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The Unseen Victims:

**Understanding the Influence of Gender Stereotypes on the Recognition of Sexual
Violence Against Men in Armed Conflicts. Study case of Kosovo**

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Abstract

This thesis explores the often-overlooked plight of male victims of conflict-related sexual violence (CRSV) within the context of pervasive gender stereotypes, particularly focusing on the case of Kosovo. Despite advancements in international legal frameworks and a growing recognition of male victims in more recent legal instruments, practical implementation frequently falls short. The prevailing perceptions of masculinity, associating maleness with resilience and invulnerability, continue to obscure the experiences and needs of male victims. The analysis reveals that while Kosovo's legal system acknowledges male victims of sexual violence, societal norms and expectations significantly hinder their access to justice and support. Utilizing a combination of descriptive and analytical methodologies, the research examines international legal documents, case law, and Kosovo's legislative responses to sexual violence. The findings reveal some biases in how male victims are perceived and treated, stemming from deep-rooted gender stereotypes that associate masculinity with strength and invulnerability and femininity with victimhood. Notably, the thesis suggests some changes to address these disparities for the Kosovo context. For instance it highlights the need for comprehensive training programs for humanitarian and medical personnel to recognize and address the specific needs of male survivors, ensuring accurate record-keeping and appropriate support services.

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TABLE OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRSV	Conflict-related sexual violence
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
KLA	Kosovo Liberation Army
KRCT	Kosovo Rehabilitation Centre for Torture Victims
OTP	The Office of the Prosecutor
RS	Rome Statue
SFRY	Socialist Federal Republic of Yugoslavia
UN	United Nations
UNMIK	United Nations Mission in Kosovo
UNSC	United Nations Security Council

1.1 Problem statement

Across the globe, sexual violence is often used as a tactic of war to terrorise civilians and to humiliate and destabilise the enemy. Sexual violence is widely recognized as a tool to stigmatize and shame victims, and perpetrators of this form of violence can also use it as a strategy during armed conflicts.¹ During the 1990s, feminists and human rights advocates succeeded in persuading international tribunals to reconceptualise rape of women from a crime of ‘honour’ to a means of war and crime against humanity.² Although international law has recognised the use of sexual violence against women and girls during conflict, the International Criminal Code (ICC) and international tribunals have not always been very efficacious in recognising or adequately theorising rape or sexual violence against men and boys, associating rape mainly with women.³ In more recent years however there seems to have been some shift on the issue. The ICC has made efforts to address sexual and gender-based violence by releasing policy papers on sexual and gender-based crimes and gender-based prosecution, which broadened the definition of gender-based violence to include crimes against men and boys.⁴

The legal system has somehow failed to identify stigma and conflict-related violence as part of a mutually reinforcing unending cycle.⁵ Stigma, characterised by negative societal attitudes and beliefs towards certain groups, often leads to their marginalisation and discrimination. This marginalisation can escalate tensions, resulting in conflict and violence. Conversely, conflict-related violence can further entrench and amplify existing stigmas, as victims and perpetrators become even more marginalised. This continuous loop makes it difficult to address and resolve either issue in isolation. The Rome Statute (RS) of the ICC defines rape and sexual violence in gender-neutral terms, permitting prosecution for the sexual violation of males.⁶ Yet in *Prosecutor v. Muthaura, Kenyatta & Ali Kenyatta*, the Pre-Trial Chamber of the ICC found that the forced circumcision and penile amputation of Luo men in Kenya did not constitute

¹ UK Government's Foreign, Commonwealth & Development Office. (2017). Principles for Global Action, p.7

² M. Alison, ‘Wartime Sexual Violence: Women’s Human Rights and Questions of Masculinity’(2007) p. 82

³ S. Sivakumaran, ‘Sexual Violence Against Men in Armed Conflict’ (2007) p.262

⁴ See: <https://www.icc-cpi.int/about/otp/otp-policies>

⁵ Maphosa, Ropafadzo. The unreported war: tackling denialism and social stigma towards victims of armed conflict-related sexual and gender-based violence. (2021) p.157

⁶ Rape and sexual slavery are included as war crimes and crimes against humanity under the Rome Statute of the International Criminal Court (1998), art. 7(1)(g) and art. 8(2)(b)(xxii). In a later document, the definition of rape as a crime against humanity includes language that is inclusive of both sexes (Elements of Crimes for the International Criminal Court, Nov. 2, 2000, art. 7(1)(g)-1).

sexual violence within the meaning of the RS. They were qualified as ‘inhumane acts’ instead.⁷ There are also other cases at the International Criminal Tribunal for the former Yugoslavia ICTY where convict that have committed sexual violence crimes against male victims were not charged with rape but with other crimes such as crimes against humanity or torture.⁸ The failure to charge convicts with committing rape or sexual assault disguises the gendered meaning of these crimes and the specific harms suffered by male victims.⁹ This reinforces the narrative that sexual violence in conflicts only affects women, portraying them solely as victims, primarily of this type of violence, while neglecting the other types of violence they endure and depicting men only as perpetrators. This distinction between sexual violence and general violence may arise from gender bias. However, as long as this distinction exists, it is essential to ensure that everyone is equally protected by the relevant provisions to avoid reinforcing existing biases.

Besides this lack of institutional recognition and prosecution of perpetrators there is also a stigma related to individuals who have suffered from CRSV. This stigma arising from CRSV has its roots in strong cultural, social and ethnic norms and traditions regarding sexuality and gender roles which often leads to sexual violence survivors being neglected by their communities.¹⁰ In the post-war context, it is crucial to recognize how these survivors are treated by their own society and failed to provide them with the support they need to heal and reintegrate.

Sexual violence was also present during the conflict in Kosovo in 1998-1999. As the former Yugoslavia disintegrated, in the late 1990s, Serb forces clashed with the Kosovo Liberation Army (KLA), which sought to establish an independent Kosovo (then a province of Serbia within the former Yugoslavia).¹¹ Civilians experienced a raft of atrocities during the fighting: murder, beatings, deportation, property destruction and sexual violence. Serb forces used sexual violence to terrorise and expel Kosovo Albanian civilians from Kosovo during their ethnic cleansing of the province.¹² After the end of the conflict,

⁷ Prosecutor v. Muthaura, Kenyatta & Ali (Decision on the Prosecutor’s Application for Summonses to Appear) ICC-01/09 – 02/11 (8 March 2011), para. 27.

⁸ Cases like: Prosecutor v. Delalić; Prosecutor v. Simić; Prosecutor v. Sikirica

⁹ S. Mouthaan, ‘Sexual violence against men and international law: criminalising the unmentionable’ (2013) p.694

¹⁰ J Kelly, K Albutt, J Kabanga, K Anderson & M van Rooyen "Rejection, acceptance and the spectrum between: understanding male attitudes and experiences towards conflict-related sexual violence in eastern Democratic Republic of Congo" (2017)

¹¹ OSCE, ‘Kosovo/Kosovo: As Seen, As Told: An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission October 1998 to June 1999’, pp. 3 – 8

¹² Human Rights Watch, Women’s Rights Division, ‘Kosovo: Rape as a Weapon of “Ethnic Cleansing”’ (2000), Section I Summary.

Kosovo has implemented several transitional justice policies. However, the issue of addressing sexual violence victims in a gender-sensitive manner remains relevant due to the limited public discourse on the subject, which will be more specifically covered in the following chapters.

To conclude, as Helen Durham and Katie O’Byrne argue, the protection of men and women during wars should not be seen as separate issues. Viewing the protection of all genders as a unified concern highlights the importance of a comprehensive approach to safeguarding all individuals in conflict situations, ensuring that all genders receive the necessary protection without one being prioritised over the other. Instead, by understanding and challenging stereotypes about gender, helping one group can also help the other. So, improving how men are protected, it could also improve how women are protected, and vice versa.¹³

1.2 Sexual violence as a tactic of war

Sexual violence has increasingly been recognized as an instrument of warfare during armed conflicts along the years. Most survivors face overwhelming social, structural and security barriers, including stigma, the repercussions of which are potentially deadly, and such barriers prevent their cases from being counted, addressed or reflected in the historical records.¹⁴ In March 2015, the Secretary-General reported to the UN Security Council:

Sexual violence perpetrated by State actors or armed groups associated with the State remains of grave concern in countries such the Sudan (Darfur), South Sudan, the Syrian Arab Republic and the Democratic Republic of the Congo. Indeed, in recent years, particular emphasis has been placed on the responsibility of Governments to protect the civilian population.¹⁵

This report highlighted 19 states where sexual violence in conflict continued, and urged that the report should be read in conjunction with six previous reports on conflict-related sexual violence,

... which provide a cumulative basis for the inclusion of 45 parties in the list of parties credibly suspected of committing or being responsible for patterns of rape and other forms

¹³ Durham H., O’Byrne K. ‘The Dialogue of difference: gender perspectives on international humanitarian law’. (2010) p. 49.

¹⁴ United Nations Secretary-General (S/2020/487).

¹⁵ UN Security Council, 2015, Conflict-related sexual violence (S2015/203), para 8.

of sexual violence in situations of armed conflict on the agenda of the Security Council (annex), 13 of which appear for the first time.¹⁶

To understand the issue in greater depth, it is essential to explore what is meant by conflict-related sexual violence (CRSV) but also how and why it is used in the context of armed conflict. There are different definitions that try to describe what CRSV is, but there cannot be any clear-cut answers. According to a UNSC report, this form of violence refers to any act of a sexual nature committed without consent, or any act that specifically targets a person's sexual function or organs, that is linked, directly or indirectly (temporally, geographically or causally) to a conflict. This link may be evident in the profile of the perpetrator; the profile of the victim/ survivor; in a climate of impunity or State collapse; in the cross-border dimensions; and/ or in violations of the terms of a ceasefire agreement.¹⁷ The UK government has listed some CRSV acts, such as: rape, gang rape, threats of rape, sexual assault, genital mutilation, any type of violence directed to sexual organs, sexual slavery, forced marriages, sexual torture, enforced prostitution, enforced pregnancy, enforced sterilisation, forced nudity or other acts of sexual nature that aim causing humiliation or degradation.¹⁸ This list includes more acts that are considered as sexual violence than some other international legal documents, like the statute of the ICC for example.

Understanding these definitions is crucial as they form the basis for legal frameworks and the criminalization of such acts. Without a clear definition, it becomes challenging to develop legal instruments that can effectively prosecute these crimes and deliver justice to the victims. The nuances in defining CRSV also influence the scope and implementation of international law, particularly in how these acts are categorised and prosecuted under different legal systems. Historically, sexual violence was not always viewed as a deliberate tactic of war. Over time, as activists and survivors broke the silence around these atrocities, the "weapon of war" frame became one of the prevalent understandings of these acts. This shift underscores the importance of advocacy in shaping international perspectives and policies. When it comes to the criminalization of these actions the Statute of the ICC officially specifically criminalizes these acts: "sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity"¹⁹. Chapter 3 of this thesis will

¹⁶ UN Security Council, 2015, Conflict-related sexual violence (S2015/203), para 3.

¹⁷ UN Security Council Report Conflict-related sexual violence (S/2015/203), para 2.

¹⁸ UK Government's Foreign, Commonwealth & Development Office. (2017). Principles for Global Action, p.6.

¹⁹ Rome Statute of the International Criminal Court, 17 July 1998 (entered into force 1 July 2002), UN Doc. A/CONF.183/9 (Rome Statute), Arts 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi)

delve in more details about the ways different international frameworks have addressed sexual violence in general and whether there has been a gendered nature in the way it has been addressed.

Arguably, sexual violence, including when conflict-related, often has no relation to sexual desire, but is instead linked to power, dominance and abuse of authority. It often occurs alongside other violations, such as unlawful killings, child recruitment, and property destruction. Conflict incidents in recent years confirm that sexual violence continues to be present in many conflict areas, and it has been used as part of a broader strategy of conflict in order to displace communities in a country in order to seize the necessary resources, as a means of repression, terror and control, and tactic of terrorism.²⁰ When sexual violence is a weapon of war, the violation of bodily integrity does not occur solely as a result of the chaotic state surrounding the war zone, on the contrary, it is intentionally committed by combatants against members of the enemy's community; and where strategic sexual violence against a member of the perpetrator's own community or group occurs, it is often due to the perception that the target is a traitor.²¹ When combatants use sexual violence as a weapon, they aim to "intimidate, degrade, humiliate, and torture the enemy".²²

Thus, the causes of sexual violence vary and include a climate of impunity, lack of explicit orders against sexual violence, widespread small arms and light weapons, and the increased vulnerability of displaced persons, migrants, and widows. The breakdown of community ties and coping mechanisms also contributes. Additionally, sexual violence can be employed strategically or tactically by conflict parties. One way to explain the reason behind these acts of violence is that its effectiveness comes from gender norms and the interconnected identities and power dynamics linked to them.²³ In different contexts sexual violence has been used for the purpose of ethnic cleansing, even though the means may differ. For example, in Rwanda, rape was used as an act of killing (by causing severe physical injuries, transmitting deadly diseases, inflicting psychological trauma leading to suicide), while in former Yugoslavia, it was used for ethnic cleansing purposes through forced procreation.

²⁰ United Nations Secretary-General, S/2019/280, para 15.

²¹ Alison, M. *Wartime Sexual Violence: Women's Human Rights and Questions of Masculinity*. (2007). p.79

²² Weitsman, P. A. *The Politics of Identity and Sexual Violence: A Review of Bosnia and Rwanda*. (2008). p 563.

²³ Kerry F. Crawford. *Wartime Sexual Violence: From Silence to Condemnation of a Weapon of War*. (2017), p.33.

The impacts of CRSV are severe, affecting victims physically, psychologically, socially, and economically. It also traumatises their relatives, who may feel guilt and helplessness.²⁴ Addressing these multifaceted issues requires understanding the broader societal and cultural factors that perpetuate such violence, recognizing that there may be relevant differences between men and women related to physical characteristics and/or social roles, and developing comprehensive support systems for all victims.

1.3 The recognition of sexual violence against women and the discrepancy in recognizing/theorizing sexual violence against men

Sexual violence committed during war can be prosecuted under various international legal frameworks. Three key frameworks are International Criminal Law, International Humanitarian Law, and International Human Rights Law. International Criminal Law holds individuals accountable for international crimes such as genocide, war crimes, and crimes against humanity. Traditionally, military forces in conflict situations regarded rape as part of the accepted gains of war. During World War II, allegations of widespread rape were made against all parties involved. Nevertheless, neither the Tokyo Tribunal nor the Nuremberg Trials acknowledged sexual violence as a criminal offense. Later on, sexual violence as a weapon of war was slowly introduced and recognized by international frameworks, like the Geneva Conventions, The Rome Statute and the statutes of the International Tribunals for former Yugoslavia and Rwanda. This issue, including the framing of sexual violence in other international legal frameworks will be addressed in Chapter 3 of the thesis.

The issue of wartime sexual violence gained more significant attention in 1992,²⁵ when the extensive rapes of individuals in the Former Yugoslavia came to light. At that point, the Security Council formally declared that the “massive, organized, and systematic detention and rape of women, particularly Muslim women, in Bosnia and Herzegovina” constituted a grave violation of international law.²⁶ They emphasized that such acts of sexual violence should be considered as an international crime that must be addressed worldwide. Subsequently the ICTY statute was the first legal instrument to explicitly recognize rape as a crime against humanity.²⁷ The ICTR and ICC declared that rape, alongside other crimes such as torture, extermination, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization,

²⁴ Gaggioli, G.” Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law. (2015), p.505.

²⁵ Fitzpatrick, B. (2016). Tactical Rape in War and Conflict: International Recognition and Response. p.41

²⁶ UN Security Council Resolution 798 (1992). (1992, December 18). para.2

²⁷ Dewey, S., & St Germain, T. (2012). Conflict-related sexual violence: international law, local responses. pg. 55-57

or any other form of sexual violence of comparable gravity, when committed in armed conflict and directed against a civilian population in a widespread or systematic manner, are crimes of genocide and crimes against humanity. ICTY and ICTR broke new ground in securing the first convictions for rape, but it was not until the setup of the ICC through the Rome Statute that would hold sexual violence perpetrators accountable.²⁸

In response to the atrocities committed in former Yugoslavia and Rwanda, during the 1990s, feminists and human rights advocates successfully influenced international tribunals to redefine the rape of women from a crime of 'honour' to a tactic of warfare and a crime against humanity.²⁹ The Women's Caucus for Gender Justice, for instance, framed wartime rape of women as a manifestation of male violence against women.³⁰ Feminist scholars often interpret the rape of women's bodies as a method of genocide: a sexualized assault targeting women based on their gender and ethnicity or group membership.³¹ Anyhow, with few exceptions, these narratives have overlooked or inadequately addressed sexual violence against male bodies.³²

It is clear that there is a disparity in the recognition of female and male victims of sexual violence, which may stem from several factors. These factors include the historic silencing of male experiences of sexual violence, certain feminist discourses on masculinity and sexual violence that downplay or even undermine male victimization, and the narrow conception of masculinity constructed by political elites.³³ This gap in acknowledgment highlights the need for a more inclusive approach to addressing sexual violence that recognizes the diverse experiences of both men and women. The media, on the other hand, 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.³⁴ The common assumption that men are perpetrators of sexual offences against women or children stems from masculine ideologies that inherently view men as aggressors rather than

²⁸ International Committee of the Red Cross. (2016). Jean-Pierre Bembo Gombo in the Central African Republic, available at: <https://casebook.icrc.org/casestudy/international-criminal-court-trial-judgment-case-prosecutor-v-jean-pierre-bemba-gombo>

²⁹ K. Engle , ' Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina ' (2005) 99 American Journal of International Law 778, p.786 – 87.

