Investigating Rape at the International Criminal Court: The Impact of Trauma

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1. INTRODUCTION: SEXUAL VIOLENCE AND THE UPC

The conflict in the Democratic Republic of the Congo (DRC) has been characterised by the widespread and systematic perpetration of rape and other forms of sexual violence. Rape has been committed by all actors in the conflict, including those operating in the Ituri region of the country, and the use of rape by Lubanga's *Union des Patriotes Congolais* (UPC) in particular has been widely reported and documented by the UN and NGOs alike.[2] Despite this, however, no charges of sexual violence were included in the indictment issued by the International Criminal Court (ICC) against Lubanga. Moreover, a subsequent attempt to introduce sexual violence charges during the trial was unsuccessful.[3]

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2 See, for example, UN Organisation Mission in the Democratic Republic of the Congo, *Special Report on the Events in Ituri, January 2002 – December 2003*, S/2004/573; Women's Initiative for Gender Justice, *Making a Statement: A Review of Charges and Prosecutions for Gender-based Crimes before the International Criminal Court* (June 2008); Human Rights Watch (HRW), *Seeking Justice: the Prosecution of Sexual Violence in the Congo War* (March 2005); HRW, *UPC Crimes in Ituri, (2002 – 2003)* (November 2006); Coalition for Women's Human Rights in Conflict Situations, *Public Records on sexual violence Perpetrated in Ituri, Kivus, oriental Povince [sic] et in Maniema (DRC) since the 1 July, 2002*, available online at <http://www.womensrightscoalition.org/site/advocacyDossiers/congo/tablesexualviolence_en.php> accessed 1 March 2012.

3 On 22 May 2009, in response to repeated testimony of rape during the trial, victims' representatives sought the recharacterisation of charges to include sexual slavery and inhuman treatment. The request was granted by the Trial Chamber, 14 July 2009, ICC-01/04-01/06-2049, but subsequently reversed by the Appeals Chamber, 8 December 2009, ICC-01/04-01/06-2205.

Sexual violence charges have been included in subsequent Court indictments,[4] although these remain highly vulnerable, with over half being dismissed before the trial stage.[5] While, therefore, there have been improvements in how the ICC investigates and prosecutes crimes of sexual violence,[6] it is clear that there is still progress to be made.[7]

This article provides an overview of socio-cultural barriers to disclosing rape before going on to consider practical factors relating to the rape itself which inhibit either recall or disclosure. The author will then examine the clinical impact of trauma resulting from war rape on disclosure and credibility assessment, before addressing the more specific difficulties involved in the medical documentation of rape and other forms of sexual violence for the purpose of proving the offence. The paper will conclude with some thoughts on the next steps needed to address the problems posed by the clinical consequences of rape.

2. THE ADEQUACY OF ICC PROVISIONS FOR THE INVESTIGATION AND PROSECUTION OF SEXUAL VIOLENCE

The provisions of the Rome Statute[8] (Statute) have been hailed as the most progressive and far-reaching of any international court for the prosecution of sexual violence.[9] Rape, sexual slavery, forced pregnancy,

4 The majority of cases before the ICC now include charges of sexual violence or rape. The case of *The Prosecutor v Jean-Pierre Bemba Gombo* for example includes charges of rape as both a war crime and as a crime against humanity, ICC-01/05-01/08, and charges of genocide, including acts of rape, are incorporated into the second arrest warrant of Sudanese President, Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-95, 6.

5 See UN Inter Press Service, *Launch of Gender Report Card on ICC 2011* (14 December 2011); *The ICC and Gender Justice*, < http://www.intlawgrrls.com/2012/02/icc-and-gender-justice.html > accessed 18 February 2012.

6 See D. Luping, 'Investigation and Prosecution of Sexual and Gender-based Crimes before the International Criminal Court', 17(2) Am Uni J Gen, Soc. Pol. and the Law 431 - 496; Open Society Justice Initiative, *International Criminal Court Takes On Gender Crimes* (23 November 2010).

