

**A Feminist Assessment of African women's experiences of
wartime sexual violence before the International Criminal
Court.**

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DECLARATION

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ABSTRACT

The International Criminal Court (ICC) is the first permanent global tribunal aimed at prosecuting war crimes, crimes against humanity, genocide, and in future the crime of aggression (Rome Statute, 1998: see the preamble). The Court prides itself in participating in the global fight to end impunity and aims to hold those responsible, accountable for their crimes and help prevent these crimes from happening again (Rome Statute, 1998: see the preamble). The ICC correspondingly continues to play a prominent role in tackling impunity for atrocious crimes committed on the African continent.

Feminist scholars have argued that as part of their history-making and norm setting function, international criminal tribunals need to acknowledge and de-legitimise sexist and/or misogynistic ideologies that contribute to violence in times of war and peace alike (Grewal, 2015). This study is a feminist engagement with an international criminal institution and aims to reflect the impact of the ICC in its incorporation and consideration of sexual violence as an international crime. It also aims to analyse the ICC's comprehension and conceptualization of wartime sexual violence and its victims. Feminist security theory and intersectionality guided this study. These theories were crucial for this study for the following reasons: in making sense of African women's wartime experiences of sexual violence, they foreground gender as a lens of analysis and consequently highlights the diverse roles women play in violent conflicts (as victims, protesters and participants) and gives women agency. Both theories bring attention to neglected factors of discrimination and subjects while accentuating the effects and consequences of wartime sexual violence on women. A qualitative research design undergirded this study, combined with a case study approach. This study used methods such as discourse analysis, and feminist self-reflexivity to engage with the data. The information generated through these methods were utilized in engaging the objectives of the study which are to provide insightful knowledge about African women's experiences of wartime sexual violence and investigate selected caselaw of the ICC, in order to comprehend the institutional discourses which ensue.

This study found that the ICC has made some notable progress in terms of moving away from a legacy of historical silence and under-investigation of sexual violence crimes at the international level. While the progress is laudable, more still needs to be done. In spite of its shortcomings, the ICC has the potential to make sense of wartime sexual violence and establishing the link between gender and other factors of discrimination that account for the perpetration of wartime sexual violence.

OPSOMMING

Die Internasionale Strafhof (ISH) is die eerste permanente, wêreldwye tribunaal met die doel om oorlogsmisdade, misdade teen die mensdom, volksmoord en, in die toekoms, die misdaad van aggressie te vervolg (Rome Statute, 1998: sien die voorwoord). Die ISH neem met trots deel aan die wêreldwye stryd om strafloosheid te beëindig en het ten doel om diegene wat verantwoordelik is vir misdade aanspreeklik te hou en die herhaling van die misdaad te voorkom (Rome Statute, 1998: sien die voorwoord). Die ISH speel dienooreenkomstig steeds 'n prominente rol in die stryd teen strafloosheid vir gruwelike misdade wat gepleeg is op die vasteland van Afrika.

Feministiese akademici voer aan dat internasionale kriminele tribunale, as deel van hul funksies van geskiedenis daarstelling en normstelling, seksistiese en/of misogynistiese ideologieë wat bydra tot geweld in oorlogstyd en vreedstyd moet erken en ontnem van regverdigheid (Grewal, 2015). Hierdie studie is 'n feministiese verbinding met 'n internasionale kriminele instelling en het ten doel om die impak van die ISH in terme van dié se oorweging en assimilasië van seksuele geweld as 'n internasionale misdaad te weerspieël. Dit het ook ten doel om die ISH se begrip en konseptualisering van seksuele geweld in oorlogstyd en die slagoffers daarvan te ontleed. Hierdie studie is gelei deur feministiese veiligheidsteorie en interseksionaliteit. Die teorieë was van deurslaggewende belang in hierdie studie omdat hul geslag as analise daarstel vir vrouens in Afrika se oorlogservarings van seksuele geweld en gevolglik die uiteenlopende rolle wat vrouens speel in gewelddadige konflik (as slagoffers, betogers en deelnemers) beklemtoon en aan vrouens agentskap gee. Beide teorieë vestig aandag op verwaarloosde faktore van diskriminasië en ter selfde tyd beklemtoon hul die effek en gevolge van seksuele geweld teenoor vrouens in oorlogstyd. 'n Kwalitatiewe navorsingsontwerp in kombinasie met 'n gevallestudie benadering onder lê die studie. Hierdie studie het metodes soos diskoersanalise en feministiese selfrefleksiwiteit gebruik om met die data te konnekteer. Die inligting wat só gegenerereer is, is gebruik om die doelwitte van die studie te behaal: om insiggewende kennis te verskaf oor vrouens in Afrika se ervarings van seksuele geweld in oorlogstyd en om geselekteerde

regsake van die ISH te ondersoek om die institusionele diskoerse wat daaruit voortvloei te verstaan.

Die studie bevind dat die ISH noemenswaardige vordering gemaak het in terme van 'n wegbeweging van die historiese stilte aangaande, en gebrekkige ondersoek van, seksuele geweldsmisdade op internasionale vlak. Alhoewel hierdie vordering lofwaardig is, moet nog meer gedoen word. Ten spyte van die ISH se tekortkominge, het dié hof die potensiaal om seksuele geweld in oorlogstyd te verstaan en om vas te stel wat die verband is tussen geslag en die ander faktore van diskriminasie wat aanleiding gee tot seksuele geweld in oorlogstyd.

DEDICATION

I would like to dedicate this dissertation to my father, Moussi Emile Manfred. Thank you for always believing in me and for loving me always.

Mummy, Sippy, Yoli, Bobo and Ludi I love you so much.

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TABLE OF CONTENTS

DECLARATION.....	I
ABSTRACT.....	II
OPSOMMING.....	IV
DEDICATION	VI
ACKNOWLEDGMENTS	VII
TABLE OF CONTENTS.....	IX
LIST OF FIGURES	XII
LIST OF TABLES	XIII
LIST OF ABBREVIATIONS	XIV
CHAPTER 1: INTRODUCTION.....	1
1.1 Context of the study	1
1.2 Rationale for study	4
1.3 Problem Statement	8
1.4 Research questions	9
1.5 Objectives of the study.....	10
1.6 Rationale for the selection of cases.....	11
1.7 Clarification of terms	14
1.8 Significance of the Study	16
1.9 Study delineation and limitations.....	18
1.10 Chapter layout	19
CHAPTER 2: LITERATURE REVIEW.....	21
2.1 Introduction.....	21
2.2 Mandate of the ICC.....	21
2.2.1 <i>Is the Mandate of the ICC limited?</i>	26
2.3 International Law and Sexual Violence	28
2.4 Africa and International criminal justice.....	31
2.5 Rape as a weapon of war.....	42
2.6 Rape as a weapon before international engagements/institutions.....	44
Conclusion	47

CHAPTER 3: THEORETICAL FRAMEWORK	48
3.1 Introduction	48
3.2 Feminist security theory	50
3.3 Security and the ICC	54
3.4 Intersectionality	59
Conclusion	60
CHAPTER 4: RESEARCH METHODOLOGY	61
4.1 Introduction	61
4.2 Research design	61
4.3 Rationale for using qualitative research design	62
4.4 Case study	64
4.5 Discourse analysis	65
4.6 Rationale for Discourse Analysis of Trial Narratives	67
4.7 Self-reflexivity	69
4.8 Feminist methods	71
4.9 Data collection	73
4.10 Data analysis	73
4.11 Validity of the study	75
4.12 Reliability in the study	76
4.13 Ethical Considerations	77
Conclusion	78
CHAPTER 5: DISCOURSES OF WARTIME SEXUAL VIOLENCE.....	79
5.1 INTRODUCTION.....	79
5.2 Gender Story	80
5.3 African women’s discourses	82
5.3.1 <i>Discourse of shame</i>	84
5.3.2 <i>Discourse of powerlessness</i>	91
5.3.3 <i>Death is better than rape</i>	92
5.3.4 <i>Discourse of violence</i>	93
5.4 Impossibility of bearing witness	97
5.6 Perpetrators’ discourses	98
5.6.1 <i>Denial of the crime</i>	99
5.6.2 <i>Impunity</i>	101
5.6.3 <i>Normalisation and knowledge of sexual violence</i>	102
5.6.4 <i>Heteronormativity and military armed groups</i>	103
5.7 Sex story.....	105
5.7.1 <i>The ghost of sex</i>	106
5.8 Conclusion	110
CHAPTER 6: WOMEN COMBATANTS AND SEXUAL VIOLENCE AGAINST MEN BEFORE THE ICC	111
6.1 Introduction	111

6.2 Women combatants	112
6.2.1 Women as perpetrators	117
6.2.2 Imperfect victims	120
6.3 Sexual violence against men	121
6.3.1 Discourse of abomination	123
6.3.2 Discourse of emasculation	123
6.4 Impossibility of bearing witness	128
6.5 Dichotomies of global discourses of war	129
Conclusion	133
CHAPTER 7: THE ICC’S INSTITUTIONAL DISCOURSE	135
7.1 Introduction	135
7.2 Prosecution discourse	138
7.2.1 Heroic protective narrative	138
7.2.2 Prosecution’s discourse on women’s wartime experiences of sexual violence	142
7.3 OTP’s discourse and gender	150
7.4 Chamber’s discourse	154
Conclusion	160
CHAPTER 8: CONCLUSION.....	162
8.1 Achievements of the ICC	162
8.2 Shortcomings	166
8.3 Answering the research questions	169
8.4 What needs to be done?.....	172
8.5 Concluding Thoughts	173
8.6 Contribution of the study	177
8.7 Recommendations for future research	180
BIBLIOGRAPHY	182
APPENDIX	206

LIST OF FIGURES

Figure 2.1. Structure of the ICC.....	55
Figure 2.2. ICC detailed organigram	56
Figure 4.1.Lubanga witness gender ratio.....	164
Figure 4.2.Lubanga witnesses composition.....	164
Figure 4.3. Katanga witness gender ratio.....	165
Figure 4.4. Katanga witnesses composition.....	165
Figure 4.5. Bemba witness gender ratio.....	165
Figure 4.6. Bemba witnesses composition.....	165
Figure 4.7. Ntaganda witness gender ratio.....	166
Figure 4.8. Ntaganda witnesses composition.....	166

LIST OF TABLES

Table 3.1. Example of codes, discourse markers and discourse.	75
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LIST OF ABBREVIATIONS

AU	African Union.
FNI	National Integrationist Front.
FPRI	Patriotic Resistance Forces in Ituri.
DRC	Democratic Republic of Congo.
CAR	Central African Republic.
GBV	Gender Based Violence.
ICC	International Criminal Court.
ICTR	International Criminal Tribunal for Rwanda.
ICTY	International Criminal Tribunal for the Former Yugoslavia
IR	International Relations.
LRV	Legal Representative for Victims.
MLC	Movement for the Liberation of the Congo.
NGO	Non-Governmental Organisation.
OTP	Office of the Prosecutor.
SCSL	Special Court for Sierra Leone.
UN	United Nations.
UNDP	United Nations Development Programme.
UNIFEM	United Nations Fund for Women.
UNIFEM	United Nations Development Fund for Women.
UNSCR	United Nations Security Council Resolution.
UPC	Patriotic Union of the Congo.
VAW	Violence Against Women.

CHAPTER 1: INTRODUCTION

This chapter presents and explains the context and the rationale for the study. It also provides an overview of the problem statement, states the research questions, and provides the aims and objectives of the study.

1.1 Context of the study

*“Widespread violence against women is probably the most direct and unequivocal manifestation of women’s oppressed status in Africa”.*¹

The universal threat of violence against women both in societies at peace and within conflict zones continues to warrant much attention. The 1993 Declaration of the Elimination of Violence against Women adopted by the United Nations General Assembly defines “violence against women as any act of gender-based violence that results in or is likely to result in physical, psychological and sexual harm or suffering to women including threats of such acts, coercion, or arbitrary deprivation of liberty”². During most armed conflicts, women of all ages, races, religions, and ethnicities experience heinous violence of diverse forms and their bodies are often used as envelopes to send messages to the perceived enemy (Askin, 2003: 134). From time immemorial, conflict-related sexual violence has been a particular evil that women have endured during armed conflicts, and it remains an issue which continues to haunt humanity. War disproportionately affects women and girls and the particularly detrimental and gender-specific position of women and girls in armed conflict was recognized at the international level during the Fourth World Conference on Women in 1995.

¹ Amina Mama, 2001, *Sheroes and Villians: Conceptualising Colonial and Contemporary Violence against Women in Africa*.

² United Nations Declaration on the Elimination of Violence Against Women, 1993, Resolution 48/104.

The African continent has been host to many armed conflicts which have often been internal. Conflicts, regardless of whether they are international or non-international, are regulated by the laws of armed conflict. These laws, also known as international humanitarian law, contain a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict (Kolb, 2008:12). Some of these general rules of war aim to regulate armed conflict by controlling the conduct of belligerents on the one hand and ensuring the protection of the civilian populace on the other (Kolb, 2008:12). Women and children, during most armed conflicts, belong to the civilian population (also known as non-combatants) and the prevailing principle behind these humanitarian rules is that civilians should not be targeted for attack, and care must be taken to spare them from any harm to the greatest extent possible (Gardam and Jarvis, 2001: 21, Carpenter, 2006). Despite these international rules that aim to protect women, most African conflicts have been marked by high levels of wartime atrocities committed against women (Fatuma, 2010: 12, Arieff, 2010: 3).

Over the past two decades, there have been major shifts in how international policy, scholarly, and legal communities have approached the issue of wartime sexual violence (Baaz and Stern 2013:2). Dominant understandings have moved from perceiving sexual violence as a regrettable but inevitable aspect of warring, to seeing it as a strategy, weapon, or tactic of war which can be prevented (Baaz and Stern 2013:1). In recognition of the widespread use of sexual violence as a tactic of warfare, the United Nations has passed Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1960 (2010), and 2106 (2013) which call for ending impunity for sexual violence in conflict. By recognising wartime sexual violence as a global security problem and viewing it as a weapon of war; feminist scholars such as Baaz and Stern (2013:1) believe an important success has been achieved in understanding and redressing wartime sexual violence, and this is fundamental. 'Rape as a weapon of war' has become the new global mantra but as Baaz and Stern (2013:2) caution, extreme care should be taken given the assumptions that lie behind the use of this mantra. This mantra is seductive, but fails to take into account the discursive nature of military strategicness, assumes military institutions embody the ideals of discipline,

control and hierarchy and fails to consider the messiness and uncertainty of warring (Baaz and Stern, 2013: 64).

Historic impunity for wartime sexual violence on the African continent as well as a largely dysfunctional continental justice systems have given survivors of wartime sexual violence little hope for justice (Bensouda and Jallow, 2008: 47). In the legal realm, progress has been made in recognising women's rights on the African continent, and the international community has witnessed advanced developments regarding the proscription, judicial investigation and prosecution of violence against women (VAW) and specifically wartime sexual violence as an international crime (Obote-Odora, 2005). Various African countries such as Rwanda, Namibia, and South Africa have established progressive laws which give women rights and protect them. Regional instruments such as the African Union's 2003 adoption of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa also known as the Maputo Protocol, have significant potential and have advanced women's rights in Africa³. Most importantly, this Protocol has brought to the fore the need to recognize women's rights as human rights and the need to ensure respect for their sexual and reproductive rights (Mukasa, 2008: 3). Despite this progress, African women's relationship with the law and its institutions necessitate attention and examination.

Prior to the 1990s, Africa's relationship with international criminal justice was non-existent. The symbolic value of international criminal justice on the African continent came into existence through the establishment of international criminal tribunals/courts such as the International Criminal Tribunal for Rwanda (ICTR), the Special Court of Sierra Leone (SCSL), the Extraordinary African Chambers of Senegal and the International Criminal Court (ICC or the Court). The presence and operation of these

³ The African woman's protocol aims to promote and protect women's rights in the thematic areas of violence against women, governance and health and reproductive rights. Various other regimes at the international level have also been created to promote and protect the human rights of women. These are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1993 UN Declaration of Violence against Women, the Vienna Declaration and Programme of Action, the 1995 Fourth World Conference on Women.

institutions marked the genesis of the relationship between Africa and international criminal justice and propelled Africa as a key player into the international criminal justice project. These judicial institutions aim at delivering justice to victims as well as tackling impunity for mass atrocities, and specifically impunity for wartime sexual violence. The record set by these tribunals in terms of recognising wartime sexual violence crimes on the African continent is noteworthy.

1.2 Rationale for study

Armed conflicts have devastating consequences on women and there is a serious call to afford better protection for women against sexual violence during armed conflicts. As emphasised by Baaz and Stern (2013: 20), it is crucial to note that all acts of violence against women exist on a continuum of violence which is intimately related to society's hierarchy of gender. While the prosecution of conflict-related sexual violence is important in ending impunity of such acts. It is imperative to address and bring to light the significant gendered disparities and discriminatory practices in society that account for the violence against women.

Most of the crimes and insecurities women experience in conflict and post-conflict settings must be understood in the context of unequal gender relations and gender (militarised masculinities and its foe femininity). The prosecution of sexual violence crimes alone therefore is not sufficient to remedy all the harms women experience during conflict. A more transformative and structural response which takes gender analysis into account is required in order to illustrate and consider what exactly happens to women in conflict settings (Travies, 2015:163).

It is important to note that wartime sexual violence is not the only gender-based crime committed in conflict. As Mibenge (2013: 14) notes, sexual violence has been easily and naturally attached to the bodies of women to such an extent that it has become a natural leap to frame it as the sole and defining harm that women experience in times of conflict. In times of conflict, women face a wide range of harms such as specific health, economic, social and security threats (Thomas and Tiessen, 2010: 481). CRSV as a form

of gender-based violence directly affects at least one-sixth of the world's population and is deeply rooted in gender roles, which are supported and perpetuated at the individual, community, state, and international levels (Linstroth, 2010: 227). As Jurasz and Isaac indicate (2018), “women’s experiences of armed conflict are underscored by their gender roles within a particular social context and whilst there exist some common aspects, women’s actual experiences depend on a range of factors, such as age, race, class, nationality, employment, socio-economic status and, finally, their combatant or civilian status”. Consequently, while all women do not experience war the same way, some issues are common to all women (Kuo, 2002: 308) Contemporary wars also known as new wars have significant dimensions of gender, ethnicity, religion. In times of war therefore, women are subjected to sexual violence for various reasons such as their sexuality and gender, relationship to a man, and on the basis of their social, religious, or ethnic affiliation (Grey, 2013: 45). Targeting is seldom on the grounds of one factor but a combination of these factors hence an intersectional understanding of CRSV is needed.

The intersection between ethnicity and gender continues to mark women’s experiences in African civil wars. However, throughout the case law of former criminal institutions such as the ICTR and SCSL, the language of ethnic persecution has overshadowed accounts of sexual violence against women's bodies (Mibenge, 2013: 67). The erasure or silencing of gender from their justice narrative alters and undermines any attempts to bring about complete gender justice and creates shallow narratives about wartime sexual violence (Mibenge, 2013: 69). Moreover, the justice narratives provided by these former tribunals (SCSL and ICTR) essentialised African women solely as rape victims hence confining them to a universal story of victimhood (Mibenge, 2013:160). These old features or legacies of the previous international tribunals which erased or silenced gender from the discourse of wartime sexual violence in Africa are worth addressing and challenging.

The International Criminal Court (ICC) is the first permanent global tribunal aimed at prosecuting war crimes, crimes against humanity, genocide, and in future the crime of aggression (Rome Statute, 1998: see the preamble). The Court prides itself in

participating in the global fight to end impunity and aims to hold those responsible, accountable for their crimes and help prevent these crimes from happening again (Rome Statute, 1998: see the preamble). It further believes that justice is a key prerequisite for lasting peace (Rome Statute, 1998: see the preamble). To date most of the cases before the International Criminal Court have come from the African continent and at the centre stage of these situations of violence and turmoil are African victims, especially women. The ICC correspondingly continues to play a prominent role in tackling impunity for atrocious crimes committed on the African continent. As a new institutional actor, the ICC's impact needs to be reflected positively in various folds. Firstly, in its incorporation and consideration of sexual violence as an international crime. Secondly, in its comprehension and conceptualization of CRSV which pay attention to the constructions of masculinity and femininity, and the complex intersections of gender, patriarchy, militarism, and ethnicity, religious, and political identities that underlie this crime.

Contemporary international tribunals such as the ICC have the potential of making sense of wartime sexual violence when used in political violence against both men and women on the African continent. These institutions are particularly symbolic because of the historic documentation of armed conflicts they create, and they provide an opportunity for establishing a historical record that is reflective of the experiences of all people impacted by the conflict (Jurasz and Isaac, 2018). As Doris Buss (2013: 24) further notes "courts are sources of official knowledge about what happened to women and men during that conflict, and hence what harms need to be addressed as part of the 'transition' from conflict to 'peace'". Mibenge (2013) posits that criminal justice mechanisms create a historiography of African women and the images that emerge from the justice narratives created by these institutions have the power to either diminish or favour women's participation in post conflict societies. A narrative which overemphasizes the perpetual victimhood that characterises African women's lives and essentialises them as constant victims is perilous and, in this regard, criminal institutions must do better for the rest of Africa's women.

In an era where wartime sexual violence is receiving so much international attention and is at the core of so many scholarly, policy, legal and activist agendas; this study will draw on the voices of scholars such as Chiseche Mibenge and Omolara Ogundipe-Leslie, Gwendolyn Mikell, who call for “more diverse narratives of African women’s experiences, which consider their identities, roles, lives and status beyond conjugal and coital settings” (Mikell, 1997: 251). This study aims to look at the unique ways women made sense of their experiences of sexual violence and also aims to move beyond female victimhood by exploring the various ways women and girls through their distinct experiences of agency and powerlessness were perpetrators and women and girls fighters (either forcibly or voluntarily) as per their testimonies. This aims to allow for a discursive shift away from pitying and rescuing degraded, battered bodies towards challenging and thinking about the conditions within which women exercise agency and how this agency goes unseen and unrecognized.

The ICC can be a powerful vessel for the promotion of gender justice and a great advocate for the eradication of sexual violence. The researcher is cautious in her engagement with a legal institution and conscious of law’s limited capacity to effect change but still believes such an engagement is important. Interactions between feminist engagements and international criminal law institutions in relation to crimes of sexual violence are not new. The works of Kelly Askin (2003), Rhonda Copelon (2000) Catherine MacKinnon (2006), Binaifer Nowrojee (2005), Rashida Manjoo (2011) are examples of these engagements. Moreover, feminist engagements in the field of international criminal law have ranged from revisionist to enforcement approaches. This binary makes up the two schools of thought in the feminist approach to international criminal law. “The enforcement school argues for the effective implementation of already-existing norms, whereas the revision school argues for a reform of norms it considers problematic per se” (D’Aoust, 2017: 215). This study locates itself within a revisionist perspective and posits there is a need to challenge gender stereotypes, engage with gender in order to get rid of international norms which are based on masculine assumptions that do not take into account global systematic gender inequality (D’Aoust, 2017: 215).

1.3 Problem Statement

From the 1990s onwards, feminist scholars have argued that as part of their history-making and norm setting function, international criminal tribunals need to acknowledge and de-legitimise sexist and/or misogynistic ideologies that contribute to violence in times of war and peace alike (Grewal, 2015). There is an acceptance of international criminal courts' legitimacy when they address, uncover and denounce the bias and violent system or status quo that often underlines mass human rights violations especially conflict related sexual violence (Grey, 2017: 459).

The growing accountability for CRSV has overturned many traditional misconceptions about CRSV, especially the notion that CRSV is an incidental by-product of conflict and has exposed the impact that sexual violence has on victims. This progress while notable does not mean we are out of the woods yet. There is still an apprehension especially at the international level to fully embrace and address the complexity of CRSV. This apprehension has led to a reductionist approach to sexual violence which perpetuates stereotypes (Anholt, 2016: 134).

The modernization of the laws on sexual violence as a key legacy of the ad hoc international criminal tribunals have, however, failed to capture the wider complexities that surround wartime sexual violence such as addressing the influence or role of gender and gender inequality. In addressing crimes of sexual violence, opportunities to explore the links between sex, gender, ethnicity and political affiliation have often been missed by the institutions such as the ICTR and ICTY (Mibenge, 2013, Campbell, 2016). Within these institutions, their Chambers have often simplistically addressed wartime sexual violence as being motivated by ethnic prejudice rather than by gender, religious or political affiliation. As Grey (2017) notes, ethnic violence and gender are treated as opposing concepts which sit uncomfortably within the cases of former ad hoc tribunals. Scholars such as Doris Buss, Chiseche Mibenge and Rhonda Copelon have criticised the ICTY and ICTR for overstating and fixating on the ethnic facets in addressing sexual violence while discarding the ways in which gender also played a role in the commission of sexual violence. This fixation according to all three scholars demonstrates that the

ICTR and ICTY erased the link between gender and other factors such as religion, ethnicity, age, political affiliation, economic status in accounting for the commission of sexual violence within the conflicts. The treatment of ethnic violence and sexual violence at opposing ends of the spectrum is at odds with an ‘intersectional’ understanding of sexual violence (Jurasz and Olga, 2018).

Feminist scholars have often critiqued former international criminal tribunals for two reasons. They have firstly failed to acknowledge the significance of gender norms and hierarchies when addressing women’s experiences in war; and secondly, they reinforce gender stereotypes (Grey, 2017, Grewal, 2016, D’Aoust, 2017). Violence in peacetime or in wartime is the result of complex dynamics and gender relations within society. Gender and ethnicity cannot be treated as entirely separate categories. In interpreting CRSV solely as either ethnicized violence, this does not reflect the complex realities of many conflict environments (Jurasz and Olga, 2018), as well as the intersectionalities of identities. The reliance on a single aspect of conflict such as ethnicity, excludes diverse social realities and constitutes a danger of narrating a single truth that suppresses alternative and subordinate voices (Turant, 2018: 32). It is important therefore to assess whether the ICC has been successful in surmounting these critiques that feminist scholars have leveled against previous international criminal tribunals despite its novel gender justice mandate.

1.4 Research questions

In light of the manifestation of wartime sexual violence in situations and cases under scrutiny by the ICC and the gender justice mandate of the ICC. The primary question raised in this study is as follows:

- Is the ICC gender responsive to wartime sexual violence and African women’s constructed identities in war?

The subsidiary questions which will aid in answering the main question are:

1. What discourses are derived from African women’s testimonies of wartime sexual violence?

2. How does the Court position itself towards the realities and experiences of African victims and what sort of narratives does it create?

1.5 Objectives of the study

In an era when wartime sexual violence is receiving much international attention and is at the core of many scholarly, policy, legal and activist agendas, this study intends to depict and be candid about African women's experiences of wartime sexual violence. This is to better understand how narratives of the lived experiences and perpetration of sexual violence crimes situate sexuality, and gender and to discuss what this might entail for the understanding of sexual violence and its perpetration in the context of mass atrocities before the theatre of international criminal trials. Secondly, this study stems from a feminist curiosity and aims to investigate selected case law of the ICC in order to comprehend the subsequent institutional discourses which are created around wartime sexual violence and its victims.

An additional aim of the study is to reveal and understand how soldier's testimonies must be seen as a product of the particular context of the war theatres (in the Central African Republic and DRC) which have local idiosyncrasies. But which must also be seen as a reflection of the warscapes which are created out of the increasingly globalized context of militarization and attendant notions of 'normal' heterosexual masculinity (Skjelsbaek, 2015). This study also aims to pay more attention on the connection between gender, sexual violence and other factors such as soldiery status, age, and ethnicity so as to come to a more complete understanding of sexual violence. A complete and complex understanding of sexual violence necessitates an intersectional lens into accounts of the experiences and perpetration of this crime. Finally, this study aims to encourage the non-reduction of African women's experiences to a universal story of war victimhood by providing accounts of African women as combatants and perpetrators of crimes.

1.6 Rationale for the selection of cases

Almost fifteen years have lapsed since the ICC began to try the first individuals who were held most responsible for the atrocities committed in situations and cases that came before it. The four cases under analysis in this study displays the enforcement of international criminal law and the choice of cases is deliberate and there are pragmatic reasons for this selection. There are currently 30 cases before the ICC and within these cases there are 12 suspects who are still at large and not within ICC custody. There are 4 cases closed because charges were not confirmed, 4 cases in which the accused were convicted, 2 cases in which the suspects were acquitted and 8 cases currently ongoing before the ICC. The researcher selected early cases that fell between 2002 to 2016 in which arrests warrants had been unsealed, indictments has been issued, charges had been confirmed and had passed pre-trial, the cases had reached trial with trial judgments. Three cases met these criteria, and these were the *Lubanga*, *Katanga*, *Bemba* cases. At the time of writing of this thesis, the *Ntaganda* trial judgement was issued in 2019 and the researcher opted to add this case to complement the aforementioned cases. The four cases are cases of many firsts and all four of these cases are historic in their own way. All four cases have victims and testimonies of sexual violence despite wartime sexual violence not being charged (like in the initial *Lubanga* case).

The *Lubanga* case represents the symbolic pursuit for international criminal justice before the first permanent international criminal court and its first conviction. This case saw the conviction of the war crimes of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities. This case was a first step and an important one in helping to bring accountability in the DRC, a country where impunity has been the norm and perpetrators of serious crimes are rarely brought to justice.

The *Katanga* case is the first before the ICC to include charges of rape and sexual slavery before the ICC. While there was no conviction for sexual violence, the case is significant because for the first time before the ICC, African women who were victims

of wartime sexual violence were able to tell the world what had happened to them. Katanga is also charged with war crimes of using children under the age of 15 as child soldiers, who allegedly served as both combatants in the attack and as escorts to the accused. These crimes have been committed on a massive scale in the DRC with impunity.

The *Bemba* case before the Court has been a case of many firsts. For the first time at the ICC, a military commander was found guilty of sexual crimes committed by soldiers under his command. Additionally, it was also the first case involving a conviction for sexual violence at trial level and it was the first time that a large number of victims were allowed to participate in international criminal proceedings, with direct and broad participatory rights. More than 5,000 victims participated in the Bemba trial to expose their views and concerns and such a number of participating victims in international criminal proceedings has been unprecedented (Mannix, 2016). Bemba was the first case in which testimony from male victims of sexual violence was heard in the context of wartime sexual violence. The Bemba case involved the largest number of witnesses for sexual violence in any ICC case at the time, with 14 out of 40 Prosecution witnesses testifying about rape and other forms of sexual violence allegedly committed by Bemba's troops.

The *Ntaganda* case reveals the various roles women play during war such as being combatants. While women take on combat roles, they are not exempt from violence and the *Ntaganda* case sheds light on wartime sexual violence carried out on women who fall within the perpetrators' groups. These experiences of women combatants are important in making sense of the complexities on CRSV.

These four cases deal with situations in the Democratic Republic of Congo and the Central Africa Republic and although of varying significance, they have overlapping relevance. With the examples of Mr Lubanga and Mr Ntaganda, both headed the same party, the Union Patriotique du Congo, and fought in the same militia– Force Patriotiques pour la Liberation du Congo. Bosco Ntaganda co-operated with Thomas

Lubanga and according to the Prosecutor, both were acting with common purpose to further the criminal objective of ousting the non-Hema population by means which involved the commission of atrocities. Their cases have joint crime investigations, common witnesses, common victims, common perpetrators, and common crimes.

The security situations in the Democratic Republic of Congo and Central African Republic as evidenced in the cases are still volatile and have continued to be a concern to the international community. The above-mentioned cases involve conflicts in which the United Nations Security Council stated concerns about the military activities of various armed groups and characterised these activities as threats to peace in the central African region. The United Nations posits that the activities of these armed groups are the cause of great insecurity and threaten the local civilian populace. The various UN Security Council resolutions which called for international intervention to address these situations are an indication of the insecurity that still persists.

Whether the conflicts in the DRC or Central Africa Republic have been international or non-international in character, they have always entailed devastating acts committed against the civilian populace. The four cases shed light on political violence on the African continent. The conflicts have thrived on ethnic hatred but also have economic and social causes. Above all, these cases are of importance because they reveal the relationship between sexual violence, gender, ethnicity, and political affiliation. The researcher by selecting these four cases is of the view that these early cases can serve as a springboard into investigating the ICC's understanding of wartime sexual violence and what changes or tools the ICC needs to use in its future cases for a better achievement of its gender justice mandate.

1.7 Clarification of terms

African woman: The African woman in this study refers to a woman who is born, who lives in, and is from the continent of Africa. The culture, evolution and history of the African woman is related to the evolution and history of the African continent itself and as Chenesai Mangoma (2020) notes African women are as diverse, powerful and unique as the 55 countries on the African Continent. It would be incorrect to state that there is a singular African woman, but all African women share the ability to create and carry customs, languages, histories which are unique to the African continent.

While this study focuses on African women's experiences of wartime sexual violence, it is not assumed that war rape had the identical effects on all women. African women do not have homogenous peacetime or wartime experiences. While the African women were victims of violence in the DRC and Central African Republic societies, they were also perpetrators of crimes in the conflicts. It is also important to note that women in the DRC and CAR continue to be advocates and agents of peace who reaffirm their agency and roles against male forms of hegemony and aggression. In the situations of the DRC and the CAR, women have mobilised themselves through NGO's such as the Association LOC de Secours aux Femmes Enceintes Et Orphelins (ALSFE0), Action for the social reintegration of women (ARSF) just to mention a few. Such examples prove that women resist victimhood and are agents who want to establish more equal rights for themselves.

Gender: Gender is both a cross-cutting and deeply political issue (Puechguirbal, 2010: 183) and shapes the way men and women experience insecurity in armed conflict. In this study gender is not understood as simply dichotomized femaleness and maleness alone but is a social, rather than a biological construct, and varies with the roles, norms and values of a given society or era. "Gender refers to the social attributes and opportunities associated with being male and female and the relationships between

women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes” (UN Women, 2021). “Gender is a system of symbolic meaning that creates social hierarchies based on perceived associations with masculine and feminine characteristics. Gender is not a variable that can be measured as a “yes” or “no” (or “male” or “female” question) but is a more complicated symbolic and cultural construction” (Sjoberg, 2009: 245).

Most of the harm and insecurity women experience in conflict and post-conflict settings must be understood in the context of gender relations and militarised masculinities (Thomas and Tiessen, 2010: 481). Gender is an important category of analysis in understanding conflict and experiences of conflict. In order to recognise how gender as a concept relates to conflict, one needs to understand the meaning of gender as a sociocultural construct and the social construct that is gender varies per context. By contextualising gender, for example, in the African context, one gets to acknowledge a wider interpretation of the role gender plays in peacetime and in conflict. Gender notions in Africa demonstrate the different ways women and men are portrayed in society and what sociocultural contexts brings in making sense of certain violations as experienced by men and women. For example, a fairly common thread which runs through the fabric of most African societies is the culture of deference and subservience of the African womenfolk to their male counter-parts (Ebila, 2011: 32). A focus on gender in the African context will be important in reflecting on the plethora and polyvalent meanings given to African bodies, sexuality and associated aspects of sexual violence.

Gender responsiveness: Gender responsiveness refers to engagements and outcomes that reflect an understanding of the role of gender and its resulting inequalities in accounting for certain unique experiences (Kamunyu, 2018). A more gender responsive approach enhances gender equality by offering nuances and sensibility to understandings of what role gender plays in shaping victim’s experiences of wartime

sexual violence. In being gender responsive, an institution seeks to not only better recognise gender power relations but represent women's voices.

Testimonies: The researcher notes that women's testimonies before the ICC are women's constructed experiences of war and while such construction could be narrow, they are not far off from their reality.

Wartime sexual violence/conflict related sexual violence: In this study both terms are used interchangeably and consists of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity in war and conflict.⁴

1.8 Significance of the Study

This study while tackling the gender responsiveness of the ICC, addresses whether there is indeed progress, what progress has been made, and what progress still needs to be made. The analyses of the four cases in this study aim to be a springboard from which further comparative, longitudinal research on the ICC's understanding and legacy of wartime sexual violence can be undertaken. This is crucial in observing or interpreting if there are any shifts or progress in understanding wartime sexual violence before this institution and whether there is a prevalence of formal and informal rules that prevent or promote the overall understanding and prosecution of wartime sexual violence.

The focus of this study, that is how sexual violence crimes are discussed in the theatre of an international criminal court, is a significant contribution to the understanding of how sexual violence victims and perpetrators can be situated in a war setting. Provides and exposes the multiple characteristics and contexts of wartime sexual violence including the diversity of perpetrators of wartime sexual violence who can be state actors and non-state actors who are men but also women. The findings suggest new

⁴ Rome Statute of the International Criminal Court, 1998.

perspectives on how courts should understand the crime of sexual violence and perpetrators in war settings and adds to the emerging literature on sexual violence perpetrators and women as imperfect victims in the theatre of war.

This study challenges the stereotypes surrounding women in war. Such stereotypes include women and girls as passive victims and that their weaknesses warrants male protection. These stereotypes are inaccurate and are reductive. By reducing women to passive victimhood, the multifaceted experiences and roles of women in war are discarded. “Such stereotypes fail to assess how even in extraordinarily violent circumstances, women often exercise some degree of agency with a view to self-protection, resistance, and survival” (Grey, 2017: 89).

Whilst it is widely recognised that sexual violence disproportionately affects women and girls, CRSV is not solely a women’s issue and in order to broaden the understanding of this crime it is crucial to include men’s experiences of this crime. This study by incorporating men’s testimonies of CRSV sheds light on how gender and sexuality are important in making sense of CRSV. Echoing Jurasz and Isaac (2014), sexual violence against all members of society, independent of their sex or gender identity, has to be understood in the context of dominating narratives relating gender, sex, and sexuality.

Social science approaches are important to the field of law, and this is because there is an unrelenting need for awareness around gender issues before legal institutions. Cognizance of the role of gender helps in improving gender-sensitive procedures and trials while rendering justice to victims for the harms they have suffered. This study by adopting a feminist security and intersectional perspective conveys the much-needed socio-legal approaches of gender and violence to international criminal law. Such an approach reveals the multiple dimensions of discrimination that underpin situations of violence. Finally, this study by investigating sexual atrocities through individual court cases is written from a social science perspective and seeks to promote the use of social science to frame and understand international crimes.

1.9 Study delineation and limitations

In assessing the gender responsiveness of the International Criminal Court, this study is delineated by a practical and temporal scope of work. Practically, this study includes in the scope of its analysis the arrest warrants, indictments, pre-trial phases, confirmation of charges, indictments, trial phases, testimonies, trial judgements and the Rome Statute. Undoubtedly, it would be impossible to closely analyse such an abundance of material in its totality. The choice of specific sources in this thesis is informed by those instances where witnesses shared their narrated constructed experiences of wartime sexual violence, where the ICC did or did not engage with gender and where the ICC did or did not live up to its gender justice mandate.

This study focuses on two aspects of the ICC jurisprudence. The first is analysing the ways in which cases involving sexual violence against African women and men have been dealt with and interrogating the gender aspect of these cases. The other focus of the study which is closely related to the first is considering intersectionality before the judgments of the ICC and whether the existing jurisprudence reflects the multifaceted and diverse nature of harms sustained by the victims of sexual violence in the conflicts in the DRC and Central Africa Republic.

For the purpose of this study, it was the trials that were deemed important alongside witnesses' testimonies. The rationale for this choice was pragmatic; it was in the trial and witness testimonies that acts of sexual violence were relayed to the greatest length and where the richest material about these crimes and the perpetrators could be found. The above consist of the most thorough texts available for gaining insights into the reasoning of the Court within the limits in which it works. This is not to say the sentencing and appeals phases were not important. While there is merit in considering those aspects, the researcher deemed the pre-trial and trial phases most informative to this study. A thorough desktop review guides the delineation process such that ultimately almost all materials have at least cursorily been reviewed, but not all are included in the analysis. Any other approach would render the dissertation too broad and monotonous while not necessarily affecting the value or direction of the findings.

The study is also informed by a temporal scope. The ICC was established in 1998 and became operational in 2002. It has therefore been in existence for more than two decades. It is therefore impossible to cover in equal measure the full range of all the years and accordingly there is a more limited coverage of the early years. The effective cut-off date of the study's temporal scope is 31 August 2019 and efforts have been made to update the work up until this date.

A clear limitation of the study is the number of cases selected when compared to the vast caselaw before the ICC. The rationales for the selected cases have been mentioned and the researcher notes while these cases could be seen as limited, they however serve as a baseline or springboard for comparative studies into the pursuit of gender justice before the ICC and the Court's understanding of the sexual violence.

Furthermore, this study aims to provide social science approaches to a legal institution. It does not delve into substantive international criminal law in terms of the material and mental elements of rape or the contextual elements for war crimes and crimes against humanity. It does not seek to problematise or investigate the substantive, evidentiary and procedural rules before the ICC when it comes to the crime of sexual violence. It likewise does not provide a commentary or analysis on the advancement of the jurisprudence on various modes of liability for wartime sexual violence in the categories of joint criminal enterprise or command responsibility. It is written from a social science perspective and aims to bring an understanding of gender issues before the Court so as to improve gender-sensitive procedures and trials while rendering justice to victims for the harms they have suffered.

1.10 Chapter layout

This study is organised into eight chapters. Chapter 1 gives the context/background to the study and the research problem, addresses the problem statement, and provides the rationale for the study. The chapter also outlines the primary research question, the secondary questions which are meant to provide answers to the main question, and the

research objectives. Chapter 2 discusses the gender justice mandate of the ICC as a backdrop against which one can assess its gender responsiveness. Within this chapter a literature review is also provided. Chapter 3 provides the theoretical framework for this study. Chapter 4 discusses the research design, research methods, data collection, data-analysing tools and ethical considerations. Chapter 5 provides a set of findings which consists of the discourses of African women's wartime experiences of sexual violence before the ICC. In this chapter, intersectional analysis and the perpetrators' discourses are also provided. The first sub-question is answered, and the first aim of the study is addressed through discourse analysis of the testimonies (primary data). Chapter 6 presents the often-forgotten reality of African women as combatants and the existence of men's sexual violation. The findings in this chapter provide a partial answer to the primary question and also aim to uncover the agency of African women in times of war. Chapter 7 discusses the ICC's institutional discourse. Chapter 8 summarises the research findings, makes recommendations for further research, and gives concluding remarks.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter consists of the literature review and aims to provide a wide-ranging overview of the scholarly developments and debates in the fields of international criminal law and security studies. It serves to frame this research in terms of African women, their invisibility, and their wartime experiences of sexual violence before international criminal mechanisms but most importantly situate the ICC within its gender justice mandate.

2.2 Mandate of the ICC

The protection of women and girls from sexual and gender-based violence has become, at least at a discursive level, a concern of the international community (Grewal, 2015: 150). The recognition that rape and other forms of sexual violence are among the most serious crimes was one of the many historic accomplishments of the July 1998 United Nations Diplomatic Conference of Plenipotentiaries that negotiated the Rome Statute of the International Criminal Court (Bedont and Hall-Martinez, 1999: 65). The drafting of the Statute of the ICC made an important contribution in history by creating the first permanent international legal body to distinguish between distinct types of SGBV in wartime and to highlight their seriousness as both war crimes and crimes against humanity (Mannix, 2014: 7).

