



Challenging Sensationalism: Narratives on Rape as a Weapon of War in Syria

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Abstract

Rape during conflict is often over-simplified and sensationalised in the accounts of international humanitarian agencies. This article suggests that such narratives on rape are connected to the way international tribunals and courts have narrowly framed the crime of rape. Limited legal constructions of rape reinforce a hierarchy where rape is seen as more worthy of protection than other forms of gender-based violence – a hierarchy that international humanitarian agencies perpetuate through their narratives on rape during conflict. Based on ethnographic accounts from Syrian women and men, this article draws attention to the problematic consequences of focusing on sensational narratives. It aims to reposition rape – and gender-based violence more broadly – within unequal power structures and a wider system of women's subordination. It argues that while less incendiary, other kinds of gender-based violence during conflict may be just as insidious as rape.

Keywords

rape – Syria – war – gender-based violence

1 Introduction

The notion of rape as a weapon of war has become commonplace, particularly in the years following international legal recognition of how sexual

violence – as a type of gender-based violence (GBV)¹ – may form part of a systematic strategy of war.² Now, scholars and activists view rape during conflict not only as a ‘side effect’ of war,³ but also as part of a strategy used during war.⁴ The bodies of women symbolise the territory that is to be captured during war.⁵ In contrast, rape outside of war is less provocative and appears to be ‘apolitical’.⁶

While the linkage between rape and war has been recognised as important, scholars also emphasise the broader context of gender inequality as a structural issue that shapes occurrences of GBV.⁷ In humanitarian guidelines, GBV is defined as ‘an umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribed (i.e. gender) differences between males and females’.⁸ The term ‘GBV’ emphasises ‘systemic inequality between males and females’, and how unequal power between women and men perpetuates GBV.⁹ This is notwithstanding the fact that there may be multiple contributing factors leading to rape during conflict,¹⁰ including increased

- 1 Inter-Agency Standing Committee, ‘Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action’, 2015, <https://interagencystandingcommittee.org/gender-and-humanitarian-action/news-public/guidelines-integrating-gender-based-violence>, accessed 10 April 2018, p. 5.
- 2 Doris E. Buss, ‘Rethinking “Rape as a Weapon of War”’, 17(2) *Fem. Leg. Stud.* (2009) 145–163, p. 148.
- 3 Anna Maedl, ‘Rape as Weapon of War in the Eastern DRC? The Victims’ Perspective’, 33(1) *Hum. Rights Q.* (2011) 128–147, p. 130.
- 4 Buss, *supra* note 2, pp. 146–147.
- 5 Liz Kelly, ‘Wars against Women: Sexual Violence, Sexual Politics and the Militarised State’, in Susie M. Jacobs, Ruth Jacobson, and Jen Marchbank (eds.), *States of Conflict: Gender, Violence, and Resistance* (Zed Books, London, 2000), 45–65, p. 50; Cynthia Cockburn, *The Space between Us: Negotiating Gender and National Identities in Conflict* (Zed Books, London, 1998), p. 43; Susan Brownmiller, *Against Our Will. Men, Women and Rape* (Fawcett Columbine, New York, 1975), p. 38.
- 6 Chiseche Salome Mibenge, *Sex and International Tribunals. The Erasure of Gender from the War Narrative* (University of Pennsylvania Press, Philadelphia, 2013), p. 12.
- 7 Sara Meger, *Rape Loot Pillage. The Political Economy of Sexual Violence in Armed Conflict* (Oxford University Press, New York, 2016), p. 187; Janine Natalya Clark, ‘The First Rape Conviction at the ICC: An Analysis of the Bemba Judgment’, 14(3) *J. Int. Crim. Justice* (2016) 667–687, p. 679; Sabine Hirschauer, *The Securitization of Rape: Women, War and Sexual Violence* (Palgrave Macmillan, London, 2014), p. 229; Maria Eriksson Baaz and Maria Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond* (Zed Books, London, 2013), p. 110; Mibenge, *supra* note 6, p. 13; Brownmiller, *supra* note 5, p. 32.
- 8 Inter-Agency Standing Committee, *supra* note 1, p. 5.
- 9 *Ibid.*
- 10 Elisabeth Jean Wood, ‘Variation in Sexual Violence during War’, 34(3) *Politics Soc.* (2006) 307–342.

militarism,¹¹ and more ‘micro’¹² reasons such as revenge,¹³ opportunism,¹⁴ or previous interpersonal problems.¹⁵ According to this definition, GBV may be physical, sexual, emotional, or may involve threats of acts, coercion, or other means of depriving someone from liberty.¹⁶ As a type of GBV, sexual violence includes rape.

This article highlights how sensationalist narratives about rape as a weapon of war have consequences for how GBV is understood: in the law, by humanitarian agencies, and even by survivors of GBV themselves. The article explores these consequences, including the fact that narratives about rape during conflict overlook the wider context of how gender inequality shapes sexual violence.¹⁷ Taking the case of the conflict in Syria, this article will demonstrate how the legal language on rape during conflict has been appropriated by international humanitarian agencies (specifically, international non-government agencies) in often-problematic ways. The case of the conflict in Syria is particularly relevant because of how rape has been cited as a reason that refugees – including refugees now living in Jordan – fled Syria.¹⁸ While the narrative that refugees left Syria due to a fear of widespread rape holds sensationalist power, this article argues it also obscures the complexities underlying people’s decision to flee armed conflict, as well as the everyday GBV faced by Syrians both before and during conflict.

1.1 *Methodology*

This article is informed by doctoral research with Syrian refugees in Jordan over a nine-month period during 2016–2017. The objective of the research was to understand family relationships, (im)mobility and social change. The research was conducted from an ethnographic perspective, which focuses on qualitative methods of observing and interacting with research participants

11 Baaz and Stern, *supra* note 7, p. 23; Brownmiller, *supra* note 5, p. 32.

12 Janine Natalya Clark, ‘Untangling Rape Causation and the Importance of the Micro Level: Elucidating the Use of Mass Rape during the Bosnian War’, 16(4) *Ethnopolitics* (2017) 388–410, p. 392.

13 *Ibid.*, pp. 396–399.

14 *Ibid.*, pp. 401–402.

15 Christopher Mullins, ‘“We Are Going to Rape You and Taste Tutsi Women”: Rape during the 1994 Rwandan Genocide’, 49(6) *British Journal of Criminology* (2009) 719–735, p. 730.

16 Inter-Agency Standing Committee, *supra* note 1, p. 5.

17 Meger, *supra* note 7, p. 187; Clark, *supra* note 7, p. 679; Hirschauer, *supra* note 7, p. 229; Baaz and Stern, *supra* note 7, p. 110; Mibenge, *supra* note 6, p. 13; Brownmiller, *supra* note 5, p. 32.

18 International Rescue Committee, ‘We Left our Homes to Protect our Daughters’: Urgent Action Required to Protect Syrian Women and Girls from Sexual Violence, 2012.

to understand social practices.¹⁹ These methods included participatory photography to understand participants' day-to-day activities in Syria and Jordan using a more creative medium. Photography activities were conducted over a six-week period through local non-government organisations in Amman, Zarqa and Irbid. Semi-structured interviews were held with photography activity participants as well as their relatives and friends who expressed interest in being interviewed, alongside life story interviews, which involved multiple visits to each participant over three to six months to understand the broader context to people's lives in Syria. This research also included participant observation – a common element of ethnographic research that enables analysis of the actions and behaviour of participants, and not only their words.²⁰ This involved spending time in people's homes, visiting cafes together, shopping and cooking. Given the intent of the doctoral research was broader, participants were not specifically asked about rape. However, rape and other kinds of GBV were mentioned by participants in the context of discussions of life in Syria. Overall, 22 women and eight men aged 18–60 participated in the interviews. These refugees lived in Damascus, Dar'a and Homs before the war. In addition, ten humanitarian workers (both local and international) who were already known to the author because of previous work in Jordan, were interviewed as part of the research.

This research was conducted within a transnational feminist framework of analysis, which is 'an anti-imperialist, anti-capitalist, and contextualized feminist project' that seeks to 'expose and make visible the various, overlapping forms of subjugation of women's lives'.²¹ This approach incorporates analysis of the 'overlapping forms of subjugation of women's lives'²² and locally situates these specific experiences of power hierarchies in order to understand how material circumstances shape women's lives.²³ The research approach was thus inductive, which allowed the analysis to emerge from the stories of research participants. It is also based on an intersectional analysis in recognition

19 Julie McLeod and Rachel Thomson, *Researching Social Change. Qualitative Approaches* (SAGE Publications Ltd., London, 2009), pp. 80–81.

