

SEEKING JUSTICE FOR MALE VICTIMS OF SEXUAL VIOLENCE IN ARMED CONFLICT

ANJALI MANIVANNAN*

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I. INTRODUCTION

“Modern torture—of men or women—now nearly always encompasses a sexual attack.”¹ Consequently, understanding, investigating, and addressing sexual violence has become imperative in order to enhance our knowledge of violence during armed conflict.² This is important because a post-conflict society must confront *all* wartime human rights violations through transitional justice mechanisms, such as trials and truth commissions, in order to progress toward a peaceful country. Wartime sexual violence can involve different acts, purposes, perpetrators, and victims that should be included in legal definitions and truth commission mandates. To this end, we must improve our understanding of all forms of sexual violence so we can comprehensively address sex crimes and achieve justice for victims.³

Acts of sexual violence against specific groups—including men, women, and transgendered persons—are experienced

1. Jamie O’Connell, *Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?*, 46 HARV. INT’L L.J. 295, 312 (2005) (quoting Telephone Interview with Jerry Gray, then director, Center for Justice and Accountability (Apr. 26, 2000)), available at http://www.harvardilj.org/wp-content/uploads/2011/03/HILJ_46-2_OConnell.pdf. See also MEGAN BASTICK, KARIN GRIMM & RAHEL KUNZ, GENEVA CTR. FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *SEXUAL VIOLENCE IN ARMED CONFLICT: GLOBAL OVERVIEW AND IMPLICATIONS FOR THE SECURITY SECTOR* 9–10 (2007), available at http://www.peacewomen.org/assets/file/Resources/NGO/vaw_sexualviolenceandconflict_dcaf_2007.pdf (describing the scope of conflict-related sexual violence); Elisabeth Jean Wood, *Variation in Sexual Violence During War*, 34 POL. SOC’Y 307, 307–08 (2006) (explaining that the extent and form of sexual violence varies in different conflicts).

2. Pamela Scully, *Expanding the Concept of Gender-Based Violence in Peacebuilding and Development*, 5 J. PEACEBUILDING & DEV. 21, 30 (2010), available at <http://dx.doi.org/10.1080/15423166.2010.735076776752>.

3. Jelke Boesten & Melissa Fisher, *Sexual Violence and Justice in Postconflict Peru*, U.S. INST. OF PEACE SPECIAL REP. 310, June 2012, at 1, 1, available at <http://www.usip.org/files/resources/SR310.pdf>; Kirsten Campbell, *The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia*, 1 INT’L J. TRANSITIONAL JUST. 411, 428 (2007), available at <http://ijtj.oxfordjournals.org/content/1/3/411.full.pdf>.

differently, rendering sexual violence a gendered experience.⁴ To effectively address wartime sexual violence, it is crucial to fully understand the full scope of such violence by looking at both sexual violence against women and sexual violence against men.⁵ Additionally, research has indicated a nexus between sexual violence in armed conflict and conceptualizations of masculinity.⁶ This has further illuminated the gray area between masculinity and femininity, which are not polar opposites on the gender spectrum. Instead, power hierarchies exist within both masculine and feminine paradigms, and this explains the existence of female-on-female, female-on-male, and male-on-male sexual violence, in addition to male-on-female sexual violence.⁷ Accordingly, improving transitional justice practices may positively transform gender norms in addition to addressing wartime abuses.

Societies undertake transitional justice processes in order to address mass atrocities by prosecuting perpetrators, organizing truth-telling initiatives, providing reparations, creating memorials, and promoting institutional reform, among other ac-

4. Although this paper will not discuss sexual violence against members of the LGBTQ community, a complete understanding of sexual violence in armed conflict necessitates further research into their gendered experiences as well. See Campbell, *supra* note 3, at 425 (highlighting the impact of gender and gendered practices before the International Criminal Tribunal for the Former Yugoslavia (ICTY)).

5. Population-based investigations into wartime sexual violence indicate that a large proportion of perpetrators of rape are the victim's intimate partner or acquaintance or a non-combatant stranger. Since it is unclear how many domestic violence incidents involve male-on-male sexual violence, I will restrict my analysis to sexual violence perpetrated by armed parties to the conflict. Dara Kay Cohen, Amelia Hoover Green & Elisabeth Jean Wood, *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward*, U.S. INST. OF PEACE SPECIAL REP. 323, February 2013, at 1, 7, available at <http://www.usip.org/sites/default/files/wartime%20sexual%20violence.pdf>; Dustin A. Lewis, *Unrecognized Victims: Sexual Violence Against Men in Conflict Settings Under International Law*, 27 WIS. INT'L L.J. 1, 4 (2009), available at <http://hosted.law.wisc.edu/wordpress/wilj/files/2012/02/lewis.pdf>.

6. Maria Eriksson Baaz & Maria Stern, *Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)*, 53 INT'L STUD. Q. 495, 499 (2009), available at <http://doi.wiley.com/10.1111/j.1468-2478.2009.00543.x>.

7. See Sandesh Sivakumaran, *Male/Male Rape and the "Taint" of Homosexuality*, 27 HUM. RTS. Q. 1274, 1275, 1282 n.31 (2005) [hereinafter *Male/Male Rape*], available at http://muse.jhu.edu/journals/human_rights_quarterly/v027/27.4sivakumaran.html.

tivities.⁸ Unfortunately, such processes have not adequately addressed the role of the victim or his or her experience of sexual violence. Instead, victims are frequently treated as mere sources of information: they are part of the prosecution's evidence in trials, and truth commissions downplay their individual experiences in favor of societal reconciliation.⁹ Although neither trials nor truth commissions are psychosocial support centers, there is a therapeutic dimension of transitional justice with respect to individual healing. Thus, transitional justice institutions and processes must address the mental state of victims because highly emotional events like an experience of sexual violence tremendously affect feelings of self and integrity.¹⁰ Unfortunately, neither trials nor truth commissions typically consult victims on their needs, their goals for transitional justice, or the type of justice process they want.¹¹ However, since victim satisfaction seems to be higher when victims' expectations align with the official findings or "truth" reached by a trial or truth commission, their input is important such that their expectations of justice are more realistic.¹²

In this Note, I will examine the significance and the necessity of addressing wartime sexual violence against men through transitional justice mechanisms, which have remained relatively unexplored in scholarship and practice.¹³ I have re-

8. Ari S. Bassin & Paul van Zyl, *The Story of Samuel Hinga Norman in Sierra Leone: Can Truth Commissions and Criminal Prosecutions Coexist After Conflict?*, in HUMAN RIGHTS ADVOCACY STORIES 229, 250 (Deena R. Hurwitz et al. eds., 2009).

9. Jonathan Doak, *The Therapeutic Dimension of Transitional Justice: Emotional Repair and Victim Satisfaction in International Trials and Truth Commissions*, 11 INT'L CRIM. L. REV. 263, 264 (2011), available at <http://nyu.library.ingentaconnect.com/content/mnp/icla/2011/00000011/00000002/art00004>. But see *Participation of victims in proceedings*, INT'L CRIM. COURT, http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/victims/participation/Pages/participation%20of%20victims%20in%20proceedings.aspx (last visited Mar. 25, 2013) (providing an overview of the ways that the International Criminal Court empowers victims to participate in court proceedings).

10. Doak, *supra* note 9, at 267.

11. *Id.* at 264.

12. *Id.* at 279.

13. Because sexual violence against children implicates many different issues than sexual violence against adults, I am limiting the scope of this paper to adult male victims and will not discuss sexual violence against boys. In addition, unless otherwise specified, the sexual violence incidents dis-

stricted my analysis to international trials and truth commissions, as these justice mechanisms play significant roles in many transitional contexts.¹⁴ I will also supplement my analysis by taking a victim-centric approach in order to explore the therapeutic aspects of trials and truth commissions.

In Part II, I will characterize acts that constitute sexual violence against men, and in Part III, I will describe the use of sexual violence against men as a weapon of war. In Part IV, I will discuss the under-reporting, under-recognition, and under-punishment of sexual violence against men. Since these obstacles are interdependent, it is critical to treat each of them both separately and as part of an interconnected, three-pronged issue. In Part V, I will analyze the effectiveness of trials and truth commissions in addressing the under-reporting, under-recognition, and under-punishment of sexual violence against men by considering victim needs, victim narration, and accountability. I will evaluate trials and truth commissions more generally and provide recommendations toward establishing best practices in Part VI.

Finally, in Part VII, I will argue that trials and truth commissions should communicate with each other and function together in order to adequately address sexual violence against men by respectively providing criminal punishment to combat impunity and narrative freedom to help expose crimes. I will propose that this coordinative system should be created using a victim-centric approach that is supplemented with psychosocial remedies in order to address victims' long-term psychological, social, and reintegration needs. Moreover, I will contend that victim-centric justice processes are necessary for

cussed here are male-on-male, as the majority of sexual violence against men is perpetrated by men—not women. However, it must be reiterated that female-on-male sexual violence takes place in and out of armed conflict situations as well.

14. Bassin & van Zyl, *supra* note 8, at 250. While other forms of justice exist, such as Rwanda's gacaca court system, these are less standardized community justice mechanisms and will not be discussed here. The gacaca court system is a method of transitional justice that relies on community traditions and brings community members together in order to discover truths and punish perpetrators of atrocities during the Rwandan genocide. Most scholarly authors have found that gacaca courts are largely unsuited for sexual violence cases. See, e.g., Emily Amick, *Trying International Crimes on Local Laws: The Adjudication of Genocide Sexual Violence Crimes in Rwanda's Gacaca Courts*, 20 COLUM. J. GENDER & L. 1 (2011).

sexual violence victims—particularly male victims who have been overlooked for too long—in order to fulfill the goals of transitional justice. Male experiences of sexual violence and their attendant suffering must be recognized and redressed according to their wants and needs.

II. CHARACTERIZATION OF SEXUAL VIOLENCE AGAINST MEN

Attacks based on gender, including sexual violence, can be inflicted on either sex. Wartime sexual violence is strategically perpetrated against both women and men as an exercise of power to inflict pain and fear on individuals as well as to humiliate the enemy group.¹⁵ It can terrorize and traumatize males as much as females, and sexual violence against either gender affects the entire community.¹⁶ Soldiers can sexually dominate the enemy directly, by attacking a particular person, or indirectly, by making a person watch an act of sexual violence against another.¹⁷

Sexual violence against men attacks a man's personal and social identity, leaving long-lasting psychological consequences for the victim.¹⁸ Alongside physical consequences of sexual violence, survivors have experienced post-traumatic stress disorder and psychological symptoms including intense feelings of shame, guilt, anger, anxiety, and emotional desensitization.¹⁹ Male victims may feel even more stigmatized and victimized than females in light of hyper-masculinized conflict situations, so consideration of sexual violence against men is necessary in

15. ROMI SIGSWORTH, CTR. FOR THE STUDY OF VIOLENCE & RECONCILIATION, GENDER-BASED VIOLENCE IN TRANSITION 10 (Sept. 2008), available at <http://www.csvt.org.za/docs/genderbased1108.pdf>.

16. PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: FACING THE CHALLENGE OF TRUTH COMMISSIONS 85 (2010).

17. Maite Vermeulen, *Hidden Victims: The story of sexual violence against men in armed conflict*, E-INT'L REL. (Sept. 4, 2011), <http://www.e-ir.info/2011/09/04/hidden-victims-the-story-of-sexual-violence-against-men-in-armed-conflict/>.

18. Wynne Russell, *Sexual Violence Against Men and Boys*, 27 FORCED MIGRATION REV. 22, 23 (2007), available at <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR27/12.pdf>.

