

CHAPTER 13

SHOULD WE BRING PEACEKEEPERS BEFORE THE ICC? - CASE STUDY OF BURUNDI



ANDRÁS HÁRS

Abstract

Burundi has been a consistent participant in United Nations peace operations since the resolution of its domestic crisis in the mid-2000s. However, the conduct of its forces in multinational peace operations has come under significant scrutiny in the last decade, with recurring incidents of severe crimes, such as sexual exploitation and abuse being reported. Since the rule of law norms are precarious, with judicial independence being virtually non-existent, the question of whether peacekeepers from Burundi should be tried for international crimes before the International Criminal Court arises. This chapter examines the overall legal situation, specifically regarding any jurisdictional difficulties that might arise, and offers a reality check from the decision makers' perspective on the level of states and international organisations to highlight the positive and negative ramifications of trying peacekeepers before an international criminal tribunal.

Keywords: International Criminal Court, jurisdiction, Burundi, peace operations, peace v. justice

András Hárs (2025) 'Should we Bring Peacekeepers before the ICC? - Case Study of Burundi Peacekeepers' Conduct in the Central African Republic'. In: Nóra Béres (ed.) *The ICC at 25: Lessons Learnt*, pp. 279–295. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2025.nbicc_13

1. Introduction

The present chapter aims to understand some of the ramifications of bringing United Nations (UN) peacekeepers before the International Criminal Court (ICC) for serious violations, mainly of sexual nature, amounting to international crimes. Burundi's case is used as an example, and the role and possibilities available to the ICC in case systematic human rights violations are observed by the country's military stationed abroad, are highlighted. The chapter does not tackle issues such as the legality of the operation and the legitimacy of accepting contributions from a regime that frequently violates the fundamental human rights of its citizens domestically. Similarly, *ius in bello* questions concerning the unlawful conduct of peacekeepers are omitted as they could derail the discussion from the international criminal law issues that arise.

The chapter provides an overview of the situation in Burundi, specifically with regard to the standards of the rule of law, democracy, and overall human rights, to assess whether a free and fair trial on a domestic level can be realistically expected, instead of a process before the ICC. Second, the acts committed in the Central African Republic (CAR) are addressed to ascertain whether they can constitute one or more international crimes, focusing on war crimes and crimes against humanity. Third, jurisdictional matters are addressed at the level of the ICC, focusing on the notion of complementarity with an added reality check to determine if cooperation is feasible and/or likely in the near future. Finally, a brief overview of the legal, political, and institutional ramifications of bringing peacekeepers before the ICC is presented, with some recommendations for the future.

2. Burundi at a glance

2.1. Rule of law standards, democracy, and human rights

Burundi, a relatively small state in the central and eastern part of Africa, has had a turbulent history. Even overlooking its colonial period and simply considering the events that transpired in the last two decades reveals a sobering reality – Burundi has experienced civil war, economic hardship, deforestation, high inflation, fuel shortage, and, a general decrease in living standards.¹ Regarding the standards of democracy, human rights, and the rule of law, the country has consistently appeared at the bottom international ranking lists. For example, in terms of democracy, independent research by Julius Maximilians Universität Würzburg ranked it 158th

1 Global Forest Watch analysis.

out of the 176 states observed, labelling it a “hard autocracy”.² Indeed, political plurality and free and fair elections are a dream that is yet to be realised. The 2022 Freedom House report provided a more detailed analysis. According to their metrics, the country scored 14 out of 100 points, indicating an iron-fisted regime of the ruling party, where human rights and civil liberties are curbed. Of particular significance is the status of the judiciary, which the report describes as ‘[...] hindered by corruption and a lack of resources and training’, while also being ‘[...] subservient to the executive, which regularly interferes in the criminal justice system’ and ‘[...] used to persecute the political opposition’.³

Furthermore, civil liberties cannot be expected to be expanded in the current system where 19% of girls are married before the age of 18, and same-sex relationships between consenting adults are considered a criminal offence punishable with two years of imprisonment; needless to say, same-sex marriage is prohibited.⁴ Even if there was a judicial process regarding a human rights violation, the Freedom House report indicates that ‘*Constitutional guarantees of due process are generally not upheld. Arbitrary arrest and lengthy pretrial detention are common.*’

Overall, compliance with international standards for the rule of law and the protection of human rights remains nominal, with the country placing little emphasis on abiding by its international obligations. As the current, fourth cycle of the Universal Periodic Review by the UN Human Rights Council highlights, there have been promising initiatives, such as the establishment of the National Observatory for the Prevention and Eradication of Genocide, War Crimes, and Other Crimes against Humanity in 2017. However, the Observatory was rendered redundant in 2021-2022 due to the lack of funding and resources by the central government, with no plan of action four years after its creation.⁵

2.2. Contribution to UN peace operations

Burundi has a long experience with peace operations. From 2004 to 2006, the UN Operation in Burundi (ONUB) was deployed after the domestic crisis of previous years had receded.⁶ Since its relatively positive experiences with UN peace operations, the country has participated in UN peace operations, particularly in the CAR (the Multidimensional Integrated Stabilisation Mission in the Central African Republic [MINUSCA]),⁷ where it has sent 774 troops so far.⁸ Several factors have influenced the continuous support of UN peace operations in the CAR, including the positive

2 Julius Maximilians Universität Würzburg – democracy matrix.

3 Freedom House report of 2022 concerning Burundi.

4 Human Rights Watch: 2024 Report on Burundi.

5 Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights, Human Rights Council, 7 February 2023, A/HRC/WG.6/43/BDI/2, Art. 8.

