

Quo Vadis Justice International Criminal Law: Protection of Women and Children Victims of War

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Abstract: Armed conflicts increasingly impact civilians, transforming wars into humanitarian disasters where women and children suffer disproportionately as highly vulnerable subjects. This study evaluates international criminal law mechanisms safeguarding women and children in wartime and examines the urgency of strengthening these legal instruments to transition from a retributive framework toward transformative, substantive justice. Utilizing a juridical-normative research design, this study applies both a legislative and a conceptual approach to critically evaluate international humanitarian law (IHL) and human rights instruments. Although frameworks like the 1998 Rome Statute, the 1949 Geneva Conventions, CEDAW, and the CRC explicitly mandate protection, practical implementation fails during real-world crises—such as the Israeli Palestinian conflict. This systemic failure is driven by an ineffective International Criminal Court (ICC) paralyzed by structural, juridical, and geopolitical limitations, resulting in a persistent impunity gap. Existing legal structures are adequate in theory but collapse in practice due to a rigid, conventional descriptive-normative enforcement framework that ignores victimological jurisprudence. To bypass this institutional deadlock, this research advocates for a transformative, victim-centered justice model, providing the necessary conceptual foundation to integrate comprehensive recovery protocols, gender-based redress, and psychosocial rehabilitation into global legal practice

Keywords: Legal Protection, Women and Children, International Criminal Law, War Crimes, Justice.

1. Introduction

Oppenheim Lauterpacht defined war as a dispute between two or more countries using armed force, with the aim of controlling the opponent and achieving the conditions desired by the victorious party (Revlina Octavia Artrisdianti, 2023). In the development of In recent times , war is no longer a battlefield and military affair, but has become a humanitarian disaster that massively impacts civilians, especially women and children as vulnerable subjects. According to Dalie Zaim (2023), in such conditions, various serious violations of International Humanitarian Law (hereinafter abbreviated as IHL) often occur, such as murder, violence, harassment, and confiscation of property (Zaim, 2023).

Women and children receive special protection in international Human Rights (HAM) because they are in the most vulnerable position to discrimination and rights violations due to structural inequality and situational conditions (M. Khusnul Khuluq, Wahyu Iswanto, 2022). This vulnerability is not only biological, but also social, economic, and legal, thus requiring an affirmative and sustainable protection approach. Within the international legal framework, the protection of women and children has been regulated through several main binding legal instruments: the 1949 Geneva Convention and Additional Protocols I and II, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, the Convention on the Rights of the Child (CRC) 1989 and the Rome Statute 1998. In the context of this paper , the conflict between Israel and Palestine represents an extreme condition that shows that non-combatant subjects experience the most significant losses due to systemic violence against civilians. The Office of the High Commissioner for Human Rights (OHCHR) report released by the United Nations Human Rights Council noted

that as of early September 2024, approximately 70% of the 8,198 fatalities resulting from the military aggression in the Gaza Strip were 2,036 women and 3,588 children (UNRWA, 2024). This reality reflects a systematic failure to ensure the safety of vulnerable groups and demonstrates a violation of the implementation of fundamental principles of IHL, particularly the principle of distinction and proportionality .

Instrument juridical international Conventions such as the 1949 Geneva Conventions, Additional Protocols I and II, the 1998 Rome Statute, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have established binding normative mandates regarding states' obligations to guarantee the integrity, safety, and dignity of non-combatants (Riky Prasetya, 2025). International criminal justice jurisprudence affirms that violence against vulnerable groups constitutes a serious crime, encompassing genocide, crimes against humanity, war crimes, and aggression. This normative construction has not been effectively implemented in the practice of international criminal law enforcement. Disparities in application and inconsistencies in accountability indicate limited guarantees of material justice, particularly for victims outside the jurisdiction of states parties to the Rome Statute (Ikromah et al., 2024). In the context of the Israeli-Palestinian conflict, this challenge is particularly acute because many perpetrators of violence have not been prosecuted under international law, despite the widespread documentation of gross human rights violations.

