

# Defining "Girls" and "Girl Children" in Social and Legal Terms

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## ABSTRACT

The purpose of this chapter is to investigate whether a clearer lexical and conceptual distinction between the various stages of development, from birth to adulthood, is needed to better recognize and protect the needs of the young female population affected by armed conflict. Should girls and girl children fall into the same age category? Can the generic macro category of children, provided by international law starting with the Convention on the Rights of the Child, be considered adequate to satisfy the needs of social and legal protection of the different phases of development towards adulthood? These questions can raise serious sociological and juridical complications. As a result, without a clear definition in place, also the category of girl children risks being confused with the category of girls, and might not be noticed for its specific characteristics and needs. This analysis proposes a reflection on the use of a more precise definition and conceptualization of the terms girls and girl children, as two distinct age stages with distinct physical and psychological development, based on intersectional feminist theory.

*Keywords: Gender; gender violence; sexual crimes; armed conflict; childhood.*

## 1. INTRODUCTION

Over the past 20 years, armed conflict has changed in such a way that the suffering of women and girls has gotten worse. The female population has traditionally been the target of severe violations and violent sexual violence in conflict situations. The nature of war today threatens gender identity and security in an increasing number of private locations [1-6].

Violence against women and girls is a major impediment to achieving gender equality and the empowerment of women and girls; it was not a coincidence that the priority theme of the 65<sup>th</sup> session of the CSW was "Women's full and effective participation and decisionmaking in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and

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girls." During its 65th session, held in March 2021, the CSW emphasized that all forms of violence and discrimination prevent women from exercising their equal right to participate in all aspects of public life and, as a result, stressed "the importance of investing in women's and girls' development and of strengthening their participation in order to break the cycle of gender inequality, discrimination, violence and poverty and to realize sustainable development, peace and human rights" [7, para 25].

But who are *girls*? In everyday language, the terms *girl children* and *girls* are used interchangeably to refer to females under the age of 18 years; the term *girl* is also used in comparison to the term *woman*, which instead describes a female adult individual. This distinction has never been explicitly stated in international child-related legal instruments, most notably the Convention on the Rights of the Child [8]. In any case, by continuing to refer to the non-adult female population as *children*, the category of *girl children* risks being confused with the category of *girls*, and vice versa; as a result, the two categories may be overlooked for their unique needs. Sociological and legal studies must begin to consider the need to differentiate non-adult female persons based on age groups that correspond to different physical and psychological development. This is especially true for the non-adult female population affected by armed conflict, whose needs must be addressed and protected.

This article's structure will be as follows. The first section and its subsections will look at the social and legal viewpoints on the category of childhood, which comprises *girls* and *girl children*. This part will examine how international legal instruments fail to effectively describe the category of *girls* and *girl children*, which are regarded as equivalent in the context of childhood. Such a lack of understanding of the two groups' specific needs has a detrimental impact, when it comes to protecting them against violence, particularly in armed conflict settings, where young females are more vulnerable. The second section will examine the implications of reconsidering social and legal concepts of *girls* and *girl children* from an intersectional standpoint. The first portion will examine in the intersectional theory, while the second will look at how this theory can be applied to the topic of this article.

## **2. FEMALE CHILDREN INVOLVED IN ARMED CONFLICT: THE SIGNIFICANCE OF DIFFERENTIATING ACCORDING TO AGE STAGES**

Girls affected by armed conflict are abducted and forced to serve as sexual slaves to numerous males in forces, or they may be given to one male for his exclusive use as a captive "wife," or they are forced to provide the majority of domestic and agricultural labor that sustains the fighting forces as an expanding array of data indicates [9-12]. Moreover, although hard figures are difficult to come by in war zones, some studies have estimated that as many as 40% of the fighters in contemporary intra-state wars are girls and, in particular areas, they comprise as much as half the armed group [13,14]. Interestingly, although academic research on this phenomenon has grown in recent years, the research

itself lacks a gendered perspective that also takes into account the different age stages. As a result, we currently have a very narrow perspective within areas of study that urgently require further investigation [15-17].

