CHAPTER I

INTRODUCTION

A. Background of Study

Women's vulnerability in war has been acknowledged through several bodies of law. The Fourth Geneva Convention of 1949, relative to the Protection of Civilians, is one of the fundamental bases of International Humanitarian Law (IHL) with regard to civilian rights and has established provisions regarding women's protection in armed conflict; however, sexual violence continues to be used as a strategy during conflicts.[1] Based on the Annual Report of the United Nations Secretary-General on Conflict-Related Sexual Violence (CRSV), conflict escalation has increased the levels of violations of humanitarian law, which are deeply concerning.[2] It was estimated that there would be around 200,000 or more female sex slaves during World War II, excluding the European sexual violations, and those horrifying violations mostly occurred within the 'Comfort Women System'.[3] Sexual violence has been carried out by weapon bearers,[4] and many were left unreported due to the instability of the situation.

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[1] Elizabeth Kissam, *Conflict-Related Sexual Violence: Report of the United Nations Secretary-General*, (S/2025/389) (Special Representative of the Secretary-General on Sexual Violence in Conflict, 2025), para. 8, https://digitallibrary.un.org/record/4096508.

[2] Ibid., para. 2.

[3] Channing N. Morrison, "The Whispered Crimes of Sexual Violence in the European and Pacific Theater of World War II" (Thesis, University of Texas at Tyler, 2024), 22–23, http://hdl.handle.net/10950/4791.

[4] Hana Salama, "Sexual Violence in Conflict and Weapons: Unpacking the Links for Better Prevention," *Humanitarian Law & Policy*, 2023, https://blogs.icrc.org/law-and-policy/2023/09/28/sexual-violence-in-conflict-weapons-unpacking-the-links-for-better-prevention/.

United Nations Security Council Resolution 1820 has recognized sexual violence as a weapon and tactic of war that could be used in a widespread and systematic manner, which would heighten the conflict situation.[5] The same resolution had also mentioned how conflict-related sexual violence is detrimental, particularly to women and girls.[6] Thus, despite the existence of various legal frameworks, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has been in force since 1981, awareness and enforcement remain limited and weak. Many different jurisprudences have been set, recognising sexual violence as a strategy manifested in various forms of conduct. Hence, impunity persisted and kept unfolding in plain sight.

The term "Conflict-Related Sexual Violence (CRSV)" refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence that is directly or indirectly linked to a conflict.[7] The terms conflict here, according to the UN Handbook for Field Missions, refer to situations of armed conflict, occupation, instability that may escalate into armed conflict, and/or the aftermath of conflict before the re-establishment of effective State authority.[8] Although such violence could also take place against men and

[5] *Resolution 1820*, S/RES/1820 (United Nations Security Council, 2008), paras. 1–4, https://www.un.org/shestandsforpeace/content/united-nations-security-council-resolution-1820-2008-sres18202008.

[6] Ibid, 1.

[7] Kissam, *Conflict-Related Sexual Violence: Report of the United Nations Secretary-General*, para. 3.

[8] United Nations Department of Peace Operations, *Handbook for United Nations Field Missions on Preventing and Responding to Conflict-Related Sexual Violence* (United Nations,

boys, the violence carried out against women and girls are considered severe due the inherent characters of gender-based shaped by cultural factors.[9] Females have historical experience of systemic violence and discrimination that is closely related to their sex,[10] therefore makes it necessary to define the gendered causes and impacts explicitly. In World War II, all sides of conflict had perpetrated sexual violence which subsequently resulted in difficulties alongside the idea that sexual violence is an inevitable by-product of armed conflict.[11] It was long before the term CRSV was established, in the 1990s, international concern started to arise over sexual violence infliction during armed conflict. International Criminal Tribunal for Rwanda (ICTR) prosecuted *Jean-Paul Akayesu* for the genocide of Rwandan in 1994, whereas sexual violence was used as means of terror systematically against women, often repeatedly and publicly.[12] Therefore, in the *Akayesu* case, although it was not the first occurrence of sexual violence in war, it was the first case that was tried before the International Criminal Tribunal for Rwanda (ICTR).

2020), 7, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/2020.08-UN-CRSV-Handbook.pdf.

[9] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19* (2017), para. 12, https://docs.un.org/en/CEDAW/C/GC/35.

[10] Reem Alsalem, *Sex-Based Violence Against Women and Girls: New Frontiers and Emerging Issues*, Special Rapporteur on Violence against Women and Girls, Its Causes and Consequences (United Nations Human Rights Council, 2025), para. 11, https://docs.un.org/en/A/HRC/59/47.

[11] United Nations Division for the Advancement of Women, *Sexual Violence and Armed Conflict: United Nations Response* (United Nations, 1998), 3, https://www.unwomen.org/en/digital-library/publications/1998/4/women2000-sexual-violence-and-armed-conflict-united-nations-response.