19. Pauline Oosterhoff, Prisca Zwanikken & Evert Ketting, *Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret*, REPROD. HEALTH MATTERS, May 2004, at 68, 70–71, available at <http://www.jstor.org/stable/10.2307/3775973>.

order to facilitate male victims' healing processes.²⁰ Moving forward, addressing sexual violence against men will combat perpetrator impunity and victim stigmatization in both war and peacetime.

Patriarchy privileges men over women and also certain men over other men and women.²¹ These gendered notions carry over from peacetime to wartime, such that soldiers dominate the enemy individually and collectively along gendered lines through acts of sexual violence.²² Since victims of sexual abuse understand themselves in different ways than those who have never been abused, we can enrich our knowledge of masculinity and gender by drawing on the male experience of sexual violence.²³ Transitional justice can inform and alter the patriarchal framework regarding gender, sex, and violence. These norms greatly affect impunity by perpetuating prevalent notions of masculinity and men as aggressors. Thus, considering sexual violence against both women and men, which may subvert the aforementioned gendered notions.²⁴ For example, recognizing sexual violence against men would break down the stereotype that women are always victims²⁵ and men are

20. See *infra* text accompanying notes 65–67.

21. Tina A. Sorensen, *Compromised Masculinities: Issues Surrounding Rape and Sexual Torture of Men in Conflict Situations* 24 (2011) (unpublished master's thesis, University of Manitoba), available at http://mspace.lib.umanitoba.ca/bitstream/1993/4881/1/Sorensen_Tina_M.A.%20Sociology%20Thesis.pdf.

22. Lewis, *supra* note 5, at 7; Wood, *supra* note 1, at 326.

23. Torbjørn Herlof Andersen, *Speaking About the Unspeakable: Sexually Abused Men Striving Toward Language*, AM. J. MEN'S HEALTH, Mar. 2008, at 25, 35, available at <http://jmh.sagepub.com/content/2/1/25.full.pdf>.

24. It should be noted that while patriarchy is a necessary condition for widespread sexual violence, it is not a sufficient one. In fact, many armed groups do not commit any acts of sexual violence despite their strong connections to patriarchal frameworks. For example, subgroups within Peru's Shining Path, rebels in El Salvador, and the Liberation Tigers of Tamil Eelam in Sri Lanka purposefully limited the commission of sexual violence; meanwhile, during 2003–04 there were more allegations of sex crimes than killings in the Central African Republic. Cohen et al., *supra* note 5, at 5–6, 8.

25. Women in armed forces become masculinized, which can explain how women can commit violence—even sex crimes—just like their male counterparts. For example, while female Congolese soldiers are frequently sexually harassed by male soldiers, they are rarely raped. This is likely because male soldiers have masculinized them and do not want to rape a masculinized person. Baaz & Stern, *supra* note 6, at 499, 505, 509. Moreover, females may perpetrate sexual violence in order to conform to the same

always perpetrators.²⁶ Moreover, if the male experience of sexual violence is validated, this may help engage men with issues related to gender-based and sexual violence against both women and men and make them partners in efforts to eliminate forms of violence against women as well.²⁷

It is important to emphasize that forms of sexual violence against men are extremely diverse. Popular conception dictates that sexual violence against men will be analogous to the experiences of women and will take the form of penetrative rape. However, sexual violence against women and men have many forms. Acts of sexual violence against men include oral and anal rape by perpetrators or “enforced rape” between victims, sometimes including family members or the dead; forced fellatio on perpetrators or other victims; enforced sterilization, including castrations; sexual slavery; forced masturbation; enforced nudity; and other violence to the genitals, such as genital beatings.²⁸ In fact, many instances of sexual violence against men are not between perpetrator and victim but involve the perpetrator forcing victims to sexually abuse each other.²⁹ When males are forced to commit sexual violence against each other, they are further violated since the act makes them both a victim to the enemy’s will and a victimizer of members of their own community. Moreover, these enforced rapes violate “private space, the sanctity of family relationships, and other cultural norms,” potentially causing greater trauma for dual victim-perpetrators than exclusively victimized men.³⁰ If sexual violence against men is reduced to rape, investigators may mischaracterize violence in entire

gender norms of masculinity as their male peers. Thus, the existence of female perpetrators also subverts conventional gender norms and this issue—while beyond the scope of my paper—should be explored in order to inform transitional justice processes. Cohen et al., *supra* note 5, at 4–5.

26. Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 *EUR. J. INT’L L.* 253, 257–58 (2007) [hereinafter *Sexual Violence Against Men in Armed Conflict*], available at <http://ejil.oxfordjournals.org/content/18/2/253.full.pdf>; Sorensen, *supra* note 21, at 74.

27. R. Charli Carpenter, *Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations*, 37 *SECURITY DIALOGUE* 83, 99 (2006), available at <http://sdi.sagepub.com/content/37/1/83.full.pdf>.

28. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 263.

29. Campbell, *supra* note 3, at 428.

30. Males who are forced to sexually assault others are considered by some to be only a perpetrator; this paper treats them as victims since they

camps, villages, and regions where testimony indicates the occurrence of non-penetrative acts of sexual violence.³¹ This would ignore numerous victims and their stories, thus painting an incomplete picture of the conflict while also failing to fulfill truth-telling goals of transitional justice.

The absence of statistics on male victimization does not simply follow from a lack of data; rather, sexual violence against men is often coded under a different category, such as torture, thus hiding the sexual nature of those offenses.³² For instance, recoding previous work from Latin American Truth Commissions yielded a significant percentage of male victims that were undiscovered because the coding conformed to overly-specific definitions that excluded male experiences of sexual violence.³³ Men, unlike women, are not frequent targets of rape but instead are victims of sexual humiliation, genital mutilation, and other forms of sexual torture, which are frequently coded as non-sex crimes.³⁴ This miscoding obscures crimes such as blunt trauma to the male genitals, which is a prevalent form of violence against men during war but is

were forced—sometimes violently—by the enemy to commit these crimes. Carpenter, *supra* note 27, at 96; Sorensen, *supra* note 21, at 11.

31. Eric Stener Carlson, *The Hidden Prevalence of Male Sexual Assault During War: Observations on Blunt Trauma to the Male Genitals*, BRIT. J. CRIMINOLOGY, Apr. 2005, at 16, 18, available at <http://bjc.oxfordjournals.org/content/46/1/16.full.pdf>.

32. “Many people have difficulty calling a spade a spade” because gender norms dictate that males cannot be victims of rape, relating back to under-reporting and under-recognition. See Augusta DelZotto & Adam Jones, *Male-on-Male Sexual Violence in Wartime: Human Rights’ Last Taboo?*, Paper Presentation at the Annual Convention of the International Studies Association (Mar. 2002) (quoting RICHIE J. McMULLEN, *MALE RAPE: BREAKING THE SILENCE ON THE LAST TABOO* 9 (1990)), available at <http://adamjones.freeseervers.com/malerape.htm>.

33. The Peruvian Truth and Reconciliation Commission coded male sexual torture as “torture” but female sexual torture as “sexual violence.” An analysis of original testimonies indicated that 22% of sexual violence victims were men, whereas the truth commission found that only 2% were men. Cohen et al., *supra* note 5, at 10.

34. Carlson, *supra* note 31, at 18; Alejandra Azuero Quijano & Jocelyn Kelly, *A Tale of Two Conflicts: An Unexpected Reading of Sexual Violence in Conflict through the Cases of Colombia and Democratic Republic of the Congo*, in UNDERSTANDING AND PROVING INTERNATIONAL SEX CRIMES 437, 482 (Morten Bergsmo, Alf Butenschøn Skre & Elisabeth J. Wood eds., 2012), available at http://www.fichl.org/fileadmin/fichl/documents/FICHL_12_Web.pdf.

not typically considered to be sexual violence.³⁵ Thus, while our understanding of sexual violence against women has evolved to encompass certain acts of torture of women, unfortunately, torture of a sexual nature of men has not been similarly understood to constitute sexual violence.³⁶ This impedes progress toward identifying sex crimes because when sexual violence is reported as a non-sex crime, patterns of violence are misrepresented.

III. SEXUAL VIOLENCE AGAINST MEN AS A WEAPON OF WAR

The use of sexual violence against men is a widespread and recurrent war tactic that has been reported in at least 25 conflicts.³⁷ Between 2007 and 2009, sexual violence against men was reported in armed conflicts in the Central African Republic, Chechnya, the Democratic Republic of the Congo, Guatemala, India, Iraq, Rwanda, Sri Lanka, Sudan, and the former Yugoslavia.³⁸ More recently, in February 2013, the U.N.

35. Carlson, *supra* note 31, at 20. Genital and sexual mutilation has also been overlooked as sexual violence at the ICTY, which has characterized it as “torture” or “degrading treatment,” and at the Peruvian Truth and Reconciliation Commission as “torture.” See Carpenter, *supra* note 27, at 95; Michelle Leiby, *The Promise and Peril of Primary Documents: Documenting Wartime Sexual Violence in El Salvador and Peru*, in UNDERSTANDING AND PROVING INTERNATIONAL SEX CRIMES, *supra* note 34, at 315, 344.

36. Compare Magali Maystre & Nicole Rangel, *Analytical and Comparative Digest of the ICTY, ICTR and SCSL Jurisprudence on International Sex Crimes*, in UNDERSTANDING AND PROVING INTERNATIONAL SEX CRIMES, *supra* note 34, at 511, 528–35 (summarizing Prosecutor v. Kunarac *et al.*, Case No. IT-96-23 & 23/1 (Int’l Crim. Trib. for the Former Yugoslavia), where defendants were convicted of rape (of females) as a crime against humanity), with Oosterhoff *et al.*, *supra* note 19, at 68–69, 72 (discussing the inattention paid to sexual torture of men and the lack of political will to prosecute sexual torture as sexual violence).

37. The Ancient Chinese, Egyptian, Greek, Norse, and Persian armies perpetrated acts of sexual violence against men. Much more recently, sexual violence against men has also occurred in armed conflicts in Argentina, Burundi, the Central African Republic, Chechnya, Chile, the Democratic Republic of the Congo, El Salvador, Greece, Guatemala, Iraq, Kenya, Kuwait, Liberia, Northern Ireland, Rwanda, Sierra Leone, South Africa, Sri Lanka, Sudan, Turkey, Uganda, the former Yugoslavia, and Zimbabwe. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 257–58; Vermeulen, *supra* note 17.

38. Sandesh Sivakumaran, *Lost in Translation: UN Responses to Sexual Violence Against Men and Boys in Situations of Armed Conflict*, 92 INT’L REV. OF THE RED CROSS 259, 264 (2010) [hereinafter *Lost in Translation*], available at

Commission of Inquiry on Syria reported the perpetration of sexual violence against men in detention centers.³⁹ Sexual violence against men may be even more widespread; unfortunately, due to the under-reporting of these crimes, statistics are limited.⁴⁰

Male rape by perpetrators was reported in Iraq, South Africa, Sri Lanka, and the former Yugoslavia, where enforced rape between victims occurred as well.⁴¹ Genital violence such as beatings and electroshock to the genital area was observed in Bosnia, Kosovo, Northern Ireland, and Sri Lanka; enforced nudity, frequently accompanied by sexually-based threats, was reported in Abu Ghraib and Kosovo; enforced masturbation between victims or with perpetrators was reported in Abu Ghraib and Sri Lanka; and enforced sterilization or sexual mutilations, namely castrations, were seen in the former Yugoslavia.⁴²

Dominance, power, and gender hierarchies play important roles in both male-on-female and male-on-male sexual violence.⁴³ Accordingly, the three usual motivations for perpetrating sexual violence against men—emasculatation or feminization, homosexualization, and prevention of procreation—integrate those hierarchies.⁴⁴ In particular, the motivations related to emasculatation and feminization can inform feminist discourse and improve our understanding of gender and gender-based violence during armed conflict.⁴⁵ Perpetrators use sexual violence to try to symbolically and physically transform “the individual body into the social body” and destroy the

<http://www.icrc.org/eng/assets/files/other/irrc-877-sivakumaran.pdf>; see, e.g., BASTICK ET AL., *supra* note 1, at 55, 77, 97, 117, 119, 125 (describing the nature of sexual violence reported in armed conflicts in Rwanda, Guatemala, India, and the former Yugoslavia).

