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# CONFLICT - RELATED SEXUAL VIOLENCE

The darker side of the *history* and  
the untold *herstory* of conflicts under  
International Human Rights Law

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*To Amelia,  
always remember to look at the world as a free woman*

## **ABSTRACT**

Conflict-Related Sexual Violence (CRSV) has been recognised as a self-standing crime that can threaten international security and impede the restoration of a sustainable international peace. Even though it is punishable under International Law, the path to eradicate it is still long. The thesis aims to explore how the international community has been able to bring these vexations to light and provide a holistic mechanism to prevent CRSV, bring perpetrators to justice, protect victims and grant them reparation. In an effort to capture the complexities of the phenomenon, this work adopts an innovative approach and builds on an interesting nexus. Indeed, it analyses the dynamic interplay between the Reporting Cycles to the CEDAW Committee, its General Recommendation n. 30 and National Action Plans implementing United Nations Security Council Resolution 1325 in selected conflict-affected countries, in order to advance the Women, Peace and Security Agenda, in which CRSV is a central issue. New insights, a dynamic framework of analysis and the consequent deep understanding of the phenomenon sheds light on CRSV. The study demonstrates that the aforementioned interplay can be crucial to avoid and eradicate the phenomenon and finally reach the truth behind the darker, overlooked, silenced side of conflicts.

## ACRONYMS

<b>AG</b>	General assembly of the United Nations
<b>AU</b>	African Union
<b>CARSV</b>	Conflict and Atrocities-Related Sexual Violence
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>CRSV</b>	Conflict-Related Sexual Violence
<b>DRC</b>	Democratic Republic of Congo
<b>FARC</b>	Fuerzas Armadas Revolucionarias del Colombia-Ejército del Pueblo
<b>FARDC</b>	Force Armées de la République Démocratique du Congo
<b>GA</b>	General Assembly of United Nations
<b>GBV</b>	Gender-Based Violence
<b>GREVIO</b>	Group of Experts on Action against Violence against Women and Domestic Violence
<b>ICC</b>	International Criminal Court
<b>ICL</b>	International Criminal Law
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>IDPs</b>	Internal Displaced Persons
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>IRC</b>	International Rescue Committee
<b>LBGTIQ</b>	Lesbian, Bisexual, Gay, Transgender, Intersex and Questioning
<b>MARA</b>	Monitoring, Analysis and Reporting Arrangements
<b>NAP s</b>	National Action Plan s
<b>OHCHR</b>	The Office of the United Nations High Commissioner for Human Rights
<b>RAP s</b>	Regional Action Plan s

<b>Res.</b>	Resolution
<b>SG</b>	Secretary-General of the United Nations
<b>SGBV</b>	Sexual Gender-Based Violence
<b>SRSG-SVC</b>	Office of the Special Representative of the Secretary-General on Sexual Violence
<b>TOE</b>	Team of Experts on the Rule of Law and Sexual Violence in Conflict
<b>UN</b>	United Nations
<b>UNHCR</b>	The UN Refugee Agency
<b>UNSC</b>	Security Council of the United Nations
<b>UNSCR</b>	United Nations Security Council Resolution
<b>UNSCSL</b>	The Special Court for Sierra Leone
<b>WHO</b>	World Health Organization
<b>WILPF</b>	The Women's International League for Peace and Freedom
<b>WPA</b>	Women's protection advisers
<b>WPS</b>	Women, Peace and Security
<b>WPSA or WPS</b>	Women, Peace and Security Agenda

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## INTRODUCTION

“A stain on our common humanity” are the words used by the Secretary-General of the United Nations to mark the International Day for the Elimination of Sexual Violence in Conflict the 19<sup>th</sup> of June 2018<sup>1</sup>.

Between 250,000 and 500,000 women survived rape during the Rwanda genocide in 1994; 60,000 were victims of conflict-related sexual violence during the Balkan conflict; Pakistani soldiers raped more than 20,000 Bengali women in 1971; between 1991 and 2002 almost 60,000 women were raped during the civil war in Sierra Leone and between 200,000 and 400,000 in the Democratic Republic of Congo (DRC) since 1998; over 20 percent of Sri Lankan Tamil males in detention have experienced sexual abuse; around 40 percent of male survivors fleeing conflict in the DRC have been victims of conflict-related sexual violence. Several survivors of conflict-related sexual violence are children<sup>2</sup>.

International and non-international conflicts are overflowing in many parts of the world leaving an ample wake of human rights violations and a “deafening silence” in institutions and organizations that are trying, or should be trying, to end wars and bring to justice those responsible for grave human rights violations and crimes. It is only in 2000 that the international community adopted the United Nations Security Council landmark resolution 1325 (UNSCR 1325), on the basis of which was adopted the Women, Peace and Security Agenda (WPSA), including the ones on Conflict-Related Sexual Violence (CRSV).

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<sup>1</sup> <<https://news.un.org/en/story/2018/06/1012472>> accessed 11/06/2018.

<sup>2</sup> Data on CRSV are scanty and fragmented. The sources used to provide this data are: Kristine T. Hagen and Sophie C. Yohani, 'The Nature and Psychosocial Consequences of War Rape for Individuals and Communities', *International Journal of Psychological Studies* 2(2) (2010): 15; World Vision UK, 'No Shame in Justice, Addressing stigma against survivors to end sexual violence in conflict zones' (2015):17 - 18; United Nations, 'Background Information on Sexual Violence used as a Tool of War' available online: <<http://www.un.org/en/preventgenocide/rwanda/about/bgsexualviolence.shtml>>, accessed 18/03/2018; Save the Children, Unspeakable Crimes Against Children Sexual violence in conflict (2013): 2 <<https://resourcecentre.savethechildren.net/library/unspeakable-crimes-against-children-sexual-violence-against-children>> accessed 18/03/2018. For a deep knowledge of the size of the phenomenon between 1989 and 2009, please consult the Sexual Violence in Armed Conflict (SVAC) dataset available at <<http://www.sexualviolencedata.org>> accessed 05/07/2018.

CRSV is one of the most horrifying human rights violations, a self-standing crime<sup>3</sup> preventable and punishable under International Human Rights Law (IHRL), International Humanitarian Law (IHL) and International Criminal Law (ICL)<sup>4</sup>.

The list of sexual crimes civilian populations have experienced is incredibly long and the atrocities can reach unthinkable levels. Rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage are the most known sexual crimes which, when linked with international or non-international conflict, may crystallize the so-called “Conflict-Related Sexual Violence”<sup>5</sup>, object of this thesis.

CRSV may threaten international security and, when used or commissioned as a tactic of war in order to deliberately target civilians, or as part of a widespread or systematic attack against the civilian population, may impede the restoration of international and sustainable peace and security and may persist even after the cessation of hostilities<sup>6</sup>.

During the last twenty years the doctrine of international tribunals such as the International Criminal Court (ICC), the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) has clarified the legal requirements for sexual violence to constitute genocide, torture, crime against humanity or war crime<sup>7</sup>. Despite this and the efforts

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<sup>3</sup> Stop rape now, UN Action Against Sexual Violence in Conflict, ‘Analytical & conceptual framing of Conflict-related sexual violence’.  
<<http://www.stoprapenow.org/uploads/advocacyresources/1321456915.pdf>>., accessed 11/07/2018.

<sup>4</sup> Gloria Gaggioli, 'Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law' *International Review of the Red Cross* 96(894) (2014): 505.

<sup>5</sup> UN, Security Council, ‘Report of the Secretary-General on conflict-related sexual violence’, UN Doc S/2017/249 (15 April 2017): 1 <<http://www.un.org/en/events/elimination-of-sexual-violence-in-conflict/pdf/1494280398.pdf>> accessed 11/07/2018.

<sup>6</sup> UN Women, 'Take five: Uncovering the untold stories of sexual and gender-based violence in conflict', Interview to Aurélie Roche-Mair, Director of the International Bar Association (IBA) Hague Office (2017). <<http://www.unwomen.org/en/news/stories/2017/10/take-five-aurelie-roche-mair>>, accessed 21/03/2018.

<sup>7</sup> UN General Assembly ‘Rome Statute of the **International Criminal Court**’, UN Doc.A/CONF.183/9 (Rome Statute) (1998; entered into force 1 July 2002; last amendment 2010) Arts 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi). Cases: The Prosecutor v. Joseph Kony and Vincent Otti ICC-02/04-01/05; The Prosecutor v. Germain Katanga ICC-01/04-01/07.  
UN Security Council, ‘Statute of the **International Criminal Tribunal for Rwanda**’, UN Doc. S/RES/955 (1994; last amendment 2006) Arts 2-3. Cases: The Prosecutor v. Jean-Paul Akayesu (Trial Judgement), ICTR-96-4-T; The Prosecutor v. Clément Kayishema and Obed Ruzindana (Trial Judgement), ICTR-95-1-T |  
UN Security Council, Statute of the **International Criminal Tribunal for the Former**



of the international community to denounce these crimes are constant, these behaviours remain a persistent hallmark in numerous armed conflicts, atrocities and national emergencies<sup>8</sup>.

Women and girls are disproportionately the targets of such atrocities, due to historical and structural inequalities that exist between men and women and the different forms of gender discrimination that females are subjected to all over the world<sup>9</sup>; nevertheless men too are victims of gender-based violence linked with conflicts.

The consequences at physical and psychological level are so deep as to make a resolution almost utopic in contexts without adequate services to take care of victims, and as to leave inter-generational scars in societies<sup>10</sup>.

This thesis explores how the United Nations (UN) and the Member States, in particular those conflict-affected, are striving to build a solid machinery to address all the shadows of the darker side of conflicts and not ignore any potential victims.

This is the main research question of this work in an effort to bring these vexations to light and provide a holistic mechanism to prevent CRSV, protect victims, bring perpetrators to justice and grant reparation to the survivors.

The thesis is rooted around key international instruments, such as the Convention on the Elimination on all forms of Discrimination Against Women (CEDAW) and the States' reports to the document itself, General Recommendation n. 30 of the CEDAW Committee and selected National Action Plan (NAPs) implementing UNSCR 1325 on Women, Peace and Security (WPS). The continual dialogue will be demonstrated among these documents advancing the Women, Peace and Security Agenda, in which CRSV holds a paramount space of concern.

A crucial dialogue that could remain *verba volant* in the wind of power and

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**Yugoslavia**, UN Doc. S/RES/808 (1993; last amendment 2002) Arts 4-5. Cases: The Prosecutor v. Duško Tadić (Appeal Judgement), IT-94-1-A; The Prosecutor v. Kunarac et al. (Trial Judgment), IT-96-23-T & IT-96-23/1-T.

<sup>8</sup> Case Matrix Network, 'International Criminal Law Guidelines: Legal Requirements of Sexual and Gender-Based Violence Crimes', (2017): 5. <<https://www.legal-tools.org/en/doc/c1c17c/>>. Accessed 30/06/2018.

<sup>9</sup> Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, 'International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Best Practice on the Documentation of Sexual Violence as a Crime Or Violation of International Law' (2) (2017): 21 <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf)> accessed 30/06/2018.

<sup>10</sup> *ibid* 237.

political interests, or set up the fortress for present survivors and for those who thanks to its potential will not be victims of this crime.

International Human Rights Law will be the legal framework considered in developing the work, nevertheless several references to International Humanitarian law and International criminal law will be made across the thesis to highlight relevant interconnections and the severe nature of this crime.

The thesis will be divided into three chapters.

What the characteristics and the consequences of this phenomenon are and what do we know about the victims are of CRSV will constitute the focus of the first chapter. In particular, CRSV will be differentiated from those sexual violent acts committed during conflict or post-conflict settings which are perpetrated with no connection to the conflict, but that potentially are favoured by the lack of rule of law, the breakdown of community and family structures, the lack of security and the prevailing impunity<sup>11</sup>.

This difference is crucial throughout the thesis, since the analysis here offered would like to explore only CRSV as a form of sexual violence directly or indirectly perpetrated by those responsible for the security of a given society. Addressing CRSV constitutes a particularly demanding exercise for States. It implies initiating procedures against its own officials, influential stakeholders within its political system. Addressing a phenomenon which is socially accepted such as sexual and gender-based violence entails further obstacles and challenges.

The second chapter will be devoted to the theoretical framework that allows us to understand and analyse the phenomenon of CRSV. Conceptualisations from different approaches and authors will enrich the theoretical perspectives of this work. The discussion covers a large spectrum from the social-oriented and the evolutionary-oriented approach discussed by Gotshall (2004), to the targeting perspective of Skjelsbaek (2001) and the analysis of perpetrators' mechanism by Houge (2014), with the aim to create a coagulation of knowledge which does not omit any nuance and driving forces of the phenomenon as such. The gender perspective will be the *file rouge* of this analysis, the Ariadne's thread to trace CRSV, even when considering males victims.

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<sup>11</sup> *ibid* 20.

The third and last chapter will analyse the dynamic interplay between States and the United Nations to implement the WPSA, and concretely address CRSV. Indeed, after showing the evolution of the UN's thought on the matter, through the study of the main documents, I will focus my attention on the WPSA born from the adoption of 8 Resolutions, starting from the landmark UNSCR 1325.

The analysis of the thesis is founded in the nineteen countries<sup>12</sup> mentioned in the last UN Secretary-General (UNSG) Report (April 2018) on sexual violence in conflicts. These countries form the more representative sample, since they are either conflict or post-conflict countries, where CRSV is widespread.

The nexus between CRSV, CEDAW and namely its General Recommendation n. 30, and selected National Action Plan (NAPs) in implementing UNSCR 1325 on Women, Peace and Security offers new insights, a dynamic framework of analysis and a deeper understanding of the phenomenon in an effort to capture the complexities of the international community's answer to the darker side of conflicts.

The analysis will develop along two strands.

The first one will explore how the NAPs for UNSCR 1325 are built according to criteria established by the Women's International League for Peace and Freedom<sup>13</sup>. Secondly, a table which shows the dialogue between the WPSA and the Committee on the Elimination of Discrimination Against Women will be created and explained, with a specific focus on how the nineteen Countries above mentioned have been addressing CRSV through NAPs.

Exploring how these countries are implementing (or not) WPSA, and addressing (or not) CRSV through the adoption of NAPs, and how the Committee on the Elimination of Discrimination Against Women has used the reporting cycles to CEDAW Convention to drive these States into doing so, gives the readers a concrete understanding of what is the operative answer to the CRSV by the most

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<sup>12</sup> Afghanistan, Bosnia and Herzegovina, Burundi, Central African Republic, Colombia, Democratic Republic of Congo, Iraq, Ivory Coast, Libya, Mali, Myanmar, Nepal, Nigeria, Somalia, South Sudan, Sri Lanka, Sudan (Darfur), Syria, Yemen. Countries which have adopted NAP: Afghanistan, Bosnia and Herzegovina, Burundi, Central African Republic, Democratic Republic of Congo, Iraq, Ivory Coast, Mali, Nepal, Nigeria, South Sudan; Countries which have not implemented NAP: Colombia, Libya, Myanmar, Somalia, Sri Lanka, Sudan (Darfur), Syria, Yemen.

<sup>13</sup> <http://www.peacewomen.org/> accessed 11/07/2018.

affected countries.

The methodology used in this work is essentially analytical. The analysis, namely content analysis, builds on political documents such as the NAPs for UNSCR 1325 and the reporting process to CEDAW Convention. The originality of this work lies precisely in the study of the nexus between CRSV and the CEDAW and selected National Action Plans (NAPs) in implementing UNSCR 1325 on Women, Peace and Security.

The main limitation encountered in this thesis pertains to the terminology. The definition of CRSV is, in fact, inextricably linked to the deep roots of gender inequality and reveals the terminology issues only the tip of iceberg of the remnants of a patriarchal world. The majority of the NAPs analysed have used the term “sexual and gender-based violence”. In fact, they do not address the difference between CRSV and SGBV in conflict, which is crucial in this context. This has caused certain difficulties in analysing critically the phenomenon.

As affirmed by António Guterres, UN Secretary-General “the era of silence at the level of national and international institutions has given way to a sense of urgency to bring all the tools of diplomacy to bear on the issue”<sup>14</sup>. The political importance of the statement by the UN Secretary-General should not be underestimated, although a lot needs to be done by the UN and its Member States to live up to its commitments. History will have the last word.

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<sup>14</sup> UN Security Council ‘UN Doc. S/2017/249’ (n.5) 6.

## CHAPTER 1

### WHAT DO WE KNOW ABOUT THE DARKER SIDE OF CONFLICT AND POST-CONFLICT SETTINGS?

Sexual and gender-based violence (SGBV) in conflict is not a niche issue, rather part of a larger pattern<sup>15</sup> which has been debated for the past two decades in the international community, finally emerging as a leading issue in the international agenda.

SGBV catches two, often interrelated concepts, sexual violence and gender-based violence.

According to the World Health Organization (WHO) sexual violence is defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work<sup>16</sup>”. Conversely, there is no internationally agreed-upon definition of gender-based violence. Some institutions, such as the Committee on the Elimination of Discrimination Against Women and the European Institute for Gender Equality speak to gender-based violence when referring to violence against women<sup>17</sup>, heightened risks women face disproportionately in terms of violence. However, it is recognized that SGBV affects also men and boys and other categories like LGBTIQ<sup>18</sup>, specifically during

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<sup>15</sup> Margot Wallström, Special Representative of the Secretary-General on Sexual Violence in Conflict, 'Security Council Open Meeting on 'Women, Peace and Security: Sexual Violence in Situations of Armed Conflict' Stop Rape Now, U.N. Action against sexual violence in conflicts, New York (27 April 2010). <<https://www.legal-tools.org/doc/984c14/pdf>> accessed 15/03/2018.

<sup>16</sup> Etienne G. Krug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi and Rafael Lozano, 'World report on violence and health', *World Health Organization* (2002): 149. <[http://apps.who.int/iris/bitstream/handle/10665/42495/9241545615\\_eng.pdf?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf?sequence=1)> accessed: 18/03/2018.

<sup>17</sup> For example see: the definition included in the General Recommendation n.19 of the Committee on the Elimination of Discrimination Against Women available online: <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>> accessed 18/03/2018; the definition included in the website of The European Institute for Gender Equality available online: <<http://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>> accessed 18/03/2018.

<sup>18</sup> UNHCR, 'The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers

particular space-time continuum, such as conflicts, to be later discussed.

This work favours an inclusive approach and shares the definition of gender-based violence provided by the UN Refugee Agency (UNHCR).

In this context, SGBV refers to “any act that is perpetrated against a person’s will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys<sup>19</sup>”. While all forms of sexual violence can generally be considered acts of gender-based violence (GBV), not all forms of GBV are sexual in nature<sup>20</sup>.

During periods of war and armed conflict issues of SGBV and Conflict-related Sexual Violence / or Conflict and Atrocity-Related Sexual Violence<sup>21</sup> (CRSV | CARSV) emerge. While the perpetration of the former may be facilitated by an environment affected by the breakdown of community and family structures, lack of security, absence of rule of law and prevailing impunity<sup>22</sup>, the latter refers to sexual violence explicitly linked to the conflict.

According to the UN Secretary-General, the link between the sexual act and the conflict:

*“may be evident in the profile of the perpetrator (often affiliated with a State or non-State armed group, including a terrorist entity or network), the profile of the victim (who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or is targeted on the basis of actual or perceived sexual orientation and gender identity), the climate of impunity (which is generally associated with State collapse), cross-border consequences (such as displacement or trafficking in persons) and/or violations of the provisions of a ceasefire*

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and Refugees: Discussion Paper’ (22 September 2010) para. 15.

<http://www.refworld.org/pdfid/4cff9a8f2.pdf> accessed 19/03/2018.

<sup>19</sup> Definition of Sexual and Gender-Based Violence by The UN Refugee Agency - UNHCR,

<http://www.unhcr.org/sexual-and-gender-based-violence.html> accessed 18/04/2018.

<sup>20</sup> Sara Ferro Ribeiro and Danaé Van der Straten Ponthoz, ‘International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Best Practice on the Documentation of Sexual Violence as a Crime Or Violation of International Law’ (2) (2017): 18 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf) accessed 22/03/2018.

<sup>21</sup> *ibid* 11.

<sup>22</sup> *ibid* 20.

*agreement*<sup>23</sup>”.

CRSV is present in most current, past and recent conflicts<sup>24</sup>. While the scope and the magnitude of the phenomenon varies, the under-reporting is common feature that results in scanty and fragmented availability of statistics and data. In some settings the pattern of sexual violence is symmetric, with all parties perpetrating conflict-related SGBV. In others case it is asymmetric, as a specific armed group takes part in these atrocities while others do not<sup>25</sup>. In some conflicts CRSV decreases over the course of the war, in others it increases and it is protracting over the post-conflict time<sup>26</sup>.

The nature of the conflict (civil war; interstate war; ethnic war; non ethnic war; genocide; ethnic-cleansing case; secessionist conflict.) does not explain the variation of sexual violence, nor does its prevalence reflect the intensity of the conflict itself<sup>27</sup>.

CRSV encompasses different forms of sexual violence, and often it has been considered the *actus rea* of genocide, war crimes and crimes against humanity as will be discussed in the second chapter. Forms of CRSV include: rape; sexual slavery; forced prostitution; forced pregnancy; forced abortion; enforced sterilization; forced marriage; sexualized torture<sup>28</sup>; castration; deliberate infection of with HIV/AIDS<sup>29</sup> and/or other sexually transmitted diseases, and any other form of sexual violence of comparable gravity<sup>30</sup>.

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<sup>23</sup> UN, Security Council, ‘Report of the Secretary-General on conflict-related sexual violence’, UN Doc S/2017/249 (15 April 2017): 1 <<http://www.un.org/en/events/elimination-of-sexual-violence-in-conflict/pdf/1494280398.pdf>> accessed 22/03/2018. For a deep understanding of the link between CRSV and conflict and the applicability of the International Humanitarian Law: Gloria Gaggioli Gaggioli G, ‘Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law’ *International Review of the Red Cross* 96(894) (2014):513-516.

<sup>24</sup> Jonathan Gottschall, ‘Explaining wartime rape’ *The Journal of Sex Research* 41(2) (2004): 130.

<sup>25</sup> Elisabeth Jean Wood, ‘Sexual violence during war: Toward an understanding of variation’ In Kalyvas S N, Shapiro I, and Masoud T, ‘Order, Conflict, and Violence’, Cambridge: Cambridge University Press (2008): 322.

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid* 334.

<sup>28</sup> *ibid* 321.

<sup>29</sup> World Vision UK, ‘No Shame in Justice, Addressing stigma against survivors to end sexual violence in conflict zones’ (2015): 10

<[https://www.worldvision.org.uk/files/1614/4888/7012/WVUK\\_No\\_Shame\\_in\\_Justice\\_low\\_res.pdf](https://www.worldvision.org.uk/files/1614/4888/7012/WVUK_No_Shame_in_Justice_low_res.pdf)> accessed 18/03/2018.

<sup>30</sup> UN, Security Council, ‘UN Doc. S/2017/249’ (n.23) 1.

Victims, perpetrators, consequences, motivations and driving forces, are essential elements for consideration in order to broadly understand a phenomenon with an unclear character as well as labile boundaries.

### 1.1 The victims of Conflict-Related Sexual Violence

Though women and girls are the “privileged[d]” target of CRSV, everyone can be victims of such atrocities. Specific groups face higher risks of CRSV than others, among the most at-risk are: refugees; internally displaced persons; children; female heads of household; human rights defenders; detainees; those associated with armed forces or groups; and those belonging to specific racial, religious, political, national or ethnic groups and others facing discrimination<sup>31</sup>.

#### 1.1.1 Women

Women are the most common target of SGBV in both times of peace and war. This can be tracked to existing gender imbalances and the patriarchal cultures<sup>32</sup> which saturate transversally all societies<sup>33</sup>.

The following figures are just the tip of the CRSV iceberg and they cannot be taken as absolute but still they can help in understanding its dimension: When the Red Army invaded Berlin in 1945 1,000,000 rapes occurred<sup>34</sup>; during the Second World War 1,900,000 women experienced rape<sup>35</sup>; between 100,000 and 250,000 women were raped during the three months of Rwandan genocide in 1994<sup>36</sup>, and 250,000 to 500,000 survived rape during the civil war that same year<sup>37</sup>; the Balkan

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<sup>31</sup> Ferro Ribeiro and Van der Straten Ponthoz (n.20) 21.

<sup>32</sup> UNGA, ‘Declaration on the elimination of violence against women’, UN Doc. A/RES/48/104 (1993): Art 1.

<sup>33</sup> <<http://www.undp.org/content/undp/en/home/gender-equality/gender-based-violence.html>> accessed 22/03/ 2018.

<sup>34</sup> Kristine C. Hagen and Sophie C. Yohani, 'The Nature and Psychosocial Consequences of War Rape for Individuals and Communities', *International Journal of Psychological Studies* 2(2)(2010): 15.

