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Expanding Protections of the Rome Statute: The International Criminal Court Affirms Charges of Sexual Assault of Child Soldiers Against Bosco Ntaganda

November 10, 2017
by Heidi Smucker

On June 15, 2017, the Appeals Chamber of the International Criminal Court (ICC) unanimously [affirmed](#) the court's power to bring charges against Bosco Ntaganda for war crimes of rape and sexual slavery committed against child soldiers. Ntaganda served as a Deputy Chief of the General Staff for the Force Patriotiques pour la Libération du Congo (FPLC), the military arm of the Union of Congolese Patriots party, during the 2002-2003 armed conflict in Ituri, Democratic Republic of Congo (DRC). While in this post, Ntaganda allegedly assisted in the conscription, training, and sexual assault and slavery of thousands of child soldiers under the age of 15. The ICC Trial Chamber VI charged Ntaganda with 13 war crimes stemming from this conflict, including crimes perpetrated against the child soldiers under his control. He [appealed](#) the counts of sexual war crimes, claiming the court had no jurisdiction over adjudicating instances of rape and sexual slavery perpetrated against child soldiers by members of the same armed group.

Issues regarding the ICC's jurisdiction over child soldier sexual assault charges first surfaced in the trial of [Thomas Lubanga Dyilo](#), another leader for the FPLC. During Dyilo's trial, the initial list of charges did not include any mention of alleged sexual abuse against the FPLC's child soldiers. While Dyilo was eventually convicted of recruiting child soldiers, the ICC trial court refused to rule on allegations that he raped and sexually enslaved child soldiers. This was a result of the prosecution's failure to introduce evidence supporting these charges before the confirmation of Dyilo's charges, making their evidence inadmissible.

When Ntaganda's proceedings began, ICC prosecutors tried again, including counts of sexual war crimes committed against the FPLC child soldiers in their original list of [charges](#). At pretrial, Ntaganda [argued](#) that while [International Humanitarian Law \(IHL\)](#) prohibits the use of child soldiers, it does not address issues of violence between members of the same military. For this reason, Ntaganda's defense claimed IHL was not applicable in cases of child soldier sexual abuse by their commanders and did not constitute war crimes under the ICC's jurisdiction. However, the prosecution argued that both the "general" and "special" levels of protection for child soldiers cited in the Geneva Conventions and IHL enabled the court to classify the FPLC child soldiers as victims of sexual war crimes.

[Article 3](#) of the Geneva Conventions classifies general protections as the humane treatment of soldiers in armed conflict, guarding them from "violence to life and person" and "outrages on personal dignity." Additionally, [Article 4](#) of the second Additional Protocol to the Geneva Conventions (Protocol II) extends special protections to children, citing that "the special protection

provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take direct part in hostilities.”

The trial court agreed with the prosecution, ruling that sexual assault of child soldiers by their commanding officers is a matter of IHL and therefore subject to protections established by Articles 7 and 8 of the [Rome Statute](#). This was crucial because Article 8 specifically states that the protections listed are considered in the “framework of international law.” Therefore, the ruling that crimes committed against child soldiers by members of the same armed forces falls under IHL provided the ICC with jurisdiction over the crimes and allowed the charges to stand.

The Appeals Chamber [upheld](#) this decision, officially extending the Rome Statute’s protections and the ICC’s jurisdiction to victims of rape, sexual assault, or sexual slavery during armed conflicts, regardless of their relationship to their perpetrator. This sweeping decision pushed forward the protections under international humanitarian law and allowed for a broader application of the Rome Statute. It affords child soldiers another layer of protection on top of the well-established war crimes charges for conscription and abuse. For example, in situations where the components of an armed uprising involving child soldiers are not deemed systemic or widespread enough to constitute a crime against humanity, if there is proven sexual abuse of the child soldiers the ICC can still assert jurisdiction and bring a case.

Additionally, this case shed more light on girls and their involvement as child soldiers. [Prior observations](#) have focused more on young men and boys and their violent, forced conscription during armed conflicts. However, the plight of the young women and girls in the FPLC demonstrates that girls are not only victims of forced sexual slavery, but are utilized across multiple roles during a conflict. Nearly [40 percent](#) of child soldier recruits are female as they are seen as easily manipulated and naturally obedient, making them appealing recruits. From scouting to combat, girls go beyond the commonly adopted view of “silent victims” and this case helps recognize female child soldiers in concurrent rights; as both child soldiers and victims of sexual abuse.

While this case namely benefits female child soldiers in a new way, it also raises awareness that male child soldiers are also vulnerable to sexual abuse. The brainwashing and fear [tactics](#) used to assert control over young boys recruited as child soldiers often includes sexual violence. This can mean rape and abuse by their fellow child soldiers and commanders or instances where they are forced to rape civilian women and girls. Sexual violence was [rampant](#) throughout the FPLC, and commanding officers routinely allowed female child soldiers to be passed between their fellow soldiers as sexual objects. Thus far, the ICC and other international courts and tribunals have failed to recognize the complex issue of sexual violence against men and boys, often times classifying such crimes as torture or inhumane treatment.

