



Transitional Justice Institute – Ulster University

Transitional Justice Institute Research Paper No. 16-16

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*Transitional Justice for Male Victims of Conflict-Related Sexual and
Gender-Based Violence*

(International Journal of Rule of Law, Transitional Justice and Human
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Transitional Justice for Male Victims of Conflict-Related Sexual and Gender-Based Violence?

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ABSTRACT

Globally, conflict-related "sexual violence is committed against men more frequently than is often thought" (Sivakumaran 2007). However, this growing attention has not yet translated into sufficient policies or transitional justice instruments for male sexual violence victims. Only very limited research specifically analyzes justice and accountability for male victims of sexual violence. Throughout this restricted body of literature, a heavy emphasis is placed on retributive justice and judicial accountability. Such a narrow focus, however, risks ignoring other potential transitional justice mechanisms which may theoretically offer redress and accountability for male victims.

Against this backdrop, this paper proposes to discuss some of the challenges male victims of SGBV face in accessing justice and legal protection. Moreover, the paper argues to consider non- or semi-judicial transitional justice mechanisms to provide redress for male victims of sexual violence, and calls for victim-centric empirical research to establish male victims' perspectives with regards to transitional justice.

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Introduction

Due to increased international attention, it is nowadays well established that crimes of sexual and gender-based violence (SGBV) seem to be an integral aspect of armed conflicts throughout the world. While most of the scholarly literature as well as policy responses and legal instruments are primarily occupied with analysing and strengthening accountability for such crimes against women and girls, we need to be reminded that men and boys are also frequently victims of conflict-related sexual violence (RLP 2013: 1; Sivakumaran 2007).

Throughout the past decade, there has been growing attention to male-directed SGBV during armed conflict and its aftermath, although most of the dynamics of such crimes nevertheless remain largely un-explored and un-explained (Sivakumaran 2007). The experiences of male victims and survivors are largely under-reported and under-studied, and it is needless to say that men who were victimized by sexual violence demand the recognition and accountability that feminists are advocating for on behalf of female victims of such crimes since various decades. As observed by Ni Aolain, O'Rourke and Swaine, "while significant political attention has been generated for sexual violence against women, tailored intervention to address male-centred sexual harms remains elusive and marginalized" (Ni Aolain, O'Rourke and Swaine 2015: 11).

However, despite growing yet still fairly limited attention, if crimes of male-directed SGBV generally qualify as under-explored, legal and (semi-)judicial responses to such crimes are definitely not yet sufficiently studied. To date, only very limited research specifically discusses and analyses justice and accountability for male victims of sexual violence (RLP 2013; Sivakumaran 2013; Manivannan 2014). Throughout this very restricted body of literature, a heavy (and almost exclusive) emphasis is placed on retributive justice and judicial accountability. Such a narrow focus,

however, risks side-lining and ignoring other potential non- or semi-judicial transitional justice mechanisms which may theoretically offer redress and accountability for male victims. At the same time, it appears that judicial legal protection for male victims of SGBV is immensely restricted. Against this backdrop, this paper aims to critically discuss some of the challenges male victims of SGBV face in accessing justice and legal protection. Moreover, based upon existing feminist critique with regards to international criminal law and sexual violence, the paper aims at critically exploring some of the limitations of international criminal justice for male SGBV victims.

The Dynamics of Conflict-Related Sexual and Gender-Based Violence (SGBV) against Men

Despite the fact that many of the dynamics of male-directed conflict-related sexual violence remain unexplained, the last decade witnesses increasing attention to this immensely important issue. We now know that sexual violence against men within the context of armed conflict is committed more frequently than often assumed (Sivakumaran 2007). Numerous conflicts globally experienced diverging forms of sexual violence against men, including but not limited to the Democratic Republic of the Congo (DRC), Uganda, the Central African Republic (CAR), Sri Lanka, El Salvador or the former Yugoslavia (*ibid.*; Carpenter 2006). Sivakumaran's seminal research demonstrates that sexual violence against men may at times be carried out on an ad-hoc basis, whereas at other times, such crimes are widespread and systematic (Sivakumaran 2007).

