Bridging the Gap Between the Reality of Male Sexual Violence and Access to Justice and Accountability

Ingrid Elliott,* Coleen Kivlahan** and Yahya Rahhal***

Abstract

The limited accountability achieved to date for sexual violence in conflict has largely reflected one specific form: the rape of women and girls. Investigation, prosecution and convictions for other forms of sexual violence have lagged behind significantly. This is the case for sexual violence against men and boys. Using detailed data from over 130 expert medical reports of Syrian male former detainees, the article contrasts known typology of male sexual violence in conflict with penal codes and case law across a range of jurisdictions. It also considers the broader challenges for access to justice, reparation and recovery for such victims and survivors of these crimes. The article then turns to examine how these gaps might be bridged to provide better access and outcomes for justice to male survivors of conflict-related sexual violence. It explores a local Syrian interdisciplinary approach using medical expert documentation which has opened up investigation and awareness of male sexual violence. Lastly, it sets out concluding recommendations for approaching male sexual violence in national investigations and prosecutions.

* Dr Ingrid Elliott MBE, International Criminal Justice and SGBV Expert, UK Preventing Sexual Violence Initiative (PSVI) Team of Experts. [elliott_ingrid@yahoo.co.uk]

** Coleen Kivlahan MD, MSPH, University of California, San Francisco. [coleen.kivlahan@ucsf.edu]

*** Yahya Rahhal MD, MSc, Pathologist. [yahyarahhal@hotmail.com]

The views expressed in this article are the authors' own and do not reflect the opinions of any of the institutions or organizations with which they are associated. The co-authors are all either a member or mentors for Lawyers and Doctors for Human Rights (LDHR) — its work is detailed in this article.

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1. Introduction

The limited accountability achieved to date for sexual violence in conflict has largely reflected one specific form: the rape of women and girls. Investigation, prosecution and convictions for other forms of sexual violence have lagged behind significantly. This is the case for sexual violence against men and boys. While the same harmful gender norms may underlie and drive sexual violence in conflict against different victims, the impact, social response and challenges of securing justice can differ greatly for different genders.[1] Unique and specific barriers block men and boys from successfully seeking services, justice and recovery. Laws, particularly national laws, often define sexual violence in such a gendered way as to exclude male victims from access to justice, accountability for the sexual violence against them, reparations and other avenues of recovery and restitution. Structural and institutionalized gender biases influence every stage of criminal justice processes, human rights litigation and reparation mechanisms, not only due to such laws but also due to the human (mis)application of gender-neutral legislation.

Using detailed data from over 130 expert medical reports for Syrian male former detainees,[2] this article explores the reality of known typology of male sexual violence in one conflict setting (Syria) and contrasts that against the shortcomings in both international and national law and practice. It also considers the broader challenges for access to justice, reparation and recovery for such victims and survivors of these crimes.

The article then offers suggestions as to how these gaps might be bridged to provide better access and outcomes for justice to male survivors of conflict-related sexual violence. It reflects on progress at the international level and how this could influence national investigations and prosecutions. The article also shares some insights from a local interdisciplinary initiative in Syria based on medical expert documentation, and it analyses how this has opened up investigation and awareness of male sexual violence. Lastly, it sets out concluding recommendations for approaching male sexual violence in national investigations and prosecutions.

1 See e.g. M. Jarvis and K. Vigneswaran, 'Challenges to Successful Outcomes in Sexual Violence Cases', in S. Brammertz and M. Jarvis (eds), *Prosecuting Conflict-related Sexual Violence at the ICTY* (Oxford University Press, 2016) 33–72.

2 These medical expert reports were prepared by trained medical experts through a Syrian NGO, LDHR, who conducted consented medical evaluations in accordance with the Istanbul Protocol (Office of the High Commissioner for Human Rights (OHCHR), *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. HR/P/PT/8/Rev.1, 5 November 2004). This procedure is described below more in detail, as well as the data collated in the reports. Relating to individual male former detainees, 138 medical experts reports were reviewed and analysed by the co-authors.

2. The Reality of Male Sexual Violence from the Syrian Conflict

The typology and reality of sexual violence vary across and within conflicts and contexts.[3] While exceptions exist,[4] not enough is currently known or uncovered about the extent, forms and impact of conflict-related sexual violence against men and boys.[5] The crisis in Syria is one context in which more is known, specifically in relation to male sexual violence in detention. While there are few avenues to meaningful justice and accountability for the survivors of these crimes in Syria, the efforts to document and preserve evidence of international crimes during the eight-year conflict have been extensive.

The crisis in Syria has resulted in widespread human rights violations through which the civilian population has suffered daily threats to life, dignity and well-being.[6] The armed conflict caused massive internal displacement, with 6.2 million persons internally displaced by 2019, and a further 5.6 million registered as refugees in surrounding countries.[7] As in other conflicts, CRSV is set amidst many other systematic human rights violations that

3 See e.g. E.J. Wood, 'Variation in Sexual Violence during War', 34 *Politics and Society* (2006) 307–342.

4 See e.g. the exploration of typology in S. Sivakumaran, 'Sexual Violence Against Men in Armed Conflict', 18 *European Journal of International Law* (2007) 253–276, at 261–267.

5 Conflict-related sexual violence (CRSV) is a defined term used by the United Nations. This definition includes violence against all survivors, including men and boys. See e.g. United Nations Secretary-General, *The Report of the United Nations Secretary General on Conflict Related Sexual Violence for 2018*, UN Doc. S/2019/280, 29 March 2019, § 4. Given the focus of this article, the expression 'male sexual violence' will be used predominantly to distinguish this sub-set of CRSV. Other short-form acronyms have been avoided as it was found to impact readability.

6 See e.g. *Human Rights Abuses and International Humanitarian Law Violations in the Syrian Arab Republic, 21 July 2016 - 28 February 2017: Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic* (UNCOI), UN Doc. A/HRC/34/CRP.3, 21 July 2016; *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HR/34/64, 2 February 2017; *Selected Testimonies from Victims of the Syrian Conflict*, UN Doc. A/HRC/27/CRP.1, 16 September 2014. See also Human Rights Watch (HRW), *If the Dead Could Speak? Mass Deaths and Torture in Syria's Detention Facilities* (2016), available online at http://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities (visited 30 December 2019); HRW, *No-one is Left: Summary Executions by Syrian Forces in al-Bayda and Baniyas* (2013), available online at http://www.hrw.org/report/2013/09/13/no-ones-left/summary-executions-syrian-forces-al-bayda-and-baniyas (visited 30 December 2019); *Fourth Report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism*, UN Doc. S/2016/888, 21 October 2016; Save The Children, *Childhood under Siege: Living and Dying in Besieged Areas of Syria* (2016), available online at http://www.savethechildren.org.uk/content/dam/global/reports/education-and-child-protection/childhood-under-siege.pdf (visited 30 December 2019).

7 See UN Office for the Coordination of Humanitarian Affairs, *2019 Humanitarian Needs Overview on the Syrian Arab Republic* (2019), available online at https://hno-syria.org/#key-figures (visited 1 October 2019), and the Syrian Refugee Regional Portal (UNHCR), available online at https://data2.unhcr.org/en/situations/syria (visited 1 October 2019).

have characterized the armed conflict in Syria.[8] Male sexual violence has most frequently been documented in detention settings, as reported in the United Nations Commission of Inquiry on Syria (UNCOI) investigations and reports, as well as from research and human rights reports detailed below.

A. Syrian Male Sexual Violence Typology

The UNCOI has found the following:

> Sexual and gender-based violence against women, girls, men, and boys has been a persistent issue in Syria since the uprising in 2011. Parties to the conflict resort to sexual violence as a tool to instil fear, humiliate and punish . . . . In detention, women and girls were subjected to invasive and humiliating searches and raped, sometimes gang-raped, while male detainees were most commonly raped with objects and sometimes subjected to genital mutilation. Rape of women and girls was documented in 20 Government political and military intelligence branches, and rape of men and boys was documented in 15 branches. Sexual violence against females and males is used to force confessions, to extract information, as punishment, as well as to terrorise opposition communities.. . . Male detainees, including boys as young as 11 years, were subjected to a range of forms of sexual violence including rape, sexual torture and humiliation.[9]

These findings are in line with research reports by the United Nations High Commissioner for Refugees (UNHCR) and the All Survivors Project.[10]

A network of Syrian doctors, which has since become LDHR, began performing medical expert evaluations of alleged torture and sexual violence in 2012. By 2019, over 250 medical expert reports on sexual violence and torture in the Syrian conflict had been completed, using the methodology set down in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (The Istanbul Protocol).[11] Under this Protocol, trained doctors undertake a medical expert evaluation (also known as a medico-legal report) which includes the following components: (i) informed consent to conduct an examination, take photographs and prepare a report; (ii) patient history; (iii) a full physical examination and psychological/mental status evaluation; (iv) photographs of physical findings; (v) an expert report including the history, methodology, findings including body diagrams and photographs, and a medical opinion on the correlation between the reported events and the findings; and (vi) where available, results of diagnostic tests or specialist referral reports. The doctors have been trained and

8 See e.g. *''I Lost My Dignity'': Sexual and gender-based violence in the Syrian Arab Republic, Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/ HRC/37/CRP.3, 8 March 2018.

9 *Ibid.*, §§ 43–50, at 1 (on male sexual violence specifically).

10 UNHCR, *''We Keep It in Our Heart'': Sexual Violence against Men and Boys in the Syria Crisis* (2017), available online at https://data2.unhcr.org/es/documents/download/60864 (visited 30 December 2019); All Survivors Project, *''Destroyed from Within''; Sexual Violence Against Men and Boys in Syria and Turkey* (2018), available online at https://allsurvivorsproject.org/wp-content/uploads/2018/09/ASP_Syria_Report.pdf (visited 30 December 2019).

11 Istanbul Protocol, *supra* note 2.

mentored on Istanbul Protocol methodology, including ethical and safety standards. This work was augmented by a confidential, secure referral system to address medical and psychological care needs.

Based on a review of a data set of 138 LDHR medical expert reports relating to male former detainees and 15 in-depth cases studies which epitomize the patterns and findings in the broader case collection, LDHR has built a picture of the typology, context, patterns and impact of male sexual violence in Syrian government detention centres.[12]

Of the 138 medical reports in this case series on male former detainees, 88% reported at least one form of conflict-related sexual violence,[13] with 43% reporting more than one form;[14] 84% of the men reported forced nudity, while almost 25% reported direct assault on their genitals (including beating, electrocution, burning and other mutilation); 15% disclosed threats of sexual violence and 15% reported forced witnessing of sexual violence. Some male victims reported anal rape and collective sexual humiliation.[15]

The details of the typology and patterns of this violence are explored below to illustrate the potential gaps in any accountability response for male sexual violence, as connected to current laws and jurisprudence set out in Section 3 below. The authors endorse the approach advocated by Sandesh Sivakumaran, which is to accurately represent survivors' experiences, even when the content may be explicit and hard to read. We believe this will lead to a better understanding and help break the taboo and silence around these crimes.[16]

12 LDHR, *'The Soul Has Died': Typology, Patterns, Prevalence and the Devastating Impact of Sexual Violence Against Men and Boys in the Syrian Conflict* (2019), available online at http://ldhrights.org/en/?p=6412 (visited 30 December 2019).

