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## Student Editorial: Fight Fire With Fire: The ICC Should Be More Aggressive In Pursuing Crimes of Sexual Violence

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# Fight Fire with Fire: The ICC Should Be More Aggressive in Pursuing Crimes of Sexual Violence

**STUDENT EDITORIAL**  
**BY MEREDITH OWEN**

**T**homas Lubanga, leader of a militia group supported by Uganda, has been charged with committing mass war crimes and crimes against humanity in the Democratic Republic of the Congo (DRC).<sup>1</sup> During the civil war, Lubanga conscripted child soldiers into his militia, using young girls as sexual slaves.<sup>2</sup> Carine Bapita, who represents five of the victims in the case against Lubanga at the International Criminal Court (ICC), described how “rape began as soon as they were abducted,” and “[s]ome were tortured.”<sup>3</sup> In addition to crimes committed against children, Lubanga allegedly ordered and committed systematic rapes, sexual torture, and mass murder.<sup>4</sup>

International criminal law is the primary mechanism to prosecute individuals and to hold such individuals accountable for their most serious crimes, including sexual violence.<sup>5</sup> Prosecutors at the ICC are charged with the responsibility to investigate and charge perpetrators.<sup>6</sup> Yet, international criminal law has been slow to take up the fight against sex-based crimes.<sup>7</sup>

Some progress has been made. Examples of progress include the creation of international human rights laws targeting gendered crimes,<sup>8</sup> the 1981 United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>9</sup> and the Geneva Conventions forbidding sexual violence as a tool or result of conflict.<sup>10</sup> Despite this progress, however, there have been few international prosecutions for sexual violence against women.<sup>11</sup>

Sexual abuse against women, such as rape, sexual slavery, and mutilation, is often used during armed conflict both as a tool to humiliate and eradicate the opponent and to demonstrate heightened feelings of power and control.<sup>12</sup> Although sexual violence may be regarded as an inherent characteristic of war, the ICC holds individuals culpable for these gendered crimes.<sup>13</sup>

At the ICC, rape is defined as:

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim . . . (2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person...<sup>14</sup>



This definition can also be found as a crime against humanity (art. 7(1)(g)-1) if the conduct was part of a widespread or systematic attack against a civilian population and the perpetrator knew the conduct was part of the widespread or systematic attack against a civilian population.<sup>15</sup> Additionally, sexual slavery and rape can be considered a war crime if it was “committed with the intent to destroy, in whole or in part,

a national, ethnical, racial or religious group.”<sup>16</sup> While it is true that the ICC is currently investigating sexual abuses,<sup>17</sup> the ICC’s commitment to rigorously investigating, prosecuting, and convicting sexual violence offenders is questionable.

This Editorial will first discuss ICC cases, in which the Office of the Prosecutor (OTP) or Pre-Trial Chamber failed to bring or dropped charges of sexual violence crimes against women. Then, it provides the rationales proffered by ICC prosecutors and judges for their failure to pursue these violent crimes, as well as critiques of those rationales by international human rights organizations. Finally, it compares the ICC’s passive approach to crimes of sexual violence to the aggressive nature of anti-sexual violence criminal laws in the United States. This Editorial will conclude that the ICC should continue the recent trend of increasing the investigation and prosecution of

crimes of sexual violence as in the U.S.

### ICC'S FAILURE TO RIGOROUSLY PURSUE INDIVIDUALS WHO COMMIT CRIMES OF SEXUAL VIOLENCE

Both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) failed to rigorously prosecute war criminals who committed sexual violence in connection to the armed conflicts.<sup>18</sup> The purpose of the ICTY and ICTR was to promptly prosecute the worst of the war criminals for the most serious crimes.<sup>19</sup> However, Amnesty International reported that “[d]espite extensive documentation by women’s groups, non-governmental organizations and NATO of rape and other crimes of sexual violence committed on a large scale during the conflict in Kosovo . . . it appears that there had, up to April 2007[,] been only one indictment including a charge of rape or sexual violence as a war crime or crime against humanity.”<sup>20</sup> Explaining why there were few indictments for sexual violence against women, judges at the ICTY specifically cited lack of time and resources to effectively investigate, prosecute, and convict state and non-state actors under the criminal liability doctrine of command responsibility.<sup>21</sup> Rather than prosecuting the cases themselves, the ICTY and ICTR left cases of sexual violence and other sensitive cases for domestic courts.<sup>22</sup>

