

# Ensuring Gender-competent Responses to Conflict-related Male Sexual Violence in Russia's Aggression against Ukraine

## Conflict-Related Male Sexual Violence in Russia's Aggression against Ukraine

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### ABSTRACT

This article examines how international criminal law and wider redress measures can help Ukraine aptly pursue conflict-related male sexual violence (CRMSV) perpetrated during Russia's ongoing aggression. The piece explores CRMSV committed during the Russia–Ukraine armed conflict and analyses how Ukraine should address these atrocities in a gendered and intersectional manner, in criminal proceedings as well as in wider transitional justice. The article first traces international law prohibitions of CRMSV, comparing them with the prohibitions of conflict-related sexual violence (CRSV) against females. It further explores how CRMSV has been addressed in international criminal jurisprudence and concludes that while CRMSV has been increasingly prosecuted globally, attention to its varied sexual dimensions has been uneven. The analysis then traces the dynamics and spectrum of CRMSV since the beginning of Russia's aggression in 2014 and discusses how CRMSV has transformed since the full-scale invasion in 2022. The article assesses the suitability of Ukraine's legal framework and expertise to consider CRMSV and examines ways forward for more gender-competent accountability and reparations. The analysis concludes that the way Ukraine addresses CRSV perpetrated against different individuals, including heterosexual and gay men and boys, expands the room for nuanced inclusion and equality transformations within Ukrainian society, which are crucial for the nation's post-conflict recovery.

### 1. INTRODUCTION

For centuries, conflict-related sexual violence (CRSV) has been cloaked in paradoxes, prejudices and various forms of shortsightedness. While all civilizations have had some rules governing the conduct of hostilities and limiting attacks on certain categories of civilians, sexual

violence has long been perceived as almost an intrinsic part of conquering the enemy. While the first express international treaty law prohibitions of sexual violations concerned females,<sup>1</sup> centuries-long CRSV against men — conflict-related male sexual violence (CRMSV) — has often been ignored (or, rather, masked by other norms, which required careful uncovering).<sup>2</sup>

Women and girls have indeed been disproportionately affected by CRSV and are critically underrepresented in peace processes and post-conflict recovery.<sup>3</sup> However, these historical and structural realities cannot be redeemed with a sketchy and problematic approach to male exposure in armed conflicts that portrays men exclusively as perpetrators and decision-makers while neglecting their victimhood and other layers of their lived experiences. Pigeonholing women as ‘perfect victims’ and seeing men through an undisputable prism of an abuser only reinforces gender hierarchies and prevents transformative individual, family and societal healing. Such a male–female juxtaposition is counterproductive for criminal prosecutions and wider transitional justice processes. It fails to see various harms endured by detained brothers forced to fellate each other,<sup>4</sup> the specific harm of husbands threatened with rapes of their wives,<sup>5</sup> enslaved boy child soldiers,<sup>6</sup> males taught to see only the ‘heroic’ aspects of surviving torture as opposed to its sexualized dimensions<sup>7</sup> and the gendered sexual abuse of gay men.<sup>8</sup> A failure to see harm is amplified by a failure to redress it in a sensitized, gendered manner — not only for a particular male but also for the females he engages with and for their wider community.

Russia’s ongoing aggression against Ukraine has reinforced these recurrent asymmetries and blind spots around CRSV and, specifically, CRMSV. The rationale and methods of Russia’s encroachment are inherently gendered. The toxic masculine positioning of the Russian leadership and wider society is manifested in their trivialization of violence against women, repression of LGBTQI+ persons and attacks on feminist ideas.<sup>9</sup> These internal dynamics, amplified by hierarchical violence within the Russian army and impunity for its past atrocities, have shaped the conduct of the Russian military in Ukraine, including its weaponization of CRSV.

The UN Commission of Inquiry has concluded that the Russian military perpetrates CRSV ‘at gunpoint, with extreme brutality and with acts of torture’.<sup>10</sup> Victims include

<sup>1</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277, at Art. 46; Convention relative to the Treatment of Prisoners of War (adopted 27 July 1929, entered into force 19 June 1931) 118 LNTS 343, at Art. 3; 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 (‘Geneva Convention IV’), at Art. 27.

<sup>2</sup> S. Sivakumaran, ‘Prosecuting Sexual Violence against Men and Boys’, in A.-M. de Brower et al. (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia, 2013) 79–97, at 79.

<sup>3</sup> F. Ní Aoláin, C. O’Rourke and A. Swaine, ‘Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice’, 28 *Harvard Human Rights Journal* (2015) 97–146, at 106–107.

<sup>4</sup> Sentencing Judgment, *Česić* (IT-95-10/1-S), Trial Chamber, 11 March 2004, § 35.

<sup>5</sup> I. Elliott, C. Kivlahan and Y. Rahhal, ‘Bridging the Gap Between the Reality of Male Sexual Violence and Access to Justice and Accountability’, 18 *Journal of International Criminal Justice* (JICJ) (2020) 469–498, at 476.

<sup>6</sup> P. Sellers and J.G. Kestenbaum, ‘The International Crimes of Slavery and the Slave Trade’, in I. Rosenthal et al. (eds), *Gender and International Criminal Law* (Oxford University Press, 2022) 157–186, at 177, 181.

<sup>7</sup> D. Žarkov, ‘Sexual Violence Against Men in Contemporary Warfare’, in I. Rosenthal et al. (eds), *Gender and International Criminal Law* (Oxford University Press, 2022) 101–125, at 108–109.

<sup>8</sup> All Survivors Project, ‘Destroyed from Within’ *Sexual Violence Against Men and Boys in Syria and Turkey* (2018), available online at <https://allurvivorsproject.org/wp-content/uploads/2022/03/Destroyed-from-Within-Sexual-Violence-against-Men-and-Boys-in-Syria-and-Turkey.pdf> (visited 18 November 2024), at 41.

<sup>9</sup> K. Busol, ‘When the Head of State Makes Rape Jokes, His Troops Rape on the Ground: Conflict-Related Sexual Violence in Russia’s Aggression against Ukraine’, 25 *Journal of Genocide Research* (2023) 279–314, at 279, 299–303.

<sup>10</sup> *Conference Room Paper of the Independent International Commission of Inquiry on Ukraine*, A/HRC/52/CRP.4, 29 August 2023 (‘CoI Conference room paper’), § 580.

women and girls, but also men and boys, aged from 4 to 82 years.<sup>11</sup> In detention, most victims appear to be male.<sup>12</sup> Most captured Ukrainian prisoners of war (POWs) — the majority of them being men — have been subjected to CRSV.<sup>13</sup> Russia's use of CRSV as torture in detention has been 'recurrent', with the 'general absence or denial of medical assistance'.<sup>14</sup> Russian direct perpetrators and their commanders adapt the forms and modes of commission of CRSV against Ukrainian civilians and POWs depending on the victim's sex, instrumentalizing traditional gender roles and expectations. While reporting from Ukraine, international organizations and non-governmental organizations (NGOs) outline the sexual abuse of both males and females: as of March 2025, CRSV against Ukrainian women and girls appears to be in a stronger focus.<sup>15</sup> Female survivors<sup>16</sup> have also been more proactive and visible in accountability and reparations advocacy campaigns that specify the harms and needs caused by sexual violence.

This article explores how current international criminal law (ICL) and wider redress measures can help Ukraine aptly pursue CRMSV. The article traces CRMSV committed during Russia's aggression against Ukraine and analyses how Ukraine should address these atrocities in a gendered and intersectional manner, in criminal proceedings and wider transitional justice. The article consists of three parts. Section 1 traces international law prohibitions of CRMSV and explores how CRMSV has been addressed in international criminal jurisprudence. Section 2 analyses the patterns of CRMSV in Russia's aggression since 2014.<sup>17</sup> Section 3 discusses the suitability of Ukraine's legal framework and expertise for considering CRMSV and ways forward for accountability and reparations. The article concludes that the way Ukraine addresses CRSV perpetrated against different individuals, including heterosexual and gay men and boys, expands the room for nuanced inclusion and equality transformations within Ukrainian society.

## 2. CRMSV IN INTERNATIONAL LAW

### A. CRMSV (In)Visibilities in Public Imagination

Sexual violence has been cloaked in silences and euphemisms, which, while related, are still different in how they interact with women and men. For centuries, sexual 'dishonouring' of a woman, largely through rape or enslavement, which presupposed rape, has been seen as both an expected military reward and an acutely gendered affront to her male relatives — the guardians of 'family honour'.<sup>18</sup> Such military practices and social perceptions have shaped a binary vision of females as victims and males as perpetrators. This vision has been further rigidified by the association of conflict-related female sexual violence (CRFSV)

<sup>11</sup> *Report of the Independent International Commission of Inquiry on Ukraine*, A/HRC/52/62, 15 March 2023 ('CoI March 2023 Report'), § 82.

<sup>12</sup> *Report of the Independent International Commission of Inquiry on Ukraine to the General Assembly*, A/79/549, 29 October 2024 ('CoI October 2024 Report'), § 47.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, § 75.

<sup>15</sup> K. Kvitka, 'Silent Victims of Sexual Violence, Ukraine's Male POWs Deserve Real Support', *The Kyiv Independent*, 3 October 2024, available online at <https://kyivindependent.com/opinion-silent-victims-of-sexual-violence-ukraines-male-pows-deserve-real-support/> (visited 11 December 2024).

<sup>16</sup> This analysis uses the terms 'survivors' and 'victims' interchangeably. Unless a particular term is required by a certain legal framework, the article prefers the term 'survivors' to emphasize the resilience of the people who have been through horrific experiences yet are unwaveringly pursuing justice.

<sup>17</sup> While this article focuses on CRMSV, it recognizes that many crimes attributable to Russian perpetrators have a gendered dimension. For instance, long-term electricity outages caused by Russia's deliberate shelling of Ukraine's energy infrastructure disproportionately impact older women and women with caregiving obligations. CoI October 2024 Report, §§ 11, 14, 17–18.

<sup>18</sup> K. Askin, 'Treatment of Sexual Violence in Armed Conflict: A Historical Perspective and the Way Forward', in A.-M. de Brower et al. (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia, 2013) 19–55, at 21–22.

almost exclusively with rape and by seeing men largely invincible to CRSV, except for ‘indirect’ encroachments on family honour posed by assaults on their female relatives. Traditional gender roles of a man as a warrior, defender and decision-maker have not allowed him to be passively ‘subjected to’ CRSV. Instead, he is expected to heroically ‘survive’ torture or ‘overcome’ incurred injuries. The fear of ‘feminization’ and ‘homosexualization’ are two other significant factors that prevent men from seeing or reporting sexual dimensions of their abuse in armed conflicts.<sup>19</sup> Finally, poor awareness about the spectrum of conduct that constitutes ‘sexual’; ignorance about non-penetrative forms of CRSV, such as forced nudity or threats of sexual violence; tabooed or limited vocabulary to describe intimate body parts and sexual trauma; societal perceptions of masculinities, power and heteronormativity; stigmatization of sexual violence and its survivors; medical and psychological support tailored overwhelmingly for female victims; the lack of criminal justice and other professionals trained to work with male and gender-diverse victims; self-censorship in sharing one’s male experience in light of atrocious CRFSV further impact CRMSV reporting.<sup>20</sup> Thus, ironically, societal perceptions have long recognized CRSV’s impact on men — but in a one-dimensional, gender-stereotyped way. By focusing on ‘family honour’, a male relative was perceived as the aggrieved party, while the suffering of an assaulted woman was largely stigmatized and ignored. Instead, CRSV should be seen not only as physical and mental harm against a woman herself but also as the spectrum of atrocities directly affecting men, boys and gender-non-conforming people.

## B. CRMSV in International Law

The legal address of CRSV has unfolded in adjacent yet distinct ways for women and men. The first express international law CRSV prohibitions have unsurprisingly centred on female rape. CRMSV has for long lacked express verbalization and has instead been characterized through the wider lenses of torture and cruel treatment.

The 1907 IV Hague Convention implicitly envisaged the first modern international law prohibition of CRSV.<sup>21</sup> While Article 46 of its Regulation protects ‘family honour’ without sex specification, the instrument has been interpreted to prohibit female rape.<sup>22</sup> This approach not only neglected a violated female’s physical and mental trauma but also implicitly confined a male to the role of a guardian who is beyond the direct reach of sex crimes. The 1949 Geneva Conventions protected women ‘against rape, enforced prostitution, or any form of indecent assault’ and envisaged special gendered treatment of female POWs.<sup>23</sup> The Additional Protocol I differentiated gender-neutral fundamental guarantees of humane treatment and the special protection of women.<sup>24</sup> Additional Protocol II prohibited rape, enforced prostitution and other indecent assault as outrages upon personal dignity without gender specifications. While this might seem gender-inclusive, the parallel drafting of the instruments and the positioning of rape as a women’s issue in Protocol I, at the time, brought a female prism to the seemingly gender-neutral CRSV wording of Protocol II.

<sup>19</sup> S. Sivakumaran, ‘Sexual Violence Against Men in Armed Conflict’, 18 *The European Journal of International Law* (2007) 253–276, at 271–273.

<sup>20</sup> *Ibid.*, at 267–271; Elliott, *supra* note 5, at 469, 480–483; Žarkov, *supra* note 7, at 103–109.

<sup>21</sup> P. Sellers and I. Rosenthal, ‘Rape and Other Sexual Violence’, in A. Clapham et al. (eds), *The 1949 Geneva Conventions: A Commentary* (Oxford University Press, 2015) 343–368, at § 13.

<sup>22</sup> *Ibid.*

<sup>23</sup> Geneva Convention IV Art. 27; Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (‘Geneva Convention III’), at Arts 14, 97; P. Sellers, ‘The Cultural Value of Sexual Violence’, 9 *Proceedings of the Annual Meeting, American Society of International Law* (1999) 312–324, at 318–319.