13 For the purposes of this analysis, the following definition of CRSV is used: an act of a sexual nature or which violates a person's sexual autonomy or sexual integrity, committed through force, threat or coercion or takes advantage of coercive circumstances, and is connected to an armed conflict. This definition, and its interpretation and application, is informed by Women's Initiatives for Gender Justice, *The Hague Principles on Sexual Violence: Civil Society Declaration on Sexual Violence* (2019), available online at https://4genderjustice.org/wp-content/uploads/2019/11/The-Hague-Principles-on-Sexual-Violence.pdf (visited 30 December 2019). The legal definitions of CRSV in international criminal law are discussed in Section 3 below.

14 There is a reported global range of between 50–80% of male torture survivors who also report sexual violence: S. Meger, '"No Man is Allowed to be Vulnerable": Fitting the Rape of Men in Armed Conflict into the Wartime Sexual Violence Paradigm', in M. Flood and R. Howson (eds), *Engaging Men in Building Gender Equality* (Cambridge Scholars Publishing, 2015). See also Sivakumaran, *supra* note 4; Euro-Med Monitor for Human Rights & Syrian Network for Human Rights, *Forced Disappearance in Syria: Gone Without a Trace* (2015), available online at http://sn4hr.org/blog/2015/08/30/11397/ (visited 30 December 2019).

15 See LDHR, *supra* note 12. The medical expert reports and data set remain in the custody of LDHR, for use and sharing in accordance with patient informed consent.

16 Sivakumaran, *supra* note 4, at 263. Noting a criticism around detailed descriptions of sexual violence in articles; '[t]he least we can do — even if we wish simply to skim over the relevant parts — is to accurately represent what they had to go through, using their words where possible. This will help to dispel the stigma and break the taboo; to euphemize would be to further the silence.'

1. Male Rape in LDHR Medical Expert Report Data Set

Among the 138 medical evaluations reviewed, there are at least nine male survivors who disclosed being raped.[17] In all of those cases, the men reported anal penetration by an object or finger. The penetrating objects varied from a water hose (with water forced at high volume and speed into their rectum), an electric stick (with electric shocks then administered internally), a 'roller', a stick and fingers (such as during a forced inspection on arrival at a detention centre).[18] None disclosed penile rape, although there were threats of this in one case. The acts described took place either during violent interrogations with demands for signed confessions or on arrival (as part of a forced inspection). These violations were always accompanied by other simultaneous forms of violence, threats and insults,[19] including cases of genital electrocution.

Some detainees disclosed that during the inspection on arrival they were subjected to forced nudity and body cavity searches; their anuses were reportedly penetrated with sticks or fingers while the men were naked in front of many others, and they were often cursed, insulted or beaten at the same time.[20]

2. Genital Violence Including Electrocution, Mutilation and Beating in the LDHR Data set

The UNCOI has reported genital mutilation, genital beating, genital electrocution and tying of the penis as forms of sexual violence.[21] This is also reflected in LDHR's data set. Of the 138 male patients studied, almost a quarter disclosed some kind of beating or mutilation of the genitals (23.9% of cases). Most prevalent in the disclosed forms was electrocution of genitals (13.8% of cases). Other forms included tying of the penis or scrotum, genital burning (with the

17 Using the International Criminal Court (ICC) definition of rape: e.g. Art. 7(1)(g), Elements of Crimes.

18 This is consistent with UNCOI findings, e.g. "*I Lost My Dignity*", *supra* note 8, § 44.

19 In most of the medical reports, there was insufficient detail in relation to the nature of insults to determine whether the insults themselves were sexual in nature and whether they may also be a form of sexual violence. There are cultural barriers, including etiquette and politeness, which create barriers to reporting and repeating these types of words and insults.

20 The Inter-American Court of Human Rights (IACHR) has held that body cavity searches against women can amount to rape (and torture). See Judgment, *Case of the Miguel Castro-Castro Prison v. Peru*, IACHR, 25 November 2006, § 312. See also A. Koenig, 'When is a Cavity Search Not a Cavity Search: Rape at Guantanamo', 11 January 2017, available online at https://medium.com/lemming-cliff/when-is-a-cavity-search-not-a-cavity-search-rape-at-guantánamo-b2b320af05db (visited 31 December 2019), which highlights several aspects about cavity searches in Guantanamo that suggest a purpose beyond a security check. These aspects included: lack of information or translation provided surrounding these acts, probable exploitation of cultural practices and norms, exploitation of gender norms including presence of women, the show of force and roughness used, mocking and 'an overall environment that was deliberately constructed to humiliate and to humble … while simultaneously fostering a sense of degradation and humiliation that almost always accompanies rape'.

21 "*I Lost My Dignity*", *supra* note 8, §§ 49–50.

flame from a pressurized gas cylinder) and beating of the genitals. There were eye-witness accounts of genital mutilation leading to death of the victim.

Genital violence occurred most frequently during interrogation, with others present — including multiple interrogators, officers and other detainees, sometimes including women. On many occasions, the person was suspended from the ceiling by their hands at the time of the violence. Most often, these forms of sexual violence were also accompanied by forced nudity and other forms of sexual violence including threats, insults and targeted humiliation.

One case study illustrated the context and variety of sexual violence episodes faced by male detainees. A 50-year-old male was arrested and taken to Palmyra Military Security Branch in 2011. He faced beatings and collective forced nudity on arrival. Daily interrogation sessions lasted up to an hour, and included being punched in the face and losing teeth, *falanga* (beating of the feet), forced positions and suspensions including the 'flying carpet' (a device that bends a person's back the wrong way) and *shabeh* (suspension) for four days, during which he was forced to urinate and defecate on himself where he hung. His legs, arms and buttocks were burnt with lit cigarettes. On six or seven occasions, the interrogators attached two wires to his penis and scrotum, then electrocuted him. He repeatedly lost consciousness during these electrocutions. The interrogators poured cold water on him to wake him. The interrogators would also kick him severely and repeatedly in the genitals, which caused rupturing and profuse bleeding of his penis. His penis turned blue and swollen, and he lost feeling in his genitals. While they beat and kicked his genitals, the security men told him this was to prevent Sunni men from having children who would grow up to kill Allawi.

Four of the case studies reported the tying of their penises for extended periods, accompanied by the penis being beaten, pulled and ligated in order to restrict urination. Restricting urination can have serious health consequences including severe infections and renal failure. This unusual form of genital violence was inflicted in a relatively consistent manner in different branches, at different times. For example, two patients had their penis tied and then the string attached to a door, one in Aleppo and the other Al Mezzeh, both Airforce Intelligence branches.

3. Collective Sexual Humiliation in LDHR Data Set

In the 138 LDHR cases, there are reported incidents of collective group sexual violence including mixed-gender groups where forced nudity and many of the other forms of sexual violence were subjected publicly on groups of detainees, in order to debase, humiliate and break them. The data set includes cases where detainees were forced to perform sexual acts on each other. In one example, a 34-year-old male was suspended in only his underwear in full view of the women's cell. The interrogators then brought two women into a connecting interrogation room — the women and he could see each other through a large window. The women were ordered to take off their clothes,

say 'dirty words', make sexual gestures and touch each other. He was also told to take his clothes off, make sexual movements in front of them and touch his genitals. This lasted an hour. Through the same window, he was also forced to witness the rape of one of the female detainees. In another case, it was reported that detainees were ordered to strip completely naked, lay face-down on top of each other and pretend to have 'sexual intercourse'. One detainee refused and was beaten by 10 soldiers.

4. Forced Witnessing of Sexual Violence in LDHR Data set

LDHR's medical evaluations also suggest that forced witnessing of sexual violence occurred in public and collective settings. Often men were forced to watch sexual violence against women or were collectively sexually assaulted together. Many of the case studies include forced witnessing of rape, sexual humiliation against inmates and multiple forms of sexual torture, sometimes fatal.

5. Threats of Sexual Violence in the LDHR Data set

Of the 138 cases, 15.2% disclosed being threatened with sexual violence. This was about evenly split between threats of anal rape (including penile), threats of other forms of sexual violence and threats to rape their mothers, sisters or wives. In one example, a detainee was threatened with the penile electrocution of his son. In another, a detainee was told his wife, mother and sister would be brought and raped in front of him.

6. Forced Nudity in the LDHR Data set

In her discussion of forced nudity against male detainees, Fionnuala Ni Aolain notes the implications of nudity in Arab culture as follows:

> [T]he religiously and culturally conservative reality of each detainee's life prior to detention and interrogative is factually and legally relevant in assessing the experience of sexual coercion. We cannot ignore that many of these men were culturally and religiously conservative, and that the exposure of their bodies to other men (and women) in such circumstances would have been demeaning, humiliating, and provoked fears for their physical and sexual integrity.[22]

Sandesh Sivakumaran states: 'Individuals who are forced to strip naked feel exposed, vulnerable and without dignity. These feelings are exacerbated when the forced nudity is accompanied by threats of a sexual nature. Some male survivors state that, 'the humiliation of being interrogated while naked was a very drastic event in their lives'. Depending on the particular cultural context

22 F.N. Aolain, 'Forced Nudity: What International Law and Practice Tell Us', Just Security, 1 June 2016, available online at https://www.justsecurity.org/31325/forced-nudity-international-law-practice/ (visited 31 December 2019).

in which this forced nudity takes place, the effects may be particularly severe.'[23]

In LDHR's data set, forced nudity occurred in three settings: (i) upon arrival — in public, group settings, with other detainees (some with women also present or relatives like fathers and sons) described by some as 'humiliating', often with insults and most often reported with 'security moves',[24] (ii) in cells as part of sexual humiliation or as part of horrendous conditions of detention and (iii) as part of interrogation to demean, humiliate and dominate, often in collective settings with many people present, sometimes with mixed genders and with people forced to watch. Some explicitly spoke of the cultural aspects of collective nudity and the humiliation they felt.

