

GENDER JUSTICE

# When No One Calls It Rape

Addressing Sexual Violence Against Men  
and Boys in Transitional Contexts

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### **About ICTJ**

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org)

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## **ACRONYMS**

|             |  |
|-------------|--|
| <b>ANC</b>  | African National Congress  |
| <b>CVR</b>  | Peru's Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliation)  |
| <b>ECCC</b> | Extraordinary Chambers in the Courts of Cambodia                                     |
| <b>FARC</b> | Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia) |
| <b>ICC</b>  | International Criminal Court   |
| <b>ICTR</b> | International Criminal Tribunal for Rwanda   |
| <b>ICTY</b> | International Criminal Tribunal for the former Yugoslavia                            |
| <b>IGOs</b> | Intergovernmental Organizations  |
| <b>IICI</b> | Institute for International Criminal Investigations                                  |
| <b>NGOs</b> | Nongovernmental Organizations  |
| <b>SCSL</b> | Special Court for Sierra Leone   |
| <b>TJRC</b> | Kenya's Truth, Justice and Reconciliation Commission                                 |
| <b>TRC</b>  | South Africa's Truth and Reconciliation Commission                                   |
| <b>USD</b>  | US Dollar  |
| <b>WHO</b>  | World Health Organization  |

## Executive Summary

Sexual violence against men and boys in times of conflict or repression is alarmingly common—and takes a markedly consistent form across contexts in terms of how it affects victims and societies as a human rights violation that is taboo to talk about. It has been committed in all cultures, geographic regions, and time periods. Today, while some of the silence surrounding the issue of sexual violence against women is being broken, unfortunately effective measures of justice and redress are still not understood or applied in ways that can support male victims.

There is no doubt that the scope of the problem for male victims is large. The World Health Organization has identified sexual violence against men and boys as a significant problem that has been largely ignored by nongovernmental organizations, health care providers, government agencies, criminal justice authorities, and others. The violations can take many forms, including rape, gang rape, sexual slavery, enforced nudity, and being forced to perform sexual acts with others. Very commonly, sexual violence against men is committed in situations of detention. Studies have shown this pattern in contexts such as Chile, El Salvador, Libya, Sri Lanka, Syria, the United States, and the former Yugoslavia.

Transitional justice mechanisms—including truth commissions, reparations programs, and criminal trials—are well placed to begin tackling some of these issues as part of efforts to address legacies of violence. Yet, although the problem has been addressed by some transitional justice efforts in certain countries, there is still wide variation and inconsistency in terms of the responses to these violations and attempts to involve male victims of sexual violence in these processes.

The risk that male victims will remain invisible and left out of responses to sexual violence is significant, unless their rights and concerns are given a specific focus comparable to that now increasingly given to female victims.

A number of factors contribute to the generally lackluster response by both state and nonstate actors involved in implementing transitional justice processes. One is the tendency to conflate sexual violence with violence against women and girls, which contributes to the perception that it is a women's issue, thus limiting the responses available to victims falling outside of this group, including men and boys. This means that male victims' experiences of sexual violence continue to be underreported, misunderstood, and mischaracterized in transitional justice processes.

Another issue is under-reporting, which is particularly relevant for truth commissions as the statements they receive from victims not only inform their final reports, but also typically

contribute to the creation of victim registries and the design of reparations programs, and even prosecutions. In many cases, male victims are reluctant to acknowledge the sexual nature of the violations committed against them. This can happen in order to avoid the social stigma attached to such acts or due to the fear of being perceived as weak, labeled homosexual, or being accused of having “wanted it.” Even in instances where men report acts of sexual violence, those receiving the reports rarely handle the report with the sensitivity and awareness they require. Medical practitioners, for example, may not be adequately trained to recognize, identify, or treat male victims or they may themselves accuse male victims of homosexuality or otherwise perpetuate social misconceptions about these crimes.

In terms of specific transitional justice responses to sexual violence against males, despite some modestly encouraging signs in places such as Peru, Kenya, and Chile, for the most part this type of violence has been ignored or treated as physical violence, rather than sexual violence. Indicative of this situation, truth commissions in East Timor, Sierra Leone, and South Africa took special measures to facilitate female victims of sexual violence to come forward, but did not take comparable measures for male victims.

International and hybrid tribunals have similarly failed when it comes to the characterization of sexual violence as such when committed against men. The International Criminal Tribunal for Rwanda, the International Criminal Court, and the Special Court for Sierra Leone each failed in varying ways to explicitly recognize the sexual dimension of various forms of violence committed against men, instead opting to characterize such acts exclusively as torture or cruel or inhumane treatment. Only the International Criminal Tribunal for the former Yugoslavia has made nominally greater progress in identifying forced fellatio between two brothers as rape and hearing evidence of other acts of a sexual nature committed against men.

Looking ahead, this report also points to some progress toward addressing sexual violence against men and boys in certain contexts. Some innovative and even unconventional routes have been taken to provide male victims with some form of justice and reparation. For example, the Extraordinary Chambers of the Court of Cambodia broke ground in recognizing men as victims of forced marriage (and not limiting victims to women). In Kenya, male victims were among those who filed a collective petition with the Kenyan Constitutional and Human Rights Court, while others have sought reparations from the UK Government, for violations committed against them during the Mau Mau uprising of the 1950s–60s. In Peru, amendments to the language in the country’s Comprehensive Reparations Plan allowed 280 additional male victims of sexual violence to access reparations.

While sexual violence against men and boys is slowly being incorporated into the larger understanding of sexual and gender-based violence, work is still needed to increase awareness about both the issue and actionable responses to it for transitional justice institutions. This includes greater acknowledgement about the existence of male victims of sexual violence and the myriad challenges limiting their full access to and participation in truth, justice, reparative, and reform processes.

## Recommendations

### For Truth Commissions and Truth-Seeking Bodies

1. Properly conceptualize, identify, record, and code sexual violations other than rape against men and boys so they are not just subsumed in other categories, such as mutilation, torture, or beatings.



2. Recognize that males may have been specifically targeted for sexual violence, and that their experiences may differ from, but are just as serious as, the experiences of women and girls.
3. Train interviewing staff in techniques that will increase their capacity to elicit the experiences of male victims of sexual violence.
4. Provide safe spaces and psychosocial support for male victims of sexual violence, particularly boys, to participate and testify in truth-seeking processes.
5. Advocate that male victims of sexual violence be consulted and remembered as part of memorialization efforts and public apologies.

### **For Criminal Justice Actors**

1. Recognize sexually violent acts as inherently sexual in nature, capable of being prosecuted and convicted independently of other physical violations.
2. Educate investigators, attorneys, judges, support staff, and others about how to identify, include, and support male victims of sexual violence.

### **For Reparations Programs**

1. Use gender-inclusive language in victim registration that does not obscure or reclassify abuses against male victims.
2. Ensure registration and implementation processes treat male and female victims of sexual violence with comparable sensitivity and privacy.
3. Design reparative measures to incorporate psychological support appropriate for and available to male victims of sexual violence, and material support that provides income-generating alternatives for men unable to continue with previously held positions.

### **For Institutional Reform Initiatives**

1. Decriminalize homosexuality to ensure male victims are not afraid to come forward to report violations.
2. Adopt gender-neutral language in all legislation and other government policies and programs on sexual violence and related forms of violence.
3. Train and educate police and relevant government officials and employees to recognize male victims of sexual violence and to identify the signs and risk factors of such violations.
4. Ensure serious consequences are provided for members of security sector forces who commit sexual violations against males.

"There are certain things you just don't believe can happen to a man, you get me? But I know now that sexual violence against men is a huge problem. Everybody has heard the women's stories. But nobody has heard the men's."

- Eunice Owiny, "The Rape of Men: The Darkest Secret of War," *The Guardian*, July 16, 2011

## 1. Expanding Gender Analysis of Sexual Violence

For generations, sexual violence has been a largely invisible "weapon of war" or tactic used by repressive states and armed groups to terrorize populations and rend the social fabric. Today, while victims<sup>1</sup> of sexual violence are increasingly challenging the suppressive silence around their experiences, effective redress is the exception rather than the norm. This remains a problem for transitional countries seeking to overcome a violent past.

One of the reasons it is so difficult for victims, responders, and policymakers to talk about this taboo subject is because of the constructs of gender prevalent in most societies. *Masculinity* is linked with power and dominance, and until the hierarchy that privileges it over that which is considered *feminine* is rebalanced, sexual violence will continue to occur against males *and* females as a means of asserting and disrupting power. This rebalancing requires that sexual violence against men and boys be addressed in proportion to the prevalence of the crime, which is surprisingly high. Still, victims' experiences continue to be underreported, misunderstood, and mischaracterized for a variety of reasons.

In most contexts, the conflation of all forms of sexual violence with "violence against women and girls"<sup>2</sup> has led to the perception that it is solely a "women's issue,"<sup>3</sup> thereby limiting the responses available to other victims, including men, boys, and people of other gender identities or sexual orientations. This tendency excludes these other victims from being recognized and their experiences heard. Consequently, we have a limited understanding of why sexual violence is committed against these other groups, what specific harms they suffer as a result, and the challenges to providing them with effective remedies.

In 2002, the World Health Organization (WHO) identified sexual violence against men and boys as a "significant problem" that has been "largely neglected."<sup>4</sup> At the same time, the UN High Commissioner for Human Rights has acknowledged that addressing sexual violence through transitional justice is "vital to ensuring accountability and sustainable peace."<sup>5</sup> This in turn requires consulting victims of sexual violence to ensure their full participation in transitional justice

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<sup>1</sup> ICTJ acknowledges that some individuals may prefer to be called *victim* while others *survivor*. Because the purpose of this report is to call attention to the fact that men and boys have been and can be victimized, we generally use the term *victim*. However, this is not intended to diminish from or advocate against the use of the term *survivor* to refer to those who have lived through violence.

<sup>2</sup> See Manivannan, "Seeking Justice," 648; Scully, "Expanding the Concept," 21–22, 27–28; and Vermeulen, "Hidden Victims."

<sup>3</sup> International Human Rights Law Clinic et al., "Promoting Accountability," 6.

<sup>4</sup> Krug et al., "World Report," 154.

<sup>5</sup> UN High Commissioner for Human Rights, Analytical Study, 4.

processes in order to facilitate adequate redress.<sup>6</sup> Valuable lessons learned from the women's rights movement highlight the need for targeted gender-sensitive strategies to achieve this. As this report demonstrates, male victims of sexual violence are also at risk of remaining invisible without a comparable specific focus, which is evident across all transitional justice initiatives.