<sup>24</sup> Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (‘Additional Protocol I’), at Arts 75–76.

None of the listed instruments expressly addressed male sexual abuse or listed its types. CRMSV could be derived from the wider prohibitions of torture, cruel treatment, medical experimentation or wilfully causing great suffering or serious injury regarding POWs, *hors de combat* and civilians.<sup>25</sup> These violations constitute grave breaches of the Geneva Conventions, merit utmost attention and prosecution, and could be used to address CRMSV. Customary law prohibits CRSV and torture, including rape-based, in all armed conflicts in a gender-neutral way.<sup>26</sup> However, gender stereotyping and perpetual blindness to the direct physical and mental sexual harms experienced by males have protracted their uncovering and explicit legal labelling.

The ICC Rome Statute has expanded the list of CRSV as war crimes and crimes against humanity to include rape, sexual slavery, enforced prostitution, enforced sterilization, other comparable forms of sexual violence, and forced pregnancy, of which only the latter is women-specific.<sup>27</sup> The crime against humanity of gender persecution can target anyone because of their sex features and actual or perceived social roles.<sup>28</sup> The ICC Office of the Prosecutor (OTP) prioritizes formerly under-prosecuted sexual and other gender-based violence (SGBV)<sup>29</sup> and recognizes its effects on various victims, including men and boys.<sup>30</sup> The OTP rightly claims that crimes affecting females have been neglected at the expense of a strong focus on violent crimes against males.<sup>31</sup> However, the OTP should have further specified that both prosecutions and public discourse have centred on *some* violence against men — whereas *sexual* violence against them has largely been obscured. Such express verbalization will pave the way to a more nuanced — gendered and intersectional — uncovering of adult and child victimhood.<sup>32</sup>

International and regional human rights treaties remain applicable in armed conflict and provide a complementary legal framework.<sup>33</sup> Their prohibitions of torture and inhuman treatment<sup>34</sup> have rightly been interpreted to include rape and other sexual violence.<sup>35</sup>

The solidifying field of transitional justice and the related survivors' right to reparations<sup>36</sup> further uncover the harms and needs of male victims. The Secretary-General recognizes that while females are particularly targeted with CRSV, males are also affected by sex crimes,

<sup>25</sup> Geneva Convention III, at Art. 13; Geneva Convention IV, at Arts 27, 32, 37, 147.

<sup>26</sup> J.-M. Henckaerts, L. Doswad-Beck, *Customary International Humanitarian Law, Volume I: Rules* (1st edn., Cambridge University Press, 2005), Rules 90, 93.

<sup>27</sup> The crime of forced pregnancy can affect only a subset of women, as young girls, older women and trans women cannot be subject to this crime. Art. 7(1)(g)-1-6, Elements of Crimes.

<sup>28</sup> ICC OTP, *Policy on the Crime of Gender Persecution Policy* (2022) ('ICC OTP, *Gender Persecution Policy*'), at 3.

<sup>29</sup> Gender-based violence (GBV) is a harmful act in leashed upon a person because of her/his actual or perceived sex, gender or sexual orientation. GBV includes sexual violence, but is not limited to it. Together, they are referred to as SGBV—sexual and other gender-based violence. CRSV is a particularly grave manifestation of SGBV perpetrated in armed conflicts and other atrocity situations. CRSV may constitute war crimes, crimes against humanity, genocide, torture or other gross human rights violations. ICC OTP, *Policy on Gender-Based Crimes* (2023) ('ICC OTP, *Policy on Gender-Based Crimes*'), §§ 27–37; Secretary-General, Guidance Note 'Reparations for Conflict-Related Sexual Violence', June 2014, 2–3.

<sup>30</sup> ICC OTP, *Policy Paper on Case Selection and Prioritisation* (2016), § 46; ICC OTP, *Policy on Gender-Based Crimes*, § 75.

<sup>31</sup> ICC OTP, *Policy on Children* (2023), § 24.

<sup>32</sup> *Ibid.*, § 4.

<sup>33</sup> *Legal Consequences of the Construction of a Wall*, advisory opinion of 9 July 2004, available online at [www.icj-cij.org/case/131/advisory-opinions](http://www.icj-cij.org/case/131/advisory-opinions) (visited 11 December 2024), §§ 104–106; Art. 21(3) ICCSt.; ICC OTP, *Policy on Gender-Based Crimes*, § 46.

<sup>34</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR'), at Art. 7; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 ('CAT'), at Art. 5; African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, at Art. 5; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, at Art. 5.1; Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222 ('ECHR'), at Art. 3.

<sup>35</sup> P. Sellers, 'Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation' (OHCHR) available online at [https://www2.ohchr.org/english/issues/women/docs/paper\\_prosecution\\_of\\_sexual\\_violence.pdf](https://www2.ohchr.org/english/issues/women/docs/paper_prosecution_of_sexual_violence.pdf) (visited 12 December 2024) (Sellers, 'Human Rights as Means of Interpretation'), at 31–33.

<sup>36</sup> P. de Greiff, 'The Future of the Past: Reflections on the Present State and Prospects of Transitional Justice', 14 *International Journal of Transitional Justice* (2020) 251–259, at 251–259.

related stigmas and the lack of tailored rehabilitation.<sup>37</sup> The pioneering Special Rapporteur on the promotion of truth, justice and guarantees of non-recurrence stresses the need to address structural inequalities, abandon an insular association of CRSV exclusively with rape, and ensure an inclusive participation of all survivors in the design and implementation of reparations programmes.<sup>38</sup> This approach could be further sensitized by discussing the diverse CRMSV and by emphasizing that addressing related male traumas would facilitate personal, family and wider societal healing.

### C. CRMSV in International Criminal Jurisprudence

International jurisprudence on CRMSV reflects the progress and lingering challenges of respective treaty, customary and soft law. The ‘intermittent’ CRMSV case law reveals the need for ‘a defined prosecutorial strategy’ and ‘a uniform judicial approach’.<sup>39</sup> So far, international criminal tribunals have treated CRMSV in three ways. First, by mentioning CRMSV but not prosecuting it. Secondly, by prosecuting CRMSV as other violent crimes, with varying attention to sexual dimensions. And thirdly, by prosecuting CRMSV as sexual violence.

#### 1. CRMSV Discussed but not Prosecuted

In its very first case — *Tadić* — the ICTY addressed direct physical CRMSV against a detainee whose testicles were bitten off but failed to categorize the psychological CRMSV of his inmates, who were forced to inflict that sexual mutilation on him.<sup>40</sup> *Akayesu* generated ground-breaking CRSV jurisprudence by recognizing rape as a genocidal act and emphasizing its grave mental and physical harm to both sexes.<sup>41</sup> However, the International Criminal Tribunal for Rwanda (ICTR) focused on the rapes of Tutsi women, whereas CRMSV of castration and genital mutilation remained ‘a background narrative without legal consideration’.<sup>42</sup> In *Brđanin*, camp guards killed a detainee who refused to follow their order to rape a woman.<sup>43</sup> The ICTY qualified this incident as a threat of rape against a woman only,<sup>44</sup> exemplifying lingering misunderstandings of non-physical forms of CRMSV. The Special Court for Sierra Leone (SCSL) analysed forced sex among civilian captives as a crime against humanity of rape, affecting both women and men.<sup>45</sup> To illustrate CRSV weaponized to terrorize the civilian population, the SCSL discussed CRMSV of forced male nudity, gang rapes and forcing men to watch rapes of their wives.<sup>46</sup> Respective prosecutions did not follow, however, due to the charging focus on CRFSV.<sup>47</sup>

#### 2. CRMSV Prosecuted as Other Atrocity Crimes

CRMSV has largely been prosecuted using other charges, with a varying focus on sexual dimensions. The Nuremberg and Tokyo tribunals considered numerous CRMSV, such as castration, genital mutilation and burning of male genitalia, in qualifying a crime against

<sup>37</sup> Secretary-General, Guidance Note ‘Reparations for Conflict-Related Sexual Violence’, June 2014, at 3, 5, 19.

<sup>38</sup> Special Rapporteur on the promotion of truth, justice and guarantees of non-recurrence, ‘Practical experiences of domestic repairation programmes’, 11 July 2019, A/HRC/42/45, §§ 41, 44(b).

<sup>39</sup> P. Sellers and L.C. Nwoye, ‘Conflict-related Male Sexual Violence and the International Criminal Jurisprudence’, in M. Zalewski et al. (eds), *Sexual Violence Against Men in Global Politics* (Routledge, 2018) 211–235, at 211.

<sup>40</sup> Sentencing Judgment, *Tadić* (IT-94-I-T), Trial Chamber, 14 July 1997, § 22; Sellers, *supra* note 39, at 215.

<sup>41</sup> Judgment, *Akayesu* (ICTR-96-4-T), Trial Chamber, 2 September 1998, § 731.

<sup>42</sup> Judgment, *Bogorasora* (ICTR-98-41-T), Trial Chamber, 18 December 2008, § 1908; Sellers, *supra* note 39, at 224–225.

<sup>43</sup> Judgment, *Brđanin* (IT-99-36-T), Trial Chamber, 1 September 2004, § 516.

<sup>44</sup> *Ibid.*

<sup>45</sup> Judgment, *Sesay and others* (SCSL-04-15-T), Trial Chamber, 2 March 2009, §§ 1205, 1207.

<sup>46</sup> *Ibid.*, §§ 1207–1208, 1347.

<sup>47</sup> Sellers and Nwoye, *supra* note 39, at 225–226; V. Oosterveld, ‘Sexual Violence Directed Against Men and Boys in Armed Conflict or Mass Atrocity: Addressing a Gendered Harm in International Criminal Tribunals’, 10 *Journal of International Law & International Relations* (2014) 107, 107–128, at 112.

humanity as other inhumane acts.<sup>48</sup> The subsequent Nuremberg 'Doctors' Trial' prosecuted the forced sterilization of both sexes, discussing the Nazi castration of Jewish, Polish and Soviet<sup>49</sup> men.<sup>50</sup> Contemporary tribunals have continued uncovering CRMSV through other charges. In *Furundžija*, the ICTY considered the mental sexual torture of a man forced to witness the rape of a fellow woman.<sup>51</sup> In *Milan Simić*, genital beating, forced nudity and castration threats were categorized as crimes against humanity of torture and other inhumane acts.<sup>52</sup> In *Blagoje Simić*, beatings of male genitalia and assertions that Muslims should not procreate were labelled as cruel and degrading treatment constituting persecution.<sup>53</sup> In *Krajišnik*, the forced rape of male inmates in front of other detainees was charged as inhuman treatment and persecution as crimes against humanity.<sup>54</sup> As the sexual nature of the crime was noted as 'degrading sexual acts', this euphemism demonstrates lingering discomfort with express verbalization of various types of CRMSV. The ICTY's qualification of CRMSV as persecution by sexual means is notable, as its Statute envisaged only political, racial and religious discriminative grounds.<sup>55</sup> In *Kenyatta*, instead of qualifying forced circumcision as 'other forms of sexual violence', the ICC judges generalized it as 'other inhuman acts'.<sup>56</sup> Such judicial approach wrongly suggested that forced circumcision lacked sexual dimensions, did not consider the crime's gendered design, and thus failed to see the interplay between rampant CRMSV against Kenyan women and men.

### 3. CRMSV Prosecuted as Sexual Violence

Qualifying CRMSV under specific sexual violence charges is the best approach, gradually yet inconsistently embraced in jurisprudence. The ICTY and the ICC have characterized fellatio and anal penetration of male victims as crime against humanity and war crime of rape.<sup>57</sup> Despite the eventual acquittal, *Bemba* marked a pivotal step towards ensuring command responsibility for male and female rape as a crime against humanity. In *Ntaganda*, the ICC explained that the prohibition of rape 'against all persons' was peremptory.<sup>58</sup> The Extraordinary Chambers in the Courts of Cambodia clarified that sex in forced marriages constituted rape of both women and men.<sup>59</sup>

<sup>48</sup> Judgment, International Military Tribunal for the Far East (1948), §§ 49,665, 49,673; P. Sellers, 'The Context of Sexual Violence: Sexual Violence as Violations of International Humanitarian Law', in G. K. McDonald and O. Swaak-Goldman (eds), *Substantive and Procedural Aspects of International Criminal Law*, Vol. I (Kluwer Law International, 2000) 263–332, at 282–283.

<sup>49</sup> Both this, other subsequent and the main Nuremberg judgment often reductively refer to 'Russians' instead of 'Soviets' and to 'Southern Russia' instead of 'Ukraine'. Such compartmentalization, misinformed or instrumentalized, ignores the fact that, as far as the USSR was concerned, most hostilities and occupation affected the Byelorussian and Ukrainian SSRs. The monolithic positioning of allegedly largely Russian fight against and victimhood from Nazi Germany and the neglect of other Soviet peoples is not just historically wrong. Russia's exclusive claim to the Soviet legacy of World War II and the Nuremberg trials is at the heart of its justifications of the ongoing aggression against Ukraine. See A. Vorobiova, 'The "Lessons of Nuremberg": Their Use and Abuse in the Current Russia-Ukraine War', *XLII Polish Yearbook of International Law* (2022) 55–82, at 55, 58; I. Nuzov, 'Legislating Propaganda: Russia's Memory Laws Justify Aggression Against Ukraine', 20 *JICJ* (2022) 805–818, at 805, 812.

<sup>50</sup> US Military Tribunal Nuremberg, *The Doctors' Trial, The United States of America vs. Karl Brandt et al.*, Judgment of 19 July 1947, available online at <https://werle.rewi.hu-berlin.de/MedicalCase.pdf> (visited 12 December 2024), at 82–83.

<sup>51</sup> Judgment, *Furundžija* (IT-95-17/1-T), Trial Chamber, 10 December 1998 ('*Furundžija*, TC'), § 267(ii).

<sup>52</sup> Sentencing Judgement, *Milan Simić* (IT-95-9/2-S), Trial Chamber, 17 October 2002, §§ 3–4.