7. Impact of Male Sexual Violence in the LDHR Data set

To understand the nature of this crime and its gravity, it is important to understand its long-term, devastating impact on survivors, including the effect on their daily lives, relations with their family and their engagement and position within their communities. Reported psychological symptoms most prevalent in the case study group were sadness and depression (93%), flash-backs or intrusive memories and thoughts (93%), anger (87%), self-isolation (80%), fear and anxiety (73%), impact on close relationships (73%), insomnia (73%), nightmares (73%), and hyper-vigilance or heightened startle responses (73%). Of note, 60% reported suffering from impotency or infertility following detention. Over half described lasting shame, self-blame or humiliation (53%).[25] There was also a variety of physical findings and resulting impact stemming from the reported ill-treatment.[26] Two-thirds of this group had been displaced from their homes or towns following detention, either as internally displaced persons or as refugees in surrounding countries.

23 Sivakumaran, *supra* note 4, at 266 (discussion on forced nudity), 270.

24 This involved squatting naked several times. See *Case of Valašinas v. Lithuania*, ECtHR (2001) Appl. no. 44558/98, Judgment of 24 October 2001, §§ 26, 177; *Iwańczuk v. Poland*, ECtHR (2001) Appl. no. 25196/94, Judgment of 15 November 2001, §§ 58–59 (amounting to torture or degrading or inhuman treatment in violation of Art. 3 of the European Convention on Human Rights).

25 See also UNHCR, *"We Keep It in Our Heart"*, *supra* note 10; A. Priddy, 'Sexual Violence Against Men and Boys in Armed Conflict', in S. Casey-Maslen (ed.), *The War Report: Armed Conflict in 2013* (Oxford University Press, 2014) 271–296.

26 See LDHR, *supra* note 12. For male sexual violence survivors, physical trauma may include rectal, penile and testicular/scrotal trauma, anal fistulae and fissures, faecal leakage, haemorrhoids, chronic pelvic pain, urinary and bowel incontinence, sexually transmitted infections, sexual dysfunction and chronic constipation. See P. Oosterhoff, P. Zwanikken, and E. Ketting, 'Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret', 12 *Reproductive Health Matters* (2004) 68–77; E.S. Carlson, 'The Hidden Prevalence of Male Sexual Assault During War: Observations on Blunt Trauma to the Male Genitals', 46 *British Journal of Criminology* (2006) 16–25.

There are other risk factors for men and boys in the Syrian conflict, including sexual violence risk upon internal or cross-border displacement,[27] recruitment as child soldiers, sexual exploitation, etc. There is a separate victimology and set of risks for GBTQ+ identifying men or those perceived as non-conforming to gender binaries.[28] Barriers to disclosure and recovery, as discussed further below, also mean that the picture remains a limited one.

3. Contrast to Access to Justice and Accountability

With that albeit limited picture, the focus now turns to what the law and case law at the national and international levels provide in terms of potential recognition and accountability for these crimes. To date, to the authors' knowledge, there are no ongoing criminal justice proceedings which include charges which explicitly relate to Syrian male sexual violence. As a result, the comparison is made against the current position across jurisdictions and courts. The potential of any future Syrian accountability processes will be specific to the relevant foundational jurisdiction,[29] as well as the expertise and awareness of male sexual violence by key actors and decision makers in those proceedings. It is hoped that the gaps highlighted in this article will help inform a more representative and reflective accountability for male sexual violence in Syrian cases.

A. Law and Jurisprudence

1. Gaps in the Law and Legal Definition

In international criminal law, CRSV can be an underlying act of genocide, crimes against humanity and/or war crimes. It can also be an underlying act

27 L. De Schrijver et al., 'Prevalence of Sexual Violence in Migrants, Applicants for International Protection, and Refugees in Europe: A Critical Interpretive Synthesis of the Evidence', 15 *International Journal of Environmental Research and Public Health* (2018) 1979. The authors concluded that accurate prevalence data are not currently available for this population.

28 See UNHCR, *"We Keep It in Our Heart"*, *supra* note 10; H. Myrttinen, L. Khattab, and C. Maydaa, '"Trust No-one, Beware of Everyone': Vulnerabilities of LGBTI Refugees in Lebanon', in J. Freedman, Z. Kivilcim, and N.Ö. Baklacıoğlu, *A Gendered Approach to the Syrian Refugee Crisis* (Routledge, 2017); Heartland Alliance International, *No Place for People Like You: An Analysis of the Needs, Vulnerabilities, and Experiences of LGBT Syrian Refugees in Lebanon*, December 2014, available online at https://www.heartlandalliance.org/wp-content/uploads/sites/13/2016/02/no-place-for-people-like-you_hai_2014.pdf (visited 31 December 2019).

29 There are a variety of possibilities as to where accountability for international crimes in Syria may be pursued given the range of extra-territorial jurisdiction provisions across countries which could found jurisdiction. Indeed, universal jurisdiction cases related to crimes in Syria are already proceeding in a number of countries. In addition, there may be an international adjudicative mechanism established or courts in Syria may eventually become viable *de jure* and de facto in terms of providing impartial, fair and effective justice processes. This is far from the case now. For the purposes of this article, accountability focuses on criminal justice; however, there are many broader forms and venues for different kinds of accountability.

of persecution constituting a crime against humanity, and it can be a form of torture constituting all three of those major crimes as well. International law provides many provisions through which CRSV can be criminalized. However, few of those explicitly call it or recognize it as sexual violence. Through hard work and persistence, the jurisprudence of international courts has slowly come to recognize, define and highlight different forms of CRSV against women and girls. Such faltering progress remains far from the 'consistent and rigorous' accountability which is necessary for deterrence and prevention.[30] As shown below, this is also largely missing for sexual violence against men and boys thus far.

When the Statutes for the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR, respectively) were drafted, any stipulations of forms of sexual violence beyond rape were limited. For the ICTY, the only explicit reference to any sexual violence was 'rape' as a crime against humanity.[31] The ICTR added 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault' as serious violations of Common Article 3 and Additional Protocol II of the Geneva Conventions.[32] When the ICC adopted its Statute (Rome Statute) in 1998, its Article 7(1)(g) added 'sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity' to rape as crimes against humanity and as serious violations of the laws and customs of war for international and non-international armed conflicts.[33]

Even the Rome Statute presents a fairly limited specific toolkit for prosecuting male sexual violence as sexual violence, especially if justice actors do not recognize or see the violence as sexual, to begin with. Few of the Syrian male sexual violence typologies detailed above are unequivocally named and included; 'other modes of sexual violence commonly directed against men and boys such as forced circumcision, penile amputation, castration, sexual mutilation (for example, burning of the genitals) and genital electrocution — are not explicitly listed in any international criminal statute or treaty'.[34]

'Any other form of sexual violence' has 'acts of a sexual nature' as the recognized *actus reus* component of sexual violence.[35] This is ambiguous, and how this is applied depends on knowledge and understanding of 'sexual nature', informed — or misinformed — by the societal norms and biases

30 See SC Res. 2106 (2013). At the ICC, to date, there has been no conviction for CRSV upheld on appeal. Judgment, *Ntaganda* (ICC-01/04-02/06), Trial Chamber, 8 July 2019 (hereinafter *Ntaganda* Judgment) included convictions for CSRV but is currently under appeal.

31 Art. 5(g) ICTYSt.

32 Art. 3(g), 4(e) ICTRSt.

33 Art. 7(1)(g), Arts 8(2)(b)(xxii), and 8(2)(e)(vi) ICCSt. As well as adding gender as a ground of persecution under Art. 7(1)(h) ICCSt.

34 V. Oosterweld, 'Sexual Violence Directed Against Men and Boys in Armed Conflict or Mass Atrocity: Addressing a Gendered Harm in International Criminal Tribunals', 10 *Journal of International Law and International Relations* (2014) 107–128, at 109.

35 Art. 7(1)(g)–7, Elements of Crimes.

around them.[36] As we will see below, even at the international level, when and if it is prosecuted, male sexual violence has often been charged and/or convicted as other non-specific crimes, such as torture, inhumane treatment or as an underlying act of persecution, without acknowledgement or condemnation of the sexualized element to it.

At the national level, ICC State Parties should have incorporated the ICC Statute provisions into their laws, which would then allow for prosecution of the above ICC sexual violence crimes.[37] In some countries, there has only been partial incorporation of international criminal law (ICL), and sometimes old laws still apply to conflict crimes.[38] Where countries prosecute conflict crimes using Penal Code sexual violence provisions, very few are fully gender-neutral.[39] Many still define rape as requiring penile penetration.[40] Some limit rape to female victims.[41] Many use antiquated terms such as 'carnal knowledge'[42] or include 'sexual gratification' as a purposive element.[43] Similarly, opaque and gendered language appears for other forms of sexual violence: 'indecent assault against a woman or girl' (Uganda), 'attacks on decency' (Syria), 'immodest act', 'assails a women in a public place in an immodest manner' (Iraq), 'disgraceful act with a female' (Yemen) and 'insult the modesty of a woman' (Bangladesh). For male sexual violence, just as with international courts, it is most likely that other crimes, such as assault or torture, would be used to prosecute sexual violence, if at all. For women, there is a failure to recognize the violence. For men, the opposite — only the violence is seen, and there is instead a failure to recognize the sexualized element.

CRSV, as with many other crimes, is often seen to have a hierarchy or range of gravity, which is reflected in the law through sentencing and reparations, as well as jurisdictional or element 'gravity' thresholds in international courts. The ICC includes other forms of sexual violence 'of comparable gravity'. There is an over-emphasis on penile vaginal rape as the only serious crime, to the

36 See e.g. Women's Initiatives for Gender Justice, *Civil Society Declaration on Sexual Violence*, September 2019, available online at https://4genderjustice.org/wp-content/uploads/2019/11/English-Civil-Society-Declaration-on-Sexual-Violence.pdf (visited 31 December 2019). This seeks to clarify what acts should be regarded as sexual violence. See also *Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict: final report / submitted by Gay J. McDougall, Special Rapporteur*, UN Doc. E/CN.4/Sub.2/1998/13, 22 June 1998, §§ 21–22.

37 Noting that for some Member States with monist legal systems, direct application of the Rome Statute may be possible by their courts.

38 For example, Bosnia, where they now apply the Social Federal Republic of Yugoslavia's Criminal Code from 1977 as the most favourable law to the accused, despite its failure to reflect ICL at the time of the crimes. Equally, the Uganda Penal Code applies to conflict crimes prior to 2010, omitting ICL.

39 The exceptions include Canada; South Africa's Criminal Law (Sexual Offenses) Amendment Bill 2006, Bill 50-2003 (GA) §2(1); Botswana's Penal Code 1986 § 141 (but includes sexual gratification as a purpose).

