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ELEMENTS OF CRIMES AGAINST HUMANITY: ANALYSIS THROUGH ICC JURISPRUDENCE

By- Dr. Ritika¹

ABSTRACT

This paper examines how the International Criminal Court (ICC) has interpreted the definition of crimes against humanity (CAH) through its jurisprudence. Crimes against humanity encompass heinous acts like murder, extermination, and enslavement, committed as part of a widespread or systematic attack on civilian populations. The paper focuses on how the ICC's rulings in landmark cases, such as Prosecutor v. Katanga, Prosecutor v. Bemba, and Prosecutor v. Gbagbo and Ble Goude, have clarified critical elements of CAH.

These include the requirements of a "widespread" or "systematic" attack, the targeting of civilians, and the necessary mental state. The research explores the ICC's role in shaping the legal understanding of CAH, contributing to more consistent and transparent prosecution of these offenses. It also highlights controversies around the requirement of a state or organizational policy, issues with gender-based crimes, and challenges the ICC faces in holding perpetrators accountable.

Overall, the paper underscores the importance of ICC judgments in evolving the legal framework for CAH, enhancing international justice, and

¹ Assistant Professor, Ashoka Law College, University of Jammu.

strengthening efforts to prevent impunity for serious human rights violations.

KEYWORDS: Crime, International Criminal Court, Rome Statute, Humanity, Violation.

INTRODUCTION:

Crimes against humanity (CAH) are among the most serious offenses under international law. They involve large-scale acts of violence targeted at civilian populations. Unlike war crimes, which occur in the context of armed conflict, or genocide, which requires the intent to destroy a specific group, CAH can be committed even during peacetime and do not necessitate discriminatory intent.

The Rome Statute of the International Criminal Court (ICC) defines CAH to include acts such as murder, extermination, enslavement, torture, and rape, when these are committed as part of a widespread or systematic attack against a civilian population. This distinguishes CAH from isolated criminal acts, as they require a collective, organized effort to target civilians on a large scale.²

Due to their scope and nature, CAH are not merely matters of domestic law, but are of concern to the international community as a whole. The gravity of these offenses makes them among the most serious under international law.

Historical Evolution of Crimes Against Humanity:

The legal concept of crimes against humanity first emerged in response to the atrocities committed during World War II. The Nuremberg Trials (1945-1946), which prosecuted senior Nazi officials, marked the first formal recognition of Crimes against humanity in international law. The Nuremberg Charter included crimes against humanity as one of the categories for which individuals could be held accountable, even in the absence of a declaration of war or direct link to an armed

² Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90.

conflict.³ The Nuremberg Trials were a significant milestone in establishing individual criminal responsibility for acts that shocked the conscience of humanity, setting a precedent for future international prosecutions.

Following Nuremberg, the United Nations took steps to codify crimes against humanity. The 1948 Genocide Convention addressed genocide but did not specifically define Crimes against humanity. It wasn't until the 1990s that international tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), further developed the legal framework for prosecuting Crimes against humanity. In these tribunals, the requirement of a widespread or systematic attack against civilians became central to the prosecution of CAH, as seen in cases like *Prosecutor v. Tadic*.⁴ The work of these tribunals laid the foundation for the Rome Statute, which established the ICC in 2002.

The Rome Statute's codification of CAH and the establishment of the ICC as a permanent court to prosecute these atrocities represented a landmark development in international criminal law. It provided a comprehensive legal framework and institutional mechanism to hold perpetrators accountable for some of the gravest offenses against humanity.

Unlike the ad hoc tribunals, which were limited to specific conflicts, the ICC was granted jurisdiction to investigate and prosecute Crimes against humanity globally, provided certain jurisdictional criteria were met. This universal mandate has enabled the ICC to play a crucial role in addressing impunity for CAH.⁵

The Relevance of the International Criminal Court:

³ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, art. 6(c), Aug. 8, 1945, 82 U.N.T.S. 279 (hereinafter Nuremberg Charter).

⁴ *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion and Judgment, p. 653 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997).

⁵ Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90.

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The ICC's relevance in prosecuting crimes against humanity lies in its mandate to ensure accountability for the most serious crimes of concern to the international community. The Rome Statute grants the ICC jurisdiction over CAH when national courts are unwilling or unable to prosecute such crimes. The principle of complementarity ensures that the ICC acts as a court of last resort, stepping in only when domestic legal systems fail to hold perpetrators accountable. The ICC's global jurisdiction and permanent structure make it a key institution in the fight against impunity for crimes against humanity.

Through its jurisprudence, the ICC has refined the legal understanding of CAH, offering clarity on the interpretation of key elements such as "widespread or systematic attack," the meaning of "civilian population," and the mental element (*mens rea*) required for CAH prosecutions. For instance, in *Prosecutor v. Katanga*, the ICC highlighted that an attack need not be both widespread and systematic; it can be either, as long as it meets the threshold of gravity required for crimes against humanity.⁶ This interpretation has provided much-needed clarity and consistency in the prosecution of CAH.

Additionally, the ICC's role in prosecuting crimes against humanity extends beyond legal accountability. The Court also serves as a platform for victim participation, offering a voice to those who have suffered the most egregious violations of human rights. Victims can participate in proceedings and seek reparations, contributing to the broader goals of restorative justice and reconciliation in post-conflict societies. The ICC's victim-centered approach distinguishes it from earlier tribunals and underscores its commitment to delivering comprehensive justice.

This paper aims to analyze the essential elements of crimes against humanity as defined in the Rome Statute and interpreted by the ICC. It will explore key ICC cases, including *Prosecutor v. Katanga*, *Prosecutor v. Bemba*, and *Prosecutor v.*

⁶ *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, Judgment Pursuant to Article 74 of the Statute, 1102 (Mar. 7, 2014).

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Gbagbo and Ble Goude, to understand how the Court has addressed critical aspects of CAH, such as the requirement for a widespread or systematic attack, the definition of civilian populations, and the mens rea required to establish liability for CAH. Furthermore, the paper will examine the controversies and challenges the ICC faces in prosecuting crimes against humanity, including debates over the need for a state or organizational policy and the evolving understanding of gender-based crimes as CAH.

The analysis will also highlight the ICC's contribution to international criminal law by clarifying the legal standards for prosecuting CAH and ensuring accountability for gross human rights violations. By examining the ICC's jurisprudence, this paper seeks to offer a comprehensive understanding of how international law addresses crimes against humanity and the evolving role of the ICC in shaping the future of accountability for such crimes.