<sup>35</sup> *ibid.*

<sup>36</sup> United Nations, ‘Background Information on Sexual Violence used as a Tool of War’ <<http://www.un.org/en/preventgenocide/rwanda/about/bgsexualviolence.shtml>> accessed 18/03/2018

<sup>37</sup> Hagen and Yohani (n.34) 15.



conflict, one of the most dreadful example of brutality in perpetrating CRSV with 60,000 women victims of the phenomenon<sup>38</sup>; Pakistan soldiers raped more than 20.000 Bengali women in 1971<sup>39</sup>; The World Health Organization has estimated that about 61-77% of women in Liberia were victims of rape during the armed conflicts<sup>40</sup>; between 1991 and 2002 during the civil war in Sierra Leone about almost 60,000 women were raped;<sup>41</sup> and between 200,000 to 400,000 women in the Democratic Republic of the Congo since 1998<sup>42</sup>.

More recently, Libya, Colombia, Afghanistan, Myanmar, Yemen, Darfur, Iraq and Syria<sup>43</sup> have experience CRSV but it is difficult to find data at this time. The data above refers only to rape, even though CRSV in conflicts is far from limited to rape.

For instance, women, in particular, experience rape, often in form of gang rape, sexual slavery and forced prostitution, genital mutilation, forced sterilization and forced pregnancy (rape camps), sexual trafficking, forced marriage.

### *1.1.2 Men*

Wartime is a period wherein everything which happens in time of peace is exacerbated, and where, as we will discuss later in this chapter, the strength of gender stereotypes are heightened, dragging all the individuals into the spiral of violence. In a study of 6000 inmates at a concentration camp in the former Yugoslavia, 80 per cent of men reported to have been raped while in detention. Over 20 per cent of Sri Lankan Tamil males, again in detention, experienced sexual abused and around 40 percent of male survivors fleeing conflict in eastern regions of the DRC have been victims of CRSV<sup>44</sup>.

Data on CRSV experienced by men is lacking not only due to the difficulties

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<sup>38</sup> World Vision (n.29) 17.

<sup>39</sup> Hagen and Yohani (n.34) 15.

<sup>40</sup> United Nations 'Background Information on Sexual Violence used as a Tool of War' (n 36).

<sup>41</sup> *ibid.*

<sup>42</sup> World Vision (n.29) 17.

<sup>43</sup> *ibid* 17.

<sup>44</sup> *ibid* 18.

of reporting sexual violence in every context -peacetime as well as war- but mainly because of taboos associated with male SGBV victimization<sup>45</sup>. Indeed, males are unlikely to share their experiences for a number of social reasons such as stigma, loss of status and authority in the community, as well as fear of prosecution for homosexuality etc<sup>46</sup>.

It is particularly difficult addressing CRSV when the perpetrator is a woman, not only because of the stigma which follows but also because of the failure of legal frameworks to identify men as anything rather than perpetrators<sup>47</sup>. We must consider that according to Dolan, 90 per cent of men in conflict-affected countries are in situations in which the law provides no protection for them if they become victims of sexual violence; 62 countries only recognise female victims of rape while 67 States criminalise men who report abuse and in 28 countries only males are recognised as perpetrators of sexual violence – not females<sup>48</sup>.

Recognition of male as victim has arrived later than for women victims; The UN Security Council (UNSC) recognised men and boys as victims of CRSV in UNSCR 2106 of June 2013 for the first time<sup>49</sup>. Nonetheless the list of countries and regions with contemporary histories of CRSV against men is quite long: Afghanistan; Argentina; Burundi; Cambodia; Central African Republic; Chechnya; Chile; Colombia; Croatia; DRC; Egypt; El Salvador; Former Soviet Union; Former Yugoslavia; Greece; Guatemala; Iran; Iraq; Kashmir; Kenya; Kuwait; Liberia; Libya; Malaysia; Myanmar; North Ireland; Nigeria; Pakistan; Rwanda; Somalia and Somaliland; South Africa; South Sudan; Sri Lanka; Sudan; Syria; Turkey; Yemen; and Zimbabwe<sup>50</sup>.

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<sup>45</sup> Ferro Ribeiro and Van der Straten Ponthoz (n.20) 625.

<sup>46</sup> *ibid* 627.

<sup>47</sup> World Vision (n.29) 18.

<sup>48</sup> Chris Dolan, 'Into the Mainstream: Addressing Sexual Violence Against Men and Boys in Conflict: A Briefing Paper Prepared for the workshop held at London' (14 May 2014): 6 <[https://reliefweb.int/sites/reliefweb.int/files/resources/Into\\_The\\_Mainstream\\_Addressing\\_Sexual\\_Violence\\_against\\_Men\\_and\\_Boys\\_in\\_Conflict.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Into_The_Mainstream_Addressing_Sexual_Violence_against_Men_and_Boys_in_Conflict.pdf)>. Accessed 20/03/2018.

<sup>49</sup> *Ibid* 1.

<sup>50</sup> *ibid*.

### 1.1.3 Children

Children, in particular girls, are a vulnerable group par excellence during conflicts: refugees and IDPs; child soldiers; children born out of rape; members of child-headed households; working children; and young mothers face increased risk during conflicts. According to *Save the Children*, nearly 30 million children living wars have been or will be sexually abuse before their 18th birthday<sup>51</sup>; in Sierra Leone more than 70% of the violence cases seen by the International Rescue Committee (IRC) were girls under 18, and more than 20% of those were girls under 11(1991-2001); in 2004 and 2005 around one-fifth of girls in Port-au-Prince (Haiti) were raped during an armed rebellion; 51.7 per cent of reported cases of CRSV in Côte d'Ivoire in 2010 - 2011 were children; in post-conflict Liberia 83 per cent of survivors of gender- based violence in 2011–12 were below 17; in the DRC during 2008, the UN Population Fund recorded 16,000 cases of sexual violence against women and girls. Nearly 65% of cases involved children, 10 per cent of which was less than ten years old. In the Central African Republic, nearly half of gender-based violence survivors that received support from the IRC were girls under the age of 18<sup>52</sup>.

## 1.2 An overview of where and by whom CRSV is perpetrated

CRSV can be perpetrated by a variety of actors: armed forces; State actors; government officials; police; members of organized non-State armed groups; peacekeepers; humanitarian personnel; members of private and security companies; or civilians<sup>53</sup>. There are cases where the perpetrators have been children associated with armed groups and forces but we have to bear in mind that children who commit sexual violence have often been manipulated or coerced by adults and thus are

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<sup>51</sup> Save the Children, 'Unspeakable Crimes Against Children Sexual violence in conflict' (2013): 2 <<https://reliefweb.int/report/world/unspeakable-crimes-against-children-sexual-violence-conflict>> accessed 25/03/2018.

<sup>52</sup> *ibid.*

<sup>53</sup> Gloria Gaggioli, 'Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law' *International Review of the Red Cross* 96(894) (2014): 504

victims themselves<sup>54</sup>.

The climate of impunity characterizing conflicts helps violators feel legitimated to perpetrate such crimes.

CRSV can occur in homes, fields, places of detention, military sites, checkpoints, camps for refugees and displaced persons and rape camps<sup>55</sup>. The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, lists some red flags which can reveal that sexual violence may be imminent or on-going. These 'red flags' include, but are not limited to forced recruitment into armed groups; abductions; looting by military or armed groups; school raids; checkpoints; detention; situations where men and women are forcibly separated; reports of torture; and flight and displacement<sup>56</sup>.

CRSV is part of the pattern of conflicts and we will see the motivations and the driving forces of these crimes through the theoretical framework analysis, but it is important in this phase to provide a general overview on how sexual violence can be used in conflict. Thus, for example, CRSV can be part of a widespread or systematic attack against a specific population: it can be used to weaken and gain control over communities; it can be used to punish a community or destroy it; in detention centers it can be used to coerce information or/and as a form of torture; it can be perpetrated against specific individuals because of their role in the society, like leaders or activists; it can be perpetrated as a form of camaraderie between soldiers and fighters; as a reward or initiation rite through which create complicity between inmates; or it may be committed as part of ritualistic or harmful communal practices<sup>57</sup>. The second part of this chapter will explore the function of gender as the paradigm underpinning this phenomenon, even though it cannot alone explain all of the shades of CRSV.

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<sup>54</sup> Ferro Ribeiro and Van der Straten Ponthoz, (n.20)22.

<sup>55</sup> Megan Bastick, Karen Grimm and Rahel Kunz, 'Sexual violence in armed conflict, Global overview and implications for the security sector' (2007): 9.

<sup>56</sup> Ferro Ribeiro and Van der Straten Ponthoz (n.20)24.

<sup>57</sup> *ibid* 19-20.

### 1.3 The characteristics of CRSV

CRSV has features which typically characterize the phenomenon.

The first characteristic which we can recognize is the **unreported element** of CRSV. Indeed, even though the phenomenon is now recognized as a pattern of the major part of wars<sup>58</sup>, available data is limited for many reasons; it is internationally recognized that we know only the tip of the iceberg of sexual violence, in conflict as well as in peacetime. Beyond the sensitive nature of this issue, the stigma and fear ostracisation or punishment impede victims from reporting CRSV<sup>59</sup>. In some cultures, being a victim of sexual violence, rape in particular, means familial and communal rejection as well as a loss of honour<sup>60</sup>; in some countries, as we have seen above, it means being condemned of homosexuality or face criminal prosecution for charges of sodomy or adultery. Some are afraid of further violence, such as retaliation or honour killings<sup>61</sup>.

Additionally, material barriers like security risks, physical distance, transportation costs<sup>62</sup>, the disruption of police and health services may make access to the few services difficult. This is exacerbated by the fact that CRSV can take place in areas which may not be readily accessible to journalists, aid workers or medical professionals. One consequence of the underreporting of CRSV is the **impunity** that is associate with it; impunity not only encourages perpetrators in carrying on this behaviour, but also discourage its denouncement. With poverty, lack of opportunities and weakened rule of law, impunity makes victims particularly vulnerable to sexual exploitation and human trafficking<sup>63</sup>. CRSV is often **part of a broad campaign of crimes** leading communities to flee their home, as well as the fact that CRSV is often committed in **public**, in order to destabilize entire communities and increase feelings of insecurity. Last, but not least, CRSV can be particularly **brutal**, sadistic, xenophobic and misogynistic.

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<sup>58</sup> Gotshall (n.24) 130.

<sup>59</sup> World Vision (n.29) 9.

<sup>60</sup> Hagen and Yohani (n.34) 15.

<sup>61</sup> Ferro Ribeiro and Van der Straten Ponthoz (n.20)22.

<sup>62</sup> Gaggioli (n.53)504.

<sup>63</sup> Bastick, Grimm and Kunz (n.55)15.

## 1.4 The consequences of CRSV

The consequences of this heinous violence are clearly devastating and they encompass a broad range of aspects. We can recognise consequences at physical and medical, psychological, social and economic levels and additionally, consequences over the community as a whole, so much so that, some scholars speak of generational<sup>64</sup> or inter-generational effects<sup>65</sup> of CRSV.

At **physical and medical** levels, consequences may include: rectal and vaginal tearing and bleeding; throat agitation through forced oral sex; bruising and broken bones; sexually transmitted infections; sexual dysfunction; disturbances with reproduction; carcinoma; vaginal discharge, and chronic infections, as well as debilitating somatic symptoms. Additionally, we have to consider that these medical conditions are aggravated by unsanitary conditions and lack of medical facilities<sup>66</sup>.

The **psychological** consequences are not less dangerous and are the most difficult to identify and tackle. Among them, there are: post-traumatic stress disorder; severe depression; crippling anxiety<sup>67</sup>; phobias; insomnia; flashbacks; nightmares; grief; denial; depersonalization; distancing; and dissociation. This trauma can lead to suicide; “wartime rape turns its victims into ‘dissociative containers’ who disconnect from humanity and the external world”<sup>68</sup>.

At the **social** level, CRSV has a considerable impact on the social fabric<sup>69</sup>. The fear and the stigma which follow CRSV leads victim to flee their home, shattering entire families while often left without resources to provide basic needs. For example, the breakdown of familial networks may lead women to cover a non-traditional role in order to guarantee basic needs are met for their children, sometimes this means being engaged in transactional sex. These women are often subjected to attack from members of their own communities which do not accept

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<sup>64</sup> Kimberly R Carter, 'Should international relations consider rape a weapon of war?' *Politics & Gender* 6(3) (2010): 355-362-365.

<sup>65</sup> Ferro Ribeiro and Van der Straten Ponthoz (n.20)237.

<sup>66</sup> Hagen and Yohani (n.34)19.

<sup>67</sup> World Vision (n.29)10.

<sup>68</sup> J. D. Pappas, (2003). Poisoned dissociative containers: Dissociative defenses in female victims of war rape. In Hagen and Yohani (n.34)19

<sup>69</sup> Gaggioli (n.53)505.

unconventional roles<sup>70</sup>.

The stigma also impacts family members, for example in order to preserve the familial economic well-being, the victim may be ostracized. In other cases a man who refuses to reject his wife victim of abuse, can feel pressure from family and friends<sup>71</sup>.

Additionally, as sexual violence is often perpetrated in public, society goes into shock and suffers the loss of mothers, sisters, daughters, husbands or other relatives, through familial rejection, physical death, the debilitating impacts of psychological and physical wounds, or due to forced migrations and displacement into camps.<sup>72</sup>

Finally, we cannot underestimate the **economic** impact of sexual violence on victims and the community as a whole. Often victims abandon their job because of feelings of shame or because they fear they encounter their attackers<sup>73</sup>.

Furthermore, the unsafe atmosphere decreases attendance at school, in particular of girls as well as the number of women that able to access water points, marketplaces and polling booths with an obvious impact of the economy of the family. The alarming picture emerging from these examples clarifies why sexual violence occurs in conflicts as well as the ways in which its consequences makes peace less possible<sup>74</sup>.

The cross-section which raises from this introductory sub-chapter is paramount to analyze the motivation and the driving forces which lead to CRSV in conflicts. This will be discussed in the next sub-chapter through a theoretical framework. Overall it will offer a broad knowledge of CRSV, and it will be clear why there is an urgent need internationally to address and find “solutions” for this phenomenon.

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<sup>70</sup> World Vision (n.29) 19.

<sup>71</sup> *ibid* 23.

<sup>72</sup> Hagen and Yohani (n.34) 20.

<sup>73</sup> World Vision (n.29) 11.

<sup>74</sup> Stop Rape Now, Statement by SRSR/SVC (27 April 2010) (n.15).

## CHAPTER 2

### THE THEORETICAL FRAMEWORK

#### 2.1 Ancient phenomenon for recent theories

The new millennium has started worn out of wars that have changed, once again after the II World War, the concept of the armed conflicts in the public opinion. Particularly, the genocide in Rwanda and ethnic cleansing in the former Yugoslavia during 1992-1995 revealed the frequency of CRSV in its most terrifying forms.

The devastating consequences of this crime and the resulting academic and social interest of the public opinion, have conferred to CSRV a central position in the international agenda. Indeed, the phenomenon has obtained an increasing consideration due to its feature as a widespread crime, making it both shocking and an urgent political question to deal with internationally.

Discussing CRSV is not an easy exercise mainly because of the lack of data *in re*, which make it almost impossible to mark the boundary of the phenomenon, and the absence of a definition as to whether CRSV is a sexual act with a violent manifestation or an act of violence with a sexual manifestation<sup>75</sup>. As a consequence, there is a extreme variety of opinions in the academic world; some scholars argue that rape occurs in all or most conflicts while others argue the widespread occurrence of CRSV depends on the nature of the conflict, and some, again, limit rape to ethnic wars<sup>76</sup>.

The widespread and systematic quality of CRSV is confirmed by a partial list of countries that have been identified as loci of mass rapes conducted by military or paramilitary forces in the 20th century alone: Belgium and Russia during World War I; Russia, Japan, Italy, Korea, China, the Philippines, and Germany during

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<sup>75</sup> Regina Mühlhäuser, 'Reframing Sexual Violence as a Weapon and Strategy of War: The Case of the German Wehrmacht during the War and Genocide in the Soviet Union, 1941–1944' *Journal of the History of Sexuality* 26(3) (2017) 367.

<sup>76</sup> Dara Kay Cohen, 'Explaining Rape during Civil War: Cross-National Evidence (1980–2009)' *American Political Science Review* 107(3) (2013): 461



World War II; and in one or more conflicts, Afghanistan, Algeria, Argentina, Bangladesh, Brazil, Burma, Bosnia, Cambodia, Congo, Croatia, Cyprus, East Timor, El Salvador, Guatemala, Haiti, India, Indonesia, Kuwait, Kosovo, Liberia, Mozambique, Nicaragua, and Peru<sup>77</sup>.

Even though, some speak of CRSV as a recent phenomenon, its timeless ubiquity seems clear since we can find reliable evidence of it starting from the Bible, the well-known Rape of Sabine, the Anglo-Saxon and Chinese Chronicles, during the Crusades etc.<sup>78</sup> Moreover, anthropologists, ethnographers and native informants have identified the promise of sexual access to outgroup women as a primary instigator of conflict in prèstate societies<sup>79</sup>.

Several scholars have studied the phenomenon, offering theories which could explain its social and cultural roots and causes in order to better understand CRSV<sup>80</sup>. Theoretical frameworks have emerged, starting from the analyses of notable authors, such as Jonathan Gottshall, Inger Skjelsbæk, and Annette Bringedal Houge<sup>81</sup>. These have offered different approaches focusing on various units of analysis: from an analysis of the main root causes of these acts; to the study of the target injured parties; as well as theory which aims to understand the mind of perpetrators.

Before exploring the aforementioned theories, it is important to highlight some considerations which can help in contextualizing and “critiquing” the different doctrines.

First, although the bibliography refers mainly to women as victims of CRSV, several depositions at the ICTR and ICTY reveals the other side of conflict and gender-based violence, where men are so rarely at the centre of attention to the point that they are almost absent from the literature<sup>82</sup>. For this reason, it is

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<sup>77</sup> Jonathan Gottschall, 'Explaining wartime rape' *The Journal of Sex Research* 41(2) (2004): 130.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> The articles chosen as the base of this dissertation are: Jonathan Gottschall, 'Explaining wartime rape' *The Journal of Sex Research* 41(2) (2004) | Inger Skjelsbaek, 'Sexual violence and war: Mapping out a complex relationship' *European journal of International Relations* 7(2) (2001) | Anette Bringedal Houge, 'Sexualized war violence: Subversive victimization and ignored perpetrators' In Lander I and Ravn S, 'Masculinities in the Criminological Field - Control, Vulnerability and Risk-Taking', *Routledge*, (2014).

<sup>82</sup> Anette Bringedal Houge, 'Sexualized war violence: Subversive victimization and ignored perpetrators' In Lander I and Ravn S, 'Masculinities in the Criminological Field - Control,

fundamental to clarify that CRSV is considered as a species of the broader genus of gender-based violence and thus it may be acting not only against women but also against men<sup>83</sup>.

The “female-centred” orientation of the debates around CRSV is probably a result of extensive and incredibly important efforts by feminists to shed light on the issue. The fulcrum of their thought is that rape and sexual violence are instances of violence, dominance and control aimed at maintaining patriarchy and women’s subordinate position within this social order<sup>84</sup>, and thus a radicalisation of the everyday gender-imbalance women are subjected to in peacetime<sup>85</sup>.

Second, while the “traditional” literature on the theme has largely referred to rape as form of sexual violence, contemporary academic and legal scholarship tends to include and highlight the broad spectrum of SGBV (*vaginal and anal rape, forced fellatio, being forced to rape, sexual slavery, forced prostitution, sterilization and mutilation, forced masturbation and forced nakedness, forced marriage, etc*) and sexualized violence acts are being articulated in such a way that the term is no longer restricted to the act of vaginal rape<sup>86</sup>.

Finally, some scholars have recently focused on the perpetrators in order to deeply investigate the social roots of these crimes. As Lise Price stresses, representing the perpetrators as monsters, inhuman unlike us, serves as an excuse to avoid thought and reflection on the social origins of this phenomenon<sup>87</sup>. Hannah Arendt condensed this concept, arguing that comprehension means “the unpremeditated, attentive facing-up-to and resisting of, reality, whatever it may be or might have been”<sup>88</sup>.

Indeed, after analysing these theories, “perpetrators-oriented studies” will

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Vulnerability and Risk-Taking’, *Routledge*, (2014):165.

<sup>83</sup> Sara Ferro Ribeiro and Danaé Van der Straten Ponthoz, 'International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Best Practice on the Documentation of Sexual Violence as a Crime Or Violation of International Law' (2) (2017): 17. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf) accessed 08/04/2018.

<sup>84</sup> Inger Skjelsbaek, 'Sexual violence and war: Mapping out a complex relationship' *European Journal of International Relations* 7(2) (2001) 212.

<sup>85</sup> Houge ‘Subversive Victimization and Ignored Perpetrators’ (n.82) 167.

<sup>86</sup> Ibid.

<sup>87</sup> Lisa S. Price, 'Finding the man in the soldier-rapist: Some reflections on comprehension and accountability' *Women's Studies International Forum* 24(2) (2001): 211-212.

<sup>88</sup> Hannah Arendt, ‘The origins of totalitarianism’, New York: Harcourt Brace Jovanich (1979) in Price(n.87) 212.

also be considered as reading them together provides a holistic framework to approach this theme.

Intellectual understandings emerging from theoretical engagement, is not designed to deny the outrageous nature of CRSV, but rather offers an opportunity to “examine and bear consciously the burden that events have placed upon us”<sup>89</sup>. “Comprehension, in short, means the unpremeditated, attentive facing up to, and resisting of, reality - whatever it may be or might have been”<sup>90</sup>

## **2.2 Jonathan Gottshall: the sociocultural and the biosocial theories – divergence between a social-oriented and an evolutionary-oriented approach.**

In 2010 Jonathan Gottshall published an article<sup>91</sup> with the aim of explaining wartime rape. In this work, he refers to four leading theories for the prevalence of wartime rape: the feminist theory; the cultural pathology theory; the strategic rape theory; and the biosocial theory. While the first three broadly can be categorized as sociocultural theories, the last one engages with “primordial” epistemologies. Indeed, the biosocial framework understands the sexual desires of men as the major cause of CRSV whereas the other three theories rule it out without hesitation<sup>92</sup>.

### *2.2.1 The Feminist Theory*

Feminist theory hinges on the assumption that rape in war, as well as in peacetime, is motivated by the attitude of man to distrust, despise and dominate women aiming to maintain patriarchy and women’s subordinate position within society<sup>93</sup>. Accordingly, a society’s patriarchal culture *is* the reason why such crime frequently injures women. Moreover rape is framed as a *gender-motivated crime* and the risk factor to being victimized is being a female<sup>94</sup>. The role of misogyny is

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<sup>89</sup> Price (n.87)212.

<sup>90</sup> Arendt (n.88) In. Price(n.87)212.

<sup>91</sup> Gottschall (n.77).

<sup>92</sup> Gottschall (n.77)133.

<sup>93</sup> Skjelsbaek (n.84) 212.

<sup>94</sup> Tamara L. Tompkins, ‘Prosecuting rape as a war crime: Speaking the unspeakable’ *Notre Dame Law Review*, 70(4) (1995). in Price (n.87) 223.

at the core of this theory as rape is a specific-gender act, an expression of hatred of women qua women, both in peacetime and in wartime<sup>95</sup>. This last concept is part of the so-called *continuum of violence* perspective according to which CRSV is primarily understood as a radicalization of the everyday violence and domination women are subjected to in peacetime<sup>96</sup>.

Feminists have argued their thesis in contrast with the so-called “pressure cooker” theory of wartime rape which asserts that war rapists are the victims of irresistible biological imperative that in the chaos of the war bursts out in all its power.

Gottshall has linked the two theories explaining the feminist position is also a pressure cooker idea, wherein the pressure that builds is not libidinal in nature but misogynistic<sup>97</sup>.

The critique Gottshall hinges upon the fact that the feminists refer to the rape as a result of specific types of socialisation practices in a specific type of society, the implication being that this crime should only prevail in a limited subset of societies. This thought does not find any legitimacy in scientific terms, not only because, in the absence of empirical data, it becomes merely speculation, but mainly because it is broadly recognized that gender-based violence, presented here as violence against women, is global in nature, crossing all societies and cultures<sup>98</sup>.

There have been scholars that go further, committing to the more conservative wing of the feminism, such as Rhonda Copelon. Copelon has referred to rape and genocide as separate atrocities. Accordingly, genocide consists of “... the effort to destroy [a] people based on its identity as a people evokes the deepest horror and warrants the severest condemnation, [while] rape is sexualized violence that seeks to humiliate, terrorize and destroy a woman based in her identity as a woman”<sup>99</sup>. Her main concern was that an overemphasis on *genocidal rape* could

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<sup>95</sup> Price (n.87) 214.