[12] Prosecutor v. Jean-Paul Akayesu (ICTR-96-4-T) (International Criminal Tribunal for Rwanda (ICTR), 1998), ¶ 706, https://www.refworld.org/jurisprudence/caselaw/ictr/1998/19275.

This thesis examines the use of CRSV as a means of warfare from an IHL perspective, analyzing the barriers and loopholes in the enforcement of existing legal frameworks. Women's protection should be guaranteed even in armed conflict, from any degradation of their dignity and any inhumane treatment that would cause them irreversible effects. Women are subject to higher risks and exposures of gender-based violence; it is a fact that cannot be denied. In situations of conflict, many forms of violence could happen, and this impact would not stop at the victim herself but could possibly affect the surroundings. The marks left for the victims were not merely physical but psychological, which is harder to identify in plain sight, hence causing a very distinctive impact on the victim.

The escalation of armed conflict, with various means developed by the parties as tools of war, should serve as the basis for the development of law. This should broaden the scope of protection to prevent further casualties. As much as the world is becoming aware of cybercrimes, the existence of silent crimes must not be forgotten, and they should be even more preventable. The infliction of sexual violence as a means of warfare has been done for ages, most likely due to the fact that it is instantly devastating without requiring an extravagant tool to carry out.[13] Furthermore, the aftermath of crimes persists and affects the lives of the victims, even after the situation has returned to normal.

[13] Paul Kirby, "The Body Weaponized: War, Sexual Violence and the Uncanny," *Security Dialogue* 51, nos. 2–3 (2020): 215, https://doi.org/10.1177/0967010619895663.

As the world evolves, the law shall evolve dynamically in response to those changes as necessary. The mid-2000s marked a significant development of International Humanitarian Law (IHL) in the recognition of Conflict-Related Sexual Violence (CRSV). As previously mentioned, it has been recognized by the Geneva Conventions and customary international law. However, the legal frameworks have become stronger and more prominent during this period. In subsequent years, many resolutions have also been adopted, such as UNSC Resolution 1820 (2008). The instrument affirmed that sexual violence can constitute war crimes and that such acts should be ceased by parties in armed conflict.[14] The resolution was largely shaped by jurisprudence and other works throughout the development of CRSV's recognition in international law.

Despite these significant advancements, legal gaps in enforcement persist. Ever since the establishment of the International Criminal Court (ICC) as a permanent international court and the formulation of UNSC Resolution 1325 (2000) by the United Nations, which has embedded the critical role of women in conflict,[15] There were still some difficulties in implementing the law and regulations as mandated. This is shown through the establishment of UNSC Resolution 2467 (2019), which aims to strengthen justice and accountability through a survivor-based approach to preventing and responding to CRSV. Whereas, the resolution reiterates significant concern about the ongoing occurrence of CRSV despite repeated

[14] *Resolution 1820*, paras. 2–3.

[15] Siwan Anderson and Maria Micaela Sviatschi, "Gender and Armed Conflict," *Economic Policy* 40, no. 124 (2025): 833, https://doi.org/https://doi.org/10.1093/epolic/eiaf010.

condemnation,[16] demonstrates the disparities in implementation. The challenges vary, mostly related to the social stigma and culture that caused reluctance from the victim,[17] hence many CRSV perpetrator were left unpunished. National authorities and other international actors were urged to commit and support the agenda by adopting and adhering to the existing legal framework by showing appropriate response, showing the necessity of comprehensive integration in order to achieve an effective legal enforcement. Nonetheless, cycles of violence kept perpetuating, making it difficult to break the patterns in order to ensure justice. In many situations, the concern would raise to the influence of patriarchal norms and structures, shape social and institutional responses to this violence, and other social-political implications.[18]

The annual report required by the United Nations was established in order to achieve consistent implementation by parties in enforcing the values that have been mutually agreed over the years. However, the same report exposed an ongoing pattern of grave and systematic violations of legal standards and other fundamental statutory obligations. It further reported that over 70 percent of the parties listed in the 2025 annual report have been

[16] *Resolution 2467*, S/RES/2467 (United Nations Security Council, 2019), paras. 5–6, https://www.un.org/shestandsforpeace/content/united-nations-security-council-resolution-2467-2019-sres24672019.

[17] Hanifah Maratussholehah and Yulia Fitriliani, "Sexual Violence in Armed Conflict: One-Sided Justice for Women?," *terAs LAW REVIEW: Jurnal Hukum Humaniter Dan HAM* 6, no. 2 (2024): 89, https://doi.org/10.25105/12b4t622.

[18] Anne-Kathrin Kreft, "'This Patriarchal, Machista and Unequal Culture of Ours': Obstacles to Confronting Conflict-Related Sexual Violence," *Social Politics: International Studies in Gender, State & Society* 30, no. 2 (2023): 655, https://doi.org/10.1093/sp/jxac018.

persistent perpetrators for five years or more, demonstrating a low level of compliance.[19]

The urgency of this research stems from gaps between legal frameworks and their inconsistent implementation. As conflicts escalate and evolve alongside the modernization of the world, the challenge persists. The acknowledgment of CRSV alone has not been enough, as accountability for such conduct remains uneven from one case to another. Therefore, this research aims to identify the gap in the enforcement of legal frameworks, given the continued prevalence of CRSV in different conflict settings.

