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From Stigma to Support: The International Framework for Children Born of Wartime Rape

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ABSTRACT

Abstract

This thesis aims to understand the role of the international community in the protection of children born of wartime rape (CBOW), the gaps in these protections, the difficulties and risks they experience, the existing solutions and means of protection and those that should exist. For a long time invisible, CBOW deserve to have their rights protected and defended like any other children. In order to effectively analyze this topic, this study begins by analyzing the phenomenon at the root of the problem: conflict-related sexual violence (CRSV). The way in which classical theories are no longer sufficient to understand the problem and view, the need to add other factors to the analysis of what really drives CRSV: the influence of armed organizations and different patterns of violence. Throughout the holistic and interdisciplinary approach adopted in this study, we have acknowledged some developments that deserve recognition in filling some of the protection gaps of CBOW, but we are forced to conclude that there is still a lot to be done to ensure that these children are treated as children, entitled to their rights.

TABLE OF ABBREVIATIONS

CBOW	Children born of wartime rape
CRC	United Nations Convention on the Rights of the Child
CRSV	Conflict-related sexual violence
GBV	Gender-based Violence
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
SEA	Sexual exploitation and abuse
UNICEF	The United Nations Children's Fund

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INTRODUCTION

1. TOPIC STATEMENT

To address the topic of Children Born of Wartime Rape (CBOW) objectively, it is crucial to first understand the root of the phenomenon: Conflict-Related Sexual Violence¹ (CRSV). Women and children are often viewed as vulnerable groups and are targeted during times of war and armed conflict. CRSV is a reality that affects people of all genders and ages, but it is evident that women and girls are particularly vulnerable to this type of violence². It is important to address this issue and work towards ending it. This topic is not new to the international agenda, there have been numerous calls for attention and requests for intervention to all parties involved in armed conflict to cease such acts immediately. However, it is evident that these atrocities persist and their consequences are increasingly notorious. In some situations, they have become systematic and widespread, reaching appalling levels of brutality. For these reasons, it is time to convert these known complexities into effective policies.

Nevertheless, while this topic is not new, and the international community has increasingly paid attention to it over time, the measures implemented thus far have proven insufficient, and state collaboration has yet to reach the desired levels.

As a result of the feminist battle for women's rights, we can now say that "women's rights are human rights" and that violence against women is no longer seen as a weakness or a whim, but as a priority. We have learned from past experiences, such as those in former Yugoslavia and Rwanda in the 1990s, that conflict-related sexual violence must be also addressed on the international agenda. The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994 by the United Nations was a significant milestone in the history of human rights. The tribunals enabled the prosecution of

¹ The United Nations defines CRSV as: "The term "conflict-related sexual violence" refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. That link may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, which includes terrorist entities; the profile of the victim, who is frequently an actual or perceived member of a political, ethnic or religious minority group or targeted on the basis of actual or perceived sexual orientation or gender identity; the climate of impunity, which is generally associated with State collapse, cross-border consequences such as displacement or trafficking, and/or violations of a ceasefire agreement. The term also encompasses trafficking in persons for the purpose of sexual violence or exploitation, when committed in situations of conflict".

Conflict-Related Sexual Violence Report of the United Nations Secretary-General (S/2019/280)

² UN Security Council, "Security Council Resolution 1820" S/RES/1820 2008, 19 June 2008

systematic rape and other sexual crimes as war crimes, crimes against humanity, or forms of genocide.³

The perception of this atrocity has changed. It can no longer be viewed as an inherent consequence of a conflict, a mere by-product of war, or the result of male sexual desire. Sexual objectification of the human body has no justification. Sexual violence must be prevented and is not inevitable.

In addition to the central role of the aforementioned tribunals, the importance of the resolutions adopted by the United Nations Security Council on "Women, Peace and Security" must be recognized. These resolutions⁴ aim to tackle the issue of women's under-representation in decision-making and peace-building processes. They highlight the importance of incorporating a gender perspective into peace-building operations and emphasize the need to consider the impact of armed conflicts on women, girls, and international peace and security. Moreover, these resolutions highlight the significance of implementing special measures to protect women and girls, hold accountable and prosecute those involved in genocide, crimes against humanity, and war crimes, focusing specifically on sexual violence and other forms of violence against women and girls.

It is urgent to transform the current 'culture of impunity' into a culture of accountability. Gender-based crimes like sexual violence are too often swept under the carpet during conflict and post-conflict, so survivors of CRSV rarely see justice or accountability for themselves.⁵

³ L. Mallinder, 'International Criminal Tribunal for the Former Yugoslavia', in L. Stan and N. Nedelsky (eds.), *Encyclopedia of Transitional Justice*, Cambridge University Press, 2012, p. 237, https://pure.ulster.ac.uk/ws/portalfiles/portal/11357126/International_Criminal_Tribunal_for_the_Former_Yugoslavia.pdf

⁴ UN Security Council, "Security Council Resolution 1325" S/RES/1325 2000, 31 October 2000; UN Security Council, "Security Council Resolution 1820" S/RES/1820 2008, 19 June 2008; UN Security Council, 'Security Council Resolution 1888' S/RES/1888 2009, 30 September 2009; UN Security Council, 'Security Council Resolution 1889' S/RES/1889 2009, 5 October 2009; UN Security Council, 'Security Council Resolution 1960' S/RES/1960 2010, 16 December 2010; UN Security Council, 'Security Council Resolution 2106' S/RES/2106 2013, 24 June 2013; UN Security Council, 'Security Council Resolution 2122' S/RES/2122 2013, 18 October 2013; UN Security Council, 'Security Council Resolution 2242' S/RES/2242 2015, 13 October 2015; UN Security Council, 'Security Council Resolution 2467' S/RES/2467 2015, 10 November 2015; and UN Security Council, 'Security Council Resolution 2493' S/RES/2493 2019, 29 October 2019. UN Security Council, Report of the Secretary-General, "Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict", S/2022/77, 31 January 2022

⁵ E. Prey, T. Domi and K. Spears, *Conflict-related sexual violence in Ukraine: Lessons from Bosnia and Herzegovina and policy option for Ukraine*, the United States, and the International Community, Washington, New Lines Institute, 2023, p. 6, <https://newlinesinstitute.org/wp-content/uploads/Sept2023-Policy-Report-CRSV-in-Ukraine-Lessons-from-Bosnia-NLISAP.pdf>

In the light of these international efforts, it is easy to understand that the focus of CRSV (although a necessary one) is on women who are victims of sexual violence in armed conflict. And so the questions arise: what are the consequences of this violence, the aftermath of such attacks? How can we talk about sexual violence, rape, forced pregnancies without focusing on the children born of these events, their difficulties, challenges and rights? For that reason, this thesis has the aim of analyzing how the international community can effectively approach the protection gaps faced by CBOW, to ensure that their rights and well-being are guaranteed.

Children born of war, also known as the forgotten and invisible victims of war, a burden on society, a reminder of a dark past, the "children of the enemy" are victims who are often neglected, stigmatized and discriminated against by their families, communities and also by the international community due to the lack of laws and policies capable of addressing their unique and specific needs.

It is thought that approximately 2,000 children were born as a result of the 20,000 to 50,000 women who experienced sexual abuse during the Balkan wars, while the precise number is unknown.⁶ An estimated 8,000 children in Northern Uganda are thought to have been born of wartime rape (CBOW) as a result of the Lord's Resistance Army's (LRA) atrocities.⁷ It is estimated that 1,000 children were born as a result of sexual abuse in East Timor during the conflict that broke out in 1999, while the real number is probably far higher.⁸ The Rohingya refugees were forcibly displaced in 2018 as a result of fresh waves of violence that swept through the state of Rakhine in Myanmar, giving birth to over 16,000 children in Cox's Bazar, the largest refugee camp in Bangladesh⁹.

⁶ C. Ingvill Mochmann and S. Lee, 'The human rights of children born of war: case analyses of past and present conflicts', *Historical Social Research*, vol. 35, no. 3, 2010, p. 269, https://www.researchgate.net/publication/282507722_The_Human_Rights_of_Children_Born_of_War_Case_Analyses_of_Past_and_Present_Conflicts

⁷ V. Gamba, 'Opening Remarks of SRSG Pramila Patten, Commemoration of the International Day for the Elimination of Sexual Violence in Conflict', United Nations, 19 June 2018, p. 1 <https://www.un.org/sexualviolenceinconflict/statement/opening-remarks-of-srsg-pramila-patten-commemoration-of-the-international-day-for-the-elimination-of-sexual-violence-in-conflict-19-june-2018/> cl

⁸ C. Carpenter, *Protecting Children born of sexual violence and exploitation in conflict zones: existing practice and knowledge gaps*, Pittsburgh, University of Pittsburgh, 2005, p. 6.

⁹ The United Nations Children's Fund (UNICEF), "More than 60 Rohingya babies born in Bangladesh refugee camps every day", *UNICEF*, 17 May 2018. Available at: <https://www.un.org/sexualviolenceinconflict/statement/opening-remarks-of-srsg-pramila-%20patten-commemoration-of-the-international-day-for-the-elimination-of-sexual-violence-in-%20conflict-19-june-2018/>

The rights covered by the United Nations Convention on the Rights of the Child are universal rights, the rights of all children, not just the most privileged. CBOW see their rights violated on a daily basis in different areas of everyday life. These children run various risks, including: "infanticide, abandonment at birth, statelessness, stigmatization and discrimination, physical violence and emotional abuse, reduced or no access to education, food insecurity, poverty, homelessness, recruitment to armed or criminal groups, enhanced risk of radicalization and poor health"¹⁰. Specific measures are needed to address these needs in order to break the intergenerational cycle of injustice.

*- "Lost childhoods become precarious adulthoods and human rights' claim to universality becomes an illusion. Children born of sexual violence are being left behind."*¹⁰

It is crucial to try to understand what efforts the international community is making to protect these children and their rights to minimize their daily struggles. Equally important is to learn from past experiences and apply them to the present and future. Urgent action is required to bridge the gap in the protection of children born of war. To achieve this, it is necessary to address the root of the problem, to recognize the difficulties involved and to work towards the minimization/resolution of the problem.

In alignment with Virginia Gamba's observation that "the fate of children born of war, the stigma attached to them and their mothers, remains extremely difficult to overcome"¹¹, this research endeavors to delve into the rights violations experienced by these children. The overarching goal is to emphasize the imperative for policymakers to prioritize the well-being of these vulnerable individuals. Through a comprehensive analysis of the international human rights framework, this study seeks to shed light on existing gaps in protection, by identifying these deficiencies, the research aims to propose actionable measures that can effectively safeguard the human rights of children born of rape.

¹⁰ J. Neenan, Closing the protection gap for children born of war: Addressing stigmatization and the intergenerational impact of sexual violence in conflict, London, The London School of Economics and Political Science, 2018, p. 8, <https://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-Children-Born-of-War.pdf>

¹¹ V. Gamba, 'Commemoration of the International Day for the Elimination of Sexual Violence in Conflict: Children Born of War', United Nations, 19 June 2018, p. 1, <https://childrenandarmedconflict.un.org/commemoration-of-the-international-day-for-the-elimination-of-sexual-violence-in-conflict-children-born-of-war/>

“In the aftermath of a conflict, meaningful peace, reconciliation and justice cannot be achieved if a vulnerable population group is excluded from access to life-saving support, family and community belonging”¹². – Lord Ahmad of Wimbledon

2. RESEARCH AIM

How can the international community effectively address the key risks and protection gaps faced by children born of wartime rape (CBOW), ensuring the protection of their rights and well-being?

In light of the pervasive challenges faced by children born of wartime rape (CBOW), this research aims to identify key risks and protection gaps that undermine their rights and well-being. By critically examining the role of the international community in addressing these issues, the study seeks to propose actionable measures to remedy these harms. The overarching goal is to ensure that the rights of CBOWs are guaranteed and protected, thereby breaking the intergenerational cycle of injustice. Drawing on past experiences and international efforts, the research endeavors to bridge the gap in the protection of CBOW and pave the way for a future where these vulnerable individuals can thrive without facing the same adversities.

To effectively tackle the issue of children born of war, it is essential to delve into its root causes before discussing its consequences. It would be counterproductive to address the aftermath without a thorough understanding of the underlying reasons. If the goal of this research is to analyze and improve the legal framework, policies and efforts of the international community to protect the rights of these children, it's crucial to focus on reducing the violence that contributes to their situation. Without addressing the source of the problem, efforts to protect these children may be less effective. Therefore, prioritizing an examination and reduction of CRSV is vital for meaningful progress in safeguarding their rights.

¹² Lord Ahmad of Wimbledon, Minister of State at the Foreign and Commonwealth Office and Prime Minister's Special Representative on Preventing Sexual Violence in Conflict

3. LITERATURE REVIEW

In the final decade of the 20th century, an estimated ten thousand children were born as a result of sexual violence in times of war in all parts of the world.¹³

As Joanne Neenan notes in her study "Addressing Stigmatization and the Intergenerational Impact of Sexual Violence in Conflict,"¹⁴ the topic of CRSV is increasingly covered in the literature and is receiving more and more attention from the international community. Nevertheless, while the structural drivers and effects of CRSV are both expanding and deepening, there is one consequence that is still unjustifiably ignored in national and international policy vision—namely, children born of war. Hand in hand with this thinking are Rene Provost and Myriam Denov¹⁵ in their study carried out in 2020, that demonstrate that "the lived realities of children born of conflict-related sexual violence remain vastly under-studied."

Furthermore, there is a general consensus in the literature on the serious and lasting impact of wartime rape on children born as a result of such violence. Systematic studies have highlighted the physical, psychological, and socio-economic challenges faced by CBOW, including stigma, discrimination, trauma, and barriers to accessing education and healthcare. The studies by Neenan, Provost, and Denov underscore the importance of recognizing intergenerational trauma and stigmatization. A mother who is entirely vulnerable, traumatized, and discriminated against by society develops severe mental health issues that directly impact her parenting abilities, affecting the child's psychosocial development, adaptation, and integration into a society that consistently attempts to push them away.

It is indispensable to reference the Principles for Global Action¹⁶, which represent a fundamental tool for policymakers and aim to provide a survivor-centered approach to ending the stigma associated with conflict-related sexual violence. This tool directly

¹³ D. Seto, *No Place for a War Baby: The Global Politics of Children Born of Wartime Sexual Violence*, New York, Routledge, 2013, p. 36.

¹⁴ J. Neenan, *Closing the protection gap for children born of war: Addressing stigmatization and the intergenerational impact of sexual violence in conflict*, London, The London School of Economics and Political Science, 2018, p. 8, <https://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-Children-Born-of-War.pdf>

¹⁵ R. Provost and M. Denov, 'From Violence to Life: Children Born of war and Constructions of Victimhood', *University Journal of International Law and Politics*, vol. 53, no. 1, 2020, p.1-79.

¹⁶ K. Adams, *Principles for Global Action: Preventing and Addressing Stigma Associated with Conflict-Related Sexual Violence*, GOV.UK

mentions the legal recognition of children born of rape and the efforts that states must make to prevent the stigmatization and exclusion of CBOW.

Although the UN Security Council report of the Secretary-General of January 2022¹⁷ makes direct reference to "women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict", a highly important step to remove the cloak of invisibility that covers these children, it is insufficient to cease further study of this topic. Today's CRSV in Ukraine can be the root cause of tomorrow's CBOW¹⁸ and it is imperative that proactive measures are taken to prevent these children from enduring the same hardships experienced by CBOW from previous conflicts.

There is still a gap in understanding the inconsistencies within the current legal framework regarding the rights and welfare of CBOW. To guarantee that CBOW are adequately protected under the international legal framework, more research is required to pinpoint any lacunae in the laws and regulations currently in place and to suggest revisions.

4. OUTLINE AND METHODOLOGY

This thesis aims to analyze the difficulties experienced by CBOW, the challenges they face and, rather than just listing these difficulties and accepting the violation of their rights as inevitable, we seek to study what the international community does to protect them and what it does not do, but should do so that they are effectively protected and taken seriously. We want to fill the gaps in their protection and try to find new ways of promoting their rights.

