https://www.crimejusticejournal.com/ *International Journal for Crime, Justice and Social Democracy*
Volume **14** (2) 2025 https://doi.org/10.5204/ijcjsd.3918

Justice for the Invisible, Unspeakable and Inevitable: An Abolition Feminism Analysis of Sexual Violence and the International Criminal Court

Natalie Hēni Maihi
The University of Queensland, Australia

Abstract

The unparalleled visibility of the atrocities at the close of the 20th century propelled sexual and gender-based violence (SGBV) to the forefront of humanitarian and scholarly rhetoric. This increased visibility paradoxically concealed the needs of victim-survivors within a faceless mass in need of saving and demonised those responsible through racialised narratives. The International Criminal Court (ICC) was instituted to address these failures, yet since its inception it has secured only two successful convictions for SGBV. Given the pervasivity of sexual violence during conflict, this raises questions of the compatibility of normative judicial mechanisms with justice in the aftermath of war. This paper uses the ICC as a thematic case study and examines court reports and transcripts from *The Prosecutor v Jean-Pierre Bemba Gombo* (2016–2018) and *The Prosecutor v Dominic Ongwen* (2021–2024), applying abolition feminism and transformative justice to disentangle and elucidate the violence innate to the ICC. It provides transformative justice as a meaningful alternative.

Keywords: Sexual and gender-based violence; abolition feminism.

Introduction

Sexual violence pervades narratives of war (Hynes, 2004; Mertus, 2004). Despite its prevalence, sexual and gender-based violence (SGBV) was long overlooked due to its categorisation as an inevitable by-product of conflict (Baaz & Stern, 2009; Buss, 2009; Fitzpatrick, 2016). As a result, SGBV was historically neglected in the literature, appearing only as brief mentions in war chronicles (Contamine, 1994; Elton, 1997) or as essentialist accounts rendering it an inescapable outcome of the hypermasculinity of war (Fukuyama, 1989; Kern, 1999; Mosher & Tompkins, 1988). The unprecedented visibility of the atrocities in Rwanda and the former Yugoslavia propelled SGBV to the forefront of humanitarian and scholarly rhetoric, but this was "dangerously easy" and paradoxically concealed the diverse needs of victim-survivors within a faceless mass (Enloe, 2000, p. 109; Schwöbel-Patel, 2018). Ensuing research established that victim-survivors were often retraumatised and dehumanised by their experiences at ad hoc tribunals, while those accused of atrocities were diminished to narratives of their inherent wickedness (Lopez, 2022; Mertus, 2004). The International Criminal Court (ICC) was created in 2002 to address these failures and end impunity, yet the court has secured only two successful convictions for SGBV. Given the prevalence of SGBV, this attrition raises questions of the compatibility of traditional judicial mechanisms with "justice" in the aftermath of war.

The role of "justice" at the ICC has been extensively researched, as the court was the first with international jurisdiction to be entrenched with restorative and victim-oriented functions (Shimoyachi, 2024). Embedded in Indigenous practices, these mechanisms shift the focus from prosecuting and punishing violations of law toward healing for those harmed, and emphasise

community, repair and reconciliation (Sardina & Ackerman, 2022). However, proponents and critics note the contradictions within a court which operates to be both punitive and restorative, with the retributive structure of ICC proceedings often conflicting with the participatory rights of victims (Cuppini, 2024; Garkawe, 2003). This tension aligns with broader critiques of restorative justice, which has been "co-opted and made into part of the carceral machinery", severed from its Indigenous roots and lost within the oppressive systems of western societies (Bell, 2021, p. 59). Transformative justice (TJ), pioneered by women of colour and LGBTQIA+ people, shifts restorative principles outside traditional legal and carceral spaces to allow collective and structural solutions (Davis et al., 2022; Kim, 2020). As an abolitionist framework, TJ recognises all forms of violence and oppression as deeply interconnected, and seeks healing, justice and accountability through transforming the conditions which allow harmful acts to occur (Dilts, 2017). Within the context of international justice, TJ confronts the "liberal peace" which sustains transitional justice and emphasises holistic responses rooted within the needs of those most affected (Gready & Robins, 2014). As the court has predominantly focused upon non-western and "underdeveloped" states, TJ would engage with the intersections of colonialism, and therefore patriarchy and racism, to understand how these violences are perpetuated and sustained.