Male-directed sexual violence can generally take various forms and can include a number of different acts. Consequentially, definitions and conceptualizations of what constitutes sexual violence against men seem to vary throughout the literature. For the purpose and scope of this paper, male-directed SGBV will be defined rather broadly, and

can include: various forms of penetrative anal and oral rape, either through the person of the perpetrator or with objects, by male and female individuals or groups and gangs (Sivakumaran 2013: 80); sexual torture and sexual mutilation, including castration or forced sterilization or beatings of the genitals; sexual humiliation and sexual threats; sexual slavery and enslavement (Russell 2007). Specifically, crimes of sexual humiliation under the broader category of sexual violence may include forced nudity, forced masturbation or men and boys being forced or subjected to violent and denigrating sexual acts, such as for example being forced to commit sexual acts with objects in public (*ibid.*; Sivakumaran 2010).

Moreover, male-directed sexual violence can also include acts of what will be referred to as 'enforced rape', or eventually indirect acts of sexual violence against men. Specifically, such acts of 'passive' or indirect crimes of SGBV against men refer to instances where men are either forced to directly rape either fellow members of the family or community ('enforced rape') or where men are forced to watch members of the family being raped or sexually abused. While in such cases, women are clearly the physical victims of the sexual attack, men may thereby be indirectly targeted as well. Such acts may serve to demonstrate men's incapability to protect their families and communities and may thus have psychological effects on men by potentially emasculating and humiliating them.

Generally, male-directed sexual violence during armed conflicts may be carried out against enemy soldiers and militaries or against (enemy) civilians. It occurs within the context of armed combat and fighting, in detention facilities (Peel 2000, 2004; Zarkov 2001; DelZotto and Jones 2002), as part of interrogation and intimidation operations against civilian populations (Esuruku 2011: 31) or within the context of internal or external displacement. Especially during displacement, but certainly elsewhere as well, sexual

violence against men is not restricted to on-going hostilities but extends to the post-conflict phase (*ibid.*).

Quantifying the extent of SGBV against men and the number of male victims affected by such crimes proves to be inherently difficult, as such crimes are characterized by widespread under- or non-reporting (Baaz and Stern 2010: 41). Firstly, due to notions of shame and social stigmatization and the incompatibility of manhood with (sexual) victimization, many male victims deliberately choose not to speak about their harmful experiences. Secondly, and again related to expectations tied to manhood and masculinities, it appears that many health and social workers have internalized gender stereotypes and are consequentially often unaware of the possibility of male sexual violence (Sorensen 2011: 17). In addition, many scholars and activists, but also transitional justice mechanisms - such as for example the International Criminal Tribunal for the former Yugoslavia or the Peruvian Truth and Reconciliation Commission - previously coded and classified acts of sexual violence under the rubric of torture, thereby not acknowledging the crimes' sexualized component or character (Leiby 2009).

To a large extent, sexual violence against men is carried out "for many of the same reasons as it is inflicted upon women and girls" (Sivakumaran 2013: 81) and features many of the power and dominance aspects of such crimes against females. Lara Stemple points out that sexual violence in general and rape in particular are closely related to the exercise of domination and the subjugation of the victims, referring both to female and male victims (Stempel 2011: 825). Similarly, Miranda Alison argues that male-directed sexual violence is a way of asserting power and masculinity (Alison 2007: 77). The occurrence and dynamics of male-directed sexual violence are in fact largely underpinned by notions of masculinities (cf. Lewis 2014), as will be explored in more detail below.

Against this background, male-directed sexual violence - in its manifold ways - may be employed to intimidate or to punish or to humiliate and emasculate its victims (UN OCHA 2008: 1). Throughout much of the scholarly literature, the sexual victimization of males is often interpreted as aiming to diminish the victims' masculinity, thereby subordinating, demoralizing and dehumanizing him (RLP 2013: 13; Sivakumaran 2007; Carpenter 2006; Stemple 2011; et al.). In many societies, there is an explicit disjuncture between notions of masculinities as well as victimization, especially with a sexualized dimension, and vulnerabilities (Saferworld 2014). Therefore, if men and boys are victimised, especially through sexual violence, they are often seen as disempowered, 'less of a man' or 'feminised' (RLP 2013: 13). Especially in highly patriarchal societies, which view men as "superior in the gender hierarchy" (*ibid.*), being sexually violated may translate into being *de facto* females, which may lower male victims' status in society (*ibid.*).

