

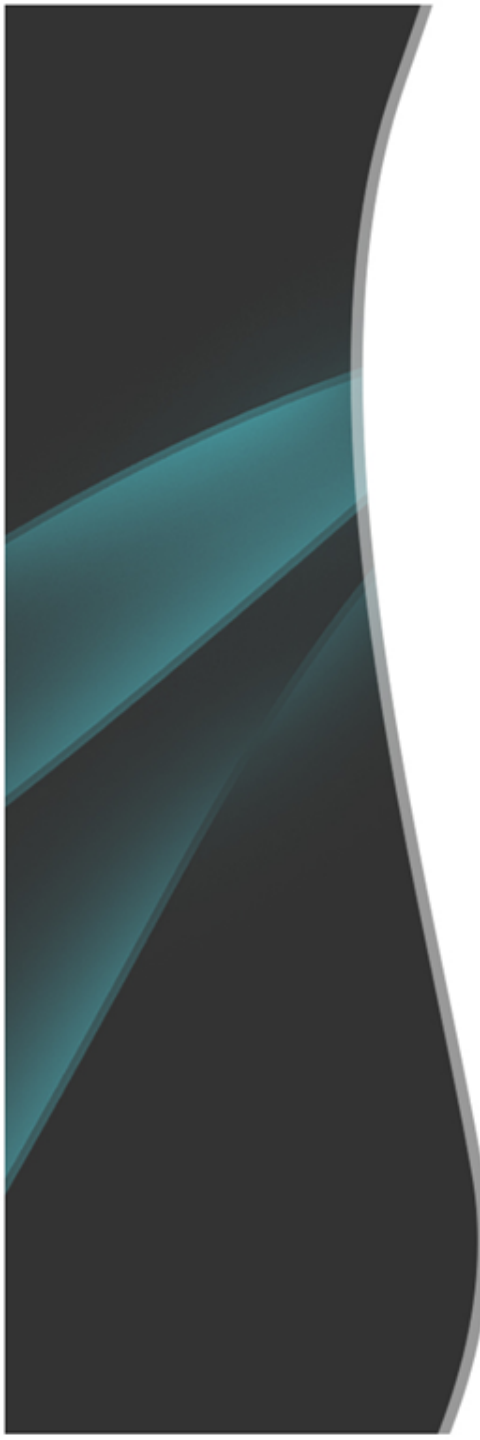


SECONDARY VICTIMISATION

Protection of the victim's rights under the Statute of the
ICTY

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Secondary victimisation- Dubrovnik, March
2012.

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1. Introduction
 2. Legislation
 - Rome Statute vs. Statute of the ICTY
 3. Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia
 4. Example
 5. Concluding remarks

Recommendation of the Committee of Ministers to member states on assistance to crime victims

Secondary victimisation means the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.

Article 22. of the ICTY Statute Protection of victims and witnesses

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.

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Article 68(1) of The Rome Statute-> Protection of the victims and witnesses and their participation in the proceedings

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. (...)

These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

Article 68 (2)

As an exception to the principle of public hearings the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means.

Article 68 (3)

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

Rule 69

Protection of Victims and Witnesses

In exceptional circumstances, the Prosecutor may apply to a Judge or Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.

Rule 75

Measures for the Protection of Victims and Witnesses

A Judge or a Chamber may, proprio motu or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

Rule 79

Closed Sessions

The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of public order or morality, safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75 or the protection of the interests of justice.

Rule 96


Evidence in Cases of Sexual Assault

In cases of sexual assault:

- (i) no corroboration of the victim's testimony shall be required;
- (ii) consent shall not be allowed as a defence if the victim
 - (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression,
 - or
 - (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;
- (iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;
- (iv) prior sexual conduct of the victim shall not be admitted in evidence

Witness DD in the Krstić case

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- **(in)equality of arms?**
 - **strict criteria after Blaškić case**
 - > **reasonable fear for his/her life/safety**
 - **aprox. 80% written participation of the victim**
 - **4000 individuals have testified before Tribunal**
 - **motivation to speak out**
 - **conflict of goals**



Thank You for Your attention!

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