



Holger- C. Rohne

The Victims and Witnesses Section at the ICTY

An Interview with Wendy Lobwein

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Abstract: The following notes are based on an interview with Wendy Lobwein, the head of the Support Unit of the Victims and Witnesses Section (VWS) at the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague. The interview was given during a visit at the ICTY undertaken by a research group of the Max-Planck-Institute for Foreign and International Criminal Law (Freiburg/Germany) in April 2003.

This paper summarizes the oral and written information presented by Wendy Lobwein during the interview. It gives an overview of the work and responsibilities of the VWS and its units. It discusses further the VWS' mandate, present statistics and experiences of the VWS.

1. Introduction

The International Criminal Tribunal for the Former Yugoslavia (ICTY) comprises several sections working together in their effort to investigate and prosecute war crimes committed during the wars in the former Yugoslavia. An integral part of the ICTY is the Victims and Witnesses Section (VWS) in accordance to Article 22 of the Statute of the ICTY:²

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

In accordance to Article 22 the amended version of *Rule 34 of Rules of Procedure and Evidence* states the following:³

¹ On the occasion of a research visit at the ICTY (April 2003) – summarized by the author.

² See <http://www.un.org/icty/basic/statut/statute.htm#22>

³ Amended by decision of the Judges at the Twentieth Plenary Session of the International Tribunal held from 30 June to 2 July 1999. – see details at http://www.oup.co.uk/pdf/bt/cassese/intcrimlaw/ch22/1993_icty_rules.pdf

Victims and Witnesses Unit

(A) *There shall be set up under the authority of the Registrar a Victims and Witnesses Section consisting of qualified staff to:*

(i) recommend protective measures for victims and witnesses in accordance with Article 22 of the Statute; and

(ii) provide counselling and support for them, in particular in cases of rape and sexual assault.

(B) *Due consideration shall be given, in the appointment of staff, to the employment of qualified women.*

Accordingly, the establishment of a *Victims and Witnesses Section*⁴ was seen to be essential, consisting of qualified staff recommending and providing protective measures, counselling and support for victims and other witnesses called to testify at the ICTY.

2. Organizational Chart

The *Chief* of the VWS supervises the *Legal Officer* and the *Operations Unit*, the *Protection Unit* and the *Support Unit*. Each unit is staffed by three officers and several assistants who personally accompany the witnesses during the procedure. The *Sarajevo Field Office*, which itself has a *Protection Unit* and a *Support Unit* is also supervised by the *Chief* of the VWS.

Additionally, several *Language Assistants* provide the essential assistance with translation and linguistic needs.

3. Mandate of the VWS

The mandate of the VWS gives a first insight into the responsibilities of the various units and expresses in short the tasks that have to be met by the VWS and its units:

The VWS contributes to the effective functioning of the ICTY by facilitating the appearance of witnesses before the Tribunal, whether called by the

⁴ As can be seen in the text of Rule 34, the terms of *Victims and Witnesses Section* and *Victims and Witnesses Unit* are used interchangeably. In the following the term *Victims and Witnesses Section* (VWS) is used as an umbrella term comprising the various *Units* within the VWS.

Chambers, the Prosecution or the Defence.

The VWS develops its principles, policies and procedures to ensure that all witnesses can testify in safety and security and that the witness' experience of testifying does not result in further harm, suffering or traumatizing. The VWS fosters an environment in which testifying can be experienced as a positive, strengthening and enriching event.

The VWS operates with the highest levels of integrity, impartiality and confidentiality, and ensures that all witnesses are informed about their rights and entitlements and equitable access to the services of the section.

The Protection Unit coordinates responses to the security requirements, the Support Unit provides social and psychological counselling and assistance to witnesses, and the Operations Unit is responsible for logistical operations and witness administration.