39. U.N. Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, ¶¶ 5, 11–13, U.N. Doc. A/HRC/22/59 Annex IX (Feb. 5, 2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A.HRC.22.59_en.pdf.

40. See *infra* Part IV.A for further discussion on under-reporting.

41. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 263–64.

42. *Id.* at 265–67.

43. See *Male/Male Rape*, *supra* note 7, at 1282.

44. See generally *Sexual Violence Against Men in Armed Conflict*, *supra* note 26 (connecting the motivations for committing acts of sexual violence against men to gendered power dynamics).

45. *Male/Male Rape*, *supra* note 7, at 1282.

group.⁴⁶ The first category, emasculation, occurs because sexual violence against men can reduce the targeted man's status to that of a "de facto female,"⁴⁷ which in turn sends the message that his community is "lesser" as well.⁴⁸ Male victims face the unique stigma of the second category of homosexualization when they question their sexuality following an episode of sexual violence, mistakenly believing that only homosexual men can be victims of and would be sexually aroused during rape or other sexual assault.⁴⁹ Finally, the third motivation for committing sexual violence is to prevent a group from procreating, and as such, its use becomes more salient in religious or ethnic conflicts. Procreation functions can be attacked in different ways, including by beating or otherwise mutilating a man's genitals.⁵⁰

IV. OBSTACLES TO ACHIEVING JUSTICE FOR MALE VICTIMS

Obstacles to achieving justice exist for female as well as male victims of sexual violence; however, arguably, male victims must overcome greater hurdles than females. In fact, many of the problems faced by male victims can be considered particularly egregious manifestations of the issues involved in addressing sexual violence against women. As a preliminary matter, stereotypes that men cannot be victims of sexual violence are commonplace, even among non-governmental orga-

46. Campbell, *supra* note 3, at 429 (quoting Maria Olujic, *Embodiment of Terror: Gendered Violence in Peacetime and Wartime in Croatia and Bosnia-Herzegovina*, 12 *MED. ANTHROPOLOGY Q.* 43 (1998)).

47. One male survivor from the Democratic Republic of the Congo said that the perpetrators kept saying "you're no longer a man, you are going to become one of our women" while raping him. He has been unable to have sexual relations since his experience of sexual violence. *Democratic Republic of Congo: Mass rape—time for remedies*, AMNESTY INT'L, <http://www.amnesty.org/es/library/asset/AFR62/018/2004/es/63b10028-d57f-11dd-bb24-1fb85fe8fa05/afr620182004en.html> (last visited Oct. 30, 2013).

48. DelZotto & Jones, *supra* note 32; *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 275.

49. Power corresponds to masculinity, which in turn characterizes *heterosexual* males. Power hierarchies allow the perpetrator to maintain his heterosexual masculinity while the victim becomes homosexualized. They also homosexualize both victim parties in an enforced rape as the third party, such as a soldier, is in control—not the man forced to rape the other man. *Male/Male Rape*, *supra* note 7, at 1290–91, 1299.

50. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 273.

nizations (NGOs) and intergovernmental organizations (IGOs).⁵¹ These stereotypes further stigmatize sexual violence against men, making it even harder for male victims to speak honestly about their experiences.⁵² Consequently, victims do not report the abuse or seek help, which problematically perpetuates revictimization.⁵³

The evidence of sexual violence against men is more than anecdotal; however, many harms are obscured due to difficulties that fact-finders have in recognizing and parsing signs by victims. For instance, men may tend to describe what they witnessed—as opposed to experienced—with respect to incidents of sexual violence.⁵⁴ Unless investigators press for more information, they may not be able to unearth firsthand experiences that male victims are reluctant to share. Additionally, as previously stated, finding evidence is rendered more difficult because fact-finding bodies will frequently classify stories of sexual violence against men as non-sexual torture instead of as sexual violence.⁵⁵

Although the precise definition of gender-based violence is in dispute, definitions in international criminal law,⁵⁶ transi-

51. NGO and IGO reports have discussed, for example, castration as mutilation and male rape as torture instead of as sexual violence against men. *Id.* at 256.

52. *Id.* at 270.

53. Because they cannot talk to anyone due to stigmatization or get help due to under-recognition, in a sense, male victims are revictimized. Al Jazeera English, *The silent male victims of rape*, AL JAZEERA, <http://www.aljazeera.com/programmes/insidestory/2011/07/2011728101626315380.html>.

54. Many women prioritize crimes they have witnessed against male relatives over any violence they have personally experienced. There are a variety of reasons for this, including the woman's discomfort with telling her story, her belief that her experience was not politically significant, or her belief that her experience was less important than that of her male relative. It is possible that men may have similar feelings regarding prioritization and discomfort that may impact their discussion of crimes as a witness and not as a victim. VASUKI NESIAH ET AL., INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, TRUTH COMMISSIONS AND GENDER: PRINCIPLES, POLICIES, AND PROCEDURES 30 (July 2006), available at https://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf; SIGSWORTH, *supra* note 15, at 17; Oosterhoff et al., *supra* note 19, at 74.

55. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 254.

56. The statute of the ICTY and International Criminal Tribunal for Rwanda (ICTR) explicitly mention the sex crime of rape as a crime against humanity. The ICTR goes further to include “[o]utrages upon personal dig-

tional justice mechanisms,⁵⁷ and international humanitarian law⁵⁸ tend to conform to gender stereotypes that exclude male victims and preserve norms about men as perpetrators and women as victims.⁵⁹ Sexual violence is often conflated with gen-

nity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault” as war crimes. However, neither the ICTY nor the ICTR uses umbrella terms like “gender-based violence” or “sexual violence.” Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 5(g) (Sept. 2009), http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf; Statute of the International Criminal Tribunal for Rwanda art. 3(g), art. 4(e) (Nov. 8, 1994), *available at* <http://www.unict.org/Portals/0/English%5CLegal%5CStatute%5C2010.pdf>. However, the International Criminal Court (ICC) has adopted a significantly more encompassing definition of sexual violence as a crime involving “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence.” Art. 7, which delineates crimes against humanity, has the broadest definition of sexual violence as any other crime of comparable gravity to the enumerated acts. Rome Statute of the International Criminal Court, art. 7, July 17, 1998 2187 U.N.T.S. 38544, *available at* <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>. The statute of the Special Court for Sierra Leone and the Rome Statute have similar language regarding the definition of sex crimes. Statute of the Special Court for Sierra Leone, art. 2(g), 3(e) (Aug. 14, 2000), <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnD1MJeEw%3d&tabid=176>.

57. While the mandates of truth commissions such as the Truth and Reconciliation Commission for Sierra Leone as well as the one for Liberia use broad language of “sexual abuse” and “sexual violations,” respectively, Liberia’s mandate singles out the experiences of women and children as most in need of attention. *See, e.g.*, The Truth and Reconciliation Commission Act 2000, § 6(b) (Feb. 2000), <http://www.usip.org/files/file/resources/collections/commissions/SeirraLeone-Charter.pdf>; Truth and Reconciliation Commission of Liberia Mandate, art. VII, § 26(f) (May 12, 2005), <http://trcofliberia.org/about/trc-mandate>.

58. Despite the exclusion of sex crimes from the Geneva Conventions, the prohibition against “rape and other forms of sexual violence” is a norm of customary international law. While this prohibition applies equally to male and female victims, nearly all the rule’s discussion focused solely on women and children as victims. *See* International Committee of the Red Cross, Customary IHL ch. 32, rule 93 (2005), *available at* http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule93 (emphasizing the need to protect and address the problem of sexual violence against women and children).

59. Scully, *supra* note 2, at 27–28. But see *In Numbers*, U.N. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (2011), <http://www.icty.org/sid/10586> (last updated 2013) (showing Biljana Plavšić among prisoners); Josephine Hazeley, *Profile: Female Rwandan killer Pauline Nyiramasuhuko*, BBC NEWS (June 24, 2011), <http://www.bbc.co.uk/news/>

der-based violence, and both of these issues are often understood as pertaining only to women.⁶⁰ Reducing gender-based violence to *sexual* violence against women also propagates and exacerbates stereotyped gender roles, which may in turn obscure non-sexual harms against women such as violations of economic and social rights.⁶¹ Thus, a broad conception of gender-based violence that does not reduce violence against women to sexual violence or conflate violence against men with non-sexual attacks would be extremely useful regarding the investigation of all crimes against all genders. Fortunately, organizations have recently published guidelines regarding sexual violence against men—albeit outside the transitional justice context—that indicate that gender-based violence targets women and men.⁶² Developments such as this provide hopeful prospects for achieving victim-sensitive justice for male victims of sexual violence.

However, before justice can be achieved, we must parse the main reasons why sexual violence against men has been

world-africa-13907693 (discussing Biljana Plavšić and Pauline Nyiramasuhuko). Plavšić and Nyiramasuhuko are the only women who have been convicted by international tribunals—respectively, at the ICTY and the ICTR—for authorizing acts of rape and sexual violence. Additionally, there have been reports of female perpetrators of sexual violence in the Democratic Republic of the Congo (against women and men), in Haiti (against women), and at Abu Ghraib (against men). Cohen et al., *supra* note 5, at 5.

60. Scully, *supra* note 2, at 27–28; see Vermeulen, *supra* note 17 (discussing why the male experience of sexual violence is largely ignored).

61. In fact, sexual violence is usually not the most frequent or prevalent form of violence experienced by women. Scully, *supra* note 2, at 26.

62. See, e.g., U.N. High Comm’r for Refugees, *Working with Men and Boy Survivors of Sexual and Gender-based Violence in Forced Displacement* (2012), available at <http://www.refworld.org/pdfid/5006aa262.pdf> (focusing specifically on how to identify and help male victims of sexual violence and also emphasizing that rape and sexual violence violate international human rights regardless of the victims’ sex or gender). See also, e.g., Inter-Agency Standing Committee, *Guidelines for Gender-based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies* 7–8 (Sept. 2005), available at <http://gbvaor.net/wp-content/uploads/2012/10/Guidelines-for-Gender-based-Violence-Interventions-in-Humanitarian-Settings-IASC-2005-ENGLISH.pdf>; U.S. DEP’T OF STATE & U.S. AGENCY FOR INT’L DEV., *United States’ Strategic Approach to Preventing and Responding to Gender-based Violence* 6, 41 (2012), available at <http://www.state.gov/documents/organization/196468.pdf> (noting that sexual violence against men occurs in both peacetime and wartime and also discussing the importance of understanding this type of violence).

ignored: under-reporting by male victims, under-recognition by social institutions, and under-punishment of perpetrators.⁶³ Next, I will further discuss these obstacles through a victim-centric lens, as it is crucial for people involved in transitional justice processes to understand how they affect victims themselves.

