THE PROSECUTION OF GENDER-BASED CRIMES AT THE ICC: ISSUES AND OPPORTUNITIES

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Abstract
The article discusses the fact that, despite notable progress, gender-based crimes are still under-investigated, under-prosecuted and remains the least condemn war crime, as if these types of crimes were of lesser importance than other crimes committed during armed conflict. The ICC must make a firm commitment to the prosecution of gender based crimes. The present article concludes with emphasis of two specific and important areas" (i) the urgent need for the establishment of institutional structures for decision-making about prosecute and investigation (ii) the need for its member states to demonstrate commitment that such crimes will not be tolerated, owing to the impact of gender crimes on women and girls. The article also reviews the office of the prosecutor of the ICC in terms of its effectiveness and administering gender justice for women and girls across the globe during arm conflicts. The work also reviews the plight of victims of sexual and gender based crimes and hour the ICC has effectively made provision for the protection of victim and witnesses of sexual and gender based crimes. Also challenges as evidence collection and building confidence in witnesses of sexual and gender crimes to freely participate in their adjudicate of justice are also effectively pointed out.

1.0 Introduction
For many centuries, women were viewed as victor's spoils. In recent decades, concern has grown for the victims of such war crimes, and so has publicity.[1]However, the publicity tends to wane once the fighting ends, and the women fade from the picture. It is only with the discovery of the scale of sexual atrocities committed during the war in the former Yugoslavia and Rwanda that the issue of war time sex crime during armed conflict has truly become a priority concern for the international community,[2] women are raped in all forms of armed conflict, international and internal, whether the conflict is fought primarily on religion, ethnic, political or of nationalist grounds,

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[1]Claire de Than and Edwin Shorts, International Criminal Law and Human Rights, London, Sweet & Maxwell (2003)

[2] Ibid at 346

they are raped by men from all sides - both enemy and "friendly" forces.[3] There have been reports of rapes and other forms of sexual abuse committed by the United Nations peace keeping forces. The reality is that rape and violent sexual abuse of women in armed conflict has a long historical background.[4]
Rent years have seen a progressive criminalization of gender-based crimes, which has culminated in the inclusion of a gender mandate within the statute of the international criminal court (ICC). The ICC statute is the first international criminal law treaty to have included references to gender.[5]Despite the progress made, there is still great suspicion that gender-based crimes are not taken seriously,[6] as they remain secondary offences, which do not seem to merit the same institutional response as other war crimes and crimes against humanity. The present article argues that despite the advances, gender-based crimes remains under-investigated and under prosecuted.

2.0 The Recognition of Gender-based Crimes

Gender-based crimes have been committed for as long as records of armed conflict exist,[7] but, until recently, they have rarely been considered illegal and, even today they remain completely unpunished. Gender crimes are regularly perceived as private acts and are not consistently treated as violations of human right law, international humanitarian law and of international criminal law. Rape and other crimes of sexual violence have been perceived to be a natural, albeit unfortunate part of war.[8] Indeed, women have all too often been treated as legitimate war booty far the use of soldiers to release tension, relax after battle or boost morale.[9]

Recent conflicts have highlighted that gender-based crimes may also be committed purposefully as part of the political or military goals of a belligerent and as consequence, such crimes become weapons of war or instruments of terror. As was observed during the conflict in Kosovo, Serbian forces targeted ethnic Albanian

[3] "Shattered Lives: Sexual Violence during the Rwandan Genocide and Its Aftermath" (B. Nowrojee. New York Human Rights Watch, 1996)

[4]Chinkin C., "Rape and Sexual abuse of women in International Law" 1994, 5 E.J.I.L 326

[5] ICC statute, Article 7(3), Rome Statute of the International Criminal Court, 17 July 1989, Doc, A/CONF.183/9 (1998) entered into force 1 July 2002.

[6] Radhika Coomaraswamy Report of the special Rapporteur on violence against women, its causes and consequences, 23 January 2001, (E/CN.4/2001/73)

[7] Kelly D. Askin, War Crimes against women (Martinus Nijhoff, Leiden, (1997)

[8] Kelly D. Askin, "The Quest for post conflict gender Justice, 41 Colum. J. Transanat'IL. 2002-2003). 509

[9] Kelly D. Akin, "Prosecuting War Rape and other Gender – Related Crimes under International Law: Extraordinary advances, Ending Obstracles',. 21 Berkeley J. IL (2003)298

women as a means of carrying out ethnic cleansing by systematically raping women and children.[10]

