

Euphemistic (re)formulations of sexual violence at the International Criminal Court: Witness comfort and faithful testimony in conflict

Ana-Maria Jerca
York University

The International Criminal Court (ICC) “prosecutes individuals charged with the gravest crimes of concern to the international community” (ICC, n.d.) including wartime sexual violence. Prosecuting this kind of crime relies on survivor accounts, but witnesses often fear the psychological effects of giving such testimony, such as retraumatization and victim-blaming (Cody et al., 2014; Craig, 2018), which have been shown to occur particularly in defense lawyers’ cross-examination of rape complainants in Anglo-American trials (e.g., Ehrlich, 2001; Matoesian, 2001). Thus, the ICC employs a trauma-informed Victims and Witness Unit (VWU) (Schabas, 2017), whose role includes putting forth provisions for questioning vulnerable witnesses. These provisions require, in part, that questioners avoid embarrassing or offending witnesses.

Using a discourse analytic approach, this presentation examines transcripts from three recent ICC cases dealing with wartime sexual violence—*Bemba, Ongwen*, and *Katanga and Chui*. I explore the discursive strategies employed by prosecutors and defense attorneys in these trials as they navigate arguing their cases before the judges while also tailoring their questions to adhere to the VWU’s questioning provisions. Specifically, my results show that adhering to the provisions in the three cases examined often involves relying on euphemistic expressions—such as *sleep with* or *sexual intercourse*—to discuss sexual violence, expressions which enter the trial discourse through linguistic formulations and reformulations (Drew, 1992; Ferraz de Almeida & Drew, 2020; Heritage & Watson, 1979). An example of these euphemistic formulations at work is provided in (1) below:

- (1) 10 PROSECUTOR Q. Thank you. The last area I want to deal with concerns the **sexual intercourse**
11 which you have described between you and Dominic Ongwen. I think you told us
12 yesterday that he would **sleep with** his wives in rotation; is that correct?
13 WITNESS A. It is correct.

The significance of the results is twofold. First, these descriptions are difficult for witnesses to challenge as the turn-taking rules of the courtroom dictate that questioners set topics and ask questions, while witnesses must merely answer them (MacLeod, 2020). Thus, the judges will be left with the questioner’s version of the events under investigation, regardless of whether the witness agrees with that interpretation or not.

Secondly, these expressions reflect the language used to discuss consensual sex (Bavelas & Coates, 2001) and are thus misleading representations of sexual assault. So, while using euphemism may serve the immediate purpose of preventing offense to vulnerable witnesses, in the long run, adhering to the VWU’s provisions by portraying an inherently violent crime using violence-omitting language can ultimately undermine the prosecution’s case, as they are seeking the conviction of the accused for a grave and violent offense. Conversely, using euphemistic, softening language to refer to rape can *help* the defense in their attempt to convince the Court that their client is not guilty of a violent crime.

References

- Bavelas, J., & Coates, L. (2001). Is it sex or assault? Erotic versus violent language in sexual assault trial judgments. *Journal of Social Distress and the Homeless*, 10(1), 29–40.
- Cody, S., Koenig, A., Mejia, R., & Stover, E. (2014). *Bearing witness at the International Criminal Court: An interview survey of 109 witnesses* (p. 108). Human Rights Center, University of California, Berkeley, School of Law.
- Craig, E. (2018). Sexual assault and the legal profession. In *Putting trials on trial: Sexual assault and the failure of the legal profession* (pp. 3–23). McGill-Queen's University Press.
- Drew, P. (1992). Contested evidence in courtroom cross-examination: The case of a trial for rape. In P. Drew & J. Heritage (Eds.), *Talk at work: Interaction in institutional settings* (pp. 470–520). Cambridge University Press.
- Ehrlich, S. (2001). *Representing rape: Language and sexual consent*. Routledge.
- Ferraz de Almeida, F., & Drew, P. (2020). The fabric of law-in-action: 'Formulating' the suspect's account during police interviews in England. *The International Journal of Speech, Language and the Law*, 27(1), 35–58.
- Heritage, J., & Watson, R. (1979). Formulations as conversational objects. In G. Psathas (Ed.), *Everyday language: Studies in ethnomethodology* (pp. 123–162). Irvington Press.
- ICC. (n.d.). *Understanding the International Criminal Court*. <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>
- MacLeod, N. (2020). "Tell me in your own words...": Reconciling institutional salience and witness-compatible language in police interviews with women reporting rape. In M. Mason & F. Rock (Eds.), *The discourse of police interviews* (pp. 249–267). University of Chicago Press.
- Matoesian, G. M. (2001). *Law and the language of identity: Discourse in the William Kennedy Smith rape trial*. Oxford University Press.
- Schabas, W. A. (2017). *An introduction to the International Criminal Court* (Fifth). Cambridge University Press.