A. *Under-reporting*

Shame, confusion, guilt, fear, and stigma contribute to under-reporting by male victims. Male survivors, like female survivors, may be ostracized by their community and family and even blamed for what happened to them.⁶⁴ The sense of shame or responsibility following an incident of sexual violence can push victims to stay silent for fear of ostracizing themselves or alienating their community.⁶⁵ In addition, men identify even more strongly with masculine stereotypes of man as the aggressor during wartime and want to project that image—not one of victimization.⁶⁶ When violence threatens the male identity as “strong, capable, virile, or heterosexual,”⁶⁷ men are less likely to report the sexual violence or describe it as such. Sexual violence against men can greatly reduce—if not completely destroy—the man’s role as protector, changing the perceptions of his family and community.⁶⁸ Because of the aforementioned concerns, many male survivors of sexual vio-

63. Vermeulen, *supra* note 17.

64. Lewis, *supra* note 5, at 15–16.

65. O’Connell, *supra* note 1, at 310. One Congolese male rape victim said, “I feel that people in the community look down on me. When I talk to other men, they look at me as if I’m worthless now.” *Democratic Republic of Congo: Mass rape—time for remedies*, *supra* note 47. Another Congolese male rape victim expressed his desire to hide his ordeal from his brother: “I fear he will say: ‘Now, my brother is not a man.’” Will Storr, *The rape of men*, *THE GUARDIAN* (July 16, 2011), <http://www.theguardian.com/society/2011/jul/17/the-rape-of-men>.

66. Andersen, *supra* note 23, at 25; *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 255.

67. A study based on interviews with soldiers in the Democratic Republic of the Congo illustrates that soldiers venerate masculine stereotypes during armed conflict, believing the heterosexual virile male fighter is the paradigm of masculinity. Baaz & Stern, *supra* note 6, at 503, 505.

68. “[Wives of Congolese male rape victims] ask me: ‘So now how am I going to live with him? As what? Is this still a husband? Is it a wife?’ They ask, ‘If he can be raped, who is protecting me?’” Storr, *supra* note 65 (quoting an NGO worker).

lence do not seek out available therapy, self-help groups, or psychological support centers to engage in dialogue and report their experience.⁶⁹

Under-reporting by male victims can also result from an inability to perceive their experience as *sexual* violence instead of general physical abuse or an inability to properly articulate the event due to inadequate vocabulary with which to discuss sexual violence against men. This creates the illusion that sexual violence rarely—if ever—happens to men.⁷⁰ In fact, there is often no language for men to describe their experiences of sexual violence since they are socialized to think that men cannot be victimized and to expect only women to be violated sexually.⁷¹ From a gender perspective, if a male victim were able to recognize his experience of sexual violence as *sexual* or *gendered*, this may subvert ingrained masculine stereotypes of men as aggressors—not victims—and may encourage him to report the incident. In turn, his choice to speak up may prompt others to do so, and this increase in reporting could, ideally, create a new normative framework for understanding the relationship between gender, sex, and violence. Generally speaking, the ability to name or label something is a crucial aspect of describing a personal experience.⁷² Therefore, when victims imprecisely describe their experiences to inexperienced professionals, their experiences are likely to be coded within categories such as “torture,” as previously discussed regarding the practices of Latin American Truth Commissions and the International Criminal Tribunal for the Former Yugoslavia (ICTY). This improper coding results in the appearance of low levels of sexual violence against men.

Additionally, if a male victim accurately describes his experience as a victim of *sexual* violence, domestic legislation criminalizing male-male sexual relations may penalize the victim.⁷³ This perpetuates under-reporting because male victims would not want to risk alienating their community by coming forward only to be shunned as the rare male victim who has

69. Andersen, *supra* note 23, at 29.

70. Carlson, *supra* note 31, at 23; Lewis, *supra* note 5, at 8–9; *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 256.

71. See Andersen, *supra* note 23, at 26–27.

72. *Male/Male Rape*, *supra* note 7, at 1287 n.52.

73. This relates to the obstacle of under-recognition. Lewis, *supra* note 5, at 9–10.

been emasculated and consequently homosexualized by the law. The criminalization of male rape victims also comes into play to a greater extent regarding the obstacle posed by under-recognition of sexual violence against men.

Finally, medical professionals, therapists, court staff, truth commission staff, and other interlocutors are neither aware of nor comfortable with addressing cases of sexual violence against men. Victims can easily sense if the professional with whom they are speaking is uncomfortable working with male victims or lacks knowledge about sexual violence against men.⁷⁴ Such workers run the risk of further deterring victims from seeking medical, legal, or other types of help, and negatively impact the reporting of sexual violence by male victims.⁷⁵ It is crucial that victims retain their dignity when providing information such that they feel encouraged and empowered to engage with transitional justice processes.

B. *Under-recognition*

Under-recognition and under-reporting are distinct problems, but they can impact each other. Under-reporting can lead to under-recognition of sexual violence against men by legal frameworks, international organizations, and the media, among other institutions. Similarly, institutional under-recognition of sexual violence can discourage male victims from reporting the crime by incorrectly depicting sexual violence against men as isolated incidents instead of systematic violence. In this section, I will discuss the under-recognition of sexual violence against men and male victims.

The lack of institutional recognition of sexual violence against men stems largely from the historic silencing of the male experience of sexual violence, certain feminist discourse on masculinity and sexual violence that downplays or even undermines male victimization, and the narrow conception of masculinity constructed by political elites.⁷⁶ Accordingly, international law typically affords men greater recognition than women, but only under categories that comply with traditional notions of masculinity, such as protections against torture or

74. Andersen, *supra* note 23, at 32.

75. Oosterhoff et al., *supra* note 19, at 74.

76. See DelZotto & Jones, *supra* note 32.

forced conscription.⁷⁷ At the most basic level, survivors of sexual violence want to be recognized and treated equally under the law; however, many male victims of sexual violence may face anti-homosexuality legislation that criminalizes their experiences instead of treating them as victims.⁷⁸ Moreover, despite the sex neutral language of the Rome Statute,⁷⁹ many international instruments and customary international law still exclude men as a class of sexual violence victims in armed conflict.⁸⁰ Documents at the international level frame sexual violence as an issue involving women and girls, excluding men from legal frameworks, enforcement mechanisms, and receiving protection.⁸¹

International organizations also under-recognize sexual violence against men. The political nature of the United Nations and NGOs, which receive funding from governments or private enterprises, has resulted in agencies' focus on the less controversial issue of sexual violence against women while under-recognizing sexual violence against men.⁸² In fact, some humanitarian and human rights workers have explicitly indi-

77. *Id.*

78. BASTICK ET AL., *supra* note 1, at 162. Progressive legislation exists—even in the developing world. For example, Burundi and the Democratic Republic of the Congo have recognized that rape victims include women and men while Kenya and Rwanda do not specify the victim's gender. Refugeelawproject, *Gender Against Men*, YOUTUBE (May 21, 2012), <http://www.youtube.com/watch?v=mJSl99HQYXc>. However, in 2011, seventy-six countries still had anti-homosexuality laws. See U.N. High Comm'r for Hum. Rts., *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, ¶ 40, U.N. Doc. A/HRC/19/41, 19th Sess. (Nov. 17, 2011), available at http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf.

79. Various parts of the world have sex-neutral definitions of rape. Al Jazeera English, *supra* note 53.

80. Lewis, *supra* note 5, at 2.

81. U.N. Security Council Resolution 1820 focuses on sexual violence, but against “in particular women and girls.” General measures within the Resolution are inclusive of men, but the language is exclusive with respect to concrete measures of implementation or enforcement. *Lost in Translation*, *supra* note 38, at 266, 268; see Vermeulen, *supra* note 17 (describing the under-recognition of sexual violence against men by the international community in legal, political, and humanitarian discourses).

82. Vermeulen, *supra* note 17; DelZotto & Jones, *supra* note 32. Oxfam refused to provide one Ugandan NGO more funding unless 70% of its rape victim client base was female. More astoundingly, the U.N. High Commissioner for Refugees reportedly turned away a male rape victim, telling him,

cated a desire to focus solely on female victims in order to preserve resources.⁸³ This is likely because gender constructions of masculinity and femininity lead people to expect sexual violence against *women* but recoil at the thought of sexual violence against *men*. A survey of 4000 NGOs working on wartime sexual violence indicated the under-recognition of male victims: only 3% mention male victims, typically in passing.⁸⁴ NGO recognition of the issue could increase the number of programs that focus on and help male survivors of sexual violence, perhaps leading to greater recognition of sexual violence against men on the whole.⁸⁵

The attrition of potential cases begins early as fieldworkers, including medical professionals, tend to mischaracterize sexual violence against men as non-sexual abuses.⁸⁶ Hence, although documentation of acts of sexual violence against men exists in medical as well as NGO and IGO field reports, these cases rarely reach the justice stage due to improper coding. In addition, despite the existence of guidelines,⁸⁷ many doctors, counselors, and humanitarian workers have not been trained to look for and recognize signs of sexual violence in men; instead, they typically look for analogous situations to the common experience of female victims: penetrative rape.⁸⁸ This excludes more prevalent forms of sexual violence that men endure during conflict, like blunt trauma to the genitals, which then remain undocumented or improperly

“We have a programme for vulnerable women, but not men.” Storr, *supra* note 65.

83. One lawyer at a Ugandan NGO commented that humanitarian and human right workers think it is dangerous to shift the focus away from women by including men because this would divert resources away. Refugee-lawproject, *supra* note 78.

84. Storr, *supra* note 65 (discussing lawyer Lara Stemple’s research).

85. See Carpenter, *supra* note 27, at 87–88 (discussing how the programmatic inattention to sexual violence against men and boys has been used as a reason for excluding male victims from NGO discourse, thus perpetuating under-recognition).

86. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 259–260; see Oosterhoff et al., *supra* note 19, at 70–71 (noting that most victims who report sexual violence first inform a medical professional).

87. See U.N. High Comm’r for Refugees, *supra* note 62, at 8–9 for a list of indicators of sexual violence against men. However, this list seems to focus on male rape victims at the expense of male victims of other forms of sexual violence.

88. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 256.

coded. Additionally, investigators who look for permanent damage frequently overlook other signifiers of sexual violence against men, like psychosocial symptoms.⁸⁹

Newspapers have also disregarded sexual violence against men in their reports on conflicts, yet report with ease on sexual violence against women. Ignorance, apathy, discomfort, and adherence to gender expectations all play roles in journalistic under-reporting on sexual violence against men.⁹⁰ The media plays an important role in highlighting crimes and raising awareness but tends to reduce women's experiences of violence to *sexual* violence while upholding the role of men as fighters who only suffer non-sexual violence.⁹¹ For example, in Croatia, international fact-finding missions and U.N. Commission of Experts found that thousands of men were sexually abused, but only six newspaper articles referenced sexual violence against men, while sixty discussed sexual violence against women.⁹² Newspapers' choices in downplaying sexual violence against men affect the reader's understanding of the issue while allowing the reader to distance himself or herself from what is considered to be a taboo topic.⁹³ This facilitates denial about the existence of male victims and preserves stereotypes about masculinity, ultimately propagating under-recognition of sexual violence against men.

Fortunately, despite these long-standing media practices, there has been an increasing trend in journalism to mention sexual violence against men, as exemplified with respect to the conflict in the Democratic Republic of the Congo.⁹⁴ This is probably due, at least in part, to increased efforts by NGOs—some of the most frequent sources for the international press—to cover sexual violence against men.⁹⁵ If the media played a greater role in highlighting sexual violence against

89. Carlson, *supra* note 31, at 21.

90. Sorensen, *supra* note 21, at 59.

91. SIGSWORTH, *supra* note 15, at 11.

92. Oosterhoff et al., *supra* note 19, at 69.

93. See Sorensen, *supra* note 21, at 50–51 (noting that readers are uncomfortable with the idea that the male body is vulnerable and literally and figuratively penetrable).

