional justice practitioners or researchers and victims or survivors reflect dynamics of power, class, race and/or gender?
4. How do civil society actors influence donors and resource allocation, and in whose name is this power exercised?
5. How reflexive are civil society actors, international justice practitioners, academics and the ICC regarding their own complicities?
6. Are civil society actors too diplomatic with decision-makers? Do civil society actors 'play it safe' at the expense of victims and survivors of sexual and gender-based violence?
7. How do the lenses of accountability for sexual and gender-based violence in conflict, or in the context of mass violence, address the sexual violence committed by those who are supposed to protect, including, for example, civil society, ICC personnel and UN peacekeepers?



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### **Intersecting oppressions, languages and actions of gender, justice, victimcy, and survival**

- 8.** Is the language used in discussing victims, perpetrators, survivors, sexual and gender-based violence acceptable? To what extent is it informed by patriarchy?
- 9.** To what extent does this language impose on those who have experienced sexual and gender-based violence identities not of their choosing? What gives some people the right to define these terms for others?
- 10.** In what ways do language and action regarding binary definitions of gender and sex foster inclusion and exclusion? Who is left out? Have transitional justice practitioners, the ICC and academics held themselves accountable for the trans-antagonism fostered by gender binaries in definitions of sex and gender in the Rome Statute and other instruments of justice?
- 11.** Have we held ourselves accountable for the ableism often present in approaches to accountability? How, for example, do deaf women experience the international criminal justice system? Are measures taken to ensure that all victims and survivors have access to justice?
- 12.** How might accountability mechanisms better address sexual and gender-based violence against men, particularly in contexts where sexual violence against men is so stigmatised?
- 13.** How might accountability mechanisms better address sexual and gender-based violence against LGBTQI people? Are accountability mechanisms doing enough to address the needs of those with marginalised sexual identities?
- 14.** What are the distinctions between sexual violence and gender-based violence? What are the roles, potential and limitations of these distinctions and where are the areas of intersection?
- 15.** Why have mainstream approaches to accountability for sexual and gender-based violence included, for the most part, so little interaction with the contributions of black feminisms and, particularly, intersectional approaches that take multiple intersecting identities and power relationships seriously? Which approaches would be fostered by this inclusion? What does the lack of inclusion suggest about power and race in the field of research and work in international justice and sexual and gender-based violence?
- 16.** Very often, adversarial processes continue to reproduce patriarchal harms for witnesses. At the ICC, drawing on jurisprudence from the International Criminal Tribunals, for example, defences related to victims' sexual history are excluded. This is particularly important in disrupting gendered oppression. In the Bemba case, this was particularly pertinent. How can the gains in this regard, in the Bemba case particularly, be maintained? How might the exclusion of such factors foster better reporting?

# QUESTIONS ANSWERED AND UNANSWERED

## Trauma, testimony, and justice

17. How can criminal justice systems be more sensitive and responsive to the trauma of adjudication processes?
18. How does cross-examination produce and avoid re-traumatisation? How can lawyers and judges be more aware of this and avoid it? How does the process of testifying produce secondary trauma?
19. Is there a narrative that suggests that the ultimate objective of justice is more important than individual victims' experiences, and how does this affect victims and the legitimacy of justice?
20. How can civil society, justice practitioners and the ICC be more accountable to victims and survivors with whom it works and ensure that secondary traumatisation is avoided at all stages of justice processes? Is enough being done to provide psychosocial support in justice processes?
21. How does the ICC Office of the Prosecutor's Policy Paper on Sexual and Gender-based Crimes (2014) address the specificities of trauma related to criminal justice processes as a survivor or victim of sexual violence?
22. What kind of psychosocial support is required for children borne of rape? Do existing frameworks account sufficiently for intergenerational trauma?

## Memory

23. How do legal proceedings interact with memorialisation?
24. What can be done to foster memorialisation processes that are political, social, psychological?
25. How do documentation processes foster memorialisation and accountability?
26. How does the imbalance in the ways in which violence is memorialised reflect broader global inequality and racism that suggests that white lives are more valuable than black lives? Why, for example, is so much more attention paid to memorialising Western than to memorialising African conflicts?
27. Why is memorialisation of the German Holocaust in the Second World War so much more expansive than memorialisation of the German genocide of the Herero people in Namibia?