20 Gobo Giampietro, *Doing Ethnography*. Trans. Adrian Belton (SAGE Publications Ltd., London, 2008), p. 5.

21 Chandra Talpade Mohanty, "'Under Western Eyes" Revisited: Feminist Solidarity through Anticapitalist Struggles', 28(2) *Signs* (2003) 499–535, p. 515.

22 *Ibid.*

23 Inderpal Grewal and Caren Kaplan, 'Introduction. Transnational Feminist Practices and Questions of Postmodernity', in Inderpal Grewal and Caren Kaplan (eds.), *Scattered Hegemonies. Postmodernity and Transnational Feminist Practices* (University of Minnesota Press, Minneapolis, 1994), 1–33, pp. 17–18.

of the fact that neither 'Syrians' nor 'women' are homogenous entities. Rather, their experiences vary depending on structures of class, age, ethnicity and other power dynamics.²⁴ This contextualised approach aligns with the main argument of this paper: that it is critical to move beyond simplistic narratives on sexual violence during conflict.

The article consists of three parts. The first part outlines the narrow approaches international tribunals and courts have taken in defining rape, highlighting that even legal constructions of rape are far from straightforward. It draws attention to how these narrow approaches result in rape being seen as more serious than other kinds of GBV. The second part of the article outlines the international humanitarian agency narratives on rape as a weapon of war in Syria, showing how these narratives have appropriated legal language to create sometimes-sensationalist accounts of rape during conflict. This includes claims that refugees fled Syria because they feared rape. The third section challenges existing narratives about rape in Syria through an exploration of ethnographic accounts from Syrian refugees. These accounts demonstrate the difficulties associated with understanding rape and emphasise the importance of recognising everyday GBV – not just rape – during conflict.

2 Rape as 'Straightforward'? Tracing the Ambiguities in International Law

International criminal tribunals and courts have differed in their approach to rape during conflict, perhaps due to the 'elasticity' in the way some laws have been phrased,²⁵ but potentially also due to fundamental inconsistencies in how this crime is understood in international law.²⁶ This section explores the contradictory judgments of international tribunals and courts to demonstrate that rape is far from 'straightforward'.²⁷

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were the first to

24 Chandra Talpade Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses', 30 *Fem. Rev.* (1988) 61–88.

25 Elizabeth-Merry Condon, 'The Incoherent International Jurisprudence of Rape', 3(1) *Eyes on the ICC* (2006) 23–31, p. 30.

26 Phillip Weiner, 'The Evolving Jurisprudence of the Crime of Rape in International Criminal Law', 36 *B.C. Int. & Comp. L. Rev.* (2013) 1207–1237, p. 1208.

27 Baaz and Stern, *supra* note 7, p. 47.

prosecute rape during armed conflict.²⁸ Alongside the ICTY and ICTR, plans began to develop around the scope of the International Criminal Court (ICC). In 1997, the Women's Caucus for Gender Justice (WCGJ) was established. It was made up of women's organisations, feminist activists and scholars (some of whom had been involved in drafting the ICTY and ICTR statutes), and sought to ensure sexual and gender-related crimes would be investigated and prosecuted at the ICC.²⁹ The WCGJ was actively engaged in the negotiation of the Rome Statute, including in debates around what constituted sexual violence, and especially rape.³⁰

Building on the jurisprudence of the ICTY and ICTR, the ICC has issued important decisions on sexual violence in Kenya, the Democratic Republic of Congo and the Central African Republic.³¹ While these judgments have at times been inconsistent, reflecting the complexities in prosecuting such crimes, they demonstrate how sexual violence during conflict has been acknowledged at the international level. Importantly, in addition to international case law, UN Security Council resolutions (in particular resolutions 1325 and 1820) have

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- 28 *The Prosecutor v. Duško Tadić*, 7 May 1997, International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Judgment, Trial Chamber, IT-94-1-T, <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>, accessed 18 December 2018; *The Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, 16 November 1998, International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Judgment, Trial Chamber, IT-96-21-T, http://www.icty.org/x/cases/mucic/tjug/en/98116_judg_en.pdf, accessed 18 December 2018; *The Prosecutor v. Jean-Paul Akayesu*, 2 September 1998, International Criminal Tribunal for Rwanda, Judgment, Chamber I, ICTR-96-4-T, <http://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>, accessed 1 September 2018.
- 29 Louise Chappell, 'Women, Gender and International Institutions: Exploring New Opportunities at the International Criminal Court', 22(1) *Politics Soc.* (2003) 3–25, p. 14.
- 30 *Ibid.*; Rosemary Grey, 'Conflicting Interpretations of "Sexual Violence" in the International Criminal Court: Recent Cases', 29(81) *Aust. Fem. Stud.* (2014) 273–288.
- 31 *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, 23 January 2012, International Criminal Court, Judgment, Pre-Trial Chamber II, ICC-01/09-02/11, https://www.icc-cpi.int/CourtRecords/CR2012_01006.PDF, accessed 13 December 2018; *The Prosecutor v. Germain Katanga*, 7 March 2014, International Criminal Court, Judgment, Trial Chamber II, ICC-01/04-01/07, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF, accessed 19 December 2018; *The Prosecutor v. Jean-Pierre Bemba Gombo*, 21 March 2016, International Criminal Court, Judgment, Trial Chamber III, ICC-01/05-01/08, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF, accessed 14 December 2018.

sought to respond to sexual violence during conflict. Resolution 1325 requests that parties to armed conflict ‘take special measures’ to protect women and girls from GBV, ‘particularly rape’.³² Resolution 1820 specifically refers to sexual violence as a ‘tactic of war’, and asserts that when this is the case, sexual violence ‘may impede the restoration of international peace and security’.³³ These resolutions, however, have also been the subject of critique. Amy Barrow argues that Resolution 1325 narrowly frames peace and security and does not adequately capture the broader context of gender inequality.³⁴ She suggests Resolution 1820 is more progressive in recognising the individual (not just the collective) in acts of sexual violence,³⁵ while Laura Shepherd asserts that Resolution 1820 challenges static notions of women as always vulnerable.³⁶ Sabine Hirschauer suggests that both Security Council Resolutions 1325 and 1820 ‘have successfully securitized rape’.³⁷ She argues that addressing systematic sexual violence is now positioned as promoting international peace and security.³⁸ Sara Meger similarly argues that the ‘women, peace and security’ agenda narrows what it means for women to be insecure during conflict, resulting in a greater concern for the security of states rather than women.³⁹

These critiques help to position the analysis that follows, drawing attention to the way narrow interpretations of rape by international tribunals and courts feed into the sensationalism around rape. This leads to the crime of rape being viewed more seriously than other kinds of GBV during armed conflict, by both legal and non-legal actors.

32 United Nations Security Council, *Resolution 1325 (2000)*, 31 October 2000, (S/RES/1325), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>, accessed 3 September 2018.

33 United Nations Security Council, *Resolution 1820 (2008)*, 19 June 2008, (S/RES/1820), [http://undocs.org/en/S/RES/1820\(2008\)](http://undocs.org/en/S/RES/1820(2008)), accessed 3 September 2018.

34 Amy Barrow, ‘UN Security Council Resolutions 1325 and 1820: Constructing Gender in Armed Conflict and International Humanitarian Law’, 92(877) *Int. Rev. Red Cross* (2010) 221–234, p. 231.

35 *Ibid.*, p. 232.

36 Laura Shepherd, ‘Sex, Security and Superhero(in)es: From 1325 to 1820 and Beyond’, 13(4) *Int. Fem. J. Politics* (2011) 504–521, p. 515.

37 Hirschauer, *supra* note 7, p. 217.

38 *Ibid.*, p. 196.

39 Sara Meger, ‘The Problematic Evolution of UN Resolutions on Women, Peace and Security’, *E-International Relations*, 2012, <https://www.e-ir.info/2012/11/01/the-problematic-evolution-of-un-resolutions-on-women-peace-and-security/>, accessed 29 August 2018.

