

Anna Adamska-Gallant, Shielding Victims of War Crimes and Other Vulnerable Witnesses in the Practice of International and Hybrid Courts. Lublin 2024, pp. 362



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BOOK REVIEW

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ABSTRACT

All those who believe in and strive for international justice should take the time to read *Shielding Victims of War Crimes and Other Vulnerable Witnesses in the Practice of International and Hybrid Courts*. The topic addressed by the author, Anna Adamska-Gallant, a former international judge of the European Union Rule of Law Mission in Kosovo, addresses an essential element of international criminal law, how the victims of serious international crimes and other vulnerable witnesses ought to be protected when called as witnesses before international and hybrid courts. Those who are quick to disparage the work of international and hybrid criminal courts too often ignore the critical and vital role that vulnerable witnesses play in the administration of international justice. Indeed, vulnerable witnesses must often face intimidation, threats, including death threats, to themselves and their family members, that are often carried out. The tremendous courage and strength required by vulnerable witnesses to testify in these criminal proceedings can never be overestimated. In three substantive chapters that deal with the recognition and development of victim's rights, a reparations system, and witness protection programs; the motivation of vulnerable witnesses to testify at international and hybrid courts; and the protection of potential vulnerable witnesses, the author offers an indispensable work for all those who are interested in the promotion of international justice through international and hybrid courts.

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This book deals with a very important topic: how the victims of war crimes and crimes against humanity and other vulnerable witnesses ought to be protected when called as witnesses before international and hybrid courts. Hybrid courts, referred to as internationalized or mixed criminal tribunals, are a blend of national and international elements and apply both national and international law. The research field is “forensic tactics,” that is described as “the attempt to establish criteria for defining the category of vulnerable witnesses for the purposes of proceedings before international and hybrid courts.” (p. 23) The book examines many aspects of vulnerable witnesses who appear before international and hybrid courts and is informed by the author’s own experience as an international judge for five years, 2013 to 2018, on cases dealing with serious international crimes in hybrid courts, at all instances, that operated with the European Union Rule of Law Mission in Kosovo. The author notes that her participatory observation played a key role in the research that was conducted for this study. The author kept notes that formed the basis for developing a questionnaire for interviewing judges and prosecutors. Interviews were conducted with four judges and four prosecutors that took about two hours to complete and were recorded in the form of reports. (p. 27) The focus of the research was on “international courts (primarily ICTY, International Criminal Tribunal of the Former Yugoslavia; ICTR, International Criminal Tribunal for Rwanda; and ICC, International Criminal Court) and the author’s own judicial experience, framed in an interdisciplinary research perspective from the standpoint of forensic tactics, criminological conditions, as well as in the material and criminal law and procedural aspects.” (p. 27) While the interviews that were conducted undoubtedly benefited the study, eight interviews can hardly be considered to be a basis for any substantial findings. Given the literally more than a hundred Justices and thousands of prosecutors and other staff employed by these two international criminal tribunals and the ICC, it would have been reasonable to expect a substantial number of interviews to corroborate and to enrich the findings.

The book is presented in three substantive chapters. The first substantive chapter considers the place of vulnerable witnesses in the classification of personal evidence in international criminal proceedings. It covers the recognition and development of victim’s rights, a reparations system, and witness protection programs. At the forefront of this evolution, the author notes, was the inherent respect for the victim’s dignity and their personal circumstances. At the international level this was initiated in the ICTY and, subsequently, with other international tribunals. The testimonies of these victims were, of course, essential to the conviction of their perpetrators. The vulnerability of these victims, given their traumatic experiences, necessitated the development of legal and procedural protections to reduce the risk of secondary victimization; defined, as stemming from “the reaction of institutions and individuals towards the victim.” (p. 35) The witnesses are classified as either expert, overview, fact, crime-scene, and an insider witness, and this classification system was formally introduced in the ICC Action Papers. (p. 86) Each of these different types of witnesses are reviewed in detail. This thorough treatment of these different types of vulnerable witnesses here is especially useful.

The second substantive chapter considers the criminal etiology aspects of the participation of vulnerable witnesses in international criminal trials. What motivates witnesses to testify in international and hybrid courts? Vulnerable witnesses are motivated to testify in court for a few reasons. Victims who tell their own stories in court can potentially achieve a level of psychological comfort that is essential to be able to cope with their negative experiences. This is contingent on the victims having

