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"Sexual Violence in Armed Conflict: Reparatory Regime under the International Criminal Court"

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Chapter 1

Introductory Remarks

1.1. Background and Context

From the beginning of civilization of mankind wars and armed conflicts have been deeply embedded in history. Even during the 20th century and these days, this is particularly true that human societies are not free from terrorizing and international armed conflicts. Where millions are killed, mostly unarmed civilians, and in this situation, women and children become the main victims, even if they have nothing to do with these conflicts.

Before 2000, there were no rights for victims and witnesses of armed conflicts to raise their voice in demanding reparation or restitution to get over the situation they had been go through. Very first, after the WW1 the survivors of the Holocaust had been granted some monetary reparation from the German government and some other sources.

In 1998, the Rome Statute was adopted to establish the International Criminal Court to prosecute mainly four international crimes, but even before the ad-hoc tribunals like the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda were in operation. In the early stages of the Rome Statute and Rules of Procedures and evidence had a very limited mandate to deal with victims and secure their participation as witnesses in solving the case against the perpetrators. But the debates were going on in several academic and non-governmental organizations about the possibility of granting reparations to the victims and the survivors of the armed conflicts. Especially after interviewing women surviving sexual violence in armed conflict, and after their situation, they were pick point of the discussion. The women who were raped, mutilated, enslaved, for them the after conflict situation was worse with living in a non-accepting society. Some of the survivors of sexual violence in the armed conflict of Former Yugoslavia, many years later, received the recognition of war victims and came under the governmental pension scheme.

After the promulgation of the International Criminal Court (ICC), the situation slightly changed for the survivors of gender-based violence (GBV). The Rome Statute was drafted to protect the

participation of victims and witnesses in the prosecution, and by doing so, the ICC became a victim-centric organization. In recent years, ICC has not only secured the criminal justice of the perpetrators but also focused on the rights of the victims for reparation and restitution. For that, there is a sole organ of the ICC which is the Trust Fund for Victims that independently works with the assistance of the international community, State, and non-state parties.

Article 75 of the Rome Statutes deals with reparatory justice for the victims and the witnesses, which contains substantive and procedural mandates through Rules of Procedure and Evidence and also the Regulations of the Trust Fund for Victims. Even under Article 21, the Court can go beyond its established regulations of international law if necessary. However, our biggest challenge is to establish principles implementing a non-discriminatory and proportional way to maintain a clear gender perspective in respect of victims and their right to compensation, restitution, and rehabilitation. It is also important for the court to take into account the viewpoints of the convicted person and the victims before declaring the reparation. For the effective enforcement of reparation orders, the cooperation of the States is essential to ensure victims' rights under national and international law.

Moreover, the Inter-American Court of Human Rights has defined the damages a victim of armed conflict can go through, like moral damage and even damage to a life plan. We should bear in mind that millions of children and women had been in indescribable atrocities which deeply can shock the conscience of humanity and for that a new international criminal justice system is necessary with the light of principles of complementarity with the provision of the Rome Statute where all the cooperation mechanisms are foreseen to obtain the right to reparation for the victims.

It is most important to keep in mind that no material reparation can overcome the suffering of an individual or heal the psychological scars of the atrocities. Over the last few years, much important research and documentation have been made on the basis of the experiences and events of the atrocities. I can recall the Eichmann case in this, where many researchers tried their best to collect the information from all over Europe, which came out as nightmares even worse than anyone’s imagination. And after the Holocaust, the Nuremberg trials opened to door to address the previous occurrence and even included paying attention to compensate the sufferers or victims.

This monograph is not about “whether” or “to what extent” the right to reparation is entailed under ICC or International Criminal Justice. It is well recognized that there is already a group of drafters

who have included different forms of exposition to different reparatory rights to victims. Rather, this monograph is more concerned about the effective implementation of that right to reparation. There needs to be an exploration about the role of governments, national and international courts, and commissions in enforcing and implementing different reparation awards. Also main consideration of this research is to uphold a good practice from every perspective of survivors and their communities, and also the perspective of policy makers to resolve technical and procedural challenges in establishing a fruitful and meaningful context of reparation for mass victimization.

Any form of sexual violence is grounded in stereotypical gender-based discrimination, which is used to subjugate and humiliate the victims. Pervasive sexual violence or gender based violence occurs in armed conflict or the aftermath of any period of societal breakdown. The stigma on the victims of sexual violence based on societal gender discrimination makes them suffer lifelong disempowerment and marginalization. In armed conflict, sexual violence is frequently used as a weapon of war, which undermines or impairs survivors to exercise their human rights and it effects with long time trauma, including insecurity in both social and economic life. The effect of sexual or gender-based violence in wartime makes life more challenging even after the war to reconnect with their family and community.

War-related sexual violence generally encompasses individual criminal responsibility based on the denial of the victim's human rights. However, the Rome Statute of the International Criminal Court (ICC) recognizes victims' right to obtain justice and an effective remedy, some other human rights instruments comply with that. Such as the Convention on the Elimination of Discrimination against Women (CEDAW) upholds the right to access justice for women under recognized and emerging humanitarian norms.

The Geneva Conventions or the Protocols of the Geneva Convention under International Humanitarian Law (IHL) predate human rights law, which also prohibits wartime sexual violence, like other modern human rights instruments that expressly address gender discrimination. Trial chambers of the ICC, the ad hoc tribunals, and other mixed courts are governed under humanitarian norms and interpretations. Rape or any forms of sexual and gender based violence in war time is direct violation of humanitarian law and the prosecution for this crime considered as a measurement of the protection from gender based discrimination and equal right to justice regardless to women or girls. In that light, several judicial institutions and their penal jurisdiction

are making an effort to figure out the elements of sexual violence in war or any armed conflict that can result in adjudication as an international crime.

Gender-based violence (GBV) or sexual violence is a manifestation of human rights violations of discrimination based on sex, which encompasses a direct expression of patriarchal-sanctioned conduct. This study is for identifying the rise of sexual violence during war and international emergencies, which impedes or deprives the victims i.e., women and girls of their ability to practice i) civil and political rights, ii) economic, social and cultural rights and iii) third generation rights like right to peace and developments. This paper attempts to identify, on the one hand, how far progress has been made under international criminal law regarding recent incidents during international armed conflicts and, on the other hand, to highlight the gaps in IHL and ICL in implementing and ensuring restorative justice for the victims. The debate on the factual and legal interpretation of rape as an international crime extends the concentration to the element of "lack of consent" and the burden of proving this element in every rape case creates substantial and procedural pressure on women and girls or any victims of sexual violence. Though the victim's right to reparation (comprising restitution, compensation, and rehabilitation) has been widely recognized at both national and international levels, the enforcement through prosecution of reparation mechanisms is extremely difficult. Victims are always terrified to face these procedural difficulties and left without reparation despite suffering of gross violation committed against them. As far as the reparation regime of the ICC may bring a positive change in the international justice system, which not only addresses retributive justice, i.e., the punishment of offenders, but also restorative justice, i.e., having victims participate in the proceedings as well as providing them reparation for their injuries. The ICC differs from the overall retributive approach established by the International Criminal Tribunal for former Yugoslavia(ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

This study is mainly about the needs of reparation of victims of sexual violence during and aftermath of such violence they survived. In addition to the severe physical, psychological, social, and economic consequences victims generally faced, they often contract sexually transmitted diseases, including HIV/AIDS. They may furthermore face unwanted pregnancies and health complications resulting from forced abortions, forced mutilation may cause other injuries such as uterine problems, vaginal wound, fistulas. The combination of such physical injuries and

psychological trauma, social stigmatization, poverty, and different sexually transmitted diseases are the typical consequence that the victims of sexual violence have to face, who are mostly women or girls. While men are also be targeted for sexual violence during conflict, particularly when it rises to the level of genocide, crimes against humanity, or war crimes. However, the consequences of the combination of physical, psychological, social, and economic factors affect female survivors most severely. As the risk of transmission of HIV through sexual attack faced by victims in international armed conflicts is high, and without proper remedies for victims are left to die a slow death.

This monograph will try to explore reparation possibilities for victims of sexual violence under the Trust Fund for Victims (TFV) of the ICC. In this regard, it is essential to understand why victims of sexual violence are in urgent need of reparation even after the conflict. Focusing on specific consequences of victims or survivors of sexual violence does not imply at all that other victims of genocide, crimes against humanity, or war crimes are less worthy of reparation. Rather, this contribution mostly highlights the sexual violence in armed conflict and the consequences that victims, mostly women, have to deal with during and after the conflict situation.

This monograph is all about exploring the practice of governments, national and international courts in applying, processing, implementing and enforcing different forms of reparations. The discussion also need to consider the practice from both perspectives as of beneficiaries- survivors and their communities, and of the policy makers and enforcement agencies who are responsible with the task of resolving the technical and procedural challenges in establishing a fruitful, effective and meaningful reparation in the context of victims of sexual or gender based violation.

One of the most innovative and important aspects of ICC is to enable and afford reparation to victims through its competent Trust Fund for Victims after the conviction of the perpetrators. Genocide, crimes against humanity, and war crimes are the most severe international crimes, and the perpetrators are considered as enemies of mankind. However, sexual violence in armed conflict has life-long effects on the victims or the survivors' lives, making them eligible for the award of reparation as of right. It has been recognized that the perpetrators, whether under individual responsibility or command responsibility, must be held accountable and should not escape liability. The International Criminal Law (ICL) imposes the obligation to provide reparations for internationally recognized wrongful acts. It is reaffirmed in the jurisprudence of national and

international courts and also reflected by international treaties. As recently in 2005, the General Assembly of the United Nations adopted and confirmed by establishing "Basic principles and guidelines on the right to remedy and reparations for gross violation of international human rights and serious violation of international humanitarian law."

Reparation for any international crimes under the Rome Statute is conceived in the context of state responsibility, traditionally for injurious international wrongs, especially at the end of the conflict. Since the Second World War (WWII) recognition of individual responsibility under international criminal law has impacted the principle of reparation in operation in several fundamental ways.

i. Reparation is understood as a Right of Victims, not as an Inter-State prerogative or an Act of Charity:

Reparation is an ethical obligation aimed at repairing the damage caused. It can support both personal and societal goals, such as healing, reconciliation, strengthening democracy, and reestablishing the rule of law. Additionally, it can assist in addressing long-standing biases that have marginalized certain groups, contributing to the injustices they endured. Moreover, it is a legal entitlement for survivors.

ii. The Effective Implementation of the Right to Reparation Consists of both Procedural Access to Remedies and Substantial Forms of Relief:

The procedural implementation of the right to reparation can come with various challenges. For example, limited reaching out and a lack of consultation with the intended beneficiaries may diminish the effectiveness of reparation efforts and reduce the chances of meeting the specific needs of vulnerable or marginalized groups, such as women, children, and minorities, are not properly addressed. The success of reparation measures can also be evaluated by their accessibility to victims, considering if the adopted approaches sufficiently overcome barriers like evidence requirements, logistical issues, or other obstacles. For instance, beneficiaries displaced from their homes may lack necessary documentation, while low literacy and education levels can make complex forms and procedures difficult to navigate.

The forms of reparation, e.g., restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition and quality of adopted measures, must be proportionate and adequate to the injuries and needs and priorities of beneficiaries and survivor communities. Yet it is indeed

impossible to put survivors back to their previous lives before the violation or to repair the violation. However, reparation measures are symbolic to set an example for those heinous crimes. The reparation measures require consideration of survivors' expectations and satisfaction, and also how they relate to the procedures for claiming reparations and the measures themselves. Reparation measures should reflect the reflection of particularities of victimization and how it affects marginalized groups and whole communities. In the instances of mass rape or sexual violence, women represent the disproportionately large number of survivors and the violation they faced are distinct from others and have life-long impacts on them and their whole communities. Evenly, the use and abuse of children in conflicts will put them, their families, and successive generations in endless suffering. For instance, mass rape which by its nature targets national, ethnical, racial or religious group impacts not only individual victims but also the collective identity of the group.

1.2. Purpose of Study:

The main purpose of the monograph is to focus right to demand reparation for victims and survivors of sexual violence or rape under international criminal law. However, the International Criminal Court under the Rome Statute already included the right of victims to receive protection and reparation, but has yet to make some specification about the women, girls, and children who are victims and survivors of sexual violence in armed conflict. Our biggest challenge today will be making a victim-focused criminal legal system a reality for thousands of victims of sexual crimes under international criminal jurisdiction. The study is also about clarifying the practice regarding reparation and the restitution meeting the victim's satisfaction for existence in a sociological environment, and how far it ensures justice. My research focuses on a special area of international criminal law, which is still very narrow and problematic to put into practice.

This study addresses the harm suffered by the victims and aims to analyze the effectiveness of the ICC's reparatory regime, which is limited due to the political will of member and non-member states, funding constraints, and operational challenges. My aim is to take a very active approach and give some recommendations for actively solving problems.

1.3. Research Question:

It is very important to remember that any form of reparation cannot overcome the sufferings of the victim. Most importantly, no amount of material reparation can heal the psychological scars who have been abused and traumatized. It always remains a horror experience in the victim's mind. However, the contribution to helping survivors is extremely important. Last few years there are so many documentations that have taken place of what actually happened with women and children during the conflict situation. I can recall the atrocities that took place in the Republic of Congo and reported thousands of victims and survivors of sexual crimes. These atrocities situation already the reality of nightmares and in such a situation who faced sexually abused and raped that far worse than anyone could be imagined.

To me, this is one of the important facets of the International Criminal Court. And there are several major questions.

i. What is the role of the reparation regime to address the harm suffered by the victims?
ii. How far the acts of sexual violence in armed conflict can be used as weapon of war and ethnic cleansing?
iii. What are the acts of sexual violence are prohibited by the international instruments of Humanitarian law, Human Rights Law, and International Criminal Law?
iv. What are the limitations of prosecutorial strategy of the ICC in convicting the perpetrators of sexual violence in armed conflict?

How far the ICC is facing challenges in ongoing investigations and how is it loosing victim's trust and also in international phenomenon?With news of new genocides and genocidal rape confronting us every day. Let us hope that this monograph will bring us one step forward helping those who desperately need the help.

1.4. Research Objective:

i. To explore the classical and theoretical understanding of reparation and victim satisfaction.
ii. To analyze the effectiveness of reparations for victims of sexual violence in armed conflict in post-conflict societies.

iii. To explore the historical evolution of recognition of sexual violence from 'no crime' to 'core crime'.

iv. A critical analysis of the practice of the reparation regime for the victims of sexual violence in armed conflict under the International Criminal Court with different case studies.

v. An analysis of contemporary armed conflicts and the use of sexual violence as a strategy of war and hurdles of the ICC jurisprudence during the ongoing investigations.

1.5. Limitation and Delimitation:

On the basis of such complicate issue of reparation for victims of sexual violence in wartime under public international law, my focus will be to approach the suffering faced by the victims in a situation when the whole nation is in awful turbulence. In terms of that, I will analyze the present international provisions regarding this reparatory justice for them. I will elaborate on the reparatory and restorative justice that can apply to the victims who suffered sexual abuse during armed conflict. However, the identification of reparation or compensation is a big challenge here for making up the victim satisfaction. Some wounds never be compensated and these victims of mass rape during wartime are unimaginative. In this monograph, I will analyze hypothetically the operations under International Criminal Law and the Provisions already made and how far they are implemented for the victims of rape and other sexual violence during wartime or armed conflict even after conflict situations, and how they are surviving.

1.6. Methodology:

This research is based on a quantitative legal method. This methodology will rely on secondary document-based research with engaging empirical research methods. My research includes theoretical analysis of classical and normative structures. The international legal instruments such as the Rome Statute, Rules of Procedure and Elements, the ICC Statute, and Rules and Procedures of International Ad-hoc Tribunals like International Criminal Tribunals for Rwanda, and International Criminal Tribunals for Yugoslavia is also data collection.

Additionally, there are normative use case analyses on the related area and the judgments already provided in the authentic digital source to access information. Comparative research is also conducted among such courts and special tribunals dealing with victims of sexual violence in terms of international crimes. My aim is also to search for any possibilities for more inclusive procedures to ensure justice for victims of sexual violence after-conflict socialization by the ICC.

1.7. Literature Review

This study is based on a wide-ranging and evolving body of literature that examines the intersection of international criminal justice, sexual violence in armed conflict, and reparative frameworks. It draws from legal theory, feminist perspective, human rights law, and transitional justice practices. The literature critically analyzes the conceptual underpinnings and the practical obstacles to implementing reparative justice through the International Criminal Court (ICC).

1.7.1. Theoretical Foundations

The normative architecture of reparatory justice is rooted in classical justice theories, as Aristotle conceptualized justice as a form of balance where punishment serves both societal order and victim satisfaction by linking punishment to the moral restoration of harm.[1] In contrast, Immanuel Kant emphasized intention and moral responsibility, advocating for a justice system that centers the dignity and consideration of victims.[2] These views underpin both retributive and restorative approaches to justice, which continue to influence legal scholarship.

Modern theorists such as Wenzel, Okimoto, and Platow enrich this discussion by differentiating between retributive justice, which emphasizes punishment corresponding to the offense, and restorative justice, which focuses on healing, reconciliation, and the involvement of victims.[3] These theories provide an essential framework for assessing whether the ICC's mechanisms genuinely reflect a victim-centered approach.

Reparatory justice within international law is now considered a right embedded in customary international law and treaty frameworks, rather than a discretionary privilege. The UN Basic

[1] Jac Armstrong, "Rethinking the Restorative, Retributive Dichotomy: Is Reconciliation Possible?", Contemporary Justice Review, vol. 17, issue no. 13 (July, 2014), p. 266-283.
[2] Kant, Immanuel, The Metaphysical Elements of Justice: Part I of Metaphysics and Moral, translated by John Ladd, 2nd ed. (Indianapolis: Hackett Publiching,), (1999).
[3] Wenzel, M., Okimoto, T. G., Feather, N. T., Platow, M. J., "Justice Through Punishment and Justice Through Restoration", Law and Human Behavior, Vol. 32, No. 5 (2008), p. 375-389.

Principles and Guidelines on the Right to a Remedy and Reparation (2005) support the right to restitution, compensation, rehabilitation, satisfaction, and guarantees against recurrence.[4] Theo van Boven's pivotal role as Special Rapporteur was crucial in shaping these principles, particularly in emphasizing the necessity for effective remedies that are both substantive and procedural.[5]

These principles have also drawn from jurisprudence like the *Chorzów Factory case,* which affirmed the notion of '*restitutio in integrum*' the idea that reparation must, as far as possible, return victims to the position they were in prior to the violation.[6] The literature reflects concern, however, that legal frameworks remain under-enforced and often exclude gender-sensitive and collective harm considerations.

The gender-sensitive theory through the feminist legal scholars have critically analyzed the shortcomings of conventional reparations. Authors such as Ruth Rubio-Marín, Christine Chinkin, and Fionnuala Ní Aoláin argue that reparations schemes frequently fail to account for the gendered dimensions of harm.[7] The dominant "reparation-as-right" model tends to individualize harm, excluding the systemic and collective impact of sexual and gender-based violence (SGBV) in conflict. Gender-based theory of reparation articulated by Kimberlé Crenshaw, further informs this analysis by demonstrating how gender intersects with race, class, religion, and other social identities to create layered vulnerabilities.[8] Accordingly, reparations that fail to engage with these dimensions risk reproducing the inequalities they intend to address.

1.7.2. Comparative and Case Study

The Rome Statute of the ICC (1998) marks a significant advancement in international criminal law by establishing a mandate for victim participation and reparation under Article 75. However, this framework is not without its critics. For instance, Mariana Goetz has highlighted the shortcomings of the conviction-based model, which frequently leaves victims without reparation

[4] United Nations General Assembly, Basic Pinciples and Guidelines on the Right to Remedy and Reparation, A/RES/60/147, (2005).
[5] Van boven, Theo., "The Right to Reparation for Victims of Gross Violations of Human Rights", United Nations Human Rights Studies, 1993.
[6] Permanent Court of International Justice (PCIJ), Germany v. Poland (Factory at Chorzów), Series A, no. 17 (1928), p. 47.
[7] Rubio Marín, R. (ed.). *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council, 2006
[8] Crenshaw, Kimberlé. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review*, Vol. 43, No. 6 (1991), pp. 1241–1299.

in cases where trials fail or are delayed.[9] The establishment of the Trust Fund for Victims (TFV) has been lauded for its dual mandate, which supports both reparations through court order and general assistance, but it is not free from a lack of funding and a lack of cooperation with state parties.[10] The first case mentioned about the reparation for the victim in the ICC prosecution was Prosecutor v. Thomas Lubanga, which highlighted with difficulties in victim identification, quantification of harm, and procedural delays.[11]

The comparative literature reveals the insights from other international and hybrid tribunals. The practice of the International Criminal Tribunal for the former Yugoslavia (ICTY) and Rwanda (ICTR) was pathbreaking in prosecuting gender-based sexual violence in armed conflicts but lacked reparatory mandates.[12] On the other side, hybrid courts, such as the Special Court for Sierra Leone (SCSL) and Colombia's Special Jurisdiction for Peace (SJP), have been more effective in integrating reparatory justice with peacebuilding and victim participation.[13] Non-judicial mechanisms like South Africa's Truth and Reconciliation Commission (TRC) and Peru's Comprehensive Reparations Plan (PIR) demonstrate the potential of symbolic reparations, public apologies, and community healing when formal trials are impractical or politically constrained.[14] These models are increasingly referenced in scholarly debates about how to adapt ICC practices to diverse conflict contexts.

Recent case studies of ongoing investigation from the ICC is addressing the contemporary idea of situation in this 21st century justice mechanism. However, such incidents suggest that despite strong normative framework, implementation remains inconsistent and often politically selective.

[9] Goetz, Mariana. "Reparations Under the Rome Statute: A Work in Progress," *International Journal of Transitional Justice*, Vol. 4, Issue 3 (2010), pp. 376–391.
[10] REDRESS Trust. *Reparations before the International Criminal Court: The Role of the Trust Fund for Victims*, 2017.
[11] Pr*osecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.
[12] De Brouwer, A.M. "Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families," *Leiden Journal of International Law*, Vol. 20, Issue 1 (2007), pp. 207–237
[13] Sandoval, Villalba, C. "Engaging with the Reparations Gap: Lessons from Colombia," *International Journal of Transitional Justice*, Vol. 10, Issue 2 (2016), pp. 284-305.
[14] amber, Brandon. *The Burdens of Truth: An Evaluation of the South African Truth and Reconciliation Commission*, HRSC Press, 2001.

1.8. Research Gap:

In determining methods, priorities, and approaches to reparation, there are a range of factors to consider, which include:

– How to ensure that the forms of reparation best address the needs of survivors and their communities: There is no magic formula for reparation; identifying the most suitable remedies requires careful analysis of and consultation with beneficiary groups, taking into account variances of perspectives within beneficiary groups, and other divergences such as time, age, and experience during and post-victimization. Given the impossibility to fully repairing the harm that was caused, most reparations measures (however concrete) will be symbolic.

-How to ensure that procedures for claiming and receiving reparation do not constitute or contribute to secondary victimization of beneficiaries:

The reparation process should be designed to restore the dignity of survivors, not to further alienate or traumatize them.

-How to secure assets:

This will depend on the nature of the assets (victim assets or property, assets belonging to a judgment/debtor or a criminal defendant in respect of proceeds of crime) as well as the purpose for the asset recovery – to restitute stolen assets, to compensate beneficiaries for their losses, or to ensure that perpetrators do not benefit t illegally from their crimes. The key to improving enforcement efforts is to ensure courts have adequate information about the financial circumstances of defendants.

1.9. Brief Overview of Chapters:

This thesis unfolds across nine comprehensive chapters, systematically addressing the evolving recognition and practical implementation of reparatory justice for victims of sexual violence in armed conflict under international law. Chapter One lays the foundational context by tracing the historical marginalization of victims, particularly women and children, in conflict settings, identifying significant gaps in legal protections prior to the Rome Statute, and establishing the research questions, objectives, and methodology. Chapter Two examines the theoretical and structural frameworks of justice, contrasting classical theories of retributive and restorative justice,

and articulating the moral and legal imperatives for victim-centered reparations within international criminal law. Chapter Three explores the nature, motives, and historical usage of sexual violence as a tactic of warfare, providing detailed case studies from conflicts such as the Democratic Republic of Congo, Rwanda, and Bosnia, and mapping the evolution of international prohibitions under humanitarian and human rights law. Chapter Four focuses on the recognition of victims' rights, analyzing the profound, multidimensional harm suffered by survivors, the need for gender-sensitive approaches, and the conceptualization of reparation as an enforceable right under international legal frameworks. Chapter Five critically assesses the ICC's prosecutorial strategies regarding sexual violence, evaluating successes and persistent challenges, and reviewing key cases to demonstrate the limitations and opportunities within current ICC practices. Chapter Six offers an in-depth analysis of the ICC's reparatory regime, discussing the statutory basis for reparations, the operation and limitations of the Trust Fund for Victims, and landmark decisions shaping the Court's reparative jurisprudence. Chapter Seven identifies the legal, jurisdictional, political, and practical obstacles confronting the ICC in delivering reparations, with specific focus on contemporary investigations such as Ukraine and Palestine, exposing issues of selective justice and political manipulation. Chapter Eight engages in a comparative analysis of international, hybrid, and national transitional justice mechanisms, extracting valuable lessons from the practices of tribunals such as the ICTY, ICTR, SCSL, and non-judicial models like South Africa's TRC and Peru's reparations programs, offering insights into alternative and complementary approaches to reparative justice. Finally, Chapter Nine presents strategic recommendations and future directions, proposing structural, procedural, and normative reforms aimed at transforming the ICC's reparations framework into a truly survivor-centered, gender-sensitive, and effective mechanism capable of restoring dignity, promoting healing, and ensuring holistic justice for survivors of sexual violence in armed conflict

Chapter 2

Theories and Structural Framework for Reparation

2.1. Classical Theories of Justice

Defining justice is challenging due to its subjective nature, influenced by different experiences, perspectives, and ideas on how it can be achieved. Throughout history, prominent philosophers have sought to clarify the complex concept of justice, theorizing based on their societal contexts. Aristotle, the renowned Greek philosopher, made significant contributions by developing various theories regarding the structures and framework of justice. In his recent work, Dr. Jac Armstrong cites Aristotle and highlights the theme of justice as it relates to punishment. He states, "Philosophers define punishment as a sanction imposed for the offender, but in a sense, it is an act of revenge which is inflicted to the satisfaction of the victim."[15] From this perspective, justice through punishment is beneficial for the offender by teaching a lesson, and on the other hand, it is a gratitude to victims, utilizing revenge on the perpetrators. In this manner, punishment or vengeance serves as a beneficial outcome of the justice system by providing a return for both the offender and the victim.

However, Immanuel Kant expressed his different point of view in regarding justice. According to him, the justice should not be only about fulfilling the emotional satisfaction of taking revenge by the person harmed[16] rather he wanted to focus on motivation, intention, and the moral outcomes of punishment, or justice should have consideration given to victims. At this point, Kant provided the term "consideration," which refers to victim-based justice.[17]

Theories on justice may differ in terms of aims, perspective, and structures. The intention of achieving justice can involve establishing a process to address crimes through punishments, retribution, recognition, recovery, and restitution. The theorists basically place their perspective on the importance of various stakeholders, including the accused, victims, intervening parties, communities, and the court itself. However, these viewpoints are based on theorists' own values and the emphasis on their recommendations, leading to significant theories of the justice system.

[15] Armstrong, Jac. supra note 1
[16] Kant, I. supra note 2
[17] Ibid

Consequently, the structures derived from diverse justice theories are shaped by varying priorities. Interestingly, despite these differences in perspectives and intentions, the outcome remains consistent, supporting a restorative justice framework that employs trial courts and punishment-focused sentencing.

2.2. Justice Structure

The justice system transcends a mere punishment framework; various theories of justice present diverse perspectives and objectives. Justice is shaped by humanity's craft in numerous ways. For this chapter, I shall focus the discussion on two distinct forms or theories of justice that are pivotal to International Law: Retributive and Restorative.

The current justice system is rooted in a retributive framework, focusing on remedies through the unilateral imposition of punishment. Wenzel notes that retributive justice aims to ensure that offenders who break rules or laws are justly punished, with penalties that match the severity of their offenses in the pursuit of justice.[18] The retributive justice aims to punish the perpetrator based on trials, avenging and providing closure to the victims, deterring the risk, and expanding the situation beyond tension. So, it can be said that retributive justice is preoccupied with addressing intangible harm and preventing tangible recidivism.

Restorative justice frameworks seek to address existing gaps by focusing on the tangible recovery of victims and promoting a forward-moving approach, rather than fixating on the crime itself. This model emphasizes repairing justice through the reaffirmation of shared values in a collaborative process. Centered on the needs of victims, restorative justice prioritizes the symbolic implications of transgressions and the shared values involved.[19] In contrast to retributive justice, which focuses on punishing offenders, restorative justice is primarily concerned with the concept of recovery.

The concept of justice, particularly in the context of international relations, is often understood as synonymous with fairness, equity, and recovery, primarily achieved through retributive measures. This perspective stems from a well-established justice system designed to administer punishment for criminal behavior. Consequently, there is a prevailing belief that the trial justice system prioritizes holding perpetrators accountable for their actions while giving insufficient attention to

[18] Wenzel, Michael, Okimoto, Tyler G., Feather, Norman T., Platow M.J. supra note 3
[19] Ibid

restoring the lives of victims. As a result, the idea of incorporating alternative forms of justice, such as restorative or reparative justice, into this existing framework may not be readily perceived as a viable option.

While justice is often a reflection of the court system, one must consider how a justice system can truly be just and fair without thoroughly addressing the needs of victims. Advocates for victims' rights bring various expertise and perspectives regarding what constitutes appropriate justice. Experts and researchers hold differing opinions on the nature of an ideal justice system—whether it should focus on punishment, deterrence, compensation, rehabilitation, or recognition. This divergence makes the process of determining what type of justice will genuinely uphold the essence of justice, providing sufficient recovery and healing for victims, highly subjective. Each case requires a unique approach to ensure that victims receive the necessary support for their recovery from the harm endured.

2.3. Structure and Theory in Line

Let us consider the foundational elements of general statistics that outline the legitimate responsibilities of national or local governments in delivering justice. This acknowledgment affirms that governing bodies are empowered to ensure justice by defining and establishing mechanisms to address crimes. The prosecution mechanisms and trial processes at the International Criminal Court (ICC) under the Rome Statute facilitate a legitimate international response and resource allocation, while also enhancing the recognition and action against sexual violence as a grave violation of human rights law. Concurrently, this mechanism has positioned prosecution as a central focus of the international response to sexual violence, prioritizing the perspectives and satisfaction of victims.[20] Under the Rome Statute and its Rules and Procedures, the International Criminal Court has made strides in better recognizing and compensating victims. Notable improvements have been made in the ICC's handling of recognition, memorialization, distribution, and disbursement of reparations to victims.[21] These advancements represent a significant step toward a more comprehensive and inclusive sense of justice, enhancing the collective international response.

[20] Ambach, Philipp, "Lessons Learnt: Process at the International Criminal Court- A Suitable Vehicle for Procedural Improvements?" ZIS Online, (2016)
[21] International Criminal Court. "How the Court Works." https://www.icc-cpi.int/about/how-the-court-works

Hugo Grotius, in his seminal work "On the Laws of War and Peace,"[22] posits that just as sovereign states derive their legitimacy from meeting the needs and expectations of their citizenry within a framework of justice, the international community bears a responsibility to intervene when regional jurisdictions demonstrate an inability or unwillingness to redress injustices. He articulates the concept of "humanitarian intervention as a fiduciary relationship," encapsulated in his Fiduciary Theory.[23] This theory asserts that the justification for the use of force lies exclusively in the pursuit of benefit for the affected populations and the safeguarding of human rights, particularly in scenarios involving armed conflict between two parties.

Under this framework, intervening states must operate within the bounds of international human rights law, placing the protection of civilians at the forefront of their obligation, both as a legal requirement and a moral imperative within the laws of armed conflict. Grotius thus contends that the international community is duty-bound to act as a responsible custodian of human rights, establishing a fiduciary relationship towards those victimized by such conflicts. This compels the intervening state to commit to protecting the most vulnerable, potentially employing force as necessary to counteract oppression and uphold fundamental human rights.[24]

The Social Contract theory of Rousseau outlines not only what citizens can and should expect from their governing structures about their rights, but also the responsibilities of these governing bodies when faced with unfair, inequitable, or violating circumstances.[25] Human societies have evolved to reflect an unspoken consensus that their governments have a leading role with the management of justice being a fundamental duty.

As the world has progressed, we have seen the emergence of more interconnected international organizations, laws, and mechanisms. This evolution suggests that these collaborative bodies are crucial in addressing and managing international issues. For instance, the International Criminal Court (ICC) has been mandated to conduct trials and implement the Trust Fund for Victims, highlighting the role of international systems in upholding justice. However, the international system must also address the areas where it currently falls short in meeting the expectations and

[22] Grotius, Hugo. On the Laws of War and Peace, Paris, 1625.
[23] Criddle, E. J. Three Grotian Theories of Humanitarian Intervention, Theoritical Inqueries in Law, vol. 16, no. 2, (2015), 473.
[24] Ibid, p. 476
[25] Rousseau, Jean Jacques, The Social Contract & Discourses, London: J. M. Dent and Sons, 1923.

needs of global citizens. This includes developing mechanisms to fill these gaps and ensuring that the protection and rights of individuals are upheld on a global scale. The responsibility of these international bodies is to evolve continually, adapting to new challenges and ensuring that justice and equity are maintained worldwide.

Many theoretical interpretations of justice have been incorporated into the fabric of societies, influencing both cultural norms and legal systems. Despite this integration, there is still no universal agreement on how justice should be perceived or implemented. Nevertheless, the insights from ancient philosophers to contemporary thinkers have been crucial in creating a foundational framework for the pursuit of justice.

These contributions have provided a diverse array of perspectives, enriching our understanding of justice and its application. Ancient philosophers like Plato and Aristotle laid the groundwork by exploring concepts of fairness, virtue, and the role of the state. Their ideas have been built upon by modern thinkers who have expanded the discourse to include notions of human rights, social justice, and restorative practices.

This evolving dialogue has shaped legal systems and cultural attitudes worldwide, guiding how societies address issues of fairness, accountability, and reparation. While the debate on the best approach to justice continues, the collective wisdom from past and present scholars offers a robust structure from which to navigate these complex issues. It is through this ongoing exchange of ideas that societies can strive to achieve a more just and equitable world.

Numerous theoretical interpretations of justice have been integrated into societal norms and legal systems, yet there is still no universal agreement on how justice should be perceived or implemented. Despite this, the insights from ancient philosophers to contemporary thinkers have been essential in creating a foundational framework for justice.

2.4. Victims Perspective on Reparatory Justice

In this thesis, the victims' perspective is a central point of discussion. Discussing human rights discourse is indeed inseparable from the perspective of various organs of society. In that way, governments may be guided by their sovereignty claims; civilians' expectation for self-determination and development; different religions practice moral values; political and social

institutions entertain various normative aspirations to attain their objectives. All these perspectives of the actors of the society may be related to human rights in one point but opinions differ depending on status and power positions. The societal actors must promote and defend their interests by greater of lesser aspects. In a post-war society, victims often find themselves in neglected, abandoned and vulnerable situations with the need of care and active recognition of human rights protection systems.[26]

If victims of armed conflicts are all in positions to speak about their rights and needs they often express themselves in similar opinions. Thus, the essence of the universality of human rights views will be more secular from the voices of victims in society. Consequently, the concepts of human rights are better to be explained from the perspective of victims rather than from any other demands of the powerful.[27] It is evident that individuals who have been subjected to persistent legal violations and unjust denials of their rights they find themselves in a variety of contexts and circumstances of abandonment, including armed conflicts: situations of violence, such as targets of criminal activity or terror, or afflicted with gender-based and sexual violence. Since humans have a right to enjoy the fundamental freedoms and rights guaranteed by the Universal Declaration of Human Rights, however, the victims of international human rights instruments, are more often feeling the discrepancy between entitlements and reality most of the time.

According to victims' perspectives different social and political factors like inadequate laws, lack of inclusiveness in getting access to justice, restrictive attitudes to courts, political and social unwillingness to recognize violation of laws were committed, shortage or unequal distribution of resources, and lack of representation of victims' capacity to pursue their claims. Victims, including women, children, members of specific racial, ethnic, or religious groups, and the mentally and physically disabled, are especially vulnerable by these factors

2.5. Effective Remedy and Reparation

In the early 1990s, the Sub-Commission on Human Rights appointed Professor Theo Van Boven Special Rapporteur to consider the right to restitution, compensation and rehabilitation of gross violations of human rights and fundamental freedoms and to prepare draft guidelines on this

[26] Ferstman et al. (eds.), Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making, Leiden: Brill Nijhoff, (2009).
[27] Ibid

question in the light of existing relevant international instruments. Which made the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and which based on the Van Boven theory.

According to Theo Van Boven, – it is apparent that victims of systematic breaches of the law and of flagrant deprivation of rights find themselves in many different settings and situations, armed conflicts: situations of violence, as objects of crime and terror, or stricken by the misery of poverty and deprivation in aftermath.[28] As human beings entitled to enjoy the basic human rights and freedoms enshrined in the Universal Declaration of Human Rights and other international human rights instruments, victims are, more often than not, experiencing the gap between entitlements and realities. The study of Van Boven's theory concerning the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms to explore the possibility of developing basic principles and guidelines on the issue. The study originated at a time of political change on various continents with prospects of a higher degree of human rights advancement. It was also a time of the creation of transitional justice mechanisms in a series of countries. Restoring justice implied an increased focus on the criminal responsibility of perpetrators of gross human rights abuses and their accomplices. He aimed at respectively combating impunity and strengthening victim rights in this established theory.[29]

2.5.1. Effective Remedies:

The basic right to effective remedies has a dual meaning. It has a procedural and a substantive dimension. The procedural dimension is subsumed in the duty to provide "effective domestic remedies" through unhindered and equal access to justice. The right to an effective remedy is laid down in numerous international instruments widely accepted by States; the Universal Declaration of Human Rights (article 8), the International Covenant on Civil and Political Rights (article 2), the International Convention on the Elimination of All Forms of Racial Discrimination (article 6), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 14), the Convention on the Rights of the Child (article 39), the International Convention for the Protection of All Persons from Enforced Disappearance (article 24), as well as in regional

[28] Van Boven, Theo. "Reparatory Justice in International Law, *Reparations: A Requirements of Justice,* ResearchGate, (2014).
[29] Ibid

human rights treaties: the African Charter on Human and Peoples' Rights (article 7), the American Convention on Human Rights (article 25), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 13). Also relevant are instruments of international humanitarian law: The Hague Convention of 1907 concerning the Laws and Customs of War on Land (article 3), the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I, article 91) and the Rome Statute of the International Criminal Court (article 68 and 75).[30]

The notion of "effective remedies" is not spelled out in these international instruments. However, international adjudicators, in particular when faced with complaints about gross violations of core rights such as the right to life and the prohibition of torture, increasingly and insistently underlined the obligation of States Parties to give concrete content to the notion of effective remedies, with emphasis on the requirement that remedies must be effective. the notion of an "effective remedy" entails, according to the European Court, an obligation to carry out a thorough and effective investigation of incidents of torture and, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including access for the complainant to the investigatory procedure.[31] The European Court followed the same reasoning in a case of alleged rape and ill-treatment of a female detainee and the failure of the authorities to conduct an effective investigation into the complaint of torture.[32]

Van Boven noted that in many instances where the law allows for impunity or where de facto impunity exists, victims are often prevented from pursuing justice through effective legal remedies. When State authorities neglect to investigate incidents and establish criminal responsibility, it becomes extremely challenging for victims or their relatives to engage in effective legal proceedings aimed at obtaining just and adequate redress and reparations.[33]

2.5.2. Law of State Responsibility

From the outset the Principles and Guidelines were based on the law of State Responsibility as elaborated over the years by the International Law Commission in a set of Articles on

[30] Van Boven, supra note 29, p.22
[31] Aksoy v. Turkey, ECtHR, Judgment of 18 December 1996, Reports of Judgments and Decisions of the ECtHR, 1996-VI, para. 98
[32] Ibid, para 103
[33] Van Boven, supra note 29

Responsibility of States for Internationally Wrongful Acts which were commended in 2001 to the attention of governments by the United Nations General Assembly. It was argued, however, by some governments that the Articles on State Responsibility were drawn up with inter-State relations in mind and would not per se apply to relations between States and individuals. This argument was countered in that it ignored the historic evolution since the Second World War of human rights having become an integral and dynamic part of international law as endorsed by numerous widely ratified international human rights treaties.[34]

2.5.3. Gross violation or all violation

The initial study carried out by the Special Rapporteur under the mandate of the Sub Commission referred to victims of gross violations of human rights and fundamental freedoms. Boven noted that the word "gross" qualifies the term "violations" and indicates the serious character of the violations but that the term "gross" is also related to the type of human rights that is being violated. However, In the ensuing discussions and negotiations, it was argued that the Principles and Guidelines would be unduly restrictive since all violations of human rights entail the right to redress and reparation. On the other hand, with the evolving opinion that the Principles and Guidelines should also cover serious violations of international humanitarian law, the view prevailed that the focus of the document should be on the worst violations. While the principles and Guidelines focus on "gross" and serious violations it is not opting for narrower approach the general principle that, all violations of human rights and international humanitarian law entail legal consequences. In order to rule out the misunderstanding it included principle 26 the principle of non-derogation saying that, the present Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights and international humanitarian law.[35]

2.6. Substantive Principles of Reparation under International Law

The core principles of reparation or effective remedy under international law are mainly based on customary norms. However, these principles can be applied on violations of international

[34] Van Boven, Theo., "The United Nations Basic Principles and Guidelines on the Right to A Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law, United Nations, (2005), https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf
[35] Ibid

obligations by States or even by individuals. Furthermore, as a branch of International Law international human rights law is also collaborative with these principles responding to the nature of violations it deals with.

