

The nexus between conflict-related sexual violence and trafficking for sexual exploitation in times of conflict

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Abstract

In its 2018 report on conflict-related sexual violence¹ the UN Secretary-General reiterated the importance of addressing the nexus between conflict-related sexual violence and trafficking in human beings for purposes of sexual exploitation in conflict. In this article we will explore this nexus from a psychological and a legal point of view. During conflict the climate of impunity and the extreme contrast between the mighty and the powerless offers an optimal setting and inevitable ground for sexual violence. In general, but in particular during conflict, being victimized by sexual violence once can put individuals at risk for similar or other forms of sexual re-victimization. For the victim who endured sexual violence, context hardly matters for its psychological impact. Therefore, in accordance with the UN Secretary-General report, from a psychological view there is no justification for a clear-cut distinction between conflict-related sexual violence and trafficking in human beings for purposes of sexual exploitation in conflict. Yet, from a legal perspective, this differentiation does matter: the legal definitions form the basis for the prosecution of perpetrators on the one hand and for access to particular rights for victims on the other. This article should be seen as a first exploration into the nexus between both crimes, when it comes to the impact on the lives of the victims/survivors, the definition of the crimes, and the resulting access to rights for victims/survivors of these crimes.

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¹ UN Security Council, Report of the Secretary-General on Conflict-Related Sexual Violence (S/2018/250), 23 March 2018.

I. Introduction

Over the last decade sexual violence has increasingly been recognized as a ‘weapon of war’ in ongoing conflicts. In the 2018 UN Secretary-General’s report on conflict-related sexual violence (CRSV)¹ it is put forward that credible information regarding the scope and magnitude of CRSV is available for at least 19 countries. A shocking picture emerges from these numbers in the UN report, especially when considering the alleged underreporting of CRSV incidents by its victims.² Not only do numbers indicate that CRSV is widespread across the globe, it seems that CRSV is an integral part of conflict. In its 2018 report the UN Secretary-General stressed once more the urgency of addressing the nexus between trafficking in human beings (THB) for the purpose of sexual exploitation and CRSV, further to UN Security Council Resolutions 2331 (2016) and 2388 (2017).³ That is, THB for purposes of sexual exploitation in conflict has been put forward as part of CRSV. According to the UN report, CRSV – which may include 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 – encompasses trafficking in persons when committed in situations of conflict for the purpose of sexual exploitation. For example, it is reported that in response to the demand for sexual services by certain Columbian armed groups, drug trafficking cartels have facilitated the sexual exploitation of women and girls. Likewise, fear of rape is frequently cited by female Syrian refugees as a primary factor inducing flight, but the risk of sexual violence, exploitation and trafficking remains high in and around refugee and displaced persons camps, owing to overcrowding, lack of privacy, financial desperation and lawlessness.

In this article we will address (the definitions of) the crimes of CRSV and THB in conflict for the purpose of sexual exploitation in order to explore how these crimes are inter-related from a psychological and a legal point of view. In particular from the victim’s perspective it is unclear what the legitimacy of such differentiations is, and, most importantly, how these serve victims in the recognition of their experiences. Based on the few information available, it seems that for some victims, recognition of what has been done to them is important; recognition in the sense that their experiences are explicitly recognized in the crimes for which the accused are charged and prosecuted or in the legal

² S. Davies & J. True, ‘The Politics of Counting and Reporting Conflict-Related Sexual and Gender-Based Violence: The Case of Myanmar’, *International Feminist Journal of Politics* 19:1 (2017): 4-21.

³ UN Security Council Resolution 2331 (S/RES/2331), 20 December 2016; UN Security Council Resolution 2388 (S/RES/2388), 21 November 2017.

judgements explaining their experiences. For most, if not all victims, access to rights that comes with the recognition of their victimhood is for sure very important.

In this article, first, a narrative of a woman who has experienced both sexual violence in conflict and human trafficking for sexual exploitation will set the scene. Second, the specificity of conflict as a setting for sexual violence and processes for sexual (re)victimization are outlined, as well as the psychological aspects of experiencing sexual violence. Third, the legal definitions of the crimes will be discussed and analyzed on the basis of relevant legal instruments (e.g. Palermo Protocol, Rome Statute of the International Criminal Code (ICC)) and case law (e.g. of the Special Court of Sierra Leone (SCSL), ICC) most applicable to these crimes to determine the scope of the definitions and where the nexus begins and where it ends. Finally, it will be discussed why these definitions matter (e.g., fair labelling of victims' experiences and access to rights). This article should be seen as a first exploration in trying to find the nexus between CRSV and THB in conflict for the purpose of sexual exploitation when it comes to the impact of the crimes on the lives of the victims/survivors, the definition of the crimes, and the resulting access to rights for victims/survivors of these crimes. The hypothesis of this article is that because of the interrelatedness of crimes that victims/survivors may experience in conflict situations, there might be a mismatch between the distinctive legal terminology used for both crimes and the victim's perspective. Experiencing one incidence of sexual violence puts victims at-risk for future sexual revictimization. Furthermore, when it comes to experiencing sexual violence the context in which this occurs hardly seems to matter.

2. The Story of Blessing⁴

Blessing thinks she was born in 1995, in a village in Nigeria. A woman found her in a basket when she was three months old. The woman brought her to an orphanage ran by Christian nuns. She never found out anything about her family; she only grew up with the girls and nuns at the orphanage. At the local school she completed education till grade 3. One day she was told she would no longer go to school, instead she had to help with taking care of other orphans. She was sad to leave school but liked to take care of the children.

In 2013, when Blessing was 18 years old, Boko Haram attacked her village. Houses were burned, people were raped and murdered. Also, the orphanage

4 This case was constructed by the authors based on their vast clinical experience in working with sexual trafficking victims. The name 'Blessing' is fictional, and her story is based on many stories and cannot be traced back to a single person.

was set on fire and many girls and nuns were murdered that day. Blessing gathered some younger girls and together they fled into the forest. After running for some days, they encountered another rebel group. At first, they helped the girls with shelter and some food, and the girls felt relieved. They thought they were safe. However, then Blessing was taken aside and asked to take off her clothes. The soldiers jokingly discussed who would have her first. Then the 'chief' came in and he told Blessing to put her clothes back on, she would now only be his wife. He carried a gun, so she did not dare to refuse. Then he beat her hard on the head and in her stomach and he raped her. She was a virgin and she was not sure what he did, but it was very painful, and she was bleeding a lot. She stayed with the chief for some months, he offered her protection and food. He had many women and he raped Blessing many times. She also became pregnant once, but she miscarried.