2.1 *Narrow Definitions and the Hierarchy of Sexual Violence Crimes*

The criminalisation of rape during war first occurred through the ICTY, which specifically dealt with key sexual violence cases occurring within the context of crimes against humanity and genocide in Bosnia and Herzegovina.⁴⁰ Rape was listed in the statute of the ICTY as a crime against humanity⁴¹ and in *Tadić* – the first case brought before the ICTY to contain sexual violence charges – the Court held that criminal culpability existed for acts of sexual violence.⁴² The ICTR's subsequent judgment in *Akayesu* contained the first international definition of rape as 'a physical invasion of a sexual nature, committed on a person under circumstances which are coercive'.⁴³ This case was significant in positioning the crime of rape because the word 'invasion' in the definition was a deviation from most existing common law definitions of rape, which listed the specific acts that constitute physical penetration.⁴⁴ Instead, the Court in *Akayesu* emphasised that 'the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts'.⁴⁵ Despite this broad approach of the Court in *Akayesu*, in the latter case of *Kunarac*, the ICTY specified the exact acts that constitute rape – instead of leaving this open.⁴⁶ The *Kunarac* approach to rape has been taken by the ICC instead of the broader *Akayesu* definition; although rape is not defined in the Rome Statute, the ICC 'Elements of Crimes' document specifies the kinds of acts that constitute rape,⁴⁷ perpetuating the narrow construction of rape.

Scholars have drawn attention to the narrow focus on rape during conflict, instead of the broader category of sexual violence.⁴⁸ Part of this critique relates

40 *Tadić*, *supra* note 28; *Delalić et al.*, *supra* note 28.

41 *Statute of the International Criminal Tribunal for the Former Yugoslavia*, (SC Res. 827), (May 1993, amended September 2009), <http://www.icty.org/en/sid/135>, accessed 9 August 2018, Art. 5(g).

42 *Tadić*, *supra* note 28, paras. 477, 689.

43 *Akayesu*, *supra* note 28, para. 598.

44 Chappell, *supra* note 29, p. 11.

45 *Akayesu*, *supra* note 28, para. 597.

46 *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, 22 February 2001, International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Judgment, Trial Chamber, IT-96-23-T & IT-96-23/1-T, <http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>, accessed 10 December 2018, para. 460.

47 *Elements of Crimes*, 2011, International Criminal Court, Art 7(1)(g)-I, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/o/ElementsOfCrimesEng.pdf>, accessed 11 December 2018.

48 Grey, *supra* note 30; Meger, *supra* note 39.

to Article 7(g) of the Rome Statute, which states that ‘any other form of sexual violence of comparable gravity’ (to rape, sexual slavery, enforced prostitution, forced pregnancy or enforced sterilisation) may constitute a crime against humanity.⁴⁹ This ‘comparable gravity’ requirement was debated during the Rome Statute negotiations, with the WCGJ feeling that such a high threshold may lead to crimes that fall short of penetration being excluded.⁵⁰ In *Kenyatta*, the Court stated that forced nudity, forcible circumcision and penile amputation of men in the Luo ethnic group by other ethnic groups was not of a similar gravity under Article 7(g), and were acts based on ethnicity, not acts of ‘sexual violence’.⁵¹ Rosemary Grey critiques the Court’s failure to recognise that these acts could constitute sexual violence as well as be motivated by ethnicity.⁵² When sexual violence is narrowly framed to only refer to rape, as in *Kenyatta*, it reinforces the hierarchy of rape over other kinds of GBV during conflict.⁵³

The prioritisation of rape within international law has been sustained by the linkage between rape and the crime of genocide. During and following the recognition of rape as a weapon of war in Bosnia and Herzegovina, feminists and academic scholars in the WCGJ wrestled with ‘the acknowledgment, extent, significance, meaning, and even naming’ of rapes during war – the largest concern being the notion of rape as genocide.⁵⁴ *Akayesu* was significant in identifying rape as a crime against humanity and part of the crime of genocide.⁵⁵ It challenged previous conceptualisations of rape as a crime against women’s honour by referring to the harm experienced by survivors of this violence,⁵⁶ repositioning previous legal thinking on sexual violence. Critical legal feminist scholars in the WCGJ, including Catherine MacKinnon, were among the proponents of the argument that rape was genocide and therefore required a special response.⁵⁷ This article will not explore the legal intricacies linking rape and

49 *Rome Statute of the International Criminal Court*, 1 July 2002, International Criminal Court, Art. 7(g), https://www.icc-cpi.int/nr/rdonlyres/eagaeff7-5752-4f84-beg4-0a655eb30e16/o/rome_statute_english.pdf, accessed 10 December 2018.

50 Grey, *supra* note 30, p. 276.

51 *Kenyatta et al.*, *supra* note 31, paras. 265–266.

52 Grey, *supra* note 30, p. 283.

53 Meger, *supra* note 7, p. 33.

54 Karen Engle, ‘Feminism and Its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina’, 99(4) *Am. J. Int. Law* (2005) 778–816, p. 779.

55 *Akayesu*, *supra* note 28, paras. 688, 731.

56 *Ibid.*, para. 687.

57 Engle, *supra* note 54, pp. 785–786.

genocide, as others have done.⁵⁸ Rather, it focuses on the essence of the divergence regarding what could be referred to as a ‘rape hierarchy’ – wartime rape versus ‘everyday’⁵⁹ or regular rape.

This distinction is important because the framing of rape as a weapon of war and the appropriation of this legal construction by humanitarian agencies, means that rape outside of war may consequently be cast as ‘apolitical’ and of lower priority,⁶⁰ contrasting with wartime rape, which has been described as ‘worse than “ordinary” rape’.⁶¹ When rape is addressed by international courts only in the context of crimes against humanity and genocide, it is not seen as a crime in its own right,⁶² reinforcing the belief that ‘the violation of a woman’s body is secondary to the humiliation of the group’.⁶³ Sarah Deibler discusses how this has occurred with crimes being tried under the Extraordinary Chambers in the Courts of Cambodia: ‘This need for rape to be something *else* in order to be systematic, in order to be sufficiently grave, is indicative of the sidelining of rape...’⁶⁴ When rape during war is viewed as exceptional, it affects how survivors are treated: women who assert rape during conflict are believed, in contrast to the reactions to rape in everyday life.⁶⁵ If an act of GBV is not linked to war, then the danger is that it may therefore be disregarded entirely.⁶⁶

The requirement that more is needed to successfully prosecute rape during conflict is also evident in the requirement that rape be perpetrated at a broader scale or as part of a wider strategy. Under the Rome Statute, rape is a crime against humanity when committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’⁶⁷

58 Buss, *supra* note 1; Engle, *supra* note 54; Grey, *supra* note 30; Rhonda Copleon, ‘Surfacing Gender: Re-engraving Crimes against Women in Humanitarian Law’, 5 *Hastings Women’s Law J.* (1994) 243–266; Sarah Deibler, ‘Rape by Any Other Name: Mapping the Feminist Legal Discourse Regarding Rape in Conflict onto Transitional Justice in Cambodia’, 32(2) *Am. U. Int. L. Rev.* (2017) 501–537.

59 Engle, *supra* note 54, p. 779.

60 Mibenge, *supra* note 6, pp. 12–13.

61 Council of Europe, *Rape in Armed Conflicts Report*, (Doc 8668), (15 March 2000), <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8878&lang=en>, accessed 10 August 2018.

62 Hilary Charlesworth, ‘Feminist Methods in International Law’, 93(2) *Am. J. Int. Law* (1999) 379–394, p. 394.

63 *Ibid.*, p. 387.

64 Deibler, *supra* note 58, p. 528.

65 Copleon, *supra* note 58, p. 264.

66 Aisling Swaine, ‘Beyond Strategic Rape and Between the Public and Private: Violence Against Women in Armed Conflict’, 27 *Hum. Rights Q.* (2015) 755–786, p. 761.

67 *Rome Statute of the International Criminal Court*, *supra* note 49, Art. 7(g).

and is a war crime ‘when committed as part of a plan or policy or as part of a large-scale commission of such crimes.’⁶⁸ The widespread or systematic requirement has been the subject of debate and contention among scholars.⁶⁹ Hilary Charlesworth argues that when rape has to be linked to a broader strategy, it illustrates how crimes against the ‘collectivity’ are given more attention than ‘the private sphere of the individual’.⁷⁰ Maria Eriksson Baaz and Maria Stern suggest that the oft-cited statement that sexual violence during war is ‘too widespread, too frequent and seemingly too calculated and effective for it *not* to be part of a larger political scheme and hence a weapon of war’⁷¹ reflects circular reasoning – as if merely the existence of mass rapes automatically equates to a strategy.⁷² This reflects the problematic way the mere existence of quantitative proof can be interpreted as meeting the legal threshold.

