

SECOND SEMESTER UNIVERSITY: **Queen's University of Belfast**

European Master's Degree in Human Rights and Democratisation 2013/2014

*Sexual grooming in armed forces as war crime;
The practices of the Liberation Tigers of the Tamil Eelam against female, pre-pubescent
soldiers*



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Abstract

The purpose of this research is to identify sexual grooming in armed groups as a current practice inherent to militaries during conflicts, and therefore to understand it as a war crime. It emphasises gaps in the research on sexual violence against female soldiers; and discusses the “*chastity obligation*” military code as constituting sexual oppression. The following specifically calls to attention the recruitment of young female soldiers by the Tamil Tigers as equivalent to the recruitment of child soldiers in general, which has already been condemned as a war crime. The porosity between recruitment and sexual grooming of Tamil girl soldiers is widely found, as the recruiting phase is a plan for war alone, and sexual grooming is a strategy which prolongs the armed group’s influence in the aftermath of the conflict. From the latter statement, many forms of sexual violence are implied, and targeting sexual grooming as a catalyst of future domestic violence may be a means of improving rehabilitative methods and programmes.

ACKNOWLEDGEMENTS

I would like to express my special appreciation and thanks to my supervisor, Professor Jean Allain, and also my director of studies, Brice Dickson, as they both provided me with many great points to include and gave me advices whenever it was required, you have been tremendous mentors for me. I would like to thank you for encouraging my research and for guiding me through this second semester.

I would like to take this time to thank the European Inter Disciplinary Centre on Human Rights and Democratisation and the Queen's University of Belfast for all of the facilities they were able to provide to me in order to make this thesis possible with a special dedication to Pietro Sullo, Alan Desmond and Athanasios Stathopoulos who gave their time during the first semester to make this experience as wonderful as possible.

I would like also to thank all my professors and friends that I cannot name here for their support and advices during this busy time. I would especially like to thank Josua Grabener who followed my work from the starting point and from whom I received priceless comments.

A special thanks to Sophie Standen who did an amazing work when I was struggling with English sentences. Her advices and her corrections throughout the thesis have been extremely helpful. I extend my gratitude also to Samuel Artair George Wallace Ward for his final suggestions which were extremely valuable, his patience and his comforting words that I really needed at the very end of this thesis.

Not only did they both proof read my text and read it for content, they were constantly there to help me when I did not think I could continue.

I would like also to express how grateful I am to Norbert Ostro, Caroline Koullen, Elsa Brittain, William Orr, Lucie Rochette for their extremely relevant recommendations and their friendship and who were always there in the moments when there was no one to answer my queries.

A special thanks to my family. Words cannot express how grateful I am to my grandfather, Jean Guillaud, who funded this master for me. Thank you to my family especially my parents for all of the sacrifices that you've made on my behalf.

I would like to express all my gratitude to all of you who have been there to support me when I was spending my days and nights at the Querini Stampalia or McClay libraries, special thanks to Lucie Lerbet, Daria Lüdtké, Issie Hall, Jessica Cunningham, Joshua Blythin, Claire Boudie, Claire Tétart, Amy Hitchens, and a lot of others for being always present when I needed a break.

At the end I would like express appreciation and dedicate this thesis to my two beloved grandfathers, René Carrot and Jean Guillaud, may your souls rest in peace.

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I- Introduction

“Sexual violence as a war tactic has political dimensions that distinguish it from violence in the domestic realm”,¹ sexual violence in the domestic sphere is generally not perceived as being to achieve a political goal. However, sexual violence as a strategy of war has emerged in international law only recently. The United Nations Security Council Resolutions 1325 and 1820 have highlighted a lack of research concerning this topic during the aftermath of conflict.² Sexual violence can be directed against both men and women, however recent research has focused on women as the main targets. Female pre-pubescent soldiers (FPS) have a complex identity as they are, due to their age, indirectly still part of civil society but nevertheless are classified as combatants, due to their fighting alongside other soldiers. As one of the UN Resolutions puts it:

*“The Security Council calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict.”*³

Thus, this thesis focuses on women soldiers as both victims and perpetrators of violence, within their own armed force.

The Liberation Tigers of the Tamil Eelam (LTTE), the case study which will be analysed below, has the advantage of being a group illustrative both of the innocent (their young age, their vulnerability during the Sri Lanka Civil War and their obligation to stay chaste while joining the movement) and the violent aspects of young female soldiers (many of the

¹ Anderson Letitia, *Politics by Other Means: When does Sexual Violence Threaten International Peace and Security?*, *International Peacekeeping*, 17:2, 244-260, 2010.

² Barrow Amy, *UN Security Council Resolutions 1325 and 1820: constructing gender in armed conflict and international humanitarian law*, *International Review of the Red Cross*, Volume 92, Number 877, March 2010.

³ SC Res. 1325, 31 October 2000.

women deciding to take up arms against sexual violence – for instance those who have been raped by the Sinhalese at the early stage of the Civil War planning suicide bombings to ensure their revenge, whilst simultaneously liberating the nation). The sexual tension appears, assuming that the promotion of chastity within the Tamil Tigers is another tactic of war to build a “deceitful” confidence in their troops, especially amongst those who are wrongly called “the weaker sex”. The following will analyse further “the LTTE’s Armed Virgins”.

While sexual violence is not clearly apparent, it is nevertheless present and ever significant. In fact, “*sexual violence remains the invisible war crime. It remains a continuing challenge in the fight against invisibility to ensure that women’s experiences are not ignored in this era of international justice*”.⁴ It appears relevant to focus on the contrast between female soldiers, who supposedly exercise their freedom to choose, and female figures as sexual objects, who are potentially manipulated by male soldiers. The thesis questions also the notion of gender itself as those girls are too young to have built their femininity and have been educated in a relatively masculine environment.

It may be relevant to suppose that those women who grow up in armed groups stay “*eternal minors*”. Primarily because of their “naivety” - their “choice” of joining the guerilla movement could have been influenced by the expectation of a better life in the aftermath of the conflict. Moreover, due to their comparative youth in the instance of recruitment, they would not have had any point of reference outside of the war zone which could have led to some difficulties when returning back to society after of the conflict. Furthermore, children are frequently under the control of an adult; hence, the continual surveillance by their substitute family has the effect of “policing their independence”; imagining life outside the rebel group appears as impossible. For instance, sex was considered a distraction from the nationalist struggle and was strictly prohibited in the

⁴ Nowrojee Binaifer, *We Can Do Better: Investigating and Prosecuting International Crimes of Sexual Violence*, Human Rights Watch/Africa, Harvard Law School, November 2004, UNICTR

LTTE. The movement for its own purpose has permitted reproduction only after women have been part of the combat movement for a few years.

This process of isolation within and by the group is almost sectarian. When the girls joined the movement, they glorified the men with whom they fought. Nevertheless, the safety of being inside the LTTE should to be reconsidered. The LTTE offered their female soldiers one vision of life only, the sole option apparent was “being in the military” and being at the service of their nation and of their cadres, with whom after a few years of service they could get married. Indeed, until then the possibility of meeting other men was prevented by an obligation of chastity. This prepared “LTTE cohesion” by indirectly imposing upon the women a militaristic style of life which produced and emphasized a gap in the moral code of those soldiers. The following investigates this gap by questioning the culture of silence concerning any involvement that the Tamil Tigers could have had in the sexual abuse of girls who were regarded as “future Tamil Tiger women”.

Some authors have assumed that the absence of sexual violence or even of sexuality (as we cannot define sexuality by violence only during war) in an armed group does not mean it is not present.⁵ This is a neglected fact and has probably encouraged global data which has consciously suppressed other data which could compromise the logic of the argument and expose our ignorance. This “apparent rarity” of any form of sexuality in the Tamil Tiger movement is a connivance.⁶ The problem of sexual violence has become more visible in literature since the 1990s,⁷ however, it has often been explored as acts directed by the army against the women/enemy of the civil society and rarely as military acts intended to

⁵ Wood E., *Armed Groups and Sexual Violence: When Is Wartime Rape Rare?*, Politics and Society, Vol. 37 No. 1, March 2009 131-162.

⁶ Cohen D. et al, *Wartime sexual violence misconceptions, implications, and ways forward*, United States Institute of Peace, report 323.

⁷ Spangaro et al, *What Evidence Exists for Initiatives to Reduce Risk and Incidence of Sexual Violence in Armed Conflict and Other Humanitarian Crises? A Systematic Review*, PLoS One. 2013; 8(5): e62600, May 2013.

discipline their own female soldiers.⁸ In the LTTE, few have questioned the veracity of chastity but those who have done it, such as Yasmin Tambiah,⁹ have explored “*how gendered behaviours and sexuality marked as culture are constructed and controlled in the interests of “militarized projects”*”. This “militarized”¹⁰ lack of sexuality, which can be correlated with the need for “purity” in the nationalistic interest, has to be further researched to eventually and, if possible, change people’s “*view and ideas about the causes and impact of sexual violence*”.¹¹

The methodology that was employed for this thesis consisted in a theoretical research rather than an investigation which would have required meeting the victims of this process, which would have required considerable time to build the confidence and trust of the Tamil community. Hence, this research is primarily theoretical, allowing firstly for a global overview of the literature on sexual violence in the military and the identification of gaps regarding sexual violence in armed groups. The comparative study of international laws and treaties identifies some common elements of war in order to make clear our gap in knowledge and eventually name this unidentifiable gap.

“*Most studies point to the universality of violence against women (...) What is needed is an analysis of the 'universal forms of abuse' that attempts to differentiate or make comparisons between the various contexts that give rise to (sexual violence)*”.¹² Through the evolution of international criminal law regarding the taboo topic of sexual violence, the thesis will

⁸ Valente, *Military Sexual Trauma, Violence and Sexual Abuse*, Military Medicine Volume: 172 Issue: 3 (2007-01-01) p. 259-265. ISSN: 0026-4075.

⁹ Tambiah Y., *Turncoat Bodies: Sexuality and Sex Work under Militarization in Sri Lanka*, Gender and Society, Vol. 19, No. 2, Gender-Sexuality-State-Nation: Transnational Feminist Analysis (Apr., 2005) (pp. 243-261).

¹⁰ Awrence P., *The watch of Tamil women, : Women's acts in a transitional warscape*, Women And The Contested State: Religion, Violence, And Agency In South And Southeast Asia (2007-01-01) p. 89-116.

¹¹ MacMahon Sarah, *Changing Perceptions of Sexual Violence Over Time*, National Online Resource Center on Violence against Women, October 2011 pp. 1-16.

¹² McWilliams M., *Violence Against Women and Political Conflict: The Northern Ireland Experience*, University of Ulster , Critical Criminology, Volume 8, Number 1, Spring, 1997.

attempt to give an overview of the definitions and eventually adapt them to the situation of girl soldiers in Sri Lanka. By analysing the conditions of women, especially girls, in their armed groups, the relevant international law and the reports by international organizations, the development of the UN Resolutions “*which address the disproportionate and unique impact of armed conflict on women*”,¹³ I will assert that the acceptance of sexual assaults was a result of the sexual unawareness of the LTTE victims of their own situation. Furthermore, “*members of the criminal justice system need to be educated about the severity of acquaintance (sexual violence) for its victims.*”¹⁴ This thesis is, therefore, mostly sociological and criminological in seeking to identify the Tamil girl soldiers as the victims of combatant predators. The material was consistent enough to prepare a guide for interviews, but unfortunately it was not practicable for me to conduct such interviews with the time and resources available.¹⁵

With regard to sexual violence, “*research should be guided by a theoretical model that integrates central psychological, sociological and cultural precipitants of relationships of violence*”,¹⁶ but I struggled several times with this research due to the lack of data concerning the Tamil Tigers and their views on sexuality. I therefore decided to focus on the “too” apparent chastity which was imposed on their “women”. It became apparent that the group I planned on studying were extremely young, so I compared the situation of the girl soldiers in armed groups with children targeted by paedophiles.

It was rather challenging to compare their situation with the victims of paedophilia as the method of “playing the game” of a potential abuser against one “kid” is a similar tactic used by the LTTE against a particular group of children but not for the same reasons or

¹³ United Nations Peace Keeping, *Women, Peace and Security, Peace keeping issues*, Gender and Peace Keeping, <http://www.un.org/en/peacekeeping/issues/women/wps.shtml>.

¹⁴ Frazier P.A., Seales L, *Acquaintance rape is real rape*, Chapter 4 in *Researching Sexual Violence against women*, Schwartz Martin D., Sage Publications, 1997.

¹⁵ Annexes.

¹⁶ White J. and Humphrey J., *A longitudinal approach to the study of sexual assault, theoretical and methodological considerations*, in *Op.Cit.14*.

purposes. The unknown sexuality inside the Tamil Tigers movement has been hidden and my hypothesis raised the possibility of another form of sexual abuse. The FPS were certainly prepared to be later sexually abused in their marital lives as the LTTE did not offer them any other options than staying within the group with the possibility of various statuses which finally gave them “no escape”.

This thesis presents the possibility of a new form of sexual crime in international law. This crime was explored several times in the UK and has been termed “sexual grooming”, yet it appears that “grooming” is a controversial practice as it is extremely difficult to bring evidence of the situation, and its subsequent motive. Recognising it as a current practice of several armed groups could positively impact on the rehabilitation of girl soldiers. I decided to further study the case of the Tamil Tigers due to the obvious strategy of sexual grooming. Little is known about the sexual frustration of the Tamil Tigers due to their ethics concerning virginity, nor the sexuality of LTTE married couples.

The question that I would like to raise is this: How can the Tamil Tigers be held accountable for a new form of war crime which targeted their own female combatants?

The first part of the thesis will be developed around the vulnerability of the female adolescent combatants, with a particular focus on the girl soldiers of the Tamil Tigers. This vulnerability will be explored in correlation with the formation of their adult identity and the high risk of being abused or controlled by the members of their armed community. The second part focuses more upon legality, discussing the perspectives of gendering the international criminal judicial system, so as to ensure greater efficiency concerning violence against women and girls during conflict. It will specifically address the different forms of sexual violence during conflicts and how the behaviour of Tamil Tigers towards their female soldiers could be interpreted as another sexual/war crime.

II- PART I: Female combatants in the Tamil Tiger movement; the immorality of a hidden crime

This first part will be divided in three distinct chapters; the first one will assess the “automation” of FPS in armed groups. This will help us to understand better the forms of engagement that women have during wars and if “gendering” wars by the integration of female combatants create tension between males and females cadres. Indeed, many within feminism have claimed that experiences of women-as combatants were the only way to be liberated from prejudices which labelled them the “weaker sex”. The transgression of integrated notions concerning alleged female behaviours can be used by several armed groups; exploiting elements and stereotypes of womanhood could be used as a tactic to legitimate the combat. This first chapter will also lay the foundation for our discussion by confirming the “feminine behaviour’s inhibition” caused by reaching their “military-self”. This notion will remain throughout the thesis as it makes them both the victims and the weapons of wars, targeting their femininity as a first step and by stopping their childhood and compromising their entrance to adulthood.

The second chapter will focus on a singular case study: the LTTE in Sri Lanka. Through the historical context of the Civil War, this chapter will complement the first by giving some food for thought concerning the involvement of the Tamil women in the Tamil Tiger insurrection. It will further assess the influence of their leader on them giving more evidences of their “robotisation” by their military family. Mimicking their leader to satisfy him, women were ready to give all they had, especially their lives, to make him proud.

The third chapter will question the idea of “safety” for women in their military family and explore “the manipulation” exercised by armed groups according to their dedication to the leader; it seems that their blind engagement is linked to the influence and admiration they have for their “protective leader”. This manipulation is seen as orders imposed for an efficient unit in combat; however, it will become evident, in the LTTE case in particular, that seduction through strict moral codes may be the objective of armed groups.

1. Chapter I: Victims or agents of change? The controversial perception of women at war and the contradictory engagement forms of female warriors in violence.

The conditions of female involvement in the military and their status in armed groups remain unclear. The astonishment of the others regarding women's combatants when they join any form of violent group creates a path to an identity dispossession. Their status and their gender are questioned because of the essentialist idea of the domestic woman, which is disconnected to the reality of female soldiers. "*Women experience violence as subjects of bombardment, custodial violence, human right violations and forms of extortion and exploitation but also as combatants and perpetrators of violence against others*¹⁷" as Coomaraswamy illustrates, women cannot be victimised only, their own aspirations have made them the outsiders of their own society. Our first chapter will explore this desire for extradition of the female combatants, wishing to contradict the notion of womanhood. Their engagement in an armed group stimulates thought of an incredible step for those soldiers. Finally, it is also easy to consider them as "the puppets" of one army.

Several authors have chosen to look at women's involvement in the Sri Lankan conflict as occurring in two ways: they have either been "brainwashed" by the LTTE (implying the weakness of the female gender) or they have opted to use violence as a pathway to female emancipation. Both motivations reject the notion that women could be involved for political reasons. By portraying women as either avengers or feminists,¹⁸ the purpose of their political involvement remains unfixed. Their engagement in war for their own individual motivation is seen as discrediting the Tamil common political goal which the

¹⁷ Coomaraswamy Radhika, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Special Procedures, United Nations, 2002.

¹⁸ Whether a particular notion of feminism can be considered as "liberal" or "radical" depends on how far it considers the involvement of women in an armed group as representing their emancipation. For further details see Chapter I, Part A.

LTTE are seeking to reach. If the liberal and radical¹⁹ feminist approach was to be praised by LTTE supporters, it would be straightforward for the Sri Lanka government to discredit the movement, by stating that attacks by women were an option of last resort.

It is apparent that the preliminary question which needs to be addressed here is: Why does a woman partake in acts which are commonly perceived to be “masculine”? Through such involvement in violence, women violate the “normality” of their gender. Women are usually considered to be the victims of a conflict, rather than the perpetrators. Women who are trained to kill erase the prejudices of gender differentiation. Women’s involvement in violence dismantles the myth that the role of women is to give birth, thereby deconstructing their traditional place in society. Scholars do not therefore understand female violence as patriotism but keep searching for a so-called “rational” explanation, portraying the women’s commitment in war time in a manner which fits with the society’s usual mores. Thus, females who go to war are seen as marginal because their actions are “*unusual, controversial*”.²⁰ Putting this differently, when rebellion by women is perceived as incoherent, this is because there is a commonly held notion that the female condition is that of the “victim”.

It is rather unusual for a scholar to state that women combatants are warriors because they want to be soldiers. Even though women warriors fight alongside men, their motivations are often explained by making a distinction based upon their gender. Rather than just being “soldiers”, the decision by women to take up arms is usually explained by using the prefix “*women, female, or girls*” before the type of combatants that they represent (suicide bombers, freedom fighters, terrorists, etc.). This emphasis on their peripheral role in war has “*merely reinforced the notion that women are not, by nature, fighters.*”²¹ Violence executed by women, and not on women, is alien to the norms which are attributed to a

¹⁹ Whalley Eager Page, *From Freedom Fighters to Terrorists, Women and Political Violence*, Ashgate Publishing Company, TJ International Ltd, 2008.

²⁰ Friedman Barbara, ‘*Unlikely warriors: how four US news sources explained female suicide bombers*’, *Journalism & Mass Communication Quarterly*, 2008.

²¹ *Ibid.*

woman's body during wars. The bodies of women who are able to fight are no longer a "means of justifying domination of male over female";²² they become instead the agents of their own bodies.

In the first part of this chapter (section A), the multiple ways in which women deviate from cultural expectations within a range of conflicts will be discussed. It will also address what women's engagement in this conflict may actually symbolise. The second part of this chapter (section B) will assess more generally the unorthodox identities which women display within armed movements in other parts of the world.

1.1- Women's militancy, comrades in arms

As we will further discuss later in this chapter, "political violence"²³ can take different forms. Whaley distinguishes the left and right wing movements, the ethno-nationalist groups, the national liberation groups, the suicide bombers and their attacks and the onslaughts of what are frequently termed "irregular combatants". When women appear as members of such forces, their society, regardless western/eastern differences, cultures or religions, do not support it; containing the female's brutality as a disorder. Their relatives are embarrassed by their "aberrant" behaviours, not least because they impede the common norms. The statement that "there is no one universal theory of political violence and terrorism for men and women",²⁴ further implies that feminist assumptions are varied. Their plurality should be better explored when it comes to female struggles which are often studied in a nihilistic manner; the conception of female's military involvement is reduced to philosophical perspectives rather than the actions they accomplish once they become

²² Olujic Maria B., 'Embodiment of terror: gendered violence in peacetime and wartime in Croatia and Bosnia-Herzegovina', *Medical Anthropology Quarterly*, New Series, Vol. 12, No. 1, The Embodiment of Violence (March 1998), pp. 31-50.

²³ *Ibid.*

²⁴ *Op.Cit. Whaley p.23*

combatants. Their reasons to join such units and the forms of their engagement in political violence cannot be analysed solely through their marginalisation.

Prejudices which hold a women's involvement at war as exceptional have biased the literature which is often tainted by broad analyses, diminishing female soldiers as gender rebels due to psychological traumas²⁵ or because of their willingness to "become something"²⁶. This utilisation of the women's status quo in gender studies have consequences on the military leaders approach to their women; especially as we will study in the following chapter "they can display a callous attitude towards violence against women"²⁷ due to the female's apparent will to look less vulnerable and as performant as men in war. The revolutionary women who are studied as gender-neutral can be targeted because of their desire to be like their male comrades. Unbeknown to female fighter's free will, feminist scholars often impose rationalisation theories of women's engagement in war. We will develop two sub-sections; the first will deal with the feminism inherent to female combatants, and the second will rationalise said feminism to the forms of engagement that is taken by women in armed groups.

²⁵ Gowrinathan Nimmi, *Inside Camps, Outside Battlefields: Security and Survival for Tamil Women, The Gendered Refugee Experience*, St Antony's International Review 9, no. 1 (2013): 11-32.

²⁶ Natanel Katherine, *Resistance at the limits: feminist activism and conscientious objection in Israel*, Feminist Review (2012) 101, 78-96.

²⁷ Harisson Deborah, *The role of military culture in military organizations' responses to woman abuse in military families*, The Sociological Review Volume 54, Issue 3, 2006.

1.1.1- Feminisms of “revolutionary” women

What is the normal way of being a woman? The dimorphic status quo is often steeped in one’s personal identity: the identity tallies with specific integrated notions which lead to “*the differentiated particularities*”²⁸ of individuals i.e. male and female. Gender is used as a socially constructed concept separating two biologically and socially different human beings. The manifestation of gender in violent movements can discredit or reinforce the perception of violence. Yet, this subordination is exploited only to categorize a flaw in the humanity of an individual. So to say, the individualistic choice cannot be only gender based neither can generalizations such as; “*women, like men, commit violence for a variety of reasons some rational and some irrational*”.²⁹ Feminists’ different ways of classifying this heightening violence of women help to comprehend the individualistic self-interest.

This study about the different forms of feminism is based on Whaley’s³⁰ approach which appears as relevant to give an overview of the gendered outlook. Far from the global unsubstantial precepts of a female’s ingenuousness or irrationality, the liberal feminist approach puts men and women on equal footings “*it is not a surprise that women also support and commit acts of political violence and terrorism for the same reasons men do*”.³¹ Difference feminism recognises a dissimilitude between men, however it also refuses to devalue any engagements. It is based upon the acceptance of the other. The most well-known concept, radical feminism, argues for women’s superiority, as it suggests that women are superior to men and that they possess a more ferocious nature to men within the context of war. For instance, Whaley explains that during the First World War, *Radical* feminists initiated campaigns to shame British and American men who did not wish to participate in fighting on the front-line. The theory of Marxist feminism suggests

²⁸ Foucault p.21 in Rastoin Cécile, « *What's the trouble ? About gender, Judith Butler and Edith Stein...* », Revue d'éthique et de théologie morale, 2012/2 n°269, p. 75-108.

²⁹ Sjosberg Laura et al., *Mothers, Monsters, Whores, Women's violence in global politics*, ZedBooks, London, 2007.

³⁰ *Ibid.*

³¹ *Op.Cit.Whaley.*

that the exploitation of women in developing countries and their subsequent oppression can be challenged through political means.

However this chapter will primarily utilise the post-modern feminist theory. Indeed, this theory considers women as a miscellaneous category: there are no strict roles or descriptions of women, the approach is more complex with “*the exceptions to the supposed rule of how men and women are supposed to behave vis-à-vis violence.*”³²

The personal accountability of violent actions has often been degraded by gender norms which also apply to various violent movements that we will study in the next part of this chapter. Therefore, it is necessary to analyse different feminist concepts in order to discover which feminist theories can be utilised to better understand and analyse the differing forms of women’s violence in their varying circles of influence.

1.1.2- Different units, different forms of engagement

Rather than focusing on women’s brutality as a political act, most studies appear to suggest that women’s violence and brutality is intrinsically linked to the emotional sphere of the woman. Registered as insane,³³ suicide-bombers in guerrillas mostly would be sexually abused. Suicide-bombing is an ultimate act which elevates the suicide bomber to a higher position: martyrs. Sometimes considered as puppets of rebellious movements, women’s positions in armed groups is also rationalized by their traditional position in the society, often, “*the underlying assumption is “a man made her do it”.*”³⁴ Nevertheless, female and male roles are often renegotiated during wars.³⁵ In certain combatant units, conflicts take on

³² *Ibid.*

³³ *Ibid.*

³⁴ Bloom Mia, *Bombshell, Women and Terrorism*, University of Pennsylvania 2011, Philadelphia.

³⁵ Grojean O., *Théorie et construction des rapports de genre dans la guérilla kurde de Turquie*, Presses de Sciences Po | Critique internationale 2013/3 - N° 60p21-35.

an asexual characteristic. Human bravery reasserts the value of the warrior and gender differences are neutralized.

The prejudices regarding women, the list being non-exhaustive, impact the conduct of wars and the rules which are implemented within fighting ranks. Gender neutrality in armed units implies that women soldiers are extraordinary human beings. Indeed, their revolutionary step for a grand purpose cannot be opposed to their roles as mothers, teaching their progenies the values of the unit that they have decided to join. They are the devoted soldiers who are preparing the next generation to be contiguous to their movement's dogma.

However, it is also apparent that different approaches to this doctrine exist in the varying groups which the women are affiliated to. Obviously their roles as women soldiers or as asexual combatants are strictly different but we will try to appraise the similarities which could come to light about the reasons of their involvement.

Laura Sjoberg and Caron Gentry³⁶ reveal that the violent behaviour of women is strongly related to their emotions: mothers protecting their children, monsters who are "*pathologically damaged*",³⁷ or as whores trying to fill their sexual void. This theory further argues that these women are confronting the "consequences" of being a woman and so presupposes a gendered based form of violence. However, Sjoberg and Gentry's theory does not take into account the gendered construction of war involvement nor the specific gendered conduct which is adopted in an armed group. The gendered methods of executing violent activity would probably give us some clues about the symbolism of women's pledge in military missions. In the PKK, Partiya Karkerên Kurdistan, the Kurdistan's workers party, the female's engagement was increasing from the end of the 1980s until few years ago while the movement struggled and female's militants were integrated in political

³⁶ *Ibid.*
³⁷ *Op.Cit. Sjoberg*

activism rather than political violence.³⁸ In some re-education centres, women have to train in order to gain military and political skills so as to integrate in an emancipation precept and men have to “*get rid of their virile domination.*”³⁹

Despite all else, a codification of practices in armed groups regarding men and women remains. Within armed groups, there exists a control of the female attitude, regulations about what clothes to wear, often focused upon avoiding unwanted attention and temptations. Indeed, men have to terminate the conservative thought of their superiority and women should behave as free women who refuse to be considered as sexual objects. The positions of men and women within groups would therefore not become ambiguous and camaraderie will increase. Moreover, it can be hoped that not any exceptional relation such as love would emerge.

It goes without saying that sexual relations are forbidden under penalty of death. It is a strategy to discipline the soldier’s bodies to ensure that they are truthfully loyal to the leader of their military group, Abdullah Ocalan. It is interesting to read some articles about how the reluctance of several men concerning the participation of women in conflict has been transformed by the notion of a new world where “enslavement” seems to be no longer permissible. Now, “*women run their own assaults and have their own command structure*”.⁴⁰ This feminine leadership has been allowed through an identity dispossession. Most of the women of the PKK were widows and extremely young, and hence their only purpose in life was to die for the Kurdish cause.⁴¹ In Peru, the contestation movements emanate in high schools especially because progressive views have given voices to women in political fights. However, it is important to note that some of them, less inspired by the

³⁸ Sharifi Dryaz M., *Women and nationalism: How women activists are changing the Kurdish conflict*, École des Hautes Études en Sciences Sociales France, Paris, 2009.

³⁹ *Ibid.*

⁴⁰ Damon Arwa, *Female fighters: We won't stand for male dominance*, CNN, October 6th, 2008, consultation online on April 12, 2014, resource <http://edition.cnn.com/2008/WORLD/meast/10/06/iraq.pkk/>.

⁴¹ Marcus Aliza, *Blood and Belief, the PKK and the Kurdish fight for independence*, New York University Press, 2007.

political cause than by fleeing their repressive familial environment, try to give their daily life a meaning.⁴²

In Israel,⁴³ a lot of women join the military service which is mandatory, most of the people who are involved are extremely young (18-21). This entrance in the army factions at a premature age, conditions the thoughts of the young generation as future “good” Israeli citizens. Women are especially affected by the various forms of discriminations that they endure as women because the extreme masculine environment of Tsahal invites women to stay “*strangers inside their own armed groups*”.⁴⁴ However, most of the female teenagers show a real desire to join Tsahal; the emancipation from the family circle and an access to more autonomy and obviously, the mobilization for the Israeli cause is a huge factor as well even if it took time to involve them in other tasks than the administrative ones.⁴⁵ According to Adelman, the presence of women in the Israeli Army is increasing but “*there are still stark gender differentials in the Israeli military.*”⁴⁶

Gendering the army despite the wish of equality among soldiers is natural. This path serves to social construction by “*the embodiment in the constitution of identities*”,⁴⁷ women are seen as inferiors because of their appearance rather than because of their beliefs. Their bodies and minds are, then, “militarised” and lose their feminine identity to privilege their soldiering identity.⁴⁸ Hence, they are not seen as objects of desire but objects of war. In Peru, according to Boutron⁴⁹ female combatants have mostly been arrested and are tortured

⁴² Boutron Camille, « *La question du genre en situation de conflits armés : l'expérience des femmes combattantes au Pérou (1980-2000)* », Critique internationale, 2013/3 N° 60, p. 37-52.

⁴³ Sasson-Levy et al, « *Genre et violence dans les paroles de soldates : le cas d'Israël* », Critique internationale, 2013/3 N° 60, p. 71-88.

⁴⁴ *Op.Cit. Sasson-Levy.*

⁴⁵ Yuval-Davis Nira, *Nationalist projects and gender relations*, University of Greenwich, London, Scientific Review. 40/1, 2003, pp. 9-36.

⁴⁶ Levin D., *You're always first a girl, emerging adult women, gender and sexuality in the Israeli Army*, Journal of Adolescent Research, Volume 26, Issue 1, 2011 p. 3-29.

⁴⁷ Sasson-Levy Oma, Rapoport Tamar, *Body, Gender, and Knowledge in Protest Movements: The Israeli Case*, Gender & Society 2003 17: 379.

⁴⁸ Segal Lynne, *Gender, war and militarism : making and questioning the links*, Feminist Review Volume 88, Issue 1, 2008, p21.35, ISSN : 0141-7789.

⁴⁹ *Ibid.*

in prisons as a “*re-domestication*” of their bodies to ensure their well-behaviour as “real” women.⁵⁰ On the other hand, in Israel, because women have increased their virility in order not to be set apart during their military service, the return to civil society life is difficult because of their domineering conditioned reflex. They are even asked to (re)-adopt “*the proper femininity*”.⁵¹

In some groups, the question of reintegration is useless because the soldiers have embraced the Machiavellian principle “*the end justifies the means*” such as the Kurdish and the Black Widows of Chechnya “*who have decided to die by taking the lives of sinners to liberate the nations (from Russian forces)*”.⁵² What is worth noticing is certainly that the only ones who wear the suicide vests are women, according to hostage testimonies “*many of them looked no more than sixteen years old*”,⁵³ who are fairly engaged in the Chechnya movement due to their traumatising situation after the Chechen war with tortures, rapes and loss of the loved ones. Reaching martyrdom is their only way to demand justice for their own personal abuses but also the ones that their own society endures. Nevertheless, an increasing amount of research tends to confirm that a selective process has been carried out by the leaders of the movement to fit the requirements established by the Black Widow troops.

Those cases have proved some of the variety of reasons which could arise when talking about females as perpetrators of violence. We can discern some similarities especially concerning this new codification of their “bodies” through the gestures and new notions that they had to integrate into their personality. It helps them to be dissociated from the essentialist notions of womanhood. Actually, in our cases, the women who participate in violence have not yet reached the status of woman as they are vulnerable adolescents. Most of them are extremely young. That is why there is ambivalence in the claim of their combat for feminism while joining armed groups; their femininity has been targeted even before it

⁵⁰ Which is understood here as women conform to the norm.

⁵¹ *Ibid.* Sasson Levy.

⁵² Bloom Mia, *Bombshell, Women and Terrorism*, University of Pennsylvania 2011, Philadelphia.

⁵³ *Ibid.*

could emerge. As we saw, the strategies of most of the groups is to make them as “androgynous” as possible.

1.2- Female agency in violence: objects of masculine purposes and exceptional non-feminine warriors

“Adolescence is a critical time for identity formation”⁵⁴ and by eradicating the norms which are affiliated to women, the armed movements deprive their “female” soldiers of their own way of constructing their own femininity. They impose upon them the constraints of their roles as soldiers of the movement; we can talk about the “eviction” of an identity more than its “dispossession”. Through this control, exercised on women from their early years, the armed groups ensure the allegiance of their soldiers to their cause. The *Bourdieu* precept of transitional socialisation⁵⁵ could be used here to emphasize what Samimiam Darash called “*the violent reflexive bodily practices*”⁵⁶ to embed in the military attitude: the body is not only transformed physically, it is also used as an emotional tool. The body is the first location of memories; it is the first one which needs to be controlled to avoid the collapse of soldiers, whether male or female. Indeed, “*wars affect both men and women*”;⁵⁷ hence there is no specific *apparent* reason for the recruitment of females especially in the armed groups.

In Africa for instance, there are a lot of abductions of female’s soldiers but the “kids” who “decide” to join the war are recruited also because of the poverty rate.⁵⁸ Various other reasons could be evoked as “push-factors” for children’s involvement in war; “*significantly,*

⁵⁴ Spellings Carolyn R., *Scratching the Surface: A Comparison of Girl Soldiers from Three Geographic Regions of the World*, International Education, Vol. 38 Issue (1), 2008.

⁵⁵ Between primary socialisation and secondary one.

⁵⁶ Samimian Darash Limor, *Rebuilding the body through violence and control*, Federmann School of Public Policy & Government, The Hebrew University, Mount Scopus, Jerusalem, June 2012, SAGE.

⁵⁷ Bucaille Lætitia, *Femmes à la guerre. Égalité, sexe et violence*, Critique internationale, 2013/3 N° 60, p. 9-19.

⁵⁸ Politische Vierteljahresschrift, *Poverty and Child Soldier recruitment, A disaggregated study of African regions*, Volume: 50 (2009-01-01) p. 386-413+524-525+531. ISSN: 0032-3470.

children often describe joining an armed group as their only feasible option.”⁵⁹ The recruitment of child soldiers cannot be reduced as a “gendered based factor”;⁶⁰ in several studies, there has been a general tendency to reduce children involved in military activities as boy soldiers⁶¹ and girl “soldiers” as sexual slaves.⁶²

Reducing the “engagement” of those teenage girls, almost women, as non-akin to boy’s involvement in wars suggests also that their assigned task in the armed group will not be the same; their experiences will vary as war experiences are always influenced by gender, which moderates the effects of war.⁶³ Also, surprisingly, there was no distinction between girls/teenagers/female recruitments in most of the studies that I have read. This lack of data concerning this phenomenon is interesting to observe as it invites us to consider that the women in armed groups stay as “eternal minors”. Those “almost women” could not reach adulthood because of their incapacity of acting by and for themselves. They were educated to act under military orders. They are meant to “obey” the other. Their military construction takes precedence over their “natural” development; they can be usually used due to their vulnerability and lack of ability to answer back to those they consider as superiors. According to Machel “girls may not have the emotional or social resources to draw upon that women may have developed in order to cope with the ordeals that they face”.⁶⁴

Therefore, the second part of this chapter will be divided in few sections to distinguish better girls and women’s engagement at war. It will explore the differences and similarities

⁵⁹ Poretti Michele, *Preventing Children from Joining armed groups*, Children at Risks, Refugee Survey Quarterly (2008) 27(4): 123-141.doi: 10.1093/rsq/hdn055.