Male victims of sexual assault are largely invisible, and ignoring or misclassifying these crimes [perpetuates the stigmas](#) erroneously attached to the issue, including the labeling of male victims as weak or homosexual. However, the Ntaganda case applies a more expansive and inclusive view of the abuse of child soldiers, both for girls and boys that are enlisted. Viewing them as victims of both their conscription and their sexual abuse opens the door for a deeper understanding of their circumstances and what should be done to provide them with justice.

Perhaps most importantly, by adopting a parallel view of the abuses suffered by child soldiers and recognizing these crimes under the Rome Statute, the ICC has contributed to raising the level of accountability for crimes of sexual violence under international law. From this ruling, governing bodies within IHL can facilitate wider discussions of sexual violence and its context within, and relationship to, war crimes and how they are identified and prosecuted.

The ICC's decision to categorize acts of sexual violence against child soldiers by the same members of an armed group not only sets a new precedent for the court, but also expands the lens through which it examines the overarching issue of sexual violence. This case serves to further clarify the rights of child soldiers under IHL while opening the door for greater awareness and accountability.

The Changing Face of the Suicide Bomber Under Boko Haram

November 22, 2017

by Susan Imerman

It's just after midday when men gather in a crowded mosque in northeastern Nigeria for Friday prayer. Just down the emptied road, a young girl of about fifteen walks forward. Trembling, she approaches her instructed destination – the mosque. She pulls a small lever on her belt and suddenly triggers an explosion. Since 2011, [Boko Haram](#), the ISIS-affiliated militant group located in northern Nigeria, [has killed](#) more than 30,000 people in Nigeria and neighboring countries and displaced 2.1 million. Boko Haram, whose name means “Western education is forbidden” in the local Hausa dialect, seeks to institute Sharia law throughout the region and uses whatever means necessary—even young female bombers—to achieve its goal.

Since its founding in 2002, Boko Haram has wreaked havoc through a wave of bombings, assassinations, abductions, and most recently, the use of female suicide bombers. Located in the northeastern region of Africa's most populous country, Nigeria, Boko Haram controls an area mostly populated by the [Kanuri ethnic group](#), who maintain a firm anti-Western mentality and supply the majority of Boko Haram fighters. In [April 2014](#), Boko Haram drew international attention by abducting more than 250 schoolgirls from the town of Chibok; a rural Nigerian village located deep in the Boko Haram-controlled territory of [Borno State](#). The jihadist group offered the girls a choice: join the militants or become their slaves. About [half](#) of them chose to join and were taken away, never to be heard from again. The widespread condemnation of this kidnapping was a [turning point](#) for the group's leaders, who discovered that the victims' gender and youth directly correlated with the increased global attention.

In August 2016, Boko Haram split and announced that [Abu Musab al-Barnawi](#) would take over as the new leader. Since the shift in leadership, the group's fighters launched an increased number of suicide bombings against tactical locations such as military barracks, universities, and hospitals. According to [UNICEF](#), “more than 110 children have been used as suicide bombers since the start of 2017 – at least 76 of them girls. Most were under fifteen years old.” A [report](#) released in August 2017 by West Point shows that Boko Haram has now set a record for deploying more female bombers than any other terrorist group in history. The relentless string of bombings has cast a shadow of distrust and terror over northeastern Nigeria and many people [mention their fear](#) of women at checkpoints, in crowded areas, and in mosques. Soldiers and civilians are on high alert for anyone suspicious, “and usually [that means](#) any women or girl, most of whom wear long head scarves and garments that could cover an explosive belt.” Mistaken killings continue to increase. In the last three months of 2016 alone, the [UN reported](#) that thirteen children from ages eleven to seventeen were killed after being wrongly identified as suicide bombers.

In response to the widespread attacks, the Nigerian government has worked with the international community to guard against future bombings and to take down Boko Haram for good. Under [Article Three common to the four Geneva Conventions](#), an impartial humanitarian body may, in certain circumstances, intervene to prevent “an armed conflict not of international

character.” Article Three and [customary international law](#) regulate instances where the international community may provide protection to civilian victims of non-international hostilities such as the one between Nigerian forces and Boko Haram. Accordingly, international efforts are in effect to prevent the launch of future attacks. In 2017, the [UN Security Council](#) adopted resolutions condemning Boko Haram’s numerous terrorist attacks and strongly encouraged local governments to “enhance military cooperation, and to move vigorously and decisively to cut funding flows to individuals, groups....and entities on the ISIL Sanctions List, including Boko Haram.” Additionally, the Security Council [urged](#) regional governments to implement policies that promote defections from Boko Haram and ISIL and to de-radicalize and reintegrate those who had defected. The enhanced military cooperation is also supported by humanitarian efforts from non-governmental actors. [UNICEF](#) continues to work with the Nigerian military and employs humanitarian workers in the region to help rescue the thousands of children and women still under Boko Haram’s dominance. Efforts from both Nigerian governmental forces and the international community have helped retake Boko Haram-controlled territory and have brought increased attention to the ongoing horrors of the fight against the vicious militant group.