By the legal rulings and the self-definition of the VWS it becomes clear that the work of the VWS is focussed only on those victims that are asked to appear as witnesses at the Court. Accordingly, the *Victims and Witnesses Section* does not work on general victimological issues but is primarily concerned with tasks that occur due to a particular request to testify.

4. Statistical facts of the VWS

In the following some statistics will be presented that have been gathered by the VWS during their work until April 1st, 2003:

- a) *Total of assisted witnesses and accompanying persons at the ICTY since 1996*

The VWS provides assistance for witnesses and also for those accompanying them. Exceptionally in 1999, the numbers of assisted persons has grown annually since 1996. Starting with 166 assisted persons in 1996, the numbers continuously increased to 672 in 2002. Until April 1st, 166 persons had been

assisted in the year 2003. Although in 1999 the total of those who received assistance sharply fell to 291 (from 447 persons in the previous year) to 291 in the year 1999. The reasons for this development were mainly due to the Tribunal's activity during this time, which to a large extent consisted of initial preparation of cases and legal hearings without the involvement of witnesses.

b) Breakdown of witnesses by gender

There is an evident gender disproportion of witnesses testifying at the ICTY. While 80% of witnesses were male, only 20% of them were female. These statistics correspond to the ratio of the callings from the Chambers, the Prosecution and the Defence. The numbers are noteworthy since they include already those female witnesses who experienced sexual harassment, rapes etc. Obviously, as far as non-gender related crimes are concerned this enlarges the significant difference between male and female witnesses to an even more unbalanced ratio. There are reasons to question the actual practice of naming mainly male witnesses because women often attended events of atrocities. Since the perpetrators often did not consider them as a potential threat, they were not eliminated and may therefore be a valuable source for the investigations of the Tribunal.⁵

c) Ratio of witnesses requested by the Chambers, the Prosecution and the Defence

Witnesses appear at the ICTY on request of the Chambers, the Prosecution or the Defence. The majority (56%) are called by the Prosecution while 46% of the witnesses are requested by the Defence. Only 2% of the witnesses are called by the Chambers. The latter is due to the complexity of the affairs and to the fact that the Prosecution and the Defence necessarily obtain the initial information about existing witnesses. This makes it likely that the witnesses are already called by them.

d) Breakdown of witnesses by country of residence

The vast majority of witnesses called have been residing in Bosnia-Herzegovina (58%), while 10% of them lived in Serbia and Montenegro and

⁵ Further insight gives the interview with Michelle Jarvis "Gender Perspective" presented by C. v. Oppeln.

only 6% in Croatia. About a quarter of the witnesses (26%) were living in other countries, namely in Germany (5%), USA (5%), Netherlands (4%), UK (3%) and 15 other countries (9%).

e) Breakdown of witnesses by age groups in 1998-2003

With 35%, the majority of witnesses were between 41-50 years old, followed by 27% who were aged between 51-60 years. About 12% of witnesses had been between 61-70 years old while 18% of them were in the age of 31-40 years. Only 6% of witnesses were aged between 21-30 years. A total of 2% of those called as witnesses had another age than those categorized above.

f) Breakdown of testifying and non-testifying witnesses at the ICTY

If witnesses follow the request and travel to the ICTY, they do not necessarily testify. Between 1998 and April 1st 2003, approximately 11% of witnesses who appeared in The Hague did not testify at the ICTY. This is mainly due to procedural reasons, i.e. if meanwhile the circumstances in question had been sufficiently proven by other witnesses or circumstances. Sometimes the refusal to testify is simply due to the lack of time in the proceedings.

Generally, it is a common phenomenon that in legal proceedings witnesses are only heard if substantially needed. Therefore, it is not surprising that this is also found in the trials of the ICTY since it was established to prosecute war crimes and not primarily to give a voice to victims and witnesses. Although understandable from a technical point of view, such a procedure is not without an impact for the witnesses concerned. Corresponding to the atrocities the ICTY deals with, the witness often goes through a difficult process of deciding whether to testify and mentally preparing for this task. Not surprisingly, the experience of finally not being allowed to testify regularly raises a significant frustration for the witness. Furthermore, it is miserable for those who may have experienced the testimony as a help to bring closure to their victimization.⁶

⁶ See also Paragraph 5. c) (2).

