

Victims as ‘Means to an End’: An Investigation into the Construction of CRSV Victimhood in the ICTY

Kirsty Lawrie*

Abstract

Law has the power to pronounce truth. In the context of conflict-related sexual violence (CRSV), this paper illustrates law’s ability to define, legitimise and privilege some narratives of victimhood, while also misinterpreting, silencing, and suppressing others. Looking at courtroom transcripts from the International Criminal Tribunal for the former Yugoslavia (ICTY), this pilot study investigates the witness testimonies of four Bosniak women who, during the Yugoslav Wars, were detained in camps and systematically raped by Serbian soldiers. A contextualised, micro-level, qualitative approach is taken to analyse their testimonies, looking specifically at the courtroom process, conduct between actors and narration of events. Through victim-witnesses’ words the wider structures and individual realities of CRSV are brought to light, with their experiences revealing ethnic tensions at play, ideas of nation-wide justice, and a strong, determined character in victims. Yet this paper argues that such narratives of victims were not acknowledged or understood by either the defence or the prosecution, suggesting that the tribunal failed to gauge the reality of CRSV. Given law’s power, and therefore the ICTY’s power, to pronounce truth, this study is crucial for international legal bodies going forward to improve the comprehension, prosecution, and, ultimately, the interruption of CRSV.

Introduction

Scholars have already investigated the power that international criminal law possesses when constructing narratives of wartime victimhood, especially sexual violence victimhood.¹ However, less is known about the experiences of victims who

* Fourth year undergraduate student of sociology at the University of Edinburgh.

have testified as witnesses before these tribunals,² and whether these legal narratives prove accurate to the narratives of victims themselves.

Specifically investigating the International Criminal Tribunal for the former Yugoslavia (ICTY) as an ad hoc tribunal under international criminal law, the main aim of this criminological pilot study is to examine the construction of an ideal victim of conflict-related sexual violence (CRSV). To realise this, the paper examines ICTY courtroom practices, analysing court transcripts to understand how different parties construct victimhood throughout a trial. Overall, the question the paper seeks to answer here is, are the ICTY's courtroom practises aware and acknowledging of victim-witnesses' own narratives of CRSV victimhood? Thinking more generally and throughout analysis it will ask, what is the courtroom process like? How do actors interact? And can victims construct their own narrative within this context?

This article will first look at law's power to pronounce truth and the many discussions surrounding the definition of victimhood. It will then provide some context on the Yugoslav Wars and background information on the case investigated, delving into the processes and aims of the ICTY. It goes on to explain the chosen methodology, including ethical considerations, data collection, and data analysis. Finally, based on the research findings, it uses a criminological approach to argue that victims' narratives and the prosecution's narratives do not always run parallel. Ending with a discussion of the implications of this conclusion for future legal approaches to sexual violence victims as witnesses, it argues that there is a lack of consideration regarding the everyday experience of sexual violence in conflict. An interruption of the production and reproduction of clear dichotomies between victim/agent and exceptional/ordinary used by law both internationally and on a state-level is required to resolve this issue. While the process of extracting witnesses' true opinions required a great deal of scrutiny, this paper also makes an argument for the use of court transcripts as data.

¹ See Doris E Buss, "Knowing Women: Translating Patriarchy in International Criminal Law," *Social & Legal Studies* 23, no. 1 (2014), <https://doi.org/10.1177/0964663913487398>; Mark A Drumbl, *Atrocity, Punishment, and International Law*, (Cambridge University Press, 2007), 3. <https://doi.org/10.1017/CBO9780511611100>; and Kirsten Campbell, "The Laws of Memory: The ICTY, the Archive, and Transitional Justice," *Social and Legal Studies* 22, no. 2 (December 2012), <https://doi.org/10.1177/0964663912464898>.

² Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia: University of Pennsylvania Press, 2005), 17, <https://www.jstor.org/stable/j.ctt3fhm43>.

This paper asserts that transcripts uncover a great deal about the process, practices, and conduct of the courtroom, as well as witnesses' emotions and thoughts during the experience.

Literature

Defining the 'Ideal Victim' of Sexual Violence

In the past half-century, the world has witnessed numerous incidents of extreme violence within large scale conflicts. The 1990s alone first saw mass genocidal killings of Tutsi political leaders by Hutu militias who believed in Hutu ethnic superiority during the Rwandan Civil War.³ It saw ethnic cleansing, mass murder and rape of Bosniak Muslims by Serbian army and militias during the Yugoslav Wars.⁴ Along with many violent actions during the First and Second Congo Civil Wars, such as the exploitation, hunting, killing, and even eating of Bambuti pygmies.⁵ Such extreme and wide-scale violence, targeted at a civilian population, is understood as 'crime against humanity'.⁶ Previously, due to the scale and international scope, and complex systems of victimhood associated with such war crimes, many criminologists had either not identified atrocity as relevant or viewed it as too large a task, leaving a general criminological gap in the study of atrocity for most of the 20th century.⁷ Yet, legal developments in the 1990s saw a growth in criminological interest in atrocity crime, specifically with the development of international and hybrid judicial institutions.⁸ These advancements sparked questions on how to define victimhood.

³ André Guichaoua, "Counting the Rwandan Victims of War and Genocide: Concluding Reflections," *Journal of Genocide Research* 22, no. 1 (2020): 127, <https://doi.org/10.1080/14623528.2019.1703329>.

⁴ Catherine Baker, *The Yugoslav Wars of the 1990s* (London: Bloomsbury Publishing, 2015), 57–76.

⁵ Jonathan Clayton, "Pygmies Struggle to Survive in War Zone Where Abuse is Routine," *The Times*, December 16, 2004. Accessed July 4, 2023 <https://www.thetimes.co.uk/article/pygmies-struggle-to-survive-in-war-zone-where-abuse-is-routine-zb6g8sz50t6>.

⁶ Robert Cryer, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst "Crimes Against Humanity," in *An Introduction to International Criminal Law and Procedure*, 2nd edition, (Cambridge: Cambridge University Press, 2010) 230–66. <https://doi.org/10.1017/CBO9780511760808.012>.

⁷ Andy Aydın-Aitchison, Mirza Buljubašić, and Barbora Holá, "Criminology and Atrocity Crimes". In *The Oxford Handbook of Criminology* 7th edition, ed. Alison Liebling, Shadd Maruna, and Lesley McAra. (Oxford: Oxford University Press, 2023), 2.

⁸ Aydın-Aitchison, Buljubašić and Holá, "Criminology and Atrocity," 2.

According to Quinney, there are three main constructions of the concept of ‘the victim’: the common-sense constructions (public opinion), officially designated victims (recognised through criminal law), and criminologically constructed victims.⁹ Crucially, definitions are dependent on the experience and standpoint of the individual producing them.¹⁰ This can prove problematic when conceptualising victimhood within complex conflicts, such as the Yugoslav Wars.¹¹ Just as Quinney saw victimhood as often constructed through ‘common-sense’, Christie famously conceptualised the “ideal victim” as victimhood that is acceptable to common social constructions – weak, respectable, blameless, unrelated to the offender, and ‘good’ to the offenders’ ‘bad’.¹² Building on this, Schwobel-Patel brought the “ideal” victim into the realm of international law.¹³ She argues that the role of victims is becoming central to criminal law’s practices and discussions, and that this increased attentiveness to victims is leading to a “visual and discursive specification of victimhood”.¹⁴ Using the example of the International Criminal Court, she argues that proponents of international criminal law invoke a certain image of victimhood as a means of self-legitimization.¹⁵ She argues that the ‘ideal’ victim in the eyes of international law is identified as (a) weak and vulnerable, (b) dependent, and (c) grotesque.¹⁶ These aspects merge to form a “feminised, infantilized, and racialized stereotype of victimhood”.¹⁷ Engulfed by innocence and silence, the ‘ideal victim’ assumes a moral superiority over their victimiser.¹⁸

⁹ Richard Quinney, “Who is the victim”, *Criminology*, 10, no. 3, (November 1972): 314–323, <https://doi.org/10.1111/j.1745-9125.1972.tb00564.x>.

¹⁰ For discussion see Sandra Harding, *Whose Science? Whose Knowledge? Thinking from Women's Lives* (Ithaca: Cornell University Press, 1991): 268, <https://doi-org.ezproxy.is.ed.ac.uk/10.7591/9781501712951>.

¹¹ Amaia Álvarez Berastegi and Kevin Hearty, “A Context-Based Model for Framing Political Victimhood: Experiences from Northern Ireland and the Basque Country”, *International Review of Victimology*, 25, no. 1, (9 July 2018): 20–21, <https://doi.org/10.1177/0269758018782237>.

¹² Nils Christie, “The Ideal Victim”, In *Revisiting the ‘Ideal Victim’* ed. Marian Duggan (Bristol, UK: Policy Press, 2019), 11–24.

¹³ Christine Schwobel-Patel, “The Ideal Victim of International Criminal Law”, *European Journal of International Law*, 29, no. 3, (2018). <https://doi.org/10.1093/ejil/chy056>.

¹⁴ Schwobel-Patel, “The Ideal Victim”, 703–705.

¹⁵ Schwobel-Patel, “The Ideal Victim”, 703–705.

¹⁶ Schwobel-Patel, “The Ideal Victim”, 703–705.

¹⁷ Schwobel-Patel, “The Ideal Victim”, 703–705.

¹⁸ Jan Van Dijk, “Free the Victim: A Critique of the Western Conception of Victimhood”, *International Review of Victimology*, 16, no. 1, (1 May 2009): 6, <https://doi.org/10.1177/026975800901600101>.