Through the use of females as the group’s main suicide bombers, Boko Haram stigmatizes women as killers, increasing public suspicion and hardship for women and girls throughout the region. Despite its tumultuous history, Boko Haram has outlived other militant groups in Nigeria building a presence in neighboring states where it has carried out attacks and recruited additional fighters. Since Boko Haram’s rise to power, ISIS’ influence in the region has greatly shifted, and with this change, has come a new image of the “suicide-bomber;” an image increasingly young and predominantly female.

South Africa Exposes Limitations of the International Criminal Court

December 1, 2017

by Matthew Reiter

The international human rights community may have breathed a sigh of relief at South Africa's [announcement](#) in March 2017 that it would [revoke](#) its attempt to leave the International Criminal Court (ICC), but there are likely more reasons to worry than rejoice. Beyond South Africa's flagrant disregard for its obligations under the ICC and the United Nations [Convention on the Prevention and Punishment of the Crime of Genocide](#) (Genocide Convention), South Africa's actions expose the various weaknesses of the ICC: namely its [inability to enforce its decisions](#).

As a [member](#) of the Genocide Convention, along with 148 other countries, [Article IV](#) makes clear that persons committing genocide or crimes against humanity will be punished, even if that person is a public official. Facing increased scrutiny and condemnation by the ICC, South Africa announced its intent to withdraw from the ICC in its entirety in October 2016. Some African leaders have called the ICC "an instrument of modern colonialism," as all prior ICC rulings have [convicted](#) Africans. This is the reason cited by South African and other African leaders for their own attempts to abandon the body. The African Union issued a resolution in early 2017 expressing its approval of [mass withdrawal](#) from the ICC, but Burundi is the only country that has [formally withdrawn](#) to date (The Gambia came close to withdrawing as well but rescinded its declaration of intent to withdraw).

Sudanese President Omar Hassan al-Bashir has managed to [evade an international arrest](#) warrant since 2009. He is accused of genocide and crimes against humanity in the Darfur region of western Sudan. In 2003, Bashir [ordered a counterinsurgency](#) against minority non-Arab rebel groups, which brought an estimated 300,000 deaths, over two million persons displaced, schools bombed, wells poisoned, and countless women and girls raped. Since then, it is [reported](#) that Bashir has crossed international borders 131 times and visited fourteen countries that are members of the ICC, including the 2015 visit to Johannesburg for an [African Union meeting](#).

It is often the case that states, when faced with international conflict or scrutiny, profess that domestic law trumps international obligations. Under the 2002 [Rome Statute](#), which established the ICC, "countries are [obligated](#) to arrest anyone sought by the tribunal. Yet according to South Africa's [Justice Minister Michael Masutha](#), the Rome Statute 'is in conflict and inconsistent with' South Africa's law that grants diplomatic immunity to visiting state leaders. Rather than accepting its responsibilities under the Statute, South Africa's government instead submitted a bill to Parliament to withdraw from the ICC in its entirety. The International Criminal Court [rejected](#) this "thin argument" ruling in July 2017 that South Africa had "in brazen defiance of the ICC warrants...flouted its duty to international law" by failing to arrest Bashir (the State hurried Bashir to a plane back to Sudan while domestic courts were ruling on whether to arrest him).

South Africa's attempt to withdraw from the ICC was stymied by its own courts. The High Court [ruled](#) that the attempt was "unconstitutional and invalid," as it was done without Parliamentary consultation and approval. While South Africa's failure to unilaterally abandon the ICC could be seen as an indication of the Courts' strength (it was generally thought that a flood of [other states would follow](#) South Africa's lead), the specific plight of the Bashir case in actuality underscores the Court's inability to impose its rulings. Multiple arrest warrants have been issued against Bashir, yet he has managed to [freely travel](#) between and within countries that are members of the International Criminal Court. The ICC's Chief Prosecutor, Fatou Bensouda, specifically points to the United Nations' [failure to publicly condemn](#) six ICC member-countries where Bashir has traveled. By failing to truly support enforcement of ICC rulings, the international community is allowing continued impunity for those who have committed major war crimes and failing the millions of victims who have suffered Bashir's genocide. It is vital that international stakeholders, such as the United Nations Security Council, increase its collective pressure on states providing sanctuary to such criminals, rather than sending a message that those who commit genocide can enjoy long-enduring exemption from justice.