B. Problem Formulation

1. To what extent have legal standards established by the United Nations and the International Criminal Court since the mid-2000s recognized Conflict-Related Sexual Violence (CRSV) as an intentional and autonomous international crime, rather than merely a collateral consequence of armed conflict?
2. What legal and institutional obstacles have constrained the effectiveness of victim protection and law enforcement mechanisms in cases of Conflict-Related Sexual Violence, thereby perpetuating the impunity of perpetrators under international law?

[19] Kissam, *Conflict-Related Sexual Violence: Report of the United Nations Secretary-General*, para. 17.

C. Objective of Research

1. Examine the development on the acknowledgment and recognition by United Nation and International Criminal Court which influence the practice in international community on the usage of sexual violence as a means of warfare to the current legal enforcement and developments since the mid-2000s to the present.
2. Analyze deeply the obstacles from the legal and institutional perspective, pursuant to the enforcement of legal mechanism in Conflict-Related Sexual Violence (CRSV), whereas it caused impunity to persist and the protection towards women in conflict remains ineffective and insufficient despite of stronger recognition and acknowledgement since the mid-2000s.

D. Originality of Research

This research offers further examination on the Conflict-Related Sexual Violence (CRSV) infliction towards women in conflict as a means of warfare, mainly from the perspective of International Humanitarian Law (IHL) and many other jurisprudences adjudicating and recognizing sexual violence in war crimes and/or conflict settings. Focusing on women as the main subject, the present research aims to understand the coverage of available legal frameworks developed since the mid-2000s that distinguish CRSV as abhorrent, alongside the obstacles in the enforcement which resulted in continuous impunity and lack of protection for the victim of such conduct. Thereby, this research concerns the stable enforcement of law under different

circumstances, aiming for better safeguarding of those affected, with huge consideration on women's rights and dignity that should not be neglected even during conflict.

The discourse of intersection of IHL, gender, and armed conflict was heightened within the mid-2000s timeframe. Normative and institutional developments recognized how armed conflict impacted women differently, which emphasize the needs to integrate gender perspectives into humanitarian responses to strengthen the protection measure under international law. Therefore, enhancing the concrete implementation of legal standards is essential in order to bridge the gap between normative advancements and everyday realities.

First, in "Sexual Violence in Armed Conflict: Threat, Mobilization, and Gender Norms" (2019) by Anne-Kathrin Kreft, the author highlighted how sexual violence in conflict have affected women and its weaponization in conflict by making assessment on factors and patterns across different conflicts. Meanwhile, the present research will highlight the application of IHL pursuant to compliance of parties and assessing accountability measure in the enforcement of law.

Second, in "Understanding Conflict-Related Sexual Violence and the 'Everyday' Experience of Conflict through Witness Testimonies" (2019) by Kirsten Campbell, et.al., the authors focused on the importance of witness testimonies in the process of justice by making reference to the International Criminal Tribunal for the former Yugoslavia (ICTY). In the opposite, the

present research will highlight the development on legal standards and the persisting challenges throughout the implementation of established legal frameworks, with case study primarily drawn from the International Criminal Court (ICC), with reference to International Criminal Tribunal for Rwanda (ICTR).

Third, in "Armed Conflicts in Africa: Examining Sexual Violence as an Instrument of War" (2019) by Innocent A. Daudu and Lukong S. Shulika, the authors were referring to the infliction of strategic sexual violence in Central African Republic and Democratic Republic of the Congo by incorporating domestic and social context surrounding the community. While the present research will concentrate on the development of legal standards which condemn the weaponization of sexual violence, with reference to the commonly known value existing in the society.

Fourth, in "The Phenomenon of Sexual Violence During Armed Conflicts in the Twenty-First Century: Entering the Era of Survivors as Agents of Peace" (2021) by Shayna Kushner, the author tried to establish different case studies where sexual violence occurred in armed conflict situation while focusing on long-term discussion of survivor experiences. Thus, the present research will delve more into the legal and institutional obstacles which hinder the preventive measure and enforcement of law.

Fifth, in "Conflict Related Sexual Violence: Reasons, Applicable Legal Provisions and Humanitarian Response" (2021) by Réka Varga, the author researched on the usage of sexual violence in war within multiple historical

settings without focusing on women as the primary subject. Therefore, the present research is more centralized on the responses made by the United Nations (UN) and the International Criminal Court (ICC) with strong reference towards women's experience in conflict.

Sixth, in "Illegality of Sexual Violence against Women during Armed Conflicts" (2023) by Miebaka Nabiebu, the author emphasized on the illegality on weaponization of sexual violence while comparing different case studies without focusing on the IHL aspects. Meanwhile, the present research try to enhance the IHL perspective and the acknowledgment of existing frameworks towards CRSV.

