

Reining in Impunity: A People’s Tribunal for the Arab-Spring Gender-Based Crimes

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This Article examines the necessity for establishing a women’s tribunal to investigate allegedly committed gender-based crimes¹ during the Arab Spring, assist victims, and indict perpetrators as a step to bring them to justice. It argues that the lack of the international community’s political will, manifested in its failure to respond adequately to Arab-Spring gender-based crimes and bring perpetrators to justice, impedes access to justice for victims, encourages the culture of impunity, and leaves the war-torn Arab countries peace-building process open to the danger of collapse. Accordingly, it examines whether the peoples’ tribunals could be seen as a community justice system (collective justice or soft justice) and an alternative avenue for institutional classical justice and accountability.

Moreover, it underlines the legitimacy and effectiveness of these civil society independent institutions in raising awareness, contributing to the collection of evidence, and exposing the horrors of all forms of sexual violence, allegedly perpetrated by members of government agents, non-state actors, and paramilitaries against civilians in mass demonstrations and gatherings during uprisings against Arab authoritarian regimes since March 2011. As well, it qualitatively explores the role of peoples’ tribunals in delivering adequate social justice and redress to victims and eradicating the culture of impunity for these crimes. Furthermore, it outlines how this civil society institution would encourage victims of Arab-Spring sexual violence to break their silence and take a step forward to expose the repressive Arab regimes, which entailed actual immunity from superpowers, and to overcome barriers to justice that victims faced during and in the aftermath of the mass uprisings of the Arab-spring. Finally, it addresses the critical question of why establishing an Arab-Spring women’s tribunal is timely and imperative.

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1. For the purpose of this Article, the term “gender-based crimes” refers to crimes committed against individuals based on socially constructed norms of maleness and femaleness.

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I. INTRODUCTION

In the wake of the self-immolation of Mohamed Bouazizi on December 17, 2010, in the town of Sidi Bouzid Southern Tunisia, an intensive twenty-eight-day campaign of protesting demonstrations broke out, known as the Jasmine Revolution, and ended with the ousting of Zine El Abidine Ben Ali, a dictator who ruled Tunisia between 1987 and

2011.² This revolution was the spark that burst out mass revolutionary movements in several Arab countries, some of which were suppressed by counter-revolutions,³ and some are still scorching in Syria, Libya, Yemen, and Sudan.⁴

Conflict-related gender-based crimes,⁵ including rape and other forms of sexual violence, were endemic in the Arab-Spring movements,⁶ mainly perpetrated by governments' officials and paramilitaries,⁷ and to a lesser extent by insurgent groups.⁸ Both women and men were subjected to horrendous forms of conflict-related sexual violence, including severe invasions of their bodies.⁹ Abuses ranged from verbal abuse and forced nudity in public,¹⁰ invasive and punitive virginity tests¹¹ to gang-rape and

2. Gianni Del Panta, *Cross-Class and Cross-Ideological Convergences Over Time: Insights from the Tunisian and Egyptian Revolutionary Uprisings*, 55 *GOV'T & OPPOSITION* 634, 639 (2019); Kirsi Pauliina Kallio and Jouni Häkli, *Geosocial Lives in Topological Polis: Mohamed Bouazizi as a Political Agent*, 22 *GEOPOLITICS* 91, 91 (2017); MAHMOUD SAMI NABI, *MAKING THE TUNISIAN RESURGENCE* 2 (2019).

3. Hilmi M. Zawati, *Sectarian War in Syria Introduced New Gender-Based Crimes*, *HUFF. POST* (Feb. 16, 2016) https://www.huffpost.com/entry/sectarian-war-in-syria-in_b_9236606 [hereinafter *Sectarian War in Syria*]; Hilmi M. Zawati, President, Int'l Legal Advoc. Forum, *Sexual Violence as a Weapon of War in the Ongoing Syrian Conflict: Testimony of Hilmi M. Zawati before the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development of the House of Commons, at the Parliament of Canada* (May 1, 2014) [hereinafter *Hilmi Zawati's Testimony*].

4. Hossam el-Hamalawy, *Revolution is a Process, and It's Far from Over*, *LIBYA TRIBUNE* (Mar. 7, 2019), <http://en.minbarlibya.org/2019/03/07/revolution-is-a-process-and-its-far-from-over/>.

5. For the purpose of this Article, the term "gender-based crimes" refers to crimes committed against individuals based on socially constructed norms of maleness and femaleness.

6. SEMA NASSAR, *DETENTION OF WOMEN IN SYRIA: A WEAPON OF WAR AND TERROR* 26 (2017) [hereinafter *DETENTION OF WOMEN IN SYRIA*].

7. Lauren Wolfe, *The Ultimate Assault: Charting Syria's Use of Rape to Terrorize Its People*, *ATLANTIC MONTHLY* (July 11, 2012), <https://www.theatlantic.com/international/archive/2012/07/the-ultimate-assault-charting-syrias-use-of-rape-to-terrorize-its-people/259669/>.

8. Ariel I. Ahram, *Sexual Violence, Competitive State Building, and Islamic State in Iraq and Syria*, 13 *J. INTERVENTION & STATEBUILDING* 180, 180 (2019); Dima Salih, *Through the Lens of ISIS: The Portrayal of the Female Enemy and Sexual Violence in ISIS Online Magazines Dabiq and Rumiyah*, 59 (Jan. 2019) (M.A. thesis, University of Helsinki) (on file with University of Helsinki).

9. Joya Taft-Dick, *Syrian Civil War: Sexual Violence Against Men and Women is Widespread in Conflict*, *POLICYMIC* (Feb. 4, 2012), <https://www.mic.com/articles/24800/syrian-civil-war-sexual-violence-against-men-and-women-is-widespread-in-conflict>.

10. A recent report by the *New York Times* found that a dozen Egyptian women were subjected to military strip searches. They were sexually assaulted by officials in police stations, prisons, and hospitals. Violations include forced nudity in public, humiliating virginity tests and invasive anal exams. See Mona El-Naggar, Yousur Al-Hlou & Aliza Aufrichtig, *In Egypt, Powerless and Sexually Abused by Agents of the State*, *N.Y. TIMES* (July 9, 2021), at A1; see also Deborah Harrold, *Women's Space After the Arab Spring: Can We Generalize?*, in *ARAB WOMEN'S ACTIVISM AND SOCIO-POLITICAL TRANSFORMATION: UNFINISHED GENDERED*

other unprecedented gender-related crimes in Libya and Syria during the ongoing civil wars since 2011.¹² Virginity testing is a form of gender-based violence, discrimination, and sexual humiliation conducted on young Egyptian women activists in Tahrir Square after the January 25, 2011 revolution.¹³

In the light of different forms of insurmountable barriers to justice, lack of the international community's political will to bring perpetrators to justice,¹⁴ and failure of formal national and international judicial

REVOLUTIONS, 89, 89 (S. Khamis & A. Mili, eds., 2017) [hereinafter *Women's Space After the Arab Spring*]; Egypt: Prisons Employ "Systemic Sexual Violence" Against Detainees: A Report Documents Over 600 Incidents of Sexual Violence Against Detainees and Their Loved Ones Between 2015 and 2022, MIDDLE EAST EYE (Apr. 8, 2022, 6:40 UTC) <https://www.middleeasteye.net/news/allegations-systemic-rape-egypts-prisons>; Stephanie Chaban, *Addressing Violence Against Women Through Legislative Reform in States Transitioning from the Arab Spring*, in GENDER IN HUM. RTS. & TRANSITIONAL JUST., 113, 118 (J. Idriss Lahai & K. Moyo eds., 2018) [hereinafter *Addressing Violence Against Women*].

11. *Women's Space After the Arab Spring*, supra note 10; *Addressing Violence Against Women*, supra note 10.

12. Hamida Ghafour, *Rape "Prevalent" in Syria Conflict*, TORONTO STAR (Jan. 14, 2013), https://www.thestar.com/news/world/2013/01/14/rape_prevalent_in_syria_conflict.html [hereinafter *Rape Prevalent*]; Hamida Ghafour, *Syrian Women Who Fled to Jordan Tell of Horrific Rapes Back Home*, STAR (Apr. 6, 2013), https://www.thestar.com/news/world/2013/04/06/syrian_women_who_fled_to_jordan_tell_of_horrific_rapes_back_home.html; Hilmi M. Zawati, *Hidden Deaths of Libyan Rape Survivors: Rape Casualties Should Be Considered Wounded Combatants Rather than Mere Victims of Sexual Violence*, NAT'L L.J. (2012) [hereinafter *Hidden Deaths of Libyan Rape Survivors*]; Hilmi M. Zawati, *The Challenge of Prosecuting Conflict-Related Gender-Based Crimes under Libyan Transitional Justice*, 10 J. INT'L L. & INT'L REL. 44, 48 (2014) [hereinafter *Prosecuting Conflict-Related Gender-Based Crimes*]; Karen Leigh, *Rape in Libya: The Crime that Dare Not Speak its Name*, TIME (June 9, 2011), <http://content.time.com/time/world/article/0,8599,2076775,00.html>; Megan Bradley, *Women Fleeing Syrian Rape Hell*, DAILY BEAST (Mar. 8, 2013), <https://www.thedailybeast.com/women-fleeing-syrian-rape-hell>; Michelle Faul, *Hundreds of Women Raped by Gaddafi Militia*, INDEP. (May 29, 2011), <https://www.independent.co.uk/news/world/africa/hundreds-of-women-raped-by-gaddafi-militia-2290609.html>.

13. Anne Song, *Political Revolutions and Women's Progress: Why the Egyptian Arab Spring Failed to Deliver on the Promises of Women's Rights*, 6 (May 18, 2018) (M.A. thesis, University of San Francisco) (on file with University of San Francisco); *Egypt: A Year After 'Virginity Tests,' Women Victims of Army Violence Still Seek Justice*, AMNESTY INT'L (Mar. 9, 2012, 12:00 AM), <https://www.amnesty.org/en/latest/news/2012/03/egypt-year-after-virginity-tests-women-victims-army-violence-still-seek-justice/> [hereinafter *A Year After Virginity Tests*].

14. For example, since the beginning of the Syrian crisis in March 2011, Russia and China have vetoed several UN Security Council resolutions on Syria, preventing numerous attempts by the UN Security Council to take a decision that might have put an end to the war crimes and crimes against humanity perpetrated against Syrian civilians by state agents. See Hilmi M. Zawati, *Geneva III: The Stillborn Conference and the Endemic Failure of the International Community*, HUFF. POST (Feb. 6, 2016, 12:40 PM), https://www.huffpost.com/entry/geneva-iii-the-stillborn-conference-and-the-endemic-failure-of-the-international-community_b_9176804.

bodies to provide gender justice to the victims and survivors of the Arab-Spring gender-based violence, this Article tackles two overlapping objectives. First, it examines the feasibility of establishing a women's tribunal as a people's informal mechanism to bring justice for victims away from formal state judicial institutions.¹⁵ Second, it determines whether this tribunal could be seen as an alternative avenue for gender justice and accountability.¹⁶

In this regard, this inquiry underlines the legitimacy and effectiveness of these civil society independent institutions in raising awareness, contributing to the collection of evidence, and exposing the horrors of all forms of sexual violence, allegedly perpetrated by members of government agencies, non-state actors, and paramilitaries against civilians in mass demonstrations and gatherings during uprisings against Arab authoritarian regimes since March 2011. In addition, it qualitatively explores the role of these institutions in delivering adequate social justice and redress to victims and eradicating the culture of impunity surrounding Arab-Spring's gender-based crimes. It also outlines how these institutions would encourage victims of Arab-Spring sexual violence to break their silence, take a step forward to expose the repressive Arab regimes, which entailed actual immunity from superpowers, and overcome barriers to justice that victims faced during and in the aftermath of the mass uprisings of the Arab Spring.

This Article argues that the lack of the international community's political will, manifested in its failure to respond adequately to Arab-Spring gender-based crimes and bring perpetrators to justice, impedes access to justice for victims, encourages the culture of impunity, and leaves the war-torn Arab countries peace-building process open to the danger of collapse. Accordingly, this Article takes the Arab-Spring gender-based crimes as a case study and the peoples' tribunals as a

15. Fleming Terrell, *Unofficial Accountability: A Proposal for the Permanent Women's Tribunal on Sexual Violence in Armed Conflict*, 15 TEX. J. WOMEN & L. 107, 118 (2005).

16. Failure to confront war crimes and crimes against humanity committed by the Syrian regime with diplomatic negotiations is a black mark against the international community, which should be acting to stop mass atrocities rather than encouraging a culture of impunity. The international community should enforce the law under Chapter VII of the United Nations (UN) Charter to protect civilians and bring perpetrators to justice. See U.N. Secretary-General, *Sexual Violence in Conflict*, 9, U.N. Doc. A/67/792-S/2013/149, (Mar. 14, 2013); Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, Human Rights Council, 25, U.N. Doc. A/HRC/23/58 (June 4, 2013) [hereinafter UN Independent Commission of Inquiry]; Press Release, Security Council, Security Council Fails to Adopt Draft Resolution Condemning Syria's Crackdown on Anti-Government Protestors, Owing to Veto by Russian Federation and China, 1, U.N. Press Release SC/10403 (Oct. 4, 2011).

potential effective civil mechanism for accountability and an alternative avenue to deliver gender justice to victims and survivors.

In addressing the above query, this Article begins by considering the peoples' tribunals' evolution as a civil society mechanism to deal with the above crimes and then underlines different patterns of conflict-related gender-based crimes, including those newly invented during the ongoing Syrian sectarian war. It also explores barriers to justice that denied the victims' rights to seeking justice and consequently flourished the impunity culture for such heinous crimes. Moreover, it examines these barriers within its socio-political and judicial contexts and brings to light the disastrous impact of this denial on victims and their societies. Furthermore, it critically investigates peoples' tribunals' significance as an informal alternative mechanism to address the Arab-Spring gender-based violence victims and survivors' needs.

Finally, this Article concludes by elucidating the above overlapping themes' findings and answers the legitimate question of whether initiation of a women's tribunal is timely and imperative to serve as an informal mechanism and alternative avenue to deliver gender justice to victims and survivors of the Arab-Spring gender-based violence.

II. PEOPLES' TRIBUNALS: SYMBOLIC JUSTICE OR EFFECTIVE CIVIL MECHANISMS OF ACCOUNTABILITY?

A. *General Overview*

As a quest for justice, peoples' tribunals are popular bodies created by civil society to discuss crimes that formal judicial institutions have never recognized or addressed under the national or supranational criminal justice system.¹⁷ They aim to eradicate the culture of impunity, call for bringing perpetrators to justice, and provide redress to victims and survivors.¹⁸ In other words, they respond to the international community's lack of political will and states' failures to hold perpetrators accountable,¹⁹ acknowledge the role of the civil society in building social solidarity, investigate and document overlooked experiences, and

17. Gabrielle Simm, *The Paris Peoples' Tribunal and the Istanbul Trials: Archives of the Armenian Genocide*, 29 LEIDEN J. INT'L L. 245, 248 (2016).

18. *Id.* at 266.

19. Craig Borowiak, *The World Tribunal on Iraq: Citizens' Tribunals and the Struggle for Accountability*, 30 NEW POL. SCI. 161, 161 (2008).

emphasize the civil society's part in the development of the international criminal justice system.²⁰

Over the past few decades, dozens of peoples' tribunals were convened worldwide, away from the states' formal structures, to investigate official violations of the norms of international humanitarian and human rights law allegedly committed by governments' agents.²¹ As documented by closely-related studies, these tribunals' establishment goes back to the Bertrand Russell Tribunals held between the late 1960s and mid-1970s.²² The first Russell Tribunal, supported by Jean-Paul Sartre and other prominent like-minded intellectuals, was held in Sweden and Denmark in 1967 to investigate and hold the United States and its allies accountable for war crimes and other violations of the norms of international humanitarian and human rights law and *jus cogens* prohibitions during the war in Vietnam.²³ The tribunal addressed significant questions regarding the *jus ad bellum* and *jus in bello*.²⁴

Nonetheless, Russell Tribunals were followed by wide-ranging types of peoples' tribunals, including the Permanent People's Tribunal founded in Bologna in June 1979.²⁵ The Women's International Tribunal on Japanese Military Sexual Slavery convened in Tokyo in December 2000 (Tokyo Tribunal),²⁶ the World Tribunal on Iraq in 2003,²⁷ the Court of Conscience in Guatemala in March 2010,²⁸ and the Women's Court in Sarajevo in May 2015.²⁹ Some of these tribunals, particularly women's tribunals on conflict-related sexual violence, will be the subject of analysis in this section. However, despite differences between these tribunals regarding their forms, objectives, and procedures, they share

20. Gabrielle Simm & Andrew Byrnes, *International Peoples' Tribunals in Asia: Political Theatre, Juridical Farce, or Meaningful Intervention?*, 4 ASIAN J. INT'L L. 103, 103 (2014) [hereinafter Byrnes & Simm, *Political Theater*].

21. Andrew Byrnes & Gabrielle Simm, *Peoples' Tribunals, International Law and the Use of Force*, 36 UNIV. NEW SOUTH WALES L.J. 711, 713 (2013) [hereinafter Byrnes & Simm, *Use of Force*].

22. Andrew Byrnes & Gabrielle Simm, *International Peoples' Tribunals: Their Nature, Practice and Significance*, in PEOPLE'S TRIBUNALS & INT'L L. 11, 11 (2018) [hereinafter Byrnes & Simm, *Nature, Practice, and Significance*]; Terrell, *supra* note 15.

23. Sara De Vido, *Women's Tribunals to Counter Impunity and Forgetfulness: Why Are They Relevant for International Law?*, 33 DEPORTATE, ESULI, PROFUGHE 145, 149 (2017).

24. Byrnes & Simm, *Use of Force*, *supra* note 21, at 726.

25. Byrnes & Simm, *Nature, Practice, and Significance*, *supra* note 22; Christine Chinkin, *People's Tribunals: Legitimate or Rough Justice*, 24 WINDSOR Y.B. ACCESS TO JUST. 201, 211 (2006).

26. Vido, *supra* note 23, at 154.

27. Chinkin, *supra* note 25.

28. Vido, *supra* note 23, at 157.

29. *Id.* at 160.

many standard features, goals, and substantial limitations. This may include: (a) responding to people's needs when national and international judicial systems do not adequately address them;³⁰ (b) raising moral consciousness to overcome the failure of national and international mechanisms of accountability;³¹ (c) drawing heavily on the truth-telling process vs. state's authority and power,³² and (d) lacking the capacity to offer guarantees of a due process similar to those offered in official judicial bodies.³³ However, the following discussion explores peoples' tribunals' evolution, which tackled conflict-related crimes of sexual violence in the past three decades. It also underlines their significance, legitimacy, and shortcomings as a quest for justice and a tool for confronting impunity and addressing wartime sexual violence victims and survivors' needs.

B. Were Conflict-Related Women's Tribunals Legitimate?

As it has already been noted at the outset of this analysis, the main idea of launching peoples' tribunals, including women's tribunals, is based on filling significant gaps in the official accountability system, manifested in the failure of local and international judicial systems to deter states' gender-based crimes, bring defendants to justice, and provide appropriate and adequate redress to victims and survivors.³⁴ While severe criticism was leveled at these tribunals regarding their ineffectiveness, bias, lack of legal authorization, lack of due process in its official format, and non-binding decisions,³⁵ one may wonder about the legitimacy of these tribunals.³⁶

Drawing on the Women's International War Crimes Tribunal's experience on Japan's Military Sexual Slavery, which was not in compliance with the standards of relevant national or international judicial bodies, Christine Chinkin maintains that the latter sought to overcome its lack of formal legitimacy through different devices.³⁷ One of them is the tribunal prosecutors' claim that their work is a continuation of what had been left undone at the International Military Tribunal of the Far East (IMTFE), presented in their indictment of the persons who were

30. Byrnes & Simm, *Political Theater*, *supra* note 20, at 124.

31. Chinkin, *supra* note 25.

32. *Id.* at 212.

33. Borowiak, *supra* note 19.

34. Terrell, *supra* note 15.

35. *Id.*

36. Byrnes & Simm, *Nature, Practice, and Significance*, *supra* note 22.

37. Chinkin, *supra* note 25, at 215.

already convicted at the IMTFE.³⁸ This strategy increased the tribunal's credibility and attempted to give it a foothold in the international judicial forum to prosecute sexual slavery as a war crime and a crime against humanity.³⁹

Furthermore, the tribunal advanced its formality by considering reports issued by the United Nations' commissions and agencies, abiding by formal courtroom procedures associated with state judicial legitimacy, and inviting a broad spectrum of renowned public figures, including eminent legal scholars, international human rights lawyers, legislators, and former actors in the international justice system to serve as judges and prosecutors.⁴⁰ Moreover, the tribunal examined incredible personal testimonies and delivered a detailed and well-documented decision.⁴¹ Further, what adds to the credibility of international women's tribunals and reinforces their legitimacy is the moral or socio-pedagogical influence of their decisions, as long as they hold their sessions in an open-access environment, attended by a variety of public audiences.⁴² One of the most specific and significant functions of the tribunals is the socio-pedagogical influence of their decisions on the involved society and the entire international community. It communicates an appropriate message to the defendant and conveys educative and deterrent information to the public.⁴³

Nonetheless, despite state challenges and criticism that could be inflicted on international women's tribunals regarding their legitimacy and authority, they are still capable of playing a significant role in providing a place for expression and validation of claims that the formal system has failed to provide. They also provide litigants who have not found a place in state-sponsored judicial institutions an opportunity to examine their claims in light of international law.⁴⁴ As Richard Falk asserts, although states do not recognize these tribunals as legal bodies,

38. *Id.*

39. *Id.*

40. *Id.* at 216.

41. For more on the concept of legitimacy standards in the international community, see Thomas Franck, *Legitimacy in the International System*, 82 AM. J. INT'L L. 705, 710 (1988); Chinkin, *supra* note 25, at 216.