This part of the thesis deals with the main principles of reparation exclusively derived from international law and international human rights law, as well as the possible application of these principles in reparatory mechanisms of ICC under the Rome Statute and other regulations.

i. The Chorzow Factory case tried and decided by the Permanent Court of International Justice(PCIJ) is a landmark case in the formulation of the core principle on reparation under international law. Decision held by PCIJ states that, "reparation must, as far as possible, wipe out all consequences of the illegal act and re-establish the situation which would, in all probability have existed as if that act had not been committed."[36] This statement refers to the *principle of reparation as restitutio in integrum.*[37] This concept has been interpreted for determining the forms and measuring reparations that can be awarded. In the context of traditional state responsibility, the retributive approach to reparation often prevails with emphasis on actions like restitution and compensation to provide redress.

ii. Reparations must be proportionate with the harm that the wrongdoing caused, with "harm" encompassing both material and moral damages, in accordance with the principle of proportionality.[38] It is important to note that while the damage will influence the type and amount of reparations, material harm alone does not mean that reparations must be sought. The fact that reparations are not punitive in nature is a significant outcome of the proportionality principle. Regardless of how serious the breach is, this is the case. Reparations ought to be considered an exemplary measure rather than a means of redressing the harm caused by the wrongdoing.

iii. The principle of causality, which is closely linked to the principle of proportionality and concerns the nature of the connection between the unlawful act and the harm

[36] Permanent Court of International Justice (PCIJ), Factory at Chorzow (Merits), PCIJ, Series A, No. 17, 1928, p. 47

[37] Amezcua-Noriega, Octavio. Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections, Dr. Clara (ed.), *Reparations Unit, Briefing Paper No.1*, University of Essex, (August 2011).

[38] International Law Commission, Materials on Responsibility of States for Wrongful Acts, United Nations, 2001, Draft Articles, art. 31

experienced, stipulates that only direct damages caused by the illegal act should be compensated for, excluding damages that are too indirect or remote. According to John Crawford, the former Special Rapporteur of the International Law Commission on State Responsibility, he requirement of a causal link is not always the same for every breach of an international obligation. As such, other aspects of the breach, as the deliberate misconduct of the State organs, should be considered.

2.7. Forms of Reparation in International Law

The early discussion of the basic principles already identified the idea of different forms of reparations. Under the International Law Commission (ILC) articles on State Responsibility formulated the difference between obligation and non-repetition under "general principles" and forms of reparation under "reparation for injury".[39] In the process of further elaboration and adoption of various forms of reparation were retained and refined as a document of reparation for harm suffered. Victims are entitled to adequate, effective, and prompt reparation, which should be proportionate to the violation and the gravity of harm suffered. The various forms of reparation under Basic Principles and Guidelines maybe summarized as follows:

i. ***Restitution:*** Under Article 19 of Basic Principles and Guidelines[40] this measure means to restore the victims to the situation as if their lives were before the violations of human rights law and humanitarian law occurred. It means ensuring that victims can get back to their original situation of life as they did before the gross violation they had. For example: restitution includes restoring liberty, rights to practice human rights, family and social life, restoration of employment, and return of property even the place of residence.

ii. ***Compensation:*** Article 20 of Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law[41] mentioned that victims should be provided compensation as appropriate and proportional to economically measurable

[39] General Assembly resolution 56/83, Annex, Responsibility of States for internationally wrongful acts, art. 28–39
[40] Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, Human Rights Resolution 2005/35
[41] supra note 40, art. 20

damages upon the gravity of violation particularly in each case. The economically assessable damage includes physical or mental harm, loss of opportunities or employment, education and social benefits. The compensation also can be required for legal or expert assistance, medical service, and psychological or social services.

iii. ***Rehabilitation:*** The Oxford Dictionary defines rehabilitation as "a course of treatment, largely physical therapy, designed to reverse the debilitating effects ofan injury." Article 21 of Basic Principles and Guidelines[42] mentioned three different forms of rehabilitation: medical rehabilitation, aiming at medical care for developing physical and psychological abilities, social rehabilitation means to reintegration of social life, and vocational rehabilitation refers to vocational services like vocational guidance, training to secure suitable employment.

iv. ***Satisfaction:*** This form of reparation is a broad range of measures from the victim's perspective. Satisfaction can include cessation of violation and truth-seeking, search for disappeared, recovery and reburial of remains, public apologies, judicial and administrative sanction, and commemoration.

v. ***Guarantee of non-repetition:*** A broad structural measure of policy should be required to ensure the non-repetition of any gross violation. This form of reparatory justice aimed for institutional reforms as civilian control over military and security forces, ensuring judicial independence, and protection of law enforcement, the media, industry and social services.

These forms of reparation, in certain instances and in case of certain individual victims or group of victims, one or more than one may be commended in order to ensure justice. The Basic Principles and Guidelines are drafted with fair degree of flexibility in this regard. The possibility of non-judicial schemes offering redress and restitution can also contribute to the benefit of victims with the cooperation of other justice systems. Although forms of reparations are mostly understood in monetary terms, the importance of non-monetary and symbolic forms like satisfaction to victims must not be neglected. Finally, in the situation of gross sexual violation victimized women, children, and even men should reach the proportionate reparatory justice. For the victims of sexual and gender-based violations, the reparation forms and policies are complex to demarcation of

[42] supra note 40, art 21

beneficiaries and entitlements and also modalities of reparation. Nevertheless, in order to ensuring justice, policies, and forms of reparation must be aimed at complete and inclusive material and moral benefits to all who have suffered abuses.

2.8. Multidimensional Framework for Reparation:

Massive trauma causes such diverse and complex destruction that only a multidimensional, multi-disciplinary integrative framework is adequate to describe it.[43] An individual's identity involves a complex interplay of multiple spheres or systems. Among these are the biological and intrapsychic; the interpersonal – familial, social, communal; the ethnic, cultural, ethical, religious, spiritual, natural; the educational/professional/occupational; the material/economic, legal, environmental, political, national and international. Each dimension may be in the domain of one or more disciplines, which may overlap and interact, such as biology, psychology, sociology, economics, law, anthropology, religious studies, and philosophy. Each discipline has its own views of human nature and it is those that inform what the professional thinks and doings.

These effects may also become intergenerational in that they affect families and succeeding generations.[44] In addition, they may affect groups, communities, and societies,. and nations. Thus, it is not only what the victim has experienced and suffered during the trauma, be it genocide, crimes against humanity, or war crimes. Repairing the rupture and thereby freeing the flow rarely means, going back to normal. However, this should not deny the experience of the survivors while returning back to normal it should mean fixation more appropriately. Justice processes, when done optimally, might contribute to lessening the feeling of being stuck for both the survivors and their societies.

2.8.1. Healing Role of Reparatory Justice

Emphasizing the multi-dimensional and multi-disciplinary need for understanding massive trauma and its aftermath, the psychological perspective of the victim's experience should be considered in defining the form of reparation. Their psychological component describes how the victims are affected by mass atrocities, their reactions, concerns, and needs. Delineating the necessary elements in the recovery process from the victim's point of view, it is important to identify how

[43] Y. Danieli, (Ed.) International Handbook of Multigenerational Legacies of Trauma, New York: Plenum Press, (1998).
[44] Op den Velde, Wybrand. "Children of Dutch War Sailors and Civilian Resistance Veterans," in International Handbook of Multigenerational Legacies of Trauma, New York, (1998), p. 147–162.

the healing is related to the justice process and the victim's experience with that process. Even it is not sufficient but reparation has its own particular component to the healing process. The missed opportunities and negative experiences of victims need to be examined for a better understanding of the critical juncture of the trial. Also, the victims' participation on such trials can deliver a proper meaning to the healing process from the reparatory justice.

Since the Nazi Holocaust till now the victims of the atrocities asserted to their experiences during the conflicts and their continuing sufferings. They, and later their children, concluded that people who had not gone through the same experiences could not understand and/or did not care. With such bitterness in life many choose to become silent about their experience and aftermath their interaction with society. And this conspiracy of silence between survivors and society is also intended by the perpetrators of the sexual violence during the armed conflicts. Which is detrimental for the survivors' mental health, familial and socio-cultural reintegration by their profound sense of isolation, loneliness, and mistrust to the society. This imposed silence is proved particularly painful to those who has survived the war and the poor post-war environment which intensify the proceeding of traumatic events, on the other side a good environment might mitigate some of the traumatic effects.[45]

2.8.2. **Necessary Elements of Healing**:

According to Y. Danieli on victims and survivors what they said about the necessary elements for healing to massive trauma are summarized as followings:

1. Reestablishment of the victims' equality of value, power, esteem (dignity), the basis of reparation in the society or nation. This is accomplished by, a. compensation, both real and symbolic; b. restitution; c. rehabilitation; d. commemoration
2. Relieving the victims' stigmatization and separation from society. This is accomplished by, a. commemoration; b. memorials to heroism; c. empowerment; d. education.
3. Repairing the nation's ability to provide and maintain equal value under law and the provisions of justice. This is accomplished by, a. prosecution; b. apology; c. securing public records; d. education; e. creating national mechanisms for monitoring, conflict resolution and preventive interventions.

[45] Op den Velde, supra note 44

4. Asserting the commitment of the international community to combat impunity and provide and maintain equal value under law and the provisions of justice and redress. This is accomplished by, a. creating ad hoc and permanent mechanisms for prosecution (e.g., ad hoc Tribunals and an International Criminal Court); b. securing public records; c. education; d. creating international mechanisms for monitoring, conflict resolution, and preventive interventions.[46]

It is important to emphasize that this comprehensive framework presents alternative means of reparation and sets out necessary complementary elements, all of which are needed to be applied in different weights, in different situations, cultures and contexts, and at different points in time. It is also crucial that victims and survivors participate in the choice of the reparation measures adopted for them.[47] While court justice through accountability is crucially one of the healing agents but it does not replace the other psychological and social elements necessary for recovery. It is thus a necessary, but not a sufficient condition for healing.

Some of these elements had already been recognized among the measures recommended in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Magna Carta for victims.[48] These elements include, at the international and regional levels, improving access to justice and fair treatment, restitution, compensation and necessary material, medical, psychological, and social assistance and support for such victims. This set of principles includes the right to know, the right to justice, and the right to reparation/guarantees of non-recurrence.

The prosecutor's office should also develop a procedure, in consultation with the witness section, for following up with prosecution witnesses should an appellate chamber overturn a guilty verdict in cases in which they testified.[49] I agree wholeheartedly with these recommendations. Judges can play an extremely important role in ensuring that witnesses are treated with dignity. In particular, they should be vigilant of and more quickly to end any abusive or disrespectful behavior on the

[46] Danieli, Y. supra note 43.
[47] Roht Arriaza, N. "Reparations in the aftermath of repression and mass violence," in My Neighbor, My Enemy: Justice and community in the aftermath of mass atrocity, (E. Stover & H.M. Weinstein (eds.), Cambridge University Press, (2004), p. 121-140.
[48] United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 40th Session, Supp. No. 53, at 213, U.N. Doc. A/40/53 (1986).
[49] E. Stover. The Witnesses: War Crimes and the Promise of Justice in The Hague, Philadelphia, University of Pennsylvania Press, (2011).

part of both defense counsel and prosecutors during cross-examination; provide witnesses with an opportunity to make a statement at the conclusion of their testimony; conduct periodic assessments of the effectiveness of the court's protection measures and issue recommendations for improving these procedures.

2.9. Problems with Reparation as a Right Model

If reparation is to be gender-sensitive, it must address these structural inequalities and take into account the particular ways in which women and girls experience harm. However, there are several ways in which current conceptions of reparation fail in this respect. As noted above, the reparation-as-right model has received the most currency in international practice. This model construes reparation primarily as an individualized legal entitlement; recognition by the State involves a process of individualization, "first of the harmful act and later of the individual herself."[50] Such recognition may express belonging to the political community, which is important in cases where women have historically been excluded and denied the full entitlements of citizenship.[51]

Any reparation program will need to consider that in many contexts, in both law and practice, women's legal autonomy, and by extension the system of individual entitlements available to them, continue to face serious obstacles. Policymakers, therefore, cannot presume that "citizenship" exists as a neutral right allowing women and men to access reparation on equal terms. Rather, pre-existing socio-cultural inequalities based on gender may create serious obstacles to women's access to reparation and the other entitlements of full citizenship. These obstacles include religious and customary norms that may operate concurrently with formal law at the national level.[52] women's ability to access reparation must always be understood contextually based on a full understanding of how gender identities interact with race, class, age, religion, and other social divisions.

If issues related to unequal citizenship arise, other challenges regarding effective reparations also come into play. When reparations programs focus solely on individual harm as isolated, measurable incidents, they risk overlooking or downplaying the broader, systemic nature of these

[50] Duggan, Colleen, and Abusharaf, Reparation of Sexual Violence in Democratic Transitions, The Handbook of Reparations, Pablo De Grieff (ed.), Oxford University Press, 2006.
[51] ibid
[52] Duggan, Colleen, and Abusharaf, supra note 50.

violations. Failing to recognize such violence as a socially constructed and structural issue means that reparations may not address deeper questions of justice, including the ongoing inequalities that underpin these harms. Even when reparations provide public recognition or societal respect for victims, the measures—such as compensation or restitution—tend to concentrate on addressing the individual's personal or private interests. This individualization limits the effectiveness of reparations efforts, as it obscures the full scope and collective impact of the period marked by human rights violations.

Finally, the notions of restitution and compensation underpinning most reparations programs are highly problematic, particularly in the context of gender-based violence. This is not to suggest that monetary assistance is not of critical importance for women's well-being in many respects. Women generally have less opportunity for economic recovery than men in the aftermath of the conflict, and monetary assistance can help them re-establish their lives. Nevertheless, mere compensation will inevitably be grossly disproportionate to the harm suffered and the damage caused. For this reason, it may risk trivializing suffering, or simply be viewed as blood money.

Furthermore, as the central principle underlying legal reparation, restitution is an extremely difficult principle to apply after gross and systematic human rights violations. It is impossible for any remedy to succeed in wiping out all the consequences of systematic sexual violence, genocide, or other gross violations of human rights. But perhaps even more importantly, it is impossible to talk about 'repair' and 'restitution' to the pre-conflict situation when that situation was marked by inequality based on gender and other aspects of identity. In such cases, restoring a victim to her position before the conflict began would be tantamount to returning her to a state of marginalization and inequality that to some extent facilitated the harm experienced in the first place.

2.10. Conclusion

This chapter has explored the theoretical and structural frameworks that underpin reparation in the context of international justice, situating them within both classical philosophical traditions and contemporary human rights discourse. By engaging with retributive and restorative paradigms of justice, it has underscored the tensions between punitive and reparative objectives in global accountability mechanisms, particularly within the framework of the International Criminal Court

(ICC). The enduring relevance of theorists such as Aristotle, Kant, Grotius, and Rousseau demonstrates that justice is not merely a procedural mechanism but an evolving moral imperative shaped by context, power dynamics, and the voices of those most affected—victims.

Through a detailed examination of the victims' perspectives and the evolution of reparation as both a legal right and a healing practice, the chapter illuminated the multidimensional nature of justice. It critically engaged with the foundational principles set forth by international law and normative instruments such as the Basic Principles and Guidelines on the Right to a Remedy and Reparation, drawing particular attention to Van Boven's contributions. While the international legal framework offers significant tools for redress, this analysis reveals that challenges remain—particularly in ensuring gender-sensitive, context-specific, and participatory approaches to reparation.

Ultimately, reparation must be understood as more than a legal entitlement; it is a complex, multifaceted process of recognition, restoration, and transformation. It demands that justice systems not only hold perpetrators accountable but also acknowledge and address the structural and intergenerational harm experienced by victims. This necessitates a shift from individualized, compensatory models toward inclusive and holistic mechanisms that reaffirm dignity, equality, and the full humanity of those most deeply impacted by injustice. Only then can the promise of justice be genuinely fulfilled

Chapter 3

Nature of Sexual Violence in Armed Conflict

3.1. Introduction

When we think about weapons of war at first glance guns, bullets, and bombs come to our mind, not rape or sexual violence. But rape does more than just wound, it is a military strategy used to deny and destroy the identity of a targeted community. Historically, sexual violence in armed conflicts was considered a byproduct of war, simply as unrestrained sexual behavior amid lawlessness and a breakdown of societal infrastructure. By digging deeper into the aims and intentions, sexual violence developed into a strategic tool of discrimination and hate, and a weapon of warfare, largely targeted at humiliation, torture, demoralization, and individual or collective shaming.

Wartime rape and sexual violence have long been shrouded in silence, historically considered as an inevitable consequence of war as a product of chaos, lawlessness, and the collapse of societal order. Acts of sexual violence were perceived merely as uncontrolled acts of aggression in the absence of authority in a broken society, these heinous crimes leave deep and long-lasting physical as well as psychological scars on victims. It displaces, terrorizes, and destroys individuals, families, and even entire communities. It can leave the survivors with emotional trauma and psychological damage coupled with physical injuries, unwanted pregnancies, and other sexually transmitted diseases (STDs) like HIV, thus bearing consequences for generations.[53] Even after explicit prohibition in International Criminal Law and International Humanitarian Law sexual violence remains widespread and prevalent during armed conflicts these days, used by the militants as a tactic or strategic means of weakening the opponent directly or indirectly, by targeting the civilian population.

But what happens with the rapists? History shows that most of the time they get away with it because the rape and sexual violence against women in armed conflicts were yet to be

[53] Melanie O'Brien, 'Don't Kill Them, Let's Have Them as Wives': The Developments of the Crimes of Forced Marriage, Sexual Slavery, and Enforced Prostitution in International Criminal Law, *The International Journal of Human Rights*, (2015), DOI: 10.1080/13642987.2015.1091562

acknowledged as a war crime by the international instruments. In 2008, the United Nations Security Council adopted Resolution 1820, which explicitly recognized that rape and any form of sexual violence can constitute war crimes, crimes against humanity, or genocide. This resolution emphasized the immediate cessation of all sexual violence against civilians in armed conflict and called upon member states to prosecute individuals responsible by ensuring the exclusion of any amnesty provisions.[54] Furthermore, the Rome Statute of the International Criminal Court (ICC) includes comprehensive prohibitions against sexual and gender-based crimes under Article 8 of such Statute. The International Criminal Court (ICC) has detailed the elements of crimes involving sexual violence through its Elements of Crimes, which outlines the specific legal criteria for prosecuting acts such as rape, sexual slavery, enforced prostitution, and any other forms of sexual violence under International Criminal Law.[55] For such acts, the individual perpetrators are subject matter of the International Criminal Court prosecution within its jurisdiction in member states, and even beyond, with a resolution from the UN Security Council for their direct or command responsibility.

3.2. History of Sexual Violence in Armed Conflict

The use of sexual violence in armed conflict is not new but rather as ancient as the Bible-Deuteronomy, as stated in chapter 21 about "beautiful captive women".[56] In ancient warfare, it was common for victors to take women captive for the purposes of desire and enslavement. Historical texts from various cultures, including the Romans, Greeks, and Vikings, reflect the widespread practice of capturing women as war trophies.[57] Throughout history, women have often been regarded as the "spoils" of war, entitled to soldiers and victorious warriors. Additionally, the use of sexual violence served as a means to undermine the pride of entire communities; men who failed to protect their women faced shame and humiliation as a form of punishment. Despite this long history, sexual violence often remains unreported due to the trauma and shame it inflicts on victims, their families, and the broader community. The historical context of sexual violence in

[54] United Nations *Security Council Demands Immediate and Complete Halt to Acts of Sexual violence against Civilians in Conflict Zones*, SC/9364, (19 June, 2008), https://press.un.org/en/2008/sc9364.doc.htm
[55] International Criminal Court Elements of Crimes, article- 8(2)(a), ISBN No. 92-9227-232-2, (2013), https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf
[56] The Bible, New International Version, Grand Rapids, MI: Zondervan, 2011, Deuteronomy 21:10-14.
[57] E. Vikman, Ancient Origins: Sexual Violence in Warfare: Part I, *Anthropology & Medicine*, Vol. 12, No. 1, April 2005, P. 24-29, DOI: 10.1080/13648470500049826

wartime is profoundly troubling; however, for an extended period, records have significantly underreported its prevalence. This silence can be attributed to the fact that such acts were perpetrated by both sides involved in the conflict. This complicity made it challenging to hold any party accountable, leading many victims to accept sexual violence as an unfortunate and inevitable aspect of armed conflict.[58] Even in the mid-20th century, discussions surrounding sexual matters and the complexities faced by victims were cloaked in social stigma. It was only after World War II that the issue of sexual violence began to gain traction as a topic of discussion, particularly concerning the recognition of atrocities committed against Asian women and girls who were subjected to enforced sexual slavery by the Japanese Army.[59] The Japanese government's official apology for compelling these women to serve in the military marked a significant acknowledgment of conflict-related sexual violence, as survivors were referred to as "comfort women."[60]

Following World War II, the establishment of war crimes tribunals in Tokyo and Nuremberg paved the way for the legal prosecution of war criminals. During this post-war era, legal principles were defined by various international treaties like the Geneva Convention (1949), the Convention on the Elimination of Discrimination Against Women (1979), and through which state practices leaned towards the laws of armed conflicts. These laws aimed to regulate the conduct of hostilities and explicitly prohibited the use of sexual violence in warfare, applicable to both internal and international conflicts. Even with this ban in place, the Charters of Nuremberg and the Tokyo Tribunals did not specifically cover sexual violence crimes. During the trial of General Matsui, the Tokyo Tribunal made a charge which expressly pointed accusations regarding the heinous acts of rape. A substantial amount of compelling evidence was presented, demonstrating that these atrocities occurred during the brutal Japanese occupation of Nanking. As a result of this substantial evidence, he was convicted of crimes against humanity. However, none of the women who had suffered rape were called to testify during the trial, and the victimization of these women received only incidental attention, underscoring a significant gap in the judicial recognition of sexual violence in wartime.[61]

[58] United Nations, Sexual Violence and Armed Conflict: United Nations Response, *Women 2000*, New York: UN, 1998, https://www.un.org/en/preventgenocide/rwanda/pdf/sexual-violence-and-armed-conflict-1998-UN-report.pdf
[59] *Ibid*
[60] *Ibid*
[61] United Nations, supra note 54

In the wake of the traumatic experiences of World War II, the four Geneva Conventions were established in 1949 to enhance the protections available to victims of war. In 1977, two additional protocols were adopted to further strengthen these conventions. These treaties included specific provisions aimed at safeguarding women and children, particularly in relation to maternity issues, as well as regulations concerning the treatment of female prisoners, specifically addressing instances of sexual violence. However, there was no explicit mention of sexual violence in armed conflict as a crime punishable under the laws of armed conflict. The extensive reports of rape during the 1971 Bangladesh conflict raised significant concerns about the plight of women in wartime, particularly regarding pregnancies resulting from war-related sexual violence by considering genocidal rape upon a religious group.[62] While the Fourth Geneva Convention explicitly addresses rape and prohibits any degrading treatment and violence against women, it implicitly highlights the issue of sexual violence.[63] These initiatives taken by the UN on the issue of wartime sexual violence were almost ignored by the Iraq invasion of Kuwait in 1990 and the frequent occurrence of sexual violence against Kuwaiti women were reported. In light of such conflict the UN decided to create a Compensation Commission to compensate the damage occurred as a result of unlawful invasion of Iraq in the land of Kuwait, and the commission also addressed about the compensation for the physical and mental injuries arising from sexual assault.[64]

In 1993, the creation of ad hoc tribunal for former Yugoslavia took one step forward on recognition of sexual violence in armed conflict as a crime. The statute of the International Criminal Tribunal for former Yugoslavia (ICTY) expressly referred rape as constituting a crime against humanity. The first indictment of ICTY exclusively dealt with sexual violence took place in the South-East Sarajevo by the Serb forces to many Muslim women who were detained and repeatedly raped by

[62] United Nations, supra note 54
[63] UN General Assembly, Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974, https://digitallibrary.un.org/record/191406?ln=en&v=pdf
[64] Lillich, Richard B., The United Nations Compensation Commission, *Transnational Publishers*, ed. 1995, ISBN: 978-90-04-63668-2

the soldiers.[65] The Tadic case is the first ever case in which the trial chamber heard the first testimony at the international level for the charge of raping female prisoner in the Omarska camp.[66]

The legal recognition of sexual violence in conflict has already been evolved, yet incidents of such violence remain pervasive. For instance, during the 1994 Rwandan genocide, thousands of women and children experienced rape, sexual mutilate on, and forced prostitution aimed at the destruction of the Tutsi ethnic group. Mass rapes were perpetrated by Hutu civilians and the Rwandan military as a means to systematically annihilate a targeted ethnic group, an act that is now recognized as genocidal rape under the Statute of International Criminal Tribunal for Rwanda (ICTR) 1994.[67] Following the establishment of the International Criminal Tribunal for Rwanda (ICTR) as an ad hoc tribunal to prosecute war criminals, progress was made toward addressing sexual violence. Although the nature of the conflicts in Rwanda and the former Yugoslavia differed as Rwanda's conflict was classified as non-international, while the conflicts in the former Yugoslavia were both non-international and international in nature.[68] The Statute of Rwandan Tribunal identified rape as a crime against humanity. It also categorized rape, enforced prostitution, and indecent assault as violations of Article 3 of the Geneva Convention and the Additional Protocol II, which specifically addresses non-international armed conflicts. Despite this framework, the tribunal made minimal efforts to investigate the sexual violence that occurred in Rwanda in 1994. For instance, the original indictment in the case of Jean-Paul Akayeshu did not include any charges of sexual violence, despite the appalling nature of the reported abuses. As the trial progressed, testimony from victims in the Taba community highlighted their experiences, prompting the tribunal to revise the original indictment to include charges of sexual violence. Although Akayeshu may not have personally committed these acts, his failure to take action to prevent them, given his power and authority, rendered him responsible.[69]

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[65] International Criminal Tribunal for Former Yugoslavia, The Prosecutor V Dragan Gagovic et. el. Case no. 96-23, Indictment, June 26, 1996.

[66] International Committee of the Red Cross (ICRC), Q&A: Sexual Violence in Armed Conflict, 22-09-2016, https://www.icrc.org/en/document/sexual-violence-armed-conflict-questions-and-answers

[67] Thompson, Allan, The Media and Rwandan Genocide, Fountain Publishers, Uganda, ed. 2007, p. 375-380, ISBN: 10 9970-02-595-3.

[68] Stewart, James G. "Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict", *International Review of Red Cross*, vol. 85, June 2003, https://doi.org/10.1017/S0035336100115199

[69] International Criminal Tribunal for Rwanda (ICTR), Prosecutor v. Jean Paul Akayesu, Indictment, ICTR-96-4-I, 1996.

Since the Nuremberg and Tokyo Trials, and extending to conflicts in Rwanda, sexual violence has been a consistent issue addressed in various contexts. Cultural factors and social stigma have often hindered women from openly sharing their trauma and suffering. Additionally, the lack of protection for victims and witnesses created significant barriers for women to testify at the Rwanda Tribunal, as fear of death and harassment loomed large.[70] The establishment of the International Criminal Court (ICC) in 1998 under the Rome Statute marked a significant development in international criminal justice, explicitly including provisions for addressing all forms of sexual violence in armed conflict. The formal recognition of sexual violence is a crucial step toward safeguarding women and girls. However, achieving more positive outcomes requires outreach efforts to the victims to address their needs in the aftermath of war.

3.3. Defining Sexual Violence in Armed-Conflict

Akayesu's case of the International Criminal Tribunal for Rwanda (ICTR) provided a significant definition of sexual violence, 'a physical invasion of sexual nature, committed to a person under coercive circumstance'.[71] This definition includes a broader picture that sexual violation is not limited only to physical invasion of the human body but also threats and intimidation for rape or sexual violence. Thus, the question arises: what threshold does sexual violence need to reach for it to be considered a war crime? To answer this question, the Statute of the International Criminal Court (ICC) should be referred to, which criminalizes specific acts considered crimes under its jurisdiction, such as sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violation of comparable gravity. Therefore, the Statute of the ICC raises the same questions regarding the requirements for the threshold of these crimes.

There is no clear-cut definition of sexual violence in armed conflict, there are however case law and legal writings that provide a number of additional examples of sexual violence, e.g. trafficking for sexual exploitation,[72] mutilation of sexual organs,[73] forced abortion,[74] enforced contraception,

[70] United Nations, supra note 54
[71] International Criminal Tribunal for Rwanda (ICTR), Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, Judgment (Trial Chamber), 2 September 1998. And, Melanie O'Brien, supra note 1.
[72] Art. 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, UNTS 319 (Protocol).
[73] ICTR, Prosecutor v. Théoneste Bagosora, Case No. ICTR-96-7, Judgment (Trial Chamber), 18 December 2008, para. 976.
[74] Gaggioli, G., Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law. International Review of the Red Cross, (2014), 96(894), 503–538. doi:10.1017/S1816383115000211

[75] forced inspection for virginity,[76] and forced public nudity.[77] For a more conclusive and refined definition one should look at the 'Elements of Crimes' of the ICC are more considerable. Article 8(2)(b)(xxii-1) says that an act is considered as rape if: i) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. ii) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[78]

Sexual violence in armed conflict can also be defined as a systematic tool of war that reinforces gendered power dynamics and perpetuates women's subordination. From the feminist point of view, sexual or gender-based violence in armed conflict is deeply rooted in patriarchal structures for asserting dominance over body and identity of the victims. By targeting individuals based on their gender, such violence becomes a tool for asserting dominance and performing masculinity, ultimately destabilizing communities and reinforcing gendered hierarchies. Studies have shown that 95% of victims of conflict-related sexual violence are women and girls which highlights the gendered nature of the atrocity during the war.[79] Sexual violence in armed conflict is quite different from sexual violence in peacetime, as it is associated with a more brutal form of rape aiming at different goals including the humiliation and subordination of the whole community, terrorizing, and spread of disease.

International Humanitarian Law also known as laws of war already sets the rules for protection for civilians, prisoners of war, and other non-combatants during international and non-international armed conflicts also sets out the prohibition for rape and other forms of sexual violence as war crimes, crimes against humanity and acts of genocide and is also enshrined in article 2 of the

[75] Gaggioli, G, supra note 74
[76] Ibid
[77] Un General Assembly, supra note 63
[78] International Criminal Court, Elements of Crimes, Art. 8(2)(b)(xxii)-1, 2011.
[79] Conflict Feminism Theory, The Gendered Nature of War: Rethinking Sexual Violence in Conflict Through a Feminist Lens, *Journal for Conflict Transformation*, Caucasus Ed. 25 March 2025, https://caucasusedition.net/the-gendered-nature-of-war-rethinking-sexual-violence-in-conflict-through-a-feminist-lens/

Convention on the Prevention and Punishment of the Crime of Genocide.[80] Common Article 3 of the Geneva Conventions through its prohibition of "outrages upon personal dignity in particular humiliating and degrading treatment" condemns any form of sexual violence. the Fourth Geneva Convention on the protection of civilians in international armed conflicts under Article 27 provides that, "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."[81] The expression of "outrages upon personal dignity" is also prohibited under Additional Protocols I and II as a fundamental guarantee for civilians and persons *hors de combat*.[82] such prohibition covers in particular, humiliating and degrading treatment, enforced prostitution, and any form of indecent assault, additionally, Article 4 adds specifically "rape" to this list.

In spite of significant historical trauma and legal prohibitions, sexual violence remains widespread during armed conflicts these days, used by the militants as a tactic or strategic means of weakening the opponent directly or indirectly, by targeting the civilian population. The impact of sexual violence in conflict is devastating, causing immeasurable harm that affects every aspect of a victim's life including physical, psychological, economic, and social. The repercussions of sexual violence rarely end with the cessation of war rather often affecting victims and their families for generations.[83]

3.4. Motive to Sexual Violence in Armed Conflicts:

Sexual Violence in armed conflict is frequently employed as a calculated strategy aimed at punishing or degrading perceived enemy groups, often as part of broader campaigns to forcibly displace or ethnically cleanse entire populations.[84] Perpetrators span a wide spectrum, including state armed forces, paramilitary units, non-state armed groups, and even child soldiers, as seen in conflicts such as those in Liberia and the Central African Republic.[85] While typically gendered as

[80] United Nations, The Convention on the Prevention and Punishment of the Crime of Genocide, 1948, art. 2, http://www.unhchr.ch/html/menu3/b/p_genoci.htm
[81] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287, (IV Geneva Convention), Article 27, 1949, https://www.refworld.org/legal/agreements/icrc/1949/en/32227
[82] Additional Protocol I, Article 75(2), 1977, Additional Protocol II, Article 4(2), 1977.
[83] Aroussi, Sahla, Women, Peace, and Security and the DRC: Time to Rethink Wartime Sexual Violence as Gender-Based Violence? *Politics & Gender.* Vol.1. p. 497, (2016) Doi.10.1017/S1743923X16000489.
[84] United Nations, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2019/280 (March 2019), p. 3-5.
[85] Dyan Mazurana and Khristopher Carlson, "The Girl Child and Armed Conflict: Recognizing and Addressing Grave Violations of Girls' Human Rights," *United Nations Division for the Advancement of Women* (2004), p. 12-15.

male-perpetrated, women have also been implicated in inciting or committing acts of sexual violence, notably during the Rwandan genocide.[86]

The objective behind such violence range from coercion, punishment, and humiliation to the exertion of control over both individuals and communities. Sexual violence often targets women and girls as symbolic bearers of familial or communal honor, thereby weaponizing shame against both the victims and the men who are perceived as having failed to protect them.[87] Public and ritualized sexual assaults, such as forced family witnessings or coercion of relatives to commit sexual acts serve to dismantle familial bonds and community structures.[88] These tactics instill widespread fear, prompting the mass flight of civilians and contributing to demographic reengineering of contested regions.

In some instances, particularly where the intent is to eliminate or destabilize a particular ethnic or social group, sexual violence has formed part of genocidal strategies.[89] Moreover, it can be used within armed forces as a form of initiation or to solidify group cohesion, sometimes promoted as a "reward" for combat bravery or as a morale booster.[90] Cultural narratives also shape perpetrators' motives. For example, in parts of the Democratic Republic of Congo, some combatants believed that raping virgins conferred supernatural strength or invulnerability.[91]

Despite the diversity of motivations, sexual violence in war is consistently rooted in socially constructed conceptions of gender and power. Acts of sexual violence often reflect dominant ideas about masculinity and militarized identities, where rape is used to assert control, embody aggression, or symbolize dominance over the enemy. As Seifert succinctly argues, "rape is not an aggressive expression of sexuality, but a sexual expression of aggression," underscoring that such violence is fundamentally an assertion of dominance rather than a product of sexual desire.[92] This

[86] Human Rights Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and Its Aftermath*, September 1996.
[87] Elisabeth Jean Wood, "Sexual Violence during War: Toward an Understanding of Variation," *Politics & Society* 34, no. 3 (2006), p. 307-341.
[88] Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff, 1997), p. 225-228.A
[89] Prosecutor v. Akayesu, ICTR-96-4-T, Judgment (Sept. 2, 1998), paras 731-734.
[90] Dara Kay Cohen, "Explaining Rape during Civil War: Cross-National Evidence (1980–2009)," *American Political Science Review* 107, no. 3 (2013), p. 461-477
[91] Maria Eriksson Baaz and Maria Stern, *The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo* (Sida, 2010), 12.
[92] Ruth Seifert, "War and Rape: A Preliminary Analysis," in *Mass Rape: The War against Women in Bosnia-Herzegovina*, ed. Alexandra Stiglmayer (Lincoln: University of Nebraska Press, 1994), 54.

expression of power may involve extreme brutality or occur under coercive arrangements that blur the lines between consent and survival, such as transactional sex in humanitarian contexts. In all cases, the act is inextricably tied to gendered hierarchies and the perpetrator's understanding of masculinity, entitlement, and control.

3.4.1. Rape as a Weapon of War

Rape is understood as a gendered violent act not only against the female sexed body but against the enemy as such through the logics of gender in which conceptualization of "weapon of war makes sense. Wartime rape is a military tactic, serving as a combat tool to humiliate and demoralize individuals, to tear apart families, and to devastate communities.[93] In today's political climate claiming that wartime rape is a strategy or tactic of war is seemingly to state obvious. Why it is important to prove rape as a weapon of war? In answering this doubt, it is important to comprehend a critical reading for revealing and interrogating the limits of using it in particular framing of wartime and to begin imagining a slightly different picture of rape in general. Describing wartime rape as a weapon of war offered up as it is self-explanatory simultaneously characterization and explanation of a violent act by itself. The discourse of Rape as a weapon of war mainly revolves around four interrelated points, which organize its narratives: 1) Strategic ness, 2) gender, 3) culpability and, 4) avoidability.[94] Among this these four points the strategic ness is more unraveling and credible key in unfolding the cohesive storyline.

When we look at the discourse of rape as a weapon of war is always rendered as a feminist storyline in global media reporting and academic literature which is embedded with sexed-gendered analysis. In order to better grasp how rape may be a weapon of war, it needs to focus upon some hidden assumptions, and logic based on strategies. Because strategic ness is found as subject imparting the sense to the discourse making rape as a weapon of war. As it is very generalized view which clearly comprises that rape as a weapon of war discourse woven out of certain assumption about gender and the gender thread entwined the other threads emerging from other nodal points. However, in this point we therefore sideline the generalized gendered story and

[93] UN Action Against Sexual Violence in Conflict, UN Action Annual Report, Office of special representative of UN secretary general, (2021), https://www.un.org/sexualviolenceinconflict/wpcontent/uploads/2022/10/report/auto-draft/UN-Action-Annual-Report-2021-Final.pdf

[94] Baaz, M. E., Stern, P. M., Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond. United Kingdom: Zed Books, (2013).

weave in a discussion of the relationship among strategicness, gender, culpability and avoidance in order to exploring the storyline of rape as a weapon of war.

3.4.2. Rape as Strategic of war

The most openly described acts of war are terrorism, torture or bombing. In particular, it is shrouded one pervasive atrocity in the conspiracy of silence, which is a military tactic of mass rape. Being absent from the ceasefire agreements and rarely mentioned in the peace-table, it is a war tactic that lingers long after the guns fall silent. Which continue to shatter civilian lives and livelihood by shredding the social fabric and devastating prospect of durable peace. During this decade, the number of victims crossed over 200,000 since conflict erupted in Eastern Congo.[95] Unlike any other injuries, its scars are invisible, which is reason behind not to find the victims on the official link of "War wounded". In the armory of any armed group, this is the only weapon of mass destruction for which societies blame the victims, rather than the attackers. Despite of recognition as war crime it is hard to bring the perpetrators to the prison.[96] This discussion can covey that, war time rape is intentional strategic or tactic of war. A report on Sierra Leone sexual violence atrocities renders this generalized truth that "Rape as a weapon of war serves a strategic function and acts as an integral tool for achieving military objectives".[97]

With the interview in The Nation Magazine, Margot Wallström, the former UN special Representative of Secretary General describes sexual abuse as a weapon of war not only targeting women and girls but also men and boys as planned and systematic, designed to control the territory to install fear by terrorizing the population.[98] By evaluating the widespread instances of sexual violence in DRC Wallström added in his statement that, the atrocities those are committed daily against women and children will leave a devastating imprint on the Congo for years in future. This case sexual violation is the only tactic of war which consequences spill over the peace over the

[95] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UNTS 319 (Protocol), Art. 3, (15 November 2000).
[96] Dr. Eleanor O'Gorman, Review on UN Action Against Sexual Violence in Conflict, Cambridge UK, (2013), https://www.stoprapenow.org/uploads/advocacyresources/1401281502.pdf
[97] Human Rights Watch, World Report 2003, NCJRS Virtual Library, NCJ no. 199392, Washington D.C.: Office of Justice Programs, (2003), https://www.ojp.gov/ncjrs/virtual-library/abstracts/human-rights-watch-world-report-2003
[98] Crossette Barbara, (2010), A New UN Voice calls for Criminalizing Conflict Rape, The Nation (Sept. 10, 2010), https://www.thenation.com/article/archive/new-un-voice-calls-criminalizing-conflict-rape/

years. Children accustomed to rape and violence grow up with that trauma and accepting such behavior, which is enough to shatter the community values to the future generation.[99]

The academic research and literature outlines the perception of the strategic effect of sexual violence as a weapon of war in two dimension, as it reaffirms militaristic masculinity and secondly, attacking the ethnic, religious or political identity by victimizing the identity of the women is seen to embody. In the regard of achieving the political purpose wartime rape described as a martial weapon in the context of different armed conflicts.[100] Generalizing political purposes can achieved by the sexual violence, Bernard gave mentioned his overview, first, it encourages ethnic cleansing by making it more attractive to escape; second, it demoralizes the adversary; third, it conveys a desire to disintegrate society; fourth, it causes trauma and helps the other side inflict psychological harm; fifth, it provides psychological advantages to the offenders; and sixth, it strikes at a group that has great symbolic significance, delivering a blow against the collective enemy.