<sup>96</sup> Houge ‘Subversive Victimization and Ignored Perpetrators’ (n.82) 167.

<sup>97</sup> Gottschall (n.77) 130.

<sup>98</sup> According to the World Health Organization about 1 in 3 (35%) of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime. <<http://www.who.int/mediacentre/factsheets/fs239/en>> accessed 07/04/2018

<sup>99</sup> Rhonda Copelon, *Surfacing gender: Reconceptualizing crimes against women in time of war*. In *The women and war reader*, edited by Lois Ann Lorentzen and Jennifer Turpin, 197-218. New York University Press (1998). In Adam Jones, 'Straight as a rule: Heteronormativity, gendercide, and the noncombatant male' *Men and Masculinities* 8(4) (2006): 460.

result in the conflation or elision of rape and genocide clouding the gendered nature of rape (committed against women qua women). Moreover Rhonda Copelon was afraid that a rape occurring outside the context of genocide may be rendered invisible<sup>100</sup>.

The “elision” between the two atrocities was introduced in the CRSV debate by Beverly Allen who coined the term ‘genocidal rape’ in 1996 after 1990s cases in Bosnia-Herzegovina (BiH) and Croatia. Allen identified genocidal rape as “*a military policy of rape for the purpose of genocide*” and she isolated three main forms: (1) in which women are raped by paramilitary forces, followed up by regular forces who “offer the now-terrified residents safe passage away . . . on the condition that they never return”; (2) rape in detention or incarceration, “often as part of torture preceding death”; and (3) the long-term incarceration of women for rape and impregnation, with the women being held until they give birth to a child that is assumed, in highly patriarchal cultures, to bear the ethnicity of the rapist, in which case the cohesion of the victim’s ethnic group is eroded by the perceived introduction of an infant of an “alien” ethnicity<sup>101</sup>.

Without saying that every acts of rape (or CRSV) can amount to genocide, the thought of Ronda Copelons is in clearly contradicted by the jurisprudence of ICTR which with, inter alia and in particular, the sentence of the *Akayesu* case, defines rape as an act of genocide and finds an individual guilty of genocide on the basis, *inter alia*, of acts of rape and sexual violence for the first time in history<sup>102</sup>.

Finally, another critique against Rhonda Copelons is that genocidal rape does not deny the gendered nature of rape, rather it highlights the intersectionality of genocidal rape which melds gender and ethnicity as reasons for the crime<sup>103</sup>.

The feminist theory hosts a foundational oversight making it incapable of singularly elucidating the crime of CRSV. In agreement with Skjelsbæk’s analysis,

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<sup>100</sup> Rhonda Copelon, *Women and War Crimes*, 69 ST. JOHN'S L. REV. 61, 67 (1995). In Sherrie L. Russell-Brown, ‘Rape as an Act of Genocide’ *Berkeley Journal of International Law* 21(2) (2003): 351.

<sup>101</sup> Beverly Allen, ‘Rape warfare: The hidden genocide in Bosnia-Herzegovina and Croatia’ Minneapolis: University of Minnesota Press (1996). In Adam Jones, ‘Straight as a rule: Heteronormativity, gendercide, and the noncombatant male’ *Men and Masculinities* 8(4) (2006): 460.

<sup>102</sup> ICTR, *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgement), ICTR-96-4-T.

<sup>103</sup> Sherrie L. Russell-Brown ‘Rape as an Act of Genocide’ *Berkeley Journal of International Law* 21(2) (2003): 351.

the feminist theory surrenders in considering the segment of the phenomenon which sees men as victims. Though gender-based violence in all its items, CRSV included, affects disproportionately women, we cannot ignore that in wartime the phenomenon assails men too. It is curious that, in reality, a gender-based approach may explain CRSV against men as well. As noted earlier, contemporarily, scholars are focusing more on the male figure in the CRSV, whether it is the perpetrator or the victim.

These studies may provide a reasonable base to assert that the gender-perspective, according to a broad approach, rather than the feminist one, can largely explain the root of CRSV.

According to both feminist scholars and military sociologists, the element of *masculinity* associated with military training as well as violent conflict induces men to fight following the normative prescriptions of masculinity which involve the responsibility to protect and to attack<sup>104</sup>. Being a *real* man in a war-zone may entail suppressing feelings of insecurity, gentleness and other characteristics commonly considered feminine.<sup>105</sup>

If this concept is pretty easy to understand when we have to cope with the violence against women, the same logic process is still not immediate when sexual violence is perpetrated against men. Yet, this form of sexual violence happens frequently.

Several cases brought to the ICTY reveals the innumerable cases of male-on-male CRSV during the Balkan crises; through analysis of the depositions it is possible to track the ways in which gender roles triggered sexual violence<sup>106</sup>. It has been argued by several scholars that sexual-violence against men has been perpetrated with the intent of feminizing the victims. Charlotte Hooper argues, “the feminized male is essential to the construction of modern masculinity, especially hegemonic masculinity<sup>107</sup>”. In the context of conflict feminizing a man means reducing him to a female, the historical “weaker sex” and affirming the

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<sup>104</sup> Houge ‘Subversive Victimization and Ignored Perpetrators’ (n.82)168.

<sup>105</sup> Skjelsbaek (n.84) 216.

<sup>106</sup> See in particular Češić (IT-95-9/2); Mucić et al. (IT-96-21); Todorović (IT-95-9/1); Tadić (IT-94-1).

<sup>107</sup> Charlotte Hooper, *Manly states: Masculinity, international relations, and gender politics*. New York: Columbia University Press (2001). In Adam Jones, 'Straight as a rule: Heteronormativity, gendercide, and the noncombatant male' *Men and Masculinities* 8(4) (2006): 453.

perpetrator's hegemonic masculinity. The enemy may be feminized by humiliation, castration and by being anathematized<sup>108</sup>.

Presently, one element characterizing a “real man” is the concept of heterosexuality while the opposite is often associated with a “feminine man”. Therefore, homosexual practices have been used to humiliate enemies, forcing them to practice homosexual acts on each others while the perpetrators watch. The following degradation has been identified as double feminization, an example of which is present in the *Mucić et al.* case in front of the ICTY<sup>109</sup>.

*|Prosecution|: “Any other incident?”*

*|Mr Dordić|: “Then he would beat me also with his rifle butt. He would set light to a fuse on me. Then he forced me to do oral sex with my own brother... Esad Landzo entered the Number 6 and he ordered us to take off our clothes and kneel down in front of one another, and he forced me to put my brother's sexual organ in my mouth and did that several times...”*

Another practice used during the Balkan Crisis was to feminize enemies through castration. Most of these acts were used not only to humiliate the victim as a individual, but to emasculate the entire group (ethnic group, religious group etc.) he belongs to, as demonstrated by the fact that they were usually performed in public. Dubravka Zarkov writes: “In a phallogentric culture, cutting off a man's penis symbolically emasculates every man belonging to the targeted group”<sup>110</sup>.

*|Q|: What were you ordered do at that time? Were you ordered to lick his arse Mr. H?|A|: Yes |Q|: What was the next order? |A|: Yes |Q|: Was the next order for Mr. G to bite his testicles? |A|: Yes |Q|: At that time what were the people around the canal yelling? .... |Q|:what did Mr. G do? |A|: He pulled his legs apart and his*

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<sup>108</sup> Adam Jones, 'Straight as a rule: Heteronormativity, gendercide, and the noncombatant male' *Men and Masculinities* 8(4) (2006): 454.

<sup>109</sup> ICTY, 'Prosecutor v. *Mucić et al.* IT-96-21 (Trial Judgment)

<http://www.icty.org/x/cases/mucic/trans/en/970707ED.htm> accessed 15/04/2018.

<sup>110</sup> Dubravka Zarkov, *The body of the other man: Sexual violence and the construction of masculinity, sexuality and ethnicity in Croatian media* (2001) In *Victims, perpetrators or actors? Gender, armed conflict and political violence*, edited by Caroline O. N. Moser and Fiona C. Clark. London: Zed. In Jones (n.108) 439.

*hands because he had his hands down on his genital, on his organ, and he was striking at him, cursing, as he had been told to, and went on doing it*<sup>111</sup>.

In this context, femininity and homosexuality epitomize the very idea of unmanliness, and thus what masculinity is not. Through the emasculation of the enemy the perpetrator shows his inversely proportional and superior masculinity<sup>112</sup>. The behaviour of these perpetrators corresponds to what Houge calls Competitor in her analysis of the profile of perpetrators of sexual violence. Houge's scheme about perpetrators will be discussed further later.

The other element of masculinity at stake is the concept of protection. What kind of a man unable to protect his women? This is the implicit question placed when soldiers force the enemies to rape their women and girls. This results feelings of impotence in the victim-perpetrator as well as in the brutality of violence on the body and psychology of both victims and the individual forced to rape.

*[o]n the table put in the corridor rape was prepared of a young girl, and she was being raped by... They wanted him to rape her and he was begging, imploring, saying, 'she could be my child' ...but then said to try to do it with a finger. He did that and it hurt her.*<sup>113</sup>

These testimonies and studies demonstrate that gender and gender stereotypes, are two of the main explanation why men are also targeted as victims. Men cannot be seen as unchangeable monsters, there is more at stake, there is the knowledge of the phenomenon as a whole, recognizing this is the only way to build a valid response for victims. The gender perspective has always to be the magnifying lens through which to approach this theme, whether it affects women or men.

Finally, the feminist theory is unable to explain why sexual violence oftentimes affects some women (and men) more than others in times of war, nor

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<sup>111</sup> ICTY 'Prosecutor v. Dusko Tadić', (IT-94-1) (Appeal Judgement) <<http://www.icty.org/x/cases/tadic/trans/en/960724IT.htm>> accessed 17/05/2018.

<sup>112</sup> Houge 'Subversive Victimization and Ignored Perpetrators' (n.82) 169.

<sup>113</sup> Houge 'Subversive Victimization and Ignored Perpetrators' (n.82) 174.



does it evaluate how ethnic, religious and political power relations interact with gender relations in understanding patriarchy<sup>114</sup>.

### *2.2.2 The Cultural Pathology Theory - also called Psycho-Social and economic Background Theory.*

Cultural pathology theory researches the trigger of deviant behaviour by men through engaging with a nation's history as well as psycho-social dynamics. MacKinnon, for example, attributes Serb rapes of Muslim and Croat women to the unbridled availability of pornography during those years<sup>115</sup>.

In considering the ongoing civil war in the Democratic Republic of Congo (DRC), the trigger of this scenario where sexual violence is ever-pervasive may be traced to the pre-European intra-African slave trade, the European slave trade and colonial rule along with post-colonial intra and inter state wars<sup>116</sup>.

Studying the crisis in the DRC, Jennifer Leaning of the Harvard Humanitarian Initiative analyses historical and socio-economic patterns that have led the society to this situation, assessing to which degree they contribute to the spread of sexual violence. Levels of CRSV in the DRC have reached that of a *pandemic*, as many as 70% of girls and women of all ages have been raped or sexually mutilated<sup>117</sup>. Leaning contends that the poor condition of men facing limited available resources as the only form of remuneration is the military, and the increasing, but still slow, acquisition of skills and status by women, influences the behaviour of soldiers<sup>118</sup>.

Also important for this kind of analysis is an investigation of psycho-social dimensions, for example, the dynamics which exist between soldiers. Indeed, literature on military sociology argues that violence plays an important role in

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<sup>114</sup> Skjelsbaek (n.84) 218.

<sup>115</sup> Catherine MacKinnon, 'Turning rape into pornography: Postmodern genocide'. In Alexandra Stiglmeier (Ed.), 'Mass rape: The war against women in Bosnia-Herzegovina' Lincoln: University of Nebraska Press (1994). In Gottschall (n.77) 131.

<sup>116</sup> OCHA UN, 'Use of Sexual Violence in Armed Conflict: Identifying Gaps in Research to Inform More Effective Interventions', UN OCHA Research Meeting, OCHA Policy (2008). [http://www.peacewomen.org/assets/file/Resources/UN/ocha\\_svinarmedconflictmotivations\\_2009.pdf](http://www.peacewomen.org/assets/file/Resources/UN/ocha_svinarmedconflictmotivations_2009.pdf) accessed 20/04/2018.

<sup>117</sup> <http://archive.sph.harvard.edu/press-releases/2007-releases/press10112007.html>>> accessed 5/05/2018.

<sup>118</sup> OCHA, UN (n.116).

building group cohesion<sup>119</sup>.

Cohesion between members of the armed group becomes vital in the context of war and it has been often been facilitated through violence; Cohen refers to *combatant socialization* meaning that war-time rape is, in all respects, a socialization tool<sup>120</sup>. Gang rape, frequently reported during conflicts, functions as a “glue” of sorts for the group, in particular, as Amir notes, during periods when group members’ status is questioned or threatened<sup>121</sup>.

Cohen also focuses on the recruitment process of soldiers, asserting that it affects the propensity for combatants to engage in wartime rape. Accordingly, the more extreme the force is during forcible recruitment, the more likely rape may occur.

Violent conflict also means the collapse of a State, consequently institutions are weakened (if at all in existence) and there is a lack of enforcement of laws which create fertile ground for illicit behaviours<sup>122</sup>.

### 2.2.3 *The Strategic Rape*

The Strategic Rape Theory is probably the most influential theory, claiming that sexual violence in conflicts is used as strategy to achieve military goals.

Even though there is no agreed upon the definition of “sexual violence as a weapon of war”, this phrase remains the most used in public discussion, media coverage and political discourse to visualize the concept of this theory<sup>123</sup>. The international community has endorsed rape and sexual violence in wartime as weapon of war, in particular after the sentences of genocide and ethnic cleansing of ICTR and ICTY.

In early 1996 the United Nations classified rape and sexual violence as weapon of war in a UN Secretary-General Report and the subsequent UN General

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<sup>119</sup> Cohen ‘Explaining Rape during Civil War’ (n.76)464.

<sup>120</sup> *ibid* 461.

<sup>121</sup> Amir Menachem, ‘Patterns in Forcible Rape’ Chicago: University of Chicago Press (1971). In Cohen ‘Explaining Rape during Civil War’ (n.76) 464.

<sup>122</sup> *ibid* 476.

<sup>123</sup> Mühlhäuser (n.75) 368.

Assembly Resolution 51/115 *Rape and abuse of women in the areas of armed conflict in the former Yugoslavia* “expresses its outrage that the deliberate and systematic practice of rape has been used as a weapon of war and an instrument of ethnic cleansing against women and children in Bosnia and Herzegovina”<sup>124</sup>. This was reaffirmed later in UNSCR 1820, sexual violence as a “tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group”<sup>125</sup>.

In *The Human Rights Watch Global Report on Women’s Human Rights 1995* Human Rights Watch argued that rape in conflict under repressive regimes is neither incidental nor private. It routinely serves a strategic function and acts as a tool for achieving specific military or political objectives<sup>126</sup>.

Feminism contributed to this theory, crystallizing the idea of rape as a weapon of war in early 1970. Lerner, for instance, conceives of CRSV not merely as individual acts directed against a particular victim but also as collective acts targeting women’s body as representatives of the society as a whole, its social fabric and respectability<sup>127</sup>.

Later, Brownmiller used the term *weapon* either to indicate rape as a weapon used by men to subordinate women in war or against an enemy collective<sup>128</sup>. Tool, tactic, policy, strategy are all terms used by MacKinnon to specify mass rape and highlight its pervasiveness<sup>129</sup>.

Despite the undeniable contribution of feminist thought, the strategic rape theory conceives of the term *weapon* strictly in a militaristic way. Within this framework, sexual violence, on whomever it is been perpetrated, is part of the military strategy or tactic to achieve military goals and thus win the conflict. It is quite different from the feminist gender perspective, which remains an interrelated

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<sup>124</sup> UN General Assembly, UN Doc. A/RES/51/115, (1997).

<sup>125</sup> UN, Security Council, 'Resolution 1820 (2008)', UN Doc S/RES/1820 (2008) introductory paragraphs.

<sup>126</sup> Human Rights Watch, ‘The Human Rights Watch Global Report on Women’s Human Rights’ (1995). In Skjelsbaek (n.84) 219.

<sup>127</sup> Gerda Lerner, ‘“The Rape of Black Women as a Weapon of Terror,” in *Black Women in White America: A Documentary History*, (Pantheon Books, 1972), 172–73. In Mühlhäuser, (n.75) 369.

<sup>128</sup> Susan Brownmiller, ‘Against Our Will: Men, Women and Rape’ Bantam Books (1976). In Mühlhäuser, (n.75) 370.

<sup>129</sup> Catherine MacKinnon, ‘Rape, Genocide, and Women’s Human Rights’ *Harvard Women’s Law Journal* 17, no. 5 (1994): 9. In Mühlhäuser, (n.75) 372.

element but fails to holistically explain the phenomenon.

If feminist theory, taking into account the gender dimension, explains individual acts which can have consequences at a domestic level, the characteristic of systematic and strategy, therefore a specific intent, may crystalize the mens rea of the crime of genocide, crimes against humanity and war crime, thus be a matter of international jurisdiction covered by the international law of human rights and the humanitarian law.

We have to understand the strategic use of sexual violence in its brutality, the long-term effects not only victims, but also the community of enemies; Shaw uses the term *degenerate war* to designate a conflict wherein the primary target is enemy people and populations rather than enemy military units<sup>130</sup>.

The sense of insecurity felt by victims affects the community at-large, leading to further migration and an increased number of displaced persons<sup>131</sup>.

Another practice that may be understandable as an *actus reus* of genocide is the enforced pregnancy with the aim of ethnic cleansing. Women are raped and impregnated with the seed of another religion or culture, accordingly polluting an entire community. This practice is so widespread that evidence of rape camps have been proved in Rwanda, Bosnia and recently in the Democratic Republic of Congo as well as Darfur. “*I will give you a light-skinned baby to take this land from you*” is the memory of a woman raped in Chad and interviewed by Refugees International<sup>132</sup> revealing the intention of ethnic cleansing.

The body of women in this context becomes the territory to conquer, acquiring political significance<sup>133</sup>. To that end, some scholars have used the term *political rape* to indicate rape with purposes connected to a political agenda other than exclusively the subordination of women<sup>134</sup>. Together with the examples above, castration, forced sterilization, forced abortion, sexual torture, forced marriage,

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<sup>130</sup> Martin Shaw, ‘War and Genocide: Organized Killing in Modern Society’ *Malden Blackwell* (2003). In Debra Bergoffen, ‘Exploiting the dignity of the vulnerable body: Rape as a weapon of war’ *Philosophical Papers* 38(3) (2009): 308.

<sup>131</sup> Kimberlt R Carter, ‘Should international relations consider rape a weapon of war?’ *Politics & Gender* 6(3) (2010): 363.

<sup>132</sup> *ibid* 362.

<sup>133</sup> Kjersti Ericsson, ‘Rape, love and war-personal or political?’ *Theoretical Criminology* 15(1) (2011): 71.

<sup>134</sup> Skjelsbaek (n.84) 219.

sexual slavery etc are recurring elements of conflicts aimed at completely destroying a population. In this extent rape and sexual violence must be considered as weapons of war because both long and short term effects annihilate communities and their culture<sup>135</sup>.

With this purpose sexual violence is often perpetrated in public, because the destruction which hails from it demolishes not only victims but their community.

As a weapon, rape attacks the solidity of families and communities as well as the political and economic stability of targeted countries and regions. It also undermines public health through widespread physical and psychological diseases and it corrodes religious faith and the cultural dimension of the targeted population<sup>136</sup>. In this regard, Aristotle foresaw the strategic rape theory arguing centuries ago that the brutality of rape endured by both body and soul has the capacity to destroy even the polis<sup>137</sup>.

However, in contrast with the evidence above, many military planners have recognised that wartime rape can be a serious threat to their strategic interests. For instance, many scholars, have indicated that one of the most effective way to strengthen the resistance of a population is by exposing it to propaganda forecasting orgies of rape when and if the enemy triumphs<sup>138</sup>. An example may be the use of *comfort women system* by the Japanese forces throughout the 1930s until the end of World War II, once the commanders found that frequent rapes of civilian women had created strategic problems<sup>139</sup>.

In this mosaic of elements through which we can understand CSRV as weapon of war, Regina Mühlhäuser has found an aspect which can inspire and lead towards discovering and ending sexual violence: “Maria Eriksson Baaz and Maria Stern have concluded that this recent understanding of rape as a weapon that perpetrators choose in pursuit of wider military, political, or economic aims “*rests largely on its promise for change*”: after all, a strategy can be abolished, a tactic prevented, the use of a weapon can be controlled, and the user of a weapon can be

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<sup>135</sup> Carter (n.131) 355.

<sup>136</sup> *ibid* 362-363.

<sup>137</sup> *ibid* 366-367.

<sup>138</sup> Gottschall (n.77) 132.

<sup>139</sup> *ibid*.

held accountable”<sup>140</sup>.

#### 2.2.4 *The Biosocial Theory*

The cornerstone of biology-based theory lies in the genetical and inevitable sexual instinct which leads men to desire aggressively women. While in peacetime these instincts may be restrained, in the chaotic wartime milieu, the desire becomes the trigger for a *pressure cooker*<sup>141</sup>.

The pressure cooker metaphor is based on the hydraulic models of aggression championed by Freud. This view is criticized by the current generation of evolutionary and biological scholars that emphasize all behaviour as being influenced by environmental cues, rather than being the result of blind biological drives<sup>142</sup>. This discrepancy is the reason why Gottschall prefers to distinguish the old view (from here-on referred to as the *biological determinism theory*) from the biosocial theory.

Therefore, biological determinism assumes that what promotes rape in wartime is a biological adaptation, presuming that everywhere we find hostile soldiers in the midst of civilians identified with enemy there will be high rates of sexual violence. The shortcoming of this theory appears to be quite easy to identify: How does this explain the fact that in many conflicts many soldiers do not rape?; and how does this explain sexual violence perpetrated against men, while the homosexuality is not socially recognised as? .

Moreover, if the reason for sexual violence lays in a biological propensity, most victims should be young women, which is not the reality in most conflicts<sup>143</sup>.

Targeting seems to concern other factors such as ethnic dominance, masculinity, feminization of enemies, strategic military tools etc.

Instead, the biosocial theory places an equal emphasis on genetic and sociocultural factors without prejudice to sexual desire being the main motivation

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<sup>140</sup> Mühlhäuser (n.75) 368.

<sup>141</sup> Gottschall (n.77) 133.

<sup>142</sup> *ibid* 134

<sup>143</sup> *ibid*.

of rape, we must bear in mind that it is regulated by socio-cultural factors<sup>144</sup>.

However, Gottschall argues, “the variability of wartime rape across conflicts and the fact that many soldiers with the option to rape apparently choose not to, decisively rules out the view of wartime rape as a blind genetic drive that is, and ever will be, expressed when men meet to fight and kill. This variation is best explained as a result of socio-cultural influences.” He concludes that genetic and socio-cultural explanations are not mutually exclusive alternatives.

Both fringes of the biological-based theory cannot explain the reason of the widespread of CRSV. Human beings (not only men) have animal instincts (being animals) including of a sexual nature, the fulfilment without consent of these may not be justified neither in peacetime nor in wartime. Human beings have developed social constructs such as consent to sift through animals instincts. Explaining such a drama with a genetical base is like presenting men's nature as static and unchangeable, as an animal which has not gone through evolution, clearly contradicts evolutionary scientific theories.

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<sup>144</sup> *ibid* 135.

### **2.3 Inger Skjelsbæk: Looking at CRSV from the targeting perspective.**

Skjelsbaek considers the phenomenon analysing three different epistemological conceptualizations of the interrelationship between sexual violence and war, in particular, focusing to which groups of victims the arguments relate to<sup>145</sup>.

#### *2.3.1 Essentialism*

The essentialism theory corresponds to the feminist theory in that women are raped in wartime as well as in peacetime, nethertheless the rules in war are quite different; the war-zone is a place of increased polarization between genders.

As previously noted in the feminist theory section, the main reason for CRSV centres around the the gender imbalance in the society and the patriarchal culture to explain CRSV.

Patriarchy, misogyny, camaraderie, the suppression of feelings of insecurity, gentleness and other characteristics which are commonly considered feminine may make easier for men to commit sexual violence during war<sup>146</sup>.

The shortcomings of the essentialist approached are the same as those exposed in the feminist theory section above.

#### *2.3.2 Structuralism*

The standpoint of this argument is that factors such as ethnicity, religious belonging and political affiliation interact with the gender identity of victims thereby exposing some women to greater risks than others. Women are targeted because they are women, as well as because they are living in the context of war wherein patriarchal gender relations are accentuated. Moreover these women are

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<sup>145</sup> Skjelsbaek (n.84)212

<sup>146</sup> ibid 219.



targeted as female embodiments of other socio-cultural identities<sup>147</sup>.