In relation to CRSV, the enthusiasm of justice institutions to acknowledge gender violence and inequality in wartime has been the subject matter of both current feminist activism and critique.¹⁹ For many feminists, international courts offer a space within which the gendered effects of armed conflict can be made visible to the world.²⁰ Certainly, since the Nuremberg Trials, international tribunals have improved by way of acknowledgement and prosecution of CRSV.²¹ In 1997, the International Criminal Tribunal for Rwanda (ICTR) formed a new Unit for Gender Issues and Assistance to Victims of the Genocide in order to address the gendered aspects of atrocity.²² In this sense, preceding and present ad hoc tribunals, such as the ICTY, could help to end the historic erasure of women from the post-war accounts of violence and its effects.²³ However, despite the advancements that criminal law is making, scholars have critiqued the way transnational justice institutions perpetuate problematic assumptions about victims of CRSV, arguing that these victims' experiences and realities are being incorrectly defined in order to fit an ideal.²⁴

First, discourse within criminal law has been found to associate 'victim' with 'women', and 'women' with 'sexual violence'.²⁵ Buss examines how international criminal courts define women's experiences of large-scale violence, finding that in another case from the ICTY the Srebrenica Genocide was defined as such on the basis that the majority of those killed in Srebrenica were men and that this would have an effect on the "patriarchal nature of the Bosnian Muslim community"²⁶. Yet Buss argues that the definition of genocide was clear due to the scale and ethnically- and politically-charged

¹⁹ Nicola Henry, "The Fixation on Wartime Rape: Feminist Critique and International Criminal Law", *Social and Legal Studies*, 23, no. 1, (2014): 93. <https://doi.org/10.1177/096466391349906>.

²⁰ Fionnuala D. Ni' Aola'in, "Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-Conflict Societies", *Queen's Law Journal*, 35 (2009): 16. <http://dx.doi.org/10.2139/ssrn.1507793>.

²¹ Mark A Drumbl, *Atrocity, Punishment, and International Law*, 3.

²² "The International Criminal Tribunal for Rwanda and Women Victims and Witnesses of the Rwandan Genocide - The Facts," United Nations International Residual Mechanism for Criminal Tribunals, February 18, 1998, <https://unictr.irmct.org/en/news/international-criminal-tribunal-rwanda-and-women-victims-and-witnesses-rwandan-genocide-facts>.

²³ Henry, "The Fixation on Wartime Rape", 106.

²⁴ For example see, Fionnuala D. Ni' Aola'in, "Advancing Feminist Positioning in the Field of Transitional Justice", *International Journal of Transitional Justice*, vol 6 (2012). <https://doi.org/10.1093/ijtj/ijts013>.

²⁵ Cynthia Enloe, *The Curious Feminist: Searching for Women in a New Age of Empire* 1st edition (Berkeley: University of California Press, 2004): 101–109, <http://www.jstor.org/stable/10.1525/j.ctt1pnb63.10>.

²⁶ Buss, "Knowing Women", 74.

motivations of the killers,²⁷ rather than gender-based structures of the victimised community. Such misrepresentations have the effect of rendering victims as one-dimensional and their experiences of structural effects of inequality (contingent to large-scale conflict) invisible.²⁸

Secondly, Leiby argues that commonly employed definitions of sexual violence are often too narrow and can misrepresent the sexualised nature of violence, notably against men.²⁹ As Charman found, international legal tribunals have historically described distinct acts of sexual violence against men as torture.³⁰ Specifically in relation to rape, Sellers states that since international courts interpret rape to constitute torture, slavery, and genocide, that suggests that “acts of sexual violence fit within the prism of peremptory norms”.³¹ Also referred to as *jus cogens* (Latin for “compelling law”), peremptory norms are the fundamental norms, values, and principles that are widely accepted by international law.³² Sellers goes on to say that rape and sexual violence may only “reach the glory of *jus cogens*” if linked as part of other crimes.³³ Therefore, in the context of war crimes, rape is only prosecutable when “piggybacked” with larger, organised crime.³⁴ When instances of rape are distorted in such a way, they ignore the individual, sexual and gendered aspects of such crimes, maintaining problematic societal conventions surrounding both female and male victimisation.³⁵ This leads to the debate on which CRSV crimes international criminal law should focus on. There has been much discussion about the need to treat international crimes as separate, both procedurally and substantively, from ‘ordinary’ domestic crimes.³⁶ For

²⁷ Buss, “Knowing Women”, 88.

²⁸ Ní Aoláín, “Advancing Feminist Positioning”, 220.

²⁹ Michele Leiby, “Uncovering Men’s Narratives of Conflict-Related Sexual Violence”, in *Sexual Violence Against Men in Global Politics* 1st edition, ed. Marysia Zalewski et al (Routledge, 2016): 143-147. <https://doi.org/10.4324/9781315456492-14>.

³⁰ Thomas Charman, “Sexual Violence or Torture?”, in *Sexual Violence Against Men in Global Politics* 1st Edition ed. Marysia Zalewski et al (Routledge, 2019): 200. <https://doi.org/10.4324/9781315456492-18>.

³¹ Patricia Sellers, “Sexual violence and peremptory norms: The legal value of rape”, *Case Western Reserve Journal of International Law*, 34, no. 3, (2002): 296.

³² Sellers, “Sexual Violence and Peremptory Norms”, 296.

³³ Sellers, “Sexual Violence and Peremptory Norms”, 296.

³⁴ Sellers, “Sexual Violence and Peremptory Norms”, 297.

³⁵ Valerie Oosterveld, “Sexual Violence Directed against Men and Boys in Armed Conflict or Mass Atrocity: Addressing Gendered Harm in International Criminal Tribunals”, *Journal of International Law and International Relations*, 10, (2014). <https://core.ac.uk/download/pdf/215389992.pdf>

³⁶ David J. Scheffer, “The Future of Atrocity Law,” *Suffolk Transnational Law Review*, 25, no. 3, (2002): 389-432.

example, Scheffer argues that “international courts [should be] used sparingly and fairly to bring the worst perpetrators of atrocity crimes to justice”³⁷. Yet, others argue that this campaign to bring “the worst” to justice has come to fruition as part of a pattern of international courts prioritising ‘exceptional’ or ‘extraordinary’ elements of crimes in their prosecution strategies.³⁸ When seeking to understand this decision-making process, one may argue that ad hoc tribunals, such as the ICTY, cannot undertake every case of sexual violence that has occurred during the sometimes decade-long wars they consider.³⁹ That they must instead focus on “crimes of significant magnitude that have seized the world’s attention”⁴⁰ Equally, one may look to Schwobel-Patel again, who explains the construction, normalisation, and reproduction of an ‘ideal’ victim within international criminal law further by conceptualising the “attention economy”.⁴¹ The “attention economy” sees attention as a limited and in-demand resource.⁴² Crucially, global justice actors compete for attention in this system.⁴³ This desire for both speed and effectiveness proves why international criminal law’s attention is rewarded to severe and spectacular victims at the expense of mild and moderate victims. Indeed ‘outrageous’ rape cases have become somewhat of a passion for international criminal law, “no doubt an important marketing strategy of international criminal law’s image of itself as an enlightened, progressive moral force that has the power to vindicate victims, prosecute villains and end impunity for these egregious crimes”.⁴⁴

Therefore, what must be kept in mind throughout this paper is the clear ability of law to (a) define, legitimise and privilege some narratives, while (b) misinterpreting, silencing, and suppressing others.⁴⁵ In short, law has the power to pronounce ‘truth’⁴⁶ so acknowledgement of the victims’ realities is essential for international tribunals,

³⁷ David J. Scheffer, “The Future of Atrocity Law,” 432.

³⁸ Henry, “The Fixation on Wartime Rape”, 100; for further discussion see Mark A Drumbl, *Atrocity, Punishment, and International Law*, 3–6; and David Luban, “A Theory of Crimes Against Humanity”, *Yale Journal of International Law* 29, no. 1, (2004): 100. <https://scholarship.law.georgetown.edu/facpub/146>.

³⁹ Scheffer, “The Future of Atrocity Law”, 431.

⁴⁰ Scheffer, “The Future of Atrocity Law”, 431.

⁴¹ Schwobel-Patel, “The Ideal Victim”, 703.

⁴² Schwobel-Patel, “The Ideal Victim”, 703.

⁴³ Schwobel-Patel, “The Ideal Victim”, 703.

⁴⁴ Henry, “The Fixation on Wartime Rape”, 106.

⁴⁵ Henry, “The Fixation on Wartime Rape”, 106.

⁴⁶ Henry, “The Fixation on Wartime rape”, 97; Buss, “Knowing Women,” 88.

especially in the case of victims of CRSV. Here I conduct a criminological pilot study that asks: are the ICTY courtroom practises aware and acknowledging of victim-witnesses' own narratives of CRSV victimhood?

