



CONFERENCE ON JUSTICE FOR VICTIMS OF THE GROSS HUMAN RIGHTS VIOLATION OF SEXUAL AND GENDER-BASED VIOLENCE 27 – 29 NOVEMBER 2019- JOHANNESBURG, SOUTH AFRICA



From (L-R) Madame Fatou Bensouda; Justice Navi Pillay; Justice (Rtd) Richard Goldstone and Dr. Mispa Roux

Prosecutors (ranging from the Chief Prosecutor of the International Criminal Court, the United Nations International Residual Mechanism for Criminal Tribunals, and a number of South African National Prosecutors); judges, representatives from the South African Department of Justice and Constitutional Development, and the Department of International Relations and Cooperation respectively; international organisations (including gender advisors from the International Committee of the Red Cross and the United Nations Office of the High Commissioner for Human Rights respectively); as well as various non-governmental organisations (including the International Criminal Justice Fund, the Johannesburg Holocaust and Genocide Centre, Justice Rapid Response, the Human Rights Institute of South Africa, the Southern Africa Litigation Centre, and Sonke Gender Justice) met in Johannesburg on 27th to 29th November 2019 to address the central theme, ***“Whether the current international legal framework provides adequate recourse and justice for victims and survivors of the gross human rights violation of Sexual and Gender-Based Violence (‘SGBV’).”***

The keynote address was delivered by Madame Fatou Bensouda, the Chief Prosecutor at the International Criminal Court (ICC). She noted that SGBV takes place *‘within a global context of*

relentless denial, and emphasised that her Office *'are conscious at all times [that] victims must remain at the heart of [their] work'*. She stated that since taking office, she has personally devoted *'special attention'* to enhance *'the effectiveness'* of the ICC in investigating and prosecuting SGBV. However, she was mindful there is still a great deal of work to be done by her Office in order to close the impunity gap for SGBV crimes. She underscored the critical role that academics, civil society and policy makers can play in supporting and enhancing the Office's efforts to investigate and prosecute these crimes, including, amplifying the voices of victims and conveying critical information about the Court's cases to communities around the world. She stated that the Court's jurisprudence, and the Office's strategies, tools and practices can provide important guidance to national jurisdictions, and to other actors who are investigating and prosecuting these crimes.

Ms. Marietou Dia and Ms. Thembile Segoeete, representatives of the ICRC and UN Mechanism respectively, gave insightful presentations from their own and their institutions' experiences. From the ICRC perspective, SGBV is viewed as an *'invisible phenomenon'*, and assumed that it occurs during conflict situations *'unless proven otherwise'*. The work of the ICRC is mainly from a protection and preventative point, and the organisation implemented an institutional strategy to prevent SGBV during armed conflict.

Thembile Segoeete, shared the lessons learnt both at the ICTY and the ICTR in investigating and prosecuting SGBV, which can be implemented by other courts and tribunals tasked with investigating and prosecuting SGBV underlying acts of genocide, crimes against humanity, and war crimes. She highlighted the importance of properly trained personnel tasked with investigations and prosecution of these crimes and that such persons should be *'bold enough'* to develop the law around SGBV. She emphasized that victim participation is *'crucial'* to the success of investigations and prosecutions, and that the absence of medical and forensic evidence should not serve as preventing its prosecution, or as proof of its occurrence. Finally, she stressed the importance of investigations being *'crime-based'* instead of *'target-based'*, therefore the focus should not be on the persons investigated as a first port of call.

Other speakers at the conference included Judge Navanethem (Navi) Pillay, who reflected on her role as judge at the International Criminal Tribunal for Rwanda during the Jean-Paul Akayesu trial in rethinking *'rape law'*. She stated that this ground-breaking judgment set an important precedent in defining the elements of sexual crimes, yet bemoaned the fact that *'the jurisprudence that has emerged within the various international courts relating to the definition of sexual crimes is far from consistent and does not provide clear precedents for the ICC.'* Judge Pillay stated that the result of this is that *'...we are left with a high degree of confusion and uncertainty over definitions and elements of sexual violence crimes. Uncertainty reigns over whether or not to include proof of the element of "non-consent" of the victim in the decision of rape, and if included, how to legally and factually interpret that element.'*

Judge Richard Goldstone observed that, although SGBV crimes were also being committed against men and boys, the largest majority of victims and survivors are women and girls, and that *'[m]any more men should become involved in the efforts to curb sexual and gender-based violence'*. He encouraged all participants in the conference to heed the call for an international treaty on sexual and gender-based violence, and that *'...civil society calling for a Convention on Sexual and Gender Crimes would bring more attention to this continuing and quite unacceptable discrimination and violence that inflicts women in very country on earth.'* He further called on all civil society organisations to renew and redouble their efforts to eliminate the commission of sexual and gender based violence.

Various country and regional reports were shared by the participants.

Short-term, medium-term, and long-term goals were highlighted at the end of the conference. They included;

- Short-term: continue with the existing work of raising awareness on this international crime and gross human rights violation.
- Medium-term: publication of academic and other work on SGBV including the publication of papers presented at the conference in a special edition dedicated to sexual and gender-based violence as a gross human rights violation.
- Long-term goal: to lobby for the creation of an international treaty recognising SGBV as an international crime, which imposes obligations on States to prevent and prosecute this gross human rights violation.

The conference was organised by the Sexual and Gender-Based Violence Unit at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law, a Centre of the University of Johannesburg ('SAIFAC'), in collaboration with the South African Research Chair in International Law ('SARCIL') and the Konrad Adenauer Stiftung's Rule of Law Program for Sub Saharan Africa.