

WOMEN UNDER SIEGE

By [Jocelyn Brooks](#)/Guest Blogger and [Akila Radhakrishnan](#)/Guest Blogger — April 11, 2014

A woman sits, microphone in hand, behind a billowing, black curtain—further obscured by a black veil that hides her face, her body, and even her hands—as she finds the courage to recount her rape by government soldiers in Minova, [Democratic Republic of Congo](#). In February, she and 46 other Congolese rape survivors testified anonymously and relatively securely in a local school auditorium-turned-courtroom with the help of special costumes and pseudonyms.

[It's a bit of a shocking disguise](#), but one that may save her life. Measures like these that keep witnesses hidden from view can shield rape victims from exposing their identities and protect them from further emotional trauma since, in many cases, it can be traumatizing for rape victims to [see](#) or be [seen](#) by those who raped them. But it wasn't always like this.



A barely disguised victim of sexualized violence in Guatemala enters the court to testify against her attacker. (Johan Ordonez/AFP/Getty Images)

International justice has come a long way for survivors of sexualized violence since the days when the Nuremberg trials kept out rape victims' testimony because, as former international criminal tribunal prosecutor Peggy Kuo [recounted](#), they didn't "want a bunch of crying women in the courtroom."

Today's tribunals, including the International Criminal Court and military courts in the Democratic Republic of Congo, offer protective measures intended to encourage women to testify about their wartime rapes. But while these frequently do encourage women to brave their fears and testify—by [disguising](#) their [faces](#) and voices or [shielding](#) them from the defendant's view—the tribunals are not always able to guard their identity or security.

An array of protections for rape victim-witnesses is essential; dangers abound for those who testify. In many parts of the world, society views women who have been raped as being permanently sullied. In DRC, where women are testifying in full-body robes and behind curtains, the “[stigma and shame](#) of rape is so severe . . . [that] it is not uncommon for a husband to abandon a wife or for a village to kick out a rape survivor.” Likewise, many women in Rwanda who were subjected to mass rape during the 1994 genocide feared they would be rejected by their [families and communities](#) if they spoke up about their rapes. Women are no doubt especially fearful of testifying in settings where they were raped by neighbors who still live among them and their families, as is sometimes the case for survivors of the Rwandan genocide. As for the former Yugoslavia, one witness testifying at the International Criminal Tribunal for the Former Yugoslavia ([ICTY](#)) requested special measures, [citing](#) a “desire for privacy, a wish not [to] be publicly associated with the alleged sexual assaults upon his person.”

Protective measures can be used to establish full anonymity of the witness, including nondisclosure of the witness' identity to the accused or his counsel, or confidentiality, which prevents the disclosure of identity to the press or public. While procedures granting full anonymity are [generally disfavored](#) by judges (they can conflict with the rights of the accused), confidentiality measures, which have been widely used to protect witnesses, are particularly important for victims of sexualized violence since revealing a rape can lead to social stigma and ostracism in many communities.

The ICTY and the International Criminal Tribunal for Rwanda (ICTR) were instrumental in building protective measures for witnesses, including victims of sexualized violence. The measures used to protect the survivors in both trials—which was the first times that war rape was prosecuted on the international stage—included [electronic distortion](#) of their faces and voices and testimony by one-way [closed circuit TV](#) or video-link from their home country. In some cases, post-testimony protections were granted to victims, including [relocation and domestic witness protection programs](#).

The 2002 [Rome Statute](#) established the ICC's functions, jurisdiction, and structure, and was built on the procedural experiences of the ICTY and ICTR. It requires that “[t]he Court . . . take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.”

Significantly, the statute also mandates that protective measures be automatically granted to witnesses who are victims of sexualized violence, unless the court orders otherwise. Such measures can [include](#): expunging identifying information from the court's public records; prohibiting trial participants and observers from disclosing identifying information to third parties; and permitting testimony by electronic or special means, including vocal or visual distortion and remote testimony, pseudonyms, and *in camera* (closed) sessions.