A few key concepts ground the analysis in this paper. The first foundational term is *sexual violence*, which is defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or act to traffic, or otherwise directed at a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.”<sup>7</sup> It includes psychological and physical violence carried out through sexual means or targeted at a person's “sexuality or sexual and reproductive health.”<sup>8</sup> Sexual violence can be perpetrated against anyone regardless of the victim's sex and may take many forms, including oral and anal rape, gang rape, forced circumcision, sexual slavery, forced sterilization, castration, genital trauma, genital torture, forced nudity, forced masturbation and being forced to have sex with others (forced sexual acts), among others.<sup>9</sup> These acts of violence may be intended to intimidate, humiliate, obtain information, kill, punish, coerce, or prevent procreation or sexual pleasure.

Though sexual violence is a form of gender-based violence, not all gender-based violence is sexual in nature. Gender-based violence targets an individual or group based on the victim's gender. It includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>10</sup>

The distinction between *sex* and *gender* is integral to understanding the intention and effects behind the two forms of violence. *Sex* refers to physiological and biological characteristics assigned at birth, while *gender* refers to “socially constructed roles, behaviors, activities and attributes that a given society considers appropriate” based on an individual's assigned sex.<sup>11</sup> Both sexual and gender-based violence are gender and sex neutral, and therefore can be perpetrated against men and women, as well as boys and girls.<sup>12</sup> Although the analysis in this report focuses on the experiences of males as victims of sexual violence, the experiences of those with other gender identities or sexual orientations must be researched and taken into account for a more complete understanding of the totality of possible gender-sensitive responses to sexual violence in transitional justice contexts.

This report first discusses the contexts in which sexual violence against men and boys is committed and its impact on victims in order to highlight how pervasive and harmful the phenomenon is. Second, the report analyzes the cascading, or compounding, effects of this historical invisibility, from under-reporting to misconceptualizing the violence to gaps in analysis and reporting to developing international criminal jurisprudence. Some creative initiatives and achievements to overcome the lack of progress through more conventional means are discussed in Part 4. The report provides several key recommendations on how the needs of male sexual violence victims can be better recognized and redressed.

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6 UN High Commissioner for Human Rights, Analytical Study, 4.

7 Krug et al., “World Report,” 149.

8 Russell et al., “Care and Support,” 2.

9 See Manivannan, “Seeking Justice,” 642; Sivakumaran, “Sexual Violence,” 263; Dolan, “Into the Mainstream;” and Russell et al., “Care and Support,” 2. However, the description by Russell et al. combines both the action and the intent of each form of violence and does not include forms of violence like forced nudity: “Forcing a man or boy to take part in sexual acts, often humiliating ones; inflicting pain and/or damage to the genitals with the overt or covert threat of interfering with future sexual pleasure; inflicting damage to the genitals designed to prevent future reproduction.”

10 International Center for Transitional Justice, “The Accountability Gap,” 2, citing General Recommendation 19 of the Committee on the Elimination of Discrimination against Women, 1992.

11 World Health Organization, “Gender, Women and Health.”

12 As with women and girls, men and boys may be targeted for reasons relating to their gender or age, or both. This paper refers to boys when they are known to have been specifically targeted on the basis of age, but otherwise the discussion is related to men, or males more generally.

## 2. Understanding Sexual Violence Against Males

### Context and Rationale

Sexual violence, whether perpetrated against men or women, boys or girls, is about exerting power and dominance over the victim.<sup>13</sup> However, there are gendered dimensions to understanding the purpose behind this type of victimization, the risks victims encounter on reporting the violation, and the long-term and indirect harm caused by the violation. For example, victimizing a male in certain communities is often viewed as a demonstration of the victim's weakness and inability to protect his family or community.<sup>14</sup> This is particularly pronounced when male community leaders are targeted.<sup>15</sup> In some circumstances, sexual violence against men serves to undercut their masculinity,<sup>16</sup> which is linked to a wider construction of nationhood, masculinity, and ethnicity in society.<sup>17</sup> By dominating the community's male champion and protector, the perpetrator symbolically disempowers the community.<sup>18</sup> One particularly visible example of this was the public display of amputated sexual organs and genital mutilation in Cambodia by the Khmer Rouge.<sup>19</sup>

Notwithstanding the range of challenges to understanding and responding to the phenomenon, both research and reporting around the world confirm its persistence across decades, cultures, religions, and countries, affecting societies that are in conflict or under repressive regimes as well as during times of mass human rights abuses. For instance, crimes such as rape, gang rape, sexual slavery, forced nudity, and being forced to perform a sexual act with another civilian in armed conflicts are common, from Sierra Leone<sup>20</sup> to Liberia<sup>21</sup> to Peru. In the latter example, 24 percent of acts of sexual violence perpetrated by the state armed forces during its internal armed conflict were against men.<sup>22</sup> Widespread commission in contexts other than armed conflict was reflected in reports of anal rape, mutilations, penile amputations, and crude circumcisions of Luo men and boys during the Kenyan post-election crisis of 2007–2008.<sup>23</sup>

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13 Brownmiller, *Against Our Will*, 3; Scarce, "Male on Male Rape," 79–80; Groth, *Men who Rape*.

14 Christan et al., "Sexual and Gender Based Violence Against Men in the Democratic Republic of Congo," 235.

15 Guberek et al., "Truth and Myth in Sierra Leone," 21–22.

16 Stanko and Hobdell, "Assault on Men," 400, 413; and Lewis, "Unrecognized Victims," 9.

17 See Zarkov, "The Body of the Other Man."

18 International Human Rights Law Clinic et al., "Promoting Accountability," 13; Juris, "Violence Performed and Imagined;" Zarkov, "The Body of the Other Man."

19 Natale, "I Could Feel My Soul Flying Away from My Body," 36.

20 Tamy et al., "Truth and Myth in Sierra Leone;" and Human Rights Watch, "We'll Kill You if You Cry," 42.

21 Johnson et al., "Association of Combatant Status," 683.

22 Leiby, "Wartime Sexual Violence in Guatemala and Peru," 456.

23 Of the 1,103 statements taken from sexual violence victims by Kenya's Truth, Justice and Reconciliation Commission, 103 were from men. See Truth, Justice and Reconciliation Commission [Kenya], Final Report (2013), Volume IIA, 713. See also Open Society Justice Initiatives, "Victims of Sexual Attacks in Kenya;" Wazima, "A gender Analysis of Forced Male

Frequently, sexual violence is reported in contexts of deprivation of liberty—typically, but not limited to, detention camps. Abu Ghraib became the most notorious detention center in recent memory after one American soldier's conscience urged him to forward photos of US soldiers "feminizing the enemy" for criminal investigation.<sup>24</sup> A subsequent military inquiry found that "numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees," including forced nudity, forced sexual acts, and simulation of electric shocks to genitalia.<sup>25</sup> Similar violations by US soldiers were documented a year later in Afghanistan.<sup>26</sup>



Saddam Saleh, a former prisoner in Abu Ghraib prison shows a picture, showing himself in the middle of the group of prisoners, during an interview with Reuters held on May 17, 2004, in Baghdad. (Reuters)

In Chile, following the ouster of dictator Augusto Pinochet, the country undertook a national truth-seeking exercise to uncover the full extent of abuses of civil rights or politically motivated torture by agents of the state and people in their service, and why they had occurred. The mechanism, the Chilean National Commission on Political Prison and Torture (the "Valech Commission"),<sup>27</sup> noted that forced nudity in detention was a nearly routine abuse, because it rendered the victim vulnerable and defenseless, increasing the (often-realized) fear that other forms of sexual violence would follow.<sup>28</sup> Beyond this, there is a set of commonly recurring violations observed in detention: the Bassiouni Commission report on violations committed in the

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Circumcisions;" *IRIN News*, "Kenya: Rape;" FIDA Kenya, "Gender Audit," 10–11; UNICEF et al., "Rapid Assessment;" and Maina Ahlber, "Not Enough Men to Rule!"

24 *CBS News*, "Exposing The Truth Of Abu Ghraib."

25 US Department of Defense, *The Taguba Report*.

26 Goldenberg and Meek, "Papers reveal Bagram abuse."

27 This commission, dubbed the Valech Commission for its president, Monsignor Sergio Valech Aldunate, was created in 2003 by presidential decree to investigate and document instances of deprivation of liberty and politically motivated torture committed by agents of the state or those acting on their behalf from September 11, 1973, to March 10, 1990. Chile's previous truth and reconciliation commission was mandated only to look into violations that resulted in death, so the new mandate covered a range of victims and violations previously excluded. Decreto Supremo N°1.040, Ministerio Del Interior: Subsecretaría del Interior, September 26, 2003.

28 Comisión Nacional sobre Prisión Política y Tortura [Chile], "Informe," 276.

former Yugoslavia during the Yugoslav Wars documented crude circumcisions, castration, other sexual mutilation, forced fellatio, electric shocks, and cases where men were forced to perform sexual acts on women, other victims or guards.<sup>29</sup> While these assaults against men primarily took place in detention, they also occurred during looting or household interrogations.<sup>30</sup> One assessment from a concentration camp in Sarajevo reported that 80 percent of the 5,000 male inmates had been raped.<sup>31</sup> A comparable scale of violations occurred in El Salvador in the 1980s, where 76 percent of males who had been detained reported being victims of sexual torture.<sup>32</sup> In Libya, sexual torture involved electric shocks to sexual organs, rape, and being stripped;<sup>33</sup> as well as genital beatings and rape using bayonets by security forces under the Gaddafi regime.<sup>34</sup> Similarly, men in detention in Syria reportedly have been forced to engage in sexual intercourse with female relatives and experienced forced nudity, electric shocks, genital beatings, and rape.<sup>35</sup> The South African Truth and Reconciliation Commission (TRC) also found men in detention experienced genital trauma and torture, including electric shocks, rape, and forced nudity.<sup>36</sup> In addition to these forms of violence,<sup>37</sup> male detainees in Chile experienced the insertion of objects, insects, and rodents into prisoners' mouths and anuses, as well as forced sex with animals, including dogs trained specifically for that purpose.<sup>38</sup>

In Sri Lanka during the civil war, torture included rape with foreign objects rubbed with chilies and forced rape of other inmates in front of soldiers for "entertainment."<sup>39</sup> One study in Cambodia revealed evidence of genital trauma, mutilation, and amputation in detention under the Khmer Rouge.<sup>40</sup>

**"They ordered me to lie down, and bend over. My hesitation earned me a kick (kwara) and a bayonet pointed in my back. Not knowing what to do, I complied. They removed my trousers and each penetrated me in turn. I could tell that those who penetrated me were three in number because each of them would do it in turn and then leave." Though Okwera tried to return to normal life, he "became deeply troubled and had nightmares about the experience."**

– Julius Okwera, speaking about the night he was raped by members of the National Resistance Army

\* From Ouko Eunice Wambui, "Julius Okwera: A Victim's Journal through pain, despair and hope!"