The ICC increased investigation and prosecution of sexual violence crimes, largely in response to the failure of international criminal law, in general, to effectively confront sexual violence as part of armed conflict, and more specifically in response to the failure of the ICTY and ICTR to prosecute the crimes.<sup>23</sup> The ICC thus far has investigated violations of international criminal law arising in countries facing conflict or post-conflict difficulties, such as the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), Uganda, and Darfur, Sudan.<sup>24</sup>

Despite documented widespread sexual violence against women occurring in armed conflicts around the world, the ICC has only sought a limited number of sexual slavery and rape charges. So far, the ICC has indicted thirteen men for a variety of crimes.<sup>25</sup> In the DRC, the ICC has charged four men, including Lubanga, for international criminal violations.<sup>26</sup> The OTP, however, failed to bring charges against Lubanga for sexual slavery or rape.<sup>27</sup> Two other leaders, Germain Katanga, the alleged commander of the Force de Résis-

tance Patriotique en Ituri (FRPI), and Mathieu Ngudjolo Chui, the alleged former leader of the Front des Nationalistes et Intégrationnistes (FNI),<sup>28</sup> were originally charged with sexual violence crimes, including sexual slavery and rape both as a war crimes and crimes against humanity.<sup>29</sup> Fearing for the safety of the witnesses of the crimes, the OTP thought it necessary to drop the sexual violence charges against the two leaders.<sup>30</sup> However, once the witnesses to the sexual slavery and rape were placed in the ICC witness protection program, the OTP re-introduced the sexual violence charges.<sup>31</sup>

The ICC has included sexual violence crimes as part of the indictment against several criminals from the CAR, Uganda, and Darfur.<sup>32</sup> The OTP has charged three men from the Darfur conflict with rape and sexual slavery, including the head of state of Sudan, Omar al Bashir.<sup>33</sup> Additionally, the ICC brought sexual slavery and rape charges against Joseph Kony for crimes committed in Uganda.<sup>34</sup> Finally, the OTP brought charges of rape as a war crime and a crime against humanity against Jean-Pierre Bemba Gombo in connection to the crimes committed in the Central African Republic.<sup>35</sup> These men, however, remain at large, and their cases are pending.<sup>36</sup>

### RATIONALE FOR FAILURE TO AGGRESSIVELY PURSUE SEXUAL VIOLENCE CHARGES AND CRITIQUES BY INTERNATIONAL LEGAL SCHOLARS

Prosecutors at the ICC argue that factors, such as lack of time, resources, and evidence, account for few charges brought against few individuals.<sup>37</sup> According to the OTP, the ICC dropped charges of sexual violence in 2008 against Ngudjolo and Katanga due to a lack of evidence and time to investigate these crimes.<sup>38</sup> Even though the ICC dropped the charges, prosecutors and investigators maintained that the OTP felt it important to investigate sexual violence charges against both Katanga and Ngudjolo, and gathered evidence from the field demonstrating that sexual slavery and rape took place during at least one specific attack in 2003.<sup>39</sup> The OTP claims that even more sexual violence charges, including forced marriage and sexual mutilation, may be brought against offenders still at large.<sup>40</sup>