Prior to 2018, the court exclusively investigated alleged situations within the African continent, with all arrest warrants and indictments issued to African men. The court has since broadened its gaze to West Asia, Southeast Asia, Eastern Europe and South America, suggesting a bias which disadvantages non-western and "underdeveloped" states. Given the ICC prosecutes only the "most serious crimes of concern to the international community", this focus implies the most dangerous criminals are native to the periphery and reinforces colonial logics which attach barbarity and wickedness to Black and Brown bodies (Lopez, 2022; Rome Statute, 1998, p. 1). These narratives survive through coloniality - the enduring patterns of power to emerge through the colonial project - which violently separate the "irrational and rational, primitive and civilised, traditional and modern" (Mendoza, 2017; Quijano, 2000, p. 3). Critical scholarship has exposed the eurocentrism of international criminal law (ICL), as a modern translation of coloniality (Dancy et al., 2020). However, proponents reinforce that all cases before the court must be either voluntarily referred by the governments of countries where crimes have occurred or by the United Nations Security Council (Keppler, 2012). Such a defence reinforces the fragility of "justice" within an anarchical system of sovereign states and overlooks the colonial roots of the scarcity and political instability underlying many situations adjudicated by the court. This eclipses the links between colonialism, underdevelopment and scarcity which intensify gendered hierarchies and SGBV. Consideration of the root causes of atrocities does not fall within the mandate of the ICC, which shrouds the enduring colonial logics behind the implicit portrayal of these acts as beyond reason, mimicking narratives of the "Global South" as "dark corners evolving into uncivilised events" (Crane, 2005, p. 4).

To explore these tensions, this paper thematically analyses two cases heard before the court: *The Prosecutor v Jean-Pierre Bemba Gombo* (2016–2018)—the first individual to be convicted, though later acquitted, of SGBV - and *The Prosecutor v Dominic Ongwen* (2021–2024), a former child soldier and the most recent conviction for SGBV. The first section engages with abolition feminism (AF) and TJ frameworks, which view interpersonal forms of violence as rooted in, and inseparable from, structural violence, and emphasise resolution to harm through visionary thinking. It then outlines the methodology: thematic analysis of official ICC court reports and transcripts from the cases against Bemba Gombo and Ongwen. It then presents the findings and discusses two themes revealed through the analysis: *legalised lawlessness* and *othering and ostracisation*. It concludes through building upon Gready and Robins (2014) to reinforce the precarity in reducing SGBV to a static ahistorical experience to be pathologised and punished, rather than an enduring and pervasive phenomenon deserving of transformative solutions.

Abolition Feminism and Transformative Justice

AF and TJ emerged through social justice advocacy, born from grassroots resistance to carceral violence (Carlton & Russell, 2018; Davis et al., 2022). Collectively, these frameworks view criminal justice institutions as sites of violence which sustain a broader system of violent social control, and therefore consider interpersonal violence as entangled within structural violence (Gruber, 2023; Kim, 2020). Whilst deeply interconnected, these frameworks are distinct. AF is a model which identifies intersectional vulnerabilities to interpersonal, community and state violence, and demands intentional and insightful responses to systemic oppression. TJ is abolition in practice, and addresses the conditions which allow violence to occur through moving beyond state-imposed and institutionalised criminal punishment systems (Davis et al., 2022; Palacios, 2016). Applied together, AF and TJ address the needs of victim-survivors, perpetrators and their communities through positioning justice and healing as a continuous process (Barrie, 2020).

Innate to these frameworks is a critique of "carcerality": a continuum of punitive state-based and interpersonal violence embedded within interlocking systems of oppression and sustained through enduring violent logics (LeBaron & Roberts, 2010; Richie, 2012). This emanates from inherently violent carceral institutions, pervaded by countless forms of criminalisation and

intervention, which disproportionately impact marginalised groups, exacerbate cycles of violence and normalise sexual violence (Davis et al., 2022). The continuum is sustained through the static binary of victim/perpetrator, and violent logics that colonise, racialise and sexualise, to entrench carcerality within society (Barrie, 2020). Consequently, the practice of AF and TJ must not only expose the systemic oppressions within carceral institutions but also transform the collective thinking which naturalised retributive justice. This process is not reformist; rather, it emphasises the interconnectivity of justice, accountability and community to address the reality of harm with compassion. Given the spectrum AF and TJ confront, scholars embrace the uncertain terrain of this praxis, which "allows it to remain a contradictory, unfinished, and ambiguous political project that rejects final solutions and ideological purity" (Palacious, 2016, p. 95).