29 UN Security Council, "Final Report of the Commission of Experts," 60.

30 Ibid., 67, 70.

31 Lewis, "Unrecognized Victims," 11, citing Željka Mudrovcic, "Sexual and Gender-Based Violence in Post-Conflict Regions: The Bosnia and Herzegovina Case," presented at the Impact of Armed Conflict on Women and Girls: A Consultative Meeting on Mainstreaming Gender in Areas of Conflict Reconstruction, Bratislava 13–15 November 2001, UN Population Fund. Other Balkan examples include: 220 statements from sexually abused men across 18 cities and reports from three organizations providing care to refugees and/or torture victims in Croatia of significant numbers of acts of sexual violence committed in the course of torture, including rape, genital beatings, electric shock, and castration.

32 Oosterhoff et al., "Torture of Men," 69, citing Inger Agger, "Sexual Torture of Political Prisoners: An Overview." *Journal of Traumatic Stress* 2 (1989): 305–18.

33 Human Rights Council, "Report of the International Commission of Inquiry," 46.

34 Physicians for Human Rights, "Witness to War Crimes," 12, 23. This report includes evidence of men being raped with a bayonet and kicked in the groin.

35 Human Rights Watch, "Syria: Sexual Assault in Detention," FIDH, "Violence Against Women in Syria," 12, citing Human Rights Council, 3rd Report of the independent international commission of inquiry on the Syrian Arab Republic, 2012 (New York: Official Records, A/HRC/21/50), 15, 18, 19, 87, 93, 96, 97, etc., [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf)

36 For example, see Truth and Reconciliation Commission [South Africa], Final Report, Vol. 2, Ch. 3., 193, 216, 215; Vol. 3, Ch. 3, 168; Ch. 5, 403, 443, 485; Vol. 4, Ch. 5., 122, 128; Vol. 4, Ch. 9, 264.

37 Namely, forced nudity, application of electrical shocks to sexual organs, threats of rape; touching; oral, anal, and vaginal rape; forced sexual acts between prisoners, including sometimes family members. See, for example, Comisión Nacional sobre Prisión Política y Tortura [Chile], "Informe," 267–270, 269, 275.

38 Ibid., 267–270; 276–278.

39 Peel et al., "Sexual Abuse of Men in Detention in Sri Lanka," 2069.

40 Natale, "I Could Feel My Soul Flying Away from My Body," 36.

One less common form of sexual violence in Cambodia, Sri Lanka, and the former Yugoslavia was the forced performance of sexual acts with others.<sup>41</sup> In Cambodia, this was perpetrated by forcing large numbers of men to marry women against their will in mass weddings and then consummate the marriage.<sup>42</sup> Particularly in the context of forced marriages, coercing men to commit sexual violence violates the “private space, the sanctity of family relationships and other cultural norms,” as it simultaneously violates the men and other victims’ physical integrity and dignity, their established positions in the community, and communal bonds.<sup>43</sup>

Accurately identifying the range of acts actually inflicted is critical to appropriately remedying the harms they cause and challenging the sociopolitical and legal factors that enabled them to be committed in the first place.

### Impact on Victims

The well-researched immediate and long-term physical, psychological, psychosocial, and social consequences of sexual violence are listed here briefly in order to highlight the impetus to address them effectively. In addition to death in some cases,<sup>44</sup> physical consequences may include damage to the victims’ reproductive or sexual capacity, sexually transmitted infections and diseases, damage to genitals, incontinence, and chronic pain.<sup>45</sup> Failure to receive adequate health care can lead to the transmission of sexually transmitted diseases, including to future partners.<sup>46</sup> Psychological harm typically manifests as feelings of shame, guilt, fear, anger, humiliation, powerlessness, and confusion,<sup>47</sup> and victims may suffer long-term mental health problems, such as anxiety, depression, post-traumatic stress disorder, self-harming, and substance abuse disorders.<sup>48</sup> Emotional trauma frequently manifests physically as a loss of appetite, chronic pain, “exhaustion,” weight loss, insomnia, and other complaints not attributed to physical injury.<sup>49</sup> In addition, victims may also face psychosocial consequences, including demoralization due to harms inflicted on their “personal and social identity,”<sup>50</sup> related to their perceived feminization and emasculation. Consequently, victims may struggle with the inability to maintain familial, social, or marital relationships,<sup>51</sup> and stigmatization related to perceived loss of heterosexual status (if they were publically known as heterosexual),<sup>52</sup> as well

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41 Baines, “Gender, Responsibility, and the Grey Zone,” 480, citing DelZotto and Jones, “Male-on-Male Sexual Violence,” which points to a much longer legacy of sexual violence against men following conflict. They describe ancient Persian murals depicting triumphal parades with platters of severed enemy genitals and Mesoamerican combatants taken as “brides” when defeated.

42 Natale, “I Could Feel My Soul Flying Away from My Body,” 38.

43 Carpenter, “Recognizing Gender-Based Violence,” 96.

44 Russell et al., “Care and Support of Male Victims,” 2.

45 Pauline et al., “Torture of Men in Croatia,” 71; van Tienhoven, “Sexual Violence;” Dustin Lewis, “Unrecognized Victims;” Hardy, “An Act of Force.”

46 Christian et al., “Sexual and Gender Based Violence Against Men in the Democratic Republic of Congo,” 237.

47 Krug et al., “World Report,” 154; and Russell et al., “Care and Support,” 2.

48 Lewis, “Unrecognized Victims,” 15–16. See also Walker et al., “Effects of Rape on Men,” 69; Krug et al., “World Report,” 154.

49 Russell et al., “Care and Support,” 3, citing Mladen Loncar, Neven Henigsberg, and Pero Hrabac, “Mental Health Consequences in Men Exposed to Sexual Abuse During the War in Croatia and Bosnia” *Journal of Interpersonal Violence* 25 (2009): 191–203, 197.

50 Manivannan, “Seeking Justice,” 640, citing Wynne Russell, “Sexual Violence Against Men and Boys,” *Forced Migration Review* 27 (2007), 22–23, 22, [www.fmreview.org/en/FMRpdfs/FMR27/full.pdf](http://www.fmreview.org/en/FMRpdfs/FMR27/full.pdf)

51 Oosterhoff et al., “Torture of Men in Croatia,” 71; Russell et al., “Care and Support,” 3; and Lewis, “Unrecognized Victims.”

52 Russell et al., “Care and Support,” 3, citing Sandesh Sivakumaran, “Sexual Violence Against Men in Conflict”

*European Journal of International Law* 18 (2007), 253–276; Wynne Russell, “A Silence Deep as death: Sexual Violence Against Men and Boys in Armed Conflicts,” Background paper prepared for OCHA experts’ meeting “Use of Sexual Violence in Conflict,” New York, June 26, 2008; and Kathy Doherty and Irina Anderson, “Making Sense of Male Rape: Constructions of Gender, Sexuality and Experience of Rape Victims,” *Journal of Community and Applied Social Psychology* 14, (2004): 85–100.

as blame and ostracization by their communities.<sup>53</sup> Stigma may also transfer to family members, including wives and children.<sup>54</sup>

Physical and psychological consequences and fear of revictimization may inhibit men from leaving the home, jeopardizing their community relations and their ability to work and contribute to household expenses.<sup>55</sup> As a consequence, gender roles may be reversed so that men assume household responsibilities traditionally held by women, and women engage in traditionally male activities, such as selling goods, tending animals, and entering the employment market. In some cases, this may lead to increased domestic violence against women and a sense of loss of masculinity and psychological problems, which need to be overcome by identifying and preemptively managing these effects.<sup>56</sup>

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53 Lewis, "Unrecognized Victims," 15–16; Manivannan, "Seeking Justice For Male Victims," 650; and Christian et al., "Sexual and Gender Based Violence Against Men in the Democratic Republic of Congo," 238.

54 Christian et al., "Sexual and Gender Based Violence Against Men in the Democratic Republic of Congo," 239.

55 Ibid., 227–246, 238.

56 Ibid., 227–246; and Refugee Law Project, Gender Against Men.



### 3. Cascading Effects

The evidence suggests that sexual violence is committed against males without distinction as to the culture, religion, or politics of the victim, perpetrator, community, or larger society; it also occurs on a larger scale than we know. However, post-facto measures pursuing truth and justice typically mention that although male sexual violence victims exist, most perpetrators are men and most victims are women and girls.<sup>57</sup> Such a cursory assumption both trivializes male victims' experiences and reinforces the idea that sexual violence is an issue that only affects women.<sup>58</sup> The failure to explicitly incorporate sexual violence against men into any truth commission mandate, as has been done with respect to women, reflects this.<sup>59</sup>

The factors discussed below contribute to this continuing blind spot and compound the harm experienced as a result of violations: from disincentives to identify as a sexual violence victim to misconceptions and failures in sensitively receiving and recognizing the violations as sexual in nature. Overcoming these obstacles is an essential initial step to adequately address victims' needs.

#### Explaining Under-Reporting

An initial challenge to reporting is the absence of male victims' recognition of the nature of the violation they experienced. In cultures that construct masculinity as the ability to exert power over others, sexual violence is perceived as emasculating, so that victimhood is considered inconsistent with male gender roles.<sup>60</sup> Understandably, therefore, men may be unable or reluctant to accurately characterize or express the sexual aspects of the violence they experienced<sup>61</sup> and instead use the terms *torture* or *abuse*.<sup>62</sup>

Sexual violence is particularly likely to go unreported when service providers and authorities are inadequately equipped to recognize victims' experiences as sexual violence.<sup>63</sup> This is exacerbated if victims of rape face a "taint of homosexuality,"<sup>64</sup> so that they are presumed to have "wanted" it, "attracted" the perpetrator, or somehow solicited sexual intercourse, particularly if the victim

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57 Carpenter, "Recognizing Gender-Based Violence," 86.

