



TRIAL
International

**Legislation Pertaining to
Children Born of War in
Bosnia and Herzegovina:
A Resounding Affirmation
in the Context of Global Silence**

AUTHOR

Ariq Hatibie

EDITORS

Adrijana Hanušić Bećirović and Amina Hujdur

PROOFREADING

Aida Spahić

GRAPHIC DESIGN

Šejla Bratić

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Introduction and Executive Summary

On 14 July 2022, Brčko District of Bosnia and Herzegovina (BDBiH) passed a law on civilian victims of war, with a groundbreaking innovation that legally recognises children born of wartime sexual violence (“children born of war”), by adding such children as a separate category under Article 2(g) of the Law on Civilian Victims of War, though stopping short of giving them additional benefits related to this status.¹ This report analyses the importance of the law in comparison to previous foreign domestic and international efforts as well as other policies concerning children born of wartime rape. Three conclusions are made.

First, before Bosnia and Herzegovina (BiH), Norway and Colombia were the only states that recognised and compensated children born of war through law. The former had a brief, one-time payout programme in 2006, while the latter had delineated comprehensive legal rights in addition to reparations. This report compares the more extensive Colombian law with that of BDBiH, illustrating how the Colombian law is stronger by entitling these children to material reparations, whereas the BDBiH law only provides legal recognition without additional benefits. Nevertheless, BiH remains one of the very few states that have legally addressed a population so universally ostracised during and after armed conflict.

Second, besides Norway and Colombia, legislative recognition of children born of war is non-existent in other countries. Libya has committed to recognise a separate legal

status for them via a ministerial decree, but this did not equate to legislation. Uganda has promised reparations via a national policy, but a law on reparations has not passed. Elsewhere, domestic courts (Bangladesh) and truth commissions (East Timor) have ordered governments to implement reparations for children born of war, but these have never manifested in law. Other countries (Iraq and Syria) have legislated to support survivors of sexual violence, but omit children born therefrom. This renders the BDBiH law a uniquely rare legal tool.

Third, the BDBiH law is the first to respond to very recent calls by the UN Secretary-General; the human rights treaty committees (CEDAW, CRC); model legislation written by the Special Representative on Sexual Violence in Conflict; and precedents set by international courts, to protect children born of war. These bodies have emphasised that children born of war are a category of victims that has been unaddressed by states, imploring states to create legislation to recognise and address their rights, needs and the issue of stigmatisation. The BDBiH law answers these calls for national legal action.

¹ Law on Civilian Victims of War of the Brčko District of Bosnia and Herzegovina. Article 2. <https://skupstinabd.ba/ba/zakon.html?lang=ba&id=/Zakon%20o%20civilnim%20z--rtvama%20rata%20Brc--ko%20distrikta%20BiH>

1. COMPARING THE BDBIH LAW WITH COLOMBIA'S LAW 1448

The internal armed conflict against the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) has festered since the 1960 and only recently formally ended. Sexual violence perpetrated by both insurgents and government was highly prevalent: from 2001-2009 an estimated 54,410 instances of sexual violence per year, or 149 per day, was recorded.² The Congress of the Republic of Colombia passed Law 1448 in 2011 to address, among others, this issue.

Law 1448 provides a powerful legal framework for addressing children born of war through the Title VII provisions on the rights of minors. Article 181 recognises “children and adolescents conceived as a result of a sexual violation during the internal armed conflict” as belonging to the category of “victim”.³ Crucially, they are not a separate legal category possessing unique rights. The law simply stresses that they belong to the general category of victims that Title VII addresses (and only for the purposes of Title VII).

The UN has lauded Law 1448 for recognising these children as victims. The Secretary-General in his 2022 report identified it as a law that “recognises victims of conflict-related sexual violence, including children born of rape,” and noted that “progress is to be commended” despite the law’s uneven implementation.⁴ Indeed, the UN clearly sees Law 1448 as a template for other countries to follow. For example, Model Legislation (guidance for countries thinking of passing similar laws) proposed in 2021 by the UN Special Representative on Sexual Violence in Conflict cited the law in its provision that children “have a right to receive reparations as a category of war victims, as per State practice in Colombia, for example.”⁵

The law’s guarantees include:

- Articles 1z82-184 grant compensation, rehabilitation, and restitution, administered by the National Family Welfare System and the Executive Committee of the Care and Reparation of Victims.
- Article 185 establishes a fiduciary fund, to be paid out when children reach the age of maturity.

² Amparo Sanchez, Olga, Jose Nicolas Lopez Vivas, Diana Rubriche Cardenas, and Maria del Pilar Rengifo Cano (2011). “First Survey on the Prevalence of Sexual Violence against women in the context of the Colombian armed conflict 2001-2009”. *Campaign Rape and Other Violence: Leave my Body out of the War*. Survey.

³ Law 1448 of 2011. “By which measures of attention, assistance, and integral reparation are set forth for the victims of the internal armed conflict and other provisions are established.” Decree of the Congress of the Republic of Colombia. <https://en.unesco.org/creativity/sites/creativity/files/law1448v18jun20.pdf>

⁴ United Nations, Security Council, *Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict*. Report of the Secretary General, S/2022/77, 31 Jan. 2022. Par. 27.

⁵ United Nations, Office of the Special Representative of the Secretary-General on Sexual Violence and Conflict (2021). “Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence.” P. 44.