Even though here we are talking about rape as a weapon of war but not only rape but also other sexual violence used as a systematic way of war as like genocide. However, in general, the empirical evidence used to support the notion that rape is strategic is frequently its widespread occurrence. The apparent logic is that the occurrence of mass rapes' must indicate that they are systematic and strategic. In the DRC, evidence supporting this allegation is, if anything, primarily anecdotal.

3.4.3. Rape as Ethnic Cleansing

Rape was utilized not just as a weapon of war, but also as a tactic of ethnic cleansing in the post-Cold War conflicts in former Yugoslavia. During the battles in Bosnia and Herzegovina and Croatia, Serb forces and, to a lesser extent, other armed factions committed mass rape. The Serbian army raped 20,000 to 50,000 Bosnian women. In the vast majority of these incidents, the women were raped repeatedly and by multiple soldiers. Furthermore, victims were often imprisoned until they became pregnant with a Serbian child to ethnically "purify" Bosnia.

In the armed conflicts this is the only weapon of mass destruction for which societies blame the victims, rather than the attackers. Despite of recognition as a war crime, it is hard to bring the

[99] Crossette B. supra note 92

[100] L. Fiske and R. Shakal, Ending Rape in War: How Far Have We come? Cosmopolitan Civil Society Journal, Vol 6, No. 3, ISSN: 1837-5391, (2016).

perpetrators to prison.[101] This discussion can convey that, wartime rape is the intentional tactic of ethnic cleansing. A report on Sierra Leone's sexual violence atrocities renders this generalized truth that "Rape as a weapon of war serves a strategic function of ethnic cleansing and acts as an integral tool for achieving military objectives".[102]

Sexual violence has been systematically employed in armed conflicts not merely as a byproduct of war but as a deliberate weapon of ethnic cleansing**.** In such contexts, rape and other forms of sexual violence are used to terrorize, humiliate, and ultimately destroy targeted communities. For example, The genocidal rape campaigns during the Bosnian War (1992–1995) offer one of the most documented examples, where Serb forces used sexual violence to forcibly impregnate Bosnian women with the aim of altering the ethnic composition of future generations.[103] The International Criminal Tribunal for the former Yugoslavia (ICTY) recognized these acts not just as individual crimes but as part of a broader strategy of ethnic persecution and genocide.[104]

Sexual violence in such cases serves multiple strategic purposes: it causes psychological devastation, stigmatizes victims and their families, and aims to disrupt the social and reproductive continuity of an ethnic group.[105] Scholars argue that in these contexts, the body becomes a "battleground" through which political and ethnic domination is asserted.[106] This practice is not confined to the Balkans; similar patterns have been documented in Rwanda, Darfur, and Myanmar, where sexual violence was deployed to ethnically cleanse populations through terror, forced displacement, and the destruction of communal bonds.[107] Thus, in the context of ethnic cleansing, sexual violence transcends individual harm and becomes a collective assault on identity, culture, and existence.

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[101] Eleanor O'Gorman, *Review on UN Action Against Sexual Violence in Conflict*, Cambridge UK(2013), https://www.stoprapenow.org/uploads/advocacyresources/1401281502.pdf

[102] Human Rights Watch, *Human Rights Watch World Report 2003*, NCJRS Virtual Library, NCJ no. 199392 (2003). https://www.ojp.gov/ncjrs/virtual-library/abstracts/human-rights-watch-world-report-2003

[103] Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Minneapolis: University of Minnesota Press, 1996), p.72-75.

[104] Prosecutor v. Krstić, IT-98-33-T, Judgment, ICTY Trial Chamber, August 2, 2001

[105] Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff, 1997), p. 213-215

[106] Catharine A. MacKinnon, "Rape, Genocide, and Women's Human Rights," *Harvard Women's Law Journal* 17 (1994), p. 5-16

[107] UN Human Rights Council, *Report of the Independent International Fact-Finding Mission on Myanmar*, A/HRC/39/64, (September 2018).

Making pregnant by soldiers intentionally so that the babies carry even after the war is a tactic of making a certain nation controlled over the blood chain. In some other picture, sexual torture to women or men by making them sexually impairment from giving birth can stop the growth of any nation. Without a doubt, evidence of the widespread and strategic aspects of sexual violence in Rwanda and Bosnia-Herzegovina in rape camps has been well established in both international tribunals and excellent academic and policy research that the occurrence of mass rapes' must indicate that they are systematic and strategic to destroy the whole ethnic community.

3.5. Sexual violence and Gender-based Violence:

The mass perpetration of sexual and gender-based violence (SGBV) during armed conflicts has been subject to diverse scholarly explanations, largely categorized into three overarching theoretical frameworks. The first, often referred to as the "theory of unreason," explains SGBV as a spontaneous, opportunistic act driven by chaos, rage, and unrestrained male aggression. This model posits that in the lawlessness of war, some combatants commit sexual violence due to emotional volatility, psychological trauma, or a perceived deprivation of sexual outlets.[108] A prominent field study in the Democratic Republic of Congo (DRC) revealed that some soldiers viewed rape either as a substitute for normative sexual interaction or as an expression of anger, entitlement, and humiliation.[109] This framework aligns with Paul Kirby's conceptualization of SGBV as transgressive and pathological violence where perpetrators enact fantasies on the bodies of others, often through extreme brutality, including the use of foreign objects, sodomy, or celebratory rape, with no tangible strategic benefit.[110]

However, the "instrumentality theory" counters the spontaneity proposed by the unreason model by emphasizing the calculated, strategic nature of SGBV. According to this view, sexual violence is not merely a byproduct of war but a deliberate tool deployed by armed actors to advance political, military, or ideological objectives.[111] Drawing on Machiavellian logic—where power is maintained through exploitation—this theory suggests that SGBV serves specific functions such as community terrorization, ethnic cleansing, forced displacement, and the assertion of control

[108] Paul Kirby, "How Is Rape a Weapon of War? Feminist International Relations, Modes of Critical Explanation and the Study of Wartime Sexual Violence," *European Journal of International Relations* 19, no. 4 (2013): 809–810.
[109] Maria Eriksson Baaz and Maria Stern, supra note 91.
[110] Paul Kirby, supra note 108.
[111] Elisabeth Jean Wood, "Variation in Sexual Violence during War," *Politics & Society* 34, no. 3 (2006): 307–341

over populations. Feminist scholars have further argued that rape, being an inexpensive and psychologically devastating tactic, is one of the most cost-effective weapons in modern warfare.[112]

A third line of scholarly discourse critically interrogates the definitional boundaries between sexual violence and gender-based violence. While international instruments frequently refer to gender-based violence in ways that suggest it inherently targets women and girls, contemporary understanding acknowledges that men and boys are also subjected to sexual violence, especially in detention settings or as a form of torture.[113] This complexity challenges the assumption that all sexual violence is necessarily gender-based in the feminist sense. Indeed, if a person is assaulted due to their ethnicity, political affiliation, or detention status, irrespective of gender, labeling the act solely as "gender-based" may obscure other motives.[114]

Nonetheless, some scholars argue that any form of sexual violence must be seen through a gendered lens, given the inextricable links between biological sex, social constructions of gender, and power hierarchies. This perspective contends that even when male victims are targeted, the act itself relies on dominant narratives of masculinity, humiliation, and domination that are inherently gendered.[115] However, this thesis adopts a more nuanced position, maintaining that while sexual violence often carries gendered implications, not all acts are necessarily reducible to gender-based motives. Conflating “sex” and “gender” risks diluting analytical precision, particularly in contexts where the violence is ethnically or politically motivated.

Together, these competing theories, such as unreason, instrumentality, and gender-based analysis, reflect the multifaceted nature of SGBV in armed conflict. Each model offers critical insight into perpetrators’ motivations and the structural conditions under which such crimes occur, though none singularly accounts for the complexity of sexual violence as both a weapon of war and a manifestation of social power.

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[112] Laura Sjoberg and Caron E. Gentry, *Mothers, Monsters, Whores: Women's Violence in Global Politics* (London: Zed Books, 2007), 166–168

[113] Sandesh Sivakumaran, “Lost in Translation: UN Responses to Sexual Violence against Men and Boys in Situations of Armed Conflict,” *International Review of the Red Cross* 92, no. 877 (2010): 259–277.

[114] Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War, and the Post-Conflict Process* (Oxford: Oxford University Press, 2011), 104–106.

[115] Ruth Seifert, “War and Rape: A Preliminary Analysis,” in *Mass Rape: The War against Women in Bosnia-Herzegovina*, ed. Alexandra Stiglmayer (Lincoln: University of Nebraska Press, 1994), 54

For example, in the Central African Republic's armed conflict, the instrumentality theory was distinctly evident, specifically in the cases of Bemba and Yekatom before the International Criminal Court. In these cases, military leaders deliberately utilized sexual and gender-based violence (SGBV) as a tactical instrument of war, manipulating deep-rooted sectarian tensions to further their strategic objectives.[116] Sexual violence was not incidental but rather constituted a deliberate and systemic component of armed offensives. Likewise, in the Democratic Republic of Congo (DRC), the use of sexual violence operated as a multi-faceted tool of domination and social control. Rape in this setting was often employed to psychologically devastate, and subjugate communities. It also functioned to economically marginalize women, depopulate targeted groups, especially through assaults on women as symbolic carriers of future generations, and to exterminate by spreading sexually transmitted diseases.[117] Survivors and observers have emphasized that such violence bore no resemblance to acts driven by sexual gratification; rather, it constituted a brutal assertion of dominance, as evidenced in cases where women were raped with weapons or other objects.[118] These acts underscore the calculated and instrumentalized use of SGBV in conflict zones to break the social fabric and inflict generational harm.

At the farthest end of the theoretical spectrum lies the mythology theory, which ascribes profound significance to SGBV crimes. This theory posits that SGBV victims are targeted based on their identity and its socio-cultural symbolism. Accordingly, SGBV is deeply entrenched in the societal hierarchy of gender and rights,[119] serving as an expression of cultural idioms and existing "intermeshed" within competing narratives of nationalism, belonging, insecurity, violence, and responsibility.[120] Rooted in feminist scholarship, particularly Simone de Beauvoir's conception of women as the "Other" the "second sex" defined entirely by patriarchal structures mythology theory views SGBV as a mechanism that reproduces patriarchal systems. Kirby extends this

[116] Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Judgment, Trial Chamber III, March 21, 2016; Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18.
[117] Maria Eriksson Baaz and Maria Stern, supra note 91, p. 10-13.
[118] Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, July 2009.
[119] Ibid
[120] Ibid

understanding, arguing that SGBV within this framework transcends the other two dominant theories (desire and political or material advantage) by perpetuating a collective system of being.[121]

Brownmiller, in her seminal work on wartime rape, acknowledges the movement between these theoretical frameworks: "When a victorious army rapes, the sheer intoxication of the triumph is only part of the act. After the fact, the rape may be viewed as part of a recognizable pattern of national terror and subjugation. I say 'after the fact' because the original impulse to rape does not need a sophisticated political motivation beyond a general disregard for the bodily integrity of women."[122] Brownmiller's observation reflects the evolving perspective of international criminal law on SGBV. This perception contributed to the exclusion of SGBV from early criminal tribunals. However, the International Criminal Court's growing focus on SGBV indicates a shifting paradigm, recognizing SGBV not merely as a violation of bodily integrity but as a deliberate tactic, aligning with instrumental and mythological frameworks.

These three theoretical approaches, opportunism, instrumentality, and mythology, provide a foundation for sociological interpretations of SGBV. While opportunism limits deeper understanding, the latter two frameworks offer a broader sociological context to analyze the multifaceted nature of SGBV and its resulting trauma.

3.6. Past incidents of Sexual violence in Armed conflict:

Sexual violence has long been employed as a deliberate weapon of war, with some of the most harrowing examples occurring during the history of armed conflicts. Here I am mention three conflicts as example, Congo, Bosnia, and Rwanda, where sexual violence was not only incidental but also orchestrated element to destroy social and ethnic cohesion. These historical instances reveal a persistent pattern in which sexual violence is not only tolerated but often encouraged or weaponized by military and political leaders, necessitating a stronger international legal and reparatory framework.

[121] Human Rights Watch, supra note 118
[122] Susan Brownmiller Against Our Will: Men, Women, and Rape (Penguin, 1975) p 37

3.6.1. Democratic Republic of Congo:

3.6.1.1. Conflict Summery

Since its independence in 1960, the Democratic Republic of the Congo (DRC) has endured a number of conflicts over its immense natural resources and the control of territory. The Mobutu regime, in power from 1965 to 1997, was toppled by Tutsi rebels and Laurent Kabila became President. Conflict broke out again in 1998 when government forces, supported by Angola, Namibia and Zimbabwe, fought against rebels backed by Uganda and Rwanda. Violence continues, despite the signing of the Lusaka peace agreements in 1999; the deployment of a United Nations peacekeeping mission in the country in 2000; and the formation of a transitional government in 2003.[123] Particularly affected are the Ituri and Kivu regions, where a number of armed groups, such as the Mai and the Interahamwe militia, continue to commit grave human rights violations, including sexual violence.[124]

More than 3.8 million people have died in the conflict since 1998.[125] Mortality studies estimate that over 1,000 people continue to die each day from disease, malnutrition and conflict-related causes. As of June 2006, some 525,000 people had been displaced internally or to neighboring countries.[126]

3.6.1.2. Sexual violence

The conflict in DRC has attracted widespread attention in view of both the high incidence and extremely cruel nature of the acts of sexual violence committed, mainly since 1996. Terms such as "epidemic", "sexual terrorism" and "the war within the war" have been used to describe these acts.[127] Sexual violence has been committed by all parties to the conflict, seemingly as part of military strategy on all sides.[128] The apparent motives of the perpetrators of sexual violence in this conflict include revenge for previous sexual violence, organised rape by troops as a "morale

[123] BBC News Country profile: Democratic Republic of Congo: (16 June 2007).
[124] International Alert, Women's Bodies as Battlegrounds: Sexual Violence against Women and Girls During the War in the Democratic Republic of Congo, (2005) ,11.
[125] Médecins Sans Frontières Democratic Republic of Congo: Forgotten War, (18 December 2006).
[126] UNHCR, Global Refugee Trends: Statistical Overview of Populations of Refugees, Asylum-Seekers, Internally Displaced Persons, Stateless Persons, and Other Persons of Concern to UNHCR, (June 2006) .
[127] UNIFEM, "Gender Profile: Democratic Republic of Congo – DRC: 'Sexual Terrorism' in South Kivu Leaves HIV in Its Wake," December 4, 2006.
[128] Médecins Sans Frontières, *"I Have No Joy, No Peace of Mind": Medical, Psychological, and Socio-Economic Consequences of Sexual Violence in Eastern DRC*, 2004, 16.

booster", and ethnic cleansing. Ritualised rape is also committed, motivated, for example, by the belief among combatants that the rape of a virgin conveys magical powers and invincibility.[129]

Acts of sexual violence occur during attacks by combatants and the pillaging of villages, in fields, forests or on the streets. Women fleeing from violence or working in fields are particularly at risk.[130] The unspeakable cruelty of sexual violence reported in DRC includes public rape in front of the family and the community, forced rape between victims, the introduction of objects into the victims' cavities, pouring melted rubber into women's vaginas, shooting women in the vagina and inducing abortion using sharp objects.[131]

Combatants have also abducted women and children and held them captive for up to one and a half years. Abduction victims have been forced to fight, loot villages and transport goods, and to provide sexual services.[132] Acts of sexual violence have been committed not only against women and girls, but also against men and boys, ranging from beating men's genitalia with rifles to rape.[133] The NGO Arche d'Alliance claims that "thousands of male victims of sexual violence were identified especially in the large Ngandja community".[134]

There is a high incidence of sexual violence against Pygmy people, as the forests where they live have become the base of the Interahamwe militia, who claim food, labour and sexual services. The government estimated that 30,000 children were associated with armed groups within the country. Many of them were forcibly recruited and sexually exploited.[135]

Incidents of sexual exploitation and abuse by UN peacekeeping troops, involving rape, trading food for sex, and the organisation of a child prostitution ring, have also been reported. Girls as young as 12, some of whom were previously raped by militia, were sexually exploited by peacekeepers in return for food or money.[136]

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[129] Réseau des Femmes pour un Développement Associatif et al. (2005), 45-51.
[130] Human Rights Watch, *The War within the War: Sexual Violence Against Women and Girls in Eastern Congo*, June 2002, 1.
[131] IRIN "Our Bodies- Their Battle Ground: Gender-based Violence in Conflict Zones", Web Special, September 2004, 19.
[132] Human Rights Watch, The War Within the War, (June 2002), 61-63
[133] IRIN, note 131
[134] "rche d'Alliance, "A Weapon of War: Sexual Violence in South Kivu, DRC," *Pambazuka News*, October 6, 2004.
[135] U.S. Department of State, Trafficking in Persons Report June 2005, 86; UNIFEM (4 December 2006).
[136] IRIN News, "Great Lakes: Focus on Sexual Misconduct by UN Personnel", 23 July 2004: http://www.irinnews.org/report.asp?ReportID=42343&SelectRegion=Africa;

Human Rights Watch estimates that "during five years of conflict in the DRC, tens of thousands of women and girls in the eastern part of the country have suffered crimes of sexual violence".[137] The International Rescue Committee and its partners have registered 40,000 cases of genderbased violence since 2003, which they say "is just the tip of the iceberg".[138] The hospital registered 250-300 rape admissions each month in 2005.[139] In 2005, the UN Office of Internal Oversight Services registered 72 allegations of sexual violence by UN troops, 20 of which were substantiated.[140]

3.5.1. Rwanda:

3.5.1.1. Conflict summary

In 1994, Rwanda experienced Africa's worst genocide in modern times. The genocide was linked to colonial segregation of Hutu and Tutsi communities and the preferential treatment granted to the Tutsi minority.[141] After 1986, Tutsis who had fled to Uganda formed a guerrilla organisation called the Rwandan Patriotic Front (RPF), and attempted to overthrow the Hutu regime. Despite the Arusha peace treaty of 1993, and the presence of 5,000 UN peacekeepers, Hutu extremists continued to mobilise against Tutsis.[142]

The shooting down of the plane transporting the moderate Hutu President Habyarimana in April 1994 ignited the genocide. From April to July 1994, between 500,000 and 1 million Tutsis and moderate Hutus were killed by extremist Hutus. RPF forces successfully invaded Rwanda and assumed power in July 1994. Around 1.9 million people fled Rwanda to neighbouring countries, particularly the Democratic Republic of the Congo, then known as Zaire.[143] In the wake of the genocide, the UN established the International Criminal Tribunal for Rwanda.

After the genocide, Rwandan Hutu Interahamwe militia and members of the Rwandan army set up bases in Zaire to attack Rwanda. In 1996, RPF forces launched attacks on camps in Zaire, backed

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[137] Human Rights Watch (March 2005) Seeking Justice: The Prosecution of Sexual Violence in the Congo War, 1
[138] Brian Sage, International Rescue Committee Coordinator, quoted in Nordland, R. (13 November 2006).
[139] Dr. Denis Mukwege, Medical Director of Panzi Hospital, quoted in Nordland, R. (13 November 2006)
[140] 4 United Nations General Assembly, Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, A/59/661, 5 January 2005,
[141] Ward, J. (2002) If not now, when? Addressing Gender-based Violence in Refugee, Internally Displaced, and Post-conflict Settings: A Global Overview, New York, RHRC, 27; Gendercide Watch (no date) Case Study: Genocide in Rwanda, 1994: http://www.gendercide.org/case_rwanda.html.
[142] Human Rights Watch (September 1996) Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath, 13; Gendercide Watch (no date).
[143] Numbers vary according to different sources: Gendercide Watch (no date); Byrne, B., Marcus, R. and Powers-Stevens, T. (December 1995) "Gender, Conflict and Development. Volume II: Case Studies", BRIDGE Report 35, 39

Kabila's rebel forces, and thus became a party to the "Second Congo War" from 1988 onwards. Clashes between Rwandan forces and the former FAR and Interahamwe continued until 2002.[144]

3.5.1.2. Sexual violence

In the years preceding Rwanda's genocide, Hutu propaganda campaigns fostered general hatred of Tutsis. More specifically, the propaganda aroused hostility against Tutsi women who were portrayed as more beautiful, but less dignified and faithful than Hutu women, and "arrogant and looking down on Hutu men".[145] This laid the groundwork for violence targeting Tutsi women.

During the genocide, killings and human rights violations were carried out by members of the military and police, by the Interahamwe militia and by ordinary civilians. Rape was widespread, and was seemingly an integral part of the genocide strategy, supervised by military and political authorities.[146] Forms of sexual violence included rape, gang-rape, the introduction of objects into women's vaginas and pelvic area, sexual slavery, forced incest, deliberate HIV transmission, forced impregnation and genital mutilation.[147]

Women from all social classes were not only victims but also played a prominent role as perpetrators of killings and sexual violence against men, children and other women.[148] The mass rapes during the genocide contributed considerably to the spread of HIV/AIDS in Rwanda.[149] Sexual violence and forced marriage continued to be perpetrated after the genocide by members of the security forces and unpaid militias.[150]

3.5.2. Bosnia and Herzegovina

3.5.2.1. Conflict summary

Formerly a constituent republic of Yugoslavia, Bosnia and Herzegovina declared its independence in March 1992. This initiated a three years' inter-ethnic war between Bosnian Muslims, Croats and Serbs. In 1995, the Dayton Peace Accords were signed and an international peacekeeping

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[144] UCDP/PRIO (1 September 2006) Armed Conflict dataset v.4- 2006, Conflict list 1946-2005.
[145] Nduwimana, F.,The Right to Survive: Sexual Violence, Women and HIV/AIDS, International Centre for Human Rights and Democratic Development, 2004, http://www.ddrd.ca/english/commdoc/publications/women/hivAIDSviolEn1.htm.
[146] Amnesty International (5 April 2004) Rwanda: "Marked for Death", Rape Survivors Living with HIV/AIDS in Rwanda, 2; Nduwimana, F. (2004); Gendercide Watch (5 April 2004).
[147] Avega study quoted in Ward, J. (2002), 28; Human Rights Watch (September 1996), 1-2, 35; Gendercide Watch (2002).
[148] "Rwanda – Not so Innocent: When Women become Killers", African Rights, 1995: http://web.peacelink.it/afrights/notsoinn.htm; Gendercide Watch (no date); Landesman, P. "A Woman's Work", The New York Times, 15 September 2002
[149] Amnesty International, *Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces*, EUR 63/01/93, January 1993.
[150] ibid

force deployed. It is estimated that between 100,000 and 150,000 people were killed during the conflict.[151]

Despite the establishment of a Gender Centre and efforts to increase the participation of women in politics, the plight of women and gender issues were largely sidelined in Bosnia and Herzegovina's reconstruction process. The position of women in Bosnia and Herzegovina "deteriorated markedly" in the five years after the war ended. At that time, 16 per cent of all households were headed by women, and many women and their children lived in precarious conditions without secure financial support. This post-war "feminisation of poverty" in Bosnia and Herzegovina exposed women to prostitution, in the absence of other alternatives, as well as trafficking.[152]

3.5.2.2. Sexual violence

During the war in Bosnia and Herzegovina, thousands of women were raped, sexually tortured and held against their will. Rapes began immediately after clashes broke out between Serbs and Muslims in April 1992, sometimes occurring as isolated incidents during home searches or in camps, but increasingly committed in public, as part of a systematic strategy of ethnic cleansing. Whilst sexual violence was committed against women of all ethnicities, Bosnian Muslim women were specifically targeted.[153]

Women and girls were sexually assaulted in the presence of family members, abducted and forced into sexual servitude.[154] Women were forcibly impregnated in so-called "rape camps" where they were raped repeatedly until they were pregnant, and then held until the termination of the pregnancy was no longer possible. Their rapists intended to ensure their victims bore children they would consider "of Serb ethnicity".[155]

After the conflict, there was an increase in prostitution and trafficking of women, encouraged by the presence of thousands of international personnel who created a market for sexual services, high

[151] Ewa Tabeau and Jakub Bijak, "War-Related Deaths in the 1992–1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results," *European Journal of Population* 21, no. 2–3 (June 2005).
[152] United Nations Office of the Resident Coordinator for Development Operations (2001) Common Country Study: The Transition to Development - Challenges and Priorities for UN Development Assistance to Bosnia-Herzegovina, Sarajevo, 7, 23.
[153] Amnesty International, *Bosnia-Herzegovina: The Missing of Srebrenica*, EUR 63/022/1995, November 1995
[154] Ward, J., If not now, when? Addressing Gender-based Violence in Refugee, Internally Displaced, and Post-conflict Settings: A Global Overview, (2002), New York, RHRC, 81
[155] Netherlands Institute for War Documentation (NIOD), *Srebrenica – A "Safe" Area: Reconstruction, Background, Consequences and Analyses of the Fall of a Safe Area*, Part I, Chapter 9, Section 2 (2002).

levels of corruption and a fragile economy. There were also reports of employees of the United States private security company DynCorp buying young girls and women as sex slaves.[156]

Estimates of the total number of women subjected to sexual violence during the war in Bosnia and Herzegovina vary from 14,000 to 50,000.[157] The lack of reliable data can be attributed both to under-reporting by survivors, and over-reporting by governments of rapes by their "enemies". The United Nations Security Council's Commission of Experts reported that there were 162 detention sites in the former Yugoslavia where people were detained and sexually assaulted.[158]

3.6. Prohibition of using Rape as a weapon of war under International Instrument

For over two decades, addressing and mitigating conflict-related sexual violence (CRSV) has been a central focus of the international agenda. CRSV encompasses a range of violations, including rape, trafficking, sexual enslavement, forced pregnancy, forced abortion, forced marriage, forced prostitution, forced sterilization, and forced nudity. International efforts have largely concentrated on establishing normative and institutional frameworks to ensure individual criminal accountability under international law.

In the past, sexual violence has been considered an inevitable by-product of armed conflict and mischaracterized as a private crime or unfortunate behavior of military and soldiers. rape or sexual violence in wartime is increasingly recognized as a weapon of war which means that it is not a private or incidental crime but rather an integral tool for achieving military and political purposes to subjugate and humiliate both women and men within the targeted community.

3.6.1. Prohibition under International Humanitarian Law (IHL)

International Humanitarian Law also known as laws of war is already sets the rules for protection for civilians, prisoners of war, and other non-combatants during international and internal armed conflicts also sets out the prohibition for rape and other forms of sexual violence as war crimes, crimes against humanity and acts of genocide.[159] The four Geneva Conventions, along with their

[156] O'Meara, Kelly Patricia. "US: DynCorp Disgrace." *Insight Magazine*, 14 January 2002.
[157] IRIN (2005) Broken Bodies - Broken Dreams: Violence against Women Exposed, Kenya, OCHA/IRIN, 178; Olujic, M. (1998).
[158] United Nations Security Council, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, Annex IX: "Rape and Sexual Assault," S/1994/674, 27 May 1994.
[159] United Nations, *The Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, http://www.unhchr.ch/html/menu3/b/p_genoci.htm

two Additional Protocols, unequivocally denounce rape and various other forms of sexual violence as grave violations of humanitarian law. This condemnation applies to both international conflicts and internal armed conflicts. These legal frameworks serve not only to protect individuals during times of war but also to establish a standard of conduct that underscores the importance of safeguarding human dignity in the face of such atrocities.

Common Article 3 of the Geneva Conventions through its prohibition of "outrages upon personal dignity in particular humiliating and degrading treatment" condemns any form of sexual violence. the Fourth Geneva Convention on the protection of civilians in international armed conflicts under Article 27 provides that, "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."[160] The expression of "outrages upon personal dignity" is also prohibited under Additional Protocols I and II as a fundamental guarantee for civilians and persons *hors de combat*.[161] such prohibition covers in particular, humiliating and degrading treatment, enforced prostitution, and any form of indecent assault, additionally, Article 4 adds specifically "rape" to this list.

3.6.2. Prohibition under International Criminal Law (ICL)

The legal instruments of International Criminal Law (ICL) explicitly prohibit serious and inhuman acts committed as part of a widespread attack against the civilian population during the war. The statutes of both the International Criminal Tribunal for the former Yugoslavia (ICTY)[162] and the International Criminal Tribunal for Rwanda (ICTR)[163] make explicit mention of rape when committed as part of a widespread attack against the civilian population, as a crime against humanity. Both tribunals have played a critical role in setting precedents in the prosecution of conflict-related sexual violence, including articulating definitions and elements of many gender-related crimes. Under Article 7(1) the Rome Statute of the International Criminal Court (ICC) sets out the prohibition on the acts of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence of comparable gravity under crime against

[160] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287, (IV Geneva Convention), Article 27, 1949, https://www.refworld.org/legal/agreements/icrc/1949/en/32227
[161] Additional Protocol I, Article 75(2), 1977, Additional Protocol II, Article 4(2), 1977.
[162] Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY Statute), Article 5, S.C. Res. 827, 1993, U.N. Doc. S/RES/827
[163] Statute of the International Criminal Tribunal for Rwanda (ICTR Statute), Article 3, S.C. Res. 955, (1994), U.N. Doc. S/RES/955

humanity as serious international crimes. The elements of war under article 8(2)(b)(xxii) of the ICC Statute specifies rape or any form of sexually violent acts as constituting a grave breach of the Geneva Conventions as war crime in international or non-international armed conflict.

3.6.3. Prohibition under Human Rights Law (HRL)

International human rights instruments ensure the protection of women and girls at all times, including during armed conflict. These protections include safeguards against rape and sexual assault, which are considered forms of torture and prohibited ill-treatment. They also address issues of slavery, forced prostitution, and discrimination based on sex. The armed and combatant groups are highly under obligation to respect international human rights standards.

The International Covenant on Civil and Political Rights (ICCPR) prohibits torture and other cruel or inhuman treatment by officials or persons acting under any official capacity. Such prohibition includes any discriminatory act based on sex, violating women's rights or any form of gender-based violence.[164] Convention on Elimination of All Forms of Discrimination against Women (CEDAW) provides that, sexual slavery and forced prostitution in times of armed conflict constitute a basic violation of the right of liberty and the security of a person.[165] The European Court of Human Rights has also found the strip-searching of a male prisoner in the presence of a female prison officer to be degrading treatment.[166]

3.7. Conclusion

This chapter has examined the multifaceted nature of sexual violence in armed conflict, demonstrating its transformation from a perceived byproduct of war into a deliberate and strategic weapon used to dominate, terrorize, and destroy communities. Drawing from historical precedents, contemporary conflicts, and evolving jurisprudence under international law, it becomes clear that sexual violence is neither incidental nor culturally inevitable—it is systematic, gendered, and often militarized. Through the case studies of conflicts in Rwanda, the Democratic Republic of Congo, and the former Yugoslavia, as well as the jurisprudence of international criminal tribunals, we see

[164] International Covenant on Civil and Political Rights, UN General Assembly,1966, 52, U.N. Doc. A/6316, https://www.refworld.org/legal/agreements/unga/1966/en/17703
[165] Convention on the Elimination of All Forms of Discrimination against Women, 1979, U.N. Doc. A/34/46.
[166] European Court of Human Rights, *VALAŠINAS v. LITHUANIA,* 44558/98, Council of Europe, 24 July, 2001. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-59608%22]}

the intentional use of sexual violence as a tool of ethnic cleansing, political repression, and collective humiliation.

While international legal frameworks such as the Geneva Conventions, the Rome Statute, and the work of ad hoc tribunals have advanced the recognition of sexual violence as a war crime, crime against humanity, and even an act of genocide, gaps in enforcement and accountability persist. The theoretical lenses of opportunism, instrumentality, and mythology further highlight the layered motives and societal structures that underpin this form of violence, revealing the complex interplay of power, gender, identity, and ideology.

Ultimately, this chapter underscores that addressing sexual violence in armed conflict requires more than legal prohibition; it demands a comprehensive and survivor-centered response that integrates justice, reparations, gender equity, and long-term societal transformation. The international community must continue to confront the structural and cultural conditions that enable such violence, ensure meaningful accountability, and uphold the dignity and agency of all victims and survivors.

Chapter 4

Victims of Sexual Violence in Armed Conflict: Recognition of Victims' Rights

4.1. Introduction

Across the globe, women and girls continue to confront a myriad of gender-specific harms that arise from deeply rooted sex and gender-based discrimination. These discriminatory practices are often exacerbated in the context of armed conflict, where existing inequalities are magnified, and new forms of gendered violence emerge. Such harms include limited access to vital resources like food, shelter, education, and livelihood opportunities, as well as sexual and reproductive health services. Furthermore, women and girls disproportionately experience gender-based violence (GBV), which encompasses sexual, physical, and psychological abuse, leading to distinct and severe consequences for this demographic.

For over two decades, the international community has prioritized addressing and mitigating conflict-related sexual violence (CRSV). This term encompasses a variety of violations, including rape, trafficking, sexual slavery, forced pregnancy, forced abortion, forced marriage, forced prostitution, forced sterilization, and forced nudity. Efforts at the international level have largely focused on establishing normative and institutional frameworks aimed at ensuring individual criminal accountability under international law, notably through the establishment of the International Criminal Court (ICC). The emphasis on combating impunity has also influenced policy initiatives, such as the UK government's Preventing Sexual Violence in Conflict Initiative (PSVI). Despite these efforts and the considerable resources dedicated to advancing prosecutions, sexual violence continues to be a pervasive and deeply entrenched aspect of contemporary armed conflicts..[167] For victims and survivors of CRSV, the inability of both international and domestic courts to deliver meaningful justice represents a compounded failure, deepening the sense of harm and neglect they experience.

[167] Report of The United Nations Secretary-General on Conflict Related Sexual Violence, U.N. Doc. S/2019/280, 29 March 2019.

The persistent prevalence of conflict-related sexual violence (CRSV) has mobilized survivors, frontline responders, and women's rights advocates to demand stronger international support mechanisms that address both the urgent and enduring needs of victims. In light of this, the international community has begun reassessing its approach to CRSV, with increasing emphasis on achieving a balance between punitive justice and reparative processes. This includes integrating criminal and civil legal pathways and ensuring equal attention to economic, social, civil, and political rights. At the forefront of this global advocacy are Nobel Peace Prize laureates Dr. Denis Mukwege and Nadia Murad, who have championed the establishment of an International Reparations Fund (IRF) dedicated to survivors of CRSV. Their initiative has garnered support from the United Nations Secretary-General and found implicit recognition in UN Security Council Resolution 2467 (2019)**,** which urges States and other stakeholders to seriously consider the creation of a dedicated survivors' fund.[168]

Reparation should be understood as a right of victims, rather than merely an inter-state prerogative or an act of compassion or charity. It represents a moral imperative aimed at mending what has been broken. Reparation can play a vital role in achieving both individual and societal goals such as rehabilitation, reconciliation, the consolidation of democracy, and the restoration of law. Additionally, it can help to challenge traditional prejudices that have marginalized certain sectors of society and contributed to the crimes committed against them. Ultimately, it is a legal right owed to the survivors.

4.2. Harm suffered by Victims of Sexual violence

This report identifies the grave health implications, both physical and psychological, of sexual violence. The direct injuries can include chronic pain, infection, and infertility. Brutal rape can result in traumatic gynaecologic disease, where a woman's vagina and her bladder or rectum, or both, are torn apart. Rape may lead to abortion, bringing its own health risks. Sexual violence is often accompanied by other forms of brutality, such as broken bones, mutilation, or amputation of limbs, which may themselves be fatal. The psychological implications of sexual violence are also extremely serious, with survivors often experiencing severe trauma and depression, sometimes

[168] United Nations Security Council, *Resolution 2467 (2019)*, S/RES/2467, April 23, 2019.

leading to suicide. Some victims are infected with sexually transmitted diseases; including HIV. Many have little or no access to health care and counselling services.

Sexual violence has serious social consequences for survivors, their families and communities. In most (if not all) societies, the victims are severely stigmatized. Female survivors face marginalisation and social exclusion. They may even be murdered by their family, in a so-called "honour killing".

Armed conflict may also lead to more indirect and long-term repercussions concerning sexual and gender-based violence, which can be further exacerbated for survivors of such abuse. Even after the cessation of a conflict, incidents of sexual and gender-based violence persist. It remains challenging to ascertain whether the levels of post-conflict sexual violence surpass those recorded during or prior to the conflict, or whether there is merely an increase in the reporting of such offenses in comparison to the pre-conflict and conflict periods. Nevertheless, numerous nations emerging from armed conflict report a notably high and/or escalating incidence of both criminal and domestic violence, including sexual and other forms of violence directed towards women. The prevailing impunity for acts of sexual violence perpetrated during the conflict may contribute to a sustained tolerance for such abuse against women and girls, representing a lasting legacy of conflict. Unemployment, poverty, and social exclusion are common challenges encountered by any post-conflict community, which may further nurture an environment conducive to increased interpersonal and sexual violence. The absence of livelihood opportunities, along with the diminished rule of law in many post-conflict settings, renders women and girls particularly susceptible to sexual exploitation, and heightens the vulnerability of both men and women to becoming victims of abuse and trafficking.

4.2.1. Consequences of sexual violence in Armed Conflict: for Individual

The physical consequences of SGBV are often acute and demand immediate action. Medical treatment is usually required urgently as the most common effects from SGBV are fistulas, mutilation, infertility, menstrual and sexual dysfunction, sexually transmitted infections and HIV, cervical cancer, PTSD, anxiety and depression. Many women require abortions, or assistance raising the children born of rape. SGBV therefore exacerbates the already vulnerable position of women post-conflict, and many SGBV victims die after conflict ends.

4.2.1.1. Consequence on Individual Victims

Medical aids are needed for the physical and psychological damage recovery of victims of sexual violence in armed conflict. Sexual violence in wartime not only means rape rather sexual mutilation, torture in private parts and also other sexual assaults. These sexual assaults result in uterus damage, and severe vaginal tearing which may not be healed and will require medical attention for the rest of their lives. The victims of sexual violence have the likelihood of sexually transmitted diseases (STDs) because of unsafe or multiple rapes.[169] For example, the Democratic Republic of Congo (DRC) suffered a lot from the transmission of STDs in the after-war situation. Even if the psychological damage is less palpable or visible but without proper care it is nearly impossible to achieve recovery from the experience of pain and suffering to normalize their life.[170]

4.2.1.2. Child Born from War Rape:

The longest-lasting impact of using rape as a weapon of war is the number of children resulting from these acts and the ripple effects on both victims and society. There are no accurate statistics on the number of children born as a result of rape in various conflicts.

A mother of a child conceived through rape endures a lifetime of turmoil over the circumstances of conception, regardless of whether she chooses to raise the child, give the child up for adoption, or terminate the pregnancy.[171] Those who decide to keep the child often grapple with conflicting emotions, torn between feelings of love and resentment. This hatred or shame directed toward their child can lead to further torment, as the mother feels guilt for having such thoughts.

Many children born from these tragic circumstances are never adopted, and orphanages in conflict zones often become overwhelmed with so-called "rape babies." In post-conflict countries, potential adoptive parents may be unable to do so due to instability and poverty, leaving the burden on the state to care for these children.[172]

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[169] Klly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff, 1997), 225–227

[170] N Office for the Coordination of Humanitarian Affairs, "Broken Bodies, Broken Dreams: Violence Against Women Exposed," OCHA/IRIN, 2005, 18.

[171] Fionnuala Ní Aoláin et al., *On the Frontlines: Gender, War, and the Post-Conflict Process* (Oxford: Oxford University Press, 2011), 198–200.

[172] United Nations Population Fund (UNFPA), *State of World Population 2010: From Conflict and Crisis to Renewal*, 2010, 48–49.

4.2.1.3. *Consequences in the female inferiority:*

In a patriarchal society, masculinity is linked to perpetrators of violence while femininity is associated with victims. Women are often depicted as dependent, passive, and in need of protection, their identities tied to their roles as caregivers and their chastity. In conflict, they become objects of abuse, while their bodies symbolize societal identities and cultural aspirations.

Men are seen as dominant, active figures, responsible for protecting women and family, their control justified through social norms that frame masculinity as natural and superior. This dynamic fosters a culture where sexual and gender-based violence (SGBV) is used as a tool of domination, particularly by groups like the Lord's Resistance Army (LRA) in Uganda, where SGBV serves to assert power and humiliate enemies.[173]

Male SGBV victims face unique challenges, as their experiences are often perceived as more serious and their masculinity is destabilized, leading to a greater sense of harm. The act of SGBV against men is not just about sexual violence but also a means of feminizing and disempowering them, reflecting deep-seated gender norms.

