Why no one comes running for the boys who cry rape

The response of domestic and international criminal justice systems to sexual violence against men and boys during conflicts

by

Catherine Elizabeth Dunmore

A thesis submitted in conformity with the requirements for the degree of Master of Laws

Faculty of Law
University of Toronto

© Copyright by Catherine Elizabeth Dunmore, 2017
Why no one comes running for the boys who cry rape

The response of domestic and international criminal justice systems to sexual violence against men and boys during conflicts

Catherine Elizabeth Dunmore

Master of Laws

Faculty of Law

University of Toronto

2017

Abstract

Sexual violence against men and boys is prevalent throughout situations of conflict, yet this study outlines the significant challenges to male victims accessing justice at either a national or international level. The legal community has the unique potential to acknowledge and address such violence. However, utilising a case study of Uganda exposes the multiple hurdles male victims may face, with domestic legislation both failing to criminalise their rape and prosecuting individuals perceived as homosexual, including through implementation of forced anal testing. Meanwhile, the country’s International Crimes Division faces constraints to its available resources, caseload and jurisdiction. A review of International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda and International Criminal Court jurisprudence demonstrates that international criminal tribunals may be better placed to ensure effective redress for male victims. Nevertheless, further progress is essential to achieve justice for all boys and men who cry rape.
Table of Contents

Introduction .................................................................................................................................................. 1

Chapter 1
The importance of legally acknowledging and addressing sexual violence against men and boys during conflicts .............................................................................................................................................. 3

Chapter 2
The domestic approach to prosecuting sexual violence against men and boys during conflicts ................. 9
a. The ability to seek legal recourse for male sexual violence during conflict in Uganda ......................... 10
   i. Prosecuting male sexual violence under Ugandan law ........................................................................ 11
   ii. Prosecuting male sexual violence domestically under international criminal law ..................... 14

Chapter 3
The approach of international criminal tribunals towards sexual violence against men and boys during conflicts ........................................................................................................................................ 18
a. The International Criminal Tribunal for the former Yugoslavia ......................................................... 18
   i. The Prosecutor v Duško Tadić ........................................................................................................ 19
   ii. The Prosecutor v Stevan Todorović ................................................................................................. 20
   iii. The Prosecutor v Blagoje Simić, Miroslav Tadić and Simo Zarić ............................................ 21
   iv. The Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo .................... 22
   v. The Prosecutor v Slobodan Milošević ......................................................................................... 24
   vi. The Prosecutor v Ranko Češić ...................................................................................................... 25
b. The International Criminal Tribunal for Rwanda .................................................................................. 27
   i. The Prosecutor v Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole
      Nsengiyumva ................................................................................................................................. 27
   ii. The Prosecutor v Mikaeli Muhimana ............................................................................................. 29
   iii. The Prosecutor v Eliézer Niyitegeka ............................................................................................ 30
c. The International Criminal Court ......................................................................................................... 32
   i. The Prosecutor v Jean-Pierre Bemba Gombo ............................................................................... 32
   ii. The Prosecutor v Uhuru Muigai Kenyatta .................................................................................... 34
   iii. The Prosecutor v Dominic Ongwen ............................................................................................. 38

Conclusion .................................................................................................................................................. 41

Bibliography ............................................................................................................................................... 43
Introduction

As a man, I can't cry. People will tell you that you are a coward, you are weak, you are stupid [...] If it happens to a woman, we listen to them, treat them, care and listen to them - give them a voice. But what happens to men?¹

Stephen Kigoma, male rape survivor²

Whilst recognising the prevalence of sexual violence against women and girls during conflicts, this paper seeks to address the legal community’s response to the concurrent male victims, at both a national and international level. As Sivakumaran has aptly surmised, there “is evidence indicating that sexual violence also takes place against men in armed conflict; indeed it takes place in nearly every armed conflict in which sexual violence is committed”.³ Unfortunately, this paper highlights that there remains a “systematic reluctance to confront the reality of conflict-related sexual violence against men and boys”, and both domestic and international criminal justice systems have proven lacking for male victims.⁴

Instances of male sexual violence during conflict have been committed in all cultures, geographic regions and time periods and can be traced back to Ancient Persia,⁵ Ancient Greece and the Middle East⁶ and beyond.⁷ Yet, despite the lack of mainstream discourse, this phenomenon remains an ever present element of wartime violence and has taken place in at least twenty-five situations in the last three decades alone.⁸ Indeed, Fitzpatrick notes that recent wars in the Democratic Republic of Congo and Darfur have seen males targeted for rape, whilst men and boys in Syria have also been victims of sexual violence.⁹ Additionally, 32.6% of male combatants surveyed in Liberia reported being subjected to a

² Save where the individual self-identifies as a ‘survivor’, or where used in quotations, this paper uses the term ‘victim’ rather than the arguably more empowering term of ‘survivor’ due to its technical legal meaning in international criminal law.
form of sexual violence.\textsuperscript{10} However, despite the pervasive nature of sexual abuse in conflicts, “effective measures of justice and redress are still not understood or applied in ways that can support male victims”.\textsuperscript{11} As Manivannan explains, “sexual violence is often conflated with gender-based violence, and both of these issues are often understood as pertaining only to women”.\textsuperscript{12}

In this context, this paper will first briefly highlight (1) the importance of legally acknowledging and addressing sexual violence against men and boys. It will outline the law’s unique position as a tool to recognise male sexual violence, and the benefits to be derived for male victims when a legal system correctly classifies and acknowledges the criminality of the acts against them. It will then (2) explore the challenges facing male victims seeking to access justice at a domestic level, both under local criminal law and the application of international criminal law at a national level, through a case study of Uganda. Finally, it will (3) analyse the developing jurisprudence of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court, to establish whether such international criminal tribunals are better placed than their domestic counterparts to ensure justice for male victims of conflict-related sexual violence.


\textsuperscript{11} Supra note 7 at 1.

Chapter 1

The importance of legally acknowledging and addressing sexual violence against men and boys during conflicts

Before considering both the existing national and international judicial approaches to conflict-related sexual violence against men and boys, this chapter will briefly explore the importance of correctly legally categorising such acts and acknowledging them as criminal. It will examine the long-term ramifications for those who are raped or sexually assaulted during situations of conflict, and the positive implications of the law recognising male victims.

One of the most evident consequences if national or international courts fail to account for the voices of male victims of sexual violence is that these men and boys cannot access the criminal justice system. Criminal accountability can only be judged before a court of law, and by declining to recognise acts of sexual abuse against men, individual perpetrators will never be tried and judged for their actions. The inability to prosecute those harming men and boys both creates a culture of impunity and denies victims an opportunity for recognition and closure. In turn, a lack of judicial avenues for redress means male victims can struggle to access legal services, with pro bono clinics inclined to focus their efforts on women and girls whose evidence stands more chance of being heard in court. To ensure effective transitional justice, the law must therefore recognise male victims of sexual violence and allow them access to and participation in the legal processes aimed at achieving acknowledgment, accountability and reform. Additionally, any legal miscategorisation of sexual acts might limit future understandings of crimes committed during conflicts. Overlooking the gendered and sexual aspect of these crimes prevents a comprehensive analysis of such violence against men and boys, which will in turn impede the ability to tackle such violence in future zones of war or conflict.

The International Center for Transitional Justice emphasises that this inaccurate or incomplete legal characterisation of sexual violations against male victims by courts can in turn exclude men and boys from reparations programs and support structures. In cases where reparations are specifically allotted to victims of sexual violence, men deemed victims only of other forms of physical violence may not have access to a similar standard of financial, symbolic, medical or community focused programs as those offered to female victims of equivalent sexual abuse. Such a deficit in reparation provisions is compounded by the existing lack of support at a national or international level for men and boys after they are sexually assaulted. The political nature of non-governmental organisations, receiving funding

---

13 Supra note 7 at 26.
14 Ibid.
15 Ibid at 21.
16 Ibid at 26.
from governments or private enterprises,\textsuperscript{17} “has resulted in agencies’ focus on the less controversial issue of sexual violence against women while under-recognizing sexual violence against men”.\textsuperscript{18} For example, Del Zotto and Jones highlight how in a review of 4,076 non-governmental organisations that address wartime sexual violence, only 3% mentioned the experience of men in their literature, often in passing reference.\textsuperscript{19} Indeed, the World Health Organisation has confirmed that:

“While some legal and social networks, however rudimentary, may exist for women and girls who have been sexually attacked, there is rarely anything comparable for male victims”.\textsuperscript{20}

As Edström et al. explain, this situation is compounded and perpetuated by an ongoing “resistance in some quarters to extending attention to male survivors”.\textsuperscript{21}

As discussed further below in chapter 2, the ability of the law to address sexual violence against men and boys intersects with societal acknowledgement of such sexual abuse. In countries marred by conflict, sexual violence against men and boys “takes a markedly consistent form across contexts in terms of how it affects victims and societies as a human rights violation that is taboo to talk about”.\textsuperscript{22} Indeed, a Swedish Red Cross Worker explained that:

“Especially in conflict situations in certain countries one does not talk about the abuse of young men”.\textsuperscript{23}

Whilst it is slowly, and arguably, becoming more acceptable to discuss sexual violence against females, this can result in the phenomenon that sexual violence becomes associated exclusively with acts against women and girls. Rendering sexual violence a female issue, not only makes it one less likely to be considered a priority in a perpetually male-dominant world, but also excludes men and boys as legitimate victims. As such, the male experience of sexual violence is often misunderstood and mischaracterised throughout the judicial process.\textsuperscript{24} Moreover, this gender stereotyping of sexual violence, combined with additional factors such as “shame, confusion, guilt, stigma, fear”,\textsuperscript{25} contributes to its significant under-reporting, which in turn perpetuates the absence of evidence of abuses before national and international tribunals.\textsuperscript{26} Whilst it is often affirmed that women comprise the vast majority of victims of sexual

\textsuperscript{17} Zaum, Dominik, “International Non-Governmental Organisations and Civil Wars” (2009) 11:1 Civil Wars 22-38.
\textsuperscript{19} Supra note 5.
\textsuperscript{21} Edström, Jerker et al., “Therapeutic Activism: Men of Hope Refugee Association Uganda Breaking the Silence over Male Rape in Conflict-related Sexual Violence” (March 2016) online: <http://www.refugeelawproject.org/files/others/Therapeutic_Activism_MOH.pdf> at 11.
\textsuperscript{22} Supra note 7 at 1.
\textsuperscript{24} Supra note 7 at 1.
\textsuperscript{26} Supra note 3 at 261.
violence, the reality is that very little data is collected on the extent of men’s vulnerability and victimisation.  

Sexual violence against both genders continues to carry a significant stigma. In “hyper-masculinized conflict situations”, the stigma for male victims who speak of their experience can be life-changing.  

Stanko and Hobdell explain how a framing of men or boys as victims is considered incompatible with their masculinity, particularly in societies where men are discouraged from discussing their emotions.  

A common belief is that “a man should have been able to prevent himself from being attacked - and in dealing with the consequences of the attack – to be able to cope ‘like a man’”. These social and cultural norms mean that “attacks on markers of gender identity are a powerful weapon of war”.  

Language plays a key role in the forming of such stigma and stereotypes, as linguistic labels demonstrate expressions of societal sentiments. Legal language is particular in that its form and context can be used by the judiciary to decide on guilt and innocence. Its interpretation is unique in its ability to create perpetrators and victims, and judge events as legal or illegal. Indeed, Finley emphasises how:  

“Law is, among other things, a language, a form of discourse, and a system through which meanings are reflected and constructed and cultural practices organized. […] Legal language does more than express thoughts. It reinforces certain world views and understandings of events […] Through its definitions and the way it talks about events, law has the power to silence alternative meanings – to suppress other stories”.  

Before the law, all voices within society must be heard equally, and in its words and discourse the law must work to protect those whose stories would otherwise be suppressed. National and international legal systems, their categorisations and definitions, are therefore uniquely positioned to break down gender binaries and the stigma and stereotyping associated with male sexual violence.  

