



Report on Panel Discussion

Translating the lived experience of sexual violence survivors into law

19 June 2019

International Day for the Elimination of Sexual Violence in Conflict

**Women's Initiatives
for Gender Justice**



The *Call it what it is* campaign

Sexual violence is a difficult topic to navigate and often not well understood. Launched in December 2018 by Women's Initiatives for Gender Justice, the *Call it what it is* campaign calls on the collective strength of civil society to give survivors of sexual violence in conflict a voice in shaping contemporary, victim-centric and contextually relevant guidance to international criminal law practitioners on what makes violence 'sexual'.

By September 2019, a Civil Society Declaration will have been developed based on the input of hundreds of consulted survivors of sexual violence from around the world. Over 50 eminent scholars and practitioners in the field of addressing sexual violence will have lent their expertise in translating the input of the survivors into the principles contained in the Declaration.

The Declaration will contain: (1) guidance on what makes violence 'sexual'; and (2) a non-exhaustive list of acts considered to be of sexual nature, such as acts that may be intended as sexual by perpetrators, and/or perceived as such by victims in specific cultural environments and that otherwise may not have been contemplated in definitions of sexual violence. The Declaration will serve as a stand-alone guidance document on what can be considered an act of sexual nature within the (international) criminal legal framework.

The *Call it what it is* campaign is a global initiative involving partnership with a large number of actors, including survivors of sexual violence, civil society organizations, State representatives, legal practitioners, and academics.

The Declaration will be finalized and adopted in September 2019. It will then be opened for endorsement by states, international organizations and NGOs before its presentation to the International Criminal Court (ICC) in December 2019 during the Assembly of States Parties to the Rome Statute in The Hague.

The panel discussion

Women's Initiatives for Gender Justice (WIGJ) marked the 2019 International Day for the Elimination of Sexual Violence in Conflict with a panel discussion called "Translating the Lived Experience of Sexual Violence Survivors into Law", co-hosted with the Embassies of Canada, Sweden, Switzerland and the United Kingdom to The Netherlands.

The lively panel discussion touched on many critical issues fundamental to the *Call it what it is* campaign, including how sexual violence in conflict is addressed in various accountability efforts and what needs to be done to better understand this form of violence. Central to the panelists' interventions was the need to involve survivors in initiatives aimed at addressing sexual violence.

The panel discussion took place at the Leiden University the Hague Campus on June 19th with approximately 85 attendees.

In addition to this report, a [full transcript](#) of the panel discussion is available to download.

Event proceedings

- Welcoming remarks by H.E. Ms. Annika Markovic, Ambassador of Sweden to The Netherlands.
- Introduction by Melinda Reed, Executive Director of the Women's Initiatives for Gender Justice.
- Panel
 - Presentation of panelists by facilitator Wayne Jordash, QC
 - Dr. Chris Dolan, Director of the Refugee Law Project, Uganda
 - Member of the SEMA Survivor Network
 - Kolbassia Haoussou, co-founder of the Survivor Speak Out Network
 - Dr. Anne-Marie de Brouwer, Tilburg University
 - Linda Bianchi, War Crimes Unit, Canadian Department of Justice
 - Niamh Hayes, Legal Officer, Office of the Prosecutor at the International Criminal Court
- Q&A
- Closing remarks by H.E. Ms. Sabine Nölke, Ambassador of Canada to The Netherlands

The opening remarks from **H.E. Ambassador Markovic** focused on the need to end impunity for sexual violence and highlighted the commitment of the Swedish government to promoting human rights and gender equality. She highlighted the Swedish feminist foreign policy and stated: "Our foreign policy is an agenda for change. We must realize that gender power structures and inequalities have a direct impact on our ability to ensure access to justice for all." She additionally highlighted the need for collaborative efforts between States, international organizations, courts, tribunals, and civil society in order to eliminate impunity for sexual and gender-based crimes (SGBCs). She ended by stating: "To conclude, communications and campaigns can be of great importance for normative impact. We therefore support both politically and financially the civil society movement *Call it what it is* and recognize how pervasive and widespread sexual violence is. We encourage others to join us and finally we should be hopeful, that in working together, starting the conversation today and fighting for the impunity for sexual and gender-based violence (SGBV) crimes is achieved."