One day she managed to escape; she kept on running deeper into the forest. Finally, she arrived in Chad, at a camp, but they did not have much food there. Blessing stayed for some time. There was an older Nigerian lady taking care of her. After a few weeks the lady introduced Blessing to a white man called John. The man was very nice to her and appeared to be very rich. He owned a bar, where Blessing started to work. One day he said there was a way for Blessing to make more money. He introduced her to two men. She was told about staying in Europe and working as a housekeeper. Blessing agreed to go; she felt that she had little choice, because life was hard in Chad. She left in a truck with the two men and two other women and they traveled to Morocco. It was a tough journey, because it was hot and there was not enough water or food. Finally, they were brought to Italy.

The two men were very rude to her and beat her. They took her to a house, where there was a woman who told her she had to pay 40,000 euros for the journey. Blessing wanted to earn the money as soon as possible, as she was very scared. Every day men came to have sex with her. The woman threatened to kill her if she would not cooperate. Sometimes Blessing had to do the 'rough job', that is sex without a condom, because it raised more money. That is how she got pregnant twice.

The first time the woman gave her an abortion pill, but the second time it turned out she was 5 months pregnant, so abortion was no longer possible. She had to keep working during her pregnancy. After the delivery of her daughter Hope, she stayed at the home of the woman for 2 months. After that, she had to work again and pay an additional 40,000 euros to compensate for the time she did not work. Now the woman threatened to harm Hope to urge Blessing to work more.

One day the woman left the house; Blessing took her chance and ran with her daughter. A man approached her, and she told her story. He was on his way home to the Netherlands. He took her along and dropped her off at a bus station in a city unknown to her. He told her which bus she had to take and so she finally ended up at a reception center. There she was identified as a victim

of human trafficking, and it was acknowledged that she had been sexually exploited. Two weeks later, she was taken to a specialized shelter for victims of human trafficking. There, Blessing and her daughter received practical, legal and psychological support. Blessing pressed charges against her perpetrators, but her case was soon dismissed, due to lack of evidence because the exploitation occurred outside of the Netherlands. She was transferred to an asylum seekers center. She currently awaits the result of her asylum application.

3. Dynamics of Sexual Violence in Conflict

From the moment the non-state armed group Boko Haram entered Blessing's life it has been a concatenation of various forms of sexual violence. As illustrated through this narrative, CRSV can come in many forms by various perpetrators, directly or more indirectly linked to conflict. These dynamics will be discussed in more detail below.

3.1. The setting and interplay between actors involved in or victimized by CRSV

Most individuals living in low-resource areas, due to poor economic and social circumstances, have a limited say over the course of their lives. This gives rise to feelings of powerlessness and worthlessness and affects future expectations of life. Armed conflicts, most of which take place in low-resource areas, sharpen this discrepancy between the relatively powerless and the mighty. This, in combination with state collapse and a climate of impunity, offers an optimal setting and inevitable ground for sexual violence. By its very nature, conflict tears apart societies, social structures, and families, and corrodes justice, bonds, and moral values usually protective against violence. This has many implications, one of which being that in particular the powerless are at increased risk of falling victim to sexual violence. The powerless are frequently members of a persecuted political, ethnic or religious minority, or are targeted on the basis of actual or perceived sexual orientation and gender identity. In traditional cultures, the increased vulnerability to sexual violence during conflict may only add to a pre-existing perception of marginalized persons *and* women as less worthy and dignified. Such judgments may imply that there is no need for a respectful approach or consent when engaging in sexual acts. The implicit or sometimes explicit message is that certain persons' lives and bodies are not fully theirs. As underlined in the 2018 UN report on conflict-related sexual violence:

Although it is increasingly clear that self-reliance, economic empowerment and having a political voice are the most effective forms of protection from sexual violence, desperate families are increasingly resorting to harmful and negative coping mecha-

nisms, including child marriage, polygamy, withdrawal from educational and employment opportunities, transactional sex and/or 'survival sex' and commercial sexual exploitation.⁵

Over the last decades the concept of sexual consent has been fiercely debated among scholars.⁶ Although there is no consensus on its definition, one common view is that it refers to 'free verbal or nonverbal communication of a feeling of willingness'.⁷ This implies that for consent there needs to be freedom to express whether one is willing or not. Even though such freedom is lacking in conflict areas controlled by armed groups victims are often still held accountable and blamed for the CRSV events. More often than not, rather than the perpetrator, it is the victim who is considered as dishonorable and tainted. They are often 'treated by their families and communities as if they have committed a crime'.⁸ The lack of being able to give consent has also been recognized in the laws and case law by international tribunals, where coercion, coercive circumstances or (threat of) force are important elements to establish for instance, the crime of rape as a crime against humanity or a war crime, rather than the element of 'lack of consent', which is generally not an issue in times of conflict.⁹ The introduction of the element 'lack of consent' would also mean that it needs to be proven and may only burden the victims of these crimes.¹⁰ In relation to human trafficking similar considerations apply. The Palermo Protocol underlines that the consent of the victim of the exploitation is irrelevant, as long as any of the forcible means to lure someone into a situation of exploitation is used. In the case of children, coercion by any of the means does not even have to be proven.

3.2. Sexual Revictimization

Considering the case of Blessing, the chain of events in her story are inter-related. Being forced to flee from Boko Haram put her at-risk, she was alone and vulnerable when she encountered the other rebel group. Thereafter residing as a displaced person in Chad with limited resources available to her put her at risk of exploitation. A vast amount of research shows that people who have been victimized by sexual violence face an increased risk for

⁵ UNSC, *Report of the SG on CRSV* (2018).

⁶ M. Cowling, *Making Sense of Sexual Consent* (London: Routledge, 2017).

⁷ K. Jozkowski et al., 'Consenting to Sexual Activity: The Development and Psychometric Assessment of Dual Measures of Consent', *Archives of Sexual Behavior* 43.3 (2014): 437-450.

⁸ R. Mollica, *Healing Invisible Wounds: Paths to Hope and Recovery in a Violent World* (Orlando: Harcourt, 2006), 230.