7 See Institute of War and Peace Reporting (IWPR), 'ICC Still Facing Rape Case Challenges' (8 August 2011).

8 UN General Assembly, *Rome Statute of the International Criminal Court (last amended January 2002)*, 17 July 1998, A//CONF. 183/9.

9 See M. Ellis, 'Breaking the Silence: Rape as an International Crime,'(2007) 38

enforced sterilisation and other forms of sexual violence are expressly recognised as crimes against humanity or war crimes, depending upon the circumstances of their perpetration.[10] The Statute provides that rape may constitute genocide when it is directed towards the destruction of a national, racial, ethnic or religious group,[11] while the inclusion of a reference to 'other forms of sexual violence' as a residual clause would potentially facilitate the exercise of jurisdiction over other, un-enumerated offences of comparable gravity to those listed, such as sexual mutilation.[12]

In addition, the drafters of the Statute appear to have intended that crimes of sexual violence should receive specific attention at the investigation stage. Article 54(1)(b), for example, requires the Prosecutor to take appropriate measures for the effective investigation of crimes within the Statute, including the need to 'take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children'. Similarly, Articles 44(1) and (2) require the Prosecutor to have particular regard to legal expertise in violence against women when appointing investigators, and Article 42(9) mandates the Prosecutor to appoint 'advisers with legal expertise on…sexual and gender violence'.[13]

Finally, there is recognition in the Statute that crimes of sexual violence may be committed in a private setting or otherwise in the absence of witnesses. Rule 63(4) of the ICC Rules of Procedure and Evidence provides that

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Case Western Reserve J. Int L 225 – 247, 235; A. Dallman, 'Prosecuting Conflict-Related Sexual Violence at the International Criminal Court' (2009) 1 SIPRI Insights on Peace and Security.

10 Articles 7(1), 8(2)(b), and 8(2)(e).

11 Elements of Crimes, Article 6(b)(1), which notes that although rape is not listed as a form of genocide under Article 6 of the Rome Statute, acts of genocide committed by the infliction of 'serious bodily or mental harm' might include 'acts of torture, rape, sexual violence or inhuman or degrading treatment', Doc. PCNICC/2000/1/Add.2 (2000).

12 P. V. Sellers, 'The Prosecution of Sexual Violence in conflict: The Importance of Human Rights as Means of Interpretation,' published by the UN High Commissioner for Human Rights [undated], < http://www2.ohchr.org/english/issues/women/docs/Paper_Prosecution_of_Sexual_Violence.pdf> accessed 1 March 2012.

13 See S. SaCouto and K. Clearly, 'The Importance of Effective Investigation of Sexual Violence and Gender-Based Crimes at the International Criminal Court' 17 Am. U.J. Gender, Social Policy and the Law, 339 – 358, 340.

corroboration is not mandatory, particularly in cases of sexual violence.[14]

Whilst the provisions of the Statute appear adequate, difficulties arise in their execution, and failures to collect the necessary evidence has meant that the ICC is choosing not to pursue charges of rape and other forms of sexual violence in favour of more straight-forward offences.[15] It is therefore appropriate to consider the difficulties in investigating and proving rape.

3. DIFFICULTIES IN INVESTIGATING AND PROVING RAPE: DISCLOSURE TO INVESTIGATORS

A number of factors operate either to inhibit survivors of sexual violence from disclosing their experiences or to impact upon the quality of evidence which they are able to provide. These factors can arise as a result of practical aspects of the rape itself, external barriers subsequent to the rape and the clinical consequences of rape-related trauma on recall. These factors are outlined in turn below.

3.1 Factors inhibiting disclosure: practical barriers specific to the rape

Forms of sensory deprivation, such as blindfolding, attack during darkness and lapses of consciousness may affect a survivor's ability to produce a coherent account of a rape, and the problem is exacerbated by disorientation and extreme stress experienced during the episode. For women who were held by rebel forces as sex slaves, factors such as drugging, and repeated or similar abuse experiences involving multiple perpetrators will also affect their ability to accurately recount events.[16] Head injury inflicted as a result of accompanying violence, together with issues such as starvation or vitamin deficiency in cases where individuals

14 Rule 63(4) states that '…a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.' Adopted by the Assembly of States Parties, 3 -10 September 2002, ICC-ASP/1/3.