The establishment of the ICC in 2002 signalled a new era in terms of the pursuit of gender justice (Chappelle, 2016). In terms of being a beacon in the advancement of gender justice, the ICC in rhetoric as stipulated in its Statute, incorporates Nancy Fraser's three elements of gender justice being recognition, representation and redistribution. The element of recognition is evidenced in the codification of the crimes based on gender and sexual violence as crimes against humanity, war crimes and grave breaches under the

Geneva Conventions. The element of representation is evidenced in the integration of structural and operational provisions that ensure that women participate in all levels of the ICC's operations and that among the ICC's staff there be adequate expertise for dealing with sexual and gender violence⁵. Last but not least the element of redistribution is evidenced through the Court's ability to order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty. Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials (Rome Statute, 1998). These elements of gender justice within the ICC Statute fill the gap within international law, a body of law that had far too long marginalized sexual violence against women.

The ICC's Rome Statute is the first international instrument to enumerate and define crimes against women and crimes based on gender and sexual violence specifically (Gabriel, 2004: 44). These crimes against women that are enumerated in the ICC provisions entail rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity as crimes against humanity under Article 7 and any other form of sexual violence as also constituting a grave breach of the Geneva Conventions as war crimes under Article 8 of the ICC Statute (Rome Statute, 1998: 4). Scholars such as Grey (2017: 54) posit that these provisions in Articles 7 and 8 are some of the most noteworthy provisions of the ICC Statute regarding women's rights and are significant towards ending impunity for sexual violence under international criminal law. Moreover, the language used in the ICC Statute as argued by D'Aoust (2017: 210) suggests that sexual violence is no longer a crime that deserves no attention or carries no grave consequences but is now a crime of the gravest nature that also constitutes a grave breach. The importance of the language used is an emphasis that sexual violence is a breach just as grave as other crimes of universal jurisdiction under the Geneva Conventions⁶.

⁵ Various provisions in the Rome Statute such as Article 36, Article 42 aim to ensure that the ICC has a balanced sex composition, and gender expertise in all three organs of the Court, namely the Office of the Prosecutor, the Registry and Chambers.

⁶ The phrase "or any other form of sexual violence also constituting a grave breach of the Geneva Conventions" which follows the enumerated sexual violence crimes under Article 8(2)(b)(xxii) signals that the enumerated crimes of rape, sexual slavery are grave breaches of the Geneva Conventions.

Throughout the Statute of the ICC, there is a key emphasis placed on sexual violence and its victims as demonstrated in Article 54(1)(b) of the Statute which requires that, in ensuring the effective investigation and prosecution of crimes within the jurisdiction of the Court the Prosecutor must take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children (Rome Statute, 1998: 24). The protection of victims and witnesses of sexual violence is also emphasised before the Statute in Article 68, which requires appropriate measures for the protection of victims and witnesses outlines and requires the Court to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors, including age, gender, [...] and health, and the nature of the crime, in particular, [...], where the crime involves sexual or gender violence and violence against children” (Rome Statute, 1998: 33). The Rome Statute is a breakthrough because it has established provisions to ensure that these crimes and their victims are properly treated (Chappelle, 2016: 183).

The ICC has been provided with the most advanced gender justice mandate (in terms of the recognition, representation and redistribution of women’s wartime experiences) of any international justice institution (Chappelle and Durbach, 2014: 534). When it comes to the crime of sexual violence, the ICC in its Statute is novel in being the court of many firsts in that while “the crimes of rape and enforced prostitution have been recognized as international crimes previous to the drafting of the Rome Statute, the crimes of sexual slavery, forced pregnancy, and enforced sterilization have not been explicitly included in a prior international instrument but only before the ICC” (Gabriel, 2004: 45). The Rome Statute is revolutionary because it codifies a mandate for the Court to adopt specific investigative, procedural, and evidentiary mechanisms that are essential to achieving justice for sexual violence victims. The Rome Statute represents a significant step towards overcoming the discriminatory and inadequate treatment of sexual violence crimes under international law (Bedont and Hall-Martinez, 1999: 67). It further recognizes a spectrum of sexual and gender crimes and incorporates the ground of gender in the crime of persecution under crimes against humanity. The Statute of the ICC is the first international

legal instrument to include provisions relating to gender equity and expertise (Gabriel, 2004: 46).

The significance of the gender justice mandate of the ICC stands out when cast against the prior treatment of wartime sexual violence under international law and former ad hoc tribunals. Previous international humanitarian law treaties and international criminal law institutions had neglected and failed to properly address sexual and gender violence (Askin, 2003). Consequently, the inclusion of Articles 7 para 1(g), 8 para 2(b)(xxii) as well as 8 para 2(e)(vi) represents a key victory for the cause of the protection of the rights of women, as previous humanitarian law codifications, did not articulate rape at all and when they did, this crime was considered as a crime against honour or dignity rather than a crime of violence (Askin, 2003). The ad hoc tribunals of the ICTR and ICTY unsatisfactorily treated wartime sexual violence and their Statutes only included the crime of rape as a crime against humanity (Campbell, 2016). This oversight fails to recognise and give serious consideration of the crime as a grave breach of the 1949 Geneva Conventions on the laws of war (Bedont and Hall-Martinez, 1999). These ad hoc tribunals also failed to provide protection against victims of sexual violence given the absence of provisions to ensure that victims of these crimes were properly treated (Askin, 2003).

The exclusion of women from international criminal proceedings has meant the absence of representation and recognition of women's wartime experiences. Women and girls have often been left on the margins of international criminal justice (Grewal, 2016: 5) given their lack of representation as witnesses. The ICC and its gender justice provisions have however been praiseworthy developments which have created hope that women's experiences during armed conflict will no longer be relegated to the abyss of silence (Henry, 2010: 1103). As Simic (2018: 34) reflects, the era of silence has been replaced with international recognition. The gender justice provisions of the ICC aim to remedy the traditional absence or underrepresentation of women before international criminal tribunals and give victims' rights, especially victims of wartime sexual violence (Chappelle, 2016: 192, Bedont and Hall-Martinez, 1999). These provisions have the

capacity to reposition women and victims of sexual violence as autonomous active subjects under international law (Chappelle, 2016: 192).

One cannot explore or appreciate the mandate of the ICC without examining the important role women's rights activists played in bringing about this gender justice mandate. The Women's Caucus proved to be an essential catalyst in ensuring the integration of a gender justice perspectives throughout the Rome Statute (Bedont and Hall-Martinez, 1999). The Women's Caucus for Gender Justice was created in spring 1997 during the Preparatory committee for the Establishment of an International Criminal Court when women human rights activists realized that without an organized caucus, women's concerns would not be actively defended by the mainstream human rights NGOs or the NGO coalition (Gabriel, 2004). This caucus had many key objectives which included persuading states to include a broad range of sexual violence crimes in the Rome Statute—broader than what had been included in any previous instrument of international criminal law (Bedont and Hall-Martinez, 1999:70). Such a move they had hoped for would combat the under-investigation and under-prosecution of sexual violence crimes, by ensuring that these crimes were always on the checklist, and always understood as crimes in themselves (Grey, 2014, Chappell,2003: 14–15, Bedont and Hall-Martinez 1999: 71). The presence of the Women's Caucus accentuates the crucial roles women's rights activists continue to play in the international arena and in engendering international instruments and institutions. This Caucus joins the train of other women's rights movements who organised the World Conference on Human Rights, held in Vienna in 1993 (the Vienna Conference), the Fourth World Conference on Women, held in Beijing in 1995 (the Beijing Conference). Huge achievements ensued from these conferences and, called on governments to condemn gender-based violence and violence against women in war situations, integrate women's rights into the mainstream of the UN system and integrate a gender perspective in the resolution of conflicts (Gabriel, 2004). The ICC Statute's gender provisions are an encouraging example of how the development of the international women's rights movement has positively impacted international law despite the strong influence of conservative political forces (Bedont and Hall-Martinez, 1999).

The ICC Statute and consequently its mandate is the manifestation of a normative shift by the international community to end the impunity surrounding crimes of sexual violence in armed conflict and give these criminal acts a different meaning (Skjelsbaek, 2014). The ICC's Rome Statute sets the stage and mandate for the ICC to focus on crimes of sexual violence committed against civilians in war, vests the Court with an ability to carry out justice for women. This Statute further provides multiple characterisations for which the ICC can indict sexual violence crimes. The emphasis on sexual violence and its victims which runs through the Statute of the ICC warrants investigating how the ICC understands sexual violence in order to effectively prosecute and address wartime sexual violence and live up to its gender justice mandate. It is against the backdrop of its gender justice mandate that this study sets to investigate if the ICC is gender responsive to women's experiences of wartime sexual violence.

2.2.1 Is the Mandate of the ICC limited?

The mandate of the ICC as found in its preamble is to “try individuals (rather than States), and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, crimes against humanity, and the crime of aggression” (Rome Statute, 1998). At a first glance, the retributive aspect (punishment-orientated mentality) of ICL is overt. This is however a limited angle and does not paint the entire picture of the significance of the ICC. A deeper analysis of the preamble and a holistic look at the Rome Statute suggests that the ICC's *raison d'être* is beyond a retributive role or function. The ICC from its preamble and Statute represents the ideals of international justice, ideals of accountability, the reach of the rule of law to all corners of the world, the consolidation of the Nuremberg Principles and trend to hold individuals responsible for serious international crimes under international law and the need to combat impunity. Moreover, the ICC represents ideals of restorative justice with its focus on victims and the need to consider their views as well as the need to acknowledge and repair damages and losses inflicted through reparations.

By prosecuting individuals who are responsible for the most serious of crimes, the ICC continues to entrench its substantive legacy by developing the jurisprudence of international crimes. Like its forerunners (the ICTR and ICTY), the ICC plays a crucial role in advancing the jurisprudence of sexual violence by establishing standards for this crime and further protecting liberties and rights of victims. The researcher is of the view that with its novel gender justice provisions, focus on victims through victim participation, the ICC has a clean slate to apply judicial creativity and is a rich ‘laboratory’ for the development of substantive international criminal law when it pertains to sexual violence and its victims⁷. As a novel and permanent judicial institution, the crime of sexual violence is encompassed as an international crime which the ICC has jurisdiction over. “The jurisdiction of the Court explicitly names a number of sexual and gender-based crimes: rape; sexual slavery; enforced prostitution; forced pregnancy; enforced sterilization; and other forms of sexual violence, gender-based persecution and enslavement” (Rome Statute, 1998). These crimes constitute crimes against humanity if they are carried out as part of a systematic or widespread attack on the civilian population. Acts of sexual violence can also be prosecuted as a war crime if they are committed in the context of, and associated with, an international or internal armed conflict (Rome Statute, 1998).

The ideals and principles within the Preamble and Rome Statute of the ICC provide the ICC with opportunities to set new records and add on to existing ones. The ICC in other words is a standard setter and is not restricted by the retributive facet of its mandate. As evidenced by the numerous commitments and declarations of the OTP, development of policy papers in order to better prosecute wartime sexual violence, the ICC goes beyond its mandate in order to make notable progress towards reconceptualising sexual violence as an international crime. The recent adoption of the ICC’s High-Level Statement on Gender Equality further exemplifies the ICC’s will to not be limited to a retributive

⁷ The attention offered by the ICC’s Statute of Rome to victims and the crime of sexual violence is commendable and ought to open uncharted territory. Historically, victims have occupied a secondary role or have for the most part been neglected in international criminal law (Schabas, 2016: 398). This has however changed under the ICC. Throughout the Rome Statute, there is great attention placed on the need to prosecute sexual violence and pay attention to the needs of sexual violence victims. This is quite important because of the historical treatment of sexual violence before international law.

mandate but to promote women's rights and to reap the benefits of women's important contributions in its work. Although much hope has been placed on the ICC to be able and willing to deliver a transformative gender justice legacy for women and men, girls and boys. It is not a stretch to require of the Court to develop comprehensive regimes and understanding for the crime of sexual violence which is a war crime and crimes against humanity under its jurisdiction. The Rome Statute of the ICC and its novel gender justice provisions after all ought to be regarded as the international community's renewed commitment to the Nuremberg Principles that no one is above the law, that individuals have rights to life and dignity and most importantly, they accentuate the international community's stance that responsibility for sexual violence is a matter that can no longer be neglected.

2.3 International Law and Sexual Violence

Sexual violence in war is by no means a new phenomenon and historically this crime has been seen as either a natural part of every war, or at least as a crime of secondary importance to others (Mannix, 2014: 250). The crimes of sexual violence during wartime did not really receive attention in proportion to their occurrence such as the Rape of Nanking, which not only is used as a metaphor, but reveals the widespread sexual crimes the Japanese troops committed against the civilian Chinese population (Kuo, 2002: 306). The abuse of the 'comfort women' by the Japanese military during World War II is also another example of the disregarded crimes committed against women which was not addressed until very recently (Kuo, 2002: 306). Silence surrounding the atrocities committed against women has often been a characteristic in the international community (Durbach and Geddes, 2017: 1265) but this, however, does not mean that the negative impacts of this crime were not known. As Patricia Visseur Seller (2014) notes:

“Dating from the first century, former warrior codes indicated that wartime sexual violence was not to be exacted upon persons occupying functional societal ranks. Basically, persons such as scholars, farmers, merchants or priests were not to be victims of the crimes which would weaken and destabilise a society. Hence, these prohibitions did not validate the worth of

the individual akin to any modern human rights conception but ensured that the non-military segments of society remained operational.”

The debilitating and destabilising effects of sexual violence on individuals and their communities were recognised long before the international criminalisation of such conduct (Mannix, 2014: 254). Despite the silence surrounding wartime sexual violence, initial prohibitions of this crime can be found as early as during the American Civil War in the Lieber Code enacted by President Lincoln. This code dealt with the conduct of Union soldiers and among the prohibitions was that against rape. The Lieber Code contained one of the first explicit prohibitions against rape (Schindler and Toman, 1988: 85).

International humanitarian law, a branch of international law also known as the law of war provides general rules of war regulating armed conflict such as the conduct of belligerents on the one hand, and the protection of the civilian populations on the other (Schmitt, 2007:10). The first international gendered protections against sexual violence can be found in the Geneva Conventions of 1949 (D’Aoust, 2017). Article 27 paragraph 2 of the Fourth Geneva Convention, Articles 75 paragraph 2(b) and 76 paragraph 1 of the First Additional Protocol, as well as Article 4 para 2(e) of the Second Additional Protocol, prohibit rape and enforced prostitution and any other form of indecent assault. Article 27 of the Fourth Geneva Convention states that: “women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.”⁸ Article 76(1) of Protocol I explicitly protects women during conflicts and states that: “women shall be the object of special respect and shall be protected in particular against rape, enforced prostitution, and any other form of indecent assault.”⁹

⁸ Geneva Conventions of 1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War.

⁹ Additional Protocol I to the Geneva Conventions 1949 relative to the Protection of Victims of International Armed Conflicts. While the Conventions include rape and enforced prostitution, they equate these crimes with crimes of honor and dignity rather than with crimes of violence.

The characterisation of CRSV and the protection afforded to women by Article 27 have been critiqued by feminist scholars on the grounds that by portraying sexual violence as an attack on a woman's honor, there is a flawed assumption that a woman is solely shamed by being the victim of rape and the great physical and emotional harm suffered by victims of sexual violence are discarded (Sharratt, 2018: 42). Secondly, defining the crimes of sexual violence as violations of the honor and reputation of women, dismisses these acts as criminal acts aimed at the physical and mental integrity of a person, which more often than not, constitute torture (Gabriel, 2014:70). Further feminists' critiques of international humanitarian law entail the discriminatory and inadequate treatment of sexual violence as found in the under recognition of sexual violence crimes as constituting "grave breaches" of the 1949 Geneva Conventions on the laws of war. Feminist scholars have argued that the omission to include rape as a grave breach of the Geneva Conventions fails to give due recognition to the seriousness of the crime that is sexual violence. (Bedont and Hall-Martinez, 1999, Charlesworth and Heathcote, 2018). Sexual violence crimes are not included in the articles enumerating grave breaches under the 1949 Geneva Conventions (nor under Article 3 common to all of the Geneva Conventions, which lays out minimum protections during the course of armed conflict). International humanitarian law as argued by Bedont and Hall Martinez (1999) has historically marginalised violence committed against women and dismissed it as inevitable consequences of war.

Despite the shortcomings of international humanitarian law, changing perceptions about CRSV have arisen and the international community has made great strides in ending impunity for human rights violations against women committed during conflicts. The international attention received by the rapes in the Rwandan genocide and Bosnia Herzegovina war were extraordinary and led to a degree of openness about a phenomenon that had historically been hidden and ridden with shame and shifted the view of wartime sexual violence solely as collateral damage in armed conflict within and between states (Skjelsbaek, 2014). These shifts led to a great focus placed on accountability and international law placing a normative framework to hold perpetrators accountable for conflict related sexual violence.

2.4 Africa and International criminal justice

Political violence and armed conflicts have resulted in gross human right violations and no other continent has suffered more than Africa due to a lack of legitimate institutes of law and accountability, resulting in a culture of impunity. The African continent has come a long way in its quest for international criminal justice and seems to have somewhat of a mixed record. The international criminal justice project consists of judicial institutions such as courts and tribunals that do not form part of any domestic criminal justice system and which in some scenarios sit outside the geographical jurisdiction of the location where atrocities are committed (Nkansah, 2011: 74). This project is linked to universal norms which entail respect for human rights, delivery of justice to victims, individual criminal responsibility, retribution, and an end of impunity for international crimes (Ncube, 2017: 423, 424). The vision which international justice upholds is to build bridges between the violence and impunity suffered by women, men, and children all over the globe.

Using international criminal justice to address war crimes and human rights violations has emerged over the last twenty-six years (Nkansah, 2011: 74) and the African continent has been no exception. Given the history of impunity on the African continent, the relationship between Africa and international criminal justice is imperative because the continent continues to be “an avenue in which international criminal accountability mechanisms have played, and still continue to play a prominent role in efforts to deal with and to combat impunity for atrocity crimes” (Bensouda and Jallow, 2008: 47). The global symbolic value of international criminal justice has come to exist through the establishment of international criminal tribunals. Prior to the 1990s Africa’s relationship with international criminal justice was non-existent. The establishment of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) in 1994 and 2002 respectively marked the genesis of a relationship

between Africa and international criminal justice and propelled Africa as a key player before international criminal justice.

According to Mwangi and Mphepo (2012: 254), Africa witnessed seismic political shifts in the 20th century that had a major effect on the development of international criminal justice on the continent. Aptel and Mwangi (2010: 265) examined the developments in international criminal justice in Africa pertaining to the establishment of international criminal courts/tribunals and their influences on the legal, political and human rights discourses in Africa. The development of international criminal justice on the African continent, they note, has been phenomenal. While analysing the work of two important international jurisdictions that operated on the African continent, namely the ICTR and the SCSL, these authors hail the judicial developments of these mechanisms but disregard their impact on the experiences of women.

The most noteworthy contributions of the aforementioned courts to international criminal justice include the first conviction for genocide, the first conviction for rape as an act constituent of genocide, sexual offences as international crimes, the first ever trial and conviction of a former African head of state by an international court, the first convictions in the history of international courts for crimes of intentional attacks on peacekeeping personnel, forced marriages, and the recruitment and use of child soldiers (Mwangi and Mphepo, 2012: 258, 264, Aptel and Mwangi 2010: 270).

These developments are noteworthy and should be applauded when evaluated against the background of impunity that has characterised the African continent. Mwangi and Mphepo (2012: 290) make an important point when they state that “the SCSL and ICTR established for the African people a historical record of the extent to which the perpetrators of crimes influenced and were involved in the commission of the crimes in the affected communities”. Such developments, they note, deserve rave reviews. However, despite substantial successes and important recorded judicial developments, the international criminal justice project ought to be pursuing goals that are not solely

retributive since there is also an ever- resonating call to provide all-inclusive and restorative justice to African victims which needs to be addressed.

The International Criminal Court (ICC) has embarked on furthering international criminal justice on the African continent, and the establishment of this court marked a significant moment in international criminal justice. The Court has been hailed a victory for accountability over impunity and serves as an international vehicle for delivering justice to victims of crime (Ncube, 2017: 426). The ICC is both a working judicial institution capable of prosecuting some of the worst mass human rights violations committed by individuals against their fellow human beings, and also a significant symbol of worldwide consensus on the denial of impunity for individuals who commit such crimes (Fisher, 2018: 542). The African continent has had a unique and significant relationship with the Court as African states were early supporters of the ICC, and all of the cases before the Court in its nascent years were from the African continent (Ncube, 2014: 429).

Examining Africa's relationship with the International Criminal Court, Cole (2013:673) notes that the continent's early relationship with the ICC was one of cooperation, good faith and mutual trust. This was evidenced, he argues, by Africa's commitment to the establishment of the ICC through various regional declarations such as the Dakar Declarations and regional meetings (Cole, 2013:673). Continental institutions such as the African Commission on Human and People's rights, the African Union (AU) and African civil society also showed commitment to the international criminal justice project through the establishment of the ICC (Cole, 2013:673-675). Such commitment and support demonstrated an affirmation to end impunity as well as a commitment to justice for victims. Strong and consistent support thus marked the nascent relationship between Africa and the ICC.

However, this close association was soon damaged. Africa's relationship with the ICC deteriorated, especially after the ICC issued a warrant for the arrest of a former sitting African head of state, President Omar Hassan Ahmad Al Bashir of Sudan (Cole,

2013:681). The arrest warrant released an unanticipated backlash against the ICC, which Cole (2013: 681) terms the 'Al Bashir factor'. This significantly contributed to the corrosion of Africa's relationship with the ICC and the AU's voice echoed the loudest. Cole (2013, 2013: 679-685) highlights Africa's criticisms of the Court under four themes: (1) The Africa-focused approach of the ICC, (2) the ICC as a conspiracy against Africa, (3) the Court's blatant disregard for head of state immunity, and (4) the undermining of ongoing peace processes by ICC prosecutions (especially of conflicts' protagonists). These criticisms have mainly been voiced by the African Union and African leaders, and one may ask what are the pronouncements made by the African victims/survivors of atrocities themselves?

“African sovereignty”, “peace first”, “African solutions to African problems”, and “self-protection” arguments have often been proclaimed by the AU. While there are merits in these stances, they however, seem to act as masks behind which transgressors of grave atrocities can hide. The African Union's attitude towards the ICC suggests that political considerations will continue to form an obstacle to international criminal justice (Ncube, 2017: 432) and as a result of such obstacles, justice will keep evading African victims.

Unlike Cole who does not see merits in the criticisms advanced by the AU, Fisher (2018) believes that to negate the concerns of the African continent as voiced by the AU, is to do real and continuous damage to the normative and perceived legitimacy of the ICC. The AU's disgruntlements are a genuine problem for the Court's legitimacy. Fisher examined Africa's role in the progression of international criminal justice and advances moral and political arguments for its continued role. Similar to Cole, she notes that the African continent has had a distinctive and weighty relationship with the Court since African states were primary supporters of the ICC and all of the cases before the Court in its early years have been from the African continent (Fisher, 2018: 545). Troubled relations between the Court and Africa, she adds, have challenged the Court's legitimacy as an arbiter of international justice.

She argues there is good reason to take African frustrations into account and not to dismiss them outright. The dismissal of growing disgruntlements towards the Court as expressed by the African continent will lead to further political and moral challenges to the ICC's legitimacy and to the international criminal justice project (Fisher, 2018: 551). Attention, she notes, should be placed on the criticisms, some of which have merit. With regard to the criticism advanced that the Court is an instrument of Western imperialism bringing justice to Africa, the procedure by which situations are brought before the Court, especially by the United Nations Security Council, creates concerns for the impartiality of the ICC (Fisher, 2018: 554). She notes "there is a genuine problem with a system that holds itself up as an arbiter of global justice but allows some actors to dictate who should be judged and who should not" (Fisher, 2018: 556).

Fisher argues that African states have a remarkably influential role in supporting or undermining the legitimacy of the Court. As much as the AU's criticisms of the ICC are a genuine problem for the Court's legitimacy, Fisher (2018:561) also argues that Africa, through the AU, has a role to play in saving the ICC's legitimacy. Rather than withdrawing, states such as South Africa, Burundi, the Gambia should take advantage of what could be an opportunity to reveal the ways in which unequal power before the Court and in the global referral system, hamper the most vulnerable states and reinforce global hierarchies in an institution that is meant to avoid them (Fisher, 2018: 544). African leaders as major contributors to this institution are in a significant position to help pilot the ICC and the international criminal justice project (Fisher, 2018: 544). She maintains that African states have a chance to do better, to be supporters of the international criminal justice project, and to improve the institution they once enthusiastically supported (Fisher, 2018: 544). ICC reforms, she adds, are an area in which African states can build on the international influence they have (Fisher, 2018: 561). Fisher calls for African states to collectively endorse and boost international justice by pushing for reforms to the ICC–United Nations Security Council relationship (especially UNSC referrals to the Court) (Fisher, 2018: 560).

Taking up on Fisher's call on Africa's role to bring about reforms in the ICC–UNSC relationship, Ncube (2018: 424) argues it is only through a partnership of convenience between the AU and the UN that the international criminal justice project can progress, and that victims of human rights abuses on the African continent can access justice. He argues that the United Nations and Africa through joint collaboration can play a key role in delivering justice to the victims of international crimes in Africa (Ncube, 2018: 434). While arguing that the AU and the UN are mutually dependent, Ncube (2018: 434) adds that the AU and the UN are partners in the administration of matters which affect the continent. He posits that it is only through better and deeper engagement between the AU, the UNSC and the ICC that a unitary international justice system can be achieved (Ncube, 2018: 434). While calling for and recommending a partnership between the AU and the UN, Ncube is cognisant of the legitimate concerns laid against the ICC by the African Union and, like Fisher, believes that these concerns and the shortcomings of the Court cannot and must not be ignored. He notes that the AU's attitude vis-à-vis the ICC has brought about a discordant relationship as well as stalled gains achieved by Africa in the international criminal justice project. Intrinsic to the project of international criminal justice is cooperation, and this cooperation extends to states, criminal mechanisms and continental institutions.

From an African perspective, Ncube (2018: 435) argues that international criminal justice serves to bring justice to victims of human rights abuses and its envisioned objective of ending impunity is central to the continent's peace and security agenda. Although the ICC is considered by some the latest western neocolonial pretext to exercise control over the African continent, the delivery of justice to victims in itself is not a neocolonialist exercise.

In its disapproving criticism of the ICC, the AU is not short of academic supporters and some scholars share similar criticisms about the ICC and voice their disdain for international criminal justice. Ferril (2008) rejects the international criminal justice project, its mechanisms, and its approach to Africa's internal conflicts and argues for new avenues of accountability and justice for those who have been violated in Africa's

internal conflicts. In her call for new justice for victims in Africa's conflicts, Ferril (2008: 378) argues that regional organisations are appropriate avenues for victims especially victims of sexual violence. She maintains that regional organisations have a cultural standard and that the economic and social rights link to these organisations are appropriate for ensuring that African victims receive the justice they deserve (Ferril, 2008: 378). She adds that regional organisations will not only bring criminals to justice but will provide a means to cope with violence and to promote societal values that respect women's rights (Ferril, 2008: 378). Finally, Ferril (2008: 378) argues that continental organisations provide a characteristically unchartered route for victims of sexual violence which allow them to evade often unresponsive and insensitive domestic systems. She calls for African nations through the African Union to follow steps similar to the European Union to ensure that victims' rights, especially those of women, are at the forefront of the continental agenda (Ferril, 2008: 378). While this is laudable, it fails to take into account the AU's reputation of being devoid of political will and having a complacent attitude towards the pursuit of accountability towards African leaders and justice for victims (Ncube, 2017: 430). Her argument for a regional solution thus leaves much to be desired in terms of whether victims will ever get justice.

Nkansah is neither a fervent supporter of the international criminal justice project nor the ICC, and argues that the package offered by internationalised justice alienates the affected communities and international adjudicators thereby denying the restorative element which is meant to be beneficial to the affected communities (Nkansah, 2011: 80). She also argues that international justice threatens fragile peace processes and favours transitional mechanisms such as Truth and Reconciliation mechanisms and hybrid courts. She believes that justice should be closer to the communities who seek it.

While justice should be dispensed as close as possible to the victims, should victims of crimes be deprived of justice if the mechanisms meant to promote accountability at national or regional levels fail or are inadequate, and the only existing "practical" internationalised mechanisms are flawed? With no prospects of redress at the national or continental levels, international criminal mechanisms are a last resort for African victims.

While not being a proponent of international criminal justice and its mechanisms, Nkansah fails to acknowledge that in themselves Truth and Reconciliation mechanisms and hybrid courts are part of the international criminal justice project, as argued by Ncube (2017: 426). The latter notes that international criminal justice is not just confined to the realm of international prosecution institutions and the procedures which flow or are supposed to flow from them, but also consists of non-criminal/non-prosecutorial mechanisms. Nkansah (2011: 81) is however right that the prospects of international criminal justice in Africa are currently uncertain; delivery of justice to victims would first and foremost require political will by African leadership and the African Union to collaborate with judicial mechanisms to bring an end to impunity.

The reign of international criminal courts, Wald (2006) argues, have had some kudos as well as concerns. She notes there has been a phenomenal development of international criminal courts in the 20th century and that these courts have provided not only cause for hope and satisfaction but also insufficiencies. She is an antagonist of the ICC and the international criminal justice it aims to achieve. She advances that international courts are needed because of the international consensus for some form of accountability for mass human rights violations, and that these courts, because they exist, have deterrent, reconciliatory and retributive effects and therefore educative power for the world's citizenry (Wald, 2006: 247-248).

Wald (2006: 251) notes that if the international community wants to hold war crime offenders to account, there will have to be some sort of international criminal courts for the indefinite future and that these need to be hybrid courts which are partly national and partly international. Alongside Nkansah, she opts for and believes that hybrid courts are the possible wave of the future but asks if the courts in themselves are sustainable? Will every country that has just recovered from war be able to afford them? She notes that the flaws of the international criminal tribunals consist of lack of outreach, an inability to reach the hearts and minds of the people who have suffered, geographical location, and little to no familiarity about the work of these tribunals by the affected communities (Wald, 2006: 252). While noting these flaws, Wald agrees with Nkansah that the flaws

of the international criminal justice estrange both the affected community/individuals and adjudicators. Similar to Nkansah, Wald believes that judicial mechanisms by being closer to the populace, will better engage with communities and not solely achieve legal goals. She argues that hybrid courts could solve some of the deficiencies of the international criminal justice project (Wald, 2006: 253-254). In themselves hybrid courts are mechanisms of international criminal justice as noted by Ncube (2017: 426) because they are international prosecution institutions. While it remains contentious which mechanisms of international criminal justice work better than others because each has its imperfections, what is imperative is the delivery of justice to victims. Wald however urges scholars to reflect and devise continental judicial solutions for the delivery of justice to victims, given that proximity does matter for an all-inclusive restorative justice. Wald (2006: 260) is correct when she states that one does not yet know the end of the story of international courts, but there is nevertheless an acute need for them given the increasing rise in terrorism, militarisation and militarism in an interdependent world which longs for justice.

The discordant relationship between the ICC and Africa has been the topic of many scholarly debates and while various scholars hold diverse opinions on these deficiencies, some scholars such as Cole, Fisher, Ncube believe in the existence of an opportunity through cooperation and political will on the part of African leadership and the AU to work constructively towards changes that would not dismantle avenues of protection and justice for individuals against attacks by their own governments. While the debates surrounding the ICC and Africa continue, the issue of most pressing concern remains the victims of international crimes on the African continent particularly African women. Disagreements between the AU and ICC should not divert attention from the plight of victims of war crimes and the crimes against humanity which have taken place on the continent. Most of the literature which focuses on the AU-ICC feud and on Africa and international criminal justice, however, have in common that they are fairly passive in mentioning African victims. Nothing much is said of African women, their needs or experiences, or the direct impact of international criminal justice in their lives despite the fact that they are vulnerable to violence.

The current relationship between Africa and the ICC is characterised by apprehension and uncertainty. A critical analysis of the ICC-AU disagreement does not fall within the scope of this study but providing some context on the relationship between Africa and international criminal justice is important, given that African situations which relate to violence and grave breaches of human rights, are before the ICC and are examined. At the centre of these situations of violence and turmoil are African victims most especially women. While acknowledging that debates about Africa and its relationship with international criminal justice through the ICC will always be contentious, the focus of this study is on how the ICC has served the victims of abuses on the African continent, particularly African women who have been victims of violence.

Existing and operating in its third decade, it is important to establish what international criminal justice has contributed both to societies that have experienced atrocities and individuals in terms of human rights. In probing any human rights project that aims to restore respect for human rights, it is essential to particularly analyse its impact on women (Freeman, 2011: 514). Essential therefore, is to question what impact the international criminal justice project has had on the advancement of women's rights. Grewal attempts to answer this question by probing the revolutionary potential of international criminal justice for women's human rights. She notes that one of the biggest assets of the international criminal justice project is its ability to deliver genuine positive change to the lives of women after conflict (Grewal, 2016: 57). She believes that this can be achieved through the international criminal prosecutions which have become a central element of international criminal justice (Grewal, 2016: 59).

Alluding to the different purposes of international criminal justice, she notes that through its different vehicles, it accomplishes: accountability for the perpetrators of atrocities without allowing for 'mob justice', a truthful record of what occurred, a sense of peace for the victims, deterrence against future atrocities, reconciliation, strengthening of domestic legal institutions and the rule of law, and raising global normative consciousness (Grewal, 2016: 60). According to Grewal (2016: 60-64), the benefits of

international criminal justice for women includes deterrence and an end of impunity against sexual and gender-based crimes and the advancement of women's rights. While it is worthwhile to analyse each of these assertions, this study emphasises how and if international criminal justice has advanced African women's rights with regards to truthful records about their experiences in times of conflict, and with regards to what sense of closure they receive as victims/survivors of atrocities in international criminal trials.

Grewal critiques the benefits of international criminal justice for women's rights advocacy. She adds that the track record of international criminal prosecutions, especially for sexual and gender-based crimes, is not as laudable (Grewal, 2016: 65) and seems to not be convinced that international criminal justice through prosecutions that have occurred so far, represents a ground-breaking shift in terms of recognising and upholding women's rights. To Grewal (2016: 68), international criminal law not only fail to contribute to the dismantling of negative gender stereotypes, but in fact provide venues for their reinforcement. Without the use of examples to assert her claims, it is quite difficult to accept Grewal's arguments. This study aims to investigate these claims and add to the debate.

Grewal also fails to give due consideration to the development of gender justice. The term gender justice is seldom given a precise definition and is often used interchangeably with notions of gender equality, women's empowerment and gender equity (Goetz, 2007: 17). Grewal's predominant focus on international criminal justice fails to consider how the international criminal justice project has engaged with gender justice.

According to Mukhopadhyay (2007: 3), gender justice consists of the ending and delivery of redress for inequalities between women and men that have resulted in men's domination of women. Mukhopadhyay considers gender justice as both an outcome as well as a process in terms of what is to be achieved and how it is to be achieved. Gender justice as an outcome, implies access to and control over resources combined with agency (the ability to make choices) (Mukhopadhyay, 2007: 4). Gender justice as a process

introduces a supplementary essential element: accountability, which implies responsibility and answerability of precisely those institutions set up to dispense justice for women (Mukhopadhyay, 2007: 5). Noting that discussions of gender justice have many different starting points, the starting point for this study goes back to before the ICC.

Observing that Goetz's definition of gender justice is more related to development, her concept is re-tailored for this study in terms of outcome and process to mean the following. Gender justice in this study as an outcome is taken to mean recognition of sexual violence, gender violence, gendered harms, elimination of masculine dominance before international institutions, the interpretation of gender in order to make sense of wartime experiences, and giving women a voice. Gender justice as a process monitors and holds accountable international criminal institutions such as the ICC, put in place to bring about gender justice as mandated in its various legal frameworks.

2.5 Rape as a weapon of war

The silence surrounding violence against women in the past obscured the reality that this is an international problem (Chinkin and Charlesworth, 2005: 940). Only at the beginning of the twentieth century did violence against women, specifically conflict-related sexual violence, become an issue of international concern. Devastated nations on the African continent can link most of their victims, especially of wartime sexual violence, to civil war or political violence. There has been much focus in the past decades on placing wartime sexual violence on the international political agenda so that it can no longer be unheard, unseen or unspoken about (Buss: 2014 :6).

From the 1990s there has been a shift in how sexual violence has been framed in the global policy debate, academia and the media (Green, 2000). According to Baaz and Stern (2013:1) prevailing understandings have moved from perceiving sexual violence in war as a regrettable but inevitable aspect of warring, to seeing it as a strategy, weapon, or tactic of war which can be prevented. The international community has finally recognised rape/sexual violence as an important global security problem, and the use of

‘rape as a weapon of war’ has become a new global mantra. “This mantra, through its global appeal, has produced a compelling narrative, and has successfully called for engagement to address rape in conflict” (Baaz and Stern, 2013: 12). Notwithstanding the progressive appeal and success in bringing exposure to rape and its victims, this mantra carries some concerns. It reproduces a limited register of how one can hear or attend to the voices of both victims and perpetrators (Baaz and Stern, 2013: 15). The notion that rape is a systematic weapon of war assigns particular meaning to rape in war and to its perpetrators and victims/survivors of rape. The conceptual framing of sexual violence as a weapon of war assumes that women primarily and solely experience rape in times of war. There is a lack of consideration of other forms of gendered harms which women experience. The mantra further compartmentalises women solely as victims and men solely as perpetrators (Baaz and Stern, 2013: 15). When this discourse is evaluated against the silence and neglect that was previously associated with rape, the narrative promises a brighter future for survivors but is nevertheless problematic.

Buss (2014: 3) raises concerns about how much attention conflict-related sexual violence, particularly on the African continent, has received. She equates the international garnered attention to the term ‘visibility’ (Buss, 2014: 5). According to Buss (2014: 3) much of the heightened attention paid to sexual violence on the African continent mostly focuses on the horrors and dark imagery of sexual violence in conflicts. Buss shares similar views with Baaz and Stern surrounding the ‘rape as a weapon of war’ mantra and believes that it needs to be challenged given the assumptions and limitations that it creates and perpetuates.

Utilising Buss’ (2014: 4) ‘visibility’ to the ‘rape as a weapon of war mantra’, the visibility or the act of making visible conflict-related sexual violence has its pros and cons. There has been an establishment of visibility and invisibility of actors, and a visibility and invisibility of harms. There has been an over-visibility of rape victims, and an invisibility of other gender-based violence victims. There has been an over-visibility of women as victims, and an over-visibility of men as perpetrators. There has been an invisibility of women as perpetrators, and an invisibility of men as victims. There has been an over-

visibility of rape and an invisibility of other gender-based crimes. Consequently, there is still much that needs to be known and understood about sexual violence as well as the vulnerability that women and girls experience in times of conflict.

Buss (2014: 7) maintains that one of the ways to explore the limitations of the mantra is to ask, ‘where are the women?’. According to Buss (2014: 7), this question functions as an analytically disruptive and productive question which opens up discourse, explores constructions and silences, and exposes exclusions. It also brings in new narratives and new characters (Buss, 2014: 7). Most importantly, ‘where are the women?’ investigates and accounts for women’s lived experiences of conflict, exposes militarised violence, and reveals the various levels at which gender structures the practices and representations of war (Buss, 2014: 7).

2.6 Rape as a weapon before international engagements/institutions

Justice for victims of sexual violence has been a powerful vision of the international criminal justice project (Koomen, 2013: 256). Buss (2014: 17) believes that institutional milieus are an important site to investigate the dominant narratives, knowledge or consensus that exist on conflict-related sexual violence. A focus on international institutions generates important research directions on how institutions working on conflict-related sexual violence privilege certain narratives and crimes over others. The establishment of international criminal tribunals needs to be seen in conjunction with the acquired political force which the recognition of sexual violence was gaining in the 1990s. International criminal justice through international criminal tribunals have been ground-breaking in recognising conflict-related sexual violence. The ‘rape as a weapon of war’ mantra is universal and well established (Baaz and Stern, 2013: 5) and international criminal tribunals have caught up on it as exemplified in the ICTR and SCSL case law. As stated earlier, ‘the rape as a weapon of war’ mantra is infused with meanings, assumptions and constructions, and one needs to query if international criminal tribunals are aware of its multiple meanings, and are they replicating certain assumptions?

Oosterveld (2014: 147) examined the representation of sexual violence before international criminal tribunals that have operated in Africa with a case study on the SCSL. She investigated the picture of conflict-related sexual violence painted by the Court and applauds the SCSL for its characterisation of ‘rape as a weapon of war’. Oosterveld (2014: 147) also acclaims the SCSL for its added helpful detail in understanding how and why rape was used in the Sierra Leone conflict and its wide-ranging representation of the rape of women. Whilst she commends the SCSL’s focus on ‘rape as a weapon of war’ for exposing the traumatic experiences of women and girls subjected to various forms of rape, the SCSL’s focused approach ignored other non-sexual crimes and non-sexual harms women were subjected to.

Mibenge (2015: 15) investigated another international criminal justice sector’s response to gross human rights violations and war crimes, namely the ICTR. International criminal justice sectors, she argues, interpret human rights norms in order to determine accountability, and produce compelling legal narratives that detail and help make sense of the infliction of political violence on men and women. While exploring judicial processes of accountability which respond in part to the widespread acts of sexual violence and other forms of gender-based violence, she notes there is an erasure of gender from the war narrative. This absence is in part due to limited understandings and engagement with gender by the ICTR. According to Mibenge (2015: 160), the ICTR’s responses to conflict have essentialised a common image of the African woman as solely raped. This is similar to Buss’ (2016) stance that the course of making rape visible alongside the focus on rape as a weapon of war has elevated a specific form of sexual violence, notably rape. Rape victims particularly women from the African continent have been raised to a hypervisible level and this hypervisibility according to Buss (2014: 14) creates an “Iconic Raped Woman”. This iconic raped woman is similar to Mibenge’s “perfect victim” before the ICTR and SCSL. Are these icons present before the ICC? How does this ‘iconic raped woman’ make sense of her experiences of war if she is present before the ICC? What narratives does the ‘perfect victim’ or ‘iconic rape woman’ promote? These categories are narrative icons that deserve attention. They expose certain institutional practices and discourses that exist before international institutions.

It is often assumed that international judicial mechanisms, because of their legal legitimacy, are not biased and are exempt from prejudice and impartiality (Mibenge, 2015: 10); however, bias coming from the international justice process should be investigated. These processes are not immune from projecting different forms of bias on victims. As Ni Aolain (2009) and Mibenge (2015) respectively note, little investigation has gone into the patriarchy inherent in international institutions or international criminal justice.

The politics of intersectionality of gender, ethnicity and sex should figure heavily in the project of international justice for victims of sexual violence. Gender, ethnicity, class, religion shape the way men and women experience insecurity in armed conflicts, especially on the African continent. Alison (2007: 75) while examining wartime sexual violence as one of the most recurring wartime human rights abuses, argues for further development of theorisations of the way that gender and ethnicity feature in wartime sexual violence before international criminal judicial mechanisms. Wartime sexual violence remains a critical issue for women's human rights deserving of attention and there is a poor interpretation in the way constructions of gender intersect with constructions of ethnicity. International judicial mechanisms are culpable of this poor interpretation, specifically interpretations of gender. According to Alison (2007: 89), any attempt to address wartime sexual violence requires a clearer understanding of the intersections between gender and ethnicity.