⁹ P. Viseur Sellers, 'The 'Appeal' of Sexual Violence: Akayesu/Gacumbitsi Cases' in *Gender-based Violence in Africa*, ed. K. Stefisyn (Pretoria: University of Pretoria 2007), 51-103.

¹⁰ Ibid.; W. Schomburg and I. Peterson, 'Genuine Consent to Sexual Violence under International Criminal Law', *American Journal of International Law* 101.1 (2007): 125, 128-131, 139.

sexual revictimization later in life.¹¹ Unfortunately, data on the course of sexual revictimization is lacking in areas of conflict. When considering victims of sexual exploitation in general, including those originating from areas of (post-) conflict, studies show that about one third have experienced sexual abuse prior to the sexual exploitation.¹² Although it needs more studying, these findings indicate the interrelatedness of various forms of sexual violence.

3.3. Victims' Psychological Strategies

Sexual violence disrupts a person's expectation of the existence of morality, and the capability to manage one's world. Sexual violence belies such trust, perverts one's relationship to the outside world and may result in general distrust and social detachment. In the setting of conflict, morality and trust have obviously already been corroded. Sexual violence makes this worse, whether experienced in an assault or during exploitation, inducing an even greater loss of basic beliefs and agency.

In such context, with the danger of sexual violence ever lurking, one needs to be constantly on guard. Many will develop strategies to avoid violence or limit its severity. If sexual violence seems inevitable, one may try to partly regain control by pro-actively setting conditions for surrender, e.g., to prevent a group rape by negotiating to only 'allow' one rebel soldier to have sex. Or, as in the case of Blessing, to sexually engage with a high-ranking soldier to ensure the provision of basic needs (e.g., food, shelter, protection). One may choose to give one's body to protect others, like close relatives. Also, one may go along with sexual violence, i.e., 'not putting up a fight', in hopes that the perpetrator may be less violent.

One strategy to escape the dreary living situation is to go along with people pretending to offer a solid income-generating opportunity somewhere else. This way, many ended up being exposed to sexual exploitation. In conflict areas, however, victims are often threatened or brutally forced into such situation, thereby being dehumanized and treated as property for trade.

4. The Experience of Sexual Violence

Enduring sexual violence is a horrific experience in many ways. Rape, probably the most frequent form of sexual violence in conflict and

¹¹ C. Classen, O. Palesh & R. Aggarwal, 'Sexual Revictimization: A Review of the Empirical Literature', *Trauma, Violence, & Abuse* 6.2 (2005): 103-129.

¹² S. Oram et al, 'Prevalence and Risk of Violence and the Physical, Mental, and Sexual Health Problems associated with Human Trafficking: Systematic Review', *PLoS Medicine* 9.5 (2012): e1001224.

situations of exploitation, is far more than an unwanted physical penetration.¹³ It entails the involuntary exposure of private body parts, the shattering of self-determination where one values it most, the maculation of one's very locuses of intimacy. Someone else's genital is often used for penetration, an event representing ultimate usurpation. Violence used may be life threatening, and cause pain and damage to body tissues. Several emotions dominate the psychological experiences during and after sexual violence.¹⁴ Four of these emotional consequences are outlined below. It may become obvious that emotional responses to sexual violence do not vary much per context. Here, it concerns universal phenomena specifically related to the actual violation of physical integrity, rather than expressions of distress whose manifestation depends on contextual background – whether this is conflict or exploitation.

4.1. Fear

It is self-evident that any form of sexual violence causes great fear in victims. This fear is felt during the violent experience but can also manifest itself as anticipated fear when there is repeated sexual violence. Sexual violence, while being a violent act in itself, is often accompanied by other physical violence, or the threat of being injured, mutilated or killed.¹⁵ Extreme fear may also be evoked when perpetrators threaten to abuse close relatives (children, spouses, parents) if the victim does not surrender. As perpetrators' superior force, physical or psychological, mostly makes fighting pointless and fleeing impossible, surrender is often the only option.

A far-reaching but common consequence of fear and powerlessness during sexual violence is the phenomenon of 'tonic immobility': an emotionally induced state of complete loss of control over one's body, leading to the inability to make any movement or sound.¹⁶ It is an involuntary response to great threat, seen in animals and humans alike. Although performing reflexively and thus beyond one's control, tonic immobility may later lead to feelings of shame and guilt in victims of sexual violence for 'not having offered resistance'.¹⁷ The latter misun-

¹³ L. Kelly, *Surviving Sexual Violence* (New Jersey: John Wiley & Sons, 2013).

¹⁴ S. Ullman et al., 'Structural Models of the Relations of Assault Severity, Social Support, Avoidance Coping, Self-blame, and PTSD among Sexual Assault Survivors', *Psychology of Women Quarterly* 31.1 (2007): 23-37.

¹⁵ S. Oram et al, 'Prevalence and Risk of Violence and the Physical, Mental, and Sexual Health Problems associated with Human Trafficking'.

¹⁶ J. Kalaf et al., 'Sexual Trauma is more Strongly Associated with Tonic Immobility than Other Types of Trauma – A Population Based Study', *Journal of affective disorders* 215 (2017): 71-76.

¹⁷ A. Möller, H. Söndergaard & L. Helström. 'Tonic Immobility during Sexual Assault – a Common Reaction Predicting Post-Traumatic Stress Disorder and Severe Depression', *Acta Obstetrica et Gynecologica Scandinavica* 96.8 (2017): 932-938.

derstanding may also give rise to blaming by others – among whom officials in legal procedures.

Another psychological state often appearing in victims of sexual abuse is that of ‘dissociation’.¹⁸ It is the involuntary inner mechanism through which elements of an intense experience are kept apart from one’s full awareness, in particular from one’s awareness of the event’s full emotional impact. It thus causes a disruption between the actual reality and one’s perceived reality. A dissociative state may be considered as protection against too much emotional intrusion of the mind, therefore being an adaptive psychological response. In later life, however, it may cause problems in several ways.¹⁹ First, it leads to the inability to (fully) remember the event in question, which may give rise to disbelief about the abuse(s), e.g., during legal procedures.²⁰ For instance, the narrative of victims may be perceived as incoherent and inconsistent due to fragmented memories. Second, stimuli linking to the event in question – whether on a conscious level or not – may either lead to sudden extreme emotions and disturbed behaviour or, in contrast, to a striking emotional flatness and unfocused speech in victims. Stimuli triggering such states may be sensory perceptions like images or smells associated with the event, and certain conversation topics or questions. Legal procedures around the event may therefore yield emotional states and related behaviours in victims, not rarely misunderstood by, and leading to irritation among the involved officials. With sudden emotional outbursts, the victims’ account might be perceived as unreliable. Conversely, victims might share their story with little emotion, which might be wrongly interpreted as an indication that the event did not have much impact.