An AF and TJ praxis is therefore intersectional and critically disentangles power, systemic oppressions and carcerality to centre accountability and justice (Battle & Powell, 2024). It simultaneously gazes backward and forward to elucidate historic subjugations and erasures to inform the tools and strategies of the future. Moreover, it is purposefully nebulous and ambiguous, as "contradictions are generative necessary sites for collective analysis and labour" (Davis et al., 2022, p. 14). These foundational principles were synthesised with the work of Davis et al. (2022), Barrie (2020) and Currie (2013) to shape the analysis. This provided a praxis to extricate implicit and historic violence, look beyond narrow binaries, confront the underlying conditions of harm, situate individual acts of harm within the context of structural violence, and centre collectivism and community.

Methodology

This article thematically examined two cases heard before the ICC: *The Prosecutor v Jean-Pierre Bemba Gombo* (2016–2018) and *The Prosecutor v Dominic Ongwen* (2021–2024). Bemba Gombo, a national of the Democratic Republic of Congo (DRC), was the President and founder of the Mouvement de liberation du Congo (MLC) and Commander-in-Chief of its military branch, Armee de liberation du Congo (ALC). He was charged as a military commander with murder and rape, as both a war crime and a crime against humanity, for his role in atrocities allegedly committed in the Central African Republic (CAR) between 26 October 2002 and 15 March 2003. Bemba Gombo was initially convicted of all counts under the "command responsibility" doctrine, which designates military commanders as criminally responsible for the behaviour of their subordinates. However, Bemba Gombo was acquitted upon appeal as the charges of his conviction exceeded those outlined prior to trial.

Contrarily, Ongwen, a Ugandan national, was the commander of the Sinia Brigade of the Lord's Resistance Army (LRA) and was charged with over 70 counts of war crimes and crimes against humanity for atrocities allegedly committed in Northern Uganda between 1 July 2002 and 31 December 2005. Ongwen was the first direct perpetrator of sexual violence to be convicted by the court. However, this decision generated criticism as Ongwen was abducted by the LRA as a child and moulded into a soldier, signifying that he was also the first victim to be criminally charged and convicted by the ICC.

The data for this study comprised official ICC reports and transcripts gathered from the court website. For *The Prosecutor v Jean-Pierre Bemba Gombo* (2016–2018), this included the judgment report (ICC-01/05-01/08-3343), sentence report (ICC-01/05-01/08-3399), appeal judgment report (ICC-01/05-01/08-3636) and transcripts of victim and witness testimony. For *The Prosecutor v Dominic Ongwen* (2021–2024), this included the judgement report (ICC-02/04-01/15-1762), the appeal judgment report (ICC-02/04-01/15-2022), sentencing report (ICC-02/04-01/15-1819), reparations report (ICC-02/04-01/15-2074) and transcripts of victim and witness testimony. These documents were publicly available and contained some redactions, with certain testimony provided by victim-survivors censored to protect their identity. Despite the volume of data, expanding to include additional cases of SGBV could have enhanced the depth and nuance of the analysis. Relevant cases include: *The Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (2024), who was acquitted of sexual violence charges, and *The Prosecutor v Bosco Ntaganda* (2021), the first individual to be successfully convicted of sexual violence charges.

The selected documents were thematically analysed in reference to Braun and Clarke (2006), Boyatzis (1998) and Charmaz (1990). The data were hand-coded and analysed both inductively and deductively, with the latter informed by the AF and TJ praxis. This approach necessitated iterative reviews of the data, to allow systematic and consistent interpretation to form a cohesive narrative. While thematic analysis typically conceptualises patterns within data in terms of prevalence, an absence or a limited quantity of a particular behaviour or theme was considered equally significant. The cases were initially separated, with Bemba Gombo analysed in its entirety first, followed by Ongwen, with the analysis becoming more connected with familiarity. The early readings of the data were inductive, to critically understand the story of each case and reveal initial themes, and the deductive reads built upon this analysis to reveal implicit violences. In the Bemba Gombo case, the initial themes included *the "ideal victim"*, *reductive language*, *fragility and impenetrability* and *litigious nonsense*, while the deductive themes were *masculinisation of conflict*, *adversarial violence*, *obsolescence*, *militarised language* and *the law as*

patriarchy. In the Ongwen case, the initial themes included *legitimate access to power, gendered language, blurring of consent* and *duress*, while the deductive themes were *eurocentrism, culpability, cycles of violence* and *segregation as exceptional*. These initial themes and their supporting excerpts were coded further to connect similarities throughout the data, which established two themes: *legalised lawlessness* and *othering and ostracisation.*

