

SEXUAL VIOLENCE IN ARMED CONFLICT: PROSECUTORIAL STRATEGY OF THE INTERNATIONAL CRIMINAL COURT AND PERSISTENT OBSTACLES

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Abstract: *When we think about weapons of war, 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 behaviour 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, demoralisation, and individual or collective shaming. This article will discuss the evolution of recognising 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.*

Key words: *Sexual Violence; Armed Conflict; International Criminal Court (ICC); Prosecutorial Strategy; Victims*

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1. INTRODUCTION

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, terrorises, 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 sexually transmitted diseases (STDs) like HIV, thus bearing consequences for generations (O'Brien, 2015, pp. 386-406).

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 acknowledged as a war crime by the international instruments. In 2008, the United Nations Security Council adopted Resolution 1820, which emphasised 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.¹ Furthermore, the Rome Statute of the International Criminal Court 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.² For such acts, the individual perpetrators are subject matter of the International Criminal Court prosecution under the principle of complementarity applies to national jurisdiction of the member states, or even non-member states when the Court's jurisdiction is triggered by UN Security Council referral to establish their direct or command responsibility.

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. During the tenure of Fatou Bensouda as the second Prosecutor of the International Criminal Court, 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.³ This Policy Paper was described as a game-changer in the prosecutorial strategy in the matter of sexual violence as it embraces such acts may affects all genders not only women.⁴ More 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.⁵ Charges would be applied cumulatively to reflect the severity and complex nature of SGBC, ensuring that offenses are recognised both in their own right and as manifestations of broader violations such as torture or persecution.⁶ By placing SGBC at the centre of prosecutorial priorities, the OTP signalled a decisive shift toward greater gender sensitivity in its jurisprudence.

However, 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

¹ United Nations Security Council (2008). Security Council Demands Immediate and Complete Halt to Acts of Sexual violence against Civilians in Conflict Zones, SC/9364. Available at: <https://press.un.org/en/2008/sc9364.doc.htm> (accessed on 14.10.2025).

² International Criminal Court (2013). Elements of Crimes, article 8(2)(a). Available at: <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (accessed on 13.10.2025).

³ Office of the Prosecutor, International Criminal Court (2014). Policy Paper on Sexual and Gender-Based Crimes. Available at: <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes-June-2014.pdf> (accessed on 14.10.2025).

⁴ *Ibid.*, paras. 18–20.

⁵ Fatou Bensouda. (2014). Statement to the Assembly of States Parties, ICC-ASP/13/20.

⁶ Office of the Prosecutor, International Criminal Court (2014). Policy Paper on Sexual and Gender-Based Crimes, para 71. Available at: <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes-June-2014.pdf> (accessed on 14.10.2025).

girls but also men are also becoming victims of such violence.⁷ This article aims to provide a comprehensive understanding of how and why sexual violence has been employed in armed conflicts throughout history. It will examine instances of sexual violence in ancient times and the evolution from 'no crime' to as a 'core crime' under International Criminal Law. The article will focus on the appropriate definitions and criteria for considering sexual violence a crime in both non-international and international armed conflict situations. In doing so this article will focus on legal prosecuting strategy of the International Criminal Court on sexual violence crime. It will interrogate the gaps between normative commitments and operational obstacles which are remaining unable to stop the exploitation of sexual violence in armed conflict.

2. A BRIEF 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".⁸ 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 (Vikman, 2005, pp. 24-29). 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 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.⁹ 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.¹⁰ 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".¹¹

Following World War II, the establishment of war crimes tribunals in Tokyo and Nuremberg paved the way for the legal prosecution of war criminals and aimed to regulate the conduct of hostilities. However, the Charters of Nuremberg and the Tokyo Tribunals did not specifically cover sexual violence crimes. During the trial of General

⁷ International Committee of the Red Cross (ICRC) (2016). Q&A: Sexual Violence in Armed Conflict, 22 September 2016. Available at: <https://www.icrc.org/en/document/sexual-violence-armed-conflict-questions-and-answers> (accessed on 18.10.2025).

⁸ The Bible (2011). New International Version. Grand Rapids, MI: Zondervan, Deuteronomy 21:10-14.

⁹ United Nations (1998). Sexual Violence and Armed Conflict: United Nations Response, Women 2000. New York: United Nations. Available at: <https://www.un.org/en/preventgenocide/rwanda/pdf/sexual-violence-and-armed-conflict-1998-UN-report.pdf> (accessed on 12.10.2025).