The requirement that acts of sexual violence occur at a wide scale also reinforces the way rape is considered as needing something more to be prosecuted. In the case of *Katanga*, the ICC held that the acts of rape and sexual slavery carried out by the accused were not part of the ‘common purpose’ of this group to destroy the village.⁷³ The Court seemed to require a higher standard for sexual violence crimes⁷⁴ compared to murder, pillaging and property destruction, which were successfully prosecuted.⁷⁵ In this controversial judgment, sexual violence acts were deemed to be insufficient in number and repetition to be ‘widespread’ or ‘systematic’.⁷⁶

In all these debates on the scale of sexual violence in legal terms, what is missing are the voices of women themselves; their narratives are often simplified into ‘digestible’ components as part of the legal process.⁷⁷ The question

68 *Ibid.*, Art. 8(2)(b)(xxii).

69 Kelly Askin, ‘Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles’, 21(2) *Berkeley J. Int. Law* (2003) 288–349, p. 315; Chappell, *supra* note 29, p. 19; Condon, *supra* note 25, pp. 23–24; Baaz and Stern, *supra* note 7, p. 47.

70 Charlesworth, *supra* note 62, p. 387.

71 Inger Skjelsbæk, ‘Sexual Violence and War: Mapping out a Complex Relationship’, 7(2) *Eur. J. Int. Relat.* (2001) 211–237, p. 213.

72 Baaz and Stern, *supra* note 7, p. 49.

73 *Katanga*, *supra* note 31, paras. 1663–1664.

74 Carsten Stahn, ‘Justice Delivered or Justice Denied? The Legacy of the *Katanga* Judgment’, 12(4) *J. Int. Crim. Justice* (2014) 809–834, p. 821.

75 *Katanga*, *supra* note 31, paras. 1657–1662.

76 *Ibid.*, para. 1663.

77 Julie Mertus, ‘Shouting from the Bottom of the Well: The Impact of International Trials for Wartime Rape on Women’s Agency’, 6(1) *Int. Fem. J. Politics* (2004) 110–128, p. 113.

to ask, Janet Halley suggests, should be: ‘what is rape to women who have been raped?’⁷⁸ More reflection is needed on whether the law – which itself is ‘selective, narrow, distanced, adversarial, politicized, gendered, partial and unequal’⁷⁹ – is indeed the best means of understanding and analysing the complexities underlying sexual violence.

The problems and gaps in international laws on rape and sexual violence, which are discussed in this section, have broader consequences beyond the law alone. They affect the way rape is prioritised over other kinds of GBV as well as narratives about rape among non-legal actors, including international humanitarian agencies, as emerges from the case of the Syrian conflict.

3 Narratives on Rape in Syria

The Syrian conflict began in 2011. In response to massive anti-government demonstrations, the Syrian government mobilised military and intelligence services to quash the protests.⁸⁰ This strong response resulted in a scale-up of resistance activities from the local to the national level, which led to the outbreak of a full-blown war in Syria.⁸¹ This conflict became complicated by the emergence of splinter groups from the ‘rebels’ or ‘opposition’, as well as external actors such as Russia, Iran and Turkey.⁸² In 2013, the Islamic State in Iraq and the Levant (ISIL) began to seize territory in Syria.⁸³ At the time of writing, the conflict in Syria has resulted in the killing of over half a million Syrians,⁸⁴

78 Janet Halley, ‘Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict’, 9 *Melb. J. Int. Law* (2008) 78–124, p. 114.

79 Nicola Henry, *War and Rape: Law, Memory and Justice* (Routledge, London, 2011), p. 118.

80 Radwan Ziadeh, *Power and Policy in Syria. Intelligence Services, Foreign Relations and Democracy in the Modern Middle East* (I.B. Tauris, London, 2012).

81 Salwa Ismail, ‘The Syrian Uprising: Imagining and Performing the Nation’, 11(3) *Stud. Ethn. Nat.* (2011) 538–549, p. 539.

82 Charles Glass, *Syria Burning. A Short History of a Catastrophe* (Verso, London, 2016), p. 54.

83 *BBC News*, ‘The War Against ‘Islamic State’ in Maps and Charts’, 28 March 2018, <https://www.bbc.com/news/world-middle-east-27838034>, accessed 24 August 2018.

84 *Reuters*, ‘Syrian Observatory Says War Has Killed More than Half a Million’, 12 March 2018, <https://www.reuters.com/article/us-mideast-crisis-syria/syrian-observatory-says-more-than-half-a-million-killed-during-war-idUSKCN1GO13M>, accessed 10 June 2018.

approximately 6.1 million people internally displaced⁸⁵ and 5.7 million Syrians fleeing Syria to be registered as refugees in the neighbouring countries of Jordan, Turkey, Lebanon, Iraq and Egypt.⁸⁶

The conflict in Syria is a powerful example of how legal language around rape as a weapon of war can be appropriated and brought into the humanitarian lexicon even before a legal determination is made. Currently, it is not clear if sexual violence – or indeed any crimes under international law – occurring as part of the Syrian conflict will be tried under international law. In 2011, the Human Rights Council established the ‘Independent International Commission of Inquiry on the Syrian Arab Republic’ to investigate human rights violations occurring in Syria.⁸⁷ The ‘International, Impartial and Independent Mechanism’, which was established in 2016 and aims to collect evidence and information on international law violations committed in Syria since the war began in 2011, complements the work of the Human Rights Council.⁸⁸ Although Syria is not a party to the Rome Statute, interestingly, a recent ICC judgment⁸⁹ also raises the possibility that the court’s jurisdiction may be extended in cases of forced deportation to Jordan, because Jordan is a State Party to the ICC.⁹⁰

International humanitarian agency (non-government organisation) reports on the Syrian conflict demonstrate how rape as a weapon of war may

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- 85 United Nations High Commissioner for Refugees, ‘UN Chiefs Call for Stepped-up Support for Vulnerable Syrians, Refugees and Host Communities, amid Escalating Violence inside Syria’, 23 February 2018, <http://www.unhcr.org/news/press/2018/2/5a9015584/un-chiefs-call-stepped-up-support-vulnerable-syrians-refugees-host-communities.html>, accessed 5 March 2018.
- 86 United Nations High Commissioner for Refugees, ‘Syria Regional Refugee Response Inter-agency Information Sharing Portal’, 2019, <http://data.unhcr.org/syrianrefugees/country.php?id=107>, accessed 14 March 2019.
- 87 Human Rights Council, *Resolution Adopted by the Human Rights Council at its Seventeenth Special Session*, 22 August 2011, (S-17/1), https://www.ohchr.org/documents/hrbodies/hrcouncil/coisyrria/ress17_1.pdf, accessed 21 February 2019.
- 88 United Nations General Assembly, *Resolution Adopted by the General Assembly on 21 December 2016*, 11 January 2017, (A/RES/71/248), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/462/01/PDF/N1646201.pdf?OpenElement>, accessed 20 February 2019.
- 89 *Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”*, 6 September 2018, International Criminal Court, Judgment, Pre-Trial Chamber I, ICC-RoC46(3)-01/18, https://www.icc-cpi.int/CourtRecords/CR2018_04203.PDF, accessed 23 February 2019.
- 90 Owen Bowcott, ‘Syrian Refugees Launch Legal Bid to Try Assad for Crimes Against Humanity’, *The Guardian*, 7 March 2019, <https://www.theguardian.com/law/2019/mar/07/syrian-refugees-launch-legal-bid-to-try-assad-for-crimes-against-humanity>, accessed 10 March 2019.

be referred to as though it is a clearly defined crime. Baaz and Stern argue that rape as a weapon of war is ‘frequently offered up as if it were somehow self-explanatory’.⁹¹ They suggest that the language around rape has become a ‘dominant discourse’ within media, humanitarian and academic fields,⁹² such that these actors refer to rape during conflict using terms such as ‘tactic’ and ‘strategic’ as though these components are ‘straightforward’.⁹³ This criticism is reflected in international media (including *BBC*, *Reuters* and *Al Jazeera*) coverage⁹⁴ and international humanitarian agency narratives of rape in Syria.⁹⁵

For example, an initially-influential humanitarian agency report in 2012 stated that rape as a weapon of war was ‘pervasive’ in Syria.⁹⁶ However, these claims were made without sufficient evidence.⁹⁷ The report emphasised that the key reason families fled Syria to Jordan was due to the fear of rape and kidnapping;⁹⁸ this messaging is also evident in the report on refugees in Lebanon.⁹⁹ While the Jordan report mentioned examples of husbands being forced to rape their wives, armed men entering homes to rape and kill, and girls being kidnapped,¹⁰⁰ the report did not contain specific analysis of how these acts

91 Baaz and Stern, *supra* note 7, p. 43.

92 *Ibid.*, p. 42.

