Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR

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No part of this book may be reproduced in any form, by print, photo copy, microfilm or any other means, without written permission from the publishers.
The drawing on the cover of this book was made by Grace, a Tutsi woman. She was a victim of multiple rapes during the 1994 genocide in Rwanda at the age of 14. Due to the genocide, Grace has lost her parents and all her four brothers and sisters. As a result of the rapes, Grace is now infected with AIDS.

The drawing depicts her story as well as those of millions of other women worldwide who have become victims of sexual violence as genocide, a crime against humanity or a war crime.
To Leonie and Jef & Freek

SCHOOL OF HUMAN RIGHTS RESEARCH SERIES, Volume 20

The titles published in this series are listed at the end of this volume.
The idea to write a book on the prosecution of sexual violence before the International Criminal Court (ICC), with the practice of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in mind, originated during my LL.M. studies in international human rights law at the University of Essex (UK) in 1998/1999. A subsequent internship at the ICTY in 1999 further strengthened this idea. During this internship, I became further acquainted with the hard reality that sexual violence is an all too common phenomenon in the context of genocide, crimes against humanity or armed conflict. Women, especially, are the victims of these crimes. A strong disbelief and indignation that such horrendous crimes could ever be failed to be properly addressed on the international level (especially in light of the precedents set by the Nuremberg and Tokyo Tribunals) directed me to study to what extent justice can or should be done to victims of sexual violence by the supranational criminal law system.

When I started this study at the Law Faculty of Tilburg University in 2000, the ICTY and ICTR had already been in operation for a few years. The ICTY and ICTR Statutes and Rules of Procedure and Evidence contain better provisions than their Nuremberg and Tokyo counterparts where the interests of victims of sexual violence are concerned. I was intrigued by the question as to whether the ICTY and ICTR practice would appropriately take into account concerns of victims of sexual violence. Furthermore, I wanted to explore how the ICC, supported by even more elaborate provisions for victims of sexual violence than the ICTY and the ICTR, could deal with sexual violence prosecution and to what extent it should follow ICTY and ICTR practice. In this book, I have tried not only to study and explain the relevant law and to provide recommendations for a more comprehensive supranational criminal prosecution of sexual violence, but also to give a voice to victims of sexual violence and their suffering.

Completing this study would not have been possible without a great many people. In the first place, a special word of thanks goes to my supervisors, Willem van Genugten and Marc Groenhuijsen, for their support over the last five years. I would like to thank Willem for always having given me the space to grow as an academic: his support to and trust in me, both as a researcher and a lecturer in international (criminal) law, has been truly heartwarming. Marc has always been a very active proponent of victims’ rights and his commitment thereto has been a real inspiration to me. I will always treasure our meetings and discussions. I am also indebted to the members of the reading committee: Kelly Askin, Theo van Boven, Cyrille Fijnaut, André Klip and Theo de Roos, for having read and commented on my manuscript. Their writings have been at the basis of this study.
I would also like to express my gratitude to the ICTR, for having given me the opportunity to work there as an intern by assigning me to the Office of the Prosecutor, viz., the Butare team, in 2003. This experience gave me many more insights into the prosecution of sexual violence before an international criminal tribunal. Moreover, during this period, I also had the opportunity to visit Rwanda several times; visits which have left an indelible impression on me. I would especially like to thank Richard Karegyesa, Senior Trial Attorney at the ICTR, for our inspirational talks and subsequent e-mail discussions on sexual violence prosecution.

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Many more people have contributed to this book in one way or another, often only just by inquiring about the progress of my research. Here, I would like to thank Marieke van Eik and Chiseche Mibenge for their support in the final stage of my research. I would also like to thank my colleagues at the Department of European and International Public Law at Tilburg University. Some of them have been instrumental in making life at university even more fun and have become true friends. Margreth de Bonth and Ruben Weigel, who introduced me to the life of ‘AIO-hood’. Saskia Lavrijssen-Heijmans, for her enduring optimism and words of encouragement. Susan Mathews, for her endless interest in my research and for proof-reading some of my chapters. Rianne Letschert, for sharing all ups and downs inherent to writing a PhD thesis; I could not have wished for a better and more caring ‘office mate’.

Last but certainly not least, I would like to thank a few people who are very dear to me. I am very grateful to my parents Jef and Leonie and my sister Vanessa, of whom I am proud. I thank them for their continuing support and love. I pay special tribute to Freek, who has supported me during this research in uncountable ways. He helped me put my troubles concerning this study into perspective at times when I needed it most. My gratitude for his love, faith, patience and encouragement cannot be expressed in words.

Anne-Marie de Brouwer
Tilburg/The Hague, September 2005
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ABBREVIATIONS

AbIH Army of Bosnia and Herzegovina  
ACHR American Convention on Human Rights  
AI Amnesty International  
AIDS Acquired Immune Deficiency Syndrome  
Art. Article  
AFRC Armed Forces Revolutionary Council  
ARV Anti-retroviral  
ASP Assembly of States Parties  
BiH Republic of Bosnia and Herzegovina  
CAT Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  
CCL Control Council Law No. 10  
CEDAW Committee on the Elimination of Discrimination against Women  
Doc. Document  
DRC Democratic Republic of the Congo  
ECHR European Convention on Fundamental Rights and Fundamental Freedoms  
ECtHR European Court of Human Rights  
EoC Elements of Crimes  
FAR Forces Armées Rwandaises (Rwandan Armed Forces)  
FARG Fonds d’Assistance aux Rescapés du Génocide  
FINN Fonds d’Indemnisation  
FWS Foča Witness Statements (Prosecution witness pseudonyms)  
GC Geneva Convention  
HIV Human Immunodeficiency Virus  
HRW Human Rights Watch  
HVO Croatian Defence Council (the Croatian Community of HZ-HB armed forces)  
HZ-HB Herzeg-Bosna  
IACHR Inter-American Commission on Human Rights  
ICC International Criminal Court  
ICCPR International Convention on Civil and Political Rights  
ICRC International Committee of the Red Cross  
ICTR International Criminal Tribunal for Rwanda  
ICTY International Criminal Tribunal for the former Yugoslavia  
ICTY/R ICTY and ICTR  
ICJ International Court of Justice  
IGO International Governmental Organisation  
ILA International Law Association  
ILC International Law Commission
Abbreviations

ILM International Legal Materials
IMFTE International Military Tribunal for the Far East (Tokyo Tribunal)
IMT International Military Tribunal (Nuremberg Tribunal)
ILO International Labour Organisation
NGO Non-Governmental Organisation
MONUC United Nations Mission in the Democratic Republic of Congo
No. Number
Nos. Numbers
N° Numéro
OTP Office of the Prosecutor
p. page
pp. pages
para. paragraph
paras. paragraphs
PrepCom Preparatory Commission for the ICC
RPE Rules of Procedure and Evidence
Res. Resolution
RPF Rwandese Patriotic Front
RUF Revolutionary United Front
RTLM Radio Télévision Libre de Mille Collines
SC Security Council
SFRY Socialist Federal Republic of Yugoslavia
Suppl. Supplement
UK United Kingdom
UN United Nations
UNAMIR United Nations Assistance Mission for Rwanda
UN Doc United Nations Document
UNGA United Nations General Assembly
UNSC United Nations Security Council
UNSCR United Nations Security Council Resolution
UNTS United Nations Treaty Series
US United States
v. versus
Vol. Volume
VPRS Victims’ Participation and Reparations Section
VRS Bosnian Serb Army
WVSS Witnesses and Victims Support Section
VWU Victims and Witnesses Unit