5. Responsibility of the various Units

a) Protection Unit

The *Protection Unit* assesses the security requirements for the witnesses and coordinates the measures taken to guarantee the witnesses' safety. These protective measures are graded by the various levels of security required. Thus, they are ranging from the absence of any protective measures to various protections mainly to keep the witnesses' identity anonymous. Concerning the appearance at Court, this might include the use of pseudonyms, visual or acoustic distortion, as well as the complete exclusion of the public or video link arrangements to a remote witness room. The various measures are often combined and successively upgraded up to a total anonymity if required.⁷

b) Operational Unit

The *Operational Unit* is mainly responsible for the logistical work, which includes the arrangements of formalities, cooperation with the border police etc. A main task for the *Operational Unit* is also to overcome the practical barriers that appear due to daily life obstacles of the witnesses, like e.g. reimbursement for lost wages while their absence.

c) Support Unit

The *Support Unit* is responsible for the social and psychological counselling and assistance provided for the witnesses. This involves various forms of support outlined below. Currently, there are additional attempts to improve support in special situations (e.g. for female witnesses of sexual crimes, special needs of youth and elderly).

(1) Anticipatory support

Personally contacted by the ICTY staff, the witnesses are provided with information about testifying and travelling to the ICTY by being given brochures and videos. This initial contact also enables the *Support Unit* to assess the need of further support or protection measures in the

⁷ For a discussion of the task of protection see <http://www.iccwomen.org/resources/vwicc/protection.htm>

particular case. Some of these needs are e.g. the provision of childcare, respectively the care for other dependent persons. Formerly, this support also included a compensation for lost wages during the absence for testifying. Due to difficulties in proving lost wages or extra expenses caused by the witnesses' absence, this practice was recently changed into granting allowances.

After the initial contact, the necessary travel arrangements are made, as e.g. insurances and the supply of visa and passport. Travel escorts are provided as extra security measures. Often they are also needed as support while travelling; being on the way to testify a witness usually experiences a significant psychological burden, which might appear in physical and psychological symptoms during travelling in unknown and stressful situations (especially, if it is the first time the witness ever travelled).

When the witness arrives at the ICTY measures are taken according to the specific needs. A *24 hour -Witness Assistant Support Service* is provided, which takes care for the various needs and uncertainties that appear during the stay in The Hague. Psychiatric and psychological support is also important since during this time the witnesses are intensively dealing with traumatic events of their past and are often about to face the political and military leaders who may be responsible for their experiences. Some persons even experience a slight nervous breakdown during the preparation and waiting time, which has to be taken care of by the *Support Unit*.

Another stress factor may also be the unknown culture and new environment in which the witness finds itself in. The *Support Unit* aims to lessen this stress by arranging a comfortable, secure accommodation, meal provisions and daily allowances etc.

(2) *Support during the testifying procedure*

This stage often includes an unpredictable waiting time and the minutes, hours or days of awaiting the unexpected are often the most

challenging times for the witnesses: recapitulation of the experiences, the image of and the emotions towards the perpetrator mixed with the pain felt by the losses and experiences that are to be testified about and the imagined scenarios of the upcoming cross-examinations are only some aspects that cause enormous anticipatory anxiety experienced by the witness both physically and emotionally. The *Support Unit* tries to meet this anxiety by offering practical assistance including technical assistance – like the provision of necessary procedural information etc. – and, of course, psychological and personal support.

