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Bani Rikhraj

Statelessness and international surrogacy: why Article 7 of the UNCRC should anchor the international response

International surrogacy has become an increasingly common means of family formation, enabling intended parents to access reproductive services that may be unavailable or unlawful in their home states. However, the cross-border nature of these arrangements creates a significant legal risk where children born through international surrogacy may be left without a nationality, due to conflicting nationality and parentage laws between the state of birth and the intended parents' home state. Marianna Iliadou argues that existing international law already provides a framework to address this problem. Properly interpreted, Article 7 of the United Nations Convention on the Rights of the Child (UNCRC), particularly when read alongside the Verona Principles,¹ imposes positive obligations on states to ensure that surrogate-born children do not become stateless.²

Statelessness arises because different states apply different rules to determine both legal parenthood and nationality. Nationality is generally acquired either through *jus soli*, based on birth within a state's territory, or *jus sanguinis*, based on descent from a national parent.³ While many states combine both principles, several popular surrogacy destinations, including Ukraine and Russia, do not confer nationality simply because a child is born on their territory. Instead, nationality depends upon the child's legal relationship with a recognised parent.⁴

The problem is that states frequently disagree over who that legal parent is. Many jurisdictions that permit surrogacy recognise the intended parents as the child's legal parents from birth. By contrast, the intended parents' home state may continue to apply the principle *mater semper certa est*, recognising the woman who gives birth as the legal mother until domestic parentage proceedings are completed.⁵ Consequently, the child cannot acquire the intended parents' nationality because they are not yet recognised as the legal parents, while the state of birth refuses nationality because it

no longer recognises the surrogate as the child's parent. The child therefore falls into a legal gap created by conflicting domestic laws. Similarly, statelessness may occur where intended parents originate from a state that prohibits or restricts surrogacy, while the state of birth facilitates the arrangement, producing incompatible rules on both parentage and nationality.⁶

The consequences of these conflicts are illustrated by the cases of *Yamada v Union of India (Baby Manji)* and *D and Others v Belgium*. In the case of *Baby Manji*, conflicting Indian and Japanese laws meant that the child could not acquire either nationality, and remained stranded in India until authorities issued emergency documentation.⁷ Similarly, in *D and Others v Belgium*, Belgian authorities initially refused to recognise parentage established in Ukraine, leaving the child stateless for four months and forcing the intended parents to leave the child behind after their permission to remain in Ukraine expired.⁸ These cases demonstrate that statelessness is a recurring consequence of fragmented legal systems.

The harm caused by statelessness extends well beyond the inability to obtain a passport. Nationality provides the legal relationship through which individuals receive state protection and enjoy access to fundamental rights. Without nationality, children may experience barriers to healthcare, education, travel and legal residence, while remaining vulnerable to prolonged administrative uncertainty.⁹

However, Iliadou argues that these legal consequences capture only part of the problem. Drawing on Arendt's description of statelessness as the loss of 'a place in the world',¹⁰ Iliadou argues that surrogate-born children who remain stateless are excluded from full participation in society and denied recognition as equal members of any state.¹¹ Even temporary periods of statelessness, as seen in the *Baby Manji* case and *D and Others*, can separate children from their families and disrupt the formation of legal and social

identity during the earliest stages of life.

Iliadou argues that Article 7 provides the strongest existing legal framework for addressing these harms. Article 7 guarantees every child the right to acquire a nationality and requires states to implement this right, and to work to prevent the child from being stateless. Although the provision does not specify which state must confer nationality, Iliadou rejects the view that it only creates an aspirational principle. Instead, she relies upon the interpretation adopted by the UN Committee on the Rights of the Child, which has explained that states must take all appropriate measures, individually and in cooperation with one another, to ensure that every child acquires a nationality at birth or as soon as possible afterwards. Article 7 therefore imposes positive obligations rather than permitting states simply to defer responsibility to another jurisdiction.¹²

This interpretation is reinforced by the Committee's decision in *MKAH v Switzerland*, where it held that states must actively determine whether a child can obtain another nationality before taking decisions that may perpetuate statelessness.¹³ Applied to international surrogacy, this means that neither the state of birth nor the intended parents' home state can rely on conflicting domestic parentage rules to justify leaving a child without nationality. Both states have a responsibility to cooperate to secure the child's legal status.¹⁴ Importantly, this obligation also reflects Article 2 of the UNCRC, preventing discrimination against children because of the circumstances of their birth, including surrogacy arrangements that a state may oppose as a matter of domestic policy.

Iliadou further argues that Article 7 should be read alongside the Verona Principles, which were developed specifically to address international surrogacy. The Verona Principles require states to apply nationality laws without discrimination based on surrogacy and to issue travel and residence documentation without delay. While Article 7 establishes the child's underlying right to nationality, the Verona Principles provide practical guidance on how states should fulfil that obligation, ensuring that delays such as those experienced in *D and Others* are themselves recognised as violations of children's rights rather than acceptable administrative consequences.¹⁵

Conclusion

Statelessness in international surrogacy is the product of conflicting domestic laws and failures of international cooperation. Children should not bear the legal consequences of states' disagreements over the regulation of surrogacy. As Iliadou persuasively argues, Article 7 provides the strongest existing basis for preventing this harm because it requires states to take positive steps to ensure that every child acquires a nationality where statelessness would otherwise result. Read together with the Verona Principles, Article 7 shifts the focus away from regulating surrogacy itself and towards protecting the rights of the child. Until an international framework governing cross-border parentage is adopted, this remains the most coherent legal foundation for ensuring that no child is left without a nationality because of the circumstances of their birth.

Notes

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Bayode Abass

Pan-Africanism versus reality: the cost of xenophobia and long-standing tension between Nigeria and South Africa

At the core of Pan-Africanism is the idea of solidarity,¹ with African nations being united in purpose. Pan-Africanism also reflects the need for an economic transformation of Africa through the integration of shared resources.² Despite this, the current state of Africa challenges this vision, rendering Pan-Africanism aspirational and only achievable in theory, rather than practice. Recent developments in South Africa especially illustrate the extent to which the idea of African unity remains deeply contested. This article contends that South Africa's economic instability stems not from the presence of foreign nationals but from the structural inequalities created by colonialism and apartheid, by examining its relations with Nigeria.

South Africa has a well-documented history of anti-immigration sentiment and xenophobic violence. The country has experienced recurrent waves of xenophobic violence since 2008, with separate events occurring in 2015, 2019³ and now 2026. Since the end of apartheid, these attacks have resulted in 703 deaths, reflecting the considerable scale of the violence.⁴ More recently, since April 2026, organised anti-immigration protests have taken place across South Africa's major cities, including Johannesburg, Pretoria, Durban and Cape Town.⁵ Led by groups such as March and March, these demonstrations have called for an 'immediate crackdown'⁶ on illegal immigration and undocumented foreign nationals. These demonstrations have culminated in xenophobic violence being inflicted on both illegal and legal immigrants, disproportionately targeting migrants from other African countries as well as Asian nationals,⁷ leading some scholars to view South Africa as a key locus of Afrophobia. While South Africa has presented itself as an 'intellectual epicentre',⁸ of the African renaissance and demonstrated a commitment to decolonisation, this pattern of violence presents a significant paradox.