Analysis and Discussion

The analysis revealed that both the ICC and ICL function as mechanisms that sustain a persistent cycle of carceral and colonial violence, operating through selective jurisdiction, historical amnesia and the legitimisation of punitive justice under international law. As Rosenblum (2002) notes, crimes of hate are rooted in history, often a bloody past obscured by selective narratives of progress and civilisation. Postcolonial studies have drawn clear links between the enduring prevalence of modern conflict in Africa and the exploitative violence of colonialism (Comaroff & Comaroff, 2007; Ndlovu-Gatsheni, 2013; Zeleza 2010). The ICC's mandate structurally omits colonial histories from its prosecutorial scope and reinforces cyclical violences through labelling contemporary conflicts as isolated legal issues, rather than legacies of imperial domination. This permeated the data and shaped each of the identified themes, which exposed the ICC as a modern iteration of a colonial legacy that is sustained through covert violences disguised as progress. Understanding this duplicity requires interrogating the historical foundations of modernity itself, which is inextricably tied to Africa's colonial past. As French (2021) argues, without the European colonial projects of the "New World", modernity itself is unimaginable. The thematic analysis established two dominant themes—*legalised lawlessness* and *othering and ostracisation*—both of which exemplify colonial violence through juridical exceptionalism and the continued marginalisation of African states within international legal discourse.

Legalised Lawlessness

International justice is marked by a juxtaposition which severs the amorphous war stories of anguish and harm from the sterile language of the law and the rigidity of its jurisdiction and evidentiary standards. This dichotomy is intertwined within the colonial, and subsequently patriarchal, normative understandings of conflict and the laws enacted to regulate it, reflecting the symbiotic relationship between gender oppression and militarism (Enloe, 2004; Gardam, 1993; Ray, 1996). Within the data, this tension exposed a paradoxical sense of *legalised lawlessness*, observable through the weaponisation of the law and the harms of legally permissible language. This "lawfare" situates the ICC within a historic cycle of violence, which militarises legal language to further stigmatise and demonise atrocities.

A longitudinal examination of civilians, conflict and sexual violence reveals parallels across time and space, challenging the traditional classification of SGBV as an isolated and inescapable phenomenon (Schwartz & Takseva, 2020; Seifert, 1994). The erasure of the traumatic experiences of women during conflict reflects the historic patriarchal ownership of their chastity, with their bodies reduced to an extension of the territories to be conquered (Balberg & Muehlberger, 2018; Clark, 1987). These acts of dehumanising plunder were subsequently lost within an arena of masculine possession and bloodlust, rendered invisible by their inevitability. Adjacent to this exclusion is the ICC's categorisation of rape as an "invasion" of the body (ICC-01/05-01/08-3343, p. 53). Whilst the Elements of Crimes (2011) suggests this label was selected for its gender neutrality, to categorise SGBV as an "invasion" is to define these acts within the parameters of the very institution which normalised and concealed it: war. It equally continues the historic dehumanisation of victim-survivors as plunder, preserving archaic narratives of "rape, loot, pillage" committed by bestial soldiers fuelled by insatiable sexual desires (Meger, 2016, p. 1). These reductive views of SGBV are reified through the sterility of legally permissible language.

Contrary to the categorisation of SGBV as an "invasion" of the body, the Elements of Crimes suggests a lack of consent need not be proven as the environment and conditions of conflict are intrinsically coercive (*Rome Statute Article* 7(1)(g), *Rome Statute Article* 8(2)(e)(vi)). Despite this rule, the court relied upon legally permissible language when discussing acts of sexual violence, including "penetration of her vagina with his penis" (ICC-01/05-01/08-3343, p. 230), "forced to have sex" (ICC-02/04-01/15-1762, p. 69), "sexual intercourse" (ICC-02/04-01/15-176, p. 69), "forcible sexual encounter" (ICC-02/04-01/15-1762, p. 750), "sexual experiences" (ICC-02/04-01/15-1762, p. 759) and "sexual relations" (ICC-02/04-01/15-1762, p 810). The sterility of legal language conflicts with traumatic experiences, as it tends to "engender oppressive and deleterious effects", further perpetuating injustice (Henry et al., 2015, p. 5). However, sexualisation is intrinsic to violent colonial logics, as "while Black male sexuality is demonised as bestial and predatory Black female sexuality is structured as its counterpart, namely as always already raped and therefore unrapeable both in law and in social understanding" (Coetzee & du Toit, 2018, p. 220-221). This mutation of harm raises a crucial question: Can the law ever prevent rape, or can it only fortify racial, gender and sexual difference and rape culture? Lawfare is further evidenced by the perpetual blurring of responsibility for child soldiers: children under the age of 15 who are recruited and used by an armed force (*UN Rome Statute,* Article 8[b-xxvi]).