³⁰ M. Gerecke , ' Explaining Sexual Violence in Conflict Situations: Preliminary Findings from Bosnia and Herzegovina, Rwanda and Sierra Leone ' in L. Sjoberg and S. Via (eds.), Gender, War, and Militarism: Feminist Perspectives (Praeger Security International 2010), pg.13.

³¹ D.E. Buss , ' Rethinking ' Rape as a Weapon of War ' (2009) 17 Feminist Legal Studies 145, pg.148 – 149.

³² D.E. Buss , ' Rethinking ' Rape as a Weapon of War ' (2009) 17 Feminist Legal Studies 145, pg. 159-160.

³³ Augusta DelZotto & Adam Jones, Maleon-Male Sexual Violence in Wartime: Human Rights' Last Taboo? (Mar. 2002)

³⁴ Sigsworth R., Gender Based Violence in Transition 10 (Sept. 2008), p. 11

potential victims. This misconception fails to acknowledge the reality that men can also be subjected to sexual violence, particularly in certain contexts such as armed conflicts. Challenging these gender stereotypes and recognizing the vulnerability of men to sexual victimisation is crucial for ensuring that all survivors, regardless of their gender, have access to appropriate support services and that perpetrators are held accountable for their actions.

When it comes to reporting, male survivors, like female survivors, may be ostracised by their community and family and even blamed for what happened to them.³⁵ 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.³⁶ 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 victimisation.³⁷ When violence threatens the male identity as “strong, capable, virile, or heterosexual,” 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.³⁸

1.4 Context of the conflict in Kosovo

With the break-up of the former Yugoslavia, Kosovo became one of the regions affected by armed conflict. After centuries of Ottoman rule, Kosovo had been integrated into Yugoslavia in 1913. During Tito's regime, Kosovo was granted substantial autonomy. However, in 1989, Kosovo made an unsuccessful attempt to break away from Serbia, as Kosovo was considered to be an autonomous province of Serbia within Yugoslavia. This attempt was driven by widespread human rights abuses, including numerous incidents of sexual violence committed primarily by members of the Serbian police force against Kosovo Albanians. As a response to Serbia’s oppression of Kosovo institutions and the abolishment of its complete autonomy in the 1980s, the Kosovo’s Liberation Army (KLA) came into being. Likewise, the rebellion of Kosovo Albanians started by establishing parallel state structures, as an act of revolt and disobedience.³⁹ These actions of the Kosovo Albanians were not well welcomed by the Serbian government. During these heightened tensions, the Serbian forces started ethnic cleansing

³⁵Lewis, *Unrecognized Victims: Sexual Violence Against Men in Conflict Settings Under International Law* (2009).p.11.

³⁶Jamie O’Connell, *Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?* (2005).p.310

³⁷Torbjørn Herlof Andersen, *Speaking About the Unspeakable: Sexually Abused Men Striving Toward Language*, (2008).p.29

³⁸Maria Eriksson Baaz & Maria Stern, *Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)*, (2009).p.514

³⁹ Daalder, I., & O’Hanlon, M. (2000, June). *The Roots of the War*. *Frontline*. para. 8

against Kosovors, forcing thousands to flee to neighbouring countries. Approximately 800,000 ethnic Albanians were expelled from the province by Serbian government forces. Kosovo lacks a comprehensive and precise documentation system for war crimes committed. Nonetheless, it is widely acknowledged that sexual violence, notably rape, was present during the conflict. Human rights groups within the country estimate that between 10,000 and 20,000 individuals fell victim to sexual violence during the Kosovo war.⁴⁰ Acts of rape and other forms of sexual violence were not rare and isolated acts committed by individuals, but rather were used as weapons of war to deliberately destroy the civilian population. Most sexual assaults were group rapes involving at least two perpetrators and were intentionally used as a tool to terrorize the civilian population, to extort money from families, and to force people to flee their homes.⁴¹

Diplomatic talks began in 1999 between Kosovo Albanians, represented by KLA, the Federal Republic of Yugoslavia (by this time composed of Serbia and Montenegro) and the international community, with the first held in Rambouillet, France. The Serbian delegation refused to sign the Rambouillet agreement, leading NATO to begin bombing Kosovo in March 1999 in locations where Serbian forces were allocated within the Kosovo territory, and later expand the bombings to Belgrade, the capital of Serbia.⁴² The armed conflict in Kosovo concluded in 1999 following the intervention of international forces and the establishment of a United Nations interim administration. This intervention aimed to address the escalating violence and humanitarian crisis in the region. According to reports from the UNSC, Resolution 1244 (1999) provided the legal framework for the establishment of the UN Mission in Kosovo (UNMIK), tasked with overseeing civil administration and facilitating the transition towards self-governance. During that time, NATO deployed the Kosovo Force (KFOR) as mandated by the same resolution to secure and guarantee a safe environment for the inhabitants of Kosovo.⁴³ Following the "Ahtisaari Plan," which advocated for Kosovo's internationally supervised independence,⁴⁴ the Kosovo government declared its independence in 2008, leading to the implementation of a new Constitution for the Republic of Kosovo.⁴⁵

⁴⁰ Dautry, M. The endless struggle of wartime rape victims in Kosovo, para 2.

<https://www.equaltimes.org/the-endless-struggle-of-wartime>

⁴¹ Human Rights Watch. (2001). Under Orders: War Crimes in Kosovo.

⁴² Encyclopaedia Britannica. (n.d.). Kosovo conflict. Encyclopaedia Britannica. <https://www.britannica.com/event/Kosovo-conflict>

⁴³ UNSC resolution 1244/99, Article 9.

⁴⁴ Comprehensive Proposal For the Kosovo Status Settlement, 2 February 2007. Available at:

<http://old.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>

⁴⁵ Constitution of the Republic of Kosovo (2008). Available at: https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf

As previously mentioned, the conflict involved the systematic use of rape and other forms of sexual violence as instruments of war, with estimates indicating that between 10,000 and 20,000 individuals were victimized by these atrocities. But although the conflict ended in 1999 and Kosovo has since declared independence, the legacy of sexual violence remains a critical issue, as it has not been internally addressed with the same attention as other issues caused by the war. After nearly two decades since the conflict in Kosovo ended, the question remains: have victims of CRSV received any justice? To address this gap, the Kosovo parliament amended in 2014 the existing law on the rights of war victims and veterans to include victims of rape. In February of 2018, authorities began accepting verification requests from rape victims. Since then, a number of survivors of sexual violence have applied, some of which have been accepted, and some rejected. When it comes to prosecuting CRSV domestically, a concerning lack of accountability persists. The issues male sexual violence victims have been facing in Kosovo will be addressed in the fourth chapter of this thesis.

By exploring, generally, the background of the historical and legal context into which the recognition and visibility of sexual violence during armed conflict has evolved in the international arena, a foundation has been laid for what the next chapters are going to address, where the international legal frameworks are going to be examined in more detail by trying to understand how the recognition has evolved and what are the gaps that need to be filled still. By providing the historical context about the conflict in Kosovo and the efforts for justice and reparations a broader understanding of the challenges sexual violence victims face in this national context is provided. The specific difficulties, those related to legal or societal challenges, encountered by male survivors will be further addressed in a separate chapter.

1.4 Objectives and scope of the study

The primary objective of this study is to investigate how gender stereotypes influence the recognition and prosecution of sexual violence against men in armed conflicts, focusing specifically on the Kosovo conflict. This study aims to uncover the ways in which international legal frameworks and societal attitudes have contributed to the invisibility of male victims of sexual violence. By examining legal texts, case law, and public discourse, the thesis seeks to highlight whether there are any discrepancies in the treatment of male and female victims of sexual violence by international tribunals and prosecutors officed, providing a comprehensive analysis of any barriers male victims might face in seeking justice, recognition and coming forward on a societal level as well. Additionally, the study intends to propose recommendations for Kosovo's institutions as well as non-governmental institutions that have worked

closely and for many years with sexual violence victims, in order for the stigmatization of male sexual violence victims during the war in Kosovo does not continue to be promoted through their work.

The main research question this thesis aims to answer is: To what extent do gender stereotypes influence the recognition of sexual violence against men in armed conflicts and how can this be addressed? A case study of Kosovo.

The sub questions that this study seeks to answer are:

1. What are gender stereotypes, especially those related to sexual violence?
2. Which and how have gender stereotypes influenced the recognition and treatment of male sexual violence victims within international legal frameworks?
3. What gender stereotypes in the legal and practical frameworks of Kosovo might affect the recognition and pursuit of justice for male victims of sexual violence during the conflict?

1.5 Research Methodology

This thesis employs a combination of descriptive and analytical methodologies to investigate the influence of gender stereotypes on the recognition and prosecution of sexual violence against men, with a specific focus on the conflict in Kosovo. The analysis will explore whether international influences are reflected in domestic policies by taking the case study of Kosovo, and how societal attitudes towards gender stereotypes impact the recognition and treatment of male sexual violence victims.

I conducted desk research by exploring and analysing a variety of sources, including academic literature such as books, treaties, journals, reports, and articles. Additionally, I reviewed media coverage and official legal documents published by governments and relevant ministries. The research is conducted through sources that have been available either in English or Albanian to access a wide range of relevant sources, many of which are only available in Albanian. Regarding some other legal documents such as the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY), which is still applicable in Kosovo for crimes committed during the period when Kosovo was part of Yugoslavia, secondary sources are used due to the original document being in Serbian, which is a language I do not speak.

- **Literature Review:** This involves a thorough review of existing literature such as books, journal articles, reports, and media coverages. Key sources reviewed especially in the second chapter include academic texts on gender stereotypes, such as ‘Gender stereotyping: transnational legal

perspectives' by Rebecca J. Cook and Simone Cusack, 'The uses and abuses of gender. *Tijdschrift voor Genderstudies*' by Joan W. Scott and 'The Image of Man: The Creation of Modern Masculinity' by George Mosse, Gloria Gaggioli 'Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law', Sandesh Sivakumaran 'Sexual Violence Against Men in Armed Conflict'. The third chapter examined mainly literature related to international law and prosecution of wartime sexual violence, such as Peggy Kuo, 'Prosecuting Crimes of Sexual Violence in an International Tribunal', Tuba Inal 'Looting and rape in wartime: law and change in international relations', Valerie Oosterveld, 'The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?'. On the fourth chapter, where the focus is more specifically on Kosovo, reports from different human rights organizations were examined in order to portray the situation during and after the conflict, such as Human Rights Watch, Kosovo: Rape as a Weapon of "Ethnic cleansing" and OSCE (1999) As seen as told. An analysis of the human rights findings of the OSCE Kosovo Verification Mission October 1998 to June 1999. At the same time local media coverages and reports from local organisations such as the report from Kosovo Rehabilitation Center for Torture Victims (KRCT) 'Justice for Survivors of Sexual Violence During the War'.

- **Legal Documents:** Examination of international legal documents was conducted in the third chapter more specifically, including documents such as the Rome Statute of the International Criminal Court (ICC), the Geneva Conventions, and relevant United Nations (UN) resolutions to identify how gender stereotypes are addressed or perpetuated, by examining whether or not gender-sensitive language has been used, or whether or not male sexual violence victims are recognized as possible victims of this form of violence. While the fourth chapter included an examination of the legal framework of Kosovo's domestic system, including Kosovo's Criminal Code, the Law on the rights of war victims and veterans, the Protocol for the treatment of victims of sexual violence.
- **Case Law Analysis:** Analysis of case law from international tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the ICC. This involves examining specific cases to understand how male victims of sexual violence are treated within these legal contexts. Some of these cases include: Prosecutor v Francis Kirimi Muthaura et al, Prosecutor v. Muthaura, Kenyatta & Ali, Prosecutor v Zejnil Delalić et al, Prosecutor v Ranko Češić, Prosecutor v Jean-Pierre Bemba Gombo).

In the concluding chapter, suggestions are provided on the approach of international human rights bodies and their legal framework regarding gender-based violence. Additionally, suggestions are made for enhancing the support systems for male victims of sexual violence in Kosovo.

Limitations

This research has faced some limitations. First of all, focusing on specific case studies from international tribunals may not fully capture the diverse experiences of male victims in various contexts. The analysis is limited to sources available in English or Albanian, excluding perspectives documented in other languages. The Kosovo case study provides valuable insights but may not be representative of all post-conflict settings, as experiences can vary across cultural contexts. Relying primarily on secondary sources like legal documents and existing literature, rather than directly engaging with survivors, could lead to missing nuanced perspectives not captured in the available literature. The underreported and stigmatized nature of the issue also makes it challenging to uncover the full breadth of male victims' experiences. Furthermore, this thesis will concentrate on cisgender male victims of sexual and gender-based violence in international criminal law, focusing on individuals assigned male at birth who identify themselves as men. In summary, the key limitations are the potential lack of representativeness, reliance on secondary sources, and difficulty capturing the full scope of experiences due to the sensitive nature of the topic.

Added Value

This thesis contributes to the existing literature⁴⁶ by highlighting the often-overlooked issue of male sexual violence in armed conflicts and the role of gender stereotypes in hindering recognition and prosecution. The added value of this research lies in examining recent developments to determine if the international community's approach to this issue has evolved. By revisiting existing literature on international law related to sexual violence and its prosecution, the research aims to identify gender stereotypes in the treatment of male sexual violence by these frameworks or international tribunals. Using Kosovo as a case study, this research aims to determine the extent to which international developments

⁴⁶ This includes: 'Gender stereotyping: transnational legal perspectives' by Rebecca J. Cook and Simone Cusack, 'The uses and abuses of gender. *Tijdschrift voor Genderstudies*' by Joan W. Scott and 'The Image of Man: The Creation of Modern Masculinity' by George Mosse, Kosovo Rehabilitation Center for Torture Victims (KRCT) 'Justice for Survivors of Sexual Violence During the War', Gloria Gaggioli 'Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law', Sandesh Sivakumaran 'Sexual Violence Against Men in Armed Conflict', Peggy Kuo, 'Prosecuting Crimes of Sexual Violence in an International Tribunal', Tuba Inal 'Looting and rape in wartime: law and change in international relations', Valerie Oosterveld, 'The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?'

on the issue are reflected at the domestic level. It provides a detailed analysis of Kosovo's legal and societal responses to male victims of sexual violence, seeking to uncover gender stereotypes in legal frameworks and policies. This approach adds significant value, as it has not been previously applied in research on the Kosovo case study when it comes to male sexual violence victims.

Structure Overview

- **Chapter 1/Introduction:** Presents the problem statement, objectives, and scope of the study. It also discusses sexual violence as a tactic of war, with a specific focus on the Kosovo conflict.
- **Chapter 2:** Examines gender stereotypes, their definitions, and their impact on the recognition of sexual violence against men. This chapter addresses the sub-question: "What are gender stereotypes, especially those related to sexual violence?"
- **Chapter 3:** Analyzes international legal frameworks and their treatment of male sexual violence victims. This chapter addresses the sub-question: "What gender stereotypes have influenced the recognition and treatment of male sexual violence victims within international legal frameworks?"
- **Chapter 4:** Focuses on Kosovo's legal and practical challenges in addressing sexual violence against men, including societal attitudes and stigma. This chapter addressed the sub-question: "What gender stereotypes in the legal and practical frameworks of Kosovo might affect the recognition and pursuit of justice for male victims of sexual violence during the conflict?"
- **Conclusion:** Summarises findings and provides some suggestions for better addressing the issue of gender stereotypes towards male victims of sexual violence.

