



CRIMES OF SEXUAL VIOLENCE ADDRESSED BY THE INTERNATIONAL CRIMINAL COURT

The Rome Statute, which established the International Criminal Court (ICC), is the first international treaty that recognizes a range of acts of sexual and gender violence as crimes. Women are especially vulnerable during conflict; however, the international community has rarely prosecuted perpetrators who committed crimes acts against women during conflict. In fact, the Nuremburg Charter did not even list acts of sexual violence as crimes. Moreover, the targeting and systematic violence against women during conflict has largely been viewed as a natural consequence of war.¹

The ICC prosecutes crimes of sexual violence, protects witnesses and victims, and provides programs to rebuild affected communities through the Trust Fund for Victims. Further, the ICC promotes the representation of women throughout the various organs of the Court. The emphasis on sexual violence, victims and witnesses at the 1998 Rome Conference which culminated in the Rome Statute is a direct reflection of the movement of international law at that time.

The text the Rome Statute and the other legal instruments governing the Court were the result of great debate and compromise among non-governmental organizations (NGOs) and governments. This paper explains the advances in the Rome Statute in the development of international laws of violence against women.

Background

The international community has largely ignored sexual violence perpetrated against women in conflict. The 1949 Geneva Conventions did not designate sexual violence as a “grave breach” and rape was not included in article 3 which sets out the minimum protections afforded to civilians during armed conflict.² Instead, the Geneva Conventions characterized sexual violence as outrageous acts upon a personal dignity or attacks on a women’s honor.³ In the 1970s, additional protocols were added to the Geneva Conventions with stronger references to sexual violence; however, they were part of categories dealing with honor and dignity.⁴

In the 1990s women suffered as a result of conflicts in the former Yugoslavia and Rwanda. The United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to prosecute those responsible for the atrocities committed

¹ The International Criminal Court: The Making of the Rome Statute (Roy S. Lee, ed.), 1999.

² The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (First Geneva Convention), available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/fe20c3d903ce27e3c125641e004a92f3>.

³ The Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (Fourth Geneva Convention), available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5>.

⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 75(2) and 76; available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 4(2)(e), available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545>.





in these countries. Both tribunals included in their statutes rape as a crime against humanity but not a war crime because rape is not considered a grave breach of the Geneva Conventions.

Crimes of Sexual Violence within the Jurisdiction of the ICC

The crimes within the jurisdiction of the ICC are limited to genocide, crimes against humanity and war crimes. The Rome Statute does not include sexual violence as a genocidal act, in keeping with the definition found in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.⁵ Article 7(1)(g) of the Rome Statute defines rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity.⁶ Article 8(b)(xxii) and 8(e)(vi) list rape, sexual slavery, forced prostitution and any other form of sexual violence as a serious violation of common article 3 of the four Geneva Conventions. Article 8 establishes sexual violence as a war crime in both conflicts of an international and non-international character.⁷

The inclusion of gender-specific provisions and a mandate of equitable balance of female and male representation at the Court is an innovation for this type of international treaty. The Rome Statute and other rules governing the Court include provisions such as “fair representation of female and male judges” and another that “States Parties shall take into account the need to include judges with legal expertise on specific issues, including but not limited to, sexual violence, and violence against women or children.”⁸ These advances were due in large part due to the 1995 Beijing Conference on Women and the international community’s commitment to continue advancing the rights of women.

Also, Article 43(6) required the Registrar to set up a Victims and Witnesses Unit to provide assistance to victims and witnesses who appear before the Court. The Victims and Witness Unit provision was based on the previous experiences in the ICTY and the ICTR. The sensitive nature of testimony and the vulnerability of witnesses require that the staff members are trained in trauma related to crimes of sexual violence.

The Victims and Witnesses Unit is mandated to provide protection, support and other assistance to both witnesses and victims. The Victims and Witnesses Unit is a neutral service provider assisting both defense and prosecution witnesses. It offers protection to witness and victims during trial and after to protect them from reprisals for participating with the Court. It also provides medical and physiological support to victims and witnesses. In addition, the Unit arranges travel of victims and witnesses to ensure their appearance at trial.

Further, the Trust Fund for Victims was established to provide for reparations, restitution and compensation to victims and their families to rebuild their communities. The Trust Fund gives grants to ICC situation areas to promote growth and prosperity for those most affected by atrocity crimes. These programs give victims and their families a stake in their own future by encouraging them to take ownership of the various projects.

⁵ Convention on the Prevention and Punishment of the Crime of Genocide 1948, available at <http://www.preventgenocide.org/law/convention/text.htm>.

⁶ The International Criminal Court, The Rome Statute, available at <http://untreaty.un.org/cod/icc/statute/rome.htm>.

⁷ *Id.*

⁸ The International Criminal Court: The Making of the Rome Statute (Roy S. Lee, ed.), 1999, pp. 374-85.





Cases Before the Court

There are four situations under investigation by the Court, including the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), Uganda and Darfur, Sudan. As a result of these investigations, arrest warrants have been issued, including for alleged crimes of sexual violence among the counts of war crimes and crimes against humanity. Among those charged with crimes of sexual violence include Mathieu Ngudjolo Chui and Germain Katanga in the DRC situation, Sudanese President Omar Al-Bashir in the Darfur situation, and Jean-Pierre Bemba in the CAR situation.

The Lubanga trial is the first to be heard by the ICC. This is where the Rome Statute was first tested by both the Office of the Prosecutor and the Defense. Thomas Lubanga Dyilo is charged with co-perpetrating war crimes of conscripting or enlisting children under the age of 15 to engage in both conflicts of an international and non-international character between September 2002 to July 2003 and July 2003 to August 2003, respectively.⁹ Although not charged with sexual violence crimes, child soldiers were allegedly subjected to sexual violence.

During the Pre-Trial phase, the Prosecutor and the Defense presented arguments and tested the Statute on issues regarding the participation of witnesses and victims, the disclosure of sensitive evidence and the protection of victims and witnesses. The protection of witnesses was a major concern of the Prosecutor because former child soldiers were often abused physically, sexually and emotionally. Former child soldiers testified to being sexually assaulted by superiors and forced to commit crimes at the command of superiors. Therefore, these witnesses required protection from attacks for testifying prior to and during trial. In fact, the Prosecutor was granted protective measures for a witness, including a pseudonym, voice and face distortion.

Conclusion

The Court has recognized the importance of ending impunity for crimes of sexual violence perpetrated during times of conflict. The Court has advanced the rights of women by expanding sexual violence beyond rape and including sexual enslavement, forced prostitution, forced sterilization and forced pregnancy. The Court has emphasized the importance of including women in all aspects of the Court from investigators, judges and attorneys.

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⁹ International Criminal Court, Situations and Cases: Democratic Republic of the Congo, available at <http://www.icc-cpi.int/Menu/Go?id=b7e416a8-54c9-413c-a09d-7f13f6b2abd2&lan=en-GB>.

