UNIVERSITY OF PÉCS



Thesis Summary

For

Preliminary Debate

"Sexual Violence in Armed Conflict:

Reparatory Regime under the International Criminal Court"

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1. Scope of the Study

The history of wars and armed conflicts has been deeply embedded in the civilization of mankind. Even in this 21st century and in contemporary times, it remains evident that societies are not free from acts of terror and international conflicts. Millions of lives are lost, predominantly among unarmed civilians, with women and children often emerging as the primary victims, despite having no involvement in these conflicts.

Any form of sexual violation or sexual abuse has a physical and psychological impact on the victims. It also causes sociological harm directly or indirectly to the victim's family or communities, which affects the victim with long-term suffering and segregation. In armed conflict sexual violation or mass rape is frequently used as a weapon to weaken the nation. In the armed conflict situation, when the whole country is struggling with the danger of existence, the sexual attack on women, girls, or boys knows no boundaries of brutality. As a sole permanent body of international criminal justice, the International Criminal Court (ICC) has always been expected to redress victims' needs and provide reparations for the aftermath of the war.

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 through. Very first, after World War I, the survivors of the Holocaust had been granted some monetary reparation from the German government and from some other sources. In 1998, the Rome Statute was adopted under which the International Criminal Court (ICC) was established to prosecute perpetrators of four international core crimes. The ICC was not only established for punitive purposes but also with a very noble intention to address victims' needs and ensure justice for them.

In the early stages of the Rome Statute had very limited mandate to address the survivors' need. After the promulgation of the Trust Fund for Victims (TFV) of the International Criminal Court, the situation slightly changed for the survivors of the war. TFV under ICC adopted a victim-centric mechanism focusing on rights for the reparation of victims and participation in the prosecution of the perpetrators. Trust Fund of Victims (TFV) is an independent organ of the ICC, which works with the assistance of the international community, State, and non-state parties.

Any form of sexual violence stems from entrenched gender-based discrimination that is employed to subjugate and humiliate victims. Pervasive sexual violence, or gender-based violence, often arises during armed conflicts or in the aftermath of societal breakdown. The stigma surrounding victims of sexual violence, rooted in societal gender discrimination, leads to lifelong disempowerment and marginalization. In times of armed conflict, sexual violence is frequently wielded as a weapon of war, undermining survivors' ability to exercise their human rights and resulting in long-lasting trauma along with social and economic insecurity. The impact of sexual or gender-based violence during wartime makes it even more difficult for survivors to reconnect with their families and communities after the conflict has ended.

However, within nearly twenty years of operation, ICC has yet to address restitution or reparation for victims of sexual violence. This study will try to explore reparation possibilities for victims of sexual violence under the Trust Fund for Victims (TFV) of ICC. In this regard, it is essential to understand why victims of sexual violence are in urgent need of reparation even after 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. Instead, this contribution mainly highlights the sexual violence in armed conflict and the consequences that victims, primarily women, have to deal with during and after the conflict situation.

The scope of this study is all about exploring the practice of governments, national and international courts in applying, processing, implementing, and enforcing different 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.

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. This article will discuss the evolution of

recognizing sexual violence as a crime from ancient times, when it was not a crime at all. By spotlighting these facts, this article will define a comprehensive understanding of sexual violence acts in armed conflict considered as a crime. There will be a discussion on the International Criminal Court (ICC)'s prosecutorial strategy on perpetrators and some existing obstacles of the ICC in addressing and charging sexual violence.

Even after numerous prohibition in international instruments regarding use of sexual violence in armed conflicts even in this 21st century, wars have continued around the world and so have rapes and other forms of sexual violence which are not only limited to women and girls but also men are also becoming victims of such violence. In practice, prosecuting perpetrators faces some consistent legal, procedural, practical, and political obstacles. Due to these numerous difficulties, the ICC has had a very low conviction rate over the past two decades. This study will discuss the practice of prosecution related to sexual violence in past incidents, referring to the ongoing investigations of modern-day armed conflict relating to sexual violence.

2. Purpose of the 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.

2.1. 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.

2.2. Research Question

- 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?
- v. How far the ICC is facing challenges in ongoing investigations and how is it loosing victim's trust and also in international phenomenon?

2.3. 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.

3. 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.

4. 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).

4.1. 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. In contrast, Immanuel Kant emphasized intention and moral responsibility, advocating for a justice system that centers the

¹ Jac Armstrong, "Rethinking the Restorative, Retributive Dichotomy: Is Reconciliation Possible?", Contemporary Justice Review, vol. 17, issue no. 13 (July, 2014), p. 266-283.

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 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,

² Kant, I. The Metaphysical Elements of Justice, (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.

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

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.

4.2. 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 in cases where trials fail or are delayed. 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. 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. The significant in the ICC procedural delays.

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. 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. Non-judicial mechanisms like South Africa's Truth and Reconciliation Commission (TRC) and Peru's

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.

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 Prosecutor 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.

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.

5. Chapter Overview

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,

¹⁴ amber, Brandon. *The Burdens of Truth: An Evaluation of the South African Truth and Reconciliation Commission*, HRSC Press, 2001.

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.

6. Research Findings and Recommendations

Armed conflicts have historically devastated the civilian population, where women and children are disproportionately targeted. Victims of sexual violence only began gaining recognition in the post-World War II era, culminating in the establishment of the ICC in 1998.

Despite the Rome Statute acknowledging victims' right to reparation under Article 75, the effective implementation of the reparatory justice remains fraught with procedural, legal, and political challenges. The Trust Fund for Victims and its reparatory mechanisms contains hardships in providing meaningful redress to the survivors of wartime sexual violence and gender-sensitive approach.

6.1. Research Findings

- i. Development in recognizing sexual violence as a grave international crime: International legal instruments clearly classify acts of sexual violence during armed conflict as a war crime, crime against humanity, and act of genocide. However, implementation gaps remain between normative recognition and effective protection through the practice of prosecution.
- ii. The reparatory regime of the ICC still remains insufficient: The ICC and its Trust Fund for Victims represent a major step in victim-centered justice. However, the access to

- reparation through procedural complexity, funding shortages, and the need for prior conviction before a reparation order makes it delayed and difficult for victims.
- iii. Legal, political, and practical obstacles limit the effectiveness and the acceptance of the ICC: The ICC faces serious temporal and territorial jurisdictional limitations to try contemporary armed conflicts in non-member states due to the non-cooperation of powerful states. Such limitations hinder both accountability and the reparatory process of justice.
- iv. Comparative analysis shows the need for hybrid and flexible models: Lessons from comparative analysis with ICTR, ICTY, SCSL, SJP of Colombia, and TRC of South Africa show the importance of combining criminal justice with restorative and symbolic reparations, where non-judicial reparations can play a vital role.

6.2. Recommendation and future Direction

The ICC must fundamentally rethink reparations if it aims to deliver meaningful justice, such as strengthening victim-centered approaches, prioritizing sexual violence-related prosecution, expand non-conviction-based reparations, secure sustainable funding for TFV, foster cooperation with national system, create a reparation chamber.

7. Research Gap

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

- i. 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.
- ii. 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.

iii. How to determine 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.

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