As mentioned above, sometimes a witness will finally not get the chance to testify.⁸ Obviously, these situations are a great challenge for the *Support Unit* since it has to deal with the enormous pressure that arouse during the period of preparing and waiting. If testifying is denied, the witness often breaks down, experiencing great despair and disappointment; the practical and mental effort they made to be ready for testifying appears to be in vain, leaving behind a bitter aftermath of what they hoped would bring relief and justice. This experience may result in feelings of repeated, respectively further victimization. According to what is known about the dangers of re- and secondary victimization, the experience of not being allowed to testify occurs to be highly problematic. It is thus a questionable practice to refuse the opportunity to testify to about 11% of the witnesses after having called them to testify.

If the witness does testify, the role of a *Support Officer* is mainly to provide accompaniment during this challenging and unknown task. During the anticipatory phase the *Support Officer* has often become a person of trust to the witness and can thus provide an environment of relief and rest.

An officer might also intervene during the procedure if he considers a resting time for the witness to be needed. This often appears to be important when the witness is challenged by an intense and tiresome

⁸ See also Paragraph 4. a).

cross-examination.

Especially if the witness meets the accused for the first time in Court, there may be unpredictable reactions, which appear to be very different and might require assistance. Even though some witnesses reportedly were positively surprised by the “small” physical appearance of the accused when they expected him to be huge and dangerous, other witnesses felt panic and feared the accused could reach over and harm the witness. In those cases the *Support Officer* has to intervene as well assuring the witness of its safety.

(3) *Closure support*

After the witness' testimony the support enters its final phase. Again, the assistance at this point highly depends on the reactions of the witnesses after having testified. The aftermath of testifying is often described as a physical and emotional elevation. Therefore, there is a need for feedback and follow-up concerning the experience of testifying. For that it has been proven to be of great importance for the witnesses to receive personal acknowledgement from the Judge, recognizing and emphasizing the importance of their efforts to testify.

To follow-up the experiences at Court the *Support Unit* provides debriefing with the witness and points to the phases of past, present and future. According to the experiences of the VWS, it is very important to ensure that the witness leaves this phase of testifying with a sense of procedural closure even though it regularly does not mean psychological closure for the witness' victimization itself. The sensed procedural closure is necessary to avoid false expectations of further assistance or cooperation after the testimony at the ICTY. After having gone through the process of preparation and testifying, the witness sometimes feels a kind of relationship to the ICTY. Having given the testimony, the witness might assume to be now an integral part in the trial. It may thus consider its involvement as the start of an ongoing interaction that might include further information or practical help like compensation. Such expectations will necessarily be frustrated. It is therefore important that the VWS reaffirms the importance – but also

the limitations – of the witness' contribution in the trial and provides the witness with realistic perspectives. Particularly in terms of further financial support, the *Support Unit* has to disillusion false expectations for compensation.

6. Motives for testifying

Although there is support provided for the witnesses appearing before the ICTY, there are still many inconveniences for them to face. Many of the witnesses have to overcome the opposition of relatives and friends containing emotional pressure and even physical threat. So the question arises what makes a witness to testify at the ICTY despite of such obstacles and difficulties. In the following some of the motives will be presented that were reported by witnesses called to the Tribunal:⁹

a) To speak for the dead

Many of the witnesses have lost loved ones as a result of war. Speaking for them at the Tribunal is an act of honouring the dead. This is especially true for parents who have lost their children during the conflict; for them it is often the last parental act they can undertake for their children.

b) To look for justice in the present

Another motive for testifying is to seek justice for what has happened. Even though time cannot be turned back, with their testimony witnesses often want to contribute to the appropriate treatment of the offenders who are held responsible for atrocities. In their view it is their part on the effort to regain justice. Certainly, the perception of justice is subjective and is evaluated by the witnesses only from their perspective. This necessarily involves emotions, projections and personal opinions on the requirements of justice in the particular case. Correspondingly, after an ICTY judgement is made, which does not satisfy the witnesses' expectations, the VWS sometimes receives calls from witnesses who express their disappointment or anger about the ruling.