Historical Background of Crimes Against Humanity:

Crimes against humanity (CAH) have evolved significantly since their initial formulation during the aftermath of World War II. This section explores the origins of CAH, beginning with the Nuremberg Trials and subsequent post-war developments, leading to their codification in the Rome Statute of the International Criminal Court (ICC). Additionally, early landmark cases, such as *Prosecutor v. Tadic* from the International Criminal Tribunal for the former Yugoslavia (ICTY), provided further clarification of key elements and paved the way for modern interpretations of CAH.⁷

Origins: Nuremberg Trials and Post-World War II Developments:

The concept of crimes against humanity was first articulated in response to the atrocities committed during World War II. Following the defeat of Nazi Germany, the

⁷ M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* 1-2 (2011).

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Allied powers established the International Military Tribunal (IMT) at Nuremberg to prosecute senior Nazi officials for war crimes, crimes against humanity, and genocide. Although the notion of war crimes was well-established in international law, the inclusion of crimes against humanity marked a groundbreaking development.

Article 6(c) of the Nuremberg Charter defined crimes against humanity as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war.”⁸ This definition reflected the Allies intention to hold individuals accountable not only for crimes committed during armed conflict but also for systematic abuses carried out by a state against its own civilians, such as the Holocaust. The inclusion of CAH expanded the scope of international criminal law by recognizing that atrocities could occur outside the context of war and that the state’s role in such crimes did not shield individuals from prosecution.

The Nuremberg Trials, held between 1945 and 1946, saw the prosecution of 24 high-ranking Nazi officials. Prominent cases such as *The Prosecutor v. Hermann Goring* and *The Prosecutor v. Rudolf Hess* set important precedents by establishing individual criminal responsibility for CAH, rejecting the defense of superior orders, and recognizing the principle that even heads of state could be held accountable for atrocities.⁹ However, the Nuremberg definition of CAH was limited by its connection to wartime activities. This limitation would later be addressed as the concept evolved in subsequent international treaties and legal frameworks.

In the years following Nuremberg, efforts were made to further develop international criminal law. The 1948 Convention on the Prevention and Punishment

⁸ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, art. 6(c), Aug. 8, 1945, 82 U.N.T.S. 279 (hereinafter Nuremberg Charter).

⁹ *The Trial of German Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg, Germany, Part 22*, 416-419 (1946).

of the Crime of Genocide specifically addressed genocide, but crimes against humanity were not fully codified in any international instrument. This gap persisted for decades until the atrocities of the 1990s, particularly the conflicts in the former Yugoslavia and Rwanda, renewed the international community's focus on prosecuting mass atrocities.

Codification in the Rome Statute of the ICC:

The next major development in the evolution of crimes against humanity occurred with the adoption of the Rome Statute in 1998, which established the International Criminal Court (ICC). The Rome Statute provided a comprehensive definition of CAH under Article 7, expanding upon the Nuremberg formulation by including acts such as enforced disappearance, apartheid, and sexual violence as specific crimes.¹⁰ Importantly, the Rome Statute decoupled CAH from the context of armed conflict, explicitly stating that such crimes could be committed “in times of peace.”

The Rome Statute also introduced several critical elements necessary for establishing CAH. It required that the underlying acts be part of a “widespread or systematic attack” directed against a civilian population, distinguishing CAH from isolated acts of violence.¹¹ Additionally, the Statute required that the perpetrators act “pursuant to or in furtherance of a State or organizational policy,” ensuring that CAH were the result of coordinated, collective efforts rather than random criminal acts.¹²

The establishment of the ICC provided a permanent forum for the prosecution of CAH, ensuring that perpetrators could be held accountable regardless of their nationality or the location of the crimes. The ICC’s global jurisdiction and mandate to prosecute the most serious crimes of concern to the international community made it a crucial institution in the development of international criminal law.

¹⁰ Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90.

¹¹ *Id.* art. 7(1).

¹² *Id.* art. 7(2).

Early Landmark Cases: Prosecutor v. Tadic (ICTY):

Before the Rome Statute came into effect, two key international criminal tribunals—the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—were established to prosecute atrocities committed during the conflicts in the Balkans and Rwanda, respectively. These tribunals played a critical role in refining the legal understanding of CAH and establishing important precedents that influenced the development of the Rome Statute.

One of the most significant early cases involving crimes against humanity was *Prosecutor v. Dusko Tadic*, tried by the ICTY. Tadic, a Bosnian Serb, was charged with multiple counts of war crimes and crimes against humanity for his involvement in ethnic cleansing campaigns during the Bosnian War. The ICTY's judgment in 1997 was groundbreaking for several reasons. First, it provided a clear articulation of the distinction between "widespread" and "systematic" attacks, key elements of CAH.¹³ The tribunal ruled that a widespread attack referred to the large-scale nature of the acts, while a systematic attack indicated a pattern or methodical plan behind the violence. This distinction remains a fundamental aspect of CAH prosecutions under the Rome Statute.

Additionally, the Tadic case addressed the scope of individual criminal responsibility for crimes against humanity. The ICTY rejected the defense that Tadić was merely a participant in the larger conflict, emphasizing that individuals could be held accountable for their contributions to a collective attack on civilians, even if they did not personally commit the most egregious acts. The judgment also clarified that non-state actors could be prosecuted for CAH, a significant development that was later incorporated into the Rome Statute's provisions on crimes against humanity.¹⁴

¹³ *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion and Judgment, p. 649-651 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997).

¹⁴ *Id.* at p. 654.

The ICTY's decisions in the Tadic case and other early cases established important precedents that shaped the understanding of CAH in subsequent international prosecutions. These cases highlighted the centrality of collective, organized action in the commission of CAH and reinforced the idea that such crimes target civilian populations as part of broader, systematic campaigns of violence.

The historical development of crimes against humanity reflects a gradual but significant expansion in the scope of international criminal law. From the Nuremberg Trials, which first recognized CAH as a distinct category of international crimes, to the Rome Statute of the ICC, which provided a comprehensive legal framework for prosecuting such offenses, CAH has become a cornerstone of international justice. Early landmark cases, such as Prosecutor v. Tadic, further refined the legal elements of CAH, particularly the requirements of a widespread or systematic attack and individual criminal responsibility. Today, the ICC plays a crucial role in ensuring accountability for crimes against humanity, building upon the legal foundations laid by earlier international tribunals.