93 *Ibid.*, p. 47.

94 *Al Jazeera*, ‘Silent War: How Rape Became a Weapon in Syria’, 11 June 2018, <https://www.aljazeera.com/programmes/witness/2018/06/silent-war-rape-weapon-syria-180611071447939.html>, accessed 16 June 2018; Charlotte Rachael Proudman, ‘War Rape: The Forgotten Pandemic Sweeping Syria’, *The Independent*, 21 January 2013, <https://www.independent.co.uk/voices/comment/war-rape-the-forgotten-pandemic-sweeping-syria-8460566.html>, accessed 24 August 2018; Lauren Wolfe, *Syria has a Massive Rape Crisis – Women’s Media Center*, 2013, <http://www.womensmediacenter.com/women-under-siege/syria-has-a-massive-rape-crisis>, accessed 2 August 2017.

95 International Rescue Committee, *Syrian Women & Girls: Fleeing Death, Facing Ongoing Threats and Humiliation. A Gender-based Violence Rapid Assessment*, 2012, p. 3, <https://data.unhcr.org/syrianrefugees/download.php?id=900>, accessed 15 October 2016; International Rescue Committee, *supra* note 17; Refugees International, *Syrian Women and Girls: No Safe Refuge. Field Report*, 2012, p. 1, <http://www.refworld.org/docid/50a9e8ad2.html>, accessed 12 January 2016.

96 International Rescue Committee, *supra* note 17, p. 1. This report was retracted shortly after release and is no longer available online. It is on file with the author. The author worked for the International Rescue Committee in Jordan from 2014–2015.

97 Janine Di Giovanni, ‘Syria’s Unspoken Crimes’, *The Investigative Fund*, 29 July 2013, <https://www.theinvestigativefund.org/investigation/2013/07/29/syrias-unspoken-crimes/>, accessed 25 September 2018.

98 International Rescue Committee, *supra* note 18, p. 1.

99 International Rescue Committee, *supra* note 95, p. 5.

100 *Ibid.*, p. 2.

link to a systematic strategy of war, yet it made the claim that rape as a weapon was pervasive.¹⁰¹ This report was referenced by UNHCR's Assistant High Commissioner, Erika Feller, who delivered an address to the Human Rights Council in Geneva in 2012. She stated: 'Syria is increasingly marked by rape and sexual violence employed as a weapon of war'.¹⁰² Her statement resulted in questions about the nature of the data being relied upon to point to rape being used as a systematic strategy.¹⁰³ As the report continued to be cited, especially by the international media,¹⁰⁴ it was eventually retracted. While care has since been taken by many humanitarian agencies (including the International Rescue Committee, which initially issued the report), as a result of the challenges that emerged with using the rape as a weapon of war language, some report findings continue to be repeated, despite the questions regarding the credibility of the data. In the same year, Refugees International, an international advocacy agency, issued a report on the 'rampant' rape and sexual violence in Syria and mentioned the way armed groups 'routinely' rape women and girls in their homes – an almost word-for-word replication of the retracted report.¹⁰⁵ In this research, a few humanitarian workers still referred to this report when explaining sexual violence in the Syrian conflict – without acknowledging the limitations of the data.

The scale and frequency of rape in Syria has also been referenced in humanitarian and media narratives – which highlights how ICC legal requirements that sexual violence be 'widespread' or 'systematic'¹⁰⁶ feed into how sexual violence is described. The report mentioned above described rape as 'pervasive' in Syria,¹⁰⁷ yet also seemingly contradicted this statement about scale by noting

101 *Ibid.*, p. 1.

102 United Nations High Commissioner for Refugees, 'UNHCR Warns of Humanitarian Cost of Syrian Conflict, Especially on the Displaced', 27 February 2013, <http://www.unhcr.org/uk/news/latest/2013/2/512e2a036/unhcr-warns-humanitarian-cost-syrian-conflict-especially-displaced.html>, accessed 3 September 2018.

103 Di Giovanni, *supra* note 97.

104 Joel Brinkley, 'War Rape: Rwanda, Bosnia, and Now Syria', *World Aff. J.*, 6 September 2013, <http://www.worldaffairsjournal.org/blog/joel-brinkley/war-rape-rwanda-bosnia-and-now-syria>, accessed 24 August 2018; Karen Leigh, 'Worsening Violence Against Syria's Women', *Syria Deeply*, 3 December 2013. <https://www.newsdeeply.com/syria/articles/2013/12/03/worsening-violence-against-syrias-women>, accessed 10 July 2018; Richard Spencer, 'Fear of Rape "Driving Syria Refugee Crisis"', *The Telegraph*, 14 January 2013, <https://www.telegraph.co.uk/news/worldnews/middleeast/syria/9800528/Fear-of-rape-driving-Syria-refugee-crisis.html>, accessed 12 August 2018.

105 Refugees International, *supra* note 95; International Rescue Committee, *supra* note 18, p. 2.

106 *Rome Statute*, *supra* note 49.

107 International Rescue Committee, *supra* note 18, p. 1.

that ‘the full extent of targeted sexual violence in the Syria conflict is still unclear’.¹⁰⁸ Another International Rescue Committee report used a sample of 20 informants to conclude that rape and sexual violence were the ‘most extensive form of violence’ faced by women and girls in Syria.¹⁰⁹ In 2013, the much-cited ‘Women Under Siege’ project proclaimed a ‘massive rape crisis’ in Syria, arguing that rape has been ‘used widely’ during the conflict.¹¹⁰

In these examples, the decisions to describe the problem in quantitative terms can be argued to be a problematic consequence of sexual violence having to be ‘widespread’ or ‘systematic’ in order to be prosecuted. However, it is not solely legal constructions that emphasise the quantification of sexual violence. Within humanitarian agencies, issues of quantifiable data and evidence have increasingly dominated discussions,¹¹¹ even when it comes to GBV. The Inter-Agency Standing Committee guidelines on GBV in humanitarian settings, which were developed in 2005 and revised in 2015, stated in both iterations that GBV should be addressed irrespective of quantitative evidence because GBV occurs everywhere.¹¹² The document notes: ‘Waiting for or seeking population-based data on the true magnitude of GBV should not be a priority in an emergency due to safety and ethical challenges in collecting such data.’¹¹³ Despite this guidance, as demonstrated above, reports of sexual violence are framed in very specific, quantified ways. A United Nations agency report on violence against women and girls frames the challenge of GBV not as one involving grappling with structures of power. Instead GBV is positioned as a challenge because of lack of data, which will be resolved by creating ‘practical, ethical and culturally sensitive systems to quantify the abuses so destructive to women’s and girls’ lives’.¹¹⁴ This language represents how the focus around GBV has shifted from addressing unequal power between women and men, to generating quantitative data. In contrast, qualitative research that grounds analysis within the specific context and that is based on deep analysis of ‘layers

108 *Ibid.*

109 International Rescue Committee, *supra* note 95, p. 3.

110 Wolfe, *supra* note 94.

111 Cathrine Brun and Ragnhild Lund, ‘Real-Time Research: Decolonising Research Practices – Or Just Another Spectacle of Researcher–Practitioner Collaboration?’, 20(7) *Dev. Practice* (2010) 812–826, p. 822; Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (University of Chicago Press, Chicago, 2016).

112 Inter-Agency Standing Committee, *supra* note 1, p. 2.

113 *Ibid.*

114 United Nations Population Fund, ‘The Role of Data in Addressing Violence Against Women and Girls’, 2013, https://www.unfpa.org/sites/default/files/resource-pdf/finalUNFPA_CSW_Book_20130221_Data.pdf, accessed 9 March 2019, p.5.

of violence',¹¹⁵ while presenting a more nuanced and complicated picture, may not translate as easily to policy¹¹⁶ and may be viewed as less credible.