⁶⁰ Somasundaram Thiru S. D., *Child Soldiers, Understanding the context*, BMJ Volume: 324 Issue: 7348 (2002-01-01) p. 1268-1271. ISSN: 0959-8146.

⁶¹ Betancourt Theresa et al, *Sierra Leone’s Child Soldiers; War exposures and mental health problems by gender*, *Journal of Adolescent Health*, Volume 49, Issue 1 , Pages 21-28, July 2011.

⁶² Denov Myriam, *Engaging the Voices of Girls in the Aftermath of Sierra’s Leone’s Conflict: Experiences and Perspectives in a Culture of Violence*, *Anthropologica* Volume: 48 Issue: 1 (2006-01-01) p. 73-85. ISSN: 0003-5459.

⁶³ Mackenzie M., *Female’s soldiers in Sierra Leone, Sex, Security and Post Conflict Development*, New York University Press, 2012.

⁶⁴ Park Augustine S.J., *‘Other Inhumane Acts’: Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone*, *Social & Legal Studies* 2006 15: 315.

of adult combatants and child soldiers but also the “gendered” attitudes which would have an impact on the evolution of the adolescent soldier.

1.2.1- Differentiation in violence relating to women and girl

The reality of girl soldiers remains mainly unexplored. Analysed through the children or female perspectives, the “young ladies” have not been the subject of extensive analytical research. Integrated as fragments of an established order, girl soldiers, or for the purpose of this study, “pubescent” females⁶⁵ are left invisible. It is essential to keep in mind that this research exploits the post-modernist feminist approach related to the unique individual’s brutality. Women and girls have different experiences at war, “*the realities of girls affected by armed conflict differ greatly according to context*”,⁶⁶ and the exposures of adult women to conflicts as well. However, girls are considered as even more vulnerable as women and few truly question their will in whether they have decided to take part in the conflict. Most scholars assume, when they emphasise the victimisation of the “innocent kids”, a breach in the enrolment procedure. Exactly like their eldest, whether female or male, girls carry out the same tasks out “*including domestic work, military duties, and sometimes sexual slavery*”.⁶⁷ Their engagement with the military may be summarised by the similitudes with them and the “grown-up” women.

Spellings⁶⁸ notes that in Africa, they are recruited through the propaganda which is even perpetrated by their own familial pressures, to escape forced marriage or domestic violence. Again, the author states this when he describes the interrelations between the physical (often interfamilial) abuses and strong political engagements of the young girls who have decided to take up arms in South and Central America. Their success in studies and even

⁶⁵ Almost women but still kids.

⁶⁶ Denov Myriam et al, *Girl soldiers: towards a gendered understanding of wartime recruitment, participation, and demobilisation*, Gender & Development, 21:3, 2013.

⁶⁷ *Op.Cit.*

⁶⁸ *Ibid Spelling.*

the chance to pursue their education within armed groups was cited as one of the main reason for their joining. In the South Pacific areas, social justice would be one of the valuable factors, due to injustices women face every day because of the repressors of their countries. Otherwise, it may also be a path to reach gender equality.

The presupposed sexual abuse loop-hole is apparent in the studies of Girl Soldiers⁶⁹ and Women Warriors as we analysed previously. What is the similarity between a woman's and a girl's "desire" to participate in armed combat and what does this teach us? Certainly, it teaches us the will for female's empowerment⁷⁰ of those individuals trying to find an honourable escape to get a grip on their true self. At the same time, the methods of recruitment "may overlap";⁷¹ all of the persons joining an armed group do not have a killer instinct nor are looking for a refuge but most of them are fragile enough-in the context of war-to barely discern an abduction from an intention to "play" the soldier role. If women are confined by their gender, the girls did not have the time to develop the contradictions linked to it. There is scarcely a gap between a woman's and a girl's engagement; the first need to hide their identity, whilst others have no other choice but to stay away from the confinements of their gender and to be detached enough to live outside the shadow of their gender.

⁶⁹ *Ibid.*

⁷⁰ Worthen et al, 'I Stand Like A Woman': Empowerment and Human Rights in the Context of Community-Based Reintegration of Girl Mothers Formerly Associated with Fighting Forces and Armed Groups, *Journal of Human Rights Practice* Vol 2 | Number 1 | 2010 | pp. 49–70.

⁷¹ Mazurana et al, *Girls in Fighting Forces and Groups: Their Recruitment, Participation, Demobilization, and Reintegration*, *Peace and conflict: journal of peace psychology*, 8(2), 97–123.

1.2.2- The “robotic” identity of juvenile female soldiers

The female’s confrontation with her gender identity begins when her menstruation begins and hence implies that she is fertile and able to have children. Nonetheless, even if it is a part of women’s health, the female can influence and change her “unnatural identity”⁷² by developing an amenorrhea which stops the periods. Obviously, women cannot really control it but it has developed when they have intensively trained their bodies to be ready to fight.

When talking about their “female” identity in the armies, it is not only in an effort to devalue their gender, which should not appear in a masculine organization, it is also a way to underline the control of their biological regulation by the armed groups; they have transformed their bodies to be adaptable for the emergence of “non-human” combatants. For instance, in some units, when women are pregnant, they “*were sequestered in special camps to produce future fighters, as occurred in LRA camps in southern Sudan.*”⁷³ This practice reduces women to being procreative machines, avoiding the question of gender because their role to discover whether they are “good” mothers or not, is simply not examined.

Furthermore, if some talk about the idea of maternal instinct, we could argue that, for the purpose of this study, our subjects are not ready yet to identify themselves as “mothers”. Puberty is a path from childhood to adulthood not from maturity as an adult to the status of a mother. Their biological system is put into service by and for the movement without compromising any gender identification except in medical terms. “Mother” is only a term to describe the “*object*” permitting the delivery of the future soldier.

⁷²

McCracken Peggy, *The Amenorrhea of War*, Signs, Vol. 28, No. 2 (Winter 2003),

pp. 625-643.

⁷³ *Op.Cit. Mazurana.*

The eradication of any form of sexuality has been also a factor controlling the female's body; the idea of women as "*femmes fatales*"⁷⁴ is present in a lot of studies and a lot of scholars would argue that "*women are sexual to the core.*"⁷⁵ Again, this statement identifies a gene in the woman's nature which could lead to emotional jealousy. But, the period of adolescence regarding the potential future "*femmes fatales*" in war takes a huge part in their construction. Hence, if no characteristic of womanhood appears anymore, except perhaps the biological ones which could even be biased by the female's shape as a soldier, "*they (re)constituted themselves as soldiers through other self/other lines of distinction (...)Embodying a military self*".⁷⁶ If the identity of one person cannot be defined only by its gender, its annihilation transforms the woman soldier into a military's machine. This "robotic" control of the mind and the body of female fighters illustrate their incapacity to reach their "*gendered-self*" and "*the inability to fulfil that biological destiny*".⁷⁷

All our subjects for this topic are in the period of adolescence whereby children, who have almost reached the stage of adulthood, do not socially conform to the sex in which they were born; "*the sex of their body does not correspond to the sex of their soul.*"⁷⁸ Obviously, in their military-self, a lack of humanity in what Foucault has described as "*the glorious body of techno science*" has occurred. It eliminates any kind of references to the gender. Their bodies are materialized and belong to the movement. Their identity is no longer questionable, "*a bullet does not make a distinction between a woman and a man, it hurts the same way,*"⁷⁹ neither is their devotion based on their gender. Their allegiance to their cause is transformed later when they die in combat; they fully embody their movement, ideally becoming martyrs only, without any gender prejudices but as soldiers

⁷⁴ Rajan Julie, *Women Suicide Bombers, Narratives of Violence*, Critical Terrorism studies, Routledge, Taylor and Francis group, 2011.

⁷⁵ *Ibid.* Sjosberg.

⁷⁶ Baaz Erikson Maria et al, *Fearless Fighters and Submissive wives: Negotiating identity among women soldiers in the Congo (DRC)*, Armed Forces & Society, SAGE, 2013.

⁷⁷ *Ibid.*

⁷⁸ In french, « le sexe de leur corps ne correspond pas au sexe de leur « âme » » in Chiland Colette, « *La construction de l'identité de genre à l'adolescence* », *Adolescence*, 2014/1 T.32 n° 1, p. 165-179.

⁷⁹ *Ibid.*

who have served one cause. Consequently, when Joan of Arc, a young soldier as well, has decided to burn alive rather than wear women's clothes,⁸⁰ this symbolised her belief in her cause and was not an attempt to reach a "gendered" achievement as a female soldier.

The sacrifice of an asexual, androgynous body, is the purest way of attaining a military-self. But by encompassing it, through this hermetic gender process, is it not rejecting the gender's differentiation? It appears that female teenagers only have to build this path to construct themselves as closest to their male mates in order to find their military-self. Can we talk about a form of gender hatred? Indeed, it is the gender which has been targeted before and during the formation of one's identity. Joan of Arc's burnt body was displayed to emphasize that "*the body is a possession that does not belong to us*",⁸¹ this exhibition of the dead body of the young female fighter "*to dispel doubts about her gender*" is an offense to the soldier's integrity. But at the same time, it shows disrespect not to the military authority but to the female's identity that Joan of Arc was trying herself to erase appearing as a "*male identified trans person.*"⁸² She has been exposed to the public because her biological nature was not really apparent yet. She was fighting "*like a man*", she looked like a man. Her organ's exposure was made legitimate by the difficulty to trust her heroism as a woman.

The alleged heroism of a soldier was addressed to male soldiers. Joan of Arc was an almost adult, and her attitude searching at erasing her real sexual appearance has become obvious in the emergence of adulthood. Finally, this young woman had nothing in common with a woman; she was certainly closer to a male soldier. She had her beliefs in her cause, certainly not any forms of combat in the name of her gender. As an adolescent soldier, the formation of one's own identity contradicts the military orders which are often emphasized as more important than personal desires.

⁸⁰ DeSoucey Michaela et al, *Memory and Sacrifice: An Embodied Theory of Martyrdom*, 6 Cultural Sociology 2008 2: 99.

⁸¹ *Ibid.*

⁸² *Ibid.*

The emotional attributes are directed to the military services, the role-model who is supposed to be inspiring is an older member of the armed group; hence, those emerging adults have developed an “undesirable” body by being “unfeminine” and only associated with the military. It can be argued that adolescents identify themselves through their social identity, which can be represented as an emotional attachment to one specific group as opposed to any forms of attachment to a specific gender which connotes a biological commonality. This commonality is not always a mental one, and the gendering of the soldier’s involvement at war pervades the aim of the conflict? If no one can escape their gender, the relevance of its dominance can be questioned.

1.2.3- Adolescent combatants as eternal minors?

“More than 250,000 children between seven and 18 years of age are actively involved in conflicts in over 40 countries”⁸³ and for more than 30 years, girl soldiers have been used world-wide.

In some countries such as Sri Lanka and Colombia, the girls’ sexual role was almost non-existent whereas in most of the African countries, their main tasks were to provide sexual services⁸⁴ for male soldiers in order not to be involved in the controversy of the gender norms; they were sometimes in the field but they were more valuable in less masculine roles.⁸⁵ However in armed movements where gender equality is preached, combatants identify themselves through the varying levels of violence that they use, not through their gender. Those future adults do not always consider themselves as combatants but more as

⁸³ Denov Myriam and MacLure Richard, *Engaging the Voices of Girls in the Aftermath of Sierra Leone's Conflict: Experiences and Perspectives in a Culture of Violence*, Anthropologica, Vol. 48, No. 1, War and Peace.

⁸⁴ *Ibid.*

⁸⁵ Stevens Amy, *The invisible soldiers: understanding how the life experiences of girl child soldiers impacts upon their health and rehabilitation needs*, Archives Of Disease In Childhood Volume: 99 Issue: 5 (2014-01-01) p. 458-462. ISSN: 0003-9888.

perpetrators of a form of violence⁸⁶ which is part of their daily life and their identity. McKay⁸⁷ affirms that their “*positions of powers*” while carrying arms for instance has made them achieve their military positions; positions which have been taught at the end of their childhood and at the entrance to their adolescence.

Wars encroach on the “*normal identity*” and on the construction of oneself; “*identity formation is part of a meaning-making process, where meanings are the symbolic identification by social actors of the purpose of their actions.*”⁸⁸ They have been modelled for conflicts. Eventually, adolescents did not focus on their gender, this perspective has been employed by others looking at their engagement; they accentuate their adulthood while becoming a proper adult soldier by constructing themselves within the military. Nevertheless, through the admiration for their eldest models, most of them when reaching their majority have stayed what we can call eternal minors due to the fact that they hope to become as good as their role-models whilst realising their own ambition of becoming role-models themselves.

At the final point of this chapter, we will conclude that if women have agencies in their violence, so do the girls. Their “*almost*” identities have enabled us to question their *real* roles in war as well. Tinted by prejudices their engagements and actions at war is a current debate in Sri Lanka that will be further explored in the next chapter. Particularly, the next chapter will discuss the ideologies and roles of the “child” soldiers, especially the female child soldiers, and what their political ideology and role is within the Tamil Tiger movement because the “military-self” is more complex than a simple adaptation for the army purpose.

⁸⁶ McKay Susan, *Girls as “Weapons of Terror” in Northern Uganda and Sierra Leonean Rebel Fighting Forces*, *Studies in Conflict & Terrorism*, (2005) 28:5, 385-397.

⁸⁷ *Ibid.*

⁸⁸ Shahnazarian Nona and Ziemer Ulrike, *Young Soldiers' Tales of War in Nagorno-Karabakh*, *Europe-Asia Studies*, 64:9, 1667-1683, 2012.

The LTTE has recreated a certain sense of kinship by placing children together in a fictional family unit;⁸⁹ “the LTTE upheld a rigid code of moral conduct amongst the cadres”.⁹⁰ Mendelshon and Straker have described the child soldier as a political individual because of the ideology which has dominated his organization “[participating] in a war situation on behalf of a particular group or ideological position”.⁹¹

This chapter has discussed the processual emergence of a “military-self” which was similar for both female and male soldiers, who had to build their identity during their adolescence whilst they were exposed to political violence. In the Tamil Tigers movement, the emerging differences regarding individual identity were considered as their “personal disclosure of true-self”;⁹² it could not be explored without understanding the complexities of their “masculine” identity that we have tried to understand in this chapter. We will further testify in the second and third chapter the moral codes imposed upon the young female soldiers which states that they should not deny their “true” self but they should also avoid the emotions and attitudes related to their gender and assess the role they have to play in their movement.

The LTTE will be our case study to illustrate better the evolution of the female’s pre-pubescent soldiers in one armed group advocating chastity and extremely strict codes to its armed members. In that sense, their political goal could be better achieved as the movement could not be denigrated by any immorality. However, the LTTE has intervened in the private sphere of its soldiers, especially its young female soldiers by imposing a strict code of conduct to make them “better” human beings. The second chapter will therefore analyse the consequences of the female’s position and role within the LTTE movement.

⁸⁹ Herath Tamara, *Women in Terrorism, Case of the LTTE*, SAGE Publications, India, New Delhi, 2012.

⁹⁰ *Op.Cit. Herath quoting Balasingham.*

⁹¹ Kanagaratnam et al, A. E. *Ideological commitment and posttraumatic stress in former Tamil child soldiers*, *Scandinavian Journal of Psychology*, 46, 511–520, 2005.

⁹² *Ibid.*

2- Chapter II: The emergence of a new terrorism: The LTTE and integration of women into militaries during the Sri Lankan internal conflict.

Our previous chapter was about female criminals at war who are perceived as being evil whereas, in reality, most of them are young and vulnerable and are already associated with revolutionaries. This chapter will deal with the integration of women into the military during the Sri Lanka Civil War. It is the intensification of the fight against the Sinhalese which transformed the reality of the masculine units. The Tigers combatants were influenced by the charisma of their leader, Prabhakaran.

We will see in this chapter that the girl soldiers were especially tempted to obey carefully because of Prabhakaran's gratefulness, as he made them feel special; we will give an historical context showing that the women have not been integrated from the beginning of the struggle in a first part and will finish on the obedient and respectful attitudes of the young girl soldiers and how it could influence their positions in the guerrilla.

2.1- The emergence of a new revolutionary movement for an identity emblem: the Tamil Tigers

2.1.1. - Overview of the conflict – an ethnic tragedy

After Ceylon independence, the Tamils were greatly discriminated. Their status, as below that of the Sinhalese was a fact made official by the Sinhalese Buddhist government. While Sinhalese nationalism has caused extreme disadvantage for few minorities in Sri Lanka, the injustice imposed on the Tamils by the Sinhalese, had the converse effect of consolidating their independence.⁹³ In 1972, after an impressive recrudescence of anti-Tamil riots due to the prejudices by the Sinhala only Act and the standardisation,⁹⁴ Tamils decided to engage themselves in further political actions in order to proclaim their rights. Prabhakaran, the future leader of the Tamil terrorist organization, started to federate the Tamil opposition⁹⁵ and revive the Tamil ethnic pride.

Although the Sri Lankan civil war compelled the Tamils into silence for many years, Tamils still dreamt of a Tamil homeland. The Tamils fought for independence and self-determination, wanting to obtain their *Eelam*. “*They began to voice their anger against these discriminatory practices and [organized peaceful] campaigns*” after their pity score during 1972 elections⁹⁶ which led to the reinforcement of the struggle; the violence soon became realised. As one of the only political parties supporting Tamil independence, joining the LTTE represented a way of representing one’s *Tamilness*.⁹⁷ Sinhalese’s attitude

⁹³ Gamage Siri, Watson I.B., *Conflict and Community in Contemporary Sri Lanka*, Sage Publications, New Delhi, South Asia for the South Asian Studies Association, 1999.

⁹⁴ Manivasakan S., *Strategic dimensions of Sri Lankan ethnic conflict*, University of Madras publications, 2002.

⁹⁵ Eudeline Hugues, *Aux origines du terrorisme maritime, Les Tigres Tamouls*, Outre-Terre, 2010, n°25-26.

⁹⁶ Welhengama G. and Pillay N., *The Rise of Tamil Separatism in Sri Lanka: From Communalism to Secession*, Routledge Research in International Law, Routledge, 2014.

⁹⁷ Brun Catherine, *Birds of Freedom*, Critical Asian Studies, 40:3, 399-422, 2008.

towards minorities, addressed mainly towards the Tamils, induced a deconstruction of the Tamil community's identity.

The Tamil front was radicalised in the 1970s when a new Constitution gave more privileges to the Sinhalese. In the early 1980s, the separatism intensified; *“they concluded that there are no other way than leading a liberation war as all the other means have come to an end.”*⁹⁸The Liberation Tigers of the Tamil Eelam (LTTE) then started proclaim its rights taking action against its rivals through violent actions, in some cases physically attacking opponents; the originally non-violent organization started down the criminal path.⁹⁹

A state-led revenge was planned after the killings of 12 Sinhalese soldiers¹⁰⁰ and anti-Tamils riots increased in Ceylon. This repression is known as the *“Black July,”*¹⁰¹ date which *“altered the course of ethnic tensions in the country (...) the riots also marked a decisive shift in ethnic politics in the country as non-violent approaches gave way to Tamil militancy”*. Thus the LTTE began eliminating the rival group leaders one by one, especially those who did not respect the Tigers code. During *“Black July”* atrocious events, the Tamils found the very foundations of their identity being attacked; buildings which were significant symbols of their identity were reduced to ashes, Tamil families had to flee their homes, and hundreds of thousands of Tamils lost their jobs.¹⁰²

⁹⁸ *Op.Cit. In French « Ils concluent qu'il n'y a pas d'autre solution que de mener une guerre de libération puisque tous les autres moyens ont été épuisés. »*

⁹⁹ Swamy Narayan, *Tigers of Lanka, from boys to guerillas*, Konark Publishers, Pvt, Ltd, New Delhi, 1994.

¹⁰⁰ Pavey Eleanor, *The massacres in Sri Lanka during the Black July riots of 1983*, Sciences Po, Online Encyclopedia of Mass Violence, 2008.

¹⁰¹ Roberts Michael, *Towards Citizenship In ThamiliLam: Sri Lanka'S Tamil People Of The North, 1983-2010*, South Asia Research 2013 33: 57.

¹⁰² Amarasingham A., *Black July, Remembering the 1983 Riots in Sri Lanka*, The Huffington Post Blog online, October 2011, http://www.huffingtonpost.ca/amarnath-amarasingam/black-july-riots-sri-lanka-1983_b_897591.html.

According to Pavey,¹⁰³ 371 Tamils were decimated and 100 000 were obliged to leave their homes. Balasingham¹⁰⁴ described this event as the beginning of the Tamil holocaust “*though, there had been periodic anti-Tamil pogrom since 1958, the racial holocaust of July 1983 was the worst in Sri Lankan history for its cruelty, brutality and savagery*”.

As stated by McDougall there should be a focus on recording minority violations “*before they lead to tensions and violence.*”¹⁰⁵ This is the case with the Tamil Tigers; they turned from a political organization who aimed to propagate and protect Tamil identity to a revolutionary movement divided in terrorist *groupuscules*.

2.1.2- Militancy and training; promoting Tamil nationalism

The total liberation of their homeland and the establishment of an independent sovereign socialist state of Tamil Eelam was a product of two major agreements between 5 militant groups.¹⁰⁶ These included, Liberation Tigers of Tamil Eelam (LTTE), People’s Liberation Organisation Tamil Eelam (PLOTE), Tamil Eelam Liberation Organisation (TELO), Eelam People’s Revolutionary Liberation Front (EPRLF), Eelam Revolutionary Organisation (EROS).

All followed more or less violent programmes in order to achieve their main aim of crushing the Sinhalese monopoly of the island. Yet the LTTE gained the advantage, partly due to Prabhakaran their leader from 1972 until his death in 2009. He was able to construct

¹⁰³ *Ibid.*

¹⁰⁴ Balasingham Adele, *The Will to Freedom, An Inside view of Tamil Resistance*, England, Fairmax Publishing 2001.

¹⁰⁵ OHCHR, *Early attention to minority rights a key tool for stability and conflict prevention – states UN expert*, United Nations Human Rights, October 2012, New-York.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10472&LangID=E>.

¹⁰⁶ *Ibid.*

a powerful political rhetoric which combined “socialist revolutionary” ideas along with nationalist ethos.¹⁰⁷

The LTTE soon became a symbol for the Tamil youth, producing leaflets and propaganda containing Prabhakaran’s ethos which was spread nationwide. It was due to this campaign that the “boys” of the LTTE were recruited and sent to Lebanon to receive an intense training.

Prabhakaran’s desire to have a disciplined movement has condemned several of his members to take an alternative code of conduct to avoid “*the crumble of their organization*”.¹⁰⁸ The tensions between the leaders of the different separatist factions presented the LTTE movement as non-coherent. Thus, the Tamil militants of other factions were easily eliminated. Tamils learnt military strategies overseas,¹⁰⁹ Ramanathapillai indicates that this was especially with regards to their relations with other revolutionary groups (a lot of trainings in the Middle East and important networks in London).¹¹⁰ Those links encouraged new methods of war tactics which characterised the Tamil organization’s radical approach; the Tamil Tigers guidance has preferably promoted death over capitulation.

The distinguished strategy of suicide-bombing is one of the most adopted actions among the Tamil militants. The “*Black Tigers*” units which are devoted to suicide-bombings emerged and gave a reputable identity to the LTTE. The Black Tiger unit is one of the most deadly in the world.¹¹¹ According to UTHR “*the religion of the L.T.T.E. also provided for its devotees the emotional excitement of blood sacrifice. The sacrificial victims were those*

¹⁰⁷ Gamini Samaranayake, *Patterns of political violence and responses of the government in Sri Lanka, 1971–1996*, Terrorism and Political Violence, 11:1, 110-122, 1999.

¹⁰⁸ *Ibid.*

¹⁰⁹ Ramanathapillai R., *The Politicizing of Trauma: A Case Study of Sri Lanka*, Peace and conflict: journal of peace psychology, 12(1), 1–18 2006, Lawrence Erlbaum associates, inc.

¹¹⁰ *Op.Cit.*

¹¹¹ FBI, *Taming the Tamil Tigers From Here in the U.S.*, Consultation on May 15th, 2014 on http://www.fbi.gov/news/stories/2008/january/tamil_tigers011008.

chosen by chance and sometimes by choice, to die in operations.”¹¹² Their desire for a separate state is encompassed within a desire to fight for it.

2.1.3- *The Tamil Tigers units, new reasons for violence*

During LTTE’S period of gestation, radical methods were employed. Radical actions such as suicide-bombings that were inspired by observed methods in the Middle East were adopted by the Tamils.¹¹³ Tamils can be considered as extremists in the sense that their death is not perceived of as an end but is instead a crucial path to their people’s liberation. Pavey states that the Tamil Tigers would be responsible for 40% of the killings by suicide-bombing methods perpetrated between 1981 and 2003.¹¹⁴

The cyanide capsule that they wear illustrates the supremacy of the Tamil common goal rather than their individualistic existence. *“Using trauma stories as a source of political capital is common in many liberation histories”*;¹¹⁵ the LTTE and especially the Black Sea Tigers can draw similarities with this collective pain, so this collective pain can act as a catalyst of their ideological struggle which postulates that only violent revolutions could reverse a faulty system.

This strategy was developed further when the LTTE realised that India would betray them and *“ruin their struggles”*, as mentioned by Swami.¹¹⁶ The Indo-Sri Lanka Accord signed in 1987 aimed to disarm the guerrillas, and as a consequence the Indian Peace Keeping forces (IPKF) were sent to Ceylon. They destabilized the Tamils by supporting the Sinhalese discriminatory policies. The LTTE rebellion became stronger using the traditional techniques of insurgency to vanquish the IPKF.¹¹⁷ After operation Pawan, which

¹¹² University Teachers for Human Rights, Jaffna, Sri Lanka.

¹¹³ Weiss Gordon, *The Cage, The Fight for Sri Lanka and the last days of the Tamils Tigers*, Great Britain, Vintage 2012.

¹¹⁴ *Ibid.*

¹¹⁵ Ramanathapillai Rajmohan, *The Politicizing of Trauma: A Case Study of Sri Lanka*, Peace and conflict: journal of peace psychology, 12(1), 1–18, 2006.

¹¹⁶ *Ibid.*

¹¹⁷ *Op.Cit.*

was a codename given to this Indian military intervention,¹¹⁸ Prabhakaran accentuated his murderous violence by killing those he thought were not legitimate enough to take part in this fight, which led to the massacres of several leaders who were fighting for the same cause.

The movement became his obsession and his desire for Eelam was grown into fundamentalism because of the over control of the LTTE's common military strategies and an emphasis on the idolization of himself. Prabhakaran personified the LTTE as a reflection of himself through his domineering control over the LTTE's political, social and economic structures.

More than being a chief or an inspirational leader, Prabhakaran was the dictator of a freedom fighter unit. His death in 2009 which marked the end of his movement, has contributed to the belief that he was the movement himself. It therefore appears that the LTTE fighters were not only fighting for the Eelam but for the father of this notion. He imposed a politically embodied violence by choosing suicide-bombings as another means of expressing the Tamil Tigers extreme belief for this sacrificial movement. The suicide bombings of the LTTE appeared as selfless because all of the chosen fighters dedicated their lives, and therefore their death to the LTTE objective of “*giving oneself*” (*thatkodai*) and not “*killing oneself*” (*thatkolai*).¹¹⁹ This implies strength rather than weakness. The Black Tigers were born; the liberation struggle actions have been transformed to a terrorist group activity which has gained its notoriety after the assassinations of head of states: Rajiv Gandhi, prime minister of India, in 1991 and Ranasinghe Premadasa, President of Sri Lanka, in 1993. The suicide-bombers' strategy was fully operational in 1990 with the suicide embarkation of the Black Sea Tigers.¹²⁰ Self-sacrificial services become a norm for

¹¹⁸ Kalyanaraman S., *Major Lessons from Operation Pawan for Future Regional Stability Operations*, Journal of Defence Studies, Vol-6, Issue-3, pp- 29-52, 2012.

¹¹⁹ DeVotta Neil, *The Liberation Tigers of Tamil Eelam and the Lost Quest for Separatism in Sri Lanka*, Asian Survey, Vol. 49, No. 6 (November/December 2009), pp. 1021-1051.

¹²⁰ Besson A., *Question maritime en Asie du Sud Est, Réalités de la menace terroriste*, IRIS, Paris, 2011.

Tamil Society which functioned as a totalitarian organization. This sacrificial nation respected and adulated their leader even when it meant being transformed in human torpedoes.¹²¹

The Black Tigers suicide vessels represented suicide as a profession and as a way of living even after one's death.¹²² Kamikazes are empowered by a political existence rather than their own self-interest. Most of the militants knew that joining the LTTE meant dying for it. The identity of the Tamil Tigers is not only constructed through Prabhakaran's desires but also through methods of war that have been incorporated in Tamil female combatant's bodies.

LTTE movement only permits a new focus on this violence of women in wartime; those women in the LTTE have become ready to die and are even afraid of living an ordinary life. However, their integration in the Tigers movement requires further explanations.

¹²¹ Gudawardena A., *Female Black Tigers, a different breed of cat*, Schweitzer Yoram, *Dying for Equality, Female Suicide Bombers*, The Jaffee Center for Strategic Studies, August 2006.

¹²² Roberts M., *Saivite symbols, sacrifice, and Tamil Tiger rites*, *Social Analysis*, Volume 49, Issue 1, Spring 2005, 67–93.

2.2- *The war in Sri Lanka and the materialisation of unusual individuals in the military*

*“The vultures’ stomachs are fattened on the lives of the poor UN, the ostrich, you are hiding your head in “world peace”. Your face is not so visible but your body is so naked”*¹²³ Barhati, a female of the LTTE political wing, killed in 1992, wrote this poem 10 years after the radicalization of the Tamil Tigers in Sri Lanka illustrating the devotion of women to guerrilla, terrorist, organizations. During the post-colonial phase, Tamil women took part in political life even if it meant possessing an inappropriate female identity; their participation in the struggle certainly meant that they could contribute to the construction of *“a pathway to Tamil Eelam as liberated society.”*¹²⁴

It appeared that women recruited by the LTTE were considered as vulnerable due to pre-existing prejudices. Tamara Herath described the *“LTTE combatant women [as having] an image of a masculine warrior in a feminise guise”*.¹²⁵ Besides, the LTTE gained its notoriety because of the Rajiv Gandhi assassination accomplished by a female member of *“the women’s wing of the Liberation Tigers of Tamil Eelani (LTTE)—SuLhanthirap Paravaikal (Birds of Freedom)”*.¹²⁶ Actually, their suicide bombing methods may be understood as altruistic because they have dedicated their entire self, including their bodies, as gifts, to the cause. It could therefore be argued that women were the unexpected heroes of this war as the first section will assess. Secondly, we will explore how they added values to the Tamil identity through their “military generosity”.

¹²³ Malathi N., *Women under LTTE, Cannon Fodder or Women’s Liberation*, abstract of *A fleeting moment in my country*, 2013, <http://fr.scribd.com/doc/156220098/Women-Under-LTTE-Cannon-Fodder-or-Women-s-Liberation>.

¹²⁴ Brun Catherine, *Birds of freedom*, *Critical Asian Studies*, 40:3, 399-422, 2008.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

2.2.1- *Women, the new heroes in the LTTE: a new military stance, and the development of Tamil identity through a feminine approach*

The disruption of conventional gender construction in the Sri Lankan war imposed new norms upon women in the training camps. The lengthy process of the civil war made LTTE Tamil forces reconsider women roles. They changed their policy towards women in 1985 when Prabhakaran fell in love and accepted that his patriarchal movement could implement more flexible policies for women.¹²⁷

Females were indoctrinated by the LTTE to take arms as “*women warriors*” and they became an essential part of the anti-state movement. O'Connor has argued that this type of female involvement could affect women's freedom to “*make women look and act like men without giving them the same rights as them*”.¹²⁸ A third of the LTTE movement was constituted by kamikaze women; as previously discussed, women were engaged in active combat and played important roles in the military, and were trained in camps to die for their cause. They were deployed in front line combat and as suicide bombers. Peng Wang notes that suicide-bombing was a means to escape from their predestined life by marking the world with their suicidal action for their movement but also in the name of their gender¹²⁹. They were, essentially, not afraid to die. According to Darkisha's experience: “*we fight for true justice by defeating our enemy*”.¹³⁰

In order to gain total devotion to the LTTE, their members joined guerilla training camps where they could not contact their family. However, these rules gradually changed over

¹²⁷ Alison M., *Women as Agents of Political Violence: Gendering Security*, Special Issues on gender and security, Department of Politics and International Studies, University of Warwick, UK.

¹²⁸ O'Connor, *Lions, Tigers, and Freedom Birds: How and Why the Liberation Tigers of Tamil Eelam Employs Women*, Terrorism and Political Violence Volume 19, Issue 1, 2007.

¹²⁹ Wang Peng, *Women in the LTTE: Birds of Freedom or Cogs in the Wheel?*, Journal of Politics and Law, Vol 4, No 1, 2011.

¹³⁰ Arnestad B., *My daughter the terrorist*, Film documentary, Norway: Snitt Film Production, 2007, Available at: <https://www.youtube.com/watch?v=apU30zDB4N4> [accessed 15 May 2014].

time. For instance, in Arnestad's documentary,¹³¹ one of the girls states that if she has to shoot her friend, she will do so because The Leader does not allow killing for nothing but for a greater purpose. Their commitment to this "*formidable military machine*"¹³², as Balasingham would argue, is an additional force in the effort to win the Eelam war. There could be no peace until the political goal of the LTTE as defenders of their homeland was realised.

Female combatants believe that the peace that can be achieved in Sri Lanka cannot be a return to the past;¹³³ those women affected by this war have nothing to lose anymore, hence their lives cannot return to normality. That is why O'Connor emphasises that there were two kinds of women: normal women and LTTE women.¹³⁴ Females taking part in this terrorism do not desire transformation of themselves or their status: they care **only** for the independent state of Eelam, their "*ultimate goal.*"¹³⁵ The recruitment of those women creates a blurred boundary between their victimisation and their ability to fight. We cannot assess the reasons of their involvement with certainty.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ Rajasingham-Senanayake D., *Between Reality and Representation: Women's Agency in War and Post-Conflict Sri Lanka*, Cultural Dynamics 2004 16: 141.

¹³⁴ *Ibid.*

¹³⁵ Bose S., *States, Nations, Sovereignty: Sri Lanka, India and the Tamil Eelam Movement*, Thousand Oaks, CA: Sage Publications, 1994, 108.

2.2.2- Female suicide bombers; giving one's life to exist in the eyes of another

Women cadres embodied roles which were extremely dangerous: not only as suicide bombers but “also involved in land (Intelligence Wing Black Tigers, air (Military Wing Black Tigers), and sea operations (Black Sea tigers).”¹³⁶ As Schrijvers suggests, women symbolise “the community [they] belong to”, the nationalist struggle without them would not have embraced the whole Tamil nation.¹³⁷ Therefore, it contradicts Coomaraswamy’s allegation that “[women] are the consumers, not the producers of the grand political project”.¹³⁸ Firstly, showing women as consumers of the movement devalues their gender, but also implies a manipulative political confusion strategy. Furthermore, according to Herath, it is extremely difficult to assess the ages of the female participants.¹³⁹ Moreover, the political formation of those young female soldiers, as most of the studies about the LTTE assumed, has been constructed based upon their experiences and what their families have taught them throughout decades of conflict; “parents may also drive children into war indirectly by their own admiration of combatants”.¹⁴⁰

Female empowerment copied their own heroes’ determination. Joining the LTTE, a terrorist group, was influenced by the values they heard since their childhood idealising the Tamil Tigers. Adding competencies to the armed groups cannot be seen as a selfish mean of women’s soldiers: often their involvement is seen as revenge and not as a service to their society. Hence, suicide-bombing was considered as a desperate act by the opponents of the Tamils and as the ultimate great action for the Tamil supporters. Their involvement in this form of militancy was supposed to not oppose their capacity as soldiers from their

¹³⁶ Shoker Sara, *Males and Females in the Liberation Tigers of Tamil Eelam: Why They Joined*, Thesis Submitted to the College of Graduate Studies, Political Studies, University of Saskatchewan, 2012.