## **2.1 The Ongoing Debate on the Violence against Female Population**

The renewed focus on the link between war crimes, crimes against humanity, genocide, and violence against women can be traced back to a debate that has affected both non- governmental organizations of women and the international community, since the early 1980s. It is useful to look back to 1975, when the United Nations declared it the International Year of Women, with the goal of creating a society in which women could fully participate in their country's economic, social, and political life [18]. To commemorate the International Women's Year, a World Conference was called for the same year in Mexico City. On that occasion, a global action plan for achieving the goals of the International Women's Year was adopted, and the decade 1975–1985 was proposed as the United Nations Decade for Women, with themes centered on the trinomial equality-development-peace.

According to the logic of the United Nations Decade for Women, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women would have had to first confirm, with specific reference to women, the provisions already established in general human rights instruments as well as some sectoral conventions. This requirement was imposed on the international community's attention, especially because, as stated in the Preamble to the Convention, serious discrimination in violation of "principles of equal rights and respect for human dignity" persisted.

The Second United Nations Conference on Women, held in Copenhagen in 1980, provided an opportunity to start addressing the issue of violence against women. In addition, the Long-term Strategies for Women's Advancement Until 2000, which were adopted at the subsequent World Conference on Women in Nairobi in 1985, were the first elaboration of the link between peace, development, and equality [19].

The Vienna Declaration and Action Program, adopted by the second World Conference on Human Rights in 1993, explicitly endorsed the full inclusion of the issue of violence against women in human rights discourse [20]. As a result, the General Assembly adopted the Declaration on the Elimination of Violence against Women in 1993 (A/Res/48/104), which provided a broad definition of violence. Namely, violence is explicitly acknowledged as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (art.1).

The issue of violence and its implications for women in armed conflicts was one of the main topics addressed in the Platform for Action, adopted by the Fourth

World Conference on Women in Beijing in 1995 (A/CONF.177/20). Section D of the Beijing Platform, entitled "Violence against women," identified violence as an obstacle to the achievement of the objectives of equality, development, and peace which prohibits the enjoyment of human rights and fundamental freedoms. Following the 1990s, the progressive improvement of international instruments aimed at ensuring the effective justiciability of women's human rights, particularly in relation to the problem of violence, resulted in the development of a more detailed definition of crimes against women.

The extraordinary session of the General Assembly on Beijing + 5 in 2000 outlined the elements of connection between the Beijing Platform and the Rome Statute of the International Criminal Court (ICC): The focus was on States' commitment, declared during the Vienna Conference, not only to integrate gendered perspectives into national policies and programs, but to consider violations of women's rights as violations of international human rights law. As a result, international cases broke new ground in the area of international jurisprudence by convicting individuals of using rape as a weapon of war and an instrument of genocide—the Akayesu case before the International Criminal Tribunal for Rwanda<sup>1</sup>—or by recognizing that forced marriage would be prosecuted as a crime against humanity—the Brima case before the Special Tribunal for Sierra Leone<sup>2</sup>.

Until recently, the study of child soldiers was essentially a study of boy soldiers, as girls recruited by armed forces and groups were either invisible or marginalized. The reason for this must also be found in the gendered approach taken by some international tools on this topic. The Cape Town Principles and Best Practices, which define who is a child soldier, specifically limited the recruitment of girls to cases of sexual exploitation or forced marriage. A child soldier, according to the Cape Town Principles, is "any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms" [21].

As a result, the negative effect has been a tendency to assume that girls are not soldiers in the sense of being on the frontlines, which has resulted in their exclusion from disarmament, demobilization, and reintegration (DDR) programs in which boys participated. According to the Paris Principles, which were adopted by the United Nations Children's Fund (UNICEF) in 2007 [22], "*From the planning stage onwards, through the design of eligibility criteria and screening*

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<sup>1</sup> *In the case Prosecutor v Jean Paul Akayesu (ICTR 96-4, September 2, 1998), the Tribunal found Akayesu, the former mayor of Taba, guilty of the crime of genocide, based on the evidence that he had encouraged rapes and sexual mutilation of women and girls as young as 12 or 13.*

<sup>2</sup> *The Special Court of Sierra Leone (SCSL) Statute, established with United Nations Security Council Resolution 1315 [57] of August 14, 2000, gives the Special Court jurisdiction over persons under the age of 15 years; however, if a person is convicted while between the ages of 15 and 18 years at the time of the alleged commission of a crime, the Court cannot sentence them to imprisonment.*