Key Elements of Crimes Against Humanity: A Comprehensive Analysis:

Crimes against humanity represent one of international criminal law's core crimes, as codified in Article 7 of the Rome Statute of the International Criminal Court (ICC).¹⁵ This analysis examines the essential elements that constitute crimes against humanity, drawing from significant international jurisprudence and scholarly interpretation.

I. Widespread or Systematic Attack:

A. General Framework

The requirement that an attack be either widespread or systematic serves as a crucial threshold element distinguishing crimes against humanity from ordinary domestic

¹⁵ Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90.

crimes.¹⁶ These elements are disjunctive; proving either widespread or systematic nature is sufficient.¹⁷

B. "Widespread" Analysis

The term "widespread" refers to the large-scale nature of the attack and the number of targeted persons.¹⁸ In *Prosecutor v. Gbagbo and Ble Goude*, the Pre-Trial Chamber elaborated that "widespread" can be defined by:

- The geographical scope of the attack
- The number of victims
- The multiplicity of separate and similar acts¹⁹

The Appeals Chamber in *Prosecutor v. Bemba* further clarified that "widespread" may be established through:

- The cumulative effect of multiple inhumane acts
- The singular effect of an inhumane act of extraordinary magnitude²⁰

C. "Systematic" Analysis

¹⁶ *Prosecutor v. Kunarac*, Case No. IT-96-23 & IT-96-23/1-A, Appeals Chamber Judgment, p. 94 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002).

¹⁷ *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Decision on the Confirmation of Charges, p. 222 (June 12, 2014).

¹⁸ *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision on the Confirmation of Charges, p. 83 (June 15, 2009).

¹⁹ *Prosecutor v. Gbagbo and Ble Goude*, ICC-02/11-01/15-1263, Trial Chamber I, Reasons for Oral Decision of 15 January 2019, pp. 151-156 (July 16, 2019).

²⁰ *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Trial Chamber III, Judgment pursuant to Article 74 of the Statute, p. 163 (March 21, 2016).

“Systematic” refers to the organized nature of the acts of violence and the improbability of their random occurrence.²¹ The Pre-Trial Chamber in *Prosecutor v. Katanga* identified several factors indicating systematic conduct:

- Existence of a pattern of crimes
- Following a regular pattern
- Organized nature of the acts
- Implementation of a common policy

II. Directed Against a Civilian Population:

A. Definition of “Civilian Population”

The term “civilian population” must be interpreted broadly within the context of crimes against humanity.²² Key interpretative principles include:

1. Primarily Civilian Nature: The population must be predominantly civilian, though the presence of non-civilians does not negate this character.²³
2. Collective Nature: The attack must be directed against a population rather than limited and randomly selected individuals.²⁴

B. Jurisprudential Development

The Trial Chamber in *Prosecutor v. Katanga* established that:

- The civilian population must be the primary target rather than an incidental victim

²¹ *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Trial Chamber II, Judgment pursuant to article 74 of the Statute, p. 1123 (March 7, 2014).

²² *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion and Judgment, p. 643 (Int’l Crim. Trib. for the Former Yugoslavia May 7, 1997).

²³ *Prosecutor v. Blaskic*, Case No. IT-95-14-T, Judgment, p. 214 (Int’l Crim. Trib. for the Former Yugoslavia March 3, 2000). *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Trial Chamber II, Judgment pursuant to article 74 of the Statute, p. 1123 (March 7, 2014).

²⁴ *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Trial Chamber II, Judgment pursuant to article 74 of the Statute, p. 1123 (March 7, 2014).

- A population remains civilian even if some armed elements are present
- The status is determined at the population level rather than by individual civilian status²⁵

III. Knowledge of the Attack:

A. Mental Element Requirements

The perpetrator must have knowledge that their conduct is part of a widespread or systematic attack against a civilian population.²⁶ This requires:

1. Knowledge of the Attack: Understanding that a widespread or systematic attack against civilians is taking place
2. Knowledge of the Context: Awareness that one's acts form part of that attack²⁷

B. Standard of Knowledge

In *Prosecutor v. Bemba*, the Trial Chamber clarified that:

- The perpetrator need not know all characteristics of the attack
- The perpetrator need not share the purpose of the broader attack
- Knowledge may be inferred from circumstantial evidence²⁸

IV. Specific Acts Constituting Crimes Against Humanity:

A. Murder

Murder, under Article 7(1)(a) of the Rome Statute, refers to the intentional killing of individuals as part of a widespread or systematic attack against civilians. The term encompasses deliberate actions leading to death, without lawful justification. In

²⁵ *Prosecutor v. Katanga*, supra note 20, at pp. 1102-1105.

²⁶ Rome Statute, supra note 14, at art. 7(1).

²⁷ *Prosecutor v. Bemba*, supra note 19, at p.167.

²⁸ *Id.* At pp. 168-169.

Prosecutor v. Katanga, the ICC explained that murder must be part of an orchestrated attack aimed at civilians, linking individual instances of murder to the broader context of the crime. The Court emphasized that intent and targeting are critical factors in determining criminal responsibility.²⁹

B. Torture, Rape, Sexual Slavery and other forms of Sexual Violence

Torture involves severe physical or mental suffering, while sexual violence includes rape, sexual slavery, enforced prostitution, and other forms of assault. The Court has established that torture and sexual violence must be committed with the intent to cause suffering or coercion. Prosecutor v. Ntaganda expanded definitions to include situations of coercion within armed groups and institutionalized sexual violence. In cases involving sexual violence, the ICC assesses the systemic nature of the crime, examining whether it forms part of an attack on a civilian population.

C. Extermination

Extermination involves large-scale killing or actions resulting in widespread loss of life, including indirect methods like depriving a population of food, water, or shelter. The Court differentiates extermination from murder by its scale and intention to decimate a significant part of the population. In Prosecutor v. Bemba, extermination was scrutinized in the context of large-scale attacks that indirectly led to civilian deaths, illustrating the comprehensive reach of this crime.³⁰

D. Enslavement

Enslavement refers to the exercise of ownership over another person, including forced labor or human trafficking. The Court assesses factors such as control over the individual, restrictions on freedom, and exploitation of labor. In Prosecutor v. Kunarac, the Court clarified that enslavement includes actions that place an

²⁹ International Criminal Court, Elements of Crimes, art. 7 (1) (a) (2011).