This explanation is more adequate in understanding the root of the phenomenon through gathering more than one factor within a blended set of reason. Convincingly the gender-based approach addresses social, cultural, political and military factors, but fails in its exclusion of men as victims.

### *2.3.3 Social Constructionist*

This theory explains why both women and men are victims of CRSV, though recognizes women as being disproportionately targeted. Bohan argues that the factors defining a particular transaction as feminine or masculine are not the sex of the actors but rather the situational parameters in which the performance occurs<sup>148</sup>.

The explanation as to why women in general, particularly women belonging to specific groups, are victimized through sexual violence is that this violence feminizes the women through victimization. This is also why this theory includes the victimization of men. According to the author, this line of thought makes the empirical focus more complete than essentialism and the structuralism. The social constructionist focuses on how wartime sexual violence can be regarded as a transaction of identities between the perpetrator and the victims, i.e. how their social identities become situated; the perpetrator and his/her ethnic/religious/political identity becomes masculinized, while the victim's ethnic/religious/political identity becomes feminized<sup>149</sup>. Moreover, for this theory, the effects and consequences will vary according to time, culture and the nature of the conflict. The gendered interaction, the interaction between perpetrator and victim, the nature of the conflict, the social, cultural, political and military elements become a coagulation that is the essence of CRSV understood in a broad framework.

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<sup>147</sup> *ibid* 223.

<sup>148</sup> Janis S. Bohan, 'Regarding Gender: Essentialism, Constructionism, and Feminist Psychology' (1997). In Skjelsbaek (n.84) 224.

<sup>149</sup> Skjelsbaek (n.84) 226.

## **2.4 Understanding sexualized war violence analyzing the perpetrators' mechanism – A teaching from Annette Bringedal Houge.**

Quite interesting is the article “Sexualized War Violence: Subversive Victimization and Ignored Perpetrators” written in 2014 by Annette Bringedal Houge as she provides an unusual perspective. Indeed, the cornerstone of CRSV is completely focused on the mechanisms which lead perpetrators to consider sexual violence as an option during the war. This perspective is indispensable to developing a holistic theoretical framework in order to achieve a broad knowledge of CRSV.

Additionally, Annette Bringedal Houge critiques the exclusive focus on female victims, arguing most of the scholars completely ignore male victims. What undermines feminist theories, the essentialism and the structuralism of Skelsbaek is that by not taking into account male victims, a part of mechanisms which lead perpetrators to such atrocities against women and men is ignored. These scholars reach a limited knowledge of the phenomenon and, therefore, it becomes more difficult to build proper mechanisms for prevention, justice and reparation for both survivors and society as a whole.

The scholar formulates perpetrator categories designed to expand the debate around the item; the perpetrator may be *Competitors*, *Soldier Idealists*, *Conformists*, *Survivors* and *Opportunists*.

*Competitors* refer to perpetrators who appear to have committed sexual violence for competitive reasons. The competitor perpetuates violence to humiliate and ridicule the masculinity of the victims, usually performing violent acts or asking to the victim to perform violent acts in order to denigrate the enemy as a whole, for this reason violent episodes are usually acted in public. Most of these perpetrators target men in order to ridicule their masculinity in terms of sexual orientation (forced homosexuality between members of enemy groups) and in terms of the (in)ability to protect (forced sexual violence against enemy communities). By humiliating the masculinity of the enemies, the group the victims belong to is also directly humiliated. Competitors demonstrate the weakness and powerlessness of their victims while simultaneously establishing their inversely proportional

masculine and ethnic power<sup>150</sup>.

*The Conformists* category include perpetrators who sexually violate as they did not want or dare to stand apart from their group of peers. What leads soldiers to behave this way are powerful pressures pushing them to conform to the practices and the expectation of the group, particularly in the absence of orders or threats. Cohesion and loyalty are of utmost importance in a military group which is the killer, as opposed to the soldier who commits sexual violence; as Grossman stressed the individual is not a killer...the group is<sup>151</sup>.

On the contrary, *Soldier Idealists* are soldiers that commit sexual violence because they are ordered to do so and rationalized their actions accordingly. The thought goes immediately to the horrific case of Adolf Eichmann, one of the most well-known Nazis convicted for crimes against humanity and executed in Israel in 1962.

Adolf Eichmann argued that he was simply executing orders as every soldier must during wartime. This opened the door towards what Hannah Arendt called *The Banality of Evil*.

As David Grossman concludes in *On Killing* and as the deposition below demonstrates, orders and obedience become the keywords for this category of violators and the crucial factor as to why a soldier is able to kill during war; “being told to fire” perfectly summarizes the entire concept<sup>152</sup>

*I ... attempted to be a perfect soldier ... The perfect soldier is the one who executes all the orders. I tried to keep to that throughout the war ... I really wished to execute the orders of my superiors*<sup>153</sup>.

*The Survivor* is a category where the line between physical perpetrators and victims is blurred. In this framework individuals are forced by peers or superiors to

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<sup>150</sup> Houge ‘Subversive Victimization and Ignored Perpetrators’ (n.82) 175.

<sup>151</sup> Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, New York: Little, Brown and Co. (2009) in Houge ‘Subversive Victimization and Ignored Perpetrators’ (n.82) 180.

<sup>152</sup> *ibid* 176.

<sup>153</sup> ICTY Mucić et al. (IT-96-21)(Trial Judgement)

<http://www.icty.org/x/cases/mucic/trans/en/980728ed.htm> accessed 10/05(2018).

sexually violate. This is often accompanied with challenges to their ethnic and masculine performance as well as threats to the survivors' lives. This argument involves a masculinity ideal of the *in-group* for which violence is a virtue per se and does not require justification.

Many soldiers investigated for sexual crimes committed during conflicts defend themselves by arguing that they were threatened with execution if they failed to comply with orders; this narrative is well-known and it may correspond to a “denial of responsibility”<sup>154</sup>.

The survivors and the competitors categories resemble each other, though the first one perceives sexual violence as a means through which to demonstrate the ethnic masculinity vis-à-vis that of their peers within the same ethnic collective, the competitor category views sexualized war violence primarily as a constructed competition between ethnically defined collective masculinities<sup>155</sup>.

*Opportunists* include those who commit sexual violence because conflict offered an opportunity to do so. The particular psychological condition of fear and stress and the pressure of the propaganda about the enemy in combination with ethnicized and militarized masculinity ideal built during conflicts may dehumanize the environment presenting CRSV as an option.

These categories often overlap. There probably is no unique paradigm which can explain the sexually violent behaviour during conflicts, but, on the contrary, different elements of each category play a role in driving such brutality.

Reading the words of soldiers from the Forces Armées de la République Démocratique du Congo (FARDC) through which we can deduce the logic of rape reduced to the bare minimum in parallel with an increased awareness of the miserable condition of a war-time soldier. A culture based on the fulfilment of what it is perceived as “basic” needs, contaminated by a patriarchal view collides with the condition of soldiers, creating a cobweb of atrocities, justifications, victimism, which can be difficult to understand and elaborate.

Most identify rape as problem of social deficit; poverty, suffering, the brutality soldiers have experienced, a lack of normality, feelings of neglect, the use and abuse

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<sup>154</sup> Houge ‘Subversive Victimization and Ignored Perpetrators’ (n.82)176.

<sup>155</sup> *ibid* 177.

of drugs and alcohol all become intrinsically part of the insanity of war and can lead to the forceful taking of what soldiers need and miss, such as women and their love. Soldiers feel alone, lost, without love, money and stability, they feel rejected by their women, unable to be what a man should be, incapable of providing; they feel they are victims. Sensing that their masculinity is at stake, soldiers are pushed to commit sexual violence<sup>156</sup>.

The lucid feeling of being a victim results in the distinction between *lust rape* and *evil rape*. If the first one is justified by the feelings and conditions mentioned above, the second is an atrocious act condemned even by the soldiers interviewed. Lust rape does not constitute an extensive problem within the army according to women soldiers interviewed. These women defended the men's right to satisfy their sexual needs, connecting sexual violence with the lack of normal relations<sup>157</sup>. It would be interesting to analyze their conceptions of women's desires and needs and how and if they might be balanced with those of men.

Conversely, evil rapes are cruel acts of sexual violence involving mutilations and in some cases, the (often slow) killing of victims. Evil rape is typically motivated by a wish to humiliate the dignity of people, mostly through the abuse of the "sacred body of the culture", the female body<sup>158</sup>. Even so, it is always motivated by poverty and frustration though it is also led by an intention to destroy, by the anger which springs from an inexorable process of the dehumanisation typical of wartime.

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<sup>156</sup> Maria Eriksson Baaz and Maria Stern, 'Why do soldiers rape? Masculinity, violence, and sexuality in the armed forces in the Congo (DRC)' *International Studies Quarterly* 53(2) (2009): 506-518.

<sup>157</sup> *ibid* 510.

<sup>158</sup> *ibid* 510-511.

## 2.5 What we have learnt reading the theoretical framework?

The vast theoretical review explained above shows the existence of a huge segment of scholarly debating on this issue while spreading knowledge about the phenomenon and from time to time, discovering and sharing elements which move us towards operative solutions to CRSV that victims and survivors deserve.

The choice of analyzing different perspectives aims to create a coagulation of knowledge which does not omit any nuance of the phenomenon as such.

The multi-dimensional aspect of CRSV requires using not simply one theoretical framework, but rather continuing to engage with elements of all theories which are playing a role in explaining CRSV.

CRSV, whether committed against a woman or a man, is always due to an intersection of elements such as gender and its interaction with ethnicity and sexuality, dehumanization processes, obedience, propaganda measures, group cohesion and loyalty, where the miserable condition of soldiers may also plays a substantial role. Taking into account all of these elements means moving closer to the cornerstone of CRSV and creating concrete space to build efficient answers to this phenomenon.

In particular, as the readers can understand from the pages above, two are the main tones which will remain as a base assumption during this dissertation: the gender dimension of the phenomenon as well as the use of sexual violence as a weapon of war.

Besides, there will never be a reference only to rape, as many scholars do, for two reasons; firstly because rape is not the only act of SGBV in conflict (even if it is the most well known) and secondly and most importantly, because excluding the other forms of CRSV means to create a potential problem of identification as a victim for individuals that have experienced such atrocities.

In conclusion, we have seen many dimensions of CRSV: war booty; relief; pressure valve; sexual urge; side effect of a spiral of violence; exercise of power; trial of strength; humiliation and feminization of enemies; consequence of the process of dehumanization of the war; and as a weapon of war.

All of these aspects of the same phenomenon though arising from different

theoretical perspectives, share a common element, being understood that, most of them, except for sexual urge, are all ingredients which can lead to CRSV.

The element in common is the concept of *identity* which underlies all of the “reasons” which for CRSV. Identity as individualism in the cases of relief, pressure valve, and sexual urge, and identity as affirmation of *self*: my ethnicity; my nation; and my power through the disintegration of *your* identity. This may correspond to your body, the body of your women, children, men, population, your ethnicity, your nation, and ultimately, your power (in cases of side effect of spiral of violence; exercise of power; trial of strength; humiliation and feminization of enemies; consequence of the process of dehumanization of the war; weapon of war).

Accordingly, *I am* only to the extent that *you are not* is conceptually stitched to the new generation of the modern and occidental society, while it is a concept which has an evident primordial root, because if we really think about it, it is the driving force of the oldest game ever, war, and all of its brutal consequences, CRSV included and *in primis*.

## CHAPTER 3

### AN INTERNATIONAL AND NATIONAL MACHINERY TO TACKLE CRSV - THE INTERPLAY BETWEEN NAPs AND THE CEDAW COMMITTEE

#### 3.1 The International Human Rights Law addresses CRSV

The United Nations has progressively addressed CRSV in conflict and post-conflict situations with different instruments of hard and soft law during the past fifty years. Since the United Nations has not yet adopted a unique document to address this item, the judicial bodies, both nationally, regionally and internationally must refer to several documents of international human rights, humanitarian and criminal law<sup>159</sup>. This legal conceptualization has developed in parallel to the evolution of international debates about women's conditions, human rights and ways to address historical imbalances in all walks of life between men and women<sup>160</sup>. Starting from the role of women and the need for their empowerment in all aspects of life, we have reached a point in time, where a solid set of different strands of law human rights, international humanitarian and the international criminal law and their interplay, offer a solid framework to prevent and prosecute perpetrators and protect and provide reparation for survivors.

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<sup>159</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999); Convention on the Rights of the Child (1989); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (1977); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (1977); Convention relating to the Status of Refugees (1951) and its Protocol (1967); Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000); Rome Statute of the International Criminal Court (1998); The Arms Trade Treaty (2013).

<sup>160</sup> UNIFEM, 'CEDAW: Restoring Rights To Women' (2004): 18-22.

<http://asiapacific.unwomen.org/en/digital-library/publications/2004/8/cedaw-restoring-rights-to-women> accessed 6/06/2018.



For the purposes of this research, there will be a legal analysis only specific documents which remain the cornerstone of the subject, even though, for academic honesty it must be noted that there are also other important documents *in re*<sup>161</sup>. This analysis will be developed considering women as the main subject and beneficiary of these provisions, but it will also highlight an evolution from a gender neutral to a more gender sensitive approach in the discipline

### 3.1.1 CEDAW and its General Recommendation n. 30: Landmark UN Instruments

In 1979 the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW<sup>162</sup>) which remains the primary document of hard law on women's rights in International Human Rights Law<sup>163</sup>. Even though the document is one of the most ratified UN Treaties worldwide has received several reservations by the States that undermines the Convention as a whole<sup>164</sup>. The Convention does not mention conflict and post-conflict situation, and thus can be used *in re* only with a broad interpretation which connects the human rights violation, such as sexual violence, in all of its forms against women, in conflicts and post-conflicts to a grave discrimination. Over time, CEDAW has developed a number of key General Recommendations to advance women's rights.<sup>165</sup> General Recommendation n. 30 on women in conflict prevention, conflict and post-conflict situations adopted by the Committee on the Elimination of

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<sup>161</sup> Such as: Committee on the elimination of violence against women, General Recommendation n. 19, 1986; UNFPA, International Conference on Population and Development, 1994; General Assembly, A/Res/60/1 World Summit Outcome Document, 2005; Security Council, Resolution n.1612 on children and armed conflict, 2005; Security Council, Resolution n. 1674 on Protection of Civilians in Armed conflict, 2006; General Assembly, A/RES/62/134 Eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and related situations, 2008; Security Council Resolution n. 2122 Aiming to strengthen women's role in all stages of conflict prevention, 2013; Security Council Resolution n.2242.

<sup>162</sup> UN, General Assembly, 'Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention)', (Adopted 18 December 1979; entered into force 3 September 1981) A/RES/34/180. (1979).

<sup>163</sup> Marsha Freeman, Christine Chinkin and Beate Rudolf, 'The UN Convention on the Elimination of All Forms of Discrimination against Women: a commentary' Oxford University Press (2012).

<sup>164</sup> Elizabeth F. Defeis 'Women's Human Rights: The Twenty-first Century' Fordham International Law Journal 18 (1995) 1750-51.

<sup>165</sup> See namely: GR 19 on Violence Against Women, GR 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, GR 33 on Women access to justice, GR 35 on violence against women updating GR 19.

Discrimination Against Women in 2013. The document is of paramount importance for this work since it amplifies the content of the convention to conflict and post-conflict situation, addressing, *inter alia*, CRSV. It also can be used as guide for the field of transitional justice in dealing with violations of women's human rights both during and following conflict.

Moreover, as discussed further in this chapter, it offers a solid link between the Convention and the National Action Plans for the implementation of UNSCR 1325.

Indeed, according to paragraph 9 of the Recommendation "CEDAW applies to conflict and post-conflict situations, and States Parties are bound to apply the Convention 'when they exercise territorial or extraterritorial jurisdiction, whether individually, for example in unilateral military action, or as members of international or intergovernmental organizations and coalitions, for example as part of an international peacekeeping force'<sup>166</sup>

The document recommends States Parties ensure a comprehensive approach to transitional justice mechanisms including both judicial and non-judicial mechanisms, such as truth commissions and reparations with a gender-sensitive perspective.

Following the 1993 II World Conference of Human Rights (Vienna) which recognized violence against women as a question pertinent to human rights<sup>167</sup>, the Declaration on Violence Against Women<sup>168</sup> was adopted and positively welcomed by the international community. The document does not deal explicitly with CRSV, nonetheless, the serious vulnerability of women in wartime is recognised as a human rights concern in the preamble. Moreover, even without a specific provision on our item, the broad definition of violence against women, pursuant art 2, and the general context identified where the violence can be perpetrated may be interpreted

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<sup>166</sup> Anne-Marie La Rosa, Madeleine Rees, Margaret Purdasy and Baroness Patricia Scotland QC 'Sexual Violence in Conflict: What Use is the Law?' Chatham House; International Security Department & International Law Programme (2015):4  
<[https://www.chathamhouse.org/sites/default/files/field/field\\_document/20150123SexualViolence.pdf](https://www.chathamhouse.org/sites/default/files/field/field_document/20150123SexualViolence.pdf)>. accessed 1/06/2018.

<sup>167</sup> Paola Degani 'Condizione femminile e Nazioni Unite, recenti sviluppi della politica internazionale per i diritti umani delle donne' Università di Padova (2000)139.

<sup>168</sup> UN, General Assembly, 'Declaration on the Elimination of Violence against Women', A/RES/48/104 (20 December 1993).

broadly thus including conflict and post-conflict situations.

The United Nations Fourth World Conference on Women in 1995, the **Beijing** Conference, adopted the namesake **Declaration and Platform for Action**<sup>169</sup>, in which the issue of women in armed conflict was included as critical areas of concern to be addressed by UN Member States, the international community and civil society<sup>170</sup>.

The Declaration and the Platform for Action should be read as part of continued dialogue between the main challenges women face in their life, both in war and peace, with solutions which could contribute to overcoming them. Development, empowerment, participation, gender mainstreaming, equality in the fulfillment of human rights, equality in the access to services and justice, are the overarching ideas in the document. Regarding conflicts, the Beijing Conference stresses the magnitude of gross and systematic violation of human rights against women in armed conflict and its disregard in relation to international humanitarian law (IHL) and human rights law (IHRL)<sup>171</sup> such as the role of women in preserving the social order during conflicts and above all, the importance of full participation of women in conflict prevention and Resolution. A gender sensitive perspective is included as a fundamental characteristic which must inform international criminal law and be adopted in training programs for both UN peacekeepers and humanitarian aid workers<sup>172</sup>.

The document rattles off six strategic objectives with relative actions to implement such as: Increasing the participation of women in conflict Resolution and peacebuilding; reducing and controlling excessive military expenditures; promoting women's contribution to fostering a culture of peace; and providing protection for women living in conflicts and those even more vulnerable like refugee women<sup>173</sup>.

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<sup>169</sup> Waldorf, Lee 'Pathway to Gender Equality: CEDAW, Beijing and the MDGs' United Nations Development Fund for Women <<https://www.unicef.org/about/execboard/files/GENDER-1.pdf>> accessed 05/06/2018.

<sup>170</sup> Judith G. Gardam and Michelle J. Jarvis, 'Women and Armed Conflict: The International Response to the Beijing Platform for Action', Columbia Human Rights Law Review 32(1) (2000):2.

<sup>171</sup> The United Nations Fourth World Conference on Women, 'Beijing Declaration and Platform for Action' (1995): para. 131.

<sup>172</sup> *ibid.*

<sup>173</sup> *ibid.*

Even though the Beijing declaration and Platform for Action is not the primary document in addressing CRSV, it is considered one of the most important as it opened the doors for debating CRSV by involving precise actions to follow; indeed it is recalled in all the future Resolutions of the Security Council *in re*.

### *3.1.2 2000-2015: Fifteen years of Security Council Resolutions to give birth to the Women, Peace and Security Agenda*

Not still time to address CRSV as a threat to international peace and security, making it a paramount task for the executive organ of the United Nations, the Security Council, adopted **Resolution 1325**<sup>174</sup> on women, peace and security in 2000. This has become the most translated UN Resolution to date and it has opened the space for including a gender approach in the debate around conflict, post-conflict and conflict Resolution. Furthermore, even though the UN Women, Peace and Security Agenda comprehends also other UNSC Resolutions, this document remains the cornerstone of the international community's commitment to women, peace and security<sup>175</sup>.

The document addresses how armed conflict and war impact on women and girls, and recognizes the critical role they can and do play in prevention as well as Resolution of conflicts and in peacemaking and peacebuilding processes<sup>176</sup>. Moreover, a gender perspective is incorporated in all UN peace and security efforts and the protection of women and girls from sexual violence is stressed as a priority for States to consider.

The Resolution is a multi-faceted document which endorses two key policies, gender mainstreaming and gender balance<sup>177</sup> through four basic pillars: participation, protection, prevention and relief and recovery.

Important in the context of this thesis is the UNSCR 1325 pillar "protection"

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<sup>174</sup> UN, Security Council, 'Resolution 1325 (2000)', UN Doc S/RES/1325 (2000).

<sup>175</sup> Maureen Shaw, 'Moving Beyond Rhetoric: Assessing the Impact of Resolution 1325' (2010): 1 <[http://www.peacewomen.org/assets/file/Resources/Academic/1325\\_movingbeyondrhetoric\\_shaw\\_may2010.pdf](http://www.peacewomen.org/assets/file/Resources/Academic/1325_movingbeyondrhetoric_shaw_may2010.pdf)> accessed 02/06/2018.

<sup>176</sup> <[https://www.usip.org/gender\\_peacebuilding/about\\_UNSCR\\_1325](https://www.usip.org/gender_peacebuilding/about_UNSCR_1325)> accessed 02/06/2018.

<sup>177</sup> Shaw (n.175): 5-6.

which deals with the impact of sexual violence against women and girls in conflict and post-conflict situations and calls for the “right to be protected”. Specifically the Resolution recognises that CRSV can amount to for genocide, crimes against humanity and war crimes and asks to end impunity; prosecute those responsible of such atrocities<sup>178</sup> take special measures to protect women<sup>179</sup>.

We have to take into account that this took place during 2000, after ten years of a shake to our moral compasses due to the Rwandan and Balkan conflicts, and when the Rome Statute, the Tribunal for the Former Yugoslavia and for Rwanda had just started to bring to light the recent obscenities and acts of sexual violence as *actus reus* of genocide, crimes against humanity and war crimes. It was following this intellectual and jurisprudential wave that the SC Res 1325 was born. Besides the fact that there is no reference to root causes of war-time rape, nor to sanctions for perpetrators and the importance of these for survivors and no strategy for improving information-flow to the Council, the real weak point of the document is the exclusion of sexual crimes as constituting acts of genocide, crimes against humanity or war crimes, from amnesty just when feasible<sup>180</sup>. It is clear that the power of the SC on this issue was limited and amenable to the taboos that were going to be released, but were not yet passed.

This document is a landmark one because it represents a turning point in the efforts of the United Nations and the Member States in addressing issues concerning women and conflicts. The vital need for women’s participation in attaining a sustainable international peace has been the *file rouge* guiding all UN efforts since this Resolution.

This document is the first seed in a growing framework and wave of responsibility worldwide in the international community. Indeed, Res.1325 has given the go-ahead to other seven SC Resolutions which together make up the Women, Peace and Security Agenda (WPSA). Read together they provide clear guidelines for promoting gender equality, strengthening women’s participation, protection and rights in conflict, with a 360° view: from conflict prevention through

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<sup>178</sup> UN ‘S/RES/1325(2000)’, (n.174) para.11.

<sup>179</sup> *ibid* para.10.

<sup>180</sup> <<http://www.stoprapenow.org/uploads/advocacyresources/1282164625.pdf>> accessed 4/06/2018.

post-conflict reconstruction<sup>181</sup>.

Since Resolution 1325 a machinery to tackle the phenomenon of CRSV has started to be build within the United Nations, mainly through the further UNSC Resolutions regarding women, peace and security.

In 2007, the UN Action Against Sexual Violence in Conflict was established<sup>182</sup> and the following year the Security Council challenged the international community's response to CRSV by unanimously adopting **Resolution 1820**<sup>183</sup>, which will become the centerpiece of UN efforts on CRSV<sup>184</sup>. The Resolution was born out of a debate on women and peace and security: sexual violence in situations of armed conflicts, which was itself a follow-up to the former UNSCR 1325<sup>185</sup>.

The feather in the cap of this document is the assumption that CRSV may significantly exacerbate the armed conflict and impede the restoration of international peace and security<sup>186</sup>. Becoming a self-standing security issue, through this Resolution, the Security Council has received from its document the license to tackle this problem<sup>187</sup>, a clear mandate to intervene through, inter alia, sanctions and empowering field staff<sup>188</sup>.