The use of such measures isn't limited to international tribunals. Following the model of protections granted by the Rome Statute, certain actions were taken to protect witnesses during the recent trial in Minova in which 37 Congolese soldiers were accused of rape: “[special care](#) [was] taken to provide rape survivors with disguises, curtains, veils, whatever they may need to feel secure when giving their testimony. The women are referred to by numbers instead of by name to maintain their anonymity.” In Guatemala, during the genocide trial against former President Efraín Ríos Montt, women rape survivors were permitted to testify while “[covering their heads](#) and faces

with rebozos (brightly colored swatches of woven fabric)” and journalists were [prohibited](#) from revealing witnesses’ identities.

Sometimes, however, what is done in court isn’t enough to keep witnesses from exposure or danger.

Godelieve Mukasarasi, a trauma counselor with [SEVOTA](#), an organization that supports widows and orphans from the Rwandan genocide, said that women who testified with the aid of disguises in local gacaca courts—outdoor trials set up in 2001 to expedite cases after the genocide—have still not been immune to identification. In this small country, she said, they could sometimes be recognized from their voices alone. One [witness](#) in a [gacaca court](#) said that although she had testified in a closed session, “people from the community were able to listen and make disparaging remarks to her from the courtroom windows, which the entire panel of Hutu judges did nothing to address.”

And in some cases, the idea of protection is just an illusion. One Bosnian journalist who observed ICTY trials said: “From their own communities, [everybody knew who testified](#).”

In one particularly chilling example of the failure of protective measures, a witness who recently testified during the ICC’s case against a deputy president of Kenya had her identity [outed](#) by viewers of the trial. Despite the fact that the witness was hidden by facial and vocal distortion technology and was referred to by a pseudonym—“Witness P0536”—a group of people on Twitter and other websites discovered her identity, which was then [publicized](#) on the Internet, along with her photograph. This lapse deterred others from testifying.

Witnesses have even been [murdered](#) in order to prevent them from testifying at the ICTR.

And because protective measures are usually intended to shield a witness’ identity from the public and the media rather than the defendant and those present in the courtroom, they are inevitably imperfect. In the war crimes chamber in Bosnia-Herzegovina, witnesses’ identities “were often [leaked](#) to the press, [and] spoken aloud during the proceedings by judges or prosecutors.” Defendants and their lawyers are also known to sometimes [disclose](#) the identity of witnesses against them despite the fact that they are prohibited from doing so. The only possible protection against such a risk would be for a witness to remain in complete anonymity—which is rarely allowed because it arguably impinges on a defendant’s right to prepare his defense and cross-examine witnesses against him.

In some cases, witnesses have also often been kept in the dark about potential risks that exist, even with protective measures in place. Either by accident or design, prosecutors have frequently misled witnesses by depicting the anonymity they are granted as comprehensive, [failing to tell](#) them that the defendants and their lawyers would be given their names and that their identities might be [leaked](#). This came under fire in a 2008 best practices manual from the ICTR’s office of the prosecutor. The manual condemned this practice and said witnesses “should be [fully informed](#) about the risks they take when they testify”—namely, that their identity will be disclosed to the defense—even if this might lead a witness not to testify.

In any decision to institute protective measures, witnesses’ individual feelings and preferences must be taken into account. In fact, some witnesses may not desire confidentiality, [because](#), for instance, they may feel “they have nothing to be ashamed of and want others to know what happened to them.”

Patricia Viseur Sellers, the former legal adviser on gender-related crimes at the ICTY who was instrumental in prosecuting crimes of sexualized violence that took place in the Foca rape camps in the former Yugoslavia, [has](#)

said that “most witnesses request confidentiality. ... Meanwhile, some women want to be identified and seen, not only by the defendant but also by the public. *What do I have to be ashamed of and why should I hide?* they might ask.”

But whether they opt for protective measures or not—and most do—a large number of rape victims have bravely chosen to testify in spite of the physical and emotional dangers that exist.

One rape survivor who testified at the ICTY said she felt empowered by the experience of testifying confidentially by video. “When you testify,” she said, “you have to tell everything—what did he do to you, how did he do it. It’s really terrible to speak about the rape you survived. When I spoke about it, I was watching the person who raped me by video link, and I felt very strong!”

Another witness—Witness 99 at the ICTY—said this of her experience: “I was glad to be able to say what had happened to me and to say who had done this to me and my people. I felt like I had fulfilled my duty. I came to look him in the face. I came to testify.”

Available at: <http://www.womenundersiegeproject.org/blog/entry/everybody-knew-who-testified-disguises-work-for-rape-survivors>