To do this, it is crucial to start by analyzing the phenomenon of CRSV. Attempting to examine strategies for the protection of children who are the result of sexual violence without addressing the causes and patterns of this violence appears to be an inadequate approach, it would be like studying the problem while ignoring its root cause. With this in mind, this study is divided into two parts: (i) a first part, dedicated to the examination

¹⁷ UN Security Council, 'Report of the Secretary-General: Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict', S/2022/77, 31 January 2022

¹⁸ I. Skjelsbaek, J. Elvebakken and L. Stotz, 'Don't Forget the Children Born of War in Ukraine', University of Oslo, Centre for Gender Research, 24 February 2023, <https://www.stk.uio.no/english/research/news-and-events/news/2023/children-born-of-war-in-Ukraine.html>

of CRSV. In order to understand that this is not an inescapable reality, it is necessary to study the classic and modern theories developed around this phenomenon, the influence of armed organizations, and finally, to try to understand how this reality can change, diminish, and eventually be completely eliminated. (ii) the second part, after studying the phenomenon at the root of the issue, dedicates itself to the study of CBOW. To this end, it begins by endeavoring to comprehend the adverse effects that these children suffer as a consequence of the constant stigmatization and discrimination that they are subjected. The occurrence of these phenomena has already been analyzed by some literature and has been demonstrated to be shared by this group of children, regardless of their origin, ethnicity, age or gender. The question now remains: what is being done to solve these problems, who has the power and responsibility to change this reality that still affects thousands of lives today? In doing so, we also directly examine some of the protection gaps and rights that are violated on a daily basis. The final section of this chapter examines justice and accountability mechanisms to understand how justice systems deal with CBOW, analyzing the areas of the international legal framework where accountability is lacking. This chapter also studies the victimhood evolution of these children and the role of the ICC in protecting them, understanding whether or not they are seen as deserving of reparations and compensation. This chapter proposes solutions and changes that we believe that could improve the protection and support for CBOW, advocating for their recognition as victims in their own right.

Ultimately, this thesis also aims to demonstrate that this problem does not have a geographical location, does not belong to a specific period of time, although, of course, every child is a child, and the problems vary in kind and level depending on various factors, these problems belong to everyone.

This research proposes a holistic approach that requires an interdisciplinary methodology, incorporating both social, political, and psychological elements, and legal sections. While the study of these CBOW is limited by the difficulty of finding empirical data from sufficiently reliable sources, this thesis attempts to combat this through a qualitative and extensive analysis of existing literature, as well as UN reports and policies, reports from certain associations, NGOs, academics, researchers, and international institutions. Furthermore, this study will analyze international human rights law, the jurisprudence of the ICC, and various international treaties.

5. *THEORETICAL FRAMEWORK*

As previously stated, the study will commence with an analysis of the reality of CRSV. In order to gain a comprehensive understanding of the phenomena in question, it is essential to conduct an in-depth examination of the theoretical frameworks that elucidate the underlying drivers of CRSV. In accordance with the contemporary theories put forth by Elisabeth Jean Wood, it is this study's premise that CRSV cannot be considered an inevitable occurrence, a mere byproduct of war, or an inherent aspect of armed conflict. Wood demonstrates the limited scope of traditional theories that attempt to justify such a problem in patriarchal social norms, sexist culture, uncontrollable male sexual desire, the increased opportunity to rape, or the strong masculinity associated with military practices. While these theories are undoubtedly important, they are not sufficient to explain the full extent of the problem. It is possible to prevent CRSV and to demonstrate this, we follow the thinking of Wood, Cohen, and Green, analyzing the influence of armed organizations and armed actors, their dynamics, and institutions.

Furthermore, we acknowledge gender-based violence (GBV) as a fundamental aspect of this issue. The acknowledgment of gender inequality as a source of discrimination and stigma associated with victims of CRSV and CBOW represents a pivotal step towards the cessation of this violence. Therefore, it is of the utmost importance to adopt a feminist discourse that advocates for the end of the failure to respect and protect women's rights.

6. *TERMINOLOGY*

CHILDREN BORN OF WAR (CBOW) – Children born of war is the term used for children born as a result of rape/situations of sexual exploitation linked to conflict or post-conflict situations. CBOW refers to any child born to a parent who is part of foreign armed forces or peacekeeping forces and another parent who is an ordinary citizen, regardless of the geographical, temporal, or cultural context and regardless of the type of conflict or mode of conception¹⁹. For the purposes of this study, the term "children born of sexual violence"

¹⁹ J. Neenan, 'Closing the Protection Gap for Children Born of War – addressing stigmatization and the intergenerational impact of sexual violence in conflict', Centre for Women, Peace and Security, London School of Economics, 2008.

or “children born of rape” is used to refer to any child conceived due to sexual violence, in its broadest sense, in conflict zones.

CONFLICT-RELATED SEXUAL VIOLENCE (CRSV) – The term “conflict-related sexual violence” refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against people of all different ages, sex or gender identities, that is linked to a conflict or post-conflict situation.²⁰

GENDER-BASED VIOLENCE (GBV) – Gender-based violence is a category of violence that is directed against a person on the basis of gender or sex. Even though GBV can also target men and boys, it disproportionately affects women and girls, and it increases on situations of conflict and post-conflict²¹. This includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty, and it can occur in public or in private life.²²

SEXUAL VIOLENCE (SV) – Sexual Violence refers to any act of a sexual nature against one or more persons or the act of forcing someone to engage in an act of a sexual nature by force, or by threat of force or coercion. As defined by the Rome Statute it includes “rape, sexual slavery, prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity”.²³

²⁰ UN Security Council, 'Report of the Secretary General on conflict-related sexual violence', UN Doc S/2017/249, 15 April 2017.

²¹ UNHCR, 'Gender-based violence', <https://www.unhcr.org/what-we-do/protect-human-rights/protection/gender-based-violence>

²² J. Neenan, 'Closing the Protection Gap for Children Born of War – addressing stigmatization and the intergenerational impact of sexual violence in conflict', Centre for Women, Peace and Security, London School of Economics, 2008.

²³ Article 7(g), Rome Statute, 17 July 2002

PART. I CONFLICT-RELATED SEXUAL VIOLENCE

1. NOT ALL ARMED ORGANIZATIONS ENGAGE IN RAPE

Exploring the root causes of Conflict-related Sexual Violence, starting from the premise that not all armed organizations engage in rape²⁴, is extremely important in order to understand the imperative, both morally and legally, to discuss the “pattern of violence”²⁵, elucidating its etiology and variations to later address its ramifications, consequences and devising preventive measures.

Foremost, it is relevant to delineate the key concepts under consideration to ensure clarity of scope. When referring to conflict-related sexual violence, we are specifically alluding to instances of sexual violence perpetrated by armed groups (any state or nonstate actor). This sexual violence can occur towards women, men, girls, boys and persons of other gender identities in a conflict or post-conflict setting.

The available data on this subject is not entirely satisfactory, given that many cases are not even reported. However, existing data reveals differences between conflicts and armed organizations regarding patterns of sexual violence, including with regard to perpetrators, victims, frequency, form and purpose. The term “conflict-related sexual violence” encompasses a range of atrocities, including rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriages, and other similarly severe acts directly linked to a conflict²⁶.

Elisabeth Jean Wood mentions, in one of her studies, that the most significant finding of recent research is that sexual violence during armed conflict varies clearly across armed actors.²⁷ Even though there is a tendency to associate this form of violence as a direct and inherent consequence of war time, many armed organizations do not engage in widespread sexual violence. Of the 177 armed actors involved in the civil wars of twenty African nations between 2000 and 2009, 59% were not found to have

²⁴ E.J. Wood, 'Variation in Sexual Violence During War', *Politics and Society*, vol. 34, no. 3, 2006, pp. 307-342.

²⁵ This concept is a fundamental element in the study of CRSV. The repertoire of violent acts that an armed group habitually engages in, along with the targeting and frequency of each violent act over the designated time frame and geographic area, make up the "pattern of violence" of that group.

²⁶ United Nations Secretary-General, 'Conflict-Related Sexual Violence – report of the United Nations Secretary-General', S/2020/487, 03 June 2020.

²⁷ E.J. Wood, 'Variation in Sexual Violence During War', *Politics and Society*, vol. 34, no. 3, 2006, pp. 307-342.

committed acts of rape or other sexual assault.²⁸ After 2009, according to the Peace Research Institute Oslo (PRIO) provided data in 2022²⁹, that takes into account the updated version of SVAC (Sexual Violence in Armed Conflict) and only examines data on active conflict year, sexual violence did increase but it did not reach the levels seen between 2000 and 2003. The average rate of sexual violence between 2010 and 2019 was 13%. In 2019, sexual violence was recorded in 8% of all conflict-actor-years, a decrease from 10% in 2018. Therefore, during this period, 92% of conflict-actor-years did not experience sexual violence.

2. WHAT DRIVES CONFLICT-RELATED SEXUAL VIOLENCE?

2.1. THE INSUFFICIENCY OF CLASSIC THEORIES

There are several classical theories attempting to elucidate the underlying causes of this phenomena. Nevertheless, none of these theories appear to provide a comprehensive or entirely satisfactory explanation. Wood presents refutations of some classic theories and points out that they fail, *ab initio*, because they over-predict rape during wartime³⁰. Although the argument of the militarized masculinity approach makes sense when it mentions that societies in times of war, their norms and institutions aim to train men and boys to become true warriors, who must dominate and finish off the enemy, often using any means necessary, we cannot look to this argument as the answer to our question. This theory fails by not only generalizing but also by not being able to explain the cases in which armies like the Salvadoran insurgency³¹ seem to have been successful in preventing their fighters from using sexual violence against civilians. Even though ideology in shaping the group's masculinity and military practices played a significant role in their training³².

²⁸ R. Nordas, 'Sexual Violence in African Conflicts', PRIO Policy Brief No.1, 2011, cited in E.J. Wood, 'Conflict-related sexual violence and the policy implications of recent research', *International Review of the Red Cross*, 2014, p. 459.

²⁹ J. Palik, A.M. Obermeier, and S.A. Rustad, 'Conflict Trends: A global Overview, 1946-2021', PRIO Paper, 2022, pp. 38-39

³⁰ E.J. Wood, 'Conflict-Related Sexual Violence and the Policy Implications of Recent Research', *International Review of the Red Cross*, 2014, p. 462.

³¹ E.J. Wood, 'Rape during War is Not Inevitable: Variation in Wartime Sexual Violence', in M. Bergsmo, A.B. Skre, and E.J. Wood (eds), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Epubliser, Oslo, 2012, p. 389.

³² M. Kiefer, 'Of predators and new men: how ideology matters in constructing military masculinities', *Z Friedens- und Konflforsch*, 11, 2022, pp. 41-63. <https://doi.org/10.1007/s42597-021-00068-y>.

Nor does it make sense to try to justify sexual violence in times of war by the "increased opportunity to rape", since this theory of opportunism assumes that the opportunity is in fact sufficient for this to happen. Additionally, the Sri Lankan secessionist rebels, for example, were notorious for violence against civilians, had ample access to them, and rarely engaged in rape³³.

The "substitution" argument, which relies on the notion of uncontrollable male sexual desire, also proves weak and insufficient under closer examination. To say that rape substitutes sex with prostitutes, female combatants or willing civilians, not only objectifies women, but also neglects to explain the brutal and traumatizing acts of sexual torture committed by armed actors on particular groups of women (such as the incidence of rape with objects, gang rapes, sexual torture and mutilation³⁴) who have access to sex workers or sexual slaves. Sexual desire is far from being the key motivator and cannot serve as an excuse for these atrocities.

A patriarchal and sexist culture, that comes from peacetime into wartime, is evident in the conduct of some armed actors and militaristic norms that subscribe to these beliefs. While acknowledging the existence of this reality, it is crucial not to stereotype it. It's noteworthy that in some conflicts, one part of the conflict may perpetrate frequent instances of rape, while their counterpart, despite sharing similar cultural beliefs and patriarchal norms, does not engage in such atrocities³⁵. In order to ensure sustainable measures to avoid and respond to CRSV, gender inequality has to be addressed, however, we must agree with the statement made by Cohen, Green and Wood – "while devaluation of women may be a necessary condition for the occurrence of widespread sexual abuse of women, this general notion of patriarchy is too broad to account for the observed variation; it is not a sufficient condition³⁶". In their study, they also mention that, as

³³ E.J. Wood, 'Is rape inevitable in war? Studying patterns of sexual violence in conflicts can help develop preventative measures', Aljazeera, 25 February 2014. Available at: <https://www.aljazeera.com/opinions/2014/2/25/is-rape-inevitable-in-war>.

³⁴ D.K. Cohen, A. Hoover Green, and E.J. Wood, *Wartime Sexual Violence – Misconceptions, Implications, and Ways Forward*, United States Institute of Peace, Special Report.

³⁵ D.K. Cohen, 'Explaining Sexual Violence during Civil War', doctoral dissertation, Stanford University, 2010.

³⁶ E.J. Wood, 'Rape during War is Not Inevitable: Variation in Wartime Sexual Violence', in M. Bergsmo, A.B. Skre, and E.J. Wood (eds), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Epublisher, Oslo, 2012, p. 389.

feminist theorists have for a long time argued, rape is related with the idea of power, hierarchy and dominance, not only sexual desire.³⁷

However, we must consider that, since, although women are the majority victims of this sexual violence, the statistical data available shows that there are also male victims. Maja Korac mentions that this invisibility associated with male victimization in CRSV "is indicative of the stigma attached to this type of violation of a man's body and his 'manhood'".³⁸ For a man, this type of violence is perceived as one of the greatest possible humiliations, which takes away his masculinity. Associated with this are death threats to those who do not want to engage in acts of rape, because they are not considered "real men".³⁹ or brave enough. From this it can be concluded that the patriarchal structure and social constructions associated with the female gender - women as vulnerable, fragile, weak, sexual objects - and the male gender - men as fighters, strong, superior and dominant - have harmful consequences for everyone. Women for the reasons previously mentioned and men for continuing to live in the shadows of their victimhood.

Although each of these theories possess validity to varying degrees, they collectively reinforce the notion that such violence is inevitable, a product of the nature of war, men's behavior, cultural dynamics, and sexual desire. Yet, this perspective overlooks the potential for intervention and prevention. While these theories shed light on particular facets of the diverse patterns of sexual violence observed across conflicts—varying in targeting, from, purpose, as well as frequency⁴⁰—they alone do not offer a sufficient framework for comprehensive understanding. If we only focus individually on certain factors in the spectrum of variation presented in patterns of sexual violence across conflicts and armed organizations, ignoring the possibility of absence of wartime rape, we run the risk of not studying all aspects of this phenomenon, which will have consequences for the prevention process.

The focus of the literature has shifted – armed organizations themselves have become the primary subject of analysis. After recognizing the variation in violence

³⁷ D.K. Cohen, A. Hoover Green, and E.J. Wood, *Wartime Sexual Violence – Misconceptions, Implications, and Ways Forward*, United States Institute of Peace, Special Report.

³⁸ M. Korac, 'Feminists against Sexual Violence in War: The question of Perpetrators and Victims Revisited', Department of Social Sciences, Cass School of Education and Communities, University of East London, 30 September 2018, p. 7.

³⁹ A. Stiglmayer, *Mass Rape: The war against Women in Bosnia-Herzegovina*, University of Nebraska Press, 1994, cited in M. Korac, 'Feminists against Sexual Violence in War: The question of Perpetrators and Victims Revisited', Department of Social Sciences, Cass School of Education and Communities, University of East London, 30 September 2018.

⁴⁰ *Ibidem*.

patterns across conflicts and institutions, the question remains: if rape is not an inevitable aspect of war, then what is not inevitable can be eradicated. If certain armed organizations can abstain from sexual violence, how can we prevent it from occurring with other actors?