Moreover, as Houge stated, as threats to international peace and security demand proactive, international action, the Resolution marks a potential shift from an almost exclusive focus on the established victim's support to more progressive approach in which preventive and protective measures are key<sup>189</sup>.

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<sup>181</sup> <<http://www.peacewomen.org/why-WPS/solutions/resolutions>> accessed 3/06/2018

<sup>182</sup> <<http://www.peacewomen.org/security-council/sexual-violence-indicators-and-monitoring>> accessed 3/06/2018.

<sup>183</sup> UN, Security Council, 'Resolution 1820 (2008)', UN Doc S/RES/1820 (2008).

<sup>184</sup> Sandesh Sivakumaran, 'Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict' International Review of the Red Cross 92(877) (2010): 271.

<sup>185</sup> *ibid.*

<sup>186</sup> Anette Bringedal Houge, 'Sexual War Violence: From Reactive to Proactive Measures' Noref Guest, Norwegian Peacebuilding Center. (2009):1 <<https://noref.no/Publications/Themes/Gender-and-inclusivity/Sexual-War-Violence-From-Reactive-to-Proactive-Measures>> accessed 4/06/2018.

<sup>187</sup> Sivakumaran (n.184) 260.

<sup>188</sup> <<http://www.stoprapenow.org/uploads/advocacyresources/1282164625.pdf>> accessed 4/06/2018.

<sup>189</sup> Houge 'From Reactive to Proactive Measures' (n.186)1.

Resolution 1820 has pivotal points including: the delineation of the scope for addressing root causes “debunking myths that fuel sexual violence<sup>190</sup>”; the implementation of zero tolerance policy on sexual exploitation and abuse<sup>191</sup>; the assumption of the legal status of sexual violence as a war crime, crime against humanity and genocide<sup>192</sup>; the importance of strengthening judicial and health-care systems to better support survivors<sup>193</sup>, and to include strategies to address sexual violence in post-conflict peacebuilding processes<sup>194</sup>.

Of extreme importance is the provision on proactive actions and special measures of prevention and protection in order to tackle CRSV<sup>195</sup>. This Resolution can be seen as a first operative guideline to addressing this.

Singular is also the employ of gender-neutral language in specific junctions, which is a relatively new development. Until now, sexual violence in conflicts was debated only in reference to women and girls as victims, *de facto* excluding men and boys as victims. Failing to recognise all victims means failing to recognise all forms of CRSV, thus make the phenomenon even more invisible.

Somewhere in the document the language used is inclusive, while elsewhere it may become exclusory. Indeed, when describing CRSV and general measures developed to deal with the phenomenon, it uses inclusive language, and thus recognizes violence against all civilians, men included<sup>196</sup>. However, when the document comes to specific concrete measures of implementation or enforcement, the victims becomes solely female<sup>197</sup>. This choice shows the staying-power of a conceptualization of CRSV as exclusively a women’s problem.

Finally, and differently from the Resolution of the millennium, this document requires the exclusion of sexual violence from any amnesty<sup>198</sup>, conquering a point of no-return in the consecration of this crime as heinous and requiring nothing other than punishment.

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<sup>190</sup> UN ‘S/RES/1820(2008)’ (n.183) para. 3.

<sup>191</sup> *ibid* para.7

<sup>192</sup> *ibid* para.4.

<sup>193</sup> *ibid* para.13.

<sup>194</sup> *ibid* para.11.

<sup>195</sup> *ibid* para.10-12.

<sup>196</sup> *ibid* para.4.

<sup>197</sup> Sivakumaran (n.184)267.

<sup>198</sup> UN ‘S/RES/1820(2008)’ (n.183) para 4.

One year later, **Resolution 1888**<sup>199</sup> was adopted, strengthening within the UN Secretary-General the machinery to address the phenomenon begun in 2007<sup>200</sup>.

It is pursuant to this document that the Office of the Special Representative of the Secretary-General on Sexual Violence (SRSG-SVC)<sup>201</sup> was established.

The Special Representative is the United Nations' spokesperson and political advocate on CRSV and chair of the UN Action Against Sexual Violence in Conflict, an inter-agency initiative<sup>202</sup> which unites the work of 13 UN entities with the goal of ending sexual violence during and in the wake of conflict. This inter-agency was endorsed by the UN Secretary-General's Policy Committee in June 2007 to amplify advocacy, improve coordination and accountability as well as support in-country efforts to prevent the phenomenon and respond to the needs of survivors<sup>203</sup>.

The SRSG-SVC works around six priorities: 1) to assist national authorities in strengthening criminal accountability and judicial capacity to end impunity from CRSV; 2) to improve protection and empowerment of civilians facing CRSV; 3) to mobilize political ownership by fostering government engagement in developing and implementing strategies to combat CRSV; 4) to raise awareness at international and national levels to increase the recognition of rape as a tactic and consequence of war; 5) to harmonize the UN's response to the phenomenon by leading UN Action against Sexual Violence; 6) to emphasize greater national ownership.

During the first years of the mandate, the SRSG-SVC highlighted in particular the urgency to end impunity, empower women to seek redress and claim their rights, increase the recognition of rape as a tactic and consequence of war and ensure a coordinated response from the UN system through the inter-agency network UN Action Against Sexual-Violence in Conflict. The SRSG-SVC was helped in leading the discussion on Sexual Violence support and prevention by national ownership and input from survivors and policy-makers in the framework of these priorities<sup>204</sup>.

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<sup>199</sup> UN, Security Council, 'Resolution 1888 (2009)', UN Doc S/RES/1888 (2009)

<sup>200</sup> <<http://www.peacewomen.org/security-council/sexual-violence-indicators-and-monitoring>> accessed 07/06/2018.

<sup>201</sup> UN 'S/RES/1888(2009)' (2009) (n.199): para. 4.

<sup>202</sup> <<https://www.un.org/sexualviolenceinconflict>> accessed 08/06/2018.

<sup>203</sup> <<http://www.stoprapenow.org/>> accessed 24/05/2018.

<sup>204</sup> <<http://www.peacewomen.org/security-council/sexual-violence-indicators-and-monitoring>> accessed 07/06/2018.



Paragraph 8 of the Resolution calls upon the UN Secretary-General to deploy a Team of Experts, called the “Team of Experts on the Rule of Law and Sexual Violence in Conflict (TOE)”. TOE brings together experts from three United Nations entities, the Department of Peacekeeping Operations, the Office of the United Nations High Commissioner for Human Rights, and the United Nations Development Programme<sup>205</sup>.

The commitment of the TOE is to strengthen the capacity of the national rule of law and justice actors including in the specialized areas of criminal investigation and prosecution, collection and preservation of evidence, military justice system investigation and prosecution, criminal and procedural law reform, as well as the protection of victims, witnesses and justice officials<sup>206</sup>. In sum, it provides holistic support for Member States in addressing CRSV, deploying, inter alia, a facilitating access to justice and reparations for survivors of CRSV in challenging contexts in the world. In fulfilling its mandate, TOE is supported by an Advisory Group and collaborating with other international entities, such as Just Rapid Response, an intergovernmental stand-by facility, and the Preventing Sexual Violence Initiative of the United Kingdom of Great Britain and Northern Ireland<sup>207</sup>.

Resolution 1888 includes special measures to protect civilians.<sup>208</sup> This includes enforcing appropriate military discipline measures and upholding the principle of command responsibility, training troops and specific provision for the protection of women and children from rape and other sexual violence in the mandates of United Nations Peacekeeping operations, including, on a case-by-case basis the identification of Women’s Protection Advisers (WPA)<sup>209</sup>.

**Resolution 1889**<sup>210</sup> was adopted the same year as 1888 and focuses on the importance of increasing women’s empowerment in particular in post-conflict situations. Women are described as having a vital role in the prevention and

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<sup>205</sup> UN, Team of Experts Rule of Law/Sexual Violence in Conflict, ‘Annual Report 2016’ (2016): 3 <<http://www.stoprapenow.org/uploads/advocacyresources/1493911578.pdf>> accessed 07/06/2018.

<sup>206</sup> <<https://www.un.org/sexualviolenceinconflict/our-work/team-of-experts/>> accessed 07/06/2018.

<sup>207</sup> UN, Team of Experts Rule of Law/Sexual Violence in Conflict, ‘Annual Report 2012’ (2012): 48 <<http://stoprapenow.org/uploads/advocacyresources/1372365509.pdf>> accessed 08/06/2018.

<sup>208</sup> UN ‘S/RES/1888(2009)’ (n.199) para: 3-4.

<sup>209</sup> *ibid.* 12.

<sup>210</sup> UN, Security Council, ‘Resolution 1889 (2009)’, UN Doc S/RES/1889 (2009).

Resolution of conflicts and peacebuilding, in particular in the re-establishment of the fabric of recovering societies<sup>211</sup>. While Resolution 1888 tackles the phenomenon of sexual violence, mainly but not exclusively using a gender neutral language, following the trend begun by res 1820, Res 1889 is focused exclusively on women.

**Resolution 1960**<sup>212</sup> was adopted in 2010 by the Security Council to strengthen monitoring and accountability. Establishing monitoring, analysis and reporting arrangements for CRSV has become the basis for evidence-based action for the United Nations in dealing with SGBV in conflicts<sup>213</sup>.

The Resolution requires the UN Secretary-General to include in its Annual Report on Sexual Violence a “naming and shaming” listing mechanism which consists in publishing the name of parties in conflict credibly suspected of committing or being responsible for CRSV<sup>214</sup>. Furthermore the UN Secretary-General is invited to establish the Monitoring, Analysis and Reporting Arrangements (MARA)<sup>215</sup> which provides a UN-wide information gathering mechanism addressing CRSV<sup>216</sup>.

Three years later the Security Council adopted **Resolution 2106**<sup>217</sup> to stress the importance of investigating CRSV with the aim of bringing perpetrators to justice and making reparations to survivors the main guiding principle for Member States.

Even though some authors<sup>218</sup> refer to Resolution 2106 as the first one in recognising men and boys as victims of CRSV, we have seen that Resolution 1820 had already open the door for this step forward using a gender neutral language. Nevertheless, it is in this Resolution that male have been formally recognised as

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<sup>211</sup> ibid preamble.

<sup>212</sup> UN, Security Council, 'Resolution 1960 (2010)', UN Doc S/RES/1960 (2010).

<sup>213</sup> <<https://www.un.org/sexualviolenceinconflict>> accessed 29/05/2018.

<sup>214</sup> UN 'S/RES/1960 (2010)' (n.212) para. 3-18(c).

<sup>215</sup> ibid para. 8.

<sup>216</sup> <<http://www.peacewomen.org/security-council/sexual-violence-indicators-and-monitoring>> accessed 08/06/2018.

<sup>217</sup> UN, Security Council, 'Resolution 2106 (2013)', UN Doc S/RES/2106 (2013).

<sup>218</sup> Chris Dolan, 'Into the Mainstream: Addressing Sexual Violence Against Men and Boys in Conflict: A Briefing Paper Prepared for the workshop held at London' (14 May 2014):6<[https://reliefweb.int/sites/reliefweb.int/files/resources/Into\\_The\\_Mainstream-Addressing\\_Sexual\\_Violence\\_against\\_Men\\_and\\_Boys\\_in\\_Conflict.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Into_The_Mainstream-Addressing_Sexual_Violence_against_Men_and_Boys_in_Conflict.pdf)> accessed 15/06/2018.

victims of CRSV<sup>219</sup>.

That same year, **Resolution 2122**<sup>220</sup> affirmed an integrated approach to sustainable peace. Above all, in light of this work, the need to address root causes of armed conflict and security risks faced by women is recognized and the provision of multisectoral services for women affected by war is called for while disarmament is linked with gender equality.

Finally, until now the framework has been concluded with **Resolution 2242**<sup>221</sup> which calls for a renewed commitment to women's participation while articulating specific recommendations for making National Action Plans<sup>222</sup>, the instruments described below, which aim to implement and make WPS more sustainable<sup>223</sup>. In particular UNSCR 2242 stresses the importance of increasing capacity building for civil society organisations and encourages Member States to increase funding for WPS through aid in both conflict and post-conflict communities and calls for aligning national policies within the scope of WPS<sup>224</sup>. These Resolutions, which together create the WPSA, can be understood as “ tools that provide concrete mechanisms for addressing issues of CRSV and suggest avenues toward accountability that could benefit the broader Women, Peace and Security Agenda as well”<sup>225</sup>.

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<sup>219</sup> UN ‘S/RES/2106 (2013)’ (n.217) preamble.

<sup>220</sup> UN, Security Council, 'Resolution 2122 (2013)', UN Doc S/RES/2122 (2013).

<sup>221</sup> UN, Security Council, 'Resolution 2242 (2015)', UN Doc S/RES/2242 (2015).

<sup>222</sup> *ibid* para. 2.

<sup>223</sup> UN Women, 'Building accountability for implementation of Security Council Resolutions on Women, Peace and Security', (2013):2 <[http://www.peacewomen.org/assets/file/final\\_report\\_global\\_review\\_meeting\\_.pdf](http://www.peacewomen.org/assets/file/final_report_global_review_meeting_.pdf)> accessed 16/06/2018.

<sup>224</sup> UN ‘S/RES/2242 (2015)’ (n.221) para. 2-3.

<sup>225</sup> <<http://www.peacewomen.org/security-council/sexual-violence-indicators-and-monitoring>> accessed 16/06/2018.

### 3.1.3 The Regional Framework

The International Regional Organisations (Organization of the American States, African Union, Council of Europe) have made a substantial contribution to the development of women's rights in particular through three main documents, which have become milestone in the matter, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - Convention of Belem Do Para - (Organization of the American States, 1994)<sup>226</sup>; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa - Maputo Protocol - (African Union, 2003)<sup>227</sup>; Council of Europe Convention on preventing and combating violence against women and domestic violence - Istanbul Convention - (Council of Europe, 2011)<sup>228</sup>.

**The Convention of Belem Do Para** was adopted in 1994 in the dawn of the international discourse on women's rights. Even though CRSV has not been covered in this document, Article 9 clearly heads toward the lens on the vulnerability of women to violence with an attentive focus on those affected by armed conflicts.

Ten years later the African Union adopted **The Maputo Protocol**, which is probably the regional instrument which set up the most advanced provisions regarding violence against women perpetrated in conflicts or post-conflicts situation, being the only regional instrument which deals with CRSV in a dedicated article<sup>229</sup>. The provision recognises CRSV as acts of genocide, war crimes and crimes against humanity and asks the States to protect their people *irrespective of the population to which they belong, in the event of armed conflict*.

On the 7th of April 2011 the Council of Europe adopted the **Convention on preventing and combating violence against women and domestic violence -**

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<sup>226</sup> Organization of American States (OAS), 'Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para"' (1994),

<sup>227</sup> African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2003).

<sup>228</sup> Council of Europe, 'Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence' (Istanbul Convention), CETS No.210, Adopted 11 May 2011, entered into force 1 August 2014, (2011).

<sup>229</sup> *ibid* art. 11.

**Istanbul Convention**<sup>230</sup>. The document offers a punctual set of articles which represents the most advanced level of international standards for the prevention and counter-action of gender-based violence, for the protection of the victims and the criminalization of the perpetrators.

A quick look at the last paragraphs of the Preamble would suffice to the most intransigent reader to perceive how meticulously the organization chooses to tackle the problem of gender-based violence, whose declinations, problems and operational solutions, are pitted article after article in a concert of unique rules in the field. The Convention does not address CRSV, nonetheless in article 2 the Convention clarifies that the document shall apply in times of peace and in situations of armed conflict, extended *de facto* its provision which at first glance seems more applicable in time of peace, in every context women are at risk of violent acts<sup>231</sup>.

Even though is not present any specific reference to CRSV in the document, article 60 becomes a glimmer in recognising the problem also in States that do not experience the phenomenon within their borders. Indeed, the article asks the Member States to “take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution” in the asylum claim.

Thinking about the migration wave Europe, in particular, is facing nowadays, the article, when implemented, could open a debate about the potential of establishing a specialized mechanism to support victims of CRSV in the reception countries.

The potential of these mechanism has not been addressed in any of the first four State’s report to the Group of experts on actions against violence against women and domestic violence (GREVIO), in charge of monitoring the implementation of the Convention by the States Members.

We have to bear in mind that an institution usually has to address the more crucial issues for the State itself in the first report to a State and build credibility among the States. Once these steps are made, Grevio could expand the

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<sup>230</sup> *ibid* art.75.

<sup>231</sup> *ibid* art.2.

understanding of the Convention and ask States Parties to advance the provisions of the document itself. The future, we will determine whether GREVIO is keen on adopting a dynamic or a rather conservative approach to the Convention<sup>232</sup>.

These three regional documents are important to give a broad understanding of the international legal framework about women's rights and they have been recalled in some of the NAPs further analysed as instruments to ratify or to take into account in the implementation of WPSA. Nevertheless the references are not frequent neither in the NAPs nor in the Reporting Cycles to the CEDAW Committee.

### **3.2 National Action Plans: policies to implement the Women, Peace and Security Agenda**

The following analysis aims to explore the use of the National Action Plan as a fundamental tool for States to address CRSV, in particular those affected by the phenomenon. It will be divided into three sections which will move from the general elements to the peculiarities of this tool, to provide a holistic overview focused on CRSV.

- Section 1 addresses the adoption of the NAPs worldwide
- Section 2 discusses the fundamental elements of an NAP through the analysis of the documents of eleven conflict-affected countries
- Section 3 focuses on the dialogue between the CEDAW Committee and the NAPs to address CRSV through a study of the States' reports to CEDAW and the NAPs of conflict-affected countries.

### 3.2.1 The adoption of the NAPs worldwide

The importance of the UNSCR 1325 and subsequent related resolutions on women, peace and security is evident in the number of conferences and workshops<sup>233</sup> which have been held around the world to promote the implementation of the WPS Agenda, especially through the adoption of Resolution 1325 National Action Plans (NAP)<sup>234</sup>. The first time Naps were mentioned in the international community was during the Security Council President's statement of 31 October 2002 – “the Security Council encourages Member States, civil society and other relevant actors, to develop clear strategies and action plans with goals and timetables, on the integration of gender perspectives in humanitarian operations, rehabilitation and reconstruction programs”<sup>235</sup>. Two years after this statement the UN Secretary-General's report on Women, Peace and Security invited States to adopt NAPs with the aim to overcome gaps and challenges with respect to the implementation of UNSCR 1325<sup>236</sup>. The “persistent call” has certainly pushed Member States which have started to draw up actions to implement the WPSA through the development of government-led National Action Plans since 2005, as shown in figure 1.

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<sup>233</sup> Barbara Miller, Milad Pournik and Aisling Swaine, 'Women in peace and security through United Nations Security Resolution 1325: Literature review, content analysis of national action plans, and implementation', Institute for Global and International studies (2014): 8 <[http://www.peacewomen.org/assets/file/NationalActionPlans/miladpournikanalysisdocs/igis\\_womeninpeaceandsecuritythroughunscr1325\\_millerpournikswaine\\_2014.pdf](http://www.peacewomen.org/assets/file/NationalActionPlans/miladpournikanalysisdocs/igis_womeninpeaceandsecuritythroughunscr1325_millerpournikswaine_2014.pdf)> accessed 1/06/2018.

<sup>234</sup> *ibid.*

<sup>235</sup> Belgin Gumru and Jean M. Fritz, 'Women, peace and security: An analysis of the national action plans developed in response to UN Security Council Resolution 1325', *Societies without Borders* 4(2) (2009): 214.

<sup>236</sup> *ibid.*

## National Action Plans for the Implementation of UNSCR 1325 on Women, Peace and Security

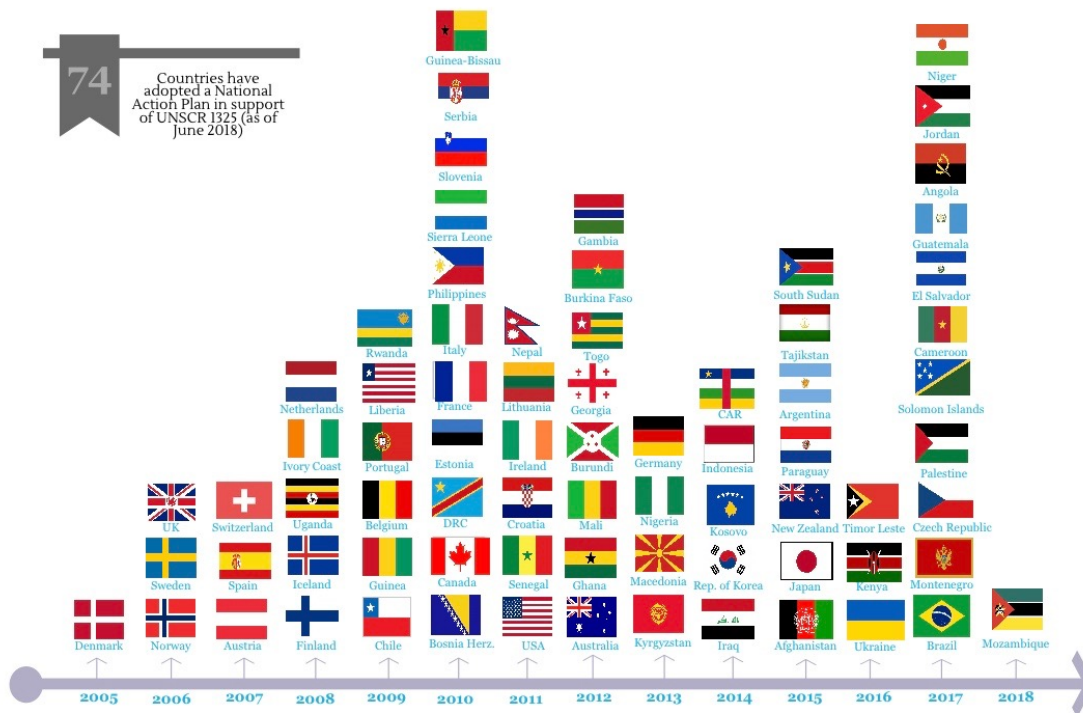


Fig.1

The National Action Plan touches upon the implementation of the WPSA into a unique framework developed with the four pillars of resolution 1325 as the main reference point for these plans. Critics argue that NAPs perpetuate the flaws of UNSCR 1325, whereas norm-entrepreneur proponents understand NAPs as a means of domesticating these international gender norms<sup>237</sup>. Hudson is correct in arguing that “such bifurcation is not helpful in gaining a better understanding of the place of NAPs in the broader WPS framework<sup>238</sup>”. This research conception of NAPs is in line with the norm-entrepreneur interpretation that NAPs should be, and to some extent are, the way to translate international commitments to WPS into

<sup>237</sup> Heidi Hudson, 'The Power of Mixed Messages: Women, Peace, and Security Language in National Action Plans from Africa' *Africa Spectrum* 52(3) (2017): 4-5.

<sup>238</sup> *ibid.*



national policies and programmes,<sup>239</sup> pledging that this implementation is systematic, sustainable and result-driven<sup>240</sup>. To be specific, they represent a concrete political will of collective effort to achieve the goals set out in the resolutions.

Some argue that by developing specific action plans rather than implementing the principle of UNSCR 1325 in established policies there is the risk of dividing women's concerns into separate arenas and, de facto, doing little to reform the status quo women are seeking to access and reform. On the contrary, lobbyists and advocates favour the implementation of distinct documents arguing that this approach avoids that gender mainstreaming and the possibilities encapsulated in UNSCR 1325 will be lost at implementation level<sup>241</sup>.

To date, 74 Member States worldwide, or 38% of all UN Member States have chosen to adopt the NAP, while others like Fiji, Israel and Colombia have integrated elements of the WPSA into already existing domestic documents<sup>242</sup>. The first action plan was developed by Denmark in 2005, followed by Norway, Sweden, the United Kingdom, Austria, Spain and Switzerland in the two following years. It is interesting to note that these pioneer countries have welfares attentive to gender issues and have achieved gender equality within their society. For instance, Denmark, Sweden, the UK and Spain were rated in the top ten of the gender equality index of 2005 drawn up by the European Institute for Gender Equality<sup>243</sup>.

The fact that until 2009 the majority of action plans were drafted by European Member States has been welcomed by many, given their role as donors and the potential this offers to internationally improve support to UNSCR 1325-related actions<sup>244</sup>. As a matter of fact, as shown in figure 1, conflict-affected countries have developed these documents slowly, starting from the Ivory Coast which was the

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<sup>239</sup> <<https://wilpf.org/national-action-plans-localising-implementation-of-unscr-1325>> accessed 25/05/2018.

<sup>240</sup> UN Women, 'Building accountability for implementation of Security Council Resolutions on Women, Peace and Security' (n.223) 10.

<sup>241</sup> Aisling Swaine, 'Assessing the potential of national action plans to advance implementation of United Nations Security Council Resolution 1325' *Yearbook of International Humanitarian Law* 12 (2009): 412.