2. Gender stereotypes

2.1 Introduction

To better comprehend how gender stereotypes shape legal frameworks and societal attitudes towards victims of sexual violence, it's essential to define stereotypes, particularly those based on gender. Gender stereotypes are deeply embedded beliefs about appropriate roles, characteristics, and behaviours for men and women. These stereotypes influence perceptions and interactions, leading to significant consequences. This chapter examines the nature of gender stereotypes, with a specific focus on those related to men and masculinity. It explores how these stereotypes are formed and reinforced, and their impact on societal attitudes, especially those related to roles of men and women in a conflict setting. By addressing these biases, we can better understand their influence legal frameworks towards victims of sexual violence, particularly in conflict settings. The chapter will then delve into the effects of gender stereotypes on societal attitudes, particularly how they re-shape perceptions of men and women in various contexts. Finally, it will cover the topic of gender stereotypes related to gender based violence and sexual violence, highlighting how these stereotypes influence the treatment and support of different victims in conflicts setting by focusing on some of the struggles male victims face with reporting sexual violence crimes due to gender stereotypes.

2.2 Defining gender stereotypes

Stereotyping is a basic part of societal human behaviour, where automatically people are sorted into groups in order to simplify the perception of the world. This involves assigning common traits, qualities, or roles to people just because they belong to a certain group. As a result, stereotyping creates broad assumptions about people in that group, often ignoring their individual abilities, needs, desires, and situations.⁴⁷ In this perspective, a stereotype assumes that all members of a certain social group share specific traits or characteristics (like thinking all teenagers are irresponsible) or perform certain roles (like believing all women are caregivers). Whether or not these traits or roles are actually common among the individuals in that group doesn't matter. The important point is that because people think the group should have these traits or roles, they also believe that any individual in that group fits the generalised

⁴⁷ Cook, R. J., & Cusack, S. (2010). Gender stereotyping: transnational legal perspectives. pg.1

view. As a result, all the unique qualities of that individual are overshadowed by the broad stereotype of the group they belong to.⁴⁸

Gender stereotypes are used as a method to create opinions or judgments about individuals based solely on their gender identity or expression by. This cannot be inherently problematic, but it becomes so when it leads to ignoring individual characteristics and abilities, creating gender hierarchies, and denying human rights and freedoms by applying overly simplistic, exaggerated, or inaccurate generalisations about how members of a particular gender are expected to think, feel, and act. Legal systems around the world have historically embodied gender stereotypes, such as considering women incapable of civil capacity or excluding them from legislatures and professions. Gender stereotypes can refer to intellectual abilities, psychosocial profiles, or biological differences, and are often used to deny women opportunities in education and careers based on the belief that men are superior in these areas. At the same time these stereotypes often portray men as aggressive and assertive.⁴⁹

Understanding "gender stereotypes" hinges on grasping the concept of "gender." The definition of "gender" is fluid and its interpretation varies based on societal beliefs regarding women's or men's appropriate roles and conduct.⁵⁰ As Joan W. Scott argues, gender has become a site of political contestation, with different groups ascribing different and often conflicting meanings to the term.⁵¹ The Committee on the Elimination of Discrimination against Women (CEDAW), established under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention)⁵² to oversee its implementation, defines gender as the "socially and culturally constructed differences between women and men"⁵³. When discussing gender, the focus is often on what it means to be feminine or masculine. The ideal of modern masculinity as a stereotype was born between the end of the 18th century and the beginning of the 19th, and has not changed considerably over time.⁵⁴ In the 18th century, as nationalism grew, it defined specific roles for men and women. Men were idealised as serious and foundational to society, embodying strength and depth. Women, on the other hand, were portrayed as

⁴⁸ Cook, R. J., & Cusack, S. (2010). Gender stereotyping: transnational legal perspectives. pg.8

⁴⁹ Cook, R. J., & Cusack, S. (2010). Gender stereotyping: transnational legal perspectives. pg. 20

⁵⁰ Cook, R. J., & Cusack, S. (2010). Gender stereotyping: transnational legal perspectives. pg. 21

⁵¹ Scott, J. W. (2013). The uses and abuses of gender. *Tijdschrift voor Genderstudies*, 16(1), pg.73.

⁵² CEDAW, art 17

⁵³ Women's Committee. (2004). General Recommendation No. 25: Article 4, Paragraph 1, of the CEDAW, on Temporary Special Measures, UN Doc. A/59/38, para. 8

⁵⁴ Mosse, George L. *The Image of Man: The Creation of Modern Masculinity*. (1996). pg 5.

both shallow and important symbols of the nation, responsible for preserving traditional values.⁵⁵ The stereotype became the usual way people thought a man should look and behave in society. It was like a standard picture of what was acceptable. People believed a man's appearance showed his worth and reflected traditional values.⁵⁶ Traits associated with masculinity included: honour, strength of will, courage, self-control ("real men don't cry"), loyalty, determination, righteousness, independence, resilience, fearlessness, honesty, stoicism, bravery, pride, dignity, heroism, willingness to sacrifice for a greater cause, and overall physical toughness essential for protecting one's honour.⁵⁷ From the First World War onwards, the connection between militarism and masculinity has been deeply intertwined, perpetuating the notion of the warrior as an ideal to strive for, characterised by core values of courage, sacrifice, and camaraderie.⁵⁸ This symbiosis has been a defining feature of modern warfare, shaping the way men are expected to behave and the expectations placed upon them in times of conflict. The latest example of this, is the case of Ukraine. As the country has found itself in need of more military troops while facing Russian aggression, the Ukraine Parliament passed a controversial law. Under this law, men aged 18 to 60 will be required to carry documents showing they have registered with the military and present them when asked. Also, any man who applies for a state service at a consulate abroad will be registered for military service.⁵⁹

When trying to recognize gender stereotypes, it is necessary to also recognize that these stereotypes can vary widely based on different societies and time periods. Scott's analysis highlights that "gender" is a complex and politically charged concept, and it's important to consider this complexity rather than trying to define it in a simple or unchanging way.⁶⁰ This perspective challenges the idea that there is only one way to understand or define gender.

Stereotypes can have a profound impact on individuals, shaping their self-perception and influencing their behaviour within society. When people internalize stereotypes, whether positive or negative, it can lead to a self-fulfilling prophecy. For instance, a student who believes the stereotype that their gender or

⁵⁵ Mosse, George L. *Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe*, Inc., 1985. Pg 16-17.

⁵⁶ Mosse, George L. *The Image of Man: The Creation of Modern Masculinity*. (1996). pg 4-5

⁵⁷ Mosse, George L. *The Image of Man: The Creation of Modern Masculinity*. (1996). pg 19-23

⁵⁸ Mosse, George L. *The Image of Man: The Creation of Modern Masculinity*. (1996). pg 107-108

⁵⁹ AP. (2024, April 11). Ukraine's parliament passes a controversial law to boost much-needed conscripts and fill army ranks. AP News. <https://apnews.com/article/ukraine-parliament-recruit-army-russia-war-5b7d9f58bb398b4ad1296311b8130b92>

⁶⁰ Scott, J. W. (2013). The uses and abuses of gender. *Tijdschrift voor Genderstudies*, 16(1), pg.73

race is not well-suited for a particular subject (for example men are better at maths) may, perhaps unconsciously, limit their own efforts or avoid challenging themselves in that area and ultimately reinforce the stereotype. This cycle of stereotyping can create a vicious circle, where individuals' behaviors are shaped by societal expectations, and others' behaviors towards them are shaped by their perception of themselves, which in turn reinforces the very stereotypes that influenced their actions in the first place. Gender stereotypes prevent people from helping others in ways that go against traditional roles. The GRIP (Gender Roles: The inhibition of Prosociality) model⁶¹ shows how ideas like "men should be strong" and "women should be gentle" stop people from offering certain kinds of help depending on the person's gender.⁶² Research tested different types of helping behaviours and looked at beliefs about gender roles. It found that these stereotypes make it harder for people to help in ways that don't match traditional gender expectations. This leads to negative attitudes and less willingness to help in non-traditional ways. In short, gender stereotypes make it difficult for people to help others if the help goes against traditional gender roles. Gender stereotypes harm both men and women by restricting their possibilities to seek and receive help. Women often feel forced to accept assistance due to stereotypes that undermine their independence, potentially leading to a loss of skills. Men, on the other hand, face societal pressure to appear strong, which causes male victims to be overlooked.⁶³ To address this, promoting gender equality and reducing sexism through education and advocacy is crucial. Women should be seen also as capable and independent, while men should be encouraged to seek help without stigma.

2.3 Gender stereotypes and sexual violence in the context of armed conflict

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) defined gender-based violence in its General Recommendation No. 19 in 1992 as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."⁶⁴ This definition of gender-based violence covers a wide range of acts, but it mainly focuses on discrimination against women. In the later General Recommendation, No.35 in 2017 another

⁶¹The Gender Roles Inhibiting Prosociality (GRIP) Model A theoretical framework integrating the Social Role Theory of Helping (Eagly & Crowley, 1986) with the Theory of Planned Behavior (Ajzen, 1991) to predict engagement in gender-inconsistent helping. More researchers have developed this model. For more see: Atkinson, C., Buie, H., Sandstrom, G., Akinin, L., & Croft, A. (2021). Testing the GRIP: An empirical examination of the Gender Roles Inhibiting Prosociality model. *Sex Roles*, 85(7-8), 440-462.

⁶² Xu, X. (2023). Gender stereotypes in help-giving and help-seeking. pg 2

⁶³ Xu, X. (2023). Gender stereotypes in help-giving and help-seeking. pg 3

⁶⁴ CEDAW Committee, General Recommendation No. 19, 1992, para. 6

definition of gender based violence is not provided and the same definition provided in General Recommendation No.19 is cited.⁶⁵ It is important to note that throughout this document, the term "gender-based violence against women" is consistently used, rather than simply "gender-based violence." This distinction clarifies that the focus is specifically on violence directed at women, rather than implying that all gender-based violence is solely against women. The specific focus on gender based violence against women is also because the CEDAW Committee, which deals with women's rights, has a specific mandate. It could also be due to the belief that women and girls are the primary victims of gender-based violence because of their lower status compared to men and boys in some societies. However, nowadays, the term "gender-based violence" is generally understood to include violence against men and boys as well, not just women and girls.⁶⁶ According to the European Commission's Gender Equality in Sport: Proposal for Strategic Actions 2014–2020 gender based violence is defined as: “violence directed against a person because of that person’s gender (including gender identity/expression) or as violence that affects persons of a particular gender disproportionately”.⁶⁷ This updated definition recognizes that gender-based violence can affect people of all genders and aims to address the issue more comprehensively.⁶⁸ Sexual violence is often included in the definitions of what gender based violence is considered, such as the definition by ICRC which defines gender-based violence as an “overall term, including sexual violence and other types of gender-specific [violence that are] not necessarily sexually-based”.⁶⁹

Recognizing a broader definition of gender-based violence is important in understanding the dynamics of underreporting. There is widespread recognition among scholars that rape and sexual violence against men, are significantly underreported. As discussed in the first chapter, in section 1.3, this underreporting can be driven by factors such as shame, confusion, guilt, fear, and stigma. Men often hesitate to disclose their victimisation, as it conflicts with societal notions of masculinity and gender stereotypes associated with men, which discourage emotional expression and imply that men should have been able to prevent the assault and cope without showing vulnerability. These dynamics are present both in peacetime and in conflict situations, where traditional masculine stereotypes are even more pronounced, as it was also

⁶⁵ CEDAW Committee, General recommendation No. 35, 2017, para 1

⁶⁶ Gaggioli, G.” Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law. (2015), p.508

⁶⁷ European Commission. (2013). *Proposal for a council recommendation on promoting health-enhancing physical activity across sectors*, pg.47

⁶⁸ Gaggioli, G.” Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law. (2015), p.508

⁶⁹ Charlotte Lindsey, Women Facing War Study, ICRC, Geneva, 2001, pg. 35–36.

mentioned above. Additionally, male survivors who want to speak out about their experiences may struggle to find the appropriate language due to these same stereotypes.

As it was addressed previously in this chapter, in section 2.2, behaviours of individuals based on stereotypes shape also how they are treated by others through a vicious cycle that is created. In the case of male victims of sexual abuse, doctors, counselors, and aid workers on the ground often reflect the reactions of the survivors they meet, leading them to miss signs of sexual violence against men, signs that could be physical injuries inconsistent with reported activities, unexplained anxiety or PTSD symptoms, changes in behavior or mood, and difficulties in forming intimate relationships.. This happens because people generally believe that men are less likely to be victims of sexual violence than women. Because of this gendered stereotype, medical workers and aid professionals may not be as careful, or in most cases not even trained, in looking for signs of sexual violence in men. As a result, they often overlook male victims. This lack of attention can prevent male survivors from getting the help and support they need, continuing the cycle of underreporting and lack of proper care.⁷⁰

This pattern of overlooking male victims is particularly concerning given the documented history of sexual violence against men in numerous armed conflicts. The prevalence varies, with some conflicts showing sporadic instances while others display systematic patterns. This is not an exhaustive list, but such violence has been recorded in ancient conflicts involving Persia, the Crusades, and armies of Ancient Greece, China, the Amalekites, Egypt, and the Norse. More recent instances include conflicts in El Salvador, Chile, Guatemala, and Argentina, as well as in Greece, Northern Ireland, Chechnya, Turkey, and the former Yugoslavia. It has also been noted in Sri Lanka, the Iraq-Kuwait conflict, the Coalition-Iraq conflict, and the Sino-Japanese war. Furthermore, sexual violence against men has occurred in Liberia, Sierra Leone, Kenya, Sudan, the Central African Republic, Burundi, Uganda, Rwanda, the Democratic Republic of the Congo, Zimbabwe, and South Africa.⁷¹ This power dynamic can occur both between men and women and between men, as both types of violence are based on the same ideas of masculine control. In wartime, sexual violence against women is often meant to signal to the men in their community that they have failed to protect their women and their territory. This sense of powerlessness and failure is even more intensified for men when they themselves become the targets of such assaults.⁷²

⁷⁰ Donnelly and Kenyon, "Honey, we don't do men": Gender Stereotypes and the Provision of Services to Sexually Assaulted Males', (1996), p.441

⁷¹ S. Sivakumaran, "Sexual Violence Against Men in Armed Conflict" (2007):257-258.

⁷²S. Sivakumaran, "Sexual Violence Against Men in Armed Conflict" (2007): 267-268.

2.4 Conclusion

The exploration of gender stereotypes and their profound impact on societal attitudes and responses to sexual violence reveals a complex web of biases and norms that shape the understanding of masculinity, femininity, and the roles individuals play in society. Gender stereotypes, deeply ingrained beliefs about the roles and behaviors of men and women, have historically influenced perceptions, perpetuated inequalities, and hindered the support available to victims of sexual violence. Through this analysis it can be concluded that gender stereotypes, especially those linked to masculinity, have significant impacts, particularly in conflict situations. These stereotypes shape societal views, individual actions, and the treatment of victims, emphasising the negative effects on both men and women. Moreover, the discussion on gender stereotypes and sexual violence within armed conflicts highlights the underreporting and lack of attention towards male victims, driven by societal expectations of masculinity and the stigma surrounding male victimization. The failure to recognize and address sexual violence against men perpetuates a cycle of silence, hindering survivors from seeking the help and support they need. By addressing gender stereotypes and challenging traditional notions of masculinity and femininity are crucial steps towards creating a more inclusive and supportive environment for all individuals, regardless of gender.

Understanding the pervasive influence of gender stereotypes is essential as in the next chapter the attention will be turned to how these stereotypes are reflected in and perpetuated by international legal frameworks. The next chapter will explore how International Criminal Law, International Humanitarian Law, and International Human Rights Law address sexual violence, particularly focusing on male victims. By examining these frameworks, we can see how societal attitudes towards gender and sexual violence are codified into laws and policies, which either support or undermine justice for male victims. This transition sets the stage for a deeper analysis of the effectiveness and limitations of international legal systems in acknowledging and addressing sexual violence against men.

3. Gender stereotypes in international legal frameworks towards male sexual victims

3.1 Introduction

As it was previously mentioned in paragraph 1.3, sexual violence committed during war can be prosecuted under various international legal frameworks. Three key frameworks are International Criminal Law, International Humanitarian Law, and International Human Rights Law. International Criminal Law holds individuals accountable for international crimes such as genocide, war crimes, and crimes against humanity. This framework has developed significantly since the Nuremberg and Tokyo trials, with the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) by the United Nations Security Council, and the International Criminal Court (ICC) in 2002. International Humanitarian Law regulates the conduct of war and limits the impact of armed conflict on non-participants. It is based on conventions like the Geneva and the Hague Conventions, as well as other international treaties and protocols. International Human Rights Law, rooted in the Universal Declaration of Human Rights and various international treaties, aims to promote human rights and dignity globally. While it primarily applies in times of peace, it remains relevant during wartime.