- Article 186 obliges the state to ensure access to justice and to investigate crimes where these children are victims, “with a view to effective realisation of the rights to truth, justice and reparation.” This is supported by the Office of the Attorney General, the Ombudsman, and Institute for Family Welfare.
- Article 187 guarantees “a process of building coexistence and restoring relationships of trust between different segments of society” for these children.
- Article 188 guarantees the above rights to orphans.⁶

The law merges children born of war into a single category with other child victims, including child soldiers and trafficked children. This is also true of the BDBiH law, which includes children born of war within the general category of “civilian victims of war.”⁷ The drawback may be a lack of sensitivity to the specific needs of each category (e.g., children born of war face unique stigmas regarding parentage). An alternative legal path, as proposed by TRIAL International in its advocacy, would be to delineate a specific legal category, which has the potential to address the unique needs of such victims. Nevertheless, Colombia’s law provides strong protections, commanding specific government agencies to provide the necessary redress to child/adolescent victims.

Unlike the BDBiH law, which gives children born of war the status of civilian victim for life, Title VII of the Colombian Law only addresses minors under 18. In other words, protections/rights for children born of war under Title VII end once they turn 18. Whether they can get rights outside of Title VII seems ambiguous from the text of the act: Art. 181 under Title VII reads, “*For the purposes of this Title will also be considered victims, children and adolescents conceived as a result of a sexual violation during the internal armed conflict.*” (emphasis added). Under a restrictive reading, the words “for the purposes of” and “also” suggest that the legislators intended to categorically exclude children born of war from the rest of Law 1448. Under this reading, children born of war get no rights under Law 1448 once they turn 18.

However, under an expansive reading, those words merely stress that children born of war uniformly as a group and by virtue of their identity automatically get rights under Title VII. In other words, the function of Art. 181 is to clarify something that courts might think is ambiguous, rather than to exclude children born of war from the rest of Law 1448. Outside of Title VII, a “victim” is defined in Title I Art. 3 as: “those persons who individually or collectively have suffered damage due to the events that occurred as of January 1, 1985, as a consequence of the violations of International Humanitarian Law or of serious and manifest violations of [international human rights], which occurred on the occasion of the internal armed conflict.” It is possible that *some* children born of war (whether under 18 or not) get rights under the rest of Law 1448 if they individually meet the criteria. This reading seems more plausible given the law’s progressive tenor, and the fact that Art. 3 does not explicitly make any categorical exclusions.

⁶ Ibid.

⁷ Law on Civilian Victims of War, Article 2.

Notably, outside Title VII, victims also include "...family members in the first degree of consanguinity ... first civilian of the direct victim, when she has been killed or disappeared."⁸ This seems to give children born of war the status of victim if their mother has been killed or disappeared. Depending on how Colombian courts interpret the law, "direct victim" could start to automatically encompass children born of war following the ICC's 2021 *Ntaganda* decision saying that children are "direct victims" (see Section IV), but this was likely not the case when Law 1448 was enacted in 2011. In any case, it is clear that the Colombian law attaches many caveats to the status of victim for children born of war, whereas the BDBiH law recognises children born of wartime sexual violence as civilian victims for their entire life.

Furthermore, Law 1448 has faced implementation problems. Although the fund has paid some reparations, there are "no official programmes addressing [the] plight" of children born of war.⁹ In 2015, former UN Special Representative on Sexual Violence in Conflict, Zainab Hawa Bangura, lamented "the silent issue of children born out of rape" in Colombia.¹⁰ In 2016, a Child Protection Officer from UNICEF mentioned that "the topic of children born of war seemed to be the most hidden one."¹¹ Similarly, the 2016 peace agreement between Colombia and FARC addresses only the general rights for children, without specific provisions for those born of war.¹²

The Colombian experience counsels that laws can over-promise.¹³ Legal recognition must harmonise with concrete funds and initiatives in collaboration with NGOs. For example, some limited psychological support sessions pursuant to this law have offered channels for women to speak about their experiences being forced into motherhood, but this has not achieved systematic implementation.¹⁴

⁸ Law 1448 of 2011. Art. 3.

⁹ Sanchez Parra, Tatiana (2018). "The Hollow Shell: Children Born of War and the Realities of the Armed Conflict in Colombia." *International Journal of Transitional Justice*, 12(1):45-63. P. 49.

¹⁰ Ibid.

¹¹ Ibid.

¹² Colombia-FARC (2016). "Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace." <https://www.peaceagreements.org/viewmasterdocument/1845>.

¹³ Correa, Cristián (2015). "From Principles to Practice: Challenges of Implementing Reparations for Massive Violations in Colombia." *International Center for Transitional Justice*. Report.

¹⁴ Neenan, Joanne (2017). "Closing the Protection Gap for Children Born of War." *Centre for Women Peace and Security*. Working Paper.

APPROACHES IN OTHER COUNTRIES

Besides Colombia, only Norway appears to have provided recourse for children born of war in the form of compensation. Many countries have made soft commitments (indeed some have been ordered to pay reparations by tribunals), but these have never manifested in concrete law. Other countries, such as France and Bangladesh, have facilitated the adoption of such children domestically or internationally. This section surveys the approaches (or lack thereof) in these other countries, finding that, although their mothers are often recognised and receive reparations, the children are overwhelmingly excluded.

Norway

An estimated 12,000 children were born to Norwegian mothers and German fathers in World War II,¹⁵ born out of a combination of direct violence, consensual relations, and a Nazi-run *Lebensborn* programme that incentivised procreation with “racially pure” or Aryan-adjacent nationalities.¹⁶ Children born therefrom were considered enemies and were excluded from child benefits, while their mothers lost their citizenship.¹⁷ Some children even ended up in mental institutions where they suffered rampant abuse.¹⁸ Norwegian courts have held that the government cannot be held responsible for their plight before 1953, i.e., before they signed the European Convention on Human Rights.¹⁹



In 2005, the Norwegian parliament eventually approved a law, recommended by the Department of Justice,²⁰ to financially compensate the war children up to 200,000 kroner (for those with documentation of their status) or 20,000 kroner (for those without documentation).²¹ This recommendation was then implemented by the Ministry of Finance via national budget allocation to the Ministry of Labour and Social Inclusion, to be provided to the children through NGOs like the War Children’s Association.^{22 23} Around 2,000 children

¹⁵ Lee, Sabine (2017). *Children Born of War in the Twentieth Century*. (Manchester: Manchester University Press). P. 58.

