

Secondary Victimization and Mass Atrocity Trials - Should Female SGBV Victim-Witnesses Be Summoned to Testify In-Person?

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Abstract

Females are systematically subjected to horrific sexual violence in armed conflicts. In such cases, international criminal trials must at least treat sexually assaulted victim-witnesses humanely. Thus, this research evaluates whether it is reasonable to summon these victims for an in-person testimony, based on the current mental protections. Where these protections fall short, the study proposes reforms to existing frameworks. Employing a doctrinal methodology alongside qualitative and critical analysis of relevant laws and court practices, this research draws on interdisciplinary insights to present an understanding of the retraumatizing impacts of testifying on conflict-related sexual and gender-based violence (SGBV).

The International Criminal Court (ICC) and Tribunals such as the ICTY and the ICTR need to change their approach to conflict-related sexual violence, especially against women and children - the most vulnerable and often civilian victims. In-person testimonies can retraumatize victims and risk evidence integrity, particularly when trauma is severe. Videotaping initial victim statements, under a modified Rule 68 of the ICC, offers a victim-centred method that protects reliable testimony while reducing further harm and victim exposure. Given the challenges of safeguarding SGBV victims under the current Statutes, reducing victim exposure is essential. Legal standards, such as the ICTY and ICTR Tribunals' Rule 96(iii) and ICC's Rule 70, must be updated to recognize that consent to sexual acts obtained in coercive conflict situations is not genuine. International Criminal Law must evolve accordingly, and financial pressure must be applied on states complicit in sexual violence when justice mechanisms fall short.

Keywords: Evidentiary Provisions, International Criminal Laws, Secondary Victimization, SGBV Victim-Witnesses, Evaluation of Mental Protections, Suggestions for Improvement

Introduction to In-Person Testimonies of SGBV Victim-Witnesses in Mass Atrocity Trials

Until recently, International Law has not taken sexual violence against women seriously. In war crimes, for example, women have been routinely abused sexually, and rape has even been - and is still - permitted in some militaries as a reward for troops (Cryer et al., 2010). Although rape was prohibited already in the Lieber Code of 1863, due to a male orientation of the wars, the International Law has ignored sexual violence against women. It is logical, since the legal provisions are directed at the protection of the wounded, combatants, and prisoners of war, and they were and usually are men - hence the focus has been on male issues (Chinkin, 2011). Established by the United Nations (UN) for crimes against Tutsis, the International Tribunal for Rwanda (ICTR) was the first Tribunal to distinguish rape not as a war crime, but a crime to perpetrate genocide (UN International Residual Mechanism, ICTR).

As sexual violence against women is employed as a weapon in mass atrocities, it is important to shed light on the consequences on women. Thus, examining both past and present international criminal legal frameworks for victims' mental protection is essential. While the Rome Statute (RS) shares similar goals with the ICTY (the International Tribunal of the Former Yugoslavia) and the ICTR, such as prosecuting crimes against humanity, including sexual violence - it differs in that it is not UN-based but created by Member States (ICC, 2019). Key legal Statutes for this research are in order of significance:

- The Statute of the ICTY: Adopted on May 25, 1993, by Resolution 827 (updated by the UN in September 2009).
- The Statute of the ICTR: Established on November 8, 1994, by Resolution 955 (updated by the UN on January 31, 2010).
- The Rome Statute of the ICC: Adopted by Member States on July 17, 1998, and updated in 2021 (ICC, 2020; RS, 2021).

Understandably, it would not be easy to give testimony as a victim-witness in these cases, as secondary victimization can take place. Secondary victimization is the negative psychological impact on victims - mental harm or revictimization - caused by the criminal justice system (Tamarit et al., January 2010). Considering the above factors, the main research question reads as follows:

In preventing secondary victimization, is the in-person testimony requirement for female SGBV victim-witnesses in mass atrocity trials compatible with trauma-informed legal practices?

