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TABLE OF CONTENTS

VOLUME 6 – ISSUE 1

MIS-ASYLUMATION: AL-ASSAD'S SALLY PORT TO IMPUNITY

Pages 1-15

XXX

Yassin Abdalla Abdelkarim

RAPE AS A WEAPON OF WAR: HOW IT USED IN THE MODERN-DAY ARMED CONFLICT

Pages 16-26

XXX

Bushrat Jahan

DOES CROSSFIRE BETWEEN ARMIES KILLING CIVILIANS BREAK THE CAUSATION IN INTERNATIONAL CRIMINAL LAW? AN ARGUMENT

Pages 27-67

XXX

Philip Lau Kwong Yui

MEXICO'S FAILURE TO PREVENT AND AVOID REPETITION OF FEMICIDE: BREAKING THE PATTERNS OF NON-COMPLIANCE

Pages 68-92

XXX

Willie Mack

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OVERVIEW

The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and

- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about “ecocide” is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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Rape as a Weapon of War: How It Used in the Modern-Day Armed Conflict

*by Bushrat Jahan**

ABSTRACT: When we think about weapons of war at first glance we remember guns, bullets, and bombs, not rape or sexual violence. But Rape does more than just wound which is a military strategy used to deny and destroy the identity of a targeted community. Historically, sexual violence in armed conflicts was considered a byproduct of war, simply as unrestrained sexual behavior amid lawlessness and a breakdown of societal infrastructure. When one digs deeper into the aims and intentions, sexual violence came out as a strategic tool of discrimination and hate, and a weapon of warfare, largely targeted at humiliation, torture, demoralization, and individual or collective shaming. In many recent conflicts, like in Afghanistan, Iraq, Sudan, Myanmar even in Ukraine rape and sexual violence were used as a weapon of terrorizing and showing of power to the enemy group by targeting civilians. But as history remains silent about punishing the perpetrators the same is happening today. Most of the time perpetrators go away with it. This study will discuss why it is important to consider rape or sexual violence in armed conflict as a weapon of war to separate them from generalized and to determine how it can be prosecuted. There will be a discussion on how perpetrators exploit sexual violence as a tactic of war in modern-day armed conflicts exemplifying some recent atrocities. By spotlighting these atrocities, this study will also underscore why international accountability fails to prosecute perpetrators and how justice will be served to the victims.

KEYWORDS: Armed Conflict; Sexual Violence; Strategy of War; Victims.

I. Introduction

Wartime rape and sexual violence are the greatest silence of the history and one of today's most extreme atrocities. It displaces, terrorizes, and destroys individuals, families, and even entire communities. It can leave the survivors with emotional trauma and psychological damage coupled with physical injuries, unwanted pregnancies, and STDs like HIV. The consequence lasts for generation by generation Even after direct indication of the prohibition in International Criminal Law and International Humanitarian Law sexual violence remains widespread and prevalent during armed conflicts these days, used by the militants as a tactic or strategic means of weakening the opponent directly or indirectly, by targeting the civilian population.

But what happens with the rapists? Well, history shows that most of the time they got away with it because the rape and sexual violence against women in armed conflicts are yet to be acknowledged as a war crime by the international instruments. In 2008, the UN recognized as a crime against humanity. Even though recent developments in International Criminal Law include prohibitions on any form of sexual violence through the elements of war crime in Rules

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and Procedure. But the wars have continued and so have the rapes, will justice be served? Will the perpetrators be held accountable, and most importantly when the world stops using rape as a weapon of war?

II. Background

To gain a better understanding of the background of rape as a weapon of war, it is necessary to start by looking at the conflict where it occurred. For this purpose, there would be no better example rather than the Democratic Republic of Congo which referred to as a “rape capital of the world”.¹ Tens of thousands of women raped all within past decade have been called an epidemic situation. This large-scale magnitude of sexual violence has potentially made eastern Congo the worst place on earth to be a woman.