*procedures for inclusion in release and reintegration programmes and informal release processes through to programming for reintegration, monitoring and follow-up, actors should recognise that girls are at risk of being 'invisible' and take measures to ensure that girls are included and relevant issues addressed at all stages" (para 4.1).*

At the same time, while progress has been achieved at the global policy level, much remains to be done. In his 2020 report on Conflict-Related Sexual Violence, the UN Secretary-General provided a record of atrocities, documenting 2,838 cases of conflict-related sexual violence in 2019; 96% of the violence was targeted at women and girls. The COVID-19 pandemic has enabled two opposing trends: new sexual violence in places affected by conflict and violence, and fewer services available for victims and survivors [23].

The involvement of girls as a significant part of armed groups led to the debate surrounding how their experiences differ from that of boy soldiers, and the significance of gender in explaining these differences. In addressing these issues, it is important to remember that "girls" are not a monolithic entity; their experiences are shaped by factors such as age, ethnicity, and religion as well as the nature of the conflict they are involved in and the society from which they come.

For this reason, it is important to strengthen reporting by disaggregated data not only per sex, but also per age. Does the violence committed against a *girl* of 6 have the same effects as that committed against a *girl* of 16? Certainly not, even if both are treated equally as *children* according to the Convention on the Rights of Child. But on this aspect, the international legal categories and terminology are not clear. In this regard it is also important to consider the approach of the international justice system.

### **2.1.a The protection of children affected by armed conflict in the International Justice**

The international judicial system is not insensitive to the different stages of psychological development that characterize the phase of childhood. The ICC statute provides that conscripting or enlisting children under the age of 15 years, or using them to participate actively in hostilities, is a war crime that falls under the jurisdiction of the ICC (Rome Statute, [36] article 8(2)(b)(xxvi) and (c)(vii)). The statute is mostly focused on children who participate directly in hostilities as combatants, but participation in an armed conflict is not limited to armed combat.

Indeed, participation include, but is not limited to, carrying out work as messengers, porters, cooks or spies; or, in more drastic scenarios, being exploited for sexual purposes during combat. In the Lubanga Appeals Judgment on Conviction it's specified that whenever there is a suspicion of using children to participate actively in hostilities "each activity must be considered on a case-by-case basis, and it is necessary to analyse the link between the activity for which the child is used and the combat in which the armed force or group of the

perpetrator is engaged" (Paras. 5 and 335)<sup>3</sup>. As a consequence of the different manners in which children can be employed within combat activity, the Appeals Chamber specified that the: "use to participate actively in hostilities" within the meaning of the Statute could include "active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints, as well as in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself"(para. 334).

It is worth noting, though, that the conscription, enlistment and use of children in hostilities is the only crime for which the age of children has relevance for the Rome Statute. In all other cases, the Statute does not make any difference by age, but rather aligns itself to the meaning of "children" given by the CRC.

Despite this gap, The ICC Office of the Prosecutor [37] recognizes that during its investigation it will "seek to address any adverse distinction against children on the basis of age, birth or other status, which may arise as a result of the work of the Court" (para 27) and it "will also assess the capacity, expertise and availability of local entities as potential sources of support for children, bearing in mind that the nature of support services needed and the availability of or access there to may differ significantly between boys and girls, and between young children and adolescents" (para 65). In this sense, the Office of the Prosecutor takes into account data regarding sex and age, *young children and adolescents*. In sum, not all children under the age of 18 years are considered equal.

It is worth analysing also the Statutes of the other International Courts which have judged cases involving children. The Statute of the Special Court of Sierra Leone (SCSL), established with the Security Council resolution 1315 (2000) of 14 August 2000, gives the Special Court jurisdiction over persons under the age of 15: however, if a person, between the age of 15 and 18 at the time of the alleged commission of a crime, should be convicted, the Court cannot sentence them to imprisonment. Article 7 of the Statute says: "1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child".

