

**European Master's Degree in Human Rights and Democratisation**



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**NO MAN'S CHILD  
THE WAR RAPE ORPHANS**

Master Thesis

By

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*To the memory of my father, Manuel  
and to my mother, Maria Helena*

## NO MAN'S CHILD

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*These children hit walls on every side  
They don't belong in any place  
Their secret they can't hide  
It's written on their face.*

*I never thought one day I'd plead  
For half-breeds from a land that's torn  
But then I saw a camp for children  
Whose crime was being born.*

From Miss Saigon

## *Abstract*

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This thesis calls attention to a group of war affected children that so far have not received the desired and deserved consideration: the war rape orphans.

As the reactions towards the children are interconnected with their mothers' ordeal, a brief historical overview of rape as a war strategy, and several definitions related to sexual crimes are offered. An analysis of the international legal standards ruling sexual violence and, more specifically "forced pregnancy" and "forced maternity" are used to show that while focusing attention on the crimes committed against women, the debates have so far ignored the children, as well as the protection of their rights. The acceptability of these children by their mothers differs substantially depending on the intention of the rapists. This difference is illustrated by two case studies: East Timor and Bosnia and Herzegovina (BiH). While they are often accepted in East Timor, they are most of the time neglected, discriminated and victims of infanticide in BiH due to identification with the rapist and therefore with the enemy. The violation of war rape orphans' rights under the Convention on the Rights of the Child is uncovered and discussed.

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## Abbreviations

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BiH	Bosnia and Herzegovina
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
FRETILIN	Revolutionary Front for an Independent East Timor
INTERFET	International Force for East Timor
NGO	Non Governmental Organisation
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNTAET	United Nations Transitional Administration in East Timor

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# I-Introduction

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## 1.1. Scope and Structure of the Thesis

Two million children killed, five million maimed and twelve million orphaned in the wars during the last decade of the 20<sup>th</sup> century alone. These are the results of the UN study presented to the UN Commission for Human Rights and the UN General Assembly in November 1996.<sup>1</sup> Millions of children have been killed as deliberate targets of warfare or caught up as fighters. Others have fallen victims to malnutrition, disease, sexual violence and the depredations of forced fight.<sup>2</sup> Children are among those that suffered the most during armed conflicts.

Meanwhile, in each and every war, there were always sexual relationships between soldiers and local women. These relations range in a continuum from mutual consent to prostitution and rape. The outcome gives rise to a group of children, whose suffering often starts when the war has formally ended. They are usually called the war children.<sup>3</sup> Born in different circumstances, the conditions and future of these children will depend on the way their mothers were treated.

Although the issue of children of rape has already been raised, remarkably little is known of their fate or to what extent they are discriminated. Their destinies are uncertain. Abandoned or neglected, sold or abused, sometimes victims of infanticide, these children need special care and special protection without being stigmatised. The aim of this study is, therefore, to draw attention to the situation of children that are born in such tragic circumstances as the case of raped women during armed conflicts.

This thesis is divided in five parts. The Introduction presents a brief historical overview of the war orphans' fate during the last decades. The second part, Rape as a War Strategy, starts by several definitions related to the topic, and continues with an historical

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<sup>1</sup> Human Rights Watch, *Stolen Children: Abduction and Recruitment in Northern Uganda*, March 2003 vol.15, No. 7 (A), p. 375.

<sup>2</sup> *The Machel Review 1996-2000, A Critical Analysis of Progress Made and Obstacles Encountered in Increasing Protection for War-Affected Children*, p.5.

<sup>3</sup> K.Grieg, *The War Children of the World*, War and Children Identity project, Bergen, December 2001. See <http://www.warandchildren.org>.

overview of the women's plight and an analysis of the international legal standards ruling sexual violence and "forced pregnancy". In the third part, devoted to the War Rape Orphans, two case studies are presented: East Timor and Bosnia and Herzegovina (BiH). In order to understand the fate of children of rape during armed conflicts, and the reasons behind several cases of rejection, neglect and infanticide, it is important to be aware of their mothers' ordeal. The way children of rape were conceived in these two countries, and their acceptance by their mothers, family and community is the main focus of this part. The case of BiH receives considerably more attention since the situation was more dramatic in this region and the level of acceptability of the children more reduced. The fourth part is dedicated to the Child Rights Standards. The protection of war rape children under the Convention on the Rights of the Child is discussed in this section. Finally, the fifth part presents some concluding remarks and proposes recommendations for the implementation of the human rights of the war rape children.

## **1.2. Methodology and Limitations**

Since the aim of the study was to evaluate the acceptability of children of rape in their communities, a qualitative approach was used employing several methods. The review of relevant literature was based on several sources like: country reports, academic journals, magazines and newspapers. Internet was a very useful resort, for example Islamic internet sites revealed to be very helpful to provide information about Islamic religious practices (see Annex III).

In order to ascertain the present situation in BiH, a fieldtrip was conducted in May 2003 to Sarajevo, Tuzla and Zenica. Visits to women's organisations and orphanages were held accompanying several interviews with workers of these institutions. Visits were made to the following places:

Sarajevo: "Hopes and Homes for Children", Save the Children UK, UNICEF, OSCE; UNHCR

Tuzla: Home for Children Without Parental Care, Familja, Vive Zena.

Zenica: Medica Zenica, SOS-Children's Village (Gracanica).

Although several contacts and visits were made, one of the limitations to the realisation of this research was the extremely sensitive character of the issue in question. Interviews with rape victims and war rape orphans were not part of the agenda since they require another kind of approach made by specialised personnel. The contacts were limited to social workers and psychologists of the organisations. Some unwillingness to provide information about such a taboo theme to a foreigner was encountered due to previous bad experiences with journalists and researchers.

### **1.3. War Children – A Brief Overview**

Records of the children born as the result of relations between soldiers and local women after World War I are rare. One of the few records, according to Kai Grieg<sup>4</sup>, is *The Sexual History of the World War* by Dr. Magnus Hirschfeld (1934). Besides revealing an old fashioned view on women's sexuality, Grieg states that the author has gone to great length in arguing for the view that a lot of the reported rape cases were voluntary.

*In December, 1929, the press reported that the Rhine League of Women had applied to the proper authorities of Paris and London to obtain support for the 15.000 illegitimate children that had been left after the departure of the French and the English. Of the 15.000 about 8.000 had been fathered by British troops. The cause of this remarkable relationship – the English were the smallest in numbers in the army of occupation – is undoubtedly due to the stability of the English pound. Whereas the French and the Belgians were going through an inflation, the Tommies always had money enough to spare<sup>5</sup>.*

World War II, with the largest transportation of soldiers from one continent to another, brought thousands of illegitimate children. Just to mention but a few, there were children of British soldiers in the Arctic Soviet, children from American and Canadian soldiers in Europe, specially in England and The Netherlands or children from German soldiers in France and Norway (see Annex I). In the end, children from allied soldiers, were treated as hard as those from German soldiers. Illegitimate and left behind, they had to face discrimination during most part of their lives.

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<sup>4</sup> K.Grieg, *The War Children of the World*, *op.cit* , p.21.

A number of these children have recently raised important questions and made an enormous effort to draw attention to their past. Various struggle desperately to find their biological parents (especially fathers), but archives with this kind of information are rare and access is often denied. Meanwhile, some children started to bring the issue to court with hope of justice and compensation.

A recent example is a group of seven Norwegian children that in 2001 sued their government, seeking compensation for the infringements that they were subject to during their childhood.<sup>6</sup> Based on the "master race" theory, a large number of soldiers in occupied Norway were encouraged to "socialise" with local women. The Nazis called the children the Lebensborn, meaning "the source of life", because their twisted racial policies classified blonde, blue-eyed Nordic people as desirable breeding stock.<sup>7</sup> Himmler's SS built nine Lebensborn homes in Germany and 10 in Norway, offering Aryan women a place where they could deliver their illegitimate babies and keep the births secret from the outside world. The SS also kidnapped Aryan-looking children from Poland and other occupied lands and brought them to the Lebensborn centres across the Third Reich, where they were "Germanized" and turned over to Nazi foster parents. Since the SS has never destroyed the Lebensborn files in Norway, the fate of children born there was worse than the fate of those born in Germany. After the Third Reich capitulated on May 8, 1945, thousands of Lebensborn babies and their mothers faced the wrath of their liberated countrymen. Many women and their kids were harassed, beaten and cursed by teachers, schoolmates and neighbours. Police sent some 14,000 women and girls who had slept with Wehrmacht soldiers to internment camps.<sup>8</sup> The head of Norway's largest mental hospital stated that women who had mated with German soldiers were "mental defectives" and concluded that 80 % of their progeny had to be retarded.

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<sup>5</sup>Idem, quoting Hirschfeld, (1934:236).

<sup>6</sup> J. Pettifer, *Norway's Lebensborn*, in BBC News, 5 December, 2001, [http://news.bbc.co.uk/1/hi/programmes/crossing\\_continents/1691452.stm](http://news.bbc.co.uk/1/hi/programmes/crossing_continents/1691452.stm).

<sup>7</sup> Idem.

<sup>8</sup>Joshua Hammer, *Hitler's Children*, «Newsweek International», March 20, 2000 [http://www.rickross.com/reference/hate\\_groups/hategroups164.html](http://www.rickross.com/reference/hate_groups/hategroups164.html).

Recently, some of the 20,000 Lebensborn children have been getting answers.<sup>9</sup> Most of these children, today between 55 and 60 years old, spent their lives searching comfort and solace in alcohol or drug abuse.

The use of prostitutes is also usually very common among soldiers. As an illustration, there are approximately 52,000 children of prostitutes born from soldiers in the Philippines, while an estimated 5 million exist in India.<sup>10</sup>

After World War II, the number of war children continued to grow. Unfortunately, the majority of these children came to life not as a result of mutual consent relationships, but as a result of rape, forced prostitution and forced maternity.

Rape has, over the years, evolved from a war side effect, a "by-product", a "reward"<sup>11</sup> for victorious soldiers as it was usually considered, to a war strategy.

As many as 80,000 women<sup>12</sup> of all ages were raped in 1937 by Japanese invasion troops during the Nanking massacre. Many cases of abnormal and sadistic behaviour in connection with these rapes were reported. "Often, women were killed after the act and their bodies were mutilated", says one of the authors of the book "The Rape of Nanking". The number of children born is estimated to be around 19,000 (see Annex I).

During World War II, up to 200,000 Korean women were extensively used as "comfort women" by the Japanese army.<sup>13</sup> It is difficult to collect the exact figures of children from these women but they must have run into several thousands.<sup>14</sup>

Rape was used by the American G.I.'s for target terrorising of the Vietnamese population as well as during the Gulf War in 1991.<sup>15</sup> Children born from the relations

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<sup>9</sup> In December 1999, German TV reporters uncovered 1,000 long-unnoticed Lebensborn files at the German government archive in Berlin, and two Norwegian Lebensborn organisations are now helping many local war children trace their parents. According to a more recent article the estimate is to 12,000 children: "Beaten, abused and sidelined since birth because their fathers were German soldiers, justice is finally in sight for Norway's 12,000 krigens barn, or war children", in: A. Osborn, *Norway's Abuse to War Children move a step closer to compensation*, «The Guardian», December 7, 2002, <http://www.guardian.co.uk/international/story/0,3604,855560,00.html>.

<sup>10</sup> Grieg, *The War Children of the World*, *op. cit.*, p.11.

<sup>11</sup> M. Nowak, *Women as victims of "Ethnic Cleansing" in Bosnia and Herzegovina* in M.Tokača, (Ed.), *The Sin of Silence -The Risk of Speech*, Sarajevo, 1999, p.406.

This book results from a collection of reports from an international conference held in Sarajevo on the 10<sup>th</sup> and 11<sup>th</sup> March 1999, entitled "Violation of the Human Rights of Women in Bosnia and Herzegovina in 92-95", Commission for Gathering Facts on War Crimes in Bosnia and Herzegovina.

<sup>12</sup> L.R. Glenn, *The Rape of Nanking: An Undeniable History in Photographs*, Press release, Saturday, December 13, 1997: <http://www.tribo.org/nanking/pressrelease.html>.

<sup>13</sup> UN Rapporteur on Violence Against Women (E/CN.4/1995/42).

<sup>14</sup> Idem.

between American servicemen and Vietnamese women are among the largest group of war children.

Between 250,000 and 400,000 Bangladeshi women experienced sexual violence, mainly committed by the Pakistani Army during the civil war in 1971<sup>16</sup> when the Bengal state, at that time officially East Pakistan, declared its independence as Bangladesh. The International Planned Parenthood estimates 25,000 children<sup>17</sup> as the result of these rapes.

According to recent studies, the numbers reveal up to 500,000 war children<sup>18</sup> living today. Their stigma is associated with the status of the mother, and the way the child was conceived.<sup>19</sup> One of the ways of discriminating the war orphans is through the names by which they are known. War children have different names all over the world. Children born from American soldiers in Vietnam have been called "Bui Doi"- dust of life and children of Canadian soldiers in Europe are known as the "war leftovers". In Bosnia they are called "little Chetnik"- Serb soldier, and in East Timor "sons of the enemy" (see Annex II).

Before analysing the particularities of the war rape orphans, the next section addresses the question of rape as a war strategy through history and the protection given to women by international law.

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<sup>15</sup> M. Novak, *Women as Victims of Ethnic Cleansing in Bosnia-Herzegovina* in *I Begged Them to Kill Me- Crime against the woman of Bosnia-Herzegovina*, CID- Centre for Investigation and Documentation of the Association of Former Prison Camp Inmates of Bosnia-Herzegovina., Sarajevo, ed. Irfan Ajanovic, 2000, p.401.

<sup>16</sup> See <http://www.undp.org/hiv/publications/gender/violence.htm>.

<sup>17</sup> S.Powell, *East Timor's Children of the Enemy*, in «The Australian», Edition 1, 10 Mar 2001, p.1 <http://www.etan.org/rt2001b/april/01-7/00etchild.htm>.

<sup>18</sup> Idem.

<sup>19</sup> Grieg, *The War Children of the World*, *op.cit.*

## II - Rape as a War Strategy

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### 2.1. Definitions

The following section provides several definitions related to the terminology used. Some of these definitions were already employed by the international tribunals and UN documents, others are proposed by some scholars with the intention to bring some linguistic clarity to the legal discourse.

#### 2.1.1. Sexual Violence

According to the United Nations, sexual violence is an overarching term used to describe "any violence, physical or psychological, carried out through sexual means or by targeting sexuality".<sup>20</sup> According to a Human Rights Watch report<sup>21</sup>, sexual violence includes rape and attempted rape, as well as acts like forcing a person to undress in public, forcing two victims to perform sexual acts on one another or harm one another in a sexual manner, mutilating a person's genitals or a woman's breasts, and sexual slavery.

Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact. According to the Declaration on the Elimination of Violence against Women, (Art. 2), sexual violence constitutes "marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation", "sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution" and "violence perpetrated or condoned by the State, wherever it occurs".<sup>22</sup>

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<sup>20</sup> Gay J. McDougall, *Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict*, Contemporary forms of Slavery: Final Report, New York: United Nations, 1998, E/CN.4/Sub.2/1998/13, pp.7-8.

<sup>21</sup> Human Rights Watch, "We'll kill you if you cry" *Sexual Violence in the Sierra Leone Conflict*, Vol. 15, No.1 (A) - January 2003, p.2.

<sup>22</sup> Declaration on the Elimination of Violence against Women, A/RES/48/104, December 20, 1993

### 2.1.2. Rape<sup>23</sup>

The International Criminal Tribunal for Rwanda (ICTR), during the judgement of the *Akayesu* case, defined rape in the following terms:

*The tribunal notes that while rape has been historically defined in national jurisdictions as non-consensual sexual intercourse, variations on the form of rape may include acts which involve the insertion of objects and/or the use of orifices not considered to be intrinsically sexual.<sup>24</sup> The Tribunal considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. (...) Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive,(...) and it is not limited to the insertion of a penis into a victim's vagina or anus or the insertion of a penis in a mouth of a victim.<sup>25</sup>*

Rape is defined in the appeals chamber judgement of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the 2002 *Foca* case as:

*The sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) [of] the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The mens rea is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.<sup>26</sup>*

The Chamber also stated that the use of force in itself is not a necessary element of rape. The coercive circumstances existing already during armed conflicts make the victim's consent to the sexual acts practically impossible. According to recent studies, the use or threat of force often removes any requirement that a victim shows resistance and most jurisdictions have discarded the idea that a rape victim must resist under all

<sup>23</sup> There are several definitions of rape. For the present paper only those given by the International Criminal Tribunals are presented.

<sup>24</sup> As an example, the ICTR states that: "An act such as that described by witness KK in her testimony – the Interahamwes thrusting a piece of wood into the sexual organs of a woman as she lay dying- constitutes rape in the Tribunal's view".

<sup>25</sup> *Prosecutor v. Jean-Paul Akayesu*, Judgement, ICTR-96-4-T, September 2, 1998, § 666-688.

<sup>26</sup> *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Foca case), Appeals Chamber Judgement, June 12, 2002, IT-96-23 and IT-96-23/1, § 127-133.



circumstances as impractical, if not absurd.<sup>27</sup> This definition, according to the report, also emphasises that rape is an attack on the physical integrity of a woman and not an attack against her honour or that of her family or community, as it has been considered and defined.

### **2.1.3. Sexual Slavery**

The 1926 Slavery Convention and the 1953 Protocol to the Convention, refer to the "status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual violence". The Rome Statute includes the trafficking of women and children on its definition of enslavement.<sup>28</sup>

### **2.1.4. Forced Impregnation**

Forced impregnation was defined by Goldstein<sup>29</sup> as "an impregnation that results from an assault or series of assaults on a woman perpetrated with the intent that she became pregnant.<sup>30</sup> Mandatory pregnancy tests following a rape, or attempts to keep track of a woman's menstrual cycle (especially if she was assaulted more frequently around the time she ovulated) similarly would be evidence of the requisite intent." The key elements in this definition are that pregnancy occurs, that rape is only one possible method, and that intent to impregnate is crucial.<sup>31</sup>

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<sup>27</sup> Human Rights Watch, *Shattered Lives- Sexual Violence during the Rwandan Genocide and its Aftermath*, September 1996, p.2.

<sup>28</sup> Idem.

<sup>29</sup> A. Goldstein, *Recognising Forced Impregnation as a War Crime Under International Law* (1993), quoted in S. Fisher, *Occupation of the Womb*, *op. cit.*, p. 92.

<sup>30</sup> The author further states that "The requisite criminal intent can be established either directly, through admissions or statements of the perpetrators, or indirectly, through circumstantial evidence. Forcible removal of a woman's IUD or contraceptive implant, or destruction of other means of birth control or access to birth control, would constitute evidence of intent to impregnate. The intentional detention of a pregnant woman until she was beyond the time limit in which local law or practice permits abortion would also constitute evidence of violation".

<sup>31</sup> C. Carpenter, *Surfacing Children: Limitations of Genocidal Rape Discourse*, in «Human Rights Quarterly», John Hopkins University Press, vol. 22, 2000, p.461.