In anticipation of criminal trials related to alleged war crimes in Ukraine or Palestine, for example, we must pay close attention to how international criminal trials treat sexually assaulted victim-witnesses. We must learn from the past and avoid replicating mistakes concerning SGBV victim-witness participation in proceedings. Thus, this study estimates whether it is purposeful to bring these victims for an in-person testimony, based on the current mental protections for SGBV victim-witnesses during proceedings, and to suggest modifications if the protection is found inadequate. Even when secondary victimization aligns with victims' physical protection, the former concerns the victim's mental protection, while the latter pertains to physical measures like relocation. Nevertheless, physical protection alone does not alleviate mental harm. Therefore, the preliminary argument posits that requiring SGBV survivors to testify in person at the International Criminal Court or the referenced Tribunals may be unreasonable and damaging, and alternative methods for securing testimony should be employed. Considering these factors, the sub-questions for this research are:

1. *Are the mental protection measures sufficient in international criminal proceedings for SGBV victim-witnesses?*
2. *If proven inadequate, what could be done to prevent secondary victimization?*

Key concepts of this research include secondary victimization, also defined as revictimization or mental harm - and testifying about becoming a victim of sexual violence perpetrated in war crimes or crimes against humanity. Particular attention is given to trial proceedings at the International Criminal Court (the ICC or the Court), the ICTY, and the ICTR. Their respective Rules of Procedure and Evidence (RPE) provide information on which evidence is admissible and how it can be gathered from victims. International legal principles, such as the *right to a fair trial* for the defendant, are essential for understanding the gaps in the effectiveness of mental protection for SGBV victim-witnesses.

This research refers exclusively to dual-status individuals, namely human victim-witnesses who have been directly harmed by the crime, as defined under Rule 85(a), *Definition of victims* of the ICC. Consequently, Rule 85(b) does not apply to this study, as it also references hospitals (ICC, 2024).

Additionally, the alleged perpetrator will be referred to as the *defendant*. Since the ICTY and the ICTR Statutes are UN-based, it is pertinent to mention that under their RPEs, the victim scope is limited to only humans over whom the Tribunal has jurisdiction (ICTY, July 8, 2015; ICTR, May 13, 2015), while the UN's victim scope also includes families (UN Human Rights, November 29, 1985). The tribunals' narrow victim scope is clear and consistent, effectively preventing issues related to an unmanageably high number of victims at trial.

Interdisciplinary Materials Using Doctrinal Legal Method

This study adopts a doctrinal research methodology, critically examining legal texts, statutes and scholarly literature through a qualitative and critical lens. It integrates insights from various disciplines, such as criminology, psychology, and International Criminal Laws to gain a holistic view on the challenges females face when testifying about experiences of conflict-related sexual and gender-based violence (SGBV). The research acknowledges that no single body of International Law can fully capture the complexities of women's experiences. Reflecting a broader academic trend, recent scholarship increasingly applies comparative and theoretical views to support legal reform (Hutchinson, 2015), to which this study also aims to contribute. The analysis is rooted in doctrinal legal research, and focuses on key legal instruments, including the Statutes of the ICTY and the ICTR, as well as the Rome Statute, all of which are binding sources of International Criminal Law (RS, 2021; ICTR, January 31, 2010; ICTY, September 2009). A central aspect of the interdisciplinary analysis is - when preventing secondary victimization - whether the in-person testimony requirement for female SGBV victim-witnesses in mass atrocity trials is compatible with trauma-informed legal practices.

Conflict-Related Sexual Violence: Victims' Inability to Give Genuine Consent

The International Committee of the Red Cross (ICRC) defines sexual violence as any sexual act carried out through force, threats, coercion, or by exploiting a *person's inability to give genuine consent*. Coercion may result from fear, detention, abuse of power, or psychological pressure (ICRC, February 2019). This includes rape, sexual slavery, enforced prostitution, forced pregnancy, and sterilization. Under the International Humanitarian Law (IHL), such acts must occur during an armed conflict to be considered crimes (ICRC, February 2019). Conflict-related sexual violence - such as rape, gang rape, and abduction - has risen sharply amid increasing militarization and arms proliferation. Women and girls are disproportionately targeted, while armed groups often profit through trafficking and exploitation (UN, June 19, 2024). More broadly, this conflict-related sexual violence is categorized as sexual and gender-based violence (SGBV), which encompasses harmful acts based on gender, including physical, sexual, or psychological abuse, threats and coercion (UN CTED, November 2023).