Seventh, in ""War has entered the blood" Conflict Related Sexual Violence – Why Men Rape in Wartime" (2024) by Rachel Brannick, this thesis studied the cause of CRSV by analyzing the motivation of the perpetrator. While the present research, are focusing on the analysis within legal scope, highlighting the available frameworks adopted by international community.

Eighth, in "The Gendered Costs of Stigma: How Experiences of Conflict-Related Sexual Violence Affect Civic Engagement for Women and Men" (2024) by Carlo Koos and Richard Traunmüller, the authors focused on the survivor integration to community while comparing the arising implication. In the opposite, the present research will only highlight CRSV infliction and implication on women, while connecting the discussion to the existing legal framework as relevant.

Ninth, in “The Whispered Crime of Sexual Violence in the European and Pacific Theater of World War II” (2024) by Channing N. Morrison, the thesis were addressing sexual violence infliction within historical context, without addressing the experience of women. Meanwhile for the present research, although historical background of the World War II will be taken into account, it aims to understand the development of CRSV recognition by focusing on the suffering of women.

Tenth, in “Beyond the Weapon of War: Rethinking Gendered Narratives of Conflict-Related Sexual Violence” (2025) by Sydney Leigh Smith, the author highlighted the recognition of rape with reference to the ICTR’s witness testimonies. Otherwise, the current research will discuss on ICTR *Akayesu* in the context of historical analysis considering its strong influence to ICC decision for *Bemba* in sexual violence.

With the increasing recognition of CRSV, research on this issue has developed significantly over the years. These studies have made important contributions to international legal discourse, each offering different scopes, timeframes, focuses, and analytical approaches. Therefore, the following table presents a comparative overview of the key findings and highlighted issues in order to clarify the distinct focus of the present research.

No.	Title of Research	Key Findings	Comparison
1.	Sexual Violence in Armed Conflict: Threat, Mobilization and Gender Norms (2019) by Anne-Kathrin Kreft	This research demonstrated how sexual violence occurrence are diverse from one conflict to another, depends on the behaviour of the armed group and political matters. The writer highlights more on factors and patterns across conflicts.	This research will not dive deeper into the factors and patterns of perpetrator in carrying out CRSV, meanwhile it will delve deeper into the applicable IHL principle in pursuant to compliance by parties as preventive measure, as well as the existing standard in IHL regarding the matters of accountability.
2.	Understanding Conflict-Related Sexual Violence and the 'Everyday' Experience of Conflict through Witness Testimonies (2019) by Kirsten	This research focuses on the use of witness testimonies before criminal tribunals, specifically referring to the International Criminal Tribunal for the former Yugoslavia (ICTY). From the	In comparison, the present study focuses on the development of evolving legal standards and the continuing challenges in the implementation of CRSV frameworks since the mid-2000s. The case studies are primarily drawn from the

	Campbell, Elma Demir and Maria O'Reilly	identification of cases to individual testimonies presented before the ICTY, the author examines the circumstances of CRSV from the victim's perspective and the challenges involved.	International Criminal Court (ICC) as the main research subject, while comparatively examining the historical foundations established by the International Criminal Tribunal for Rwanda (ICTR).
3.	Armed Conflicts in Africa: Examining Sexual Violence as an Instrument of War (2019) by Innocent A. Daudu and Lukong S. Shulika	This research asserts that sexual violence is strategically used as a method of warfare, referring to cases in Central African Republic and the Democratic Republic of the Congo. It also incorporates the domestic and societal context of the affected communities to better	The present research adopts a different analytical focus on the use of sexual violence as a method of warfare. It concentrates on the development of international legal standards and their evolving recognition since the mid-2000s, with women as the primary subject. Domestic barriers are only addressed to highlight the challenges

		understand the silence surrounding these crimes.	that influence the protection of women from CRSV.
4.	The Phenomenon of Sexual Violence During Armed Conflicts in the Twenty-First Century: Entering the Era of Survivors as Agents of Peace (2021) by Shayna Kushner	This research established different case studies of sexual violence occurrence during armed conflicts, but rather focusing on the survivor aspects in long-term discussion.	The research will focus more into the legal and institutional standard rather than the social impact towards the survivor. The central of the analysis will be the legal framework itself and the enforcement progress from mid-2000s to the present.
5.	Conflict Related Sexual Violence: Reasons, Applicable Legal Provisions and Humanitarian Response (2021)	This research discussed on how sexual violence in war is often used as a method in warfare as well as providing the legal provisions and available response by the international	The current research centralized on the mid-2000s development, focusing on the legal responses by the United Nations and International Criminal Court (ICC) by comparing several

	by Réka Varga	community. history in multiple settings. However, it does not focus on women as primary targets.	resolutions and decisions made across time.
6.	Illegality of Sexual Violence against Women during Armed Conflicts (2023) by Miebaka Nabiebu	This research emphasizes on the illegality of sexual violence usage in armed conflicts under international legal frameworks. It shows different case studies in relation to CRSV that have been prosecuted and not focusing on the IHL aspects.	The present research will dive deeper not only into the accountability aspect, but delve into IHL perspective and fundamental basis in relation to CRSV acknowledgment as a heinous act rather than a mere by-product of war.
7.	"War has entered the blood" Conflict Related Sexual Violence – Why Men Rape in	The research studies the underlying causes of CRSV by examining the motivations of the rapist from political,	The analysis made in the present research will be focused on the legal context, and the available institutional and legal