6 United Nations Security Council Resolution 1545, 21 May 2004.

7 United Nations Security Council Resolution 2149, 10 April 2014.

8 UN Peacekeeping – MINUSCA mission overview.

experiences of the country; the perceived contribution of the peace operation to the wider central and eastern African region, where Burundi is also situated, resulting in the possibility of controlling migration and refugee waves; and being a prime ground for the military to gain first-hand experience in international cooperation. Sceptics have pointed out that this continuous support has not been influenced by altruistic and security reasons only but also a financial one, as Burundi has profited 13 million dollars from the UN out of a 1.1 billion dollar budget for the operation, making it a lucrative venture for the country; this is excluding the personal gains obtained by looting and pillaging the local population.⁹ The question in this instance is what is worth more for the UN: turning a blind eye to the abuses and the loss of the organisation's reputation resulting from the continuous violations by peacekeepers from Burundi, or the several-hundred-strong contributions of the country to the peace operation. By reaching the threshold of international crimes, the scales could be tipped, and the UN could be forced to act. Voices have already been calling for the removal of Burundi from peace operations since 2019.¹⁰

3. Acts committed in the Central African Republic and their evaluation under international criminal law

Several reports have shown severe criminal acts committed by peacekeepers from Burundi in the CAR. In their 2019 open letter, Code Blue cited at least 43 reported allegations that have occurred since 2015.¹¹ The Guardian reported a similar number, naming 41 peacekeepers based on a UN report in 2015–2016.¹² It would be both superficial and incorrect to put all the blame on Burundi, as other states, such as Gabon and Tanzania, have also been accused of turning a blind eye to systematic misconduct.¹³ This is also not an isolated incident, as lately in the spring of 2023, Tanzania was asked to repatriate 60 of its peacekeepers, as news of sexual exploitation and abuse was widely reported, and the UN was forced to act.¹⁴

9 Burke, 2017, p. 49; Code Blue Campaign, 2019.

10 Code Blue Campaign press release, 2020.

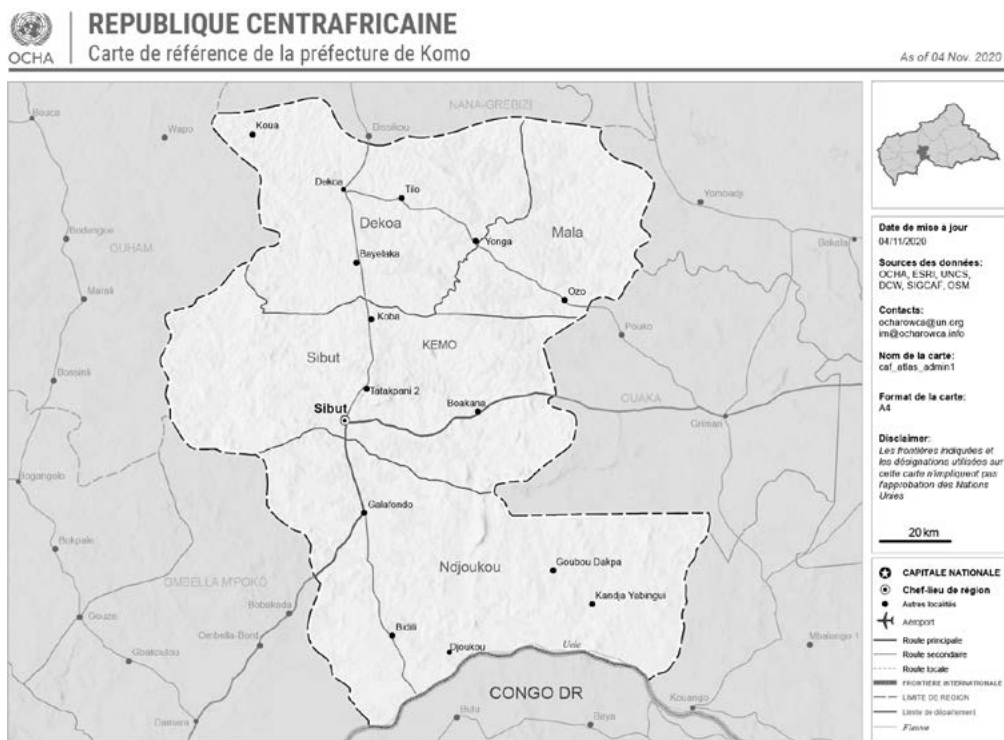
11 Code Blue campaign, 2019.

12 Boffey, 2016.

13 Burke, 2017. p. 12.

14 The New Humanitarian Report, 2023.

Map 1. Komo prefecture in the CAR, where most of the alleged conduct took place.