Forced pregnancy (or forced impregnation) was already recognised as a military strategy used in several conflicts and has been codified under international law as a war crime and a crime against humanity.<sup>32</sup> The Rome Statute of International Criminal Court has defined forced pregnancy as "unlawful confinement of a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population."<sup>33</sup> According to S. Fisher, forced impregnation is a crime distinct of rape.<sup>34</sup> Rape might be used to achieve forced impregnation, but forced impregnation can be perpetrated by other means than rape. According to the same author, forced impregnation "as intentional policy of an aggressor to destroy a group of people is a crime of genocide".<sup>35</sup>

### **2.1.5. Enforced Pregnancy**

According to Charli Carpenter<sup>36</sup> "enforced pregnancy" should be used to describe the act - undertaken by governments or individuals - of forcing a woman who has been forcibly impregnated to carry her child to term, for instance by denying means of having an abortion.

### **2.1.6. Forced Maternity**

The introduction of this terminology is extremely important since it includes a new element in the discourse that has been neglected so far: the children. According to Carpenter, a child of rape only results from "forced maternity", and she explains this terminology in the following terms:

*The current label "forced pregnancy" is too broad to encompass the secondary victimisation of children conceived in policies of mass rape. Children of rape are not*

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<sup>32</sup> C. Carpenter, *Assessing and Addressing the Needs of Children Born of Forced Maternity*, International Conference on War-Affected Children, Winnipeg, Canada, 2000  
<http://www.waraffectedchildren.gc.ca/orphans-e.asp>.

<sup>33</sup> Rome Statute of the International Criminal Court, Article 7 (2) (f), "Forced pregnancy means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy".

<sup>34</sup> S. Fisher, *Occupation of the Womb: Forced Impregnation as Genocide* in «Duke Law Journal», vol. 46:91, 1996, p. 92.

<sup>35</sup> Idem, p. 93.

<sup>36</sup> Carpenter, *Surfacing Children*, *op.cit.*, p.462.

victims of "forced pregnancy." A forced pregnancy alone may not even result in a child's birth: whether it does will depend on abortion access or the mother's ability or willingness to carry to term. A child of rape only results from "forced maternity": the actual act of a raped woman being forced to carry to term and give birth to the child.

Carpenter further states that the human rights of born children can be accomplished without jeopardising reproductive freedom by distinguishing between forced pregnancy, forced maternity and "birth by forced maternity" as specific crimes.<sup>37</sup>

Shifting the attention from the women to the children, brings awareness to another person with particular claims to rights that may be denied based on her/his biological origins.<sup>38</sup>

## **2.2. Rape in Armed Conflicts**<sup>39</sup>

*S. could not imagine that a man's body could do such damage to a woman, that it was so powerful, so unfairly overpowering that a woman had no defence against such force.*<sup>40</sup>

Fact: from conflicts all around the world, women and girls have been singled out for sexual violence, imprisonment, torture and execution.

Fact: this violence may take gender specific forms, as sexual mutilation, forced pregnancy, rape or sexual slavery,<sup>41</sup> irrespective of their age, ethnicity or political affiliation.<sup>42</sup>

Fact: rape is identified by psychologists as the most intrusive of traumatic events.<sup>43</sup>

Fact: for most of the time, wartime rape has been ignored.<sup>44</sup>

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<sup>37</sup> See Carpenter, *Surfacing Children*, *op cit*.

<sup>38</sup> *Idem*.

<sup>39</sup> Since the aim of this thesis is not to focus on rape, but on the children born of rape in war times, this issue will be dealt with very briefly. For more information about war rapes see generally: S. Brownmiller, *Against our Will: Men, Women and Rape*, New York: Simon and Schuster, 1975 and C. Niarchos, *Woman, War, and Rape: Challenges Facing The International Tribunal for the Former Yugoslavia*, «Human Rights Quarterly», Johns Hopkins University Press, vol.17,1995, pp.649-690.

<sup>40</sup> S. Draculic, *S. A Novel About the Balkans*, Penguin Books, New York, 1999, p.64.

<sup>41</sup> Human Rights Watch, *Shattered Lives*, *op.cit.* note 31, p.2.

<sup>42</sup> *Idem*.

<sup>43</sup> UNICEF, *The State of the World's Children 1996, Sexual Violence as a weapon of war*, in: <http://www.unicef.org./sowc96pk/sexviol.htm>

<sup>44</sup> It is curious to note that during the International Military Tribunal at Nuremberg, despite extensive evidence of rape being heard, the term 'rape' was not mentioned once in the 179 page judgement. It got lost in the general category of "ill-treatment of the civilian population". The Nuremberg tribunal was constituted by the Allies, so for the most part their own crimes escaped scrutiny. One of those episodes, that

Historical records of rape are overwhelming. According to Catherine Niarchos, in primitive warfare women as the propagators of the enemy's soldiers were the objects of direct attack.<sup>45</sup> Richard Hertigan stated that "the savage mind could be pictured as logically concluding that the most economic use of his energies in war would be to guarantee that he would not have to face his enemy again. One way to achieve this result was to eliminate the source of future supply".<sup>46</sup>

Greeks, Romans, Hebrews considered women as a spoil of war, they were seized as a prize, along with the lands and livestock of the vanquished.<sup>47</sup> As women were regarded as property, rape was seen as an injury and an offence to the male estate and to the community but not to the woman. According to Susan Brownmiller,

*Men of a conquered nation traditionally view the rape of "their women" as the ultimate humiliation, a sexual coup de grace... in fact, by tradition, men appropriate the rape of "their women" as part of their own male anguish of defeat. This egocentric view does have a partial validity. Apart from a genuine, human concern for wives and daughters near and dear to them, rape by a conqueror is compelling evidence of the conquered's status of masculine impotence. Defence of women has long been a hallmark of masculine pride, as possession of women has been a hallmark of masculine success. Rape by a conquering soldier destroys all remaining illusions of power and property for men of the defeated side. The body of a raped woman becomes the ceremonial battlefield, a parade-ground for the victor's trooping the colours. The act that is played upon her is a message passed between men – vivid proof of victory for one and loss and defeat for the other.*<sup>48</sup>

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went unpunished and, according to Niarchos, even unexamined for many years, occurred when Soviet soldiers captured the city of Berlin in 1945. See C.Niarchos, *Woman, War, and Rape: Challenges Facing The International Tribunal for the Former Yugoslavia*, «Human Rights Quarterly», Johns Hopkins University Press, vol.17,1995 pp.649-690

<sup>45</sup> Idem p.659.

<sup>46</sup> Richard S. Hartigan, *The Forgotten Victim: A history of the Civilian*, 1982, quoted in Niarchos, *Woman, War, and Rape*, op.cit., p. 659.

<sup>47</sup> Idem.

<sup>48</sup> S. Brownmiller, *Against our Will: Men, Women and Rape*, New York: Simon and Schuster, 1975, p.38 in G.Mulheir and T. O'Brien, *Private Pain, Public Action: Violence Against Women In War And Peace*, Centre for Peace and Development Studies, University of Limerick, 2000,p.19.

Women are raped not just as a way to affect men, but because they are also seen as legitimate targets; not because they are the enemy's women, but rather because they themselves are the enemy.<sup>49</sup>

Women had gained some legal protection by the age of chivalry. During the Hundred Years War (1337-1453), Ordinances of War were promulgated to prohibit rape during war, on penalty of death.<sup>50</sup> This law was only not respected but "license to rape was considered a major incentive for the soldier involved in siege warfare".<sup>51</sup>

By the nineteenth and twentieth centuries, legal protection for women started to be codified and improved. Although The Hague and Geneva Conventions provided implicit or explicit protection against rape,<sup>52</sup> the twentieth century was disastrous for women, as for civilians in general.<sup>53</sup>

Rape has been used as a tactic of terror as the German army marched through Belgium and France in World War I; gang rape was part of the orchestrated riots of *Kristallnacht* which marked the beginning of Nazi campaigns against the Jews, despite soldier's concerns with "race defilement";<sup>54</sup> it was later a weapon of revenge as the Russian army marched to Berlin in 1945. Similarly, Turkish troops participating in the 1974 invasion and occupation of Cyprus were notorious for the widespread rape of women and girls. According to the Report of the Council of Europe on Human Rights in Cyprus, in one instance, twenty-five girls who reported their rapes by Turkish soldiers to Turkish officers were then raped again by those officers.<sup>55</sup>

Pakistan, Vietnam, Algeria, Uganda, Liberia, Sierra Leona, Yugoslavia, Rwanda, East Timor...this listing is, lamentably, dreadfully long.

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<sup>49</sup> See R. Copelon, *Surfacing Gender: Reconceptualising Crimes Against Women in Times of War* in A. Stilmayer (Ed), *Mass Rape: The War Against Women in Bosnia-Herzegovina*, University of Nebraska Press, Lincoln and London, 1994.

<sup>50</sup> Niarchos, *Woman, War, and Rape*, *op.cit.*, p. 659, quoting Theodor Meron, *Henry's Wars and Shakespeare's Laws: Perspectives on the Law of War in the Latter Middle Ages* 112 n.179, 1993.

<sup>51</sup> *Idem.*

<sup>52</sup> *Idem.*

<sup>53</sup> According to UNICEF data from 1989, statistics show a shift from 5% civilian losses in World War I, to 90% in recent wars.

<sup>54</sup> D.Q. Thomas, and R.E. Ralph, *Rape in War: Challenging the Tradition of Impunity*, Human Rights Watch, SAIS Review (vol), Johns Hopkins University Press, 1994, pp. 82-89, also in <http://www.hrw.org/women/docs/rapeinwar.htm>.

<sup>55</sup> Report of the Council of Europe on Human Rights in Cyprus, 1974, London, 1980, pp. 121-122, in Thomas, and Ralph, *Rape in War*, *op.cit.* supra note.

According to Mulheir, it is important to note that these rapes have at times been overlooked, and indeed ordered, by military command. One telling example is of Moroccan mercenaries, serving in the French army during World War II, who were explicitly granted the right to rape and loot in conquered Italian territory.<sup>56</sup> Most of Italian women that didn't take shelter in the mountains were raped. The story is known because the Italian Government later offered them a pension.<sup>57</sup>

Rape in conflict is also used as a weapon to terrify and humiliate a particular community and to attain a particular political end. In these situations, gender intersects with other aspects of a woman's identity such as ethnicity, religion, social class or political affiliation.<sup>58</sup> The intentions of the rapist are not only to humiliate, hurt and terrify the individual woman but also to target the community that she is part of. The rape of one person is translated into an assault upon the community through the emphasis placed in every culture on women's sexual virtue: the shame of the rape humiliates the family and all those related with the survivor. Combatants who rape in war often explicitly link their acts of sexual violence to this broader social humiliation.<sup>59</sup> In the aftermath of such abuse, the harm done to the individual woman is usually hidden by the professed harm to the community.

### **2.3. Women, Rape and Forced Impregnation in International Law**

Acts such as rape, sexual assault, sexual slavery, forced prostitution, forced sterilisation, forced abortion, and forced pregnancy may all qualify as crimes under national and international laws.<sup>60</sup> Sexual violence was already considered to be a war crime,<sup>61</sup> torture,<sup>62</sup> genocide<sup>63</sup> and a crime against humanity.<sup>64</sup> Several scholars made a

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<sup>56</sup> Mulheir and T. O'Brien, *Private Pain, Public Action*, *op. cit.*, quoting Seifert (1996).

<sup>57</sup> Niarchos, *Woman, War, and Rape*. *op. cit.*, quoting Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 1991, 134-135, quoting Ignazio Silone, *Reflections of the Welfare State*, 8 Dissent, 1961, pp.185-189.

<sup>58</sup> Human Rights Watch, *Shattered Lives*, *op.cit.* note 31.

<sup>59</sup> *Idem.*

<sup>60</sup> Human Rights Watch, *Kosovo Backgrounder: Sexual Violence as International Crime*, <http://www.hrw.org>.

<sup>61</sup> The Convention Relative to the Protection of Civilians in Time of War (The Fourth Geneva Convention) of August 12, 1949, explicitly requires the protection of women against "rape, enforced prostitution, or any

distinction between rape and forced impregnation as separate crimes, also considering forced pregnancy as a crime of genocide.

Both the ICTY and the ICTR, are specifically empowered to prosecute rape and sexual assault as crimes against humanity.<sup>65</sup> The recognition of forced pregnancy as a potential crime of genocide was done when, in the Akayesu decision, the ICTR described a situation, in which a rapist might impregnate his victim with the intent to force her to give birth to a child who would, because of patrilineal social conventions, not belong to its mother's group. The tribunal noted that such an act might be a constitutive element of genocide.<sup>66</sup> It could be argued that this was not only a crime of forced impregnation but a crime of "forced maternity", since this is the actual act of forcing a raped woman to carry to term and give birth to a child.<sup>67</sup> In the *Karadžić and Mladić* Rule 61 decision, the ICTY Trial Chamber I, consisting of Judge Jorda (presiding), Judge Odio Benito and Judge Riad, addressed crimes of sexual violence and inferred that forced impregnation may constitute evidence of genocidal intent.<sup>68</sup>

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form of indecent assault" (Art. 27). Common Article 3 of the Geneva Conventions prohibits "violence to life and person", "cruel treatment", "torture"(Art.3 (1) (a)) or "other outrages upon personal dignity" (Art.3. (1)(c)). Protocol II to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts, explicitly outlaws "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" Article 4 (2)(e).

<sup>62</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984, states that rape and other forms of sexual violence constitute torture when they are "intentionally inflicted" on a person by "a public official or other person acting in official capacity", or at the official "instigation", "consent", or "acquiescence" for purposes such as intimidation, coercion, punishment, or eliciting information or confessions or "for any reason based on discrimination of any kind" (Art.1 (1)).

<sup>63</sup> As defined in the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, genocide constitutes certain acts "committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such" (Art. 2).

<sup>64</sup> Although under the Nuremberg Charter, the Military Tribunal did not prosecute rape, the Military Tribunal for the Far East (the Tokyo Tribunal) did convict Japanese officers of rape.

<sup>65</sup> To date, the tribunals have successfully prosecuted rape and sexual assault as genocide (Akayesu decision), crimes against humanity (Akayesu decision), torture (Celebici decision) and as war crimes (Furundzija decision).

<sup>66</sup> Human Rights Watch, *Kosovo Backgrounder: Sexual Violence as International Crime*, May 10, 1999, see <http://www.hrw.org>.

<sup>67</sup> See definition proposed in 1.6.

<sup>68</sup> Prosecutor v. Karadžić and Mladić, Review of the Indictment Pursuant to Rule 61, Nos. IT-95-5-R61, IT-95-18-R61 (July 11, 1996), in Kelly Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, «The American Journal of International Law», 1999, vol.93, p.115 (pp.97-123)

The statute of the International Criminal Court<sup>69</sup> (ICC) also recognises sexual violence, rape and forced pregnancy as international crimes. The statute's definition of crimes against humanity includes torture as well as "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity." Huge efforts to consider the crime of forced pregnancy as a different crime of rape were done mainly by feminist groups during the Rome Conference for the ICC. Under the auspices of the International Women's Human Rights Clinic of the City University of New York, Green and her colleagues jointly presented a proposal to the judges of the ICC, in which they distinguished between rape, "forced impregnation", and "forced maternity."<sup>70</sup> The Holy See, opposed to abortion even in cases of rape and forced pregnancy, objected that it is not yet agreed-upon language.<sup>71</sup>

*My delegation joins those many other delegations, which have endorsed the fundamental legal principle: nullum crimen sine lege. (...) Now, why does my delegation echo the concern of others regarding "[en]forced pregnancy"? After an exhaustive search for its meaning, we find no explanation or definition of this expression in any juridical or legal text. We are, however, aware that this term does enjoy an understanding amongst some to mean denial to terminating pregnancy. To be candid, this imprecise phrase has no home within the fundamental rules of international law. Consequently, my delegation joins others in stating that the problematic language of "enforced pregnancy" must be deleted from the draft Statute for the ICC wherever it appears. Moreover, it should not be replaced by the equally problematic phrase: "forced pregnancy." Neither provides legal redress for the crimes in which perpetrators brutalise their fellow human beings. As with Pandora's Box, this language may be appealing to some; however, like Pandora's Box, it contains horrors we cannot afford to release. Retention of "forced" or "enforced pregnancy" raises the ironic prospect of making the enforcement of legitimate state and conventional law a "war crime.*

According to the Women's Caucus for Gender Justice, the term "forced pregnancy" has been repeatedly used in the UN system. An equal phrase, "forced pregnancy", and the need for a particularly effective response to this crime were articulated in the final documents of the Beijing Fourth World Conference on Women and in the Vienna

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<sup>69</sup> ICC Statute [as corrected by the procès-verbaux of 10 November 1998 and 12 July 1999] Art 7(1)(g) and Art. 8 (2)(b)(xxi)(xxii).

<sup>70</sup> "Rape, forced impregnation and forced maternity should be explicitly recognised as "grave breaches" under article 2 [of Geneva Convention]...[and] as violations of the laws and customs of war under art.3" Carpenter, *Surfacing Children*, op.cit., p.447.



Declaration. The Vienna Declaration of the World Conference on Human Rights, calling for the prosecution of crimes against women reads: "Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and international humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response."<sup>72</sup> In April, 1998, the UN Commission on Human Rights reaffirmed that forced pregnancy is among the gravest violations of humanitarian and human rights law.<sup>73</sup>

Carpenter brings new light into this problematic with groundbreaking articles.<sup>74</sup> She calls attention to the fact that, by the time the war crimes tribunals and the international criminal court debated genocidal rape and forced impregnation as crimes against women, the war-rape orphans had dropped out of sight of human rights scholars and advocates. The "enforced pregnancy" debate "has situated women's freedom against the presumed rights of children of rape (read fetuses in the abortion debate). The existence and rights of born children are marginalized when the debate is focused on abortion. In order to extricate the rights of the children from the abortion debate one must distinguish between impregnation resulting in abortion and those resulting in live birth, "forced impregnation" was equated in one context with rape and in the other with abortion rights. The language of abortion rights applied to a situation which both women and born children are involved, focuses attention onto women's reproductive freedom and unborn children's rights, and away from the born child – she[or he] is reduced to a fetus whether she[or he] was in fact born or not".<sup>75</sup>

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<sup>71</sup> [http://www.c-fam.org/FAX/fax\\_1998/faxv1n23.html](http://www.c-fam.org/FAX/fax_1998/faxv1n23.html).

<sup>72</sup> Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights, U.N. GAOR, 47<sup>th</sup> Sess., at 37, U.N. Doc. A/C157/24 (Part 1) (1993).

<sup>73</sup> The Women's Caucus For Gender Justice, <http://www.iccwomen.org/icc/iccpc/rome/forcedpreg.htm>

<sup>74</sup> See Carpenter, *Surfacing Children*, op.cit., *Forced Maternity, Children's rights and The Genocide Convention: a Theoretical Analysis*, in «Journal of Genocide Research», vol.2 (2), 2000, 213-244.

