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Unpacking the Harms of Reproductive Violence in Mass Atrocities: Developing a New Typology

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ABSTRACT[∞]

Despite widespread evidence of reproductive violence in mass atrocity contexts, transitional justice and international criminal law have been slow to recognize and prosecute these violations. This article argues that this accountability gap stems partly from pedagogical failures – while existing definitions conceptualize reproductive violence as violations of reproductive autonomy, they fail to unpack its differentiated harms. This article develops a new typology that categorizes reproductive violence according to reproductive consequences for victim-survivors. It performs a pedagogical function, making more visible the distinct suffering each category inflicts. By assisting pattern recognition across seemingly disparate acts, the typology helps investigators in framing such acts as interconnected instances of reproductive violence, identifying systematic reproductive control strategies and gathering targeted evidence. By strengthening understanding of the far-reaching physical, psychological and sociopolitical consequences for victim-survivors, this typology offers a tool to recognize reproductive violence as meeting the gravity threshold for accountability under the Rome Statute and beyond.

KEYWORDS: Gender-based crimes, reproductive violence, Rome statute, sexual violence, typology

INTRODUCTION

[T]o her this is not a child, it is a burden she is carrying in her stomach. Because she has been forced to do so... To her it is a parasite ...¹

Drakulić's novel about a victim-survivor of a rape camp in the former Yugoslavia evokes the deep psychological trauma inflicted through forced pregnancy. Her literary testimony captures what transitional justice has struggled to articulate: the distinctive harms when reproductive capacity itself becomes weaponized within mass atrocity contexts. Reproductive violence – defined here as 'violence that violates reproductive autonomy and/or is directed at people on account of their actual or potential reproductive capacity, or perceptions thereof'² – has occurred across

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¹ Slavenka Drakulić, *S: A Novel About the Balkans*, tr. Marko Ivic (New York: Penguin, 2001), 178.

² International Criminal Court, 'Policy Paper on Sexual and Gender-Based Crimes: Crimes Involving Sexual, Reproductive and Other Gender-Based Violence' (The Office of the Prosecutor, 2023), para. 35 at 14.

several contemporary atrocities.³ It has far-reaching physical, psychological and sociopolitical consequences for victim-survivors.⁴ Yet both transitional justice and international criminal law (ICL) have been slow to recognize, investigate and prosecute it as a distinct category of harm requiring specific attention.

Several studies have already traced in detail the limited attention given to reproductive violence in transitional justice and ICL and this article will not repeat those discussions.⁵ In transitional justice contexts, Vijayarasa observes that, despite growing emphasis on gender mainstreaming, insufficient emphasis ‘has been placed on such violations as forced pregnancy, sterilization and coerced or forced use of contraception and genital mutilation’⁶ and, generally, the subject of reproductive harms has remained ‘overwhelmingly absent from debates about postconflict justice, institutional reform and the challenges to achieve sustainable development.’⁷ And, similarly, in ICL, Altunjan has emphasized how reproductive violence has ‘rarely come to the attention of international prosecutors and judges . . . [and] remains in the shadows.’⁸ This article will, therefore, firstly seek to understand the lack of accountability for reproductive violence through theoretical frameworks that examine how legal structures have systematically obscured these violations. Drawing on feminist legal theory, the article examines how definitional ambiguities, evidentiary challenges and the conflation of reproductive with sexual violence have created structural barriers to prosecution. It is argued that part of the reason that reproductive violence has remained in the background is pedagogical – whilst there have been several academic studies, and some criminal trials, focusing on specific manifestations of reproductive violence (e.g., forced sterilization and forced pregnancy), the broader concept of reproductive violence remains poorly understood.⁹

³ For a recent example, see Organization for Justice and Accountability in the Horn of Africa and Physicians for Human Rights, “You Will Never Be Able to Give Birth”: Conflict-Related Sexual and Reproductive Violence in Ethiopia”, *PHR*, <https://phr.org/our-work/resources/you-will-never-be-able-to-give-birth-conflict-related-sexual-and-reproductive-violence-in-ethiopia/> (accessed 7 October 2025).

⁴ Milan Markovic, ‘Vessels of Reproduction: Forced Pregnancy and the ICC,’ *Michigan State Journal of International Law* 16(1) (2007): 439–458; Tanja Altunjan, *Reproductive Violence and International Criminal Law* (The Hague: TMC Asser Press, 2021), 77.

⁵ Altunjan, *supra* n 4; Rosemary Grey, ‘Reproductive Crimes in International Criminal Law,’ in *Gender and International Criminal Law*, ed. Indira Rosenthal, Valerie Oosterveld and Susana SáCouto (Oxford: Oxford University Press, 2022); Ciara Lavery and Dieneke de Vos, ‘Reproductive Violence as a Category of Analysis: Disentangling the Relationship between “the Sexual” and “the Reproductive” in Transitional Justice,’ *International Journal of Transitional Justice* 15(3) (2021): 616–635; Kimberly Mutcherson, ‘Symposium on Reproductive Violence in International Law: The Reproductive Justice Movement and International Criminal Law,’ *Opinio Juris*, 4 June 2024, <https://opiniojuris.org/2024/06/04/symposium-on-reproductive-violence-in-international-law-the-reproductive-justice-movement-and-international-criminal-law/> (accessed 7 October 2025); Ramona Vijayarasa, ‘Putting Reproductive Rights on the Transitional Justice Agenda: The Need to Redress Violations and Incorporate Reproductive Health Reforms in Post Conflict Development’ *New England Journal of International Law and Comparative Law* 15(1) (2009): 101–122; Aldo Zammit Borda, ‘Putting Reproductive Violence on the Agenda: A Case Study of the Yazidis’ *Journal of Genocide Research* 26(1) (2022): 94–114.

⁶ Vijayarasa, *supra* n 5 at 102.

⁷ *Ibid.*, 101.

⁸ Altunjan, *supra* n 4 at 1.

⁹ In the context of mass atrocities, forced sterilization was prosecuted in various post-World War II trials, most notably the RuSHA case: US Government Printing Office, ‘Trials of War Criminals before the Nuremberg Military Tribunals’ (1950). It has also been considered by several international human rights courts: see Carmen Draghici, *Procreative Rights in International Law: Insights from the European Court of Human Rights* (Cambridge: Cambridge University Press, 2024), 22; Paulina Macías Ortega, ‘Forced Sterilizations on Trial,’ *Verfassungsblog*, 2025, <https://verfassungsblog.de/forced-sterilizations-peru-iachr/> (accessed 7 October 2025). Forced pregnancy was first prosecuted internationally by the ICC in the Ongwen case: see *The Prosecutor v Dominic Ongwen*, Trial Judgment ICC-02/04-01/15 (2021), para. 2717 at 952; Rosemary Grey, ‘The ICC’s First “Forced Pregnancy” Case in Historical Perspective,’ *Journal of International Criminal Justice* 15(5) (2017): 905–930. However, before Ongwen, allegations of forced impregnation / forced pregnancy arose in the context of the conflict in Bosnia between 1992 and 1995, where it was alleged that the Serbs impregnated Croat and Muslim women as part of a systematic plan. While this conduct was not prosecuted by the International Criminal Tribunal for the former Yugoslavia, it generated significant scholarship and advocacy: see, among others, Siobhan Fisher, ‘Occupation of the Womb: Forced Impregnation as Genocide,’ *Duke Law Journal* 46(1) (1996): 91–133; Alyson Drake, ‘Aimed at Protecting Ethnic Groups or Women? A Look at Forced Pregnancy Under the Rome Statute,’ *William & Mary Journal of Race, Gender, and Social Justice* 18(3) (2012): 595–623; Kelly Dawn Askin, ‘Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles,’ *Berkeley Journal of International Law* 21(2) (2003): 288–349; Anne Tierney Goldstein, ‘Recognizing Forced Impregnation as a War Crime Under International Law’ (New York: The

This includes also the distinct and serious consequences of different categories of such violence.

For these reasons, this article proceeds to develop a new, intuitive typology for reproductive violence that focuses on the reproductive consequences for victim-survivors. The typology developed here is not a legal framework, in that it does not classify violence according to the criminal law's technical requirements of *mens rea* and *actus reus*. Rather, it is intended as a pedagogical tool that will help unpack the differentiated harms of reproductive violence into three categories. This will promote a more nuanced understanding of its consequences for victim-survivors. It is considered that this pedagogical step is a necessary, but not sufficient, condition to promote greater recognition, investigation and prosecution of reproductive violence in transitional justice and ICL. As argued below, when investigators and prosecutors understand reproductive impacts as the unifying thread, they can recognize how seemingly unrelated acts – forced contraception in one setting, forced abortion in another – are instances of coordinated strategies to control or destroy reproductive capacity. This pattern recognition may, therefore, promote greater visibility of policies targeting reproductive autonomy in mass atrocity contexts.