15 See IWPR, 'International Justice Failing Rape Victims' (15 February 2010); IWPR 2011, see note 7.

16 J. Herlihy, P. Scragg, and S. Turner, 'Discrepancies in autobiographical memories - implications for the assessment of asylum seekers: repeated interviews study'(2002) 324 British Medical Journal.

were held for a lengthy period, may impair neuro-psychiatric memory.[17]

3.2 Factors inhibiting disclosure: external barriers subsequent to the rape

(i) Social, cultural and familial barriers to justice-seeking: the impact of shame:

In many societies sex remains a taboo subject. Disclosure of sexual violence may have devastating consequences for a survivor's marriage, leading to ostracism from the family, destitution and impoverishment, as well as social exclusion within the survivor's community.[18] In cases of unmarried rape survivors, sexual violence may reduce a survivor's prospects of marriage.

Clinical research with survivors of trauma shows that those with a history of sexual violence experience greater levels of shame when compared with survivors of non-sexual violence, [19] and there is evidence of a link between shame and the non-disclosure of both experiences of rape and resulting clinical symptoms. Notably, whilst shame operates as a limiting factor on disclosure in both cases, participants in the study in question identified shame as the principal reason for non-disclosure of symptoms more frequently than of experiences.[20] This is likely to be significant in establishing appropriate reparations awards for victims of rape and other forms of sexual violence.

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17 International Rehabilitation Council for Torture Victims (IRCT), *Psychological Evaluations of Torture Allegations: A Practical Guide to the Istanbul Protocol – for psychologists* (2007).

18 See United Nations, *Gender-Based Persecution*, 1997, EGM/GBP/1997/Report.

19 Assessed by reference to a 25-item scale investigating characterological, behavioural and bodily shame, and considering experiential, cognitive and behavioural components of shame within each of the three identified domains; B. Andrews, M. Qian and J. Valentine, 'Predicting depressive symptoms with a new measure of shame: the Experience of Shame Scale' British Journal of Clinical Psychology, 29 – 42, 41, reported in D. Bogner, J. Herlihy and C. Brewin, *Impact of sexual violence on disclosure during Home Office interviews* (2007) 191 British Journal of Psychiatry 75 – 81; See also J. Herlihy, and S. Turner, 'Should discrepant accounts given by asylum seekers be taken as proof of deceit?' (2006) 16(2) Torture.

20 A. Hook and B. Andrews, 'The relationship of non-disclosure in therapy to shame and depression' (2005) 44 British Journal of Clinical Psychology 425 - 438.

Difficulties for investigators are exacerbated where social ostracism or cultural isolation heighten the trauma response of the survivor. According to the Istanbul Protocol,[21] the UN-endorsed manual for the effective investigation and documentation of torture, 'psychological consequences [...] occur in the context of personal attribution of meaning, personality development, and social, political and cultural factors'.[22] Issues such as social ostracism or cultural isolation may exacerbate survivor reactions to trauma, and the trauma response will in turn influence the ability of a survivor of sexual violence to speak about her experiences.[23]

(ii) Trust and the existential dilemma:

Survivors of war rape are at an increased risk of emotional difficulties, including what has been termed the 'existential dilemma', by which a survivor's core beliefs about the world as a just place have been challenged. As a result, survivors may experience difficulties in trusting others, particularly those who are asking them to relate painful experiences.[24]

If investigators are working through an interpreter, difficulties in disclosure may be compounded where the interpreter is from the same community as the survivor and there is a fear of a lack of confidentiality. In such circumstances, survivors will be extremely reluctant to divulge their experiences of sexual violence.