42. Chinkin, *supra* note 25, at 220.

43. HILMI M. ZAWATI, FAIR LABELLING AND THE DILEMMA OF PROSECUTING GENDER-BASED CRIMES AT THE INTERNATIONAL CRIMINAL TRIBUNALS 31 (2015) [hereinafter FAIR LABELLING]; Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 AM. J. INT'L L. 7, 13 (2001) [hereinafter *Beyond Impunity*].

44. Byrnes & Simm, *Use of Force*, *supra* note 21 at 713.

they are still legitimate in responding to massive crimes committed by officials who enjoy state immunity and live at large.⁴⁵

C. *Women's Tribunals on Conflict-Related Crimes of Sexual Violence*

As early as the first reports of the systematic mass rape of mainly Bosnian Muslim women in the summer of 1992,⁴⁶ feminist legal scholars, individually or collectively through women's human rights institutions, played a significant role in calling for criminalizing gender-based crimes in international legal instruments.⁴⁷ The infliction of rape and other forms of gender-based crimes on a massive scale as an integral part of ethnic armed conflicts during the 1990s—leaving thousands of physically and psychologically devastated women—surfaced these crimes and brought them into the international legal arena and to those concerned with crimes against women.⁴⁸ Since that time, the international criminal justice system has achieved tremendous progress by establishing several international criminal judicial bodies.⁴⁹

Notwithstanding these remarkable accomplishments, however, conflict-related gender-based crimes were, and still are, unfairly and inadequately addressed in the statutory laws and jurisprudence of the international criminal tribunals,⁵⁰ while genocidal rape and sexual terrorism have been committed with impunity. Although these crimes have received unprecedented attention in international criminal law since World War II, the international criminal tribunals have largely failed to recognize and prosecute these crimes on an equal footing with other

45. *Id.* at 726.

46. Alexandra Stiglmayer, *The War in the Former Yugoslavia, in MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZGOVINA* 1, 25 (1994).

47. FAIR LABELLING, *supra* note 43, at 89.

48. Charlotte Lindsey, *Women and War: An Overview*, 839 INT'L REV. RED CROSS 561, 565 (2000); Lauren Gilbert, *Rights, Refugee Women and Reproductive Health*, 44 AM. U. L. REV. 1213, 1224 (1995); U.N. High Comm'r for Refugees [UNHCR] Sexual Violence Against Refugees: Guidelines on Prevention and Response, ¶ 1.5 (1995), available at <https://www.unhcr.org/publications/operations/3b9cc26c4/sexual-violence-against-refugees-guidelines-prevention-response-unhcr.html>; Vesna Nikolić-Ristanović, *Refugee Women in Serbia: Invisible Victims of War in the Former Yugoslavia*, 73 FEMINIST REV. 104, 109 (2003).

49. Specifically, the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court (ICC), and the Special Court for Sierra Leone (SCSL). Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, 37 ¶ 1 [hereinafter Rome Statute]; Statute of the International Criminal Tribunal for the Former Yugoslavia, United Nations SCOR, 48th Sess., 3175 Annex, at 40, U.N. Doc. S/25704 pmbl, May 3, 1993, (codified as amended at Security Council Resolution 1481) [hereinafter Statute of the ICTY]; S.C. Res. 955, annex, 3 (Nov. 8, 1994) [hereinafter Statute of the ICTR]; S.C. Res. 1315, pmbl. (June 3, 2002) [hereinafter Statute of the SCSL].

50. FAIR LABELLING, *supra* note 43, at 17.

serious crimes.⁵¹ Many of these crimes were acquitted or withdrawn from the court during plea bargaining or charge exchanges,⁵² as plea bargaining has become a staple commodity of international criminal law.⁵³

Moreover, the tribunals failed to deal with gender-sensitive matters, whether at the investigation or the trial stage.⁵⁴ The lack of professional female investigators made many rape survivors refrain from coming forward to talk or complain, adversely affecting the tribunals' ability to fulfill their mandate as a result, prosecute gender-based crimes, and bring justice to victims.⁵⁵ Provocative questions either by poorly trained investigators at the pre-trial stage or by defense counsel in the trial process—particularly if the witnesses received psychological counseling before trial—retraumatized them and resulted in inconsistent testimonies.⁵⁶

Considering the successive failures of national and international judicial bodies to provide appropriate and adequate justice to victims and survivors of conflict-related sexual violence, feminist legal scholars and activists declared dissatisfaction with the official judicial bodies' gender justice.⁵⁷ They sought quasi-legal initiatives, although it is informal. Their central aim was to pressure the international community to meet its *jus cogens* prohibitions, prosecute perpetrators of these atrocious crimes and bring them to justice.⁵⁸ For this purpose, women have launched several women's courts since the early 1990s.⁵⁹ The most famous and relevant ones to the subject matter of this inquiry are the Women's International Tribunal on Japanese Military Sexual Slavery convened in Tokyo in December 2000 (Tokyo Women's Tribunal)⁶⁰ and the Women's

51. *Id.* at 134.

52. *Id.*

53. Beth Van Schaack, *Obstacles on the Road to Gender Justice: The International Criminal Tribunal for Rwanda as Object Lesson*, 17 AM. UNIV. J. GENDER, SOC. POL'Y, & L. 361, 396 (2009); Doris Buss, *Rethinking "Rape as a Weapon of War,"* 17 FEMINIST LEGAL STUD. 145, 151 (2009).

54. Anne M. Hoefgen, *There Will Be No Justice Unless Women are Part of the Justice: Rape in Bosnia, the ICTY and Gender Sensitive Prosecution*, 14 WIS. WOMEN'S L.J. 155, 168 (1999); Valerie Oosterveld, *Gender-Sensitive Justice and the International Criminal Tribunal for Rwanda: Lessons Learned for the International Criminal Court*, 12 NEW ENG. J. INT'L & COMP. L. 119, 121, 125 (2005).

55. FAIR LABELLING, *supra* note 43, at 115.

56. *Id.*

57. *Id.* at 117.

58. *Id.* at 121.

59. *Id.* at 142.

60. Chinkin, *supra* note 43, at 202.

Court in Sarajevo: A Feminist Approach to Justice in May 2015 (Sarajevo Women's Court).⁶¹ However, the purposes of these women's courts were to address the needs of victims through a "feminist approach to justice," end masculine monopoly of the interpretation and application of the law, counter and eradicate the culture of impunity for these crimes, and document and call attention to conflict-related sexual crimes perpetrated against women.⁶² Nonetheless, this analysis offers some reflections on these two women's tribunals through the above discussion's lens and explores their role in highlighting the victims' calamity and restore international gender justice.

1. Women's International Tribunal on Japanese Military Sexual Slavery

The establishment of the Tokyo Women's Tribunal was preceded by several overwhelmed failures on the part of the Japanese government and the international community.⁶³ This includes (a) the international community's failure to incorporate wartime rape and sexual slavery as crimes of war and crimes against humanity in the Charter of the IMT, despite evidence without reasonable doubt that these crimes were perpetrated on a large scale by the Japanese Imperial Army in the occupied territories;⁶⁴ (b) the global silence on the latter's conscription of more than 200,000 Asian women and girls, mainly from China, East Timor, Indonesia, Malaysia, North and South of Korea, Philippines, Taiwan, as well as Japan, for sexual slavery, known as comfort women, during World War II;⁶⁵ (c) the Japanese government refusal to apologize to victims and its denial to accept the legal responsibility for these crimes,⁶⁶ and (d) the failure of national courts to provide adequate official mechanisms of accountability⁶⁷ and compensation for victims.⁶⁸ These

61. Janine Natalya Clark, *Transitional Justice as Recognition: An Analysis of the Women's Court in Sarajevo*, 10 INT'L J. TRANSITIONAL JUST. 67, 72 (2016).

62. Vido, *supra* note 23, at 149, 153.

63. Nicola Henry, *Memory of an Injustice: The Comfort Women and the Legacy of the Tokyo Trial*, 37 ASIAN STUD. REV. 362, 373 (2013).

64. *Id.* at 367; Alexis Dudden, *We Came to Tell the Truth: Reflections on the Tokyo Women's Tribunal*, 33 CRITICAL ASIAN STUD. 591, 591 (2001).

65. Chinkin, *supra* note 25, at 202; Vido, *supra* note 23, at 155.

66. Henry, *supra* note 63, at 370; Shontelle Grimberg, *Women Without a Voice: Japan's Silencing of Its Comfort Women and the Redemptive Future the Tokyo Women's Tribunal Offers to the Gendered and Colonial History of International Law*, 2 N.Z. WOMEN'S L.J. 207, 225 (2018).

67. Terrell, *supra* note 15, at 113.

failures cast a heavy shadow of frustration on both surviving victims and women's rights groups in Asia and worldwide and set the stage for establishing this tribunal.⁶⁹

Portraying the Tribunal as “the moral authority” of the peoples of Asia,⁷⁰ judges and prosecutors had the “power to push the law to the limits of its humanity.”⁷¹ The organizers aimed at ending the cycle of impunity for wartime sexual violence against women⁷² and holding the Japanese Emperor Hirohito and some high-ranking Japanese military commanders and state political executives accountable for systematic and widespread rape, sexual slavery, forced abortion, and other forms of conflict-related sexual violence as crimes against humanity, perpetrated by the Japanese military during the Asia-Pacific War in the 1930s and 1940s.⁷³

It is worth mentioning that the Tribunal had contributed to the procedure of prosecuting and adjudicating conflict-related gender-based crimes in many ways. It provided a meaningful approach to gender-sensitive justice by recruiting an internationally accredited panel of female judges and prominent female prosecutors.⁷⁴ Moreover, the Tribunal handled the victims' cases with special care and respect that restored their dignity and right to justice, which was denied for many years.⁷⁵ It also influenced the eradication of the culture of impunity for crimes perpetrated against women in armed conflict by bringing charges

68. In 1991, comfort women from different Asian-Pacific countries filed ten cases before Japanese national courts, alleging the responsibility of the Japanese government for the rape and sexual slavery, conducted by the Japanese Imperial Army during its occupation of the victims' countries, and asked for apologies and reparations. All cases were dismissed except one case at the Tokyo District Court, which urged the government to think about the possibility of providing redress to victims. However, the High Court had reversed the decision in 2005. *See id.* at 124; Vido, *supra* note 23, at 159.

69. Chinkin, *supra* note 25, at 207.

70. In this respect, Christine Chinkin, international lawyer, and one of the Tribunal judges provides that “when States fail to exercise their obligations to ensure justice, civil society can and should step in. To ignore violative conduct is to invite its repetition and sustain a culture of impunity.” *See* Christine Chinkin, *Editorial Comments: Women's International Tribunal on Japanese Military Sexual Slavery*, 95 AM. J. INT'L L. 335, 339 (2001).

71. Dudden, *supra* note 64.

72. Y. Matsui, *Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society*, 19 E. ASIA 119, 120 (2001).

73. Christine Chinkin, *Toward the Tokyo Tribunal 2000: A Brief History*, WOMEN'S CAUCUS FOR GENDER JUST. (Jan. 19, 2021), <http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/chinkin.html>.

74. *Id.*

75. *Id.*

against both individuals, including the head of the state and states at an international forum.⁷⁶ Furthermore, it proceeded as a people's tribunal and acted when sovereign states utterly failed to bring perpetrators to justice and address the victims' needs.⁷⁷

2. Women's Court in Sarajevo: A Feminist Approach to Justice

Frustrated with the constant failure of the ICTY to provide adequate gender justice for thousands of women, who were systematically drafted into all forms of sexual violence during the 1990s dissolution war of the former Yugoslavia,⁷⁸ feminist activists and other civil society actors⁷⁹ sought to find an alternative path to address the needs of the perpetrated women. They launched the first-ever people's court in Europe to address wartime rape and other forms of sexual violence, *inter alia*, other gender-based crimes since the International Tribunal on Crimes against Women took place in Brussels on March 4-8, 1976.⁸⁰

Conceptualizing the feminist approach to transitional justice as a substantial dimension of justice as recognition⁸¹ has portrayed the Court as a victim-centered forum.⁸² This was exemplified in offering women

76. *Id.*

77. *Id.*

78. Nicola Henry, *Civil Society and Gender-Based Violence: Expanding the Horizons of Transitional Justice*, 42 *AUSTL. FEMINIST L.J.* 119, 127 (2016); OLIVERA SIMIĆ, *SILENCED VICTIMS OF WARTIME SEXUAL VIOLENCE* (2018).

79. The organizers of the Court include the following feminist networks: Cure and Mothers of Srebrenica and Žepa from Bosnia Herzegovina, the Center for Women Studies and the Center for Women Victims of the War from Croatia, the Women's Network from Kosovo, the Council for Gender Equality from Macedonia, Anima from Montenegro, the Women in Black and the Center for Women Studies from Serbia, and the Women's Lobby from Slovenia. See Caterina Bonora & Daniela Lai, *Dealing with the Past Through Feminism*, OSSERVATORIO BALCANIE CAUCASO TRANSEUROPA (May 2015), <https://www.balcanicaucaso.org/eng/Areas/Bosnia-Herzegovina/Dealing-with-the-past-through-feminism-161645>; *Rules of the Women's Court*, WOMEN'S COURT FEMINIST APPROACH TO JUSTICE, ¶¶ 9, 11 (Jan. 11, 2021), https://www.zenskisud.org/en/pdf/RULES_Womens_Court.pdf; Vido, *supra* note 23, at 160.

80. Diana E.H. Russell, *Report on the International Tribunal on Crimes Against Women*, 2 *FRONTIERS: A.J. WOMEN'S STUD.* 1, 1 (1977).

81. In this respect, Staša S Zajović offers some reflection on the feminist approach to justice. She asserts this it has emerged from the fact that the promoters of the Court were women activists from feminist organizations, adopting feminist principles of work, based on their understanding of feminist theories of justice. See Staša Zajović, *The Women's Court—A Feminist Approach to Justice: Review of the Process of Organizing of the Women's Court*, WOMEN'S CT. FEMINIST APPROACH TO JUST. ¶¶ 7, 12 (2015), http://www.zenskisud.org/en/pdf/2015/9_sintesi_libro.pdf.

82. Annika Björkdahland & Johanna Mannergren Selimovic, *Feminist Ethnographic Research: Excavating Narratives of Wartime Rape*, in *ETHNOGRAPHIC PEACE RSCH.: APPROACHES AND TENSIONS* 43, 58 (G. Millar, ed. 2018); Clark, *supra* note 61, at 72; Rules of the Women's Court, *supra* note 79, ¶1.

survivors a public platform to speak freely and without interruption about their shattered lives and suffering, whether during the 1990s breakup of the former Yugoslavia or peacetime. Considering that women are usually marginalized during the transitional justice process, the Court intended to empower women by making their voices heard to break the impunity cycle, prevent future crimes, silence, and forgetfulness.⁸³ The Court also envisioned to document victims' testimonies and appeal to judicial institutions to punish perpetrators.⁸⁴ Accordingly, the Court's intention was not to prosecute individuals or deliver legal judgments but to empower women and increase public awareness.⁸⁵ On the other hand, the Judicial Council of the Court has proclaimed preliminary recommendations,⁸⁶ while the conclusive verdict has not yet been released.⁸⁷

However, at the conclusion of the sessions of the Court, the Judicial Council issued several preliminary decisions and recommendations, the most important are⁸⁸ recording the painful history presented by witnesses and making it available to the public in the countries of the former Yugoslavia and worldwide and calling upon the concerned governments' responsibility of addressing women victims' needs adequately by providing them with reparations, ending impunity, and bringing perpetrators to justice.⁸⁹

D. Concluding Remarks

Towards this end, a careful examination of the above accounts shows that women's courts were initiatives with different undertakings from those tackled by traditional judicial procedures. Women's courts never sought to be an alternative to the official judiciary systems but a supplement and complementary to them.⁹⁰ Moreover, women's courts managed to fill in some of the transitional justice system gaps by offering women victims adequate gender-sensitive justice and providing them

83. Clark, *supra* note 61, at 72.

84. *Id.* at 72-73; Rules of the Women's Court *supra* note 79 ¶8; Björkdahland, *supra* note 82.

85. SIMIĆ, *supra* note 78.

86. *Women's Court: Preliminary Decisions and Recommendations*, RECOM RECONCILIATION NETWORK (May 9, 2015), <https://www.recom.link/en/womens-court-preliminary-decisions-and-recommendations/>.

87. SIMIĆ, *supra* note 78.

88. *Women's Court*, *supra* note 86.

89. *Id.*

90. Dasa Gordana Duhacek, *The Women's Court: A Feminist Approach to In/Justice*, 22 EUR. J. WOMEN'S STUD. 159, 160 (2015).

with an open-access platform to speak out about their experiences without interruption.⁹¹ The courts invented a parallel redress by advocating justice as recognition.

Nonetheless, through the above discussion's lens, one may argue about the effectiveness of Women's Courts offering justice as recognition to victims of conflict-related gender-based crimes *vs.* legal justice offered by international and local judicial mechanisms. A closer look at both systems reveals that their core objective is to make justice and combat the culture of impunity,⁹² although they differ in how to achieve these goals.

Practically speaking, justice provided by domestic and international official courts is no different from that offered by peoples' tribunals and courts; both systems are moral, and their main objective is to recognize victims. However, the following analysis illustrates how people's courts often surpass official courts in bringing justice to victims: (a) broad definitions and ambiguity of gender-based crimes in international courts' statutes lead to inconsistent verdicts and punishments and constitute barriers to justice for victims and defendants alike.⁹³ For example, many isolated conflict-related gender-based crimes did not fall into the context of crimes against humanity and were not prosecuted as such, as this criterion is restricted to crimes systematically committed against a civilian population.⁹⁴ Accordingly, victims who are not classified as such will not achieve justice. (b) Many wartime rape and sexual violence charges diminished in number and quality—some of them by withdrawal for lack of evidence beyond a reasonable doubt⁹⁵ or dropped as a part of plea-bargaining deals with defendants who agreed to plead guilty for less

91. *Id.* at 161.

92. Clark, *supra* note 61, at 72.

93. FAIR LABELLING, *supra* note 43, at 123.

94. Article 7 of the Rome Statute limited crimes against humanity to crimes committed as part of a widespread or systematic attack directed against any civilian population. Rome Statute, *supra* note 49, ¶ 7.

95. See Prosecutor v. Juvénal Kajelijeli, ICTR-98-44A-T, Judgement and Sentence, International Criminal Tribunal for Rwanda, ¶ 908–25 (Dec. 1, 2003), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-98-44A/MS29988R0000541978.PDF>; Prosecutor v. Alfred Musema, ICTR-96-13-A, International Criminal Tribunal for Rwanda, Judgement and Sentence, ¶ 193-94 (Jan. 27, 2000), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-13/MS21028R0000532581.PDF>; Prosecutor v. Eliézer Niyitegeka, ICTR-96-14-T, International Criminal Tribunal for Rwanda, Judgement and Sentence, ¶¶ 457-458 (May 16, 2003), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-14/MS11729R0000540696.PDF>.

serious crimes to speed up the trials.⁹⁶ Even of those convicted, many did not complete their sentences and were released to practice their normal lives, while victims kept out of sight for fear of reprisals or fear of meeting their perpetrators, which causes them profound psychological pain.⁹⁷ (c) Condemnation of sexual crimes in international criminal tribunals was only within the terms and definitions set out in their statutory laws, which do not necessarily apply to many committed crimes.⁹⁸ Therefore, it promotes a culture of impunity for those crimes. (d) Although the people's courts' decisions are merely recommendations and not judgments executed by the power of law, they place considerable pressure on the authorities and force them to make decisions that bring justice to victims.⁹⁹ (e) The people's courts were established to fill a gap in the formal judicial system, which failed to bring justice to victims for political reasons or because it could not be accessed for financial, social, or psychological reasons related to the stigma associated with such crimes.¹⁰⁰ (f) In most cases in which sexual offenders were convicted, the punishment was limited to the perpetrator's incarceration, a small part of the expected justice.¹⁰¹ At the same time, victims remain isolated, in urgent need of medical counseling, and may require social, psychological, and financial care. On the other hand, civil society groups that organize people's courts provide most of these services to victims.¹⁰² (g) While the people's courts can call defendants, including the head of the state and the highest military ranks, local courts in some countries with universal jurisdiction¹⁰³ cannot prosecute perpetrators while remaining in power.¹⁰⁴ Finally, (h) when politics overrides justice, and

96. Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze, ICTR-99-52-T, International Criminal Tribunal for Rwanda, Judgement and Sentence, ¶ 520, 522 (Dec. 3, 2003), <https://ucr.irmct.org/legalref/cmsdocstore/public/english/judgement/notindexable/ictr-99-52/msc26797r0000541998.pdf>.

97. FAIR LABELLING, *supra* note 43, at 142.

98. *Id.*

99. Vido, *supra* note 23, at 160.

100. *Id.* at 170.

101. FAIR LABELLING, *supra* note 43, at 95.

102. Vido, *supra* note 23, at 171.

103. See Australia Foreign States Immunities Act, No. 196, § 42(7) Office of Parliamentary Counsel (1985); see also Canada State Immunity Act, R.S.C., c. S-18, § 3 Minister of Justice, (1985); Act on the Civil Jurisdiction of Japan with Respect to a Foreign State, Act No. 24, art. 4 (2009); South Africa Foreign States Immunities Act, GoN 2244, G. 7849, Act 87, Office of the Prime Minister (1981); State Immunity Act, United Kingdom, Chapter 33 § 14(3) (July 20, 1978); Foreign Sovereigns Immunity Act, 28 U.S.C. § 1330 (1976).

104. Arar v. Syria, O.T.C. 151, Court of Ontario, Superior Court of Justice, Judgement ¶ 32-34 (2005); Houshang Bouzari et al. v. Iran, O.T.C. 297, Court of Ontario, Superior Court of

controversial decisions are taken in some cases at international criminal courts,¹⁰⁵ people's courts make their recommendations impartially and without any political pressure.