It is worth noting here that issues regarding the credibility of data are not unique to the Syrian armed conflict; the 'aura of constant ambiguity' around sexual violence data has also been a challenge in other contexts, such as Rwanda.¹¹⁷ In some cases, if data exists, it may be mobilised in particular ways – with more weighting given to certain kinds of evidence over others because of how conceptually powerful the idea of rape as a weapon of war is. This is perhaps the most evident in how rape in the Democratic Republic of Congo is sensationalised, as other scholars have observed.¹¹⁸ Despite research showing that physical violence perpetrated by intimate partners is greater in numbers than rape cases in the Democratic Republic of Congo, attention is still focused on rape as a weapon that is wielded by military officials and rebel groups as part of the armed conflict.¹¹⁹ In this example, violence in the private sphere may be viewed as neither serious nor sensational enough; humanitarian agencies may feel pressured to use emotive, dramatic statements about rape as a weapon of war to gain attention and therefore funding.¹²⁰

This is not to say that rape in Syria has only been described as a weapon of war. A Human Rights Watch report focuses on the torture of Syrian prisoners through sexual violence,¹²¹ and a recent Security Council report mentions instances of sexual violence in the Syrian conflict.¹²² Neither report uses the language of weapon of war. Similarly, a Human Rights Council report,¹²³ which

115 Swaine, *supra* note 66, p. 785.

116 Jelke Boesten, 'Of Exceptions and Continuities: Theory and Methodology in Research on Conflict-Related Sexual Violence', 19(4) *Int. Fem. J. Politics* (2017) 506–519, p. 507.

117 Hirschauer, *supra* note 7, pp. 205–207.

118 Baaz and Stern, *supra* note 7, pp. 24–25; Rosanne Marrit Anholt, 'Understanding Sexual Violence in Armed Conflict: Cutting Ourselves with Occam's Razor', 1(6) *J. Int. Hum. Action* (2016) 1–10, p. 2; Amber Peterman, Tia Palermo and Caryn Bredenkamp, 'Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo', 101(6) *Am. J. Public Health* (2011) 1060–1067.

119 Peterman *et al.*, *supra* note 118.

120 Sam Cook, 'Security Council Resolution 1820: On Militarism, Flashlights, Raincoats, and Rooms with Doors – a Political Perspective on Where It Came from and What It Adds', 23 *Emory Int. Law Rev.* (2009) 125–139, p. 129.

121 Human Rights Watch, *Syria: Sexual Assault in Detention*, 2012, <https://www.hrw.org/news/2012/06/15/syria-sexual-assault-detention>, accessed 9 August 2018.

122 United Nations Security Council, *Conflict-related Sexual Violence. Report of the Secretary-General*, 23 March 2015, (S/2015/203).

123 Human Rights Council, '*I Lost My Dignity*': *Sexual and Gender-based Violence in the Syrian Arab Republic*.

Christine Chinkin and Madeline Rees describe as ‘ground-breaking’ in challenging how sexual violence and GBV are conceptualised because it demonstrates that Syrian men and boys have also experienced sexual violence during this conflict,¹²⁴ details cases of sexual violence and GBV in Syria, without referring to it as a weapon of war. While these reports reflect a more careful, less sensationalist way of reporting on GBV occurring in Syria, they also receive less attention.

This example of how narratives emerge and are mobilised in certain ways does not, however, mean that rape as a weapon of war is not a problem in Syria. In addition to reports on the Syrian regime’s engagement in sexual violence as a strategy of war, the use of rape as a weapon of war in Syria has also arisen with respect to ISIL. Media and NGO reports have focused on the use of sexual violence by ISIL fighters to target a Kurdish religious minority: the Yazidis.¹²⁵ Academics like Salma Ismail and Paulo Gabriel Hilu Pinto have critiqued the tendency to attribute the causes of the Syrian conflict to sectarian divisions, however, they also note that both the Syrian regime and the rebels have used the language of sectarianism to gain political support.¹²⁶ The reports focused

Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, 8 March 2018, (A/HRC/37/CRP.3).

- 124 Christine Chinkin and Madeline Rees, *Commentary on the Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic. ‘I Lost my Dignity’: Sexual and Gender-based Violence in the Syrian Arab Republic*, 2018, https://wilpf.org/wp-content/uploads/2018/05/Syria-CoI-23rd_May2018_CChinkin-MRees_FINAL3.pdf, accessed 28 September 2018, pp. 1–2.
- 125 Amnesty International, ‘Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq’, 2014, https://www.amnesty.org.uk/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf, accessed 3 September 2018; Ariel Ahram, ‘Sexual Violence and the Making of ISIS’, 57(3) *Survival* (2015) 57–78; Human Rights Watch, ‘Iraq: ISIS Escapees Describe Systematic Rape’, 14 April 2015, <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>, accessed 21 August 2018; Nadia Murad, ‘Outraged by the Attacks on Yazidis? It Is Time to Help’, *The New York Times*, 12 February 2018, <https://www.nytimes.com/2018/02/10/opinion/sunday/yazidis-islamic-state-rape-genocide.html>, accessed 21 August 2018; Cathy Otten, ‘Slaves of Isis: The Long Walk of the Yazidi Women’, *The Guardian*, 25 July 2017, <https://www.theguardian.com/world/2017/jul/25/slaves-of-isis-the-long-walk-of-the-yazidi-women>, 3 September 2018; Aki Peritz and Tara Maller, ‘The Islamic State of Sexual Violence’, *Foreign Policy*, 16 September 2014, <https://foreignpolicy.com/2014/09/16/the-islamic-state-of-sexual-violence/>, accessed 18 August 2018.
- 126 Ismail, *supra* note 81, p. 543; Paulo Gabriel Hilu Pinto, ‘The Shattered Nation: The Sectarianization of the Syrian Conflict’, in Nader Hashemi and Danny Postel (eds.), *Sectarianization: Mapping the New Politics of the Middle East* (Hurst & Company, London, 2017), 123–142, p. 129.

on ISIL's sexual violence against the Yazidis tend to emphasise sexual violence in the context of a religious conflict, with potentially genocidal elements,¹²⁷ which is different to sexual violence in other parts of Syria.

Sexual violence in the Syrian conflict needs to be understood in more nuanced ways to reflect the fact that these acts are not clearly defined or understood. They need to be contextualised – as the Yazidi case above illustrates – and, importantly, they need to be situated within pre-existing gendered power relations.

4 Blurring the Lines: Ethnographic Accounts of Rape

The ethnographic accounts below challenge the notion of rape as a clear-cut issue. They question the simplicity of the notion that Syrian refugees fled because of rape, exploring the underlying contextual factors around the decision to leave Syria. In this section, ethnographic examples of other kinds of GBV before and during conflict are also discussed.

4.1 *Reasons for Leaving Syria*

While the narratives around rape in Syria have referenced the notion that rape was the reason people fled the conflict, this article argues that it is not so simple to articulate that Syrian refugees as a collective fled because they were afraid of rape. In reality, departure from Syria may be influenced by an interplay of issues that are specific and different for each family and individual. The following portion of an interview highlights some of the complex reasons Syrian refugees decided to leave Syria:

Author: How did your family decide that now is the time to leave?

Jumala:¹²⁸ To leave because there started to be bombing at night. And our neighbours were injured, some died. So, my father decided that day to have us leave.

Lubna (Jumala's mother): We were afraid for the girls that they would be raped.

For Jumala, a young woman in her early 20s, the reason were the bombings, which caused injuries and deaths close to their home. She attributes the decision to leave to one particular day – when bombings began at night and

¹²⁷ Amnesty International, *supra* note 125; Murad, *supra* note 125; Otten, *supra* note 125.

¹²⁸ All names of research participants used in this article are pseudonyms. Informed consent was obtained from all research participants.

the consequences became more severe. Her mother Lubna, however, articulated the rationale differently, saying that the decision stemmed from a fear of rape. She was likely referring to her own daughters, Jumala and her sister who were both unmarried at the time and thus perhaps in her eyes more vulnerable without the protection offered by having a husband. Lubna may also have been referring to the five daughters of her husband's second wife, who also left with them to Jordan; using 'the girls' in a broader way. Interestingly, Lubna's husband did not accompany his wives and children to Jordan, as his relative was in jail in Syria. Instead, the two wives took the lead for the move, taking the children across to Jordan, via Zaatari Refugee Camp, and setting up a household together in an urban area. Two years later, Lubna's husband's second wife became pregnant (her husband had visited his wives in Jordan) and she returned to Syria with her five daughters to have her baby. At the time of return, her eldest daughter was in her teenage years, which also has implications since she may have been viewed by her family as being more vulnerable to rape because of her age. The return to Syria and subsequent decision to remain in Syria also complicates the narrative about leaving due to the fear of rape; it suggests the fear of rape was no longer relevant. Also worth noting, while Lubna and her husband's second wife lived together, there were conflicts in the household, leading to the second wife at one point wishing to have her own separate household in Jordan. This may have also contributed to her decision to remain in Syria after the birth of her child.