As Donnelly and Kenyon explain, such “gender role stereotypes influence providers’ perceptions of male sexual assault victims and the actual services that are offered”. Labelling sexual violence during conflict as a female issue means that men and boys are not readily viewed as susceptible to such

---

28 Supra note 12 at 640.  
30 Supra note 3 at 255.  
33 Supra note 21 at 44.  
34 Donnelly, Denise & Stacy Kenyon, “‘Honey, we don’t do men’: Gender Stereotypes and the Provision of Services to Sexually Assaulted Males” (1996) 11:3 J Interpersonal Violence 441-448 at 446.
abuse. Additionally, as Sivakumaran notes, “[d]octors, counsellors and humanitarian workers present on the ground mirror the responses of survivors, thus not picking up signs of male sexual violence”.\(^\text{35}\)

Whilst medical practitioners in conflict and post-conflict situations may be anticipating diagnosing female patients as victims of sexual violence, they may not automatically look for the signs of such abuse in male patients. Indeed, as Oosterhoff, Zwanikken and Ketting highlight, many medical workers may never have been trained in how to assist male victims of sexual assault.\(^\text{36}\)

Yet medical intervention proves essential when, according to the American Medical Association, male victims of sexual assault are more likely to suffer significant physical trauma than females.\(^\text{37}\)

Indeed, men and boys as victims of sexual violence can be permanently injured, incontinent, bleeding in burning pain or infected with sexually transmitted infections.\(^\text{38}\) The physical toll taken constrains many males to diets of often unattainably expensive soft foods like bananas, leaving them the stark choice between starvation or produce unsuitable for their bodies.\(^\text{39}\) The violence experienced means many victims are unable to take on manual labour, leaving them with limited economic opportunities to sustain a livelihood and provide for their families.\(^\text{40}\)

In terms of psychological trauma, like female victims, males can experience profound humiliation, as well as a sense of confusion about their sexuality, deprivation of their masculinity or feminisation.\(^\text{41}\) Many feel a sense of inadequacy or guilt, or consider being cursed in the eyes of God.\(^\text{42}\) Men and boys can be left unable to engage in sexual activity and distanced from their partners both physically and emotionally. Additionally, men may feel more homophobic tendencies, or under pressure to prove their manhood physically and sexually, with potential negative impacts on their future relationships and sexual partners.\(^\text{43}\) Existing relationships can suffer or terminate, women whose husbands are assaulted might leave them due to psychological barriers or stigma surrounding them in their community.\(^\text{44}\) Many male victims report community ostracisation, having their gender identity challenged and facing labels such as “bush wife”.\(^\text{45}\) One woman explained being left questioning her relationship, and the role and societal position of her husband after his sexual assault, asking:

\(^{35}\) Supra note 3 at 256.


\(^{40}\) Supra note 21 at 24.

\(^{41}\) Meger, Sara, Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict (USA: Oxford University Press, 2016) at 187.


\(^{45}\) Supra note 41 at 184.
“So now how am I going to live with him? As what? Is this still a husband? Is it a wife? [...] If he can be raped, who is protecting me?”

By legally acknowledging men and boys as victims of sexual violence during conflict, it can become easier for them to seek appropriate medical services in their communities. Stigma and gender stereotypes can be broken down, enabling doctors to become better trained in diagnosing and treating male victims. By correctly legally categorising such violence against men and boys as specifically sexual, the need for male victims to have the option of accessing medical personnel of the same sex becomes more apparent. Increasing the availability of male doctors, protection officers, counsellors and interpreters who are trained specifically in responding to the needs of sexual violence victims may encourage more men and boys to seek swift assistance. Augmenting sexual violence awareness within medical services, whether provided by non-governmental organisations or national medical facilities, may improve the ability of both sexes to receive appropriate physical examinations and treatment. With swift access to non-judgemental practitioners and support systems, where no moral or legal blame is attributed to the victim, males might stand a better chance of physical recovery from their ordeal. Additionally, providing comprehensive psychological services to male victims might better enable them to form strong and stable relationships in the future, both with their sexual partners and as active members of the community in a post-conflict society. Indeed, extending such programming to men and boys might encourage them to address the causes and consequences of violence against females, and thereby reduce all forms of sexual violence. For example, the International Rescue Committee explained that through their work in Kibondo, Tanzania:

“The men were encouraged to discuss their own experiences of violence and how it was directed towards them because of their gender. This exercise helped men to understand how women experience violence because they are women”.

Indeed, a prominent female judge at the International Criminal Tribunal for the former Yugoslavia “when asked if the prosecution of sexual violence against males would lessen the stigma on women, answered, ‘Yes, it would. Men feel more embarrassed than women victims, it would show male vulnerability’”. As Carpenter explains, when “men’s experiences of gender-based violence are named

46 Supra note 39.
48 Supra note 4 at 83.
49 Supra note 23 at 98.
51 Sharratt, Sara, Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals (Great Britain: Ashgate Publishing Ltd, 2011) at 109.
and validated, this arguably can provide a jumping-off point for including them as partners in efforts to reduce other forms of gender-based violence in conflict situations”. 52

***

As the United Nations has observed, ensuring justice for victims of conflict-related sexual violence requires a “full understanding of the gendered-nature and consequences of the harm suffered for both males and females”. 53 The law has the privileged possibility of altering societal stereotypes encompassing masculinity and reducing the stigma surrounding sexual violence. It can dispel the myth of females being perpetual victims of rape whilst men remain the perpetrator class, and instead spark a productive discussion between genders to create a climate where sexual violence can be acknowledged and addressed. 54 Critically legally examining sexual violence against men and boys will not take away from female victims, ultimately it forms part of the same issue, namely the gender dimension of post-conflict justice. Rather, if both national and international tribunals recognise the full implications of sexual violence against men and boys during conflict, more males and females might receive the justice and support that they so crucially deserve.

52 Supra note 23 at 99.
54 Supra note 12 at 641-642.
Chapter 2

The domestic approach to prosecuting sexual violence against men and boys during conflicts

Having established the value of legally acknowledging that sexual violence occurs against men and boys during conflicts, this chapter seeks to explore the ability of these male victims to access justice at a domestic level. Utilising a case study of (a) Uganda, it will analyse the remedies available under domestic criminal law for male victims of sexual violence, as well as when international criminal law is implemented at a domestic level. Although Uganda presents one of the more extreme examples of domestic attitudes toward male sexual violence, it is selected to demonstrate the challenging realities faced by many male victims in post-conflict nations.

In patriarchal, post-colonial societies such as Uganda, gender roles are generally strictly defined. Men and boys are therefore actively discouraged from talking about their emotions, rendering sexual violence against them even harder to acknowledge. As Atim explained:

“In Africa no man is allowed to be vulnerable [...] You have to be masculine, strong. You should never break down or cry. A man must be a leader and provide for the whole family. When he fails to reach that set standard, society perceives that there is something wrong”.

This sentiment in turn hinders investigations and reported cases of sexual violence against males, with potentially only a fraction of the true number of victims ever coming forward. Consequently, cases rarely work their way through the legal systems to reach a stage at which lawyers become involved.

Even if a male victim chose to report a violation, they face a widespread lack of legal protection for men and boys who experience sexual violence. Indeed, in reviewing the penal codes of 189 countries, Dolan observed that:

“90 per cent of men in conflict-affected countries are in situations where the law provides no protection for them if they become victims of sexual violence”.

Notably, in sixty-two countries, representing two thirds of the world’s population, the laws only provide for females as victims of rape. This lack of legal recognition that men and boys can be raped inevitably means victims have no motivation to report their assaults to the police or other authorities. Additionally, in twenty-eight countries only males are recognised as perpetrators of sexual violence. This sustains the

55 Supra note 39.
57 Ibid.
58 Ibid.
gendered myth of females exclusively as victims of rape, whilst solely men are capable of becoming rapists. Accordingly, when sexual violence occurs against men and boys during situations of conflict, they are likely unable to seek legal recourse.

A further hurdle for these victims of male sexual abuse is that “[s]ociety considers any such contact to be indicative of homosexuality, regardless of any element of coercion”.59 With “cultural stereotypes where men are viewed as sexually dominant and women as submissive”, rape demasculates males and stigmatises them as homosexual.60 Such labelling of male victims not only taints them in society, but may also leave them vulnerable to criminal prosecution.61 Indeed, Dolan recorded sixty-seven states that criminalise men who report sexual abuse.62 Notably, thirty-three of these countries are in Africa,63 where leaders such as the Zimbabwe President, Robert Mugabe, have proudly proclaimed “[w]e are not gays!”64 This danger of self-incrimination invariably dissuades male victims from reporting the abuse they have suffered. As Mahon remarked:

“A legal framework that outlaws homosexuality is often representative of very conservative cultural and societal values where strong stigmas and taboos connected to these issues often mean that it is extremely difficult for male victims to speak out.”65

Accordingly, whilst sexual violence against men and boys is universally under-discussed and under-reported, in strongly heteropatriarchal post-conflict countries such as Uganda, male victims routinely suffer in silence for fear of discrimination, stigmatisation and even prosecution for the crime of homosexuality.66

a. The ability to seek legal recourse for male sexual violence during conflict in Uganda

In 1986, a rebellion broke out against the Ugandan President Yoweri Museveni, sparking war in the north of the country between the government forces and the rebel Lord’s Resistance Army (the LRA), led by Joseph Kony, Dominic Ongwen and others.67 The LRA’s ranks were formed primarily by the use of child abductees, as the conflict spread over Uganda’s borders into South Sudan, the Central African

59 Supra note 25 at 1274.
61 Supra note 25 at 1275.
62 Supra note 56 at 6.
63 76 Crimes, “76 countries where homosexuality is illegal” (19 May 2017) online: <https://76crimes.com/76-countries-where-homosexuality-is-illegal/>.
64 Ruptly TV, “UN: ‘We are not gays’ - Mugabe shocks the UN General Assembly” (28 September 2015) online: YouTube <https://www.youtube.com/watch?v=pxH_Rp0VlJ8>.
Republic and the Democratic Republic of Congo.\textsuperscript{68} Fighting on both sides become increasingly violent, including toward the civilian population, with over 1.7 million displaced and large-scale rapes and murders reported.\textsuperscript{69} Large numbers of men and boys experienced sexual violence first-hand in Uganda,\textsuperscript{70} but official government responses have often failed to acknowledge the problem.\textsuperscript{71} The Refugee Law Project’s interactions with potential service providers in Uganda, including police, medical professionals, lawyers and humanitarian workers, confirmed that “none of them have received any training on how to work with male survivors”.\textsuperscript{72} Whilst Uganda’s Minister for Relief, Disaster Preparedness and Refugees, Musa Ecweru, stated:

“Just ignore it [...] It’s a minor issue. It’s being promoted and made prominent by the whites and NGOs who want funding [...] Male rape, homosexuality, is not an African issue”.\textsuperscript{73}

This section will explore the ability to prosecute such sexual offences against males both under (i) the country’s domestic legal system and (ii) when international criminal law is applied at a domestic level.

\textbf{i. Prosecuting male sexual violence under Ugandan law}

Considering first the legal ability to prosecute those raping men or boys in Uganda under domestic law, the nation’s colonial inspired Penal Code Act 1950 defines rape as exclusively against females. It specifically describes the offence of rape as “[a]ny person who has unlawful carnal knowledge of a woman or girl, without her consent” and makes it punishable by death.\textsuperscript{74} Meanwhile the Penal Code Act has no provision or punishment for male rape. There is some protection for males under eighteen in section 147, whereby sexual offences against them are classified as indecent assault:

“Any person who unlawfully and indecently assaults a boy under the age of eighteen years commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment”.\textsuperscript{75}

Consequently, whilst those raping women and girls face capital punishment, the same violation of boys results in a prison term and for rape of adult males no punishment is envisaged. This leaves victims of conflict-related sexual violence in an unequal position in the eyes of the law, with their ability to seek redress highly dependent on both their age and gender.

\textsuperscript{69} Supra note 67 at 434.
\textsuperscript{70} Supra note 42.
\textsuperscript{71} Refugee Law Project, “They Slept With Me” (10 December 2011) online: YouTube <https://www.youtube.com/watch?v=6dxaFqezrXg>.
\textsuperscript{72} Supra note 21 at 11.
\textsuperscript{74} Penal Code Act, 1950, c 120, ss 123-124.
\textsuperscript{75} Ibid, s 147.
Additionally, Uganda has legal systems and criminal justice institutions which make no distinction between consensual and non-consensual male sexual acts. Consequently, male victims bear a significant risk in reporting a sexual assault that their behaviour will be legally viewed as homosexual. As Stephen Kigoma, a male rape survivor in Uganda said:

“When I asked the police, they said that if it has anything to do with penetration between a man and a man, it is gay”.  

Uganda’s legislative framework dealing with homosexuality comes from the English laws prohibiting buggery, which were adopted when the nation formally became a British protectorate in 1894. Tamale outlines how before this time same-sex acts were not criminalised. Indeed, among the Langi of northern Uganda, the mudoko dako, or effeminate males, were treated as women and could marry men whilst in Buganda it was an open secret that Kabaka (king) Mwanga II was gay and had a sizeable male harem. Moreover, some Ugandans believed that supernatural powers stemmed from same-sex intercourse with spirits passed down to other men via anal sex, whilst the misago women refused to be wedded to men, instead engaging in sexual relationships with other women.