¹³⁷ Schrijvers J., *Fighters, Victims and Survivors: Constructions of Ethnicity, Gender and Refugeeeness among Tamils in Sri Lanka*, Journal of Refugee Studies Vol. 12, No. 3 1999, University of Amsterdam. The Netherlands.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Op.Cit. Slinger (2005 :64) quoted in Herath.*

traditional roles. Actually, their competences at war and at home are interrelated. Indeed, women are characterized by the notion of “caring”. We cannot separate the two entities which are extremely related; “*acting as a human bomb is an understood and accepted offering for a woman who will never be a mother.*”¹⁴¹ Their involvement by giving their body to the nation can be described as the prolongation of a modernist idea of motherhood as they care for the nation as much as they would care for their own child. The motherhood notion is also strictly associated with the Tamil motherland. The acts of those females benefit to the Tamil nation. Dying for a common goal, in somehow, taught a lesson to the enemy and to the Tamil’s successors of determination and bravura. The Tamil Tigers prefer the world to see them as “*suicide warriors*” rather than terrorists; their violence would be the result of a common political cause. Finally, suicide-bombing was their method to strengthen the LTTE’s self-defence, “*life as weapon*”¹⁴² was the catch-phrase used by Prabhakaran for its “*maravar*”;¹⁴³ those who are valuable enough for the movement **may** die for it.

In this chapter, we have assessed the admiration of the combatant of the Tamil Tigers for their chiefs. This admiration may cost a lot for simple soldiers who are easily manipulated and seduced by their leaders; they do not question their actions, thinking they are good anyway. The Tamil militancy increased after 1983 when Prabhakaran decided to influence the struggle by making the Tamil Eelam *his* struggle.

¹⁴¹ Cutter A., *Tamil Tigresses, Hindu Martyrs*, Columbia University, Journal of International Affairs, 1998.

¹⁴² *Ibid.*

¹⁴³ Schalk P., *Historisation of the martial ideology of the Liberation Tigers of Tamil Eelam (LTTE)*, South Asia : Journal of South Asian Studies, 20:2, 35-72, 1997.

3- Chapter III : A specific code of conduct in militaries, a « cure » for a hidden crime

In chapter one, we studied the girl soldiers as ‘robots’ and our second chapter focuses **upon** female combatants in the Tamil Tigers movement and their connection to the leaders. Labelled as inherently evil, they were in fact raised to be militarised. Their specific criminal acts made them new heroes of the Eelam war but also unconscious objects of male soldiers.

This third chapter will focus on the alleged safety of the women in the movement. A lack of data concerning rapes or any sexual abuses in the LTTE does suggest a new form of sexual violence, namely the seduction process of the LTTE child soldiers throughout the civil war and for the duration of their maturity. The first part of the chapter will compare the abuses of power by commanders in military groups and the second will deal with the inappropriate consequences of those behaviours. Hence, we will explore the notion of sexual grooming in guerrillas which transform the recruitment of child soldiers into an even more heinous crime.

3.1- Strict rules of conduct for combatants, from abuse of power by criminals to non-regulated- rules

The LTTE movement has generated a new form of trust which has developed a new familial kinship structure in which the patriarchy, though not obvious, is apparent. The paternal figure that embodies Prabhakaran has an impact on the children's loyalty: the veneration of the leader of the LTTE has been transmitted from the biological family to the combatant family. In this way, patrimonialism could be an appropriate term, because the young female soldier's identification with the military self is combined with the desire to consolidate the force of its armed group. The elitist female youth of the LTTE would practise the desire of their patrons to make them feel proud. This section will be divided in 3 parts assessing the admiration for one leader, the specific admiration for Prabhakaran and finally exploring those veneration as a catalyst for an armed group's internal policy.

3.1.1- Admiration of one leader, dedication to one nation

According to Balasingham, females in the LTTE have been internationally recognised as incredible combatants.¹⁴⁴ Young women in the units of the LTTE have broken away from the norms which have ensnared them in their traditional familial environment. However through their involvement in the rebel army, young females of the LTTE have broken away from their traditional role in the familial context. Indeed, due to the fact that many of the women who fought in this guerrilla war became embroiled in it at a very young age, it could be argued that the LTTE has, in a certain sense, contributed to the construction of the LTTE women's gender as they reached adulthood. In many instances it has changed their moral values because they have had to adapt in order to satisfy the leaders of the forces they are part of, and who are mostly recognized in their parent's speeches since an early age. Their loyalty to their biological family is closely related with the new authority that

¹⁴⁴

Ibid.

they have joined. Indeed, if they had to break the relations to their biological families to protect them, they were raised in the admiration of the Tigers, the new family they joined.

According to Wessels, they become political actors for a purpose they do not understand fully because of their lack of political consciousness.¹⁴⁵¹⁴⁶ Killing becomes their way of achieving justice in accordance with what they have learned from their new “armed group” family; “*in Sri Lanka for example the families of young suicide bombers receive better homes and access to better jobs.*”¹⁴⁷

The relationship between the commanders and the young soldiers is one of clientalism; in Sierra Leone for instance, “*if you didn't join, they wouldn't feed you. If you left, the rebels would kill you.*”¹⁴⁸ In Nigeria, patrimonialism has dominated democracy because military rules are considered as a more legitimate way of maintaining an institutional order (especially in the army); “*through extreme obedience and unqualified veneration.*”¹⁴⁹

The “military fathers” would care for their devotees only under conditions of success in combat situation. It is a relationship of patrons and clients, where the rulers attempt to reach the interests of the masses by improving opportunities for the most reliable.¹⁵⁰ In war-time, a child who becomes a soldier can be considered as an extension of “*children's obligations to their families.*”¹⁵¹

In particular, the LTTE has imbued mortality with meaning, by emphasising that it is a child's duty to die for Tamil Eelam.

Balasingham describes Prabhakaran as a heroic child soldier who took up arms when he was sixteen, highlighting the notion that he is the triumphant spirit of the LTTE.

¹⁴⁵ Wessels, *Child Soldiers from Violence to Protection*, Harvard University Press, 2006.

¹⁴⁶ Op.Cit.145

¹⁴⁷ Bloom, *Bombshell, Women and Terrorism*, University of Pennsylvania 2011, Philadelphia.

¹⁴⁸ Murphy William, *Military Patrimonialism and Child Soldier Clientalism in the Liberian and Sierra Leonean Civil Wars*, *African Studies Review*, Vol. 46, No. 2 (Sep., 2003), pp. 61-87.

¹⁴⁹ Ikpe U.B., *Patrimonialism and Military Regimes in Nigeria*, *African Journal of Political Science / Revue Africaine de Science Politique*, Vol. 5, No.1 (June 2000), pp. 146-162.

¹⁵⁰ Theobald Robin, *Patrimonialism*, *World Politics*, Vol. 34, No. 4 (Jul., 1982), pp. 548-559.

¹⁵¹ *Ibid.*

Furthermore, Prabhakaran appeared as an inspiring figure because of his entire dedication to the notion of Tamil Eelam, as part of his military strategy¹⁵² was to increase child recruitment so that the children could martyr themselves for the Tamil cause. He once answered a young girl's question about her life in the aftermath of the LTTE struggle by stating that: *"At your age, your only focus should be fighting for Tamil Eelam and that's all you should think about."*¹⁵³

Prabhakaran's new ideal Tamil society was to make a slight deviation concerning the traditional gender roles which have dominated Tamil society and culture. For instance, it has been stated that, *"girls who martyr themselves receive a Heroes Welcome"*,¹⁵⁴ and that this martyrdom, in essence, creates a different meaning in life for women.

The attachment to the leader has encouraged the Tamil Community to get involved in the recruitment of child soldiers.

The Tamil community's love for Prabhakaran meant that the population was not discouraged from sending their children to war, as this provided the most appropriate future for the Tamil nation.¹⁵⁵ Moreover, the children of the Tamil Tigers were able to commit the worst atrocities because their social environment has taught them that it was for their own good and that it was a philanthropic step to satisfy their entire community and to protect their families. Inspired by the model of the other martyred children child soldiers in the LTTE have certified that they volunteered.

Females of the LTTE felt particularly safe within the movement as they did not have to adopt the traditional duties normally reserved for wives. They have instead chosen for the attainment of equality with their inspirational leader by becoming the Birds of Freedom of

¹⁵² De Silva Harendra, *The Use Of Child Soldiers In War With Special Reference To Sri Lanka*, Colombo Telegraph, November 5th, 2013 online <https://www.colombotelegraph.com/index.php/the-use-of-child-soldiers-in-war-with-special-reference-to-sri-lanka/>.

¹⁵³ De Soya Niromi, *Tamil Tigress, My story as a child soldier in Sri Lanka's bloody civil war*, Allen and Ulwin, Melbourne, 2011.

¹⁵⁴ Baker Ryan K., *Adolescents and War, How Youth deal with Political Violence*, Oxford University Press, 2009.

¹⁵⁵ *Ibid.*

the Tamil Eelam; “by all accounts women became leaders and key figures in virtually all aspects of LTTE activity.”¹⁵⁶ Nevertheless, the symbiosis between their path to independence as future adult Tamil women revival and their stand for enlightening the Tamil nationalist project cannot be linked together.

According to Cynthia Enloe, a gendered tension has emerged. This tension connects the contribution of women to achieve the national purpose and the cultural values which reject women. It could produce a radical new definition of the nation¹⁵⁷ as it is a path to the evolution of Tamil nationalism. Nevertheless, integration of women as equals as men cannot be heard as long as the Eelam has not been attained.

The Tamil Tigers have never considered their women combatants as women; “*the LTTE machinery was much like the human body. Prabhakaran was the brain who controlled all the organs with ruthless efficiency*”.¹⁵⁸ An important part of the guerilla’s efficiency was the control of the LTTE structures. The formation that was taught at school to the Tamil children which assessed the importance of war was integral to the LTTE strategy as their youth were considered “*as the very personification of the war*”.¹⁵⁹

This personification has become more pronounced by the engagement of women who have become the second symbol of the movement right after Prabhakaran’s illustration of the movement. As this concerns all Tamils, children ran away from home in order to defend their families. The LTTE has recruited around 42% of girls according to Human Rights Watch.¹⁶⁰ As it appears that some of the girl’s reports have shown their volunteer status,

¹⁵⁶ Weinberg, Eubank, *Women’s Involvement in Terrorism*, *Gen. Issues*, 28:22–49 Springer Science+Business Media, LLC 2011.

¹⁵⁷ Qadri I., *Boys Will Be Boys!*, *Gender and National Agency in Frantz Fanon and LTTE*, *Economic and Political Weekly*, Vol. 27, No. 31/32 (Aug. 1-8, 1992), pp. 1677-1679.

¹⁵⁸ Swamy, *Tigers of Lanka, From Boys to Guerrillas*, Konark Publishers, New Delhi, 1994.

¹⁵⁹ Sharika Thiranagama, *The Self at a Time of War in Northern Sri Lanka*, *Journal of Historical Sociology* Vol. 26 No. 1 March 2013.

¹⁶⁰ Human Rights Watch, *Living in fear, child soldiers and the tamil tigers in Sri Lanka*, November 2004 Vol. 16, No 13 (C) , <http://www.hrw.org/sites/default/files/reports/srilanka1104.pdf>.

some other new recruits seem to have been forced to enrol because of the LTTE threats to their families.

One interesting comment that can be relevant in the report is the testimony of one child who was obliged to recruit others for the sake of the LTTE “*They said to get people about fifteen years old, but with a build of a certain amount of strength. They said, “Don’t bring people who are married.”*”¹⁶¹ Children were mostly persuaded to act as adults without having the same rights; their inability to comprehend the dangers of war is apparent through the statements of their comrades; “*We do not need to marry. It is enough to fight for the liberation (vidutalai) and happiness of the people*”.¹⁶²

3.1.2- *The LTTE, ever-present in its combatant’s life*

The LTTE has imposed strict rules of conduct for their combatants; Prabhakaran has developed a strategy of conduct which addressed the problem of the intimacy of its combatants. The quality of their education in the few Tamil schools which had not yet been destroyed by their opponents welcomed some cadres of the LTTE as a part of the secondary socialisation of the future revolutionary children of the movement. The LTTE-became-the family that its members-had chosen to construct the appropriate Tamil society. LTTE men and women are connected by kinship relationship-where they refer to each other through Tamil nicknames such as “Thambi” which means little brother, “Akkha” which means little sister in order to eradicate any sexual dimensions and to emphasize-the purity of the movement. The inclusion of women could have been criticized by the civil society, Herath¹⁶³ states-that it has not been interpreted as “morally decadent” because of this language codification which has permitted a liberation of women in this army.

¹⁶¹ *Ibid.*

¹⁶² Trawick M., *Reasons for violence: A preliminary ethnographic account of the LTTE*, South Asia: Journal of South Asian Studies, 20:s1, 153-180, 1997.

¹⁶³ *Ibid.*

Miranda Alison has reinforced Herath's analyses by reminding that "*cadres are(...)highly disciplined and are forbidden alcohol, tobacco and sex (unless married)*".¹⁶⁴ The military family was functioning exactly like the traditional one except that trust is highly valued to avoid the movement's collapse. Prabhakaran has strictly forbidden romances until he fell in love himself and if love was not the first ideal of the Tamil combats, it was a way to honour the Tamil emotional culture "*a Tamil in a Tamil nation was a person with vTram (valor) and mdnam (honor)*".¹⁶⁵ Sen has stated that education was central to instil the idealistic notions which have contributed to the evolution of one's society¹⁶⁶ because one of the main purposes of education is the inculcation of values which reinforce "*the feeling of patriotism and commitment to the nation.*"¹⁶⁷

The Tamils of Sri Lanka have experienced wars for decades; people were potentially prepared to become a part of the LTTE, their claims were their nation's claims and the camps where they got their military training was the prolongation of their childhood at school where the LTTE came at the early stage of the militancy to discipline the minds of their children; this evolution disciplined not only their minds but their bodies as well.

Militarisation *denormalises* certain behaviours through an institutionalisation of characteristics inherent to the human being; the inherent violence of humans is channelled. Nevertheless, The LTTE has decided to preserve few Tamil social values by reducing the perversion that some can feel while participating in war; through the mandate that any activities practised by women should suggest chastity.

However, if the regulation of sexual activities in the LTTE movement is crucial, some other rules were initiated by the leaders: the LTTE has interfered in the private sphere of its combatants by imposing specific "armour". This armour has combined Tamil moral values

¹⁶⁴ *Ibid.*

¹⁶⁵ Price Pamela, *Revolution and Rank in Tamil Nationalism*, The Journal of Asian Studies, Vol. 55, No. 2 (May, 1996), pp. 359-383.

¹⁶⁶ Sen A., *Civil paths to peace*, Report of the Commonwealth Commission on Respect and Understanding. London, England : Commonwealth Secretariat, 2007.

¹⁶⁷ Hayes David, *Duty and Service: Life and Career of a Tamil Teacher of English in Sri Lanka*, Brock University St. Catharines, Ontario, Canada, TESOL QUARTERLY Vol. 44, No. 1, March 2010.

within the Tamil combatant's appearance. The LTTE imposes an androgynous dress code. It is required that the females cut their hair short so that they can be identified in public, and also so they do not provoke an unwanted sexual attention. In order not to provoke any kinds of intolerable desire they reproduce what illustrates their society; the Tamil Tigers organised weddings according to the arranged marriage principles eventually. One of the other rules they have to respect is patience; they have the right to get married after 5 years of services within the LTTE. "*Marriage ceremonies are conducted by a special unit of the LTTE set up for civil ceremonies*";¹⁶⁸ the LTTE military society has an impact on the future civil life of their soldiers. Indeed, their intern policy withdraws their members. They do not have any escape; they were obliged to learn behaviours reconfiguring them.

This learning process contributed to the adaptation to orders of the military. This had an influence not only on their own-self evolution in the military fighting areas but it transformed them for their "proper life", outside war, as well.

"*We Tamil women can achieve anything. The LTTE has given [us] courage, inner strength, confidence, and helped us to grow.*"¹⁶⁹ By imposing their vision of the society through ethical and military training, the LTTE have established "*patterns of behaviour*".¹⁷⁰ The LTTE has interfered in private sphere of its combatants by encouraging them to be separated even from the Tamil Society itself as new and better humans" because of their full impregnation into the movement. Any contact with relatives outside the movement was prohibited. The LTTE's code of conducts—violation could lead to some of the worst sentences, Swamy¹⁷¹ describes it as a "*mess duty to demotion in ranks*", some reports have collected testimonies showing that people who have been recruited and tried to flee could be shot or severely punished.

¹⁶⁸ Dilshika Jayamaha, *Partners in Arms: LTTE Women Fighters and the Changing Face of the Sri Lankan Civil War*, thesis online 2004.

¹⁶⁹ *Op.Cit.*

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

It is interesting to note that the cadres who got married if they succeeded to escape were not the main concern of the LTTE anymore, the preoccupation being addressed to the youth able to die for them without consequences of family's anger.¹⁷² Indeed, "*the cyanide capsule tied around the young girls neck was equated to the tali (necklace signifying marriage) the sign of a metaphorical marriage to the movement or to the leader,*"¹⁷³ a wedding outside this principle is considered as a betrayal. This predestined life is the only way-out for certain members who have suffered loss and cruelty, it has consequences on the way of anticipating life as such; the celebration of death rather than life is the first step.¹⁷⁴

According to Alison,¹⁷⁵ women wanted to re-shape their place in society;¹⁷⁶ this could legitimate the appearance of women's forces. Some of them had more intimate reasons to join; this has been used as propaganda as well by the LTTE. One of the main reasons was the support to the families.¹⁷⁷ The vicious circle of poverty, and discrimination at school and all the reasons that we have seen were pushing people to commit in the violence of the LTTE. But another reality has transformed the reality of those women. Beyler¹⁷⁸ has perhaps too promptly suggested that rape and the impact of families encouraging rape victims to sustain the struggle as suicide-bombers as the only "*redeeming option left*" were reasons for liberation from men's oppression. Their behaviour in suicide-operations has been made more acceptable because they seek revenge making the Black Tigers operations, suicide-bombings as more humane and so almost acceptable to the world at large.¹⁷⁹ However, as we have observed in the previous chapter, this reductionist approach could be

¹⁷² *Ibid.*

¹⁷³ Sumathy 2004 quotes in Pieris Anoma, *Between the home and the world in violent conflict*, Gender, Place & Culture: A Journal of Feminist Geography, 2012.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ Beyler Clara, *Messengers of death : female suicide-*

bombers, ICT Researcher, 2003, <http://212.150.54.123/articles/articleDet.cfm?articleid=47>.

¹⁷⁹ Gunawardena A., *Female Black Tigers: A Different Breed of Cat?*, Tel Aviv, Jaffee Centre for Strategic Studies, 2006

interpreted as a propaganda tool legitimizing the movement around the world through a feminist desperate attempt to denounce the atrocities of the Sri Lankan Army against the Tamils. This justifies additionally the control implemented by the LTTE over its members which is eventually “*a veritable crucible of death*”.¹⁸⁰ By controlling the relationships which are distant between men and women of their groups, by imposing thoughts which could not go against their organization and eliminating those who dare to oppose or run away from the LTTE, the political movement depreciates the self-consciousness of its members. This creates a dependency to the armed groups as its members, and especially women, owe them everything. Indeed, by enlisting, the participants were ensuring that they had a refuge, and that their families could be protected. Additionally, they also gained the recognition that was synonymous with being a Tamil soldier who was fighting for the sake of the nation.

Everything was under the control of the LTTE in Jaffna areas. The society and especially the cadres of the LTTE are taught to not be embroiled in any kind of “*bad habits*”.¹⁸¹ For instance, the image of purity and virginity attributed to women was the virtuous symbol of the Tamil movement. Those habits control have consequently stimulated an emotionless behaviour which caused the focus of the Sri Lankan civil war to be centred around the celebration and the honour of death, rather than preserving Sri Lankan lives. This implies that the combatants adopted a heroic-robotic attitude.

“*The warriors believe killing is a job that must be done without involving the emotions, whether negative or positive*”.¹⁸² This ascetic attitude has resonated with the Tamil martyrs who have or would enlighten the movement with their own sacrifice allowing the “re-

¹⁸⁰ Roberts Michael, *Towards Citizenship In ThamiliLam: Sri Lanka'S Tamil People Of The North 1983–2010*, South Asia Research 2013 33: 57.

¹⁸¹ Cristiana Natali, *Building cemeteries, constructing identities: funerary practices and nationalist discourse among the Tamil Tigers of Sri Lanka*, Contemporary South Asia, 16:3, 287-301, 2008.

¹⁸² Hellmann-Rajanayagam D., *And heroes die: Poetry of the Tamil Liberation Movement in Northern Sri Lanka*, South Asia: Journal of South Asian Studies, 28:1, 112-153, 2005.

purification”¹⁸³ after sexual abuse; the rejection they could have experienced alive is transformed in honour because of their selfless act for the nation.¹⁸⁴ It will be considered as a death of circumstances liberating the violated woman from the oppression of her “dirty body” which was in opposition with the name itself of the female’s combatants units; “armed virgins”.¹⁸⁵ The Tamil teenagers are mostly soldiers who cannot succeed in their adult life because of some traumatic experiences;¹⁸⁶ “*a typical Tigress unit might consist exclusively of women aged between 16 and 22, and many Tigers, male and female, are even younger. This is partly a reflection of the toll the war has taken on older Tamils, but it also reflects the ease with which the young have been harnessed to what has become the Tamils' most terrible weapon: fanaticism.*”¹⁸⁷

The Tamil society as a whole was alienated to the Tigers but the involvement was different from one individual to another. Arasi, one of the case studies of Herath, has stated that the movement “*has high moral values and is a very sweet family.*”¹⁸⁸ Balasingham refers to females who might appear as women of “*bad character*”¹⁸⁹ as those who might have compromised their chastity and despite her critics concerning the Coomaraswamy reports, she cannot deny that “*the armed virginal woman cadre ensures that this notion of purity, based on denial, is a part of the social construction of what it means to be a woman according to the world view of the LTTE.*”¹⁹⁰

¹⁸³ Schalk Peter, *Historisation of the Martial Ideology of the Liberation Tiger of Tamil Ealam (LTTE)*, South Asia : Journal of South Asian Studies, 20(2), December 1997, 35–72.

¹⁸⁴ Somasundaram Daya, *Suicide Bombers of Sri Lanka*, Asian Journal Of Social Science Volume: 38 Issue: 3 (2010-01-01) p. 416-441. ISSN: 1568-4849.

¹⁸⁵ Ness Cindy D., *In the Name of the Cause : Women's Work in Secular and Religious Terrorism*, Studies in Conflict & Terrorism, 28:5, 353-373, 2005.

¹⁸⁶ Brun Catherine, *Young People, the LTTE, and Representations of Gender, Nationalism, and Governance in Northern Sri Lanka in Birds of freedom*, Critical Asian Studies, Volume 40, Issue 3, 2008.

¹⁸⁷ McGirk Tim, *Boys and girls come out to die*, Independent Sunday 26 February 1995, online consultation on May 25th, 2014, <http://www.independent.co.uk/arts-entertainment/boys-and-girls-come-out-to-die-1574916.html>.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ Coomaraswamy Radhika, *Tiger Women and the Question of Women’s Emancipation*, Pravada 4/9, 1997

The Armed Virgins had almost no social interaction with their male counterparts; furthermore, the LTTE has officialised its sexual control by burning pornographic films after the 2002 ceasefire¹⁹¹ and by its progressive steps to marry cadres among them to indicate their approval to the persons themselves. LTTE unions are submitted to the Central Committee which will decide on the date of marriage, however the girl has the “choice” to reject the proposal if she does not want to get married to her male counterpart.

The LTTE can take two advantages of those free choices; first of all, the female cadre who would decide to have a family life will extend the Tamil Tigers circle but, if another woman would prefer to continue to fight in the LTTE, they would then ensure the continuation of its military activities and their efficiency. Finally, the strict code of conduct initiated by the LTTE for its members is the result of an allegedly more ambitious project of social reproduction inside the new LTTE society.

3.1.3- Internal policy of armed groups/terrorists, a possibility to “condemn the control”, especially for women?

In the few cases that we have studied in chapter 1, the re-domestication of the bodies through codes of practices which impacted the behaviour inside armed groups have resulted in an elevation inside a new sphere of the military society. Elisabeth Jean Wood¹⁹² has decided to study further the case of the Tamil Tigers where sexual connotations have been constrained to a pre-supposed purity of the armed group.

During times of war, women are often considered as sex objects. Sexuality has often being reduced to violence during conflicts as it has been used as a “weapon of war”¹⁹³ to avoid this “blunder”, military brothels have been implemented to escort soldiers and stimulate

¹⁹¹ Thambiah Yasmin, *Sexuality and Sex Work under Militarization in Sri Lanka, Gender and Society*, Vol. 19, No. 2, Gender-Sexuality-State-Nation : Transnational Feminist Analysis (Apr., 2005), pp. 243-261.

¹⁹² *Ibid.*

¹⁹³ Kirby Paul, *How is rape a weapon of war? Feminist International Relations, modes of critical explanation and the study of wartime sexual violence*, European Journal Of International Relations Volume: 19 Issue: 4, p. 797-821. ISSN: 1354-0661, 2013.

them by physical contacts.¹⁹⁴ According to some authors, this authorization of sexuality paid by the military institution could help to avoid violent sexual behaviour against civilians or their women's comrades due to frustration.¹⁹⁵

The Tamil Tigers have privileged chastity of both females and males soldiers and marriages after 5 years of combats only. Marriages, as we will explore in chapter 4, would allow sexual relations - but if an investigation needs to be made, we could expect first sexual intercourses with frustrated combatants to be violent. El Qaderi has focused on Morocco and the colonisation process which has allowed rape through weddings as it would not usually be considered as "rape" in this legal union.¹⁹⁶ Surprisingly, the Tamil Tigers, for the virtue of their movement, the PKK, certainly for the same reasons and other armed groups with a sense of moral duty to legitimize their force abroad, have rejected the sexual potential force which is allowed at war as we have demonstrated in chapter one. Sexual choices of women are particularly affected in this kind of organization but the sexual activity of men is also compromised.

The sexual behaviour of women defines their identity and also their social, economic and cultural arrangements.¹⁹⁷ The liberation of their identity might be transformed; however their sexual autonomy is still under control. Men who do not participate in sexual intercourse during wars might illustrate the existence of "lust rapes" and "evil rapes" defined in Baaz and Stern's approach, to compensate for this lack of intercourse: "*physically men have needs. He cannot go a long time without being with a woman. It is*

¹⁹⁴ Fargnoli Vanessa, *Viol(s) comme arme de guerre*, Questions contemporaines Défense, armée, sécurité, droit, justice, questions de genre, L'Harmattan, Mars 2012.

¹⁹⁵ Poulin Richard, *Le système de la prostitution militaire en Corée du Sud, en Thaïlande et aux Philippines*, Le Bulletin d'Histoire Politique, volume 15, n°1, automne 2006, p 81-92.

¹⁹⁶ El Qaderi Mustapha, *Femmes des Bordels Militaires de Campagne. Les BMC de l'armée coloniale française au Maroc*, BNM, Rabbat, 2009

¹⁹⁷ Tambiah Yasmin, *Sexuality and Women's Rights in Armed Conflict*, Reproductive Health matters, Vol.12, N°23, Sexuality, right and social justice, May 2004.

really difficult to stop him".¹⁹⁸ This statement is interesting for our case study, due to the fact that Prabhakaran fired one of his comrades and a woman for having hidden their pre-marital sexual relations.¹⁹⁹ It is described that when a romantic relation started in the LTTE, the lovers were watched, and that the LTTE could not tolerate any forms of "bad behaviour". Tambiah²⁰⁰ has reported the story of one woman who was killed because she had sexual relations with men: "*she was shot by a LTTE cadre (...) because she was a "loose" woman*".

The violence to preserve the dignity of one society by delimiting each element of sexual interactions might have led to the emergence of emotional violence. The Colombian paramilitary procedures did not differ much from the LTTE manipulative strategy concerning its women except that the moral behaviour concerning sexuality is not legalised through weddings but through sex work to relieve the military.²⁰¹ "*Male military policy makers – uniformed and civilian – have [tried] to control women in order to achieve military goals*".²⁰² This over militarisation of the combatants' lives has transformed their perception of the global reality to their narrowed armed group's new normality. For example, in Sierra Leone, marriages are seen as "*a strategy for minimizing sexual violence*".²⁰³ Armed groups have specific systems of codification: chastity is used to emphasise the promiscuity of the deviant women in the LTTE and as a privilege, almost a gift given to soldiers who have suffered sexual abstinence during wars and could eventually

¹⁹⁸ Stern and Eriksson Baaz, *Why do soldiers rape? Gender, Violence and Sexuality in the DCR armed forces*, Gotteborg university, Volume 1, Issue 2, Report of the International Conference, Progress Challenge and Opportunities, Peace and Conflict Management Review, 2008.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ Estrada A., Ibarra C. and Sarmiento E., *Regulation and control of subjectivity and private life in the context of armed conflict in Colombia*, Community, work and family, 10:3, 257-281, 2007.

²⁰² Enloe Cynthia, *Maneuvers: The international politics of militarizing women's lives*, University of California Press, Berkeley, CA, 2000, p. 37.

²⁰³ Marks Zoe, *Sexual violence in Sierra Leone's civil war : 'virgination', rape, and marriage*, African Affairs, March 2013

choose a woman to make her “bear a child (...) who will be, in turn, ready to die for the nation”.²⁰⁴

The regulations during the armed conflict of the Lord’s Resistance Army in Uganda can also reflect the situation of the LTTE because of the breach of the norms which have resulted in an imposed punishment for the transgression of rules concerning rape, sexual violence and sexual relations inside the group itself.²⁰⁵ According to Baines, at the end of the war, the impact of the armed groups on conjugal relations has fostered order and loyalty due to the fact that “*the regulation of sex was used as a measure to reinforce boundaries of national purity*”. As opposed to the Tamil Tigers who have reintegrated raped women in their suicide units, the LRA killed the ones who could corrupt the well-being of their political project. The purity or high moral standards which are promoted by armed groups as a protective measure for their women suggests an impure hypocritical mirror of the organization by legitimizing a desire through legal means.

The military behaviour which has been inculcated to FPS in particular has obscured their judgment concerning the primitive masculine typical reactions and if less apparent, the male’s performance in affecting the military life of woman is real. In the LTTE for instance, Alison²⁰⁶ reveals that women appropriate their dress to satisfy men and prevent the males from their intolerable desires at war. LTTE cadres cannot stand the violation of the “*strict moral-sexual imperative, sex workers, real or imagined, may even be murdered with impunity as Tamil society's moral contaminants*” affirms Tambiah.²⁰⁷ But the recruitment from an early age avoids the confrontation of the young girl soldiers with lubricity;

²⁰⁴ Das Vinas, *Violence, Gender, and Subjectivity*, Annual Review of Anthropology, Vol. 37 (2008), pp. 283-299.

²⁰⁵ Baines Eric, *Forced marriage as a political project, Sexual rules and relations in the Lord’s Resistance Army*, Liu Institute for Global Issues, University of British Columbia, March 2014.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

however it does not prevent them from being the objects of desire of the community where they grow up.

3.2.- An indirect way of grooming without any references to the crime

McAlinden explains that some of the LTTE's sexual offenses cannot be perceived and further describes that grooming is "*the preparatory stage of sexual abuse*".²⁰⁸ Her consideration concerning the abuse of trust where local communities and families can easily be manipulated through the biased apprehension of their criminals applies to the LTTE case. Indeed, if she establishes a canvas of the risks that children can face online, I propose that there is an apparent need to look at a conflict where sexual abuse has not been proven. Indeed, the Tamil Tigers have made chastity as one of their main characteristic and in the Sri Lankan war, sexual abuses seem non-existent amongst the LTTE. It was emphasized by the desire of the organization to reach moral prosperity. Although "*our emotional logic tells us, something is clearly and profoundly wrong when children are soldiers*",²⁰⁹ the Tamil Tigers thorough techniques facilitating compassion to their nationalist purpose have succeeded in making the children's enrolment more acceptable. As we have seen in several studies and which is again emphasized by Becker quoting the UNICEF report; "*more than 40% of children recruited by the LTTE are girls*".²¹⁰ The Tamil culture has always preserved women as the symbol of virtue; by joining, the female youngster soldier conveys the impression of being more protected or having the possibility of making amends in case she has been confronted with any kind of abuses.

²⁰⁸ McAlinden Anne Marie, *'Setting 'Em Up': Personal, Familial and Institutional Grooming in the Sexual Abuse of Children*, Social & Legal Studies 2006 15: 339.

²⁰⁹ Rosen David M., *Armies of the Young, Child Soldiers in War and Terrorism*, Rutgers University Press, London, 2005.

²¹⁰ Becker Jo, *Sri Lanka, Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka*, Human Right Watch, November 2004, Vol.16, n°13.

Affected by discourses pronounced by the Tamil Tigers²¹¹ and by their parents admiration for them, children were psychologically prepared during the “*first phases of their socialization*”²¹² to become pro-LTTE. The Tamil Tigers are not only the “saviours of their motherland” but people who inspire trust. Many under age combatants who have made their own choice to participate in war have been influenced by their experience of suffering. The LTTE appears as fully dedicated to the cause and as those to whom the Tamil community owe their lives. This feeling of dependence is one of the main steps of offenders also known as the “*emotional seduction*”.²¹³

This seduction consists of 5 stages defined by McAlinden, the first one being the use of a variety of manipulative and controlling techniques.

As we have studied, the promise of living a better life within the LTTE and a better life for the relatives outside the conflict zone is the main points which convinced them to join. The LTTE offered the expectations of being rewarded for the accomplishment of the national duty especially if it involves dying for the cause. Identifying the Tamil Tigers procedures is easy; their code of conduct ruling the movement was taught to impose a strict discipline. This process was not only used to control their soldier’s comportments on the battlefield but it was also meddling in the intimacy of the soldiers through a “sexual repression” approach. The latter has particularly proved to be an essential part of the manipulative and controlling strategy of the LTTE.

The second condition is the interaction with a vulnerable subject and we have assessed that most of the females recruited were extremely young, if not, they were widows and devastated by the conflict situation. The oppressive policies initiated against them and their families were discriminatory.

²¹¹ IRB - Immigration and Refugee Board of Canada, *Student Organization of Liberation Tigers (SOLT); mandate; recruitment; relationship with the Liberation Tigers of Tamil Eelam (LTTE)*, 09 August 1999 (verfügbar auf ecoi.net) http://www.ecoi.net/local_link/185389/303024_de.html (Zugriff am 13. Juni 2014).

²¹² Tremoulinas Alexis, *État des lieux sur la socialisation*, Observatoire sociologique du changement, (fnsp-cnrs, umr7049), 2010.

²¹³ *Ibid.*

Another condition is the seduction which has to occur in a range of inter-personal and social settings as well, the LTTE have controlled the entire familial environment replacing the real family with the new military family. This new military family was able to provide support to those who were willing to be fully dedicated to the cause. Fourthly, in order to establish trust or normalise sexually harmful behaviour, the LTTE have obliged their soldiers to stay chaste; nonetheless, this apparent purity and control of sexuality outside legal norms between two “lovers” could legalize a sexual interaction which is not fully agreed between the 2 partners. Surely, the non-comparison and lack of points of reference outside the LTTE transforms sexual consent as a compulsory one for a woman who has to be submitted to the fatality of her situation.

Legalizing relationships by initiating weddings which conform with cultural norms does not provide evidence of other forms of sexual exploitation or abuse. For instance, domestic violence would not be submitted to the LTTE authority anymore. It leads to the final stage of the emotional seduction, preventing the control exercised by the LTTE facilitate exploitation of the new brides. The exposure of the lovers is prohibited by the LTTE when they are not married but the norms imposed do not apply anymore and it does not required the authority of the organization to scrutinise married couples anymore.

This resembles “*the betrayal of affection*”²¹⁴ but without techniques having included any sorts of physical contact previously to prepare the “*Armed Virgin*” to her new sexual life. But “*the atmosphere of normality or acceptance*” is already designed. If the future victim had the possibility to say no to the proposal; saying yes did not mean that a good wife is prepared sexually speaking.

