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**GENDER IN TRANSITIONAL JUSTICE CONTEXTS:
Reproductive Rights in the Spanish Case of Stolen Babies**

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SUMMARY

Despite the democratic regime initiated with the Constitution of 1978, no transitional justice measure whatsoever has been implemented in Spain for the reparation of the human rights violations that occurred during the Spanish civil war and following dictatorship. Moreover, little is known about the consequences that those events had on Spanish women. Any official disaggregated data on the numbers of people affected by the different human rights violations and crimes committed by the dictatorship is highly difficult to obtain in a country that fills itself with pride for the conviction of other dictators abroad but is unwilling to judge its own history. Some years after the turn of the century, many people in the country started denouncing a practice that has been alleged to have occurred during the years that the dictatorship lasted and also during the early years of democracy once the dictatorship was over: the stealing of babies in maternity wards all around Spain. Whereas some people consider these abuses as mere crimes between individuals, others argue that the dictatorship played a role in the commission of these crimes. Spain's reluctance to investigate the crimes committed during the dictatorship obstructs the possibility of investigating whether those allegations are true, but it may not be the only obstacle. Transitional justice comes with its own limitations as well, especially in relation to gender and economic and social rights issues. In this thesis, the different obstacles, not only in Spain, but also in transitional justice practice as well, for the inclusion of the stealing of babies in a hypothetical transitional justice agenda for Spain will be debated. Moreover, the consideration of the stealing of babies in Spain as a sexual and reproductive rights violation will also be argued as being necessary for the inclusion of a gender perspective in such a hypothetical agenda.

1. Introduction

It is June 2011, and a Spanish TV show has managed to gather together in its studios two women who the programme believes could be mother and daughter. The younger woman's name is Pilar Alcalde. She had gone to the TV show 7 years before with her adoptive father to look for her biological mother. Seven years later, the investigation department of the TV show believes to have found someone who could be the biological mother of Pilar. The investigation department has also conducted a DNA test on both women to verify whether the older woman, María Luisa Torres, is the biological mother of Pilar. The results of the DNA test are to be disclosed at the end of the show, which on this occasion is broadcasting everything live. During that show's episode, Pilar and her adoptive father tell the presenter and the audience their long fight to find Pilar's biological mother, and the many walls found in their way. Later, it is María Luisa's turn. She tells how, back in 1982, she had separated her husband and lived alone with her two years old daughter. By that time she had a new boyfriend, who abandoned her after she was five months pregnant with his child. Faced with that situation, she attended Santa Cristina's hospital in search for a nun¹ who she had been told could help her with the child. She thought that the nun had some sort of kindergarten for women with economic difficulties. But when the nun offered the option to give her child for up adoption, she categorically refused. The pregnancy went on, and when the time came, the same nun and other professionals would help her during labour. Once the child was born, María Luisa demanded to see her baby, but the nun told María Luisa that the baby was stillborn. Upon María Luisa's insisting demand to see the body, the nun openly told her that the baby was alive, but was to be given for adoption. Upon María Luisa's reaction, the nun threatened to denounce her for adultery and take her two years old daughter away to be given to the social services if she kept insisting. María Luisa ended up going home to her two years old daughter, heartbroken for the baby that she had been obliged to leave at the hospital.²

By the end of that TV show's episode, the presenter opens an envelope and reads the DNA test's results: María Luisa Torres and Pilar Alcalde are mother and daughter. Some years before, different journals had already documented the experiences of mothers who believed that their babies were stolen from them, as well as adults who believed they were stolen from their biological mothers.³ In 2014, a civil society association spoke of 4.000 judicial claims filed with

¹ For legal concerns, I prefer not to reproduce the name of the nun.

² ANTENA3 TV: "Una supuesta 'niña robada' se reencuentra con su madre biológica después de 28 años", El Diario, antena3.com, Madrid, 30/06/2011. http://www.antena3.com/programas/el-diario/supuesta-nina-robada-reencuentra-madre-biologica-despues-anos_20110630571f65be4beb287a291b9282.html#.

³ María José Esteso Poves, *Niños robados: de la represión franquista al negocio*. Diagonal, November 2012. Foreword, page 11.

the state attorney for the investigation of these crimes.⁴ It is estimated that the number of babies stolen from the 40's until the 90's in private and public maternity wards all around Spain amounts to 180.000.⁵ As of today, in May 2017, not a single person has been convicted for these alleged abuses.⁶ In the only case concerning these facts that is on its way to make it to the trial phase, the accused, a doctor, is charged with the crimes of illegal detention of a newborn, false declaration on a public document and pretended childbirth.⁷ However, I am surprised that so far within the context of these events of abducted children no one has been charged with a crime whose protected legal interest is women's reproductive capacity. Does such a crime even exist in Spanish law?

Moreover, the alleged crimes occurred during a time in Spain when the country was ruled by a dictatorship, and some cases have been reported to have occurred during the years of early democracy once the dictatorship was over. The dictatorship was instated by the general Francisco Franco after the civil war in Spain (1936-1939) and lasted from 1940 until 1975, year of Francisco Franco's death.⁸ Despite the UN's Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence' insistence for Spain to review the crimes committed during the Spanish civil war and later dictatorship⁹, Spain has not implemented any Transitional Justice (TJ) measure for reviewing its own past yet.¹⁰ Only in 2010, different civil society organisations filed a complaint with the Argentinian judiciary for the investigation of the crimes committed during the Spanish civil war and the dictatorship that followed. The investigation is still ongoing.¹¹

1.1 Research questions

With that information in mind, I ask myself: Is there any link between the abducted children case and the Francoist state? From a gender and economic and social rights' perspective, is it relevant to ask if transitional justice should deal with any of these issues, since the perpetrators of the

⁴ Carlos Marlasca, "La justicia perdida de los niños robados", [eldiario.es](http://www.eldiario.es/sociedad/justicia-perdida-ninos-robados_0_257575012.html), 07/05/2014, a las 20:49h. http://www.eldiario.es/sociedad/justicia-perdida-ninos-robados_0_257575012.html.

⁵ *Ibid.*

⁶ Alberto Pozas, "Primera petición de cárcel contra un médico por el robo de bebés", CADENA SER, Madrid, 12/01/2017-07:44 h CET http://cadenaser.com/ser/2017/01/12/tribunales/1484183007_852407.html.

⁷ *Ibid.*

⁸ Andrés Zaragoza Montejano "Impunity in Spain: From the Franco-Era Times to the Garzón case", MA dissertation, 15/09/2011, School of Law, University of Essex. Page 3.

⁹ Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Mission to Spain, 22 July 2014. A/HRC/27/56/Add.1

¹⁰ Consejo de Derechos Humanos, Informe del Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Pablo de Greiff, Misión a España: comentarios del Estado al informe del Relator Especial, 17 de septiembre de 2014, A/HRC/27/56/Add.3.

¹¹ Amaya Larrañeta, "Presentan la primera querrela sobre los crímenes del franquismo contra las mujeres", Nacional, 20 minutos, 16/03/2016 at 10:59 h. <http://www.20minutos.es/noticia/2698973/0/querrela/crimenes-genero/franquismo/>

stealing of babies in Spain were private actors? And if the question was to be answered in the affirmative, what would the implications of the Spanish case of stolen babies be for the overall debate on transitional justice and gender?

1.2 Theory

The theory used will be both gender theory combined with an economic and social rights perspective. TJ cases both in the form of international and national criminal tribunals and Truth and Reconciliation Commissions (TRCs) will be analysed to present the place that economic and social rights violations usually occupy in the TJ agenda. Also, gender theory will be used to analyse the way women's rights' violations are addressed by the referred TJ mechanisms, if they are addressed at all. Once the Spanish case is presented, an analysis of it from a gender and economic and social rights perspective will be conducted to render visible the stealing of babies as constituting a reproductive rights' violation as well as violence against women and a crime against humanity.

1.3 Materials

The materials used are varied and consist on academic articles, books, human rights as well as international criminal law instruments, judicial cases and TRCs' reports, testimonies from some of the victims and mass media articles.

1.4 Methodology

In chapter 2, I will analyse cases from international criminal tribunals and TRCs' reports from a gender and economic and social rights perspective to check how economic and social rights violations as well as women' rights' violations have been addressed by TJ mechanisms. This chapter will include a comparative case analysis of the stolen babies' cases from Argentina and Australia, that will be later used for the purposes of exploring how the Spanish case of stolen babies could be addressed by a hypothetical TJ agenda for Spain. In chapter 3, I will present the background of the Spanish case of stolen babies since the end of the Spanish civil war, and some testimonies will be presented as well for the purposes of making it easier for the reader to see the pattern of organisation of these thefts of newborns. Also, an analysis of this case from a gender and economic and social rights perspective will be conducted which, in conjunction with different cases' analyses, will be used to advance the argument that the Spanish case of stolen babies constitutes a reproductive rights' violation, violence against women and a crime against humanity. Despite being directly committed by private actors, such as doctors and nuns in the role of midwives, gender theory will be used for the purposes of making the argument that the Spanish case of stolen babies should be addressed by a hypothetical TJ agenda for Spain.