III. ARAB-SPRING'S UNPARALLELED GENDER-BASED CRIMES

Although sexual violence during the Arab Spring took various forms and was committed for different purposes, perpetrators possessed the same goals: overpowering popular uprisings, humiliating protesters, and curbing their ambitions for freedom, democracy, and social justice. As this analysis reveals, Arab-Spring sexual violence was systematic, unusual, and unprecedented.¹⁰⁶ It ranged from forced nudity and virginity tests to gang-rape. They were committed as a tactic and strategic weapon

Justice, Judgement [2002] ¶ 87-90; Kazemi v. Islamic Republic of Iran, 2011 QCCS 196, Superior Court of Quebec, ¶ 2 (Jan. 25, 2011); Kazemi v. Islamic Republic of Iran, 2014 SCC 62, Supreme Court of Canada, ¶ 1 (2014).

105. See Hilmi M. Zawati, *Prosecuting International Core Crimes Under Libya's Transitional Justice: The Case of Abdullah Al-Senussi*, in JUSTICIABILITY OF HUM. RTS. L. DOMESTIC JURISDICTIONS 217, 218 (Alice Diver and Jacinta Miller, eds.) [hereinafter *Prosecuting International Core Crimes*]; Michele Tedeschi, *Complementarity in Practice: The ICC's Inconsistent Approach in the Gaddafi and Al-Senussi Admissibility Decisions*, 7 AMSTERDAM L.F. 76, 95 (2015); Prosecutor v. Saif Al-Islam Gaddafi & Abdullah Al-Senussi, ICC-01/11-01/11-344, Decision on the Admissibility of the Case Against Saif Al-Islam Gaddafi ¶ 216-17 (May 31, 2013).

106. See generally U.N. High Commissioner for Refugees, Detention in the Syrian Arab Republic: A Way Forward, Independent International Commission of Inquiry on the Syrian Arab Republic, ¶ 3, 4 (Mar. 8, 2018), https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/AWayForward_DetentionInSyria.pdf; Elizabeth Johansson-Nogués, *Gendering the Arab Spring? Rights and (in)Security of Tunisian, Egyptian and Libyan Women*, 44 SEC. DIALOGUE 393, 399 (2013) [hereinafter *Gendering the Arab Spring*]; Patrick Kingsley, *80 Sexual Assaults in One Day: The Other Story of Tahrir Square*, GUARDIAN (July 5, 2013); PETER LEVRANT, LOOKING THROUGH THE WINDOW DARKLY: A SNAPSHOT ANALYSIS OF RAPE IN SYRIA 9 (New York: Syrian Accountability Project, Syracuse Univ. College of Law, 2016) [hereinafter LOOKING THROUGH THE WINDOW DARKLY]; U.N. Secretary-General, *Conflict Related Sexual Violence*, ¶ 18-35, U.N. Doc. S/2019/280 (Mar. 29, 2019); U.N. Human Rights Council 37th Session Conference, *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*, ¶ 83-85, U.N. Doc. A/HRC/37/CRP.3 (Feb. 26-Mar. 23, 2018) [hereinafter *I Lost My Dignity*]; see generally Rep. of the S.C., at 8-12, U.N. Doc. S/2017/249 [hereinafter Report of the Secretary-General on Conflict-related Sexual Violence]; Hum. Rts. Watch, “*We Do Unreasonable Things Here*”: Torture and National Security in al-Sisi's Egypt (2017), <https://www.hrw.org/report/2017/09/05/we-do-unreasonable-things-here/torture-and-national-security-al-sisis-egypt>. [hereinafter *Torture and National Security in al-Sisi's Egypt*]; *Sexual Violence in Conflict*, *supra* note 16, at 7.

of war at the same time.¹⁰⁷ In Libya, for example, Qadhafi used rape as a tool of political repression, a biological weapon of war, and a form of terror to suppress protesting movements in the uprising cities, particularly Misrata.¹⁰⁸ Several reports and first-hand information proclaim that the Qadhafi regime had equipped its soldiers and paramilitaries with condoms and Viagra and ordered them to rape women and female children as young as eight years old.¹⁰⁹

Moreover, besides physical and psychological injuries in the form of post-traumatic stress disorder (PTSD), social exclusion, and stigmatization associated with rape and other forms of sexual violence, the regime consciously used HIV/AIDS as a biological (bio-terror) weapon of war by directing infected sub-Saharan Africa mercenary bands to raid repelling cities and carry out mass rape campaigns against Libyan women and girls.¹¹⁰

According to the UNAIDS and WHO AIDS epidemic update reports, Sub-Saharan Africa is the region most heavily affected worldwide by HIV/AIDS, accounting for over two-thirds (67%) of all people living with the virus.¹¹¹ In this respect, relevant studies show, for example, that rape was widespread during the Rwandan genocide of 1994, and perpetrators willfully infected their victims with HIV as a weapon of war.¹¹²

By the same token, the Rapid Support Forces (RSF), a paramilitary force primarily composed of the Janjaweed militias and operated by the Sudanese government, used rape as a strategic weapon of war.¹¹³ This force, which was previously accused of killing and raping civilians

107. Aron Zaltz, *Gendering the Arab Spring the Challenge of Prosecuting Wartime Rape Under Libyan Transitional Justice: An Interview with Dr. Hilmi M. Zawati*, 6 RTS. REV. 19, 19 (2013).

108. Elizabeth Marcus, *Rape and the Arab Spring: The Dark Side of the Popular Uprisings in the Middle East*, CTR. FOR AM. PROGRESS (Dec. 2011), <https://www.americanprogress.org/article/rape-and-the-arab-spring/>.

109. *Id.*; ANNICK COJEAN, LES PROJES: DANS LE HAREM DE KADHAFI 274 (Paris: Bernard Grasset, 2012); *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12.

110. *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12; *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12, at 52.

111. Zaryab Iqbal & Christopher Zorn, *Violent Conflict and the Spread of HIV/AIDS in Africa*, 72 J. POL. 149, 149 (2010); *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12.

112. Edward J. Mills & Jean B. Nachega, *HIV Infection as a Weapon of War*, 6 LANCET 752, 752 (2006); Lahoma Thomas & Rebecca Tiessen, *Human Security, Gender-Based Violence and the Spread of HIV/AIDS in Africa: A Feminist Analysis*, 44 CAN. J. AFR. STUD. 479, 482 (2010).

113. John Hagan, Richard Brooks & Todd Haugh, *Reasonable Grounds Evidence Involving Sexual Violence in Darfur*, 35 L. & SOC. INQUIRY 881, 909 (2010).

during the war that erupted in Darfur in February 2003,¹¹⁴ attacked the pro-democracy sit-in in the center of the Sudanese capital on Monday, June 3, 2019, and committed multiple sexual assaults, including raping more than seventy women and men, some of whom were medical staff at the field hospital.¹¹⁵ Firsthand information collected from victims, eyewitnesses, and medical staff testimonies during and after the paramilitaries crackdown on the protest camp outside the Ministry of Defence in Khartoum indicates that the number of sexual assaults were higher than that, and many victims were reluctant to report the harrowing details of the attack because of the shame associated with it and for fear of being revictimized, isolated, and stigmatized.¹¹⁶ A CNN report exposed the regime's brutality when women were dragged into police vehicles, senselessly beaten and raped by security forces.¹¹⁷ A Sudanese intelligence officer told CNN that the regime sent a clear message down to its officers on the ground: "[b]reak the girls! If you break them, you will break their men."¹¹⁸ Nevertheless, this Part undertakes, in two sections, the analysis of different patterns of unusual conflict-related sexual violence and some unprecedented wartime gender-based crimes.

A. *Patterns of Unusual Conflict-Related Sexual Violence*

1. Forced Nudity

Despite the failure of the drafters of the statutory laws of the ad hoc international criminal tribunals and the Rome Statute of the International

114. Allard Duursma & Tanja R. Müller, *The ICC Indictment Against Al-Bashir and Its Repercussions for Peacekeeping and Humanitarian Operations in Darfur*, 40 *THIRD WORLD Q.*, (Apr. 2019), at 1, 11; Hagan, *supra* note 113, at 899.

115. Zeinab M. Salih & Jason Burke, *Sudanese Doctors Say Dozens of People Raped During Sit-In Attack: Hospitals in Khartoum Record More than 70 Cases of Rape in Aftermath of Attack on Protest*, *GUARDIAN* (June 11, 2019), <https://www.theguardian.com/world/2019/jun/11/sudan-troops-protesters-attack-sit-in-rape-khartoum-doctors-report>.

116. Jason Burke, *Sudan Paramilitaries Raped and Assaulted Protesters and Medics: Witnesses Describe Attacks in Khartoum During Deadly Assault on Pro-Democracy Sit-In*, *GUARDIAN* (June 4, 2019), <https://www.theguardian.com/world/2019/jun/04/sudans-military-council-calls-for-snap-elections-in-wake-of-deadly-protests>; Leela Jacinto, *Sudanese Activists Seek Justice for Mass Rapes after Militia Breaks the Girls*, *FRANCE 24* (June 20, 2019), <https://www.france24.com/en/20190619-sudan-rape-reports-militia-protest-justic>; *Sudanese Doctors*, *supra* note 115.

117. Nima Elbagir et al., *They Tried to Use Rape to Silence Women Protesters. It Didn't Work*, *CNN* (May 17, 2019), <https://www.cnn.com/2019/05/17/africa/sudan-protests-asequals-intl/index.html>.

118. *See id.*; *see also* Nita Bhalla, *Sudan Urged to Ensure Justice for Raped Women Protesters*, *REUTERS* (July 18, 2019), <https://www.reuters.com/article/us-sudan-women-rights-idUSKCN1UD2VE>.

Criminal Court (ICC) to recognize forced nudity as a separate gender-based crime under the rubric of war crimes and crimes against humanity,¹¹⁹ this crime, as well as other degrading sexual-based assaults, including sexual humiliation, sexual molestation, forced impregnation, forced maternity, gender-based persecution, sexual mutilation, sexual terrorism, sexual torture, and forced abortion, could be prosecuted under other categories, embodied in the provisions of the above statutes, namely “sexual violence of comparable gravity”;¹²⁰ “other inhumane acts”;¹²¹ “any other form of sexual violence”;¹²² “any form of indecent assault”;¹²³ and “outrages on personal dignity.”¹²⁴ For example, forced nudity, which may not involve any physical contact,¹²⁵ was prosecuted at the ICTY¹²⁶ and the International Criminal Tribunal for Rwanda (ICTR)¹²⁷ as a crime against humanity under “other inhumane acts.”

119. SOPHIE HUYE, *THE USE OF U.N. SANCTIONS TO ADDRESS CONFLICT-RELATED SEXUAL VIOLENCE 3* (Georgetown Institute for Women, Peace, and Security, 2018).

120. Rome Statute, *supra* note 49, ¶ 7.

121. Statute of the ICTR *supra* note 49, ¶¶ 3, 4; Statute of the ICTY *supra* note 49, ¶ 5; Statute of the SCSL *supra* note 49, ¶ 3.

122. Statute of the SCSL *supra* note 49, ¶ 2.

123. Statute of the ICTR *supra* note 49, ¶ 3(e).

124. Rome Statute, *supra* note 49; Statute of the ICTR *supra* note 49, ¶ 4; Statute of the SCSL *supra* note 49, ¶ 3(e).

125. THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT, *POLICY PAPER ON SEXUAL AND GENDER-BASED CRIMES*, ¶ 17 (2014).

126. See *Prosecutor v. Anto Furundžija*, IT-95-17/1-T, Judgement, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, ¶¶ 39-41 (Dec. 10, 1998) <https://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf>; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, IT-96-23-T and IT-96-23/1-T, Judgement, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, ¶ 766-74 (Feb. 22, 2001), <https://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>; see also Patricia Viseur Sellers, *Sexual Torture as a Crime Under International Criminal and Humanitarian Law*, 11 N.Y.C. L. REV. 339, 340-41 (2008); Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law*, 46 MCGILL L. J. 217, 230 (2000).

127. In *Prosecutor v. Akayesu*, [w]itness KK testified regarding an incident in which the accused told the *Interahamwe* to undress a young girl named Chantal, whom he knew to be a gymnast, so that she could do gymnastics naked. The accused told Chantal, who said she was Hutu that she must be a Tutsi because he knew her father to be a Tutsi. As Chantal was forced to march around naked in front of many people, witness KK testified that the accused was laughing and happy with this. See *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgement and Sentence, International Criminal Tribunal for Rwanda, ¶ 429 (Sept. 2, 1998), <https://www.un.org/en/preventgenocide/rwanda/pdf/akayesu%20-%20judgement.pdf> [hereinafter *Akayesu Judgement*]; see also Leila Nadya Sadat, *Avoiding the Creation of a Gender Ghetto in International Criminal Law*, 11 INT’L CRIM. L. REV. 655, 658-59 (2011); Copelon, *supra* note 126, at 226-27.

However, the abstractness and lack of accurate description of gender-based crimes in the above statutory laws infringe upon the principle of fair labeling, which stresses that crimes must be separated from one another, categorized, and labeled in a manner that presents distinctive forms of criminality according to the gravity of each crime, and recognizes a proportion between the wrongdoing and the sentence.¹²⁸ The ambiguity of gender-based crimes in the statutory laws of the ad hoc international criminal tribunals and the Rome Statute of the ICC and the reliance on judicial discretion to categorize an act of sexual violence had produced inconsistent verdicts and punishments and caused inadequate prosecution of such crimes.¹²⁹

In this regard, in the *Bemba* case, the Pre-Trial Chamber II of the ICC rejected the cumulative charging approach utilized by the Prosecutor and declined to confirm the charge of torture as a crime against humanity and outrages upon dignity as a war crime on a sexual basis of forcing civilian men and women in the Central African Republic to undress in public.¹³⁰ The Chamber concluded that this act was “fully subsumed by the count of rape.”¹³¹ Similarly, in the *Brima et al.* case, the Trial Chamber of the Special Court for Sierra Leone (SCSL) found that forced marriage, as an “other inhumane act,” must involve conduct not otherwise subsumed by other crimes listed under Article 2 of the Statute of the SCSL.¹³² After examining the entirety of the evidence in the case, the Trial Chamber II declared itself—by a majority—not satisfied that the evidence adduced by the prosecution established the elements of a non-sexual crime of “forced marriage” independent of the crime of sexual slavery under Article 2(g) of the Statute of the SCSL.¹³³ Additionally, the Trial Judges ruled by a majority that the crime of sexual slavery entirely subsumed the prosecution’s evidence and that no lacuna in the law would necessitate a separate crime of “forced marriage” as an “other inhumane act.”¹³⁴

Recently, women and girls were subjected to forced nudity in different Arab-Spring countries. Based on validated accounts and

128. FAIR LABELLING, *supra* note 43, at 142, 143.

129. *Id.* at 95, 109.

130. Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08-388, Decision Pursuant to Article 61(7)(a) and (b) on the Charges Against Jean-Pierre Bemba Gombo, ¶ 205, 206, 209, 312 (June 15, 2009), https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF.

131. *Id.*

132. FAIR LABELLING, *supra* note 43, at 17.

133. *Id.* at 18.

134. *Id.*

personal testimonies, UN reports revealed that women were forced to strip naked during house searches, at checkpoints, and in detention centers by government forces, paramilitaries, and interrogators.¹³⁵ It included several authentic ordeals of Syrian women who were forced to walk naked in Karm-al-Zeitoun's streets in Homs.¹³⁶ Other non-governmental organizations' reports indicated that many Syrian girls were molested during a strip search by the guards at the al-Mezzeah military airport detention center before being vaginally and orally gang-raped.¹³⁷

In this vein, forced nudity and other forms of sexual humiliation were also devastating to the ongoing Syrian civil war for men and boys at home in front of family members and detention centers. A recent UN Human Rights Council's report disclosed horrific accounts of sexual violence committed against Syrian detainees by the Air Force Intelligence officers at Sednaya's notorious prison, including boys as young as eleven years old.¹³⁸ They were subjected to all forms of degrading sexual violence by interrogators and pro-government paramilitaries to break them and destroy their family values. Violence has involved sexual torture, gang-rape and forcing victims to strip naked in public for long periods.¹³⁹

135. *I Lost My Dignity*, *supra* note 106; Lina Biscaia, *Weaponising Gender: Sexual Violence in the Syrian Conflict*, in *THE SYRIAN WAR: BETWEEN JUSTICE AND POLITICAL REALITY* 140, 148 (H.M-E. Khen, N. Boms & S. Ashraph, eds., 2020).

136. Rep. of the Hum. Rts. Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 98, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012) [hereinafter *Inquiry on the Syrian Arab Republic*].

137. B. McKernan, *Inside Assad's Prisons: Horrors Facing Female Inmates in Syrian Jails Revealed*, *INDEPENDENT* (Aug. 18, 2017), <https://www.independent.co.uk/news/world/middle-east/assad-prisons-women-syria-female-inmate-treatment-conditions-exclusive-life-jails-a7899776.html>; LAWYERS AND DOCTORS FOR HUMAN RIGHTS, *VOICES FROM THE DARK: TORTURE AND SEXUAL VIOLENCE AGAINST WOMEN IN ASSAD'S DETENTION CENTERS* 15 (July 2017), available at <https://ldhrights.org/en/wp-content/uploads/2017/07/Voices-from-the-Dark.pdf>.

138. Elbagir, *supra* note 117.

139. *I Lost My Dignity*, *supra* note 106; LAWYERS AND DOCTORS FOR HUMAN RIGHTS, 'THE SOUL HAS DIED: TYPOLOGY, PATTERNS, PREVALENCE AND THE DEVASTATING IMPACT OF SEXUAL VIOLENCE AGAINST MEN AND BOYS IN SYRIAN DETENTION' 43 (Mar. 2019), available at <http://ldhrights.org/en/wp-content/uploads/2019/03/The-Soul-Has-Died-Male-Sexual-Violence-Report-English-for-release-copy.pdf> [hereinafter *THE SOUL HAS DIED*]. Likewise, several NGO reports indicate that some Saudi women activists were allegedly subjected to inhuman treatment by interrogators at Dhahban Saudi prison. For example, Saudi detainee Eman Al-Nafjan was tortured and sexually harassed, including, stripping her naked, photographing her, and putting her picture in front of her on the table during interrogation. Moreover, at least one female activist was subjected to physical sexual harassment by the prison guards, and was beaten and groped in sensitive places. See *Saudi Detainee Eman Al-Nafjan Tortured and Sexually Harassed*, *BAHRAIN MIRROR* (Mar. 2, 2019); *Saudi Puts Detained Female Activist in Solitary Confinement*, *MIDDLE*

Likewise, Qadhafi intelligence officers and militiamen subjected women, particularly those from protesting regions, to rampant rape and sexual humiliation.¹⁴⁰ An outrageous example is the famous case of Iman al-Obeidi and another Libyan girl from Benghazi who were kidnapped at a checkpoint by Qadhafi militiamen in Tripoli on the evening of March 24, 2011.¹⁴¹ They were stripped naked and repeatedly raped by fifteen assailants; one was a cousin of Qadhafi.¹⁴²

2. VirginitY Test

The participation of women and young girls in the Arab uprisings of 2011, whether by appearing in street demonstrations, sit-ins, being active on social media, or supporting protestors, put them at risk and made them vulnerable to all kinds of exploitation.¹⁴³ As bearers of their families "honour," linked to their sexual purification according to their culture, women protestors and activists were "disciplinary punished" by security forces, secret police, and the regime's mercenary thugs "*Baltajiyah*."¹⁴⁴ For example, Egyptian women protestors participating in the Tahrir Square sit-ins post the January 25, 2011 revolution were brutally beaten, sexually assaulted, and subjected by military authorities to invasive, sexually humiliating and punitive "virginitY tests."¹⁴⁵ This abasing assault dated back to the early days of the Supreme Council of the Armed Forces (SCAF) rule, following the subversion of Hosni Mubarak's regime.¹⁴⁶

On March 9, 2011, one day after International Women's Day, when groups of Egyptian women marched through Tahrir Square, they were aggressively attacked and molested by the Egyptian Secret Police

EAST MONITOR (Feb. 12, 2019), <https://www.middleeastmonitor.com/20190212-saudi-puts-detained-female-activist-in-solitary-confinement/>.

140. Steven Stoloff, *The Rape of Iman al-Obeidi: The Libyan Regime's Other Crisis*, TIME (Mar. 29, 2011), <http://content.time.com/time/world/article/0,8599,2062007,00.html>.

141. *Id.*

142. Ian Black, *Iman al-Obeidi Faces Criminal Charges Over Libya Rape Claim*, GUARDIAN (Mar. 29, 2011), <https://www.theguardian.com/world/2011/mar/29/iman-al-obedi-libya-rape-claim-charges>.

143. *Women's Space After the Arab Spring*, *supra* note 10, at 89.

144. Hayat Alvi, *Women's Rights Movements in the Arab Spring: Major Victories or Failures for Human Rights?*, 16 J. INT'L WOMEN'S STUD. 294, 308 (2015).

145. *Women's Space After the Arab Spring*, *supra* note 10, at 89.

146. HAYAT ALVI, THE POLITICAL ECONOMY AND ISLAND OF THE MIDDLE EAST: THE CASE OF TUNISIA 64 (2019).

(*Mukhabarat*) and the National Security forces.¹⁴⁷ Eighteen women were detained and subjected to strip-searches, nude photographing, while seven of them were forced to undergo the humiliating “virginity test.”¹⁴⁸ One of the assaulted young women was Samira Ibrahim (twenty-four years), who had forcefully undergone a “virginity test” conducted by Ahmed Adel, a prison military doctor.¹⁴⁹ According to the molested women’s testimonies, doctor Adel carried out the “virginity tests” using his fingers to examine their hymens.¹⁵⁰ Samira Ibrahim and another two assaulted women brought charges against the military doctor, including “public indecency” and “disobeying military orders” for coercing them to undergo the invasive tests after they were arrested.¹⁵¹ On Monday, December 26, 2011, the “virginity tests” were suspended by the Cairo Administrative Court, where Judge Aly Fikry, the head of the Court, ruled that the test was completely illegal.¹⁵²

On Sunday, March 11, 2012, the Egyptian Military Court found Dr. Adel not guilty for conducting the “virginity tests” and acquitted him.¹⁵³ At the same time, the State Council Administrative Court suspended this cruel practice.¹⁵⁴ In this respect, it should be recalled that Abdel Fattah El

147. Abdallah Dalsh, *EXPOSING STATE HYPOCRISY: SEXUAL VIOLENCE BY SECURITY FORCES IN EGYPT*, FIDH-International Federation for Human Rights, 24 (Nov. 19, 2014), https://www.fidh.org/IMG/pdf/egypt_report.pdf [hereinafter *EXPOSING STATE HYPOCRISY*].