Warring in the Democratic Republic of Congo (DRC) is heinous for women and girls, as it is considered the rape capital of the world. Acts including mass rape, sexual slavery, genital mutilation, and the deliberate infliction of injuries by pouring melted plastic objects into women's vaginas (Nyakio et al., August 1, 2024). The terrible crime in question leads not only to PTSD, but also to faecal and urinary incontinence. These atrocities are used systematically as weapons of war, in violation of UNSC Resolution 1820 (2008) and the Geneva Conventions (Nyakio et al., August 1, 2024). Despite the estimated 200,000 victims, most of whom are women and children, legal accountability remains rare. The Congolese National Law criminalizes rape, but enforcement is weak and prosecution rates remain low (Nyakio et al., August 1, 2024). Despite these atrocities, the DRC receives ongoing foreign aid, amounting to \$ 3,249 million in 2022 from the World Bank (Global Economy).

The ICRC's Path to Victim Justice: Presuming Sexual Violence in Armed Conflicts

The ICRC assumes *sexual violence occurs in armed conflicts* and acts proactively; however, this assumption - known as a reversed burden of proof - is not a legal judgment or accusation (ICRC, February 2019). History has shown that during the commission of every genocide, crime against humanity and armed conflict, instances of SGBV also took place. Therefore, the point of departure for any society must be to draw on the ICRC's approach and to assume that SGBV occurs, unless and until proven otherwise (Roux, 2020). As the IHL definition only encompasses sexual violence in armed conflicts, the present Rome Statute, as well as the ICTY and the ICTR also stipulate rape under their *Crimes against humanity* provisions. These provisions are found in the Rome Statute, Article 7(1)(g) (2021), the ICTY Statute, Article 5(g) (September 2009), and the ICTR Statute, Article 3(g) (January 31, 2010).

The Murad Code project, promoting ethical approaches to investigating sexual violence, recognizes that systematic and conflict-related sexual violence (SCRSV) can occur even during peace or political transitions. This violence, including genocide, war crimes, and crimes against humanity, is often used deliberately to oppress or intimidate entire communities (Murad Code, 2024). ICRC's take is really important, as there are no permanent convictions on sexual violence at the ICC. The only one in the Bemba case was later overturned (ICC, June 15, 2018).

Revictimization in Law and Psychology: Probability of Added Trauma vs. Humane Treatment

Secondary victimization materializes when a victim suffers further harm due to the treatment they receive from institutions in the criminal process before, during, and after the crime. Its source is not the crime itself; rather, factors such as recurring contact with the perpetrator, repeated questioning, or insensitive language can contribute to it (European Institute for Gender Equality). Secondary victimization refers to the trauma that rape victims endure as a result of negative treatment, often from police and courts. The criminal process can cause

psychological distress, particularly during pretrial and cross-examinations, where victims may feel blamed or shamed (Maier, 2008). Moreover, secondary victimization may also stem from interactions with medical staff and mental health professionals or police investigations if officers imply that the victim's behavior contributed to the rape (Maier, 2008). This research indicates that progress in the treatment of sexual violence victims is lagging - perhaps due, as Maier points out, to rape being one of the most underreported crimes (Maier, 2008).

Sexual assault is a serious issue in Canada, and the criminal justice system often exacerbates victims' trauma, argue Haskell and Randall (2019), who examined the matter through psychological and legal lenses. Many victims do not report sexual violence due to fear of retraumatization from legal proceedings (Haskell & Randall, 2019). SGBV is profoundly traumatic - one of the most severe traumas for women - and reactions to it may vary. It affects victims neurologically, necessitating more sensitive handling by the justice system (Haskell & Randall, 2019). However, victim responses, such as freezing, memory gaps, or shame, are often misunderstood, undermining their credibility in court. Even though trials frequently rely on victim testimony, it is often, however, mishandled or doubted, influenced by harmful labelling (Haskell & Randall, 2019). Women also have to demonstrate particularly hard that they are reliable witnesses. There are additionally stereotypes of women being promiscuous or that, due to their alcohol or drug use, the rape was rather "harmless" (Haskell & Randall, 2019).

In the US criminal proceedings, nearly half of rape victims experience secondary victimization, according to Patterson (2011), who approached the issue from a community psychology perspective. In interviews with 20 victims on how detectives handled them, it was concluded that retraumatization often occurred when cases were not prosecuted (Patterson, 2011). On the other hand, victims whose cases advanced generally viewed detectives as more compassionate. Negative interactions with law enforcement were linked to victims' reluctance to seek further mental health support (Patterson, 2011). The research highlights that officers who receive education on handling rape cases tend to respond with greater empathy and sensitivity (Patterson, 2011).