Extreme levels of fear experienced during sexual violence may disrupt the body’s so-called stress system, i.e., the whole of neurobiological mechanisms regulating the response of body and mind to stress. A common consequence of sexual violence is the continuous activation of the victim’s stress system, even after the event.²¹ An ongoing high tension then results in emotional hyper-reactivity, sleeping problems, and physical complaints, and may even develop into mental health disorders, such as a post-traumatic stress disorder.

¹⁸ I. Schalinski, T. Elbert & M. Schauer, ‘Female Dissociative Responding to Extreme Sexual Violence in a Chronic Crisis Setting: The Case of Eastern Congo’, *Journal of Traumatic Stress* 24.2 (2011): 235-238.

¹⁹ R. Gower et al., ‘Reported Sexual Abuse and Subsequent Psychopathology among Women Attending Psychology Clinics: The Mediating Role of Dissociation’, *British Journal of Clinical Psychology* 37.3 (1998): 313-326.

²⁰ M. Tankink, & R. Lambrichts, ‘Rammelende Verklaringen en de Vrije Wil. Over Inconsistente Verklaringen en Keuzevrijheid bij Slachtoffers van Seksuele Uitbuiting’, *Delict en Delinkwent* 2.1 (2017): 13-25.

²¹ A. Martinson, J. Craner, & S. Sigmon, ‘Differences in HPA Axis Reactivity to Intimacy in Women with and without Histories of Sexual Trauma’, *Psychoneuroendocrinology* 65 (2016): 118-126.

4.2. Shame

Shame can arise when personal boundaries protecting privacy are threatened or violated and there is risk of loss of dignity. Although shame, like guilt, is mostly thought of as a feeling related to the unveiling of one's own wrongdoing, it can be elicited by any unwanted exposure, including of everything considered private. Shame is an emotional state featuring prominently in victims of sexual violence. Sexual violence may be preceded, accompanied or followed by intentional psychological humiliation of any kind, be it through words or deeds, thereby inducing shame and loss of dignity in the victim.

Other sources of shame are possible physical responses to the sexual violence situation and the very penetration: vaginal lubrication in women, penile erection in men.²² It is common biological knowledge that such phenomena can be elicited by tactile stimulation and similarly by extreme fear. For victims, however, awareness of such body reactions may be highly confusing as they usually express sexual arousal. This may lead to misinterpretation of one's own physical reaction (erection or vaginal lubrication) as a sexual response instead of either a tactile or a fear response, to great uncertainty about 'secretly having enjoyed the experience', and to accompanying shame. Another physical response to feelings of shame is tonic immobility and dissociation, as already addressed above.²³

After sexual violence, shame may urge the victim to silence the event and socially withdraw in order to prevent even more exposure.²⁴ Particularly in non-western cultures, openness about it may have major negative consequences, and often leads to ostracism by the spouse and relatives, social marginalization, and (for women) not being marriageable any more.²⁵ Speaking out may thus lead to a radical loss of social and family life. Silencing the event then becomes the preferred option, leaving the victim to suffer in solitude – and perpetrators to remain untouched.

²² C. Bullock & M. Beckson, 'Male Victims of Sexual Assault: Phenomenology, Psychology, Physiology'. *The Journal of the American Academy of Psychiatry and the Law*, 39.2 (2011): 197-205.

²³ A. Schultz, *Does Dissociation Produce Shame? An Exploration of Adults with Sexual Abuse Histories* (Unpublished dissertation, 2018).

²⁴ C. Decou et al., 'Assault-Related Shame Mediates the Association Between Negative Social Reactions to Disclosure of Sexual Assault and Psychological Distress', *Psychological Trauma: Theory, Research, Practice, and Policy* 9.2 (2017): 166.

²⁵ F. Mukananga et al., 'Gender Based Violence and its Effects on Women's Reproductive Health: the Case of Hatcliffe, Harare, Zimbabwe', *African Journal of Reproductive Health* 18.1 (2014):110-22; M. Tankink, 'The Silence of South-Sudanese Women: Social Risks in Talking about Experiences of Sexual Violence', *Culture, Health & Sexuality* 15.4 (2013): 391-403.

4.3. Disgust

Forced physical contact or penetration may evoke disgust: a strong feeling of revulsion.²⁶ This mostly concerns sensory experiences associated with the abuse, such as the sound of a perpetrator's heavy breathing or body smell, the image of a perpetrators' face or intimate parts, the feeling of his genital or semen inside one's body. The latter in particular can cause a victim to feel soiled and dirty. This feeling may persist long after the actual abuse, despite the fact that the body will have excreted liquids and regenerated tissues quite soon. Aversion of oneself may give rise to long-lasting avoidance of any further intimacy – even with a loved one –, or even worse, to the inability to watch or touch one's own body. It is self-evident that such highly debilitating impacts are direct consequences of a sexual assault itself, regardless of its context.

4.4. Identity

One of sexual violence's worst impacts is that it corrodes the feeling of identity. Indeed, identity is based on an inner feeling of continuity and the experience of personal boundaries. Both underlie the perception of oneself (or another person) as an integral and consistent entity. Sexual violence violates this integrity. It shatters the seeming self-evidence of being a delimited creature, an entity, and thereby causes damage to one's image of the self.²⁷ Thus, the act of sexual violence entails penetration of both the physical body and the psychological self.

Men who are victims of sexual violence experience broadly similar problems as women. Fear and humiliation are similarly evoked, and so are shame and identity problems. The latter may apply even stronger in patriarchal cultures, where images of masculinity may be more traditional. Shame originating from humiliation and surrender may then be particularly intense in males. Forced penetration often makes victims doubt of their sexual identity, as if the event would have disclosed a concealed homosexuality. The latter idea may be reinforced by shameful awareness of one's penile erection while being raped (see above).