<sup>53</sup> Sellers and Nwoye, *supra* note 39, at 217.

<sup>54</sup> Oosterveld, *supra* note 47, at 112.

<sup>55</sup> Art. 5(h) ICTYST.

<sup>56</sup> Confirmation of Charges Judgment, *Kenyatta* (ICC-01/09-02/11), Pre-Trial Chamber 23 January 2012, §§ 257–266.

<sup>57</sup> Sentencing Judgment, *Todorović* (IT-95-9/1-S), Trial Chamber, 31 July 2001, §§ 3, 9; Judgment pursuant to Article 74 of the Statute, *Bemba* (ICC-01/05-01/08), Trial Chamber III, 21 March 2016 ('*Bemba*, TC'), §§ 494, 633.

<sup>58</sup> Second Decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9, *Ntaganda* (ICC-01/04-02/06), Trial Chamber VI, 4 January 2017 ('*Ntaganda*'), § 51.

<sup>59</sup> The *Case 002/02* appeal judgment corrected the gender-stereotyped Trial Chamber's reading that state-imposed sex in forced marriages allegedly victimized only women. M. O'Brien, 'Symposium on the ECCC: Forced Marriage in the ECCC',

CRMSV prosecutions have been catalysed by feminist advancement of ICL, increased documentation of CRMSV and the accentuation of crimes such as forced marriage, forced pregnancy and child soldiering, which invite the consideration of victimhood of both sexes.<sup>60</sup> However, asymmetries between female and male CRSV jurisprudence, as well as wider gendered understandings of armed conflicts and post-conflict recovery, persist.

### 3. CRMSV IN RUSSIA'S AGGRESSION AGAINST UKRAINE

#### A. CRMSV in 2014–2021

CRSV has been recorded since the beginning of Russia's aggression against Ukraine through the occupation of the Crimean Peninsula and parts of the Donbas region in 2014. During the initial years of the invasion, the documentation of CRSV by domestic prosecution, civil society and international actors was inconsistent.<sup>61</sup> All conflict-related crimes, let alone such intricate ones as CRSV, were novel for Ukrainian professionals. International partners were grappling with witnessing a conventional interstate armed conflict pursuing neo-imperial conquest and subjugation<sup>62</sup> — a reality, which they considered to be a matter of the past and were, for a long time, unwilling to recognize.<sup>63</sup> These factors, together with the lack of access to the temporarily occupied territories, the stigma around sexual violence, limited understanding of the CRSV spectrum, and gendered stereotypes about 'typical [female] victims', have impacted the visualization and categorization of conflict-related crimes and their gendered dimensions.

#### 1. Eastern Ukraine

Before analysing CRMSV patterns, a particularity of the early documentation and qualification of conflict-related crimes in Donbas should be explained. Russia has consistently denied its presence in eastern Ukraine and its control over armed groups there, claiming that these groups were self-organized separatists. This stance, and the wider geopolitical laxity in naming and acting upon Russia's initial aggression in Crimea and Donbas, has impacted the attribution of conflict-related crimes, including CRSV. Ukrainian human rights NGOs and prosecutorial authorities have constantly provided evidence of Russia's presence.<sup>64</sup> Despite that, international organizations, including the UN, were overcautious in implicating the Kremlin and preferred referring to 'armed groups'.<sup>65</sup> The overdue recognition came after the full-scale invasion when a Dutch court adjudicating the MH-17 case and the European Court of Human Rights established Russia's overall and effective control over parts of

Opinio Juris, 2 November 2022, available online at <https://opiniojuris.org/2022/11/02/symposium-on-the-eccc-forced-marriage-in-the-eccc/> (visited 12 December 2024).

<sup>60</sup> Sellers and Nwoye, *supra* note 39, at 211–212; R. Grey and L. J. Shepherd, "Stop Rape Now?" Masculinity, Responsibility, and Conflict-related Sexual Violence' 16 *Men and Masculinities* (2012) 115–135, at 115, 128.

<sup>61</sup> Busol, *supra* note 9, at 286–288.

<sup>62</sup> V. Putin, 'On the Historical Unity of Russians and Ukrainians', *The Kremlin*, 12 July 2021, available online at <http://en.kremlin.ru/events/president/news/66181> (visited 12 December 2024).

<sup>63</sup> K. Oksamytna, 'Imperialism, Supremacy, and the Russian Invasion of Ukraine', 44 *Contemporary Security Policy* (2023) 497–512, at 497–498, 501–502.

<sup>64</sup> Global Rights Compliance, 'International Law and Defining Russia's Involvement in Crimea and Donbas' (13 February 2022), available online at <https://globalrightscompliance.com/wp-content/uploads/2022/05/International-Law-and-Russia-Involvement-in-Crimea-and-Donbas-1.pdf> (visited 11 December 2024); I. Marchuk and A. Wanigasuriya, 'Venturing East: The Involvement of the International Criminal Court in Post-Soviet Countries and Its Impact on Domestic Processes', 44 *Fordham International Law Journal* (2021) 735–769, at 764–765.

<sup>65</sup> For example, OHCHR, 'Conflict-Related Sexual Violence in Ukraine, 14 March 2014 to 31 January 2017' (OHCHR, 'CRSV in Ukraine'), § 8; OHCHR, 'Arbitrary detention, torture and ill-treatment in the context of armed conflict in eastern Ukraine, 2014–2021' (OHCHR, 'Arbitrary detention'), s VII.

Donbas since mid-May 2014.<sup>66</sup> Two conclusions are in order. First, most of the 2014–2021 conflict-related crimes, including CRSV, in Donbas associated with armed groups were perpetrated with direct engagement or endorsement of Russian authorities. Secondly, more conversations on the equality of arms in international law are needed, when the reporting of well-documented atrocities and calls for action by local actors appear to be insufficient without external validation, and until such atrocities skyrocket in their gravity and scale.<sup>67</sup> These conversations should go beyond the Global North–Global South dichotomy and address the nuances of the past and present of Russia's imperialism in Central and Eastern Europe.<sup>68</sup> Such layered vision is important for understanding the motives of Russia's conduct and patterns of its crimes<sup>69</sup>—as well as for designing viable justice avenues for them.

In Donbas, CRSV was recorded in detention, in temporarily occupied territories, in areas with high military presence and at checkpoints between government- and non-government-controlled areas. CRSV, especially rape, was particularly widespread during active fighting in 2014–2015.<sup>70</sup> CRSV was used to intimidate, punish, force confessions, and, in the Russia-controlled areas, to get ransom.<sup>71</sup> CRSV was attributable to Russian service persons and Russia-controlled armed groups, as well as to the Ukrainian military and its voluntary formations active at the beginning of the invasion.

The Ukrainian military resorted to forced nudity, rape, threats of rape, genital electrocution and beatings, predominantly against actual or perceived separatists, largely men.<sup>72</sup> Some CRSV perpetrated by voluntary battalions operating at the beginning of Russia's invasion in 2014 was prosecuted, but judgments were classified.<sup>73</sup> In 2014–2021, in the Ukrainian government-controlled areas, the Office of the High Commissioner for Human Rights (OHCHR) documented 35 CRSV cases, of which 18 were CRMSV, most of them perpetrated in conflict-related detention.<sup>74</sup> With arbitrary detentions, the estimates of CRSV raised to 140–170 persons, of which 80–100 were men.<sup>75</sup> While survivors' security concerns and military camaraderie might have impacted the reporting, the indicated UN figures and analyses of human rights NGOs working with survivors indicate that CRSV committed by Ukrainians was neither prevalent nor regular.<sup>76</sup>

Russian military and their armed groups perpetrated rapes, gang rapes, threats of rape, genital beatings, electrocution and mutilation, castration, forced nudity, unwanted touching and detention and humiliation by members of the opposite sex, including female guards.<sup>77</sup> Women were predominantly assaulted in occupied territories and at checkpoints, with rapes,

<sup>66</sup> Decision, *Ukraine and The Netherlands v. Russia*, Applications №. 8019/16, 43800/14 and 28525/20, 20 November 2022, § 695; Case 09-748006/19 (First Instance) District Court of The Hague (17 November 2022), available online at <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2022:12219> (visited 11 December 2024).

<sup>67</sup> P. Labuda, 'On Eastern Europe, "Whataboutism" and "West(s)plaining": Some Thoughts on International Lawyers' Responses to Ukraine', *EJIL: Talk! Blog of the European Journal of International Law*, 12 April 2022, available at [www.ejiltalk.org/on-eastern-europe-whataboutism-and-westsplaining-some-thoughts-on-international-lawyers-responses-to-ukraine/](http://www.ejiltalk.org/on-eastern-europe-whataboutism-and-westsplaining-some-thoughts-on-international-lawyers-responses-to-ukraine/) (visited 11 December 2024).

<sup>68</sup> M. Mälksoo, 'The Postcolonial Moment in Russia's War Against Ukraine', 25 *Journal of Genocide Research* (2023) 471–481, at 475–476; P. Labuda, 'Countering Imperialism in International Law: Examining the Special Tribunal for Aggression against Ukraine through a Post-Colonial Eastern European Lens', *Yale Journal of International Law* (forthcoming 2024) 1–37, at 8.

<sup>69</sup> L. Mälksoo, *Russian Approaches to International Law* (Oxford University Press, 2015).

<sup>70</sup> CEDAW, 'Concluding Observations on the Eighth Periodic Report of Ukraine', 9 March 2017, CEDAW/C/UKR/CO/8, § 14; Eastern-Ukrainian Centre for Civic Initiatives, 'War without Rules: Gender-Based Violence in the Context of the Armed Conflict in Eastern Ukraine' (2017), available online at [https://totalaction.org.ua/public/upload/book/1522852942\\_gon\\_eng\\_web.pdf](https://totalaction.org.ua/public/upload/book/1522852942_gon_eng_web.pdf) (visited 12 December 2024) (EUCCI, 'War without Rules'), at 96.

<sup>71</sup> OHCHR, 'CRSV in Ukraine', § 60.

<sup>72</sup> OHCHR, 'CRSV in Ukraine', § 66; OHCHR, 'Arbitrary detention', § 47; EUCCI, 'War without Rules', at 74.

<sup>73</sup> EUCCI, 'War without Rules', at 76–77.

<sup>74</sup> OHCHR, 'Arbitrary detention', § 47.

<sup>75</sup> *Ibid.*, § 48.

<sup>76</sup> EUCCI, 'War without Rules', at 73.

<sup>77</sup> OHCHR, 'CRSV in Ukraine', § 87; OHCHR, 'Arbitrary detention', § 68; EUCCI, 'War without Rules', at 38.

gang rapes, attempted rapes, enslavement, sometimes combined with robbery and killing.<sup>78</sup> In detention, the majority of victims were males,<sup>79</sup> subjected to forced nudity, electrocution of genitalia, and threats of rape and gang rape towards them and their female relatives.<sup>80</sup> Civilian detainees and POWs were largely targeted for their pro-Ukrainian position.<sup>81</sup> LGBTQI+ persons experienced enhanced violence because of their sexual orientation or gender identity.<sup>82</sup> Already during the first phase of the armed conflict, Russia's CRSV appeared to be widespread and systematic.<sup>83</sup>

## 2. Crimea

Russia's presence in Crimea through occupation since late February 2014 was hard to deny, both for Russia and for the international community. Occupation constitutes an international armed conflict, and allegations of atrocities, including CRSV, should be examined considering this context and through this prism.<sup>84</sup>

The lack of access to occupied Crimea by Ukraine and independent human rights monitors, as well as possible religious considerations for Muslim Crimean Tatars, have impacted — but not incapacitated — the reporting on atrocities there, including CRSV.<sup>85</sup> The repression of those opposing Russia's presence through enforced disappearances, murder, torture and sham trials has been documented since the beginning of the occupation.<sup>86</sup> The majority of those targeted have been men — Ukrainian and indigenous Crimean Tatar civil society activists, journalists, artists and politicians accused of 'extremist' activities.<sup>87</sup> To force confessions, Russian authorities subjected detained Ukrainian men to various forms of sexual violence, sexualized torture and ill-treatment, including electrocution of genitalia, tying ropes around genitalia, threats of rape and forced nudity.<sup>88</sup> Survivors' attempts to seek redress for these violations from the occupying authorities have been futile.<sup>89</sup>

### B. CRMSV since the Full-scale Invasion

The all-out invasion has amplified all conflict-related crimes, including CRSV. With a now undisguised intention to subjugate, vicious fighting, more Russian servicemen on the ground, and the occupation of new territories, all nourished by dehumanising rhetoric,<sup>90</sup> Russia's CRSV has skyrocketed in its prevalence and gravity.

<sup>78</sup> OHCHR, 'CRSV in Ukraine', §§ 88–106; EUCCI, 'War without Rules', at 82.

<sup>79</sup> This is not to downplay the horrible experiences of Ukrainian civilian and POW women detained by Russia. Many of those women had health issues, aggravated by the lack of medical aid, proper nutrition and gender-specific hygiene conditions. Some of the detained women were pregnant. See more in Media Initiative for Human Rights, 'Female Prisoners: Analysis of Testimonies of Women Freed from Russian Captivity' (2023), available online at <https://drive.google.com/drive/u/0/folders/1oJRSawDM1KulotKM669z3IGb2Abk2H5> (visited 23 December 2024); Busol, *supra* note 9, at 288–289.

<sup>80</sup> In 2014–2021, Russia had twice as many conflict-related detainees as Ukraine, 85% of whom were men. OHCHR, 'Arbitrary detention', §§ 56, 68–69.

<sup>81</sup> EUCCI, 'War without Rules', at 113.

<sup>82</sup> *Ibid.*, at 45–47.

<sup>83</sup> *Ibid.*, at 82.

<sup>84</sup> Geneva Conventions, at common Art. 2.

<sup>85</sup> OHCHR, 'CRSV in Ukraine', §§ 2, 9, 29.