While this inquiry is undertaken primarily by reference to the Rome Statute of the International Criminal Court (ICC), the typology developed herein has wider implications for the field of transitional justice. This is because, as the cornerstone of international criminal accountability, strengthening recognition, investigation and prosecution of reproductive violence under the Rome Statute has the potential to influence approaches to such violence in other international and domestic accountability fora, through the effects of positive complementarity and norm transfer.¹⁰ This typology may also prove useful for other transitional justice mechanisms where reproductive violence is implicated, such as truth commissions¹¹ or reparations.

This article is organized in five parts. The second part examines why reproductive violence has remained marginalized in transitional justice and ICL, showing how definitional ambiguities and structural barriers have hampered prosecution. The third part develops a typology that categorizes reproductive violence by its consequences: birth-compelling, birth-preventing and birth-endangering harms. The fourth part unpacks the discrete harms of each category, emphasizing some of the serious physical, psychological and social consequences of reproductive violence for victim-survivors. The final part concludes that this typology may assist accountability efforts in three ways: it facilitates pattern recognition by showing how seemingly disparate acts may constitute related reproductive control strategies; it may assist evidence collection by directing investigators towards specific documentation for each type of harm; and it may help investigators and prosecutors better conceptualize the systematic targeting of reproductive capacity in mass atrocity contexts.

CONTEXTUALIZING THE MARGINALIZATION OF REPRODUCTIVE VIOLENCE

Over the last three decades, conflict-related sexual violence has come to be recognized as amongst the gravest crimes in transitional justice and ICL. This evolution has been extensively documented in the literature and will not be reiterated here.¹² However, in contrast, accountability mechanisms have traditionally overlooked reproductive violence, with only a few notable

Center for Reproductive Law & Policy, 1993); Catharine A. MacKinnon, 'Rape, Genocide, and Women's Human Rights,' *Harvard Women's Law Journal* 17(3) (1994): 5–16; Markovic, *supra* n 4.

¹⁰ See, for instance, Eithne Dowds, *Feminist Engagement with International Criminal Law: Norm Transfer, Complementarity, Rape and Consent* (Oxford: Hart Publishing, 2020), 3.

¹¹ Note, however, that the difficulties of relying on truth commissions as fora for discussing gender-based violence have been discussed extensively: see Vijeyarasa, *supra* n 5 at 112.

¹² For a bibliography, see Serge Brammertz and Michelle Jarvis, eds., *Prosecuting Conflict-Related Sexual Violence* (Oxford: Oxford University Press, 2016).

exceptions. The International Criminal Tribunal for the former Yugoslavia's (ICTY) failure to prosecute forced impregnations in the 1990s – notwithstanding extensive documentation of rape camps designed for reproductive control – exemplifies this accountability gap.¹³ That absence of prosecutions, however, catalysed significant scholarly and advocacy efforts,¹⁴ emerging alongside broader international recognition of gender-based violence through instruments such as the 1993 Vienna Declaration and the 1995 Beijing Declaration.¹⁵

Of particular note is the work of the Women's Caucus for Gender Justice, which convened in the context of the Rome Statute negotiations, and successfully advocated for the codification of, *inter alia*, 'forced pregnancy' as a distinct crime in the Rome Statute.¹⁶ This laid the foundations for greater recognition of reproductive violence within the Rome Statute framework and beyond. Subsequently, the ICC's *Ongwen* judgment marked a watershed moment by explicitly recognizing that forced pregnancy violates 'reproductive autonomy' – the first articulation of this concept in international criminal jurisprudence.¹⁷ This breakthrough was followed by other significant developments, including the ICC Office of the Prosecutor's revised 2023 Policy on Gender-Based Crimes, which now expressly acknowledges reproductive violence as a distinct category of harm,¹⁸ and the 2024 Policy on Slavery Crimes, which recognizes the reproductive dimensions of enslavement.¹⁹ Although these policies lack legally binding force, they signal evolving prosecutorial priorities and interpretive approaches towards reproductive violence.²⁰

Several other developments suggest growing recognition of reproductive violence at both the international and domestic levels, including the first conference on reproductive violence in international criminal justice in 2024,²¹ the adoption of a report by UN Women and Global Justice Center on documenting reproductive violence in situations of mass human rights violations²² and the subsequent call by the UN Under-Secretary General and UN Women Executive Director to 'treat reproductive violence as a distinct category of harm and hold perpetrators accountable,'²³ the growing use of the concept by fact-finding missions and other institutional bodies,²⁴ calls to include reproductive violence in the draft Crimes Against Humanity

¹³ Saeeda Verrall, 'The Picture of Sexual Violence in the Former Yugoslavia Conflicts as Reflected in ICTY Judgments,' in *Prosecuting Conflict-Related Sexual Violence at the ICTY*, ed. Baron Serge Brammertz and Michelle Jarvis (Oxford: Oxford University Press, 2016), 329; Goldstein, *supra* n 9.

¹⁴ See *supra* n 9.

¹⁵ Kristen Boon, 'Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent,' *Columbia Human Rights Law Review* 32(3) (2000): 625–675.

¹⁶ Markovic, *supra* n 4 at 440; Grey, *supra* n 9 at 920.

¹⁷ Grey, *supra* n 9 at 905.

¹⁸ International Criminal Court, *supra* n 2 at para. 35, p. 14.

¹⁹ Office of the Prosecutor of the International Criminal Court, 'Policy on Slavery Crimes' (2024), para. 3 (p. 4), <https://www.icc-cpi.int/sites/default/files/2024-12/policy-slavery-web-eng.pdf> (accessed 7 October 2025). While the ICC OTP's policies lack the binding force of the Rome Statute, they provide authoritative guidance for prosecutorial practice and signal institutional recognition of reproductive violence as requiring distinct attention. Similarly, UN documentation efforts and expert conferences contribute to evolving standards without creating binding obligations.

²⁰ For reflections on the importance of the previous gender-based crimes policy, see: Valerie Oosterveld, 'The ICC Policy Paper on Sexual and Gender-Based Crimes: A Crucial Step for International Criminal Law Crucial Step for International Criminal Law,' *William & Mary Journal of Race, Gender, and Social Justice* 24(3) (2018): 443–457, at 446.

²¹ Women's Initiatives for Gender Justice, 'Reproductive Violence in International Criminal Law Conference,' <https://4genderjustice.org/our-latest-posts/reproductive-violence-in-international-criminal-law-conference/> (accessed 7 October 2025).

²² UN Women and Global Justice Center, 'Documenting Reproductive Violence: Unveiling Opportunities, Challenges, and Legal Pathways for UN Investigative Mechanisms', 2024, <https://www.unwomen.org/en/digital-library/publications/2024/09/research-paper-documenting-reproductive-violence-unveiling-opportunities-challenges-and-legal-pathways-for-un-investigative-mechanisms> (accessed 7 October 2025).

²³ UN Women, 'Remarks by UN Under-Secretary General and UN Women Executive Director Sima Bahous at the UN Security Council High-Level Open Debate on the "Protection of Civilians in Armed Conflict",' *Question of Palestine*, 22 May 2025, <https://www.un.org/unispal/document/unwomen-remarks-security-council-22may25/> (accessed 7 October 2025).

²⁴ See, for instance, United Nations Report of the Commission of Inquiry, 'More than a Human Can Bear': Israel's Systematic Use of Sexual, Reproductive and Other Forms of Gender-Based Violence since 7 October 2023,' Human Rights Council,

Treaty²⁵ and the increasing recognition of reproductive violence by domestic courts.²⁶ However, these advances also highlight a troubling accountability deficit between the prevalence of reproductive harms in mass atrocity contexts and their infrequent prosecution.