²⁶ C. Badour et al., 'Disgust as a Unique Affective Predictor of Mental Contamination Following Sexual Trauma', *Journal of Anxiety Disorders* 28.7 (2014): 704-711.

²⁷ J. Clark, 'A Crime of Identity: Rape and Its Neglected Victims' *Journal of Human Rights* 13.2 (2014) May 2014, 13(2): 146-169; C. Perilloux, J. Duntley & D. Buss, 'The Costs of Rape', *Archives of Sexual Behavior* 41:5 (2012): 1099-1106; C. Draucker et al., 'The essence of healing from sexual violence: a qualitative metasynthesis', *Research in Nursing & Health* 32.4 (2009): 366-378.

4.5. Physical Problems and Mental Health Disorders

Sexual violence may cause physical damage to the body. This can be the consequence of ruthless manipulation or penetration. In the case of conflict-related sexual violence, damage to the genital area is often caused intentionally in order to inflict pain and destroy a person's dignity and even procreative capacity. Indeed, sexual violence as a weapon of war particularly aims to damage the reproductive functioning of victims, thereby contributing to the extermination of targeted populations.²⁸

Physical problems resulting from sexual violence may be diverse. Mutilation may evoke great shame and inconvenience due to malformation or dysfunction of organs (e.g., sexual dysfunction, or the unwanted spilling of urine or stool). Infections may come with serious symptoms and even be life-threatening (e.g., HIV infection).

Emotional problems may lead to the development of mental disorders, such as a posttraumatic stress disorder, depression, or other psychiatric conditions. Unfortunately, specialist treatment, although obviously indicated, is not always provided, its availability often being determined by a victim's socio-economic or legal position.

4.6. Contextual Factors

The listing above is dreary and may illustrate that the devastating effect of sexual violence on victims is mostly determined by characteristics of the act itself and can vary greatly between individuals. Bearing in mind the case of Blessing, the various acts of CSRV she has encountered are best understood within the same range of experiences rather than separate categories. Certainly, each act of CSRV had its particular setting, dynamics and level of severity, however experiencing the act itself can be considered to have a similar emotional impact. Furthermore, the meaning given to the act by the victim afterwards influences the effect of CSRV. Sexual violence – exposure and penetration – causes terror, loss of dignity, and shame. This happens in particular when sexual violence is used as a weapon of war and is even harsher when it is a gang rape. Purposeful humiliation and gang rapes happen frequently in situations of sexual exploitation as well. While in common life power and sexuality are implicitly intertwined, conflict presents prime examples of the distortion of this dyad towards sadism. Thus, contextual factors, such as conflict

²⁸ I. Ba, and R. Bhopal. 'Physical, Mental and Social Consequences in Civilians who have Experienced War-Related Sexual Violence: A Systematic Review (1981–2014)', *Public Health* 142 (2017): 121-135; A. McAlpine, M. Hossain & C. Zimmerman. 'Sex Trafficking and Sexual Exploitation in Settings Affected by Armed Conflicts in Africa, Asia and the Middle East: Systematic Review', *BMC International Health and Human Rights* 16.1 (2016): 34.

situations, may add particular setting to the experience, however the lasting impact of its intrinsically gruesome nature and its negative emotional sequelae can vary between individuals.

As outlined above, the psychological impact of sexual violence on the victim is severe regardless of the context in which the act took place. The setting of conflict may, however, offer a particular dynamic to the sexual violence. Therefore, there is a need to explore whether the victim's perspective corresponds to the present legal framework for these crimes.

5. The Scope of the Legal Definitions of CRSV and THB

5.1. Where Does the Nexus between CRSV and THB Begin?

In light of increasing violent extremism and mass migration, United Nations Security Council (UNSC) Resolution 2331 (2016) underlined the urgency of addressing the nexus between trafficking in persons, (conflict-related) sexual violence, terrorism and transnational organized crime; the first of its kind. The UNSC Resolution recognized that:

*Trafficking in persons in areas affected by armed conflict and post-conflict situations can be for the purpose of various forms of exploitation, including exploitation of the prostitution of others or other forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude or the removal of organs.*²⁹

It further recognized that:

*Trafficking in persons in armed conflict and post-conflict situations can also be associated with sexual violence in conflict and that children in situations of armed conflict and persons displaced by armed conflict, including refugees, can be especially vulnerable to trafficking in persons in armed conflict and to these forms of exploitation.*³⁰

Thus, the acknowledgment of the nexus between conflict-related sexual violence and trafficking in persons for the purpose of sexual exploitation was unprecedentedly made on the international level with similar resolutions following suit.³¹

²⁹ UN Security Council Resolution 2331 (S/RES/2331) 20 December 2016.

³⁰ Ibid.

³¹ UNSC Res. 2388.

In order to even better understand this nexus, the UN Secretary-General's report on CRSV (2017) defined the term 'conflict-related sexual violence' and held it to encompass trafficking in persons.³² In precise terms, the report stated that CRSV referred 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. This link may be evident in the profile of the perpetrator (often affiliated with a State or non-State armed group, including a terrorist entity or network), the profile of the victim (who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or is targeted on the basis of actual or perceived sexual orientation and gender identity), the climate of impunity (which is generally associated with State collapse), cross-border consequences (such as displacement or trafficking in persons) and/or violations of the provisions of a ceasefire agreement. The term also encompasses trafficking in persons when committed in situations of conflict for the purpose of sexual violence/exploitation.*³³

Not only does the report make clear that it sees CRSV to encompass trafficking in persons when committed in situations of conflict for the purposes of sexual exploitation, it also stresses the circumstances under which the 'conflict' may reveal itself, e.g., in situations of armed group violence, State collapse, cross-border movement or violations of a ceasefire agreement. Indeed, according to the above definition, the CRSV may be either 'directly or indirectly' linked to a conflict. When reading the annual reports of the UN Secretary-General on conflict-related sexual violence, it becomes clear who the suspects of CRSV, including human trafficking, are, and to what kind of conflict-related situations they are linked. A total of 47 parties have so far been listed by the UN Secretary-General with the majority of listed parties being non-State actors, of which seven designated as terrorist groups; other listed parties include national military and police forces.³⁴

CRSV can be random or isolated acts in conflict situations; CRSV can also be a so-called 'weapon of war', an integral part of the operations, ideology and economic strategy of the perpetrators thereby forming a threat to international security and peace.³⁵ In the 2018 UN report, a division is made between sexual violence in conflict-affected settings (e.g. including Afghanistan, Central African Republic, Iraq, Libya), post-conflict settings (e.g. Ivory Coast, Nepal)

³² UN Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence* (S/2017/249), 15 April 2017.