148. *Id.*; *Addressing Violence Against Women*, *supra* note 10, at 118; Song, *supra* note 13, at 6.

149. Hana Zuhair, *Virginity-Test Victim Samira Ibrahim Continues to Fight*, EGYPT TODAY (Sept. 23, 2013), <https://www.egypttoday.com/Article/1/369/Virginity-Test-Victim-Samira-Ibrahim-Continues-to-Fight>.

150. Hum. Rts. Watch, *Egypt: Military Impunity for Violence Against Women: Whitewash in Virginity Tests Trial*, (Apr. 7, 2012), <https://www.hrw.org/news/2012/04/07/egypt-military-impunity-violence-against-women>.

151. *A Year After Virginity Tests*, *supra* note 13.

152. Elizabeth Flock, *Samira Ibrahim is the Woman Behind Egypt’s Ban of Virginity Tests*, WASH. POST (Dec. 27, 2011), https://www.washingtonpost.com/blogs/%20blogpost/post/samira-ibrahim-is-the-woman-behind-egypts-ban-of-virginity-tests/2011/12/27/gIQACKNgKP_blog.html; Riazat Butt & Abdel-Rahman Hussein, *Virginity Tests on Egypt Protesters are Illegal, Says Judge*, GUARDIAN (Dec. 26, 2011), <https://www.theguardian.com/world/2011/dec/27/virginity-tests-egypt-protesters-illegal>.

153. Amnesty Int’l, *Acquittal of Egyptian Military Doctor Fails Women Victims of “Virginity Tests,”* (Mar. 11, 2012); Jailan Zayan, *Egyptian Doctor Acquitted Over Forced Virginity Tests on Female Protesters*, NAT’L POST (Mar. 11, 2012), <https://nationalpost.com/news/egypt-court-acquits-doctor-accused-of-performing-forced-virginity-tests-on-protesters>; Marwa Awad & Edmund Blair, *Egypt Army Court Acquits Doctor Over Virginity Test*, REUTERS (Mar. 11, 2012), <https://www.reuters.com/article/us-egypt-detainee-doctor-idUSBRE82A04R20120311>.

154. *Addressing Violence Against Women*, *supra* note 10, at 119; Margot Badran, *Creative Disobedience: Feminism, Islam, and Revolution in Egypt*, in *WOMEN’S MOVEMENT IN POST – “ARAB SPRING” NORTH AFRICA* 45, 54 (Fatima Sadiqi ed., 2016).

Sisi, the head of military intelligence during the post-Hosni Mubarak SCAF rule, has justified the forced “virginity tests,” arguing that it was necessary to protect the military staff from being accused of sexual assaults.¹⁵⁵

Nonetheless, one may argue against Sisi’s above plea in many ways. For example, women prisoners’ intact virginity never means they were not sexually assaulted, as many sexual offences do not involve penetration or even require physical contact.¹⁵⁶ If the virginity of a woman in prison is indicative of her not being subjected to sexual violence by the secret police or interrogators, how can he prove that married women prisoners were not sexually assaulted? The case law of international criminal tribunals indicates that penetration of one’s sexual parts is not the only way to involve sexual felonies.¹⁵⁷

3. Wartime Male Rape

The phenomenon of wartime male rape has long been considered and predominantly used as an assertion of power, a kind of humiliation of opponents, and a declaration of victory over them rather than an expression of sexual gratification.¹⁵⁸ There was a prevalent belief that when a victorious soldier emasculated a vanquished enemy and sexually penetrated him, the victim would lose his manhood and no longer be a warrior.¹⁵⁹ In this sense, male rape was used as a strategic weapon of war to inflict severe mental, physical, and sexual health consequences leading

155. *Addressing Violence Against Women*, *supra* note 10, at 119; Mona Eltahawy, *Egypt Has a Sexual Violence Problem*, N.Y. TIMES (June 20, 2014), <https://www.nytimes.com/2014/06/21/opinion/mona-eltahawy-egypts-sexual-violence.html>.

156. Akayesu Judgement, *supra* note 127, ¶ 688; K. Alexa Koenig & Ryan Lincoln, et. al, *The Jurisprudence of Sexual Violence* 10 (Hum. Rts. Ctr., 2011).

157. Koenig, *supra* note 156, at 10.

158. A. Nicholas Groth & Ann W. Burgess, *Male Rape: Offenders and Victims*, 137 AM. J. PSYCHIATRY 806, 806 (1980); Elaff G. Salih et al., *Rape Talks Louder than Guns Feminising Men via Wartime Rape in Judith Thompson’s Palace of the End*, 26 PERTANIKAJ. SOC. SCI. & HUMANITIES 285, 294 (2018); *see also* Owen D. Jones, *Sex, Culture, and the Biology of Rape: Toward Explanation and Prevention*, 87 CAL. L. REV. 827, 880-81, 883 (1999); Sarah Ben-David & Peter Silfen, *Rape Death and Resurrection: Male Reaction after Disclosure of the Secret of Being a Rape Victim*, 12 MED. & L. 181, 185 (1993).

159. The impact of such a horrible attack can damage the victim’s psyche and cause him to lose his pride, break him down, and perhaps even extend this feeling to his entire family and society. *See* Hilmi M. Zawati, *Impunity or Immunity: Wartime Male Rape and Sexual Torture as a Crime Against Humanity*, 17 TORTURE J. 27, 33 (2007) [hereinafter *Wartime Male Rape and Sexual Torture*]; Lana Stermac et al., *Sexual Assault of Adult Males*, 11 J. INTERPERSONAL VIOLENCE 52, 53 (1996).

to the victim's annihilation and proof of the perpetrators' absolute victory.¹⁶⁰

In this respect, at the end of the civil war that erupted in the former Yugoslavia in the early nineties of the last century, different reports from the battlefield in Croatia and Bosnia-Herzegovina claimed that male captives were subjected to a systematic brutal rape and sexual assaults during armed conflicts, including castration, genital beatings, and electroshock.¹⁶¹ It has been estimated that Serb militants sexually abused more than 4,000 Croatian men.¹⁶² Ruling on the first case before the ICTY, the Prosecutor charged Duško Tadić with sexual violence against male prisoners at the Omarska concentration camp.¹⁶³ Similarly, following the occupation of Iraq, the Abu Ghraib Scandal of April 2004 revealed that rape and sexual torture were conducted by American corrections officers and interrogators against Iraqi men in a systematic way to crush the spirit of those detainees who opposed and resisted the American invasion.¹⁶⁴

Given that this analysis examines the Arab-Spring's gender-based crimes, it is appropriate to mention that wartime rape and other forms of sexual felonies, whether committed against women or men, have not been known or permitted in the culture of war among Muslims throughout history.¹⁶⁵ According to prominent Muslim jurists from

160. Will Storr, *The Rape of Men: The Darkest Secret of War*, GUARDIAN (July 17, 2011), <https://www.theguardian.com/society/2011/jul/17/the-rape-of-men>; *Wartime Male Rape and Sexual Torture*, *supra* note 159, at 35.

161. *Wartime Male Rape and Sexual Torture*, *supra* note 159, at 24.

162. Pauline Oosterhoff, Prisca Zwanikken & Evert Ketting, *Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret*, 12 REPROD. HEALTH MATTERS 68, 73 (2004); Jocelyn Viteria, *Radical or Righteous? Using Gender to Shape Public Perceptions of Political Violence*, in DYNAMICS OF POLITICAL VIOLENCE: A PROCESS-ORIENTED PERSPECTIVE ON RADICALIZATION AND THE ESCALATION OF POLITICAL CONFLICT, 196 (Chares Demetriou, Lorenzo Bosi, & Stefan Malthaner eds., 2014).

163. Prosecutor v. Tadić, Case No. IT-94-1-I, Indictment, ¶ 2.1-2.6 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 13, 1995); *see also* Eric S. Carlson, *Sexual Assault on Men in War*, 439 LANCET 129, 129 (1997); Lucy Wadham, *Shame of Bosnia's Rape POWs*, SUNDAY TEL. (Apr. 28, 1996), at 29; Oosterhoff, Zwanikken, & Ketting, *supra* note 162, at 70.

164. Adam Zagorin, *The Abu Ghraib Scandal You Don't Know*, TIME (Feb. 7, 2005), <http://content.time.com/time/subscriber/article/0,33009,1025139,00.html>; Linda Burnham, *An American Value*, COUNTERPUNCH (May 22, 2004), <https://www.counterpunch.org/2004/05/22/an-american-value/>; M. G. Bloche & Jonathan H. Marks, *Triage at Abu Ghraib*, N.Y. TIMES (Feb. 4, 2005), <https://www.nytimes.com/2005/02/04/opinion/triage-at-abu-ghraib.html>; W. L. Bennett, Regina G. Lawrence & Steven Livingston, *None Dare Call It Torture: Indexing and the Limits of Press Independence in the Abu Ghraib Scandal*, 56 J. COMMUN 467, 470 (2006).

165. Zaltz, *supra* note 107; Abstract of Interview by Aron Zaltz & Ibtisam Mahmoud with Hilmi M. Zawati, Pres. Int'l Legal Advoc. Forum on Wartime Rape in Syria & Libya, in Toronto, Can. (July 10, 2013).

different jurisprudence schools, it is forbidden and punished under Islam criminal law, whether in the state of peace or war.¹⁶⁶ It is also considered a major sin and unforgivable crime.¹⁶⁷ Any Muslim fighter who may commit fornication, rape, and other forms of gender-based sexual violence is subject to stoning to death or lashing according to the crime's elements and to his civil status as single or married.¹⁶⁸ Moreover, even though the principle of reciprocity is one of the significant rules of war in Islamic international law,¹⁶⁹ it prohibits this crime and sets out strict provisions punishing those who commit it. In other words, if the enemy commits sexual crimes against Muslims, whether male or female, Islamic international law has not allowed Muslim fighters to rape enemy fighters as a form of reciprocity.¹⁷⁰

Nonetheless, despite the strict provisions of Islamic law and the firm norms of the statutory laws of international criminal judicial bodies, the use of rape and other forms of sexual violence has been increasingly used in recent civil and transnational armed conflicts in Arab-Spring countries due to several factors: poor implementation of the above laws, the abstractness of the statutory laws of the ICC on gender-based crimes, and the fact that politics override justice in many cases. A case in point is

166. Azman Mohd Noor, *Rape: A Problem of Crime Classification in Islamic Law*, 24 ARAB L. Q. 417, 417 (2010).

167. *Id.*; Hilmi M. Zawati, *The Canadian Parliament Opens the Case of Rape and Persecution of Religious Minorities During the Ongoing War in Syria*, ACADEMIA (2014), https://www.academia.edu/41664579/The_Canadian_Parliament_Opens_the_Case_of_Rape_and_Persecution_of_Religious_Minorities_during_the_ongoing_War_in_Syria (summarizing Hilmi M. Zawati, *Testimony Before the International Commission on Human Rights in the Canadian Parliament* (2014)); Noor, *supra* note 166.

168. Hilmi M. Zawati, HILMI M. ZAWATI, IS JIHAD JUST WAR? WAR, PEACE AND HUMAN RIGHTS UNDER ISLAMIC AND PUBLIC INTERNATIONAL LAW 43 (2001). It is important to mention that Islamic international law has prosecuted and considered rape in war as a war crime, as early as fourteen centuries before the Geneva Conventions of 1949, and the statute of the International Criminal Tribunal for the Former Yugoslavia, 1993. In the case of *Khālid Ibn al-Walīd v Dirār Ibn al-Azwar*, the former complained to 'Umar Ibn al-Khattāb, the second Muslim Caliph, that the latter, a Muslim army commander, had had sexual intercourse with a captive woman during the Muslim war against Banu Asad. In response, 'Umar wrote to Khālid ordering him to stone Ibn al-Azwar to death. Before Khālid had received 'Umar's judgment, however, Ibn al-Azwar had passed away. Nahed Samour, *Is There a Role for Islamic International Law in the History of International Law?*, 25 EUR. J. INT'L L. 313, 317 (2014).

169. Faiz Bakhsh, *Compatibility Between International Humanitarian Law and Islamic Law of War (Jihad)*, 4 PETITA JURNAL KAJIAN ILMU HUKUM DAN SYARIAH 75, 82 (2019) (Indon.); JOHN KELSAY, *ARGUING THE JUST WAR IN ISLAM* 193 (2007); Mathias Vanhullebusch, *Reciprocity Under International Humanitarian Law and the Islamic Law of War*, 11 J. ISLAMIC ST. PRAC. INT'L L. 58, 68-69 (2015).

170. Hilmi M. Zawati, *Lecture Delivered at a Conference on Islam, Politics and Law: Perspectives on International Humanitarian Law between Universalism and Cultural Legitimacy* (Nov. 27, 2009).

the failure of the UN Security Council to take decisive action to stop the civil war in Syria and refer the case to the ICC Prosecutor under Chapter VII of the UN Charter, although the Security Council has previously adopted Resolution 1820, which classified rape, for the first time, as a tactic of war and a threat to international peace and security.¹⁷¹

In the ongoing civil and transitional wars in Syria and Libya, male rape was committed with political motives to humiliate opponents, extract information from them, or force confessions.¹⁷² In Syria, men and boys were routinely raped and sexually abused during detention, at checkpoints, and secret police stations.¹⁷³ It is estimated that between 30-40% of the Syrian detainees had undergone such a devastating experience.¹⁷⁴ Similarly, according to multiple testimonies collected from first-hand information sources, the Qadhafi regime systematically used male rape as a political weapon of war and an instrument of sexual persecution during the 2011 revolution.¹⁷⁵

Nonetheless, the impact of rape and other forms of sexual violence on Syrian and Libyan men and boys was horrifying on different levels, whether in the present or the future. Victims may physically suffer rectal cracks, involuntary urination, and sexually transmitted infections, including HIV/AIDS.¹⁷⁶ Psychologically, many of them endured unihemispheric sleep patterns, post-traumatic distress disorder and

171. The United Nations Security Council has adopted a number of resolutions, including 1325, 1820, 1888, and 1889, calling on all parties to armed conflicts to take special measures to protect women and girls from gender-based violence. *See* S.C. Res. 1325, ¶ 10 (Oct. 31, 2000); *see also* S.C. Res. 1820, ¶ 3-5 (June 19, 2008); *see also* S.C. Res. 1888 ¶ 10 (Sept. 30, 2009); *see also* S.C. Res. 1889 ¶ 3 (Oct. 5, 2009); *see also* TAMSIN P. PAIGE, PETULANT AND CONTRARY: APPROACHES BY THE PERMANENT FIVE MEMBERS OF THE UN SECURITY COUNCIL TO THE CONCEPT OF ‘THREAT TO PEACE’ UNDER ARTICLE 39 OF THE UN CHARTER 183 (2019).

172. Sarah Chynoweth, *Male Rape and Sexual Torture in the Syrian War: It is Everywhere*, GUARDIAN (Nov. 21, 2017), <https://www.theguardian.com/working-in-development/2017/nov/21/male-sexual-torture-in-the-syrian-war-it-is-everywhere>.

173. *Id.*; U.N. High Comm’r on Refugees, Rep. *We Keep it in Our Heart: Sexual Violence Against Men and Boys in the Syria Crisis* at 27, 29 (Oct. 2017) [hereinafter *We Keep it in Our Heart*]; Chris Jewers, *Syrian Secret Police Officer is Given Life Sentence in Germany for Crimes Against Humanity While Overseeing ‘Systematic and Brutal Torture’ of 4,000 Prisoners*, DAILY MAIL (Jan. 13, 2022), <https://www.dailymail.co.uk/news/article-10397999/Syrian-secret-police-officer-given-life-sentence-Germany-crimes-against-humanity.html>.

174. Chynoweth, *supra* note 172; *We Keep it in Our Heart*, *supra* note 173, at 16; Rep. of the Hum. Rts. Council., *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, ¶ 98-99, U.N. Doc. A/HRC/31/CRP.1 (Feb. 3, 2016); *The Soul Has Died*, *supra* note 139, at 17-23.

175. Cécile Allegra, *Revealed: Male Rape Used Systematically in Libya as Instrument of War*, GUARDIAN (Nov. 3, 2017), <https://www.theguardian.com/world/2017/nov/03/revealed-male-used-systematically-in-libya-as-instrument-of-war>.

176. *We Keep it in Our Heart*, *supra* note 173, at 16, 36.

stigma, leading to depression and self-harm. Several cases of suicide or suicide attempts were genuinely reported.¹⁷⁷ Socially, many male rape survivors have been subjected to community ostracism, as their families were dismantled while they were unable to carry out their duties towards them.¹⁷⁸

4. Gang-rape

The devastating crime of wartime gang-rape, also known as “multiple perpetrator rape,”¹⁷⁹ was, and still is, alternated and rarely examined in academia. It is a form of exercising power and demonstrating masculinity¹⁸⁰ and being used as a legitimate perk of battle and a weapon of coercion and degradation to break opponents or supporters.¹⁸¹ In this respect, since the eruption of civil wars in Africa and Eastern Europe in the early 1990s, as well as in the recent Arab-Spring revolts against authoritarian regimes, investigative media and NGO reports brought to light the horrifying news of the execution of gang-rape, mainly by government agents or its paramilitaries, as a weapon of war, a tool of ethnic cleansing, and as an instrument of destroying the social construction of political opponents.¹⁸²

During the 1990s dissolution war of the former Yugoslavia, and following the takeover of many Bosnian Muslim and Croatian territories by the Bosnian Serb Army and other Serb militias, both men and women,

177. *Id.*

178. *Id.*

179. See generally Jemma C. Chambers et al., *A Typology of Multiple-Perpetrator Rape*, 37 CRIM. JUST. BEHAV. 1114, 1114 (2010); Miranda A. H. Horvath & Liz Kelly, *Multiple Perpetrator Rape: Naming an Offence and Initial Research Findings*, 15 J. SEXUAL AGGRESSION 83, 83 (2009).

180. Melissa S. Jones, *The Encyclopedia of Women and Crime*, *Gang Rape*, 400 (2019).

181. Beth Stephens, *Humanitarian Law and Gender Violence: An End to Centuries of Neglect*, 3 HOFSTRA L. & POL'Y SYMP. 87, 88 (1999); Christopher W. Mullins, *He Would Kill Me with His Penis: Genocidal Rape in Rwanda as a State Crime*, 17 CRITICAL CRIMINOLOGY 15, 18 (2009) [hereinafter *He Would Kill Me*].

182. Christopher S. Maravilla, *Rape as a War Crime: The Implications of the International Criminal Tribunal for the Former Yugoslavia's Decision in Prosecutor v. Kunarac, Kovač, & Vuković on International Humanitarian Law*, 13 FLA. J. INT'L L. 321, 325 (2001); Kelly D. Askin, *A Decade of the Development of Gender Crimes in International Courts and Tribunals: 1993 to 2003*, 11 HUM. RTS. BRIEF 16, 18 (2004); Kelly D. Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, 93 AM. J. INT'L L. 97, 115 (1999) [hereinafter *Sexual Violence in Decisions and Indictments*]; *Prosecutor v. Kunarac & Kovač*, Case No. IT-96-23-PT, Amended Indictment, ¶ 5.3 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 8, 1999).

as young as twelve years old,¹⁸³ were subjected to all forms of sexual violence, including gang-rape and sexual slavery.¹⁸⁴ However, the Bosnian Serb Army's campaign of atrocious gang-rape crimes coincided with the vicious gang-rape atrocities committed by the *Interahamwe*, a Hutu death squad that took the most significant part in the 1994 Rwandan genocide¹⁸⁵ against Tutsi women and girls as an act of genocide. In the Akayesu case, the Trial Chamber I of the ICTR recognized sexual violence, including gang-rape, public rape, multiple instances of rape, forced nudity, forced abortion, and forced marriage, as an integral part of the process of genocide against the Tutsi minority.¹⁸⁶ Prejudiced by prevailing social stereotypes and mutilated historical legacies characterizing the relationship between Hutu and Tutsi ethnic groups, on the one hand, and responding to the incitement of their leaders to "taste" Tutsi women and girl-children, on the other,¹⁸⁷ the *Interahamwe* perpetrators waged a widespread and systematic campaign of different forms of sexual violence, including gang-rape.¹⁸⁸

At the beginning of the third millennium, gang-rape became a terrifying scenario, and a widespread phenomenon¹⁸⁹ in civil wars followed Rwanda's massacres and the dissolution of the former Yugoslavia in the 1990s. Subsequently, women from different ethnic groups and ages were targeted and subjected to gang-rape and various types of sexual violence in many war-torn countries, including Sierra

183. Eileen Meier, *Prosecuting Sexual Violence Crimes During War and Conflict: New Possibilities for Progress*, 10 INT'L LEGAL THEORY 83, 98-99 (2004); James McHenry, *Justice for FOCA: The International Criminal Tribunal for Yugoslavia's Prosecution of Rape and Enslavement as Crimes Against Humanity*, 10 TULSA J. COMPAR. INT'L L. 183, 183 (2002); *Sexual Violence in Decisions and Indictments*, *supra* note 182, at 102.

184. Mullins, *supra* note 181, at 17; Patricia A. Weitsman, *The Politics of Identity and Sexual Violence: A Review of Bosnia and Rwanda*, 30 HUM. RTS. Q. 561, 565 (2008).

185. HILMI M. ZAWATI, *THE TRIUMPH OF ETHNIC HATRED AND THE FAILURE OF INTERNATIONAL POLITICAL WILL: GENDERED VIOLENCE AND GENOCIDE IN THE FORMER YUGOSLAVIA AND RWANDA*, xxii (2010).