The conflict was generated since the DRC gained independence from Belgium in 1960. The first Congo War began aftermath of the Rwandan genocide, in which ethnic Hutu extremists killed an estimated one million minorities of ethnic Tutsis and moderate Hutus in Rwanda. Nearly two million refugees crossed the Congolese border and settling in refugee camps. Pressure intensified when Tutsi militias began organizing with the backing of Rwandan Patriotic Fronts. The reality that many Congo women faced that time during 1996-1997 is frightening and difficult to imagine. Even though the main agenda was to protect the Tutsi ethnic group but the involvement of various groups only added the complexities and increased the number of attacks on civilians. What is important to note that, rape and other forms of sexual violation were first noticed as cross-border hostilities in the Rwandan genocide. In Rwanda, more than half a million women were raped during the genocide in 1994.

Later on the atrocities also witnessed the sexual violence, for example, up to 60,000 Bosnian women were raped by Serb forces in the camps between 1992-1995. And rape is being used as a weapon of war by Myanmar soldiers again today, against the Rohingya Muslims in Myanmar described by the UN this situation as a textbook example of ethnic cleansing.

III. Defining Sexual Violence in Armed-Conflict

For defining the sexual violence or rape in armed conflict referring Akayesu’s case is a must, which is the very first case delivering charge on the ground of sexual violation. During the case International Criminal Tribunal for Rwanda (ICTR) held that, “sexual violence is any act of sexual nature is committed on a person under coercive circumstance”.² This definition includes a broader picture that includes not only physical force but also threats and intimidation for rape or sexual violence. And there is a question arise understanding the gravity of sexual violence and when it will consider as a war crime?

To answer this question, the Statute of International Criminal Court should be referred which criminalizes specific acts consider as a crime under its jurisdiction, such as sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violation of comparable gravity. The doubt also can arise here with the term “gravity” that, what actually mean the minimum gravity for an act considered as sexual violence?

¹ Justine Limpitlaw, *Democratic Republic of Congo*, in MEDIA LAW HANDBOOK ON SOUTHERN AFRICA (2024), at 397-449, <https://www.kas.de/documents/285576/285625/MLHSA+2021+Volume+2+-+EBOOK.pdf>.

² ICTR, *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4, Trial Chamber, Judgment, (Sept. 2, 1998), para. 688, <https://casebook.icrc.org/case-study/ictr-prosecutor-v-jean-paul-akayesu>

There is no clear-cut answer to that rather case laws and legal writings provide a number of additional examples of sexual violence. For example: trafficking for sexual exploitation,³ mutilation of sexual organs,⁴ forced abortion,⁵ enforced contraception,⁶ forced inspection for virginity,⁷ forced public nudity⁸ have been qualified as sexual violence. For a more concluding and refined definition the Rule and Procedure of ICC ‘elements of crimes’ are more considerable. Article 8(2)(b)(xxii-1) says that an act is considered as rape if: 1. 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. 2. 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.⁹

Despite clear and vast historical nightmare experiences 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. Political theorist Francis Fukuyama proclaimed that the end of the cold war between the United States and the Soviet Union would be marked as a triumph of capitalist, liberal democracy over competing ideologies.¹⁰ It was believed that the 21st century would be a globalized post-conflict society moving toward collective peace and prosperity. However, Fukuyama’s theory was profoundly challenged by the 9/11 attacks and the subsequent US war on terrorism, open warfare between armies became increasingly rare in the post-Cold War environment.

IV. How Rape Used as a Weapon in Modern-Day Armed-Conflict

Rape is understood as a gendered violent act not only against the female sexed body but against the enemy as such through the logics of gender in which conceptualization of “weapon of war makes sense. Wartime rape is a military tactic, serving as a combat tool to humiliate and demoralize individuals, to tear apart families, and to devastate communities”.¹¹ In today’s political climate claiming that wartime rape is a strategy or tactic of war is seemingly to state obvious.

³ UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, (Nov. 15, 2000), at 2237. UNTS 319 (Protocol), art. 3. <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

⁴ ICTR, *Prosecutor v. Théoneste Bagosora*, ICTR-96-7, Trial Chamber, Judgment, (Dec. 18, 2008), para. 976, <https://www.refworld.org/jurisprudence/caselaw/ictr/2008/en/92006>.

⁵ M. Bastick, K. Grimm, R. Kunz, *supra* note 14, at 19; WHO, *supra* note 14, at 149.

⁶ *Id.*, at 5.

⁷ *Id.*, at 5.