In the cases of Katanga and Ngudjolo, the Pre-Trial Chamber concluded that witnesses to and victims of the sexual crimes lacked protection, and accordingly the OTP placed the victims and witnesses in the ICC Witness Protection Program (ICCP).<sup>41</sup> Despite the ar-

gument that this protection would effectively allow witnesses to testify, one judge still disagreed with the reinstatement of charges for sexual slavery against Katanga and Ngudjolo.<sup>42</sup> The judge argued that there was insufficient evidence to support the reinstatement of charges because there were no “substantial grounds to believe” that Katanga and Ngudjolo intended to sexually enslave or rape the victims or that they knew or should have known about the crimes.<sup>43</sup> Instead, the judge asserted that the evidence suggested that the defendants punished those who committed the crimes.<sup>44</sup> Still, the OTP reinstated charges of sexual slavery and rape over the judge’s objection due to the placement of the victims and witnesses into the ICC Victims and Witnesses Unit of the Registry (VWU), the ICCPP.<sup>45</sup>

Even though the ICC has been more aggressive than the ICTY and ICTR in prosecuting sexual violence crimes, the ICC has similarly limited investigations and prosecutions of sexual violence crimes.<sup>46</sup> At the ICC, the elements of rape are difficult to prove without witness testimony,<sup>47</sup> and the social stigma of rape prevents many witnesses from coming forward, leading to few convictions.<sup>48</sup> Further, to expedite cases, the OTP brings fewer charges for faster convictions.<sup>49</sup> Procedural rules refer the OTP investigation findings to the Pre-Trial Chamber so that the judges may determine whether there is enough evidence to support a conviction against a defendant at trial.<sup>50</sup> In the case of Lubanga, the Prosecutor’s decision to expedite the case by limiting the number of charges ultimately defeated any sexual violence charge.<sup>51</sup> The Prosecutor contended there was insufficient evidence to show that Lubanga held command responsibility for the rapes and acts of sexual slavery, and therefore decided not to proceed with charges of sexual violence.<sup>52</sup>

The ICC claims that it continues to investigate sexual violence crimes against other offenders from the CAR, Uganda, and Darfur.<sup>53</sup> In fact, the OTP contends that the ICC is making great strides in the adjudicating sexual violence in these states by bringing more charges against the alleged criminals and especially against the Sudanese President Omar al-Bashir for rape.<sup>54</sup> In CAR, many more will face charges for sexual violence, such as the former Vice-President of the DRC, Jean-Pierre

Bemba, who faces charges of rape and torture as a crime against humanity and war crime.<sup>55</sup>

In response to the ICC’s explanations for their failure to vigorously pursue sexual violence charges, human rights organizations argue that complicity is condoning the practice.<sup>56</sup> These critics question why the ICC did not include sexual violence charges against Lubanga of the DRC, where girls were kidnapped, forced into Lubanga’s militia, and endured numerous

rapes and prolonged sexual slavery.<sup>57</sup> Further, the ICC failed to charge Lubanga with rape and sexual slavery in the face of ample evidence of such crimes.<sup>58</sup> Both Amnesty International and Human Rights Watch reported that ICC investigators found widespread cases of rape against women as young as eleven years old committed under Lubanga’s authority, while other women were captured and held as sexual slaves for militiamen.<sup>59</sup> Although investigators managed to

put together witness testimony, many victims of sexual violence were killed after their attacks, eliminating any possibility that the women could testify.<sup>60</sup>

The evidence illustrates that Lubanga’s troops committed crimes against humanity. It was a widespread attack against the female civilian population.<sup>61</sup> The abuses could also be tried as a war crime because they were gendered crimes and committed as part of a policy or large-scale commission in the context of an international armed conflict, and Lubanga was aware of the crimes.<sup>62</sup>

Despite the systematic sexual violence against civilian women and over 12,500 female child soldiers forced into the militia, the OTP dropped charges of sexual violence, including sexual slavery as a war crime and crime against humanity, against Katanga and Ngudjolo “after a Pre-Trial Chamber judge excluded the statements of witnesses supporting those charges on the grounds that the witnesses were not adequately protected.”<sup>63</sup> Subsequently, the OTP managed to reinstate the charges after witnesses were put into the ICC Witness Protection Program.<sup>64</sup>