While both International Criminal Law and International Humanitarian Law have adopted a gender-neutral approach to addressing conflict-related sexual violence, the same cannot be said for International Human Rights Law. The latter is primarily based on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which entered into force in 1981. Generally International Human Rights instruments do not explicitly address sexual violence against men or male sexual abuse, and the language used is usually female-specific when it comes to sexual violence. As a result, International Human Rights Law can be considered inadequate with the current provisions for addressing (wartime) sexual violence against men and raising awareness about it, and even vulnerable men are often excluded from the protection offered by International Human Rights Law to victims of sexual violence.⁷³

In the following sections of this chapter, I will delve into the legal frameworks that have explicitly addressed the issue of sexual violence in their texts, or those that should have but have failed to do so, but also recognizing the time period of their adoption. These frameworks will be analysed in chronological order, with a focus on the date of their adoption. This approach will provide a

⁷³ Féron, É. (2018). Wartime sexual violence against men: Masculinities and power in conflict zones, pg.162-163

comprehensive understanding of how or if the concept of sexual violence has evolved within the international legal system over time. By examining these legal frameworks in a chronological sequence, it is aimed to identify key milestones, shifts in societal attitudes, and the impact of historical events on the development of laws addressing sexual violence.

3.2 An overview of international legal documents through the years

3.2.1 The Hague Convention

The Hague Conventions, of 1899 and 1907, fail to impose any clear obligation on state parties to prevent their armed forces from committing acts of rape. The documents do not explicitly mention rape, and the closest they come to addressing the issue is in article 46 of the Convention with respect to the Laws and Customs of War on Land of 1899, which requires respect for "family honors and rights." However, this language is ambiguous and does not explicitly mandate the prevention of rape. Even if one were to interpret "family honor and rights" as an indirect reference to rape, the use of the term "respect" rather than "prohibition" results in a very low level of obligation, as the precise meaning and scope of this requirement remain unclear.⁷⁴ This interpretation, however, could only be true if we were to refer to a stereotype that assumes that 'family honour' is related to the sexual activity of an individual.

Given the issues with obligation and precision in the Hague Conventions regarding rape, there is also a lack of delegation. Even if prosecutions were to occur for violations of the conventions, if a court or tribunal had been established, the likelihood of charges being brought for rape was almost non-existent, as it is unclear whether states had a responsibility to prevent rape in the first place. Therefore, the Hague Conventions cannot be considered legal documents that established a prohibition regime against rape.⁷⁵ These documents not only fail to address the crime of rape directly therefore it would not be expected for the documents to consider any issues related to gender neutrality when it comes to rape or sexual violence, which means they do not offer a strong or clear set of rules for preventing or punishing rape in any context.

3.2.2 Nuremberg and Tokyo Military Tribunals

The Second World War witnessed many atrocities, among which the use of sexual violence as a weapon of war. Leaders of the Axis powers promoted the use of women for recreational purposes, viewing it as

⁷⁴ Inal, T. (2013). Looting and rape in wartime : law and change in international relations, pg.61

⁷⁵ Inal, T. (2013). Looting and rape in wartime: law and change in international relations, pg.61

a reward or a form of 'encouragement.'⁷⁶ In response to these horrific crimes, the international community established two significant military tribunals to ensure justice and accountability. The Nuremberg Trials, held in Nuremberg, Germany, and the Tokyo Trials, conducted in Tokyo, Japan, were landmark judicial efforts to address the crimes committed during the war.

The Nuremberg Tribunal had authority over three distinct categories of offences: crimes against peace, war crimes, and crimes against humanity.⁷⁷ At first glance, two of the three categories could encompass acts of sexual violence against civilians. War crimes are defined to include "murder, ill-treatment, or deportation to slave labour or for any other purpose of the civilian population of or in occupied territory," while crimes against humanity involve "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial, or religious grounds."⁷⁸ It would be more difficult to prove that acts of sexual violence are included in the definition of crimes against peace, that involve "namely, planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."⁷⁹ Although the definitions are broad and there was evidence of numerous sexual and gender-based crimes, the Charter did not specifically mention 'rape' or any other forms of sexual violence. Additionally, the indictments against the defendants failed to include any charges related to sexual crimes.⁸⁰

The Charter of the Tokyo Tribunal lists the same three categories of crimes as the one of the Nuremberg Tribunal. The difference is that in the Charter of the Tokyo Tribunal, the definition of war crimes under Article 6(b) of the Charter is even more broadly and vaguely described. It refers to these offences as "violations of the laws or customs of war" without offering any specific examples or detailed descriptions of what constitutes such violations.⁸¹ Another distinction from the Nuremberg Tribunal is evident in the

⁷⁶ Jocelyn Campanaro, 'Women, War, and International Law: The Historical Treatment of Gender-Based War Crimes' (2001) 89(8) *Geo LJ* 2557, 2559

⁷⁷ Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (signed 8 August 1945) 82 UNTS 279 (Nuremberg Charter), art 6.

⁷⁸ Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (signed 8 August 1945) 82 UNTS 279 (Nuremberg Charter), arts 6(b)-6(c).

⁷⁹ Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (signed 8 August 1945) 82 UNTS 279 (Nuremberg Charter), arts 6(a).

⁸⁰ Kuo, P. (2002). *Prosecuting crimes of sexual violence in an international tribunal*. *Case Western Reserve Journal of International Law*, 34(3), pg.306-307.

⁸¹ Charter of the International Military Tribunal for the Far East (signed 19 January 1946) (Charter of the Tokyo Tribunal), art 6 (b).

Tokyo Tribunal, where rape was among the atrocities acknowledged and the defendants were found guilty of such crimes. However, the judges in Tokyo avoided addressing rape explicitly. Instead, they focused more thoroughly on what they considered greater crimes, like murder, mass deportation, and mass enslavement. In the Tokyo judgments, rape was mentioned but only as part of the broader atrocities committed by the top military commanders.⁸²

Considering the extensive evidence that has come to light, even in recent years, about the sexual violence crimes committed during the Second World War,⁸³ the military tribunals had the chance to recognize and prosecute these crimes. However, they treated these acts as secondary offences and did not prioritise seeking justice for the victims. This decision reflects a significant failure to address the full range of wartime atrocities and to hold perpetrators fully accountable for their actions. It highlights a gap in the pursuit of justice when it comes to sexual violence victims. At the time, when recognizing sexual violence as a crime was still taboo, addressing this issue in a gender-neutral way would also have been unheard of.

3.2.3 The Geneva Conventions

The Geneva Conventions are international humanitarian laws consisting of four treaties and three additional protocols that set legal standards for humanitarian treatment in war. Commonly referred to as the agreements of 1949, these conventions updated two 1929 treaties and added two new ones, plus their two additional protocols. They define the rights of wartime prisoners, civilians, and military personnel, and establish protections for the wounded, sick, and civilians in war zones.

The only explicit mention of any type of sexual violence in the Geneva Conventions, is the mention of rape in Article 27 of GCIV. This article states that ‘Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.’⁸⁴ This article focuses exclusively on protecting women, leaving a significant gap in recognizing and addressing sexual violence against men. This gender exclusivity is further emphasised through the

⁸² Peggy Kuo, Prosecuting Crimes of Sexual Violence in an International Tribunal, 34 Case W. Res. J. Int'l L. 305 (2002), pg.307-308

⁸³ During World War II, Japanese forces compelled hundreds of thousands of women from Australia, Burma, China, the Netherlands, the Philippines, Japan, Korea, Indonesia, East Timor, New Guinea, and other countries into sexual enslavement for their armed forces. It was not until the 1990s that the Japanese government began to officially apologise and offer compensation.

⁸⁴ Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Fourth Geneva Convention), art 27.

commentary provided by the ICRC on this convention. According to the ICRC commentary, Article 27 refers to acts of violence that were also perpetrated against women and children during the previous World War, including "rape in occupied territories, brutal treatment, mutilations, etc." The commentary further identifies rape and enforced prostitution, the two explicitly mentioned acts in the article, as "acts constituting an attack on women's honor."⁸⁵ Furthermore Additional Protocol I to the Geneva Conventions (AP I) includes specific provisions for the protection of women. Article 76(1) states that "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution, and any other form of indecent assault."⁸⁶ This rule applies to all women within the territory of a party involved in a conflict. However, it is important to note that these protections are not listed as "grave breaches" of International Humanitarian Law (IHL) under Article 85 of AP I.⁸⁷ This highlights the international community's disregard for sexual violence crimes at the time, showing that they did not receive the same level of attention as other types of violence committed during conflicts.

Worthy to be pointed out as well, is that Article 4 of Additional Protocol II (AP II) explicitly lists several sexual crimes under the category of "outrages upon personal dignity." These crimes include "humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault."⁸⁸ Notably, this article uses a gender-neutral language when referring to sexual crimes which could lead to an interpretation that victims of such crimes can be any person, regardless of gender. This gender-neutral language that allows the recognition of both men and women being victims of sexual violence, marks a step towards a more comprehensive understanding of the impact of such crimes in the context of armed conflict. However, one could argue that this might not qualify as an acknowledgment, but merely as a phrasing in a gender-neutral manner, as is the case of many international instruments.

Generally the language used in the Geneva Conventions, when it comes to women, emphasises the need to protect their 'honour'. This comes from a common gender stereotype that distinguishes women from men, alluding that women are more inferior or vulnerable and that is why they would need more protection that is granted through these provisions. At the same time it could also suggest that for women, being a victim of sexual violence is especially devastating, as it implies that their worth is tied

⁸⁵ ICRC, 'Treaties, States Parties, and Commentaries - Geneva Convention (IV) on Civilians, 1949 - 27 -- Commentary of 1958'

⁸⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), art 76(1).

⁸⁷ Additional Protocol I (n 91) art 85.

⁸⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) art 4

to their honor. Likewise, women's honour holds significant importance for 'their' men, who do not want to be associated with a dishonoured woman. However, the ICRC has updated its Commentary to the First Geneva Convention, stating that the concept of "women's honour" is outdated and no longer considered appropriate.⁸⁹ It could be argued that it is important to give special protection to vulnerable groups during armed conflict, and this includes women and girls as well. This special protection can be argued to be necessary for achieving gender equality. However, I argue that exclusively recognizing women as victims of sexual violence not only discriminates against men by excluding them from protection but also reinforces harmful stereotypes. These stereotypes suggest that only women can be victims of sexual violence and men can only be perpetrators. In my view, this approach contradicts its intended goal of promoting gender equality. Instead, it perpetuates inequality by failing to acknowledge the reality that both men and women can be victims and need protection. Chapter 4 of this thesis will present the Kosovo case study, and in section 4.4, it will discuss in detail how focusing on de-stigmatizing sexual violence against women has inadvertently excluded male victims from public debate, leading to underreporting of their cases.

3.2.4 Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination Against Women (CEDAW)⁹⁰ is the authoritative body responsible for monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. This committee plays a crucial role in ensuring that signatory countries adhere to the principles and provisions of the Convention, which aims to eliminate discrimination and promote gender equality. As it was discussed previously in chapter 2, section 2.3, in its General Recommendation No. 19, titled "Violence Against Women," the committee provides a comprehensive definition of gender-based violence. It emphasises that gender-based violence is a form of discrimination that significantly impedes women's ability to fully enjoy their rights and freedoms on an equal footing with men.⁹¹ General Recommendation No. 35 in 2017 does not introduce a new definition of gender-based violence, instead citing the definition from General Recommendation No. 19. The committee elaborates that the definition of discrimination, as articulated in Article 1 of the Convention, inherently includes gender-based violence. This type of violence is characterised by acts directed against a woman because of her gender or acts that disproportionately affect women. Such

⁸⁹ Knut Dôrmann and others, Commentary on the First Geneva Convention: Convention (i) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (CUP 2016) footnote 161.

⁹⁰ Convention on the Elimination of All Forms of Discrimination Against Women art. 17, Dec. 8, 1979, 1249 U.N.T.S. 13.

⁹¹ CEDAW Committee, General Recommendation No. 19, 1992, art.1

violence can take many forms, including physical, *sexual*, psychological, and economic harm, and it manifests in various settings such as the home, workplace, community, and even state institutions.⁹²

Furthermore, General Recommendation No. 19 on Violence Against Women calls for extensive remedies to combat violence against women, including sexual violence. This recommendation lays out several broad and far-reaching measures for states to implement. For instance, it instructs states to institute preventive measures, such as public information and education programs aimed at changing societal attitudes towards violence against women.⁹³ These programs are intended to foster a culture of zero tolerance for violence and to educate the public about the rights and protections available to women. Additionally, the recommendation calls for effective legal measures, which include penal sanctions, civil remedies, and compensatory provisions designed to protect women from all forms of violence, particularly sexual assault.⁹⁴ These legal measures are crucial for ensuring that perpetrators are held accountable and that victims receive justice and compensation for their suffering. The CEDAW committee also emphasises the importance of comprehensive data collection and reporting. It urges states to include in their reports all available data on the incidence of each form of violence and the effects of such violence on women who are victims.⁹⁵ This data is essential for understanding the scope of the problem and for developing targeted and effective interventions. Moreover, the recommendation highlights the need for states to establish or support services for victims of violence. These services should include specially trained health workers, rehabilitation programs, and counselling services to provide holistic support to survivors.⁹⁶ In General Recommendation No. 35, published in 2017 as an update to General Recommendation No. 19, CEDAW highlights the significant impact of stereotypes on gender-based violence against women and how they contribute to perpetuating inequalities between men and women⁹⁷, emphasising how legal procedures, including the enforcement of criminal law, should be free of any gender stereotypes or discriminatory interpretations.⁹⁸ When it comes to recommendations related to preventive measures, General Recommendation No.35 urges states to adopt laws and other measures that combat stereotypes⁹⁹ and to specifically work on eradicating stereotypes by working with

⁹² CEDAW Committee, General Recommendation No. 19, 1992, para.6

⁹³ CEDAW Committee, General Recommendation No. 19, 1992, para 24 (f)

⁹⁴ CEDAW Committee, General Recommendation No. 19, 1992, para 24 (h)

⁹⁵ CEDAW Committee, General Recommendation No. 19, 1992, para 24 (c)

⁹⁶ CEDAW Committee, General Recommendation No. 19, 1992, para 24 (k)

⁹⁷ CEDAW Committee, General Recommendation No. 35, 2017, para 10, 26

⁹⁸ CEDAW Committee, General Recommendation No. 35, 2017, para 26 (c)

⁹⁹ CEDAW Committee, General Recommendation No. 35, 2017, para 30 (a)

multiple stakeholders, including women's rights organisations.¹⁰⁰ It is commendable that the Recommendation acknowledges the impact of stereotypes on gender-based violence and calls for their eradication. While it is understandable that the focus is on stereotypes against women, given that the Recommendation specifically addresses gender-based violence against women, I would argue it is important to recognize that to effectively combat this violence, all types of gender stereotypes must be addressed. Stereotypes about men, for instance, that portray them as invulnerable or dominant, can reinforce harmful dynamics and contribute to a culture that tolerates or excuses violence against women. Therefore, to truly eradicate gender-based violence against women, it is essential to address and eliminate all gender stereotypes, as they collectively uphold the systemic inequalities and cultural norms that enable such violence.

This is one of the cases where international human rights instruments recognize gender-based violence as a form of violence that primarily affects women. The provisions of CEDAW are focused on women, as the convention itself is explicitly designed to protect and promote the rights of women, addressing issues and discrimination that uniquely or disproportionately affect them. But while the concept itself is not fundamentally problematic, as violence directed at women due to their roles as women is indeed a form of gender-based violence, the frequent use of the terms 'gender-based violence' and 'violence against women' as if they are synonymous leads to significant confusion. This tendency to use these terms interchangeably perpetuates the mistaken belief that they mean the same thing. In reality, gender-based violence is a broader term that includes various forms of violence directed at individuals based on their gender, which can affect not only women but also men, non-binary, and gender non-conforming individuals. By conflating these terms, it is risked to oversimplify the issue and failing to recognize the full scope of gender-based violence and its impact on different groups.

3.2.5 The international Criminal Tribunals in Rwanda and Yugoslavia

The conflicts that were happening in the 1990s in Rwanda and former Yugoslavia, where sexual violence was widely spread as a weapon of war, served as a wake-up call for the international community to take action in order to rightfully respond to this extreme use of sexual violence.¹⁰¹ Responding to this violence, the UNSC adopted a resolution in 1992 and stated that it was "appalled by reports of massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina" and

¹⁰⁰ CEDAW Committee, General Recommendation No. 35, 2017, para 30 (b)

¹⁰¹ Ndulo, Muna. "The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions." *Berkeley J. Int'l Law Journal*, 27, no. 127 (2009): 127-161. 131.

strongly condemned “these acts of unspeakable brutality”.¹⁰² In the following years UNSC through two resolutions, 827¹⁰³ and 955¹⁰⁴, created two criminal tribunals, ICTY and ICTR, which had the jurisdiction to prosecute war crimes, crimes against humanity, and genocide.