⁸ See ICTR, *Prosecutor v. Jean-Paul Akayesu*, cit.

⁹ ICC, *Elements of Crimes* (2011), art. 8(2)(b)(xxii)-1, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

¹⁰ Ray Michael, *8 Deadliest War of the 21st Century*, ENCYCLOPEDIA BRITANNICA (Apr. 18, 2023), <https://www.britannica.com/list/8-deadliest-wars-of-the-21st-century>.

¹¹ Office of the Special Representative of the UN Secretary General, *UN Action against Sexual Violence in Conflict*, in UN ACTION ANNUAL REPORT (2021), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2022/10/report/auto-draft/UN-Action-Annual-Report-2021-Final.pdf>.

Why it is important to prove rape as a weapon of war? In answering this doubt, it is important to comprehend a critical reading for revealing and interrogating the limits of using it in particular framing of wartime and to begin imagining a slightly different picture of rape in general. Describing wartime rape as a weapon of war offered up as it is self-explanatory simultaneously characterization and explanation of a violent act by itself. The discourse of Rape as a weapon of war mainly revolves around four interrelated points, which organize its narratives: 1) Strategic ness, 2) gender, 3) culpability, and 4) avoidability.¹² Among these four points, the strategic ness is more unraveling and credible key in unfolding the cohesive storyline.

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

A. Rape as a Strategic of War

The most openly described acts of war are terrorism, torture or bombing. In particular, it is shrouded one pervasive atrocity in the conspiracy of silence, which is a military tactic of mass rape. Being absent from the ceasefire agreements and rarely mentioned in the peace-table, it is a war tactic that lingers long after the guns fall silent. During this decade, the number of victims crossed over 200,000 since conflict erupted in Eastern Congo.¹³

Unlike any other injuries, its scars are invisible, which is reason behind not to find the victims on the official link of “War wounded”. In the armory of any armed group, this is the only weapon of mass destruction for which societies blame the victims, rather than the attackers. Despite of recognition as war crime it is hard to bring the perpetrators to the prison.¹⁴ This discussion can covey that, war time rape is intentional strategic or tactic of war. A report on Sierra Leone sexual violence atrocities renders this generalized truth that “Rape as a weapon of war serves a strategic function and acts as an integral tool for achieving military objectives”.¹⁵

With the interview in The Nation Magazine, Margot Wallström, the former UN special Representative of Secretary General describes sexual abuse as a weapon of war not only targeting women and girls but also men and boys as planned and systematic, designed to control the territory to install fear by terrorizing the population.¹⁶ By evaluating the widespread

¹² Maria Eriksson Baaz, Maria Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions*, in PROBLEMS IN THE CONGO AND BEYOND (2013), <https://uu.diva-portal.org/smash/get/diva2:1148245/FULLTEXT01.pdf>

¹³ *Supra* note 3.

¹⁴ ELEANOR O’GORMAN, *Review on UN Action Against Sexual Violence in Conflict* (2013), Cambridge, UK. <https://www.stoprapenow.org/uploads/advocacyresources/1401281502.pdf>

¹⁵ HUMAN RIGHTS WATCH, (2003), NCJRS Virtual Library, NCJ no. 199392.

¹⁶ Crossette Barbara, *A New UN Voice calls for Criminalizing Conflict Rape*, THE NATION (Sept. 10, 2010). <https://www.thenation.com/article/archive/new-un-voice-calls-criminalizing-conflict-rape/>.

instances of sexual violence in DRC Wallström added in his statement that, the atrocities those are committed daily against women and children will leave a devastating imprint on the Congo for years in future. This case sexual violation is the only tactic of war which consequences spill over the peace over the years. Children accustomed to rape and violence grow up with that trauma and accepting such behavior, which is enough to shatter the community values to the future generation.¹⁷

The academic research and literature outlines the perception of the strategic effect of sexual violence as a weapon of war in two dimension, as it reaffirms militaristic masculinity and secondly, attacking the ethnic, religious or political identity by victimizing the identity of the women is seen to embody. In the regard of achieving the political purpose wartime rape described as a martial weapon in the context of different armed conflicts.¹⁸ Generalizing political purposes can also achieved by the sexual violence by various viewpoints like, first, it encourages ethnic cleansing by making it more attractive to escape; second, it demoralizes the adversary; third, it conveys a desire to disintegrate society; fourth, it causes trauma and helps the other side inflict psychological harm; fifth, it provides psychological advantages to the offenders; and sixth, it strikes at a group that has great symbolic significance, delivering a blow against the collective enemy.