Moreover, the SCSL addresses crimes particularly relevant to children such as rape, sexual slavery, enforced prostitution, and indecent assault. Article 4 of the Statute, entitled "Other serious violations of international humanitarian law", criminalises the conscripting or enlisting of children under the age of 15 into armed forces or groups or using them to participate actively in hostilities (art. 4,

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<sup>3</sup> *Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-3122,01 December 2014, Appeals Chamber*

lett. c); and, regarding girls specifically, the crime of abuse. Article 5, entitled "Crimes under Sierra Leonean law", provides: "The Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law: a. Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31): (i) Abusing a girl under 13 years of age, contrary to section 6; (ii) Abusing a girl between 13 and 14 years of age, contrary to section 7; (iii) Abduction of a girl for immoral purposes, contrary to section 12".

In June 2007, the SCSL issued its first trial judgment in the case of "The Prosecutor v. Brima, Kamara and Kano", referred to as the Armed Forces Revolutionary Council (AFRC) case<sup>4</sup>. This judgment was followed in August 2007 by the trial judgment in the case of "The Prosecutor v. Fofana and Kondewa", known as the Civil Defence Forces (CDF) case<sup>5</sup>. These two judgments, and their subsequent 2008 Appeals Chamber judgments, are noteworthy for having been the first to adjudicate, on an international level, the war crime of conscription or enlistment of children under the age of 15 or using them to participate actively in hostilities, together with the gender based crime against humanity of forced marriage. This wasn't, though, the only judgement of the SCSL that placed its attention on children. The Summary Judgment in the case "The Prosecutor v Charles Ghankay Taylor"<sup>6</sup> stated that: "The Trial Chamber has examined the evidence presented in relation to the crimes that members of the RUF, AFRC, the AFRC/RUF Junta or alliance, and/or Liberian fighters allegedly committed in Sierra Leone between 30 November 1996 and about 18 January 2002(.. .)The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between about 30 November 1996 and about 18 January 2002, members of the RUF, AFRC, AFRC/RUF Junta or alliance and Liberian fighters conscripted and enlisted children under the age of 15 into their armed groups and used them to participate actively in the hostilities in the following districts of Sierra Leone (...)".

A lack of child related specific provisions can be registered in the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), established by the Security Council Resolution 827 of 25 May 1993, and the International Criminal Tribunal for Rwanda (ICTR) established by the Security Council Resolution 955 of 8 November 1994. Anyway, both Tribunals have handled cases that involved crimes against children, and the case law of both the ICTY and ICTR has recognised rape as: a crime against humanity, as genocide and as a war crime. In the case "The Prosecutor v Jean Paul Akayesu"<sup>7</sup>, Akayesu, the former mayor of Taba, was found guilty of the crime of genocide, based on the evidence that he had encouraged rapes and sexual mutilation of women and girls as young as 12 or 13. The ICTY also handed down judgements in cases involving sexual violence against girls. Most notably, in the "Foca case" against

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<sup>4</sup> *Trial Chamber II, SCSL-04-16-T*

<sup>5</sup> *Trial Chamber I, SCSL-04-14-T*

<sup>6</sup> *Trial Chamber I, SCSL-03-1-T*

<sup>7</sup> *ICTR 96-4, 2 September 1998*

Radomir Kovac and others<sup>8</sup>, a 12 year old girl was among the different women abducted, taken to a house called Kuraman's house, and repeatedly raped by Serb Soldiers. Kovac was convicted of crimes against humanity, and war crimes with respect to the rape and sexual enslavement of girls and sentenced to 20 years' imprisonment.

The above short review has served the purpose of showing how international jurisprudence deals frequently with international crimes that involve children, even though specific rules concerning children are not established in all the Statutes of International Courts. Children, of different ages, can suffer from the hardest forms of trauma when victims of war crimes.

The attention given by the judicial system to the different age stages included in the category of childhood shows the importance of having a more precise definition of the terms that are used. Otherwise, the confusion in terminology risks jeopardizing the appropriate international legal and jurisprudential instrument of human rights protection. But which is the criterion for considering the specific needs children face during their different stages of development, from prepuberty to puberty?

## **2.2 Girls and Girl Children in the Social Category of Childhood**

We have all experienced childhood, but are we able to define a child? During the 16th and 17th centuries, artistic representations of children increased significantly, focusing on the idyllic and romantic vision of childhood constructed around John Locke's theories of the *tabula rasa* (Ariès, 1960). According to Locke [24], the mind at birth could be compared to a blank slate that would eventually be inscribed by experience.