Overall, SGBV is rooted in systemic misogyny rather than being an opportunistic crime, and understanding this is essential for healing and prevention efforts.

4.2.2. Destruction of the Society:

Sexual and gender-based violence (SGBV) during armed conflict causes harm that extends far beyond the immediate, individual physical injuries suffered by victims. Women's bodies are often symbolically constructed as carriers of collective values such as honor, purity, and the continuity of the community.[174] As a result, when a woman is sexually violated in wartime, the act is not only a personal assault but a symbolic desecration of the entire community's moral and cultural identity.[175] In this framework, the woman's subordination—defined through male dominance—renders her sexual purity a commodity imbued with communal value. Its violation is perceived as an attack not only on the woman but on the men who are socially assigned the role of her

[173] Annan, Jeannie, Christopher Blattman, Khristopher Carlson, and Dyan Mazurana. "The State of Female Youth in Northern Uganda: Findings from the Survey of War-Affected Youth." United Nations Population Fund (UNFPA), 2008.
[174] Ruth Seifert, "War and Rape: A Preliminary Analysis," in *Mass Rape: The War against Women in Bosnia-Herzegovina*, ed. Alexandra Stiglmayer (Lincoln: University of Nebraska Press, 1994), 55
[175] Dubravka Žarkov, *The Body of War: Media, Ethnicity, and Gender in the Break-up of Yugoslavia* (Durham: Duke University Press, 2007), 160

protectors.[176] Thus, SGBV becomes a powerful weapon in the arsenal of war, employed to humiliate, destabilize, and disintegrate the social fabric of enemy communities.

Stigma plays a critical role in the effectiveness of this tactic. Women who are sexually violated are frequently ostracized, rejected, or blamed by their own communities, who view them as bearers of dishonor.[177] In many cases, this stigma becomes internalized within the community to the extent that SGBV serves as a self-perpetuating form of destruction, turning victims into symbols of collective shame.[178] This dynamic not only devastates survivors but shatters the perceived masculinity of men who, according to traditional norms, have failed in their duty to protect "their" women.[179] Within the logic of war, such emasculation undermines morale and further fractures community solidarity. Tragically, instead of directing accountability toward perpetrators, blame is often displaced onto the female victims, who face social death in the form of shame and exclusion.[180]

4.3. Addressing Victims' Need in Long Term Realities

Victims of sexual violence face unique and compounded traumas that hinder their recovery and are often used to prevent their participation in societal and community rebuilding. The impact of sexual violence in conflict is devastating, causing immeasurable harm that affects every aspect of a victim's life and support network. This harm is physical, psychological, economic, and social. The repercussions of sexual violence rarely end with the cessation of war rather often affecting victims and their families for generations.[181] The long-time cares are generally needed for the victims of sexual violence without these ensuring justice is not possible.

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[176] lisabeth Jean Wood, "Sexual Violence during War: Toward an Understanding of Variation," *Politics & Society* 34, no. 3 (2006): 314

[177] Fionnuala Ní Aoláin, Naomi Cahn, Dina Haynes, and Nahla Valji, *The Oxford Handbook of Gender and Conflict* (Oxford: Oxford University Press, 2018), 203–205.

[178] Paul Kirby, "How Is Rape a Weapon of War? Feminist International Relations, Modes of Critical Explanation and the Study of Wartime Sexual Violence," *European Journal of International Relations* 19, no. 4 (2013): 803

[179] Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff, 1997), 230.

[180] UN Office for the Coordination of Humanitarian Affairs (OCHA), *Broken Bodies, Broken Dreams: Violence Against Women Exposed*, 2005, 21

[181] Aroussi, Sahla. (2016). Women, Peace, and Security and the DRC: Time to Rethink Wartime Sexual Violence as Gender-Based Violence?. *Politics & Gender*. Vol.1. p. 497, Doi.10.1017/S1743923X16000489.

4.3.1. Medical care

The medical needs of victims of sexual violence require long-term support and aid. Medical aids are needed for the physical and psychological damage recovery of victims of sexual violence in armed conflict. Sexual violence in wartime not only means rape rather sexual mutilation, torture in private parts and also other sexual assaults.

The physical damage, the need for surgery, medication, and physical rehabilitation are most readily diagnosed and managed with aid, if present. However, the psychological damage is less palpable or visible, but just as intrinsic to any step in recovery being achieved. Suppose a victim is not given the tools to cope with the trauma of the initial assault. In that case, they may reach a point of being unable to manage the psychological toll of their experience, and this could interfere with their ability to rebuild the other areas of their lives. A part of the unique experience of victims of sexual violence is that their assault can be imbued and added to every other area of struggle. As a result, they are reminded of the details of their victimhood by how the community separates them, and adds obstacles to the roadmap of recovery the region is trying to achieve.

Sexual assaults that also include being severely beaten, shot, or sliced with sharp weaponry, such as a knife or machete, will require immediate and sometimes long-term medical support. These sexual assaults result in uterus damage, and severe vaginal tearing which may not be healed and will require medical attention for the rest of their lives. The victims of sexual violence have the likelihood of sexually transmitted diseases (STDs) because of unsafe or multiple rapes. For example, the Democratic Republic of Congo (DRC) suffered a lot from the transmission of STDs in the after-war situation.[182] Even if the psychological damage is less palpable or visible but without proper care it is nearly impossible to achieve recovery from the experience of pain and suffering to normalize their life.

4.3.2. Financial support:

Medical and psychological care represent immediate needs that intersect with the economic challenges faced by victims of sexual violence. Depending on the region, medical care is often inaccessible to most victims due to the high costs associated with treatment. Even when they manage to obtain medical assistance, extensive needs can leave them burdened with significant debt that might never be repaid. This situation, combined with the social stigma of victimhood,

[182] Aroussi, Sahla. supra note 181

can result in long-term impoverishment as victims are often excluded from various forms of financial support.

In some cases, victims may be rejected by their relatives, including spouses, and many encounter difficulties in securing employment. In more conservative or religious regions, it may already be uncommon for women to seek work outside the home. When female victims are expelled from their homes due to the shame associated with their assault, it further complicates their employability, as community members may be reluctant to hire them.[183]

Even when victims retain family support, they can become a significant financial burden. This might stem from the costs of their medical treatment, their inability to find work, or the additional dependency created by having a child as a result of rape. It is essential to recognize that these children may also endure poverty, psychological distress, and social ostracism. Victims who are marginalized by their communities often lose access to employment opportunities due to societal perceptions surrounding sexual violence, leaving them with little hope for anything beyond a life of poverty.

4.3.3. Social support:

Being socially stigmatized is a common situation for victims of sexual violence aftermath, which led them long long-standing social struggles. Losing social connection in already traumatized conditions after such violence makes their lives hard to survive. Turning by their own community and neighborhood creates hardship living in the same residence which causes losing their house as well and in this situation, rehabilitation for the victims of sexual violence is a must. Without any social dignity and lack bonding women become unsheltered from the society. In this perspective awareness campaigns could be useful to incorporate collaboration in the community integrating social values and reconstructing social environment for victims.

4.4. Gender Sensitivity Regarding Reparation

International law is beginning to recognize that men and women do not experience political violence and other gross violations of human rights in the same way.[184] In addition to the spectrum

[183] Aroussi Sahla, supra note 181.

[184] Colleen Duggan & Adila M. Abusharaf. "Reparation for Sexual Violence in Democratic Transitions: The Search for Gender Justice," in Pablo de Greiff (ed.) Th e Handbook of Reparations (Oxford: Oxford University Press, 2006) 623 at 624.

of violations experienced by men, women are subjected to sexual violence much more systematically than men, as well as to other violations more specific to their gender, including reproductive violence and forms of domestic enslavement.[185] In many cases, violence directed toward women because they are women is part of a larger strategy of political domination, and gendered violence is used as a weapon of conflict.

While some of the consequences of violence against women are specific to the country or region in which the conflict has taken place, a number of general consequences can be noted. These may include:

i. harm to women's reproductive and sexual organs;
ii. a subsequent inability to have a normal sex life;
iii. a high risk of HIV infection and, because of lack of adequate medication, the associated risk of developing full-blown AIDS;
iv. a sense of shame or loss of honour;
v. a sense of guilt for: (a) having been unable to protect family members and/or themselves; (b) not committing suicide before the rape and abuse could occur; (c) having survived when other family members were killed;
vi. an inability to face society, knowing that a pregnancy is the result of rape; and
vii. for girls who have been raped or sexually assaulted, fewer prospects for marriage and a normal life in the future;
viii. a woman's inability to face her children because she was not able to protect them from sexual abuse or, perhaps, because they witnessed her rape and sexual abuse; and
ix. long-term feelings of insecurity and vulnerability.[186]

Over the last fifteen years, the international legal response to gendered violence has changed dramatically.[187] Advancements in international law reflect the evolution of the treatment of sexual violence in international humanitarian and human rights law as well as international criminal law from a crime 'against family honor and rights' or as 'outrages against personal dignity' in the

[185] Colleen Duggan & Adila M. Abusharaf, supra note 184
[186] Rights & Democracy. Women's Right to Reparation," Working Paper for Pparticipants of the International Meeting on Women's Right to Reparation, 19–21 March 2007, Nairobi, Kenya, (unpublished) at 12
[187] Katherine Franke, "Gendered Subjects of Transitional Justice" (2006) 15 Colum. J. Gender & L. 813 at 816.

Fourth Geneva Convention to the recognition of rape and other forms of sexual violence as a crime against humanity.

Judgments rendered by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have been groundbreaking for their recognition of sexual violence as among the most serious crimes under international law. These developments have increased the visibility of gendered violence, leading to the explicit inclusion of rape, sexual slavery, enforced prostitution, forced pregnancy, gender-based persecution, sexual enslavement, enforced sterilization, and sexual violence as war crimes and crimes against humanity in the Rome Statute of the International Criminal Court.

In the field of reparatory justice, sexual violence victims' needs are not generalized with other victims. Women and girls' particular vulnerability in the wake of the conflict, as well as the enormous potential for societal transformation nascent in such periods, means that paying close attention to these issues is particularly pressing. The challenges faced by women and girls in the post-conflict period are especially acute for several reasons. First of all, women must frequently shoulder heavy economic burdens in cases where a man, as the former head of the household, has been killed, disabled, or disappeared during the conflict. In cases where women are already marginalized and economically disadvantaged, this greater burden increases their vulnerability. Secondly, the effects of sexual violence on women and girls' lives are acute and ongoing, plaguing them both emotionally and physically. These effects are compounded by negative stereotypes that continue to harm victims, often leading women to blame themselves for the crimes they have experienced.[188] Negative stereotypes also impact on access to justice and reparation by women, who may be reluctant to come forth due to feelings of shame or fear of being socially ostracized.

Finally, sexual violence against women tends to continue in the aftermath of conflict, often in the form of elevated levels of domestic violence. This continuation occurs in part because women's suffering cannot be attributed solely to the conditions of political violence or regime change. Rather, sexual violence is linked to pervasive underlying structural inequalities that do not end simply because peace is restored.

[188] Judith G. Gardam & Michelle J. Jarvis, Women, Armed Confl ict and International Law (Th e Hague: Kluwer Law International, 2001) at 180.

4.5. Reparation as Victims' Right Under International Law

The term "reparation" in international law encompasses two main frameworks. Firstly, it refers to measures aimed at addressing harms from crimes or state responsibility breaches.[189] Secondly, it involves structured programmes providing direct benefits to victims of serious violations, particularly in post-conflict or post-authoritarian settings. This broader understanding of reparation addresses systemic injustice and mass atrocities.[190]

Core human rights instruments recognize the right to effective remedies, including procedural guarantees like fair hearings and substantive redress. The goal of reparation is "full restitution," restoring victims to their pre-violation status, with compensation as an alternative when restitution isn't possible. Here, reparation is an individual right grounded in personal harm, with the State responsible for providing redress.[191]

The UN's 2005 Basic Principles and Guidelines affirm that the State holds primary responsibility for ensuring victims' rights to reparation.[192] However, distinguishing between individual and mass violations presents challenges; individualized reparation approaches can be legally insufficient and impractical in cases of widespread abuse, highlighting limitations in current legal interpretations of reparation.[193]

4.5.1. Recognition of Reparation for Conflict-related Sexual Violence

It is well established under general international law and the law of state responsibility that a breach by a state of an international obligation owed to another state gives rise to an obligation to provide adequate reparation for that wrongdoing. The obligation of reparation results from the wrongful act is attributable to the state. Full reparation for the injury caused can take the form of restitution to re-establish the situation that existed before the wrongful act was committed, compensation to recompense for the damage caused to the extent that such damage is not made good by restitution, and satisfaction insofar as the injury caused cannot be made good by restitution or compensation,

[189] Pablo de Greiff, *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), 1–2
[190] Ruth Rubio-Marín, "The Gender of Reparations: Setting the Agenda," in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (Cambridge: Cambridge University Press, 2009), 21
[191] Dinah Shelton, *Remedies in International Human Rights Law*, 2nd ed. (Oxford: Oxford University Press, 2005), 13–15
[192] UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, A/RES/60/147 (December 16, 2005), Principle 2
[193] Ibid, principle 3.

the obligation to give satisfaction such as an acknowledgment of the breach, an expression of regret, a formal apology may be required.[194]

Prior to the advent of international human rights law, wrongs committed by the state to its own nationals were totally domestic matters. Wrongs committed by a State against nationals of other States could give rise to claims for reparation, but such claims could only be brought by the State of nationality asserting its own rights.

With the adoption of the Universal Declaration of Human Rights (1948) and subsequent international and regional human rights instruments, States recognised that human rights were no longer a matter of exclusive domestic concern. Gender-based and sexual violence have been recognised as such violations, and the State is responsible when such acts are committed by State agents (police, security services, armed forces, etc.). The State is also responsible for such acts when committed by non-State actors (armed militias, private security personnel, terrorists etc.) where it has failed to exercise due diligence to prevent, prosecute, punish and make reparations. The right of victims of human rights violations to pursue their claims for redress and reparation before national courts and, if necessary, before international justice mechanisms is now an integral part of the international legal architecture. Before turning to examine international human rights law, some mention of two other branches of international law – international humanitarian law and international criminal law is warranted.

4.5.2. Reparation Under International Humanitarian Law (IHL) and International Criminal Law (ICL)

Under International Humanitarian Law it is firmly embedded the concept of war reparation between states.16 but it is a matter of debate among states and commentators whether IHL grants individual rights to victims for reparation on such breaches of substantive rules.[195] IHL treaties do not expressly identify who is entitled to reparations Historically, the vast majority of agreements between States over war reparations have typically included a waiver of individual claims since individuals were not seen as rights holders but as incidental beneficiaries of an interstate system of rights and obligations.

[194] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Articles 34-37
[195] Tokyo District Court, Civil Division No. 6, Sjoerd Lapré et al. v. Japan, Claims for compensation from Japan arising from injuries suffered by former POWs and civilian internees of the Netherlands, Claim No. 1218 (Civil), Judgment, 30 November 1998

A significant barrier for victims is that sexual violence is not specific subject matter of prosecution in international trials. This lacuna in the law has been partially addressed through the normative and institutional developments in international criminal law (ICL), which is primarily concerned with prosecution of serious international crimes and acts prohibited under IHL, such as grave breaches of the Geneva Conventions, war crimes, crimes against humanity and genocide.[196] But as with domestic criminal law, ICL has focused predominantly on the accountability of perpetrators rather than concerning to the victims' rights, other than as witnesses.

This lacuna in the law has been partially addressed through the normative and institutional developments in international criminal law (ICL), which is primarily concerned with prosecution of serious international crimes and acts prohibited under IHL, such as grave breaches of the Geneva Conventions, war crimes, crimes against humanity and genocide.[197] however to date few victims have been benefitted from this provision due to restrictive eligibility conditions, prolonged litigations and problems with implementation.[198] In particular, victims of CRSV have too often been deprived of their right to seek reparation principally as a result of flawed strategies adopted by the Office of the Prosecutor (OTP).

4.5.3. International Human Rights Law

Under international and regional human rights law and treaties the right to reparation is founded on the right to an effective remedy. The obligation on States to ensure that victims have effective access to reparations is also found in regional treaties concerned with preventing and combatting violence against women whether perpetrated in peacetime or in armed conflict.[199] States have the obligation to comply with international and regional human rights law, human rights treaties to which they are parties and customary international law including jus cogens norms.

Soft law instruments such as UN General Assembly resolutions together with international jurisprudence have clarified disparate and sometimes vague language around reparations found in human rights treaties. In particular, the Basic Principles and guidelines have contributed to the

[196] United Nations General Assembly Resolution 260 A (III),
[197] Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, 17 July 1998, Article 75 (2) [hereinafter Rome Statute]
[198] The only three cases that have reached the reparation stage are The Prosecutor v. Lubanga, The Prosecutor v. Katanga and The Prosecutor v. Al Mahdi.
[199] The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) 9 June 1994, Article 7

clarification and development of such law. But it is obvious to mention that, soft law instruments like the Basic principles and guidelines are not legally binding as such. However, to the extent that the resolution emphasizes that the instrument does "not entail new international or domestic legal obligations" the norms contained therein represent existing customary international law binding on all States.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation identify three core components of the right to a remedy: equal and effective access to justice, the right to adequate and prompt reparation, and access to relevant information concerning violations and available mechanisms.[200] Although the instrument specifically addresses gross violations of international human rights and humanitarian law, the underlying principles apply broadly, in line with the doctrine of State responsibility.[201] States are obligated to provide reparation for harms caused by their own actions or omissions (Principle 15), and where non-State actors are responsible but unable or unwilling to compensate victims, States must implement national reparation programmes (Principle 16).[202]

Customary international law further holds States accountable for failing to prevent or punish abuses by private actors when due diligence is not exercised.[203] Reparation may take various forms, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (Principles 19-23).[204] Symbolic and material measures—such as prosecution of perpetrators, public apologies, truth-telling, or memorialization—are all recognized methods of restoring victims' dignity.[205]

Notably, these Principles were adopted amid growing use of administrative reparation schemes in post-conflict transitions. Such schemes serve as alternatives to judicial processes and are better suited to addressing large-scale violations, especially where litigation imposes barriers like cost,

[200] United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, A/RES/60/147 (December 16, 2005), Principles 11–13
[201] Dinah Shelton, *Remedies in International Human Rights Law*, 2nd ed. (Oxford: Oxford University Press, 2015), 105
[202] UNGA, *supra note 200,* Principles 15–17
[203] Ibid, principle 3(c)
[204] Ibid, principle 19-23
[205] Pablo de Greiff, *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), 451–452

evidentiary burden, or retraumatization.[206] For women and girls affected by conflict-related sexual violence (CRSV), these administrative mechanisms are particularly vital, offering more inclusive definitions of victimhood and accessible avenues for redress.[207]

These developments of international phenomenon also concided with the adoption of UN Security Council Resolution 1325 in 2000 in women, peace and Security with international recognition of sexual violence in armed conflict. And evidence shows that international law is still failing to register and response to the particular experience of victims regarding their needs during and aftermath the conflicts.

4.6. Conclusion

Highlighting the critical need to address the distinct harms experienced by survivors, particularly women and girls, through comprehensive and gender-sensitive approaches, this chapter has explored the evolving recognition of victims' rights in the context of conflict-related sexual violence (CRSV). While international legal instruments have progressively acknowledged sexual violence as a serious violation of international law—qualifying as war crimes, crimes against humanity, and acts of genocide—the practical realization of justice and reparation for survivors remains severely limited.

The chapter underscored that reparation is not merely a discretionary gesture but a legal and moral right of victims, deeply rooted in international human rights, humanitarian, and criminal law. Despite significant normative advances, institutional responses remain hampered by structural inequalities, gendered stereotypes, and weak implementation mechanisms. The persistent stigmatization of survivors, inadequate access to healthcare and psychosocial support, and the absence of effective reparatory frameworks continue to reinforce victims' marginalization and silence.

In advocating for survivor-centered, transformative reparations, this chapter has emphasized the necessity of moving beyond formalistic approaches. It calls for a reparation framework that not

[206] Ruth Rubio-Marín, "Reparations for Conflict-Related Sexual and Reproductive Violence: A Feminist Critique of International Practice," in *Repairing the Past: Reparations and Transitional Justice*, ed. Max du Plessis and Stephen Pete (Cape Town: Institute for Justice and Reconciliation, 2007), 23–25.
[207] Fionnuala Ní Aoláin et al., *The Oxford Handbook of Gender and Conflict* (Oxford: Oxford University Press, 2018), 263–26

only addresses immediate material and medical needs but also challenges the patriarchal norms that underpin CRSV. The integration of gender-sensitive policies, long-term psychosocial and economic support, and the active involvement of survivors in the design and implementation of reparatory measures are essential steps toward justice and societal healing.

Ultimately, meaningful reparation must be both a mechanism of redress and a tool for structural change restoring dignity, fostering inclusion, and affirming the humanity of those most profoundly affected by armed conflict. Only through such a holistic commitment can the international community fulfill its legal and ethical obligations to victims of sexual violence in war

Chapter 5

The ICC's Approach to Sexual Violence: Experiences in Modern-Day Armed Conflicts

5.1. Introduction

Sexual violence in armed conflict continues to be one of the most pervasive and devastating violations of international humanitarian and human rights law. Traditionally marginalized in discussions of war, this form of violence has increasingly gained recognition as a serious international crime, necessitating legal accountability and a survivor-centered approach to justice. The establishment of the International Criminal Court (ICC) in 2002 marked a significant turning point in the global response to conflict-related sexual and gender-based violence (SGBV), providing the promise of a permanent judicial mechanism to address these atrocities. With the inclusion of offenses such as rape, sexual slavery, enforced prostitution, forced pregnancy, and other forms of sexual violence as war crimes, crimes against humanity, and acts of genocide under the Rome Statute, the ICC ushered in a new era in the legal treatment of these crimes.

Despite these normative advancements, the practical implementation of the ICC's mandate has revealed both progress and enduring challenges. The Court has faced issues of under-reporting, evidentiary difficulties, prosecutorial discretion, and inherent gender biases that often impede effective accountability. While landmark cases such as Prosecutor v. Jean-Pierre Bemba Gombo have advanced the development of international criminal jurisprudence concerning sexual violence, notable reversals and acquittals have underscored significant limitations in prosecutorial strategies, evidentiary standards, and survivor participation.

This section will critically examine the ICC's evolving approach to addressing sexual violence in contemporary armed conflicts, drawing on its legal framework, institutional practices, and case law. It will assess the Court's achievements and shortcomings in holding perpetrators accountable, recognizing survivors' rights, and contributing to broader goals of deterrence and justice. In doing so, it will interrogate the gaps between normative commitments and operational realities and

explore how international criminal justice can become more responsive to the complex needs of survivors of sexual violence.

5.2. Rome Statute and Elements of Crime

The adoption of the Rome Statute establishing the International Criminal Court (ICC) marked a substantial advancement in international criminal law, particularly in the recognition and prosecution of sexual and gender-based crimes (SGBC). For the first time, the Statute explicitly enumerates offenses such as rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as both war crimes and crimes against humanity.[208] Notably, it also includes residual clauses for "other forms of sexual violence," enabling a flexible and evolving interpretation that reflects the dynamic realities of sexual violence in conflict.[209]

The Statute goes further by criminalizing enslavement—with particular emphasis on human trafficking involving women and children[210]—and, for the first time, defines persecution on the basis of gender as a crime against humanity.[211] This represents a major step toward developing a more inclusive, gender-sensitive framework within international criminal law.[212] The significance of explicitly codifying such offenses lies in the foundational principle that naming a harm is the first step toward its eradication.[213] While sexual violence could historically be prosecuted under general categories such as torture or inhumane treatment, in practice, it was often overlooked or deprioritized.[214] The ICC Statute corrects this by affirming that acts of sexual violence are distinct crimes warranting focused legal scrutiny and accountability.

This specificity is crucial for several reasons. First, it affirms the expressive function of international criminal law: the idea that by naming and criminalizing specific conduct, the international legal system signals that these harms are not only criminal but profoundly

[208] Rome Statute of the International Criminal Court, Articles 7(1)(g), 8(2)(b)(xxii), and 8(2)(e)(vi)
[209] Ibid., Articles 7(1)(g)-6 and 8(2)(b)(xxii)-6, recognizing "other forms of sexual violence of comparable gravity."
[210] Ibid., Article 7(1)(c), defining enslavement in the context of trafficking.
[211] Ibid., Article 7(1)(h), addressing persecution on gender grounds.
[212] Fionnuala Ní Aoláin, "Advancing Gender Justice Through International Criminal Law," *UN Women Discussion Paper Series*, 2012.
[213] Catharine A. MacKinnon, "Rape, Genocide, and Women's Human Rights," *Harvard Women's Law Journal* 17 (1994): 5.
[214] Kelly D. Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff, 1997), 170–172

incompatible with peace, justice, and human dignity.[215] Such labeling conveys moral and legal condemnation, and helps dispel lingering myths—such as the idea that sexual violence is merely a by-product of war rather than a tactic of it.[216] Second, it facilitates more accurate attribution of criminal responsibility and deeper recognition of victims' experiences.[217] This is particularly important in transitional justice processes, where social stigma attached to survivors of sexual violence can be mitigated by the law's affirmation that the acts were coercive and criminal, not consensual or shameful.[218]

Finally, the explicit recognition of SGBC has procedural implications: it strengthens the foundation for victim participation and reparation in ICC proceedings.[219] By acknowledging these harms through specific legal categories, the ICC not only promotes accountability but also supports survivors' rights to recognition, dignity, and redress

5.3. Prosecutorial Strategy Involving Sexual Violence

During the tenure of Fatou Bensouda as the second Prosecutor of the International Criminal Court (ICC), substantial progress was made in addressing earlier limitations in investigations and prosecutions, particularly concerning sexual and gender-based crimes (SGBC). A landmark development came in 2014 with the adoption of the Policy Paper on Sexual and Gender-Based Crimes by the Office of the Prosecutor (OTP), which introduced a structured, gender-sensitive framework for conducting investigations and prosecutions.[220] This initiative was widely described as a "potentially game-changing" advancement for gender justice at the ICC.[221]

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[215] Carsten Stahn, "Justice Under Construction: The ICC's Expressive Function," *Journal of International Criminal Justice* 10, no. 5 (2012): 1187–1208

[216] Paul Kirby, "How Is Rape a Weapon of War?" *European Journal of International Relations* 19, no. 4 (2013): 797–821.

[217] Elisabeth Jean Wood, "Sexual Violence During War: Variation and Accountability," in *Understanding and Proving International Sex Crimes*, ed. Morten Bergsmo (Torkel Opsahl Academic EPublisher, 2012), 245–260.

[218] Ruth Rubio-Marín, "The Gender of Reparations," in *The Gender of Reparations*, ed. Rubio-Marín (Cambridge University Press, 2009), 27–30.

[219] Mariana Goetz, "Reparations and Victim Participation: A Gender Perspective," in *Repairing the Past: Transitional Justice and Reconciliation in Theory and Practice*, ed. Max du Plessis and Stephen Pete (Institute for Justice and Reconciliation, 2007), 202–205.

[220] Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, International Criminal Court, June 2014

[221] Valerie Oosterveld, "Gender and the International Criminal Court: Progress and Reflections," in *The First Global Prosecutor: Promise and Constraints*, ed. Martha Minow, C. Cora True-Frost, and Alex Whiting (Ann Arbor: University of Michigan Press, 2015), 227

The Policy Paper embraces a comprehensive understanding of gender, emphasizing its socially constructed nature and the roles, behaviors, and expectations imposed on individuals based on perceived sex or identity.[222] In doing so, it helps clarify the previously ambiguous reference to "gender" in Article 7(3) of the Rome Statute, which defines gender as "the two sexes, male and female, within the context of society."[223] The Paper takes a progressive stance by explicitly recognizing that SGBC extends beyond sexual violence, and that such crimes may affect all genders—not only women.[224] Furthermore, it introduces an intersectional approach, acknowledging that gender interacts with other identity markers, including race, ethnicity, religion, disability, and sexual orientation.[225] This signals a promising move toward institutionalizing more critical and anti-discriminatory frameworks in the prosecution of international crimes.

Importantly, Prosecutor Bensouda affirmed her intention to pursue SGBC under multiple legal classifications—namely as genocide, crimes against humanity, and war crimes—depending on the circumstances in which the crimes were committed.[226] Charges would be applied cumulatively to reflect the severity and complex nature of SGBC, ensuring that offenses are recognized both in their own right and as manifestations of broader violations such as torture or persecution.[227] By placing SGBC at the center of prosecutorial priorities, the OTP signaled a decisive shift toward greater gender sensitivity in its jurisprudence. The influence of the Policy Paper has already been observed in practice, notably in the prosecution of *Dominic Ongwen*, where the charges included a wide range of gender-based crimes reflecting both physical and psychological harms.[228]

5.4. Practice of ICC Prosecuting Sexual Violence

Recent advancements in International Humanitarian Law and International Criminal Law have led to notable progress in the investigation and prosecution of sexual violence as a war crime and a crime against humanity. Despite the explicit prohibition of such acts in numerous international instruments, sexual and gender-based violence persists in 21st-century armed conflicts. As the sole

[222] ICC-OTP, *supra note 220*, para. 16
[223] Rome Statute of the International Criminal Court, Article 7(3)
[224] ICC-OTP, *supra note 220,* paras. 18–20
[225] Ibid., para. 24
[226] Fatou Bensouda, "Statement to the Assembly of States Parties," ICC-ASP/13/20, The Hague, December 2014.
[227] ICC-OTP, *supra note 220,* para. 71
[228] *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Pre-Trial and Trial Chamber Documents, 2016–2021

permanent body dedicated to international criminal justice, the International Criminal Court (ICC) bears primary responsibility for investigating and prosecuting those responsible for these crimes.

However, the prosecutorial strategy for charges related to sexual violence tends to be more vulnerable and narrower in scope compared to other crimes, often resulting in such charges being dropped in the early stages of proceedings. Even when comprehensive charges of widespread sexual violence are brought forward, prosecutors face significant challenges in substantiating these allegations with sufficient evidence for the court. Consequently, this often leads to the acquittal of perpetrators accused of committing systematic and widespread sexual violence during times of war.[229]

Despite being established for two decades, the ICC has seen only a small number of cases related to conflict-related sexual violence go to trial, with even fewer yielding convictions.[230] The success of a court should not be judged solely by its conviction rate; however, in its twenty-year history, the ICC has only brought eight cases involving conflict-related sexual violence to trial. Among these, six had their charges confirmed, and only two resulted in convictions.[231] The prosecutorial approach of the ICC to sexual violence crimes has proven to be relatively less effective in achieving the immediate goals of accountability and deterring persistent patterns of violence against women during armed conflicts.[232] This part of the study will Offer a concise examination of cases involving sexual violence, highlighting the various technical, procedural, and evidentiary challenges encountered before the court. This discussion will also to explore how these cases charged, presented, and decided within the ICC proceedings.

The first case addressing widespread sexual violence at the International Criminal Court (ICC) was brought against Thomas Lubanga, the Congolese warlord, during the investigation into the

[229] Cvercko N., July 18, 2018, Analysis: The ICC's Treatment of Sexual and Gender-Based Violence crimes, *Global Justice Journal,* https://globaljustice.queenslaw.ca/news/analysis-the-iccs-treatment-of-sexual-and-gender-based-violence-crimes
[230] Shackel R., 2019, International Criminal Court Prosecutions of Sexual and Gender-Based Violence: Challenges and Successes. In K. Engle, Z. Miller, & D. Otto Eds., *Rethinking Transnational Gender Justice: Transformative Approaches in Post-Conflict Settings*, p. 187-208, Palgrave Macmillan, https://doi.org/10.1007/978-3-319-77890-7_10
[231] Chappell, L. (2012), The Role of the ICC in Transitional Gender Justice: Capacity and Limitations. In Buckley, S. & Stanley, R. (eds), *Gender in Transnational Justice*, Governance and Limited Statehood Series, Palgrave Macmillan, https://doi.org/10.1057/9780230348615_2
[232] Jackson, B. (2025), Advancing Gender Justice: The ICC's Evolving Approach to Froced Pregnancy and Gender-Based Violence, *University of New South Wales Law Journal Student Series*, No. 25-7, https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/UNSWLawJlStuS/2025/7.html#

conflict in the Democratic Republic of Congo.[233] Despite substantial evidence and testimonies regarding the use of girl soldiers as sexual slaves and the resultant unwanted pregnancies, Lubanga was not charged with conflict-related sexual violence, raising significant debate about the fairness of the prosecution. During the trial, ninety-nine victims, mostly former child soldiers, testified about rampant rape and the coercion to perform abortions in unsanitary conditions.[234] The omission of sexual violence crimes from the indictment indicated a troubling perspective among prosecutors, who often viewed such violence as a byproduct of war. The trial chamber criticized this neglect and noted that sexual violence should have been addressed.[235]

Notably, this case marked the first instance of the ICC implementing reparations for the harm caused by the crimes. The Appeals Chamber acknowledged that sexual violence constituted "harm" related to Lubanga's convictions, allowing victims of sexual violence to benefit from reparations through the Trust Fund for Victims (TFV), despite Lubanga not being convicted for those specific crimes.[236]

Germain Katanga, a former Congolese rebel leader, was formally charged with rape, sexual slavery, and forced marriage as part of accusations related to war crimes and crimes against humanity. However, he was acquitted of all charges related to sexual and gender-based violence, based on the argument that such violence did not form part of the attacks on the civilian population of the Democratic Republic of Congo.[237] Similarly, in the case of Mbrushimana, charges included instances of sexual violence, such as miscarriages resulting from rape, along with other horrific acts.[238] However, the trial could not proceed due to a lack of sufficient evidence. In this situation concerning the Republic of Kenya, ICC prosecutors brought charges of sexual violence for widespread rape and persecution. Nevertheless, the pre-trial chamber denied the confirmation of charges, and the accused were ultimately acquitted of all allegations.[239]

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[233] International Criminal Court, (2006), *The Prosecutor v. Thomas Lubanga Dyilo*, Case no. ICC-01/04/-01/06.
[234] Ibid
[235] Jackson, B. supra note 36
[236] International Criminal Court, 3 March 2015, *Lubanga case: ICC Appeals Chamber Amends the Trial Chamber's Order for Reparation to Victims*, ICC-CPI-20150303-PR1092
[237] International Criminal Court, 7 March 2014, *The Prosecutor v. Germain Katanga,* Summery of Trial Chamber II's Judgement (pursuant to article 74 of the Statute), https://www.icc-cpi.int/sites/default/files/itemsDocuments/986/14_0259_ENG_summary_judgment.pdf
[238] International Criminal Court, 3 August 2011, *Prosecutor v. Mbarushimana*, Pre-Trial Chamber I, Case no. ICC-01/04-01/10-330-AnxA-Red.
[239] Ibid

The ICC secured its first conviction for sexual violence crimes against Jean-Pierre Bemba Gambo in the Central African Republic. He was charged with rape, which only referenced the unwanted pregnancies resulting from it, while other forms of sexual violence, like forced pregnancy, were not included.[240] Although this case marked a significant conviction, it was criticized for not adequately addressing sexual and gender-based violence. Bemba was later acquitted by the Appeal Chamber, which weakened the case's significance.[241] The acquittal did not specifically relate to sexual violence charges but may impact future prosecutions, limiting the incorporation of additional evidence later in trials. It is often noted that evidence in sexual violence cases surfaces late due to survivors' reluctance to testify, and the Bemba appeal effectively restricts the Prosecutor from responding to new evidence during such trials.[242]

Dominic Ongwen, a former commander of a Ugandan rebel group, became the first person convicted of sexual violence in armed conflict by the ICC on February 4, 2021. He was found guilty of forced marriage as a crime against humanity under Article 7(1)(k) of the Rome Statute, marking a significant precedent in international criminal law for sexual and gender-based crimes.[243] Despite the conviction, the case faced challenges regarding victim prosecution and participation, but the court implemented protective measures for victims, including psychological support and anonymity.[244] Similarly, Bosco Ntaganda, the alleged Deputy Chief and Commander of Congolese forces, was convicted of rape, sexual slavery, and persecution as war crimes and crimes against humanity. Ntaganda was held accountable under command responsibility for crimes committed by his troops, highlighting the ICC's commitment to supporting victims of sexual violence in legal proceedings.[245]

A further promising development is the trial on broad nature of sexual violence and gender-based persecution charges and resulting conviction in Al Hasan case in the ICC situation of Mali.[246] It is

[240] International Criminal Court, 21 June, 2016, *Prosecutor v. Jean-Pierre Bemba Gambo*, Trial Chamber III, Case no. ICC-01/05-01-08-3399.
[241] Jackson, B. supra note 36.
[242] Powderly, J. (2018), Prosecutor v. Jean-Pierre Bemba Gombo: Judgement on Appleal of Mr. Jean Pierre Bemba Gombo against Trial Chamber III's "Judgement Persuant to Article 74of the Statute", *International Legal Materials*, 57(6), 10311-1079, DOI: 10.1017/ilm.2018.50
[243] Kenny, C (2024), Prosecutor v. Dominic Ongwen, *American Journal of Intermational Law*, 118(1), 153-160, DOI: 10.1017/ajil.2023.65
[244] Shackel R., supra note 34.
[245] International Criminal Court, July 2019, *The Prosecutor v. Bosco Ntaganda,* Trial Chamber VI, Case no. ICC-01/04-02/06.
[246] International Criminal Court, Situation in Mali, *The Prosecutor v. Al Hasan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud,* ICC-01/12-01/18

noteworthy that in Al Hasan case constitutes an important progress within the ICC framework concerning crime of persecution on intersecting religious and gender grounds. The religious and gender-based persecution also became part of the ICC investigation in the situation of Afghanistan.[247] Besides the preliminary examination of Nigeria, which was not particularly limited in crimes against women rather the investigation on forced persecution of men and boys was also reported.[248]

Examining previous prosecutions for sexual violence crimes within the ICC reveals significant achievements alongside notable challenges, underscoring both technical and practical difficulties as well as cultural and systemic barriers. The establishment of the Rome Statute and the subsequent practices of the ICC mark a substantial advancement in the prosecution of a wide array of sexual and gender-based violence in armed conflicts.[249] The ICC explicitly identifies offenses such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and various forms of sexual violence as crimes against humanity and war crimes.[250] However, this clear prohibition against the use of sexual violence in armed conflict has not been sufficient to prevent its occurrence. Recent investigations by the ICC have identified reasonable grounds to believe that numerous incidents of sexual violence have taken place in Ukraine, Palestine, the Philippines, and Venezuela.[251] These investigations are characterized by multiple suspects and complex legal assessments.

Here is the *Summary Table* pointing out the ICC cases involving sexual and gender-based violence including charges, trial status, verdict, and reparation order on such crimes:

[247] International Criminal Court, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17, https://www.icc-cpi.int/victims/situation-islamic-republic-afghanistan
[248] The Office of Prosecutor of ICC, 2019, *Report on preliminary Examination Activities,* Nigeria, p. 47, https://www.icc-cpi.int/sites/default/files/itemsDocuments/191205-rep-otp-PE.pdf
[249] Shackel R., supra note 34
[250] Altunjan, T. (2021), The International Criminal Court and Sexual Violence: Between Aspiration and Reality, *German Law Journal*, 22, p. 878-893, DOI: 10.1017/glj.2021.45
[251] International Criminal Court, *Situations under Investigation*, https://www.icc-cpi.int/situations-under-investigations

Case Name	Sexual Violence Charges	Went to Trial	Case Status	Conviction/ Acquittal on SGBV Charges	Reparation Orders for SGBV Victims
Prosecutor v. Thomas Lubanga	No charges on SGBV crime	Yes	Closed (Convicted 2012)	Not Applicable	Reparations ordered for child soldiers, not SGBV victims
Prosecutor v. Germain Katanga	Rape and Sexual Slavery	Yes	Closed (Convicted 2014)	Acquitted on SGBV charges	No reparations for SGBV victims
Prosecutor v. Bosco Ntaganda	Rape and Sexual Slavery (including child soldiers)	Yes	Closed (convicted 2019)	Convicted on SGBV charges	Reparation ordered for SGBV victims (2021)
Prosecutor v. Jean-Pierre Bemba	Widespread and Systematic Rape	Yes	Closed (Acquitted on Appeal 2018)	Convicted in 2016, Acquitted on appeal in 2018	Reparation stopped on post acquittal
Prosecutor v. Dominic Ongwen	Forced marriage, rape, sexual slavery	Yes	Closed (Convicted on 2021)	Convicted on 19 counts of SGBV crimes	Reparation ordered for SGBV victims (2021)
Prosecutor v. Al Hassan Ag Abdoul Aziz	Rape, sexual slavery, gender-based persecution	Yes	Ongoing trial… (verdict expected)	Trial ongoing as of 2025	Pending outcome

Figure 1: Showing practice of ICC prosecution practice regarding sexual and gender-based violence.

5.5. Persistent Obstacles in ICC Practice

The ICC obtained a very progressive and strong legal framework, but in case of practice relating to sexual violence is not very satisfactory. After two decades, the ICC secured only one final conviction regarding sexual violence charges, and another was overturned on appeal, which put at risk the fulfilment of ending sexual violence and gender crimes under international criminal law. The ICC's practice over the sexual violence case almost failed at all stages of proceedings which indicated some persistent reasons such as investigation, making charge, gathering evidence, ensuring participation of victims and witnesses, and very lengthy process until reach out the final verdict.