The ICTY was established with ‘the power to prosecute persons responsible for serious human rights violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.’¹⁰⁵ These violations included mass killings, the massive, organized, and systematic detention and rape of women, and the ongoing practice of “ethnic cleansing.”¹⁰⁶ The ICTY stood out for several distinctive features. Firstly, it was an independent organ, not beholden to any authority or control from the UNSC. Secondly, its existence was tied to the restoration of peace and international security in the former Yugoslavia, making it a temporary entity. Thirdly, it was an ad hoc jurisdictional mechanism, not directly related to the establishment of a permanent international criminal jurisdiction. Lastly, it was confined to applying existing rules of international humanitarian law, rather than developing or creating new ones.¹⁰⁷

After the 1992 resolution of the UNSC, a committee of experts was created in order to investigate violations of humanitarian law in the former Yugoslavia. At the end of their investigation these experts identified that men had also been subjected to sexual violence and not only women. ‘In camps where men are detained, they are also subjected to sexual abuse’ the report states, using witness testimonies to describe the horrid acts which men suffered in detention situations. These include instances where prisoners were forced to bite off the genitalia of other prisoners, electric shocks to the scrotum, and forced sexual acts amongst prisoners, one instance in particular being between a father and son who shared a cell.¹⁰⁸ In one detailed instance, Serb women were forced to stand nude in front of male prisoners, and any male prisoner who had an erection was castrated.¹⁰⁹

¹⁰² UN Security Council, Res. 798, 18 December 1992, preamble and § 2

¹⁰³ UNSC Res 827 (25 May 1993) UN Doc S/RES/827 (‘Statute of the ICTY’ or ‘ICTY Statute’)

¹⁰⁴ UNSC Res 955 (8 November 1994) UN Doc S/RES/955 (‘Statute of the ICTR’ or ‘ICTR Statute’).

¹⁰⁵ UN, 1993, Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808

¹⁰⁶ UNSC Res 827 (n 111), 1.

¹⁰⁷ Quintana, JJ, 1994, Violations of international humanitarian law and measures of repression: the International Tribunal for the former Yugoslavia, *International Review of the Red Cross*, 300, pg 227-228.

¹⁰⁸ UNSC, ‘Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council’ (27 May 1994) UN Doc S/1994/674, annex, para 247

¹⁰⁹ UNSC, ‘Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council’ (27 May 1994) UN Doc S/1994/674, annex, para 247

Considering all the evidences that were gathered by activists or non-governmental entities working on the ground of acts of sexual violence committed, the statute of ICTY explicitly mentions rape in article 5, where it is considered to be a crime against humanity, though it may also be prosecuted by means of persecution, torture, enslavement, or inhumane acts where the *chapeau* elements for crimes against humanity are met.¹¹⁰ Sexual crimes could also be included within elements of genocide.¹¹¹ In instances where sexual violence is mentioned in the ICTY statute, there is no evidence of stereotypical language that excludes men from seeking protection under its provisions.

In *Prosecutor v. Duško Tadić*, the ICTY documented an incident where male detainees were forced to perform oral sex upon another detainee, and then were forced to bite off his testicles. But since by the statute rape was considered to be a crime against humanity, the prosecutor characterised and charged these acts as torture or inhuman treatment, as well as a grave breach of the Geneva Conventions, war crime and crime against humanity rather than sexual violence or rape.¹¹² However this case can be considered as a landmark case as it was the first ever case that achieved a conviction for sexual violence against male victims. *Tadić* was not the only case which prosecuted acts of sexual violence committed towards men at the ICTY. In the *Češić* case, evidence was presented that the accused had ‘intentionally forced, at gunpoint, two Muslim brothers detained at Luka Camp to perform fellatio on each other in the presence of others’ and that ‘he was fully aware that this was taking place without the consent of the victims’.¹¹³ This sexual assault constituted rape as a crime against humanity, and humiliating and degrading treatment as a war crime.¹¹⁴ But in other less successful cases of male sexual violence victims, acts such as forcing prisoners to perform oral sex, were not characterized as sexual violence or rape, but rather considered to constitute as both inhumane treatment and cruel treatment as war crimes.¹¹⁵ While there are a number of other cases of male sexual violence victims that were difficult to prove or whose charges were dropped.¹¹⁶

In the same decade a conflict was going on in Rwanda. Similarly, as it was done with the case of the former Yugoslavia, the UNSC had set up a Committee of Experts to investigate and compile reports of

¹¹⁰ ICTY Statute (n 111) art 5

¹¹¹ ICTY Statute (n 111) arts 4(2)(b) and 4(2)(d).

¹¹² *Prosecutor v. Tadić* (Opinion and Judgment) IT-94-1-T, para. 206

¹¹³ *Prosecutor v Ranko Češić* (Sentencing Judgement) IT-95-10/1-S (11 March 2004) paras 13-14

¹¹⁴ *Prosecutor v Ranko Češić* (Sentencing Judgement) IT-95-10/1-S (11 March 2004) para 107

¹¹⁵ *Prosecutor v Zejnil Delalić et al* (Judgement) IT-96-21 (16 November 1998) (Čelebići Case) paras 1062-1066.

¹¹⁶ One of these cases being *Prosecutor v Duško Sikirica et al* (Second Amended Indictment)

gross violations of IHL in Rwanda.¹¹⁷ In 1994, the Committee found that large massacres over the last 45 years had taken place, primarily against the Tutsi population, representing pre-meditated executions of approximately half a million unarmed civilians. Such acts consisted of ‘severe human rights violations, including systematic, widespread and flagrant breaches of IHL, large-scale crimes against humanity and genocide.’¹¹⁸ The report neglects to provide details on rape or sexual violence having taken place. Additionally, neither the first nor second reports of the Special Rapporteur from the UN Commission on Human Rights made any mention of rape or sexual violence of any kind.¹¹⁹ A report in 1996 finally addressed allegations of rape and sexual violence; and while numerous forms of rape were listed, the report refers only to female victims of rape.¹²⁰

The statute of ICTR is very similar to the statute of the ICTY, even when it comes to addressing sexual violence crimes. Rape is listed as a crime against humanity in article 3(g) of the statute, with a slight difference from ICTY because the ICTR recognizes “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault” as a war crime in article 4(e). When it comes to cases of male sexual violence victims in the tribunal’s jurisdiction, there were only few since the work of the tribunal on this matter was mainly focused on women. But one achievement of the jurisprudence of this tribunal that merits to be mentioned is the Akayesu case. In 1998, the ICTR expanded the legal definition of sexual violence, ruling that “[it] is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact”, like, for example, forced nakedness.¹²¹

3.2.6 The Rome Statute

Following the atrocities of the Second World War and the Nuremberg and Tokyo Tribunals, an idea of creating a permanent international criminal court was going around within the international community. This idea of a permanent court was more reinforced after the conflicts in former Yugoslavia and Rwanda.

¹¹⁷ UNSC Res 9935 (4 October 1994)

¹¹⁸ UNSC, ‘Letter dated 1 October 1994 from the Secretary-General addressed to the President of the Security Council’ (4 October 1994) UN Doc S/1994/1125, annex, paras 42-43.

¹¹⁹ UNCHR (n 115); UNCHR, ‘Report on the situation of human rights in Rwanda / submitted by René Degni-Ségué, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994’ (12 August 1994) UN Doc E/CN.4/1995/12.

¹²⁰ UNCHR, ‘Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségué, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994’ (29 January 1996) UN Doc E/CN.4/1996/68.

¹²¹ Prosecutor v. Akayesu, ICTR-96-4-T, Trial Chamber 1, Para. 688

However, the establishment of such a court was only possible on the 17th of July 1998 with the adoption of the Rome Statute.¹²² The statute came into force in 2002, after 60 ratifications.

The Rome Statute created the International Criminal Court (ICC). The ICC has jurisdiction over four categories of crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.¹²³ However all these crimes are subject to the statute only if committed after it has come into force (1st of July 2002).¹²⁴ When it comes to sexual violence crimes, rape and sexual slavery are included as war crimes¹²⁵ and crimes against humanity.¹²⁶ In a later document the definition of rape as a crime against humanity includes language inclusive of both sexes: "The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body."¹²⁷ The Statute enumerates various sexual crimes, including 'imposing measures intended to prevent births within the group' in the context of genocide. It also lists 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence' as war crimes and crimes against humanity. Additionally, it addresses other inhumane acts, enslavement, and specifically the trafficking of women and children.¹²⁸ This document also offers an expansive list of sexual violence crimes, including enforced sterilization, which the Elements of Crimes defines as the deprivation of "biological reproductive capacity."¹²⁹ 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.¹³⁰

The Rome Statute also contains the first definition of "gender" in an international treaty: "the two sexes, male and female, within the context of society."¹³¹ While the phrase that made its way into the statute,

¹²² Rome Statute of the International Criminal Court. (1998)

¹²³ Rome Statute of the International Criminal Court. (1998), arts 6-8

¹²⁴ Rome Statute of the International Criminal Court. (1998), art 11.

¹²⁵ Rome Statute of the International Criminal Court. (1998), art. 8(2)(b)(xxii).

¹²⁶ Rome Statute of the International Criminal Court. (1998), art. 7(I)(g).

¹²⁷ Elements of Crimes for the International Criminal Court (Nov. 2, 2000) art. 7()(g)-I.

¹²⁸ Rome Statute of the International Criminal Court. (1998) arts 6(d), 7(1)(g), 7(1)(k), 7(2)(c), 8(2)(b)(xxii).

¹²⁹ Elements of Crimes for the International Criminal Court (Nov. 2, 2000) art. 7(1)(g)-5.

¹³⁰ Manivannan, A. (2014). Seeking Justice for Male Victims of Sexual Violence in Armed Conflict. *New York University Journal of International Law and Politics*, 46(2),pg 662

¹³¹ Rome Statute of the International Criminal Court. (1998), art 7 (3)

"within the context of society," was criticised for its failure to critique socially constructed norms,¹³² It does offer a ground-breaking nod to gender's societal context, and includes both males and females. However, the interpretation of whether this definition is exclusive to binary understandings of gender (cisgender individuals) or if it could encompass a broader spectrum remains unclear. The term "the two sexes" suggests a binary view, but the phrase "within the context of society" opens the possibility for a more expansive interpretation that acknowledges diverse gender identities beyond the binary.

The statute's inclusion of gender was rightly heralded by some as a victory for women.¹³³ In 2014, the Office of the Prosecutor (OTP) released a Policy Paper on Sexual and Gender-Based Crimes and gave some more clarity about the definition of gender in the Rome Statute of the ICC. According to the OTP the definition of gender in the Rome Statute 'acknowledges the social construction of gender', and separates it from the definition of 'sex' which it defines as 'the biological and physiological characteristics that define men and women'.¹³⁴ According to this policy paper the OTP, in accordance with article 54(1)(a) of the Statute, is committed to incorporating a gender analysis into the investigation of all crimes under its jurisdiction. This involves assessing how gender differences, societal roles, stereotypes, and power dynamics influence behaviour and contribute to crimes, particularly those based on sexual and gender biases.¹³⁵ Additionally, the OTP will enhance its operational procedures by embedding a gender perspective at every stage, from preliminary examinations and developing investigation strategies to witness protection and post-trial processes. Efforts will also be made to equip staff with the necessary skills and knowledge to address sexual and gender-based crimes effectively, including understanding the impact of trauma related to these crimes.¹³⁶ However there is some critique related to this gender analysis of the OTP on the policy paper.¹³⁷ The critique of the OTP policy paper on gender persecution suggests that the proposed gender analysis fails to adequately address the specificities of sexual violence against men. Instead, it echoes familiar feminist theories that explain wartime rape of women as rooted in patriarchy and the social and economic inequality of women, which

¹³² Valerie Oosterveld, *The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?*, (2005), pg 55-57

¹³³ Valerie Oosterveld, *The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?*, (2005), pg 58

¹³⁴ International Criminal Court. (2014, June 20). Policy paper on sexual and gender-based crimes, pg 3

¹³⁵ International Criminal Court. (2014, June 20). Policy paper on sexual and gender-based crimes, pg 13

¹³⁶ International Criminal Court. (2014, June 20). Policy paper on sexual and gender-based crimes, pg 14.

¹³⁷ Vojdik, V. K. (2019). *Towards a Gender Analysis of Sexual Violence Against Men and Boys in Conflict: Incorporating Masculinities Theory into Feminist Theories of Sexual Violence Against Women*. In S. Mouthaan & O. Jurasz (Eds.), *Gender and War: International and Transitional Justice Perspectives* pg. 110–111.

is insufficient to explain the nature and impact of violence against male victims. The analysis primarily focuses on the inequalities between men and women, neglecting the gender relations between different groups of men within specific social contexts, which is crucial to understand the social meaning and impact of sexual violence against men and women, and gender relations more generally.

When it comes to cases brought in front of the court, the landmark case of Jean-Pierre Bemba Gombo, former president of the Mouvement de libération du Congo (MLC) and commander-in-chief of its Armée de libération du Congo (ALC), marked the first successful prosecution of an individual for sexual violence committed against men.¹³⁸ In March 2016, Jean-Pierre Bemba Gombo was found guilty of multiple crimes, including the rape of both women and men by soldiers under his command, which was characterized as rape as a crime against humanity and a war crime.¹³⁹ Despite being initially convicted of multiple crimes, including the rape of both women and men, Jean-Pierre Bemba Gombo's conviction was later overturned on appeal, resulting in his acquittal of all charges.¹⁴⁰ However the ICC can be criticized for its handling of sexual violence against men. In the Muthaura et al case, the ICC utilised evidence of forced circumcision of Luo men in Kenya as supporting evidence for other charged crimes.¹⁴¹ The Pre-Trial Chamber concluded that the acts were not considered sexual violence but rather "other inhumane acts" under Article 7(l)(k) of the Statute, citing the serious injury caused and the character of the acts.¹⁴² This decision was criticized by legal representatives for the victims, who argued that the Pre-Trial Chamber relied on an outdated understanding of sexual violence and neglected the power dynamics involved in such acts. The forced circumcisions were seen as part of a broader context of Luo feminization and Kikuyu masculinity, where Kikuyu men asserted their dominance over the feminized Luo men through mutilation. This case highlights the need for a more nuanced understanding of sexual violence and its various forms, including those that do not involve physical penetration.¹⁴³

Another important case that is considered as a good step forward from the ICC to address sexual and gender-based violence against men is the Ntaganda case that successfully prosecuted sexual and gender-

¹³⁸ Prosecutor v Jean-Pierre Bemba Gombo (Trial Judgement) ICC-01/05-01/08 (21 March 2016) para 1.

¹³⁹ Prosecutor v Jean-Pierre Bemba Gombo (Trial Judgement) ICC-01/05-01/08 (21 March 2016) paras 633-638.

¹⁴⁰ Prosecutor v Jean-Pierre Bemba Gombo (Appeal's Judgement) ICC-01/05-01/08 A (8 June 2018).

¹⁴¹ Prosecutor v Francis Kirimi Muthaura et al (Decision on the Confirmation of Charges) ICC-01/09-02/11 (23 January 2012) para 262.

¹⁴² Prosecutor v Francis Kirimi Muthaura et al (Decision on the Prosecutor's Application for Summonses to Appear) ICC-01/09-02/11 (8 March 2011) para 27

¹⁴³ Prosecutor v Francis Kirimi Muthaura et al (Victims' Observations on the "Prosecution's application for notice to be given under Regulation 55(2) with respect to certain crimes charged") ICC-01/09-02/11 (24 July 2012) para 11-12

based violence against men. Bosco Ntaganda, a former Deputy Chief of Staff in the Forces Patriotique pour la Libération du Congo (FPLC), was found guilty of 18 counts of crimes against humanity and war crimes, including rape and sexual slavery.¹⁴⁴ The case included evidence of sexual crimes committed by militia soldiers, including anal penetration with penises or wooden objects, resulting in serious injury and death. The judgement also recognized that intra-party sexual violence can be charged and convicted as a war crime.¹⁴⁵

3.2.7 The UN response

It has been argued that UN policies and resolutions are narrow, little space is granted to wartime sexual violence against men, and attention is rather drawn to the need to protect women from violence exerted by men.¹⁴⁶ There is criticism that the language used in major texts, such as UN Security Council Resolutions, about gender and conflict is essentialist. Essentialism refers to the assumption that certain characteristics, such as gender, are fixed and unchanging. In this context, the language used in these resolutions rarely questions the categories "women" and "men," assuming that all women face the same issues and all men have the same violent role. This approach overlooks the diversity of individual experiences and the complexities of gender relations in different contexts,¹⁴⁷ including the approaches of UN Security Council Resolutions 1325 (2000)¹⁴⁸ and 1820 (2008).¹⁴⁹

The Security Council 1820 resolution often in its text states that women and children need protection from the states, further emphasising the stereotype that women are mainly victims and men are mainly perpetrators. The resolution marks a shift from a focus on sexual violence *in particular* against women and girls to a broader approach addressing sexual violence *against* women and girls. For example, the Security Council: 'Affirms its intention, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict.'¹⁵⁰ The Resolution's language is more inclusive when it comes to describing the problem of sexual violence and general measures, but becomes exclusive when specifying

¹⁴⁴Prosecutor v Bosco Ntaganda (Trial Judgement) ICC-01/04-02/06 (8 July 2019) para 32.