<sup>86</sup> OHCHR, 'Ten Years of Occupation by the Russian Federation: Human Rights in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine', 28 February 2024 (OHCHR, 'Ten Years of Occupation'), § 25; M. Vishchuk and A. Moiseivich, 'Crimean Tatars: Eight Years of Anything by Marginal Resistance', *EJIL: Talk! Blog of the European Journal of International Law*, 25 March 2022, available at [www.ejiltalk.org/crimean-tatars-eight-years-of-anything-but-marginal-resistance/](http://www.ejiltalk.org/crimean-tatars-eight-years-of-anything-but-marginal-resistance/) (visited 11 December 2024).

<sup>87</sup> *Ibid.*

<sup>88</sup> OHCHR, 'CRSV in Ukraine', §§ 110–111; OHCHR, 'Ten Years of Occupation', § 25.

<sup>89</sup> OHCHR, 'Ten Years of Occupation', § 25.

<sup>90</sup> CoI Conference room paper, §§ 49, 532; 'Our experts decode the Putin speech that launched Russia's invasion of Ukraine', Atlantic Council, 22 February 2023, available online at [www.atlanticcouncil.org/blogs/new-atlanticist/markup-putin-speech-ukraine-war/](http://www.atlanticcouncil.org/blogs/new-atlanticist/markup-putin-speech-ukraine-war/) (visited 1 July 2024).

Victims are civilian and POW women and men, children and the elderly, aged from 4 to 82 years.<sup>91</sup> Civil society activists, local officials, members of the Ukrainian armed forces and their families, and anyone pro-Ukrainian are particularly targeted.<sup>92</sup> CRSV is accompanied by xenophobic gendered slurs and claims that Ukrainians must stop procreating.<sup>93</sup> Females are predominantly assaulted in occupied territories through rape, gang rape, threats of rape, and sexual slavery.<sup>94</sup> Russians accompany these crimes with torture or execution of male family members or make relatives watch the abuse.<sup>95</sup> LGBTQI+ persons are additionally targeted because of their gender identity and sexual orientation.<sup>96</sup> In detention, the majority of civilians and POWs report torture and ill-treatment, of which CRSV forms an 'important aspect', weaponized 'almost daily'.<sup>97</sup> Both sexes are assaulted, though the majority of victims are men aged from 21 to 58 years.<sup>98</sup> CRMSV includes oral and anal rape; castration, threats of castration and forcing to watch castration and other CRSV; beatings, burning and electrocution (often repeated) of genitalia; pulling a penis with a rope; attempted rape; invasive intimate searches; threats of CRMSV; and forced nudity, oftentimes in cold temperatures or in front of members of the opposite sex.<sup>99</sup> Such abuses are committed to intimidate, punish, force confessions or alliance to Russia and are combined with other crimes.<sup>100</sup> The UN Commission of Inquiry has recorded Russia's 'recurrent use of sexual violence as a form of torture'.<sup>101</sup> The OHCHR, the UN Commission of Inquiry and the UN Special Rapporteur on Torture have concluded that Russia's torture is thoroughly organized in its division of functions between perpetrating authorities, infrastructure and techniques.<sup>102</sup> Russia's torture of Ukrainian civilians and POWs is widespread and systematic.<sup>103</sup> The Special Rapporteur has singled out sexual torture for her future focus in Ukraine.<sup>104</sup>

A smaller number of allegations implicates the Ukrainian side. Torture or ill-treatment reports, some with sexual dimensions, concern two contexts: the capture, transfer and initial internment of Russian POWs, and the treatment of alleged collaborators. As regards alleged

<sup>91</sup> Col March 2023 Report, § 78.

<sup>92</sup> OHCHR, 'Human Rights Situation during the Russian Occupation of Territory of Ukraine and Its Aftermath, 24 February 2022-31 December 2023' (20 March 2024) (OHCHR, 'Human Rights Situation during the Russian Occupation'), § 39; Col Conference room paper, §§ 524–525.

<sup>93</sup> *Report of the Independent International Commission of Inquiry on Ukraine*, A/HRC/55/66, 18 March 2024 ('Col March 2024 Report'), § 67; Col Conference room paper, §§ 585, 603; C. Lamb, 'She Thought she was Unshockable, then Two Castrated Ukrainian Soldiers Arrived', *The Australian*, 18 June 2023, available online at [www.thetimes.co.uk/article/ukraine-soldiers-castrated-russia-war-0hlfzhzlv](http://www.thetimes.co.uk/article/ukraine-soldiers-castrated-russia-war-0hlfzhzlv) (visited 12 December 2024).

<sup>94</sup> Col Conference room paper, §§ 580–585.

<sup>95</sup> *Ibid.*, § 581.

<sup>96</sup> *Ibid.*, §§ 628–629.

<sup>97</sup> Col March 2023 Report, § 81; OHCHR, 'Report on the Human Rights Situation in Ukraine, 1 December 2023-29 February 2024' (26 March 2024) ('OHCHR, 'Human Rights Situation Report' (26 March 2024)'), §§ 47, 82; "He called me his girl" – the story by four men from Kherson's torture chambers', *SlidstvoInfo*, 27 March 2024, ('*SlidstvoInfo*, "He called me his girl"), available online at [www.youtube.com/watch?v=OcSAOrph3tU](http://www.youtube.com/watch?v=OcSAOrph3tU) (visited 12 December 2024).

<sup>98</sup> Col October 2024 Report, § 47; Col March 2023 Report, § 58.

<sup>99</sup> Col October 2024 Report, §§ 47, 85; OHCHR, 'Treatment of Prisoners of War and Update on the Human Rights Situation in Ukraine, 1 June 2024-31 August 2024' (1 October 2024) ('OHCHR, 'Treatment of Prisoners of War October 2024 Report'), §§ 30, 102–103; Col Conference room paper, §§ 527, 529; OHCHR, 'Human Rights Situation Report' (26 March 2024), § 47; *SlidstvoInfo*, "He called me his girl".

<sup>100</sup> Col March 2024 Report, § 60; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'Report on the visit to Ukraine' (15 February 2024) A/HRC/55/52/Add.1 ('Special Rapporteur on Torture, "Visit to Ukraine Report"), § 36.

<sup>101</sup> Col October 2024 Report, § 75.

<sup>102</sup> Col March 2024 Report, §§ 79–80; OHCHR, 'Human Rights Situation Report' (26 March 2024), § 40; Special Rapporteur on Torture, 'Visit to Ukraine Report', §§ 46–50; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'Investigating, prosecuting and preventing wartime sexual torture, and providing rehabilitation to victims and survivors' (18 July 2024) A/79/181, § 4.

<sup>103</sup> Col October 2024 Report, § 78; OHCHR, 'Treatment of Prisoners of War October 2024 Report', §§ 28, 37–38; OHCHR, 'Human Rights Situation Report' (26 March 2024), § 40; Special Rapporteur on Torture, 'Visit to Ukraine Report', §§ 46–50.

<sup>104</sup> Special Rapporteur on Torture, 'Visit to Ukraine Report', § 45.

Ukrainian collaborators and looters, 24 of them, largely men, were threatened with CRSV and subjected to forced public nudity.<sup>105</sup> As regards Russian POWs, the UN has ‘regular and unimpeded access’ to them.<sup>106</sup> Some Russian POWs (all men) have reported beatings, including on their genitals, electric shocks (to a lesser extent and without the specification of body parts) and threats of rape during capture and transfer.<sup>107</sup> Some of these allegations are being prosecuted by Ukraine.<sup>108</sup> The rigid views on masculinity prevalent in Russian culture<sup>109</sup> might complicate the reporting by Russian servicemen of sexual violence they may have endured, and the figures of CRMSV might eventually change. However, as of March 2025, it does not appear that any such changes might be drastic. First, the UN has full access to Russian POWs. In their competent interviews of such captured servicemen,<sup>110</sup> UN and other professionals can detect any red flags of possible CRMSV that may have been endured and concealed and initiate more honest reporting. Secondly, it has been consistently confirmed, including by UN officials, that the vast majority of crimes are attributable to Russia.<sup>111</sup> Crucially, as of early 2025, no reports alleging a policy dimension in CRSV associated with Ukraine have emerged. Whatever the future dynamics, Ukraine must impartially prosecute any existing or new allegations implicating the Ukrainian side, including regarding CRMSV.

### C. Legal Assessment

Ukraine and Russia are parties to key international human rights law and international humanitarian law (IHL) instruments prohibiting CRSV and requiring its prosecution and redress.<sup>112</sup> Both states are also bound by respective customary law.

Russia’s CRMSV may constitute war crimes of rape, enforced sterilization, sexual violence, torture or inhuman treatment; crimes against humanity of torture, rape and persecution on gender and political grounds; as well as human rights violations. It can also form genocidal acts and indicate Russia’s genocidal intent.<sup>113</sup> Ukraine’s CRMSV may constitute war crimes of rape, other sexual violence, torture or inhuman treatment, as well as human rights violations.

In Ukraine, like in many other contexts, from the former Yugoslavia to Syria, CRSV against males and females is intertwined, and is CRSV with torture.<sup>114</sup> The (non-)consideration of these

<sup>105</sup> OHCHR, ‘Report on the Human Rights Situation in Ukraine 1 August–31 January 2023’ (24 March 2023), § 13.

<sup>106</sup> OHCHR, ‘Treatment of Prisoners of War October 2024 Report’, § 54.

<sup>107</sup> OHCHR ‘Human Rights Situation Report’ (26 March 2024), § 64; OHCHR, ‘Treatment of Prisoners of War October 2024 Report’, §§ 55, 57, 62.

<sup>108</sup> OHCHR, ‘Treatment of Prisoners of War October 2024 Report’, § 69.

<sup>109</sup> Busol, *supra* note 9, at 299–303.

<sup>110</sup> As of March 2025, captured Russian POWs are almost all men. OHCHR, ‘Treatment of Prisoners of War October 2024 Report’, § 55, footnote 45: among 434 Russian POWs the OHCHR interviewed, only one was a woman.

<sup>111</sup> ‘UN Commission of Inquiry: Statement on the third-year mark of Russia’s full-scale invasion of Ukraine’ 26 February 2025, available online at [www.ohchr.org/en/statements-and-speeches/2025/02/un-commission-inquiry-statement-third-year-mark-russias-full-scale](https://www.ohchr.org/en/statements-and-speeches/2025/02/un-commission-inquiry-statement-third-year-mark-russias-full-scale) (visited 12 March 2025).

<sup>112</sup> Both states are parties to the 1907 Hague Convention; 1949 Geneva Conventions and their Additional Protocol I; ICCPR; CAT; CEDAW.

<sup>113</sup> Especially CRMSV during filtration procedures, CRMSV in captivity and aggravated detention conditions for men, which complicate their recovery from the abuse, male-focused executions, assertions that Ukrainians should stop procreating and men losing their fertility after CRMSV. All of the above, in an interplay with CRFSV and in combination with other atrocities, indicate the targeting of Ukrainians as a national group and impact its survival. CoI Conference room paper, § 553; New Lines Institute, *The Russian Federation’s Escalating Commission of Genocide in Ukraine: A Legal Analysis* (2023), available online at <https://newlinesinstitute.org/wp-content/uploads/20230726-Genocide-Ukraine-Report-NISLAP.pdf> (visited 12 December 2024), at 7–9; A. Mykytenko, ‘Sexual Violence is not a Hidden War Crime in Ukraine’, *The Kyiv Independent*, 23 February 2024, available online at <https://kyivindependent.com/opinion-sexual-violence-is-not-a-hidden-war-crime-in-ukraine/> (Mykytenko, ‘Sexual Violence’) (visited 12 December 2024); Y. Ioffe, ‘Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?’, 25 *Journal of Genocide Research* (2023) 315–351, at 315, 345–346.

<sup>114</sup> K. Campbell, ‘The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia’, 1 *The International Journal of Transitional Justice* 411 (2007) 411–432, at 422–423; Elliott, *supra* note 5, at 472.

interconnections impacts the categorization of CRSV and, especially, CRMSV. In Ukraine and globally, CRMSV is increasingly discussed as torture.<sup>115</sup> This is 'particularly true in the case of UN reports'.<sup>116</sup>

While CRSV against both sexes can constitute torture, the prevalent positioning of CRMSV perpetrated in Russia's aggression within a torture rubric and CRFSV within an SGBV rubric generates at least two challenges. First, it reinforces the stereotypical gender binary of 'stoically enduring males' versus 'sexually subjugated females'. Secondly, the sexual dimensions of physical and mental male torture are often lost. The mistreatment of Ukrainian male detainees is sometimes generalized as 'torture', 'torture with electricity' or 'beatings'.<sup>117</sup> Not specifying that Russia often directs electrocution and other torture techniques specifically at male genitalia blurs foundational sexual layers of the crime, ignores the toxic masculine mindset of perpetrators and neglects crucial gendered aspects of victim's suffering and required redress.<sup>118</sup> CRMSV categorization challenges are particularly apparent with mental torture. Where Ukrainian men are forced to witness rapes of their female relatives, the physical sexual ordeal of females is, understandably, emphasized more.<sup>119</sup> A fuller analysis of harms should expressly mention the sexual mental torture of a man, its connection with CRFSV and the aggravating circumstance of rape and sexual torture inflicted on both sexes at home, in front of the family.<sup>120</sup>

As discussed in Section 1, CRMSV can be addressed both through torture and specific sexual violence charges. What is crucial is a layered, gender-competent uncovering of sexual, physical and mental harms and, where relevant, cross-referencing between sexualized torture and focused CRSV charges. For Ukraine, the torture lens is particularly relevant given the growing evidence of its widespread and systematic weaponization by Russia as a crime against humanity.<sup>121</sup> Such categorization should necessarily analyse the CRSV components of torture affecting both sexes, physically and emotionally.

