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# SEXUAL VIOLENCE: A COMPREHENSIVE GLOBAL FRAMEWORK

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Aryaman Miglani, Symbiosis Law School, Noida

## ABSTRACT

Despite significant advancements since the establishment of the International Criminal Court (ICC), sexual violence in conflict remains one of the most pervasive and under-prosecuted international crimes. Existing legal frameworks, from the Geneva Conventions to the Rome Statute, recognize sexual violence as a war crime, crime against humanity, and an act of genocide. However, fragmented jurisprudence, lack of clarity in definitions, and evidentiary challenges continue to limit accountability. This paper argues for the development of a comprehensive and unified global framework that more accurately reflects the diverse forms, purposes, and impacts of sexual violence in situations of armed conflict and mass atrocity.

The analysis examines evolving case law from the ICC, ICTY, ICTR, and regional human rights bodies to highlight patterns in how sexual violence has been interpreted: often through the narrow lens of physical acts, coercion, or sexual gratification. The paper emphasizes that sexual violence is frequently used as a strategic tool to dominate, terrorise, displace, destroy social cohesion, and target identity at individual and collective levels. It explores emerging categories—such as sexualised torture, forced nudity, sexual humiliation, and targeting of men, boys, and gender-diverse persons—that demand more explicit legal articulation.

Using feminist legal theory and survivor-centred approaches, the study identifies key normative gaps: inconsistent definitions, lack of recognition of non-physical coercion, and insufficient attention to long-term psychological and social harms. To address these issues, it proposes a combined international framework that standardises legal definitions, strengthens evidentiary standards, and integrates sexual violence within broader strategies for truth-seeking, reparations, and deterrence.

Ultimately, the paper advocates for a system where sexual violence is not treated as an ancillary harm, but as a core component of international criminal accountability and global gender justice.

## **1. Introduction**

### ***1.1 Sexual Violence in Armed Conflict***

Sexual Violence in armed conflict remains a paradoxical atrocity, condemned by all yet severely under theorised and remains an undeniable part of conflicts, historical and modern. It has consistently been treated as lesser and a by-product of war, an ancillary harm with an opportunistic nature.<sup>1</sup> It remains plagued by stigma and patriarchal notions resulting in under-reporting and silenced voices. Globally, it has been perceived as an attack on the honour of a woman rather than a grave crime against humanity.

While late 1990s were characterised by a normative shift and an initiation for properly addressing this as a crime against humanity and as a strategic weapon used for genocide, with the DEVAW (Declaration on the Elimination of Violence Against Women) guidelines, the Rome Statute of the International Criminal Court and the ICTY and ICTR judgements, which judicially recognized and addressed sexual violation, the effectiveness of such measures and further action taken to eradicate the presence of sexual violence is insufficient.

### ***1.2 Reasons for the lack of effectiveness in combating Sexual Violence***

The minimal progress made in combating sexual violence can be associated with jurisprudential limitations. Inconsistent definitions of rape and overemphasis on penetrative acts, narrow understanding of coercion and consent dynamics have heavily hindered any useful progress in eradicating sexual violence and providing justice to victims. The mischaracterisation of sexual violence as a mere opportunistic act rather than a structured way to dismantle social cohesion limits perpetrator accountability. Evidentiary overemphasis fails to account for practical challenges of collecting forensic evidence in warzones especially for mass atrocities and place an unnecessary burden on victim testimonies despite the risk of re-traumatisation.

### ***1.3 Research Objectives***

This paper pursues four core objectives of research:

To examine the evolution of Sexual Violence as a crime against humanity and its interpretation

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<sup>1</sup> Catharine A. MacKinnon, 'Rape, Genocide, and Women's Human Rights' (1994) 17 *Harv Women's LJ* 5

in international tribunals.

To identify the persistent jurisprudential gaps in interpreting Sexual Violence by judicial bodies.

To understand the use of Sexual Violence as a strategic tool of war and recognize emerging and underrepresented forms of Sexual Violence.

To acknowledge normative gaps, present in combating Sexual Violence and introduce measures to streamline judicial application of existing jurisprudence.