¹⁶ Ibid. P. 58.

¹⁷ Ibid. P. 65.

¹⁸ Al Jazeera (2007). “Nazi war children want recognition.” <https://www.aljazeera.com/news/2007/4/14/nazi-war-children-want-recognition>.

¹⁹ The Guardian (2007). “Norway’s Aryan children go to court after years of prejudice.” <https://www.theguardian.com/world/2007/mar/08/secondworldwar.international>.

²⁰ Department of Justice, Norway (2003-2004). “St.meld. nr. 44: Erstatningsordning for krigsbarn og erstatningsordninger for romanifolk/tatere og eldre utdanningskadelidende samer og kvener.” <https://www.regjeringen.no/contentassets/0e716aaede964fd78f98f2c8c0b4a48b/no/pdfs/stm200320040044000dddpdfs.pdf>.

²¹ Valderhaug, Gudmund (2008). “Memory, Justice and the Public Record.” Conference Paper for the Ethics of Memory Conference. <https://oda.oslomet.no/oda-xmliui/bitstream/handle/10642/614/523264post.pdf?sequence=2&isAllowed=y>. P. 7.

²² Ministry of Finance, Norway (2005). “St.prp. nr. 65 (2004-2005). Tilleggsbevilgninger og omprioriteringer i statsbudsjettet medregnet folketrygden 2005.” https://www.regjeringen.no/no/dokumenter/stprp-nr-65-2004-2005-/id138849/?q=krigsbarn&ch=3#match_2.

took the offer, but others thought that the amount was insufficient.²⁴ A group of 154 launched a lawsuit against Norway at the European Court of Human Rights, but their case was deemed inadmissible,²⁵ and the Norwegian government continues to deny any systematic abuse.²⁶ Indeed, an adviser at the Ministry of Labour and Social Inclusion said, "The Norwegian government has never ill-treated war children, on the contrary, we have done our very best to include them."²⁷ Norway has since apologized to the mothers for state-supported ostracisation, but a similarly comprehensive admission regarding the children remains elusive.²⁸

World War II

Besides in Norway, tens of thousands of children were born from war in World War II. Of those born from German fathers alone, 85,000 were born to French mothers,²⁹ 10,000 to Dutch mothers,³⁰ and 20,000 to Belgian mothers.³¹ Again, these arose out of a combination of wartime sexual violence, consensual relationships, and *Lebensborn*. France facilitated their adoption under state auspices, but according to Sabine Lee, "there is no evidence to suggest that policies were devised with reference" to their welfare.³²

Wartime sexual relations and violence increased as the Allies encroached on German territory as well, with 100,000 estimated women who have suffered rape during the Soviet entry into Berlin alone.³³ Around 66,000 children were born from this allied occupation (both from consensual relations and not).³⁴ Again, they faced similar stigmatisation as children of the enemy, and again, the state failed to address the issue. For example, in occupied Germany, although fathers were required to financially support children until they were 16, the U.S. specifically excluded paternity/alimony claims of children of the occupation.³⁵

In the Eastern front, 200,000 women, mostly from China and Korea, but also from Southeast Asia, were forced to work by the Japanese army as prostitutes or "comfort women."³⁶ One study found that more than 30% of Korean Comfort Women gave birth to children.³⁷ Although much is known about the women's experiences, very little is known about policies targeted towards their children.³⁸ Comfort women continue to seek recognition and reparation to this day.³⁹

²³ Ministry of Labor and Inclusion, Norway (2006–2007). St.prp. nr. 1. "FOR BUDSJETTÅRET 2007 — Utgiftskapitler: 600–691, 2541–2543, 2620–2690 Inntektskapitler: 3600–3690, 5701–5705." https://www.regjeringen.no/no/dokumenter/stprp-nr-1-2006-2007-/id212975/?q=krigsbarn&ch=2#match_0.

²⁴ Ibid.

²⁵ Magra, Iliana (2018). "Norway apologises, 70 years later, to Women who had Relationships with WWII Germans." *The New York Times*. <https://www.nytimes.com/2018/10/19/world/europe/norway-lebensborn-german-girls.html>.

²⁶ Al Jazeera (2007).

²⁷ Ibid.

²⁸ Magra (2018).

²⁹ Lee (2017). Ibid. P. 62.

³⁰ Ibid.

³¹ Ibid. P. 66.

³² Ibid. P. 84–85.

³³ Ibid. P. 71.

³⁴ Ibid. P. 76.

³⁵ Ibid. P. 78.

³⁶ Ibid. P. 63.

³⁷ Devine, Maija Rhee (2017). "Children of 'comfort women.'" *The Korea Times*. https://www.koreatimes.co.kr/www/opinion/2017/08/162_235364.html.

³⁸ Lee (2017). P. 64.

³⁹ McCarthy, Julie (2020). "Why these World War II Sex Slaves Are Still Demanding Justice." *National Public Radio*. <https://www.npr.org/sections/goatsandsoda/2020/12/04/940819094/photos-there-still-is-no-comfort-for-the-comfort-women-of-the-philippines>.