40 For example, England and Wales, Scotland.

41 For example, Sri Lanka Penal Code, Art. 363; India Criminal Law Amendment Act 2013 — penetration of a woman by a man, Uganda Penal Code § 123.

42 For example, Botswana and Uganda.

43 For example, Botswana Penal Code, § 141.

detriment of other forms of sexual violence. Aliraza Javaid notes that the UK 1994 parliamentary debates about expanding the law of rape to include male victims were punctuated by suggestions that 'coercive anal rape might be less upsetting for a man than for a woman'.[44] He stresses that 'if this notion of naming or labelling such forced sexual acts as rape is ignored in law, it will exacerbate the institutional neglect of male rape and the lack of societal recognition of this social issue'.[45]

There are also laws in many national settings which create risks of criminalizing survivors, barring them from reporting and access to justice, and stigmatizing them with blame. These are laws which criminalize 'involvement' regardless of whether there was coercion, force or lack of consent. For example, the criminalization of all sexual acts outside marriage, adultery if either the perpetrator or victim is married or sexual acts between people of the same sex.[46] Survivors may also fear criminalization and being labelled as homosexual, in light of misconceptions that only homosexual men can be raped.[47]

2. Gaps in Application of the Law

Even if the law were perfectly gender-neutral, the application of the law to the facts by justice actors is frequently far from it. 'It is patently obvious that judicial recognition of CRMSV [conflict-related male sexual violence] begs judicial clarity, uniformity and consistency. CRMSV has confronted many biases and taboos since the modern re-emergence of the adjudication of sexual violence under international humanitarian and international criminal law.'[48] Justice outcomes are fogged by failures to recognize and understand male sexual violence, distorted by mislabelling or deprioritizing, and blinded by prejudice and 'rape myths' in relation to all genders, including men and boys. Investigators, prosecutors, defence counsel and judges are not above or immune from this prejudice, stigma and unconscious bias. Instead, these attitudes seep into decisions and outcomes in our criminal justice systems, international or national, reinforcing their institutionalization in many of our laws.

44 A. Javaid, 'Male Rape in Law and the Courtroom', 20 *Web JCLI* (2014) at 4.

45 *Ibid.*, at 8.

46 Syria Penal Code, Art. 520: 'any carnal conjunction', Yemen Penal Code, Arts 263–268.

47 See below. For example, Uganda Penal Code, § 145: 'Unnatural offences' includes when a person has 'carnal knowledge of any person against the order of nature, of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature.' 'Against the order of nature' and 'carnal knowledge' requires 'anal penetration by a male organ.' Iraq Penal Code, Art. 394(1): 'any person who outside of marriage has sexual intercourse with a woman with her consent or commits buggery with a person with their consent.' Sri Lanka Penal Code, Art. 366: 'Unnatural Offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal.'

48 P.V. Sellers and L.C. Nwoye, 'Conflict-related Male Sexual Violence and the International Criminal Jurisprudence', in M. Zalewski et al. (eds), *Sexual Violence Against Men in Global Politics* (Routledge, 2018) chap 12, at 228. CRMSV is used in that article to designate conflict related sexual violence against males.

To understand how these laws are applied and how CRMSV cases fare in court, 45 cases from different jurisdictions that had at least some factual reference to male sexual violence were identified and analysed.[49] That is not to say that these cases ended in a conviction for male sexual violence, either explicitly recognized as sexual violence or otherwise. Convictions have not been consistently produced, even in cases with clear evidence of sexual violence against males on record. Nor does it speak to the volume of cases, and crimes, that failed to include factual averments or to even make it to court. Some conclusions which may be drawn from the variable approaches or outcomes in the 45 cases are discussed below.

First, for some context, almost 70% of these cases relate to crimes in Bosnia Herzegovina (1992–1995): 18 were tried at the ICTY, and 13 were tried in the courts of Bosnia. Of the other cases, three came from the ICTR, three from the Special Court of Sierra Leone (SCSL), four from the ICC and one was tried at the Extra-ordinary African Chambers in Senegal (EAC). Apart from Bosnia, the authors were unable to locate any prosecutions of CRMSV in (non-hybrid) national courts.

(a) Prosecutors have often failed to charge or specify sexual violence against male victims

This can be seen in cases at the SCSL, ICTR, EAC, ICC and Bosnian State Court.[50] Cases at the SCSL illustrate the contrast between a court allowing evidence, curing notice deficiencies in the charges (*RUF* case) and excluding the evidence and facts of male sexual violence from the case entirely (*AFRC, Charles Taylor* cases).[51]

(b) Male rape is rarely charged or convicted as rape[52]

49 The authors are grateful for case collections within Sellers and Nwoye, *ibid.*; Oosterweld, *supra* note 34; Refugee Law Project, *Promoting Accountability for Conflict-Related Sexual Violence Against Men: A Comparative Legal Analysis of International and Domestic Laws Relating to IDP and Refugee Men In Uganda*, Refugee Law Project Working Paper No.24, July 2013, available online at https://www.law.berkeley.edu/files/Sexual_Violence_Working_Paper_(FINAL)_130709.pdf (visited 31 December 2019); Sivakumaran, *supra* note 4; S. Sivakumaran, 'Lost In Translation: UN Responses to Sexual Violence Against Men And Boys in Situations of Armed Conflict', 92 *International Review of the Red Cross* (2010) 258, at 272–275.

50 See footnote 46; Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and Related Requests, *Ongwen* (ICC-02/04-01/1501199-Red), Trial Chamber, 6 March 2018. Victims sought to have testimony of three male rape victims heard. The Trial Chamber refused as sexual violence against males had not been charged. First Instance Verdict, *Indira Kamerić* (S11K01013213 KrI), Court of Bosnia and Herzegovina (First Instance Panel), 17 April 2015 (hereinafter *Kamerić* Verdict), although the evidence included digital vaginal rape, the prosecutor never amended the material facts on indictment, so the Court held that it could not convict for rape.

51 *Alex Tamba Brima et al.* (SCSL-04-16-PT) (hereinafter *AFRC* Case); *Charles Taylor* (SCSL-03-01-PT) (hereinafter *Charles Taylor* Case). In contrast to *Issa Hassan Sesay et al.*, SCSL-04-15-T (hereinafter *RUF* Case), where court remedied charge/notification deficiencies (put only as outages upon personal dignity and not mentioned in the rape count discussion).

52 See *RUF* Case, convicted as outrages upon personal dignity.

From the 45 analysed cases, 11 cases included facts which amounted to anal rape of a male victim.[53] Only three cases included charges or conviction as rape (either as a crime against humanity and/or as a war crime) (27%); of these, two were at the ICC (with one subsequently overturned),[54] and one was in Bosnia, charged under the Socialist Federal Republic of Yugoslavia Criminal Code Article 142(1) on rape and inhuman treatment as a war crime against civilians (upheld on appeal but as 'sexual abuse' instead of 'rape').[55] In the other cases, there were five charges of persecution,[56] four of torture, two of other inhumane acts (crimes against humanity) and four related to cruel or inhuman treatment as a war crime.[57] In one case, there was only a charge, of murder, for the resulting death.[58]

Separate from the charges or convictions, only seven of these cases explicitly recognized or discussed the violations as sexual. In 36% of cases, there was no discussion of the sexual nature of the crime. As discussed above, recognition and labels are important.[59] For example, in the *Hassan Hibre* case, sexual violence victims were awarded $33,880 each in reparations, and victims of torture were awarded $25,410.

The same pattern emerges for oral rape of male victims. From the 45 cases, 19 had facts amounting to male oral rape (including being forced to penetrate another's mouth with his penis).[60] Again, only three of these cases included rape charges (15.8%):[61] one ended in a conviction for rape as a war

53 5 ICTY, 3 Bosnia, 2 ICC, 1 EAC. Over 72% relate to crimes in Bosnia.

54 Judgment, *Bemba* (ICC-01/05-01/08), Trial Chamber, 21 March 2016 (hereinafter *Bemba* Judgment) (oral and anal rape of men, charge and convicted as rape crime against humanity and war crime (overturned on appeal)); *Ntaganda* Judgment (penile and object penetration) anal rape, charged and convicted as rape as a crime against humanity and war crime, and resulting in death as murder as a crime against humanity and war crime.

55 First Instance Verdict, *Begović* (BiH S11K01660016Krž), Court of Bosnia and Herzegovina (First Instance Panel), 11 December 2015 (hereinafter *Begović* Verdict) forced rifle barrel into anus (plus oral rape).

56 All ICTY.

57 *Sikirica* (ICTY-95-8) (2001); *Blagoje Simić* (ICTY-95-9) (2003); *Stanišić & Župljanin* (ICTY-08-91) (2013); *Karadžić* (ICTY-95-5/18); *Hissen Habre* (EAC) (2016) (evidence of insertion of wood into anuses and penises: subsumed in torture and inhumane acts); First Instance Verdict, *Vlačo* (S11K00712112Kro) Court of Bosnia and Herzegovina (First Instance Panel), 4 July 2014 (*Vlačo Verdict)*; First Instance Verdict, *Ibro Mačić* (S11K01104713KrI) Court of Bosnia and Herzegovina (First Instance Panel), 17 April 2015 (*Mačić* Verdict).

58 *Kvočka* (ICTY-98-30/1) (2002) (same incident as *Sikirica* Case).

59 For differing views on this, see Sellers and and Nwoye, *supra* note 48, stating that '[f]eminists and increasingly male advocates on CRSV often prefer that sexual violence conduct be indicted under explicitly sexual assault provisions, such as rape or sexual slavery. The authors suggest that both approaches to CRSV more broadly and CRMSV specifically are strategically viable and legally complementary' and Oosterweld, *supra* note 34, at 112, stating that '[t]he better approach is to charge rape as rape, in addition to other forms of harm (if the rape also fulfils the elements of crime for those other forms). When rape is categorized solely under non-rape categories, the sexual nature of the harm is obscured and therefore potentially lost when determining liability.'