<sup>242</sup> Gumru and Fritz (n.235) 214.

<sup>243</sup> <<http://eige.europa.eu/gender-equality-index/2005/countries-comparison/index/bar>> accessed 13/06/2018.

<sup>244</sup> Swaine (n.241) 413.

first, doing so in 2008.

The tenth anniversary of UNSCR 1325 experienced a peak in the adoption of NAPs, probably because anniversaries represent a unique and mainstream choice for States to demonstrate their efforts to comply with international standards in front of the world. .

Since 2010, we have seen an increase in NAP adoptions by extra-European States and in particular by States which have experienced or are currently involved in conflicts or crises where women's human rights are particularly at stake. Indeed, 22% of the NAPs already adopted have been in African countries (28% of the States of the African continent). African countries' great interest in developing NAPs is probably explained by the fact that most of these countries have experienced violent conflicts and/or are currently in a post-conflict phase where the general levels of women's political, socio-economic, and physical insecurity remain high following war<sup>245</sup>. On the contrary some resistance to advancing the WPSA has been observed in some of the permanent members of the UN Security Council, like China and Russia, and Countries that are the major contributors to peacekeeping and political missions, such as India and Bangladesh, since they have not yet adopted an NAP for UNSCR 1325<sup>246</sup>.

Finally, in some cases NAP adoption has been overtly instrumental; for instance, Australia developed its NAP at the same time as it made a bid for an elected seat on the Security Council and New Zealand launched its NAP to coincide with the 2015 High-level Review of UNSCR 1325 implementation, with its own seat secure for the 2015–16 term<sup>247</sup>.

The overall goal of the WPSA is to achieve gender equality in the particular context of security and sustainable peace through four pillars: prevention, participation, protection and relief and recovery. This goal is one of the main and enduring responsibilities of all Member States and one of the preeminent areas in which UN Women has a key mandate to promote and monitor the full implementation of the WPS agenda both within the UN system and at national and

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<sup>245</sup> Hudson (n.237) 6.

<sup>246</sup> Paul Kirby and Laura J. Shepherd. "The futures past of the Women, Peace and Security agenda." *International Affairs* 92.2 (2016): 378.

<sup>247</sup> *ibid.*

regional levels<sup>248</sup>.

This is reflected in entities other than Member States, such as regional/sub-regional organizations, adopting NAPs and working towards action plans. In 2006 the International Conference on the Great Lakes Region adopted the “Pact on Security, Stability and Development in the Great Lakes Region<sup>249</sup>” implementing the previous Declaration in addition to ten Protocols, four Programmes of Action, a Regional Follow-up Mechanism and a Special Reconstruction and Development Fund<sup>250</sup>. In 2008 the European Union adopted the Comprehensive Approach to the implementation of UNSCR 1325 and 1820<sup>251</sup> and the next year the African Union (AU) adopted a gender policy<sup>252</sup> which includes commitments to both UNSCR 1325 and the 1995 Maputo Protocol. Continuing to focus on Africa, which demonstrates a strong will to address the issues concerning WPS, the Economic Community of West African States (ECOWAS) adopted The Dakar Declaration on the implementation of UNSCR 1325 and its related regional plan of action during the Regional Forum «Women Count for Peace» in 2010. Three years later the AU published a revised action plan. 2012 is a key date for the Pacific and Arab areas as the Pacific Regional Action Plan was established. In addition, the League of Arab States approved a regional strategy entitled, ‘Protection of Arab Women: Peace and Security’ followed by a Regional Action Plan adopted in 2015. In 2014 another Action Plan was adopted by NATO/EAPC<sup>253</sup> for the implementation of its policy on the Women, Peace and Security Agenda<sup>254</sup>.

Despite UNSCR 1325 being the most translated and the most known Security Council Resolution in the world, and even though the adoption of NAPs and RAPs has become increasingly widespread, gaps in the effective implementation of

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<sup>248</sup> UN Women, 'Building accountability for implementation of Security Council Resolutions on Women, Peace and Security' (n.223)10.

<sup>249</sup> <[http://www.peacewomen.org/sites/default/files/icglr\\_pact\\_2006.pdf](http://www.peacewomen.org/sites/default/files/icglr_pact_2006.pdf)> accessed 29/05/2018

<sup>250</sup> <<http://www.peacewomen.org/peacewomen.org/icglr>> accessed 30/05/2018.

<sup>251</sup> European Union, Comprehensive Approach to the implementation of SCR 1325 and 1820. <[http://www.peacewomen.org/sites/default/files/eu\\_comprehensive\\_eu\\_approach\\_to\\_the\\_implementation\\_of\\_unscr\\_1325\\_and\\_1820\\_december2008.pdf](http://www.peacewomen.org/sites/default/files/eu_comprehensive_eu_approach_to_the_implementation_of_unscr_1325_and_1820_december2008.pdf)> accessed 29/05/2018

<sup>252</sup> African Union Gender Policy <<http://www.peacewomen.org/peacewomen.org/rap-au>> accessed 29/05/2018.

<sup>253</sup> NATO/EPAC Action Plan <<http://www.peacewomen.org/sites/default/files/NATO%20Action%20Plan.pdf>> accessed 29/05/2018.

<sup>254</sup> UN Women, 'Building accountability for implementation of Security Council Resolutions on Women, Peace and Security' (n.223) 12.

WPSA still remain.

Bearing in mind that, according to the UN Secretary-General, the primary responsibility for implementing UNSCR 1325 is of the States<sup>255</sup>, it is important to stress that on one hand NAPs offer a framework to organise, coordinate and increase activities and have the potential to enhance accountability by making visible any progress (or lack thereof) of States towards their responsibilities to implement 1325<sup>256</sup>.

Nevertheless, on the other hand, the lack of resources allocated and the mild provisions of several NAPs, in particular in the sectors of security, disarmament, conflict prevention, peacebuilding and reconstruction, , weaken the potential of these instruments. According to the analysis of Women's International League for Peace and Freedom (WILPF)<sup>257</sup>, only 23% of Member States which have adopted an NAP have allocated a budget for its implementation and only 30% include references to disarmament and provide specific actions to disarm society and control the illicit trade of small arms, which affect women the most. Moreover, despite many countries having experienced conflicts, the WILPF highlights an insufficient analysis and consideration of the connection between disarmament, gender equality and violence through the NAPs already adopted<sup>258</sup>.

Keeping in mind that this work aims to address the specific phenomenon of CRSV, the analysis that follows will focus on the nineteen countries<sup>259</sup> recalled in the last UN Secretary-General Report (April 2018) on sexual violence in conflicts.

These countries are not only named in this report but for years they have held the attention of the UN Secretary-General in its reports, since they are engaged in conflict situations or are in post-conflict settings. Oversee the ways these countries are (or are not) implementing UNSCR 1325 and the following resolutions through the adoption of NAPs provides a concrete understanding towards an operative answer for CRSV in the most affected countries.

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<sup>255</sup> UN, Security Council, 'Report of the Secretary-General on women and peace and security', UN Doc. S/2007/567 (2007).

<sup>256</sup> Swaine (n.241) 420.

<sup>257</sup> <<http://www.peacewomen.org/>> accessed 05/05/2018.

<sup>258</sup> <<http://www.peacewomen.org/member-states>> accessed 05/05/2018.

<sup>259</sup> Afghanistan, Bosnia and Herzegovina, Burundi, Central Republic Africa, Colombia Democratic Republic of Congo, Iraq Ivory Coast, Libya Mali, Myanmar, Nepal, Nigeria, Somalia, South Sudan, Sri Lanka, Sudan (Darfur), Syria, Yemen.

First of all, to date only eleven of these countries have implemented a NAPs while we are still waiting for the other eight documents (Afghanistan<sup>260</sup>, Bosnia and Herzegovina<sup>261</sup>, Burundi<sup>262</sup>, Central Republic Africa<sup>263</sup>, Democratic Republic of Congo<sup>264</sup>, Iraq<sup>265</sup>, Ivory Coast<sup>266</sup>, Mali<sup>267</sup>, Nepal<sup>268</sup>, Nigeria<sup>269</sup>, South Sudan<sup>270</sup>).

This is unsurprising as a large portion of these eight countries are facing the worst humanitarian crises of the last decade. Myanmar, Somalia, Darfur, Libya, Yemen and Syria are shocking the world with apparently unresolvable bloody conflicts with both legitimate and illegitimate governments on their knees and sustainable reforms seemingly impossible. CRSV is so predominant in these conflicts, that once a sort of order is re-established, these Countries will have to address this issue, and the adoption of an NAP will be the most effective strategy to take a step towards reforming their systems to protect women.

Despite eight years having passed since the end of the conflict between the Liberation Tigers of Tamil Eelam and the Government, Sri Lanka has yet to benefit from a comprehensive transitional justice process to address crimes committed

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<sup>260</sup> The Islamic Republic of Afghanistan ‘NAP for UNSCR1325’ (2015).  
<<http://www.peacewomen.org/action-plan/national-action-plan-afghanistan>> accessed 10/05/2018.

<sup>261</sup> The Federation of Bosnia and Herzegovina ‘NAP for UNSCR1325’ (2010); revised in 2013.  
<<http://www.peacewomen.org/nap-bih>> accessed 10/05/2018 .

<sup>262</sup> Republique du Burundi ‘NAP for UNSCR1325’ (2011)  
<<http://www.peacewomen.org/peacewomen.org/nap-burundi>> accessed 10/05/2018

<sup>263</sup> Republique Centrafricaine ‘NAP for UNSCR1325’ (2014).  
<<http://www.peacewomen.org/action-plan/national-action-plan-central-african-republic>>

<sup>264</sup> The Democratic Republic of The Congo ‘NAP for UNSCR1325’ (2010)  
<<http://www.peacewomen.org/nap-drc>> accessed 10/05/2018.

<sup>265</sup> The Federal Government of Iraq and Kurdistan Regional Government ‘NAP for UNSCR1325’ (2014) <<http://www.peacewomen.org/nap-iraq>> accessed 10/05/2018.

<sup>266</sup> The Republic of Cote d'Ivoire ‘NAP for UNSCR1325’ (2008)  
<<http://www.peacewomen.org/nap-cotedivoire>> accessed 10/05/2018.

<sup>267</sup> Republique du Mali ‘NAP for UNSCR1325’ (2012) <<http://www.peacewomen.org/action-plan/national-action-plan-mali>> accessed 10/05/2018.

<sup>268</sup> The Federal Democratic Republic of Nepal ‘NAP for UNSCR1325’ (2011)  
<<http://www.peacewomen.org/nap-nepal>> accessed 10/05/2018.

<sup>269</sup> The Federal Republic of Nigeria ‘NAP for UNSCR1325’ (2012); revised (2017)  
<<http://www.peacewomen.org/nap-nigeria>> accessed 10/05/2018.

<sup>270</sup> The Republic of South Sudan ‘NAP for UNSCR1325’ (2015)  
<<http://www.peacewomen.org/action-plan/national-action-plan-s-sudan>> accessed 10/05/2018.

during the war<sup>271</sup>. There are considerable CRSV cases, 2036 complaints for rape in 2016. Sri-Lanka has to face numerous challenges to address CRSV, in particular the lack of protection programmes for survivors and the backlog of cases.

Colombia signed its peace accord in November 2016, after half century settling the conflict between the Government and the Fuerzas Armadas Revolucionarias del Colombia-Ejército del Pueblo (FARC). In 2017, 24576 victims of CRSV were registered and only one third had received compensation<sup>272</sup>. Despite some steps forward by both the Government and FARC<sup>273</sup>, the path towards justice for survivors is still long. The adoption of an NAP could facilitate the process and create a collaborative dialogue among different stakeholders facilitating the achievement of the goal.

The analysis below will be devoted only to States equipped with NAPs and it will focus on a general study and the eleven NAPs, compared following criteria prevalent in almost every NAP such as: *structure; leading actors; specification about the role of the actors involved in the process; support by external aid; civil society involvement in the development, implementation and monitoring as well as evaluation phases; monitoring and reporting mechanisms; timelines; indicators; budget; and disarmament*. We can identify the criterion which is also used in the NAPs' analysis by the Women's International League for Peace and Freedom as the 'skeleton' of these documents.

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<sup>271</sup> UN, Security Council, 'Report of the Secretary-General on conflict-related sexual violence', UN Doc S/2018/250 (2018): 28 <<https://www.securitycouncilreport.org/un-documents/document/s2018250.php>> accessed 05/06/2018.

<sup>272</sup> *ibid* 10.

<sup>273</sup> For example, in Sri Lanka: the Witnesses and Victims Protection Act (2015); National Action Plan to address sexual and gender-based violence (2016); Plan on the promotion of Human Rights (2017; In Colombia, the Office of the Attorney-General had issued indictments in 17% of cases of sexual violence, 5 per cent of which resulted in convictions, including three criminal sentences for conflict-related sexual violence perpetrated by members of the Autodefensas Gaitanistas de Colombia. In UNSC SG Report S/2018/250 (n.253) 10&28.

### 3.2.2 *The elements of an NAP – case study on eleven conflict-affected countries' NAPs*

Laura J. Shepherd argues there are important differences between various NAPs, and these differences are often related to the perceived or demonstrable ability of the Plan to uphold WPS principles and deliver positive results in different sectors of peace and security governance<sup>274</sup>.

Even though there is no standard template for the development of these documents, there are prevalent criteria that can be considered the framework of an NAP for the implementation of UNSCR1325, namely: *the structure; leading actors; specification about the role of the actors involved in the process; support by external aid; civil society involvement in the development, implementation and monitoring as well as evaluation phases; monitoring and reporting mechanisms; timelines; indicators; budget; and disarmament*. These elements have been used by the Women's International League for Peace and Freedom to analyse the State's propensity to concretely implement the WPSA.

Therefore, the more an NAP includes all of these elements, the easier it is to monitor the extent to which the government has respected its commitments, in a spirit of due diligence.

Regarding its **structure**, an NAP should set its priority areas along the four pillars of UNSCR 1325: prevention, protection, participation, and involvement in relief and recovery<sup>275</sup>. This is usually declared in the matrix of the document and can facilitate the government itself in orientating its efforts, and all the actors responsible for each provision. Additionally, it helps in the follow-up phase as well as in the monitoring of achievements. Only five<sup>276</sup> of the 11 countries considered clearly categorize their provisions in light of the four pillars while the others often include instructions related to the pillars but display them in a different order, sometimes considering some but not all of the four dimensions.

How an NAP is drafted is a crucial moment for its long-term potential, since

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<sup>274</sup> Laura J. Shepherd, 'Making war safe for women? National Action Plans and the militarisation of the Women, Peace and Security agenda' *International Political Science Review* 37(3) (2016): 325.

<sup>275</sup> Miller, Pournik and Swaine (n.233) 30.

<sup>276</sup> Afghanistan, Bosnia and Herzegovina, Iraq, Nepal, Nigeria.

the process serves to educate the staff on issues of women, peace and security, and to hold individuals accountable for their actions, or inactions, in respect of UNSCR 1325<sup>277</sup>.

The building of National Action Plans usually includes large contributions from different **stakeholders**, from the Government to the society and the private sector, at local, national and regional levels<sup>278</sup> often with an important role played by the international community.

Frequently the international community, led by UN Agencies, multinational organisations or national governments provides advisors and consultants to serve in post-conflict countries while funding the development and implementation of these documents.

Indeed almost all of the eleven countries in the analysis have been supported by UN Women and other organisations while several have obtained financial aid from external countries: for instance the U.K.'s foreign aid agency, provided support to Nigeria; the European Union played a considerable role in the drafting process of Bosnia and Herzegovina's NAP<sup>279</sup> which was also sponsored by Sweden, Austria and Switzerland<sup>280</sup>; the NAPs of Afghanistan, Burundi, the Democratic Republic of Congo (DRC) and South Sudan have been funded by the Netherlands<sup>281</sup>.

The importance of dedicated financing for NAPs meets the overall international consensus on the vital importance of implementing the WPSA and the need to ensure the integration of this agenda in discussions on global financing for development, ì also in debates regarding the effectiveness of aid. According to the final report by the Global Technical Review, Building accountability for implementation of Security Council Resolutions on Women, Peace and Security published by UN Women, the financing strategy must focus on a stronger collaboration amongst all donors to build more effective and sustainable solutions

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<sup>277</sup> Swaine (n.241) 412.

<sup>278</sup> Miller, Pournik and Swaine (n.233)10.

<sup>279</sup> *ibid* 9.

<sup>280</sup> UN Women, 'Building accountability for implementation of Security Council Resolutions on Women, Peace and Security' (n.223) 22.

<sup>281</sup> *ibid*.



such as the development of multi-stakeholders devoted to sponsoring the WPSA<sup>282</sup>.

The development of these documents is usually led by the central Government. The eleven aforementioned countries entrusted their Ministry of Family and Social Affairs, or their Ministry of Human Rights and Peace with this task.

Two elements indicating how the NAP is an inclusive and democratic living document are the inclusion of civil society in the development, implementation and follow-up phases as well as the indication of its actors for each provision. Regarding the role of **civil society**, all the NAPs studied include this group as important stakeholders, nonetheless they define its role differently. While the majority of the eleven countries call for civil society to collaborate in the development, implementation and monitoring of the document, four countries deviate from this standard. Afghanistan and the South Sudan do not mention civil society during the third phase, which is one of the most important and is when the civil society may advocate and pressure the government to comply with its pledges. Mali does not even mention this stakeholder in their implementation phase renouncing de facto to implement its commitment to a multi-agency approach. Finally, the Ivory Coast does not include civil society during the development phase of the NAP, making it an exclusive process rather than an inclusive one, thereby denying a fundamental characteristic of the NAP framework.

The choice of the aforementioned countries to exclude or limit the role of civil society is, at the least, ambiguous considering that the UNSCR 1325 was drafted and vetted by women from civil society organisations across the globe and therefore to some extent grounded in local needs and values<sup>283</sup>.

In particular, the inclusion of civil society during the development of these documents and through strong cross-sector collaborations and broad-based consultations can facilitate later impact assessments. Nevertheless, some argue that letting civil society play an integral role in the planning process could constitute a risk, since civil society also plays a crucial role in the monitoring moment that is often better achieved with independence and distance<sup>284</sup>. Indeed, Nepal is an

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<sup>282</sup> *ibid.*

<sup>283</sup> Hudson (n.237) 16.

<sup>284</sup> Swaine (n.241) 417.

example of the former behaviour, since it conducted field consultations in all of its five regions and in 40 of the 75 districts of the country<sup>285</sup>. Additionally, it is also plausible that the degree of social inclusivity of the NAP process, regarding ethnicity, religion, and social class, may affect its implementation and increase political cohesion and stability in the country and the region, thereby improving global stability and security, as Miller, Pournik and Swaine argue<sup>286</sup>.

Also listening to all of the **different actors involved** in the activities which compose the NAP is a valid indication of inclusiveness and capacity for the government to decentralize its power<sup>287</sup> and to balance the allocation of resources.

Moreover we will soon see the relevance of this list in the follow-up phase in measuring the adherence of the Government's implementation to the dispositions. A delicate phase of the Action Plan is that of **monitoring and reporting** which is fundamental to observing the extent to which the government is complying with what was promised in the NAP in terms of implementing effective measures rather than using the NAP as a smokescreen 72% of the countries under examination have established a mechanism for monitoring and reporting, in the majority of cases with the collaboration of the civil society which can be an independent and critical reviewer providing valuable advice for the following implementation.

In order to facilitate this process, it is important that the NAP includes a detailed **timeline**, a list of actors involved, and indicators of achievement for each of the planned activities. Only seven of the 11 countries fulfil the timing requirement, while the other four, precisely Côte d'Ivoire, Burundi, Iraq, Nigeria, de facto have written merely the period of time the NAP is adopted for<sup>288</sup>.

Côte d'Ivoire and the Democratic Republic of Congo do not to specify the actors appointed to the various activities, and the Democratic Republic of Congo fails to outline an indicator of achievement, making its NAP one of the most meagre.

The results of the monitoring and reporting process are not generally public and thereby it is difficult, almost impossible, to evaluate whether these plans have

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<sup>285</sup> Miller, Pournik and Swaine (n.233)18.

<sup>286</sup> *ibid.*

<sup>287</sup> *ibid* 17.

<sup>288</sup> All the eleven countries except for the Democratic Republic of Congo provide a plan period for the implementation of their NAPs.

been implemented correctly. Following the goal of advancing the WPSA to which an NAP is related rather than being only a document of national interest<sup>289</sup>, greater transparency is the *condicio sine qua non* needed to reach comprehensive knowledge as to whether States are being held accountable for their commitments<sup>290</sup> and where the international community should direct further efforts.

The themes engaged by the WPSA (namely: the role of women in the conflict Resolution process, the security and protection of women in conflicts, reliable justice, greater participation of women in the security sector and peacekeeping missions and the broad principle of gender equality in the paradigm of peace and security for women) are the cornerstones of the NAP which is not only a document of national interest, but above all a component at national level of implementation of the international efforts towards the WPSA.

The eleven NAPs in question are focused more on action to implement at national level, rather than internationally, mainly because they have been facing unstable situations where the themes which concern UNSCR 1325 have been present within their borders. On the contrary, there are NAPs which include actions regarding entities such as the European Union or the United Nations, or that mention local issues in international settings where they have peacekeeping missions<sup>291</sup>.

One of the sticking points which undermines the credibility and the achievement of the aforementioned themes is the lack of **disarmament strategies** and the absence of a firm link between disarmament and women's security in the NAPs.

Of the 11 countries analysed, only South Sudan and the Central African Republic mention disarmament in their documents. Though South Sudan specifies the role of women in their strategy, the Central African Republic discusses action for this strategy while “forgetting” to make it explicit in their recommendations<sup>292</sup>.

This behaviour is not characteristic of the cases examined, rather it is a

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<sup>289</sup> UN Women, 'Building accountability for implementation of Security Council resolutions on Women, Peace and Security' (n.223)20.

<sup>290</sup> Miller, Pournik and Swaine (n.233) 54.

<sup>291</sup> Gumru and Fritz (n.235) 10.

<sup>292</sup> <<http://www.peacewomen.org/action-plan/national-action-plan-central-african-republic>> accessed 29/05/2018.

general custom of the States that have implemented NAPs; indeed only 30% include references to disarmament and provide specific actions to disarm society and control the illicit trade of small arms<sup>293</sup>. Once again States lose the match of letting human being security prevail on national border security, to the detriment of the most vulnerable.

Finally, these 11 countries do not distance themselves from this general behaviour as 45% of them fail to allocate a budget towards practically implementing their NAP. Financing an NAP remains the challenge par excellence for the WPSA since that **budget** remains an exception rather than a rule among States worldwide<sup>294</sup>. The NAP should always be considered as any other policy<sup>295</sup> and thus, failure to provide detailed resource allocation, makes these documents a list of words, through which women in conflict situations can simply hope for some sort of future justice.

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<sup>293</sup> <<http://www.peacewomen.org/member-states>> accessed 27/05/2018.

<sup>294</sup> UN Women, 'Building accountability for implementation of Security Council resolutions on Women, Peace and Security' (n.223) 21.

<sup>295</sup> Miller, Pournik and Swaine (n.233) 53-54.

### 3.2.3 Building a bridge between the CEDAW Convention and the Women, Peace and Security Agenda.

Country listed in the SG report S/2018/250 April 2018	NAP to WPS			CRSV	Budget	CEDAW Reporting Cycles Before GR.n.30			CRSV	Follow up required on CRSV and/or NAP	CEDAW Reporting Cycles After GR.n.30			CRSV	Follow up required on CRSV and/or NAP
	Yes	Not	Year			Yes	Not	Year			Yes	Not	Year		
Afghanistan	V		2015 - 2022	V	X	V		2011							
Bosnia and Herzegovina	V		2010 - 2013 2014 - 2017	V	X	V		2011			V		V		N/A
Burundi	V		2012 - 2016	V	V	V		2007			V		V		X
Central African Republic	V		2014 - 2016	V	V	V		2013							V C.O. n° 16
Colombia		X				V		2012			V		V		V C.O. n° 24
Congo	V		2010	V	X	V		2010			V		V		N/A
Côte d'Ivoire	V		2008 - 2012	V	X	V		2010			V		V		V C.O. n° 29
Iraq	V		2014 - 2018	V	V	V		1998			V		V		X V C.O. n° 12
Libya		X				V		2008			V				X
Mali	V		2012 - 2014	V	V	V		2004			V		V		V
Myanmar		X				V		2007			V		V		V C.O. n° 45 (f)
Nepal	V		2011 - 2016	V	X	V		2010			V		V		N/A
Nigeria	V		2013 2017 - 2020	V	V	V		2006			V		V		V C.O. n° 16
Somalia		X													Signature: NA, Ratification/Accession: NA
South Sudan	V		2015 - 2020	V	V	V		2010			V		V		V C.O. n° 25
Sri-Lanka		X													Signature: NA, Ratification/Accession: NA
Sudan-Darfur		X						2005			V		V		V C.O. n° 27
Syria		X													
Yemen		X						2007			V		V		N/A

C.O.= Concluding Observations CEDAW | V = Addressed | V = Not specifically addressed | X = Not Addressed | V = follow-up required on the adoption and/or implementation of a NAP | N/A = Not available to date | \*Data accessible on the OHCHR website – Last access: 20/06/2018

Tab.1

The table has been conceived to show the interaction, in addressing CRSV, between the conflict-affected States listed in the last UN Secretary-General report on CRSV, and the reporting cycle to the Committee on the Elimination of Discrimination Against Women, pursuant to art. 18<sup>296</sup> of the CEDAW Convention.