3.3 Factors inhibiting disclosure: the clinical impact of trauma on recall

(i) *Avoidance:*

Avoidance strategies can include not only voluntary tactics, such as trying not to think about past experiences or avoiding places or events that might trigger painful memories, but also involuntary responses

21 *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, OHCHR, 1999.

22 Para 234.

23 IRCT, note 17 at 24.

24 J. Herlihy and S. Turner, 'Should discrepant accounts given by asylum seekers be taken as proof of deceit?' (2006) 16(2) Torture.

including psychogenic amnesia.[25] Avoidance itself forms a central part of the post-traumatic stress disorder (PTSD) response to a deeply traumatic event. Moreover, clinical studies have shown that avoidance symptoms are significantly more evident in survivors of rape and other forms of sexual violence than in survivors of non-sexual trauma.[26]

(ii) *Dissociation:*

Dissociation is understood as 'a disruption in the usually integrated functions of consciousness, identity, memory and perception'.[27] Dissociation can occur at the time of the traumatic event itself (peritraumatically[28]), producing a subsequent psychogenic amnesia for some or all of the traumatic event.[29] In addition, dissociation may recur with memories of the event and during times of high arousal, such as when a survivor is questioned about her experiences. This in turn can affect the ability of the individual to construct a coherent narrative of the event.[30] Clinical research with survivors of sexual violence has identified 'more dissociation symptoms and greater difficulty in disclosure' in the study population when compared to survivors of non-sexual trauma,[31] hence exacerbating the problem of memory retrieval and evidence gathering for investigators.

(iii) *Impact of PTSD on recall*:

Symptoms of PTSD can affect the ability of a survivor of gross

25 *Ibid.*

26 C. Van Velsen, C. Gorst-Unsworth and S. Turner, 'Survivors of torture and organized violence: demography and diagnosis' (1996) 9 Journal of Traumatic Stress 181 – 193.

27 *Diagnostic and Statistical Manual for Mental Disorders (DSM-IV)*, 4th Ed., (Washington DC, American Psychiatric Association 1994).

28 D.S. Weiss *et al*., 'Predicting symptomatic distress in emergency services personnel' 63 Journal of Consulting and Clinical Psychology 361 - 368, cited in D. Bogner, J. Herlihy and C. Brewin, 'Impact of sexual violence on disclosure during Home Office interviews' (2007) 191 British Journal of Psychiatry 75 - 81.

29 J. Herlihy and S. Turner, 2006 see note 24.

30 D. Bogner, J. Herlihy and C. Brewin, 'Impact of sexual violence on disclosure during Home Office interviews' (2007) 191 British Journal of Psychiatry 75 - 81.

31 *Ibid.*

violations to recall an important aspect of the trauma or to construct a coherent account of events. In addition, research has identified 'a trend for sexual torture…to be associated with a higher PTSD symptom count', indicating a higher risk of the subsequent PTSD development,[32] again increasing the difficulty for survivors of rape in recounting their experiences to ICC investigators.

(iv) *Autobiographical memory impairment*:

Autobiographical (otherwise declarative or explicit) memory refers to the ability to recall events in our own lives. These memories are recorded and stored chronologically, can be retrieved voluntarily, and it is possible to construct a chronological and coherent narrative of them.[33] A critical feature of autobiographical memory is an accompanying awareness that the events concerned occurred in the past.[34]

There is a growing consensus that traumatic memories are of a different character.[35] During deeply traumatic events, it is believed that greatly heightened emotional arousal interferes with the processing and storage of information in explicit memory, and the process fails. As a result, autobiographical memory of the event is fragmentary or non-existent. Herlihy and Turner observe that 'when someone is interviewed and asked about an experience that was traumatic, and has only, or largely, memories of this fragmented type, they are unlikely to be able to produce a coherent verbal narrative, quite simply because no complete verbal narrative exists'.[36] While explicit memory fails, however, non-declarative (implicit) memory, which includes emotional responses, habits and reflexive actions, appears

32 R. Ramsay, C. Gorst-Unsworth and S. Turner, 'Psychiatric morbidity in survivors of organised state violence including torture. A retrospective series' (1993) 162 The British Journal of Psychiatry 55 - 59, 57 – 58; See also D. Lecic-Tosevski and J. Bakalic, 'Against Torture – The Road to a Healthy Individual and Society,' in Z. Spiric, G. Knezevic and V. Jovic, et al. (eds), *Torture in War: Consequences and Rehabilitation of Victims – Yugoslav experience* (International Aid Network: Belgrade 2004) 97.