For many years, thinkers and artists were influenced by the ideas of the English philosopher Jean-Jacques Rousseau, who, in his famous 1762 novel *Emile*, described childhood as a brief period of sanctuary before people encounter the dangers and hardships of adulthood [25].

The first phase of the Industrial Revolution in 1760 represented an important turning point, during which the disparity between high-minded romantic ideals of childhood and the reality of the growing magnitude of child exploitation in the workplace became apparent. Children were regarded as "little adults," and this notion persisted well into the 19th century, with young children frequently employed to work in mines and factories. Female children were also hired in mines and factories, especially in the textile sector, but also worked as chimney sweeps. Some jobs, like nurses and spinners, were primarily performed by women as well as girls as young as six years old. Furthermore, in industrialized Victorian England, the poorest girls were sometimes forced to prostitute themselves to earn money.

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<sup>8</sup> *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vucovic, Foca case, IT96-23 and IT-96-23/1, 22 February 2001*



A more structured debate on childhood emerged in the 20th century; social studies started to take childhood into consideration not as a category in itself, but rather as a dependent variable interconnected with other social components [26]. This kind of approach would explain the continuous phenomenon of the social "invisibility of childhood" -that is to say, the nonexistence of childhood within social categories.

The term *infancy* is not even mentioned in the 1930 edition of the *Encyclopaedia of the Social Sciences*, whereas the term *child* refers exclusively to the child's welfare, hygiene, psychology, and other problems associated with the condition of being a young adult. The 1968 edition of the *Encyclopaedia* contains no discernible improvements in this regard.

It is only with Philippe Ariès's studies that a new season of research and analysis on childhood began, one which would eventually challenge and change traditional approaches. Ariès is the first to argue that the child should be viewed as a person in its own right, and not as an adult in the making [27,28]. Between the 1990s and the 2000s, the sociology of childhood developed quite rapidly as a critical discipline within the field of childhood studies [29,30]; the so-called "new paradigm for the sociology of childhood," sometimes also referred to as "the new social studies of childhood," considered childhood as a social category, and not as an attribute in specific fields or research objects [31,32]. The words *girl* and *girl children* are not easily defined in this macro category, just as the concepts of children and childhood are fluid and change over time. Girl is sometimes used colloquially to refer to a young or unmarried woman. So, at what age does a person become a *girl*?

### **2.3 The Lack of Definition in Legal Texts**

The construction of childhood through adults' understanding of this concept is reflected clearly in the broadest delimitation of childhood adopted by the 1989 International Convention on the Rights of the Child, which states that a "child is every human being under the age of eighteen" UN General Assembly, 1989, (art.1). The extension of the childhood status ranging from birth until the reaching of legal age is employed to clearly separate childhood from adulthood; nevertheless, no relevance is given to the different phases of development within the category of childhood. Childhood is essentially defined by reference to adulthood [33].

The enduring adult-centered view of childhood as not based on the understanding of children's experiences is also reflected in other international legal languages. In this sense, it is suggestive that the 1948 Universal Declaration of Human Rights does not contain any specific attention to children. Along with motherhood, the only reference to children is made when assistance and safety for these groups need to be decided (Universal Declaration of Human Rights, Articles 25, 26). Children are viewed in a similar vein by the 1966 International Covenant on Economic, Social and Cultural Rights, which states:

"The States Parties ... recognize that ... special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation" (Article 10).

It is interesting to observe, in this text, the distinction between the terms *children* and *young people*, which are made out to be viewed as two opposite categories. But while this distinction is made, no specification is given with regards to how exactly we are to understand the terms. How are these two groups different?