Even though here we are talking about rape as a weapon of war but not only rape but also other sexual violence used as a systematic way of war as like genocide. Making pregnant by soldiers intentionally so that the babies carry even after the war is a tactic of making a certain nation controlled over the blood chain. In some other picture, sexual torture to women or men by making them sexually impairment from giving birth can stop the growth of any nation. Without a doubt, evidence of the widespread and strategic aspects of sexual violence in Rwanda and Bosnia-Herzegovina in rape camps has been well established in both international tribunals and excellent academic and policy research. However, in general, the empirical evidence used to support the notion that rape is strategic is frequently its widespread occurrence. The apparent logic is that the occurrence of mass rapes' must indicate that they are systematic and strategic. In the DRC, evidence supporting this allegation is, if anything, primarily anecdotal.

V. Review on Recent Atrocities

In the first twenty years of the century, fifty-four countries have been through involvement in war and most of those continue today. Around sixty states and a hundred armed groups were actively making war in 2020.¹⁹ Many other States support these wars in principle and practice as diplomatic, financial, and arm-trading allies. Since 2003, wars in Muslim-majority countries came out on featuring because of Islamist revolutionary movements- like Al Qaeda, and also against authoritarian Muslim governments like Iraq, Syria, and Sudan, Muslim population also resisted oppressive non-Muslim governments in Palestine, Myanmar, and Thailand.

In this section of the article, author is intending to approach some relevant war situations where rape and sexual violence used as a tactic in a systematic way. By examining these the case studies, this article aims to highlight the unique and shared dimensions of sexual violence in different conflict zones, explore the underlying motives of perpetrators, and assess the international responses to these crimes.

¹⁷ *Id.*

¹⁸ Lucy Fiske, Rita Shackel, *Ending Rape in War: How Far Have We come?*, in 6(3) COSMOPOLITAN CIVIL SOCIETY JOURNAL (2014).

¹⁹ ICRC, *Annual Report 2020*, <https://www.icrc.org/en/document/annual-report-2020>

A. Sudan

As conflict summery in Sudan, it is obvious to mention that because of inheriting a huge ethnic and religious diversity it has been in near constant conflict since its independence in 1956 over natural resources between Sudanese government and southern rebel groups. Even though the conflict erupted in 1993 and peace was agreed in 2002 but some fighting continued till 2004. In 2003, two armed groups took up arm against the government demanding end of political, social and economic marginalization of Darfur and more protection to its population.²⁰ The government responded with military group and allegedly encouraged militia to fight the insurgents in Darfur region by giving impunity to their action. Grave human rights violation continued in Darfur since 2004, despite UN Security Council Resolution 1556 and the presence of an African Union protection force.²¹

The scale and severity of sexual abuse in the Darfur region have shocked the globe. The Janjaweed militia and Sudanese government forces have committed the majority of sexual violence, although other armed organizations have also engaged in it. Sexual violence occurs primarily during attacks on villages by Janjaweed forces, which rape women and girls as they go from house to house, during flight, or at roadblocks and checkpoints.²² Women and girls have been kidnapped, sexually assaulted, and coerced into becoming rebel wives, helping to plunder communities, or performing subsistence work by the Janjaweed militia of Arab active in Sudan.²³ After raping their victims, some militia have mutilated their female genitalia, and rape victims who became pregnant have been imprisoned and fined for being unmarried. Additionally, both inside and outside of camps, there has been a rise in sexual abuse against internally displaced people (IDP) and refugees.²⁴ Surprisingly, most of the sexual violence occurred in cease fire situation in Sudan as a silenced war tactic or strategy.