2. International Criminal Law and Transitional Justice from a gender and economic and social rights perspective

The United Nations (UN) has defined TJ as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”¹² Although the “indivisibility and interrelatedness of all human rights is a well-established element of international human rights law”, it is also a fact that “economic and social aspects of past abuses have historically been neglected both in the theoretical literature relating to such processes and in practice.”¹³ Transitional justice is not an area of law impermeable to this reality.

In the following sections, I intend to show how economic and social rights violations have been ignored not only by international criminal tribunals, but also by other TJ mechanisms such as TRCs, with a particular focus on those of South Africa and Timor-Leste. Also, I intend to show some legalist approaches as well as other TJ mechanisms’ limitations to deal with the violations of women’s rights in war-torn societies. I will conclude the chapter with an analysis of women’s rights’ violations beyond rape and domestic violence during conflict and repressive regimes. Concretely, I will address the issue of separating children from their mothers as direct attacks on maternity in the Argentinian and Australian cases. Since I will frame the case of the stolen babies during Francoism in Spain as directly affecting women’s reproductive health in a later chapter, this chapter will help understand the many obstacles this case has to deal with in order to achieve justice.

According to the International Center for Transitional Justice (ICTJ), TJ is to be understood as “a response to systematic or widespread violations of human rights.”¹⁴ This international organization assists countries emerging from repressive rule or armed conflict, but also democracies where past injustices or systemic abuse remain unresolved.¹⁵ It insists that TJ “is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse.”¹⁶ It is believed that this type of justice emerged after the II World War (IIWW) in the form of the Nuremberg Trials to prosecute those responsible for the violation

¹² United Nations, Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice (March, 2010). Summary, page 2.
https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf last accessed 13 March 2017.

¹³ Evelyne Schmid and Aoife Nolan, ‘Do No Harm’? Exploring the Scope of Economic and Social Rights in Transitional Justice’ *The International Journal of Transitional Justice*, Vol. 8, 2014, 362–382, doi:10.1093/ijtj/iju015 Advance Access publication: 14 September 2014. Pages 363-364.

¹⁴ International Center for Transitional Justice (ICTJ), Factsheet “What is Transitional Justice?” (ICTJ,2009) at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> last accessed 13 March 2017.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

of the laws of war and, increasingly, human rights abuses.¹⁷ A continuation of this line of justice was seen in the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to hold those responsible for serious violations of International Humanitarian Law (IHL) accountable.¹⁸ After these, other criminal and hybrid tribunals have been established for the prosecution of systematic human rights abuses committed during conflict.¹⁹ However, even though criminal prosecutions may help in the transition from repressive or conflicted societies to sustainable peace, it is not considered enough.²⁰

From the UN's definition of TJ presented at the beginning of the chapter, it is easy to conclude that in certain cases legal prosecutions may not be enough for dealing with past human rights atrocities. The UN identifies TRCs, reparations, institutional reform and national consultations in conjunction with criminal prosecutions as the main components of TJ.²¹

Now that we have a broader picture of what TJ encompasses, we can address the issue of when TJ applies. As I announced in the definitions presented above, TJ usually takes place after a conflict or repressive regime has ended; although TJ can also deal with remaining past injustices in present democracies. However, the common scenario for TJ is that of a society right after conflict or where a repressive regime has come to an end. The time of TJ is tied to the concept of transition, and as has been argued, it "has typically appeared salient only after massive direct violence has been brought to a halt."²² In this scenario, the international community plays a relevant role. With the ongoing development of the Responsibility to Protect (R2P) theory, some have criticized the *modus operandi* of TJ in the past decades and the crisis model of intervention.²³ If we have a look at UN Security Council (UN SC) Resolution 955 for the creation of the ICTR, we see the international community's "grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law" had been committed in Rwanda.²⁴ In relation to the creation of the ICTY, UN SC 827 emphasized the

¹⁷ Louise Arbour, 'Economic and Social Justice for Societies in Transition' 40 N.Y.U. J. Int'l L. & Pol. 1 2007-2008. Introduction, pages 1-2.

¹⁸ See UN Security Council, *Security Council resolution 955 (1994) [Establishment of the International Criminal Tribunal for Rwanda]*, 8 November 1994, S/RES/955 (1994) and UN Security Council, *Security Council resolution 827 (1993) [International Criminal Tribunal for the former Yugoslavia (ICTY)]*, 25 May 1993, S/RES/827 (1993).

¹⁹ For instance, the Special Court for Sierra Leone (SCSL), the Special Tribunal for Lebanon (STL) or the Extraordinary Chambers in the Courts of Cambodia (ECCC).

²⁰ Arbour (n 17). Page 2.

²¹ United Nations (n 12). B. Components of Transitional Justice. Pages 7-10.

²² Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections' *Third World Quarterly*, Vol. 29, No. 2, 2008. Page 280.

²³ Martha Albertson Fineman and Estelle Zinsstag, *FEMINIST PERSPECTIVES ON TRANSITIONAL JUSTICE, From International and Criminal Justice to Alternative Forms of Justice*. Series on Transitional Justice, volume 13, Intersentia (May 2013). Chapter 5, Mary H. Hansel, International Law, Crisis and Feminist Time.

²⁴ UN SC Res. 955 (n 18).

international community's "grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, (...), including reports of mass killings, massive, organized and systematic detention and rape of women".²⁵

It is noteworthy that only when the conflict escalated to the point where grave violations of international humanitarian law were taking place did the international community decide to intervene. Also, it is important to realize the prominent role that international humanitarian law plays in the scene. If we take a closer look at UN SC Res. 827, it refers to "mass killings, massive, organized and systematic detention and rape of women"²⁶, violations of international humanitarian law that also amount to civil and political rights violations.

Another critique that this pattern of intervention faces is the lack of analysis of how external factors may influence the conflict. In referring to the situation in Iraq after Saddam Hussein, transitional justice's artificial time frame "glosses over the illegality of the US-led invasion, the damage caused by the corrupt UN oil-for-food programme, ongoing insurgency, and human rights abuses committed by US soldiers at Abu Ghraib and elsewhere."²⁷ This pattern of intervention makes transitional justice "vulnerable to the general challenge that critics raise against the supposed universalism of human rights."²⁸ As Orford argues, "the focus is not on genocide or human rights violations in liberal democratic states."²⁹

In relation to this artificial time frame of TJ, it is contested whether TJ settings should focus on historical and past injustices or only limited episodes of violence are worthy of attention.³⁰ If the former was to be considered, structural violence that pre-dated the conflict could be included within the scope of traditional TJ focus. As Cahill- Ripley states, "Structural violence exists when the structures of the State support the unequal distribution of power (and agency) which is reinforced through unequal distribution of resources."³¹ This has an impact on the enjoyment of economic and social rights by certain sectors of the population and, in some cases, in the break of the conflict itself.³² Some factors identified as structural violence are "racial inequality, poverty and institutionalised discrimination."³³ I consider that gender should be taken into account as well. The discrimination suffered by many women before a conflict takes place in a society is not only

²⁵ UN SC Res. 827 (n 18).

²⁶ *Ibid.* Preamble.

²⁷ Nagy (n 22). Page 281.

²⁸ *Ibid.*

²⁹ Anne Orford, 'Commissioning the truth', *Columbia Journal of Gender and Law*, 15, 2006. Page 861.

³⁰ Amanda Cahill-Ripley, 'Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights' 32 *Neth. Q. Hum. Rts.* 183 2014. Page 191.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

a violation in itself but also affects the way women will experience harms and traumas during and after war.³⁴ As argued by Lambourne and Rodriguez Carreon, “For women in many transitional contexts, the underlying socioeconomic injustices are both a cause and effect of physical, material and psychological harms caused by lack of access to civil and political rights”.³⁵

The limited scope of TJ on “extraordinary” civil and political rights violations in conflict and repressive regimes treats other types of violence pre-dating the conflict as “ordinary”, something to be tolerated.³⁶ Another consequence of focusing on civil and political rights violations during conflicts is the disregard of economic and social rights violations suffered by women in these settings. As Nagy argues, “there has been a tendency to underrate the gendered and socioeconomic ramifications of violent conflict, which may include HIV/AIDS, widowhood and poverty.”³⁷ Beyond economic and social rights, domestic violence suffered by women during conflict and after conflict is also a topic worthy of attention, with many studies claiming that women experience heightened domestic violence during that time.³⁸

2.1 The exclusion of economic and social rights violations in International Criminal Law and Transitional Justice

I started the chapter explaining how international criminal tribunals have been established after mass human rights violations have taken place during conflict. However, the underlying causes of the conflicts, many times entailing structural inequalities as well as influenced by the presence of external agents, have been largely unaddressed by international criminal tribunals. By unaddressed I don't mean that different international criminal tribunals haven't presented these factors as contributors to the conflict, but that the existence of those inequalities and illegitimate presence of external actors in the country *per se* never triggered the interest of any international criminal tribunal as adjudicative human rights' violations. In many cases, these structural inequalities have been regarded by international criminal tribunals as background information that led to massive civil and political rights abuses during conflict.³⁹ However, the focus is placed again in the latter category of rights. They are not seen as crimes in their own rights.⁴⁰ This is a conceptualisation of economic and social rights' violations that has also affected TRCs in their work. As argued by Schmid, “Considerations on ESCR are, ..., largely absent in strategies to deal with the legacy of armed conflicts, be it in criminal prosecutions, truth-seeking exercises or other

³⁴ Wendy Lambourne and Vivianna Rodriguez Carreon, 'Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women' *Hum Rights Rev* (2016) 17: 71. doi:10.1007/s12142-015-0376-0. Page 72.