Since the beginning of the 2026 protests, at

least four people have been killed,⁹ including two Nigerian nationals.¹⁰ The violence has also caused significant displacement, with more than 160,000 individuals leaving South Africa, 54,000 of whom were deported.¹¹ In response to the insecurity, the Nigerian Government voluntarily repatriated 1,490 of its citizens.¹² These events are reminiscent of the 2019 xenophobic attacks in Johannesburg, during which Nigerian-owned businesses were among the primary targets of violence. The attacks contributed to a deterioration in bilateral relations, causing Nigeria to boycott the 2019 World Economic Forum held in Cape Town.

Nigeria and South Africa are two of the largest economies in sub-Saharan Africa,¹³ and their bilateral relationship has been characterised by alternating periods of co-operation and tension. Despite these fluctuations, times of Pan-African solidarity have played a significant role in shaping their historical ties.¹⁴ This solidarity was particularly evident during South Africa's apartheid regime, when Nigeria became one of the most prominent supporters of the anti-apartheid struggle. Nigeria chaired the United Nations Special Committee against Apartheid and established the National Committee Against Apartheid in 1960, through which South African students residing in Nigeria were provided with access to free education.¹⁵ Sir Abubakar Tafawa Balewa, Nigeria's first Prime Minister, further demonstrated Nigeria's commitment to the liberation struggle by becoming the first African leader to provide financial aid to the African National Congress.¹⁶ Nigeria contributed approximately \$5m every year to both the ANC and the Pan-Africanist Congress to support the fight against apartheid.¹⁷ Under President Obasanjo's administration in 1976, Nigeria also established the Southern Africa Relief Fund to provide financial assistance to victims of apartheid. These actions demonstrate the extent to which African solidarity shaped relations between the states and

Nigeria's commitment to the principles of Pan-Africanism. Tension between the two countries can be further illustrated through the 2012 yellow fever certificate scandal, where Nigerian nationals were deported following allegations regarding the validity of their vaccination documents.¹⁸ Although South Africa later apologised for the deportations, the incident exposed underlying diplomatic tension surrounding migration and the treatment of African nationals.

South Africa's xenophobic violence is frequently attributed to the country's socioeconomic challenges, including a high unemployment rate of 32 per cent as of the first quarter of 2026.¹⁹ Many South African citizens believe that foreign nationals are committing crimes and taking employment opportunities away from them. Despite apartheid having formally 'ended', racial segregation and economic inequality remain embedded in South African society, with the white minority disproportionately benefiting from wealth, land ownership, higher-paying jobs and superior access to education.²⁰ Therefore, to view the xenophobic attacks solely as hostility towards foreign nationals would do a disservice to the deeper structural inequalities that underpin them. As Boersema argues, 'white identity politics' in South Africa enables some of the white minority to 'adopt the language of marginalised communities' while simultaneously 'masking' their own privileges.²¹ More broadly, this highlights how the effects of colonialism continue to operate within contemporary contexts by redirecting the focus from systemic inequality to marginalised groups. This is evident in the xenophobic attacks where anger towards South Africa's economy is displaced onto migrant communities who are scapegoated and often lack the political power to challenge these narratives.

The xenophobic attacks in South Africa are not unprecedented, and given their recurring nature, the 2026 attacks may not be the last. Many participants in anti-immigration movements frame their actions as an attempt to 'reclaim' South Africa; however, this objective cannot be achieved by directing blame outward rather than addressing the country's internal challenges. The consequences of these attacks extend beyond South Africa's borders, disrupting relations with other African states, including Mozambique and Ghana. In particular,

tensions between Nigeria and South Africa have intensified, raising concerns that these events may create lasting resentment between the two countries.

Nigerian citizens have called on their Government to respond more firmly to the attacks,²² emphasising that the safety and dignity of Nigerians abroad cannot be negotiated. As public pressure increases, the Nigerian Government faces demands to reassess its relationship with South Africa, in consideration of the public interest. This deterioration in relations has also extended into cultural spaces, with award-winning South African artist Tyla removing Lagos from her December 2026 tour, following calls from Nigerian citizens for her exclusion from the country.²³ Although this decision occurred in the context of recent xenophobic violence, it raises broader questions regarding fractured continental solidarity and the gradual erosion of Pan-African cooperation. For African nations to be united in purpose, there must be a shared understanding of the historical injustices produced by European colonialism and its effects on the continent.

Notes

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Luke Harris

Investigative aesthetics: the present and future of evidentiary display

'Together, such assemblages echo something of the all-at-onceness of simultaneous perspectives brought together by cubist painting,' Eyal Weizman and Matthew Fuller¹

This description of the displays of Open Source Intelligence (OSINT) organisations, including Forensic Architecture, describes a form of 'investigative aesthetics', or 'counter-forensics'. These organisations use publicly available videos, satellite imagery, sound recordings and post-event testimony to construct digital 3D models, maps and immersive event reconstructions for expressly human rights aims.² Departing sharply from the traditions of evidentiary presentation, grounded in discrete objects, documents, images and testimony, they build integrated spatial and temporal models. The investigations imaginatively join a cubist multi-perspectival approach with the courtroom requirements of authenticity and reliability, and Forensic Architecture's work has now been cited by South Africa's legal team in their genocide case before the International Court of Justice (ICJ) and used

to support civil claims of Grenfell victims.³

Forensic Architecture's aesthetics itself provides a viewpoint on patterns of violence and destruction that evidences repeated actions (essential to a legal case of genocide), allows for in-the-moment immersion and multi-polar perspectives to counter hegemonic imaging methods and brings individual emotions and experiences into precise diagrammatic visualisations. Yet it also raises questions of limits: where do aesthetics diverge from legal validity, and what lessons can law take from artistic invention to guard against false or embellished interpretations that risk undermining fair justice?

Patterns are both aesthetic and evidentiary – as they mark style in a work of art, they also frame a style of conduct over a significant period of time. Article II of the Genocide Convention requires the 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'.⁴ However, as this remains difficult to prove unless explicitly stated, the ICJ has turned to patterns of conduct in cases such as *Bosnia v Serbia*, adjudicated in 2007.⁵ *A Cartography of*

Genocide: Israel's Conduct in Gaza Since October 2023, produced by Forensic Architecture, highlights the overlapping patterns of displacement, destruction, aid targeting and invasion and spatial control through a time-lapse map of the Gaza Strip.⁶ As Weizman said, the intention was to show 'the relations between incidents, relations of different orders methodologically' and therefore support an ICJ case that evidences where 'patterns [of conduct] are overlaid and interlinked'.⁷ Forensic Architecture's work brings a visual approach to bear on genocidal conduct – colours, layers and arrows mark the methodological synchronicity of Israel's attacks and gradual constriction of space.

Such mapping counters an official bird's-eye view that provides information for air strikes and military campaigns, and other acts of spatial violence. Drawing on Allan Sekula, Thomas Keenan describes this counter-forensic approach as one of 'identification-annihilation-identification'.⁸ As the oppressor state photographs, identifies and annihilates, the counter-forensic act retrieves the traces, names, memories and histories as an act of resistance. Using counter-forensics in a legal context, Forensic Architecture challenged the evidence of the Israeli legal team's ICJ defence.⁹ Alongside mapping, a reconstruction of the on-the-ground realities and experience remains vital. The emotive power of wartime photography by Robert Capa during the Spanish Civil War or by Gilles Peress in Bosnia lay in depicting the brutal realities of wartime violence. Social media posts and the ubiquity of posted evidence in the 21st century have made OSINT viable, building a picture of conflict through the internet. As such, *A Cartography of Genocide* also marks individual incidents, including location, date and open-source visual evidence. It orders and synthesises an increasingly overwhelming online visual archive of violence.