Uganda’s new laws outlawing same sex male acts were however confirmed in section 145 of the Penal Code Act, entitled “Unnatural offences” and stating that:

“Any person who—

(a) has carnal knowledge of any person against the order of nature;

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

commits an offence and is liable to imprisonment for life”.  

With the introduction of the Penal Code Amendment (Gender References) Act 2000, grossly indecent acts between women were also criminalised and punishable by up to seven years imprisonment. More recently, in 2009, an Anti-Homosexuality Bill was introduced before Parliament, aimed at “strengthening the nation’s capacity to deal with emerging internal and external threats to the traditional heterosexual family”. The Anti-Homosexuality Bill proposed to broaden the criminalisation of same-sex relations, and introduce the offence of ‘aggravated homosexuality’. The proposed new offence mandated the death
penalty for individuals who, for example, are serial homosexual offenders, drug their victims, are HIV-positive, engage in acts with under eighteens or those with disabilities.\textsuperscript{82} The Ugandan parliamentary speaker, Rebecca Kadaga, was quoted as saying that “Ugandans want that law as a Christmas gift. They have asked for it and we'll give them that gift”.\textsuperscript{83} James Nsaba Buturo, the Minister of State for Ethics and Integrity outlined the government’s determination to pass the legislation stating “We are talking about anal sex. Not even animals do that […] We believe there are limits to human rights”.\textsuperscript{84} Ultimately, whilst no longer including the death penalty, the enacted Anti-Homosexuality Act 2014 still punished homosexuality and aggravated homosexuality with life imprisonment.\textsuperscript{85}

Additionally, Uganda is one of several countries in which those suspected of homosexuality-related offences can be subject to forcible anal examinations. These examinations with the purported objective of finding “proof” of homosexual conduct often involve medical personnel forcibly inserting their fingers, and sometimes other objects, into the anus of the accused.\textsuperscript{86} They are rooted in discredited nineteenth century theories that homosexuals can be identified by the tone of the anal sphincter or the shape of the anus.\textsuperscript{87} Additionally, men accused of such same-sex conduct are often also subjected to forced HIV tests, or to blood tests the purpose of which is not explained.\textsuperscript{88}

Human Rights Watch recorded that police in Kampala have frequently subjected men and transgender women accused of homosexual conduct to these anal exams.\textsuperscript{89} Those enduring testing have reported finding the experience painful and degrading, and itself a form of sexual violence. For instance, one man subjected to an anal exam in a neighbourhood of Kampala recalled that:

“I had to take my pants off. [The doctor] even put his fingers in my ass. He opened my dick [pulled back foreskin], and then he told me to bend over and put several fingers in my ass. He told me it was positive. I don’t even know what that means. I’ve never been fucked up the ass. It was nasty stuff. He just rammed his fingers in and pulled them out—it was like he was just doing his formal thing to write a report. I jerked away because it was painful. I jumped. He said, ‘He’s sensitive, that means he does it.’”\textsuperscript{90}

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment remarked that “‘[m]edically worthless’ practices of subjecting men suspected of homosexual conduct to

\textsuperscript{82} Ibid, s 3.
\textsuperscript{85} Anti-Homosexuality Act, 2014, ss 2-3.
\textsuperscript{88} Supra note 86 at 17.
\textsuperscript{89} Ibid at 3.
\textsuperscript{90} Ibid at 52.
non-consensual anal examinations to ‘prove’ their homosexuality” contravene the prohibition on torture and ill-treatment.91 Whilst the Independent Forensic Expert Group considered that “the examination should be considered a form of sexual assault and rape”.92

One medical specialist in Kampala claimed that “[n]inety-five percent of our Ugandan doctors have no experience handling cases of sexual assault, especially sodomy”. 93 Yet, rather than attempting to protect male victims of rape, medical practitioners undertaking such homosexuality investigations have the potential to further abuse and victimise these Ugandan men, and criminalise them for the abuse suffered.

ii. Prosecuting male sexual violence domestically under international criminal law

An alternate avenue for prosecuting sexual violence during conflict in Uganda would be through the implementation of international criminal law at a domestic level. When Uganda passed the International Criminal Court Act of 2010 (the ICC Act) it domesticated the prosecution of international crimes and incorporated aspects of the Rome Statute into domestic law.94

The International Crimes Division (the ICD) within the High Court of Uganda,95 located in Gulu, acts as a court of complementarity with regard to the International Criminal Court.96 Its origins can be traced to the Juba Peace Talks from 2006 between the Ugandan government and rebel groups including the LRA.97 The ICD was formally established through the ICC Act and by a legal notice from Uganda’s chief justice in May 2011.98 Its jurisdiction was defined in section 6(1) as:

“any offence relating to genocide, crimes against humanity, war crimes, terrorism, human trafficking, piracy and any other international crime as may be provided for under the Penal Code Act, Cap 120, the Geneva Conventions Act, Cap 363, the International Criminal Court Act, No. 11 of 2010 or under any other penal enactment” .99

Accordingly, on this basis, the ICD appears to have the legislative potential under international law to prosecute sexual violence against Ugandan men and boys.

91 Méndez, Juan E, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UNGAOR, 23rd Sess, UN Doc A/HRC/22/53 (2013) at para 79.
93 Supra note 86 at 71.
94 International Criminal Court Act, No. 11 of 2010.
99 Legal Notice 10, The High Court (International Crimes Division) Practice Directions, 2011, s 6(1).
So far the only domestic war crimes trial before the ICD is that of Thomas Kwoyelo, a former LRA mid-level commander. Mr Kwoyelo is charged with crimes under Uganda’s Geneva Conventions Act and the Penal Code Act and the lengthy legal process against him is still ongoing. As Macdonald and Porter highlight, these proceedings raise the question of “why, to date, Thomas Kwoyelo is the only LRA member to have been pursued for prosecution by the ICD”. Indeed, as Human Rights Watch reported, “[i]nformation on other possible cases involving serious crimes committed either by LRA members or the Ugandan army was not available”.

One significant challenge for the ICD is that the court faces serious human resource constraints. As International Justice Monitor explains the ICD “is not in a position to recruit staffers to carry out some functions that are pivotal for a holistic and successful trial of serious crimes”. Another major hurdle that emerged for the success of the ICD, and any ability it may have to prosecute male sexual violence, was potential limitations to its jurisdiction under the country’s Amnesty Act. At the height of the conflict in 2000, the Ugandan Parliament enacted this Amnesty Act which provides in section 2(1) a broad amnesty for all nationals who renounce rebellion against the government and meet certain requirements:

“An Amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986 engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by –

(a) actual participation in combat;
(b) collaborating with the perpetrators of the war or armed rebellion;
(c) committing any other crime in the furtherance of war or armed rebellion; or
(d) assisting or aiding the conduct or prosecution of the war or armed rebellion”.

To become eligible for an amnesty certificate, the individual must renounce and abandon involvement in the war or armed rebellion and surrender their weapons. In doing so, they are not required to divulge

---

100 *Uganda v Thomas Kwoyelo*, Constitutional Appeal No. 01 of 2012, 8 April 2015 at 1.
106 The Amnesty Act, 2000, c 294, s 2(1).
107 *Ibid*, s 3(1).
their role in any crime committed during the conflict. Over 12,000 LRA members have received amnesty since the Amnesty Act was adopted including numerous senior members of the rebel group.

In the Parliamentary debates surrounding the Amnesty Act, the scope of immunity to be provided appeared broad. For instance, Vice-Chairperson of the Committee on Defence and Internal Affairs, Lt. Col. Mudoola, stated that:

“the Committee is of the view that a blanket amnesty be provided […] we shall propose that reporters be granted a blanket amnesty on all crimes committed during the course of the insurgency”.

He further noted that the government is willing to forgive and forget the atrocities committed, with every rebel able to benefit from this amnesty. Such a blanket amnesty for all crimes, available to all perpetrators, would have significantly impeded the ICD’s jurisdiction to prosecute, including for acts of sexual violence.

However, in proceedings relating to an attempt by Mr Kwoyelo to claim amnesty, the Supreme Court of Uganda held that the Amnesty Act only covered acts committed “in the cause of, or in furtherance of, war or rebellion”. In the process of denying Mr Kwoyelo’s amnesty, Chief Justice Katureebe affirmed:

“I do not think the definitions, and indeed the purpose of the Act, or in its implementation, would include granting amnesty to grave crimes committed by an individual or group for purposes other than in furtherance or in the cause of the war or rebellion.

The Legislature could easily have stated without any qualification that any crimes committed during the war are granted amnesty. But, in my view, words were carefully used. The crime must be shown to have been ‘in furtherance of war or rebellion’ or ‘in the cause of war or rebellion,’ for it to qualify for grant of amnesty”.

Consequently, the Supreme Court ruling confirmed the application of the Amnesty Act to crimes committed in furtherance of war or rebellion, but prohibited its extension to other grave crimes. Accordingly, grave acts of sexual violence would not be capable of receiving amnesty and an individual could not be granted immunity from such prosecution. Therefore despite the presence of the Amnesty

---

108 Supra note 98 at 3.
109 Supra note 103 at 14.
112 Supra note 100 at 31.
113 Ibid at 30-31.
Act, the Supreme Court decision ensured that the ICD retained jurisdiction over grave crimes which would in theory include sexual violence against males.

However, unfortunately prosecutions will likely not be brought before the ICD under the ICC Act for crimes committed before the Act was passed in 2010, “thus limiting its utility for men who were victimized in the conflicts in Northern Uganda”.114 Moreover, prosecutions remain problematic for substantive offences which are more restrictively defined by the Penal Code Act than the Rome Statute, and the associated ICC Act, such as male sexual violence.115 As a result, unless and until Uganda harmonises its domestic laws in line with the Rome Statute, there are limits to the practical domestic use of international criminal law.116

***

With no recognition of men as rape victims in the country’s Penal Code Act, and unequal treatment for sexual assaults of boys as compared to female victims, Ugandan male victims are left unprotected by their country’s laws. Moreover, as McMahon highlights, in Ugandan anti-homosexuality legislation “[r]efERENCE TO CONSENT IS SIMPLY OMITTED THEREBY MAKING IT IRRELEVANT IN THE EYES OF THE LAW.”117 Any male reporting rape therefore runs the significant risk that they themselves will be domestically prosecuted for the offence of homosexuality, potentially involving invasive and traumatic anal testing, and risking life imprisonment. In theory, through the implementation of international criminal law, the ICD has the legal ability to prosecute male sexual violence. However, with only one case pending before the court, significant human resource constraints and a hesitancy to prosecute Rome Statute crimes going beyond the scope of domestic legislation, or committed prior to 2010, it appears unlikely that any act of sexual violence against men and boys will be prosecuted within Uganda.

115 Ibid at 57.
117 Supra note 65.
Chapter 3

The approach of international criminal tribunals towards sexual violence against men and boys during conflicts

Having recognised the often significant challenges for males accessing justice mechanisms at a national level following incidents of conflict-related sexual violence, consideration will now be given to the legal approach at an international level. Accordingly, this final chapter explores the developing jurisprudence of international criminal tribunals, notably that of (a) the International Criminal Tribunal for the former Yugoslavia, (b) the International Criminal Tribunal for Rwanda, and (c) the International Criminal Court. It seeks to understand the tribunals’ varying attitudes to sexual violence against men and boys, and analyse their ability to ensure justice for male victims of conflict-related sexual violence. In doing so, it hopes to establish whether such international legal mechanisms are better placed than their domestic counterparts to address such crimes, or if they too fall short in their ability to prosecute the perpetrators and protect male victims.

a. The International Criminal Tribunal for the former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia (the ICTY) was created as a body of the United Nations (the UN) by its Resolution 827 of 1993 to prosecute persons responsible for serious violations of international humanitarian law committed since 1991 during the Yugoslav wars.118 Under the Statute of the International Criminal Tribunal for the former Yugoslavia (the Statute of the ICTY), the tribunal had jurisdiction over four types of violations, namely grave breaches of the Geneva Conventions of 1949 (the Geneva Conventions), violations of the laws or customs of war, genocide, and crimes against humanity.119

Whilst notably the first international war crimes tribunal since Nuremberg and Tokyo, the ICTY was also the first such process involving charges of sexual violence. In this regard, the ICTY progressively created a Sexual Assault Investigation Team, which investigated both the rape of women and men during the civil war.120 This section will focus on the resulting accusations of sexual violence against men and boys, and discuss the evolving jurisprudence from the benchmark first case of (i) the Prosecutor v Duško Tadić, to (ii) the Prosecutor v Stevan Todorović, (iii) the Prosecutor v Blagoje Simić, Miroslav Tadić and Simo Zarić, (iv) the Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, (v) the Prosecutor v Slobodan Milošević, and (vi) the Prosecutor v Ranko Češić.