B. Afghanistan

Afghanistan's tumultuous history, marked by civil wars, authoritarian regimes, and foreign invasions, has resulted in widespread and systematic human rights violations, including acts recognized as international crimes. This legacy has left millions as victims and inflicted deep societal scars. In 1996, the Taliban, a group of Islamic scholars adhering to a stringent and fundamentalist interpretation of Islam, took control of the country. Their decrees severely curtailed women's rights, regulating nearly every aspect of their lives, including their movement, behavior, and attire. The grave circumstances confronting Afghan women were used as justification for the U.S. military invasion in 2001. Following the events of September 11, the situation deteriorated further when the Taliban refused to surrender Osama bin Laden,

²⁰ Amnesty International, *Sudan, Darfur: Rape as a Weapon of War: Sexual Violence and Its Consequences* (July 2004), <https://www.amnesty.org/en/documents/afr54/076/2004/en/>.

²¹ *Id.*

²² Megan Bastick, Karin Grimm, Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, Geneva Center for the Democratic Control of Armed Force (2007), https://www.academia.edu/6451259/Sexual_Violence_in_Armed_Conflict_Global_overview_and_implications_for_the_security_sector.

²³ U.S. Department of State, *Documenting Atrocities in Darfur*, State Publication 11182 (Sept. 2004), <https://2001-2009.state.gov/g/drl/rls/36028.htm>.

²⁴ *Id.*, at 23.

the leader of Al-Qaeda, for prosecution. This refusal allowed the U.S. to frame its military actions as part of a broader "war on terror." However, harassment, violence, and extreme repression against women, particularly those living outside Kabul, continue to persist.²⁵

In 1978, the Soviet Union occupied Afghanistan under the pretense of friendship and internationalism, leading to the emergence of sexual violence as a significant issue in the country. During the Soviet-backed regime, sexual torture was utilized as a strategy to humiliate and demoralize countless male and female detainees. Additionally, numerous incidents of rape by Soviet soldiers against women in rural areas were reported. The rise of the Mujahideen during the civil war further intensified the situation.²⁶ Rape and gang rape and other sexual assault also continued in the time of the Taliban to the Tajik and Hazara ethnic groups.²⁷

Some survivors' testimonies and reports of human rights organizations show that Mujahideen groups, regardless of ethnicity, treated all Kabul residents as enemies, because Kabul city, during the fourteen years of the Soviet Union war, was under the domination of the Soviet-supported regime. The Mujahideen government in the first days of its power announced an amnesty law, based on this amnesty they forgave crimes of sides involved in the conflict.²⁸

In 2006, the Afghanistan Independent Commission on Human Rights recorded 1,651 cases of sexual and gender-based violence, including 41 instances of girls being traded and 634 cases of wartime rape, alongside various other severe violations of human rights. Women in Afghanistan faced significant gender discrimination, and the ongoing conflict further exacerbated their struggles. In 2020, the United Nations Assistance Mission in Afghanistan (UNAMA) documented 271 cases of sexual and gender-based violence, with 18 of these confirmed as conflict-related sexual violence, impacting nine boys, five women, and four girls. Notably, acts of conflict-related sexual violence against three girls were attributed to members of the Taliban. Additionally, involvement in these violations was also noted among the Afghan National Army, the Afghan National Police, and the Afghan local police.

C. Russia

Since the beginning of its aggression toward Ukraine in 2014, the Kremlin has committed actions widely recognized as international crimes, including acts of sexual violence. Following the full-scale invasion in 2022, the prevalence and severity of sexual violence perpetrated by Russia have increased significantly. Although this is a disturbing subject, the documented crimes include a range of atrocities such as rape, gang rape, sexual slavery, physical assault, mutilation of genitalia, castration, threats of rape, and coercion of family members to witness the abuse of their loved ones.²⁹

Russia used sexual violence or atrocities as a means of warfare. Giving impunity to the Russian military on their activities worked like blowing the fire. At the same time, Russia pardons rapists in return for joining the war against Ukraine, and military recruits undergo brutal and pervasive hazing in the Russian army. Soldiers heading to the front are also aware

²⁵ Fatima Ayub, Sari Kouvo, Yasmin Sooka, *Addressing Gender Specific Violation in Afghanistan*, (2009), www.ictj.org.

²⁶ Bastick, Grimm & Kunz, *supra*.

²⁷ *Id.*, at 22.

²⁸ *Id.*, at 22.