Part of the reason for this marginalization is that reproductive violence has traditionally been subsumed within the broader category of sexual violence. While this categorization reflects the overlap between sexual and reproductive violations, it obscures a crucial analytical distinction. As several scholars have argued, sexual violence violates bodily and sexual autonomy, that is, the right to decide whether, how and under what circumstances to engage in sexual activity. Reproductive violence, by contrast, specifically targets reproductive autonomy, that is, the right to decide whether, how and under what circumstances to reproduce.²⁷

While there may be overlap between the two, this distinction has significant implications for how we understand and prosecute these crimes. When forced pregnancy is understood primarily through the lens of sexual violence, the analysis centres on the rape or sexual assault that caused the pregnancy. Indeed, during the Rome Statute negotiations, some delegations considered that a separate crime of ‘forced pregnancy’ was redundant, as it was ‘encompassed under the prohibition against rape.’²⁸ Yet this framing inadequately captures the distinct harm of being compelled to carry a pregnancy to term against one’s will, a violation that extends beyond the initial assault to encompass – as encapsulated in the quote from Drakulić’s novel – months of unwanted pregnancy, as well as physical and psychological harm.²⁹ As Markovic has argued:

the indignity central to the crime of forced pregnancy is not being forcibly made pregnant—which will usually be punishable as rape or some other crime—but rather that a woman is being forced to carry a child against her will.³⁰

Similarly, categorizing forced sterilization alongside other sexual crimes fails to acknowledge its unique character as the potentially permanent elimination of procreation capacity.

Although, as noted above, the approach to reproductive violence within the Rome Statute framework has begun to change, legal practitioners remain reluctant to investigate and prosecute such offences.³¹ This hesitation may be partly attributed to the lack of express codification of many acts of reproductive violence under the Rome Statute.³² The Statute explicitly criminalizes only three reproductive violations: forced pregnancy, enforced sterilization and genocide through imposing measures to prevent births.³³ This limited codification leaves zones

2025, para. 39, p. 11, <https://www.un.org/unispal/document/report-of-the-commission-of-inquiry-israel-gender-based-violence-13march2025/> (accessed 7 October 2025).

²⁵ Kelly Adams, ‘Progress on Gender Justice Continues as States Consider Next Steps on Draft Crimes Against Humanity Treaty,’ *Just Security*, 18 November 2024, <https://www.justsecurity.org/104884/gender-progress-crimes-against-humanity-treaty/> (accessed 7 October 2025).

²⁶ See, for instance, momentum towards accountability for reproductive violence at the domestic level, including at the Colombia’s Special Jurisdiction for Peace: see Christine Chinkin and Keina Yoshida, ‘Colombia’s Recent Ruling on Reproductive Violence and Forced Recruitment Is a Significant Step for Ex-Combatant Women and Girls,’ *LSE Latin America and Caribbean blog*, 19 February 2020, <https://blogs.lse.ac.uk/latamcaribbean/2020/02/19/colombias-recent-ruling-on-reproductive-violence-and-forced-recruitment-is-a-significant-step-for-ex-combatant-women-and-girls/> (accessed 7 October 2025). And in the Military Tribunal of Uvira of the Democratic Republic of the Congo: see TRIAL International, ‘DRC: Conviction for Forced Pregnancy and Other Crimes against Humanity for Warlord Ndarumanga,’ *TRIAL International*, <https://trialinternational.org/latest-post/drc-conviction-for-forced-pregnancy-and-other-crimes-against-humanity-for-warlord-ndarumanga/> (accessed 7 October 2025).

²⁷ Altunjan, supra n 4 at 99. See also Grey, supra n 5; and Laverty and de Vós, supra n 5.

²⁸ Drake, supra n 9 at 607.

²⁹ Goldstein, supra n 9 at 17–18.

³⁰ Markovic, supra n 4 at 447.

³¹ UN Women and Global Justice Center, supra n 22 at 28.

³² Another reason mentioned in the literature relates to the high level of intent needed: see Drake, supra n 9 at 596.

³³ Forced pregnancy as a crime against humanity and a war crime (articles 7[1][g], 8[2][b][xxii] and 8[2][e][vi]); enforced sterilization as a crime against humanity and war crime (articles 7[1][g], 8[2][b][xxii] and 8[2][e][vi]); and genocide by

of reproductive violence, such as forced contraception, forced abortions or strategic denial of reproductive healthcare, without clear legal definitions and requires prosecutors to charge them as underlying acts of other crimes (such as torture or other inhumane acts).³⁴

The absence of clear definitions creates particular challenges for prosecution. This is because risk-averse prosecutors may prioritize crimes that are more explicitly articulated and whose elements are clearly set out, which could lead to conservative investigative and charging practices that may overlook reproductive dimensions of violence.³⁵ The limited codification of reproductive violence, and the resultant legal ambiguity, intersects with the inherently complex nature of this violence, which spans a range of physical, psychological, social and symbolic harms and remains poorly understood within transitional justice and ICL. As a result, as a UN Women report found, ‘investigators may hesitate to broach these complex topics at all.’³⁶ The conceptual uncertainty around reproductive violence thus generates hesitancy among prosecutors, particularly where reproductive harms have not been expressly codified. Furthermore, the contentious negotiations surrounding forced pregnancy in the Rome Statute remind us that some types of reproductive violence remain entangled with controversial and politically sensitive debates over reproductive rights in international human rights law.³⁷ The combination of these factors may lead some prosecutors to avoid investigating and charging reproductive violence.

Moreover, feminist theories offer further important insights into the marginalization of this violence. As some scholars have argued, transitional justice mechanisms have exhibited a ‘crowding out’ effect whereby attention to sexual violence, particularly rape, has overshadowed other forms of gender-based harm.³⁸ Sikkink et al., for instance, have shown that ‘gender-attentive transitional justice policies have focused predominately on physical harms and, especially, rape’,³⁹ creating what they term a ‘hierarchy of harms’ within transitional justice discourse.⁴⁰ This prioritization of the crime of rape, particularly when considered against the background of the lack of codification of many acts of reproductive violence, has significant implications. Acts of reproductive violence are deprioritized and become conceptually invisible when subsumed within the dominant paradigm of sexual violence prosecutions. This leads to a situation where, as Aoláin has noted, ‘while rape in armed conflict makes headlines obstetric violence against women and girls generally does not.’⁴¹

Moreover, scholars have also highlighted structural barriers to recognizing reproductive violence in criminal law.⁴² Drawing on feminist social theory, Campbell argues that accountability operates through an ‘individualist paradigm’ that conceptualizes harm as discrete injuries to autonomous individuals.⁴³ Yet reproductive violence is often deployed not as targeting specific

imposing measures intended to prevent births within a national, ethnic, racial or religious group (article 6[d]). It is contested within feminist discourse whether crimes such as forced pregnancy and genocide by imposing measures to prevent births seek to protect primarily individual victims’ interests and/or group interests, and whether these positions are reconcilable. However, whilst acknowledging this theoretical debate, the issue falls outside the scope of the present article: see Drake, supra n 9 at 616; Altunjan, supra n 4 at 222.

³⁴ Grey, supra n 5 at 247.

³⁵ Michelle Jarvis, ‘Overview: The Challenge of Accountability for Conflict-Related Sexual Violence Crimes,’ in *Prosecuting Conflict-Related Sexual Violence*, ed. Serge Brammertz and Michelle Jarvis (Oxford: Oxford University Press, 2016), 9.

³⁶ UN Women and Global Justice Center, supra n 22 at 77.

³⁷ Grey, supra n 9 at 918.

³⁸ Kathryn Sikkink and others, ‘Gender and Transitional Justice: Explaining Global Trends,’ *International Journal of Transitional Justice* 18(3) (2024): 387–404, at 392. See also Dowds, supra n 10.

³⁹ Sikkink et al., supra n 38 at 389.

⁴⁰ Ibid., 392.

⁴¹ Fionnuala Ní Aoláin, ‘A Zone of Silence: Obstetric Violence in Gaza and Beyond,’ *Just Security*, 21 February 2024, <https://www.justsecurity.org/92562/a-zone-of-silence-obstetric-violence-in-gaza-and-beyond/> (accessed 7 October 2025).

⁴² See, for instance, Karen Engle, Zinaida Miller and DM Davis, eds., *Anti-Impunity and the Human Rights Agenda* (Cambridge: Cambridge University Press, 2016).

⁴³ Kirsten Campbell, *The Justice of Humans: Subject, Society and Sexual Violence in International Criminal Justice* (Cambridge: Cambridge University Press 2022), 37–38.

individuals but as ‘system violence,’ that is violence that produces ‘aggregate social harms’ targeting ‘classes of persons’ rather than isolated individuals.⁴⁴ Thus, for instance, systematic policies that forcibly separate women and men to prevent reproduction within targeted populations, the deliberate destruction of reproductive healthcare infrastructure to deny particular communities access to reproductive services and state-sponsored sterilization programmes targeting specific ethnic or religious groups all operate at this structural level, seeking to control the reproductive capacity of entire groups.⁴⁵ This mismatch between the individualized framework of criminal law, and the broader, systematic patterns of control over populations’ reproductive capacities that reproductive violence often entails may help further explain why this form of violence remains under-recognized in criminal accountability.