2.1.1. UNDERSTANDING THE INFLUENCE OF ARMED ORGANIZATIONS

The formation of an armed organization starts prior to the battlefield. Recruiting and training of members is a crucial phase for ensuring organizational cohesion⁴¹. The effectiveness of an armed organization is dependent on the structure of its units, their discipline, efficiency, communication, transparency and strength.

According to Wood's definition, the pattern of violence on the battlefield, including the repertoire, targeting, and frequency of violence, is influenced by the institutions responsible for monitoring it. It is not always feasible for commanders to supervise and control all combatants during times of war. Although a leader has the power to prohibit, authorize, encourage or tolerate rape, the implementation of their preferences is not solely dependent on their will.

Commanders' preferences frequently diverge from those of their subordinates due to a variety of factors. These can include differing backgrounds, moral and religious beliefs, and emotional connections. Such influences on human behavior are as relevant on the battlefield as they are elsewhere. Moreover, commanders are often distanced from their subordinates by the information available to them about events transpiring in the field. Even if a superior attempts to impose a particular pattern of violence, they are ultimately confronted with the reality of the actions chosen by the combatants themselves – the actual pattern of violence.

Combatants' preferences⁴² for patterns of violence are not rigid and can fluctuate due to a range of components. As previously discussed, the recruitment process plays a pivotal role in shaping a recruit's mindset. It is during this phase that individuals may learn to desensitize themselves to the realities of war, normalize the act of taking others' lives, and prioritize the well-being of their organization and fellow colleagues above

⁴¹ E.J. Wood, 'Rape during War is Not Inevitable: Variation in Wartime Sexual Violence', in M. Bergsmo, A.B. Skre, and E.J. Wood (eds), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Epubliser, Oslo, 2012, p. 406.

⁴² By “preferences” we mean the broad definition argued by Elisabeth Jean Wood. Preferences as the reasons for action such as “norms, tastes, ethical commitment, emotions, affective ties to others and psychological propensities”, as seen in E. J Wood, *Conflict-Related Sexual Violence and the Policy Implications of Recent Research*, *International Review of the Red Cross*, 2014, p. 466

everything else. Violence is often encouraged in boot camps and through informal initiation rituals, which serve as spaces for forging warriors and fostering a sense of belonging to the group. This process leads to the cultivation of bonds of loyalty among group members that often surpass those to one's own family.⁴³

Amelia Hoover Green⁴⁴ responds to the 'commanders' dilemma' - the challenge of producing and controlling violence simultaneously - by presenting two approaches: (i) the need for institutions to strongly indoctrinate recruits so that they internalize the commander's preferred pattern of violence, and (ii) the need for strong disciplinary institutions and mechanisms to ensure a flow of information up the chain of command regarding ground-level events, as well as fair and effective methods of punishing offenders.

The social dynamics of wartime, frustrations, anxiety, trauma, social pressures, and animosity towards the enemy, often exert significant influence on combatants' behavior and reshape group repertoires towards the wider use of violence. However, when confronted with directives from superiors, these factors only prevail if institutions are not sufficiently robust to provide continuous guidance to combatants, reminding them of the conflict's purpose and the appropriate means of achieving it. Amelia Hoover Green's research has shown that armed groups equipped with strong disciplinary systems and consistent political education institutions tend to employ narrower repertoires of violence, with notably lower incidence of sexual violence⁴⁵.

If the measures adopted to indoctrinate combatants and the efforts to hold those responsible accountable are effectively put into practice, combatants will follow orders despite their individual preferences⁴⁶, the leadership's choices will prevail; if organizational strength is insufficient, individual and unit norms will dominate. The LTTE insurgency in Sri Lanka, aforementioned for rarely engaging in rape, deployed a parallel chain of command dedicated to internal intelligence⁴⁷.

⁴³ D. Winslow, 'Rites of Passage and Group Bonding in the Canadian Airborne', in *Armed Forces and Society*, 2014, p. 435.

⁴⁴ A. Hoover Green, 'The Commanders' Dilemma: Creating and Controlling Armed Group Violence', *Journal of Peace Research*, 53, no. 5, 2016.

⁴⁵ E.J. Wood, 'Rape during War is Not Inevitable: Variation in Wartime Sexual Violence', in M. Bergsmo, A.B. Skre, and E.J. Wood (eds), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Epubliser, Oslo, 2012, p. 412.

⁴⁶ E.J. Wood, 'Conflict-Related Sexual Violence and the Policy Implications of Recent Research', *International Review of the Red Cross*, 2014, p. 468.

⁴⁷ E.J. Wood, 'Variation in Sexual Violence During War', in *Politics and Society*, vol. 34, no. 3, 2006, p. 317.

The question arises: why do some groups choose not to implement disciplinary measures if they are so effective? While these institutions promote communication up the chain of command, which facilitates the possibility of holding those below accountable, they also pose a potential threat to the interest of commanders, because the combatants in question may hold significant strategic importance for the group. In addition, sexual violence is often tolerated in conflict situations, even if it is not directly ordered as a war strategy. This is because superiors consider its prohibition to be too costly⁴⁸ and do not want to invest scarce economic resources in monitoring. Furthermore, some commanders may tolerate sexual violence to maintain their authority and respect among subordinates. Taking a strong stance against such acts may be perceived as a sign of weakness or vulnerability. In certain contexts, rape may even be viewed as a form of "deserved compensation" for combatants, further complicating efforts to eradicate this phenomenon within armed groups.

Following Wood's logic, if the organization's internal institutions are strong⁴⁹ and well-structured, if the leadership chooses to promote the rape of civilians, combatants will rape their chosen target with high frequency, and if the leadership chooses to prohibit rape, combatants will not rape (except, of course, in a few isolated cases). Therefore, instances of sexual violence within an armed group with functioning internal institutions likely indicate that such violence is ordered or condoned by the leadership.⁵⁰

These mechanisms of indoctrination, continuous political education, and discipline not only contribute to better control on the battlefield and the minimization of conflict-related sexual violence but also serve to establish the command's responsibility for such acts if the usual criteria for effective command are met. In cases where direct evidence is lacking, documentation and analysis of the pattern of violence can further substantiate command accountability. Furthermore, even if an organization formally prohibits sexual violence, the absence of proper institutions and mechanisms to effectively implement these measures may lead to tolerance of such acts if they occur.

⁴⁸ Ibidem.

⁴⁹ Wood defines the strength of armed institutions as "the ability of the hierarchy to enforce decisions taken by the leadership through disciplinary and/or through ongoing indoctrination". To illuminate this strength, Wood outlines key factors: the capacity to manage resources transparently, the efficacy in disciplining errant combatants, and the adeptness in orchestrating intricate offensive or defensive maneuvers requiring coordinated efforts from multiple units. E.J. Wood, 'Rape during War is Not Inevitable: Variation in Wartime Sexual Violence', in M. Bergsmo, A.B. Skre, and E.J. Wood (eds), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Epubliser, Oslo, 2012, p. 418.

⁵⁰ E.J. Wood, 'Conflict-Related Sexual Violence and the Policy Implications of Recent Research', *International Review of the Red Cross*, 2014, p. 469.

Policy makers should draw lessons from organizations that have successfully avoided engaging in conflict-related sexual violence. Ongoing training for officers should emphasize the organization's respect for and dependence on civilians and their support.

It is essential to recognize that conflict-related sexual violence is not solely a "women's issue"⁵¹, this crime can impact individuals of any age or gender, it is a security issue with broader implications for peace and security. Therefore, policies should adopt a gender-neutral and inclusive approach, while also acknowledging specific challenges faced by certain groups. Women and girls continue to be those primarily affected by CRSV⁵², not least due to patterns of gender discrimination and inequality predating the conflict. Due to prejudiced legal frameworks, social taboos, homophobia, and gendered stereotypes associated with masculinity, boys and men are also victims or survivors of CRSV. These factors contribute to their victimization and stigmatization.

1.1. INTERNATIONAL EFFORTS AND CHALLENGES

The enforcement of measures to prevent conflict-related sexual violence through international law is a complex topic. Despite the effectiveness of certain strategies, such as the education of recruits and implementation of strong disciplinary measures within armed organizations, their widespread adoption as mandatory requirements in international law faces several challenges. Adherence to international policies and regulations relies heavily on the cooperation of the member states, which can be difficult to achieve due to sovereignty concerns and differing priorities among nations.

Furthermore, although it has already been shown that state-actors are the group most often recorded as perpetrators of sexual violence, followed by rebel groups, and militias, according to SVAC 3.0⁵³, it is important to mention that the enforcement of these measures represents an even greater complexity when it is not a non-state actor. This point is worth mentioning, since there is a usual misconception, analyzed by Cohen, Green and

⁵¹ United Nations CRSV Policy, 'United Nations Field Missions: Preventing and responding to Conflict-related sexual violence', January 2019 <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/02/DPO-DPPA-SRSG-SVC-OHCHR-Policy-on-Field-Missions-Preventing-and-Responding-to-CRSV-2020.pdf>.

⁵² Ibidem.

⁵³ J. Palik, A.M. Obermeier, and S.A. Rustad, 'Conflict Trends: A global Overview, 1946-2021', PRIO Paper, Peace Research Institute Oslo (PRIO), 2022, p. 41.

Wood⁵⁴, that sexual violence is always perpetrated by combatants and, although this represents the majority of reported cases, some victims report that the perpetrator was an intimate partner or another non-combatant.

CRSV constitutes a crime that is punishable and preventable under international human rights law, international humanitarian law and international criminal law. Four peacekeeping missions had a specific Security Council mandate to address CRSV in 2022: MINUSCA in the Central African Republic, MINUSMA in Mali, MONUSCO in the Democratic Republic of the Congo and UNMISS in South Sudan. These peacekeeping missions aim to prevent and respond to CRSV and they are organized according to the five priority objectives of the United Nations CRSV Policy, known as the “PEACE”⁵⁵ approach: (i) Prevention and protection of persons facing the risk of CRSV; (ii) Ending impunity for CRSV; (iii) Awareness and condemnation of CRSV; (iv) Capacity of national actors to effectively address CRSV; (v) Empowerment of victims/survivors through political processes and their referral for support.

These missions adopt a victim/survivor of CRSV approach⁵⁶, placing the victim's or survivor's needs and rights at the core of all field mission responses and prevention measures. Initiations aimed at addressing CRSV ought to guarantee the active involvement of victims and survivors, taking into account their age, gender, sex, particular circumstances, and cultural background.

The military CRSV focal points are responsible for the development and implementation of directives and policies aimed at addressing matters related to gender, child protection, and CRSV, advising the Force Commander in peacekeeping missions like MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo). These points represent a crucial role in peacekeeping missions, conducting daily patrols, offering security, advice, sensitization programs and CRSV training to all Force elements, and, by request, to national counterparts⁵⁷. This initiative exemplifies one of the international endeavors aimed at fostering a culture of prevention

⁵⁴ D.K. Cohen, A. Hoover Green, and E.J. Wood, 'Wartime Sexual Violence – Misconceptions, Implications, and Ways Forward', United States Institute of Peace, Special Report, p. 6.

⁵⁵ United Nations, 'Annual Summaries of Activities and Good Practices by United Nations Peacekeeping Operations, Preventing and Responding to Conflict-Related Sexual Violence', 2022, p. 9.

⁵⁶ United Nations CRSV Policy, 'United Nations Field Missions: Preventing and responding to Conflict-related sexual violence', January 2019.

⁵⁷ United Nations Peacekeeping, 'Preventing and Responding to Conflict-Related Sexual Violence', Annual Summaries of Activities and Good Practices, 2021.

of conflict-related sexual violence (CRSV), characterized by sustained and direct engagement with communities on the ground.

2.3. CONCLUSION

In conclusion, this chapter has delved into the intricate dynamics surrounding conflict-related sexual violence (CRSV), shedding light on its various facets and implications. Through an analysis of classical theories and contemporary insights, we've explored the complex interplay of factors driving CRSV.

Our examination has underscored the inadequacy of simplistic explanations and highlighted the need for a nuanced understanding of CRSV, recognizing its multifaceted nature and varied manifestations across conflicts. We've discussed the critical role of armed organizations in shaping patterns of violence, emphasizing the importance of strong institutional frameworks and disciplinary mechanisms in mitigating CRSV.

UN peacekeeping missions play a crucial role in addressing and preventing CRSV through direct contact with at-risk communities and various local and international stakeholders. Through initiatives such as the Monitoring, Analysis, and Reporting Arrangements (MARA), UN peacekeeping missions increase accountability and transparency in efforts to address CRSV. By documenting and reporting on incidents of sexual violence, peacekeeping missions hold perpetrators accountable and ensure survivors receive the support and justice they deserve.

In 2010, the United Nations Security Council adopted Resolution 1960, which requested the Secretary-General to establish Monitoring, Analysis, and Reporting Arrangements (MARA)⁵⁸ on conflict-related sexual violence, including rape in situations of armed conflict, post-conflict, and other situations of concern. These arrangements consider the specificity of each country and ensure a coherent and coordinated approach at field-level. MARA represents a practical response to the challenges identified in the literature. It is a mechanism designed to systematically monitor, analyze, and report on CRSV incidents, including rape, in conflict and post-conflict settings. By collecting data, conducting analysis, and disseminating information, MARA aims to enhance the international community's capacity to prevent and respond to CRSV effectively. It

⁵⁸ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 'Monitoring, Analysis and Reporting Arrangements (MARA)', 2021.

provides a platform for evidence-based decision-making, policy formulation and operational planning.

In summary, the examined literature offers the empirical insights and theoretical framework required to comprehend CRSV, and MARA serves as a useful tool for putting this knowledge to use. Sustainable efforts to prevent and respond to CRSV require addressing gender inequality and ensuring the full realization of women and girls' civil, political, economic and social rights, including through their full, equal and meaningful participation in peace and political processes.

However, although it is not the primary focus of this thesis, it is important to acknowledge a significant challenge associated with UN peacekeeping missions. The issue of CRSV in these UN missions remains a serious challenge, despite current efforts to address it. For almost 30 years, military and civilian peacekeepers around the world have been involved in cases of rape, sexual assault, forced prostitution, trafficking, and sexual exploitation of women and children. In his study, Stephen Moncrief⁵⁹ demonstrated that sexual exploitation and abuse (SEA) of civilians by international peacekeepers is a form of post-conflict violence associated with disciplinary failures at the lower levels of command of the peacekeeping mission. He also argued that a peacekeeping mission has its own norms and socialization processes that constrain or facilitate the emergence and persistence of sexual abuse. Valorie Vojdik⁶⁰ posits that rather than treating sexual exploitation and abuse as a crime perpetrated by individual peacekeepers, as the UN has done, the international community must contextualize peacekeepers' SEA "within the gender-based power structures that perpetuate conflict-related violence against women and girls". Thus, highlighting the structural aspect of the phenomenon.

In essence, the aforementioned issues are interrelated. Peacekeepers' SEA is also rooted in unequal gender relations and poverty, exacerbated by the social and economic dislocations of war.⁶¹ Furthermore, as discussed throughout the previous chapter, peacekeeping troops also frequently engage in "masculine" social practices that, in turn, contribute to the encouragement or acceptance of sexual exploitation and gender-based violence against women and children. Consequently, the problem persists. The direct

⁵⁹ S. Moncrief, 'Military socialization, disciplinary culture, and sexual violence in UN peacekeeping operations', *Journal of Peace Research*, 12 September 2017

⁶⁰ V.K. Vojdik, 'Sexual Abuse and Exploitation by UN Peacekeepers as Conflict-Related Gender Violence', 2019. Available at: https://doi.org/10.1007/978-981-10-8905-3_28.

⁶¹ *Ibidem*.

contact between peacekeepers and communities at risk in conflict or post-conflict situations may serve the good of the community, but this contact is corrupted by patriarchal social values. Even those who have the power to hold perpetrators accountable and ensure that survivors receive the support and justice they deserve may be part of the perpetrators.

