
GENDER BASED VIOLENCE AND INTERNATIONAL CRIMINAL LAW: JURISPRUDENTIAL AND POLICY ANALYSIS

Shaili Meena, LL.M., Gujarat National Law University, Gandhinagar

ABSTRACT

The present paper explores the remarkable journey that the understanding and recognition of gender-based violence has gone through. Gender based violence (GBV) was initially recognised as collateral damage of war. Now, after decades of work, it has become a significant factor in deciding international criminal accountability. By tracing the historical trajectory from the Lieber Code and the Nuremberg trials to ICTR and ICTY, this study analyzes how the definition of rape evolved from a mere anatomical to a conceptual base of coercive factors. In this analysis, the focus returns to the Rome Statute and judicial interpretations, such as the Akayesu and Bemba judgements, which together form the jurisprudence regarding the concept of gender-based violence. To better reflect on the findings, the paper also examines the principles of International Criminal Law, how they both facilitate and hinder gender justice. The paper highlights gaps in jurisprudence, reflecting on the high evidentiary thresholds for command responsibility and the exclusion of non-binary identities under the Rome Statute's current gender definition. Lastly, as the paper concludes, it urges a sociological interpretation of the concept of "gender", along with a trust fund for victims, advanced digital forensics, and more. There is a need to bridge the gap between progressive codification and transformative justice to achieve justice for all survivors.

Introduction

The recognition of gender violence as a crime under international criminal law represents one of the biggest transformations in the history of international justice. For most of the 19th and 20th centuries, the international legal system functioned in silence regarding sexual and gender violence. These were frequently overlooked, justified as the necessary collateral damage of war, or subsumed under the rubric of protecting "family honour."¹ Historical trajectory reveals a slow transition from viewing women as property to recognising them as subjects of international rights. This transition is a product of rigorous advocacy, the catastrophic failures of the post-Cold War era, and a fundamental reassessment of the nature of mass atrocity.²

Some of the early founding texts of international humanitarian law, such as the **Lieber Code of 1863**,³ did, in fact, ban rape, even specifying punishment such as death. However, the crime was conceptualized through the prism of protecting a woman's "honour and property," which made the primary victim a matter of social reputation and family prestige rather than bodily integrity.⁴ This "honour-based" terminology carried over into the **1907 Hague Convention (IV)**,⁵ where "family honour" served as a generic umbrella for protection against sexual violence a formulation that some scholars regard as a step backward in terminology, from more direct references to the act itself in earlier conventions.⁶

Even in the aftermath of World War II, the Nuremberg and Tokyo trials, while historic in their focus on individual criminal liability, still did not have a specific forum for gender crimes. The Tokyo Judgment did specifically address the systematic rape and forced prostitution by Japanese troops, but the Nuremberg Charter did not include sexual violence as a specific crime, instead grouped such acts under catch-all phrases such as "inhumane acts" or "ill-treatment."⁷

The 1990s marked a conceptual awakening, precipitated by the intentional employment of rape

¹ Richard Goldstone, *Historical Evolution - From Nuremberg to the International Criminal Court*, 25 PENN ST. INT'L L.REV. 802 (2007).

² *Id.*

³ Instructions for the Government of Armies of the United States in the Field, Gen. Orders No. 100 (Apr. 24, 1863).

⁴ Rainer Grote, Constitutionalism, MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. (updated Apr. 2021), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1729> accessed 27 February 2026.

⁵ Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 205 C.T.S. 277.

⁶ Grote, *supra* note 4.

⁷ Valerie Oosterveld, *The Special Court for Sierra Leone's Consideration of Gender-Based Crimes: Igniting a Leap Forward*, 41 CASE W. RES. J. INT'L L. 295 (2009).

as a weapon of war in the former Yugoslavia and the genocide in Rwanda, ending the long silence. The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) served as the "primary engines" for a new international jurisprudence.⁸

These courts, often fueled by the prominent role of female judges and NGOs, brought sexual violence from the margins to the center of international charges. The case of *Prosecutor v. Akayesu (1998)* provided the first legal definition of rape and established it as a type of genocide when used as a tool of destruction against a people.⁹