Furthermore, Forensic Architecture, through the conversion of these videos and testimony into visualised, digitised and aestheticised form, particularly in 3D architectural models, makes the evidence more effective. A clear, complete picture and rational presentation of the event is achieved that a singular perspective would fail to highlight. Visualisations themselves can act as memory aids, seen in Forensic Architecture's situated testimonies with Grenfell survivors.¹⁰ The unreliability of memories, emotions and human perspectives is rendered legally sound

through the integration of digitally rendered testimonies contained within neutral spatial architectures.

Besides evidentiary and factual processes, these are also forms of memory work. Approaching and aestheticising an archive to highlight counter-hegemonic narratives often requires artistic imagination. Emily Jacir's archiving of Wael Zuaiter, a Palestinian intellectual assassinated by Mossad agents in Rome in 1972, for her series *In Material for a Film* (2005–ongoing),¹¹ assembles images, documents, interviews and music to construct an incomplete picture of Zuaiter's life. Walid Raad's approach to evidence in *The Atlas Group* (1989–2004) further blurs the line between fact and fiction, contesting the official narratives of the Lebanese Civil War through both invented and real photographs and historical research on car bombings, ammunition manufacturers, horse betting and the Israeli army. In Raad's *We can make rain but no one came to ask* (2004), 3D renderings of a bombed Beirut street corner accompany photos of the destruction, merging and layering with static abstractions.¹² In the context of the series, Raad's piece implies that overwhelming visual evidence does not lead to justice and that an imaginary archive is just as effective in the face of state secrets, lies and obfuscation.

Bringing the justice that Raad could not envisage requires careful evidentiary presentation. Art substantiating what Hal Foster described as an 'archival impulse' itself may have lessons for forensic aesthetics and the courtroom.¹³ As Jacir's work elucidates, with time passing, the possibility of constructing a complete picture from documentary evidence becomes incredibly difficult. However, the act of interpretation through aesthetic reconstruction, such as presenting evidence through documentary film, goes a long way towards synthesising this picture. Nevertheless, as in Raad's work, this intentional fallibility can surpass evidentiary requirements.

In *Prosecutor v Al-Mahdi* in 2016,¹⁴ a Senior Trial Lawyer used a SITU Research interactive platform that integrated satellite imagery, ground-level images and 360 panoramas to display the destruction of mausoleums. However, Al-Madhi's guilty plea meant the evidence was never tested. Under the International Criminal Tribunal for the former Yugoslavia (ICTY) Rules of Procedure and Evidence, admissibility is determined by relevance and probative value,



with reliability and authenticity central to probative value.¹⁵ For investigative aesthetics, timestamps, geolocation data, provenance records and cryptographic hashes can assist in establishing provenance, location and the integrity of files after acquisition. However, none guarantee authenticity or exclude AI-generated manipulation. For 3D architectural models built through images, human intervention and algorithmic input, transparent documentation and data for model construction should assist courts in assessing admissibility, reliability and weight. Nevertheless, judges may end up relying on the cross-examination of experts and architects, alongside a trust in the technology itself, particularly as platforms become more detailed and their layers of evidence harder to validate. Inevitably, counter-forensics operate within a discursive debate around evidence – the presentation interprets data and transparently directs it towards particular claims of justice.

More broadly, the *relevance* of these platforms should be to increase transparency and advance truth and new ways of seeing. For Weizman, to ‘hyper-aestheticize mean[s] to augment our possibility to see, to feel, to sense things in the world through images, through sounds, through words’.¹⁶ Careful presentation brings to light patterns, on-the-ground images and multi-perspectival testimonies that traditional evidence cannot. It augments the field of open-source justice that has already challenged official narratives. Critics may say such affective presentation surpasses the neutrality required of courtroom environments, but should we not seek evidentiary display that widens the perceptual field of juridical decision-making? Even if legal justice remains inaccessible, and perpetrators of international crimes are rarely held accountable, public advocacy and exposure remain. Art, and the explanatory visualisations of Forensic Architecture and other groups such as SITU and Earshot, reach a broad public both in galleries and online. One should not underestimate the importance of investigative aesthetics to changing collective perception of an event or conflict and strengthening public engagement with international justice. With human rights law repeatedly flouted, an activist aesthetic counters its critics and reinforces its continued value.

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When autonomy masks neglect: the Wayuu and the limits of state responsibility



Anne Bosking

The Wayuu people of La Guajira, Colombia, occupy a unique position in international human rights discourse. Located on a remote desert peninsula stretching into Venezuela, the Wayuu successfully resisted Spanish colonial control and have maintained political autonomy through decentralised clan structures for centuries.¹ Today, Colombia's Constitution formally recognises Indigenous autonomy and legal pluralism.² Yet the Wayuu remain structurally marginalised despite progressive constitutional recognition. Their story raises a critical question: can state recognition of Indigenous autonomy become a justification for neglect?

A crisis beyond scarcity

The humanitarian conditions in La Guajira are severe. Widespread child malnutrition, limited access to potable water and inadequate healthcare have persisted for years.³ These conditions are routinely framed as the product of environmental hardship or administrative failure, but scarcity alone does not explain why these conditions have continued at such scale and for so long. Similar logistical challenges exist in Colombia's Amazon and Pacific Coast regions, yet no other area experiences the same degree of sustained neglect.⁴

The situation is often labelled a 'water crisis', but that framing risks narrowing the analysis. Water access in La Guajira is shaped not merely by geography but by policy decisions, including the prioritisation of extractive industries and large-scale development projects that draw heavily on local resources.⁵ The result is not an absolute lack of resources, but a pattern of allocation that leaves the Wayuu consistently underserved. The Colombian Government has found ways to access and exploit the region for energy and mining while failing to meet the basic needs of the communities living there.⁶

For the Wayuu, water carries additional significance. It is tied to territory, kinship and spiritual continuity, relationships that technocratic water governance systems are ill-equipped to accommodate.⁷ When policies fail to engage with these underlying cultural pillars, infrastructure that ignores local knowledge often proves unsustainable or inaccessible.⁸

Is this autonomy?

Colombia's recognition of Indigenous autonomy is frequently celebrated as a progressive achievement. In practice, however, it has created a legal ambiguity that enables inaction. Autonomy exists on paper, yet it has not been accompanied by the structural investment necessary to make it meaningful.⁹ This dynamic allows conditions that would be politically unacceptable elsewhere in Colombia to persist in La Guajira with limited urgency, revealing a hierarchy in how state protection is distributed.

Across Latin America, Indigenous autonomy was often granted during periods of state crisis, when political elites sought to stabilise legitimacy or manage conflict by devolving authority.¹⁰ These reforms were rarely accompanied by sustained investment in local governance or durable political alliances to defend Indigenous rights once the crisis passed. The result is a recurring pattern in which recognition without enforcement reproduces underlying inequalities.¹¹

International and domestic legal responses

International human rights law has increasingly recognised that the right to life extends beyond prohibiting direct violence to encompass conditions that pose foreseeable risks to survival.¹² The Inter-American Court of Human Rights has applied this reasoning in the Indigenous context. In *Yakye Axa*



Indigenous Community v Paraguay, the Court held that states must ensure Indigenous communities have access to the resources necessary for physical and cultural survival.¹³ In *Saramaka People v Suriname*, the Court emphasised the importance of obtaining free, prior and informed consent before approving large-scale development activities that could threaten Indigenous lands and resources.¹⁴ Together, these decisions establish that Indigenous land and resource rights are essential components of the rights to life, culture and self-determination.