#### ***1.4 Research Questions***

To achieve the outlined objectives, the following questions have been formulated:

1. How has the conceptualisation of Sexual Violence evolved under International Criminal Law?
2. What jurisprudential gaps exist in existing theory and judicial application to address Sexual Violence sufficiently?
3. What forms of Sexual Violence remain largely unrepresented in the current global scenario?
4. What normative shortcomings exist as obstacles in effective representation against Sexual Violence?
5. What measures can be introduced to increase the effectiveness of current judicial systems?

#### ***1.5 Scope of the Paper***

This paper argues that the existing framework of legal concept and international judicial application is inadequate in addressing Sexual Violence in its capacity as a strategic tool of war and is ineffective in representation against emerging forms of sexual violence like non-physical coercion and sexual torture and humiliation as well as the abuse suffered by men and boys as well as gender diverse persons in conflict zones. Based on feminist legal theory and

survivor friendly measures, a newer framework can effectively address the normative gaps present in existing jurisprudence.

## 2. Literature Review

### 2.1 Evolution of Sexual Violence in International Law

The recognition of Sexual Violence in the context of international jurisprudence was observed in the Geneva Conventions of 1949, where women were categorised as part of protected persons against sexual violence, however, it labelled sexual violence as an attack on the honour of a woman.<sup>2</sup> This was criticised by various scholars as representative of gendered assumptions underlying the formulation of early legal norms which reinforced the view of it as being a private crime against dignity and not a grave crime against humanity.<sup>3</sup>

Subsequently, ad hoc tribunals established progress through multiple judgements. The ICTR in *Prosecutor v. Akayesu* recognised rape as a tool of genocide and laid down a mechanical definition of rape.<sup>4</sup> While the ICTY in the judgements of *Furundžija*<sup>5</sup> and *Kunarac*<sup>6</sup> broadened the ambit of sexual violence beyond traditional interpretations. Scholars also recognize the Rome statute<sup>7</sup> of the International Criminal Court which codified sexual crimes and enumerated multiple forms of sexual violence including forced pregnancy and enforced sterilisation.

### 2.2 Shortfalls in Existing Jurisprudence

One of the core reasons for sexual violence which remains a largely underrecognized crime in the context of international law, is the glaring lack of clear and encompassing definitions, indicating inadequacy at the conceptual level. Oosterveld criticises the formalistic definition given in the Rome Statute<sup>8</sup> which defines ‘gender’ as “the two sexes, male and female, within

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<sup>2</sup> ‘Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.’ <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-27>> accessed 5 February 2026

<sup>3</sup> Gaggioli G, ‘Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law’ (2014) 96 *Int Rev Red Cross* 503

<sup>4</sup> *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998)

<sup>5</sup> *Prosecutor v Furundžija* (Judgment) IT-95-17/1-T (10 December 1998)

<sup>6</sup> *Prosecutor v Kunarac, Kovac and Vukovic* (Judgment) IT-96-23 & IT-96-23/1-T (22 February 2001)

<sup>7</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90

<sup>8</sup> Valerie Oosterveld, ‘The Definition of “Gender” in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?’ (2005) 18 *HHRJ* 55

the context of society. The term “gender” does not indicate any meaning different from the above”.<sup>9</sup> This regressive interpretation was not a result of jurisprudential acknowledgement, rather a negotiated compromise to appease more traditionally inclined delegations and limits gender in the scientific sense,<sup>10</sup> completely ignoring its development as a social construct and the existence of other genders including transgenders. There is also observable regression in terms of judicial action when it comes to international sexual abuse. The progress made by the judgement of Akayesu given by the ICTR was then reverted by the formalistic interpretations upheld by the ICC in even judgements given after 2010.

In *Prosecutor v. Lubanga* the investigation undertaken by the prosecution was characterised by multiple flaws and incompetencies which limited the scope of conviction and excluded various grave crimes including sexual and gender-based violence from the charges.<sup>11</sup> While *Prosecutor v. Bemba* was another judgement which set international jurisprudence back by a few decades as it set a precedent for labelling sexual violence as mere opportunistic crimes and excluded the liability of the military commanders who actively involve themselves through explicit orders to commit the crimes,<sup>12</sup> it again regressed sexual violence to a private crime on the honour of a woman, rather than a strategic move undertaken to oppress and terrorise deliberately.