²⁹ Kateryna Busol, *Russia's Weaponising sexual violence and Ukraine's response, reveals a grim war of values*, THE GUARDIAN (Mar. 25, 2024), <https://www.theguardian.com/commentisfree/2024/mar/25/russia-weaponising-sexual-violence-ukraine-values>.

that the majority of the crimes committed in Chechnya, Moldova, Georgia, Syria, and Mali were not held against the military and Wagner mercenaries.

According to the UN Commission of Inquiry on Ukraine, the Russian military committed sexual abuse "at gunpoint, with extreme brutality," including torture and summary executions. Victims range in age from four to eighty years old and include both boys and girls, men and women. Civilian women and girls are primarily targeted in the occupation. Victims in custody include both civilians and prisoners of war, the majority of whom are men. The offenders do not spare pregnant women, some of whom have miscarried or are afraid that their newborns will be deported to Russia. Attacks on LGBTQ+ individuals are exacerbated by Russia's severe homophobia. Such sexual violence might be considered a crime against humanity, a war crime, or a flagrant violation of human rights. Additionally, it may reflect Russia's intention to commit genocide against Ukrainians as a national group or constitute a component of genocidal activities.³⁰

According to the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) reported, total of 376 cases of sexual violence have been documented during Russia's full-scale war against Ukraine. The figure includes 262 men, most of whom were tortured in detention on occupied territories or in Russia, more than hundred women, as well as children- ten girls and two boys, according to the report.³¹

D. Myanmar

In the months following Myanmar's independence from Britain in 1948, civil war erupted. Since then, conflicts between the military government and various ethnic insurgency groups have persisted. Government forces have conducted large-scale anti-insurgency campaigns, targeting civilians through looting, the destruction of homes and property, forced relocations under military surveillance, and acts of torture, extrajudicial killings, and sexual violence.³² In 2017, the military committed ethnic cleansing against the Rohingya Muslim minority in Rakhayin state, which included widespread sexual violence. By the end of 2023, there were more than 2.6 million internally displaced people, in addition, 1.3 refugees and asylum seekers from Myanmar hosted in other countries, including nearly 1 million stateless Rohingya refugees got shelter in Bangladesh. As estimated 70,000 child soldiers serve in the national army and child recruitment continues.³³

Systematic sexual violence by the military, police and border guards utilized as a weapon of war. Acts of sexual violence often perpetrated or ordered by military commanders who were acting with total impunity. Women and girls from different ethnic groups report similar stories of sexual violence, including rape and gang rape, sexual slavery, forced marriage, forced pregnancy, genital penetration with knives and other objects, and mutilation of breasts and

³⁰ *Id.*, at 29.

³¹ Kateryna Denisova, *UN has recorded 376 sexual violence cases related to Russian War against Ukraine*, THE KYIV INDEPENDENT, (Dec 10, 2024), <https://kyivindependent.com/un-records-over-370-sexual-violence-cases-related-to-russian-war-against-ukraine/>.

³² Women's League of Burma (WLB), *System of Impunity: Nationwide patterns of sexual violence by the military regime's army and authorities in Burma* (2004), https://burmacampaign.org.uk/media/SYSTEM_OF_IMPUNITY.pdf

³³ Human Rights Watch, *Child soldier use 2003: A briefing for the 4th UN Security Council open debate on children in armed conflict* (Jan. 2004), at 27-28, <https://www.hrw.org/reports/childsoldiers.pdf>.

genitals.³⁴ Primary and secondary sources confirmed that sexual and gender-based violence, including rape, were repeatedly perpetrated in interrogation center and other formal detention settings against women, men and LGBTQ community members, as well as in villages during military raids.

VI. Justice Delayed is Justice Denied

In 2002, the Rome Statute established the International Criminal Court (ICC), since then it has functioned as an independent court of last resort for the investigation and prosecution of individuals responsible for four core crimes of international law: genocide, war crime, crime against humanity and crime of aggression. ICC works as a last resort in the sense of the complementarity principle, which means domestic courts are unable or unwilling to provide legitimate judgment. For suspected criminals who are citizens of a non-party state, a United Nations Security Council resolution is necessary in order to proceed with the case. As ICC has no police force of its own, it needs to rely upon national police service and state cooperation to make arrests and transfer them to ICC, or wait until the accused's surrender to try them. The court suffered from constant criticism ever since it was created.