It can be concluded that these UN peacekeeping missions can be part of the solution and effective support for victims and survivors of CRSV. There are several initiatives being implemented to increase accountability and transparency, including the introduction of specialized training programs for peacekeepers⁶², the improvement of monitoring and reporting mechanisms, and stricter measures to prevent and respond to sexual exploitation and abuse (SEA) by peacekeeping personnel. Concurrently, in order to resolve the issue of peacekeepers' SEA, it is imperative to address the gender inequality that persists in many societies. This necessitates the empowerment of women and a transformation of institutional patterns and practices that perpetuate and legitimize the use of male violence by peacekeepers.

⁶² United Nations Regional Service Centre Entebbe, 'CRSV course improves peacekeepers' response to sexual violence', 21 November 2022. Available at: <https://rsce.unmissions.org/crsv-course-improves-peacekeepers-response-sexual-violence>.

PART. II CHILDREN BORN OF WAR

It is already established that when the notion of CRSV is referenced, it is not limited to the phenomenon of rape. The concept encompasses a vast array of practices that are internationally condemned. This chapter will explore the phenomenon of Children Born of War (CBOW), a group of victims and survivors of CRSV. A survey⁶³ conducted in 2001 estimated that tens of thousands of children were born from sexual violence in the 1900s and that at least 5000,000 “war children” were living at that time. These children are scattered in various parts of the world such as Iraq, Myanmar, Bosnia, Kenya, Colombia, Sierra Leone, Bangladesh, East Timor, Sri Lanka, Kosovo, DRC, Uganda and Peru. Beyond these countries, we can't ignore the fact that this phenomenon hasn't stayed in the past, transcending temporal and geographical boundaries. After nine months of the Russian invasion of Ukraine, women who became pregnant as a result of sexual abuse during the conflict⁶⁴ have given birth to children conceived under those circumstances.

The understanding of CBOW includes children born of sexual violence, because of rape or situations of sexual exploitation of girls and women in or linked to conflict, including conflict and post-conflict situations.⁶⁵ Children born of war refers to any child born to a parent who is part of foreign armed forces or peacekeeping forces and another parent who is an ordinary citizen, regardless of the geographical, temporal, or cultural context and regardless of the type of conflict or mode of conception. For the purposes of this study, the term "children born of sexual violence" is used to refer to any child conceived due to sexual violence, in its broadest sense⁶⁶, in conflict zones.

⁶³ K. Greig, 'The War Children of the World', War and Children Identity Project, 2001. Available at: https://www.academia.edu/2189623/The_war_children_of_the_world.

⁶⁴ I. Skjelsbaek, L. Stotz, and J. Elvebakken, 'Don't Forget the Children Born of War in Ukraine', 23 February 2023. <https://blogs.prio.org/2023/02/dont-forget-the-children-born-of-war-in-ukraine/>.

⁶⁵ J. Neenan, 'Closing the protection gap for children born of war – Addressing stigmatization and the intergenerational impact of sexual violence in conflict', Centre for Women, Peace and Security, London School of Economics, 2018, p. 6.

⁶⁶ Rome Statute of the International Criminal Court, (adopted 17 July 1998 and entered into force 1 July 2002) 2187 UNTS 90, arts 7(g) and 8(xxii).

1. STIGMATIZATION AND INTERGENERATIONAL TRAUMA

“Stigma can function as a mechanism to “bring things back to normal” by excluding those whose bodies carry the scars of conflict and as a mechanism to rebuild pre-existing inequalities/gender dynamics as part of what a community understands as recovery”⁶⁷

In addition to the numerous adverse effects associated with a period of war, these children are confronted with a multitude of challenges and obstacles that persist from their earliest years to adulthood and beyond. These children are exposed to a unique set of immediate and long-term risks.

First and foremost, it is crucial to recognize that these children are subjected to condemnation due to their very existence. This condemnation often originates from their own families and communities, who associate them with the pain of a dark past. Children's identities have been stigmatized with collective names such as "Chetnik babies" in Bosnia, "Children of hate" in Rwanda, "Kony's children" in Uganda, and "Los paraquitos" in Colombia, across birth ethnic and non-ethnic conflicts⁶⁸. The use of these names serves to tarnish the lives of these children and to associate them with the consequences of a disaster. CBOW are perceived as the next generation of an armed political, ethnic or religious movement and, for that reason, the survivors are often seen as affiliated with the parties to the conflict, causing stigma and in some cases abuse, infanticide, abandonment or other grave violations⁶⁹.

To understand the stigma faced by CBOW, Joanne Neenan underscores the significance of comprehending the multifaceted nature of the concept. "Internalized" stigma is associated with the subjective experiences of the victim, encompassing feelings of shame, guilt, and self-exclusion. These feelings are often intertwined with a sense of not belonging due to the victim's experiences in society, which are often influenced by discriminatory and disruptive social norms. "Externalized" stigma, in contrast, refers to the discriminatory acts of those who "stigmatize" the victims, through stereotyping, labeling, and prejudice directed at a child on the basis of their perceived "status".

⁶⁷ K. Adams, 'Principles for Global Action – Preventing and Addressing Stigma Associated with Conflict-Related Sexual Violence', developed by the United Nations and the UK government, 2017, p. 16.

⁶⁸ J. Neenan, 'The Role of the ICC in Protecting the Rights of Children Born of Rape in War', 12 February 2018, p. 4.

⁶⁹ United Nations Security Council, 'Report of the Secretary-General: Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict', S/2022/77, 31 January 2022.

The "status" of being labeled as children of the enemy or the raped woman who made the choice to raise them imposes severe repercussions on their mental and physical well-being, profoundly affecting their integration into society. Compounding this, many of these children are raised by single, traumatized mothers who are themselves survivors of CRSV. Forced into motherhood, these women face overwhelming emotional and financial burdens for which they are ill-prepared.

As Neenan highlights⁷⁰, the intergenerational transmission of trauma, along with economic, psychological, and emotional challenges, becomes highly probable. A mother's mental health significantly shapes her parenting, leading these children to grow up without essential support systems. The fate of these children appears to be inextricably linked to their mothers'. Pramilla Patten, in her video message for the launch of the EuroWARCHILD Project, shared her experiences in Bosnia and Herzegovina, where she met adults who had been born from rape and realized the extent to which they suffer as a result of their mothers' own discrimination and stigmatization, she states that there is a "cascade of harms, passed from mother to child in an intergenerational cycle of denial of human dignity and rights".⁷¹

2. STATE RESPONSIBILITIES TOWARDS CBOW UNDER INTERNATIONAL HUMAN RIGHTS LAW

*"A significant dimension of the protection gap lies with the failure of states to respect and protect the human rights of children born of sexual violence and to prevent and redress gender-based discrimination against their mothers."*⁷²

Under International Human Rights Law and based on article 2 of the ICCPR⁷³ and the ICESCR⁷⁴, States owe obligations to their citizens and to those under their

⁷⁰ J. Neenan, 'Closing the protection gap for children born of war – Addressing stigmatization and the intergenerational impact of sexual violence in conflict', Centre for Women, Peace and Security, London School of Economics, 2018, p. 24.

⁷¹ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 'SMSG Patten video for the "Launch of the EuroWARCHILD Project – What does it mean to be a Child born of War?"', 1 June 2022.

⁷² Ibidem. note 57

⁷³ United Nations, 'International Covenant on Civil and Political Rights', 16 December 1966.

⁷⁴ United Nations, 'International Covenant on Economic, Social and Cultural Rights', 16 December 1966

jurisdiction. Traditionally, we can mention the 3 three levels of obligations – the duty to respect, protect and fulfill human rights.⁷⁵

The obligation to respect human rights is a negative duty, states must refrain from interfering with the enjoyment of human rights. The obligation to protect requires States to act into the protection of individuals and groups against human rights abuses or interference. The third level is the duty to fulfill, that means that States must take positive action to ensure and facilitate the enjoyment of human rights⁷⁶.

The Convention on the Rights of the Child (UNCRC) is the most widely ratified human rights instrument in history, and it acknowledges that every child has basic fundamental rights and that governments are required to meet children's basic need and help them reach their full potential⁷⁷. Those "basic fundamental rights", such as the right to life, survival and development, right to education, health and non-discrimination are often restricted or even violated for a child born of sexual violence.

As Carpenter⁷⁸ notes, there is a significant distinction between the possession and enjoyment of a right. Human rights are legal norms associated with a specific level of morality that must be imposed and enforced by each government. The mere existence of a convention or the ratification of its provisions by member states does not guarantee the enjoyment of children's rights. It is essential to ensure that these rights are effectively realized by all children, including those belonging to the most vulnerable groups, such as CBOW.

In its General Comment 5⁷⁹, the UN Committee on the Rights of the Child elucidated that the obligation of non-discrimination necessitates that states proactively identify children and groups of children whose recognition and realization of rights may necessitate "special measures." The global overview presented of children born of sexual violence illuminates that they are a group of children at particular risk of stigmatization and discrimination. Consequently, states are obliged to implement affirmative measures to guarantee the rights of these children and their specific needs.

⁷⁵ United Nations, 'The Foundation of International Human Rights Law'. Available at: <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.

⁷⁶ Ibidem.

⁷⁷ Save the Children, 'UNCRC, Every Child has the Right to Survival, Protection and Education'. Available at: <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child>.

⁷⁸ C. Carpenter, *Forgetting Children Born of War: Setting the Human Rights Agenda in Bosnia and Beyond*, Columbia UP, 2010.

⁷⁹ United Nations General Comment n5, 'General Measures of Implementation of the Convention on the Rights of the Child', CRC/GRC/2003/5.

3. PROTECTION GAPS

3.1. THE STATE OF BEING STATELESS

As mentioned in article 7 of the CRC, "the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents." and, furthermore, "states parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Denial of citizenship may lead to a loss of access to education, social care and health. Yet many children have this right compromised. For instance, Vietnam follows the principle of *jus sanguinis*, according to which the nationality of the relative is passed on to the child, regardless of where they were born⁸⁰. During and after the war in Vietnam, up to 500,000 "children of war" were born to foreign soldiers. This principle resulted in many children born of rape to American soldiers becoming "stateless", as the parents did not register their children. According to Carpenter these children were denied medical care, welfare and education, since it was customary for the father to register the child and request legal paternity.

The *jus sanguinis* rule, from the Latin "law of blood", was also applied by Bosnia and Croatia, which meant that the children of Bosnian women, born in Croatia, had no right to acquire Croatian nationality⁸¹- which gave them a "stateless" status, with no access to basic rights such as the right to education. In September 1996, this situation finally changed, as the Bosnian government amended Article 4 of the Citizenship Law, changing the *jus sanguinis* principle. This amendment made it possible to confer the nationality of Bosnia and Herzegovina on a child born outside the country to a relative who is a citizen of Bosnia and Herzegovina and the other relative a citizen of a former republic of the Federal Republic of Yugoslavia. Before that, refugee children, particularly those abandoned by their mothers and placed in local institutions, could not acquire any

⁸⁰ C. Carpenter, 'War's Impact on Children Born of Rape and Sexual Exploitation: Physical, Economic and Psychosocial Dimensions'.

⁸¹ C. Carpenter, *Forgetting Children Born of War: Setting the Human Rights Agenda in Bosnia and Beyond*, Columbia UP, 2010.

nationality and were also stateless, the children with “no name – NN” which entails difficulties and challenges for their well-being, access to fundamental rights and future⁸².

In opposition to this principle, we have the rule of *jus soli*, from the latin “law of the soil”, one that seems stronger in terms of protection against statelessness. Under this rule, being born in the territory of a country is a necessary condition for acquiring the nationality of the country in question.

Gender discrimination is also a crucial factor in the creation and perpetuation of statelessness⁸³. Many countries around the world still do not have gender-inclusive citizenship laws. In Iraq, Libya, Somalia and Syria children cannot be registered without the father’s name⁸⁴. In Africa, for instance, more than 20 countries still deny a woman the right to pass on her nationality to her spouse. These laws *ratio*, based on the vision of the father, the man of the family as the main agent of identity transmission, perpetuates patriarchal norms and reinforces traditional gender roles. This patrilineal system, where the child's nationality is determined solely by the father's citizenship or nationality, regardless of the mother's citizenship or place of birth⁸⁵, is a clear violation of gender equality principles. It perpetuates patriarchal norms and reinforces traditional gender roles, where the father's nationality is considered more important than the mother's⁸⁶. Furthermore, the rights of children are violated, not only because of the clarity of Article 7 of the CRC, but also because of its harmful effects.

The inability of a stateless child to access rights and services in the country of their birth is a result of this violation. In Iraq and the Syrian Arab Republic, they frequently lack access to health care, education, housing and employment because of the lack of civil documentation. Although children in Sudan are entitled to a name, nationality, and birth registration, in reality, these rights are hampered by onerous

⁸² J. Daniel-Wrabetz, *Born of War, Protecting Children of Sexual Violence Survivors in Conflict Zones*, Kumarian Press, Inc, 2007, p. 33.

⁸³ United Nations Security Council, 'Report of the Secretary-General: Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict', S/2022/77, 2022.

⁸⁴ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 'SRSG Patten video for the "Launch of the EuroWARCHILD Project – What does it mean to be a Child born of War?"', 1 June 2022.

⁸⁵ A reality still presents today in countries such as Saudi Arabia, Qatar, the United Arab Emirates, Brunei and Bahrain, even though some efforts have been made to amend this factor of discrimination, the complete reform and implementation of laws granting women equal rights in terms of nationality and citizenship remain permanent challenges.

⁸⁶ I. Goris, J. Harrington, and S. Kohn, 'Statelessness: what it is and why it matters', 2010. Available at: https://mcrg.in/wp-content/uploads/2022/02/Ref6_What-is-it-and-why-it-matters.pdf

processes for obtaining nationality through the mother's line. Considering this, it is common for children's inheritance and property ownership to be restricted or disputed. Family members in Uganda opposed the return of survivors, especially if they were bringing children who had been raped during a conflict. In extreme situations, they even killed the survivors and their children out of concern that they would lose their land to rapists or members of the military forces⁸⁷.

In addition, there are instances in which mothers are reluctant to register their children due to the shame associated with the father's name. In other cases, the identity of the father is unknown, with only the information that he is a soldier being available. This is often the case in instances of gang rape or multiple individual rapes committed by different perpetrators.

Similarly, to Article 7 of the CRC, Article 15 of the UDHR explicitly acknowledges the right to a nationality. However, it does so in a general manner, with no mention of the specific criteria to be adopted by states. However, it is clear that there is an obligation, associated with any state governed by the rule of law, to comply with the general principles of law and international human rights law, in essence, states "retain the right to draw up the content of their nationality laws (but) must do so in accordance with international standards relating to nationality, including the principle that statelessness must be avoided"⁸⁸. There are several international treaties that guarantee the right to citizenship and the special protection of vulnerable groups. The Convention on the Reduction of Statelessness was adopted by the United Nations General Assembly in 1961 and is designed to prevent and reduce statelessness by establishing rules for the acquisition and loss of nationality. This Convention places particular emphasis on children's rights, requiring states to grant citizenship to children born on their territory or born to their nationals abroad⁸⁹, who would otherwise be stateless in order to prevent

⁸⁷ United Nations Security Council, 'Report of the Secretary-General: Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict', S/2022/77, 31 January 2022.

⁸⁸ Convention on the Reduction of Statelessness, 1961.