Such jurisprudence brought the understanding that Gender violence is not simply a series of discrete events but a manifestation of underlying gender discrimination in society.¹⁰ The Rome statute¹¹ that led to the establishment of ICC, was the world's first statute to define the term "gender". This led to recognition of range of sexual and gender-based crimes, such as sexual slavery, forced pregnancy, and forced sterilization, as war crimes and crimes against humanity.¹²

Today, the ICC's Office of the Prosecutor (OTP) continues this work through the adoption of the 2023 Policy on Gender-Based Crimes,¹³ which has expanded from the "Sexual and Gender-Based Crimes" (SGBC) policy to the more inclusive "Gender-Based Crimes" (GBC) policy. This policy recognizes that almost every crime within the Court's jurisdiction can be committed through a gendered lens, and underscores the importance of an intersectional, survivor-focused approach that considers the specific experiences of women, men, boys, girls, and LGBTQI+ individuals.¹⁴

As the international community grapples with the challenges of the twenty-first century, the study of GBV in international criminal law has become even more important to provide an

⁸*The Jurisprudence of Sexual Violence* (UC Berkeley Law, Working Paper, 2015), <https://www.law.berkeley.edu/wp-content/uploads/2015/04/The-Jurisprudence-of-Sexual-Violence-SV-Working-Paper.pdf>.

⁹ *Id.*

¹⁰ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS [OHCHR], *The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation*.

¹¹ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3.

¹² *Id.*

¹³ OFFICE OF THE PROSECUTOR, INT'L CRIM. CT., *Policy on Gender-Based Crimes* (2023), <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>.

¹⁴ *Policy on Gender – Based Crimes*, *supra* note 13.

important measure of the success and legitimacy of the global justice project

Principles of International Criminal Law

It is pertinent to discuss how Gender Based violence interacts with the fundamental pillars of International criminal law. The pursuit of gender-based violence through international criminal law is grounded in its principles, which form the framework that ensures justice is both strong and equitable. These are legality, individual and command responsibility, complementarity, and the gravity threshold.¹⁵ These principles aim to ensure accountability for the most serious crimes while protecting the rights of the accused and respecting state sovereignty.

1. The Principle of Legality and Non-Retroactivity

The principle of legality, the foundation of criminal justice, states that no person can be found guilty of an act that was not a crime at the time of its commission.

Crimes must be specifically defined, and judicial interpretation must remain within the literal meaning of the law, prohibiting analogical expansion of liability. In gender-based crimes, legality has sometimes been used to justify the prosecution of acts that were not fully conceptualized or were not included in previous laws.¹⁶

A challenge in this principle was presented in **the Ntaganda case**, where the defense contended that the ICC did not have jurisdiction over the rape and sexual slavery of child soldiers in the same militia group.¹⁷ The defense argued that international humanitarian law traditionally protected "enemies" or "civilians," and that prosecuting crimes committed against members of one's own group would go beyond the law. However, the ICC Appeals Chamber ruled that the prohibition of such acts is already customary international law and is also reflected in the Rome Statute. This decision reaffirmed that the law's protective scope applies to all persons, irrespective of their status. This indicates that legality and progressive humanitarian law can be in harmony if there is a firm foundation in existing treaty or customary law.¹⁸

¹⁵ INT'L COMM. OF THE RED CROSS, *General Principles of International Criminal Law* (Discussion Paper), https://www.icrc.org/en/download/file/166999/dp_consult_34_general_principles_icl.pdf.

¹⁶ *Id.*

¹⁷ OPEN SOCIETY JUSTICE INITIATIVE, *The Trial of Bosco Ntaganda at the ICC: Sentencing* (Sept. 10, 2019), <https://igg-geo.org/en/2020/04/26/a-gender-perspective-on-the-war-crime-of-using-child-to-participate-actively-in-hostilities/>.

¹⁸ *The Trial of Bosco Ntaganda at the ICC: Sentencing*, *supra* note 17.