Libya

In 2014, the Libyan Council of Ministers issued Decree 119 on the Protection of Survivors of Rape and Violence. The Decree was to create a committee to identify sexual violence victims under the former regime and during the 2011 conflict; a mechanism to recognise the legal status of children born of rape; and a fund to support survivors.⁴⁰ According to the UN, this decree is “lower than a law in the legislative hierarchy.”⁴¹ Indeed, the Ministers only announced Decree 119 because the Libyan General Conference refused to pass a Draft Law on the Protection of Survivors of Rape and Sexual Violence.⁴² One NGO notes that the Decree was opposed by the legislature for conflicting with local values and religion, where incidents of sexual violence should not be exposed, suggesting that this motivated the rejection of the initial Draft Law.⁴³

Indeed, the fund has faced implementation problems. For example, the Secretary General’s 2022 report noted that it remains “unimplemented to date;”⁴⁴ and many other multilateral institutions have made statements to that effect.⁴⁵ Such references on the lack of implementation suggest that the government simply did not follow up. It is clear that this initiative lacked legislative consensus.



Uganda

has been under insurgency by the Lord’s Resistance Army (LRA), led by Joseph Kony, since 1987. The LRA has conducted ethnic purification via forced marriages and impregnation.⁴⁶ The Ugandan Internal Affairs Ministry has determined that 4,000-6,000 children were born of war in the northern Acholi region.⁴⁷

⁴⁰ United Nations, General Assembly, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs*. A/HRC/28/51. 12 Jan. 2015. Par. 62.

⁴¹ United Nations, Development Program (2018). “Libya: Gender Justice and the Law.” Country Report. P. 14. https://arabstates.unfpa.org/sites/default/files/pub-pdf/Libya%20Country%20Assessment%20-%20English_0.pdf.

⁴² Ibid.

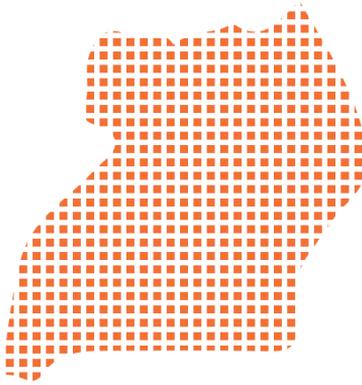
⁴³ Cairo Institute for Human Rights Studies (2018). “Libya must uphold its obligation to protect women.” Footnote 7. <https://cihrs.org/libya-must-uphold-its-obligation-to-protect-women/?lang=en>.

⁴⁴ United Nations, Security Council (2022), Par. 27.

⁴⁵ See also UNICEF (2020). “Situational Analysis of Women and Girls in the MENA and Arab States Region: A Decade Review 2010-2020.” Regional Report. P. 227; World Bank (2019). “Supporting Peace and Stability in Libya: A Compilation of Existing Analysis on Challenges and Needs.” P. 147; United Nations, Support Mission in Libya (2016). “Towards a National Reconciliation in Libya.” P. 15, Footnote 22.

⁴⁶ Baines, Erin and Oliveira, Camile (2021). “Securing the Future: Transformative Justice and Children ‘Born of War.’” *Social and Legal Studies*, 30(3):341-361.

⁴⁷ Natukanda, Carol (2018). “Gov’t to Register Children Born during LRA War.” *New Vision*. <https://www.newvision.co.ug/news/1500173/govt-register-children-born-lra-war>.



The 2019 National Transitional Justice Policy (NTJP), announced by their Ministry for Internal Affairs, committed the government to paying reparations for, among others, “children born while their mothers were in captivity.” Despite promises for implementing this via legislation, especially the proposed Transitional Justice Act, this has not transpired into concrete law.⁴⁸ The NTJP itself was criticised for lacking victim participation, while 90% of respondents in a survey by REDRESS said that they did not receive any reparation.⁴⁹ Earlier in 2017, a proposal that would have given reparations to children born of war, with further provisions for land ownership and psychological support, was also blocked.⁵⁰

East Timor

From 1975 to 1999, the Indonesian army abducted, raped, impregnated, and enslaved “an unverifiable number” of women in East Timor.⁵¹ Although 853 cases were recorded by the Commission for Reception, Truth, and Reconciliation, “many ... did not come forward.”⁵² In 1999 alone, there were reports of 46 cases of rape, 18 of which were “mass rape,” during the forced deportation of 250,000 Timorese into camps in West Timor by pro-Jakarta militias.⁵³ Many children were abandoned, with a quiet understanding that most children in Catholic orphanages were those born of war.⁵⁴ They were stigmatised, even by the Church, because they were seen as born out of extra-marital relations rather than rape.⁵⁵ Women who kept their kids struggled to put them through education.⁵⁶

The Commission for Reception, Truth, and Reconciliation (CAVR) established a short-term Urgent Reparations Scheme for victims of the Indonesian incursions from 1975-1999.⁵⁷ This funded medical and psychosocial care, support for the disabled, and an emergency grant of \$200.⁵⁸



⁴⁸ Ministry of Internal Affairs of the Republic of Uganda (2019). “National Transitional Justice Policy.”

⁴⁹ REDRESS (2020). “Victims of the 20-Year Conflict in Uganda Mostly Sidelined from the Transitional Justice Process.”

⁵⁰ Neenan (2017). P. 38.

⁵¹ Harris-Rimmer, Susan (2009). “After the guns fall silent: Sexual and gender-based violence in Timor-Leste.” *Issue-Brief for the Timor-Leste Armed Violence Assessment (TLAVA)*.

⁵² Harris-Rimmer, Susan (2007). “Orphans or Veterans? Justice for Children Born of War in East Timor.” In Charli Carpenter, ed. *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*. (Bloomfield: Kumarian Press). Ch. 4. P. 55.

⁵³ *Ibid.* P. 56.

⁵⁴ *Ibid.*

⁵⁵ Chega! P. 2030.

⁵⁶ *Ibid.*

⁵⁷ Evans, Christine (2012). *The Right to Reparation in International Law for Victims of Armed Conflict*. (Cambridge: Cambridge University Press). P. 194.