94. See, e.g., Jeffrey Gettleman, *Symbol of Unhealed Congo: Male Rape Victims*, N.Y. TIMES, Aug. 5, 2009, at A1, available at http://www.nytimes.com/2009/08/05/world/africa/05congo.html?_r=1&.

95. Quijano & Kelly, *supra* note 34, at 448–49.

men by detailing its occurrence, importance, relevance, and consequences, legal and social institutions may follow suit.⁹⁶

C. *Under-punishment*

Survivors of sexual violence face many barriers to accessing and gaining justice, such as sociocultural factors including stigmatization and institutional shortcomings.⁹⁷ These feed into the third obstacle to addressing sexual violence against men: the under-punishment of these crimes, which increases impunity. Impunity escalates during conflict, also increasing the recurrence of sexual violence since perpetrators think they are even less likely to be caught and punished than in non-conflict situations.⁹⁸ This prevailing sense of impunity also follows from the under-reporting and interrelated under-recognition of sexual violence, which then facilitate the culture of impunity, which in turn fuels more sexual violence. Many perpetrators of mass atrocities dismiss the possibility of being held accountable by any justice mechanism—often rightly so—and this is even more applicable for perpetrators of sexual violence against men.⁹⁹ This can reinforce the idea that sexual violence against men is a “lesser” crime than sexual violence against women and accordingly less deserving of punishment, and within

96. Sorensen, *supra* note 21, at 68. Novelist and journalist Will Storr received an email from one of the authors of a *Journal of the American Medical Association* study on sexual violence in eastern Congo thanking him for highlighting sexual violence against men (22% of men reported conflict-related sexual violence) because of the derision she faced by her NGO colleagues. Storr believes there is a cultural problem in the United Nations and NGOs regarding the consideration of men as a monolithic perpetrator class. See Storr, *supra* note 65 (describing institutional tendencies to portray females as only victims and males as only perpetrators).

97. The lack of criminalization of all forms of sexual violence in domestic legal frameworks is one obstacle that victims face. BASTICK ET AL., *supra* note 1, at 155.

98. In most conflict situations, heightened violence coupled with the frequent breakdown of the rule of law result in a decreased probability of prosecution, which in turn creates a wartime culture of impunity. Rashida Manjoo & Calleigh McRaith, *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, 44 CORNELL INT’L L.J. 11, 16 (2011), available at <http://www.lawschool.cornell.edu/research/ILJ/upload/Manjoo-McRaith-final.pdf>.

99. Oosterhoff et al., *supra* note 19, at 70; Vermeulen, *supra* note 17.

that category, perpetrators can commit certain acts, such as blunt trauma to male genitals, with impunity.¹⁰⁰

Consequently, transitional justice processes must work to solve the problems of under-reporting, under-recognition, and under-punishment in order to achieve justice for male victims of sexual violence. In the next Part, I will analyze each transitional justice mechanism's effectiveness in addressing victim needs, victim narration, and accountability, which are issues that significantly impact transitional justice's ability to overcome these three obstacles.

V. EFFECTIVENESS OF TRANSITIONAL JUSTICE MECHANISMS

International law has affirmed victims' right to justice¹⁰¹ for human rights violations they have suffered.¹⁰² As such, countries transitioning from conflict must balance the need for punishment, victim and perpetrator rehabilitation, and national reconciliation in order to reach effective remedies for mass atrocities.¹⁰³ An effective transitional justice system establishes a record of abuses, prevents future abuses, provides remedies, and punishes perpetrators by seeking out, listening to, and respecting victims' desires for justice.¹⁰⁴ This last point is especially important since the means—not the ends—ultimately determine whether post-conflict changes will occur.¹⁰⁵

Principles of justice require understanding what victims want and need by listening to and recording their stories, and then addressing their needs with legal and non-legal solu-

100. Carlson, *supra* note 31, at 24.

101. The right to justice is part of a larger package of remedies including reparations, restitution, compensation, victim satisfaction, rehabilitation, and guarantees of non-repetition. BASTICK ET AL., *supra* note 1, at 158.

102. *Id.* at 155.

103. Naomi Cahn, *Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence*, 1 STAN. J. C.R. & C.L. 217, 219 (2005).

104. BASTICK ET AL., *supra* note 1, at 156; Elizabeth M. Evenson, Note, *Truth and Justice in Sierra Leone: Coordination Between Commission and Court*, 104 COLUM. L. REV. 730, 730 (2004), available at <http://www.jstor.org/stable/4099329>.

105. Margaret Maisel, *Have Truth and Reconciliation Commissions Helped Remediate Human Rights Violations Against Women? A Feminist Analysis of the Past and Formula for the Future*, 20 CARDOZO J. INT'L & COMP. L. 143, 153 (2011), available at http://www.cjicl.com/uploads/2/9/5/9/2959791/cjicl_20.1_maisel_article.pdf.

tions.¹⁰⁶ Opportunities to provide a narrative can shape the way that people collectively remember the past and construct their identity moving forward. Thus, narration and its effects on memory are important in transitioning and improving pre-existing gender and power dynamics.¹⁰⁷ In fact, extensive truth-telling also seems to be characteristic of successful reconciliation.¹⁰⁸ The benefits of truth-telling come from the process through which the victim tells his or her story to others, who listen and validate this experience.¹⁰⁹ Sometimes—but not always—survivors of serious human rights violations can restore self-esteem and self-worth simply by storytelling. The fact that gender-based attacks target the very core of an individual's identity coupled with the additional stigma faced by male victims renders the restoration of self extremely important. However, both trials and truth commissions restrict victims' ability to narrate and subject background, contextual, and emotionally-based testimony to limitations.¹¹⁰ Regarding accountability, only trials can deliver retributive justice and punishment in the form of imprisonment. At the same time, truth commissions do not imply impunity since perpetrators must also admit guilt, and simply recording the atrocities may vindicate victims' rights to be recognized as having been harmed.¹¹¹ In the following sections, I will discuss the effectiveness of trials and truth commissions with respect to addressing sexual violence against men.

A. *Trials*

1. *Victim Needs*

Trials focus on whether the accused is guilty, leaving little or no space for victims and perpetrators to engage with each other. This is problematic since many victims seek an opportunity to confront those who perpetrated crimes against them.¹¹² Additionally, victims have commonly received a sort of emotional catharsis if they engage in justice processes character-

106. Cahn, *supra* note 103, at 220.

107. SIGSWORTH, *supra* note 15, at 20.

108. Doak, *supra* note 9, at 274.

109. SIGSWORTH, *supra* note 15, at 16.

110. Doak, *supra* note 9, at 270, 273, 289.

111. Cahn, *supra* note 103, at 243; Evenson, *supra* note 104, at 751–52.

112. Doak, *supra* note 9, at 293.

ized by narration, truth-finding, and facing the perpetrator.¹¹³ One research study on peacetime abuse yielded positive responses from participants who appreciated that someone was interested enough in their predicament to research it. Several of them thought reporting the abuse during the interview was therapeutic because it allowed them to develop their stories.¹¹⁴

Unfortunately, the adversarial system requires investigators to treat victims as witnesses first and victims second. Thus, the needs of the victim-witness and the investigators can rarely be reconciled.¹¹⁵ Furthermore, despite safeguards against hostile cross-examination or prohibitions against evidence of prior sexual conduct, prosecutions can sometimes compound feelings of victimization by requiring the victim to relive his or her experience by testifying against the abuser.¹¹⁶ On the other hand, some victims and witnesses have experienced catharsis following a trial; however, these positive feelings were short-lived and often disappeared after the survivors returned home.¹¹⁷

Another challenge in prosecuting sexual violence generally is the prosecutor's need for witnesses who have never been interviewed or counseled on their experiences and who have not spoken with other victims about their experiences. This is because the victim may develop a new story after discussing the experience, which can make him or her unreliable under cross-examination. Therefore, it is an ethical quandary that the best witness is one who has not received any professional help.¹¹⁸

2. *Victim Narration or Truth-Telling*

Prosecutions do not provide victims with a free narrative space. In the trial, lawyers—not victims—are the storytellers and they may manipulate testimony in order to win their

113. *Id.* at 269, 288.

114. Norwegian adult males who were sexually abused as children were interviewed about their experiences. Andersen, *supra* note 23, at 26.

115. William H. Wiley, *The Difficulties Inherent in the Investigation of Allegations of Rape before International Courts and Tribunals*, in UNDERSTANDING AND PROVING INTERNATIONAL SEX CRIMES, *supra* note 34, at 367, 380.

116. Cahn, *supra* note 103, at 237; Doak, *supra* note 9, at 281–85.

117. Doak, *supra* note 9, at 271 (based on a survey of ICTY victims and witnesses).

118. Wiley, *supra* note 115, at 379.

case.¹¹⁹ The due process mechanisms necessary for fair trials further limit the truth by favoring the rights of the accused over the victim's right to provide his or her narrative.¹²⁰ In addition, trials often frustrate the narrative process since courts only want information that is directly relevant to the charges at hand and thus prevent victims from sharing their entire experience.¹²¹ For example, at the ICTY, witnesses have been regularly discouraged from explaining the background or contextualizing events, presumably because these facts were not deemed legally relevant.¹²² This procedure could exclude valuable testimony that could provide clues as to the occurrence of under-reported crimes like sexual violence and, more specifically, sexual violence against men, leaving victims wanting for justice.¹²³

3. *Accountability*

Prosecutions have a significant ability to hold perpetrators of sexual violence against men accountable through retributive punishment. Prosecutions lead to increased accountability and decreased impunity as well as the reestablishment of the rule of law. Moreover, prosecuting sexual violence has consequences beyond providing justice for survivors: it impacts concurrent as well as future sexual violence cases.¹²⁴ Since accountability through prosecutions strongly indicates the level of gravity of the crime,¹²⁵ the lack of jurisprudence regarding sexual violence against men reinforces stereotypes of men as perpetrators and women as victims.¹²⁶ Justice processes can affect the new social order by reducing the stigma associated with male victimization and sending the message that future violence cannot occur with impunity.¹²⁷

119. Doak, *supra* note 9, at 272.

120. SIGSWORTH, *supra* note 15, at 15.

121. BASTICK ET AL., *supra* note 1, at 157; Doak, *supra* note 9, at 292.

122. Doak, *supra* note 9, at 271–72.

123. *See id.* at 272 (describing trial procedures that discourage victims and witnesses from providing contextual background unless it was *legally* relevant, stifling narrative freedom and perhaps even hindering justice processes).

124. Boesten & Fisher, *supra* note 3, at 4.

125. Cahn, *supra* note 103, at 235–36.

126. Lewis, *supra* note 5, at 48–49.

127. *See id.* at 2 (proposing that international law can be used to protect men from sexual violence and the stigma it entails by expanding legal defini-

While the Extraordinary Chambers in the Courts of Cambodia (ECCC), International Criminal Court (ICC), International Criminal Tribunal for Rwanda (ICTR), ICTY, and Special Court of Sierra Leone (SCSL) have reworked definitions and improved prosecutions of gender-based violence,¹²⁸ there have been *no* exemplary prosecutions of acts of sexual violence against men.¹²⁹ This may relate to the general difficulties in prosecuting sexual violence because of its overly vague definition, which also relates to under-recognition, a lack of evidence, and an inability to locate perpetrators.¹³⁰ In Rwanda, Sierra Leone, and the former Yugoslavia, sexual violence against men has been documented and recognized, but it has rarely been highlighted in tribunal judgments. In fact, most of the time, sexual violence against men is not prosecuted, and when it is, there are three groups of jurisprudence: sexual violence against men is mentioned but not characterized as sexual violence, sexual violence against men is mentioned and characterized as sexual violence but there are no consequences attached to the incident, or sexual violence against men is characterized as sexual violence with attached consequences.¹³¹ Unfortunately, the last category of judgments seems to be the smallest.