³³ *Ibid.*, para. 2; see also UNSC, *Report of the SG on CRSV* (2018), 2 (with slight alterations).

³⁴ UNSC, *Report of the SG on CRSV* (2018), para. 3.

³⁵ UN Security Council Resolution 1820 (S/RES/1820), 19 June 2008.

and other difficult situations (e.g. Burundi, Nigeria), again making clear what kind of conflict situations the UN Special Rapporteur has in mind when addressing CRSV and human trafficking in conflict.

The language found in the above-mentioned UN Resolutions and reports mirrors the conflict-related sexual violence crimes found in the 1998 Statute of the International Criminal Court (ICC or Court). This Court is based in The Hague, the Netherlands, and has – under certain conditions – the mandate to prosecute the most senior individuals suspected of having committed international crimes, such as genocide, crimes against humanity and war crimes, as of 2002, and when States themselves are unable or unwilling to do so. The Statute of the ICC provides for an extensive list criminalizing conflict-related sexual violence. In Articles 7 and 8 of the Rome Statute, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and any other form of sexual violence of comparable gravity are explicitly outlawed as crimes against humanity and war crimes. In addition, persecution against any identifiable group or collectivity on the ground of gender, and the crime of enslavement (which may include trafficking in persons, in particular women and children), are prohibited as a crime against humanity. Although the Rome Statute definition of genocide does not include specific sexual violence crimes amongst its acts, the ICC’s guiding Elements of Crimes do recognize that rape and other forms of sexual violence could be prosecuted as such (under ‘serious bodily or mental harm’).³⁶ The sexual and gender-based violence crimes become international crimes only, however, when certain general requirements of the international crimes are fulfilled; i.e., for genocide, there needs to be a specific intent against a particular group; for crimes against humanity, there needs to be a widespread or systematic attack against a civilian population; and for war crimes, there needs to be the presence of an international or non-international armed conflict. Only then can we speak of CRSV; an umbrella term for specific sexual violence crimes that can amount to genocide, crimes against humanity or war crimes.

Thus, apart from the crimes of forced marriage and forced abortion, the conflict-related sexual violence crimes mentioned by the UN in its above-mentioned resolutions and reports are partly similar to – and it seems inspired by – the conflict-related sexual violence crimes prohibited in law by the ICC as well as several other international criminal tribunals, such as the Special Court for Sierra Leone (SCSL). Whereas forced marriage and forced abortion are not currently criminalised in law, it should be noted that international criminal tribunals have in the past noted that other sexual and gender-based crimes, such as forced marriage, forced nudity, sexual mutilation, and forced abortion, may constitute international crimes. In fact, the SCSL has successfully prose-

³⁶ ICC, *Elements of Crimes* (The Hague: Official Journal of the International Criminal Court, 2011).

cuted not only rape and sexual slavery, but also forced marriage as the crime against humanity of an ‘other inhumane act’.³⁷

The question remains: where does conflict-related sexual violence and human trafficking meet? The answer can partly be found in some of the most applicable laws and case law interpreting these laws. When looking specifically at the Statute of the ICC and its Elements of Crimes document, this is in particular the case where it concerns the crimes of ‘enslavement’ (a crime against humanity and a non-specific sexual violence crime) and ‘sexual slavery’ (both a crime against humanity and a war crime and a specific sexual violence crime) as both these two crimes incorporate trafficking in persons. According to Article 7(2)(c) of the Statute of the ICC: ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.’ The Elements of Crimes further explain that the exercise of power attached to the right of ownership includes the ‘purchasing, selling, lending or bartering [of] such a person or persons, or by imposing on them a similar deprivation of liberty’, and that this conduct includes trafficking in persons, in particular of women and children.³⁸ The Elements of Crimes with regard to the crime of sexual slavery are similar to enslavement (and thus may also include trafficking in persons), with the addition that an act of a sexual nature needs to have been committed.³⁹

While the Rome Statute and the Elements of Crime encompass trafficking in persons in the crimes of enslavement and sexual slavery, they do not give a further definition of THB. For a definition of ‘trafficking in persons’ one has to look at the Palermo Protocol, which includes the first and internationally recognised definition, which is also referred to by the UN Security Council and

³⁷ I. Haenen. *Force & Marriage: The Criminalisation of Forced Marriage in Dutch, English and International Criminal Law* (Antwerp: Intersentia, 2014).

³⁸ A footnote furthermore explains that: ‘It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. *It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children (italics added).*’

³⁹ Sexual slavery – Elements of Crimes, Article 7(1)(g)-2: ‘(1) The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. (2) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.’ It should be noted that it has been argued that the crime of sexual slavery is somewhat redundant as it would also fit under the crime of enslavement. See, on this latter issue, A. Adams, ‘Sexual Slavery: Do we Need this Crime in Addition to Enslavement?’ *Criminal Law Forum* 29.2 (2018): 279-323; and P. Viseur Sellers, ‘Wartime Female Slavery: Enslavement?’ *Cornell International Law Journal* 44.1 (2011): 115-143.

the UN Secretary General in the relevant resolutions and reports linking THB and CRSV. Article 3 of the Palermo Protocol defines THB as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Trafficking thus requires: (1) an act; (2) a means; and (3) a purpose, that of exploitation. The acts include the recruitment, transportation, transfer, harboring or receipt of a person. ‘Means’ refers to various ways of distorting the free will of a person.⁴⁰ The final element, the purpose of exploitation, is not well defined: ‘at minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’. What is precisely meant with these terms is left to national governments to decide. The element of exploitation is one of specific intent (*dolus specialis*). Or as Siller puts it: ‘It is the actual purpose of the perpetrator, as opposed to the ‘practical results’ which satisfies the mens rea element. For a situation to be considered as trafficking in persons, the exploitation does not necessarily have to take place. The action taken and the means used must be carried out with the specific intention to exploit’.⁴¹

Yet, the question that has more recently been raised is whether ‘trafficking in persons’ (a transnational crime) is either a crime which comes under the crime of enslavement (an international crime⁴²), or whether enslavement is only one of the potential exploitative manifestations of trafficking as laid down in the Palermo Protocol?⁴³ Siller argues that, seen from an international criminal law perspective, there is a need for judicial clarity and decision in either merging the crimes or distinguishing them.⁴⁴ This will involve an analysis as to what constitutes ‘powers attaching to the right of ownership’. According to her, the addition of a separate crime against humanity of trafficking in persons may be the only way to hold individuals accountable under international criminal law. Until that time, however, it appears that traffickers who also engage in the enslavement of their victims in the context of a crime against humanity can be

⁴⁰ N. Siller, ‘“Modern Slavery”: Does International Law Distinguish between Slavery, Enslavement and Trafficking?’, *Journal of International Criminal Justice* 14 (2016): 417; A. Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press, 2010), 30.