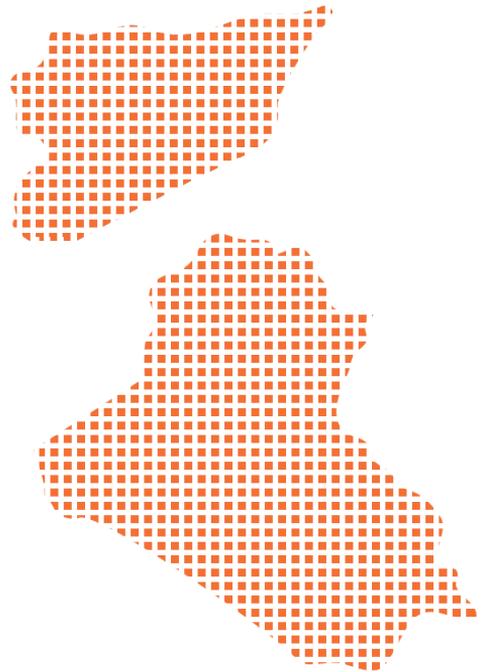
⁵⁸ *Ibid.* P. 195.

It did not address children born of war, but “orphans” and “someone isolated within his or her community” were eligible. This was intended as a temporary source of funding, envisioning a longer-term scheme.

CAVR’s 2005 Final Report recommended reparations for victims, including children “born out of an act of sexual violence whose mother is single.”⁵⁹ This has failed to manifest, as President José Ramos-Horta sought to avoid antagonising Indonesia. Draft legislation was submitted to parliament in June 2010, but stalled, as politicians wanted to first clarify the status of “war veterans” before committing to reparations.⁶⁰

Iraq and Syria

ISIS conducted genocidal sexual violence in Northern Iraq in the 2010s, particularly against the Yazidi, Turkmen, and Assyrian minorities, that have resulted in approximately 8,000 children being born of war.^{61 62} In 2019, the Yazidi Spiritual Council excluded children born of rape from being welcomed back into their communities, on account of these children being ethnically and religiously non-Yazidi.⁶³ Many were given to orphanages in Iraq and Syria.⁶⁴ In Syria, children born of war face issues of birth registration, since citizenship does not pass matrilineally. If the father is foreign, the child does not receive Syrian citizenship. If the father is unknown, the child gets Syrian citizenship but their ID cards will reflect this unknown parentage, which causes stigma.⁶⁵



Although the 2021 Survivors Law has measures for compensating, rehabilitating, and re-integrating survivors of sexual violence under ISIS, and establishes a General Directorate of Survivors Affairs,⁶⁶ it does not specifically address children born of war, despite pressure

⁵⁹ “Chegal” Final Report of the Timor-Leste Commission for Reception, Truth, and Reconciliation (CAVR). (2005). P. 2619.

⁶⁰ Evans (2012). P. 198.

⁶¹ SEED Foundation (2020). “Children born of the ISIS War.” https://www.seedkurdistan.org/Downloads/Reports/201223-Children_Born_of_the_ISIS_War.pdf

⁶² Washington Post Editorial Board. “The world must do something about the children of ISIS fighters.” *Washington Post*. 12 Jan. 2020.

⁶³ “Yazidis to accept ISIL rape survivors, but not their children.” *Al-Jazeera*, 29 Apr. 2019. <https://www.aljazeera.com/news/2019/4/29/yazidis-to-accept-isil-rape-survivors-but-not-their-children>.

⁶⁴ Arraf, Jane. “In Syria, an Orphanage Cares for Children Born to Yazidi Mothers Enslaved by ISIS.” *National Public Radio*. Jun. 6, 2019. <https://www.npr.org/2019/06/06/729972161/in-syria-an-orphanage-cares-for-children-born-to-yazidi-mothers-enslaved-by-isis>.

⁶⁵ Syria Justice and Accountability Center (2019). “Legal Limbo: The Future of ISIS’s Children.” <https://syriaaccountability.org/legal-limbo-the-future-of-isis-children/>.

⁶⁶ Nadia’s Initiative (2022). “Paving the Way for Reparations for Survivors.” <https://www.nadiasinitiative.org/news/survivor-centric-support-for-yazidi-women>.

from civil society.⁶⁷ The UN Special Rapporteur on Internally Displaced Persons, Cecilia Jimenez-Damary, notes ‘The situation of these children is unfortunately not addressed by this law. I call on the Government of Iraq ... to protect the rights of both the children and their mothers, and to support them in achieving a durable solution to their displacement.’⁶⁸

Rwanda

The Rwandan civil war saw around 250,000 women raped by Hutu government soldiers and their allied militia, the *Interahamwe*.⁶⁹ Victim groups estimate that 10,000-25,000 children were born from this violence.⁷⁰ Rape’s taboo status in Rwanda has led to ostracism from socioeconomic support systems.⁷¹ They face extreme challenges with reintegration, such as the inability to mix with other kids at school, and worse mental and physical health outcomes such as suicidal ideation.⁷²

Currently, children born of war are ineligible for the government’s Fund for the Neediest Survivors of Genocide in Rwanda (FARG), because assistance is limited to those “alive and affected by the Genocide between 1st October 1990 and December 1994.”⁷³ Rwanda had community-oriented Gacaca courts from 2002-2012 to process rape cases, but because of heightened stigmatisation, rape victims and their children were less likely to pursue this option.⁷⁴



Bangladesh

The war between East Pakistan (now Bangladesh) and West Pakistan (now Pakistan) in 1971 saw the rape of 200,000 – 400,000 Bangladeshi women and girls.⁷⁵ Estimates suggest that at least 25,000 children were born from this violence.⁷⁶ They experienced high stigmatisation in a society that perceived rape as a woman’s loss of honour. One child born of war testified in 2014 that her in-laws tortured her upon learning of the circumstances of her birth.⁷⁷

⁶⁷ Waldman, Nicolette. “Iraq’s reparations law for Yazidi survivors is a positive step.” *Al-Jazeera*, 28 Jun 2021. <https://www.aljazeera.com/opinions/2021/6/28/iraqs-reparations-law-for-yezidi-survivors-is-a-positive-step>.