A major consequence of an investigation into wartime sexual violence that solely focuses on ethnicity, is the erasure of unequal power relations between men and women which account for the violence. International tribunals are erasing the gender component from war narratives specifically when dealing with ethno-national conflicts as argued by Mibenge (2015) and Alison (2007). Most African conflicts have an ethno-national facet to them, and the ICTR and SCSL analysed by Mibenge (2015) have focused on this which accounts for the existing impoverished conceptualisations of gender and violence. Could this inconsistency and the invisibility of gender by international criminal tribunals

be a result of the existence of an 'institutional patriarchy' before international institutions that Ní Aoláin (2009) posits? Regardless of the reason, in most African countries, wartime sexual violence is both gendered and ethnicised, and the link between gender, ethnicity, and wartime sexual violence can therefore not be downplayed.

Conclusion

This chapter provided a comprehensive literature review and situated the ICC within its gender justice mandate. The next chapter presents the theoretical frameworks which underpin this study.

CHAPTER 3: THEORETICAL FRAMEWORK

3.1 Introduction

This chapter introduces the theoretical framework of the study which is feminist security theory. In light of the relationship between the ICC and Africa, the African woman is most deserving of attention given that her human security on the continent has always been precarious and is exacerbated in times of conflict. War and its resulting atrocities pose a serious threat to women's security. In addition to this framework, an intersectional framework is added to complement the feminist security theory.

Security discourses in mainstream International Relations (IR) have traditionally been state-centric. Traditional notions of security view the state as holding the monopoly in right and means to protect its citizens (Owen, 2006: 374). Security revolves around state security which encompasses concerns surrounding peace and war within and outside the state (Blanchard, 2003: 1290). State control and state security are enabled and achieved through militarism, surveillance and policing to maintain peace as well as law and order (Owen, 2006: 376). However, the same states or nations which uphold these tenets have failed their citizens by violating their basic human rights (Owen, 2006: 376).

Feminist scholars such as Christine Sylvester contest the illusion of total security afforded to individuals, especially women, under the state-centric approach of security and observe that security for women has "always been partial, elusive and not guaranteed" (Blanchard citing Sylvester, 2003:1295). Feminist scholars have been challenging the study of IR, and scholars such as Enloe, (1996), Peterson & Runyan (1993), Sylvester (2000) have been exploring the role that gender plays in areas such as war, conflict and global security

A shift from an emphasis on a state-centric view of security to a focus on the security of people/individuals has brought about the concept of human security. This shift came about as a result of universal processes of political liberalisation and democratisation

which created new spaces and new fault lines such as political and economic instabilities and conflicts within states (Owen, 2006: 374). The concept of human security contests the idea of state security and promotes the idea that states must concern themselves with the security of their people (Chenoy, 2005: 43, Owen, 2006: 374). The very basis of human security entails respect for human rights and fundamental freedoms (freedom from want and freedom from fear). Human security according to Kaldor (2012) is threefold. Firstly, it entails the security of individuals and the communities in which they live and infers a commitment to human rights (Kaldor, 2012: 445). Secondly, it consists of the interrelationship between freedom from want and freedom from fear (Kaldor, 2012: 445). Finally, it implies an extension of a rule-governed security as opposed to war-based security, meaning relations between states should be governed by a law archetype rather than a war archetype (Kaldor, 2012: 446). According to the Human Development Report of 1994, human security is seven-fold. This entails personal security, food security, environmental security, health security, political security, economic security and community security. A human security approach is important because it conveys individualistic concerns related to peace, security and human development.

Despite seeming progressive, the concept of human security has however not been welcomed in feminist contexts because the terms “human” or “people” have usually failed to incorporate women and failed to be gender sensitive. According to Chenoy (2009: 23), the term “human” in human security has been considered gender neutral and therefore fails to give due consideration to women and excludes their experiences. The notion of human security collapses femininity or masculinity into a term which obscures the gendered underpinnings of realities, experience and practices (Hudson, 2005: 157). Women’s security simply remains precarious or elusive if a gender lens is not applied to human security. Feminist scholars thus argue for an additional feminisation of the human security approach. Hudson (2005: 155) makes a case for more fluid context-based interpretations of gender in human security and in agreement with Hudson, this study aims to offer an alternative vision of human security through the lens of gender.

3.2 Feminist security theory

Feminist security theory is an important contribution to security discourses because it places significance on the deconstruction of androcentric knowledge by integrating feminist considerations, analyses, and activities within the broader framework of security and human security (Chenoy, 2009: 30). Feminist security theory challenges the key concepts of traditional international relations which are war, peace and security (Blanchard, 2003: 1289). It investigates and problematises the relationships between women, security, and peace and war, and foregrounds gender as a social and symbolic construct involving relations of power (Wibben, 2011). Feminist security theory proposes transformative ways of conceptualising peace, war, and post conflict transitions (Wibben, 2011) and addresses how women and gender are relevant for understanding security (Runyan and Peterson, 2014: 142). It gives agency to women and highlights the diverse roles women play in violent conflicts (as victims, protesters and participants) and in peace processes (Sjoberg, 2009). Through scrutinising and redeveloping traditional notions of security, feminist security theory brings attention to new or neglected subjects and experiences (Sjoberg, 2009). Moreover, it accentuates the effects and consequences of war on women who have constituted and continue to constitute an increasingly large proportion of casualties (Kaldor, 2012). Feminist security theory exposes ways international interventions and operations widen or diminish unequal gender relations as well as discloses women's absence from decision making positions (Smith, 2018). Finally, it uncovers the ways in which women and girls experience insecurity which differ from men, and how they are subject to gender hierarchies and power inequalities that exacerbate their insecurity (McKay and Mazurana 2004, 153; Tickner 1992, 42). A feminist security framework identifies existential threats to women and poses questions such as what security means to women.

Violence against women is a threat to women's security and women throughout the world live with constant risk or are vulnerable to physical, sexualised and psychological harm (Thomas and Tiessen, 2010: 481). Feminist security theory points out the serious threats to women's security such as war and wartime sexual violence. It uncovers the political

and symbolic nature of wartime sexual violence which is assumed to be natural and private (Blanchard, 2003:1300).

Over the course of time, feminist scholarship has strived to establish links between gender and violence in war (specifically wartime sexual violence). Feminist scholars have demonstrated that wartime sexual violence is institutionalised in war, is recreational, and is a weapon (Card, 1996, Werchick 2004, Brown 2011, Enloe 2000). Sjoberg (2009) notes that as an institution, war is closely associated to gender and specific constructions of masculinity. Sexual violence in war reveals a great deal about masculinities and the pursuit of masculine dominance and power in situations where women's bodies continue to be violated (Brown 2011: 65). Gender according to feminist security theorists such as Sjoberg (2009), Peterson and Runyan (2010) shapes the way men and women experience armed conflict. These scholars argue that understanding and conceptualising wartime sexual violence requires paying attention to constructions of masculinity and femininity, more precisely the complex intersections between gender and militarisation. In agreement with feminist security theorists such as Sjoberg, Peterson and Runyan, gender matters in this study in two main ways: it is necessary, conceptually, for understanding women's experiences; and it is essential to thinking about solutions and promoting positive change in the security realm for women. Paying attention to gender as underpinned in feminist security theory, re-envisioning security as starting from the perspective of individual women's lives and experiences (Sjoberg, 2009).

While gender accounts for how women experience insecurity, it is not the only factor at play as noted by Hudson (2005: 161). Gender alongside other markers such as sex, race, and ethnicity account for various insecurities which women experience. In this study however, gender is integrated into security discourses and holds prominence because:

[G]ender has an integrative potential as a tool of security analysis which is facilitated by the transdisciplinary and interdisciplinary nature of feminist scholarship. A feminist perspective extends the nature of society to the realm of security and reminds one that comprehensive security can only be achieved if the relations of domination and submission in all walks of life are eliminated and

gender equality is achieved. Moreover, gender as a lens in security discourses reveals the multifaceted mix of interlinked gendered knowledge constructions and practices within all the sectors of security and at all levels such as patriarchy and militarism (Hudson, 2005: 161).

Gender in this study is not the equivalent of affiliation to biological sex classes but rather a cross-cutting issue and a deeply political issue (Puechguirbal, 2010: 183) which shapes the way men and women experience insecurity in armed conflict.

Gender is a system of symbolic meaning that creates social hierarchies based on perceived associations with masculine and feminine characteristics. Gender is not a variable that can be measured as a “yes” or “no” (or “male” or “female” question) but is a more complicated symbolic and cultural construction (Sjoberg, 2009: 245).

Feminist security theory uncovers the gender constructions associated with war (men as protectors and women in need of protection) and acknowledges the varied ways in which women experience and participate in conflict (Hoogensen and Stuvoy, 2006).

The link feminists have strived to establish between gender and violence is known as the gender story as devised by Baaz and Stern (2013). In this story the link between violence and gender is established through militarisation. Militarisation is important in forming violent militarised masculinities which bring about the perpetration of wartime sexual violence performed as hypermasculinities. The latter produce and transform soldiers from men into violent beasts/machines of war (Parpart 2010: 154). Strong military masculine ideals require boys/men to undergo the destruction of civilian/feminised identity and build up the macho soldier (Baaz and Stern, 2013: 18).

Wartime sexual violence thus becomes a “site for performing masculinity” and “reaffirming heteronormativity” (Parpart and Thompson, 2011), or in other words, it is the fault of gender in the sense that it is an expression of the violent masculinity necessarily produced through militarisation (Baaz and Stern, 2013: 30). The process of

conflict entails a logic of militarisation which requires particular articulations of ideal types of masculinity and femininity. The main type of masculinity which prevails during war is hegemonic militarised masculinity and has as its foe femininity (Peterson and Runyan, 2010: 164). The ideal masculinity produced during war and within the military applauds violence, order, masculine-coded obedience and domination (Baaz and Stern, 2013:18).

Most global discourses of wartime sexual violence subscribe to this gender story. The mantra of “rape as a weapon of war” which has been common in international engagements is anchored within the gender story. This story according to Baaz and Stern (2013: 27), views rape as a gender act, effective precisely because it is gendered. According to this logic, rape is a violent act not only against female sexed bodies, but against the ‘enemy’. Particular notions of masculinity such as militarised masculinities and femininity help in establishing the link between violence and gender. The story helps in making sense of the logic of vulnerabilities in war by giving an insight into how associations of certain subjects with ‘feminine’ attributes and other subjects with ‘masculine’ attributes render certain subjects particularly vulnerable to (sexual) violations in conflict. This explains the popularity of the ‘rape as a weapon of war mantra’ within academic, policy and international settings. Linked to the purchase of the mantra is the notion that wartime sexual violence is avoidable and can be eradicated if culpable masculine subjects abstain from rape and punish the perpetrators of these atrocities, or if culpable masculine subjects can revise or forgo their violent masculinity.

While gender is theoretically, empirically, and normatively essential to studying women’s experiences of war in this study, some feminist scholars in making sense of wartime sexual violence establish a link between sex and violence. Baaz and Stern (2013: 17) call this the sex story, and according to this story, wartime sexual violence should be understood in terms of male heterosexuality as a natural force. Central to this story is the male soldier’s libido which is always in need of sexual satisfaction (Baaz and Stern, 2013: 17). Scholars such as Enloe (2000), Wood (2009), and Thornhill (2000), argue that wartime sexual violence is institutionalised and pervasive in times of armed conflict

because “soldiers do not enjoy ‘normal’ access to women in other ways and they will ‘substitute’ sex by force for ‘normal’ sex out of sheer necessity” (Wood 2009: 135). This explanation accounts for notions such as recreational rape (Enloe, 2000), lust rape (Baaz and Stern, 2013), and the “sexual urge” explanation (Seifert, 1996) which all view the resort to wartime sexual violence as a result of men’s desires and biological make-up. The ‘sexual urge’ explanation according to Seifert (1996 :35), is the traditional household explanation given for rapes in the context of war. According to this household explanation, wartime sexual violence is a natural occurrence to be ascribed to the male anthropology or acts of hordes run wild.

The relationship between sex, gender and violence has been a subject of discursive debates in feminist scholarship. Notions of gender and sex before feminist literature have been treated as distinct elements in understanding wartime sexual violence. This distinction has led to what Baaz and Stern call the sex/gender paradox which occurs when a focus on gender to make sense of violence refutes the power or workings of sex, yet the precepts of gender are anchored within notions sex (Baaz and Stern, 2013: 20). An investigation of wartime sexual violence before the establishment of the ICC in this study, provides an example of how the sex/gender paradox operates and prevails and how familiarity with this paradox helps to better understand the ways in which sex haunts gender in the reading of gendered experiences before the ICC.

3.3 Security and the ICC

According to the Rome Statute system, the Assembly of States Parties serves as the ICC’s administration or managing body. The Assembly of State Parties is not an organ of the ICC but serves as an oversight, and legislative body. It elects key actors within the ICC such as judges and prosecutors. It establishes the budget of the ICC, amends law and procedure, and conducts other activities consistent with the Rome Statute (Rome Statute, 1998, ABA-ICC Project, 2020). The International Criminal Court (ICC) is a permanent international legal body that was formed by a multilateral treaty called the Rome Statute. The ICC, which is independent of the United Nations, is based in The Hague, the

Netherlands. It has four primary organs which are the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. These are displayed below.

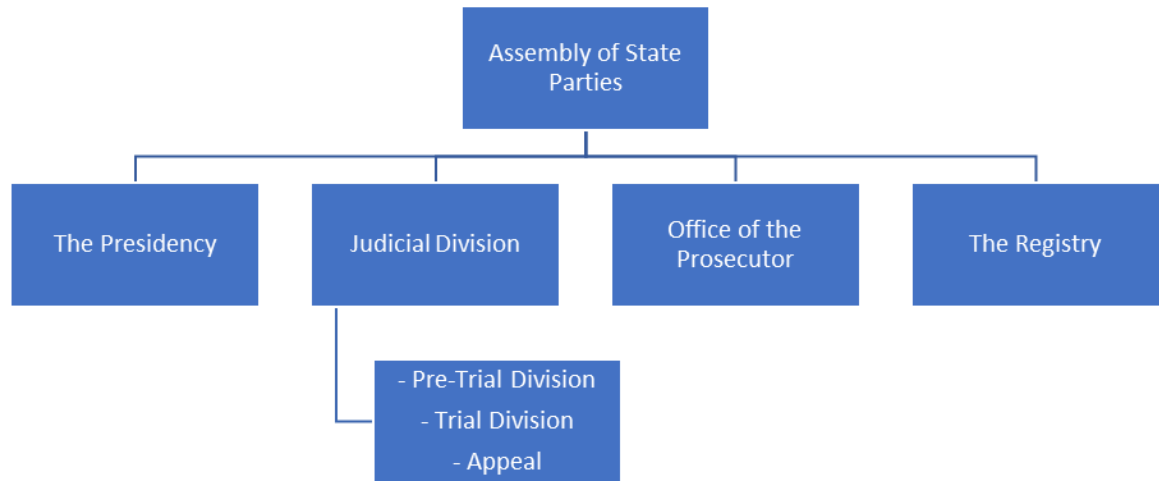


Figure 3.1. Formation of the ICC

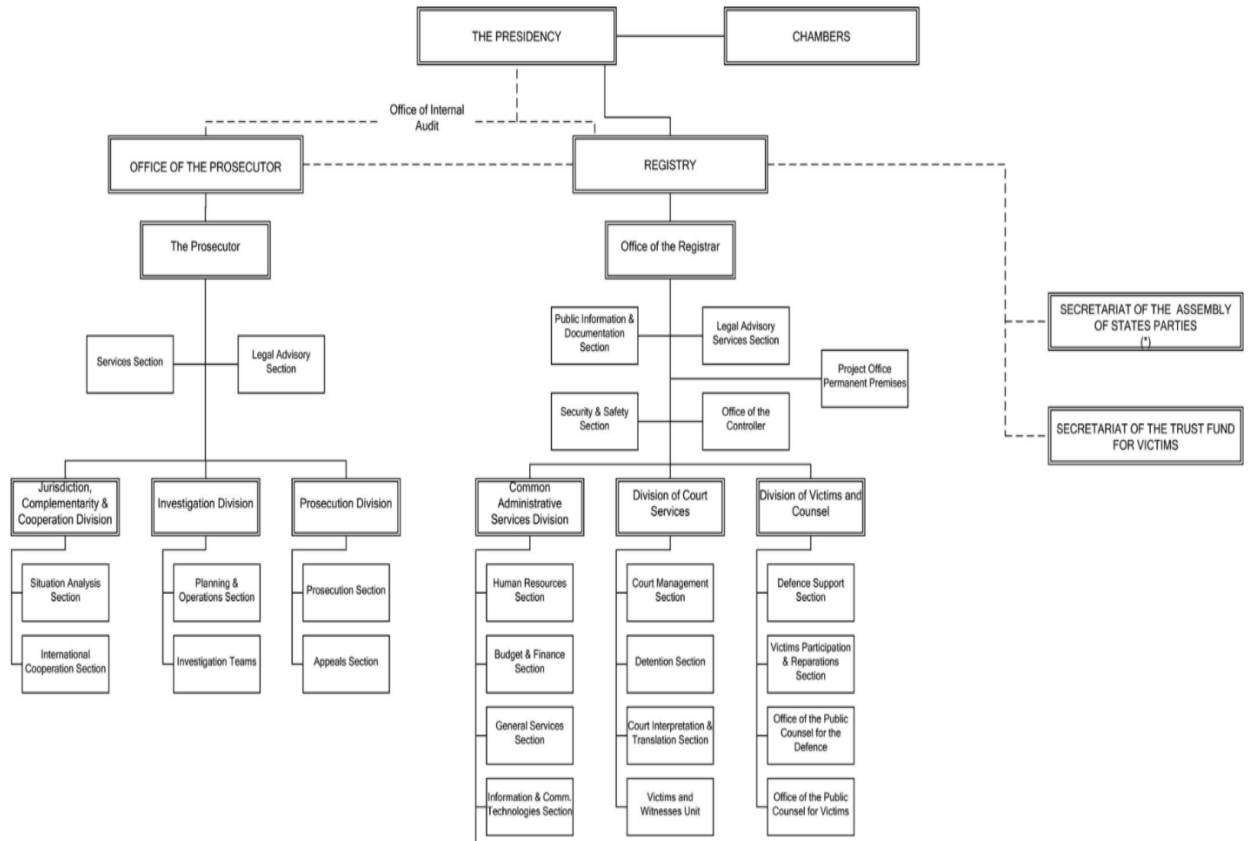


Figure 3.2. ICC detailed organigram (Human Rights Watch, 2008)

“The Presidency conducts external relations with States, coordinates judicial matters such as assigning judges, situations and cases to divisions, and oversees the Registry's administrative work. The Judicial divisions consists of 18 judges in 3 divisions – Pre-Trial, Trial and Appeals. These conduct judicial proceedings before the ICC. The Office of the Prosecutor conducts preliminary examinations, investigations and prosecutions and the Registry conducts non-judicial activities, such as security, interpretation, outreach, support to Defence and victims' lawyers” (ICC-ABA project, 2020). From its inception in 2002 till date, the ICC has a total of 28 cases ensuing from the African continent. These cases entail completed cases such as the *Lubanga*, *Katanga*, *Al Mahdi*, *Bemba*, *Kenyatta*, *Gbagbo* and *Ble Goudé* cases. Ongoing cases consists of the *Ongwen*, *Al Hassan*, *Yekatom* and *Ngaïssona* cases. Pending cases comprise of *Al Bashir*, *Kony et al* and *Gaddafi* cases (ICC Fact Sheet, 2020).

How does the human security approach relate to international justice or the ICC? Firstly, international justice is a necessary condition for human security as argued by Meernick (2016: 56). International criminal tribunals can contribute to the human security of women by distinguishing and accounting for the gender-specific harms and violations that women experience and by providing legal processes that are impartial to all. However, it has always been assumed that institutions of law, because they echo equality of all people before the law and because of their perceived neutrality and legal legitimacy, do not have any gender biases (Mibenge, 2015). Despite this notion of equality before the law, the interpretation of the law and its processes and actors do not afford women the same rights or opportunities as men. There are many norms, attitudes, and traditions that uphold gender bias and inequalities within international judicial institutions mandated to bring about gender justice, which result in the marginalisation or exclusion of women and their experiences (Chappell, 2014).

An investigation of the ICC is important because it forms part and parcel of transitional justice mechanisms, and the language of security, gender violence, and sexual violence has become ever-present in transitional justice discourses and institutions. As a judicial mechanism which is meant to be impartial and to differentiate between the gender-specific injustices women experience, it is essential to understand and explore what happens to and for women before the ICC and how this institution impacts women's human security. Feminist security theory pays attention not only to the security of individuals and communities within states but also to the security of individuals before international organisations. This is in tandem with the feminist axiom that the 'the personal is international and the international is personal' (Moon, 1997: 111).

As the most prominent contemporary symbol of international criminal justice, the ICC serves as a substitute for the frail national judicial systems that characterise the African continent. While the ICC can assist many African societies to transition from war to peace, it can also play a vital role in promoting African women's security. This echoes Hudson's (2005) argument that "security of all [African] people is linked to the security of the [African] women on the continent."

This study, underpinned by feminist security theory, takes into account gender and women's human security and seeks to reveal the (im)partiality of institutions meant to address women's harms, to disclose the intersections among personal and institutional forms of power, to expose the gender biases and hierarchies that exist in non-state institutions, and to highlight how some dominant discourses weaken the significance of women's experiences and realities. This study not only promotes gender justice but advances the need for international institutions to recognise women's experiences and bring about human security for women.

The study examines the complex interrelationship between masculinities and femininities and war that continue to warrant much attention, as emphasised by feminist scholars inter alia Ann Tickner, Mary Zalewski and Jane Parpart. An examination of masculinities offers insights into the practices that sustain the insecurity of women. Most importantly, feminist security theory aims to forefront girls' and women's experiences to show that the eradication of gender-linked insecurities under global systems of patriarchy is critical (Sjoberg, 2009: 123). Relying on feminist security theory, this study identifies the insecurities and experiences of violence produced by gender relations of domination and subordination.

In a nutshell, this study views gender conceptualisations of security as important and takes pride in the fact, as noted by Hudson (2005: 171), that "feminist conceptualizations of security have done what no other theory of security (and IR) did before and that is - make the field of IR more self-aware and pushed security discourses outside the confines of mere problem-solving into the realm of engaging with power".

3.4 Intersectionality

The conflicts in the situations and cases before the ICC are important in exposing the intersectional nature of wartime sexual violence particularly in relation to how women are targeted due to various identity markers such as their gender and ethnicity. As Grey, Buss and Mibenge note, in times of conflicts, men and women may be targeted for sexual violence due to reasons such as their ethnic identity, their age, their political affiliation, their sexual orientation, as well as their sex or their gender (Buss 2007; Mibenge 2013, 76–87). The concept of intersectionality is therefore useful in understanding that wartime sexual violence is usually not a reflection of one single fault line in society such as ethnicity but should be understood in terms of intersecting gender politics, ethnic politics, racial politics, socio-economic politics and others (Grey, 2014: 763).

Intersectionality was coined by an American legal scholar Kimberle Crenshaw in 1989. Crenshaw aimed to show the distinctive experiences of black women in the USA which are related to their position as black women in the USA and the conjunction of their experiences of gender discrimination and racial discrimination. She further raised awareness that discrimination is not single-axis (gender only, or race only) but is often intersectional as it involves multiple layers simultaneously such as gender, race and class discrimination (Crenshaw, 1989: 140). Crenshaw's concept of intersectionality considers how diverse identity categories a person claims for themselves or is assigned to, such as gender identity, sexual orientation, race, and religious affiliation, intersect with one another and create unique experiences of harm, violence, and access to justice and support services.

In the case of African women, intersectionality assumes that in times of peace and in war, African women are subjected to violence or discrimination on the basis of their gender, ethnicity, religious affiliation, political affiliation, economic status just to mention a few. Consequently, the dynamic interaction of these different identity markers creates unique

experiences. Intersectionality in making sense of wartime sexual violence is important because before national courts or international criminal tribunals there has been an over-emphasis on sex and under analysis of how sexual violence is shaped by a complex and interconnected array of factors homophobia and heteronormativity, patriarchy and misogyny, racism and colonial history, socio-economic and geo-political inequality (Yuval-Davis, 2006: 200, Mibenge, 2013).

Conclusion

This chapter provided the theoretical frameworks which underpin this study. The researcher by adopting a feminist, intersectional perspective deems that these can be useful in conceptualizing African women's experiences of sexual violence in a more nuanced fashion before international law – a white male created and still male-dominated field. The next chapter presents the research design for the study and provides information related to the data collection, data analysis and research process.

CHAPTER 4: RESEARCH METHODOLOGY

4.1 Introduction

This chapter presents the research methodology used in this study as well as a description of the research process. Information concerning the various methods and most importantly the rationale behind using these methods are provided. The chapter also describes the stages of the research, which include disclosing the primary data, the data collection process and the process of data analysis. The position and role of the researcher in this qualitative research in relation to self-reflexivity is presented. The chapter touches on validity and reliability; elements which are critical in for robust research, as well the ways in which these elements were considered in the study.

4.2 Research design

According to Maxwell (2012: 56), the nature of the research questions and the subject under investigation determine the appropriate research design. The research design is therefore selected on the basis of its usefulness as a means to find answers to the questions posed by this study. The aim of this research is to understand the construction of African women's wartime experiences before the International Criminal Court (ICC). Focus is thus primarily placed on women's (witnesses/victims) voices, to understand their perceptions of violence, sexual violence, perpetrators of this crime, and war. By mainly focusing on women's voices, I aim to unmute African women, and to make their experiences heard and read in this study. The study seeks to challenge and look beyond victimhood and the disempowerment of African women. While I use "African women" victims, throughout the study, my intent is not to generalise all victims. African women do not have homogenous peacetime or wartime experiences and it is therefore vital to understand that African women do not have a homogenised voice or experience. The study seeks to provide qualitative findings and is guided by the following research questions:

Is the ICC gender responsive to wartime sexual violence and African women's constructed identities in war?

In order to answer this main question, there are two sub-questions:

- What discourses inform African women's testimonies of wartime sexual violence?
- How does the Court position itself towards the realities and experiences of African victims and what sort of narratives does it create?

As argued by Henning (2004: 3), the purpose of a research study has the most influence on the selection of a particular design, methods of data collection, and specifically data analysis. The researcher believes a qualitative research design is best suited for this study because it places emphasis on understanding and making sense of the meanings which underlie human experiences. Moreover, a qualitative research design investigates the qualities of phenomena rather than the quantities of phenomena (Henning. 2012: 3)

4.3 Rationale for using qualitative research design

This study identifies itself as a feminist research project which aims to take African women's experiences and needs into account, and to be instrumental in improving women's lives in one way or another. Feminist research is often characterised by the use of qualitative research design given its fitting and varied methods which open up to women's voices and needs in general (Flick, 2009:67). This study is focused on the gendered experiences of African women in situations of conflict, and a qualitative research design allows their voices to be heard and feminists' goals to be achieved. These goals require that women's experiences are valued, that the conditions that oppress women are recognised, and that a desire to change these conditions are brought about through the research (Acker, Barry, Esseveld, 1983: 423). This is not to say that a

quantitative research design is incompatible with this feminist study but a qualitative research design on an issue like conflict-related sexual violence and the law is more suitable to address the meaning of what justice means for survivors of wartime sexual violence? What did sexual violation mean to them? What are their experiences or harm? Are the experiences they suffered addressed by the post-conflict accountability mechanisms? The essence of using a qualitative research design in this study is to understand how victims of wartime sexual violence make sense of their experiences and how designated judicial institutions understand their experiences.

The following distinct features underlie qualitative research and serve as rationale for why the researcher opted for this type of design:

- A qualitative research design provides the opportunity and allows the researcher to recognise issues from the perspective of the subjects in the research; to comprehend the meanings and interpretations they give to events, issues, objects and behaviour (Hennink, Hutter and Bailey, 2011:8, Henning, 2012: 10).
- Qualitative research aims to incorporate and comprehend the contextual related influences on or surrounding the research issues (Hennink *et al*, 2011: 8).
- The descriptive nature of a qualitative research design permits the researcher to present a narrative of the experiences of the respondents, which will either align with or challenge the selected theoretical framework (Schurink & Schurink, 1998: 45).
- Qualitative research design thrives on an interpretive approach and requires the researcher to be flexible, open minded, empathic, curious, and able to listen to people telling their own stories (Hennink *et al*, 2011: 8).
- With a qualitative approach, analysis of the data is interpretive and as argued by Hennink *et al*, (2011: 17), an interpretive approach entails two elements namely understanding and *verstehen*. If the primary aim of qualitative research is to understand behaviour or experiences, understanding can be twofold. In this study, understanding is mixed in that the researcher uses her own frame of reference for the issues which are referred to as understanding. But it also takes into account

African women's perspectives by paying attention to their frames of reference on certain issues, which is known as *verstehen*. *Verstehen* means studying people's lived experiences which occur in a specific social context and time frame (Hennick citing Snape and Spencer, 2008:7). In other words, it refers to understanding the life of the people whom one is studying from their own perspectives and describing these using their words (Hennick *et al*: 2011: 17). The researcher made it a point to incorporate *verstehen* because it is important in qualitative research and specifically in this research to know the subjective meaning African women attach to their experiences.

In opting for a qualitative research design, I am aware and mindful of the limitations associated with such a design. These limitations are the following, there is a restricted generalizability, the study could be difficult to replicate, the research project could be too subjective. (Bryman, 2016: 391). Despite these limitations, a qualitative research design best suits this study because this study is concerned with providing a deepening understanding of a phenomenon at hand (Flick, 2009: 413). The objective of the qualitative methods that will be used aims to produce in-depth and illustrative insights in order to understand the various dimensions of the phenomenon under analysis (Bryman, 2006: 393). In line with the goals of feminist research, the qualitative methods used in this study aid in producing useful knowledge which will contribute to global gender justice (England, 2010: 81).

4.4 Case study

A case study seeks to investigate and comprehend a social issue or phenomenon. It can pay attention to a single issue, institution or event and can range from any point in time to a prolonged duration (David, 2006). This study selected a specific case study as a fitting design to answer the research questions, and sought to comprehensively understand how the ICC recognizes African women's wartime experiences. As such, this single case study enabled the researcher to focus on institutional discourses within the context of the ICC. By centering on a specific case, the study could query and explore the various perceptions, and experiences of actors and organs within the institution. Case

studies allow researchers to combine micro-level to macro-level analyses (Neuman, 2011). Furthermore, the findings or conclusions produced from case studies are generalisable at the theoretical level (Yin, 2014: 14). This means that the conclusions from the study can contribute to theoretic proposals by either cooperating, altering, refuting or enhancing theoretical concepts (Yin, 2014: 15). With the benefit of hindsight, this feature of the case study design, validated the selection of this design because the findings of the study, at the level of theory, can be used to either approve, advance or contradict the prevailing theoretical underpinnings of feminist security theory.

4.5 Discourse analysis

This feminist research study focuses on the ICC Statute and case law (*Lubanga, Katanga, Ntaganda* and *Bemba*). It uses court judgments, court decisions/submissions and court transcripts which consists of witnesses' testimonies on wartime sexual violence and wartime atrocities as its primary data. The primary data is predominantly given in text format and is analysed using discourse analysis. The researcher selected this method because according Parker (1992: 52), discourse analysis concerns itself with investigating the meanings and implications induced by a particular text. In addition to this, the area of law offers a great opportunity for discourse analysis because law is a highly verbal and written field (Niemi-Kiesiläinen, Honkatukia and Ruuskanen, 2007:1). Law as a field contains loads of verbal content and great effort is made to record in writing all oral interactions that occur in court. The written discourse that ensues is a great avenue for discourse analysis (Niemi-Kiesiläinen *et al*, 2007: 1).

Discourse analysis is employed to analyse the primary data (testimonies, submissions and judgments), because one of the defining characteristics of discourse analysis is that it can easily be applied in a wide variety of settings and contexts (Shuy, 2001:437). Wherever there is continuous text, written or spoken, there is potential analysis of such text (Shuy, 2001:437). With a case study of the ICC which is a judicial institution, discourse analysis serves as the appropriate method of analysis because through this method, close and critical attention is paid to judicial reasoning, the language and concepts used, the way arguments are constructed, what is absent from or excluded by

the text and judgement, as well as where institutional emphasis is placed. In this study for example, the aims were to identify what understandings of gender and sexual based violence are invoked or constructed by the judgment or organs of the ICC, to contextualise these judgments or resulting institutional discourses within the broader legal and non-legal discourses around gender and sex, and to consider the potential socio-legal effects of judgments and institutional discourses.

African women's testimonies alongside their views and concerns before trials in the ICC are a way for the Court to recognise their experiences and to improve its understanding of the contexts in which atrocities are committed. By analysing the transcripts of these statements using discourse analysis, new insights into the alternative narratives of women's experiences of harms which are not considered by the Court, are obtained and provided.

As a method, discourse analysis helps to unpack and make sense of the ways in which testimonies reproduce knowledge about certain subject-matters such as wartime sexual violence and its subjects. The politicisation of wartime sexual violence has evolved over the course of the years, and most framings and global discourses have focused on framing rape as a weapon, and the ensuing meaning has mostly been for the benefit of the international community rather than what the violation means to the victims in their own worlds. This study aims to understand the political significance or meaning of women's wartime experiences and consequently to pay attention to the meaning and damage as constructed by the victims of these atrocities. The victims who come before the ICC have their experiences conveyed in testimonies through text, which means that discourse analysis is important to make sense of their experiences since it explores the underlying meaning found in these texts (Parker, 1992, Jones, 2019).

“A discourse is referred to as a conversation and the meanings behind the conversations as understood and articulated by a group of people” (Parker, 1992). Discourse analysis is important for this case study because by focusing on African women's testimonies which articulate their lived experiences, one is able to understand the conditions behind

specific issues. The study thus identified wartime discourses from African women's points of view rather than providing an absolute answer to their problems.

4.6 Rationale for Discourse Analysis of Trial Narratives

As the experiences of victims of wartime sexual violence continue to be a focus before international trials, there is an articulated need to pay attention to trial narratives. Analysing the trial narratives and testimonies of the victims one comes closer to an understanding of how wartime rape has affected victims in unique ways. Official texts from criminal courts can be subject to various kinds of analysis and this study opts for the discourse analysis of these texts in order to ask and answer qualitative questions about how the narratives of sexual violence victims and perpetrators situate their experiences, and actions as well as identities in these texts. Such analysis provides insights into ways no other methods such as interviews can.

As Skjelsbaek (2014) notes, court transcripts and judgments provide a wealth of material which can and should be analysed and give the researcher data to analyse in order to generate knowledge production. The discourse analysis of the court transcripts and judgments will aid in the attainment of one of the aims of the researcher which is to move towards an intersectional understanding of CRSV in order to grasp the complexity of CRSV.

The researcher opts for a focus on trial narratives and not interviews because there is a greater scope in listening to the views of the affected communities particularly the victims/survivors of the crimes (Grey, 2017). Testimonies ensure the views of those most directly affected by the proceedings, namely, the victims are taken into account. The various experiences of the victims have a place in the understanding of the impact of wartime sexual violence. Heeding to Skjelsbaek, I opt to work with the voice of victims as found in their testimonies because while their experiences have a role to play in my understanding of the impact of sexual violence. My understanding of this crime must not

be based solely on the findings that confirm my assumptions, but on findings that might also contradict and challenge my initial convictions. The testimonies of victims open up a plethora of realities.

This study draws its empirical findings from testimonies of African women from the Democratic Republic of Congo and Central Africa Republic before the ICC. From these testimonies one sets out to learn about the narrated constructed experiences of women subject to wartime rape. These testimonies contain countless examples of the roles and identities women take in war. In the trials of *Lubanga*, *Katanga*, *Bemba* and *Ntaganda*, women and girls were victims of crimes, but they were also combatants and child soldiers in the various rebel armed groups. These various identities are important.

The testimonies of women are not abstract nor a new phenomenon. Women have been called forth to testify and tell their stories so that the world could hear what happened to them and have their testimonies preserved. Women have shared their stories before transitional justice mechanisms in Peru, Sierra Leone, Timor-Leste, Rwanda, Bosnia-Herzegovina (Durbach and Geddes, 2017:1261). The researcher by focusing on testimonies before the ICC rather than interviews seeks to assert the long-term impact of sexual violence on women and acknowledge the collective declaration of victims for redress for the acts of sexual violence they have experienced.

Testimonies are an opportune avenue to bring forth the importance and need for a gender analysis through using intersectionality as a tool. Victims' experiences as found in their testimonies justify intersectionality because intersectionality is first and foremost, victim centred (Beringola, 2017: 105). Beringola (2017: 105) posits that victims' voices allow intersectionality because through these narratives there is qualitative information made available as to the nature of discrimination and the harms experienced by the victims are reflected on and not obscured.

4.7 Self-reflexivity

A qualitative research design has the defect of being overly subjective and while I acknowledge this limitation, the interpretive facet of the qualitative research design allows for the researcher to be reflective about this subjectivity. This is an intrinsic dimension of feminist praxis (Harding, 1991). Reflexivity is a process that involves conscious self-reflection on the part of the researcher to make explicit her potential influence on the research process (Hennick *et al*, 2011: 19). The interpretive approach of a qualitative research design not only acknowledges subjectivity but also recognises that while subject participants reflect subjective views of their social world, so too does the researcher. Researchers are not exempt from bringing subjective influences into the research process especially during data collection and interpretation (Lumsden, 2019). The researcher's background, emotions and position are acknowledged by the interpretive approach of a qualitative research design as being an integral part of the process of producing data (Hennick *et al*, 2011: 19).

There are two forms of reflexivity, namely personal and interpersonal. The self or personal type of reflexivity is associated with this study and requires the researcher to reflect on how her own background and assumptions may influence the research process and interpretation of the data (Hennick *et al*, 2011: 19). Self-reflexivity is a beneficial tool, and is employed throughout all stages of the research in the qualitative research cycle. A qualitative research design and methodology allowed for the researcher to be a primary instrument in the research process from the conception of the study to the data collection and analysis (Bryman, 2006: 393).

Ramazanoglu and Holland (2009; 150) note that all research grows from a position that influences the research project although this might not always be obvious to the researcher. In light of self-reflexivity, which is vital in this study, I had to reflect on my own position in terms of background, experiences, and why I decided to select this particular topic and carry out this study. I am a young educated African woman who has had the privilege of interning at the International Criminal Court for six months. This

opportunity was a once in a lifetime opportunity and provided me with a valuable experience. Interning at the ICC enabled me to become well versed with women's experiences as well as be a firm advocate for international criminal justice. While interning before this institution, I was fortunate to attend hearings and listen to the views and concerns of African women who had been victims of war. As simple as it sounds, most of the victims of sexual atrocities value societal and legal condemnation of the acts committed against them. This is because the victimised believe they deserve the acknowledgement of their humanity and reaffirmation of the utter wrongness of the crimes committed against them. The reality has however been very different for African women before international criminal mechanisms and global discourses.

As an African woman, I have always been interested on the labels used to represent African women as well as their experiences before national, regional and global spaces. And while several cosmetic attempts are made internationally to 'rescue' the African woman, little attention is paid to her security in terms of what security means to her. How can this security be achieved? Why does this security seem elusive? The African woman's condition always hits home for me not only from personal lived experience but also from observations and awareness of the various ills which continue to beleaguer the continent of Africa such as political violence, human rights violations, poverty, violence against women, famine and terrorism just to mention a few. These ills continue to serve as obstacles in the attainment of human security for African women – freedom from want, freedom from fear and a life of dignity. As African women we are constantly reminded of how fragile our lives are as well as how precarious human security is, be it in times of peace or in times of war.

I consider myself an advocate for international criminal justice because I believe international criminal justice has an important and great role to play in fostering women's security at an international and local stage, and should do more. The purpose of international criminal justice through international criminal institutions is not just to align itself to indictments, prosecutions and convictions. International criminal justice ought to render justice to African women for the harms and atrocities they have suffered and

to advance comprehensive alternative narratives which consider their human security and provide them with agency by halting the recourse to discourses that essentialise and cloak African women in perpetual victimhood. The work of international criminal justice should not restrict itself to the execution of the law but must walk the extra mile to help and bring about change in the lives of African women.

In stating these expectations, I concur with Parker (2004), that any study or research is undertaken by subjective individuals and this subjectivity needs to be acknowledged (Parker, 2004). Hence, I acknowledge my subjectivity and vested interest in this study. Harding (1991) also notes that it is essential for the researcher to work from a level of consciousness which is critically reflective of the different ways in which her positionality can serve as a hurdle on one hand and a useful source on the other in the production of knowledge. In carrying out this research, I am conscious of my bias and the insights I bring to provide in-depth comprehension of the subject matter under scrutiny.

While I have always had a keen interest in war and its harmful atrocities, carrying out research on wartime sexual violence requires engaging with emotions not just of the women affected by wars but also with my own emotions. Feminist researchers have highlighted the difficulties of doing research on topics like war, violence, and death because sensibilities are affected not only during fieldwork but also during the writing of the research (Sylvester, 2011, Ribbens and Edwards, 1999). The affected sensibilities as a result of the study of wars and violence work in tandem with the feminist axiom that the ‘the personal is political’ (Simic, 2018: 34).

4.8 Feminist methods

In this study, I also use feminist methods and as Ni Aolain (2012: 81) notes, these are vitally attuned to the need to listen to what women say about what harms them and to understand how and why women’s experiences are excluded in various contexts such as transitional and judicial contexts. Feminist methods such as ‘asking the woman

question'¹⁰ are important in this study because they serve to open up women's visibility or invisibility, reveal their silences, and open up discourses about their experiences (Buss, 2016: 312). This method is grounded in women's experiences of subordination and exclusion and is critical and constructive in revealing problematic features of the law or legal institutions (Barlett, 1989: 829). Asking the woman question further places the lived reality of women's experiences at the core of analysis and aims to expose the omissions in law and correct them (Joyner, 1997:183). The woman question is not confined to specific scenarios (Durojaye and Oluduro, 2016: 324) and can be asked in several contexts.

This study examines African women's wartime experiences before international criminal justice, and opts to tailor "asking the woman question" to "asking the African woman question" which is similar to the work done by Durojaye and Oluduro (2016). Inspired by their framework, the African woman question for the purposes of this study aims to explore or investigate how international criminal justice mechanisms or international criminal law institutions such as the ICC represent the African woman who has been a victim of the conflicts which they adjudicate. Asking the African woman question in this study aims to augment and contribute to empirical evidence on African women's experiences with international criminal institutions and aims to break the silence (both institutional and universal). Asking the question in this study aims to make visible the varied forms of crimes and harms that African women experience in times of war and to probe the legal institutions that create what we know about African women's wartime experiences and the types of discourses that arise from this. Finally, by asking the African woman question, one is able "to expose how institutions and institutional arrangements combine to perpetuate the subordination of African women in society or sustain hierarchical gender relations" (Durojaye and Oluduro, 2016: 324). "Not asking the woman question, renders the suffering of women typically due to their gender invisible

¹⁰ According to Bartlett, feminists often ask a set of questions known as 'the woman question', designed to identify the gender implications of rules and practices which might otherwise appear to be neutral or objective. While the essence of the woman question is to expose certain features of the law that are discriminatory and how these can be corrected, the crux of the woman question is to expose how certain institutional practices perpetuate and sustain hierarchical gender relations. See Bartlett 1989, Ebenezer Durojaye and Olubayo Oluduro 2016.

and ignored, which consequently exacerbates women's position in society" (Durojaye and Oluduro, 2016: 324).