¹⁴⁵Prosecutor v Bosco Ntaganda (Trial Judgement) ICC-01/04-02/06 (8 July 2019) paras 623, 940.

¹⁴⁶Féron, É. (2017). WARTIME SEXUAL VIOLENCE AGAINST MEN: WHY SO OBLIVIOUS? European Review of International Studies, 4(1), pg.68

¹⁴⁷Féron, É. (2017). WARTIME SEXUAL VIOLENCE AGAINST MEN: WHY SO OBLIVIOUS? European Review of International Studies, 4(1), pg.68

¹⁴⁸ UNSC Resolution 1325; S/RES/1325(2000)

¹⁴⁹ UNSC Resolution 1820; S/RES/1820(2008)

¹⁵⁰ UNSC Resolution 1820; S/RES/1820(2008), para 5.

concrete implementation or enforcement measures. This is evident when considering passages that combine descriptive and implementation measures, or when general and specific measures are addressed together.¹⁵¹ This can be evident in this passage: The Security Council: ‘Encourages troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations....’¹⁵² Another example, the Security Council: ‘Requests the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN peacekeeping operations, consistent with their mandates, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard’.¹⁵³

There is a perception among human rights officials that addressing sexual violence against men will divert resources from addressing sexual violence against women, as sexual violence is predominantly viewed as a problem faced by women due to higher reported rates and long-standing societal norms that emphasize women’s vulnerability. This perspective can lead to the belief that allocating attention and resources to male victims might undermine efforts to combat what is seen as a predominantly women's issue, potentially diminishing the focus on the extensive and deeply ingrained impact of sexual violence on women. For example, an important meeting at Wilton Park in May 2008, brought together high-level UN officials, governmental representatives, and force commanders of peacekeeping missions, amongst others, to discuss responses of military peacekeepers to sexual violence against women and girls in times of armed conflict. The conference acknowledged that ‘women are not the only civilians to be targeted for sexual violence’ and that ‘children and also men, particularly captive male combatants, are also subjected to sexual torture and terror.’¹⁵⁴ The meeting focused primarily on women and girls due to the perception that they are the majority of civilians targeted for sexual violence, with their reproductive

¹⁵¹ Sivakumaran, S. (2010). Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict. *International Review of the Red Cross*, 92(877), pg 267.

¹⁵² UNSC Resolution 1820; S/RES/1820(2008), para 8.

¹⁵³ UNSC Resolution 1820; S/RES/1820(2008), para 9.

¹⁵⁴ Anne-Marie Goetz, ‘Introduction’, in *Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers? Wilton Park, 27–29 May 2008*, p. 3.

capacities being particularly affected. Additionally, violent sexual attacks on women and girls pose unique challenges for peacekeepers, distinct from cases involving male victims.¹⁵⁵

In 2009, the United Nations Security Council (UNSC) adopted Resolution 1888, which uses language that can be considered gender-sensitive and does not explicitly differentiate between men and women when referring to victims of sexual violence. For instance, the first paragraph of the resolution refers to civilians as targets of sexual violence without specifically focusing on women alone. Some years later, in 2013, UNSC Resolution 2106 was adopted, which notes that ‘sexual violence in armed conflict and post-conflict situations disproportionately affects women and girls, as well as groups that are particularly vulnerable or may be specifically targeted, while also affecting men and boys and those secondarily traumatized as forced witnesses of sexual violence against family members’.¹⁵⁶ In some more recent development, through the UNSC 2467 resolution, has put a focus in addressing conflict-related sexual violence, by urged prevention, protection and relief efforts address all survivors – women and girls, but men and boys too.¹⁵⁷ It is argued that this resolution places survivors at the heart of responses and prevention efforts, offers comprehensive pathways to address stigma, reform the justice sector, combat impunity and pay specific attention to neglected sites and individuals. It is on the latter that the document most advances the agenda, by shining the light on “hidden” survivors and victims of sexual violence, most notably, children born of sexual violence and men and boys who are victimised during conflicts.¹⁵⁸

3.3 Conclusion

The examination of gender stereotypes within international legal frameworks reveals a complex but also evolving landscape when it comes to the protection of male sexual victims during armed conflict. Initially because sexual violence was not even considered an international concern the issue itself received no attention at all (see 3.2.2). As the year passed, the international frameworks, including the Geneva Conventions and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have predominantly focused on female victims, largely due to societal stereotypes that view women as the primary victims of sexual violence. In the best case this gender-specific language has

¹⁵⁵Anne-Marie Goetz, ‘Introduction’, in *Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers?* Wilton Park, 27–29 May 2008, p. 4

¹⁵⁶ UNSC Resolution 2106 (2013), para 6.

¹⁵⁷ UN Security Council Resolution 2467 (2019), S/RES/2467(2019), para 28.

¹⁵⁸Hogg, C. L. (2019, June 19). UN resolution acknowledges hidden victims of sexual violence in conflict—men and boys. OpenGlobalRights. <https://www.openglobalrights.org/un-resolution-acknowledges-hidden-victims-of-sexual-violence-in-conflict-men-and-boys/>

mistakenly excluded male victims, perpetuating the stereotype that men are invulnerable to such abuses and are typically the perpetrators rather than the victims.

Progress has been made in more recent legal instruments, such as the Rome Statute and policies of the International Criminal Court (ICC), which acknowledge sexual violence against men and include gender-neutral language. However, the legacy of earlier frameworks and ongoing enforcement challenges highlight a significant gap in the recognition and support for male victims. Efforts by the ICC and various United Nations resolutions, like UNSC Resolution 2467, which calls for attention to all survivors including men and boys, signify a positive shift towards inclusivity. Nonetheless, to truly address and dismantle harmful gender stereotypes within these frameworks, there needs to be a consistent and rigorous application of gender-neutral language and practices that recognize the vulnerabilities of all victims, regardless of gender.

International legal frameworks and practices can also influence domestic legal systems, and vice-versa. By setting global standards and norms, these international frameworks provide models that countries can adopt or adapt according to their local needs and contexts. For instance, treaties and conventions, such as the CEDAW or the Rome Statute of the International Criminal Court, establish principles and legal standards that promote human rights and justice. Domestic legal systems often incorporate these international standards to improve their own laws and ensure compliance with global expectations. Therefore, in the subsequent chapters, I will explore whether these international influences (practices or legal frameworks) are reflected in domestic policies, specifically examining the response to male sexual violence victims in Kosovo during the widespread occurrences of sexual violence in the 1998-1999 conflict.

4. Challenges of male sexual violence victims on a national level: focus on Kosovo

4.1 Introduction

International law, alongside national legislation, establishes that the judicial system of a state should deliver justice to victims of sexual violence and secure accountability for these offenses. States are obligated to offer compensation to victims of severe breaches of international human rights law and international humanitarian law. Moreover, individuals and entities deemed responsible for violations during conflicts may also be required to provide reparations.¹⁵⁹ The laws protecting victims of sexual violence on a national level are shaped by the unique context of conflict each country encounters, which varies widely due to factors such as historical circumstances, established legal traditions, regional characteristics, socio-economic conditions, and prevalent social stigmas. These diverse factors influence how national legislations are crafted and implemented, ensuring that they are tailored to address the specific needs and challenges faced by victims of sexual violence within different societal frameworks.

In Kosovo CRSV was noted as early as the 1990s, with incidents escalating in frequency between 1998 and 1999.¹⁶⁰ During this period, local NGOs and international bodies such as the 1998 Kosovo Verification Mission recorded instances of rape and sexual violence.¹⁶¹ Reports from the Centre for the Protection of Women and Children indicated that Serbian police and Yugoslav Army soldiers were among the perpetrators.¹⁶² Sexual assaults were often perpetrated by various Serbian entities, including police, paramilitary units, and prison guards, and involved prolonged periods of forced sexual and domestic servitude.¹⁶³ These crimes typically occurred during home invasions, displacement, or detention, with most victims being women and girls under twenty-five. These acts were part of a broader pattern of violations, where Serb forces would invade villages, separate women from men, and subject them to abduction, rape, and murder.¹⁶⁴ It is estimated that approximately 20,000 women were raped by Serbian forces during the Kosovo war, but the extent of sexual violence against men and boys remains unclear. In the aftermath of the war, organizations like Human Rights Watch linked the systematic nature of these crimes to the ethnic cleansing policies of the Slobodan Milošević regime, which targeted

¹⁵⁹ UN General Assembly resolution 60/147 (2005) Basic Principles and Guidelines on the Right to Remedy and Reparation, principle 15.

¹⁶⁰ UNIFEM (2000) No Safe Place: An Assessment on Violence against Women in Kosovo, Prishtina. pg 61.

¹⁶¹ OSCE (1999) As seen as told. An analysis of the human rights findings of the OSCE Kosovo Verification Mission October 1998 to June 1999.

¹⁶² Human Rights Watch, Kosovo: Rape as a Weapon of “Ethnic cleansing”, pg, 7.

¹⁶³ Human Rights Watch, Kosovo: Rape as a Weapon of “Ethnic cleansing” section II

¹⁶⁴ International Amnesty, “Wounds that burn our souls”, compensation for Kosovo’s wartime rape survivors, but still no justice, Available at: <https://www.amnesty.org/download/Documents/EUR7075582017ENGLISH.PDF>

Kosovor Albanians. There were also unconfirmed reports of sexual violence against boys and men during the conflict, but at the time, no victims were prepared to publicly discuss their experiences.¹⁶⁵ Dr. Feride Rushiti, head of the Kosovo Rehabilitation Centre for Torture Victims (KRCT), in an interview¹⁶⁶ emphasized the severe stigmatization male victims of sexual assault face in Kosovo, largely due to prevailing gender stereotypes associated with 'strength' and 'masculinity'. Rushiti explained that the lack of justice has left these victims feeling angry and hopeless. Over her 25 years of work, she has observed that male victims often experience deep depression, particularly when the abuse occurs in front of family members, which exacerbates their trauma and leads them to silence.

In this chapter, an analysis of the Kosovo case will be conducted, examining how domestic legislation and policies have addressed the issue of sexual violence following the conflict that occurred within Kosovo's territory during the war. Specifically, the focus will be on the legislative, policy approaches taken towards male victims of sexual violence, as well as court proceedings and prosecutions, exploring whether these approaches incorporate or challenge prevailing gender stereotypes. Additionally, it will be delved into the societal challenges and stereotypes that male sexual violence victims face in Kosovo. This includes investigating how cultural perceptions of masculinity and societal stigma impact the recognition and treatment of male survivors within legal and social frameworks. This analysis aims to uncover the nuances of Kosovo's response to this complex issue and to understand the broader implications of their legislative and policy choices. By exploring both the legislative context and societal attitudes, this chapter will provide a comprehensive overview of the hurdles and progress in addressing male sexual violence in a post-conflict setting.

4.2 Kosovo's legal framework on conflict related sexual violence

War crimes, crimes against humanity, and genocide committed in Kosovo during 1998-1999 are primarily adjudicated based on two legal documents: the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY Criminal Code) from 1976, specifically articles 22 and 142, and the Criminal Code of Kosovo, which covers articles 142 to 156.¹⁶⁷ These codes establish the legal foundation for prosecuting such serious offences and detail the penalties and responsibilities involved.

¹⁶⁵Kurteshi, Bleona. "It happened to boys and men too", GC Human Rights Preparedness, 23 November 2023

¹⁶⁶Haxhiaj S. (2024). Worse than death: Male wartime rape survivors in Kosovo speak out. *Balkan Insight*.

¹⁶⁷Murati, G., Rushiti, F., & Metaj Dika, A. (2023). Justice for Survivors of Sexual Violence During the War (KRCT), pg 26.

During an interview with a local NGO, a prosecutor in Kosovo detailed how both criminal codes are utilised in legal proceedings.¹⁶⁸ The "principle of leniency" is a legal guideline that comes into play when a law relevant to a crime is changed after the offence has been committed. According to this principle, if the new law is more favourable to the accused, meaning it might result in a lighter sentence or less severe penalties, then this newer, more lenient law should be applied in the court's decision-making. This principle is incorporated into judicial decisions to ensure fairness, recognizing that if the legal system's understanding of justice has evolved to be less harsh, individuals should not be punished under the older, stricter rules that no longer apply. Essentially, it prevents retrospective application of harsher laws and seeks to administer justice in a manner that is consistent with the most current legal standards.

The SFRY Criminal Code, specifically Chapter XVI, which deals with "Crimes against Humanity and International Law," prohibits war crimes and genocide. Although the code does not explicitly cover the full spectrum of sexual violence recognized under international law, it does criminalize forced prostitution and rape as war crimes against civilians under Article 142. In contrast, the provisions on genocide (Article 141), war crimes against the wounded and sick (Article 143), and war crimes against prisoners of war (Article 144) do not explicitly address sexual misconduct.¹⁶⁹ An analysis conducted by the OSCE found that the SFRY Criminal Code does not adequately cover the prosecution of wartime sexual violence crimes.¹⁷⁰ While it explicitly criminalizes rape and forced prostitution as war crimes against civilians under Article 142, the code fails to address other forms of sexual violence recognized under international law, such as sexual slavery, enslavement, forced pregnancy, enforced sterilization, and gender-based persecution.¹⁷¹ This limitation, in theory, could create significant obstacles for effectively prosecuting a wider range of wartime sexual violence crimes. However the SRFY Criminal Code does suggest that such crimes can be prosecuted under provisions related to war crimes, including torture, inhuman treatment, or causing great suffering or serious injury to bodily integrity or health.¹⁷² Additionally, it is recognized by the SRFY Criminal Code that sexual violence can be categorized as

¹⁶⁸The interview was conducted with Ms. Drita Hajdari , Kosovo Special Prosecutor, February 2022 by the NGO QKRMT. This detail of the interview is incorporated in the NGOs report: Justice for Survivors of Sexual Violence During the War, pg.26

¹⁶⁹Murati, G., Rushiti, F., & Metaj Dika, A. (2023).Justice for Survivors of Sexual Violence During the War (KRCT), pg 26.

¹⁷⁰Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges, OSCE Report 2014

¹⁷¹ Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges, OSCE Report 2014, p.37

¹⁷² Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges, OSCE Report 2014, p.37

genocide and prosecuted under the definitions of “the inflicting of serious bodily injuries or serious disturbance of physical or mental health,” or as acts involving measures “intended to prevent births within the group.” This implies that actions such as forced sterilization are inherently acknowledged as constituting genocide.¹⁷³ When it comes to the language used in the formulation of the articles, the SRFY Criminal Code is gender-neutral, meaning that it does not make legal distinctions based on the gender of the victim in crimes. By not drawing such distinctions, the law avoids limiting the range of crimes that can be prosecuted based on the victim's gender. In practical terms, this means that the same legal standards are applied to similar acts of sexual violence, whether the victims are male or female.