⁸⁹ In the introductory note by the United Nations High Commissioner for Refugees, to avoid statelessness in such cases, it is stated that "States may either grant nationality to children automatically at birth or subsequently upon application. The Convention further seeks to prevent statelessness later in life by prohibiting the withdrawal of citizenship from nationals of States - either through the loss, renunciation or deprivation of nationality - when doing so would result in statelessness. Finally, the Convention instructs states to avoid statelessness in the context of the transfer of territory. In all these scenarios, the safeguards of the 1961 Convention are triggered only in cases where statelessness would otherwise arise and for individuals who have some attachment to a country. These standards serve to avoid nationality problems that may arise between states."

statelessness at birth⁹⁰. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 and prohibits discrimination against women in any area of life, including nationality rights. States are thus obliged to ensure that all individuals have equal rights to nationality, including the capacity to obtain, alter, and retain nationality⁹¹. Article 24 of the International Covenant on Civil and Political Rights (ICCPR) also recognizes the right of every child to acquire a nationality, free from discriminatory processes and taking the necessary measures to prevent statelessness. The CRC mentions frequently that state parties need to identify the most vulnerable and disadvantaged children within their borders and to take affirmative action to ensure that the rights of these children are realized and protected⁹².

As Mochmann and Larsen posit⁹³, CBOW has gradually come to be regarded as a particularly vulnerable group of children. It is therefore of paramount importance at both the national and international levels to recognize their specific needs and to protect their human rights. Their best interests⁹⁴ must always be taken into account. It is

⁹⁰ Following the “Guidelines on Statelessness NO. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness” of the United Nations Refugee Agency HCR/GS/12/04, 21 December 2012, the term “would be otherwise stateless” means that the child would be stateless unless a Contracting State with which he or she has a link through birth in the territory or birth to a national of that State grants that child its nationality. A child can be considered stateless for various reasons, including: (i) his or her parents are stateless and the child is born in a country that applies the *jus sanguini* principle; (ii) the child is born in a country that does not apply the *jus soli* principle and the parents have a nationality, but neither can confer it upon the children. The criterion is not whether or not the parents have a nationality, but whether the child is stateless because he or she acquires neither the nationality of his or her parents nor that of the State of his or her birth.

⁹¹ Article 2(f) of the UN CEDAW, Convention on the Elimination of All Forms of Discrimination Against Women, provides: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating against women and, to this end, undertake, *inter alia*, to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”

⁹² J. Daniel-Wrabetz, *Born of War, Protecting Children of Sexual Violence Survivors in Conflict Zones*, Kumarian Press, Inc, 2007, p.32.

⁹³ Mochmann and Larsen, 'The Life Course of Children Fathered by German Soldiers in Norway and Denmark during WWII', *Historical Social Research*, January 2008. Available at: https://www.researchgate.net/publication/299171002_Children_born_of_war_The_life_course_of_children_fathered_by_German_soldiers_in_Norway_and_Denmark_during_WWII_-_Some_empirical_results.

⁹⁴ Article 3 – Convention on the Rights of the Child

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

imperative that the mothers of these children be afforded the right to pass on their nationality to their children. Furthermore, even in the case of abandonment, these children must not be regarded as "no name and no state" children. It is the duty of states to ensure not only the protection of these children, but also to guarantee that they can actually enjoy their rights, rather than merely allowing them to exist as a theoretical possibility for some children.

The joint statement by CEDAW and the CRC⁹⁵, expresses concern about the continuing acts of rape and sexual violence that result in children born of rape. It notes that the reparation programs put in place by states have not fully addressed the economic impact of raising children born of rape, which leaves them vulnerable to future cycles of violence.

It is recognized that CBOW are frequently precluded from birth registration and their rights to nationality or citizenship due to contestation of their identity and the lack of formal civil registration systems. This has the consequence of creating obstacles to the exercise of their human rights and preventing the implementation of lasting solutions for the integration of these children into society while they are transitioning to adulthood. In light of this, it is urged that States take effective measures. In the joint statement these include: (i) Identification of children and right to nationality: States must ensure that CBOW are registered and that they have access to their right to a nationality. Children who are abandoned need access to basic services and a birth certificate, they also have the right to acquire a nationality where otherwise they would be stateless. These measures must be implemented in accordance with non-arbitrary and non-discriminatory principles, not only after conflicts have ceased, but also during and before them. (ii) The combat of stigma and social exclusion: This initiative begins with a mention of "measures employed by the military and law enforcement authorities, including deradicalization programs, respect women's and children's rights to dignity", with which we agree, as it concerns one of the root causes already mentioned above in this thesis. This measure also stems from a concern to generate adequate public awareness and education campaigns, with the objective of combating the social isolation of CBOW. It is important to note that we also value the acknowledgment of the need to collaborate with non-governmental

⁹⁵ Committee on the Rights of the Child and Committee on the Elimination of All Forms of Discrimination Against Women, 'Joint Statement by CEDAW and CRC, "Ensuring prevention, protection and assistance for children born of conflict related rape and their mothers"', 19 November 2021.

organizations (NGO's) and state agencies to raise awareness about the vulnerabilities and risks faced by women and children born of rape.

As has already been stated, this process of integration into society also necessitates the raising of awareness within the communities themselves, which must be prepared to receive and accept these children, and the eradication of any stereotypes. Furthermore, we concur with the advantages of engaging traditional and religious leaders in the awareness-raising process, utilizing the media to disseminate information about the plight of these survivors.

In conclusion, the joint statement of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is important for emphasizing the interconnectedness of children's and women's rights and advocating for their protection and promotion. However, the applicability and acceptance of this joint declaration by states varies depending on several factors. These are two different conventions, so we can argue that this declaration is more likely to be respected and taken into account in its national laws by states that have ratified both and already have strong legal frameworks in place to protect the rights in question. Ultimately, the success of international agreements and joint declarations is contingent upon the political will of governments to accept and implement them.

Article 3 of the CRC⁹⁶ states that “In all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”, this represents another example of a legal principle and subjective right⁹⁷ that integrates CBOW concerns into national child protection systems and humanitarian efforts, which should include their citizenships rights to prevent statelessness, providing them with a legal identity and, consequently, access to services.

⁹⁶ Article 3, CRC, 1. 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.' 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

⁹⁷ J. Cardona Llorens, 'Presentation of General Comment No.14: strengths and limitations, points of consensus and dissent emerging in its drafting', in Council of Europe, *The best interests of the child – A dialogue between theory and practice*, 2016.

In light of the growing recognition of the vulnerability of CBOW to statelessness, the role of civil society organizations, including NGOs and advocacy groups, in promoting acceptance of the joint declaration and raising awareness of the seriousness of the issue has become increasingly crucial. Such advocacy can influence governmental policies and practices regarding the rights of children and women. Furthermore, international pressure from organizations such as the United Nations⁹⁸ and regional bodies can also encourage states to accept and implement joint declarations. In addition to the establishment of joint declarations, measures should also be taken to implement them or at the very least, encourage their implementation.

3.2. RIGHT TO EDUCATION

Article 28 of the CRC states that all States Parties shall "recognize the right of the child to education". This right is one of the most influential elements in a child's future, in building his or her personality and goals. Article 29 specifically mentions that: "The education of the child shall be directed to: (a) the development of the child's personality, talents, and mental and physical abilities to the fullest of his or her potential". Education is an empowering right that facilitates the active participation of individuals in society and the exercise of their civil and political rights⁹⁹. Manfred Nowak describes this right as a "precondition for the exercise of human rights", as he believes that the enjoyment of many civil and political rights, as well as economic, social and cultural rights, depends on "at least a minimum level of education, including literacy"¹⁰⁰. Following and agreeing with his thinking, education is not only for self-education, but can serve a much greater purpose - the strengthening of human rights. Although this right and the priorities of education vary according to geographical, religious, social, historical and political factors, there is a general consensus on the need for "the development of respect for human rights

⁹⁸ UNICEF Uganda, 'UNICEF partnered with the National Identification and Registration Authority (NIRA) to improve birth registration services', UNICEF Uganda Annual Report of 2019. https://www.unicef.org/uganda/media/6806/file/UNICEF_UgandaAR2019-WEBhighres.pdf. In Uganda, With this financial and material support provided by UNICEF, Uganda's eight child-protection learning districts provided 17,118 newborn babies with birth notifications in 2019, compared to just 3,913 birth notifications in 2018 and Uganda's under-five birth registration rate is now estimated to have increased to 37.3 per cent, with certification at approximately 19.5 per cent. Information available at UNICEF Uganda Annual Report of 2019, https://www.unicef.org/uganda/media/6806/file/UNICEF_UgandaAR2019-WEBhighres.pdf

⁹⁹ Human Rights Watch, 'The education Deficit', 9 June 2016. <https://www.hrw.org/report/2016/06/10/education-deficit/failures-protect-and-fulfill-right-education-through-global>.

¹⁰⁰ M. Nowak, 'The Right to Education', in *Economic, Social and Cultural Rights*, 2001, pp. 245-246.

and fundamental freedoms and for the principles enshrined in the Charter of the United Nations"¹⁰¹ and "the full development of the human personality and the sense of its dignity, and (...) respect for human rights and fundamental freedoms"¹⁰².

The child, as a blank canvas and the future generation, absorbs through their education life skills and knowledge to cope with the challenges of everyday life, which can be the key to breaking out of the intergenerational cycle of poverty¹⁰³. The status and stigma associated with being a CBOW has a detrimental effect on their growth, mental health and self-confidence. Often, education ends up being a factor that minimizes these feelings by helping in the process of integration into their communities. They want to escape their status as "children of the enemy" and be seen as honorable and "normal" students. This need is accompanied by a strong desire to be a perfect example and to be worthy of belonging, so that "our mothers don't regret why they gave birth to us"¹⁰⁴.

However, the effects of constant discrimination, stigmatization and exclusion by their families and community do not always have a motivational effect, and some children end up having traumatic experiences at school that affect their academic performance¹⁰⁵. For some children, the feeling of hope and the desire to belong and succeed in society did not prevail, and they ended up giving up their studies and falling into the world of sex work and substance use.¹⁰⁶

“Legal frameworks are not static and unchangeable texts; rather, they accompany the evolution of countries’ needs and enshrine fundamental principles applicable to all. A supportive legal framework is paramount to lay down the conditions for the delivery and sustainability of inclusive and equitable quality education for all”¹⁰⁷

¹⁰¹ CRC art 29 (1), b).

¹⁰² Article 13 (1) of the CDESCR.

¹⁰³ Human Rights Watch, 'The education Deficit', 9 June 2016. <https://www.hrw.org/report/2016/06/10/education-deficit/failures-protect-and-fulfill-right-education-through-global>.

¹⁰⁴ S. Kahn and M. Denov, 'We are children like others: Pathways to mental health and healing for children born of genocidal rape in Rwanda', National Library of Medicine, 2019, p. 231.

¹⁰⁵ Ibidem. A participant of the research, made by Kahn and Denov, on the Children born of genocidal rape in Rwanda said: "When it is time to go to school, I really feel disturbed. Normally it is difficult for me to hear and to understand when I am in class". This statement clearly demonstrates the consequences of shame and stigmatization.

¹⁰⁶ Ibidem.

¹⁰⁷ UNESCO, 'Capacity Development for Education Programme: Operationalizing Sustainable Development Goal 4 – A review of national legislations on the right to education', 2017. https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000260460&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_0ed299c4-6596-4694-8c9c-4262d60cff00%3F_%3D260460eng.pdf&updateUrl=updateUrl8329&ark=/ark:/48223/pf0000260460/PDF/260460eng.pdf.multi&fullScreen=true&locale=en.

In the study led by Myriam Denov, which explores the experiences of children born of genocidal rape, their mothers and family members, the team conducted interviews with 29 women and 31 men in Rwanda over an eight-month period. According to the author, many of the participants reported limited economic resources and support, which prevented them from affording school fees. For some of the participants, attending school represented a pathway to a better future, the promise of a job, and the ability to support themselves and their families. However, without the financial resources to pay the fees, that future would be infeasible. Some of the participants shared an important insight: even though they need the materials and resources, “the most important thing is to feel safe and comfortable. We can have all that and full tuition fees, but when we get to school, we’re still thinking about the bad words we were told at home and how our neighbors insult us. How can you succeed at school?”¹⁰⁸.

It is evident that academic success of these children depends not only on their ability to attend school in search of better conditions of life, but also on the environment that surrounds them within the four walls of the classroom and the psychological support that is made available to them. It is challenging to envision a promising future when one is marginalized and mistreated by one's family and community. When one has been consistently devalued and regarded as an anomaly, it becomes difficult to perceive a positive future.

The Joint Statement issued by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) underscores the importance of ensuring that pregnant girls, girls with young children, and children born of rape have access to free and quality education. However, it is imperative to recognize the particular vulnerability of this group of children and go beyond mere adherence to legal provisions.

In addition to the fundamental right to education, these children require supplementary incentives and support within the educational environment. It is essential to provide teachers with training to ensure they are equipped to create an inclusive and supportive learning environment for these children. Furthermore, it is crucial to address any stigma and discrimination that may exist among educators towards these children. Respect for the rights of these children must begin with a shift in mindset. When

¹⁰⁸ S. Kahn and M. Denov, 'We are children like others: Pathways to mental health and healing for children born of genocidal rape in Rwanda', 2019.

discussing these children's right to education, it is not only about their access to it but also about how they are treated within the educational system and what additional support measures are available. This holistic approach to education for vulnerable children must be recognized and supported by the international community.

The role of NGO's, international organizations, government agencies, academic institutions, teacher associations and all kinds of organizations willing to contribute to training programs that spread inclusive education policies, awareness about the sensitivity of the topic, and knowledge of how to deal and react with these children is much needed. Education and teachers play a crucial role in the lives of all children around the world. CBOW are children like all others and deserve an inclusive and appropriate education. Psychosocial support training, trauma-informed teaching practices¹⁰⁹, as well as conflict-sensitive education are necessary tools that can make all the difference to a child's chosen path in life. Cooperation and partnership between governments, NGOs and all types of international organizations, institutions and associations is essential to build networks, platforms or mechanisms that facilitate and promote awareness-raising campaigns aimed at breaking down the stereotypes and misconceptions that contribute to the social and family exclusion of these children, promoting their inclusion, respect and adequate and effective support.

With this, we can conclude that education policies at national and international level should explicitly address the needs of CBOW, prioritizing access to quality education for all children, regardless of their origins or backgrounds, and include measures to prevent and address stigma, trauma and discrimination in schools. The necessary resources should be made available to fund teacher training programs and support services. As well as to support governments and relevant stakeholders in strengthening their capacity to implement and uphold existing legal frameworks on the rights of CBOW, by providing technical assistance and capacity-building support¹¹⁰.

¹⁰⁹ The Child Mind Institute is a relevant source of studies on the effects of trauma on children's lives at school, on signs of trauma and on tips for helping traumatized children, available at: <https://childmind.org/article/how-trauma-affects-kids-school/>; The National Child Traumatic Stress Network provides school administrators, teachers, staff, and concerned parents with basic information about working with traumatized children in the school system (elementary school, high school, middle school and preschool students), <https://www.nctsn.org/resources/child-trauma-toolkit-educators>

¹¹⁰ S. Nicolai and C. Triplehorn, 'The role of education in protecting children in conflict', Humanitarian Practice Network, 2003.

The Convention against Discrimination in Education¹¹¹, adopted in 1960, is the first legally binding international instrument that is entirely and specifically dedicated to the right to education. This treaty does not admit any reservations, which means that the 110 states that have ratified this Convention must comply with all the rights and obligations set out in this instrument¹¹². However, even though this treaty guarantees free and compulsory primary education, secondary education in its different forms available and accessible to all, higher education equally accessible to all and other relevant provisions, it should be borne in mind that this convention was adopted in 1960. Over the intervening years, not only have study and learning methods changed, but society's challenges, conflicts, and vulnerable groups have changed, as have their needs and interests. This right must be adapted to everyone so that it can belong to everyone. With ten years to go until the 2030 Agenda for Education¹¹³ targets with the aim of “leaving no one behind,” it is high time that the CBOW be expressly mentioned in law. It is also time for the international community to renew its commitment to ending discrimination in education by giving a new impetus to the Convention in order to reflect the new challenges of the 21st century¹¹⁴.