186. Akayesu Judgement, *supra* note 127, ¶¶ 688, 731.

187. Alex Obote-Odora, *Rape and Sexual Violence in International Law: ICTR Contribution*, 12 NEW ENGLAND J. INT'L COMPAR. L. 135, 146 (2005); Christopher W. Mullins, *We Are Going to Rape You and Taste Tutsi Women: Rape During the 1994 Rwandan Genocide*, 49 BRIT. J. CRIMINOLOGY 719, 728 (2009).

188. *Sexual Violence in Decisions and Indictments*, *supra* note 182, at 107; Magdalini Karagiannakis, *Case Analysis: The Definition of Rape and Its Characterization as an Act of Genocide—A Review of the Jurisprudence of the International Criminal Tribunals for Rwanda and the Former Yugoslavia*, 12 LEIDEN J. INT'L L. 479, 486-87 (1999).

189. Evelyn Fanneron et al., *Transitional Justice, Gender-Based Violence and Women's Rights*, in HUMAN RIGHTS IN AFRICA: CONTEMPORARY DEBATES AND STRUGGLES 124 (2019).

Leone¹⁹⁰ and South Sudan,¹⁹¹ to humiliate them or expel religious groups from their territories as in Myanmar.¹⁹² In 2002, the Shan Human Rights Foundation and the Shan Women's Action Network released a report, titled "License to Rape," documenting the rape of 625 women and girls by Burmese military personnel between 1996 and 2001.¹⁹³ The report asserts that 61% of the rape incidents involved gang-rape and were conducted as a "strategic weapon of war" to terrorize and subjugate the Shan people.¹⁹⁴ By the same virtue, the Burmese military troops recently raided the Rohingya Muslim minority territory, set their homes and crops on fire, and subjected their women and girls, as young as seven years old, to different forms of sexual violence.¹⁹⁵ Reports indicate that gang-rape was unrestrained during these raids.¹⁹⁶

At the beginning of the early 2010s peaceful movements, striving for freedom, democracy, and social justice, Arab authoritarian governments' security forces and affiliated gangs have adopted the gang-rape phenomenon on a mass scale.¹⁹⁷ Egyptian national security forces and Qadhafi's thugs carried out gang-rape in public, at homes, and in detention centers to terrify the uprising cities and suppress the popular revolution.¹⁹⁸ Similarly, Syrian security forces (*al-Mukhabarat*) and paramilitaries (*Shabbiha*) conducted gang-rape as a political weapon of

190. Hum. Rts. Watch, L. Taylor, "We'll Kill You if You Cry": *Sexual Violence in Sierra Leone Conflict*, at 12, 14, 25-27 (Jan. 2003); Nathaniel Danjibo & Adebimpe Akinkuotu, *Rape as a Weapon of War Against Women and Girls*, 17 GENDER & BEHAV. 13161, 13165 (2019).

191. Danjibo, *supra* note 190, at 13166.

192. Lisa B. Buchanan et al., *Examining Internal Displacement Through the Rohingya Crisis*, 93 J. EDUC. STRATEGIES, ISSUES, IDEAS 148, 150 (2020).

193. The Shan Women's Action Network, *License to Rape: The Burmese Military Regime's Use of Sexual Violence in the Ongoing War in Shan State* (May 2002); MAKIKO TAKEDA, WOMEN, CHILDREN, AND SOCIAL TRANSFORMATION IN MYANMAR 34-35 (2020).

194. Takeda, *supra* note 193, at 35.

195. Argelyn Adlawon, *Documenting Atrocity Crimes Committed Against the Rohingya, Accountability and Next Steps: An Overview of the Conference Held by the Public International Law and Policy Group (PILPG)*, 11 AMSTERDAM L. F., 103, 107 (2019).

196. *Id.*; Beth V. Schaack, *Determining the Commission of Genocide in Myanmar: Legal and Policy Considerations*, 17 J. INT'L CRIM. JUST. 285, 299-300 (2019).

197. Júlia Garraio, *Arresting Gaddafi Will Be the Most Effective Way to Stop these Rapes: Sexual Violence in the Western Media's Coverage of the War in Libya*, 16 E-CADERNOS CES 111, 111-12 (2012).

198. Elizabeth Flock, *Iman Al-Obeidi: Rape as a Weapon of War*, WASH. POST (Mar. 29, 2011), https://www.washingtonpost.com/blogs/blogpost/post/iman-al-obeidi-rape-as-a-weapon-of-war/2011/03/29/AFVX4IwB_blog.html; Owen Bowcott, *Libya Mass Rape Claims: Using Viagra Would Be a Horrific First*, GUARDIAN (June 9, 2011, 9:52 AM), <https://www.theguardian.com/world/2011/jun/09/libya-mass-rape-viagra-claim>; Leigh, *supra* note 12.

war and a tool of ethnic cleansing to spread panic among protesters and push them to flee their homes.¹⁹⁹

It has been largely reported that thousands of Libyan women, children, and men were drafted for different forms of conflict-related gender-based crimes, including systematic mass rape, gang-rape, sexual torture, sexual enslavement, sexual terrorism, gender-based persecution, male rape, and forced nudity. Both government forces and foreign mercenaries conducted these crimes, and to a lesser extent, rebel fighters during and after the conflict to extract information or retaliate.²⁰⁰ One of the shocking gang-rape cases that made headlines was the case of Iman al-Obeidi, a lawyer from Benghazi who was kidnapped in Tripoli. Al-Obeidi, who burst into a hotel in Tripoli, told foreign media that government forces kidnapped her at a roadblock in Tripoli, kept her in an isolated place, beat her, and gang-raped her for two consecutive days.²⁰¹ Moreover, Human Rights Watch reported several gang-rape cases conducted by Qadhafi security forces against civilians in the uprising cities.²⁰² On the other side, it was reported that six insurgents had gang-raped a 16-year-old black Sub-Saharan girl, suspecting that her father was one of the regime's mercenaries.²⁰³ Insurgents believed that black African Qadhafi mercenaries had committed most of the sexual assaults, including gang-rape.²⁰⁴

During the 2011 Egyptian uprising against the totalitarian regime of Hosni Mubarak, women participating in the Tahrir Square sit-ins were constantly harassed and targeted by the regime's culprits (*Baltajiyah*) for different forms of sexual violence, including mob rape.²⁰⁵ These violent measures were purposely taken to marginalize women and

199. Emma von der Lieth, *Forced to Flee: A Case Study Analysis of Sexual Violence During the Syrian Civil War*, in THE MIGRATION CONF. 2017 PROCEEDINGS F. (Tilbe, E. Iskender & I. Sirkeci, eds.) 89, 92, 112.

200. *Prosecuting Conflict-Related Gender-Based Crimes*, supra note 12, at 47.

201. Garraio, supra note 197, at 111.

202. Hum. Rts. Watch, *World Report 2012: Events of 2011*, at 597 (2012), <https://www.hrw.org/sites/default/files/reports/wr2012.pdf>.

203. Karen Allen, *African Migrants Living in Limbo in Libya*, BBC NEWS (Jan. 9, 2012), <https://www.bbc.com/news/av/world-africa-16465272>.

204. Alexander Spencer, *Rebels Without a Cause: Narrative Analysis as a Method for Research on Rebel Movements*, in RESEARCHING NON-STATE ACTORS IN INTERNATIONAL SECURITY: THEORY AND PRACTICE 31, 42 (Andreas Kruck & Andrea Schneiker eds., 2017); Jerome Starkey, *Mercy and Justice for Gaddafi's Army Dupes*, TIMES, 40-41 (June 21, 2011).

205. Sherine Hafez, *Egypt, Uprising and Gender Politics: Gendering Bodies/Gendering Space*, in WOMEN AND GENDER IN MIDDLE EAST POLITICS 28, 31 (V. Langohr, M. Lynch & L. Baker eds., 2016).

subvert their political participation.²⁰⁶ A typical example is the gang-rape of the American journalist Lara Logan on the night of February 11, 2011, where more than 100,000 people were celebrating the fall of Mubarak's regime in Tahrir Square.²⁰⁷ Logan was subjected to mob beating and sexual assault.²⁰⁸ Moreover, only on one day in 2013, it was reported that mobs sexually attacked dozens of women protesting at the Tahrir Square, including the gang-rape of a twenty-two year old Dutch journalist who had to undergo surgery for severe injuries sustained as a result of the assault.²⁰⁹

In Syria, both women and men were sexually assaulted systematically.²¹⁰ Gang-rape and other forms of sexual assaults were mainly carried out, as a deliberate military strategy and weapon of war,²¹¹ by the Syrian military forces,²¹² intelligence agents,²¹³ and paramilitaries (*Shabbiha*) in detention centers, at home,²¹⁴ checkpoints, and public

206. *Id.*; N. Naber & A. Said, *The Cry for Human Rights: Violence, Transition, and the Egyptian Revolution*, 7 HUMAN.: AN INT'L J. OF HUM. RTS., HUMANITARIANISM, & DEV. 1, 79 (2016).

207. Melissa Maerz, *Lara Logan Breaks Her Silence on "60 Minutes": They Raped Me with Their Hands*, L.A. TIMES (May 2, 2011), <https://latimesblogs.latimes.com/showtracker/2011/05/lara-logan-breaks-her-silence-on-60-minutes-.html>.

208. *Id.*

209. Linda Steiner, *Women War Reporters' Resistance and Silence in the Face of Sexism and Sexual Violence*, 17 MEDIA & JORNALISMO 11, 14 (2017); Nina Burleigh, *Gang Rape, the Dark Side of Egypt's Protests*, CNN (July 3, 2013), <https://www.cnn.com/2013/07/03/opinion/burleigh-rapes-tahrir-square/index.html>.

210. U.N. Secretary-General, *Report on Conflict-Related Sexual Violence*, ¶ 60, U.N. Doc. S/2015/203 (Mar. 23, 2015).

211. Human Rights and Gender Justice Clinic at the City University of New York School of Law, *Human Rights Violations Against Women and Girls in Syria 2* (July 25, 2016) (unpublished report submitted to the United Nations Universal Periodic Review of the Syrian Arab Republic, 26th Session) (on file with City University of New York City).

212. Hum. Rts. Watch, *Syria: Sexual Assault in Detention—Security Forces Also Attacked Women and Girls in Raids on Homes*, (June 15, 2012), <https://www.hrw.org/news/2012/06/15/syria-sexual-assault-detention> [hereinafter Syria: Sexual Assault in Detention].

213. *Sexual Violence in Conflict*, *supra* note 16, at 33.

214. In an earlier report of the Independent International Commission of Inquiry on the Syrian Arab Republic, a victim from Baba Amr in Homs testified that in late February/early March 2012, approximately 50 men in military uniform stormed his door at 5:00 am. He described how they gang raped him, his wife, and two young teen daughters while forcing them to watch the whole process. In his words: "The men raped [my two daughters] and my wife, forcing them onto the ground to do so. They raped them at the same time. When they began to rape my daughters, they forced me to raise my head and watch. You cannot imagine what that felt like, as a man to sit there and watch them do that. They raped each of them three times. Then they forced me out of the chair and ordered me onto the ground. They raped me as well and ordered my wife and children to watch. The men were jeering and said: Look at your father. They destroyed me." *Inquiry on the Syrian Arab Republic*, *supra* note 136, at 92.

places²¹⁵ against women and girls suspected to be affiliated with the opposition.²¹⁶ Even though most cases go unreported, considering the devastating impact of such crimes on the Syrian conservative society, humanitarian aid agencies records revealed that physical and psychological support was given to tens of thousands of gender-based violence victims in 2013 alone.²¹⁷ The United Nations Population Front records indicated that it had provided psychological support for more than 38,000 victims in different Syrian regions in that year.²¹⁸ Similarly, the Euro-Mediterranean Human Rights Network released a report in 2013, which found out that around 6,000 women and young girls were subjected to multiple forms of sexual exploitation, including gang-rape, since the beginning of the peaceful protests against the regime in 2011.²¹⁹

*B. Unprecedented Wartime Gender-Based Crimes in the Syrian Sectarian War*²²⁰

Since its eruption in March 2011, the Syrian people's movement for freedom and democracy has significantly changed.²²¹ It has gradually shifted from a peaceful uprising to a civil war²²² and finally became sectarian warfare.²²³ This dramatic change has occurred when Hezbollah and Iraq—both belonging to the Shi'i faith—sent troops to fight

215. Amnesty Int'l, "Death Everywhere": War Crimes and Human Rights Abuses in Aleppo, Syria, at 40 (May 4, 2015), <https://www.amnesty.org/en/wp-content/uploads/2021/05/md2413702015english.pdf>.

216. Von der Liethl, *supra* note 199, at 113; Lisa Davis, *ISIL, the Syrian Conflict, Sexual Violence, and the Way Forward: Syrian Women's Inclusion in the Peace Processes*, 48 N.Y.U. J. INT'L L. & POL. 1157, 1175 (2016).

217. Junaid Ul Shafi, *Gendered Impacts of Syrian Civil War*, 2 J. HUM. RTS. L. & PRAC. 19, 20 (2019).

218. Tom Miles, *U.N. Aided 38,000 Victims of Syrian Gender-Based Violence in 2013*, REUTERS (Jan. 8, 2014), <https://www.reuters.com/article/us-syria-crisis-rape/u-n-aided-38000-victims-of-syrian-gender-based-violence-in-2013-idusbrea0711r20140108>.

219. EuroMed Rts., *Violence Against Women, Bleeding Wound in the Syrian Conflict*, at 12 (Nov. 2013).

220. *Sectarian War in Syria*, *supra* note 3; Hilmi Zawati's Testimony, *supra* note 3.

221. Adham Saouli, *Back to the Future: The Arab Uprisings and State (Re) Formation in the Arab World*, 22 DEMOCRATIZATION 315, 315 (2015); Armenak Tokmajyan, *Militarization of the Syrian Revolution: Was This the Wrong Choice?*, 7 J. AGGRESSION, CONFLICT & PEACE RSCH 101, 101 (2015); Jamie Allinson, *Class Forces, Transition and the Arab Uprisings: A Comparison of Tunisia, Egypt and Syria*, 22 DEMOCRATIZATION 294, 296 (2015).

222. Frederic C. Hof & Alex Simon, *Sectarian Violence in Syria's Civil War: Causes, Consequences, and Recommendations for Mitigation*, CTR. FOR PREVENTION GENOCIDE 1, 1 (Mar. 25, 2013).

223. *Id.* at 2.

alongside the government forces,²²⁴ the majority of them belong to the Alawite sect,²²⁵ on the one hand, and when Salafists and jihadists²²⁶—all belonging to the Sunni faith—sided with the Free Syrian Army (FSA),²²⁷ on the other.

As in most internal and transnational armed conflicts, rape has been a horrific component of the Syrian sectarian war,²²⁸ becoming a widespread weapon of terror and a form of torture²²⁹ to extract information from rebels or their family members and supporters.²³⁰ The perpetrators aim to destroy the victims' identity, intimidate them, undermine bonds of solidarity between them and their families, and break their communities' social fabric.²³¹ As has already been pointed out, numerous reports indicate that most of these crimes were allegedly carried out by the Alawite government security forces,²³² pro-government paramilitaries "*shabbiha*,"²³³ as well as by Hezbollah troops.²³⁴

224. INT'L CRISIS GRP., SYRIA'S METASTASISING CONFLICTS 16 (Middle East Report, No. 143 2013) [hereinafter Syria's Metastasising Conflicts].

225. Ayse T. Fildis, *Roots of Alawite-Sunni Rivalry in Syria*, 19 J. MIDDLE E. POL'Y COUNCIL 148, 150 (2012); Emily Alpert, *What Does it Mean to be Alawite*, L.A. TIMES (Feb. 7, 2012), http://latimesblogs.latimes.com/world_now/2012/02/syrian-president-alawite-what-does-that-mean-and-why-does-it-matter.html.

226. *Syria's Salafists Getting Stronger?*, ECONOMIST (Oct. 20, 2012), <https://www.economist.com/middle-east-and-africa/2012/10/20/getting-stronger>; *The War for Syria: Jihadists on the Way*, ECONOMIST (Aug. 4, 2012), <http://www.economist.com/node/21559968>.

227. ELIZABETH O'BAGY, THE FREE SYRIAN ARMY 10 (Inst. for the Stud. of War, 2013).

228. Melissa Jeltsen, *Syria's Rape Crisis: Women Under Siege Project Maps Sexual Violence*, HUFF. POST (Mar. 4, 2013), https://www.huffpost.com/entry/syrias-rape-crisis-women-_n_3006973; DETENTION OF WOMEN IN SYRIA, *supra* note 6, at 26.

229. Ruth Sherlock, *Syria Using Rape as Weapon Against Opposition Women and Men*, DAILY TEL. (May 29, 2012, 6:00 AM), <https://www.telegraph.co.uk/news/worldnews/middleeast/syria/9296135/Syria-using-rape-as-weapon-against-opposition-women-and-men.html>; Int'l Fed. Hum. Rts., *Violence Against Women in Syria: Breaking the Silence*, at 10, 15 (Dec. 2012) [hereinafter *Breaking the Silence*].

230. Kristin Deasy, *Crimes of War: Teen Activist Speaks Out on Rape in Syria's Prisons*, DAILY BEAST (July 11, 2017), <https://www.thedailybeast.com/teen-activist-speaks-out-on-rape-in-syrias-prisons>.

231. Larissa Peltola, *Rape and Sexual Violence Used as a Weapon of War and Genocide*, 2 (2018) (B.A. thesis, Claremont Colleges) (on file with Claremont McKenna College).

232. *Syria: Sexual Assault in Detention*, *supra* note 212.

233. Taft-Dick, *supra* note 9; Wolfe, *supra* note 7.

234. *Lebanese Hostages Threatened Over Hezbollah Syria Role*, YAHOO FIN. (Sept. 5, 2014), [https://www.theguardian.com/world/2013/jul/25/rape-violence-syria-women-refugee-camp](https://finance.yahoo.com/news/lebanese-hostages-threatened-over-hezbollah-syria-role-151532748.html?guccounter=1&guce_referrer=ahr0chm6ly93d3cuz29vz2xllmnvbs8&guce_referrer_sig=aqaaaa1riqrepp2o-zxyv8dlqqybb32ojwpku_jm_jvf9squecqueyxyqxb0oxehnyvj69pfmju3thaucupvd0xskbw_ywdgkqh5ybb4qcpogwlnmndbpxs2rnqabqnou3nk49dukowodt-fcsxaykjseyoulamo55iog_6dkeo4h; Phoebe Greenwood, Rape and Domestic Violence Follow Syrian Women into Refugee Camps</i>, GUARDIAN (July 25, 2013), <a href=).

Several reports also indicate that the situation for Syrian women and girls is frightening.²³⁵ Many families have fled the country to protect their women from rape, which is employed as a weapon of “sectarian cleansing”²³⁶—a new conflict-related crime to be added to the long list of crimes against humanity, embodied in Article 7 of the Rome Statute of the ICC.²³⁷ Firsthand information collected from Syrian refugees in Jordan, Lebanon, Iraq, and Turkey, reveals that Syrian women and young girls were gang-raped and intentionally impregnated.²³⁸ They have been assaulted in detention and interrogation centers,²³⁹ during home raids and searches in front of their families,²⁴⁰ and in public at checkpoints and roadblocks.²⁴¹ They were, and still are, experiencing a living death behind bars or in refugee camps inside and outside Syria²⁴² and continue to be vulnerable to different kinds of exploitation by both friends and foes.²⁴³ In a heart-wrenching story from the Za’tari refugee camp in Jordan, a father was forced to surrender his underage daughter to government security forces at a checkpoint after being threatened with the death of all family members inside the car.²⁴⁴

In Syria, as well as in other Arab countries, there are unequal gender norms.²⁴⁵ Customs and domestic laws maintain discriminatory provisions against women, considering them as just sexual objects and honor symbols rather than human beings treated on an equal footing with

235. *Rape Prevalent*, *supra* note 12.

236. *Metastasizing Conflicts*, *supra* note 224, at 6.

237. Rome Statute, *supra* note 49, at 91.

238. R. El Arab & M. Sagbakken, *Child Marriage of Female Syrian Refugees in Jordan and Lebanon: A Literature Review*, GLOB HEALTH ACTION, 2019, at 1, 6 (2019); SYRIAN NETWORK HUM. RTS., RAPE AT SYRIAN SECURITY DETENTION CENTRES: TESTIMONIES OF SEVEN WOMEN RAPED IN HAMA SECURITY BRANCH, 2 (2015); Rima Mourtada et al., *A Qualitative Study Exploring Child Marriage Practices Among Syrian Conflict Affected Populations in Lebanon*, 11 CONFLICT & HEALTH 54, 58 (2017).

239. *Breaking the Silence*, *supra* note 229, at 11.

240. *Id.*

241. *Id.*; *Rape Prevalent*, *supra* note 12.

242. Cecily Hilleary, *Sexual Violence: A Factor in Syrian Refugee Crisis*, VOICE AM. (Jan. 21, 2013), <https://www.voanews.com/a/sexual-violence-a-factor-in-syrian-refugee-crisis/1588105.html>.

243. Stephen Starr, *Live-Tracking Sexual Violence in Syria*, GLOBE & MAIL (Apr. 3, 2013), <https://www.theglobeandmail.com/news/world/syria-live/live-tracking-sexual-violence-in-syria/article10720703/>.

244. HANDBOOK OF ARAB WOMEN AND ARAB SPRING: CHALLENGES AND OPPORTUNITIES 155 (Muhamad S. Olimat ed., 2014) (citing N. Boustany, *Rape is Now Defining Syria’s Conflict*, THE DAILY STAR, 7 (Feb. 18, 2013)).