ICL is predicated upon binaries: "innocent" and "guilty", "good" and "evil" and "victim" and "perpetrator". This rigidity is challenged by the phenomenon of the child soldier, a complex victim-survivor framed as each of these binaries, often simultaneously, yet confined within narratives of criminality (Kan, 2018). Within the data, the ICC oscillated between referring to child soldiers as "abductees", "fighters", "recruits" and "attackers", without dictating when an abducted child becomes criminally responsible. This inconsistency reflects portrayals of child soldiers as either "passive victims" or "dangerous demons", which decontextualise, essentialise and exoticise children, often through racialised narratives (Steinl, 2017, p. 9). These binary logics exacerbate the harm faced by children in war-affected territories, whilst exonerating the court of its failure to protect these children. Lawfare is equally discernible through the rigidity of arbitrary temporal and spatial parameters.

The ICC conceptualises the flux of war and peace as disjunctive, requiring harmful acts to occur within arbitrary temporal and spatial parameters to be labelled as international violations. This narrow view has significant implications. It overlooks the ongoing and protracted nature of many conflicts (Azar, 1990) and it separates war from peace through the lens of the men who wage it, ignoring the oppression of women and the heightened subjugation of civilians in "post"-conflict societies (Hynes, 2004). Further, it prioritises legal formalities in place of traumatic experiences. This is exemplified by the following excerpt from the Bemba Gombo appeal:

> Mr Bemba argues that the allegation of rape by MLC soldiers in the CAR between on or about 26 October 2002 and 15 March 2003 would not be sufficiently specific and that "[w]ithout the inclusion of any other factual details, it would be a rape charge with [a] 141-day time frame covering a geographic area of approximately 623,000 square [kilometers]". (ICC-01/05-01/08-3636, p. 30)

In this instance, the Defence exploited these parameters through highlighting their obscenity. This position was reinforced in the Ongwen case, as the Trial Chamber dismissed a woman who was held captive by the LRA as she "was not held captive in Sinia, [so] her personal experience does not directly fall within the charges" (ICC-02/04-01/15-1762, p. 158). Through a patriarchal lens, the court overlooks the continuum of violence experienced by civilians in conflict zones. The onus upon specificity reflects the *legalised lawlessness* of ICL; its evidentiary standards demand precise details of events that occur in disorder, which hinders investigations and evidence gathering efforts (Cockburn, 2004). The court has faced criticism for its neglect of SGBV when investigating atrocities, often failing to consider the gendered experiences of these acts and the stigmatisation attached to both victim-survivors and perpetrators (Luping, 2009; SáCouto & Cleary, 2009). The court's emphasis on strict legal frameworks and narrow jurisdiction highlights the incompatibility between normative judicial mechanisms and the complex realities of wartime. This disconnection perpetuates violence against victim-survivors while simultaneously demonising and racialising those held responsible.

Othering and Ostracisation

ICL has oppressive and harmful effects, and its application by the court others and ostracises victim-survivors and those accused of atrocities. This process transforms the ICC into a producer and reproducer of harm, violence and trauma, which reinforces systemic harms such as patriarchy, sexism, racism and misogyny. This *othering and ostracisation* is facilitated through the harms of adversarial mechanisms, which segregate experiences of violence as exceptional, exposing the logics of coloniality which sexualise and demonise Black and Brown bodies (Lugano, 2017; Odinkalu, 2015). This theme suggests coloniality is sustained through ICL, as "law and order" is wielded to pacify and control, and binds notions of government to those of domination.