The choice to investigate the dialogue between these two entities comes from the will to understand what are the concrete steps taken to fight the phenomenon, beyond the institutional words of condemnation, which are often lost in the wind of power and political interests.

Before explaining the table, it is important to highlight three key points.

First, the implementation of Resolution 1325 and following, is primarily of duty of Member States of the UN, but also of the UN Security Council, UN entities, regional and national organizations and civil society<sup>297</sup>. It is only with a constant effort and collaboration between all the aforementioned stakeholders, that an effective implementation of this Agenda is possible.

Regarding women's rights, the UN body par excellence is the Committee established through the CEDAW Convention<sup>298</sup>. The Committee has complied to its responsibility to advance WPSA, *inter alia*, by including in its recommendations to States' reports strong invitations to adopt and/or implement NAPs.

Second, the Committee published its General Recommendation n. 30 (GR.n.30) on women in conflict prevention, conflict and post-conflict situations in 2013, clarifying the CEDAW application in these settings and thus an obligation for the State to devote more attention to the explanations set up in the GR n.30. The document contains several references to Resolution 1325 and following which together created the WPSA, considering them a crucial political framework for advocacy regarding women, peace and security<sup>299</sup>. In particular, it stresses the

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<sup>296</sup> UN, CEDAW A/RES/34/180 (n.162): Art 18.

<sup>297</sup> <http://www.peacewomen.org/who-implements> accessed 20/06/2018.

<sup>298</sup> Anne Bayefsky. "CEDAW: Threat to, or Enhancement of, Human Rights" American Society of International Law Proceedings 94 (2000); Ilic Zagorka and Ivanka Corti. The Convention on the Elimination of All Forms of Discrimination Against Women. UNITED NATIONS MANUAL ON HUMAN RIGHTS REPORTING. U.N. Doc. HR/PUB/91/1 (Rev.1) (1997)

<https://www.ohchr.org/Documents/Publications/manualhrren.pdf> accessed 05/07/2018.

<sup>299</sup> UN, Committee on the Elimination of Discrimination against Women, 'General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations,'

States' duty to comply with the CEDAW provisions *in re*, in conjunction with UNSCR 1325<sup>300</sup>; to ensure that NAPs and strategies to implement WPSA are compliant with the Convention and that adequate budgets are allocated for their implementation<sup>301</sup>, and to provide information on the implementation of WPSA in the States' reports to the Committee<sup>302</sup>.

These two points clarify the strong link between CEDAW Convention and WPSA, and thus with NAPs.

Third, even though both the NAPs and the CEDAW Convention address issues concerning WPS<sup>303</sup>, CRSV is not the only problem to deal with. However, being this phenomenon the nucleus of this thesis, I chose to focus only on the way CRSV has been addressed in these documents.

This choice does not intend to underestimate all the issues posed by the WPSA, which have to be born in mind as integral parts in addressing CRSV, but rather it intends to circumscribe a complex framework and analyse only the concrete steps taken by the states to deal with the phenomenon itself.

CRSV in this analysis is understood as those violent sexual acts perpetrated by State actors, non-State actors, or civilians with purposes strictly linked to the conflict<sup>304</sup>, which is different from the sexual violence perpetrated by individuals during a time of conflicts due to the breakdown of community and family structures, lack of security, absence of rule of law and prevailing impunity<sup>305</sup>.

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UN Doc CEDAW/C/GC/30 (2013) Para.25.

<sup>300</sup> *ibid* para. 45&70

<sup>301</sup> *ibid* para. 28.

<sup>302</sup> *ibid* para. 84.

<sup>303</sup> *Inter alia*: promoting gender equality; strengthening women's participation, protection and rights in conflict and post conflict; creating inclusive and more democratic peacemaking; turning from gender inequality to gender justice.

<sup>304</sup>: strategy to advance military objectives; part of a widespread or systematic attack directed against a civilian population, or acts of genocide; as mean to weaken and gain control over communities; as war booty; as a way to bind soldiers and fighters together, as a form of camaraderie. It can be used to punish or destroy a particular group, instil terror in them, retaliate against them or cause them to flee from a location; in detention centres, prisons and interrogation facilities, as a form of torture, to punish, humiliate, intimidate or coerce information. In particular, as stressed in the theoretical chapter, CRSV can be a side effect of a spiral of violence; an exercise of power and a trial of strength, a mean of humiliation and feminization of enemies; as consequence of the process of dehumanisation of the war; and as weapon of war.

<sup>305</sup> Sara Ferro Ribeiro and Danaé van der Straten Ponthoz International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law, Second Edition, (2017).

The table is divided into three sections: 1) National Action Plan to WPSA; 2) Reporting cycle before the adoption of GR.n.30; 3) Reporting cycle after the adoption of GR.n.30. Every section has criteria to be fulfilled; the criteria included: the adoption (or not) of the documents thereto, the year of adoption, the establishment (or not) of a budget to implement the NAPs; the inclusion (or not) of specific references to CRSV in the NAP, for the first section. For the second and third sections: the year in which the reporting cycle has started, the inclusion (or not) of references on CRSV in all the reporting process, including the follow-up; the inclusion of the implementation and/or adoption of an NAP in the follow-up procedure.

The reporting cycles considered are those published on the OHCHR website in all their steps: State report; List of Issues; reply to the List of Issues; concluding observations; follow-up, that generally were the last two reports.

#### **A. The adoption of an NAP**

The adoption of an NAP in the eleven countries equipped with these documents was often encouraged by the Committee during the reporting procedure pursuant to art. 18 of the CEDAW Convention.

The Committee used in some circumstances the follow-up instrument to urge the adoption of such documents, strengthening *de facto* the importance of complying with this recommendation.

- The use of the follow-up mechanism to urge the adoption and/or the implementation of NAPs to UNSCR 1325

The follow-up mechanism has been used by the Committee to encourage States to adopt and/or implement the NAP to implement UNSCR 1325.

Colombia and Iraq received the request to adopt the NAP for implementing

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf) accessed 25/06/2018.



UNSCR 1325.

Colombia did not accept the invitation of the Committee arguing that the implementation of UNSCR 1325 was not enforced by the adoption of an NAP, but through different governmental policies, respecting the four pillars of the Resolution itself. Specifically, the actions taken were set out in the National Public Policy on Gender Equality and the Comprehensive Plan for Guaranteeing Women a Life Free of Violence<sup>306</sup>. The strategy that Colombia has enforced to tackle issues concerning women, peace and security, among which there are punctual provisions to deal with CRSV, is overall a solid and efficient strategy. Nevertheless, one could argue that, not being condensed in a unique NAP, the provisions are less accessible by citizens and monitoring their implementation can be more difficult.

On the contrary, Iraq has been an example of due diligence in complying with the request of the Committee, since it not only adopted the document, but conformed to the draft before the adoption partially following the advice of the institution. For instance, it established a budget to implement the document, while it disattended the request to include in the draft a timeframe in the matrix<sup>307</sup>.

As seen previously in this work, establishing a budget to implement an NAP is crucial for the implementation of the document itself, since without financial provisions it remains written words rather than becoming actions brought into effect. The choice of five of the eleven States considered not to equip the NAP with a budget, has to be understood not only as a lack of resources, but rather as an act of politically informed free will: adopting an internationally important instrument to conform one's own country to the international standards publicly showing virtue in cooperating within the international community, rather than adopting it with a belief in the potential of the document itself.

Côte d'Ivoire, Nepal, and Nigeria received requests of follow-up report on the implementation of their NAPs.

Côte d'Ivoire was invited by the Committee to submit a follow-up report on

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<sup>306</sup> CEDAW Committee, 'CEDAW/C/COL/CO/7-8/Add.1' (1 June 2016).  
<[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CEDAW&Lang=en](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CEDAW&Lang=en)> accessed 25/06/2018.

<sup>307</sup> CEDAW Committee 'CEDAW/C/IRQ/CO/4-6' (10 March 2014) par 12  
<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5)> accessed 25/06/2018.

the steps undertaken to implement the recommendations contained in paragraph 29 which concerns CRSV. Specifically the institution urged the State to implement the NAP to UNSCR 1325, concerned about: the lack of comprehensive measures to assist victims of sexual violence “covered by the 2007 Ordinance providing amnesty for most crimes committed during the conflict”, CRSV included, and the difficulties in accessing the criminal justice system faced by survivors of CRSV. It recommended the implementation of the document in conjunction with the implementation of CEDAW to, *inter alia*, “ensure that victims of sexual crimes receive appropriate reparations and rehabilitation, including by mobilizing international funding to this effect<sup>308</sup>”.

Analogously, the Committee invited Nepal to implement the UNSCR 1325 in the paragraph concerning CRSV; in particular, the Committee expressed concerns over: the lack of investigation and prosecution for CRSV cases; the difficulties encountered by conflict-affected women in accessing justice, in particular during the procedure of filing complaints; the lack of women’s participation in peace and reconstruction processes. Moreover it asked to ensure rehabilitation, reparation and counseling to survivors of CRSV through the implementation of UNSCR 1325<sup>309</sup>.

Nigeria has been recalled by the institution specifically on: the lack of a budget; the proliferation of small arms and light weapons which have a huge impact on women; the persistent exclusion from peace negotiation, conflict prevention, peacebuilding and post-conflict efforts. Moreover it stressed the importance to continue to investigate, prosecute and punish perpetrators of alleged sexual exploitation.<sup>310</sup>

In these three cases the partnership between NAPs to UNSCR 1325 and CEDAW Convention to address CRSV is crystal-clear.

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<sup>308</sup> CEDAW Committee ‘CEDAW/C/CIV/CO/1-3’ (8 November 2011) para. 29  
<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5)> accessed 25/06/2018.

<sup>309</sup> CEDAW Committee ‘CEDAW/C/NPL/CO/4-5’ (11 August 2011) para. 36  
<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5)> accessed 25/06/2018.

<sup>310</sup> CEDAW Committee, ‘CEDAW/C/NGA/CO/7-8’ (24 July 2017) para. 16  
<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5)> accessed 25/06/2018.

Several States, like Afghanistan, Burundi, the Central African Republic, Congo, Mali and South Sudan adopted the NAP to UNSCR1325 during the reporting cycles to the Committee, in the major part of the cases after the Committee had solicited them to do so.

Bosnia and Herzegovina, a country deeply shaken by the conflict in the '90, showed its virtue in the implementation of UNSCR 1325 and advancement of the WPSA, adopting the revised NAP for the period 2014-2017. The only State following the behaviour of Bosnia and Herzegovina, was Nigeria with the new revised NAP for the period 2017-2020.

Despite Sri-Lanka and Myanmar having a draft<sup>311</sup> ready of NAP to UNSCR 1325, and even though the Committee has urged them several times in their reporting cycles to adopt an NAP in regions which are experiencing a high rate of human rights violation during conflict, CRSV included, both the States have not yet adopted the document.

Finally, Syria and Yemen have not adopted the document, nor have they prepared a draft, despite the recommendations of the Committee. Syria in its reply to the Committee's List of Issues argued it has been developing awareness-raising activities on the issues concerning UNSCR 1325, programmes to include women in the peacemaking sector and a mechanism for the implementation of protection directed to women<sup>312</sup>. The path chosen to implement UNSCR 1325 without adopting an NAP seems similar to the example of Colombia, except for the fact that these provisions are absolutely not enough to address all the issues of WPSA, CRSV included.

Regarding Yemen, on the website of the OHCHR only the last two reported cycles are published entirely, respectively the one on the VI<sup>o</sup> State report to CEDAW and the VII<sup>o</sup> and VIII<sup>o</sup> combined State reports to CEDAW. While the former is completed, for the latter only the List of issues to the State has been

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<sup>311</sup> CEDAW Committee, 'CEDAW/C/MMR/Q/4-5/Add.1 (3 May 2016); CEDAW/C/LKA/Q/8/Add.1 (10 February 2017 )para.82 <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=22](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=22)> accessed 25/06/2018.

<sup>312</sup> CEDAW Committee, 'CEDAW/C/SYR/Q/2/Add.1' (22 January 2014) <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=22](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=22)> accessed 25/06/2018.

published, suggesting that the reporting process has not been concluded yet. In the reporting cycles to the VI<sup>o</sup> State report to CEDAW the Committee did not invite the State to adopt an NAP to implement UNSC Resolution 1325; a shortcoming by the CEDAW that can maybe be explained by the fact that at that time there was no conflict and probably the Committee decided to prioritize other recommendations.

The reporting cycle to the VII<sup>o</sup> and VIII<sup>o</sup> combined State reports to CEDAW started at the same time as the conflict. In the List of Issues, the only document of this round published on the OHCHR website, the Committee asked the State to indicate steps taken to adopt an NAP to UNSCR 1325<sup>313</sup>. Unfortunately, the reporting cycle not being concluded, it is difficult to understand how the dialogue between the two entities has increased the solidity of the measures to deal with the CRSV phenomenon in the Country.

The frequent references to UNSCR 1325 and the NAP in the reporting cycles to the Committee have increased the Resolution's scope and it could potentially create further avenues of accountability<sup>314</sup>; furthermore, according to Swaine, this strong inter-linkage between WPSA and other international instruments for gender equality such as the CEDAW and the Beijing Platform for Action, often helps to locate the action plan within sectors that are pre-determined by prior international commitments on gender equality<sup>315</sup>.

On the topic, this analysis has shown that the link mentioned above does not lay only in the words of these documents but it has been strengthening, day by day, through the political action of the Committee with the Member States of the CEDAW Convention.

- The inclusion (or not) of specific references to CRSV in the NAP and in the reporting cycles to the Committee

It has been particularly difficult to build an analysis regarding the way in

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<sup>313</sup> CEDAW Committee 'CEDAW/C/YEM/Q/7-8'  
<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=18](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=18)> accessed 25/06/2018.

<sup>314</sup> Swaine (n.241) 433.

<sup>315</sup> *ibid* 418.

which CRSV has been addressed in the NAPs considered, since the major part of the States do not specifically distinguish CRSV from SGBV in conflict or post-conflict, while redacting their national documents. Thus, it has not always been possible to understand when the actions provided aim to address the former or the latter phenomenon.

One could argue that every action which tackles SGBV includes also CRSV. Instead and in particular when an action regards the legal dimension of the fight against a crime, the problem of distinguishing the two phenomena arises with vehemence. For instance, it is different to bring to justice someone charged with genocide, crimes against humanity or war crimes, someone who *inter alia* often holds a high position in the armed forces of the State, and to bring to the justice a civilian who has presumably committed a sexual crime against a woman, without having the intention to advance military objectives or perpetrate the crime as part of a widespread or systematic attack directed against a civilian population, and gain control over communities.

Even though several States have written in the NAPs befitting actions to tackle SGBV, rooting them around the four pillars of the UNSCR 1325, we should verify to what extent these provisions are accessible to survivors of CRSV. Nonetheless, assuming that Resolution 1325 and following have to be contextualized in conflict or post-conflict settings, we have to presume that all the provisions set up in the NAPs also regards CRSV, even when the difference with SGBV in conflict has not specifically been addressed. This shortcoming should be highlighted by the institutions in charge, such as the UNSC, the UN Secretary-General and the CEDAW Committee.

The following States have addressed the phenomenon of SGBV in their NAP without making references to the link with conflict, thus in the table they are signed with a yellow V.

## Afghanistan

Afghanistan refers to CRSV in the introduction of its NAP<sup>316</sup> as a phenomenon which impacts disproportionately women in the country itself. To ensure the successful implementation of the document, the State set up a separate implementation plan based on the matrices to clarify the responsibility of the lead and supporting agencies and the steps to be taken in terms of coordination, monitoring and financing of the NAP<sup>317</sup>. The document roots around the four pillars of UNSCR 1325 and SGBV has been addressed in the matrix in terms of the protection and prevention pillars. The actions never refer to CRSV but to Violence Against Women (VAW); in the matrix<sup>318</sup> the actions provided *in re* are mainly focused on the improvement of the Afghan legal framework to deal with gender-based violence. Indeed it established: the implementation of a monitoring system to advance the EAW law; provisions to strengthen the justice sector with a focus on the prosecution of VAW cases; the establishment of a high level Committee to monitor the status of women's human rights in detention facilities and protect women detainees from violence; the establishment of legal clinics within the scope of community centers; and the launch of an assessment of the legal measures to protect victims and witnesses considering their needs. Less space is given to the health and psychological support for victims which is traced in one action only. Finally the government established training for all militaries on how to protect women from sexual violence, rather than only on how to not violate their human rights.

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<sup>316</sup> The Islamic Republic of Afghanistan 'NAP' (n.260)2.

<sup>317</sup> *ibid* 7.

<sup>318</sup> *ibid* 13-26.

## Central African Republic

CRSV has been referred to in the NAP in a specific introductory paragraph<sup>319</sup>, where the acts of sexual violence committed between 2002 and 2003 have been highlighted. In this paragraph a reference is also present to the Trial to Jean-Pierre Bemba, acquitted of charges of war crimes and crimes against humanity, among which there were several cases of CRSV, last June by the Appeals Chamber of ICC<sup>320</sup>.

Nevertheless, the matrix<sup>321</sup> of the plan never mentions CRSV or SGBV committed in conflicts. The Central African Republic concentrates its effort on proposing an ample range of training for defence and security forces, community leaders and NGOs, staff of basic social services (Health and Social Affairs), media staff, magistrates and lawyers, on sexual violence and GBV. Despite the importance of these provisions the government forgets to stress the role of these actors in dealing with the phenomenon and what their potential could be in doing so.

Other provisions aim: to create protection policies for women and girls; to promote legal and judicial support for victims; to strengthen the technical and institutional capacities of the structures involved in responding to sexual violence and to develop the role of existing courts and tribunals in dealing with cases of SGBV. The strengths of this document are certainly the provision of a sentinel surveillance system and a green line for reporting and documenting cases of SGBV; the exclusion of perpetrators of SGBV from the benefit of amnesty and the creation of a compensation fund for victims of sexual violence that is almost unique in the NAPs considered in this analysis. Interesting is also the the commitment to support the economic initiatives of women victims of violence and the implementation of incentives for schooling girls victims of sexual violence and GBV. Overall the governments has touched the key points to address SGBV. We should hope that these actions are set up also for victims and survivors of CRSV.

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<sup>319</sup> Republique Centrafricaine ‘NAP’(n.263)6-7.

<sup>320</sup> <<https://www.ijmonitor.org/2018/06/the-bemba-appeals-judgment-the-icc-facing-the-tower-of-babel/>> accessed 25/06/2018.

<sup>321</sup> Republique Centrafricaine ‘NAP’(n.263) 18-32.

## **Côte d'Ivoire**

The country never refers to CRSV neither in the introductory paragraph, nor in the matrix.

Nevertheless, it refers to SGBV perpetrated in conflict situations, thus, following the assumption above mentioned, we presume the inclusion of the former phenomenon into the latter. The NAP develops the activities through the pillars of protection and participation.

Côte d'Ivoire lists a series of objectives, activities and results expected. None of the activities which regards SGBV is linked to a conflict situation. The activities<sup>322</sup> which deal with SGBV are included under the label: Protecting women and girls against sexual violence and Female Genital Mutilation. The provisions set up are only the implementation of a warning mechanism; the establishment of a specific police department to deal with SGBV and the amendment of legal procedures regarding the prosecution of sexual violence. Finally a reference to facilitate access to medical care through the reduction or abolition of the costs is in place for survivors of SGBV. The provisions are too few to address the phenomenon holistically, nonetheless if implemented it could represent a starting point in a country lacking in services and infrastructures.

## **Mali**

Mali does not specifically address CRSV and when it mentions SGBV perpetrated in conflict it refers also to domestic violence<sup>323</sup>, corroborating the thesis that States should be required to make a major distinction between CRSV and SGBV in conflict. In the matrix<sup>324</sup> the actions devoted to tackle SGBV are few, and the reference to a conflict context has been made only when the State offers training on IHL and the method of referral to international courts. The activities provided regard mainly the legal sector. Indeed the country intends to organize and multiply

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<sup>322</sup> the Republic of Cote d'Ivoire 'NAP' (n.266)15.

<sup>323</sup> Republique du Mali 'NAP' (n.267) 3.

<sup>324</sup> *ibid* 6-16.



legal and judicial support services for victims to bring more SGBV perpetrators to justice.

## **Iraq**

The country addresses the impact of the conflict on women in a specific paragraph of the document<sup>325</sup>, nevertheless, the references to SGBV in conflict are veiled and the NAP never uses the world CRSV. Moreover in the paragraph “Protection, Security and Prevention<sup>326</sup>,” the country refers to sexual violence after conflict due to political instability and widespread impunity, confirming a reference more to SGBV in conflict or post-conflict as explained above, rather than a reference to CRSV.

The pillars of Resolution 1325 included in this NAP are: protection, prevention and participation; other four pillars are added, namely Promotion; Social and Economic Empowerment; Legislation and Law Enforcement; Resource mobilization, Monitoring and Evaluation. The NAP does not established a matrix. The provisions to tackle SGBV are only two - Integrate women’s rights into the justice and security system; protect victims and provide rehabilitation and reintegration for survivors into society during and after the post-conflict period - and are included under the pillar Protection and Prevention<sup>327</sup>.

## **Congo**

Congo is the only State of the eleven which have adopted the NAPs to UNSCR 1325 that has written a “poor” document which does not include a budget, a matrix, indicators and a timeframe. Nevertheless it opens the document highlighting the widespread use of rape as a weapon of war<sup>328</sup>. The aim of the NAP is to make progress in terms of gender equality in the field of policy and its

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<sup>325</sup> The Federal Government of Iraq and Kurdistan Regional government ‘NAP’ (n.265)6.

<sup>326</sup> *ibid* 11-12.

<sup>327</sup> *ibid* 15-16.

<sup>328</sup> The democratic Republic of The Congo ‘NAP’ (n.264)2.

implementation both at national and international level<sup>329</sup>. The NAP has been set up to contribute in guaranteeing the security of women, the rule of law and to fight violence against women. The provisions are sketched<sup>330</sup> and only roughly offer support, legal clinics and programmes to combat impunity.

On the contrary, the following countries have adopted substantial NAPs where, *inter alia*, references to CRSV are more evident. Two of these States, namely Bosnia and Herzegovina and Nigeria have also adopted a revised NAP.

### **Bosnia and Herzegovina (BiH)**

The first NAP of this country was developed with accuracy by the government, nevertheless the big shortcoming is the absence of a budget.

The NAP recalls the recommendation made by the CEDAW Committee during the Bosnia and Herzegovina's reporting cycle started in 2011. For instance, the State reports in the document the following recommendation which concerns CRSV in particular "The Committee urges the State party to explicitly recognize and adequately protect women who were civilian victims of sexual violence during the armed conflict through a State law as well as through the allocation of financial resources for adequate social provisions..."<sup>331</sup>,

The State recognises two main problems in dealing with violence against women in conflict: the access to justice which encounters several obstacles and the question of redress due to psychological difficulties left by the traumatic experience of the war and the risk of facing a re-victimization during a trial<sup>332</sup>. Knowing the history of Bosnia and Herzegovina in the International Criminal Tribunal for the former Yugoslavia, it has to be presumed that the country refers to CRSV even using the term SGBV, linking it always with conflict and post conflict situations.

A huge part of the NAP addresses human trafficking which is a widespread phenomenon in the country itself.

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<sup>329</sup> *ibid* 3.

<sup>330</sup> *ibid* 7.

<sup>331</sup> The Federation of Bosnia and Herzegovina 'NAP' (n.261)7.

<sup>332</sup> *ibid* 19.

In the Matrix<sup>333</sup> of the NAP objective 6 is dedicated to women and girls victims during the war, and the list of activities mainly roots around the prevention and protection pillars of the WPSA. Indeed, the activities planned for instance include: applying the “zero tolerance” method to any form of illicit sexual behavior of the peacekeeping mission personnel; incorporating in the curricula of police academies gender-sensitive topics in particular around the concept of prohibition of sexual harassment and gender discrimination; empowering women, civilian victims of war by providing psychosocial assistance and strengthening capacities and developing and improving training modules for family doctors and social workers to address retraumatization problems.