2. Individual Criminal Responsibility

The emphasis of ICR is on individual accountability, not that of states, for atrocity crimes. People can be liable for directly perpetrating a crime, but also for "planning, instigating, ordering, or aiding and abetting" in its commission.¹⁹

In the case of gender-based violence, it is difficult to prove direct perpetration by high-ranking officials, as these crimes are usually committed by lower-ranking soldiers on the ground.²⁰ In these cases, prosecutors resort to wider forms of liability, such as "joint criminal enterprise" (which has been widely used at the ICTY) or "indirect co-perpetration" (which is favored at the ICC), to link leaders to the violence perpetrated by their subordinates.²¹

The early jurisprudence of the ICC illustrates the challenges of these approaches. In **the Lubanga case**, the ICC's first completed trial, the Court focused on the recruitment and enlistment of child soldiers.²² While there was evidence of sexual violence against these children, it was not prosecuted, reflecting a "cautious approach by the prosecution to focus on 'easier' crimes rather than pursue more complex gender-based crimes."²³ This indicates a challenge in ICL, where the "technical requirements of proving a 'common plan' or 'effective control'" may at times "exclude the most widespread suffering of victims."²⁴

3. The Command Responsibility Principle

The command responsibility principle is the key to addressing gender-based violence as a systemic issue, and it is based **on Article 28 of the Rome Statute**.²⁵ This principle states that military commanders, as well as civilian leaders, can be held responsible for crimes committed by troops under their effective command and control, provided they knew or should have known about the crimes and failed to take "necessary and reasonable measures" to prevent or

¹⁹ INT'L COMM. OF THE RED CROSS, *supra* note 15.

²⁰ Susana SáCouto, *The Bemba Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes*, 27 WM. & MARY BILL RTS. J. 1149 (2019).

²¹ Valerie Oosterveld, *The ICC Policy Paper on Sexual and Gender-Based Crimes: A Crucial Step for International Criminal Law*, 24 WM. & MARY J. WOMEN & L. 443 (2018).

²² *The International Criminal Court and the Pursuit of Sexual Violence Crimes*, AUSTL. HUMAN RTS. INST. (June 25, 2019), <https://www.humanrights.unsw.edu.au/news/international-criminal-court-and-pursuit-sexual-violence-crimes>.

²³ *Id.*

²⁴ Oosterveld, *supra* note 21.

²⁵ Rome Statute of the International Criminal Court art. 28, July 17, 1998, 2187 U.N.T.S. 3.

punish them.²⁶ Unlike direct responsibility, this is an omission-based charge, which centers on the failure of a leader to fulfill their duty of control.²⁷

The ICC's Bemba case was a turning point in the application of this principle. Jean-Pierre Bemba, as the head of the MLC, was first convicted of rape as a crime against humanity on the principle of command responsibility, as the court determined that he had effective control over his troops in the Central African Republic and failed to prevent the systematic rape of civilians.²⁸ However, in 2018, the Appeals Chamber overturned this decision, stating that the Trial Chamber was wrong in its definition of what constitutes "reasonable measures." The majority held that Bemba had taken measures, such as setting up commissions of inquiry, and that the prosecution had failed to prove that these measures were inadequate in light of his distant role.²⁹

This decision was a major blow to gender justice, which has raised questions about whether the standard of evidence required for command responsibility has been set so high that it is impossible to convict leaders of sexual crimes committed by troops under their control.³⁰

4. Complementarity and the Gravity Threshold

The ICC is a complementary court that only intervenes when a state's judiciary fails.³¹ The concept of complementarity encourages states to try cases domestically, but many state justice systems struggle with gender biases that have long been present in international law. For women who have experienced gender-based violence, complementarity may deny access to justice if the state cannot protect witnesses or if the state's rape definition is too narrow.³²

Secondly, the ICC mandate only allows the court to investigate crimes of "sufficient gravity."³³

²⁶ *International Criminal Law*, EUR. CTR. FOR CONST. & HUMAN RTS., <https://www.ecchr.eu/en/glossary/international-criminal-law/> (last visited Feb. 21, 2026).

²⁷ *Prosecutor v. Jean-Pierre Bemba Gombo*, INT'L CRIMES DATABASE, <http://www.internationalcrimesdatabase.org/Case/98/Bemba/> (last visited Feb. 21, 2026).

²⁸ *Id.*

²⁹ Susana SáCouto, *The Bemba Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes?* 34 AM. U. INT'L L. REV. 1 (2019).