4.9 Data collection

According to Mouton and Marais (1991: 34), in a qualitative research approach there are various sets of data collection namely oral histories, documents and records, participant observations, and interviews. In the present study, court records and documents were used as the main method of data collection. The primary data for the study consist of testimonies from African women who were victims of war and who appeared before the ICC as witnesses and participating victims. The transcripts of these testimonies alongside court judgments, court submissions, and the 1998 Rome Statute of the ICC make up the primary data. The transcripts were obtained from ICC court records which are readily available to the public through the Court's website and legal resources tool section. The transcripts before the ICC are recorded in English and French which are the working languages of the Court. The researcher is fluent in both French and English but predominantly focused on and used the English transcripts. Vast sources of secondary literature in the form of ICC preparatory committees' reports, books, journal articles, media statements, and UN Resolutions were also used in the study.

4.10 Data analysis

Data analysis refers to the process in which a phenomenon or issue is broken down into its constituent parts to be better analysed and understood (Mouton and Marais, 1991: 37). This study investigated four cases before the ICC, namely the *Lubanga*, *Katanga*, *Bemba* and *Ntaganda* cases. The primary data gleaned from these cases was voluminous and required a methodical approach. The cases and data were organised in a chronological manner to examine the presence of the women witnesses, similarities and differences in their narratives, and ensuing silences from the earliest (*Lubanga*) to the most recent case (*Ntaganda*). The researcher examined the African women's testimonies in all four cases, those of the few African men who were also victims of wartime sexual

violence, and the testimonies of some perpetrators. The trial transcripts were initially combed through and read by the researcher to familiarise herself with the content. This exercise, which entails open coding, is important in getting a comprehensive impression of the content and provides an opportunity for the researcher to better know and label the data with good units of meaning (Henning, 2004: 104). This open coding is an inductive process and allows the researcher to pay attention to what is important. After familiarisation with the language and content in the testimonies, the transcripts and other data were imported into Atlas.ti qualitative data analysis software for compilation, comparison, and coding. Coding according to Rallis and Rossman (2012: 345), consists of organising data by demarking selected segments with meaning and later categorising the segments. A phase in the coding consisted of analysing the testimonies for common words, themes, concepts, and recurring patterns. From these categorised segments, discourse markers emerged through a search for signs in language that indicated the way the women tried to make sense of their experiences. An example of the applied codes/categories and discourse markers are provided in Table 4.1.

CODES	DISCOURSE MARKERS	DISCOURSE
Vocabulary of sexual violence	<p>Words and adjectives that described sexual violence within testimonies. Words that reoccurred more in narratives.</p> <p>Examples:</p> <p>“You know, it is shameful. All these things have destroyed my life. First of all, having the difficulty that I now have. I have a lot of difficulty today. And another thing, my reputation, I lost that as well, you know. If a woman is raped by other men, this is not good. If somebody hears about it, it is</p>	Shame

	not good. The life that I now have this is a difficult life”.	
African masculinity and femininity	Notions about female sexuality, femininity, male sexuality and masculinity on the African continent. Examples: “It is an abomination for such to happen to an African man”.	Abomination

Table 4.1. Example of codes, discourse markers and discourse.

The discourse markers entail specific instances where the use of words or phrases exemplify the dominant discourse and were recurrent in the testimonies or transcripts of victims. Recurrent discourses highlighted the meanings which victims made of their experiences. The dominant discourse was then articulated within the broader workings of gender in times of peace and war. A requirement of a good qualitative research design is ongoing analysis of the data. The various transcripts were read several times to ensure that the constructions of the discourse were fully recognised and understood and to ensure that no new interpretations emerged from successive re-readings. Ample time was also spent to ensure that the discourses correctly reflected the way African women as witnesses and victims constructed meaning. In addition, I determinedly guarded myself against imposing my own views or experiences and attempted to remain aware of my own biases.

4.11 Validity of the study

Good research concerns itself with the extent to which the outcome or results are coherent over time (reliability), whether the research accurately measures that which it was meant to measure (validity) as well as how accurate the findings are (validity) (Denzin and Lincoln, 2005: 34). This study as mentioned earlier is underpinned by a qualitative

research design, and qualitative research has been critiqued for being deficient in the rigour and credibility associated with quantitative research (Horsburgh, 2003: 19). Different techniques within qualitative research are used to evaluate validity. Reflexivity as a tool has been advanced by scholars such as Popey (1998) to ensure validity in qualitative research. Reflexivity as aforementioned consists of the researcher's subjective participation in the research process. As the researcher, I acknowledged that my experiences of and knowledge about certain issues had an influence on the conception of the research. This consciousness and acknowledgment are hallmarks in ensuring validity.

One of the features of qualitative research to ensure validity is the analysis of subjective meaning. This denotes the means and process of using the respondent's narratives to analyse and interpret data (Horsburgh, 2003 and Popey, 1998). More details around how this feature was observed are presented in the discussion of research findings in Chapter 5. Good qualitative research incorporates a description of context, which indicates the need to describe the social context within which the study was carried out so as to provide the reader with a better understanding of the findings (Popey, 1998). This was adhered to throughout this study.

Validity in a study is also achieved by the degree to which a researcher provides adequate details to enable the readers to understand and interpret the meaning as well as the context of what is presented (Popey, 1998). Validity is thus reliant on the openness with which a study is carried out via data collection and analysis and presentation of findings. This is in line with Henning (2004: 141) who posits that the validity and trustworthiness of the research process can be determined by the degree to which the study provides information, and on the process by which the findings or results have been reached. Similarly, the discussions of data collection, research methodology, data analysis and other processes outlined in this chapter and throughout the study are in line with this aim to ensure validity.

4.12 Reliability in the study

In quantitative research, reliability measures the degree to which the research findings and the data will stay consistent across frequent studies in diverse settings with different researchers, and the degree to which such findings are generalisable (Gibbs, 2002). This study adopted a qualitative research design, and this approach contends that there are numerous realities and that different individuals construct meanings differently at different times. Consequently, it is not possible for data to remain consistent across repeated investigations with different participants.

Unlike quantitative research, qualitative research relies on dependability instead of reliability. This dependability of the data and the findings is achieved through the process of granting for external assessments or audits throughout the research process. Allowing an external evaluator who is not the primary researcher to evaluate the accuracy of the findings and whether or not the interpretations and conclusions are supported by the data, allows researchers to ascertain the extent to which the presented data and findings are dependable (Lincoln and Guba: 1985). To ensure dependability, a list of codes, discourse markers and an analysis of the data were presented to the supervisor of this study - Professor Amanda Gouws, who made her own interpretations and questioned aspects of the analysis. If every single person who is engaged in the identical data analysis comes to similar conclusions, it is likely that the findings are reliable and therefore dependable (Thurmond, 2001). The analyses in this study were reliant not only on my supervisor's and my interpretations but also on how other sources in the literature considered and accounted for similar results on similar topics.

4.13 Ethical Considerations

This study did not require any ethical clearance as it examined and dealt with textual data or documents before ICC court cases. It also did not engage with any human respondents. Despite being a qualitative desktop research, I strived to adhere to research ethics throughout the process, and various considerations were taken into account to ensure that the study was conducted in an ethical and appropriate manner. In carrying out the research design and study, I considered beneficence as an ethical consideration. Beneficence requires the researcher to be sensitive and to have the welfare and best

interests of the people studied or examined in the study (Hennik *et al*,2011: 64). Through beneficence, I reflected on how the findings in this study can further benefit different stakeholders involved in addressing African women's wartime experiences. The benefit of this feminist study as social science research can provide valuable findings on how to address and better African women's experiences. Justice as an ethical consideration (Hennik *et al*,2011: 65), also requires the researcher not to be deceptive in their dealings with the subjects and their experiences. I endeavoured to respect and do justice to the experiences of African women throughout this study.

Conclusion

This chapter outlined how the research was conducted, explained the choice of design selected for the study, provided the rationale for the design, illustrated how the data was collected and discussed the methods used to analyse the data. The chapter concluded by corroborating the validity and reliability of the research design and methodology. The next chapter details the findings of the research.

CHAPTER 5: DISCOURSES OF WARTIME SEXUAL VIOLENCE

5.1 Introduction

I am particularly attuned to the dangers of overemphasising the sexual and penetrative violations of women's bodies. However, in this chapter a focus on sexual violation is important in order to investigate its political significance for the victims as well as to investigate the narratives that inform global discourses of wartime sexual violence. Understanding these two dimensions of this sexual violation will assist in making sense of the gender and sex story within discourses of wartime sexual violence.

Over the years, the framing of wartime sexual violence has evolved. There have been discursive shifts from viewing sexual violence as an inevitable by-product of war, to a women's issue, to a human rights issue, to a weapon of war and finally to an international security issue (Crawford, 2013: 507). While these framings have been praiseworthy in bringing urgency to the crime of wartime sexual violence, meanings of wartime sexual violence and specifically rape should be re-interpreted. What did sexual victimisation actually mean to the victims? This is an important question and angle to investigate if one wants to examine the political significance of rape. Most framings and international discourses of wartime sexual violence have focused on the meaning of rape for the wider society rather than what this violation means to the victims and their worlds. Du Toit (2009: 89) argues that the political significance of rape (sexual violence) should include the meaning and damage to victims of rape. Political significance should take into account victims' lived experiences, the damage to them, and the meaning of sexual violation to them (Du Toit, 2009: 89). Bergoffen (2011: 190) posits that the proscription and prosecution of sexual violence are laudable, but there is a need to accept and be attentive to the unspoken and intrinsic meanings of this crime through the experiences and testimonies of witnesses or victims that come before international criminal tribunals.

The political significance of rape for the international community has been translated into the narrative of ‘rape as a weapon of war’. This narrative relies on a gender story which according to Baaz and Stern (2013, 12) makes visible violence, the strategicness of rape by armed groups, and the fact that this crime is avoidable (Baaz and Stern, 2013: 12). The gender story views rape as a gender act, fruitful because it is gendered. According to this logic, rape is a violent act not only against female sexed bodies, but against the ‘enemy’. Certain notions of masculinity such as militarised masculinities and femininity help to establish a link between violence and gender (Baaz and Stern, 2013: 27). A sex story on the other hand advances notions of male heterosexuality as a natural force in understanding wartime sexual violence and how in times of war, the male soldier’s libido demands sexual satisfaction (Baaz and Stern, 2013: 17). The sex story has been dismissed as essentialist by scholars but this same sex story hovers in war narratives. What renders wartime sexual violence exceptional is precisely that it is a sexual form of violence. Yet curiously the sexual is erased from frames or understandings of accounts of wartime rape when cast as political and avoidable (Kirby, 2020: 212, Baaz and Stern, 2018: 2). In making sense of the discourse or political significance of wartime sexual violence to victims and perpetrators, sex stories as well as gender stories are made intelligible. The presence of both stories provides a bigger repertoire of possible and alternative discourses of wartime sexual violence. Distinct elements of gender and sex in understanding wartime sexual violence have however led to a sex/gender paradox which occurs when a focus or shift towards gender refutes the power or workings of sex, yet the workings of gender anchor within notions sex (Baaz and Stern, 2013: 20).

5.2 Gender Story

In making sense of wartime sexual violence, feminist scholars have strived to establish a link between gender and violence, and militarisation and militarised masculinities have been identified as key. Militarisation is important in forming violent militarised masculinities which brings about the perpetration of wartime sexual violence performed as hypermasculinities which produce and transform soldiers from men into violent beasts/machines of war (Parpart 2010: 154). Strong military masculine ideals require

boys/men to undergo the destruction of civilian/feminised identities to build up the macho soldier (Baaz and Stern, 2013: 18).

Sexual violence is performed as a fault of gender in the sense that it is an expression of violent masculinity necessarily produced through militarisation (Baaz and Stern, 2013: 30). Conflicts and militarisation bring about militarised masculinities resulting from an inherent logic which requires particular articulations of ideal types of masculinity and femininity. The main type of masculinity which prevails during war is hegemonic militarised masculinity which has as its foe femininity (Peterson and Runyan, 2010: 164). This ideal wartime masculinity, also operative in the military, applauds violence, order, masculine-coded obedience and domination (Baaz and Stern, 2013:18). Before the ICC court records excerpts from witness statements in all four cases reveal the prevalence of militarised masculinities. The following extracts point to these masculinities, their ideals, and the myths of militarised manhood. In *Ntaganda*, a witness 0901 states the following: “*What is the job of a soldier? The job of a soldier means waging war. If there is a battle, he has to go and fight*¹¹”. Witness P-55 in *Ntaganda* claims Bosco Ntaganda praised high ranking officer Mulenda for being a real man in relation to his leadership in orchestrating the Kobu attack which resulted in the massacres of civilians. The aforementioned excerpts point to the presence of militarised masculinities which celebrate violence and domination and recaps Enloe’s (1983: 212) argument that “militaries need men to act as men who must be willing to kill and die to prove their manhood”. Military training serves as a platform for the indoctrination and construction of militarised masculinities and the eventual macho soldier. Constructing militarised masculinities according to Whitworth (2008: 114) involves degrading techniques, humiliation and the breakdown of men’s civilian traits to instilling them with violence. Militarised masculinities require men to kill the woman in them.

Common to the armed groups in all four cases were military chants. These chants are arguably a characteristic of most African military armed groups to instill cohesion, solidarity and to boost the morale of troops. Aside from the latter, the chants celebrate

¹¹ ICC-01/04-02/06-T-29-Red-ENG WT 21-09-2015 1/63 SZ T

aggressive and violent expressions of manhood; they are an extension of denigration and violence which needs to be employed according to militarised masculinities. The primary targets of this denigration are usually women because women are considered ‘the powerless other’ and an enemy of militarised masculine ideals. Phallogentric notions of masculinity are also crystal clear in the chants with women viewed as sexual objects existing for the sole pleasure of men and cast as inferior to the militarised heterosexual masculine. This is illustrated in the following chant from witness 0010’s testimony.

Witness 0010 in *Ntaganda* chanted:

I am crying. I am crying. Give me a girl. Give me a Lendu1 girl so that I can fuck her all night and then she will complain about having back ache because I screwed her.¹²

Women are characterised as objects of sexual desire. More testimonies reinforce Baaz and Stern’s (2013) argument, that the production of militarised masculinities is a continuous process which never fully arrives as is evident from the use of drugs. A resort to drugs was a recurring element in the testimonies of the perpetrators; soldiers felt afraid and stated that military service was tough. War is scary, they added and since militarised masculinities are ever in need of reinforcement because they fall short, soldiers resort to drugs and alcohol. Drugs are viewed as an essential way to deal with the fears of combat situations (Kovitz 2003: 39).

5.3 African women’s discourses

In order to investigate the political significance of rape for victims, discourse analysis of their narratives/testimonies was applied. For this exercise, women’s voices were primarily used, as well as perpetrators’ voices to understand their experiences of sexual violence. The few men who were victims of sexual victimisation before the ICC are important in this exercise and will be presented in the next chapter. All these actors allow one to dig into the various facets of meaning of their experiences as the victims and

¹² ICC-01/04-02/06-T-47-Red2-ENG WT 11-11-2015 1/73 SZ T

perpetrators. Their narratives also serve to identify how discourses around sexual violence shift, and expose how gender and sex operate in war. The witnesses' constructions of a specific discourse stem from their subjective experiences and are also informed by the ways in which peacetime central discourses view sexual violence.

There were recurring discourses in the testimonies which served as primary data. These discourses of shame, powerlessness, violence, death is better than rape, impunity, and denial of the crime are some of the salient topics of wartime sexual violence. Crime-related witness testimonies pertaining to sexual violence varied but had common traits and that is how the dominant discourses were established. While some crime-based witnesses were able to recollect their experiences of rape or sexual violence with sufficient detail, others did not get into the range of details. Direct quotes from the transcripts are presented in recognition of a discourse.

Before discussing the dominant discourses that recurred in the women's testimonies, it is worth mentioning that it was difficult for some witnesses to testify especially those who had been victims of sexual violence. On several occasions, the judges had to take some breaks to give witnesses/victims some time to recuperate and gather themselves given how painful their experiences had been. The difficulties victims experienced point to what scholars such as Agamben (1999) and Henry (2010) term the "impossibility of bearing (or being a) witness". This notion has its roots in psychological trauma and considers how victims themselves experience distress manifested in loss of language to describe their suffering but also the ways in which external forces to the witness contribute to the impossibility or difficulty of recounting their traumatic experiences (Henry, 2010: 1099). This is peculiar to the crime of rape. Victims of sexual violence require special needs and the ICC's legal framework has been friendly and considerate when it pertains to victims of this crime.

According to the ICC's Rome Statute and Rules of Procedure and Evidence, victims and witnesses shall be protected during their participation in the proceedings but most importantly the Court shall take appropriate measures to protect the safety, physical and

psychological well-being, dignity and privacy of victims and witnesses where the crime involves sexual or gender violence (Article 68, Rule 86). Such measures include appropriate protective measures, security arrangements, counselling and assistance before and during court proceedings (Article 68.4). These various victim support mechanisms before the ICC are a start to re-affirming on an international level, the needs of victims, and their need for restoration of dignity and normalcy in their lives (Ni Aolain, *et al*, 2011: 429).

5. 3.1 *Discourse of shame*

A recurring and dominant discourse from the testimonies of women witnesses was of shame. During their testimonies' they reported deep feelings of shame, guilt and humiliation during their assaults as well as after the assaults. The excerpts below support this claim:

Witness 0018 in *Ntaganda* recounts:

Q. And do you recall that in your first interview you did not mention to investigators of the Office of the Prosecutor that you had been raped; do you remember that?

A. That is true. The first time that I met them I was afraid about telling them that. I was ashamed.

Q. Can you explain what you mean when you say you were afraid and ashamed to tell them about the rape?

A. Very well. I saw that I could not speak about this issue openly before the public, or to say it to somebody else. I wanted it to be my secret, a secret to be kept in my heart.¹³

She further adds:

A: You know, it is shameful. All these things have destroyed my life. First of all, having the difficulty that I now have. I have a lot of difficulty today. And another thing, my reputation, I lost that as well, you know. If a woman is raped by other

¹³ ICC-01/04-02/06-T-111-Red2-ENG CT WT 28-06-2016 1/84 FA T

men, this is not good. If somebody hears about it, it is not good. The life that I now have this is a difficult life.¹⁴

Throughout most of the testimonies, women who were victims of sexual violence experienced feeling of shame and stigmatisation. This is a universal feeling that permeates wartime and peacetime (Olujić, 1998: 40). According to witness 0018 in *Ntaganda* “if a woman is raped by other men, this isn't good”- a feeling of shame is produced because of the patriarchal focus on women’s sexuality and chastity (Simic, 2018: 122). Women are honour carriers and shame owners (Sharatt, 2011: 123) and as Motsei (2007: 46) notes, women are the bearers of the cross of morality. Women’s bodies are linked to sacredness, inviolability, vulnerability, and their private organs are understood as a realm of intimacy, sanctuary, and femininity (Harris and Hanchey, 2015: 5). Women’s femininity is a double-edged sword in that it is the site of both her self-respect and of her humiliation.

The fact that the witness wanted this violation to be her secret reflects the ‘unspeakability’ of rape and the stigma attached to it. This unspeakability was coined by Henry (2010:1101), and refers to the difficulties as well as obstacles victims face in disclosing or speaking about rape. External obstacles such as shame, stigma, and ostracisation render rape “unspeakable” (Henry, 2010: 1101). The discourse of shame stems from the physical act itself and from the symbolism and value that society attaches to women’s sexuality and the female body (Simic, 2018: 126). As Sharatt (2011: 135) notes, women feel ashamed because not only has their sexuality been stigmatised but they know that in a patriarchal society, what happens to a woman tends to bring shame to her family, her community and her nation. The discourse of shame or the feeling of shame is made intelligible because of the “ghost of sexuality”. According to Sharratt (2011:2), the ghost of sexuality and its accompanying notions of chastity and purity required of women permeate court proceedings and explains why shame is a dominant discourse.

¹⁴ ICC-01/04-02/06-T-111-Red2-ENG CT WT 28-06-2016 1/84 FA T

Witness 0018's omission to tell the investigators that she was raped indicate how predominant feelings of shame can hinder victims of sexual violence to come forward to testify. The consequence in some scenarios is simply silence. The silence surrounding rape is based on the assumption that women do not want to talk about rape (Chappelle, 2014) or that no women are or were ever raped in times of conflicts (Mibenge, 2015). Shame alongside factors such as the sanctity of the family, and moral and community code which place a heavy emphasis on virginity and chastity, work to silence women about their experiences in the aftermath of armed conflict (Henry, 2010: 1115). Similar to Mibenge's findings before the ICTR, the reasons why some women, especially African women, shy away from the legal system is because they harbour feelings of shame, but this does not apply to all victims.

Feelings of shame and the 'unspeakability' of the crime have been advanced as gendered legacies or informal rules of international law which have led to a failure to prosecute wartime sexual violence. Gender legacies and informal rules according to Chappelle (2014:578) consist of practices as well as assumptions which have led to the historical failure of international criminal law to recognise the gendered and sexualised forms of harm experienced by women. Gender legacies and informal rules also lead to misconceptions about the extent, nature, and grievous harm of sexual violence in conflict; to biased and inadequate investigation techniques; and to inappropriate courtroom proceedings (Ni Aolain, 2011: 429). These informal rules before institutions like the ICC and former international criminal tribunals are injurious and have served as structural barriers that work against appropriate evidence gathering, witness identification and victim enablement when it came to the recognition of women's wartime experiences (Henry, 2010: 1108). This influences the ensuing discourses of wartime sexual violence. However, the presence of women victims before international criminal proceedings dismantles the discourse that encodes one of the many unexamined gender assumptions, namely that women do not testify because of being ashamed (Sharatt, 2011: 122).

Like most witnesses before other international tribunals, some of the witnesses before the ICC had never testified about their experiences of wartime sexual violence before

any international actors or their communities. Witness 0018's hesitancy to initially open up about her sexual violation mirrors the struggle of millions of victims in humanitarian or international engagements who fear to identify themselves as victims of rape. As Aroussi (2017: 504) notes, because victims find it hard to identify as victims of rape and disclose details of what happened, they may be discouraged from seeking treatment in the first place. This 'unspeakability' or omission should not be interpreted as the violation not having occurred. It rather calls for gender-sensitive, cultural and victimological analyses of war and its victims.

In a shift to tip the balance of shame as well as counter this feeling, women judges such as Judge Fatoumata Dembele Diarra constantly reminded the witnesses that the experiences they were subjected to were not their doing and as such they did not have to feel shame. In the *Katanga* case, Judge Diarra advanced the following:

Madam Witness, I am one of the Judges who have to determine the responsibilities for the acts that were perpetrated. I'm not going to talk here about those who are responsible, but what you have said, that a woman who is raped is a woman who has no value, she has to be ashamed, she is totally useless, that is not true. Women, children, and all the citizens of the world have to be protected by the family, by the society, by the governments and by the international organizations, and when those duties of protection are not carried out, when women such as yourself and the young girl who was with you are subject to such treatment, when the men are in the cars, they have all the weapons in the world and they are in their palaces, the shame here is the shame of the entire world. This is dishonor for humanity.¹⁵

Judge Diarra's position is important in that it indirectly attacks societal assumptions about rape and calls for international responsibility towards sexual violence. Her statement is pertinent because the shame of wartime sexual violence should not be borne by the victim but by the perpetrators. Scholars such as Simic (2018: 17) posit, "shame resulting from sexual violence should not reside with victims but with the aggressors/perpetrators". Du

¹⁵ ICC-01/04-01/07-T-141-Red-ENG WT 14-05-2010 44/83 RM T

Toit (2009: 85) argues that the victim's world is not engulfed by the perpetrator's world and the meaning of rape is not contained in the rapist's definition. Wartime sexual violence is a political issue which deserves attention, action, accountability and its roots causes need to be addressed. While Judge Diarra's statement is well intentioned and aims to dismantle the feelings of shame which women bear, there is a heroism and protectionist logic which hovers over her statement. The duties of protection which were not carried out by the family, the society, the government and international organisations produce a masculinist heroism and protectionist narrative that women always need to be rescued and must be protected by men who are often the perpetrators.

Shame is a dominant discourse that women victims use to construct and make meaning of their experiences. The discourse of shame mirrors the fact that victims indirectly acknowledge certain ideal behaviours or expectations designed for women, and non-conformity to these cultural expectations has repercussions. Shame as the dominant discourse reveals how the effectiveness of rape is parasitical on a pre-existing social symbolic notion according to which women's sexuality is problematically appropriated by men and linked to the nation (Du Toit, 2009: 87). The discourse also demonstrates the enduring notion of feminine purity and the value it exudes in communal settings, and confirms the double victimisation that many women experience once the violence ends (Ni Aolain *et al*, 2011: 429).

5.3.1.1 Naming of the harms

As Bergoffen (2010: 612) argues, international tribunals through their verdicts or practices have engaged the international community in a dialogue in which the language of crimes of sexual violence have been made plain. The naming of harms provides for a conversation where the violence of crimes especially rape is transformed into words describing the ordeal so as to make women's experiences become an archetype of a human rights culture (Bergoffen, 2010: 613). Like international criminal law which is deeply involved in the naming of harms (Ni Aolain, 2011: 342), international criminal rape trials are also deeply involved in the naming of harms and violations by the victims.

Throughout the testimonies, of key significance was the disparity in the actual naming of the act of rape between victims and perpetrators' narratives. These disparities have implications which should not be brushed off. In some perpetrators' narratives, the discourse of denial of sexual violence meant that some soldiers went to great lengths when testifying to deny that acts of rapes did not happen to the extent that the word "rape" was unknown to them. The unfamiliarity of the word "rape" is crucial in divulging how victims experienced and narrated this violation. The term rape was seldom used by women victims and descriptions such as "he slept with me" (French equivalent – *il a couché avec moi*) were mostly common. The excerpts below evidence this point.

Witness 087 in *Bemba* recounts:

Next to the house, there are the latrines. There is a small veranda and he pushed me. He took off my underwear and he had his firearm in his right hand, a torch in his left hand, but he had put that down, and he took off his belt and took off my underwear and he got out his penis and he penetrated me and he started to sleep with me and I had my hand on my head. When he finished he ejaculated, and he left.

Witness 0022 in *Bemba* during her examination in chief states:

Q. Madam Witness, you told the Court that the three Banyamulenge slept with you in your bedroom. Can you please explain to the Court what you mean by "they slept with me"?

A. They slept with me the way a man sleeps with a woman. That is how they slept with me.

Witness 0079 in *Bemba* articulates:

Q. My question to you is this: When you say, "slept with me," can you please describe for us what the first Banyamulenge did to you?

A. They slept with me. They pulled me out of bed. They threw me to the ground. They took off my clothes and they slept with me. They used my female parts.

The absence of the word “rape” or its French equivalent “viol” before narratives indicate (mis)understandings of appropriate sexual behavior. To “sleep with” or “couché avec” is the common way of referring to sexual intercourse or having sex and this was commonly used by women in recounting their experiences of rape. In addition to this, there were signifiers of violence which acted to illustrate the coerced nature of the sexual intercourse. These signifiers of violence demonstrated according to the women that they were coerced and did not consent to the sexual relations. Within these signifiers of violence were the overpowering nature of perpetrators, their weapons and the slurs they threw at women. The common use of the terms “slept with” before the narratives indicate how language accounted for the subtle distinctions in how women expressed the complex field of human experience and social norms related to coercion in sex (Holly, 2016 :123). Similar to Holly’s work which examined issues surrounding wrongdoing and justice, and sexual violence and rape, the victims who recounted their experiences before the ICC focused more on the description of the sexual act as being brutal.

Perpetrators’ narratives are different from women’s narratives of their violations in that the term – make love or ‘faire l’amour’ (French equivalent) appears most before perpetrators’ testimonies when describing this sexual violation. To make love is considered as natural heterosexual sex understood to be mutually consensual between two lovers. The difference between the use of the terms “make love” by perpetrators and “he slept with me” as used by victims point to a common similarity whereby sex was something done to women and the sexually active agents are men who have sexual desires and need pleasure. An inconsistency revealed with the terms “make love” as used by perpetrators and “he slept with me” as used by the victims to describe the violation, is the fact that while it seems that the perpetrator had sex with the victim, the victim on the other hand did not have sex with the perpetrator. The use of these terms reveals and illustrates feminist critiques of sex belonging to the masculine (Cornell, 1995: 567) and women always considered as the sexually passive being, void of sexual desires and pleasure and men considered the sexually active being. This image is compounded by sex viewed as solely heterosexual, an indication of patriarchal domination.

5.3.2 *Discourse of powerlessness*

Powerlessness is a discourse that women who have been victims of sexual violence use to construct meaning about their experiences. In the testimonies one finds that victims felt a sense of powerlessness during the ordeal. Witness 0010 in *Ntaganda* responded as follows:

Q. What would happen if any girl, including yourself, refused to have sex with the commanders who were asking for it?

A. We could not refuse. It was impossible. We did not have the power to say no.¹⁶

According to Witness 0022 in *Bemba*:

Well, I was powerless. Those men were armed. One of them placed his gun barrel against my temple. I could not complain. I could not shout. I could not even cry. There was a weapon held against me and I did not have any opportunity, or even the bravery, to speak to them.¹⁷

Witness 132 in *Katanga* recollects:

The first time those things happened I was wearing some briefs and a skirt, and the young man lifted the skirt and took off my undergarments and slept with me. And then there was another person. When he was finished, then someone else did. That is not what I wanted, of course, but I did not have any strength. I could not refuse because I was there, and you are scared, and you know that you are already dead. That is the way it is that is the way it was.¹⁸

Most of the victims recounted feeling powerless against their assailants. In times of war there are power disparities between perpetrators and victims. According to Brownmiller (1975: 256), “all rape is an exercise of power”. The discourse of powerlessness echoes Seifert’s (1996:41) argument, that the incontestable reality of tortured female bodies in

¹⁶ ICC-01/04-02/06-T-47-Red2-ENG WT 11-11-2015 1/73 SZ T.

¹⁷ ICC-01/05-01/08-T-41-Red2-ENG CT2 WT 01-12-2010 1/47 NB T.

¹⁸ ICC-01/04-01/07-T-139-Red-ENG WT 11-05-2010 1/66 EA.

war is translated into male power. The gendered perspective of violence views men as the dominant gender that holds and uses the means of violence, and women are the weaker gender meant to be dominated (Lusher and Robins, 2009: 67). The discourse of powerlessness also stems from the fact that rape is a noticeable act in which grave forms of power are exerted predominantly by a man over women; rarely over other men (Du Toit, 2009: 90). This engulfment of the victim's world by the perpetrator's world, points to Du Toit's argument that rape is politically significant because it brings about the control of the victim's world or a person (2009: 85). The powerlessness which victims felt asserts Ni Aolain *et al's* (2011: 429) argument that "perpetrators and victims understand that public sexual violence is a form of communication and power whereby hyper-masculinity through violence and rape play out. It also illustrates how armed soldiers communicate to women their inferior positions of power and helplessness". Women are indeed treated as 'the powerless other' (Puechguirbal, 2010: 179).

5.3.3 *Death is better than rape*

In the testimonies women who had been subjected to rape voiced feelings of rape being equivalent to death, or death being better than rape.

Witness 0249 in *Ntaganda* states:

The soldiers were there. They started beating me. There was a small house nearby, and they started sleeping with me again. I told them that they were going to kill me. I told them that it would be better for them to kill me rather than treat me like that, like an animal. The soldiers said that they could kill me if they wished or maltreat me. I told them to do what they wanted to do.¹⁹

Witness 132 in *Katanga* recounts:

After that, some of them slept with me on that day. I was very traumatized. I was crying. I was like someone who was already dead, and from there we went on our way.²⁰

¹⁹ ICC-01/04-02/06-T-118-Red-ENG WT 11-07-2016 1/71 CVZ T

²⁰ ICC-01/04-01/07-T-139-Red-ENG WT 11-05-2010 1/66 EA T.

She further adds:

For the first rape it is where they found me. Everybody slept with me and raped me. When the first one was finished, it was another person. Everybody was sleeping with me. I had nothing to say. I was just being quiet. I knew I was already dead, but God protected me. That is the way it was.²¹

Most of the victims experienced what psychologists term rape trauma syndrome (RTS) which characterises rape as a life-threatening event in which victims fear both violence and death during their ordeal (Henry, 2010: 1120). This discourse of ‘death is better than rape’ is similar to Du Toit’s notion of loss of world that victims of rape experience. In the excerpts above witness 132 and 0249 both share what Du Toit advances as structural similarities in rape experiences. The notion of loss of world as advanced by Du Toit (2009: 39) entails the destruction of the victim’s self, the victim’s world, their sexual and bodily integrity and loss of agency.

5.3.4 Discourse of violence

Witness 0018 in *Ntaganda* states:

When they came to get me I had my child with me. And the person who came to get me said, ‘Put the child down, ma'am’ I said, ‘No’. And they started to pull me into the forest. It was a strong man. And he took me, and he raped me. We fought. I really fought back hard when he was raping me. And he said, ‘Are you joking with me? I could kill you. You know, I can kill you and there's nothing you can do about it.’ But I continued to fight. And he started to show me his weapon and to terrify me, to scare me with his weapon, but I continued to fight back. He shot his weapon and I do not know the direction of the bullet.²²

Witness 0901 in *Ntaganda*:

²¹ ICC-01/04-01/07-T-139-Red-ENG WT 11-05-2010 1/66 EA T.

²² ICC-01/04-02/06-T-111-Red2-ENG CT WT 28-06-2016 10/84 FA T.

Q. Did Bosco's men use their weapons while they were beating you?

A. They were beating us up with the sticks, that is all they did. They fetched a few sticks from around and beat us with those sticks, but some of the soldiers also used their guns. They also used the butt of their guns to beat us up.²³

In the testimonies before the ICC, there are distinct manifestations of violence against civilians especially against women. This discourse of violence is linked to the discourse of powerlessness above. The violence women are subjected to in times of war display the power of perpetrators and their weapons; there is a fusion between guns and penises in this discourse. The penis is considered a bodily weapon alongside other military apparatus. These weapons symbolise militarised masculine prowess and are used to intimidate and to fuel violence. This all points to not only the 'war functionality of weapons but precisely the war functionality of the penis' (Clark, 2019: 800). The attribution or functionality of the penis as a weapon is popular in Mostsei's account of the penis as a masculine machine gun before the Zuma rape trial. Zuma sang the song "bring me my machine gun" at the trial. This masculine machine gun according to Motsei (2007: 61) is a symbol of warrior culture in which the penis is associated with a gun. Unlike the gun to which it is so often compared, the penis has a sexual and cultural life during and beyond the battlefield.

Throughout various victims' testimonies before the ICC, the 'uncanniness of the penis' as a body weapon is made clear. This term was coined by Paul Kirby (2020: 222) and refers to the paradoxical ways in which the penis signifies as both one thing and another in the frame of war: subservient but unruly, sensual but insensitive, vulnerable but utilitarian. The 'uncanniness of the penis' in the narratives views the penis as a source of masculine power and a source of death and destruction. It is an invasive weapon considered deadly to both women and men. In violating civilians by using their penises to commit sexual violence, perpetrators implicitly kill their victims (loss of their worlds) even if the victims survive. The uncanniness of the penis is also evident in its juxtaposition as both a source of pleasure and a source of pain.

²³ ICC-01/04-02/06-T-29-Red-ENG WT 21-09-2015 1/63 SZ T.

Witness 0069 who is a man who was raped in the *Bemba* case states the following:

Oh, my God. Just imagine, can you imagine the penis of a man, can you imagine everything that it contains, everything that that penis contains? You cannot know.²⁴

The excerpt from witness 0069's testimony, "...*can you imagine the penis of a man, can you imagine everything that it contains, everything that that penis contains*" indirectly alludes to the various meanings and functions invested in this organ. It is a tool of pleasure and a symbol of male prowess. The penis has sexual and cultural connotations. Coming to the sexed connotations of this organ, it is important to clarify a few issues. A focus on the organ of the perpetrator for this exercise does not aim to eliminate the voices of the victims and survivors. The attention placed on the penis as an embodied weapon also does not aim to reify a partial view of sexual violence or endorse essentialist notions of victim and perpetrator (Kirby, 2020: 213). Rather it aims to reflect on the sexual connotations of the organ and make visible "sex" in wartime sexual violence which has been gradually erased, according to Baaz and Stern (2018).

As mentioned earlier, the penis unlike the gun has a life and multiple meanings. Though the penis is considered a potential bodily weapon, it has sexual connotations as the ultimate archetype of phallocentrism saturated with sexual significance. According to the ideology of phallocentrism, the phallus or male sexual organ is the fundamental component in the establishment of societal world order (Scott: 1990: 20).

Witness 0068 in *Bemba* states:

Q. What is the function of that part of his body?

A. The masculine part of the body is the part of a man's body that he uses on a woman.

Q. What is the function of that feminine part of your body?

²⁴ ICC-01/05-01/08-T-193-Red2-ENG WT 29-11-2011 1/61 SZ T.

A. The feminine part of a woman, well, God created that part so as to allow men to use it.²⁵

The testimony of war is highly sexualised, and the testimonies of the ICC were no exception. The narrative above is important in revealing what has always been thought of sexual organs. In the testimony of witness 0068, a penis and vagina are natural God-given organs with specific functions. According to Christian discourse, the functions of these organs is procreation. Aside from the end goal of procreation, the functionality of the penis and the vagina in the above testimony drive a sex story. Women's bodies are sexed and coded as passive and useful for the purposes of giving pleasure and birthing babies (Bergoffen, 2010: 435). A sex story supervenes from excerpts such as '*a penis is what a man uses on a woman and the vagina is created for men to use it*'. Sex is therefore something done to women and male heterosexuality is natural. Such meanings follow Catherine McKinnon's (1987: 78) argument that sex has always been about sexual arousal, desire and pleasure for men, erasing women's understanding of desire.

Understanding wartime sexual violence through militarised masculinities in a gender story lays bare the association between masculinity and power and between femininity and vulnerability. Sexual violence in war is used as a means to subjugate women as well as men while empowering armed perpetrators (Feron, 2018: 6). Gender violence carried out in war aims to maintain gender hierarchies and punish femininities (Peterson and Runyan, 2010: 166). African women's discourses of shame, powerlessness, and violence in which death is considered better than rape, display the link between gender and militarisation. Militarised masculinities propagate violence and domination against the feminine other which renders or aims to render women powerless while celebrating the dominant hypermasculine soldier who is the symbol of masculine domination. The dominant discourse of shame displays the underpinnings of femininity and how the resort to sexual violence by armed groups is effective in humiliating and destroying women. Femininity is linked to chastity and virginity and such feminine attributes aid in making sense of the logic of vulnerabilities in war.

²⁵ ICC-01/05-01/08-T-48-Red2-ENG WT 17-01-2011 1/44 NB T.

5.4 Impossibility of bearing witness

Schabas and Bernaz (2011: 12) note that survivors of gross human rights violations find some comfort in testifying before international war crimes trials. This comfort however does not exclude the trouble some of them face in recounting their experiences or violations. Some women who were witnesses before the ICC experienced difficulties in articulating their sexual victimisation because of cultural hurdles. This difficulty is a consequence of the ‘unspeakability’ of rape. Other consequences involve difficulties in articulating trauma and traumatic misunderstandings during international court proceedings (Henry, 2010: 1106). The following excerpts demonstrate the difficulties witnesses experience in disclosing details of rape.

Witness 0079 in *Bemba* recounts:

One of them first slept with me; the other one had his gun pointed at my temple. And the first one, after he had slept with me, got up and then left. Then a second man took his place.²⁶

Witness 0080 in *Bemba* recollects:

Q. Thank you, Madam Witness. You have said that the first one was on you. What was he doing on you?

A. He slept with me like one sleeps with a woman.

Q. Thank you, Madam Witness. Please tell the Court the name of this feminine part of your body. Could you please tell the Court what the feminine part of your body is; what is its name?

A. I am ashamed to say that.²⁷

Witness 0080’s inability to name her female genitalia pinpoints to the impossibility of bearing witness before international criminal proceedings. She experiences shame for a couple of reasons. Victims of rape, struggle to share intimate details of their violations before complete strangers (Henry, 2010:1105). Moreover, they experience difficulties

²⁶ ICC-01/05-01/08-T-92-Red2-ENG CT WT 30-03-2011 1/43 NB T.

²⁷ ICC-01/05-01/08-T-63-Red2-ENG WT 10-02-2011 1/67 NB T.

in finding a language to describe or name their experiences, particularly if there is a strong taboo attached to revealing intimate and personal details within their community or nation of origin. This inexpressibility is also a feature of peacetime or ordinary rape and is not peculiar to the ICC but also present in former tribunals such as the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for Yugoslavia (Henry, 2010: 1107).

In witness 0079's testimony, she refers to her female genitalia as her temple. This is significant as it illustrates how women's body parts are infused with meaning. As mentioned above in the discourse of shame, women's bodies are linked to sacredness, inviolability, and vulnerability and their private organs are understood as a realm of intimacy, sanctuary, and femininity (Harris and Hanchey, 2015:5). Witness 0079's reference to her female genitalia as a temple points to the sacredness imbued in this organ. Its violation subsequently brings about its desecration. Women's sexuality are both the site of sacredness, sin and shame. The "ghost of sexuality" which requires purity and chastity from women hovers over the testimonies of witnesses 0079 and 0080. This is because their victimisation is understood through reference to purity, qualities associated with femininity.

5.6 Perpetrators' discourses

At the centre of Africa's violent conflicts are militarised masculinities and the conflicts in the Democratic Republic of Congo and Central African Republic are no exception. The perpetrators of sexual violence before the ICC embody violent masculinities constructed in the military. The section of this chapter which focuses and analyses perpetrators' narratives before the ICC does not aim to justify a narrative for the act of wartime sexual violence. The section rather aims to probe the narratives of perpetrators and heed Sharratt's (2011: 80) call that any progress in understanding and prosecuting wartime sexual violence requires examination of masculinity and femininity before international criminal courts. The section also aims to make visible the gender story and demonstrate how the sex story haunts the former. According to Baaz and Stern (2018), the sex story has been erased before discourses of wartime sexual violence, and this has

repercussions. The erasure of 'sex' brings about the invisibility of the sexual bodies between of the perpetrator and the victim (Baaz and Stern 2018: 14) as well as notions of male sexuality and female sexuality. The gender story which is predominant in the global discourses of wartime sexual violence focuses on violence, acts of domination, and the ordered nature of wartime sexual violence (Baaz and Stern, 2013: 10). This story aids in making sense of the logic of vulnerability in war through association of certain subjects with 'feminine' attributes and other with 'masculine' attributes. In the gender story that prevails before the ICC, the subjects made visible as masculine are perpetrators in the armed forces from the UPC, MLC, FNI AND FRPI. In this study focus is placed on the perpetrators' narratives to make sense of the political significance which sexual violence has for the perpetrator. Similar to Baaz and Stern's work, I consider the perpetrator's perspective useful for this exercise. The recurring discourses in perpetrators' narratives are denial of the crime of rape, normalisation of this crime, and impunity for acts of rape. These are examined in the following pages.

