



The contribution of NGOs to the fight against impunity for perpetrators of sexual violence in conflict situations

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Twenty years have passed since the International Criminal Tribunal for Rwanda sentenced Jean-Paul Akayesu to life imprisonment, for crimes including acts of rape. This was a first in international judicial history. There was also the awarding of the 2018 Nobel Peace Prize to Nadia Murad and Denis Mukwege in recognition of their extraordinary work to combat sexual and gender-based violence (SGBV), whether against the Yezidis, in the Democratic Republic of Congo (DRC) and elsewhere.

Over the past 20 years, other international, local and hybrid tribunals have increasingly rendered judgments against perpetrators of SGBV. Cases have been ruled on by courts in Bosnia and Herzegovina (BiH), Colombia, Ethiopia, Guatemala, Kosovo, Uganda, DRC, Serbia and South Sudan. Applying the principle of universal jurisdiction, the courts of certain third countries (such as Germany and Switzerland) have convicted some perpetrators, notably for crimes committed in Iraq, Syria and Liberia. Some states (in particular the United Kingdom) have devoted political and diplomatic expertise as well as their international credibility to this long-running battle. There has been intense and persuasive advocacy by multiple international actors. New standards of documentation and investigation of these crimes have been made more effective. Meanwhile, groups representing survivors have been created, with foundations emerging to support this work, as public opinion has begun to respond.

More discretely, many NGOs have been involved in the practicalities several legal proceedings in support of survivors seeking justice.

The organisation we work for, TRIAL International, has been particularly active for many years in working with survivors of SGBV, notably in BiH and DRC, two very different contexts. We thought it would be useful to share some illustrations of the support work that can be undertaken. This is not to glorify ourselves, nor in an attempt to establish a narrative that all is well. We do this because powerlessness and despair are perpetrators' best allies, and we feel it is essential to show (without naivety or exaggeration) that things can start to change.

« Survivors are now able to seek reparations in criminal trials »

Bosnia-Herzegovina

According to estimates, between 20,000 and 50,000 women, men and children were victims of SGBV in BiH between 1992 and 1995. Many obstacles were erected at the end of the conflict to make the path towards justice particularly difficult. For example, the institutional fragmentation of the country after the peace agreements makes it difficult to implement uniform responses.

Since 2010, our organisation has worked to have a positive influence on some of the most obvious problems. First of all, legislation needed to be reviewed. For example, in 2013 the Bosnian parliament approved a definition of SGBV that, at last, removed the requirement for this to feature the use or threat of force. Many other procedures that made it difficult or

impossible to bring cases to court were also revised. The organisation successfully advocated for multiple reforms, including the introduction in 2016 of a national system of free legal aid for survivors.

It has also been necessary to encourage prosecuting authorities to better prioritise the prosecution of SGBV crimes as part of their criminal justice strategy, because too often they are perceived as being of lesser importance. This has been done in conjunction with the UK's Preventing Sexual Violence Initiative and the Office of the Special Representative of the Secretary-General on SGBV. Thus, since 2014, trials are now held on a regular basis, and the consideration that should be given to this type of crime seems much more real. Since then, TRIAL International continues to support many victims free of charge. This is part of multiple cases that have so far seen the conviction of about ten individuals.

In the area of reparations, the political and judicial authorities have often struggled to implement international standards, with some actively resisting. Following a procedure supported by our organisation, the BiH State Court finally admitted – in a landmark judgment in 2015 – that survivors could obtain financial compensation in the framework of the criminal trial. This means not having to initiate a new procedure in the civil justice system; a slow, costly procedure lacking adequate protection measures, which victims never used. This jurisprudence has gradually begun to have an impact in the country, both in national and local courts. To this end, it was necessary to train prosecutors and judges to ensure the proper implementation of this judicial reform.

Similarly, a long running battle had to be waged so that the entire system would stop stigmatising victims, whether consciously or not. This work featured interviews with survivors, analysis of dozens of judgments, the writing of reports and training of people in the legal system, all contributing to the many myths about rape being deconstructed. The aim is for survivors to feel – at last – that the authorities are really working in their interests, and that the courts are no longer there to blame and attribute responsibility to victims of these crimes.

Referring to international standards is a key part of this work. Sometimes the authorities refuse to implement them, so it has been necessary to refer the matter to various international bodies. Sometimes in landmark decisions resulted. To take just one example, in August 2019 the UN Committee against Torture not only demanded that BiH pay financial compensation to a victim of SGBV, and that she must receive immediate medical and psychological care free-of-charge, but also that the state should issue an official apology. Most importantly, this ground-breaking decision stipulated that BiH must commit to an effective domestic reparations system for victims of war crimes - including SGBV. TRIAL International is currently working with the Bosnian authorities to ensure that the implementation of this decision can take place, despite ongoing political obstacles.

Another, positive example: for years, the question of the treatment of children born of SGBV has been largely avoided, with the fate of these children ignored in BiH. The indifference and taboos surrounding this issue continues to make these children feel forgotten and neglected. It took years of struggle to have their status recognised, all the while the psychological, economic and social impact that sexual violence had on their daily lives took its toll. Yet finally, in the summer of 2022, children born of rape were recognised as civilian victims of war for the first time in BiH. One of the three administrative units of the country, the Brčko district, decided to grant them this status. This is a first in the region, and probably even in Europe, and is the result of collaboration between several civil society organisations and international actors.