Grey has shown that many forms of reproductive violence are, in substance, already criminalized and may be pleaded as underlying acts of established Rome Statute crimes, even where they are not expressly codified.⁴⁶ However, it is only after investigators and prosecutors, firstly, come to recognize the gravity of such acts and, secondly, take steps to countervail existing conceptual ambiguities and structural barriers, that meaningful recognition, investigation and prosecution of such violence may occur. This article argues that an important first step is pedagogic: practitioners must be persuaded of the grievous, multidimensional harms that reproductive violence visits upon victim-survivors. Only once that harm is better understood will investigators and prosecutors be persuaded that it meets the Rome Statute’s gravity threshold of ‘the most serious crimes of concern to the international community as a whole,’ and accord it the legal weight it warrants.⁴⁷ To that end, the typology of reproductive violence developed in the next part is designed to unpack the discrete harms of each category of reproductive abuse so that they become more visible. Before outlining that framework, however, the following section explains why prosecuting reproductive violence is normatively important and assesses the existing definitions’ strengths and limitations.

Articulating the Need for Recognition

The need to address the gap in recognition and prosecution of reproductive violence emerges from two distinct yet interconnected considerations. First, transitional justice scholarship and practice have shown that pursuing accountability for victim-survivors of serious acts of reproductive violence is an important goal, not only to achieve justice but also for truth telling and reconciliation in contexts of mass atrocity.⁴⁸ Second, and equally significant, the continued marginalization of reproductive violence undermines the expressive value that undergirds criminal justice.⁴⁹ Drawing on sociolegal theory, Drumbl argues that international criminal prosecutions serve functions beyond individual accountability, operating as mechanisms through which the international community articulates shared values and constructs collective memory. As he observes, criminal trials serve a broad expressive function by dramatizing the evil of mass atrocity and establishing authoritative narratives about which harms warrant condemnation.⁵⁰ Osiel further argues that criminal proceedings function as ‘monumental spectacles’

⁴⁴ Campbell, *supra* n 43. See also Laverty and de Vos, *supra* n 5.

⁴⁵ See, for instance, Laverty and de Vos, *supra* n 5 at 623. For an example of such policies operating in mass atrocity contexts, see *Uyghur Tribunal Judgment* (Uyghur Tribunal), para. 182, p. 54.

⁴⁶ See Grey, *supra* n 5.

⁴⁷ Preamble of the Rome Statute.

⁴⁸ Vijayarasa, *supra* n 5 at 110. For more general commentary on the role of truth seeking in transitional justice, see: Hugo van der Merwe, Victoria Baxter and Audrey R. Chapman, ‘Introduction,’ in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, ed. Hugo Van Der Merwe, Victoria Baxter and Audrey R. Chapman (Washington, DC: United States Institute of Peace Press, 2009), 1; Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace Press, 2010).

⁴⁹ Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007), 173.

⁵⁰ *Ibid.*, 182.

that shape public consciousness about the nature and gravity of mass atrocity.⁵¹ The exclusion or marginalization of reproductive violence from these proceedings would therefore amount not merely to a legal oversight but to a mnemonic failure, relegating this form of suffering to juridical invisibility.⁵² From this perspective, what remains unprosecuted risks being perceived as peripheral or unimportant, creating a feedback loop whereby legal marginalization reinforces social marginalization.⁵³

This expressivist deficit carries particular weight given the gendered dimensions of reproductive violence. Kreft has shown how underlying patriarchal norms continue to influence institutional responses to gender-based crimes.⁵⁴ The failure to prosecute reproductive violence risks perpetuating the ‘masculinist’ orientation of criminal justice, wherein harms that distinctly or disproportionately affect women remain conceptually peripheral.⁵⁵ Unless reproductive violence is expressly recognized, investigated and prosecuted, state and non-state policies that weaponize reproduction in mass atrocity will remain deprioritized, and the grave, far-reaching consequences of this violence will continue to escape accountability.

The Need for a Differentiated Typology

Before reproductive violence in mass atrocity may be recognized and prosecuted, this violence must firstly be defined. As Koskeniemi observes, language and norms:

interpret for us what we can see in international reality . . . There are many examples of how doctrinal (conceptual) developments have affected the way we think about [...] behavior.⁵⁶

A key limitation in the state of the art is that existing definitions typically conceptualize reproductive violence in broad terms, as violations of reproductive autonomy, without unpacking its grave and differentiated harms for victim-survivors.

A UN Women report, for instance, defines reproductive violence as ‘acts or omissions that cause harm by interfering with reproductive autonomy and rights, or violence directed at people because of their actual or perceived reproductive capacity.’⁵⁷ The principal advantage of these conceptual approaches lies in their brevity and inclusivity. By focusing on the core unifying principle of reproductive autonomy, they provide a flexible framework capable of accommodating a wide range of (present and future) acts and harms. However, because of their breadth, such conceptual definitions may also be ambiguous, as it is not always clear which acts that violate reproductive autonomy rise to the level of reproductive violence.⁵⁸ They also fail to capture how distinct categories of reproductive violence may give rise to differentiated harms for victims.

In addition to conceptual definitions, another approach to defining reproductive violence is enumeration, providing illustrative lists of acts that fall within the definitional ambit. The OTP Policy, for example, specifies that relevant acts ‘might include forced use of contraception, forced abortion, forced breastfeeding, denial of essential reproductive healthcare or physical violence

⁵¹ Mark J. Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick: Transaction Publishers, 1999), 3.

⁵² *Ibid.*, 73.

⁵³ Mark Osiel, *Making Sense of Mass Atrocity* (Cambridge: Cambridge University Press, 2009), 22.

⁵⁴ 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(2) (2023): 654–677, at 656.

⁵⁵ Vijayarasa notes: ‘it is apparent, but must be stated, that reproductive rights violations, though perpetrated against men, are predominantly experienced by women’: see Vijayarasa, *supra* n 5 at 108; Campbell, *supra* n 43 at 249, 275.

⁵⁶ Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2006), 526–528.

⁵⁷ UN Women and Global Justice Center, *supra* n 22 at 7.

⁵⁸ Certain government policies, such as China’s former one-child policy, may illustrate acts infringing on reproductive autonomy which, however, would not constitute reproductive violence under transitional justice and/or ICL.

aimed at reproductive organs.⁵⁹ These enumerated examples bring concreteness, making manifest the diverse ways in which reproductive autonomy can be violated. However, illustrative lists also carry notable limitations, particularly given that they may be incomplete as new methods of perpetrating reproductive violence emerge. Enumerated examples can, moreover, place undue emphasis on direct and sensational forms of violence, at the expense of more subtle and indirect expressions of harm.⁶⁰

The existing definitions of reproductive violence, therefore, may partly obscure our understanding of the gravity of this violence for victim-survivors. For instance, while acts such as forced pregnancy, forced contraception and forced abortion all violate reproductive autonomy, they do so in significantly different ways and, as will be discussed below, infringe on different interests and generate distinct forms of suffering. Yet available definitions of reproductive violence flatten these experientially distinct violations into an undifferentiated category of violations of reproductive autonomy, thereby obscuring the specific ways that each act harms victims' lives.

Rather than treating all violations of reproductive autonomy as conceptually equivalent, we need a typology that unpacks how different forms attack human dignity through particular mechanisms, some compelling unwanted reproduction, others preventing desired reproduction, still others endangering reproductive health and survival. Such differentiated analysis would perform the pedagogical function discussed above and could enhance our understanding of this type of violence in mass atrocities.

ARTICULATING A TYPOLOGY FOR REPRODUCTIVE VIOLENCE

The typology outlined below (see Table 1) is designed to complement existing definitions of reproductive violence. It is based on two analytical layers: one focusing on the nature of the acts themselves and the other on their mode of implementation. This typology aims to perform a pedagogical function, helping practitioners to identify and categorize acts of reproductive violence according to their reproductive consequences for victims and communities. In this sense, it is not a legal framework and determining which acts amount to proscribed criminal conduct will require a third layer of analysis – one that focuses on their legal characterization within the parameters of criminal law.⁶¹

The first layer of analysis focuses on the intended reproductive consequences of the acts themselves, distinguishing between three categories:

- a) birth-compelling harms;
- b) birth-preventing harms; and
- c) birth-endangering or -terminating harms.