Consequentially, male-directed sexual violence can be seen as intending to enhance the perpetrators' masculinity by equipping him (or her) with power and dominance, while at the same time victimising and emasculating the victim. Sorensen adequately observes that "it perhaps seems contradictory that men would rape other men in order to demonstrate masculinity, but this is not the case", it appears (Sorensen 2012: 30). As with sexual violence against women, the male victim "is merely the vehicle through which masculinity can be performed" (*ibid.*). Referring to such common interpretations, sexual violence - whether against men or women - can serve to contrast the perpetrators' (enhanced) masculinity with the victims' (assigned) femininity and victimhood.

Although often carried out for similar reasons as against women, especially regarding power and dominance, male-directed sexual violence may also be

perpetrated "for reasons that are not comparable to sexual violence against women" (Sivakumaran 2013: 81). Specifically, sexual violence against men, and in particular direct physical acts, including penetrative rape, may cast aspersions of homosexuality (Sivakumaran 2005; RLP 2013: 13). Sivakumaran argues that the perpetrator may taint the victim with homosexuality by sexually violating or assaulting him, which may further humiliate or eventually emasculate the victim, especially in societies which are largely homophobic or which criminalize same-sex activities.

However, as with sexual violence against women, the reasons for the occurrence of male-directed sexual violence are often manifold and complex, and certainly vary across time and space and even within cases. Therefore, the causes and drivers of sexual violence against men shall not be reduced to notions of masculinities and the attempted emasculation only. Instead, as briefly touched upon before, male-directed sexual violence can serve a variety of purposes, and may for example aim to otherwise humiliate as well as to intimidate or punish the targeted victim.

The consequences of sexual violence against men are often comparable to the effects on female victims of such crimes, with a few notable exceptions, once again primarily linked to notions of masculinities. In fact, even if crimes of sexual violence against men do not specifically aim to emasculate the victim, perceived emasculation is nevertheless among the most prevalent implications of these forceful acts. Although admittedly rare, research with and accounts from male victims of sexual violence indicate that often, these victims feel being a less of a man due to the crimes committed against them (Johnson et al. 2010). Similarly, notions of shame and extreme social stigmatization generally appear to be attached to male sexual abuse (Baaz and Stern 2010: p. 44). According to Baaz and Stern, the stigma associated with male-directed sexual violence is often particularly strong due to the extreme

"disjuncture between masculinity and victimhood" (*ibid.*).

The related social consequences can likewise be severe for male sexual violence victims. Preliminary research includes reports of men being looked down upon and being excluded and ostracised from their communities because of the crimes committed against them, and because of their loss of masculinity (Sivakumaran 2010). Potentially, wives may request to be divorced from their sexually violated husbands, often because the physical and psychological consequences¹¹⁵ of these crimes prevent them from fulfilling socially constructed expectations of being a man (UN OCHA 2008: 4). Because of physical pain and weakness as well as psychological and mental instability, male victims for instance may be unable to carry out physical labor and thus face difficulties in providing for their families and communities, as expected due to stereotypical gender roles and responsibilities.

As briefly argued before, notions of shame and social stigma and perceived emasculation likewise oftentimes prevent men from reporting the sexual crimes committed against them. Male victims are therefore frequently unable to seek medical or psychological services or to access legal protection or remedies as responses to their harmful experiences.