It is important to examine the text of *Agenda 21*, which is a holistic plan of action adopted in 1992 and to be developed internationally, nationally, and locally by United Nations organizations, governments, and major groups in all fields where human beings have an impact on the environment. In para 25.8, it specifies: "Each country should combat human rights abuses against young people, particularly young women and girls, and should consider providing all youth with legal protection." Furthermore, General Assembly Resolution 70/138, adopted on 17 December 2015, is titled "The Girl Child," and it recognizes a series of situations involving female people, who are referred to as *girls* and *girl children* but (i) no specific definition of the term *girl children* is given, and (ii) the terms *girl children* and *girls* are used interchangeably. Unfortunately, international legal instruments do not take into account the different age ranges between birth and the coming of age at 18 years, which are marked by different psychophysical developments. As a result, all people from birth to 18 years of age are indifferently included in the macro category of *children* by the CRC. Such a situation exists even though the Committee on the Rights of the Child has repeatedly requested States to provide disaggregated data "by sex, age group and, where possible, ethnic group, urban and rural area" [34,35].

What about *girls* and *girl children*? Girls who are yet to sexually develop, and adolescent girls, all fall under the category of *children*. Should we then assume that there is no difference? Understandably, although girls, after the menarche, can have adult bodies and play many adult roles, they have not yet fully developed an adult's emotional maturity, and therefore need the "special care and assistance" provided to them by the CRC. However, their physical maturity and intellectual ability differ from that of children who live the stages of "innocence" and have specific needs and protection necessities. Regrettably, according to the CRC, they are all *children*.

## **2.4 A Matter of Age?**

In the early 20th century, American psychologist Granville Stanley Hall first defined adolescence as a distinct stage of human development marked by puberty that is collectively seen as a crucial stage of life [38,39]. Since then, in work on children's cognitive growth, psychologists have studied developmental psychology as a separate psychological subfield, concentrating heavily on the field of education.

Specifically, according to Jean Piaget's theory of cognitive development, childhood consists of two stages, the preoperational stage and the concrete operational stage. In developmental psychology, childhood is divided into the developmental stages of *early childhood* (preschool age), *middle childhood* (school age), and *adolescence* (puberty to legal adulthood) [40,41]. Due to the lack of an agreed-upon definition of childhood, which also depends on the different criteria adopted by each society, the attribution based on age cannot be considered a satisfactory criterion for ensuring homogeneity in the circumscription of this social category. Although age is not an objective indication, it can be a rough indicator of a person's maturity. From a medical standpoint, a *child* is considered as such from birth until the onset of puberty, with the average age span being from birth to 10 years of age. Following the child stage, different stages of adolescence are experienced: there is *early adolescence* (10–13 years), during which there is a growth spurt and development of secondary sexual characteristics; *mid-adolescence* (14–15 years), characterized by forming new relationships with peers and peer groups, and the development of a separate identity from parents; and finally, *late adolescence* (16–18 years), during which adolescents begin to behave similarly to adults, and develop their own distinct identities, opinions, and ideas [42,43].

During this development, females undergo specific physical and psychological phases of maturity [42,43]. Physical and psychological differences between a female child who has not yet reached puberty, *girl child*, and a female person who is no longer a child but not yet an adult, *girl*, also entail a different assessment of the effects of actions committed against them, or by them.

## **2.5 “Age Categories by Rites of Passage or National Law”**

The transition from childhood to adolescent is marked by rituals in many nations and cultures because puberty is widely seen as an important life stage. These ceremonies serve as a tribe's way of acknowledging that one of its young women or men has matured enough to become responsible, fertile, and productive in the community. According to Gennep [44], "rites of passage" are the phases through which a community moulds and teaches youngsters in order to get them ready for their new role in life. There are some ceremonies that equate reaching sexual maturity with symbols that mark adulthood. For example, in many parts of Tamil Nadu in southern India, when a girl reaches puberty, she is doused in turmeric, dressed as a bride and presented to the wider community as mature. In general, rural areas tend to show less marked variation between children and adults than more urbanized areas. One consequence of this is that adolescence in rural areas is not considered a stage of development in its own right, but is rather embedded in the stage of childhood. As soon as a child becomes physically mature, so what in other contexts might be defined as entering adolescence, she/he immediately begins to assume adult roles. Therefore, in many contexts, the concept of adolescence as a transitional phase from childhood to adulthood is completely outdated.

Traditions have not always stood the test of time; altered social, economic, and political circumstances undoubtedly had an impact on them. As a result, legislation has largely replaced traditions in defining various ages that, before the age of 18, denote varying degrees of maturity and responsibility. For instance, in the United States, a person can change their name at the age of 14, whereas the legal age of consent for sexual conduct varies by state and can be 16, 17, or 18.