60 From 1997 to 2016: 13 ICTY, 6 BiH. 100% Bosnian cases.

61 It should be noted that in *Mučić* (ICTY-96-21) (1998), the prosecutor had charged cruel treatment as a war crime for oral rape between male detainees. It was the Court which pointed

crime,[62] one with a guilty plea which included rape as a crime against humanity[63] and in the last, the charge was dropped in a plea agreement[64] (10.5% conviction rate). In the other cases, there were nine charges of persecution,[65] four for torture, three for other inhumane acts as a crime against humanity, one for outrages upon personal dignity and eight for violence to life or cruel or inhuman treatment as a war crime.[66] In one case (the *Kvočka* Case, related to the same incident as the *Sikirica* Case), the only charge was murder for the resulting death.[67]

Separate from the legal charges, only 12 of these cases explicitly recognized or discussed the acts as sexual violence. In 36.8% of the cases, they did not. The *Karadžić* Judgment provides an interesting example of the differential recognition of rape depending on the gender of victims. Sexual violence is addressed as an underlying act of persecution in three paragraphs under a heading 'Rape and Sexual Violence'. In the first paragraph, it uses the word 'rape' in relation to ordeals suffered by women. In the second paragraph, no sex or gender of victim is mentioned but it describes forced oral and 'sexual intercourse' between detainees. The word 'rape' is not used, although these acts fall within its definition. In the third paragraph, it talks of 'other forms of sexual violence' against women, men, girls and boys, and includes 'forced fellatio' between men.[68]

(c) Male sexual violence is most often mischaracterized and mislabelled

The mislabelling and mischarging of male sexual violence extends beyond male rape.[69] This sometimes occurs due to gaps in the law and sometimes from a failure to recognize it as sexual violence. Most often it is considered torture,[70]

out that it could have been charged as rape. This seems to have influenced only one or two of the subsequent ICTY cases.

62 *Begović* Verdict.

63 *Češić* (ICTY-95-10/1)(2004), pled guilty to rape as a crime against humanity.

64 *Todorović* (ICTY-95-9/1) (2001), pled to persecution. Male sexual violence was found to be an aggravating factor.

65 All ICTY.

66 *Tadić* (ICTY-94-1) (1997); *Sikirica* Case; *Blagoje Simić* Case; *Brđanin* (ICTY-99-36) (2004); *Martić* (ICTY-99-11) (2007); *Stanišić & Župljanin* Case; *Karadžić* Case; *Ostoja Minić et al.* (120K00092914Kž), Court of Bosnia and Herzegovina (First Instance Panel) (2014); *Zijad Kurtović* (BiH X-KRŽ-06/299), Court of Bosnia and Herzegovina (2009); *Sreten Lazarević et al.* (X-KRŽ-06/243), Court of Bosnia and Herzegovina (First Instance Panel) (2008); *Mačić* Verdict; *Zelenika et al.* (S11K00912416Krž), Court of Bosnia and Herzegovina (First Instance Panel), 14 April 2015; *Stakić* (ICTY-97-24) (2003); *Krajišnik* (ICTY-00-39) (2006).

67 *Kvočka* Case, *supra* note 58.

68 *Karadžić* Judgment, §§ 2501, 2502, 2503.

69 K. Campbell, 'Gender Justice Beyond the Tribunals: From Criminal Accountability to Transformative Justice', 110 *AJIL Unbound* (2016) 227-233, at 227.

70 For example, Second Instance Verdict, *Dušan Spasojević and Ratko Todorović* (0700Kž08000381), Federation Supreme Court of Bosnia and Herzegovina (Second Instance Panel), 29 October 2008.

cruel treatment or other inhumane acts. For example, in *Brđanin*, forced nudity, genital beatings, an attempt to force an elderly man to rape a young female detainee and threats to rape detainees' mothers (as well as oral rape), were all lumped under 'humiliation and degradation as an underlying act of persecution as a crime against humanity', in contrast to the treatment of CSRV against women in that case.[71] *Stanišić & Župljanin* also provides a striking example: while including facts covering a wide typology of male sexual violence, these acts are characterized as torture, cruel and inhumane treatment, and persecution. Some are referred to as sexual violence, others are not.[72]

(d) There are substantial inconsistencies in charging and convictions

These are inconsistencies in the characterization of the same male sexual violence acts (as can be seen above). There are also inconsistencies in characterization between similar CRSV acts, depending on whether men or women were the victims.[73] These are in addition to the often inconsistent treatment of sexual violence more generally.[74] The fight to bring CRSV against women and girls out of the shadows has been a long hard-fought one. As stated at the start of this section, there is still a long way to go to get 'consistent and rigorous prosecution of sexual violence crimes'.[75] So far, CRMSV is lagging behind, as it is lost in stigma, myths and invisibility. 'This lack of consistency suggests there has been, or there is currently, no overarching or coherent prosecutorial policy, or consistent judicial analysis, on how to approach this form of sexual violence.'[76]

Of the 45 cases reviewed, 12 contained facts related to male genital mutilation.[77] Only one contained charges which specifically related to sexual violence, and the ICC Pre-Trial Chamber refused to confirm them (the *Kenyatta* case). It imposed 'other inhumane acts' as a crime against humanity, holding 'not every act of violence which targets parts of the body associated with sexuality should be considered an act of sexual violence'.[78] Instead, these

71 *Brđanin* Judgment.

72 *Stanišić & Župljanin* Judgment.

73 See also Oosterweld, *supra* note 34, at 115, stating that '[i]n comparison, violence directed against women and girls is more likely to be directly categorized as sexual — sometimes there is an intense focus on the sexual aspects, to the detriment of including or recognizing other forms of female victimization.'

74 For example, the ICTY's common charging of sexual violence as an underlying act of persecution but not also charging it as stand-alone crimes in their own right. This contrasts with the way murder, deportation and some other crimes have been charged. See below for discussion of the *Mladić* Judgment.

75 'The consistent and rigorous prosecution of sexual violence crimes … are central to the deterrence and prevention.' SC Res. 2106, 24 June 2013.

76 Oosterweld, *supra* note 34, at 110.

77 6 ICTY, 1 Bosnia, 3 ICTR, 1 SCSL, 1 ICC.

78 Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, *Kenyatta* (ICC-01/09-02/11-382), Pre-Trial Chamber, 23 January 2012 (hereinafter *Kenyatta* Case), §§ 264–265 (forced circumcision and castration of Luo men, in context of rape, forced nudity and other sexual mutilations).

acts were prosecuted and/or convicted as persecution (eight charges, all ICTY), torture (four), other inhumane acts as a crime against humanity (one, ICTR), outrages upon personal dignity (one, SCSL), violence to life, wilfully causing great suffering and cruel or inhuman treatment as war crimes (five).[79] Three cases only included murder charges for the resulting death.[80] Separate from the legal charges, only three of these cases explicitly recognized or discussed the acts as sexual violence; 75% either did not or the Court rejected any consideration of them as sexual.

(e) There is a lack of specificity or clarity in the language used for male sexual violence

As shown in the *Karadžić* case above, language used in relation to male sexual violence can lack clarity. As noted, it is not always called what it is: rape and sexual violence. The opaque language in many national laws — 'carnal knowledge', 'unnatural acts', etc. — creeps into judgements and judicial dicta too. For example, the use of 'lewd acts' in a Bosnian Court verdict obscured whether or not the evidence established whether penetration had occurred, which is a legal element for rape.[81] Further, some of the language used can feed stigma or shame for the victim. For example, one Bosnian verdict repeated a witness' description of 'forced ... intercourse like homosexuals' twice, to describe forced anal rape.[82]

(f) Male sexual violence is often overlooked, deprioritized or gets lost

This seems particularly the case when male sexual violence is committed in a context in which large-scale murders and rape against women are also occurring.[83] The ICTR jurisprudence provided no accountability for any form of male sexual violence in the Rwandan conflict, despite reports of it occurring

79 *Kenyatta* Case; *Mučić* Case; *Todorović* Case; *Milan Simić* (ICTY-95-9) (2002) (pled to torture as a crime against humanity for genital beating and threatened castration). *Blagoje Simić* Case (genital beating, with comment Muslims should not propagate); *Stanišić & Župljanin* Case; *Mačić* Verdict; *Niyitegeka* (ICTR-96-14) (2003) (castration). *RUF* Case (slicing of both male and female genitals outrages upon personal dignity); *Muhimana* (ICTR-95-18) (2005).

80 *Tadić* Case (ignored, charged murder); *Bagasora* (ICTR-98-41) (2008) (amputated genitals at roadblock not charged).

81 First Instance Verdict, *Rade Veselinović* (X-KR-05/48), Court of Bosnia and Herzegovina (First Instance Panel), 30 June 2009.

82 *Vlačo* Verdict, §§ 319, 331.

83 For example, the *Tadić* Judgment (crimes against Harambasić who died as result of sexual violence against him, which included forced nudity, forced subject of fellatio, genital mutilation as testicles bitten off, but only charged as murder); *Kvočka* Case (Bahonjić and Jusufagić (alias "Car") were severely beaten, and forced to fellate other prisoners. Bahonjić and Jusufagić then had objects inserted into their anuses. They died from injuries sustained during such abuse. Charges and conviction only with murder.); *Brđanin* Case (An old man killed after refusing to rape a female detainee. Threat of assault recognized against female detainee, but not the old man.); *Muhimana* Case (genitals amputated and hung on a pole, beheaded — charged only with murder).

and relevant evidence.[84] In the *Mladic* 2,500+ page Judgment, whose scope spans the length of the Bosnian conflict, not a single heading refers to any form of sexual violence. All CRSV is hidden as an un-headed sub-category of an underlying act 'cruel and inhumane treatment', and it is characterized as persecution as a crime against humanity. It is covered in one paragraph, less than half a page.[85] Several specific incidents of CRSV against women are mentioned, and some generic sentences which could relate to men or women as victims. Male sexual violence is not explicitly mentioned in these legal findings. In contrast, the discussion of forced labour has a heading and covers 20 paragraphs over seven pages.[86] Sexual violence is not mentioned explicitly as serious bodily or mental harm as an *actus reus* of genocide.[87] Murder, deportation and other underlying crimes of persecution are also charged and convicted as stand-alone crimes against humanity.

(g) Patterns of male sexual violence are not represented

Given how often male sexual violence has been mischaracterized or unrecognized, as Kirsten Campbell has pointed out, 'patterns of sexual violence against men are not similarly represented [as that against women], and the failure to prosecute a single [thematic] case of male sexual violence comparable to Kunarac reinforces the invisibility of male sexual assault'.[88] In addition to the mischaracterizations and failures to charge set out above, there is so far little or no recognition in case law of male forced nudity, genital electrocution, threats of sexual violence against men, forced participation in rape of women, forced witnessing and the role of female perpetrators in sexual violence against males.[89] Many of these typologies were identified in male sexual violence in Syrian detention centres.

(h) Shortcomings in the law have consequential effects in jurisprudence

Some of these problems may have arisen initially and in part because of the gaps in the law, particularly in light of the ICTY and ICTR Statutes' limited

84 See e.g. *Bagasora* Case; *Muhimana* Case.

85 Judgment, *Mladić* (ICTY-09-92), Trial Chamber, 22 November 2017 (hereinafter *Mladić* Judgment), § 3291.

86 *Mladić* Judgment, at 1725–1732, §§ 3360–3380.

87 *Mladić* Judgment, §§ 3447–3451.