As with the right to acquire a nationality, the realization of the right to education depends on its effective implementation by countries. In this regard, UNESCO develops and monitors education norms and standards to promote the implementation of this right at a national level. In accordance with its mandate, UNESCO requires Member States to submit reports on a four-yearly basis. These reports must detail the legal provisions that have been adopted and the measures that have been taken to implement the conventions and recommendations¹¹⁵.

¹¹¹ United Nations Educational, Scientific and Cultural Organization (UNESCO), “Convention Against Discrimination in Education”, 14 December 1960, <https://adsdatabase.ohchr.org/IssueLibrary/UNESCO%20Convention%20against%20Discrimination%20in%20Education.pdf>

¹¹² UNESCO, “The right to education”, <https://www.unesco.org/en/right-education/convention-against-discrimination>, 28 February 2024

¹¹³ UNESCO, “Decisions adopted by the Executive Board at its 197th session”, 22 October 2015, <https://unesdoc.unesco.org/ark:/48223/pf0000235180>

The Education 2030 Agenda and SDG4 (ensure inclusive and equitable quality education and promote lifelong learning opportunities for all), offer a strategic opportunity for Member States to review and adjust their national legal systems and fulfill their legal responsibilities under standard-setting instruments and to comply with international agreements on the realization of the right to education for all.

¹¹⁴ UNESCO, “The right to education”, <https://www.unesco.org/en/right-education/convention-against-discrimination>, 28 February 2024

¹¹⁵ Constitution of UNESCO, Article VII

It is of equal importance to comply with existing international law and legal principles and to adapt and change in order to meet the needs of all, thus ensuring that the universality of human rights is not merely a fiction. In this context, UNESCO's review¹¹⁶ of national legislation on the right to education, with the aim of operationalizing SDG4¹¹⁷, in its target 4.5 notes that "By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations." The CBOW, as a specific vulnerable group, is profoundly affected by entrenched stigma, discrimination, and violence. The success of the SDG agenda depends on the adoption of more protective legal norms to overcome these practices and marginalization, thereby ensuring that "no one is left behind."¹¹⁸

Although it may take a considerable time to alter practices and overcome stereotypes, a change in legislation is a necessary preliminary step to recognize discrimination as illegal. In other words, "legal reform is necessary but not sufficient". Laws alone are not sufficient to guarantee the full enjoyment of the right to education without discrimination. Their articulation with implementation measures, as well as their full enforcement, are indispensable. It is equally important to implement public awareness-raising campaigns and training programmes for law-enforcement officials and judges, in order to create definitive change in attitudes and social norms¹¹⁹.

3.3. *RIGHT TO NON-DISCRIMINATION*

The concept of "stigmatization" is related to the concept of "discrimination," but it is important to distinguish between the two. As previously stated, stigma is a social process¹²⁰ whereby an individual is negatively viewed by society due to a specific

¹¹⁶ UNESCO, 'Capacity Development for Education Programme: Operationalizing Sustainable Development Goal 4 – A review of national legislations on the right to education', 2017. https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000260460&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_0ed299c4-6596-4694-8c9c-4262d60cff00%3F_%3D260460eng.pdf&updateUrl=updateUr18329&ark=/ark:/48223/pf0000260460/PDF/260460eng.pdf.multi&fullScreen=true&locale=en.

¹¹⁷ United Nations, 'Sustainable Development Goal 4 – Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all'. <https://sdgs.un.org/goals/goal4>.

¹¹⁸ UNESCO, 'Capacity Development for Education Programme: Operationalizing Sustainable Development Goal 4 – A review of national legislations on the right to education', 2017.

¹¹⁹ *Ibidem*.

¹²⁰ "Principles for Global Action, Preventing and Addressing Stigma Associated with Conflict-Related Sexual Violence," United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, International Committee of the Red Cross, 2017, p. 20

characteristic or attribute¹²¹ (in the case of CBOW, their background and an assumed association with the "enemy"). Discrimination, in contrast, is the treatment of these children based on the same characteristics or attributes. Article 2 of the CRC states that "States Parties shall respect and ensure the rights set forth in the present Convention to all children within their jurisdiction without discrimination of any kind, irrespective of the race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child or of his or her parents or legal guardians." CBOWs are subjected to discrimination on the basis of their identity, and their right to non-discrimination is persistently violated.

This right is the foundation of all rights and is essential for promoting equality, justice, and human dignity. The aforementioned protection gaps illustrate the interconnectivity of this right with all others and exemplify the necessity to address discrimination as a significant obstacle in the lives of these children. It has been demonstrated that discrimination in relation to the right to a nationality can result in a child becoming stateless and increasing their risk of not receiving basic services. Even the requirements associated with service provision can be discriminatory and prevent access, with fear of stigmatization¹²² being a critical barrier to victim support. For example, requiring the permission of or accompaniment by the father to access services. In terms of access to education, discrimination is also a factor that makes the provision of a quality education difficult, and in some cases impossible, impeding the desired and usual beneficial effects.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also prohibits discrimination against women in all areas of life, including civil, political, economic, social, and cultural domains. However, the process of stigmatization felt by CBOWs is, as a matter of fact, inextricably linked to a complex matrix of social hierarchies, and as such it is interwoven with wider gender discrimination issues that has not yet been overcome. It is known that one of the main causes of stigmatization of these children is the association of the child with their perpetrator

¹²¹ Better Health Channel, 'Stigma, discrimination and mental illness'. <https://www.betterhealth.vic.gov.au/health/servicesandsupport/stigma-discrimination-and-mental-illness>.

¹²² I.C. Mochmann, 'Children Born of War – A Decade of International and Interdisciplinary Research', *Historical Social Research*, 2017, p. 19.

fathers¹²³. This perception of Neenan, which we also endorse, is linked to gender-discriminatory, patriarchal, and patrilineal understandings of a child's identity. This is because, as previously stated, there are societies that effectively eliminate the role of the mother as a parent and transmitter of her nationality and identity to her child. This is done through discriminatory legal frameworks that effectively erase her identity through the act of rape¹²⁴.

The "Principle for Global Action"¹²⁵ number one¹²⁶, "Recognize and Address Stigma's Root Causes," is a highly pertinent instrument for the prevention and response to CRSV and its victims and survivors, mothers and CBOW. The recognition of gender inequality as a source of discrimination and stigma associated with victims CRSV represents a crucial step towards the cessation of this violence. Furthermore, the document emphasizes the necessity of ending impunity by adopting a "zero-tolerance policy towards CRSV and its associated stigma"¹²⁷. This entails ensuring that no victim is held culpable or criminalized for CRSV perpetrated against them or CBOW.

In essence, we concur with the measures proposed by the Principles of Global Action and believe that this problem must be addressed with the understanding that "one incident is one too many." It is also imperative to recognize that these children are victims, and that they deserve to be treated as such. The stigma and discrimination that persecutes them can result in human rights violations and, in and of itself, constitutes a human rights violation. It is of the utmost importance to pursue the full integration of gender equality and non-discrimination in all peace and security efforts, as this will facilitate economic, social, and political integration and empowerment.

¹²³ J. Neenan, 'Closing the Protection Gap for Children Born of War – Addressing stigmatization and the intergenerational impact of sexual violence in conflict', The London School of Economics and Political Science, Centre for Women, Peace and Security, Foreign & Commonwealth Office, 2017, p. 31.

¹²⁴ Ibidem.

¹²⁵ In an effort to close the "urgent policy gap in recognizing and tackling CRSV-associated stigma," these Principles for Global Action were developed with contributions from over 120 experts, governments, non-governmental organizations and civil society. The five global principles address the stigma that may arise from a lack of understanding of who, where, and how CRSV affects people, especially CBOW. Their objective is to provide the international community with the necessary tools to implement non-stigmatizing norms in attempts to reduce sexual violence and wartime rape. <https://www.gov.uk/government/publications/launch-of-the-principles-for-global-action-on-tackling-the-stigma-of-sexual-violence-in-conflict>

¹²⁶ Principle 1: "Recognize and address stigma's root causes: CRSV-associated stigma has its roots in, and is sustained by, gender inequality and discrimination, the normalization and tolerance of sexual violence itself and the failure to consistently adhere to and implement human rights. Ending impunity, recognizing and responding to stigma as a rights violation and instilling thorough gender analyses are vital to ending the cycle of CRSV and its associated stigma".

¹²⁷ Principle 1, 1.2

As one of the CBOW that participated in Kahn and Denov's study in Rwanda said: "things start with neighbors (...) we need, first of all, the neighbors' and families' support (...) People in *gacaca* were asking for forgiveness and they were forgiven despite the fact that they killed people. What about us, who didn't do anything? Why can't people understand that we are victims?"¹²⁸. Things start from neighbors, from their acceptance and respect from their own children. The education of communities about CBOW experiences is crucial to challenge and eliminate stereotypes and misconceptions. NGO's, government agencies, international organizations, all appropriate institutions, communication channels have the role and capacity to promote the education and awareness of communities, via workshops, media campaigns, and positive interactions between the children and their neighborhood. Cultural, sport, educational events can foster the integration of these children among their people.

The creation of the Principles of Global Action was followed by 9 stigma workshops¹²⁹ led by the Foreign & Commonwealth Office in conflict affect countries in 2017 – Central African Republic, Colombia, Kosovo, Mali, Nepal, Sri Lanka, Sudan, South Sudan and Uganda. Nevertheless, despite the acknowledgment and addressing of the harmful consequences of the stigmatization process, discriminatory attitudes, and the fact that victims can be entirely excluded from their own communities and ostracized from their families and social networks, few direct references are made to CBOW. For instance, in the report of the workshop¹³⁰ held in Bangui, Central African Republic, it is mentioned once to state that "it is important to note that children born of rape are also stigmatized." While it is understandable that the CBOW were not the focus of these workshops, it is precisely this lack of focus that is our point. There is a clear need for more workshops in which these children are the protagonists.

We recognize the valuable work done by the "CHIBOW network"¹³¹, which aims to enhance the understanding of the challenges experienced by CBOW in volatile

¹²⁸ S. Kahn and M. Denov, "We are children like others": Pathways to Mental Health and healing for children born of genocidal rape in Rwanda', *Transcultural Psychiatry*, vol. 56, no. 3, 2019, pp. 510-528. <https://doi.org/10.1177/1363461519825683>.

¹²⁹ Foreign & Commonwealth Office, 'Principles for Global Action on Tackling the Stigma of Sexual Violence in Conflict'. <https://www.gov.uk/government/publications/launch-of-the-principles-for-global-action-on-tackling-the-stigma-of-sexual-violence-in-conflict>.

¹³⁰ Tearfund, 'Preventing Sexual Violence Initiative: Central African Republic Stigma Workshop, 30-31 August 2017' https://assets.publishing.service.gov.uk/media/5a81cdce40f0b62302699401/SV_Workshop_Report_-_CAR.pdf.

¹³¹ CHIBOW: Children Born of War network. Available at: <https://www.chibow.org/about-us>.

societies. Nevertheless, an international effort is necessary to ensure that these children are no longer subjected to discrimination, experiencing the violation of their rights on a daily basis and being regarded as mere "secondary victims" of CRSV.

4. LEGAL, POLICY AND OPERATIONAL RESPONSES

4.1. REINFORCING JUSTICE AND ACCOUNTABILITY

Although there is a consensus in the literature that CBOW face significant challenges, "transitional justice provisions rarely include survivors and children born of conflict-related violations"¹³². In a statement, the Special Representative on Sexual Violence in Conflict, Pramilla Patten, outlined her primary strategic objectives, which "include transforming cultures of impunity into cultures of deterrence and prevention, as well as a survivor-centered approach".¹³³

To end this "culture of impunity," Patten also emphasizes the importance of assisting member states in aligning their legislative frameworks with international norms and standards. One of the most effective instruments for achieving this objective is the *Teams of Experts*, established by the Council, which assists states in strengthening their justice institutions to fulfill their obligations under international law. As the Council has previously noted, "ending impunity for these crimes is a responsibility of all states."¹³⁴

This Team of Experts is worthy of mention for its success stories and for having committed itself on the ground to provide support. For instance, in the Democratic Republic of Congo, while accountability is advancing, the case of Ntabo Ntaberi Sheka (the leader of the Mai Sheka militia group) is illustrative of the challenges that remain. Sheka was convicted of the rape of over 300 individuals, a crime that has been described as one of the worst mass rapes of the last decade in the country. He was sentenced to life imprisonment for these atrocities.¹³⁵ The court awarded damages to the 11 victims who participated in the trial, ranging from the equivalent of 4,000 to 12,000 dollars.

¹³² United Nations Security Council, 'Report of the Secretary-General: Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict', S/2022/77, 31 January 2022.

¹³³ Office of the SRSG on Sexual Violence in Conflict, 'Remarks of Under-Secretary-General Pramilla Patten, Special Representative of the Secretary-General on Sexual Violence in Conflict, Session 1 of the Digital Dialogue Series', 21 July 2020.

¹³⁴ *Ibidem*.

¹³⁵ Human Rights Watch, 'DR Congo: Militia Leader Gets Life Term for Atrocities, Sheka's Trial Highlights Progress, Gaps in Military Justice System', 24 November 2020. <https://www.hrw.org/news/2020/11/24/dr-congo-militia-leader-gets-life-term-atrocities>.

Nevertheless, while the Congolese courts have frequently awarded compensations to victims of sexual violence, such “reparations have rarely, if ever, been paid”.¹³⁶

Nevertheless, the question remains: what about CBOW? In the context of transitional justice provisions, CBOWs are often excluded. Is this because they are still regarded as mere secondary victims? Are they eligible for reparations? In Iraq, in March 2021, the Yazidi Survivors Law¹³⁷ was enacted to provide transformative support to survivors of sexual violence perpetrated by Daexe. The law mentions the Yazidi, Turkmen, Christian, and Shabak communities, yet it fails to recognize or provide benefits for children born of rape. In Libya, the two ministerial decrees issued in 2014 offering solutions to survivors and, expressly, to children born of rape, have not been implemented to date¹³⁸. In Colombia, the Victims and Land Restitution Law, adopted in 2011 (Victim Law 1448)¹³⁹, recognizes children born of war, "conceived as a result of rape during the internal armed conflict," as victims in Article 181 - *Rights of Children and Adolescents*. It is unfortunate that this represents yet another example of a formal recognition, which, while commendable for representing an important step towards recognizing the rights of these children, is in fact an illusory reality with no practical implementation. This illustrates the inadequacy of legal frameworks alone in protecting rights.¹⁴⁰¹⁴¹

In addition to the aforementioned considerations, the *Preliminary Observations of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence on his Official Visit to Colombia*¹⁴² mentioned that the debate around

¹³⁶ Ibidem.

¹³⁷ Yazidi [Female] Survivors' Law, March 2021. <https://c4jr.org/wp-content/uploads/2022/01/Yazidi-Female-Survivors-Law-March-24-2021.pdf>.

¹³⁸ United Nations Security Council, 'Report of the Secretary-General: Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict', S/2022/77, 31 January 2022.

¹³⁹ This law has the purpose of establishing “a set of individual and collective judicial, administrative, social and economic measures for the benefit of the victims of the violations contemplated in article 3 of this law, within a framework of transitional justice, (...) for them to enjoy their right to truth, justice and reparation with a guarantee of non-repetition, so that their status as victims is recognized and dignified through the materialization of their constitutional rights”. However, to date, no children have yet received reparations. <https://reparations.qub.ac.uk/assets/uploads/Victims-Law-1448-2011.pdf>

¹⁴⁰ J. Neenan, 'Closing the protection gap for children born of war – Addressing stigmatization and the intergenerational impact of sexual violence in conflict', Centre for Women, Peace and Security, London School of Economics, 2018, p. 36.

¹⁴¹ T. Sanchez Parra, 'The Hollow Shell: Children Born of War and the Realities of Armed Conflict in Colombia', *International Journal of Transitional Justice*, 2018.