The effects of sexual violence are often less visible compared to other crimes, the scars are even deeper in psychological than physical. It is therefore crucial that the investigators act with more sensitivity in regards to cultural issues, gender roles in every individual situation with an understanding of the impact of sexual violence on survivors and their communities. But in practice sexual violence get less prioritization to be considered sufficiently systemic in nature to fulfill the threshold under crime against humanity or war crime.[252] If the investigators remain unable to include sexual violence crimes as the early stage of the proceeding, it will be more difficult to amend the charges later on.

In case making charge of sexual violence the ICC follows cumulative charging against individuals, which requires more evidence against each cases at the ICC. This pattern of charging individual creates barriers from evidence gathering perspective, make complexity of the cases, and eventually creates a backlog for the cases of ICC. If the prosecutor thinks there is enough evidence to covict the defendant they can persue with charging, but gathering more evidence against each and every individual would lead to same outcome direct the trial more lengthy and complex.[253]

Furthermore, the attention to sexual and gender-based crime is mostly diverted to the serious nature of such violations. While the Rome Statute expressly directs that "any forms of sexual violence" can be prosecuted,[254] the practice of the ICC considers it under comparable gravity to other crimes. Such an approach of the ICC raises a question about recognizing that certain acts of sexual violence

[252] Altunjan, T. supra note 51
[253] Jackson, B. supra note 36
[254] International Criminal Court, (1998), The Rome Statute, Art. 7(1)(g), 8(2)(b)(xxii), 8(2)(vi).

are less worthy of prosecution. For example, in the Bemba case, the prosecutors focused only on forced pregnancy, which diverted attention from other forms of serious violations like forced abortion, forced maternity, or intentional destruction of reproductivity.[255] Therefore, focusing on specific sexual violations may lose the broad-reaching approach of the Rome Statute, which codifies several other serious sexual offences. The prosecutors also should keep considering that focusing on more specific sexual violence may make it narrow which decreases the likelihood of a successful conviction by proving the intention of defendant to affect the whole community of any population.[256]

From the history of the sexual violence used as the weapon or strategic of war required more analysis with gravity assessment on sexual violence as ethnically motivated violence. In the case of Kenyatta described conduct of forced circumcision or penile amputation were not as a violence of sexual nature rather used as prejudice the whole ethnic community and demonstrate cultural superiority.[257] Such misconception of sexual violence make it extremely restrictive and fail to take into account ethnic dimensions. Such act of violence along with enforced sterilization should consider as destruction of reproductive capacity with intention to ethnic cleansing of the whole community.[258]

The protracted nature of proceedings at the International Criminal Court is attributed to the complexity of cases, difficulties in collecting reliable evidence from conflict zones, ensuring participation and safety of victims and witnesses, and the frequent lack of cooperation of the States contributes significantly to procedural delays. The ICC is conducting active investigations, ongoing cases that never reach the trial stage because the suspects remain at large even after issuing arrest warrants, for example, Sudanese President Omar Al Bashir, Taliban Leader Akhundjada, Chief Justice of Afghanistan Abdul Hakim Haqqani, have never been surrendered or transferred to the ICC. These pending cases highlight that the norm for victims' justice has failed to some extent, that "justice delayed is justice denied."

[255] ICC, Bmba Gambo, supra note 44
[256] Jackson, B. supra note 36.
[257] International Criminal Court, January 2012*, Prosecutor v. Kenyatta*, Decision on the confirmation of charges, case no. ICC-01/09-02/11, https://www.icc-cpi.int/CourtRecords/CR2012_01006.PDF
[258] Altunjan, T, supra note 51.

5.6. Sexual Violence in Modern-Day Armed-Conflict

Rape is understood as a gendered violent act not only against the female sexed body but against the enemy as such through the logic of gender in which the conceptualization of "weapon of war makes sense. Wartime rape is a military tactic, serving as a combat tool to humiliate and demoralize individuals, to tear apart families, and to devastate communities.[259] In today's political climate claiming that wartime rape is a strategy or tactic of war is seemingly stating the obvious.

To better grasp how rape may be a weapon of war, it needs to focus upon some hidden assumptions, and logic based on strategies not only generalized views about gender. Instead, we should focus on the connection among strategies, gender, culpability, and avoidance in order to explore the storyline of rape as a weapon of war.

The most openly described acts of war are terrorism, torture, or bombing. In particular, one pervasive atrocity is shrouded in silence, which is a military tactic of mass rape. Being absent from the ceasefire agreements and rarely mentioned in the peace table, it is a war tactic that lingers long after the guns fall silent. Unlike any other injuries, its scars are invisible, which is the reason why the victims cannot be found in the official statistics of war-wounded personnel. In the armory of any armed group, this is the only weapon of mass destruction for which societies blame the victims, rather than the attackers. Despite recognition as a war crime, it is hard to bring the perpetrators to prison.[260] This discussion can convey that, wartime rape is an intentional strategy or tactic of war. A report on Sierra Leone's sexual violence atrocities renders this generalized truth that "Rape as a weapon of war serves a strategic function and acts as an integral tool for achieving military objectives".[261]

In an interview in The Nation Magazine, Margot Wallström, the former UN special Representative of the Secretary-General describes sexual abuse as "a weapon of war not only targeting women and girls but also men and boys as planned and systematic, designed to control the territory to install fear by terrorizing the population."[262] When evaluating the widespread instances of sexual

[259] UN Women, UN Action Against Sexual Violence in Conflict, UN Action Annual Report, Office of special representative of UN secretary general (2021).
[260] Dr. Eleanor O'Gorman, *Review on UN Action Against Sexual Violence in Conflict*, (2013), Cambridge UK.
[261] Human Rights Watch, NCJRS Virtual Library, (2003), NCJ no. 199392. https://www.ojp.gov/ncjrs/virtual-library/abstracts/human-rights-watch-world-report-2003
[262] Crossette Barbara, A New UN Voice calls for Criminalizing Conflict Rape, The Nation (Sept. 10, 2010), https://www.thenation.com/article/archive/new-un-voice-calls-criminalizing-conflict-rape/

violence in the Democratic Republic of Congo, Wallström added in her statement that, the atrocities that are committed daily against women and children will leave a devastating imprint on the Congo for years in the future. Sexual violation is the only tactic of war that will have consequences spilling over the peace over the years. Children accustomed to rape and violence grow up with that trauma and accept such behavior, which is enough to shatter the community values for future generations.[263]

The academic research and literature outline the perception of the strategic effect of sexual violence as a weapon of war in two dimensions, as it reaffirms militaristic masculinity and secondly, attacks the ethnic, religious, or political identity by victimizing the identity the women are seen to embody.[264] With regards to achieving the political purpose, wartime rape is described as a martial weapon in the context of different armed conflicts.[265] Political purposes can also achieved through sexual violence in various aspects, first, it encourages ethnic cleansing by making it more attractive to escape; second, it demoralizes the adversary; third, it conveys a desire to disintegrate society; fourth, it causes trauma and helps the other side inflict psychological harm; fifth, it provides psychological advantages to the offenders; and sixth, it strikes at a group that has great symbolic significance, delivering a blow against the enemy.

While rape is the most overt manifestation of sexual violence, it is not the only one, as other forms of sexual violence can also contribute to genocidal actions by systematically targeting the social, cultural, and biological continuity of the affected group. Soldiers forcefully impregnating women is a tactic of controlling a nation via the blood chain. On the other hand, inflicting damage on men's and women's reproductive organs through torture will prevent the victims from bearing children, thus possibly stunting the growth of the entire nation. Without a doubt, evidence of the widespread and strategic aspects of sexual violence in Rwanda and Bosnia-Herzegovina in rape camps has been well established in both international tribunals and excellent academic and policy research. However, the empirical evidence used to support the notion that rape is strategic is frequently its widespread occurrence. The apparent logic is that the occurrence of mass rapes must

[263] Crossette Barbara, supra note 36

[264] Maria Eriksson & Maria Stern, Sexual Violence as a Weapon of War? Perception, Prescriptions, Problems in the Congo and Beyond, The Nordic Africa Institute, 2013, ISBN: 978 1 78032 164 6

[265] L. Fiske and R. Shakal, Ending Rape in War: How Far Have We come? *Cosmopolitan Civil Society Journal*, (2014), Vol 6, No. 3, ISSN: 1837-5391.

indicate that they are systematic and strategic that is deliberate and planned to achieve military objectives not an opportunistic act of violence.

5.6.1. Review on Sexual Violence in Recent Atrocities

In the first twenty years of this 21st century, fifty-four countries have been involved in armed conflict and most of those continue today. Around sixty states and a hundred armed groups were actively involved in war in 2020.[266] Since 2003, wars in Muslim-majority countries started because of Islamist revolutionary movements- like Al Qaeda, or in response to authoritarian Muslim governments like Iraq, Syria, and Sudan, Muslims also resisted oppressive non-Muslim governments in Palestine, Myanmar, and Thailand.

In this section of the article, some relevant belligerent situations where rape and sexual violence are or were used in a systematic and tactical way will be approached. By examining these case studies, this article aims to highlight the unique and shared dimensions of sexual violence in different conflict zones, explore the underlying motives of perpetrators, and assess the international responses to these crimes.

5.6.1.1. Sudan

The scale and severity of sexual abuse in the Darfur region have shocked the globe. The Janjaweed militia and Sudanese government forces have committed the majority of sexual violence, although other armed organizations have also engaged in it. Sexual violence occurs primarily during attacks on villages by Janjaweed forces, which rape women and girls as they go from house to house, during flights, or at roadblocks and checkpoints.[267] Women and girls have been kidnapped, sexually assaulted, and coerced into becoming rebel wives, helping to plunder communities, or performing subsistence work by the Janjaweed militia of Arabs active in Sudan.[268] After raping their victims, some militia have mutilated their female genitalia, and rape victims who became pregnant have been imprisoned and fined for being unmarried. Additionally, both inside and outside of camps, there has been a rise in sexual abuse against internally displaced people and

[266] ICRC annual report 2020, https://www.icrc.org/en/document/annual-report-2020
[267] Bastick, Grimm, Kunz, Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector, Geneva Center for the Democratic Control of Armed Force, p. 63, (2007), ISBN: 978-92-9222-0594-4.
[268] U.S. Department of State, Documenting Atrocities in Darfur; Amnesty International, issue 10, (September 2004).

refugees.[269] Surprisingly, most of the sexual violence occurred in the ceasefire situation in Sudan as a silenced war tactic or strategy.

5.6.1.2. Afghanistan

Afghanistan's tumultuous history, marked by civil wars, authoritarian regimes, and foreign invasions, has resulted in widespread and systematic human rights violations, including acts recognized as international crimes. This legacy has left millions as victims and inflicted deep societal scars. In 1996, the Taliban, a group of Islamic scholars adhering to a stringent and fundamentalist interpretation of Islam, took control of the country. Their decrees severely curtailed women's rights, regulating nearly every aspect of their lives, including their movement, behavior, and attire. The grave circumstances confronting Afghan women were used as justification for the U.S. military invasion in 2001. Following the events of September 11, the situation deteriorated further when the Taliban refused to surrender Osama bin Laden, the leader of Al-Qaeda, for prosecution. This refusal allowed the U.S. to frame its military actions as part of a broader "war on terror." However, harassment, violence, and extreme repression against women, particularly those living outside Kabul, continue to persist.[270]

In 1978, the Soviet Union occupied Afghanistan under the pretense of friendship and internationalism, leading to the emergence of sexual violence as a significant issue in the country. During the Soviet-backed regime, sexual torture was utilized as a strategy to humiliate and demoralize countless male and female detainees. Additionally, numerous incidents of rape by Soviet soldiers against women in rural areas were reported. The rise of the Mujahideen during the civil war further intensified the situation. Rape, gang rape, and other sexual assault also continued in the time of the Taliban against the Tajik and Hazara ethnic groups.[271]

In 2020, the United Nations Assistance Mission in Afghanistan recorded 271 instances of sexual and gender-based violence, with 18 of these identified as conflict-related sexual violence, affecting

[269] Ibid

[270] Ayub Fatima, Kouvo and Sooka, Addressing Gender Specific Violation in Afghanistan, International Center for Transitional Justice, (2009), www.ictj.org.

[271] POSH at Work, "Sexual Harassment, Taliban & Afghanistan: An Analysis", 27 September, 2021, https://poshatwork.com/sexual-harassment-taliban-afghanistan-an-analysis/

nine boys, five women, and four girls. Importantly, incidents of conflict-related sexual violence against three girls were linked to members of the Taliban.[272]

5.6.1.3. Myanmar

In the months following Myanmar's independence from Britain in 1948, civil war erupted. Since then, conflicts between the military government and various ethnic insurgency groups have persisted. Government forces have conducted large-scale anti-insurgency campaigns, targeting civilians through looting, the destruction of homes and property, forced relocations under military surveillance, and acts of torture, extrajudicial killings, and sexual violence.[273] In 2017, the military committed ethnic cleansing against the Rohingya Muslim minority in Rakhayin state, which included widespread sexual violence.

Systematic sexual violence by the military, police and border guards are utilized as a weapon of war. Acts of sexual violence often perpetrated or ordered by military commanders who were acting with total impunity. Different ethnic groups report similar stories of sexual violence, including rape and gang rape, sexual slavery, forced marriage, forced pregnancy, genital penetration with knives and other objects, and mutilation of breasts and genitals were repeatedly perpetrated in interrogation centers and other formal detention settings against women, men, and LGBTQ+ community members, as well as in villages during military raids.[274]

5.6.1.4. Ukraine

Since the beginning of its aggression toward Ukraine in 2014, the Kremlin has committed actions widely recognized as international crimes, including acts of sexual violence. Following the full-scale invasion in 2022, the prevalence and severity of sexual violence perpetrated by Russia have increased significantly. Although this is a disturbing subject, the documented crimes include a range of atrocities such as rape, gang rape, sexual slavery, physical assault, mutilation of genitalia, castration, threats of rape, and coercion of family members to witness the abuse of their loved ones.[275]

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[272] United Nations Assistance Mission in Afghanistan (UNAMA), Afghanistan Protection of Civilians in Armed Conflict: Annual Report (2020) (Executive Summery).
[273] Women's League of Burma, "System of Impunity: Nationwide patterns of sexual violence by the military regime's army and authorities in Burma", WLB, (2004) https://burmacampaign.org.uk/media/SYSTEM_OF_IMPUNITY.pdf
[274] Dr. Eleanor O'Gorman, supra note 34, p. 91-92.
[275] K. Busol, Russia's Weaponising Sexual Violence and Ukraine's Response, Reveals a Grim War of Values, (2024), https://www.theguardian.com/commentisfree/2024/mar/25/russia-weaponising-sexual-violence-ukraine-values

According to the UN Commission of Inquiry on Ukraine, the Russian military committed sexual abuse "at gunpoint, with extreme brutality," including torture and summary executions.[276] Victims range in age from four to eighty years old and include both boys and girls, men and women. Civilian women and girls are primarily targeted in the occupation. Victims in custody include both civilians and prisoners of war, the majority of whom are men faced genital cutting or mutilation, forced nudity, and other forms of sexual torture. The offenders do not spare pregnant women, some of whom have miscarried or are afraid that their newborns will be deported to Russia. The state-sanctioned attacks on LGBTQ+ individuals are exacerbated by not only Russia's severe societal homophobia but also marginalizing and endangering this community.[277] Such sexual violence might be considered a crime against humanity, a war crime, or a flagrant violation of human rights.[278] Additionally, it may reflect Russia's intention to commit genocide against Ukrainians as a national group or constitute a component of genocidal activities.[279]

According to the United Nations Human Rights Monitoring Mission in Ukraine a total of 376 cases of sexual violence have been documented during Russia's full-scale war against Ukraine. The figure includes 262 men, most of whom were tortured in detention on occupied territories or in Russia, more than one hundred women, as well as children- ten girls and two boys, according to the report.[280]

5.6.1.5. Palestine

Human rights abuses have been committed by both sides since January 2006, with violence in Gaza fueled by the power struggle between Fatah and Hamas, including extrajudicial killings, civilian deaths, and abusive treatment of detainees. Recent incidents from October 2023 to August 2024 during the escalation of the Gaza conflict have reported cases of sexual violence against Palestinian women by Israeli troops during house searches, as well as by Israeli police officers at

[276] United Nations, Ukraine, UN Commission of Inquiry on Ukraine Finds Continued Systematic and Widespread Use of Torture and Indiscriminate Attacks Harming Civilians, Press Release, 25 September 2023, https://www.ohchr.org/en/press-releases/2023/09/un-commission-inquiry-ukraine-finds-continued-systematic-and-widespread-use

[277] Human Rights Watch, Russia: Supreme Court Bans LGBT Movement as Extremist, 30 November 2023, https://www.hrw.org/news/2023/11/30/russia-supreme-court-bans-lgbt-movement-extremist

[278] K. Busol, supra note 49

[279] K. Busol, supra note 49

[280] Denisova, Kateryna, "UN has recorded 376 sexual violence cases related to Russian War against Ukraine", The Kyiv Independent, Dec 10, 2024. https://kyivindependent.com/un-records-over-370-sexual-violence-cases-related-to-russian-war-against-ukraine/

checkpoints in Hebron. There have also been incidents of sexual harassment and threats to both women and men in detention, involving invasive body searches, forced nudity, and threats of sexual violence.[281] In February 2025, Palestinian doctors both male and female detained by Israeli forces reported severe abuse including beatings and other physical torture.[282] Many cases of the killing of girls and women were reported against their families after discovering that they had been raped or had become pregnant following the rape.[283] The reasons for less reporting of sexual violence in the Palestinian war are mostly stigmatization of survivors discriminatory laws and the high risk of honor killings.[284]

The United Nations report of March 2024 found clear and convincing information that the hostages taken on 7th October 2023 were subjected to rape and sexually tortured by Hamas and other extremists in Gaza.[285] Another report by the UN commission reported that the Israeli Security Forces employed sexual and gender-based violence, including forced public stripping, sexual harassment, and assaults against Palestinian women and children as a method of war explicitly ordered or encouraged by the Israeli leadership.[286] However, both reports faced strong denials from the accused parties. The International Criminal Court initiated its investigation on 20th December 2019 on the situation of Palestine to address the accountability and prevent the sexual violence in the region of Gaza, West Bank and East Jerusalem.[287] The office of prosecutor of the ICC filed charges in the situation of Palestine following its preliminary investigation on the grounds of commission of crimes against humanity of murder, extermination, torture, rape, and other forms of sexual violence. Additionally, the alleged crime of war crimes has been brought encompassing murder, cruel treatment, torture, taking hostages, outrages upon personal dignity, rape, and other

[281] United Nations, The Question of Palestine: Impact of Armed Conflict on Palestinian Women, UN Development Fund for Women (UNIFEM), (2002).
[282] Kelly, A. "Doctors in Detention", The Guardian, 25 Feb. 2025, http://www.theguardian.com
[283] Ayub Fatima, Kouvo and Sooka, supra note 44, p. 133
[284] Human Rights Watch, A question of Security: Violence against Palestinian Women and Girls, November 6, 2006, https://www.hrw.org/report/2006/11/06/question-security/violence-against-palestinian-women-and-girls
[285] United Nations, Reasonable Grounds to Believe Conflict-Related Sexual Violence in Israel During 7 October Attacks, SC/1521, 11 March 2024.
[286] United Nations, Rights Probe Alleges Sexual Violence Against Palestinians by Israeli Forces Used as 'Methods of War', The UN Office at Geneva, 13 March 2025, https://news.un.org/en/story/2025/03/1161081
[287] International Criminal Court, *"Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine"*, 3 March, 2021, https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine

forms of sexual violence.[288] In May 2024, the judges of Pre-Trial Chamber I found sufficient grounds to believe that crimes under the Rome Statute had been committed, thus issuing arrest warrants for the perpetrators. This recent action by the ICC sets a landmark precedent in the international community, demonstrating a strong commitment to addressing and prohibiting wartime rape and sexual violence.

5.7. Time to Re-Think Sexual and Non-Sexual Gender-Based Violence Crimes under the ICC Mandate

Although the International Criminal Court (ICC) has advanced the prosecution of sexual and gender-based crimes (SGBC), its jurisprudence reveals persistent ambiguity regarding the precise definitions and boundaries between sexual and gender-based violence.[289] While the *Elements of Crimes* refer to "an act of a sexual nature," no further interpretive guidance is provided, leading to inconsistent application across cases.[290] To ensure adequate prosecution, a gender-sensitive and functional understanding of what constitutes "sexual violence" is essential.

Several interpretive frameworks have been proposed. Alexander Schwarz defines sexual violence as acts that target a person's sexuality or violate their sexual autonomy.[291] This view aligns with the 1998 report by the UN Special Rapporteur on Contemporary Forms of Slavery, which includes both physical and psychological attacks aimed at sexual characteristics.[292] For instance, it cites forced nudity, genital mutilation, and coercive acts between victims.[293] Anne-Marie de Brouwer supports a broad definition that does not require physical contact, while Kai Ambos advocates for

[288] International Criminal Court, "Statement of ICC Prosecutor Karim A. A. Khan on the Issuance of Arrest Warrant in the Situation in State of Palestine", 21 November 2024, https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-issuance-arrest-warrants-situation-state-palestine

[289] Valerie Oosterveld, "Gender-Sensitive Justice and the ICC," *International Feminist Journal of Politics* 10, no. 4 (2008): 603–624

[290] ICC, *Elements of Crimes*, Article 7(1)(g)

[291] Alexander Schwarz, "Gender-Based Crimes at the ICC: Legitimacy and Challenges," in *The International Criminal Court in Turbulent Times*, ed. L. van den Herik and C. Stahn (The Hague: Brill, 2020), 145–146

[292] UN Commission on Human Rights, *Report of the Special Rapporteur on Contemporary Forms of Slavery*, E/CN.4/Sub.2/1998/13, June 1998, para. 26.

[293] Ibid., paras. 27–30.

a narrower scope requiring some physical act.[294] Rosemary Grey emphasizes the value of culturally sensitive, locally grounded interpretations.[295]

A notable recent initiative is the Hague Principles on Sexual Violence, developed by the Women's Initiatives for Gender Justice through extensive consultations with survivors and experts. These principles adopt a survivor-centric, inclusive approach, defining sexual violence as conduct that affects sexual or reproductive autonomy or identity—including acts motivated by gender, reproductive coercion, and sexualized language.[296] However, this broad framework risks conflating sexual and gender-based violence.[297] While reproductive violence—such as forced pregnancy or sterilization—does not always infringe on sexual autonomy, the ICC Statute currently classifies these as sexual crimes, suggesting the need for a broader understanding.[298] Still, any expansion must respect the principle of legality and remain practical in judicial proceedings.[299]

A balanced approach may define sexual violence under the ICC Statute as conduct that violates an individual's sexual or reproductive autonomy—that is, their freedom to decide whether, how, and under what conditions to engage in sexual activity or reproduction.[300] This includes acts committed through sexualized means, those affecting reproductive or sexual organs, or those targeting individuals because of those attributes

5.8. Conclusion

The International Criminal Court's (ICC) treatment of sexual violence in armed conflicts underscores both significant advancements and enduring challenges within international criminal justice. The Rome Statute's explicit recognition of sexual and gender-based crimes as severe international offenses has laid a foundational framework for addressing these atrocities. However, the ICC's practice reveals a persistent gap between normative commitments and operational

[294] Anne-Marie de Brouwer, *Supranational Criminal Prosecution of Sexual Violence* (Cambridge: Intersentia, 2005), 75; Kai Ambos, *Treatise on International Criminal Law*, Vol. 1 (Oxford: Oxford University Press, 2013), 243–244.
[295] Rosemary Grey, *Gender, Sexuality and the ICC: Legacies and Futures* (Cambridge: Cambridge University Press, 2022), 118
[296] Women's Initiatives for Gender Justice, *The Hague Principles on Sexual Violence*, 2021.
[297] Ibid., 16–20.
[298] Rome Statute of the International Criminal Court, Article 7(1)(g)–4 and –5.
[299] Ambos, *Treatise on International Criminal Law*, 245
[300] The Hague Principles, 18.

realities. Despite groundbreaking convictions such as those in the Ongwen and Ntaganda cases, the limited number of successful prosecutions and the protracted nature of proceedings highlight systemic hurdles, including evidentiary barriers, cultural sensitivities, and institutional limitations.

Moreover, the ICC's prosecutorial approach often struggles to adequately address the intersectionality of gender, ethnicity, and identity in conflict-related sexual violence. The focus on narrowly defined charges risks overlooking the multifaceted and pervasive nature of these crimes, which are frequently wielded as strategies of war, tools of ethnic cleansing, and mechanisms for societal disintegration. The chapter has emphasized the critical need for gender-sensitive investigations, survivor-centered approaches, and a broader interpretation of sexual violence to advance justice and accountability.

As sexual violence continues to evolve as a weapon in modern-day armed conflicts, the ICC must recalibrate its practices to reflect the gravity and complexity of these crimes. This requires not only a refinement of legal frameworks but also a transformative shift in institutional priorities, ensuring that survivors' voices are heard and perpetrators are held to account. By addressing these persistent obstacles, the ICC has the potential to set a more robust precedent for combating sexual violence globally, fostering deterrence, rehabilitation, and the restoration of dignity for survivors and their communities.

Chapter 6

Reparatory Mechanism of ICC

6.1. Introduction

Any disaster, whether natural or man-made, creates mass destruction in the states affected. Natural disasters cannot be held responsible for the damage caused; in comparison, man-made damages and mass victimization are attributable to the perpetrator held accountable in the wake of the atrocities of World War II, the global community recognized the urgent need to establish new international norms to safeguard human rights and hold individuals accountable for the harm inflicted by their actions. As Justice Robert H. Jackson, the Chief Prosecutor for the United States, remarked in his opening address to the International Military Tribunal in Nuremberg regarding the alleged offenses, "Civilization cannot tolerate their being ignored because it cannot survive their being repeated."[301]

Following a general trend in national criminal justice systems, as well as in international human rights law, and further developing from the experiences of Nuremberg, Tokyo, the UN ad hoc tribunals and the International Criminal Court (ICC), the aim is now to integrate victims into the criminal proceedings. Activating and empowering those persons who have suffered most from the atrocities is nowadays one of the principal aims of the criminal process.

The relatively new system of victim participation at the ICC mechanism may be politically problematic under the legal framework of the Rome Statute. The problems are further intensified by the fact that a participation and compensation claim is open to registered victims only. Victim participation consists of the possibility of the victims exercising certain procedural rights during the judicial proceedings before the Court. These must be conducted in a manner that "is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial".[302] The compensation claim is a separate process against the convicted offender, in which the victim requests compensation for the damage suffered. Article 68 (3) RS in conjunction with Rule 85 of

[301] Jackson RH (1946) Opening statement for the prosecution of the major war criminals case. IMT Trial http://avalon.law.yale.edu/imt/11-21-45.asp.
[302] Olásolo (2008), p. 158; see ICC, Prosecutor v. Bemba, ICC-01/05-01/08-320, Fourth Decision on Victims' Participation (12 December 2008) paras. 87–94

the ICC Rules of Procedure and Evidence (RPE) defines those persons whom the Court might generally recognise as a "victim".

Considering the possible victimization of a large number of victims as a result of micro-criminal context of international criminal law, and also taking into account the increasing number of victims interested in participating in ICC proceedings, it is important to determine the particular crime that relates to the victims in order to be able to secure expeditious and objective criminal justice.

At the same time, the broad definition of a victim, provided for in the RPE, enables the participation of hundreds of people who have directly or indirectly been victimized due to the macro-criminal context of the acts of the accused. In some cases, hundreds of victims' applications are submitted.[303] So many victims exercising their procedural rights may lead to delays and protracted judicial proceedings which, in turn, could, from the accused's standpoint, undermine the principle of a fair trial in its classical perception.[304]

The victims' participation mechanism at the ICC provides a completely new system, one which had not been part of previous international tribunals that were responsible for prosecuting mass atrocities. This mechanism includes the active participation of the victims during both the truth-finding and the reparation processes. Neither the IMT, the ICTY nor the ICTR employed a similar mechanism during their procedures.

The codification of the new mechanism in the Rome Statute attracted a great deal of criticism amongst practitioners as well as from academics. As Van Den Wyngeart mentioned, it is supposedly a politically symbolic mechanism, however, on the other hand, victim participation offers judicial possibilities within the truth-finding procedure. Through this, the victims may also claim compensation to help them recover from the harm10 that was inflicted upon them. The participation of the victim in the justice process is predominantly motivated by the fact that the victims want to see justice being done (retributive justice) whilst, at the same time, being compensated for the harm they have suffered (restorative justice). this chapter is about the deep discussion on mechanism of ICC trial process and participation of victims in the court proceedings.

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[303] Christine Van den Wyngaert Hon., *Victims before International Criminal Courts: Some Views and Concerns of an ICC Trial Judge*, 44 Case W. Res. J. Int'l L. 475 (2011)

[304] Martin Kuijer, (2013) The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, *Human Rights Law Review*, Volume 13, Issue 4, Pages 777–780, https://doi.org/10.1093/hrlr/ngt036

For ensuring the justice to the victims how the Trust Fund works and in practical situation of TFV reparation implementation process also a point of discussion here. In this continuity this chapter will focus on different approaches of implementation of reparation and the first case of ICC declared reparation will come under the light of this chapter.

6.2. Legal Framework for Reparation at the ICC

The International Criminal Court (ICC), established by the Rome Statute in 1998, marked a watershed moment in international criminal justice by explicitly integrating victims' rights into its statutory framework.[305] Among these rights, the entitlement to reparation stands out as a critical component, representing a normative shift from a focus solely on the punishment of perpetrators to an approach that also seeks to redress the harm suffered by victims.[306] The ICC's legal framework for reparations provides the first instance of an international criminal tribunal with a comprehensive mandate to order reparations to victims, including those of sexual violence, thereby seeking to restore victims' dignity, promote justice, and contribute to long-term peace and reconciliation.

6.2.1. Statutory Basis for Reparation

The Rome Statute lays the foundational basis for reparations at the ICC. Article 75 is the primary provision addressing reparations, empowering the Court to establish principles relating to reparations and to order reparations against a convicted person.[307] Article 75(1) states:

"The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation..."[308] Article 75(2) further provides that the Court may make an order directly against a convicted person specifying appropriate reparations to victims or, where appropriate, order that reparations be made through the Trust Fund for Victims (TFV).[309]

[305] Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, UN Doc. A/CONF.183/9 (Rome Statute), Preamble
[306] Redress Trust, *Reparations before the International Criminal Court: Issues and Challenges*, 2011, p. 8
[307] Rome Statute, Art. 75(1).
[308] Ibid
[309] Rome Statute, Art. 75(2)

In addition to Article 75, Article 79 establishes the Trust Fund for Victims, further operationalizing reparations by creating an institutional mechanism through which reparations can be implemented.[310]

6.2.2. Operationalizing Reparation under Rules of Procedure and Evidence

The ICC's Rules of Procedure and Evidence (RPE) provide crucial procedural details complementing the Rome Statute's reparations framework. Rules 94 to 99 elaborate the process for victims to apply for reparations, for the Court to notify relevant parties, and for reparations orders to be implemented.[311]

Rule 94 stipulates that victims must submit applications in writing specifying the injury suffered, the type of reparation sought, and supporting evidence.[312] Rule 95 allows the Court to proceed on its own motion to issue reparations orders even without individual applications, particularly where collective reparations may be appropriate.

Rule 97 outlines the modalities of reparations, authorizing the Court to award reparations on an individualized basis, on a collective basis, or both.[313] Rule 98 governs the use of the Trust Fund for Victims when direct enforcement against the convicted person is impracticable. These procedural rules ensure reparations are integrated within the broader judicial process, balancing efficiency with victims' rights.

6.3. Trust Fund for Victims: Institutional Support for Reparation

Under the authorization of Rome Statute, the Trust Fund for Victims was created in 2002 by the Assembly of State Parties. The Article 79(2) of Rome Statute indicated that, the court may order money and other property collected through fines or forfeiture to be transferred by the order of the court to the Trust Fund in the name of restitution, compensation, or rehabilitation of the victims. In addition to that article Rule 98(5) of Rules of Procedure and Evidence says that other resources

[310] Rome Statute, Art. 79.
[311] International Criminal Court, *Rules of Procedure and Evidence*, ICC-ASP/1/3, Rules 94–99.
[312] Ibid Rule 94
[313] Ibid Rule 97

of the Trust fund may be used for the benefit of the victims.[314] In 2005, the sole regulation for the Trust Fund established the secretariat of the trust fund. According to regulation 47 of the trust fund ensures psychological and physical rehabilitation and any material support to the victims. In short, The mission of the trust fund is to provide empowerment, hope, and dignity to victims of war crimes, genocide, and crimes against humanity.[315] The TFV fulfills an international commitment to justice by supporting programs that address the harms caused by crimes under the ICC's jurisdiction, helping victims reintegrate into their communities with dignity and contribution. The Trust Fund for Victims supports victims and their families by collaborating with various community groups, experts, NGOs, governments, and UN agencies to create, execute, and finance initiatives that cater to the physical, material, and psychological needs of victims. The primary focus of the TFV is to empower local leadership, enabling victims to rebuild their lives and fostering their hope for the future.

Since 2009, the Trust fund has supported locally-based implementing partners that work directly with victims. The primary locations where TFV operates are three countries that have seen the longest and deadliest armed conflict: the Central African Republic, the Democratic Republic of Congo, and Northern Uganda.[316] These three countries have been made the focus of Trust Fund dedication and efforts because of the consistent concerns within the regions, as well as their cases having actually reached the reparations stage. On 16 May 2017, the Trust Fund Board decided to launch a new assistance program in a third ICC situation country, Côte d'Ivoire, to provide physical, psychological rehabilitation and material support for the benefit of victims of crimes under the ICC's jurisdiction.[317] To carry out the assistance the financing comes through fines and forfeitures of convicted person and huge part of funding comes from the donations of member states or voluntary contribution of individual donors.[318]

Where the court trials delivering the sense of justice, the trust can address the real needs of victims. However, TFV practice is limited under ICC jurisdiction and due to bureaucratic process the high standard of victim proof is required which often responsible to delay the in delivering the

[314] *Rome Statute of the International Criminal Court (last amended 2010)*, ISBN No. 92-9227-227-6, UN General Assembly, 17 July 1998.
[315] International Criminal Court (ICC), How the Court Works, https://www.icc-cpi.int/about/how-the-court-works
[316] The Trust Fund for Victims, official website. https://www.trustfundforvictims.org/
[317] Background Information, The Trust Fund for Victims, https://www.trustfundforvictims.org/sites/default/files/inline-files/TFV%20Background%20Information_1.pdf
[318] International Criminal Court, "Trust Fund for Victims" https://www.icc-cpi.int/

reparation. Even after going through high-standard proof of victimhood, it is often hard for ICC Trust Fund to identify beneficiaries. The victims qualifying for the reparation necessarily be individual or communities who are most directly affected from the crime happened. The qualifying and the eliminating process is incredibly time consuming which in a long run, detriment to the well-being of victims and make them wait for years to receive a settlement.

The entire administrative body known as the Secretariat governs the Trust Fund and consists of about 15-20 people. The catch is that they are not integrated into the structure of the ICC, and court judges have no authority to direct the administration on what to do with the money. Because the Trust Fund is financed primarily through voluntary contributions, judges may order reparations to be implemented, but if there are no funds in the account, nothing can be done.[319] This structure of how the Trust Fund operates demonstrates that while it is technically part of the ICC system, it does not operate as part of the ICC central structure.[320] In 2019 a panel of independent experts was established and in 2020 these individuals conducted an audit of the ICC. In their review of the Trust Fund, Phillip Ambach, Chief of the Victims Participation and Reparations Section in the Registry of the International Criminal Court (ICC) notes, "that the panel of experts said the Trust Fund needs to be incorporated into the registry because it can no longer be that the Trust Fund sits outside the control mechanisms of the court, and… runs in idle, and can reinvent itself, pick and choose, and thereby potentially create inefficiencies.[321]

For the victims who have been traumatized by sexual violence, it is a delicate matter to reach out and communicate with them because of the extreme anonymity and confidentiality that must be exercised in order to protect the victim's identity from being revealed in the community.[322] assessing the reparation for these victims based on the circumstances and limitations is a big challenge. TFV must take into consideration the different global perspectives also country's culture and societal norms. For example, sexual violence victims of Bosnian war and sexual assault happened in Timbuktu will not be the same. The societal confines, culture, and way of life need to take into consideration while assessing reparation.

[319] Dutton, Anne and Ní Aoláin, Fionnuala, "Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate," Chicago Journal of International Law: Vol. 19, 2019.
[320] Peschke, Katharina. The Role and Mandates of the ICC Trust Fund for Victims. Doi. 10.1007/978-90-6704-912-2_19. (2013). P. 317-327
[321] Ambach Phillip, supra note 20
[322] The Trust Fund for Victims, official website. https://www.trustfundforvictims.org/

6.4. Qualifying as a Victims

As per Rules 85 and 86 of the Rules and Procedure and Evidence, victims can be individuals as well as organizations or institutions that have experienced direct damage to any property dedicated to religion, education, art, science, or charitable causes, including historic monuments, hospitals, and other humanitarian sites and objects.

In the case of sexual or gender-based violence in the armed conflict victims are mostly girls or women but in some cases they also can be men. During the armed conflict rape and other forms of sexual violence are prohibited under numerous international treaties including Geneva Convention 1949 and their Additional Protocol 1977 but none of them have any precise definition of rape or sexual violence. However, The Statute of the International Criminal Court (ICC) contains its own definition under the elements of crimes of ICC. The Elements of Crimes of ICC Statute adopted in 2002 and revised 2010 includes every forms of sexual and gender-based violence under the subsection of war crime. Using rape as weapon of war will be considered as war crime in international criminal court after revision of the elements of crime in 2010. Article 8(2)(b)(xxii) 1 to 6 of the Elements of Crimes of ICC describes details about which acts will be considered as sexual or gender-based violence for prosecuting under war crimes in armed conflicts.

The 'Elements of Crimes' of the ICC Statute, adopted in 2002 and revised in 2010, define rape as "invasion" or "penetration" that is "committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment." This definition of rape is based on coercion rather than on the absence of consent.[323] In addition to that, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence and persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or other grounds are universally recognized as crime under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.[324]

[323] ICRC Advisory Service on International Humanitarian Law, Prevention and Criminal Repression of Rape and Other forms of Sexual Violence during Armed Conflicts, http://www.icrc.org

[324] International Criminal Court (ICC), *Elements of Crimes*, ISBN No. 92-9227-232-2, 2011, https://www.refworld.org/reference/research/icc/2011/en/87658

Individuals who have experienced physical or mental harm, either directly or indirectly, due to one of the crimes specified in the confirmation of charges are encouraged to apply for participation in the court. Once they submit their application, the Registry will forward it to the chamber, which will evaluate the application and grant participation based on the Registry's analysis.[325] However, it needs to be noted that, the application form through VPRS to is only the purpose of analyzing participation and for reparation after conviction not to provide evidence. This complex process sometimes seems to be reluctant for victims to get recognized and a struggle to get their rights and damages.

For instance, the ICC has approached handling the large number of victims that come forward by having them collectively represented before the court. Victims are grouped by the court, excluding some, and categorizing others as a priority. It is because there are two type of victims groups; direct victims who are suffered directly from the brutalities and indirect victims are those who had lost their loved ones, also can participate or spoke in the court proceeding and can receive reparations.