In Italy, the age of consent, or the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity, is 14. Sexual activity with a person under the age of 14 can result in a criminal prosecution for rape.

These few instances simply serve to illustrate how varying levels of responsibility and maturity are acknowledged by national law in persons who, while not of legal age, have passed puberty. However, it is difficult to adequately define people in different phases of childhood in international legal papers due to a lack of vocabulary. Therefore, the special requirements that characterise the many stages of physical and mental development that accompany humans from childhood to adulthood are not given any special consideration. The appropriate international legal and judicial framework for protecting the rights of girls and girl children may actually be compromised as a result of this disregard [45].

### **3. RETHINKING THE SOCIOLOGICAL AND LEGAL CONCEPTS OF GIRLS AND GIRL CHILDREN: THE INTERSECTIONAL APPROACH**

The aforementioned Beijing Declaration and Platform for Action [46] states that governments should

“intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people” (Article 32).

This attention to the multiple barriers that women face is also widely emphasized by feminists from Latin America and Southeast Asia, who criticize the international community for having a single approach to gender alone, without considering other causes of discrimination against women, such as race, ethnicity, and social class. Theories labeled “Western” or “Eurocentric” are accused of failing to discern between the application of feminist theories and historical, political, and sociocultural specificities [47].

While intersectionality theory began as an investigation into the oppression of women of color in society, it has now expanded to include many other aspects of social identity, including those most commonly mentioned in the fourth wave of feminism, such as race, gender, sex, sexuality, class, ability, nationality,

citizenship, religion, and body type. The current research on these topics has led to important considerations. Age, unfortunately, does not appear.

As the next sub-sections of this article will demonstrate, adopting an intersectional approach can help us to understand how the substantial and terminological confusion between *girls* and *girl children* can have negative effects on the protection of female persons.

### **3.1 The Theory of Intersectionality**

The theory of intersectionality, first suggested by the American activist and jurist Kimberlé Crenshaw in 1989, maintains that it is possible to perceive the social identity of an individual as an "intersection." The "intersection" consists of different biological, social, and cultural categories, including, but not limited to, gender, race, social status, disability, sexual orientation, religion, caste, age, and nationality [48]. All these different identity axes interact at various levels, often simultaneously, and participate together in forming the social identity of an individual. Crenshaw argued that to fully understand the experience of being a Black woman, it is necessary to take into account the interactions which take place between the two identities, that of being Black, and of being a woman. To clarify this issue, Crenshaw refers to her personal legal history and therefore to the judicial cases involving racist events against women of color like the *De Graffenreid* case (*De Graffenreid v General Motors Assembly Div, etc.*, 413 F. Supp. 142, 1976) [49].

Academic research on the theory of intersectionality has emphasized the need to remodel notions that are expressly focused on the experiences of primarily white women. As a result, research agendas are globalized and enhanced to include the distinctively different gendered patterns of crime and violence against women that occur across the global South and North. Barberet [50] for example, argues that women and girls' status as refugees or asylum seekers, as well as the gendered framework provided by the country of origin and women/girls' authority or lack thereof, all have an impact.

Intersectional thinking is an approach that also is increasingly being used for the development of equality policies ("equality+"). The adoption of this approach, in fact, can also be connected to the work carried out by the United Nations and the EU [51]. In fact, a positive development toward addressing intersectional discrimination, as a global phenomenon, and one that required international attention, was represented by the UN World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, held in Durban in 2001. Here, intersectional discrimination was recognized by the international community:

"We recognize that racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex, language,

religion, political or other opinion, social origin, property, birth or other status” [52]

Likewise, the 2007 European Commission Report, *Tackling Multiple Discrimination: Practices, Policies and Laws*, highlighted the lack of implementation of commitments to address multiple and intersectional forms of discrimination in international contexts and in EU Member States. The field of activism has also been slowly infiltrated by intersectionality, having become more and more popular over the years. In 2017, the signs were evident at the Women’s March in Washington: “If it’s not intersectional, it’s not feminism.”

Nevertheless, exposure to intersectional discrimination has concentrated exclusively on adults, not on children and females. In other words, the distinction between male and female has always been thoroughly taken into account in the adult category; however, age is still an aspect that must be taken into account in addition to gender.