88 K. Campbell 'The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia', 1 *The International Journal of Transitional Justice* (2007) 411–432.

89 For example, *Stakić* Judgment, §§ 236, 806, VI. Victim's List; *Brđanin* Case (even clearly attempted/threatened sexual violence vis-à-vis the girl); *RUF* Judgment, § 1347(recognized having to watch wife be raped as fomenting terror). For female accused cases, see: *Plavšić* (ICTY-00-39 & 40/1) (plea), *Albina Terzić*, BiH S11K00566511KrŽ (2013) (acquitted); *Kamerić* Verdict (failed to charge rape); *Zelenika* Case (convicted crimes against humanity other inhumane acts, even though the court stated forced oral penetration was the 'equivalent of sexual intercourse').

explicit reference to sexual violence. This lack of clarity, lack of specificity and inconsistency in cases can then spread further into other courts; in particular, national courts often rely on and follow international jurisprudence. For example, while the Bosnian State Court's law is framed on the Rome Statute, jurisprudence from the ICTY is cited in verdicts and adjudicated facts from the ICTY were accepted by that court. Where male sexual violence has been overlooked in ICTY cases, the same approach often followed in cases before the State Court in Bosnia and Herzegovina.[90]

(i) There are some positive signs of progress[91]

While its record is also inconsistent, the ICC has demonstrated some progress. In two ICC cases, male rape was charged as a stand-alone crime of rape as a crime against humanity and as a war crime.[92] The ICTY has been similarly inconsistent, but some plea agreements at the ICTY have advanced the jurisprudence for male sexual violence.[93] The later ICTY cases of *Karadžić* and

90 See e.g. First Instance Verdict, *Mejakić, Gruban and Knežević* (X-KRŽ-06/200), Court of Bosnia and Herzegovina (First Instance Panel), 30 May 2008, at 202, fn. 68 (citing ICTY and ICTR case law on rape). This case related to crimes at Omarska and Keraterm camps, and the accused individuals were originally charged at the ICTY (Case No. IT-95-4-I) linked with the *Kvočka* case. While witnesses spoke of male sexual violence including oral rape of men as well as genital mutilation and forced nudity (*ibid.*, 105, 142), the sexual violence findings seem only to relate to sexual violence against women (*ibid.*, 128–130, 202). Further adjudicated facts relating to sexual violence in Omarska camp from the ICTY explicitly related to only women as the victims. *Ibid.*, 53, Adjudicated Fact 236. Female detainees were subjected to various forms of sexual violence in Omarska camp (*Kvočka* Judgment, § 108; see also *Brđanin* Judgment, §§ 515–517).

91 *Martić* Case (CRSV including male CRSV as a natural and foreseeable consequence of a joint criminal enterprise); *Češić* Case (pled guilty to rape as a crime against humanity for forced fellatio, both found to be victims of rape); *Karadžić* Judgment (includes wider range of male sexual violence including by direct female perpetration (all under persecution JCE III foreseeable (§§ 2501–2503), and recognizes sexual violence against men and boys underlying acts of serious bodily and mental harm *actus reus* of genocide (§§ 2581–2582)); *Bemba* Case (oral and anal rape of men, conviction for rape at first instance (overturned on appeal related to command responsibility)). *Ntaganda* Judgment (anal rape (penile and with wood), victim died as result, charged and convicted as rape and murder). See also Judgment, *TMG de Mbandaka, Songo Mboyo*, DRC Military Court, 12 April 2006, at 32 (uses ICC/Elements of Crime to ensure rape against men included in law). This case is not one of the 45 cases as it contained no facts of male sexual violence pled, despite reports of its occurrence in DRC, see e.g. J. Gettleman, 'Symbol of Unhealed Congo: Male Rape Victims', *New York Times*, 5 August 2009, available online at https://www.nytimes.com/2009/08/05/world/africa/05congo.html (visited 2 January 2020).

92 *Bemba* Judgment; *Ntaganda* Judgment.

93 *Sikirica* Case (2001) (Dosen and Kolundžija pled guilty to the sexual assaults charged as persecution); *Todorović* Case (pled guilty to sexual assaults as underlying acts of persecution on religious ground. Male sexual violence as aggravating circumstance); *Plavšić* Case (female leader pled guilty to persecution, inclusive of male sexual violence, in return for the withdrawal of the genocide counts); *Milan Simić* Case (pled guilty to torture as a crime against humanity, based on acts of genital beating and threatened castration, and held that sexual humiliation increased the victims' mental suffering of victims); *Češić* Case.

Stanišić & Župljanin included a wide range of male sexual violence, mostly acknowledged as such. Some prosecution efforts have also tried to advance accountability for sexual violence against males.[94] On other occasions, judicial dicta have illuminated a more informed understanding.[95] Unfortunately, this has not translated into a consistent or ongoing practice.

3. The Role of Male Sexual Violence Stigma and Misconceptions in Justice Outcomes

Societal gender norms, stigmas and 'rape myths' impact male sexual violence, the law and its application.[96] It is important to understand how such myths, rooted in harmful, deeply ingrained gender norms, manifest in justice processes differently for male and female survivors. If justice outcomes for CRSV are to improve, it is critical to tackle the root causes and uncover biases for all survivors and the intersectional discrimination they face. For example, experts have noted gender biases in the system and process which lead to a disproportionate lack of female witnesses testifying before international or hybrid courts, as well as alarming credibility challenges that appear to arise against women.[97] For male survivors, there is a dearth of research and analysis around male survivor testimony, perhaps because so few male survivors have testified in court.[98] It is interesting to note that denialism and accusations of lying may also arise in some settings from disclosure of male rape, given its conflation with and mis-conceptualization as homosexuality.[99]

Reluctance or failure to recognize and call sexual violence what it is creates barriers to reporting and accountability. 'This topic remains shrouded in misconceptions and ignorance.'[100] Traditional misconceptions and patriarchal gender norms focus on CRSV as penile rapes against women. 'Men rape, but don't get raped.' '"Real men" would fight off an assailant, so there should be signs of physical violence.'[101] 'If a man is raped, he must be homosexual.'[102]

94 For example, *Kenyatta* Case (ICC OTP in its efforts to charge forced circumcision/genital mutilation and castration of Luo men and boys as sexual violence).

95 For example, *Mučić* Case (court said forced fellatio could have been charged as rape).

96 See e.g. Jarvis and Vigneswaran, *supra* note 1, at 34–41; S. Sharratt, *Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at the War Crimes Tribunals* (1st edn., Routledge, 2011), at 53–72.

97 Sharratt, *ibid.*, at 65; Campbell, *supra* note 69, at 2; M. Jarvis and N. Nabti, 'Policies and Institutional Strategies for Successful Sexual Violence Prosecutions', in Brammertz and Jarvis, *supra* note 1, 73–111, at 80–82 (gender bias in the ICTY Office of the Prosecutor).

98 See e.g. P. Gopalan, D. Kravetz, and A. Menon, 'Proving Crimes of Sexual Violence', in Brammertz and Jarvis, *supra* note 1, 111-171, at 113–114.

99 See C. Dolan, 'Only a Fool … Why Men Don't Disclose Conflict-related Sexual Violence in an Age of Global Media', in Zalewski et al. (eds), *supra* note 48, 165, at 173–175.

100 M. Lowe and P. Rogers, 'The Scope of Male Rape: A Selective Review of Research, Policy and Practice', 35 *Aggression and Violent Behaviour* (2017) 38-43.

101 Javaid, *supra* note 44, citing S. Lees, *Ruling Passions: Sexual Violence, Reputation and the Law* (Open University Press, 1997).

102 Javaid, *ibid.*, 'In one male rape case, the heterosexuality of the offender was in fact thought of as a mitigating factor in sentencing. This was evidenced in the case of Harvey (1984: 186) 6 Cr App R (S) 184, whereby Lawton LJ reduced a sentence to 30 months from 3.5 years on a

Anal rape is 'less upsetting' for men.[103] If a man gets an erection or ejaculates, it means he consented.[104] To date, there have been no studies of the experiences of male conflict-related sexual violence survivors through judicial processes, possibly because there are so few male survivors who have testified. In national courts, for peacetime cases of male sexual violence, the experience has not been a positive one.[105] As Javaid explains, tackling these myths and prejudice are critical to disclosure, reporting and judicial outcomes:

> Research has shown that, in the context of rape of women, addressing these myths has been very important in changing criminal justice practices, as rape victims are more likely to trust and confide in local authorities; therefore, increasing the reporting rate of rape. However, several research studies confirm that male rape victims are less likely than female rape victims to report to the police and to pursue their case to court because of male rape myths that facilitate inaccurate assumptions about male rape, low reporting rates, poor treatment, and an increase in homophobia.[106]

4. Broader Challenges for Accessing Justice, Reparation and Recovery

In addition to gaps in the law and its application, there are significant barriers for survivors seeking to disclose and access justice in the first place. Taboos and stigmas hinder initial and full disclosure and reporting, through fear of repercussions and reprisals for survivors and lack of safe spaces. As noted above, male sexual violence has its own complexities, impacted by societal attitudes, concepts of 'masculinity' and the inability to understand or recognize sexual violence against men within that conceptualization. This can lead to mistaken assumptions about the masculinity and sexuality of the survivor, which can destabilize their identity[107] within a community and marginalize them. Without recognition and understanding, few survivors have the space or support to discuss and process what has happened to them. As with women, disclosure of male sexual violence is often delayed or in pieces, over years or

man convicted of ''forced buggery'' of a boy who was 12 years old. Lawton LJ quotes: ''[T]his was an isolated incident ... in the experience of this court those who commit this kind of offence usually have fairly marked homosexual tendencies. There is nothing about this case to indicate that this man has got those tendencies (emphasis added).'''

103 Javaid, *supra* note 44.

104 Javaid, *ibid.*, citing P.N.S. Rumney and M.P. Morgan-Taylor, 'Sentencing in Cases of Male Rape', 62 *Journal of Criminal Law* (1998) 263–270.

105 Javaid, *ibid.*, citing N. Abdullah-Khan, *Male Rape: The Emergence of a Social and Legal Issue* (Palgrave Macmillan, 2008); J. Jamel, 'Researching the Provision of Service to Rape Victims by Specially-Trained Police Officers: The Influence of Gender - An Exploratory Study', 13 *New Criminal Law Review* (2010) 688–709; E. Sleath and R. Bull, 'Male Rape Victim and Perpetrator Blaming', 25 *Journal of Interpersonal Violence* (2010) 969–988; C. Cohen, *Male Rape is a Feminist Issue: Feminism, Governmentality, and Male Rape* (Palgrave Macmillan, 2014).