The account from Jumala highlights that the decision-making process of refugees is multi-layered: rape may be part of narratives for fleeing, but is not always solely causative for every person involved. This complication points to how recognition of the context – including in this case an understanding of familial dynamics – is critical to understanding people's lives. This example also illustrates how the idea of fear can be powerful in shaping behaviour. Janine Di Giovanni's account of life in wartime Syria references the fact that agents of the government (*shabiha*) would foment fear by threatening civilians that they were going to rape women.¹²⁹ While referencing the initial retracted report on rape, Di Giovanni notes, however: 'Whether or not rape is being used in Syria as a weapon of war needs to be further examined, but certainly it is a fear-provoking strategy'.¹³⁰ The transcript below, from an interview with a young woman now living in Jordan, affirms Di Giovanni's reference to rape being used by the government to create fear:

129 Janine Di Giovanni, *The Morning They Came for Us. Dispatches from Syria* (Bloomsbury Publishing, London, 2016), p. 19.

130 *Ibid.*, p. 22.

Author: What did your parents tell you?

Safa: About leaving?

Author: Yeah.

Safa: We were aware of being surrounded by war. We were conscious of it, because it was in our childhood, so we were aware of things that were really beyond our age. They took us out, my parents, because they were afraid for us, as girls, for our honour.

...

Safa: It was a busy, populous area. There were a lot of rebels in it, so the people living there were almost all against the regime. So, they besieged it a lot, and there was a lot of shelling with rockets, so that was the reason we left. And when the security forces came in, they were threatening the women and girls with rape... They wanted so much to have revenge on this area, so they were planning to do that... They arrested many of the men, so the news reached us by way of the rebels that we shouldn't let women stay in the area.

...

Safa: There are spies... so they communicated with each other. In the planning of the war there's one that delivers the message to this side and another spy to deliver a message to the other side... So the news was delivered to the rebels and they passed it on to us... The rebels were in groups, they shared information, and each one began to get his family out.

Author: Did you actually hear of any of this happening or it was just rumours that it might happen?

Safa: The news came... according to what I heard from people who were there. They separated women from men from the area in which they had surrounded them. There were some situations, they hadn't yet done anything to them, but they threatened them. That area came under fire from the rebels so they couldn't do anything to the women who were still there in [name of location].

Safa was 12 years old when she left Syria, which makes it possible that her account was not only her own, but also that of her family's. This is reflected in how she switches from what happened to her versus what was told to her by

others. Her parents, for example, were the ones who told her that they left because of fear for her and her older sister's 'honour'. Later, however, Safa states that the reason for leaving was the rockets. Her family had not yet left, but they received news from the rebels that the government forces were planning to rape women, therefore they ought to leave. The area where Safa lived was a known area for rebels, and was therefore targeted by the regime. It may be that Safa's parents used the reason of 'honour' to shield Safa – then a child – from the situation of danger they faced from the rockets. Importantly, Safa's account is unclear as to whether rape occurred or not – only that rape was threatened and the threat was sufficient enough for it to be one of the reasons for leaving.

Building on this idea of fear of rape, one particular ethnographic account is particularly striking in demonstrating fears of a different kind that seemingly override the fear of rape:

Fuad: In reality now in Syria, there is nothing called man. The woman is everything now. She brings the bread. She brings things for the house. She works. She makes documents. There is no man to do anything there. He doesn't dare to go out because he will be arrested – they would arrest any man they find.

Author: They do not arrest women?

Fuad: They arrest the women they like the look of – beautiful women. Now, women in Syria have changed the way they dress. This is reality... [T]hey wear bad clothes. To make themselves look less attractive. They don't wear makeup any more.

Author: How do you know this? Have other people told you?

Fuad: My aunt who traveled. Her mother-in-law and sister-in-law came, a month ago. And told us that this is the reality there. The girl herself told us, because she is the one that goes out. Her brother doesn't dare to go out...

This account appears to contradict the international media and international humanitarian reports about people fleeing Syria because of rape, and about rape being 'pervasive',¹³¹ because here, Syrian women are described as being

131 *AlJazeera*, *supra* note 94; International Rescue Committee, *supra* note 18; International Rescue Committee, *supra* note 95; Proudman, *supra* note 94; Refugees International, *supra* note 95; Wolfe, *supra* note 94.

mobile – more so than men – during conflict. In this ethnographic account, men are the ones who fear leaving the home and it is women who, wearing less attractive clothing, move in the streets. However, this account also draws attention to the idea that being less attractive and not wearing make-up protects women from rape. This challenges the notion that fear of rape and immobility of women are always linked, but suggests that the fear of women being raped is viewed less seriously than men being arrested. This challenges ideas about perceptions regarding the gravity of rape, especially how issues of culture and ‘honour’ within Syrian society are described as making rape particularly heinous.¹³² It suggests that women’s well-being might be sacrificed to protect men. Further, it infers a connection between rape and how women physically present themselves; the onus is upon women to dress in certain ways to avoid attention and rape.

The complexities evident in the ethnographic examples above highlight that determinations about rape as a weapon of war are far from obvious. Additionally, this article builds on Meger’s argument to suggest that the humanitarian agency and media fixation on the more provocative and inflammatory declarations of rape perpetrated as part of war strategies feed into specific ideologies around the uncivilised strategies of war.¹³³ For example, wars in contexts like the Democratic Republic of Congo have received significant media and policy attention because of sexual violence acts, which are depicted as ‘primitive, anarchic and barbaric, as fundamentally “Other”’.¹³⁴ The barbarism of sexual violence is positioned in contrast to the apparently-traditional cultural context, and is also seen as contrasting with the ‘West’ and its more progressive society, feeding into racial narratives about how ‘their “barbaric” culture is essentially different from “our” civilized culture...’¹³⁵ This framing of rape as acts perpetrated in far-away lands has resulted in what Meger refers to as the ‘fetishization’ of sexual violence,¹³⁶ such that rape is ‘transformed into an object of global media and public fascination’.¹³⁷

132 Leigh, *supra* note 104; Wolfe, *supra* note 94.

133 Baaz and Stern, *supra* note 7, p. 25.

134 *Ibid.*, p. 25.

135 Nadjé Al-Ali, ‘Sexual Violence in Iraq: Challenges for Transnational Feminist Politics’, *Eur. J. Women Stud.* (2016) 1–18, p. 3.

136 Meger, *supra* note 7, p. 1.

137 *Ibid.*, p. 17.

4.2 *Domestic Violence, Fate and the GBV Hierarchy*

This preoccupation with rape during conflict pushes ‘everyday’ violence to the margins.¹³⁸ It also hides other gender inequalities during war, including inequitable access to food and poor access to education, which in some cases are the main concerns of rape survivors, even over legal or other support for rape.¹³⁹ The more sensational stories about GBV may be the concern of visiting donors and journalists. However, such a focus also negates the pre-displacement problem of domestic violence in Syria,¹⁴⁰ making it appear as something new to displacement. The concept of rape as a weapon of war is not, importantly, appropriated for the sake of appropriation; the consequence of mobilising around this atrocity may be receiving funding for activities addressing sexual violence.¹⁴¹ Baaz and Stern argue that rape during conflict has become ‘commercialized’,¹⁴² such that ‘everyday’ GBV that may not receive the attention of donors or international agencies during peacetime or war, is lower in the hierarchy compared to the much more heinous act of rape during conflict. Even when the numbers show intimate partner violence occurs more than rape,¹⁴³ financial resourcing may only be targeted at rape,¹⁴⁴ which highlights fundamental problems in how discourses may shape policy more than evidence does.

The focus on rape also results in other kinds of GBV – specifically domestic violence – being viewed as less serious or even becoming normalised.¹⁴⁵ This mirrors how in international courts, rape linked to genocide may be viewed more seriously, requiring a special response, compared to ‘everyday’ rape.¹⁴⁶ The normalisation of ‘everyday’ GBV is not just a humanitarian/media

138 Alicia Elaine Luedke and Hannah Faye Logan, “‘That Thing of Human Rights’: Discourse, Emergency Assistance, and Sexual Violence in South Sudan’s Current Civil War”, 42 *Disasters* (2018) 599–118, 5100.