Legal Responses, Judicial Accountability and Transitional Justice for Conflict-Related Sexual Violence against Men

To date, only very limited research specifically discusses and analyses justice and accountability for male victims of sexual violence (cf. RLP 2013; Sivakumaran 2013; Zawati 2007). Throughout this very restricted body of literature, a heavy (and almost exclusive) emphasis is placed on retributive justice and judicial accountability. The sections

below aim to discuss some of the main challenges and shortcomings throughout the literature and with regards to justice-related responses to SGBV against males. In a seminal study on accountability for male victims of SGBV, the Uganda-based Refugee Law Project (RLP) argues that "in principle, [...] international criminal justice offers the best prospects of redress" (RLP 2013: ii) for men affected by sexual violence. This argument is based upon the observation that international criminal law (ICL) conceptualizes crimes of SGBV gender-neutrally, and therefore theoretically "offers the broadest recognition of sexual violence against men through its gender-inclusive definitions of crimes" (RLP 2013: 74). According to RLP's research, the record of prosecutions through international criminal justice and respective tribunals with regards to sexual violence against men has been positive, while acknowledging that nevertheless, more progress in this regard is needed (*ibid.*).

However, despite evolving conceptual progress in recognizing and criminalizing SGBV against men under international criminal law, administered by international courts and tribunals, the progress with regards to prosecuting sexual violence against men has been largely insufficient. To date there have been only very few cases involving crimes of sexual violence against men at the major international criminal tribunals. At the same time, within these few cases, crimes of sexual violence against men were mostly listed under the heading of torture or degrading and inhumane treatment, without explicit recognition of the sexualized nature of these acts. Despite attesting a positive record of prosecutions of SGBV against men, RLP's study does acknowledge that the theorized contribution or potential of international criminal law with regards to male-directed sexual violence "has been seriously under-utilized in nearly all cases to date" (*ibid.*: ii).

Throughout most of the scholarly literature and the policy discourse alike, the two *ad-hoc* tribunals - the

¹¹⁵ For a more elaborate discussion on the physical and psychological consequences of sexual violence against men, see: Johnson et al. 2010; Sorensen 2011; UN OCHA 2008; et al.

International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) - are credited for being responsible for the contemporary evolution of jurisprudence on sexual violence within the context of armed conflict (De Londras 2009; Haffajee 2006; O'Byrne 2011), particularly with regards to such crimes against women. The two ad-hoc tribunals specifically developed precise and widely adapted definitions as well as clear guidelines and strategies for prosecutions of such crimes (Koenig et al. 2011) while establishing landmark and precedence cases concerning sexual violence. Under international criminal law, crimes of sexual violence are mainly defined in gender-neutral terms and language. In fact, the Rome Statute of the ICC as well as the ICTY and the ICTR all define sexual violence in a gender-inclusive matter, thereby acknowledging that sexual violence can be committed against both men and women. Throughout the scholarly literature, especially the ICC's conceptualization of sexual violence is being praised for being progressive and inclusive (Cohen and Nordas 2014). Not only does the definition put "beyond any doubt that men and boys can be raped" (Sivakumaran 2013: 84), but furthermore includes various acts of sexual violence which are not limited to rape only, thereby contributing to a broad and inclusive understanding of such crimes. This seems particularly important with regards to male victims, given that evidently, in cases of sexual violence against men, rape is often not the most common form of sexual abuse (Leiby 2009). Instead, or in addition, cases of sexual humiliation and torture, such as forced castration of genital beatings, seem to be as prevalent if not even more common as rape (Leiby 2009; Sivakumaran 2013: 85). Consequentially, on a theoretical level, international criminal law in general and international courts and tribunals in particular can be expected to offer the best prospects of redress and accountability for male SGBV victims (RLP 2013: ii).

Despite great conceptual progress, however, I argue that on a practical level, the international recognition, investigation and criminalisation of conflict-related cases of sexual violence against men has been mostly insufficient to date. "The actual prosecutions of male sexual violence have been rather disappointing", Sivakumaran attests (Sivakumaran 2013: 87). Arguably, this suggested lack of progress with regards to male victims is mirrored by an attested lack of progress with regards to sexual and gender-based violence overall and generally.