A gendered analysis of intersecting harms will advance the nuanced interpretation of CRMSV, CRSV and related atrocities in Russia's aggression.<sup>122</sup> For instance, sexual slavery has rightly been alleged regarding a confined 16-year-old girl being regularly raped, strangled and otherwise sexually assaulted by a Russian commander stationed in her house with his unit for 20 days.<sup>123</sup> This categorization would be more layered with the recognition of related sexual mental torture, torture and forced nudity of the brother, who was aware of the girl's ordeal, was trying to protect her and, as a punishment, was regularly beaten, naked and cuffed, in cold temperatures outside. In addition, the continuous enslavement of the whole family — the siblings and their grandmother — should have been qualified.<sup>124</sup>

<sup>115</sup> For example, CoI March 2024 Report, §§ 58–67.

<sup>116</sup> S. Sivakumaran, 'Lost in Translation: UN Responses to Sexual Violence Against Men and Boys in Situations of Armed Conflict', 92 *International Review of the Red Cross* (2010) 259–277, at 259, 273.

<sup>117</sup> Truth Hounds, *War in Religious Dimension: Attacks on Religion in Crimea and Donbas Region* (2019), available online at <https://truth-hounds.org/wp-content/uploads/2019/08/Religion3-LAYOUT.pdf> (visited 12 December 2024), 24; CoI Conference room paper, §§ 551, 555, 559, 560, 565.

<sup>118</sup> Busol, *supra* note 9, at 299–303.

<sup>119</sup> CoI March 2024 Report, § 89; CoI Conference room paper, § 593.

<sup>120</sup> *Furundžija*, TC, § 267(ii); Judgment, *Delalić, Mucić, Delalić and Landžo (Čelibići)* (IT-96-21-T), Trial Chamber, 16 November 1998 ('*Delalić*, TC'), § 1262; Sentencing Judgment, *Češić* (IT-95-10/1-S), Trial Chamber I, 11 March 2004 ('*Češić*, TC'), § 53.

<sup>121</sup> CoI October 2024 Report, § 78; OHCHR, 'Treatment of Prisoners of War October 2024 Report', §§ 28, 37–38; OHCHR, 'Human Rights Situation during the Russian Occupation', § 40; Special Rapporteur on Torture, 'Visit to Ukraine Report', §§ 46–50.

<sup>122</sup> ICC OTP, *Policy on Gender-Based Crimes*, §§ 40–41, 75.

<sup>123</sup> CoI Conference room paper, § 593.

<sup>124</sup> *Furundžija*, TC, § 267(ii); Judgment, *Kunarac* (IT96-23T & IT-96-23/1-T), Trial Chamber, 22 February 2001, § 543; ICC OTP, *Policy on Gender-Based Crimes*, § 140; ICC OTP, *Policy on Slavery Crimes* (2024) ('ICC OTP, *Slavery Crimes Policy*'), §§ 33–36; Henckaerts, *supra* note 26, Rule 94; Sellers and Kestenbaum, *supra* note 6, at 178.

A persecution lens is increasingly pertinent for categorising Russia's CRSV against Ukrainian men, women and LGBTQI+ persons, often at an intersection of gender and political grounds. Since the beginning of the ongoing aggression in 2014, the ICC OTP, UN General Assembly and human rights NGOs have characterized Russia's oppression of Ukrainians opposing the occupation as alleged persecution on political grounds.<sup>125</sup> Russia's sexual torture and other CRSV are amplified by victims' actual or perceived pro-Ukrainian stance or affiliation with the Ukrainian army.<sup>126</sup> Russians' views of victims' sexual orientation or gender identity also inform the way they sexually assault them.<sup>127</sup> The Kremlin's endorsement of 'traditional' male and female gender roles and criminalization of the LGBTQI+ movement have not only incapacitated 'expressions of diverse sexual orientations and gender identities' in Russia-controlled territories.<sup>128</sup> Such Kremlin action have also further singled out in any way 'non-conforming', politically and otherwise, women, men and LGBTQI+ individuals, and legitimized their targeting, including with acutely gendered CRSV. The purported 'de-masculinization' of Ukrainian males, whether through abuse by female perpetrators or through sexual violation of their female relatives, their 'feminization' by making male POWs to dance in women's clothes, or their 'homosexualization' through other CRMSV or the 'humiliation' of gay men by targeted sexual means signal persecution fusing political and gender layers.<sup>129</sup>

CRMSV against Muslim Crimean Tatars should be analysed through an intersection of religious, gender, ethnic and political prisms. Such an approach is necessitated by the particular social standing of Crimean Tatar males, the indigenous people's outspoken opposition to Russia's occupation and the legacy of their oppression by imperial, Soviet and contemporary Russia.<sup>130</sup>

An intersection of gender and religion is further important in categorizing CRMSV in Ukraine beyond Crimea.<sup>131</sup> By subjecting Ukrainian priests to forced nudity and making them parade naked in their own parish, Russian occupying authorities levy additional humiliation on religious figures and intimidation on their followers.<sup>132</sup> Occupiers send an unambiguous message to the local community: since we can penetrate into the most intimate layers of your spiritual leader and sexually subjugate him,<sup>133</sup> we can subjugate all of you.

<sup>125</sup> ICC OTP, 'Report on Preliminary Examination Activities' (2020), § 279; GA Res. 72/192 'Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine', 16 December 2020, at 5; GA Res. 77/229, 'Situation of Human Rights in the Temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine', 15 December 2022, at 4, 5, 8; OMCT, Human Rights Center ZMINA, Media Initiative for Human Rights, 'You're Loyal to Ukraine—Are You a Nazi?' *Torture and Other Violations as Crimes against Humanity by the Russian Army in Ukraine* (2024), available online at <https://zmina.ua/wp-content/uploads/sites/2/2024/07/rapport-ukraine-torture-final-omct-web-pages-1-1.pdf> (visited 26 November 2024), at 67–70.

<sup>126</sup> CoI March 2024 Report, §§ 91–92; CoI October 2024 Report, §§ 81–82.

<sup>127</sup> CoI Conference room paper, §§ 626–629.

<sup>128</sup> E. Edenborg, 'Russia's Spectacle of "Traditional Values": Rethinking the Politics of Visibility' 22 *International Feminist Journal of Politics* (2020) 106–126, at 106–109; OHCHR, 'Ten Years of Occupation', § 29.

<sup>129</sup> OHCHR, 'Report on the Human Rights Situation in Ukraine, 16 August to 15 November 2017', § 58; EUCCI, 'War without Rules', 43; Sivakumaran, *supra* note 19, at 275; R. Grey et al., 'Gender-Based Persecution as a Crime against Humanity: The Road Ahead', 17 *JICJ* (2019) 957–979, at 968–969; ICC OTP, *Gender Persecution Policy*, §§ 44–45, 51.

<sup>130</sup> Declaration of Judge Crawford, at 113–116, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Order of 19 April 2017; ICC OTP, 'Report on Preliminary Examination Activities' (2020), § 279; GA Res. 77/229, 'Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine', 15 December 2022, at 3–7; Global Rights Compliance, 'Occupied Religion: Ukraine Submits Evidence of Crimes against Humanity Committed by Russia in Crimea to ICC', 5 March 2024, available online at <https://globalrightscpliance.com/2024/03/05/occupied-religion-ukraine-submits-evidence-of-crimes-against-humanity-committed-by-russia-in-crimea-to-icc> (visited 26 November 2024); R. Serbyn, 'Lemkin on Genocide of Nations', 7 *JICJ* (2009) 123, 123–130, at 126; R. Finnin, *Blood of Others: Stalin's Crimean Atrocity and the Poetics of Solidarity* (Toronto University Press, 2022).

<sup>131</sup> ICC OTP, *Policy on Gender-Based Crimes*, § 33.

<sup>132</sup> CoI March 2023 Report, § 84.

<sup>133</sup> As of March 2025, only men may be priests in Ukraine.

Attention to forced nudity should not be blurred by the focus on other CRMSV or related atrocities. Stripping of clothes, as the visualization of the purported stripping of dignity and of any decision-making power about one's body and fate, is an unambiguous prelude to subsequent harms. However horrifying the increased shooting of POWs (often undressed) may be, it should not subsume the underlying crime of forced nudity.<sup>134</sup> Specifying that, before executions, Russians make captured Ukrainian servicemen undress — fully or letting them keep just the underwear on — is important not just for the fair labelling of all harms. Such mistreatment of the captured in the ongoing aggression painfully resonates with similar practices employed during the mass annihilation of the Ukrainian intelligentsia by the Russians in the 1920–1930s.

This brings us to the final underlying point: the categorization of CRMSV and other crimes in the ongoing aggression will be inherently incomplete unless it is rooted in the broader historical framework of the Kremlin's attempts to subjugate Ukraine.<sup>135</sup> For Ukrainians, the connecting thread with the patterns of mass purges in the first half of the twentieth century is exceptionally symbolic. Then, 75% of the nation's most avant-garde poets, writers, directors, artists and academics were deported to and killed in the Russian forest of Sandarmokh — undressed, with their hands tied.<sup>136</sup> Due to gendered asymmetries in access to artistic professions and policymaking at the time, most of those liquidated were men.<sup>137</sup> Raphael Lemkin poignantly described these policies in his essay 'Soviet Genocide in Ukraine' as an assault on 'the national brain, so as to paralyse the rest of the body'.<sup>138</sup> Like in the case of the shot Ukrainian POWs, the horror of the mass graves of Sandarmokh should not blur the presaging calculated humiliation of forced nudity.

The described elimination of the modernist visionaries of independent Ukraine is known as the Executed Renaissance.<sup>139</sup> In the essence of the intention to destroy and in the forms of its implementation, contemporary Ukrainian intellectuals joining the resistance against Russia's ongoing aggression see many parallels with the Executed Renaissance — and often follow their predecessors' fate.<sup>140</sup>

To paraphrase Solomiia Pavlychko, a feminist literature scholar of Ukrainian Modernism, history cannot be re-written — but it can be re-read.<sup>141</sup> When publishing Lemkin's 'Soviet Genocide in Ukraine' in this very *Journal*, the editors have recognized that '[this] document was known to Lemkin specialists and experts in genocide, although most scholars have

<sup>134</sup> R. Petrenko, 'Russians execute 9 Ukrainian POWs in Kursk Oblast', *The Ukrainska Pravda*, 13 October 2024, available online at [www.pravda.com.ua/eng/news/2024/10/13/7479470](http://www.pravda.com.ua/eng/news/2024/10/13/7479470) (visited 13 October 2024). Both Russian political leadership and servicemen have called for the execution of Ukrainian POWs, in breach of treaty and customary IHL. OHCHR, 'Treatment of Prisoners of War October 2024 Report', § 52; Additional Protocol I, at Art. 40; Geneva Convention III, at Art. 121; Henckaerts, *supra* note 26, Rule 46.

<sup>135</sup> ICC OTP's Slavery Crimes Policy 'highlights the importance of historical and cultural knowledge'. The policy explains how the legacy of oppression 'presages vulnerability' and recognizes that 'historical and cultural perspectives' are crucial 'to comprehend [the crimes] commission and to achieve accountability'. ICC OTP, *Slavery Crimes Policy*, Executive Summary, §§ 94–95. Given the Policy's thematic focus, it centres its arguments primarily around slavery crimes (with some references to the crime of persecution). This article submits that careful consideration of historical and cultural undercurrents is fundamental for nuanced redress for all atrocity crimes.

<sup>136</sup> Ukrainian Institute of National Remembrance, '1937—the Beginning of the Most Widespread Executions in Sandarmokh', available online at <https://uinp.gov.ua/istorychnyy-kalendar/zhovten/27/1937-pochatok-naymasovishykh-rozstri-liv-u-sandarmosi> (visited 12 December 2024).

<sup>137</sup> 'The List of Ukrainians and Persons Originating in Ukraine in Sandarmokh', *RadioSvoboda*, 28 October 2023, available online at [www.radiosvoboda.org/a/24477308.html](http://www.radiosvoboda.org/a/24477308.html) (visited 12 December 2024).

<sup>138</sup> Serbyn, *supra* note 130, at 126–127.

<sup>139</sup> B. Tokarsky, *The Un/Executed Renaissance: Ukrainian Soviet Modernism and Its Legacies* (Forum Transregionale Studien, 2021), at 6–8.

<sup>140</sup> V. Amelina, 'Cancel Culture vs. Execute Culture', *Eurozine*, 31 March 2022, available online at [www.eurozine.com/cancel-culture-vs-execute-culture](http://www.eurozine.com/cancel-culture-vs-execute-culture) (visited 12 December 2024); C. Higgins, 'Stalin Erased One Generation of Ukraine's Artists. Now Putin is killing another — including my friend', *The Guardian*, 14 July 2023, available online at [www.theguardian.com/commentisfree/2023/jul/14/stalin-ukraine-artists-vladimir-putin-victoria-amelina](http://www.theguardian.com/commentisfree/2023/jul/14/stalin-ukraine-artists-vladimir-putin-victoria-amelina) (visited 12 December 2024).

<sup>141</sup> Pavlychko's original quote says 'Culture cannot be re-written, but it can be re-read'.

tended to ignore it, or to play it down'.<sup>142</sup> International law has had too many perspectives that have been downplayed.<sup>143</sup> Apart from muting the voices of the oppressed — those whom the law is meant to protect and empower in the first place — this has distorted the original meaning or the subsequent interpretation of many concepts foundational to the field. CRMSV and other conflict-related crimes perpetrated in the ongoing aggression should be contextualized within the broader picture of Russia's persistent oppression of peoples across Central and Eastern Europe and Central Asia. Doing so will visualize the legacy of the Kremlin's continuous neo-imperial conquest, highlight the hidden dimensions of its current atrocities and illuminate the intricacies of the original thinking behind some foundational ICL concepts, such as the destruction of a national group.