³⁰ Id. At art. 7 (1) (b).

individual in a situation where their autonomy is deprived. Evidence of restricted movement, forced labor, or exploitation of personal freedom contributes to the Court's determination of enslavement.³¹

E. Deportation or Forcible Transfer

This act involves the forced removal of individuals from an area without legitimate grounds, typically involving coercion or threat of harm. The Court distinguishes deportation (across borders) from forcible transfer (within national borders). In *Prosecutor v. Bemba*, deportation was analyzed in the context of forced movement that causes severe suffering or leaves individuals in vulnerable situations. Examples: Forced evictions, transfers under coercive conditions, and the use of violence to drive out communities.³²

F. Enforced disappearance of Persons

Enforced disappearance refers to the detention or abduction of individuals by the state or other entities, followed by a refusal to disclose their fate. The ICC considers enforced disappearance an ongoing crime, as long as the state or entity responsible conceals the fate or whereabouts of the person. This crime has been analyzed in contexts where disappearances form part of a broader pattern of attacks. Prolonged absence, lack of acknowledgment by authorities, and psychological suffering of families.

G. Apartheid

Apartheid is the institutionalized oppression of one racial group over another, often seen through systemic segregation or denial of rights. While the ICC has yet to develop significant case law on apartheid, the Rome Statute treats it as a crime of discrimination involving inhumane acts intended to establish domination by one

³¹ Rome Statute, *supra* note 14, at art. 7(2)(c).

³² *Id.* at art. 7(2)(d).

racial group. The Focus Areas of Apartheid are Segregation, systemic discrimination, and a policy of sustained oppression.

H. Persecution against identifiable Groups or Collectives

Persecution involves the intentional and severe deprivation of rights based on identity factors like race, religion, or ethnicity. Persecution is distinguished by its discriminatory motive. In *Prosecutor v. Al-Bashir*, the ICC noted that persecution must target specific groups, with an intent to degrade or subjugate them. Evidence of discriminatory intent and the targeting of collective rights based on shared identity are crucial for establishing persecution.

I. Other Inhumane Acts

This is a catch-all category for any act causing great suffering or harm that doesn't fit other categories. This category requires:

- Acts of similar character to other enumerated acts
- Causing great suffering or serious injury
- Comparable gravity to other crimes against humanity.³³

J. Imprisonment or other Severe Deprivation of Physical Liberty

This includes unlawful confinement that is severe enough to impact the individual's liberty and autonomy. The Court considers arbitrary detention without due process or confinement that is part of systematic attacks. *Prosecutor v. Katanga* highlighted that such deprivation must be arbitrary and not justified by national or international law. Length of imprisonment, lack of legal justification, and deprivation that contributes to broader attacks on civilians.³⁴

³³ *Prosecutor v. Katanga*, supra note 20, at pp. 1162-1163.

³⁴ *Id.*

Each of these acts has been shaped through ICC jurisprudence, helping define their parameters and applications. Detailed cases and specific fact patterns are essential to illustrate the ICC's approach and provide practical interpretations of these statutory elements. Let me know if you'd like further case examples or an in-depth analysis of any particular act

V. State or Organizational Policy:

A. Policy Requirement

The Rome Statute requires that the attack be committed "pursuant to or in furtherance of a State or organizational policy."³⁵ This requirement distinguishes crimes against humanity from random or isolated acts of violence.

B. Contrasting Interpretations

1. ICTY Approach

- Did not require proof of a state or organizational policy
- Focused on the systematic or widespread nature of the attack³⁶

2. ICC Approach

- Requires evidence of a policy element
- Policy need not be formally adopted or declared
- Can be inferred from the totality of circumstances³⁷

C. Policy Element Analysis in Prosecutor v. Lubanga

The Pre-Trial Chamber established that:

- The policy need not be explicitly defined

³⁵ Rome Statute, supra note 14, at art. 7(2)(a).

³⁶ Prosecutor v. Kunarac, supra note 15, at p. 98.

³⁷ Prosecutor v. Katanga, supra note 20, at pp. 1106-1108.

- It can be inferred from repeated actions
- The policy may be implemented by action or deliberate inaction³⁸

The evolution of crimes against humanity in international criminal law reflects a careful balance between ensuring accountability for mass atrocities while maintaining stringent legal standards. The elements discussed above serve as crucial safeguards against over-expansion of this serious international crime while ensuring its effectiveness in addressing systematic human rights violations.

Interpretations and Controversies in ICC Judgments:

The International Criminal Court (ICC) has played a crucial role in shaping and interpreting the legal framework of crimes against humanity (CAH), particularly through its judgments. However, differing judicial approaches and various controversies have arisen over the interpretation of key elements, such as the requirement of a widespread or systematic attack, the existence of a state or organizational policy, and the ICC's stance on gender-based crimes and persecution. This section delves into some of the key interpretations and controversies in recent ICC cases, including *Prosecutor v. Ntaganda*, *Prosecutor v. Al-Bashir*, and *Prosecutor v. Al Hassan*, providing insight into the evolving jurisprudence on CAH.

Differing Judicial Approaches: Prosecutor v. Ntaganda and Prosecutor v. Al-Bashir:

One of the most significant areas where the ICC has demonstrated differing judicial approaches is in its interpretation of the elements required to establish crimes against humanity. The cases of *Prosecutor v. Ntaganda* and *Prosecutor v. Al-Bashir* illustrate how the Court has interpreted key aspects of CAH, particularly the requirement of a widespread or systematic attack directed against a civilian population.

³⁸ *Prosecutor v. Lubanga*, ICC-01/04-01/06-803-tEN, Decision on the Confirmation of Charges, pp. 396-397 (January 29, 2007).

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In *Prosecutor v. Bosco Ntaganda*, a former rebel leader in the Democratic Republic of the Congo (DRC) was charged with war crimes and crimes against humanity for his role in the Ituri conflict between 2002 and 2003. The ICC found that the attacks carried out by Ntaganda's forces were part of a widespread and systematic campaign of violence targeting civilians in the region. The judgment emphasized that the "widespread" nature of the attacks was evident from the large-scale, coordinated operations involving significant numbers of victims and geographic scope, while the "systematic" nature was demonstrated by the deliberate and organized planning of the attacks, including the use of sexual violence as a weapon of war.³⁹ This interpretation aligned with previous ICC jurisprudence on CAH, reaffirming that either the "widespread" or "systematic" nature of the attack suffices, and both elements do not need to be proven concurrently.