³⁵ *Ibid.* Page 73.

³⁶ Nagy (n 22). Pages 285-286.

³⁷ *Ibid.* Page 278.

³⁸ *Ibid.* Page 280.

³⁹ Cahill-Ripley (n 30). Page 198.

⁴⁰ *Ibid.* Page 197.

measures of post-conflict justice.”⁴¹ However, it is important to distinguish between structural inequalities that have more to do with socioeconomic considerations of the conflict and economic and social rights violations *per se*.⁴²

2.1.1 At international criminal tribunals

Although the statutes of many international criminal tribunals provide for crimes that can be applied to economic and social rights violations, “it is evident that in the majority of these processes there has been little or no consideration of such rights violations as a part of wider gross human rights violations or as crimes in their own right.”⁴³ When referring to this situation, it has been argued that “there are clearly international criminal law provisions which could apply to such gross violations of socio-economic rights, but very little attention has been given to exploring the potential or limitations of this area of the law to deal with such violations.”⁴⁴

As Schmid argues, “The destruction of homes, the looting of crops or livestock, or the denial of humanitarian relief in the context of a deliberate policy to target civilians are all too familiar occurrences in times of armed conflicts.”⁴⁵ In referring to lack of access to water or the wilful hindrance of humanitarian assistance, she argues that “such scenarios can often be understood as violations of ESCR, particularly where states fail to respect rights, such as by directly interfering with the enjoyment of people’s access to housing, food, education or health, or where states fail to protect persons within their jurisdiction from abuses by non-state actors.”⁴⁶ The latter part of the sentence is of particular interest for this thesis. As advanced in the beginning of the chapter, many violations that women suffer during conflict happen at hands of non-state actors as a consequence of the state’s manifest failure to protect its own citizens. This not only refers to sexual violence committed by militias, but also to the domestic violence experienced, if not increased, during this period. This point will be further developed in another section of this chapter.

The crimes that usually trigger most of the attention at international criminal tribunals are “summary executions, arbitrary detention, disappearances, and more recently rape.”⁴⁷ These crimes often entitle violations of IHL, constituted by the laws of war, the Geneva Conventions of 1949 (GCs) and their Additional Protocols of 1977 (APs). However, there are conducts proscribed in these instruments that also amount to economic and social rights violations. For instance, the

⁴¹ Evelyne Schmid, ‘War Crimes Related to Violations of Economic Social and Cultural Rights’ (2011) 71(3) Heidelberg Journal of International Law. Page 523.

⁴² Schmid and Nolan (n 13). Page 364.

⁴³ Cahill-Ripley (n 30). Page 197.

⁴⁴ *Ibid* (citations omitted).

⁴⁵ Schmid (n 41). Page 524.

⁴⁶ *Ibid*.

⁴⁷ *Ibid*.

destruction of homes could be proscribed by IHL as a civilian building and constitute a violation of ESCR as a forced eviction.⁴⁸

In the case of *Prosecutor v Kupreskic et al.*, the ICTY found that

(...) the case at hand concerns the comprehensive destruction of homes and property. Such an attack on property in fact constitutes a destruction of the livelihood of a certain population. This may have the same inhumane consequences as a forced transfer or deportation. Moreover, the burning of a residential property may often be committed with a recklessness towards the lives of its inhabitants. The Trial Chamber therefore concludes that this act may constitute a gross or blatant denial of fundamental human rights, and, if committed on discriminatory grounds, it may constitute persecution.⁴⁹

In this case, the ICTY acknowledged that economic and social rights violations can amount to crimes under IHL. However, some scholars still criticize this ruling in that “these violations are not explicitly recognised as violations of economic and social rights.”⁵⁰ As put forward by van der Herik “there is no direct criminalization of socio-economic rights, but rather a pronounced appreciation of the socio-economic dimensions of crimes.”⁵¹ This can be seen in other ICTY judgements as that of *Prosecutor v Dragomir Milosevic*, where it was established that

(...) Sarajevo was effectively besieged by the SRK. If, by virtue of the limited possibilities offered by the tunnel, this was not a siege in the classical sense of a city being surrounded, it was certainly a siege in the sense that it was a military operation, characterised by a persistent attack or campaign over a period of fourteen months, during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace. The purpose of the siege of Sarajevo was to compel the BiH Government to capitulate.⁵²

As pointed out by Cahill-Ripley in referring to this case, “the deliberate starvation of civilians and burning and destruction of homes was widely documented as evidence to form a picture of the wider context in which violations of personal integrity rights took place.”⁵³ However, these violations of economic and social rights were not being adjudicated as such. Rather, they were

⁴⁸ *Ibid.* Page 529.

⁴⁹ *Prosecutor v. Kupreskic et al. (Trial Judgement)*, IT-95-16-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 14 January 2000. Para 631 (citation omitted).

⁵⁰ Cahill-Ripley (n 30). Page 198.

⁵¹ L. van den Herik, 'Economic, Social and Cultural Rights - International Criminal Law's Blind Spot' (2013) Grotius Centre Working Paper 2013/002-ICL (University of Leiden 2013). Page 354.

⁵² *Prosecutor v. Dragomir Milosevic (Trial Judgment)*, IT-98-29/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 12 December 2007. Para 751.

⁵³ Cahill-Ripley (n 30). Page 198.

presented as background contextual information necessary to specify the circumstances in which other crimes took place. Therefore, we can see a hierarchy of rights where economic and social rights violations are usually presented to form a picture of the situation or context in which civil and political rights violations took place. These economic and social rights violations are not usually constitutive elements of the crimes as such⁵⁴, reason why its participation is limited to background information of other “more relevant” violations.

However, it is also important to acknowledge some modest efforts from the International Criminal Court (ICC) as well to import socio-economic notions into international criminal law architecture.⁵⁵ In its decision on the Prosecution’s Application of a Warrant of arrest against Omar Al Bashir, the Pre-Trial Chamber (PTC) stated that

the Prosecution submits that GoS forces systematically destroyed the means of survival - including food, shelter, crops, livestock and, in particular, wells and water pumps - of the Fur, Masalit and Zaghawa civilian population in Darfur because “[t]he aim was to ensure that those inhabitants not killed outright would be unable to survive without assistance.”⁵⁶

Nevertheless, the PTC also concluded that

although there are reasonable grounds to believe that GoS forces at times contaminated the wells and water pumps of the towns and villages primarily inhabited by members of the Fur, Masalit and Zaghawa groups that they attacked, there are no reasonable grounds to believe that such a contamination was a core feature of their attacks.⁵⁷

As van der Herik would argue, this would be a case where the “rigid legal requirements’ of criminal law results in a marginal role for international criminal processes in addressing such violations.”⁵⁸

Despite these efforts of some international criminal tribunals to import these socio-economic notions into the framework of international criminal law, several scholars believe there is still room for improvement.⁵⁹ All of these cases referred to above dealt with economic and social rights violations during conflict (although the tribunals never referred to economic and social rights violations as such). But these tribunals never addressed the structural discrimination or socio-economic dimensions that led to the increase of the tensions or the outbreak of the conflict itself.

⁵⁴ *Ibid.*

⁵⁵ Van der Herik (n 51). Page 366.

⁵⁶ Prosecutor v Omar Hassan Ahmad Al Bashir ("Omar Al Bashir") (International Criminal Court PreTrial Chamber I, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir) ICC-02/05-01/09 (4 March 2009) para 91. Citation omitted.

⁵⁷ *Ibid.* Para 93.

⁵⁸ Cahill-Ripley (n 30). Page 200.

⁵⁹ Van der Herik (n 51). Page 366.