Source: UN Office of the Coordinator for Humanitarian Affairs¹⁵

These numbers should be understood in context. Crimes that are sexual in nature remain among the most underreported due to their sensitive nature; they are accompanied by a sense of shame on the victim's part, their reluctance to relive the trauma, disbelief among authorities, and family or societal stigmatisation. Coupled with a broken state apparatus – which necessitated the establishment of the peace operation in the first place – and the fact that an “allegation” can encompass several victims and/or perpetrators as a single case, it can safely be assumed that the reported number is merely the tip of the iceberg.¹⁶

The type of crime that was reported to have been committed in the aforementioned section in the “allegations” against peacekeepers from Burundi was labelled as sexual exploitation and abuse, which encompass a myriad forms of crimes of a sexual nature based on the terminology used by the UN.¹⁷ Conducts include rape and other forms

¹⁵ United Nations Office for the Coordination of Humanitarian Affairs, 2020.

¹⁶ Hårs, 2021. p. 104.

¹⁷ Venturini, 2019. pp. 26–27.

of sexual violence, rape against a minor, and soliciting sexual favours in exchange of goods or services.¹⁸ The role of the Burundi government is unclear and would warrant further investigation by the Prosecutor of the ICC should he decide to investigate the matter thoroughly. Options range from “merely” not dissuading its peacekeepers to overtly encouraging and supporting all manner of unlawful action against the local populace. Clearly, Burundi has refused to prosecute any of its peacekeepers for the alleged crimes since the initial reporting of those crimes in 2015-2016.

3.1. War crimes

The “simplest” international crime that can be applied is war crimes. Under the Rome Statute of the ICC, a conduct can be understood as “war crimes” *‘when committed as part of a plan or policy or as part of a large-scale commission of such crimes’*.¹⁹ We are not talking about singular acts or a few separate cases. The fact that 41-43 peacekeepers were repatriated as possible perpetrators indicates that the crimes in question were committed by approximately 7% of the Burundian personnel, revealing systematic problems sufficient enough to label the conduct as “large-scale”; however, currently, the “part or plan” cannot be proven to a sufficient degree. Nonetheless, based on the wording of the Statute, fulfilling even one of these criteria would be sufficient for the large-scale commission to be evident.²⁰

Besides the nature of these crimes, individual conduct must also be considered. Article 8 (1) Para (e) of the Rome Statute states, *‘Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions’*. The reports originating from the region mention rape and other forms of conflict-related sexual violence, which clearly match the conduct described in the Rome Statute. The tenet for the prohibition of rape and other forms of sexual crimes is also supported by the International Committee of the Red Cross (ICRC) customary law database, which establishes the rule for international and non-international armed conflicts deriving from the general prohibition enshrined in the common Article 3 of the Geneva Conventions.²¹ Amnesty International cited an August 2015 event where a young girl aged 12 was raped by MINUSCA personnel.²² This flagrant violation of the obligations of peacekeepers resulted in the resignation of special representative Babacar Gaye from MINUSCA.²³ From a procedural perspective and as a side-

18 United Nation News 2016.

19 Rome Statute Art. 8(1).

20 Harrington, 2005. p. 141.

21 ICRC Customary Law Database: Rule Number 93, Rape and Other Forms of Sexual Violence.

22 Amnesty International, 2016.

23 It is disputed whether it was a voluntary resignation or a forced one by then Secretary-General Ban Ki-moon. United Nations’ Central African Republic envoy Babacar Gaye sacked over peacekeeper abuse claims, 2015.

note, the Office of Internal Oversight Services (OIOS) launched an investigation regarding the incident.²⁴ In cases where the investigation led to sufficient evidence regarding the criminal conduct of peacekeepers, the contributing state is alerted. This results in the alleged perpetrators being repatriation and possibly facing a domestic criminal process, the latter of which we have no confirmation about for almost ten years.

3.2. Crimes against humanity

Another possibility would be the assumption that crimes against humanity have taken place.²⁵ According to Article 7 Section (1) of the Rome Statute, this can occur ‘*when [it is] committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*’. Coupled with Section (1) Para (g), which states that the act in question can take the form of ‘*Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity*’, whether crimes against humanity could be applicable in this scenario should be examined.²⁶ The Prosecutor of the ICC will need to consider whether the “attack” nature can be proven; however, due to the scarce availability of information, it is hard to imagine (and even harder to prove) that the government of Burundi or the military leaders of MINUSCA would deliberately attack the local population of the CAR.²⁷

There have been several cases during the course of which the ICC developed the case law regarding classifying conflict-related sexual violence as crimes against humanity. In the 2019 Ntaganda case, the ICC made substantial strides regarding instances where sexual violence was committed by a group of perpetrators against a group of victims,²⁸ whereas in the 2021 Ongwen case, the ICC analysed *inter alia* the issue of forced marriage and child soldiers.²⁹ While the Ntaganda and Ongwen cases were not related to the conduct of peacekeepers, they underscore the point that the ICC has become much more alert and reflective in its understanding of sexual and gender-based violence along with conflict-related sexual violence. It also highlights a shift in the policy considerations of the Prosecutor, which is a hopeful turn of events in terms of potential the prosecution of Burundi nationals for similar conduct.