119 Statute of the International Criminal Tribunal for the former Yugoslavia (as amended on 7 July 2009), 25 May 1993, arts 2-5.
i. The Prosecutor v Duško Tadić

In the first trial before the ICTY, Duško Tadić a member of the Serbian Democratic Party (the SDS) was accused of the seizure, murder and maltreatment of Bosnian Muslims and Croats in opstina Prijedor, Bosnia-Herzegovina, between 23 May 1992 and 31 December 1992. The SDS, with support from military and police forces, forced thousands of Muslims and Croats from their homes and unlawfully confined them in the Omarska, Keraterm and Trnopolje camps. For his role, Mr Tadić was indicted at the ICTY for crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws or customs of war.

One allegation against Mr Tadić was that he forced two male prisoners, G and H, to commit oral sexual acts on, and sexually mutilate, another inmate Fikret Harambasić. G and H were ordered to jump into an inspection pit along with Fikret Harambasić who was already naked and bloody from beating. The Trial Chamber heard how:

“Witness H was ordered to lick his naked bottom and G to suck his penis and then to bite his testicles. Meanwhile a group of men in uniform stood around the inspection pit watching and shouting to bite harder. [...] G was then made to lie between the naked Fikret Harambasic’s legs and, while the latter struggled, hit and bite his genitals. G then bit off one of Fikret Harambasic’s testicles and spat it out and was told he was free to leave”.

The ICTY found Mr Tadić guilty on 7 May 1997 on six counts of crimes against humanity and five counts of violations of the laws or customs of war, later sentencing him to twenty years imprisonment. On appeal, Mr Tadić was additionally sentenced for grave breaches of the Geneva Conventions, notably inhumane treatment and wilfully causing great suffering or serious injury to the body or health. In the Sentencing Judgment, the Trial Chamber noted beyond reasonable doubt that Mr Tadić was present during the sexual mutilation of Fikret Harambasić and that:

“[T]hrough his presence, Duško Tadić aided and encouraged the group of men actively taking part in the assault. Of particular concern here is the cruelty and humiliation inflicted on the victim and the other detainees involved”.

121 Prosecutor v Duško Tadić and Goran Borovnica, IT-94-1, Second Amended Indictment (Public) (14 December 1995) at para 1 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>.
122 Ibid.
126 Ibid at para 22.
Yet, whilst recognising that forced oral sex and mutilation constituted an inhumane act as a crime against humanity and cruel treatment as a war crime, neither the Prosecutor’s indictment nor the Trial Chamber’s final judgment acknowledged the sexual nature of the offences. As the first ever international criminal trial involving sexual violence against men, this case was uniquely capable of setting the benchmark for legally recognising the sexual nature of such crimes against men and boys. Yet, whilst undoubtedly in many ways a hugely progressive step away from prior jurisprudence, failing to acknowledge forced oral sex and sexual mutilation as inherently sexual, in addition to cruel and humiliating, created a significant lacuna. Whilst charges relating to the male victims were classified as torture, corresponding charges relating to the female victims were classified as rape. Indeed, Askin proposes that perhaps the ICTY did not address the gendered nature of sexual violence in this instance because the accusation focused on the sexual violation of a man rather than a woman.

The ICTY itself hails the Prosecutor v Duško Tadić as a landmark case that “proved to the world that the nascent international criminal justice system could end impunity for sexual crimes and that punishing perpetrators was possible”. Yet, although hugely progressive in actually prosecuting sexual violence against men, the case could have gone much further to acknowledging and protecting male victims in recognising that they suffered not just violent acts, but ones of a sexual nature. Had a stronger stance been taken from the outset of the ICTY’s mandate, it might have enabled the tribunal to better serve other male victims in later indictments.

ii. The Prosecutor v Stevan Todorović

From 17 April 1992, Stevan Todorović served as Chief of Police for the Bosanski Šamac municipality, Bosnia-Herzegovina. Alongside Blagoje Simić, Miroslav Tadić, Simo Zarić (discussed further in section iii below) and Milan Simić, he was accused of participation in a campaign of persecutions and ethnic cleansing against primarily Bosnian Croats and Muslims in the region. Mr Todorović’s position granted him superior authority to all other police officers in the municipality at the time and he was charged with crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws or customs of war.

Nine of these counts brought by the Prosecutor against Mr Todorović related to three occasions of sexual assaults on men between May and June 1992 in offices at the Bosanski Šamac police station.

---

127 Supra note 7 at 17.
130 Prosecutor v Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović and Simo Zarić, IT-95-9, Second Amended Indictment (Public) (19 November 1998) at para 17 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>.
131 Ibid.
One allegation detailed that Mr Todorović forced two men to perform fellatio upon each other in a hallway in the presence of several other prisoners and guards.\textsuperscript{132} In this instance, the Prosecutor recognised the sexual nature of the offences by charging all three instances of assault not just as torture and humiliating, degrading treatment but as rape constituting a crime against humanity pursuant to article 5(g) of the Statute of the ICTY.\textsuperscript{133}

Subsequently, all nine counts relating to the sexual assaults were among those withdrawn in accordance with a Plea Agreement with the Prosecutor. Although unable to be found criminally culpable on these counts for rape, in the Plea Agreement the Prosecutor and Mr Todorović “agree on certain facts as being true and constituting the factual basis for the guilty plea”.\textsuperscript{134} These include ordering the six men to perform fellatio at the Bosanski Šamac police station.\textsuperscript{135} The Trial Chamber’s Sentencing Judgement accordingly records both Witness C’s testimony that Mr Todorović ordered him to perform oral sex with Witness D,\textsuperscript{136} and Witness E’s statement that:

“After the beating Todorovic ordered us (Witness E and Witness F) to do a blow job on each other. He was laughing when we was doing it”.\textsuperscript{137}

In classifying forcible oral sex as rape, the Prosecutor differed to its prior approach against Duško Tadić in correctly acknowledging the action’s inherently sexual nature. It demonstrated its recognition that rape can occur against both men and women, and can take a range of forms in its manner of perpetration. Additionally, at a moment in proceedings when the evidence of forced fellatio could have been disregarded, the Prosecutor instead took a strong stance toward this sexual violence against men. By requiring within the Plea Agreement that Mr Todorović acknowledge his role in forcing oral sex between men, the Prosecutor achieved acknowledgement both for those specific male victims and the wider community that sexual violence was perpetrated against men and boys during the Yugoslavia conflict.

iii. The Prosecutor v Blagoje Simić, Miroslav Tadić and Simo Zarić (Prosecutor v Simić et al.)

During the Yugoslav wars, Blagoje Simić served as President of the War Presidency of the Serbian Municipality of Bosanski Samac, and as President of the Samac Municipal Assembly was the highest ranking civilian official in the municipality.\textsuperscript{138} During the same period, Miroslav Tadić was Chairman of the Bosanski Samac ‘Exchange Commission’ and Simo Zarić served in roles including Deputy to the

\begin{footnotes}
\item[132] Ibid at para 44.
\item[133] Supra note 119, art 5(g).
\item[134] Prosecutor v Stevan Todorović, IT-95-9/1, Sentencing Judgement (Public) (31 July 2001) at para 9 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>.
\item[135] Ibid.
\item[136] Ibid at para 39.
\item[137] Ibid at para 40.
\item[138] Prosecutor v Blagoje Simić, Miroslav Tadić and Simo Zarić, IT-95-9, Fifth Amended Indictment (Public) (30 May 2002) at para 1 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber II), online: ICTY <http://www.icty.org>.
\end{footnotes}
President of the War Council for Security Matters of the Odzak municipality. Together with Stevan Todorović (discussed further in section ii above) and Milan Simić, they were accused of participation in a campaign of persecutions and ethnic cleansing against primarily Bosnian Croats and Muslims in the region. As a result of their actions, the men were charged with persecutions and deportation as crimes against humanity and grave breaches of the Geneva Conventions.

As part of the case against the men, the Trial Chamber heard several Prosecution witnesses give evidence that detainees were subjected to sexual assaults. They recorded that:

“One incident involved ramming a police truncheon in the anus of a detainee. Other incidents involved forcing male prisoners to perform oral sex on each other and on Stevan Todorović, sometimes in front of other prisoners”.

Yet, despite the similarity of the allegations to those against Stevan Todorović, none of the sexual acts against males were charged as rape by the Prosecutor. Rather, seemingly both the Prosecutor and the Trial Chamber were in this instance satisfied that these heinous acts constituted torture as a crime against humanity. The difference in charging between these two cases appears stark, and leaves inconsistent jurisprudence on the ICTY’s approach to such sexual assaults against males.

iv. The Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo (Prosecutor v Mucić et al.)

From the end of May 1992, Bosnian Muslims and Bosnian Croats attacked and took control of villages containing predominantly Bosnian Serbs within and around the Konjic municipality, Bosnia-Herzegovina. Bosnian Serbs were expelled and held at collection centres, primarily at the Celebici camp, where they were killed, tortured, sexually assaulted, beaten, and otherwise subjected to cruel and inhuman treatment. Zejnil Delalić, Zdravko Mucić and Hazim Delić were accused before the ICTY of having superior authority over and commanding the tactical groups attacking the Konjic area and of running the Celebici camp, whilst Esad Landžo was named as a subordinate Celebici camp guard. As a result of their actions, the Prosecutor charged the men with grave breaches of the Geneva Conventions and violations of the laws or customs of war.
One of the allegations at the Celebici camp was that certain of the male detainees were forced to perform fellatio on each other. Indeed, Mr Landžo added his own testimony to that of eleven witnesses which detailed that:

“on one occasion, Esad Landžo ordered Vaso Đordić and his brother, Veseljko Đordić, to remove their trousers in front of the other detainees in Hangar 6. He then forced first one brother and then the other to kneel down and take the other one’s penis into his mouth for a period of about two to three minutes. This act of fellatio was performed in full view of the other detainees in the Hangar”.

During the same incident, Mr Landžo also conceded to having placed a burning fuse around the brothers’ genitals. Mr Delalić, Mr Mucić and Mr Delić were charged in the indictment under counts 44 and 45 in relation to this incident on the basis of the responsibility of superiors for inhumane acts, in knowing or having reason to know that their subordinates committed such actions and failing to prevent or punish them. In its Judgment the Trial Chamber confirmed the defendants’ guilt on counts 44 and 45, noting that:

“The Trial Chamber finds that the act of forcing Vaso Đordić and Veseljko Đordić to perform fellatio on one another constituted, at least, a fundamental attack on their human dignity. Accordingly, the Trial Chamber finds that this act constitutes the offence of inhuman treatment under Article 2 of the Statute, and cruel treatment under Article 3 of the Statute”.

However, in contrast to the approach in the Prosecutor v Todorović, the Prosecutor in this instance neglected in the indictment to charge forced fellatio as rape. This error thereby limited the potential scope of the tribunal’s judgment, restricting them to findings of inhuman and cruel treatment. Indeed, the Trial Chamber noted the Prosecutor’s failing and addressed it directly in the Judgment:

“The Trial Chamber notes that the aforementioned act could constitute rape for which liability could have been found if pleaded in the appropriate manner”.

Whilst the Trial Chamber acknowledged the true nature of the crimes committed in the Prosecutor v Mucić et al., it is highly unfortunate that through an error in the indictment the Prosecutor removed the possibility for a conviction for forced fellatio as rape. In doing so, it deprived the victims of the possibility of witnessing their persecutors fully charged for their crimes, and may have limited the brothers’ future rights to remedies.

---

147 Ibid at para 1062.
148 Supra note 143 at para 34.
149 Supra note 146 at para 1066.
150 Ibid.
v. The Prosecutor v Slobodan Milošević

As leader of the Socialist Party of Serbia, Slobodan Milošević was elected President of Serbia on 26 December 1990 and subsequently from 15 July 1997 to 6 October 2000 he held the post of President of the Federal Republic of Yugoslavia (the FRY). As President of the FRY he was simultaneously Supreme Defence Council of the FRY and the Supreme Commander of the Yugoslav Army. Mr Milošević was indicted by the ICTY for crimes against humanity, violations of the laws or customs of war and grave breaches of the Geneva Conventions in Kosovo, Croatia and Bosnia-Herzegovina. The charges against him included genocide, thousands of murders, forced deportations including of approximately 800,000 Kosovo Albanian civilians and torture.

The allegations against Mr Milošević involving sexual assaults on men included forced oral sex, forced gang rape and forced incest. In evidence against Mr Milošević, Witness B-1461 testified of the kind of violent sexual abuse men were subject to:

“Q. I'd ask you to please describe what types of treatment you observed while you were detained in that room.