Complexity structure justice International criminal law is rooted in the *treaty-based nature* of the International Criminal Court (ICC), thus limiting jurisdiction to states that have ratified the Rome Statute. The absence of ratification from key actors, such as Israel, limits the ICC's substantive competence over perpetrators of international crimes outside the scope of territorial and personal jurisdiction (Yuni Putri Dewantara, Michelle Hadi, 2025). Palestinians, in opposition to Israel, are resisting the occupation that shackles, restricts, and exploits them, transforming their territory into settlements, which is prohibited under the Geneva Conventions. Political resistance and refusal to cooperate from countries involved in the conflict further hamper the effectiveness of the prosecution function. This condition indicates the existence of an *impunity gap* , namely the imbalance between the existence of legal instruments and the ability of victims to actually access justice. The implications of this imbalance are reflected in the dominance of geopolitical considerations in the law enforcement process, which results in the selectivity of prosecution and the marginalization of victims' interests in the international criminal justice system (Ari Maulana et al., 2023).

Criticism of mechanism International criminal justice needs to be placed within a proportional analytical framework. The limitations of the ICC do not merely reflect institutional failures, but also inherent consequences of the normative mandate of the 1998 Rome Statute, including the application of the *complementarity principle* and the limitations of *ratione loci* and *ratione personae jurisdiction* . The dominance of the legal-formalistic approach and the retributive paradigm in the orientation of law enforcement also weakens the position of victims in the judicial process. The perspective of *victimological jurisprudence* , which emphasizes recovery, recognition, and social reintegration, has not been systematically accommodated in the practice of international criminal justice (Alimi et al., 2025). Therefore, a critical evaluation and a more victim-oriented corrective approach are needed to address the disparity between legal norms and the reality of implementation. This research will be directed at two main focuses: *first* , identifying the mechanisms of international criminal law in ensuring legal protection for women and children as victims of war crimes. *Second* , the formulation of the urgency of strengthening international legal protection mechanisms that not only emphasize formal aspects, but also the substance of justice including recognition of suffering, psychosocial recovery, and comprehensive social reintegration.

1.1 Conceptual framework

The theoretical foundation and reflective framework in this study were developed through a selective review of previous studies relevant to similar legal issues. Referring to research by Godlief Niclas Wenetama Latubual, et al. in the journal Legal Protection of Women and Children in the light of IHL , it was revealed that the prolonged conflict between Israel and Palestine has caused systemic suffering for vulnerable groups. Non-combatant subjects, especially women and children, suffer multidimensional impacts including physical suffering, psychological stress, and an increase in the number of casualties due to uncontrolled violence. The ineffectiveness of the application of IHL norms, coupled with the weak internalization of the principle of protection in the domestic legal system, are determining factors for the failure to protect vulnerable subjects in situations of armed conflict. The relevance of this argument is strengthened by the findings of research by Aidatul Fitriyah and Ahmad Dailami Fadhil through a journal entitled International Legal Analysis of Human Rights Violations and Alleged Genocide in Palestine: A Normative Juridical Approach. The study indicates that Israel's repressive actions against Palestinian civilians reflect strong allegations of serious violations of international law, particularly in the classification of genocide and war crimes. Therefore, the continuation of conflict without effective accountability mechanisms not only undermines the authority of the international justice system but also increases the risk of normalizing impunity for perpetrators of serious international crimes. Both studies contribute significantly to describing the empirical reality and indications of human rights violations against women and children in the Palestinian-Israeli conflict. The approach applied in both studies tends to be limited to a conventional descriptive-normative framework without a critical evaluation of the effectiveness of structural international criminal law mechanisms. The dimensions of formulating a protection system oriented towards victim-based substantive justice have also not been the

focus of in-depth analysis . The focus of discussion and main variables in both studies show substantive differences compared to the direction of analysis in this research, which emphasizes a critical evaluation of international criminal law mechanisms and the urgency of strengthening the legal protection framework for women and children as victims of war crimes.

1.2 Research purposes

This research aims to systematically outline the mechanisms of international criminal law that include provisions for the protection of women and children victims of war. Additional objectives include the urgency of strengthening legal protection instruments for women and children in the context of armed conflict as a conceptual foundation for promoting the formation of an international legal framework oriented toward substantive justice.

2. Methodology

2.1 Research design

This research employs a juridical-normative method with a legislative and conceptual approach. The analysis focuses on a systematic review of international legal norms relating to the protection of vulnerable groups, through the stages of identification, interpretation, and critical assessment of the substance of their regulations. The argumentative foundation is built using a deductive-prescriptive framework to develop alternative formulations aimed at strengthening the effectiveness of legal protection in a just manner.