58 *Ibid.*, 83–103, 93–94.

59 Also noted by Manivannan, "Seeking Justice for Male Victims," 670.

60 Sivakumaran, "Sexual Violence Against Men in Conflict," 270; and Stanko and Hobdell, "Assault on Men," 413.

61 Lewis, "Unrecognized Victims," 9; Manivannan, "Seeking Justice for Male Victims," 651; and Sivakumaran, "Sexual Violence Against Men in Conflict," 256.

62 Herlof Anderson, "Speaking about the Unspeakable," 26–27.

63 Lewis, "Unrecognized Victims," 9.

64 Sivakumaran, "Male/Male Rape," 1290.

experienced a physiological response, such as physical arousal or ejaculation.<sup>65</sup> Unsurprisingly in these contexts, men are more likely to report witnessing sexual violence against other males rather than against themselves, to avoid social stigma.<sup>66</sup>

Compounding this is the criminal status of homosexuality and recent (failed) attempts to increase punishment for it in some countries, like Uganda.<sup>67</sup> Heightened reluctance to report abuse because of the risk of criminal punishment “problematically perpetuates victimization.”<sup>68</sup> Uganda is not alone in this. Same sex relationships are punishable by death in 5 countries and by imprisonment in approximately 70 others.<sup>69</sup>

In several contexts, cultural perceptions of sexual violence are compounded by restrictive legal and sociopolitical frameworks. For example, the Ugandan Penal Code defines rape as a crime against a woman or girl, which excludes male victims.<sup>70</sup> Developing from an entirely different cultural tradition, the Chilean legal framework similarly historically denied male sexual violence victims in its exclusive criminalization of the “rape of a woman;”<sup>71</sup> only in 1999 did an amendment to the law adopt gender-neutral terminology that recognized that rape may be anal, oral, or vaginal.<sup>72</sup> However, because the amendment does not apply retrospectively, sexual violence against men and boys committed in detention centers during the Pinochet dictatorship (1973–1990) cannot be prosecuted as such.

Even with inclusive laws, there are lessons learned from working with women victims of sexual violence that suggest specific procedures are required to challenge the silence, invisibility, and exclusion surrounding male experiences of sexual violence. Victims of sexual violence, whether male or female, are less likely to engage with normal public procedures used by victims of crimes not associated with social stigma.<sup>73</sup> This generates a particular challenge for transitional justice initiatives that seek to be inclusive.

Drafted to assist criminal justice and human rights investigators and monitors, The Guidelines for Investigating Conflict-Related Sexual and Gender-Based Violence Against Men and Boys, published by the Institute for International Criminal Investigations (IICI), offers useful practical strategies to increase the likelihood of reporting. Intended to complement existing relevant investigation frameworks and practices, the guidelines highlight the need for a specific plan to approach male victims, given heightened fears around security, threat and risk assessments, and the identification of assistance services likely to be required.<sup>74</sup>

## Receiving Reports of Sexual Violence by Men

Overcoming legal and social barriers for males to report sexual violence does not guarantee that these experiences will be received sensitively or appropriately. In many cases, medical person-

65 Sivakumaran, “Sexual Violence Against Men in Conflict,” 272, citing A. Nicholas Groth, *Men Who Rape: The Psychology of the Offender* (New York: Plenum Press, 1979), 138–139; American Medical Association, *Strategies for the Treatment and Prevention of Sexual Assault* 21; and Peel et al., “Sexual Abuse of Men in Detention in Sri Lanka.”

66 Cohen et al., “Wartime Sexual Violence,” 7. See also Oosterhoff et al., “Torture of Men in Croatia,” 74.

67 Consensual anal sex is criminalized by the Ugandan penal code under a provision titled, “Unnatural Offences.” The first version of the bill, which increased sentences, was declared invalid by the Ugandan Constitutional Court in August 2014, but a new bill to achieve the same result was introduced in Parliament in December 2014. See Daily Nation, “MPs to Pass Gays Bill.”

68 Manivannan, “Seeking Justice for Male Victims,” 647; and Al Jazeera English, “The Silent Male Victims of Rape.”

69 Rodgers et al., “Where Is It Illegal to Be Gay?” In 2011, 76 countries had discriminatory laws that criminalize consensual same-sex relationships. See also Free & Equal, “Criminalization Fact Sheet;” and UN High Commissioner for Human Rights, *Discriminatory Laws and Practices*, ¶ 40.

70 Penal Code Act [Uganda], Article 123.

71 Penal Code 1874 [Chile], Article 361.

72 Penal Code [Chile], Amendment Act to Article 361.

73 UN Women, *Progress of the World’s Women*, 52.

74 Institute for International Criminal Investigations, *Guidelines*, 9–11.

nel may not be trained to recognize, identify, or treat male victims,<sup>75</sup> or they may even refuse to believe that men can be victimized.<sup>76</sup> For example, refugees from the Democratic Republic of the Congo who sought treatment for sexual assault in Kampala, Uganda, were commonly prescribed painkillers and in some cases even referred for follow-up treatment to gynecologists, not doctors with expertise in men's health.<sup>77</sup> Other victims reported that counselors, doctors, and aid workers suggested they were homosexual.<sup>78</sup> Even when physicians and counselors successfully identify victims, they are often not trained to provide male victims with the necessary psychological counseling.<sup>79</sup> A lack of trained professionals also means that care providers may retraumatize victims and/or otherwise fail to ensure their anonymity and confidentiality, exposing them to social stigmatization.<sup>80</sup>

Similarly, nongovernmental organizations (NGOs) and intergovernmental organizations (IGOs) at a strategic and programmatic level have also historically overlooked male victims.<sup>81</sup> In 2002, only 3 percent of 4,076 NGOs working on "war rape and other forms of political sexual violence" mentioned sexual violence against males in their programming or literature.<sup>82</sup> And although two UN agencies—UN Women and UN Population Fund Agency—explicitly aim to prevent sexual violence against women in conflict, no such agenda exists for men. On the other hand, the UN High Commissioner for Refugees, the US Department of State, and the US Agency for International Development have published guidelines regarding sexual violence against men, albeit beyond the scope of transitional justice.<sup>83</sup>

Because transitional justice efforts often draw heavily on NGOs, medical professionals, and others for basic information towards the identification of those who experienced violations and in their outreach for engagement with victims, these actors can serve to limit or increase attention to male victims of sexual violence in transitional justice processes. For instance, staff may be ill-equipped to identify the physical or psychosocial symptoms of sexual violence against men<sup>84</sup> and therefore less likely to elicit testimony of sexual violence.<sup>85</sup>

While the South African, Sierra Leonean,<sup>86</sup> and East Timorese experiences incorporated specific proceedings to encourage women victims of sexual abuse to testify, including holding closed hearings conducted by female commissioners in which male commissioners and staff were excused, no comparable procedures for men were implemented. The only exception to this was on the basis of age, rather than gender, whereby the Special Hearings on Children and Youth in the South African TRC elicited testimony from boy victims of sexual abuse and torture in detention.<sup>87</sup>

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75 Carlson, "The Hidden Prevalence," 18; and Oosterhoff et al., "Torture of Men in Croatia."

76 Refugee Law Project, "Male Victims of Sexual Violence in Kampala," 5.

77 Ibid., 5.

78 Dolan, "Into the Mainstream," citing IRIN Humanitarian News & Analysis, "Africa: Uganda's Anti-Gay Law Reinforces Homophobia, Xenophobia, Says Report," April 30, 2014, [www.irinnews.org/report/100018/uganda-s-anti-gay-law-reinforces-homophobia-xenophobia-says-report](http://www.irinnews.org/report/100018/uganda-s-anti-gay-law-reinforces-homophobia-xenophobia-says-report)

79 Stemple, "Male Rape and Human Rights," 612, citing Eric Stener Carlson, "Sexual Assault on Men in War," *The Lancet* 349 (1997), 129.

80 Human Rights Council, "Analytical Study," 5.

81 Manivannan, "Seeking Justice," 646, citing Sandesh Sivakumaran, "Sexual Violence Against Men in Conflict," *European Journal of International Law* 18 (2007), 253–276, 256; and DelZotto and Jones, "Male-on-Male Sexual Violence.

82 No updated statistics are publicly available. See DelZotto and Jones, "Male-on-Male Sexual Violence."

83 For example, the recently updated "United States Strategy to Prevent and Respond to Gender-based Violence Globally" maintains an emphasis on the issue of sexual violence against men and boys. It includes them as a targeted population, highlights the scale of the issue globally, and makes several recommendations that either includes male victims alongside female victims or addresses them specifically, such as by making a call for greater "analysis of the prevalence of gender-based violence among men and boys and identification of effective strategies for assisting this population." USAID, "United States Strategy," 49.

84 Stener Carlson, "The Hidden Prevalence," 18, 21.

85 Ibid., 16–25, 18.

86 Truth and Reconciliation Commission for Sierra Leone, Final Report, Vol. 1, Ch. 5, 240.

87 Truth and Reconciliation Commission [South Africa], Final Report, Vol. 4, Ch. 9, 282.

Similarly, in Kenya, the Truth, Justice and Reconciliation Commission had guidelines requiring sexual violence victims to be interviewed by investigators of the same sex,<sup>88</sup> and in practice many sexual violence victims testified *in camera*. In fact, male victims testifying about their own experiences did so exclusively in this way. However, though many women participated in women-only hearings, there were no hearings held exclusively for men. Because many women testified to the victimization of their sons or husbands, even without further analysis it seems highly likely that the number of participating male sexual violence victims represented a small fraction of the universe of these victims.

The Chilean Valech Commission's identification of a significant range and scale of sexual violations against men and boys set an important example. It seems to be the exception. The truth commissions in Sierra Leone and Kenya did not expose the same scale of this type of violence. However, given documentation of these crimes in Sierra Leone and Kenya by civil society organizations,<sup>89</sup> it is likely sexual violence against men was committed on a significant scale in these countries but simply was not reported to the truth commissions. Specific outreach procedures, training for investigators, and dedicated sessions may have increased the number of male victims willing to testify about sexual violence.