Sellers and Grey have also observed overemphasis on physical penetration and visible force as requisites which has led to a marginalisation of non-penetrative forms of violence and coercion motivated by structural and contextual differences.<sup>13</sup> This line of interpretation limits itself to a direct form of sexual assault that is undeniable and ignores conflict contexts rampant with power imbalances, displacement and dependency dynamics which promote a coercive environment supporting sexual violence being committed in a less obvious form which is equally damaging.

### ***2.3 Strategic Motivation for Sexual Violence***

Various scholars have globally criticised the framing of sexual violence and observed the

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<sup>9</sup> Rome Statute of the International Criminal Court (n 7) art 7(3)

<sup>10</sup> Rosemary Grey, ‘On Hope, Reform and Risk: The Rome Statute’s Definition of “Gender” and the Crimes Against Humanity Convention’ (2025) 36 *EJIL* 369

<sup>11</sup> *Prosecutor v Lubanga Dyilo* (Judgment) ICC-01/04-01/06-2842 (14 March 2012)

<sup>12</sup> *Prosecutor v Bemba Gombo* (Judgment) ICC-01/05-01/08-3343 (21 March 2016)

<sup>13</sup> Rosemary Grey, ‘Conflicting Interpretations of “Sexual Violence” in the International Criminal Court: Recent Cases’ (2014) 29 *AFS* 273

lack of recognition of sexual violence as a strategic tool of war. MacKinnon argues on the use of sexual based violence for ethnic cleansing and social domination corroborated by the mass rape committed by Serbian troops on Bosnian women.<sup>14</sup> Mibenge argues that international jurisprudence treats war primarily as a male-centred conflict, which perceives sexual violence as an inevitable and ancillary by product of war, morally wrong but lacks basis for political or military motivation.<sup>15</sup>

Wood presents the varied nature of sexual violence, i.e., how it becomes opportunistic or strategic among different conflicts. She claims that this variation introduces a strategic intention behind sexual crimes and moves away from mere opportunism.<sup>16</sup> Scholars argue that such interpretations reduce the prosecutability of sexual violence as a strategic tool for systemic destruction and brand it as an ancillary to war crimes.<sup>17</sup> The perception of opportunism dilutes the structured nature of this crime and limits possibility of legal action against military leaders, as observed in the case of Bemba.

#### ***2.4 Under-recognized forms of Sexual Violence***

The Rome Statute traps gender within binary constraints and evolved jurisprudence has constructed a simplified template of the crime. Overemphasis on overt force and penetrative acts exclude a variety of crimes including forced nudity and sexual humiliation. It also ignores coercive atmospheres created by power asymmetries and dependency factors.

Another under-recognized issue is sexual violence on males. Perception of sexual crimes predominantly have male perpetrators on female victims which has left jurisprudential development inadequate. Male victims go through emasculation practices through physical or psychological torture yet remain bereft of justice.<sup>18</sup>

#### ***2.5 Feminist Critique and Survivor Centrism***

Feminist legal theory has consistently critiqued the jurisprudential development on its epistemic foundations. Scholars like Charlesworth and Chinkin have argued that the presented neutrality in international law hides gendered bias and is coded for the male

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<sup>14</sup> MacKinnon (n 1) 5

<sup>15</sup> Chiseche Salome Mibenge, *Sex and International Tribunals: The Erasure of Gender from the War Narrative*

<sup>16</sup> Elisabeth Jean Wood, 'Variation in Sexual Violence During War' (2006) 34 *Pol & Soc* 307

<sup>17</sup> Catharine A MacKinnon, 'Crimes of War, Crimes of Peace' (1993) 4 *UCLA Women's L J* 59

<sup>18</sup> Sandesh Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18 *EJIL* 253

interpretation of such harms which has led to evidentiary challenges and testimonial burdens on survivors.<sup>19</sup> Mackinnon argues against the trivializing of sexual violence as a private moral harm and a gender issue rather than a crime against humanity.<sup>20</sup> Engle argues on the prosecution of such crimes being punishment oriented over survivor oriented which leads to overemphasis on procedural smoothness at the cost of survivor rehabilitation.<sup>21</sup>

### **3. Research Methodology**

#### ***3.1 Doctrinal Research and Judicial Analysis***

This study conducts structured research of international jurisprudence on sexual violence by integrating doctrinal research of statutory instruments and treaties and their judicial applications in different contexts and multiple tribunal judgements. It analyses conceptual development and the effective in its practical translation.