	Wartime (2024) by Rachel Brannick	social and psychological factors involved in armed conflict.	framework adopted by the international community through time.
8.	The Gendered Costs of Stigma: How Experiences of Conflict-Related Sexual Violence Affect Civic Engagement for Women and Men (2024) by Carlo Koos and Richard Traunmüller	This research studied the survival perspective correlated to community life for both women and men, in the context of Conflict-Related Sexual Violence while also comparing the implication arising to other forms of exposure to violence.	The present research will only focus on the infliction of CRSV towards women. Thereby, the discussion in regards to the victim's experience will be limited in connection to the statutory consideration as relevant in the Geneva Conventions and CEDAW.
9.	The Whispered Crime of Sexual Violence in the European and Pacific Theater of World War II	This thesis addressed sexual violence and its usage as a tactic of war, it focuses on historical background in the occurrence of World	The historical background which to be analyzed in the present research is different, as it aims to analyze the development of CRSV since the mid-2000s to the

	(2024) by Channing N. Morrison	War II, without specifically highlight the struggle of women.	present, highlighting the unnecessary suffering of women.
10.	Beyond the Weapon of War: Rethinking Gendered Narratives of Conflict-Related Sexual Violence (2025) by Sydney Leigh Smith	This research focused on the recognition of rape in the context of Conflict-Related Sexual Violence by analysing the International Criminal Tribunal for Rwanda (ICTR)'s redacted witness testimonies.	The discussion of the present research will also attach the historical analysis from the ICTR. Thus, with the research focusing on mid-2000s, analysis towards both UN resolutions and, alongside ICC decision, will be made in comparison to the prior recognition to figure the development.

According to the findings from previous research presented above, the current study differs from existing studies in several ways. The differentiation lies in the temporal context in historical development, the type of obstacle analysed, and the perspectives and variables prioritized in prior research. As elucidated in the table above, this study focuses on the establishment of legal standards by the United Nations and the International Criminal Court since the mid-2000s and examines how these standards have influenced the recognition of Conflict-Related Sexual Violence (CRSV) as an intentional

and autonomous international crime. Additionally, this research also investigates the legal and institutional obstacles that have hindered the enforcement of laws addressing CRSV, contributing to the continued impunity of perpetrators. With a particular focus on women, the study further explores International Humanitarian Law as the body of law regulating armed conflict, emphasizing its provisions concerning the protection of women in conflict situations.

E. Literature Review

1. Gender and International Humanitarian Law

International Humanitarian Law (IHL), as regulated by the Geneva Conventions and their Additional Protocols, provided an international legal framework as a safeguarding mechanism for civilians or those who no longer take part in hostilities, including women, from unnecessary suffering in conflict. Even war has rules, the application of IHL is supposed to limit the parties of conflict from endangering the protected persons or objects. Several international jurisprudences have decided upon the usage of gender-based violence as a means of warfare, thus, there are still gaps to be tackled especially related to the implementation. Considering that the designated law to protect women and girls is still limited, achieving compliance from the parties of conflict are rather difficult.

In IHL, other than granted general protection as civilian, women shall be especially protected against any attack on their honour, in particular

against rape, enforced prostitution, or any form of indecent assault.[20] This shows how women's rights should be respected and protected at all times, and the existence of hostilities on field cannot be the justification reason to violates that rights. As much as human rights shall be upheld, specific women's rights as granted by bodies of law are expected to provide adequate safeguarding mechanism.

While gender dynamics often become an invisible battlefield, the intersection of gender and armed conflict, particularly in situations of occupation was heavily debated. In regards of whether International Humanitarian Law (IHL) or International Human Rights Law (IHRL) offers the more appropriate framework in responding to gendered harm.[21] This perspective overlooks the reality, whereas in the weaponization of sexual violence, gender must not be seen merely as either human rights or humanitarian concern. Instead, each must be examined in complementarity to strengthen and enhance the protective role in addressing gendered harm during and post-conflict.[22]

Sexual violence is rather a triggering issue to be discussed, and that is how it becomes underreported despite of its occurrence have been part of the history of wartime.[23] Addressing Conflict-Related Sexual Violence

[20] Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (1949), art. 27(2), https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949.

[21] Vanessa Murphy, *Gendered Impacts of Armed Conflict and Implications for the Application of International Humanitarian Law* (International Committee of the Red Cross (ICRC), 2022), 29, https://shop.icrc.org/gendered-impact-of-armed-conflict-and-ihl-pdf-en.html.