A. I saw them asking for fathers and sons to get on the stage, to take off their clothes, to strip, and to engage in oral sex using their mouths and genitals. At first it had to be fathers with sons, and after that, sons with fathers. The people who applied, some were fathers and sons, others were not. At first it appeared that the group was too small. Then they asked or, rather, separated people at random, at will, sending them to the stage and to join the others.

Q. Approximately how many pairs of fathers and sons were forced to engage in this type of activity?

A. Two or three pairs of fathers and sons, but the total was about eight to ten couples.

Q. And what were the other men in the building required to do while this was taking place?

A. The other men were ordered to sit facing the stage, and they all had to watch what was going on on the stage. […]

Q. Did there come a time when some of the men were forced to perform even more violent acts against each other?

A. Yes.

---

151 Prosecutor v Slobodan Milošević et al., IT-99-37, Second Amended Indictment (Public) (16 October 2001) at paras 3-4 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>.
152 Ibid at para 63.
Q. Could you explain.

A. They demanded that certain couples, certain men, bite off the genitals of others. They asked men to show those penises. They actually forced a man to show the penis he had bitten off and to swallow it. One man refused to, but the other one did actually do it. And then they asked one person to -- to push the broom -- the handle of a broom into the behind of another man”.

Yet, in a similar vein to the Prosecutor v Simić et al. and the Prosecutor v Mucić et al., the jurisprudence of the Prosecutor v Todorović was ignored and forced fellatio and anal assault were not categorised and charged as rape in the indictment. Such acts in this instance were instead charged only as persecutions as a crime against humanity under article 5(h) of the Statute of the ICTY. Sellers explains how charging such acts as “torture, persecution, inhumane acts etc., unlike rape are not dependent upon the establishment of coercive circumstances or lack of the victim’s consent” In this regard, the allegations against Mr Milošević avoid questions of consent, and may therefore she claims “spare and possibly privilege male victim/survivors over women”. The counter-standpoint however would be that this case proved a further example of the ICTY neglecting male victims in failing to successfully convict sexual acts for their true nature.

vi. The Prosecutor v Ranko Češić

Ranko Češić was brought before the ICTY for crimes allegedly committed between May and June 1992, when he acted as a member of the Intervention Platoon of the Bosnian Serb Police Reserve Corps for Brčko, Bosnia-Herzegovina. During this period Serb forces killed hundreds of male Bosnian Muslims and Croats at Luka camp or confined them in inhumane conditions. Mr Češić was indicted at the ICTY for crimes against humanity and violations of the laws or customs of war.

Two counts against Mr Češić were for sexual assault as a violation of the laws or customs of war and a crime against humanity pursuant to articles 3 and 5(g) of the Statute of the ICTY. These counts related to events at Luka camp on 11 May 1992, when Mr Češić forced two Muslim brothers, A and B, to beat and perform sexual acts on each other at gunpoint. The Trial Chamber noted that:

---

154 Prosecutor v Slobodan Milošević, IT-02-54, Transcript (Public) (6 May 2003) at 20221-20222 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>.
155 Supra note 119, art 5(h).
157 Ibid.
159 Prosecutor v Ranko Češić, IT-95-10/1, Third Amended Indictment (Public) (26 November 2002) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>.
160 Supra note 119, arts 3 and 5(g).
“Ranko Češić then forced both brothers to perform fellatio on each other and left the office after he told a guard to make sure that they would not stop until he returned. He left the door open when he went out and several guards could watch and laugh. The witness stated that the situation lasted for about 45 minutes, until Ranko Češić returned with another guard”.161

In pleading guilty before the court, Mr Češić admitted these actions and that he was fully aware they took place without the consent of the victims. In sentencing Mr Češić to eighteen years imprisonment, the Trial Chamber further examined some aggravating factors for the sexual offence, namely that:

“The family relationship and the fact that they were watched by others make the offence of humiliating and degrading treatment particularly serious. The violation of the moral and physical integrity of the victims justifies that the rape be considered particularly serious as well”.162

To date, the Prosecutor v Ranko Češić stands as the only case to explicitly charge and sentence forced fellatio between men as rape.163 Although similar acts were evidenced in previous cases, including those outlined above, in actually acknowledging forced oral sex between men as rape amounting to a crime against humanity, the ICTY created progressive jurisprudence protecting the rights of male victims.

The ICTY jurisprudence is unquestionably a significant development in the international criminal response toward sexual violence during conflict. By instigating a Sexual Assault Investigation Team and proceeding to charge numerous forcible sexual acts against men, the tribunal’s response to the violence of the Yugoslav wars was unparalleled in the recognition and justice it could offer male victims. Indeed, Stemple explains how the “conflict in the former Yugoslavia eventually resulted in a uniquely thorough accounting of sexual violence against males during conflict”.164 Yet, despite findings such as that in the Sarajevo Canton which revealed that 80% of 6,000 male concentration camp detainees reported that they had been raped,165 the ICTY only dealt with a small percentage of the actual instances of reported male sexual violence. In the cases themselves, the Prosecutor was highly progressive in its charging of male rape in the Prosecutor v Tadić and the Prosecutor v Češić, going some way to achieving acknowledgement of the sexual atrocities committed. Yet the ICTY’s approach was seemingly inconsistent between similar forced sexual acts, and in the Prosecutor v Tadić, the Prosecutor v Simić et al., the Prosecutor v Mucić et al. and the Prosecutor v Milošević the court could have gone much further to acknowledging and protecting male victims.

161 Supra note 158 at para 14.
162 Ibid at para 35.
163 Supra note 7 at 18.
164 Supra note 120 at 613.
165 Ibid.
Even if most charges and convictions do not specifically reflect the sexual nature of the violations, they remain significant in legitimising male sexual violence as an international crime.\textsuperscript{166} By raising the visibility of sexual assaults against men and boys within conflict, the ICTY both provided some acknowledgement to victims in the former Yugoslavia and established ground-breaking jurisprudence for the future protection of males.

b. The International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (the ICTR) was similarly established by the UN Security Council pursuant to Resolution 955 of 1994 to prosecute persons responsible for genocide and other violations of international humanitarian law within Rwanda in 1994.\textsuperscript{167} Under the Statute of the International Tribunal for Rwanda (the Statute of the ICTR), the tribunal had jurisdiction over three types of violations, namely genocide, crimes against humanity and grave breaches of the Geneva Conventions.\textsuperscript{168}

The ICTR contributed ground-breaking jurisprudence on sexual violence,\textsuperscript{169} notably in the Prosecutor v Jean Paul Akayesu in holding that rape and sexual violence can also constitute genocide.\textsuperscript{170} This second section will focus on the cases before the ICTR involving accusations of sexual violence against men and boys, discussing the tribunal’s jurisprudence in (i) the Prosecutor v Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva, (ii) the Prosecutor v Mikaeli Muhimana, and (iii) the Prosecutor v Eliézer Niyitegekao.

i. The Prosecutor v Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva (Prosecutor v Bagosora et al.)

In April 1994, Colonel Théoneste Bagosora was directeur de cabinet of the Ministry of Defence, General Gratien Kabiligi had the role of head of the operations bureau of the army general staff, Major Aloys Ntabakuze acted as commander of the elite Para Commando Battalion and Colonel Anatole Nsengiyumva was commander of the Gisenyi operational sector.\textsuperscript{171} Together, the four men were accused of crimes directed principally against Tutsi civilians as well as Hutus who were seen as sympathetic to the Tutsi-led Rwandan Patriotic Front or as opponents of the ruling regime.\textsuperscript{172} The defendants were charged on direct or superior responsibility with conspiracy to commit genocide, genocide, crimes

\textsuperscript{166} Supra note 7 at 18.
\textsuperscript{168} Statute of the International Tribunal for Rwanda (as amended on 14 August 2002), 8 November 1994, arts 2-4.
\textsuperscript{172} Ibid at para 4.
against humanity (murder, extermination, rape, persecution and other inhumane acts) and serious violations of the Geneva Conventions, whilst Mr Nsengiyumva was also accused of direct and public incitement to commit genocide.\textsuperscript{173}

During the trial, multiple accounts were heard of extremely violent sexual acts against males in evidence particularly against Mr Bagosora. For instance, witnesses recounted how in one instance the Rwandan army escorted Tutsis to a church, where they killed them slowly through violence such as having “men's scrotum areas cut with machetes”.\textsuperscript{174} Additionally, civilian roadblocks were noted as sites of open and notorious slaughter and sexual assault, with witnesses viewing the “mutilated genitals of men”.\textsuperscript{175} However, as Sivakumaran notes, these accounts unfortunately “merely formed part of the background of the case and accordingly no consequences arose from the descriptions of male sexual violence” against the defendants.\textsuperscript{176}

In its Judgment, the Trial Chamber in the \textit{Prosecutor v Bagosora et al.} also referred to a summary of witness’ anticipated testimony annexed to the Prosecution’s Pre-Trial Brief, which stated that in relation to an attack at the Saint Josephite Centre that “[s]ome of the victims were naked, men and women”.\textsuperscript{177} Yet, in its deliberations regarding this incident, the Trial Chamber referred only to “the stripping of women before killing them at the Saint Josephite Centre”.\textsuperscript{178} Indeed, subsequently in its conclusion the tribunal found:

> “Bagosora guilty of other inhumane acts as a crime against humanity (Count 9) as a superior under Article 6 (3) in connection with the [...] stripping of female refugees at the Saint Josephite Centre”.\textsuperscript{179}

Whilst referring clearly to evidence that the undressed victims at the Saint Josephite Centre were both female and male, the Trial Chamber then proceeded to focus exclusively on the female victims in its considerations. Such a selective approach, without explanation, ignored the experience of the male victims of Mr Bagosora and prioritised the female victims rather than treating them as equals. Mr Bagosora was ultimately sentenced to life imprisonment, reduced to thirty-five years on appeal,\textsuperscript{180} for


\textsuperscript{174} \textit{Supra} note 171 at para 976.

\textsuperscript{175} \textit{Ibid} at para 1908.


\textsuperscript{177} \textit{Supra} note 171 at para 2221, n 2374.

\textsuperscript{178} \textit{Ibid} at para 2220-2221.

\textsuperscript{179} \textit{Ibid} at para 2224.

genocide, crimes against humanity for murder, extermination, rape, persecution and other inhumane acts and serious violations of the Geneva Conventions.\textsuperscript{181}

\textbf{ii. The Prosecutor v Mikaeli Muhimana}

Acting as conseiller of the Gishyita Secteur since 1990, Mikaeli Muhimana was brought before the ICTR for his alleged actions against the ethnic Tutsi population between April and June 1994 in the Bisesero area and in many locations in Gishyita Commune, Kibuye Préfecture, in Rwanda.\textsuperscript{182} Mr Muhimana was indicted on four counts, notably genocide, or alternatively, complicity in genocide, murder as a crime against humanity and rape as a crime against humanity.\textsuperscript{183}

The Trial Chamber heard detailed evidence against Mr Muhimana involving sexual violence against males. It was alleged that on around 22 June 1994, Mr Muhimana participated in the killing of a prominent Gishyita town civilian and Tutsi businessman named Assiel Kabanda.\textsuperscript{184} As part of the evidence against Mr Muhimana, multiple witnesses testified that they saw Assiel Kabanda’s nude body with his private parts severed.\textsuperscript{185}

“We also saw Assiel Kabanda’s body; he was naked. His head had been cut off. He had also been castrated, so they had cut off his penis”.\textsuperscript{186}

Additionally Witness AT stated that he had heard that Assiel Kabanda’s genitals had been hung on a stake in Gitarama, and that after the war, in October 1994, he had the opportunity to personally confirm this information.\textsuperscript{187}

For his actions, the Trial Chamber found Mr Muhimana guilty of genocide, rape as a crime against humanity and murder as a crime against humanity, with the alternate charge of complicity in genocide dismissed, and sentenced him to life imprisonment.\textsuperscript{188} However, the proceedings had failed to categorise the violent acts against men, described above, as sexual violence, and therefore Mr Muhimana was unable to be convicted of male sexual violence. Indeed, in its Judgment the Trial Chamber referred exclusively to the killing of Assiel Kabanda, and neglected to acknowledge the sexual violence that he suffered.\textsuperscript{189}

\begin{itemize}
\item \textsuperscript{181} Supra note 171 at para 2258.
\item \textsuperscript{182} Prosecutor v Mikaeli Muhimana, ICTR-95-1B, Judgement and Sentence (Public) (28 April 2005) at paras 4 and 6 (International Criminal Tribunal for Rwanda, Trial Chamber III), online: ICTR <http://unictr.unmict.org>.
\item \textsuperscript{183} Prosecutor v Mikaeli Muhimana, ICTR-95-1B, Revised Amended Indictment (Public) (3 February 2004) (International Criminal Tribunal for Rwanda, Trial Chamber III), online: ICTR <http://unictr.unmict.org>.
\item \textsuperscript{184} Supra note 182 at para 429.
\item \textsuperscript{185} Ibid at para 441.
\item \textsuperscript{186} Ibid at para 418.
\item \textsuperscript{187} Ibid at para 444.
\item \textsuperscript{188} Ibid at paras 585-586 and 618.
\item \textsuperscript{189} Ibid at para 450.
\end{itemize}
iii. The Prosecutor v Eliézer Niyitegeka