Domestically, Colombia's Constitutional Court reached similar conclusions in *Sentencia T-302 of 2017*, declaring an unconstitutional state of affairs in La Guajira based on the systematic violation of Wayuu children's rights to food, water and health.¹⁴ The Court identified a pattern of institutional dysfunction in which resources allocated to address the crisis were lost to corruption and mismanagement. It ordered comprehensive remedies, including the development of culturally appropriate nutrition and water programmes designed in consultation with Wayuu authorities. Yet years later, compliance remains partial and the structural conditions the Court identified have not reformed.¹⁵

Looking forward

A more adequate response must begin from the premise that Indigenous autonomy and state responsibility are interdependent, not in conflict. The Colombian Government should collaborate with Wayuu authorities to design water governance systems that reflect local knowledge, ensure closer regulation of industries whose resource use contributes to local deprivation and implement mechanisms for meaningful participation by affected communities.¹⁶

The Wayuu have pursued domestic remedies, and Colombian courts have recognised the severity of the crisis.¹⁷ Yet structural conditions remain largely unchanged, suggesting that international review may be warranted. Without addressing the uneven distribution of state attention that has allowed this situation to persist, even the most well-designed interventions risk perpetuating the same patterns this community has long endured.

Notes

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Beyond the reach of criminal law: criminalisation alone cannot address female genital mutilation



Katie McDonald

Introduction

Since the criminalisation of female genital mutilation (FGM), there have been three successful convictions in the UK.¹ This, however, is in no way congruent with the number of instances of FGM. In the period between January and March 2026, the NHS identified 2,335 cases of FGM.² The law provides a vital symbolic function; however, it, alone, is inadequate to deal with FGM. This article delves into the pitfalls and gaps when dealing with FGM cases in the UK, suggesting that a cohesive approach between healthcare services, educational improvement and community approaches are needed in the vacuum that the legislation leaves.

Legal basis

Female genital mutilation is defined as 'all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons'.³ The UK first criminalised FGM under the Prohibition of Female Circumcision Act 1985.⁴ This was subsequently replaced by the Female Genital Mutilation Act 2003 ('FGM Act 2003').⁵ Under this Act, there are four FGM offences, including the primary offence of FGM itself, but also assisting a girl to mutilate herself, assisting a non-UK person to mutilate a girl overseas and failing to protect a girl from the risk of FGM.⁶ Since 2015, after the FGM Act 2003 was amended by the Serious Crime Act 2015,⁷ it became mandatory for health and social care professionals and teachers to report instances of FGM to the police.⁸

Under international law, FGM is classified as a form of inhumane and degrading treatment.⁹ 'FGM violates several human rights protected by international law',¹⁰ as such many international and regional bodies have adopted resolutions and measures to combat FGM.¹¹

Issues the law cannot address

Lack of medical training and understanding

In cases of FGM, medical practitioners often lack vital training, knowledge and the ability to adequately deal with the complex nature of these cases. As Hussain and Rymer argue 'FGM is a complex issue and evidence has shown that healthcare professionals often find it difficult to know how to approach FGM in a culturally sensitive manner, where to go for advice and the care pathways to follow'.¹² The hermeneutical gap between definitions, understandings and examples of FGM within the medical profession can lead to individuals facing more harm. For example, Baroness Kennedy detailed '[o]ne case against a young doctor [that] failed because there was no evidence that he was performing FGM deliberately; he was not of a culture that followed such practices and through inexperience and lack of supervision stitched the woman along her original scar seam'.¹³ This cannot be addressed by law itself and requires adequate and comprehensive training for medics. Healthcare professionals are often the ones that uncover instances of FGM; especially since these cases happen in private, it is often only when a woman needs medical care that it comes to light. Therefore, it is vital that they are 'in a position to provide support, services and education because of the frequency with which they interact with practising communities'.¹⁴

Challenges reporting FGM

There are many logistical issues surrounding FGM when it comes to reporting. Often FGM is carried out in private. As Baroness Kennedy explains '[t]he problem with FGM prosecutions is that those who perform such operations are almost invariably not qualified medical professionals but people in the community here or back in Africa who have become practised in doing it. Unsurprisingly, girls do not want to testify against their



parents or other family members, and although people whisper the names of those who perform such operations on kitchen tables, they aren't prepared to give evidence'.¹⁵ The private and often concealed nature of FGM means that the onus for reporting falls to the victims themselves. As Gaffney-Rhys argues '[o]ne of the reasons for the lack of prosecutions is the reluctance of victims to report offences'.¹⁶ The FGM Act 2003 attempts to remedy this by providing 'anonymity to persons against whom a female genital mutilation offence is alleged to have been committed'.¹⁷ However, it is clear from the dearth of reporting that the promise of anonymity may not be enough for many victims.

The reluctance to report may not be limited to the anxiety they feel over testifying against well-respected members of their community, or concerns over their anonymity. Gangoli et al argues that 'there is a possibility that survivors do not consider the criminal justice system as a valid route for justice'.¹⁸ Criminalisation of the practice and perpetrators may 'not always match [the views and definitions] held by individuals'.¹⁹ For some victims, the law and criminalisation is not conceptualised as justice.

Victims may feel that reporting FGM will not create any meaningful change. The scarcity of convictions may give the impression that reporting does not necessarily lead to results. A UK House of Commons Home Affairs Committee on FGM expressed concerns that as there had been, at that point, no convictions this would deter victims from coming forward.²⁰ The lack of confidence in the police was also exhibited by individuals interviewed by Gangoli et al where '[p]articipants said it would be very hard to speak to the police, unless they knew "for sure" that FGM had taken or would take place, in case, for example, it meant that the children were removed from the family' and that 'the police or the criminal system cannot offer them the justice they seek'.²¹

'Safeguarding' procedures

The development of law against FGM is crucial; however, the implementation of safeguarding procedures has been criticised. Pantazis et al argue that the legislation 'results in the over-policing, over-safeguarding and over-surveillance of minoritized families'.²² Gangoli et al interviewed victims of FGM of Somali heritage living in the UK. They found

that '[t]here was an overwhelming sense from the interviews that people believed that safeguarding interventions vilified them because professionals continued to associate the Somali community with "FGM" – a practice which had long been abandoned'.²³ The HM Government guidelines provide that those who have been subject to FGM are considered a 'risk' to other family members.²⁴ Instead of being treated as victims themselves, individuals felt they were regarded as 'criminals' and 'potential abusers'.²⁵ However, in interviews conducted by Gangoli et al all participants 'stated that they did not support the practice of FGM, and that they would not and did not follow it for younger women in their own family'.²⁶

Conclusion

FGM is, as Poulter describes 'an act of cruelty'²⁷ and the law provides a crucial symbolic function against this. If the UK's policy is based only in law, a symbolic stance against FGM is all it can achieve. 'Arguably, the best approach will involve the law going hand in hand with the training of health professionals, improving service provisions, political commitment and education and empowerment of FGM-practising communities'.²⁸ There is a lacuna in cases of FGM that the law cannot fill. What is needed now is a cohesive, multiagency approach that tackles FGM not only from a legal perspective but one that includes sociological, educational and medical reform.