The design of truth-seeking initiatives can facilitate (or limit) victims' decisions to provide testimony. Developing a method that encourages victims of sexual violence to come forward and including narratives by males of sexual violence are crucial to creating an accurate historical record of abuses.<sup>90</sup> It may also help dismantle societal stigma and build greater understanding of the long-term, multifaceted consequences of sexual violence. Truth commissions may also benefit victims, including those who choose not to testify, by increasing the visibility of these violations, ensuring that victims may register for reparations even if they do not provide testimony, and facilitating the allocation of funds to psychosocial and medical support for male victims of sexual violence.

### Conceptualizing, Counting, and Analyzing Sexual Violence Crimes

Best practices with respect to sexual violence against women have evolved so that criminal conduct of a sexual nature is recognized as sexual violence (rather than any other form of violence); and sexual violence, in turn, is recognized as a crime that can be committed as an act of torture, a war crime, a crime against humanity, or an act of genocide. However, acts of sexual violence against males are still characterized more generally as torture or inhumane treatment, which obscures their sexualized nature.<sup>91</sup> In fact, truth commissions have misclassified sexual violence against men simply as physical violence, perceived men solely as perpetrators rather than victims in forced sexual acts, or subsumed them in sections dedicated to violence against women. This misconception has led to inaccurate coding in the database of violations, which in turn means that a commission's statistical analysis will reflect that misconception and sexual violence against men and boys will continue to be grossly under reported. The identification and analysis of patterns of violations and their consequences will similarly be limited by initial misconceptualizations. Consequently, unless these acts are accurately conceptualized and recorded, conclusions and recommendations on sexual violence against men and boys will continue to be very limited and little progress made on redress or prevention.

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88 Truth, Justice and Reconciliation Commission [Kenya], Final Report, Vol. 2a, Ch. 6, 712.

89 See, for example, Guberek et al., "Truth and Myth in Sierra Leone," 21–23; FIDA Kenya, "Gender Audit," 10–11; and UNICEF, et al., "Rapid Assessment."

90 UN High Commissioner for Human Rights, "Analytical Study," 5.

91 According to Jamie O'Connell, "Modern torture—of men or women—now nearly always encompasses a sexual act," in Anjali Manivannan, "Seeking Justice For Male Victims of Sexual Violence in Armed Conflict," *NYU Journal of International Law and Politics* 46 (2014): 635–679, 636, citing Jamie O'Connell, "Gambling with the Psyche: Does Prosecuting Human Rights Violators Console their Victims," *Harvard International Law Journal* 46 (2005): 295–345, 312, quoting a telephone interview with Jerry Gray, then director of the Center for Justice and Accountability (April 26, 2000), [www.harvardij.org/wp-content/uploads/2011/03/HILK\\_46-2\\_OConnell.pdf](http://www.harvardij.org/wp-content/uploads/2011/03/HILK_46-2_OConnell.pdf)

The South African TRC offers an interesting example. Sexual violence against men was coded in three different categories: sexual assault and abuse as “torture;” sexual assault or abuse as “severe ill treatment”; and sexual harassment as “associated violations.” Despite this important step, the commission coded electric shocks to the genitals, genital beating, and genital mutilation only as “electric shocks,” “beating,” and “mutilation,” in the same way that electric shocks to ears or fingers were coded, which meant that the strategic targeting of male sexual organs and sexuality was not recognized. This exclusion from the commission’s narrative is especially significant given the use of electric shocks on genitalia in police detention and military hospitals, including to “convert” the sexual orientation of homosexual men without their consent.<sup>92</sup>

The Sierra Leonean TRC conceptualized and recorded sexual violations as rape, sexual abuse, and sexual slavery in its coding system.<sup>93</sup> However, the definition of sexual slavery as “forced/willing keeping of a *woman* . . .,” automatically excluded male victims. Further, by including castration or genital mutilation under its definition of “physical torture,” the commission ignored the sexual nature of these abuses. Consequently, while men were principally targeted for torture,<sup>94</sup> it is unclear how many experienced sexual violations as a form of torture. A 2006 report that incorporates the TRC data along with two other sources included accounts of male rape and sexual slavery victims,<sup>95</sup> confirming the TRC’s failure to properly analyze statements and accurately record these types of violations.

It also identified instances of forced sexual acts as sexual violence against women, but not against the men forced to perform the sexual act, including men being forced to strip and have sexual intercourse with women, including female relatives.<sup>96</sup> For example, the report describes a scene in which mothers and sons were forced to dance together and hold each other’s genitals. This narrative is told from the mother’s perspective only—the report does not acknowledge the son’s victimhood.<sup>97</sup> Similarly, the report’s account of a woman “stripped naked with [her] husband” fails to consider the husband’s forced nudity as an act of sexual violence.<sup>98</sup> All of these were described in the chapter dedicated to women, obscuring the victimhood of the males forced to participate in these crimes.

Notwithstanding improved definitions, mischaracterizing sexual violations against males as physical violations, particularly in the case of torture, leads to under-recognition of the extent of the phenomenon. This is compounded in some cases, but not all, by the absence of supportive and protective procedures for male victims. It may also have indirect material consequences. For example, Sierra Leonean male victims of sexual violence not included in the truth commission are ineligible for reparations.<sup>99</sup>

Overall, these gaps and emerging practice suggest it is important for transitional justice procedures to assume male victims of sexual violence are vulnerable and require specific encouragement to testify or participate in other ways. It also underscores the need to ensure that violations of sexual integrity are categorized, recorded, coded, and analyzed as sexual violence.

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92 See, for example, Truth and Reconciliation Commission [South Africa], Final Report, Vol. 4, Ch. 5, ¶41; Vol 3, Ch. 2, ¶24.

93 The Benetech Initiative, Statistics Appendix, 6.

94 *Ibid.*, 21.

95 Guberek et al., “Truth and Myth in Sierra Leone,” 21–23.

96 Report of the Truth and Reconciliation Commission [South Africa], 162 ¶296, 172 ¶332.

97 Report of the Truth and Reconciliation Commission for Sierra Leone, Vol 3B, Ch. 3, 137 ¶205.

98 *Ibid.*, 138 ¶207.

99 Bastick et al., “Sexual Violence in Armed Conflict,” 161; and Truth and Reconciliation Commission for Sierra Leone, “Final Report,” 250 ¶95.

## Analysis

Even when acts of sexual violence against men and boys are accurately identified and recorded, lack of analysis limits our understanding regarding who was targeted, for what purpose, and the range of consequences flowing from the violation. For example, the South African TRC's detailed analysis of sexual violence against women in the chapter on the Special Women's Hearing, and the issue's inclusion in the conclusions and findings, contrasts with the lack of corresponding analysis and conclusions on sexual violence against men and boys. Without a specific focus on analyzing the documentation in its possession, the commission failed to explore how the systematic use and consequences of sexual violence affected male victims.

Interestingly, in response to initial criticism of the negative impact of its gender neutrality on women, the South African TRC subsequently analyzed the specific dynamics of sexual violence against women. Paradoxically, it then failed to analyze the phenomenon as committed against males, who apparently testified about sexual violence in higher numbers than women did. This is a significant loss, not only of the opportunity to understand the practice of sexual violence against men but also of the opportunity to analyze the range of contextual, cultural, or procedural factors enabling male testimony, which could have provided much-needed guidance to other truth commissions.

In Peru, the Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación, CVR) did explicitly acknowledge that "male detainees were also subjected to violence and rape."<sup>100</sup> Significantly, the section on sexual violence in the CVR's final report is included in the chapter on "Consequences of the Conflict," not in the chapter on women. The full report also documents a handful of instances of sexual violence against men, and one in which the Tupac Amaru Revolutionary Movement targeted men because of their gender identity and sexual orientation.<sup>101</sup>

Despite these contributions, language in the report tends to characterize sexual violence as "sexual violence against women."<sup>102</sup> The effects of inaccurate coding on the ultimate analysis and conclusions are also evident in this context: the CVR coded sexual torture of men as torture but sexual torture of women as sexual violence. Thus, despite men providing 22 percent of sexual violence testimonies, the final report erroneously found only 2 percent of sexual violence victims were men.<sup>103</sup> Recognizing men as targets of violence based on gender

**In 1986 Patrick Mzathis, then 14, was detained by police in Mossel Bay. According to the report, Patrick was beaten, kicked, and pistol-whipped during detention. At one point a police sergeant "slammed his penis and testicles in a drawer." Patrick recalled, "It was the first time I experienced a pain of my private parts. I went unconscious." He was kept in a cell naked for three months.**

– *Report of the Truth and Reconciliation Commission of South Africa (Cape Town: Truth and Reconciliation Commission, 1999), Vol. 4, Ch. 9 Appendix, page 282*

100 Center for Civil and Human Rights of the University of Notre Dame et al., "Hatun Willakuy," 270.

101 Amnesty International, "Peru," citing Final Report of the Truth and Reconciliation Commission of Peru, "Actors in the Conflict" Vol. 2, 432–3.

102 See, for example, Center for Civil and Human Rights of the University of Notre Dame et al., "Hatun Willakuy," 6, 24, 188, 336, 337, referring to *sexual violence against women* without mentioning sexual violence against men.

103 Kay Cohen et al., "Wartime Sexual Violence," 10.

identity and sexual orientation, and of sexual abuse while in detention, is a significant contribution, but interpreting sexual torture only as physical torture resulted in a disturbing under-recognition of male sexual violence victims.

Kenya's TJRC similarly acknowledged sexual violence against men in both its hearings and report but maintained some inconsistent practices and language. It received 346 statements from male victims of sexual violence and acknowledged their victimization in sections of its final report dedicated to the subject.<sup>104</sup> The section on sexual violence explicitly recognized that male victims are a historically neglected group, definitions traditionally exclude men, and sexual violence against men is even more under-reported and under-investigated than sexual violence against women.<sup>105</sup> In an improvement over the South African and Peruvian truth-seeking experiences, the Kenyan TJRC report discussed sexual violence as a form of torture; however, it still did not differentiate it as a separate, stand-alone practice of "sexual torture," forgoing an important opportunity to re-enforce its seriousness and understand the dynamics of its perpetration independent of other crimes.

The Kenyan TJRC also adopted a comprehensive and gender-neutral definition of sexual violence capable of covering most violations against men but did not maintain this language throughout the report. For example, the report discusses the consequences, aftermath, and under-reporting of sexual violence with respect to women and repeatedly refers to "sexual violence of girls and women," when discussing violations broadly, thereby leaving open the interpretation that sexual violence happened only to females. These inconsistencies highlight the importance of maintaining a gendered analysis across all violations so that the varying gendered implications of similar crimes committed against males and females can be fully understood.