#### ***3.2 Feminist Perspective and Normative Advancement***

This study is supported by feminist legal theory and critiques male coded interpretation of sexual violence and advocates for survivor-centric and gender progressive approaches. It applies a normative framework for suggesting ideal progressions of jurisprudence to address the inadequacies and limitations present based on three substantial reforms:

1. Substantive law and conceptual reforms
2. Recognition of sexual violence as a tool of war
3. Evidentiary reforms along with survivor centred procedures

### **4. Evolution of Sexual Violence in International Jurisprudence**

#### ***4.1 Early developments and regressive interpretations***

The initial progress made for integrating sexual violence into the global legal landscape was

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<sup>19</sup> Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *AJIL* 613

<sup>20</sup> MacKinnon (n 1) 5

<sup>21</sup> Karen Engle, 'Anti-Impunity and the Turn to Criminal Law in Human Rights' (2015) 100 *Cornell L Rev* 1069

with the Geneva Conventions of 1949. The fourth convention covered women as a protected category against sexual violence recognizing their vulnerability to these acts, however the formulative inadequacy arose because sexual violence was framed as a strike to the 'honour' of a woman<sup>22</sup> and was attributed to be a female centred moral harm which women were supposed to be passively protected from ignoring the problematic implications of violation of bodily autonomy<sup>23</sup> and excluding male and third gender victims.

This shows undertones of patriarchal protection for a weaker gender over collective initiative to eradicate sexual violence as a crime against humanity. This is corroborated by article 147 which lists out grave breaches to humanity involving torture or willful killing but does not mention sexual violence explicitly.<sup>24</sup>

Advancement in jurisprudence came with the Additional Protocols of 1977. Under Additional Protocol I, article 75 addresses sexual violence in an implicit manner while article 76 addresses protection of women from sexual violence.<sup>25</sup> These protocols again addressed sexual violence as an opportunistic violation over a strategic tool and grave breach. They again focused on protecting women from such crimes.

Additional Protocol II did address these issues by explicitly prohibiting sexual violence but lacked any doctrinal expansion on coercion, strategic violence and command responsibility.<sup>26</sup> It lacked an enforcement mechanism because it was made for non-international armed conflicts and persecution of crimes along with punishment definitions was left to independent states without an international prosecution body.<sup>27</sup>

#### **4.2 Critical Analysis of Tribunal Breakthroughs**

Apart from normative developments, there have been various judicial advancements against sexual violence. The case of Prosecutor v. Akayesu in 1998 was a breakthrough for

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<sup>22</sup> *Convention (IV) Relative to the Protection of Civilian Persons in Time of War* (n 2) art 27

<sup>23</sup> Thekla Morgenroth, 'The Moralization of Women's Bodies' (2025) 55 *Eur J Soc Psychol* 1

<sup>24</sup> *Convention (IV) Relative to the Protection of Civilian Persons in Time of War* (n 2) art 147

<sup>25</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) art 75 (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3

<sup>26</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art 4 (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609

<sup>27</sup> Gloria Gaggioli, 'Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law' (2014) 96 *Int Rev Red Cross* 503

jurisprudence. The ICTR recognised sexual violence and rape as a form of genocide and defined rape as “A physical invasion of a sexual nature committed under coercive circumstances”.<sup>28</sup> It was the first judicial recognition of rape as a tool of genocide and ethnic destruction rather than an incidental crime. There was still a doctrinal gap with the mechanical and vague definition given considering the complexity in defining coercive circumstances and it also excluded non-penetrative crimes.<sup>29</sup>