⁹ See also <http://www.iccwomen.org/resources/vwicc/participation.htm>

c) To tell the world the truth about what happened

A lot of witnesses aim to tell the world the truth of what they experienced and what did actually happen during the conflict. This mainly derives from the perception that the truth is still to be delivered to the public. The main problem of such a motive is the risk of being frustrated by the actual experiences at the Court. As the ICTY diverges in its intention and task from those of the TRC in South Africa, the Tribunal is limited to its procedural rules, which are those of legal trials. Accordingly, the Court does not consider witnesses to be the main actors and does not allow them to tell their story. It rather wants them to answer the particular questions of interest. It is therefore important that the witnesses know in advance about their limited role in the procedure and the realities that are awaiting them in trial.

d) Contribution that such crimes will not happen again

Finally, the witness may consider its testimony to be part of the efforts to prevent such crimes in the future. By providing information on the atrocities, the witness wants the cruelty to be seen by others in order that such crimes will not occur again. This motive is apparently based on the assumption that the experience of the past and the knowledge about it prevents history's repetition.

Yet, it still has to be fully grasped which motivation predominates and to which extent the motivational factors are met through the testifying process. It would be also of interest to empirically research the impact that testifying has on witnesses. Still, there is a lot of anecdotal evidence that testifying has positive effects for the witnesses. However, it should not be concealed that some witnesses had also expressed regret of their involvement. The latter appears to be more likely if the witnesses return to an impoverished environment, particularly where they do not feel totally safe.

7. Conclusion and Outlook:

It became clear that the implementation of the VWS is an important and integral part of the work at the ICTY in its effort to effectively prosecute war crimes committed during the war in the former Yugoslavia. Presently, the VWS effectively provides assistance to witnesses in matters of security, organization and multiple supports.

Still, the discussion continues if and how to improve support and help for those who come to witness at the ICTY. Demands exist that call for compensating the losses experienced by the witnesses during the war. Despite the problems towards the financial realization of such claims, any monetary benefit for testifying obviously contains the danger of the appearance of false witnesses or at least of such with questionable intentions. Making such witnesses an integral part of the prosecution, endangers the credibility of the ICTY. Nevertheless, there can be no doubt that a broader compensation or restitution program would be of great benefit for those who would not misuse it, but are in need of such a support.

Clearly, the work of VWS includes a great variety of essential activities and indispensable measures to guarantee security and help for the witnesses. Unfortunately, these measures are limited by the financial resources available; in order to guarantee and further develop the necessary measures there needs to be an increased monetary provision for this task. This might not only improve the areas where support is already given, but could also open up the way for a long term follow-up, which could not be offered, yet.¹⁰

In accordance to its institutional nature, the ICTY obviously is not set up to provide a 'victim orientated approach'. Dealing with the past is rather perceived as a judicial matter between the actual perpetrators and the International Community. Still, in terms of comprehensively dealing with the past, the ambivalent experiences of the VWS indicate that from a victim's perspective the legal proceedings as such are insufficient. This again raises the question for other approaches, respectively additional instruments that could foster reconciliation among the victimized populations of war-torn regions.¹¹

¹⁰ To really ensure that the testifying did not lead to harm if the witness is back in its environment there is a need for measures like local psycho-social counselling and regional security measures, which is presently lacking due to the widespread mistrust towards the local police forces in being capable to provide protection.

¹¹ The measures taken in Sierra Leone might serve as a general example for the coexistence of judicial prosecution of crimes and non-judicial instruments that primarily give a voice to those involved in the atrocities. Obviously, the relationship between the various instruments has to be well-coordinated in order to avoid possible dissensions as partially seen in Sierra Leone.

Selected literature

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 - b) The path to The Hague – Selected documents on the origins of the ICTY, Geneva 2001.
 - c) Basic documents, Geneva 1995.

 2. *Stover, Eric:*
The Witnesses – War Crimes and the Promise of Justice in The Hague, Berkeley 2003.
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