5.6.1 Denial of the crime

Discourses of the denial of the crime ranged from rape being viewed as collateral damage to it never occurring. Witness 0033 in *Bemba* affirmed that acts of sexual violence were just inevitable consequences because there is no clean war. He added that from the get-go no war takes place without collateral damage. This stance reflects traditionally held beliefs of war in which the rape of women are considered an inevitable consequence or by-product of war (Olga and Mouthan, 2019: 30). According to the armed soldiers who participated in the conflict, the rape of girl soldiers or women combatants did not occur. The denial of this crime could be an indication of the institutionalised impunity that prevailed as well as the loss of sight of women combatants' multiple burdens and victimisation. Some soldiers advanced the notion that there were no differences in roles between women combatants/girl child soldiers and men combatants. To these soldiers, sexual violence never occurred, and women combatants were never raped. Some soldiers went to great lengths when testifying to deny that acts of rape ever happened at all in their ranks or in their communities and carried on stating that the word rape was unknown

to them. They further state that the sole role women or girl fighters had in the armed groups was that of being soldiers.

In *Ntaganda* witnesses 0768 narrates:

Q. Were the girls who were in escorts or in operations treated any differently than the boys?

A. No, I did not see that. They were treated like all the soldiers. There was no particular aspect to the way they were treated.

Q. And were they used in any ways that were differently, for instance, by the commanders?

A. No. They worked like all the boys in the ranks. There was no particularity.²⁸

Witness 0299 in *Ntaganda* adds:

Q. What did the girl soldiers do at Mandro? What was their role?

A. They were soldiers. What else can be said? A soldier is a soldier.²⁹

According to some military insiders, women and girl combatants were taken as wives by the UPC/FPLC soldiers with the primary role of sexually satisfying the soldiers. At the camps, women fighters were performing domestic chores. In case of attack, the women were supposed to participate in war and help the soldiers carry their possessions and munitions. And when the armed groups moved and occupied another locality, the women were supposed to resume their roles of sexually satisfying, domestically catering to the troops, and participating in hostilities. Similar to women's domestic labour in the capitalist machine which goes unnoticed and is undervalued, women and girl combatants' roles and labour go unnoticed and are unappreciated in the masculine war machinery. These roles and labour are anything but required and the abuse and exploitation of women fighters are normalised. There is ample evidence of the roles and burdens born by women soldiers which are different from their masculine counterparts. Obliviousness to the conditions of women combatants is apparent in the narratives. Women suffer from multiple burdens because of their subordinate positions in peacetime,

²⁸ ICC-01/04-02/06-T-34-Red2-ENG CT WT 20-10-2015 1/68 NB T.

²⁹ ICC-01/04-02/06-T-66-Red-ENG WT 11-02-2016 1/68 SZ T.

which are simply aggravated by war. They are especially vulnerable in militarised units or armed groups, but this is invisible to the masculine war machine and its soldiers. Whithmore (2008:120) posits that women in armed groups or the military suffer gender violence most frequently at the hands of their masculine counterparts and that this is the largest cause of PTSD suffered by women soldiers.

5.6.2 *Impunity*

Related to the discourse of denial, is the discourse of impunity. In armed groups, impunity for sexual violence was evident as the following illustrates.

Witness 0963 in *Lubanga*:

Q. Are you aware of any punishment or discipline that was meted out on Museveni for having raped this girl?

A. No. Until the day he left, he was free. He was not punished

Q. Sir, apart from the case of these specific rapes that you heard about in Mongbwalu, apart from those, my question is was it a crime, when you were in the UPC, was it considered a crime to rape?

A. No.³⁰

Witness 0907 in *Ntaganda*:

Q. Do you have any knowledge of any UPC/FPLC punishments for the crime of rape?

A. I never heard mention of a soldier being punished for having raped a woman.³¹

Sexual violence against women and girls whether combatants or civilians, was characterized by impunity in the ranks of the various armed groups. Soldiers knew they

³⁰ ICC-01/04-02/06-T-79-Red2-ENG CT WT 12-04-2016 75/93 EP T.

³¹ ICC-01/04-02/06-T-89-Red-ENG WT 25-04-2016 1/86 SZ T.

could commit such acts without fear of reprisal. They were seldom punished for such acts and no disciplinary were actions carried out for the crime of rape. The impunity for this crime stems from notions that sexual violence is needed for the upkeep of military cohesion and morale.

5.6.3 Normalisation and knowledge of sexual violence

Alongside the discourse of impunity, the testimonies of insider soldiers point to the frequency and pervasiveness of sexual violence and how normal the act is considered. This normalisation is compounded by knowledge of its perpetuation. In the armed groups' ranks, soldiers know of incidents of sexual violence given that they live in a community and speak about almost everything. Soldiers learnt about the prevalence of such acts because they shared their participation in the commission of such acts, and also what they saw other soldiers and commanders do. Commanders not only participated in the commission of sexual crimes against women but knew that their troops committed such acts against women and did nothing to punish them. This was the status quo.

Witness 0017 in *Ntaganda* recalls:

Q. Were you aware of other instances of the rape of soldiers in the UPC?

A. Yes. Similar cases were frequent. It was considered as a normal act.³²

Bemba, Katanga, Lubanga and Ntaganda were all charged as commanders for their knowledge that crimes were committed by their troops and the fact that they repeatedly failed to take necessary and reasonable measures to prevent and repress them. The knowledge and normalisation of the crime lead to impunity, denial of the crime being committed, and obliviousness to the crime.

³² ICC-01/04-02/06-T-58-Red-ENG CT WT 28-01-2016 1/83 NB T.

5.6.4 *Heteronormativity and military armed groups*

Sexuality is a significant element integral to masculinity (Alison, 2007: 77) and to militarised masculinities in particular. Heteronormativity is furthermore an integral part of militarised masculinities. The soldiers' testimonies point to an overwhelming focus on heteronormativity and maintenance of the privilege of male heterosexuality.

Witness 0963 in *Ntaganda* states:

Q. Do you know the gender of these people who were raped?

A. I do not know. I do not quite know how to answer that. One can only rape a woman.³³

Witness 0011 in *Ntaganda* details:

Q. You also said to me earlier that some of these women and girls were the commanders' wives. What do you mean by that?

A. Yes. Sometimes these adults would discuss among themselves, and they would say that we had to carry out our military duties and that the officers would sleep with these women.

Q. What was your understanding of what "sleeping with these women" meant?

A. Well, to sleep with a woman, it means to take her as a woman, that is, do everything that a man can do with a woman. That is what it means.³⁴

Extracts from the narratives such as: “*one can only rape a woman*” and “*take her as a woman and do everything that a man can do with a woman*” resound with hegemonic constructions of masculinity and femininity. These extracts are imbued with meaning related to socially constructed meanings of authority and subordination in which men are the dominant and women the submissive actors. They also echo constructions of male and female sexuality within a heterosexual script. In this script of a heterosexual matrix the following power dynamics operate: the male sexual figure with an insatiable libido

³³ ICC-01/04-02/06-T-79-Red2-ENG CT WT 12-04-2016 75/93 EP T

³⁴ ICC-01/04-01/06-T-138-Red2-ENG CT WT 27-02-2009 74/79 SZ

is the sexually active subject and the female sexed body is the sexually passive subject. According to this notion male bodies ultimately hold sexual power and can do whatever they want with female sexed bodies.

It is worth mentioning that the military perpetrators subscribe to a heteronormative frame of discourse. Sexual violence against men is not mentioned by any of the perpetrators; only sexual violence against women. This is important because it points to the intrinsic relationship of military armed groups, their masculinities and heteronormativity. As Alison (2007: 77) notes, the homosocial nature of militaries may be necessary for cohesion, but its attendant danger of homosexual behavior does not sit well with the heteronormativity of hegemonic masculinity. The unquestioned heterosexuality and unchallenged militarised masculine power of armed groups is preserved by the absence of narratives of men-on-men sexual victimisation from the point of view of the perpetrators. This absence from the narratives is arguably an attempt not to blame the armed groups since blame would be detrimental to military prowess or militarised masculinities.

Sexual violence against men is however a reality and does occur. It is perpetrated by armed soldiers and the enactment of this crime is narrated by civilians. Witness 0019, a woman in *Ntaganda*, recalls:

A. Outside the men raped the women. That was done in a wild way or a savage way.

Q. What men raped what women?

A. It was UPC troops.

Q. Who did they rape? Who were these women?

A. They raped men too.

Q. And what do you mean "in a savage way"?

A. That is to say that the men raped men.³⁵

³⁵ ICC-01/04-02/06-T-115-Red-ENG WT 06-07-2016 1/62 NM T.

Witness 0019's testimony and other male victims' accounts of sexual victimisation contradict witness 0963's account that only women can be raped, as well as the heterosexual nature of armed groups. These nuanced narratives provide the discursive shifts necessary to interrogate the heterosexual and masculine nature of armed groups.

5.7 Sex story

As mentioned earlier, in a gender story sexual violence is performed as the fault of gender in the sense that it is an expression of the violent masculinity necessarily produced through military training (Baaz and Stern, 2013: 30). In making sense of wartime sexual violence through gender in this study, militarised masculinities reveal the association between masculinity and power and between femininity and vulnerability, and the occurrence of wartime sexual violence. According to the perpetrators' discourses however, wartime sexual violence is not the consequence of militarised masculinities but is institutionalised and falls within the category of recreational rape (Enloe: 2000) and lust rape (Baaz and Stern, 2013: 18). In *Lubanga* and *Ntaganda*, when the UPC commanders prepared their troops for attacks on Mongbwalu and in the Banyali-Kilo community, soldiers were promised women. Wartime sexual violence according to the perpetrators' discourses is thus considered as perks (spoils of war) and a necessary entitlement by soldiers when taking part in war (Peterson and Runyan, 2010: 168).

The discourses of impunity, denial and normalisation of the crime of wartime sexual violence underscores the prevalence of institutionalised rape. The latter falls under the sex story of wartime sexual violence according to which the (male) soldier's libido is understood as a formidable natural force which ultimately demands sexual satisfaction (ideally from women) (Baaz and Stern, 2013: 17). This notion has prevailed in military armed groups around the world and according to scholars such as Seifert (1996), Thornhill and Palmer (2000), serves as a framework for understanding the occurrence of wartime sexual violence. Arguments such as the 'sexual urge' (Seifert 1996) or the 'substitution' argument (Wood 2009) "posit [that] rape occurs in military contexts because soldiers do not enjoy 'normal' access to women in other ways and they will 'substitute' sex by force for 'normal' sex out of sheer necessity".

The narratives of both crime-related witnesses and perpetrators disclose the presence of gender and sex stories and how both exist in narratives of wartime sexual violence. Sexual violence is not solely about gender and violence but also about sex according to McKinnon (1987) and Baaz and Stern (2018). Narratives before the ICC are tainted with violence and militarisation but also reveal the sex facet in wartime sexual violence. The testimonies of war are highly sexualised and testimonies before the ICC were no exception. In the victims' narratives, the notion of sex is made evident by the ghost of sex.

5.7.1 *The ghost of sex*

When [wartime] sexual violence is prosecuted, women become sexual spectacles and have to give detailed accounts of every aspect of the sexual abuse which they experienced (Smart, 1989: 95). The visibility of wartime sexual violence before the ICC also means the visibility of the ghost of sex. In all the cases that dealt with wartime sexual violence in witness accounts, statements and testimonies, we are introduced to the ghost of sex. According to Sharatt (2011:72), the ghost of sex comprises sexualised details of wartime sexual violence, the pornographic display of such experiences, the creation of lust and voyeurism in the courtroom, and the presence of fear which sharing a similar sex as the perpetrator, may make courtroom actors feel like perpetrators. The ghost of sex was present in the courtrooms of the *Katanga*, *Bemba* and *Ntaganda* cases. In the *Bemba* case for example it is made visible in the following accounts:

Witness 22 recounts:

He penetrated my woman part of the body with his own man part of the body, and he ejaculated inside me. Some of the other women were made to perform fellatio on the MLC troops in public view.³⁶

The Prosecutor in the opening statement states:

³⁶ ICC-01/05-01/08-T-41-Red2-ENG CT2 WT 01-12-2010 1/47 NB T.

Six MLC soldiers came into the bedroom of the witness. One of them ordered the witness to lie on the bed. She refused...he pushed her on the bed. He cut her clothes with a knife. The witness states that she was subsequently raped by the three MLC soldiers in succession with a gun at her throat. All three perpetrators ejaculated in her.³⁷

Witness 23 a man victim states:

The soldiers told me I will live, but they will have to fuck my anus. A number of these MLC soldiers penetrated my anus with their male parts, in turns, in the presence of my wife and children.³⁸

The ghost of sex is also present in the *Ntaganda* case. The excerpt below is the account of Witness P-758 who was girl child soldier.

One of the soldiers told his two friends to go and he remained with me. He stripped me and told me not to fear. He would help to heal my wound. I told him that I had not washed since yesterday. Despite this, he removed my top and continued to touch me. I struggled and tried to resist him, but he had more strength because he was a man. He kicked me and succeeded to subdue me. He then threw me on the bed and spread my legs apart. He then penetrated my vagina with his penis. My vagina hurt where I had been injured the day before. After he finished raping me, he said, 'It is true you have been injured. You have a wound.'³⁹

The presence of this ghost of sex renders women's bodies sites of sexualisation. Carol Smart (1989: 97) argues that during trials the female body becomes heavily imbued with sexual messages and certain body parts convey sexual meanings. In the narration of the experiences of wartime sexual violence, female bodies symbolise the standard fantasy of

³⁷ ICC-01/05-01/08-T-32-ENG CT WT 22-11-2010 1/64 PV T.

³⁸ ICC-01/05-01/08-T-51-Red2-ENG CT2 WT 21-01-2011 1/53 SZ T.

³⁹ ICC-01/04-02/06-T-8Bis-Red-ENG WT 11-02-2014 26/59 SZ PT pg 25 para 5-13.

the pleasure of abuse and sexual power by male bodies. It constitutes salacious content for the male gaze. In the abovementioned examples before the ICC, phallogentrism is hypervisible.

In the perpetrators' testimonies, sex is made evident in terms of sexual desire, pleasure, eroticism and its particular mix with an imagined racialised brutality on the part of the perpetrator (Baaz and Stern, 2018: 8). Most importantly the sexual body of the perpetrator is made visible. A sex story depicts how rape which is an integral part of war, occurs because male perpetrators are subject to their biologically driven heterosexual needs (Baaz and Stern, 2013: 20). The sex stories of the perpetrators are also based on the assumption that female sexed bodies are always readily available for male sexual gratification and that soldiers have insatiable sexual needs. In testimonies of armed soldiers, women and girl fighters are taken as wives by armed groups soldiers for the primary role of sexually satisfying them. This reveals how the sex story prevails and has a stronghold in military and armed groups.

Witness 0963 (a man soldier) in *Ntaganda* recollects:

When we arrived over at the military camp, we could take the girls with whom we would be sleeping. They said to everyone, "You are free to take any one of the women and to sleep with her". Now, soldiers also wanted to have sex with the women combatants because they may have gone out to find women outside, and if that did not happen, then they would fall back on the women fighters.⁴⁰

Witness 0019 (a women civilian and victim) in *Ntaganda* recounts:

No, they did not threaten me. They wanted to tell me that I should know each that they came close to me that I should know what they wanted was sex.⁴¹

Witness 0081 (a woman civilian and victim) in *Bemba* states:

When they arrived, I was getting ready to prepare tea. When they arrived, my husband took the baby. They said that they wanted a woman, and my husband

⁴⁰ ICC-01/04-02/06-T-80-Red2-ENG CT WT 13-04-2016 1/97 SZ T.

⁴¹ ICC-01/04-02/06-T-115-Red-ENG WT 06-07-2016 1/62 NM T.

said that I was his wife and I had a baby, and they said that was not a problem. They said they just wanted a woman, and I was a woman and they slept with me.⁴²

In the narratives above, the prevailing view is that armed soldiers have insatiable male sex drives which empower them and construct women as objects of male sexual desire. Soldiers with sexual needs feel entitled to women's bodies. In the sex story rape or sexual violence is seen as the result of violent male heterosexuality, comingled with ideals of heteromascularity (McKinnon, 1987: 24). The sexual body of the perpetrator or armed soldier is associated with sexual arousal, desire, and pleasure alongside acts of domination, which account for sexual violence (Heberle and Grace, 2009: 192).

In attempting to establish the link between gender, militarisation and sexual violence as per the gender story, the sex story haunts the gender story as seen in the perpetrators' discourses and the ghost of sex. The disruption caused by the sex story to the gender story brings about a sex/gender paradox. A gender story entails armed soldiers resorting to wartime sexual violence because the military as an institution condones violence, specifically sexual violence. Sexual violence in this story is therefore strategic in terms of condonation and instruction of troops to rape. The masculinities articulated from this institution create and require good soldiers who are heterosexual to resort to sexual violence to build solidarity and group cohesion. Moreover, the normalisation, knowledge and the impunity towards acts of sexual violence stem from the way these institutions manoeuvre around their homosocial makeup.

A sex/gender paradox supervenes in the perpetrators' discourses. Renditions of sex permeate the gender story which focuses on gender (militarised masculinities). A case in point in this chapter is the following: while the armed soldiers who are masculine violent perpetrators are constructed as a result of violent militarised masculinities. Aside from these masculine violent macho soldiers these soldiers are also male sexual subjects or male sexed bodies with insatiable sex drives. They are male sexed bodies subject to the natural forces of male heterosexuality. The gender story takes for granted the sexual

⁴² ICC-01/05-01/08-T-55-Red2-ENG CT WT 27-01-2011 1/56 SZ T.

bodies of the perpetrators but the gender attributes (masculine) are not inseparable from sex (male heterosexuality and male sexed bodies).

Within the gender story in this chapter, women are repositories of cultural identities (Parashar, 2014: 101) and in the sex stories in the narratives, women are repositories of male sexual desire and pleasure. In the former, women uphold the social and cultural values of the warring sides and upholds the morality of society, and in the sex story women satisfy male sexual desire. Sex haunts the gender story in that women (feminine) are not inseparable from female sexed bodies.

5.8 Conclusion

While the narratives of women victims and perpetrators are important in investigating the political significance of sexual violence, it is further important to bring about the collaboration of both their worlds. Du Toit (2009: 67) argues that the political significance of rape can be found in the clash between the victims' and perpetrators' worlds. No world should be viewed in isolation or as taking precedence over the other. Before the testimonies of crime-related victims and perpetrators, the sexual body of the perpetrator and the sexual component of wartime sexual violence are made visible. Moreover, in the African women's discourses, there is a dominance of hegemonic constructions of gender and sexuality. Heteronormative notions affect and shape witnesses' views and understanding of rape, for example the common assumption that rape is not a violation but what a man does to a woman; it is his masculine prerogative and male sexual entitlement. Women's discourses in their narratives or testimonies are understood through reference and adherence to purity and chastity; qualities associated with femininity. These discourses inform the ICC's institutional discourse of protection which is discussed in Chapter 7. Wartime sexual violence is not solely about gender but also about sex as illustrated by the sex/gender paradox which arises. The erasure of sex in wartime sexual violence is not the only feature of global discourses of wartime sexual violence. The absence of women perpetrators as well as the absence of sexual violence against men are important erasures in the global discourses of wartime sexual violence

which account for women's incomplete experiences as well as how sex and gender operate in war. These are addressed in the following chapter

CHAPTER 6: WOMEN COMBATANTS AND SEXUAL VIOLENCE AGAINST MEN BEFORE THE ICC

6.1 Introduction

Global discourses of wartime sexual violence view women and girls as the predominant victims of sexual violence and men as the predominant perpetrators. These discourses mask irregularities and, as argued by Harris and Hanchey (2014) and Baaz and Stern (2013), discourses are never permanent or fixed. This chapter aims to destabilise the dominant discourses of wartime sexual violence by addressing and considering the participation of women in war as well as men's sexual victimisation. These are contradictions masked by the dominant discourses. Scholars such as Alison (2009: 75) argue for a need to account for the presence of men victims of sexual violence and women perpetrators in war narratives. This is imperative in order to provide a holistic view of women's wartime experiences and to better understand how gender and sex play out in the theatre of war. It echoes Mibenge's (2015: 199) call for the disruption of discourses through the selection of narratives that identify masculinities and femininities which emphasise experiences of war not formally made visible before the international criminal justice project.

Alongside other feminist scholars such as Harris and Hanchey (2014), I face the conundrum of how to examine women's human rights in war without reifying essentialist and incomplete constructions of their experiences. In this chapter I aim to acknowledge and respond to the reality of men victims of sexual violence and women perpetrators while still recognising the simultaneous reality that women and girls remain the majority of victims of armed conflict. The presence of men victims of sexual violence and women's participation in war call for a new debate on wartime sexual violence. This also calls for messy understandings of armed conflict.

Underpinning discourses of wartime sexual are universal assumptions which often associate women with peace and reconciliation and men with war and violence (Olga and Mouthan, 2019, King, 2015). Gender essentialism defines women in three conflating categories: as vulnerable, as mothers, and as civilians (Puechguirbal, 2010: 172). These assumptions tend to overlook the roles women play as perpetrators of violence and sexual abuses during wartime, given the dominant perceptions and assumptions which classify them solely as vulnerable. The stereotype portrays men as aggressors and women as victims.

6.2 Women combatants

Militaries and armed groups around the world have witnessed increased participation and presence of women in their ranks (Wood and Thomas, 2017). While this increase could be viewed as a feminisation of the military, the nature of the participation or presence whether voluntary, involuntary or forced has had consequences. It has meant a disruption in traditional roles and beliefs, and the testimonies before the ICC has brought the involvement of women to light. The following quotations illustrate this. The presence of women combatants is established in numerous testimonies such as witness 0010's (former girl child soldier) testimony in *Ntaganda*:

When I was in Mongbwalu, I saw a lot of young women and civilians in the armed group. What I do not know is whether they had joined the army voluntarily or

they were enlisted. I did not know whether I was going to see them again or not. And then afterwards, I saw others, different ones.⁴³

Witness 0011 in *Lubanga* recounts during his questioning:

Judge Odio Benito: Finally a question, sir, if I may, you explained to us how on many occasions the officers and Chief Kahwa and another officer went to the towns to ask the people and parents to send the children to be trained and to be part of the army. Did girls volunteer to be part of the army?

A. Yes, there were girls who volunteered.⁴⁴

The women fighters in the testimonies above and in the armed groups under scrutiny joined the community of women fighters in countries such as Sierra Leone, Liberia, South Africa, Nicaragua, Sri Lanka, to mention a few. In the narratives of the witnesses, women's participation in war and roles as agents of violence is evident. This needs to be acknowledged and further examined to provide a better understanding of the complex picture of conflict. An overview of the literature and history suggests that women play multiple roles in times of mass political violence and war. These roles include being silent bystanders and supporters of the regime, acting as administrative and supporting personnel, traitors and spies, prison and camps guards, interrogators and torturers, killers and murderers, sex offenders, political leaders and instigators (Smeulers, 2015: 243, Locken, 2017: 56, Turshen, 1998:105). While the roles vary, so do the motives or reasons for joining armed groups. In the four cases under scrutiny, women and girls were abducted and forced to join militarised units. Some voluntarily joined from ideological conviction and motivated by vengeance while some were orphans and the armed groups provided perceived economic security. These motives are in line with Smeulers' (2015: 247) arguments that women and girls join military units for varied reasons.

Despite the presence of women and girls in armed groups the groups, like most militaries, remain masculine-favouring institutions which are principally made up of men. Scholars argue that conflicts and militarised armed groups exacerbate existing patriarchal

⁴³ ICC-01/04-02/06-T-47-Red2-ENG WT 11-11-2015 1/73 SZ T.

⁴⁴ ICC-01/04-01/06-T-139-Red2-ENG CT WT (rev.dec.1974) 03-03-2009 1/100 PV T.

structures, gender stereotypes, and discrimination (Mostei, 2007: 182, Ni Aolain *et al*, 2011: 342), and the armed groups under scrutiny are no exception. While women are present in the ranks of these militarised communities, they are still confined to traditional roles of cooking, cleaning and sexually satisfying men soldiers. They are allotted a predominantly combat-supporting role in spite of their participation in combat and hostilities. Parashar (2014: 101), argues that as a social institution, war upholds its own gendered order with a clear division of labour between the sexes. Strict sexual division of labour in war was demonstrated in the *Lubanga*, *Katanga*, *Ntaganda* and *Bemba* cases.

In *Lubanga* and *Ntaganda* for instance, women combatants are referred to as PMF which stands for “personel militaire feminin”, in other words feminine military staff. The presence of PMFs point to the different roles women have played and continue to play in times of conflict as well as how division of labour between the men and women operates. These PMFs consist of military girls and women of all ages.

Witness 0299 in *Lubanga* states:

The commanders were appointed to certain posts, and they had women soldiers behind them. PMF we would call them. The PMFs' job was to take the commander's bags, and their other job was to be their wives.⁴⁵

The term “PMF” – displays unease and a discriminatory attitude when it comes to the presence of women in an all-masculine institution. While women are now allowed in the army, acceptance is only for subordinate positions (Smeulers, 2015: 233), and women in combat support roles have trouble fitting into military organisations (Parashar, citing Goldstein, 2001:127). The PMFs in armed groups in the Congo can be likened to women who joined the SS during the Nazi era and were not accepted as full members but as so-called auxiliaries (Smeulers, 2015: 253). The term PMF which translates into feminine military staff points to the auxiliary role attached to women in these groups. Their membership is not based on physical strength in institutions which reward masculine physical prowess, but are based on their domestic roles/support. They are not viewed as

⁴⁵ ICC-01/04-01/06-T-122-Red3-ENG CT WT (rev.dec.1974) 09-02-2009 1/63 PV T.

actual soldiers despite their frequent participation in conflict but are predominantly positioned in combat-supporting roles. They are auxiliary to the masculine war machine and masculine militarised institutions and regarded as inferior.

Throughout the narratives before the ICC, there is evidence that women and girls also play roles in intelligence and are referred to as 'IS' girls' which stands for "Intelligence Service" girls. In war contexts these 'IS girls' are used against the enemy and when the need arises, are sent out to enemy camps or towns to ascertain what kind of weapons the enemy is using and to gather as much intelligence as they can. The rationale behind the use of 'IS girls' is the notion that men have a weakness for women and young girls⁴⁶. Women and girls are exploited by the phallogentric masculine war machine. These tactics are not limited to African conflicts, but according to Smeulers (2015: 246), using women or girls as spies are universal war tactics. Women and girls, Smeulers (2015: 249) posits, are used because they are not seen as dangerous but innocent victims and can thus easily manipulate people. Their innocence but most especially their sexuality is exploited as means to an end in war.

In the military and its militarised masculinities, the foe is femininity, and anything linked with femininity is considered harmful to these masculinities. This explains why militaries or armed groups around the world work to actively preserve the association between masculinity and militaries (Peterson and Runyan, 2010: 164). The presence of women combatants is considered an irregularity and notwithstanding the roles they play, they are still subjected to denigration in the armed groups under scrutiny. Their denigration is apparent in military chants such as the following:

Misfortune. Vaginas and penises have committed an error. They have had a child. The child then had difficulties, and we continued to shoot night and day. They went up into the bush. In Bunia we sought work and did not find any. Mimi,

⁴⁶ ICC-01/04-02/06-T-47-Red-ENG WT 11-11-2015 46/73 SZ T

why do I have to marry a female soldier, PMF. If I marry her, where will I take her? Mimi, why must I marry a PMF? If I marry her, what will I do with her.⁴⁷

Such chants not only indicate the level of contempt masculine institutions such as the armed groups hold vis-à-vis women, but also indicate that irrespective of the presence of women in these masculine institutions, women will always be outsiders. They are merely tolerated rather than entirely respected and accepted (Cohen, 2013). In the lyrics above it is clear that being a woman soldier or ‘PMF’ makes a woman ‘unmarriageable’. This unsuitability for marriage is concurrent with Baaz and Stern’s (2010: 181) argument that there is a strong stigma attached to women in the armed forces; they are not only considered unfit for marriage but also for family life. Whether girls or women join armed groups voluntarily or by force, their involvement contravenes gender norms. For every contravention of a gender norm, there are repercussions. The women fighters involved in masculine institutions such as armed groups face repercussions during conflicts and post-conflicts scenarios in the form of denigration, rejection, ostracisation from their communities, and exclusion in DDR programmes (Ni Aolain, 2014: 147).

During war, men soldiers often express derogatory language towards their feminine counterparts. This is done to remind the women of their oppressed and subordinate positions. In *Lubanga* and *Ntaganda*, women combatants or ‘PMF’ are called ‘*guduria*’. According to witness 0010 in *Ntaganda*, a ‘*guduria*’ means a large cooking pot, used to express the fact that any soldier can sleep with a woman fighter at any time. The attachment of such degrading words towards PMFs aims to position men soldiers as superior and stronger than women fighters. As noted by Javaid (2018: 35), “the use of derogatory language represents a symbolic form of violence, highlighting to the victims their devalued and disliked position in the gender hierarchy”. The use of terms such as ‘*guduria*’ aims not only at denigrating women but at attacking women fighters’ femininity and sexuality. Subsequently, the ‘ghost of sexuality’ and its accompanying notions of purity and chastity required of women continue to hover in narratives. Soldiers in these armed groups understand how these notions of chastity and purity are tied to

⁴⁷ ICC-01/04-02/06-T-47-Red-ENG WT 11-11-2015 41/73 SZ T

cultural constructions of femininity. By comparing a woman fighter to a pot which everything gets into, the men soldiers are aware that a ‘good’ woman first and foremost does not join the army and secondly cannot allow herself to be impure by having sexual relations with several men. The soldiers adhere to the social construction of a woman as someone who is chaste and not sexually impure. Her will or failure to consent given the coercive environment of war is not considered. By defining women combatants by their sexuality (requirement of chastity and shame), these soldiers perpetuate a masculinist view of women. This derogatory term ‘*guduria*’ demonstrates the continuous hold which the notion of feminine purity exerts and the value it exudes in communal settings and armed groups, and confirms the double victimisation that many women experience once the violence ends (Ni Aolain, *et al*, 2011: 429).

In armed groups around the world, women combatants suffer countless abuses at the hands of their masculine counterparts. Accordingly, the women assume multiple burdens or lived experiences which are unique to them as women. In *Ntaganda*, *Lubanga* and *Katanga*, women combatants are expected to not only participate in hostilities, perform domestic chores and satisfy their male counterparts’ sexual desires, but they are also punished for sleeping with these very soldiers. Witness 0963 in *Ntaganda* recounts:

We saw that girls and women were punished. All the girls and women were assembled one day, and the commander said to them “where did you go to sleep?”. And they said that they were taken by the trainers. The commander replied, “you women spend all the nights with the trainers, so today I am going to occupy you in the morning with training” and they were punished.⁴⁸

Women combatants experience a wide range of victimisation and burdens which render them vulnerable in war. This goes unnoticed and the masculine war machinery is oblivious to them.

6.2.1 Women as perpetrators

⁴⁸ ICC-01/04-02/06-T-80-Red2-ENG CT WT 13-04-2016 1/97 SZ T.

In times of war, women display agency and sometimes embrace masculine power or are agents thereof. As a result, the picture of war becomes complex. It is important to investigate women's agency because, as argued by Hadderj (2019: 3), "good feminist research into women's experiences should not just focus on women's victimisation and masculine domination but also need to consider and theorise competing discourses that offer positions of resistance to women". By shedding light on women's participation or involvement in times of war, women's agency can be strengthened (Haardej, 2019: 4). I heed Simic's caution (2018: 7) on the importance of not taking away from women's historical suffering when considering their agency in war.

Women perpetrators are not recent actors or a new phenomenon (Cohen, 2013, King, 2015). Over the course of years women have participated in wars and committed atrocities in wars in Rwanda, Sierra Leone, and the former Yugoslavia to mention a few. As Smeulers (2015: 220) posits, in Spain and in South Africa (under the apartheid regime), there were reported cases of women fighters committing acts of torture by pumping water into other women's fallopian tubes and applying electric shocks to their victims. Even though the number of women perpetrators is lesser than men, several women than assumed so far have been involved in mass atrocities (Smeulers, 2015: 226, King, 2015). The narratives before the ICC show that women combatants are involved in war-related sexual violence, torture, and assaults. The following narratives illustrate this involvement.

Victim A/0542/08 (a woman victim) in *Bemba* narrates:

A few moments later, some others came. There was a woman amongst them, and she was carrying a child and she went into the house and she used her weapon to assault us under the bed. I came out from underneath the bed. She asked me to give her some money, I told her that I did not have any and she threatened to shoot me if I did not give her money. She started to assault me.⁴⁹

Witness 0038 (a man witness) in *Bemba* recounts:

⁴⁹ ICC-01/05-01/08-T-220-ENG CT WT 01-05-2012 1/56 NB T.

A. The women fighters would intercept a boy of 30 years of age and say, ‘Take off your clothes. We want to see your penis.’ And what madness. And indeed, the fellow would have to take off his clothes, everything, and he would remain there naked. And they would take the barrel of their gun and use it to poke at his genitals and then let him go.

Q. And just to be clear, this was done by the women soldiers of Jean-Pierre Bemba's forces?

A. Yes, yes. It is an abomination for such to happen to an African man.⁵⁰

Some of the literature on war postulates that women are even involved in sexual violence; sometimes in a supporting capacity (holding the victim) and in some cases as the main physical perpetrator (Olga and Mouthan, 2019: 54, Smeulers, 2015: 254). Accounts of women perpetrators invite us to rethink the traditional archaic binaries of men as perpetrators and women as victims. The narratives mentioned above cast doubt and disrupt assumptions that women are naturally peace loving, nurturing and have a natural instinct to safeguard human life. The presence of women perpetrators is important because it aids in untangling and understanding how gender and its norms affect the behavior of men and women and to what extent it plays a role in the capacity of men and women to commit atrocities in war. Smeulers (2015: 265) and Loken (2017: 62) argue that voluntary entry into armed groups by women is a way of being accepted into a group, of achieving social recognition, of gaining self-confidence, and of vindicating past traumas. In times of war, most women perpetrators are members of an armed group or the military. In this masculine dominated institution, women are often labelled as weak and considered outcast members. These institutions which revere violence require women combatants to resort to violence to display equality with men (Loken, 2017: 64). This has a theatrical function because by subscribing to violence women perpetrators try to prove they belong to the ‘boys’ club’. Women in militarised organisations seem to experience the same pressures as their male counterparts and seem to be socialised into violence in similar ways (Smeulers, 2015: 266).

⁵⁰ ICC-01/05-01/08-T-34-Red2-ENG WT 24-11-2010 1/56 NB T.

I do not aim to portray women perpetrators as perpetual victims, but consideration should be given to what role the context and systems of military socialisation play in inducing them to resort to violence and commit violent atrocities in war. Most importantly, some women perpetrators as argued by Smeulers (2015: 241) make a conscious choice to carry out certain atrocities. Women through their participation as low-level soldiers or political authorities are capable of committing atrocities (Mibenge, 2015, Smeulers, 2015: 241).

6.2.2 Imperfect victims

Women combatants are imperfect victims; in times of war they occupy the dual status of being both victims and perpetrators. This imperfect reality disrupts and does not fall within the traditional assumptions of war. In an attempt to not deal with this imperfect reality, there is a tendency to simplify the narratives and find simple discourses to war (Aroussi, 2017, 498). This results in us cutting ourselves with Occam's razor⁵¹ which means we do ourselves a disservice by always opting for the simplest explanation and running away from complex explanations (Anholt, 2016). Women in times of war are never total victims and never total perpetrators and it is imperative to understand this messiness or complex picture of war so that women's full experiences can be properly addressed. Scholars such as Harris and Hanchey (2014:336), argue for the need to embrace messy understandings of war, and in agreement with them I argue that the complicated reality and agency of women in wars need to be acknowledged.

My focus on women perpetrators does not aim to categorise these women as "abnormal and unnatural" (Sjoberg, 2016:78) or vilify them thus producing a distance between them and ordinary peaceful women. Women's involvement in war should not be considered as a shock or a deviance from human behavior (Smeulers, 2015: 243). Although women are capable of aggression and violence, most societies implicitly condemn feminine aggressiveness (Alison, 2009). My aim is to shed light on how gender constructions within institutions such as militarised armed groups accounts for women combatants' participation in atrocities. The absence of women perpetrators in the Office of the Prosecutor's indictments, arrest warrants and ICC judgements, pinpoint to a remarkable

⁵¹ Occam's razor stipulates the simplest explanation is preferable to one which is more complex.

difference between the portrayal of men and women in times of war. By not addressing the matter of women perpetrators, the ICC misses an opportunity to add to the debate of women perpetrators as well as to inform its own institutional discourses around women perpetrators. In the media, in the literature, and in previous tribunals, the portrayal of women perpetrators gives the dominant message that women who commit atrocities or are involved in war must be either mentally disturbed or ‘unnatural and abnormal’ (Sjoberg, 2016). Secondly, while these women perpetrators are classified or portrayed as unnatural or abnormal, they are also viewed as mothers, monsters or whores (Sjoberg, 2007, Smeulers, 2015).

The gendered impact of war still resonates in the practice of international criminal law (Chappelle, 2016: 205), and before the ICC who predominantly sees women as victims and men as perpetrators.

6.3 Sexual violence against men

As mentioned earlier, men’s sexual victimisation is one of the paradoxes masked by the dominant discourses of wartime sexual violence. Mass rapes and sexual torture of men in times of war are not a new phenomenon. Empirical evidence suggest that sexual violence against men have occurred in Ancient Greece, Pre-Colombian societies, Armenian genocide, the Rape of Nanking, Eastern DRC, Peru, Rwandan , Northern Ireland, Sierra Leone just to mention a few (Sivakumaran, 2007, Feron, 2018:24, Koos, 2018). This facet of war has been neglected for too long and its evasiveness before human rights discourses and the ICC are symptomatic of a bigger issue. According to Onyango and Hampanda (2011: 237), the current human rights discourse used to examine wartime sexual violence is problematic as it promotes an exclusive male perpetrator and a female-victim paradigm. Scholars such as Sivakumaran (2007), Javaid (2018), and Feron (2018), believe and argue that there is a need to take the discourse of men’s sexual victimisation to the next level. An understanding of gender and sex is important in making sense of sexual violence against men perpetrated by armed soldiers. Analysing men’s sexual violence also aids in untangling how gender and sex is interpreted before the ICC.

Sexual violence against men during armed conflict has remained an elusive issue before transitional justice institutions (Onyango and Hampanda, 2011: 238). The elusiveness of sexual violence against men reinforces equations of men and (sexual) invulnerability meaning men can never be victims. And on the other hand, reinforces the equation of women and (sexual) vulnerability meaning only women can be victims (Feron, 2018: 161). Over the course of time, there have been attempts to include and address gender before various international institutions. Gender has, however, been treated as the totality of women and men rather than seen as interrelational and structural (Aroussi, 2017: 511). This explains the resulting conflation of women as victims of sexual violence and the invisibility of men's sexual violation. Sexual violence, whether committed against men or women victims, is rooted in beliefs and attitudes surrounding femininities and masculinities and is essentially about dominance, power, and control (Javaid, 2018: 453). Examining men's wartime sexual violation aims to reveal interconnections between gender, violence, sexuality and the reality and invisibility of sexual violence against men. As argued by Ni Aolain (2011), men's sexual violence is a communication between militarised masculinities and subordinate masculinities.

In analysing men's sexual violation, I shine light on the voices of men victims, their testimonies, the various facets of their victimisation before the ICC, and how gender and sex operate in the commission of this crime. The narratives of men rape victims help to identify how discourses around sexual violence shift and how witnesses' constructions of their subjective experiences in times of war are informed by the ways in which peacetime discourses constructs and view sexual violence. The cultural constructs of harm to men's bodies have differing social meanings in the theatre of war (Ni Aolain, 2011). I recognise that the silencing and the invisibility of men victims of conflict related sexual violence does not mean that this issue is less important. It is important to pry into this because within the context of the ICC, men's sexual violation combines dynamics of militarised masculinities and women perpetrators and exposes myths held about "male rape". Though slightly different from women's discourses, men's narratives of sexual violence contain dominant discourses of abomination and emasculation.

6.3.1 *Discourse of abomination*

Witness 0038 (a man) in *Bemba* recalls:

A. Most of the troops were men and small children. Regarding women, I think in my humble opinion I counted six women. I believe I saw six different Banyamulengue women, and one of them had a baby, but she was a soldier. They would intercept a boy of 30 years of age and say, ‘Take off your clothes. We want to see your penis.’ And what madness. And indeed, the fellow would have to take off his clothes, everything, and he would remain there naked. And they would take the barrel of their gun and use it to poke at his genitals and then let him go.

Q. And just to be clear, this was done by the women soldiers of Jean-Pierre Bemba's forces?

A. Yes, yes. It is an abomination for such to happen to an African man.⁵²

As mentioned earlier, women combatants are also involved in the commission of atrocities and wartime sexual violence. In the narrative above women fighters are the main physical perpetrators, and witness 0038 notes that this act was an abomination. The use of the term ‘abomination’ is thought-provoking. According to the Oxford dictionary, an abomination is a thing that causes disgust or loathing. Referring to the sexual assault of a young man in his testimony, witness 0038 by using the terms ‘madness’ and ‘abomination’, echoes the thoughts that sexual victimisation of a man is disgusting and sheer madness. This is so because the sexual victimisation of any man goes against gender norms and expectations of men being strong and powerful. An African man is meant to be virile, sexually inviolable, and the male body impenetrable. Most of the men victims have internalised, constructed and understood masculine gender norms used to view and organise themselves in society (Feron, 2018: 76).

6.3.2 *Discourse of emasculation*

Witness 0069 in *Bemba* narrates:

⁵² ICC-01/05-01/08-T-34-Red2-ENG WT 24-11-2010 1/56 NB T.

Maybe in their country no distinction is made between a man and a woman; however, in the Central African Republic this is taboo. This is an unknown entity. It is the Banyamulengue of Mr. Bemba who brought this practice to our country and today, today people make fun of those who were victims of rape. Mr. Bemba humiliated us. We no longer have any values in the Central African Republic. How can one imagine a man raping another man?⁵³

In witness 0069's narrative, the rape of men is a homosexual practice and unknown. This practice is alien and normal heterosexual men do not engage in this taboo. Witness 0069's view on homosexuality as taboo and an abomination mirrors the thoughts shared by the respondents in Makofane's work (2013) - *Unspoken facts: a history of homosexualities in Africa*. According to the African respondents interviewed by Makofane (2013: 247), homosexuality is an alien concept and against African traditions and Christianity. Like the discourse of abomination above, the practice is viewed as horrible and sheer madness.

Witness 0023 (a man) in *Bemba* recounts:

Q. Sir, you have just mentioned that they did carry out acts and that is the reason why I considered myself a dead man. Can you explain to the Court what you mean by this? What acts did they carry out?