33 L.R. Squire and S. Zola-Morgan, 'The Medial Temporal Lobe Memory System' Science, 20 September 1991, 253.

34 J. Herlihy and S. Turner, 2006 see note 24.

35 C. Brewin, *Posttraumatic Stress Disorder: Malady or Myth?* (Yale University Press: London 2003); J. Herlihy, P. Scragg and S. Turner, 2002 see note 16.

36 J. Herlihy and S. Turner, 2006 see note 24.

unaffected by trauma. As a result, while a survivor of trauma may not be able to access a coherent memory of the event, he/she may be aware of sensory perceptions and behavioural reenactments emanating from it.[37] These may in turn be experienced as images, smells, sensations or emotional states.[38] Such memories are accessed through qualitatively different 'pathways', and rather than arising voluntarily or consciously in the survivor, respond to triggers or reminders of the event. Because these memories are subject to triggers, different aspects may arise depending upon the questions posed by the investigator, and where survivors are able to retrieve memories, these are often not chronological and are fragmented.

Significantly, implicit memories are not perceived by the survivor as occurring in the past.[39] During an investigation, survivors will experience these memories as happening in the present, which will be highly distressing for the interviewee and potentially problematic for the investigator.

4. CLINICAL FACTORS IMPACTING UPON PERCEIVED CREDIBILITY

In addition to clinical issues which impact upon a survivor's ability to recall and relate her story, a number of factors arising as a result of trauma may affect the way in which investigators assess the credibility of survivor testimony.

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37 P. Janet, *Psychological Healings, Vols 1 – 2* (Macmillan: New York 1925); J.C. Nemiah, 'Early Concepts of Trauma, Dissociation and the Unconscious: Their History and Current Implications', in D. Bremner and C. Marmar (eds), *Trauma, Memory and Dissociation* (American Psychiatric Press, Washington DC 1995); van der Kolk and van der Hart, 'Pierre Janet and the breakdown of adaptation in psychological trauma' (1989) 146 American Journal of Psychiatry 1530 – 1546; B. van der Kolk and van der Hart, 'The Intrusive Past: The flexibility of memory and the engraving of trauma' (1991) 48(4) American Imago 425 – 454.

38 B. van der Kolk, 'Trauma and Memory,' in B. van der Kolk, A. MacFarlane, L. Weisaeth, (eds), *The effects of overwhelming experiences on mind, body and society* (Guildford Press: New York 1996).

39 S.J. Hellawell and C.R. Brewin, 'A comparison of flashbacks and ordinary autobiographical memories of trauma: content and language' (2004) 42 Behav Res Ther 1 -12.

4.1 Central v. Peripheral Detail

Essential to the legal understanding of credibility is the idea that details which are central to an event might be constructed by reference to historical and public data, whereas specific details cannot, and so recall of the latter is considered to be indicative of credibility. The ability of a survivor of gross violations, including rape and other forms of sexual violence, to recall peripheral details of an event is therefore often seen as a way of distinguishing between credible, accurate recollection and reconstruction based on historical or schematic knowledge.[40]

This approach, however, is not supported by clinical literature, and research has shown that traumatic memories tend to focus on central events rather than peripheral details. Depression has been shown to have a direct, negative impact on the ability to recall specific or peripheral detail, and for individuals with high levels of post-traumatic stress in particular, discrepancies in accounts arise in peripheral detail with the increase of time between interviews or length of court processes.[41]