24 Amnesty International, 2016.

25 O’Brien, 2006. pp. 284–285.

26 Rome Statute, Art. 7 Sec. (1).

27 Harrington, 2005. p. 141.

28 The Prosecutor vs. Bosco Ntaganda, ICC-01/04-02/06, Trial Judgment, 8 July 2019; Tridgell, 2017. p. 158; Modzeleski, 2019. p. 723.

29 The Prosecutor v. Dominic Ongwen, ICC-02/04-01/15. Trial Judgment, 4 February 2021, Para 205–209. Sec. a.; Souris, 2019. p. 483; Kwik, 2020. p. 136.

3.3. *The issue of command responsibility*

Another closely related aspect is the matter of command responsibility for the conduct. Since it is the Prosecutor's long-standing policy to bring cases where the alleged perpetrator is a leader, architect, or decision-maker for the crime in question, the criminal responsibility of the contingent commander should also be considered. In the Bemba case before the ICC, the Appeals Chamber in 2018 made some fundamentally important statements. It established standards for not only developing individual reports, even for those high in the chain of command, about the crimes taking place, but also the widespread manner in which news is disseminated amongst the general public about the crimes committed, leading to the perpetrator "knowing" about the criminal acts.³⁰ These conditions are also sufficient if the commander is not present on the ground but is at a remote location.³¹ However, when the Appeals Chamber acquitted Mr. Bemba, they stated that the decisions and sanctions made by Bemba were in line with his possibilities at the time, given the circumstances of the case.³²

Transferring the morals learned from the Bemba case to the conduct of Burundi peacekeepers in CAR reveals considerable similarities. Based on the available information, the commanders of the operation had to know that soldiers under their command committed criminal acts. Whether the action taken before deployment was sufficient or not is another matter. For example, were soldiers warned of criminal responsibility ramifications for their conduct? Was it established that swift, disciplinary action would be taken should the personnel breach existing obligations? These questions require an independent investigation. Even more pressing are questions regarding what actions were taken upon the resignation of special representative Babacar Gaye, when it became apparent that several, serious violations had taken place – when it could be concluded that the sexual crimes were not simply a one-off, unrelated events but symptoms of a systematic fault in how the operation was run. To date, nothing is known about the possible actions taken by the contingent commander of Burundi or persons close to them in the military hierarchy. However, this could serve as the focal point for the Prosecutor's investigation.

30 Prosecutor v. Bemba, no. ICC-01/05-01/08 A, Appeal Judgement, 8 June 2018, Paras 170, 179.

31 Jackson, 2018.

32 Chadimová, 2019. pp. 308–309.

4. Burundi and the International Criminal Court – matters of jurisdiction and cooperation

To ascertain the jurisdiction of the ICC, the general legal situation must be evaluated in a nutshell. The peace operation in the CAR envisioned cooperation with the ICC. Specifically, it enabled, envisioned, and rendered desirable for the ICC to hold accountable perpetrators of acts amounting to crimes under the Rome Statute of the Court under the mandate of MINUSCA.³³ The CAR has been a state party to the Rome Statute since 2003. The CAR has referred the entire “situation” occurring on its territory between 2002 and 2003 to the ICC³⁴ and the renewal of violence on its territory in 2012.³⁵ However, that took place before MINUSCA’s establishment in 2014. Therefore, the present referral by the CAR would not provide sufficient jurisdictional ground for the Prosecutor to begin the investigation. Despite this fact, being a state party on whose territory international crimes have occurred, the Prosecutor possesses the capacity to launch the process *ex officio*. Presently, let us not forget that in a peacekeeping environment, the UN, the troop-contributing countries, and the host state are bound by the so-called memoranda of understanding (MoUs) as well as status of forces agreements (SoFAs). These agreements specifically mandate the exclusive criminal jurisdiction of the host state, thereby not enabling criminal processes in either the host state or before international fora.³⁶ This legal stringency explains why the UN’s response in most cases end with the repatriation and blacklisting of alleged perpetrators (the latter for substantiated allegations only), and the occasional sacking of the force commander who demonstrated a soft attitude towards criminal acts committed under his watch.

A possible way to get around the jurisdictional hurdle would be a referral by the UN Security Council, which could serve as a clear-cut solution for this Gordian Knot. It worked previously, in cases concerning Darfur and Libya; however, in the current international environment, it is unlikely to happen.³⁷

Burundi has been a state party since 2004 when it ratified the Rome Statute.³⁸ Of the three possibilities, the process before the ICC can be launched (referral by

33 UN SC Res 2149/2014 (10 April 2014) Art. 12:

Reiterates that all perpetrators of violations of international humanitarian law and human rights violations and abuses must be held accountable and that some of those acts may amount to crimes under the Rome Statute of the International Criminal Court (ICC), to which the CAR is a state party, recalls the statements made by the Prosecutor of the ICC on 7 August 2013 and 9 December 2013, notes further the opening of a preliminary examination by the Prosecutor of the ICC on alleged crimes committed in the CAR since September 2012, and welcomes the cooperation by the Transitional authorities in this regard.

34 CAR’s 1st referral of the situation in 2002-2003 to the ICC.

35 CAR’s 2nd referral of the situation in 2012 to the ICC.

36 Notar, 2006. p. 428.

37 Béres, 2021. pp. 51–59. For some political side-effects on why referral would not be the ideal solution, please refer to Chapter 5 of this paper.