⁴¹ *Ibid.*, 418.

⁴² A similar comparison could be made with regard to the crime of sexual slavery.

⁴³ Siller, ‘Modern Slavery’, 405-427.

⁴⁴ N. Siller, ‘The Prosecution of Human Traffickers? A Comparative Analysis of Enslavement Judgments among International Courts and Tribunals’, *European Journal of Comparative Law and Governance* 2 (2015): 260.

held accountable before international courts and tribunals based on the current interpretation of the crime of enslavement in case law.⁴⁵ In fact, before the ICC, steps are currently underway to investigate whether charges related to trafficking in persons can be made in the situation of Libya.⁴⁶ On the other hand, as trafficking in persons is considered a transnational crime with different requirements from enslavement being an international crime (e.g. trafficking does not rely upon the exercise of ownership over a person and could have a defence of consent), it could also be held that trafficking is not slavery and should therefore be removed from the crimes against humanity provision of enslavement.

5.2. Where Does the Nexus between CRSV and THB End?

Finally, the question to be answered is where the nexus between conflict-related sexual violence and human trafficking ends. Surely, as mentioned above, the reports of the UN Secretary-General give some indication, by stating that CRSV includes THB and that CRSV can be either directly or indirectly linked to conflict, and can happen in conflict, post conflict situations and other situations of concern. At the same time, the crime of THB is much broader in scope than as a form of conflict-related sexual violence.⁴⁷ The following question is then raised: how long we can still speak of 'conflict-related' sexual violence? When should THB for purposes of sexual exploitation still be considered as a form of conflict-related sexual violence, and when should it be seen as a stand-alone crime? In other words, when does the nexus between conflict-related sexual violence and THB end?

It seems as if in literature on the term CRSV no attention has been devoted to the scope of 'conflict-related'. It may be that this is due to the fact that while CRSV is an umbrella term for all sorts of sexual violence acts related to conflict, it is not a legal term in and of itself. Therefore, there has been no need to define 'conflict-related' as an element of the crime of CRSV. Rather, forms of CRSV have been criminalised as discussed above. The term at a minimum implies a direct or indirect correlation to conflict. That CRSV exists beyond conflict situations is reflected in, for instance, the fact that enslavement is also considered a crime against humanity, which can occur in peace time as well. In addition, the UN reports cited above speak of conflict and post-conflict situations. This would actually imply that exploitative practices refugees face while fleeing from conflict and that amount to THB might still be considered CRSV. Just as in the narrative of Blessing: her refuge from the conflict and sexual violence actually led her into a trafficking situation abroad. Her lack of resources and psycholo-

⁴⁵ For case law references, see: Siller, 'Modern Slavery', 405-427.

⁴⁶ ICC, 'Statement of ICC Prosecutor to the UNSC on the Situation in Libya', 9 May 2017.

⁴⁷ See section above and the definition of THB in general.

gical vulnerability put her at risk to enduring future sexual revictimization. To determine whether trafficking in persons is linked to a particular conflict is sufficiently widespread or systematic to speak of enslavement as a crime against humanity, this is relevant. Traffickers in Libya and Italy, who make use of the migration crisis, can then be prosecuted for enslavement as a crime against humanity. Then, what about the situation when a refugee flees from conflict and arrives at a destination country by his/her own means? Would a trafficking situation in the destination country then still be considered as related to conflict, since the person would not even be in the destination country if it were not for the conflict? While the victims' vulnerable position might be conflict-related, the perpetrators generally have no connection with the conflict anymore. Yet, on the other hand, perpetrators make, most of the time, deliberate use of the consequences of the conflict, by exploiting people who fled and are in a vulnerable position. Therefore, in these situations, THB should be considered as a stand-alone crime. The nexus with the conflict seems to end when the perpetrators are no longer linked, directly or indirectly, to the conflict anymore, although they do benefit from the conflict-related vulnerability of the victims.

6. Sexual Violence, Legal Labelling and their Impact on Wellbeing

Why do we bother so much to determine when a situation can be considered as conflict-related sexual violence, including trafficking in persons, or when trafficking can be considered as a stand-alone crime? For whom does this actually matter? Sexual violence has long-term consequences for the victims' wellbeing. At the very least, it impacts one's sense of safety and worldview. In addition, sexual violence may have serious physical and mental health consequences requiring treatment. In principle, victims should have access to (mental) health care for these problems. Currently, the legal labelling determines whether people have access to such services. It legally matters how (and where) certain acts can be prosecuted, and what type of protection is awarded to victims. But it also matters socially/psychologically, for the victims, that the terminology used to define what has happened to them matches their experiences.

6.1. Recognition

It may be clear that all aforementioned psychological aspects around sexual violence are common human phenomena, and that emotional responses to abuse are universal. CRSV and THB with the purpose of sexual exploitation are connected phenomena, not only by their intertwined appearance but also by their similar destructive impact on a victim's psychological balance. Both act through humiliation, the shattering of a person's self-determination, the brutal violation of personal boundaries, and a fierce attack on an individual's

feeling of identity. It is not hard to imagine how a disturbed feeling of identity and a distorted worldview may have a negative impact on psychological wellbeing and social functioning. Emotional sequelae are severe and long-lasting, and urge for attention, to start with recognition of victimhood with respect to both kinds of sexual violence. The recognition of harm from sexual violence can mean an important first step to recovery.