2.2 Research approach

This research applies a legislative and conceptual approach. The legislative approach includes a review of international legal instruments, including the 1998 Rome Statute, the 1949 Geneva Conventions, Additional Protocols I and II, the CEDAW Convention, the 1989 Convention on the Rights of the Child, and the 2000 Optional Protocol to the CRC, to identify normative substance related to the protection of vulnerable groups in armed conflict. The conceptual approach is used to examine the legal framework that includes the principles of substantive justice, a victim-based orientation, and a comprehensive protection model. The focus of the analysis is directed at the correlation between international norms, humanitarian law doctrine, and the principles of international criminal law.

2.3 Sources and Techniques for Collecting Materials

The data sources in this study include primary and secondary legal sources. Primary legal sources come from international legal instruments, including the 1998 Rome Statute, the 1949 Geneva Conventions and their Additional Protocols I and II, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the 1989 Convention on the Rights of the Child. Secondary legal materials consist of literature sourced from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), laws and regulations, scientific articles, and publications of relevant non-governmental organizations. The data collection technique uses a literature study based on research tools designed at the initial stage and the object of analysis is focused on women and children's groups.

2.4 Data Analysis Techniques

The analysis technique applied uses qualitative methods. Referring to the thinking of Denzin and Lincoln in *the Handbook of Qualitative Research*, this method emphasizes the process of interpreting social reality contextually and naturally (Rijal Fadli, 2021). The direction of the analysis is focused on victim protection to obtain substantive meaning as the conclusion. The analysis procedure includes the stages of information reduction, presentation of findings, and drawing conclusions. Reduction is carried out through data selection from observations and document studies. The compiled results are presented in descriptive form to facilitate the identification of patterns, variable relationships, and empirical trends. Researchers conduct critical reasoning through contextual interpretation, prioritizing validity and credibility through the application of triangulation techniques.

3. Findings and Discussion

3.1 International Criminal Law Mechanisms for the Protection of Women and Children as Victims of War Crimes

Normatively, war is an armed conflict between two or more organized military forces. IHL, or the laws of war, holds an essential position as a norm governing the behavior of parties in armed conflict (Ikromah et al., 2024). This norm requires respect for armed opponents, militia groups, and civilians not directly participating in hostilities. IHL establishes

legitimate limits on the use of armed force to protect civilians and non-military objects, including women and children . These provisions aim to prevent violations of humanitarian principles while minimizing the detrimental impacts of war.

Article 48 of Additional Protocol I establishes a fundamental norm in IHL that emphasizes the obligation to distinguish between combatants and civilians and between military objectives and civilian objects. This provision reflects the principle of distinction as the basis for the legitimacy of armed attacks during conflict, while also serving as a delimiting tool to ensure respect for humanitarian values. The existence of the principle of distinction aims to prevent arbitrary action against legally protected parties, including civilian individuals and objects. non-combatants (Khafifa Kara Abnin et al., 2021). The application of this principle is absolute and binding on all parties involved in international and non-international armed conflicts. Failure to comply with the principle of distinction is classified as a serious violation of IHL that can give rise to individual accountability, both within the framework of the ICC system and domestic mechanisms that adopt it. universal jurisdiction .

The principle of proportionality emerged as a corrective element to the use of armed force. An attack can only be justified if the military advantage gained is commensurate with the potential harm to civilians and objects. Excessive incidental losses are considered a serious violation of this principle. The assessment of proportionality must be based on information reasonably available at the time the military decision is made, not on actual outcomes that subsequently emerge (Sompotan et al., 2025). The principles of distinction and proportionality complement each other and serve as the main foundation for regulating the laws of war. Both serve to limit the methods and means used in conflict and ensure that the exercise of military force is subject to humanitarian law oversight.

Mochtar Kusumaatmadja , as quoted by Latubual, et al., stated that throughout 3,400 years , the people man only experienced about 250 years of peace (Latubual et al., 2024). This reality reflects that armed conflict is part in journey civilization This awareness gave rise to efforts to limit the methods and means of warfare, and encouraged the formulation of legal provisions governing the conduct of war between nations. The process of codifying legal norms form The conceptual basis for the formation of modern international law, particularly IHL as an independent legal system that is binding on all parties in armed conflict. Early writings on the laws of war became an important milestone in the development of international law as a normative discipline that regulates relations between nations, especially in the context of conflict and protection. to humanity .

