

## **ICC Still Facing Rape Case Challenges**

**Author:** [Passy Mubalama](#)  
[Espérance Nzigire](#)

Campaigners say court has improved its record on prosecuting gender-based violence but obstacles to justice remain.

While progress has been made by the International Criminal Court, ICC, in The Hague in the prosecution of sexual violence crimes, the court's prosecutors continue to struggle to collect the necessary evidence to secure convictions, experts say.

"The Office of the Prosecutor (OTP) has improved significantly [over the years] in how it deals with gender-based violence," Carla Ferstman, director of the London-based victims' organisation, Redress, said. "It is getting better, it doesn't mean it is good, but it is getting better."

In the past, the ICC has been widely criticised for a lack of emphasis on crimes of sexual violence perpetrated against the female population in countries where it has sought to prosecute atrocities, particularly in the Democratic Republic of Congo, DRC.

In the first case at the ICC - that of Congolese warlord, Thomas Lubanga - no sexual violence charges were brought despite evidence which has come out during the trial suggesting that young girls were raped and sexually assaulted by troops under his command.

However, rights groups say that since the opening of the Lubanga investigation, the ICC has upped its game when it comes to gender-based crimes.

"The [International Federation for Human Rights] and other organisations brought this fact [that sexual violence offences had been omitted] to the attention of the prosecutor, Luis Moreno Ocampo, and today, it is an [area of] big progress for the ICC," Marianna Pena, executive director of the International Federation for Human Rights, FIDH, in The Hague, said.

Systematic rape has been and continues to be used as a weapon of war in eastern DRC. The region has been terrorised by armed militias and villages have been abandoned, while HIV has spread rapidly among the population.

According to an investigation by the Harvard Humanitarian Initiative last year, 60 per cent of sexual violence victims in eastern DRC are gang raped by armed groups. Soldiers patrolling the countryside have resorted to rape, torture and mutilation of women and young girls.

"Sometimes rapes are so violent that they lead to the death of the victim," one rape victim told IWPR. "Women can be raped at any moment during the day and anywhere: in the fields, at home, at the market, on the road, at the water well. [It] destroys us in our body and soul."

Investigations into sexual violence differ markedly from those of other types of crime prosecuted by international courts. Gathering the necessary testimony through sensitive interviewing techniques, as well as getting medical evidence, both play a crucial role in securing a conviction once the case reaches court. However, victims are often reluctant to come forward to report attacks and getting the necessary evidence that rape occurred can be very difficult where access to hospitals is not guaranteed and the nature of the crime often precludes witnesses.

"There are always some difficulties linked to sexual violence investigations," Pascal Turlan, an adviser on international cooperation for the OTP in The Hague, told IWPR. "It is very difficult to identify and locate victims, the [local judiciaries'] archive system is often crumbling in the countries where investigations are conducted, but it is also very difficult to find documents stating that a rape occurred."

The second case to go to trial at the ICC, that of Germain Katanga, alleged leader of the Forces for Patriotic Resistance, FRPI, in the DRC does contain charges of sexual violence. Sexual violence crimes are also included in the indictment against Jean-Pierre Bemba, a former vice-president of the DRC, who is charged with atrocities in the Central African Republic.

Other alleged perpetrators of sexual violence have also been brought before the ICC recently. Callixte Mbarushimana, a member of the Democratic Liberation Forces of Rwanda, FDLR, leadership was arrested on October 11, 2010 by French authorities. Earlier this year, he was transferred to The Hague where he is accused of 11 counts of war crimes and crimes against humanity, including rape. He is said to have committed atrocities in the east of DRC, notably in the Walikale territory of the Kivus where more than 250 women were allegedly raped by FDLR troops under his command.

"[Gender-based violence] is a really important crime in the context of the Congo; it is hugely important in the Mbarushimana case, so it is going to be essential that the court deals with it - that the OTP deals with it," Ferstman said.

While some difficulties in prosecuting sexual violence are linked to investigation procedures, others stem directly from the victims traumatic experience and the fact that they do not want to talk about it.