Sexualized violence against women was a common occurrence in Rwanda and was clearly manifested during the 1994 genocide.[11] In the Central African Republic (CAR) the population was terrorized and forced to support the government by the Mouvenment de Liberation ducongo (MLC) using rape as a weapon of war between October 2002, and March 2003.[12] Also since 2002, crimes of sexual violence have been a common occurrence in the conflict in the Democratic Republic of Congo (DRC).[13]In times of armed-conflict, pre-existing gender inequality seems to provide a licence for gender-based crimes. Gender-based crimes are more likely to occur during armed conflict if violence was already prevalent before the start of the conflict, if there was a pre-existing cultural disparity between men and women and if there is little or no fear for punishment.[14] In Kosovo for instance, before the start of the conflict, the Yugoslava state overtly criticized ethnic Albanian women and precluded them from work and health care. As a consequence, Serbian armed forces felt legitimized in targeting Albanian women in their ethnic cleansing campaign in Kosovo.[15] Gender-based crimes such as rape[16] sexual torture,[17] sexual slavery,[18] forced pregnancies[19] forced sterilization[20] forced abortion and forced marriage have been used as a tool of war to humiliate, terrify or even exterminate entire ethnic groups.

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[10] UNEPA, Gneder-based violence in Kosovo-A case study, May-July 2005, available at http://www.unfpa.org/women/docs/gbv-kosovo.pdf.

[11] Human Rights Watch/Africa and Human Rights watch/women's right project shattered lives: sexual violence during the Rwandan Genocide and its afteremath, (Human Rights Watch, new York, 1996)

[12] Luis Moreno-Ocampo, Keynote address, Interdisciplinary Colloquium on sexual violence as International crime: Interdisciplinary approach to Evidence, 16 June 2009

[1313] Report by the Harvard Humanitarian Initiative with Support from Oxfram America, "Now the world is without me". An investigation in sexual violence in Eastern Democratic Republic of Congo, 15 April 2010

[14] Joanna Bourke, Rape, A History from 1860 to the Present (Virago, London, 2007)

[15] UNFPA, supra note 10

[16] Rapes have been documented in diverse countries such as Bangladash in 1971, Rwanda in 1994, Bosnia, Cambodia Haiti, Congo, Uganda, and Darfur.

[17] In former Yugoslavia for Instance Prosecutor v. Delalic, mucic and Landzo, 16 November 1998, ICTY, ITT-96-21-Tj para. 470.

[18] "Comfort women" used by Japanese Military during World War II, Congo, Darfur.

[19] Former Yugoslavia, Rwanda, Darfur

[20] Nazi Concentration camps

3.0 Advances made

In the 1990's there was a general shift of mindset towards the use of sexual violence, especially given the astonishingly widespread use of rape as a weapon of genocide from Rwanda to the former Yugoslavia.[21] The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) took ground breaking steps in regards to prosecuting with explicit charges of wartime gender crimes, and indirectly defining gender crimes under customary law. It was not until these tribunals demonstrated that sexual crimes were being used intentionally as tools of war during armed conflict that it was accepted that gender – based crimes could, and should, be punished by international law.[22]Many scholars at this point began to examine the relationship between rape and racial extermination.[23]
The examination of rape as a tool of genocide is most clearly outlined in the *Akayesu v. Prosecutor Case*, from the Rwanda Tribunal.[24] The case originally charged Jean-Paul Akayesu, major of the Taba commune in Rwanda, with multiple counts of various war crimes, crimes against humanity, and genocide. While there was extensive documented evidence of rape and other forms of gender crimes by women's and human rights organizations, such as the coalition on women's human right in conflict situations, none of these charges against Akayesus were gender-related.[25] In the midst of the trial, a witness spontaneously testified to the gang-rape of her six year-old daughter by three internahamwe soldiers. Her testimony was followed by a another victim and witness to rapes committed by the Hutu Militia hearing this, the prosecution requested to convene a trial to investigate charges of sexual violence, and if deemed appropriate, include appropriate charges[26] four months later, the prosecution re-opened the case with six more witnesses to testify to Akayesu's encouragement of sexual violence in the area.[27]

The judgement concluded that rape and other forms of sexual crimes were used as instruments of genocide, and that these crimes against civilians were widespread and

[21] "Conflict Profiles: Rwanda, "Women under Siege. Accessed June 7, 2016

[22] "Crimes of Sexual violence". ICTY accesses June 7, 2016. Available at http://wwwicty.org/sid/10312

[23]Sjoberg, Laura (2007) "Women and the Genocidal Rape of Women: The Gender Dynamics of Gender War Crimes" Zed Books.