Having worked as a journalist and a news presenter on Radio Rwanda, Eliézer Niyitegeka was sworn in as Minister of Information of the Interim Government on 9 April 1994.\(^{190}\) He was charged by the Prosecutor in the indictment both individually and as a superior with genocide, complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, crimes against humanity as well as subsequently withdrawn charges of serious violations of the Geneva Conventions.\(^{191}\)

The primary allegations against Mr Niyitegeka relating to male sexual violence were also in relation to the attack on Assiel Kabanda (as discussed above in section ii on the case of the Prosecutor v Muhimana). On the basis of witness testimony, the Trial Chamber found that on 22 June 1994, Mr Niyitegeka lead an attack against Tutsi refugees at Kazirandimwe Hill. The attackers found Assiel Kabanda, for whom they had searched for several days, and Mr Niyitegeka was amongst those rejoicing when their victim was killed and subsequently decapitated and castrated, and his skull pierced through the ears with a spike.\(^{192}\) Assiel Kabanda’s genitals were then hung on a spike and visible to the public, until a witness found them and buried them.\(^{193}\) The Trial Chamber concluded that:

“Although the Accused did not personally kill Kabanda, the Chamber finds that he was part of the group that perpetrated these crimes, and rejoiced at the commission of these acts”.\(^{194}\)

In its legal findings, the tribunal focused on the encouragement and jubilation of the accused at the castration, particularly in light of his leadership role.\(^{195}\) It stated that the violence against Assiel Kabanda would cause mental suffering particularly to Tutsi civilians, and did “constitute a serious attack on the human dignity of the Tutsi community as a whole”.\(^{196}\) In this regard, Mr Niyitegeka was found guilty on count 8 of the indictment for other inhumane acts as a crime against humanity.\(^{197}\) This conviction, along with others for genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and further crimes against humanity, resulted in a sentence of life imprisonment for Mr Niyitegeka.\(^{198}\)

The Prosecutor v Niyitegeka was the only trial before the ICTR in which male sexual violence was charged in the indictment and resulted in a conviction, yet regrettably not as sexual violence per


\(^{192}\) *Supra* note 190 at para 462.

\(^{193}\) *Ibid* at para 303.

\(^{194}\) *Ibid* at para 312.

\(^{195}\) *Ibid* at para 462.

\(^{196}\) *Ibid* at para 465.

\(^{197}\) *Ibid* at para 467.

\(^{198}\) *Ibid* at para 502.
Indeed, Mibenge critiques this judgment for ignoring the sexual element of the attack, particularly in contrast to similar violations of females which were categorised by the tribunal as sexual. She states that:

“It glosses over the fact that castration is not merely an amputation but the amputation of a male sexual and reproductive organ and the symbolic amputation of masculinity”.

By classifying the attack as an other inhumane act, the ICTR desexualised the context of the murder. The tribunal ignored the motivation behind the castration, notably a desire to make “a man into a non-man”, and in doing so failed to recognise the true extent of the atrocities committed against Assiel Kabanda.

There is evidence of sexual violence against both Tutsi and Hutu men during the conflict in Rwanda, yet not one case before the ICTR indicted or tried an individual for sexual violence against men during the genocide. Accordingly, there is merit to Buss’ observation that the males subjected to rape and sexual violence “are hard to see as victims of the genocide” in Rwanda. Although progressive on sexual violence in the Prosecutor v Akayesu, the tribunal demonstrated significantly less willing than the ICTY to address sexual assaults against males. Very little testimony was heard before the ICTR on male sexual violence, and such acts failed to be charged in both the Prosecutor v Bagosora et al. and the Prosecutor v Muhimana. Whilst in contrast the Prosecutor v Niyitegeka succeeded in charging and convicting acts of sexual violence against men, this was again without reference to the crime’s sexual nature. Mibenge maintains that such “omission in the narrative of the ICTR is clearly gendered and detrimental to male victims of sexual violence made invisible by the specter of the female rape victim”.

By ignoring or mischaracterising male sexual violence in Rwanda, the “ICTR’s narrative of the types and prevalence of crimes committed during the Rwandan genocide is both incomplete and inaccurate”. Rather than expanding on ICTY jurisprudence, the ICTR failed to recognise the gendered and sexualised crimes perpetrated against Rwandan males and missed a crucial opportunity to expand the legal protections offered to male victims of sexual violence during conflict.

---

199 Supra note 7 at 19.
201 Ibid.
203 Ibid.
204 Supra note 200 at 81.
205 Supra note 7 at 19.
c. The International Criminal Court

The concept of establishing an international tribunal to judge leaders accused of international crimes had first been proposed in the aftermath of World War I, and the utility of creating such a permanent institution was highlighted again with the advent of the ICTY and the ICTR. Consequently, at a July 1998 UN conference in Rome world governments overwhelmingly approved establishing a permanent international criminal court for those accused of genocide, war crimes and crimes against humanity.206 This Rome Statute of the International Criminal Court (the Rome Statute) entered into force on 1 July 2002 as the founding treaty of the International Criminal Court (the ICC).

The Rome Statute notably includes the first definition of gender in an international legal treaty within article 7(3), incorporating both sexes equally in noting that:

“For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society”.207

Additionally, within the Rome Statute, the ICC has what might be considered a progressive definition of sexual violence within crimes against humanity, in that it is gender-neutral. The text of its article 7(1)(g) makes no separation between sexual violence against males or females in defining as a crime against humanity:

“Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”.208

Described by Hall-Martinez and Bedont as a historic development under international law,209 by incorporating sexual violence not just against women and girls, but also against men and boys, this broad statutory definition allows, on paper at least, all victims of sexual violence as a crime against humanity redress before the ICC. This section therefore seeks to explore select jurisprudence of the ICC, notably (i) the Prosecutor v Jean-Pierre Bemba Gombo, and (ii) the Prosecutor v Uhuru Muigai Kenyatta, as well as the ongoing case of (iii) the Prosecutor v Dominic Ongwen to examine the realities of the court’s treatment of male sexual violence.

i. The Prosecutor v Jean-Pierre Bemba Gombo

Former Vice President of the Democratic Republic of Congo, Jean-Pierre Bemba Gombo, was President of a political party he founded, the Mouvement de libération du Congo (the MLC), as well as
Commander-in-Chief of the MLC’s military branch, the Armée de libération du Congo (the ALC). On 25 October 2002, Central African Republic (the CAR) President Ange-Félix Patassé requested the MLC and ALC’s assistance from Mr Bemba to help defend his government authorities against an organised armed group of rebels led by General Bozizé. Between their deployment on 26 October 2002 and their withdrawal on 15 March 2003, it was alleged that MLC troops committed crimes against humanity and war crimes through the acts of murder, rape and pillaging against the civilian population in the CAR.

Mr Bemba was indicted by the ICC for his role as military commander with effective authority and control over the actions of these MLC troops. Recognising that acts of sexual violence had been perpetrated against both sexes during the conflict, the Prosecutor alleged within the charges that Mr Bemba was responsible for MLC “acts of rape upon civilian men, women and children” as both crimes against humanity and war crimes in breach of article 7(l)(g) and 8(2)(e)(vi) of the Rome Statute. Subsequently, the Prosecutor called not only female victims to testify at trial but also male victims of rape. In doing so, it recognised a common motivation for the rape of men in conflict situations, that:

“Men were also raped as a deliberate tactic to humiliate civilian men, and demonstrate their powerlessness to protect their families”.

During the proceedings, evidence of sexual violence against men primarily emerged through the testimony of two male witnesses. The Pre-Trial Chamber recorded that:

“Witness 23 was ordered to lie down in the position of a horse and was raped in succession by three MLC soldiers in the garden of his house in PK 12 on 8 November 2002 in the presence of his three wives and children. [...] An MLC soldier threatened the witness with death and further stated ‘Ok, you will live but we will have to fuck your anus’.

Whilst later the Trial Chamber recognised the troubling legacy for the male rape victim, as “[a]fter the events, P23 could not walk, as his anus was swollen and he was treated only with traditional leaves. People in his community disrespected him. He considered himself a ‘dead man’.”

Additionally, the Trial Chamber heard from witness 69, understanding that in November 2002:

---

210 Prosecutor v Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute (Public) (21 March 2016) at para 1 (International Criminal Court, Trial Chamber III), online: ICC <https://www.icc-cpi.int>.
211 Ibid at para 380.
214 Ibid at para 39.
215 Prosecutor v Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo (Public) (15 June 2009) at para 171 (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>.
216 Supra note 210 at para 494.
“two soldiers took him into a bedroom, and, holding him at gunpoint, penetrated his anus and mouth. Thereafter, P69 suffered severe damage to his anus, his wife had to have an operation, and his family was ‘completely destroyed’.”

In its findings, the Trial Chamber emphasised the gender-neutrality of the concept of ‘invasion’, that it includes “same-sex penetration, and encompasses both male and/or female perpetrators and victims”. Consequently, the Trial Chamber held that the perpetrators had, by force, invaded the bodies of both P23 and P69. Additionally, and of particular relevance to P69’s testimony, the Trial Chamber referred to ICTY jurisprudence and affirmed that “oral penetration, by a sexual organ, can amount to rape and is a degrading fundamental attack on human dignity which can be as humiliating and traumatic as vaginal or anal penetration”.

The ICC found Mr Bemba guilty on 21 March 2016 on two counts of crimes against humanity for murder and rape and three counts of war crimes for murder, rape and pillaging, later sentencing him to eighteen years imprisonment. Although the phase of proceedings for appeals and victims’ reparations is still outstanding, this case represents notable progress as the ICC’s first verdict to acknowledge rape both against men and women as a weapon of war. By actively recognising male rape within the charge sheet as both a crime against humanity and a war crime, and calling male witnesses to testify, the Prosecutor effectively ensured voices of both genders would be heard in court. The case is a promising example of the ICC actively prosecuting those with effective authority and control over the perpetrators of male rape, and recognising all forms of bodily ‘invasion’ whether committed against a man or a woman.

ii. The Prosecutor v Uhuru Muigai Kenyatta

Between November 2007 and January 2008, current President of Kenya, Uhuru Muigai Kenyatta, allegedly provided institutional support for a common plan between the then incumbent Party of National Unity (the PNU) and the Mungiki criminal organisation to carry out widespread and systematic attacks against those who were not members of the Kikuyu tribe. The attacks were aimed particularly at the Luo, Luhya and Kalenjin ethnic groups, perceived as supporting the opposition Orange Democratic Movement (the ODM), with the purpose of keeping the PNU in power. The most extensive violence
occurred following the announcement of the results of the presidential election on 30 December 2007, with thousands displaced and significant numbers dead, subject to rape or severe physical and mental injury.\textsuperscript{225} The Prosecutor charged Mr Kenyatta before the ICC with five counts of crimes against humanity for his role in the post-election violence,\textsuperscript{226} by mobilising the Mungiki and coordinating the Kenyan Police to ensure the attacks were uninterrupted.\textsuperscript{227}

Following the violence, the leaders of both the PNU and the ODM jointly agreed to set up a Commission of Inquiry into the Post-Election Violence (the \textbf{CIPEV}) in Kenya. The CIPEV concluded that “sexual violence was rampant during this period consisting mainly of rape and gang rape, defilement, genital mutilation, sodomy, forced circumcision, and sexual exploitation”.\textsuperscript{228} Although failing to prosecute in relation to the allegations of male rape, in this instance, the Prosecutor might still be considered progressive in its approach to sexual violence against males. The Prosecutor included in the charge sheet as “other form[s] of sexual violence” under article 7(1)(g) of the Rome Statute, acts of forcible circumcision against, and penile amputation of, men perceived to be supporters of the ODM.\textsuperscript{229}

In charging Mr Kenyatta for this crime against humanity, the Prosecutor submitted that:

“[T]hese weren't just attacks on men's sexual organs as such but were intended as attacks on men's identities as men within their society and were designed to destroy their masculinity”.\textsuperscript{230}