A. Prosecutor, these persons, when they came, we thought they were humans, but they used their weapons to crush us. You see, somebody like me, a man lying with me, that is why I considered myself to be dead because a man cannot sleep with another man. With what they did to me, I knew that I was dead. I could no longer feel like a human being. And after that, my second wife refused me because she considered that I was a woman like her.⁵⁴

Witness 0023 recollecting, "*somebody like me, a man lying with me, that is why I considered myself to be dead because a man cannot sleep with another man*" analogises his rape to death. This is similar to the women's discourse of death being better than rape or rape being death, in Chapter 5. The death which men victims of rape experience is

⁵³ ICC-01/05-01/08-T-193-Red2-ENG WT 29-11-2011 1/61 SZ T.

⁵⁴ ICC-01/05-01/08-T-51-Red2-ENG CT2 WT 21-01-2011 1/53 SZ T.

also expressed by women rape victims and point to Du Toit's (2009) argument about the structural similarities in rape experiences. In this instance, the similarities transcend the genders of the victims. This however does not mean that men and women victims of sexual violence have similar experiences or give similar meanings to their sexual victimisation. Their experiences are different because of the divergent cultural constructs of harm to men's and women's bodies. According to a heteronormative framework, a man's body is inviolable and the commission of rape on this body violates the very core of this inviolable entity.

Witness 0080 (a woman) in *Bemba* narrates:

Well, when my husband tried to intervene, the Banyamulengue said to my husband that he too was a woman and that if he tried to oppose them they were going to sleep with him as well, and they did the same thing to him as they did to me for that reason.⁵⁵

The fear of being feminised or the thought of being feminised runs through these narratives. Witness 0023 wife's response to his rape – '*I was a woman like her*' or the insults hurled at witness 0080's husband that '*he too was a woman*' – echo the notions that the worst thing that can happen to a man is to become or be treated like a woman. As Motsei (2007: 122) notes, construction of masculine power is largely defined by who is dominant. As a result, real manhood is measured according to where it fits along the strong-weak continuum. Men are often at the ultimate end of the strong spectrum and women are at the end of the weak continuum. "*I was a woman like her*" is similar to being "*less of a man*" on this continuum, and mirrors the feeling of shame and humiliation only reserved for women. Sexual violence is an experience solely associated with women because they are weak and constantly dominated by men. These all resonate with Seifert's (1996) argument, that social constructions of the feminine is underpinned with 'vulnerability to assault', something that the construction of masculinity does not include (Seifert, 1996: 40).

⁵⁵ ICC-01/05-01/08-T-61-Red2-ENG CT WT 08-02-2011 1/56 NB T.

The sexual victimisation of witness 0023, 0069 and 0080's husband should not be viewed as homosexual acts although the victims viewed them as such. As mentioned earlier, gender norms require men to be virile and impenetrable and men-on-men sexual violence subsequently causes gender non-conformity. This results in men's sexual violation being seen as abomination and a sign of homosexuality. Far from being a homosexual act, wartime sexual victimisation against men is a communication between militarised and subordinate masculinities (Ni Aolain, 2011: 429). Sexual violence against men is an exercise of power (Brownmiller, 1975: 256) and as such there is a strong link between sexual violence against men and sexual violence against women. Sexual violence against women and sexual violence against men operate on the domination paradigm (Mibenge, 2015: 82). In the case of sexual violence against men, constructions of masculinities operate on a strong-weak continuum with the strongest being the hegemonic masculinity (Motsei, 2007: 76). This masculinity is militarised and tops other masculinities.

Militarised hegemonic masculinity is also considered hypermasculinity and holds dominance not only over women but also "subordinate" men (Feron, 2018: 36). Hypermasculinity according to Onyango and Hampanda (2011: 241)

...is the most extreme form of traditional masculinity, [and] has seven dimensions of what it means to be a man: avoid all things feminine; restrict one's emotional life; be tough and aggressive; be self-reliant; emphasize achieving status above all else; objectify attitudes toward sexuality; and fear/hate homosexuality.

Rather than being seen as a homosexual act, wartime sexual violence against men is all about reasserting power. Alison (2007: 81) argues that sexual violence against men is a highly masculinised act for both the perpetrator and his audience. For the perpetrator, the act reasserts his position of power, feminises the victim, and symbolises power and control. In short, this crime asserts hegemonic masculine dominance and emasculates other men (Lewis, 2009: 43). Hyper-masculinity communicates to other men their relative positions of power and helplessness (Ni Aolain, 2011: 237). This points to the gender story.

The sex story looks like this. The perpetrator of this crime who is a heterosexual man, does not consider himself homosexual for having sex with a man as the act is characteristically phallic. The victim on the other hand views himself as a violated male body because being sodomised or penetrated renders him female. Within a heterosexual frame or matrix only female sexed bodies are meant to be penetrated during sexual intercourse. Wartime sexual violence and the discourses of emasculation and abomination through a sex story thrive on the notions of female sexuality as passive and male sexuality as active with the female body being treated as nothing but a vessel for male sexual pleasure.

The discourse of emasculation thus leads men to associating their victimisation as incompatible with masculinity making them feel that they have lost a large part of their identity as a man. The discourses of abomination and emasculation both point to socially constructed notions of sex and gender. These sex and gender stories keep hovering in the testimonies before the ICC.

Wartime sexual violence against men highlights how sex and gender intertwine. Sex is first and foremost a heterosexual activity designed solely for male and female bodies. In the matrix of this heterosexual activity, the male body is sexually active, and the female subject is sexually passive. Female bodies in the heterosexual paradigm are readily available bodies meant to be penetrated and intended for male sexual desire. Sex is phallic in that it is something done to a female body for male pleasure. On the other hand, when a male body is penetrated by another male body (regardless of how he identifies sexually), the victim feels violated because in a heterosexual matrix he is now a female subject; sexually passive. The discourses of emasculation and abomination display what has been made of sex in a heteronormative society. In a heteronormative framework, sex communicates masculine power. Consequently, excerpts from testimonies by men victims such as “*I am a woman like her*” illustrate that sex is something done to women by men. The discourse of abomination ensues because the men-on-men sexual act

contravenes heteronormative norms which stipulate that sex is designed solely for men and women.

6.4 Impossibility of bearing witness

Men who are victims of wartime sexual violence before the ICC face similar difficulties to women who have been sexually victimised. The men victims also have difficulties recounting their experiences before courtrooms because of the impossibility of bearing it and of being a witness. Some victims were upset when recounting their experiences and others found great difficulty in recollecting and living with the victimisation.

Witness 0023 in *Bemba* details:

Thank you for your question, and please bear with me. I apologize. This event offended me greatly and so I cried earlier. Now, the ones on the other side of the river, the soldiers, the Banyamulengue, Bemba's soldiers, they did this to me. They sodomised me. They treated me as if I were a woman. The way they brutalized me, even if I were a woman, I would be entitled to some rest, but the abuse was severe.⁵⁶

Witness 0069 in *Bemba* narrates:

We no longer have any values in the Central African Republic. How can one imagine a man raping another man? Many people lived through this experience of rape. Many of my neighbors were also raped. You know, this is really impossible to bear.⁵⁷

Men who were victims of sexual violence faced difficulties in recounting their experiences before courtrooms because of social notions of masculinity. These notions of masculinity (similar to notions of femininity in Chapter 5) are a major contributing factor to the underreporting of sexual violence by men survivors, and account for the impossibility of bearing witness by men victims. Weiss (2008: 123) argues that some

⁵⁶ ICC-01/05-01/08-T-51-Red2-ENG CT2 WT 21-01-2011 1/53 SZ T.

⁵⁷ ICC-01/05-01/08-T-193-Red2-ENG WT 29-11-2011 1/61 SZ T.

men after their ordeals experience a sense of shame for not fulfilling their masculine roles which dictate that they should be in control and take care of matters themselves. Some of the men victims found themselves in a double bind before the ICC which means they faced fear of not having their experiences believed and also felt shame while recounting these to strangers. This was the case of witness 0069 in *Bemba*:

Let me repeat myself. I believe I have already said that they assaulted me. They sodomised me. I am ready to take my clothes off to show you the wounds that I received in my anus. I am telling you the truth. Goodness me. Your Honour, I ask you could you ask Defence counsel to go off into a private room so that I take my clothes off? I can take my clothes off to show him my anus, my wounds, the scars, and so that he can see for himself what I was subjected to. If Bemba hadn't sent the Banyamulengue into the CAR, if Defence counsel thinks that I'm lying to be prejudicial to Bemba, if Bemba hadn't sent these people across the Ubangi River to commit these acts of violence and abuses, well, God is my witness.⁵⁸

The fear of not having their stories believed, the shame in recollecting their victimisation in front of strangers, the difficulty of bringing it to the knowledge of others, and the painful recollection silence victims and impose the 'unspeakability' of wartime rape (Henry, 2010: 1101, Lyotard, 1988: 5). In the narratives above the witnesses struggled to come to terms with their victimisation since it is commonly, albeit mistakenly, believed that 'men cannot be raped' (Javaid, 2018: 59). The existence of myths of 'male rape' were uncovered in the narratives of some men victim. These myths are inaccurate and erroneous beliefs about rape against men (Javaid, 2018:58). The beliefs thrive because of traditional views of masculinity. The following myths were identified before the ICC: 'male rape is solely a homosexual issue', and 'men are not rapeable' since the act goes against masculine norms of men as 'strong and powerful' which makes it very difficult for some men victims of sexual violence to bear witness.

6.5 Dichotomies of global discourses of war

⁵⁸ ICC-01/05-01/08-T-193-Red2-ENG WT 29-11-2011 1/61 SZ T.

During conflicts as well as in global discourses, multiple binaries continue to operate. As Alison (2007: 87) notes, in times of conflict numerous binary constructions are formed such as the 'masculine' contrasted to 'feminine' within groups, 'us' contrasted to 'them', 'our women' as contrasted to 'their women' and 'our men' to 'their men'. Accordingly, global discourses on wartime sexual violence have been informed by three typical dichotomies (Harris and Hanchey, 2014). These are public/private, self/other, and agent/victim. The dichotomies are interdependent and retain dominant power relations within them. 'Femininity' is signalled in the private-other-victim categories and masculinity is signalled in the public-self-agent categories. Prevailing dichotomies of self/other, agent/victim and public/private have kept women's complete experiences of war such as their participation in armed conflict out of narratives or global discourses of war. These dichotomies have also brought about the invisibility of sexual violence against men. War narratives thus need to be retold and discourses need to be revised.

Beginning with the public/private dichotomy, there is no single such dichotomy. Political theorists acknowledge two broad traditions which distinguished between public and private and these are classical and liberal traditions. "Within the Western liberal discourses, men have been associated with the public sphere, in the character of government, and civil society, while women have been indelibly associated with the private sphere, in the character of family" (Thornton, 1991: 450). While the public/private divide has its roots in classical and liberal traditions, this dichotomy has found its way into discourses of wartime sexual violence (Harris and Hanchey, 2014). In the context of war, the public/private dichotomy is gendered; the public is masculinised and the private is feminised (Harris and Hanchey, 2014: 325). The public is associated with violence, armed groups (all masculine entities), militarised masculinities, strange/unknown perpetrators (Baaz and Stern, 2018: 75, Parashar, 2014: 46). Armed groups and soldiers are viewed and considered dangerous. Violence is in the public realm and militarised masculinities account for this violence. Civilians especially women belong in the private realm. The private is symbolised by women, their homes, their bodies and sex (Baaz and Stern, 2018: 75, Parashar, 2014: 46). These bodies are linked

with sacredness, inviolability, and vulnerability, and the private organs are understood as a realm of intimacy, sanctuary, and femininity (Harris and Hanchey, 2015:5)

The public/private divide triggers the discourse of wartime sexual violence because a violent stranger who belongs to a military armed group violates a woman's body which is sacrosanct in the private realm. In this case, the sexual violation is triggered by a violent stranger who belongs in the public realm in the context of war.

Sex is ontologically not violence (war) and belongs in the private realm. Wartime sexual violence is thus cast as abnormal and the exception because it is associated to violence, strangers and the exceptional state of war. It is not normal or civilised sex which takes place in the private realm. Though this normal sex could be considered violent too. This civilized sex stands in contrast to military rape, which is cast as abnormal, violent and – importantly – political sexualized acts ordered or at least sanctioned from higher up in the military hierarchy (Baaz and Stern, 2018: 78).

Similar to peacetime during which state intervention continues to be ambivalent in 'domestic' violence, international engagements and international criminal justice mechanisms are also ambivalent in addressing intimate violence committed by civilians in times of war. The intimate violence women are subjected to in times of war by intimate partners or civilians fall through the cracks of international engagements and international criminal justice as a result of this public/private binary. In peacetime in the private realm, this violence is made invisible especially when perpetuated by intimate partners. The violence only becomes political outside the confines of the home.

The self/other dichotomy similar to the public/private dichotomy informs global discourses of wartime sexual violence. The realm of 'self' is masculinised and symbolised by military armed groups and their militarised masculinities. These masculinities fuel violence and denigrate 'the other'. The realm of the 'other' is feminised and consists of civilians, especially women who are considered the "powerless other" (Aroussi, 2017: 480). The militarised masculinities at play in war and in the armed

groups through violence aggrandises this 'self' and demeans the 'other'. As Parashar (2014: 101) notes, the history of most wars demonstrates the social and political development of militarised masculinity which privileges the idea of honour and nationalism. Militarised masculinity is reclaimed or preserved in a violent contest between the 'self' and 'other', with women 'othered' in dramatic and violent ways during war.

The most common dichotomy which informs global discourses of wartime sexual violence is the agent/victim dichotomy. Like other dichotomies, this too is gendered. The agents are men (military perpetrators), and the victims are women (civilians). Pertaining to wartime sexual violence, victimisation is equated with femininity. In this binary, masculinity is associated with agency and the capacity to enact violence. As a result, men are always seen as perpetrators and their victimization get lost in the longer testimony of the violation of women and girls. In this dichotomy agency eludes women and renders sexual violence against men obscure; sexual violence is considered and treated solely as a woman's issue. The elusiveness of women's agency is not only caused by this dichotomy but the dichotomy of self/other and public/private. All three dichotomies are interconnected and interdependent.

An unpacking of the various dichotomies reveals the complexities of war as well as identifies possibilities to make hidden realities visible. The dichotomies carry and hold paradoxes which are masked by the dominant discourses of wartime sexual violence, and these discrepancies are reproduced before the ICC. The dichotomies first and foremost homogenise victims and perpetrators. Victims are treated as a monolithic group with no individual needs or harms. Wartime sexual violence is treated as an exceptionality because it is carried out by a violent armed stranger in war while sexual violation carried out by civilians in wartime or in their own homes is rendered invisible. The dichotomies also render wartime sexual violence unique from everyday sexual violence. By focusing solely on armed soldiers as perpetrators, civilians are absolved of any involvement in the commission of harms or atrocities. According to Heaton (2014: 634), there has been a distressing trend of civilians becoming the main perpetrators of sexual violence over the

years and in most conflicts. The enduring gendering of the dichotomies not only objectifies women but also reinforces protectionist logics when it pertains to wartime sexual violence. The depictions of perpetrators who are masculine armed soldiers resonate with colonial racialised stereotypes. The descriptions of these actors or perpetrators as barbaric, not civilised, real bandits who do not respect and defend the population, cast soldiers as outsiders and the villains. The perpetrators are racialised, and these descriptions carry the risk of fuelling stories that are aligned with preconceived ideas of Africa and its people. The depictions alongside preconceived ideas could perpetuate colonial depictions of non-white men and soldiers as backwards, hypersexualised, and uncivilised.

These dichotomies which inform the global discourses of wartime sexual violence make it impossible to consider other facets of sexual violence, and reinforce the myths that only women are raped and are victims and all men are perpetrators. The ICC not only perpetuates ethnic binaries in its case law when prosecuting wartime atrocities but also replicates the dichotomies of public/private, agent/victim, self/other. This results in the elusiveness of sexual violence against men and women perpetrators. Moreover, the three dichotomies which inform the discourses of wartime sexual violence before the ICC remain and entrench power relations. The dichotomies capitalise the power of hegemonic and heteronormative masculinities which brings about an institutional focus on vulnerability, victimhood, lack of agency and discourses of powerlessness. By incorporating women perpetrators and men sexual violence in this chapter, I aimed to destabilise the fixed universal discourses of wartime sexual violence.

Conclusion

Prevailing dichotomies of self/other, agent/victim and public/private have kept women's full experiences of war such as participation in armed conflict, out of narratives or global discourses of war. These dichotomies have also brought about the exclusion of sexual violence against men. As Parashar (2014: 108) notes, not all women are civilians and not all men are combatants. Women and men can be both perpetrators and victims of wartime sexual violence. Despite the evidence of wartime sexual violence against and the

presence of women perpetrators before the ICC, their treatment and prosecution remain evasive. The elusiveness of sexual violence against men reinstates prescribe ideas of a man's body, which cannot or should not be sexually victimized, unlike the weak, sexually desirable, and vulnerable body of a woman (Mibenge, 2015: 81). An absence in prosecutorial focus and attention on women perpetrators and sexual violence against men lead to erasures of how gender and sex operate in times of war. War narratives therefore need to be retold and discourses destabilised. The next chapter investigates the institutional discourses that arise from the ICC's judicial response to African women's wartime experiences of sexual violence. How does the ICC understand and view armed conflict, conflict-related sexual violence, and its victims?

CHAPTER 7: THE ICC'S INSTITUTIONAL DISCOURSE

7.1 Introduction

It is good practice to not only scrutinise the achievements and failures of international judicial institutions to keep them accountable, but to also interrogate and reevaluate the resulting discourses when it comes to war and its associated realities for women. With a case study of the International Criminal Court, it is worth appraising the institutional discourses that arise from this institution's response to African women's wartime experiences of sexual violence. An appraisal entails examining how the ICC understands and views armed conflict and conflict-related sexual violence, and how it discursively constructs African women who come before it for justice. In addition, does the ICC subscribe to the gender or sex story of wartime sexual violence and how does it interpret gender?

Feminists' reliance on or shift towards gender to make sense of women's experiences often results in an impasse as result of the sex/gender paradox. This paradox ensues because the subjects which feminism depicts, such as 'women' are not entrenched in a universal truth of who they are or what they consist of. The gender story is linked to military masculinity and how men learn to be masculine through violence and mechanisms that create good soldiers. It depends on a particular articulation of ideal types of masculinity and femininity through which men are constructed as heterosexual, masculine, citizen-soldiers and women as peace-loving, ready to serve, and reliant on protection. Military masculinity celebrates violence, order and domination. Femininity on the other hand is viewed as corrosive, and directed inwards stomping out traits of femininity to enhance group bonding (Baaz and Stern, 2013: 20). Women are viewed as symbolic of ethno-nationalism and reproducers of community, and raping them destroys the fabric of society. Rape of enemy women is therefore viewed as an effective way to destroy the enemy, and raped women are often rejected by their husbands and the community (Baaz and Stern, 2013: 22). The gender story constructs men as perpetrators and women as victims, but the sex story tells us that men can be perpetrators and victims,

as can women. In the words of Baaz and Stern (2013: 22-23), the sex/gender paradox works in the following way

... attention to gender as constructed nonetheless tethers gender to the sexed body that gender is seen to act upon. Attention to the power of gender therewith also implies an implicit attention to and reproduction of 'sex'. We are nonetheless enticed into thinking that by paying attention to gender, we have refuted the power of sex.

This chapter is not a legal intellectual exercise to assess how the Office of the Prosecutor and the Defence have interacted with each other in criminal proceedings to prove matters of fact and law when it pertains to armed conflict and wartime sexual violence. Rather it aims in establishing the representational discourse of women's wartime experiences before the ICC. In combing through court records, decisions and judgements, one can establish certain institutional narratives and discourses, and in order to establish the representational discourses before the ICC, it is important to investigate how the ICC positions itself in relation to the realities of armed conflict, understands women's wartime experiences, and positions itself with regards to African women in these cases. Discourses are important because they shed light on how an issue/problem is talked about. In the case of violence, discourses determine how it is viewed or understood, which solutions are perceived, to what extent there is moral outrage around the violence, and most importantly to what extent the violence is considered a political problem (Gouws, 2015: 66). A representational discourse will therefore provide an understanding of the ICC's response to African women's realities in armed conflict and how it relates to the sex/gender paradox.

In investigating this institutional discourse, it will be misleading to assume and treat the Court as a homogeneous structure. While the ICC is a stand-alone institution, it is however made up of different independent structures. This is evident in international criminal proceedings/courtrooms. During international criminal proceedings the various parties and participants such as the Office of the Prosecutor (OTP), the Chambers, the

Defence and Legal Representative of the victims all represent different interests and subsequently provide various nuances to the overall representational discourse. It is for this reason that each structure should be separated, and its discourses examined. In the end, all the discourses are amalgamated which provides a better approach to understand and scrutinise the generated rhetoric. For the purpose of this study, only the discourses of the OTP and Chambers are focused on.

The Office of the Prosecutor (OTP) is an independent structure of the ICC and plays a huge role in the fight against impunity. The work of the OTP makes it a crucial structure to investigate in order to understand the discourses before the ICC. The Prosecutor is the activating mechanism in the pursuit of international criminal justice before the ICC and international community and is consequently of paramount importance. Article 15 of the Rome Statute vests certain powers in the Prosecutor and stipulates:

The Prosecutor may initiate investigations *proprio motu* (on his or her own accord) on the basis of information on crimes within the jurisdiction of the Court and shall analyse the seriousness of the information received. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected.⁵⁹

In investigating and charging suspected individuals, the OTP gathers and unveils evidence at various stages of the proceedings. In the evidence relied upon for a case, its submissions, and opening and closing statements, one can perceive how the OTP structure understands certain crimes, armed conflict realities, and eventually the victims.

⁵⁹ Rome Statute, 1998: 9.

7.2 Prosecution discourse

7.2.1 Heroic protective narrative

The Preamble of the Rome Statute of the ICC establishes that “children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, and affirms that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured” (Rome Statute, 1998: 1). The components of the Preamble of the Rome Statute lay the ground for moral commitment and the pursuit of the international community to end impunity through the vehicle of international criminal justice. As mentioned in Chapter 2, the vision of international criminal justice aims to build bridges of justice between the violence and impunity suffered by women, men, and children all over the globe. This commitment translated into a duty which the OTP takes pride in. The OTP considers itself the guardian of the international community and believes this role to have been vested in its mandate. Throughout the OTP’s opening statements in the cases under scrutiny in this study, the former makes it a mission to constantly state and make known this vested mandate. This is illustrated below.

In *Lubanga*, the Prosecutor asserts:

The Rome Statute ratified by 108 States and supported by citizens and institutions across the globe have given me a mandate. I have to investigate and prosecute the perpetrators of the most serious crimes of concern to the international community as a whole.⁶⁰

In *Katanga*, the Prosecutor states:

The Prosecution has a mandate from 121 Member States to put an end to impunity and represent the victims of crimes where no one is protecting their rights. It is in furtherance to this mandate that the Prosecution is here before giving a voice to the victims of Ituri of the Democratic Republic of Congo.⁶¹

⁶⁰ ICC-01/04-01/06-T-107-ENG ET WT 26-01-2009 1/74 SZ T.

⁶¹ ICC-01/04-01/07-T-80-ENG ET WT 24-11-2009 1/73 NB T.

Of significance to the OTP's duty narrative its particular focus on children and women. There is particular emphasis by the Prosecution to protect those with the least power, namely children. The first historic trial before the International Criminal Court, the *Lubanga* case, focused solely on children. In 3 out of 4 cases under scrutiny, the charges brought forward by the OTP consist of crimes against children under the age of 15 and their use in the active participation in hostilities (child soldiers). Its principal focus on children as seen in *Lubanga* continues right through *Katanga* and *Ntaganda*.⁶²

The OTP's fixation on children sheds light on various aspects of child soldiers' experiences such as the insecurity they feel, the atrocities they experience, and their use to provide security to armed group commanders. The various atrocities they commit such as killing and raping civilians and pillaging property, are highlighted. With this attention on children, the OTP (in the *Lubanga* case) pays no attention to the roles or to how gender affects the experiences of girl child soldiers and boy child soldiers. Child soldiers are treated with gender neutrality. While the OTP mentions passively in its opening statements in *Lubanga* that girl child soldiers were sexually abused, it does not incorporate or amend the charges to include sexual violence. Secondly, the Prosecutor at the time, Luis Moreno Ocampo, pledged to not render girl child soldiers and their experiences invisible before the ICC. This is evident in the following:

During the course of this trial my office will make it its mission to ensure that Thomas Lubanga is held criminally responsible for the atrocities committed against those little girl soldiers when he enlisted and conscripted them to be used as sexual prey when he used them in combat. [Your honors] the ruling in this case can change the life of these girls. In this International Criminal Court, the girl soldiers will not be invisible.⁶³

The commitment to African girl child soldiers' experiences by the OTP as represented by the Prosecutor is however a tokenistic gesture because the OTP advances the negation

⁶² In the *Lubanga*, *Katanga* and *Ntaganda* cases, the OTP aimed to prove that, Thomas Lubanga, Germain Katanga and Jean Bosco Ntaganda systematically recruited, trained, and used children under the age of 15 as soldiers in their military movements the UPC and FPRI to commit atrocities.

⁶³ ICC-01/04-01/06-T-107-ENG ET WT 26-01-2009 1/74 SZ T.

of girl child soldiers' experiences in their communities, and renders them marginalised. It repeats the same mistake especially in the *Lubanga* case by not addressing or incorporating their experiences. The OTP in its early cases not only left African girl combatants on the margins of justice but rendered their experiences invisible. In addition to this, omission of the sexual and gendered crimes which African civilian women were subjected to, meant a lost opportunity to highlight women's wartime experiences. African women and girls' experiences were initially missing, concurrent with their absence as witnesses before the ICC.

A discourse of protection ensues from the OTP's narratives in its preoccupation with paying particular attention to the suffering of children and arguing for the need to protect them because they are the least powerful. The OTP also has an overriding preoccupation with the vulnerability and fragility of African women in the cases before it as shown in its rejection of women perpetrators and ascribing wartime sexual violence solely to women. This vulnerability has been constructed and emphasised in ways such as stripping African women of any agency and emphasising the barbaric characteristic of the masculine perpetrators (who are armed groups). The centrality of vulnerability in the OTP's discourse is not surprising because most international humanitarian engagements have thrived on emphasising the vulnerability of women in order to purchase legitimacy and credibility in their interventions. Baaz and Stern (2013) advance and refer to this as the commercialisation of rape. Laura Heaton also argues that most global humanitarian engagements have been inclined and strived to solely advance women's stories of rape to showcase the vulnerabilities of African women and gain more legitimacy (2014: 629). All three authors examined global humanitarian engagements in the Democratic Republic of Congo.

Considering itself as the guardian or gatekeeper of the international community as instituted in its mandate, the OTP accentuates the vulnerabilities of affected communities but accentuates the vulnerability of women most. When women and girls are for example discussed by the OTP, there is a tendency for them to predominantly be portrayed as silent victims and bystanders. This results in a distorted picture of their lived realities,

and has the unintended consequence of rendering women and girl fighters devoid of agency and classifying them as perpetually voiceless. In the case of civilian women, the OTP's protective narrative is made possible by underscoring the gendered and racialised partitions in affected local communities. According to the OTP, it is predominantly women who are in danger because of the presence of barbaric troops. The OTP racialises the armed groups in the cases under scrutiny and considers them threats to affected African women through an emphasis on the brutality, violent and barbaric nature of the groups' acts. These troops in their perpetration of sexual violence, are depicted as having an insatiable sex drive and as individuals who cannot control themselves which fosters racialised and gendered assumptions about African sexualities. In the Prosecution's narratives the soldiers, as perpetrators, are the villains who do not respect and defend the population and are cast as outsiders. The prevalence of such narratives emphasises the OTP's rationale of saving or protecting African women from barbaric armed groups. Also, the lack of familiarity of the OTP with local communities, exacerbated by the divide between the OTP, local African women and barbaric armed groups, are revealing of and make intelligible the OTP's protective masculinist narrative.

As argued by Marion Young (2003: 4),

...for a protective masculinity to have meaning, there must be something to protect against. The logic of masculine protection, then, requires the image of a selfish and violent aggressor who wishes to invade communities and sexually conquer women. This aggressor is the bad guy. The good guy on the other hand can only appear in his goodness if there is an assumption that lurking outside the warm familial walls are aggressors who wish to attack others. The dominant military masculinity in this way constitutes protective masculinity as its other.

The OTP has focused on the vulnerability of African women in the cases before it by stripping them of any agency. This has been done as mentioned in Chapter 6, by making unintelligible the acts of women perpetrators as well as sexual violence against men. The gendered dichotomy of perpetrator (masculine armed groups)/ victims (feminine civilians) mentioned in the previous chapter brings about the OTP's protective heroic stance.

The fixation of the OTP on the vulnerabilities of women and children leads to a semblance of the ‘women and children’ syndrome which is common in international humanitarian discourses. This leads to paternalistic protective discourses and the OTP is not the only institution guilty of this; there are also others like the United Nations. The paternalistic protective discourses aim to protect the most vulnerable group being children and women by associating children and women, but not men, as possessing the attributes connected with a claim to immunity: innocence and vulnerability (Puechguirbal, 2010: 176). According to Scully (2009: 115), UN discourses around women in war and sexual and gender-based violence in conflict have placed great emphasis on feminine vulnerability. This vulnerability is subsequently ‘compensated’ with a need for protection and the monotonous rhetoric of the ‘vulnerable woman’, is consistently equated with the ‘girl-child’, which effectively strips women and girls of agency. Similar to the UN, the ICC replicates this practice.

7.2.2 Prosecution’s discourse on women’s wartime experiences of sexual violence

Throughout the four cases under scrutiny the OTP has attempted to commit to Article 54(1)(b) of the Rome Statute which states that the Prosecution has to take into account the nature of the crimes in particular where it involves sexual violence, gender violence or violence against children (Rome Statute, 1998:34). Dwelling on sexual violence and gender violence as it pertains to African women who were victims in the four cases, it is crucial to examine how the OTP interprets and understands sexual violence and gender violence and how it deliberates the function of sex and gender in the theatre of war.

The innovative gender justice provisions in the Rome Statute provide a great framework to address and redress women’s wartime experiences (Chappelle, 2014: 590). Despite this promising framework, the first historic case of the Prosecutor forgets African women who are victims of atrocities in the Lubanga case. According to Chappelle (2016: 192), the ICC’s rocky start in terms of addressing women’s wartime experiences and pursuing

gender justice reminds one of how deeply gendered the field of international law is. The record of the OTP pertaining to addressing African women's wartime experiences is initially poor and when these experiences begin to take centre stage, the sexualised forms of violence which women experience, such as rape, take precedence. Not only do they take precedence but are framed in various ways. According to Brysk (2018: 48), framing works to garner advocacy, brings a private crime to public light, brings attention to the gravity or pervasiveness of an issue, and reveals the complex dynamics of the issue or the problem.

Crawford (2013: 505) also notes that "the way an issue is 'framed' (viewed and understood) has a profound effect on whether it is viewed as a priority for action by international organisations, states, and civil society". The OTP frames rape as a military tactic in *Katanga*, as a weapon of war in *Bemba* and *Ntaganda*, and argues that women are considered spoils of war in *Katanga* and *Ntaganda*. These framings are important primarily because they are illustrative of which story (sex or gender) the OTP subscribes to. They are also crucial in indicating the commonalities or pervasiveness of weapon talk. Weapon talk, according to Paul Kirby, entails references to rape as a weapon, strategy, tactic, and instrument or tool of war. These references he notes are not only popular but dominant before international discourses given the web of associations between acts of sexual violence, scenes of battle, and weapon imagery (Kirby, 2020: 214). These references according to Kirby make wartime sexual violence gain political weight. According to Crawford, "non-governmental organizations, international organizations, civil society, women's rights advocates, promoted the "weapon talk" to increase attention to the gravity of the crime and this has led to increased international legal and political action"⁶⁴ (2013: 506). The weapon talk is visible before the ICC in the OTP's narratives in its various opening/closing statements and submissions.

⁶⁴ In June 2008, the United Nations Security Council passed resolution 1820 which viewed sexual violence 'as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate' civilians. This indicated the rise of 'rape as a weapon' as the prevalent discourse for wartime sexual violence (United Nations Security Council 2008a, 1).

The prevalence of weapon talk shines light on feminist complicity given that feminists have been involved in the over-visibility of certain subject matters in international milieus as well as the subsequent blind spots in women's experiences as a result of this over-visibility. Nadj (2018:7), posits that feminists are complicit in the high attention given to sexed bodies as a consequence of their fixation on the violated body before international engagements. She further notes that feminist's complicity is apparent in the imperialist project of international law through feminist production and reproduction of knowledge about the real world of women which has suffused international law and its institutions (2018: 45). Such knowledge she argues reduces and assumes the universal experience of women in wartime to rape as well as failure to acknowledge the diversity of victims' identities (Nadj, 2018: 46). Grewal (2015), also opines that the over-visibility/over-recognition of rape committed against women which has led to the exceptionality of wartime rape, is a result of feminist complicity through advocating and promoting the "rape as a weapon of war" mantra.

The main characterisation of wartime sexual violence as 'a weapon of war' or 'a war tactic' in the OTP submissions or opening statements results in 'rape as a weapon of war' script. This script is evidenced in the following cases. In *Ntaganda*, the script states:

Sexual violence was part of the means used by the co-perpetrators to take over Ituri. It was meant to victimise, terrorise, and punish the non-Hema civilian population, considered as the enemy. It also aimed at rewarding the troops and keeping their morale high. Because rapes occurred during every UPC offensive and because they were also committed by UPC officers, their occurrence were known to the UPC leadership including to Bosco Ntaganda. There was no sanction, no punishment when the victims were non-Hema. This is because as UPC military insider witness P-38 explains, sexual abuse was just another weapon that the UPC used for violence.⁶⁵

⁶⁵ ICC-01/04-02/06-T-8-Red-ENG WT 11-02-2014 1/53 SZ PT.

In *Bemba*, the script is as follows:

The massive rapes were not sexually motivated; as gender crimes they were crimes of domination and humiliation directed against women, but also directed against men with authority. These crimes spread terror and devastated communities by means of the cheapest weapon and most available ammunition. Women were raped systematically to assert dominance and to shatter resistance. Men were raped to destroy their authority, their capacity to lead.⁶⁶

The ICC through the OTP has embraced the ‘rape as a weapon of war’ frame and positioned wartime sexual violence within the scope of international criminal justice. In the excerpts above the script contains the following elements. It is a means to control, victimise, terrorise, punish the enemy population (civilians), and reward the troops. Sexual violence serves to uphold military cohesion and morale. It is carried out by soldiers and commanders in armed groups. There is condonation/tolerance of this act within the armed groups’ ranks and results in impunity. Rapes are widespread and systematic, and women are treated as property. The acts of sexual violence are characterised by brutality and public display, and commission of the crime takes place within homes, compounds, in the streets, and in the presence of family members.

The abovementioned script has brought about the political purchase of the ‘rape as a weapon of war’ mantra in international discourses. According to Baaz and Stern (2013), the mantra thrives on four main assumptions. These are strategicness, avoidability, gender and culpability. These assumptions account for the alluring appeal of the narrative which points to the instrumentality of rape as used in armed conflicts. The four assumptions reinforce each other and strategicness entails recasting rape as intentional, following reason and devised to effect particular outcomes by rational gendered (masculine) actors (Baaz and Stern, 2013: 46). Rape is therefore avoidable if rational subjects do not resort to it as a strategic means to an end. Culpability suggests rape as a weapon of war has brought about a stringent and significant sense of responsibility and guilt which is regulated by its treatment as an international crime in international law

⁶⁶ ICC-01/05-01/08-T-32-ENG CT WT 22-11-2010 1/64 PV T.

which induces punishment. Rape as a weapon of war is gendered because it is carried out by culpable gendered (masculine) actors who aim to humiliate and dominate feminine subjects. The instrumentality of rape according to the narrative resonates in the following ways: rape in war is a weapon that is wielded for strategic purposes; a weapon of choice used by rational contemporary subjects who are military commanders or soldiers. These subjects intend evil for particular purposes and must be held accountable. The strategic purpose of rape is to humiliate, to tear families apart, to devastate communities and to terrorise (Baaz and Stern, 2013: 11).

The Prosecution's 'rape as a weapon of war' thesis in *Bemba* and *Ntaganda* fits into the above explanation. The main actors that dominate the narrative or script according to the Prosecution are soldiers/commanders of armed groups who are culpable actors. The victims on the other hand are civilians, predominantly women. The culpable actors and victims are easily gendered. The armed soldiers are portrayed to have all the power and are in complete physical and psychological control of the victims who are in a position of vulnerability. The armed groups are also depicted as structured, organised, and hierarchical. Their ranks are filled with trained and disciplined soldiers and as such the crime of sexual violence can be easily avoided should the commanders call their troops to order and should the soldiers simply discipline themselves. The OTP's reliance on 'rape as a weapon of war' and its resulting discourse of African women's experiences of sexual violence, thus follows a gender story. A gender story consists of two subjects in this plot, namely the perpetrators of rape who are subject to violent militarised masculinities in armed groups, and the victims who are raped and hindered by gendered power relations. Before the ICC, wartime sexual violence is always performed by men or better still, the perpetrators are always gendered as masculine. The victims on the other hand are gendered as feminine with a fixation on their feminine vulnerability which is exploited by masculine prowess.

A sex story on the other hand, consists of two sexed bodies in the plot. The sexed bodies are male and female, the male bodies being those of armed soldiers. These male armed soldiers are subject to male sexual desires, and male heterosexuality is a natural driving

force in their commission of wartime rape. The male libido which naturally demands sexual satisfaction from one woman or multiple women displays sexual potency through rape. These armed soldiers are not guided by a violent learnt attribute (militarised masculinity) but give in to natural urges. The context of war on the one hand prevents soldiers from having normal access to women and they consequently have to resort to coercive ways to satisfy their sexual urges. The victims who are female sexed bodies are passive repositories for male sexual gratification. The power dynamics which lie in the heterosexual matrix view and consider the male sexed body as sexually active and the female sexed body as sexually passive. The vulnerability of the female sexed body lies in the sexual objectification of this body which is meant to be “naturally and easily available” for male sexual satisfaction.

The OTP’s use of the weapon talk similar to Kirby’s argument, holds various hypotheses and emphases. In relying on the weapon talk the OTP aims to convey the purpose of wartime sexual violence and attribute agency. It also relies on the weapon metaphor to communicate the experience of pain felt by civilians (Kirby, 2020: 215). In line with its anchor on a gendered story, the OTP’s reliance on the weapon talk ascribes agency and culpability to military armed groups whose resort to this weapon has the purpose of humiliating, violating and dominating a civilian population. Under close scrutiny however the dependence on this weaponry talk fails to consider the realities of war such as the male soldier’s libido, how war is messy, how sexual violence is not strategically ordered, and how some soldiers seize the unruliness of war to commit opportunistic rapes. Most importantly, as Kirby argues, dependence on the weaponry talk while emphasising the rational military purpose behind sexual violence, makes invisible and subserves wartime sexual violence as first and foremost sexualised violence (2020: 215). As Javaid notes, sexual violence is a form of masculine conduct that stems from patriarchy and what has been made of sex (2018: 29).

The OTP’s reliance on ‘rape as a weapon of war’ has led it to characterise and view sexual violence as a crime or conduct institutionally approved within armed groups by the leadership or command structures. The OTP believes institutionalised sexual violence

by armed groups not only has an instrumental purpose, but also believes that the fish rots from the head meaning that bad leaders are the cause of the perpetration of these acts. According to the OTP, military commanders are more dangerous than single soldiers who are direct perpetrators. In *Bemba* for example, the OTP advanced that “a commander that lets his troops carry out inhumane acts is more dangerous than a single rapist”. In *Ntaganda* it argues, “a commander, sets the standard for his troops and influences their behavior through his commission of serious crimes. His behavior signals to the troops what is expected of them.” In addition to holding commanders to a higher standard through their conduct and knowledge of these crimes, the Prosecution believes the hierarchical structure or organisation of armies easily attributes to these troops responsibility for atrocities.

The OTP’s focus on military commanders, armed groups and armed soldiers alongside their hierarchy, discipline, and command structure suggests that the eradication of wartime sexual violence is surmountable as long as the rational gendered subjects being military commanders, take the necessary precautions to not order rapes, to not turn a blind eye on its commission and to punish the perpetrators. Within this gender story, the ICC proffers a gender solution by believing wartime sexual violence is solvable if masculine subjects, namely armed soldiers, act appropriately or produce their militarised masculinities differently.

While the OTP subscribes to the gender story, accompanying notions of the male sexuality of the masculine military armed groups and commanders underpin the OTP’s narrative. A fixation on sexual violence by the OTP and its coupling of the perpetrators as masculine and victims as feminine, relies on male and female sexed bodies. While the OTP takes for granted these sexed bodies throughout the narratives before the ICC, there is evidence of perpetrators as sexual bodies who give into the force of nature and women are victims of the manifestation of men’s biology. The sex/gender paradox similarly emerges before the ICC because the OTP’s insistence on the gender-ness of wartime sexual violence relies on ‘sex’ and a sex–gender difference. The traces of the sex story however haunt the persistence of the gendered-ness of sexual violence by the OTP. The

ghost of sex as discussed in Chapter in 6 which consists of sexualised details of wartime sexual violence and the pornographic display of these experiences, unsettles the story of sexual violence as essentially gendered.

This sex/gender paradox puts the ICC in a catch 22 and this is similar to the predicament feminists face when making sense of violence through gender or sex. While the ICC's gender story links violence with masculine subjects and views women as symbols of ethno-nationalism whose rape brings humiliation. This story has its shortcomings, in terms of the subjects who are made intelligible and which are limited to masculine and feminine subjects. In other words, a limited category is created which does not consider all victims and perpetrators. The sex story on the other hand, while simplistic and relying on biological considerations, provides for alternative repertoires not considered by the ICC's gender story. This sex story views wartime sexual violence as unavoidable. The gender story is a better story because the sex story prevents a deeper probing into the meanings and functions of collective sexual violence against women and men (Seifert, 1996).

Consequently, the road to redemption in light of this ICC's predicament, would be for the Court to ameliorate its gender story and contextually interpret gender in each of the cases before it to make better sense of women's wartime experiences. A thorough analysis of war and its related atrocities must certainly consider many aspects related to gender. A comprehensive understanding of gender does not resume itself to conflating gender and women or gender and female sexed bodies. It entails considering central issues such as contempt or hatred of women in general which must be analysed in terms of its socio-cultural as well as its psychoanalytical aspects. As noted by Brownmiller (1975: 32), "war provides men with the perfect backdrop to give vent to their contempt for women". Without reference to such components of hostility in the construction of gender relations, the specific kind of violence directed against women and men in war cannot be explained (Seifert, 1996: 37).