Fortunately, the ICTR, ICTY, and ICC have taken progressive steps to address sexual violence against men. The ICTR has a broad definition of sexual violence that even includes acts that do not involve physical contact such as forced nudity.¹³² The ICTR has even recognized that rape and sexual violence can be committed against males and females; however, no one in Rwanda has ever been charged with committing rape or sexual assault against men despite its occurrence.¹³³ Additionally, male-specific victimization included in

tions and jurisprudential standards to prosecute perpetrators of sexual violence against men).

128. Manjoo & McRaith, *supra* note 98, at 21.

129. Campbell, *supra* note 3, at 427.

130. Boesten & Fisher, *supra* note 3, at 6 (detailing the reasons why prosecutors and judges have not pressed charges against perpetrators of sexual violence against Peruvian women).

131. *Lost in Translation*, *supra* note 38, at 272–73.

132. Vermeulen, *supra* note 17.

133. Hilmi M. Zawati, *Impunity or Immunity: Wartime Male Rape and Sexual Torture as a Crime Against Humanity*, 17 TORTURE 27, 34 (2007), available at www.irct.org/Admin/Public/DWSDownload.aspx?File=/Files/Filer/Torture

the ICTY case against Duško Tadic involves acts of sexual violence but it is subsumed under “cruel treatment” and “inhumane acts” in the judgment.¹³⁴ In fact, ICTY investigators have systematically minimized the sexual nature of trauma to the male genitals and reduced sexual violence to torture or degrading treatment.¹³⁵

Most progressively, the Rome Statute has an extremely expansive list of sexual violence crimes, including enforced sterilization, which the Elements of Crimes defines as the deprivation of “biological reproductive capacity.”¹³⁶ This broad definition encompasses common male experiences of sexual violence—such as genital beatings, genital mutilation, and sexual torture—that attack the male procreation function. Consequently, if male sexual violence were reported to and recognized by trial investigators, the ICC could prosecute those offenses as gender-based crimes against humanity under Article 7(1)(g), thus holding perpetrators accountable. The ICC has already addressed sexual violence against men in the form of forcible circumcision in a trial chamber document on Kenya¹³⁷ and male rape in a pre-trial chamber decision on the Central African Republic.¹³⁸ Moving forward, Prosecutor

Journal/17_1_2007/impunity_or_immunity.pdf; see *supra* note 37 (noting the occurrence of sexual violence against men in Rwanda).

134. This was the first case before the ICTY in which sexual violence against men was prosecuted. Tadic forced two male detainees to perform oral sex on each other and also forced a male detainee to sexually mutilate another by hitting and biting his genitals until one testicle was bitten off. Prosecutor v. Tadic, Case No. IT-94-I-T, Opinion and Judgment, (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997), <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>; Maystre & Rangel, *supra* note 36 at 516–18.

135. See generally Maystre & Rangel, *supra* note 36, at 516–648 (discussing sexual violence cases before the ICTY).

136. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 274 (citing *Elements of Crimes*, INTERNATIONAL CRIMINAL COURT, Art. 7(1)(g)-5, element 1 (2001)); see *supra* note 56 (describing the ICC's broad definition of sexual violence).

137. Prosecutor v. Muthaura & Kenyatta, Case No. ICC 01/09-02/11, Victims' Observations on the “Prosecution's application for notice to be given under Regulation 55(2) with respect to certain crimes charged,” ¶ 14 (July 24, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1444316.pdf> (discussing forcible circumcision and the physical and psychological effects on the male victims).

138. One witness from the Central African Republic was gang raped in front of his wives and children after a soldier said to him, “Ok, you will live

Fatou Bensouda has indicated the possibility of taking a second case on Libya focusing on sexual violence against women *and* men.¹³⁹

As of 2010, there have been no trials at the ICC, ICTY, or national courts in the former Yugoslavia that focused solely on sexual violence against men. However, sexual violence against men has been mentioned in the background of judgments by the ICTR and SCSL as well as mentioned and characterized as sexual violence by the ICTR, ICTY, and ICC.¹⁴⁰ Unfortunately, on the whole, when crimes of sexual violence against men are at issue, they have been punished less severely than sexual violence against women. For example, at the ICTY, only sixteen out of seventy-seven sexual violence indictments included charges of sexual violence involving male victims, of which seven led to convictions. An additional three cases that strongly indicated sexual violence against only male victims did not even lead to indictments for sex crimes.¹⁴¹

but we will have to fuck your anus.” Prosecutor v. Bemba, Case No. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ¶ 171 (June 15, 2009), <http://www.icc-cpi.int/iccdocs/doc/doc699541.pdf>.

139. *ICC Weekly Update*, INTERNATIONAL CRIMINAL COURT, Nov. 12, 2012, at 2, available at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/icc%20weekly%20update/Documents/ED150_ENG.pdf.

140. Vermeulen, *supra* note 17; *Lost in Translation*, *supra* note 38, at 275; *supra* note 137–38.

141. The three defendants, Zdravko Govedarica, Esad Landzo, and Mladen Naletilic, only victimized males and were not indicted for sexual violence. Their actions indicating sexual violence included stripping one male detainee to his underwear and kicking him in the testicles, forcing two brothers to perform fellatio on each other and placing a burning fuse cord around the genital area of two male detainees, and beating a young man’s genitals, respectively. Prosecutor v. Mejjakic, Case No. IT-95-4, Initial Indictment, ¶ 29.1 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 13, 1995), <http://www.icty.org/x/cases/mejjakic/ind/en/950213.pdf>; Prosecutor v. Mucic, Case No. IT-96-21-T, Judgment, ¶ 1275 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998), http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf; Prosecutor v. Naletilic & Martinovic, Case No. IT-98-34-T, Judgment, ¶ 450 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 31, 2003), http://www.icty.org/x/cases/naletilic_martinovic/tjug/en/nal-tj030331-e.pdf.

B. *Truth Commissions*

1. *Victim Needs*

Generally, the law operates with gender bias and marginalizes certain groups including women and, analogously, “feminized” male victims of sexual violence.¹⁴² On the other hand, truth commissions seem to offer greater potential for catharsis than trials because victims participating in commissions are given a comparatively free space to relate their story. Commissions prioritize truth-finding and victims do not have to endure adversarial cross-examinations that can frequently devolve into character attacks in trials.¹⁴³ In truth commissions, which can focus on the facts instead of violations of legal rights, the victims are considered fundamental to reconciliation, whereas in trials they are sometimes just pieces of evidence for the prosecution.¹⁴⁴ Truth commissions can increase the visibility of sexual violence, which can benefit victims who choose not to testify, by revealing common narratives that can ease the isolation felt by sexual violence victims, particularly men.¹⁴⁵ However, since truth commissions tend to prioritize collective reconciliation, their restorative function at the individual level is questionable.¹⁴⁶

In order to adequately respond to victim needs, both the gender of commissioners at the truth commission and their expertise in gender-based violence are critically important factors in their selection and appointment.¹⁴⁷ There is no research on whether men would respond better if men or women held leadership positions in the truth commission; however, since males may prefer male and female co-counselors, they may similarly prefer co-gendered leadership.¹⁴⁸ Therefore, male and female interviewees must be asked for their in-

142. See Maisel, *supra* note 105, at 151–52.

143. Doak, *supra* note 9, at 290.

144. *Id.*

145. BASTICK ET AL., *supra* note 1, at 158.

146. Doak, *supra* note 9, at 293.

147. BASTICK ET AL., *supra* note 1, at 158; HAYNER, *supra* note 16, at 89.

148. See Maisel, *supra* note 105, at 154 (at the South African TRC, the Committee asked female interviewees if women should be appointed but did not ask male interviewees and also did not ask any candidates if men should be appointed to the Commission).

put on the gender makeup of the commissioners as well as with which gender they would be more comfortable speaking.

2. *Victim Narration or Truth-telling*

Narration plays a large role in addressing victim needs—in fact, victims experience therapeutic benefits by telling their story and knowing that their story will be told even if perpetrators are not tried.¹⁴⁹ Truth commissions are conducive to this end because victims have more narrative freedom when testifying before a truth commission than before a trial. However, this space for victims to express their experiences is exchanged for achieving retributive justice, which cannot be accomplished through truth commissions.¹⁵⁰

Truth commissions also have shortcomings because they prioritize “politically motivated crimes” and frequently limit mandates to these crimes¹⁵¹ in a manner that treats many forms of sexual violence as non-political. This may discourage or even exclude sex crimes against both women and men.¹⁵² Fortunately, many victims understand their experiences of sexual violence as politically motivated, especially when widespread patterns of sexual violence suggest that it was sanctioned or encouraged by the authorities.¹⁵³ Therefore, given narrative freedom, victims may be empowered to express their grievances following an experience of sexual violence in ways that fall within the scope of the truth commission’s mandate.

Truth commissions have the capacity to address systemic causes of mass atrocities and thus play an important role with respect to sexual violence against men.¹⁵⁴ However, truth commissions have regrettably overlooked the variations in sexual violence and its impact and failed to analyze the data and evidence in a gendered manner.¹⁵⁵ This can undermine the positive capabilities of truth commissions to serve justice for male victims.

149. Cahn, *supra* note 103, at 268.

150. Doak, *supra* note 9, at 286.

151. Maisel, *supra* note 105, at 155–56.

152. HAYNER, *supra* note 16, at 87; SIGSWORTH, *supra* note 15, at 17.

153. HAYNER, *supra* note 16, at 88.

154. EVENSON, *supra* note 104, at 753.

155. HAYNER, *supra* note 16, at 85–86.

3. *Accountability*

Understanding sexual violence is imperative to increasing reporting, recognition, and accountability. Truth commissions seek to achieve justice by recording and investigating the causes and effects of abuses, holding hearings, conducting fact-finding missions, and taking statements. By providing a space for victims to narrate their experience and by officially recognizing and condemning wrongdoings, truth commissions can address the three main obstacles to achieving justice for male victims of sexual violence.¹⁵⁶ However, unless truth commissions highlight—and punish—gender-based violence, prevailing norms about masculinity will continue to persist, thus marginalizing male as well as female victims of sexual violence by perpetuating gender stereotypes.¹⁵⁷

Both trials and truth commissions have advantages and shortcomings. Before proposing my victim-centric solution in Part VII, I will necessarily compare the abilities of trials with those of truth commissions regarding victim needs, narration or truth-telling, and accountability. I will also make suggestions as to the implementation of best practices for transitional justice.

VI. EVALUATION OF AND RECOMMENDATIONS FOR TRANSITIONAL JUSTICE MECHANISMS

A. *Victim Needs*

Truth commissions seem to be more effective in reducing under-reporting of sexual violence against men. They provide more narrative freedom than trials do, although testimony may still be subject to resource and time constraints.¹⁵⁸ Openness is necessary to facilitate increased reporting by male victims and to help fulfill victim needs, namely the victim's healing process.¹⁵⁹ As such, reporting sexual violence must be simple and dignified, followed by thorough investigations and consequential action.¹⁶⁰ Investigators also need to consider and adapt to the cultural constructs of victimhood, masculin-

156. See BASTICK ET AL., *supra* note 1, at 157.

157. Maisel, *supra* note 105, at 184.

158. Doak, *supra* note 9, at 273.

159. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 276.

160. Manjoo & McRaith, *supra* note 98, at 31.

ity, and sexuality throughout the affected region while gathering evidence so men do not feel like their “male identity” is being threatened.¹⁶¹ This would increase people’s trust in the trial or truth commission’s competence to take action and meet victim needs.