[22] Ibid., 34.

[23] International Committee of the Red Cross (ICRC), "Commentary of Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War," 2025, para. 3152, https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949.

(CRSV) in pursuant for justice has been the concern of international community across time, especially with the escalating occurrence in different conflict settings continuously.[24] Indeed, it is undeniable that nowadays men are also victim of CRSV. However, referring to the gravity of its impact, CRSV remains disproportionately higher on women and girls while men and boys are also targeted.[25]

In the Situation of Darfur, the government were relentless in subjecting their campaign against women, whereas men and boys were killed, meanwhile the women and girls will be kept as the 'spoils of war'.[26] For instance, the Masalit women, a non-Arab ethnic group residing in the area were also targeted of rape and other forms of sexual violence by the weapon bearer.[27] Subsequently, these means are used to destroy the Darfur communities[28] by employing specific religious and ethnic dimensions, carried out in an extremely cruel method.[29]

The level of compliance by parties in conflict in itself can be seen to have become an issue, considering the escalation of CRSV occurrence in

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[24] Shayna Kushner, "The Phenomenon of Sexual Violence During Armed Conflicts in the Twenty-First Century: Entering the Era of Survivors as Agents of Peace," *International Relations Honors Papers*, 2021, 27, https://digitalcommons.ursinus.edu/int_hon/9.

[25] North Atlantic Treaty Organization (NATO), *NATO Policy on Preventing and Responding to Conflict-Related Sexual Violence* (2021), para. 6, https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2021/05/31/nato-policy-on-preventing-and-responding-to-conflict-related-sexual-violence.

[26] Kushner, "The Phenomenon of Sexual Violence During Armed Conflicts in the Twenty-First Century: Entering the Era of Survivors as Agents of Peace," 37.

[27] Kissam, *Conflict-Related Sexual Violence: Report of the United Nations Secretary-General*, para. 59.

[28] Kushner, "The Phenomenon of Sexual Violence During Armed Conflicts in the Twenty-First Century: Entering the Era of Survivors as Agents of Peace," 41.

[29] Innocent A. Daudu and Lukong S. Shulika, "Armed Conflicts in Africa: Examining Sexual Violence as an Instrument of War," *Journal of African Union Studies* 8, no. 1 (2019): 62–63. https://www.researchgate.net/publication/333251926_Armed_conflicts_in_Africa_examining_sexual_violence_as_an_instrument_of_war

different conflict settings as reported by the UNSG. Thereby, impunity for conflict-related sexual violence continued to prevail despite stronger legal framework put in place.[30] In some cases, it was caused by the lacking of formal accountability process, while some others was caused by lack of political will by the national level.[31] Calls for stronger accountability mechanism is necessary, to ensure that not only for impunity to cease but aiming for the prevention of CRSV occurrence.

2. CEDAW and the Jurisprudential Milestones in Women's Protection

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that was adopted in 1979 was firstly brought to discussion given the fact that women's rights have been sidelined in many aspects. As the title mentioned, this convention aims to eliminate targeted discrimination against women, establishing equality between women and men with identical legal capacity and freedom.[32] It was due to consideration that women were subjected to discrimination in many aspects, thus it is necessary to establish a specific protection to tackle this matter.

In 2013, the UN Committee on CEDAW established a General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations. Therefore, the convention should be enforced

[30] Kissam, *Conflict-Related Sexual Violence: Report of the United Nations Secretary-General*, para. 16.

[31] Ibid.

[32] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), art. 15, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women.

concurrently with IHL when it is active, considering that IHL by itself has regulated the entitlement of women affected by armed conflicts for protection; be it general and/or specific e.g. against rape, forced prostitution.[33] Although armed conflict is detrimental to all civilians, hence it is irrefutable that women burden the primary target of sexual violence that persists even after cessation of hostilities.[34]

The enforcement of legal framework needs to be supported by co-existing formal judicial bodies as a neutral institution upholding justice in international instrument. Since World War II, *ad hoc* tribunals in Nuremberg and Tokyo have prosecuted war criminals, followed by other tribunals namely International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) established to address conflict in the concerned territory.[35] Eventually, international community has a permanent judicial institution established pursuant to Rome Statute, namely the International Criminal Court (ICC). The matters undertaken by this court are limited to the 4 (four) most heinous crimes only when the origin country is unable and/or unwilling to prosecute the conflict at hand.[36]

[33] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations* (2013), paras. 19–20, https://docs.un.org/en/CEDAW/C/GC/30.

[34] Ibid., paras. 35–36.

[35] Veronika Bílková and Federica Cristani, "Mechanisms of International Justice to Fight Impunity," *European Parliament Coordinator: External Policies Analysis and Support Unit*, 2025, 8, https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU(2025)775282.

[36] Ibid.