In contrast, the ICC's approach to the case of *Prosecutor v. Omar Al-Bashir*, the former President of Sudan, introduced a more contentious judicial stance. Al-Bashir was charged with CAH, genocide, and war crimes for his role in the Darfur conflict, where government forces and allied militias were accused of committing atrocities against the civilian population. One of the key controversies in this case was the question of whether Al-Bashir could be prosecuted despite his position as a sitting head of state. The ICC issued two arrest warrants for Al-Bashir in 2009 and 2010, but several states, including members of the African Union, refused to arrest him, arguing that the ICC's jurisdiction did not extend to sitting heads of state under customary international law.⁴⁰ This debate over the limits of ICC jurisdiction raised questions about the reach and enforceability of CAH prosecutions, especially when high-ranking officials are involved.

³⁹ *Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06, Judgment Pursuant to Article 74 of the Statute, pp. 738-740 (July 8, 2019).

⁴⁰ *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Case No. ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al-Bashir, p. 44 (Mar. 4, 2009).

Furthermore, while the ICC found that there was sufficient evidence to link Al-Bashir to a systematic campaign of violence in Darfur, critics argued that the prosecution's failure to secure his arrest and trial undermined the ICC's credibility and exposed the challenges of enforcing accountability for CAH when powerful political actors are involved. This case highlighted the complexities of pursuing CAH charges in politically sensitive contexts and the tension between international legal norms and state sovereignty.

Controversies Regarding the Policy Requirement in Crimes Against Humanity:

One of the most debated aspects of crimes against humanity in ICC jurisprudence is the requirement of a "State or organizational policy" under Article 7 of the Rome Statute. This requirement distinguishes CAH from isolated or spontaneous acts of violence by ensuring that the crimes are committed as part of a broader, coordinated effort. However, the interpretation of what constitutes a "policy" has been the subject of significant controversy.

The Rome Statute does not specify whether the policy must originate from a state or whether non-state actors can also satisfy this requirement. This ambiguity has led to differing interpretations in ICC cases. For example, in *Prosecutor v. Katanga*, the Court held that a non-state actor, such as a rebel group, could qualify as having a policy to commit CAH, provided that the organization had the capacity to carry out a systematic or widespread attack on civilians.⁴¹ This interpretation broadened the scope of CAH to include actions by non-state armed groups, ensuring that they could be held accountable for atrocities, even in the absence of formal state backing.

However, the policy requirement has remained a point of contention. Critics argue that the inclusion of this element creates unnecessary legal hurdles, potentially allowing perpetrators of atrocities to escape liability if they can argue that their

⁴¹ *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, Judgment Pursuant to Article 74 of the Statute, p. 1123 (Mar. 7, 2014).

actions were not part of an explicit policy. For instance, in *Prosecutor v. Al-Bashir*, defense teams argued that the violence in Darfur, although widespread, lacked a clear state policy aimed at targeting civilians, which raised questions about the sufficiency of evidence to prove the policy element.⁴² Despite these challenges, the ICC has consistently upheld the necessity of proving some form of policy to establish CAH, emphasizing that this requirement ensures the crimes are connected to a larger scheme rather than being isolated incidents.

The ICC's Evolving Stance on Gender-Based Crimes and Persecution: Prosecutor v. Al Hassan:

The ICC has also evolved in its approach to gender-based crimes and persecution within the framework of crimes against humanity. Early cases under the Rome Statute did not fully address the complexities of gender-based violence, but recent judgments have marked a shift toward greater recognition of such crimes as CAH. One of the most significant cases in this regard is *Prosecutor v. Al Hassan*, which involved a senior member of Ansar Dine, an Islamist militant group active in Mali.

In *Prosecutor v. Al Hassan*, the ICC charged Al Hassan with war crimes and CAH, including persecution on religious and gender grounds, for his role in the occupation of Timbuktu in 2012-2013. The prosecution argued that Al Hassan played a central role in the enforcement of strict Sharia law, which disproportionately targeted women and led to widespread sexual violence, forced marriages, and other forms of gender-based persecution.⁴³ This case represented a significant development in ICC jurisprudence, as it underscored the Court's willingness to address gender-based violence and persecution as central components of CAH.

The ICC's treatment of gender-based crimes in *Al Hassan* builds on earlier cases, such as *Prosecutor v. Bemba*, which prosecuted sexual violence as a CAH in the

⁴² *Id.*

⁴³ *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Case No. ICC-01/12-01/18, Decision on the confirmation of charges, p.540-543 (Sept. 30, 2019).

context of the conflict in the Central African Republic. However, Al Hassan marked a departure from previous cases by emphasizing the intersectionality of gender and religion in the context of persecution, recognizing that women were targeted not only because of their gender but also because of their perceived non-compliance with religious laws. This evolving stance reflects a broader trend in international criminal law toward a more nuanced understanding of gender-based crimes and their relationship to other forms of persecution.

The ICC's jurisprudence on crimes against humanity has evolved significantly over the years, but it remains fraught with differing judicial interpretations and controversies. Cases like *Prosecutor v. Ntaganda* and *Prosecutor v. Al-Bashir* illustrate the Court's challenges in interpreting key elements of CAH, while debates over the policy requirement continue to generate legal controversy. Furthermore, the ICC's evolving stance on gender-based crimes and persecution, as seen in *Prosecutor v. Al Hassan*, marks a significant step toward recognizing the full spectrum of crimes that fall under CAH. These cases demonstrate the ICC's ongoing role in shaping the legal framework of crimes against humanity, ensuring accountability for perpetrators, and protecting vulnerable populations from the most heinous violations of human rights.

Comparative Analysis: ICC vs. Other International Tribunals:

The development and interpretation of crimes against humanity (CAH) have not been confined to the International Criminal Court (ICC). Other international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and hybrid courts like the Special Court for Sierra Leone (SCSL), have also played pivotal roles in adjudicating these crimes. This section provides a comparative analysis of ICC judgments and those of other international tribunals, focusing on key differences in the interpretation of elements of CAH, such as the requirement of a widespread or systematic attack, the policy requirement, and individual criminal responsibility.

Crimes against humanity represent one of international criminal law's most significant developments, bridging domestic and international legal systems in the fight against impunity. This intersection between national and international jurisdictions creates both opportunities and challenges in prosecuting these crimes.⁴⁴ The interaction between national and international approaches to crimes against humanity reveals both the progress and continuing challenges in addressing these serious crimes. Future developments must balance the need for uniformity with respect for diverse legal traditions.