#### 4. UKRAINE'S RESPONSES TO CRMSV

Ukrainian CRMSV victims have four accountability avenues: the ICC, UN treaty bodies, especially the Human Rights Committee and the Committee against Torture (CAT), universal jurisdiction, and domestic proceedings in Ukraine. The ICC has so far focused on other crimes, but given the mounting evidence of Russia's consistent use of torture, any potential related ICC prosecutions should carefully examine correlations between torture and CRSV. UN treaty bodies may act only upon individual complaints. However, treaty bodies also interact with countries during their periodic reviews. The CAT should pose more questions to Russia about its use of physical and mental sexual torture in detention and occupied territories and should highlight detailed CRSV-focused findings and recommendations in its respective concluding observations. Universal jurisdiction cases depend on prosecutorial discretion. Some NGOs' submissions to third countries' prosecutors allege Russia's CRSV.<sup>144</sup> Prosecutors should prioritize CRSV, including CRMSV, given how stigmatized and underinvestigated these crimes are globally, including in universal jurisdiction proceedings.<sup>145</sup> Third countries' prosecution of CRSV in Russia's aggression will also solidify the emerging action upon sexual violence against women and men, started by universal jurisdiction cases on Syria and the Yazidis.<sup>146</sup>

The aforementioned international justice avenues are important. However, they depend on jurisdictional modalities, prosecutorial choices and available resources. Given these considerations, the immense number of Russia's atrocities and the redress required by victims of other violent situations globally, Ukraine realizes its primary obligation to address conflict-related crimes, including CRMSV. And Ukraine has been acting on it through prosecutions and reparations.<sup>147</sup>

<sup>142</sup> Serbyn, *supra* note 130, at 123.

<sup>143</sup> See generally, W. A. Schabas, *The International Legal Order's Colour Line* (Oxford University Press, 2023).

<sup>144</sup> J. Borger, 'German Prosecutors Handed Evidence of Russian War Crimes in Ukraine', *The Guardian*, 26 October 2023, available online at [www.theguardian.com/world/2023/oct/26/german-prosecutors-evidence-russian-war-crimes-ukraine](http://www.theguardian.com/world/2023/oct/26/german-prosecutors-evidence-russian-war-crimes-ukraine) (visited 12 December 2024).

<sup>145</sup> Trial International, *Universal Jurisdiction Annual Review 2022: Universal Jurisdiction, an Overlooked Tool to Fight Conflict-Related Sexual Violence* (2022), available online at [www.fidh.org/IMG/pdf/trial\\_ujar\\_25\\_03\\_2022\\_digital.pdf](http://www.fidh.org/IMG/pdf/trial_ujar_25_03_2022_digital.pdf) (visited 12 December 2024), at 10.

<sup>146</sup> P. Kroker and F. Lüth, 'One Year On—Remembering the Al-Khatib Syrian Torture Case and Reflecting on the Documentation of International Crimes Cases in German Courts', *EJIL: Talk! Blog of the European Journal of International Law*, 12 January 2023, available at [www.ejiltalk.org/one-year-on-remembering-the-al-khatib-syrian-torture-case-and-reflecting-on-the-documentation-of-international-crimes-cases-in-german-courts](http://www.ejiltalk.org/one-year-on-remembering-the-al-khatib-syrian-torture-case-and-reflecting-on-the-documentation-of-international-crimes-cases-in-german-courts) (visited 12 December 2024); Doughty Street Chambers, 'German Court Delivers Third Genocide Verdict against ISIS Member for the Enslavement and Abuse of Yazidi Woman in Syria and Iraq' (2023), available online at [www.doughtystreet.co.uk/news/german-court-delivers-third-genocide-verdict-against-isis-member-enslavement-and-abuse-yazidi](http://www.doughtystreet.co.uk/news/german-court-delivers-third-genocide-verdict-against-isis-member-enslavement-and-abuse-yazidi) (visited 12 December 2024).

<sup>147</sup> Yuriy Belousov: "We Can't Lose Ukraine's Legal Battle", *JusticeInfo*, 11 July 2023, available online at [www.justiceinfo.net/en/119268-yuriy-belousov-we-cant-lose-ukraine-legal-battle.html](http://www.justiceinfo.net/en/119268-yuriy-belousov-we-cant-lose-ukraine-legal-battle.html) (visited 12 December 2024); Government Portal, 'Olha Stefanishyna: Providing Urgent Interim Reparations Today Should Become an Important Element of Achieving Justice in the

## A. Domestic Framework

### 1. Criminal Accountability

As of March 2025, Ukraine's legislation on international humanitarian law and ICL is limited: it lacks clarity and has certain linguistic and translation issues that might complicate or misguide the categorization of international crimes. Until the October 2024 reform, that is, until the adoption of the first set of legislation domesticating the Rome Statute, Ukraine's legal framework was even more limited.<sup>148</sup>

The Criminal Code of Ukraine (CCU) has one key war crime provision, Article 438. Of potential relevance for CRSV, it criminalizes the cruel treatment of POWs or civilians, other violations of the rules and customs of warfare as envisaged by Ukraine's international treaties, and ordering their commission.<sup>149</sup> Slavery crimes are not expressly listed but are connected to human trafficking and forcible transfer for forced labour.<sup>150</sup> Until the October 2024 reform related to the Rome Statute ratification, the CCU's genocide provision did not reflect international standards, as it categorized only physical harm to members of protected groups as a genocidal act.<sup>151</sup> After the reform, the CCU not only provides that 'serious harm' can include mental aspects but also that such harm can result from rape or other forms of sexual violence.<sup>152</sup> Most glaringly, before October 2024, the CCU did not criminalize crimes against humanity, and its provisions on command responsibility addressed only the direct ordering of crimes and not the whole spectrum of failures to prevent or punish them.<sup>153</sup> These two lacunae were particularly detrimental as they limited the potential of pre-October 2024 domestic proceedings to demonstrate the widespread and systematic character of CRSV as endorsed or embraced by Russian leadership. The introduction of crimes against humanity and their CRSV subset into the CCU in 2024 was a milestone, albeit not a flawless one. The CCU seems to have certain discomfort with slavery crimes, such as slave trade and sexual slavery, and mixes them up, conceptually and translation-wise, with human trafficking and sexual exploitation.<sup>154</sup> These conceptual and translation incoherences regarding certain crimes against humanity relevant to CRSV prosecutions persist between the CCU and the Ukrainian version of the Rome Statute.<sup>155</sup>

With the current framework, CRMSV cases can be built in four ways. First, by using Article 438's wording on the cruel treatment of civilians and POWs to explain sexual abuse. Secondly, by following Article 438's reference to Ukraine's international treaties and deriving

Future' (4 March 2024), available online at [www.kmu.gov.ua/en/news/olha-stefanishyna-zabezpechennia-nevidkladnykh-promizhnykh-reparatsii-vzhe-sohodni-maie-staty-vahomy-m-elementom-dosiahnennia-pravosuddia-u-maibutnomu](http://www.kmu.gov.ua/en/news/olha-stefanishyna-zabezpechennia-nevidkladnykh-promizhnykh-reparatsii-vzhe-sohodni-maie-staty-vahomy-m-elementom-dosiahnennia-pravosuddia-u-maibutnomu) (Government portal, 'Urgent interim reparations') (visited 12 December 2024).

<sup>148</sup> Since 2014, Ukraine's Government has been regularly petitioned to harmonize its legislation with IHL and ICL. See Center for Civil Liberties, 'Zelenskyi must immediately sign the law on war criminals (reg. No.2689) in response to the Russian army's atrocities in Bucha' (4 April 2022), available online at <https://ccl.org.ua/en/claims/euromaidan-sos-zelenskyi-must-immediately-sign-the-law-on-war-criminals-reg-no-2689-in-response-to-the-russian-armys-atrocities-in-bucha/> (visited 12 December 2024); Parliamentarians for Global Action, 'Parliament of Ukraine Adopts Bill to Implement International Criminal and Humanitarian Law' (20 May 2021), available online at [www.pgaction.org/news/ukraine-bill-2689.html](http://www.pgaction.org/news/ukraine-bill-2689.html) (visited 12 December 2024); PACE, Resolution 2198 'Humanitarian Consequences of the War in Ukraine' (2018), § 11.1.

<sup>149</sup> Criminal Code of Ukraine (2001), available online at <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (visited 12 December 2024), at Art. 438. Arts 433–434 additionally prohibit the mistreatment of civilians and POWs specifically by the Ukrainian military.

<sup>150</sup> CCU, at Arts 149.1, 438.

<sup>151</sup> CCU, at Art. 442.1.2.

<sup>152</sup> *Ibid.*, footnote.

<sup>153</sup> CCU, at Arts 438.1, 426, 146<sup>1</sup>.2. A fuller notion of command responsibility could be derived from the Geneva Convention's Additional Protocol I, Art. 86.2, as Ukraine's international treaties have precedence over domestic legislation. This option is still limited as Art. 86.2 addresses the failure to act only regarding the Geneva Conventions' grave breaches and is narrower in scope than the Rome Statute's Art. 28.

<sup>154</sup> CCU, at Art. 422<sup>1</sup>.1.4-5.

<sup>155</sup> The Rome Statute of the International Criminal Court (Ukrainian version) available online at [https://zakon.rada.gov.ua/laws/show/995\\_588#Text](https://zakon.rada.gov.ua/laws/show/995_588#Text) (visited 18 December 2024), at Arts 7.1.c, 7.1.g.

their CRMSV prohibitions to substantiate domestic charges. Thirdly, by using torture and CRSV provisions of the CCU's newly introduced article on crimes against humanity. And, finally, by utilizing the CCU's 'peacetime', that is, its ordinary gender-neutral provisions on rape, other sexual violence and torture.<sup>156</sup>

None of these options are ideal. Relevant international treaties acceded to by Ukraine — the Geneva Conventions and Additional Protocol I — prohibit CRMSV through the lenses of torture, cruel treatment or causing great suffering or injury. Such disguised wording, contrasted with express prohibitions of CRFSV and amplified by the stereotypical association of sex crimes with female victims, has complicated the specification of CRMSV in domestic charges, especially pre-2022. Recourse to the Rome Statute's CRSV catalogue has become possible from 1 January 2025, when the instrument became effective for Ukraine.

Customary IHL references have been problematic for Ukraine's domestic professionals, who struggle to reconcile them with the criminal law requirements of specificity and fair labelling. Ordinary sexual violence and torture provisions envisage a substantially milder punishment than Article 438 and pose the same difficulties for focused CRMSV charges. In 2014–2022 proceedings, the ordinary sexual violence lens proved limiting and even harmful for victims of both sexes. Perplexed by the official categorization of a response to the armed conflict in Eastern Ukraine as an 'anti-terrorist operation' and overly cautious about the novel IHL/ICL terrains,<sup>157</sup> Ukrainian prosecutors and judges applied ordinary evidentiary standards to CRSV. That included prioritization of forensic evidence and distrust towards overreliance on victim and witness statements and circumstantial evidence, which are foundational to CRSV proceedings globally.<sup>158</sup> Ukrainian prosecutors have been struggling to charge rape in relation to male victims and, before 2022, categorized CRMSV in combination with other atrocities as torture, largely ignoring its sexual dimensions.

Increased CRSV since the all-out invasion has strengthened responses to it. In 2022, the Prosecutor General's Office (PGO) established a specialized CRSV Department. Its female leadership and largely female team have sensitized painful CRSV discussions with survivors, especially men, who previously complained about the lack of female investigators and prosecutors. The PGO's first CRSV Strategy emphasizes that CRSV can be committed against anyone and lists sexual orientation and gender identity as additional discriminative grounds.<sup>159</sup> The PGO's general 2023–2025 Strategy prioritizes effective prosecutions of international crimes.<sup>160</sup> Interestingly, already in 2023, the instrument listed crimes against humanity, including gender persecution, both of which formally became part of Ukraine's criminal legislation only in October 2024.<sup>161</sup> The Strategy also mentions sexual violence, signalling its growing prioritization. Such mentioning would be enhanced with listing CRSV types and additional mentioning of its impact on both sexes. Both Strategies prioritize survivor-centricity and gender-competence.<sup>162</sup>

<sup>156</sup> CCU, at Arts 152–153, 127.

<sup>157</sup> I. Marchuk, 'Domestic Accountability Efforts in Response to the Russia-Ukraine War', 20 *JICJ* (2022) 787–803, at 790.

<sup>158</sup> 'Sex Crimes Education with Valerie Oosterveld and Kim-Thuy Seelinger', *Asymmetrical Haircuts*, 20 January 2023, available at [www.asymmetricalhaircuts.com/episodes/episode-72-sex-crimes-education-with-valerie-oosterveld-and-kim-thuy-seelinger](http://www.asymmetricalhaircuts.com/episodes/episode-72-sex-crimes-education-with-valerie-oosterveld-and-kim-thuy-seelinger) (visited 11 December 2024), at 8:39–10:59.

<sup>159</sup> PGO, 'CRSV Strategy', available online at [www.gp.gov.ua/ua/posts/specializovani-dokumenti](http://www.gp.gov.ua/ua/posts/specializovani-dokumenti) (visited 12 December 2024), at 1–2.

<sup>160</sup> 'Strategic plan on the implementation of powers of the General Prosecutor's Office in the area of prosecution for international crimes for 2023–2025', available online at [www.gp.gov.ua/ua/posts/strategicnij-plan-shhodo-realizaciyi-povnovazhen-organiv-prokuraturi-u-sferi-kriminalnogo-peresliduvannya-za-vcinennya-miznarodnix-zlociniv-na-2023-2025-roki](http://www.gp.gov.ua/ua/posts/strategicnij-plan-shhodo-realizaciyi-povnovazhen-organiv-prokuraturi-u-sferi-kriminalnogo-peresliduvannya-za-vcinennya-miznarodnix-zlociniv-na-2023-2025-roki) (visited 12 December 2024).

<sup>161</sup> *Ibid.*, 2–3.

<sup>162</sup> *Ibid.*, 7; CRSV Strategy, 3.