One problematic inequity in international criminal law, according to human rights organizations, is that female child soldiers lose out on crimes against humanity protections because, although they are often victims

At the ICC, the elements of rape are difficult to prove without witness testimony, and the social stigma of rape prevents many witnesses from coming forward, leading to few convictions.



of widespread or systematic sexual slavery and rape, female child soldiers are not victims of crimes committed against a “civilian” population.<sup>65</sup> Although the criminals who enslave female child soldiers could be tried for sexual violence as a war crime, the Rome Statute does not criminalize the “use of children indirectly in armed conflicts, which disproportionately affects girls typically used in these ways.”<sup>66</sup>

Critics argue that the United Nations Security Council, when establishing the ICC, acknowledged sexual enslavement and rape as inherent to “military operations,” and, therefore, the U.N. provides impunity to offenders.<sup>67</sup> ICC critics also argue that by failing to charge offenders with sexual violence, the ICC is acquiescing to the belief that sexual violence is a natural result of armed conflict.<sup>68</sup> They contend that international human rights, humanitarian, and criminal law provisions are “inadequate and, moreover, that the law of armed conflict incorporates a gendered hierarchy in the sense that the rules dealing with women are regarded as less important than others and their infringement is not taken as seriously.”<sup>69</sup> These critics suggest that a Women’s Convention on the law of armed conflict is necessary to illustrate the severity of these crimes and that the convention would demonstrate that the ICC could effectively prosecute sexual violence offenders.<sup>70</sup>

Critics also argue that international criminal law has been developed with an androcentric bias.<sup>71</sup> Specifically, the ICC’s Rome Statute illustrates a “prosecutorial strategy of selective justice and efficient procedure.”<sup>72</sup> Society has developed international law that reflects the male experiences without considering the needs of or violence against women.<sup>73</sup>

Furthermore, critics argue, that domestic criminal law regimes are ineffective in prosecuting sexual violence. For example, women from the DRC live in a state without effective rule of law mechanisms, and gender-bias in the judicial process is prevalent.<sup>74</sup> Although ICC prosecutors recognize the difficulty in gathering witness statements in these situations, it is more difficult for victims to testify in national courts when they are forced to confront their attackers in a public forum and when domestic law enforcement officers discourage bringing claims of sexual violence.<sup>75</sup> Instead, the ICC should take the reins in adjudicating these sensitive cases, while protecting victims in the Witness Protection Program.<sup>76</sup> Because domestic courts will likely fail to pursue sexual violence claims, the ICC’s should continue its recent increased vigor in bringing sexual violence charges and add sexual violence charges in

pending cases, such as the Lubanga case.

**WHILE THE UNITED STATES HAS FAILED TO EXERT  
PRESSURE ON THE ICC TO PROSECUTE  
SEXUAL VIOLENCE OFFENDERS, ITS DOMESTIC  
CRIMINAL JUSTICE SYSTEM SERVES AS AN  
EXAMPLE OF AGGRESSIVE SEXUAL VIOLENCE  
PROSECUTION**

The United States refuses to consent to ICC jurisdiction, yet it continues to advocate for the adjudication of human rights abuses in national and international courts.<sup>77</sup> The U.S. failure to consent to ICC jurisdiction does not illustrate its complicity with sexual violence crimes, but rather its fear of ICC encroachment on American sovereignty.<sup>78</sup> However, international organizations, such as Amnesty International, continue to question the U.S. commitment to promoting peace and preventing conflict and wonder if, without U.S. support, the United Nations and ICC can effectively hold individuals accountable for international crimes.<sup>79</sup>