The Importance of Victim-Witness Testimony in SGBV vs. the Risk of Revictimization

Concerning victims at trials, their common interests are verification of the crime, prosecution of the perpetrators, and restorative justice (Olásolo, 2009). Yet, victim-witnesses of especially SGBV often face retraumatization during long, complex trials (Orth, 2002). A successful victim participation scheme will require a delicate balance between the needs and the rights of the prosecutor, the defendant, and the victims. Above all, it should be guided by the local dimensions of conflict and justice, and acknowledge the victims' wants and needs (Jacovides, 2023). Accordingly, communication, transparency and mental support are required for a strong

participatory regime that avoids secondary victimization (Jacovides, 2023).

When comparing the factors influencing criminal trials for the prosecution of sexual violence in Chart 1, several dichotomies exist for each aspect in the chart below. The absence of witnesses can bias trials, yet victim-witnesses risk retraumatization through participation, particularly in cases of sexual violence, where their testimony is crucial (Milaninia, December 16, 2019; Haskell & Randall, 2019; King et al., 2016). Furthermore, circa half of rape victims in the US

experience retraumatization due to criminal trials (Patterson, 2011); yet, the protective measures for victims must be balanced against defendants’ right to a fair trial (Ciorciari & Heindel, 2016). While restorative justice is virtually non-existent, it perceives victims as active agents, in contrast to retributive justice, where victims remain passive observers (Garbett, 2015). Surprisingly, some victims find catharsis in testifying, even though criminal trials are not designed for healing and may lead to further trauma (Ciorciari & Heindel, 2016; Milaninia, December 16, 2019).

Positive aspects of victim participation	VERSUS	Negative aspects of victim participation
Without witnesses, criminal proceedings can be seen as biased (Milaninia, 2019)	Absence of victims can bias the trials vs. victims’ retraumatization?	Victim-witnesses can be retraumatized (Haskell & Randall, 2019)
In sexual violence, the victim is the best source of testimony (King et al., 2016)	Victim’s probability vs. secondary victimization?	Ca. half of the rape victims in the US get retraumatized by criminal proceedings (Patterson, 2011)
Victims are active agents participating in restorative justice (Garbett, 2015)	Restorative vs. retributive justice?	Victims are passive objects, observing at most in punitive justice (Garbett, 2015)
The protective measures for victims (Ciorciari & Heindel, 2016)	The level of victim protection vs. the fairness of the alleged perpetrator? (Ciorciari & Heindel, 2016)	The fair trial rights of the defendant can be jeopardized (Ciorciari & Heindel, 2016)
Some victims get a cathartic effect due to being able to testify (Ciorciari & Heindel, 2016; Milaninia, 2019)	Mental relief vs. retraumatization?	Criminal trials aren’t built for therapeutic relief, and can re-traumatize victims. (Ciorciari & Heindel, 2016)

Chart 1: Comparing the Negative and Positive Aspects of Victims in Criminal Justice

International Legal Principles: Defendants Prioritized Over SGBV Victim-Witnesses

This research indicates that international criminal trial principles, such as the *fair trial*, tend to favor defendants and disadvantage victim-witnesses. Victim-witnesses - especially survivors of SGBV - often endure retraumatization during lengthy, complex proceedings (Orth, 2002). The process can cause significant psychological distress, particularly during pretrial and cross-examinations, where victims may be blamed or shamed (Maier, 2008). Additionally, contrary to layperson assumptions, defence lawyers represent the accused/defendant, not the victim. The fair trial principle, as outlined by the ICRC’s Rule 100, also prioritizes *the presumption of innocence*, ensuring that the defendant is tried by an impartial and properly constituted court (ICRC). Furthermore, under the *ne bis in idem* principle, a person cannot be prosecuted more than once for the same crime (Oxford Public International Law, 2023), even though victims suffer due to the repetition of continuous questioning (King et al., 2016). The principle *in dubio pro reo* holds that if doubt remains about guilt, the defendant cannot be convicted (Oxford Reference, 2025).