## International Criminal Jurisprudence

In the 1990s, the ad-hoc international criminal tribunals for Rwanda and the former Yugoslavia precipitated the development of a body of international criminal jurisprudence addressing sexual violence, which, like national criminal prosecutions, has not always effectively recognized sexual violence against males. While some of the cases discussed involve a clear failure to prosecute sexual violence as sexual per se, it is not always possible to conclude whether the failures are due to incorrect conceptualization or insufficient analysis by the investigators, the prosecutors, or the judiciary. What is clear is that a stronger commitment to pursuing justice for sexual violence against men and boys could have resulted in improved outcomes—most often in the form of stand-alone convictions that send the strongest message that these crimes are taken seriously.

For example, in the first case before the International Criminal Tribunal for the former Yugoslavia (ICTY), Duško Tadić was found guilty of inhumane acts as a crime against humanity and cruel treatment as a war crime for forcing a male detainee to perform oral sex on another detainee and then bite off one of his testicles.<sup>106</sup> However, neither the indictment nor the judgment acknowledges the sexual nature of the offences, but rather identifies them variously as cruel treatment, an inhumane act, or inhuman act.<sup>107</sup> A decade later in *Prosecutor v. Češić*, progress was reflected in convictions for rape as a crime against humanity and humiliating and

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<sup>104</sup> Truth, Justice and Reconciliation Commission [Kenya], Final Report, Vol. 1, xiii.

<sup>105</sup> *Ibid.*, Vol. 2a, Ch. 6, 708.

<sup>106</sup> *Prosecutor v. Tadić*. Case No. IT-94-1-T. International Criminal Tribunal for the Former Yugoslavia, Opinion Judgment, ¶ 206 (May 7, 1997).

<sup>107</sup> See *Prosecutor v. Tadić*. Case No. IT-94-1-T, International Criminal Tribunal for the Former Yugoslavia, Opinion Judgment, (Dec. 14, 1995); *Prosecutor v. Tadić*. Case No. IT-94-1-T. International Criminal Tribunal for the Former Yugoslavia, Second Amended Indictment (May 7, 1997).

degrading treatment as a war crime for forcing two detained Muslim brothers to perform oral sex on each other in the presence of others.<sup>108</sup> Still, notwithstanding evidence of similar violations admitted in numerous other cases, Češić stands as the only case to explicitly charge and convict forced fellatio between men as rape.<sup>109</sup>

Beyond the Češić case, the ICTY has heard charges relating to forced oral sex, other forced sexual acts, genital mutilation, blunt trauma to the genitals, and threats of sexual mutilation against men.<sup>110</sup> Inclusion of these charges is significant, showing a willingness to acknowledge sexual violence against males as an international crime, even if the charges and convictions do not reflect the sexual nature of the violations. At the very least, similar to the Chilean Valech Commission, making the conduct visible provided an important platform for some male victims and set a precedent for future initiatives.



Detainees in the Manjača Camp, near Banja Luka, Bosnia and Herzegovina, where incidents of sexual violence are alleged to have occurred, 1992. (Photograph provided courtesy of the ICTY.)

The International Criminal Tribunal for Rwanda (ICTR) has not shown the same willingness. On sexual violence it was groundbreaking in finding that rape could constitute genocide in

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108 *Prosecutor v. Češić*, Case No. IT-95-10/1-S, International Criminal Tribunal for the Former Yugoslavia, Sentencing Judgment, ¶ 13–14 (Mar. 11, 2007).

109 In *Prosecutor v. Todorovic*, Case No. IT-95-9/1. International Criminal Tribunal for the Former Yugoslavia, Second Amended Indictment (Nov. 19, 1998). The Office of the Prosecutor charged Todorovic with nine counts based on forced fellatio. All counts were dropped in accordance to a plea agreement with the prosecution.

110 See *Prosecutor v. Tadić*, Case No. IT-94-1-T, International Criminal Tribunal For the Former Yugoslavia, Second Amended Indictment (May 7, 1997); *Prosecutor v. Češić*, Case No. IT-95-10/1, International Criminal Tribunal for the Former Yugoslavia, Third Amended Indictment, (Nov. 26, 2002); *Prosecutor v. Todorovic*, Case No. IT-95-9/1. International Criminal Tribunal For the Former Yugoslavia, Second Amended Indictment (Nov. 19, 1998); *Prosecutor v. Mucic et al.*, Case No. IT-96-21, International Criminal Tribunal For the Former Yugoslavia, Initial Indictment, (March 19, 1996); *Prosecutor v. Simić*, Case No. IT-95-9/2, International Criminal Tribunal for the Former Yugoslavia, Fifth Amended Indictment (May 30, 2002); *Prosecutor v. Stanišić & Župljanin*, Case No. IT-08-91, International Criminal Tribunal For the Former Yugoslavia, Second Amended Indictment (Oct. 6, 2004).



*Prosecutor v. Akayesu*:<sup>111</sup> this jurisprudence has been incorporated in subsequent statutes, charging strategies, and convictions. However, because the ICTR prosecutor did not explicitly charge any crimes of sexual violence perpetrated against men, very little testimony regarding the subject was heard at trial. *Prosecutor v. Niyitegeka* was the only case in which sexual violence against men was charged in the indictment and resulted in a conviction, but not as sexual violence. Instead, participation in castrating a prominent Tutsi man and displaying his mutilated genitalia on a stake was considered as an “other inhumane act” and as a “crime against humanity” without any reference to its sexual nature.<sup>112</sup> Moreover, despite witness accounts of male genital mutilation and forced nudity in *Prosecutor v. Muhimana* and *Prosecutor v. Bagosora et al.*, the ICTR failed to convict these harms as sexual violence.<sup>113</sup>

By nearly completely ignoring or mischaracterizing sexual violations against males, the ICTR’s narrative of the types and prevalence of crimes committed during the Rwandan genocide is both incomplete and inaccurate. While sexual violence against women, and rape in particular, was recognized as integral to the victimization of Tutsis and moderate Hutus, little is known about the types and scale of sexual violence perpetrated against men during the genocide. The ICTR also missed an important opportunity to expand its jurisprudence on sexual violence and further develop international criminal law’s understanding of the gendered dimensions of such crimes.

Unfortunately, this trend continued in the Special Court for Sierra Leone (SCSL), where prosecutors failed to bring any charges for sexual violence committed against men. Three of the four cases brought before the SCSL included acts of sexual violence against men, but specific charges of sexual violence were restricted to those committed against women and girls. The prosecution’s problematic approach was exposed in the Revolutionary United Front case, *Prosecutor v. Sesay*, when the Trial Chamber included evidence of forced sexual acts and genital mutilation of men in its judgment even though they were not recognized in the initial indictment.<sup>114</sup>

Unfortunately, in two other cases, this oversight was not overcome. In the fourth SCSL trial, the prosecution failed to include charges of sexual violence and rape initially, and the Trial Chamber refused to exercise its judicial discretion to allow the Prosecutor to amend the indictment to include these charges at a later date.<sup>115</sup> In a ruling criticized by the Appeals Chamber, the majority also excluded evidence of sexual violence and rape from the trial.<sup>116</sup>

The SCSL prosecutor’s conservative charging of sexual violence only with respect to women and girls is all the more concerning because of the available evidence that similar acts were

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111 *Prosecutor v. Akayesu*, ICTR 96-4-T, Judgment of the Trial Chamber, paras. 596-8, 685-96, 731-4.. In *Akayesu*, the charges did not include rape and sexual violence until Judge Navanethem Pillay interrupted the proceedings to question their absence.

112 *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14, International Criminal Tribunal for Rwanda, Trial Judgment, ¶ 312, 459-467, (May 16, 2003). The trial court found the accused was part of a group that killed, castrated and displayed severed genitalia on a stake.

113 See, for example, *Prosecutor v. Muhimana*, Case No. ICTR-95-1B-T, International Criminal Tribunal for Rwanda, Judgment, ¶ 441, 444 (Apr. 28, 2005): the witness testified that a victim’s genitals had been severed and hung on a pole; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-T, International Criminal Tribunal For Rwanda, Judgment, ¶ 976, 1908, 2220 n.2374, 2224 (Dec. 18, 2008), UNAMIR Force Commander Romeo Dellaire recalled seeing bodies of men whose genitals had been mutilated at civilian roadblocks, his personal staff officer recounted genital mutilation and castrations while other witnesses recalled seeing men stripped before being killed.

114 The Prosecution introduced testimony describing how rebels had ordered a couple to have sexual intercourse in the presence of their daughter and other captured civilians and then forced the daughter to wash her father’s genitals. Other witness testimony recalled rebels forcing 20 captured civilians to have sexual intercourse with one another before mutilating the genitalia of several male and female civilians. *Prosecutor v. Sesay*, Kallon & Gbao, Case No. SCSL-04-15-T, Special Court for Sierra Leone, Trial Chamber I, Judgment Mar. 2, 2009, ¶¶ 1180-85, 1207-8.

115 Special Court of Sierra Leone, Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence, 23 May 2005 (published 22 June 2005), ¶¶ 17, 19. For a summary of the procedural events leading to the exclusion of evidence relating to sexual violence, see Kendall and Staggs, “Silencing Sexual Violence,” 3.

116 Oosterveld, “Gender and the Charles Taylor Case,” 10.

perpetrated against males. While the Trial Chamber's unwillingness to remedy the oversight is reasonably grounded in fair-trial considerations, the consequence is a number of lost opportunities in judgments by both chambers across all four cases to appropriately develop international criminal jurisprudence for the benefit of male victims of sexual violence.