⁶⁸ United Nations, Office of the High Commissioner of Human Rights. “Iraq: UN expert welcomes law to aid ISIL atrocity survivors, but more needs to be done for children born from rape.” *Press Release*. 21 Apr. 2021.

⁶⁹ “Rwanda’s children born of genocidal rape look to future.” *France 24*, 3 Mar. 2021.

⁷⁰ Hogwood, Jemma, Christine Mushashi, Stuart Jones, and Carl Auerbach. “I learned who I am.: Young People Born From Genocide Rape in Rwanda and their Experiences of Disclosure.” *Journal of Adolescent Research*, 33(5):569-570. P. 550.

⁷¹ *Ibid.*

⁷² *France 24* (3 Mar. 2021).

⁷³ Hamel, Marie-Eve (2016). “Ethnic belonging of the children born out of rape in postconflict Bosnia-Herzegovina and Rwanda.” *Nations and Nationalism*, 22(2):287-304. P. 301.

⁷⁴ See Human Rights Watch (2011). “Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts.” <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>.

⁷⁵ Sharlach, Lisa. “Rape as Genocide: Bangladesh, the Former Yugoslavia, and Rwanda.” *New Political Science*, 22(1):89-102. P. 94.

⁷⁶ *Ibid.*

⁷⁷ Zayeeef, Ahmed. “Rape victim and her war child battered but not beaten.” *Dhaka Tribune* (23 Dec. 2014).



These children did not receive psychosocial counselling or financial support, and there has been no official initiative to date.⁷⁸ The International Crimes Tribunal Bangladesh (ICT-BD), in the 2014 case *Chief Prosecutor v. Syed Md Qaiser*, directed the Ministry of Liberation War Affairs, Ministry of Social Welfare, and social organisations to “initiate prompt and necessary steps” to identify “war babies” as victims of rape and to implement programmes to reduce their stigma and encourage reparations.⁷⁹ The ICT-BD emphasised that “much greater and systematic attention is now needed for their psycho-social protection.”⁸⁰ However, this has yet to transpire.

Notably, Bangladesh has also addressed children born of war by facilitating their adoption internationally, via the Bangladesh Abandoned Children (Special Provision) Order of 1972. Many were adopted by families in the UK, US, Sweden, Switzerland, Norway, the Netherlands, and Belgium.⁸¹

Peru

Peru suffered a civil conflict in the 1980s and 1990s involving the government and two insurgent groups, the Túpac Amaru Revolutionary Movement and the Shining Path. The Peru Truth and Reconciliation Commission has recognised 70 military bases where rape and sexual violence occurred, and 538 cases were reported directly to the PTRC.⁸² Children born of war were branded names like *los regalos de soldados* (soldier’s gifts) and *chatarra* (stray cat).⁸³ Because many do not know their fathers, they often had to take their mother’s last name in identity documents, a further source of stigma.⁸⁴ Although Peru has extended reparations to survivors of sexual slavery, forced prostitution, and forced abortion,⁸⁵ no legal frameworks exist in Peru to recognise their children, although women have fought to hold the state accountable in this regard.⁸⁶ For example, they would insist on incorporating the father’s *nom de guerre* as a way of forcing the state to acknowledge their paternity.⁸⁷ Like in many cases, the mothers received legal recognition and reparation, but the children depended on soft measures.



⁷⁸ Rahim, Naureen. “OP-ED: All the children born of rape.” *Dhaka Tribune* (11 Dec. 2020).

⁷⁹ *Prosecutor v. Qaiser*. ICT-BD Case No. 04 (2013). Par. 991.

⁸⁰ *Ibid.*

⁸¹ United States Department of Justice (2009). Migration Review Tribunal Research Response BGD34330.

⁸² Theidon, Kimberly (2015). “Hidden in Plain Sight: Children Born of Wartime Sexual Violence.” *Current Anthropology*, 56(S12):191-199. P. 192.

⁸³ *Ibid.*

⁸⁴ *Ibid.* P. 197.

⁸⁵ Cabitza, Mattia (2012). “Peru widens civil war compensation for victims of sexual violence.” *The Guardian*.

⁸⁶ Theidon (2015). P. 197.

⁸⁷ *Ibid.*



RESONATING WITH INTERGOVERNMENTAL DEVELOPMENTS

The BDBiH law responds directly to the very recent focus on children born of war by international bodies in four distinct ways.

First, the law embraces the recommendations in the UN Secretary-General's 2022 report addressing "children born of sexual violence in conflict."⁸⁸ The report responded to a request by the UN Security Council, which in 2019 emphasised for the first time the consequences faced by such children.⁸⁹ It notes the slow process and faulty implementation of initiatives protecting the rights of children born of war (mentioning some cases outlined above). The report urges that member states ensure "that national legislation and policies are designed to uphold the rights of ... children born of such violence"; that adequate funding for medical, psycho-social, and legal services are available; protection from discrimination; and other guarantees.⁹⁰

Second, the BDBiH law resonates with a joint statement issued in 2021 by the treaty bodies, CEDAW (Committee on the Elimination of Discrimination against Women) and CRC (Committee on the Rights of the Child), also in response to the 2019 UNSC resolution, specifically on protecting and assisting "children born of conflict related rape and their mothers."⁹¹ Among others, they call for equal access to "vocational training, life skills and socioeconomic support, sports and leisure activities, religion and cultural activities." They emphasise supporting them in transitioning into adulthood via "skills training" and "livelihood opportunities." The BDBiH law takes the first step by giving legal recognition, though proposals to gain access to these socioeconomic benefits still need to be adopted.