This phase focuses attention on the consequences for victim-survivors of the wide array of practices through which perpetrators may violate reproductive autonomy. (1) *Birth-compelling harms* encompass conduct designed to force the continuation of a pregnancy or to ensure births, such as forced impregnation, forced pregnancy or 'breeding' programmes.⁶² They would

⁵⁹ International Criminal Court, *supra* n 2 at para. 37.

⁶⁰ For instance, acts such as the systemic deprivation of prenatal care or the deliberate destruction of reproductive health infrastructure can form part of the continuum of reproductive violence, even if their impact is more diffuse.

⁶¹ This third layer of analysis falls beyond the scope of this article.

⁶² For the purposes of this analysis, the important, but separate, issue of children born of rape is not directly covered, given that such children are independent rights holders under international law: see Charli R. Carpenter, 'Surfacing Children: Limitations of Genocidal Rape Discourse,' *Human Rights Quarterly* 22(2) (2000): 428–477; Human Rights Watch, 'Justice for Children in the Future Convention on the Prevention and Punishment of Crimes Against

Table 1. Typology of Reproductive Violence.

Category	Definition	Examples of Acts	Key Harms	Mode of Implementation
Birth-Compelling Harms	Conduct intended to force the continuation of pregnancy or ensure births against the victim's will	• Forced impregnation • Forced pregnancy • Forced copulation • Forced gestation • Forced parenthood • Forced breastfeeding • 'Breeding' programmes	• Occupation of the womb' (Fisher) • Months of unwanted bodily transformation • Loss of reproductive autonomy • Psychological trauma from bearing 'enemy' child • Intergenerational trauma • Social death and stigmatization • Coerced parenthood challenges	Usually direct physical interventions
Birth-Preventing Harms	Acts aimed at depriving victims of the ability to conceive and bear children, either temporarily or permanently	• Forced sterilization • Forced contraception • Forced castration • Penile amputation • Genital mutilation • Separation of sexes • Prohibition of marriages • Physical harm to reproductive organs • Coercive policies (including economic, political, etc.) aimed at preventing births	• Loss of reproductive capacity (permanent or temporary) • Major interference with reproductive health status • Physical or mental trauma causing a victim to refuse subsequently to procreate • Enabling prolonged sexual exploitation in contexts of slavery • Attack on sexual identity and selfhood • Demographic control/destruction	Spectrum from direct interventions to indirect/structural violence

(Continued)

Table 1. Continued

Category	Definition	Examples of Acts	Key Harms	Mode of Implementation
Birth-Endangering or Terminating Harms	Interventions intended to terminate wanted pregnancies or endanger reproductive health and survival	• Forced abortion • Forced loss of pregnancy • Deliberate denial of obstetric care • Targeting of pregnant women • Starvation to induce miscarriage • Destruction of reproductive health infrastructure and/or deliberate targeting of hospitals, maternity wards and fertility clinics • Forced exposure to toxic agents or environmental conditions designed to impair fertility	• Egregious form of inhuman treatment • Denial of maternal-foetal relationship • Physical trauma from unsafe procedures • Grief from loss of wanted pregnancy • Mental trauma, including suicidal ideation • Existential rupture in sense of self • Group destruction through elimination of future generations	Spectrum from direct interventions to indirect/structural violence

also include any linked forceable measures such as forced breastfeeding.⁶³ (2) *Birth-preventing harms* include separation of the sexes, prohibition of marriages, forced sterilization, forced contraception, forced castration or physical harm to reproductive organs, all of which may inflict either temporary or permanent impairment of future reproductive ability. (3) *Birth-endangering or -terminating harms* comprise interventions like forced abortion or deliberate denial of life-saving reproductive healthcare.⁶⁴ These interventions would also include measures such as deliberate targeting of pregnant women, and deliberately inflicting conditions of life calculated to bring about biological endangerment or destruction, such as starvation aimed at inducing stillbirths or miscarriages.⁶⁵ Moreover, as was specified in *Akayesu* (in the context of genocide, but applicable more widely), such measures:

may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.⁶⁶

The second layer of analysis focuses on their mode of implementation, highlighting a spectrum that extends from direct, physical interventions to indirect, protracted measures. At one end of the spectrum are overt violations targeting reproductive functions, such as forced pregnancy or sterilization. These are the acts of reproductive violence that are most easily recognized and privileged because they represent ‘the rapid, the hot, and the spectacular.’⁶⁷ At the other end are more gradual and protracted, but no less insidious, processes of deprivation, displacement and structural manipulation that deliberately inflict conditions of life calculated to bring about biological endangerment or destruction. These measures would include slow, ‘banal’ and unspectacular acts, such as separation of the sexes, or deliberate and serious targeting of normal procreation/copulation.⁶⁸ They would also include measures such as starvation, which we know may have ‘disproportionate, and severe consequences on all aspects of reproduction, including pregnancy and lactation.’⁶⁹ While these measures may appear ‘passive, routine, and banal,’ they may have equally devastating results on the reproductive capacity of individuals and communities.⁷⁰

The next section will examine how each category of reproductive violence inflicts distinct and multidimensional harms both on the individual victims and on their groups.

UNPACKING THE HARMS OF REPRODUCTIVE VIOLENCE

This article has argued that the lack of accountability for reproductive violence goes beyond gaps in the law; it reflects a failure to appreciate how deeply these crimes harm victim-survivors. Before this category of violence may receive broader recognition in transitional justice and ICL, therefore, the profound physical, psychological and social consequences of reproductive

Humanity,’ ReliefWeb, 2025, <https://reliefweb.int/report/world/justice-children-future-convention-prevention-and-punishment-crimes-against-humanity> (accessed 7 October 2025); Grey, supra n 9 at 920.

⁶³ UN Women and Global Justice Center, supra n 22 at 71.

⁶⁴ Ibid., 62.

⁶⁵ Helen Fein, ‘Genocide and Gender: The Uses of Women and Group Destiny,’ *Journal of Genocide Research* 1(1) (1999): 43–63, at 50.

⁶⁶ *The Prosecutor v Jean-Paul Akayesu* (1998) Judgment ICTR-96-4-T, para. 508.

⁶⁷ Jenna Marie Christian and Lorraine Dowler, ‘Slow and Fast Violence: A Feminist Critique of Binaries,’ *ACME: An International Journal for Critical Geographies* 18(5) (2019): 1066–1075. See also Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge: Harvard University Press, 2011), 1.

⁶⁸ Florian Jessberger, ‘The Definition and the Elements of the Crime of Genocide,’ in *The UN Genocide Convention: A Commentary*, ed. Paola Gaeta (Oxford: Oxford University Press, 2009), 92.

⁶⁹ UN Women and Global Justice Center, supra n 22 at 71.

⁷⁰ Christian and Dowler, supra n 67 at 1068–1069.

violence have to be better articulated. This step is necessary to show that acts of reproductive violence meet the Statute's standard for the most serious crimes.⁷¹ The analysis below breaks down different types of reproductive violence to emphasize each one's specific harms. By unpacking these harms, this analysis seeks to perform an important pedagogical function, rendering more visible the consequences for victim-survivors so that practitioners might better understand the gravity of the violations.