6.5. Approaches to the Implementation of Reparations

Pursuant to Rule 97(1), the Court may award reparations on a individualized or collective basis; or a combination of them both. Several different approaches on how to distribute reparation awards were presented prior to the Court's decision. The prosecution suggested that the Chamber should award reparations both collectively and individually.[326] It was contented that collective reparations could provide justice to the wider class of victims and affected communities.[327] Collective reparations were considered the best way, given the limited resources, to provide accessible reparations to the community as a whole.[328] Regarding individual reparations, the prosecution highlighted the sense of justice that victims may feel if granted individual awards.[329] Notwithstanding these remarks, it would be an even further sense of justice if Lubanga himself would compensate the victims of crimes for which he was convicted. The prosecution submitted

[325] International Criminal Court (ICC), How the Court Works, https://www.icc-cpi.int/about/how-the-court-works
[326] International Criminal Court, TFV, Observations on Reparations in Response to the Scheduling Order of 14 March 2012, ICC-01/04-01/06-2872, 25 April 2012 (Lubanga Observations on reparations), para. 71.
[327] Ibid., para. 76
[328] Ibid., para. 58
[329] International Criminal Court, TFV, supra note 326, para. 46

this fact, but due to Lubanga's limited resources he would be unable to compensate for all the harm that was inflicted on victims. Hence, it would be unnecessary to raise victims' expectations.[330]

Regarding collective reparations, the defence observed that there are two possible approaches on how to award victims this type of reparation. There is firstly a possibility to award a collective compensation, which remedies the harm that particular individuals have suffered, but on a collective basis. Secondly, collective reparations can be awarded as compensation to a community, without identifying individual members. The defence submitted that if collective reparations are granted, the beneficiaries must be individually identified. It was argued that ordering reparations through the TFV would risk losing any link to the present case.[331] By referring to assistance programmes already run by the TFV, the defence further contented that victims who already had received some form of compensation should not be eligible to receive any further awards.[332]

ICTJ argued that direct victims may be rewarded individual reparations and that the Chamber consequently should prioritise these victims.[333] The legal representatives for one group of victims, correspondingly, submitted that the victims who were authorized to partake in the reparations proceedings should be awarded with individual reparations, taking into account the specific stigma and harm suffered by the victims.[334] The United Nations Children's Fund (UNICEF) points out the risk of individual reparations leading to stigmatisation of the beneficiaries, but notes at the same time that individual awards could have significant utility for marginalized victims.[335] Collective reparations could furthermore risk that the beneficiaries only would represent one side of the ethnic conflict.[336]

As expressed in the TFV's Observations, the Fund advised against an individualistic approach to reparations, as those reparations would depend on a successful application and would not be representative of the thousands of likely victims in the area.[337] The best way of using the limited funds would be collective reparation measures, as these do not require a timeconsuming and costly process of verification. As different ethnic groups were involved in the conflict, the best way to

[330] International Criminal Court, TFV, supra note 326, para. 131
[331] Ibid., para. 59
[332] Ibid., para. 77
[333] Ibid., para. 50
[334] International Criminal Court, TFV, supra note 314, para. 42
[335] Ibid., para. 49
[336] Ibid., para. 53
[337] International Criminal Court, TFV, supra note 326, para. 44

approach reparation would be to give the term collective reparations a wide interpretation.[338] The NGO's shared the view of the TFV Observations, that individual reparations could be perceived as discriminatory if the international community were to "reward" those who themselves committed horrible acts of violence.[339] Noting that collective reparations do not have to presume collective harm, the NGO's argue that collective reparations would be the best way to build a reconciled society.[340]

The Office of the Public Counsel for Victims (OPCV), recommended a combination of both individual and collective reparations. Given the factors of Lubangas declared indigence and the TFV's limited resources, there is a need for a deadline to be set for individual reparation claims in order not to delay the proceedings. They suggest that compensation should be awarded the former child soldiers that previously had submitted individual application forms.[341] Bearing in mind the risk of impacting any wider reparations programme by granting individual reparations rewards, Womens's Initiatives additionally highlighted the benefits of combining both individual and collective reparations as it is of importance to recognize those who participated in the trial.[342] Some of the victims additionally suggested that those victims who had already benefitted from NGO programmes should not receive any further reparations from the ICC.[343]

Evidently, there are several benefits of awarding collective reparations. The limited financial resources reserved for reparation awards will be able to help more victims if awarded collectively. By applying reparations equally to a group, there risk of creating a hierarchy of suffering between victims will be very limited. Collective reparations could furthermore benefit the vast majority of victims who does not receive victim status under Rule 85 and become part of a case before the Court. It should be noted that collective reparations awarded to the community as a whole could compromise the right to reparation of the individual. Such reparations may furthermore risk marginalizing the needs of certain vulnerable groups in affected communities; groups such as women and children may have different needs than other affected victims. Non-repaired physical or psychological injuries may e.g. prevent individual victims from earning a living, leaving them

[338] International Criminal Court, TFV, supra note 326, para. 55
[339] Ibid., para. 48
[340] Ibid., para. 63
[341] Ibid., para. 43
[342] International Criminal Court, TFV, supra note 314, para. 47
[343] Ibid., para. 68

to a life in poverty. If individual reparations are to be excluded, it may risk that the harm caused by international crimes remains.

6.6. The First Reparations Decision of the ICC

The very first conviction in the case of the Prosecutor v. Thomas Lubanga Dyilo, was consequently followed by the first reparations decision by the Court.[344] In its decision, and in accordance with Article 75(1) of the Rome Statute, the Trial Chamber established certain principles relating to reparations and their implementation.[345]

When establishing principles of reparations the Court is obliged to treat all victims fairly and equally, not limiting reparations only to those who participated in the trial or applied for reparations awards.[346] All victims have to be taken into account, especially children, elderly, victims with disabilities and those who have suffered gender-based violence.[347] Reparations are to be granted without differentiating between grounds including, inter alia, gender, age, race, religion, wealth or social origin.[348] They should also address underlying injustices and avoid further stigmatisation.[349] In its introductory remarks, the Court noted that reparations are to be provided in a broad and flexible manner, granting the widest possible remedies for victims. When addressing the harm caused by crimes of which Lubanga has been convicted, it is important to use great deal of flexibility.[350] In this case, the Court addressed the following issues with the objective of creating reparation principles; non-stigmatisation, beneficiaries of reparations, accessibility and consultation with victims, victims of sexual violence, child victims, scope of reparations, modalities of reparations, proportional and adequate reparations, causation, standard and burden of proof, rights of the defence, states and other stakeholders and the publicity of the principles.[351]

Regarding the issue of priority, the Court acknowledged the fact that some victims may be in a particularly vulnerable situation and require immediate medical or trauma care. To be able to

[344] International Criminal Court, TFV, supra note 314, para. 20
[345] Ibid., para. 181
[346] Ibid., para. 187
[347] International Criminal Court, Rome Statute; Article 68, Rule 86 of the Rules of Procedure and Evidence.
[348] Article 21(3) of the Rome Statute
[349] Lubanga reparations decision, para. 192.
[350] Ibid., para. 180
[351] ICC-ASP/13/7, Report of the Court and the Trust Fund for Victims on the rules to be observed for the payment of reparations, 23 May 2014, Annex

guarantee equal and safe access to reparations, the use of affirmative action could be imperative.[352] As to the uncertainty of the number of victims is in this specific case, the Court stated that the reparations should have a collective approach to ensure that they reach the currently unidentified victims.[353] As the TFV recommended, the Court furthermore agreed with the fact that the collective approach would be to prefer with regards to the very costly and resource intensive process of granting individual awards.[354]

As Lubanga has been declared indigent and no monetary resources have been identified for the purpose of reparations, the Court declared that his participation in the reparations purely would be symbolic.[355] As regards to reparations being made through the TFV, the Court ascertains that in the case of a convicted person being declared indigent, the reparations award is not limited to the seized assets deposited with the TFV; the award can be supported by the Fund's own resources in accordance with Rule 98(5) and Regulation 56. The Court draws on the language of Regulation 56 and acknowledges that it imposes an obligation on the TFV to complement the resources collected for reparations awards under Rule 98(3) and (4).[356] In accordance with the Decision on the Notification of the Board of Directors of the Trust Fund for Victims in accordance with Regulation 50 of the Regulations of the Trust Fund, the Court reaffirmed that the main responsibility of the TFV is to ensure that sufficient fund are available to complement any potential reparation orders under Article 75 of the Rome Statute.[357]

The Court endorsed a five-step implementation plan through which victims will obtain reparations.[358]The first step consists of identifying localities, which ought to be involved in the reparations process and secondly, start a consultation process in the identified localities. During this consultation process and as a third step, a team of experts should assess the harm suffered by victims. As a fourth step, public debates should be carried out in each identified locality in order to address victim expectation and to explain the reparations principles and procedures. The final step consists of collecting proposals for collective reparations measures that are to be carried out

[352] Lubanga reparations decision, para. 200
[353] Ibid., para. 219
[354] Ibid., para. 274
[355] Ibid., para. 269
[356] Ibid., para. 271
[357] Ibid., para. 272
[358] Ibid., para. 281

in each locality.[359] It was also stated that the TFV, in this given case, should undertake the assessment of harm, the work of identifying the victims and beneficiaries as well as taking over the application process.[360] Lastly, the Chamber decided not to examine any individual application forms for reparation awards, the ones already received should be transmitted to the TFV. The Court should furthermore be able to exercise any necessary monitoring functions of the implementation process; otherwise it can decline the TFV to implement future reparation orders that are to be based on voluntary contributions.[361]

Although the Trial Chamber established certain abovementioned principles relating to reparations and the implementations of such reparations, it was clarified that they only were limited to the present case. These principles are not intended to affect victims' rights to reparation in other cases.[362] From a victim's perspective, it is unfortunate that Court-wide reparation principles were not agreed upon in advance of this decision. It could be argued that the Court has failed to ensure victims both certainty and predictability by making reparation principles case-based. The Lubanga reparations decision raises the importance of how to manage victims' expectations. If Court-wide principles were to be provided in advance, victims would then be granted a higher degree of certainty. Victims should be allowed to expect that reparations should reflect and remedy the harm they have suffered. It could also appear arbitrary that the full responsibility of implementing awards was left in the hands of an independent body of the Court.

6.6.1. Decision of Appeal Chamber

Both the legal representatives of victims and the OPCV acting on behalf of the victims as well as the Defence chose to appeal the reparations decision. Grounds of appeal included the decision to dismiss the individual applications for reparations without considering them on their merits. The Court would then fail in its obligations to give full effect to victims' right to reparations as well as the victims who had submitted their applications would de facto be deprived of their right to have their applications decided upon in accordance with Article 75(1) of the Rome Statute.[363] The appeal grounds also included the fact that the Court erred in law when it decided to delegate

[359] Lubanga reparations decision., para. 282
[360] Ibid., para. 283-284
[361] Ibid., para. 289
[362] Ibid., para. 181
[363] ICC, Office of Public Counsel for Victims, team of legal representatives, Appeal against Trial Chamber I's Decision establishing the principles and procedures to be applied to reparations of 7 August 2012, ICC-01/04-01/06-2909, 24 August 2012 (OPCV Appeals), paras. 17–19;

reparations responsibilities to a non-judicial entity such as the TFV. It was stated that decisions regarding responsibilities for reparations should be fulfilled within a strictly judicial framework.[364] The Court further erred in law when it decided that the convicted person's only contribution to the reparation process would be a possible voluntary apology.[365] The Defence appealed against reparations decision as a whole.[366]

Prior to the Court actually considering any actual grounds of appeal, there was a need to resolve a large number of procedural issues. These first and foremost included whether the decision was an appealable reparations decision under Article 75 of the Rome Statute, or if the decision solely was a procedural decision setting out the guidelines for determining reparations. On 14 December 2012, it was decided by the Appeals Chamber that the decision actually was a reparations decision and the victims were given a legal standing in the appeals.[367]

The grounds of appeal could be considered rather expected as the Trial Chamber did in fact recognize the possibility of awarding both individual and collective reparations concurrently in the Lubanga reparation decision. It therefore appears rather contradictory that the Chamber decided to dismiss any individual awards in favour of collective reparations. Factors such as costly and resource intensive processes of granting individual awards, the possibility of community based reparations reaching a larger amount of affected victims and the risk of causing secondary victimisation and stigmatisation to former child soldiers, contributed to the decision of excluding individual reparation awards. It appears as the Court is trying to maximize the scope of potential beneficiaries by deciding not to examine any individual application forms for reparation awards. From a reparative justice perspective, the preferable approach would be to grant both individual and collective reparations. On the one hand, it would not be possible for victims to receive any acknowledgement of the specific harm they have suffered, if the possibility to receive individual awards would be excluded. This could consequently risk losing the very notion of reparation, the acknowledgement of harm. On the other hand, allowing a larger number of victims to have their

[364] ICC, Office of Public Counsel for Victims, supra note 363, paras. 25–26
[365] Ibid, para. 15
[366] ICC-01/04-01/06-2917, Defence team for Mr Thomas Lubanga Dyilo, Appeal of the Defence for Mr Thomas Lubanga against Trial Chamber I's Decision establishing the principles and procedures to be applied to reparation rendered on 7 August 2012, 6 September 2012, para. 6.
[367] ICC, Appeal Chamber, Decision on the admissibility of the appeals against Trial Chamber I's "Decision establishing the principles and procedures to be applied to reparations" and directions on the further conduct of proceedings, ICC-01/04-01/06-2953, 14 December 2012, para. 11.

dignity restored and the harm they have suffered repaired could provide victims with a more fair perception of the overall justice mechanism. From a reparative justice perspective, it appears to be favourable if collective reparations are designed to remedy the harm that particular individuals have suffered, but on a collective basis.

Lubanga had furthermore, on 3 October 2012, decided to appeal both his sentence and conviction, asking for an acquittal and annulment or a reduction of his 14-year sentence.[368] He argued that the Prosecution had failed to investigate alleged factual errors in relation to the age of the FPLC enlisted individuals.[369] This consequently resulted in the Appeals Chamber deciding to put the all of the abovementioned reparations appeals on hold until Lubanga's conviction and sentence appeal had been resolved.[370]

It was not until 1 December 2014 that Lubanga's conviction appeal resulted in the Court's very first appeals verdict. Judge Erkki Kourula and a panel of five judges rejected all of Lubanga's grounds of appeal in a majority decision. The total sentence of 14 years was accordingly confirmed. Kourula stated there was no reason to doubt the original verdict.[371] The TFV's reparations mandate have, due to the abovementioned circumstances, remained inactive. The judgement of 1 December 2014 does however "[…] bring victims in the case closer to justice and to receiving reparation for the harm they suffered, after almost eight years of proceedings." [372]

6.7. Conclusion

There are benefits and some drawbacks as well to the Trust Fund. Even if it is a vital tool for victims of sexual assault to obtain justice and heal, it is still not a complete solution to their pressing demands. This article described and analyzed the current situation of reparation for survivors and victims in relation with Trust Fund of International Criminal Court. In this regard, assessing the

[368] ICC-01/04-01/06-2934, AC, Defence team for Mr Thomas Lubanga Dyilo, Notice of Appeal lodged by the Defence for Mr Thomas Lubanga against Trial Chamber I's Judgment pursuant to Article 74 of the Statute of 14 March 2012.
[369] ICC-01/04-01/06-2949, AC, Defence Team for Mr Thomas Lubanga Dyilo, Mr Thomas Lubanga's appellate brief against Trial Chamber I's 10 July 2012 Decision on Sentence pursuant to Article 76 of the Statute, 3 December 2012.
[370] ICC-01/04-01/06-2953, AC, Decision on the admissibility of the appeals against Trial Chamber I's Decision establishing the principles and procedures to be applied to reparations" and directions on the further conduct of proceedings, 14 December 2012, para. 86.
[371] ICC Press Release on 01/12/2014, The ICC Appeals Chamber confirms the verdict and the sentence against Thomas Lubanga Dyilo, ICC-CPI-20141201-PR1069
[372] Carla Ferstman, Director of REDRESS, REDRESS Press Release on 1 December 2014, [http://www.redress.org/downloads/press-releaselubanga-appeals-judgment011214.pdf] 2014-12-03

needs and expectation of victims towards reparation and the legal framework also discussed. The victims who suffered from gross atrocities in wartime very specifically from mass rape and gender-based violence needs assistance for living after war situation in the society and community. However, access to reparation has been challenging for survivors due to lengthy procedural measures in the court. Although TFV established to ensure reparatory justice to victims, nowadays it faces numerous challenges to ensure meeting up needs of the victims. The author recommends that the reparation process need to take action regarding increase support and more inclusiveness. Also setting more link with the national authorities can be more effective to obtain implementation of reparation.

Chapter 7

Challenges of the ICC in Ensuring Justice to Victims: Reviewing Recent Investigations

7.1. Introduction

The International Criminal Court (ICC) was established in 2002 with the adoption of the Rome Statute, marking it as the sole permanent institution aimed at maintaining judicial infrastructure in areas affected by mass atrocities and addressing post-conflict situations in the social and political environment, ensuring justice for victims. Its primary responsibility is to establish a framework for accountability and to prosecute four core types of international crimes: war crimes, crimes against humanity, genocide, and the crimes of aggression. The International Criminal Court (ICC) and Tribunals are typically established in countries that have historically struggled with robust legal frameworks. These nations often face significant challenges in maintaining the rule of law, particularly in the aftermath of conflict or war that has severely disrupted their existing legal systems. As a result, these courts play a crucial role in addressing issues of justice and accountability in environments where traditional legal institutions may be weak or nonexistent. Establishing the rule of law by ensuring justice after conflict is undoubtedly difficult. For functioning in such war-affected countries, the ICC relies on the voluntary jurisdiction of State parties. Despite having these noble intentions, because of political interference, challenges to implementation, and judicial limitations, many perpetrators of international crimes continue to evade accountability under the ICC framework.[373]

However, since its establishment, the court has struggled with a weak record of convictions and has faced contentious relations with major world powers, resulting in a significant decline in its influence. Recently, several member states of the Rome Statute have voiced significant concerns about the trustworthiness and impartiality of the International Criminal Court (ICC). These nations contend that the ICC has shown favoritism in its investigations and prosecutions, raising doubts about its objectivity in handling cases involving serious violations of international law. They argue

[373] R. H. Steinberg, "Politics and Justice at the International Criminal Court" *Israel Law Review*, vol. 57, Cambridge University press.(2024), doi:10.1017/S0021223724000049.

that such perceived bias compromises the court's integrity and undermines public confidence in its ability to dispense justice fairly. Moreover, these member states believe that the ICC has fallen short of the ambitious expectations outlined when it was established, particularly in regards to its role in pursuing accountability for perpetrators of war crimes, crimes against humanity, and genocide. This increasing skepticism could hinder the ICC's effectiveness and impact its relationships with the nations that support its mission.

The lengthy court processes are often criticized by academics and researchers, which may contribute to a low conviction rate. During these two decades, the ICC has successfully convicted eight perpetrators and currently has fourteen ongoing investigations, which are leading to seemingly endless prosecutions. And by that, most of the time the victims remain unheard and far from getting any reparation. A persistent question remains: how can the ICC achieve victim-centred justice, and to what extent can victims find satisfaction with its mechanisms?

Prior to delving into the intricate political and practical diplomatic challenges faced by the International Criminal Court (ICC), the author underscores the existing legal and jurisdictional obligations that the ICC must navigate as part of its operational framework. This exploration emphasizes the foundational principles that govern the court’s actions and responsibilities. However, the author’s primary aim is to illuminate the constrained diplomatic role that the ICC ought to adopt beyond the parameters established by the Rome Statute, highlighting the complexities that arise when the court interacts with international relations and diplomacy.

7.2. Legal Challenges of ICC

When the Rome Statute constituted the International Criminal Court (ICC), the whole world was hopeful that it might dampen violence and atrocities by providing accountability to perpetrators and ensuring justice for survivors. Recent advancements in international humanitarian law (IHL) and international criminal law have significantly enhanced the processes of investigation and prosecution of war crimes and crimes against humanity.[374] However, obstacles persist regarding equal access to protection under humanitarian norms during investigations, prosecutions, and adjudications within the International Criminal Court (ICC) framework.

[374] R. H. Steinberg, supra note 373.

Since the establishment of the ICC, various challenges at every stage have sparked criticism among scholars, lawyers, and activists about whether the ICC can achieve its goals. Critics have identified a variety of structural, legal, and political challenges on courts' ability to transform international justice.[375] These constraints embedded in the Rome Statute delineate the scope of the court's authority and its ability to address the myriad violations that have occurred in the context of armed conflicts.

The recognition and prohibition of international crimes and criminal responsibilities of core international crimes are already well established under the Rome Statute and other international legal instruments. However, there is a big discrepancy between prohibition and criminalization a difference that cannot be attributed to any shortcomings or ambiguities within international law. Instead, what is urgently required is the development of better implementation policies and more effective prosecution measures. These enhancements are essential to hold perpetrators accountable and ensure that justice is served.

In this part of the article, the author intends to identify some legal challenges in the ICC mechanism which are creating barriers in the way of ICC brings perpetrators under accountability for their wrongdoing and ensures a proper sense of justice for victims who suffered harm already.

7.2.1. Lack of Executive and Enforcement Power

Before pursuing the trial process or post-trial enforcement issue, the ICC needs to go through a lengthy pre-trial process of initial investigation and confirmation of the charges by the pre-trial chamber need to take place. For initiating any investigation ICC can follow three possible ways: reference from a member state about any situation within the jurisdiction of the court, the UN Security Council referral on any situation occurring anywhere in the world, or the prosecutors can initiate an investigation proprio motu with the approval of pre-trial judges.[376]

Once the investigation is opened, the prosecutor's office can collect and examine evidence in person or by investigators or other staff.[377] After gathering the evidence and identifying the

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[375] Cristopher W. Mullins & Dawn L. Rothe, (2010), "The Ability of the International Criminal Court to Deter violations of International Criminal Law: A Theoritical Assessment", *International Criminal Law Review*, 10(5), p. 771-786, DOI: 10.1163/157181210X528414

[376] Rome Statute of the International Criminal Court (last amended 2010), ISBN No. 92-9227-227-6, UN General Assembly, 17 July 1998.

[377] International Criminal Court (ICC), *How the Court Works*, https://www.icc-cpi.int/about/how-the-court-works

suspect, the pre-trial judges can issue an arrest warrant or a summon to appear in court. As the ICC lacks its own police force to enforce the arrest warrant, the ICC needs to rely on countries to make arrests and transfer suspects to the ICC.[378] The success of this situation is entirely reliant on the actions of individual member states, a scenario that remains uncertain because there are insufficient mechanisms in place to compel these nations to collaborate effectively.

Whether the states will use their military or law enforcement force to extricate the oppressive leader from their country extremely depends on the will of their governments. The lack of institutional resources of ICC is not in full power to ensure the defendants' presence in court for prosecution. For example, it can be turned into the situation of issuing an arrest warrant against Sudanese President Omar al Bashir and requesting to arrest or surrender to the ICC prosecutor's office. The arrest warrant was issued in 2009, which was ignored by 19 countries among those 9 countries were the signatories of the Rome Statute.[379]

Due to the limited law enforcement authority, the Prosecutor's ability to gather information is significantly hampered. As one commentator noted, “Pursuing an ideal apolitical form of justice while disregarding the necessity of State support would ultimately undermine the ICC’s credibility.” This consideration was pivotal in the Pre-Trial Chamber's ruling that an investigation into Afghanistan would not serve the “interests of justice,” given the minimal cooperation received by the Prosecution.[380]

7.2.2. Challenges Regarding the Principle of Complementarity

The principle of complementarity serves as an essential foundation for enhancing the ICC’s operational framework, whereby the jurisdiction of the Court is meant to be complementary to national criminal jurisdiction. In short, the ICC is not meant to replace national or domestic courts on these serious crimes rather to complement their jurisdiction where necessary. this idea reiterates that ICC should be the court of “last resort”.[381] Article 19 of the Rome Statute mandates that the ICC can only exercise jurisdiction when national courts are unwilling or unable to prosecute

[378] Klobucista, Claire and Ferragamo, Mariel (2024), The Role of ICC, *Council on Foreign Relations*, https://www.cfr.org/backgrounder/role-icc

[379] A Bashir Case, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Pre-trial, https://www.icc-cpi.int/darfur/albashir

[380] ICC investigation on Afghanistan, ICC-02/17, https://www.icc-cpi.int/afghanistan

[381] Patrick B. (2021), Recent Developments at the International Criminal Court, , *House of Commons Library,* Briefing paper no. 9067

international crime in their territory.[382] More specifically, Article 17(1) of the Rome Statute provides that the ICC cannot have jurisdiction overlapping the ongoing investigation or prosecution by the state.[383] This limitation of the jurisdiction do not apply in three situations stated by the Rome Statute, i) where the state is genuinely unwilling or unable to prosecute or investigate, as such, where the domestic proceedings are being used as a shield to the accused person,[384] ii) where there is an unjustified delay in domestic proceedings,[385] iii) where domestic proceedings are not conducted in independently or impartially.[386]

The principle of complementarity, which is foundational to the ICC's modus operandi can complicate its interventions through the political influences of the national courts. The foundational principle guiding the International Criminal Court (ICC) lays the groundwork for its mandate, which brings forth distinct legal complexities. These challenges become even more pronounced in nations grappling with political instability, such as Afghanistan, where the court's ability to intervene is often hindered by the tumultuous environment and the intricate web of capacity or willingness of local and national courts to conduct genuine proceedings.[387] In Afghanistan, the judicial system has faced numerous challenges, including limited capacity, security issues, and changes in political power and control, such as the return to power of the Taliban, which made the complexities surrounding the principle of complementarity. Such political shifts significantly affect the willingness and ability of the state to prosecute international crimes by influencing ICC's assessment and jurisdiction.[388] States like Afghanistan can invoke Article 19 to challenge the admissibility of the case before the ICC and also can argue that they are actively investigating or prosecuting the alleged crime domestically, which can render the ICC intervention unnecessary.

Assessing a state's capability and readiness to prosecute is a complex task that demands a meticulous evaluation of national judicial proceedings by the ICC. Deguzman emphasizes that this

[382] Patel, N. B. (2008). "An Introduction to the International Criminal Court (3rd ed)." *Commonwealth Law Bulletin*, 34(2), p. 509-512, https://doi.org/10.1080/03050710802038635
[383] Article 17(1) of the Rome Statute 1998
[384] Article 17(2)(a)
[385] Article 17(2)(b)
[386] Article 17(2)(c)
[387] Stahn, C. (2015). *"The Law and Practice of the International Criminal Court*." Oxford University Press, USA.
[388] Heller, K. J. (2013). *"A Stick to Hit the Accused with': The Legal Recharacterization of Facts under Regulation 55."* The Law and Practice of the International Criminal Court, Oxford University Press. p. 981-1006.

involves an in-depth analysis of the local legal system, the independence and impartiality of the judiciary, as well as the overall efficiency of the judicial processes.[389]

7.3. Jurisdictional Limitation of ICC

In terms of taking endeavors for conflict-related war crimes, genocide, and crimes against humanity the ICC encounters inherent jurisdictional limitations that shape its capacity to respond to those international crimes. The principle of complementarity as discussed earlier posed some challenges for ICC jurisdictional power. Additionally, these constraints embedded in the Rome Statute delineate the scope of the court authority and its ability to address the myriad violations that have occurred in the context of armed conflicts. The jurisdictional limitation encompasses the ICC's subject matter, temporal, and territorial jurisdiction.

Each jurisdictional aspect in the legal mechanism presents challenges and implications for pursuing justice for the victims of the atrocities. With the subject matter jurisdiction restricting the ICC to the gravest and most serious international crimes, non-qualifying offenses are affected by the temporal limitation which excluded crimes committed before the formation of the Rome Statute. Moreover, the territorial jurisdiction constrains the ICC from reaching crimes occurring outside the territory of the party states.

7.3.1. Subject-matter Jurisdiction

The subject matter jurisdiction mandate of ICC narrows down its investigation and prosecution power only to four international crimes: war crimes, crimes against humanity, genocide, and crimes against aggression. The specific mandate of the Rome Statute limits the ICC's reach by excluding various human rights violations and crimes that do not meet these criteria of four crimes but are essential and sensitive for victims and affected communities to come under the shed of ICC.

William A. Schabas mentioned this aspect by emphasizing that many serious, consequential violations fall outside the scope of ICC jurisdiction.[390] Cryer et al. detailed this problem in their book by saying, that the Rome Statute definitions of these four crimes set a high threshold for

[389] Deguzman, M. M. (2012). "How serious are international crimes? The gravity problem in international criminal law." *Columbia Journal of Transnational Law*, vol. 51(1). Temple University Legal Studies Research Paper No. 2012-13.
[390] Schabas, W. A. (2016). *"The International Criminal Court: A Commentary on the Rome Statute*." Oxford University Press, USA. p. 112.

investigation and prosecution, which means that numerous offenses in the conflict-affected zone, even severe, do not qualify for ICC investigation.[391] Local-level violence, abuses by lower-ranking officials, or crimes not widespread or systematic enough but impactful and bring a lot of suffering to the victims, do not meet the ICC's criteria for grave international crimes.[392] This delineation of jurisdiction underlines a significant gap in the scope of international criminal law, leaving many violations unaddressed at the international level.

7.3.2. Temporal Jurisdiction

The ICC's temporal jurisdiction is limited only to the international crimes committed after July 1, 2002, when the Rome Statute came into force,[393] or when the country ratifies the Statute ICC considers those crimes after the date of ratification. The ICC has no retrospective effect to try any crime committed before these dates, even if their severity or impact falls apart from the jurisdiction of the ICC. This includes the allegations related to Afghanistan, Poland, Lithuania, and Romania.[394] For example, multiple violations took place during various phases of Afghanistan's conflict-ridden history. Such as those under the Afghan communist regime, by the Mujahideen group, the Taliban, the Northern Alliance, and the US forces before ratifying the Rome Statute by Afghanistan in 2003. Without trying or investigating those atrocities making the linkage with recent crimes committed is very challenging for the ICC.[395]

This concludes that the crimes or violations committed in various phases of history cannot be tried or investigated even if they are setting up a link with the current atrocities. Without investigating the prior crimes linking with the current atrocities becomes hard for the ICC.

7.3.3. Territorial Jurisdiction

The territorial jurisdiction significantly shapes the ICC's capacity to address international crimes, confining its investigative and prosecutorial powers to offenses committed within the territories of

[391] Cryer, R., Friman, H., Robinson, D., & Wilmshurst, E. (2019). *"An Introduction to International Criminal Law and Procedure",* (4th ed.), Cambridge University Press, p. 20
[392] Akande, D. (2003). "The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits." *Journal of International Criminal Justice, vol. 1(3), p. 618-650.*
[393] *ibid note 8*
[394] Ehsan Qaane (2024), The International Criminal Court's Afghanistan Investigation: Challenges and Constrains Assessments, *Raoul Wallenberg Institute of Human Rights and Humanitarian Law*, ISBN: 978-91-86910-87-7
[395] *Ibid*

State Parties, non-member states that have accepted the Court's jurisdiction or have been referred to the Court by the United Nations Security Council.[396]

This constraint on the ICC's territorial jurisdiction raises significant challenges in achieving comprehensive justice, particularly in interconnected global contexts where conflict actors often operate across multiple jurisdictions. The Court's inability to extend its reach to crimes committed outside State Parties' territories while operating from there can result in significant gaps in accountability.

Countries such as the United States, China, Russia, India, Israel, Türkiye, Iran, and Egypt collectively representing over half of the world's population are not signatories to the International Criminal Court (ICC). The lack of participation from numerous conflict-ridden nations like Syria and Iraq further diminishes the court's deterrent effect. More than two decades have elapsed since the adoption of the Rome Statute, which established the ICC. During this time, powerful nations have consistently declined to engage in many investigations related to serious violations and have obstructed the process, compelling the ICC to adopt a fragmented approach instead of a comprehensive one.

The United States firmly maintains that, due to its non-signatory status to the Rome Statute, the International Criminal Court (ICC) does not possess the authority to exercise jurisdiction over American nationals. This stance is particularly pronounced when it comes to matters involving actions taken in nations where the U.S. holds substantial political and military influence. This perspective highlights the intricate challenges associated with the enforcement of international criminal law, particularly when attempting to establish jurisdiction over individuals from countries that have chosen not to ratify such agreements.[397] The ICC Appeals Chamber disagreed with the USA's position. It argued that the ICC has jurisdiction over alleged crimes perpetrated on the territory of its state parties, like Afghanistan. It decided to proceed with an investigation into grave abuses in Afghanistan, including those by US forces, a move that marked a significant development and attracted strong US opposition.[398]

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[396] *ibid note 8*

[397] *ibid note 9*, p.16-18

[398] Scheffer, D. J. (2020, March 6). "The ICC's Probe into Atrocities in Afghanistan: What to Know", *Council on Foreign Relations*. https://www.cfr.org/article/iccs-probe-atrocities-afghanistan-what-know

7.4. Political and Practical Challenges

Even though the Rome Statute clearly outlines the obligations of the state parties, still ICC is limited to enforcement by itself. Because the ICC requires the political will of the state parties regarding the enforcement of arrest warrants, investigation of the territory, and collection of evidence. Consequently, ICC as a legal institution has become more dependent on the political will of the member states to ensure the effectiveness of the rule of law.

The ICC mainly deals with grave crimes such as genocide, crime against humanity, war crimes, and crime of aggression, often arising from highly political issues like civil war and targeted violence against specific ethnic or tribal communities.[399] Criminals involved in armed conflicts should be held accountable under the rule of law, which must take precedence over political influences. The cases presented to the International Criminal Court (ICC) frequently feature prominent political figures and pose intricate legal and political challenges.[400] To deliver justice to the victims and hold the perpetrators accountable, it is crucial that the ICC operates free from political interference. Nevertheless, the excessive influence of politics within the ICC's legal frameworks, the politicization by the UN Security Council, and the lack of political will among state parties contribute to undermining court's legal credibility.

Because of the lengthy pre-trial process, it is hard for ICC to pursue the trial and go along with the judgment. This makes a big credibility question on ICC, because of taking almost 16 years to convict less than 10 suspects. However, the academics and researchers analyzed that the complexity of the pre-trial and trial mechanism in terms of multiple crimes and a high number of charges is also responsible for the low conviction rate.

For effective administration of justice ICC faces challenges of lack of own resources rather than depending on funds from state parties which requires the cooperation of the States concerned which is often lacking. Additionally, world politics and political diplomacy also hinder the ICC from prosecuting the perpetrators. For instance, the ICC can issue arrest warrants for perpetrators but due to the lack of its own executing agency needs to depend on other states. The states can be reluctant to hand over the perpetrator for fear that revealing their governmental classified

[399] Lee D. (2024, March 1), "10 Landmark Cases of International Criminal Court", *Listverse,* https://listverse.com/2024/03/01/10-landmark-cases-of-the-international-criminal-court/
[400] *ibid*

information. On the other hand, politicians can use the ICC as a negotiating tool to advance their own interests, which in effect undermines the ICC's legal system as a whole.[401]

7.4.1. Lack of Cooperation with the ICC

Having the legal framework for cooperation with member states is of significant importance to run the proceedings of the ICC. Several critical reasons emphasize the importance of establishing a collaborative legal framework. One of the primary factors is the reliance on state parties to provide both financial support and the necessary resources for law enforcement agencies to operate effectively. Moreover, the success of investigations and the thorough collection of evidence are significantly influenced by the level of cooperation among various stakeholders. Without this collaboration, the process of uncovering the truth and ensuring justice may face substantial obstacles. Facilitating the evidence collection and sharing procedure and mechanism through a legal framework should be effective between a state and the ICC.[402] Without such a framework, gathering crucial evidence in the territory of hostile regions or ongoing conflict zones becomes potentially inconvenient, which compromises the thoroughness and reliability of the collected evidence.

Another important consideration is to facilitate the presence of the witness during the trial process at the ICC, enabling them to present their testimonies directly. Cooperation agreements often specify the provisions for accessing the witness, ensuring their safety and protection,[403] without which it is near to impossible for the ICC to bring their testimonies in sensitive cases by putting them at risk. Although Article 68 of the Rome Statute establishes protections for witnesses and their involvement in proceedings, numerous cases have reported instances of intimidation and threats directed at the witnesses. For example, in cases against Kenyan President Uhuru Kenyatta, ICC prosecutor Fatou Bensouda has repeatedly claimed widespread witness intimidation and political interference which resulting the withdrawal of their testimonies.[404]

The absence of political cooperation of the state parties in case of witness protection inhibits the potential to collect information and evidence for successful prosecution by the ICC. The cases

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[401] Steven C. Roach, (2013), "How Political is the ICC? Pressing Challenges and the Need for Diplomatic Efficacy", *Global Governance: A Review of Multilateralism and International Organizations*, vol 19, p. 507-523.

[402] Ambos, K. (2021). *"Treatise on International Criminal Law: Foundations and General Part." 2nd ed: Vol 1,* Oxford Public International Law.

[403] Sluiter, G. (2009). *"International Criminal Procedure: Principles and Rules."* Oxford University Press.

[404] S. Jennings, 28 March, 2014, "Action urged on ICC Witness Protection", *Institute for War and Peace Reporting*, https://iwpr.net/global-voices/action-urged-icc-witness-protection

brought to the ICC are often very political, which means witnesses are always at risk of being politically persecuted for stepping forward.[405] To ensure the safety and well-being of witnesses, it is crucial to implement enhanced security measures. This includes stronger protective protocols from both the International Criminal Court (ICC) as well as the member states involved. Such measures are essential to safeguard witnesses from potential threats and to encourage their cooperation in legal proceedings.

Article 86 of the Rome Statute requires member states to fully cooperate with the Court regarding the investigation and prosecution of international crimes within its jurisdiction.[406] Apart from this general obligation to cooperation the ICC can request state parties for cooperation upon ratification, acceptance, approval or accession. Most other member states drafted their ICC cooperation laws or any measures necessary for assurance of assistance and cooperation within months of ratification of the ICC.[407] However, politically dominant country like Afghanistan nearly seven years after accession to the ICC, had not drafted these cooperation laws. Perhaps this was the clearest indication of the government's disinterest in complying with ICC.[408] This imbalance amount of support received by ICC exacerbated the existing view of inconsistent application of its mandate, increasing the perception of bias and politicization.[409] These incidents had shaken once again the whole mandate of the obligation of state parties regarding cooperating ICC and accelerated a suspicious view on ICC's credibility and reliability in terms of ensuring justice.

7.4.2. Political Diplomacy

The ICC investigation is entangled in a complex web of diplomatic challenges, highlighting the delicate balance the ICC must maintain in its pursuit of justice. Presently, the political obstacles the ICC faces are particularly pronounced due to the influence of powerful nations such as the USA and Russia. Additionally, the court's position on the situations in Ukraine and Gaza has drawn

[405] Ibid
[406] Article 86 of the Rome Statute 1998
[407] Article 87 of the Rome Statute, 1998.
[408] Mehdi J. Hakimi, (2021) The International Criminal Court's Afghan Dilemma: Complementarity and the Quest for Justice in Afghanistan, *Columbia Journal of Transnational Law*, Vol. 60.
[409] Coalition for the ICC, 15 March, 2023, 'Justice Ministers conference on Ukraine is a vital opportunity for consistent and sustained support for all situations under the jurisdiction of the ICC', https://www.coalitionfortheicc.org/news/20230315/justice-ministers-conference-ukraine-vital-opportunity-consistent-and-sustained

criticism from various entities, including human rights organizations, suggesting that it falls short of the expectations held by many observers.

For a better understanding of the challenges the ICC faces nowadays in international phenomena, it is important to draw attention to its political role in developing pragmatic strategies for conflicts by diplomatic efficacy. Diplomacy can be defined as a strategy or solution to conflicts or disputes which are mutually acceptable. In the context of the ICC, diplomacy overlaps with politics under the need to govern and shape the behaviour of the states to uphold the rule of law.

The core intention of the ICC is not political but rather to promote international justice. In doing so, the ICC is forced to play political and diplomatic roles in balancing state politics in favour of international justice. For example, seeking mutual accommodation and cooperation leads the ICC as an institution with soft power. It is hard to debate possessing soft power rather than hard power for such a legal institution like the ICC under the Rome Statute in international politics.

7.5. Review on Recent Investigations

The ICC is a unique legal institution that maintains international relations by possessing political resources and assets from state parties for its trial or prosecution and execution of arrest warrants. It also maintains a relationship with the UN Security Council. The ICC's political resources refer to its diplomatic capacity to attract states to effective cooperation.

In some cases, the perpetrators of war crimes, crimes against humanity, and genocide are politically protected by stronger states like the US. For example, in 2016, the International Criminal Court (ICC) launched a detailed investigation into allegations of war crimes committed by U.S. forces in Afghanistan. This inquiry, however, faced serious backlash as those involved as such lawyers, judges, and various personnel encountered severe repercussions. Many had their bank accounts frozen, while others found their ability to travel to the United States severely restricted, facing revocations of travel privileges. These retaliatory actions underscored the contentious nature of international scrutiny over military conduct and the protective measures employed by the U.S. to shield its personnel from accountability. This is a clear example of the influence of politics over the strength of the ICC itself.

On the other side, despite having 125 member states and 137 signatory member states around the world, world's four most powerful countries are yet to join, including the United States, Russia, China, and India.[410] The Court's inability to extend its reach to crimes committed outside State Parties' territories while operating from there can result in significant gaps in accountability. To continue with this discussion let us put examples of two recent investigations of the ICC in which global political diplomatic involvement has become the prime issue:

7.5.1. Ukraine

The effectiveness of international criminal justice is designed not only to prosecute those international crimes but also to prevent them in the future.[411] Unfortunately, even in this 21st century humanity has not yet learned to solve geopolitical problems peacefully and diplomatically.[412] The recent armed aggression of the Russian Federation against Ukraine is forcing us to rethink the whole scenario of the international criminal justice system, which going through a challenge of political influences in global diplomacy. The ICC is the one and only permanent court of international criminal justice in the modern international legal system which can prosecute core international crimes like war crimes and crimes against humanity that occurred in Ukraine.[413]

This part of this chapter is about to examine the legal basis of the investigation of ICC on the situation of Ukraine, a non-state party to the Rome Statute. After the full-scale invasion in 2022, the ICC consolidated the proceedings with the crimes committed in Ukraine since 2014. Here doubt arises as to how the ICC manages to legitimate the jurisdiction over Ukraine, and how far it would be fruitful for Ukraine.