Additionally, since sexual violence against men is already a highly taboo subject, a lack of discussion would push a male victim further into isolation, perpetuating the cycle of silence. Regarding this issue, some researchers have concluded that group therapy may be the best forum since the group would diffuse ingrained feelings of shame and isolation.¹⁶² One therapist observed that after one man broke the silence about being sexually tortured in detention, other members in the group began to speak about their experiences, illustrating the value of group therapy.¹⁶³ None of the men initially admitted to being sexually tortured; instead, they said they attended the session on someone else’s behalf. Although it is unclear why the men began the conversation in this way, their perceptions of male victimization coupled with the stigma of being a male victim of sexual violence likely informed this decision.¹⁶⁴ Thus, therapy within the group setting seemed to positively impact each man’s decision to speak about his experience. Hearing discussions about sexual violence alleviates victim concerns that he or she was the only one who was abused in that way.¹⁶⁵ These concerns may be surmounted if transitional justice professionals recommend that men who may be victims attend group hearings. This would encourage actual male victims to disclose their experiences and, ideally, help them parse a typically shameful and alienating experience.

While both trials and truth commissions can treat the victim as a means to an end, truth commissions engage victims in the justice process by asking them, for example, what level of

161. See Leiby, *supra* note 35, at 340–41 (discussing the ways that perceptions of male identity affect the likelihood of male victims reporting incidents of sexual violence).

162. I speculate that group therapy may be the best forum, although researchers have not determined the most effective treatment methods for male victims. Sorensen, *supra* note 21, at 20.

163. Oosterhoff et al., *supra* note 19, at 74.

164. These therapy sessions took place in all-male therapy groups in post-war Croatia. *Id.*

165. O’Connell, *supra* note 1, at 310.

privacy they want, what they envision as the gender makeup of the commissioners, and whether they want to speak with a male or a female commissioner. Regarding the gender of the commissioner, female victims of sexual violence usually want to speak to another female, but it is unclear who male victims would prefer.¹⁶⁶ Research has shown that it may be more effective to have male and female co-therapists to address victim needs. Male victims would perceive a male therapist's sympathy as validation of their experience and reaffirmation of their masculinity; however, they may feel more comfortable with a female present because of gender stereotypes that cause them to believe women would be less judgmental about male victimization.¹⁶⁷ On the other hand, male-only hearings may provide a better space for male victims than mixed-gender settings. Since truth commissions have a relatively flexible approach that can account for individual preferences, they may create a more comfortable experience than the rigid confines of a trial.

B. *Victim Narration or Truth-telling*

Although both trial judgments and truth commission reports can recognize sexual violence against men, each mechanism can tell very different stories. As a result of the significant narrative freedom of truth commissions, a truth commission's "truth" would more likely resemble the victim's "truth," whereas a trial's "truth" would be more like a judicial narrative, perhaps laden with legalese. Since narration appears to be very beneficial for sexual violence victims, the lack of truth-telling in trials make them less desirable as a justice mechanism for male victims of sexual violence. On the other hand, truth commissions' inherent truth-telling capabilities and freer space for victim and witness narratives render them suitable for handling sexual violence against men, which may help uncover patterns of sexual violence against men.¹⁶⁸

But while some victims merely want their stories to be heard, others may desire legal recognition in court documents. To maximize healing and minimize additional harm, institutions should provide victims with a free space for their

166. NESIAH ET AL., *supra* note 54, at 19; *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 276.

167. Sorensen, *supra* note 21, at 20–21.

168. Bassin & van Zyl, *supra* note 8, at 253–54.

narrative as well as opportunities for victims and perpetrators to engage in dialogue.¹⁶⁹ However, the maxim “revealing is healing” is not always true, and sometimes victims may actually be re-traumatized by testifying before either a trial or a truth commission unless they receive appropriate psychosocial support.¹⁷⁰ This is another reason that victims must be consulted on their desires and expectations of the justice process.

Theoretically, the conciliatory, non-adversarial nature of truth commissions should encourage sexual violence victims to come forward and tell their stories,¹⁷¹ helping the victim regain his or her agency by providing space for open narrative.¹⁷² Extrapolating from the effect of all-male group therapy sessions on reporting, special hearings for male victims could encourage them to speak before a truth commission. This has been the case for female victims; at least one female victim of sexual violence who had originally decided not to speak before the South African Truth and Reconciliation Commission (TRC) changed her mind when she learned about the special women’s hearing.¹⁷³ Having a special hearing for male victims of sexual violence would demonstrate the commission’s belief that male victims exist and deserve a space to report their experiences.¹⁷⁴ However, if support systems are not included to help victims heal, it is possible that the victim may be re-traumatized by testifying about his experience of sexual violence.¹⁷⁵

Investigators documenting and recognizing variations in sexual violence must take care to avoid re-traumatizing male victims. A victim-friendly inquiry would take a sex-neutral and gender-sensitive approach toward sexual violence, highlight commonalities and differences between sexual violence against women and men, and analyze patterns of sexual violence against men within conflicts as well as among different conflicts.¹⁷⁶ As a preliminary matter, someone trained in rec-

169. *Id.* at 291.

170. *Id.* at 254.

171. SIGSWORTH, *supra* note 15, at 16.

172. See Andersen, *supra* note 23, at 34.

173. NESIAH ET AL., *supra* note 54, at 31.

174. See Doak, *supra* note 9, at 288 (noting the advantages of truth commissions over trials for victims).

175. Bassin & van Zyl, *supra* note 8, at 254.

176. Quijano & Kelly, *supra* note 34, at 485–86.

ognizing psychological symptoms of sexual violence against women could provide insight into identifying male victims, as male and female survivors can experience the same psychological symptoms.¹⁷⁷ Then, along with providing any background pertaining to sexual violence against men, transitional justice mechanisms must highlight the patterns and impact of sexual violence against men, discuss international and national frameworks addressing sexual violence, and break down stereotypes of masculine and feminine ideologies with respect to victimization and the perpetration of violence.¹⁷⁸

Regarding the record, workers must carefully consider how they categorize abuses such that non-rape sexual violence like genital violence and other sexual torture is characterized as “sexual violence.”¹⁷⁹ Statement-takers must also carefully note when victims describe their experiences of sexual violence as something else or describe being subject to *attempted* sexual violence as they may feel more comfortable saying that sexual violence *almost* happened.¹⁸⁰ This necessitates careful investigation in order to determine whether he or she was a victim of attempted or actual sexual violence.

C. *Accountability*

Finally, both trials and truth commissions hold perpetrators accountable by publicizing incidents of abuse or the identities of perpetrators, but they do so in different ways, rendering it difficult to precisely compare their effects. Because of their ability to provide narrative space while condemning sexual violence, truth commissions may be better at promoting long-term stability and accountability via reconciliation than prosecutions.¹⁸¹ Truth commissions can also address a wider range of abuses and a larger number of perpetrators.¹⁸² But as of yet, no truth commission has successfully incorporated sexual violence against men into its work, so truth commissions may be less likely to combat the culture of impunity surround-

177. Oosterhoff et al., *supra* note 19, at 75.

178. See SIGSWORTH, *supra* note 15, at 18.

179. *Sexual Violence Against Men in Armed Conflict*, *supra* note 26, at 276.

180. See HAYNER, *supra* note 16, at 86–87 (discussing the experience of Peruvian statement-takers who noted that victims were hesitant to describe personal experiences of actual rape).

181. Evenson, *supra* note 104, at 731.

182. Cahn, *supra* note 103, at 251–52.

ing these crimes. With respect to reparations, the Sierra Leonean TRC prioritized sexual violence survivors, including men and boys; however, it is questionable as to whether the commission really encouraged males to come forward since all reported incidents were against women and girls.¹⁸³

Accordingly, in order to address sexual violence against men, truth commissions must have a very inclusive definition of sexual violence that covers male victims.¹⁸⁴ Evaluating these mechanisms is made more difficult since prosecutions are still important to enforce the idea that sexual violence against men is deserving of punishment. This serves to tell perpetrators that they cannot commit sexual violence against men with impunity.¹⁸⁵ On the whole, truth commissions must begin effectively engaging male victims of sexual violence. At the same time, prosecutors must unequivocally charge and convict perpetrators of sexual violence against men for committing that crime.

More specifically, if different patterns of sexual violence emerge in different conflicts, then cases that represent those different forms should be prosecuted¹⁸⁶—especially since certain violations require patterns, such as crimes against humanity.¹⁸⁷ This would indicate that no type of sexual violence can be committed with impunity. There should be a proportionate number of male and female victim-witnesses with respect to the proportion of sexual violence against men and sexual violence against women, respectively.¹⁸⁸ Advisers to prosecutors must have expertise in gender-based violence including sexual

183. BASTICK ET AL., *supra* note 1, at 161.

184. *See id.* at 158 (noting that truth commissions cannot adequately address gender-based and sexual violence without having explicit and inclusive definitions of sexual violence).

185. Bassin & van Zyl, *supra* note 8, at 250.

186. Campbell, *supra* note 3, at 430.

187. *See What are crimes against humanity?*, INTERNATIONAL CRIMINAL COURT, http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/12.aspx (noting that an attack must be “widespread or systematic” to constitute a crime against humanity).

188. Of course, due to the obstacles discussed throughout this Note, it is difficult to determine the ratio of male to female victims of sexual violence. Campbell, *supra* note 3, at 431.

violence against both men and women.¹⁸⁹ Sexual violence victims must be treated with sensitivity, respect, and care, and as such, international tribunals must protect and support them during the trial preparation, trial, and post-trial phases.¹⁹⁰

Generally speaking, retributive justice through prosecutions tends to marginalize the victims themselves by prioritizing the prosecution's victory over the victims' needs, whereas more reconciliation-focused justice mechanisms like truth commissions seek to expose crimes and have the potential to transform sexual violence against men from an invisible occurrence to a visible, known crime.¹⁹¹ While truth commissions deliver a more restorative type of justice than trials, neither fully addresses victims' healthcare, economic, and sociocultural needs.¹⁹² Thus, psychosocial, victim-centric justice should be instituted in conjunction with trials and truth commissions in order to achieve the best results for male victims of sexual violence in armed conflict.

VII. VICTIM-CENTRIC SOLUTION

Emotional injuries and healing can extend to the societal level and either impede or promote reconciliation.¹⁹³ This makes individual, victim-friendly processes extremely relevant to moving forward in the aftermath of mass atrocities. In order to adopt a victim-centric approach to transitional justice, we must understand victims' needs and experiences, which would be facilitated by more research on sexual violence against men. The victim has a role beyond his or her use in a trial's prosecution of perpetrators or a truth commission's attempts to reconstruct society. In non-transitional justice settings, there is evidence that suggests that restorative justice effectively helps heal victims' trauma; however, evidence is lacking in the transitional justice context.¹⁹⁴ Since neither trials nor truth commissions are therapy centers, it is important to incorpo-

189. The ICC requires the Prosecutor to appoint advisers with expertise on sexual and gender violence, which would help identify and prosecute sexual violence crimes. *See* BASTICK ET AL., *supra* note 1, at 157.

190. *Id.*

191. *See id.* at 156 (comparing the healing, restorative justice approach of truth commissions with the retributive justice approach of prosecutions).