Birth-Compelling Harms

Birth-compelling acts would include forced impregnation, forced pregnancy and associated acts such as forced copulation, forced gestation, forced parenthood and forced breastfeeding. As noted above, since the conflicts in the former Yugoslavia, birth-compelling measures, particularly forced impregnation and forced pregnancy, have generated extensive theoretical engagement within transitional justice scholarship.⁷² The systematic use of forced pregnancy as a weapon of ethnic cleansing in Bosnia-Herzegovina catalysed scholarly attention to reproductive violence as a distinct category of harm, prompting critical examination of how reproductive capacity becomes weaponized during conflict.⁷³ This scholarship has emphasized how birth-compelling violence may constitute both individual violations and systematic attacks on group identity, maternal autonomy and intergenerational continuity.⁷⁴

Birth-compelling measures fundamentally violate reproductive autonomy by transforming victims' bodies into instruments of coerced reproduction. This appropriation of reproductive capacity operates through multiple mechanisms. Most immediately, forced impregnation violates the victim's freedom to choose whether to become pregnant, while forced pregnancy, through unlawful confinement, denies the freedom to decide whether to continue a pregnancy.⁷⁵ The strategic deployment of birth-compelling measures during the Yugoslav conflicts exemplified their use as tools of ethnic domination. Documented evidence from the ICTY showed systematic patterns where Bosnian Muslim women were repeatedly raped until pregnant, then detained to prevent abortion access. Testimonies before the tribunal established that perpetrators explicitly articulated their reproductive objectives, telling victims they would 'now carry a Serb baby.'⁷⁶ While such strategies rest on social myths and flawed assumptions about genetics, they nevertheless carry devastating individual and social consequences.⁷⁷

Fisher's conceptualization of forced pregnancy as 'occupation of the womb' captures the totalizing nature of this violation.⁷⁸ In the literature, Atwood's portrayal in *The Handmaid's Tale* of women reduced to 'two-legged wombs' captures the inherent dehumanization.⁷⁹ Unlike other forms of violence, forced pregnancy initiates a temporal process of bodily occupation extending through gestation, childbirth and beyond. Moreover, while 'impregnated with a child of the "enemy" ethnic group, the woman is unable to give birth to children of her own ethnicity.'⁸⁰ The victim experiences months of unwanted physical transformation, loss of bodily autonomy

⁷¹ The importance of training and capacity building in this area has been extensively recognized. See, for instance, UN Women and Global Justice Center, *supra* n 22; Vijayarasa, *supra* n 5 at 118.

⁷² 'Annex II: Report on the Situation of Human Rights in the Territory of the Former Yugoslavia Submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Pursuant to Commission Resolution 1992/S-1/1 of 14 August 1992,' United Nations, 1993, UNDoc.E/CN.4/1993/50 paras 9–14; Grey, *supra* n 9 at 915.

⁷³ Drake, *supra* n 9.

⁷⁴ Boon, *supra* n 15 at 657.

⁷⁵ Grey, *supra* n 9 at 917.

⁷⁶ *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (2001) Judgment IT-96-23-T&IT-96-23/1-T, paras 342, 583. See also Drake, *supra* n 9 at 603; Markovic, *supra* n 4 at 456.

⁷⁷ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Minneapolis: University of Minnesota Press, 1996), 87; Markovic, *supra* n 4 at 454.

⁷⁸ Fisher, *supra* n 9 at 105.

⁷⁹ Margaret Atwood, *The Handmaid's Tale* (New York: Vintage, 1996), ch. 23.

⁸⁰ Drake, *supra* n 9 at 610; Markovic, *supra* n 4 at 453.

and psychological distress as her body serves the perpetrator's reproductive objectives against her will.

The physical dimensions of birth-compelling violence encompass immediate assault, forced gestation and the medical risks of pregnancy and childbirth under conditions of captivity. As Drake observes:

the victimization of a woman who is forcibly impregnated lasts long beyond the rape. She must undergo nine months of confinement and bodily turmoil as she watches her body change as a result of the trauma to which she was subjected.⁸¹

Documentation from conflicts in Rwanda, Bosnia and more recently with Yazidi women held by ISIS indicates patterns of deliberate medical neglect during forced pregnancies, compounding physical harm.⁸² Victims often lack access to prenatal care, safe delivery conditions or postnatal support, transforming pregnancy from a potentially desired experience into a mechanism of sustained physical suffering.⁸³

Moreover, studies with forced pregnancy survivors document high rates of post-traumatic stress disorder, depression and complex trauma responses.⁸⁴ The psychological harm operates through multiple pathways: the initial sexual violence, the daily reminder of violation through unwanted pregnancy, the loss of reproductive choice and the serious identity disruption of bearing a child conceived through violence.⁸⁵ Testimony from Rwandan genocide survivors powerfully articulates this psychological trauma, with victims describing themselves as 'the living dead,' reflecting how forced pregnancy created a form of social death that extended beyond physical survival.⁸⁶

For those who carry pregnancies to term, the harm extends into coerced parenthood with its attendant challenges. Victims suffer trauma, rejection and stigmatization, particularly in societies that view children born of rape as 'the enemy.'⁸⁷ Mothers face impossible choices between raising children conceived through violence, risking continued trauma and economic hardship or relinquishing children, creating different forms of lasting psychological distress.⁸⁸ The trauma of these conflicting feelings is captured in Alexievich's documentary novel *The Unwomanly Face of War*, based on testimonies of Soviet women during World War II. In one testimony, she recounts how Corporal Anastasia Vasilyevna Voropaeva cried and beat her own stomach, saying 'I won't bring a Fritz home! I won't! [And subsequently,] she hanged herself... Along with her little Fritz...'⁸⁹

⁸¹ Drake, *supra* n 9 at 620.

⁸² Drake, *supra* n 9 at 596.

⁸³ Zammit Borda, *supra* n 5 at 17.

⁸⁴ See, for instance, Mladen Lončar and others, 'Psychological Consequences of Rape on Women in 1991–1995 War in Croatia and Bosnia and Herzegovina,' *Croatian Medical Journal* 47(1) (2006): 67–75; Jan Ilhan Kizilhan and Michael Noll-Hussong, 'Post-Traumatic Stress Disorder among Former Islamic State Child Soldiers in Northern Iraq,' *The British Journal of Psychiatry* 213(1) (2018): 425–429.

⁸⁵ Carmela Buehler, 'War Crimes, Crimes against Humanity and Genocide,' *NEMESIS* 5(1) (2002): 158–167, at 166, https://www.academia.edu/9262596/War_crimes_crimes_against_humanity_and_genocide (accessed 7 October 2025); Carpenter, *supra* n 62 at 429.

⁸⁶ Fein, *supra* n 65 at 57. See also Klejda Mulaj, 'Constructions of Genocide Denial and Remembrance: Fractured National Identity in Postgenocide Bosnia,' in *Postgenocide: Interdisciplinary Reflections on the Effects of Genocide*, ed. Klejda Mulaj (Oxford: Oxford University Press, 2021), 173.

⁸⁷ Jonathan M. H. Short, 'Sexual Violence as Genocide: The Developing Law of the International Criminal Tribunals and the International Criminal Court,' *Michigan Journal of Race & Law* 8(2) (2002): 503–527, at 519.

⁸⁸ Elisa von Joeden-Forgey, 'Gender and the Future of Genocide Studies and Prevention,' *Genocide Studies and Prevention* 7(1) (2012): 89–107, at 93.

⁸⁹ Svetlana Alexievich, *The Unwomanly Face of War*, tr. Richard Pevear and Larissa Volokhonsky (London: Penguin Classics, 2017).

The transgenerational impacts of birth-compelling measures constitute a distinct dimension of harm.⁹⁰ Research on children born of conflict-related rape documents the intergenerational transmission of trauma, as mothers struggle with conflicting emotions towards children who simultaneously represent violation and kinship.⁹¹ Carpenter's groundbreaking work on children born of wartime rape shows how these children often face severe stigmatization, identity crises and social exclusion.⁹² This intergenerational harm amplifies the original violation, extending perpetrators' destructive intent across generations.⁹³

Birth-Preventing Harms

Birth-preventing acts, including direct acts such as enforced sterilization, forced contraception, forced castration and physical or psychological harm targeting reproductive capacity, or indirect acts such as economic policies or other serious coercion intended to prevent births, fundamentally violate reproductive autonomy by depriving victims of the ability to conceive and bear children. The harm in these acts is often irrevocable, leaving victims with a permanent and irreparable loss of their reproductive capacity.⁹⁴ The psychological burden is immense, as victims must reconcile the lasting loss of a fundamental human aspiration. As noted by the European Court of Human Rights (ECtHR), sterilization without the patient's full and informed consent constituted a 'major interference with a person's reproductive health status,' with wide-ranging repercussions on their 'personal integrity including [their] physical and mental well-being and emotional, spiritual and family life.'⁹⁵

In the context of mass atrocities, forced sterilization was notoriously employed, *inter alia*, by the Nazi regime.⁹⁶ In the RuSHA case, which dealt with Nazi racial policies that included the mass sterilization of persons deemed 'racially inferior,' the Court explicitly acknowledged that forced sterilization constituted a fundamental assault on human dignity.⁹⁷ The psychological impact of forced sterilization and other birth-preventing violence extends beyond the individual, affecting entire communities. Social scientists have long underscored the centrality of reproduction to individual identity, cultural continuity and social belonging.⁹⁸ The inability to bear children due to involuntary, irreversible interventions disrupts a core dimension of the self in relation to family and community. Victims of enforced sterilization have spoken of agonizing feelings of loss, grief and alienation. The Inter-American Court of Human Rights held that non-consensual sterilization breached fundamental rights to autonomy and reproductive freedom, depriving individuals of their ability to make autonomous decisions in relation to their body and life plans.⁹⁹

In situations of mass atrocity, forced contraception has been used as a means of enabling prolonged sexual exploitation and enslavement. Under ISIS rule, Yazidi women and girls were

⁹⁰ Jan Ilhan Kizilhan and Michael Noll-Hussong, 'Individual, Collective, and Transgenerational Traumatization in the Yazidi,' *BMC Medicine* 15(1) (2017): 198–202.