War, Tribunal and Witness

The ICTY is an international ad hoc tribunal, set up with the purpose of prosecuting war crimes committed during the Yugoslav Wars, a series of separate but related ethnic conflicts that took place in the former Yugoslavia between 1991 and 2001.⁴⁷ Conflicts both emerged from and resulted in the breakup of Yugoslavia into independent countries corresponding to the six previous republics.⁴⁸ Among these was Bosnia and Herzegovina (BiH), inhabited by mainly Muslim Bosniaks and Orthodox Serbs, with a smaller population of Catholic Croats.⁴⁹ The Bosnian War started when BiH declared its independence in early 1992, following Slovenia and Croatia which both did so in mid-1991.⁵⁰ After declaring independence, the Bosnian Serbs, led by Radovan Karadžić and supported by the Serbian government of Slobodan Milošević and the Yugoslav People's Army (JNA), organised their forces inside Bosnia and Herzegovina to ensure an ethnically Serb territory.⁵¹ The goal of the JNA can be characterised as ethnic cleansing, which included the systematic capture, detention, and rape of Bosniak women across BiH.⁵²

In this paper I look at the town of Foča, located in the south-east of Bosnia, where mass rapes occurred as part of this genocidal goal. Women were kept in various make-shift detainment centres such as the Foča High School, or 'Partizan' Sports Hall.⁵³ They lived there in unhygienic conditions where they were malnourished,

⁴⁷ Baker, *The Yugoslav Wars*, 99.

⁴⁸ Baker, *The Yugoslav Wars*, 24.

⁴⁹ Baker, *The Yugoslav Wars*, 57.

⁵⁰ Baker, *The Yugoslav Wars*, 57.

⁵¹ Baker, *The Yugoslav Wars*, 50–68.

⁵² Edina Becirevic, *Genocide on the Drina River* (Yale University Press, 2014) 89, Yale Scholarship Online, <https://doi-org.ezproxy.is.ed.ac.uk/10.12987/yale/9780300192582.001.0001>.

⁵³ United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia, *Case Information Sheet: "FOČA" (IT-96-23 and 23/1) Kunarac, Kovač and Vuković*. https://www.icty.org/x/cases/kunarac/cis/en/cis_kunarac_al_en.pdf.

mistreated, and repeatedly raped.⁵⁴ Serbian soldiers or policemen would come to these detention centres, select one or more women, take them out and rape them; some girls were kept in apartments or even sold as sex slaves.⁵⁵ Here I study the testimonies given by four of these women in front of an ICTY court in an attempt to understand their experiences as victims of sexual violence called to testify as witnesses. These four witnesses were chosen due to their varying ages, experiences, and attitudes, in order to understand the complexities of victimhood.

For this pilot study I selected the *Kunarac et al.* Case,⁵⁶ often referred to as the 'Foča Trial'. It covers the crimes committed in relation to the mass rape in Foča outlined previously. This was the second ICTY trial to deal entirely with charges of sexual violence, however this wasn't the only aspect of the case that served as a landmark. The judgement widened the definition of enslavement to cover not just forced labour and servitude but also sexual servitude.⁵⁷ It also found all three accused to be guilty of rape as a crime against humanity – again, the first conviction of its kind in ICTY history.⁵⁸

A key part of the trial that this paper examines was the evidence given by the victims through oral testimony. Oral testimony refers to testimony where witnesses are physically present in court to answer questions and tell of their experience.⁵⁹ In the ICTY the process of testifying follows three key stages.⁶⁰ First, witnesses are brought forward by one side (in this case the prosecution), which begins by asking the witness

⁵⁴ United Nations, *Case Information Sheet: "FOČA" (IT-96-23 and 23/1) Kunarac, Kovač and Vuković*.

⁵⁵ United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia, *Trial Summary Judgement Of Trial Chamber II In The Kunarac, Kovac And Vukovic Case*. JL/P.I.S./566-e. The Hague: 22 February 2001. <https://www.icty.org/en/cases/judgement-list>.

⁵⁶ United Nations, *Case Information Sheet: "FOČA" (IT-96-23 and 23/1) Kunarac, Kovač and Vuković*.

⁵⁷ ICTY, "Landmark Cases," United Nations International Criminal Tribunal for the former Yugoslavia, accessed March 18, 2023, <https://www.icty.org/en/features/crimes-sexual-violence/landmark-cases>.

⁵⁸ ICTY, "Landmark Cases."

⁵⁹ ICTY, "Witnesses - FAQs," United Nations International Criminal Tribunal for the former Yugoslavia, accessed September 19, 2023 <https://www.icty.org/en/about/registry/witnesses/faq#5>.

⁶⁰ ICTY, "Criminal Proceedings" United Nations International Criminal Tribunal for the former Yugoslavia, accessed March 18, 2023 Criminal Proceedings | International Criminal Tribunal for the former Yugoslavia (icty.org).

questions; this is referred to as “direct examination”.⁶¹ When the prosecution is finished with the direct examination, the defence begins “cross-examination”, where they also question the witness.⁶² Finally, the side that brought the witness to the stand may ask them further questions related to issues raised in the cross-examination, this is known as “re-direct examination”. On top of this, the judges may ask questions at any time during the witness testimony.⁶³

Of note in this trial was the presence of Rule 96 of the Rules of Procedure and Evidence,⁶⁴ used specifically in cases of sexual assault. Here I focus on victim-witnesses, who are characterised by the ICTY either by their experience, witnessing, or familial relation to a victim of a crime. Many of these victim-witnesses “still suffer physical and psychological trauma from the horror that they lived through”,⁶⁵ and indeed, “for these people, the act of testifying is an extremely courageous one”.⁶⁶ Rule 96 states that no corroboration of the victim’s testimony shall be required.⁶⁷ Consent shall not be allowed as a defence if the victim has been subjected to, threatened with, or has had reason to fear violence, duress, detention or psychological oppression, or that another person might be subjected to sexual assault.⁶⁸ Crucially, prior sexual conduct of the victim shall not be admitted in evidence.⁶⁹

⁶¹ ICTY, “Criminal Proceedings.”

⁶² ICTY, “Criminal Proceedings.”

⁶³ ICTY, “Criminal Proceedings.”

⁶⁴ United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, *Rules of Procedure and Evidence*. IT/32/Rev.50, The Hague, The Netherlands: United Nations, July 8, 2015. <https://www.icty.org/en/documents/rules-procedure-evidence> (Accessed September 19, 2023).

⁶⁵ ICTY, “Witnesses”, United Nations International Criminal Tribunal for the former Yugoslavia, accessed March 18, 2023 Witnesses | International Criminal Tribunal for the former Yugoslavia (icty.org).

⁶⁶ ICTY, “Witnesses.”

⁶⁷ ICTY, “Witnesses.”

⁶⁸ ICTY, “Witnesses.”

⁶⁹ ICTY, “Witnesses.”

Methodology

Ethical Considerations

In terms of ethics, there were two main considerations made prior to and during the research and writing stages of this paper. The first I have termed 'harms and benefits'.⁷⁰ Research on human suffering is so painful that some argue that it is only justified if it contributes to the end of that suffering.⁷¹ Ethical sensitivity and care are fundamental when investigating horrors and atrocities suffered, most notably in this case where the rape of these women was violent and ugly. Criminologists using public court transcripts have no direct interaction with witnesses, as these are secondary sources of data. Nonetheless what they reveal is by all means personal, and ethical issues are no less severe than during primary data collection. One of the basic ethical principles outlined in the Belmont report is beneficence.⁷² Beneficence means minimising the risks of harm and maximising the potential benefits for subjects.⁷³ To ensure beneficence, data was gathered from enterprises that have already been performed, maintaining confidentiality, and monitoring the data to assure the safety of subjects.⁷⁴

The second consideration is contextualising.⁷⁵ In researching war crimes both subjects and researchers become situated in an often extreme, violent, and politicised field.⁷⁶ To fully comprehend CRSV one must consider its everyday experience, as sexual violence often becomes daily reality for many victims. Analysis must therefore be contextualised within the circumstances of the conflict.⁷⁷ In order to address this, I

⁷⁰ Jelena Subotić, "Ethics of Archival Research on Political Violence", *Journal of Peace Research*, 58, no. 3, (2021): 342–344, doi:10.1177/0022343319898735.

⁷¹ Karen Jacobsen and Loren B. Landau, "The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration", *Disasters* 27, no. 3, (2 September 2003): 185 –206, doi:10.1111/1467-7717.00228.

⁷² Subotić, "Ethics of archival research", 343.

⁷³ Subotić, "Ethics of archival research", 343.

⁷⁴ Subotić, "Ethics of archival research", 343.

⁷⁵ Subotić, "Ethics of archival research", 347.

⁷⁶ Kirsten Campbell, "Ethical Challenges: Researching war crimes", in *Research Ethics in Criminology: Dilemmas, Issues and Solutions* 1st edition ed. Malcolm Cowburn, Loraine Gelsthorpe, and Azrini Wahidin (Abingdon: Routledge, 2017): 154. <https://doi.org/10.4324/9781315753553-18>.

⁷⁷ Campbell, Kirsten, Elma Demir, and Maria O'Reilly. "Understanding Conflict-Related Sexual Violence and the 'Everyday' Experience of Conflict Through Witness Testimonies", *Cooperation and Conflict* 54, no. 2 (June 2019): 255. <https://doi.org/10.1177/0010836719838586>.

have first moved analysis beyond single offences by considering the full extent of harms experienced by CRSV victims as well as the everyday experiences and decisions they made when dealing with CRSV.