The Rome Statute (1998) and the Rules of Procedure and Evidence (2013) embed victim participation within ICC proceedings, making the court the first with international jurisdiction to integrate victim-oriented functions within its mandate (Shimoyachi, 2014). Whilst some scholars marked this shift as a restorative turn toward victim-centric justice, others remained cynical, suggesting restorative practices distract the court from punishing those responsible (Kendall, 2015; Moffett, 2015). This disparity reflects the "punitive and restorative function" of the court and, despite the implied reciprocity between these functions, the analysis suggests victim-centric practices are secondary to retributive procedures (International Criminal Court [ICC], 2013, p. 6). This hierarchy is embedded within criminal proceedings as victims are categorised by evidentiary value, with their stories extracted to produce probative legal narratives (Mertus, 2004; SáCouto & Cleary, 2009). The harm of this duality is evidenced by the court's distinction between "witnesses", who provide legally binding testimony, and "victims", who present their "views and concerns". Victim-survivors must be "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the court" to provide evidence (Rules of Procedure and Evidence, 2013, p. 31). The concept of "harm" remains contentious, reinforcing the hierarchisation of the "ideal victim" within international justice.

The testimony of victim-survivors of SGBV is integral to international criminal trials, yet victim-survivors must navigate feminised, infantilised and racialised stereotypes to achieve the complete and legitimate status of being a victim (Kendall & Nouwen, 2013; Schwöbel-Patel, 2018). This "ideal victim" archetype, a concept popularised by Christie (1986), imposes value hierarchies on victimhood and positions some individuals as more deserving of the status than others. In international justice, the "ideal victim" is portrayed as weak, vulnerable and dependent, with their experiences grotesquely spectacularised. Critics argue that this abstract representation has enabled "the creation of a deity-like and seemingly sovereign entity, "The Victim" which transcends all actual victims" and fails to reflect their specific realities (Kendall & Nouwen, 2013, p. 241; Schwöbel-Patel 2018). This cannot be separated from the probative value attached to such experiences, which hierarchises trauma based on legal permissibility and evidentiary standards and limits the "witnesses" deemed worthy of providing testimony. Within the Bemba Gombo case, 5,229 victims were "authorised to participate" in the case, yet only one victim-survivor of SGBV provided testimony before the chamber (ICC-01/05-01/08, p. 16). Similarly, in the Ongwen case, 4,095 victims "participated in proceedings", but only seven testified about their experiences of SGBV (ICC-02/04-01/15, p. 14). This disparity underscores the hierarchy of harm which simultaneously frames some violence as exceptional, while ostracising the "victims" who do not meet such criteria. It equally speaks to the incompatibility of normative judicial mechanisms designed to prosecute one individual for widespread and systematic violence, which is further exacerbated by the antagonism of the adversarial process (St. Germain & Dewey, 2013).

The ICC has instituted a range of mechanisms intended to protect victim-survivors who provide testimony at the court, yet these measures cannot compensate for the harms innate to adversarial mechanisms (Rules of Procedure and Evidence, 2013). The legal doctrine of "due process", intended to balance the rights of the accused with those of victim-survivors, has instead institutionalised the disempowerment of victim-survivors through legitimating the dispute of their experiences. Research suggests adversarial cross-examination and law-premised questions reduce victim testimony to probative value and reveal an innate tension between the recollection of traumatic experiences and the production of legal meaning (Viebach, 2017). While adversarial mechanisms silence and undermine, victim-survivors seek participation, voice and validation, and this contestion occurred throughout both cases (Powell, 2015). To assert the innocence of their clients, both defence teams attacked the credibility of victim-survivors and their testimony. In the Ongwen case, the Defence stated the testimony of a victim-survivor was "riddled with contradictions" (ICC-02/04-01/15-1762, p. 107), while in the Bemba Gombo case, it was labelled as "incapable of belief" (ICC-01/05-01/08-3343, pp. 228-234).

The denigration within the Bemba Gombo case is compounded as only one victim-survivor of SGBV testified before the court: a woman who gave evidence of two incidents of sexual assault by 14 individuals. Her testimony was elicited through questions including "Where were you raped? Was it on a bed? Was it on the ground? Where was it?", "You said that the others looked on as you were being raped. How many of them would you say were looking on as you were being raped? What was their reaction?" and "Did they take turns in raping you, or did it happen that two soldiers would rape you at the same time?" The violence of these questions is diametric to the profound pain expressed in her testimony, which concluded with "they abused me. They took turns freely, as they wished". The disentangling of this violence reveals a colonial narrative which frames the "third world woman" as "thoroughly disempowered, brutalised and victimised" and depicts the "native" man as perverse with an unruly sexuality (Kapur, 2000, p. 15; Oyěwùmí, 1997). These adversarial mechanisms not only expose the inseparability of racial and sexual inferiorisation within the colonial project but they equally demonstrate how the dissection of traumatic experiences sensationalises and eroticises sexual violence. The combination of these factors produces patriarchal dominance comparable to that which underpins SGBV (Coetzee & du Toit, 2018; Lugones, 2007). These enduring logics of coloniality are evidenced through the eurocentrism of the court, which prioritises white voices while segregating the violence of the "war criminal" as exceptional.