⁹¹ Serri Mahmood, 'Challenges of Children Born by ISIS Rape in Iraq,' Master's in Advanced Studies in Humanitarian Action, Centre for Education and Research in Humanitarian Action, University of Geneva, 2016, 23, <https://www.cerahgeneve.ch/files/1715/0963/3793/WP49-Challenges-Children-Born-by-ISIS-Rape-Iraq.pdf> (accessed 7 October 2025).

⁹² Drake, *supra* n 9 at 620.

⁹³ Carpenter, *supra* n 62 at 429.

⁹⁴ See, for example, *Uyghur Tribunal Judgment*, *supra* n 45 at para. 10.

⁹⁵ *VC v Slovakia* (2011) European Court of Human Rights 18,968/07, para. 106.

⁹⁶ Robert N. Proctor, *Racial Hygiene: Medicine Under the Nazis* (Cambridge: Harvard University Press, 1989), 1.

⁹⁷ 'Trials of War Criminals Before the Nuernberg Military Tribunals (RuSHA Case 1948)'. In Jerusalem, Eichmann was also convicted for measures he took 'calculated to prevent births among Jews, by directing that births be banned and pregnancies terminated among Jewish women in the Terezin Ghetto, with intent to exterminate the Jewish People': see *Attorney General v Adolf Eichmann* (1961) Judgment Criminal Case No. 40/61.

⁹⁸ See, for instance, Kudzai Bakare and Shelene and Gentz, 'Experiences of Forced Sterilization and Coercion to Sterilize among Women Living with HIV (WLHIV) in Namibia: An Analysis of the Psychological and Socio-Cultural Effects,' *Sexual and Reproductive Health Matters* 28(1) (2020): 335–348, at 345.

⁹⁹ *IV v Bolivia* (2016) Inter-American Court of Human Rights 329 (157); Draghici, *supra* n 9 at 26; Macías Ortega, *supra* n 9.

systematically subjected to forced contraception to prevent them from becoming pregnant, allowing them to be continually raped and resold.¹⁰⁰ The UN Commission of Inquiry documented cases where ‘Yazidi women and girls reported being forced to take birth control, in the form of pills and injections, by their fighter-owners,’ ensuring that they remained sexually available.¹⁰¹ One survivor recounted how ‘she was raped daily throughout her captivity and described being forced to take pills every day,’ a practice that was widely imposed on captured Yazidi women.¹⁰² Unlike other birth-preventing harms (such as sterilization), forced contraception is often designed to be reversible, yet its impact remains deeply harmful, particularly when imposed over extended periods without consent.

Another type of birth-preventing harm results from physical violence targeting reproductive organs through acts such as penile amputation and genital mutilation. These violations, while distinct from enforced sterilization campaigns, similarly attack reproductive capacity through the deliberate destruction or impairment of sexual and reproductive functions. The impact of such violence extends beyond immediate physical trauma, as documented in ICC proceedings examining, *inter alia*, penile amputations during Kenya’s post-election violence. As the Victims’ Legal Representative submitted, these acts ‘had a detrimental effect on [their victims] physically and psychologically.’¹⁰³ These acts constitute a particularly cruel form of reproductive violence, simultaneously destroying biological reproductive capacity while inflicting severe psychological harm through attacks on victims’ sexual identity and selfhood. The targeting of reproductive organs represents not merely physical assault but a calculated strategy to undermine victims’ fundamental human dignity through the permanent impairment of intimate bodily functions.

Beyond direct surgical or pharmaceutical interventions, birth-preventing measures can also include more protracted forms of reproductive violence, such as the forced separation of men and women in occupied territories or the prohibition of marriages within targeted communities. For instance, in the *Genocide* case before the International Court of Justice, Bosnia claimed that the systematic forced separation of male and female Muslims in Bosnia during the conflict ‘in all probability entailed a decline in the birth rate of the group, given the lack of physical contact over many months.’¹⁰⁴ Similar tactics have been documented in other genocidal contexts, where the deliberate disruption of normal reproduction functions as an insidious means of preventing births within a targeted group.¹⁰⁵

The destruction of reproductive autonomy through birth-preventing violence constitutes a harm that transcends the immediate violation of bodily integrity, as it fundamentally alters the victim’s future possibilities. Survivors of forced sterilization and forced contraception describe experiences of deep personal loss and despair, often struggling with feelings of dehumanization and a sense that their bodies have been permanently commandeered for political or ideological purposes. For instance, in the context of the ‘comfort women’ system, arspenamine was regularly forcibly administered and many women who received it testified that they suffered from serious side effects, including infertility.¹⁰⁶ The broader implications of these violations extend

¹⁰⁰ Violating their bodily and reproductive autonomy: see Eleanor Childs and Benjamin Isakhan, ‘Gender and Cultural Violence: Feminist Perspectives on Islamic State’s Heritage Destruction,’ *International Affairs* 101(1) (2025): 157–175, at 161.

¹⁰¹ United Nations Human Rights Council and Independent International Commission of Inquiry on the Syrian Arab Republic, ‘“They Came to Destroy”: ISIS Crimes Against the Yazidis’ (2016) A/HRC/32/CRP.2, para. 69.

¹⁰² *Ibid.*

¹⁰³ *Victims’ Observations on the ‘Prosecution’s application for notice to be given under Regulation 55(2) with respect to certain crimes charged’* (2012) International Criminal Court ICC-01/09–02/11, para. 14, p. 6.

¹⁰⁴ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) (355); William A. Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2009), 199.

¹⁰⁵ See, for example, UN Women and Global Justice Center, *supra* n 22 at 18.

¹⁰⁶ Peipei Qiu, Su Zhiliang and Chen Lifei, *Chinese Comfort Women: Testimonies from Imperial Japan’s Sex Slaves* (Vancouver: University of British Columbia Press, 2013), 61.

to the collective, as communities that experience widespread reproductive violence face long-term demographic and cultural erosion. The psychological burden of such crimes is exacerbated by the knowledge that the loss is often irreparable, making acts of birth-prevention some of the most extreme and lasting forms of reproductive violence.

Birth-Endangering (or -Terminating) Harms

Birth-endangering or -terminating acts, such as direct acts of forced abortion¹⁰⁷ or forced loss of pregnancy,¹⁰⁸ or indirect acts such as destruction of reproductive health infrastructure and/or deliberate targeting of hospitals, maternity wards and fertility clinics, as well as forced exposure to toxic agents or environmental conditions designed to impair fertility,¹⁰⁹ constitute serious violations of reproductive autonomy by depriving victims of the ability to continue a wanted pregnancy. Legal and bioethical scholarship has long recognized the significance of the maternal-fetal relationship and the existential weight of the decision to carry a pregnancy to term.¹¹⁰ When this decision is forcibly taken away, victims suffer not only physical harm but also deep psychological and emotional trauma, often compounded by social stigma.

The ECtHR has underscored the severity of forced abortion as a violation of human dignity, characterizing it as ‘an egregious form of inhuman and degrading treatment.’¹¹¹ The Court also reaffirmed that ‘the decision of a pregnant woman to continue her pregnancy or not belongs to the sphere of private life and autonomy,’¹¹² thus placing reproductive decision making within the core of fundamental rights. In the context of mass atrocities, therefore, forced abortion is not merely an act of physical coercion but a fundamental denial of agency, stripping the victim of their right to determine the trajectory of their reproductive life.

Historically, systematic forced abortion has been used as a mechanism of reproductive control in contexts of mass sexual violence. Within the ‘comfort women’ system operated by the Japanese military, forced abortions were institutionalized to ensure that pregnancies did not disrupt the sexual exploitation of enslaved women. Testimonies from survivors showed that abortion was often accompanied by sterilization, permanently impairing reproductive capacity. One survivor recounted how ‘some girls got pregnant and had to rest for a few days after the abortion,’¹¹³ only to be subjected to further sexual violence before their bodies had healed. Others described the sheer brutality of the procedures, noting that a woman was subjected to continued sexual violence ‘even though her private part did not heal from the abortion.’¹¹⁴ The forced termination of pregnancy in such settings was not only an assault on reproductive autonomy but a means of sustaining and reinforcing a system of slavery.