Dichotomy at the ICC: Victim-Witness Protection vs. Defendant’s Right to a Fair Trial

The fair trial rights are frequently mentioned in the RS, as broad victim-witness protections may prejudice the defendant. While this research focuses on victim-witness welfare, the fair trial principle largely neglects victims, offering them only a

few benefits. Even when the defendants’ fair trial rights may appear unjust to SGBV victim-witnesses, Cryer et al. argue that victim protection at the ICC can disadvantage both the defendant and the victims. Confidentiality measures, in particular, may conflict with fair trial guarantees (Cryer et al., 2010). For example, RS Article 69(4) *Evidence* emphasizes fair trial rights of the defendant, stating that evidence must not be biased (RS, 2021).

Protective measures and fair trial rights are frequently discussed in connection with the ICC’s Victims and Witnesses Unit (VWU), which supports victim-witnesses under Article 68 concerning their protection and participation in proceedings (RS, 2021). Testimony may be presented using recorded statements or audio/video-link technology under Article 69(2), as well as Rule 67 on live testimony and Rule 68, *Prior recorded testimony*, provided that the defendants’ fair trial rights are upheld (RS, 2021; ICC, 2024). Further ambiguity - this time in favor of victims - appears between the statements of the Office of Public Counsel for Victims (OPCV) and the ICC’s Regulations. Under Regulation 80, a Chamber *may* appoint legal representatives for victim-witnesses. More definitively, Regulation 81 strengthens this support by stating that victims *shall* have public legal representation (ICC, 2018). However, tension arises between victims’ rights and the defendant’s right to a fair trial. Article 68(3) of the Rome Statute allows victims to present their views during proceedings, but only if they do not prejudice the defendants’ fair trial (RS, 2021). This creates

a conflict between the RS and the OPCV, as it emphasizes that prioritizing victims' interests and ensuring accountability for perpetrators are paramount (ICC, 2019).

Dichotomy at the Tribunals: Victim-Witness Protection vs. Defendant's Right to a Fair Trial

As conflict-related SGBV is atrocious, victim-witness protection is also challenging. At the ICTR and the Special Court of Sierra Leone (SCSL), protective measures for SGBV victims are often neglected but should be prioritized, especially in court (Oosterveld, 2014). In Sierra Leone, rape, perverse methods of SGBV, and sex slaving were conducted to 'show a message' in the case *Prosecutor v. Charles Ghankay Taylor*. SGBV victims often faced STDs, PTSD, and social isolation, including stigma and rejection by their families (Palmer, September 26, 2013). Enforcing protective measures under the current ICTR Statute is nearly impossible. Tribunal contempt proceedings are ineffective, and procedural offences should be handled nationally instead, as with the ICC (Sluiter, September 01, 2005). Yet, widening protection risks fair trial rights, especially the defendant's ability to prepare a defence (Sluiter, September 01, 2005).

Unwillingness to testify can stem from poor health, as demonstrated in the ICTY case *Prosecutor v. Kupreškić*. A staff member noted that the victim-witness was unable to travel to The Hague and testify due to PTSD (ICTY, October 23, 2001, Appeals Chamber). In the first ICTY case, *Tadić*, the debate over witness protection through anonymity versus the defendant's fair trial rights led to a lengthy discussion, as the majority decision to grant anonymity was both criticized and supported. The Trial Chamber's majority decision to indefinitely withhold a witness's identity from the defendant and counsel sparked a debate about balancing witness protection and the rights of the defendant (Lamb, April 2009). Some endorsed the ruling, citing the ICTY's unique context and precedents from other tribunals such as the European Court of Human Rights. However, many opposed it for undermining the defendant's right to cross-examine witnesses under Article 21(4)(e), *Rights of the accused*, as effective cross-examination needs knowledge of the witness's identity and background (ICTY, September 2009; Lamb, April 2009).

Repetition-Induced Witness Fatigue: A Decline in Evidentiary Accuracy

An interdisciplinary approach, incorporating professionals from psychology, human rights, and psycho-social support, underpinned the work of the ICTY's Victims and Witnesses Unit, demonstrating the multifaceted nature of victim support. This research emphasizes that victim testimony was among the most valuable elements of the ICTY's proceedings, highlighting the tribunal's commitment to participatory rights (King et al., 2016). Under Rule 34(A)(ii), trained female staff provided psychosocial support, helping protect victims' well-being throughout and beyond the trial process. Interestingly, most victim-witnesses were university-educated, suggesting

that education level did not shield individuals from becoming victims and underscoring the need for tailored, rather than standardized support mechanisms (ICTY, July 8, 2015; King et al., 2016).