During this post-election period, Kikuyu tribe men had sought to display masculine dominance by forcibly circumcising members of the Luo tribe.\textsuperscript{231} Whilst in Kikuyu tribal culture circumcision signifies the transition from boy to man, the Luo men do not practice circumcision.\textsuperscript{232} In the electoral context, Chinouya explains how the term ‘kihii’ was politicised to refer to uncircumcised Luo men, such as opposition candidate Raila Odinga, as ‘children’, thereby questioning their suitability as leaders.\textsuperscript{233} Indeed, Kihato discusses how Kenya’s first president extolled the virtues of circumcision.\textsuperscript{234} The checks for circumcision and consequential forced acts were therefore seen as the Kikuyu men violating their Luo victims’ cultural identity and ability to hold power.\textsuperscript{235}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{225} \textit{Ibid} at para 117.
\item \textsuperscript{226} International Criminal Court, “Kenyatta Case” online: ICC <https://www.icc-cpi.int/kenya/kenyatta>.
\item \textsuperscript{227} \textit{Supra} note 224 at para 5.
\item \textsuperscript{229} \textit{Prosecutor v Francis Kirimati Matharia, Uhuru Muigai Kenyatta and Mohammed Hussein Ali}, ICC-01/09-02/11, Document Containing the Charges (Public) (2 September 2011) Count 5 (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>.
\item \textsuperscript{230} \textit{Supra} note 224 at para 264.
\item \textsuperscript{235} \textit{Supra} note 7 at 20-21.
\end{itemize}
\end{footnotesize}
The ICC’s Pre-Trial Chamber heard how Luo men were “rounded up and forcefully circumcised using pangas and broken bottles”\textsuperscript{236} One eye-witness reported that:

“The Kikuyu militias were forcibly circumcising Luo men. One Luhya witness was spared because he was already circumcised, but he was forced to accompany the group. Our group was about 50 people spread along the road. The Kikuyus then started checking everybody and circumcising Luos right there. I saw two of these. They grabbed one man, about 30 years old, and told him to remove his pants. He just kept saying, ‘What? What?’ Then they forcibly removed his pants. One person was holding his penis, and another one was cutting his foreskin with a piece of a broken Fanta bottle”\textsuperscript{237}

The Pre-Trial Chamber learnt that Naivasha town recorded at least four cases of traumatic circumcision\textsuperscript{238} whilst in Nakura town at least six men were treated at hospital for traumatic circumcision and penile amputation.\textsuperscript{239} Indeed, in one instance a young man’s penis was entirely cut off.\textsuperscript{240} The court additionally recorded that:

“In one incident, a perceived ODM supporter was ambushed by a group of pro-PNU youth who cut off his testicles and placed them in his hands before cutting off his penis and putting it in his mouth”.\textsuperscript{241}

Whilst the Pre-Trial Chamber agreed that “on the facts, that there are substantial grounds to believe that the Mungiki attackers carried out acts of forcible circumcision and penile amputation against Luo men as part of the attack on the perceived ODM”, it disagreed with the Prosecutor’s classification of such actions as sexual.\textsuperscript{242} Despite all evidence provided by the Prosecutor, the Pre-Trial Chamber declined to confirm that forcible circumcision and penile amputation were acts with a sexual component, as required for their classification under article 7(l)(g), stating that:

“The Chamber is of the view that not every act of violence which targets parts of the body commonly associated with sexuality should be considered an act of sexual violence. In this respect, the Chamber considers that the determination of whether an act is of a sexual nature is inherently a question of fact”.\textsuperscript{243}

\textsuperscript{236} Supra note 224 at para 262.
\textsuperscript{237} Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, ICC-01/09-02/11-T-5-Red-ENG, Transcript (Public redacted) (22 September 2011) at paras 88-89 (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>.
\textsuperscript{238} Supra note 224 at para 255.
\textsuperscript{239} Ibid at para 254.
\textsuperscript{240} Ibid at para 262.
\textsuperscript{242} Supra note 224 at para 260.
\textsuperscript{243} Ibid at para 265.
Rather than sexual in nature, the Pre-Trial Chamber found on the evidence “that the acts were motivated by ethnic prejudice and intended to demonstrate cultural superiority of one tribe over the other”. Consequently, they did not fall under the definition of “other forms of sexual violence” within the meaning of article 7(1)(g) of the Rome Statute, but rather came under the article 7(1)(k) category of “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.  

This decision has been widely criticised, with the Women’s Initiatives for Gender Justice describing the refusal to recognise the sexual nature of the acts as a “worrying move”. Whilst the International Center for Transitional Justice remarked that:

“It is difficult to conceive of an attack on a sexual organ or ‘part of the body commonly associated with sexuality’ that would not have a significant sexual impact and thereby not be of an inherently sexual nature”. Indeed, subsequently the Victims’ Legal Representative recounted that all male victims were detrimentally impacted, through their ability to have sexual intercourse, the severe effect on their masculinity and sense of manhood. As Grey explains, the Pre-Trial Chamber did not appear to pay regard to submissions by the Victims’ Legal Representative on this issue. While the court is not bound to accept the victims’ personal views on the legal characterisation of acts, their input to the proceedings is crucial to ensure the legitimacy both of the individual trial decision, and the ICC process as a whole.

For the many male victims who would consider the mutilation or amputation of their penis a fundamental act of sexual violence, this decision may therefore be seen as a lost opportunity for the only permanent international criminal institution to set a legal precedent for the prosecution of sexual violence against men. Instead, the Prosecutor may in fact be discouraged from properly characterising such sexual violence against men in future indictments. Although, reassuringly in June 2014 the Prosecutor issued a Policy Paper on Sexual and Gender-Based Crimes which affirmed that it “will continue to present acts of genital mutilation or deliberate injuries to the genitalia as sexual crimes”. Yet by not recognising the sexual aspects of these crimes, the Pre-Trial Chamber not only failed to acknowledge for victims the true nature of the violence, but could also have excluded them from reparations programs and support

---

244 Ibid at para 266.
245 Supra note 206, art 7(1)(k).
247 Supra note 7 at 20.
248 Prosecutor v Francis Kirimi Muthaura and Uhuru Muigai Kenyatta, ICC-01/09-02/11, Victims’ Observations on the “Prosecution’s application for notice to be given under Regulation 55(2) with respect to certain crimes charged” (Public) (24 July 2012) at para 14 (International Criminal Court, Trial Chamber V), online: ICC <https://www.icc-cpi.int>.
250 Supra note 7 at 20.
structures. In situations where reparations are specifically allotted to victims of sexual violence, the circumcised or amputated men might have been rendered ineligible, due to their miscategorisation by the ICC’s Pre-Trial Chamber.

With a developing intersectional approach to sexual violence, it may be unsurprising that this decision that acts against the Luo men were ethnically motivated instead of sexually motivated has sparked controversy. Indeed, the Victims’ Legal Representative submitted that the Pre-Trial Chamber erred in its decision by relying “on an outdated conceptualization of sexual violence; namely, that such acts are purely about sex and not about the complex power dynamics at play”. Additionally, he affirmed the concept of power in all forms of sexual violence, noting that it “may be motivated less by sexual gratification than by an attempt to exert power and dominance over the victim and potentially the victim’s community”. Taking MacKinnon’s statement that “sex is normally something men do to women”, Turan argues that penile amputation or mutilation is understood not as sexual violence but as “deprivation of the means to perform dominance in a male-dominant world”. Turan submits that this ICC decision subordinates women as victims within a patriarchal justice system, as:

“The ICC, by ignoring the sexual and gendered harm to male victims in the Kenya case, delineates women as the only victims in a covert manner and thus reinforces a masculine manifestation of sexual violence”.

In any event, the Prosecutor later withdrew the charges against Mr Kenyatta due to insufficient evidence, and consequently it cannot be known how the ICC’s Trial Chamber or Appeals Chambers might have handled these issues. Yet, if the Pre-Trial Chamber had seized the opportunity to recognise these acts as forms of both ethnic and sexual violence, future international and domestic courts might have been encouraged to offer the same or even greater protections to male victims.

iii. The Prosecutor v Dominic Ongwen

In relation to Uganda, the ICC is currently investigating crimes committed during the country’s conflicts but, to date, the case against Dominic Ongwen is the only one committed to trial before the court. Whilst the Prosecutor has accused Mr Ongwen of seventy counts of crimes against humanity and war

---

252 Supra note 7 at 26.
253 Supra note 249 at 283.
254 Supra note 248 at para 12.
258 Ibid at 43.
259 Prosecutor v Uhuru Muigai Kenyatta, ICC-01/09-02/11, Decision on the withdrawal of charges against Mr Kenyatta (Public) (13 March 2015) (International Criminal Court, Trial Chamber V(B)), online: ICC <https://www.icc-cpi.int>. 
crimes as Brigade Commander within the LRA, the confirmed charges make no mention of any sexual violence against men.261

With the trial currently in progress and further investigations continuing, time will tell whether the only permanent international criminal institution is able to provide more justice to male victims than they receive within Uganda.

---

The ICC has a unique capacity as the only permanent international criminal institution to create a robust and enduring body of jurisprudence that would set both an example and a benchmark for domestic and international prosecutions of sexual violence against males. With a broad, gender-neutral definition of sexual violence, the court can theoretically allow all victims of sexual violence equal access to redress before a court of law. The ability of men and boys to seek access to international criminal justice is further enhanced through the Rome Statute’s provisions for victim participation, allowing them to express their “views and concerns” through a legal representative.262 The ICC’s jurisprudence on male sexual violence is currently limited, but the example of the Prosecutor v Bemba Gombo demonstrates a strong stance in recognising male rape as a weapon of war and acknowledging all forms of bodily sexual ‘invasion’.

Yet whilst the ICC is in many ways progressive in its approach to prosecuting sexual violence against men and boys, more can still be done to recognise these crimes and provide redress to male victims. For many, the Prosecutor v Kenyatta reinforces a masculine manifestation of sexual violence and may be seen as a lost opportunity for the ICC to recognise the realities of male sexual assault before both the victims and the international community.263 Meanwhile, for Ugandan victims, it remains to be seen whether the ICC is willing and able to provide some level of recognition and justice for the male victims of sexual abuse.

***

Between the closing of the Nuremberg and Tokyo trials and the opening of the ICTY, sufficient progress was made at both a societal and legal level to enable the new ad hoc international criminal tribunal to bring charges in relation to sexual violence. The prosecution of male sexual violence in particular, “reflect[ed] the very real advances that have been made on the subject more broadly in recent years”.264 Whilst the conflict itself facilitated a thorough and perhaps unprecedented documentation of sexual

---

261 Prosecutor v Dominic Ongwen, ICC-02/04-01/15, Decision on the confirmation of charges against Dominic Ongwen (Public redacted) (23 March 2016) (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>.
262 Supra note 206, art 68(3).
263 Supra note 257 at 43.
264 Supra note 8 at 79.
violence against men and boys, the ICTY’s response was unparalleled in the recognition it offered to male victims. Although in many cases the specific sexual nature of the crimes was overlooked, the acts were nonetheless detailed and acknowledged, thereby legitimising male victims in the former Yugoslavia. Moreover, in bringing the first charges for male rape in the Prosecutor v Tadić and the Prosecutor v Češić, the ICTY established novel jurisprudence for the future protection of male victims.

Unfortunately, rather than expanding on the precedent created by the ICTY, the ICTR “has been far less active in prosecuting male sexual violence”.265 With not one indictment specifically acknowledging sexual abuse against males, the true nature of the crimes committed against both Hutu and Tutsi men and boys remains overlooked.266 Indeed, “contemporaneous accounts suggest that instances of male sexual violence [...] were more numerous and more systematic than the jurisprudence of the ICTR [...] would suggest”.267 The ICTR failed “to explicitly recognize the sexual dimension of various forms of violence committed against men” in Rwanda during the genocide, and in doing so neglected to expand upon, or even equal, the justice offered by the ICTY to male victims.268

Meanwhile, the Rome Statute and ICC jurisprudence in the Prosecutor v Bemba Gombo has promisingly confirmed that the “international legal framework is in place for the prosecution of male sexual violence as an international crime”.269 Indeed, there now appears little doubt that the sexual abuse of men and boys has the potential to be prosecuted as a war crime, a crime against humanity and as genocide. “Yet, despite the existence of this legal framework, actual prosecutions of male sexual violence are few and far between” in all international criminal institutions, and the tendency remains to prosecute these acts as inhumane treatment or torture.270 As a court of complementarity, when domestic legal systems are “unwilling or unable genuinely to carry out the investigation or prosecution” of sexual violence against men and boys,271 the organs of the ICC must actively investigate, indict and try the key perpetrators to end impunity for such crimes.272 International criminal law and its institutions have the potential to set benchmarks for the protection of men and boys in situations of conflict, and must ensure that prosecutions for sexual violence against males no longer fall by the wayside.