Still, U.S. rape and sexual violence laws illustrate an aggressive posture towards the prosecution of sexual violence criminals.<sup>80</sup> Since the feminist advocacy of the 1960s, law reforms shifted the way U.S. courts frame and adjudicate rape and domestic violence cases.<sup>81</sup> Much of this advocacy focused on changing the historic perception of the passive female who is blamed for the violent acts of others.<sup>82</sup> Sexual violence, discrimination, and rape laws changed because feminist advocates were able to debunk theories that male power inherently dominates women.<sup>83</sup>

U.S. sexual violence laws reformed through the “creation of specific domestic violence offenses,” federal prosecution of offenders involving interstate activity, and the acknowledgment of self-defense for victims of sexual violence.<sup>84</sup> These reforms also targeted the social stigma against sexual violence victims by providing shelters for psychological and medical recovery.<sup>85</sup> In addition to the criminalization of sexual violence crimes, U.S. statutes reformed anti-discrimination and tort laws to provide women with civil remedies.<sup>86</sup> U.S. laws further protect victims by attempting to prevent violence before it occurs, exemplified by sexual harassment statutes.<sup>87</sup>

Although they do not in a state of armed conflict, sexual sadist cases may be factually similar to those that arise in conflict zones. Sexual sadists utilize elements of both torture and sexual violence, often resulting in

the rape, sexual enslavement, and death of the victim.<sup>88</sup> For instance, in *State v. Smith*,<sup>89</sup> the defendant, a diagnosed sexual sadist, raped, tortured, and murdered two victims.<sup>90</sup> The defendant was sentenced to death.<sup>91</sup> Similarly, in *People v. Guerra*,<sup>92</sup> the defendant was not clinically diagnosed with sexual sadism, but he nonetheless received the death penalty for the attempted rape and the murder of a woman.<sup>93</sup> A significant number of other cases, including *State v. Ross*<sup>94</sup> and *People v. Lindsay*,<sup>95</sup> resulted in the death penalty and other severe sentences for the perpetrators of sexual violence. As demonstrated by these cases, the laws, courts, and public act in concert to harshly condemn perpetrators of sexual violence crimes.

## CONCLUSION

Although the ICC was intended to respond to the failures of past internationalized courts, it still has a long way to go before it can be said that it has aggressively pursued crimes of sexual violence. The ICC's commitment to vigorously pursuing charges of sexual violence is questionable, as evidenced by the lack of, limited, or dropped charges of sexual violence crimes against perpetrators like Lubanga. Critics contend that refusing to investigate and prosecute sensitive cases involving rape and sexual enslavement has led to impunity for the offenders. The ICC has responded to these criticisms by reinstating sexual violence charges against Katanga and Ngudjolo as well as by bringing charges of rape and sexual slavery against others indicted at the ICC. The reform of sexual violence laws in the United States exemplifies an effective aggressive stance towards sexual violence, and the ICC should adopt this rigorous approach. Rigorous prosecution and conviction is important because "[i]nternational criminal prosecution works to end impunity for gender-based crimes, heightens the profile of gender-motivated violence in the international community, challenges gender relations and hierarchies that perpetuate discriminatory practices, and sets important precedents for future cases tried at the international level."<sup>96</sup>

<sup>1</sup> Nick Grono, *The Role of the International Criminal Court in Peace Processes: Mutually Reinforcing or Mutually Exclusive?*, INTERNATIONAL CRISIS GROUP, (2006), <http://www.crisisgroup.org/home/index.cfm?id=4552&l=1>.

<sup>2</sup> *Id.*

<sup>3</sup> Rachel Irwin, *Prosecutor Says Girls Used as Sex Slaves*, THE LUBANGA TRIAL, Jan. 26, 2009, <http://www.lubangatrial.org/2009/01/26/prosecutor-says-girls-used-as-sex-slaves/>.

<sup>4</sup> Nick Grono, *ICC's Prosecutorial Strategy for 2007-2009*, INTERNATIONAL CRISIS GROUP, (2006), <http://www.crisisgroup.org/home/index.cfm?id=4411&l=1>.