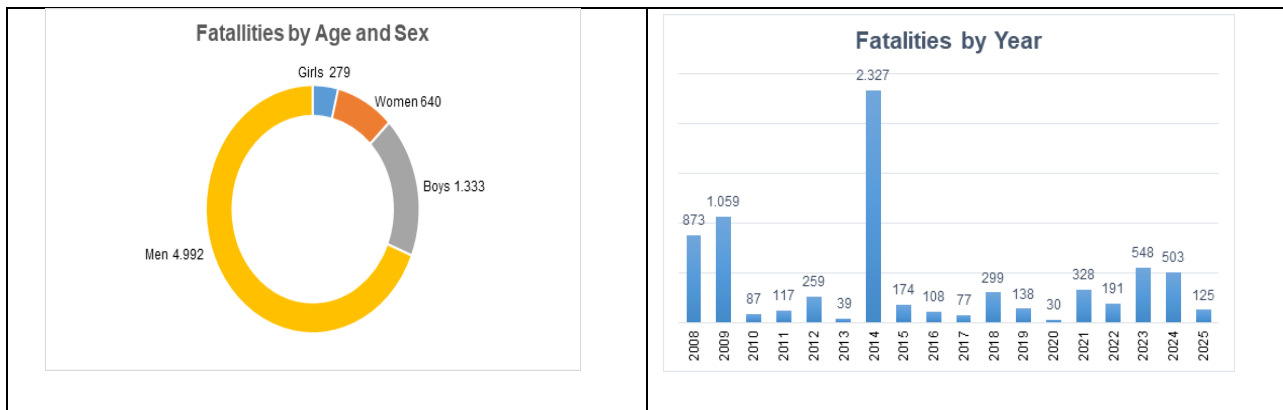
Table 1. International Regulations and Policies

No	Aspect	Rule
1	General Protection in Armed Conflict	The Rome Statute of 1998 prohibits crime humanity , including violence sexual violence, sexual slavery, and rape in armed conflict Additional Protocols I and II of the 1949 Geneva Conventions guarantee protection special for women and children in armed conflict , prohibiting inhumane treatment, and protecting civilians .
2	Woman	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) General Recommendation No. 30 of CEDAW
3	Child	Convention on the Rights of the Child (CRC) 1989 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (2000)

Source : processed by the author.

Based on these international regulations, a normative configuration explicitly regulates the legal protection of women and children in situations of armed conflict. This legal position carries legal implications that any protection system established by IHL and international criminal law must be able to guarantee the fulfillment of dignity, security, and the strengthening of the role of vulnerable groups within the framework of transformative and just post-conflict social reconstruction (Ahsinin et al., 2020). However, the status quo demonstrates a discrepancy between the established legal construction and the empirical reality on the ground.

The armed conflict between Israel and Palestine is one example of the failure to implement the protection of women and children. The escalation of violence, particularly in the Gaza Strip, reflects a disregard for international law protecting civilians. As Sudarnoto (2021) points out, this conflict is not merely a form of conventional armed hostilities but has reached the characteristics of genocide aimed at the systematic destruction of the Palestinian population. Data as of October 2023 shows that more than 70,000 residential units have been destroyed, only 15 of 35 hospitals are still operational, 986 medical personnel have been killed, and 130 ambulances have been destroyed. Intensive airstrikes, a total blockade, the destruction of civilian infrastructure, and the lack of access to humanitarian aid have made the Gaza Strip one of the areas with the highest levels of humanitarian crisis globally.



Source: OCHA (United Nation Office for the Coordination of Humanitarian Affairs)

Figure 1. Data on Casualties

Based on data on the high number of victims in the armed conflict between Palestine and Israel, it is concluded that international crimes are still occurring systematically and protractedly. This condition reflects the weak effectiveness of international law enforcement mechanisms in preventing and stopping serious violations of humanitarian law and human rights. The ratification of the 1998 Rome Statute, which became the basis for the establishment of the ICC, marked a significant milestone in the codification of international crimes, including the crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. The Rome Statute emphasizes that official position cannot be used as a justification or excuse to avoid criminal responsibility.