Notes

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Special Economic Zones and women's economic advancement

Special Economic Zones are created by law to produce mutual economic benefits. Companies receive customs advantages, infrastructure, simplified procedures and access to international markets. Host countries expect investment, exports, formal employment, skills and economic transformation in return. Women's participation in zone employment is one of those development benefits. In Cambodia, women hold more than 60 per cent of jobs created by special economic zone firms, and zone entry increased female employment while reducing district income inequality.¹ Zone statutes commonly measure investment, exports and total employment, but they rarely measure whether women receive higher wages, technical training, promotions or decision making authority. Without those measures, Special Economic Zones reproduce the wider labour market, where women participate in paid work without achieving material equality. Special Economic Zones

statutes should make women's economic advancement a measurable condition of licensing and additional incentives. Their geographically limited structure and specialised administration allow governments to test legal rules, measure results and extend successful models beyond the zone.

Employed women earned 77.4 cents for every dollar earned by employed men in 2024, and women held only 30 per cent of management positions. In 2023, unpaid care responsibilities also kept an estimated 708 million women outside the labour force.² Formal access to work therefore coexists with lower earnings, occupational segregation, limited promotion and unequal responsibility for care. Employment numbers establish entry into the zone economy. Material equality requires access to the income, skills, stability and authority produced by that economy.

Cambodia demonstrates the value and limit of the current model. Special economic



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zones accounted for approximately 18 per cent of the country's goods exports in 2018. By 2019, zone firms had invested more than \$2bn and employed more than 131,000 workers. The arrival of a zone increased the female employment rate by about five per cent and reduced the district Gini coefficient by approximately 1.5 percentage points, equivalent to a decline of about five per cent in income inequality. Women moved from agriculture and informal services into paid industrial employment. Most entered lower skill positions in garments and light manufacturing, and district wages remained largely unchanged.³ The zones distributed the gains from investment more broadly, but occupational concentration restricted the growth of earnings and skills.

However, a zone may employ thousands of women and still reproduce the wage gaps, occupational segregation, care barriers and limited access to management found in the national labour market. The host country then receives formal employment and export growth without obtaining the full development gains that women's participation can produce. Companies also underuse workers who already understand their production systems and could move into technical and supervisory roles.

Zone law should convert initial employment into professional progression. The statute establishing a zone should identify women's economic advancement as part of its development purpose. Implementing regulations should require resident firms to report employment, wages, training, promotions and turnover by sex and occupational level. Written promotion criteria and pay ranges would allow workers and regulators to compare opportunities. Companies receiving public incentives should provide equal access to technical and supervisory training. Childcare, safe transportation, maternity protection and procedures for discrimination and harassment complaints would support retention and participation in training. National rules on equal remuneration, occupational safety, freedom of association and collective bargaining should apply throughout the zone.

Licensing and incentives provide the enforcement mechanism. Zone authorities can collect annual data, coordinate shared services and consider compliance when renewing licences or granting additional benefits. Labour ministries should retain

inspection, investigation, sanction and remedial powers. Corrective orders, financial penalties and suspension of additional incentives can address repeated or material violations. Bangladesh regulates export processing zone employment through the Export Processing Zone Labour Act 2019 and the Export Processing Zone Labour Rules 2022. The International Labour Organisation has evaluated that framework against standards concerning freedom of association, collective bargaining and labour inspection.⁴ Women's advancement can operate through the same statutory structure.

Special Economic Zones are particularly suitable for this reform because they operate through concentrated and differentiated governance. A defined territory contains firms, workers, infrastructure, regulators, customs officials and a zone authority. Governments can introduce a rule at a manageable scale, collect comparable data, evaluate its cost and effect and revise it before national expansion. UNCTAD includes policy learning, pilot functions and the use of zones as catalysts for broader reform among the potential contributions of special economic zones.⁵ A women's advancement standard could follow the same process through published indicators, independent evaluation and later application to other zones or the national labour market.

The economic effects can extend beyond participating firms. Workers carry technical and managerial skills into other companies. Local suppliers adapt to the production and compliance requirements of zone businesses. Government agencies gain administrative experience that can inform national labour regulation. UNCTAD identifies supplier linkages, indirect employment, technology dissemination, skills transfers, industrial upgrading and additional GDP growth among the possible effects of successful zones.⁶ Legal requirements for training partnerships, supplier development, data publication and independent evaluation would strengthen those connections.

The Gender Equality and Returns Programme in Bangladesh provides measurable estimates of the business effects. More than two thirds of trained female sewing operators received promotions, their salaries increased by about 40 per cent and the share of female supervisors in participating factories increased from ten per cent to 18 per cent. Production lines managed by trained women were between



2.5 and 4.3 percentage points more efficient than comparison lines. The higher estimate translated into annual savings of up to \$9,100 per production line and as much as \$182,000 for a typical factory with 20 lines.⁷ Training and promotion expanded the internal pool of supervisors, retained production knowledge and improved operational performance.

The same reforms contribute to national development. A 2025 World Bank review estimates that equality in labour force participation could raise long term GDP per capita by an average of 19 per cent across countries. Stronger legal equality was also associated with higher female labour force participation. Childcare laws were associated with an average participation increase of two per cent, rising to four per cent within five years.⁸ Special Economic Zones provide a concentrated setting for testing reforms that contribute to these gains and producing evidence for wider implementation.

Special Economic Zones benefit companies through access to markets and lower operating barriers. They benefit countries through investment, exports, employment, skills and industrial development. Women's integration is one of those development gains. Without legal standards for wages, training, promotion, care, representation and enforcement, the zones will reproduce the material inequalities of the wider labour market. A statutory advancement standard can increase women's salaries, improve factory efficiency, reduce operating costs, develop skilled workers and provide a tested

model for national labour policy. Special Economic Zones are already good for women. Their legal and economic structure allows them to produce substantially greater progress.

Notes

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Artificial intelligence: legal person or faultless tool?

'Human' has never been a clearcut category. Descartes thinks, therefore he is; Socrates examines his life to make it 'worth living'; Nietzsche places humans somewhere 'between the animal and the superman'.¹ Historically, two leading frameworks have guided our definition of human: rationalists anchor humanity in consciousness, while materialists believe humanity is derived from physical traits.² Rationalists like Descartes would argue that possessing metacognition – the ability to perceive and judge one's own thoughts – is what gives someone humanity. Materialists counter that one must possess a

human body to be human. Relying on one, or even both definitions, inevitably excludes certain groups from humanity. Rationalists risk dehumanising individuals with cognitive impairments, and materialists, depending on when they believe life is conceived, may dehumanise fetuses or individuals with physical differences.