## 2.4. Concluding Remarks

As rape, forced impregnation was considered by scholars as a war crime, grave breach of the Geneva Conventions, torture, genocide and crime against humanity, but although recognised in international law, forced pregnancy has so far been treated only as a women's issue. While doing so, there is a gap that was left unconsciously or intentionally from consideration: the plight of children-born-of-rape.<sup>76</sup> According to Carpenter's research, only three scholars addressed this question: Beverly Allen, Adrien Wing and Sylke Merchán, but all of them in a superficial manner:

*Taking a momentary notice of children's plight and subsequently turning back to the "more pressing" concerns of gender crimes seems to represent a conscious subordination of children's to women's issues. Children may be tacitly acknowledged as victims, but their rights are never articulated directly within any legal framework. Instead, they are footnoted and marginalised, their fate is reduced to an interesting issue to ponder rather than as a set of crimes to observe and address. (...) they are first, as foetuses, understood only in terms of their mothers' sovereignty over "her" body; once born, their existence is noted primarily in order to enunciate the plight of the mothers.*<sup>77</sup>

While scholars were trying to situate "forced impregnation" as genocide, based in the prevention of births within the group and the forcible transfer of children from one group to another, no scholar considered that there was no clear agreement as to which group these children belong. Instead, a blanket identity was assigned to the child of rape according to whichever linguistic strategy would fit the requirements of the Genocide Convention.<sup>78</sup> Constructions of forced impregnation as a war crime, and as a crime against humanity, remained silent about children and in doing so marginalised them. Women were seen as the victims; children of rape were seen as irrelevant. This indifference has been expressed as a lack of attention to widespread abandonment, neglect or abuse, as well as outright justifications of infanticide such as in Allen's remark: "Many attempt to kill their babies at birth in a reaction that, speaking in terms of the mother's psychological well-being, *might even be considered healthy.*"<sup>79</sup>

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<sup>75</sup> Idem, p.449.

<sup>76</sup> Idem.

<sup>77</sup> Idem, p.453.

<sup>78</sup> Idem, p.456.

<sup>79</sup> Idem, p.458.

Definitely, killing their babies can not possibly be seen as "psychological" new way of treatment, and even less as a "healthy" one. As much it could be done in a moment of "temporary insanity", but that doesn't omit a crime of infanticide. The fate of the war rape orphans is addressed in the following section with the presentation of two case studies: East Timor and BiH.

### III - War Rape Orphans

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War rape orphans around the world are stigmatised in most societies, regardless of the ethnic context in which the rape occurred (see Annex II). Articles and reports show that children of rape were more easily accepted in East Timor than in Bosnia Herzegovina, Kosovo or Rwanda. Although social, cultural and religious factors have an important role in the acceptance of the babies, the intention of the rapist has also a paramount impact. While in East Timor women only discovered their pregnancy weeks after a rape, not being harassed anymore by the violator, in Bosnia, Muslim women were forcibly impregnated and forced to carry to term their pregnancy, giving birth to a child while hearing that they were giving birth to Serb or Chetnik babies that, growing up, would kill Muslims. However hard it was in both contexts, the first group of women had less difficulties in accepting the children while the reaction of the rest of the community remained the same in both countries. With the only objective of understanding the children's acceptance by natural mothers and communities, it is important to separate these cases in two different groups that should be illustrated by two case studies: the children of unintentional impregnation in East Timor, and the children of forced maternity in BiH.

### 3.1. Children of "Unintentional Impregnation" in East Timor

*"I have given birth to five children from five different fathers, all members of the Indonesian army. I have been arrested, beaten, treated like a servant, and until 1991 I had to serve soldiers at night time. This calamity will never end for me. After experiencing this shameful treatment at the hands of the military forces, I have been disowned by my family, all of them condemn me. They don't want to accept that my fate was a consequence of the war situation."<sup>80</sup>*

#### 3.1.1. Brief Historical Context

The Portuguese first arrived on the island in the early 16th century and by the 1550s had occupied the eastern part. The Dutch took control of the western part, which became part of the Dutch East Indies and, after independence, Indonesia.<sup>81</sup> Portugal remained in control until the 1974 Portuguese Revolution. In 1975, the new left-wing Portuguese government relinquished all of its colonies. East Timor then enjoyed just a few days of independence, before the Indonesians, who had long coveted the territory, annexed it as their 27th province. There was little local resistance and the international community largely acquiesced. The main Timorese independence movement, Revolutionary Front for an Independent East Timor - FRETILIN<sup>82</sup> (*Frente Revolucionária de Timor Leste Independente*<sup>83</sup>), which was originally formed to fight the Portuguese, now had to gear up again to combat a new and more brutal occupier. In the savage counter-insurgency campaign that followed, the Indonesian army killed over 100,000 East Timorese.<sup>84</sup>

During the final years of occupation, the Indonesian military established a number of local militia groups, ostensibly to protect pro-integration sections of the local community from pro-independence forces. According to an agreement concluded between Portugal and Indonesia on May 5, 1999, under the auspices of the UN,<sup>85</sup> a

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<sup>80</sup> Oxfam, East Timorese Women Demand Human Rights, July 1999, in: [www.caa.org.au/horizons/h29/timor.html](http://www.caa.org.au/horizons/h29/timor.html).

<sup>81</sup> See <http://www.columbusguides.com/data/tls/tls.asp>.

<sup>82</sup> Since Feb 1 2001, FRETILIN's military front changed to FALINTIL -The Armed Forces for National Liberation of East Timor. UN Doc. A/54/726, S/2000/59, 31/1/00.

<sup>83</sup> See <http://www.tip.net.au/~wildwood/fretilin.htm>.

<sup>84</sup> Idem.

<sup>85</sup> UN Doc. A/54/726, S/2000/59, 31/1/00.

popular referendum on the future status of the province was held in August 1999 and 80% opted for independence.<sup>86</sup> After this overwhelming vote for independence in the face of widespread violence and intimidation, by way of revenge, the Indonesian army along with local militias that they had armed and financed, went on the rampage, in an orgy of destruction and killing that displaced hundreds of thousands of people and destroyed the territory's already fragile economic base. An Australian-led International Force for East Timor (INTERFET) arrived in September 1999 to restore order. All Indonesian soldiers left East Timor at the end of October 1999 but pro-Indonesia militiamen remained active in refugee camps in West Timor, preventing East Timorese refugees from returning home, blocking access by humanitarian organisations<sup>87</sup> and clashing sporadically with peacekeeping forces.<sup>88</sup> The INTERFET force left East Timor on February 2000 and was replaced by a UN peacekeeping force, UNTAET,<sup>89</sup> (UN Transitional Administration in East Timor). The assembly poll, which was held in August 2001, returned as expected a large majority for FRETILIN candidates. The presidency, contested in April 2002, was won by Xanana Gusmão, with a huge majority.

East Timor, the world's newest independent country, became the 191<sup>st</sup> member state of United Nations on the 20<sup>th</sup> of May 2002.

### **3.1.2. The Ordeal**

Women from East Timor were no exception to the generalised violence against women during armed conflicts. They were subject to all kinds of sexual violence and torture. During the Indonesian occupation of the country (1975 to 1999), the use of rape, "local wives" and "comfort women" were extremely common. Those who were used as

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<sup>86</sup> See <http://www.tip.net.au/~wildwood/fretilin.htm>.

<sup>87</sup> *Indonesiens Armee aus Osttimor abgezogen*, «Neue Zürcher Zeitung», 1/11/99; *New land route for Timor refugees*, «Associated Press», 12/11/99; *UN: East Timor refugees die as militia deny access*, «Reuters», 6/12/99; *Freedom on a knife edge*, «The Guardian», 31/7/99.

<sup>88</sup> See for instance Paterson, H. *Timor Peacekeepers, Militia Clash*, «Associated Press», 18/1/00.

<sup>89</sup> H. Paterson, *Peacekeepers withdraw from E. Timor*, «Associated Press», 23 February 2000. Coalition to stop the use of Child Soldiers.

sex slaves often referred to themselves as "isteri simpanan", that means "kept wives", in a way of sanitising the brutality of their experience with a veil of false respectability.<sup>90</sup>

An East Timorese speaker stated at a forum for female victims of war co-ordinated by "Fokupers", East Timor Women's Forum, an emerging women's organisation: "We women suffer for the sake of our homeland. We become prostitutes, we are imprisoned, beaten... we are stripped naked, forced to give birth to children fathered by different men from the army who abandon us with their children so that our suffering increases. We endure all of this in our fight for independence, so that we can have a free life and determine our own destiny... Although we are women, poor, ordinary people, illiterate, this is our basic right. It is the right of a nation which consists of men and women to establish their freedom."<sup>91</sup>

In September 7,1991, Bishop Belo wrote a report on the reign of terror in the territory and about the problem of illegitimate children (fathered by Indonesian soldiers) as being extremely serious.<sup>92</sup> In 1996, the Free East Timor Japan Coalition also wrote a report showing that rapes happened where soldiers were placed and gave several testimonies of children born of these rapes:

*Ms "H"(30), another woman interviewed, has two children, 2 and 7 years old, conceived as a result of rape by two different soldiers belonging to battalion 511. Neither of the soldiers took any responsibility for the children.*

*Mr "X", a man interviewed in one village, said that as many as fifty women in the village had been sexually abused by Indonesian soldiers. His younger sister, Ms "B" (25) gave birth to a baby (10 months at the time of the interview) conceived when she was raped by an Indonesian soldier.*

*In [1997] this same sister was forced to become the "local wife" of an Indonesian Air Force Officer by the name of Agus Korek and later she bore a child. This Indonesian officer had a wife in his own country, and after his six months' duty ended in East Timor he went back home, leaving his sister and the child of the officer that she later bore.<sup>93</sup>*

Following her mission to Indonesia and East Timor in 1998, Ms. Radhika Coomaraswamy's<sup>94</sup> made a report stating that much of the violence against women in East Timor was perpetrated because it was treated as a military zone. Under the control of

<sup>90</sup> Sian Powell, *East Timor's Children of the Enemy*, «The Weekend Australian», Ed. 1, March 10, 2001.

<sup>91</sup> Oxfam, *East Timorese Women Demand Human Rights*, *op. cit.*

<sup>92</sup> Grieg, *The War Children of the World*, *op. cit.*, p.36.

<sup>93</sup> *Idem.*

<sup>94</sup> UN Special Rapporteur on Violence against Women, report *Violence against Women, its Causes and Consequences*, UN Doc.E/CN.4/1999/68/Add.3 21 January 1999 (hereinafter Coomaraswamy Report)

Indonesia, it had a Military Operation Area status which limited access by outside observers, who were required to obtain a permit either through the Director-general of the Social and Political Affairs Department or the region's military commander. The inaccessibility had allowed human rights abuses to go unreported and perpetrators to act with immunity.<sup>95</sup> According to the same report, before May 1998, rape was used by the military as a method of torture and intimidation against the local population. Relatives of political opponents were raped by the military as a form of revenge or to force their relatives out of hiding.<sup>96</sup> Bishop Belo stated that "almost everyday there are persons who force their way into houses of the population and rape the women, it is these accursed actions which show hatred and traumatise the East Timorese".<sup>97</sup> While the Special Rapporteur was in Dili, East Timor, she was able to meet with victims of gender-specific violence. The following few testimonies give a sense of the violations that took place and about the pregnancies that occurred as a result:

*B (32 years old) from Craras, Viqueque, was told, after her husband disappeared, that if she wanted to see him again she would have to serve 100 soldiers at Pos Lalarek Mutin military post. For three months, she had to obey all orders and accede to all the needs of the post during the day and was raped at night. (...) As a result of the rape she has a seven year-old daughter. B is afraid to go to the authorities and file a complaint out of fear of retaliation against her and her family."<sup>98</sup>*

*D. (38 years old) from Viqueque was arrested and raped on many occasions during the period 1975-1991. She was forced to serve different soldiers who were stationed near her village. She has five children, all of them allegedly the result of rape by soldiers. Reportedly, those who fathered her children were officers in the Military District Command KODIN and the Nanggala Kopassus Unit. Her church has helped her to support her children but she wants Indonesia to take responsibility for her and her children."<sup>99</sup>*

As everywhere around the world, also in East Timor victims of rape are stigmatised and most of the times ostracised in their local communities. Married women are rejected by their husbands and young girls will no longer be able to marry. In many cases they are treated as traitors. "They are viewed as rubbish", says Abuelda Alves, Chief of Advocacy at Fokupers, "their families are embarrassed. Women who were already married, their

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<sup>95</sup> Idem § 75.

<sup>96</sup> Idem § 79.

<sup>97</sup> Bishop Belo, «De TAK Magazine», 16 July 1998, in Coomaraswamy Report, § 79.

<sup>98</sup> Coomaraswamy Report. Case interview, Dili, December 1998, § 85.



husbands rejected them."<sup>100</sup> Many traumatised women, who feared being spurned by their husbands, families and neighbours, have kept silent, yet even so the UN has already hundreds of cases registered, potentially making East Timor one of the World's worst sites for rape, joining Rwanda and the former Yugoslavia.<sup>101</sup>

For most of the women, the name of the child's father is known since the military used to stay long in each location. According to the UN police investigating the cases, former Australian Federal Police officer David Senior, there were several thousand instances of rape just in 1999, rape was so "normal" that "in every second house one or more of the girls have been raped".<sup>102</sup> Although the numbers of children born out of rape are uncertain, Grieg estimates that between 1975 and 1999 around 5,000 children must have been born, 1,000 alone in 1999. (see Annex I)<sup>103</sup>

### **3.1.3. Social Reaction to the Children**

When the High Commissioner on Human Rights, Mary Robinson, visited East Timor, she was presented to one of the children. The mother said: "Here, this is a product of a militia rape, what are we supposed to do?"<sup>104</sup>

According to Grieg, East Timorese leaders are aware of the burden put on the women and their children by fellow East-Timorese. They try to educate people to understand that the women were innocent in the rapes. In many places the women live in special quarters separated from the rest of the village. In many cases women with small babies have been forced to leave to another village because they are seen as militia wives.

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<sup>99</sup> Coomaraswamy Report. Case interview, Dili, December 1998. § 86.

<sup>100</sup> AFP: *Scars of vote violence remain real for many East Timor women*, November 19, 2000.

<sup>101</sup> Powell, *East Timor's Children of the Enemy*, *op. cit.*

<sup>102</sup> Grieg, *The War Children of the World*, *op. cit.*, p.38.

<sup>103</sup> Grieg states: "I worked in one of the districts in East Timor, with approximately one tenth of the tiny country's population of 800,000. The number of children as a result of rapes in 1999 alone was at least 100. From this I will estimate the number to be up to 1000 for the whole country. In addition to this come the war children born from 25 years of occupation. A census of these children is yet to be made. I will estimate this figure to be at least 5,000.", p.38.

<sup>104</sup> *Idem.*

The East Timorese orphanages are filled with these "children of the enemy". One sister revealed to a journalist that most of the children living in the church orphanage were the result of rape by Indonesian soldiers, and while they are not openly rejected, "everyone knows the shame of their parentage".<sup>105</sup> The sister explains the background of the children:

*Some of these children are the result of rapes, others are the product of a situation that resembles sexual slavery and some are the result of consensual sex... the women are having a very difficult time, not only because of poverty, but because the sight of these children often reminds them of rape.*<sup>106</sup>

Although several mothers put their children in orphanages, according to Powel, no one working with raped women in East Timor can recall a single instance of a woman abandoning a child because it is the product of rape.<sup>107</sup> Occasionally, some hostility is transferred to the baby, more by family members than by the mother.<sup>108</sup> Many Timorese women manage to divorce the reality of her child's parentage from the trauma of the rape. Rather, they often cling to their children, renouncing any desire for a normal life with a husband. In an interview a woman stated that she never thought of abandoning her child, even though he was "the son of the enemy", "I have to accept him. Because of the war, that's what happened. And also, he was given by God. I don't want to get married. I just want to look after my baby. I have had a bad life, and if I marry the badness will follow".<sup>109</sup>

The women's resilience and love for the babies fathered by the enemy continues to surprise many aid workers. Galuh Wandita, a human rights officer stated "I've seen the women against all odds taking care of the children and becoming single mothers with all the difficult financial and social implications of that". UNHCR's Kerblatt stated that his field observations lead him to rank East Timorese mothers as among the least bitter

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<sup>105</sup> *Indo Military Used Rape As Systematic Torture*, «Sydney Morning Herald», September 13, 1999, see Institute for Global Communications (IGC), <http://www.igc.org/>

<sup>106</sup> *Idem.*

<sup>107</sup> Powell, *East Timor's Children of the Enemy*, *op. cit.*

<sup>108</sup> *Idem*

<sup>109</sup> *Idem.*

towards their children: "compared with what I've seen in Rwanda and Yugoslavia, there is less rejection of the children here".<sup>110</sup>

The question of the rejection of children is quite different in countries like Rwanda or Yugoslavia, but they have to be seen within a completely different context, connected with the rapist intentions. The following section will draw attention to the case of children born of rape in Bosnia Herzegovina, and to their mothers' ordeal.

### **3.2. Children of "Forced Maternity" in BiH**

*To give birth to a child conceived by rape would be more disgraceful than betrayal for them, a fate worse than death.*<sup>111</sup>

#### **3.2.1. Brief Historical Context**

The Balkans have always been a melting pot of identities, peoples and religions. Even more so in BiH, a country more divided than its name suggests.

Through history, Bosnia was first a Byzantine vassal county, than an independent medieval kingdom, an Ottoman province, an Austro-Hungarian crown land and a Republic of the former Yugoslavia.<sup>112</sup> Following the decisions to declare independence by Slovenia and Croatia, on February 28 and March 1, 1992, the citizens of Bosnia and Herzegovina voted on a referendum whose result was the proclamation of an independent, democratic and sovereign republic; and which had Europe's bloodiest war era since World War II ultimately started.

The Serbs, making up 31% of Bosnia's population, were more eager to stay in a Yugoslavia led by Serbia and Milosevic than to live in an independent Bosnia (unlike the Bosniacs, Croats, and people of mixed ethnic origin, together the remaining 70% of the population); so, after the decision on independence had been passed, a group of Serb politicians automatically created the "Serb Republic of Bosnia and Herzegovina", and – with the help of the Yugoslav army – took more than 70% of the country's territory under

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<sup>110</sup> Idem.

<sup>111</sup> S. Drakulic, S., *op. cit.*, p.129.

<sup>112</sup> See generally R. Mahmutović, *Bosnia: A Story from the Beginning of the War*, Sarajevo, 1996

control. The war in Bosnia and Herzegovina lasted until November 1995, when the Dayton peace accords were signed by the then-leaders of Bosnia, Croatia and Yugoslavia, under mediation of the USA and the EU, leaving more than visible scars which will probably haunt Bosnia and Herzegovina over several coming generations.

The biggest damage left by the war in Bosnia-Herzegovina is the one on people. No exact statistical data exists, but estimates claim that around 200,000 people have been killed; in a speech given to the General Assembly of the United Nations, the Bosnian President Alija Izetbegovic said:

*The results of this uneven struggle are as follows: 70% of our country fell under occupation in the first months of the war, more than 200 000 civilians have been killed, over 1,000 (or one fourth) of our inhabitants have been expelled from their homes, hundreds of cities and villages destroyed and burnt. This cannot be described as a classic example of warfare between two armies. This has been a war of an army against civilians, followed by genocide and, until this time, unprecedented destruction of cultural and religious objects. The world has not responded in an appropriate manner to such barbarism.*<sup>113</sup>

It was the war in Bosnia and Herzegovina that had brought a tragic expression onto the world stage: "ethnic cleansing",<sup>114</sup> a cynical euphemism used by Serb leaders to describe their campaign to establish homogeneous Serbian control over geographic areas by using violence and intimidation to remove the non-Serb residents.<sup>115</sup> According to Fisher, forced pregnancy (and forced maternity), was one of the strategies for the accomplishment of this goal.