38 International Criminal Court, 2004.

state, referral by the UN Security Council, and investigation by the Prosecutor). The *proprio motu* investigation by the Prosecutor was initiated on 25 October 2017.³⁹ Shortly thereafter, Burundi's withdrawal came into effect on 27 October 2017. It is evident from the timeline that the Prosecutor's announcement to launch the investigation was delayed as long as possible in the hope that Burundi's government might change its mind and renounce the withdrawal. When it became apparent that the country would proceed with it, the Prosecutor was forced to announce the commencement of the investigation in the last minute so as not to lose temporal jurisdiction after the one-year period from Burundi's initial announcement had expired. The scope of the investigation involves 'crimes against humanity allegedly committed both in and outside of Burundi by Burundian nationals between 2015 and 2017'.⁴⁰ Even though the original purpose and scope of the investigation was to analyse the conduct of various actors during the domestic strife in Burundi, it has nonetheless opened a path for a plethora of different crimes to be investigated during this timeframe.

In terms of the possible jurisdiction of the ICC, besides the material one, temporal, territorial, or personal jurisdiction should be considered along with the tenet of complementarity. Starting with temporal jurisdiction, the acts occurred between 2015 and 2017 when Burundi was a state party to the Rome Statute. The withdrawal from the ICC's Statute only came into effect in 27 October 2017, clearly enabling the Court's jurisdiction from a temporal basis. Regarding the territorial or personal dimensions (without which either is sufficient), it can be established that the CAR was and is still a state party; thus, since the acts in question have occurred on its territory, the ICC shall have jurisdiction. From an active personal perspective, the alleged crimes have been committed by the citizens of Burundi; therefore, as a state party, the ICC has both territorial and personal jurisdiction.

Complementarity is somewhat harder to ascertain.⁴¹ Undoubtedly, Burundi has the primary capacity to initiate a criminal justice process. However, there are no reports indicating that domestic judicial processes have taken place over the course of the almost 7-9 years since the acts have occurred.⁴² There is no clear deadline by which the Prosecutor will have to wait for a country; however, we can make a conclusion based on existing practice.⁴³ Based on the state of the country as established at the beginning of this chapter, it cannot be expected that a government-controlled judiciary would facilitate or even enable such a process, particularly if the government itself has explicitly or implicitly condoned such acts. Even though the latter statement regarding the government's role cannot be substantiated at this

39 ICC 01/17 Situation in the Republic of Burundi.

40 Ibid.

41 Giles, 2017. pp. 182–183.

42 For crimes of a sexual nature committed by soldiers from the Democratic Republic of the Congo in the CAR, there have been attempts at domestic criminal processes, albeit with very limited success. See also Redress and Child Rights International Network (CRIN), 2019–2020, p. 40.

43 Du Plessis – Pete, 2010. pp. 12–13.

point, the lack of domestic process coupled with a weak rule of law and non-existent judicial impartiality are factors that could lead to the shielding of alleged perpetrators, which would not rule out a future process by the ICC.⁴⁴

5. Prospects of “peacekeeper trials” before the ICC – some theoretical and practical considerations

Should the ICC’s jurisdiction be established, besides the purely legal reasoning, some societal and political considerations will need to be considered. First, among the positive ramifications of a trial or series of trials before the ICC, the victim’s standpoint deserves precedence.⁴⁵ In a country ravaged by civil war and constant unrest for decades, showing victims that their suffering is not unheard and that there is justice on the highest level would be a laudable goal.⁴⁶ Furthermore, it would enable aid to the victims through the Trust Fund of the ICC as well as making it possible for reparations to be paid from the assets of the perpetrators.⁴⁷ Concerning future commission of such crimes, the value of deterrence should also be mentioned. Based on cases in the Democratic Republic of the Congo, even an acquittal will have local effects on the credibility and future political aspirations of the indicted.⁴⁸ The process before the ICC would also mean that potentially unreliable, government-controlled domestic courts are taken out of the equation and a veritable, independent, and impartial judicial process could take place. A common denominator in these high-profile cases is that they also serve as fact-finding and in the judgment, the black and white historical narrative can manifest itself for the benefit of not only historians but also future generations attempting to make sense of past events.⁴⁹ On the UN level, facilitating criminal processes before the ICC would reinforce the image of an organisation as a law-abiding entity taking steps to end impunity – an otherwise common criticism regarding crimes of sexual nature by its peacekeepers.⁵⁰

Besides the numerous arguments in favour of international criminal justice, some negative side-effects must also be examined to gain a clear and balanced overview of the situation. The most severe issue is the almost certain lack of participation by Burundi. Since the country has withdrawn from the Rome Statute and has so far

44 Rome Statute Art. 20. Sec. 3 para. a).

45 Defeis, 2017. pp. 210-211.

46 Ferstman, 2013. p. 3.

47 Sexual Exploitation and Abuse in UN Peacekeeping Operations – Improving Victim’s Access to Reparation, Support and Assistance, Redress, 2017, p. 16.