The ICC is entangled within matrices of power shaped by coloniality and eurocentrism, with the analysis suggesting this relationship is mutually constitutive. At the core of this cycle is the court's mandate which overlooks the origins of violence, simultaneously relegating atrocities as inexplicable whilst maintaining the colonial distortion of the "native" as predatory "animals, uncontrollably sexual and wild" (Lugones, 2010, p. 743). Within the data, these logics created a caricature of the "war criminal": a senselessly evil creature, devoid of humanity, who is violent beyond reason. This process categorised the accused as intrinsically culpable, detaching them from their environment, their experiences and themselves.

In the Ongwen case, the ICC weaponised colonial and carceral logics and reduced the accused to a caricature of the "war criminal". The court provides countless references to the "coercive environment" of the LRA, but failed to consider the impact these conditions, nor his abduction as a child, may have had upon Ongwen's behaviour. Instead, he was found liable as he "committed the relevant crimes when he was an adult", reinforcing binary and carceral logics and individualising criminal behaviour as removed from its environment (ICC-02/04-01/15, p. 17). This narrative was further compounded by testimony describing Ongwen as a "very simple person, who was down to earth" (ICC-02/04-01/15, p. 887) and "highly loved by his

people and he was also a very loving person … very relaxed and easy to work with" (ICC-02/04-01/15, p. 886). Rather than engaging with these characterisations, the court addressed them solely to dismiss claims of diminished responsibility, implying that one cannot be simultaneously likeable and "criminal". The caricaturing of the "war criminal" was deepened by the refusal to acknowledge the precipitating factors which underpinned Ongwen's behaviour.

The Defence argued Ongwen's innocence due to diminished responsibility, citing his abduction by, and prolonged entrenchment within, the LRA. Ugandan experts, Professor Emilio Ovuga and Dr. Dickens Akena, diagnosed Ongwen with post-traumatic stress disorder (PTSD), severe depression and dissociative disorders after working closely with him to assess his mental state. However, their findings were dismissed as "it is not the role of a forensic expert to sustain a relationship of trust and confidence with the person to be examined for the court" (ICC-02/04-01/15, p. 893). In contrast, the court relied on psychiatrists who never met Ongwen and based their diagnoses on video assessments. This approach was particularly problematic given the limited understanding shown of the diverse impacts of the coercive militia environment, as illustrated by one expert's statement:

> These symptoms are so severe and so intrusive that they stop the individual from being able to carry on with their normal day-to-day functioning. They cannot work. They cannot study. They cannot lead normal family lives. They don't interact with their friends. All their – all their functioning is significantly impaired. (ICC-02/04-01/15, p. 875)

The prosecution witness Professor Gillian Mezey's statement highlights the absurdity of assessing trauma through the lens of "normal day-to-day functioning." Her comments, including "people that suffer from PTSD tend to avoid trauma reminders", "the individual would become socially withdrawn" and "the majority of individuals exposed to trauma do not go on to develop PTSD", fail to address the complex realities of conflict (ICC-02/04-01/15, pp. 874–881). They disregard the pervasive threat of death for those deemed insubordinate within the LRA and overlook the psychological toll of abduction, torture and being forced to become a child soldier. This failure to recognise and legitimise these conditions exposes intersecting colonial and carceral logics at the core of the court's mandate, which were equally present in the Bemba Gombo case.

In the Bemba Gombo case, the court placed significant weight on whether the accused's actions were deemed "genuine", transforming this term into a marker of morality: "the measures taken were … not "genuine" … his primary intention was not to genuinely take all necessary and reasonable measures within his material ability to prevent or repress the commission of crimes" (ICC-01/05-01/08-3343, p. 47). At the core of these measures was the Mondonga Inquiry, which was instituted by Bemba Gombo to investigate war crimes allegedly committed by his subordinates. The court condemned the inquiry as it did not pursue reports of SGBV and resulted in a mere seven soldiers facing trial. Yet, these efforts bear paradoxical resemblance to international justice responses to SGBV and, at the time, were arguably more successful than the ICC. This juxtaposition reflects the binary colonial logics which perpetuate the historical demonisation of Black men as inherently evil while denying their capacity for duality and humanity. This othering is further evidenced through the prioritisation of European "African conflict" experts.