6.2. Labeling of the Crime (legal definitions) and access to rights

One of the reasons why (legal) labeling matters is that there are different rights attached to a situation being considered conflict-related sexual violence (not being trafficking) and human trafficking. While there is no such thing as an international CRSV convention, the trafficking framework is well defined and offers (in Europe even far-reaching) protection for victims, beyond protection during criminal proceedings. The Palermo Protocol is ratified by virtually all States and includes specific provisions aimed at protecting victims.⁴⁸ Linked to the criminal proceedings, the Palermo Protocol includes the right to information, the right to participation, and the right to compensation.⁴⁹ Further, it urges States to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including appropriate housing, medical, psychological and material assistance, counselling and information in a language that a victim can understand and employment, educational and training opportunities. In providing these protective mechanisms, States are required to take into account the age, gender and special needs of victims.

After the adoption of the Palermo Protocol in 2003, the protection of THB victims has been elaborated further by the United Nations Human Rights Office of the High Commissioner, as the Palermo Protocol was criticized for its criminal justice response, aimed at prosecuting the perpetrators, rather than a human rights based approach, which puts the victim at the center of any credible action and thus requires an analysis of human rights violations in the trafficking cycle. Based on the role and obligations of States under international human rights law, the OCHR (2002) developed 'The Recommended Principles on Human Rights and Human Trafficking'. The subsequent anti-trafficking documents adopted in Europe have incorporated this human rights-based approach to trafficking, including far-reaching protective mechanisms for victims. First with the adoption of the Council of Europe's Convention on Trafficking and

⁴⁸ Currently 173 States have ratified the Palermo Protocol, see https://treaties.un.org/pages/View-Details.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

⁴⁹ Article 6 sub 2 and sub 6 Palermo Protocol.

later, for EU countries, with the adoption of the Framework Decision of the EU, which was replaced by the EU Directive on trafficking in 2011.

Let us come back to the example of Blessing, who was exploited both in the conflict zone and Italy, and then managed to escape her situation and ask for asylum in the Netherlands. As soon as there was an indication, based on her story, that she was a presumed victim of trafficking, she was entitled to a temporary residence permit, a place in a shelter for victims of trafficking as a third country national, and access to medical and psychological support. This was the case even though the exploitation did not take place in the Netherlands.⁵⁰ If, however, her story had indicated that she had been a victim of sexual violence during the conflict, which cannot be considered trafficking in human beings, these protective mechanisms on the national level would not, or rarely, have been available.⁵¹

6.3. The importance of (legally) labeling the crime for victims?

There is little empirical research available on how victims of CRSV and THB really think about how the crimes committed against them are legally labeled. Some anecdotal evidence seems to indicate that to a certain degree the labeling of the crimes does matter to victims. For example, a Rwandan victim of sexual violence of the 1994 Genocide against the Tutsi held that she was shocked to find out that the violence committed against her was labeled by the Rwanda Tribunal Judges as a crime against humanity rather than genocide.⁵² Furthermore, it is not without reason that for centuries women's and human rights organizations have fought hard to have CRSV recognized as crimes rather than by-products of war or criminalized under vaguely formulated provisions such as 'outrages upon personal dignity', not doing justice to the harms suffered by the victims of these crimes at all.⁵³ Yet, it is still a different question altogether whether today's specific sexual violence crimes (such as rape and sexual slavery) or non-specific sexual violence crimes (such as enslavement) do justice to victims

⁵⁰ It needs to be indicated that when your trafficking situation occurred outside of the Netherlands, this might form an obstacle to building a criminal case against any person implicated in the crime. As the protection is only temporarily not linked to the criminal case, during the reflection and recovery period of 30 days, after that the case might be dismissed and the access to support ended.

⁵¹ Note that on the *international* level, before the ICC, where some victims of CRSV can participate or appear as witnesses in the proceedings, certain rights are granted to them, including protection, participation and reparation. In addition, assistance (e.g. socio-economic or psychological support) can even be provided to victims outside the case against a particular accused.

⁵² U. Kaitesi, *Genocidal Gender and Sexual Violence: The Legacy of the ICTR, Rwanda's Ordinary Courts and Gacaca Courts* (Cambridge/Antwerp/Portland: Intersentia, 2013), 174.

⁵³ K. Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward', in *Sexual Violence as an International Crime: Interdisciplinary Approaches*, ed. A. de Brouwer et al. (Antwerp: Intersentia, 2013), 21-64.

of CRSV and THB. The specific sexual violence crimes recognize the sexual nature of the crimes but the non-specific sexual violence crimes may not. There is a risk that when charging CRSV under the latter category, such as enslavement as a crime against humanity, the sexual violence components are overlooked by the Prosecutor or Judges.⁵⁴ However, when, for instance, the sexual aspects of the enslavement come explicitly to light in the final Judgment, this may provide sufficient 'justice' for victims of these crimes. In order to answer this question properly – to what extent would a CRSV, incorporating THB, judgement be adequately satisfying the victims? – it should therefore be asked to a significant number of actual victims of these crimes. This does not seem to have been done so to date.

7. Concluding Remarks and the Way Forward

During conflict the climate of impunity and the extreme contrast between the mighty and the powerless set an optimal setting and inevitable ground for sexual violence. In general, but in particular during conflict, a victim of sexual violence can be at risk of similar or other forms of sexual revictimization. As outlined above, contextual factors, such as (post) conflict, may add particular dynamics to the experience of sexual violence, but retain its intrinsically gruesome nature and negative emotional sequelae. Therefore, from a psychological viewpoint, in line with the 2018 UN Secretary-General report, there is no justification for a clear-cut distinction between CRSV and THB for purposes of sexual exploitation in conflict. Based on the few information available, it seems that for some victims, recognition of what has been done to them is important; recognition in the sense that their experiences are explicitly recognized in the crimes for which the accused are charged and prosecuted or in the legal judgements explaining their experiences. For most, if not all victims, whether CRSV or THB related, access to rights that comes with the recognition of their victimhood is definitely very important. More quantitative and qualitative research will need to be done to better understand the victims and survivors' perspective on the nexus of CRSV and THB and its legal and psychological consequences.

⁵⁴ H. Zawati. *Fair labelling and the dilemma of prosecuting gender-based crimes at the international criminal tribunals* (Oxford: Oxford University Press, 2014); A. de Brouwer. *Supranational criminal prosecution of sexual violence: The practice of the ICTY and the ICTR* (Antwerp: Intersentia, 2005).

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