Third, the UN Special Representative on Sexual Violence in Conflict has in June 2021 written model legislation addressing conflict-related sexual violence, including "children born as a result of sexual violence."⁹² Key provisions include:

- 1) Chapter I Definitions: It proposes including in the definition of "victim" members of the immediate family. Victims generally get a fund (Art. 65), reparations (flexibly designed based on domestic needs, Art. 66), assurances for victim participation (Art. 58), and other guarantees.

⁸⁸ United Nations, Security Council, *Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict*. Report of the Secretary General, S/2022/77, 31 Jan. 2022.

⁸⁹ United Nations, Security Council, Resolution 2467, Adopted by the Security Council at its 8514th Meeting on 23 April, 2019. S/RES/2467.

⁹⁰ S/2022/77. Par. 36.

⁹¹ United Nations, Office of the High Commissioner of Human Rights. "Ensuring prevention, protection and assistance for children born of conflict related rape and their mothers." Joint Statement by CEDAW and CRC. 19 November, 2021.

⁹² United Nations, Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (2021). "Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence." P. 37.

- 2) Article 3(3)(d): “Children born as a result of aggravated sexual violence require protection from discrimination, especially in accessing resources, identification documents and social services such as education and health care, and have a right to receive reparations as a category of war victims...” Here, the legislation explicitly cites Colombia as an example.
- 3) Article 42 enshrines principle of non-discrimination on the ground of birth, and explicitly stresses that “birth” includes protections against discrimination for children born of war.

Fourth, the BDBiH law will resonate with international court decisions. In February 2021, the International Criminal Court (ICC) convicted Dominic Ongwen on a charge of forced pregnancy as a war crime and crime against humanity. Even more relevantly, in March 2021 the ICC confirmed in *Prosecutor v. Bosco Ntaganda* that children born of rape and sexual slavery were direct victims of these crimes and eligible for reparation (set at \$30 million USD).⁹³

As the Judges wrote in *Ntaganda*, “direct victims” require a causal link between the harm suffered and the crimes of the accused.⁹⁴ “Indirect victims” are those whose harms arise from the harm suffered by direct victims because of their relationship with them.⁹⁵ The ICC concluded that children born out of rape and sexual slavery “may qualify as direct victims ... as the harm they suffered is a direct result of the commission of the crimes of rape and sexual slavery.”⁹⁶ In contrast, children who were *not* born of sexual violence, yet whose mothers were nevertheless raped, are indirect victims because their harms were “a consequence of the harm suffered” by their mothers.⁹⁷ One commentator noted that categorising children born of war as “direct victims” can lead to *their* children being classified as “indirect victims,” amounting to a recognition of intergenerational harm and opening this latter group to possible reparations as well.⁹⁸

The BDBiH law has already drawn the attention of the ICC, with Chief Prosecutor Karim Khan lauding this “momentous step,” and announcing that “such children will be given special consideration in the investigations and prosecutions by my office.”⁹⁹

In addition, the UK launched in November 2021 a global call for proactive action to address the needs of children born of war which was so far endorsed by a group of nations comprising the United States, Norway, South Sudan, Mexico, Guatemala, the Democratic Republic of Congo, and Kosovo. They encourage states to, among other measures, “strengthen legal and policy frameworks to eliminate barriers and pro-actively support the rights and well-being of children born of sexual violence in conflict.” The call is also endorsed by three UN Special Representatives on Sexual Violence in Conflict, Children and Armed Conflict, and Violence Against Children.¹⁰⁰

⁹³ International Criminal Court. “ICC Trial Chamber VI orders reparations for victims.” Press Release 8 Mar. 2021.

⁹⁴ *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06. Reparations Order. (8 Mar. 2021). Par. 121.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.* Par. 122.

⁹⁷ *Ibid.*

⁹⁸ Lostal, Marina (2021). “The Ntaganda Reparations Order: a marked step towards a victim-centred reparations legal framework at the ICC.” *EJIL: Talk!* Blog post.

⁹⁹ Khan, Karim (2022). July 15, 10:50AM. Tweet. <https://twitter.com/KarimKhanQC/status/1547956776259112972>.

¹⁰⁰ United Kingdom, Foreign, Commonwealth and Development Office (2022). “Call to action to ensure the rights and wellbeing of children born of sexual violence in conflict.” Policy Paper. <https://www.gov.uk/government/publications/ensuring-the-rights-and-wellbeing-of-children-born-of-sexual-violence-in-conflict-call-to-action/call-to-action-to-ensure-the-rights-and-wellbeing-of-children-born-of-sexual-violence-in-conflict>.

Civil society played a crucial role in promoting the passage of the BDBiH law. Formed in 2015 by Dr. Amra Delić, and a group of survivors and activists, the organisation Forgotten Children of War promotes the inclusion of children born of war while providing them with organisational and psychosocial support.¹⁰¹ Their efforts have included a range of advocacy tools, including press conferences, living libraries, documentaries, and art exhibitions.

One particularly cathartic moment for Ajna Jusić, the President of Forgotten Children of War, was an interview with DW Germany in 2018, where she came out and revealed her status as a child born of the 1990s war. She recounts how people in her life were shocked at how much she had to hide her history, and how many lies she had to tell because of the widespread stigmatisation that children like her and their mothers faced.¹⁰² Her story illustrates the consequences of pervasive social norms of silence and shame regarding such parentage, and conversely the benefits that acceptance, responsibility, and recognition can bring.