<sup>5</sup> Suzan M. Pritchett, *Entrenched Hegemony, Efficient Procedure, or Selective Justice?: An Inquiry into Charges for Gender-Based Violence at the International Criminal Court*, 17 TRANSNAT'L L. & CONTEMP. PROBS. 265, 273-74 (2008) (suggesting that international law has lagged in holding individuals accountable for sexual violence crimes because of the historic subjugation of women).

<sup>6</sup> See *infra* Part II (discussing conflict in African states and the ICC investigations).

<sup>7</sup> See Pritchett, *supra* note 5, at 271-72 (noting that, until recently, international legal institutions have been lead by mostly Western men who had maintained a focus on state sovereignty, political independence, territorial integrity, and legitimizing force, while ignoring the plight of women in conflict).

<sup>8</sup> *Id.* at 271.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 273.

<sup>11</sup> *Id.*

<sup>12</sup> See STOP VIOLENCE AGAINST WOMEN, SEXUAL ASSAULT DURING ARMED CONFLICT (2006),

[http://www.stopvaw.org/Sexual\\_Assault\\_During\\_Armed\\_Conflict.html](http://www.stopvaw.org/Sexual_Assault_During_Armed_Conflict.html) (quoting various international legal scholars and institutions, which note that sexual violence is often committed as a deliberate war strategy, rather than for sexual pleasure).

<sup>13</sup> See *id.* (arguing that sexual violence against women during armed conflict should be criminally punishable and not accepted as merely a characteristic of armed conflict).

<sup>14</sup> Jonathan M.H. Short, *Sexual Violence as Genocide: The Developing Law of the International Criminal Tribunals and the International Criminal Court*, 8 MICH. J. RACE & L. 503, 522 (2003).

<sup>15</sup> Finalized Draft Text of the Elements of Crimes, Preparatory Comm'n for the Int'l Crim. Ct., U.N. Doc. PCNICC/2000/1/Add.2, 12 (2000), available at

<http://www.iccnw.org/documents/ElementsofCrimeEng.pdf>.

<sup>16</sup> See Short, *supra* note 14, at 522 (citing art. 6 of the Rome Statute).

<sup>17</sup> VICTIMS' RIGHTS WORKING GROUP, ICC VICTIMS' RIGHTS LEGAL UPDATE: 29 MAY TO 30 JUNE 2009 (2009), <http://www.redress.org/reports/June%202009%20Legal%20update.pdf>.

<sup>18</sup> Susana SáCouto, *The Importance of Effective Investigation of Sexual Violence and Gender-Based Crimes at the International Criminal Court*, 17 AM. U. J. GENDER SOC. POL'Y & L. 337, 348 (2009).

<sup>19</sup> See Pritchett, *supra* note 5, at 275 (noting that the ICTY and ICTR creation statutes both specified rape as an act that could constitute a crime against humanity).

<sup>20</sup> AMNESTY INTERNATIONAL, SERBIA (KOSOVO): THE CHALLENGE TO FIX A FAILED UN JUSTICE MISSION 75 (2008), available at <http://www.unhcr.org/refworld/docid/47a0584a2.html>.

<sup>21</sup> *Fourth ICC Arrest in the DRC Situation*, INTERNATIONAL FEDERATION FOR HUMAN RIGHTS, April 30, 2008, <http://www.fidh.org/Fourth-ICC-arrest-warrant-in-the-DRC-situation>.

<sup>22</sup> SáCouto, *supra* note 18, at 344-46.

<sup>23</sup> *Id.* at 338-39.

<sup>24</sup> INTERNATIONAL CRIMINAL COURT, ALL CASES, <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/>.

<sup>25</sup> *Id.*

<sup>26</sup> INTERNATIONAL CRIMINAL COURT, DEMOCRATIC REPUBLIC OF THE

CONGO, <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0104/> [hereinafter DRC].