4.2 Emotional Numbing

Emotional numbing associated with avoidance results in a survivor having no access or emotional connection to her experiences. This lack of any range of affect impacts upon a survivor's demeanour when giving testimony, leading to perceptions of 'coldness'. This in turn fails to accord with lay assumptions of how a survivor of sexual violence is expected to behave, and can be interpreted negatively to impugn credibility.[42]

5. DIFFICULTIES IN INVESTIGATING AND PROVING RAPE: MEDICAL DOCUMENTATION

40 H. E. Cameron, 'Refugee status determinations and the limits of memory' (2010) International Journal of Refugee Law. See also J. Herlihy and S. Turner, 'Asylum claims and memory of trauma: sharing our knowledge' (2007) 191 British Journal of Psychiatry 3 - 4.

41 J. Herlihy, P. Scragg and S. Turner, 2002 see note 16.

42 See E. Smith and J. Boyles, 'Justice Denied: The experiences of 100 torture surviving women of seeking justice and rehabilitation' (2009) Medical Foundation for the Care of Victims of Torture.

In a recent interview concerning the investigation and prosecution of sexual violence at the ICC, an adviser to the Court's Office of the Prosecutor (OTP) stated that '[t]he greatest difficulty is that most of the victims do not get checked by a doctor after the rape therefore there is no medical record of the rape'.[43] Access to clinical services may be highly problematic for women during periods of ongoing conflict and insecurity,[44] and a lack of access to healthcare for survivors of sexual violence in the Ituri region of the DRC in particular has been documented.[45]

Notwithstanding the availability of healthcare services, medical documentation of rape is problematic. Somnier observes that most physical signs of torture rapidly disappear,[46] and this is particularly true in many cases of penile rape. Clarke, for example, notes that it is exceptional to find scars in the genital area following penile rape, and even where a woman is examined within 24 hours of rape, the most that one might expect to find are bruises or abrasions, which heal quickly without leaving a scar. According to the Istanbul Protocol, a medical examiner is unlikely to see specific signs of rape in a survivor after seven days.[47]

This does not mean, however, that clinical documentation is impossible where there has been a significant lapse of time between the attack(s) and clinical assessment. Where scars and other long term damage (such as mutilations or damage to the pelvic structures such as the bladder and rectum) have occurred, these can be documented by a clinician. Notably, however, these may not effectively 'testify' to the survivor's full experience of sexual violence. In cases of rape with extreme violence or rape using a sharp implement, fistula or other forms of damage to reproductive organs might be clinically documented a long time after the rape occurred,[48] and the UNFPA (UN Population Fund) has reported the incidence of fistula

43 IWPR, 2011 see note 7.

44 There are a number of other reasons why women who have survived sexual violence do not seek rehabilitative care, See E. Smith and J. Boyles note 42.

45 'International Crisis Group, Maintaining Momentum in the Congo: The Ituri Problem' (2004) 84 Africa Report 14.

46 F. Somnier, P. Vesti, M. Kastrup and I.Genefke, 'Psychosocial consequences of torture: Current knowledge and evidence', in M. Basoglu (ed), *Torture and its consequences: Current treatment approaches* (Cambridge University Press 1992) 56 - 72.

47 At para 223.

48 See E. Smith and J. Boyles note 42.

amongst thousands of women in eastern Congo, caused by 'systematic, violent gang rape'.[49]

In addition, a survivor can be asked about the immediate and longer-term physical effects which she experienced, including abdominal pain, vaginal discharge, STD or HIV infection, pregnancy and miscarriage. These symptoms can be assessed for their consistency with the survivor's account of her rape and medical evidence produced accordingly.[50]

Finally, the statement of the OTP adviser focuses on the availability of physical evidence of rape, without reference to the psychological sequelae of sexual violence. The International Rehabilitation Council for Torture Victims notes that '[c]ontrary to the physical effect of torture, the psychological consequences of torture are often more persistent and troublesome than physical disability'.[51] Given the short timeframe for the physical documentation of many of the clinical signs of rape, recourse to psychological evidence is essential to the successful prosecution of the offence. Ongoing psychological impact of rape can be recorded, and while psychological symptoms are unlikely to be 'diagnostic' of rape, their consistency or otherwise with the survivor's account of rape can be assessed by an expert clinician.

