



United Nations Office of the Special Representative  
of the Secretary-General for

**CHILDREN AND  
ARMED CONFLICT**



## **“THE ROME STATUTE, THE VOICES OF VICTIMS”**

*by:*

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**United Nations Secretary-General for Children and Armed Conflict**

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**Stocktaking of International Criminal Justice  
The impact of the Rome Statute System on Victims and Affected  
Communities**

2 June 2010

Review Conference of the Rome Statute of the ICC

Kampala, Uganda

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**THE ROME STATUTE, THE VOICES OF VICTIMS**

*Breaking the silence on atrocities*

In his book *The Birthright of Man* Rene Maheu writes:- “The groans and cries to be heard...are never uttered by the most wretched victims. These, throughout the ages, have been mute. Wherever human rights are completely trampled underfoot, silence and immobility prevail, leaving no trace in history, for history records only the words and deeds of those who are capable, to however slight degree, of ruling their own lives, or at least trying to do so. The lot of the victim who complains and is heard is already a better one.”

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One of the most important aspects of the Rome Statute is that it helps to break the silence on atrocities committed against humankind. Anthropologists and scholars writing about violence have described that the horrors committed during mass violations renders most affected people speechless. They cannot express in words, the terror they experienced. Breaking the silence is therefore the first act of healing.

The Rome Statute helps break the silence about horrendous crimes firstly by creating the discourse by which moral outrage can be articulated and by providing a process for its vindication. It has made talking, venting and acting against war crimes and crimes against humanity legitimate and created a network of activists and agencies who are in a position to support victims. Now those victims have become the most powerful voices for justice in the world.

Excellencies, Ladies and Gentlemen,

The Rome Statute was a groundbreaking achievement for humanity. It has not only given voices to atrocities, and the survivors who were most affected by them. It has also created a conceptual clarity by defining the details of war crimes and established provisions for rehabilitation and reparations.

### *Conceptual Clarity*

In terms of conceptual clarity under my own mandate, The Rome Statute, for the first time in an international legal context, stated that “conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities is a war crime.” Finally, this is clearly stated and articulated. It leaves no area of ambiguity or doubt that these are morally offensive crimes.

With regard to women girls and boys, there is also conceptual clarity. “Committing rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of sexual violence” is a war crime, because it is “committing outrages upon personal dignity”. The Rome Statute thus outbalances the vagueness of the Geneva Conventions.

This clarity came at a time where the world was becoming more sensitive to the responsibility to protect civilians in times of war. As warfare changed and many civilians found themselves on the frontline during military operations, humanitarian principles had to be further strengthened. Protecting civilians should therefore be the centerpiece of military strategy and those who commit heinous acts against civilians without justification should be sure of punishment.

### *Protection of witnesses*

The difficulty for victims to come forward and face their memories and their assailants directly is often underestimated. Victims have to consider the consequences when making themselves heard. If they speak, is there a possibility of reprisal on them or their families? Who will be able to guarantee their security? Finally, will the victims if they testify, be capable of withstanding a vigorous cross examination that often results in an attack on their character at the horrific events as they recall them?

Recently, I was in the Central African Republic and met three generations of women who had been raped when soldiers from the DRC had entered their home. A grandmother, a mother and two teenage daughters - all brutally raped. But when they met me, they were full of optimism. They were ready to come to The Hague to testify against the parties concerned and they were ready for their day in court. Wherever I have gone, either as Special Rapporteur on Violence against Women or Special Representative on Children and Armed Conflict, victims speak to me of justice. Some may say they prefer peace to justice but when you spend more time with them and ask them whether they would not mind the perpetrators wandering in their midst, living next door to them, their eyes show only fear. They would like justice but are often afraid of the consequences if that path is followed.

It is for this reason, that I am very pleased that the Court, under the direct supervision of the judge, has adopted a number of measures to protect witnesses from possible consequences if they testify in court. These include the redaction of information which could identify a victim from public documents, ordering closed sessions, and the taking of measures to conceal the identity of a witness from the public with voice or image distortion. In addition, there is also the possibility of resettling the victim witness if they are in real danger. Phone lines are also made available in case of any emergency. Victim witnesses are also to be provided with counselling.

I remember going to Arusha in late 1990's to see the first woman who gave testimony on the issue of sexual violence against women in war time. Her experience was extremely traumatic and visibly apparent to those who met her. Speaking in the presence of the perpetrator, who was making threatening gestures, exhausted and terrified her. While there are always improvements to be made, there have been major developments in strengthening the protection system and in providing victims with the support they need.

Improvements stemming from the Rome Statute continue to be made. One of the more innovative aspects of the Rome Statute system is that victims are allowed to participate in proceedings. Victims may file submissions before the pre-trial Chamber, before the Court Chambers at the pre-trial stage, during the proceedings and at the appeals stage. This is a new element international criminal proceedings and bodes well for the future with regard to victims interests being safeguarded. As long as the due process rights of the defendant are protected, and the Victims Participation and Reparation Section is allowed to assist victims with the organization of their legal representation before the Court, this is truly a positive step forward. This groundbreaking development may have important implications for national courts and jurisdictions trying criminal cases. We must all watch developments closely and learn.