In referring to this situation, it is argued that “socio-economic grievances, such as systematic discrimination or unequal access to land, work, and housing, trigger conflict or exacerbate social tensions”⁶⁰ and that “the current justice processes offer only a one-dimensional narrative that is focused on physical violence and in which economic structural root causes remain invisible.”⁶¹

We can conclude this subsection stating that civil and political rights violations still are the main focus of attention of TJ contexts and international criminal tribunals. Despite some efforts to include economic and social rights violations in the latter area of law, its main participation is as background information to determine the context in which the “main violations” took place. Also, the strict legal requirements of international criminal law can constitute an obstacle for economic and social rights violations to be acknowledged within criminal justice frameworks. Last but not least, the wider socio-economic dimensions that led to the break of hostilities are still hardly ever addressed by international criminal tribunals, although many scholars claim that these are aspects that would be better addressed by other TJ mechanisms, such as TRCs.⁶²

2.1.2 At Truth and Reconciliation Commissions: South Africa and Timor-Leste

In the words of Louise Arbour, former UN High Commissioner for Human Rights:

Transitional justice having as an objective to contribute to the building, in societies in transition, of a solid foundation for the future based on the rule of law, it is imperative to see how best to equip a country *to redress often deep-seated social and economic inequalities*.⁶³

This statement may seem a bit at odds with the definition of TJ established by the former UN Secretary-General’s Report on “The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies”:

For the United Nations, ‘justice’ is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the wellbeing of society at large.⁶⁴

⁶⁰ *Ibid.* Citation omitted.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Louise Arbour, ‘Economic and Social Justice for Societies in Transition’, United Nations High Commissioner for Human Rights, Second Annual Transitional Justice Lecture hosted by the Center for Human Rights and Global Justice at New York University School of Law and by the International Center for Transitional Justice, 25 October 2006, New York University School of Law, New York. Emphasis added.

⁶⁴ The Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, U.N. Doc S/2004/616 (Aug. 23, 2004). Para 7.

Although “fairness in the vindication of rights” may imply the recognition and redress of economic, social and cultural rights violations⁶⁵, the language of “the victim” and “the accused” in the second sentence appears to circumscribe the concept of justice within a more traditional dispute resolution framework that primarily focuses on violations of civil and political rights.⁶⁶ In referring to this idea that informs the whole of the Secretary-General’s Report, Arbour argues that “this definition of transitional justice obscures the need to address gross violations of economic, social, and cultural rights associated with conflict.”⁶⁷

Therefore, we have the socio-economic dimensions of the conflict, including those structural inequalities and discrimination in the distribution of resources that led to the outbreak of hostilities on the one hand, and also direct economic, social and cultural rights violations as a consequence of the conflict on the other hand. As I advanced previously, it has been argued that TRCs are better suited for the investigation of the socio-economic dimensions of conflicts. However, these TJ mechanisms (TRCs) have not been immune to the perceived hierarchy between civil and political and economic, social and cultural rights violations. The case of the South African TRC provides a good example of this hierarchy of rights in TJ settings. In the work of this TRC, “a “victim” was limited to individuals who had suffered gross violations of human rights, including killing, abduction, torture, or ill treatment.”⁶⁸ Economic, social and cultural rights violations during the apartheid regime remained off the table. Moreover, if we take a look to the South African TRC report itself, we see in the definition of “Gross Human Rights Violations” that

This definition limited the attention of the Commission to events which emanated from the conflicts of the past, rather than from the policies of apartheid. There had been an expectation that the Commission would investigate many of the human rights violations which were caused, for example, by the denial of freedom of movement through the pass laws, by forced removals of people from their land, by the denial of the franchise to citizens, by the treatment of farm workers and other labour disputes, and by discrimination in such areas as education and work opportunities (...). Nevertheless, they could not be interpreted as falling directly within the Commission’s mandate.⁶⁹

And in the next paragraph, the TRC states that “The Commission recognised that these issues formed part of the broader context within which the specifically defined gross human rights violations had taken place.”⁷⁰ As in the case of international criminal tribunals, economic social

⁶⁵ Arbour (n 17). Page 4.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Dustin N. Sharp, ‘Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice’, 35 *Fordham Int’l L.J.* 780 2011-2012. Page 793.

⁶⁹ Truth and Reconciliation Commission of South Africa Report. Volume Five. Presented to President Nelson Mandela on 29 October 1998. Page 11, para 48.

⁷⁰ *Ibid.* Para 49.

and cultural rights violations are relegated to the background to form a picture of the context within which “major” human rights violations occurred. As put forward by Sharp, “the quotidian violence of poverty and racism, and the victims and beneficiaries of the apartheid system itself, receded into the background.”⁷¹ This focus on civil and political rights violations rather than economic, social and cultural ones has had disastrous consequences for the South African society. It has been argued that this disregard for the socio-economic dimensions of the apartheid regime in South Africa has legitimized “other abuses of power, leaving many of those who benefitted most from the apartheid economic system comfortable in the status quo.”⁷² Even though apartheid has ended, “the de facto economic and social status quo has not changed to the degree many would have hoped.”⁷³ Moreover, in South Africa today “Poverty, inequality, and crime remain high.”⁷⁴

Despite this lack of focus from the South African TRC on the socio-economic dimensions of the regime, there are other examples where more efforts were directed at the documentation of economic social and cultural rights violations during conflict. For instance, the Timor-Leste Commission for Reception, Truth and Reconciliation states in the chapter dedicated to economic and social rights violations that

Under the Indonesian occupation the people of East Timor were subjected to brutal forms of violation of their physical integrity and their civil and political rights, but the impact of the conditions in which they lived, while often less remarked on, was equally damaging and possibly more long-lasting.⁷⁵

This report found “evidence of direct violations of economic and social rights caused by military operations, security concerns, and the political agenda of the government at the time.”⁷⁶ The Commission documented the “explicit use of education as a propaganda tool”; the resettlement of villages “in areas that had previously been avoided because of their poor soils and malarial conditions” and that “endangered people’s health”, or the “manipulation of coffee prices to fund military operations and benefit military and civilian officials” which limited “farmers’ chances of making an adequate livelihood”⁷⁷, among other economic and social rights violations.

Moreover, not only did the Commission document the economic and social rights violations that occurred during the conflict, but also addressed other factors that pre-dated the conflict and

⁷¹ Sharp (n 68). Citation omitted.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Timor-Leste Commission for Reception, Truth and Reconciliation. Final Report 3 (2006). Chapter 7.9 Economic and Social Rights. Para 1.

⁷⁶ Arbour (n 17). Page 9.

⁷⁷ Timor-Leste Commission for Reception, Truth and Reconciliation (n 75). Para 6.

contributed to it. In the part of the report dedicated to the history of the conflict, it goes back to the Portuguese colonialism to show how it influenced the later Indonesian occupation.⁷⁸

Although these efforts to include the socio-economic dimensions of the conflict as well as economic, social and cultural rights violations should be acknowledged, in the end for the purposes of reparations the definition of “victim” was limited to “victims of violations of civil and political rights.”⁷⁹ Regardless of whether it is justified due to resource constraints, “such practices have the effect of promoting hierarchies of rights and granting de facto impunity to the architects of economic violence.”⁸⁰ In this case the reparations programme further reflected the perception that economic and social rights are a lesser category of rights compared to those of a civil and political nature. With economic and social rights violations remaining unaddressed, it can be highly contested that there is any fairness in the vindication of rights.

2.2 Women and TJ

Various considerations are to be found in relation to women in TJ settings. As I advanced previously, sexual violence in worn-torn societies is an aspect of conflict that has increasingly gained attention by ICL and TJ mechanisms in the last decades. Many studies have explored the relationship between structural discrimination faced by women during so called “peace time” and the harms suffered by women during conflict. Women experience increased gender-based violence during conflict due in part to this inequality already present in the society before the outbreak of hostilities. As put forward by Buss, “violence against women in wartime is shaped and made possible in large measure by violence and inequality in so-called ‘peacetime’”⁸¹. However, in traditional TJ settings, what is adjudicated is the harm experienced by women during conflict; but the inequalities and discrimination that pre-dated the conflict remain largely unaddressed. This has disastrous consequences for women during and after conflict. If this discrimination remains unaddressed by TJ mechanisms, and concretely by institutional reform, the condition for women’s lives may be even worse than those that pre-dated the conflict. In these situations, has there been any transition for women? Have their lives improved in any way?

In the following subsections, I will first address the issue of “ordinary violence” as opposed to the “extraordinary violence” experienced by women during conflict and so called “peace time”. Secondly, I will speak of the harms experienced by women after conflict due to the already existing inequalities for women in society; that many times remain unaddressed by TJ mechanisms, such as prosecutorial settings, TRCs and the lack of institutional reform.

⁷⁸ *Ibid.* Part 3: The History of the Conflict.

⁷⁹ Sharp (n 68). Page 795.

⁸⁰ *Ibid.* Citation omitted.

⁸¹ Doris Buss, ‘Performing Legal Order: Some Feminist Thoughts on International Criminal Law’, *International Criminal Law Review* 11 (2011). Page 413.

2.2.1 “Ordinary violence” as opposed to “extraordinary violence” against women

In the introduction to this chapter, I explained how the crisis model of intervention works. It is usually in a society where tension has been escalating to the point where “widespread and flagrant violations of international humanitarian law” are taking place that the international community decides to intervene. This creates the false perception that, before that time, peace was established in the society concerned. Obviously, many would argue that, effectively, the period that pre-dated the conflict is to be defined as peace. Faced with this situation, my question is: peace for whom?