106 Javaid, *supra* note 44.

107 S. Solangon and P. Patel, 'Sexual Violence Against Men in Countries Affected by Armed Conflict', 12 *Conflict, Security & Development* (2012) 417–442.

decades, even when there is access to support. One of the many barriers to self-identification as a victim of sexual violence is the challenge for men to themselves conceptualize their experiences as sexual violence. Sexual violence is typically seen and institutionalized as a women's issue, and many men minimize or misinterpret their individual experiences.

There is an institutional lack of access and lack of disclosure points (based on beneficiary definitions, targeting of one specific group), specialist services and expertise in the humanitarian and justice sectors for male sexual violence. While safe spaces and recovery pathways for women and girls have improved significantly, this has occurred because of specific and hard-fought campaigns and policies targeting women and girls as the most significantly impacted group. The system response for CRSV is then often exclusively focused on women and girls. Male sexual violence is less recognized, with minimal evidence for effective interventions for men, legal barriers and lack of clarity in societal and institutional responsibility for addressing male sexual violence.[108] While guidance notes, including Clinical Management of Rape Protocols, have started to acknowledge male survivors, this has only slowly trickled into the field and practice.[109] There is already too little funding for the existing critical responses for women and girls. Thus, any space or response for male survivors is too often seen as competing for already inadequate resources.[110]

The expertise gap has a twofold impact — a gap in recognition of signs, symptoms and risk factors (identification for screening and support), and a gap in access points, response and recovery (disclosure and treatment). Across conflicts, there are serious deficits in the expertise of medical personnel in the following areas:[111] identification of male survivors or LGBTQI+ survivors, expertise in forensic sexual violence interview techniques as well as forensic physical and genital findings, and expertise in the preparation of high-quality medico-legal documentation. There are training and clinical gaps in responding

108 For example, see UNHCR, *"We Keep It in Our Heart"*, *supra* note 10, at 43. SGBV services are not tailored to men, are mostly staffed by women without training/sensitization to male sexual violence issues and training, and toolkits and guidelines are all focused on CRSV against women and girls. All Survivors Project, *supra* note 10, at 32 (lack of acknowledgement and lack of organizational capacity and expertise — including an absence of MHPSS services for male survivors, lack of attuned services designed for male survivors and lack of funding).

109 For example, UNHCR and Refugee Law Project, *Working with Men and Boy Survivors of Sexual and Gender-Based Violence in Forced Displacement* (2012), available online at https://www.refworld.org/pdfid/5006aa262.pdf (visited 31 December 2019). See also C. Cottet, 'Medical Approaches to Sexual Violence in War, in Guidelines and in Practice', in Zalewski et al. (eds), *supra* note 48, 88–97, at 91–97.

110 See e.g. ICAI, *DFID's Efforts to Eliminate Violence Against Women and Girls: A Learning Review*, May 2016, at 17, available online at https://icai.independent.gov.uk/wp-content/uploads/ICAI-Learning-Review-DFIDs-Efforts-to-Eliminate-Violence-Against-Wome...pdf (visited 2 January 2020). See also UNHCR, *"We Keep It in Our Heart"*, *supra* note 10; All Survivors Project, *supra* note 10. Both repeatedly reflect concerns about diversion of much-needed resources from responses for women and girls. See also S. Meger, 'The Political Economy of Sexual Violence Against Men and Boys in Armed Conflict', in Zalewski et al. (eds), *supra* note 48, chap 6, at 100–101.

111 See e.g. Cottet, *supra* note 109, at 94–95.

to sexual violence against males in terms of medical and psycho-social needs. In the authors' experience, there is limited training in medical school or residency in the areas of sexual violence, torture or trauma-informed care, especially for men. Furthermore, proctologists and urologists are rarely present in humanitarian response teams.[112] There are also gaps in psychological support systems attuned for male survivors. Finally, there are gaps in our knowledge of the unique short and long-term impact of sexual violence on men, their families and communities.

All such gaps, barriers to disclosure and barriers to support block the path to recovery for survivors, as well as their access to justice for these crimes.[113]

4. How to Bridge the Gaps

A. Progress at the International Level

Over the last three to four decades, international initiatives, policies and mechanisms to prevent, protect and respond to violence against women and girls in conflict have experienced success in focusing attention on that important issue.[114] By definition, these policies and responses have been largely blind to or excluded sexual violence against men and boys. Gender became synonymous with women and girls. Sexual or gender-based violence in conflict was interpreted predominantly to focus on the rape of women. What is needed is a gender-sensitive and gendered understanding of and response to CRSV against all victims.

Albeit limited, the jurisprudence from the ad hoc tribunals and the ICC Statute catalysed wider recognition that sexual violence is also committed against men and boys. In 2012, the United Kingdom launched the Preventing Sexual Violence in Conflict Initiative (PSVI), and by April 2013 it secured a G8 Declaration of the same name, which explicitly acknowledged men and boys as victims of CRSV.[115] While such crimes had previously been

112 See also Dolan 'Only a Fool …', *supra* note 99, at 168.

113 See Refugee Law Project's Model of Screen – Refer – Support – Document: based on their experience that recovery must come first before a survivor is able to engage in the justice process in a safe and full way. See e.g. https://www.refugeelawproject.org/files/others/Speech_for_ARU.pdf (visited 16 January 2019).

114 Convention on the Elimination of Discrimination Against Women, 18 December 1979 (CEDAW) and the CEDAW Committee defined gender-based violence with reference to women and girls only; 1993 Declaration on the Elimination of Violence Against Women, GA Res. 104, § 1, UN Doc. A/48/104, 20 December 1993; *Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women*, United Nations Commission on Human Rights, Res. 1994/45, 4 March 1994; SC Res. 1325 (2000) on Women, Peace and Security; SC Res. 1820 (2008); SC Res. 1888 (2009); SC Res. 1889 (2009); SC Res. 1960 (2010); SC Res. 2122 (2013); SC Res. 2242 (2015).

115 G8 Declaration on Preventing Sexual Violence in Conflict, § 3, available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf (visited 2 January 2020) ('Ministers underlined the importance of responding to the needs of men and boys who are victims of sexual violence in

mentioned on an occasion at United Nations Security Council (UNSC) debates[116] and inferences could be drawn from phrasing, such as 'particularly against women and girls', the first explicit recognition of sexual violence against men and boys (in the United Nations framework SV/Women Peace and Security series of resolutions) came shortly after the G8 Declaration in June 2013 with UNSC Resolution 2106.[117] Subsequently, the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSG-SVC) and the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict (whose mandates are gender-neutral) held a two-day UN Workshop on Sexual Violence against Men and Boys in Conflict Situations, which produced 29 recommendations.[118] It is fair to say most of those recommendations are now starting to be addressed by some of the work described below. Only now has some critical momentum and concerted attention been brought to this issue.

In April 2019, UNSC Resolution 2467 went considerably further, as it referred to the need for access to relief and reparation, as well as support and recovery services for men and boys. For the first time, in a resolution the UNSC:

> recognizes also that men and boys are also targets of sexual violence in conflict and post-conflict settings . . .; urges Member States to protect victims who are men and boys through the strengthening of policies that offer appropriate responses to male survivors and challenge cultural assumptions about male invulnerability to such violence; requests further that the monitoring, analysis and reporting arrangements on conflict-related sexual violence focus more consistently on the gender specific nature of sexual violence in conflict and post-conflict situations against all affected populations in all situations of concern, including men and boys.[119]

Other important steps which have raised awareness and increased the chances of access to justice for male survivors include the inclusion of male sexual violence in professional investigation standards,[120] country-specific

armed conflict, as well as to the needs of those secondarily traumatized as forced witnesses of sexual violence against family members.').

116 Also discussed in earlier UNSC debates, including the debate on SC Res. 1820 (2008) and reports under it in 2008, 2009, as well as at UN General Assembly debates 2007; Sivakumaran, 'Lost in Translation', *supra* note 49, at 262.

117 SC Res. 210, 24 June 2013 ('Noting with concern that sexual violence in armed conflict and post-conflict situations disproportionately affects women and girls . . . while also affecting men and boys . . .').

118 SRSG-SVC and UN Team of Experts on the Rule of Law and Sexual Violence in Conflict, Report of Workshop on Sexual Violence against men and Boys in Conflict Situations, UN Workshop, New York, 25–26 July 2013 (December 2013). See also G. Becerra, 'Masculine Subjectivities in United Nations Discourse on Gender Violence (1970–2015): Absent Actors, Deviant Perpetrators, Allies and Victims', in Zalewski et al. (eds), *supra* note 48, 184–197.

119 SC Res. 2467 (2019), § 28.

120 See e.g. S. Ferro Ribeiro and D. van der Straten Ponthoz (British FCO), *The International Protocol on Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation and Investigation of Sexual Violence as a Crime or Violation of International Law* (2nd edn., FCO, 2017), available online at https://www.gov.uk/government/publications/inter

investigation guidelines which provide examples of male sexual violence,[121] the publication of specific guidelines on working with male survivors and investigating male sexual violence[122] and the provision of training modules on investigating sexual violence against males.[123]

To accompany the growing calls for consistent and explicit CRSV references in UN sanction regime criteria and individual sanction listing based on CRSV alone, such initiatives could also expressly recognize CRMSV (as well as CRSV against other unrecognized groups including LGBTQI+ survivors) so that Sanctions Panels are alert to and trained on this phenomenon, in order to ensure inclusive investigations capturing all groups of victims and perpetrators.[124]

Again, after a somewhat slow start,[125] the issue of conflict-related male sexual violence has become the subject of research, and a body of academic articles is emerging.[126] Recent critical examples of this include the work of Dr Sarah Chynoweth at the Women's Refugee Council and the All Survivors

national-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict (visited 2 January 2020) (consideration of CRSV against men and boys is integrated throughout, see e.g. at 18, 21, 25–27, and there is a dedicated chapter 17, at 265–281).

121 Institute of International Criminal Investigations (IICI), *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Iraq* (2018), available online at https://iici.global/0.5.1/wp-content/uploads/2018/03/Iraq-IP2-Supplement_English_Online.pdf (visited 2 January 2020), at 4–5, 7; IICI and REDRESS, *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Myanmar* (2018), at 6–8, available online at https://redress.org/wp-content/uploads/2018/03/Myanmar-IP2-Supplement_English_Online.pdf (visited 2 January 2020); IICI and REDRESS, *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Sri Lanka*, at 5–7, available online at https://redress.org/wp-content/uploads/2018/03/20190315-Sri-Lanka-IP2-Supplement_Online.pdf (visited 2 January 2020).

