

Does Becoming a Party to the International Criminal Court (ICC) Have a Positive Effect on Regulating Violence Against Women in Domestic Law?

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Fionnuala D. Ní Aoláin, *Gendered Harms and Their Interface with International Criminal Law: Norms, Challenges and Domestication*, Minnesota Legal Studies Research Paper No. 13-19 (2013), available at [SSRN](#).

Expanding legal definitions and the enforcement of rape and domestic violence laws have been a major focus of the feminist agenda for decades, not only in the United States but also around the world. While we tend to think of such crimes in national terms, [Fionnuala Ní Aoláin](#), currently the Dorsey and Whitney Professor of Law at the University of Minnesota Law School and Co-Director of the University of Ulster Transitional Justice Institute in Northern Ireland, looks at these crimes more broadly to suggest that developing international criminal norms about rape may have a positive impact on developing more robust domestic law. Professor Ní Aoláin's work in the fields of human rights and sex-based violence in times of war has been widely recognized, and the Irish government has twice nominated her to the European Court of Human Rights.

This working paper does not analyze legal issues in the United States. However, the use of international human rights law to affect a paradigm shift in analyzing domestic violence cases and other gendered crimes such as trafficking is a hot topic in the United States since the 2011 decision in [Jessica Lenahan \(Gonzales\) v. United States](#) by the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), which held the U.S. responsible for human rights violations in domestic violence settings. The United States government participated in that litigation pursuant to our ratification of the [American Declaration of the Rights and Duties of Man](#) (American Declaration). While we have not signed on to the International Criminal Court, which is the focus of Professor Ní Aoláin's current article, her insightful analysis confirms that efforts to encourage signing and ratification of international criminal and human rights treaties should remain a priority here for those who hope to promote domestic law reform punishing all forms of violence against women.

The article begins by recognizing the debate between feminists who question whether the criminal justice system can ever provide "transformative" change and those who believe it can provide substantial gains for women. To determine if there is a "synergy" between ratification of the ICC statute and domestic legislation directed to violence against women, she surveys all of the signatories to the ICC statute to see if they later adopted domestic legislation affecting women. To provide context, the article discusses historical efforts to obtain recognition of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization as sanctionable crimes of war, and trafficking as a crime at any time, and the "lightening speed" with which international law has come to define such crimes and obtain high profile convictions. Ratification of the ICC statute requires prosecution of the defined crimes nationally, and her survey reveals significant adoption of domestic laws related to sexual violence, trafficking, stalking, and domestic violence, suggesting that ratification may have been more effective than decades of feminist advocacy. However, Professor Ní Aoláin notes that divorcing extraordinary wartime acts from ordinary crimes of sexual violence may limit enforcement and become a way to deflect attention from systematic violence against women. In other words, the normative expansion of rape in international law does not guarantee effective enforcement either internationally or in domestic law. Moreover, practical realities exist such as ensuring that women feel safe to testify, even when the typically male investigators and prosecutors are willing to take legal action.

Professor Ní Aoláin admits that more detailed empirical analysis is necessary to prove a direct link between ICC

ratification and adoption of domestic laws against sexual crimes, and certainly a deeper analysis is warranted concerning timing and content of domestic legislation. Yet it seems intuitive that if there is enough impetus to become a member of the ICC, efforts to lobby for domestic laws to complement the international obligation would likely receive a more welcome hearing, even though she finds little evidence that international lobbying intersects with domestic law reform efforts. At a minimum, she concludes that ICC ratification creates an opportunity to remedy contradictory domestic norms and to promote other efforts at reform. The Professor does not assume that domestic progress is quick or inevitable, describing experiences in Canada, Australia, and the United Kingdom, which have robust legal systems, but still evince low victim reporting, low conviction rates, and uneven sentencing practices. However, even those jurisdictions were able to create new definitions of rape after adoption of the ICC statute. The article understandably raises more questions than it answers, but that is the point: To open a new area for analysis about whether symbolic gains actually may have more immediate results in changing entrenched sexist views that hinder local reform.

Editors' Note: It is with great sadness that the editors note the death of Myrna Raeder, a founding co-editor of the Jotwell criminal law section. Myrna, a professor at Southwestern University School of Law since 1979, was one of the nation's premier scholars of women as victims and offenders in the criminal justice system. Her pioneering scholarship on the impact on women of mandatory federal sentencing guidelines and the harms of incarceration for convicted women and children brought a much-needed critical gender lens to legal scholarship in crime and criminology. Her work on evidence issues in domestic violence cases was part of the great wave of research and activism that helped move domestic violence from the margins of crime policy and transformed law all over the country. Myrna was also an early and persuasive critic of the way women were being criminalized by some of the very same reforms and distinctly disadvantaged by the national turn toward non-individualized retributive sentencing. Myrna enriched our field both substantively and intellectually. She was the first woman to chair the ABA Criminal Justice Section and she served as chair of both the Evidence Section and the Women in Legal Education Section of the AALS. Honored by the ABA with their Margaret Brent Women of Achievement Award in 2002, Myrna will be greatly missed.

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