<sup>27</sup> Lisa Gambone, *Failure to Charge: The ICC, Lubanga & Sexual Violence Crimes in the DRC*, THE WORLD AFFAIRS BLOG NETWORK, July 22, 2009, <http://warcrimes.foreignpolicyblogs.com/2009/07/22/failure-to-charge-the-icc-lubanga-sexual-violence-crimes-in-the-drc/>.

<sup>28</sup> DRC, *supra* note 26.

<sup>29</sup> HUMAN RIGHTS WATCH, VICTIM AND WITNESS PROTECTION SUPPORT (2008) [hereinafter VWP], available at <http://www.hrw.org/en/node/62135/section/10>.

<sup>30</sup> Gambone, *supra* note 27.

<sup>31</sup> VWP, *supra* note 29.

<sup>32</sup> DRC, *supra* note 26.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 340-41.

<sup>36</sup> ALL CASES, *supra* note 24.

<sup>37</sup> Katy Glassborow, *International Criminal Court Investigative Strategy under Fire: Sexual Violence in Congo*, RADIO NEDERLAND WERELDOM-ROEP, Oct. 17, 2008, <http://static.rnw.nl/migratie/www.rnw.nl/internationaljustice/specials/commentary/081017-IWPR-redirec>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> VWP, *supra* note 29; see also COALITION FOR THE INTERNATIONAL CRIMINAL COURT, KATANGA—NGUDJOLU CHUI CASE (2009), <http://www.iccnw.org/?mod=drctimelinekatanga> (providing a timeline of the Katanga case from indictment to trial, which commenced in October 2009).

<sup>42</sup> INTLAWGRRLS, VAGARIES OF WITNESS PROTECTION BEFORE THE ICC (2008), <http://intlawgrrls.blogspot.com/2008/11/vagaries-of-witness-protection-before.html>.

<sup>43</sup> *Id.*

<sup>44</sup> See *id.*

<sup>45</sup> Prosecutor v. Katanga and Ngudjolo, ICC, Case No. ICC-01/04-01/07, Victims and Witnesses Unit's Considerations on the System of Witness Protection and the Practice of "Preventive Relocation," June 12, 2008, ¶ 10.

<sup>46</sup> See John D. Haskell, *The Complicity and Limits of International Law in Armed Conflict Rape*, 29 B.C. THIRD WORLD L.J. 35, 62 (2009) (discussing how, despite extensive documented evidence of sexual violence, the ICC has been reluctant to bring charges of sexual violence in DRC, Uganda, and Sudan).

<sup>47</sup> See *id.* at 55-56 (detailing the elements of "rape" under the Rome Statute).

<sup>48</sup> *Id.* at 75.

<sup>49</sup> Pritchett, *supra* note 5, at 292-93.

<sup>50</sup> *Id.* at 294.

<sup>51</sup> *Id.* at 293.

<sup>52</sup> *Id.*

<sup>53</sup> ALL CASES, *supra* note 24.

<sup>54</sup> Glassborow, *supra* note 37.

<sup>55</sup> *Id.*

<sup>56</sup> See Gambone, *supra* note 27 (contending that the belief that rape and sexual violence are inherent to armed conflicts leads to complicity and lack of prosecution for these gendered crimes).

<sup>57</sup> SáCouto, *supra* note 18, at 341.

<sup>58</sup> Gambone, *supra* note 27; and see generally WOMEN'S INITIATIVE FOR GENDER JUSTICE, MAKING A STATEMENT: A REVIEW OF CHARGES AND PROSECUTIONS FOR GENDER-BASED CRIMES BEFORE THE INTERNATIONAL CRIMINAL COURT (2008), available at

[http://www.iccwomen.org/news/docs/MakingAStatement-Web\\_Final.pdf](http://www.iccwomen.org/news/docs/MakingAStatement-Web_Final.pdf) (describing atrocities, especially sexual mutilation, torture, rape, and enslavement, in all situations where the ICC is investigating in the DRC).