³⁰ *Id.*

³¹ EUROPEAN PARLIAMENT, *Public International Law Perspectives on the Prosecution of Daesh Crimes Against Women and Girls* (Briefing Paper, 2016), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/582045/EPRS_BRI\(2016\)582045_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/582045/EPRS_BRI(2016)582045_EN.pdf).

³² Niamh Hayes, *Beyond Policy: Overcoming Challenges in Prosecuting Gender Persecution at the International Criminal Court*, 17 FIU L. REV. 593 (2023).

³³ K. Alexa Koenig, Ryan Lincoln & Lauren Groth, *The Jurisprudence of Sexual Violence* (UC Berkeley Law, Working Paper, 2011), <https://www.law.berkeley.edu/wp-content/uploads/2015/04/The-Jurisprudence-of->

There was a tendency to consider individual acts of sexual violence less serious than mass killings or destruction.³⁴ However, modern international criminal law rejects this notion. The 2023 OTP Policy clearly states that gender-based crimes are "among the gravest crimes"³⁵ in the Statute. This is important because it focuses on the severity of suffering and the strategic use of gender to terrorize and destroy communities, not just the number of victims.³⁶

Analysis of the topic

The history of gender violence in international criminal law follows the development of legal definitions, the role of individual cases in expanding the boundaries of the law, and the process of institutions updating their policies to more accurately reflect the use of gender as a tool of persecution that is shaped and crafted by society. This history follows the shift from a focus on anatomical detail to a recognition of the importance of gender as a construct of society, used as a tool of persecution.

I. The Evolution of the Definition of Rape

Over the years, the definition of rape in international criminal law has developed in a number of ways. The definition of rape in the **1998 ICTR case of Akayesu** was broad and conceptual: rape was defined as a physical invasion of a sexual nature, committed under coercive conditions.³⁷ This definition was revolutionary in that it did not focus on specific acts of anatomy, recognizing that in the context of mass atrocities, the coercive environment obviates the need for consent.³⁸

In contrast, **the ICTY case of Kunarac in 2001** defined rape in a more mechanical or anatomical way, defining rape as the penetration of the vagina, anus, or mouth by a penis or other object.³⁹ This definition once again emphasized the lack of consent as a necessary element of rape. **The ICC's Elements of Crimes** later brought these two approaches together, using gender-neutral language to define actus reus as penetration (even if slight) by a sexual organ

Sexual-Violence-SV-Working-Paper.pdf.

³⁴ Hayes, *supra* note 32.

³⁵ OFFICE OF THE PROSECUTOR, INT'L CRIM. CT., *Policy on Gender-Based Crimes* (Policy Paper, 2023), <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>.

³⁶ Christine Chinkin, *Gender-Related Violence and International Criminal Law and Justice*, in THE OXFORD COMPANION TO INTERNATIONAL CRIMINAL JUSTICE 75 (Antonio Cassese ed., 2009).

³⁷ OHCHR, *supra* note 10.

³⁸ Grote, *supra* note 4.

³⁹ Chinkin, *supra* note 36.

or any object into the victim's body.⁴⁰ Notably, the ICC definition requires that the invasion be accomplished by force or by threat of force or coercion, such as fear of violence, duress, or abuse of power. This represents a shift from a focus on anatomical detail to a recognition that, in the context of armed conflict, meaningful consent is often impossible.⁴¹

II. Gender Persecution and the Social Construction of Harm

The **Rome Statute** represents a significant breakthrough in that it specifically codifies "persecution on the basis of gender" as a crime against humanity.⁴² Persecution, in this sense, is the deliberate and severe deprivation of vital rights because of the identity of groups.⁴³ It goes beyond particular crimes such as rape and murder; it includes a wide range of actions that limit civil, political, and social rights.⁴⁴

One of the burning issues among academics and policy-makers has been the definition of "gender" in Article 7(3) of the Statute⁴⁵. The Statute states that gender is "the two sexes, male and female, referred to in the context of society." This definition was a political compromise between states that wanted a more conservative definition and those like the Holy See, which wanted to avoid including sexual orientation and non-binary gender identities. However, the part of the definition that says "in the context of society" allows the Court to interpret gender in a more progressive, sociological way.⁴⁶

Recent ICC decisions demonstrate the sociological interpretation of gender. In the case of **Prosecutor v. Al Hassan (2024)**, the Court examined how armed groups in Timbuktu had specific "roles and expectations" for women, which were used as instruments of persecution in a social way.⁴⁷ In the case of **Prosecutor v. Abd-Al-Rahman (2021)**, the Court examined how perpetrators' perceptions of victims as "rebels" were informed by a shared gendered assumption that men are the primary combatants, resulting in the targeting of Fur men based

⁴⁰ *Id.*

⁴¹ Grote, *supra* note 4.

