

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

Anne-Marie L.M. de Brouwer

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Anne-Marie L.M. de Brouwer  
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Supranational Criminal Prosecution of Sexual Violence:  
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The drawing on the cover of this book was made by Grace, a Tutsi woman. She was a victim of multiple rapes during the 1994 genocide in Rwanda at the age of 14. Due to the genocide, Grace has lost her parents and all her four brothers and sisters. As a result of the rapes, Grace is now infected with AIDS.

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

*To Leonie and Jef & Freek*

SCHOOL OF HUMAN RIGHTS RESEARCH SERIES, Volume 20

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## ACKNOWLEDGEMENTS

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

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

Completing this study would not have been possible without a great many people. In the first place, a special word of thanks goes to my supervisors, Willem van Genugten and Marc Groenhuijsen, for their support over the last five years. I would like to thank Willem for always having given me the space to grow as an academic: his support to and trust in me, both as a researcher and a lecturer in international (criminal) law, has been truly heartwarming. Marc has always been a very active proponent of victims' rights and his commitment thereto has been a real inspiration to me. I will always treasure our meetings and discussions. I am also indebted to the members of the reading committee: Kelly Askin, Theo van Boven, Cyrille Fijnaut, André Klip and Theo de Roos, for having read and commented on my manuscript. Their writings have been at the basis of this study.

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I would also like to express my gratitude to the ICTR, for having given me the opportunity to work there as an intern by assigning me to the Office of the Prosecutor, viz., the *Butare* team, in 2003. This experience gave me many more insights into the prosecution of sexual violence before an international criminal tribunal. Moreover, during this period, I also had the opportunity to visit Rwanda several times; visits which have left an indelible impression on me. I would especially like to thank Richard Karegyesa, Senior Trial Attorney at the ICTR, for our inspirational talks and subsequent e-mail discussions on sexual violence prosecution.

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

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

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

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|       | Curriculum Vitae  | 567        |
|       | School of Human Rights Research Series  | 569        |

## ABBREVIATIONS

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

Abbreviations

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