Strengthening the law enforcement mechanism through the ICC is urgently needed to ensure accountability for perpetrators of war crimes, particularly serious violations against vulnerable groups such as women and children, through a legal process that guarantees substantive and procedural justice. The ICC's jurisdiction is individual, meaning that individuals, including government officials, military commanders, and civilian actors directly or indirectly involved in international crimes, can be held accountable. The 1998 Rome Statute explicitly classifies and defines war crimes and crimes against humanity, but implementation of these provisions still faces complex obstacles, both politically, legally, and structurally. This ineffectiveness is caused by several factors, including the ICC's limited jurisdiction over non-party states, political resistance from state actors with strategic interests, and challenges in gathering evidence and enforcing decisions. This situation demands reform of international mechanisms to strengthen the reach and legitimacy of the international legal system in realizing substantive and inclusive global justice.

3.2 The Urgency of Strengthening Legal Protection to Achieve Substantive Justice

The escalation of the armed conflict in the Gaza Strip demonstrates a systemic increase in violations of fundamental principles of IHL, particularly the principles of distinction and proportionality. These actions directly contradict the provisions of Articles 48 and 52 of Additional Protocol I of 1977 to the Geneva Conventions, which require a clear distinction between military and civilian targets and stipulate an absolute prohibition against directing attacks on non-combatant objects (Muslimma et al., 2024). Women and children occupy a special position in IHL as legal subjects who are obliged to receive special protection (Latubual et al., 2024). The level of vulnerability of women and children in armed conflict is not only determined by age or physical limitations, but is also closely related to their natural roles, social functions, and historical-cultural constructs embedded in the structure of society. Women perform strategic functions in the aspects of reproduction, caregiving, transmission of cultural values, and strengthening social relations, while children have a vital position as the next generation for the nation's sustainability (Hidayatullah et al., 2024).

The reality of the conflict in Gaza demonstrates that the normative protections stipulated in IHL have not been matched by effective implementation. Repeated violations of IHL norms reflect the weak reach of international protection instruments in ensuring holistic recovery, encompassing recognition of rights, psychosocial recovery, and social reintegration (Mohammad Makhdom Ibrahim, 2024). The current concept of justice remains trapped in a purely retributive approach, so that the participatory dimension and post-conflict recovery for women and children have not been comprehensively accommodated within the existing legal system .

The Rome Statute, as the ICC's normative foundation, affirms jurisdiction over the crimes of genocide, crimes against humanity, war crimes, and aggression (Riky Prasetya, 2025). However, this regulation does not explicitly formulate a comprehensive legal protection protocol for women and children, as the most vulnerable groups in armed conflict. The absence of a specific post-conflict mechanism in the Rome Statute creates an implementation gap, resulting in the absence of guarantees for psychosocial recovery, social reintegration, and full recognition of victims' rights. Article 75 of the Rome Statute does contain provisions regarding restitution, compensation, and rehabilitation, but their

implementation is highly dependent on state capacity and the availability of institutional support (Andersen Refel Wongkar et al., 2021). The absence of a robust oversight mechanism and limited victim participation in the decision-making process renders such protection purely procedural, without addressing substantive aspects.

In general, the legitimacy of imposing criminal sanctions is classified into two approaches: *teleological* and *deontological legitimacy*. The teleological approach emphasizes the rationality of punishment based on preventive and rehabilitative objectives for the benefit of the future, while the deontological approach views punishment as a form of moral accountability for violations of criminal law norms. The principle of restorative justice has not been functionally implemented within the ICC structure. The orientation of the international criminal law system is still based on a retributive model that tends to neglect victim recovery. However, in the context of women and children, this aspect is essential given the complexity of psychological wounds and social burdens experienced. Specific needs such as trauma, security guarantees, and post-conflict sustainability are not adequately accommodated. The absence of an inclusive and participatory approach leaves women and children isolated from recovery mechanisms, despite being among the most multidimensionally impacted groups (Mufty, 2025).