ICC vs. ICTY: Interpretation of Widespread or Systematic Attack:

One of the fundamental elements of CAH, as outlined in the Rome Statute, is that the criminal acts must be committed as part of a “widespread or systematic attack” against a civilian population. While this element is similarly present in the statutes of other international tribunals, including the ICTY, the interpretation of what constitutes “widespread” and “systematic” has varied across different courts.

The ICTY first addressed the interpretation of CAH in its landmark case, *Prosecutor v. Tadic*. The ICTY defined a “widespread” attack as one that is large in scale, involving a significant number of victims, while a “systematic” attack required evidence of an organized plan or policy behind the atrocities.⁴⁵ In *Tadic*, the ICTY found that the ethnic cleansing campaign in the former Yugoslavia, characterized by the mass persecution of civilians, qualified as a systematic attack due to the coordinated efforts of political and military leaders to expel non-Serbs from Bosnian territories.⁴⁶ The ICTY’s interpretation of the term “systematic” emphasized the importance of organized action, even if the attacks were not geographically widespread.

⁴⁴ M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* 1-2 (2011).

⁴⁵ *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion and Judgment, pp. 648-651 (Int’l Crim. Trib. for the Former Yugoslavia May 7, 1997).

⁴⁶ *Id.*

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In comparison, the ICC's interpretation of the "widespread or systematic" element has been somewhat more flexible, as seen in cases like *Prosecutor v. Ntaganda*. The ICC's Pre-Trial Chamber ruled that an attack could be either widespread or systematic, and need not meet both criteria to qualify as CAH. This more expansive interpretation allows the ICC to prosecute individuals involved in isolated but highly organized attacks, even if they do not involve large numbers of victims.⁴⁷ For instance, in *Ntaganda*, the ICC found that although the attacks in the Ituri region did not cover a broad geographic area, the systematic nature of the violence and its targeted nature against civilians satisfied the CAH criteria. This subtle difference between the ICTY and ICC highlights the evolving nature of international criminal jurisprudence, with the ICC adopting a broader approach to ensure accountability.

ICTR vs. ICC: Genocide and Crimes Against Humanity:

The ICTR, established to prosecute those responsible for the 1994 Rwandan genocide, also contributed significantly to the development of CAH jurisprudence. However, the ICTR's focus was primarily on prosecuting the crime of genocide, which shares certain elements with CAH, particularly in relation to the targeting of civilian populations. This focus on genocide influenced the ICTR's interpretation of CAH, particularly in distinguishing between genocidal intent and the elements of CAH.

In the landmark case of *Prosecutor v. Akayesu*, the ICTR dealt with both genocide and CAH charges. The court held that the mass murder and persecution of Tutsi civilians constituted both genocide and CAH, but it was careful to distinguish the specific intent required for genocide—namely, the intent to destroy a particular group in whole or in part—from the broader intent needed for CAH, which only requires knowledge of the widespread or systematic attack on civilians⁴⁸. This

⁴⁷ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, p. 522 (Sept. 2, 1998).

⁴⁸ *Prosecutor v. Jean - Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, p. 522 (Sept. 2, 1998).

distinction was crucial in developing a clearer understanding of how genocide and CAH overlap yet remain distinct under international law.

In contrast, the ICC's Rome Statute provides separate legal frameworks for prosecuting genocide and CAH. The ICC has emphasized the specific contextual elements that distinguish CAH from other international crimes, particularly the requirement of a state or organizational policy. This requirement is absent from the definition of genocide but is a critical element in prosecuting CAH. In cases like *Prosecutor v. Al-Bashir*, the ICC focused on the existence of a systematic state policy in prosecuting CAH, while also addressing allegations of genocide in Darfur. Thus, while the ICTR dealt extensively with both crimes, the ICC's structured differentiation in the Rome Statute has provided clearer guidelines for prosecuting CAH as distinct from genocide.⁴⁹

Hybrid Courts: Special Court for Sierra Leone and Crimes Against Humanity:

Hybrid courts, such as the Special Court for Sierra Leone (SCSL), have also contributed to the development of CAH jurisprudence. These courts combine elements of both domestic and international law, often operating within post-conflict societies to address mass atrocities. The SCSL, established to prosecute those responsible for war crimes and CAH during Sierra Leone's civil war, has made notable contributions, particularly in its interpretation of individual criminal responsibility.

One of the most important cases from the SCSL is *Prosecutor v. Charles Taylor*, the former President of Liberia, who was convicted of CAH, among other crimes. The SCSL's judgment emphasized the role of individuals in positions of authority in orchestrating widespread attacks on civilians, even if they did not directly carry out the crimes themselves.⁵⁰ The court found that Taylor had provided material support

⁴⁹ *Id.*

⁵⁰ *Id.*

to rebel forces in Sierra Leone, which committed CAH as part of a systematic campaign of violence. The SCSL's interpretation of "aiding and abetting" CAH highlighted the importance of holding individuals accountable for their indirect role in orchestrating mass atrocities.

In contrast, the ICC's jurisprudence has further developed the concept of "indirect co-perpetration," which is not explicitly present in the statutes of earlier tribunals. In cases like *Prosecutor v. Katanga*, the ICC held that individuals could be held responsible for CAH if they contributed to a common plan or policy to carry out such attacks, even if they did not personally participate in the crimes.⁵¹ The ICC's concept of indirect co-perpetration expands the scope of liability by focusing on the collective efforts of perpetrators, reflecting a more nuanced understanding of individual responsibility in the context of CAH.

Policy Requirement: ICTY, ICTR, and ICC Approaches:

A major point of divergence between the ICC and earlier international tribunals is the policy requirement for CAH, which is explicitly mandated by the Rome Statute but was not included in the statutes of the ICTY and ICTR. Article 7 of the Rome Statute requires that CAH be committed "pursuant to or in furtherance of a State or organizational policy." This requirement ensures that CAH are distinguished from random acts of violence or isolated incidents.

The ICTY and ICTR did not require proof of a formal policy to prosecute CAH. In cases like *Prosecutor v. Tadic* and *Prosecutor v. Akayesu*, the courts focused on the widespread or systematic nature of the attacks, without needing to prove an underlying state or organizational policy. This broader approach allowed for the prosecution of CAH even in the absence of direct evidence linking the crimes to a

⁵¹ *Id.*

specific policy.⁵² However, critics argued that the lack of a policy requirement made it more difficult to distinguish CAH from war crimes or isolated atrocities, potentially diluting the distinct legal category of CAH.