the psychological support necessary and having the ability to testify in a friendly setting. One study of those witnesses who testified before the Special Court for Sierra Leone (SCSL) provided a number of reasons for why they agreed to testify. Chief among these was wanting to “respond to witness harm,” “contribute to public/world knowledge of the war,” “contribute to justice/increase accountability and punishment for those responsible for war crimes,” and “reacting to the disclosure of wrongs done to others, fulfilling a moral duty towards those who have been wronged.” (p. 128) A similar study of those witnesses who testified before the ICTY found that witnesses were motivated to testify to “help judges to make the right decision,” “prevent similar wars in the future,” “a moral duty to the victims of war,” and “the need to tell your story.” (p. 130) The “moral obligation” to testify is a theme that is repeated consistently in the studies that have been done on why vulnerable witnesses testify at international and hybrid courts. The author concludes that “the moral obligation to contribute to collective welfare, emerged as a primary motivation among witnesses testifying in cases of the gravest international crimes.” (p. 131) This chapter also covers the topics of those witnesses who suffer from Post Traumatic Stress Disorder (PTSD), survivor’s guilt, collective memory, sexual violence, and, most importantly, the effect of pressure and intimidation on witness testimony. What is noteworthy is that victims do not come forward to report a crime committed against them. Witnesses must be recruited and persuaded to testify and, if they agree, this puts the witness at risk. (p. 200) Those who choose to testify can face “intimidation and threats, including death threats, which are sometimes carried out.” (p. 201) These threats and intimidation are often levelled against the witness’s family members. The *R. Haradinaj* case at the ICTY is the example of witnesses refusing to testify because of their fear for their personal safety. Many of the witnesses retracted their incriminating statements and a number of the witnesses did not live to testify at trial, which explains why the defendants were acquitted. (p. 201) This was also the situation in the Kenyan cases against *Ruto and Sang* at the ICC and the *Kenyatta* case, where two crucial witnesses died and two others who were too scared to testify. This was especially a problem at the ICTR where, according to official government figures, between January 1995 and August 2008, 156 witnesses were murdered in Rwanda. This is such an important issue that this book brings to light in stark detail, that is too often ignored by those who disparage the efficiency of international and hybrid courts. This raises the all-important issue of witness protection for all those who appear before these courts.

The third substantive chapter deals with the practice of international and hybrid courts towards vulnerable witnesses. The focus of this chapter is on the ICC. The ICC uses intermediaries more than other international tribunals. Intermediaries facilitate the contact between the investigators and potential witnesses. This is done to try and avoid arousing any suspicion from the local community and thereby discourage their cooperation. The intermediaries, from local humanitarian agencies or officials from international organizations, have a better understanding of local customs and relations and, therefore, can better identify who the potential sources of information might be. This is done to try to maintain the anonymity of potential witnesses. As the author notes, “Ensuring the safety of witnesses is one of the most important principles that should guide investigators and prosecutors conducting war crimes investigations.” (p. 221) The general rule is that there should be no more than 30 witnesses per case. Not only does this make for a more manageable process for qualifying and preparing witnesses but it also helps to ensure the witnesses’ own safety as well as that of their family’s. All potential

witnesses must provide their informed consent before they can be called as witnesses. Witnesses and their families are also compensated for their testimonies in a few ways. Material benefits to witnesses are particularly important for insider witnesses who are called upon to testify against their former political or military leaders. In these instances, the expectation is that they will receive impunity or more lenient treatment, but also be granted relocation to another country that could also include their family members. Preparing witnesses to present evidence or “proofing” is another important feature of international and hybrid court trials. Although contentious, this practice has been accepted by some international courts as promoting a fair trial. It should not, however, consist of rehearsing or staging a witness on how to give evidence. Guiding a witness in the presentation of the content of their evidence or “coaching” is not permitted. In the *Lubanga* case the ICC identified two stages of proofing. The first stage consisted of familiarizing the witness with the specifics of the proceedings and the role of the participants at the trial. The second stage was providing the witness with substantive preparation to give evidence. This was found to be impermissible by the ICC Justices. However, as the author points out, this is not an area of settled law among the international and hybrid courts. This chapter concludes with an examination of the effects of cross-questioning vulnerable witnesses.

The conclusions drawn from this study of vulnerable witnesses’ evidence and testimonies before international and hybrid courts are manifold. War crimes and crimes against humanity can traumatically affect thousands of people whose most fundamental human rights are being or have been violated. Practically, it would be impossible to prosecute every person who is responsible for the commission of these atrocity crimes. Consequently, there is a necessity to focus on those who are in the most senior leadership positions and bear the most responsibility for these atrocity crimes even though they may not have had any direct perpetration in these crimes. Considering the motivations for why vulnerable witnesses testify before international and hybrid courts such as “a strong sense of moral obligation towards others and the need to act for the common good come to the fore, regardless of the inconvenience involved, for example, by having to face the trauma experienced in public.” (p. 325) Thus, the author states that it takes those investigators, prosecutors, and judges who are adequately prepared to be able to work with vulnerable witnesses. It further implies that adequate safeguards need to be in place to ensure that vulnerable witnesses are not harmed in any way. The author further calls for the introduction of a catalogue of vulnerable witnesses and ends by reinforcing the importance of witnesses in ensuring that those who perpetrate atrocity crimes can be brought to justice. The author’s thorough and detailed treatment of her topic makes this an indispensable work for all those who are interested in the promotion of international justice through international and hybrid courts. And what is called for is further research on vulnerable witnesses in the proceedings of international and hybrid courts and, specifically, with respect to “the applied forensic tactics in the procedural aspect (psychology of testimony and explanations)” and “how to obtain the most valuable testimony with the greatest possible respect for their well-being.” (p. 329)

COMPETING INTERESTS

The author has no competing interests to declare.

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