Mark Danner, an American writer, claims that by investigating the well-documented stories of towns and villages seized in Croatia, Bosnia-Herzegovina and

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<sup>113</sup> Speech by A. Izetbegovic to the 49<sup>th</sup> Session of the UN General Assembly, on September 27<sup>th</sup>, 1994. A. Izetbegovic: "Odabrani govori" (Selected speeches), Zagreb 1996. Translated into English by M. Mesic.

<sup>114</sup> The term "ethnic cleansing" originates from the Serbian/Croatian word "raščišćenje", literally "cleansing", "clearing", or "dispersing" in, Srpskohrvatsko-Engleski Rečnik [Serbocroatian-English Dictionary] 518 (3rd ed. 1990), Fisher, *Occupation of the Womb*, *op. cit.*

<sup>115</sup> *No Justice, No Peace: Accountability for Rape and Gender-Based Violence in the Former Yugoslavia*, Based on a Mission of the Women in the International Human Rights Law Group, Washington D.C., June 1993, p.1. According to the same source, the term "ethnic cleansing" is misleading in the sense that Croats, Bosnian Muslims, and Serbs all share a Slavic "ethnicity", and are divided more by religious and national identity. In accordance with this policy, Serb forces have operated detention camps in which Muslims, as well as Croats, have been tortured, mutilated, starved and killed.

Kosovo, it is possible to trace a procedure of “perfect ethnic cleansing” and defines its “5 perfected steps” as follows:

1. *Concentration: Surround the area to be cleansed and after warning the resident population [belonging to the attacking or ‘cleansing’ ethnic group], by urging your own people to leave or at least mark their homes; intimidate the target.*
2. *Decapitation: Execute political leaders and those capable of taking their places: lawyers, judges, public officials, writers, professors.*
3. *Separation: Divide women, children and elderly men from men of “fighting age” – sixteen to sixty years old.*
4. *Evacuation: Transport women, children and old men to the border, expelling them to a neighbouring territory or country; eventually, rape the women.*
5. *Liquidation: Executing men of “fighting age” and dispose of bodies.*<sup>116</sup>

The Bosnian war has, as said, left more than 200,000 casualties; tens of thousands of women were raped, according to the statistics, some of them more than a hundred times; many were beaten and tortured in concentration camps; numerous people are missing<sup>117</sup> and millions have lost their homes. Many regions, especially the western and northern part (Podrinje and Posavina, with predominantly Bosniac-Muslim and Croat populations before the war) were hardly hit by this process. Sarajevo, the country’s capital and for centuries a centre of tolerance, understanding, peace and culture, was under a siege of over 1,000 days, but has – luckily enough – managed to escape the tragedy of ethnic cleansing.

In order to prosecute the tragic events in Bosnia-Herzegovina and all of the Former Yugoslavia, the UN has instituted a special international ad-hoc tribunal for Crimes in the former Yugoslavia (ICTY),<sup>118</sup> seated in The Hague, with a rather effective trial chamber and prosecutor. The Court has authority to prosecute and try for grave breaches of the 1949 Geneva Conventions, violations of the laws and customs of war, genocide and crimes against humanity. However, even when all the accused suspects have been prosecuted, Bosnia-Herzegovina will still have to go through a long process of wound-

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<sup>116</sup> M. Danner, *Endgame in Kosovo*, New York, 1999.

<sup>117</sup> According to a source from the Bosnian Federal Missing Persons Investigations Commission (FBiH MPIC), at the beginning of 1997, about 27,000 persons were registered as missing. Thanks to IMP, the International Institute for Missing Persons, numerous mass graves have been discovered with more than 1,500 corpses; however, the number of missing persons still remains extremely high.

<sup>118</sup> The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by Security Council resolution 827. This resolution was passed on 25 May 1993 in the face of the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, and as a response to the threat to international peace and security posed by those serious violations.

healing and recovery from a time where *human rights* were an imaginary word, as well as through reconciliation between the peoples that have been living in Bosnia peacefully for centuries. Yet it seems that some wounds will never heal, especially those inflicted upon women. (see Annex VIII)

### 3.2.2. The Ordeal

*She feels trapped. A mechanism is closing in on her which turns humans into non-humans and she is beginning to operate exactly as she is expected to. She sees with horror that, like everyone else, she too is prepared to hate. Opening up inside her again is the hole that swallows up everything that is human about her.*<sup>119</sup>

Raped, tortured, mutilated, sexually enslaved, burned with acid and cigarettes, sold, trafficked for organ commerce, forcibly impregnated, used and abused in all imaginable and unimaginable ways.

Although the rapes in former Yugoslavia still represent the universality of women's experiences in war,<sup>120</sup> they have some particularities that should be analysed with more detail. The numbers of raped women vary depending on the sources. In December 1992, the EU Fact Finding Mission determined that 20,000 women had been raped by the Bosnian Serb Army "as a prolonged form of terror".<sup>121</sup> The Bosnian Government estimated the number of raped women around 50,000. While all sides in the Bosnian conflict have committed rapes, Serbian forces appear to have used rape on the largest scale, principally against Muslim women.<sup>122</sup> The majority of the cases, perpetrated by soldiers, paramilitary groups, local police as well as civilians, occurred between fall of 1991 and the end of 1993, with a concentration of cases between April and November 1992.<sup>123</sup>

<sup>119</sup> S. Drakulic, S., *op. cit.*, p.130.

<sup>120</sup> Niarchos, *Woman, War, and Rape op.cit.*, p.668.

<sup>121</sup> M. Nowak, *Women as Victims...*, *op. cit.*

<sup>122</sup> Jeri Laber, *Bosnia: Questions of Rape*, «N.Y. Rev. Of Books», Mar.25, 1993 ,p.4 in *No Justice, No Peace, op. cit.*, p.2.

<sup>123</sup> United Nations, Security Council, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), Annex 241 n.65, U.N. Doc. S/ 1994/674 (1994) [hereinafter Final Report].

Women and girls had to endure rape repeatedly, hundreds of times, for weeks and months. The reports of their rapes and other atrocities are outrageous, shocking and despicable. Although almost every motive for rape is present: rape as misogyny, rape to destroy a culture and community, rape to instil terror, rape to boost morale, rape as a reward, and rape as the messenger of defeat,<sup>124</sup> when one looks more closely at Muslim women, other particularities exist. According to Salzman, the Serbian practice of rape and sexual assault differ from other assaults because it was a systematic military policy conceived and planned before the outbreak of the war to achieve the ethnic cleansing of Muslims from Serbian territory.<sup>125</sup> This statement is corroborated by several reports that led to the adoption of a special resolution by the UN General Assembly on January 5, 1994, stating that "systematic practice of rape was used as a weapon of war and an instrument of ethnic cleansing against women and children in the areas of armed conflicts in former Yugoslavia, and specially against the Bosniac women and children in BiH".<sup>126</sup>

Among several factors that substantiate the allegation of a Serbian rape policy are the five patterns of sexual violence that were established by the Final Report.<sup>127</sup> In the first pattern, sexual violence occurred with pillaging and intimidation before widespread fighting broke out in a particular region.<sup>128</sup> The aggressors would break into homes, steal property, and torture and sexually assault the inhabitants, oftentimes in front of other family members or in public.<sup>129</sup>

A second pattern of sexual violence took place during fighting. In the process of attacking a town or village, the forces would rape or sexually assault some women in their homes. Once the town was secured, the forces would gather the surviving population according to sex and age, selecting some women for rape or sexual assault.<sup>130</sup>

The third pattern was carried out in detention facilities. After a town or village was cleared, the men were executed or sent to detention camps where they were tortured and the women were sent to separate camps, where "soldiers, camp guards, paramilitaries and

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<sup>124</sup> See Niarchos, *Woman, War, and Rape*, *op.cit.*

<sup>125</sup> T. Salzman, *Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia*, «Human Rights Quarterly», vol. 20, 1998. p.355.

<sup>126</sup> Nowak, *Women as Victims...*, *op. cit.* n. p.402.

<sup>127</sup> Final Report, § 244.

<sup>128</sup> *Idem* § 245.

<sup>129</sup> *Idem*.

<sup>130</sup> *Idem*.

even civilians were allowed to enter the camp, pick out women, take them away, rape them and then either kill them or return them to site."<sup>131</sup> Gang rapes were common, and the rapes/murders particularly sadistic, involved severe beatings and torture.<sup>132</sup>

A fourth pattern occurred in the so-called "rape camps" established in buildings such as hotels, schools, restaurants, hospitals, factories, peacetime brothels, or even animal stalls in barns, fenced pens, and auditoriums<sup>133</sup>. Frequently, the Serbian captors told the women that they were trying to impregnate them. In doing so they would create "Chetnik babies" who would kill Muslims when growing up. Furthermore, they repeatedly said that their president had ordered them to do this. Gynaecologists examined the women and those found pregnant were segregated, given special privileges, and held until their seventh month when it was too late to obtain an abortion; at that time they were released.<sup>134</sup>

In the fifth pattern, the women were forced into brothels to sexually entertain soldiers. While many of the women in the other camps were eventually exchanged for other civilian prisoners, these women were generally killed.<sup>135</sup>

There is unquestionable evidence that rape and other forms of sexual violence were not just "by-products" of the armed conflict or a form of revenge for a victorious army, but a well-planned and systematic policy in the context of ethnic cleansing.<sup>136</sup>

Niarchos refers that the only point of distinction is that rape in BiH has been chronicled to an unprecedented degree. That was only one of the aspects, another was the intention of impregnation and of reproducing "Chetnik" babies.<sup>137</sup> Unlike the extermination of the "source of future supply" of soldiers in primitive warfare as it was stated previously, one could argue that in former Yugoslavia the intention was to propagate soldiers who would theoretically destroy the Muslims and therefore continue the main goal: genocide.

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<sup>131</sup> *Idem* § 247.

<sup>132</sup> Niarchos, *Woman, War, and Rape*, *op.cit.*, p.657 quoting Catharine Mackinnon.

<sup>133</sup> T. Salzman, *Rape Camps*, *op.cit.*, p.359

<sup>134</sup> Niarchos, *Woman, War, and Rape*, *op.cit.*, p. 657.

<sup>135</sup> Final Report § 249; Salzman, *Rape Camps*, *op.cit.*, p.359

<sup>136</sup> M. Novak, *Women as Victims of Ethnic-Cleansing in Bosnia-Herzegovina* in *I Begged Them to Kill Me, Crime Against Women of Bosnia-Herzegovina*, CID, Sarajevo, 2000, p.401.

<sup>137</sup> Although forced impregnation is not unprecedented (thousands of babies born from war rapes prove this), it was a strategy also used in former warfares by the dominant power. The idea that these babies could continue the genocide against their mothers' families, however, arose during the war in former Yugoslavia.



### “Forced Maternity” as Genocide ?

As previously stated, one of the ethnic cleansing or genocide strategies was the forcible impregnation of women. Genocidal rape in BiH is conceptualised by Beverly Allen in three scenarios. First, as a tool of instilling fear, women were raped by neighbours as well as law enforcement personnel, driving them out of an area, never to return. Second, in concentration camps, women were frequently raped and then murdered. Third, in rape/death camps, women were systematically raped for long periods of time by Serbs as torture and then killed or forcibly impregnated. In other words, women are either expelled, killed or impregnated.<sup>138</sup>

Allen questions the Serbian logic that encourages this practice: How can rape, enforced pregnancy and forced maternity or forced child birth equal genocide? Is not propagation of species the antitheses of genocide? How would the forced impregnation of Muslim and Croat women serve the objective of creating a greater Serbia?<sup>139</sup> On the other hand, to Anne Tierney Goldstein, the fact that the mother has to carry the rapist's child for at least nine months makes her incapable of conceiving and bearing a child of her own ethnicity. If she is nearing the end of her child-bearing years, if she encounters complications in pregnancy, she becomes unmarriageable within her community, and finally, the enforced pregnancy may preclude her permanently from having a child of her own ethnicity or genetic heritage.<sup>140</sup> Another point in favour of Goldstein's philosophy would be: women who were raped and traumatised do not want to marry and/or have any more children, therefore less Muslim children are born. This perception of facts, common in media and scholarship, is fortunately being challenged by new critical voices. According to Allen, the genocidal character of forced maternity becomes conceivable only if one denies both science and culture.<sup>141</sup> Allen, Salzman, Charli Carpenter, Vesna Nikolič-Ristanović and Patricia Weitsman among others, draw attention to the fact that perceiving children born of rape as a product of genocide or ethnic cleansing is to deny

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<sup>138</sup> P. Weitsman, *The Discourse of Rape in Wartime: Sexual Violence, War Babies and Identity*, Paper prepared for delivery at the Annual Meeting of the International Studies Association, Portland, OR, February 26-March 1, 2003.p.11

<sup>139</sup> Salzman, *Rape Camps*, op.cit., p.364

<sup>140</sup> A. Goldstein, *Recognising Forced Impregnation as a War Crime under International Law* in Centre for Reproductive Law and Policy, New York, 1993, p.4, quoted in Weitsman, *The Discourse of Rape*, op.cit

the genetic link between mother and child.<sup>142</sup> Biologically, the foetus shares an equal amount of genetic material between the non-Serb mother and the Serbian father. Culturally, unless the child is raised by the father within a Serbian community, he or she will assimilate the cultural, ethnic, religious, and national identity of the mother.<sup>143</sup> The idea that the male determines a child's ethnic identity is cross-cultural and common, though misinformed. However, the acceptance of this myth is not limited to Serbs, but is supported by Muslim and Catholic men and women as well.<sup>144</sup> In this constructed ideology the ethnicity of a baby is the same as its father. As said, Serb soldiers and paramilitary troops who raped women told them that they would give birth to "little Chetniks" or Serbian soldiers, who would grow up to kill them.<sup>145</sup> Other Croat or Muslim women were told that if a woman carries a baby, than she too is a Serb.<sup>146</sup> As already seen, some women were held in rape camps until their pregnancies were so advanced that they would not be able to obtain an abortion.<sup>147</sup> Since the goal of ethnic cleansing is the creation of an ethnically and nationally pure population, the forced impregnation of non-Serb women has required some twists in thinking in Serbian nationalist ideology.<sup>148</sup>

This nationalistic ideology started long before the war, when the Serbian leaders, supported by the Orthodox Church, called for women to do their duty to the country by having more babies and willingly sacrificing their sons. Mythic figures were recalled to coerce Serbian women to support their nationalistic goals, while the law makers were changing the constitution and laws,<sup>149</sup> so that women would have no choice but to comply.

In addition to the cult of blood and soil, the new Serbian nationalists also recall the symbolic medieval figure of mother Yugovich<sup>150</sup> – the long suffering, fearless, stoic

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<sup>141</sup> Idem.

<sup>142</sup> Weitsman, *The Discourse of Rape*, *op.cit.*, p.12; R. Carpenter, *Surfacing Children*, *op.cit.*

<sup>143</sup> Salzman, *Rape Camps*, *op.cit.*, p.364

<sup>144</sup> Idem.

<sup>145</sup> "Feminist Resistance to War and Violence in Serbia", in <http://www.uri.edu/artsci/wms/hughes/warviol.htm>.

<sup>146</sup> State Commission For Gathering Facts on War Crimes in the Republic of Bosnia and Herzegovina, October 1992 in "Feminist Resistance to War", *op.cit.*

<sup>147</sup> Tresnjevika, 28 September 1992, in "Feminist Resistance to War", *op.cit.*, p.6.

<sup>148</sup> Idem.

<sup>149</sup> Idem.

<sup>150</sup> Epic heroine from the battle of Kosovo in 1389 who, despite the death of her nine sons in battle with Turks, did not weep. Salzman, *Rape Camps*, *op.cit.*, p.350.

mother of nine that offered her children to death in the defence of the fatherland. "Maternity is now to be seen as an obligation, not as a free option for women; the sexuality of women has to be controlled and reduced to procreation".<sup>151</sup> According to the Feminist Resistance to War, militaristic nationalism insists that Serbian women must have more babies so that the nation will be able to defend itself in war. One politician said, "I call upon all Serbian women to give birth to one more son in order to carry out their national debt." Following the war in Slovenia, another politician said, "For each soldier fallen in the war against Slovenia, Serbian women must give birth to 100 more sons".<sup>152</sup>

### **3.2.3. Social Reaction to the Children**

No clear data or information is available about the social reaction to the children. Therefore, the information given below must be seen as a first approach to a subject that requires more attention. Although there are inevitable questions to be made, both in qualitative and quantitative terms, numbers are important only to understand the entire scope of the situation. Every single case should be given the correct value and due respect to each victim.

As previously stated, the number of women that experienced sexual violence range between 20,000 and 50,000, but there are no clear figures referring to women that were forcibly impregnated. The Bosnian government estimated that some 35,000 women, primarily Muslim but also Croat, became pregnant from rape.<sup>153</sup> Medical studies estimate that a single act of intercourse results in pregnancy between 1% and 4% of the time,<sup>154</sup> this would indicate between 875,000 and 3,500,000 incidents. Salzman alerts to the fact that this shocking statistic reveals not only a shortcoming to obtain accurate information, but also the propaganda purposes to incite the masses.<sup>155</sup> According to several reports,<sup>156</sup>

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<sup>151</sup> Zagovich, December 1991, p.26, quoted in "Feminist Resistance to War", *op.cit.*

<sup>152</sup>"Feminist Resistance to War", *op.cit.*, p.8.

<sup>153</sup> Salzman, *Rape Camps, op.cit.*, p.363.

<sup>154</sup> See Shana Swiss & Joan E. Giller, *Rape as a Crime of War: A Medical Perspective*, 270 *JAMA* 612, 613

<sup>155</sup> Salzman, *Rape Camps, op.cit.*, p.363.

the majority of these women had abortions, given that abortions are allowed among Muslim women until the 120<sup>th</sup> day of pregnancy<sup>157</sup>. On the other hand, it is also stated that a large number of women were kept in detention until they could not make abortions. Ahmed Zin, director of the Egyptian Aid Agency designated by the Sarajevo leadership to operate group homes for the rape orphans, estimated that 500 to 600 children of rape have been born,<sup>158</sup> and he speculated that many more were trapped with their mothers in the 70% of Bosnian territory controlled by Serbs. This interview was given in 1993 when many of the pregnant women had not given birth and the raping was still going on. Although the exact number is not known, there are estimates of around 4,000 children born by forced maternity (see Annex I).

Some women gave birth in Bosnia, numerous in Croatia and several in the countries where they were evacuated and accepted as refugees. A number of them were also taken in advanced stages of pregnancy to Serbia<sup>159</sup> and nobody knows their whereabouts.<sup>160</sup>

Regardless of international law, raped women are still not recognised as victims within Bosnia. At best, they are regarded as tarnished, at worst as "fallen women" who somehow invited their own misfortune.<sup>161</sup> Fadila Memisevic of the Association for threatened Peoples of Bosnia, revealed that raped women who kept their babies were a tiny minority. Many more may have wanted to do so, but the pressures on them were intolerable.

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<sup>156</sup> See Report on The Situation of Human Rights in The Territory of Former Yugoslavia Submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Pursuant to Commission Resolution 1992/S-1/1 of 14 August 1992, UN ESCOR, Commission on Human Rights, 49<sup>th</sup> Session, Agenda item 27.