It has been argued that “Law is neither neutral nor separate from the very processes by which ‘crime’ and ‘order’ are constituted.”⁸² Moreover, “The very identification of something as a ‘crime’, the distinctions between serious and less serious offences, the allocation of penalties, (...), the decisions to police and prosecute are all mechanisms by which ideas of order, disorder, justice and injustice are shaped and given effect.”⁸³ With this statement in mind, it is not difficult to see the effects the crisis model of intervention has in the invisibility of the many injustices suffered by different groups in a concrete society. If only major IHL violations are addressed by international criminal tribunals and other TJ mechanisms, for those outsiders who are mere spectators of a concrete conflict, the message received is that “peace” or “justice” has been restored. However, for those directly affected by the conflict, those might be empty concepts.

In regard to women in different TJ contexts, “the underlying socioeconomic injustices are both a cause and effect of physical, material and psychological harms caused by lack of access to civil and political rights”⁸⁴. This lack of access to civil and political rights refer to the period before the conflict. This lack of access to rights and inequality directly affects the way women will be affected during conflict. As argued by Lambourne and Rodriguez, “rape and other SGBV, are thus regarded as symptoms of an underlying conflict that has not been resolved or transformed—a conflict in the relationship between men and women that is based on power imbalances and structural inequalities.”⁸⁵ In relation to this, the “perceived lower status in many societies before, during and after the conflict”⁸⁶ that affects women plays a role as well. Therefore, “all acts of violence exist on a continuum of violence facilitated by a (further) breakdown in law and order, which is intimately related to society’s hierarchy of gender, ethnicity, political and civil rights.”⁸⁷

⁸² *Ibid.* Page 410.

⁸³ *Ibid.* Pages 410-411.

⁸⁴ Lambourne and Rodriguez (n 34). Page 73.

⁸⁵ *Ibid.* Page 72.

⁸⁶ *Ibid.* Page 73.

⁸⁷ Sara E. Davies and Jacqui True, ‘Reframing conflict-related sexual and gender-based violence: Bringing gender analysis back in’, *Security Dialogue* 2015, Vol. 46(6) 495-512. Page 501.

However, the crisis model of intervention may distort this perception. Violence against women is already widespread during so called “peace time”⁸⁸. However, sexual and gender based violence (SGBV) occurring during conflict at the hands of military or paramilitary groups is perceived as extraordinary and reprehensible, while that occurring during “peace time” or even during conflict but not so directly related to it is perceived as legitimate and tolerated.⁸⁹ CEDAW’s General Recommendation No.30 on Women in conflict prevention, conflict and post-conflict situations already recognizes that “Conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors.”⁹⁰ In relation to the multiple perpetrators of gender-based violence during conflict, it refers to “members of government armed forces, paramilitary groups, non-State armed groups, peacekeeping personnel and civilians.”⁹¹ However, the harm may be differently persecuted, if persecuted at all, depending on the perpetrator. If we take a look at the Rutaganda Appeals Judgement before the ICTR, the Appeals Chamber stated that

(...) if a non-combatant takes advantage of the lessened effectiveness of the police in conditions of disorder created by an armed conflict to murder a neighbour he has hated for years, that would not, without more, constitute a war crime under Article 4 of the Statute.⁹²

This statement has particular consequences for victims of sexual violence during conflict. CEDAW’s GR No. 30 already recognized that women experience exacerbated vulnerability to gender-based violence during conflict. However, although the conflict has contributed to this exacerbated vulnerability, the sexual violence experienced will be differently regarded depending on the perpetrator. As argued by Buss, “The concern here was (and is) that sexual violence against women might grab international attention only when it can be seen as part of an attack on a community.”⁹³ Therefore, there not only exists a hierarchy between sexual violence experienced during “peace time” and conflict; but also within the conflict, sexual violence will be regarded as differently relevant depending on the perpetrator. Sexual violence committed by military or paramilitary groups and/or contextualized within a widespread or systematic attack against a civilian population is considered to deserve the attention of international criminal tribunals, whereas that committed by a non-combatant in the advantage of the exacerbated vulnerability of

⁸⁸ Jelke Boesten, ‘Analyzing rape regimes at the Interface of War and Peace in Peru’ *The International Journal of Transitional Justice*, Vol. 4, 2010, 110–129, doi: 10.1093/ijtj/ijp029. Page 114.

⁸⁹ *Ibid.* Pages 113-114.

⁹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30. Para 34.

⁹¹ *Ibid.*

⁹² *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor (Appeal Judgement)*, ICTR-96-3-A, International Criminal Tribunal for Rwanda (ICTR), 26 May 2003. Para 570.

⁹³ Buss (n 81). Page 413.

the victim will be rendered unworthy of the international community's attention.⁹⁴ This makes it necessary to bring the concepts of public and the private sphere into the discussion. Violations between non-combatants and mere individuals are regarded as pertaining to the domestic sphere and therefore irrelevant to the public sphere,⁹⁵ whereas those violations committed by military and/or paramilitary groups may stand a chance to be recognized before criminal prosecutions and other TJ mechanisms as worthy of attention.

This scenario is not only visible in post-conflict societies and TJ settings. It has been argued that "Rape by 'the other' signifies a certain kind of atrocity justifying 'our' military response. In 'peacetime', by contrast, sexual violence against women tends to be largely invisible as an issue of national, let alone international, concern."⁹⁶ In this sense, "peace time" not only refers to societies later affected by conflict. Sexual violence is an issue affecting so called "civilized nations" as well. However, sexual violence in these Western societies never triggered the international community's attention as much as sexual violence committed in conflicted, non-Western societies. As put forward by Buss, "In the current operation of international criminal law, the defendants are almost all racialized men."⁹⁷

From this we can conclude that SGBV, and concretely rape, is an issue affecting both Western as well as non-Western societies in peace time as well as during conflict. However, the crisis model of intervention creates the false perception that sexual violence is an abhorrent crime *when committed in other, non-Western, societies*. Moreover, the sexual violence committed within the private sphere still remains largely invisible to TJ mechanisms in post-conflict societies. Even though it has been largely documented that violence against women increases during and after conflict, TJ mechanisms do not consider this issue as falling within their mandates. This can be seen, for instance, in the lack of persecution of sexual violence during conflict by international tribunals when the violation is not committed by someone taking direct part in hostilities or the crime does not form part of a wider and systematic attack against a civilian population. As argued above, in TJ settings sexual violence is rendered relevant when committed as an attack on a community. However, those women whose vulnerability has been increased by the conflict won't be able to see justice done if the violation suffered doesn't entail the former characteristics.

2.2.2 "Direct" as opposed to "indirect" consequences of conflict for women

⁹⁴ Serge Brammertz and Michelle Jarvis, *Prosecuting Conflict-Related Sexual Violence at the ICTY* Oxford University Press, first edition published in 2016. Page 181.

⁹⁵ Boesten (n 88). Page 113.

⁹⁶ Buss (n 81). Page 420.

⁹⁷ *Ibid.* Pages 420-421.

We already acknowledged that the recognition of rape and other SGBV as violations of international humanitarian law meant for the advancement of women's rights in ICL. This further commitment of the international community with women in conflict can be seen in UN SC Res. 1325⁹⁸ and 1820⁹⁹. Whereas the former speaks of the need to include women and gender mainstreaming in institutions for the prevention, management and resolution of conflicts¹⁰⁰, the latter deals almost exclusively with the problem of SGBV during conflict.

It is important to acknowledge the scale of SGBV during conflict and the commitment of the international community as well as other international institutions to combat it. However, a narrow focus on this situation may obscure the causes as well as other problems that women after conflict face as a result of it. As argued by Lambourne and Rodriguez, "Criminal justice deals with only a limited aspect of the harms suffered by women as an integral part of how sexual crimes are defined: in terms of the physical act and its physical harm which forms the basis of the legal justice claim."¹⁰¹ However, the consequences of sexual violence during conflict go beyond the physical harm. Concretely, "Psychological harm is also not adequately addressed, and the socioeconomic implications of living with the aftereffects of SGBV are rarely considered."¹⁰² Moreover, other aspects derived from SGBV during conflict that are usually overlooked are the "repair of the physical harm through medical intervention and care for what are often quite extreme and enduring problems of sexual and reproductive health, including the inability to bear children, as well as the potential life sentence of HIV/AIDS."¹⁰³ Moreover, in certain societies women who have been raped are usually stigmatized as "dirty" and unmarriageable. In these societies where "a woman's marriage is central in determining her life experiences, to be unmarriageable has profound and lasting effects."¹⁰⁴

However, women during and after conflict are often faced with other problems that constitute gender based violence but that go beyond sexual violence and its consequences. As put forward by Nagy, "There is some evidence to suggest that violence against women actually increases in the 'post-conflict' period."¹⁰⁵ This could be explained "as a result of post-traumatic stress, of the need of men to reassert control in their homes, which had been headed by women during the war, or because of the sense of dislocation, powerlessness and unemployment that combatants may

⁹⁸ UN Security Council, *Security Council resolution 1325 (2000) [on women and peace and security]*, 31 October 2000, S/RES/1325 (2000).