6. SOME CONCLUDING THOUGHTS AND AREAS FOR FUTHER INVESTIGATION

It is clear from the above that the evidence of survivors of rape and other forms of sexual violence can appear disjointed, incomplete and incoherent. Memories may be fragmented, non-chronological and lacking in peripheral detail. This runs counter to legal approaches for the assessment of evidence and testimony, and poses a significant problem for Court investigators in the collection of evidence to substantiate rape allegations.

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49 *Campaign to end Fistula*, UNFPA website. Fistula can also be caused by FGM or obstructed labour, see E. Smith and J. Boyles note 42.

50 See A. Callamard, *Documenting Human Rights Violations by State Agents: Sexual Violence*, Amnesty International/International Centre for Human Rights and Democratic Development (Canada 1999) 53. For a full account of physical and psychological sequelae of rape and other forms of sexual violence, See E. Smith and J. Boyles note 42.

51 In IRCT, note 17 at 6.

It has been argued that far from suggesting that a survivor's account lacks credibility, the difficult and fragmented nature of evidence may in fact be supportive of a claim to have been raped.[52] While such an approach may be correct in the broadest sense, it should be treated with caution, particularly in so far as it might impact upon the ability of the defendant to challenge the legitimacy of evidence before the Court. Much of the literature on the clinical impact of trauma relates to disclosure within the therapeutic environment. Further work is therefore required to assess the direct relationship between individual sequelea and difficulties experienced in the collection of evidence for criminal prosecution. Such work would require expert clinical assessment and documentation of symptoms in order to relate sequelae to evidential difficulties and to consider the degree of consistency between the symptoms recorded and the evidential difficulties encountered. Such an approach would also require consideration of how the Court currently engages expert witnesses.

Use of fragmented testimony in Court proceedings would also require significant Court engagement with issues of trauma. Some, albeit limited, progress has already been made in this regard in the International Criminal Tribunals for the former Yugoslavia and Rwanda, the former of which has concluded that PTSD would not necessarily affect the credibility of a victim/witness.[53] Statements to date, however, have been limited to PTSD diagnoses as opposed to symptomology, or otherwise make vague reference to 'trauma', without consideration of specific sequelae.[54] While, therefore,

52 See K. Kittichaisaree, *International Criminal Law* (2001) 45; R. May and M. Wierda, *International Criminal Evidence* (2002) 237; Burnett and Peel, 'What brings asylum seekers to the UK?' (2001) 322 (7284) British Medical Journal 485 – 488.

53 In the *Furundzija* case, the ICTY Trial Chamber, noting that post-traumatic stress disorder could impair memory and reliability, went on to state that '[t]here is no reason why a person with PTSD cannot be a perfectly reliable witness', *The Prosecutor v Furundzija*, 10 December 1998, Case No. IT-95-17/1-T, Trial Chamber Judgment, 108-109; see also *The Prosecutor v Kunarac et al*., 12 June 2002 Case Nos. IT 96-23-I & IT 96-23/1-A, Appeals Chamber Judgment, 324. In respect of the ICTR, see *The Prosecutor v Bagilishema*, 7 June 2001, Case No. ICTR 95-1A-T, Trial Chamber Judgment, 24, in which the Court concluded that differences between earlier statements and testimony in court could be due to a number of factors, including 'the impact of trauma on the witness', going on to suggest that 'some inconsistency is tolerable and may in fact speak to the credibility of the evidence'.

54 A PTSD diagnosis is not necessarily helpful in this regard, since it involves a

there has been some progress in the investigation of crimes of sexual violence, there is still room for improvement, and particular attention to issues emanating from the clinical impact of rape-related trauma may provide an opportunity for the improved collection of credible evidence to support sexual violence charges at the International Criminal Court.

collection of symptoms which can vary as between survivors. An approach based purely on specific sequelae as opposed to a collective clinical diagnoses should be favoured.