7.5.1.1. Initiation of the Investigation in Ukraine:

The prosecutor of the ICC opened an investigation into the situation in Ukraine based on referrals by several state parties. Particularly, the prior decision of the prosecutor's office needed to make the initiation of the investigation procedurally possible, anyhow the prosecutor wanted to renounce the steps of investigation on its own initiative (proprio motu).

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[410] United Nation (1998), Rome Statute of the International Criminal Court, *United Nations Treaty Collection*, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en

[411] Lankevych, A. Zaverukha, O. Sopilnyk, R. Havrylenko, O. & Podilchak, O. (2024), *The ICC Jurisdiction in Ukraine: Challenges and Opportunities in the Fight against Impunity*, Amazonia Investiga, vol. 13, Issue 77.

[412] ibid

[413] ibid

As of today, 125 nations have officially ratified the Rome Statute, a pivotal treaty designed to promote alignment among national legal systems rather than fostering discrepancies. In light of the ongoing military aggression by Russia in Ukraine, which has escalated into a conflict of global significance, leaders from European and North American countries have united in their resolve. They have come to a strong consensus on the urgent need to pursue justice for the crimes committed in Ukraine, particularly those perpetrated by the leaders of the Russian Federation. This collective stance highlights a crucial moment in international law and accountability, emphasizing the importance of holding individuals responsible for their actions on the global stage.[414]

Finally, on 2 march 2022 the ICC prosecutor Karim Khan announced the official opening of an investigation into the situation of Ukraine potential alleged war crimes and crimes against humanity upon receiving referrals from thirty-nine state parties.[415] The first referral was made by the Republic of Lithuania on March, 1st, 2022. In one day, thirty-eight state parties had joined the initiative. Four more countries joined the initiative later on. These were Japan, North Macedonia, Montenegro and Chile.[416]

After getting referrals from major number of state parties, the office of the prosecutor was renouncing another procedural path of proprio-motu which had previously been taken.[417] This is precedential and this way is more legitimate even for those countries that are not ratified or state parties like Ukraine and Russia. The second is that for international judicial bodies like the ICC, it is more solid ground of legitimacy than political endorsement. The concern here is the scope of jurisdiction of ICC over the non-state party Ukraine and the limitation of jurisdiction of ICC.

7.5.1.2. Jurisdictional Scope of ICC over Ukraine:

The International Criminal Court's (ICC) jurisdiction is defined as its authority to investigate and prosecute international crimes within the confines established by its Statute. ICC jurisdiction as a multifaceted framework encompassing substantive or subject matter jurisdiction, personal

[414] ibid
[415] International Criminal Court. 2 March, 2022, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, *International Criminal Court*, https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states
[416] Human Rights Watch. (2004), "Enduring Freedom": Abuses by U.S. Forces in Afghanistan, *Human Rights Watch*, vol. 16, https://www.hrw.org/reports/2004/afghanistan0304/afghanistan0304.pdf
[417] Art. 15(3), Rome Statute of the International Criminal Court (adopted 17 July 1998).

jurisdiction, temporal jurisdiction or the time frame of such crimes, and territorial jurisdiction underpinned by core jurisdictional principles.[418]

The ICC prioritizes cases involving the most severe international crimes, as defined under Article 5 of the Rome Statute: genocide, crimes against humanity, war crimes, and the crime of aggression. Case gravity is assessed quantitatively and qualitatively, with particular attention to the crime's nature, scale, and impact. When overlapping jurisdictions exist between national courts and the ICC, the Statute emphasizes prioritizing domestic adjudication, with ICC jurisdiction functioning as supplementary.[419]

The application of ICC jurisdiction over Ukraine presents unique challenges, given Ukraine's status as a non-party to the Rome Statute. Although Ukraine signed the Rome Statute in 2000, it has not ratified the treaty due to constitutional and political complexities.[420] Nonetheless, under Article 12(3) of the Rome Statute, non-member states can recognize ICC jurisdiction on an ad hoc basis. Ukraine has utilized this provision twice: first in 2014 to address alleged crimes against humanity during the Euromaidan protests, and subsequently in 2015 to cover crimes committed during the ongoing armed conflict following Russia's annexation of Crimea and the hostilities in Donetsk and Luhansk.[421]

Despite its limited ratification status, Ukraine has amended its domestic legal framework to align with ICC requirements. For example, in May 2022, amendments to the Criminal Procedure Code introduced provisions for cooperating with the ICC in investigating and prosecuting crimes of international concern. However, challenges remain, including resource constraints, potential overlap with national and other international jurisdictions, and the exclusion of aggression from the ICC's prosecutorial purview in this context.[422]

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[418] Geng, Z. (2023). An exploration of selective justice in the International Criminal Court. *SHS Web of Conferences, 178*, 02019. https://doi.org/10.1051/shsconf/202317802019

[419] United Nations (1998). Rome Statute of the International Criminal Court. *United Nations Treaty Collection*. https://acortar.link/tNIxUE

[420] Verkhovna Rada of Ukraine (2001), *Constitutional Court of Ukraine,* Conclusion in the case of the Rome Statute. https://zakon.rada.gov.ua/go/v003v710-01

[421] *Ibid*

[422] Rynkun-Werner, R., Kozicki, B., Zelkowski, J., & Krzew, D. (2023). Jurisdiction of the International Criminal Court in The Hague and war crimes in Ukraine in the Face of Security, *Journal of Security and Sustainability*, issue 13, no 1, p.325-336.

The ICC has already taken significant steps in response to the situation in Ukraine. In 2020, it launched a formal investigation into alleged crimes committed since 2014. Following the full-scale invasion by Russian forces in 2022, these investigations were consolidated with ongoing proceedings of ICC. Notably, in March 2023, the ICC issued arrest warrants for Russian President Vladimir Putin and Children's Rights Commissioner Maria Lvova-Belova, marking a historic moment in international criminal justice.[423]

Despite these efforts, Ukraine's incomplete ratification of the Rome Statute limits the ICC's ability to prosecute all relevant crimes comprehensively. Advocates for full ratification argue that it would enhance Ukraine's alignment with international legal standards, improve judicial cooperation, and bolster accountability mechanisms. However, political hesitancy and concerns over sovereignty continue to impede progress in this regard.[424]

7.5.1.3. Retroactive Jurisdiction of ICC in Ukraine:

In the case of Ukraine ICC has the power to exercise the crime committed since 2013 and further. In this case, the retroactive practice of the legality principle by the ICC is unprecedented in ICC practice, as in the case of Afghanistan. ICC also faced the problem of temporal jurisdiction for the crimes committed before 2003, with Afghanistan being a party to ICC. Even Ukraine gave recognition the jurisdiction of the ICC encompasses past and present allegations of war crimes, crimes against humanity, and genocide on any part of the territory of Ukraine.[425] It seems going beyond the jurisdictional parameters in the situation of Ukraine.

ICC has the jurisdiction for core international crimes; war crimes, crimes against humanity, genocide, and crimes of aggression. For the ICC it is a core element that non-retroactivity, which requires that the conduct in question be criminalized must have fair notice for the consequence of committing a crime and be protected from arbitrariness. Paradoxically, there is an exception of such a non-retroactive principle of legality that in two cases the court can take the risk of application of retroactive jurisdiction. First, when the Security Council uses the power under Article 13(b) to refer a case to the Court involving a non-state party. Secondly, when a situation

[423] International Criminal Court (2022). *Situation in Ukraine* ICC-01/22. https://www.icc-cpi.int/situations/ukraine
[424] Smyrnov, M.I. (2023). Conceptual issues of ratification of the Rome Statute of the International Criminal Court and Ukraine's cooperation with international criminal court in the context of Russian military aggression. *Juridical Scientific and Electronic Journal, 1*, 542-546.
[425] ICC OTP. *Information to the victims, Jurisdiction in the general situation*. https://www.icc-cpi.int/ukraine8

commenced from ad hoc declaration under article 12(3), a declaration by which a state whether a party or not grants the court jurisdiction over the situation that took place when such state had not accepted the application of Rome Statute.[426]

As the expert argues on such retroactive action of the court, after lodging a Declaration with the ICC Registrar, the government of Ukraine has accepted ad hoc jurisdiction of the ICC for the alleged crimes committed in Kyiv between November 2013 and February 2014. Other Parliamentary requests for such ad hoc jurisdiction have not reached the ICC yet. Utilization of ad hoc acceptance of the jurisdiction of the ICC entails a greater danger of politicization of the neutral, impartial court, which can be avoided via ratification of the Rome Statute, which gives the ICC unlimited jurisdiction to investigate crimes allegedly committed by all parties, on the full territory and by all nationals of a State Party to the Rome Statute.[427]

7.5.1.4. Arrest Warrant Issued:

In February 2022, Russia launched a full-scale invasion of Ukraine, escalating tensions that had been building since 2014. Looking back at the relationship between Russia and Ukraine over the past seven years, it has been strained, especially following the Maidan protests in Ukraine. These protests culminated in a tragic event known as the Maidan massacre, which significantly influenced the political and military developments in the region. This violence led to the ousting of President Viktor Yanukovych and marked the beginning of the conflict in Eastern Ukraine.[428] In late February 2014, shortly thereafter, unmarked Russian troops later revealed to be Russian special forces, seized control of significant government buildings and military installations in Crimea. On March 18, 2014, Russian President Vladimir Putin signed a treaty that formally annexed Crimea into the Russian Federation, an action that the United Nations condemned as a breach of international law.[429] Around the same time, pro-Russian separatists, supported significantly by Russia in terms of military and logistics, seized control of parts of Ukraine's Donetsk and Luhansk regions. This marked the start of an armed conflict in eastern Ukraine, where

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[426] Talita de Souza Dias, (2018). "The Retroactive Application of the Rome Statute in Cases of Security Council Referrals and Ad hoc Declarations An Appraisal of the Existing Solutions to an Under-discussed Problem*", Journal of International Criminal Justice*, vol 16.

[427] Parliamentarians for Global Action, *Ukraine and the International Criminal Court: Information on Perceived Challenges*, https://www.pgaction.org/pdf/2015/2015-09-14-Ukraine-Booklet_EN.pdf

[428] Ivan Katchanovski, 2024, The Maidan Massacre in Ukraine: The Mass Killing that Changed the World, *Rethinking Political Violence*, Palgrave Macmillan, ISBN 978-3-031-67120-3, https://doi.org/10.1007/978-3-031-67121-0

[429] United Nations. (2014, March 27). *General Assembly adopts resolution affirming Ukraine's territorial integrity, condemning Crimea's 'attempted annexation' by Russian Federation*. *United Nations.* https://www.un.org/press/en/2014/ga11493.doc.htm

Russian-backed rebels clashed with Ukrainian government forces. The war in Donbas continued for years, resulting in thousands of casualties and multiple failed ceasefire agreements under the Minsk Accords. These ongoing hostilities ultimately led to Russia's full-scale invasion in 2022.

By 2021, more than fourteen thousand people were killed in eastern Ukraine. In 2022, attacks and counterattacks regarding the Russian attempts to seize Kyiv made the situation more devastating. Russian invasion was characterized by indiscriminate artillery bombing and air strikes. More than 200,000 Ukrainian troops were killed in combat and a third of Ukraine's population were displaced. Russia also been accused of ethnic cleansing in the Ukrainian territory that it occupied and as many as 1.6 million Ukrainian were forcibly transferred to Russian territory and torture, rape, and other sexual violence were also reported.[430] All these activities of Russian troops amounted to grave violations of IHL and ICL and came under subject-matter jurisdiction of ICC.

After the preliminary examination in 2023, the ICC pre-trial chamber issued arrest warrants against Mr. Vladimir Putin and Ms. Maria Lvova Belova, considering that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of the population; mainly children; from occupied areas of Ukraine to the Russian Federation, in prejudice Ukrainian children.[431]

Later on in 2024, the ICC pre-trial chamber issued two more warrants of arrest against two more individuals for alleged international crimes committed in the context of the Ukrainian situation. Upon this initiative, ICC faced numerous criticisms from every corner regarding the unprecedented level of attention and resources on this case, and the issue of bias and prioritization was also raised. However, the doubt still remains, how far the ICC can ensure justice, and whether the issuance of an arrest warrant can redress the victims? The visit of Putin as a Head of State to Mongolia, which is a state party to the ICC, makes it even more complicated to doubt the credibility of the ICC in global diplomacy and politics.

7.5.1.5. Impacts of ICC Investigation

While the investigation is at an ongoing stage and public information is understandably limited, it is merely possible to make informed speculation of the scenario of Ukraine after the intervention

[430] M. Ray, 8 Deadliest War of the 21st Century, *The Editors of Encyclopedia Britannica*, https://www.britannica.com/list/8-deadliest-wars-of-the-21st-century

[431] International Criminal Court, *Situation in Ukraine*, ICC-01/22, https://www.icc-cpi.int/situations/ukraine

of the ICC. However, here is the author's opinion on this scenario as it is more than clear that the Russian Federation is not taking the intervention of the ICC very positively. It can be stated that compared to many other past or ongoing investigations, the Ukrainian situation has more striking features. For example, in several other situations like Sudan, Libya, the Philippines, and Myanmar, the prosecutor's office faced either lack of access to the territory or significant obstacles in taking investigating steps in the country.

Regarding the impact of the ICC investigation in Ukraine, if the question is whether the ICC can bring peace or de-escalate the violence, or it could make matters worse. On this ground, it can be said that the ICC is the place for international accountability not for conflict resolution. So, if there is any expectation that ICC would remove the roots of the cause of conflict between two states, that would be a wrong perception. In the matter of bringing peace, the Court's effects are mostly ambivalent, the pursuit of justice by the ICC supporting victims is far from satisfaction in reality.

Looking at Putin's past invasions makes horror reflection and unabashedly made war crimes, even in the case of Syria, along with Bashar-al-Assad, their use of chemical weapons upon civilians made ample evidence that Putin cares little about human life.[432] So, expecting any sustainable peace in Putin's power is not shown to happen when he is not even interested in any international community justice. But if the ICC's intervention adds to Putin's isolation and he is eventually deposed, perhaps the Court could contribute to peace. There is an optimistic note on that is ICC investigation could deter further atrocities in Ukraine.

7.5.2. Palestine

The International Criminal Court (ICC) has faced significant criticism regarding its investigation into the situation in Palestine, particularly in comparison to its approach toward Ukraine. Critics argue that the ICC exhibits a double standard in its response to alleged war crimes, genocide, and crimes against humanity. While the ICC swiftly initiated an investigation into the situation in Ukraine following Russia's 2022 invasion, the investigation into Palestine has been slower and received far fewer resources.

The International Criminal Court (ICC) has received various critiques over the last two decades, and it is once again under scrutiny due to differing approaches to inquiry in Palestine and Ukraine.

[432] R. Pita & J. Domingo, (2014), The Use of Chemical Weapons in the Syrian Conflict, *Toxics,* vol. 2(3).

In its early years, it was criticized for centering its trial on conflicts in Africa; presently, it remains the center of discussion due to the slow pace of investigation in Palestine.

7.5.2.1. Initiating Investigation on Palestine

On 20 December 2019, Fatou Bensouda, then-Prosecutor of the International Criminal Court (ICC), announced an investigation into alleged war crimes committed in Palestine by Israeli forces, Hamas, and other Palestinian armed groups since 13 June 2014. These allegations include the establishment of illegal Israeli settlements in the occupied West Bank and violations of international humanitarian law as a war crime and the crimes against humanity as a widespread and systematic attack against the civilian population of Gaza.[433] The court also found the intentional deprivation to the civilian population of Gaza with the essential objects to their survival, including food, water, medicine, as well as fuel and electricity, by impeding any humanitarian aid. In addition, limiting or preventing medical supplies into Gaza, particularly anaesthetics and anaesthesia machines, doctors were forced to operate on wounded persons including children without anaesthetics and were forced to use inadequate or unsafe means of sedative to intentionally cause these persons extreme pain and suffering, which are amount to the crime against humanity of other inhuman acts.[434] Additionally, following the events of 8 October 2023, ICC judges indicated reasonable grounds to believe that Israeli leaders committed crimes such as starvation, murder, deliberately targeting civilians, and persecution, while Hamas leaders were implicated in crimes including extermination, murder, and hostage-taking.[435]

Israel, which is not a party to the ICC, disputes the court's jurisdiction, asserting that Palestine is not a sovereign state capable of acceding to the Rome Statute. Despite these objections, ICC Chief Prosecutor Karim Ahmad Khan has affirmed that alleged war crimes committed by both Israelis and Palestinians fall within the court's jurisdiction under the Palestine investigation.[436] Israeli

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[433]International Criminal Court, 3 March, 2021, *"Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine"*, https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine

[434] International Criminal Court Press Release, 21 November 2024, *Situation in the State of Palestine: ICC Pre-Trial Chamber,* https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges

[435] Human Rights Watch, *21 November 2024, "Palestine: ICC Warrants Revive Hope for Long-Delayed Justice",* https://www.hrw.org/news/2024/11/21/palestine-icc-warrants-revive-hope-long-delayed-justice

[436] Anthony Deutsch; Stephanie van den Berg (13 October 2023). "Exclusive: Hamas attack, Israeli response fall under ICC jurisdiction, prosecutor says". *Reuters*, https://www.reuters.com/world/middle-east/hamas-attack-would-fall-under-jurisdiction-war-crimes-court-prosecutor-2023-10-12

Prime Minister Benjamin Netanyahu has dismissed the ICC's allegations as "antisemitic," a claim widely criticized as a politicization of antisemitism.[437] Furthermore, reports suggest that Israel has used its intelligence agencies to surveil, pressure, and allegedly threaten ICC officials since the investigation's initiation in 2015.

7.5.2.2. Jurisdictional Scope of the ICC over Palestine

The ICC's jurisdiction applies to state parties and crimes committed within their territories. While Israel signed the Rome Statute in 2000, it did not ratify the treaty. Palestine acceded to the statute on 2 January 2015, with jurisdiction retroactively effective from 13 June 2014.[438] Earlier, in 2009, the Palestinian National Authority had submitted an ad hoc declaration accepting ICC jurisdiction, but it was deemed invalid as Palestine was only a UN "observer entity" at the time. Following the UN General Assembly's recognition of Palestine as a non-member observer state in 2012, the ICC Prosecutor affirmed that Palestine was eligible to join the Rome Statute.[439] A valid declaration was later submitted in 2015, officially granting the ICC jurisdiction over crimes committed in Palestine.

Israel challenged the court's jurisdiction over the situation of Palestine under article 19(2) of the Rome Statute. Israel continues to contest the ICC's jurisdiction, arguing that Palestine lacks the sovereignty required to be a party to the Rome Statute. However, in 2021, the ICC definitively upheld the legal validity of Palestine's status as a state party to the Rome Statute, enabling the continuation of its investigation.[440] The Chamber of the prosecutors decided by the majority on the issue raised by Israel that the court may exercise its criminal jurisdiction in the situation of Palestine and the territorial scope of this jurisdiction extends to Gaza and the West Bank including East Jerusalem. The chamber also described that determining its jurisdiction was not equal to determining whether Palestine fulfilled the requirements of statehood under Public International

[437] Staff, T. O. I. (3 March 2021), "Israel livid over 'anti-Semitic' ICC war crimes probe; PA and Hamas cheer", *Times of Israel,* www.timesofisrael.com.
[438] Ahren, Raphael (23 December 2019). "The Hague vs. Israel: Everything you need to know about the ICC Palestine probe". *Times of Israel*. website: www.timesofisrael.com.
[439] Bensouda, Fatou (29 August 2014). "Fatou Bensouda: the truth about the ICC and Gaza". *The Guardian*, https://www.theguardian.com/commentisfree/2014/aug/29/icc-gaza-hague-court-investigate-war-crimes-palestine
[440] Beaumont, Peter (20 December 2019). "ICC to investigate alleged Israeli and Palestinian war crimes". *The Guardian*. https://www.theguardian.com/law/2019/dec/20/icc-to-investigate-alleged-israeli-and-palestinian-war-crimes

Law, or adjudicating border disputes, or prejudging any future borders, rather it was only about determining the scope of the ICC's territorial jurisdiction for the purpose of the Rome Statute.[441]

7.5.2.3. Arrest Warrants Issued

On 21 November 2024, the International Criminal Court (ICC) issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu, former Defence Minister Yoav Gallant for crime against humanity and war crimes committed from at least 8 October 2023 until at least 20 May 2024.[442] Each of them bear criminal responsibility as co-perpetrators for committing war crime for using starvation as a method of warfare and crime against humanity as of murder, murder persecution and other inhuman acts. The Chamber also found reasonable grounds to believe that both of them bear criminal responsibility as civilian superiors for the war crime of intentionally directing attack against civilian population.[443] The ICC issued the warrant, classifying it as 'secret' to protect witnesses and safeguard the investigation.

The 124 ICC member states, including France, Germany, and the United Kingdom, are now obligated to arrest Netanyahu and Gallant if they enter their territories. However, Netanyahu remains welcome in the United States, which is not a member of the ICC. Meanwhile, the US is increasing its pressure to obstruct an investigation against the Israeli officials with letters from some senators warning that issuing arrest warrants for Israeli Prime Minister Benjamin Netanyahu and other officials would have negative repercussions for the court and its officials.

7.5.3. Criticism of Double Standards in Ukraine-Palestine Investigations

Following the completion of the preliminary examination of the situation in Ukraine by former ICC Prosecutor Fatou Bensouda on December 11, 2020, and the subsequent initiation of an investigation, the court issued arrest warrants in March 2023 for Russian President Vladimir Putin and Russian Children's Rights Commissioner Maria Lvova-Belova. In March 2024, warrants were also issued for Lieutenant General Sergey Ivanovich Kobylash and Admiral Viktor Nikolayevich Sokolov. Then, in June 2024, arrest warrants were announced for Secretary of the Russian Security

[441] *Ibid note 62*
[442] International Criminal Court Press Release, 21 November 2024, *Situation in the State of Palestine: ICC Pre-Trial Chamber*, https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges
[443] *Ibid*

Council Sergey Shoigu, a former Russian defense minister, and Russian Chief of General Staff Valery Gerasimov.[444]

Despite ongoing mass war crimes, crimes against humanity and genocide in Gaza, the budget and human resources allocated by the ICC Prosecutor's Office for the Palestine investigation are much less than those allocated for Ukraine, consequently, no ICC investigators or prosecutors ever visited the territory of Israel or Palestine.[445] On the other side, the Chief prosecutor undertook several visits to Ukraine after the full-scale invasion of Russia, open the Court's biggest field office, deployed 42 investigators, raised unprecedented amounts of funding from various states, these were the same measures the Palestinian human rights groups have been requesting for a while, yet to little or no avail.[446] Which is leading to increasing criticism of "double standards," and responsible for rising questions on the credibility and biasness of the ICC in the public domain.

As the situation unfolds, the United States is ramping up its efforts to hinder an ongoing investigation into Israeli officials. This includes correspondence from several senators who cautioned that the issuance of arrest warrants for key figures, including Israeli Prime Minister Benjamin Netanyahu, could lead to serious and detrimental consequences for both the court involved and its personnel. The letters express concern about the potential diplomatic fallout and the broader implications for international relations in the region.[447] Furthermore, the United States and Israel are reportedly involved in espionage and intimidation tactics directed at the ICC in an effort to hinder investigations into those responsible for crimes committed in Palestine.

The example of situation in Palastine confirms that influences from the powerful states of the global political system have a vital contribution in selection of cases by the ICC, which is responsible to make international criminal justice unbalanced as a concrete risk of double standard of the court. The situation [448]

[444] Anadolu Agency. (2024, July 17). *ICC faces legitimacy challenges on its 22nd anniversary over investigations in Palestine, Ukraine.* https://www.aa.com.tr/en/world/icc-faces-legitimacy-challenges-on-its-22nd-anniversary-over-investigations-in-palestine-ukraine/3265655

[445] Triestino M. (2024, January 3), "The Prosecutor's Double Standards in the time of an Unfolding Genocide", *Opinio Juris*, https://opiniojuris.org/2024/01/03/the-icc-prosecutors-double-standards-in-the-time-of-an-unfolding-genocide/

[446] *Ibid*

[447] *Ibid note 73*

[448] Ibid note 74

7.6. Distrust on the ICC Due to World Politics

Another form of criticism of ICC came from the African-based countries claiming ICC is inappropriately political by only focusing on the situation in Africa. Some critics view this practice as an unjustified effort by Western nations to ensure African countries remain stymied by the West and its allies. They argue that African countries are used as a scapegoat in the ICC's quest to acquire credibility on the global phenomenon. Notably, all convicted individuals by ICC so far are African.[449] Even though there is no evidence to say that any of the ICC prosecutions in Africa were unjustified the pertinent question arises on the ground of why the ICC is taking limited action in other regions. Most African countries, including South Africa expressed dissatisfaction with the ICC's action-taking mechanisms by claiming bias and considering it as a tool of Western imperialism.[450] At the same time three African countries, Burundi, Gambia and South Africa, signaled their intention to leave the ICC. As a result, Burundi was the first country to withdraw its membership from the ICC in 2017.[451]

The weaknesses of the International Criminal Court (ICC) became evident with the withdrawal of Burundi in 2017 and the Philippines in 2019, following the initiation of investigations against them. This highlighted that states have the option to exit the ICC when they choose. Furthermore, the fact that only 11 convictions have been rendered to date underscores the sluggishness of the ICC's investigation and prosecution processes. It also suggests a tendency to avoid targeting officials from powerful states, resulting in numerous crimes remaining unpunished.

In recent years, there has been significant discussion among scholars and politicians regarding the perception that the International Criminal Court (ICC) disproportionately targets African nations. Critics argue that this focus undermines the sovereignty of these countries, as most cases brought before the ICC involve African states, while other nations, such as Syria, seem to be overlooked.[452] Notably, prominent African leaders like Paul Kagame have expressed the view that the court is driven more by political agendas than by a genuine pursuit of justice, describing it as "politics

[449] Bosco, David L. *Rough Justice the International Criminal Court in a World of Power Politics*. New York: Oxford University Press, 2014.

[450] Norimitsu Onishi, 8 March 2017, 'South Africa Reverses Withdrawal from International Criminal Court' *New York Times*, , https://www.nytimes.com/2017/03/08/world/africa/south-africa-icc-withdrawal.html

[451] Timothy Jones, 27 October 2017, 'Burundi becomes first country to leave International Criminal Court' *Deutsche Welle*, https://www.dw.com/en/burundi-becomes-first-country-to-leave-international-criminal-court/a-41135062

[452] F. Kuwonu, 2017, "ICC: Beyond the Threats of Withdrawal", *Africa Renewal,* https://www.un.org/africarenewal/magazine/may-july-2017/icc-beyond-threats-withdrawal

disguised as international justice."[453] These remarks reflect a growing sentiment that the ICC is deviating from its intended role as a justice institution and is increasingly seen as a political tool used to suppress African countries under the guise of "implementing the law."

Even if the majority of the African cases in ICC were instigated by the countries themselves or initiated by the prosecutor with the full cooperation of the governments. However, still, the distrust remains in the name of immunity for sitting heads of state. For instance, the case of Al-Bashir, who was indicted by the ICC when he was sitting head of state of Sudan. As with Russia, Sudan is not a state party to the ICC. Even though the Rome Statute does not recognize immunity for the head of state but Al Bashir's immunity as a head of state in Sudan and political influences hindered his arrest and surrender to court. As in the case of Putin, cooperation of the home state and other state parties is necessary for prosecuting a serving head of any state.

In the case of Al Bashir, none of the African states including Sudan itself were willing to help ICC. Due to grave crimes taking place in Darfur, Sudan was referred by the UN Security Council to the ICC Prosecutor's Office.[454] Vladimir Putin as a president of Russia might escape the ICC trial just like Al Bashir unless Russia Cooperates with the court.

In other words, while international courts do not recognize immunity, the prosecution of serving heads of state presents significant challenges, particularly when there is a lack of cooperation regarding arrest and surrender to the Court. Several factors contribute to this situation: (a) head-of-state immunity remains acknowledged within domestic jurisdictions; (b) such immunity is also recognized by foreign national criminal courts and is rooted in customary international law; and (c) importantly, the question of head-of-state immunity before an international criminal court is determined by the specific statute that governs the court, rather than solely by customary international law.[455]

[453] *ibid*
[454] UN Security Council, "Resolution 1593 (2005), Adopted by the Security Council at 5158th Meeting, on 31 March 2005," UN Nations Digital Library, 2005, https://digitallibrary.un.org/record/544817.
[455] Aghem Hanson Ekori, 2020, "The ICC or the ACC: Defining the Future of the Immunities of African State Officials," *African Journal of International Criminal Justice* (AJICJ), vol.6(1).

7.7. Conclusion:

Despite facing significant criticism, the International Criminal Court (ICC) remains a crucial organization for promoting international justice in cases of violations of international criminal law. Even though the ICC has many flaws as like overplay of politics in its legal structures, issues in evidence collection, political immunity of the head of the states, and the UN Security Council's politicization over the ICC, it remains the sole hope for the victims who suffered the acts of violence in armed conflicts.

Nevertheless, the Rome Statute is not able to do much by itself without the cooperation of the state, as such ensuring enforcement of arrest warrants. Reformation of the ICC requires a collective effort of all its members and also the UNSC to respect the rule of law of the ICC. To improve its effectiveness and gain wider acceptance, the ICC must address the criticisms directed at its operations. This includes tackling perceptions of bias, expanding its jurisdiction to include non-member states, and enhancing the speed, transparency, and overall effectiveness of its investigations and trials. Additionally, the ICC should improve its outreach to victims and engage more effectively with civil society.

Chapter 8:

Comparative and Complementary Approaches

8.1. Introduction

The question of reparations for victims of sexual violence in armed conflicts has evolved substantially over the last few decades. While the International Criminal Court (ICC) has been a pioneer among international criminal institutions in establishing a formalized reparations framework under Article 75 of the Rome Statute, it is neither the first nor the only mechanism to address the aftermath of mass atrocities. Comparative analysis with other international, hybrid, and domestic mechanisms offers critical insights into how the ICC can refine and strengthen its reparatory regime, particularly for victims of sexual violence, whose needs are often distinct, multifaceted, and profoundly long-term.

Earlier international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), laid important foundations in recognizing sexual violence as a constitutive element of serious international crimes, including genocide and crimes against humanity. However, these tribunals notably lacked formal mandates to deliver reparations to victims, leaving a significant gap between legal recognition of harm and the actual delivery of justice. Similarly, hybrid courts like the Special Court for Sierra Leone (SCSL) and domestic processes, such as Colombia's Special Jurisdiction for Peace (SJP) and Uganda's transitional justice mechanisms, have developed different strategies to respond to victims' rights and needs, offering models of both promise and limitation.

In recent years, growing attention has been given to national tribunals such as the International Crimes Tribunal of Bangladesh (ICT-BD), which has dealt with crimes committed during the 1971 Liberation War, including sexual violence. Although ICT-BD operates within a primarily criminal accountability framework, its approach toward victim acknowledgment and broader transitional justice efforts provide another valuable reference point. Examining these mechanisms reveals critical lessons about the inclusion (or exclusion) of victims' voices, the design of reparations schemes, and the cultural and contextual adaptability of reparatory measures.

Beyond formal judicial processes, non-judicial and administrative reparations programs—such as those implemented in Peru, South Africa, and Sierra Leone—demonstrate alternative methods of addressing mass victimization. These programs often deploy symbolic, collective, or community-based reparations, particularly important in addressing gender-specific harms that individual monetary compensation alone cannot redress. Their experiences highlight the importance of holistic, participatory, and culturally sensitive approaches, especially where victims of sexual violence are concerned.

Thus, this chapter seeks to place the ICC's reparatory regime within a broader landscape of comparative practices, assessing both successes and failures across different institutional contexts. It aims to draw meaningful parallels and contrasts that can inform future improvements to the ICC's work. By exploring international, hybrid, and national experiences alongside non-judicial initiatives, this analysis contributes to a more nuanced understanding of what reparative justice can and should look like for victims of sexual violence in armed conflict.

The chapter proceeds in six sections. Section 7.2 discusses the approaches of the ICTY and ICTR to sexual violence and reparations. Section 7.3 examines hybrid and national transitional justice mechanisms, including the Special Court for Sierra Leone, Colombia's SJP, Uganda's policies, and the International Crimes Tribunal of Bangladesh. Section 7.4 offers a comparative analysis of the strengths and weaknesses of these systems. Section 7.5 turns to complementary, non-judicial reparations models. Section 7.6 synthesizes lessons that can guide the ICC toward more effective and victim-centered reparations. The chapter concludes in Section 7.7 by summarizing the key insights and proposing pathways forward.

8.2. International Criminal Tribunals and Sexual Violence Reparations

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were instrumental in recognizing sexual violence as a grave breach of international law. However, while these tribunals made substantial doctrinal advances, they did not possess reparations mechanisms akin to the ICC's framework. Understanding their contributions and limitations is crucial for evaluating the ICC's reparatory regime and considering broader possibilities for justice.

8.2.1. International Criminal Tribunal for the former Yugoslavia (ICTY)

The ICTY, established by the United Nations Security Council in 1993, marked a turning point in the prosecution of sexual violence as a serious international crime. Its pioneering work included recognizing rape and sexual enslavement as crimes against humanity and war crimes under the Tribunal's Statute.[456] Key cases such as *Prosecutor v. Kunarac, Kovač and Vuković* (the "Foča case") demonstrated the Tribunal's commitment to expanding the understanding of sexual violence beyond simplistic or patriarchal conceptions.

In *Kunarac*, the Trial Chamber recognized that sexual enslavement involved repeated acts of sexual violence, control over victims' movements, and exploitation.[457] Moreover, the ICTY in *Prosecutor v. Furundžija* identified rape as a violation of the prohibition against torture under customary international law, emphasizing the serious and humiliating harm inflicted upon victims.[458] These decisions were groundbreaking in crystallizing legal standards applicable to sexual violence in armed conflict.

Yet despite these advances, the ICTY lacked any mandate to order reparations for victims. Its primary focus remained criminal accountability through prosecution and punishment. Victims participated mostly as witnesses, with limited procedural rights and no formal recognition as parties with reparative claims. As a result, the justice process remained largely detached from victims' broader needs for acknowledgment, restitution, and healing.

Critics argue that this prosecutorial emphasis entrenched a "trial-centered" model of justice, privileging retributive aims over restorative ones.[459] Without the ability to award reparations, the ICTY's contribution to the realization of victims' rights remained incomplete. Although the Tribunal did recommend that national governments provide assistance to victims, no systematic follow-up or enforcement mechanism was put in place.

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[456] Statute of the International Criminal Tribunal for the former Yugoslavia (as amended), 25 May 1993, UN Doc S/RES/827.
[457] *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, ICTY-96-23-T, Trial Judgment, 22 February 2001, paras 539–543
[458] *Prosecutor v. Anto Furundžija*, ICTY-95-17/1-T, Trial Judgment, 10 December 1998, paras 163–186
[459] Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge University Press 2007) 180–185

Thus, while the ICTY advanced the normative framework regarding sexual violence, it offered little by way of reparative justice for survivors. This gap set an important precedent for the ICC, demonstrating the need for an integrated approach combining accountability with reparations.

8.2.2. International Criminal Tribunal for Rwanda (ICTR)

Established in 1994 to address the genocide in Rwanda, the ICTR further developed international jurisprudence on sexual violence. Most notably, in *Prosecutor v. Akayesu*, the Tribunal found that acts of sexual violence could constitute genocide when committed with intent to destroy a particular group.[460] This landmark ruling revolutionized international criminal law by recognizing rape not merely as a crime of opportunity but as a deliberate tool of ethnic destruction.

The Akayesu judgment defined rape broadly as "a physical invasion of a sexual nature committed on a person under circumstances which are coercive," moving away from traditional definitions requiring physical force or penetration.[461] Moreover, in cases like *Prosecutor v. Muhimana*, the ICTR continued to develop legal understandings of sexual violence during genocidal campaigns.

However, like the ICTY, the ICTR was structurally limited to criminal prosecutions and did not provide reparations mechanisms for victims. Although it acknowledged the profound harms suffered by survivors, the ICTR lacked the mandate to issue reparations orders, whether symbolic or material. Victims could not claim damages through the Tribunal, nor was any trust fund or assistance program systematically established under its auspices.

This absence generated significant critiques, particularly in the Rwandan context, where mass sexual violence had devastating social and psychological consequences. Scholars such as Sarah Kendall and Sarah Nouwen have argued that the ICTR's failure to provide reparations contributed to a disconnect between international legal processes and local experiences of justice.[462] Many survivors, particularly women who endured sexual violence, perceived the Tribunal as an external, elite-driven mechanism that did little to meet their practical needs for restoration.

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[460] *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment, 2 September 1998, paras 731–732.
[461] Ibid, para 688
[462] arah Nouwen and Sarah Kendall, "As You Set Out for Ithaka: Practical, Epistemological, Ethical Challenges of Empirical Research in Transitional Justice" (2014) 27 Leiden Journal of International Law 227, 238–241

Importantly, Rwanda's own domestic *gacaca* courts and subsequent government-led reparations programs attempted, albeit imperfectly, to fill some of these gaps. However, the absence of a coordinated international reparations scheme remains a significant legacy issue for the ICTR.

In sum, the ICTR expanded the legal landscape regarding sexual violence, particularly its recognition as an element of genocide. Nevertheless, it replicated the ICTY's failure to integrate reparative justice for victims, underscoring the necessity for future mechanisms—such as the ICC—to incorporate victim-centered reparations as a fundamental part of transitional justice processes.

8.3. Hybrid and National Transitional Justice Mechanisms

The shortcomings of purely international tribunals in addressing victims' needs have encouraged the development of hybrid and national transitional justice mechanisms. These institutions often integrate international legal standards with domestic legal systems, offering unique models for victim engagement and reparations. This section explores the experiences of the Special Court for Sierra Leone (SCSL), Colombia's Special Jurisdiction for Peace (SJP), the International Crimes Tribunal of Bangladesh (ICT-BD), and Uganda's National Transitional Justice Policy, highlighting both achievements and limitations in addressing sexual violence victims' reparations.

8.3.1. The Special Court for Sierra Leone (SCSL)

The SCSL, established jointly by the Government of Sierra Leone and the United Nations in 2002, was mandated to prosecute those "bearing the greatest responsibility" for serious violations of international humanitarian law and Sierra Leonean law committed during the country's brutal civil war. Sexual violence, including rape, sexual slavery, and forced marriage, featured prominently among the atrocities addressed.[463]

Significantly, the SCSL recognized *forced marriage* as a new crime against humanity under the rubric of "other inhumane acts" in the *AFRC* case.[464] The acknowledgment of sexual and gender-based violence as central to the conflict represented a major doctrinal advance.

[463] Statute of the Special Court for Sierra Leone, 16 January 2002, 2178 UNTS 145
[464] *Prosecutor v. Brima, Kamara and Kanu* ("AFRC case"), SCSL-2004-16-T, Trial Judgment, 20 June 2007, para 713

However, similar to the ICTY and ICTR, the SCSL did not have a formal reparations mandate. Victims participated primarily as witnesses, with limited procedural rights compared to those in the ICC system. Although the Court recommended that the Sierra Leonean government provide reparations, it lacked the authority to enforce such recommendations.

Complementing the SCSL's work, Sierra Leone established the Truth and Reconciliation Commission (TRC), which adopted a more victim-centered approach. The TRC's Final Report extensively documented sexual violence and called for specific reparations, including medical care, education, and housing for women and girls affected by sexual violence.[465] However, implementation of these recommendations remained inconsistent and underfunded, leading to frustration among survivors.

The SCSL experience demonstrates the importance of coupling criminal accountability with proactive reparations frameworks. Without such mechanisms, legal recognition of harms may be symbolically important but practically hollow.

8.3.2. Colombia's Special Jurisdiction for Peace (SJP)

Colombia's SJP, created as part of the 2016 peace agreement between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), represents one of the most innovative transitional justice mechanisms to date, particularly concerning victim participation and reparations.

The SJP operates within a broader Comprehensive System for Truth, Justice, Reparation, and Non-Repetition. Victims, especially survivors of sexual and gender-based violence, are at the center of its design. They have rights to participate, present reports, and influence reparations measures, moving beyond the passive witness role typical of earlier tribunals.[466]

Crucially, the SJP explicitly recognizes sexual and gender-based violence as a priority area. Its jurisprudence has stressed intersectionality, acknowledging how factors such as ethnicity, gender, and displacement exacerbate victimization. Reparations under the Colombian framework are both

[465] Truth and Reconciliation Commission of Sierra Leone, *Final Report* (2004), Vol 3b, Chapter 3
[466] Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Colombia, 24 November 2016.

individual and collective, involving material compensation, symbolic measures, community reconstruction, and guarantees of non-repetition.[467]

An example is Case 007 (regarding sexual and gender-based violence in the armed conflict), where the SJP has emphasized the necessity of survivor-centered proceedings and has adopted protective measures to minimize re-traumatization.

Challenges remain, particularly in implementing reparations amidst Colombia's complex political landscape and ongoing insecurity. Nevertheless, the Colombian model illustrates how a transitional justice mechanism can embed reparations structurally rather than treating them as an ancillary concern.

