
The War Crimes Tribunal: Triumph of the “International Community,”

Pain of the Survivors

Julie Mertus

Julie Mertus, J.D., is a visiting fellow at the Human Rights Program at Harvard Law School and an affiliate with the Harvard Center for International Affairs. This paper will also be featured as a chapter in a forthcoming book (1997) entitled War Crimes: The Legacy of Nuremberg.¹



I used to believe that the world was full of many colors,
now I know it's just black.
I used to believe that all people are kind,
now I know only some of them are.
I used to believe that my friends would be with me all of my life,
now I know that none of them would give any part of their body for me.
I used to believe that I could trust people, now I know that I should be careful.

I used to believe that I would have a good life with my neighbors,
but now I know it is easy for them to kill in war.
I used to believe that no one could force me away from my homeland,
but now I know this isn't a dream.
I couldn't believe that my generation could be worse than the older generation,
but now I know they are.

I used to believe in everything,
but now I believe in nothing.
I used to believe in happiness,
but now I cannot even believe my eyes.

I used to believe that I would live by my wishes,
but now I know I will live by other people's wishes.
What I couldn't believe. I now believe

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(from a “Group Poem,” one line each told by Adisa, Nasir, Hajra, Muriz, Mirsada, Remzija, Melisa, Senid, Aziz, Uzeir, Mevlida, Sahza, ages 13 to about 54, refugees from Sarajevo, Jajce and Donji Vakuf in Islamabad, Pakistan, August 1994. Reprinted from *The Suitcase: Refugees' Voices from Bosnia and Croatia*, 1996).

From the Voices of Survivors to the War Crimes Tribunal

The problem with the war crimes tribunal for the former Yugoslavia and Rwanda is that it is a war crimes tribunal. The stuff of law—the elements of the crimes, the rules of procedure, the dance of witness, lawyer, judge—can do only so much. And the closer one is to the crime, the less likely “so much” will be enough.

Aristotle said that the pursuit of justice should bring pleasure. Tribunal justice may bring pleasure to lawyers drafting pleonas-

tic legal documents in the Hague, diplomats declaring success at stabilizing conflicts, and local politicians staking their claims to power amidst the smoldering embers of destroyed communities. But little satisfaction will come to survivors. Genocide, mass murder, rape, torture and other crimes may be tried, and a small percentage of the perpetrators may be convicted. International principles will triumph or fail; respect for international law will expand or diminish. The new governments arising out of conflict will be legitimized or de-legitimized. Still, regardless of the outcome, the voices of survivors will remain largely unheard and unaddressed.

For survivors, storytelling is not a luxury. War has served to strip them of control over their lives and erase all sense of a volitional past and future. As Elaine Scarry (1985) observes in *The Body in Pain*, the discourses of torture, rape, murder and other forms of violence teach their targets that they are nothing but objects. The process of telling and of observing one's story being heard allows survivors to become subjects again, to retrieve and resurrect their individual and group identities. From voice comes hope.

The Bosnian Muslim refugees who sat in a circle on the floor in their refugee camp in Pakistan and, line by line, contributed to the poem of lost beliefs reprinted above, reclaimed a small corner of their identities. When first asked to contribute to the poem, many had difficulty answering—not because they did not have ideas, but because, in the words of one participant, “no one has asked us what we think in such a long time.” They had been treated as mere objects, first by their tormentors, then by refugee camp handlers, government spokespeople, asylum officers, visiting journalists. They had been denied their complex selves and stamped with unitary identities: enemy, victim, refugee, the “ethnically cleansed,” asylum seeker, spectacle.

And now the war crimes tribunal? The survivors now bear the stamp of potential witness; they become the conduit through which investigators and prosecutors can make their case. Despite their good intentions, investigators and prosecutors—the agents of law—must focus on piecing together facts to prove the crime. Even if they avoid putting the personal suffering of survivors on trial, they cannot return survivors' rightful claim to subjecthood. By opening and closing to let in only enough information to prove the issue at hand, law is inherently counter-narrative. Victims can testify about the hand that beat them, confirm the size of the room, the color of the door, the width of the wooden table on which bodies were broken. But they cannot talk about how their child's face looked when the paramilitary troops dragged her away, they cannot remember what they ate for dinner on the last day the entire family was alive and together, they cannot cry about their dog who was left behind or reminisce about long walks through their old town square. No one will see the stories, poems, pictures, jokes, coffees, gossip, walks around the refugee camp yard—no one will know the little things that helped them survive (see Mertus *et al.*, 1996). The war crimes tribunal is, after all, a war crimes tribunal.

A Paradigm of Functions and Interests

The refugee woman who listened to the asylum officer calmly inform her that her application was rejected because she was only threatened with rape, but not actually raped or tortured in a concentration camp; the newlywed doctors who escaped Bosnia by paying an aid convoy 4,000 German Marks each and somehow made it across borders to Germany, where they disappeared into the ranks of the shadow labor force; the teenage girl who carries in her rucksack

the poetry of her dead soldier boyfriend; the four year-old boy who wants to become a plane so he can fly his family back home; the elderly couple who lived in their basement for four months before a sympathetic enemy neighbor found them and arranged their safe passage out—the tribunal can fulfill many functions, but it cannot serve the needs of these and other survivors. As in other criminal cases, even-handed investigations and fair prosecutions before the tribunal can potentially fulfill the following narrow set of functions: *naming* crimes; *blaming* individual perpetrators; *punishing* the guilty and *detering* potential perpetrators; *delivering reparations* to survivors; *reforming* lawless societies; and *recording* what happened for history.

The problem is not that the war crimes tribunal will utterly fail to address these functions. It is rather that its success in doing so will be measured differently depending on one's particular interest. To be sure, everyone has some interest in "justice" being served. But this thing called justice often depends on one's *position*, in all senses of the word; that is, one's *location and placement*—relative proximity to the crimes, the conflict, the region and the issues; *attitude and disposition*—assessment of the origins of conflict, the accountability of various actors for crimes and their continuation and the need to remember or the desire to forget; *job*—role and responsibility as an international, regional, national, community or family leader, and *social status*—position inside or outside international, regional, national and community power structures, and worth accorded to one's existence according to that position. When measured according to these attributes, most survivors, close to the crime, are far from achieving their vision of justice.

While other writers may debate the procedure and substance of the tribunal, this brief essay places in context those whose

interests will not be heard: those closest to the crime, those who need to remember, outsiders to power—the survivors.

The sections below illustrate some of the intersections between the functions outlined above and position. I describe interests served by each function for three main groups of actors: (1) the "international community"—international and regional institutions and organizations, states and individual actors outside Rwanda and the former Yugoslavia; (2) local power brokers, including the states, territories and communities arising out of the conflicts and their opposition; and (3) individual survivors, including both those who stayed in the area in conflict and those who fled to safer ground (but excluding those who previously or presently held positions of power). Within each of these groups, interests can vary further according to the nuances of position—proximity, attitude, job and social status.

In general, as explained below, the tribunal is most likely to address (if not satisfy) the interests of the international community, and least likely to even hear the interests of survivors. The tribunal should thus be understood as a necessary, although not sufficient, response to the aftermath of conflict and the need for healing.

Naming Crimes

The naming of crimes can serve important, although vastly different, interests for the three groups of actors. For the international community, the naming provides a historical opportunity to establish, refine and/or enforce the boundaries of international law. For example, by naming the crime of genocide, the tribunal has become the first international criminal court to define the meaning and application of the Genocide Convention, a post-World War II treaty. By naming the crime of rape as a