"We must recognize the value of survivor led initiatives that give a voice to those who have experienced sexual violence."

"I invite you all to lend your voice to our effort to better understand sexual violence."

The Ambassador's opening was followed by comments from **Melinda Reed**, the Executive Director of the Women's Initiatives for Gender Justice (WIGJ) who briefly outlined the *Call it what it is* campaign and the consultations with survivors that were held in March of 2019. She stated, "Today's event is part of the process of translating the lived experience of survivors into law, and of ensuring that survivors' voices are heard on the issue of addressing conflict-related sexual violence. I invite you all to lend your voice to our effort to better understand sexual violence."

The panel was opened by **Wayne Jordash QC** who introduced the video statement from **Dr. Chris Dolan**, Director of the Refugee Law Project in Uganda. Dr. Dolan spoke about the importance of a campaign to better define sexual violence, stating "We find a problem where people do not name something, it [generally] gets disregarded. If it's not there in black and white, it hasn't happened. Another big problem that we have is that particularly when we're talking about sexual violence done to men, a lot of it gets described as torture, both by the victims themselves and the organizations that are intervening. In support of victims of torture, it's really time that we bring them out from underneath of the umbrella." He addressed the benefit to survivors of calling acts sexual violence, which allows them to simply say yes or no rather than needed to try to explain that what they experienced was in fact sexual violence.

"In my view there is no question that these were acts of sexual violence, from a victim/survivor perspective and to call it anything other than acts of sexual violence is doing a huge disservice to them and a disservice to the pursuit of justice."

Dr. Dolan additionally addressed some of the potential dangers and challenges of trying to better define sexual violence. He noted that any definition can exclude acts that are not specifically part of that definition, and stated that "the more specific you become, the more specific you have to get as we go along". He highlighted the need to expand understandings of sexual violence in a way that can be used by victims/survivors. "I would say that in addition to talking about acts of a sexual nature, we also need to talk about acts that target the victim's sexuality, sexual identity, sexual orientation. Why do I think it's important to have these three different ways of talking about sexual violence: acts of a sexual nature, acts that impact on sexuality, acts that target sexuality? It's because they also entail different ways of looking at the relationship between the perpetrator and the victim, the level of intention, and [these three ways] don't fixate on intention."

Dr. Dolan was followed by a member of the SEMA survivor network from South Sudan. She talked about the SEMA network which now has survivors from 20 countries and highlighted the importance of survivors supporting each other. She stated: "When there is no acknowledgement by a state like mine and no form of support for the thousands of women and children - it is dangerous for us to call ourselves a network working towards ending sexual violence. That has to end. From our perspective, as the women from SEMA, the power of us being and working together has made us unite in the idea that we don't only want to end this reality, but to really holistically work



towards an education and elimination of this male-driven urge of aggression in our consciousness in all communities; and that is the power of us gathering together as survivors.” She went on to note that the *Call it what it is* campaign is important because states and other actors shy away from the real meaning of sexual violence and often give it just a small mention in peace agreements, ignoring the reality of how widespread it is. She stated that true change may require having perpetrators join the cause, and that it is necessary to change the narrative. “For myself, for all the women, men and children. [We must] go deeper in how we are and try to put an end to this and address it as it is. [We must] work together in calling it what it is and basically break the stigma because many of the girls who became mothers during this war in my country were rejected by their families and outcasted by their communities. Many of the children who were born in the war, [whose] mothers were left with the decision of: do I love this child, or do I abandon it? And when those children are gathered into shelters, who will they become in the future? Unfortunately, in most of cases, they [become] perpetrators themselves. So, with the work of SEMA, there is scope of holistic healing and care, that we hope to work on and to strongly call out for justice because justice is not only silencing the perpetrator, but justice is also changing the culture among the perpetrators.”