<sup>59</sup> Pritchett, *supra* note 5, at 282.

<sup>60</sup> Gambone, *supra* note 27.

<sup>61</sup> Pritchett, *supra* note 5, at 281-82.

<sup>62</sup> *Id.* at 283-84.

<sup>63</sup> SáCouto, *supra* note 18, at 342.

<sup>64</sup> *Id.*

<sup>65</sup> Jordan A. Gilbertson, *Little Girls Lost: Can the International Community Protect Girl Soldiers?*, 29 U. LA VERNE L. REV. 219, 233-34 (2008).

<sup>66</sup> *Id.* at 235.

<sup>67</sup> See Haskell, *supra* note 46, at 67 (arguing that "the political needs of the Security Council in 'maintaining or restoring international peace and security' trump any concerns over human rights abuses.").

<sup>68</sup> Judith Gardam, *Women and the Law of Armed Conflict: Why the Silence?*, 46 INT'L & COMP. L.Q. 1, 56 (Cambridge University Press, 1997).

<sup>69</sup> *Id.* at 56.

<sup>70</sup> *Id.*

<sup>71</sup> See Pritchett, *supra* note 5, at 270 (arguing that "international law and prosecution are products of a particular socio-historical context of elite men and Western-state supremacy.").

<sup>72</sup> *Id.* at 269.

<sup>73</sup> *Id.* at 273.

<sup>74</sup> See *id.* at 301 (noting that "[i]n many areas of the country, years of war and economic depression have rendered the national judicial system 'decrepit' and ill-equipped to deal with the rapes.").

<sup>75</sup> Haskell, *supra* note 46, at 75-76.

<sup>76</sup> See *id.* at 76 (arguing that the gacaca laws in Rwanda prevented the adjudication of sexual slavery and rape cases due to the attached social stigma, while the ICTR poorly investigated sexual violence during the Rwandan conflict).

<sup>77</sup> Anup Shah, *United States and the International Criminal Court*, GLOBAL ISSUES, Sept. 25, 2005, <http://www.globalissues.org/article/490/united-states-and-the-icc>.

<sup>78</sup> See *id.* (asserting that the Bush Administration un-signed the Rome Statute to prevent the ICC from encroaching on U.S. sovereignty).

<sup>79</sup> See *id.* (explaining that, due to U.S. pressure, the U.N. Security Council agreed to exempt peacekeeping officers prosecution, despite harsh criticism from Amnesty International, which argues that the exemption undermines the purpose of the ICC).

<sup>80</sup> Julie Goldscheid, *Domestic and Sexual Violence as Sex Discrimination: Comparing American and International Approaches*, 28 T. JEFFERSON L. REV. 355, 358 (2006).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 358-59.

<sup>83</sup> See *id.* at 359-60 (challenging the notion that "sexual socialization" accounted for male domination, and arguing that feminist advocacy prevented re-victimization of women who suffered sexual violence).

<sup>84</sup> *Id.* at 366.

<sup>85</sup> Goldscheid, *supra* note 80, at 369-70.

<sup>86</sup> *Id.* at 371.

<sup>87</sup> *Id.* at 371-72.

<sup>88</sup> WAYNE PETHERICK, SERIAL CRIME: THEORETICAL AND PRACTICAL ISSUES IN BEHAVIORAL PROFILING 320 (2009).

<sup>89</sup> 159 P.3d 531 (Ariz. 2007).

<sup>90</sup> *Id.* at 535.

<sup>91</sup> *Id.* at 535, 546.

<sup>92</sup> 129 P.3d 321 (Cal. 2006).

<sup>93</sup> *Id.* at 334.

<sup>93</sup> 849 A.2d 648 (Conn. 2004).

<sup>94</sup> 617 N.E.2d 389 (Ill. App. Ct. 1993).

<sup>95</sup> Pritchett, *supra* note 5, at 297.

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