192. *Id.*

193. Doak, *supra* note 9, at 268.

194. *Id.* at 296–97.

rate education and welfare agencies, NGOs, mental health staff, and housing associations to lend support to female and male victims.¹⁹⁵ Affordable forms of mediation should be used to complement a trial or truth commission to address individual reconciliation and allow victims to engage with perpetrators if they wish to do so.¹⁹⁶

All survivors of sexual violence have reintegration needs with respect to their families and communities as well as their own sense of safety. Reintegration is difficult and is deeply impacted by the community's knowledge about sexual violence and the situation faced by victims of sexual violence.¹⁹⁷ Thus, justice for sexual violence must account for individual and community interests.¹⁹⁸ Programs must educate communities about sexual violence while also taking advantage of the malleable nature of the transitional period in order to transform gender and cultural stereotypes about masculinity and eliminate anti-homosexual legislation.¹⁹⁹ The latter is particularly essential since *de jure* and *de facto* discrimination based on actual or *perceived* sexual orientation exists nearly everywhere²⁰⁰ and harmful norms propagate the under-reporting, under-recognition, and under-punishment of sexual violence against men. Such justice programs could help male victims feel safer and more comfortable with testifying before a court or truth commission.

On the individual level, justice processes that allocate psychosocial services to victims may be the most useful form of justice in order to heal the individual suffering of sexual violence victims.²⁰¹ For instance, trials and truth commissions both provide a public space for narrative; however, no private space exists. Private spaces are useful for reconstructing "truth" for the victim, which would facilitate reconciliation.²⁰²

195. *Id.* at 290.

196. *Id.* at 295–96.

197. Cahn, *supra* note 103, at 254, 261.

198. *Id.* at 221.

199. *See id.* at 252 (discussing the importance of changing community perceptions of sexual violence in order to help victims move forward).

200. *Male/Male Rape*, *supra* note 7, at 1292.

201. *See Cahn*, *supra* note 103, at 249 (weighing the benefits of and challenges to implementing social services for survivors of sexual violence).

202. "Ultimately the fact that victims and perpetrators are unable to meet with each other (if they should so wish) in a private setting means that there

Local community groups like churches, human rights organizations, and other victim-centered organizations can fill the void left by authoritative or governmental inaction by providing medical, mediation, and psychological services to sexual violence victims.²⁰³ Of course, these initiatives would require significant financial and human resources, and thus, the extent to which resources are available practically limits the addition of psychosocial services. However, I believe that victim-centric psychosocial remedies can be implemented if trials and truth commissions operate concurrently such that each offsets the inherent limitations of the other, thus freeing up resources for psychosocial supplementation.²⁰⁴

In addition to freeing up resources, the concurrent operation of trials and truth commissions could enhance transitional justice for male victims of sexual violence. For example, in Sierra Leone, the use of the hybrid Special Court, the TRC, and traditional justice mechanisms have been relatively successful at addressing sexual violence crimes.²⁰⁵ Notably, truth commissions typically hold hearings for victims and witnesses and produce a findings report. These findings can be used as a basis for criminal prosecutions unless going before the truth commission is part of an amnesty agreement.²⁰⁶ Of course there are drawbacks to this approach, as defendants would not want to testify before truth commissions if they knew their testimony could be used as fodder for prosecution.²⁰⁷ Similarly, victims seeking the therapeutic benefits of testifying before a truth commission may be deterred from doing so if they knew they could be compelled to testify against their abuser in a trial

is likely to be a much reduced sense of shared experience, and little opportunity for a new co-narrative to be constructed." *Id.* at 289.

203. "When civil authorities failed to respond to the crisis, it was local communities via churches, human rights and women's groups, and other, often indigenous, organizations that provided medical care and counseling to the abuse victims." Cahn, *supra* note 103, at 260.

204. "[B]y adopting both criminal prosecutions and a TRC, transitional countries can offset many of the inherent limitations of each institution alone." See Bassin & van Zyl, *supra* note 8, at 252.

205. BASTICK ET AL., *supra* note 1, at 159 (describing Sierra Leone's transitional justice approach incorporating both trials and a truth commission); Evenson, *supra* note 104, at 731-32.

206. BASTICK ET AL., *supra* note 1, at 158.

207. Evenson, *supra* note 104, at 732.

that *at best* would be less therapeutic and *at worst* would force them to relive the trauma of the sexual violence.²⁰⁸

Additionally, trials and truth commissions may conflict due to the public nature of truth commission hearings, which could include commissioners, victims, witnesses, and the media. This could influence other witnesses and contaminate future trials and potentially prematurely impact political, social, and legal decisions before the truth commission draws any formal conclusions.²⁰⁹ Thus, trials and truth commissions must work harmoniously and in coordination to complement—not undermine—each other, since working toward the same goals from the outset greatly facilitates the emergence of consistent truths.²¹⁰ Unfortunately, trials and truth commissions often reach incongruous findings because they rely on different methodologies and standards of proof.²¹¹

Truth commissions should share information with trials when perpetrators are unidentifiable and where sharing would not impact the truth commission's operation or goals of achieving reintegration or reconciliation.²¹² For example, trials can compel testimony to provide in-depth accounts of atrocities, which would be particularly useful for “hidden” crimes like sexual violence.²¹³ However, trials and truth commissions must consult with each other beforehand in order to

208. “[V]ictims may be re-traumatized by testifying if proper precautions are not taken and support systems are not included to help with the long-term healing process.” See Bassin & van Zyl, *supra* note 8, at 254.

209. *Id.* at 263; see Evenson, *supra* note 104, at 758 (discussing the problems involved in information sharing processes between courts and truth commissions).

210. Evenson, *supra* note 104, at 745–46, 755, 760 (noting the complex relationship between the Special Court for Sierra Leone and Sierra Leone's truth commission and also the difficulties in coordinating their relationship).

211. It is important to note that official institutions during peacetime, such as criminal and civil trials, frequently come to different conclusions—in fact, this is characteristic of complex societies and justice systems worldwide. Therefore, the possibility of incongruous findings should not preclude the conjunctive use of international criminal trials and truth commissions. Bassin & van Zyl, *supra* note 8, at 255, 260.

212. Evenson, *supra* note 104, at 766 (noting that information sharing is sometimes essential to improving trials).

213. “Criminal prosecutions can also affirmatively assist TRCs. Because they have the power to compel testimony and provide plea deals, prosecutions may have access to otherwise unavailable information, and can provide

institute transparent information sharing processes under context-specific conditions.²¹⁴ Information sharing in a mutually reinforcing manner can help establish the occurrence of sexual violence, which can be determined through testimony, pattern evidence presented by an expert witness, or through a combination of these.²¹⁵ Written testimony given by truth commissions to prosecutions could establish patterns of sexual violence against men such that it is at least recognized in the judgment background—as opposed to being completely unrecognized.²¹⁶

Regarding victim needs, truth commissions appear to meet male victims' psychosocial needs better than trials by allowing them space to speak. However, if perpetrators of sexual violence are never prosecuted, impunity may prevail as the justice meted out by commissions may be even less likely than retributive justice to deter perpetrators of rampant sexual violence against men.²¹⁷ Generally speaking, a victim-centric approach that considers and recognizes the harm *as perceived by the victim* would broaden mandates and allow for the inclusion of sexual violence crimes. At this time, the best way to approach male victims' needs is unclear; however, a better solution to the obstacles surrounding sexual violence against men appears to be one that utilizes a commission's truth-telling capability to increase reporting and recognition alongside a trial's greater ability to hold accountable and punish perpetrators. Finally, resources must be allocated to address victims' emotional and psychosocial needs in order to augment the therapeutic aspects of trials and truth commissions.

VIII. CONCLUDING REMARKS

The investigation of sexual violence against men must be part of all international human rights investigations due to its "invisibility" and frequent misrepresentation by professionals

more in-depth accounts of the activities of essential actors and key atrocities." Bassin & van Zyl, *supra* note 8, at 255.

214. *Id.* at 258.

215. *Id.* at 254, 257; Wiley, *supra* note 115, at 378.

216. Evenson, *supra* note 104, at 758.

217. See generally Miriam J. Aukerman, *Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice*, 15 HARV. HUM. RTS. J. 39 (2002) (arguing that mass atrocities are undeterrable because the perpetrators are convinced that their abusive, violent campaigns are for the best).

and even victims as non-sex crimes. Although evidence shows that the majority of sexual violence victims are female, this cannot be confirmed unless we have accurate data on male victims.²¹⁸ A more accurate report of sexual violence against women and sexual violence against men may change the proportion of victims.²¹⁹ Data must be collected, disaggregated for gender, and carefully coded to account for sexual violence. Instead of shying away from labeling a crime as an act of sexual violence against men, investigators must understand the signs of sexual violence against men and name it appropriately.²²⁰

Similarly, men must be included alongside women in post-conflict conversations—and not just as perpetrators.²²¹ Male victims must be fully represented in international justice initiatives, and sexual violence against men should be recognized in official documents as more than just another form of torture. In the post-conflict era, both women and men need to be educated on sexual violence. This goal may be achieved if outreach by women's groups, which are knowledgeable about sexual violence generally if not about sexual violence against men, expands to include victims of all genders in order to raise awareness about sexual violence and help victims heal.²²² Acts of sexual violence against men also have implications for the women's and gender equality movements since the male victim is subjugated through feminization while the perpetrator retains a heteronormative masculine identity.²²³ Moreover, addressing the needs of male victims could reduce post-conflict male-on-female violence stemming from a male victim's desire to reassert and reestablish his gender normative male identity.²²⁴

218. Carpenter, *supra* note 27, at 87–88.

219. Leiby, *supra* note 35, at 341.

220. Carpenter, *supra* note 27, at 98.

221. See Scully, *supra* note 2, at 29 (emphasizing the need to stop stereotyping men as only perpetrators and woman as only victims).

222. See *id.* at 159–61 (specifically discussing Sierra Leone's TRC's outreach to women's groups despite the occurrence of sexual violence against men and boys as well).

223. Al Jazeera English, *supra* note 53.

224. Men realize they have to reassert their lost power following war. For example, this tends to cause a rise in domestic violence. Refugeelawproject, *supra* note 78.

Programs that target both genders would pierce the stigma surrounding sexual violence against men and allow male victims to tell their stories with less shame and fear of being ostracized.²²⁵ Since the transitional period also provides a space to rewrite legislation, domestic systems must be reworked to encompass sexual violence against women and men in a dignified manner such that victims in peacetime are also afforded legal protection and redress.²²⁶ Finally, due to the stigmatized nature of sexual violence against men, raising awareness about its occurrence and incorporating public campaigns to address its deserved status as a crime may further efforts to increase the reporting, recognition, and punishment of sexual violence against men.²²⁷

In conclusion, sexual violence against men is a pervasive wartime problem that must be handled with care during the transitional period so victims are not discouraged from reporting their experiences or seeking justice. Instead, prosecutions, truth commissions, or other justice mechanisms must find, engage, and listen to as many victims of different gender identities as possible. Trials and truth commissions both play important roles in healing victims and ending impunity; however, neither alone sufficiently addresses victim needs. Although there is no magic formula for justice, moving forward, post-conflict countries should consider implementing trials and truth commissions cooperatively, supplemented with psychosocial remedies in order to facilitate reporting, recognition, and punishment while also addressing victim needs and preventing re-traumatization. These post-conflict countries must recognize that victims are not mere tools in the justice process. Instead, the needs of male victims of sexual violence must be acknowledged and respected alongside those of females in order to facilitate post-conflict individual and communal reconciliation. Moreover, victim-centric justice is pivotal to overcoming the under-reporting, under-recognition, and under-punishment of sexual violence against men as well as gender and cultural stereotypes about masculinity. By ad-

225. See Sorensen, *supra* note 21, at 21 (discussing societal norms and stereotypes that discourage men from reporting experiences of sexual violence).

226. BASTICK ET AL., *supra* note 1, at 163.

227. See *id.*

dressing all forms of sexual violence and seeking justice for all victims—regardless of their gender—we can fulfill the goals of transitional justice and give voice to previously silenced victims.