7.3 OTP's discourse and gender

In its opening statements before the *Katanga* case, the OTP states that gender accounts for why women were targeted in armed conflict - "all these women were targeted and victimized because of their gender [sex]. They were attacked in particular because they were women". This statement held lots of promise that the OTP would bring forward and interpret how gender differentiates and brings about women's unique wartime experience. However, this is a tokenistic gesture given that not only did it focus solely on ethnic identities to explain why women were targeted in this case, but throughout the whole trial no attempt in the form of evidence or arguments were brought forward to allude to how gender operates on the battlefield. This is illustrated below:

Horror was not over yet for the women of Bogoro. Once captured, some women hid their Hema identity to save their lives. Those later revealed as Hema were killed. The others were raped and forced into marriage as combatant wife or detained to serve as sexual slaves by Mr Katanga or Mr Ngudjolo's soldiers. During the Ituri conflict, Lendu and Ngiti militias abducted and raped women from opposing tribes and they considered these women to be 'butin de guerre' (spoils of war).⁶⁷

The association with ethnic conflict is attributed to and over-emphasises women's accounts of sexual violence. In making sense of the OTP's discourse on sexual violence, the victim must be perceived and targeted by the perpetrator of the crime because of a distinctive ethnic identity. This approach suggests that the prosecution of sexual violence against women, requires first and foremost that women be members of an ethnic group before the ICC. During the Prosecution's examinations of its witnesses, allusion is solely made to the ethnic identity of the women and nothing points to gender. The OTP advances in *Bemba* that the rape carried out by the armed groups were gender crimes.

⁶⁷ ICC-01/04-01/07-T-80-ENG ET WT 24-11-2009 1/73 NB T.

This is illustrated below:

Bemba's troops stole from the poor people of one of the poorest countries in the world. The massive rapes were not just sexually motivated but were gender crimes meant to assert domination and humiliate women and sometimes men with authority.⁶⁸

In *Lubanga* the OTP states:

We believe the facts are that the girls were abused, used as sexual slaves and raped. We believe this suffering is part of the suffering of the conscription. We did not allege and will not present evidence linking Thomas Lubanga with rapes. We allege that he linked it with the conscription, and he knows the harsh conditions. So, what we believe in this case is a different way to present the gender crimes.⁶⁹

In the above excerpts, in stating that the crimes are gender crimes, the OTP does not interpret gender. Its interpretation of gender is not only simplistic but also target-based and conflates gender with women and sexual violence. In making sense of the OTP's discourse, I argue that gender crimes according to the OTP are established when they directly affect a certain gender, in this case women. Secondly, the OTP often incorporates sexual violence or sexual crimes as gender crimes. Addressing and prosecuting gender crimes should entail understanding that sexual violence is not the sole gender crime women are subjected to. The inadequacy of the OTP to define and interpret gender and gender crimes points to its tokenistic practice pertaining to gender. This practice is similar to what Jane Bennett terms 'metaphorical deafness'. 'Metaphorical deafness' is a patriarchal strategy or approach to gender whereby the concrete realities in which gender dynamics play a fast and furious role, are evaded or deliberately or unintentionally not engaged in or snubbed (Bennett, 2001: 90).

Throughout the cases under scrutiny in this study, the scenarios to advance why gender is important as well as the interpretations of gender were manifold. This was evident in

⁶⁸ ICC-01/05-01/08-T-32-ENG CT WT 22-11-2010 1/64 PV T

⁶⁹ ICC-01/04-01/06-T-107-ENG ET WT 26-01-2009 1/74 SZ T.

the recruitment of girl child soldiers in armed groups to provide domestic labour and sexually satisfy the troops and in the capture of civilian women by armed soldiers and forcibly taking them as wives, depriving them of liberty, and seeing them as property to be exploited (sexually) at will. Boys are also forcefully recruited to perform masculine soldiering roles. While it is important for the OTP to emphasise the frequency and brutality of the atrocities especially sexual violence committed by armed groups, this fixation accounts for the lost opportunities to bring gender to the forefront. Opportunities to tackle and address gender are also lost because of the tokenistic practice of the OTP to not interpret gender.

The reliance of the ‘rape as a weapon of war’ narrative in the OTP’s narratives depoliticises wartime sexual violence. Scholars such as Harris and Hanchey (2014: 335) advance international discourses of sexual violence which bifurcate sexual violence and render wartime sexual violence unique from sexual violence in times of peace. Crawford (2013: 507) posits that sexual violence should not be separated from the continuum of gender-based violence and the societal factors that foster gender inequality⁷⁰. Sexual violence as a social phenomenon and not a simple military or conflict-related issue, should be addressed by focusing on a larger intervention to eradicate gender inequality and empower women (Aroussi, 2017: 501). Legal responses such as the OTP’s judicial response stereotypically narrow the lens of intervention to armed perpetrators, taking attention away from the social norms and behaviours and the structures of inequalities and marginalisation that permit violence and human rights abuses to be committed and sustained in the first place (Aroussi, 2017: 507).

The OTP by treating wartime rape as exceptional, omits the inherent fact that gender inequality is at play. The focus on the brutality, end goal, and violence which characterises sexual violence erases unequal gender relations as a cause of this phenomenon. The ‘rape as a weapon of war’ mantra frames rape as a tool used by one

⁷⁰ Crawford also notes that obvious implications of overlooking the broader continuum of gender-based violence and inequality is that issues like inequality in education, domestic violence, lack of political and economic rights for women, the rate of sexual violence in ‘peacetime’, and various manifestations of gender discrimination may not receive the attention they deserve.

side against the other. These sides usually consist of armed groups targeting innocent civilians and the divisions thrive on ethnic rivalry. While it arguably holds true that armed groups commit atrocities, civilians also carry out a vast majority of atrocities in times of war (Heaton, 2016, Meger, 2010). This, however, goes unobserved in the rape as a weapon of war script. What is principally overlooked in this script, as relied by the OTP, is how peacetime gender relations dynamics play out. In sticking to the gender story of 'rape as a weapon of war', the OTP gets a bailout for its failure to engage with peacetime unequal gender relations by purporting the end goal of this crime focuses on humiliation and domination. Subscription to this discourse, which emphasises harm caused to the honour and dignity of the victims and their families without addressing or understanding unequal gender relations, forever characterises women as a distinct category of victims who are viewed as weak, vulnerable and who would be ashamed of the sexual violence they are subjected to. Subsequently, a patriarchal discourse of women ensues.

Gender crimes in conflicts are extensive and Aroussi (2017: 489) argues that there has been an unprecedentedly narrow focus on sexual crimes before international agendas. While this has been the case within the United Nations Security Council's agenda on Women, Peace, and Security (WPS), the OTP of the ICC has followed suit and this narrow focus has been the rule rather than the exception. The ICC's subscription to the gendered story accounts for this. As noted by Baaz and Stern (2013: 31), "a gender story forgets that all violence is gendered and a focus on sexual violence as gendered and *sui generis*, sets the stage for ultimately rendering 'other' violence in warring as 'normal' or invisible". Consequently, a consideration of the myriad gender crimes women are subjected to, is missing in the OTP narratives. The preoccupation with addressing sexual violence as a weapon of war instead of the myriad gender crimes women are subjected to, has a detrimental impact on obscuring the extent and multiplicity of women's suffering and the deprioritisation of women's other needs (Aroussi, 2017: 489).

As a result of the fixation on ethnicity, gender goes missing more than once and is often not engaged with by the OTP. This points out not only to exclusionary practices and interpretations that render the narratives on gender and violence incomplete before

international criminal institutions, but points to what Mibenge (2015) refers to as the erasure of gender. Erasure here means that interrogation is shut down as a result of shying away from engagement for political and strategic reasons (Baaz and Stern, 2018: 4). Borrowing Anderson's (2012: 8) meaning of erasure, erasure in this context also comes to mean the rubbing out of meaning, in this case, of gender. While the OTP aims to reveal the link between gender and violence by advancing the 'rape as a weapon of war' mantra, the role of gender is barely argued by the OTP because of its fixation on ethnic rivalry. Additionally, the persistence of the OTP in displaying the gender-ness of sexual violence is haunted and disrupted by the sex story.

7.4 Chamber's discourse

An important reason to assess the Chamber's resulting discourse is because it presumably holds a fair position with regards to the Prosecution, victims, and the Defence. According to Article 64(2) of the Rome Statute, Chambers has an obligation to ensure a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection and rights of the victims and witnesses (Rome Statute, 1998: 41). The Chamber assesses the evidence presented and evaluates it in the way it deems most fitting. It poses questions and takes into account the observations, comments and arguments of the various parties and participants. Regardless of the stage of the proceedings, the Chambers always pronounces the final verdict. In this section, the judges' interaction in the courtrooms with victims and Prosecutors, alongside Chambers' judgements are examined and presented to make a case for the representational discourse that ensues before the ICC. These elements provide for a better understanding, clarification and insights.

Starting with judicial interactions, in the *Lubanga* case where the Prosecutor failed to charge and include any sexual and gender-based crime committed against women, the presence of a woman judge – Judge Elizabeth Odio Benito and her judicial interactions with the victims bring great insights into understanding how gender operates in war and accounts for the experiences of African girl child soldiers. Her questioning and follow-

ups provide an opportunity missed by the Prosecution to bring these experiences to the forefront.

In *Lubanga*, judicial interaction was as follows:

Judge Odio Benito: You also explained to the Court that in the camp there were no buildings, there were houses built by the soldiers and the recruits. You lived in those houses; is that correct?

Witness 0038: In Mandro yes, but in Mongbwalu I had a house. I was in Commander Salumu's camp. In Mandro we all had small houses.

Judge Odio Benito: Thank you, sir. Could you explain to us who cleaned and cooked in the camps in addition to the houses of the commanders or the high officers?

Witness 0038: Could you kindly request a more detailed question, please?

Judge Odio Benito: Yes, sir. You told us that you were living in houses. So, my question is: Who was in charge of cleaning and cooking in those houses?

Witness 0038: When we finished the training, that is when we became soldiers, the bodyguards who were often women, girls and children prepared food, cleaned and sexually satisfied the commanders as wives.

Judge Odio Benito: Thank you, sir. When you talk about women, are you talking about girls under the age of 15 or women above the age of 15?

Witness 0038: When I make reference to girls and women, I'm also making reference to those who are under the age of 15. I have already explained in *Abelanga*, there was a girl who was a bodyguard and she was under the age of 15. But there were also other girls who were under the age of 15, and they were also in the training centre. In addition, there were older girls. They were older than 15 years old.

Judge Odio Benito: Thank you. Sir, were they subjected to the same rules and regulations as the boys? Specifically, if flogged what would be the main reasons?

Witness 0038: There were indeed girls who had been flogged and you've read it in my statements. In Mandro one day Commander Nembe had not seen the girls

during the night, and the next day he assembled the girls and they were flogged because they had spent the night with trainers. In fact, they were asked specifically where they had spent the night, and they answered that they had spent the night in the houses of the trainers. Commander Nembe punished those girls during the general parade in the morning.⁷¹

Towards the end of the *Lubanga* trial, Judge Odio Benito reproaching the OTP states the following:

Ms. Bensouda, in the OTP closing brief, document 2748, and again this afternoon in your presentation, it was stated, and I quote: “That girls who were recruited were even in a worse situation than boys, as they were used as sex slaves and were subject to systematic sexual abuse. This resulted in pregnancies, abortions and a psychological state that is quite catastrophic.” However, the Prosecution never mentioned sexual violence in the document containing the charges against the accused. Sexual violence was also not included in the charges confirmed against the accused by Pre-Trial Chamber I. Bearing in mind Article 74, my question is as follows: How is sexual violence relevant to this case, and how does the Prosecution expect the Trial Chamber to refer to the sexual violence allegedly suffered by girls if this is not in the facts and circumstances?⁷²

The examples of this judicial interaction evidence a commitment by women judges⁷³ to understand and make known the role of gender in accounting for women’s experiences. Some scholars such as Grossman (2011), Wald (2011), and Chappelle (2010) have queried how and if the gender profile of the ICC bench can dramatically transform international law in terms of expanding gender justice or bringing about gender sensitivity to women’s wartime experiences. While the above-mentioned excerpts point to how judicial interaction accounts for what we know about women’s wartime experiences before international criminal institutions, this particular judicial interaction enables one to quickly probe if women judges on benches before the cases under scrutiny

⁷¹ICC-01/05-01/08-T-34-Red2-ENG WT 24-11-2010 1/56 NB T.

⁷²CC-01/04-01/06-T-47-EN [28Nov2006 ET WT] 1/151 SZ PT.

⁷³ The presence of women judges before the ICC is a great example of the gender justice provisions of the ICC aimed at remedying the traditional absence or underrepresentation of women and gender expertise before international criminal law precisely international criminal tribunals.

make a difference in shedding light on women's wartime experiences and on querying how gender accounts for these experiences. While this question relates to gender judging – an area not delved into in this study - from a quick glance it seems that the presence of women judges does make a difference. This difference though not apparent in judicial outcomes, with the exception of the *Bemba* case which had an all-women bench, was apparent in other ways. These were in the questioning of the absence of sexual violence charges (in *Lubanga*), questioning the role of gender in accounting for diverging wartime experiences (*Lubanga*), listening attentively and respectfully to testimonies of war (all four cases), offering support and comfort to women victims (*Katanga and Bemba*), critiquing judgments, and providing dissenting opinions on matters pertaining to women's experiences (*Lubanga*).

I am in agreement with Louise Chappelle in not making the erroneous assumption that the mere presence of women judges or the critical mass presence or election of women judges would be a cure-all for conquering gender biases in judicial institutions, nor advocating that a constant filling up of women on the bench is the solution to gender discrimination in the legal realm. The presence of women judges however makes a difference as long as these judges have a feminist orientation such as Judge Odio Benito (Hunter, 2009, Kenney, 2008: 35).

Returning to the representational discourse of Chambers, the various judgements express the views of the different Chambers as it pertains to African women's experiences and the violations they were subjected to. Interestingly none of the Chambers in the *Katanga*, *Lubanga*, *Bemba* or *Ntaganda* cases interprets gender in their judgments. In the *Ntaganda* case, the Chambers overtly rejects gender in accounting for the different experiences of girl child and boy child soldiers. While it overtly states that there is no difference in treatment on the basis of gender between boy recruits and girl recruits when they were recruited, trained, and fought in battle, the Chambers makes no mention of how gender accounts for the different treatment of women soldiers and their subjection to sexual violence. The Chambers finds there is ample evidence to believe that women members of the UPC/FPLC were regularly raped and subjected to sexual violence and

notes that these crimes went widely unpunished. It further adds that the women who were part of the UPC, were also tasked with performing domestic chores such as cooking, cleaning, fetching water, and doing laundry in training camps. With these established facts, which provide examples of how gender operates, there is still no analysis of gender by the Chambers.

The Chambers in all four cases robustly stuck to ensuring the establishment of strict legal criteria for the crime of sexual violence through the evidence presented by the OTP. Chambers subscribe to a strict legal analysis and do not take into account how gender, sex or ethnicity play out in war. The judgements which express the views of the different Chambers make no allusion to gender, sex or ethnicity. By erasing gender or not engaging with it, Chambers has created a danger of a constant narrow judicially-delivered analysis of women's wartime experiences. Similar to the OTP, there is some metaphorical deafness on the part of Chambers when it comes to gender. This metaphorical deafness brings about the erasure of gender in the ICC narratives. The problem with the ICC's discursive discourses of African women's wartime experiences thus lies in its treatment of gender. From the prosecutorial and judicial (Chamber) interpretations, there is a complete erasure or simplistic understanding of 'gender'. The ICC specifically through the Chambers has mostly abstained from engaging with gender. The OTP has elusively dealt with gender in its narratives and rather focused on ethnic identities. The limited references to gender before the prosecutorial and judicial submissions or decisions are further evidence of this.

The metaphorical deafness with regard to gender which leads to the erasure of gender before the ICC, I argue, is what Chappell (2014) refers to as old informal rules or sticky legacies. These misrepresent, misrecognise and render invisible women's wartime experiences and prevailed before the former tribunals of the International Criminal Tribunal of Rwanda and the Special Court of Sierra Leone. Examples of these rules or legacies consist of inappropriate questioning of victims of sexual violence, and assumptions that victims of sexual violence do not want to talk about their violations to mention a few. As mentioned in Chapter 4, the 'ghettoization' of gender and the

feminisation of women's wartime experiences which lead to conflation, misrepresentation, and misrecognition of women's wartime experiences are also examples of such old informal rules. Chappell (2014: 590) notes that older informal rules from previous tribunals have slipped in and filled in the voids between the Rome Statute's innovative and expansive gender justice rules and their implementation. One of these old informal rules which is metaphorical deafness toward gender, I argue, has stuck as a legacy or informal rule before the ICC. Chappell notes that informal rules (in this case metaphorical deafness to gender) are often invisible and difficult to determine and that they play a crucial role in influencing how formal rules (the innovative gender provisions of the ICC) are interpreted and implemented. The sticking to and influence of this informal rule is a significant obstacle in bringing about justice to African women's wartime experiences and change to the narrow interpretation of sexual violence.

I argue that great consideration should be given to the interpretation of gender by the ICC (OTP and Chambers) because of the following. By not paying attention to gender, many realities get lost which can help in understanding wartime sexual violence. Victim's discourses of shame, and discourses of emasculation and abomination examined in Chapter 5 and 6 allude to and give consideration to how socially-constructed norms of masculinity, femininity and sexualities exacerbated their experience and how the impact of wartime sexual violence affected them. By not taking gender into account these experiences and discourses go to waste. In an overall analysis of the four cases under examination in this study, there is no upward trend by the ICC towards understanding the social construction of gender despite mounting testimonies and prospects of the interplay between gender in war. I agree with Mibenge, that the role of gender which entails how socially produced masculinities and femininities interact and act on each other in times of warring, cannot be dismissed. The gender story views wartime sexual violence as a gender act, effective precisely because it is gendered (Baaz and Stern, 2013: 19). This story aids in making sense of the logic of vulnerabilities in war by understanding how associations of certain subjects with 'feminine' attributes and other subjects with 'masculine' attributes render certain subjects particularly vulnerable to specific violations in conflict. However, gender is not solely at play in making sense of

wartime sexual violence. The battlefield reality is complex, and the role of sex remains evident in times of war. A sex story consequently takes into account natural and not learned masculine military attributes to understand the occurrence of wartime sexual violence. At the forefront of the sex story are notions of male heterosexuality as a natural force demanding sexual satisfaction as the reason behind the occurrence of wartime rape (Baaz and Stern, 2013: 22). While both gender and sex stories are important in making sense of wartime rape, a distinct treatment or shift towards gender at the expense of sex leads to a sex/gender paradox whereby renditions of sex not only permeate the gender story but the workings of gender are dependent on notions of sex.

The intersection between ethnicity, sex and gender, continues to mark women's experiences in African civil wars (Beringola, 2017: 85). The erasure or silencing of gender and sex from the justice narrative alters and undermines any attempts to bring about gender justice and creates shallow narratives about African women's wartime experiences. Chappelle (2016: 53) notes that without the completion of a trial, one cannot assess whether a more gender-sensitive jurisprudence is likely to emerge from the ICC. With the examples of the *Bemba*, *Lubanga*, *Katanga* and *Ntaganda* as completed cases, one can argue that the ICC has been partially gender-responsive in terms of the presence of women judges, women victims, and the inclusion of sexual violence charges. On the other hand, in terms of the substantive interpretation of gender (interpreting the social constructions of gender), the ICC has been gender unresponsive.

Conclusion

The 'rape as a weapon of war' thesis has contributed to international discourses on wartime sexual violence as well as how the ICC has come to view and understand this crime. The fact that this narrative exist within ICC court records is no mistake. As argued by Baaz and Stern (2013: 57), when wartime sexual violence is framed as an international crime (war crime, crime against humanity, genocide), the addition of the 'rape as a weapon of war' narrative pushes for a more stringent sense of responsibility, guilt, and culpability. The ICC joins in the record set by other international criminal justice institutions which operate on the African continent such as the International Criminal

Tribunal of Rwanda and the Special Court of Sierra Leone. While the records set by these institutions in terms of recognising sexual violence are noteworthy, they however emphasised and linked wartime sexual violence to the ethnic dimensions of the conflicts. They additionally restored patriarchal discourses which solely viewed women as victims and men as perpetrators. The ICC reproduces these masculinist notions that tend to essentialise women (and men) and their wartime experiences. The masculine perpetrator/feminine-victim binary remains largely untouched and intact before the ICC and one can only wonder if this will remain a static feature. This is arguably the case; Mibenge (2013:89) notes that international criminal justice institutions meant to address women's wartime experiences, essentialise women and create a narrative of "absolute and perpetual victimhood for women and girls in war and peace".

Moreover, the reality remains that conflicts or political violence in Africa are not solely based on ethnicity. They have religious, political, and economic roots and in the midst of it all gender is always present. The ICC tends to present the wars in the Central African Republic and Democratic Republic of Congo as basically identical in terms of the reasons behind the sexual victimisation of women. These reasons are to humiliate, punish and dominate women, and distort the intricacies of wars by obscuring the differences between various wars. The ICC's explanations of conflicts which dwell on ethnicity or focus on ethnic components tend to have impoverished the conceptions of gender. Besides this there is a need for the ICC to adopt a more nuanced understanding of gender. In agreement with scholars such Patricia Sellers, Miranda Alison, Kate Lockwood Harris and Jenna Hanchey, I believe it is high time to incorporate an intersectional lens before international criminal institutions. This lens will provide a holistic picture for understanding African women's wartime experiences by shedding light on the roles of masculinity, femininity, ethnicity, and sexuality in war.

CHAPTER 8: CONCLUSION

This study aimed to be a feminist assessment of wartime sexual violence before the ICC and how this institution creates discourses and knowledge about African women's experiences in times of war or disqualify these experiences. In this final chapter, the findings are recapped and answers to the various research questions provided. This chapter tackles the gender responsiveness of the ICC, addresses whether there is indeed progress, what progress has been made, and what progress still needs to be made. Recommendations for future research are offered as well as concluding remarks provided.

8.1 Achievements of the ICC

While the record of the ICC in terms of successful convictions of CRSV is questionable, the guilty verdicts of *Lubanga*, *Katanga*, *Ntaganda* and *Bemba* at trial level represent progress. The ICC from the *Lubanga* to *Ntaganda* case continues to move away from a legacy of historical silence and under-investigation of sexual violence crimes at the international level. Successful trial convictions such as the *Bemba* and *Ntaganda* cases were effective at awarding responsibility for wartime sexual violence as an international crime. Considering this, it is also important to note that the ICC keeps setting its own unique track record in the prosecution of crimes committed against women and in the *Bemba* case, it breaks the silence surrounding sexual violence against men.

The *Bemba*, *Katanga*, and *Ntaganda* cases provided historic moments before the ICC when African women victims of sexual violence appeared as witnesses and participating victims and were represented before this permanent international criminal court. As participating victims, African women were able to provide their views and concerns to ICC judges during court proceedings when their interests were affected. The presence and visibility of African women as victims of international crimes is symbolic and celebratory when cast against the backdrop of their historic absence before international law and the reigning climate of impunity that has characterised the African continent. In

the *Bemba*, *Katanga* and *Ntaganda* cases, women are recognised as the direct victims of the crime, as opposed to previous approaches which emphasized the harms on their husbands or family members.

The visibility of women as victims has meant some progress in terms of the recognitive gender justice mandate of the ICC (Chappelle, 2016: 45). The gender justice provisions of the ICC have aimed to remedy the traditional absence or underrepresentation of women before international criminal tribunals and give victims' rights, especially victims of wartime sexual violence (Bedont and Hall-Martinez, 1999). The ICC by taking into account African women who are victims of wartime sexual violence has repositioned women and victims of sexual violence as autonomous active subjects under international law (Chappelle, 2016: 192).

The presence and testimonies of African women as witnesses are powerful because it shows that African women are not prepared to remain silent about their wartime experiences especially on issues of sexual violence. Their presence and testimonies transcend and shatter the legacy of the 'unrapeability' of black women. This legacy, according to Sharpley-Whiting (1997: 56), functioned as a code of silence; self-erasure in the name of honour which served to deny the occurrence of rape/sexual violence in the lives of black women. The presence of women as witnesses is a vital gain which should not be taken for granted. This gain has a significant impact in what happened during court proceedings/cases and have rendered women's experiences of sexual violence visible. The presence of women and girls as child soldiers as well as combatants also points to the multiplicity of women's roles and experiences in times of war which have often fallen through the cracks of international criminal law or failed to be made visible. A breakdown of African women who were witnesses before the court proceedings introduces different images of women beyond their status as victims of war. These images, specifically of women as combatants and perpetrators are dealt with in more detail in Chapter 6.

Notwithstanding the current acknowledgment of women as witnesses before international criminal proceedings, a gender-disaggregation of the data of witnesses or a gender breakdown of the statistics of witnesses, is important. Such a disaggregation identifies the presence of women-victims, plus the numbers and percentage they made up in the configuration of witnesses before the ICC. The purpose of conducting such an exercise works in tandem with asking “the African woman” question so as to reveal what is happening to women and their accounts of their wartime experiences before the ICC. The charts below illustrate the gender makeup of witnesses before the ICC. The prosecution witnesses were crime-related victims, witness-suspects also known as military insiders, and experts or neutral observers. The pie charts show gender disaggregated statistics of witnesses before the ICC to make progress, justices and injustices visible. As argued by Puechguirbal (2004: 6), there is an enormous incentive in gender-disaggregating data as it makes injustices visible, and once they are visible, the power dynamics that create these injustices are also accounted for and challenged.

LUBANGA CASE

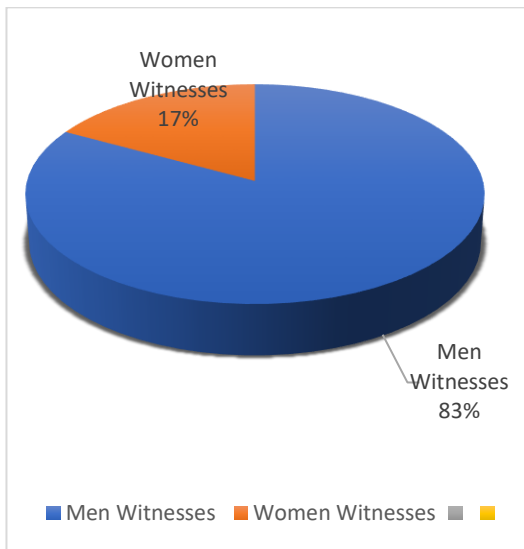


Figure 8.1.Lubanga witness gender ratio

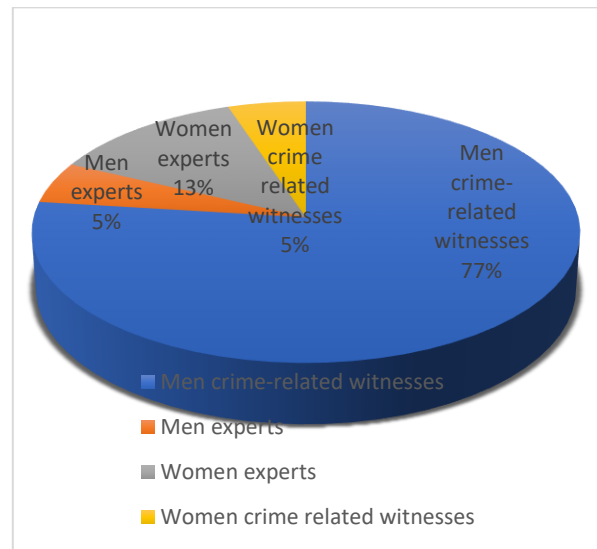


Figure 8.2.Lubanga witnesses composition

KATANGA CASE

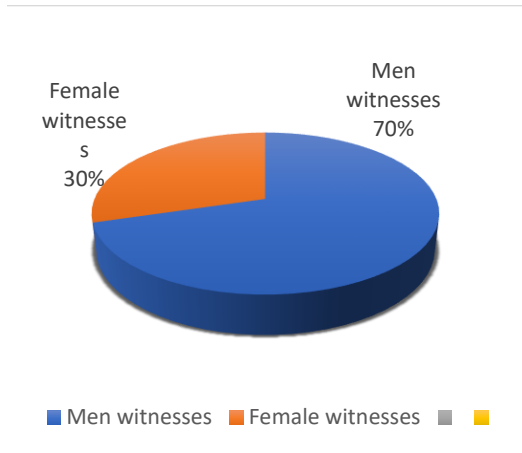


Figure 8.3. Katanga witness gender ratio

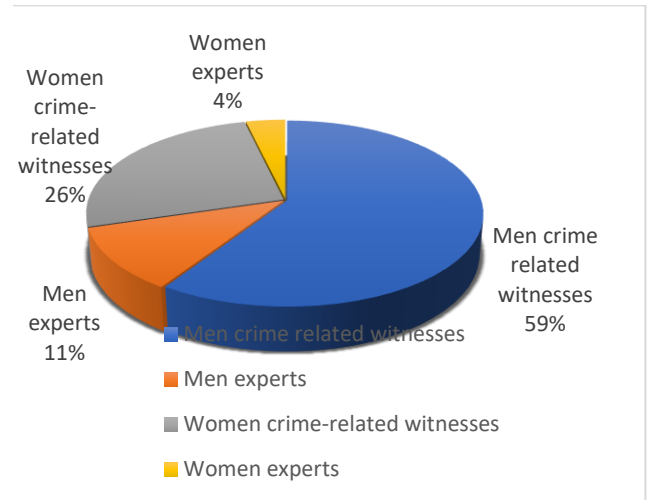


Figure 8.4. Katanga witnesses composition

BEMBA CASE

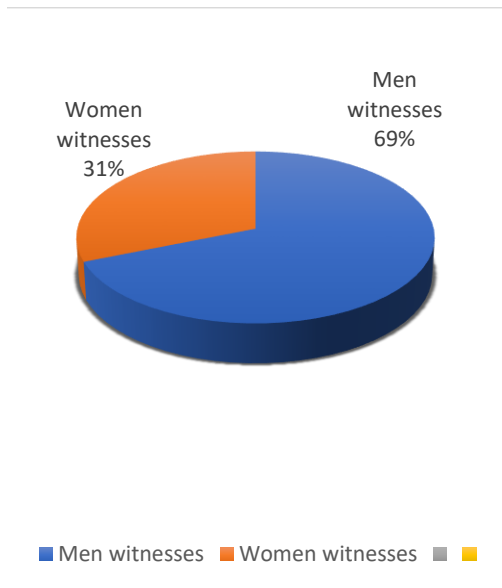


Figure 8.5. Bemba witness gender ratio



Figure 8.6. Bemba witness composition

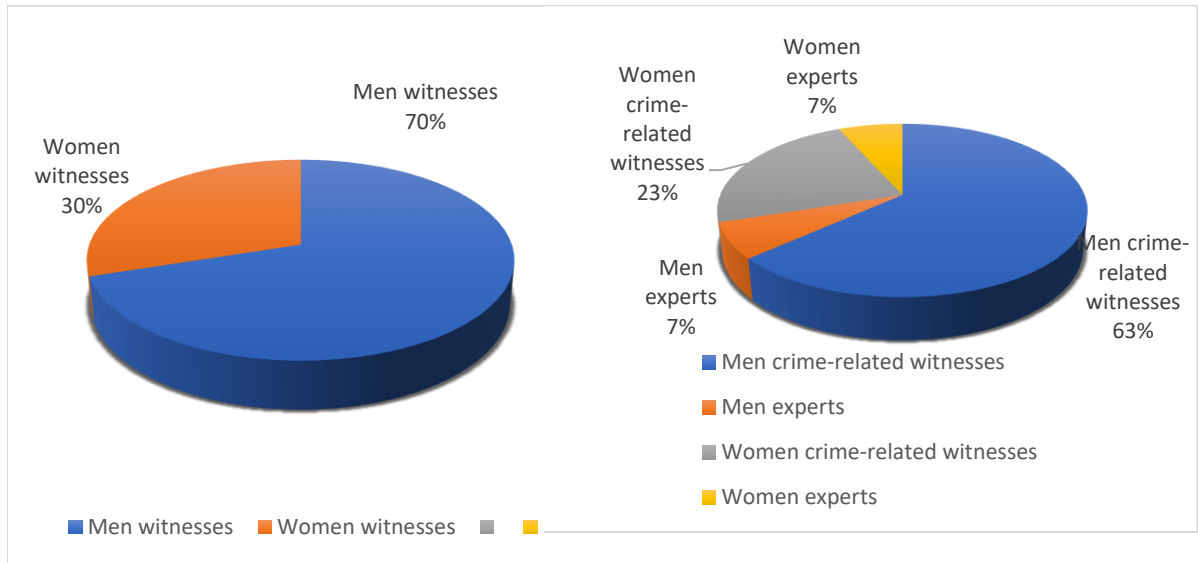
NTAGANDA CASE

Figure 8.7. Ntaganda witness gender ratio

Figure 8.8. Ntaganda witnesses composition

Tables providing information on all the witnesses can be found in the appendix of this study.

8.2 Shortcomings

While the visibility of women as witnesses is laudable, more still needs to be done. A tally of the demographics of witnesses in the four cases demonstrates a low percentage of women witnesses appearing before the ICC. This disconcerting indication has the effect of reducing the extent to which women experiences of war are made visible. In spite of the positive recognition mandate of the ICC of women before international criminal proceedings, they are still relatively underrepresented. This number should be increased.

At the Pre-Trial phase in the *Katanga* case, out of 18 prosecution witnesses, only 5 were women. Out of these 5 women, 4 were crime-related witnesses and 1 a witness-observer. In the *Bemba* case, out of 24 prosecution witnesses, 6 were women and all were crime-related witnesses. The *Ntaganda* case which had the highest number of witnesses, namely 39, women only account for 10 out of the 39 witnesses and the rest were men.

Of the 10 witnesses who were women, 3 were witness-observers. At the trial phase in the *Lubanga case*, there were 41 witnesses of which 7 were women; 5 of the women were experts and 2 were crime-related witnesses. The *Ntaganda case* had 80 witnesses and out of this number there were 20 women; 3 were experts and the other 17 were crime-related witnesses. There were 27 witnesses in the *Katanga case* at the trial level with only 8 women. Out of the 8, there were 6 crime-related witnesses, and 2 experts were women. The *Bemba case* had 45 witnesses, women crime-related witnesses were 13 and out of that number and 1 was an expert. Women as witnesses still hardly make up half of the witnesses and are underrepresented before international criminal proceedings at the ICC.

The ICC seems to have given consideration to the crime of wartime sexual violence through its prosecution but the examination of the *Bemba*, *Lubanga*, *Katanga* and *Ntaganda* cases, illustrate that wartime sexual violence has not been completely understood by the ICC. The ICC in its judgments in *Lubanga*, *Katanga* and *Ntaganda* produces silences especially when it comes to women perpetrators, men victims of sexual violence and the role of gender in the perpetration of wartime sexual violence. The *Bemba case* shows that while sexual violence may be committed primarily by men against women as is often assumed, this is not always the case. The presence of men victims of sexual violence and women perpetrators necessitates challenging gender stereotypes.

A blind spot of the ICC is women perpetrators. African women have taken on combat roles and have been security actors in the conflicts under scrutiny. However, the ICC essentialises African women as victims and assumes that women are naturally peace loving, nurturing and have a natural instinct to safeguard human life. Such essentialism silences and excludes an important facet of African women's conflict realities. By not addressing the aspect of women combatants and in some instances women perpetrators, the ICC misses an opportunity to give African women agency and to contribute to the debate of women perpetrators as well as highlight its own institutional discourse where it pertains to these subjects. There is a need to reveal women in different battlespaces.

Throughout history and in the literature African women have taken on combat roles in various institutions and various conflicts as analysed in Chapter 6. When African women are ascribed the sole symbolic role of victims, this works to the detriment of their agency.

A shortcoming of the ICC entails its reluctance to engage with “gender”. In the four cases under scrutiny in this study, the ICC similar to former international criminal tribunals goes some way towards ‘gendering’ trial narratives and these narratives are only partially gendered because only the victims’ sex and gender identity are considered. The ICC’s ability to shed light on the women’s experiences of wartime sexual violence is thwarted if its analysis or understanding of gender only considers the sex of its witnesses or victims. By not engaging with gender, the ICC like the ICTR and ICTY appears to have to a limited appetite for judicial engagement with roots causes of wartime sexual violence (Jurasz and Isaac, 2018). As argued by D’Aoust (2017), there is significance towards international criminal courts’ legitimacy when they address, uncover and denounce the bias and violent system or status quo that often underlies mass human rights violations especially conflict related sexual violence. Moreover, in terms of norms transfer from the international to the national level, a shallow understanding of wartime sexual violence before the ICC and the failure of a coherent gender-responsive approach by the Court has the danger of trickling down to national courts, hampering any progress in terms of addressing the systemic violence women are subjected to.

From the angle of advancing gender justice, it is concerning that there is no engagement on gender. While the socio-cultural dimensions of wartime sexual violence were made visible in witnesses’ testimonies, the judgments before the ICC in *Lubanga*, *Katanga*, *Bemba* and *Ntaganda* have not pronounced themselves nor condemned the societal and structural forces that account for CRSV. The successful or unsuccessful prosecution of CRSV will not matter if little attention is placed on understanding the root causes of CRSV. In this respect, the ICC’s treatment of gender and the gender justice it aims to achieve is somewhat similar to Hudson’s work on gender mainstreaming approaches

(Hudson, 2009). Hudson argues that approaches to gender mainstreaming can be divided into two forms, namely integrative and agenda-setting. The ICC seems to be doing the former in that it seeks to mostly integrate women into its existing structures and processes such as ensuring the presence of women judges and women witnesses. However, its interpretation of gender before its institutional discourse as discussed in Chapter 7 has been tokenistic and as Hudson (2009) notes, tokenistic gestures are a trend of gender mainstreaming. Such a trend thrives on conflating gender and women with the focus being on gender/sex balance rather than addressing and challenging gender relations. The ICC has been complicit in this.

8.3 Answering the research questions

This study had as its primary question the following:

- Is the ICC gender responsive to wartime sexual violence and African women's constructed identities in war?

The subsidiary questions which will aid in answering the main question are:

- What discourses are derived from African women's testimonies of wartime sexual violence?
- How does the Court position itself towards the realities and experiences of African victims and what sort of narratives does it create?

Firstly, by focusing on African women's voices, I aimed to unmute the African woman, and to make her experiences heard and read in this study. In answering the first question which queried what discourses informed African women's testimonies of wartime sexual violence, the findings suggest the following. The dominant and recurring discourses as analysed in Chapter 5 were discourses of shame, powerlessness, violence, and death-is-better-than-rape. African women's construction of a specific discourse stemmed from their subjective experiences in times of war and was also informed by peacetime constructions and views of sexual violence. The discourse of shame for

example mirrored the fact that victims acknowledged certain ideal behaviours or expectations of gender norms for women, and the non-conformity to these socio-cultural expectations had repercussions. Shame as a dominant discourse revealed how the effectiveness of rape was parasitical upon a pre-existing social symbolic facet in which women's sexuality was problematically appropriated by men and linked to the nation (Du Toit, 2009: 87). The discourse also demonstrated the continual hold of the notion of feminine purity and the value placed on it in a patriarchal society. In addition to these, discourses of African men who were victims of wartime sexual violence were examined (in Chapter 6) and here emasculation and abomination were the main recurring themes. African men's experiences were vital given the need to pay attention to sexual violence against men which is often erased or kept under the radar. This shift aimed at examining wartime sexual violence holistically to untangle and understand the importance of gender and sex in making sense of wartime sexual violence. The discourses of shame, powerlessness, abomination and emasculation which ensued were important in revealing the role of gender (femininity and militarised masculinities), and sex in understanding sexual violence.

The second question was, how does the Court position itself towards the realities and experiences of African victims and what sort of narratives does it create? This question pertained to the ensuing institutional discourse of the ICC which was analysed in Chapter 7. In the findings presented, it appears that the ICC (Office of the Prosecutor and Chambers), has generated a heroic protective narrative or discourse of protection as a result of their preoccupation with the suffering of children and women because they are the least powerful. The OTP specifically accentuates the vulnerability and fragility of African women in the cases before it by rejecting women perpetrators and ascribing wartime sexual violence solely to women and not men. The ICC's institutional discourse is based on a logic of masculinist protection which puts those most in need of protection because of their vulnerability, namely women and children, at the forefront of its actions or interventions.

Puechguirbal (2010) argues that before the United Nations a form of patriarchy also exists in which a logic of protective masculinity that sees men as guardians of the 'weaker sex' prevails. This has seemingly been replicated by the ICC, given its omission and evasive approach regarding women perpetrators and men's sexual victimisation. Along with the United Nations, this logic of protective masculinity in the ICC assumes and defines women as victims who are caregivers, linked to their role as mothers of children and wives as seen in the narratives. This leads to and perpetuates a lack of agency and a lack of recognition of the various roles women take up in war such as combatants and heads of household in the absence of men.

The main question was whether the ICC is gender responsive to wartime sexual violence and African women's constructed identities in war. The ICC seems to have considered the crime of wartime sexual violence through its integration as charges in the indictments in the *Katanga, Bemba and Ntaganda* cases. It has also given African women victims of wartime sexual violence a voice as demonstrated in their presence as witnesses before trials. The ICC has thus been gender responsive in representing women's voices. On the other hand, the ICC has not been gender responsive, given its failure in recognising the role of gender when considering wartime sexual violence in the *Bemba, Lubanga, Katanga and Ntaganda* cases. A more gender responsive approach by the ICC, would greatly enhance complex understandings of CRSV by offering nuances and sensibility to understandings of what role gender plays in targeting and shaping victim's experiences of wartime sexual violence. Furthermore, men and women may be targeted for sexual violence due to reasons such as their ethnic identity, their age, their political affiliation or their sexual orientation. The four cases affirm the importance of intersectionality and show the need to move beyond simplistic and reductive understandings of wartime sexual violence. As demonstrated sexual violence does not just affect women nor is it committed solely by men. Within armed groups as well that are considered perpetrators, members of these armed groups also experience sexual violence. An intersectional approach aids in revealing the complex motivations and effects of wartime sexual violence.

8.4 What needs to be done?

As Beringola (2017) notes international criminal law has not yet grappled with understanding the role of gender and other interlinked factors of discrimination which are essential for the effective investigation and understanding of sexual violence. An intersectional lens into wartime sexual violence remedies the various blind spots or shortcomings of the ICC and challenges the ICC's simplistic analyses and fixed basic dichotomies of women-victims and men-perpetrators. Most importantly, it reveals how gender intersects with ethnicity and political affiliation in the perpetration of sexual violence.

The conflicts in the situations before the ICC expose the intersectional nature of wartime sexual violence particularly in relation to how women are targeted due to their ethnicity and gender. The intersection of gender and ethnicity are socio-cultural forces that create a climate within which sexual violence becomes a powerful tool for waging war (Jurasz and Isaac, 2018). The *Lubanga, Katanga, Bemba and Ntaganda* cases before the ICC, illustrate how the lack of an intersectional approach to sexual violence led to obscuring the reality and gravity of this crime and, in particular, overlooking the perpetration of this crime by women and against men. While the women who suffered sexual violence in the DRC and CAR were targeted on the basis of their ethnicity, it is also clear that they were also targeted because they were women. Hence, it is the combination of their ethnic identity and their gender identity that made them targets and eligible for sexual violence. The war zone, in general, is a place of increased gender polarization (Skejlbaesk, 2017: 145).