⁴² *International Criminal Court*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/international_criminal_court (last visited Feb. 21, 2026).

⁴³ *Id.*

⁴⁴ Niamh Hayes, *Beyond Policy: Overcoming Challenges in Prosecuting Gender Persecution at the International Criminal Court*, 17 *FIU L. REV.* 593 (2023).

⁴⁵ Rosemary Grey, *On Hope, Reform and Risk: The Rome Statute's Definition of "Gender" and the Crimes Against Humanity Convention*, 36 *EUR. J. INT'L L.* 369 (2025).

⁴⁶ Grote, *supra* note 4.

⁴⁷ *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, INT'L CRIMES DATABASE, <https://www.internationalcrimesdatabase.org/Case/3322/Al-Hassan/> (last visited Feb. 28, 2026).

on their socialized gender role.⁴⁸ These two cases demonstrate how the ICC understands gender as a relational and contextual construct, and not simply a biological one.

III. Reproductive Violence and Forced Marriage

The Rome Statute was a turning point, it criminalized forced pregnancy, enforced sterilization, and sexual slavery. Forced pregnancy is the act of forcing a woman to become pregnant and forcing her to carry the fetus to term while she is in detention.⁴⁹ This crime was included to address the ethnic cleansing methods observed in the former Yugoslavia, where women were raped and kept until abortion was no longer an option, all in an effort to change the ethnic composition of a population.

Dominic Ongwen, a high-ranking member of the Lord's Resistance Army, was the first to be convicted of forced pregnancy by the ICC. This trial also highlighted the issue of forced marriage, which, although not explicitly mentioned in the Rome Statute, was prosecuted as an "other inhumane act."⁵⁰ This is important because forced marriage is rape and sexual slavery, but it is also its own set of circumstances that include loss of autonomy, domestic slavery, and the psychological trauma of being known as the "wife" of the enemy.⁵¹ In the **Ntaganda and Ongwen trials**, dissenting opinions have suggested that these crimes should also fall under the use of children in hostilities, as these "wives" were essential to the logistical and symbolic needs of the fighting groups.⁵²

IV. Targeting Men, Boys, and LGBTQI+ Individuals

Traditionally, the law on gender-based violence (GBV) has focused on women and girls, but there is an increasing recognition that men and boys are also often targeted. Consider the Tadić case before the ICTY, where the conviction was based on sexual violence and the mutilation of men.⁵³ In the **Celebici case**, it was held that the genital torture of male prisoners constituted

⁴⁸ PROSECUTOR V. ALI MUHAMMAD ALI ABD-AL-RAHMAN, Case Information Sheet, INT' L CRIM. CT. (Dec. 2025), <https://www.icc-cpi.int/sites/default/files/case-info-sheets/abd-al-rahman-eng.pdf>.

⁴⁹ Chinkin, *supra* note 36.

⁵⁰ *Prosecutor v. Dominic Ongwen* (Judgment on Appeal), 62 I.L.M. 619 (2023).

⁵¹ *Id.*

⁵² PROSECUTOR V. BOSCO NTAGANDA, Case Information Sheet, INT' L CRIM. CT., <https://www.icc-cpi.int/sites/default/files/case-info-sheets/ntaganda-eng.pdf> (last visited Feb. 28, 2026).

PROSECUTOR V. DOMINIC ONGWEN, Case Information Sheet, INT' L CRIM. CT., <https://www.icc-cpi.int/sites/default/files/case-info-sheets/ongwen-eng.pdf> (last visited Feb. 28, 2026).