¹⁴² United Nations Derechos Humanos Procedimientos Especiales, Relatores Especiales, Expertos Independientes Y Grupos de Trabajo, 'Preliminary Observations of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence in his Official Visit to Colombia', 29 September 2023. Available at:

the type of transitional justice system that should accompany the peace negotiations has not yet progressed. Furthermore, the observations indicate that there is a lack of clarity regarding the manner in which victims will be involved in these transitional justice mechanisms and the timing of any consultations with them.

It is also worth noting the "Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence"¹⁴³ which benefited from the work of Maxine Marcus and Kathy Roberts and includes specific provisions on children born of rape. The objective of this model was to eliminate obstacles in the access to justice for victims, survivors, and their families. It builds upon and extends beyond the Statute of the International Criminal Court (Rome Statute). As Patten observed, The Model was prepared with survivors in mind, with the intention of providing them with a framework within which they can seek redress for the crimes they have suffered. The objective is to ensure that the justice system not only avoids causing harm, but also contributes to the well-being of those affected by these crimes¹⁴⁴. Nevertheless, it would be unwise to be content with the provisions made to the CBOW. With regard to the definition of victims, reference is made to the following: "the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" and "Immediate family members are defined to include adoptive parents, children, stepparents, legal guardians, or other immediate caregivers in appropriate circumstances".¹⁴⁵

This definition does not appear to be sufficiently comprehensive and inclusive. Should we consider CBOW as secondary victims? This means, "the victimization that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim"¹⁴⁶. Should they, instead, be recognized as victims in their own

<https://www.ohchr.org/sites/default/files/documents/issues/truth/statements/20230929-eom-stm-colombia-sr-truth.pdf>.

¹⁴³ Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence, 18 June 2021

¹⁴⁴ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence", 18 June 2021, p. 8 Available at: <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2021/06/report/auto-draft/OSRSG-SVC-Model-Legislative-Provisions-ENG.pdf>

¹⁴⁵ Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence, p. 40

¹⁴⁶ Ibidem. p.16

right, with their own specific provisions and articles, thereby addressing them as direct victims of conflict-related sexual violence?

4.2. *CBOW AND VICTIMHOOD*

4.2.1. HISTORICAL CONTEXT OF THE VICTIMHOOD OF CBOW

Historically, not only the mothers of these children, but also them, have been overlooked. International criminal law emerged as a response to mass atrocities, initially in post-war societies, shortly after World War II, with the Nuremberg and Tokyo trials, to sanction war crimes. The victimhood of CBOW or the broader impacts of wartime rape were not topics discussed and prioritized, as in many post-war societies, as previously mentioned, CBOW were seen as a mere reminder of conflict, a product of the evil of the enemy and the result of the CRSV phenomenon, still seen as something inevitable and a collateral damage inherent to wartime.

Nowadays, however, the reality is different and the seriousness with which the crime of sexual violence is viewed is much greater. The Rome Statute of the ICC, adopted in 1998, explicitly and directly includes rape and other forms of sexual violence as war crimes, crimes against humanity, and in certain situations, if the necessary requirements are met, as acts of genocide. Additionally, the UN Security Council also mentions "children born of sexual violence in conflict" in its resolutions, recognizing their risks and harms as worthy of specialized protection.

With regard to the concept of victim and the status that derives from it, it is essential to note that the ICC defines victims as "those who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court".¹⁴⁷ The status of victim is often equated with the simple recognition of pain or suffering resulting from the commission of one or more crimes. The concept of victimhood is frequently perceived in a negative light, with associations of weakness, fragility, and vulnerability. This perspective is explored by Tessa Lacerda, who notes that "individuals affected by the Brazilian civil-military dictatorship (1964-1985) often resist acknowledging their own victimhood"¹⁴⁸. Lacerda elucidates that: "To affirm the absolute innocence of victims is also to reduce them to mere objects, taking away their responsibility for their own actions,

¹⁴⁷ Rome Statute of the International Criminal Court, Rule 85, 'Definition of Victims', Rules of Procedure and Evidence. <https://www.icc-cpi.int/sites/default/files/RulesProcedureEvidenceEng.pdf>.

¹⁴⁸ T. Lacerda, 'Victim: What is hidden behind this word?', *International Journal of Transitional Justice*, November 2015, pp. 179-188. Available at: <https://academic.oup.com/ijtj/article/10/1/179/2356874>.

even though no individuals can or should be held responsible for the external conditions in which they find themselves. It is this denial of a person's ability to act, to be the subject of an action rather than a mere object, that is present in the word "victim." (...) To summarize, to define oneself as a victim is to risk giving up one's dimension as a subject; it is to be paralyzed in the position of an object of the actions of others. How can one demand one's rights when one sees oneself as a mere object—when entire groups see themselves as mere objects—of the actions perpetrated by others?". This point, also mentioned by Denov and Provost in their study, deserves to be analyzed. This could explain why many people prefer the term "survivor" to "victim"¹⁴⁹, as it is associated with a struggle won, with power and strength to overcome.

However, the status of victim goes far beyond mere vulnerability. Quite the opposite: The status of a victim for CBOW, increases their power and their rights, gives them a voice and helps changing social misconceptions and associations with the enemy. It is more than just acknowledging their pain, suffering and challenges, it is giving them the legitimacy, the power and the means to change the reality that surrounds them - as victims, as survivors, with a right to reparation under international law. Although, for many, the term is socially associated with weakness, and that is why some are starting to refer to "victim/survivor" or simply "survivor", we believe that the problem does not lie in the word itself. At all times, this term should be associated with great respect, recognition and power, as it provides legal avenues for defense and reparation.

4.2.2. CBOW AS DIRECT VICTIMS

Although often overlooked by transitional justice frameworks, which frequently ignore or inadequately address the specific needs and rights of CBOW, these children were legally recognized by the International Criminal Court (ICC) in the case of *Prosecutor v. Bosco Ntaganda*¹⁵⁰ as direct victims eligible for reparations for the crimes committed by Ntaganda, a former Congolese rebel leader and military commander, including rape and sexual slavery.

CBOW were considered direct victims because it was possible to establish "a direct causal link (...) between the harm suffered and the crimes of which the accused is

¹⁴⁹ J. Dunn, "Victims" and "Survivors": Emerging Vocabularies of Motive for "Battered Women Who Stay", *Sociological Inquiry*, Wiley Online Library, December 2005. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1475-682X.2005.00110.x>.

¹⁵⁰ International Criminal Court, 'Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06, Reparations Order', 8 March 2021. <https://www.icc-cpi.int/pages/record.aspx?docNo=ICC-01/04-02/06-2659.AC>

found guilty"¹⁵¹. In the case of indirect victims, the focus is on their relationship to the direct victim, "the loss, injury or damage suffered by the direct victim gives rise to their harm". Although the parties argued that children born of rape should be considered indirect victims, the Chamber ultimately concluded that these children should be considered direct victims because the harm they suffered was a direct result of the commission of the crimes of rape and sexual slavery committed against their mothers.¹⁵² Also taken into account are children who were not born as a result of rape and sexual slavery, but who are the children of women and girls who were victims of rape or sexual slavery, who can be considered as indirect victims of these crimes because they may have suffered harm as a result of the harm suffered by the direct victims.

The recognition of the direct impact of the crime on their lives is extremely important and a crucial step towards ensuring that these children's harms are treated with due attention and concern, rather than as a mere afterthought. The recognition of the victimhood of CBOW contributes to their inclusion in peacebuilding and reconciliation processes, which consequently helps in fostering more inclusive and comprehensive processes that embrace their specific needs in post-conflict recovery plans.

Ntaganda was found to be indigent by the judges, as he does not have the means to pay compensation. However, the judges encouraged the ICC Trust Fund for Victims (TFV) to allocate and raise additional funds for the implementation of these reparations¹⁵³ (which include measures such as restitution, compensation, rehabilitation and other forms of support, always taking into account a gender perspective and the adoption of the "do no harm" principle) and to prioritize urgent assistance to the most vulnerable victims, including children born of rape.¹⁵⁴ Currently, the TFV is underfunded, with less than \$20 million available¹⁵⁵, and Bosco Ntaganda has been ordered by the ICC to pay \$30 million in reparations to the victims of his crimes. In conclusion, although the ICC has made provisions for these children as direct victims, there are no funds to implement them.

¹⁵¹ International Criminal Court, 'Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06, Reparations Order', 8 March 2021. <https://www.icc-cpi.int/pages/record.aspx?docNo=ICC-01/04-02/06-2659>.

¹⁵² ICC-01/04-02/06 p. 46

¹⁵³ International Justice Monitor, 'Ntaganda's Liability for Reparations Set at \$30 Million USD', 11 March 2021. <https://www.ijmonitor.org/2021/03/ntagandas-liability-for-reparations-set-at-30-million-usd/>.

¹⁵⁴ International Criminal Court, 'Ntaganda case: ICC Appeals Chamber confirms conviction and sentencing decisions', 30 March 2021. Available at: <https://www.icc-cpi.int/news/ntaganda-case-icc-appeals-chamber-confirms-conviction-and-sentencing-decisions>.

¹⁵⁵ Aljazeera Centre for Public Liberties & Human Rights, 'ICC orders \$30 million reparations to Ntaganda victims', 10 March 2021

It is also worth mentioning that on January 19, 2023, the UK government announced its intention to amend its future Victims Bill¹⁵⁶, applicable in England and Wales, so that the law would now specify children born as a result of rape as victims of crime, this would allow them to get the support they deserve from criminal justice agencies such as the police and the relevant courts¹⁵⁷. This represents a significant and pivotal advancement in the protection of children born of rape. It has the potential to serve as a model for other countries to adopt similar measures, collectively working for the end of the existing gaps in the protection of these vulnerable individuals. Although this amendment does not directly refer to the "conflict" factor or the case of CBOW, we believe it opens the door to developments in the policy for CBOW.

4.3. THE IDEA OF A WRONGFUL LIFE

A claim for compensation for "wrongful life" is brought to court by a child born with a significant disability that a defendant medical professional negligently failed to detect and, consequently, failed to prevent the mother from terminating the pregnancy. The ratio behind this concept is to provide the child with the possibility of claiming compensation for their suffering and pain in life that is directly related to their birth. The jurisprudential analysis of this concept and its practical application is closely aligned with the concerns surrounding the harms and challenges experienced by CBOW¹⁵⁸. The existence of these children, their very birth, is directly linked to an act of violence. This is precisely where these realities intersect, since, although in a very different setting, private law claims capture a similar mix of benefits and harms linked to a child's existence.

In different parts of the world, the "wrongful life" action is employed to seek redress for an act committed before the birth of a child that subsequently caused difficulties in the life of that child or the parents. In their study¹⁵⁹, Provost and Denov identify two aspects of harm explored in wrongful life case law that are interconnected with the situation involving CBOW. (i) The act of violence in question was the cause of

¹⁵⁶ Victims and Prisoners Bill', 29 March 2023. <https://publications.parliament.uk/pa/bills/cbill/58-03/0286/220286.pdf>.

¹⁵⁷ Gov.UK, 'Law to recognize children born as result of rape as victims for the first time'.

¹⁵⁸ R. Provost and M. Denov, 'From Violence to Life: Children Born of War and Constructions of Victimhood', *New York University Journal of International Law and Politics*, 2020, p. 14.

¹⁵⁹ *Ibidem*.

a benefit (the child's existence) and a harm (the serious discrimination and social exclusion and stigmatization to which they are constantly subjected by their families, groups of friends, at school and in their own communities). (ii) The second factor is the "uncertain causal chain between the illegal act and the possible harm to the child." The harm experienced by these children varies according to different factors, including the family environment, culture, legal framework, school and peer groups, and the impact of these factors on their lives.

Before commencing this analysis, it is imperative to make a crucial observation. The objective of this thesis is not to conduct a comprehensive investigation into the applicability of this claim to the CBOW in practice. This analysis will not encompass a comprehensive examination of the application of the law of extra-contractual responsibility. As previously noted by Provost and Denov, "there is no suggestion that private law remedies offer an avenue upon which CBOW could rely in order to (*effectively*) obtain redress" and private law remedies are not as effective as they could be as a means of restitution due to the lack of functioning judicial systems in transitional justice societies and victims' mistrust of these institutions. Victims of such crimes often refrain from seeking judicial assistance due to a lack of trust, lack of hope, shame, and fear. Even when victims do seek assistance, they often encounter inefficiency or economic obstacles that prevent them from obtaining it. Furthermore, the problem surrounding CBOW and their families, CRSV, inherently has other difficulties such as the difficulty of identifying the real perpetrator, who is often missing, dead or even unknown.

This chapter, although not dedicated to an in-depth legal analysis, aims to identify points that relate to the difficulties experienced by CBOW. The objective of this thesis is to examine how the international community can effectively address the significant risks and protection gaps faced by CBOW, while rectifying inconsistencies within the current legal framework to ensure the guaranteed protection of their rights. In order to identify the challenges and dynamics involved in seeking reparation for damages that arise before the birth of a child, it is relevant to explore the jurisprudence of "wrongful life" claims in order to highlight the complexity of such claims. The intersection between "wrongful life" and the CBOW situation reveals important parallels: both deal with the impacts of a child's existence in a context of violence (an existence connected with a negligent medical act and act of sexual violence in conflict) and the subsequent social and legal challenges. While the aim is not to directly apply the concept of "wrongful life" to CBOWs, the

analysis provides valuable insights into how legal systems treat claims that involve both benefits and damages resulting from a single initial act of violence.

In order to gain a comprehensive understanding of the concept, it is now necessary to analyze its practical application. In 1986, the Israel Supreme Court decision in the case of *Zeitov v. Katz*¹⁶⁰, a child brought to the court the argument that the social conditions in which she lived constituted a form of violence. In this case, the mother of the child in question had consulted her doctor regarding the potential risks associated with passing on her severe genetic disease to her fetus, given that she did not intend to become pregnant if that was the case. The doctor negligently assured her that this was not a possibility, which led to her becoming pregnant and her child being born with her disease. In the end, the court allowed the child's wrongful life claim. Another case, in France, the *Perruche* case¹⁶¹, became well known for the great debate it caused. A pregnant woman consulted her doctor and informed him that she intended to terminate her pregnancy if, and only if, her fetus was infected by rubeola (since she had been exposed to this disease during her pregnancy). The doctor did not advise her diligently according to her wishes and the child ended up being born with severe disabilities, for that reason, the Court of Cassation held that the child could present a claim for wrongful life.

However, these decisions, due to their radical nature, surprised many people, as it could be concluded that some lives are not worth living, leading the majority of case law to conclude that the fact of being alive should always prevail over the negative aspects that accompany that life¹⁶². In this claim, the harm argued by the child is its birth (and the suffering associated with it and its condition). In addition to moral and philosophical issues, this raises legal questions. Both civil liability and common law regimes require the courts to place the plaintiff in the situation they would have been in had the defendant's harmful conduct not taken place, allowing for fair compensatory damages that erase the consequences of the wrong so that the plaintiff is satisfied. And in these cases it is not possible to consider the non-existence of the child that would have resulted from diligent medical advice.

¹⁶⁰ *Zeitov v. Katz*, Israel Supreme Court, 1986

¹⁶¹ *Affaire Perruche*, Court of Cassation, 2000

¹⁶² R. Provost and M. Denov, 'From Violence to Life: Children Born of War and Constructions of Victimhood', *New York University Journal of International Law and Politics*, 2020, p. 14.

Nevertheless, some argue that there is nothing inherently illogical about the idea of comparing the value of someone's current existence with a state of non-existence.¹⁶³ There is nothing to prevent us from assigning relative values to both conditions and then calculating damages in a way that is consistent with legal theory and principles.¹⁶⁴ For example, the law allows the choice of non-life for a potentially deformed child, which is implicit in the fact that the law allows this choice. In Portugal, for instance, voluntary termination of pregnancy up to 24 weeks is permitted if there is certainty that the unborn child suffers from an incurable disease or congenital malformation that renders the fetus' life impossible, in accordance with Article 142 of the Portuguese Penal Code¹⁶⁵ and Law No. 16/2007 of April 17¹⁶⁶.