The most recent international decision on this issue at the International Criminal Court (ICC), regarding forcible circumcision in Kenya, is also disappointing. Despite progressive gender-neutral language in the Rome Statute of the ICC permitting prosecutions of sexual violence against males,<sup>117</sup> the ICC Pre-Trial Chamber still mischaracterized forcible circumcision as a form of physical, rather than sexual, violence.<sup>118</sup>

The ICC Prosecutor's request to investigate the Kenyan 2007–2008 post-election violence included evidence of “numerous incidents of sexual violence against men and women,”<sup>119</sup> like the forced circumcision of Kenyan Luo males. This request was successful on the basis that “there were reasonable grounds to believe that the defendants were criminally responsible” for several violations including “at least six cases of forcible circumcision” and evidence of penile amputations of Luo men.<sup>120</sup>

However, when the prosecutor moved to charge these acts as “other forms of sexual violence” under Article 6(1)(g) of the Rome Statute, the Pre-Trial Chamber of the ICC ruled that they should be categorized as “other inhumane acts” under Article 7(1)(k) instead, because the evidence did not establish the sexual nature of the acts, noting, “not every act of violence which targets part of the body commonly associated with sexuality should be considered an act of sexual violence.”<sup>121</sup> There is no authority cited to support this statement. Indeed, it is inconsistent with the broadly accepted 2002 definition of sexual violence by the World Health Organization (used in this paper) that includes “attacks on sexuality”<sup>122</sup> as well as the logic that characterizes the crime by the type of harm inflicted on the victim. It is difficult to conceive of an attack on a sexual organ or “part of the body commonly associated with sexuality” that would not have a significant sexual impact and thereby not be of an inherently sexual nature.

By denying the sexual nature of these acts the Pre-Trial Chamber discourages the ICC Prosecutor from properly characterizing sexual violence in future indictments and precludes appropriate recognition of the nature and scope of harm experienced by male victims of sexual violence. Further, this mischaracterization meant that the Pre-Trial Chamber failed to recognize the full spectrum of harm experienced by the victims—and as likely intended by the perpetrators.

The Kikuyu perpetrators specifically targeted Luo males in an ethnically motivated display of masculine dominance,<sup>123</sup> brutally intending to “make men of boys” by forcibly circumcising them.<sup>124</sup> To understand why the perpetrators selected these victims and chose forcible circumci-

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117 This also seems to indicate that women may be perpetrators; however, an important limitation appears in the definition of “gender,” which excludes transgender or intersexual people who do not identify as cisgender male or cisgender female, and who may be particularly vulnerable targets of violence. See Rome Statute of the ICC, article 7(3).

118 *Prosecutor v. Kenyatta*, Case No. ICC-01/09-02/11, International Criminal Court, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ¶ 265.

119 *Prosecutor v. Kenyatta*, Case No. ICC-01/09-02/11, International Criminal Court, Decision Assigning the Situation in the Republic of Kenya to Pre-Trial Chamber II (Nov. 6, 2009). See also International Human Rights Law Clinic et al., “Promoting Accountability,” 30.

120 *Prosecutor v. Kenyatta*, Case No. ICC-01/09-02/11, International Criminal Court, Decision Assigning the Situation in the Republic of Kenya to Pre-Trial Chamber II (Nov. 6, 2009). See also International Human Rights Law Clinic et al., “Promoting Accountability,” 31.

121 *Prosecutor v. Kenyatta*, Case No. ICC-01/09-02/11, International Criminal Court, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ¶ 265.

122 World Health Organization, “Sexual violence,” 149.

123 Kamau-Rutenberg, “Watu Wazima.”

124 Chinouya, “Ethnic identities,” 502.

sion as the act of violence, it is essential to understand the rites of passage to manhood within these two ethno-political communities:

Unlike the Kikuyu, Luo men do not traditionally get circumcised but have other coming-of-age-rituals. Conversely, male circumcision is an important marker of adulthood in Kikuyu tradition, signifying the transition from boy to man. Within Kenya's political context, circumcision has been appropriated as a symbol of political power and wealth and an assertion of Kikuyu superiority over Luos.<sup>125</sup>

Overlooking either the gendered or the sexual nature of these assaults, or both, as the ICC did, misconceptualizes the nature of the crime, limits a full understanding of the harm experienced, and excludes the victims from accessing justice for all of the crimes committed. While the Kenyan ICC case reflects denial of access to criminal justice, the indirect consequences of misconceptualization may also be material, for example if eligibility for reparations for sexual violence depends on recognition of victimhood on the basis of sexual violence. The lost opportunity is made more poignant because of the ICC's unique capacity as the only permanent international criminal institution to create a robust and enduring body of jurisprudence that would set both an example and a benchmark for domestic prosecutions for sexual violence against males. Given that the ICC's structure allows victims to participate in proceedings through a representative, such prosecutions could also enhance male victims' access to international criminal justice.

Another example is the hybrid War Crimes Chamber in the Court of Bosnia and Herzegovina, which has adjudicated 214 cases related to the conflict of the early 1990s.<sup>126</sup> Of these cases, 16 mention sexual violence against men in the indictment or judgment.<sup>127</sup> Though the chamber has convicted acts of sexual violence against men, none were recognized as sexual violence per se. For example, in *Prosecutor v. Bastah et al.*, despite testimony from a wife that the accused beat "her husband with rifle barrels in the groin region,"<sup>128</sup> the judgment failed to acknowledge the beating specifically targeted the genitals. In several cases the chamber recognized that men had been stripped, often in conjunction with beatings and torture, but did not characterize this as the sexual crime of forced nudity. Instead, forced nudity and genital beatings were variously characterized as acts of persecution, "other inhumane acts,"<sup>129</sup> torture, and intentionally inflicting severe physical or mental pain of suffering—but not as an act of sexual violence.<sup>130</sup>

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125 Kihato, "Go Back and Tell Them Who the Real Men Are!," citing Ahlberg, Beth M., Kezia Njoroge, and Pia Olsson, "We Cannot Be Led by a Child: Forced Male Circumcision during the Post-Election Violence in Kenya" (Uppsala, Sweden: Department of Women's and Children's Health, Uppsala University and Karaborg Institute for Research and Development, 2011).

126 OSCE Mission to Bosnia and Herzegovina, "War Crimes Processing Project."

127 These conclusions are based on available information in English. The most recent case available is from 2011, though not all cases from 2004 to 2011 have been translated and are therefore excluded from this analysis. See the World Courts International Case Law Database or the Washington College of Law War Crimes Research Office database.

128 *Prosecutor v. Bastah et al.*, Case No. X-KR-05/122, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Feb. 4, 2010) p. 71; *Prosecutor v. Savi*, Case No. X-KR-07/478, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Jul. 3, 2009).

129 "Other inhumane acts" is a residual category for criminal conduct not captured by more specific categories of violence. In this case, both forced nudity and genital beatings could have more accurately been prosecuted as sexual violence crimes, committed either as crimes against humanity (if widespread and systematic) or as war crimes (in the context of armed conflict).

130 See *Prosecutor v. Kujundži*, X-KRŽ-07/442, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Oct. 4, 2010); *Prosecutor v. Karaji*, X-KR-07/336, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Apr. 13, 2010); *Prosecutor v. Radi*, Case No. X-KR-05/139, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Feb. 20, 2009); *Prosecutor v. Savi*, Case No. X-KR-07/468, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (July 3, 2009); *Prosecutor v. Fustar*, Case No. X-KR-06/200-1, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Apr. 21, 2008); *Prosecutor v. Paliija*, X-KR-06/290, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Nov. 28, 2007); *Prosecutor v. Bastah et al.*, Case No. X-KR-05/122, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict (Feb. 4, 2010); *Prosecutor v. Andrun*, Case No. X-KR-05/42, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict p.2 Count 5 (Dec. 14, 2009).

Further, sexual violence crimes committed in the absence of physical violence were not charged as sexual violence or rape. Thus, while the judgment of *Prosecutor v. Lazarevic et al.* described forced oral sex between two men, the defendant was convicted only for “inhumane treatment” rather than sexual violence or rape.<sup>131</sup> By failing to recognize or prosecute sexual violence as a crime in and of itself, its conviction depends on accompanying nonsexual forms of violence, which both trivializes sexual violence and perpetuates impunity when it is committed in circumstances where other forms of violence are absent. This also undermines the ICTR’s Akayesu decision of convicting forced nudity for the coerced performance of exercises while naked, *without* the commission of any other overt act of violence,<sup>132</sup> and creates an inconsistency in the jurisprudence between sexual violence committed against women and men.

Beyond the failure to charge acts of sexual violence against men and boys, the pervasive mischaracterization by both prosecutors and judges of sexual violence against males as physical violence is the most salient challenge. Charging and convicting perpetrators for crimes that encompass the sexual nature of victims’ harm will thus depend on correctly identifying sexual acts and ensuring these are charged independently of other physical violations.

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<sup>131</sup> See *Prosecutor v. Lazarevi* , Case No. X-KR-06/243, Bosnia and Herzegovina Criminal Division War Crimes Section, Verdict p. 66 (Sep. 29, 2008).

<sup>132</sup> *Prosecutor v Akayesu*, ICTR 96-4-T, Judgment, ¶ 437.

## 4. Progressive Approaches

Amid the lost opportunities and continuing challenges, there are a few notably progressive and/or successful approaches both to accurately identify male sexual violence victims and provide some form of redress connected to this recognition. The first of these is legally recognizing men as victims of forced marriage, which has only occurred in the Extraordinary Chambers of the Court of Cambodia (ECCC). The gender-neutral language of the indictment for Case 002 at the ECCC paves the way for convictions on the basis of forcing men to marry and rape within the context of forced marriage. It states that “both men and women were forcibly married” under the Khmer Rouge and monitored by cadres to make sure the marriage was consummated;<sup>133</sup> importantly, it does not specify women as the exclusive victims.<sup>134</sup> The Court was scheduled to begin hearing evidence on the charges of forced marriage and rape in August 2016.<sup>135</sup>

Moreover, as a hybrid court allowing for victim participation, the ECCC admitted 779 civil parties under forced marriage, 247 of whom are men.<sup>136</sup> It is unclear how many of these men were forced to marry or were indirect victims, such as sons or brothers. Especially if some of these civil parties are direct victims, this case has the potential to recognize male victims of forced marriage and rape within forced marriage. Further opening the possibility of prosecuting sexual violence against men, the prosecutor has requested the office of investigations to examine allegations of sexual violence outside forced marriage in the fourth and final case, known as Case 004.<sup>137</sup>

Elsewhere, domestic criminal justice failures have in some cases prompted efforts to secure remedies through other legal avenues. One example is a petition filed by eight sexual violence victims, including two men, and four NGOs in the Kenyan Constitutional and Human Rights Court. The petition claims that the Government of Kenya failed to properly protect civilians from sexual violence during the post-election violence, to investigate and prosecute crimes committed in that period, and to provide effective remedies for victims. The claimants seek criminal penalties against government officials, acknowledgement that victims’ rights were violated during the post-election violence, appropriate compensation, the establishment of a database for victims and an independent reparations body.<sup>138</sup> The trial is ongoing.