## *Reparation and rehabilitation*

Justice must also mean reparation and rehabilitation of victims. As far back as 1985, the General Assembly passed the declaration of Basic principles of Justice for Victims of Crimes and Abuse of Power. The principles lay out three themes with regard to reparations. Offenders or third parties must make fair restitution to victims, their families and dependents. It also argues that where compensation is not available from the offender, States should endeavor to provide financial compensation. Finally the declaration states that victims should receive the necessary financial, medical, psychological and social assistance.

The Rome Statute attempts to handle these issues through the creation of a Trust Fund for Victims. The Trust Fund works by mobilizing people and funding opportunities for the benefit of the victim and then implementing court ordered reparation awards. The Trust Fund has chosen an interactive approach, attempting to work with survivors and their communities to identify and implement the proper intervention. Besides court ordered reparation, the Trust Fund also looks at psychological and physical rehabilitation and financial support. ~~By seeking for sustainability, the Trust Fund~~ endeavors to allow survivors of these horrible crimes to rebuild their lives. As may be expected, the Trust Fund does not always have the necessary resources. International efforts should be strengthened to develop its capacity, and I call upon all member states to support this fund to the fullest.

During my tenure as Special Rapporteur on Violence against Women and as the Special Representative on Children and Armed Conflict, I have met many victims and they have described to me in detail what has happened to them. I met a young woman, who we will call Alice, from Rwanda. The Interhamwe came to her home and raped her repeatedly till she was unconscious. When she woke up she found that her entire family was dead. She was taken to a hospital by a

neighbor and then made to leave because she was a Tutsi. She went into the jungle and her arm had begun gangrenous. Finally, she found a machete and hacked off her own arm. She was barely conscious when the help came. Alice told me of the horror of those moments and how they haunt her every day. When she spoke about those days she trembled visibly. She was taken in by an NGO, given counseling and financial assistance and as a result, she found the strength to head a leading women's group in Rwanda made up of survivors. The ICC has now given hope that people like Alice will find justice and support and do not have to rely on luck and circumstance. It is important that we understand the terrible suffering they have gone through and to ensure that the Court is sensitive to their post-conflict needs.

Court systems often deal with individuals by themselves, independent and before the law. However, the community of a child victim is extremely important in armed conflict situations but also in the rehabilitation period. A victim has to continue to live in a community and it is to the community that he or she turns for support and assistance. If we truly wish to assist victims of armed conflicts, we must also strengthen their communities.

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In this regard I would like to mention the work of my office with regard to former child soldiers. The first case before the ICC, the case of Thomas Lubanga, involves charges brought with regard to the conscripting and enlisting of children. Former child soldiers have been asked to testify and it has been a traumatic experience for many of them. The protection measures outlined before for their participation in the proceeding is extremely important and must include child specific elements. However the reintegration of the child soldier back into the community is essential if the child is to have a future. This must be an important concern of the Trust Fund.

Experience around the world with former child soldiers, compiled into what are called the Paris Principles, have shown that successful integration only takes place if there is community-based



programming, recognizing that programs should be directed toward all children in the community. I hope the Trust Fund in implementing its programs takes note of these principles. Community Based programming does not stigmatize the child soldier and it will help develop the community along with the child.

There are children, of course, who need special programs because of their experiences. Research has shown that children who are at the receiving end of terrible violence or have been asked to perpetrate terrible crimes often need extra guidance and support. Any program must take care of those special needs such as psychological treatment and drug rehabilitation. Girls also need specialized treatment that is relevant to their experience and their future. Girls may be at the receiving end of gender based violence and they also may be new mothers. Gender sensitive programming is also a matter of urgency.

Given the right programs, children will build on their natural resilience and agency to become strong actors in their society. My office is working in close cooperation with a network of former child soldiers, many of them made to commit terrible crimes, who with the proper care and support have become energetic voices of peace--not only in their societies but also in the world.

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Excellencies, ladies and gentlemen, the Rome Statute has given hope to many around the world who have become victims of atrocities and this thanks to your government's adherence to this convention. While the "jurisdiction" aspect of the Statute limits it at the moment to a few countries this is still the beginning. Even if we cannot bring justice to every victim, we must try to bring the benefits of an international justice system to those we can.

Effective justice is a deterrent. In many of my negotiations with non-state actors for the release of children, groups have questioned me in details about the ICC provisions. There is some fear about the ICC and such fear is healthy and it is born out of respect. Hopefully the

possibility of appearing before the ICC will deter many parties from committing horrendous crimes.

In the UN and in courts we deal with law and statistics. We become engrossed in dry facts, legal technicalities and positive reasoning. The discourse is dry, turgid and removed. However, we should never forget what this is all about in the first place. It is about the victims and their right to justice. The defendants must be entitled to all their guaranteed rights but it is the victim who is the *raison d'être* of this process. The Rome Statute has come a long way in appreciating this and has developed structures and policies to assist the victims. We must continue to strengthen its capacity to do this work.

Those of us who have worked in the field have seen the eyes of women and children, blank and immobile after their terrible experiences of violence. Anyone who has talked to these victims, who has shared their pain cannot but hope that the Rome Statute will herald in a new era for victims around the world. We must work toward achieving universal jurisdiction and making sure that all victims, wherever they are in the world, have their day in court.

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Thank You