The context of the trial was also considered. Viewing court documents years after trials can mean that transcripts are often completely decontextualized from the social or biographical context in which they were created, indicating that they may be unreliable and subject to ethically challenging interpretations. I have delved into gender norms and structures of power that affect these victims both inside and outside of the courtroom in order to address the ethical consideration of context.⁷⁸

Using Testimonial Archives as Data

This paper takes its data from the testimonial archives of the ICTY; however, there are some issues that come with using transcripts. For one there is a lot of inaccessible information. Often there are redactions, hidden identities, or invisible early stages where witnesses are briefed.⁷⁹ On top of this, large parts of the scripts prove to be somewhat impractical, such as areas where there are issues of communication between parties or technical problems. Such areas interrupt the flow of dialogue and therefore the flow of analysis, extending the amount of time it takes to analyse dialogue.⁸⁰

Crucially, the process of questioning in the court, including what questions are asked and what the aims and direction of questioning are, is out of the researchers' hands.⁸¹ Judges ensure discussions remain relevant to the court's aims, while parties structure their questioning according to their own aims. In this sense, witnesses are being asked different questions than criminologists would perhaps ask them. Despite the differing goals between researchers and courtroom parties, this may in fact be a positive for

⁷⁸ Campbell, "Ethical Challenges", 156.

⁷⁹ Andy Aydin-Aitchison, "Handle with Care: ICTY, Juridical By-Products and Criminological Analyses" in *Legacies of the International Criminal Tribunal for the Former Yugoslavia: A Multidisciplinary Approach* ed. Carsten Stahn, Carmel Agius, Serge Brammertz, and Colleen Rohan (Oxford: Oxford University Press, 2020): 4
<https://doi.org/10.1093/oso/9780198862956.003.0012>.

⁸⁰ Aydin-Aitchison, "Handle with care", 3–9.

⁸¹ Aydin-Aitchison, "Handle with care", 3–9.

criminological research. The very acknowledgement that courtroom discussions are led by legal parties' interests bears the question of whether victims' interests are being considered. Viewing the interactions between actors without the influence of a researcher's presence allows criminologists to see their goals clearly and to understand the context and processes within which they interact.

The aim of this paper, as mentioned above, is to investigate courtroom practices when defining and recognising witness-victims of rape and sexual violence. It therefore fits that the transcripts of such legal frameworks in action would fit as this paper's source of data. In particular, the ICTY is a vast and authoritative body. Its archives contain more than 2.5 million pages of transcripts, indictments of over 160 individuals, and testimonies from over 4,650 witnesses.⁸² Specifically for investigations into CRSV, testimonies made by witnesses before international courts can provide richer accounts of these crimes, insights into the situated and lived experiences of such victims, and evidence of the sometimes banal strategies they adopt in order to survive or resist the violent and coercive way of war.⁸³ In short, despite the complicated process of analysis, testimonies are a useful and relevant source for this paper, offering meaningful and contextualised information that reveals the feelings, interactions and lived experience of the victim-witness.

Data Collection

News articles,⁸⁴ the case information sheet,⁸⁵ and preceding literature⁸⁶ about the trial was read to narrow in and find key witness numbers and events. From here, four key witnesses were identified for investigation, namely Witnesses 62, 51, 50, and 75. Witness 62 is a grandmother; Witness 51 is her daughter, and Witness 50 is her granddaughter. Witness 75 is a similar age to Witness 50. By investigating these particular victim-witnesses, interconnected as family members and varying in age,

⁸² ICTY, "Infographic: ICTY Facts & Figures" United Nations International Criminal Tribunal for the former Yugoslavia, accessed March 18, 2023, <https://www.icty.org/node/9590>.

⁸³ Campbell et al, "Understanding Conflict," 257.

⁸⁴ IWPR, "Foča Rape Case," *Institute for War and Peace Reporting*, February 14, 2001. Accessed March 18, 2023, <https://iwpr.net/global-voices/foca-rape-case>

⁸⁵ UNITED NATIONS, *Case Information Sheet: "FOČA" (IT-96-23 and 23/1) Kunarac, Kovač and Vuković*.

⁸⁶ Becirevic, "Genocide in Eastern Bosnia"

experience, and attitude, I hope to illustrate the complexities of CRSV victimhood. The transcripts of their testimonies were found on the ICTY website and were studied for relevant sections such as mentions of sexual violence and rape. This narrowed the original 2.5 million pages of transcripts available in the ICTY archives down to 1,000 relevant pages, pertaining to court discussions from 20 March to 3 April 2000, which covered the victim-witnesses' experiences in conflict.

Analytical Approach

As advised by Campbell et al, a contextualised, micro-level, qualitative approach was taken to analysis. Micro-level refers to analysis that focuses on small subjects of study, such as individuals, small groups, or social settings.⁸⁷ Equally the research of this paper is qualitative, in the sense that it investigates different actors' understandings of concepts and situations through their own words. Qualitative research is interpretivist, in that it aims to "derive meaning and understanding through the interpretations of others".⁸⁸ In this case, the narratives and perceptions of victims and legal actors within one courtroom was the focus of the research.

Analysis was conducted through NVivo, a software that works with unstructured data, aiding the researcher in interpreting, coding, and structuring that data. Woolf and Silver make clear that NVivo does not do the analysis for researchers, rather – if "harnessed powerfully" – it can give meaning to the mass.⁸⁹

Coding was done through a process termed "stages of effective coding" by Finch and Fafinski.⁹⁰ Through this process, words and phrases were coded into concepts (open coding), which were coded into categories (axial coding), which were then compared to draw a final conclusion (see Table 1). The process began with reading through a few of the interview transcripts in their entirety to familiarise myself, as the researcher, with the data. Starting with the first transcript, I highlighted relevant words, phrases,

⁸⁷ Campbell et al. "Understanding Conflict," 256.

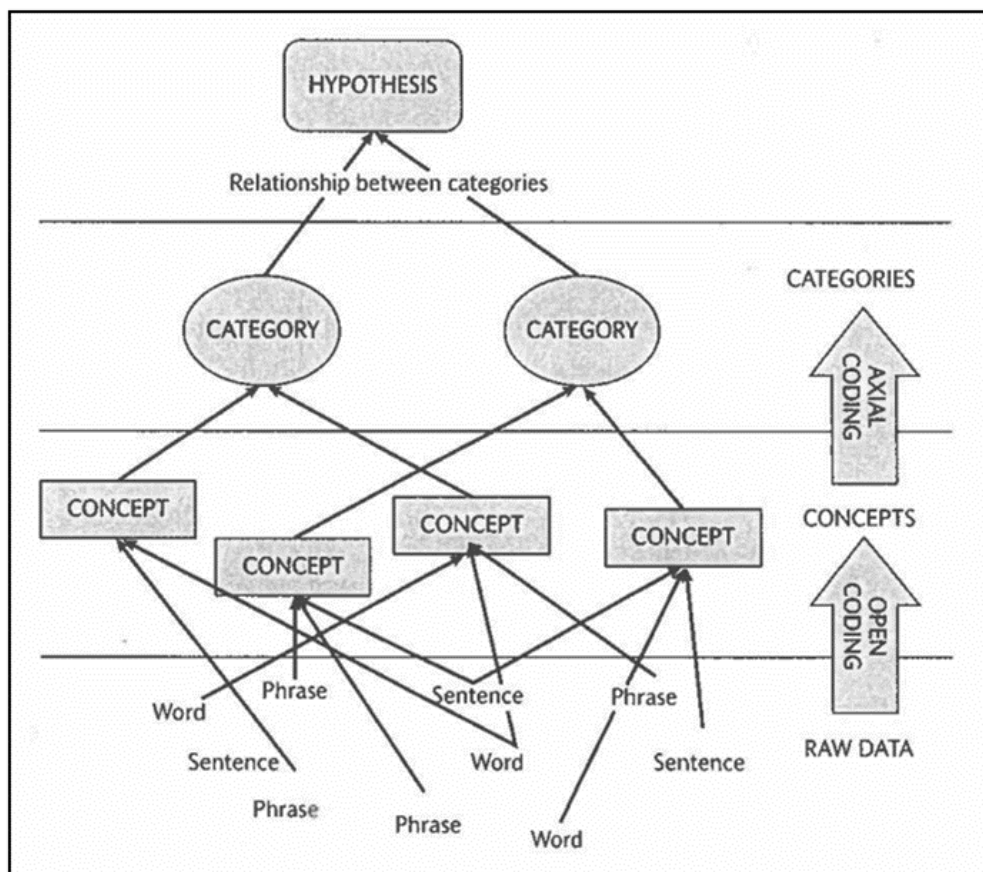
⁸⁸ Emily Finch and Stefan Fafinski, "Qualitative Analysis", in *Criminology Skills* ed. Emily Finch and Stefan Fafinski (Oxford: Oxford University Press, 2019): 383.

⁸⁹ Nicholas Woolf and Christina Silver, *Qualitative Analysis Using NVivo: The Five-Level QDA Method 1st edition*, (New York: Routledge, 2017): 1–9, <https://doi.org/10.4324/9781315181660>.

⁹⁰ Finch and Fafinski, "Qualitative Analysis", 387.

and sentences and grouped them under different codes. I then moved onto the next transcript and repeated this process. Subsequent transcripts, as expected, revealed new themes that had previously not emerged; therefore, a second read through of previous scripts was necessary to see if new themes were relevant.