245. See generally SHIRIN J. A. SHUKRI, ARAB WOMEN: UNEQUAL PARTNERS IN DEVELOPMENT 66 (1996).

men.²⁴⁶ Accordingly, raping a Syrian woman simply means sentencing her to death, physically, psychologically, and socially.²⁴⁷ Assaulted women might be killed, abandoned, or socially rejected.²⁴⁸ Moreover, women could be killed by their own families or commit suicide as a preventive measure of being raped.²⁴⁹ A report by the International Rescue Committee reveals that a father shot dead his daughter as an armed group approached them in order to prevent the dishonor of her being sexually assaulted.²⁵⁰

In this respect, testimonies collected in Amman, Jordan, by Hamida Ghafour, Toronto Star's foreign affairs reporter, disclosed that many raped Syrian women had been killed by their families or forced to commit suicide upon their release from jail, as they allegedly brought "shame" to their families.²⁵¹ Others were pressured to marry, even to elderly people to "restore" their honor.²⁵² In the same vein, Syrian women agents procure teen brides, some as young as twelve years for men as old as seventy years.²⁵³ Ghafour brings to light the story of a 17-year-old bride wedded to a Saudi groom of seventy;²⁵⁴ the child bride would like to "sacrifice herself for her family," as her mother said.²⁵⁵ Ghafour adds that this case is one of the hundreds of forced marriages where teen girls have been "sold to early marriages" for as little as \$100 cash for a bride.²⁵⁶ However, many of these marriages were temporary and lasted only for a few weeks or even days before these child-brides were forced to return, broken, to their families in the camp.²⁵⁷ For

246. NABIL F. KHOURY & VALENTINE M. Moghadam (eds.), GENDER AND DEVELOPMENT IN THE ARAB WORLD: WOMEN'S ECONOMIC PARTICIPATION: PATTERNS AND POLICIES 4 (1995).

247. Hilmi Zawati's Testimony, *supra* note 3.

248. *Breaking the Silence*, *supra* note 229, at 14; Hilleary, *supra* note 242.

249. *Breaking the Silence*, *supra* note 229, at 14; Michael Weiss, *Women in Aleppo Choose Suicide Over Rape, Rebels Report*, DAILY BEAST (July 12, 2017), <https://www.thedailybeast.com/women-in-aleppo-choose-suicide-over-rape-rebels-report>.

250. Int'l Rescue Comm., *Syria: A Regional Crisis-The IRC Commission on Syrian Refugees*, at 7 (Jan. 2013), <https://www.rescue-uk.org/sites/default/files/document/991/finalsyria-reportanglicised.pdf> [hereinafter The IRC Commission's Report].

251. *Sectarian War in Syria*, *supra* note 3.

252. *Id.*

253. Hamida Ghafour, *Syria's Refugee Brides: "My Daughter is Willing to Sacrifice Herself for Her Family,"* TORONTO STAR (Mar. 22, 2013), https://www.thestar.com/news/world/2013/03/22/young_brides_displaced_by_syria_conflict_sought_by_older_grooms.html.

254. *Id.*

255. *Id.*

256. *Id.*; *Breaking the Silence*, *supra* note 229, at 15.

257. Ghafour, *supra* note 253; Ruth Sherlock & C. Malouf, *Syrian Girls "Sold" into Forced Marriages*, TEL. (Jan. 23, 2013), <https://www.telegraph.co.uk/news/worldnews/middle-east/syria/9821946/Syrian-girls-sold-into-forced-marriages.html>.

example, a fifteen-year-old girl was sold four times into young marriages.²⁵⁸

Nevertheless, in light of the above discussion, one may identify some newly invented conflict-related gender-based crimes emerging from Syria's sectarian strife.

1. *Zawāj Ta'assufī* “Arbitrary Marriage”

Sexual exploitation and trafficking in young Syrian women and girls have become a disgraceful phenomenon spread during, and as a result of, the sectarian war in Syria.²⁵⁹ Field researchers discovered that many women who were sexually abused and sought shelter in refugee camps in neighboring countries—particularly in the Za'tari refugee camp in Jordan—were revictimized and subjected to sexual exploitation.²⁶⁰ Associated stigma, shame, poverty, revenge, and dishonor have prevented victims and their families from speaking out or seeking help.²⁶¹ For that reason, many young victims have been forced by their families to early marriages.²⁶² As young as twelve-years-old, the child brides have been auctioned by their parents to Arab grooms, who married them as a “patriotic duty” and a form of “support to the revolution” against the Syrian regime.²⁶³ They usually take these young girls as second wives, promising to alleviate the families' financial problems and spare their daughters from a certain harsh life in the refugee camps.²⁶⁴ These marriages could be classified into two categories:

(i) *Zawāj al-sawn* “protection marriage,” where parents force their daughters into early marriages under the pretext of fear of the unknown, fear of rape—which would damage the family's reputation and demolish the girl's future chances to get married—and because of the lack of financial resources to sustain them.²⁶⁵ A typical case is that some Syrian families in al-Raqqa and Deir Ez-Zor governorates, which were under the control of the self-declared Islamic State in Iraq and the Levant (ISIL), married their daughters as young as fourteen-years-old to older adults from their communities to protect them from being forced to

258. Ghafour, *supra* note 253.

259. Sherlock, *supra* note 257.

260. Hilmi Zawati's Testimony, *supra* note 3.

261. Hilleary, *supra* note 242.

262. Mourtada, *supra* note 238, at 58.

263. Hilmi Zawati's Testimony, *supra* note 3.

264. Sherlock, *supra* note 257.

265. Ghafour, *supra* note 253.

marry ISIL fighters.²⁶⁶ In this respect, the Independent International Commission of Inquiry on the Syrian Arab Republic revealed that the ISIL fighters targeted unmarried women and girls over the age of puberty for marriage.²⁶⁷ The Commission provided that the ISIL severely punished reluctant families and took their daughters by force.²⁶⁸ A case in point is that the ISIL fighters in Deir Ez-Zor city lashed the father of a fourteen-year-old girl because he refused their “proposal,” and finally, they took the girl from her home by force.²⁶⁹

(ii) *Zawāj al-sutra* “shame marriage,” where families push their women who were sexually assaulted in the war to marry volunteer Arab grooms to preserve their dignity and restore the families’ honor.²⁷⁰ Unfortunately, many of these arbitrary marriages end up temporary for pleasure and last only for a few days or weeks.²⁷¹ As a result of these deviant and nonbinding marriages, many young girls have been impregnated, abandoned, dumped alone,²⁷² or left to return to the Za’tari refugee camp, injured, insulted, and mortified.²⁷³ This is a form of licensed sexual exploitation, which was imposed by war conditions.²⁷⁴

However, this crime has motivated a number of Syrian and Arab activists to launch an online campaign under the title *lāji’at la sabāyā* “refugees, not spoils of war” to expose individuals and institutions who served as sexual mediators between “grooms” and Syrian needy refugee families in the camp.²⁷⁵

2. *Zawāj al-Istimtā*^c “Pleasure Marriage”

In her testimony, a Syrian mother of two little children from the city of Douma, the center of Damascus governorate, testified that five members of the Hezbollah brigade gang-raped her at home while her husband was participating in demonstrations against the regime.²⁷⁶ She said that they had forced her, at gunpoint, to *zawāj al-Istimtā*^c “pleasure

266. *I Lost My Dignity*, *supra* note 106.

267. *Id.*

268. *Id.*

269. *Id.*

270. *Sectarian War in Syria*, *supra* note 3.

271. Ghafour, *supra* note 253; Sherlock, *supra* note 257.

272. Canan Yaşar, Syrian Refugee Women and Girls Forced into Marriage in Turkey: Existing National and International Law Instruments and their Effectiveness, 11 (2018) (M.A. thesis, University of Padova) (on file with the University of Padova).

273. Sherlock, *supra* note 257.

274. *Id.*

275. *Sectarian War in Syria*, *supra* note 3.

276. *Id.*

marriage,” one after another. The perpetrators might have conducted this crime under the plea of practicing *zawāj al-mut’a* “temporary marriage,” commonly practiced by Shi’i communities, including Twelver Shia, who prevail in Iran and Southern Lebanon.²⁷⁷

In “The Militarization of Sex: The Story of Hezbollah’s Halal Hook-ups,” a 2009 *Foreign Policy* article, Hanin Ghaddar provides that Shiite women and men practice temporary marriage as a religious duty.²⁷⁸ Zahra, a twenty-five-year-old Shiite divorced woman notes that temporary marriages with women whose husbands were killed by Israelis would be more rewarding in heaven.²⁷⁹ However, *zawāj al-mut’a*, which was permitted for a very short period of time in the early days of Islam, and strictly prohibited by the Prophet Muhammad on the occasion of the battle of Khybar, as narrated by *Alī Ibn Abī T{ālib*, is quite different from this invented gender-based crime.²⁸⁰

According to the Shiite personal law, temporary marriage is a fixed-term marriage, freely performed under a temporary contract between a man and an unmarried woman who agrees to wed for a fixed period of time, spanning to a couple of months, weeks, days, or even hours.²⁸¹ The woman should say: I have wedded you myself, declaring firmly the time period of marriage and the dowry.²⁸² The man must respond by saying he accepts the marriage.²⁸³ Moreover, when the proposed time is finished, the woman should wait for two menstrual periods before engaging in another marriage.²⁸⁴ On the contrary, the invented crime of “pleasure marriage” is simply a kind of sexual violence and prostitution in the form of marriage, where Syrian Sunni women, regardless of their social status or age, have been allegedly forced by the sectarian government forces or their allies.²⁸⁵

277. *Id.*

278. Hanin Ghaddar, *The Militarization of Sex: The Story of Hezbollah’s Halal Hookups*, FOREIGN POL’Y (Nov. 25, 2009), <https://foreignpolicy.com/2009/11/25/the-militarization-of-sex/>.

279. *Id.*

280. R. Ibrahim Adebayo, *A Study of Nikāh al-Mut’ah and its Implications for Feminine Dignity*, 4 ILORIN J. RELIGIOUS STUD. 3, 4 (2014).

281. SHAHLA HAERI, LAW OF DESIRE: TEMPORARY MARRIAGE IN SHI’I IRAN 97 (2002).

282. *Id.*

283. *Id.*

284. *Id.*

285. *Sectarian War in Syria*, *supra* note 3.

3. *Jihād al-Nikāh* “Sexual Jihad Marriage”

It has been widely reported that at least a dozen young Tunisian girls have been lured to Syria²⁸⁶ in response to a false *fatwā* “religious decree,” allegedly attributed to sheikh Muhammad al-^cArīfī,²⁸⁷ an authoritative Saudi Islamic scholar. He allegedly exerted women to temporarily marry and provide “sexual services” for jihadist rebels to strengthen their position in fighting against the Alawite Syrian regime.²⁸⁸ The notion of sexual Jihad, based on a false tweet, was first propagated in September 2012 by pro-regime’s Lebanese *Shī’ī* and Tunisian leftist media channels as a political weapon to discredit and publicly slander Islamist armed groups fighting against the regime.²⁸⁹ Sheikh al-’Arīfī, however, has repeatedly denied this fictitious *fatwā*, considering this marriage as a form of prostitution under the pretense of “temporary marriage,” which is also a type of adultery and strictly proscribed under Islamic law.²⁹⁰ Nonetheless, in this framework, first-hand information collected from Syrian detainee women and girls provides that they were forced to confess on the official Syrian TV and other pro-regime’s media stations that they were involved in providing sexual Jihad to opposing militant groups.²⁹¹ The confessions were extracted from them by the prison interrogators under severe torture or in exchange for their freedom.²⁹²

In this context, many commentators argue that the above *fatwā* lies within the declared war between *Shī’ī* and *Sunnī* faith followers over the Syrian people’s revolution.²⁹³ They believe that the *fatwā* was fabricated and widely disseminated by the Syrian regime and its allies, namely Hezbollah and Iran, to send a twofold message.²⁹⁴ The first one is directed to the Syrian conservative community to tarnish and stigmatize

286. Patrick Goodenough, ‘Sexual Jihad’ Fatwa Urges ‘Temporary Marriages’ for Syrian Rebels, POL. F. (Mar. 29, 2013, 4:56 AM), <https://www.cnsnews.com/news/article/sexual-jihad-fatwa-urges-temporary-marriages-syrian-rebels>.

287. *Id.*

288. *Id.*

289. DETENTION OF WOMEN IN SYRIA, *supra* note 6, at 15.

290. Goodenough, *supra* note 286.

291. DETENTION OF WOMEN IN SYRIA, *supra* note 6, at 15.

292. On July 16, 2014, Euro-Mediterranean Human Rights Network interviewed two former women detainees in Damascus. Shadia, a twenty-year-old student of chemistry at the University of Damascus, and Saidah, a twenty-four-year-old mother of a baby girl from Aleppo were forced to publically make false confessions on practicing of what has been called *jihād al-nikāh*. The confessions were aired on the official Syrian TV. *See id.* at 33.

293. Reem Haddad, *Sexual Jihad and the Syrian Revolution*, ARAB AM. NEWS (Aug. 8, 2013), <https://www.arabamericannews.com/2013/08/09/sexual-jihad-and-the-syrian-revolution/>.

294. Ghaddar, *supra* note 278.

the jihadist rebels, who allegedly authorized prostitution in the garb of temporary marriages.²⁹⁵ The second message is to the international community to lose faith in the FSA, which mainly comes from Syria's *Sunnī* majority and questions its ability to build a free democratic Syria.²⁹⁶

Nonetheless, regardless of the perpetrators' identity of the above heinous crimes, it is necessary that the international community would take a further step and halt the war waged on Syrian women by all war factions and bring perpetrators to justice and combat the culture of impunity.²⁹⁷ To achieve these legitimate goals, however, the UN Security Council should overcome its continued failure over the past ten years to stop the war in Syria and refer its case under Chapter VII of the UN Charter to the Prosecutor of the ICC, pursuant to Article 13(b) of the Rome Statute.²⁹⁸ Moreover, it is also essential to call upon the drafters of the Rome Statute of the ICC to reconceptualize, classify, define, and label gender-based crimes—including these newly introduced by the sectarian war in Syria—and incorporate them in the provisions of the Statute, as well as in the States Parties' national criminal legislation under core crimes, namely war crimes, crimes against humanity and genocide.²⁹⁹

IV. BARRIERS TO JUSTICE AND THE FAILURE OF THE INTERNATIONAL POLITICAL WILL

Although conflict-related gender-based crimes are embodied in the statutory international criminal law norms under war crimes and crimes against humanity and prosecuted as such at ad hoc tribunals, national courts with universal jurisdiction, and the International Criminal Court, they have been the least condemned and most condoned crimes. Impunity has thrived for these abhorrent crimes in Syria, Egypt, Libya,

295. *Id.*

296. C. Phillips, *Sectarianism and Conflict in Syria*, 36 *THIRD WORLD Q.* 357, 359 (2015).

297. See generally Soraya Chemaly, *Why is the U.S. Media Ignoring Rape in Syria?*, SALON (Mar. 9, 2013), https://www.salon.com/2013/03/09/why_is_the_u_s_media_ignoring_rape_in_syria/.

298. Rome Statute, *supra* note 48, at 91.

299. Ben Hubbard, *Germany Takes Rare Step in Putting Syrian Officers on Trial in Torture Case*, N.Y. TIMES (Apr. 23, 2020), <https://www.nytimes.com/2020/04/23/world/middle-east/syria-germany-war-crimes-trial.html>; Philip Oltermann & Emma Graham-Harrison, *Germany Charges Two Syrians with Crimes Against Humanity: Alleged Former Secret Service Officers Arrested in February Over Torture of Prisoners*, GUARDIAN (Oct. 29, 2020), <https://www.theguardian.com/law/2019/oct/29/germany-charges-two-syrians-with-crimes-against-humanity>.

and other Arab-Spring countries.³⁰⁰ The constant failure to prosecute and punish these crimes is due to the world's lack of political will and conspiracy of silence on these crimes, the absence of competent gender justice, and the prevalence of impunity, exemplified in the practical immunity from prosecution due to the continuous failure, *de jure* or *de facto*, to bring perpetrators to justice. Accordingly, achieving accountability for wartime gender-based crimes is regularly confronted by many obstructions, including the following obstacles discussed below.

A. Judicial Obstructions and Perpetrators Reprisal or Retaliation

Judicial systems in the Arab-Spring countries played a significant role in reducing conflict-related gender-based crime victims' capacity to hold perpetrators accountable for their felonies, mainly when victims are still in detention or living as refugees in other countries. The victims' reluctance to file cases before local courts or judicial bodies with universal jurisdiction was due to their fear of perpetrators' reprisal or retaliation, as many victims still have families or relatives living in areas controlled by the Syrian regime.³⁰¹ For example, due to Libya's prevailing impunity, as a result of the lack of a central authority and public order and consequently to the paralyzed judicial system in the post-Qadhafi era, rebel forces and local brigades allegedly committed many human rights violations and war crimes, including conflict-related gender-based crimes.³⁰² Tawerghan women and girls were vulnerable to all kinds of risks and violence. Misrata militias allegedly attacked these women in retaliation for the allegations of mass rape committed by Tawerghan men against Libyan women and men during the early days of the Libyan revolution against the Qadhafi regime.³⁰³ Women who were

300. *Whitewash in Virginity Tests Trial*, *supra* note 149; Simon Tisdall, *Syrian War Criminals May Find the Law is Finally Closing in on Them*, *GUARDIAN* (Oct. 14, 2019), <https://www.theguardian.com/world/2019/oct/14/syria-war-criminals-may-find-the-law-is-finally-closing-in-on-them>; Sophie McBain, *Breaking the Silence: Confronting Rape in Post-War Libya*, *GUARDIAN* (June 10, 2013), <https://www.theguardian.com/global-development-professionals-network/2013/jun/07/confronting-rape-post-war-libya>.

301. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., 2020 Country Reports on Human Rights Practices: Syria 51 (2020), <https://www.state.gov/wp-content/uploads/2021/10/SYRIA-2020-human-rights-report.pdf>.

302. Asmae Khalifa, *Women in Libya: The Ongoing Armed Conflict, Political Instability and Radicalization*, in *NORTH AFRICAN WOMEN AFTER THE ARAB SPRING: IN THE EYE OF THE STORM* 246 (Larbi Touaf, Soumia Boutkhil, & Chourouq Nasri eds., 2017).

303. *Id.*

sexually harassed by local militias could not report these incidents due to the absence of a competent operating judicial system.³⁰⁴

However, barriers to justice for victims of sexual violence in Syria were not much different from those in Libya. Syrian victims of wartime rape and other forms of sexual violence were confronted by several obstructions, including lack of confidence in the reporting process, fear of perpetrators' retaliation, and the associated stigma and blame from family members, close relatives, and even the entire community.³⁰⁵ For instance, the refugee victim's lack of trust in governmental institutions, on the one hand, and the uncertainty about the confidentiality of personal information accompanied by fear of retaliation by government agents, on the other, impeded reporting processes and constituted barriers to justice.³⁰⁶ Moreover, many Syrian women rape survivors at refugee camps often preferred not to talk about their ordeal for fear of reprisals, shame, and bloodshed.³⁰⁷

B. Victim's Limited Financial Resources

Limited financial resources for victims of wartime sexual violence, particularly those released from prisons, could be problematic and constitute a barrier to justice. A striking example is the case of sexually assaulted women, descended from highly patriarchal and conservative societies in which a woman's chastity is equal to her honor,³⁰⁸ who encountered financial difficulties upon their release. Considering the prevailing belief that interrogators have raped every woman detained in Syria, many women were abandoned by their families and consequently lost their primary financial support source.³⁰⁹ Worse than that is that detained women could not seek employment in their communities, and if they found any, they would be expelled as soon as the employer knew that they were former detainees.³¹⁰ Hiring former security prisoners in Syria would undoubtedly put employers on the horns of a dilemma and constant threat from Syrian intelligence.³¹¹ The limited financial resources and associated stigma restricted the victims' ability to seek

304. *Id.*

305. Emma MacTavish, *Barriers of Reporting Sexual Violence in Syrian Refugee Camps*, 37, 38 (2016) (M.A. thesis, Royal Roads University).

306. *Id.* at 38.

307. *Id.* at 38-39.

308. *DETENTION OF WOMEN IN SYRIA*, *supra* note 6, at 21.

309. *Id.* at 23.

310. *Id.*

311. *Id.* at 43.

medical or legal remedies.³¹² Similarly, in some cases, wartime male rape survivors were ostracized by their families, while many were unable to carry out their job duties, increasing their risk of poverty and limited access to justice and medical counseling.³¹³

C. *Victim's Fear of Stigmatization and Being Vulnerable to Others*

Living together in converging societies, where most people know each other, many Arab-Spring victims of sexual violence feared stigmatization and preferred to live with their persistent trauma rather than seeking justice that may render them vulnerable to further assaults. This phenomenon manifested itself with victims subjected to sexual violence during interrogations in government-run detention centers. The lack of gender-sensitive justice and inadequate accountability mechanisms has resulted in the reluctance of rape survivors to take legal measures against perpetrators.³¹⁴ For instance, in the case of Syrian victims, the intense social stigma associated with the devastating assaults and the shortage of psychological and medical support, and the lack of legal aid in territories ruled by the Syrian regime had a horrific impact on the victims.³¹⁵ They forced them to remain silent in terrible conditions that may lead them to psychosis and even suicide.³¹⁶ Sexual exploitation of women would cast an extended profound shame and humiliation on them and their entire family.

D. *Corruption of the Judicial System*

Corruption of the judicial system in most Arab-Spring countries has become a general phenomenon, not an exception. Many rape victims who reported cases of sexual violence were revictimized and assaulted in police stations and accused of prostitution, and at best, their complaints had never been taken seriously or presented to a judge. A striking example is the case of Meriem Ben Mohamed, a twenty-seven-year-old Tunisian woman who was allegedly raped by two police officers.³¹⁷

312. *Id.* at 22.

313. *We Keep It in Our Heart*, *supra* note 173.

314. DETENTION OF WOMEN IN SYRIA, *supra* note 6, at 22.

315. *Id.*

316. *Id.*; *Looking Through the Window Darkly*, *supra* note 106, at 44; U.N. SCOR, 7938th mtg., U.N. Doc. SC/12819 (May 15, 2017) [hereinafter *Sexual Violence as War Tactic*]; *Conflict Related Sexual Violence*, *supra* note 106, ¶10, 69; *Sexual Violence in Conflict*, *supra* note 16, at 33.