However, as evidenced by the case of *McKay v. Essex AHA*¹⁶⁷ there is a clear inclination in case law to deny the assessment of non-existence, concluding that no damage can be established that a court can recognize. However, as argued by Harvey Teff¹⁶⁸, the fact that the court is unable to weigh up the claimant's condition prior to the damage does not mean that it should refuse to award compensation. If it does so, it is prioritizing procedural technicalities over the fundamental objective of compensating for the damage caused. The difficulty in calculating the precise amount of compensation should not preclude the pursuit or award of a claim if it is valid and justified. It is also important to note that this request by the victim herself does not diminish the value of life; rather, it recognizes that compensation can "allow the child to live, at least materially, in conditions more in keeping with human dignity, regardless of the existence of family support, private or public."¹⁶⁹

¹⁶³ Minnesota Law Review, 'A Cause of Action for Wrongful Life: (A suggested Analysis)', University of Minnesota Law School, Minnesota Law Review, 1970.

¹⁶⁴ H. Teff, 'The Action for "Wrongful life" in England and the United States', *The International and Comparative Law Quarterly*, Cambridge University Press on behalf of the British Institute of International and Comparative Law, 1985, p. 435.

¹⁶⁵ Article 142 of the Portuguese Penal Code. <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1995-34437675>.

¹⁶⁶ Lei n.º 16/2007, de 17 de abril, 'Exclusão da Ilícitude nos Casos de Interrupção Voluntária da gravidez'. https://www.congreso.es/docu/docum/ddocum/dosieres/sleg/legislatura_14/spl_67/pdfs/34.pdf.

¹⁶⁷ *McKay v. Essex AHA*, Court of Appeal (Court Division), 1982. Available at: <https://vlex.co.uk/vid/mckay-v-essex-area-793227361>.

¹⁶⁸ H. Teff, 'The Action for "Wrongful life" in England and the United States', *The International and Comparative Law Quarterly*, Cambridge University Press on behalf of the British Institute of International and Comparative Law, 1985, p. 435.

¹⁶⁹ R. Provost and M. Denov, 'From Violence to Life: Children Born of War and Constructions of Victimhood', *New York University Journal of International Law and Politics*, 2020, p. 17.

Case law tends to conclude that compensation for “wrongful life” is incapable of being assessed, admitting that it is ultimately subsumed in political considerations and moral principles. To admit that, in certain cases, non-existence has a higher value than existence would be incompatible with social norms, since life is seen as an absolute value. The Singapore Court of Appeal has stated that it is morally offensive to treat the birth of a normal, healthy child as a matter of compensation¹⁷⁰. There is a view that every birth is a blessing and that compensation should never be awarded for such a cheerful event. Behind this is also the idea that “a judicial declaration to the effect that the plaintiff would be better off if he had not been born not only degrades him but encourages social intolerance towards the disabled”.¹⁷¹ What becomes even more critical in the case of a CBOW, a healthy child, it could lead to an increase in the stigmatization that surrounds them.

The ongoing debate surrounding the "wrongful life" claim is a testament to the controversy it has generated. While it has the potential to divide opinion, the jurisprudential analysis of this topic plays a crucial role in providing a structured legal and ethical framework for dealing with complex cases in which the act leading to birth is itself a source of harm. This is of particular relevance in the context of the policy on CBOWs. An understanding of how courts have dealt with such sensitive claims based on reparation for the harm they suffer due to the circumstances of their birth provides insight into the path that CBOWs still have to face.

The arguments used in court to defend and oppose this claim are useful for discussion and for deepening our understanding of the harm felt by CBOWs. Strategies and considerations for reducing stigma are discussed, and even those who do not agree with the ratio of this claim are often able to recognize their suffering and physical and psychological challenges. This represents a step towards greater recognition and protection in international policy.

¹⁷⁰ *ACB v. Thomson Pte Ltd*, Supreme Court of Singapore, 2017. https://www.elitigation.sg/gd/s/2017_SGCA_20.

¹⁷¹ H. Teff, 'The Action for “Wrongful life” in England and the United States', *The International and Comparative Law Quarterly*, Cambridge University Press on behalf of the British Institute of International and Comparative Law, 1985, p. 436.

4.4. THE ROLE OF THE ICC IN PROTECTING THE RIGHTS OF CBOW

In light of the marginalization of victims before the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the Rome Statute of the ICC, adopted in 1998, aimed to establish the ICC as a court that applies a victim/survivor-centered and trauma-informed approach.¹⁷²

The ICC Office of the Prosecutor's guidance document on children, dated December 2023, is based on a "child-sensitive" approach that takes into account the specific experiences and needs of children and ensures that their feedback, participation, and reactions are taken into account.¹⁷³ This guidance document also mentions the importance of addressing the stigma associated with crimes against and affecting children, which is crucial for child protection. The survivor-centered and trauma-informed approach necessitates that, in all circumstances, the rights of the survivor be prioritized¹⁷⁴, taking into account the effects of the traumatizing events experienced by the children concerned. A trauma-informed approach acknowledges that criminal acts may have caused trauma to children and that this can affect children's physical, emotional, and mental health, as well as their general well-being and behavior. The implementation of these trauma-informed procedures at all stages of the investigation and prosecution process is essential for the success of a survivor-centered strategy.

In addition to already being legally recognized as direct victims (case no. ICC-01/04-02/06) for the direct link between the harms they suffer and the crime of rape, the ICC Policy on Children includes CBOW in the category of "crimes affecting children" to highlight the wider implications and ensure comprehensive protection and support for all affected children.¹⁷⁵ This category is not intended to diminish their status as direct victims in specific legal contexts, rather, it is intended to broaden the scope of protection and recognition, since "crimes affecting children" can involve both direct and indirect

¹⁷² R. Provost and M. Denov, 'From Violence to Life: Children Born of War and Constructions of Victimhood', *New York University Journal of International Law and Politics*, 2020, p. 44.

¹⁷³ International Criminal Court, 'Office of the Prosecutor Policy on Children', December 2023, p. 25. <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf>.

¹⁷⁴ ICC, Policy on Children, "d) Taking a survivor-centered, trauma-informed approach 52. A survivor-centered approach prioritizes a survivor's rights. It orients all policy, actions, and decision-making towards treating every survivor with dignity and respect. As a general principle, this approach acknowledges that every survivor has equal rights to care and support; is different and unique; will react differently to their experiences of violence; has different strengths, capacities, coping skills, resources and needs; has the right, appropriate to their age and circumstances, to decide who should know about what has happened to them and what should happen next; should be believed and should be treated with respect, kindness, compassion and empathy.", p. 28

¹⁷⁵ *Ibidem*. p. 11-12

victimization, depending on the nature and consequences of the crimes. This reinforces the idea that even when children are not the direct targets of a crime, they can be seriously affected by it and deserve to be protected and compensated for such harm.

4.5. THE RIGHT TO REPARATION

The Office of the Prosecutor of the ICC is also dedicated to facilitating the involvement of children in any reparations programs.¹⁷⁶ This right to reparation is owed to victims of CRSV, not only those who endured the violence itself, but also to members of their families, such as children born as a result of rape.¹⁷⁷

It is essential to ensure a proportional relation between the reparation and the gravity of the violations and the harm suffered. In accordance with both domestic law and international law, victims of gross violations of international human rights law and serious violations of international humanitarian law must be provided with effective reparation for their harms. This reparation may take the form of: (i) restitution, for cases where it is possible to put the victim in the position they would have been in had the violation never occurred (ii) compensation, which should be used as a method whenever there is an economically assessable damage¹⁷⁸ (iii) rehabilitation, which includes medical and psychological and legal services (iv) satisfaction, which are basically measures with the aim of cessation of continuing violations, which can include public apologies or commemorations and tributes to the victims (v) and guarantees of non-restitution, measures which should include strengthening the legal framework and measures for the protection of CBO and prevention of CRSV, public awareness campaigns and educational reforms.

¹⁷⁶ *Ibidem.*, p. 28. 'The Office will also support the meaningful participation of children in any reparations programmes. Appropriate reparations may include collective reparations with an individual component, including non-monetary awards such as apologies, education grants, child support for children born from rape, and collective reparations, such as the building of commemorations, schools or health care facilities.'

¹⁷⁷ United Nations, 'Reparations for Conflict-Related Sexual Violence', Guidance Note of the Secretary-General, June 2014, ST/SG(02)/R425, p. 3; UN General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', 21 March 2006, A/RES/60/147.

¹⁷⁸ Including situations of: Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;

The majority of CRSV victims continue to lack access to reparations and redress.¹⁷⁹ For CBOW, the objective is not to recreate the victim's circumstances prior to the incident, but rather to mitigate the “real-life stigmatization”¹⁸⁰ and challenges that come with this phenomenon. While financial compensation can assist in addressing immediate needs, it is essential to consider the long-term impacts and provide services that enable a dignified life, such as access to health and education free from discriminatory practices. Furthermore, the future of these children is contingent upon their integration into society. To this end, it is imperative that guarantees of non-repetition be implemented in order to provide the legal and institutional reforms necessary to protect these children and their rights in the long term. Moreover, societal attitudes towards these children must also undergo a transformation. Public education campaigns are therefore required to facilitate the promotion of the dignity of these victims.

¹⁷⁹ Office of the SRSG on Sexual Violence in Conflict, 'Remarks of SRSG Pramilla Patten at the Security Council Open Debate on Preventing Conflict-Related Sexual Violence through demilitarization and gender-responsive arms control', New York, 23 April 2024. <https://www.un.org/sexualviolenceinconflict/statement/remarks-of-srsg-pramila-patten-at-the-security-council-open-debate-on-preventing-conflict-related-sexual-violence-through-demilitarization-and-gender-responsive-arms-control-new-yor/>.

¹⁸⁰ J. Neenan, 'The Role of the ICC in Protecting the Rights of Children Born of Rape in War', February 2018.

CONCLUSION

Conflict-related sexual violence is not an inevitable reality and viewing it as such has harmful consequences. Any theories that individually identify what drives CRSV as uncontrollable male sexual desire, increased opportunity to commit acts of sexual violence in times of war, the human body as a reward or form of compensation, toxic masculinity associated with the militarization process of soldiers, patriarchy, or sexist social and cultural norms are insufficient and do not provide the necessary answers and solutions. Although each of these theories has its own logic, we believe that they should not be used to close the books on research into this subject. CRSV is still a reality that haunts us today and affects the lives of many victims around the world. CRSV cannot be considered a "women's issue," as evidenced by the available data, which demonstrates that this problem, while disproportionately affecting girls and women, does not choose its victims based on age, sex, or gender. Moreover, it is a problem not only for the victims, but for all of humanity, a very serious problem with broader implications for peace and security. For these reasons, it is imperative that policy-makers adopt a gender-neutral and inclusive approach, while also acknowledging the specific challenges faced by certain groups.

We studied the influence of armed actors, armed organizations and different patterns of violence and, according to the literature surrounding this topic, we considered that the mechanisms of "indoctrination", political education and discipline play a key role in transforming societal mentalities. These mechanisms can contribute to the de-normalization of violence and the rejection of viewing women's bodies as sexual objects or rewards. However, it would be unrealistic and impractical to conclude that the solution to this problem would be the end of war, the end of conflict, the end of gender inequality, the end of impunity for the perpetrators of these crimes against humanity. Thus, we advocate the continuous study of these phenomena and their variations, taking advantage of the data available.

It is of the utmost importance to recognize that not all armed organizations engage in rape. Therefore, it is imperative that we advocate for the effective enforcement of measures to prevent conflict-related sexual violence. Additionally, as important as these measures is the cooperation of states, international institutions and all those who have the power to make a difference.

Although the evolution of international efforts is evident in the success of many UN peacekeeping missions, UN resolutions and the work carried out by various NGOs to support many victims, we are forced to conclude that it is still not enough. True progress will be achieved when there are no victims left, and policies are fully put in practice rather than remaining purely theoretical. The era for merely acknowledging the suffering or existence of victims has passed and it is now time for decisive action - the international community must enhance and sustain efforts in preventing harms, supporting and protecting victims, spreading awareness and promoting respect for them around the world. By understanding the nuanced roles of education, discipline, and by implementing targeted preventive measures, the international community can move closer to eradicating conflict-related sexual violence and supporting victims effectively.

The second part of this thesis is devoted to the study of CBOW, their immediate and long-term risks, the impact on their lives, and what the international community has done and could do to alleviate these difficulties. We analyzed in depth the stigmatization and discrimination suffered by these children and came to the conclusion that their own families and communities often contribute to these factors, finding in their social exclusion a way to avoid the pain of being constantly reminded of a dark and painful past and trauma. The social exclusion of these innocent children and their mistaken association with parties to the conflict, together with intergenerational trauma, make it very difficult to break a cycle of economic, psychological and emotional challenges.

In analyzing their protection gaps, we decided to look at what we consider to be the primary key risks and inconsistencies for the human rights of CBOWs, taking into account the obligation of states to protect, respect and fulfill the human rights of their citizens and those under their jurisdiction. Although all children in the world have their rights materially protected by international conventions and treaties, in particular by the CRC, we conclude that in the case of CBOWs, this protection is not sufficiently effective and that some of their basic fundamental rights continue to be violated. The right to a nationality is protected by various international legal texts, but we are still confronted with their inadequacy; the same goes for the right to education and the right to non-discrimination. All these problems are related not only to gender discrimination, but also to the stigmatization that these children suffer simply because they are alive.

The patrilineal system, in which a child's nationality is determined solely by the father's citizenship or nationality, regardless of the mother's citizenship or place of birth, is a clear violation of gender equality principles. It perpetuates patriarchal norms and

reinforces traditional gender roles in which the father's nationality is considered more important than the mother's. Many countries around the world still don't have gender-neutral citizenship laws that allow children to be registered without the father's name. Denial of citizenship contributes to lack of access to education, social services and health care. The right to education is one of the most influential elements in a child's future. However, we concluded that this right is also often violated, not only because these children have difficulty accessing quality education, but also because they are unable to pay school fees. In addition to this, for many of these children, discrimination and stigmatization, are also inside the classroom, which makes it difficult for them to do well in school and, consequently, their future. This brings us to the third right analyzed, the right to non-discrimination, which is restricted in many areas of CBOW's daily life.

In order to remedy these inequalities, we have linked these problems to the need to strengthen justice and accountability for these children, to promote their acceptance and respect, and to promote policies specifically targeted at them and their particular needs and interests. As mentioned above, legal frameworks are not immutable texts and should accompany the evolution of society and the specific needs of different groups. The role of international organizations, courts, national and international policies, NGOs, society and people as key factors in the functioning of a democratic society is now central and the study and support of these children cannot cease.

Throughout this study, we have acknowledge some developments that deserve recognition, such as the joint statement by CEDAW and CRC on "Prevention, protection and assistance to children born of conflict-related rape and their mothers", the UN Security Council resolution on "Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict", the first time that CBOW have been specifically addressed in detail in an official UN document, and the efforts of Pramilla Patten, the Special Representative on Combating Sexual Violence in Conflict, to end the culture of impunity surrounding CRSV and the harms faced by these children. In addition, the ICC's legal recognition of CBOW as direct victims of crimes against humanity and war crimes, specifically the crimes of rape and sexual slavery, contributes to their being considered a special category of concern covered by specific norms, national and international policies.

However, our primary focus has been on the discrepancy between the material reality of these policies, laws, recommendations, reports and resolutions and the practical reality of the lives of those who are still stigmatized and discriminated against today. In

addition to all that has been stated in this thesis, we emphasize the importance of addressing the root problems once and for all. In order to reduce the stigma of CBOW globally, it is essential to address and eradicate gender discrimination by promoting policies that reflect the promotion of gender equality and the protection of the rights of women and children.

This study deserves to be a permanent topic on the international agenda and urgently needs practical developments. Children born of war are children, not invisible victims of war.

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