The ICC has been regarded as a necessary institution for advancing international justice to the victims of atrocities or violence they suffered. However, in reality, criticism has been leveled regarding the limited engagement with civil society and the victims' after-conflict situation.³⁵ On the one hand the court has been criticized for not having done enough to raise awareness about its work, because of lack of effective communication with the affected communities, victims, or the general public. Numerous individuals living in the war-affected zone are uninformed about the ICC's victim-centric mandate and unaware of how to get access to its services. This lack of communicativeness and outreach can prevent victims from coming forward to report violations that occurred against them and to seek justice for the harm suffered, which resulting the undermining by and large the credibility of the work of ICC. As a result, the victims remain unheard and deprived of their right of justice. on the other hand, the lack of transparency of court activities raises the question of bias and unfairness. Trials and investigations at the ICC take place in a quiet private phenomenon and the public has little access to information about the active cases.³⁶ Due to such a closed-door operating, the ICC strategy lead to suspicions and mistrust regarding the activity of the institution as a whole.³⁷

Two other main areas where ICC faced criticism is its high costs and slow pace of justice. as we discussed before court runs by the contribution of the member states but the cost and

³⁴ Jeanne Ward, *If not now, when? Addressing Gender-based Violence in Refugee, Internally Displaced, and Post conflict Settings: A Global Overview*, (2002), at 10-21, <https://www.womensrefugeecommission.org/research-resources/if-not-now-when-addressing-gender-based-violence-in-refugee-internally-displaced-and-post-conflict-settings/>.

³⁵ Kjersti Lohne, 'Global civil society, the ICC, and legitimacy in international criminal justice' in THE LEGITIMACY OF INTERNATIONAL CRIMINAL TRIBUNALS, (2017), https://www.researchgate.net/publication/312530054_Global_Civil_Society_the_ICC_and_Legitimacy_in_International_Criminal_Justice

³⁶ Sabina Grogore, *Justice Delayed, Justice Denied: Bias, Opacity and Protracted case Resolution at the International Criminal Court*, JUST ACCESS (2023), <https://just-access.de/bias-opacity-and-protracted-case-resolution-at-the-international-criminal-court/#>.

³⁷ Ignaz Stegmiller, 'The International Criminal Court and Mali: Towards More Transparency in International Criminal Law Investigations?', 24(4) CRIMINAL LAW FORUM 475 (2013), <https://www.proquest.com/docview/1461628586?sourcetype=Scholarly%20Journals>

budget has been evaluated as very high. In addition, the investigation and trials process can take years to complete which is leading to delays in justice for victims. When the victims are in need for immediate or fast verdict from the court to survive in the post-war society, the court takes lengthy process. Which resulting the lack of reliability from the victims and losing hope of entertaining the right of getting justice. as the Rules and Procedure of ICC describes the initiation of trial in ICC must go through lengthy pre-trial process and wait until the accused get presented to court,³⁸ that in reality takes test of patience of the victims who actually in need for such redress. For example, the case of Afghanistan relates in this scope of discussion. In almost 20 years since the prosecutors of ICC first considered opening the investigation into the crime occurred in Afghanistan, there has been almost “no” effective measures shown or hope toward bringing justice to Afghan victims. Nonetheless, the conflict and crimes have continued to occur throughout the whole time and even after the case came under the attention of the ICC.³⁹ As such limited by its own mandate and regulation, justice has not yet been delivered to the victims affected by the war in Afghanistan.

Moreover, since 2009 the legitimacy of the ICC has been shaken by a gradual disinterest of African countries in the court, when it issued an arrest warrant against Sudanese President Omar Al Bashir, whose country is not a signatory to the Rome Statute. In 2015, the South African government refused to arrest Omar Al Bashir, while his visiting to South Africa to attend the African Union meeting. As a state party, South Africa was legally required to arrest Bashir. Yet, the government allowed him to leave the country claiming that he had immunity as ahead of state during the summit meeting. The ICC issued an immediate judgment on that issue saying that the immunity of Al Bashir has been superseded by UNSC Resolution (2005) which referred Darfur to the ICC. In addition, ICC added that, a sitting head of state can be held responsible for his committing international crime in their individual capacity, so that Al Bashir could have been arrested and tried by ICC. Most of the African countries including South Africa expressed dissatisfaction on this judgement and consider it as a tool of western imperialism.⁴⁰ As a result, Burundi was the first country to withdraw its membership from ICC in 2017.⁴¹