317. Naveena Kottor, *Tunisian Police Rape Victim Defiant*, BBC (Apr. 2, 2014), <https://www.bbc.com/news/world-africa-26820712>.

When Meriem filed a complaint against the perpetrators, the investigating judge charged her with “public indecency” and acquitted the offenders.³¹⁸

In brief, the story began on the evening of September 3, 2012, when Meriem and her fiancé Ahmed were seized by three policemen while driving their car through Ain Zaghuan, a suburb of Tunis, the capital.³¹⁹ The police accused them of being in an “immoral position,” a charge that could lead to six months in jail if they were convicted.³²⁰ Afterwards, two of the officers took Meriem to the back of their car and raped her one after another.³²¹ At that moment, the third officer handcuffed her fiancé and took him to a nearby bank machine to obtain 300 dinars from him under duress.³²² However, when the investigating judge announced the verdict of charging Meriem and her fiancé with “intentional indecent behavior,” he turned the victim into an offender and put tremendous pressure on the couple to drop the complaint they lodged against the police.³²³ Moreover, he aimed to discredit the rape victim, thwart such complaints in the future, and tell the perpetrators that they could get away with it.³²⁴

In a similar case, an Egyptian military court charged seventeen protesting women, after trials lasting less than thirty minutes, where seven of them were subjected to a “virginity test” by a military doctor, with “thuggery” and imposed on them suspended one-year sentences.³²⁵ Later, on March 11, 2012, the court acquitted Dr. Ahmed Adel, the only military officer charged with “public indecency” and “failure to obey orders” in relation to “virginity test” assaults.³²⁶ The military court’s failure to investigate and punish alleged sexual violence committed by military forces against women obstructed the victims’ hope to hold perpetrators accountable for such felonies and bring them to justice.³²⁷

318. Ed Payne, *Rights Group: Police Rape Woman in Tunisia, then Charge Her with Indecency*, CNN (Oct. 2, 2012, 8:55 PM), <https://www.cnn.com/2012/10/02/world/africa/tunisia-rape-protest/index.html>.

319. Ségolène Allemandou, *My Fiancée was Raped by Police, Then Charged with Indecency*, FRANCE 24 (Sept. 28, 2012, 6:14 PM), <https://www.france24.com/en/20120927-tunisia-police-rape-woman-indecency-trial-feminism-islamist-ennahda-party>; Kottor, *supra* note 317.

320. Allemandou, *supra* note 319.

321. Kottor, *supra* note 317.

322. Allemandou, *supra* note 319.

323. Allemandou, *supra* note 319.

324. Payne, *supra* note 318; *Gendering the Arab Spring*, *supra* note 106, at 402; Allemandou, *supra* note 319.

325. *Whitewash in Virginity Tests Trial*, *supra* note 150.

326. *Id.*

327. *Id.*

The verdict assured the military justice system's lack of independence and underlined its failure to punish gross abuses perpetrated against women by military officers.³²⁸

Complaints of sexual exploitation filed against security forces officers have been systematically hindered and inadequately investigated. Several reports indicated that police officers and prison guards pressured victims of sexual violence to withdraw complaints or threatened them with reprisals to prevent them from filing future complaints.³²⁹ In this respect, the Egyptian deputy minister for human rights at the Ministry of Interior told the press that "N," a student at al-Azhar University who was allegedly raped in a van by a policeman on December 28, 2013, in front of her college was "irrational" and wanted "to turn public opinion against the police."³³⁰ Regrettably, the prosecution process's politicization, together with the judicial system's failure to punish such crimes, would encourage the culture of impunity for state actors and invite families to take revenge as in Mohamed Kamal's case, the police officer.³³¹ Kamal was castrated in the street for raping "N," the student mentioned above, in a police van.³³²

Likewise, the Libyan transitional justice system has utterly failed to punish sexual violence allegedly committed by rebel fighters during the conflict. The lack of the transitional government's control over armed militias promotes a large scale of retaliation attacks, including rape and other forms of sexual violence against suspected security forces of the former regime, groups or communities believed to be loyalists to Qadhafi and alleged foreign mercenaries.³³³ Some townships and districts in Western Libya have been ethnically cleansed and turned into virtual ghost towns, particularly Tawergha, Bani Walid, and Sirte.³³⁴ A closer look at the Libyan transitional laws, particularly Law No. 38, shows that these laws were promulgated in a way that makes them retributive rather

328. Cairo Inst. for Hum. Rts. Stud., *Delivering Democracy Repercussions of the Arab-Spring on Human Rights: Human Rights in the Arab Region Annual Report 2012*, at 104 (2013), <https://www.cihrs.org/wp-content/uploads/2013/09/the-annual-report-2013.pdf>; *Whitewash in Virginitas Tests Trial*, *supra* note 150.

329. EXPOSING STATE HYPOCRISY, *supra* note 147, at 26.

330. *Id.*

331. *Id.*

332. *Id.*

333. *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12, at 69.

334. Ann E. Mayer, *Building the New Libya: Lessons to Learn and to Unlearn*, 34 UNIV. PA. J. INT'L L. 365, 372 (2013); *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12, at 72.

than constructive.³³⁵ For example, Article 4 of the law, which provides blanket immunity for persons who carried out the task of toppling the former regime, approves the status of lawlessness and encourages the culture of impunity.³³⁶ Early reports from Libya suggest that this amnesty law was drafted to address the tribal leaders' concerns of holding members of relative rebel forces accountable for human rights violations allegedly committed during and after the Libyan uprising against the Qadhafi regime.³³⁷

E. Fear of Being Killed or Abandoned and Socially Rejected

In the Arab-Spring countries' conservative societies, a woman's chastity and virginity are among the most highly regarded social values and constitute her and her family's honor and dignity.³³⁸ So, many Arab-Spring sexually assaulted women were victimized twice: first when their assailants perpetrated them, and second, by society, which attributes shame to women only and considers them as merely sexual objects and symbols of honor rather than human beings.³³⁹ Accordingly, to maintain the family's honor, many individuals,³⁴⁰ including victims themselves, believe that raped women must be subjected to "honor killing" by their families, or at best be abandoned and socially rejected, even though they were assaulted against their will.³⁴¹ Practically speaking, raping an Arab woman, whether in peacetime or armed conflict, would cast an extended profound shame and humiliation on her and the entire family and would simply mean, in many cases, sentencing her to death—physically, psychologically, and socially.³⁴²

In many Arab-Spring countries, there is a widespread belief that any detained woman must be subjected to rape and other forms of sexual violence by interrogators.³⁴³ For example, many Syrian women, who were released from the regime's prisons in the past ten years, have been

335. *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12, at 80.

336. K.J. Heller, *The UN International Commission of Inquiry and International Crimes in Libya, 2011-2012*, in *THE LAW AND PRACTICE OF INTERNATIONAL COMMISSIONS OF INQUIRY* (Jens Meierhenrich ed., 2021); Law No. (38) of 2012 (concerning some special measures regarding the transitional period), art. 4, National Transitional Council, (May 2, 2012) (Libya); Int'l Fed'n for Hum. Rts., *Libya: The Hounding of Migrants Must Stop*, at 70 (Nov. 10, 2012).

337. *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12, at 56.

338. Hilmi Zawati's Testimony, *supra* note 6, at 21.

339. *Id.*

340. *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12.

341. *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12, at 51.

342. *Sectarian War in Syria*, *supra* note 3.

343. *DETENTION OF WOMEN IN SYRIA*, *supra* note 6, at 21.

threatened with death.³⁴⁴ Some of them were subjected to actual “honor killing” by their relatives.³⁴⁵ They believed that these women had disgraced themselves and their families. Consequently, many of them sought refuge abroad or tried to start a new life away from their communities.³⁴⁶

A typical example is the case of Zainab, (alias name), from the governorate of Homs, who was detained by the Syrian military intelligence service to extract information from her about her brothers who were targeted by the regime.³⁴⁷ When the intelligence services released Zainab after three months of torture, she went to her aunt’s house in Homs, but the latter refused to receive her.³⁴⁸ She told her that she was subjected to dishonorable acts that tarnished the family’s honor during her detention.³⁴⁹ Consequently, Zainab found herself compelled to return to Damascus, where she met a young man from the city of Dara’a, who gave her shelter and finally agreed to get married at a later time.³⁵⁰ During this period, Zainab called her sister in Homs and informed her about her new residence situation.³⁵¹ The sister told Zainab that one of her brothers intended to get rid of her because she had blemished the family’s honor and reputation.³⁵² A few months later, two young men stormed Zainab’s residence, trying to kill her, but her husband protected her after he was stabbed several times in the back.³⁵³

In a similar case from Libya, Physicians for Human Rights reported that three teenage sisters aged fifteen, seventeen, and eighteen had gone missing after Qadhafi troops arrived in Tomina.³⁵⁴ When they returned home, they told their father that they had been raped in the al-Wadi al-Akhdar elementary school for three consecutive days by Qadhafi’s

344. *Id.*

345. *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12, at 51.

346. DETENTION OF WOMEN IN SYRIA, *supra* note 6, at 21.

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.* at 22.

351. *Id.*

352. *Id.*

353. *Id.*

354. Physicians for Hum. Rts., *Witness to War Crimes: Evidence from Misrata*, at 15 (Aug. 1, 2011).

thugs.³⁵⁵ On that day, the father slit his three daughters' throats in an honor killing for allegedly "humiliating their family."³⁵⁶

The above accounts underline the severe impact of the traditional misconception of Arab society of sex and honor in dealing with female victims of conflict-related sexual violence. This misconception stems from the Arab male-dominated society, which requires society to get rid of the victim for one reason: being a female "brought shame to herself and her family," although she was assaulted against her will. First-hand information collected from victims in refugee camps and elsewhere indicates that this discriminatory-based treatment of women victims makes them reluctant to reveal their ordeals, prevents them from taking further steps to seek justice and consequently encourages the culture of impunity for such heinous crimes. Unfortunately, many Arab-Spring women survivors of rape and other forms of sexual violence preferred to die in silence rather than come forward and seek justice. As rape and sexual violence has become one of the central features of the ongoing civil wars in some Arab-Spring countries, it is believed that the time has come to review the misconception of shame and honor and to put an end to the discriminatory notion of considering wartime raped women's honor and dignity derived from their virginity and chastity.³⁵⁷ Wartime rape casualties should be considered wounded combatants rather than mere victims of sexual violence, as veterans of a just war rather than a shameful statistic. Ignoring the pains of those women would encourage the culture of impunity and constitute a barrier to justice.³⁵⁸

F. *Lack of International Political Will*

The lack of political will at both national and international levels to arrest persons involved in such atrocious crimes and bring them to justice had a devastating impact on the victims. Despite the tremendous progress made during the last three decades by international criminal tribunals and courts on gender-based crimes, many legal scholars and commentators consider these developments inadequate if not a complete failure.³⁵⁹ This inadequacy has rendered gender-based crimes the least

355. *Id.*

356. *Id.*; Chris Hughes, *Dad Murders Three Teenage Daughters Raped by Gaddafi Thugs*, DAILY MIRROR (Feb. 7, 2012, 10:44 PM), <https://www.mirror.co.uk/news/uk-news/dad-murders-three-teenage-daughters-150740>.

357. MacTavish, *supra* note 305, at 38.

358. Hilmi M. Zawati, *Libyan Rape Casualties as Veterans of a Just War, Not a Shameful Statistic*, N.J. L.J., Jan. 2012, at 31; *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12.

359. FAIR LABELLING *supra* note 43.

condemned crimes at the international and state-run judicial bodies, the matter that damaged the credibility of these judicial institutions and forced victims to refrain from reporting such crimes.³⁶⁰ This inadequacy has been the result of several deficiencies, including the lack of a clear gender-based prosecuting strategy, limitations on the courts' jurisdictions and mandates, the lack of the prosecutors' political will, and plea bargaining, which is a highly controversial judicial process that may even result in the dropping of severe charges, including wartime rape and other forms of sexual violence.³⁶¹ Moreover, some legal scholars also argue that this inadequacy is due to the abstractness and ambiguity of gender-based crimes in these courts' statutory laws and jurisprudence, which placed them in a dilemma, resulting in delivering only symbolic gender justice.³⁶²

To address this failure and empower the international judicial system, the UN Security Council has adopted a number of resolutions, including 1325, 1820, 1888, and 1889, calling on all parties to armed conflicts to take extraordinary measures to protect women and girls from gender-based violence.³⁶³ It is worth mentioning here that Resolution 1820 has classified rape, for the first time, as a tactic of war and a threat to international peace and security,³⁶⁴ the thing which enables the UN Security Council to refer these heinous crimes to the Prosecutor of the ICC under Chapter VII of the UN Charter. However, notwithstanding the above fine-sounding norms, the use of rape and other forms of sexual violence has been increasing in recent and ongoing civil wars in Arab-Spring countries, which was due to the poor implementation of the above laws and to the lack of political will on the part of major players at the international arena. A case in point is the Security Council's failure to take decisive action to stop the disastrous civil war in Syria and refer the case to the International Criminal Court.³⁶⁵ Russia, the Syrian regime ally and supporter, has vetoed sixteen UN Security Council resolutions on Syria since a crackdown by the Syrian regime on pro-democracy

360. *Id.* at 141.

361. *Id.* at x, 187, 214.

362. *Id.* at 187; Hilmi M. Zawati, President, Int'l Legal Advoc. F., Prosecuting Wartime Gender-Based Crimes Under Canada's Crimes Against Humanity and War Crimes Act, A Speech Delivered before the All-Party Parliamentary Group for the Prevention of Genocide and Other Crimes Against Humanity in a Session on: Sexual Violence During Wartime: A Crime Against Humanity—A Global Issue (Mar. 26, 2014), SSRN at <http://ssrn.com/abstract=2419801>.

363. See S.C. Res. 1325, ¶ 10 (Oct. 31, 2000); see also S.C. Res. 1820, ¶ 3-5 (June 19, 2008); see also S.C. Res. 1888 ¶ 10 (Sept. 30, 2009); see also S.C. Res. 1889 ¶ 3 (Oct. 5, 2009).

364. See S.C. Res. 1889 ¶ 3 (Oct. 5, 2009).

365. Zaltz, *supra* note 107.

protesters in 2011.³⁶⁶ In this respect, as politics overrides justice in many cases, one may recall the UN Security Council Resolution 1487 (2003) adopted on June 12, 2003.³⁶⁷ It exempted the American troops and personnel serving in any UN force in Iraq from prosecution for international war crimes under the ICC Rome Statute.³⁶⁸ The Resolution promoted the culture of impunity for war crimes and crimes against humanity committed by American troops serving in Iraq, including the Abu Ghraib Scandal of April 2004, where rape and sexual torture of both Iraqi women and men were conducted in a systematic way to crush the spirit of the political detainees for rejecting and resisting the American invasion of Iraq in April 2003.³⁶⁹

On the national level, a close look at the situation of the victims of sexual violence during Libya's civil war since February 2011 reveals that victims were, and still are, reluctant to pursue any form of legal justice against their perpetrators for several reasons.³⁷⁰ The most important of which is that the norms of the traditional Libyan criminal law, as well as the post-revolution transitional laws, contain discriminatory provisions against victims and consequently encourage the culture of impunity for conflict-related gender-based crimes.³⁷¹ The Libyan penal code, Law No. 70 of 1973, which establishes the *hadd* (penalty) for *zina* (adultery), discriminates against female victims.³⁷² It criminalizes *zina*, which is defined as sexual intercourse between a man and a woman who are not bound to each other by marriage regardless of whether or not it was consensual or whether it took place in war or peacetime.³⁷³

366. Michelle Nichols, *Russia, China Veto Syria Aid Via Turkey for Second Time This Week*, REUTERS (July 10, 2020, 12:43 PM), <https://www.reuters.com/article/us-syria-security-un/russia-china-veto-syria-aid-via-turkey-for-second-time-this-week-idUSKBN24B2NW>.

367. S.C. Res. 1487 (June 12, 2003).

368. *Id.* ¶1. Requesting that the ICC shall for a 12 month period starting July 1, 2003 not commence or proceed with investigation or prosecution of any case arises involving current or former officials or personnel from a contributing state not a Party to the Rome Statute over acts or omissions relating to a UN established or authorized operations (June 12, 2003) UN Doc. S/RES/1487 (2003).

369. Zagorin, *supra* note 164; Bloche & Marks, *supra* note 164; Bennett, Lawrence, & Livingston, *supra* note 164.

370. *Prosecuting Conflict-Related Gender-Based Crimes*, *supra* note 12.

371. *Id.* at 52, 66.

372. *Id.* at 52.

373. Law No. 70 of 1973 (regarding the establishment of the *hadd* penalty for *zina* (adultery) and modifying some of the provisions of the penal code), Revolutionary Command Council, art. 1 (Libya).

On the other hand, the Libyan National Transitional Council (NTC) adopted in 2012 several laws, including Law No. 35 “On an Amnesty for Some Crimes,”³⁷⁴ and Law No. 38 regarding “Some Procedures Relating to the Transitional Period.”³⁷⁵ A careful examination of the above laws shows that Law No. 35 addresses only violations of human rights by former government agents between September 1, 1969 and February 15, 2011.³⁷⁶ In other words, it fails to consider violations committed individually or collectively by the rebels or the transitional government’s agents.³⁷⁷ By the same token, Law No. 38 is in conflict with the norms of international treaties and covenants on human rights.³⁷⁸ For example, Article 4 of the same code, which put rebels above the law, provides that “there shall be no penalty for military, security, or civil actions” dictated by the February 17th Revolution that were performed by revolutionaries to promote or protect the revolution.³⁷⁹ Accordingly, this law, which grants a blanket amnesty for rebels and other transitional government agents, violates Libya’s obligations under international law to investigate and prosecute serious violations of international humanitarian and human rights law.³⁸⁰ This matter impedes any attempt to bring rebels who allegedly committed conflict-related gender-based crimes to justice and promotes the culture of impunity for such crimes.³⁸¹

V. WHY AN ARAB-SPRING WOMEN’S TRIBUNAL IS IMPERATIVE?

In the light of the above obstacles and the failure of the national and international judicial mechanisms³⁸² to hold perpetrators of the Arab-Spring sexual violence accountable for their alleged crimes and bring them to justice, the setup of an Arab-Spring women’s tribunal at this time has become significant. Although this tribunal just provides social justice and represents an ethical value outside the official legal mechanism as it could not impose legal sanctions on Arab-Spring governments involved

374. Law No. 35 of 2012 (concerning amnesty for particular crimes), National Transitional Council, (May 2, 2012) (Libya).

375. Law No. 38 of 2012 (concerning some special measures regarding the transitional period), art. 4, National Transitional Council, (May 2, 2012) (Libya).

376. Prosecuting Conflict-Related Gender-Based Crimes, *supra* note 12, at 54.

377. *Id.* at 55.

378. Hum. Rts. Watch, *Libya: Amend New Special Procedures Law*, at 1 (May 11, 2012).

379. Law No. 38 of 2012 (concerning some special measures regarding the transitional period), art. 4, National Transitional Council, (May 2, 2012) (Libya).

380. *Libya: Amend New Special Procedures Law*, *supra* note 378.

381. *Id.*

382. Terrell, *supra* note 15.

in conflict-related gender-based crimes,³⁸³ it provides a sense of dignity to the victims and addresses their needs in different ways. This includes, *inter alia*, recognizing their suffering, providing more gender-sensitive justice, raising national and international awareness to increase the recognition of wartime gender-based violence as core crimes, and using this awareness as an instrument to deter, eliminate, or reduce the perpetuation of such heinous crimes in the future, and combating the culture of impunity for all kinds of conflict-related gender-based crimes.³⁸⁴ Below, this section intends to provide a satisfactory answer to the above timely question by elucidating the tribunal's following core objectives.

1. Collecting evidence. While it is not within this court's chores to criminalize the accused and issue judgements, one of its most important objectives is to enable the victims to speak freely and independently in an atmosphere that considers their privacy and the crime's sensitivity.³⁸⁵ Through this practice, the court will provide a public condemnation of the crimes of sexual violence perpetrated during the Arab-Spring and gather compelling evidence that enables victims to file lawsuits before competent courts.³⁸⁶

Accordingly, one of the core objectives of this court is to collect accurate information within international standards on crimes of Arab-Spring's sexual violence, as well as impel countries to acknowledge their responsibility for these crimes, apologize to the victims, prosecute, and bring perpetrators to justice, and finally provide rewarding compensations for victims.³⁸⁷

2. Encouraging victims to seek justice and confirm that Arab-Spring's sexual violence was an abhorrent form of ill-treatment of both women and men, and a war crime and a crime against humanity that has never been seriously prosecuted at local or international judicial bodies. Until the date of drafting this analysis, no judicial entity has provided trustworthy, independent, and unbiased investigations that would lead to serious prosecutions compatible with international fair trial standards.³⁸⁸

In this respect, the UN Commission of Inquiry asserted that the extended Syrian sectarian war would impede any possibility of carrying

383. *Id.* at 115.

384. *Id.* at 115, 118.

385. Chinkin, *supra* note 25, at 212.

386. *Id.* at 212, 213.