“I believe that there is a strong need to speak out and address the issue without shying away from what words to use and what is okay and appropriate to expose. ”

“Between people who would cook pudding cake following the recipe from the supermarket but haven’t tasted it, who is [in] the best place to tell you how the pudding actually tastes like? ”

Kolbassia Haoussou, co-founder of the Survivors Speak Out Network spoke next, remarking on the need to include survivors as key stakeholders in any discussions about the effective elimination of sexual violence in conflict. In reflecting on what justice would mean for him as a survivor, Mr. Haoussou stated, “The years of stigma and injustice I’ve experienced, the loss of identity that I live with, the impunity, which allows my perpetrators to continue to enjoy their life, the trauma and also the lack of personal development that I suffered. I asked: can justice restore of all this? Can justice help me go back to normal life before the trauma? That would have given me a normal life experience. Can justice provide closure for the trauma I have suffered? I came to the conclusion that to achieve the closure

I need some form of justice.” He further stated: “While I see myself very much as an expert, I don’t know if other practitioners, experts in the media and governments accept me and any other survivor as an expert. There’s always an assumption that we survivors are very vulnerable to be able to know what is best for ourselves. Meaningful engagement gives survivors a choice, a voice, a way to move. From being only ‘consulted’ on the issues that affect them to be given the power, the responsibility and the resource to organize themselves, to influence and make decisions for themselves and create support that meet their needs.” He discussed the survivor network he formed in 2006 with the motto “who better to speak for us if not ourselves”. “To eliminate sexual violence in conflict is like being in the game of a puzzle with a group of people: practitioners, policy makers, lawyers, service providers, survivors, each of us possess a piece of the puzzle, and for us to complete the puzzle, each one of us should be involved by bringing their piece of the puzzle. Then we would understand better what we are facing, and together [we can] find the best possible solution to fight [back] and provide an adequate response that meet the needs of survivors. So be mindful of asking the right people to provide you the right piece of the puzzle and also asking the person who tasted the pudding if you want to find how the pudding tastes like.”

Dr. Anne-Marie de Brouwer spoke about her involvement with the Rwandan survivors of genocidal sexual violence. She spoke about why these Rwandan survivors wanted to be involved, and to participate in her book which include seventeen portraits of sixteen women and one man and testimonials of the sexual violence they endured during 1994 genocide against the Tutsis in Rwanda. Dr. De Brouwer noted that the survivors wanted the world to know what happened to them so that there is no denying to them and these books with their stories and photos made vividly clear that sexual violence did happen. Additionally, they wanted to make it clear to the world how sexual violence can be used as an effective tool of genocide to destroy a certain group; their stories also exposed the impact of sexual violence in conflict long after the hostilities have ended; and they want to keep the memory of genocidal sexual violence alive and urge the international community to prevent the atrocities from happening again.



With regard to the WIGJ *Call it what it is* campaign, Dr. de Brouwer highlighted that certain forms of sexual violence are not acknowledged and or prosecuted including bestiality and other acts designed to humiliate their victims into doing anything unacceptable in the community. She also referenced male victims and female perpetrators of sexual violence. In Rwanda, most cases of male sexual violence were committed by women. She stated, "A Rwandan genocide survivor of rape and sexual slavery said in the book: "I don't know of any other men who experienced sexual violence in the genocide, but I know they wouldn't talk about it if they had. It was a very difficult experience and not all are brave enough to talk about it; it's considered shameful to be raped by a woman".

"Sexual violence comes in many different forms, has many different impacts in short and long term for many different people (not only the direct victims)."

