

## **Using pattern evidence to build cases of conflict-related sexualized and gender based violence crimes**

### *Potential and limitations of new methodological approaches in collecting and using social science evidence before International Criminal Tribunals*

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For a long time, conflict-related sexualized and gender based violence (hereinafter ‘SGBV’) was condoned as a collateral damage and necessary byproduct of armed conflicts. It was only by the end of the second half of the 20<sup>th</sup> century that conflict-related SGBV was recognized as an international crime. But even though international criminal tribunals by now recognize unanimously the central role SGBV has (had) in many armed conflicts, relatively few cases have been tried and adjudicated. When analyzing these cases, it becomes clear that mostly direct perpetrators or those close to the crime scene (low- or mid-level perpetrators) have been held accountable – but scarcely the military and political leaders that stand at the very top of the chain of command. If we look at the existing substantive law established by the statutes of international criminal tribunals regarding SGBV and the increasing jurisprudence on the topic, it becomes clear that the reasons for the limited number of charges and even less convictions are not primarily to be found in missing or insufficient substantive laws. Considering the special attention prosecutors paid to the issue by now, it is also not due to institutional neglect (anymore). The reasons are rather rooted in problems related to questions of evidence at the investigation and procedural level – particularly regarding the establishment of a link between superior and subordinate (linkage evidence) as well as between single acts of SGBV and a broader campaign of crimes (crime base evidence).

The unsatisfactory results of prosecutions involving cases of SGBV crimes have raised demands for new evidentiary approaches. Luis Moreno Ocampo, former chief prosecutor of the International Criminal Court, was one of the first prominent voices calling for a shift away from traditional evidentiary approaches towards the so called *new evidence*. This generic term describes the effort to establish reliable evidence using pattern evidence, statistical analysis and other social science methodologies. So far, these methods have been used to a very limited extent in international criminal procedures – and even less in cases concerning conflict-related SGBV. Some scholars as well as practitioners even demand that prosecutors should be able to build a case exclusively on the basis of this new type of evidence and thus supersede the participation of witnesses and victims in criminal procedures. This claim has been highly contested.

Taking the aforementioned into account, the starting point of this dissertation is the struggle of international criminal tribunals in establishing evidence as one of the key challenges in prosecuting SGBV. Accordingly, the overarching question is how the prevailing evidentiary gaps can be bridged. The work is guided by three principal questions: First, what exactly are the key obstacles that international criminal tribunals face when establishing evidence in highly complex cases involving SGBV and which common patterns and structural shortcomings can be identified in this regard? Second, which new approaches such as Hierarchical Linear Modeling or cluster surveys can be pinpointed as possible instruments for a sound and gapless establishment of evidence? And third, which potential but also limitations do these new methods of evidence entail – especially regarding the reliability of evidence and the rights of the accused? Following this idea, this work contributes to the international debate that circles around the difficulties of prosecuting conflict-related SGBV by identifying and analyzing new evidentiary approaches.