Their rationality is codified through the judgement of their future husband as a way of continuing the fight for Tamil Eelam without the obligation to die for it anymore but it

²¹⁴ *Op.Cit.*

might imply a new form of sexual violence which has not been explored; namely a contradictory status of “rape by consent”. This statement, if not entirely true because of terms which are by definition opposed, assesses the manipulative exploitation of LTTE girls’ sexuality easily explored through their ignorance concerning the matter. The fear of sexual violence appeared when the IPKF intervened in Sri Lanka, by the redemption that the LTTE offered, the opportunity to become someone has conferred to the LTTE a legitimate reputation for their females. Yet, Wood²¹⁵ found few cases where the LTTE cadres might have raped some of their girls which was justified by the girls’ attempts to flee. But the cases are so few that we cannot generalize it. She explains that “*domestic violence, including spousal rape, is common*”. The lack of awareness concerning this type of sexual violence is due to the feeling of safety within the organisation.

The LTTE has structured its soldier’s sexuality but the sexual norms fixed by the movement do not apply while married. The so-called “protection” exercised by the armed group is shattered as soon as women are “not entirely faithful to the “movement only” anymore. Moreover, the legality of relationships cannot have any effects to the LTTE values regarding international eyes on the organization. They become the prey of their alleged secured environment.

The glorification of the cadre engagement with whom they could marry and their disciplined identity condemn them to misunderstandings of their situation; “*the involvement of dependent, developmentally immature children and adolescents in an armed conflict that they do not truly comprehend, to which they are unable to give consent, and which adversely affects their right to unhindered growth and identity as children.*”²¹⁶ The Tamil Tigers husbands could be considered as predators that were prepared for many years for their sexual “gift” allowed by their highly controlled organization. In somehow, giving wives to the LTTE cadres permit to not collapsing their moral standards. Indeed, domestic violence would not have any consequences on the LTTE itself; we will give an overview of

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

the law applicable to child soldiers at war and then, their vulnerability will help us to discover a new form of crime.

3.2.1- *Child soldiers, just and unjust legal rules at war*

Non-state armed groups are prohibited to use any child soldiers under the age of 18 under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. However, the reality shows that children know war and if unfortunate, experience it. The child is defined by the Convention on the Right to Child as “any person under the age of eighteen years old”. The article 8 of the Rome Statute of the International Criminal Court War crimes states that “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities is classified as a war crime” (Article 8(2)(b)(xxvi)) deepening the Article 4(3)(c) of the Additional Protocol II applicable to non-international armed conflicts, stating that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”.²¹⁷

Speaking of child soldiers, the general focus is on boys. However as Wessels²¹⁸ has demonstrated “girls soldiers are exploited in all the ways that boys are and carry the added burden of gender-based violence”. Mature girls of the LTTE might have become damaged because of several points; “children are exempt from adult sexuality (...) children cannot give informed consent for sex with adults (...) they cannot appreciate fully what it means.”²¹⁹ Girl soldiers of the Tamil Tigers were involved in the same actions as adults and were able to martyr themselves but they were not prepared equally to endure the reality of marital life, in the eventuality that they survived and were not suitable to perform what is described in the Tamil poetry as the “ultimate act”. Therefore, “in Sri Lanka, forced sexual

²¹⁷ Zerrougui Leila, *International Standards*, UN Secretary-General, Child Soldiers International, in July 2012, http://www.child-soldiers.org/international_standards.php.

²¹⁸ *Ibid.*

²¹⁹ Garbarino, Kostelny and Dubrow, *No place to be a Child, Growing up in a War Zone*, Lexington Books, Foreword by Liv Ullman, Toronto, 1991.

*intercourse in marriage is not criminalised in law,*²²⁰ but the rules which applied to the movement itself controlling unacceptable behaviour by ferocious sentences does not apply to the legal couple.

Girls' testimonies concerning marriages show a desire for celibacy but also an idealistic vision of the male cadres of the LTTE compared to males of the civil society. Describing their cadres as unique in doing any tasks in the house, the pubescent soldiers idealise their future husbands with the certitude that all will remain the same once married. This naivety turns out to be innocence; *"innocence makes you vulnerable, badly in need of protection, which is one reason adults like it to be in others"*.²²¹

3.2.2- *Grooming, a particular term and a new tendency specific to the LTTE*

Whereas grooming has been explored mainly through internet and pornography to precipitate an abuse, this research focuses on offenders at war who are often guided by a charismatic leader such as Prabhakaran to create an atmosphere of trust among its members and in our case especially with FPS.

Those young women are also affected by the transformation of their bodies during war even if, as we have referred to in chapter 2, it does not have consequences on male desires as their asexual position through the way they dress or the way they act on the field do not distinguish them from men. According to the Network of Communities Activities *"generally [grooming] can be seen as the process by which an individual manipulates those around them – particularly, but not exclusively, the child – to provide opportunities to abuse and reduce the likelihood of being reported or discovered."*²²² The Tamil Tigers

²²⁰ Sepali Kottegoda, Kumudini Samuel, Sarala Emmanuel, *Reproductive Health Concerns in Six Conflict-Affected Areas of Sri Lanka*, Reproductive Health Matters, Volume 16, Issue 31, May 2008, Pages 75–82.

²²¹ Kincaid quote in Ost Suzanne, *Child Pornography and Sexual Grooming, Legal and Societal Responses*, Cambridge Studies in Law and Society, Cambridge University Press, 2009.

²²² Network of Communities Activities, *Protecting Children from Sexual Harm, a fact sheet on sexual grooming* online http://www.netoosh.org.au/pdf/sexual_grooming_factsheet.pdf.

willingness to anticipate their weddings is not clear. However, the girls who have grown to adulthood in the organization have been close to them when they were “maturing”. The cadres have waited a long time to fulfil their sexual desire with the young girls they were seeing throughout the years of service in the organisation. The affection that the girls have for their comrades-in-arms can arbitrate the fact that the Tigers have prepared them to be sexually abused legally. On the other hand, we cannot compare the civil war environment with a normal one. Hence we could not qualify the Tamil Tigers as sex offenders per se.

The circumstances, if it makes the future assault no less intolerable, leave place for suspicions regarding the group’s intentions concerning those girls. The difference with a sex offender who can already initiate proximity with children is the recruitment phase during war time. The Tamil Tigers who cannot, or with extreme difficulty, desensitise the girls through not only touching but conversing with them is almost prohibited. The vulnerability of the children affected by war is not one of children in peace time. “*Grooming is a well-organised long-term activity*”²²³; a sex offender would dedicate few months in order to target his or her victim, however people of the armed group would not generate a targeting plan. Their project is, indeed, integrated into the normalcy of the group and widely known. Childhood innocence is preserved regarding sexuality in armed groups such as the LTTE as sexual allusions procure awkwardness for those who have to talk about it. Researchers have noted the silence or laughs occurring especially when girls were interrogated. The sexual offender uses other sexual care-taking and behaviours to catch vulnerable children with obvious tactile strategies and by “*eroticizing*” his target through normalizing pornography, sharing inappropriate secrets, strokes.²²⁴

The Sexual Offence Act, UK, 2003 has clearly given a status to grooming as a sexual offence. Still, number of psychologists do not agree with its definition; the term is used “to

²²³ Sanford L.T., *The silent children : a parent's guide to the prevention of child sexual abuse*, McGraw-Hill, 1982.

²²⁴ *Ibid.*

describe a wide range of behaviours, and furthermore, that each definition, description and theory varies in the types of behaviours, settings and/or circumstances that constitute sexual grooming.”²²⁵

Gaining access to the FPS was easy due to the circumstances at war; the proximity to the male commanders and cadres through the unquestioning idolisation of the defenders of the Tamil nation and the respectful distance created to avoid suspicion of fervour hides the sexual intent.

Sexual grooming is defined by Craven and others as “*a process by which a person prepares a child, significant adults and the environment for the abuse of this child. Specific goals include gaining access to the child, gaining the child’s compliance and maintaining the child’s secrecy to avoid disclosure. This process serves to strengthen the offender’s abusive pattern, as it may be used as a means of justifying or denying their actions.*”²²⁶

The secrecy may apply in the LTTE only if a soldier defies the rules in case he would be killed or tortured if discovered. In the book where Niromi de Soyza tells her story, her meeting with an influential cadre of the LTTE surprised her; he knew her real name whereas the LTTE were giving them war names in order to not be recognized. She states herself “*I was baffled. How did he know my real name? I did not realize then that he had known everything about me for nearly couple of years.*”²²⁷ This intrusion in the lives of potential members of the LTTE who might have not joined yet is a common practice of the abuser.

However, Tigers were not paedophiles. This is because “*feeling sexual attraction to children*”²²⁸; is due to war and sexual deficiency, and children are not an object of fantasy in the first place. According to Ost, their life experiences contribute to their predatory actions; someone who abuses a child “*may also be led to offend because of negative emotional*

²²⁵ Craven Samantha, Brown Sarah and Gilchrist Elizabeth, *Current Responses to Sexual Grooming: Implication for Prevention*, The Howard Journal Vol 46 No 1. February 2007 ISSN 0265-5527, pp. 60–71.

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ Oxford Dictionary and Thesaurus, 1997, Oxford University Press.

states including anxiety and loneliness” and more particularly in the military where conscripted children mature too fast because they have to face the atrocious reality of war.²²⁹

If the *“notion of childhood innocence is itself a source of titillation for abusers”*,²³⁰ childhood during war is even more compromised, the two terms already opposing themselves by definition. A child is *“a young human being below the age of puberty or below the legal age of majority”*,²³¹ he is not a *“short adult”* as suggested by Gabarino.²³²

War is opposed to this definition of a ‘child’ in the sense that the first implies revival, the other implies destruction. In a poem,²³³ a 16 year old child of war describes her feelings in Vietnam. It describes losing her rightful innocence because her war experience has left traces on her body and in her mind. Nevertheless, innocence is still present or hoped when she pronounces *“I am sorrow because of the people who can’t use me rightly”*. The adult influence which is meant to guide the child until the end of childhood is confirmed through this poetic prose. Children realise that they are used because of their age but assess that they are not *“used rightly”*. Child soldiers realize their evil side but cannot escape because they are not mature enough to assert their independence from the military structure which has raised them.

Sexual grooming associated with armed groups is a mass phenomenon which has been constructed collectively; the consequences of sexual psychological damage on the girl soldiers who have been groomed by those they trusted is extremely difficult to prove. We can use the technical term employed by Mavridis and Michalopoulos of *“deceptive relationship indicating the deceptive relationship that the predator tries to establish with*

229

Ibid.

230

Ibid.

231

Oxford Dictionary online.

232

Ibid.

233

Annexes.

the minor, and are preliminary to a sexual exploitation attack”²³⁴ to classify the type of grooming the LTTE has adopted on its “*Armed Virgin*”; it would be then more of an instinctive initiative of survival rather than a calculated one which would be appropriate for the paedophiles. As we want to reiterate, the LTTE or combatants who groomed their girl soldiers are not necessarily categorized as war paedophiles. The entire group is not necessarily fully aware of this organised sexual crime but could anticipate it due to the long implementation of one relationship and its rigorous structuring by the other members. We could call it “*a luring trap*”²³⁵ where the males have to face their own deficiency and girls who were put on the same equals footing than the other cadres have to return to another form of submission.

Gender dominance has never totally disappeared; the existent literature on the Tigers has often shown the veneration for the people of the groups through their women’s eyes.

Sexual grooming is a sexual offence under national law in the United Kingdom²³⁶ but a better approach of those laws internationally is necessary. Indeed, grooming is generally criminalised for its results rather than for the act itself.²³⁷ It would be necessary to enforce and “harmonise” laws internationally. In France, for instance, sexual grooming is a notion which does make sense. The sexual predator for the French criminal justice is someone who has already committed the crime²³⁸; they are not sexual predators then but sexual

²³⁴ Michalopoulos D., Mavridis M., *Utilizing Document Classification for Grooming Attack Recognition*, Department of Applied Informatics, Thessaloniki, Greece, 978-1-4577-0681-3/11, 2011.

²³⁵ Staik Atheina, *Eroticized Dominance – Emotional Grooming, Predatory Behaviors As Cultural Norms?*,

NeuroScience and Relationship, PsychCentral Blog online, 2011. <http://blogs.psychcentral.com/relationships/2011/10/eroticizing-dominance-grooming-sexual-predatory-behaviors-as-norms/>

²³⁶

The Crown Prosecution Service, *S15 Grooming*, January 2013, online consultation on June 5, 2013, http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/s15_grooming/.

²³⁷ Gillespie Alisdair A., *Responses to Child Solicitation/Grooming*, De Montfort University, UK.

²³⁸ France Soir online, *Quelle prise en charge pour les prédateurs sexuels ?* Faits Divers, France Soir, 2011, <http://www.francesoir.fr/actualite/faits-divers/quelle-prise-en-charge-pour-predateurs-sexuels-152166.html>.

criminals. The coordination internationally could be great concerning sexual grooming to target the potential offender and to act before it will be too late; it should be imperative to condemn it under international criminal law as the victims are children or adolescents.

Protecting FPS at war in their own armed group from grooming which could lead to sexual exploitation in their marital life should be condemned as a sexual war crime; they should be protected from the “*lowest common determinant*.”²³⁹ The lack of sexual explicit conduct has not been further explored in international law unfortunately. Nevertheless, it has led to what we have defined as “*rape by consent*” which is a real danger for the victim comrades of the Tamil Tigers. “*Sexual assault has been included as a crime against humanity and as a war crime in the statutes of the ICTY and the ICTR*”;²⁴⁰ the preparation for a sexual assault should be equally qualified because the consent is provoked rather than agreed.

In the next chapter, we will compare different forms of sexual violence and argue that sexual grooming should be recognized as a current practice of war within armed groups, and that furthermore, this sexual predation should not remain unpunished.

²³⁹ *Ibid.*

²⁴⁰ The Advocates for Human Rights, *Sexual Assault During Armed Conflict*, Stop violence against women, online 2013, http://www.stopvaw.org/sexual_assault_during_armed_conflict.

III- Part II: Gendering Justice; reparations, fighting against a new form of sexual crime used during war

4- Chapter IV: An unqualifiable crime: assessing an unknown war crime and its consequences

This last chapter assesses why armed groups should be held accountable for the recruitment of child soldiers in a stricter way as their recruitment can be perceived as a sexual trap. It will deal with different forms of sexual violence and their evolution under international law, as recognizing sexual violence is a long process (section A) Then, the chapter will focus on its central goal; the recognition of sexual grooming within the military as a new form of war crime (section B). This will permit the abusers to be recognized as such. Allowing armed groups to act with impunity in relation to sexual predation means that the victims never receive justice for the acts committed against them and this causes difficulty in their ability to be rehabilitated into society.

There is a vicious circle because when the victims face their families, their families reactions can differ from the idealistic vision of martyrdom that was propagated by the Tamil Tigers. Most of the former female LTTE cadres would have experienced isolation²⁴¹ when they went back to their “normal”, non-militarised, life.

The psychosocial problems they can feel is due to what “Erikson described as a “loss of communality.”²⁴² This provides the reality of combatants’ new lives. The total destruction of their military family has defeated them as individuals more than defeating the Tamil symbolic movement as such. Their alleged “protective” members were no longer there to

²⁴¹ Price Natasha, *Integrating ‘Return’ with ‘Recovery’: Utilising the Return Process in the Transition to Positive Peace: A Case Study of Sri Lanka*, *The Round Table: The Commonwealth Journal of International Affairs*, 99:410, 529-545, (2010).

²⁴² Somasundaram Daya, M.D., *Short-and Long-Term Effects on the Victims of Terror in Sri Lanka*, *Journal of Aggression, Maltreatment & Trauma*, 9:1-2, 215-228, (2004).

command any of their movements. Saba Mahmood has argued that “*desire for submission to recognised authority*” was a key point.²⁴³ As we have repeated in this thesis, the females recruited by the Tigers were young; their veteran’s life was an accelerated path to adulthood.

They cannot get along without the Tamil Tigers because their lives were guided by them. Therefore, in 2010, 1 year after they were defeated, some ex members of the LTTE decided to get married with other former Tamil Tigers members in detention camps.²⁴⁴ If the weddings were the Sri Lankan government’s idea for a smooth transitional process²⁴⁵, it is extremely difficult to not think of their difficulties with disposing of the Tigers continued influence. Many testimonies²⁴⁶ of female ex-combatants qualifies the view that women were relying on the Tamil Tigers as a unified movement, instead of their capacity of resisting the enemy. They were more confident inside the movement than when it collapsed; they did not trust their own self, whereas they were themselves former combatants of the Sri Lanka bloody war.

The LTTE did not allow female soldiers to gain real independence, as they made themselves essential to their women soldiers’ lives. Despite the lack of sexual activities in the Tamil Tiger movement, their young soldiers were growing up as abused soldiers, as the regulation of sexual activities through prohibition was discriminatory. Making their soldiers accountable for their “misbehaviour” concerning their intimacy is unethical. If sexual

²⁴³ De Mel Neloufer, *Gendering the New Security Paradigm in Sri Lanka*, IDS Bulletin Volume 40 Number 2 March 2009.

²⁴⁴ The Sunday Leader, *53 Former LTTE Cadres Married In Vavuniya*, The Sunday Leader Week End Photos online, June 2010, <http://www.thesundayleader.lk/2010/06/13/53-former-ltte-cadres-married-in-vavuniya/>.

²⁴⁵ Anouil Regis, *Sri Lanka : Entre propagande et réhabilitation, un mariage collectif d'ex-Tigres tamouls hindous et catholiques a été célébré dans les camps tenus par l'armée*, June 2010, Golias News online, <http://golias-news.fr/article4266.html>.

²⁴⁶ Krishnan Sonny Inbaraj, *The transition of teenage girls and young women from ex-combatants to civilian life : a case study in Sri Lanka*, Intervention 2011, Volume 9, Number 2, Page 137 – 144.

consent is necessary for a positive attitude towards “normal sexual behaviours”,²⁴⁷ I argue that regulations of sexual activities based on what we can call a “non-sexual consent” is wrong. Indeed, “*rape and sexual assault are crimes of violence and control that stem from a person's determination to exercise power over another.*”²⁴⁸

Finally, exercising a power which prohibits sexuality is also an attack motivated by “sexual domination” through the IMPOSITION of non-sexual activity. Furthermore, condemning the breach of chastity by punishing the “perpetrators” implies a pre-determined life for the combatants. “*Prabhakaran ruthlessly enforced celibacy. He is known to have defamed, excommunicated, and even murdered those who strayed from his diktat. One of those who he allegedly killed was a dear friend and cofounder of the LTTE.*”²⁴⁹ The LTTE regulation is also pressures their combatants because they decide for them who they are able to live with. The definition of sexual violence and abuse is “*any behaviour (physical, verbal, virtual/digital) perceived to be of sexual nature which is controlling, coercive, exploitative, harmful, or unwanted that is inflicted to anyone (irrespective of age, ethnicity, religion, gender or sexual orientation) without their consent or understanding.*”²⁵⁰ The LTTE practices are an indirect form of sexual violence, this may be considered to be sexual grooming.

²⁴⁷ Vandervort Lucinda, *Sexual Consent as Voluntary Agreement: Tales of “Seduction” or Questions of Law?*, New Criminal Law Review: An International and Interdisciplinary Journal, Jan 01, 2013; Vol. 16, No. 1.

²⁴⁸ United States Department of Justice, *Myths and Facts about Sexual Violence*, Office on Violence Against Women, January 2013, online <http://www.law.georgetown.edu/campus-life/advising-counseling/personal-counseling/sarvl/general-information.cfm>.

²⁴⁹ Anonymous, *The Defeated, Sri Lanka's Tamils pick up the pieces after the war*, The Caravan - A Journal of Politics and Culture, February 1, 2012, <http://caravanmagazine.in/print/617#sthash.zWgUwdE6.dpuf>.

²⁵⁰ *Ibid.*

4.1- *Sexual gendered based crimes in the military at war.*

“Sexual violence experienced by women during interstate and internal conflict has long escaped legal regulations”,²⁵¹ those regulations were essential in the condemnation of the perpetrators of sexual violence at war. Tool of war, rape was used to conduct “ethnic cleansing”, as the bodies of women were targeted as objects of rape and possession. For example, the Nazis controlled the “femininity” of Jewish women in the Second World War by shaving the intimate parts of their bodies. The scholar, Ni Aolain has called it “*the sexual obliteration*”.²⁵² The sexual attacks on women were often motivated on a gendered basis; “*the mass rapes of World War II and those in Yugoslavia determine and influence women’s social position, their identity and their self-esteem*”,²⁵³ their trauma during wars due to sexual violence has deconstructed their identity and hence, has “ruined” them.

This last chapter will develop an argument concerning this primordial notion of consent which has never been analysed clearly. In the first part, I will try to recognize the evolution of sexual crimes in international law and the often sexual, gendered- based crimes which are mostly used in the military, whether in the army or in any other armed groups. This will allow one to refer back to chapter 3 and will also allow one to analyse the emergence of a new form of sexual offence during conflicts. This chapter will then conclude with the argument that the perpetrators of this new war crime should be held accountable under international criminal law.

²⁵¹ Ni Aolain Fionnuala, *Rethinking the concept of Harm and Legal Categorizations of Sexual Violence During War*, The Cegla Institute for Comparative and Private International Law, Theoretical Inquiries in Law, Volume 1, N°2, 2000.

²⁵² *Ibid.*

²⁵³ *Ibid.*

4.1.1- Recognized sexual crimes in times of conflict, process of recognition

Rape as a rule of war was the strategy in Rwanda and ex-Yugoslavia conflicts, it later became prohibited by international law but sexual aggression against women was still perceived of as a “*product of war*”.²⁵⁴ Rape has always been used in war. It is a means not only to liberate sexual frustration but also to take away the dignity of the enemy; it is what Bauman calls “*the inclusivist domination*”.²⁵⁵ This domination through the use of atrocious sexual abuse against women was a path to integration in the social group in which the soldiers belonged. Bauman talks about the “*social production of immorality*”,²⁵⁶ this describes collective war crimes. Indeed, the criminal moral behaviour is not one individual concern but a solidarity process which has been implemented throughout a variety of armed groups which has led to the emergence of a society of criminal soldiers.

The first trial which charged rape and sexual violence as crimes against humanity and war crimes was during the International Criminal Tribunal for the former Federal Republic of Yugoslavia (*Prosecutor v. Tadić (IT-94-1, 1995)*)²⁵⁷ Kelly Askin notes, “*the progress made globally in recognizing, prohibiting, and finally enforcing gender-related crimes has been painstakingly slow.*”²⁵⁸ Rape and sexual violence during conflicts have been considered as “normal” during conflicts as a result of the male biological nature.²⁵⁹ Grotius considers the avoidance of sexual violence during wars as unnatural. Sexual violence is strongly related

²⁵⁴ Copelon Rhonda, *Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law*, Hastings Women Law Journal, Vol. 5, No. 2, 1994.

²⁵⁵ Jamieson Ruth, *Genocide and Immorality*, The Criminology of War, International Library of Criminology, Criminal Justice and Penology - Second Series, March 2014

²⁵⁶ Mirchandani Rekha, *Reconstructing Zygmunt Bauman's Postmodern Sociology of Morality*, in Lehmann Jennifer M. (ed.) *Social Theory as Politics in Knowledge (Current Perspectives in Social Theory, Volume 23)*, Emerald Group Publishing Limited, pp.301-335, 2005.

²⁵⁷ *Prosecutor v. Tadić, Case No. IT-94-1-T*, Opinion & Judgment [hereinafter Tadić Trial Judgment], at para. 9. 7 May 1997.

²⁵⁸ Askin K. D., *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law : Extraordinary Advances, Enduring Obstacles*, 21 Berkeley j. int'l law. 288 (2003).

²⁵⁹ Kinsella Helen M., *Gendering Grotius: Sex and Sex Difference in the Laws of War, Political Theory*, Vol 34 N°2, April 2006 pp. 161-191.

to possessiveness; the male's desire to own women is intensified in situation of war where they become more and more vulnerable.

Bassiouni and McCormick²⁶⁰ have exposed the differences between rape, sexual violence, and sexual assaults. The distinction is too broad and examines rape as the worst evil crime whereas other sexual crimes also exercise control over someone else's body. However, the common basis of these sexual crimes is the lack of consent.²⁶¹

This chapter is extremely important as it will focus on sexual grooming in armed movements as a new international war crime during conflict. I believe this new form of violence should be acknowledged as a new form of crime during conflicts because it could affect and harm the victims in the long term. Most of the FPS who have been targeted by this form of pre-sexual violence are unaware of the abuse. However, even if they remain indirectly affected, sexual grooming had consequences on the developmental capacity of the future adult. This case study has demonstrated that a specific approach will be required to deal with reparations of the harm inflicted by the Tamil Tigers on their women soldiers.

²⁶⁰ Whyte Angela Christina, *Placing blame or finding peace: a qualitative analysis of the legal response to rape as a war crime in the former Yugoslavia*, Thesis, Department of Sociology, University of Manitoba, Winnipeg, Manitoba, December 2004.

²⁶¹ McGregor Joan, *Is it rape? On acquaintance rape and taking women's consent seriously*, live questions in ethics and moral philosophy, Ashgate, 2005.

4.1.2- *From sexual grooming of girl soldiers to sexual violence against those who are made “women” without knowing it*

The recognition of this new criminal offence endured by the females of the Tamil Tigers and others can be a way reinforcing the law against the recruitment of child soldiers. Indeed, the girls we studied in this thesis were somehow “*andrapodized*”;²⁶² “*andrapodizing is a type of premeditated and semi-lethal war-fare aimed expressly against inhabitants not trained, or too old, or too young to fight back.*”²⁶³ Being the reckless captives of an armed group put invisible chains on the FPS. The sexual violence which seems to not be applicable to the Tamil Tigers movement is actually organized beforehand; they are as predatorily as other groups who do not hide their “sexual immorality” behind a moral code. Under criminal law, the notion of sexual autonomy is questioned; Joan McGregor has even raised the idea of “*the competence to consent*” because unwanted sexual access to anyone’s body has always been despised.²⁶⁴

An “authorisation to commit sexual violence” through the ambiguous non-consent/consent of the other person can be interpreted as a lack of communication, or difficulty in the interpretation, however, it cannot be considered as a legitimate argument. Indeed, the theory of alleged consent has biased the law about rapes because it suggests that there is an absence of harm due to a misinterpretation.²⁶⁵ “*No idea testifies more powerfully to individuals as a source of value than the principle of consent*”.²⁶⁶ According to George Fletcher, the consent of those who are not aware of the construction and, hence, the influence of their own so-called “consent” can be seen as victims of a manipulative process;

²⁶² Gaca Kathy L., *Girls, Women and the Significance of Sexual Violence in Ancient Warfare*, in *Sexual Violence in Conflict Zone from the Ancient World to the Era of Human rights*, Heineman Elizabeth D., University of Pennsylvania Press, 2011.

²⁶³ L.Gaca Kathy, *The Andrapodizing of War Captives in Greek, Historical Memory*, Transactions of the American Philological Association 140, pp 117–161, 2010.

²⁶⁴ *Ibid.*

²⁶⁵ Munro Vanessa E., *From consent to coercion, evaluating international and domestic frameworks for the criminalization of rape*, in McClynn and Munro, *Rethinking rape law, international and comparative perspectives*, Routledge, Taylor and Francis groups, 2011.

²⁶⁶ *Ibid.*

the consent remains ambiguous. “*Not all women are being policed to marriage*”²⁶⁷ but the women of the LTTE are being indirectly prepared for their future weddings with other cadres of the same group and if they seem to have a choice, the truth of their “choice” is the result of circumstances which allow male soldiers to indirectly dominate their young female soldiers. “*It is difficult to assess the incidence of marital rape as many women who are coerced into sex do not define this as rape.*”²⁶⁸ The importance of the recognition of sexual grooming during wartime is important because of the consequences on the future of those abused women. One of the high risk could be the forced marriage which is seen as a consented one; the preparation of the girls to dedicated until their souls to the movement could be contradictory. The risk of those “almost consented” weddings could lead to what I have named earlier as “rape by consent”.

Men were not worried before law on sexual violence as their wives belonged to them; this forced sex strategy is emphasised even more in the context of the Sri Lankan Civil War where the domination of males on their future wives is obvious. No studies have been led about the particular case of marital rape in LTTE couples, however, by all the evidences that we gave previously, we can easily suppose it occurs regularly. Indeed, the control of the bodies of the female soldiers is inherent to the LTTE. Consequently, exercising domination over the bride’s body might be possible. If being raped by an intimate partner sounds unreal, the resistance to such an action inside the Tamil Tiger couples appears to be irrational: “*women who have experienced marital rape may not resist because they believe it is their “wifely duty” and feel that they are to blame for the incident*”.²⁶⁹ If this procedure is applied to the Tamil Tigers, the LTTE woman would not resist because she would have integrated the notion of submission and also her role of fulfilling the desire of her husband as the duty of the “good wife” and would not necessarily perceive it as a form of abuse. Indeed, the integration of the moral behaviour of soldiers as exemplary models also applies

²⁶⁷ Lees Sue, *Ruling Passions, Sexual Violence, Reputation and the Law*, Open University Press, 1997.

²⁶⁸ *Ibid.*

²⁶⁹ Martin Elaine K., Taft Casey T., Resick Patricia A., *A review of marital rape*, Aggression and Violent Behavior, Volume 12, Issue 3, Pages 329–344, May–June 2007.

to the home as there is no rupture between the violent conflict and being “at home”. Also, this “female marionette” was certainly influenced in her decision to get married without making her own choice. Her choice was a choice of forced circumstances.²⁷⁰

*“Forced marriage is recognised as a human rights abuse, violating a number of international human rights norms, including the rights to freely enter into marriage, and to bodily and sexual integrity. As early as 1948, the right to free and full consent to a marriage was stipulated by the Universal Declaration of Human Rights’ acknowledging that consent cannot be free and full when one of the parties is not sufficiently mature to make an informed decision, as is the case with child marriage”.*²⁷¹ The adult narcissism towards the child/teenager sexuality and endangers the child development whereas *“adolescence is a period of rapid physical, psychological and cognitive changes.”*²⁷² They are not ready for their marital status and even less ready for their first sexual intercourse which is not the product of their own desire but the projection of the other’s desire of domination. The FPS of the LTTE have been forced in adulthood by giving their bodies whether for the attainment of martyr status which was necessary for the legitimacy of the Tamil Eelam or unconsciously, by giving themselves to cadres who were ready to espouse them not for love but for the accomplishment of a sexual desire. This desire was legalized by marriage which makes it legitimate and unpunishable.²⁷³ In South Asia, *“violence instigated by intimate male partners within the context of marriage or cohabiting*

²⁷⁰ Annexes.

²⁷¹ Sabbel A et al, *Determinants of child and forced marriage in Morocco: stakeholder perspectives on health, policies and human rights*, BMC International Health and Human Rights 2013, 13:43.

²⁷² Erulkar Annabel, *Early Marriage, Marital Relations and Intimate Partner Violence in Ethiopia*, International Perspectives on Sexual and Reproductive Health, Vol. 39, No. 1 (March 2013), pp. 6-13.

²⁷³ Moonesinghe L.N. And Barraclough S., *Domestic Violence against Women in Sri Lanka: The Role of Primary Health Care in Complementing Human Rights and Legal Responses*, Australian Journal of Primary Health, 2007, Vol. 13, No. 1, p. 52-59.

relationships is one of the most prevalent form".²⁷⁴ Sri Lanka has the highest rate of abuses against married women.²⁷⁵

4.1.3- A sexual crime or not?

The definition of domestic violence has evolved, and now includes controlling coercive behaviour. It indicates more comprehensively the range involved and what domestic violence implies. In the United Kingdom, the definition seems the most appropriate to cover every single issue which could be related to an abuse whether sexual, physical or psychological at home. Domestic violence can take several forms; it can be an emotional, psychological and controlling behaviour. This regulation of everyday behaviour could breach the freedom of the victims (Female LTTE soldiers targeted in their armed virgin status). It can be threats addressed to others or an isolation from family, friends, an external source of support (the LTTE was threatening the family of their future soldiers and did not allow any of their combatants see their family; they were conditioned to remain part of the "Tamil army"). Another possible manifestation is the actions around the alleged victim; their extended family can play a role through "*the perpetuation of unlawful activities such as forced marriages, honour based violence and crimes.*"²⁷⁶

The invasion of sexual controlling nature in the lives of female soldiers should be tackled. Preventives measures are necessary; "*sexual violence is not inevitable at war.*"²⁷⁷ Some actors such as rebel groups, state militaries and militias are known to restrain their

²⁷⁴ Jayatilleke Achini et al, *Wives' Attitudes Toward Gender Roles and Their Experience of Intimate Partner Violence by Husbands in Central Province, Sri Lanka*, J Interpers Violence 2011 26: 414, 6 May 2010.

²⁷⁵ Jayasuriya Vathsala et al, *Intimate Partner Violence Against Women in the Capital Province of Sri Lanka : Prevalence, Risk Factors, and Help Seeking*, Violence Against Women, 2011 17: 1086, 1 September 2011.

²⁷⁶ Department of Health, Social Services and Public Safety, *Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020*, Public Consultation Document, Department of Justice, December 2013.

²⁷⁷ Nordas R., *Preventing Conflict-related Sexual Violence*, Peace Research Institute Oslo (PRIO), Policy Brief, February 2013.

involvement in sexual violence.²⁷⁸ They are not *directly* involved. Their use of sexual violence is not violence as a weapon of war, but the cases where sexual violence has not occurred as a part of “*conflict dynamics*”²⁷⁹ can still be an indirect way of abuse linked to the participants of the conflict more than the conflict itself. The dynamics cannot be obvious but the logic is perverse and deserves more attention to prevent abuse instead of curing it.

A re-examination of this lack of sexual activity during wars is necessary not to omit or neglect any possibilities which could be “*equally invasive and devastating for the victim*”;²⁸⁰ however further investigations to gain information concerning this insufficient clarity should be expected. Indeed, “*looking at rape avoidance to break the conceptual lock of violence as definitive of the matter of rape and sexual assault is important for advancing understanding of sexual violence itself.*”²⁸¹

²⁷⁸ Cohen Dara K. et al, *Four things everyone should know about wartime sexual violence*, Monkey Cage Blog online, The Washington Post, June 9, 2014. <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/06/09/four-things-everyone-should-know-about-wartime-sexual-violence/>

²⁷⁹ Cohen Dara, *Sexual violence in armed conflict, Introducing the SVAC dataset, 1989–2009*, 6/83 in *International Relations, Journal of Peace Research*, SAGE Publications, 2014.

²⁸⁰ Schinnerl Kerstin, *Rape as an international crime – The Jurisprudence of the International Tribunals with specific Regard to the Definition of Rape*, Institut für Völkerrecht und Internationale Beziehungen, Graz, August 2013.

²⁸¹ Hayden M., *Rape and Rape Avoidance in Ethno-National Conflicts: Sexual Violence in Liminalized States*, Department of Anthropology, University of Pittsburgh, *American Anthropologist*, Volume 102, Issue 1, Article first published online: 7 Jan 2008.

4.2- *The Fight against impunity, sanctioning sexual grooming as a war crime: justice for new adults, an important step for the rehabilitation of indirect victims.*

*“In order to prove international crimes there must be evidence which satisfies the common elements of the category of international crime. It is the additional proof which “converts” a domestic crime into an international crime.”*²⁸² The impunity of sexual grooming at war is explicable by the fact that it has never been questioned before. *“Why some armies deploy sexual violence to control and punish collaborators and others do not remain unexplained.”*²⁸³ What I tried to develop in this thesis is a “prolongation” of Wood study; she claimed ethnic cleansing was a current practice by the LTTE against their enemy, however, by a strict selectivity of the representatives of their nation, I think the Tamil Tigers with the doctrine of “no sexual violence” was practising a “reversed” ethnic cleansing by creating their own ideal nations. This practise of ethnic cleansing cleared the Sinhalese community through their acts of terrorism but was reinforced by the group sectarianism which could explain their necessity to preserve their image.