Table 1: Approach to Coding (where ‘concept’ is equal to ‘code’)⁹¹



Categories, such as ‘Weakness’, were somewhat determined from previously read literature.⁹² However, a few additional categories emerged as research was being conducted. For example ‘War and Ethnicity’ had not been previously considered, but it became apparent through reading that to leave out the part that ethnic tensions played would be to gravely misunderstand these victims. Looking specifically at my categories (see Table 2), instances related to ‘Rape and Sexual Violence’ were identified to first situate the research in the relevant areas of the transcript. General violence was used to identify the threat that accompanies rape in these contexts, and within this the presence of taunting during these crimes revealed much about the

⁹¹ Finch and Fadinski, “Qualitative Analysis”, 387.
⁹² Schwobel-Patel, “The Ideal Victim,” 710.

ethnic nature of these crimes. These steps led to 'War and Ethnicity', which allowed the research to see victim-witnesses within their contexts and better understand their realities before both war and trial. 'Agency' referred to moments where victim-witnesses spoke for themselves, their goals, or their experiences. Additionally, 'Weakness' allowed an understanding of the prosecution's conceptualisation of victimhood. Lastly, 'Conduct' referred to the nature of interactions between courtroom parties, including discernible tone and repetition, revealing what each party found important and how differing narratives related in the context of the courtroom.

Table 2: Codes and Categories

Rape and Sexual violence	General Violence	War and Ethnicity	Agency	'Ideal' Weakness	Conduct
Rape Sex Sexual violence Sex crime Sexualised body parts	Assault Threaten Weapon Taunting	Serb/Chetnik Muslim Ethnicity Information Soldiers Before war During war Peace	Justice Speak up Assertiveness	Forced Frightened Trapped Weak/Frail Shame Consent	Care for witness Interrogation Interruption Witness narration Exasperation/Hostility

Overall, NVivo assured a systematic reading and coding of the transcripts without requiring manually noting down phrases or their location. It can be said without a doubt that the process of 'effective coding' and analysis thoroughly involved myself as the researcher, making clear the context of the data as a whole, as well as the differences between transcripts and therefore between witnesses' experiences.

Findings

As outlined in preceding sections, my research was aimed towards instances where (a) witnesses' feelings and thoughts and (b) the courtrooms' aims and pursuits were apparent. Here I will focus specifically on my findings relating to the three most saturated and valuable codes, in the sense that they reveal most clearly how these victims were understood with the Tribunals process: 'Conduct', 'Weakness', and

‘Agency’. For each code, I will look at the narratives of sexual violence victimhood produced by, and the intricacies of exchange between, the defence, the prosecution, and the witnesses.

Courtroom Conduct and Witness Credibility

‘Conduct’ refers here to the quality of interactions between prosecution, defence, judge and the witnesses. Across the four transcripts, only five references to care being shown towards the victim-witness were found. This included both prosecution and judges expressing words of comfort, such as “I realise this is difficult”⁹³ and “we appreciate the problems you’ve gone through, and we know that it’s very difficult for you to relive”.⁹⁴ Having said this, I found that care shown towards the witnesses was particularly scarce during cross examination by the defence. Witnesses’ credibility is questioned, particularly their quality of memory, yet it becomes clear that insistent and provocative questioning does nothing to aid such memory as witnesses become angered and exasperated. An example of this is when Witness 62 struggled to remember details about one of the accused:⁹⁵

- “W62: I didn't know what to do with myself, here I was, and I lost my family, eight family members. Eight family members I lost, and my husband.
- Prosecutor J: I know that eight years have gone by since then at this point in time we are talking, but five years ago
- Judge M: Witness, would you like a break?
- W62: No, I wouldn't. But I don't want to be mistreated to such an extent. I don't want to be provoked in this way by anyone”.

⁹³ *Prosecutor v. Kunarac et al*, IT-96-23 (27 March 2000): 987.

⁹⁴ *Prosecutor v. Kunarac et al*, IT-96-23 (27 March 2000): 1045.

⁹⁵ *Prosecutor v. Kunarac et al*, IT-96-23 (27 March 2000): 1035

Here the witness appears overburdened, as the defence incessantly continues questioning her for answers she does not possess, with one of the judges having to intervene and allow the witness some respite. This was one of many instances where the defence in particular caused witnesses to express exasperation, as Witness 50 found when being cross examined:⁹⁶

“Prosecutor J: Did you make this statement yourself?

W50: Yes, I did.

Q. Do you stand by what you stated here?

A. I said I can't remember anymore.

Q. So if I understand you correctly, you don't remember what you gave to the Prosecution.

A. Is that a terrible thing, if I can't remember every detail?

Q. I'm not asking you if it's a terrible thing.

A. Well, then I'm telling you, I don't remember how it came about.

Prosecutor J: Thank you, Your Honours. I have no further questions.”

For witnesses the truth was always seen plainly, that they had been raped and that the rapists should be prosecuted and brought to justice. In the procedure of the court however, prosecution is not so black and white, evidence has to be presented and proven, witnesses must be tested, and their memory must be interrogated. Questions of consistency between statements given pre-trial and during trial are interrogated, and details of location, pictures, present people and even building layouts are all asked of the witness.⁹⁷ After a lengthy interrogation about an occasion where the witness

⁹⁶ *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1340.

⁹⁷ See *Prosecutor v. Kunarac et al*, IT-96-23 (28 March 2000): 1082; and (29 March 2000): 1243.

and others were taken out to be sexually assaulted, the witness is asked to recall who was taken out with her. Witness 51 could not recall all the names and appears exasperated:⁹⁸

“W51 (cross-exam by Defence P): What else do you want me to say?”

When told by the Defence that she had no reason to be angry she replied:⁹⁹

“W51 (cross-exam by Defence P): What do you mean I have no reason? Did I have a reason to be raped? Did I want to be raped?”

While the point of cross-examinations is to elicit the truth and test the witness, it is not unwarranted to ask for recognition of a victim-witnesses’ anguish. These women suffered immeasurably, and it is not unsurprising that memories of building layouts and room furniture have been forgotten.¹⁰⁰ Frustration at insistent questioning and misunderstanding is shown here to result in uncooperative and uncomfortable victim-witnesses. For victims of CRSV especially, it often takes years to come forward,¹⁰¹ so sensitivity towards their situation may in fact aid the tribunal, as victims may feel more comfortable to share difficult memories.

The Prosecutions’ ‘Ideal’ Victim

While the defence questioned the witness’s integrity, the prosecution aimed to build a narrative of victimhood that was all too familiar. ‘Weakness’ here refers to this narrative. I found moments where the fragility or vulnerability of victims was made abundantly clear, and equally I found moments where complex narratives were ignored by the prosecution in an attempt to shape the victim into an ‘ideal’.

⁹⁸ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1223.

⁹⁹ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1223.

¹⁰⁰ Chris R. Brewin, “Autobiographical Memory for Trauma: Update on Four Controversies,” *Memory* 15, no. 3 (2007): 227–248, <https://doi.org/10.1080/09658210701256423>.

¹⁰¹ Stover, “The Witnesses,” 89.

One of the most pivotal moments in Witness 75's testimony was when she recalled one of the accused coming to an apartment she was being kept in.¹⁰² There the accused told Witness 75 that he had killed her uncle because he was forced to, although she says she did not believe this. He told her about what was happening in the war and what his superiors were saying. He then sexually assaulted her:¹⁰³

“Prosecutor U : You said he forced you. What do you mean by
 “force”?

W75: Well, that I had to... I don't know how to explain this.

Q: Did he threaten you or did he point a gun at you?

A: No. No. He just said that he couldn't get an erection
 after everything. And then I had to use my hand and
 mouth to stimulate him so that he could get an
 erection to rape me.”

This event was crucial for the prosecution, as part of the ICTY definition of rape is sexual penetration “by coercion or force or threat of force against the victim or a third person”.¹⁰⁴ It was therefore important to the prosecution that it was clear the witness had been threatened. However, her answer complicated things for them. The witness stated there was no direct threat, yet she complied and even stimulated the soldier to speed the process up, showing the tactics she adopted to cope with and survive the violent circumstances of war. To demonstrate the evil of the accused/defendant the victim is painted as sexually pure, forced and threatened. Yet her reality is more complex than that. This is indicative of the flaws of legal definition of rape, as it is clear

¹⁰² *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1451.

¹⁰³ *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1452.

¹⁰⁴ United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, *Prosecutor V Dragoljub Kunarac Radomir Kovac And Zoran Vukovic - Judgement*. IT-96-23& IT-96-23/1-A, The Hague, The Netherlands: United Nations, June 2002. <https://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf> (Accessed September 19, 2023)

the prosecution's 'ideal' victim is equally dictated by legal frameworks as well as social constructions.¹⁰⁵

The focus on penetration is clear through each of these women's testimonies. For example, Witness 50 is further examined by the prosecution and makes this clear:¹⁰⁶

“Prosecutor K: And then what did he do?

W50: Then he raped me.

Q. I apologise again for asking you specifics, but the Court needs to know. Can you describe what he did?

A. This time he raped me vaginally.

Q. Do you mean that he put his penis into your vagina?

A. Yes.”

And again, the next day:¹⁰⁷

“Prosecutor K: When you say "rape" what exactly do you mean?

W50: I don't understand your question.

Q: You said that this 40 -- this elderly man raped you. What exactly did he do?

A: He forced me onto the bed to take my clothes off, and then he raped me, he attacked me and raped me.

Q: Does it mean he put his penis into your vagina?

¹⁰⁵ Schwobel-Patel, “The Ideal Victim”, 709-713.

¹⁰⁶ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1252-1253.

¹⁰⁷ *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1390.

A: Yes.”

The rigid definitions used provide no scope for nuance. Reducing these crimes to the body parts involved ignores the complexity of identities and social interactions at play between and around the victim and perpetrator. Delving further, the witness reveals a glimpse into their reality of what rape feels like and means to them. Witness 51 talks about her daughter being sexually assaulted for the first time:¹⁰⁸

“W51: She did not tell me immediately up there, but it was all clear to me when I saw her, when I saw the state she was in when she walked out, when I saw how much she cried. It was all clear to me what had happened.”