122 UNHCR and Refugee Law Project, *supra* note 109; IICI, *Guidelines for Investigating Conflict-related Sexual and Gender-based Violence Against Men and Boys*, available online at https://iici.global/0.5.1/wp-content/uploads/2017/03/160229_IICI_InvestigationGuidelines_ConflictRelatedSGBVagainstMenBoys.pdf (visited 2 January 2020).

123 Module 17 of IICI's Training Materials on the International Protocol on the Investigation and Documentation of Sexual Violence in Conflict, March 2017, available online at https://iici.global/publications/ (visited 2 January 2020).

124 See S. Huve, *UN Sanctions and Conflict-Related Sexual Violence*, GWIP Policy Brief, March 2018, available online at https://giwps.georgetown.edu/wp-content/uploads/2018/04/Policy-Brief-Use-of-UN-Sanctions-to-Address-Conflict-related-Sexual-Violence.pdf (visited 2 January 2020). In the conclusion, this policy paper states: 'Sanctions, if properly and consistently applied, can work to reinforce and advance existing international norms, hold leaders accountable to those norms, and protect the safety and lives of millions of women and girls living in conflict settings.' *Ibid.*, at 4.

125 The OCHA Expert Working Group convened in 2008 to assess the nature, scope and motivation for sexual violence against men and boys in armed conflict. OCHA, *Discussion Paper 2: The Nature, Scope and Motivation for Sexual Violence Against Men and Boys in Conflict*, OCHA Policy Development and Studies Branch, June 2008.

126 See e.g. Refugee Law Project, *supra* note 49, 9–11; H. Touquet and E. Gorris, 'Out of the Shadows? The Inclusion of Men and Boys in Conceptualisations of Wartime Sexual Violence', 24 *Reproductive Health Matters* (2016) 36–46.

Project.[127] Another example is the research relating to male sexual violence arising from the Refugee Law Project in Uganda.[128] These projects have raised both awareness and attention to the problem, and they have also enhanced and deepened understanding of the issue.

An older study from 2002 is often quoted to indicate just how few NGO and Human Rights Reports mentioned male CRSV (3%).[129] While there is no updated survey, a study found that 131 Amnesty International and Human Rights Watch reports from 2000 to 2016 'with a few exceptions, have constructed sexual violence against men in armed conflict as a form of torture' only.[130] A similar picture is painted by a review of human rights reports on the crimes against the Rohingya available online by August 2018.[131] The exceptions are Chynoweth's research report, cited above, and the Fact-Finding Mission for Myanmar.[132] Overall, there are few human rights reports dedicated to male sexual violence.[133]

In the humanitarian field, there has been increasing awareness of male sexual violence. In 2012, UNHCR and Refugee Law Project published 'Need to Know Guidelines on Working with Men and Boy Survivors of Sexual and Gender-Based Violence in Forced Displacement', which was aimed at raising awareness and recognition of men and boys as survivors within service-providers. However, there is a continuing struggle to meet the multitude of needs of women and girls, let alone expand, adapt or add new service

127 See e.g. UNHCR, *''We Keep It in Our Heart''*, *supra* note 10; Chynoweth Women's Refugee Commission, *''More Than One Million Pains': Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy'*, March 2019, available online at http://www.womensrefugeecommission.org/images/zdocs/Libya-Italy-Report-03-2019.pdf (visited 2 January 2020); Chynoweth Women's Refugee Commission, *''It's Happening To our Men As Well': Sexual Violence Against Rohingya Men and Boys*', November 2018, available online at https://www.womensrefugeecommission.org/gbv/resources/1664-its-happening-to-our-men-as-well (visited 2 January 2020); All Survivors Project, *supra* note 10.

128 E.g. Refugee Law Project, *supra* note 49; P. Schultz, 'Examining Male Wartime Rape Survivors' Perspectives on Justice in Northern Uganda', 29 *Social and Legal Studies* (2019) 19-40; Dolan, 'Only a Fool . . .', *supra* note 99; C. Dolan, 'Victims Who are Men', in F.N. Aoláin et al. (eds), *The Oxford Handbook of Gender and Conflict* (Oxford University Press, 2018) 672.

129 Sivakumaran, 'Lost in Translation', *supra* note 49, at 259, citing A. Del Zotto and A. Jones, 'Male-on-Male Sexual Violence in Wartime: Human Rights' Last Taboo?', Paper presented to the Annual Convention of the International Studies Association, New Orleans (23–27 March 2002).

130 T. Charman, 'Sexual Violence or Torture? The Framing of Sexual Violence against Men in Armed Conflict in Amnesty International and Human Rights Watch Reports', in Zalewski et al. (eds), *supra* note 48, at 198–209.

131 Conducted by one of the co-authors in August 2018 (unpublished).

132 *Report of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/39/64, 12 September 2018, §§ 38, 45; *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/42/CRP.5, 17 September 2018, §§ 675–676, 920, 939–940. See also *Report of the Independent Fact-Finding Mission on Myanmar - Sexual and Gender-Based Violence in Myanmar and the Gendered Impact of its Ethnic Conflicts*, UN Doc. A/HRC/42/CRP.4, 22 August 2019, §§ 5, 7, 73, 149–179 (with a separate section specifically on sexual and gender-based violence against men and boys).

133 For example, LDHR, *supra* note 12; see also research reports cited above at fns 126-128..

provisions and access points for men and boys as well. The growing recognition has not automatically translated into a better response or more access point and support for male survivors.[134]

Without such access points, support and pathways to recovery, access to justice for male survivors remains a long way off. There is far more which needs to be done to turn growing international recognition into local action, support and practice. Initiatives to tackle stigma related to sexual violence against women and girls remain in their infancy. Additional efforts need to grapple with the full range of stigmas and misconceptions associated with sexual violence, including the specific blind spot and taboos around male sexual violence.

B. LDHR's Medical Expert Documentation as a Multidisciplinary Holistic Initiative

Within the Syrian context, a Syrian-led multidisciplinary initiative has opened up the awareness of and prospects of accountability for conflict-related male sexual violence. It is shared here as one potential model which may assist in other contexts.

In 2012, a group of Syrian doctors, psychologists and lawyers began training on forensic medical expert documentation of torture and sexual violence, with the aim of increasing the prospect of justice for the crimes being committed in Syria. It became clear early in the process that most Syrian doctors had no prior training on responding to sexual violence against men, women, girls or boys. LDHR recently surveyed a new cohort of 20 doctors being trained on medical documentation (12 males and 8 females, with an average age 35.4 years and ages ranging from 30 to 48 years)). The majority of those physicians (75%) had not received any training on sexual violence during medical school. While 70% had not received any training on responding to or evaluating sexual violence cases in their clinical training, no physician received training on the clinical management of rape.

In addition to forensics and the Istanbul Protocol methodology, LDHR's training has included recognition and understanding of CRSV against women and men (adults), with a separate specialist cadre training on CRSV against children. It has also included detailed training on the physical, psychological and wider sequelae of sexual violence, including on male survivors. Critically, LDHR documenters have been trained on non-stigmatizing, open interview techniques, aimed at creating safe, enabling environments for disclosure. The standing of local doctors as trusted community figures may also be an important factor.

LDHR has also developed safe and confidential pathways to vetted support services for CRSV survivors, and it has trained over 800 first responders

134 See e.g. UNHCR, ''*We Keep It in Our Heart*'', *supra* note 10, at 40–42 (on GBV-IMS reporting of male SV in Iraq (none), Lebanon and Jordan), and at 43–46 (on limited services and frequent perceptions that men are either perpetrators or allies in combatting violence against women).

(doctors, nurses, midwives, social workers, physio-therapists, counsellors, mosque teachers, school teachers, policemen, etc.) in Syrian communities to recognize CRSV signs and symptoms, and to make empathetic, safe responses and referrals. However, LDHR has encountered a greater reluctance in male survivors to attend support services and assistance, particularly given the compounding stigma surrounding mental health.[135] LDHR has also recognized that community attitudes towards sexual violence prevent survivors from even reaching first responders. LDHR has since embarked on community-driven initiatives to raise awareness and tackle harmful gender norms and stigma to help create a more positive and safer space for disclosure, support and recovery. Additional and unique challenges are raised for community discussions around male sexual violence. This work is in its early phases.

Through this system of survivor response and medical expert documentation, survivors have felt able to shed light on the victimology, typology and patterns of male sexual violence in Syrian detention centres. LDHR lawyers have presented these findings in reports; going forward, this should help shape and inform investigations and prosecutions. LDHR doctors are ready to present medical testimony and findings in criminal courts (particularly focused on active universal jurisdiction prosecutions underway in European jurisdictions), and they are also ready to support survivors' rights in other fora, such as reparation, asylum claims and United Nations Special Procedures — in hopes of reducing the gaps between the reality of sexual violence against males in Syria and the prospects for justice in its many forms.

5. Concluding Recommendations

There remains a long way to go. More awareness and discussion of conflict-related male sexual violence is needed. As mentioned above, explicit mention of male sexual violence in sanction regimes could be a positive first step. Further advocacy and pressure should be aimed at reforming laws to create gender-neutral recognition and explicit typologies which include sexual violence against males. This increasing attention should be supported by specialist expertise and on-the-job mentoring, to sensitize and build male CRSV-sensitive responses and support within humanitarian and justice sectors. Existing expert rosters could provide mentors with expertise in male sexual violence for this purpose. Critically, training and sensitization are needed for investigators, prosecutors, judges, victim advocates and defence counsel working on ICL cases. Local multidisciplinary teams could build forensic documentation plugged into local support systems and community engagement, based on the LDHR initiative. An emphasis on recovery and safe disclosure spaces could complement

135 This is also reflected in research. See e.g. G. Hassan, L. Kirmayer, and P. Ventevogel (eds), *Culture, Context and the Mental Health and Psychosocial Wellbeing of Syrians: A Review for Mental Health and Psychosocial Support Staff Working with Syrians Affected by Armed Conflict* (UNHCR, 2015) 34–35.

expert medical evidence to support criminal accountability or the upholding of survivors' other rights.

Additional funding is key. Male sexual violence responses cannot and should not draw away from already scarce resources for responses to CRSV involving women and girls. Specific and separate funding pools or calls could catalyse research, support longer term impact studies, increase the efficacy of response and support, while building local sustainable capacity where it is needed.

Lastly, we must call it what it is. Harmful societal attitudes and misconceptions hide the victims of male sexual violence, barring their recovery and access to their rights. If there are to be consistent and rigorous prosecutions which can contribute to prevention, then our laws and their application during investigation, charging, trial, judgment and sentencing must fully recognize and condemn conflict-related male sexual violence. Based on the foundational knowledge of typologies and patterns now available for Syrian detention centres, there is no excuse for the pervasive gaps in accountability for male sexual violence in Syria.