An explanation of their control over Tamil women’s sexuality would be the procreation of “the best Tamil society” preserved by the rules that they implemented, where cadres who remained cadres, would marry someone from this society only, and would produce new “pure” Tamil Tigers soldiers. Unfortunately, the constrained behaviours are not observed after the marriages of the combatants of the Tamil Tigers. The hypothesis that has been developed concerning sexual grooming and the alleged violence of husbands on former LTTE female soldiers is not scientific. However, we have some elements which could make sense in order to define this practice as a specific war crime.

²⁸² De Brouwer Anne-Marie et al, *Sexual Violence as an International Crime, Interdisciplinary Approaches*, Intersentia, Series on Transitional Justice, June 2012.

²⁸³ Wood J.E., *Variation in Sexual Violence during War*, Politics Society, 2006, 34: 307.

This last part will compare how some well-known sexual crimes became recognized internationally and condemned as war crimes. Additionally it will focus on the recruitment of child soldiers and the level of accountability of armed groups under international law. I will focus particularly on the Tamil Tigers.

4.2.1- *The status of sexual crimes and sexual violence under international law*

The increasing literature concerning sexual violence against women at war has influenced international law to “*articulate a terminology of sexual violation*” according to Ni Aolain.²⁸⁴ Rape and sexual violence appeared to be the “norms” of armed conflict but it has become prevalent since the 1990s and further concerns have been raised.²⁸⁵ The ICTY brought to justice those responsible for crimes against humanity. Those prosecutions have improved the prosecutions against rape and sexual violence in conflict.²⁸⁶

The legal question concerning rapes and the use of sexual violence by soldiers should have been questioned during the Nuremberg trial, “*it was a great omission and a poor precedent for the ad-hoc criminal tribunals.*”²⁸⁷ The stagnation of both the ICTY and ICTR to define rape and sexual violence during wars was necessary to make progress in international law; “*their definition of sexual violence and rape are being coopted into national and international justice processes.*”²⁸⁸ When the practise of sexual violence is continuous and the results of a conduct which was dictated by the commanders as a strategy of war, the violence is not only psychological. The desire to hurt is the result of a well-thought out political strategy. It could involve a “*chain of command*”²⁸⁹ where individuals can reunited their forces to commit a common similar crime against the same group of people because

²⁸⁴ *Ibid.*

²⁸⁵ Wachala Kas, *The tools to combat the war on women's bodies: rape and sexual violence against women in armed conflict*, The International Journal of Human Rights, 16:3, 533-553, 2012.

²⁸⁶ United States Institute for Peace, *Confronting Crimes Against Humanity*, A Study Guide Series on Peace and Conflict For Independent Learners and Classroom Instructors, Washington DC.

²⁸⁷ Mibenge Chiseche Salome, *Sex and International Tribunals, The Erasure of Gender from the War Narrative*, University of Pennsylvania Press, Philadelphia, 2013.

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

they became “military machines”. The UN Special Representative on Sexual Violence in Conflict, Ms. Zainab Hawa Bangura stated that *“sexual violence in conflict needs to be treated as the war crime that it is; it can no longer be treated as an unfortunate collateral damage of war.”*²⁹⁰

The suffering that has been endured by victims of rape and sexual violence continues despite adequate laws that have emerged. The international community seems unwilling to enforce international law. The investigation on sexual violence is extremely limited and biased. Susana SaCouto and Katherine Cleary have observed that the patterns of evidence that are in place to assess that an accused ordered certain crimes is limited. Indeed, if those crimes are linked to genders or sexuality during wars, it confronts those evidences with the reluctance of the ad hoc tribunals to treat those cases.²⁹¹ Indeed, *“according to the Akayesu judgment, the Tribunal identified sexual violence to include acts that did not necessary involve physical invasion of the human body or physical contact”*²⁹²; the investigation process of those cases is extremely complex because it is based on the credibility of testimonies rather than evidence-based.

According to the Criminal Code and the Rome Statute, specific acts of sexual violence that constitute crimes against humanity include *“rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity”*.²⁹³ However, the ICRC précised that *“the Statute of the International Criminal Court includes rape and some other forms of sexual violence in the list of war crimes and in the list of acts that constitute crimes against humanity when committed as*

²⁹⁰ Outreach Programme on the Rwanda Genocide and the United Nations, *Background Information on Sexual Violence used as a Tool of War*, United Nations The Justice and Reconciliation Process in Rwanda.

²⁹¹ Aranburru Xabier Agirre, *Sexual Violence beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases*, *Leiden Journal of International Law*, 23.3, September 2010, 609-627.

²⁹² Park Jennifer, *Sexual Violence as a Weapon of War in International Humanitarian Law*, *International Public Policy Review*, Vol. 3, N°1, June 2007.

²⁹³ Edman Angela J., *Crimes of Sexual Violence in the War Crimes Chamber of the State Court of Bosnia and Herzegovina: Successes and Challenges*, *Washington College of Law, Human Rights Brief* 16, no.1 (2008): 21-28.

part of a widespread or systematic attack directed against any civilian population”;²⁹⁴ sexual grooming as being addressed against their own soldiers and not against civilians cannot be considered as a crime against humanity. However, J. Edman²⁹⁵ notes that when victims are children the circumstances could be aggravated but I will come to that point later.

In armed conflict, sexual violence is not isolated from other ranges of violations; it often goes with “*killings, child recruitment, destruction of property and looting among other things.*”²⁹⁶ It is a tool of war even if it remains invisible in many contexts as victims are afraid of the consequences of their revelations. According to Mitchell,²⁹⁷ all parties are bound by international humanitarian law, hence, they are entitled to respect the prohibition of rape and other forms of sexual violence; “*many forms of sexual violence have been found to constitute forms of(...)war crimes and when they meet the constituent elements of these crimes, they may be prosecuted as peremptory norms subject to universal jurisdiction*”. Article 27 of the Geneva Convention IV specifies that “*women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.*”²⁹⁸ State and non-state actors are bound by IHL. The ICRC recognizes that sexual violence is a grave and a life threatening occurrence.²⁹⁹

The practice of sexual grooming in armed groups is both a gendered based violence (GBV) and a practice against child soldiers; the two components already constitute war crimes. “*The role of international criminal tribunals must be noted as an important mean of*

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International Committee of the Red Cross, *Sexual violence in armed conflict : questions and answers*, online <http://www.icrc.org/eng/resources/documents/faq/sexual-violence-questions-and-answers.htm>, 10.11.2013.

295 *Ibid.*

296 Bastick et al, *Sexual violence in armed conflict, Global Overview and Implications for the Security Sector*, Geneva Centre for the Democratic Control of Armed Forces, 2007.

297 Mitchell David S., *The prohibition of rape in international humanitarian law as a norm of jus cogens: clarifying the doctrine*, Cambridge University, Centre of International Studies, 2005.

298 *Ibid.*

299 *Ibid.*

*fighting impunity for these crimes ensuring their recognition and formulating a reaction”;*³⁰⁰ the formulation of sexual grooming as a war crime needs to be assessed through a “*reversed burden proof*”³⁰¹ mechanism because this theoretical research has put theoretical presumptions which still need to be validated. However, based on De Brouwer “*checklists for interviews*” on the form of international crimes which was appropriate to rape for instance, I have made our own observation checklists and interview frameworks to go further.³⁰² This practice would be a sexual violence among and within the armed group directed against “*combatants who are victims in virtue of being combatants*” according to Sinha.³⁰³ The same author argues that if we refer to the unwillingness of child soldiers to become combatants, we should presume that they engage in sex unwillingly as well.

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Piccolo I., *Rape and International Criminal Law*, International Criminal Law Series, International Courts Association Press, 2013.

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Anonymous, *Burden and Standards of Proof: Presumptions*, Bookshop media online, <http://www.bookshop.com/media/filetype/s/p/1350092855.pdf>.

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Annexes.

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Sinha G. Alex, *Child soldiers as super-privileged combatants*, *The International Journal of Human Rights*, 17:4, 584-603, 2013.

4.2.2- *International identification of the accountability of child/adolescent recruitment: can military leaders be prosecuted for sexual and gendered war crimes against their own child soldiers?*

International Humanitarian Law creates obligations for individuals during armed conflicts on both sides even it should be kept in mind that the civilian population and the combatants do not have the same status.³⁰⁴ Children are often recruited by armed groups because it legitimises their actions as their defeat could ruin the future of those children.³⁰⁵ Child soldiers are often affected by the conflict and can become adults while still being soldiers for their group; they are both the perpetrators and victims of crimes. “*Children shall be the object of special respect and shall be protected against any forms of indecent assaults. The Parties to the conflict shall provide them with the care and aid they require whether because of their age or for any other reason.*”³⁰⁶ The children who were recruited by the LTTE were young adults aged from 14 to 20 years old. Their “*level of maturity*”³⁰⁷ was an influential factor on whether they decided to join the armed group or not. Claire McDiarmid affirms that “*the age of criminal responsibility*” corresponds to a difficulty in understanding acts which have or have not been committed.³⁰⁸ A transitional psychological following should consider the obedient soldiers in armed groups as mostly victims rather as being fully aware of their crimes.³⁰⁹

³⁰⁴ La Haye, *War Crimes in Internal Armed Conflicts, The regime of war crimes*, Cambridge studies in international and comparative law, 2008.

³⁰⁵

Coomaraswamy R., *Protecting Children in Situations of Armed Conflict : Interview with Radhika Coomaraswamy* Interview Under Secretary-General Office of the Special Representative of the Secretary-General for Children and Armed Conflict, New York, 2005.

³⁰⁶ 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3.

³⁰⁷ Rowe Peter, *The Impact of Human Rights Law on Armed Forces*, Cambridge University Press, 2006.

³⁰⁸ Arts K and Popovoski, *International Criminal Accountability and the Rights of Children*, Hague Academic Press, 2005.

³⁰⁹ Amnesty International, *Child Soldiers, Criminals or Victims ?*, December 2000, IOR 50/02/00.

The civil society might perceive the child victims-perpetrators as “poor manipulated children” but we cannot exclude entirely the atrocity of child crimes. In the LTTE, girls who were involved in suicide bombings, or who were coerced in this violence with no return have perpetuated hatred. The armed group as a whole forced them to join and prevented them from going back to their normal life by arranging their marriages with someone in the movement if they did not kill themselves for it. This supervision of the girl’s acts are, indirectly, a way in which violence was directed against the female gender. Gender based violence “*constitutes a breach of the fundamental right to life, liberty, security, dignity, equality between women and men, non-discrimination and physical and mental integrity*”.³¹⁰ Sexual grooming in armed groups such as the Tamil Tigers is, by definition, a GBV. Hence, they could, by other means than the recognition of sexual grooming as a war crime, be prosecuted for both the recruitment of child soldiers and to an extent, be additionally prosecuted for the gender based crime against girl soldiers as they are “*under the control of the accused*” and there is a “*specific purpose*”.³¹¹ The specific purpose of the LTTE would be to target their own women to recreate an appropriate nation with the idealisation of the females who blew themselves up for the Eelam and for those who were pure enough to be able to procreate ideal future children of “the LTTE society”. Furthermore, this GBV was premeditated and well-organized as it was structured around the time of services for the movement and the regulation of chastity for those who could get married and if the woman was pure enough to stay or to bomb herself.

“*The international criminal court does not treat GBV as grave violations*”,³¹² however, in February 2014, the Court has generated a report concerning its progress concerning the inclusion of “*various forms of sexual and gender based crimes(...)and may exercise jurisdiction over other sexual and gender based crimes for which girls and women are particularly targeted if they constitute acts of genocide or other acts of crimes against*

³¹⁰ European Institute for Gender Equality, *What is gendered based violence?*, Conference Eliminating Violence Against Women in Europe Intersectoral Approaches and Actions, 2013, Vienna.

³¹¹ O’Connell S., *Gender based crimes at the international criminal court*, Plymouth Law Review, 2010.

³¹² *Ibid.*

*humanity or war crimes.*³¹³ Hence, the article 8³¹⁴ concerning war crimes and particularly the session saying “*outrages upon personal dignity or the recruitment of child soldiers may also contain gendered and sexual elements. The Office will be vigilant in charging sexual and gender based crimes as war crimes*”³¹⁵ confirm that no one could escape justice.

The breach of adulthood construction of the girl soldiers of the LTTE could be condemned and be held accountable, if not yet for sexual grooming on their FPS, for the recruitment of child soldiers and for a gender-based favouritism leading to sexual violence. Sexual violence crimes are the most difficult to prosecute, the efforts which were maximised in Kosovo have failed constantly since then especially because historically, matters of sexual violence were seen as “*private wrongs*”.³¹⁶ Sexual grooming by the Tamil Tigers is not a private matter but a strategy for the aftermath of the war for reunited the “best” persons of the Tamil nation (i.e. those who have contributed to the combat; “the LTTE nation”).

This chapter has especially given another perspective on the notion of “consent” which deserves to be better explored when it could lead to war crimes. I believe sexual grooming as new form of violence should be acknowledged as a new form of crime during conflicts because it could affect and harm the victims on long term. Most of the FPS who have been targeted by this form of pre-sexual violence are unaware of the abuse. However, even if they remain indirectly affected, sexual grooming had consequences on the development capacity of the future adults growing up in the LTTE, it might not be recognized as a war crime yet, however, this reflexivity on the LTTE process could cover the “*impunity gap*”³¹⁷ defined by Marcus. Finally, this case study has demonstrated that it will require a

³¹³ International Criminal Court, *DRAFT Policy Paper on Sexual and Gender Based Crimes*, February 2014, The Hague.

³¹⁴ Annexes.

³¹⁵ *Ibid.*

³¹⁶ SáCouto Susana and Cleary Katherine, “*Importance of Effective Investigation of Sexual Violence and Gender-Based Crimes at the International Criminal Court.*” *American University Journal of Gender, Social Policy & the Law*. 17, no. 2 (2009): 337-359.

³¹⁷ *Ibid.*

specific approach to deal with reparations of the harm inflicted by the Tamil Tigers on their “almost women” soldiers.

IV- Conclusion- Recognition of Grooming as an international war crime: a positive path for identification of an unusual violation of human rights

This thesis has brought forward a new notion which could be further explored in international law: that of sexual grooming as a current practice in armed groups against their own girl soldiers. Through examining the confusing identity of the female pre-pubescent soldier, we have demonstrated that one of the possibilities is that in young girls being made to conform to the military group they come to carry an almost “genderless”, militaristic identity. It has also been demonstrated that it is a possibility—that the young girls’ identity is affected by the military group beyond the period of adolescence, and into adulthood. The young female soldiers of the Tamil Tigers, having developed in a masculine movement, eventually become “masculine” themselves. However, due to the ethics of the organisation, they are unable to escape from the prejudices regarding their gender. The moral codes which were imposed affected them more than their comrades of the other sex. This “robotisation”, and pervasion of an identity based on gender, is criminal.

The case study above, discussing the practices of the LTTE in the Sri Lankan conflict, explores the vulnerability of female pre-pubescent soldiers. Their vulnerability was exploited by the LTTE through the tactical restriction of sexual practices. Any acts which could appear as immoral were punished. Invading the privacy of their soldiers, deciding on their “path to death” through suicide bombings (by making them “suicide-bombers married to the movement”, or not (by making them “soldiers married to another”), the LTTE transformed their young women into “political objects” who are wholly dedicated to the cause. This acceptance and submission to the LTTE is primarily influence by the girls’ idolisation of the LTTE leaders since their childhood. The acts of these females for the Tamil nation enable one to question the value of the individual when said individual fights for a larger cause and group. Finally, the militarisation of female soldiers in the LTTE is

synonymous with dedication to the LTTE through a certain “seduction process”, mainly influenced by admiration of “childhood heroes”.

This thesis has identified this seduction of children in armed groups as sexual grooming. The prohibitions of sexual activity, and the promotion of the chastity of those who they proudly called their “armed virgins”, imply an involvement only in the combat. Other desires are erased by the importance of fighting for the LTTE purpose, which indirectly allows a path to abuses. The female pre-pubescent soldiers in the LTTE have been “structured” to obey the cadres who could become their husbands after five years of service in the movement, or their mentors if they decided to die for the *Eelam*. The consent of the young soldiers to get married or to commit suicide bombings without any possibility of an alternative is heavily influenced by the leaders of the LTTE. This pressured consent is a form of assault, as young female soldiers are often unaware of the danger that they are in, and do not fully understand their obligation to die for the LTTE, or how this also may be a form of sexual predation.

This indirect sexual violence should be prosecuted as a gender-based crime under international law. It may be argued, therefore, that the Tamil Tigers committed war crimes based on the linkage elements and evidence checklists suggested by Maxine Marcus.³¹⁸ The common elements that can be found in the international investigation on crimes of sexual violence helped comparisons between several sexual war crimes. It contributed to the emergence of a new table specific to sexual grooming in armed groups allowing its prosecution as a war crime.³¹⁹ More specifically, the acts of the LTTE in relation to their female pre-pubescent soldiers could be characterised as follows.

The LTTE are perpetrators of a gendered-based crime through the control of their female adolescent soldiers. This control has transformed the female soldiers into androgynous

³¹⁸ *Ibid* and Annexes.

³¹⁹ Annexes.

combatants. This militarisation of bodies and minds has been created to preserve the morale of the movement by structuring the sexual relations of members. Described as “armed virgins”, those teenagers were the targets of a long term “seduction” plan: their deaths for the movement, or weddings with another cadre, were pre-planned. The LTTE have eliminated those who were “impure” because of previous sexual assault and have kept those who correspond with their moral standards so that they can regulate new births in their own new Tamil society. The girls were indirectly owned by the Tigers since-childhood and this has resulted in the deprivation of their liberty. This calculated abuse of power which leads to their death or sexual abuse during marriages causes harm both physically and mentally. By taking advantage of the dynamics of works, an extremely coercive environment, the LTTE forced children to engage in something they did not fully comprehend. This abuse of power against innocents, who are incapable informed consent, is the responsibility of the commanders and male cadres. The LTTE was essentially grooming the girls through false promises. Leaders made the abuse “legal” as few questioned the domestic and sexual violence which is allowed by the marital contract in Sri Lanka. The Tamil Tigers should be held accountable for war crimes committed against children on the basis of their gender. They obviously selected the “potential pure mothers” for the “future” of their community. A calculated manner of seduction put in place since the early childhood of the female soldiers was created in order to ensure the “purity of the “LTTE procreation”.

It should be noted that prosecution for sexual violence and gender based crimes requires investigations that, due to lack of time and means could not be explored further here. However, it is essential to further investigate this topic and thus interviews and questionnaires have been included in the annexes, which could complete and give more substantial evidence to the argument. We can confirm that the emergence of sexual grooming in this thesis has connected the tensions between child recruitment, forced marriages, gender based violence and sexual violence in war, with a particular focus on girl soldiers. If these three war crimes can be named as sexual grooming, then this should

motivate the international community into trying the Tamil Tigers for attempting to ‘own’ child soldiers through sexual grooming.

If the statement is considered that “*The international recognition of sexual violence is but a first step towards justice for survivors of sexual violence, and it is vital that the next steps include an understanding for their needs and their direct participations,*”³²⁰ then it is apparent that a further investigation concerning a female soldier’s status after the collapse of the LTTE should be conducted. One of the difficulties that “children of war” face is that they grew up and “*are now socialized in a war milieu with direct experiences of violence, emotions of terror, grief and hatred and militant role models*”.³²¹ Families reactions when facing their female veterans can be extremely different. This is especially true in Sri Lanka, particularly where the traditional idea of women is contradictory to their engagement in war: the women soldiers have defied their expected “*womanhood*”.³²² Some of them were arrested and released a few years after the defeat of the Tigers, but the reaction of their communities left them isolated³²³ because they are unable to handle the perpetual insults made against them, and they are not hired anywhere because they are “*unusual women.*”³²⁴ The new life of the female combatant is not directly linked to the LTTE, yet the Tigers still exert influence over the individual, albeit in an indirect manner.

³²⁰ *Ibid.*

³²¹ Somasundaram Daya, M.D., *Short-and Long-Term Effects on the Victims of Terror in Sri Lanka*, Journal of Aggression, Maltreatment & Trauma, 9:1-2, 215-228, 2004.

³²² Schrijvers Joke, *Fighters, Victims and Survivors: Construction of Ethnicity, Gender and Refugeeness among Tamils in Sri Lanka*, University of Amsterdam, Journal of Refugee Studies, Vol. 12, No. 3 1999.

³²³ Yanthini Dushi, *Women ex combatants continue to face tough time and stonewalling*, October 20, 2012, Passion Parade blog online consultation on the 23/06/2014, <http://passionparade.blogspot.it/2012/10/women-ex-combatants-continue-to-face.html>.

³²⁴ Shamila, *Female ex-combatants of LTTE in post-war Sri Lanka*, GroundViews, Journalism for citizens, February 24th, 2012, consultation on June 23rd, 2014, <http://groundviews.org/2012/02/24/female-ex-combatants-of-ltte-in-post-war-sri-lanka/>.

A community approach is necessary, especially when the female soldiers and their families are still unaware that they have been abused by those they trusted most. Families reject them, stating that “*they feel ashamed if they (the ex-women combatants) come back (to their families)*”.³²⁵ This approach to the crime can be assessed only by testimonies of victims and perpetrators, that is, through a specific transitional justice mechanism; a truth recovery process which could benefit the women who face difficulties when seeking to return to “real society”.³²⁶ The demobilised young girls face rejection especially from the communities and their families, existing cultural prejudices contributing to their devaluation and engagement, as their status as ‘incredible’ combatants is not accepted by the civil society.³²⁷ Their disempowerment reflects their “LTTE-scheduled destiny”. This special truth recovery process would help the female combatants’ reintegration by a collective understanding of their situation and also give an official version of the events within the armed movement itself. Usually, truth recovery comes from victims who desire opportunities for their suffering to be publicly acknowledged and expose the general atrocities of the perpetrators,³²⁸ but in this case the truth recovery is quite unique, as it allows the uninformed victims an awareness of the unusual abuse used by the Tamil Tigers as a strategy to maintain their influence on their female soldiers even in the aftermath of the conflict.

Mary Robinson said that “*girls also are used as soldiers, have been victims of rape and other sexual abuses. The human rights impacts... are terrible and far reaching and...have an impact not only on those children directly concerned but also on their families and*

³²⁵ Kanagasabapathipillai Dushiyanthini, *Post-war Sri Lanka denies rights of women ex-combatants*, Ethics in Action, Asian Human Right Commission, Vol. 7 N°1, 2013 <http://www.ethicsinaction.asia/archive/2013-ethics-in-action/2013V7N1/2013V7N1P8>.

³²⁶ Minority Right Groups International, *Living with insecurity: Marginalization and sexual violence against women in north and east Sri Lanka*, 16 October 2013, ISBN 978-1-907919-43-5, available at: <http://www.refworld.org/docid/528489bf4.html> [accessed 23 June 2014].

³²⁷ Manchada Rita, *Women’s Agency in Peace Building, Gender Relations in Peace Building Reconstruction*, Economic and Political Weekly n°4738, October 29, 2005.

³²⁸ Brewer John, *Memory, truth and victimhood in post-trauma societies*, in C. Wright Mills and the *Ending of Violence*, London : Palgrave, 2003.

communities, and continue long after the hostilities have ended.”³²⁹ The girl soldiers of the LTTE who became adults during the establishment of the transitional justice are entitled to hold their leaders/perpetrators accountable for their situation during the Civil War. “*Moral need for society and legal duty of the new regime*”,³³⁰ transitional justice could help the former girl soldiers understand the meaning of their childhood and their relatives understand the LTTE’s “gendered military targeting” by naming this hidden sexual crime.

³²⁹ McKay S. and Mazurana D., *Girls in Militaries, Paramilitaries, and Armed Opposition Groups*, University of Wyoming College of Arts and Sciences, Women and peacebuilding, 1999.

³³⁰ Mels C., *Re-Member, Rehabilitation, Reintegration and Reconciliation of War Affected Children*, Intersentia, Series on Transitional Justice, Cambridge, 2012.

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tenus par l'armée, June 2010 , Golias News online, <http://golias-news.fr/article4266.html>

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-ANNEXES

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Annexes 1

*“I am Sorrow,
Who will listen to my feeling?
Who will listen to my useless land?
After the war, my skin has been damaged,
There are craters in my body.
Although I was sad, sorry, and suffering
Who will listen to my feeling?
I am sad, sorry, and suffering
Who will know my feeling?
I am not sad about my harmed body
I am sorrow because of the people
Who can't use me rightly.
Who will know my feeling?¹”*

Sindy Cheung, 3 May 1989

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¹ Sue Lees, *Ruling Passions, Sexual Violence, Reputation and the Law*, Open University Press, 1997

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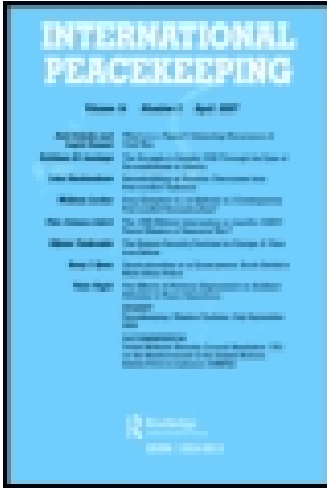
On: 26 June 2014, At: 12:22

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954

Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK

ANNEXES 2



International Peacekeeping

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/finp20>

Politics by Other Means: When does Sexual Violence Threaten International Peace and Security?

Letitia Anderson

Published online: 23 Apr 2010.

To cite this article: Letitia Anderson (2010) Politics by Other Means: When does Sexual Violence Threaten International Peace and Security?, *International Peacekeeping*, 17:2, 244-260, DOI: [10.1080/13533311003625134](https://doi.org/10.1080/13533311003625134)

To link to this article: <http://dx.doi.org/10.1080/13533311003625134>

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situation. Identifying the threats raised by sexual violence can provide a common frame of reference for states and civil society activists to analyse when it reaches the 'trigger threshold' for action.

For ease of recall, the test can be summarized as the 'six Cs' of 1820. Namely, sexual violence threatens international peace and security when it constitutes a *crime of international concern*, is *commanded/condoned*, *civilians are targeted*, a *climate of impunity* prevails, it has *cross-border implications* and/or it entails a *ceasefire violation*.

Pillar 1. Crime of Concern to the International Community (Credibly Alleged)

Certain wrongs are so grave they concern the international community as a whole.¹⁵ There can be no amnesty for those who commit or commission these crimes. The Preamble to the Rome Statute of the ICC stipulates that 'such grave crimes threaten the peace, security and well-being of the world'.¹⁶ The same act of sexual violence can constitute more than one of the below-mentioned crimes, depending on the elements of the offence.

Sexual violence as a war crime

Sexual violence, amounting to actual or alleged war crimes, concerns the Security Council because conflict management and resolution is its core business. A single rape by a belligerent during armed conflict can constitute a violation of the laws or customs of war, defined in the 1998 Rome Statute to include grave breaches of the 1949 Geneva Conventions, in relevant part: causing great suffering or serious injury to body or health; torture or inhumane treatment; directing attacks against civilians; rape, sexual slavery, forced prostitution or forced pregnancy.¹⁷ Art.27 of Geneva Convention IV and Arts.75(2) and 76 of Additional Protocol I address sexual violence in situations of international armed conflict. Common Art.3 and Art.4(2) of Additional Protocol II outlaw 'outrages upon personal dignity', in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault in non-international armed conflict. The general requirement of a nexus with conflict excludes crimes of a random, incidental nature.

In 2005, the International Committee of the Red Cross (ICRC) published a study on customary IHL, which concludes that sexual violence is categorically prohibited in situations of international or non-international armed conflict.¹⁸ As a customary norm, this prohibition is universally binding on parties to an armed conflict, in addition to their treaty obligations.

Sexual violence as a crime against humanity

Sexual violence also concerns the Security Council when reported to reach the scale or level of organization of a crime against humanity. Crimes against humanity 'constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy . . . or of a wide practice of atrocities tolerated or condoned by a government or a *de facto* authority.'¹⁹ Art.7 of the Rome Statute defines a 'crime against humanity' as any of the following acts when

committed as part of a widespread or systematic attack directed against a civilian population with knowledge of the attack, in relevant part: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity. This encompasses a broad spectrum of atrocities and does not require a connection with armed conflict. As the scale and severity of sexual violence often continue post-conflict, this is particularly important.²⁰ Crimes against humanity are part of *jus cogens*, hence all states are obligated to prosecute or extradite suspects.

The ICTR in *Akayesu* reconceptualized rape as an attack on personal security, rather than an offence against 'honour'. The Court defined sexual violence to include forced nudity, which constitutes a crime against humanity by way of 'other inhumane acts'.²¹ The first conviction by the ICTY of rape as a crime against humanity was the *Kunarac* decision, in which the Trial Chamber found that rape was 'used by members of the Bosnian Serb armed forces as an instrument of terror'.²² The Court found that the actions of the accused were part of a systematic attack against Muslims. The accused knew that one of the main objectives was to drive Muslims from the region; to achieve this they terrorized the population in a manner that would make it impossible to return. They knew the general pattern of crimes, especially detaining women and girls in locations where they would be raped.²³ The accused were convicted of enslavement as a crime against humanity, having enslaved women who were subjected to multiple gang-rapes by members of the armed forces.²⁴

Significantly, it is not necessary to prove that rape itself was widespread or systematic; only that rape was one of many crimes comprising a campaign committed on a widespread or systematic scale.²⁵ This supports the view that sexual violence need not be an explicit 'tactic of war' to warrant a security response, provided it is linked with armed conflict or with patterns of anti-civilian attack.

Sexual violence as torture

When sexual violence constitutes torture amounting to a war crime or crime against humanity, it warrants Security Council attention. Building upon the 1984 Convention against Torture, the Rome Statute defined 'torture' in 1998 to mean 'the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions'.²⁶ As per the Special Rapporteur on Torture, the importance of classifying an act as 'torture' reinforces legal implications, which include the obligation to bring perpetrators to justice and provide reparations to victims.

The ICTY ruled in the *Čelebići* judgment (regarding a prison camp run by Bosnian Muslims and Croats) that rape at the instigation of a public official in situations of armed conflict is torture.²⁷ The Trial Chamber emphasized that sexual violence inflicts the severe physical and psychological suffering that characterizes torture. This has since been recognized in other ICTY cases,²⁸ often concerning interrogation tactics, punishment – including of women

related to fighters, or guards who rape to set an example to other prisoners. The ICTR has stated that rape can constitute torture because both are used for ‘purposes such as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person’.²⁹

The present framework disaggregates torture from other war crimes or crimes against humanity, since victims may prefer their case to be prosecuted ‘under the umbrella of torture’³⁰ rather than rape, to circumvent intrusive consent-based questioning. Such cross-examination should arguably be irrelevant in an environment of coercion and duress such as conflict. Indeed, the ICTY has said that the quality of consent must be assessed in light of the surrounding circumstances.³¹ This provides another articulation of the distinction between wartime rape and contexts of prevailing peace.

Sexual violence as an act of genocide or ‘ethnic cleansing’

In ‘ethnic wars’, rape has been used to attack the identity of communities and alter the composition of coveted territory. In qualifying rape as a form of genocide, the ICTR recognized it as a step in the process of group destruction.³² While the 1948 Genocide Convention makes no specific reference to rape, the proscribed acts include imposing measures intended to prevent births within a group or deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part.³³ It is artificial to separate sexual violence from other genocidal acts when all manifest the same intent: to harm members of a group, with a view to their eradication.³⁴

The ICTR in *Akayesu* recognized for the first time that acts of sexual violence can be prosecuted as elements of genocide.³⁵ The Trial Chamber held that ‘rape was systematic and had been perpetrated against Tutsi women only, manifesting the specific intent required for those acts to constitute genocide’.³⁶ Akayesu, Mayor of Taba commune, was charged with having known that acts of sexual violence were being committed and facilitating their commission by permitting them to be carried out on commune premises. The Trial Chamber also inferred the requisite intent from the fact that many rapes were perpetrated near mass graves, and statements were made that women would be collected for execution.

Akayesu makes the ethnic dimensions of the crime clear: citing in evidence propaganda such as the headline, ‘The Cockroach Begets Another Cockroach and not a Butterfly’. In the *Musema* Judgment, the ICTR noted that rape victims were told, ‘the pride of the Tutsis will end today’.³⁷ Pauline Nyiramasuhuko, the first woman to be indicted by an international tribunal, reportedly told Hutu militia, ‘you need to rape these Tutsi women because they’re arrogant’.³⁸ Similar examples abound, including Arab militiamen calling victims ‘African slaves’ prior to rape in Darfur, attesting to the motivating factor of ethnic hatred.³⁹ In contexts where ethnic identity is patrilineal, such epithets highlight the strategic use of sexual violence to weaken tribal lines.

Sexual violence has been part of terror tactics aimed to ensure vast swathes of territory remain empty of groups who dare not return to their land. Desolate villages and fallow fields bear stark witness to the impact of sexual violence in compelling communities to flee. Such attacks often take the form of ‘collective

punishment', in violation of IHL. For instance, during the Afghan Civil War 'every mujahidin group fighting inside Kabul committed rape with the specific purpose of punishing entire communities for their perceived support for rival militias . . . in many cases, it was used as a means of ethnic cleansing'.⁴⁰ Where it has this intent or impact, sexual violence can be classified as synonymous with insecurity.

Pillar 2. Command Responsibility – Security Profile of Perpetrators

Sexual violence sponsored by governments or armed groups warrants different consideration from sexual violence by ordinary citizens. State-sanctioned violence has specific dimensions, given the military exists to protect and defend the population and requires public trust in order to perform its functions.⁴¹ It also has greater power and resources to wreak havoc on individual and community life than lone civilians. Another point of distinction is that commanders have greater control over the behaviour of combatants than civilian authorities do over the behaviour of citizens.⁴² Under IHL, carrying a weapon entails responsibility to use it with lawful restraint. Rule by rape erodes trust in the uniform. When it leads warlords to the corridors of power, rather than the cells of a prison, it fosters contempt for the law. Yet such atrocities may be ordered precisely to position commanders as a force to be reckoned with, increasing their leverage in peace talks.

The modern doctrine of command responsibility can be defined as the responsibility of superiors for war crimes committed by persons subject to their control.⁴³ If a commander either ordered sexual violence to attain military ends, or knew or should have known that sexual violence was being committed by subordinates and failed to prevent or punish such acts, the commander may be held individually liable. The Special Court for Sierra Leone has convicted senior members of the Armed Forces Revolutionary Council for atrocities including rape, and leaders of the Revolutionary United Front for sexual slavery and inhumane acts including forced marriage.

The ICTY has indicted several individuals for superior responsibility for sexual violence. It is important to note that the converse does not follow: low rank is not an escape from liability, though the defence of obeying orders may mitigate sentencing. In *Čelibići*, the ICTY convicted the accused on the basis of command responsibility for violations by camp guards, which 'were so frequent and notorious that there is no way [the accused] could not have known or heard about them'.⁴⁴ In the *Blaskić* Judgment, the ICTY convicted a colonel serving as Chief of the Central Bosnia Operative Zone for violations against the population on the basis that he ordered, planned, instigated or otherwise aided and abetted in the planning, preparation or execution of those crimes.⁴⁵ In *Semanza*, which reflects a high standard of proof, the accused was found to have substantially contributed to the actions of the principal perpetrator because his instigation to rape was causally connected to the act.⁴⁶

Under ICTR and ICTY case law, command responsibility requires three elements: the existence of a superior–subordinate relationship of effective control; the requisite *mens rea*; and the commander's failure to take the necessary

steps to prevent or punish offences. However, courts have generally construed this narrowly, demanding direct orders, physical presence at the crime scene and evidence of an actual rape occurring.⁴⁷ From a policy perspective, it is desirable to visibly prosecute high-level officials behind mass-rape strategy, to incapacitate them and deter others, even if they did not personally commit the act.

The fact that a military hierarchy can orchestrate sexual violence affirms that prevention is also possible. When employed, supervised or incited by the architects of armed conflict, the phenomenon is not ‘rape out of control’, but ‘rape under orders’. When perpetrators include armed groups, militias and state agents, sexual violence is squarely situated within a security paradigm. The locus of attack is often military bases, checkpoints or compounds. The profile of perpetrators may also be evident in signature patterns of abuse associated with specific groups, including the marking/branding of victims. Similar assaults in non-contiguous geographical areas may evidence a rape policy, especially when timed to coincide with military operations or weapons searches. Moreover, routine rape in detention indicates a ‘deliberate failure’ of authorities to exercise command and control.⁴⁸ Licence to loot and rape at gunpoint can prolong conflict, providing incentive for irregularly paid rebels to continue the fight. When a state or militia permits its troops to rape with impunity to terrorize and subjugate civilians, it plants the seeds of future social trauma. Though often dismissed as opportunism, such violence by arms bearers may directly or derivatively link with larger military, political and economic agendas. Impact should therefore be more relevant than intent. Provided genocidal intent behind the overall campaign can be established, it should not be necessary to establish genocidal intent behind specific acts of rape forming part of that campaign.