⁵³ *A Gender Perspective on the War Crime of Using Child to Participate Actively in Hostilities*, INT' L GENDER GROUP (Apr. 26, 2020), <https://igg-geo.org/en/2020/04/26/a-gender-perspective-on-the-war-crime->

a serious breach.⁵⁴

The OTP Policy on Gender-Based Crimes of 2023 commits to an intersectional approach, recognizing that gender intersects with age, ethnicity, and sexual orientation.⁵⁵ However, the traditional binary formulation of Article 7(3) as "male and female" creates challenges in protecting LGBTQI+ and intersex individuals.⁵⁶ Some authors have suggested that intersex individuals are the only group that is completely outside the current definition because they do not fall within the first criterion of being male or female. Others have suggested that international law might be queerly reinterpreted to include sexual orientation within the "within the context of society" provision of the gender definition⁵⁷. This is precisely what the OTP Policy of 2023 does, but until it is upheld in court, the legal status of queer victims remains precarious.

V. Institutional Policy and the 2023 OTP Policy

The 2023 Policy on Gender-Based Crimes is a watershed moment for the ICC. It supersedes the 2014 Policy Paper on Sexual and Gender-Based Crimes and demonstrates a more nuanced understanding of how different harms are interconnected.⁵⁸ From "SGBC" to "GBC" is more than a notational shift; it indicates that gender should be integrated into every crime, from property pillage with gendered economic impacts to attacks on cultural sites that may impact gendered spaces.

The policy sets out ten guiding principles, including a survivor-focused, trauma-informed approach. This recognizes that trauma can impact how a witness remembers events, and that discrepancies in testimony should not necessarily impugn credibility. It also commits to challenging myths, such as that sexual desire obviates criminal intent or that gender-based violence is less serious than other crimes. To implement this, the OTP has established a Senior Coordinator position and a Gender and Children Unit (GCU) to provide technical assistance to

of-using-child-to-participate-actively-in-hostilities/.

⁵⁴ *Id.*

⁵⁵ OFFICE OF THE PROSECUTOR, INT'L CRIM. CT., *Policy on Gender-Based Crimes: Crimes Involving Sexual, Reproductive and Other Gender-Based Violence* (Policy Paper, 2023), <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>.

⁵⁶ *Gender under the Rome Statute: Intersex Outcast*, SEXUAL VIOLENCE RSCH. INITIATIVE (Sept. 18, 2017), <https://svri.org/blog/gender-under-rome-statute-intersex-outcast>.

⁵⁷ Gustavo Beckmann & Isabel Barbosa, *Protection of LGBTQIA+ Rights in Armed Conflict: How (and whether) to "Queer" the Crime Against Humanity of Persecution in International Criminal Law*, 37 LEIDEN J. INT'L L. 151 (2024).

⁵⁸ OFFICE OF THE PROSECUTOR, *supra* note 55.

unified investigative teams, ensuring gender expertise throughout the process.⁵⁹

Conclusion and Suggestions

The history of gender-based violence in international criminal law has moved from a position of near complete impunity to one of complex, but far from perfect, accountability. The transition from a biological and protective conception of women to a sociological and rights-based conception of gender has enabled international criminal law to address the root causes of violence. However, recent acquittals and overturned convictions demonstrate that there are obvious discrepancies between legal ideals and the actual outcome of trials. Justice for GBV survivors requires more than what is enshrined in law; it requires a paradigm shift in the culture of international courts and a genuine political will on the part of the international community.

There is a mismatch between the wide definitions of gender-based crimes in the Rome Statute and the Court's capacity to obtain convictions against high-ranking perpetrators. The Bemba reversal indicates that the technical requirements of "command responsibility" fail to capture the planning and tolerance of systemic sexual violence by leadership.⁶⁰

The ICC Office of the Prosecutor's 2023 Policy on Gender-Based Crimes is a progressive, living document that breaks the mold of the Rome Statute's gendered binary. By defining "gender" as a construct that encompasses sexual orientation and gender identity, the OTP is leading the charge towards a paradigm shift that has not yet been fully captured in the final judgments of the judiciary.⁶¹

The Trust Fund for Victims is an essential part of the justice equation that complements trials. For GBV survivors who are stigmatized and marginalized, reparative justice—such as fistula medical assistance, HIV/AIDS support, and collective memory projects—is the direct result of the ICC process.⁶²

The Ntaganda judgment expanded the protective mandate of international humanitarian law, reaffirming that children are protected from sexual violence perpetrated by their own armed

⁵⁹ *Id.*

⁶⁰ The Bemba Appeals, *supra* note 20.