Dr. de Brouwer additional commented, "We have to call it what it is. Five very important words, but what is 'it'? Sexual violence comes in many different forms, has many different impacts in short and long term for many different people (not only the direct victims). Call[ing] it what it is with the books I spoke off earlier, already proves to be a really big challenge in that we still hear people saying that they don't really want to read the books or stories of the survivors because they are so gruesome and the crimes are described so explicitly. Even Romeo Dallaire, a UN commander at the time of the genocide in Rwanda, only spent half a page on the sexual violence that he witnessed in his book of over five hundred pages. Even though in court but also later on in public he said that sexual violence was the worst thing that he came across whilst he was there, even worse than the killings. [Despite all this] the survivors in this book chose to share their stories and are not shying away from calling it what it is. So, we all have the responsibility to hear them and call it what it is, including those of us working in the justice sector."

She concluded with a quote from Usta Kaitesi, a trainer of Gacaca judges on the legal and psychological components that they would come across when dealing with sexual violence cases. He adequately described the importance of giving a voice to the survivors of sexual violence in the context of the judicial setting. He said: "Even as a trainer on sexual violence, I wish that I did not have to do this. But the greatest challenge for justice, especially criminal justice and more so transitional justice is that detailed accounts are required of issues that we are neither prepared to speak about, nor to hear – consequently, those with the power to decide or even help, tend to silence victims by not creating mechanisms for which they may receive justice or by silencing them even when they want to have access to such mechanisms, because we have socially labelled our experiences as unspeakable or unbearable is wrong."

Linda Bianchi from the Department of Justice in Canada spoke from the perspective of a prosecutor trying to work in this area. She noted that accurately characterizing sexual violence is the linchpin of successful prosecutions. Without a clear definition, comprehensive accountability for these crimes continues to be elusive and fragmentary at best and unattainable at worst. "In my experience both at the ICTR and in Canada, accuracy in defining and understanding the parameters of the crime is essential; otherwise misunderstandings and mischaracterization can undermine accountability for crimes and most particularly for sexual violence crimes in a number of ways.

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First and potentially the most fundamental impact is that investigations will overlook the very fact of the commission of the crimes, that is you are not looking for the offence and not recognizing the offence when facts are presented to you that should otherwise trigger the specific offences that have occurred. Second, even if there is an understanding that a crime exists, misconceptions about the nature of the crime can lead to not viewing them as serious or as severe as other types of crimes and therefore not pursuing that further in lieu of pursuing other crimes that may be seen as more serious. Third, particularly in the type of work done in the

international setting when you're often going after those individuals bearing the greatest responsibility, you miss the connection between the nature of sexual violence and the broader violent campaign. Especially, to link the sexual violence to senior level officials, it's highly dependent on linking sexual violence and the broader campaign



of crimes. In many cases, the crime is dismissed as being opportunistic or driven by sexual gratification, if it is not properly understood as being part of that greater campaign.”

Ms. Bianchi reflected on the experience of Canada changing the laws governing rape in 1983 and the need to review the issue of violence. “The central issue was the way in which the legal definition of rape both directly and indirectly represented male perspectives and interest and mischaracterized the nature of offence. In essence the main discourse in the debate was the qualification of the act of rape, as an act of violence versus a sexual act. So, it is deemed necessary to disengage rape from legal/cultural norms that overdetermine its defining characteristic as sexual.” She provided an overview of current laws in Canada and provided the following summary, “Therefore, in Canada currently, there are three levels of sexual assault: (1) sexual assault that cause little or no physical injury; (2) sexual assault that involves weapons, threats or bodily harm; and (3) sexual assault that involve physical wounds, disfigurement or threatening the life of survivors.”