¹⁰⁷ For an overview of Colombia’s Special Jurisdiction for Peace’s findings on this, see Juliana Laguna Trujillo, ‘Colombia’s Transitional Justice Tribunal Paves New Ground on Reproductive Violence,’ *LSE Women, Peace and Security blog*, 19 June 2025, <https://blogs.lse.ac.uk/wps/2025/06/19/colombia-is-setting-a-path-for-intersectionality-survivor-agency-and-restorative-justice/> (accessed 7 October 2025); Valeria Babără, ‘Colombia Is Setting a Path for Intersectionality, Survivor Agency and Restorative Justice,’ *LSE Women, Peace and Security blog*, 19 June 2025, <https://blogs.lse.ac.uk/wps/2025/06/19/el-tribunal-de-justicia-transicional-de-colombia-abre-un-nuevo-camino-en-el-abordaje-de-la-violencia-reproductiva/> (accessed 7 October 2025).

¹⁰⁸ Kelly Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Leiden: Martinus Nijhoff Publishers, 1997), 399–400.

¹⁰⁹ See Office of the Prosecutor of the ICC, ‘Draft Policy on Environmental Crimes Under the Rome Statute,’ 2024, para. 56, <https://www.icc-cpi.int/sites/default/files/2024-12/2024-12-18-OTP-Policy-Environmental-Crime.pdf> (accessed 7 October 2025).

¹¹⁰ See, e.g., Rosamund Scott, *Rights, Duties and the Body: Law and Ethics of the Maternal-Fetal Conflict* (Oxford: Hart Publishing, 2002).

¹¹¹ *SFK v Russia* (2022) European Court of Human Rights 5578/12, para. 81.

¹¹² *Ibid.*, para. 92.

¹¹³ Angella Son, *Stories That Make History: The Experience and Memories of the Japanese Military Comfort Girls-Women* (Berlin: Walter de Gruyter GmbH, 2020), 258.

¹¹⁴ *Ibid.*, 228–229.

In genocidal contexts, birth-endangering or -terminating measures serve the function of targeting future generations – ‘to kill the unborn in the womb.’¹¹⁵ As Fein has observed, ‘reproduction serves to continue the group: genocide to destroy it,’¹¹⁶ noting how perpetrators must either target reproduction within the group or appropriate its progeny to destroy its distinct identity. The use of forced abortion as a genocidal tool can thus be understood as a means of ensuring that unwanted pregnancies, those that would result in the continuation of the victimized group, are systematically eliminated, leading to the destruction of the group through the removal of its capability to reproduce.¹¹⁷

Forced abortion can also have devastating psychological effects, compounding the trauma already inflicted by sexual violence. In postconflict societies, victims who have been forcibly subjected to abortion often experience significant grief and alienation, as they are denied both the possibility of motherhood and the ability to grieve their loss in a manner recognized by their communities. Survivors of forced abortion under ISIS rule, for example, have reported ‘suicidal thoughts, and intense feelings of rage interspersed with periods of deep depression and listlessness,’¹¹⁸ due to the violation of their reproductive choices and the loss of their unborn children. The psychological toll of these violations cannot be understated, as they not only strip victims of their autonomy but also have severe consequences for their sense of self and continuity.

Birth-endangering measures such as the deliberate denial of life-saving obstetric care further reinforce the oppressive structures of reproductive violence. The targeting of pregnant women,¹¹⁹ the withholding of essential medical treatment and the imposition of conditions intended to bring about biological endangerment, such as inducing stillbirths or miscarriages, serve as indirect but equally potent means of disrupting reproductive autonomy. In atrocity campaigns, measures aimed at birth endangerment or termination have included starvation or the deliberate targeting of hospitals, maternity wards and fertility clinics, which may be intended to disproportionately affect pregnant victims, and often have the effect of doing so.¹²⁰ The consequences of these actions impact the reproductive autonomy of individual victims, but they also effectively curtail the reproductive viability of entire groups, endangering long-term demographic and cultural survival.

CONCLUSION

As discussed, the typology for reproductive violence developed in this article is not a legal typology, as it does not classify violence according to the criminal law’s technical requirements of *mens rea* and *actus reus*. It rather aims to fill an intermediate, pedagogical space: it aims to make the consequences of reproductive violence more visible in order to assist investigators and prosecutors to better understand the disaggregated harms of such violence. The article has argued that this pedagogical function is a necessary, but not sufficient, condition to promote greater recognition, investigation and prosecution of reproductive violence. Moreover, while the discussion here has focused on criminal accountability, it is envisaged that this typology may be applied to other transitional justice settings where reproductive violence is at issue, such as truth commissions and/or the awarding of reparations.¹²¹

¹¹⁵ To cite lyrics from: Iron Maiden, ‘2 Minutes To Midnight Lyrics & Meanings,’ *SongMeanings*, 24 September 2004, <https://songmeanings.com/songs/view/16936/> (accessed 7 October 2025).

¹¹⁶ Fein, *supra* n 65 at 43.

¹¹⁷ Jessberger, *supra* n 68 at 101.

¹¹⁸ United Nations Human Rights Council and Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* n 101 at para. 177; Zammit Borda, *supra* n 5 at 20.

¹¹⁹ See, e.g., United Nations Report of the Commission of Inquiry, *supra* n 24 at para. 29 (p. 9).

¹²⁰ UN Women and Global Justice Center, *supra* n 22 at 71.

¹²¹ Vijayarasa, *supra* n 5 at 109.

By unpacking reproductive violence according to reproductive consequences for victim-survivors, this typology aims to assist accountability efforts in three ways. First, the framework enables pattern recognition by highlighting the reproductive impacts of particular actions, showing how seemingly disparate acts constitute coherent reproductive control strategies and/or criminal policies designed to disrupt reproductive capacity within individuals or groups. For instance, when viewed through traditional lenses, ISIS's forced contraception against the Yazidis appears as isolated pharmaceutical abuse, while their sexual enslavement registers as rape or sexual slavery. The typology, however, helps frame these as interconnected components of (i.e., 'instances of') a systematic birth-preventing strategy, with contraception enabling continued sexual exploitation while preventing the birth of Yazidi children. This pattern recognition transforms our understanding of such acts, linking fragmented incidents to a more systematic reproductive policy.

Second, by facilitating recognition of such patterns of conduct, the framework assists evidence collection by directing investigators towards specific types of documentation relevant to each category of reproductive harm. This evidence may extend beyond conventional criminal investigation materials. For instance, for birth-preventing measures, investigators guided by the typology would not only collect testimony about forced sterilization procedures but may also seek pharmaceutical distribution records documenting systematic contraceptive administration, demographic data evidencing population decline in targeted communities, marriage registries showing prohibition of unions and medical records indicating reproductive health impacts. And for birth-compelling violence, the framework highlights the importance of documenting confinement duration, policies preventing access to safe abortion, where available, and longitudinal data tracking children born of rape, evidence necessary for establishing the temporal elements of forced pregnancy yet often overlooked in traditional sexual violence investigations.

Third, by enabling disparate incidents to be coded as birth-compelling, birth-preventing and/or birth-endangering or -terminating harms, and facilitating pattern recognition, this may encourage investigators and prosecutors to better identify systematic targeting of reproductive capacity and control. This may prove particularly valuable for forms of reproductive violence lacking explicit recognition under the Rome Statute. For instance, intragroup forced abortions may traditionally be framed solely as sexual assault. However, the typology codes such acts as birth-endangering violence potentially constituting torture (art 7(1)(f)), persecution based on gender (art 7(1)(h)) or other inhumane acts (art 7(1)(k)). Similarly, systematic denial of reproductive healthcare in detention, which may be dismissed as mere neglect or a side effect of conflict, could be coded through the typology as potential birth-endangering violence that may amount to crimes against humanity when part of widespread or systematic attack.

The identification of systematic patterns is important for demonstrating requisite gravity thresholds, particularly when reproductive violence must be charged as underlying acts within other Rome Statute crimes. This typology, therefore, helps investigators identify seemingly minor violations as instances of broader, systematic reproductive control warranting criminal accountability. In so doing, it is hoped that this typology may assist greater recognition of reproductive violence and may contribute to greater accountability.