[24] Prosecutor v. Akayesu, Case No. ICTR 964T(1998), 694

[25] Rwanda Tribunal to Rule on Akayesus case. "Human Rights Watch, September 2, 1998. Accessed June 8, 2016 http://www.hrw.org/news/1998/09/01/rwanda-tribunal-rule-akayesu-case

[26] Chenault, Suzanne, "And Since Akayesu? The Development of ICTR Jurisprudence on Gender Crimes: A comparism of Akayesu and Muhimana" (2008)

[27] Ibid

systematic, constituting crimes against humanity.[28] Ultimately, Akayesu was found guilty of nine counts of genocide and crime against humanity and subsequent he was sentenced to life imprisonment.[29] This judgement marked the first instance of an international criminal tribunal convicting a non-military leader for genocide and international crimes of sexual violence.[30]

Until the 1990's it was men who primarily wrote and enforced humanitarian law. As such, it was men who generally neglected to classify, condemn and prosecute crimes of gender-violence.[31] Positions of power have slightly shifted, and this is shown by an increasing awareness in the propagation of gender—based violent crimes and their prosecution. The presence of South African judge Navanethem Pillay, the only female judge at the ICTR tribunal, has been lauded as a positive, influence in drawing out details from the witnesses regarding Akayesu's encouragement of sexual crimes.[32] Judge Pillay had served for thirty years as a human rights lawyer, and her experience and personal perspective served to bring these instances of sexual violence to light. International law scholar Kelly Askin commented that the Akayesu's judgement was "the most important decision rendered thus far in the history of women's jurisprudence" and the importance of female contributions to decision making is vitally important to this landmark case.[33]

Almost half of those convicted by the ICTY were later found guilty of crimes involving sexual violence, which is a huge step for a historically untouched area of prosecution.[34] These convictions show that the language of the treaties and conventions from the past are finally being brought to fruition, and violators are receiving the legal retribution they desrve.[35] More than providing legal justice, the ICTY and ICTR proved that prosecution of wartime sexual violence can be effective. These tribunals served as a watershed for victims of sexual and gender crimes worldwide to come forward, and for survivors to begin a positive dialogue to work

[28] Ibid

[29] Ibid

[30] Prosecutor v. Akayesu, Case No. ICTY 964 T (1998), 694

[31] Christine M. Chinkin, Peace and Force in International law, in Reconcievingreatity: women and international law 212 (Dorinda G. Dallmeyered, 1993)

[32] Frey, Barbara. "A Fair Representation Advocating for women's Rights in the International Criminal Court" (2003) center on women and public policy.

[33] Ibid

[34] "Crimes of Sexual Violence ICTY Accessed June 8, 2016 http://ww.icty.org/sid/10312

[35] Ibid

towards change.[36] While there is still a great reticence in many cultures regarding these types of crimes, the tribunals have begun to break the silence.
The ICTY in the Kunarac Case[37] also dealt with gender based crimes not with regard to victim's honour but as prosecutable crime against humanity.

The ICTY has taken an innovative position in regards to victim protection especially regarding the ability to testify in court. Potential witnesses are often hesitant to testify, as they feel that their security may be jeopardized. To overcome this, the tribunal went ahead to institute some safety methods, such as the use of pseudonym, voice distortion, and closed testifying sessions.[38]

They have also established the victims and witnesses section (VWS) that provides victims with aid before, during and after their testimony. This aid takes many forms and can entail assistance with practical issues to psychological counseling during a witnesses stay in the Hague[39]. It is imperative that witnesses experience their testimony with a little incident as possible, especially when the experience of testifying can often serve as a trigger that puts the witness under stress, and can even lead to re-traumatisation.[40]

4.0 Gender Justice and the ICC

The ICC has taken the innovative approach to include reference to gender and gender-based violence in its statute. It has codified an increased number of the gender crimes as war crimes and crimes against humanity and included a gender mandate within the ICC structures and procedures. Despite this progress, gender-based crimes are still under-investigated and under prosecuted. Gender-based crimes should be expressly mentioned as such alongside improvement of the institutional arrangements to ensure effective prosecution of gender-based crimes.

The ICC and Gender-based Crimes

Article 21(3) states that the application and interpretation of law must be without adverse distinction on the basis of among others, gender. The ICC statute explicitly recognizes a wide range of gender-based crimes, but perceptions and attitudes of gender-based violence needs to be further altered.