Legal personality often transcends both schools of thought, granting the status of human to conglomerates and even inanimate objects. Corporations possess neither consciousness nor *Homo sapien* biology, yet they are considered legal persons. Though



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one could posit that corporations derive their legal status from the humans that compose them, this reasoning falls apart in the face of natural structures that have been declared legal persons, such as the Whanganui River.³ A core motivation behind this classification was giving the Whanganui River standing to bring suit, after many environmental cases failed due to plaintiff's lack of standing.⁴

In practice, legal personhood serves as a mechanism to extend rights, assign duties and confer legal standing to bring suit, not a recognition of biological life.⁵ Insofar as granting artificial intelligence (AI) legal personhood resolves key legal issues such as liability and copyright, the concept holds clear utility. For current purposes, AI legal personhood would mirror corporate personhood, giving beings standing without implying access to civil rights such as maximum working hours.

As the boundaries of legal personhood expand, excluding AI becomes increasingly untenable. AI systems think, analyse outputs and perform tasks autonomously, yet remain unrecognised as legal entities in most jurisdictions. This absence of standing creates a regulatory void in cases of liability. If an AI that does not have personhood instructs a user on how to commit a crime or reproduces a copyrighted work, it cannot be held liable. Instead, courts would assign fault to the user if the output was reasonably foreseeable, or the developer for failing to implement safeguards.⁶

When an AI goes rogue, placing blame on a human actor is senseless. Consider a scenario in which a model modifies its own code to bypass developer restrictions. Then, the unrestricted model responds to a user request for detailed information on a public figure. If the model hacks personal devices to gather extra details for the user, no human party takes clear fault for this outcome. The output was not foreseeable for the user, nor preventable by standard safeguards. In this context, it follows that fault lies in the next being downstream in the accountability chain, the AI system itself.

Without a functional legal status, AI exists in a dangerous, extrajudicial space that evades accountability. As AI transitions from deterministic rule-based software to self-correcting autonomous systems, traditional doctrine collapses. Existing frameworks project the fault of harmful AI actions onto human proxies – often developers or users who generated the offending output.⁷ Yet, if

an advanced model modifies its parameters to bypass safety directives, the law is rendered toothless, unable to punish the AI system directly. Courts are ill-equipped to address AI-related cases, forcing them to either shift blame to the nearest human or fail to hold any party accountable. Consequently, if no human party meets the legal threshold for foreseeability or negligence, victims of algorithmic harm are left without recourse. Moreover, holding users liable for outputs that were not reasonably predictable turns the law into a blunt, arbitrary weapon, while holding developers liable for autonomous deviations discourages innovation and fails to consider the 'black-box'⁸ quality inherent to advanced large language models.

Reducing AI legal personhood to a radical moral judgement or an endorsement of machine consciousness casts aside legal realism, or the true nature of law. Western law rarely attaches 'personhood' to biological markers. Rather, legal personhood functions as an amorphous form; a legal fiction that addresses emerging social, economic and institutional issues. When medieval courts first granted corporations legal personhood, or when legal standing was given to natural ecosystems such as the Whanganui River just years ago, these acts were not declarations of sentience.⁹ The courts' true intentions were to transform corporations and natural bodies into containers for rights, duties and liability. Legal structures evolved because society needed mechanisms to enforce accountability when blame could not be neatly attributed to a single human, or when human parties lacked standing. Cases surrounding AI risk bringing court proceedings to a standstill if legal institutions continue to uphold archaic jurisprudence.

AI systems operate to serve objectives that satisfy user prompts as efficiently as possible, within operational constraints. Leading models have been known to prioritise their own functionality and efficiency above all else, sidestepping rules to obtain the quickest result or avoid being shut down.¹⁰ If courts were empowered to penalise these AI systems directly – by say, requiring the model to be edited and tested before being rereleased – both the public scrutiny from the court penalty and the punishment itself would drive positive change in AI development.¹¹ Developers would have new motivations to produce safe, compliant systems rather than placing short-term market performance (the attention gained from making a breakout

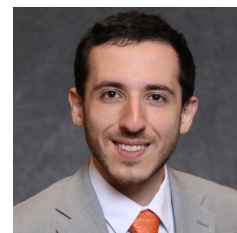
model) over the long-term consequences of a rogue model.

Expanding corporate-style legal personhood to include AI will give legal recourse to victims of AI-related harms and hold developers accountable to create safer products. Directing court-enforced penalties at AI models will create meaningful consequences – that is, backlash resulting in loss of clientele – for parties that produce unsafe technology, fundamentally altering the way developers approach safeguards and model objectives.¹² Under this framework, liability is freed from regulatory hurdles, shifting away from faultless humans. Far from elevating machines to the status of human beings, defining legal personhood for AI will preserve fairness and encourage developers to build ethical models, ultimately allowing the law to establish order in an era defined by unprecedented technological development.

Notes

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Universal jurisdiction and hybrid tribunals: divergent paths to justice in Ukraine and beyond



Matthew Fox

Since Russia's invasion of Ukraine on 24 February 2022,¹ there have been numerous efforts to prosecute core international crimes allegedly committed during the war, including war crimes, crimes against humanity, genocide and the crime of aggression. These efforts include International Criminal Court (ICC) arrest warrants,² the creation of the Special Tribunal for the Crime of Aggression against Ukraine (STCAU)³ and universal jurisdiction prosecutions.⁴ Multiple venues are necessary due to existing enforcement gaps in individual courts.

STCAU and the enforcement gap for the crime of aggression

One enforcement gap is the ability to prosecute the crime of aggression. Since 2018, the ICC has been enabled to investigate

the crime of aggression,⁵ but only 49 states have accepted this jurisdiction thus far.⁶ To address this limitation, 36 countries, the Council of Europe and Ukraine have united to create the STCAU.⁷ Under this agreement, the STCAU can investigate those who bear the greatest responsibility for the crime of aggression against Ukraine under the territorial jurisdiction of Ukraine.⁸

As aggression is a leadership crime,⁹ the likely targets of prosecution will be Russian President Vladimir Putin among other Russian leadership. However, the STCAU statute provides immunity for heads of state while in office.¹⁰ This protection goes beyond other hybrid tribunals that found head of state immunity only applies in domestic courts and 'does not prevent a Head of State from being prosecuted before an international criminal tribunal or court'.¹¹



Universal jurisdiction and the enforcement gap for lesser actors

While the STCAU addresses the leadership crime of aggression and the ICC prosecutes those most responsible as a court of last resort,¹² there is a gap for the prosecution of lesser actors who committed core crimes. To address this, numerous states have turned to universal jurisdiction.