Yet, testifying can be retraumatizing, and threats against witnesses were a concern at the ICTY. Witnesses also suffered from 'witness fatigue' due to repetition and delays, as the same witnesses were called to testify repeatedly (King et al., 2016). The research on sexually assaulted children suggests that repetition only decreased the evidentiary accuracy, referring to the same 'witness fatigue' as witnessed at the ICTY (King et al., 2016; Santtila et al., 2004). For children, the effectiveness of obtaining detailed testimony was only worsened by repetition. Children were significantly more informative in initial interviews, providing more new details than in the repeated ones (Santtila et al., 2004). This was the case even when the interviewers used significantly more precise indicative utterances in the repeated interviews, with an increase of as much as 63%. Children tended to respond more often with meaningless utterances and no response in the repeated interviews (Santtila et al., 2004).

Critical Flaws at the ICTY and the ICTR: Implausible Consent to Sexual Violence

The most significant and troubling difference between the ICC and the ad hoc tribunals concerns consent to sexual violence. The ICC disregards consent as grounds for excluding criminal responsibility in Rules 70(a)-(c), *Principles of evidence in cases of sexual violence*, but uses a conditional term, namely "where appropriate" (ICC, 2024). Both Tribunals, the ICTR and the ICTY, allow consent to be used as a defence under Rule 96(iii). In other words, the respective Rules state that in coercive crimes of genocide, war crimes, and crimes against humanity, consent to sexual violence was given [*sic!*] (ICTR, May 13, 2015; ICTY, July 8, 2015). This is deeply troubling and must not be adopted by any future ad hoc tribunal. These regulations are harmful to SGBV victim-witnesses and appear to disregard basic human rights.

In both the ICTY and the ICTR, Rule 96(iii) on SGBV evidence is identical: the victim's testimony does not require corroboration. However, the defendant can still challenge its truthfulness (ICTY, July 8, 2015; ICTR, May 13, 2015). Before any evidence of the victim's consent to sexual violence is admitted, the defendant must convince the Trial Chamber in camera that it is both relevant and reliable (ICTY, July 8, 2015; ICTR, May 13, 2015). This research argues that such a Rule contributes to secondary victimization, as it allows the defendant - and the legal process itself - to undermine the victim's credibility. As a result, proving the crime becomes more difficult when the defendant can directly oppose the SGBV victim's account. See Chart 2 for a comparison of consent to sexual violence and how victim testimony is verified under the ICTY and the ICTR.

ICC, RPE (2024)	ICTY, RPE (July 8, 2015)	ICTR, RPE (May 13, 2015)	TRAUMA
No consent exists to sexual violence; thus, criminal responsibility ICC Rules 70(a)-(c), <i>Principles of evidence in cases of sexual violence</i> BUT “In cases of sexual violence, the Court shall be guided by and, where appropriate , apply the following principles: [...]”	Consent to sexual violence, excluding criminal responsibility ICTY Rule 96(iii) <i>Evidence in Cases of Sexual Assault</i> : “before evidence of the victim’s consent is admitted [...]” AND “the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;”	Consent to sexual violence, excluding criminal responsibility ICTR Rule 96(iii) <i>Rules of Evidence in Cases of Sexual Assault</i> : “before evidence of the victim’s consent is admitted, [...]” AND “the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;”	H I G H ADDS T R A U M A

Chart 2: Comparing the International Criminal Laws for the *Implausible* Consent to Sexual Violence and the Defendant Verifying Victims’ Testimony

Key Shortcomings and Modifications to Existing Provisions

This research finds that requiring an in-person testimony from victim-witnesses in SGBV cases is fundamentally flawed in mass atrocity trials. Additionally, psychological protections are inadequate currently, but can be addressed through reforms. Prioritizing alternative methods - such as videotaped testimony - is crucial, especially if victims later become unable to testify or die. While mental protection measures can be labor-intensive, as the ICTY findings suggest (King et al., 2016), minimizing victim exposure, as Cryer et al. recommend (2010), would save the victims from additional trauma. Concerning the burden of proof, repeated questioning of victims tends to diminish evidentiary accuracy over time, rendering continuous testimony an inefficient use of resources.