48 Whether the tarnished reputation of the acquitted is beneficial is highly debatable. See: Bloomberg 2018.

49 Venigandla, 2021. p. 7.

50 Wills, 2013. pp. 71-73.

shown no sign of cooperation with the Court, it is unlikely that without meaningful domestic changes, Burundi's stance would be altered. As such, apprehending the alleged perpetrators and bringing them to The Hague is highly doubtful. Since the Rome Statute does not allow for *in absentia* trials, chances are slim that the process can commence in earnest.⁵¹ Even if some of the alleged perpetrators are transferred to the ICC, due to the Prosecutor's policy on dealing with the leaders, orchestrators, and architects of international crimes, only a few key figures are likely to be brought to justice, and even that process is likely to be lengthy, lasting several years. This line of thought causes some scholars to completely abandon the idea of the ICC as a forum for prosecuting peacekeepers.⁵² From a political perspective, "another African case" would reinforce the perceived anti-Africa sentiment the ICC is regularly accused of, forcing it to argue defensively when faced with such accusations.⁵³ From the victim's point of view, having a remote and lengthy trial on the other side of the world may not be sufficient to have a sense of "justice being done", particularly when the prison sentence's comfortable and humane conditions are compared to the brutal and merciless circumstances in which the crimes were committed.⁵⁴ On a slightly more political and international relations side of the arguments, having peacekeepers on the bench of the accused could project a negative view of the UN, which could be seen as an organisation that has previously protected the perpetrators and turned a blind eye to their conduct. Even more relevant could be troop-contributing states' reluctance in either acceding to the Rome Statute for fear of their own citizens being tried by the Court or it could lead to the suspension of their contribution to peace operations, paralysing future operations.⁵⁵

51 As a general rule of thumb, the Rome Statute does not allow *in absentia* trials, demanding the presence of the accused during trial (Rome Statute Art. 61 Sec. 1). The presence of the accused can only be envisioned under very specific circumstances (such as the disruption of the process – Art. 61 Sec. 2) or during specific stages (such as when the Appeals Chamber renders its judgement – Art. 81 Sec. 5). Whether this is a valid stance in the current situation is widely discussed in the academia; however, to date, no concrete shift has been seen among state parties to amend the Rome Statute in this regard. Wheeler, 2020.

52 Harrington, 2005. p. 143.

53 Cannon – Pkalya – Maragia, 2016. pp. 6–28.; Vilmer, 2016. pp. 1319–1342.

54 Regarding the humane conditions in Dutch prisons, for example, in Scheveningen, see: Verfuss, 2018.

55 Genovese, 2018. p. 636.

Table 1. Advantages and disadvantages of the ICC's process of Burundi peacekeepers

Advantages	Disadvantages
sense of justice being done	remote justice – “comfortable” punishment
access to the Trust Fund; enables reparations	lack of cooperation from Burundi – access to potential perpetrators almost impossible
deterrence	anti-Africa perception by the ICC could heighten
no reliance on possibly biased state-controlled domestic courts	small number of perpetrators who can be brought before the ICC; lengthy process
fact-finding, history-establishing nature	could deter countries contemplating the ratification of the Rome Statute
image of the UN taking steps against impunity	contributions to UN peace operations could decrease

Source: the author's own compilation.

6. Concluding remarks

There are compelling reasons both for and against peacekeepers from Burundi before the ICC. The “lesson learned” here is that it may not always be a good idea to charge peacekeepers for international crimes. This is what the UN believes, fearing that its contributors’ support will dwindle, resulting in the UN not advocating this path. Another lesson that “might have been learned” is that deterrence and the realistic possibility of a judicial process can be a good idea, particularly for leaders, as seen in the Bemba Gombo case. The indication by the Prosecutor that the “ICC’s eyes” are upon the country can be sufficient for a domestic criminal process to begin. Although in the case of Burundi, there are no indications towards this direction. Finally, the “unlearned” lesson is that, according to the saying often attributed to Nelson Mandela: “only justice can bring peace”. This is certainly the moral and underlying reason international courts such as the Nuremberg and Tokyo Tribunals, the ICTY, and the ICTR were set up after major conflicts. If we allow free rein to political considerations, the victims’ standpoint and the entire *raison d’être* of international justice mechanisms become moot. To underscore this point, the victims’ standpoint should serve as a testament to the lasting mental and physical damage such acts incur.

„A Burundian soldier dragged this 14-year-old girl into his barracks and raped her in Bangui, Central African Republic (CAR), leaving her pregnant with the baby boy of whom she speaks: “Sometimes when I’m alone with my baby, I think about killing him. He reminds me of the man who raped me”.⁵⁶