In another instance Witness 50 explains she was taken from the high school to a house in Foča and raped by a soldier who was a stranger:¹⁰⁹

“W50: He had a knife. He said to me, "You will see, you Muslim. I am going to draw a cross on your back. I'm going to baptise all of you. You're now going to be Serbs".”

Again, about another soldier she said:

“W50: I don't remember exactly what he said to me. They were all speaking and saying the same things. Always they were saying, “You Muslim women, you Bule, we'll show you,” and that's what they said, all of them, the same things.¹¹⁰”

¹⁰⁸ *Prosecutor v. Kunarac et al*, IT-96-23 (28 March 2000): 1192.

¹⁰⁹ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1277-1278.

¹¹⁰ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1252-1253.

This is not the first suggestion that ethnicity played a big part in the rapes of these women. In other testimonies of the *Kunarac et al* Case, Witness 48 stated that soldiers told him of orders from superiors to rape their victims.¹¹¹ Another witness's rapist had said to her that Muslim women were being systematically raped "in order to be inseminated by the Serb seed".¹¹² For the prosecution the presence of a weapon and threat constitutes their definition, and the event is taken no further. However, a closer look here shows firstly, the emotional and often unspoken nature of sexual violence in these contexts and secondly, the ethnically charged motivations of their victimisers. Therefore, again the complex realities of CRSV do not always fit within the prosecution's straightforward and easily prosecutable 'ideal' account of events.

Witnesses' Agency in the Face of Adversity

'Agency' refers here to instances of assertiveness found from witnesses, including mentions of a need to 'speak up' for justice or an overcoming of shame. I found bravery in these victims, clear through their declarations of truth often in spite of the prosecution's efforts to build a weak narrative.

In one event during the witnesses' entrapment, several television channels and news teams visited the school for a day. During this visit, soldiers allowed them to film and told them "How they were looking after us [...] how they had saved us"¹¹³ as Witness 75 stated. When asked by the Prosecution why she had not spoken to the journalist and told the truth about what was happening Witness 75 replied:¹¹⁴

"W75: Up to that day I had been raped by almost 50 of them. So how could I say anything, to look them in the eyes?"

Witness 75 shows the shame she feels as a victim of sexual violence, indeed earlier she also stated:¹¹⁵

¹¹¹ Becirevic, "Genocide in Eastern Bosnia", 122.

¹¹² Becirevic, "Genocide in Eastern Bosnia", 117.

¹¹³ *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1400.

¹¹⁴ *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1401.

¹¹⁵ *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1333.

“W75: When I came here, I got over my shame and decided to tell the whole incident as it happened.”

Here it becomes apparent that Witness 75 feels compelled to define her experience truthfully and wholly. This suggests just how important she views her testimony. Choosing only now to tell her story in full, perhaps she saw the legal system as a means to speak the truth. Witness 51 also refers to speaking the truth in her testimony:¹¹⁶

“W51: She was taken out and she wasn't even 17. And you can ask me whatever you like, but that is the truth, that is what happened and nothing else. And I have taken the oath here to tell the truth before this Tribunal and in front of all the people here. And I wanted to tell the truth once and for all so that people know what happened.”

And when asked about certain ambushes that occurred in the region, the witness repeats:¹¹⁷

“W51: I don't know about this, and I don't want to talk about things I don't know about. I talk about myself [...] I am talking in my own name and on behalf of my children.”

And: ¹¹⁸

“W51: It's not easier for me to speak about it today, but nevertheless, I wanted everyone to hear about it.”

¹¹⁶ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1207.

¹¹⁷ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1215.

¹¹⁸ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1247.

Most victims of rape are resistant to testify, often finding it difficult to speak up due to social conventions and resultant guilt.¹¹⁹ The bravery of these victims is clear through their declarations, and refusal of irrational shame imposed on them by patriarchal norms.¹²⁰ Here the agency of victims is illuminated, again often ignored by the prosecution in an attempt to build their narrative of 'weak' victimhood as a mirror opposite to 'strong' perpetration. Yet, my research demonstrates that recognition of victims' agency does not take away from, but in fact stands in spite of, the horrific acts they endured. To recognise testifying victims as strong is not to belittle the actions of the perpetrator. Rather, it speaks to the reality of conflict-related victimisation and – particularly in the case of sexual violence – works against problematic notions of shame.

Discussion

From these results two main points arise. The first refers to the conduct and quality of interactions with the witness shown by the defence and the prosecution, and the second refers to the differing narratives between these three parties. Here I will discuss the implications of these findings, making suggestions for their contemporary relevance in today's legal context.

Conduct: Justice for Victims

It is clear that these witnesses have gone through immeasurable suffering, yet the defence fails to show awareness or understanding of this. Some scholars argue that the purpose of post-war tribunals is to establish a factual record of events, and "to expect more, or view these institutions as vehicles for individual psychological healing [...] is wishful thinking".¹²¹ Here however, cross-examinations were overly interrogative, to the point that they proved irrelevant,¹²² with judges having to intervene

¹¹⁹ Stover, "The Witnesses", 89.

¹²⁰ Henry, "The Fixation on Wartime Rape", 100.

¹²¹ Stover, "The Witnesses," 32; for opinion of the theatrics of a trial see also Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 1977), 9; and Sam Garkawe, "The Victim-Related Provisions of the Statute of the International Criminal Court: A Victimological Analysis," *International Review of Victimology* 8, (2001): 275.

¹²² *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1226; and *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1338.

and move proceedings along as witnesses became angered and uncooperative. While the point of cross-examinations is to elicit the truth and test the witness, it is not unwarranted to ask that the defence and anyone questioning victim-witnesses “provide a certain degree of acknowledgment and recognition to the victims and their communities”.¹²³ For victims of CRSV it often takes years to come forward,¹²⁴ so sensitivity towards their situation may aid the tribunal, as victims may feel comfortable to share difficult memories.

Equally, the aim of the tribunal is to “bring justice”,¹²⁵ yet through a lack of understanding and recognition, victim-witnesses may feel their justice needs are not being met. Simic outlines five elements of victims’ justice interests, namely participation, voice, validation, vindication, and offender accountability.¹²⁶ It may be argued that, as the tribunal works within the attention economy,¹²⁷ its goals are to be seen as effective and unstoppable, rendering its consideration of justice for victims second to this goal. As Stover found, witnesses “complained that their prosecutors showed little or no interest in them after they testified”.¹²⁸ If the aim of the tribunal is to bring justice to these victims,¹²⁹ then using them as means to an end is to disrespect them and ignore their experiences and justice needs.

Ultimately, if victims regard courtroom procedures as humiliating, unfair, or inattentive to their rights and interests, this may interfere with future cooperation.¹³⁰ It is therefore in the interest of the ICTY, and equally in the interest of any courtroom, that witnesses feel acknowledged and respected. Going forward, legal bodies must first treat victim-witnesses with respect and recognition. In doing so they will avoid disrupting their own proceedings and may improve the comprehension and prosecution of CRSV.

¹²³ Stover, “The Witnesses,” 33.

¹²⁴ Stover, “The Witnesses,” 89.

¹²⁵ “Mandate and Crimes under ICTY Jurisdiction”, United Nations International Criminal Tribunal for the former Yugoslavia, accessed March 18, 2023, <https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>.

¹²⁶ Olivera Simic, *Silenced Victims of Wartime Sexual Violence* 1st edition (London: Routledge, 2018): 216 <https://doi.org/10.4324/9781315688398>.

¹²⁷ Schwobel-Patel, “The Ideal Victim,” 703.

¹²⁸ Stover, “The Witnesses,” 17–32.

¹²⁹ “Mandate and Crimes under ICTY Jurisdiction,” United Nations International Criminal Tribunal for the former Yugoslavia.

¹³⁰ Stover, “The Witnesses,” 26.

Weakness' vs 'Agency': An Unrealistic 'Ideal' and the Future of CRSV

True understanding of the experiences of CRSV victims should be of the utmost importance to tribunals such as the ICTY. As a body of law that produces truth, international criminal law has the capacity to end the historic erasure of CRSV from post-war accounts. In addition, the implications of a false conceptualization of victimhood are not limited to future legal proceedings; they also affect collective memory.¹³¹ Campbell argues that the ICTY as a “legal archive”, functions as a system that produces and aids memory through its structures.¹³² Indeed, the ICTY states that “[witnesses contribute] to the process which establishes the responsibility of the accused and creates a historical record of what happened during the conflicts in the former Yugoslavia”.¹³³

The truth pronounced by legal bodies and tribunals such as the ICTY affects not only legal memories of conflict and legal notions of sexual violence victimhood, but also popular and public understandings. Indeed, the Human Rights Watch asserted that “future generations will use the evidence [of the ICTY] to understand the region’s history”.¹³⁴ As Aroustamian argues, particularly in matters of sexual assault and rape, the limits of the law extend beyond the courtroom and have the potential to frame and constrain any discussion of sexual violence experiences.¹³⁵

Therefore, the legacies of tribunals, such as the ICTY, are essential when looking forward to future cases of sexual violence in the context of conflict. Take for example the ongoing conflict between Russia and Ukraine, where reports of sexual violence against Ukrainians began to emerge less than two months after the initial invasion in February 2022.¹³⁶ In the Yugoslav Wars, sexual violence was used as a way of

¹³¹ Campbell, “The Laws of Memory,” 247.