Back in the days, the conduct of sexual and gender-based crimes within armed conflict was considered inevitable. It was massive, and carried out by both sides in conflict which complicates accountability matters.[37] The first ground-breaking was made in the case of *Prosecutor v. Jean-Paul Akayesu*, that was heard before an *ad-hoc* trial. The International Criminal Tribunal for Rwanda (ICTR), was the first jurisprudence of recognizing sexual violence i.e. rape, as a form of genocide. It was with consideration that the act was carried out intentionally as part of an attack to destroy the civilian ethnic population.[38] In the present case, *Akayesu* was not held individually liable but rather as the executive in function, therefore without his facilitation the crime would not take place.

The UN have also established the first hybrid tribunal in agreement with the local government that accommodate both national and international war crimes during the conflict in Sierra Leone. The Special Court for Sierra Leone (SCSL) in the *Prosecutor v. Brima, Kamara and Kanu* case had prosecuted the conduct of sexual violence upon individual criminal responsibility as prescribed in the Statute of the Special Court for the Sierra Leone.[39] There were also discussion following the contention of the Prosecutor that forced marriage to be considered as a discrete crime

[37] Bushrat Jahan, "Sexual Violence in Armed Conflict: Prosecutorial Strategy of the International Criminal Court and Persistent Obstacles," *Bratislava Law Review* 9, no. 2 (2025): 231, https://doi.org/10.46282/blr.2025.9.2.1031.

[38] *Prosecutor v. Jean-Paul Akayesu (ICTR-96-4-T)*, ¶ 695.

[39] Statute of the Special Court for Sierra Leone (2002), art. 2(g), https://www.rscsl.org/Documents/scsl-statute.pdf.

against humanity under the category of 'other inhumane acts'. However, this statement was rejected by the court and such act was considered subsumed with sexual slavery, with a dissenting opinion from Judge Doherty.[40] Hereby, the perpetrator was alternatively convicted for outrages on personal dignity, with forced marriage being dismissed for redundancy.[41]

International Criminal Court (ICC) in several different cases have decided upon this matter as well, such as in the case of *Prosecutor v. Jean-Pierre Bemba Gombo* which affirms the development and reinforcement liability attribution in sexual violence. The development here refers to the conviction of liability towards higher superior[42] which is unlikely to be adjudicated in comparison with prior cases.

3. Islamic Perspective on Gender-Based Violence

Islam as a religion promotes the entitlement of individual to be respected and to uphold their dignity as a human being. Violence against women are contradictory to Islamic teachings, let alone violence in itself. The rights of women to be specific, have been discussed in both of the main source of Islamic teachings that is Al-Qur'an, as well as the construction of the law itself.

[40] Prosecutor v. Brima, Kamara and Kanu (SCSL-04-16-T) (Special Court for Sierra Leone (SCSL) 2007), ¶ 721, https://www.refworld.org/jurisprudence/caselaw/scsl/2007/91904.

[41] Ibid., ¶ 722.

[42] Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08) (International Criminal Court: Pre-Trial Chamber II 2009), ¶¶ 444–446, https://www.icc-cpi.int/court-record/icc-01/05-01/08-424.

As human stepped their foot on earth, different phenomenon will occur. Islam upholds morality as integral to the life of human beings, Islamic Criminal Law (*Jinayah*) existed as a safeguarding mechanism of morality. The objective of *maqashid al-shari'a* aims to protect several elements of human life, namely religion (*hifz ad-diin*), soul (*hifz an-nafs*), intellectual (*hifz al*-aql), lineage (*hifz an-nasl*), and property (*hifz al-maal*).[43] Hereby, gender violence in itself is detrimental to the life of human being from many different aspects possible. Furthermore, although there was not an explicit provision in the main source of Islamic teachings in relation to sexual violence, the existing framework that is foundational to Islamic norms highlighted the commitment of Islam in protecting moral and dignity of human beings amidst the phenomenon occurring in reality.[44]

F. Research Methods

1. Types of Research

This research is a normative legal research or library studies, which conducted by gathering information through the existing positive law and jurisprudences, alongside other prior relevant research published to the author's current research. In this type, the research seeks to explore responses of legal framework within this matter, alongside the enhancement and development since the mid-2000s in regards to the development of CRSV acknowledgement by international community. The

[43] Mhd Soleh Hasibuan et al., "Pendekatan Fiqih Jinayah terhadap Isu Kejahatan Seksual: Analisis Normatif dan Sosiologis," *Jurnal Sains Student Research* 3, no. 5 (2025): 9. https://ejurnal.kampusakademik.co.id/index.php/jssr/article/view/5457

[44] Ibid., 10.

reference will be made towards secondary data, including primary, secondary and tertiary legal materials correlated with the prevailing research.

2. Research Approach

a. Historical Approach

In this approach, the research examines through the background of development and arising regulations concerning the matters.[45] This approach is used to explore the development of legal standards and the historical occurrence underlying such framework. The purpose is to understand deeper the acknowledgment of CRSV from time to time, concurrently with the differences between current and past conditions of the international community. Hereby, tracing the evolution of legal enforcement through past practices including early international tribunals before the establishment of International Criminal Court (ICC).