### **3.2 An Intersectional Theory for Categorizing Girls and Girl Children?**

There has been a great deal of criminological study done on the association between gender and crime [53-55], but the intersectionality of gender and age among victims has been overlooked. The inherent flexibility of the intersectional approach makes it possible for a wide range of problems to be analyzed, and it is because of its adaptable nature that the approach could be extended to different stages of childhood we discussed earlier. The key claim would be that “age” can be perceived as a class that can create a kind of exclusion, and that such “age-based” discrimination can be identified using the speculation of intersectionality.

In both cases, when we talk about *girls* and *girl children*, we refer to non-adult female individuals. *Girl children* should be looked after in a different way, because they have not yet achieved the same stage of *girls’* psychological and physical growth. It is also a disservice to *girls* to put them in the category of young children, because they will have achieved a sexual and psychological maturity that is not acceptable for all children. It is significant that national regulatory frameworks allow for the distinction of punishments for the crime of sexual assault in cases where harassment is committed against children under the age of 14 years. For example, Article 609 ter of the Italian Criminal Code, entitled “aggravating circumstances,” establishes the penalty of imprisonment from 6 to 12 years, instead of from 6 to 10 years, “if the violence is committed:

1. against a person who has not turned fourteen;
2. against a person who has not turned sixteen, of which the culprit is the ascendant, the adoptive parent, the guardian.”

The key underpinning argument is that intersectionality makes sense insofar as it contributes to actual change. By applying the intersectional theoretical apparatus to childhood studies, one might be able to clarify the different stages that mark the development of children, from birth to adulthood. The evaluation of the various demands associated with the two different age

categories of girls and girl children also prevents the young female population from suffering further victimization, which would stem from the failure to recognize their special needs. Because of their sex, the female population is more vulnerable to crime; because of their sex, the female population is also more vulnerable to the stigmatization that is a consequence of crimes committed. In addition to these issues, the young female population may be further victimized due to the lack of special attention that young women require, following a crime [57-59].

It is necessary to overcome the intersectional marginalization that affects *girl children*, on one hand, and *girls* on the other, when both are considered, indifferently, within the macro category of children. These intersectional marginalizations are mutually reinforcing and result in a further denial of the rights of *girls* and *girl children*.

Moreover, the fragment of the identity of *girls* in the categories of women and children causes girls to be neglected in favor of those who are more visible, that is to say, children and women. For example, a UN Special Rapporteur on Violence against Women exists; a UN Secretary-General Special Representative for Children and Armed Conflict exists. Why not set up a United Nations Special Representative for *girls*?

#### **4. CONCLUSIONS**

Aside from the above slightly provocative question, the issues raised in this analysis do not have a definitive answer, one that should perhaps be addressed more thoroughly in legal and social studies. This is particularly important in terms of the consequences of data production and analysis, which affect both the legislative and legal branches, as well as the social policies that target these two groups. For example, all statistics reporting data on violence against minors under the age of 18 years, sometimes referring to girls and adolescents, do not address the various psychological and physical consequences of such abuses if they are committed against an 8-year-old minor or, for example, a 16-year-old child. Due to the absence of any agreement on the definition of childhood, which varies according to the type of criteria adopted, the belonging to this macro category on the basis of age cannot be considered a satisfactory criterion. Social and legal sciences should begin to abandon the macro category of adolescents, in order to better understand the basic needs and characteristics of the various stages of life, from birth to adulthood, that mark the different psychophysical developments of a person. If these aspects are not taken into account, this may result in age-based discrimination and lack of protection for female persons who are, currently, indifferently included in the macro category of children.

The 65th CSW (2021) acknowledged that "multiple and intersecting forms of discrimination and marginalization are obstacles to women's full and effective participation and decision-making in public life as well as to the elimination of violence." It also stressed that "while all women and girls have the same human rights, women and girls in different contexts have particular needs and priorities,

requiring appropriate responses" (para 35). Therefore, instead of viewing female infants, girl children, and adolescent girls as a macro category of children, we should respect their unique needs and priorities. This innovative approach could aid social and legal studies in better understanding and dealing with the issues confronting young female victims of violence.

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