Prosecutor v Furundžija in 1998 by the ICTY laid down an authoritative definition of rape but narrowed to two thresholds, physical penetration and coercive circumstances.<sup>30</sup> It showed early doctrinal expansion on the coercive nature of the crime yet labelled non-penetrative crimes as ‘outrages upon personal dignity’.<sup>31</sup> The ICTY did equate rape committed for intimidation, humiliation or discrimination to torture which it included as *jus cogens*.<sup>32</sup> Prosecutor v. Kunarac in 2001 was where the ICTY reframed rape prosecutions around consent dynamics over application of overt force.<sup>33</sup>

#### 4.3 The Rome Statute and ICC Decisions

The Rome statute, adopted in 1998, came into force in 2001 establishing the ICC as a centralised body to deal with global war crimes. It introduced conceptual development for addressing sexual violence by explicitly criminalising various forms of sexual violence in both international and internal conflicts and recognises forced pregnancy separately acknowledging its role for ethnic cleansing in wartime.<sup>34</sup> It gives a binary definition of gender. It does provide gender neutral laws, specific systems for survivor centred proceedings, however these changes are only progressive in theory.<sup>35</sup>

Scholars argue that enumerating different forms of sexual violence portrays them as individual crimes overshadowing their structural nature.<sup>36</sup> Scholars argue that the gender

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<sup>28</sup> *Akayesu* (n 4) para 598

<sup>29</sup> Alexandra Adams, ‘The Legacy of the International Criminal Tribunals for the Former Yugoslavia and Rwanda and Their Contribution to the Crime of Rape’ (2018) 29 *EJIL* 749

<sup>30</sup> *Furundžija* (n 5) para 185

<sup>31</sup> *Ibid* para 272

<sup>32</sup> *Ibid* para 144

<sup>33</sup> *Kunarac* (n 6) para 129

<sup>34</sup> *Rome Statute of the International Criminal Court* (n 4) arts 7(1) and 7(2)

<sup>35</sup> Tanja Altunjan, ‘The International Criminal Court and Sexual Violence: Between Aspirations and Reality’ (2021) 22 *Ger L J* 878

<sup>36</sup> Janet Halley, ‘Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law’ (2008) 30 *Mich J Int'l L* 1

neutrality maintained on paper, lies above gendered assumptions as these laws are male coded and perceive sexual crimes as lesser to killings and torture.<sup>37</sup> Practically, the Rome Statute is overambitious in scope as it requires state cooperation in enforcement.<sup>38</sup>

Prosecutor v. Lubanga in 2012 was criticised for its narrow prosecutorial strategy which excluded evidence of sexual violence on girl child soldiers.<sup>39</sup> The tunnel vision on prosecuting conscription of child soldiers failed to acknowledge the sexual abuse committed on them, the ICC was criticised for deliberately excluding sexual violence in the appeal stage due to procedural reasons.<sup>40</sup> Prosecutor v. Bemba in 2016 was another controversial case of the ICC.<sup>41</sup> At the trial stage, it focused on rape as sexual violence and applied the concept of command responsibility to convict the commander for troop crimes introducing a systemic element to the crime, however this was overturned at the appeals stage which set high thresholds for convicting commanders for their orders.<sup>42</sup> Prosecutor v. Ntaganda in 2019 was a breakthrough as it successfully established prohibition on sexual violence committed internally among troops. It interpreted the coercive environment within a military hierarchy and rejected the ownership and consent by command argument.<sup>43</sup>

## 5. Fragmented Jurisprudence and Inconsistencies

### 5.1 Inconsistent and inadequate definitions

A main reason for inefficiency in persecuting sexual violence is the inadequacy of conceptual and judicial interpretations. Historically, definitions have failed to account for the complexity in sexual violence and the accompanying gender dynamics. Jurisprudence gives rigid definitions that either overemphasise on penetration or fixate on regressive gender stereotypes.<sup>44</sup> Akayesu gave a vague definition disregarding nuances,<sup>45</sup> Furundžija fixated on penetrative acts,<sup>46</sup> while Kunarac acknowledged coercion complexity but remained context

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<sup>37</sup> Charlesworth, Chinkin and Wright (n 19) 613

<sup>38</sup> Halley (n 36) 1

<sup>39</sup> *Prosecutor v Lubanga Dyilo* (Appeal Judgment) ICC-01/04-01/06-3121 (1 December 2014)