The ICC's jurisdiction, limited by the principle of *treaty-based courts*, emphasizes the state-centric orientation of international law. The ICC can only exercise its authority over individual perpetrators of international crimes originating from states party to the Rome Statute or based on a referral from the UN Security Council under Article 13 of the Rome Statute (Rosiyana & Suherman, 2024). This situation creates a legal gap, particularly in the context of conflicts involving non-state parties such as Israel. Access to justice becomes fragmented and incomplete, particularly for women and children outside the formal jurisdiction of international institutions, thus preventing them from receiving redress proportional to the level of suffering they have experienced (Wibowo, 2023). The international criminal law system has not fully accommodated the need for substantive justice for victims, particularly vulnerable groups. The dominant retributive approach neglects victims' fundamental rights to truth, justice, and reparation. The imbalance between punishment for perpetrators and reparation for victims reflects an institutional bias that focuses more on prosecution than protection (Putra Aditya, Nabila Ramadhani, 2024). The reparation mechanism stipulated in the Rome Statute through the ICC remains generalist and fails to fully address the complexities of victims' suffering.

Jurisdictional limitations, weak institutional capacity, and a lack of integration between international and national legal systems are major obstacles to the realization of victim protection. These obstacles are exacerbated by the absence of a holistic approach that positions victims as active participants in the post-conflict justice process and social reconstruction (Crescent, 2024). The establishment of a substantive legal protection system must include comprehensive recovery mechanisms, including psychosocial rehabilitation, restitution, compensation, and guarantees of non-repetition. Strengthening the capacity of the ICC and collaborating with local institutions are key to ensuring that victim protection is not merely symbolic or a legal formality. The integration of transitional justice principles, restorative justice, and a human rights-based approach needs to be the basis for reforming the international criminal law system to address the multidimensional challenges of victim protection (Erasmus A.T. Napitupulu et al., 2022).

Strengthening a transformative protection system requires restructuring the relationship between law and victims by prioritizing humanitarian needs. The direction of international legal policy must be oriented toward healing collective wounds, ensuring non-recurrence, and social reintegration. Fulfillment of the principles of participation, respect for human dignity, and protection of victims' basic rights are indicators of justice that are futuristic, not merely retrospective. Therefore, the following are three urgent matters that can serve as the basis for strengthening legal protection for women and children victims of war: 1) Recognizing women and children as vulnerable groups requiring special protection. This recognition of vulnerability must be realized in the form of affirmative legal protection, not merely general protection that ignores their specific needs. 2) Guaranteeing accountability for perpetrators of war crimes. Institutions such as the ICC must be strengthened and supported politically and legally so that they are able to prosecute perpetrators, regardless of whether they come from powerful countries or hold military power. In this way, the principle of non-impunity can be upheld as a form of substantive justice for victims. 3) Fulfilling international obligations. The Convention on the Rights of the Child (CRC) and the CEDAW Convention affirm that states, both parties to a conflict and the international community, have a legal obligation to provide maximum protection to women and children in situations of war. This includes preventing violence, providing humanitarian assistance, and guaranteeing fundamental rights.

4. Conclusions

Based on the previous description, the main conclusion shows that several international legal instruments have established norms for the protection of women and children as victims of armed conflict. The 1998 Rome Statute, Additional Protocols I and II to the 1949 Geneva Conventions, CEDAW, and the 1989 CRC are legal instruments that explicitly contain such provisions. The availability of these legal instruments does not automatically guarantee effective protection. The reality in conflict zones, particularly in Palestine, demonstrates a discrepancy between norms and implementation. The main obstacles lie in weak enforcement, the limited jurisdiction of the ICC, and the politicization of international legal mechanisms. The urgency of legal protection for women and children victims of war lies in recognizing their status as vulnerable subjects requiring special mechanisms. Enforcing accountability for perpetrators

of serious violations and fulfilling states' legal obligations to international norms are essential requirements for ensuring civilized substantive justice.

Based on the findings of this study, the authors recommend the need to reconstruct legal protection mechanisms within the international criminal law system to ensure more effective and substantive protection for women and children as victims of war crimes. Legal protection must be based on the principle of *victim-centered justice*, emphasizing the active role of vulnerable groups as legal subjects. The ICC needs to formulate an implementing protocol to regulate comprehensive protection for vulnerable groups, including gender-based redress schemes, access to justice mechanisms, and guarantees of non-recurrence of violations. The following recommendation emphasizes the importance of developing additional legal instruments capable of strengthening protection for vulnerable groups through a substantive justice approach. Aligning international criminal law with human rights instruments is a prerequisite for upholding global accountability, expanding synergy between countries, and establishing mutual legal assistance *scheme*.

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Conflict of Interest

The authors declare there is no conflict of interest

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