Indeed, social recognition and de-stigmatisation are central to activism for children born of war. Although the BDBiH lacks provisions for economic benefits, Jusić stressed that “it was historical because it was the first time that we had the country on our side ... giving us recognition through the law means we are in some way, in some part, accepted by the country.”¹⁰³ As the comparative analysis reveals, legal recognition of children born of war was non-existent in BiH, and is virtually non-existent elsewhere, so the law is a crucial first step.

Activism continues in BiH. A similar law in the Federation of Bosnia and Herzegovina (FBiH) is on the table, with prospects that further advocacy may persuade legislators to enact more material benefits. After the Federation, the Forgotten Children of War will also increase their advocacy in Republika Srpska.

Elsewhere, civil society has played crucial roles in campaigning for recognition. Research programmes initiated by people such as Ingvill Mochmann, the founder of the International Network for Interdisciplinary Research on Children Born of War Project (INIRC-CBOW), have helped conceptualise children born of war as a field of research, helping scholars better study the challenges and life experiences of this group, identifying critical sources of data, and articulating suitable policy responses.¹⁰⁴ Another EU-funded research network,

¹⁰¹ Author interview with Ajna Jusić. It is important to note that the Forgotten children of war Association under the category of “Children born of war” includes “children whose fathers were: a) soldiers-members of the opposing army, i.e., members of other ethno-national groups in relation to the group to which the mother belonged (parents belonging to previously warring, so-called enemy parties); b) members of the stationary / peacekeeping forces (UNPROFOR, IFOR, SFOR, etc.); or c) employees of foreign humanitarian missions while mothers were local women.” Read more about it: <https://zdr.ba/en/about/>

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Mochmann, Ingvill (2017). “Children Born of War – A Decade of International and Interdisciplinary Research.” *Historische Sozialforschung*, 42(1):320-346.

CHIBOW, operated from 2015–2019, enabling PhD researchers to study all dimensions of children born of war and utilising resources from 20 organisations worldwide.¹⁰⁵

Like in BiH, innovative methods have increased public awareness. For example, the Children Born of War Project in Norway bridged the information divide through innovative forms of outreach like the 2018 video game, “My Child Lebensborn,” a game that takes players through the role of parenting a child born from the WWII *Lebensborn* programme.¹⁰⁶ The game sold 1 million copies and even won a BAFTA award.¹⁰⁷

Yet according to Jusić, international activism surrounding children born of war has not coalesced around a coherent strategy.¹⁰⁸ Indeed, it appears that outside the aforementioned research projects, advocacy is sporadic, and the spotlight remains dim. Even in Colombia, home to by far the strongest law on the issue to date, the media treats conflict-related sexual violence with “an almost absolute silence around the human beings born as a result of that violence.”¹⁰⁹

The challenge now is to combine this accumulated wealth of knowledge with the recent burst of interest from multilateral institutions, to trigger long-lasting change globally. Hopefully, the BDBiH law can embolden global activism and act as a model for jurisdictions abroad to finally address a population so universally present yet stigmatised in post-conflict states.

¹⁰⁵ Children Born of War (2018). “About us.” <https://www.chibow.org/about-us>. CHIBOW has received funding from the European Union’s Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 642571.

¹⁰⁶ The Children Born of War Project (2022). “About.” <https://www.cbowproject.org/about/>.

¹⁰⁷ Ibid.

¹⁰⁸ Author interview with Ajna Jusić.

¹⁰⁹ Sanchez Parra, Tatiana, and Sergio Lo Iacono (2020). “(Re)Productive Discourses: Media Coverage of Children Born of War in Colombia.” *Bulletin of Latin American Research*. 39(1):22–36. P. 24.

Ultimately, the BDBiH law is not the first to affirm legal protections for children born of war, as Colombia provides very strong guarantees. Furthermore, while recognising children born of war as a distinct group, like the Colombian law they are also placed under the more general category of victim. Yet the BDBiH law differs in one notable respect: unlike Colombia's Law 1448, the BDBiH law recognises the children's victim status well beyond the age of maturity, a novelty that has potential to be more protective if future amendments confer additional benefits. Norway provides an example of direct compensation, but further reparations could include provisions for access to benefits like educational scholarships or healthcare subsidies.

BDBiH has pushed the needle forward and provided a baseline for further development both domestically (in the Federation or in Republika Srpska) and on the world stage. The law responds to very recent developments in international politics, including recommendations by the UN Secretary General, human rights treaty bodies, and UN Special Procedures, as well as international court decisions.

Undeniably, as the comparative analysis shows, much stigmatisation against children born of war emanates from deeply entrenched, patriarchal values that permeate wider society. As Ajna Jusić emphasises in her interview with us, she was not invisible because of the war, but because of every single human being who discriminated against her and her mother. Full acceptance thus requires widespread acknowledgement from ordinary citizens. Legal change is necessary for this development, but complete reparation and recognition is a battle that requires ordinary citizens to change their most fundamental biases at the grass roots.

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About TRIAL International

TRIAL International is a non-governmental organisation fighting against impunity for international crimes and supporting victims in their quest for justice. The organisation provides legal assistance to victims, litigates cases, develops local capacity and pushes the human rights agenda forward. TRIAL International has been active in Bosnia Herzegovina since 2007, and opened its **Office in BiH** in 2013. The organisation fights against impunity and promotes transitional justice across BiH, and also promotes the rights of war crimes victims. In supporting war crimes victims in BiH, the organisation focuses on vulnerable groups, including sexual violence survivors, the families of missing persons and former camp detainees.



TRIAL

International

TRIAL International

 Rue de Lyon 95 • 1203 Geneva • Switzerland

 +41 22 321 61 10

 info@trialinternational.org

 www.trialinternational.org

TRIAL International Office in Bosnia and Herzegovina

 Čobanija 19 • 71 000 Sarajevo • Bosnia and Herzegovina

 +387 33 219 873

 bh@trialinternational.org

 www.trial.ba