Most recently, the same thing happened again which created a very legitimate question on the credibility of ICC in global phenomenon regarding the arrest warrant of Vladimir Putin. In 2023, the pre-trial chamber II of ICC issued an arrest warrant for Russian president Vladimir Putin, in connection with international crimes occurred in Ukraine in connection with the deportation and transfer of children as a force-displacement.⁴² On basis of the reference of 24 state parties ICC started a rapid investigation on this matter resulted on issuing arrest warrant immediate assessing the matter of war in Ukraine.⁴³ After this the Court faces another wave of criticism regarding its practices of prioritization and resource allocation among the cases. Even

³⁸ ICC, *How the Court Works*. <https://www.icc-cpi.int/about/how-the-court-works>

³⁹ Elizabeth Evenson, *International Criminal Court Should Reach Decision on Afghanistan: Ruling Could Allow Investigation on Taliban Abuses*, HUMAN RIGHTS WATCH (Sept. 12, 2022), <https://www.hrw.org/news/2022/09/12/international-criminal-court-should-reach-decision-afghanistan>.

⁴⁰ NORIMITSU ONISHI, *South Africa Reverses Withdrawal From International Criminal Court*, THE NEW YORK TIMES, (Mar. 8, 2017). <https://www.nytimes.com/2017/03/08/world/africa/south-africa-icc-withdrawal.html>

⁴¹ TIMOTHY JONES, *Burundi becomes first country to leave International Criminal Court*, DEUTSCHE WELLE (Oct. 27, 2017). <https://www.dw.com/en/burundi-becomes-first-country-to-leave-international-criminal-court/a-41135062>.

⁴² ICC, *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

⁴³ MAARTEN ROTHMAN, LONNEKE PEPEKAMP, SEBASTIAAN RIETJENS. REFLECTIONS ON THE RUSSIA-UKRAINE WAR (2024), <http://www.jstor.org/stable/jj.13760045>.

though, Ukraine was a signatory for long time but the ratification did not take place on their behalf. ICC opened an investigation into crimes committed during the conflict in Ukraine, which created many challenges, as a lack of access to the conflict zone, as Ukraine was not a party state, in reality, it was erratic to cooperate with the court. finally, Ukraine ratified the Rome Statute in 2023 and became the 125th member of ICC.

Even after taking an immediate interest in the Ukraine matter, the ICC yet to start the trial procedure, because of incapable bringing Putin in front of the court. as Russia is not even a signatory or ratifying country to ICC, getting cooperation from the Russian police force is near to impossible. However, Putin's recent visit to Mongolia, a state party of the ICC, caused controversy about the acceptance of the ICC once again. As a party-state, Mongolia must cooperate with the ICC arrest warrant, but the Mongolian government said it could be a difficult choice for the country to arrest the Russian head of state, showing the reason that Russia holds a significant role in Mongolia's energy security.⁴⁴ This recent incident has shaken once again the whole mandate of an obligation of state parties regarding cooperating with ICC and accelerated a suspicious view on ICC's credibility and reliability in terms of ensuring justice, whether ICC can do justice to the victims or it is just an institution for setting an example?

VII. Conclusion

Despite facing significant criticism, the International Criminal Court (ICC) remains a crucial organization for promoting international justice in cases of violations of international criminal law. The importance of the ICC's efforts in investigating the crimes committed in Ukraine cannot be overstated. To improve its effectiveness and gain wider acceptance, the ICC must address the criticisms directed at its operations. This includes tackling perceptions of bias, expanding its jurisdiction to include non-member states, and enhancing the speed, transparency, and overall effectiveness of its investigations and trials. Additionally, the ICC should improve its outreach to victims and engage more effectively with civil society.

⁴⁴ Aloka Wanigasuriya, *Putin Travels to Mongolia: What Prevents His Arrest?*, OPINIO JURIS (Sept. 4, 2024), <https://opiniojuris.org/2024/09/04/putin-travels-to-mongolia-what-prevents-his-arrest/>.