<sup>40</sup> Sienna Merope, 'Recharacterizing the Lubanga Case: Regulation 55 and the Consequences for Gender Justice at the ICC' (2011) 22 *J Int'l Crim Just* 311

<sup>41</sup> *Prosecutor v Bemba Gombo* (Appeal Judgment) ICC-01/05-01/08-3343 (21 March 2016)

<sup>42</sup> Susana Sacouto and Patricia Viseur Sellers, 'The BEMBA Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes?' (2019) 27 *Wm & Mary Bill Rts J* 599

<sup>43</sup> *Prosecutor v Ntaganda* (Judgment) ICC-01/04-02/06-3099 (8 July 2019)

<sup>44</sup> Grey (n 13) 273

<sup>45</sup> *Akayesu* (n 4) para 598

<sup>46</sup> *Furundžija* (n 30) para 185

dependent and harder to normalise.<sup>47</sup> Adams argues that this inconsistency weakens prosecution effectiveness and increases judicial ineffectiveness.<sup>48</sup>

### ***5.2 Narrow Interpretation of Consent Dynamics***

Scholars have also critiqued the overemphasis on penetrative acts and overt force on victims for establishing commission. While Kunarac acknowledged consent dynamics and coercive circumstances, this principle has not been adequately applied in later interpretations. Jurisprudence has given narrow interpretations of sexual violence which fixate on overt force and coercion. It does not account for power imbalances and hierarchical and gendered vulnerabilities that are present in wartime.<sup>49</sup>

### ***5.3 Evidentiary Challenges and Procedural Burdens***

Prosecution of sexual violence is also hindered by evidentiary struggles which disproportionately place burden of proof on survivors and put their credibility in question. Buss and Chappell criticise the usage of unsuitable methods of evidence collection which fail to account for mass atrocity contexts which destroys any scope of accurate forensic evidence and unfairly burdens testimonies.<sup>50</sup> Mackinnon argues that such methods ignore the psychological implications of sexual abuse and re-traumatising victims. It essentially places the victim on trial.<sup>51</sup>

## **6. Sexual Violence as a strategic tool of War**

### ***6.1 Systemic Nature of Sexual Violence***

The enduring interpretation of sexual violence as an opportunistic moral violation of a woman's honour has hampered the justice given to victims of mass atrocities. Sexual violence must be accepted as a strategic tool of systemic breakdown through psychological and social harm caused to the victims. It breaks down group structures and forces victims to

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<sup>47</sup> Kunarac (n 33)

<sup>48</sup> Adams (n 29) 749

<sup>49</sup> Ciara Laverty, 'What Is Sexual about Sexual Violence? Narratives from International Criminal Law' (2023) 21 *J Int'l Crim Just* 383

<sup>50</sup> Rosemary Grey and Louise Chappell, 'Prosecuting Sexual and Gender-Based Crimes in the International Criminal Court: Inching Towards Gender Justice' in *Gender and War: International and Transitional Justice Perspectives* (Cambridge University Press 2019) 209–234

<sup>51</sup> Catharine A MacKinnon, 'Rape Redefined' (2016) 10 *Harv L & Pol'y Rev* 431

endure psychological trauma and social stigma which then makes ideological domination easier.<sup>52</sup> Akayesu acknowledged rape as a tool of committing genocide on the Tutsi group. Mackinnon showcased the mass rape of Bosnian women by Serbian soldiers followed by their execution or forced pregnancy to commit ethnic cleansing.<sup>53</sup>

### ***6.2 Political and Social Domination***

Sexual Violence plays an effective role in social and political control. It is used to break social cohesion and terrorise civilians. Mass rape creates enduring trauma, fear and hatred within the community, it alienates the victims while establishing psychological dominance of the perpetrators. It destroys social identities by feminizing male victims and violating the autonomy of women. Third gender victims suffer from hate-focused sexual violence. Troops establish an atmosphere of coercive dominance which symbolically targets men as ‘failed protectors’ and violates women to destroy their social and internal respect.