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[36] "Crimes of Sexual Violence" Accessed June 8, 2016

[37] *Prosecutor v. Kunarac, Kovac, and Vukovic, Trial Chamber II Judgement IT96, 23-T, 22 February 2002*

[38] Ibid

[39] "Innovative Procedures" ICTY Accessed June 8, 2016 http://www.icty.org/sid/10313.

[40] "Reliving the past" ICTY accessed June 8, 2016 available at http://www.icty.org/sid/10608

The ICC statute is the first international treaty to go significantly beyond the prohibition of rape. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence are war crimes[41]and crimes against humanity[42]persecution on the basis of gender and trafficking of women and children falls within the definition of enslavement and are both crimes against humanity.[43] Furthermore, rape and sexual violence can as well be acts of genocide.[44] The ICC not only codified existing international law, such as on rape, but also developed international law in some instances, such as on forced pregnancy. The ICC's approach to categorise these crimes as gender-based violence will certainly contribute to changing the perception that such crimes are no longer tolerated by the member states. However, the list of crimes is incomplete. Crimes such as pornography, forced nudity, sexual humiliation, punching or electroshocks to the genitals were not included in its statute.

There is no doubt that the ICC statute has contributed to progress. However, the prosecution and adjudication of these crimes will be the measure of success.[45] Thus far, charges of sexual enslavement,[46] rape,[47] rape as torture,[48] outrages upon personal dignity[49]persecution by acts of rape.[50] However, this is by no means the whole extent of gender-based crimes committed during situations investigated or prosecuted by the ICC. Thus, the ICC is heavily criticised for under-investigation and under-prosecuting gender-based crimes and alongside falling to address the pain and suffering of victims of gender-based crimes.

5.0 The Office of the Prosecutor and Gender – Sensitive Measures

[41] ICC Statute, Articles 8(2)(b)(xxii) & 8(2)(e) (vii) Rome Statute of the International Criminal Court 17, July 1989, Doc. A/CONF-183/9(1998) entered into force 1 July 2002

[42] ICC Statute, Article 7(1)(g) supra

[43] ICC Statute Article 7(1((h) & 7(2)(g) and 7(3) supra note 41, Article (71)h of the ICC Elements of Crimes.

[44] Article 69b) of the ICC Statute's Element of Crimes, ibid

[45] Kate Fitzgerald, Problems of Prosecution and Adjudication of Rape and other sexual assaults under international law, 8 E J.I.L.(1997) p. 638--663

[46] Joseph Kony, Vincent Otti, Germain Katanga and Mathieu Ngudjolo Chui

[47]Joseeph Kong, Vincent Otti, Kuskanga, Ngudjolo, Ahmad Harun, Ali Kushayb Omar Hasseabn Almad Al Bashir, Jean Pierre Bemba

[48]CallizteMbarushimana

[49] Katanga, Mathieu, Ahmad Harun, Ali Kushayb, and Jean-Pierre Bemba Gombo

[50] Ahmad Harun and Ali Kushayb

Under *Article 54(1)(d)*, the ICC prosecutor has a duty to investigate crimes of sexual and gender violence. The investigation into gender-based crimes should be carried out with genuine gender awareness of how to direct, plan and conduct investigations into such crimes. Therefore, in the investigation and trial stages the prosecutor must respect the interest and personal circumstances of the victims and witnesses, and also take into account, the nature of the crime. In particular where it involves sexual violence, gender violence or violence against children.[51]

The inclusion of this duty certainly contributes towards the aspiration of zero tolerance of gender – based crimes. Thus far, the steps undertaken by the OTP include the creation of gender and children unit,[52]the appointment of a special gender advisor and training a staff to develop expertise to deal with gender crimes.[53] The gender and children unit advices the OTP on sexual gender violence and violence against children as well as supporting OTP with its investigations and prosecutions. The special gender advisor provides additional expertise on gender violence such as advising on gender-related policies, practices and legal submissions.

6.0 Victims of Gender-Based Crimes

The ICC statute has changed the role of the victims from passive and at the hands of the parties, in particular the prosecutor to a more active role. In doing this, the ICC attempts a combination of punitive justice with some elements of restorative justice in order to acknowledge the role of victims in discovery the truth. The ICC statute has established the victims and witnesses unit (VWU),[54] offers procedural safeguards during its proceedings,[55] gives the possibility to the court to award reparations to victims[56] and grants the right to participate to victims.[57] The victims and witness Unit (VWU) is responsible for the protection, security, counseling and assistance of victims and witnesses. Since 2009, the VWU includes staff and specific expertise in trauma related to crimes of sexual violence.