In contrast to the SFRY Criminal Code, the Criminal Code of Kosovo provides a more comprehensive framework for addressing serious violations of humanitarian law and human rights. It includes a broader range of articles that hold individuals accountable for their involvement in these violations. The code also incorporates the customary concept of crimes against humanity and defines command responsibility comprehensively.¹⁷⁴ Furthermore, it defines sexual violence to include a wide range of acts, including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity.¹⁷⁵ When it comes to protecting sexual violence victims during trials the Criminal Procedure Code of Kosovo does not include specific evidentiary rules aimed at protecting victims of sexual violence during trials, potentially exposing them to further trauma. This contrasts with the approach taken by Bosnia and Herzegovina, where the Criminal Procedure Code contains detailed rules to safeguard the dignity and privacy of sexual violence victims. These rules exclude evidence related to a victim's past sexual behaviour or sexual orientation, and specify conditions under which other types of evidence can be admitted, ensuring a more sensitive handling of sex crime cases.¹⁷⁶

The Criminal Code of Kosovo adopts the same gender-neutral language as the SRFY Criminal Code, as outlined previously. By maintaining this neutrality, the law prevents the restriction of prosecutable crimes based on gender, thus broadening the scope of legal protection for all individuals. Practically, this means that the legal standards applied are consistent across similar acts of sexual violence, regardless of whether

¹⁷³Murati, G., Rushiti, F., & Metaj Dika, A. (2023).Justice for Survivors of Sexual Violence During the War (KRCT), pg 27

¹⁷⁴Kosovo Criminal Code, article 152

¹⁷⁵Kosovo Criminal Code, article 143, para 1.7

¹⁷⁶Murati, G., Rushiti, F., & Metaj Dika, A. (2023).Justice for Survivors of Sexual Violence During the War (KRCT), pg. 32.

the victims are male or female, ensuring a uniform application of justice without gender bias within the legal system.

The Kosovo government has also published a State Protocol on Handling Cases of Sexual Violence.¹⁷⁷ The primary objective of this protocol is to establish standardised procedures for a sustained, comprehensive, and accountable response. This includes the identification, protection, treatment, documentation, referral, sustainable empowerment, and reintegration of victims/survivors of sexual violence. It aims to ensure that the interventions by responsible institutions are immediate and professional.¹⁷⁸ The protocol states that despite data indicating that women and girls are predominantly the victims of reported cases of sexual violence, it is undeniable that boys and men can also suffer from this form of violence. Consequently, the protocol states that it will employ inclusive language that does not exclude male victims/survivors.¹⁷⁹ It is important to highlight that the language used throughout the entire protocol is notably gender-sensitive and inclusive, by always including men and boys as recognized victims of sexual violence. According to this protocol, crime statistics reveal that boys and men are also victims of sexual abuse, although at lower rates than women. It is emphasised in the protocol that the likelihood of men and boys reporting sexual violence is reduced, largely due to stigma and societal assumptions. The protocol recognizes that gender stereotypes and prejudices, such as the expectation for men to physically resist aggression, make it challenging for them to discuss their experiences openly. Consequently, male victims and survivors of sexual violence often struggle more with acknowledging their victimhood and seeking assistance.¹⁸⁰ There is a dedicated chapter on this protocol on conflict related sexual violence victims.¹⁸¹ The protocol achieves to recognize male sexual violence victims as well. It is stated in the protocol that “sexual violence does not only affect hundreds of people thousands of women and girls, but it also affects and victimizes men and boys.”¹⁸²

Another important legal framework in Kosovo is the “Law on the status and the rights of the martyrs, invalids, veterans, members of the Kosovo liberation army, civilian victims of war and their families”, adopted in 2011. Under this law, individuals falling into these designated categories were entitled to a monthly pension. However, the Assembly of Kosovo decided not to extend these benefits to victims of

¹⁷⁷Republic of Kosovo (23.11.2022), *Protokoli shtetëror për trajtimin e rasteve të dhunës seksuale*.

¹⁷⁸Republic of Kosovo (23.11.2022), *Protokoli shtetëror për trajtimin e rasteve të dhunës seksuale*, pg. 3

¹⁷⁹Republic of Kosovo (23.11.2022), *Protokoli shtetëror për trajtimin e rasteve të dhunës seksuale*, pg. 10

¹⁸⁰Republic of Kosovo (23.11.2022), *Protokoli shtetëror për trajtimin e rasteve të dhunës seksuale*, pg. 26

¹⁸¹The issue is addressed in the third section of the Protocol.

¹⁸²Republic of Kosovo (23.11.2022), *Protokoli shtetëror për trajtimin e rasteve të dhunës seksuale*, pg. 108

wartime sexual violence, justifying their exclusion by claiming the events happened too long ago to accurately identify the victims. Despite widespread acknowledgment of the need for support for these victims from both the state and broader society, Kosovo's institutions did not recognize them as qualifying under this law.¹⁸³ A few months later, on March 13, 2013, the oppositional left-wing party 'Vetëvendosje' presented a draft bill to the Assembly of Kosovo, proposing that victims of wartime sexual violence be included under the existing law to receive compensation, including financial support, rehabilitation, and healthcare.¹⁸⁴ The proposal sparked intense and heated debates in the Parliament, revealing deep-seated sexism and prejudice. Some of the statements from members of the Parliament included questions about the roles of Albanian men during the conflicts when Serbian forces were accused of raping 20,000 women.¹⁸⁵ These statements highlight deep-seated gender stereotypes about victims of wartime sexual violence. First, they fail to acknowledge that among the estimated 20,000 victims, men were also affected, and they incorrectly assume that all victims are women. Second, these statements reinforce gender roles by portraying men primarily as the protectors of 'their women' against Serbian forces, oversimplifying the complex roles people play during conflict. These statements also seem to take away some of the responsibility of Serbian troops. However, following vigorous advocacy by civil society organisations in 2014, the Assembly of Kosovo passed a law (Law No. 04/L-172) that officially acknowledged survivors of sexual and gender-based violence.¹⁸⁶ It took 4 more years for sexual violence victims to finally be able to apply for the monthly pension after the Commission for the Verification and Recognition of Sexual Violence Victim Status was established¹⁸⁷. The Commission has the responsibility to offer reparations to survivors once their status has been confirmed. The Ministry of Labor and Social Welfare has empowered four non-governmental organisations (NGOs) that specialise in assisting CRSV survivors, to facilitate the application process. Once approved, survivors are eligible to receive a monthly compensation of 230 euros for their suffering.¹⁸⁸ According to reports from civil society organisations the Commission struggled to manage the high volume of initial applications, resulting in significant challenges. Survivors faced long delays, complex decision-making, and intricate

¹⁸³Kurteshi, Bleona. "It happened to boys and men too", GC Human Rights Preparedness, 23 November 2023

¹⁸⁴Top Channel. (2013, March 15). Abuzimet dhe dhuna gjatë luftës. <https://top-channel.tv/2013/03/15/abuzimet-dhe-dhuna-gjate-luftes/>

¹⁸⁵Kurteshi, Bleona. "It happened to boys and men too", GC Human Rights Preparedness, 23 November 2023

¹⁸⁶ Republic of Kosovo 'Law of Status and The Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and Their Families' (04/L-054, 2012).

¹⁸⁷Republic of Kosovo. (2018). Regulation (QRK) No. 10/2016 on the amendment and supplementation of Regulation No. 2/2015 on the determination of procedures for the recognition and verification of the status of victims of sexual violence during the war

¹⁸⁸[UN Women. \(2018, February\). First applications in for compensation for conflict-related sexual violence survivors in Kosovo.](#)

communication and appeal procedures, which led to widespread dissatisfaction and discouraged many from applying. Documenting their trauma was another major hurdle. Additionally, many survivors risked facing community prejudice if their experiences became known, which made it even harder for them to come forward or seek support.¹⁸⁹

The enactment of this law, initiated Kosovo's first institutional recognition and discussion on wartime sexual violence. However, it failed to meet expectations due to the gendered memory of the war, which, once again, honours men as heroes and portrays women predominantly as victims. Organizations dealing with wartime sexual violence report that the number of men seeking their help far exceeds those applying for government pensions. Recent data from the government's Commission on Recognition and Verification of the Status of Sexual Violence Victims indicates that only 83 men have applied for recognition.¹⁹⁰ Since the beginning of the process in February 2018 until 31 December 2022, this Commission received a total of 1,833 applications for recognition of the status of the victims of sexual violence during the war. Out of this number the Commission recognized the status of 1506 individuals, 83 of which are male victims.¹⁹¹ However there is no official data about the number of male sexual violence victims in general.

4.3 Court proceedings and prosecution of wartime sexual violence

Regarding court proceedings cases involving sexual violence victims in Kosovo, there appears to be a limited number of cases both nationally and internationally. CRSV cases in Kosovo have been addressed by three distinct judicial entities: ICTY, the Special War Crimes Court in Serbia, and the Special Prosecution Office of the Republic of Kosovo.¹⁹² At domestic level there is only one case for which the Supreme Court of Kosovo confirms the judgement by the Court of Appeal sentencing Zoran Vukotic to 13 years in prison for wartime sexual violence in Kosovo has been confirmed. Initially, the Basic Court in Pristina had sentenced Vukotic to 10 years, but this was increased to 13 years following an appeal. According to the NGO KRCT who was representing the victim throughout this process but also offering physiological support, this marks the conclusion of the case, celebrating the first survivor who, through her persistence and the steadfast support of KRCT, achieved victory at every judicial level.¹⁹³ Until 2019

¹⁸⁹Murati, G., Rushiti, F., & Metaj Dika, A. (2023). Justice for Survivors of Sexual Violence During the War (KRCT), pg 29

¹⁹⁰Kurteshi, Bleona. "It happened to boys and men too", GC Human Rights Preparedness, 23 November 2023

¹⁹¹Dukagjini. (Tetor, 2023.). 83 meshkuj në mesin e të mbijetuarve të dhunës seksuale gjatë luftës në Kosovë. <https://www.dukagjini.com/83-meshkuj-ne-mesin-e-te-mbijetuarve-te-dhunes-seksuale-gjate-luftes-ne-kosove/>

¹⁹²Elshani V. (2020). Legal Framework of Conflict Related Sexual Violence; the Kosovo Case, pg. 9.

¹⁹³Kosovo Press (November 2023) The Supreme Court decides on the first case of punishment for sexual violence during the war. <https://Kosovopress.com/en/supremja-vendos-per-rastin-e-pare-te-denimit-per-dhunim-seksual-gjate-luftes>

there had been three prosecutions for conflict related sexual violence in Kosovo.¹⁹⁴ The first prosecution related to the events in Kosovo was conducted by the UNMIK at the Gjilan/Gnjilane District Court, completed in 2002. In 2008, UNMIK's judicial responsibilities were transferred to EULEX, the European Union's rule-of-law mission, which finalized two additional cases at the Basic Court in Mitrovice/Mitrovica in 2013 and 2016. In 2017, EULEX began the first investigations where sexual violence was classified as war crimes. At that time, EULEX was managing three ongoing investigations and three preliminary investigations, having already completed two investigations and dismissed two.¹⁹⁵ While at the time of writing the Special Prosecution has filed a total of 4 cases for sexual violence during wartime in Kosovo.¹⁹⁶

This low number of cases can be attributed to several factors. Firstly, investigations are confined within Kosovo's borders, yet many suspects, mainly Kosovo Serbs or Serbian nationals, are no longer in the country, and Kosovo's laws did not allow for trials in absentia.¹⁹⁷ While this assessment held true up until 2019, Law No. 06/L-091 dated May 30, 2019, amended the Criminal Procedure Code¹⁹⁸ by stating that trials in absentia can only be applied to criminal acts against International Humanitarian Law and International Criminal Law committed between January 1990 and June 1999.¹⁹⁹ Since then the situation has seen some changes. Starting in November 2023, Kosovo's courts began conducting the first in absentia hearings for crimes committed during the wartime period.²⁰⁰ However, since Serbia does not recognize Kosovo as an independent state and does not extradite suspects there, it is highly unlikely that these perpetrators will ever be brought to justice in person. Additionally in Kosovo, individuals have been prosecuted for "War Crimes against the civilian population" under Article 142 (1) of the 1976 Criminal Code of the SFRY. The SFRY Criminal Code characterizes the offense of rape as involving "forcible prostitution or forcible rape." This definition can complicate prosecutions because it

¹⁹⁴Gopalan, P. (2019). Conflict-Related Sexual Violence in Kosovo: Gendering Justice Through Transformative Reparations. pg. 290

¹⁹⁵Gopalan, P. (2019). Conflict-Related Sexual Violence in Kosovo: Gendering Justice Through Transformative Reparations. pg. 290

¹⁹⁶ Koha (February 2024) The first hearing in absentia for sexual violence during the war fails.

<https://www.koha.net/en/lajmet-e-mbremjes-ktv/409999/deshton-seanca-e-pare-ne-mungese-per-dhune-seksuale-gjate-luftes>

¹⁹⁷Gopalan, P. (2019). Conflict-Related Sexual Violence in Kosovo: Gendering Justice Through Transformative Reparations. pg. 291

¹⁹⁸ Law No. 06/L-091 dated May 30, 2019, for the amendment and supplementation of the Criminal Procedure Code

¹⁹⁹ Republic of Kosovo. (2019). Law No. 06/L-091 on amending and supplementing the Criminal Procedure Code, article 303

²⁰⁰Koha (February 2024) The first hearing in absentia for sexual violence during the war fails.

<https://www.koha.net/en/lajmet-e-mbremjes-ktv/409999/deshton-seanca-e-pare-ne-mungese-per-dhune-seksuale-gjate-luftes>

necessitates evidence that the victim sustained physical injuries and/or made attempts to resist, making it challenging to prove the crime under this narrow definition.²⁰¹ But what could still contribute to a low number of cases is the absence of witness protection which severely undermines judicial integrity. Other obstacles include challenges related to court management and the professional capacity of judicial staff. In cases of sexual violence, the situation is exacerbated by the victims' reluctance to testify, often due to stigma, and a lack of victim-sensitive judicial arrangements that further discourage their participation in trials.²⁰²

One male sexual violence survivor, unknowingly initiated Kosovo's institutions first official investigation into male rape in February 2024 after commenting on social media about a prison guard involved in war crimes. Before this, he had never disclosed his ordeal, which included arrest, interrogation, and sexual assault by Serbian police in 1998, followed by imprisonment and mistreatment. After the war, despite efforts to identify his assailants and consider reporting the assault, the murder of a potential witness led him to silence because of the fear of him being harmed as well. Recently, his case has attracted official scrutiny as part of Kosovo Police Directorate's investigation into war crimes.²⁰³ The scarcity of male sexual violence cases brought to light and justice in Kosovo can be attributed to the stigma these victims face, rather than a lack of institutional efforts. This is evident in the fact that very few male victims come forward to apply for a monthly pension, despite the confidentiality of their identities in this process. If applying for a simple pension is already daunting for them, seeking justice through the court system, which is far more public and challenging, becomes even more difficult. The low number of applications and reluctance to come forward may be due to the stigma they face and some of the complexity of the legal process mentioned above, which makes it harder for male victims to pursue justice.

4.4 Societal stereotype of war time male sexual violence victims

In the face of systemic oppression based on ethnic identity inside former Yugoslavia in the 70s, 80s and 90s, Kosovo Albanians turned to traditional customary laws for organization, which resulted in a stronger patriarchal society. This shift prioritized collective ethnic threats over individual injustices, such as those based on gender. Consequently, women's rights were regarded to be a private family issue, further deepening the silence and overlooking the injustices and inequalities women faced.²⁰⁴ The Kanun, a set

²⁰¹Elshani V. (2020). Legal Framework of Conflict Related Sexual Violence; the Kosovo Case, pg.10-11.

²⁰²Gopalan, P. (2019). Conflict-Related Sexual Violence in Kosovo: Gendering Justice Through Transformative Reparations. pg. 291

²⁰³Haxhiaj S. (2024). Worse than death: Male wartime rape survivors in Kosovo speak out. Balkan Insight.

²⁰⁴Krasniqi, E. (2014). Women in Search of Social Security: Hostage of Family, Tradition and State. pg.207-208.

of traditional customary laws in Albania and regions inhabited by Albanians, has historically provided guidance on social conduct and ethnic identity, especially under the stresses of war and foreign threats. Dating back centuries, these laws were designed to unify and protect the community during times of external invasion and cultural assimilation threats, like those from the Ottoman Empire. The Kanun emphasizes ethnic identity and has specific gender roles that contribute to the patriarchal system, particularly reinforcing male roles as protectors and leaders and limiting women's rights, especially concerning inheritance and family honor.²⁰⁵ During the war, Albanians in Kosovo collectively turned to their traditional roots and customs, which heightened their sense of Albanian ethnic identity. This shared identity not only brought the community together but also helped give deeper meaning to their shared experiences throughout the conflict. This collective identity played a crucial role in how they understood and coped with the war.²⁰⁶ I would argue that this shift influenced not only societal roles and women's rights, both generally and in conflict situations, but also distinctly impacted men's experiences during the war. It reinforced the stereotype of men as providers and protectors while failing to recognize them as potential victims. Men were expected to fight to protect their families and land, which put significant psychological and physical burdens on them. This expectation hid their vulnerabilities and need for support, creating a limited view of men's roles during the conflict and ignoring their potential suffering and victimization.