By contrast, the ICC has consistently upheld the policy requirement in CAH prosecutions. In *Prosecutor v. Katanga*, the ICC held that the policy requirement served to ensure that the crimes were part of a coordinated, deliberate effort, thus preventing the prosecution of random or opportunistic acts of violence.⁵³ The policy element also serves to hold organizational leaders accountable for orchestrating mass atrocities, furthering the ICC's goal of ensuring accountability for those in positions of power.

The interpretation of crimes against humanity has evolved across various international tribunals, with notable differences between the ICC and other courts like the ICTY, ICTR, and hybrid tribunals. While all of these institutions have contributed significantly to the development of CAH jurisprudence, key differences remain in how they interpret elements such as the widespread or systematic attack, the policy requirement, and individual criminal responsibility. The ICC's more structured and expansive approach, particularly with the introduction of the policy requirement and the concept of indirect co-perpetration, reflects its broader mandate to address complex international crimes in a global context.

Challenges in Prosecuting Crimes Against Humanity at the International Criminal Court: A Critical Analysis:

The International Criminal Court (ICC) represents a milestone in international criminal justice, yet faces substantial challenges in prosecuting Crimes Against Humanity (CAH). These challenges encompass jurisdictional limitations, state

⁵² *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Case No. ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al-Bashir, P.30 (Mar. 4, 2009).

⁵³ *Prosecutor v. Charles Taylor*, Case No. SCSL-03-01-T, Judgment, p. 695-699 (Special Court for Sierra Leone May).

cooperation issues, enforcement difficulties, and political influences that significantly impact the development of international criminal jurisprudence.⁵⁴ This analysis examines these challenges in detail and their implications for international criminal justice.

Jurisdictional Complexities:

The ICC's jurisdictional framework presents fundamental challenges in prosecuting CAH. The Court operates under the principle of complementarity, which establishes that it may only exercise jurisdiction when national courts are unwilling or unable to prosecute.⁵⁵ This principle, while respecting state sovereignty, creates significant procedural hurdles. The ICC must first establish that domestic courts have failed to act appropriately before proceeding with its own prosecution, a process that can be both time-consuming and politically sensitive.

Furthermore, the Court's jurisdiction is limited to crimes committed after July 1, 2002, and only extends to territories or nationals of State Parties, unless the UN Security Council refers a situation or a non-party state accepts the Court's jurisdiction.⁵⁶ This temporal and territorial limitation significantly restricts the ICC's ability to address historical atrocities and crimes committed in non-member states, creating what some scholars term "accountability gaps" in international justice.

State Cooperation and Enforcement Challenges:

The effectiveness of ICC prosecutions heavily depends on state cooperation, as the Court lacks independent enforcement mechanisms. This dependency manifests in multiple critical areas. First, the collection of evidence often requires access to crime

⁵⁴ Cassese, Antonio, "International Criminal Law", (2013) Oxford University Press, p. 261-265.

⁵⁵ Schabas, William A. "An Introduction to the International Criminal Court" (Cambridge University Press, 2020) 83-85.

⁵⁶ Rome Statute of the International Criminal Court, Article 11 and 12, UN Doc. A/CONF.183/9 (1998).

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scenes, witnesses, and documents within state territories. Without robust state cooperation, investigators face substantial obstacles in building compelling cases.⁵⁷

The challenge of securing arrests particularly highlights the Court's reliance on state cooperation. Unlike domestic courts, the ICC has no police force and must rely on member states to execute arrest warrants. This has led to numerous situations where indicted individuals remain at large, undermining the Court's credibility and effectiveness. The case of Sudan's former President Omar al-Bashir exemplifies this challenge, where despite an ICC arrest warrant, he traveled to several countries without being apprehended.⁵⁸

Political Influence and Its Impact:

Political considerations significantly influence ICC prosecutions in both obvious and subtle ways. The selection of cases and situations for investigation often faces criticism of political bias, particularly regarding the Court's historical focus on African situations.⁵⁹ This perceived bias has led to tensions between the ICC and several African states, some of which have threatened withdrawal from the Rome Statute.

The political dimension extends beyond case selection to affect the practical aspects of prosecution. States may withhold cooperation for political reasons, impeding investigations and prosecutions. The United States complex relationship with the ICC exemplifies how political considerations can affect the Court's operations, with various U.S. administrations taking different approaches to cooperation with the Court.⁶⁰

⁵⁷ Cryer, Robert. "International Criminal Law vs State Sovereignty: Another Round?" *European Journal of International Law* 16.5 (2005): 979-1000.

⁵⁸ Peskin, Victor, "International Justice in Rwanda and the Balkans" (Cambridge Press, 2008) 45-67.

⁵⁹ Barnes, Gwen P. "The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir" *Fordham International Law Journal* 34.6 (2011): 1584-1619.

⁶⁰ Ssenyonjo, Manisuli, "The International Criminal Court and the African Union: What Next?" *African Journal of International Criminal Justice* 1.1 (2015): 74-102.

Impact on CAH Jurisprudence Development:

These challenges significantly impact the development of CAH jurisprudence. The selective nature of prosecutions, driven by jurisdictional limitations and political considerations, means that the development of legal principles remains somewhat fragmented. While the ICC has made important contributions to defining and clarifying elements of CAH, the inconsistent application and enforcement of these principles potentially undermines their universal acceptance.⁶¹

The political influence on case selection and prosecution also affects the development of precedent. When certain types of cases or situations are systematically excluded from the Court's consideration due to political or practical constraints, the resulting jurisprudence may not fully reflect the range of CAH scenarios that international criminal law should address.⁶²

Future Implications and Potential Solutions:

Addressing these challenges requires a multi-faceted approach. Strengthening the ICC's independent investigative capabilities, enhancing state cooperation mechanisms, and developing more robust enforcement procedures could help overcome some operational challenges.⁶³ Additionally, increasing transparency in case selection and prosecution decisions might help address concerns about political influence.

The development of regional criminal courts and specialized tribunals could complement the ICC's work, providing additional forums for CAH prosecution while potentially reducing political pressures on any single institution. However,

⁶¹ Bosco, David, "Rough Justice: The International Criminal Court in a World of Power Politics" (Oxford University Press, 2014).

⁶² DeGuzman, Margaret M. "Crimes Against Humanity" in Research Handbook on International Criminal Law (Edward Elgar Publishing, 2011) 121-146.

⁶³ Cassese, Antonio, "International Criminal Law" (Oxford University Press, 2013) 356-378.