56 Sieff 2016.

References

- Amnesty International. (2016). Mandated to protect, equipped to succeed? Strengthening peacekeeping in the Central African Republic. [Online]. Available at: <https://www.amnesty.org/en/latest/news/2015/08/car-un-troops-implicated-in-rape-of-girl-and-indiscriminate-killings-must-be-investigated/> (Accessed June 3, 2025)
- Béres, N. (2021). A Biztonsági Tanács által a Nemzetközi Büntetőbíróság elé utalt helyzetek legfontosabb jogi problémái, Mádl Ferenc Összehasonlító Jogi Intézet, Budapest
- Bloomberg. (2018, September 4). Congo court bars opposition leader Bemba from presidential vote. [Online]. Available at: <https://www.bloomberg.com/politics/articles/2018-09-04/congo-court-bars-opposition-leader-bemba-from-presidential-vote> (Accessed June 3, 2025)
- Boffey, D. (2016, December 5). UN inquiry into CAR abuse claims identifies 41 troops as suspects. *The Guardian*. [Online]. Available at: <https://www.theguardian.com/world/2016/dec/05/un-inquiry-into-car-abuse-claims-identifies-41-troops-as-suspects>
- Burke, S. R. (2017). Due Diligence and UN Support for African Union Security Forces. *Journal of International Peacekeeping*
- Cannon, B. J. – Pkalya, D. R. – Maragia, B. (2016). The International Criminal Court and Africa: Contextualizing the Anti-ICC Narrative, *African Journal of International Criminal Justice*, Vol. 2, Issue 1
- Chadimová, M. (2019). Superior Responsibility in the Bemba Case – Analysis on the Court's Findings on Necessary and Reasonable Measures. *International Criminal Law Review*, Vol. 19, Issue 2
- Code Blue Campaign. (2019, September 9). Press release. [Online]. Available at: <https://www.codebluecampaign.com/press-releases/2019/9/9> (Accessed June 3, 2025)
- Code Blue Campaign. (2020, July 16). Press release. *AIDS Free World*. [Online]. Available at: <https://aidsfreeworld.org/statements/2020/7/16> (Accessed June 3, 2025)
- Defeis, E. F. (2017). U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity, *Washington University Global Studies Law Review*, Vol. 7, Issue 2, pp. 210-211.
- Du Plessis, M. – Pete, S. (2010). Who Guards the Guards? The ICC and Serious Crimes Committed United Nations Peacekeepers in Africa, *African Security Studies*, Vol. 13, Issue 4, pp. 12-13.
- Ferstman, C. (2013). Criminalizing Sexual Exploitation and Abuse by Peacekeepers, *United States Institute for Peace*, p. 3.
- Freedom House. (2022). Freedom in the world 2022: Burundi. [Online]. Available at: <https://freedomhouse.org/country/burundi/freedom-world/2022> (Accessed June 3, 2025)
- Genovese, S.. (2018). Prosecuting U.N. Peacekeepers for Sexual and Gender-Based Violence in the Central African Republic, *Brooklyn Journal of International Law*, Vol. 43, Issue 2, p. 636.
- Giles, Sh. A. (2017). Criminal Prosecution of Peacekeepers: When Defenders of Peace Incite Further Conflict Through Their Own Misconduct, *American University International Law Review*, Vol. 33, Issue 1, pp. 182-183.
- Global Forest Watch. (n.d.). Burundi country dashboard. [Online]. Available at: <https://www.globalforestwatch.org/dashboards/country/BDI/> (Accessed June 3, 2025)
- Harrington, A. R. (2005). Victims of Peace: Current Abuse Allegations Against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future. *ILSA Journal of International & Comparative Law*, Vol. 12, p. 141.

- Hárs, A. (2021). Sexual Exploitation and Abuse in United Nations Peace Operations – With Special Regard to Implications of Responsibility in International law, Doctoral Thesis, University of Szeged, p. 104. [Online]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3944742. (Accessed 3 June 2025)
- Human Rights Watch. (2024). World report 2024: Burundi. [Online]. Available at: <https://www.hrw.org/world-report/2024/country-chapters/burundi> (Accessed 3 June 2025)
- International Committee of the Red Cross. (n.d.). Rule 93: Rape and other forms of sexual violence. Customary IHL Database. [Online]. Available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule93> (Accessed 3 June 2025)
- International Criminal Court. (2004). Burundi ratified the Rome Statute. [Online]. Available at: <https://www.icc-cpi.int/news/burundi-ratified-rome-statute> (Accessed 3 June 2025)
- International Criminal Court. (n.d.). Situation in the Republic of Burundi (ICC-01/17). [Online]. Available at: <https://www.icc-cpi.int/burundi> (Accessed 3 June 2025)
- International Criminal Court. (n.d.-a). Situation in the Central African Republic (2002–2003). [Online]. Available at: <https://www.icc-cpi.int/car> (Accessed June 3, 2025)
- International Criminal Court. (n.d.-b). Situation in the Central African Republic II (2012). [Online]. Available at: <https://www.icc-cpi.int/carII> (Accessed June 3, 2025)
- Jackson, M. (2018) Geographical Remoteness in Bemba. In: EJIL:Talk! 30 July 2018. Geographical Remoteness in Bemba – EJIL: Talk! (ejiltalk.org). (Accessed 3 June 2025)
- Julius Maximilians Universität Würzburg – democracy matrix: [Online]. Available at: <https://www.democracymatrix.com/ranking> (Accessed 3 June 2025)
- Kwik, J. (2020). The Road to Ongwen: Consolidating Contradictory Child Soldiering Narratives in International Criminal Law. *Asia Pacific Journal of International Humanitarian Law*, Issue 1
- Modzeleski, E. (2019). The International Criminal Court Appeals Chamber Ruling in Ntaganda: An Opportunity to Improve Accountability for Sexual and Gender-based Crimes Against Men and Boys. *Georgia Journal of International and Comparative Law*
- Notar, S. A. (2006). Peacekeepers as Perpetrators: Sexual Exploitation and Abuse of Women and Children in the Democratic Republic of the Congo, *American University Journal of Gender, Social Policy & the Law*, Vol. 14, Issue 2
- O'Brien, M. (2006). Prosecuting Peacekeepers in the ICC for Human Trafficking. *Intercultural Human Rights Law Review*, Vol. 1
- Office of the United Nations High Commissioner for Human Rights, Human Rights Council. (2023, February 7). Compilation of information: Burundi (A/HRC/WG.6/43/BDI/2), art. 8.
- Prosecutor v. Bemba, no. ICC-01/05-01/08 A, Appeal Judgement, 8 June 2018
- Redress and Child Rights International Network (CRIN). (2019–2020). Litigating peacekeeper child sexual abuse (p. 40). [Online]. Available at: <https://home.crin.org/issues/sexual-violence/un-peacekeepers/litigation-report>
- Sexual Exploitation and Abuse in UN Peacekeeping Operations – Improving Victim's Access to Reparation, Support and Assistance, Redress, 2017, 16: [Online]. Available at: <https://www.refworld.org/reference/themreport/redress/2017/en/118666>.
- Sieff, K. (2016) Members of a U.N. peacekeeping force in the Central African Republic allegedly turned to sexual predation, betraying their duty to protect. *The Washington Post*. [Online]. Available at: <https://www.washingtonpost.com/sf/world/2016/02/27/peacekeepers/> (Accessed June 3, 2025)
- Souris, R. N. (2019). Virtue Ethics, Criminal Responsibility, and Dominic Ongwen. *International Criminal Law Review*, Issue 3, p. 483.