⁹⁹ UN Security Council, *Security Council resolution 1820 (2008) [on acts of sexual violence against civilians in armed conflicts]*, 19 June 2008, S/RES/1820 (2008).

¹⁰⁰ UN Security Council (n 98). Para 1.

¹⁰¹ Lambourne and Rodriguez (n 34). Page 75.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.* Page 76.

¹⁰⁵ Nagy (n 22). Page 280. Citation Omitted.

face upon return.”¹⁰⁶ Nevertheless, the problem of increased domestic violence during and after conflict are not issues at the table of the traditional TJ agenda. We already explained in the previous subsection how the public and private sphere work in TJ settings. Whereas the violations committed by military or paramilitary groups as well as agents of the state can be easily included as violations worthy of attention by TJ settings and mechanisms, violations committed by private individuals are decontextualized as violations that are not connected to the conflict or regime. Therefore, these violations are not addressed or included in the traditional TJ agenda. However, we also explained in the previous subsection that conflicts in fact increase the already vulnerability of women during so called “peacetime”. Therefore, the violations that women suffer during conflicts at the hands of private individuals are also caused by the conflict itself, in addition to the already existing gender discrimination in a society. These are consequences less “direct” than the sexual violence committed against women during conflict in the “public sphere”; but they are also connected to it, and as such they shouldn’t be overlooked.

Last but not least, the already existing discriminatory laws and discrimination in a society can make it worse for women in the post-conflict period. For instance, in repressive regimes, men make the most victims of enforced disappearances by agents of the state.¹⁰⁷ Where this is the case, women face massive challenges to continue living in a society where a man’s permission or authority is required for every participation in the public sphere. Particularly, this can become a challenge when women see themselves in the necessity of becoming the breadwinners and need to take on a job to support their families. Where women are not allowed in the labour market or are not educated to have the same opportunities as men in the search for a job, this can lead them to take on jobs with exploitative working conditions, even prostitution, with the further risk of contravening HIV/AIDS and other sexually transmitted diseases (STDs)¹⁰⁸. As well, access to bank accounts belonging to the (male) person disappeared or deceased can be another problem. Many times these bank accounts are frozen and its access blocked to the wife or female relative of the person deceased.¹⁰⁹ Same with social security provisions.¹¹⁰ This situation is reproduced in the access to land tenure in some countries. For instance, in the case of post-conflict Rwanda, “many women had lost both land and the male relatives through whom they could maintain previous landholdings or acquire new land allotments according to the provisions of customary law.”¹¹¹ This obstacle in accessing land rights can have particular consequences for women in the

¹⁰⁶ *Ibid.* Citation omitted.

¹⁰⁷ ICTJ, Factsheet: ‘Las desaparecidas y las invisibles: Repercusiones de la desaparición forzada en las mujeres’, Marzo 2015. Page 4.

¹⁰⁸ *Ibid.* Page 6.

¹⁰⁹ *Ibid.* Page 7.

¹¹⁰ *Ibid.*

¹¹¹ Laurel L. Rose, ‘Women’s Land Access in Post-Conflict Rwanda: Bridging the Gap Between Customary Land Law and Pending Land Legislation’, *Texas Journal of Women and the Law*, Volume 13. Page 201.

exercise of their socioeconomic rights, as we already explained concerning access to the labour market.

Therefore, all of these “indirect” consequences of conflict for women should be kept in mind by experts in TJ settings in order to acknowledge the need “to more widely target discriminatory laws and practices that impede women’s socioeconomic development and political participation.”¹¹² Otherwise, the existing discriminatory practices and laws against women may only worsen the already vulnerable situation of women after conflict.

2.3 Beyond sexual violence: Direct attacks on maternity rights

As was explained in the previous section, usually the focus on women’s rights violations during conflict is on sexual violence. For instance, if we take UN SC Res 1820, we see a great focus on women as victims of sexual violence during conflict. Acknowledging that sexual violence in conflict is a serious problem, women are targeted during conflict and repressive regimes not only as victims of sexual violence, but also as victims of other forms of gender-based violence. In the following subsections, I want to discuss two different cases where maternity rights were directly targeted by repressive regimes, and the legal paradigms sought to address them. The first case is that of Australia during colonialism; and the second one is Argentina during the dictatorship of Jorge Rafael Videla. Although similar at first sight, the reasons why the State targeted certain groups of women and children differ. In the following lines, I will briefly describe both cases. This will be useful for the later comparison with the Spanish case, concerning whether the violations have been addressed as sexual and reproductive rights violations, who the perpetrators were and whether the Spanish case could fit in the crimes against humanity definition as the Argentinian one.

2.3.1 *Bringing Them Home*. The case of Aboriginal and Torres Strait Islander children’s separation from their families

Bringing Them Home is the name given to the report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families during colonialism in Australia¹¹³, published in 1997. Upon the request of the Attorney-General of Australia at the time, Michael Lavarch, the Human Rights and Equal Opportunity Commission had been asked to trace the past laws and policies that resulted in the separation of Aboriginal and Torres Strait Islander children from their families, examine the need of any changes in current laws and policies for the reunification of people affected by the practice of separation and to review whether current laws

¹¹² Lambourne and Rodriguez (n 34). Page 82.

¹¹³ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia). *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. [Sydney]: [Human Rights and Equal Opportunity Commission], 1997.

related to the welfare of Aboriginal and Torres Strait Islander children respected the principle of self-determination. Moreover, it was also the task of the Commission to examine the principles relevant for the justification of compensation.¹¹⁴ Although “Aboriginal and Torres Strait Islander children had been stolen from their families since the colonial invasion and occupation in 1788”¹¹⁵, it is estimated that around “100,000 Aboriginal and Torres Strait Islander children were forcibly removed from their families, in the period between 1910-1970 by statutory welfare bodies and church missionaries.”¹¹⁶ During this period, the forcible removals were facilitated by “explicit federal and state policies”¹¹⁷ that focused mainly on the removal of children of mixed descent¹¹⁸. These laws and policies aimed at “merging” the mixed descent children into the white society, with a clear genocidal intent as can be inferred from an article in the Brisbane’s Telegraph Newspaper published in May 1937¹¹⁹ that reported the following:

Mr Neville [the Chief Protector of WA] holds the view that within one hundred years the pure black will be extinct. But the half-caste problem was increasing every year. Therefore their idea was to keep the pure blacks segregated and absorb the half-castes into the white population. Sixty years ago, he said, there were over 60,000 full-blooded natives in Western Australia. Today there are only 20,000. In time there would be none. Perhaps it would take one hundred years, perhaps longer, but the race was dying. The pure blooded Aboriginal was not a quick breeder. On the other hand the half-caste was. (...)¹²⁰

The motives behind these laws and policies reflected the racist ideologies of the time. As presented by the *Bringing Them Home* report in reference to governments and missionaries, “Their motives were to ‘inculcate European values and work habits in children, who would then be employed in service to the colonial settlers.’”¹²¹ But other than those, these children were also used as cheap labour by European settlers, and in the case of girls, their work as domestic servants served a double purpose: “Apart from satisfying a demand for cheap servants, work increasingly eschewed by non-Indigenous females, it was thought that the long hours and exhausting work would curb the sexual promiscuity attributed to them by non-Indigenous people.”¹²² These

¹¹⁴ *Ibid.* Terms of Reference.

¹¹⁵ Leticia Funston, Sigrid Herring & ACMAG, ‘When Will the Stolen Generations End? A Qualitative Critical Exploration of Contemporary ‘Child Protection’ Practices in Aboriginal and Torres Strait Islander Communities’, Education Centre Against Violence, New South Wales Health, Sexual Abuse in Australia and New Zealand, June 2016, Volume 7(1): 51-58. Page 52.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.* Citation omitted.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ Human Rights and Equal Opportunity Commission (n 113). Page 24.

¹²¹ *Ibid.* Page 22. Citation omitted.

¹²² *Ibid.* Page 26.

children “were never paid beyond the provision of variable quantities of food and clothing.”¹²³ Moreover, they were also vulnerable to sexual abuse and other forms of exploitation¹²⁴. Far from being a problem of the past, it is argued that this practice of removing Aboriginal and Strait Islanders children from their families in the name of those children’s welfare remains in the present¹²⁵. Again, it depends of how the people in power defines “welfare”.