¹⁰ *Ibid.*

¹¹ *Ibid.*

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 victimisation of these women received only incidental attention, underscoring a significant gap in the judicial recognition of sexual violence in wartime.¹²

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 (Stanley, 1997, p. 72). While the Fourth Geneva Convention explicitly prohibits acts such as rape, enforced prostitution, and any form of indecent assault under its provisions against outrages upon personal dignity and violence directed at women, it simultaneously conveys an implicit recognition of sexual violence as a pervasive and grave concern in situations of armed conflict.¹³ 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 for the damage that occurred as a result of the unlawful invasion of Iraq in the land of Kuwait, and the commission also addressed the compensation for the physical and mental injuries arising from sexual assault (Lillich, 1995, pp. 141-307).

In 1993, the creation of *ad hoc* tribunal for the former Yugoslavia took one step forward on the 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.¹⁴ 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 the soldiers.¹⁵ 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.¹⁶

With the prosecution of Tadic case the discussion of criminalising sexual violence in conflict had already been evolved, yet incidents of such violence remain pervasive. For instance, during the 1994 Rwandan genocide, thousands of women and

¹² *Ibid.*

¹³ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, (1949), Art. 27.

¹⁴ The International Criminal Tribunal for former Yugoslavia (ICTY) Statute (1993). Art. 5(g), UN Security Council Resolution 827.

¹⁵ International Criminal Tribunal for Former Yugoslavia (ICTY) (1996). The Prosecutor v. Dragan Gagović et al. Case No. 96-23, Indictment, 26 June 1996.

¹⁶ International Criminal Tribunal for Former Yugoslavia (ICTY) (1997). Prosecutor v. Duško Tadić (Appeals Chamber), Case No. IT-94-1-A, 15 July 1999. Available at: <https://www.refworld.org/jurisprudence/caselaw/icty/1999/en/40180> (accessed on 23.10.2025).

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 recognised as genocidal rape under the Statute of International Criminal Tribunal for Rwanda (ICTR) 1994 (Thompson, 2007, pp. 375-380). 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 (Stewart, 2003, pp. 313-318). The Statute of Rwandan Tribunal identified rape as a crime against humanity. It also categorised 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.¹⁷

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.¹⁸ The establishment of the International Criminal Court 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. DEFINING SEXUAL VIOLENCE UNDER INTERNATIONAL INSTRUMENTS

Akayesu's case of the ICTR provided a significant definition of sexual violence, "a physical invasion of sexual nature, committed to a person under coercive circumstance".¹⁹ 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 ICC should be referred to, which criminalises specific acts considered crimes under its jurisdiction, such as sexual slavery, forced prostitution, forced pregnancy, enforced

¹⁷ International Criminal Tribunal for Rwanda (ICTR) (1996). Prosecutor v. Jean Paul Akayesu, Indictment, Case No. ICTR-96-4-I.

¹⁸ United Nations (1998). Sexual Violence and Armed Conflict: United Nations Response, Women 2000. New York: United Nations. Available at: <https://www.un.org/en/preventgenocide/rwanda/pdf/sexual-violence-and-armed-conflict-1998-UN-report.pdf> (accessed on 12.10.2025).

¹⁹ International Criminal Tribunal for Rwanda (ICTR) (1998). Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, Judgment (Trial Chamber), 2 September 1998; see also O'Brien (2015).

sterilisation, 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,²⁰ mutilation of sexual organs,²¹ forced abortion (Gaggioli, 2014, pp. 503-538), enforced contraception,²² forced inspection for virginity,²³ and forced public nudity.²⁴ For a more conclusive and refined definition one should look at the 'Elements of Crimes' of the ICC. 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.²⁵

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 destabilising 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 (De Moor, 2025). Sexual violence in armed conflict is quite different from sexual violence during peacetime, as the key distinction lies in the *war nexus*, that whether such acts are committed in the context of an armed conflict. While it is associated with a more brutal form of rape aiming at different goals including the humiliation and subordination of the whole community, terrorising, and spread of disease, primarily or directly connect to the dynamics and objectives of warfare.

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 through which it sets out the prohibition for rape and other forms of sexual violence as a reflection in Article 27 of the Fourth Geneva Convention and Article 76 of Additional Protocol I.²⁶ However, such prohibitions are not enumerated among the *grave breaches* of Geneva Conventions as it does in International Criminal Law, particularly as codified in the Rome Statute of the International Criminal Court expressly criminalises rape and other forms of sexual

²⁰ United Nations (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTS 319), 15 November 2000, Art. 3.

²¹ International Crimes Tribunal for Rwanda (ICTR) (2008). Prosecutor v. Théoneste Bagosora, Case No. ICTR-96-7, Judgment (Trial Chamber), 18 December 2008, para. 976.