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this approach requires careful coordination to avoid fragmenting international criminal law further.⁶⁴

The challenges facing the ICC in prosecuting CAH are substantial and multifaceted. While some are inherent to international criminal justice, others could be addressed through reforms and enhanced international cooperation. The future effectiveness of the Court in prosecuting CAH will depend on the international community's willingness to address these challenges.⁶⁵

Conclusion: The Evolution and Future of Crimes Against Humanity Jurisprudence at the ICC:

The International Criminal Court's role in prosecuting Crimes Against Humanity represents a pivotal development in international criminal justice, despite facing significant challenges in its implementation and enforcement. Through its jurisprudence, the ICC has contributed substantially to defining and clarifying the scope and elements of CAH, building upon the legacy of previous international tribunals while adapting to contemporary manifestations of mass atrocities. The Court's interpretation of the Rome Statute's provisions on CAH has helped establish clearer standards for what constitutes a "widespread or systematic attack" and has elaborated on the meaning of "civilian population" in modern conflicts.⁶⁶

The ICC's impact extends beyond its direct prosecutorial function. Through its complementarity regime, the Court has incentivized national jurisdictions to strengthen their domestic legal frameworks for prosecuting CAH. This has resulted in the incorporation of CAH provisions into national criminal codes and the

⁶⁴ Burke-White, William W. "Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice" *Harvard International Law Journal* 49.1 (2008): 53-108.

⁶⁵ Benzing, Markus, "The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity" *Max Planck Yearbook of United Nations Law* 7 (2003): 591-632.

⁶⁶ Sadat, Leila N. "Crimes Against Humanity in the Modern Age." (2020) *American Journal of International Law*, 114 (2), PP. 334-377.

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development of specialized prosecution units in various countries. The Court's jurisprudence has served as a guide for domestic courts, contributing to a more harmonized approach to CAH prosecutions globally.⁶⁷

However, significant obstacles remain in the Court's ability to effectively prosecute CAH. The persistent challenges of securing state cooperation, gathering evidence in conflict zones, and protecting witnesses have hampered numerous investigations and prosecutions. Political interference and the selective nature of case referrals continue to undermine the Court's legitimacy and effectiveness. These challenges have resulted in lengthy proceedings, limited case law, and gaps in jurisprudential development that must be addressed for the Court to fulfill its mandate.⁶⁸

Looking forward, several developments could enhance the ICC's effectiveness in prosecuting CAH. First, strengthening the Court's investigative capabilities through technological innovation and enhanced forensic capacity could reduce dependence on state cooperation. Second, developing more robust witness protection mechanisms and evidence preservation protocols could improve the quality and reliability of prosecutions. Third, expanding the Court's outreach and capacity-building programs could help build stronger domestic judicial systems capable of handling CAH cases.⁶⁹

To strengthen CAH jurisprudence, the international community must address several key areas. The Assembly of States Parties should consider amendments to the Rome Statute that clarify jurisdictional issues and strengthen enforcement mechanisms. States Parties must demonstrate greater political will in supporting investigations and enforcing arrest warrants. Additionally, the development of

⁶⁷ Bassiouni, M. Cherif, "International Criminal Law: Sources, Subjects and Contents", (2021) Brill Publishers, p. 439.

⁶⁸ Akhavan. Payam, "The International Criminal Court in Context" (2019), Oxford University Press, p. 283.

⁶⁹ Mettraux, Guenaël, "International Crimes: Law and Practice", (2020) Oxford Press, p.512.

specialized units within the Office of the Prosecutor focused on particular aspects of CAH could lead to more efficient and effective prosecutions.⁷⁰

The future development of CAH jurisprudence will likely be shaped by emerging challenges in international criminal justice. These include the need to address crimes committed through cyber means, the role of non-state actors in perpetrating mass atrocities, and the intersection of CAH with other international crimes such as aggression and genocide. The ICC must adapt its interpretative approach to ensure that the definition of CAH remains relevant to contemporary forms of criminality while maintaining legal certainty and predictability.⁷¹

Recommendations for enhancing Crimes Against Humanity jurisprudence include:

1. Developing standardized investigative protocols specifically tailored to CAH cases, incorporating modern forensic techniques and digital evidence collection methods.
2. Establishing a dedicated CAH research unit within the ICC to systematically analyze patterns and trends in atrocity crimes.
3. Creating stronger partnerships with regional courts and national jurisdictions to facilitate evidence sharing and capacity building.
4. Deploy AI-powered tools for pattern recognition in mass data analysis.
4. Implementing more efficient case selection and prioritization strategies to maximize the Court's impact with limited resources.
5. Enhance victim participation frameworks while maintaining fair trial rights.

⁷⁰ *Supra* note 58.

⁷¹ Werle, Gerhard & Jessberger, Florian, "Principles of International Criminal Law" (2020) Oxford University Press, p. 401.

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5. Expanding victim participation and reparation programs to ensure meaningful justice for affected communities.⁷²
6. Strengthen complementarity mechanisms between national and international courts.
7. Develop capacity-building programs for national jurisdictions.
8. Create comprehensive guidelines for consistent interpretation of CAH elements
9. Implement regular judicial training programs
10. Create practice directives for complex procedural issues.
11. Streamline victim application and participation processes.
12. Strengthen witness protection mechanisms.
13. Establish sustainable funding mechanisms.
14. Expand technological capabilities.
15. Strengthen cooperation networks and enhance victim support systems.

The ICC must also address structural challenges that impede effective CAH prosecution. This includes strengthening witness protection mechanisms, developing more robust evidence preservation protocols, and enhancing the Court's investigative capabilities through technological innovation. Additionally, the Assembly of States Parties should consider amendments to the Rome Statute that clarify jurisdictional issues and strengthen enforcement mechanisms.⁷³

Future developments in CAH jurisprudence will likely be shaped by emerging challenges in international criminal justice, including the need to address new forms of organized violence, the role of artificial intelligence in criminal investigations, and

⁷² Stahn, Carsten, "A Critical Introduction to International Criminal Law" (2019), Cambridge University Press, p. 187.

⁷³ *Supra* note 69.

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the intersection of CAH with other international crimes. The Court must maintain flexibility in its interpretative approach while ensuring legal certainty and predictability in its jurisprudence.⁷⁴



⁷⁴ Drumbl, Mark A. "Atrocity, Punishment, and International Law" (2021) Cambridge University Press, p. 295.