The focus on ethnic identity and patriarchal norms during conflicts has made it difficult for sexual violence victims to come forward, reflecting how deeply societal contexts can impact the recognition and treatment of such victims in Kosovo. When it comes to stigmatization and stereotyping on a societal level, sexual violence victims, particularly male victims who have experienced sexual violence during the war, face significant struggles. It was only recently, in 2018, that the first survivor of sexual violence during the war in Kosovo publicly shared her story on television, marking a significant milestone in the fight against the silence surrounding such atrocities. She exposed two crime authors, a Serbian police officer and a nonuniform man, and her long struggle for justice in a complex and highly criticised trial. Despite identifying the two crime authors, the courts declared the accused innocent; the Human Rights Fund, an organisation that monitors war crime trials, says the court failed to pursue the criminal authors

²⁰⁵Shala, A. (2023). *Surviving sexual gender based violence: A study of social identities, war narratives and resilience*. Case study: Kosovo (Doctoral dissertation, Nottingham Trent University).pg.76-78

²⁰⁶Shala, A. (2023). *Surviving sexual gender based violence: A study of social identities, war narratives and resilience*. Case study: Kosovo (Doctoral dissertation, Nottingham Trent University).pg.76-78

due to irregular investigations rather than a lack of evidence.²⁰⁷ After Vasfije bravely shared her story of sexual violence publicly, it sparked an important national dialogue on this issue. In subsequent anonymous interviews,²⁰⁸ other victims of sexual assault expressed that they felt empowered and inspired by Vasfije's courageous act of speaking out. However, many also conveyed a sense of uncertainty about coming forward with their own experiences. The victims explained that in most cases, they had never even disclosed their assaults to their own husbands or children, fearing how they might react. Sharing such traumatic experiences publicly felt unimaginable. Vasfije's story had given them hope, but also highlighted the immense personal challenges and risks involved in breaking the silence around sexual violence. These interviews were conducted with female sexual violence victims.

For male sexual violence victim, the stigma surrounding them is significant to this day, as the same continues to be true for female victims (though to a lower extent in recent years), and it can hinder their ability to seek help and heal from their experiences. According to a psychologist in Kosovo,²⁰⁹ the societal expectation of men as strong and resilient can make it difficult for them to acknowledge and discuss their victimization. This stigma can lead to feelings of shame, guilt, and vulnerability, which can further isolate them. Also, according to some other psychologists and researchers interviewed²¹⁰ one of the primary reasons sexual violence against men and boys went unreported for so long is that many civil society organizations, that had an important role in supporting sexual violence victims after the war, focused on survivors of sexual violence were established explicitly as women's rights organizations, primarily addressing female survivors. In Kosovo, only KRCT possessed expertise in working with men and their traumatic experiences resulting from torture.²¹¹ Some organizations that have worked and continue to work with sexual violence survivors in Kosovo are organizations such as the Center for the Protection of Women and Children in Pristina, the KRCT, the Center for the Promotion of Women's Rights in Drenas, Medica Gjakova, Medica Kosovo, and the Kosovo Women's Network.

²⁰⁷Halili D. (2018).Të mbijetuarit flasin pas rastit të Vasfijes. Kosovo2point0
<https://kosovotwopointzero.com/survivors-speak-in-the-wake-of-vasfije/>

²⁰⁸ Halili D. (2018).Të mbijetuarit flasin pas rastit të Vasfijes. Kosovo2point0 <https://kosovotwopointzero.com/survivors-speak-in-the-wake-of-vasfije/>

²⁰⁹Sevije Izeti interviewed by DW. Cerkini V. (2024) Raped men in Kosovo: Living with the stigma. DW
<https://www.dw.com/en/raped-men-in-kosovo-living-with-a-stigma/a-68507272>

²¹⁰ Interviews were conducted by Kosovo2point0 and the findings published in the article: Halili D. (2022). I never imagined this could be done to men. <https://kosovotwopointzero.com/en/i-never-imagined-this-could-be-done-also-to-men/>

²¹¹Halili D. (2022). I never imagined this could be done to men. <https://kosovotwopointzero.com/en/i-never-imagined-this-could-be-done-also-to-men/>

Some organizations in Kosovo working closely with survivors of sexual violence victims have worked through the years to break the stigma surrounding the topic in the country. On June 12, 2015, the art piece "Mendoj Për Ty" (Thinking of You) was exhibited, featuring 5,000 dresses hung on clotheslines at the football stadium in Pristina, the capital of Kosovo. This piece, aimed at honoring survivors of sexual violence during the 1998-1999 conflict, was conceived by Alketa Xhafa Mripa, a London-based artist originally from Kosovo. The project was brought to life through the collective efforts of local women and women's rights organizations over a month, supported by the Office of the President at the time, Atifete Jahjaga.²¹² According to some of the organisers of this art installation, it broke the silence surrounding sexual violence, shifted public perception, and empowered survivors and activists. Additionally, it brought the survivors' experiences into public discourse, enhancing both awareness and engagement in societal and political realms.²¹³ However the art installation, while impactful in raising awareness about wartime sexual violence, specifically used dresses—a garment typically associated with women. In my view this choice could unintentionally suggest that sexual violence primarily affects women, thereby overlooking male survivors whose experiences are equally severe and deserving of recognition. While it is crucial to address the disproportionate impact of sexual violence on women and girls, we must also ensure that male survivors are not relegated to a secondary position. A comprehensive approach to tackling sexual violence should involve acknowledging and addressing the needs of all survivors, regardless of gender, to ensure that no group is marginalized or overlooked. This approach risks reinforcing gender stereotypes and could exclude male survivors from the conversation, potentially making them feel invisible and unsupported. A more gender-sensitive representation in such projects might help acknowledge all survivors, promoting a more inclusive and supportive environment for everyone affected by such violence.

Art forms have been used in other cases in Kosovo to raise awareness about war time sexual violence in the country. The Government financed a memorial that built to honor the 20,000 women who were raped during the Kosovo War of 1998-99. It is a typographic sculpture revealed on June 12, 2015, celebrated as Kosovo Liberation Day. The monument represents the faces of Kosovo women using 20,000 pins, with each pin symbolising one of the assaulted women. The varying heights of the pins create a relief

²¹²Di Lellio, A., Rushiti, F., & Tahiraj, K. (2019). "Thinking of You" in Kosovo: Art Activism Against the Stigma of Sexual Violence. *Violence Against Women*, pg. 1543-1544.

²¹³Di Lellio, A., Rushiti, F., & Tahiraj, K. (2019). "Thinking of You" in Kosovo: Art Activism Against the Stigma of Sexual Violence. *Violence Against Women*, pg. 1555

portrait that can be viewed up close to see individual portraits or from a distance to see the whole face.²¹⁴ Just like with the ‘Thinking of You’ art installation I would argue that the exclusive focus on women in this memorial, while addressing a deeply significant issue, inadvertently contributes to the invisibility of male victims in public discourses about wartime sexual violence. This oversight is particularly noteworthy given that the memorial is funded by the government itself. Government sponsorship of such projects could carry with it an implicit endorsement of the narratives they present and those they omit. By funding a memorial that acknowledges only female victims, the government may unintentionally reinforce gender stereotypes that suggest men cannot be victims of such crimes, or that their experiences are less worthy of public acknowledgment and commemoration. Furthermore, the decision to focus solely on female experiences in a state-sponsored memorial could be seen as a reflection of societal attitudes towards gender and victimhood. It suggests a potentially incomplete approach to justice and remembrance, which can hinder the healing process for all survivors.

4.5 Conclusion

While Kosovo's legal frameworks, such as the Criminal Code, provide a foundation for addressing wartime sexual violence, their implementation often falls short in fully supporting male survivors. This issue is worsened by societal beliefs that discourage men from sharing their experiences and seeking justice. However, it is important to acknowledge the positive steps taken by the Kosovo government in enhancing legislation related to sexual violence. The establishment of protocols and laws aimed at broadening the definition and recognition of sexual violence to include male victims reflects a progressive shift towards inclusivity. These legal advancements, alongside efforts to standardize procedures for handling cases of sexual violence, demonstrate a commitment to improving the support system for all survivors. But more needs to be done to improve how these laws are put into practice and how society views male victims.

Despite these legislative improvements, the prosecution of sexual violence cases continues to face significant challenges, as it was addressed in this chapter. Issues such as the lack of witness protection, the difficulties in gathering sufficient evidence, and the deep-rooted gender biases in societal frameworks complicate the pursuit of justice, particularly for male survivors. These challenges highlight the need for further reforms in both legal proceedings and societal attitudes to ensure that all survivors receive the

²¹⁴Agjencia për Menagjimim e Komplekseve Memoriale të Kosovës. (n.d.). Memoriali Heroinat – Prishtinë. Retrieved June 14, 2024, from https://amkmk.rks-gov.net/acadp_listings/memoriali-heroinat-prishtine/

recognition and support they deserve. Public awareness campaigns and memorials, while primarily focusing on female victims, should be expanded to more inclusively represent all survivors of sexual violence, irrespective of gender. This would not only aid in altering public perception but also support a more holistic healing process for all victims. In conclusion, while Kosovo has laid down a foundation for addressing sexual violence through its legal system, the complete and effective support for all victims, especially males, remains a work in progress. Enhanced legislative efforts, coupled with a shift in societal attitudes towards male victimization, are essential for providing comprehensive support and justice to all victims of sexual violence in a post-conflict setting.

5. Concluding remarks

In the midst of war, where violence leaves deep and lasting marks, many voices go unheard. These voices are silenced by strong social rules and long-standing beliefs that make it hard for people to speak out. As a result, the true impact and suffering of those caught in conflict often remains hidden and ignored. The societal expectations that men must always be strong and invulnerable create an environment where their experiences are often dismissed. This silence is further compounded by the stigma attached to sexual violence, making it incredibly difficult for male victims to come forward and seek help. Sexual violence as a weapon of war has been indiscriminately used against a diverse group of individuals, showing that its impact is far from homogeneous. Historically, the perception has been that only women and girls are targeted by such atrocities. However, emerging reports from war terrains and conflict zones reveal a troubling reality: sexual violence has affected not just women, but also men and children. This perception has influenced both legal frameworks and societal attitudes to, initially, primarily focus on female victimization. Consequently, male survivors are less likely to access the support services they need due to the social stigma around the topic as well.

This thesis has aimed to illuminate the under-recognized situation of male victims of CRSV in the backdrop of deep gender stereotypes, focusing particularly on the pervasive influence of gender stereotypes that influence both recognition and prosecution in international legal frameworks and within the specific socio-political context of Kosovo. Despite some inclusion of a gender-neutral language present in some more recent international legal instruments, and the evolution over time of recognizing male sexual violence victims in these instruments, the practical application often fails to extend adequate recognition and justice to male victims, whose experiences are overshadowed by enduring perceptions of masculinity that equate maleness with resilience and invulnerability. These efforts have been limited and their effectiveness remains to be proven in the coming years. This effectiveness of the most recent efforts will also need to be studied at a later stage as well.

Theoretical and political challenges remain, such as separating the concept of gender from women, and gender-based violence from violence against women, which is addressed in chapter 3, section 3.2.4 regarding CEDAW and its definition of gender-based violence. The stereotype here is that sexual violence is predominantly a women's issue, leading to a lack of recognition and resources for male victims. These legal frameworks are influenced by the perception that men, due to their gender, are less likely to be victims of sexual violence.

The UN has adopted a number of resolutions that have aimed to address wartime sexual violence.²¹⁵ The UN has managed to recognize male victims of sexual violence through various resolutions. Nonetheless, as discussed in chapter 3, section 2.7 of the thesis, there remains a discrepancy between the attention given to female victims and that afforded to male victims through the resolutions. Adopting similar resolutions to recognize that men also suffer from sexual violence would not be a viable approach, as it would perpetuate a divided rather than unified objective of prohibiting sexual violence in armed conflict. It could also lead to varying interpretations of sexual violence based on the victim's gender. Therefore, it has been argued that future resolutions should continue to emphasize that women are disproportionately affected by sexual violence in armed conflict, while also acknowledging that men can be victims too. This recognition should be more than incidental, explicitly condemning sexual violence against women, children, and men alike.²¹⁶

While the case study of Kosovo, discussed in chapter 4 of this thesis, demonstrates that societal stereotypes predominantly prevail over those found in legal frameworks. Male victims in Kosovo continue to be marginalized, their suffering minimized due to prevailing notions of masculinity that equate maleness with invulnerability. The examination of how Kosovo's laws and society treat male victims of conflict-related sexual violence shows a worrying difference between what the laws promise and how they are actually applied due to societal norms and expectations. This issue is not just in Kosovo but is common in many global efforts to protect human rights: while there's been a lot of progress in dealing with sexual violence against women, the recognition and support for male victims are still far behind. Government institutions have been set up to assist survivors of sexual violence, making some progress in improving the conditions for the victims that have been brave to come forward. Alongside these government efforts, local NGOs have played a crucial role in the rehabilitation of survivors since the war ended, providing essential support that has been vital for the recovery of some of the victims. However, while non-governmental organizations (NGOs) and political discussions try to reduce stigma and support survivors, they often unintentionally reinforce gender stereotypes.²¹⁷ These stereotypes can include portraying survivors in a way that emphasises traditional gender roles, such as associating qualities of strongness and the obligation to protect and provide to men specifically. These stereotypes

²¹⁵ This would include the resolutions discussed in chapter 3 of the thesis, Resolution 1325, resolution 1820, Resolution 1888, but also resolution 2106 and resolution 2467.

²¹⁶ Mouthaan, S. (2013). Sexual violence against men and international law - criminalising the unmentionable. *International Criminal Law Review*, 13(4), pg. 673

²¹⁷ Like the "Thinking of You" art installation or the "Heroina" monument

can be utilized to highlight gender-specific issues related to sexual violence, such as reinforcing the idea that 'a real man is not afraid to disclose his experiences,' thus challenging traditional norms that discourage men from expressing vulnerability. By doing so, it encourages awareness and dialogue about the gendered dimensions of sexual violence, particularly emphasizing the importance of dismantling harmful stereotypes that pressure men to adhere to traditional roles of strength and protection.

Humanitarian and medical personnel play a crucial role in identifying and supporting survivors of sexual violence. However, many professionals lack the training to recognize the signs of sexual violence in males. This was also confirmed by the experiences of humanitarian personnel in Kosovo.²¹⁸ This gap in knowledge can lead to underreporting and misdiagnosis, further marginalizing male survivors. Comprehensive training programs should be implemented to educate personnel on the prevalence of male sexual violence, the specific needs of male survivors, and the importance of accurate record-keeping. In the case of Kosovo, after having analysed their legal framework and the policies that have been undertaken from government institutions but also local NGOs that have had an important role in supporting victims of CRSV, I would conclude that there needs to be a prioritisation in the development of policies that specifically address male victims of CRSV and their needs. This can include funding for specialised services or public awareness campaigns and free legal assistance for male victims of CRSV. In recent years, public campaigns and open discussions about female victims of CRSV in Kosovo have significantly influenced public discourse. These initiatives have raised awareness, reduced stigma, and provided a platform for survivors to share their experiences. By bringing the issue into the public eye, these campaigns have facilitated greater empathy, understanding, and support for female survivors.²¹⁹ This model of advocacy and awareness can be extended to male survivors, who face similar challenges but lack the same level of visibility and support. It would also be essential for platforms to be created where male survivors could share their experiences. This could help demystify and destigmatize their trauma. As it was mentioned previously in chapter 4, section 4.4, a lot of local NGOs that have offered support along the years to survivors of sexual violence during the war, have been mainly women's rights NGOs, which can play a role in not encouraging male survivors to come forward. The government involvement would be essential to ensure that the efforts to create platforms open to survivors of sexual violence in general, without any distinction based on gender, are comprehensive and sustainable. By

²¹⁸Halili D. (2022). I never imagined this could be done to men. <https://kosovotwopointzero.com/en/i-never-imagined-this-could-be-done-also-to-men/>

²¹⁹ Halili D. (2018). Të mbijetuarit flasin pas rastit të Vashfijes. Kosovo2point0 <https://kosovotwopointzero.com/survivors-speak-in-the-wake-of-vashfije/>

facilitating the creation of supportive platforms and collaborating with NGOs, governments can play a pivotal role in addressing the needs of male CRSV survivors.

Lastly the advocacy to recognize male victims of sexual violence shouldn't be seen as conflicting with women's rights efforts, but rather as complementary. Collaborating between these groups can enable the sharing of valuable experiences, build mutual support, and jointly tackle the oppressive gender norms and expectations that often drive sexual violence in conflict situations. This teamwork can make both movements stronger in their fight to change the deep-seated gender biases that allow sexual violence to continue.

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