⁶¹ OFFICE OF THE PROSECUTOR, *supra* note 13.

⁶² *The Bemba Judgement and "Justice" for Survivors of Rape and Sexual Violence*, SEXUAL VIOLENCE RSCH. INITIATIVE (June 22, 2018), <https://svri.org/blog/bemba-judgement-and-justice-survivors-rape-and-sexual-violence>.

forces. This upends the traditional "enemy vs. civilian" paradigm and provides a model for protecting the most vulnerable, unseen victims within armed groups.⁶³

Suggestions

The ICC should use a more gender-sensitive interpretation of Article 28. In situations where sexual violence is institutionalized, "reasonable measures" cannot be fulfilled through administrative fiat or hollow investigations. The ICC should how a commander's orders change or affect the mentality of the soldiers. In response to intersex exclusion and LGBTQIA+ inclusion, the Assembly of States Parties should propose amending Article 7(3) of the Rome Statute. The gender definition needs to include gender identity, expression, and sexual orientation, transcending the 1998 binary compromise to reflect modern international human rights norms.⁶⁴ In current practice, victims' participation in the early investigation stage is often restricted. The Court should introduce mechanisms allowing victims and their counsel to take part earlier, to ensure the link between GBV and the broader conflict is established before evidence is destroyed or witnesses are coerced.⁶⁵ The reparations award in the Ongwen case, over €52 million, illustrates the high financial requirements of victims. States Parties must guarantee the TFV receives sustainable funding to avoid the empty promise of reparative justice because of the financial inability of the convicted.⁶⁶ In response to the lack of forensic evidence in war zones, the ICC should leverage technology such as Project Harmony to analyze massive digital evidence, such as social media, satellite imagery, and more, to identify patterns of systematic gender violence even when a particular rape case has no tangible evidence.⁶⁷ National legal frameworks should be encouraged to follow suit from the ICC's shift from SGBC to GBC. By integrating a gender approach in national counter-terrorism and criminal laws, nations can better address how groups like ISIS or Boko Haram use gender roles to recruit and terrorize civilians.⁶⁸

⁶³ Ntaganda, *supra* note 17.

⁶⁴ *Gender under the Rome Statute: Intersex Outcast*, SEXUAL VIOLENCE RSCH. INITIATIVE (Sept. 18, 2017), <https://svri.org/blog/gender-under-rome-statute-intersex-outcast>.

⁶⁵ LEGAL ACTION WORLDWIDE, *LAW Recommendations for ICC Revised Victims Strategy* (Recommendations Paper, 2025), <https://www.legalactionworldwide.org/wp-content/uploads/2025/01/LAW-Recommendations-for-ICC-Revised-Victims-Strategy.pdf>.

⁶⁶ *ICC Upholds Reparations for LRA Survivors in Ongwen Case*, WOMEN'S INITIATIVES FOR GENDER JUSTICE (Feb. 29, 2024), <https://4genderjustice.org/icc-upholds-reparations-for-lra-survivors-in-ongwen-case/>.

⁶⁷ INT'L CRIM. CT., *The International Criminal Court's Submissions in Relation to the Consultation Process Outlined in UNGA Resolution 78/227* (Submission to UNODC, 2024), https://www.unodc.org/documents/treaties/UNTOC/Resolution_78_227/ICC_Submission.pdf.

⁶⁸ Niamh Hayes, 'Beyond Policy: Overcoming Challenges in Prosecuting Gender Persecution at the International

In conclusion, international criminal law has a robust arsenal of tools to address gender-based violence. However, the effectiveness of this arsenal depends on judges who are both technically competent in the law and cognizant of gender realities. We have progressed from silence to codification, and the challenge is to move from codification to real, transformative justice for all survivors. It is high time that we witness the impactful application of the upcoming jurisprudence and bridge the gaps to achieve gender justice.

Criminal Court' (2023) 17 FIU L Rev 593.