Eurocentrism and coloniality are sustained through the norms of criminal justice, which deify whiteness whilst positioning Blackness as the antithesis (Thusi, 2022). This tension permeated the data, particularly in the prioritisation of white European "experts" who testified as to the geopolitical conditions in Uganda and the use of westernised psychiatric tools. In the Ongwen case, expert testimony on the origins and operations of the LRA, the economic and security conditions of their camps, and the mental health impacts of SGBV and child conscription was provided by white male academics from institutions such as the London School of Economics, the University of Cambridge and Stanford University. Perspectives from Ugandan academics were conspicuously absent. This eurocentric courtroom culture, founded on the prioritisation of white credibility and authority, is reinforced by the systematic discrediting of Black witnesses and experts with lived experience and further glorified whiteness.

Gender and race were constitutive functions within the logic of colonialism and entrenched sexual violence within the symbolic and physical possession of land, bodies and minds of those viewed as inferior (Jordan, 2024; Morgensen, 2012). The literature intertwines sexual domination within the colonial project, which "sexualised Indigenous lands and people as violable" and allowed imperialists to both "civilise" and "save" the supposedly inferior groups (Anderson, 2000; Morgensen, 2012, p. 4; Smith, 2005). This iterative process is innate to international justice, which constructs those responsible as barbaric, savage and animalistic, resembling the stereotypes of inferiority and violence weaponised to support the colonial legal narratives which justified enslavement and empire (Coetzee & du Toit, 2018; Lopez, 2022). The research links the conflicts of modern Africa to the violence of colonialism, yet consideration of such a relationship falls outside the mandate of the court (Zeleza, 2008). Given colonial violence is concealed through hyperbole, the caricature of the "war criminal" may be an illusion to conceal the violent logics of coloniality which survive through the ICC.

Conclusion

In her gendered analysis of the continuum of violence, Cockburn (2004) identifies three key factors driving conflict: economic distress, militarisation and ideological divides. A broad examination of the Bemba Gombo and Ongwen cases supports this framework, but this research demonstrates that these factors are not isolated; they are part of a historic cycle of violence. This cycle underscores the precariousness of relying on normative and colonial institutions as solutions to harm. The prison represents the final stage of this cycle—an inherently violent institution that encapsulates the multifaceted violences of international justice. While Bemba Gombo was acquitted and released, Ongwen was sentenced to 25 years' imprisonment. Having been abducted at age 9 years, and arrested at 39, this amounts to 55 years of his life spent without self-determination or freedom. This was reiterated by Ongwen in his statement during his sentencing hearing, "since the LRA abducted me 27 years ago, I was already in jail … I am still in jail. Now, if you add all these years, almost 36 years I am still in jail" (ICC-02/04-01/15-T-261, p. 26). Carceral responses fail to address the root causes of atrocities, and instead obscure and perpetuate harm. Given the ongoing prevalence of SGBV, and atrocities more broadly, this study presents an opportunity to challenge structural oppression through abolitionist and TJ.

The principles of AF and TJ emphasise liberation, accountability and collective action, to create systems of repair to interrupt and transform harm (Barrie, 2020). Core to this is *community*, to shatter the logic of violence as isolated and instead address conflict through strengthening community ties (Barrie, 2020). However, this study suggests the ICC views such relationality through the parochial and exclusionary lens of the "international community", a colonial construct which can be confronted through localised and culture-specific dispute resolution mechanisms amongst those most impacted (Gready & Robins, 2014). To echo Lajul (2016), "true justice in the context of armed conflicts should help to heal the wounds created by wars; mend broken hearts, revive dampened spirits and restore social relations torn apart by conflicts" (p. 33).

While this research may paint a solemn picture of international justice, it is an image commensurate with hope and compassion. This praxis refuses to "let go of the visionary - that which does not yet exist — and the radicalness of the imaginary as a space for what is yet unthinkable, at the edge of the possible" (Davis et al., 2022, p. 27). This project elucidates the paradoxical and enduring logics of coloniality intrinsic to international justice, yet it does not provide definitive answers. Instead, it cultivates a haven within the ambiguity and embraces the hope and potential in imagination. It does, however, acknowledge our interdependence and shared vulnerabilities to envision a future of transformative responses to harm.

Correspondence: Natalie Hēni Maihi, The University of Queensland, Australia. n.fennell@uq.edu.au

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