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[51] ICC statute Article 54(1)(b) supra

[52] ICC statute, Article 42(9) and the regulation of the office of the prosecutor 8(a) & 12 ICC - BD/05-07-09 entered into force 23 April 2009

[53] ICC statute, article 42(9) supra the first special gender Adviser, Professor – Catherine McKinnon was appointed 26 November 2008

[54] ICC statute, Article 34(6) supra note 41

[55] ICC statute, Article 68(2) and (3) Rome Statute of the International Criminal Court , 17July 1989, Doc. A/CONF.183/9 (1998), entered into force 1 July 2002

[56] ICC statute Article 75, supra

[57] ICC statute, Article 68(3)

It is interesting to note that the ICC statute contains gender sensitive provisions to deal with the protection of victims and witnesses and their participation at all stages of the proceedings. These provisions and procedures ensure that the crime, victims and witnesses are appropriately treated. In doing so, the ICC has been able to build upon the measured progress made by the ICTY and ICTY in order to secure prosecutions and procedural precedents. The ICTY stated vividly in the Tadic case that women who have been raped and have sought justice in the legal system commonly compare this experience to being raped a second time.[58] In essence, what these procedural safeguards should achieve is to help victims and witnesses through the painful process and to contribute to the rehabilitation of the victim. Without adequate procedural safeguards, victims may not report the crime, testify or withdraw. In the cause of trial, witnesses are protected by a number of provisions such as controlling the manner of questioning of witnesses and victims, there is the prohibition of questioning the victim as to her previous sexual experiences, this is a powerful provision that saves victims from undergoing the distress and humiliation such examination and cross-examination as commonly used in domestic cases.[59]For victims of sexual violence, the court can allow for part of the proceedings to be conducted in camera. The court can also allow for the evidence to be presented by electronic or other special means such as via one-way CCTV,[60] taking into account the enormous strain for victims and witnesses of crimes of sexual violence, for instance, at the request of the prosecutor, the cases against Germain Katanga and Mathieu Ngudjolo Chui were joined, to minimize the impact on witnesses and to facilitate the protection of their physical and mental well-being.[61] The ICC statute recognises however, the right of victims to participate and intervene in proceedings either directly or through legal representative.[62] Unlike in previous international criminal tribunals where victims participation was a contentious issue with regards to how to balance the rights of victims and the rights of the accused.

Aside from victims and witnesses participation in proceedings, the ICC also award reparations, which can take the form of restitution, compensation or rehabilitation, compensation or rehabilitation[63].The Trust Fund for Victim (TFV) organizes and

[58] Prosecutor v. Tadic, 2 October 1995, ICTY, IT-94-1 AR 72.

[59] Claire de than and Edwin Shorts, International Criminal Law and Human Rights, London, Swqeet and Maxwell (2003) page 358

[60] ICC statute, Article 68(2) & (3) supra note 55 and Rules of procedure and Evidence (RPC), ICC – ASP/13/part IIA, entered into force 9 September 2002, Rules 89-93

[61] Prosecutor v. Germain Katanga and Mathieu Ngudjolo, 26 February 2009, trial chamber II ICC – 01/04-01 07, p. 428

[62] RPE, Rule 99, Supra note 60

[63] ICC Statute, Article 75

implement awards for reparations ordered by the court against a convicted person.[64] The (TFV) assists the victims and their families to help repair the harm suffered, and this includes vocational training counselling, reconciliation workshop and reconstructive surgery.[65] It has developed a number of its projects specifically to assist victims in Congo and Uganda. It usually would rely on voluntary contributions from good spirited individuals across the world to do this.

7. 0 Challenges

One major setback for the pursuit of gender justice is the perception of, and attitudes towards gender-based crimes. Sadly, the international community at large still condones and tolerates gender-based crimes. Today, rape during armed conflict is still being perceived to be a private crime committed by a soldier, thus waving away the importance of such crimes by military officers and political leaders.[66] Gender-based crimes are not just incidental, they often form part of war strategy and victims may be special target because of their gender and being members of the enemy group. For instance, Congolese soldiers raped central African women as punishment for supporting rebels. Therefore gender-based crimes must be strictly condemned.