## Prosecution-centrism and frames of justice

28. How can international criminal processes interact with other processes? Does one displace the other? Is the dichotomy presented between 'local' and 'international' processes helpful? What do 'local' and 'international' mean, and which lenses are used to define them?
29. How do we ensure that, in advocating for particular approaches to justice, we do not

negate the roles of other approaches? How do we retain the humility and accountability to recognise that sexual and gender-based violence is a complex problem, with heterogeneous victims and survivors and multiple experiences? How do we ensure that we do not allow our lenses and frameworks to crowd out the needs and preferences of victims?

30. What role might communal accountability play in addressing sexual and gender-based violence as has been the case in certain contexts in Iraq and South Sudan?
31. To what extent do the temporal limitations of international criminal justice preclude consideration of historical antecedents to both conflict and the societal and global norms that give rise to the proliferation of sexual and gender-based violence? Can we address sexual and gender-based violence in conflict without a consideration of sexual and gender-based violence before conflict?
32. In light of the broad networks of complicity in many contemporary and historical conflicts, how might justice mechanisms address corporate complicity in conflict? Which mechanisms or courts are best placed to address this? Should courts in the host states of multinational corporations bear responsibility for this accountability? Should regional and sub-regional courts be strengthened and capacitated to address corporate complicity?
33. How might accountability mechanisms better address sexual and gender-based violence committed by private military contractors?
34. Was the Hissène Habré case a landmark for international justice in Africa? To what extent is the model of the Extraordinary African Chambers replicable? What logistical, legal, political and financial issues emerge in considering it as a model?
35. How might reparation and redress be more comprehensively considered? How do issues of land and inheritance interact with some of the narrower conceptions of reparations that often dominate reparations discussions in international criminal justice? How might broader redress, particularly in the context of

sexual and gender-based violence, provide for greater gender equity and independence for women? How might adequate attention to normalised notions of gender and sexual violence prior to conflict shift approaches to reparations?

36. Who is left out in contemporary approaches to justice?

### Relationships with and disruptions of patriarchy

37. How does the way in which sexual and gender-based violence are discussed reflect patriarchal conceptions?
38. How does cultural context interact with sexual violence? How does globalised rape culture interact with the various contexts in which accountability processes are playing out?
39. How is sexual and gender-based violence normalised in societies? How does this interact with the concepts of war and peace, and how helpful are the distinctions between war and peace in light of this?
40. How do the distinctions between war and peace reflect patriarchal framings? If sexual and gender-based violence is an ongoing physical, mental and psychological war on the bodies of women and people with marginalised gender identities, how is framing conflict in relation to the commencement of cessation of armed hostilities reflective of conflict?

### Questions of efficacy and process

41. How might reparations be made more of a priority in international justice? What is required to promote efficiency in terms of reparations?
42. In some contexts, as was the case in Rwanda, the numbers of victims and perpetrators are so expansive that institutions struggle to prosecute. How can international criminal justice respond to this problem? How can domestic jurisdictions respond to this problem? What other mechanisms or processes might be engaged in addressing contexts of such high incidences of sexual and gender-based violence?

# QUESTIONS ANSWERED AND UNANSWERED

- 43.** Which responsibilities lie with different actors? Which roles should actors in civil society and academia play alongside the ICC and states in the fight against sexual and gender-based violence? Which measures can be put in place to facilitate more responsive approaches by all actors?
- 44.** Does the ICC play a preventive role in sexual and gender-based violence? Should it (and those around it) view its role as such?
- 45.** How can the ICC more widely disseminate judgments and developments in cases to victims and survivors so that they are kept informed?
- 46.** What roles can states, civil society organisations and the ICC play in ensuring the requisite evidence is obtained in ICC and/or domestic cases?

We hope that the questions, unanswered  
and answered, will be of value for you in  
the continued struggle for justice.



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