Ms. Bianchi discussed a Supreme Court review of the new sexual assault laws, with the following key observations, “When it came to the Supreme Court to review it, as well as the new terms [in the Criminal Code], what they found was, sexual assault is an assault, which is committed in the circumstances of a sexual nature... such that, the [victim’s] sexual integrity is violated. They went onto say that this test is to be applied in determining whether the imputed conduct having the requisite sexual nature is an objective one. They said, “In view of all the circumstances, the sexual or carnal context of the assault [must be] visible to a reasonable observer.” The Courts provided factors that is helpful to determine the act of a sexual nature, such as the part of body touched, the nature of the contact, the situation in which it occurred, any gestures or words accompanying the act and all other circumstances surrounding the conduct (including threat, which may or may not be accompanied by force). Importantly, in my view, the Court wants to say: the intent or purpose of the person committing the acts - to the extent that it may appear in the evidence - may also be the factor in considering whether the act is sexual i.e. if the motive is sexual gratification. It must be emphasized however that the existence of such motive is simply one of many factors to be considered, the importance of which will vary depending on the circumstances. In that way, the Supreme Court was able to give a clear definition of what could constitute sexual nature but still provided flexible parameters.”

She closed with a final statement about a Court of Appeals ruling in Canada that focused on the experience of the victim: “Interestingly, after ten years, the Court of Appeal of Ontario came back to the decision and went on to say: “Talking about the motive/intent behind the perpetrator, the court minimized the importance on the perpetrators intent focusing it back on what the actual experience of the victim and the victim’s sexual integrity in saying that sexual gratification if present is best a footnote – the scope of the offence is extremely broad and covers everything from an unwanted kiss on the cheek or hand touching another person’s buttocks – it is an act of power, aggression and control.”

The final panelist was **Niamh Hayes** from the Office of the Prosecutor of the International Criminal Court. She began by highlighting the need for more clarify on sexual violence given the profound lack of common understanding about what it is. “...you have definitions of sexual violence, where the word ‘sexual’ trumps or sometimes the word ‘violence’ is the focus. And if

“There is no other crime in the Rome Statute where the most contentious term is defined in relation to itself. The definition of genocide is not an act of a genocidal nature. The definition of torture is not an act of a torturous nature. ”

something doesn’t seem sexual enough or violent enough for the person making that determination, whether that’s the police officer on the front desk, the prosecutor, the judges or the jury, then you end up with a denial of justice to the individual survivor and a completely mismatch of concepts from a legal perspective.” She noted that most people think sexual violence is rape, and more specifically rape of women, and stated that even practitioners will overlook sexual violence if they have not seen evidence of rape. She stated as an example in working with practitioners, “Have you ever had a case which involved sexual violence?” and they say “No there’s no rape.” and then you ask your follow up questions and they acknowledge that there was a lot of torture, maiming and detention – where they had cords attached to their genitals etc. And here is when you start to pull the thread, but in their heads that label never applied which means they never actually treated it as something that they fell into



a category that they might have understood on an intellectual level. They literally didn't recognize it when they saw it."

With regard to the definitions in the Rome Statute, she stated, "There is no other crime in the Rome Statute where the most contentious term is defined in relation to itself. The definition of genocide is not an act of a genocidal nature. The definition of torture is not an act of a torturous nature. Or persecution an act of a persecutory nature." Ms Hayes discussed the example of the Kenyatta case before the ICC and how the ruling on forcible circumcision focused more on academic and legal considerations than on the impact it had on the victims' long-term sexual autonomy and sexual function. She went on to illustrate the fact that the definitions and understandings of sexual violence frequently exclude micro-aggressions and other forms of violence that are very clearly felt by the victim. She stated, "It matters, it has a huge normative impact, whether or not you label something as sexual and there are multiple scenarios where it's incredibly important to the survivors to have that recognition of what it was. But there are also scenarios where a survivor may not want that label and are not comfortable or ready for that label. I remember speaking to a male survivor of sexual torture in Bosnia who told me: "For 25 years, I got to be a survivor of torture. I got to have that recognition that I was brave and strong and unbreakable and I'm going to trade that in to be a victim of rape as a man in my culture".

She closed by noting the value of asking survivors in the legal process how they would characterize what they experienced, and noted, "I would love it if there were more consultations with survivors in the legal process to ask them: "How would you like this would to be characterized? What label you would like us to apply to this?" But in the absence of this, I do think we need to call it what it is as often as possible, because you create a precedent and the next time you are having an argument about something that may fall outside the persons' reflex definition, the easier it will be to recognize it for the sexual violence that it is."