Although the *Bringing Them Home* report documented “both the terrible effects on children of separation from their mothers, institutionalization, abuses, denigration, and separation from the Indigenous community, and the consequences of removal for the family and community left behind.”¹²⁶, the Inquiry was still unable to bring forward the mothers of those forcibly removed children to speak of their experiences

In preparing this submission we found that Aboriginal women were unwilling and unable to speak about the immense pain, grief and anguish that losing their children had caused them. That pain was so strong that we were unable to find a mother who had healed enough to be able to speak, and to share her experience with us and with the Commission...¹²⁷

Besides this acknowledgement of pain and suffering, and maybe because of the impossibility to persuade these victims to come before the Commission to speak, the report doesn’t address the issue of Aboriginal and Strait Islander children’s forcible removal from a gendered perspective. Concretely, on the consequences these policies had for women as mothers. As stated by Orford, the Commission made a “wide-ranging series of recommendations related to matters including reparations, provision of services for those affected, and adoption of new policies in the areas of child welfare, family law, and juvenile justice to halt contemporary separations.”¹²⁸ Despite the fact that reparations recommended by the Commission were based on international legal obligations, the Prime Minister of Australia at the time publicly stated that he did not believe that the “current generations of Australians should formally apologise and accept responsibility for the deeds of an earlier generation.”;¹²⁹ a statement that implies the exclusion of Aboriginal and Torres Strait Islanders people as founders of the nation and that is disruptive with the legal language that obliges the Australian state to pay reparations for the violations committed in the past.¹³⁰

¹²³ *Ibid.* Page 22.

¹²⁴ *Ibid.* Page 135.

¹²⁵ Funston, Herring and ACMAG (n 115). Page 51.

¹²⁶ Orford (n 29). Page 867.

¹²⁷ Human Rights and Equal Opportunity Commission (n 113) referring to Link-Up (NSW) submission. Page 179.

¹²⁸ Orford (n 29). Page 867. Citation omitted.

¹²⁹ *Ibid.* Page 873. Citation omitted.

¹³⁰ *Ibid.* Pages 873-874.

2.3.2 Argentina's Stolen Children

After democracy was restored in Argentina in 1983, the elected president at the time, Dr. Raul Alfonsín, called upon different individuals who enjoyed national and international prestige in the defence of human rights to form the National Commission on the Disappearance of Persons. This Commission was tasked with the investigation of the disappearance of thousands of people under the junta rule. Although the Commission's task was the delivery of an unbiased chronicle of the events that happened during the junta regime, it also issued a set of recommendations to pursue legal action against those responsible for the events under investigation. The adjudication of responsibility was to be determined by the courts, which would receive evidence of the crimes allegedly committed by the accused from the Commission. As a result of the Commission's work, the *Nunca Más* official report was first issued in 1984 in a Spanish version.¹³¹ The report included the investigation of the fate of those pregnant women who were abducted by forces of the junta government and gave birth while deprived of their liberty. The babies were allegedly given to militaries and families close to the regime. The *Nunca Más* report starts the chapter on pregnant women and their children stating that "When a child is forcibly removed from its legitimate family to be put in another, according to some ideological precept of what's 'best for the child's welfare', then this constitutes a perfidious usurpation of duty."¹³² However, it is arguable if this was the only reason why mothers and their children were targeted by the State during the dictatorship that affected the country from 1976 until the early 80's.¹³³ As described by Lazzara, this was a period in which "certain 'family members' once sought to extirpate a 'Marxist cancer' from the body politic"¹³⁴. This case presents many similarities with the Spanish one, reason why I consider it appropriate to present it in a more detailed way than the previous case. It is estimated that around 500 children were affected by this practice¹³⁵, which consisted in the following:

detained pregnant women, (...) were induced and forced to give birth by C-section during sessions of physical and psychological torture, most often at the infamous Naval School of Mechanics torture center (ESMA) or the Campo de Mayo military hospital.¹³⁶

Moreover,

Mothers would often give birth blindfolded, in squalid conditions, hidden away in clandestine 'maternity wards' (*maternidades*). Most babies were taken at birth and the

¹³¹ Nunca Más Home Page.

http://www.desaparecidos.org/nuncamas/web/english/library/neveragain/neveragain_000.htm

¹³² National Commission on the Disappearance of Persons (CONADEP), *Nunca Más (Never Again) report-1984*. Part II. The Victims. A. Children and pregnant women who disappeared.

¹³³ *Ibid.* Part I. The Repression. General Introduction.

¹³⁴ Michael J. Lazzara, "Kidnapped Memories: Argentina's Stolen Children Tell their Stories", *Journal of Human Rights*, 12:319–332, 201. Page 320.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

mother forced to write a letter with instructions to the ‘adoptive’ parents. Soon thereafter, mothers would be drugged and dropped into the ocean from military planes. The babies were subsequently placed either with military families or families sympathetic to the military’s cause and given false names—and false documentation—that sought to erase any trace of their biological origins.¹³⁷

As horrendous as it sounds, only a concrete type of woman was affected by this practice. After all, “The military’s main goal was to socialize and inculcate these future Argentine citizens with the victors’ ideology and to eliminate any vestige of its leftist enemies and their legacy.”¹³⁸ Therefore, from this sentence it is easy to realise that those women affected by this practice were women considered to be “the enemy”, or related to the enemy one way or another. Those responsible for these atrocities always denied the existence of a systematic pattern in the perpetration of the crimes; and always reduced them to a “product of “excesses” committed by one or another perpetrator.”¹³⁹ However, in 2012, the Tribunal Oral en lo Criminal Federal n°6 de la Capital Federal in Buenos Aires concluded otherwise. Not only did the Tribunal recognise that the facts amounted to enforced disappearances, but also concluded that they constituted a crime against humanity:

In conclusion and in accordance with what has been presented, we consider that the forced disappearances of which (...) were victims must be considered to constitute crimes against humanity, since the former formed part of a generalised and systematic attack against a civilian population, and were perpetrated with knowledge of such an attack.¹⁴⁰

In the present case, the crimes were committed by members of the armed forces, police force and military personnel¹⁴¹. Maybe because of this reason it was easier to frame these crimes as crimes against humanity; in the sense that it was easier to prove that the perpetrators knew they were pursuing a state policy in the perpetration of the crimes.

3. The Spanish case

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.* Pages 320-321. Citation omitted.

¹⁴⁰ Tribunal Oral en lo Criminal Federal n°6 de la Capital Federal. Poder Judicial de la Nación. Carlos E. Poledo, Secretario de Cámara. Buenos Aires, Sentencia de 17 de Septiembre de 2012. La desaparición forzada de personas como delito de lesa humanidad. Page 324. Free translation for: “En conclusión y en virtud de todo lo hasta aquí relatado, tenemos debidamente acreditado que las desapariciones forzadas de las que fueron víctimas (...) deben ser calificadas como delitos de lesa humanidad, por entender que aquéllas formaron parte de un ataque generalizado y sistemático contra la población civil, y que fueron cometidas con conocimiento de aquel ataque.”

¹⁴¹ National Commission on the Disappearance of Persons (CONADEP) (n 132). Part II. The Victims. Births in Captivity.

The 18th of July 1936 is the date when the military coup against the II Spanish Republic took place by the Nationalists, the uprising side of the war. This coup initiated what would be known as the Spanish Civil War that lasted three years until the Nationalists won the war in 1939. In a country that is reluctant to review its past, what is usually on the discussion of the crimes committed by the Francoist state is the number of combatants killed during the conflict and the need to recover their bodies from mass graves.¹⁴² As legitimate as this initiative is, I consider that more research is to be devoted to applying a gender perspective to the civil war and bringing to the table the consequences that this conflict as well as its following dictatorship had on women.

Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees on non-recurrence of the UN¹⁴³, already noted in its mission to Spain that

there are no official censuses of victims, or data or official estimates of the total number of victims of the Civil War and the dictatorship. Furthermore, several subjects are still under-explored, such as the forced labour of prisoners, bombing deaths, *stolen children, the consequences of war and different forms of repression, including that directed at women (emphasis added)*, and the responsibilities of private companies for their active participation or complicity in the perpetration of human rights violations.¹⁴⁴

However, Spain still refuses to follow the SR's recommendations, as was made clear in its official replies to the SR in 2014.¹⁴⁵

In the following sections, I will present the case of those women whose children were stolen during Francoism, directly affecting their maternity rights. I will divide the chapter in four sections. The second section is devoted to a practice that affected many private and public maternity wards around Spain, but that targeted a very specific type of woman. This practice is the focus of my research. However, to get to this point it is necessary to get to the origins where this practice started in Spain, right back to the war and post-war period in section 1. Later in

¹⁴² Amaya Larrañeta, "Presentan la primera querrela sobre los crímenes del franquismo contra las mujeres", Nacional, 20 minutos, 16/03/2016 at 10:59 h. The author explains how in 2016 the organisation Women's Link Worldwide asked the Argentinian judge María Servini to include in the cause against the crimes committed during Francoism, which was initiated in 2010, those crimes committed against women by the regime. <http://www.20minutos.es/noticia/2698973/0/querrela/crimenes-genero/franquismo/>

¹⁴³ United Nations Human Rights, Office of the High Commissioner, Biography of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff (Colombia), <http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/PablodeGreiff.aspx>

¹⁴⁴ Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Mission to Spain, 22 July 2014. A/HRC/27/56/Add.1

¹⁴⁵ Consejo de Derechos Humanos, Informe del Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Pablo de Greiff, Misión a España: comentarios del Estado al informe del Relator Especial, 17 de septiembre de 2014, A/HRC/27/56/Add.3.

sections 3 and 4, I will frame the Spanish case as constituting a reproductive rights' violation, violence against women and a crime against humanity.