387. Terrell, *supra* note 15.

388. Hum. Rts. Watch, *Syria: Criminal Justice for Serious Crimes Under International Law*, at 9 (Dec. 17, 2013).

out independent and unbiased prosecutions at any Syrian national court, now and in the near future.³⁸⁹ This was due to the lack of competent judicial institutions, on the one hand, and the Syrian authorities' unwillingness to carry out such tasks, on the other. In many cases, perpetrators are high-ranking officers in the military intelligence service forces or influential members in different rebellious groups.³⁹⁰ This is another challenge that promotes the culture of impunity for grievous conflict-related gender-based crimes. Indeed, the seriously collapsed Syrian national justice system, suffering a shortage of trained judicial actors, outdated rules of procedure, and judges and prosecutors' corruption, will not deliver fair judgements and address victims' needs.³⁹¹

Similarly, in Egypt, where impunity for sexual violence against women is the rule and prosecution of such crimes is the exception, accountability systems have utterly failed to deliver adequate justice for the Arab-Spring sexually abused women.³⁹² Neither official mechanisms of accountability nor military prosecutors have judiciously investigated, prosecuted, and punished sexual violence perpetrated by agents of security forces, secret police, and the regime's mercenary thugs "*Baltajiyyah*" against women demonstrators arrested during the sit-in in Tahrir Square on March 9 and December 16, 2011.³⁹³

The failure of the official mechanisms of accountability in the Arab-Spring countries to respond adequately to cases of sexual violence, due to the above shortcomings and jurisdictional limitations, should serve as a motivation to create the Arab-Spring Women's Tribunal that would hold perpetrators symbolically accountable for these heinous crimes and provide some measure of social justice to victims.³⁹⁴ This court's establishment is a crucial stage for expanding the voices of victims silenced by repression, lack of financial resources, and fear of disgrace and social stigmatization, a critical issue that will be discussed below.³⁹⁵

3. Stop punishing victims and reconsider the traditional concept of shame and associated stigma by regarding victims of the Arab-Spring's sexual violence as wounded combatants and recognizing them as

389. *Id.*

390. *Id.*

391. *Id.*; UN Independent Commission of Inquiry, *supra* note 16, at 5.

392. *Whitewash in Virginity Tests Trial*, *supra* note 150.

393. *Id.*

394. Terrell, *supra* note 15.

395. Matsui, *supra* note 72, at 130; Rebecca Johnson, *World Courts of Women: Against War, for Peace*, OPEN DEMOCRACY, (Jan. 25, 2016), <https://www.opendemocracy.net/en/5050/courts-of-women-resisting-violence-and-war/>; Vido, *supra* note 23, at 172.

heroines and champions.³⁹⁶ Indeed, the shame and associated stigma of wartime sexual violence have been marked throughout the history of armed conflict as the worst backfire of the crime.³⁹⁷

Shame could be a double-edged sword, playing a critical function on both individual and societal levels. By carrying out rape and other forms of sexual violence systematically and on mass scales, perpetrators tend to destroy victims physically and spiritually, inflict emotional harm on them by bringing shame to them, and humiliate them and their families, on the one hand, and to ostracize them, tear their communities apart, and undermine bonds of solidarity between them and their entire society, on the other.³⁹⁸

Moreover, battered women fear that their families would reject them and accordingly, they would lose the opportunity for marriage.³⁹⁹ A typical case is that an Arab woman's chastity is fundamental to maintain her family's honor.⁴⁰⁰ So, even in conflict-related sexual violence, losing her virginity would cast shame on her family and community and completely ruin her opportunity to get married in the future.⁴⁰¹ In this respect, the ICTR trial chamber, e.g., asserts that Tutsi women were subjected to the "worst public humiliation" when the *Interahamwe* militias intentionally targeted them for rape and other forms of sexual violence, aiming at the destruction of their spirit and elimination of their will to live through shame and humiliation.⁴⁰²

What is fatal is when shame, whether individual or communal, turns out to be a serious obstacle to prosecution and justice.⁴⁰³ It has become a barrier to justice in many cases and played a significant role in

396. *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12.

397. Claire McEvoy, *Addressing Impunity: Sexual Violence and International Law with Kibakuli's Story*, in *THE SHAME OF WAR: SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS IN CONFLICT* 65 (Lisa Ernst eds., 2007); *Sexual Violence as a War Tactic*, *supra* note 316; Amnesty Int'l, *Wounds that Burn Our Souls: Compensation for Kosovo's Wartime Rape Survivors, but Still No Justice*, AI Index EUR 70/7558/2017, at 42 (Dec. 13, 2017).

398. KAREN ENGLE, *THE GRIP OF SEXUAL VIOLENCE IN CONFLICT: FEMINIST INTERVENTIONS IN INTERNATIONAL LAW* 114 (2020) [hereinafter *The Grip of Sexual Violence in Conflict*].

399. *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12.

400. *Id.*

401. Elizabeth Marcus, *Rape and the Arab Spring: The Dark Side of the Popular Uprisings in the Middle East*, CTR. FOR AM. PROGRESS, (Dec. 20, 2011), <https://www.americanprogress.org/article/rape-and-the-arab-spring/>.

402. Akayesu Judgment, *supra* note 127, ¶701-02.

403. Karen Engle & Annelies Lottmann, *The Force of Shame*, in *RETHINKING RAPE LAW: INTERNATIONAL AND COMPARATIVE PERSPECTIVES* 79 (Clare McGlynn & Vanessa Munro eds., 2010) [hereinafter *The Force of Shame*]; McEvoy, *supra* note 397, at 97.

lowering the rates of indictments and convictions for gender-based crimes at international criminal tribunals and courts. Due to shame and its impact on their social relations, victims refrained from coming forward and filing cases against perpetrators, testifying before investigators or judges, or serving as witnesses because of their fear of stigmatization.⁴⁰⁴ This reluctance may puzzle out the limited number of prosecutions and conventions of gender-based crimes in international courts and tribunals over the past three decades or so.⁴⁰⁵

However, shame was used as a tactical weapon of war in Syria and Libya to demoralize women and tear their societies apart.⁴⁰⁶ Many Arab women see rape and associated shame and disgrace as a disaster worse than death.⁴⁰⁷ Like other national and religious conservative groups, many of them would prefer death over being raped or sexually assaulted.⁴⁰⁸ As already mentioned earlier, a Syrian father shot his daughter dead when an armed group confronted them on the road to preserve her honor and prevent them from sexually assaulting her.⁴⁰⁹ In this connection, one may recall Emina's story, a young Muslim Woman from Sjenica, a town located in the Zlatibor District of south-western Serbia, who took up an arm to defend her town that was besieged and attacked by loyalist Serbian *Chetniks* during the World War II.⁴¹⁰ When she could not hold them back and fell into their hands, she begged them, saying: "Only leave me my honor, and I forgive you my death."⁴¹¹

For all that, establishing an Arab-Spring women's tribunal, as a form of community justice capable of responding adequately to victims' needs, is crucial to change the inherited outrageous concept of the deeply entrenched shame attached to conflict-related sexual violence. This would not be possible without regarding victims, who have experienced

404. The Grip of Sexual Violence in Conflict, *supra* note 398, at 114; Pamela Shipman & Lauren Rumble, *Neglected Challenges: The Humanitarian Responsibility to Protect with Pewa's Story*, in *THE SHAME OF WAR: SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS IN CONFLICT* 116 (Lisa Ernst eds., 2007).

405. *The Force of Shame*, *supra* note 403, at 79-80.

406. Adnan Mouhiddin, *Syrian Youth, War, and Community Approach to Stigma Surrounding Psychological Intervention*, in *GLOBALIZATION AND ITS IMPACT ON VIOLENCE AGAINST VULNERABLE GROUPS* 148 (Milica Boskovic ed., 2020); *Sexual Violence in Conflict*, *supra* note 16, at 21.

407. Mouhiddin, *supra* note 406, at 148.

408. *Id.*

409. The IRC Commission's Report, *supra* note 250, at 7.

410. KELLY D. ASKIN, *WAR CRIMES AGAINST WOMEN: PROSECUTION IN INTERNATIONAL WAR CRIMES TRIBUNALS* 269 (1997).

411. *Id.*; Azra Zalihic-Kaurin, *The Muslim Women*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA* 173 (Alexandra Stiglmeier ed., 1994).

profound forms of stigma and lost their self-esteem and integrity, as wounded combatants rather than mere victims of sexual violence, as veterans of a just war rather than shameful statistics.⁴¹²

4. Considering the socio-pedagogical influence of the women tribunals' trials on the deterrence and cessation of further gender-based crimes, whether in the ongoing or future civil armed conflicts.⁴¹³ As suggested in an earlier analysis, proceedings of trials, either in people's tribunals or in traditional criminal courts, are considered a communication enterprise among actors in the criminal justice system, victims, defendants, and the public.⁴¹⁴ So, these tribunals have a deterrent-preventive influence through playing a prominent role in educating the society in question,⁴¹⁵ preserving the victims' dignity, addressing their need for social recognition, socially stigmatizing criminals' violations, and sending a strict deterrent message to perpetrators that there is zero tolerance and no impunity for these heinous crimes. Thus, it is crucial to reinforce the public sense of accountability and communicate to society the proper degree of condemnation attached to the wrongdoer.⁴¹⁶

5. Breaking the cycle of impunity, underlining accountability, and emphasizing that conflict-related gender-based crimes are not subject to any statute of limitations, and accordingly, perpetrators can be condemned and punished at any time.

In many Arab countries, including those of the Arab Spring, impunity is no longer a traditional phenomenon but rather an official institution fostered and protected by the deep state.⁴¹⁷ The latter has utterly failed to separate between powers, allowed professional unions and social entities to play political and sometimes legislative roles, and justified violence by state security agencies against the opposition and

412. *Hidden Deaths of Libyan Rape Survivors*, *supra* note 12; *Sectarian War in Syria*, *supra* note 3.

413. Mirjan Damaška, *The International Criminal Court Between Aspiration and Achievement*, 14 *UCLA J. INT'L L. & FOREIGN AFFS.*, 19, 22-23 (2009); Payam Akhavan, *The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court*, 99 *AM. J. INT'L L.*, 403, 419 (2005).

414. *FAIR LABELLING* *supra* note 43, at 52.

415. Seeta Scully, *Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia*, 13 *ASIAN-PAC. L. & POL'Y J.*, 300, 306 (2011); Payam Akhavan, *Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal*, 20 *HUM. RTS. Q.*, 737, 746 (1998).

416. *Beyond Impunity*, *supra* note 43, at 13; Mirjan Damaška, *What is the Point of International Criminal Justice*, 83 *CHI.-KENT L. REV.*, 329, 347 (2008); *FAIR LABELLING*, *supra* note 43, at 54; Akhavan, *supra* note 415, at 746.

417. *Beyond Impunity*, *supra* note 43, at 7.

legitimized it to protect the allegedly threatened national security.⁴¹⁸ In other words, if a human rights activist confronted the phenomenon of conflict-related sexual violence perpetrated by state agents, he would be charged with disturbing the national security, spreading false information that promoting hatred among different entities of the society, and accordingly endangering the safety of security forces personnel.⁴¹⁹ Moreover, the judicial system has become a puppet of the ruling elite, whereby charges were fabricated against opponents in proportion to the punishment the government wants to carry against them.⁴²⁰ Thus, a large number of victims were turned into convicts, while perpetrators were acquitted.⁴²¹

For example, in post-Arab-Spring Tunisia, police institutions turned to be a political driving force when they successfully forced the government to pass a police bill guaranteeing security forces impunity.⁴²² The government's acquiescence to the police demands led to an increase in the latter's brutality in confronting protesters and demonstrators, shooting them with armed munitions, and exposing them to episodes of systematic torture to extract confessions from them.⁴²³

In Egypt, although Articles 63 and 232(2) of the Egyptian Code of Criminal Procedure give prosecutors the exclusive right to investigate allegations against public officials and law enforcement personnel, including police officers and security services agents,⁴²⁴ prosecutors failed to adequately investigate and prosecute officials responsible for the mass killings of civilians in the sit-in of Rabi'a al-'Adawiyya and al-Nahda Squares on August 14, 2013.⁴²⁵ On that day, hundreds of civilians were massacred by security forces.⁴²⁶ Since then, complaints related to the Public Prosecutor's Office by families of victims yielded no results, and accordingly, not a single security officer was held accountable for

418. See Fadil Aliriza, *Tunisia's Kais Saied Becomes an Ordinary Politician*, MIDDLE EAST INST. (Jan. 14, 2022), <https://www.mei.edu/publications/tunisia-kais-saied-becomes-ordinary-politician>; Hum. Rts. Watch, *Tunisia: From Victims to Accused*, (July 4, 2017), <https://www.hrw.org/news/2017/07/04/tunisia-victims-accused#>.

419. *From Victims to Accused*, *supra* note 418.

420. Aliriza, *supra* note 418.

421. Cengiz Günay & Fabian Somavilla, *Tunisia's Democratization at Risk*, 25 MEDITERRANEAN POL., 673, 679 (2020); *From Victims to Accused*, *supra* note 418.

422. Günay & Somavilla, *supra* note 421, at 679.

423. *Id.*

424. *Torture and National Security in al-Sisi's Egypt*, *supra* note 106.

425. Hum. Rts. Watch, *All According to Plan: The Rab'a Massacre and Mass Killings of Protestors in Egypt*, (Aug. 12, 2014), <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt>.

426. *Id.*

those crimes.⁴²⁷ On the contrary, to hand over the dead bodies to their relatives from the Cairo Morgue, the Prosecutor's Office required them to accept certificates indicating that their relatives committed suicide or died of a natural cause.⁴²⁸

In this respect, it must be pointed out that the culture of impunity has been flourishing for many years due to loopholes in the Egyptian penal law. These lacunae allowed prosecutors and judges loyal to the authoritarian regime to choose articles that provide for reduced penalties in case of convicting any security agents.⁴²⁹ However, since the Arab-Spring outbreak in early 2011, prosecutors failed to refer security agents to justice under the proper penal articles that provide for punishment proportionate to power abuse.⁴³⁰ For example, prosecutors filed cases of torture committed by policemen or national security agents under Article 129 of the penal code, which provides for punishment of up to one-year imprisonment or a fine of up to 200 Egyptian pounds (US\$10) instead of charging them under Article 282.⁴³¹ This Article provides for a sentence of three to fifteen years of imprisonment for anyone, whether they are a law enforcement official or a civilian, who unlawfully arrests a person and threatens to kill him or subject him to physical torture.⁴³²

Similarly, none of the police or security forces who attacked the women demonstrating in Tahrir Square on December 17, 2011, were brought to justice.⁴³³ This failure was because police and security agents are only charged by the military prosecutor, who has done less than nothing in this matter.⁴³⁴ When some of the women, who were beaten and dragged in the street and their clothes were torn off in a humiliating way, and sexually assaulted by National Security officers, approached the civilian investigative judge, the latter referred the case to the military

427. Nadine Haddad, *The Unjust Legacy of Egypt's Darkest Day*, Newsweek (Aug. 13, 2015, 3:51 PM), <https://www.newsweek.com/unjust-legacy-egypts-darkest-day-362576>.

428. Relatives of those who were murdered by the security forces at Rabi'a al-Adawiyya and al-Nahda Squires complained about the pressure they were subjected to from the forensic medicine at the Cairo Morgue. The latter refused to hand over the dead bodies to their relatives, or to give them permits for burial, unless they sign a declaration indicating that the victims died naturally or committed suicide. For more information, see U.A. al-Maqsoud, *The Families of Rabi'a al-Adawiyya Squire Victims: Confusion and Determination*, AL JAZEERA, (Aug. 23, 2013), <https://bit.ly/33U1Jij>, (Arabic).

429. *Torture and National Security in al-Sisi's Egypt*, *supra* note 106.

430. *Id.*

431. *Id.*

432. *Id.*

433. *Whitewash in Virginity Tests Trial*, *supra* note 150.

434. *Id.*

prosecutor, who promised to conduct an investigation.⁴³⁵ To date, victims have not been summoned to testify before investigative judges, and no charges have been brought against the assailants, although some of the attack incidents were documented by a video showing the assailants' faces.⁴³⁶

6. Pressuring the concerned governments to take legal responsibility and offer meaningful apologies to the victims of Arab-Spring gender-based crimes, including providing them with financial aid, medical treatment, and social integration.⁴³⁷ Pursuing a transformative and comprehensive gender-sensitive reparation program, including making an apology and providing adequate restitution for Arab-Spring sexual violence victims, is one of the most sensible recovery measures that should be implemented by Arab governments in question.⁴³⁸ Nonetheless, although a women's tribunal does not have an official legal mechanism to force states to take legal responsibility and offer restitution to victims, it has the social power to challenge the pertained governments and make them take moral responsibility, followed by restitution to victims.

7. Pointing out that the international criminal justice system is complementary,⁴³⁹ politicized, and delivered inconsistent verdicts due to the abstractness of gender provisions in its statutory laws.⁴⁴⁰ Gender-based crimes in the Rome Statute of the ICC, e.g., are still limited and abstract, and the Court's decisions are inconsistent and subject to the judges' discretion.⁴⁴¹ A typical example is the case of Saif Al-Islam Qadhafi and Abdullah Al-Senussi.⁴⁴² As has already been mentioned, the ICC's Pre-Trial Chamber I (PTCI) rejected Libya's challenge of the admissibility of the case against Saif Al-Islam Qadhafi, under Article 19(2)(b) of the Rome Statute and requesting Libya to surrender the latter

435. *Id.*

436. *Id.*

437. Fionnuala N. Aol'ain, Catherine O'Rourke & Aisling Swaine, *Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice*, 28 HARV. HUM. RTS. J., 97, 124 (2015).

438. Bojan Gavrilovic & Stephanie Schweininger, *A Criminal Tribunal and a Wide-Ranging Reparation Programme is Necessary for the Victims of Sexual Violence and Torture in Iraq*, 29 TORTURE J., 110, 122 (2019); Tina Dolgopol, *The Judgment of the Tokyo Women's Tribunal*, 28 ALT. L.J., 242, 242 (2003).

439. Hilmi M. Zawati, *The International Criminal Court and Complementarity*, 12 J. INT'L L. & INT'L REL., 208, 217 (2016).

440. FAIR LABELLING, *supra* note 43, at 107.

441. *Id.* at 34.

442. Tedeschini, *supra* note 105, at 77.

to the Court in The Hague.⁴⁴³ By contrast, in response to Libya's challenge of the admissibility of the case against Abdullah Al-Senussi, the PTCI decided that the case is inadmissible under Article 17(1)(a) of the Rome Statute and that it is subject to domestic proceedings, regardless of the fact that Libya lacks a competent judicial system to adhere to international fair trial standards.⁴⁴⁴

Likewise, the Syrian judicial system is unqualified to carry out credible and independent proceedings that meet the international fair trial standards, ensure judges' and prosecutors' independence, and fully protect lawyers, witnesses, investigators, and other judicial personnel.⁴⁴⁵ Moreover, although gender-based crimes have received unprecedented attention in international criminal law in the past years, the international criminal tribunals, including the ICTY and the ICTR, have largely failed to recognize and prosecute these crimes on an equal footing with other serious crimes.⁴⁴⁶ Many of these crimes were acquitted or withdrawn from the court during plea bargaining or charge exchanges.⁴⁴⁷

VI. CONCLUSION

This Article argued that the lack of the international community's political will, manifested in its failure to respond adequately to Arab-Spring gender-based crimes and bring perpetrators to justice, impedes access to justice for victims, encourages the culture of impunity for these crimes, and leaves the war-torn Arab countries peace-building process open to the danger of collapse. Accordingly, this analysis took the Arab-Spring gender-based crimes as a case study and the establishment of an Arab-Spring women's tribunal as an effective informal civil mechanism for accountability and an alternative avenue to deliver gender justice to victims and survivors.

In conducting this inquiry, this research study considered the evolution of the people's tribunals as a civil society mechanism to deal with the above crimes. Moreover, it underlined the legitimacy and effectiveness of these civil society independent institutions in raising awareness, contributing to the collection of evidence, and exposing the horrors of all forms of sexual violence, allegedly perpetrated by members of government agents, non-state actors, and paramilitaries against

443. *Prosecuting International Core Crimes*, *supra* note 105.

444. *Id.*

445. *Syria: Criminal Justice for Serious Crimes*, *supra* note 388, at 9.

446. FAIR LABELLING, *supra* note 43, at 134.

447. *Id.*

civilians marched in mass demonstrations and gatherings against Arab authoritarian regimes since March 2011. It also considered people's tribunals' role in delivering adequate social justice and redress to victims and eradicating the culture of impunity for these crimes. The analysis then moved to accentuate different patterns of conflict-related gender-based crimes, including those newly invented during the ongoing Syrian sectarian war. It also explored barriers to justice that denied the victims' rights to seeking justice and consequently flourished the impunity culture for such heinous crimes. Furthermore, It examined these barriers within its socio-political and judicial contexts and brought to light the disastrous impact of this denial on victims and their societies. Finally, it critically investigated the significance of establishing an Arab-Spring women's tribunal as an informal mechanism to address the needs of the Arab-Spring gender-based violence victims and survivors by providing adequate social justice and recognition.

That being said, this inquiry answered the timely and critical question of why the establishment of an Arab-Spring women's tribunal is imperative. In clarifying this point, it outlined how this civil society institution would encourage victims of Arab-Spring sexual violence to break their silence and take a step forward to expose the repressive Arab regimes, which entailed actual immunity from superpowers, and to overcome barriers to justice that victims faced during, and in the aftermath of, the mass demonstrations that swept the countries of the Arab Spring.

While women's tribunals are not an alternative to traditional criminal courts, whether domestic or international, to deliver legal justice to the victims of conflict-related gender-based violence, they have achieved what the latter had failed to do for many years. Considering the sensitivity of investigating such crimes, women's tribunals convened in the past two decades, contributed heavily to collecting and documenting information related to all forms of sexual violence perpetrated mainly by governments' agents and paramilitary forces. Moreover, they offered victims an open public platform to express their suffering without restrictions, delivered social justice to them, highlighted their plight, and brought widespread recognition and solidarity from all society segments.

Finally, this analysis emphasized that Arab-Spring sexual violence survivors should be recognized and declared as champions, as they were targeted and assaulted during the Arab people's battle for liberation and democracy. Casualties of rape and other forms of sexual violence should be considered wounded combatants rather than mere victims of sexual

violence, as veterans of a just war rather than a shameful statistic. Concerned governments should also carry a two-fold task. The first one is establishing special socio-medical centers to address the victims' needs, rehabilitate them, and integrate them into local communities. The second task is collecting and documenting evidence of gender-based crimes, establishing sensitive justice mechanisms, and encouraging victims to come forward and speak out. Ignoring victims' pains and destroying sexual violence evidence, under the pretext of preserving the honor of the victims and society's values, would promote the culture of impunity and constitute barriers to justice.