The event was closed by HE Ambassador **Sabine Nölke** from the Embassy of Canada following a question and answer session. Ambassador Nölke stated, "But a legal framework is one thing, and having it down in writing is another, and implementation is quite a different and difficult thing altogether. I want to be very frank about [the fact] that we have not made sufficient progress, in either curbing sexual violence on the ground or after they have occurred – prosecuting these as weapons of war. I think international law still lags behind in translating the experiences of victims into concrete judicial action. The jurisprudence is inconsistent. I think at most it reflects the lack of appreciation of the extent of sexual violence. It also is at this point incapable of really expressing the horrific or even grotesque creativity that perpetrators bring to acts of sexual violence."

"I think international law still lags behind in translating the experiences of victims into concrete judicial action. The jurisprudence is inconsistent. I think at most it reflects the lack of appreciation of the extent of sexual violence. "

She noted the importance of providing the courts and practitioners with a toolbox based on the experience of survivors. She further added that she encouraged governments to support the civil society declaration to better

She closed by stating the following, with reference to remarks made by the SEMA network member, "She is absolutely right in saying that this is also a domestic problem and sexual violence is not just a problem in armed conflict, but also in households and if we can extend that definition and get domestic courts to look at it as well then we will help victims across the world. Finally, all I want to say is yes 'call it what it is' and the time for that is now. Let's call it what it is. The time is now."



Dr. Chris Dolan has worked extensively in sub-Saharan Africa in a range of academic, civil society and UN spaces. Since 2006, as Director of the Refugee Law Project in Uganda, he has done extensive practical work with refugee and IDP survivors of sexual violence

in conflict settings, as well as global advocacy to draw attention to the gaps in humanitarian support to male survivors of such violence. Chris is also a Visiting Professor at Ulster University, writing and teaching on conflict-related sexual violence.

The second panelist is a representative of SEMA, a network gathering victims and survivors of wartime rape from all around the world, acting in solidarity and mobilizing collectively to speak out about the reality of sexual violence in conflict, and creating change through innovative awareness raising and advocacy actions.



Kolbassia Haoussou has worked since 2009 at Freedom from Torture, the Medical Foundation for the Care of Victims of Torture. In 2007 he co-founded the Survivors Speak OUT network, a national network of torture survivors who draw on their experience to influence decision-makers and raise

awareness of the challenges facing survivors trying to rebuild their lives in the UK.

Linda Bianchi is a senior counsel with the Crimes Against Humanity and War Crimes Section of the Department of Justice of the Government of Canada. She previously worked as Senior Appeals Counsel in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda and was a founding member and Chairperson of the Committee



for the Review of the Investigation and Prosecution of Sexual Violence Crimes.

Dr. Anne-Marie de Brouwer is co-founder and team member of IMPACT, Center against Human Trafficking and Sexual Violence in Conflict. She chairs the Mukomeze Foundation, which improves the lives of survivors of sexual violence during the 1994 Genocide against the Tutsi in Rwanda. She is also a research fellow with the International Victimology Institute Tilburg (INTERVICT) at Tilburg University, conducting research on conflict-related sexual violence.



Niamh Hayes is a Legal Officer in the Gender and Children Unit of the Office of the Prosecutor at the ICC. She has worked with UN Women, the UN Department of Peacekeeping Operations, the ICTR and the UK Foreign and Commonwealth Office on training and best practices projects relating to the investigation and documentation of conflict-related sexual violence. In 2016 she acted as a legal consultant for a research project conducted by the International Federation for Human Rights (FIDH) on increasing accountability for sexual and gender-based crimes at the ICC and in other jurisdictions



Wayne Jordash QC is managing partner at Global Rights Compliance, an international legal partnership committed to enhancing compliance with international law. He is an International Humanitarian Law (IHL) and International Human Rights Law (IHRL) expert, recognized in the global network of international tribunals in relation to allegations of genocide, crimes against humanity, and war crimes