<sup>157</sup> According to Al-Bukhari, when the foetus is less than 120 days, it is still not a complete human being. In the Hadeeth reported by Ibn Mas'ud, the Prophet (PBUH) says: "Verily the creation of each one of you is brought together in his mother's belly for forty days in the form a seed, then he is a clot of blood for a similar alike period, then he becomes a morsel of flesh for alike period, then there is sent to him the angel who blows the breath of life into him and who is commanded about four matters, to write down his means of livelihood, his live spun, his actions end, and whether happy or unhappy." After 120 days, the foetus is a sole; any damage done to it is punishable, in <http://islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=8400>

<sup>158</sup> Belma Becirbasic and Dzenana Secic, *Invisible Casualties of War*, B. Becirbasic and D.Secic are journalists with Start magazine in Sarajevo. This report appeared in IWPR'S Balkan Crisis Report, No. 383, 18 November 2002. See [www.iwpr.net](http://www.iwpr.net).

<sup>159</sup> Reports that pregnant Muslim and Catholic women were released from detention camps and sent to Serbia to give birth to "Serbian children" further helps to propagate the Serbian population, as the "Serbian child" is not considered tarnished by the mother's genes in Serbia as it is with the father's genes among Catholics or Muslims. Salzman, *Rape Camps, op.cit* , p.375-376.

<sup>160</sup> Some of these women are included in the number of missing persons.

The fact that there is no detailed record, only information about sporadic cases, makes the tracking of the children, along with a serious study about their integration in the society, extremely difficult. Nevertheless, some information was collected with media, government, religious communities, women's organisations and orphanages.

### The Media

*And still they keep silent. Do they think that this conspiracy of silence can conceal their shame, defend their honour? Or is it that their experience is not something one can share with others, not even with those who have gone through the same thing themselves? Silence protects us, but it also protects the rapists...*<sup>162</sup>

The events in former Yugoslavia, specially the barbarous rapes and forced impregnation crimes, received widespread attention by the media, bringing this issue to the international arena. If this time violence against women during an armed conflict was impossible to ignore, the main responsibility lies with the media, since most of the research done in this field was carried out by journalists. Although the involvement of media can be very useful in bringing some issues to the public, it also has a perverse side. The apparent scandalous manner in which many crimes against women are reported may result in a tendency towards voyeurism. Dealing with sensitive topics in a very sensationalistic way, not respecting the privacy of the victims and calling attention to the persons involved - mother and child - more than to the problem itself, can have devastating consequences on the victims by increasing their sense of shame and stigmatising the children. Rape survivors in former Yugoslavia reportedly have attempted or committed suicide and have experienced severe clinical depressions and acute psychotic episodes after repeatedly recounting – sometimes in front of the camera – the details of their assaults.<sup>163</sup> When the horror of rape is invoked to serve political ends, women victims of rape are often ill-served by the attention they receive.<sup>164</sup> This fact is an

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<sup>161</sup> Idem.

<sup>162</sup> Drakulić, S., *op. cit.*, p.141.

<sup>163</sup> Shana Swiss and Joan E.Giller, *Rape as a Crime of War: A medical Perspective*, in «Journal of the American Medical Association», vol. 270. no.5, 1993, pp. 612-615 in Thomas and Ralph, *Rape in War*, *op.cit.*

<sup>164</sup> "First, even if rape of women is condemned, the denunciation is intended not to ensure accountability but to exploit the problem. Second, the individual crimes get lost in a sea of exaggeration, which, if not substantiated, may produce doubt about the scale of abuses and the credibility of women's individual

obstacle to further research in addition to the negative repercussions in other rape victims, since they would not be so willing to seek help and support.

### The Government

In 1993 the Bosnian Government, while claiming that 200,000 people had been killed in 15 months of nationalistic aggression, refused to relinquish any more of its endangered citizens.<sup>165</sup> One of the measures adopted was the prohibition of international adoption of war orphans, and among those, the children of forced maternity. This attitude, in accordance with religious principles laid down by the Muslim Community, was motivated not only with the hope that natural mothers of these children would some day learn to accept them, but also as a means of repopulating the country. Weitsman notes that, while children conceived by rape in wartime are frequently considered to assume the identity of their father by the perpetrators, the victim's states do not necessarily adopt that view.<sup>166</sup> Those seeking to help the rape victims, on the other hand, objected to the subtle pressures being applied to the women to accept children who would always remind them of their violent impregnation.<sup>167</sup>

According to Angela Pudar,<sup>168</sup> National Director of Save the Children UK, there is nothing at state level that regulates or protects children without parental care. Since there are no private adoption agencies, the centre for social work is the one to decide where to place the children. The concept of foster families is not well developed in BiH. Pudar added that there was a poor capacity of the government to respond to children that were sent abroad. Unlike a group of children, from the Children's Home Bjelave, Sarajevo, that was evacuated to Germany and returned after the war without any complications, another group of around 40 children from this same home was evacuated, at the end of 1992, to

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testimonies. Unfortunately, the use of numbers by the parties to "dramatise the victimisation of "their women" is rarely accompanied by efforts by those same parties to prosecute alleged abusers. Thus women, perhaps twice victimised, receive no redress, and no precedent of accountability is established." in Thomas and Ralph, *Rape in War*, *op.cit.*

<sup>165</sup> Carol Williams, *Bosnia Bans Adoption of Children of Wartime Rape Victims*, «Los Angeles Times», July 23, 1993.

<sup>166</sup> Weitsman, *The Discourse of Rape*, *op.cit.*, p.19.

<sup>167</sup> *Idem.*

<sup>168</sup> Interview, Sarajevo, May, 2003.

Italy where they remain until today. This episode will deserve special attention in the Child Rights Standards chapter.

### **The Religious Communities**

Since the majority of rapes were perpetrated by Orthodox Serbs against Muslim and Catholic Croat women with the explicit purpose of impregnation to create "Chetnik babies", only the responses of the Islamic and Catholic Communities will be presented.

### **The Islamic Community**

According to Mr. Muharem Omerdić,<sup>169</sup> the Counselor for Religious Issues in BiH, the analysis of the problem and the study of the status of women in the Sharia Law<sup>170</sup> was conducted with the intention of making sure that these women were protected. Furthermore, it was intended to prepare Muslims to accept the children and to alleviate their pain. Omerdić stated that "it was particularly painful when some of the raped women were left by their husbands, even their fathers. Cruel gossips about some women spread through their neighbourhoods, especially when they were left pregnant".<sup>171</sup>

In order to deal with this situation, scholars from several countries issued special Fatwas,<sup>172</sup> legal statements in Islam issued by a mufti or a religious lawyer on a specific issue. The promulgation of these fatwas was extremely useful, specially in the rural areas, first because rural areas were the most affected places and secondly because people are

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<sup>169</sup> Muharem Omerdić, *The Position of the Islamic Community on the Care for Children of Raped Mothers in The Plucked Buds*, Mirsad Tokača (ed), Commission for Gathering Facts on War Crimes in Bosnia and Herzegovina, Sarajevo, 2002, p. 428.

<sup>170</sup> Sharia is the law system inspired by the Koran, the Sunna, older Arabic law systems, parallel traditions, and work of Muslim scholars over the two first centuries of Islam. Being "based upon the Koran", it is considered the "will of God". <http://i-cias.com/cgi-bin/eo-direct.pl>.

<sup>171</sup> Idem.

<sup>172</sup> Fatwas are asked for by judges or individuals and are needed in cases where an issue is undecided or uncertain. Lawsuits can be settled on the basis of a fatwa. in: <http://i-cias.com/cgi-bin/eo-direct.pl?fatwa.htm>.

considered to be much more religious than in urban areas.<sup>173</sup> According to Omerdić, several problems had to be addressed:

*What is debauchery? What are the sanctions against debauchery? Are raped women unchaste? Are raped women subject of the provisions against debauchery?*

*Are babies born by a raped mother the babies born by an unchaste woman? Whose family name will the baby carry? Who will it inherit and what will be its right in general? Who will take care of such a baby?*

*Whom does an unwanted baby belong to by God's, natural and civil law? Are raped mothers entitled to perform abortion, and when are they allowed to do so?*<sup>174</sup>

Ali D'adulhakk, the sheikh of Al-Azhar, Cairo, considered to be the greatest recognised living religious authority, wrote and published a fatwa entitled "Fatwa on Children Born by Raped Women in BiH". This fatwa, translated and published in BiH, provides some answers:

*Raped women are not unchaste. A baby conceived by a raped woman is considered to be her baby.*

*She is to carry, give birth to, raise and take care of that baby. The baby is to have its mother's family name, it inherits her and vice versa. Mothers are not allowed to have an abortion after 4 months of pregnancy. Women must make the greatest sacrifice to keep the baby and thus strive for both the baby's and her own life.*

*If a mother rejects her illegitimate baby (...), and leaves it to the mercy of others, that is a great sin. That is why a great and grave responsibility falls upon her. It is society then than takes care of her baby...*

*The society should not expose the babies to any threat, (adoption in third countries) or death. These babies must be accepted and kept in life (...) since they are equal members of society.*

*This attitude arises from the fact that Islam obliges both society and individual to protect children, even the illegitimate ones, in order to make them useful (to mankind); their identity should not be emphasised in order to secure their social adaptation and in order not to remind them ever of their origins.*<sup>175</sup>

<sup>173</sup> Case interview, Sarajevo, May 2003.

<sup>174</sup> Muharem Omerdić, "Šerijatski stav o abortusu iz nasilnog odnosa", Preporod, Sarajevo, 15<sup>th</sup> July 1992, No. 12/523, in Omerdić, *The Position of the Islamic...*, *op.cit.*, p.429.

<sup>175</sup> Ál-Šajh D'allulakk, Ali D'allulakk, al Ima al akbar, Hukmu at fali n-nisa I al-mugtesibati fi l-Busneti wa l-Harsaki (regulations related to the children of raped women in BiH), Buhnus wa fatawa islamiyya fi qadaya al-mu asira, Cairo 1994, III, 175-186. See also Prof. Dr. Omer Nakičević, Fetva o djeci silovanih žena u Bosni I Hercegovini ("Fatwa on Children Born by raped women in BiH"), Glasnik Rijasetu IZ u BiH, sarajevo, LVIII/1996, 1-3, 41-4, quoted in Omerdić *op. cit.* ,p.430. Other Islamic Theoreticians, experts in Sharia Law and commissions for scientific research issued their fatwas relating to this issue: Prof. Dr. Sheikh Jusuf Qaradawi, Egyptian professor at the Islamic University in Qatar, Prof. Dr. Muhammed Rewawas Kaládji, Syrian, professor at the University Melik Saud, Ryad, Saudi Arabia; Shaikh Muhammed Gazali, Egyptian ; the Commission of Scholars for issuing Fatwas from Algeria, *et alia*.



Islam urges women and communities to accept and raise these babies, to integrate them as much as possible in the communities and, in order to "secure their social adaptation", keep their real identities secret. It is also worthy to note that, to protect the babies of any "threat" (like being sold, enslaved, trafficked or abused), they should not be given to adoption, specially not to other countries. This matter is even more evident in another fatwa, issued by the Muslim scholar, Sheikh Ibn Baz, the former Mufti of Saudi Arabia (see Annex III):

*"With regard to the children (of women who were raped in Bosnia and Kosovo), the Muslims are obliged to take care of them and bring them up in Islam. They must not leave them to the Christians or others."*

The fact that Muslims should "not leave [the babies] to the Christians or others" could have several interpretations. On one hand, as stated before, Islam obliges the Muslim community to take care of their own children. On the other hand, one could argue that the best interests of the child, even if it implies being adopted by a Christian family, should come before any religious norm or political motivation. The Islamic Community in BiH also took some concrete steps, aimed at providing shelters for raped women and their children. Attention should be given to the fact that besides opposing attempts of foreigners to adopt, they were opposed to the creation of special shelters and registers or records of these children, in order to avoid their stigmatisation. The following extract may give an illustration (see Annex IV for more details):

- *prevent the foreigners from adopting the children of raped mothers and their taking out of BiH;*
- *no special shelters should be established for these children, as it was planned by a local humanitarian organisation in Sarajevo, since that would "mark" the children permanently and prevent them from adapting in society;*
- *no special registers of these children should be kept since this would put them in an unequal and unfavourable position; instead, from the very beginning, each of these children should be treated as any other children, they should be respected and the condition for them should be developed in the sense of what The Prophet Muhammad, a.s. stated as "Who shows no mercy towards children and fails to be caring for elderly - is not one of us".*

### The Catholic Community

In 1993, Pope John Paul II addressed a letter to Archbishop Vinko Pulijik of Sarajevo with a message to Bosnian Muslim Women who had been raped in the conflict (see Annex V). The aim of this letter was to appeal for these women to “transform an act of violence into an act of love and welcome” by “accepting”<sup>176</sup> the enemy inside them and making him “flesh of their flesh” by carrying their pregnancies to term. This statement raised several criticisms. One of them was from an author, Frances Kissling,<sup>177</sup> who in her writings considered the Roman Catholic church among the harshest and most punishing of religions when it comes to understanding and respecting women’s rights and needs.

The referred message further states that "as the image of God, these new creatures should be respected and loved no differently than any other member of the human family, (...) since the unborn child is in no way responsible for the disgraceful acts accomplished, he or she is *innocent* and therefore cannot be treated as the *aggressor...*",<sup>178</sup> the terms "rape" and "abortion" are noticeably absent from this document. It should be noted that, regarding "orphans and abandoned children", the Pope only expresses "a word of appreciation to all those who are working to promote adoption procedures: when little ones lack the support of those who have given them life, it is an act of great human and Christian value to offer them the warmth of a new home."<sup>179</sup>

As seen, although there are several common points between the Christian Church position and Islam, including an appeal for the mothers to accept their children, a clear difference exists regarding abortion and adoption policies. Muslim muftis allow abortion during the first 120 days and issue fatwas against adoption, especially by non Muslims. The Catholic church, on the contrary, is completely against abortion and welcomes the efforts of providing a home to every child, regardless of their religious background.

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<sup>176</sup> *Pope Urges Bosnian Rape Victims Not to Have Abortions*, «Los Angeles Times», February 28, 1993. in: In Catholic Circles.:<http://www.cath4choice.org/new/incathcircles/iccbottompg2vol6no6.htm>.

<sup>177</sup> Frances Kissling, *A Callous and Coercive Policy, Once Again the Vatican Tries to Deny Emergency Contraception to Women Who Have Been Raped in War*, Summer 1999 in: <http://www.cath4choice.org/conscience/archived/coercive.htm>.

As Salzman points out, "if the culture, society, and family do not react according to the Serb's projections, but instead stand by these women and support them in solidarity, an impetus for the practice is removed. The Serbian policy of rape [and forced maternity] for the purpose of ethnic cleansing is dependent not only upon the complicity of Serbs as perpetrators, but also on the Muslims and Catholics as the victims and the anticipated cultural responses towards these victims. If met with love and acceptance instead of fear and hatred, a link in the chain of genocide is removed."<sup>180</sup>

### **Women's Organisations and Mother / Child Reactions**

Women's organisations dealing with these issues are more concerned with the well-being of women and therefore, they are not the best kind of organisations to provide the desired answers related to the destinies of the children. Although they are aware of the circumstances of the conception, the main goal is to help women to cope with the physical and psychological traumas caused by rape and forced pregnancy. They have special training and experience working with women's problems, not only rape but also domestic violence, a problem that has been escalating since the end of the war. The following stories, shared by women's organisations will help to provide a general idea of the different kinds of reactions between mother and child.

Vive Zena is a women's centre in Tuzla that provides counselling for rape victims. Among its staff, helping several other women traumatised by war, there is a woman, Safeta, that was forcibly impregnated. Safeta was six months pregnant by the time she arrived in Tuzla. Unable to have an abortion, she had to wait until the baby was born. After a first rejection of the baby that was sent to the local orphanage, she later reconsidered and decided to keep the baby with her. The price of this decision was high. Rejected by family and local community she had to go through a long fight until she could live with her son. Safeta had endured the whispers and pointing fingers of other women in Zivince, the place where she started her life as a refugee. The taboo around rape even extended to her family. Her mother, sister and brother-in-law were supportive,

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<sup>180</sup> Salzman , *Rape Camps, op.cit.*, p.369.

but not her father or younger brother. She remained in Bosnia throughout her pregnancy, but many women who had been raped in prison camps in Northwest Bosnia were evacuated to third countries via Croatia<sup>181</sup>.

The Director of the Zagreb Centre for Women Victims of War, CWWW, Nela Pamukovic, recalled two pregnant women who took refuge with her organisation, "One of them kept her baby and left for the US with her parents. The other threw her newborn child into the Sava river. She was charged with infanticide, but did not stand trial after doctors diagnosed diminished responsibility".<sup>182</sup>

According to Medica Zenica,<sup>183</sup> from 150 raped women that arrived to the centre, eight women had babies; one mother kept the baby with support of the family; one mother wished to keep the baby but she didn't have enough money so the child was taken by the government; one mother killed the baby six months after delivery, in a moment of "insanity", but the majority of women opted for giving the children to adoption. According to the same organisation, that also provides psychological support not only to the women but also to their families, the majority of girls, when realising it was too late for an abortion, wanted to have an abortion using paraprofessional methods or even injuring themselves. All women were extremely reluctant to accept their pregnancy. They neglected their body because it was a constant reminder of rape.<sup>184</sup> A woman that approached Medica after being raped in Brcko was accompanied by her mother, who kept insisting that the pregnancy was her daughter's own fault. In the end, this woman did manage to keep her child. Mirha Pojskic, from Medica, recalled the case of another woman that was raped close to the border with Serbia. Even though she was a Bosnian, the woman fled to Serbia where she adopted a Serbian name. Too ashamed to tell her closest family about her rape and pregnancy, the woman gave birth and kept the child for a year. Finally, with no money nor family support, she left him in a Serbian orphanage. The orphanage, discovering that the baby was Bosnian, demanded from the mother to remove him. Trying to take the baby to her own parents in Sarajevo, they refused to

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<sup>181</sup> Becirbasic, *Invisible Casualties of War*. Same story was confirmed in Vive Zena, case interview, Tuzla, May 2003.

<sup>182</sup> Becirbasic, *Invisible Casualties of War*, *op cit*.

<sup>183</sup> Helped by Monica Hauser, this centre is equipped with a gynaecological out-patient department and a therapeutic in-centre department. Interview, May, 2003.

<sup>184</sup> Case interview, Sarajevo, May 2003.

accept him. After some months, Pojskic received a letter from the Sarajevo Social Services stating that the woman wanted Medica to accept her baby, because she could no longer feed him. Pojskic "tried to convince the welfare workers in Sarajevo to find the woman a job so she could support her child, but they did nothing".<sup>185</sup>

### **Orphanages**

In Zagreb, most deliveries took place at the Petrovo Maternity Hospital. From there, according to the Centre for Women Victims of War, CWVW, and the Zagreb Caritas office, unwanted babies were taken to the Vladimir Nazor Orphanage or the Goljak Centre for children with special needs.<sup>186</sup> Zagreb Caritas received around 150 raped women, of whom around 60% were pregnant. The director Jelena Brajsa remembers the first 15 pregnant women who arrived in 1993. All had been repeatedly raped. After delivery, two babies were kept by their mothers, one Christian and one Muslim, nine were collected by the Bosnian Embassy and Red Cross and later returned to Bosnia. There, two were taken by their families, two were adopted and five placed in institutions. The remaining 4 babies, which were handicapped, according to the same report stayed behind and are in Zagreb until today. Only speculations could reason the motive behind this decision to keep these four handicapped babies in Zagreb.