²² *Ibid.*

²³ *Ibid.*

²⁴ Geneva Convention (iv), supra note 16.

²⁵ International Criminal Court (2013). Elements of Crimes, article 8(2)(a) (b)(xxii)-1. Available at: <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (accessed on 13.10.2025).

²⁶ United Nations (1948). Convention on the Prevention and Punishment of the Crime of Genocide, Art. 2. Available at: http://www.unhcr.ch/html/menu3/b/p_genoci.htm (accessed on 18.10.2025).

violence as war crimes, crimes against humanity and acts of genocide. 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 honour, in particular against rape, enforced prostitution, or any form of indecent assault."²⁷ 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*.²⁸ 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 a 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 affect victims and their families for generations (Aroussi, 2016, p. 497).

4. PROSECUTIONS UNDER THE INTERNATIONAL CRIMINAL COURT

Recent advancements in International Criminal Law by adding sub-article 8(2)(b)(xxii)-1 in "Elements of Crimes" have led to notable progress in the investigation and prosecution of sexual violence as a war crime and a crime against humanity. Despite the prohibition of such acts in binding and non-binding international instruments and additional norms in soft law, sexual and gender-based violence persists in the 21st-century armed conflicts. As the sole permanent body dedicated to international criminal justice, the ICC bears core objective to investigate and prosecute those responsible for these crimes, inherently complementary and subsidiary intervening only when national jurisdictions are unwilling or unable to genuinely carry out such proceedings.

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 (Cvercko, 2018).

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 (Shackel, 2019, pp. 187-208). 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 (Altunjan, 2021, pp. 878-893). The prosecutorial approach of the ICC to sexual violence crimes has proven to be

²⁷ International Committee of the Red Cross (1949). Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention), 75 UNTS 287, Art. 27. Available at: <https://www.refworld.org/legal/agreements/icrc/1949/en/32227> (accessed on 17.10.2025).

²⁸ International Committee of the Red Cross (1977). Additional Protocol I, Art. 75(2); International Committee of the Red Cross (1977). Additional Protocol II, Article 4(2).

relatively less effective in achieving the immediate goals of accountability and deterring persistent patterns of violence against women during armed conflicts (Jackson, 2025, p. 86). 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 explore how these cases charged, presented, and decided within the ICC proceedings.

The first case addressing widespread sexual violence at the International Criminal Court was brought against Thomas Lubanga, the Congolese warlord, during the investigation into the conflict in the Democratic Republic of Congo.²⁹ 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.³⁰ 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 criticised this neglect and noted that sexual violence should have been addressed (Jackson, 2025, pp. 90-105).

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.³¹

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.³² Similarly, in the case of Mbarushimana, charges included instances of sexual violence, such as miscarriages resulting from rape, along with other horrific acts.³³ 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.³⁴

The ICC secured its first conviction for sexual violence crimes against Jean-Pierre Bemba Gambo in the Central African Republic, even though Bemba was acquitted later by the Appeal Chamber, which weakened the case's significance (Jackson, 2025, p. 87). 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

²⁹ International Criminal Court (2006). *The Prosecutor v. Thomas Lubanga Dyilo*, 7 February, 2007, Case No. ICC-01/04-01/06-803-tEN.

³⁰ *Ibid.*

³¹ International Criminal Court (2015). *Lubanga case: ICC Appeals Chamber Amends the Trial Chamber's Order for Reparation to Victims*, 3 March 2015, ICC-CPI-20150303-PR1092.

³² International Criminal Court (2014). *The Prosecutor v. Germain Katanga, Summary of Trial Chamber II's Judgement* (pursuant to article 74 of the Statute), 7 March 2014. Available at: https://www.icc-cpi.int/sites/default/files/itemsDocuments/986/14_0259_ENG_summary_judgment.pdf (accessed on 12.10.2025).

³³ International Criminal Court (2011). *Prosecutor v. Mbarushimana, Pre-Trial Chamber I*, 3 August 2011, Case No. ICC-01/04-01/10-330-AnxA-Red.

³⁴ *Ibid.*

included.³⁵ Although this case marked a significant conviction, it was criticised for not adequately addressing sexual and gender-based violence. 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 (Powderly, 2018, pp. 1031-1079).