139 Baaz and Stern, *supra* note 7, p. 112.

140 United National Development Fund for Women, *Violence Against Women Study. Syria 2005, 2006*, <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/asia/violence%20against%20women%20in%20syria%20study%202005/syria%20-%20key%20findings%20of%20vaw%20study%202005.pdf?vs=349>, accessed 14 December 2018.

141 Luedke and Logan, *supra* note 138, p. 5103.

142 Baaz and Stern, *supra* note 7 p. 112.

143 Peterman *et al.*, *supra* note 118, p. 47.

144 Baaz and Stern, *supra* note 7, p. 112.

145 Cook, *supra* note 120, p. 129.

146 Mibenge, *supra* note 6, pp. 12–13. Engle, *supra* note 54, pp. 785–786.

problem, but also infuses how women themselves talk about GBV they have experienced.

For example, for one woman, Aya, who married a Syrian man after coming to Jordan, GBV has become part of her experience of marriage. Aya laughingly explained how her life changed after marriage: 'I loved him and so I took him! After love then the bear comes out!' This comment about the bear is an idiom – in Arabic, the word 'bear' (*dubb*) has a similar sound to 'love' (*ḥubb*). Aya is prohibited from leaving her home in Jordan unless her husband gives his permission – even to visit her mother, who lives a short walk away. Aya said: '[H]e likes to control me'. Her husband also finds other ways of regulating her behaviour, including confiscating her phone and threatening to remove WhatsApp – which makes it difficult for her to maintain social connections. Apart from this emotional GBV, Aya has also experienced physical violence from her husband on multiple occasions, including in front of his parents, which was particularly humiliating for her. However, she seemed to justify this behaviour, re-iterating the idea echoed by many women who were interviewed, that men are under pressure in Jordan and should not be bothered: 'If someone can't let it out on his wife, who is there for him to let it out on?' Through tears, as she recounted the many challenges she faces, Aya laughed, saying, 'But it's *naṣīb*. Every human being takes their *naṣīb* in this world. *Hamdu li'llāh* [praise be to God/thank God] for everything'. The concept of *naṣīb* refers to fate or destiny – the idea that whatever happens has been 'written' by God, therefore cannot be changed. *Naṣīb*, although originally in the Quran, is also cultural. In some cases, it can be mobilised by women themselves to attempt to justify the GBV they have endured.

The downplaying of 'everyday' GBV is also evident in the accounts of Eman. Eman married her cousin before the war and reflected on how her life changed after marriage: 'There is no freedom anymore. *Ya'nī* [it means], a girl's life is different from a woman's life'. Her husband has diabetes and also another disease that causes him to have seizures. Over multiple interviews, Eman attributed the physical violence she experienced in Syria and Jordan to his illnesses.

[B]ecause of his condition, his illness... he loses his temper because he is not able to control it. And most of the times he even... He even loses his temper with the neighbours! He argues with them and he is not even conscious of what he does... [E]ven when he loses his temper on the neighbours or argues with them, I go and apologise on his behalf and they say, 'No, it's fine we've gotten used to his condition. There is no problem'.

While Eman blames her husband's diseases for the GBV she experiences, her brothers blame what they refer to as her 'weak personality' for the GBV: 'They

tell me I am the one who allowed him to stay this way'. Her brothers physically fought with Eman's husband in Syria, and in Jordan have continued to support Eman, even urging her to take legal action against her husband after she was badly injured. In Jordan, Eman's husband's health has worsened, which means he cannot always work. She feels this has worsened the violence she has experienced.

Reviewing the accounts of Aya and Eman above, it may be easy to overly-simplify their GBV experiences and to suggest that they experienced GBV as a result of the pressures of displacement or disease. The idea that displacement triggers GBV is a common assertion in humanitarian narratives; the argument is that being unable to find work results in men's emasculation and men take out this frustration on their wives through violence.¹⁴⁷ It is similar to the argument about rape as a weapon of war that scholars like Meger have critiqued – the notion that war is an intervening event that triggers the rape of women.¹⁴⁸ Both these arguments, however, overlook the broader context of gender inequality. Having married her husband after coming to Jordan, it is difficult to know whether Aya would have still experienced GBV if they were not displaced. However, an argument could be made that the systematic nature of the GBV she experienced – restrictions to her mobility and relationships (including via social media), alongside emotional and physical violence – points to a broader pattern that illustrates her position in the household. In Eman's case, her husband was known to have a temper, which affected his relationship with Eman's brothers who would intervene on her behalf even before displacement; however, his actions were blamed on his illnesses.

The issue of who is to blame for GBV also emerges from the account of Dina, a young woman who lived in Homs before coming to Jordan. Dina discussed her experiences of suffering physical and emotional violence inflicted by her husband. This violence was not linked to displacement but began shortly after their marriage in Syria. As Dina recounted stories of violence, she appeared to justify her husband's behaviour. Like Aya, Dina explained these events by

¹⁴⁷ CARE Jordan, *Syrian Refugees in Urban Jordan. Baseline Assessment of Community-Identified Vulnerabilities among Syrian Refugees Living in Irbid, Madaba, Mufraq, and Zarqa*, 2013, p. 31, <http://www.care.org/sites/default/files/documents/EMER-JOR-2013-Syrian-Refugees-in-Urban-Jordan.pdf>, accessed 18 January 2016; Beatrix Buecher and James Rwampigi Aniyamuzaala, *Women, Work and War: Syrian Women and the Struggle to Survive Five Years of Conflict*, CARE, 2016, p. 14, <https://insights.careinternational.org.uk/publications/women-work-war-syrian-women-and-the-struggle-to-survive-five-years-of-conflict>, accessed 13 February 2018.

¹⁴⁸ Meger, *supra* note 7, p. 1.

referring to fate: ‘What can I do? This is my *naṣīb*’. Dina said: ‘I don’t blame him for anything that happened in Syria, because he has a kind heart...’.

In the accounts of GBV from Aya, Eman and Dina, what emerges is the fact that women themselves blame external factors – fate, the pressures faced by men and diseases – and receive messaging from others about how these factors, as well as their own behaviour or weakness, is the cause of GBV. This article argues that the consequence of prioritising more sensational narratives around war rape is that ‘everyday’ violence like that experienced by Aya, Eman and Dina is seen as less important – not only in the eyes of the media or humanitarian agencies – but by women themselves.

5 Conclusion

This article challenges simplistic and sensationalist humanitarian agency accounts of rape during conflict. It argues that as a result of international courts and tribunals narrowly framing rape during conflict, the hierarchy of rape over other kinds of GBV has been perpetuated not just in the law, but also by non-legal actors, including international humanitarian agencies. Importantly, sensationalist narratives have policy consequences. The humanitarian agency focus on rape, including the provocative language used to describe the apparently ‘widespread’ nature of rape, leads to other types of GBV slipping from focus.

In reality, the extent to which acts of sexual violence can be deemed as part of a systematic strategy during armed conflict, is not always clear. Despite the challenges in successfully prosecuting rape as a systematic strategy of war, the language of rape as a weapon of war is ubiquitous; the fulfilment of the legal criteria required for crimes against humanity and/or genocide is taken as a given.¹⁴⁹ The result of this legal construction being appropriated and popularised is that making this assertion requires little evidence:¹⁵⁰ it is dramatic and conceptually powerful enough to take flight on its own – with or without credible data or robust analysis.

Based on ethnographic accounts from Syrian women and men, this article draws attention to the importance of contextualising GBV. While less incendiary, other kinds of GBV may be just as insidious as rape, affecting women’s daily lives as well as causing them to normalise the GBV that they experience, framing it as caused by themselves or by external factors. This article repositions the causes of GBV as linked to unequal power, challenging the notion that

149 Baaz and Stern, *supra* note 7, p. 47.

150 *Ibid.*, p. 43.

displacement, war or other factors are root causes of GBV. This article therefore builds on existing scholarship about how the legal construction of rape as a weapon of war obscures the complex underpinnings to GBV. It highlights that GBV during conflict needs to be understood more carefully – outside of just the ‘spectacular testimonies’.¹⁵¹ Beyond sensationalist headlines and emotive language, there is a need to situate the GBV experiences of women during conflict, in order to better-understand the complexities, nuances and contradictions that may be present.¹⁵²

151 Anette Bringedal Houge and Kjersti Lohne, ‘End Impunity! Reducing Conflict-Related Sexual Violence to a Problem of Law: End Impunity!’, 51(4) *Law Soc. Rev.* (2017) 755–789, p. 776.

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