Advija Hercegovac of the Vojo Peric orphanage in Tuzla, BiH, stated that in 1993 alone, they admitted 700 children while the capacity of the orphanage was only 100, "it is possible that many of those were babies of raped women, but there was a chaos at the time and we had more important tasks than keeping detailed records".<sup>187</sup> Children later adopted were subject to the usual rules protecting their identities and those of their adoptive parents. Orphanages in the Balkans were overwhelmed by requests from foreign couples who wanted to adopt war orphans and children born as a consequence of the war rapes. Curiously, requests from Serbian citizens were given preference before foreigners of Yugoslav descent or other foreigners were allowed to adopt.<sup>188</sup>

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<sup>185</sup> Becirbasic, *Invisible Casualties of War*, *op cit.*

<sup>186</sup> *Idem.*

<sup>187</sup> *Idem*

<sup>188</sup> Weitsman, *op.cit.*, p.20.

The orphanages visited in May 2003, were as reluctant to address the question of the children of rape as the women's organisations. Most of the time denying awareness about this particular subject, the most common information was that keeping records of the children during the war period was extremely difficult. The psychologist of the Tuzla orphanage revealed that some children born of rape were sheltered in that institution. She stated that sometimes she tried to explain to these children their origins but they "didn't understand".<sup>189</sup> There are presently other serious problems affecting the orphanages, specially concerning children survivors from Srebrenica. Authorities from Republic Srpska are asking for these children, but they are not willing to go back to the place where their families were killed. According to a social worker in this orphanage, this mainly occurred due to the fact that funds are given by the government. Although the origin of the abandoned children that ended up in the orphanage between 1992 and 1995 is uncertain, they are most probably the result of rape. Nothing has been revealed regarding the relationship between children of rape and the other war orphans. One of the reasons, according to the orphanage workers, is that these children are not aware of their origins.

### **3.3. Concluding Remarks**

After widespread news of mass rapes and forced impregnation during the war, it seems that a veil of silence covered the country. The majority of statements collected are very clear; "There is no unequal treatment between these children and others. These children are completely integrated" or "we never heard about these children".<sup>190</sup>

Women's organisations, NGOs and orphanages are not willing to be confronted with such an uncomfortable and sensitive issue. The concern of these organisations for children in their care and the will to protect them, avoiding a second re-victimisation and stigmatisation, could be one of the reasons to avoid the issue. However, it is important to look for other possible reasons behind this attitude. Either equal treatment for these children facilitated the assimilation and integration into the Bosnian society, or the taboo, the shame, and the lack of institutional support are more than enough to avert these

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<sup>189</sup> Case interview, Sarajevo, May 2003.

women from coming forward, and so no discrimination can occur. Alone and in silence, women are dealing with their own traumas, not revealing the origins of their children, because they know that both their family and community would have a negative reaction. Besides, if there is no official structure to support them, the exposition of their suffering is not going to bring any benefit, even more so when the victims believe they brought shame on themselves and their families by being raped. Several cases are only starting to be revealed now, and several women are committing suicide. Although the issue is hushed, little by little the stories start to appear. Based on several reports, the information about the destinies of these children is that either they are integrated in their mother's families, they were sent abroad for adoption, although officially this was forbidden, or they are stigmatised, ostracised, abandoned or neglected.

Relief agencies that take care of the unwanted children are almost as reluctant to address the topic. Tory Araldesn, a psychologist who oversees a women's counselling centre in Tuzla run by Norwegian People's Aid, stated that "rape here is much more taboo than it is in the West. It is so taboo that even the local therapists are hesitant to bring it up".<sup>190</sup> The Director of Caritas revealed that in one meeting of the Association of Bosnian Women in Zagreb, which is now defunct, the fate of babies of raped women was discussed and "there was a general consensus that these children should be taken as far away from Bosnia as possible".<sup>192</sup>

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<sup>190</sup> Several case interviews, Sarajevo, May 2003.

<sup>191</sup> Carol Williams, *Bosnia Bans Adoption of Children of Wartime Rape Victims*, «Los Angeles Times», July 23, 1993.

<sup>192</sup> Idem.

## IV – Child Rights Standards

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*That night those hands had first assisted in the birth of the child, and then tightly tied a scarf around the baby's neck... War, the war made her do it. But those who started the war and led the woman to murder the child have the same excuse. If everyone has the same excuse, that they are forced to kill because there is a war on... is one really utterly deprived of all choice in war?<sup>193</sup>*

The Committees to the Convention on Rights of the Child (CRC) and to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have emphasised their complementary and mutually reinforcing nature. Both are based on the principles of human rights as articulated in International Covenants, and both reaffirm human rights as universal, indivisible and interdependent.<sup>194</sup> Meanwhile, the lack of support and assistance to the enjoyment of the mother's human rights, can result in further human rights violations of the children. This interrelation can be seen in several examples like in infant mortality due to neglected health and nutrition of the mother during pregnancy; in cases like the disregard of a female infant due to cultural attitudes of son-preference, resulting in higher mortality among female infants<sup>195</sup>; or in the present case of abandonment and sometimes infanticide of children born of forced maternity due to ethnic, cultural, religious or other reasons. Unfortunately, the neglect of these children did not only occur within their families and communities, but also at a political and legal level. Debates around rape and forced pregnancy were focusing on the women's suffering, in terms of violation of women's rights and ignored an essential part, the children and their rights as human beings.

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<sup>193</sup> Drakulić, S., *op. cit.*, p.132.

<sup>194</sup> UNICEF, *Human Rights for Children and Women*, June 1999 p.15



#### 4.1. War Rape Orphans in the Convention on the Rights of the Child

*The children of rape are in any case doomed to grow up living a lie. And should it happen that one of the mothers keep the child, she will have to lie.<sup>195</sup> She will have to invent for the child a father, a family, a past. The child will have, in a way, a completely false identity and the mother will be responsible for it. Which is the greater, the right to a father or the right to the truth. To tell the child the truth would be to add yet another injustice to the one already done.<sup>197</sup>*

During the last fifty years, several documents providing rights, protection and wellbeing of children have been developed in several international legal instruments such as conventions, covenants and declarations, but only in 1989 the standards concerning children were brought together in a single legal instrument approved by the international community. Spelling out in an unequivocal manner the rights to which every child is entitled, regardless of where born or to whom, regardless of sex, religion, or social origin, the Convention of the Rights of the Child<sup>198</sup> (CRC) of which all countries of the former Yugoslavia are State Parties (see Annex VI), is the most complete instrument on children's rights ever made and the first to give these rights the force of international law.<sup>199</sup> The CRC includes the whole spectrum of rights, civil and political, as well as economic, social and cultural rights, adapted to the specific needs of children,<sup>200</sup> generally defined as any person under the age of 18 (Article 1). The body of rights enumerated in the Convention are the rights of *all children everywhere*.<sup>201</sup>

The indivisibility of rights is the key to interpret the Convention. Decisions with regard to each right must be made in the light of all the other rights in the Convention. For example, it is not enough to guarantee the right to education if children are not enrolled or cannot go to school regardless of gender or economic class.<sup>202</sup> In the same

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<sup>195</sup> Idem

<sup>196</sup> Draculić, *op.cit.*,p.8

<sup>197</sup> Idem, p.198

<sup>198</sup> Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989, (Resolution 44/25); entry into force: September 2, 1990.

<sup>199</sup> Ralph Krech, *UN Crime Prevention, in Understanding Children's Rights*, Eugeen Verhellen (ed.), University of Ghent, July 1996, p.373

<sup>200</sup> Quoted in *International Criminal Justice and Children*, UNICEF Innocenti Research Centre, September 2002, p.35

<sup>201</sup> The Convention on the Rights of the Child in <http://www.unicef.org/crc/convention.htm>

<sup>202</sup> idem

way, it is not enough to promote family rights to children-born-of-forced maternity if adoption is not allowed for political or religious reasons.

Unfortunately, as Mirjana Obretković pointed out, like all great ideas which pretend to be of universal importance and significance, perhaps the syntagma “the rights of the child” has been somewhat exhausted, without yet having acquired a clear meaning and concrete substance. In this sense it is possible to understand, and accept the often quoted, sceptical thesis of an American author, that the rights of the child are “a slogan in search of a definition”.<sup>203</sup> Although the CRC reinforces fundamental human dignity, highlights and defends the family's role in children lives, seeks respect for children, but not at the expense of the human rights or responsibilities of others, endorses the principle of non-discrimination, and establishes clear obligations for states in the accomplishment of minimum standards, the reality has a different story to tell. And more so the war children in general, who are exposed to all kinds of injustice and discrimination based on their or their parent's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth and other possible reasons not explicitly mentioned but included in "other status" like being born out of wedlock.

The CRC Committee, has identified four articles as "foundation" principles that underpin all other articles, namely non-discrimination (Article 2); “best interest” of the child (Article 3); the inherent right to life, survival and development (Article 6); and participation (Article 12). Focusing on war rape orphans (being children-of-forced-maternity or "unintentional impregnation"), it is beyond belief to realise how most of their rights could be endangered. At different ages different aspects are important for the child. In order to better understand the plight of these children, the analysis of their most affected rights will follow the division in four groups proposed by Donnelly and Howard,<sup>204</sup> which was later reinforced by Lawrence LeBlanc,<sup>205</sup> adapting this list to the Rights of the Child: Survival Rights; Membership Rights; Protection Rights and Empowerment Rights. Especial attention is given to membership rights

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<sup>203</sup> Mirjana Obretković, *What are the Rights of the Child?*, in *Rights of the Child, Global and Yugoslav perspectives*, ed. Nevena Vučović Šahović, Belgrade Centre for Human Rights, Belgrade, 1997, p.17(Rodham, 1973:487)

<sup>204</sup> Donnelly and Howard, *Assessing National Human Rights Performance: A Theoretical Framework*, «Human Rights Quarterly», vol.10, 1988, p.214

#### **4.1.1. Survival Rights**

Although the list implies no hierarchy of rights, to Donnelly and Howard, “survival” is “the prerequisite to all other human rights”. It includes not only the right to life but also the rights that sustain life, such as the right to an adequate standard of living (Article 27) and health care (Articles 24 and 25). Defined in this way, the category of survival rights emphasises the indivisibility of all civil and political and economical, social and cultural rights as they are stipulated in the Convention.

Bearing in mind the war rape orphans, one could say that one of the most important rights concerning children of rape is the right to life (Article 6). The beginning of life as such is not defined in the CRC, but its definition is left to national legislation. As this chapter does not deal with unborn life, the ethical discussions about the right to abortion in cases of rape will not be raised. It is clear that babies that were murdered by their mothers or other family members, were deprived of their right to live. Those that were abandoned and stayed in the orphanages and other institutions were deprived of an adequate standard of living.

#### **4.1.2. Membership Rights**

"From Aristotle to Marx it has been commonplace, yet absolutely essential to note that man is a social animal. More recently, it has been noted that women and children, too, are part of the community".<sup>206</sup> According to Donnelly and Howard, the protection of the survival rights alone guarantees only the crudest anomic existence, a life unfit for a human being; to exist as a human being, one must exist as a part of a community. They identified two key membership rights, the protection of the family and the prohibition of discrimination. LeBlanc focuses on three particular "membership" groups of rights, that are affirmed in the CRC. First, the state obligation to respect and ensure the non-discrimination of the children rights (Article 2). Second, the rights to have a name and a

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<sup>205</sup> L. LeBlanc, *The Convention of the Rights of the Child: United Nations Lawmaking on Human Rights*, (University of Nebraska Press, 1995),

nationality (Article 7). And third, the family rights and the rights of the child within the context of the family (Articles 9, 19, and 21). These rights are of particular importance in the case of war rape orphans.

#### **4.1.2.1. Non-discrimination**

The first paragraph of article 2, along with article 3 (2) and article 4, sets out the fundamental obligations of states parties in relation to the rights outlined in the remainder of the CRC, to “respect and ensure” *all* rights in the Convention to *all* children in their jurisdiction without discrimination of any kind.<sup>207</sup> Based on several reports and on some findings, we could argue that war rape orphans have been experiencing discrimination. One of the grounds for their discrimination is their parents religious and ethnic background. But, what is the child's ethnic and religious background? The mother's? The father's? How are these children perceived? As we have seen, the children of rape in East Timor are seen as "sons of the enemy", and children of forced maternity in BiH are commonly seen as "little chetniks", carrying only the father's genes. Meanwhile, both the Muslim Community and the BiH government are strongly against the adoption of these children by "outsiders". For the religious community, the children are Muslims and should be raised as such; for the government they are a way of repopulating the country. But what are they for the community where they are being raised? If caretakers manage to keep the identity of the children secret, there would be no grounds for discrimination, on the other hand, the children would be deprived of the right to know their identity. Should there be a prioritisation of their rights? What would be the best interests of the child? The right to have an identity is interconnected with the right not to face discrimination. Identity is as crucial a need for small children as is food, sleep, shelter. Given the need of children for familial guidance, structure, love and socialisation (and their extreme vulnerability to lack of such a basis for identity formation) the right to membership in a meaningful social unit is a crucial ingredient for recognition of other

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<sup>206</sup> Donnelly & Howard, *op.cit.*, p.223

rights. Moreover, in political contexts where the identity of everyone around the child is demarcated in ethnic or religious terms, to be deprived of such a sense of belonging may seriously complicate the child's ability to exercise political and social self-determination.<sup>208</sup>

The non-discrimination principle does not bear affirmative action like the legitimate differentiation in treatment of individual children. In its Preamble, the CRC recognises that "in all countries in the world, there are children living under exceptionally difficult conditions", and that "such children need special consideration". This principle is included in all the basic human rights instruments and has been carefully defined by the bodies responsible for monitoring their implementation.<sup>209</sup> The CRC states frequently that States Parties need to identify the most vulnerable and disadvantaged children within their borders and take affirmative action to ensure that the rights of these children are realised and protected. This could lead to new discrimination if it is not done with the due discretion. It should be noticed that this fact was considered in BiH, by the government and also by the religious community (see Annex IV).

#### **4.1.2.2. Name and Nationality**

According to the CRC (Article 7), the child must be "registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents". The rights to a name and a nationality are crucial to a person's identity and are important membership rights. The question of nationality is one of the most sensitive and complex aspects associated with birth registration and can compromise the registration of the child. Birth registration establishes the child's identity and is generally a prerequisite for the issuing of a birth certificate.<sup>210</sup>

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<sup>207</sup> Implementation Handbook for the Convention on the Rights of the Child, Fully Revised Edition, UNICEF, 2002, p.19.

<sup>208</sup> Carpenter, *Forced Maternity*, *op.cit.*, p.229

<sup>209</sup> Implementation Handbook, *op.cit.*

<sup>210</sup> UNICEF, *Birth Registration. Right From the Start*, «Innocenti Digest» No 9, March 2002

In the case of war rape children, birth registration was not always done. In many places, like Rwanda or Vietnam, where nationality focuses on the male line, citizenship is rejected to a child with a foreign father. Too ashamed to reveal the identity of the father, or because this identity is not known, (it could be one of several rapists), women frequently do not register their babies. Some of the orphanages visited in BiH reported that children were found simply abandoned; in these cases, children were registered as "NN"- no name. Although some might argue that these were war rape children, there is no proof neither in favour nor against this argument.

Most states confer nationality according to the principles of *jus soli* or *jus sanguinis*,<sup>211</sup> or a combination of both. The different rules mean that children could possess dual nationality, or no nationality at all, when, for example, they are born in a country that does not grant nationality on the basis of *jus soli*, only on *jus sanguinis*, and their parents have no nationality or are stateless.<sup>212</sup> This is particularly true for children of asylum seekers or refugees, or from a minority or ethnic groups who experience discrimination. There is no ground to say that war rape babies in BiH and East Timor are denied this right, but those born and abandoned in other countries remained stateless if the country follows the *jus sanguinis* rule. As Bosnia,<sup>213</sup> also Croatia follows the *jus sanguinis* ruling, which means a denial of citizenship to children of Bosnian women that were born in Croatia. This situation was only changed when in September 1996, the Bosnian Government made an amendment to Article 4 of the law regulating *jus sanguinis*. The new paragraph states that if one parent is citizen of BiH, the other is a citizen of a former republic and a child was born abroad, the child should be given the BiH citizenship.<sup>214</sup> The inclusion of this article seems to avoid the stateless status of

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<sup>211</sup> *Jus solis*, which translates literally as the law of the soil, is the principle whereby those born within the country's territory are nationals, even if one or both parents came originally from another country. In this case birth registration gives the child automatic right to citizenship of the country in which he or she was born. In the case of *jus sanguinis*, the law of the blood, the child does not have an automatic right to citizenship of the country of birth if neither parent is a national of that state. This system applies in most of Asia and the majority of countries following Islamic law.

<sup>212</sup> Le blanc, p.108

<sup>213</sup> The only exception is the one expressed in Art. 7 in which a child born in BiH, of unknown parents, would be awarded citizenship that would end if until the 14<sup>th</sup> birthday, it is found out that both parents have a foreign citizenship.

<sup>214</sup> Judge Majer, Ministry of Justice, Vienna, Austria.

refugee children, specially those whose mothers were victims of rape and have no intention of keeping the babies, leaving the children to the care of local institutions.

Although several CRC articles have links to birth registration, there are some with particular importance like: Articles 2, 3, 4, 8, 9, 10, 21, 32, 35, 38. The denial of citizenship to war rape orphans that were born abroad, in refugee camps, like those born in Croatia in 1993, would constitute a denial of rights to a nationality, excluding them from education, medical care and welfare among other rights. Without citizenship the children are doomed to be a pariah in their birth country.

#### **4.1.2.3. Family Rights**

The family is often regarded as the basic unit of society. Besides reinforcing the fundamental human dignity of the child, one of the CRC goals is to highlight and defend the family's role in children's lives, as the fundamental group of society and the natural environment for the growth and well being of its members, particularly children. Its importance to the rights of the child is evident in the large number of articles included in the CRC. Article 5 provides the basic framework.<sup>215</sup>

The right to know the biological parents is provided by Articles 7, 8, and 9, and under Article 22 States Parties shall provide "as they consider appropriate" co-operation to protect, assist and "trace the parents or other members of the family of any refugee child". Albeit the ever returning issue for other war children is the search for their biological fathers,<sup>216</sup> there is no evidence to say that also children from rape want to know their parents. Article 7 reads that children should have "as far as possible, the right to know and be cared for by his or her parents." In some cases this right cannot be fulfilled. Either because the child was abandoned, or because the mother doesn't know or refuses to identify the father, or when the State decides that a parent should not be identified<sup>217</sup> (in cases of artificial fertilisation, or some cases of adoption). The UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special

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<sup>215</sup> LeBlanc, op.cit.

<sup>216</sup> Grieg, op.cit

Reference to Foster Placement and Adoption Nationally and Internationally,<sup>218</sup> provides that "the need of a foster or adopted child to know about his or her background should be recognised by persons responsible for the child's care unless this is contrary to the child's best interests"(Article 9).<sup>219</sup> The holistic nature of the Convention suggest that a child who would definitely be harmed by the discovery of his or her parent's identity could be prevented from having this information.<sup>220</sup> The children's right to know their parentage could only be refused on the grounds of best interests in the most extreme and unambiguous circumstances as the case of the war rape orphans.