Secondly, gender-based crimes has not consistently been included in the indictments against perpetrators where there is sufficient evidence of gender based crimes, persons responsible for such should be fully indicted. To date, in six out of ten cases, charges for gender-based crimes have not been included, reacting to crime committed in Uganda, the DRC, Sudan and CAR.[67] Despite the wealth of evidence of gender-based crimes, the prosecutor has been criticized for falling to investigate, indict appropriately and charge the full array of gender-based crimes. For instances, in the case of *Thomas Lubanga Dyilo*, the first person arrested by the ICC, human rights groups criticized the office of the prosecutor (OTR) for falling to include sexual violence charges in the indictment against Lubanga, despite allegations that girls had been kidnapped into Lubanga's militia and were often raped and/or kept as sex slaves.[68] In light of the World Bank's estimate that over a third of child soldiers (12,500 of the 30,000 in the DRC in 2006 were girls Organizations, criticized the

[64] RPE, Rule 98(2), 3 & 4

[65] Regulation 50(1)(a) fo the Regulations of the Trust Fund for victim.

[66]BinaiferNowrojee, Shaterred Lives: Sexual Violence during the Rwandan Genocide and its aftermath (Human Rights Watch New York, 1996).

[67] Joseph KOny, GermainKatanya/MathienNjudjolo, Callixte, Mbarus-himana, Ahmad Haran.

[68] See generally joint letter from Avocats Sans Frontiere et al to the chief prosecutor of the international criminal court, D.R. Congo: ICC charges raised concern (July 31, 2006), available at http://hrw.org/english/docs/2006/08/01/congo1389/tet.htm.

court for falling to recognize the systematic sexual violence girls had been subjected to during that conflict.[69] Furthermore, even where sexual violence has been charged, challenges have arisen, threatening removal of those charges from the case. Specifically, in the case against milita leaders Germain Katanga and Mathieu Ngudjolo, the prosecutor dropped charges of sexual slavery as both a war crime and a crime against humanity after a pre-trial chamber judge excluded the statements of witnesses. Supporting those charges on the grounds that the witnesses were not adequately protected. The situation was only resolved after the witnesses were eventually accepted into the court's witnesses protection programmes[70] and the prosecutor amended its charges not only to reinstate those relating to sexual slavery but also to include allegations of rape as a war crime and crime against humanity. We are disappointed that two years of investigation by the office in the DRC has not yielded a broader range of charges against Mr. Lubanga… we believe that you as the prosecutor, must send a clear signal to the victims in Ituri and the people of the DRC that those who perpetrate crimes such as rape, torture and other forms of gender crimes will be held to account for their ungodly and wicked acts.

8. 0 Opportunities for the ICC

For the ICC to effectively investigate and prosecute gender-based crimes it needs to deliberately build and maintain a strong and effective international institution for the investigation of gender crimes where skills and trainings would be passed on to professionals drawn from across the world on the intricacies of investigation of gender crimes with adequate knowledge of the culture of victim nations and communities.

The ICC has the opportunity to adopt a treaty specifically aimed at the prohibition, punishment and prevention of gender – based crimes to reflect the UN resolutions calling for an end to sexual violence in armed conflict.

Again, the current category of gender-based crimes in the ICC statute is too restrictive, the list of crimes is incomplete, crimes such as pornography, forced nudity, sexual humiliation, punching or electroshocks to the genitals needs to be included in the ICC statute.

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[69] See Katy Glassborow, plight of Girl Soldiers "Overlooked" lust. FOR War and Peace Reporting, Oct. 31, 2006, http://www.iwpr.net/index.php?m=p&0=324983&s=F&aocstate=henfacr324983 (hereinafter Glassborow, plight of girl soldiers (arguing that while the international community recognises the abuses faced by child soldiers, the unique situation faced by female child soldiers who face sexual violence does not receive appropriate international attention)

[70] See *Prosecutor v. Katanga &Chvi, case NO*ICC01/04-01/07 decision on prosecutions urgent application for the admission of the evidence of two witnesses 132 and 287/6-7 (May 28, 2008)

9.0 Conclusion

The ICC has been given a huge mandate to ensure gender justice. Its assignment simply goes beyond the investigation and prosecution of perpetrators of gender crimes. The ICC is also greatly involved in raising awareness of gender crimes among member states; the ICC fully needs the support of states in the fight against gender-based crimes.

The help of the international community is seriously needed in the building of capacity for proper investigation and prosecution of gender-based crimes committed by during armed conflict. Gender based crimes must be strictly condemned as there is the need for full indictment of gender crimes where there is sufficient evidence supporting such.