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133 *Co-Prosecutors v. Nuon, Ieng, Khieu and Leng*, Case No. 002/19-09-2007-ECCC-OCIJ, Extraordinary Chambers in the Courts of Cambodia, Closing Order (Sep. 15, 2010), ¶¶ 1432, 1446, 1447.

134 *Ibid.*, ¶ 842.

135 Extraordinary Chambers in the Courts of Cambodia, “Trial Chamber to Hear Evidence.”

136 Communication by author with Duong Savorn, Director of the GBV Project at the Cambodian Defender’s Project, October 16, 2014.

137 There is concern that ECCC Cases 003 and 004 will not reach the trial stage. From 2009, when investigations opened, until mid-2016, no charges have been made. Case 003 progressed when the one remaining accused appeared before the court in December 2015, and Case 004 was forwarded for final submissions on July 27, 2016. See ECCC, “Case File 00401 Forwarded.”

138 Nudd, “Expert Witness Says.”

Similarly, there are limited examples of victims successfully pursuing tangible reparations as a consequence of recognition. Peru's CVR adopted a more conventional approach: through its plenary session on reparations for female victims of sexual violence, it adopted language that implied male victims could qualify for reparation.<sup>139</sup> Subsequent amendments to the country's Comprehensive Reparations Plan in 2012 meant approximately 280 additional men who had suffered sexual violence during Peru's internal armed conflict were recognized as entitled to reparations; only 22 were eligible prior to the amendment.<sup>140</sup> Reparations under the plan comprise free healthcare and education as well as compensation of 10,000 Peruvian soles (USD \$2,960). While 280 likely represents only a small proportion of the number of male victims, the amendment recognizing their eligibility is nonetheless an encouraging precedent.<sup>141</sup>



A UK-funded memorial in Kenya to Kenyans killed and tortured by British forces during the Mau Mau uprising in the 1950s is part of a 2013 out-of-court settlement by the UK government by which it agreed to pay £20 million (USD \$30 million) in compensation to Mau Mau veterans, at an unveiling ceremony held on September 12, 2015. (nKiruu Photography/jothee/Flickr)

A less conventional path to reparations was pursued against the UK Government on behalf of 5,228 Kenyan detention camp victims during the Mau Mau uprising of the 1950–60s.<sup>142</sup> Significantly, one of the three successful test claimants was a victim of castration while in detention. Four years after filing reparations litigation in the UK courts,<sup>143</sup> Foreign Secretary William

139 Rubio-Marin, "Reparations for Conflict-Related Sexual and Reproductive Violence," 88, citing Ruth Rubio-Marin, "The Gender of Reparations in Transitional Justice," in Ruth Rubio-Marin, ed., *International Center for Transitional Justice, The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (New York: Cambridge University Press, 2009), 98; and Guillerot, "Linking Gender and Reparations in Peru," 158.

140 Cabitza, "Peru."

141 The changes to the 2006 national plan of reparations would add 780 people to the 2,242 already entitled to reparations. Approximately 302 of the 3,022 of victims are male. Michelle Leiby estimates that 24 percent of sexual violence events perpetrated by state armed forces during the civil wars were against males. Leiby, "Wartime Sexual Violence in Guatemala and Peru," 456.

142 Press Association, "UK to Compensate Mau Mau."

143 Reinl, "Kenyans Celebrate Mau Mau Compensation Win."

Hague announced a £19.9 million (USD \$31 million) payment for reparations and costs to vetted claimants as part of an out-of-court settlement.<sup>144</sup> On behalf of the government in Parliament, he also formally acknowledged and expressed regret for the torture and ill treatment of Mau Mau and suspects by the colonial administration.

Widely applauded as a first step in reparations for colonial abuses, the announcement was also significant in its recognition of sexual violence against men as an independent form of torture. However, by avoiding court proceedings, the government was able to avoid admitting liability for violations that would have created a legal precedent for future claims. In addition, both the court case and the announcement perpetuated the trend of mischaracterizing sexual violence as physical, because castration was described as *ill treatment* rather than *sexual violence*.

Looking ahead, there are a few imminent opportunities for reparations programs to recognize and redress sexual violence harms against males. Kenya is poised to offer reparations to victims of the post-election crisis, following President Kenyatta's March 2015 pledge to establish a reparations fund. This, combined with the Kenyan TJRC's recommendation to establish centers to provide medical and counseling services to sexual violence victims, creates an opportunity to ensure male victims' access to reparations as a result of suffering sexual violence.

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144 Press Association, "UK to Compensate Mau Mau;" and Reinl, "Kenyans Celebrate Mau Mau Compensation Win."

## 5. Conclusions

Sexual violence against men and boys is slowly becoming a part of the discussion about justice and accountability for crimes. Despite the fact that this type of violence is pervasive across contexts and causes significant and enduring harm to both victims and their communities, it has typically been ignored or considered as simply physical rather than sexual harm. In addition, sexual violence has often been defined as violence against women, including by service providers, so that male victims are at risk of being excluded from benefits that are available to women victims.

While not consistent across contexts, there is an emerging trend toward recognizing and addressing sexual violence against men and boys. While the South African TRC failed to identify sexual violence as “sexual violence” as such in a consistent manner, it did recognize that male victims of sexual violence had suffered violation. Notwithstanding numerous institutional failures to typify violence accurately or provide gender-sensitive procedures that support men and boys, there are aspects of practices in Peru, Kenya, and Chile that are encouraging. The potential for reparations through court cases is made more real by the successful outcome of the Mau Mau litigation against the UK Government, albeit out-of-court. When reparations programs are limited to truth commission lists of those who testified, as in South Africa and Sierra Leone, and where there is no specific attempt to recognize or reach male victims of sexual violence, many such victims will be ineligible to receive reparations. Inaccurate or incomplete characterization of violations against male victims by truth commissions—or by courts—can exclude them from reparations programs and support structures and/or from an adequate criminal justice response.

Individual perpetrators’ criminal accountability for sexual violence against men and boys can only be achieved through prosecutions. While the rape of men and boys has been charged and prosecuted, the sexualized nature of many forms of violence beyond rape has been largely overlooked or denied by international tribunals, including the ICTY, ICTR, Special Court for Sierra Leone, and the ICC. The ICTY’s Češić case is an exception, setting a progressive example that the ICC declined to follow by refusing to recognize sexual acts other than rape as sexual violence. The ECCC will have the opportunity to extend the jurisprudential understanding of victims of sexual violence when it considers rape in the context of forced marriage.

Greater consciousness about the existence of male victims of sexual violence and their likely vulnerabilities is essential to enhancing their access and participation in processes aimed at achieving acknowledgement, accountability, and reform. Thus, acknowledging and addressing sexual violence against men and boys is a critical component of comprehensive and effective transitional justice.



## 6. Recommendations

There are simple, achievable approaches to overcome many of the existing challenges to responding to the rights and needs of male victims of sexual violence, drawn from lessons learned. The following recommendations are for those involved in formulating policies or implementing initiatives.

### For Truth Commissions and Truth-Seeking Bodies

- 1. Properly conceptualize, identify, record, and code sexual violations other than rape against men and boys so they are not subsumed in other categories, such as mutilation, torture, or beatings.** A significant part of the problem is a lack of information. Broad surveys and mapping of conflicts and repressive regimes conducted by truth-seeking initiatives can help to gauge the scale of sexual violence against men and boys and inform appropriate responses. By excluding male narratives of sexual violence, truth-seeking entities will fall short of the goal of ensuring inclusion of all victims, particularly the most hidden and vulnerable.
- 2. Recognize that males may have been specifically targeted for sexual violence, and that their experiences may differ from, but are just as serious as, the experiences of women and girls.** Accordingly, any focus or chapter of a final report on sexual violence should encompass sexual violence committed against males as well as females. The option of closed hearings should also be offered to male victims of sexual violence.
- 3. Train interviewing staff in techniques that will increase their capacity to elicit the experiences of male victims of sexual violence.** Being able to recognize indicators of sexual violence when engaging with men is a prerequisite to capturing when, how, and why such crimes may have been committed.
- 4. Provide safe spaces for male victims of sexual violence, particularly boys, to participate and testify in truth-seeking processes.** Procedures reflecting these changes may include men-only hearings, guidelines for victim testimony regarding the gender of commissioners present, and a trained victims and witnesses section designed to support men and boys.
- 5. Advocate that male victims of sexual violence be consulted and remembered as part of memorialization efforts and public apologies.**

### For Criminal Justice Actors

1. **Recognize sexually violent acts as inherently sexual in nature, capable of being prosecuted and convicted independently of other physical violations.** This includes recognizing that males forced to perform sexual acts with others are also victims of sexual crimes.
2. **Educate investigators, attorneys, judges, support staff, and others about how to identify, include, and support male victims of sexual violence.** For example, knowing that in many contexts male detainees face a considerable risk of sexual violence should lead to sensitivity to the possibility of harms when investigating abusive detention.

### For Reparations Programs

1. **Use gender-inclusive language in victim registration that does not obscure or reclassify abuses against male victims.** This neutral language should span the lifetime of the endeavor, from the legislation, statute, or mandate through to operations and final decisions or reports.
2. **Ensure the registration and implementation processes treat male and female victims of sexual violence with comparable sensitivity and privacy.**
3. **Design reparative measures to incorporate psychological support appropriate for and available to male victims of sexual violence, and material support that provides income-generating alternatives for men unable to continue with previously held positions.** Recognize, for example, that the psychological effects of trauma may render male victims unable to fulfill traditionally “male” head-of-household responsibilities, like working in the public sphere.

### For Institutional Reform Initiatives

1. **Decriminalize homosexuality to ensure male victims are not afraid to come forward to report violations.** Laws against homosexuality and the social stigma around it put homosexual men and boys at higher risk of abuse, and compound its consequences by making it difficult for male victims of sexual violence to seek and receive medical, legal, or social services.
2. **Adopt gender-neutral language in all legislation and other government policies and programs on sexual violence and related forms of violence.**
3. **Train and educate police and relevant government officials and employees to recognize male victims of sexual violence and to identify the signs and risk factors of such violations.**
4. **Ensure serious consequences are provided for members of security sector forces who commit sexual violations against males.** Given men generally comprise the majority of those detained, they are particularly vulnerable to abuse by detainers. Without punishment for sexual violations, perpetrators are likely to perceive these as less serious than other crimes.

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