Tying Development Aid to Accountability: No Foreign Aid Where Sexual Violence Is Used as a Weapon of War

As sexual violence in conflict zones goes beyond secondary victimization and the retraumatization of victim-witnesses when they testify, modifications are gravely needed. It is a serious international issue, exemplified by the widespread, systematic assaults in places like the Democratic Republic of Congo currently. Victims often require not only psychological support but also reconstructive genital surgery (Nyakio et al., August 1, 2024). Despite the atrocities, the DRC received \$3.25 billion in foreign aid from the World Bank in 2022 (Global Economy). Thus, all global aid should be conditional on the absolute prohibition of sexual violence in armed conflict. Therefore, the first proposal is the *money talks policy*, currently used to limit Russian aggression by monetary sanctions:

→ Correction to getting any financial aid: Provide only minimal aid to governments that perpetrate or tolerate sexual violence as a weapon of war. Prioritize funding for projects that support survivors of conflict-related sexual and gender-based violence and work to prevent such abuses.

When Doubting the SGBV Crime: Victim-Witnesses' Testimony Must Bear Greater Evidentiary Weight

To prevent secondary victimization, the principle of *in dubio pro reo* - which holds that reasonable doubt must benefit the defendant (Oxford Reference, 2025) - should be contextually modified in cases of conflict-related sexual and gender-based violence. While essential for safeguarding the defendant, this standard harms victims. It contrasts with the International Committee of the Red Cross’s presumption that sexual violence should be assumed in conflict unless proven otherwise (ICRC, February 2019). The International Criminal Court’s failure to secure a single permanent conviction for sexual violence highlights the need for reform. One possible step is adapting *in dubio pro reo* to benefit the SGBV victims:

→ Correction: When doubt arises regarding the occurrence of sexual assault, greater evidentiary weight should be afforded to the victim’s testimony.

Making Evidentiary Provisions Absolute: No Consent to Sexual Violence in Mass Atrocities

To address other measures for reducing secondary victimization, provisions for consent to sexual violence must be modified by rejecting the consent. The International Committee of the Red Cross (ICRC) defines conflict-related sexual violence as violence in which the victim is unable to give genuine consent. Coercion can stem from an abuse of power or psychological pressure (ICRC, February 2019). It is, therefore, deeply problematic that the ICTR and the ICTY Rule 96(iii) still focus on consent to sexual violence in such chaotic contexts (ICTR, May 13, 2015; ICTY, July 8, 2015). Rape remains one of the most underreported crimes (Maier, 2008), resulting in its prevalence in armed conflict being largely unknown. The ICC takes a clearer stance, as Rule 70 affirms that consent does not apply in cases of sexual violence; however, the application of this concept is made optional by “where appropriate” (ICC, 2024). Therefore, it is of utmost importance to eliminate any possibility where the court can assume consent was given.

Amending Rule 70 of the ICC, having it regulate the Tribunals also, and deleting Rule 96(iii) of the ICTY and the ICTR is essential. Points (a)–(d) in Rule 70 could remain unchanged as they already reject consent (ICC, 2024; ICTY, July 8, 2015; ICTR, May 13, 2015). Ensuring consistent application would make consent legally impossible at all three courts:

→ Correction to consent to conflict-related sexual violence: The ICC Rule 70 shall regulate all international criminal courts in the following form: Rule 70. Principles of evidence in cases of sexual violence. In cases of sexual violence, the Court shall be guided by and *always* apply the following principles: [...]

Minimizing SGBV Victim-Witness Exposure: Only Videotaped Testimony Permitted

To address further measures for reducing secondary victimization, the initial victim testimony must be videotaped and utilized as the sole evidence from an SGBV victim-witness, thereby minimizing repeated questioning and exposure. As arrangements for victim participation and protection can be resource-intensive and complex, Cryer et al. suggest that a potentially more effective and pragmatic approach may lie in minimizing direct contact with vulnerable victim-witnesses wherever possible (2010). This logic appears to be echoed in the practice of the ICC, where limitations on exposure are reflected in institutional safeguards - evident, for example, in the restrictions that prevented this research from conducting interviews with SGBV victims. While victims are the best sources of SGBV testimony (King et al., 2016), testifying about the atrocity can cause extreme mental harm. Rape is also one of the most severe traumas for women (Haskell & Randall, 2019).