Yet where evidence of intent is available, the motivations that armed actors cite may provide another critical point of distinction between sexual violence as a security matter and common law rape. When soldiers claim to rape for the ‘good of the nation’, or ‘strength in battle’, this can indicate that rape is encouraged by commanders, or condoned by them.⁴⁹ Women raped by military personnel are often accused of supporting insurgents. For instance, the UN Special Rapporteur on Human Rights in Myanmar noted that sexual abuse by government forces has been ‘a regular feature in the mode of operation of the army in its campaign of incursions into the insurgency zones’.⁵⁰ The General Assembly further noted that rapes by the Burmese armed forces disproportionately targeted minorities. Many victims reported to the Yugoslav Commission that perpetrators mentioned raping pursuant to orders with the objective of driving victims and their families from the area. A letter sent to the secret police chief from a Serb army commander noted that because ‘the psychological effect is strong’ rapes should continue.⁵¹

Pillar 3. Civilians Targeted – Protected Profile of Victims

The Security Council has recognized certain categories of person as particularly requiring protection in armed conflict and its aftermath: women/girls – through resolutions 1325 (2000), 1820 (2008), 1888 (2009) and 1889 (2009); children – through resolution 1612 (2005) and 1882 (2009); and the civilian

population generally – through resolutions 1674 (2006) and 1894 (2009). These are precisely the groups targeted by sexual violence. Women/girls are particularly targeted as symbols of a community's ability to procreate and survive. Resolution 1889 heralds new attention to sexual and reproductive security, marking the first Council mention of 'sexual and reproductive health and reproductive rights'.⁵² This responds to the trauma and disease inflicted by rape as a form of 'biological warfare'. 'Rape and other grave sexual abuse' is listed as one of the six grave violations against children in armed conflict. Resolution 1882 expands the 'list of shame' of violations against children to encompass perpetrators of sexual abuse, providing information that can be acted upon by sanctions committees or courts.⁵³ Resolution 1674 condemns 'all sexual and other forms of violence committed against civilians', and requires the Council to ensure that 'peace support operations employ all feasible measures to prevent such violence and address its impact'.⁵⁴ This includes the rape of male civilians, often employed for strategic reasons.⁵⁵

While this could constitute a subset of Pillar 1 above, the purpose of the present framework is to draw out dimensions of the problem that either concern the Council *per se*, or intersect with its areas of concern. Sexual violence is part of a broader challenge: securing respect for the distinction between civilians and combatants enshrined in IHL to prevent a widening scope of violence.⁵⁶ This is not to imply that sexual violence against combatants is permissible. Such violence would fall under the prohibition on 'superfluous injury or unnecessary suffering', in addition to being an illicit method of warfare.

Pillar 4. Climate of Impunity

Impunity for sexual violence, particularly of a widespread or systematic character, can feed the cycle of conflict. Collapsed rule of law and incomplete disarmament contribute to the spread of post-conflict sexual violence. A 'climate of impunity' refers to the unwillingness of parties to deter rape by punishing perpetrators. A serious challenge for peacekeepers will be finding ways to address this in the face of weak state institutions and powerful spoilers to the peace.

Punishment according to law is particularly validating for victims who have historically borne the blame and shame of rape in the absence of formal accountability. In a post-conflict context, this is tied to the extension of state authority and the capacity of central and local government to uphold order. At the heart of reconciliation is the notion of resurrecting civic trust, whereby victims of abuse can again be regarded as rights-bearing citizens. Allowing forms of violence that disproportionately affect women to go unpunished amounts to discrimination that infringes human rights.

Failure to uphold obligations under international law has, almost invariably, predicated the descent into further egregious violations, vengeance and vigilante justice. Indeed, the threat or experience of sexual violence has been a motivating factor for many women who have taken up arms against an unjust situation, such as former rebel commander Black Diamond of Liberia, who was gang-raped by Charles Taylor's forces.⁵⁷

Impunity for sexual violence can fuel a generalized culture of impunity, as such crimes are often perpetrated in conjunction with pillage, killings and destruction. In Liberia, rape was used at the end of the conflict as a ‘scorched earth’ policy: ‘[w]hen ECOWAS [the Economic Community of West African States] peacekeepers arrived ... the fighters in Liberia engaged in a “frenzy of rape” ... The female population was seen as booty to be taken before the peacekeepers took over.’⁵⁸ Infiltration of refugee/IDP (internally displaced person) camps, in violation of their civilian character, also occurs due to a sense of sexual entitlement on the part of armed elements emboldened by the law and order vacuum.

Sexual violence creates and perpetuates a culture of attack and retribution, with ripple effects extending from the victim to their family and community. As Deputy Secretary-General Asha-Rose Migiro has stated, ‘[i]mpunity for sexual violence committed during conflict perpetuates a tolerance of abuse against women and girls and leaves a damaging legacy by hindering national reconciliation’.⁵⁹ During the Liberian Civil War, sexual violence was perpetrated by all belligerent parties. It was not addressed in the 2003 Liberian Peace Agreement, though women were instrumental in bringing it about. Currently, rape is the crime most frequently reported to the Liberian National Police. Ignoring sexual violence in peace processes may encourage its persistence post-conflict. Accordingly, resolution 1820 requires the Peacebuilding Commission to address sexual violence in its recommendations.

Pillar 5. Cross-Border Implications

While it may be difficult to quantify the relationship between sexual violence and international security, there can be no doubt that its effects are often transboundary and multifaceted. The implications are even more serious when ethnic, linguistic or other fault lines are mirrored across frontiers. Sexual violence can then be deployed as a tool of addressing inter-group resentments in conflicts across borders. When sexual violence crosses borders, as in West Africa or the Great Lakes region, it fuels instability and undermines peace.⁶⁰ This pillar has three subcomponents: displacement; HIV transmission; and economic insecurity.

Forced displacement/ demographic destabilization

Migration can alter the ethnic composition and population distribution within and between states, which can increase the potential for instability, particularly in situations of resource scarcity and in sensitive border areas. In Darfur, for example, campaigns of rape and terror have displaced more than a million civilians from their tribal lands. The spill-over of Sudanese refugees into eastern Chad, as well as cross-border incursions by militias, have created an environment of heightened insecurity in which sexual violence has spiked.

Rape victims are further vulnerable to exploitation and trafficking, the proceeds of which may fuel conflict and flow to transnational criminal networks for the purchase of arms. Abduction for sexual slavery was employed during the civil war in Sierra Leone, where women were regarded as ‘war rations’: in the same way that militias would seize crops to sustain themselves, there was

border areas affected by conflict, whose populations are at risk from a variety of cross-border problems, including . . . widespread rape’.

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Publications

What Can I Do to Help Ensure a Successful Interview?

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Sexual violence is hard for anyone to disclose and discuss, but it may be even more difficult for farmworker victims. There are many factors that may make it challenging for farmworkers to speak about sexual violence. For example, they may be:

- Afraid of losing their job;
- Afraid of losing their housing when it, too, is provided by the employer/perpetrator and can be taken away in retaliation for reporting the assault;
- Blamed for the sexual assault by family, friends, neighbors and co-workers;
- Feeling shame and/or self-blame about the assault due to social norms and cultural taboos around sexuality.

Make contact and meet in a safe location. Victims' safety and the case may be compromised if perpetrators learn that victims are working with law enforcement. For that reason, you may need to make contact and meet with victims outside of work or employer-controlled housing.

Practical tips for your interview. The following are practical steps that you can take to help alleviate victims' fears and concerns. Ultimately, you can help victims feel more comfortable, more likely to share the details of the assault and more likely to continue to work with you by:

- Scheduling a group interview with the victim's permission if more than one person from the support team will be assisting the victim rather than conducting multiple interviews;
- Scheduling interviews after farmworker work hours or on weekends;
- Explaining the confidentiality, privilege and privacy implications of having a friend or family member present during the interview;
- Asking whether the victim prefers to be interviewed by a man or a woman, provided that you can accommodate the request;
- Giving the victim choices about where to conduct the interview;
- Explaining why you need to take notes during the interview;
- Explaining how long you anticipate the interview will take;
- Encouraging the victim to take breaks as needed;
- Creating a road map for the investigation so that the victim knows what to expect;
- Asking questions regarding the victim's concerns about employment, housing, physical safety, privacy, financial stability and education and making appropriate referrals for services;
- Making referrals to immigration attorneys as necessary;
- Telling the victim what information you are going to share, with whom and for what purpose;
- Explaining to the victim that your conversation is not confidential and that all information collected—including your notes—may be used by the prosecution and the defense;
- Being organized and succinct;
- Explaining safety planning and creating a safety plan;
- Being aware of your body language, eye contact, word choice, tone, mannerisms and reactions to victims' comments so that the victim feels supported rather than judged or hurried: and

Trust Rating

90%

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he victim to get to s may become rmination.

Be creative when building the timeline. A victim's credibility is often questioned during a prosecution; this commonly arises when victims struggle to remember the timeline of events. This is often an issue for all sexual violence victims because of memory loss due to trauma.

Additionally, due to high illiteracy rates, some farmworkers may not be accustomed to keeping track of the month, date and hour or creating a written record of events. You can work with victims to overcome these challenges by using markers such as type of harvest or holidays, rather than month of the year, to specify timed events.

Be aware of trauma's impact. Each time victims recount what happened, it may be painful and re-traumatizing. It is not uncommon for victims to walk through and relive the trauma while answering interview questions. Victims may move their bodies in the same way as the perpetrator did, move their hands as the perpetrator did, change their tone of voice and mimic the perpetrator's voice, among other things. Sexual violence often causes emotional disturbances such as post-traumatic stress disorder, anxiety, depression and memory loss. The degrees of trauma experienced will vary for each victim and can greatly impact victims' ability to relay details of the sexual harassment or sexual assault and to request services. Keep in mind that many victims may have experienced violence previously, which may compound the effects of the most recent trauma. Immigrant victims may have fled violence in their country of origin or may have been assaulted or raped during migration to the U.S. Multiple traumas can dramatically impact memory, cognitive processes and the ability to discuss the incident of violence that has brought them to you.

Provide reassurance. You may be the one person to whom victims disclose the sexual assault. Encouraging words, such as "This is not your fault" and "You are not responsible" and "You deserve respect and safety" may be helpful.

Choose your words carefully. Discussing sexual violence is difficult in all cultures. For this reason, you must tread carefully when you prepare for an interview or meet with someone from a culture other than your own.

It is important to ensure that you do not offend, create discomfort or re-victimize individuals. In some cultures, it is taboo to discuss sex, even if it was consensual. It may be difficult for individuals to share information about the sexual violence due to shame and embarrassment. Direct questions may make victims struggle to answer and feel uncomfortable; they may even shut down and not respond to any additional questions.

Therefore, try to ask indirect questions. Accept the fact that victims may talk around the issue and be less direct. It can be helpful to learn from victims the most appropriate and non-offensive terms they wish you to use. Additionally, be aware that some words used in English to talk about sexual violence do not always exist in other languages; therefore, victims may not use the same words to describe what happened as an English speaker might use.

Be comfortable talking about sexual violence. It can be uncomfortable and awkward for you and victims alike to talk about sexual assault. However, if you are uncomfortable talking about anatomy, sexual acts or sexual violence, you may miss opportunities to assist victims. Victims may not disclose to you or may not follow up post-disclosure because of your response. Ask for staff training from community partners, such as rape crisis centers, on how to talk about sexual violence. Practice mock interviews with co-workers until you are comfortable talking about sexual violence between individuals of the same and opposite gender, adults and children.

Eye contact. In some cultures, avoiding eye contact with a person of authority is a way to show respect. Additionally, eye contact may be difficult for victims, as they may feel ashamed about the sexual assault.

Give victims enough physical space. When interviewing sexual violence victims, give them enough physical space to make them feel comfortable. Try not to invade their personal space by moving closer. Victims may react out of fear if someone gets too close or tries to touch them. Resist the urge to give a reassuring pat on the arm or back as such gestures may be unwanted and feel inappropriate.

Educate law enforcement personnel and fact-finders about rape myths and the power and control dynamics within the agricultural industry. Rape myths affect the way that sexual assault victims' credibility is assessed. One is that "real rape" is violent and results in profound physical injury to the victim. In truth, most sexual assault victims do not suffer serious physical injuries as a part of the rape. More over, farmworker victims may be less likely to physically resist an assault in cases where they—and their family—are vulnerable to the perpetrator in various ways, including relying on the perpetrator for income, housing, transportation, etc. Another myth is that victims lie—that they claim rape, when it was consensual sex. Outsiders may perceive that rape victims consented for different reasons, such as a continued contact with the perpetrator post-assault. Here again, farmworker victims may be even more vulnerable to attacks on their credibility because of on-going dependence upon the perpetrator for food, transportation and shelter. An additional myth is that victims of real rape report to law enforcement immediately after being assaulted. Few sexual assault victims report immediately to law enforcement, if at all; farmworkers may take even more time to report due to additional barriers such as transportation, language and fear of retaliation. Your role is critically important. You can help debunk these myths—and acknowledge the enormous power imbalance in the rural workplace—with law enforcement, prosecutors, judges and juries, among others. Finally, your fellow law enforcement officials and fact-finders must be constantly reminded about cultural backgrounds and mores and how they might bear on credibility. For example, victims may be reluctant to make eye contact with an interviewer not because they are being untruthful but because they have grown up in a culture in which averting someone's eyes is a way of showing respect.

Ensure accurate explanation of legal terms. Understanding and interpreting legal concepts is another challenge farmworker victims may face in a criminal case. Just as some words used to discuss sexual violence may not exist in the victim's native language, it is possible that certain legal concepts or other words do not exist in the victim's native language. Allow ample time to make certain that farmworker victims understand legal terms and work closely with an interpreter.

Explain the Sexual Assault Forensic Examination (SAFE).¹⁰ Refer the victim to an advocate or be prepared to explain the purpose or steps involved in undergoing a SAFE exam including how evidence is collected and how it may be used in civil and/or criminal litigation. Be aware that some farmworkers may have never undergone such an exam and even if they have it can be especially violating and re-traumatizing. Victims must make informed decisions about whether to undergo the exam, including understanding how medical records may be subpoenaed or used in legal proceedings, which can be discussed with a civil attorney.

Respect victims' decisions not to pursue criminal charges. Victims may not want to participate in an investigation and/or prosecution because of concerns about safety, retaliation, economic stability, immigration status, migration, time away from work to pursue prosecution or fear of putting their family in jeopardy. These concerns may outweigh their desire to seek justice.

Discuss the importance of staying in contact. The necessity of some farmworkers to migrate for work introduces challenges of remaining in contact with victims as well as their availability to participate in a prosecution. Ask victims to keep you updated with new addresses and phone numbers as they move or migrate. Also, determine whether there is any way to reduce the time between filing the police report and case resolution so that victims are available to testify rather than returning for a trial many months later. For example, fight continuances and work to ensure quickly scheduled trial dates.

Exercise

- What methods do I use to make a victim witness feel at ease?
- Of what might a farmworker victim be most afraid when reporting to law enforcement? What can I do to address and reduce those fears?
- How do I show respect for the victim's culture?
- How can I improve my interviewing skills?

Interview

Leading an interview on sexual violence is a difficult task; the truth of this traumatic experience could have a long term impact on the victim. In the LTTE, the reality of sexual violence is even more difficult to assess as chastity was the only accepted behaviour. The LTTE ideal “virgin members” were under the control of the movement and this imposed conduct should be explored through the victim’s testimonies instead of the LTTE vision only. In the aftermath of the Sri Lanka Civil War, we could also raise some questions concerning the loss of control of the LTTE on their soldiers; the “LTTE couple” marital life. After the observations and questionnaires we would lead, the interview process could become easier as the persons will begin to know a bit more about us and our work. However, a schedule is still necessary as intimacy is always difficult to discuss. Several meetings over a period of two months’ time will be organized and if a direct reference to sexual violence will be avoided for this too short period of time, I think the few questions and answers gathered together could allow us to go further later on as we cannot prepare questions for something we do not know for sure.

<i>1st Month</i>	<i>2nd Month</i>
1st week: Meeting with one victim and questions about their childhood, their children... If the victim does not seem to be vulnerable or seems to feel at ease, go further with questions about her families, schools and childhood during the war and her feelings concerning the war.	5th Week: Victim alone about the code of conduct imposed.
2nd Week: Meeting with few victims together about their experience during the war...	6th Week: Group meeting. Same questions than week 5.
3rd Week: Meeting again with the victim alone and ask questions about her role during the war with the Tigers (necessity to go further with LTTE women only)	7th Week: Meeting with one victim only and indirect questions concerning sex and sexuality / chastity with focus on marriages to help the victim to feel more at ease talking about those issues.
4th Week: Meeting in groups, same questions than during the third week.	8th Week: Questions about LTTE couples only with one victim only and same question during the same week with group.

Sexual Violence in the LTTE

Questions to make the person comfortable...

- How many children do you have?
- Where did you grow up?
- What do you remember from your childhood?
- What future do you see for your children?
- How did you and your family experience the war?
- Did you have any role during the war? What about your parents?
- What did they tell you about this difficult period?
- Were you going to school at this time? What did they teach you at school?
- How was your professor? The other students? What did you enjoy most?
- What was and is your favourite activities?
- How do you see yourselves in few years?
- How did you feel during the war? Were you afraid? Why?
- Did you talk about your fear with your family? Your friends?
- What was your role during the War?

Group Questions about the War

- How old were you when the Civil War began?
- How did you feel then?
- How did you perceive the adults? Were they stressed, supportive, confident?
- How were the relationships with your parents?
- What did you learn at school?
- What did your parents think about the Tamil Tigers? What did your professor say about them? What did you think at this time and what do you think now about them?
- Did you meet the Tamil Tigers? When? What did they tell you?
- Did you join them? Why?

Questions about the Tamil Tigers

- When did you decide to join them?
- Why?
- How were you recruited? Did you volunteer?
- How did your parents see your involvement?
- How did you feel then?
- What was your role, tasks with the LTTE?
- Did you have a mentor? A woman or a man?
- How were the trainings? Where? How did you feel about them?
- Did you go on the field? When?
- Did you have any friends? Did you lose some of them? How did you react?

- What do you think of Prabhakaran? Why?
- How did the leaders behave with you? What did they say? What did they teach you?

Questions about the LTTE imposed code of conduct

- What was the goal of the Tamil Tigers? Why? Do you agree with it? Why?
- Were you allowed to see your family while in the movement? Why?
- What did you feel on the field? Scared? Other? What was the reaction of the LTTE when you were afraid?
- Did you receive the same treatment, opportunities than men? Why? What was different?
- What was prohibited? What was allowed? Why?
- What do you think of the military codes?
- Did the codes of conduct the same for men and women?
- What was similar? What was different? Why?
- Did you feel comfortable or oppressed in the movement? Why?
- What did you have to wear? Why?
- Could you carry weapons? Did you use them?
- Have you ever hurt or killed somebody? How do you feel about it? What did the movement say?
- What was your role inside the Tamil Tigers?
- How did you perceive the role of the suicide-bombers? Why? What are they representing for you?
- How did men behave with you? Were you allowed to talk to them? Why?
- How did the LTTE react if you were not obedient/ did not respect their codes of conduct?
- Did you or some of your friends marry any members? Why?
- Did the LTTE support your weddings? How could you date them during the war?
- What is a “bad behaviour” for women? What is a good man?
- Did you want to stay with the LTTE? Why?
- How do you feel since 2009? Do you still have contact with any members?
- What was your family reaction when you came back from the field?

Indirect Questions (through weddings) concerning sexuality/chastity

- In the LTTE, you were not allowed to talk or spend times with any men but did you? Why?
- Did you feel discriminated because of your gender in the LTTE?
- Did any of your friends or members talk to a male cadre? Why? What was your reaction? The reactions of the other members? And the LTTE leaders?
- What do you think about men? Why?
- What do you think about LTTE cadres? Why?
- Why did the LTTE avoid any contact between females and males? What do you think?
- What do you think about sex and sexual relationships? Why?

- Have you ever wanted to marry anyone? Did you get married? To whom? Why did you choose this man? Why did you refuse to get married?
- How did the LTTE organize weddings? Why? What was the difference on the field between married women and single one? What about men?
- What was the reaction if you did not get marry to a male cadre but a civilian? Why?
- Did your husband or any LTTE members behave in a way where you did not feel comfortable? Can you explain a bit?
- Do you have children? Do you raise them with your husband? Why?
- I am going to ask you some questions about your sexuality now, do not feel obliged to answer. Did you ever experience sexuality? When? How did you feel about it? Did you or husband take contraception? Why?
- Was your first sexual relationship painful? Why? What about others sexual relationships you might have had?
- Have you seen a doctor after your first sexual relationship? Why? What did he/she say? Did you contract any disease?
- What was the policy of the Tamil Tigers concerning sexuality? Why? How did you feel about it?
- Did some persons breach the LTTE rules on sexuality? Why? What do you think?
- Did your husband and you have sex before getting married?
- How was it? Why?
- Do you love your husband? How does he behave with you?
- What was the reaction of the LTTE when you decided to get married? Did he ask them or did you ask them the permission? Did you know him before?
- What did change between your LTTE single life and your marital life? Do you know why? Did the LTTE members change their attitudes? Why?
- Did your role in the LTTE change when you get married? Why? What about your husband's role?
- When did you decide to have children? Why?
- Were you happy to get married? Why? What did it change then?
- Did you have a proper house for married couples in the LTTE? Where did you live? Can you explain the conditions? What was different/similar than when you were single?
- Where did you deliver your baby? Who was taking care of your child when you were still in the LTTE? Did you have special accommodation arrangements? Did you have access to health care?
- Were you afraid to go back to your family after the collapse of the LTTE? What was your reaction? Your husband reaction? Did they meet your husband? What do they think of him?
- Would you describe your marital life as a happy one? Was it better in the LTTE or now? Why?

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ANNEXE 4

On: 14 February 2014, At: 09:41

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954

Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Journal of Aggression, Maltreatment & Trauma

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/wamt20>

Short- and Long-Term Effects on the Victims of Terror in Sri Lanka

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Published online: 30 Sep 2008.

To cite this article: Daya Somasundaram MD (2004) Short- and Long-Term Effects on the Victims of Terror in Sri Lanka, *Journal of Aggression, Maltreatment & Trauma*, 9:1-2, 215-228, DOI: [10.1300/J146v09n01_26](https://doi.org/10.1300/J146v09n01_26)

To link to this article: http://dx.doi.org/10.1300/J146v09n01_26

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TABLE 1. Distribution of war stress in the community

Stress factors	Community (n = 98)	OPD ¹ (n = 65)
Direct stress		
Death of friend/relation	50%	46%
Loss of property	46%	55%
Injury to friend/relation	39%	48%
Experience of bombing/shelling/gunfire	37%	29%
Witness violence	26%	36%
Detention	15%	26%
Injury to body	10%	9%
Assault	10%	23%
Torture	1%	8%
Indirect stress		
Economic difficulties	78%	85%
Displacement ²	70%	69%
Lack of food	56%	68%
Unemployment	45%	55%
Ill health ³	14%	29%

1. Outpatient department (OPD) of a general hospital.

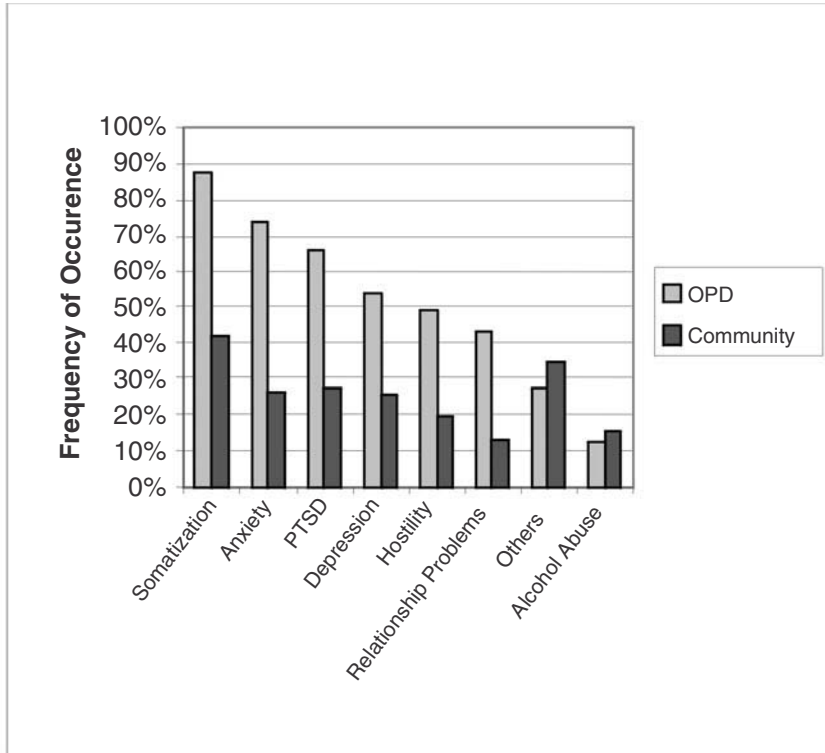
2. After the 1995 mass displacement when the figure would have reached almost 100%.

3. Ill health due to war-related injuries, including amputations caused by landmine blasts, epidemics like malaria, reduced resistance to infections (due to stress and malnutrition), and septicemia had debilitating mental effects.

sector including: (a) hospital out patient departments (OPDs), (b) general practitioners, and (c) traditional healers. For example, in Jaffna, the largest city in the Tamil area, the level of traumatization and symptom formation was higher among OPD patients than in the general population (Somasundaram, 2001). The mean stress score for the OPD attendees (41.4) was significantly higher than in the general population (36.2). The implications of these findings for the time and cost of inappropriately treating these large numbers in the OPD and the need to address their real difficulties properly, such as through counseling, relaxation exercises and socio-economic rehabilitation, should be realized.

Noteworthy, in the above research, is the finding that 1% of the study population had been tortured, but the figure reached 8% in the OPD patients. Torture was used as a routine procedure carried out on all those detained. Studying 168 ex-detainees, Doney (1998) found that all had been subject to torture. Eighty-six percent of the ex-detainees were found to suffer from Post Traumatic Stress Disorder (PTSD). Notably, different and opposed parties use

FIGURE 1. Psychosocial and psychiatric problems in the OPD compared to the community



the very same methods of torture, even on their own cadres, such as beating with plastic pipes filled with sand, putting chili powder into eyes, nostrils or genitalia, suffocating with a 'shopping' bag filled with petrol, and driving pins under the nails. In '*Dharmachakra*' (*wheel of righteousness*), a new method, also called '*jujuyekbab*' (fried chicken) in Iran, the victim's wrists are tied together just below the bent knees, so that a pole can be passed simultaneously through the crook of the bent knees in front of the elbows. The pole is then suspended and, when rotated rapidly like a wheel, there is intense pain to the body but the only evidence will be healing abrasions at the wrist (Fernando, 2001). The person becomes confused and breaks down (with loss of resistance). The curious use of the Buddhist spiritual term *Dharmachakra* for this type of torture is psychologically revealing (Gunasekara, 2001). Many individuals do

abuse, including sexual abuse, reported to the District Child Protection Committee (see Figure 2) at the General Hospital in Jaffna.

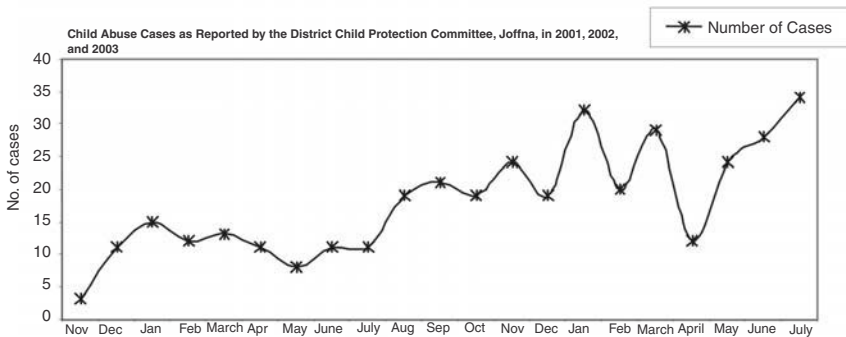
This could be due to increased awareness of the problem (child abuse always existed in Tamil society, but is only now coming to light) but is also due to the war. Many families are displaced from their familiar surroundings and natural habitat where they had the support and protection of extended family and friends in the village. They now have to live in crowded camps or accommodations in strange and new places. Parents have to go out to attend to various urgent requirements like fetching relief and meeting authorities. Some families are without their men. In some, the mother has started another relationship. This is compounded by the aforementioned general deterioration in social values and principles, a reduction in restraints and even disinhibition. There is also a noticeable increase in violence against women.

POSITIVE EFFECTS OF WAR

In contrast to the overwhelming negative consequences of the sustained terror on the community, there have been a few positive developments described below.

Emerging Community Organizations. Some new community grass roots organizations have emerged such as those for widows and the disappeared. Leadership by women of many of these organizations is particularly noteworthy. New religious movements, particularly the charismatic, emotive ones, have become popular, attesting to the community's need for the emotional support, fellowship, leadership, and meaning to events they provide. *Villipukulus*, community vigilante organizations, have started functioning in vil-

FIGURE 2. Child Abuse in 2001, 2002 and 2003



Questionnaire for victim's rehabilitation

To the victim :

- Do you have a job? What? When did you find it?
 - Did you join any organizations? Why? Did it help you to get back on your feet? How? Where is it located? Is it easy to access?
 - Are you happy with the support they provide you?
 - We propose few definitions of sexual violence here, do you agree with one in particular? Why?
- Sexual violence and abuse is any behaviour (physical, verbal, virtual/digital) perceived to be of sexual nature which is controlling, coercive, exploitative, harmful, or unwanted that is inflicted to anyone (irrespective of age, ethnicity, religion, gender or sexual orientation) without their consent or understanding. (Thesis)
 - Sexual violence is any sexual act or attempt to obtain a sexual act by violence or coercion, unwanted sexual comments or advances, acts to traffic a person or acts directed against a person's sexuality, regardless of the relationship to the victim, in any setting. It occurs in times of peace and armed conflict situations, is widespread and is considered to be one of the most traumatic, pervasive, and most common human rights violations (Wikipédia)
 - Sexual violence (SV) is any sexual act that is perpetrated against someone's will. SV encompasses a range of offenses, including a completed non-consensual sex act (i.e., rape), an attempted non-consensual sex act, abusive sexual contact (i.e., unwanted touching), and non-contact sexual abuse (e.g., threatened sexual violence, exhibitionism, verbal sexual harassment). These four types are defined in more detail below. All types involve victims who do not consent, or who are unable to consent or refuse to allow the act.
 - A completed sex act is defined as contact between the penis and the vulva or the penis and the anus involving penetration, however slight; contact between the mouth and penis, vulva, or anus; or penetration of the anal or genital opening of another person by a hand, finger, or other object.
 - An attempted (but not completed) sex act
 - Abusive sexual contact is defined as intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person without his or her consent, or of a person who is unable to consent or refuse.
 - Non-contact sexual abuse does not include physical contact of a sexual nature between the perpetrator and the victim. It includes acts such as voyeurism; intentional exposure of an individual to exhibitionism; unwanted exposure to pornography; verbal or behavioral sexual harassment; threats of sexual violence to accomplish some other end; or taking nude photographs of a sexual nature of another person without his or her consent or knowledge, or of a person who is unable to consent or refuse. (Center for Disease Control and Prevention)

- The term “sexual assault” generally means unwanted sexual contact, or in other words sexual contact against your will, and without consent. The legal definition varies by state, but sexual assault and domestic violence organizations consider any unwanted sexual activity to be sexual assault. This includes rape. Sometimes, people are sexually assaulted or raped by strangers. But even more often, people are sexually assaulted by someone they know – a friend, date, relative, acquaintance, or even a long-time partner or spouse. There is often overlap between domestic violence and sexual assault because one of the ways abusers harm their partners is through sexual assault. Sexual assault can be verbal, visual, or anything that forces you to join in unwanted sexual contact or attention. Examples of this are voyeurism (when someone watches private sexual acts), exhibitionism (when someone exposes him/herself in public), incest (sexual contact between family members), and sexual harassment. Sexual assault or rape may happen to anyone, including women, men, children, elderly, straight or gay. (National Women’s Health Information Center, US Department of Health and Human Services)
- Do you think it corresponds to any similar situation that you experienced during or after the conflict? Can you explain a bit further?
 - What would be your own definition of sexual violence?
 - Do you feel there should be more done in your country to promote equality and reconciliation? What? Can you think of any opportunities that you would like to have?
 - How do you feel since the end of the conflict?
 - Could you see any doctors, psychologists?

To organizations helping victims

- What is the service you provide to the women victim of the Sri Lanka Civil War?
- Were they in relations with the LTTE? How? What was their links?
- How do you help them to be rehabilitated and reintegrated? Services, health care, police, judiciary?
- What do they report you? Do you have any cases about sexual violence? If yes or no, why? Do you know if the perpetrators of their traumas are prosecuted?
- Do you train your staffs for the relations with those victims? How? How do you think it helps?
- Is your organization equal in gender?
- How can you involve community to deal with the violence that those women suffered during the war? How can you involve them in the rehabilitation programme to encourage their talks about sexual violence?
- Do you have any contact with the LTTE? Why? How?
- Do you register the trauma caused by them in different sections?
- Do you see any difference between sexual violence during conflicts and in the aftermath? What are the consequences? How do you deal with it? Is your approach any different then?
- As sexual violence remains invisible, what are your resources? How did they speak about it?

Chen Reis

recommendations document was further informed by previous work on ethical and safety issues involved in researching violence against women.⁵³

Box 2: WHO Ethical and Safety Recommendations for Researching, Documenting, and Monitoring Sexual Violence in Emergencies.

Risks and Benefits

The benefits to respondents or communities of documenting sexual violence must be greater than the risks to respondents and communities.

Methodology

Information gathering and documentation must be done in a manner that presents the least risk to respondents, is methodologically sound, and builds on current experience and good practice.

Referral to services

Basic care and support for survivors/victims must be available locally before commencing any activity that may involve individuals disclosing information about their experiences of sexual violence.

Safety

The safety and security of all those involved in information gathering about sexual violence is of paramount concern, and in emergency settings in particular should be continuously monitored.

Confidentiality

The confidentiality of individuals who provide information about sexual violence must be protected at all times.

Informed consent

Anyone providing information about sexual violence must give informed consent before participating in the data gathering activity.

Information gathering team

All members of the data collection team must be carefully selected and receive relevant and sufficient specialized training and ongoing support.

Children

Additional safeguards must be put into place if children (i.e. those under 18 years) are to be the subject of information gathering.

4.2. THE WHO RECOMMENDATIONS DOCUMENT

The WHO recommendations document resulting from the consultation was designed to be used before the start of information collection on sexual violence in humanitarian settings, and to apply to a range of forms of data collection. It can be used by anyone involved in planning, conducting, funding, reviewing protocols for, approving or supporting information collection on sexual violence in humanitarian settings including researchers, programme planners, funders,

⁵³ See *supra* 48.

ethics review committees, ethicists, managers and staff of humanitarian and human rights organizations, and all those involved in sexual violence inquiries. The eight inter-related recommendations are grounded in core ethical principles including respect for persons, beneficence and justice. The WHO recommendations document is intended to complement and enhance existing professional and ethical standards and guidelines, and inform ethics review processes. It is not intended to be a stand alone document and should be read together with other tools and documents which govern ethical and safe practice related to research and documentation in humanitarian settings.

The following section summarizes some key aspects of each of the recommendations. This summary does not replace the reading of the full WHO recommendations document.

4.3. THE RECOMMENDATIONS

4.3.1. *Risks and benefits*

Recommendation 1: The benefits to respondents or communities of documenting sexual violence must be greater than the risks to respondents and communities.