Since 2022, more express discussions of CRMSV and using Article 438's reference to Ukraine's international treaties for CRMSV prosecutions have increased. Notices of suspicion and public outreach describe CRMSV as a widespread element of Russia's male torture, to be prosecuted as grave breaches of the Geneva Conventions and Additional Protocol I.<sup>163</sup> In contrast to 2014–2021, new prosecutions increasingly identify forced nudity as CRMSV<sup>164</sup>; specify that electrocutions target male genitalia, sometimes with lingering discomforts around naming further anatomic details such as penis, testicles, scrotum or nipples<sup>165</sup>; qualify male anal rape as part of detention torture<sup>166</sup>; and discuss how the absence of medical aid, proper food and hygiene aggravates the effects of detention-related CRMSV.<sup>167</sup> The PGO's reporting on CRSV cases is gender-disaggregated: as of November 2024, out of 326 CRSV proceedings, 117 concern CRMSV.<sup>168</sup> Considering gendered stigmas, prosecutors and civil society rightly explain that these numbers are not indicative.<sup>169</sup> A victim-sensitive, trauma-informed, gender-competent work, rooted in the understanding of different aspects of victims' identity and experience, will eventually incentivize more survivors to come forward.<sup>170</sup>

## 2. Wider Redress

Ukraine has been developing transitional justice thinking since 2019.<sup>171</sup> Initial transitional justice policymaking lacked survivor engagement, let alone a gender-diverse one.<sup>172</sup> The adoption of a comprehensive transitional justice policy was stalled by the full-scale invasion. Nevertheless, the pre-2022 initiatives signal the government's and civil society's growing awareness about survivors' medical, psychological and other needs, and the realization that redress for conflict-related crimes goes beyond criminal proceedings. With the burgeoning reparations thinking, in 2019, Ukraine launched a one-time modest compensation for detention victims, captured and mistreated in occupation for their pro-Ukrainian position.<sup>173</sup> While the programme benefitted female and male survivors, the assessment committee did not investigate CRSV in detention in a targeted manner. Despite all the limitations, already during the first phase of Russia's aggression, Ukrainian CRSV survivors demanded urgent interim and wider reparations, the majority of activists being women.<sup>174</sup>

<sup>163</sup> PGO, Notices of Suspicion: Popov (29 February 2024) (Popov), Laikov (4 November 2023), available online at [www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-33083](http://www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-33083) (visited 12 December 2024); Mykytenko, *supra* note 113.

<sup>164</sup> PGO, *CRSV Investigation Guidelines*, available online at [www.gp.gov.ua/ua/posts/pam-yatki-z-rozsliduvannya-snpk](http://www.gp.gov.ua/ua/posts/pam-yatki-z-rozsliduvannya-snpk) (visited 12 December 2024).

<sup>165</sup> PGO, Notices of Suspicion: Lada (10 August 2024), available online at [www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-ladi-v-a](http://www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-ladi-v-a) (visited 13 December 2024) (Lada), 9; PGO, Notice of suspicion: Spivak (18 September 2024), available online at [www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-spivaku-a-s](http://www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-spivaku-a-s) (visited 13 December 2025) (Spivak), 14, 21.

<sup>166</sup> PGO, Notice of suspicion: Popov, 8.

<sup>167</sup> PGO, Notice of suspicion: Spivak 13; Lada, 11.

<sup>168</sup> 'Conflict-Related Sexual Violence: Documentation and Investigations of the Prosecutor General's Office', *Radio Svoboda*, 7 November 2024, available online at [www.radiosvoboda.org/a/novyny-pryazovya-seksualne-nasylystvo-pid-chas-viyny/33190694.html](http://www.radiosvoboda.org/a/novyny-pryazovya-seksualne-nasylystvo-pid-chas-viyny/33190694.html) (visited 10 December 2024).

<sup>169</sup> Global Rights Compliance, 'Progress and challenges to addressing sexual and gender-based crimes in Ukraine domestically' (7 December 2023), available online at <https://globalrightscompliance.com/2023/12/07/progress-and-challenges-to-addressing-sexual-and-gender-based-crimes-in-ukraine-domestically/> (visited 12 December 2024).

<sup>170</sup> *Ibid.*

<sup>171</sup> K. Busol, 'Mariupol and the Origins and Avenues of Ukraine's Transitional Justice Process', *Just Security*, 1 June 2022, available at [www.justsecurity.org/81680/mariupol-and-the-origins-and-avenues-of-ukraines-transitional-justice-process](http://www.justsecurity.org/81680/mariupol-and-the-origins-and-avenues-of-ukraines-transitional-justice-process) (visited 11 December 2024).

<sup>172</sup> OHCHR, 'Report on the Human Rights Situation in Ukraine, 1 February-31 July 2021' (23 September 2021), § 52; Venice Commission, 'Ukraine—Opinion on the draft law "On the Principles of State Policy of the Transition Period"' (15–16 October 2021) CDL-AD(2021)038, § 81.

<sup>173</sup> Global Survivors Fund, 'Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence' (2022), at 61.

<sup>174</sup> K. Busol, 'Reparations for Atrocity Victims in Ukraine: Survivors' Aspirations and the Emerging Legal Framework', *The Cambridge Journal of Law, Politics, and Art* (2024), available online at [www.cjpa.org/post/reparations-for-atrocity-victims-in-ukraine-survivors-aspirations-and-the-emerging-legal-framework](http://www.cjpa.org/post/reparations-for-atrocity-victims-in-ukraine-survivors-aspirations-and-the-emerging-legal-framework) (visited 11 March 2025).

The full-scale invasion has amplified survivors' numbers, visibility and needs, as well as reparations discussions. The Ukraine–UN CRSV Cooperation Framework confirmed that CRSV affected both sexes, both needing reparations and wider support to address taboos and stigmas.<sup>175</sup> In March 2024, Ukraine launched a pilot urgent interim reparations programme with the potential to provide a one-time €3,000 compensation to up to 500 CRSV survivors.<sup>176</sup> Lessons from this pilot will inform the expansion of the programme to further CRSV and other atrocity victims. At the launch of the pilot, the majority of survivors were women. However, the officials inaugurating the scheme stressed the victimization of both sexes,<sup>177</sup> and the public outreach around the pilot increasingly discussed CRMSV. Wise use of technology allowing the submission of claims in electronic and paper formats, psychological and paralegal support, a possibility for case managers to come to survivors scattered across Ukraine, outreach to survivors who are abroad and, importantly, no pressure to engage in criminal proceedings have appealed to survivors. As of 16 December 2024, 607 persons (354 men, 241 women, 10 girls and 2 boys) have applied for the scheme.<sup>178</sup> Pilot urgent interim support has been provided to 379 persons (202 men, 172 women, 4 girls and 1 boy). Sixty applications were rejected, and the rest are being processed.

While implementing the pilot, Ukraine's Parliament has also approved laws on the national register of persons whose life and health have been affected by Russia's aggression (National Victims Register Law) and on the status of CRSV survivors and urgent interim reparations (Urgent Interim Reparations Law).<sup>179</sup> Both instruments note that any 'person' can be affected by CRSV.<sup>180</sup> The Urgent Interim Reparations Law is particularly innovative and nuanced. It provides the most detailed, inexhaustive list of CRSV in Ukraine's legislation so far; introduces the notion of children born out of CRSV and recognizes them as victims; applies the non-discrimination principle to considering CRSV's impact on women, men, girls and boys; and confirms that Russia's CRSV started in 2014, and urgent interim reparations are available to everyone violated since then.<sup>181</sup>

Importantly, in mid-2024, male CRSV survivors established their first NGO: the Network of Ukrainian Men Who Survived Captivity and Torture 'Alumni'.<sup>182</sup> In contrast to the partner initiative of female survivors,<sup>183</sup> the newly founded NGO does not mention CRSV in its title. The co-founders explained that Ukrainian society predominantly associates CRSV with women and is often unprepared to invite males to share their vulnerabilities.<sup>184</sup> While sexual

<sup>175</sup> Framework of Cooperation between the Government of Ukraine and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence (3 May 2022), at Preamble, § 3, Arts. V–VII, X–XI.

<sup>176</sup> Government portal, 'Urgent Interim Reparations'.

<sup>177</sup> *Ibid.*

<sup>178</sup> Government Commissioner for Gender Equality Policy, *Facebook Post*, 16 December 2024, available online at [www.facebook.com/GovernmentCommissionerforGenderPolicy/posts/pfbid02fhXXYijuxGAQRcpfrjDwDQH5qBpgruyHpYtZKTHbUpbDpeGG7y9XZjeoAwNw6j349l](http://www.facebook.com/GovernmentCommissionerforGenderPolicy/posts/pfbid02fhXXYijuxGAQRcpfrjDwDQH5qBpgruyHpYtZKTHbUpbDpeGG7y9XZjeoAwNw6j349l) (visited 18 December 2024).

<sup>179</sup> Draft Law on the Register of Persons, Whose Life and Health Have Been Affected as a Result of Armed Aggression of the Russian Federation against Ukraine № 10256 (adopted 20 November 2024), available online at <https://itd.rada.gov.ua/billInfo/Bills/Card/43188> (visited 19 December 2024); Draft Law on the Status of Persons Affected by Sexual Violence in Connection with the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations №. 10132 (adopted 20 November 2024), available online at <https://itd.rada.gov.ua/billInfo/Bills/Card/42862> (visited 19 December 2024).

<sup>180</sup> National Victims Register Law, at Art. 8.1.5; Urgent Interim Reparations Law, at Art. 1.1.6.

<sup>181</sup> Urgent Interim Reparations Law, at Arts 1.1.6, 1.1.5, 2.1.2.

<sup>182</sup> E. Graham-Harrison and A. Mazhulin, "'Carved on bodies and souls': Ukrainian Men Face "Systemic" Sexual Torture in Russian Detention Centres', *The Guardian*, 29 October 2024, available online at [www.theguardian.com/world/2024/oct/29/carved-on-bodies-and-souls-russias-use-of-male-sexual-torture-in-ukraine](http://www.theguardian.com/world/2024/oct/29/carved-on-bodies-and-souls-russias-use-of-male-sexual-torture-in-ukraine) (visited 11 December 2024).

<sup>183</sup> SEMA Ukraine: Ukrainian Women against Sexual Violence and Impunity in War, available online at <http://semaukraine.org.ua/en/> (visited 19 November 2024).

<sup>184</sup> A.O. Sivak, 'Former Prisoners of War Establish Their Civil Society Organisation', in K. Levchenko (ed.), *Ukraine Is Not Silent: Chronicles of Fighting Against War-Related Sexual Violence (2022-2024)* (Folio, 2024) 244–259, at 253, available online at [https://uwf.org.ua/wp-content/uploads/2024/12/book\\_ukraine-is-not-silent.pdf](https://uwf.org.ua/wp-content/uploads/2024/12/book_ukraine-is-not-silent.pdf) (visited 19 December 2024).

violence may not come expressly from the NGO's title, it is definitely in its core focus; its members contribute to the initiatives on accountability and reparations for CRSV, specifically CRMSV, and partner with international NGOs supporting CRMSV survivors.<sup>185</sup>

Redress should amalgamate fair judgments, reparations, gender-inclusive societal transformations and nuanced narratives. Ukraine's National Union of Journalists presented a study on CRSV reporting, highlighting the gender stereotyping of victims as female and the necessity of explaining the sexual targeting of men.<sup>186</sup> The first documentary on CRMSV presents male survivors discussing Russians' 'almost daily' weaponization of CRSV.<sup>187</sup> These experiences confirm Russia's toxic masculine positioning and gendered atrocities employed since imperial and Soviet times, for which the Kremlin has not borne responsibility, and for which critical truth-seeking, accountability and wider reckoning are important for Ukrainian survivors, the international community and Russian people.<sup>188</sup>

### B. Avenues for Sensitization

Ukraine can enhance gender-competent responses to CRMSV by sensitizing criminal legislation, prosecutions and wider human-centred transformations.

Ukraine should bring the CCU into compliance with IHL/ICL to ensure that domestic criminal justice professionals can build gender-nuanced charges for direct perpetrators and commanders. Competent, comprehensive domestication of the Rome Statute crime catalogues is the most viable option and Kyiv's obligation under the Ukraine–EU Association Agreement.<sup>189</sup> The Agreement obliges Ukraine to implement not only the Rome Statute, but also the ICC's 'related instruments', which should include the Elements of Crimes.<sup>190</sup> After the October 2024 reform, the introduction to the CCU of a detailed, open-ended catalogue of CRSV as war crimes remains particularly pertinent. Until the CCU is thus reformed, using the Article 438 reference to Ukraine's international treaties and deriving detailed charges of CRMSV as war crimes from the Rome Statute, which, from 2025, will be binding upon Ukraine, will be the most viable approach. Ukraine's prosecution and judiciary are increasingly more familiar with the Rome Statute framework, which will facilitate both charging under the amended CCU and referencing the ICC's Statute and jurisprudence. The CCU, along with prosecutorial and adjudication guidelines, should clearly specify that, but for forced pregnancy, all CRSV crimes can victimize both sexes. For gender persecution, discriminative layers of gender identity and sexual orientation should be explained. Recognizing the Rome Statute's lacunae,<sup>191</sup> Ukraine should criminalize war crimes of enslavement and slave trade, as well as the crime against humanity of slave trade. The terminology of Ukraine's criminal legislation and policies should aptly reflect the correlation between slavery crimes, human trafficking, sexual exploitation and forced labour, as recognized in

<sup>185</sup> All Survivors Project, Ukraine, available online at <https://allurvivorsproject.org/our-focus-countries/ukraine/> (visited 19 December 2024).