Scholars either voice concern that the international courts and tribunals only insufficiently dealt with crimes of sexual violence (mostly referring to female victims) (Mertus 2004; McGlynn et al. 2012). On the other hand, feminist scholarship criticises the international and UN-lead discourse's over-emphasis on prosecutions of such crimes (Engel 2013; Otto 2009; Ni Aolain and McWilliams 2012), suggesting that this focus obstructs from other gendered harms women experience within the context of armed conflict (cf. Theidon 2007), or contributes to phrasing and framing sexual violence as 'the worst of the worse' crimes, thereby establishing a hierarchy of crimes, harms, suffering and violations (Engel 2013; Ni Aolain and McWilliams 2012).

With regards to male victims of sexual violence and international jurisprudence, however, it seems that factual progress has been very limited. Despite conceptual advancements, including gender-neutral language and definitions, the various international criminal courts and tribunals only dealt with very few cases involving sexual violence against men. Such an assessment, however, is not to suggest that international criminal law cannot be credited for having made some important advances with regards to case law in this area. In fact, especially the ICTY dealt with several instances of male-directed sexual violence in its judgements (Sivakumaran 2013: 87). For example, in the *Prosecutor v. Tadic* case, the accused

was charged with *inter alia* forcing two male prisoners "to commit oral sexual acts" and forcing one of them to "sexually mutilate the other" (Prosecutor v. Tadic: para 6, as quoted in: Sivakumaran 2013: 87-88). Other cases dealt with various forms of sexual assault, including charges for beatings of the genitals, forced oral sex, biting of the testicles (Sivakumaran 2013: 88). The only time that male rape has been explicitly charged and tried as such under international criminal law was in the ICTY's *Prosecutor vs. Ranko Cesic* case, "where the defendant intentionally forced two Muslim brothers to perform fellatio on each other" (Prosecutor v. Ranko Cesic: 13 - 14; RLP 2013: 33). In contrast, the ICTR, the Special Court for Sierra Leone (SCSL) or the Extraordinary Chambers at the Courts of Cambodia (ECCC) have been far less active with regards to investigating and prosecuting male sexual violence.

Interestingly, however, for those few cases which involved the sexual victimization of men, the majority of these forceful acts were not specifically charged as sexual violence (Sivakumaran 2013.: 93). For instance, in the above discussed *Tadic* case at the ICTY, the described sexual acts and the sexual mutilation were included under the headings of torture and inhumane treatment, thereby under-acknowledging the sexual component and characteristics of these crimes. However, this paper argues that cases of sexual violence against men require being prosecuted and named and labelled as such. The danger of prosecuting these acts in the general form (i.e. torture) rather than the specific (i.e. sexual violence, which may constitute an act or torture) is that such a mis-conceptualization would reinforce the above subjected stereotypical assumptions that men and boys cannot be raped or sexually abused, thus further "perpetuating the hidden nature of male sexual violence" (*ibid.*).¹¹⁶

¹¹⁶ Generally, however, the relationship, similarities and disjuncture between torture and sexual violence,

Given the continuous implementation of the exit strategies of the ICTR and the ICTY respectively, international attention with regards to criminal law is shifting mainly to the ICC. According to the Court's Policy Paper on Sexual and Gender-Based Crimes, SGBV is among the Office of the Prosecutor's (OTP) key strategic goals (ICC Policy Paper 2004: 5). Regarding such crimes against men in boys in particular, instances of male rape and sexual violence are included within the Court's investigations in the Central African Republic (CAR). Especially the *Bemba* case includes charges alleging that "civilian women and men were raped [...] by soldiers on the CAR territory" (Prosecutor v. Jean-Pierre Bemba Gomba) [emphasize added].