It is the responsibility of those who are gathering data on sexual violence in humanitarian settings to ensure that this activity is justified. In order to help users identify whether the information gathering activity is necessary and consider whether the benefits to individuals or communities who will be providing information are greater than the risks to them, box 3 below includes the key questions to be answered by project planners or researchers in the early planning stages. These may also be used by those with oversight or approval responsibilities for data collection activities.

Box 3: Questions to Answer When Planning and Designing Information Collection Activities

- What is the purpose of the proposed data collection activity?
- How likely is it that collecting information in a given way from a given group will achieve the intended purpose?
- What are the likely physical, psychological, social and legal risks to survivors, their families and supporters, and to communities?
- What are the likely physical, psychological, social and legal risks to those involved in collection of the data of the proposed data collection activity?
- How can the above risks be minimized?
- Is it fair to the individuals and the community to ask them to be involved in this activity? Must this population be used? Will they benefit directly?

4.3.2. Methodology

Recommendation 2: Information gathering and documentation must be done in a manner that presents the least risk to respondents, is methodologically sound, and builds on current experience and good practice.

A sound understanding of the local context must inform any effort to collect data on sexual violence in humanitarian settings. Those involved in data collection must abide by relevant standards and recommended good practice for data collection and for working with survivors of sexual violence. Before any data are collected, the plan for data analysis and reporting must be elaborated. When compiling existing data (for example information from service providers) this must be done in a way that prevents the linking of data to a specific individual or group of individuals.

There are particular risks that may arise from interviewing survivors of sexual violence or those who are likely to have experienced sexual violence. Several of the recommendations include specific guidance related to directly interviewing survivors of sexual violence. These are summarized in a textbox entitled “Special considerations for interviewing women or other persons who may have experienced sexual violence.”⁵⁴ Because of the heightened risk associated with interviewing survivors, this should only be considered after all other options have been considered and judged insufficient for gathering critically needed information.

4.3.3. Referral services

Recommendation 3: Basic care and support to victims/survivors must be available locally before commencing any activity that may involve individuals disclosing information about their experiences of sexual violence.

In the process of collection of data about sexual violence – especially through interviews with those who may have experienced sexual violence – those collecting the data may encounter individuals who request or who may need specific health or psychosocial services or access to services that can address safety issues. For some these will be issues that arise from the sexual violence but for which they have not been able to seek assistance. In other cases, the participation in the data collection exercise may lead to a need for specific support.

⁵⁴ WHO *Ethical and Safety Recommendations for Researching, Documenting, and Monitoring Sexual Violence in Emergencies* (Geneva, Switzerland: World Health Organization, 2007), 14, available at www.who.int/gender/documents/OMS_Ethics&Safety10Aug07.pdf.

As such, in any setting where data collection is being considered, it is an ethical imperative that survivors have access to at least basic medical care, psychosocial support and protection from further violence. In order to ensure that these services are available, those undertaking data collection should ensure links with local service providers. If the information collection involves children (i.e. those under 18 years of age) this required basic care and support must include services designed to meet the special needs of children (see recommendation 8, below).

4.3.4. *Safety*

Recommendation 4: The safety and security of all those involved in information gathering about sexual violence is of paramount concern, and in emergency settings in particular should be monitored continuously.

Given the sensitive nature of an inquiry about sexual violence in a humanitarian setting and the likely inherent insecurity of the setting itself, safety and security must be a paramount concern. The safety and security issues which must be considered relate not just to those from whom information is being gathered but also to anyone involved in or possibly affected by the data collection activity, including the members of the information collection team and the community. A data security plan, which sets out procedures for ensuring that data are protected and which defines principles around data sharing must be in place before the data collection starts. The safety and security issues should be monitored and evaluated throughout the data collection and the data gathering stopped or reconfigured if it is deemed that security has been compromised or that it is unsafe to continue.

4.3.5. *Confidentiality*

Recommendation 5: The confidentiality of individuals who provide information about sexual violence must be protected at all times.

The right to privacy obligates those collecting personal information to preserve the confidentiality of this information. This means that information disclosed by an individual may not be shared without the specific, explicit and informed consent of the individual. Breaches of confidentiality are not only ethical issues but in humanitarian contexts can lead to serious harm to the survivor, the family, and the community. As such, it is critical that confidentiality be maintained during data collection, when data are stored as well as when they are analyzed. Furthermore, confidentiality considerations must govern whether and how data are shared or publicized. The WHO recommendation document also addresses specific issues related to confidentiality including mandatory reporting

requirements, limits to confidentiality in the context of service provisions, and issues related to use of photos, audiotapes and videotapes.

4.3.6. *Informed consent*

Recommendation 6: Anyone providing information about sexual violence must give informed consent before participating in the data gathering activity.

Informed consent is a process which, when applied to gathering of data on sexual violence, aims to ensure that those providing the information understand:

- why it is being collected
- the procedures that will be followed
- the risks and the benefits to themselves if they participate
- their rights to refuse to provide certain information or to participate at all.

It is important to view informed consent as an ongoing process rather than merely a requirement for a form to be signed. To avoid inadvertently coercing people into participating in the information collection exercise, both the content of the information and the way in which it is conveyed must take into account the power dynamics in the local context.

4.3.7. *Information gathering team*

Recommendation 7: All members of the data collection team must be carefully selected and receive relevant and sufficient specialized training and ongoing support.

Careful selection, training and support of those involved in data gathering on sexual violence in humanitarian settings is essential not only for reducing risk for themselves but also for those providing information including survivors. The selection process and criteria for information collection team members should take into account at least age, sex, ethnicity and language skills of team members. All those involved in the information collection activity, whether directly (e.g. interviewers) or in support functions (e.g. drivers) may encounter safety and ethical issues during the process. These issues may differ depending on the role of the team member. As such, all (regardless of role) must be carefully selected, trained and supported.

4.3.8. Children

Recommendation 8: Additional safeguards must be put into place if children (i.e. those under 18 years) are to be the subject of information gathering.

Any information collection activity which involves children must involve additional safeguards to protect them. Every effort must be made to identify possible risks, and anticipate and prevent, or minimize harmful consequences. Children must only be involved if both of the following conditions are in place:

- their inclusion is the only way to get needed information and
- support services for children are in place.

The recommendation also addresses issues of informed consent specific to children as they may not legally be able to give consent. It also highlights specific additional background information, for example about mandatory reporting rules in the setting, which must be considered by those planning the information collection exercise before starting.

5. CONCLUSION

There are important legal, methodological, ethical and safety issues which must be considered before collecting information on sensitive issues in humanitarian settings. Although many of those seeking information on sexual violence in conflict and post conflict settings are motivated by a desire to end impunity and help survivors, insufficient understanding of and attention to these issues may lead to harm.

When collected, analysed and used correctly and responsibly, data on sexual violence in humanitarian settings can help inform political and justice processes, and prevention and response programming, increase attention to the issue of sexual violence and support efforts to increase resources to address it.

The collection and use of data on sexual violence in humanitarian settings must consider the needs of survivors and should support, rather than undermine or create barriers to the work of those responding to these needs including health and psychosocial support service providers. Efforts to collect, share and use data on sexual violence in conflict affected settings should use appropriate methodological approaches and be based on guidance regarding ethics and safety.

investigator – and may serve to protect the evidence itself from later misinterpretation.²¹

5.2. COMMON ELEMENTS OF THE CATEGORY OF CRIME – WAR CRIMES, CRIMES AGAINST HUMANITY, OR GENOCIDE

In order to prove international crimes there must be evidence which satisfies the common elements of the category of international crime. It is this additional proof which “converts” a domestic crime into an international crime. If there is insufficient evidence to satisfy the common elements of war crimes, crimes against humanity, or genocide, no charge may be brought for this crime under international criminal law. Keeping these elements in mind should serve to assist the researcher/investigator, rather than to burden them. Again, keeping a checklist of the elements of war crimes, crimes against humanity, and genocide at hand, an investigator may avoid leaving gaps which later need to be filled, and can ensure that the full picture of criminality is included in the case to be brought.

Examples of evidence which could be gathered from an individual survivor-witness which could serve to satisfy the common elements²²:

- A particular repeated pattern or methodology to the attack(s) (eg. First the village is attacked from the air, then it is surrounded by tanks, and finally the perpetrators on camelback enter and violations are committed.)
- Public statements related to the attacks
- Means and methods used in the attack
- Political or military involvement
- Persecutory or discriminatory remarks which the witness heard spoken by the perpetrator or those with the perpetrator
- Detailed descriptions of the hostilities and their scale and proximity to the incident

²¹ One more suggestion is relevant here – it is recommended that the researcher/investigator always ask a witness what *else* they saw, what *else* they heard, what *else* they witnessed, did they see anything else, is there anything else they would like to share. It is natural to focus an investigation on a particular incident or particular kind of crime – but every individual survivor may well have information about other crimes or other incidents, and these paths are best explored as soon as possible to enable the investigator to follow the evidence wherever it may lead. If the question is not asked, the information cannot be obtained; a survivor-witness cannot be expected to know what kind of information may be relevant to a particular judicial investigation. This type of question may also serve to elicit exonerating evidence which must be explored alongside the inculpatory evidence. In any case, open ended questions must always be the rule of thumb.

²² This list is illustrative, not exhaustive.

the ICC, the evidence must demonstrate that there was penetration as one of the elements of the crime of rape. If the survivor-witness does not have evidence of penetration, s/he may still likely be a victim of another international crime under the Rome Statute involving sexual and non-sexual violence – but s/he is not a victim of rape. In the case where the crime was committed long ago, and in fact in most instances in the context of international criminal investigations, the primary evidence for crimes of sexual violence will be witness testimony, as physical evidence is most often no longer available. This renders the witness testimony the main evidence to prove the crime, and thus centrally important to the case which will be presented at trial. The manner in which the original evidence is obtained from the witness/survivor is critical and can impact upon the ultimate weight attributed to his/her testimony in court.

Another example would be with the matter of the coercive or threatening circumstances in which the survivor was attacked. Although the investigator may ask the witness to describe the crime of sexual violence in great detail, s/he may omit to ask about the surroundings or physical circumstances in which this act took place. Does the investigator know after the interview whether any doors were closed/locked? What was the proximity of weapons or other armed troops to the scene of the crime? What threatening words were spoken? The main point of dealing with such matters is to determine the facts supporting the specific element requiring a showing of coercive circumstances as one element of many crimes of sexual violence.

If these subjects are not covered during the interview, a prosecutor later reviewing the evidence will not know if this witness was a victim of rape, or other crime(s). A prosecutor will not know the nature of the circumstances of duress or repression which contextualised the criminal act. A prosecutor will then be faced with two choices upon reviewing this witness's evidence: either re-interview the witness with all the consequences described above, or "drop" this witness from the witness list due to insufficient detail as to what s/he survived.²⁰ Neither scenario is a positive one for the victim – s/he may well have been raped and may wish to seek justice and accountability but s/he will not be given that opportunity. These were but two simple examples of possible results of not covering all relevant issues in an interview, and this applies to crimes of sexual violence as well as crimes of a non-sexual nature. Most often such investigations are conducted in high risk, high pressure settings, with long hours worked and a certain degree of exposure of the investigator to vicarious trauma. A checklist of elements can protect the survivor-witness as well as the

²⁰ Such questions are not easy to ask nor easy to answer. The way such matters are dealt with during the interview can be critical to the impact on the witness and to the evidentiary value of the information provided by the witness. Careful phrasing, timing, with sensitivity and respect for the wishes of the witness, combined with information so that the witness understands why such questions are being posed, will in most cases result in minimising the harm to both the witness and the evidence.

- Evidence of persons in coordinating/superior role suggesting organisation/system
- Information regarding the scale and nature of the harmful acts
- Patterns of targeting of particular persons (civilian/combatant, ethnic or religious group, etc)
- Geographic scope of the harmful acts
- Information regarding a policy or plan
- Organisation of armed groups involved
- Involvement of national armed groups or foreign forces of any kind

5.3. LINKAGE ELEMENTS

Even with sufficient evidence to satisfy the specific elements of a particular crime and the common elements of war crimes, crimes against humanity, and/or genocide, a charge may not be brought if there is insufficient evidence to satisfy the linkage elements, upon which individual criminal responsibility would be based. In order to bring a case against an Accused for his/her individual criminal responsibility for rape, sexual slavery, cruel treatment, forced pregnancy, or any other specific crime as a crime against humanity, or as a war crime, or as an act of genocide, there must be sufficient evidence that the Accused was either directly (such as through commission, ordering, aiding and abetting, etc) or indirectly (such as through command responsibility) allegedly responsible for the crimes. A checklist including the specific and common elements of international crimes must also include the linkage elements.

Examples of evidence which could be gathered from an individual survivor-witness which could serve to satisfy the linkage elements²³:

- Descriptions of the perpetrator group and perpetrator “tools” (uniforms, insignias, other distinctive dress, weapons, boots, vehicles, flags or shields, etc.)
- Words spoken by perpetrators or co-perpetrators (in person, to each other, to her, on radio, orders, code words, language used, ethnic/racial slurs)
- Description of other persons present before, during, after attack and their proximity to the incident, presence of persons in more than one relevant location
- Someone taking or sharing command, passing or following orders, enforcing discipline
- Someone passing up daily reports to superiors via radio or other means of communication

²³ This list is illustrative, not exhaustive.

- Existence of a plan, discussion of aspects of this plan, persons involved in the planning and organisation
- Someone helping the direct perpetrator commit the act – telling them “go ahead”, or giving them a gun and pointing, using gestures of encouragement
- Description of coordination or methodology before, during, after the attack or incident (did the perpetrators come and leave together? Was there coordination among them?)

5.4. EXAMPLE OF AN EVIDENCE CHECKLIST FOR INTERNATIONAL CRIMINAL INVESTIGATIONS INTO CRIMES OF SEXUAL VIOLENCE

As an example of what such a checklist would look like, please consider the following. Note please that these elements are most closely aligned (though somewhat abbreviated) with the provisions of the Elements of Crimes for the International Criminal Court and/or the ICTY/R, but that any investigator can alter the wording of the elements to accord with elements of crimes or violations in any jurisdiction whether domestic or international. The boxes at the left of each element can be checked during a pause in an interview with a witness to ensure that the investigator has asked questions to elicit evidence satisfying each and every element of what will ultimately need to be proven in court.

Example 1: Checklist for Interviews: Evidence needed to support an allegation of Rape as a War Crime

Specific Elements of Rape

- The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body,
- AND
- The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

AND

Common Elements of War Crimes

- The crime was committed in context of and associated with armed conflict,
- The victims were protected persons (international armed conflict) or were taking no direct part in hostilities (internal armed conflict),

AND

- The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

AND

Elements of Individual Criminal Responsibility – Linkage Elements

Direct Responsibility:

- The accused committed, ordered, solicited or induced, aided and abetted or otherwise assisted in the commission (or attempt) of the crime

OR

- Contributed to a group with a common purpose to commit (or attempt) the crime

OR

Command Responsibility:

- The accused had effective control over the direct perpetrator
- The accused knew or had reason to know that the direct perpetrators were committing crimes,

AND

- The accused failed to either prevent or punish the commission of these crimes.

Example 2:

Checklist for Interviews:

**Evidence needed to support an allegation of
Rape as a Crime Against Humanity**

Specific Elements of Rape

- The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body,

AND

- The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

AND

Common Elements of Crimes Against Humanity

- The crimes were committed as part of a widespread or systematic attack
- The attack was directed against a civilian population
- The direct perpetrators knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

AND

Elements of Individual Criminal Responsibility – Linkage Elements

Direct Responsibility:

- The accused committed, ordered, solicited or induced, aided and abetted or otherwise assisted in the commission (or attempt) of the crime

OR

- Contributed to a group with a common purpose to commit (or attempt) the crime

OR

Command Responsibility:

- The accused had effective control over the direct perpetrators
- The accused knew or had reason to know that the direct perpetrators were committing crimes,

AND

- The accused failed to either prevent or punish the commission of these crimes.

**Example 3:
Checklist for Interviews:
Evidence needed to support an allegation of
Sexual Slavery as a Crime Against Humanity**

Specific Elements of Sexual Slavery

- The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty,

AND

- The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

AND

Common Elements of Crimes Against Humanity

- The crimes were committed as part of a widespread or systematic attack
- The attack was directed against civilian population
- The direct perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

AND

Elements of Individual Criminal Responsibility - Linkage Elements

Direct Responsibility:

- The accused committed, ordered, solicited or induced, aided and abetted or otherwise assisted in the commission (or attempt) of the crime

OR

- Contributed to a group with a common purpose to commit (or attempt) the crime

OR

Command Responsibility:

- The accused had effective control over the direct perpetrators
- The accused knew or had reason to know that the direct perpetrators were committing crimes,

AND

- The Accused failed to either prevent or punish the commission of these crimes.

Example 4:

**Checklist for Interviews:
Evidence Needed to Support an Allegation of
Rape as an Act of Genocide**

Specific Elements of Rape

- The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body,

AND

- The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

AND

Common Elements of Genocide

Any of the following acts, committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;

OR

- Forcibly transferring children of the group to another group.

AND

Elements of Individual Criminal Responsibility – Linkage Elements

Direct Responsibility:

- The Accused committed, ordered, solicited or induced, aided and abetted or otherwise assisted in the commission (or attempt) of the crime

OR

- Contributed to a group with a common purpose to commit (or attempt) the crime

OR

Command Responsibility:

- The accused had effective control over the direct perpetrators
- The accused knew or had reason to know that the direct perpetrators were committing crimes,

AND

- The accused failed to either prevent or punish the commission of these crimes.

The theory which underlies this methodology is that any witness may have evidence to prove any aspect of a particular international crime. Investigators and prosecutors may be inclined to believe instinctively that victim-witnesses will have only evidence to support the specific elements, and that only insider witnesses will have linkage evidence linking the crimes directly to the accused or the investigative target. However, a victim/survivor witness may well have heard words spoken by the accused or seen documents signed by the accused or his close associates, and may have such information highly relevant to the case.

Questions pertaining to all three categories must be asked from all manner of witnesses and sources.²⁴

This recommendation that the investigator or prosecutor implement a kind of a checklist based upon the three categories of elements which need to be proven in court is a way to ensure no gaps remain after the investigation as the case is prepared for trial or a final report. It is as simple as having at hand the elements of crimes which need to be proven in the particular jurisdiction where any case would be brought, and preparing a checklist for reference in the field during interviews. When the case is ultimately reviewed by prosecutors in preparation of an indictment, the collection of evidence will be assessed, in essence, along the lines of the above described structure. It is at that stage often too late, for many reasons, to return to fill any major gaps. This could result in critical aspects of the criminal enterprise or the scope of the violations not being as comprehensively adjudicated as they could have been.

6. STRATEGIES FOR PRESENTATION OF EVIDENCE IN COURT

There are numerous ways in which we can ease the process of bringing this evidence in court, remaining squarely within the applicable rules of procedure and evidence, and without employing extraordinary measures. Several suggestions are included here. However, undoubtedly there are many more examples of ways to facilitate this process in a manner which protects the witness, assists the Chamber, and respects the rights of the accused.

6.1. MEASURES TO PROTECT SURVIVOR WITNESSES IN COURT

Witnesses who have survived crimes of sexual and gender based violence may require particular protective measures, which should be explored providing they are reasonable and not outside the bounds of the proper conduct of courtroom proceedings. These may aim at ensuring witnesses' security and well-being to avoid re-traumatisation when testifying in Court, as well as aiming to conceal the witness' identity from the public since a strong social stigma is attached to crimes of a sexual nature. Evidently, the court will weigh these considerations

²⁴ One question asked in relation to one category may provide answers which satisfy elements from several categories at once. For example, evidence of discriminatory words spoken can serve to prove both common elements of persecution as a crime against humanity or genocide, while also serving to prove linkage elements in relation to an individual accused or member of the joint criminal enterprise.

Checklist for sexual grooming in armed groups against female's prepubescent soldiers as a War Crime

This checklist still needs to be improved and is based on Maxine Marcus checklists on rape and other forms of sexual violence.

Elements to compare with sexual violence	Specific elements of Sexual Grooming based on the other descriptions of sexual violence as war crimes	Sexual grooming as a War Crime
<p>Rape as a War Crime</p> <p>Rape as a Crime against Humanity</p> <p>Sexual Slavery as a Crime against humanity</p> <p>Rape as an Act of Genocide</p>	<p>Specific elements:</p> <ul style="list-style-type: none"> - <i>If married: The invasion of the body was committed against a person incapable of giving genuine consent</i> - <i>The invasion was committed by coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such a person or another person or by taking advantage of a coercive environment or the invasion was committed against a person incapable of giving genuine consent.</i> - <i>The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons(...) by imposing on them a similar deprivation of liberty.</i> - <i>The perpetrator caused such person or persons to engage in one or more acts of sexual nature (testimonies interview and especially after LTTE weddings!)</i> 	<p>Linkages elements:</p> <p>Perpetrator, groups and tools:</p> <ul style="list-style-type: none"> • Adulthood of the perpetrator over the childhood of the victims • LTTE as combatants, mainly males, with ideas of dying better than living for the nation (suicide bombings for instance)=> masculine domination • Strict code of conduct <p>Words spoken by perpetrators:</p> <ul style="list-style-type: none"> • Controlling behaviours <p>Time:</p> <ul style="list-style-type: none"> • Long term attack (preparation, premeditation) <p>Existence of a plan:</p> <ul style="list-style-type: none"> • Prabhakaran taking/sharing commands passing or following orders while enforcing discipline of his soldiers (until killing those who did not respect the rules imposed) <p>Methods:</p> <ul style="list-style-type: none"> • Coordination of the Tigers?

	<p>Common elements of a war crime</p> <ul style="list-style-type: none"> - The crime was committed in context of and associated with armed conflict - The perpetrator was aware of the factual circumstances that established the existence of an armed conflict - <i>The victims were protected persons? (girl soldiers, indirect links to hostilities?)</i> - <i>The crimes were committed as part of widespread or systematic attack</i> - <i>The attack was directed against a civilian population (girl soldiers so at least innocence should be taken into account here)</i> - <i>The direct perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population (“innocent child soldiers”population)</i> - Any of the following acts, committed with the intent to destroy in whole or in part a national, ethnic, racial, religious group as such: killing members of the group (<i>through suicide bombings, selective procedures</i>), causing bodily or mental harm to members of the groups (<i>torture if disobedience and directed against girl soldiers which do not have an identity yet</i>), 	<p>Checklists:</p> <p>Specific elements:</p> <ul style="list-style-type: none"> - Questioning the sexuality of the LTTE couples, we can wonder if the invasion of the body was committed against a person incapable of giving genuine consent as most of the “women” were extremely young and vulnerable when they met their husband (unawareness of non consent?) - It is the result of an abuse of power from the adult males cadres by taking advantage of a coercive environment when the act of being married after a predatory attitude is, by definition, committed against a person incapable of giving genuine consent. - The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons(...) by imposing on them a similar deprivation of liberty. - The perpetrator caused such person or persons to engage in one or more acts of sexual nature (testimonies interview and especially after LTTE weddings!) - Violence is obvious during the marriage
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	<p><i>deliberately inflicting on the group conditions of life calculated (codes of conduct)</i></p> <ul style="list-style-type: none"> - <i>Imposing measures intended to prevent births within the group (here it is (but to check) an imposing measure to stay and form a family within the LTTE group only=> births regulation on "LTTE purity")</i> <p>Elements of Individual Criminal Responsibility- Linkage elements</p> <ul style="list-style-type: none"> - <i>The accused committed, ordered, solicited or induced, aided, and abetted or otherwise assisted in the commission or attempt of the crime</i> - <i>The accused contributed to a group with a common purpose to commit or attempt the crime</i> <ul style="list-style-type: none"> - <i>Command responsibility: the accused had effective control over the direct perpetrator</i> - <i>The accused knew or had reason to know that the direct perpetrators were committing crimes</i> - <i>The accused failed to either prevent or punish the commission of these crimes</i> 	<p>Common elements of a war crime</p> <ul style="list-style-type: none"> - <i>The crime was committed in context of and associated with armed conflict where the victims is a girl soldiers so a protected person because of the prohibition to use child soldiers during conflict</i> - <i>The crimes were committed as part of widespread or systematic attack, if this practise is recurrent indeed but necessity to get testimonies and rate of weddings at this time.</i> - <i>Any of the following acts, committed with the intent to unify and live in an autocracy preventing any other contact with other people for an "ideal LTTE nation" as such:</i> <ul style="list-style-type: none"> • <i>killing members of the group (through suicide bombings, selective procedures),</i> • <i>causing bodily or mental harm to members of the groups (torture if disobedience and directed against girl soldiers which do not have an identity yet), deliberately inflicting on the group conditions of life calculated (codes of conduct)</i> • <i>Imposing measures an imposing measure to stay and form a family within the LTTE group only=> births regulation based on "LTTE purity"</i>
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		<p>Elements of Individual Criminal Responsibility- Linkage elements</p> <ul style="list-style-type: none"> - <i>The accused committed, ordered, solicited or induced, aided, and abetted or otherwise assisted in the commission or attempt of the crime</i> <ul style="list-style-type: none"> - <i>The accused contributed to a group with a common purpose to commit or attempt the crime</i> (needs of testimonies) <ul style="list-style-type: none"> - Command responsibility: the accused had effective control over the direct perpetrator - <i>The accused knew or had reason to know that the direct perpetrators were committing crimes</i> - <i>The perpetrator controlled the person resulting in her suicide (suicide bombing) or wedding (indirect forced marriage) with another member of the movement and exercised any or all powers attaching to the right of ownership over his/her soldiers by imposing them a strict and controlled deprivation of liberty</i>
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⇒ **Sexual Grooming as a War Crime¹**

¹ Definition in the conclusion



Cour
Pénale
Internationale
International
Criminal
Court

Le Bureau du Procureur
The Office of the Prosecutor

DRAFT Policy Paper on Sexual and Gender Based Crimes

**February 2014
The Hague**

(iii) *Article 8 – War crimes*

27. Sexual and gender based crimes are often committed in the context of and in association with an international or non-international armed conflict. They may fall under the Court's jurisdiction as war crimes under article 8 of the Statute. These include acts of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common article 3. Other types of war crimes such as intentionally directing attacks against the civilian population, torture, mutilation, outrages upon personal dignity or the recruitment of child soldiers may also contain gendered and sexual elements. The Office will be vigilant in charging sexual and gender based crimes as war crimes, to the full extent the Office deems possible under article 8.²⁶

(a) *Rules of Procedure and Evidence*

28. The Rules of Procedure and Evidence also include important principles of evidence in cases of sexual violence, consolidate procedural protections for witnesses and victims of these crimes and allow for the use of special measures *inter alia* to facilitate the testimony of victims of sexual violence.²⁷

(b) *The Prosecutorial Strategy*

29. In its previous prosecutorial strategies, the Office committed to enhancing its investigations and prosecutions of sexual and gender based crimes.²⁸ In its

²⁶ In the *Katanga/Ngudjolo* case, Pre-Trial Chamber I accepted that forcible nudity constitutes outrages upon personal dignity and found sufficient evidence that FNI/FRPI members committed these crimes. However, it declined to confirm the charge due to insufficient evidence that the commission of such crimes was intended by Mr. Katanga and Mr. Ngudjolo as part of the common plan to "wipe out" Bogoro village, or that as a result or part of the implementation of the common plan, these facts would occur in the ordinary course of events. *Prosecutor v. Katanga and Ngudjolo*, Decision on the confirmation of charges, [ICC-01/04-01/07-717](#), 30 September 2008, paras. 570-572. In the *Bemba* case, the Prosecution included in the charges the crime of outrages upon personal dignity under article 8(2)(c)(ii) through acts of rape or other forms of sexual violence, in addition to the crime of rape and other form of sexual violence under article 8(2)(vi). Pre-Trial Chamber II declined to confirm the charge of outrages upon personal dignity on the grounds, *inter alia*, that: most of the facts presented by the Prosecution reflect in essence the constitutive elements of force or coercion in the crime of rape; and the count of outrages upon personal dignity is fully subsumed by the count of rape, which is the most appropriate legal characterisation of the conduct presented. *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, [ICC-01/05-01/08-424](#), 15 June 2009, paras. 307-313.

²⁷ See, for example, rules 70, 71 and 72 discussed below.

²⁸ [Report on Prosecutorial Strategy](#) (ICC-OTP 2006), p. 7. In its Prosecutorial strategy 2009-2012, the Office also confirmed its commitment to "work with external actors, *inter alia*, with regard to sexual and gender crimes to constantly update prosecutorial techniques". [Prosecutorial Strategy: 2009-2012](#) (ICC-OTP 2010), p. 8.

Strategic Plan 2012-2015, the Office has elevated this issue to one of its strategic goals, which is to enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children.²⁹ The Office in its strategy commits to integrating a gender perspective in all areas of its work, to being innovative in the investigation and prosecution of these crimes, to adequately training staff, and to giving special attention to the manner in which staff interact with victims, in particular, seeking to ensure the prevention of possible secondary or re-traumatisation.

IV. Preliminary Examinations

30. The Office conducts a preliminary examination of all situations that are not manifestly outside of the jurisdiction of the Court on the basis of information available, in order to determine whether there is a reasonable basis to initiate an investigation. The Prosecutor shall reach such a determination after having considered the factors set out in article 53(1)(a)-(c) of the Statute: jurisdiction (temporal, material, and either territorial or personal jurisdiction); admissibility (complementarity and gravity); and the interests of justice.³⁰
31. During the process of the preliminary examination of a situation, the Office analyses information on crimes potentially falling within its jurisdiction.³¹ In so doing, the Office will also examine the general context within which the alleged sexual and gender based crimes have occurred and assess the existence of local institutions, international organisations, NGOs and other entities available as potential sources of information and/or of support for victims.
32. Where crimes within the jurisdiction of the Court, including sexual and gender based crimes, have been identified, the Office will examine the existence of genuine and relevant national proceedings and if there are such proceedings, whether those relate to potential cases being examined by the Office. In this context, the Office will consider the factors relevant for the assessment of the admissibility of potential cases.³² This determination is case specific. It requires an examination of whether the national proceedings encompass the investigation and/or prosecution of the same persons for the same conduct as that which forms

²⁹ [Strategic plan June 2012-2015](#) (ICC-OTP 2013), p. 27.

³⁰ The Office policy and practice in the conduct of preliminary examinations are described in detail in its [Policy Paper on Preliminary Examinations](#) (ICC-OTP 2013). Rule 48 of the Rules requires the Prosecutor to consider the factors set out in article 53(1)(a)-(c) of the Statute in determining whether there is a reasonable basis to proceed with an investigation under article 15(3).

³¹ In accordance with article 15 of the Statute, the Office may receive information on such crimes and may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organisations and other reliable sources.

³² [Policy Paper on Preliminary Examinations](#) (ICC-OTP 2013).

the basis of the preliminary examination.³³ The crimes in the national system need not be identical to the crimes in the Statute. It is sufficient that relevant domestic legislation incorporates the conduct proscribed under the Statute.

33. Inactivity at the national level may result from numerous factors, including: the absence of an adequate legislative framework or judicial capacity; the existence of legal impediments that could serve as a barrier to domestic proceedings, such as amnesties, immunities or statutes of limitation; manifestly insufficient steps in the investigation and prosecution of sexual and gender based crimes; the deliberate focus of proceedings on low-level perpetrators despite evidence against those who may bear more responsibility; lack of expertise in the investigation and prosecution of these crimes; or other more general issues related to the lack of political will, including official attitudes of trivialisation and minimisation or denial of these crimes.
34. If there are investigations or prosecutions that relate to potential cases being examined by the Office, an assessment will be made into whether such national proceedings are vitiated by an unwillingness or inability to genuinely carry out the proceedings.
35. The complementarity assessment is made on the basis of the underlying facts as they exist at the time of the determination and is subject to on-going revision based on change in circumstances.
36. Although crimes falling within the Court's jurisdiction are by and of themselves serious, article 17(1)(d) of the Statute requires the Court, as part of the admissibility

³³ *Prosecutor v. Ruto et al.*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", [ICC-01/09-01/11-307](#), 30 August 2011, paras. 1, 47; *Prosecutor v. Kenyatta et al.*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", [ICC-01/09-02/11-274](#), 30 August 2011, paras. 1, 46. See also *Prosecutor v. Thomas Lubanga Dyilo*, Decision concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo, [ICC-01/04-01/06-8-Corr](#), 24 February 2006, para. 31: "it is a *conditio sine qua non* for a case arising from the investigation of a situation to be inadmissible that national proceedings encompass both the person and the conduct which is the subject of the case before the Court"; *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on the admissibility of the case against Abdullah Al-Senussi, [ICC-01/11-01/11-466-Red](#), 11 October 2013, para. 66: "for the Chamber to be satisfied that the domestic investigation covers the same 'case' as that before the Court, it must be demonstrated that: a) the person subject to the domestic proceedings is the same person against whom the proceedings before the Court are being conducted; and b) the conduct that is subject to the national investigation is substantially the same conduct that is alleged in the proceedings before the Court. [...] the determination of what is 'substantially the same conduct as alleged in the proceedings before the Court' will vary according to the concrete facts and circumstance of the case and, therefore, requires a case-by-case analysis."

determination, to assess whether a case is of sufficient gravity to justify further action by the Court. Factors relevant in assessing the gravity of the crimes include their scale, nature, manner of commission and impact.³⁴ The nature of the crimes refers to the specific elements of each offence such as killings, rapes and other crimes involving sexual and gender violence.

37. The Office considers acts of sexual and gender based violence to be among the gravest crimes, in accordance with the Rome Statute. In assessing the gravity of alleged sexual gender based crimes, the Office will take into account the multi-faceted character and the resulting suffering, harm and impact of such acts.
38. The Office will seek to encourage, where feasible, genuine national investigations and prosecutions by the State(s) concerned in relation to sexual and gender based crimes.³⁵
39. The Office will seek to react promptly to upsurges of violence, including the sexual and gender based crimes, by reinforcing early interaction with States, and international and non-governmental organisations in order to verify information on alleged crimes, to encourage genuine national proceedings and to prevent the reoccurrence of crimes. The Office may also issue preventive statements in order to deter the escalation of violence and the further commission of crimes to put perpetrators on notice and to promote national proceedings.³⁶

V. Investigations

40. In accordance with the duties and powers of the Prosecutor set out in article 54 of the Statute, the Prosecutor will investigate both incriminating and exonerating circumstances relating to sexual and gender based crimes in a fair and impartial manner, to establish the truth.

³⁴ Regulation 29(2), Regulations of the Office. See, in concurrence with the Prosecution's submissions, *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, [ICC-02/05-02/09-243-Red](#), 8 February 2010, para. 31; *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, [ICC-01/09-19-Corr](#), 31 March 2010, para. 188; *Situation in the Republic of Côte d'Ivoire*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, [ICC-02/11-14](#), 3 October 2011, para. 204.

³⁵ In its Interim Report on the Situation in Colombia, for example, the Office highlighted among the five pending areas that will form the focus on the on-going preliminary examination, the need for the Colombian authorities to prioritise the investigation and prosecution of crimes of sexual violence. See, [Situation in Colombia – Interim Report](#) (OTP, November 2012).

³⁶ See, for example, [ICC Prosecutor confirms situation in Guinea under examination](#) (14 October 2009); [ICC Deputy Prosecutor: We are keeping an eye on events in Guinea](#) (19 November 2010); [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the occasion of the 28 September 2013 elections in Guinea](#) (27 September 2013).

41. The Office will, with due diligence, undertake investigations into sexual and gender based crimes concurrently with its investigations into other crimes. This will ensure efficient utilisation of resources and provide an opportunity for a thorough investigation of sexual and gender based crimes. This will also ensure sufficient time for the collection and analysis of evidence, strategic planning and on-going decision-making, including identification and selection of witnesses.
42. In addition to general challenges such as conducting investigations in situations of on-going conflict and a lack of cooperation, the investigation of sexual and gender based crimes presents its own specific challenges. These include: under or non-reporting of sexual violence due to cultural, religious or societal factors; limited domestic investigations and the associated lack of readily available evidence; stigma for victims of sexual and gender based crimes; lack of forensic or other documentary evidence, due, *inter alia*, to the passage of time; and inadequate or limited support services at the national level.
43. The Office will consider specific means to address these challenges, such as prioritisation from the earliest stages and to the full extent possible, the collection of different types of evidence, including forensic (e.g. clinical examinations, forensic epidemiology and autopsies), technology and documentary (video footages, formal and informal notices to perpetrators and reports of experts etc.) and insider evidence. Analysis techniques such as database design, statistics and GIS (Geographic Information Systems) will also assist in identifying the relevant patterns of crime and organisational structures.
44. Bearing in mind the specific challenges faced in obtaining evidence in respect of sexual and gender based crimes, the Office will apply lessons learned and best practices standards to ensure the effectiveness of investigations into such crimes.³⁷
45. In the strategic plan 2012-2015, the Office adopts a new approach with more in-depth, open-ended investigations while maintaining focus so that more evidence from more diversified sources may be collected.³⁸ Where necessary, a strategy of gradually building cases up from mid- and high level perpetrators, and even from low level notorious perpetrators, to the most responsible will be followed.³⁹ This is intended to assist in addressing the challenge of establishing individual criminal responsibility for those at the highest levels for the commission of sexual and gender based crimes.