- The New Humanitarian. (2023, June 9). UN sex abuse allegations in Central African Republic peacekeepers. [Online]. Available at: <https://www.thenewhumanitarian.org/news/2023/06/09/UN-sex-abuse-allegations-Central-African-Republic-peacekeepers> (Accessed June 3, 2025)
- The Prosecutor v. Dominic Ongwen, ICC-02/04-01/15. Trial Judgment, 4 February 2021
- The Prosecutor vs. Bosco Ntaganda, ICC-01/04-02/06, Trial Judgment, 8 July 2019
- Tridgell, J. (2017). Prosecutor v Ntaganda: The End of Impunity for Sexual Violence against Child Soldiers, Australian International Law Journal
- United Nations News. (2016, December). UN peacekeeping mission in Central African Republic. [Online]. Available at: <https://news.un.org/en/story/2016/12/547012> (Accessed June 3, 2025)
- United Nations Office for the Coordination of Humanitarian Affairs. (2020, November 4). République centrafricaine: Carte de référence de la préfecture de Kémo [Map]. ReliefWeb. [Online]. Available at: <https://reliefweb.int/map/central-african-republic/republique-centrafricaine-carte-de-reference-de-la-prefecture-de-kemo-04-nov-2020> (Accessed June 3, 2025)
- United Nations Peacekeeping. (n.d.). MINUSCA mission overview. [Online]. Available at: <https://peacekeeping.un.org/en/mission/minusca> (Accessed June 3, 2025)
- United Nations Security Council. (2004, May 21). Resolution 1545 (S/RES/1545).
- United Nations Security Council. (2014, April 10). Resolution 2149 (S/RES/2149), art. 12.
- United Nations Security Council. (2014, April 10). Resolution 2149 (S/RES/2149).
- United Nations' Central African Republic envoy Babacar Gaye sacked over peacekeeper abuse claims. (2015, August 12). BBC News. [Online]. Available at: <https://www.bbc.com/news/world-africa-33890664> (Accessed June 3, 2025)
- Venigandla, Sh. (2021). Protection, Justice and Accountability: Cooperation between the International Criminal Court and UN Peacekeeping Operations, International Peace Institute
- Venturini, G. (ed.) (2019). Integrating Gender Perspectives into International Operations – A Training Handbook with Commentaries, International Institute of Humanitarian Law, Sanremo
- Verfuss, T. (2018). Palace or just 'international standards': Where and how do the ICC detainees live? *Medium*. [Online]. Available at: <https://medium.com/@JFJustice/palace-or-just-international-standards-where-and-how-do-the-icc-detainees-live-6038dec944b0> (Accessed June 3, 2025)
- Vilmer, J.-B. J.. (2016). The African Union and the International Criminal Court: Counteracting the Crisis, *International Affairs*, Vol. 92, Issue 6
- Wheeler, C. (2020). The ICC Appeals Chamber signals a possible change in approach to the permissibility of trials in absentia. *EJIL:Talk! – Blog of the European Journal of International Law*. [Online]. Available at: <https://www.ejiltalk.org/the-icc-appeals-chamber-signals-a-possible-change-in-approach-to-the-permissibility-of-trials-in-absentia/> (Accessed June 3, 2025)
- Wills, S. (2013). Continuing Impunity of Peacekeepers: The Need for a Convention, *Journal of International Humanitarian Legal Studies* Vol. 4.