---

265 Ibid at 88.
266 Ibid at 92.
267 Ibid at 89.
268 Supra note 7 at 2.
269 Supra note 8 at 97.
270 Ibid.
271 Supra note 206, art 17(1)(a).
Conclusion

Sexual violence during conflict is an “ancient problem”,273 and its use as a weapon against men, women, girls and boys “is frequently more effective at destroying lives and tearing communities apart than guns alone”.274 Yet “[t]oday, while some of the silence surrounding the issue of sexual violence against women is being broken, unfortunately effective measures of justice and redress are still not understood or applied in ways that can support male victims”.275

Male rape and sexual assault remains deeply taboo,276 whilst both in society and in the eyes of the law, ‘gender’, and accordingly ‘gender-based violence’, is still often a euphemism for ‘women’.277 Rendering such violence an exclusively female issue reinforces societal stereotypes encompassing masculinity, rendering male victims invisible and conversely female victims hyper-visible. “Law is a language of power, a particularly authoritative discourse”.278 Accordingly, the law has the privileged possibility to alter these pre-conceived notions of violence and masculinity and acknowledge the diverse gender dimensions of post-conflict justice.279 It is uniquely placed to foster an environment of dialogue and exchange between all victims of sexual violence, helping rebuild post-conflict communities and preventing future atrocities. However, “the prosecution of male sexual violence reveals certain tensions and limitations” and both national and international courts could be doing more to protect men and boys from sexual attacks.280

Although presenting one of the more extreme examples of domestic attitudes toward male sexual violence, the case study of Uganda highlights the reality for 90% of men in conflict-affected countries where the law provides no protection for them as victims of sexual assault.281 It exposes the multiple hurdles male victims may face in trying to seek justice at a national level, with no legal recognition of men as rape victims and a significant risk that males reporting sexual assault will be criminalised as homosexual. Theoretically Uganda’s International Crimes Division can draw upon international criminal law to prosecute perpetrators of male sexual assaults. However, it faces substantial constraints both on its available resources and its jurisdiction, with Rome Statute crimes going beyond the scope of domestic legislation, or committed prior to 2010, appearing exempt from prosecution. Accordingly in Uganda, and

275 Supra note 7 at 1.
278 Supra note 32 at 888.
280 Supra note 8 at 79.
281 Supra note 56 at 6.

As a court of complementarity, when domestic legal systems fail to prosecute sexual violence against men and boys, the organs of the International Criminal Court should be prepared to actively investigate, indict and try the key perpetrators. An analysis of international criminal law jurisprudence demonstrates examples of significant progress, and today before international criminal tribunals “it is beyond question that male sexual violence is a serious issue and that it can amount to war crimes, crimes against humanity and genocide”.\footnote{Supra note 8 at 89.} The substantive law is in advance of many post-conflict countries’ domestic legislation, and precedent set before the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court demonstrates that such tribunals could in theory be well-placed to ensure effective redress for male victims.\footnote{Supra note 114 at ii.} However, actual prosecutions of male sexual violence are rare before these courts and often continue to overlook the specific sexual nature of the crimes. Therefore while international criminal tribunals are often more progressive than their domestic counterparts, they continue to lose opportunities to ensure post-conflict justice for all men and boys. This is particularly disappointing when international criminal institutions have the potential to set benchmarks for other international and national legal bodies on the protection of men and boys in conflict.

To date, “there have been no exemplary prosecutions of acts of sexual violence against men” before the international criminal courts.\footnote{Supra note 12 at 661.} Accordingly, the legal community requires an attitudinal shift at both a domestic and an international level to ensure that prosecutions for sexual violence against males no longer fall by the wayside.\footnote{Supra note 282 at 46.} The state of prosecutions of male sexual violence reflects the state of affairs more generally in post-conflict societies on the subject of sexual violence against men and boys.\footnote{Supra note 282 at 46.} Legislators and courts of law must take the lead in acknowledging, addressing and critically engaging with male sexual violence, and recognise their duty to ensure justice for all boys and men who cry rape.
Bibliography

LEGISLATION

Uganda

Anti-Homosexuality Act, 2014

Bill 18, Anti-Homosexuality Bill, 2009-2010 sess, 2009

International Criminal Court Act, No. 11 of 2010

Legal Notice 10, The High Court (International Crimes Division) Practice Directions, 2011

Penal Code Act, 1950, c 120

Penal Code Amendment (Gender References) Act, 2000

The Amnesty Act, 2000, c 294

JURISPRUDENCE

Uganda

Uganda v Thomas Kwoyelo, Constitutional Appeal No. 01 of 2012, 8 April 2015

SECONDARY SOURCES

Periodicals


Donnelly, Denise & Stacy Kenyon, “‘Honey, we don’t do men’: Gender Stereotypes and the Provision of Services to Sexually Assaulted Males” (1996) 11:3 J Interpersonal Violence 441-448
Edström, Jerker et al., “Therapeutic Activism: Men of Hope Refugee Association Uganda Breaking the Silence over Male Rape in Conflict-related Sexual Violence” (March 2016) online: <http://www.refugeelawproject.org/files/others/Therapeutic_Activism_MOH.pdf>


Books

American Medical Association, Strategies for the treatment and prevention of sexual assault (1995)


Fitzpatrick, Brenda, Tactical rape in war and conflict: international recognition and response (Bristol: Policy Press, 2016)

Goldstein, Joshua S, War and Gender: How Gender Shapes the War System and Vice Versa (Cambridge: Cambridge University Press, 2003)

Meger, Sara, Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict (USA: Oxford University Press, 2016)

Mibenge, Chiseche Salome, Sex and International Tribunals: The Erasure of Gender from the War Narrative (Philadelphia: University of Pennsylvania Press, 2013)

Sharratt, Sara, Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals (Great Britain: Ashgate Publishing Ltd, 2011)

Essay in a Collection


Sivakumaran, Sandesh, “Prosecuting Sexual Violence against Men and Boys” in Anne-Marie de Brouwer et al., eds, Sexual Violence as an International Crime: Interdisciplinary Approaches (Intersentia, 2013) 79

Other


BBC News, “‘We need to talk about male rape’: DR Congo survivor speaks out” (3 August 2017) online: <http://www.bbc.com/news/world-africa-40801782?SthisFB>
BBC World Service: Africa Today, “Male Rape Under-Reported in South Sudan Conflict” (2 August 2017) online: <http://www.bbc.co.uk/programmes/p05bcyfz>

BBC World Service: The Documentary, “Episode 2: An Unspeakable Act” (4 August 2012) online: <http://www.bbc.co.uk/programmes/p00vxx55>


Nguyen, Katie, “Powerful myths silence male victims of rape in war”, Thomson Reuters Foundation News (15 May 2014) online: <http://news.trust.org/item/20140515154437-het27/>


Refugee Law Project, “They Slept With Me” (10 December 2011) online: YouTube <https://www.youtube.com/watch?v=6dxaFqezrXg>


Ruptly TV, “UN: ‘We are not gays’ - Mugabe shocks the UN General Assembly” (28 September 2015) online: YouTube <https://www.youtube.com/watch?v=pxH_Rp9Vlj8>


Women’s Initiatives for Gender Justice, “Legal Eye on the ICC” (July 2011) online: <http://www.iccwomen.org/news/docs/LegalEye7-11/LegalEye7-11.html>


76 Crimes, “76 countries where homosexuality is illegal” (19 May 2017) online: <https://76crimes.com/76-countries-where-homosexuality-is-illegal/>

**INTERNATIONAL MATERIALS**

**International Criminal Court**


The *Prosecutor v Jean-Pierre Bemba Gombo*

International Criminal Court, “Bemba Case” online: ICC <https://www.icc-cpi.int/car/bemba>

*Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo (Public) (15 June 2009) (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>

*Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Revised Second Amended Document Containing the Charges (Public redacted) (18 August 2010) (International Criminal Court, Trial Chamber III), online: ICC <https://www.icc-cpi.int>

*Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute (Public) (21 March 2016) (International Criminal Court, Trial Chamber III), online: ICC <https://www.icc-cpi.int>

*Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision on Sentence pursuant to Article 76 of the Statute (Public) (21 June 2016) (International Criminal Court, Trial Chamber III), online: ICC <https://www.icc-cpi.int>

The *Prosecutor v Uhuru Muigai Kenyatta*

International Criminal Court, “Kenyatta Case” online: ICC <https://www.icc-cpi.int/kenya/kenyatta>

*Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, ICC-01/09-02/11, Document Containing the Charges (Public) (2 September 2011) (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>
Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute (Public redacted) (23 January 2012) (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>

Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, ICC-01/09-02/11, Decision on the withdrawal of charges against Mr Kenyatta (Public) (13 March 2015) (International Criminal Court, Trial Chamber V(B)), online: ICC <https://www.icc-cpi.int>

Prosecutor v Dominic Ongwen, ICC-02/04-01/15, Decision on the confirmation of charges against Dominic Ongwen (Public redacted) (23 March 2016) (International Criminal Court, Pre-Trial Chamber II), online: ICC <https://www.icc-cpi.int>

International Criminal Tribunal for Rwanda


Statute of the International Tribunal for Rwanda (as amended on 14 August 2002), 8 November 1994


The Prosecutor v Jean Paul Akayesu


The Prosecutor v Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva


Prosecutor v Anatole Nsengiyumva, ICTR-96-12, Amended Indictment (Public) (12 August 1999) (International Criminal Tribunal for Rwanda, Trial Chamber I), online: ICTR <http://unictr.unmict.org>

Prosecutor v Théoneste Bagosora, ICTR-96-7, Amended Indictment (Public) (12 August 1999) (International Criminal Tribunal for Rwanda, Trial Chamber I), online: ICTR <http://unictr.unmict.org>


The Prosecutor v Mikaeli Muhimana

Prosecutor v Mikaeli Muhimana, ICTR-95-1B, Revised Amended Indictment (Public) (3 February 2004) (International Criminal Tribunal for Rwanda, Trial Chamber III), online: ICTR <http://unictr.unmict.org>

Prosecutor v Mikaeli Muhimana, ICTR-95-1B, Judgement and Sentence (Public) (28 April 2005) (International Criminal Tribunal for Rwanda, Trial Chamber III), online: ICTR <http://unictr.unmict.org>

The Prosecutor v Eliézer Niyitegeka

Prosecutor v Eliézer Niyitegeka, ICTR-96-14, Amended Indictment (Public) (26 June 2000) (International Criminal Tribunal for Rwanda, Trial Chamber I), online: ICTR <http://unictr.unmict.org>

Prosecutor v Eliézer Niyitegeka, ICTR-96-14, Judgement and Sentence (Public) (16 May 2003) (International Criminal Tribunal for Rwanda, Trial Chamber I), online: ICTR <http://unictr.unmict.org>

International Criminal Tribunal for the former Yugoslavia


Statute of the International Criminal Tribunal for the former Yugoslavia (as amended on 7 July 2009), 25 May 1993

The Prosecutor v Ranko Češić

Prosecutor v Ranko Češić, IT-95-10/1, Third Amended Indictment (Public) (26 November 2002) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

Prosecutor v Ranko Češić, IT-95-10/1, Sentencing Judgement (Public) (11 March 2004) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber I), online: ICTY <http://www.icty.org>

The Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo

Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, IT-96-21, Indictment (Public) (19 March 1996) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, IT-96-21, Judgement (Public) (16 November 1998) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>
The Prosecutor v Slobodan Milošević

Prosecutor v Slobodan Milošević et al., IT-99-37, Second Amended Indictment (Public) (16 October 2001) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

Prosecutor v Slobodan Milošević, IT-02-54, Transcript (Public) (6 May 2003) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

The Prosecutor v Blagoje Simić, Miroslav Tadić and Simo Zarić

Prosecutor v Blagoje Simić, Miroslav Tadić and Simo Zarić, IT-95-9, Fifth Amended Indictment (Public) (30 May 2002) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber II), online: ICTY <http://www.icty.org>

Prosecutor v Blagoje Simić, Miroslav Tadić and Simo Zarić, IT-95-9, Judgement (Public) (17 October 2003) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber II), online: ICTY <http://www.icty.org>

The Prosecutor v Duško Tadić

Prosecutor v Duško Tadić and Goran Borovnica, IT-94-1, Second Amended Indictment (Public) (14 December 1995) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

Prosecutor v Duško Tadić, IT-94-1, Opinion and Judgment (Public) (7 May 1997) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

Prosecutor v Duško Tadić, IT-94-1, Sentencing Judgment (Public) (14 July 1997) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

The Prosecutor v Stevan Todorović

Prosecutor v Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović and Simo Zarić, IT-95-9, Second Amended Indictment (Public) (19 November 1998) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

Prosecutor v Stevan Todorović, IT-95-9/1, Sentencing Judgement (Public) (31 July 2001) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>

United Nations

Méndez, Juan E, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UNGAOR, 23rd Sess, UN Doc A/HRC/22/53 (2013)