<sup>186</sup> The National Union of Journalists of Ukraine, *Reporting Conflict-Related Sexual Violence* (28 March 2024), available online at <https://nsju.org/novini/u-nszhu-pidbyly-rezultaty-socziologichnogo-doslidzhennya-pro-vysvitleniya-v-media-temy-sek-sualnogo-nasylstva-povyazanogo-z-konfliktom> (visited 12 December 2024), at 16.

<sup>187</sup> 'Rape, Electrocution of Genitalia and Castrations Threats: Experiences of Four Ukrainian Men in Russia's Occupation', *SlidstvoInfo*, 2 April 2024, available online at [www.slidstvo.info/warnews/zgvaltuvannia-elektrostrum-do-statevykh-orhaniv-ta-pohrozy-kastratsiieiu-shcho-perezhyly-chetvero-ukrainskykh-cholovikiv-pid-chas-roisyskoi-okupatsii](http://www.slidstvo.info/warnews/zgvaltuvannia-elektrostrum-do-statevykh-orhaniv-ta-pohrozy-kastratsiieiu-shcho-perezhyly-chetvero-ukrainskykh-cholovikiv-pid-chas-roisyskoi-okupatsii) (visited 12 December 2024).

<sup>188</sup> Serbyn, *supra* note 130, 125–127; D. Budrytė, 'Deportation and Gulag as Gendered Processes', in J. Johnson et al. (eds), *The Routledge Handbook of Gender in Central-Eastern Europe and Eurasia* (Routledge, 2021) 322–330, at 326.

<sup>189</sup> Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014) 22014A0529(01), at Art. 8.

<sup>190</sup> *Ibid.*

<sup>191</sup> As of March 2025, the Rome Statute does not enshrine war crimes of enslavement or slave trade. A catalogue of slavery crimes constituting crimes against humanity might be more nuanced in the burgeoning specialized treaty on crimes against humanity. Sellers and Kestenbaum, *supra* note 6, at 175–176, 186.

international law and jurisprudence.<sup>192</sup> Some of the above issues have been addressed in the PGO's strategic documents, but they should also be reflected in criminal legislation and proceedings.

While Ukraine's criminal proceedings are increasingly CRMSV-competent, there is room for further sensitization. Confidentiality and non-retraumatization of survivors should be ensured at all stages.<sup>193</sup> Notices of suspicion, while respecting victims' privacy and not indicating their names, should specify their sex and other possibly discriminatory characteristics and vulnerabilities to contextualize crimes' gendered and other intersecting dimensions.<sup>194</sup> Descriptions of beatings should always specify targeted body parts and any vulnerable positions victims might have been forced to take.<sup>195</sup> Prosecutorial guidelines commendably address non-penetrative CRSV, including forced nudity, threats of rape and being forced to watch sexual abuse.<sup>196</sup> These instruments should emphasize that such CRSV affects both sexes and is amplified by the weaponization of gender roles (e.g. a man's alleged failure to protect a woman assaulted in front of him),<sup>197</sup> all of which should be reflected in prosecutions. The sexualized mental torture of males should be reflected in reporting, charging, sentencing and guilty pleas.<sup>198</sup> New CCU provisions on crimes against humanity related to CRSV and torture should be used to reflect that Russia's CRMSV is widespread and systematic.

Reproductive dimensions of CRMSV should be carefully deduced from the aims, modes and effects of inflicted abuse.<sup>199</sup> Such reproductive dimensions can be both physical and mental. Physical would include genital beatings — also with assertions that Ukrainians should stop procreating — or fertility issues after enduring CRMSV. Mental reproductive effects could be deduced from CRMSV survivors' doubts about their aptness to have children or breaking up existing relationships because of CRSV, to which one of the partners was subjected to. Gendered slurs and other dehumanizing rhetoric should be specified to better contextualize the crimes and categorize the charges.

Proceedings should analyse an interplay of male and female CRSV in detention and occupation and qualify CRSV in public or in front of acquaintances as aggravating circumstances.<sup>200</sup> Physical and mental CRMSV's connection with other atrocities, especially forcible transfer, torture, enslavement, sexual slavery, forced labour and forced conscription should be addressed.<sup>201</sup> The continuous nature of CRMSV and/or related atrocities, such as enslavement, should be reflected in sentencing.<sup>202</sup> Ukraine's ongoing genocide investigation

<sup>192</sup> ICC OTP, *Slavery Crimes Policy*, Executive Summary, §§ 32–66.

<sup>193</sup> As of January 2025, some non-redacted notices of suspicion indicating victims' names were available online. This must be avoided at all times. This article does not provide further details of such notices of suspicion, out of respect for the victims.

<sup>194</sup> For example, conflict-related rapes of pregnant Ukrainian women in occupation have been recorded. Respective notices of suspicion sometimes redact this information; E.g. PGO, *Notice of Suspicion: Senenko* (29 October 2024), available online at [www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-ta-povistki-pro-viklik-senenka-mv-na-14112024-21112024-25112024](http://www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-ta-povistki-pro-viklik-senenka-mv-na-14112024-21112024-25112024) (visited 13 December 2024), at 4–5. Both the age and pregnancy of female victims are important considerations, which co-shape their traumatic experience. Such considerations, signalling the particular vulnerabilities, also impact the mental turmoil of a male relative or friend who is forced to watch or hear the abuse and struggle with his inability to spare the suffering of his dear one.

<sup>195</sup> For example, Russian detention officials made some detainees take a vulnerable 'shrimp' position, to enhance the painful effects of beatings and electrocutions, CoI October 2024 Report, § 49.

<sup>196</sup> PGO, CRSV Investigation Guidelines.

<sup>197</sup> CoI March 2024 Report, § 89, 94.

<sup>198</sup> *Ibid.*; PGO, *Raped women and children. Two Russian Servicemen Who Committed Mass Sexual Violence during the Occupation of the Kyiv Region Will Face Trial* (25 September 2023), available online at [www.gp.gov.ua/ua/posts/gvaltuvaliznok-ta-ditei-suditimut-dvox-rosiiskix-viiskovosluzbovciv-yaki-vcinili-masove-seksualne-nasilstvo-pid-cas-okupaciyi-kiyivshhni](http://www.gp.gov.ua/ua/posts/gvaltuvaliznok-ta-ditei-suditimut-dvox-rosiiskix-viiskovosluzbovciv-yaki-vcinili-masove-seksualne-nasilstvo-pid-cas-okupaciyi-kiyivshhni) (visited 12 December 2024); *Furundžija*, TC, § 267(ii).

<sup>199</sup> This article acknowledges that reproductive violence may be connected with CRSV, but it may also be committed independently, for example, by impeding access to contraception. ICC OTP, *Policy on Gender-Based Crimes*, §§ 35–37, 43–44.

<sup>200</sup> *Delalić*, TC, § 1262; *Češić*, TC, § 53.

<sup>201</sup> CoI Conference room paper, §§ 593, 712, 834; CoI March 2024 Report, § 92.

<sup>202</sup> ICC OTP, *Policy on Gender-Based Crimes*, § 140.

should be informed by inherent gendered lenses.<sup>203</sup> Nuanced prosecution of CRSV against both sexes will catalyse the uncovering of gendered dimensions of other non-sexual crimes.

Ukraine's prosecutors should explore the option of charging command responsibility for CRMSV, especially in connection with torture.<sup>204</sup> Such an approach will catalyse a shift from atomized consideration of individual incidents to the prosecution of atrocity patterns and policies behind them.<sup>205</sup> Using this mode of liability will also contribute to rectifying the lingering gap in international jurisprudence in ensuring command responsibility for CRSV.<sup>206</sup>

Criminal justice professionals should continue receiving gender-competent training on CRSV and other atrocity crimes. This will help reduce instances of revictimization or stigmatization of survivors.<sup>207</sup> Gender diversity in investigative and prosecutorial teams and on benches should be ensured at all times, especially in remote areas. *Ongwen* and other proceedings have demonstrated that female professionals are usually more proactive in exploring sexual violence issues and are thus crucial to building more gender-intricate jurisprudence.<sup>208</sup> State stakeholders should continue expanding collaboration on CRSV issues with specialized human rights NGOs and victim groups. Such cooperation should not only inform CRSV prosecution and reparations, but also nourish any other emerging transitional justice initiatives. All such professionals working on CRSV and other atrocity proceedings require permanent gendered-sensitive mental health support and training on how to mitigate risk.

The way Ukraine addresses CRSV and other gendered dimensions of Russia's aggression will guide the nation's wider human-centric transformation. Overemphasizing criminal justice responses to atrocities has been rightly criticized for nurturing asymmetries in legal and other support, with international lawyers and other professionals parachuting from one domestic context to another; not redressing survivors; and not addressing structural human rights issues.<sup>209</sup> In Ukraine's case, nuanced prosecutions are important — for survivors, who demand the recognition that they were targeted for their pro-Ukrainian stance, and for wider narratives, debunking Russia's myths about alleged 'Nazis' in Ukraine and exposing Russia's gendered atrocities as a means of pursuing its neo-imperial ambitions. Ukraine's response, however, should go further and revive transitional justice thinking. Reparations should be expanded and sensitized to gendered harms and the needs of women, men, children, the elderly and LGBTQI+ survivors, considering their intersecting vulnerabilities. LGBTQI+ persons' contribution to defending Ukraine should be celebrated with public coverage and expanding such individuals' equal citizenship rights. Male dominance in all sectors and levels of state administration should cease, ensuring that Ukraine's in-conflict governance, peace process and recovery are more gender-diverse. By rejecting the binary vision of protective heterosexual males and distressed assaulted females and embracing a diverse spectrum of survivors, defenders and visionaries, Ukraine will solidify its commitment to inclusion,

<sup>203</sup> PGO, *JIT Members Signed an Agreement to Investigate Genocide* (14 April 2023), available online at [www.gp.gov.ua/ua/posts/cleni-jit-pidpisali-ugodu-pro-rozsliduvannya-zlocinu-genocidu](http://www.gp.gov.ua/ua/posts/cleni-jit-pidpisali-ugodu-pro-rozsliduvannya-zlocinu-genocidu) (visited 12 December 2024).

<sup>204</sup> *Delalić*, TJ, §§ 1066–1072; *Bemba*, TC, §§ 735–742.

<sup>205</sup> The PGO publishes regular updates about pending conflict-related proceedings. As of 24 January 2025, it was prosecuting 153,782 atrocity crimes. However horrendous, these incidents should be analysed not individually, but through the prism of patterns and policies uniting them.

<sup>206</sup> S. SáCouto and P.V. Sellers, 'The *Bemba* Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes?', *27 William & Mary Bill of Rights Journal* (2018-2019) 599–622, at 620–622.

<sup>207</sup> CoI March 2024 Report, § 93.

<sup>208</sup> 'Challenging the Status Quo—Patricia Sellers on Redefining Sexual Violence as International Crime', *Room for Discussion*, 16 May 2023, available online at <https://www.youtube.com/watch?v=hpSKVxowqO8> (visited 12 December 2024), 43:42–44:50.

<sup>209</sup> P. Alston, 'Criminalizing Human Rights', *15 Journal of Human Rights Practice* (2023) 660–676, at 664–665.

dignity, equality and the primacy of human rights — the fundamentals it is safeguarding amid the ongoing aggression.

## 5. CONCLUSIONS

CRSV epitomizes the utmost weaponization of gender roles in atrocity situations — used to attack, pierce and tear the most intimate intricacies of individual lives and the wider social fabric. The international community and international law have matured to cease seeing CRSV as an intrinsic spoliation of warfare and have begun to address, redress, and also prevent it. From special treaty prohibitions to express jurisprudential verbalizations and focused academic analyses, this action has been more pronounced with CRFSV. Women and girls have indeed been principally targeted with CRSV. Females also remain glaringly underrepresented in ceasing largely male-made armed conflicts and in leading transformations in societies devastated by male dominance. However, globally and in Ukraine, CRSV against males is not only commonplace but also inherently interconnected with CRFSV, as both are shaped by gender dynamics in perpetrator and victim societies.

The ongoing aggression is Russia's neo-imperial attempt to subjugate Ukraine, one that has many tragic precedents witnessed throughout the centuries.<sup>210</sup> The sexual and other violence unleashed on Ukrainians serves as the means of Russia's purported conquest of the nation through its partial elimination. Russia's CRSV against Ukrainian women and men in the ongoing aggression is deeply gendered. It is nourished by the toxic masculine hierarchization of Russia's state governance, army and the wider society. While Ukrainian women and children are largely violated in their homes under occupation, and males are sexually targeted in detention, the varied CRSV against both sexes forms part of a larger gendered encroachment on Ukrainians who oppose Russia's conquest.

To fully uncover all the intricacies of trauma, see the interconnections between atrocities, and, crucially, caringly support all survivors, CRMSV against Ukrainian males cannot be addressed on the fringes of sexual violence against women. It must, instead, be prioritized in and of itself. Prosecutors and judges should ensure the fair labelling of diverse CRMSV perpetrated by all parties to the conflict. In the case of using other counts or parallel charging, physical and mental sexual harms must be expressly pronounced and considered in guilty pleas and sentencing. Such focused consideration of CRMSV, together with the gendered norms nourishing its infliction and intersecting vulnerabilities, will reveal more interwinds between male and female victimization and guide a more layered redress for survivors. Such redress should include the revival of Ukraine's transitional justice policymaking and the expansion of reparation initiatives to support women and men targeted with CRSV and other atrocities since the beginning of Russia's aggression in 2014.

The way Ukraine addresses CRSV expands the room for a nuanced change. Sensitized consideration of CRSV against all persons will facilitate the uncovering of the gendered dimensions of other atrocity crimes. Seeing beyond established gender binaries and roles in aggression-related proceedings will help the civil society and the government better visualize the gendered dimensions of lingering structural asymmetries domestically and inspire more inclusive governance of Ukraine, both during and post conflict.

<sup>210</sup> See generally, S. Plokhly, *The Gates of Europe* (Penguin, 2016); S. Plokhly, *The Russo-Ukrainian War: The Return of History* (W.W. Norton & Company, 2023).

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