In criminal trials, secondary victimization creates a tension between securing testimony and treating victims humanely (Haskell & Randall, 2019; Patterson, 2011). The repetition of testimony and delays at the ICTY resulted in 'witness fatigue', and victims were also threatened (King et al., 2016). Considering all these factors, minimizing victim exposure by videotaping the first victim's testimony and using it as the sole testimony would provide relief to victims and significantly reduce the burdens of fatigue and secondary victimization, not to mention physical threats when exposure is limited. The concept of videotaping the first victim's testimony is foreign to the ICTY and the ICTR, as they only record the questioning of defendants in Rule 34 (ICTY, July 8, 2015; ICTR, May 13, 2015). Yet, as videotaping is already used, it would not be a new procedure.

Korkman, a forensic psychologist, advocates for videotaped initial testimony to prevent repeated recounting and unnecessary contact with victims. Time erodes memory, and since court cases often span years, revisiting pretrial statements is crucial (in Lehtinen, May 11, 2021). Interrogations in serious criminal cases should be recorded on video, thereby reducing the risk of distorted evidence (in Lehtinen, May 11, 2021). This research suggests that videotaped first victim testimony would also secure victims' testimony in chaotic circumstances

and would particularly benefit SGBV victim-witnesses. An additional advantage of minimizing exposure and recording the first testimony is the reduced necessity for traditional trial protections afforded to victims. Recordings would serve as sole testimony, and the victim-witness would be examined remotely by the prosecutor, judges, and defence via modern technology. Rule 68(2)(b) *Prior recorded testimony* of the ICC stipulates on videotaping but considers fair trial rights against the victim-witness (ICC, 2024), thus modifying the Rule and applying it to the ICTY and the ICTR would minimize exposure and also reduce witness fatigue:

→ Correction to Rule 68: The prior videotaped testimony of SGBV victim-witnesses shall be recorded at the Pre-Trial investigations and later used as the *only* testimony in all proceedings. It goes to prove all matters, *including the conduct of the accused*. The SGBV victim-witness shall thus only be questioned once, namely during the videotaping.

Final Conclusion: Reforming Evidentiary Provisions and Rejecting Consent to Sexual Violence

Future and present courts and tribunals must adapt their ideologies, especially regarding women and children who are victims of conflict-related SGBV. While sexual violence disproportionately targets women and children (Nyakio et al., 2024), the most vulnerable, the international response remains inadequate. These individuals are often civilians who should be protected from the war. Rape is also one of the most severe forms of trauma for women (Haskell & Randall, 2019), with some survivors requiring reconstructive surgery (Nyakio et al., 2024). Therefore, the requirement for live testimony can undermine both the victim's well-being and the integrity of their evidence. Accordingly, the bodily and mental trauma often makes in-person testimonies retraumatizing and impractical.

Videotaping victims' initial statements - as permitted under a modified Rule 68, *Prior recorded testimony* (ICC, 2024) - offers a viable alternative. It preserves the victim's most reliable account and reduces secondary victimization. Additionally, videotaping the testimony while the memory is still fresh documents how profoundly traumatic sexual violence is. This method represents a more victim-centred perspective in the International Criminal Law, bringing it closer to the proposed principle: when in doubt, the victim's testimony carries greater evidentiary value.

Given the difficulty in protecting victims under the ICTR Statute (Sluiter, September 01, 2005), for example, victims would require less protection by minimizing their exposure in trials. Furthermore, videotaping ensures that the court holds a testimony, should the victim later pass away or be too ill to testify. Accordingly, legal standards like Rule 96(iii) and Rule 70 (ICC, 2024; ICTY, July 8, 2015; ICTR, May 13, 2015) that exclude criminal liability based on coerced or absurd consent in cases of sexual violence must be rejected or reformed, as consent under coercion is not valid. As the ICRC recognizes the inevitability of sexual violence in armed conflict (ICRC, February 2019), legal frameworks must evolve to prioritize

justice and reduce harm for SGBV survivors. Further, funding conditionality must be considered for states complicit in systemic sexual violence against non-parties to the conflicts. Many times, *the money talks policy* is the most effective.

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