### ***6.3 Regressive Perception as Opportunistic***

The continuing perception of sexual violence as opportunistic reduces liability. Wood argues that this excludes command responsibility and diminishes the role of military leaders while reducing the crime from systemic harm to mere individual misconduct.<sup>54</sup> Mackinnon argues that this marginalizes sexual crimes to mere ancillary acts rather than collective initiatives to weaken social structure and makes them lesser than the ‘real crimes’, this perception reduces prosecutability of the crime by shifting focus from community disruption to standalone acts.

## **7. Under-recognized Forms of Sexual Violence**

### ***7.1 Non-Penetrative Forms of Sexual Violence***

Sexual violence has been consistently associated with penetrative acts and physical force. This has led to severe marginalization of non-penetrative crimes such as sexualised torture which has been repeatedly deprioritized. Genital mutilation was commonplace on Croats by

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<sup>52</sup> Sara Meger, ‘Sexual Violence as a Weapon of War’ in *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict* (2016) 93–114

<sup>53</sup> MacKinnon (n 1) 5

<sup>54</sup> Elisabeth Jean Wood, ‘Conflict-Related Sexual Violence and the Policy Implications of Recent Research’ (2014) 96 *Int Rev Red Cross* 457

Serbian forces yet was not properly reported.<sup>55</sup> The Israel-Palestine war also shows reports of detainees subjected to forced nudity and humiliating treatment.<sup>56</sup> There are various other examples where detainees are forced into degrading positions, or during the Serbian invasion in Bosnia where the crimes were recorded and edited to display and incite further hatred.<sup>57</sup> Such acts are often clouded due to social taboos or lack of reporting which prevents their persecution.

## 7.2 Male and Gender-diverse victims

Another form of sexual crimes that lacks proper jurisprudential action is the sexual abuse on male victims and third gender persons. For male victims, the violence is aimed towards feminizing them through genital torture or humiliation, in some cases men are forced to witness abuse inflicted on family members to strip away their dignity as a protector.

There have been various reports from Ukraine,<sup>58</sup> Syria<sup>59</sup> and Gaza<sup>60</sup> showing male detainees subjected to sexual torture. In the 2007-08 Kenyan post-election violence, there were multiple accounts of forced castration which were characterised as ‘other inhumane acts’ by the ICC instead of sexual violence, this reduced the implications of such acts by categorising them under broad headers.<sup>61</sup> Another major scandal was the infamous ‘Abu Ghraib’ prison in Iraq where the male detainees were subjected to humiliating and torturous acts by US soldiers to

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<sup>55</sup> P Oosterhoff, P Zwanikken and E Ketting, ‘*Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret*’ (2004) 12 *Reprod Health Matters* 68

<sup>56</sup> UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel* (A/79/232, 11 September 2024) <https://undocs.org/A/79/232> accessed 4 February 2026

<sup>57</sup> MacKinnon (n 1) 5

<sup>58</sup> United Nations Secretary-General, *Conflict-related sexual violence: Report of the Secretary-General* (UN Doc S/2025/389, 15 July 2025) <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2025/08/2024-SG-annual-report-on-CRSV-ENGLISH.pdf> accessed 5 February 2026

<sup>59</sup> UNHCR, ‘*Male Rape and Sexual Torture Widespread in Syria Crisis – Report*’ (UNHCR, 6 December 2017)

<https://www.unhcr.org/in/news/stories/male-rape-and-sexual-torture-widespread-syria-crisis-report> accessed 5 February 2026

<sup>60</sup> Office of the United Nations High Commissioner for Human Rights, *UN report: Palestinian detainees held arbitrarily and secretly, subjected to torture and mistreatment* (OHCHR, 31 July 2024) <https://www.un.org/unispal/document/torture-and-mistreatment-ohchr-pr-31jul24/> accessed 5 February 2026

<sup>61</sup> All Survivors Project Foundation, *Submission to the United Nations Human Rights Committee on Kenya, 128th Session, 2–27 March 2020* (UN Human Rights Committee, 128<sup>th</sup> Session, 2020) [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KEN/INT\\_CCPR\\_ICO\\_KEN\\_40936\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KEN/INT_CCPR_ICO_KEN_40936_E.pdf) accessed 5 February 2026