But do the parents have the right not to be found? Does a raped woman that simply abandoned or gave up her child to adoption has the right not to be confronted with her painful past? The children's rights to know their origins and the mother's rights to confidentiality and protection to avoid social condemnation such as ostracism, injury or death could be competing. Article 30 of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, 1993, upholds mother's rights, empowering the state of origin of the child to withhold information about the parents' identity. Those countries that maintain adoption secrecy in order to protect the mother should, according to the Implementation Handbook for the CRC, have provisions to release information to the child, either with the mother's permission or at a time when she will not suffer harm.<sup>221</sup>

### **Alternative means of child care**

The Convention emphasises the primary responsibility of the family for the care of the child, although it recognises that under some circumstances children might become, or have to be, separated from their family environment either temporarily or

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<sup>217</sup> Implementation Handbook, *op. cit.*, p.117

<sup>218</sup> Doc adopted by resolution 41/85 by the General Assembly in December 1986.

<sup>219</sup> Implementation Handbook, *op,cit*, p.117

<sup>220</sup> *Idem*

<sup>221</sup> *Idem*, p.118



permanently.<sup>222</sup> The CRC contains two articles on alternative means of child care: Article 20 and Article 21.<sup>223</sup>

Under Article 20, the state should provide "special protection and assistance" to children deprived of their family environment. These children should be given alternative means of child care like adoption or foster placement, always regarding the "best interests" of the child. Besides the special protection, Article 20(3) is particular important for the present case since it presents the concept of *kafalah* of Islamic law, the placement of children with relatives.

Article 21 concerns the adoption of children within countries and intercountry adoptions, only applicable to states "that recognise and/or permit the system of adoption". If they do, they must ensure that "the best interests of the child" are the "paramount consideration". The article does not, therefore, mandate that states parties take measures to facilitate the adoption of children. Delegates from some Islamic countries made statements regarding the terms of both articles 20 and 21, claiming that the articles are not binding on them because, consistent with the Islamic law, they do not recognise or approve the system of adoption. Islamic states have followed up on their concerns by including, in their instruments of ratification, statements noting that they do not consider themselves bound by the provisions of Article 20 and 21.<sup>224</sup>

BiH inherited the old family law of the former Yugoslavia, which among other things, regulates adoptions. While there is nothing in Bosnian law that specifically prohibits foreigners from applying to adopt a Bosnian child, the law stresses that there has to be overwhelming justification and exceptionally compelling reasons for a foreigner to be permitted to adopt a Bosnian child. Just what an "overwhelming justification" might be is judged on a case-by-case basis. Foreign adoption is a particularly sensitive subject to Bosnian authorities and to the people of Bosnia, especially after having lost so many people in the war. Therefore, absolute priority is given to Bosnian citizens.<sup>225</sup>

In BiH, adoptions are the responsibility of the two entities, the Federation and the Republika Srpska. Their laws and practices are basically the same. The application for

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<sup>222</sup> LeBlanc, p.118

<sup>223</sup> Leblanc,p.119

<sup>224</sup> Leblanc,p.120

<sup>225</sup> *Bosnia and Herzegovina International Adoption*, in [http://travel.state.gov/adoption\\_bosnia.html](http://travel.state.gov/adoption_bosnia.html)

adoption must be submitted to the custodial body in the municipality where the child resides. In most cases, the responsible body is the Centre for Social Work. The Centre prepares an adoption case for submission to the ultimate authority to approve adoptions by foreigners- the Ministry of Social Policy of the entity in question<sup>226</sup>, which is not the case for adoptions by local Bosnian citizens. In practice, it is extremely difficult or almost impossible to obtain this approval.<sup>227</sup> The main reason is that neither the government of the Federation nor that of Republika Srpska considers it beneficial for native-born children to be uprooted, to lose contact with other relatives, or to lose their identity through losing their citizenship. Furthermore, in a country that is still recovering from a long and brutal conflict, it can be extremely difficult to determine if the whereabouts of a parent are simply unknown or if the child is truly an orphan.

### **The BiH War Children Case**<sup>228</sup>

During the war period, transfers of children from BiH to other countries were undertaken. Fearing for their safety, the main worry was to send the children as far away as possible from a country that was being torn apart.

Among the children sent away, some were orphans or abandoned but others were trusted by their parents and/or related families to humanitarian organisations. The transfers were done in two phases. During the first phase, in 1992, a group of 40 or 50 orphans and abandoned children were taken from children centres and sent to the region of Puglia, Italy. The reason for the transference was stated as "medical treatment". These children, between some months and maximum two years old, were registered through Catholic organisations, not as Bosnian but as Italian orphans.

The second phase concerns another group of 50 children who were also removed to Italy between 1994 and 1995. This transference was carried out by several humanitarian organisations and orphanages, like Nasa Djeca in Tuzla and Bjelave Children Centre in

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<sup>226</sup> *Bosnia and Herzegovina International Adoption, op. cit.*

<sup>227</sup> *Bosnia and Herzegovina International Adoption, op. cit.*

<sup>228</sup> The information concerning this case is not official but was collected through interviews. Newspapers in Bosnia also addressed this question.

Sarajevo among others. These 50 children are subdivided in two age groups. The first group is made up of babies until one year old, most of them without known relatives. The second consists of children between 3 and 5 years, with memories from their homes and families. These children were first sent from the city of Gorazde to Sarajevo, but in 1994, the orphanage of Bjelave, with the agreement of the children's parents, sent them to Milan. They stayed there for 2 years without any contact with parents or family. In 1996, a family member of one child of Bjelave, that was among those sent to Italy, wanted to contact the child and the access was denied.

The decision not to allow any contact with Bosnian families was taken by the Italian families that did not adopt these children legally. One of the reasons used to justify this attitude was the signed agreement to send these children away, to a safer place, although an approval for adoption was never given. In 1996, the Court for Juveniles in Milan initiated proceedings regarding these children and their availability for adoption. The state of BiH has been requesting the return of these children without any success. Some parents, also unsuccessful in the claim of their children, are unable to provide adequate legal representation at court.<sup>229</sup>

Meanwhile, the children, unaware of their origins in most of the cases, learned to speak only Italian, and are already integrated in the Italian society. Presently, some children have few but terrible memories and do not want to go back to their families in BiH, orphans are facing the risk of being institutionalised in BiH, probably with lack of resorts, and with the possibility of being stigmatised as rape orphans, and there are parents and families who are losing their children to the country that helped to save them in first place.

Although this is an ongoing issue<sup>230</sup>, a political agreement was made. In order to serve the best interests of the children, and also the interests of their Italian families that do not want to let them leave, some children will stay in Italy and visit Bosnia every

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<sup>229</sup> Pudar points out several reasons like: the lack of funds; lack of understanding of international regulations and of the Italian legislation; the language, etc.

<sup>230</sup> The journalist Edina Kamenica, from the Bosnian daily «Oslobodenje», has been covering this topic during the last years. The Ministry of Foreign Affairs and the Federation Ministry of Social Welfare are also involved in this matter.

summer. The biological families are allowed to visit the children but forbidden to reveal their family bonds.<sup>231</sup>

While the transfer of children was done with the agreement of their families, the refusal to send them back constitutes a violation of Article 11 of the CRC.

There are probably more of these children in countries that gave support during the war years like The Netherlands, Germany, Saudi Arabia and Kwait among others.

#### **4.1.3. Protection Rights**

These rights are the legal and judicial rights, for their principal thrust is to establish the rule of law and to provide judicial review of governmental action.<sup>232</sup> Several articles of the Convention deal with the need to protect children from various forms of abuse and mistreatment: Articles 11, 19, 21, 32-38, and 40. In addition, Article 39 establishes the obligation of the states parties to take measures to promote the physical and psychological recovery and social reintegration of a child that becomes victim of abusive treatment. LeBlanc subdivided these rights in three groups: exploitation and abuse; abduction of, sale of, and trafficking in children; and the use of children in armed conflicts.<sup>233</sup>

During armed conflicts when attention is given to other kinds of problems, families willing to adopt children not always go through all the legal proceedings, specially if facing a country willing to "get rid" of these children. The fact that war-rape children could face the risks of being sold for trafficking and abuse, is one of the reasons why international adoption is not always seen as the best alternative. On the other hand, having the possibility of being adopted by a loving caring family, and this right being denied for political reasons, or because the family willing to adopt is from another religious group, could be seen as a violation of the right to a family, not taking into account the bests interests of the child. The Islamic concept of *Kafalah*, and their refusal to accept adoption as set in Articles 20 and 21, should be seen in this perspective, in a

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<sup>231</sup> Muhamed Mesic, Interview, Vienna, June, 2003.

<sup>232</sup> Donnelly and Howard, *Assessing National H.R. Performance, op.cit.*, p.230

way of protecting children, giving the responsibilities of their upbringing to their families and local communities.

#### **4.1.4. Empowerment Rights**

While the other rights are mainly passive rights that constitute protection of the children, empowerment rights allow the children to be an active member in the society. LeBlanc includes in this category freedom of thought, conscience, and religion (Article 14), the freedom of expression (Articles 12 and 13) and the right to education (Article 28). The right to education can be crucial to create a private space for intellectual autonomy, and a way to strengthen and protect membership rights as well as survival rights. Reports of governments denying citizenship to war rape orphans, and thus preventing them from entering public schools, may be in violation of that right,<sup>234</sup> specially if no other form of education is proportioned.

#### **4.2. Justiciability of War Rape Orphans Cases**

The aim of the following case is to give a practical example of justiciability and, at the same time, proportionate new hope of redress, not only to women victims of sexual assault with forced impregnation and forced maternity, but specially to their children.

Mohamed Garne's mother, Kheira, was only 16 years when she was impregnated, after being repeatedly raped by 30 or 40 French soldiers during several months in a French detention camp for Algerian citizens.<sup>235</sup> Garne, who suffers from both physical and psychological infirmities, was born in April 1960 in the internment camp of Theniet el-Had, Southwest of the capital Algiers.

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<sup>233</sup> LeBlanc, *op.cit.*, p.123

<sup>234</sup> Carpenter, *Surfacing Children, op.cit.*, p.470

<sup>235</sup> See islamonline.net *Son of Algerian war Rape Victim Compensated by French Court*, Paris, Nov. 23, 2001.

Garne 's mother gave him up after his birth and he was raised in various orphanages, only succeeding in tracing his mother in 1988. Kheira initially told Garne he was the son of an Algerian soldier killed during the war but his family refused to give Mohamed his father's last name.<sup>236</sup> In order to learn more about his identity, in 1994 Garne took his mother to court in order to force her to reveal the circumstances of his birth. She ended up revealing that he was conceived during a gang rape by French soldiers and that, after learning that she was pregnant, the soldiers had hit her stomach with metal cables in an attempt to provoke a miscarriage.

In 1999 and 2000 two lower courts denied Garne any reparation stating that he could only be considered as an indirect victim of the war. Crucial for the new ruling was the testimony of a psychiatrist testifying that his troubles could be linked to the traumatic pregnancy and later shock of discovering his origins.

The court accepted the argument that the foetus had suffered from continued violence inflicted on his mother by the French soldiers while she was pregnant and ruled that under the military pension system Garne was entitled to partial disability benefits for three years. This was the first time that a French court ruled that a person was a war victim as a result of rape, and it brought a formal closure to Garne's tortuous search for his identity.<sup>237</sup>

*For 13 years I have been saying that my mother was raped, that I am a child of rape. Everybody hid, everybody pretended not to hear. I fought and I am very pleased to have waged this battle. I am the first to have dared to defy the state. I am not totally satisfied, because I have not been awarded a life pension – but it is important to have reopened the file on the Algerian war. There are many of us in Algeria, children born of French army rapes. It is necessary that this is said and recognised in France. Otherwise it will be forever a stain in our history.*

Mohamed Garne

*That terrible war ended without anybody being found guilty or held responsible. Now we know that it left behind at least one victim.*<sup>238</sup>

Jean-Yves Halimi, Mr Garne's lawyer.

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<sup>236</sup> Lara Marlowe, *Algerian victims of French Torture Seek Recognition*, «Irish Times», <http://www.ireland.com/special/reviews/2000/world/marlowe5.htm>

<sup>237</sup> Verena Derschau, *Algerian War Victim Awarded Pension*, Nov. 22, 2001

<sup>238</sup> J. Henley, *Algeria: Son of Raped Girl Recognised as a Victim of War*, «The Guardian» Nov. 23, 2001

In 2001, finally addressing a painful period in France's colonial history, the pensions court in Paris recognised Mohamed Garne as a victim of Algeria's 1954 - 1962 war against French rule. The recognition of the war victim status to this man constitutes an extremely important precedent of jurisprudence. Hopefully, this example will not fall in oblivion and more people could bring their cases to justice, although it also implies the overcoming of the shame and taboo always connected to these cases.

## V – Concluding Observations

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*"Mankind owes to the child the best that it has to give..."<sup>239</sup>*

Armed conflict affects millions of children that have become increasingly exposed to the violence of warfare in several ways, both directly and indirectly. Among these children there is one group that was conceived during war, as consequence of sexual relations between soldiers and local women, and needs special attention: the war rape orphans.

While rape has always been used as a war strategy and authorisation to rape was part of the incentive to the victorious soldiers, women were merely seen as property, as the "cerimonial battlefield, a parade-ground for the victor's trooping the colours"<sup>240</sup> Part of the results are thousands of babies. Rape has already been qualified as a crime under national and international law, but there are other gender crimes even more severe than rape: forced impregnation and forced maternity. Although debates over the legal terminology related to these crimes are extremely important, they are insufficient in regard to children's rights. While protecting women's rights, that for long have been ignored, children stay out of the discourse, and with them the protection of their rights.

While some pregnancies occur as the result of rapes, some rapes were done with the sole purpose of impregnation and such practice was enforced by the denial of abortion. The reaction and acceptability of the war rape children differs a lot in East Timor and BiH. While in East Timor the acceptance of children by their mothers is higher, in BiH – where many were conceived as a result of organised rape in detention camps – most women try to get rid of their children in order to supersede their trauma.

As Carpenter stated, while forced maternity is a crime against the mother, birth of a child can never be a crime against the child, for this is the event that brings about his/her status as an ontological being and rights-bearer. The war rape orphan is victimised not

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<sup>239</sup> 1924, Declaration of the Rights of the Child.

<sup>240</sup> S. Brownmiller, op.cit. p.19



directly through his/her existence, but through his/her mother's victimisation. Though it is the perpetrators of the initial rape who have committed a war crime, some human rights violations may also be perpetrated by later parties against the child as a policy of discrimination.<sup>241</sup>

Although some efforts have been made to protect these children, their rights are not being fulfilled and violations occur. Seen as an element of repopulating the country or as a religious obligation to the Muslim or Catholic community, the best interests of the children are lost between religion and politics, when the actual reaction of the communities will always be the most important factor in the end. The identity of the children remains an open debate which jeopardises their membership rights.

The United Nations have addressed this particular group of children in very few papers. One of these is the UNFPA assessment report on sexual violence in Kosovo,<sup>242</sup> which states: "According to the Amsterdam declaration of 21 June 1994, children who are born as a result of rape should not be marginalised. The programme of Comprehensive Support for Victims of Sexual Violence should be integrated into all the other programmes dealing with refugees, so that the victims are not stigmatised. Programmes for dealing with these children should complement others that already exist for unaccompanied children (i.e. UNICEF programmes). Special attention should be given to these children in terms of legal rights and protection (i.e. adoption laws, nationality, etc.)".

Women and children were and still are the victims waiting for justice. After the initial crime they suffer from stigmatisation and discrimination. Bringing perpetrators to justice is one part of the solution. Providing physical and psychological support, as well as compensation for war victims, is only another part of the solution. The most important, however, should be a change of mentalities at a grass-roots level because in the end, the local community is the one to accept or ostracise and discriminate both women and children, regardless of sympathetic religious or political speeches.

It is believed that several women, especially in BiH, kept the babies more out of fear of being rejected and stigmatised by families and local communities than for the

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<sup>241</sup> idem

<sup>242</sup> See <http://www.ess.uwe.ac.uk/Kosovo/Kosovo-Current%20News196.htm>

affection to the child. According to Ibrahimefendic,<sup>243</sup> women who are hiding their experiences deep inside, not willing to talk about them, are at risk to encounter psychological problems that may lead to drastic solutions - including suicide or infanticide.

Ignoring the problem doesn't help to solve it. It is imperative to find a way to help the mothers of these children without stigmatising neither the mother nor the child.

Olara Otunnu, the Special Representative of the Secretary-General for Children and Armed Conflict, stated that "the most pressing challenge facing us collectively is how to translate the principles, standards and measures that have been put in place into facts on the ground, into a protective regime that can save children in danger. For this, it is imperative to embark on an 'era of application'"<sup>244</sup>. It is time to start thinking about the grim situation of the war rape orphans, and realise that their situation is as delicate as the one of child soldiers, refugees and other war-affected children.

In order to embark in this "era of application" it is advisable to promote information campaigns in order to prevent discrimination on a local level. Information packages could be made to provide governments and health personnel with lessons from other conflicts. War children from other countries can be a valuable resource to show the global aspect of this issue and that they look differently upon it as they grow older.<sup>245</sup>

Assistance should be provided in claiming compensation from governments. Material support for the mothers should be done in a way that negative attention is not brought to them. Where fathers cannot be found but it is clear that they were government employees, the government should be held responsible for the upbringing of the child.<sup>246</sup>

Reports of abuse or neglect of war rape orphans in orphanages should be immediately investigated and the responsible prosecuted or disciplined. NGOs and professionals should be allowed unlimited access to monitor the conditions in such institutions.

The war rape orphans with disabilities should receive the education and programmes necessary to achieve their fullest individual development. War orphans in custodial care must not be diagnosed as retarded or disabled unless they have been observed and

<sup>243</sup> Dr. Teufika Ibrahimefendic, Excerpt from "Women: Raped" (Zena: Silovana), Tuzla 2002

<sup>244</sup> Statement in the UN Security Council on the occasion of Open Debate on "Children and armed Conflict", January 14, 2003

<sup>245</sup> Grieg, Kai, "The war Children of the World"

examined adequately over a period of time. Furthermore, governments should work towards the development and establishment of clear national and international standards on the treatment, care, and protection of the rights of children confined in orphanages and similar institutions.<sup>247</sup>

These are only some of the possible measures that can be undertaken to prevent discrimination of the war rape orphans. Most of all, efforts should be made to include these children in society and provide them with a beneficial surrounding and a sense of belonging and identity so that they no longer remain No Man's Child.

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<sup>246</sup> Idem

<sup>247</sup> S. Philips, Human Rights Watch, *Promises Broken*, in <http://www.hrw.org/campaigns/crp/promises/orphans.html>

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***Children by Military Personnel***<sup>248</sup>

The following numbers should be understood as estimates since very few good records were made.