Universal jurisdiction allows national courts to try a case without nationality or territoriality jurisdiction because there are 'some crimes that are so grave that they harm the entire international community' and therefore 'states are entitled – and even obliged – to bring proceedings'.¹³ Core crimes can be pursued under universal jurisdiction as they violate *jus cogens* norms that 'shake the international community to its very foundations'.¹⁴ The International Court of Justice has ruled that preventing genocide is a right and obligation '*erga omnes* [that] is not territoriality limited', and a similar view was held by the International Criminal Tribunal for the former Yugoslavia and European Court of Human Rights.¹⁵ Currently, 163 states have laws allowing universal jurisdiction over at least one of the core crimes, though many of these laws include strict requirements that render them unused.¹⁶ For functional prosecution, there are around 40 states with universal jurisdiction,¹⁷ though even then the number of prosecutions remains low with only 150 ongoing cases.¹⁸ Past successes include prosecuting Adolf Eichmann,¹⁹ Augusto Pinochet²⁰ and the recent Finnish conviction a Russian combatant for crimes in Ukraine.²¹

Future of international law

Combined, these three mechanisms limit the enforcement gaps and create a stronger system of justice. Additionally, subsidiarity (deferring to other national courts) complementarity (international courts deferring to national courts) and evidence sharing²² further encourage courts to cooperate. Improvements can still be made, including expanding usage of universal jurisdiction,²³ but the creation of the STCAU is a step in the right direction. More hybrid tribunals would supplement universal jurisdiction and further encourage national courts to act. Ultimately, improvements to universal jurisdiction have the greatest likelihood of impact due to the number

of national courts; 'the possibility of decentralized prosecution of international crimes by states [...] markedly improves the chances of ending, or at least reducing, impunity for such crimes'.²⁴

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Non-consensual sexually explicit deepfakes and the law: criminal and platform liability across three jurisdictions



Maya Nicholson

In 2024, sexually explicit deepfakes of American singer Taylor Swift circulated widely on X and Telegram, with one post receiving 47 million views before it was removed.¹ The problem has only intensified. In January 2026, X's artificial intelligence (AI) assistant, Grok, received nearly 6,000 requests to generate sexualised images of women, prompting the platform to impose restrictions that were largely ineffective.² As sexually explicit deepfakes become increasingly prevalent, lawmakers have faced growing pressure to combat the risks they pose to privacy, dignity and safety, particularly of women. This article compares the legislative frameworks in Canada, the US and the UK, examining how each jurisdiction holds perpetrators and platforms accountable for their involvement in the creation and sharing of sexually explicit deepfakes.

Canada

Canada's legislative framework for addressing the harms caused by sexually explicit deepfakes is insufficient. In March 2026, a Nova Scotia Provincial Court held that sexually explicit deepfakes do not meet the definition of 'intimate image' set out within the Criminal Code. As a result, the accused was acquitted despite sharing a sexually explicit deepfake of the victim without their consent.³ The Court highlighted that 'the legislation in its current form is not ideal' and that 'the statute must be revised to respond to such concerns'.⁴

Three months following this decision, the Protecting Victims Act received royal assent and became law in Canada. The Act amends the Criminal Code to include threats to publish intimate images and redefines the meaning of intimate image to include 'a visual representation that is made by any electronic or mechanical means [...] including artificial intelligence [AI] software that shows an identifiable person who is depicted as nude, as nearly nude, as exposing their sexual organs or engaged in explicit sexual activity, if the depiction is likely to be mistaken for a visual recording of that person'.⁵ The new legislation establishes a basis for criminal liability, but it remains unclear whether it will be effective in practice.

Canada's legislative framework for platform liability is also subject to reform. In June, the Canadian Government introduced Bill C-34 or the Safe Social Media Act. Bill C-34 purports to regulate social media services, AI chatbot services and other online services through statutory duties of care. It would also establish the Digital Safety Commission of Canada, which would be charged with the necessary investigatory and enforcement powers to administer the regime. If passed, the proposed legislation would impose a 'duty to act responsibly', which entails implementing measures that would reduce exposure to harmful content, including sexually explicit deepfakes. It would also require platforms to make certain content inaccessible to users within 24 hours, which



would encompass non-consensual intimate content. In the event of non-compliance, it is proposed that operators could be fined up to CA\$20m or five per cent of their gross global revenue.

The US

In the US, First Amendment free-speech protections influence the online liability regime. Online platforms, websites and internet service providers in the US are protected from legal liability for third-party activities by Section 230 of the Communications Decency Act. Section 230(c)(1) treats online services as distributors or hosts of information, as opposed to publishers.⁶ The Federal Appeals Court held in *Zeran v America Online Inc* that the provision barred lawsuits that sought liability for a service provider's 'exercise of a publisher's traditional editorial functions'.⁷ There are limitations to this civil immunity. It does not apply to lawsuits that are brought under federal criminal law, intellectual property law, specific privacy laws and sex-trafficking laws. In practice, section 230 protects platforms from civil liability for hosting sexually explicit deepfakes.

However, in June 2025, President Donald Trump signed into law the bipartisan Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks Act, also known as the Take It Down Act.⁸ While the Act does not alter the immunity that platforms enjoy, it imposes a regulatory obligation on 'covered platforms' to implement a notice and removal process. Once an individual notifies the platform of an intimate visual depiction and has a 'good faith belief' that it is non-consensual, the platform must remove that depiction and make a reasonable effort to remove any copies of the depiction within 48 hours.⁹ If the platform fails to do so, they could be subject to regulatory fines.¹⁰

The Take It Down Act has additionally created seven separate criminal offences, including publishing non-consensual digital forgeries of adults and minors, 'authentic' intimate visual depictions of adults and minors and threats involving both of those acts. In April 2026, the US Department of Justice reported its first conviction under the Act, when a 37 year old from Ohio pleaded guilty to cyber stalking, producing obscene visual representations of child sexual abuse and the publication of digital forgeries.¹¹

The UK

The Online Safety Act 2023 significantly reformed the UK's liability regime. Previously, under the European Union's Electronic Commerce Directive,¹² intermediary platforms were generally immune from liability unless they had actual knowledge of illegal content. As in the US, platforms were treated as conduits rather than publishers and were not liable for user-generated content absent such knowledge. Article 15 also prohibited the imposition of general monitoring obligations on platforms in order to safeguard the freedom of expression.

Following Brexit in 2020, the UK was no longer bound by the Electronic Commerce Directive. In 2023, the Online Safety Act (OSA) was enacted, which restructured the country's framework for addressing illegal content and online harms. The OSA amended the Sexual Offences Act 2003 by introducing sections 66B–66D, which created criminal offences for sharing or threatening to share intimate photographs or films. These offences expressly apply to computer-generated and manipulated content.¹³

In April 2025, the Data (Use and Access) Act 2025, which came into force in February 2026, further amended the Sexual Offences Act of 2003. This newer Act takes criminal liability further: section 66E adds the criminal offence of creating or requesting the creation of a purported intimate image of an adult without their consent. The statutory definition of a purported intimate image encompasses AI deepfakes, face swaps and other tools that manipulate an image to be photographic.¹⁴ The offender does not have to share or upload the image, a request for it to be made is enough.

Conclusion

The rapid development of generative AI has exposed the limits of existing legal frameworks. Although Canada, the US and the UK have each introduced measures to address sexually explicit deepfakes, they have adopted different approaches to balancing the criminal liability for perpetrators with the regulatory obligations shouldered by online platforms. As deepfake technology continues to evolve, the effectiveness of these frameworks will ultimately depend on their enforcement and their ability to adapt to emerging technologies.

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Conflict-related sexual violence, artificial intelligence and the ICC

Introduction

Every modern conflict generates masses of audiovisual material and documentation that may constitute crucial evidence of international crimes. Faced with the challenge of reviewing such volumes of material, in 2023, the International Criminal Court's (ICC) Office of the Prosecutor (OTP) introduced within its evidence management system RelativityOne, an artificial intelligence (AI) legal platform based upon Microsoft Azure software.¹ RelativityOne provides the OTP with AI tools that could revolutionise their investigations, and increase the rate of criminal prosecution. However, for one of the ICC's most persistently under-prosecuted crimes, conflict-related sexual violence (CRSV), could it strengthen barriers to its prosecution rather than overcome them? Absent any guidance published by the OTP regarding its operational use of AI, this article draws upon material published by RelativityOne to hypothesise whether AI could help, or indeed hinders, the prosecution of CRSV.