"When you're raped in most cases you're subjected to discrimination and mockery. You're always pointed at by your neighbours," explained a woman from the town of Masisi in North Kivu who has been raped. "This means that you just stay at home so that people won't know you've been raped."

The nature of gender-based crimes also makes it difficult to gather evidence against a particular perpetrator, particularly in the rural environment of eastern DRC.

"We don't know how to resort to justice because, even if we do, often rapists run away after they've committed their crime and you cannot bring them to justice," another rape victim who spoke to IWPR said.

An additional problem in gathering the necessary evidence of rape stems from the fact that most of the victims fail to go to hospital to see a doctor. This makes it difficult for prosecutors to prove beyond doubt that a rape took place.

In a recent cross-examination by the defence in the Bemba case, a rape victim was asked why she had no medical certificate confirming that she had been raped.

"In our country if you want to see a doctor at hospital you always need money. When I was raped I had no money, I couldn't go see a doctor," she replied.

Turlan confirmed that the lack of access to medical facilities following a rape is a significant obstacle for prosecutors.

"The greatest difficulty is that most of the victims do not get checked by a doctor after the rape therefore there is no medical record of the rape. This is a very important element in the treatment of such cases," Turlan said.

Ferstman said that understanding rape and guiding society's response to it is an area in which the ICC still has to do more. It is seen as crucial in order to make victims feel supported and thereby increase their willingness to come forward and report instances of rape. Victims need to be assured that they will be safe in doing so and that they are not going to be stigmatised or punished by their family and the wider community on account of what happened to them.

"[The ICC] should be working in consultation with local gender-focused organisations who are working very closely with the victims," Ferstman said. "On a certain level, there is more public relations-type work that the Office of the Prosecutor and the court more broadly needs to do, to reassure potential witnesses to come forward."

According to Ferstman, the ICC still has "a lot to learn" from other international courts such as the International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda. Ferstman pointed to the level of outreach, on-the-ground work that helped these courts bring victims forward to report rape.

The ICC says it is doing a lot in this regard in order to encourage victims to cooperate with investigations into rape cases.

"The Office of the Prosecutor's primary concern when investigating crimes and in particular sexual and gender-based crimes is to [secure] the protection of victims, to address their concerns and to ensure that it will be able to speak to witnesses," Turlan, the ICC adviser, told IWPR.

"We have also set up a gender and children unit that supports the investigation teams in approaching victims, [protecting] their physical and mental health and wellbeing and addressing their concerns."

The ICC is also taking steps to overcome the difficulty of getting rape victims to testify in the courtroom without exposing them to danger.

"Maintaining a low profile, being as discreet as possible as to our interactions with local organisations and keeping our interactions with victims and local organisations as confidential as possible are part of our operating procedures and contribute to a great extent to the objective of ensuring adequate representation of the suffering of sexual and gender-based violence victims before the court and protecting them at the same time," Turlan said.

Turlan explained how the ICC is also generating publicity about sexual violence and the court on the ground.

“The ICC conducts outreach and communication campaigns as well as trainings and education activities on a very regular basis, using all available media,” he said.

However, the court accepts that while some victims do come forward to enable prosecutors to investigate alleged perpetrators, the court is faced with the challenge that the majority of victims prefer not to talk about their experience.

“Most of the victims are reluctant to speak about sexual violence, since, on the one hand, it is seen as taboo but also they have difficulties talking about this painful experience when some of them end up having been contaminated by HIV after a rape,” Turlan said. “Others are traumatised [by their experiences and it] often [results in] rejection by their families and society. Also, they won’t have the chance to get married.”

Experts believe that the ICC alone cannot encourage victims to speak out and engage in the justice process. Other organisations such as the United Nations, the European Union and development agencies working on the ground to establish and help enforce the rule of law must also play their part, they say.

“In a way the ICC is a catalyst [for improvement] but it cannot do the domestic work on its own,” Ferstman said. “The people working on rule of law in DRC will pick up on ICC standards and try to help get these in place.”

**Passy Mubalama and Espérance Nzigire are IWPR-trained reporters based in Goma.**

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