Dominic Ongwen, a former commander of a Ugandan rebel group, became the first successful conviction 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 (Kenny, 2024, pp. 153-160). 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 (Shackel, 2019, pp. 187-208). 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.³⁶

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.³⁷ It is 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.³⁸ 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.³⁹

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. Even though the conviction rate of the ICC in the matter of sexual violence and wartime rape was not very satisfactory, the establishment of the Rome Statute should be marked as a substantial advancement in the prosecution of a wide array by criminalising sexual and gender-based violence in armed conflicts (Shackel, 2019, pp. 187-208). For instance, the Rome Statute identifies offenses such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and various forms of sexual violence as crimes against humanity and war crimes (Altunjan, 2021, pp. 878-893). However, this clear prohibition against the use of sexual violence in armed conflict has not been sufficient to

³⁵ International Criminal Court (2016). Prosecutor v. Jean-Pierre Bemba Gambo, Trial Chamber III, 21 June 2016, Case No. ICC-01/05-01-08-3399.

³⁶ International Criminal Court (2019). The Prosecutor v. Bosco Ntaganda, Trial Chamber VI, 08 July 2019, Case No. ICC-01/04-02/06.

³⁷ International Criminal Court. (2024). Situation in Mali, The Prosecutor v. Al Hasan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18.

³⁸ International Criminal Court. (2020). Situation in the Islamic Republic of Afghanistan, ICC-02/17. Available at: <https://www.icc-cpi.int/victims/situation-islamic-republic-afghanistan> (accessed on 28.10.2025).

³⁹ The Office of Prosecutor of ICC (2019). Report on Preliminary Examination Activities, 5 December 2019, p. 47. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/191205-rep-otp-PE.pdf> (accessed on 29.10.2025).

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.⁴⁰ These investigations are characterised by multiple suspects and complex legal assessments.

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 regard 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 prioritisation to be considered sufficiently systemic in nature to fulfil the threshold under crime against humanity or war crime (Altunjan, 2021, pp. 878-893). 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 cases involving charges of sexual violence, the ICC applies a policy of cumulative charging against individuals, which requires a higher evidentiary threshold in each case before the Court. 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 convict the defendant they can pursue with charging, but gathering more evidence against each and every individual would lead to same outcome direct the trial lengthier and more complex (Jackson, 2025, p. 90).

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,⁴¹ the practice of the ICC considers it under comparable gravity to other crimes. Such an approach of the ICC raises a question about recognising that certain acts of sexual violence 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.⁴² 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 (Jackson, 2025, pp. 90-91).

⁴⁰ International Criminal Court (2025). Situations under Investigation. Available at: <https://www.icc-cpi.int/situations-under-investigations> (accessed on 30.10.2025).

⁴¹ Rome Statute of the International Criminal Court, 17 July 1998, Art. 7(1)(g), 8(2)(b)(xxii), 8(2)(vi).

⁴² International Criminal Court (2016). Prosecutor v. Jean-Pierre Bemba Gambo, Trial Chamber III, 21 June, 2016, Case No. ICC-01/05-01-08-3399.

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.⁴³ Such misconceptualisation of sexual violence make it extremely restrictive and fail to take into account ethnic dimensions. Such act of violence along with enforced sterilisation should consider as destruction of reproductive capacity with intention to ethnic cleansing of the whole community (Altunjan, 2021, pp. 878-893).

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."

6. CONCLUSION

Recent developments in International Humanitarian Law and International Criminal Law have seen significant progress in the investigation and prosecution of sexual violence in the form of war crimes and crimes against humanity. However, challenges persist particularly in concerning implementation and adjudication, which expose shortcomings in existing mechanisms of international criminal justice. Often, the lack of judicial recourse for sexual violence has gone unaddressed, frequently for two main reasons, first, there is the difficulty in identifying physical perpetrators, and second, the challenge of charging non-physical perpetrators those who are geographically distant but hold responsibility as political leaders or military commanders. Additionally, principles of head-of-state immunity and complementarity further hinder the successful prosecution of these individual perpetrators.

Armed conflicts, whether non-international or international, have persisted for decades, resulting in widespread devastation, displacement, and suffering. The recent wars of the 21st century showcase profound grievances, political conflicts, and external geopolitical interests that continue to incite violence. Despite numerous global initiatives aimed at fostering peace, a long-lasting resolution remains out of reach. Achieving enduring peace demands a commitment to justice, mutual recognition, and substantive dialogue among the parties involved. Immediate action towards achieving a world free from rape and all forms of sexual violence in armed conflict must prioritise the strengthening of legal frameworks and the rigorous enforcement of laws to hold perpetrators accountable. Additionally, protecting survivors should involve ensuring access to healthcare, legal support, and long-term rehabilitation in a transformative manner.

⁴³ International Criminal Court (2012). Prosecutor v. Kenyatta, Decision on the confirmation of charges, January 2012, Case No. ICC-01/09-02/11. Available at: https://www.icc-cpi.int/CourtRecords/CR2012_01006.PDF (accessed on 02.11.2025).

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