³⁷ See particularly Prosecuting Mass Atrocities - Lessons from the International Tribunals: A Compendium of Lessons Learned and Suggested Practices from the Offices of the Prosecutors (2013), suggested practices 11-12, 118-124, 196, 212, 264-267. The Compendium is accessible to members of the International Association of Prosecutors only.

³⁸ [Strategic Plan June 2012-2015](#) (ICC-OTP 2013), p. 6.

³⁹ *Ibid.*

(a) *Initiation of an investigation*

46. All staff from different Divisions involved in the investigation shall be responsible for integrating a gender perspective within the investigations and for ensuring that sexual and gender based crimes are thoroughly addressed at each stage of the investigative process. Teams will be proactive in making recommendations to ExCom. ExCom will monitor and ensure proper implementation of this practice.
47. In the course of developing its case hypothesis, the Office will carefully consider the report produced during the preliminary examination stage, as well as in-depth additional research and analysis, and any investigations, in so far as they also relate to sexual and gender based crimes.⁴⁰ The initial case hypothesis and investigation plan will be regularly reviewed and may be amended on the basis of the additional analysis of evidence collected.

(b) *Preparation*

48. In order to build networks which are crucial for the effective investigation of sexual and gender based crimes, the Office will consider the information obtained during the preliminary examination stage relating to local communities and the existence of civil society organisations. The establishment of contacts and networks within the community will be prioritised to the extent possible to support its operational activities and to create a referral base in support of victims and witnesses.⁴¹
49. The Office identifies individuals who may be selected as intermediaries in order to support the conduct of effective investigations. Such intermediaries who are likely to engage with victims and witnesses of sexual and gender based crimes will be specifically briefed to ensure that they have an understanding of the possible effects of trauma in relation to the crime as well as the investigative process. The Office will continuously monitor and evaluate the performance of intermediaries. The selection, tasking and supervision of intermediaries are regulated in detail in the Operations Manual.
50. Staff will receive briefings on relevant cultural issues, traditional and religious practices and other considerations relevant to the investigation. In the course of preparations for missions, relevant staff is required to familiarise themselves with local traditions, customs and cultural issues, including the status of women and

⁴⁰ Regulation 34(2) of the Regulations of the Office provides: "In each provisional case hypothesis, the joint team shall aim to select incidents reflective of the most serious crimes and the main types of victimisation - including sexual and gender violence and violence against children - and which are the most representative of the scale and impact of the crimes."

⁴¹ See World Health Organisation (WHO), [Ethical and safety recommendations for researching, documenting and monitoring sexual violence emergencies](#), 2007 (hereafter "WHO Ethical and safety recommendations"), recommending, *inter alia*: "Basic care and support for survivors/victims must be available locally before commencing any activity that may involve individuals disclosing information about their experiences of sexual violence", at p. 9.

men within this context and other factors that may impact on the investigation mission and the interview process.

51. The interview team will undertake specific preparations in relation to the interview process. This may include familiarisation with euphemisms and other verbal and non-verbal communication which may be used by witnesses to refer to acts of sexual violence within the specific context of the investigation. Interpreters will also receive briefings and glossaries in order to familiarise themselves with the appropriate and accurate terms to describe acts of sexual violence and parts of the body.
52. The interview team will verify, and be sensitive to, the witness' preference regarding the gender of interpreters and interviewers. When dealing with sexual and gender based crime witnesses, the interview team will also give consideration to the convenience of using audio- or video-recording of the interview,⁴² and will pay special attention to any circumstances indicating unique investigative opportunities.⁴³ or

(c) Investigation practices

53. The Office has adopted an integrated approach to gender issues and the investigation of sexual and gender based crimes. This ensures that alongside the investigation of explicit acts of sexual and gender based crimes, the gender dimensions of other crimes will be adequately considered.
54. As required by article 68(1) of the Statute, the Office takes various measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly during its investigation and prosecution activities with regard to sexual and gender based crimes.
55. Potential victim-witnesses of sexual and gender based crime shall be subject to preliminary psycho-social and security assessments and screenings. The psycho-social assessment is mandatory for all witnesses of sexual and gender based crimes. ⁴⁴ It will be conducted by a psycho-social expert who will consider the welfare of the witnesses and their ability to undergo an interview process and

⁴² Rule 112(4) of the Rules.

⁴³ According to article 56 of the Statute, where the Prosecutor considers an investigation to present a unique opportunity to take testimony or statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, s/he may request the Pre-Trial Chamber to take certain measures to collect or preserve evidence.

⁴⁴ Regulation 36(3) of the Regulations of the Office provides: "The physical and psychological well-being of persons who are questioned by the Office and are considered vulnerable (in particular children, persons with disabilities and victims of gender and sexual crimes) shall be assessed by a psychology, psycho-social or other expert during a face-to-face interview prior to questioning. This assessment shall determine whether the person's condition at that particular time allows him or her to be questioned without risk of re-traumatisation."

testify without undue personal or psychological harm. The expert may be present during the interview itself, in order to monitor the interview, advise the interviewer and provide support to the witness as required.

56. The screening will focus on assessing the individual's personal circumstances, willingness to assist the investigation, evidentiary value, and establishing a relationship of trust and respect.
57. The screening of witnesses of sexual and gender based crimes will generally be conducted during a face-to-face meeting. Remote screening of such witnesses will only be conducted if the Office is satisfied that appropriate support is available to the witness.
58. The security assessment will be conducted with a focus on specific risks and the available protection measures. Victims will be considered as witnesses for the investigation subject to positive assessments regarding their psycho-social condition, investigative needs and security.
59. In the development and implementation of investigative strategies, the Office will bear in mind that victims and witnesses of sexual and gender based crimes may also be witnesses to other crimes, and vice versa, and plan accordingly. This will be reflected in the specific investigative strategies developed by the teams within the context of each criminal investigation.
60. The provision relating to persecution on the basis of gender, an innovation in the Statute will be utilised to the fullest extent possible. The investigation will take into consideration various indicia, including discriminatory policies, violent acts selectively targeting a particular gender, gender-adverse propaganda, relevant utterances issued by the direct perpetrators, elements of individual suspect background and prior conduct indicative of relevant intent and adverse gender biases in the response of suspected groups or authorities.
61. Good practices related to the management, interaction and relationship with victims and witnesses of sexual and gender based crimes have been incorporated into the Operations Manual. Specific questionnaires and guidelines have been developed to support sound practices in this area.
62. The Office is mindful that victims of sexual and gender based crimes may face the additional risks of discrimination, social stigma, exclusion from their community or physical harm if their status is exposed. In order to minimise their exposure and possible re-traumatisation, the Office will, in addition to evidence of victims, enhance its efforts to collect other types of evidence. This will include insider testimony, the testimony of relevant experts, medical and pharmaceutical records, empirical research and reports and other credible data produced by States, organs of the United Nations, intergovernmental and non-governmental organisations and other reliable sources.

63. The Office will improve its practices with regard to source evaluation, exercising due diligence and considering the existence of adverse gender biases that may affect different sources of information, possible under-reporting or misrepresenting the truth about sexual and gender based crimes. Evidence will be subject to impartial evaluation regarding its credibility.
64. In the selection of witnesses, all teams will take into account considerations relating to security, the social and psychological risks which may be associated with providing evidence of sexual and gender based crimes, as well as the healing effect that the provision of such evidence may afford certain witnesses and victims.⁴⁵ The Office recognises that many witnesses of sexual and gender based crimes want to testify in support of judicial proceedings and as a component of their own recovery process. In its selection of witnesses, the Office will give careful consideration to whether taking evidence from a specific witness will be of benefit or harm to the individual.
65. Experience has highlighted the importance of managing the expectations of victims and witnesses. The Office will take particular care in this regard. Added effort will be put into maintaining reasonable contact with witnesses and keeping them informed. Clear explanations will be provided to witnesses about the mandate of the Office and in particular, the role of Registry's Victims and Witnesses Unit (VWU) on matters related to assistance, including medical and psycho-social assistance, support and protection and the role of the Office in these areas. The Office will liaise with the VWU on all such matters.

VI. Prosecutions

(a) Charging

(i) Crimes charged

66. Building on the preliminary examination and the substantive and detailed investigations and collection of evidence, the Office will ensure the inclusion of charges for sexual and gender based crimes, wherever there is sufficient evidence to support such charges.
67. In principle, the Office will bring charges for sexual and gender based crimes explicitly as crimes in themselves, as well as charge these acts as forms of other violence within the competence of the Court, where the material elements are met, e.g. rape as torture. In such instances, the Office will seek to bring cumulative charges in order to fairly reflect the severity and multi-faceted character of sexual

⁴⁵ See [WHO Ethical and safety recommendations](#), recommending, *inter alia*: "The benefits to respondents or communities of documenting sexual violence must be greater than the risks to respondents and communities", at pp. 9-11.

violence and to enunciate the range of sexual and gender crimes supported by the evidence in each case.

68. Where supported by the evidence, the Office will also charge acts of sexual and gender based violence as different categories of crimes within the Court's jurisdiction (war crimes, crimes against humanity, genocide), in order to properly describe, *inter alia*, the nature, manner of commission, intent and context of each act.⁴⁶
69. The Office will also seek to actively highlight the gender-related aspects of other crimes within its jurisdiction, e.g. domestic labour and "household" duties within the crime of enslavement as well as highlighting other gender-related aspects of sexual crimes e.g. domestic labour in the context of sexual slavery.

(ii) *Mode of liability*

70. The Office will consider the full range of modes of liability available under article 25 or article 28 of the Statute for charging in cases of sexual and gender based crimes, and will make a decision based on the existing evidence. The Office will charge different modes of liability in the alternative, where appropriate.
71. Pursuant to article 28 of the Statute, cases may be brought against individuals who may be responsible for the commission of rape and other sexual and gender based crimes committed by those under their effective command and control (or effective authority and control), on the basis of either (military) command responsibility⁴⁷ or superior responsibility. The Office will, as appropriate, increasingly explore the potential of bringing charges on the basis of article 28 in light of the possible impact on the behaviour of commanders and non-military superiors. In that context, it will not limit itself to ensuring accountability of military commanders or non-military superiors where they intended the specific conduct or consequence of sexual and gender based crimes but also where they knew or should have known that such crimes would occur in the ordinary course of events.

(iii) *Mental element*

⁴⁶ For example, in the *Katanga/Ngudjolo* case, the Office charged the accused with sexual slavery and rape both as a crime against humanity and a war crimes under articles 7(1)(g) and 8(2)(b)(xxii). The same approach has been taken in various other cases, including *Harun/Kushayb*, *Bemba*, *Mbarushimana*, *Hussein*, *Mudacumura* and *Ntaganda* where the Office considered that there was sufficient evidence establishing contextual elements of both types of crimes.

⁴⁷ For example, *Prosecutor v. Jean-Pierre Bemba Gombo*, Public Redacted Version Of the Amended Document containing the charges filed on 30 March 2009, [ICC-01/05-01/08-395-Anx3](#), 30 March 2009. This is the first case before the ICC in which a military commander is being prosecuted on the basis of command responsibility for alleged crimes including rape, committed by forces under his effective command and control.

72. Pursuant to article 30 of the Statute, the Prosecution must establish that the person under investigation or accused committed the crime with intent and knowledge unless the Elements specify a mental element for any particular conduct, consequence or circumstances listed therein.⁴⁸ Establishing intent and knowledge of the person under investigation or the accused in relation to the crimes is one of the major challenges for the Office. This is because the investigation and prosecution is generally focussed on senior leaders or commanders who are not direct perpetrators and who are often located far from the scenes of the crimes at relevant times. This is particularly the case with sexual and gender based crimes which are often under-reported or considered as incidental occurrence in conflict situations. However, the situations and cases before the Court have shown that rape and other sexual and gender based crimes are often widespread and used systematically as a tool of war or repression.
73. Sexual and gender based crimes may be committed by organised structures as a result of direct, explicit orders or they may be a foreseeable result of broader instructions given by commanders and superiors, for example to carry out a specific military operation with inducement in the form of a promise of “women” as rewards for an attack.⁴⁹ These crimes may also be caused by a combination of other relevant factors at all levels of an organisation such as lack of military discipline and a culture of tolerance. The Office will take into account this diversity of scenarios when considering the different modes of liability and mental elements under articles 25, 28 and 30 applicable to the case at hand. The Office will seek to present various types of evidence, such as witness testimony, communications and

⁴⁸ See paragraph 2 of the General Introduction to the Elements of Crimes. According to article 30(2) of the Statute, “For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Article 30(3) provides that “‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. ‘Know’ and ‘knowingly’ shall be construed accordingly.” Depending on the mode of liability, it may be necessary to establish specific mental elements (e.g. article 25(3)(c) requiring the “purpose of facilitating the commission of such a crime” for aiding, abetting or otherwise assisting).

⁴⁹ See, for example, *Prosecutor v. Stanislav Galic*, Trial Chamber I Judgment and Opinion, [IT-98-29-T](#), 5 December 2003, paras. 3, 738, 742-743, 746-747, 749, 751; *Prosecutor v. Stanislav Galic*, Appeal Judgement, [IT-98-29-A](#), 30 November 2006, paras. 175, 177-178; *The Prosecutor v. Jean-Paul Akayesu*, Trial Chamber I Judgement, [ICTR-96-4-T](#), 2 September 1998, paras. 1, 483, 681-682; *Prosecutor v. Kupreskic et al.*, Appeal Judgement, [IT-95-16-A](#), 23 October 2001, para. 365; *Proceedings of Brigadefuhrer Meyer (Abbaye Ardenne Case)*, Canadian Military Court, 10-28 December 1945, IV Law Reports 97, 108: “There is no evidence that anyone heard any particular words uttered by the accused which would constitute an order, but it is not essential that such evidence be adduced. The giving of the order may be proved circumstantially...and if you find the only reasonable inference is that an order that the prisoners be killed was given by the accused at the time and place alleged, and that the prisoners were killed as a result of that order, you may properly find the accused guilty.”

reporting mechanisms and contemporaneous public reports on the crimes⁵⁰ in order to establish the intent and knowledge of the accused.

74. The Office considers that sexual and gender based crimes do not necessarily require a specific intent to cause the conduct, and that awareness that these crimes will be a consequence in the ordinary course of events, will be sufficient to satisfy the mental element, in the appropriate cases.⁵¹

(b) Witness Preparation

75. The Office will consistently seek approval from Chambers to prepare witnesses for the purpose of promoting efficient and accurate testimony.⁵² Bearing in mind, in certain cases, the additional stigma, social and other consequences of sexual and gender based crimes, the Office considers witness preparation, particularly in such cases, to be highly desirable in supporting the psychological well-being of witnesses, diminishing the intimidation of the court-room environment and facilitating the complete provision of evidence pertaining to sexual and gender based crimes.⁵³

(c) Measures to protect the safety, and physical and psychological well-being of witnesses

(i) General obligations during proceedings

76. Article 68 of the Statute is the central article with regard to the protection of victims and witnesses throughout the proceedings and is binding on all organs of the Court.⁵⁴ The Office will fulfil its duty in ensuring that all appropriate measures

⁵⁰ For example, in the *Charles Taylor* case, the Trial Chamber of the Special Court for Sierra Leone relied heavily on contemporary documentary evidence regarding the coverage of the crimes committed in Sierra Leone by international organisations, NGOs or media on the crimes to find beyond reasonable doubt that the former President of Liberia was aware of the crimes committed in Sierra Leone by the RUF/AFRC forces against civilians, including rape. *Prosecutor v. Taylor*, Trial Chamber II Judgment, Case No. [SCSL-03-01-T](#), 18 May 2012, paras. 6815-6886.

⁵¹ See, for example, the Prosecution's closing argument in the trial of *Katanga et al.* *Prosecutor v. Katanga and Ngudjolo*, [ICC-01/04-01/07-T-336-ENG](#), p. 58, ln. 19- p. 61, ln. 10.

⁵² Departing from the practice in earlier cases, Trial Chamber V in the two Kenya cases decided to permit witness preparation, recognising that proper witness preparation not only helps ensure that the witness gives relevant, accurate and structured testimony but also enhances the protection and well-being of witnesses, including by helping to reduce their stress and anxiety about testifying. *Prosecutor v. Ruto et al.*, Decision on witness preparation, [ICC-01/09-01/11-524](#), 2 January 2013, paras. 4, 37, 51; *Prosecutor v. Kenyatta et al.*, Decision on witness preparation, [ICC-01/09-02/11-588](#), 2 January 2013, paras. 4, 41, 52. Witness preparation has been widely practiced by the *ad hoc* international criminal tribunals to facilitate the presentation of testimonial evidence.

⁵³ *Prosecutor v. Ruto et al.*, Decision on witness preparation, [ICC-01/09-01/11-524](#), 2 January 2013, para. 37.

⁵⁴ According to article 68(1) of the Statute, "[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender

are taken during the investigation and prosecution of sexual and gender based crimes.

77. The VWU of the Registry is the unit primarily responsible for the provision of protective measures, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Office also has statutory obligations with regard to protection. The Office and the VWU have accordingly concluded a joint protocol on witness protection, which sets out responsibilities.⁵⁵ In accordance with the protocol, the Office will cooperate with the VWU on matters of protection and support, including by sharing any relevant information and providing any assistance in the implementation of protective measures and support where necessary and appropriate.⁵⁶ The Office is mindful of the need for timely intervention and will facilitate the provision of the required assistance where necessary to maintain the physical and psychological welfare of witnesses, particularly victims of sexual and gender based crimes. The Office will also work with States and other relevant actors in order to give full effect to this provision.

(ii) Disclosure of evidence

78. The Office will exercise due diligence in ensuring that it meets its statutory requirements in relation to the disclosure of evidence, in a timely and professional manner. If the disclosure of identity would expose victims and witnesses, including those of sexual and gender based crimes, to the risk of physical and psychological harm, which may not be addressed by other protective measures, the Office may request authorisation for redactions to their identities pursuant to rule 81(4) of the Rules or use summaries of witness statements prior to trial, in accordance with articles 61(5) and 68(5) of the Statute. Prior to an interview, the Office will fully inform witnesses of its disclosure obligations in relation to witness statements, taking into account the particular vulnerability of the witness and any additional concerns witnesses of sexual and gender based crimes may have regarding security, personal and/or family or social repercussions.

as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

⁵⁵ In accordance with article 43(6) of the Statute, the Registrar has set up a Victims and Witnesses Unit within the Registry, with a mandate to provide, in consultation with the Office, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. A Prosecution-Registry Joint Protocol on the Mandate, Standards and Procedure for Protection was concluded in March 2011.

⁵⁶ The Office has established the Protection Strategies Unit and the Operations Support Unit that deal with protection and support of witnesses and other persons at risk on account of their interactions with the Office.

(iii) *In-court measures*

79. Article 68(2) of the Statute provides that as an exception to the principle of public hearings, the Chambers may conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special measures to protect victims and witnesses. In particular, such special measures are mandatory in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
80. Where deemed necessary to protect a victim or witness of sexual and gender based crimes, the practice of the Office is to request a Chamber to order measures pursuant to rule 87 including: redacting the name of a person and any identifying information from the public records of the Chamber; prohibiting the parties and the participants to the proceedings from disclosing the name and any identifying information of a person to a third party; presenting evidence by electronic or other special means, including by image or voice alteration, video-conferencing and close-circuit television, or the exclusive use of sound media; using pseudonyms; or conducting proceedings, or parts thereof, in closed session.⁵⁷
81. In the case of witnesses who may face an increased risk of psychological harm and/or psychological or physical difficulties which may affect their well-being and ability to testify, the Office will request the Chamber to take special measures with a view to minimising re-traumatisation and facilitating their testimony.⁵⁸ Such special measures may include the use of screens to prevent direct visual contact between the witness and the accused; the provision of evidence via video-link; the presence of an accompanying support person or in-court assistant, such as a VWU support assistant, a psychologist or outside expert during the testimony.

⁵⁷ For example, in the *Bemba* case, the Office sought authorisation for victims of sexual violence to be accompanied by persons of their choice during their testimony at trial, *inter alia*, to minimise possible trauma and any additional fear associated with participating in the proceedings. See *Prosecutor v. Jean-Pierre Bemba Gombo*, Corrigendum to “Prosecution’s Request for Protective and Special Measures for Prosecution Witnesses at Trial”, [ICC-01/05-01/08-800-Corr-Red4](#), 6 July 2010, paras. 19-20.

⁵⁸ Rule 88(1), first sentence, of the Rules provides: “Upon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as, but not limited to, measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2.”

82. The Office will pay particular attention to the manner of questioning of a witness or victim, especially with regard to sexual and gender based crimes and will take all possible steps to prevent any harassment, intimidation or re-traumatisation.⁵⁹

(d) Evidence

83. The evidence necessary for charging sexual and gender based crimes, and the burden on the prosecution to prove its case, are no more substantial or onerous than they are for other crimes. The Office will ensure that this is reflected in its investigation and prosecution strategies, including in its litigation before Chambers.

84. There are important rules of evidence designed to protect the witnesses/victims of sexual and gender based crimes, particularly with regard to the issue of corroboration, consent and past behaviour.

85. Rule 63(4) of the Rules provides that corroboration is not required in order to prove any crime within the Court's jurisdiction, in particular, crimes of sexual violence. Within the limits of its mandate, the Office will contribute to the consistent application of this rule, while ensuring sufficient evidence to prove the charges.

86. According to rule 70 which outlines the principles of evidence in cases of sexual violence, consent cannot be inferred by reason of any words or conduct of a victim of the alleged sexual violence where the environment undermined the victim's ability to give voluntary and genuine consent or where the victim was incapable of giving genuine consent. Consent cannot be inferred by reason of silence or lack of resistance.

87. According to rule 70(d), credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness. Rule 71 further provides that in light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69(4), evidence of the prior or subsequent sexual conduct of a victim or witness is generally inadmissible. These provisions provide an important disqualification of any attempt to undermine or discredit a victim or witness of sexual violence, based on her or his perceived or actual sexual conduct.

88. Rule 72 requires notification to the Court in the event of an intention to adduce evidence of consent by the victim. The Chamber is required to decide on the relevance and admissibility of the evidence, after hearing the views of parties, the witness and the victim or his or her legal representative *in camera*. In accordance

⁵⁹ Rule 88(5) of the Rules provides: "Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence."

with rules 70-71, the Office will, when required, object to admission of such evidence. The Office will take a proactive and rigorous approach to the application of this rule.

89. The Office will consult with experts and, where appropriate, propose their testimony on different aspects, such as socio-political, psychological and medical aspects, of sexual and gender based crimes.⁶⁰ Such experts may also be useful in identifying patterns of sexual and gender based crimes, the nature of injuries and their consistency with victim testimony, and the personal and social consequences of the crime.⁶¹

(e) *Sentencing*

90. The Office will argue for sentences which give due consideration to the sexual and gender dimensions of the crimes charged, including their impact on victims as an aggravating factor and reflective of the gravity of the crimes committed. In the determination of an appropriate sentence, the Court is required to take into account factors such as the gravity of the crime and the individual circumstances of the convicted person.⁶² Several factors, including the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime, must also be considered by the Court.⁶³ Bearing this in mind, the Office will adduce evidence to argue for the imposition of appropriate sentences for sexual and gender based crimes and the related harm caused to victims. The Office will, where appropriate, adduce evidence of the impact of the sexual and gender based

⁶⁰ The Office will take into account precedents of expert testimony of this kind in other international tribunals and national jurisdictions. Note, for example, the expert report by Ms. Binaifer Nowrojee at the ICTR, Case No. ICTR-98-41-T, *The Prosecutor v. Bagosora et al.*, exhibit No. P 291, "Sexual violence crimes during the Rwandan genocide", June 2004. ICTR Trial Chamber I admitted Ms. Nowrejee as an expert in relation to her investigations of sexual crimes in Rwanda based on her interviews and field investigations and found her evidence relevant to the pattern of sexual violence in 1994, including whether it was widespread, public, organised and the level of brutality compared to other armed conflicts. See *The Prosecutor v. Bagosora et al.*, Trial Chamber I Judgement and Sentence, Case No. [ICTR-98-41-T](#), 18 December 2008, para. 1728.

⁶¹ For example, the Office called Prof. André Tabo and Dr. Adeyinka Akinsulure-Smith as expert witnesses on the relevant pattern of sexual violence during the 2002-2003 conflict in the Central African Republic and its impact on the victims.

⁶² Article 78(1) of the Statute provides: "In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person."

⁶³ According to rule 145(1)(c) of the Rules, in its determination of the sentence, the Court shall: "In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person."

violence on the victims, their families and the community as a whole, by way of victim or expert testimony and written statements.

91. The commission of a crime with a motive involving discrimination, including on the grounds of gender, or where the victim is particularly vulnerable, in itself constitutes aggravating circumstances.⁶⁴
92. Even where the accused is not charged with sexual and gender based crimes as such, the Office considers that any sexual or gender dimensions involved in the crimes charged should be treated as an aggravating factor or as part of the gravity factor for the purpose of sentencing.

(f) *Reparations*

93. Reparations decisions will be determined by each Trial Chamber with due consideration of the specific facts of the case, the context and circumstances within which the crimes occurred, the interests of victims, and the harm and suffering experienced.⁶⁵ The Office may be involved during the reparation stage.⁶⁶ The Office supports a gender-inclusive approach to reparations, taking into account the gender-specific impact, harm and suffering of the victims affected by the crimes for which an individual has been convicted. Where possible, the Office will also support the carrying out of a gender analysis by an appropriate body in order to determine the most effective and appropriate forms of reparation with regard to a particular community.

VII. Cooperation

94. Cooperation is one of the two fundamental components of the Rome Statute system, together with complementarity. Effective cooperation is crucial in order to ensure that the Office and the Court are able to carry out their mandate. The Office accordingly actively engages with States and other relevant stakeholders in order to improve the effectiveness of its actions with respect to sexual and gender based crimes. The Office also includes a gender perspective in its public information activities which seek to maximise awareness and impact of its work.

⁶⁴ The aggravating circumstances set out under rule 145(2)(b) of the Rules include: "Commission of the crime where the victim is particularly defenceless" (rule 145(2)(b)(iii)) and "Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3", which includes gender (rule 145(2)(b)(v)).

⁶⁵ *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, [ICC-01/04-01/06-2904](#), 7 August 2012.

⁶⁶ Article 75(3): Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States. In the *Lubanga* case, the Chamber invited the Office to file submissions on the principles and procedure to be applied to reparations. *Prosecutor v. Thomas Lubanga Dyilo*, Scheduling order concerning timetable for sentencing and reparations, [ICC-01/04-01/06-2844](#), para. 8.

(a) *External relations*

95. As part of its external relations strategy, the Office will enhance its efforts to identify, support and engage with initiatives undertaken to respond to the scourge of sexual and gender based crimes, including the facilitation of contacts between various entities in this field. Through missions, public statements, sharing of information, and participation in conferences and trainings, amongst others, the Office contributes to and highlights the need for accountability for sexual and gender based crimes.
96. The Office encourages various initiatives and actions notably by States Parties to address sexual and gender based crimes. These include: efforts towards universal ratification of the Statute and the adoption of domestic legislation which incorporates the conduct proscribed under the Statute; support for domestic investigations and prosecutions for these crimes;⁶⁷ enhancement of cooperation for the execution of ICC arrest warrants; and strengthening political support to end impunity and to prevent the recurrence of such crimes.⁶⁸ These contributions are important to establish and reinforce the normative framework of the Statute for the accountability of sexual and gender based crimes.
97. The establishment of the United Nations Special Representative of the Secretary-General for Sexual Violence in Conflict was also a significant development in the fight against impunity for sexual and gender based crimes as it strengthens the UN efforts in this area.⁶⁹ The Office of the Prosecutor liaises with the office of the

⁶⁷ [Security Council Resolution 1820 \(2008\)](#) also calls upon Member States to comply with their obligations for prosecuting persons responsible for rape and other forms of sexual violence constituting a war crime, a crime against humanity or a constitutive act with respect to genocide, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth and national reconciliations. The Security Council, in its [Resolution 2106 \(2013\)](#), encouraged Member States to include the full range of crimes of sexual violence in national penal legislation to enable prosecutions for such acts and recognised that effective investigation and documentation of sexual violence in armed conflict is instrumental both in bringing perpetrators to justice and ensuring access to justice for survivors.

⁶⁸ For example, the United Kingdom launched an initiative on preventing sexual violence in conflict, aimed, *inter alia*, at strengthening international efforts and coordination and supporting states to build their national capacity to prosecute acts of sexual violence committed during conflict. The African Solidarity Initiative, a programme launched by the African Union (AU) in 2012 to mobilise support for post conflict reconstruction, has also initiated consultations with the objective of formulating an AU led strategic framework for the prevention and response to sexual violence in Africa. See [the Concept Note on High Level Consultation on Preventing and Responding to Sexual Violence in Conflict, Post-Conflict Countries and Beyond](#), 9-11 October 2013.

⁶⁹ In February 2010, the UN Secretary General announced the appointment of Ms. Margot Wallström as his first Special Representative on Sexual Violence in Conflict. She was replaced by Ms. Zainba Hawa Bangura in June 2012. See the UN press releases announcing their appointments: ["Secretary-General appoints Margot Wallström of Sweden as Special](#)

Special Representative, and other relevant UN entities, including the Special Representative of the Secretary-General for Children in Armed Conflict, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the Office of the High Commissioner for Human Rights.

98. The Office also recognises the crucial role that civil society plays in preventing and addressing sexual and gender based crimes. International and local NGOs are often first- responders to incidents of sexual and gender-based violence, undertake documentation of such crimes and provide significant medical, psychosocial and material support to victims. The Office will seek to support and strengthen the cooperation with these organisations. The Office will also continue to actively work towards building a network with these organisations in order to enlist their assistance and support in efforts to reach out more to the victims.
99. Civil society organisations also play a crucial role in: transforming public attitudes towards gender equality and addressing gender based crimes; campaigning for and supporting the adoption of domestic rape and sexual violence legislation in line with the Statute; advocating for the ratification of the Statute and an adherence to international laws and human rights standards; and supporting an international norm of accountability for crimes, including sexual and gender based crimes.
100. The ICC is complementary to national efforts. Accordingly, consistent with its positive complementarity policy, the Office seeks to combine its own efforts to prosecute those most responsible with national proceedings for other perpetrators. It may, for example, engage with and support national authorities in their national proceedings, including in relation to sexual and gender based crimes, provided that it does not compromise any future admissibility proceedings and subject to the existence of a credible local system of protection for court staff or witnesses and other security-related caveats.
101. As part of its positive complementarity approach, the Office encourages and supports States to carry out their primary responsibility of investigating and prosecuting crimes, including sexual and gender based crimes.

(b) Public Information

102. In support of the policy to integrate a gender perspective in all aspects of its work, its public information activities will include creating and seizing opportunities to highlight the impact of sexual and gender based crimes and increase awareness and contribute to the prevention of future crimes. The Office will utilise various platforms such as public events, media/social media campaigns, media programmes on high level missions, or documentary projects

[Representative on Sexual Violence in Conflict](#), 2 February 2010; [“Secretary-General appoints Zainab Hawa Bangura of Sierra Leone Special Representative on Sexual Violence in Conflict”](#), 22 June 2012.

for this purpose. The Prosecutor, and relevant staff members, particularly the Gender and Children Unit, will be actively engaged in these activities.

VIII. Institutional development

(a) Recruitment and institutional arrangements

103. The Office will enhance its institutional capacity to investigate and prosecute sexual and gender based crimes more effectively. The Office established the Gender and Children Unit (GCU) as one of the ways to ensure that proper focus is put on the investigation and prosecution of these crimes.⁷⁰ This Unit comprises of staff with legal and psycho-social expertise⁷¹ and supports all Divisions and teams in dealing with victims and witnesses, particularly those of sexual and gender based crimes. The GCU provides advice to the Prosecutor, the Executive Committee and staff in all areas related to sexual and gender based crimes and crimes against children at all stages of the operations. The Unit is responsible for liaising with the Victims Participation and Reparations Section (VPRS) in the Registry and also acts as the focal point with the VWU on support issues relating to victims and witnesses.
104. In addition, in accordance with article 42(9) of the Statute, the Prosecutor has appointed advisers with legal and other expertise on specific issues, including sexual and gender violence, to further develop the capacity of the Office and expand the expertise available to advise its work. To date, two Special Gender Advisors have been appointed.⁷²
105. Article 44(2) of the Statute requires that in the employment of staff within the Office, the Prosecutor shall ensure the highest standards of efficiency, competency and integrity and have regard to considerations of the representation of the principal legal systems of the world, equitable geographical representation and a fair representation of women and men.
106. The Office will recruit persons with required expertise and experience in the field of sexual and gender based crimes as required.

⁷⁰ The GCU was established in 2003 shortly after the taking of office by the first Prosecutor.

⁷¹ Regulation 12 of the Regulations of the Office.

⁷² Prof. Catherine MacKinnon served as the Special Gender Advisor between November 2008 – June 2012. In August 2012, Ms. Brigid Inder was appointed as new Special Gender Advisor. See the press releases announcing their appointments: [“ICC Prosecutor appoints Prof. Catharine A. MacKinnon as Special Adviser on Gender Crimes”](#), 26 November 2008; [“ICC Prosecutor Fatou Bensouda Appoints Brigid Inder, Executive Director of the Women’s Initiatives for Gender Justice, as Special Gender Advisor”](#), 21 August 2012.

107. In February 2010, the Office adopted the Operations Manual which sets out its operations in detail and incorporates good practices related to victims and witnesses of sexual and gender based crimes.

108. The Staff Welfare Office of the Registry provides support for ICC staff to prevent and manage stress and trauma. The Office will request that the Staff Welfare Office provide such support more regularly for its staff, particularly in relation to their work involving sexual and gender based crimes. Managers will be expected to regularly engage with staff in this regard through support and supervision and encourage staff to seek the assistance of the Staff Welfare Office.

(b) Staff training

109. Staff training is an important component towards ensuring effective investigation and prosecution of sexual and gender based crimes. As foreseen in the Court-wide revised strategy towards victims, training will be adjusted in accordance with new strategies and experiences.⁷³

110. The Office will endeavour to ensure that all members of the joint/trial teams as well as any other relevant staff members have the necessary competencies and support to perform their functions effectively in relation to sexual and gender based crimes. In addition, the Office will provide on-going technical and advanced training on methodologies in collection and analysis of evidence of such crimes, the relevant legal framework, cultural issues and other traditional and religious practices related to the situation and specific communities where the investigation is being conducted.⁷⁴ Training will also be provided on how to properly conduct court examinations of vulnerable witnesses as well as insiders/overview witnesses to elicit relevant information regarding these crimes. The demonstration of awareness, knowledge and good practices regarding the gender and cultural context of the investigations by all members of the investigation team, will be supported and monitored by the joint/trial team leadership.

111. The Office will constantly monitor its practices with regard to the investigation and prosecution of sexual and gender based crimes as part of its lessons learned processes. Good practices and other relevant developments will be incorporated into the Operations Manual on an on-going basis.

⁷³ Report of the Court on the Revised strategy in relation to victims: Past, present and future, [ICC-ASP/11/40](#), 5 November 2012, para. 58. See also para. 8: "In general, the Court has recognised that it must do more to make its personnel increasingly gender sensitive. The different organs and units dealing with particularly vulnerable groups, e.g. women victims, children and survivors of Sexual and Gender Based Violence (SGBV), are developing policies on gender and guidelines for relevant personnel."

⁷⁴ [WHO Ethical and safety recommendations](#), recommending, *inter alia*: "All members of the data collection team must be carefully selected and receive relevant and sufficient specialized training and ongoing support", at p. 9.