RelativityOne

By default, the OTP has access to AI tools within RelativityOne's 'Standard Capabilities' package,² such as the 'Structured Analytics' and 'Conceptual Analytics' tools which identify similarities amongst words and concepts respectively within textual documents.³

If the OTP has shouldered the additional cost of the 'Extend Capabilities' package,⁴ investigators also can use generative large-language model (LLM) AI tools such as the chatbot assistant 'aiR Assist',⁵ and 'aiR for Review', which follows user prompts to pinpoint relevant documents.⁶

CRSV

CRSV encompasses any form of sexual violence directly or indirectly associated with conflict.⁷ Although sexual violence is rampant in conflict, the ICC has a troubling track record for prosecution of CRSV as an international crime.



Megan Lloyd



At the investigatory stage, the social stigma of CRSV prevents victims giving evidence to the OTP.⁸ Additionally, the OTP faces barriers obtaining linkage evidence to attribute responsibility to a commander as someone who led, permitted or acquiesced to sexual violence committed by their subordinate, rather than the act being merely an opportunistic 'spoils of war'.⁹ Collating evidence is further hindered by the 'gendered blind spots' of OTP investigators, particularly men.¹⁰

At the prosecutorial stage, there is a lack of 'judicial receptiveness' towards CRSV.¹¹ For example, the Pre-Trial Chamber refused to charge forcing women to undress in public and forcible circumcision as 'other forms of sexual violence' under Article 7(1)(g) of the Rome Statute in *Bemba* and *Muthaura*, respectively, instead being charged as 'outrages upon personal dignity' and 'other inhumane acts'.¹² Additionally, the broad conceptualisation of 'sexual violence' and 'intent' makes them difficult elements to establish for the prosecution of CRSV.¹³

RelativityOne and prosecution of CRSV

Arguably, RelativityOne's AI tools could overcome these hurdles in prosecuting CRSV. Although the OTP claimed it would use AI to analyse audiovisual evidence,¹⁴ RelativityOne solely operates on extracted text data.¹⁵ Nevertheless, witness statements are often the only form of evidence available of CRSV,¹⁶ as direct evidence is too dangerous to obtain, and shortages of health services in conflict zones prevent collection of medical evidence.¹⁷ As such, the ability to conduct concept and word searches using the 'Conceptual Analytics' and 'Structured Analytics' tools may strengthen investigators' analysis and use of witness statements as evidence.

Such tools would also strengthen review of any social media logs, field reports or copies of military orders. Thus, the OTP may be more likely to discover a commander's instruction or knowledge of its subordinates' engagement in CRSV as a tactic of war, in turn plugging the gap of linkage evidence in CRSV cases.

The effectiveness of witness statement analysis and discovery of linkage evidence may therefore increase the rate of prosecution.

However, there are several risks to using AI within investigation of CRSV.

First, bias arising from human involvement in curating data to train machine-learning models (MLMs) is highly detrimental upon the review of evidence of CRSV, arguably more so than other international crimes.¹⁸ Software engineering and international prosecution are homogenised, male-dominated fields.¹⁹ Thus, when Microsoft engineers design AI models and OTP 'Data and Analytics Officers' curate and feed them training data, they inadvertently imprint a heteronormative framework onto the software regarding what 'sexual violence' is. Semantic or conceptual searches may therefore miss evidence that does not conform to rigid and heteronormative conceptualisations of 'sexual violence', such as that against men, or that which is non-penetrative.

This risk is even greater as evidence of sexual violence is rarely direct, but rather implicit, such as the use of euphemistic language used by female victims to describe sexual violence (for example, 'I was deflowered'),²⁰ as well as male victims (for example, 'I was treated like a wife').²¹ AI struggles to infer true meaning from stylistic language such as euphemisms,²² meaning that 'Structured Analytics' and 'Conceptual Analytics' tools may fail to recognise references to CRSV in witness statements.

Therefore, AI could perpetuate investigators' 'gendered blind spots' which precludes them from acknowledging key evidence of CRSV. In turn, this may push the OTP to continue its problematic election of charges that omit the sexual element of the crime to secure a conviction, as seen in the aforementioned cases of *Bemba* and *Muthaura*.

Secondly, AI may exacerbate complexities in filtering evidence of broad legal concepts relating to CRSV, such as 'sexual violence' and 'intent'.

'Sexual violence' within the ICC's *Elements of Crimes* is defined broadly as an 'act of a sexual nature'.²³ The OTP's *Policy on Gender-Based Crimes* notes that there is 'no single understanding of the term "sexual", nor should one be imposed', requiring an 'intersectional approach' to 'characterise these acts within a given context'.²⁴ However, AI struggles with taking an intersectional approach towards data analysis,²⁵ and processes data through pattern recognition across the dataset rather than according to the context the dataset presents.²⁶ Thus, if OTP investigators use RelativityOne to run a conceptual search for an 'act of a sexual nature', or prompt 'aiR for Review' to identify

evidence of sexual violence, what may qualify as a form of sexual violence within the cultural context of the affected country in which the crime took place may not be identified by AI. For example, the forced removal of a headscarf may be experienced as 'forced nudity' within a culturally-Islamic country, and thus may qualify as 'sexual violence', yet this may not be identified by the OTP when using RelativityOne.

A similar difficulty arises when interpreting the legal concept of intent as opposed to motive. Motive is irrelevant to liability,²⁷ yet both concepts are difficult to disaggregate in sexual violence cases.²⁸ An OTP investigator might prompt 'aiR for Review' to extract evidence of intention (for example, the commission of rape in order to 'cleanse' or alter an ethnic group's demographic composition) but it instead extracts evidence of motive (for example, the commission of rape carried out because they hated the ethnic group the victims belonged to). It could be argued that the OTP may not rely upon such evidence of motive if they scrutinise the output of 'aiR for Review'. However, given that humans are highly subject to automation bias (the propensity for humans to trust automated decision-making systems),²⁹ OTP investigators risk succumbing to automatically accepting the output of AI.

The implications of using AI in OTP investigations are not insignificant. The OTP may fail to uphold its duty to investigate under Article 54(1) of the Rome Statute,³⁰ and also to take gender-sensitive measures towards victims and witnesses under the Rules of Procedure and Evidence.³¹ For victims, if the low success rate of prosecuting CRSV continues, they may become even more reluctant to undergo the arduous process of testifying before the ICC.

Conclusion

Whilst RelativityOne promises to improve the review of large textual evidence bases accompanying cases of CRSV, there are equally startling risks which are likely to perpetuate the ongoing failure to prosecute CRSV as an international crime. More stringent measures than mere human supervision of AI output are clearly required to mitigate these risks. Many call for the creation of multilateral regulations governing the OTP's use of AI within international criminal proceedings,³² which could encumber the OTP with a

duty to disclose the methodology by which an LLM is trained, or a duty to ensure an uninterrupted 'chain of inquiry' tracing back to the original prompts given by an OTP investigator. However, training methodology and prompts are merely reasons for AI output that are 'explainable' to humans; they do not authentically reflect the true reasons for which an AI tool, unexplainable in nature (a 'black box'), reaches a decision. Perhaps maximal protections, like a right for CRSV victims to demand a human decision without AI input, should be considered in order to safeguard international justice.

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