As mentioned in the previous chapter, interestingly none of the Chambers in the *Katanga, Lubanga, Bemba* or *Ntaganda* cases interprets or engages with gender in their judgments. It is crucial to understand the relationship between gender, ethnicity and sexual violence. Sexual violence cannot be explained by reference to ethnicity alone and one must locate the victims and perpetrators in their specific context and consider the intersections between gender and other factors such as nationality, ethnicity, political

affiliation and combatant/civilian status (Grey, 2017: 893). The presence or reality of victims of wartime sexual violence who are both men and women reveal the significance of gender as a factor shaping conflict as well as the tactical use of wartime sexual violence (Jurasz and Isaac, 2017). An understanding of gender makes sense of women's participation in war and in armed groups. Women's participation in war continues however to be defined primarily in terms of sex and sex difference: a process which does little to destabilise hegemonic understandings of both, renders the perpetration of crimes women commit and sexual violence against men largely invisible (Grewal, 2017: 34).

The application of a gender analysis through using intersectionality as a tool in the four cases demonstrates the need for social (intersectional) approaches to violence as a way to understand the multi-faceted nature of sexual violence before international criminal law. The conflicts in the situations before the ICC expose the intersectional nature of wartime sexual violence particularly in relation to how women are targeted due to their ethnicity and gender. An intersectional approach towards investigating and prosecuting sexual violence is imminent because it allows for the disruption of traditional gender conceptions relating to CRSV. Furthermore, it enables the ICC to produce a more nuanced understanding of CRSV and challenge the assumption of homogeneity of CRSV victims which is commonly reproduced in judgments.

8.5 Concluding Thoughts

The Rome Statute of the ICC is the first international criminal law instrument where women's issues have been taken into consideration in a wide-ranging way. The ICC and its Statute still stand as an unprecedented achievement of the international community, and while the ICC may have its shortcomings and imperfections when it comes to gender issues, the hope for a greater and better future achievements should not be tampered. Rather future vigilance on how the Court deals with these shortcomings is important in the strive of ending impunity for sexual violence committed against women.

In order to provide adequate redress and justice to victims alongside achieving substantive and transformative gender equality, there is a need for judgements to pronounce themselves on the structural and social premises that underlie wartime sexual violence. As Grey (2017:352) notes, focus should not be solely on whether or not sexual violence is effectively prosecuted but rather on what is the ICC's stance on these systemic social structures that account for wartime sexual violence.

In agreement with D'Aoust, it is understood that while the ICC's mandate is arguably not to fully reform laws and attitudes surrounding sexual violence, great opportunities are missed by judges to address the complexities of wartime sexual violence and elaborate on its link to gender inequality. There is a need to re-conceptualize and challenge gender norms before the ICC in order to achieve a wider impact on the global norms surrounding gender equality. CRSV is complex and the failure to reconceptualise gender norms might lead to the ICC remaining trapped in old-fashioned conceptualizations of wartime sexual violence which fail to encompass the complexities of CRSV in terms of multiple perpetrators and various factors which account for the perpetration of this crime.

In union with Campbell (2016), "an integral part of the broader challenge of transformative gender justice involves recognizing that international criminal accountability will only be a partial component of the larger transformative agenda of gender justice". International criminal law is just one component in addressing and challenging systems of discrimination and needs to be backed by other avenues. As Chappelle and Durbach (2014:530) note, many feminists have often long held a deep scepticism about using criminal law in general, and international law in particular, as a tool to advance gender justice. And while this distrust is founded in international law's initial discard and treatment of violence against women. The researcher believes international law and specifically the ICC provide sites where feminists can adopt meaningful engagements with international law and its institutions. Within these engagements, there are various strategies that can be adopted such as subversive strategies which view the ICC for example as a site for discursive and political struggle.

Given its jurisdictional, institutional and ideological limitations, the ICC as Grewal (2015: 145) notes, will often not provide as the best site for the most important radical feminist work to be done. Its limited jurisdiction will always mean it is inevitable that only those crimes of exception can and will be dealt with. The focus on perpetrators and victims makes broader examination of structural and discursive relations of power difficult (Kapur 2006; Nesiah 2011). Despite these inherent hiccups that may be present, withdrawal of engagement with this institution will not stop it from continuing to have an impact on women's lives and it is therefore important to continue carrying on engaging with this institution. As Grewal (2015: 147) notes, feminists should try to make better use of fora such as the ICC as arenas for discursive challenge and struggle. Through such guerrilla tactics, feminists may yet make the ICC deliver something on its promise of gender justice. The Rome Statute created a permanent judicial body that is the ICC and consequently this institution is here to stay. While deciding on individual criminal responsibility, this institution has been vested with a gender justice mandate and in order for it to live up to this mandate. It is important and essential for feminists who seek to advocate and engage with this institution, to not compromise and accept stereotypical representations to achieve short-term goals as this ultimately does little to promote the rights of either the individuals directly involved or women and men more generally. Instead, more cautious feminist strategy of engagement that focuses less on the number of prosecutions and convictions and more on the characterisation of the violations being addressed are needed.

Despite its shortcomings and limitations, there is still some optimism around the potential of the ICC in better addressing conflict related experiences. The ICC has been around for almost two decades and as Navi Pillay (2018: 452) notes "creating an effective international criminal law system requires time. In fact, if one looks at the overall achievements of the last two decades or so, and places these in a broader historical perspective, one may conclude that quite impressive progress has been made". The ICC continues to grow and in particular the OTP. The OTP has made efforts in bringing itself to par by striving to make sense of wartime sexual violence by emphasising gender analysis as seen in its 2014 Policy Paper on Sexual and Gender-

Based Violence⁷⁴. This policy paper illustrates the OTP's commitment to conducting gender analyses based on the understanding of gender as a social construct. The OTP's Strategic Plan 2016-2018 alongside its policy paper aim to improve certain practices and ensure the OTP integrates a gender perspective in all areas of its work. These examples show how the ICC continues to strive to do better in living up to its gender justice mandate.

These numerous promises and documents by the OTP accentuating a commitment to particularly addressing SGBV and paying attention to the role of gender, are an optimistic sign of the OTP putting article 54(1)(b) into practice. Article 54(1)(b) of the Statute requires that, in ensuring the effective investigation and prosecution of crimes within the jurisdiction of the Court, the Prosecutor take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children⁷⁵.

The cases before the ICC such as the *Bemba*, *Katanga*, *Lubanga* and *Ntaganda* cases suggest the ICC strives to bring justice considering the obstacles which hinder effective international criminal investigations of wartime sexual violence. Such obstacles entail - locating a crime scene years after the alleged crimes have taken place, gathering and questioning of witnesses, language and cultural barriers, security risks and the investigative challenges unique to crimes of sexual and gender-based violence in conflict (Mannix, 2014:214).

The researcher recognises the multiple challenges faced by the ICC as well as the limitations (practical and procedural) of an institution of its calibre. While mindful of this, it is crucial to emphasise the progress that the ICC has made and continues to make

⁷⁴ The 2014 Policy paper of the ICC is novel because for the first time the Office of the Prosecutor of an international criminal tribunal pledges to carry out a gender analysis throughout all processes ranging from preliminary examinations, investigations and prosecutions of conflict related sexual violence. What distinguishes this gender analysis is the centrality of the relationship between gender and discrimination which the Prosecutor seeks to understand. Moreover, focus is placed on the intersection of other factors of discrimination such as political affiliation, race, religion, age in relation to these crimes (Beringola, 2017:100).

⁷⁵ Rome Statute of the ICC, page 34.

in the context of the discourse of wartime sexual violence. On the other hand, in revealing the ICC's shortcomings when it comes to its treatment of gender, the purpose is not to be overtly critical of this institution, but the aim is to offer insights into the ways the understanding and eventual prosecution of wartime sexual violence can be improved by incorporating more consistently an intersectional lens into the crime of wartime sexual violence.

Since the trials in Nuremberg, the jurisprudence of sexual violence continues to evolve and the ICC as the last standing permanent criminal institution has a gender justice mandate to uphold. For the legitimacy of the ICC, it is important that it stays consistent in delivering on its gender justice and includes gender perspectives throughout its processes. There are possibilities and challenges facing the ICC's path to gender justice. It is not only a matter of tallying successful numbers of prosecutions when assessing whether or not the ICC has understood the crime of CRSV. It is also not only a matter of whether or not there is a gender balance in terms of victims of CRSV before the ICC to assess whether the ICC is living up to its gender justice mandate. It is most relevant to consider whether or not when opportunities arose for the ICC to pronounce itself on the role of gender in understanding CRSV it seized them. These opportunities are important in bringing about the visibility of gender alongside ethnicity in improving the understanding of CRSV. The ICC's understanding of sexual violence will continue to develop in response to new cases and the inclusion of an intersectional lens within the upcoming cases will bring out more nuances and a complete picture of wartime sexual violence. The great legacy of the ICC's gender justice mandate lies in its contributions towards providing improved understandings of conflict related sexual violence.

8.6 Contribution of the study

While feminist theorists have demonstrated that wartime rape is institutionalised and is a weapon of war, this study aimed to add to the gains and unsettle established thoughts on wartime sexual violence realities. It aimed to engage on shared views of feminist work on security by investigating new empirical settings and to develop new theoretical insights. In considering African women's experiences of sexual violence in my feminist

tale of African women, before an international criminal institution, the role of gender was at the centre of understanding or making sense of these experiences.

Gender has taken on unprecedented importance and it has consequently become quite hard to ignore the workings of gender. Zalweski and Stern (2009) posit that this trend has created the gender industry which advocates for the services of feminism as urgently needed in order to understand and redress the gendered harms related to war and militarisation. As noted by Grosz (2004: 72), there has always been an expectation of feminist scholars to ‘do something’ about the burdens that gender and its resulting societal or cultural expectations bring or have brought about. It was due to a practical need to do something about African women’s experiences of wartime sexual violence that I embarked on this study. However, in a move to add to feminist knowledge or contribute towards the literature, I was confronted with a challenge in carrying out this feminist study. This challenge is what Baaz and Stern (2013) and Zalewski and Stern (2009) term the sex/gender paradox, which they argue is feminism’s own apparent dilemma in carrying out feminist work.

Before carrying out this study, it is worth mentioning that I conceptually treated sex and gender as distinct categories and when I embarked on the study I decided to focus on and use gender. While working with the data and writing my findings, I was astounded by the simultaneous workings of sex and gender and realised that the presence and consideration of sex and gender provide for a different and bigger repertoires of possible and alternative narratives of wartime sexual violence.

The simultaneous workings of gender and sex consisted of the sex/gender paradox. This paradox arises when a fixation on gender refutes the power of sex and yet sex haunts every renditions of gender (Baaz and Stern, 2013: 19). While I considered gender as a transformative tool in revealing various realities of war, I faced an impasse which most feminists who resort to use gender, experience. While a shift from sex to gender convinced me that I had negated the role or power of sex (because it is essentialist), this conviction was temporary. It was temporary because feminism is glued to a generational

trajectory of activity always seemingly en route to offering a solution to gender but ostensibly failing to ever find this solution (Baaz and Stern, 2013: 21). The failure in the search for a solution towards gender occurs because while there is a perception that a fixation on gender abandons the sexed body, my corresponding notions of gender as a construct are based on a distinct and meaningful category of 'sex' and sexed bodies upon which gender acts. Despite this impasse and predicament, I believe gender as a transformative tool offered sophisticated findings in this study. Being cognisant of the sex/gender paradox also helped me to provide alternative narratives of the sex story where necessary.

In making sense of African women's experiences of sexual violence, the ensuing discourse of shame, for example, displayed the underpinnings of femininity and the men's discourse of emasculation displayed the underpinnings of masculinity. A focus on gender aided in making sense of these discourses and this was viewed as desirable and seemed progressive. The narratives of a sex story were evident in this study through the presence of the ghost of sex analysed in Chapter 5 which comprised sexualised details of wartime sexual violence, pornographic displays of experiences, the presence of female sexed bodies in testimonies, the theatre of violence on the female sexed body, and the sexual body of male perpetrators.

By focusing on African women and their experiences of wartime sexual violence, I aimed to not portray African women solely as victims according to global narratives but strived to articulate their agency and view them beyond victimhood. In times of war, women have carved out different spaces of agency in roles such as combatants. In a couple of instances, I portrayed how women and girls used their agency even when faced with violent situations in order to navigate the dynamics of war, resist and survive of war. From these narratives, one can see that women and girls are circumscribed actors who have the ability to act or not to act with this capacity for action being 'delimited, bounded, and confined' (Drumbl, 2012).

8.7 Recommendations for future research

This study has contributed to the broader discourse and literature on women's wartime experiences of sexual violence, women's interaction within legal institutions, and international criminal institution engagements with wartime sexual violence. It will be valuable if some of the findings as well as the information presented in this study are used as a springboard for further research with a separate focus from the one intended and presented in this study.

A recommendation for future research consists of a comparative study of African women's wartime experiences of sexual violence before former international criminal justice mechanisms such as the International Criminal Tribunal for Rwanda (ICTR), Special Court for Sierra Leone (SCSL) and current institutions such as the ICC. Such a comparison would be beneficial for two reasons. Firstly, it will be beneficial to compare the experiences of African women before the ICC and African women before the ICTR AND SCSL to determine whether their constructions of wartime sexual violence as well as war are similar or vary significantly. Secondly, with these international criminal justice mechanisms which have operated for the most part on the African continent, it will be beneficial to reveal what has been their revolutionary impact for African women. Most importantly is the question of what sort of historiography and representation of African women, who are victims of conflict-related sexual violence, would have been created with the advent of the international criminal justice project and its tribunals. This is important to delve into because restorative and retributive justice initiatives seem to be the cornerstones in the new era of addressing and investigating gender violence.

In conducting or taking up similar future studies, it would also be meaningful to use other research methods which enable researchers to draw on different data sets and make comparisons. Such methods could prospectively include other qualitative research methodologies. For example, a longitudinal research of African women's experiences before international criminal justice mechanisms over a lengthier period could be carried out in order to investigate whether certain discourses stay static or change over time.

In relation to what was examined throughout this study and considering the emerging research conducted on African women's experiences before the international criminal trials, it is recommended that further research be conducted on this topic. This study focused on certain aspects of the wartime experiences of African women being sexual violence, the construction of their discourses of shame, powerlessness, and revealed their roles as combatants. Future research should explore in more detail women's involvement in conventional African militaries and armed groups and their relationship with international humanitarian engagements for example. Such a study should be undertaken not to know more about women combatants' numbers, but to investigate the reasons behind their participation as well as their experiences and challenges. Their relationship with these engagements would be of importance because their experiences are unique but continue to be invisible before global discourses of wartime sexual violence and judicial institutions. This has the effect of ignoring or erasing them in post conflict societies.

While the presence of hegemonic masculinities as seen through militarised masculinities were revealed and examined through witness testimonies, the treatment of sexual violence against men before the ICC arguably says a lot about the existence of an institutional judicial masculinity. Judicial institutions have a life of their own and, as noted by Ni Aolain, institutional masculinities remain under-investigated. A recommendation for future research would be to investigate and examine how institutional judicial masculinities operate within and before the ICC.

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APPENDIX

PRETRIAL WITNESSES

LUBANGA

WITNESS	Gender & Status of witness	Nature of account
Prosecution Christine Peduto Witness	Women, Expert	Addresses a broad range of issues ranging from the recruitment of child soldiers, security situation, humanitarian situation, living conditions of child soldiers.
OTP-WWWW-0012	Man, civilian	Identifies Thomas Lubanga Dyilo
OTP-WWWW-0004	Man, civilian	Confirms Thomas Lubanga political position
OTP-WWWW-0044 (Witness AB)	Man , Insider	Involvement of states such as Rwanda in the conflict, reality on the ground, creation of the UPC
OTP-WWWW-0003	Man, Insider	Provision of arms by the Rwandan authorities
OTP-WWWW-0002	Man, Insider	UPC objectives and the threats against non-Hema
OTP-WWWW-0043	Man, Insider	UPC objectives and the threats against non-Hema
OTP-WWWW-0030 (Witness AO)	Man, Insider	UPC objectives and the threats against non-Hema, use of child soldiers
OTP-WWWW-0040 (witness AC)	Man, Insider	UPC objectives and the threats against non-Hema,
OTP-WWWW-0025	Man, Insider	De jure and de facto control of Thomas Lubanga of the UPC.
OTP-WWWW-0021	Man, Insider	Thomas Lubanga as supreme commander of the armed forces, the general phenomenon of child soldiers recruitment in the Hema community.
OTP-WWWW-0016	Man, Insider	Recruits and the officers of the FPLC
OTP-WWWW-0024	Man, Insider	The structure and the communication abilities of the FPLC.
OTP-WWWW-0037 (Witness B)	Man, Child soldier	Describes in detail

		the role Thomas Lubanga played in the recruitment of children
OTP-WWWW-0034 (Witness AX)	Man, Child soldier	Describes in detail the role Thomas Lubanga played in the recruitment of children
OTP-WWWW-0020	Man, civilian	Recruitment of child soldiers
OTP-WWWW-0041 (Witness AQ)	Man, Military Insider	Recruitment activities of the UPC and the FPLC,
OTP-WWWW-0038	Man, Military Insider	Recruitment activities of the UPC and the FPLC,

KATANGA

WITNESS	Gender & Status of witness	Nature of account
Witness 250	Man, an FNI insider	Military camps, military operations, participation in the attacks
Witness 28	Man, child soldier (FRPI)	Military camps, presence of child soldiers, orders to kill everybody without distinguishing between civilians or combatant,
Witness 157	Man, child soldier (FNI)	Attacks in Bogoro village
Witness 279	Man, child soldier (FNI)	Attacks in Bogoro village, participation in the attacks
Witness 280	Man, child soldier (FNI)	Attacks in Bogoro village
Witness 166	Man, civilian	Pillaging, killing of civilians
Witness 233	Man, civilian	Pillaging, killing of civilians
Witness 249	Woman, civilian	Rape and sexual slavery
Witness 132	Woman, civilian	Rape, abduction and sexual slavery
Witness 160	Woman, Expert	Rape
Witness 12	Man, journalist	Overall context of the attacks.
Witness 258	Man, Military insider	Massacre of civilians in the Bogoro attack.
Witness 159	Man, civilian	Pillaging by child soldiers, killing of civilians.
Witness 161	Man, civilian	Loss of his family members, killing of other civilians, loss of livestock.
Witness 287	Woman, civilian	Stripped half naked and made to publicly walk around, killing of her family members, got shot
Witness 268	Man, civilian	Killing of other civilians
Witness 271	Woman, civilian	Rape and sexual slavery

Witness 268	Man, NGO staff	Demobilisation of child soldiers
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BEMBA

WITNESS	Gender & Status of Witness	Nature of account
Witness 23	Man, civilian	His rape, rape of his wife
Witness 6	Man, Investigator	Widespread and systematic attacks against civilians
Witness 9	Man, Investigator	Widespread and systematic attacks against civilians
Witness 47	Man, Military Insider	Eyewitness account of MLC combatants perpetrating separate acts of gang-rapes on about 40 Central African women. Planned and organised attacks against civilians. MLC soldiers publicly and repeatedly raped women
Witness 80	Woman, civilian	Rape
Witness 81	Woman, civilian	Rape
Witness 38	Man, Military insider	Killing of civilians
Witness 42	Man, civilian	Killing of civilians, rape of his daughter,
Witness 22	Woman, civilian	Rape and house to house attacks of civilians
Witness 26	Man, Military insider	House to house attacks of civilians
Witness 29	Woman, civilian	Rape, house to house attacks of civilians
Witness 25	Man, civilian	Modus operandi of MLC armed group.
Witness 7	Man, civilian	Modus operandi of MLC armed group.
Witness 33	Man, Military Insider	Knowledge of rape by Mr Bemba, pillaging.
Witness 45	Man, High ranking MLC official	Knowledge of rape by Mr Bemba
Witness 36	Man, Military insider	Knowledge of rape by Mr Bemba
Witness 31	Man, Military insider	Control of Mr Bemba over troops
Witness 37	Man, High ranking MLC official	Knowledge of atrocities by Mr Bemba
Witness 68	Woman, civilian	Rape
Witness 87	Woman, civilian	Rape
Witness 40	Man, Military Insider	Control of the MLC armed group by Mr Bemba
Witness 15	Man, Political insider	Knowledge of atrocities by Mr Bemba

Witness 32	Man, Military insider	Knowledge of atrocities by Mr Bemba
Witness 46	Man, Military insider	Knowledge of atrocities and control of Mr Bemba of the MLC troops

NTAGANDA

WITNESS	Gender and Status of Witness	Nature of Account
Witness P-19	Woman, civilian	Rape
Witness P-805	Man, civilian	Mass displacement
Witness P-24	Man, NGO worker	re-recruitment of soldiers
Witness P-758	Woman, child soldier	Rape / she is child soldier participation in several battles
Witness P-792	Man, Insider	Human rights atrocities
Witness P-317	Woman headed a United Nation's mission to Ituri in 2003	Overall context and overall crimes
Witness P-360	Man, Journalist	Human rights atrocities
Witness P-768	Man, Military insider	Assaults carried out by the armed group
Witness P-55	Man, Senior military insider	Assaults carried out by the armed group
Witness P-107	Woman, civilian	Rape
Witness P-38	Man, Military insider	Assaults carried out by armed groups.
Witness P-105	Man civilian	Atrocities
Witness P-804	Man, civilian	Pillage, displacement
Witness P-17	Man, Military insider	Overall playout of conflict
Witness P-16	Man, Military insider	Child soldiers
Witness P-800	Man, civilian	Attack on protected objects/institutions
Witness P-22	Man, civilian	Rape
Witness P-18	Man, civilian	Rape
Witness P-12	Man political insider	Ethnic unfolding/playout of the conflict
Witness P-113	Woman, civilian	Rape
Witness P-43	Man /Congolese judge	Ethnic unfolding/playout of the conflict
Witness P-315	Woman, International NGO researcher	Ethnic unfolding/playout of the conflict
Witness P-46	Woman, UN investigator and a child protection officer	Overall context of conflict and atrocities

Witness P-10	Man, Military insider	Assaults and orders given to troops to take position and target civilians
Witness P-14	Man, a journalist	Ethnic unfolding/playout of the conflict
Witness P-56	Man, a UN staff member	Rape of non-Hema women
Witness 792	Man, a Lendu community leader.	Attacks on the villages and surrounding areas.
Witness P-127	Man, Lendu community leader	Attacks on the villages and surrounding areas.
Witness P-300	Man, Lendu community leader	Attacks on villages and surrounding areas.
Witness P-809	Man, civilian	Killing of civilians
Witness P-27	Man, civilian	Killing and capture of civilians
Witness P-39	Man, Military insider	Killing of civilians
Witness P-0031	Man, NGO worker	Child soldiers
Witness P-0290	Man, military insider	Recruitment and training of child soldiers
Witness P-0071	Man, a military insider.	Recruitment and training of child soldiers
Witness P-0041	Man, Political insider	Recruitment and training of child soldiers

WITNESSES AT TRIAL LEVEL

LUBANGA OTP WITNESSS

WITNESS	GENDER AND STATUS	NATURE OF ACCOUNT
OTP-WWWW-0298	Man, former child soldier	Recruitment of child soldiers, Interethnic war, UPC dynamics. Suffering of child soldiers
OTP-WWWW-0038	Man, former child soldier	Recruitment of child soldiers, UPC dynamics and structures. Training centres. Weaponry. Rape of girl child soldiers
OTP-WWWW-0299	Man, Soldier	Recruitment of his son as a child soldier, identified the commanders of the UPC. Training camps, weaponry.
OTP-WWWW-0041	Man, Soldier	UPC leadership. Rivalry against RCD/ML, Support of the Hema community, child soldiers in UPC. Funding of the UPC. Demobilization of child soldiers
OTP-WWWW-0030	Man, civilian	Identify Lubanga, Child soldiers, UPC control, UPC commanders.

OTP-WWWW-0213	Man, former child soldier	Recruitment of child soldiers, Military training and camps. Weaponry. UPC command structure
OTP-WWWW-0008	Man, Former child soldier	Recruitment of child soldiers. Military training and camps. UPC commanders. Rape of girl child soldiers. Rape of civilian women
OTP-WWWW-0011	Man, Soldier	UPC command structure, child soldiers. Military training. Rape of girl child soldiers. Means of communication of UPC. Participation in war battles.
OTP-WWWW-0010	Woman, Former child soldier	Participation in training. Rape of girl child soldiers. Battles of UPC, Weaponry.
OTP-WWWW-0007	Man, Former child soldier	UPC command structure, child soldiers. Military training. Rape of girl child soldiers. Means of communication of UPC. Participation in war battles.
OTP-WWWW-0294	Man, Former child soldier	Recruitment of child soldiers, Military training and camps. Weaponry. UPC command structure
OTP-WWWW-0293	Woman, civilian	Recruitment of her sons, abandonment by her husband, death of her sons.
OTP-WWWW-0043	Man, civilian	UPC modus operandi. Child soldiers.
OTP-WWWW-0017	Man, soldier	Training and training camps. Weaponry, UPC command structure. Communication within the UPC. Rape of girl child soldiers. Battles.
OTP-WWWW-0360	Man, Expert	Expert in Congolese affairs who works in the Ituri region.
OTP-WWWW-0002	Man, Soldier	Origins of the UPC, UPC command structure. Other armed groups in Ituri.
Elisabeth Schauer	Woman, Expert	Trauma, psychology, PTSD and war.
OTP-WWWW-0012	Man, Soldier	History of PUSIC armed group, activities of the UPC. Commanders.
Serge Kilo Ngabu	Man, civilian	Interethnic war, demobilization of child soldiers.
OTP-WWWW-0055	Man, Former commander	Recruitment of child soldiers.
Catherine Adamsbaum.	Woman, Expert	Radiologist in paediatric imagery. Age determination of child soldiers.
Caroline Rey-Salmon	Woman, Expert	Mistreatment of children, sexual abuse on minors, bone expertise, age determination.
OTP-WWWW-0014	Man, Insider	Interethnic war, UPC control, UPC structure and commanders, child soldiers.

CHM-WWWW-0002 (Roberto Garretton)	Man, Expert	Expert on the background and context to the situation and conflict in Ituri. Who was violating human rights.
OTP-WWWW-0089	Man, Child Soldiers	UPC control, Training camps, Recruitment of child soldiers. Commanders in Ituri.
OTP-WWWW-0031	Man, Civilian	Demobilisation of child soldiers. Inter-ethnic conflict.
OTP-WWWW-0116	Man, Civilian	Child soldiers and their recruitment, demobilisation of child soldiers. Trauma of the child soldiers.
OTP-WWWW-0297	Man, former child soldier	UPC commanders, Child soldiers, Disarmament. Witness inducement
OTP-WWWW-0321	Man, civilian	Demobilisation of child soldiers, Identification and presentation of witnesses to the ICC.
OTP-WWWW-0316	Man, civilian	Communication with witnesses and investigators.
OTP-WWWW-0015	Man, former soldier	UPC movement, Interview with ICC investigators. Witness inducement
OTP-WWWW-0582	Man, Head of investigations	Communications with witnesses and intermediaries, sources of reports of atrocities. Interviews of witnesses.
OTP-WWWW-0581	Man, ICC employee	Communications with witnesses and intermediaries
OTP-WWWW-0583	Man, ICC employee	Communications with witnesses and intermediaries
OTP-WWWW-0598	Man, UNICEF employee	Child soldiers -reintegration and demobilization. UNICEF programs for child soldiers.
OTP-WWWW-0046 (Chistine Peduto)	Woman, Expert	Children affected by armed conflict. Recruitment of child soldiers. UPC modus operandi. Demobilization of child soldiers.
Radhika Coomaraswamy (Special Representative of the Secretary-General on Children and Armed Conflict)	Woman, Expert	Experience and field realities of child soldiers.
Kambayi Bwatshia	Man, Expert	Civil Status in the DRC.
WITNESS: a/0270/07 (participating victim)	Man, Civilian	Interethnic war, abduction of children. Destruction of a school.
Witness a/0225/06 (participating victim)	Man, former child soldier	Abduction of children, child soldiers, interethnic war, battlefield realities.

Witness: a/229/06 (participating victim)	Man, former child soldier	Death of his parents, abduction, recruitment of child soldiers. UPC battles. UPC leadership.
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KATANGA OTP WITNESSES

WITNESSES	GENDER AND STATUS	NATURE OF ACCOUNT
DRC-OTP-233	Man, civilian	Location of Bogoro. Attack on the Bogoro village by the FRPI and FNI armed groups. UPC soldiers. Records of the death of civilians
DRC-OTP-419 (Zoran Lesic)	Man, Expert	360-degree presentation of the Bogoro Institute and its vicinity.
DRC-OTP-250	Man, former soldier	Battle between the UPC and the APC. Ethnic groups in Bunia. Formation of military camps. Identifying Mathieu Ngudjolo. FNI command structure. His participation in military fighting. Military training. Hierarchical organisation of the soldiers of the FNI.
DRC-OTP-268	Man, civilian	Bogoro attack. Bodies of dead civilians. Identification of perpetrators. Presence of child soldiers. His assault (tied up and beaten). Killing of civilians and UPC soldiers. General knowledge about the UPC camp at the Bogoro Institute.
DRC-OTP-161	Man, civilian	The attack in Bogoro. Killing of his son. Killing of civilians and UPC soldiers. Looting of civilian property.
DRC-OTP-323	Man, former soldier	UPC military camp in Bogoro. Ousting of UPC from Bogoro. Organisation of the UPC camp. Child soldiers.
DRC-OTP-159	Man, civilian	Attacks on Bogoro. Killings of civilians in Bogoro. FRPI and FNI attackers. Ethnicity of the attackers. Child soldiers. Identify Mathieu Ngudjolo. Loss of property.
DRC-OTP-418 (Eric Baccard Dr)	Man, Expert	Co-ordination of medico-legal activities in the Office of the Prosecutor at the ICC. Support and scientific intervention unit. Patients' traumatic history.
Jean-Claude Renaud	Man, Journalist	War photographs. Child soldiers. Weaponry
DRC-OTP-287	Man, civilian	Attacks in Bogoro village, death of her two children. Undressed and asked to walk around naked. Fighting between the UPC and the UPDF in Bunia. Wounds she personally sustained and operations she underwent.
DRC-OTP-249	Woman, civilian	Sexual violence she underwent. Leg injury sustained. Attacks in Bogoro.

DRC-OTP-132	Woman, civilian	Sexual violence she underwent. Experiences during and after the Bogoro attack. Attacks on Bogoro, killing of civilians. Child soldiers
DRC-OTP-279	Man, former child soldier	Abduction of children to become child soldiers. Commander Boba Boba. Military training of child soldiers. Mr. Ngudjolo in charge of military camp in Zumbe. Attack on Bogoro. Pillaging by FNI troops.
DRC-OTP-280	Man, former soldier	Enlisted to become a soldier. Commander Kute. Military training. UPC the enemy. Mr. Ngudjolo in charge of military camp in Zumbe. Weaponry. Child soldiers. Underground prisons. Attack on Bogoro. Communication of troops. Pillaging.
Constance Kutsch Lojenga	Woman, Expert Linguist	Phonetics/phonology between Lendu and Ndruna.
DRC-OTP-267	Man, civilian	Activities of the witness. Demobilising and assisting children associated to armed groups. Chaos in Ituri/Bunia. FRPI, its military command structure
DRC-OTP-030	Man, civilian	Pacification and cessation of hostilities in Ituri. Armed group leaders/commanders. Insecurity in Bunia. Armed groups involved in Ituri.
DRC-OTP-002	Man, Insider	Pacification and cessation of hostilities in Ituri. Armed group leaders/commanders. Insecurity in Bunia. Armed groups involved in Ituri.
DRC-OTP-012	Man, Insider	Pacification and cessation of hostilities in Ituri. Armed group leaders/commanders. Insecurity in Bunia. Armed groups involved in Ituri.
DRC-OTP-0219	Man, former soldier	Sexual slavery. Attack on Nyankunde, killing of civilians. Looting. Commanders in charge. Armed groups involved and their origins. Various perpetrators. Communications system. Attack in Bogoro.
DRC-OTP-0160	Woman, Insider.	Identifying head of FRPI Germain Katanga, war in Bogoro and Mandro. Split of the Lendus and Ngitis. Relationship between FRPI and the Lendus. Leaders of the FRPI.
DRC-OTP-0353	Man, civilian	Sexual violence, looting, killing of civilians.
DRC-OTP-0028	Man, soldier	Armed conflict between UPC soldiers and FRPI. Insecurity in Bunia/Ituri. Military camp and training. Child soldiers. Military songs. Command structure
DRC-OTP-0166	Man, civilian	Three major attacks on the village of Bogoro. Child soldiers. Armed groups involved in the war.

DRC-OTP-0317	Man, MONUC staff	Serious violations in Ituri. MONUC missions and activities. FNI and the FRPI forces and their command structures
DRC-V19-P-0002 (participating victim)	Woman, civilian	Loss of property. Attacks in Bogoro
DRC-V19-P-0004 (participating victim)	Woman, civilian	Loss of property. Attacks in Bogoro.

BEMBA OTP WITNESSES

WITNESS	GENDER AND STATUS	NATURE OF ACCOUNT
OTP-PPPP-0038	Man, civilian	Location and population of Begoua. Rebels and troops of Mr Jean-Pierre Bemba – Banyamulengue. Leadership of the MLC troops. Duration of the hostilities. Headquarters. Uniforms of the MLC troops. Weaponry. Pillaging and killing of civilians. Jean Pierre Bemba's visit. Rape
OTP-PPPP-0221 (Dr Akinsulure-Smith)	Woman, Expert	Expert report on gender crime and Post-Traumatic Stress Disorder. The impact of sexual violence on people during armed conflict
OTP-PPPP-0022	Woman, civilian	Rape. Perpetrators (MLC).
OTP-PPPP-0087	Woman, civilian	Rape. Perpetrators (MLC), Pillaging.
OTP-PPPP-0068	Woman, civilian	Rape, Perpetrators (MLC), Pillaging.
OTP-PPPP-0023	Man, civilian	Armed conflict 2002-2003, Command structure of MLC, Identification of MLC soldiers. Sodomisation, rape of his wife and daughters. Human violations against the population. Bemba's visit
OTP-PPPP-0081	Woman, civilian.	Rape. Perpetrators (MLC),
OTP-PPPP-0082	Woman, civilian.	Rape, Perpetrators (MLC), Pillaging.
OTP-PPPP-0080	Woman, civilian	Rape, Rape of her daughters and husband. Perpetrators (MLC), Pillaging.
OTP-PPPP-0042	Man, civilian	Arrival of MLC troops in PK 12. Thieving, murdering, looting by the MLC. Rape of his daughter. Pillaging of his property. Visit of Mr Bemba.
OTP-PPPP-0073	Man, civilian	Pillaging. Assaulted. Headquarter of the MLC militia. Human right violations.

OTP-PPPP-0079	Woman, civilian	Rape, Rape of her daughter. Pillaging. Death of her husband. Perpetrators MLC.
OTP-PPPP-0029	Woman, civilian	Rape, Pillaging
OTP-PPPP-0119	Woman, civilian	Rape, Pillaging. Perpetrators- Banyamulengue (MLC)
OTP-PPPP-0222 Prof William James John Samarin	Man, expert	Linguistics, Sango language, knowledge of Central African languages
OTP-PPPP-0075	Woman, civilian	Pillaging.
OTP-PPPP-0006 (Firmin Findiro)	Man, civilian	Commission and prosecution of human rights atrocities. MLC soldiers in Bangui.
OTP-PPPP-0229 (Dr André Tabo)	Man, Expert	Psychiatrist. Expert on rape as a tool of war.
OTP-PPPP-0009 (Oradimo Pamphile)	Man, civilian	Investigations into the atrocities committed by the MLC.
OTP-PPPP-0063	Man, civilian	Pillaging, MLC militia, child soldiers.
OTP-PPPP-0209	Man, civilian	Bozize's troops, MLC invasion and human rights atrocities. Pillaging
OTP-PPPP-0110	Woman, civilian.	Death of her sister, Identifying the MLC Banyamulengue, Pillage
OTP-PPPP-0112	Man, civilian.	Invasion of the Banyamulengue soldiers (MLC). Pillaging, human rights atrocities.
OTP-PPPP-0108	Man, civilian	Pillage of his property, MLC- Banyamulengue soldiers. What the militiamen did to the civilian population.
OTP-PPPP-0169	Man, Insider	Military dynamics of MLC. Means of communication of militia. Human rights atrocities.
OTP-PPPP-0173	Man, civilian	Invasion of Banyamulengue (MLC soldiers). Leadership of the MLC. Supplies of the MLC, casualties caused by the MLC.
OTP-PPPP-0178	Man, civilian	Composition of the MLC. Invasion of Banyamulengue (MLC soldiers). Leadership of the MLC. Supplies of the MLC, casualties caused by the MLC.
OTP-PPPP-0033	Man, Insider	Origins of the MLC. Leadership of the MLC. Structural set-up of the MLC. Communication means of the MLC. MLC Judicial system and convictions. Looting by MLC. Command structure of the MLC.

OTP-PPPP-0032	Man, Insider	Military supplies of the MLC. Military justice and military law enforcement of the MLC. Gbadolite Trials.
OTP-PPPP-0065	Man, Insider	MLC military training. MLC headquarters in Gbadolite. Command structure of the MLC. Means of communication of the MLC. Military operations in the Central African Republic.
OTP-PPPP-0151	Man, Insider	Presence of other armed groups. CCOP and its structure. Command structure of the MLC.
OTP-PPPP-0047	Man, civilian	Transported the MLC militia to Central African Republic. Ammunitions of the MLC.
OTP-PPPP-0031	Man, Insider	Centre for the Command of the Operations. Alliances between MLC and the Central African Armed Forces. Arrival of the MLC in Central African Republic. Logistics of the MLC.
OTP-PPPP-0213	Man, Insider	Security of Mr Bemba, MLC military training in Gbado, Structure of the MLC. Command structure of the MLC.
OTP-PPPP-0069	Man, civilian	Human rights atrocities, death of his sister. Perpetrators – MLC militia. Bemba as leader of the MLC. Rape of his wife, his rape. Pillaging.
OTP-PPPP-0219	Man, Military expert.	Report on military dynamics. Experience about military organisations
OTP-PPPP-0045	Man, Insider	MLC Military training, Gbadolite MLC headquarters. Bemba's role within the MLC. Composition of the MLC. Leadership of the MLC. Enemies of the MLC. Transportation means of the MLC.
OTP-PPPP-0044	Man, Insider	MLC Military training, Gbadolite MLC headquarters. Bemba's role within the MLC. Composition of the MLC. Leadership of the MLC. Enemies of the MLC. Transportation means of the MLC.
OTP-PPPP-0015	Man, Insider	MLC Military training, Gbadolite MLC headquarters. Bemba's role within the MLC. Composition of the MLC. Leadership of the MLC. Enemies of the MLC. Transportation means of the MLC.

OTP-PPPP-0036	Man, Insider	Origins of the MLC. Leadership of the MLC. Structural set-up of the MLC. Bemba's role within the MLC. Composition of the MLC. Leadership of the MLC. Enemies of the MLC
V20-PPPP-0001	Woman, civilian	Rape, Pillaging in Mongoumba.
V20-PPPP-0002	Man, civilian	Explosion in Sibut. Banyamulengués/ MLC militia, Visit of Bemba. Human rights violations.
A/0542/08 (views and concern victim)	Woman, civilian	Assaulted by the MLC soldiers. Pillaging. Attacks by the MLC soldiers. Rape
A/0394/08 (views and concern victim)	Man, civilian	Pillaging. Banyamulengué invasion and human rights atrocities.
A /0511/08 (views and concern victim)	Man, civilian	Assaulted by the Banyamulengué, Human rights atrocities. Death of his wife

NTAGANDA OTP WITNESSES

WITNESS	GENER AND STATUS	NATURE OF ACCOUNT
OTP-P-0805	Man, Civilian	Invasion of the UPC, tribal component of the UPC, the UPC activities, personal loss-loss of his child, pillage. Killings of Lendu's
OTP-P-0901	Man, Insider	UPC/FPLC dynamic, organization, knowledge of the relationship between Bosco Ntaganda and Wamba Dia Wamba, recruitment, confirmation of the identity of some commanders, child soldiers, political situation, rape
OTP-P-931 (Mr Roberto Garretón)	Man , Expert witness	Expert on the background and context to the situation and conflict in Ituri. Who was violating human rights.
OTP-P-0768	Man, Military Insider (Military commander)	Role of Bosco Ntaganda in UPC/FPLC, Operational strategy of the UPC. Weaponry used by the UPC. Killing of civilians, Looting. Child soldiers, UPC Training camps, Rapes
OTP-P-0886	Man, civilian	Tribal war, attacks on the villages. Killing of civilians, child soldiers

OTP-P-0039	Man, civilian	Did not testify (protective measures not adequate enough according to the witness)
OTP-P-0055	Man, Insider	UPC command structure.
OTP-P-0106	Man, Civilian	Interethnic conflict, UPC attacks, killing of civilians, Identifies Bosco Ntaganda.
OTP-P-0010	Woman, Insider (former child soldier)	Sexual exploitation of girl child soldiers. Rape of civilian women. UPC command structure, Training camps, Recruitment of child soldiers. Killing of Lendu civilians. Weaponry, Looting
OTP-P-0859	Man, Civilian	Interethnic war, UPC movement, UPC attacks on villages. Lost property, brother's death
OTP-P-0790	Man, Civilian	Various administrative structures or divisions are within Ituri. Wars that broke out in Ituri in 2002-2003. UPC attacks. Atrocities. Child soldiers.
OTP-P-0017	Man, Insider	Child soldiers, ethnic composition of UPC. Rape, UPC atrocities.
OTP-P-0290	Man, Civilian	Atrocities committed by the UPC.
OTP-P-0815	Man, Civilian	Interethnic conflict, looting. Child soldiers
OTP-P-0963	Man, Insider	Rapes, UPC atrocities, Child soldiers
OTP-P-0892	Woman, civilian	Loss of her husband, attacks of the UPC.
OTP-P-0933 (John Charles Yuille)	Man, Expert	Trauma and memory-based issues
OTP-P-0907	Man, Insider	Chain of command of UPC, Child soldiers, Rape, UPC attacks.
OTP-P-0887	Woman, Civilian	Rape, child soldiers
OTP-P-0190	Man, Insider	Recruitment of child soldiers, UPC dynamics, war fatalities
OTP-P-0046 (Christine Peduto)	Woman, Expert	Child soldiers
OTP-P-0894	Man, Civilian	Pillaging by UPC, loss of his property

OTP-P-0888	Man, Insider (Former child soldier)	UPC training camp, weaponry and ammunitions. UPC atrocities in Songolo
OTP-P-0315 (Ms Anny-Aleida Van Woudenberg)	Woman, Expert	Interethnic war, child soldiers
OTP-P-0877	Man, Civilian	UPC attacks, looting, killing of civilians
OTP-P-0018	Woman, Civilian	Interethnic war, pillaging, rape
OTP-P-0850	Man, Civilian	UPC attacks against civilians. Identifying Bosco Ntaganda. Interethnic conflict.
OTP-P-0938	Woman, Expert	Expertise in Psychotherapy. Psychological impact of sexual violence. Field of psychotherapy, in particular with regard to adult victims of rape and child sexual abuse.
OTP-P-0019	Woman, civilian	UPC attacks on the civilian population. Rape. Prisoners of war
OTP-P-0113	Woman, civilian	Interethnic conflict, prisoners of war,