Similarly, the Court's investigation into the Kenyan situation included evidence suggesting that even though "the vast majority of sexual crimes were committed against women and girls, men, too were subjected to SGBV, including forcible circumcision, sodomy, and penile amputations" (Open Society Justice Initiative 2013). However, even though the ICC Prosecutor included these charges of forced circumcision and sexual mutilation under the rubric of 'other forms of sexual violence', ICC judges disagreed, arguing that the described crimes do not constitute sexual violence (Prosecutor v. Kenyatta: 264-266; RLP 2013: 31). According to the chamber, "not every act of sexual violence which targets part of the body commonly associated with sexuality should be considered as an act of sexual violence" (*ibid.*). Despite this shortcoming to classify acts of sexual torture and humiliation under the heading of sexual violence, the Prosecution's case against Uhuru Kenyatta at the ICC, which included these crimes, has recently been dropped, and the charges have been withdrawn (ICC-01/09-02/11). In contrast, the other situations currently

especially if directed against men, is a complicated issue, which requires further thorough investigation.

under investigation by the ICC¹¹⁷ thus far do not include specific references to sexual violence against men. Consequentially, despite some attested conceptual advancements - especially with regards to gender-neutral language and inclusive definitions - international criminal courts and tribunals thus far seem to have failed to fully account for crimes of sexual violence against men.

National Jurisdiction and Sexual Violence against Men

If international criminal law can be considered as having made only insufficient practical progress with regards to male-directed SGBV, national and regional jurisdiction, especially in conflict settings, largely failed to deal with such crimes.

In many countries, most of the jurisdiction does not even include men as potential victims of sexual violence. The Ugandan Penal Code (UPC), for example, defines sexual violence to affect female victims only (RLP 2013: 53). This is not atypical, however: Research by the Refugee Law Project observes that generally, various African countries adopted specific prohibitions concerning sexual violence against women - which is progressive and praiseworthy - but none pertaining to male-directed sexual violence (*ibid.*: 41). Moreover, most regional African human rights instruments focus on sexual violence against women, while failing to account for male victims (*ibid.*).

Moving beyond the African continent, the situation generally does not look much more promising. Tentative and forthcoming research by Chris Dolan and the Refugee Law Project finds that globally, "90 per cent of men in conflict-affected countries are in situations where the law provides no protection for them if they become victims of sexual violence" (Dolan 2014: 6). Similarly, 62 countries around the world only recognize female

victims of rape, thereby explicitly excluding male victims (*ibid.*).

At the same time, on the national or regional level, much of the existing jurisprudence and law may actually be seen as disincentives and discouragements to legally report any sexual violence against men (RLP 2013: 62; Sivakumaran 2013: 83). In countries and societies which penalize and criminalize homosexual activities, such as for example Uganda or Nigeria, reporting crimes of male sexual violence can lead to incriminations and prosecutions of the male sexual violence victims. RLP's research shows that 67 states around the world in one way or another criminalize men who report abuse (Dolan 2014: 6). Out of fear for prosecution, there are therefore real disincentives for male victims to report any sexualized violation committed against them.

Conclusion

In conclusion, there is generally insufficient national and international legal protection for male victims of conflict-related sexual and gender-based violence. As has been shown throughout this paper, and as argued by Chris Dolan and the Refugee Law Project before, international criminal law in principle offers the best remedy, yet is still under-utilized and did not result in effective practical process with regards to prosecutions for crimes of male-directed sexual violence. (RLP 2013). In contrast, national criminal justice and proceedings in many societies affected by conflict mostly do not provide adequate legal protection, and oftentimes even further endanger male victims of sexual violence by criminalizing homosexual activities and thus eventually treating victims of violent crimes as potential perpetrators.

However, throughout the limited discourse and the scholarly literature on justice and male-directed SGBV, there is an almost exclusive emphasize on prosecutions and judicial accountability, which largely ignores or sidelines other semi- or non-judicial transitional justice mechanisms. Consequentially, there is almost no

¹¹⁷ These specifically include the situations in: Uganda, Democratic Republic of the Congo (DRC), Sudan (Darfur), Libya, Ivory Coast, Mali

scholarly attention nor any sufficient policy initiatives dealing with non- or semi-judicial transitional justice mechanisms and policies, which under certain circumstances may theoretically be favourable my male victims of sexual violence to respond to their harms and suffering. Therefore, I argue that more attention is needed with regards to transitional justice for male victims of

sexual violence, and that the discourse needs to be broadened from narrowly focusing on international criminal law and judicial accountability only to alternative, semi- or non-judicial or restorative justice mechanisms, too.

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