8.3.3. International Crimes Tribunal, Bangladesh (ICT-BD)

The ICT-BD, established in 2010 under the International Crimes (Tribunals) Act of 1973, seeks to prosecute crimes committed during Bangladesh's 1971 Liberation War, including mass killings, rape, and other atrocities. The Tribunal has made significant findings regarding sexual violence, recognizing the use of rape as a tool of war and genocide.[468]

In cases such as *Prosecutor v. Abdul Quader Molla* and *Prosecutor v. Delawar Hossain Sayedee*, the ICT-BD found that rape and other forms of sexual violence were systematically committed by auxiliary forces in collaboration with the Pakistani army.[469]

However, the Tribunal's primary focus is criminal accountability; it does not have a direct reparations mandate. While the judgments sometimes acknowledge victims' suffering, they do not order reparations. Instead, reparative efforts for victims, including "Birangana" (honored women) recognition for rape survivors, have been pursued through government initiatives outside the Tribunal's proceedings.

[467] Rodrigo Uprimny and Nelson Camilo Sánchez, "Transitional Justice for Colombia: A Balance Sheet" (2017) 9 International Journal of Transitional Justice 253, 261
[468] *Prosecutor v. Abdul Quader Molla*, ICT-BD Case No. 02 of 2012, Judgment, 5 February 2013
[469] *Prosecutor v. Delawar Hossain Sayedee*, ICT-BD Case No. 01 of 2011, Judgment, 28 February 2013

The Government of Bangladesh's efforts have included financial support, housing programs, and symbolic recognition of survivors. However, many scholars and activists argue that these efforts remain inadequate, fragmented, and insufficiently sensitive to the specific needs of sexual violence survivors.[470]

The ICT-BD experience highlights the tension between criminal justice and reparative justice in national prosecutions. It underscores the need for integrated strategies that move beyond mere recognition to tangible support and empowerment for survivors.

8.3.4. Uganda's National Transitional Justice Policy

Uganda's experience with transitional justice emerged primarily from the long-standing conflict between the government and the Lord's Resistance Army (LRA). Although Uganda referred the situation to the ICC in 2004, its domestic transitional justice process has operated alongside international proceedings.

Uganda's 2019 National Transitional Justice Policy (NTJP) represents a holistic framework encompassing formal justice, traditional justice, truth-telling, and reparations. The NTJP explicitly recognizes the need for reparations, including for victims of sexual and gender-based violence.[471]

Among the policy's key features are:

- Provision of restitution and rehabilitation services for survivors.
- Implementation of both individual and collective reparations.
- Attention to gender-specific harms and the stigma faced by survivors of sexual violence.

Nevertheless, progress in implementing the NTJP has been slow. Resource constraints, political will, and competing governance priorities have impeded full realization of the policy's reparations promises. Moreover, the continued marginalization of survivors, particularly in northern Uganda,

[470] Sara Hossain and Bina D'Costa, "Redress for Sexual Violence before the International Crimes Tribunal in Bangladesh: Lessons from Other Contexts" (2016) 10 Journal of International Humanitarian Legal Studies 37.
[471] Government of Uganda, *National Transitional Justice Policy* (2019)

suggests that strong institutional support and sustained advocacy are necessary for meaningful reparations to materialize.

Uganda's model illustrates the potential—and the challenges—of a nationally driven, holistic approach to transitional justice that includes reparations for sexual violence victims.

8.4. Comparative Insights: Key Strengths and Weaknesses

A comparative analysis of international, hybrid, and national mechanisms for addressing sexual violence in armed conflict reveals a complex and evolving landscape. While each system offers valuable lessons, they also exhibit critical weaknesses that impact the realization of meaningful reparations for victims. This section synthesizes the experiences of the ICTY, ICTR, SCSL, Colombia's SJP, the ICT-BD, and Uganda's transitional justice process, focusing on how their different structures, mandates, and sociopolitical contexts shape reparatory outcomes for survivors of sexual violence.

8.4.1. Strengths across Mechanisms

i. Recognition of Sexual Violence as a Grave Crime

One of the most significant contributions across all mechanisms studied is the consistent recognition of sexual violence as a grave violation of international law. The ICTY and ICTR broke new ground by recognizing rape as a constituent act of crimes against humanity, war crimes, and even genocide.[472] These doctrinal developments fundamentally shifted perceptions of sexual violence from private wrongs to matters of public international concern.

Similarly, the SCSL's recognition of *forced marriage* as a distinct crime[473] and the SJP's focus on intersectionality[474] reinforce the idea that sexual violence in conflict is complex, systemic, and requires nuanced legal responses. These legal advances provide a crucial normative foundation for reparations efforts, affirming victims' suffering and legitimizing their claims to redress.

[472] *Prosecutor v. Kunarac*, ICTY-96-23-T, and *Prosecutor v. Akayesu*, ICTR-96-4-T
[473] P*rosecutor v. Brima et al.*, SCSL-04-16-T
[474] Colombia's SJP Rules of Procedure (2017)

ii. Growing Emphasis on Victim Participation

Hybrid and national mechanisms have shown a growing commitment to victim participation. Unlike the ICTY and ICTR, where victims were largely passive witnesses, the SJP empowers victims to submit reports, influence reparative processes, and engage meaningfully in proceedings.[475] Uganda's NTJP also emphasizes participatory design for reparations programs, recognizing that survivors must have agency in shaping their own paths to justice.

This trend represents a significant evolution in international justice, acknowledging that reparations must be not only about material compensation but also about restoring dignity, agency, and social standing.

iii. Holistic Conception of Reparations

Increasingly, mechanisms are adopting a holistic understanding of reparations. Colombia's model, which integrates truth-telling, institutional reform, individual and collective reparations, and guarantees of non-repetition, exemplifies a comprehensive vision of transitional justice.[476] Similarly, Uganda's NTJP and Sierra Leone's TRC emphasized psychosocial support, community reconstruction, and symbolic reparations alongside material compensation.

This broader conception is particularly crucial for survivors of sexual violence, for whom stigma, social exclusion, and trauma often compound physical injuries.

8.4.2. Weaknesses across Mechanisms

i. Absence or Weakness of Reparations Mandates

A significant weakness across many mechanisms is the lack or weakness of formal reparations mandates. Neither the International Criminal Tribunal for the former Yugoslavia (ICTY) nor the International Criminal Tribunal for Rwanda (ICTR) had the authority to award reparations, resulting in a notable gap between the acknowledgment of harm and the restoration of material support. Similarly, while the Special Court for Sierra Leone (SCSL) could recommend reparations,

[475] Rodrigo Uprimny and Nelson Camilo Sánchez, "Transitional Justice for Colombia: A Balance Sheet" (2017)
[476] Colombian Peace Agreement, 2016, Section 5.1.3

it lacked the ability to enforce them, and the International Criminal Tribunal for Bangladesh (ICT-BD) did not have an integrated reparations framework.

Even in cases where mechanisms like Colombia's Special Jurisdiction for Peace (SJP) or Uganda's National Transitional Justice Policy (NTJP) establish provisions for reparations, practical implementation often encounters challenges due to political resistance, limited resources, and bureaucratic inefficiencies. This underscores an essential lesson: legal recognition of sexual violence must be accompanied by enforceable reparations frameworks for justice to hold true meaning for survivors.

ii. Fragmented Implementation and Political Constraints

Many reparations programs suffer from fragmentation and political interference. Sierra Leone's TRC recommendations were implemented inconsistently, leaving many survivors disillusioned.[477] In Bangladesh, while the government's recognition of "Biranganas" represents an important symbolic step, material support programs have often been ad hoc and inadequately funded.[478]

Colombia's ambitious reparations system faces challenges from political instability, security threats, and bureaucratic inertia, while Uganda's NTJP struggles against slow rollout and limited reach. In every case, the success of reparations depends not only on legal frameworks but also on sustained political commitment and resource allocation.

iii. Insufficient Gender Sensitivity and Intersectionality

While there have been improvements, many reparations processes still fail to adequately address the gendered dimensions of harm. For example, early transitional justice efforts often treated sexual violence survivors as an undifferentiated group, ignoring how experiences of violence intersect with factors such as ethnicity, class, age, and disability.

[477] Truth and Reconciliation Commission of Sierra Leone, *Final Report* (2004).
[478] Sara Hossain and Bina D'Costa, "Redress for Sexual Violence before the International Crimes Tribunal in Bangladesh" (2016)

Colombia's explicit adoption of an intersectional approach offers a promising model,[479] but it remains an exception rather than the rule. Most other mechanisms have not systematically tailored reparations to the specific needs and lived realities of survivors of sexual violence.

iv. Lack of Survivor-Centered Approaches

In several contexts, survivors have been treated primarily as witnesses or beneficiaries, rather than active agents in the justice process. The ICTY and ICTR exemplified this dynamic, but even more recent initiatives sometimes fall into technocratic patterns that marginalize survivors' voices.

A truly survivor-centered approach requires not just allowing participation but building processes around survivors' needs, preferences, and aspirations. It also demands sensitivity to the risks of re-traumatization and careful attention to issues of confidentiality, consent, and psychological support.

8.4.3. Key Comparative Insights

Bringing these strands together, several comparative insights emerge, firstly, integrated approaches to the systems that combine criminal accountability, truth-telling, and reparations (e.g., Colombia) are more likely to deliver holistic justice for survivors. Secondly, ensuring participation is crucial in the mechanisms that treat victims as active party rather than passive recipients (e.g., SJP) foster more meaningful reparations. Thirdly, true political will is necessary, because without sustained political support and resource commitment, even well-designed reparations frameworks can falter (e.g., Sierra Leone, Uganda). Fourthly, cultural and contextual sensitivity to the sexual and gender-based-violence is important, as reparations must be adapted to the cultural, social, and historical context of victims' experiences (e.g., Uganda's use of traditional justice elements). Finally, legal innovation is necessary in expanding legal categories (e.g., forced marriage at the SCSL) and recognizing new harms (e.g., sexual violence as genocide at the ICTR) are crucial for accurately addressing survivors' realities.

[479] Special Jurisdiction for Peace (Colombia), *Case 007: Gender-Based Violence and Conflict*

These insights provide critical guidance for enhancing the ICC's reparatory regime, particularly for victims of sexual violence, who require justice measures that are comprehensive, participatory, survivor-centered, and politically supported.

8.5. Complementary Non-Judicial Reparations Models

While judicial mechanisms like the ICC, SCSL, and SJP play crucial roles in advancing accountability, they are often limited in scope, reach, and reparative capacity. Non-judicial reparations programs, often implemented at the national level, provide complementary paths for addressing the complex harms suffered by victims of sexual violence during armed conflicts. These programs are often broader in coverage, more flexible in design, and can target structural inequalities that courts alone are ill-equipped to remedy.

This section explores key examples from Peru, South Africa, and Sierra Leone, highlighting lessons for complementing ICC reparatory efforts.

8.5.1. Peru's Comprehensive Reparations Plan (PIR)

Peru's *Programa Integral de Reparaciones* (PIR) emerged from the recommendations of the Peruvian Truth and Reconciliation Commission (CVR), which investigated atrocities committed during the country's internal armed conflict (1980–2000). The PIR includes several forms of reparations:

i. *Economic Compensation:* Direct financial payments to victims.
ii. Collective Reparations: Support for community development projects in areas heavily affected by violence.
iii. *Health and Education Benefits:* Access to specialized health services, including for victims of sexual violence.
iv. *Symbolic Reparations:* Memorialization and public acknowledgments of victims' suffering.[480]

[480] Republic of Peru, Law No. 28592 (2005), Law Creating the Comprehensive Reparations Plan (PIR).

Notably, the CVR explicitly documented the widespread use of sexual violence, particularly against Indigenous women.[481] Although the PIR does not create a special track for survivors of sexual violence, many of its benefits are accessible to them.

However, these efforts are also face some challenges like bureaucratic hurdles in the registration process which disproportionately affected women, many of whom lacked documentation or faced social stigma. Additionally, reparations delivery has been slow and uneven, especially in remote and marginalized communities.

8.5.2. South Africa's Truth and Reconciliation Commission (TRC)

South Africa's TRC, established in 1995 after the end of apartheid, pioneered the use of truth-telling processes as a form of reparative justice. While its focus was not on armed conflict per se, its insights remain valuable.

The TRC's reparations policy try to provide urgent interim relief to immediately address the survivors in dire need with individual reparations or financial compensation. In addition, it put much efforts to rebuild communities devastated by systemic violence.[482]

Sexual violence was included within the TRC's mandate, but women's groups criticized the process for failing to sufficiently prioritize or center sexual and gender-based harms.[483] Many survivors of sexual violence felt marginalized, and their testimonies were often subsumed under broader narratives of political violence.

8.5.3. Sierra Leone's Reparations Program

Following the end of its civil war, Sierra Leone established a reparations program under the supervision of the National Commission for Social Action (NaCSA), drawing on the recommendations of the TRC.

[481] Peru Truth and Reconciliation Commission, *Final Report* (2003), Vol 6
[482] South African Truth and Reconciliation Commission, *Final Report* (1998)
[483] Beth Goldblatt and Sheila Meintjes, "Dealing with the Aftermath: Sexual Violence and the Truth and Reconciliation Commission" (1998) Agenda 36.

This program prioritized the amputees, war widows, orphans, and survivors of sexual violence as the most vulnerable categories of victims. Individual and collective reparations**,** including healthcare services, psychosocial support, educational assistance, and symbolic measures like memorials.[484]

Survivors of sexual violence were notably eligible for specialized medical and psychosocial services. However, the reparations program faces significant challenges, including chronic underfunding that restricts both the reach and quality of these services. Limited community outreach has resulted in many survivors being unaware of their rights and the services available to them. Additionally, deep-seated social stigma surrounding survivors of sexual violence further hindered their participation.

Despite these obstacles, Sierra Leone's reparations program has made meaningful progress in formally acknowledging the specific harms experienced by survivors of sexual violence and in providing specialized support whenever possible.

8.5.4. Key Insights from Non-Judicial Models

Across these three models of non-judicial reparation system it is evident that,

i. Non-judicial programs must be designed with meaningful input from survivors, ensuring that reparations address their actual needs and preferences.
ii. Combination of both material economic assistance and symbolic recognition (such as public apologies or memorials) are crucial components of reparations.
iii. Proactive measures are needed to improve accessibility and outreach to victims **by** addressing the barriers faced by survivors of sexual violence, including stigma, illiteracy, and geographic isolation.
iv. Reparations must be understood as long-term sustainable commitments, not one-off gestures.

[484] Government of Sierra Leone, *National Reparations Programme* (2008)

8.5.5. Key Achievements in Addressing Conflict-Related Sexual Violence

First, it is important to recognize that there has been significant normative progress over the past three decades. The recognition of sexual violence as a grave violation of international law — as seen in the jurisprudence of the ICTY, ICTR, and SCSL — represents a major shift in international legal consciousness. Survivors of rape, sexual slavery, forced pregnancy, and other forms of sexual violence are no longer invisible within international criminal justice; their suffering has been officially acknowledged as constituting crimes against humanity, war crimes, and, in some cases, genocide.

Hybrid and national mechanisms, such as Colombia's Special Jurisdiction for Peace (SJP) and Uganda's National Transitional Justice Policy (NTJP), have further broadened the conceptions of justice by integrating victim participation, holistic reparations, and intersectional approaches. Non-judicial programs in Peru, South Africa, and Sierra Leone have complemented criminal accountability with material and symbolic reparations tailored to broader societal healing.

8.5.6. Persistent Challenges Undermining Reparations

Despite these achievements, reparations for victims of sexual violence in armed conflict often remain fragmented, underfunded, and insufficiently survivor-centered. Courts like the ICTY and ICTR, while groundbreaking in recognizing sexual violence, lacked mandates to deliver reparations, leaving survivors without tangible redress. Even where reparations frameworks exist such as under the SCSL or in national programs like Sierra Leone's political will, resource scarcity, and societal stigma have severely limited implementation.

Moreover, sexual violence survivors often face unique barriers to accessing reparations Social stigma and shame discourage public identification as victims. Gender-insensitive reparations programs fail to capture the complexity of their harm. Bureaucratic procedures and documentation requirements disproportionately disadvantage marginalized women and girls. These challenges suggest that legal recognition of harm is only the first step; without robust, accessible, and holistic reparations programs, the promise of justice remains unfulfilled.

8.5.7. Comparative Lessons for the ICC's Reparatory Regime

The International Criminal Court (ICC), through the Trust Fund for Victims (TFV) and its reparations orders, has the potential to establish a more comprehensive model of reparations for survivors of sexual violence. To fully realize this potential, the ICC must internalize key lessons drawn from comparative practices.

Reparations processes of ICC should be designed with the voices and lived experiences of survivors at the forefront. As demonstrated by Colombia's Special Jurisdiction for Peace (SJP), active victim participation enhances the legitimacy, responsiveness, and effectiveness of reparations. Reparations must address the physical, psychological, economic, and social dimensions of harm. By combining individual monetary awards with collective measures—such as community-based support services, education, and healthcare—a more comprehensive recovery process can be achieved. Non-material reparations, including public apologies, memorials, and truth-telling initiatives, are essential for restoring the dignity of survivors and challenging societal stigma, as evidenced by practices in South Africa and Sierra Leone. Reparations should take into account how sexual violence intersects with race, ethnicity, age, disability, and other factors, acknowledging that harm is not experienced uniformly. Without sustained funding and political will, the promise of reparations risks becoming hollow. The Trust Fund for Victims must be sufficiently supported and empowered to design flexible, context-specific programs. Proactive outreach and accessibility for ensuring access for survivors necessitates the elimination of procedural barriers, the provision of culturally sensitive services, and proactive engagement with marginalized communities.

By adopting these approaches, the ICC can move closer to fulfilling its mandate to "put victims at the heart of justice" particularly those who have suffered the profound, enduring harms of sexual violence in conflict.

For example, in the Liberation War of Bangladesh in 1971, even after 65 years of cessation of war the country is still recovering from the effects of the damage occurring during wartime. During nine months of war, three million deaths and more than three hundred thousand sexual violence were estimated. The pattern of atrocities by Pakistani armed forces and paramilitary groups against civilians of east Pakistan (which became Bangladesh later on) included large-scale and targeted

killing, arson, mass rape, and other generalized sexual violations.[485] Furthermore, there substantial number of displacements seven to ten million people fled to India as refugees among whom possibly one million never came back even after the war ended.[486] On December 14, 1971, two days before the surrender Pakistani militants targeted and killed the intellectuals, scholars, professionals, and potential political leaders to break down the future of the country.

On 16 December 1971, the Pakistani administration led by Yahya Khan crumbled and the Army was forced to surrender. On that very day, Bangladesh emerged as a sovereign country. But before surrendering the Pakistani Army destroyed by bombing every significant infrastructure as roads, industries, markets, and cattle fields. After gaining independence new Bangladesh faced tons of difficulties as a result a big famine attack on Bangladesh in 1975 and people suffered from a scarcity of food, and clothing as well as political turbulence after the death of Sheikh Mujib.[487]

8.6. Conclusion

The experiences of international, hybrid, and national mechanisms analyzed in this chapter reveal both the remarkable advances and persistent challenges in providing reparations to victims of sexual violence in armed conflict. Through comparative study, several crucial lessons emerge that can and should inform the ongoing evolution of the reparatory regime under the International Criminal Court (ICC).

[485] Akmam,W. (2002), Atrocities against humanity during the liberation war in Bangladesh: A case of genocide, Journal of Genocide Research, vol. 4, p. 543-559, https://doi.org/10.1080/1462350220000000463

[486] Sumit Sen, Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia Part 1, *International Journal of Refugee Law*, Volume 11, Issue 4, 20 October 1999, Pages 625–645, https://doi.org/10.1093/ijrl/11.4.625

[487] The Aftermath of the Bangladesh Liberation War of 1971: Enduring Impact. (2024). United Kingdom: Taylor & Francis.

Chapter 9

Recommendation and Future Direction for ICC Improving Reparatory Justice to Victims

9.1. Introduction

Since its establishment, the International Criminal Court (ICC) has promised a transformative model of justice that places victims at the center. However, the delivery of reparatory justice remains a significant challenge. The ICC's current reparations framework — innovative in design — has been criticized for its slow implementation, limited reach, and insufficient attention to the complex needs of victims, particularly survivors of sexual violence in conflict settings.

This chapter outlines concrete recommendations for strengthening the ICC's reparatory regime and proposes future directions for a more survivor-centered and holistic approach to justice.

9.2. Strengthening the Victim-Centered Approach

The centrality of victims' experiences, voices, and agency must be a core principle underpinning reparatory justice. The ICC should reform its procedures to ensure that victims are not passive recipients of reparations but active participants at every stage. The ICC should establish mechanisms for continuous consultation with victims and victim communities from the earliest phases of proceedings, not only post-conviction. Victim participation must inform both the design and implementation of reparations programs.[488] Decentralized victim consultations must be conducted in survivors' languages, using culturally appropriate methods. Engagement should account for factors such as illiteracy, social stigma, and physical accessibility.[489]

9.3. Expanding Non-Conviction-Based Reparation

A major structural limitation at the ICC is that reparations are legally tied to a successful criminal conviction. This leaves many victims, including those harmed by persons not yet convicted, without redress. For this the ICC should address more carefully the Trust Fund's Assistance

[488] Mariana Goetz, "Reparations and Victim Support in the International Criminal Court" (2014) in *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity*, ed. Ferstman et al.
[489] Redress Trust, *Reparations: A Handbook for Victims* (2017), p. 56.

Mandate for allowing it to provide support independent of specific convictions. This mandate should be expanded and better resourced.[490] The ICC should issue clear policies emphasizing that reparatory justice does not depend solely on securing convictions, recognizing the broader right of victims to redress under international law.[491]

9.4. Enhancing Gender Sensitivity and Intersectionality

Sexual violence survivors have historically faced marginalization within reparations frameworks. Gender-sensitive and intersectional approaches are therefore essential. Reparations must address the specific consequences of sexual and gender-based violence (SGBV), including long-term psychological trauma, social ostracization, and economic marginalization.[492] Reparations programs should acknowledge the compounded vulnerabilities faced by women of ethnic minorities, disabled persons, children born of rape, and LGBTQ+ survivors.[493]

9.5. Securing Sustainable Funding for the Trust Fund for Victims

The effectiveness of reparations is contingent upon adequate and sustainable funding**.** One of the major challenges facing the ICC's reparatory regime is the chronic underfunding of the TFV, which limits its capacity to implement reparations and assistance programs meaningfully. The ICC Assembly of States Parties (ASP) should amend relevant regulations to require mandatory contributions from States Parties, beyond voluntary donations.[494] The TFV of the ICC should seek partnerships with international organizations, private donors, and philanthropic foundations to diversify and stabilize its funding base.[495] Strengthening enforcement mechanisms is necessary to seize and liquidate convicted persons' assets is critical to financing reparations orders. States must cooperate fully in asset-tracing efforts.[496]

[490] Trust Fund for Victims, *Strategic Plan 2020–2025* (2020).
[491] Pablo de Greiff, "Justice and Reparations" in *The Handbook of Reparations* (2006).
[492] Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (2012), p. 137
[493] Rashida Manjoo and Calleigh McRaith, "Gender-Based Violence and Justice in Conflict and Post-Conflict Areas" (2011) Cornell International Law Journal, Vol. 44, p. 11.
[494] Assembly of States Parties, *Report of the Bureau on Legal Aid and TFV Funding*, ICC-ASP/18/26 (2019).
[495] Mariana Goetz, "Strengthening Victim Participation at the International Criminal Court" (2017), *International Criminal Law Review* 17(3).
[496] REDRESS, *Reparations before the International Criminal Court: Insights and Challenges* (2018), p. 47

Sustainable financing is not merely a technical issue but a matter of justice: without sufficient resources, victims are denied effective reparation, undermining the Court's legitimacy.

9.6. Increasing Cooperation with National and Regional Mechanisms

Reparations delivered through a complementarity approach, working alongside national and regional mechanisms, can enhance reach, contextual relevance, and victim satisfaction. The ICC and TFV should establish formal cooperation agreements with national reparations programs and truth commissions where available.[497] In fragile post-conflict states, the ICC could assist in strengthening domestic capacity to design and implement reparations programs, fostering local ownership and supporting the development of regional reparations networks, for example, through African Union initiatives to coordinate efforts and share best practices.[498]

Examples such as the Colombian Special Jurisdiction for Peace (SJP) and the Peruvian reparations programs demonstrate how hybrid approaches can better meet victims' needs.[499]

9.7. Promoting Symbolic Reparation and Societal Recognition

While material reparations are crucial, symbolic measures are equally vital to acknowledge the harm suffered, affirm victims' dignity, and foster societal healing. The ICC should integrate public apologies, memorialization projects, and national days of remembrance into its reparations orders.[500] Reparations should include educational initiatives that teach future generations about the crimes committed and the resilience of survivors. The experience of Rwanda's Gacaca courts and memorialization efforts demonstrates the transformative potential of symbolic reparations when embedded in community practices.[501]

9.8. Implementing Participatory Monitoring and Evaluation of Reparations

The effectiveness of reparations cannot be assumed; it must be assessed through participatory monitoring and evaluation (M&E) that includes victims themselves as key stakeholders. Victim

[497] Clara Sandoval and Luke Moffett, "Reparations for Victims of Conflict-Related Sexual Violence: Potential Avenues at the International Criminal Court" (2020) *Journal of International Criminal Justice*, 18(2).
[498] UN Guidance Note of the Secretary-General, *Reparations for Conflict-Related Sexual Violence* (2014)
[499] International Center for Transitional Justice, *Reparations in Peru: From Recommendations to Implementation* (2013)
[500] Carla Ferstman, *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity* (2009), p. 185
[501] Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (2010)

Feedback Mechanisms develop ongoing feedback channels where victims can express satisfaction or grievances about reparations delivery.[502] Reparations programs should be flexible enough to evolve based on victims' feedback and changing circumstances.

Participatory M&E fosters transparency, builds trust, and ensures that reparations are not static but responsive to survivors' lived realities.

9.9. Future Directions: Survivor-Centered Reparatory Justice Paradigm

In light of the lessons learned from both the ICC's practice and comparative experiences globally, the future of reparatory justice must decisively shift toward a survivor-centered paradigm**.** This vision demands structural, procedural, and normative changes to the Court's current approaches.

9.9.1. Structural Reform

First, the ICC must recalibrate the architecture of reparations so that it is no longer primarily tied to individual criminal convictions. A rights-based approach to reparations, viewing them as a freestanding entitlement under international law, would empower the Trust Fund for Victims to proactively deliver support programs even when trials are delayed, perpetrators remain at large, or convictions are overturned.[503]

Moreover, the establishment of a Victims' Advisory Council composed of elected survivors from different situations could guide the Trust Fund and the Registry in reparations design and implementation, ensuring ongoing survivor participation.[504]

9.9.2. Procedural Innovation

The Court should embrace procedural flexibility to accommodate the realities faced by survivors, particularly those of sexual violence by lesser evidentiary thresholds for qualifying as a victim for accessing reparations, recognizing the inherent difficulties in proving SGBV. To protect victims from re-traumatization and community stigma anonymous reparations proceedings can be

[502] Luke Moffett, *Reparations and Transitional Justice: Justice or Political Compromise?* (2014), p. 256.
[503] Office of the UN High Commissioner for Human Rights (OHCHR), *Basic Principles and Guidelines on the Right to a Remedy and Reparation* (2005), Principle IX.
[504] Juan E. Méndez, "National Reconciliation, Transnational Justice, and the International Criminal Court" (2001) *Ethics & International Affairs*, Vol. 15, p. 28.

introduced. Gender-sensitive procedural rules should be promulgated which actively dismantle barriers for women, girls, and LGBTQ+ persons seeking reparations.

9.9.3. Normative Evolution

Normatively, the ICC must explicitly recognize that reparations serve transformative purposes are not merely compensatory but aim to restore dignity, rebuild agency, and catalyze broader societal change.[505] This transformative vision aligns with feminist legal scholarship, which argues that reparations for sexual violence must challenge the structural inequalities that enabled the violence to occur.[506]

9.10. Possibility and Future Steps

The previous Chapters discussed about elaborate ideas about mechanisms of ICC and the challenges it faces on its way to ensuring justice. here in this chapter the author intends to put some opportunistic area where ICC should take step to develop for betterment in long ahead.

Is it feasible for the ICC to restructure its idea of justice, to cater its procedures, process, sentencing, and its management of the Trust Fund to be more inclusive? Or is the concept of trials within the courts fundamentally separate in its concept of justice? These are the long-term questions, as the arena for international justice develops, particularly as sexual violence within grave crimes further establishes itself with the consideration of the courts.

9.10.1. Enhance Capacity:

While essential to the process of justice, trial justice remains only a part of justice. The ICC has the authority and the ability to regulate long-term, while their non-governmental peers do not always have the financial stamina. In this way, currently, the combined efforts of both government and non-governmental organizations serve as a complement to one another in their joint efforts to serve the victims of war crimes and violent conflict. If the courts were to be restructured with the aim to better provide justice for the community, along with the capability and capacity needed to rebuild communities, perhaps more needs could be met, and better, long-term regulated support

[505] Ruth Rubio-Marín, *What Happened to the Women? Gender and Reparations for Human Rights Violations* (2006), p. 21.
[506] Christine Bell and Catherine O'Rourke, "Does Feminism Need a Theory of Transitional Justice? An Introductory Essay" (2007) *International Journal of Transitional Justice*, Vol. 1(1)

could exist. In this way, the ICC could improve, and fill the gap to provide in terms of long-term regulation and structure.

9.10.2. Considerate focus on Qualifying victims

a valid argument could also be made in favor of the necessity of a more holistic approach when it comes to giving out justice for victims of sexual violence. The reparation activities of the ICC Trust Fund focus on qualifying individuals. The Trust Fund places the onus on victims to provide proof of identity as well as victimization in order to receive any benefits. In the case of war crime victims, both kinds of proof could ultimately prove to be very difficult to obtain, particularly without compromising anonymity. Consequently, the response time for reparations via the Trust Fund is often a grueling and detrimental process, in addition to being sluggish. The separation and established procedures enforce this situation, but an examination of tribunal structures articulates that it does not have to be like this. When tribunals structure themselves to check in with victims, to consider their roles and experience, and to adapt, update, and restructure according to victim participation and input, they can more effectively create victim satisfaction and a more restorative justice experience.

9.10.3. Reshape the Procedures:

Would it be feasible for the ICC and its Trust Fund to adapt its procedures to reshape court-mandated justice to incorporate alternative remedies and enlarge the role of victims in trials? A current barrier to that goal is integrated into the structural system of the ICC, in regard to victim status. Considered to be participants in the trial process, victims are able to request reparations, but are limited to that distinction and are not considered as a party to the proceedings. However, this is not the case with the legal parameters set by ad hoc tribunals, such as The Extraordinary Chambers in the Courts of Cambodia (ECCC), in which a dissimilar set of rules and laws apply to a victim's legal standing. These victim-centered tribunals abide by French civil law that has been incorporated into their judicial system to provide victims not only the right to involvement in court proceedings, but also the legal status and right to function as a party to the hearings.

9.10.4. Inclusive Justice for victims

The Trust Fund has the structure and authority of the ICC to back its efforts, yet by its very nature, it is currently impossible for the Trust Fund, as an extension of the court, to provide these services under fewer regulations and oversight. If they were allowed to restructure, perhaps it would allow for a faster reparation turnaround time. As it stands, victims rely on joint efforts from organizations

outside of the ICC and the ICC Trust Fund in order to provide benefits to people and communities. According to Gillett, improvement with the ICC could be "by focusing on key issues, [and] more delegation"; by focusing on a more expeditious trial process would be to the betterment of victims. In summary, by adjusting the structure of the ICC, the institution could integrate and develop a more inclusive structure of justice for victims, and achieve greater involvement in victim rehabilitative efforts.

9.10.5. Introducing judicial or Administrative reparations:

The ICC should promote the design of a comprehensive public policy and framework on reparations to address conflict-related sexual violence, including the establishment of judicial remedies and administrative reparation programs. An administrative reparations program is an out-of-court process used by States to provide reparation to massive numbers of victims of gross violations of international human rights law and/or serious breaches of international humanitarian law. In such programs, States identify the violations and the victims to be redressed and provide them with reparation through an established procedure. Reparation can also be ordered by national or international courts against a State or against the perpetrator of the crime, as applicable.

When gross violations of human rights and/or serious violations of international humanitarian law, including conflict-related sexual violence, take place on a large scale, administrative reparations programmes have the potential of being more inclusive and accessible than courts. These programmes are in fact capable of reaching a larger number of victims and are more victim-friendly as their procedures are more flexible, and evidentiary standards and costs are considerably lower.

Nevertheless, administrative reparations programmes should not preclude victims of conflict-related sexual violence from obtaining reparations through courts; all victims should have access to effective judicial remedies which include adequate, prompt and full reparation for the harm suffered. Domestic or international courts should take into account and complement reparations awarded by administrative reparations programmes when deciding on redress for victims of conflict-related sexual violence.

9.10.6. Address urgent or interim reparation:

Providing comprehensive redress to victims requires time, resources, coordination, expertise and political will. In most experiences to-date, reparations have been provided many years after the conflict or repression giving rise to the violations.

For these reasons, the ICC should also support efforts to make urgent interim reparations available to respond to the most urgent and immediate harm affecting victims of conflict-related sexual violence. Urgent interim reparations should be distinguished from social or humanitarian assistance measures, as they are based on the recognition of State responsibility and require State and political support.

Victims of conflict-related sexual violence often face serious mental and physical health problems as a consequence of the crimes committed against them, and often do not have access to health services. For example, women and girls as well as men and boys, as applicable, could suffer serious genital, vaginal and/or anal or other bodily injury, serious sexual mutilations, fistulas or uterine prolapse, among other harms, that would seriously affect not only their reproductive systems but also their urinary and digestive systems. Furthermore they may have also contracted serious diseases like HIV/AIDS. They require access to immediate medical treatment and medication and other services.

Urgent interim reparations might be provided in a variety of ways. A truth seeking mechanism, such as a truth commission, might be given authority and funds to administer a programme of interim reparations. Alternatively, a court might order the State to provide victims of human rights violations with immediate assistance, for example in the field of health. Or the State might institute an administrative programme to respond to immediate needs of victims.

9.10.7. Case selection and Prioritization:

ICC's prosecutor should construct a careful strategy regarding future case selection, which should include considerations such as the prospects of a successful conviction, the possibility that the chosen case and prosecution will lead toward more prosecutions of higher-level defendants, geographic diversity to ensure that defendants from all parts of the world are investigated and prosecuted, as well as any political concerns related to the opening of a new case. When prosecuting cases, the OTP should ensure that the prosecution is the result of a long and detailed

investigation, based on better in-country expertise, and that the evidence at trial is presented in a logical and well-thought out manner.

9.10.8. New legal Approach to SGBV crime:

The winds of change have ushered in the incorporation of sexual and gender-based violence (SGBV) provisions within the statutes of the International Criminal Court and various tribunals. Recent indictments and the evolving jurisprudence demonstrate significant progress in addressing sexual and gender-based violence. The establishment of accountability for SGBV in conflict situations as an independent crime has highlighted that such gender-based offenses are neither trivial nor secondary. Yet, there remains a notable lack of empathy in comprehending the "multidimensional nature of their suffering," even as women grapple with the turmoil of diverse violent conflicts that permeate every continent. The predominant focus on sexual and penetrative violations of women's bodies reflects a sensitivity gap regarding the emotional harm inflicted, the impact on families and personal spaces, as well as the detrimental effects on children and others closely connected to the women affected. This issue represents one of the most significant challenges to uphold the dignity of international law in this century. Consequently, sovereign states, the UN, and international relief and humanitarian agencies must confront the scourge of gender-centric violence to pave the way for a more humane, secure, and just world.

9.10.9. Introduce a Reparation Chamber

Considering the duration of trials and the limited eligibility criteria for victims seeking reparations restricted to individuals charged and convicted prior to the ICC's oversight, while victim participation in the trial is unnecessary for claiming reparations—it may be worthwhile to contemplate the establishment of a distinct reparations chamber within the ICC, separate from criminal rulings. Some might question whether the ICC is the most appropriate entity to handle reparations for those not convicted by it. Nonetheless, given that the Court frequently serves as the sole international or external adjudicating authority addressing these matters and is the only permanent platform for international crimes involving 124 State Parties, it is well-positioned to serve as a means for victims to seek redress when states lack the willingness or capability to provide reparations. Although regional human rights courts somewhat fulfill this function in Latin America, Europe, and Africa, their jurisdiction pertains to broader human rights violations and state accountability. Increasingly, international crimes span transnational borders, involving various non-state armed groups, mercenaries, multinational corporations, and states that offer few

or no avenues for victim redress. A reparations chamber at the ICC would concentrate on the most severe international offenses where State Parties are either unwilling or unable to investigate, prosecute, or remedy victims' situations.

Others have supported the idea of a separate Reparations Chamber or Commission, in light of the existing challenges facing the ICC's reparations framework. The author has hesitated to endorse such a separate chamber because previous advocates have led to the exclusion of victims from participating in trial proceedings at the Court. Victim involvement at the ICC is crucial for ensuring trial proceedings are transparent and for effectively safeguarding their interests. The proposed reparations chamber would not eliminate victim participation in trial proceedings but would instead aim to provide reparations to victims by directly interacting with states. The Trust Fund could be utilized to offer more immediate compensation to victims applying to the Court, such as rehabilitation, akin to the provisional measures employed by the Inter-American Court of Human Rights to avert death or irreparable damage. Alternatively, focusing the TFV's assistance mandate directly on victims before the ICC through provisional measures could help concentrate resources on cases currently under the Court's jurisdiction.

A reparations chamber would enable victims to directly petition the Court for reparations from the moment a situation is opened, rather than requiring them to wait for years for a criminal conviction. This approach offers a dual-track strategy to deliver justice to victims and combat impunity, simultaneously investigating and prosecuting those accountable while allowing victims to present their claims for reparations. Furthermore, a reparations chamber would aid in facilitating and overseeing states in enhancing their reparations capacities; since the ICC cannot provide reparations to every victim in a given situation, it could shine a light on the issue and mandate such reparations be carried out by the state, with assistance from the TFV and Assembly of State Parties. This strategy would shift the ICC's focus from primarily dealing with perpetrators and retributive justice to a more comprehensive approach to achieving justice for victims.

9.11. Recommendations for the security sector

i. Security sector institutions should cooperate and coordinate with other sectors that provide essential services to survivors of sexual violence in conflict. These include agencies providing medical care and psychological counseling, protection and shelter,

socio-economic support, and legal advice. Security sector actors should also coordinate and collaborate in their efforts to prevent and respond to sexual violence.

ii. Security sector institutions should adopt a gender-sensitive approach at all stages of response to sexual violence in conflict: in planning, implementation, monitoring, and evaluation. This approach should take into consideration the particular needs of adult male survivors of sexual violence.

iii. Gender training for all security sector personnel is necessary to develop a gender-sensitive capacity within security services. This should include training to address the particular needs of victims of sexual violence.

iv. The full and equal participation of women in the security sector should be promoted, to ensure that security services are able to effectively identify and respond to the needs of all members of the community. Measures to increase the proportion of women should include gender-sensitive recruitment and retention strategies, and be accompanied by the development of an organizational culture that promotes gender equality within security services.

v. Security sector institutions should develop operational protocols and procedures for assisting and supporting victims of sexual violence. These should include, for example, protocols for interviewing victims and investigating sexual violence crimes, for documenting sexual violence, and for referrals to health, social and legal services.

vi. In providing services to survivors of sexual violence during conflict, security sector institutions should determine whether special measures are needed for particular groups, such as children, former combatants, and male survivors of sexual violence.

vii. Access to justice, including reparations, should be ensured for victims of sexual violence.

viii. Security sector institutions should develop and prioritise operational strategies to prevent sexual violence in armed conflict.

ix. Strict codes of conduct prohibiting sexual abuse and exploitation by security sector personnel, including armed forces, police, peacekeepers and DDR staff, must be formulated, implemented with proper training, and enforced. This is essential to prevent sexual violence, to fight impunity and thus ensure accountability.

x. Security sector institutions should seek and support the participation of civil society and affected communities, including women and girls, in responding to sexual violence. Civil society organisations may advise or provide training to security actors, undertake awareness-raising in affected communities, or provide essential services to victims.

9.12. Conclusion

The International Criminal Court is currently at a crucial point in its mission to deliver justice and reparations to victims of war crimes, particularly survivors of conflict-related sexual violence. At the same time, it has made notable progress in integrating victim participation and addressing reparations, systemic and structural challenges remain, obstructing its ability to achieve a transformative vision of justice fully. By adopting a survivor-centered paradigm that emphasizes inclusivity, gender sensitivity, and intersectional approaches, the ICC can redefine its reparative framework to address the diverse harms experienced by victims more effectively. Ongoing efforts to secure funding, enhance access through non-conviction mechanisms, and promote collaboration with national and regional systems are vital to this transformation. Ultimately, the ICC must go beyond viewing reparations as a supplement to its judicial function, embracing them instead as a fundamental element of its dedication to healing, restoration, and the dignity of those it serves. Only through such a transformation can the ICC fulfill its foundational promise to put victims, particularly those who have endured the unspeakable trauma of conflict-related sexual violence, at the very heart of international justice.

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