Country of Father/Mother	Year of military presence	Number of children	Age today	Sources and other information
France and UK/ Germany	1914-1918	15,000	85-89	Hirschfeld:236, other sources set the number to 500-800. <a href="http://www.africana.com/Articles/tt_680.htm">http://www.africana.com/Articles/tt_680.htm</a>
Japan/Korea	1940-1945	100+	58-63	Korean Comfort Women were transported to the field. (E/CN.4/1995/42) UN Rapporteur on Violence Against Women estimated several thousands.
Canada/UK	1940-1947	22,000+	56-63	<a href="http://project-roots.com/whoare.html">http://project-roots.com/whoare.html</a>
Germany/Norway	1940-1945	12,000	58-63	<a href="http://www.guardian.co.uk/international/story/0,3604,855560,00.html">http://www.guardian.co.uk/international/story/0,3604,855560,00.html</a>
America/UK	1941-1948	23,000	57-62	<a href="http://project-roots.com/whoare.html">http://project-roots.com/whoare.html</a> whereas 2000+ from black GIs. <a href="http://www.channel4.com/untold/programs/babies/page2.html">http://www.channel4.com/untold/programs/babies/page2.html</a>
UK/Soviet Union	1941-1945	14+	58-62	<a href="http://news.independent.co.uk/world/russia/story.jsp?story=86992">http://news.independent.co.uk/world/russia/story.jsp?story=86992</a>
Germany/ France	1941-1945	80,000	58-62	Estimate based on Stein Ugelvik Larsen speech in Berlin July 2001. Source: Aftenposten 4 July 2001
Germany/ The Netherlands	1941-1945	10,000- 50,000	58-62	Aftenposten 4 July 2001
Canada/Rest of Europe (most in The Netherlands)	1945-1946	8,000	57-58	Estimated 6,000 in The Netherlands. <a href="http://project-roots.com/whoare.html">http://project-roots.com/whoare.html</a>
America/rest of Europe	1945-1946	Not known	57-58	No information available
America/West Germany	1945-1956	Not known	47-58	No information available
Japan/China	1945-1950	19,000+	53-58	<a href="http://www.migrationint.com.au/news/slovenia/apr_2000-16mn.html">http://www.migrationint.com.au/news/slovenia/apr_2000-16mn.html</a>
US/ Austria	1945-1955	2,000+	48-58	2000 in Salzburg alone. <a href="http://www.imageat.cim/salzburg/0005.htm">http://www.imageat.cim/salzburg/0005.htm</a>
Australia/Japan	1945-1960	60+	43-58	<a href="http://www.theage.com.au/daily/990101/news/news7.html">www.theage.com.au/daily/990101/news/news7.html</a>
Burma	1948-2001	Not known	2-55	No information available

<sup>248</sup> GRIEG, Kai, "The War Children of the World", War and Children Identity project, Bergen, December 2001, [www.warandchildren.org](http://www.warandchildren.org). Some changes and new data were added to the original table.

## Annex I

UN(US)/ Korea	1950	2,000+	53	Grieg 's estimate, <a href="http://www.warandchildren.org">http://www.warandchildren.org</a>
France/Algeria	1954-1962	Not known	41-49	No information available
Taiwan/Africa	1960-1980	400	23-43	The fathers of the children are Taiwanese Civilian experts in Agriculture and other field. <a href="http://www.taipetimes.com/news/2001//04/04/story/0000080307">http://www.taipetimes.com/news/2001//04/04/story/0000080307</a>
USA/ Vietnam	1965-1975	40,000	28-38	<a href="http://www.oneworld.org/ni/issue216/dream.htm">http://www.oneworld.org/ni/issue216/dream.htm</a> New Internationalist issue 216, February 1991
USA/ Philippines	1965-1982	52,000	21-38	<a href="http://www.inq7.net/reg/2001/jul/11/reg_7-1.htm">http://www.inq7.net/reg/2001/jul/11/reg_7-1.htm</a> From web page The Sad Plight of Filipino Amerasians, by Sol Jvida
Bangladesh	1971	25,000	32	<a href="http://www.undp.org/hiv/publications/gender/violence.htm">http://www.undp.org/hiv/publications/gender/violence.htm</a> Book: the Rape of Bangladesh
Indonesia/East Timor	1975-1999	5,000	4-28	Grieg's estimate. <a href="http://www.warandchildren.org">http://www.warandchildren.org</a>
Turkey/ Kurdistan	1980-2001	Not known	2-23	No information available
Iraq/Iran	1980	Not known	23	No information available
Sri Lanka	1985-2000	Not known	3-18	Grieg's estimate. <a href="http://www.warandchildren.org">http://www.warandchildren.org</a> , the figure is likely to be in the thousands.
Peru	1990-2001	400+	2-13	Human Rights Watch reports 300-400 born in one district alone
Liberia	1990-1998	25,000+	5-13	<a href="http://www.mg.co.za/mg/news/98oct2/260cliberia.html">http://www.mg.co.za/mg/news/98oct2/260cliberia.html</a> IPS/Misa, October 26, 1998. One source put the figure to 30000: <a href="http://www.expotimes.net/issue010214/Opinion2.htm">http://www.expotimes.net/issue010214/Opinion2.htm</a> .
ECOMOG/ Liberia	1990-1997	6,000-25,000	6-13	<a href="http://www.mg.co.za/mg/news/98oct2/260cliberia.html">www.mg.co.za/mg/news/98oct2/260cliberia.html</a> Estimates varies. Also includes children from the UNOMIL UN observer group.
Serbia/Bosnia	1991-1995	4,000	11	Grieg 's estimate, <a href="http://www.warandchildren.org">http://www.warandchildren.org</a>
UNTAC/ Cambodia	1992-1997	25,000	6-11	One TV report sets the number of children from UN personnel to this figure. <a href="http://www.sbs.com.au/dateline/transcript.php3?date=2000-09-20&amp;title=The+UN%60s+legacy+in+Cambodia+">http://www.sbs.com.au/dateline/transcript.php3?date=2000-09-20&amp;title=The+UN%60s+legacy+in+Cambodia+</a>
Rwanda	1993	2,000-5,000	10	<a href="http://www.hrw.org/reports/1996/Rwanda.htm">http://www.hrw.org/reports/1996/Rwanda.htm</a>
Sudan	1997-1999	Not known	4-6	No information available
Serbia/Kosovo	1997-1999	Not known	4-6	No information available
Indonesia/East Timor	Sept.1999	1,000	4	Grieg 's estimate, <a href="http://www.warandchildren.org">http://www.warandchildren.org</a>
<b>TOTAL</b>		<b>378,974 - 440,974</b>		

*War Rape Orphans Terminology*<sup>249</sup>

Nationality of the father	Nationality of the mother	Names called to the children
German	Norwegian	- "Tyskerunge"- literally kid of a German - son or daughter of the German whore - "krigsbarn" - war children
German	French	- "children of the barbarian"
American	Vietnamese	- Amerasians - Vietnamericans - "Bui Doi"- dust of life - "Con Lai"- outcasts - Children of Gold
American	Filipino	- Babay Na Sa – bye-bye to daddy - "Hanggang"- up to pier only - "Negro" - "Mulato" if they are light skinned - "Kulot" – or curly haired, if they were dark
Canadian	European	"war leftovers"
From the Rwandan Genocide: Hutu	Tutsi	- Children of hate; - Children of war - "Enfants non-desirés" – Unwanted children - "Enfants mauvais souvenir" – Children of bad memories
Serb	Croat and Bosnian Muslim	- Little Chetniks – Serb soldier - Sons of the enemy
Indonesian	Timorese	- Sons of the enemy

<sup>249</sup> GRIEG, Kai, "The War Children of the World", War and Children Identity project, Bergen, December 2001, [www.warandchildren.org](http://www.warandchildren.org).



**Fatwa on War Rape Children**<sup>250</sup>***Answer***

In the Name of Allah, Most Gracious, Most Merciful.

All praise and thanks are due to Allah, and peace and blessings be upon His Messenger.

Brother, may Allah bless your efforts in pursuit of knowledge!

Brother, though your questions are very important, they are of research nature. So, our Fatwa page cannot meet such requirements. We'd like to advise you to check Islamic books that are available on the Internet or in the libraries. In books, you will find ample information that will satisfy your needs.

The following Fatwa issued by the late Muslim scholar, Sheikh ibn Baz, the former Mufti of Saudi Arabia, is beneficial for you:

“With regard to the children (of women who were raped in Bosnia and Kosova), the Muslims are obliged to take care of them and bring them up in Islam. They must not leave them to the Christians or others. As Allah says:

“The believers, men and women, are Awliya’ (helpers, supporters, friends, protectors) of one another” [al-Tawbah 9:71].

And the Prophet (peace and blessings of Allah be upon him) said:

“The likeness of the believers in their mutual love, mercy and compassion is that of the body: when part of it is in pain, the whole body joins it in staying awake and having a fever.”

And these children come under the ruling of orphans, and Allah has prescribed kind treatment to orphans in particular.” Source: [www.islam-qa.com](http://www.islam-qa.com)

Do keep in touch. May Allah guide us all to the straight path!

Allah Almighty knows best.

Fatwa Editor: W. Shihab

<sup>250</sup> The answer was given by a mufti (group of Islamic scholars) after being inquired about the existence of fatwas issued in order to protect children of raped Muslim women in Bosnia. <http://www.islamonline.net>

**The Position of the Islamic Community on the Care for Children of Raped Mothers**<sup>251</sup>

The following texts were presented by Mr. Muharem Omerdic, the Councilor for Religious issues in BiH, during the conference "Children- Victims of war & Peace", Sarajevo, September 2001.

Concrete steps undertaken by the Islamic Community of BiH, aimed at providing shelters for raped women and their children:

- *accept, provide shelter and take care of raped women;*
- *prepare them for deliveries, develop their resolve to live and readiness to live with their new-borns;*
- *influence relevant state bodies to provide raped mothers with the housing and employment so that they can care of themselves and the child;*
- *contact the families of raped women in order for them to accept the women without fear or shame and to make sure that mothers are not separated from their babies upon delivery;*
- *eliminate cruelty towards raped women, and replace rejection or boycott with solidarity, understanding and permanent care;*
- *prevent the foreigners from adopting the children of raped mothers and their taking out of BiH;*
- *raped women who have not kept their babies upon delivery should be enabled to be in touch with them, either in case have been adopted or provide temporary shelter with the family until the mothers are fully adapted and capable of taking care and until their love wins over all the obstacles;*
- *no special shelters should be established for these children, as it was planned by a local humanitarian organisation in Sarajevo, since that would "mark" the children permanently and prevent them from adapting in society;*
- *no special registers of these children should be kept since this would put them in an unequal and unfavourable position; instead, from the very beginning, each of these children should be*

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<sup>251</sup> M. Omerdic, *The Position of the Islamic Community on the Care for Children of Raped Mothers* in Tokaca, Mirsad (Ed), *The Plucked Buds*, Commission for Gathering Facts on War Crimes in Bosnia and Herzegovina, Sarajevo, 2002.

*treated as any other children, they should be respected and the condition for them should be developed in the sense of what The Profet Muhammad, a.s. stated as "Who shows no mercy towards children and fails to be caring for elderly – is not one of us".*

- *Advocate strongly the rights of these children and their mothers and ensure their equality with other children and other mothers.*

*Some concrete steps that have been implemented successfully, thanks to the activities of the Islamic Community of BiH, their bodies, institutions and members and officials:*

- Provide shelter for raped women once they arrive on the free territories;
- Ensure the basic essential needs, clothes, footwear, food, etc.
- Use the most optimal solutions for the contact with them, through the female students (...)
- Advocacy among many families to provide raped women and their children with a safe heaven;
- Prepare women for delivery with very few people knowing about the event;
- Ensure acceptance of raped women by their own families;
- Custody over children with decent and honourable families in mothers for any reason reject them;
- Custody over mothers and children with good people if their families reject them;
- Prevent adoption arrangement by foreigners whenever we find out about the case, instead, ensure in the Bosniak Islamic communities abroad the shelter and employment for mothers and babies so that they can take care of themselves and the babies;
- Prevent children from being taken out of BiH;
- Influence the state bodies to create good rehab-programs for this group of mothers and children;
- Influence humanitarian organisation to focus on this vulnerable social group;
- Influence international public to save, provide shelter, protect and prevent further suffering of women and children of BiH;
- Several documents have been made on this, as well as official letters, interviews and radio and TV programs.

*Change Violence into Acceptance*<sup>252</sup>

February 2, 1993

The Holy Father urges solidarity towards violated women and their children.

To call renewed attention to the situation in Bosnia-Herzegovina, the Holy See recently released the text of a letter which the Holy Father sent to Archbishop Vinko Puljic of Sarajevo. In his Italian letter the Pope encouraged efforts at reconciliation, beginning in the family; he particularly encouraged the Church to care for the victims of the reported widespread rape in the area and the innocent children conceived.

*To my Venerable Brother Archbishop Vinko Puljic of Sarajevo*

*Venerable Brother in the Episcopate, The prayer which we offered in Assisi on 9 and 10 January for peace in the Balkans compels me to hope that the violence and tribulations in progress will soon cease and yield to reconciliation and peace.*

*Through this letter I want to tell you that I am particularly close to the suffering of the Pastors and people of Bosnia-Herzegovina, upon whom the disastrous consequences of a prolonged material and spiritual devastation weigh heavily. With trepidation I think of the conditions of extreme misery affecting many families, especially children, on whose behalf I especially feel the duty of appealing to the solidarity and generosity of the whole Church.*

*It is precisely within families, especially those stricken by the loss of some members and the experience of particularly atrocious violence, that the demanding process of peace must begin. Indeed, nowhere other than in the family, the sanctuary of life and love, can the effort begin to bring peace to society, an effort to which everyone must dedicate himself as soon as the arms cease to resound with the roar of death. Therefore, it is the task of the Pastors to begin planning appropriate initiatives in order to encourage families to make gestures of reconciliation, generosity and Christian love.*

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<sup>252</sup> Priests for Life, "Teachings of the Magisterium on Abortion" in: <http://www.priestsforlife.org/magisterium/93-02-02poperapeandab.htm>

*It is particularly necessary that the Pastors and all the faithful responsible for the family apostolate sense an urgency in looking after the situation of the mothers, wives and young women who have been subjected to violence because of an outburst of racial hatred or brutal lust. These women, who have been the object of such a serious offence, must find the support of understanding and solidarity in the community. Even in such a tragic situation they must be helped to distinguish between the act of deplorable violence which they have suffered from men who have lost all reason and conscience, and the reality of these new human beings who have been given life. As the image of God, these new creatures should be respected and loved no differently than any other member of the human family.*

*In every case it should be emphasized most clearly that since the unborn child is in no way responsible for the disgraceful acts accomplished, he or she is innocent and therefore cannot be treated as the aggressor.*

*Therefore, the entire community should be close to these women who have been so tragically offended and to their families, in order to help them transform the act of violence into an act of love and acceptance. The Gospel reminds us that violence should not be met with violence (cf. Mt 5:38-41). Barbarous acts of hatred and racism must be answered with the strength of love and solidarity. Did the Apostle Paul not recommend to the Christians of Rome, persecuted by a hostile power: "Do not repay anyone evil for evil; be concerned for what is noble in the sight of all.... Do not be conquered by evil but conquer evil with good" (Rom 12:17, 21)?*

*I am certain that the other Churches, not only those of Europe but of every part of the world, will find appropriate ways to come to the aid of the people and families placed in such conditions of grave material, psychological and spiritual distress. I offer my most cordial encouragement to such beneficial initiatives, recalling the words of Christ: "Whoever receives one child such as this in my name, receives me" (Mk 9:37).*

*In the case of orphans and abandoned children, I want to express a word of appreciation to all those who are working to promote adoption procedures: when little ones lack the support of those who have given them life, it is an act of great human and Christian value to offer them the warmth of a new home.*

*In assuring all those who are suffering of the solicitous concern of this Church of Rome which "presides in charity", I want to send to you, dear brother, and the other Prelates of the region and the sorely tried population a special Apostolic Blessing, which I accompany with the assurance of my assiduous, heartfelt prayer.*

From the Vatican, 2 February 1993

IOANNES PAULUS PP. II

**Convention on The Rights of the Child**

<b>Country</b>	<b>Status</b>	<b>CRC</b>	<b>I Optional Protocol</b>	<b>II Optional Protocol</b>
Bosnia and Herzegovina	Signature	_____	7 Sept. 2000	7 Sept. 2000
	Ratification; Acceptance(A); accession(a); Succession(d)	1 Sept. 1993 (d)	_____	4 Sept. 2002
Croatia	Signature	_____	8 May 2002	8 May 2002
	Ratification; Acceptance(A); accession(a); Succession(d)	12 Oct. 1992 (d)	_____	13 May 2002
Yugoslavia	Signature	_____	_____	8 Oct. 2001 <sup>2</sup>
Serbia and Montenegro	Ratification; Acceptance(A); accession(a); Succession(d)	12 Mar. 2001 (d)	_____	10 Oct. 2002
Timor Leste	Signature	_____	_____	_____
	Ratification; Acceptance(A); accession(a); Succession(d)	16 April 2003 (a)	29 Jan. 2003 (A)	29 Jan. 2003 (A)

**Reservations to CRC:****Bosnia and Herzegovina**

"The Republic of Bosnia and Herzegovina reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Bosnia and Herzegovina provides for the right of competent authorities (guardianship authorities) to determine on separation of a child from his/her parents without a previous judicial review."<sup>253</sup>

<sup>253</sup> <http://www.unhchr.ch/html/menu2/6/crc/treaties/declare-crc.htm>

## Maps

### **East Timor Map**

<http://www.un.org/Depts/Cartographic/map/profile/timoreg.pdf>

<http://www.un.org/Depts/Cartographic/map/profile/timoreg.pdf>

<http://www.un.org/Depts/Cartographic/map/profile/timor.pdf>

### **Bosnia**

<http://www.un.org/Depts/Cartographic/map/profile/bosnia.pdf>

former Yugoslavia:

<http://www.un.org/Depts/Cartographic/map/profile/frmryugo.pdf>



**Feminist Resistance**<sup>254</sup>

*In response to threats, Women in Black issued their annual statement "Seven Years of Women in Black Against War: 9 October 1991 to 9 October 1998". This time the annual report was in the form of a confession of their guilt for seven years of activism for peace, freedom and democracy for all people in former Yugoslavia.*

"I confess

to my long time anti-war activity;  
that I did not agree with the severe beating of people of other ethnicities and nationalities, faiths, race, sexual orientation;

that I was not present at the ceremonial act of throwing flowers on the tanks headed for Vukovar, 1991 and Prishtina, 1998;

That I fed women and children in the refugee camps, schools, churches, and mosques;

That I sent packages for women and men in the basements of occupied Sarajevo in 1993, 1994, and 1995;

that for the entire year I crossed the walls of Balkan ethno-states, Because solidarity is The politics which Interests me;

That I understand Democracy as support To anti-war Activists/friends/sisters -Albanian women, Croat women, Roma Women, stateless Women;

That I first challenged The murderers from The state where I live And then those from other states, because I consider this to be responsible political behaviour of a citizen;

that throughout all the seasons of the year I insisted that there be an end to the slaughter, destruction, ethnic cleansing, forced evacuation of people and rape;

that I took care of others while the patriots took care of themselves"

(Women in Black, 9 October 1998)

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<sup>254</sup> Lepa Mladjenovic and Donna M. Hugues, *Feminist Resistance to War and Violence in Serbia*, Frontline Feminisms, Garland press, 1999, in <http://www.uri.edu/artsci/wms/hughes/warvio2.htm>



2003

# No man's child : the war rape orphans

## No man's child : the war rape orphans

Daniel - Araujo Torres da Silva, Joana

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