¹³² Campbell, “The Laws of Memory”, 248.

¹³³ “Witnesses”, United Nations International Criminal Tribunal for the former Yugoslavia, accessed March 18, 2023, <https://www.icty.org/en/about/registry/witnesses>.

¹³⁴ Human Rights Watch, “Weighing the Evidence: Lessons from the Slobodan Milošević Trial,” *HRW*, December 13, 2006, Executive Summary. <https://www.hrw.org/report/2006/12/13/weighing-evidence/lessons-slobodan-milosevic-trial>.

¹³⁵ Camille Aroustamian, “Time’s up: Recognising Sexual Violence as a Public Policy Issue: A Qualitative Content Analysis of Sexual Violence Cases and the Media”, *Aggression and Violent Behavior*, 50 (2020): 1. <https://doi.org/10.1016/j.avb.2019.101341>.

¹³⁶ Jenevieve Mannell “Sexual violence in Ukraine,” *BMJ Clinical Research* no. 377 (2022): 1. Doi:10.1136/bmj.o1016.

damaging the lives and reproductive abilities of Bosnian Muslim communities, yet the motivations for sexual violence against Ukrainians is still unknown.¹³⁷ Mannell argues that this is a problem that affects whole societies, and, as a result, he states that researchers, funders, and policy leaders must move beyond thinking of sexual violence as a problem for the unfortunate individual and view it as an issue that affects a nation.¹³⁸ Mannell also urges that an approach to subjects that is inherently non-discriminatory¹³⁹ and intersectional is essential to recognising their differing experiences and needs.¹⁴⁰

This study has indeed revealed the wider realities of CRSV. The experiences of the victim-witnesses illustrate ethnic tensions at play, ideas of nation-wide justice, and strong, determined victims at the forefront. From a legal perspective, going forward legal bodies must first acknowledge that CRSV victimhood is not inherently weak, feminine, or simplistic and may in fact be powerful, passionate, and intersectional. Finally, they must improve their acknowledgement of the contexts surrounding sexual violence victimhood, as demonstrated here by the structural role of CRSV in wars and conflicts. In doing this, legal bodies – and society as a whole – may move beyond one-dimensional understandings of CRSV and, as a result, improve the comprehension, prosecution, and, ultimately, interruption of CRSV.

Conclusion

This paper sought to answer the question: are the ICTY's courtroom practises aware and acknowledging of victims' own narratives of CRSV victimhood? The process of the court was found to involve multiple stages of questioning for each witness: direct examination, cross-examination and re-direct examination. Witnesses were each questioned over the course of two days, sometimes longer. Most notably during cross-examination by the defence, witnesses were seen to show frustration and anger

¹³⁷ Mannell, "Sexual Violence in Ukraine", 1.

¹³⁸ Mannell, "Sexual Violence in Ukraine", 1.

¹³⁹ Mannell, "Sexual Violence in Ukraine", 1.

¹⁴⁰ Mannell, "Sexual Violence in Ukraine", 1; see also Elena Stavrevska, "Enter Intersectionality: Towards an Inclusive Survivor-Centred Approach in Responding to Conflict-Related Sexual Violence," *London School of Economics*, December 10, 2019, <https://blogs.lse.ac.uk/wps/2019/12/10/enter-intersectionality-towards-an-inclusive-survivor-centred-approach-in-responding-to-conflict-related-sexual-violence/>.

at insistent and irrelevant questioning.¹⁴¹ Additionally, the prosecution was found to direct questions in a way that proved their narrative of victimhood by ticking boxes for the legal definition of rape. However, in this they failed to reach the truth of experience and identity for many of these women. The victim-witnesses were found to show great agency, particularly in the face of societal shame, and, in spite of the defence and prosecution's methods, witnesses were somewhat able to express their own – albeit ignored – goals. Through this, I can conclude that the narratives of victims were not fully acknowledged or reflected in courtroom practices, suggesting that the tribunal failed to gauge the truth of CRSV. However, through this pilot study, the wider structures and individual realities of CRSV have been brought to light, with the experiences of the victim-witnesses revealing ethnic tensions at play, ideas of nation-wide justice, and a strong, determined nature within these victims.

In the context of future and ongoing conflicts, legal bodies must first treat victim-witnesses with respect and recognition. Secondly, they must recognise that CRSV victimhood is not inherently weak, feminine, or simplistic; as victim-witnesses' realities are in fact shown here to be powerful, intersectional, and complex. Finally, they must improve their acknowledgement of the contexts surrounding sexual violence victimhood, in this case the structural role of CRSV in wars and conflicts. In doing these three things, international criminal law will not only avoid disrupting its own proceedings, but it may move beyond one-dimensional understandings of CRSV and, as a result, improve the comprehension, prosecution, and, ultimately, the termination of CRSV.

¹⁴¹ *Prosecutor v. Kunarac et al*, IT-96-23 (29 March 2000): 1226; and *Prosecutor v. Kunarac et al*, IT-96-23 (30 March 2000): 1338.

Bibliography

Arendt, Hannah. *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Penguin Books, 1977

Aroustamian, Camille. "Time's Up: Recognising Sexual Violence as a Public Policy Issue: A Qualitative Content Analysis of Sexual Violence Cases and the Media." *Aggression and Violent Behavior* 50 (2020): 5–12. <https://doi.org/10.1016/j.avb.2019.101341>

Aydin-Aitchison, Andy. "Handle with Care: ICTY, Juridical By-Products and Criminological Analyses" in *Legacies of the International Criminal Tribunal for the Former Yugoslavia: A Multidisciplinary Approach* edited by Carsten Stahn, Carmel Agius, Serge Brammertz and Colleen Rohan, 191-206. Oxford, UK: Oxford University Press, 2020. <https://doi.org/10.1093/oso/9780198862956.003.001>

Aydin-Aitchison, Andy, Mirza Buljubašić, and Barbora Holá. "Criminology and Atrocity Crimes". In *The Oxford Handbook of Criminology* 7th edition, edited by Alison Liebling, Shadd Maruna, and Lesley McAra. Oxford: Oxford University Press, 2023

Baker, Catherine. *The Yugoslav Wars of the 1990s*. London, UK: Bloomsbury Publishing Plc, 2015

Becirevic, Edina. *Genocide on the Drina River*. New Haven: Yale University Press, 2014.

Berastegi, Amaia Álvarez and Kevin Hearty. "A Context-Based Model for Framing Political Victimhood: Experiences from Northern Ireland and the Basque Country," *International Review of Victimology* 25, no. 1 (09 July 2018): 19–36. <https://doi.org/10.1177/0269758018782237>

Brewin, Chris R. "Autobiographical Memory for Trauma: Update on Four Controversies," *Memory* 15, no. 3 (2007): 227–248. <https://doi.org/10.1080/09658210701256423>

Buss, Doris E. "Knowing Women: Translating Patriarchy in International Criminal Law" *Social and Legal Studies* 23, no. 1 (2014): 73–92. <https://doi.org/10.1177/0964663913487398>

Campbell, Kirsten. "The Laws of Memory: The ICTY, the Archive, and Transitional Justice" *Social and Legal Studies* 22, no. 2 (December, 2012). <https://doi.org/10.1177/0964663912464898>

Campbell, Kirsten. "Ethical Challenges: Researching War Crimes." In *Research Ethics in Criminology: Dilemmas, Issues and Solutions* edited by Malcolm Cowburn, Loraine Gelsthorpe and Azrini Wahidin. Abingdon: Routledge, 2017. <https://doi.org/10.4324/9781315753553-18>

Campbell, Kirsten, Elma Demir, and Maria O'Reilly. "Understanding Conflict-Related Sexual Violence and the 'Everyday' Experience of Conflict Through Witness Testimonies". *Cooperation and Conflict* 54, no. 2 (June 2019): 254–277

Charman, Thomas. *Sexual Violence Against Men in Global Politics*, 1st edition, 198-210. London: Routledge, 2019. <https://doi.org/10.4324/9781315456492-18>

Christie, Nils. "The Ideal Victim", In *Revisiting the 'Ideal Victim'* edited by Marian Duggan. Bristol, UK: Policy Press, 2019.

Clayton, Jonathan. "Pygmies Struggle to Survive in War Zone Where Abuse is Routine". *The Times*, 16 December 2004. Accessed July 4, 2023. <https://www.thetimes.co.uk/article/pygmies-struggle-to-survive-in-war-zone-where-abuse-is-routine-zb6g8sz50t6>

Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst. "Crimes Against Humanity," in *An Introduction to International Criminal Law and Procedure*, 2nd edition, edited by Robert Cryer, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst, 230–66. Cambridge: Cambridge University Press, 2010. <https://doi.org/10.1017/CBO9780511760808.012>

Drumbl, Mark A *Atrocity, Punishment, and International Law*, Cambridge University Press, 2007. <https://doi.org/10.1017/CBO9780511611100>

Eltringham, Nigel. "‘We Are Not a Truth Commission’: Fragmented Narratives and the Historical Record at the International Criminal Tribunal for Rwanda," *Journal of Genocide Research* 11, no. 1 (2009): 55–79. <https://doi.org/10.1080/14623520802703616>

Engle, Karen. "Feminism and its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina," *American Journal of International Law* 99, no. 4 (2005): 778–816. <https://doi.org/10.2307/3396669>

Enloe, Cynthia. *The Curious Feminist: Searching for Women in a New Age of Empire* 1st edition, Berkeley: University of California Press, 2004.