Law developed through the social phenomenon occurring in the society, it appears as a response to the needs in building a solid foundation to overcome certain situation.[46] In this research, the specific idea of CRSV will focus upon the decision of International Criminal Tribunal for Rwanda (ICTR) as the ground of CRSV recognition in international legal frameworks. This focus aims to enhance the

[45] Muhaimin, *Metode Penelitian Hukum* (Mataram University Press, 2020), 57.

[46] Wang Xirui, "On Historical Analysis Methods in Legal Research," *Education and Teaching Research*, no. 2 (2023): 42–43.

historical background on the established jurisprudence with gender perspective involved. Moreover, this approach aims to gather identical facts and characteristics across time in which influenced the development of law.[47]

b. Statutory Approach

Statutory approach in normative research is commonly used to determine the correlation between one statute to another in its establishment purposes, stances, and scope of operation.[48] The harmony and consistency between provision, which could be comprehend through this approach.[49] Herein, the approach serves to scrutinize the applicable laws and regulations, specifically entrenched to endorse the position of CRSV as a heinous act. Focusing on the Geneva Conventions and customary IHL as the ground, followed by further reinforcement of gender-based perspective in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as relevant United Nations resolutions and reports in pursuant to the prohibition of CRSV. Thus, established under the objective of preventing and putting an end to the phenomenon of impunity.

c. Case Study Approach

With the research focusing on sexual violence against women in armed conflict, study of the case of *Prosecutor v. Jean-Pierre Bemba*

[47] Ibid., 45.
[48] Peter Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017), 136.
[49] Peter Mahmudz Marzuki, "The Essence of Legal Research Is to Resolve Legal Problems," *Yuridika* 37, no. 1 (2022): 55, https://doi.org/10.20473/ydk.v37i1.34597.

Gombo is significant to apprehend the progress in acknowledgment of recognition towards CRSV in international law within the context of armed conflict. The establishment of International Criminal Court (ICC) as a permanent judicial body mandated to adjudicate the most heinous crimes prescribed in the Rome Statute, was significantly influenced by earlier international tribunals, particularly the benchmark decision of *Akayesu* in the genocide of Rwandan.[50] The case approach will focus on legal qualification of sexual violence within ICC proceedings, particularly where women are the victims. In the present research, the focus will be made towards the case of *Bemba*, whereas the act of rape and outrage against personal dignity was raised as a war crime under command responsibility in Article 28(a) of the Rome Statute.

3. Research Object

The object of research here focuses on the legal standards and other normative frameworks developing since the mid-2000s onwards to address and acknowledge the presence of CRSV as a horrendous act carried out in conflict settings, including the 1949 Geneva Convention(s) application throughout years, the United Nation Reports in relation to the CRSV and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as the focus of research will be the damage caused

[50] Tanja Altunjan, "The International Criminal Court and Sexual Violence: Between Aspirations and Reality," *German Law Journal* 22, no. 5 (2021): 879, https://doi.org/10.1017/glj.2021.45.

towards women. Following this, different relevant jurisprudence from the past years will be analyzed to explore the basis to strengthen author's findings.

4. Data Sources

With normative approach of research, the sources will circle upon secondary data, which consists of:

a. Primary Legal Materials

1) The Fourth 1949 Geneva Conventions and the Additional Protocols;
2) Customary International Humanitarian Law (CIHL);
3) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
4) *Prosecutor v. Jean-Paul Akayesu in the International Criminal Tribunal for Rwanda (ICTR)*; and
5) *Prosecutor v. Jean-Pierre Bemba Gombo in the International Criminal Court (ICC)*.

b. Secondary Legal Materials

Secondary legal materials refer to legal publications that are not classified as official documents established to serve as further explanation of the primary legal materials. In this research, such materials shall include books, journal articles, official reports, and other legal studies correlated with the topic

c. Tertiary Legal Materials

Tertiary legal materials serve as complementary references to navigate deeper into both primary and secondary legal materials. These shall include foreign-language dictionaries and other reference that support in the identification, interpretation, or contextualization of an information.

5. Data Collection Method

Data of research will mainly come from authoritative repository and judicial records database e.g. ICRC, UN and ICC database, containing international legal frameworks; including treaties, customary law, and case law. For the secondary legal materials, will mainly be accessible through academic libraries, legal research databases and different kind of certified journals accessible.

6. Data Analysis

This research will enhance qualitative data analysis, revolve around compiling data related to the continuous occurrence of CRSV in different armed conflict situation, and seek for relevant legal documents to understand the protection coverage that should have been given towards women as a preventive measure. Therefore, conducting analysis to eventually come up with conclusion on the research, regarding the issues on implementation of legal frameworks that resulted in impunity of CRSV despite years of recognition by legal frameworks and jurisprudences.