‘soften them up’ for interrogation purposes.<sup>62</sup> Sexual Violence on third gender persons is another set of crimes that is never acknowledged and plagued by social taboo and stigma. Trans persons report being subjected to rape as punishment for non-gender conformity or as a corrective remedy in various incidents in Syria<sup>63</sup> as well as Latin America.<sup>64</sup>

## 8. Survivor Centred Approach

### 8.1 Epistemic Injustices in Trials

Scholars have also highlighted the prevalence of epistemic injustice<sup>65</sup> present in trials wherein survivor testimonies are subjected to higher standards due to ideal ‘victim’ behaviour narrative, insufficient understanding of trauma responses and credibility assessments.<sup>66</sup> Courts subject victims to testimonial injustice by objecting testimonies for inconsistency in emotional response and recapitulation which can be attributed to trauma responses. Scholars argue that international courts have a history of favouring coherence in testimonial evidence perceiving dissociative or escapist responses as unreliable.

Another aspect is the hermeneutical injustice faced by survivors due to linguistic differences and lack of legal literacy which prevents proper expression of the severity of the crimes. It also minimizes understanding of the suffering and allows prejudiced opinions to dominate adjudication. Oosterveld notes that even with testimonial sufficiency, courts still over-rely on forensic corroboration despite practical challenges marginalizing narrative evidence.<sup>67</sup> This invokes a need for an overhaul of judicial understanding of survivor narratives and inclusion of psychological training to equip judges to properly accommodate survivors.

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<sup>62</sup> United States Army, *Article 15-6 Investigation of the 800th Military Police Brigade (Taguba Report)* (Major General Antonio M Taguba, March 2004) <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/Taguba%20Report.pdf> accessed 5 February 2026

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## ***8.2 Survivor Oriented Adjudication***

Scholars advocate for a survivor-oriented system of adjudication which accommodates for trauma accounts and maintaining a safe space for victims while minimizing the risk of re-traumatizing victims and putting unfair burdens of testimonial credibility thresholds on them. This system would be characterised by greater emphasis on context-oriented assessments and understanding psychological implications during adjudication. Accommodating for out of court power asymmetry between the survivors and the perpetrators will maintain proper survivor control over narrative. This system ensures maintenance of requisite legal standards while aligning procedural complications with atrocity contexts.

## **9. Normative Framework**

### ***9.1 Conceptual and Substantive Law Reforms***

These reforms are required to move beyond regressive interpretations of sexual violence which focus on overt force and penetrative acts. Proper inclusion of non-penetrative acts, coercive circumstances, coercive circumstances and consent dynamics as well as male and gender diverse victims will ensure a wider ambit ensuring justice.

### ***9.2 Recognizing strategic commission of Sexual Violence***

Sexual violence must be recognized for its role in systemic destruction and fracturing cultural and social cohesion. Its continued perception as an opportunistic individual crime reduces its importance to an ancillary harm rather than a deliberate ‘modus operandi’ to destroy certain societies. Proper recognition will ensure command responsibility and accountability.

### ***9.3 Evidentiary Reforms and Survivor Centrism***

There is a requirement for evidentiary reforms aligning challenges in forensic corroboration with contextual reality of mass atrocities. A survivor centred approach involves trauma informed adjudication to optimize testimonial evidence and account for psychological implications.

## **10. Conclusion**

### ***10.1 Summary of Findings***

This study shows how sexual violence remains a prevalent part of modern conflicts despite significant conceptual and judicial developments. Humanitarian law initially interpreted it through gendered perceptions while subsequent jurisprudence remains inconsistent and insufficient in addressing these issues. Judicial activism has struggled due to outdated stereotypical perceptions, narrow interpretations of consent and coercion, unfair evidentiary standards and association of sexual violence with opportunism, which marginalize male and gender diverse victims and non-penetrative harms while weakening accountability and understanding of the gravity of the crime.

### ***10.2 Direction for Change***

The current state of jurisprudence on sexual violence must change with reforming sexual violence as a core and strategic tool of war and a crime against humanity. Future developments must formulate encompassing definitions along with a reform in evidentiary and procedural practices that account for trauma-induced conditions. This approach will ensure greater accountability and effective prosecution while providing adequate justice to victims before it becomes obsolete.

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