Democratic Republic of Congo

The DRC, and in particular the east of the country, has a long-held reputation for being the "rape capital of the world". Sexual violence used as a weapon of war is used in conflicts between the state and the country's many armed groups. It has resulted in more than a thousand cases reported to the United Nations in 2021 alone. In addition, there are countless other instances that are never reported by victims due restricted access to the justice system as well as insufficient financial means, legal assistance and remedies. There was also fear for their personal safety or of stigmatisation by their community. The task was made even more difficult by the size of the country,

the poor or non-existent infrastructure and the state's weakness in places most vulnerable to this type of crime.

The first challenge for the justice system when dealing with victims of SGBV is **to document these crimes quickly, effectively, securely and without re-traumatising survivors**. International NGOs, including our own, have played an important role in this regard, providing knowledge and skills to lawyers and local civil society organisations.

Thanks to these groups having privileged access to vulnerable communities, they serve as an early warning system when mass crimes are being committed. The effect is to make justice accessible, bringing it close to people. As well as informing the judicial authorities quickly of crimes committed in remote locations, this also serves to collect evidence early and to raise awareness among survivors about their legal rights and the role of the judicial system. **This methodology provides for a survivor-centred approach, which includes a referral system featuring medical, psychological and socio-economic follow-up.**

This approach continues into the investigation phase through a "consultation framework", which features close collaboration between the judicial authorities with international and local organisations. These informal structures bring together technical partners in support of the provision of justice, and lead to the establishment of a prioritisation strategy for the prosecution of mass crimes at national level. This has enabled several cases to be dealt with effectively and swiftly by the public prosecutor in the east of the country. This is particularly the case in South Kivu, where TRIAL International has been active since 2013.

One of the most notable precedents for the role of NGOs and other partners in the fight against impunity for perpetrators of SGBV is the "Kavumu" case. Some 40 girls aged between 18 months and 10 years were abducted and raped in South Kivu by a militia sponsored by a provincial deputy between 2013 and 2016. The contribution of NGOs of technical, legal, medical and psychological expertise was decisive in assisting the victims and convicting those responsible in 2017.

This contribution meant that, for example, the systematic nature of the rapes was recognised and the context set as these being crimes against humanity. Furthermore, it has allowed the establishment at the investigative level of the judicial process of protective measures adapted to the needs of child victims of sexual violence. These measures included, for the first time in the DRC, the use of video-recorded interviews with victims for use in the trial rather than in-person testimony. This allowed for the highest standards of child protection and welfare to be used.

Finally, medical and psychological assessments of the children by national and international experts allowed for a proper level of damages to be awarded by the courts.

The collaboration between NGOs and other partners in the Kavumu case did not stop with the appeal judgment in 2018. This confirmed the judgment from the court of first instance, and continues to this day through the establishment of an extraordinary consultation framework. This has responsibility for following up on the different aspects of the case, and for addressing the needs of survivors and their families in a holistic way by providing legal, security, psycho-social, medical and economic support.

Another more recent but equally striking precedent in the fight against impunity for the perpetrators of sexual violence in the DRC was the conviction at the end of 2019 of militia leader Kokodikoko. He was brought to justice for acts of rape, sexual slavery and other crimes inflicted between 2018 and 2019 on more than 300 victims in some 15 villages in South Kivu.

Legal expertise in support of the lawyers (supervised by TRIAL International) and the judicial authorities enabled the identification of the same modus operandi in the different villages. It also resulted in these being classified as international crimes. In addition, the contribution of the NGOs and the consultation framework was fundamental in providing technical, financial and logistical support for the preparation of the mobile court hearings in the case. This enabled the courts to bring justice closer to the victims. It also made it possible to find two victims of sexual slavery who had been missing for over a year, thanks to the testimony of witnesses during the trial.

Finally, in an unprecedented decision, the judgement recognised not only the responsibility of the state for having failed to protect the civilian population, but also it granted rehabilitation measures to the victims of SGBV. Indeed, the state was ordered to provide psychological and medical follow-up to the survivors. This case is currently under appeal.

In the DRC, the role of NGOs has been fundamental in the fight against impunity for international crimes at the national level, and in the implementation of the Rome Statute according to the principle of complementarity. A sustainable reinforcement of skills as well as effective assistance to survivors has been achieved thanks to NGOs providing technical expertise, having presence on the ground, and their understanding of the context, as well as the support offered by local structures and actors.

Since the Kavumu and Kokodikoko cases, more crimes of this type have been investigated and prosecuted by national courts. For example, our organisation has been involved in multiple proceedings that have resulted in the conviction of more than 50 perpetrators of SGBV. The collaboration between partners established in the consultation frameworks has only been strengthened after each case. It now allows for a coherent and solid prosecution strategy.

This methodology, developed in the rape capital of the world in the east of the country, has been adapted and brought to other provinces. In some regions this could make all the difference, such as in Kasai where dozens of girls continue to be kidnapped and turned into sex slaves by militias.

There is still so much to be done in Bosnia and Herzegovina, the Democratic Republic of Congo, and many other places around the world. Yet the impact of advocacy efforts, investigations, legal action, and consistent holistic efforts by multiple civil society actors has contributed to the development of this practice. Despite all the difficulties, this approach pays particular attention to the needs of survivors. **Above all, these advances have enabled victims to play a greater role in the judicial process and to support each other. They could also contribute to change that could serve as an example elsewhere if the follow up is sufficiently committed and long lasting.**