Before the adoption of the revised NAP, the CEDAW Committee, during the reporting cycle to the fourth and fifth combined State reports, noted failures in: taking concrete measures to include a definition of wartime sexual violence in line with international standards, especially at the entity level; setting up cooperative mechanisms between prosecutors and courts competent to deal with war crimes at all levels of the State party; taking sufficient measures to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, measures of protection and psychological support<sup>334</sup>.

These shortcomings are addressed in the revisal NAP<sup>335</sup> which was adopted during that reporting cycle.

The last State report to the CEDAW published in April 2018 refers to the Bosnia and Herzegovina Naps once again confirming the strong partnership between WPS and CEDAW and highlights significant improvements on the matter of concern. Significantly the number of war crimes indictments with element of sexual violence increased; sexual violence has been defined as war crime and crime against humanity in the Criminal Code of BiH; a draft has been provided of the Law on Victims of War Torture, aiming to provide social assistance to survivors, including victims of CRSV; and in the Decision on Protection of Civil Victims of

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<sup>333</sup> *ibid* 46-98.

<sup>334</sup> CEDAW Committee, CEDAW/C/BIH/CO/4-5 (30 July 2013) para. 9–10-11-12. [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5) accessed 25/06/2018.

<sup>335</sup> The Federation of Bosnia and Herzegovina ‘Revised NAP’ (n.261)18-19.

War in Bosnia and Herzegovina the discriminatory provision has been abolished, which recognized the status of survivor of wartime sexual violence only to those who, in addition to evidence of physical injuries, could prove that the perpetrator was found and convicted<sup>336</sup>.

Reading both the NAPs and the reporting cycles to the CEDAW Committee, it is clear how the recommendations of the CEDAW have guided and challenged Bosnia and Herzegovina in building an efficient architecture to deal with CRSV in the country which still has gaps to overcome. Bosnia and Herzegovina has shown a strong commitment to and respectful for international requests, both in regards to NAP to UNSCR 1325 and the reporting cycle under CEDAW

### **Burundi**

The matrix<sup>337</sup> of Burundian NAP is not divided according to the four pillars, rather it included prevention, participation and protection, but does not mention the relief and recovery pillar.

The NAP does not use the term CRSV, and this phenomenon often overlaps with SGBV. Nevertheless, studying the matrix, several actions can potentially include CRSV, since more than once the conflict setting where SGBV is perpetrated is mentioned.

Among the actions offered, of utmost importance are: the proposal of a national study on sexual violence and trafficking of girls in conflict and post-conflict situations and on the effects of armed conflict on women and girls; the establishment of a collective redress fund for victims of abuse and rape during the war; the establishment and operationalization of regular dialogue mechanisms between security actors and the local and national population on gender-based violence and of special protection mechanisms for women and girls against gender-based violence.

The NAP also considers the legal dimension in dealing with SGBV in

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<sup>336</sup> CEDAW Committee, CEDAW/C/BIH/6 (19 April 2018) [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=29) accessed 25/06/2018.

<sup>337</sup> Republique du Burundi 'NAP' (n.262)11-21.

particular providing the promulgation of a specific law against gender-based violence and training judges from different jurisdictions on GBV.

Finally it proposes to train a vast portion of stakeholders (security forces, community leaders and human rights organisations) on national and international instruments to protect the rights of women in times of conflict confirming the multi-agency character of these strategies to fight against SGBV and CRSV.

## **Nepal**

The NAP of Nepal is divided into two moments (2011-2012 / 2015-2016) and roots around six pillars<sup>338</sup> which include the four set up by Resolution 1325. The two pillars added are labelled as “promotion” and “Resource Management, Monitoring and Evaluation”.

Nepal refers in it to sexual violence in conflict due to the weakened law and order situations, without mentioning who the perpetrators have been and thus without distinguishing CRSV from SGBV.

Nonetheless, Nepal sets up several provisions in the matrix<sup>339</sup> which create a solid mechanism to deal with the phenomenon of SGBV, often connected with conflicts, showing a deep understanding of what the elements on which to build a strategy are. Indeed it calls for the need: to create a mechanism of investigation by maintaining confidentiality and dignity for survivors and make legal provisions to prosecute perpetrators; to maintain zero tolerance regarding SGBV in the security sector; to address issues of SGBV in all peace agreements; to exclude SGBV from amnesty and to set up the infrastructure necessary for establishing the Truth and Reconciliation Commission.

Also regarding services for survivors the government is intent on providing free medical service and psychosocial and legal counselling for victims of SGBV in conflict; formulating gender-sensitive relief programmes with the participation of women victims of conflict and giving survivors a relief and recovery package.

Finally it provides an emerging fund for addressing the immediate needs of

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<sup>338</sup> The Federal Democratic Republic of Nepal ‘NAP’ (n.268)17-20.

<sup>339</sup> *ibid* 25-48.

women and girls during conflicts.

## **Nigeria**

The NAP recognises SGBV in conflict as a plague on its society<sup>340</sup>, even though it never specifically refers to CRSV. The first NAP roots around 5 pillars, namely, Prevention, Participation Protection, Promotion and Prosecution.

The matrix<sup>341</sup> of Nigeria is focused on strengthening the political security measures to protect women in conflict and the capacity of the courts to handle cases of GBV; on undertaking research and collection of gender disaggregated data on the impact of violence in conflict; on providing support (including staff training) to the shelters for victims of GBV and offer psycho-social and trauma counselling to survivors; on providing materials to women and girls victims of SGBV in conflict; on training and skills development programmes on gender justice with focus on GBV issues for judges, lawyers, the police and prosecutors.

The Nigerian NAP is one of the few NAPs that specifically ask for the recruitment of a Gender Adviser in the police force and to implement advocacy activities directed to policy makers and security agencies on policies and laws addressing issues related to gender-based violence (GBV) against women and girls in conflict zones. This last provision is of particular importance because it encompasses the real potential of the NAP as a guide tool for advocating political actors on gender-based violence (CRSV included and in primis).

The revised NAP adopted by Nigeria stresses the shortcomings of the first document; in particular, it states that the first NAP does not address issues of radicalization, demobilisation and reintegration of victims of insurgency and does not address post-conflict and reintegration issues, such as psychological and trauma counselling<sup>342</sup>. Thus, the new document aims to overcome the previous gaps.

In particular the revised NAP recognises SGBV as a phenomenon perpetrated by the insurgents and thus connected with the conflict.

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<sup>340</sup> The Federal republic of Nigeria 'NAP' (n.269)5.

<sup>341</sup> *ibid* 19.

<sup>342</sup> *ibid* 'Revised NAP' VIII.

The outcomes regarding sexual violence in conflict, Nigeria would like to achieve with the new document encompass a wide range of elements crucial to achieve peace. Indeed it hopes: to operationalise a gender responsive mechanism to prevent and monitor women's rights violations in time of peace and conflict; to grant relief, early recovery and long-term recovery programmes that respond to the particular needs of women and girls; to establish special courts and to increase the number of reported cases of violations by security actors investigated; and to assure gender sensitive post-conflict institutions such as the transitional justice and reconciliation mechanism.

### **South Sudan**

South Sudan published its first NAP to the UNSCR 1325 in 2015 for a period of five years (2015-2020) being supported in its draft and implementation by several stakeholders, from the civil society to agencies of the international community, such as, inter alia, UN WOMEN and the United Nations Mission in South Sudan (UNMISS). These actors have formed the National Steering Committee with the aim to facilitate the identification of the priority areas the NAP should include<sup>343</sup>.

The NAP is particularly focused on strengthening the participation of women in peace and security efforts, on including a gender-sensitive perspective in designing all policies related to peace and security, and to achieve a gender-inclusive environment for justice, sustainable peace, and the recovery and reconstruction process the State is facing.

It also addresses CRSV, calling for sentences proportionate to the grave offences of perpetrators of sexual violence in conflict settings.

The country also reflects on the socio-economic condition of women which exacerbates risks to their reproductive health. Here, the security of women becomes a broad concept including different elements that can compromise the fulfilment of their rights and dignity. South Sudan reserves special attention for ex-combatant women during the social reintegration period when they are at risk of double

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<sup>343</sup> The Republic of South Sudan 'NAP' (n.270)8.

stigmatization, due to their choice to engage in combat which is in violation of the culture and traditions of the country.

These innovative elements in South Sudan's NAP give hope for a substantial cultural change in favour of women, particularly in a moment like the present, where the deteriorating situation with Sudan is mostly affecting women and children, in terms of severe human rights violations.

South Sudan ratified the CEDAW Convention in 2015, and to date, no State reports have been submitted to the CEDAW Committee.

The NAP of South Sudan establishes one of the most solid and structured strategies to tackle the phenomenon (at least on paper) as compared with the other eleven States. Specifically it gives wide importance to preparing the security sector to deal with CRSV: recruiting qualified women into the armed forces to perform gender sensitive functions and into the army to work in crime prevention units with specific focus on support and prevention of SGBV; facilitating a Special Protection Units dedicated to SGBV; recruiting gender advisors in the armed forces; and training police officers to facilitate women in reporting SGBV cases. The legal dimension of the machinery to tackle SGBV provides the establishment of forensic laboratories for criminal investigations; the reform of laws in conformity with international human rights standards and humanitarian and international criminal law; the prosecution of perpetrators of SGBV among the armed forces and peacekeepers with sentences proportionate to the offence; the strength of the capability of the State and national legal systems to deal with cases of violence, in particular SGBV and the training of all the actors involved in the legal sector on SGBV prevention and protection measures, gender issues and human rights.

The South Sudan Nap aims also to organize training and sensitization programmes for all technical people working in national and State governments, policy makers and parliamentarians on the gendered effects of war and to involve women in the development of early warning systems to monitor potential crisis situations.

Regarding the support for survivors South Sudan offers the development of a holistic gender-sensitive public health intervention approach to address the need of victims and ensure their assistance; the establishment of special units in existing



health facilities to deal with SGBV; and SGBV survivor support groups at the community level.

Finally South Sudan includes a unique idea encouraging the formation of Male Champion Groups to campaign against SGBV and strengthen efforts to prevent sexual violence in conflict areas and in post-conflict contexts.

Overall the NAPs analysed are focused in particular on the legal and support dimension of the strategy to address sexual violence, too often not linked with conflict or post-conflict contexts.

Few States like South Sudan, Nigeria and Burundi reflect on the importance of conducting a study and collecting data on the impact of war on women. Burundi and the Central African Republic are the only States that offer, at least on paper, a fund for victims of SGBV in conflict. Finally only the Nepal and the South Sudan Naps specifically gives relevance to the value of investigation procedures. How and if all of these activities have been or will be implemented is the key momentum of the potential of every NAPs.

## **B. The reporting cycle before and after the General Recommendation n. 30**

The choice to divide the reporting cycle in “before and after the adoption of GR.n.30” was made with the certainty of finding a stronger recall to address CRSV in the Committee's recommendations to States in the cycles after the adoption of GR.n.30. Instead, The Committee punctually addressed the phenomenon even before GR.n.30, showing a strong interest in the problem, usually considered by the institution distinct from SGBV.

The explanation why in some cases the Committee did not dealt with CRSV in the reporting cycles before the adoption of the GR.30, is that there was no ongoing conflict or post-conflict settings in the country under exam to date. This was the case of Iraq, Mali, Nigeria, Syria and Yemen; for all these countries, CRSV was addressed in the following reporting cycles, after the beginning of their conflicts.

It is still important to highlight that the recommendations and/or the request for information on CRSV by the Committee have acquired much stronger political status since the adoption of GR.n.30. Indeed, the document has been cited several times as the instrument to comply with in order to implement the CEDAW Convention in time of conflict and post-conflict, regarding violence against women.

- *The use of the follow-up mechanism to address CRSV*

The follow-up mechanism has been used several times to put pressure on the States on the CRSV concern.

Specifically, in Afghanistan, Bosnia and Herzegovina, the Central African Republic, Côte d'Ivoire, Myanmar, Nepal, Nigeria and Syria<sup>344</sup>, the Committee required the States follow-up report on the measures they took to tackle CRSV. The follow-up mechanism helps not only in monitoring the behaviour of the State, but above all can serve as a powerful deterrent for States. Indeed, a State is aware it will publicly show its behaviour in front of the international community. In this specific case, where we talk about severe violations of human rights perpetrated by State or non-State actors participating in the conflict, and that could amount to genocide, war crimes or crimes against humanity, the deterrent power of monitoring mechanisms should be constantly publicly used by the institutions in charge.

Finally, the Committee's decision to use the follow-up mechanism twice in the reporting cycles of Sri-lanka<sup>345</sup>, asking for information on CRSV, drew attention to the importance of its concern both in terms of the diffusion of the phenomenon and of the lack of actions taken by the country to tackle the problem.

For four countries the analysis could not be precise, since some have not adopted NAP to UNSCR 1325 or have not ratified the CEDAW Convention. This is the case of Somalia and Sudan-Darfur. Instead, although Libya ratified CEDAW, it has not submitted any State report to the Committee since the first one in 1998,

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<sup>344</sup> CEDAW Committee

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5) accessed 25/06/2018.

<sup>345</sup> CEDAW Committee 'CEDAW/C/LKA/CO/7 (para.52)'; 'CEDAW/C/LKA/CO/8 (para.52)' [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5) accessed 25/06/2018.

before UNSCR 1325 and has not adopted an NAP yet.

In conclusion, in almost all the reporting cycles the Committee urged States to address CRSV, mainly focusing its recommendation on recurring themes, namely: data collection; support to survivors; access to justice and protection.

The phenomenon of CRSV has usually been addressed by the Committee as distinct from SGBV against women in time of conflict. The choice of the Committee confirms the idea that the two phenomenon has to be perceived as different, even though are both part of the *ample genus* of gender-based violence.

What emerges from this analysis is the commitment of the United Nations in addressing CRSV and the vital importance of the NAPs to strengthen this effort.

The constant references to the importance of the adoption or implementation of NAPs made by the CEDAW Committee to all the States reports analysed, have enriched and demonstrated the potential of these documents.

The dialogue demonstrated between CEDAW and NAPs to implent UNSCR 1325 is an incessant exchange of vital nourishment for the advancement of WPSA and has to be preserved and looked at as an example of cooperation and connection between the international and national level of world politics.

## CONCLUSION

Atrocities occurring in many conflicts around the world, including CRSV, do not find the place they deserve in the news. Thus, they remain in the darkness of those who are experiencing that brutality, and in those few working in the field of human rights. Even when CRSV is reported in the media, it almost never emerges as other grave human rights violations in conflict or post-conflict settings. In time of peace as well as in time of conflict, every form of gender-based violence struggles to emerge for several reasons, among which the difficulty for victims both to tell their story and for their stories to be heard; the lack of services prepared to receive and deal with the cases presented; and above all, the paradoxical idea of ‘normality’ that surrounds these violations in all the societies, illustrating the remnants of patriarchy.

GBV and CRSV in particular, disproportionately affects women and girls due to the historical and structural gender inequalities, where violence is, on the one hand, formally recognised as violation in international and domestic law in almost all States, but, on the other hand, it is tolerated by societies. To confirm what we have just said, CRSV has been considered for centuries unfortunate collateral damage rather than a tool of war<sup>346</sup>.

The originality of this work lies precisely in the study of the nexus between CRSV, CEDAW and selected National Action Plan (NAPs) in implementing UN Security Council Resolution 1325 on Women, Peace and Security.

In reality, CRSV is a widespread phenomenon which affects millions of citizens around the world. It is disproportionately perpetrated against women and girls. Nonetheless several reported cases of male survivors and the jurisprudence of international tribunals have confirmed that also men and boys are targeted, similarly due to gender-based reasons, as demonstrated in the second chapter of this work.

Moreover, this violation is not only a devastating individual plague, but its severity can amount to genocide, crime against humanity and war crimes, and thus

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<sup>346</sup> <<http://www.un.org/en/preventgenocide/rwanda/pdf/Backgrounder%20Sexual%20Violence%202013.pdf>> accessed 03/07/2018.

be a true weapon of war. It being a crime firmly prohibited by IHRL, IHL and ICL, it is the duty of the international community to tackle the problem<sup>347</sup>.

Two of the main strategies to comply with this duty of paramount importance are: on the one hand, to protect the victims, guarantee justice and support the survivors, in those contexts where CRSV has been perpetrated; and, on the other, to assure a preventive framework to guarantee future generations that those crimes will never again be committed.

The Women, Peace and Security Agenda, which includes these strategies, has therefore found a central place in this work, as the tool the international community has set up to tackle, *inter alia*, the phenomenon of CRSV in the human rights law framework. Exploring its potential and implementing it with due diligence and in a multi-level spirit shall be “the must” of the international community as a whole.

The analysis conducted among selected NAPs to UNSCR 1325 of conflict-affected countries has shown the potential and the limitations of these documents in advancing WPSA. NAPs to implement UNSCR 1325 can represent a crucial means to guide governments and the stakeholders in charge, to address CRSV under the four pillars and various objectives of UNSCR1325, which must be implemented giving all equal emphasis. An NAP to UNSCR 1325 is a joint commitment by the government and its society vis à vis each other and the international community, which cannot remain disregarded. It is a way to devise a strategy divided point by point, resource by resource, time by time in order to protect its own population. It is a document that clarifies in black and white which next steps to take to deal with women, peace and security issues, among which CRSV should have a special space.

The potential of this instrument has been demonstrated and enriched by the constant references to the importance of its adoption or implementation made by the CEDAW Committee to all the States reports analysed, which led several of the nineteen States analysed to adopt or enforce the implementation of these documents.

The interplay demonstrated between CEDAW and NAPs to UNSCR 1325 is an incessant exchange of vital nourishment for the advancement of WPSA and

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<sup>347</sup> Gloria Gaggioli, 'Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law' *International Review of the Red Cross* 96(894) (2014): 505.

has to be preserved and looked at as an example of cooperation and connection between the international and national levels.

The limitation of these documents lies mainly in the absence of an established budget to give concreteness to the activities proposed. The fact that only 17 of the 74 UN Member States<sup>348</sup> and only six out of eleven States analysed with an NAP to UNSCR 1325 have equipped the document with a budget, shows that striving for a concrete implementation of these documents is the exception rather than the rule among States. Furthermore, the mild provisions, in particular in the security sector, disarmament, conflict prevention, peacebuilding and reconstruction, of several NAPs, weaken the potential of these instruments.

Empirical evidence suggests that other elements can also undermine the implementation of an NAP: the absence of an inclusive process and meaningful participation by civil society for the preparation, implementation, monitoring and evaluation of the NAP. Potential absence of a timeframe, budget, indicators or monitoring and reporting can reveal to what extent the government is honouring its commitment.

Against all odds, NAPs remain a crucial document, a key instrument for civil society to improve the activities of advocacy and lobby to the governments and raise awareness of women, peace and security issues, and thus of inclusive security and sustainable peace.

Among the main challenges in addressing the phenomenon of CRSV through NAPs and advancing WPSA, empirical evidence suggests that the following two are of particular interest: terminology and gender.

Regarding the terminology used, in the majority of the NAPs analysed the governments do not make distinctions between CRSV and SGBV that is perpetrated in conflict. Even several international documents, such as many of the WPSA UNSC Resolutions, have also used indifferently the two terms in the past. Over time we witnessed an evolution in the terminology from SGBV to CRSV; initially the two terms were used without distinction, but distinction is indeed crucial.

The difference between the two forms, as explored in this thesis, lies mainly in the nature of perpetrators and the grounds on which the crime was committed,

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<sup>348</sup> <http://www.peacewomen.org/member-states> accessed 6/07/2018.

that leads to, and has different relevance and implications at the legal level.

In the case of CRSV, the perpetrators are parties to a conflict and use CRSV as tool of war, while in the case of SGBV, perpetrators are not necessarily linked to the conflict and just take advantage of the instability in the country and the lack of rule of law to commit SGBV crimes. Empirical evidence suggests that CRSV is a form of sexual violence often directly or indirectly perpetrated by those responsible for the security of a given society. Thus, for a State, addressing it, in a way, means to openly acknowledge its own responsibility.

Tackling CRSV means, inter alia, collecting data on the phenomenon and advancing the investigation procedures, ultimately leading to convictions for the perpetrators and to recovery and justice for victims, potentially reaching the truth behind the darker, overlooked, silenced side of the conflict.

Being aware of the political consequences of a linguistic choice in an official document such as an NAP or relevant texts by International Organisations, the author wonders whether the lack of CRSV as a term in the eleven NAPS analysed has been lack of knowledge, wrong translation into English, time of adoption of the NAPs, or political choice.

Further research is needed to answer the question of whether the services offered in the NAP have been really implemented in the eleven countries and whether and how the phenomenon and support to survivors is addressed. Furthermore, it calls upon the United Nations, namely the Security Council, to call States to adjust the terminology, and in turn the provisions in re to implement.

The second challenge to the advancement of WPSA concerns the exclusion of male victims of CRSV from NAPs. The WPSA states already in its name who the beneficiaries are of its advancement. Nevertheless, some Resolutions that build the agenda, include also men and boys as victims.

The paradigm "gender-based violence and women" is certainly adequate in time of peace where it disproportionately affects women and the fact that GBV has surfaced thanks to the feminist movement, is the reason why the political and legal framework (in re) are rooted in and have strengthened this paradigm. Nevertheless, men and boys victims or survivors of CRSV, due to gender reasons, are a documented reality as demonstrated in the second chapter.

The future lies not breaking this paradigm, but in its expansion to include men in it. This expansion has been developed through the conceptualizations of scholars such as Hooper<sup>349</sup>, Adam<sup>350</sup> and Houge<sup>351</sup>, and through the jurisprudence of International Tribunals, such as the ICTY<sup>352</sup>. The missing link is at the political level. WPSA could represent a momentum through which to revolutionize the paradigm for what concerns CRSV, given that the Agenda also tackles other issues which concern only women. In fact, it is all about inclusiveness.

The analysis on NAPs and the reporting cycles to the CEDAW Committee of conflict-affected countries has shown the spider's web of answers set up by the international community allowing the international and domestic legal and political structures to interplay with each other.

Significantly, guiding the States in the adoption, improvement and implementation of NAPs, the CEDAW Committee has demonstrated that a treaty body of the UN has the potential to influence States' choices. No matter whether State's compliance with the Committee's recommendations is more an international display of virtue than a real effort to protect human rights for all. What is important is having instruments on the ground to use in order to demand that human rights are promoted and protected.

Indeed, NAPs *de facto* empower civil society organisations and stakeholders at the political level to stand up for human rights and demand a concrete implementation of the document itself. In sum, the NAPs has the potential, under certain conditions to become the driving force of their own implementation.

The analysis of the nineteen States has shown that the eleven equipped with these documents had to develop a template through which to distill the essential dimensions to tackle the phenomenon. Legal reforms; programmes to support survivors in dealing with trauma; programmes to facilitate the victims' access to

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<sup>349</sup> Charlotte Hooper, *Manly states: Masculinity, international relations, and gender politics*. New York: Columbia University Press (2001). In Adam Jones, 'Straight as a rule: Heteronormativity, gendercide, and the noncombatant male' *Men and Masculinities* 8(4) (2006): 453.

<sup>350</sup> Adam Jones, 'Straight as a rule: Heteronormativity, gendercide, and the noncombatant male' *Men and Masculinities* 8(4) (2006)

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justice; national studies on the impact of war on women; data collection systems, all become the cornerstone of the machinery in addressing CRSV at the domestic level. Furthermore, they have committed themselves to building a pool of experts in the security, judicial and healthcare sectors making publicly clear that to deal with this phenomenon we must have professionals.

On the other hand, one could argue that even without an NAP a State can implement UNSCR 1325 and the WPSA through domestic policies, taking for example the experiences of Colombia and Syria. Of course it is important to have a mechanism in the country to deal with WPS issues, but in hindsight, Syria fails to set up a structured strategy, while Colombia, instead, has an apparently solid plan.

Nevertheless, what is missing in both the experiences is a template of actions in a unique instrument that can be punctually monitored in its implementation. In sum, that means lack of knowledge of what the State wants to do to tackle a phenomenon and lack of “voice” to claim that the State’s commitments are respected.

Overall, the nexus between CRSV, CEDAW and namely its General Recommendation n. 30, and selected National Action Plan (NAPs) in implementing UNSCR 1325 on WPS, has offered new insights, a dynamic framework of analysis and a deeper understanding of the phenomenon, and has facilitated capturing the complexities of the international community’s answer to the darker side of conflicts. It demonstrated also that CRSV is avoidable and as such should and can be eradicated.

The challenge CRSV is posing to the international community is demanding. The answers are already written in the international documents; translating them into reality lies in the international and national political will and interest, and always in our common humanity.

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