Finch, Emily and Fafinski, Stefan. "Qualitative Analysis", in *Criminology Skills* edited by Emily Finch and Stefan Fafinski. Oxford: Oxford University Press, 2019. 382–407

Finley, Lucinda M. "Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning," *Notre Dame Law Review* 64 (1989), 886–910. https://digitalcommons.law.buffalo.edu/journal_articles/194

Guichaoua, André. "Counting the Rwandan Victims of War and Genocide: Concluding Reflections." *Journal of Genocide Research* 22, no. 1 (2020): 125–141. <https://doi.org/10.1080/14623528.2019.1703329>

Harding, Sandra. *Whose Science? Whose Knowledge?: Thinking from Women's Lives*. Ithaca, NY: Cornell University Press, 1991. <https://doi.org/10.7591/9781501712951>

Henry, Nicola. "The Fixation on Wartime Rape: Feminist Critique and International Criminal Law", *Social & Legal Studies* 23, no. 1, (2014): 93–111. <https://doi.org/10.1177/0964663913499061>

Human Rights Watch. "Weighing the Evidence: Lessons from the Slobodan Milošević Trial." *HRW*, December 13, 2006. <https://www.hrw.org/report/2006/12/13/weighing-evidence/lessons-slobodan-milosevic-trial>

ICTY, "Criminal Proceedings." United Nations International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/en/about/chambers/criminal-proceedings>

ICTY, "Landmark Cases." United Nations International Criminal Tribunal for the former Yugoslavia. Accessed March 18, 2023. <https://www.icty.org/en/features/crimes-sexual-violence/landmark-cases>

ICTY, "Mandate and Crimes under ICTY Jurisdiction." United Nations International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>

ICTY, "Infographic: ICTY Facts & Figures." United Nations International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/node/9590>

ICTY, "Witnesses." United Nations International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/en/about/registry/witnesses>

ICTY, "Witnesses - FAQs." United Nations International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/en/about/registry/witnesses/faq#5>

IWPR, "Foča Rape Case," *Institute for War and Peace Reporting*, February 14, 2001. <https://iwpr.net/global-voices/foca-rape-case>

Jacobsen, K and Landau, L. B. "The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration". *Disasters* 27, no. 3 (September 2003): 185-206. <https://doi.org/10.1111/1467-7717.00228>

Johnson, Kirsten, Jana Asher, Stephanie Rosborough, Amisha Raja, Rajesh Panjabi, Charles Beadling, Lynn Lawry. "Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Postconflict Liberia". *JAMA* 300, no.6 (2008): 676–90. <https://doi.org/10.1001/jama.300.6.676>

Kelly, J.T., T.S. Betancourt, D Mukwege, R Lipton, and M.J. VanRooyen. "Experiences of Female Survivors of Sexual Violence in Eastern Democratic Republic of the Congo: a Mixed-Methods Study". *Conflict and Health* 5, no. 25 (November 2011): 1–8. <https://doi.org/10.1186/1752-1505-5-25>

Karstedt, Susanne and Stephan Parmentier. "Introduction to The Special Issue". *European Journal of Criminology* 9, no. 5 (September 19 2012): 465–467. <https://doi-org.ezproxy.is.ed.ac.uk/10.1177/1477370812455879>

Leiby, Michele. "Uncovering Men's Narratives of Conflict-Related Sexual Violence". In *Sexual Violence Against Men in Global Politics* 1st edition, edited by Marysia Zalewski, Paula Drumond, Elisabeth Prugl and Maria Stern, 137–151. London: Routledge, 2016. <https://doi.org/10.4324/9781315456492-14>

Luban, David. "A Theory of Crimes Against Humanity". *Yale Journal of International Law* 29, no.1 (2004): 85–167. <https://scholarship.law.georgetown.edu/facpub/146>.

Murray, Sarah, Molly Lasater, Marie-France Guimond, Ohemaa Poku, Rashelle Musci, Manal Al-Fataftah, Lilian Kasina, Mercy Lwambi, Asma Salameh, and Kathryn Falb. "Measuring Sexual Violence Stigma in Humanitarian Contexts: Assessment of Scale Psychometric Properties and Validity with Female Sexual Violence Survivors from

Somalia and Syria". *Conflict and Health* 15, no.1 (December 2021): 2-15, <https://doi.org/10.1186/s13031-021-00431-z>

Mannell, Jenevieve. "Sexual Violence in Ukraine". *BMJ* 377, no. 1016 (April 2022). <https://doi.org/10.1136/bmj.o1016>

McEvoy, Kieran, and Kirsten McConnachie. "Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy". *European Journal of Criminology* 9, no. 5 (2012): 527–538. <https://doi.org/10.1177/1477370812454204>

Ní Aoláin, Fionnuala D. "Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-Conflict Societies". *Queen's Law Journal* 35 (2009): 219–244. <http://dx.doi.org/10.2139/ssrn.1507793>

Ní Aoláin, Fionnuala D. "Advancing Feminist Positioning in the Field of Transitional Justice". *International Journal of Transitional Justice* 6 (2012): 205–228. <https://doi.org/10.1093/ijtj/ijts013>

Oosterveld, Valerie. "Sexual Violence Directed against Men and Boys in Armed Conflict or Mass Atrocity: Addressing Gendered Harm in International Criminal Tribunals". *Journal of International Law and International Relations* 10, (2014), 107–128. <https://core.ac.uk/download/pdf/215389992.pdf>

Press Release. "The International Criminal Tribunal for Rwanda and Women Victims and Witnesses of the Rwandan Genocide - The Facts." *United Nations International Residual Mechanism for Criminal Tribunals*, February 18, 1998. <https://unictr.irmct.org/en/news/international-criminal-tribunal-rwanda-and-women-victims-and-witnesses-rwandan-genocide-facts>

Quinney, Richard. "Who is the Victim," *Criminology* 10, no. 3 (November 1972): 314–323. <https://doi.org/10.1111/j.1745-9125.1972.tb00564.x>

Ross, Fiona C. *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa*. London: Pluto Press, 2002.

Scheffer, David J. "The Future of Atrocity Law". *Suffolk Transnational Law Review* 25, no. 3 (2002): 389-432

Schwobel-Patel, Christine. "The Ideal Victim of International Criminal Law". *European Journal of International Law* 29, no. 3 (2018): 703–724. <https://doi.org/10.1093/ejil/chy056>

Sellers, Patricia. "Sexual Violence and Peremptory Norms: The Legal Value of Rape". *Case Western Reserve Journal of International Law* 34, no. 3 (2002): 296–299. <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1466&context=jil>

Simic, Olivera. *Silenced Victims of Wartime Sexual Violence* 1st edition. London: Routledge, 2018.

Sivakumaran, Sandesh. "Sexual Violence Against Men in Armed Conflict". *European Journal of International Law* 18, no. 2 (2007): 253–303. <https://doi.org/10.1093/ejil/chm013>

Stavrevska, Elena. "Enter Intersectionality: Towards an Inclusive Survivor-Centred Approach in Responding to Conflict-Related Sexual Violence." *London School of Economics*, December 10, 2019. <https://blogs.lse.ac.uk/wps/2019/12/10/enter-intersectionality-towards-an-inclusive-survivor-centred-approach-in-responding-to-conflict-related-sexual-violence/>

Stover, Eric. *The Witnesses: War Crimes and the Promise of Justice in The Hague*. Philadelphia: University of Pennsylvania Press, 2005.

Subotić, Jelena. "Ethics of archival research on political violence". *Journal of Peace Research* 58, no. 3, (2021): 342–354. <https://doi.org/10.1177/0022343319898735>

United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia, *Case Information Sheet: "FOČA" (IT-96-23 and 23/1) Kunarac, Kovač and Vuković*. https://www.icty.org/x/cases/kunarac/cis/en/cis_kunarac_al_en.pdf.

United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991. *Prosecutor v Dragoljub Kunarac Radomir Kovac and Zoran Vukovic - Judgement*. IT-96-23 & IT-96-23/1-A. The Hague, The Netherlands: United Nations, June 2002. <https://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf>

United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991. *Rules of Procedure and Evidence*. IT/32/Rev.50. The Hague, The Netherlands: United Nations, July 2015. https://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf

United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia, *Trial Summary Judgement of Trial Chamber II In The Kunarac, Kovac And Vukovic Case*. JL/P.I.S./566-e. The Hague: 22 February 2001. <https://www.icty.org/en/cases/judgement-list>.

Van Dijk, Jan. "Free the victim: A critique of the Western Conception of Victimhood". *International Review of Victimology* 16, no. 1 (May 2009), 1–33. <https://doi.org/10.1177/026975800901600101>

Woolf, Nicholas and Christina Silver. *Qualitative Analysis Using NVivo: The Five-Level QDA Method*, 1st edition. New York: Routledge, 2017. <https://doi.org/10.4324/9781315181660>

Žarkov, Dubravka, *The Body of War: Media, Ethnicity, and Gender in the Break-up of Yugoslavia*. New York: Duke University Press, 2007. <https://doi-org.ezproxy.is.ed.ac.uk/10.1515/9780822390183>

Courtroom Transcripts

Prosecutor v. Kunarac et al, IT-96-23 (27 March 2000)

Prosecutor v. Kunarac et al, IT-96-23 (28 March 2000)

Prosecutor v. Kunarac et al, IT-96-23 (29 March 2000)

Prosecutor v. Kunarac et al, IT-96-23 (30 March 2000)