3.1 Women during and after war. Stolen maternities in prison settings

As already noted, only very little research has been devoted to the consequences women experienced during civil war and Francoism in Spain. Even though male victims make the most numbers in the (few) statistics available on extra-judicial killings during the civil war, if we apply a gender analysis to extra-judicial killings during this period, we see it was very common for women to experience sexual violence before being executed by paramilitary groups and sympathisers of the Nationalist band.¹⁴⁶ Women affected by extra-judicial killings were usually targeted either because of being somehow related to male sympathisers and members of the Republican side of the war¹⁴⁷, or by having actively participated in the public sphere during the years of the II Republic in Spain, considered a transgression of their “natural” domestic sphere by the Nationalist band.¹⁴⁸

Unfortunately, sexual violence and extra-judicial killings were not the only practice affecting women during the civil war. As the Nationalist band was conquering more territories, women related to Republican sympathisers had to be punished for their perceived betrayal to the “National cause”. It was quite common that after conquering a concrete village or city, paramilitary groups detained women who were perceived sympathisers in any way to the Republican band, or who had not publicly supported the “Nationalist cause”. Their hair would then be completely shaved¹⁴⁹ and later the same women would be obliged to drink several liters of Castor oil. This oil has the effect of losing control over sphincter, so women would then be paraded around the territory conquered at the yell of “Down with prostitutes!” or “Long live the Guardia Civil!” two or three hours before being sent to prison.¹⁵⁰ This sort of public scorn was reproduced all around Spanish territories by paramilitary groups with the consent or acquiescence of the Nationalist military, and the rest of the city or village concerned was either obliged to witness this atrocity or would be present at the time of happening out of fear of being accused of not supporting the “National cause”.¹⁵¹

¹⁴⁶ See Pura Sanchez, *Individuas de dudosa moral, la represión de las mujeres en Andalucía (1936-1958)*, Crítica, 2009.

¹⁴⁷ Enrique González Duro, *Las rapadas: El franquismo contra la mujer*, Siglo XXI de España Editores, S.A., 2012. Page 35, on how paramilitary groups of the Nationalist band would, on 15th August 1936, in Navarra, execute Vicente Lamberto and rape his daughter Maravillas, who was only 14 years old at the time, and whose body was never found.

¹⁴⁸ *Ibid.* Page 43.

¹⁴⁹ *Ibid.* Page 35, on how in Santarguda, one of the two hairdressers would even charge women for shaving their heads against their will.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.* Page 36.

But once imprisoned the reality for these women didn't improve. Guardians and other civil servants would still sexually abuse prisoners, with the acquiescence of their superiors, who only exceptionally would sanction the abusers.¹⁵² Moreover, prison settings were also used for case studies to prove the alleged mental inferiority of Marxist women. Antonio Vallejo Nájera, a psychiatrist of the time who conducted an investigation on 50 women in the prison of Málaga, made use of his research to support the theory of the existence of the "Marxist gene".¹⁵³ The study, which had been financed by the military and whose results were assumed by the State¹⁵⁴, was the reasoning under the policy of segregating children from their Republican mothers in prison, in an attempt to eradicate the "Marxist gene"¹⁵⁵. The number of children stolen from their mothers in prisons, in conjunction with those who had escaped with their parents to France and were repatriated by external services and placed in Francoist state institutions¹⁵⁶, are estimated to amount to around 30.000¹⁵⁷. During the post-war period, this policy was legalised by different instruments, just as the case of forcefully abducted Aboriginal children in Australia discussed above. Again, the "welfare" of minors was the excuse to commit such atrocities. According to the Council of Europe's Recommendation 1736:

The Franco regime spoke of the "protection of the minors". But this idea of protection was integrally linked to punishment. The children had to actively expiate the "sins of the fathers". Yet, at the same time, they were repeatedly told that they too were irrecoverable. As such, they were frequently segregated from other classes of inmates in state institutions and mistreated both physically, mentally and in other ways.¹⁵⁸

Through the legal apparatus, the Francoist State made use of the law to take away the guardianship of these children from their parents to the State, and then, if adopted, to other parents. Every trace of the past of these children was to be erased, and their surnames would be changed in the civil registry, forever obscuring their origin.¹⁵⁹ In prisons, just as would later happen in hospitals, it was the Catholic Church, and more concretely nuns, who would take children away from their

¹⁵² *Ibid.* Pages 170 and 171, where it is narrated how a pregnant woman was raped by 7 guards in the prison of Murcia, or how young prisoners would be taken out of cells by pairs and abused in a room in the prison of Albacete.

¹⁵³ Ricard Vinyes, *Irredentas: Las presas políticas y sus hijos en las cárceles de Franco*, Ediciones Temas de Hoy, S.A. (T.H.), 2002. Pages 66-70.

¹⁵⁴ *Ibid.* Page 70.

¹⁵⁵ Juzgado Central de Instrucción nº5, Audiencia Nacional. Madrid. SUMARIO (PROC.ORDINARIO) 53 /2008 E. AUTO. Pages 18 and 19.

¹⁵⁶ Parliamentary Assembly of the Council of Europe, Recommendation 1736, 17 March 2006, Doc. 10737, on the need for international condemnation of the Franco regime. Para 74.

¹⁵⁷ Juzgado Central de Instrucción nº5, Audiencia Nacional. Madrid (n 155). Page 61.

¹⁵⁸ Parliamentary Assembly of the Council of Europe (n 156). Para 75.

¹⁵⁹ See, for instance, Ley de 4 de Diciembre de 1941 sobre inscripción de niños repatriados y abandonados, BOE n. 350 de 16/12/1941, pages 9819-1920; Orden de 30 de marzo de 1940, BOE n. 97 de 6/4/1940, page 2354; Decreto de 23 de noviembre de 1940 sobre protección a huérfanos de la revolución y de la guerra, BOE n. 336 de 1/12/1940, pages 8253-8255.

mothers' arms in the pursuit of this policy¹⁶⁰, knowing this practice was under the protection of the law.¹⁶¹

3.2 Stolen children in hospital settings. The private sphere

Researchers usually divide the stealing of babies during Francoism into two different periods. First, the period that went from 1940's until 1960's, and that relates to the practice described in the previous section. This period is characterized by the existence of repressive laws and legal policies for the separation of children from their Republican mothers from prison settings in an attempt to eradicate any trace of the political opponents of Francoism and its regime of national-Catholicism. The second period dates from 1960's until 1990's (although after the transition to democracy in 1978 the number of stolen children decreased progressively)¹⁶², and the perpetrators were doctors, nuns, priests, lawyers and notaries, who committed the crimes in knowledge of their impunity and, primarily, for economic reasons.¹⁶³ However, it is also believed that political reasons played a role as well. Concretely, I am referring to the case of women whose babies were stolen right after childbirth to be sold to wealthier families, while the victims were told that their babies had either been born dead or died hours later. This practice happened in public and private hospitals all around Spain.¹⁶⁴

In spite of this division, the periods may overlap sometimes. Although after 1960 there were probably no more children to be stolen from Republican mothers, some victims that I've had the chance to talk to for the purposes of this thesis are looking for babies stolen in hospitals as far as back in 1947.¹⁶⁵ It is estimated that the number of people affected by this practice amounts to 180.000.¹⁶⁶

¹⁶⁰ Juzgado Central de Instrucción nº5, Audiencia Nacional. Madrid (n 155). Pages 65 and 66.

¹⁶¹ Note that the Catholic Church always supported the uprising of the Nationalist band during the Civil War, and it was one of the pillars of Francoism in conjunction with the military. See for instance, Javier Fisac Seco, *Dios es...de Derechas*, SEPHA Edición y Diseño, S.L., 2009. Chapter III section 2. Franco, Caudillo de España por la Gracia de Dios. Page 230.

¹⁶² Although progressively decreasing, it is not surprising the fact that the stealing of babies in hospitals continued for some time after democracy, if we take into account the fact that many people working for Franco's administration during the dictatorship continued working in public offices during democracy, although in positions with different names. See Paloma Aguilar, "Jueces, Represión y Justicia Transicional en España, Chile y Argentina", revista internacional de sociología (ris) Vol.71, mayo-agosto, 281-308, 2013.

¹⁶³ María José Estesó Poves, *Niños robados: De la represión franquista al negocio*. Diagonal, November 2012. Foreword, page 13.

¹⁶⁴ See, for instance, José Luis Gordillo, *Los hombres del saco: Resurge la trama de los bebés robados*. SAN PABLO, 2015; and Soledad Arroyo, *Los bebés robados de sor María: Testimonios de un comercio cruel*. RBA Libros, S.A., 2013.

¹⁶⁵ The victim belongs to the civil society platform "Agrupación de Afectados Adelante Bebés Robados, por Nuestro Derecho a Saber la Verdad y Justicia". See Annex 1.

¹⁶⁶ Carlos Marlasca, "La justicia perdida de los niños robados", eldiario.es, 07/05/2014, a las 20:49h. http://www.eldiario.es/sociedad/justicia-perdida-ninos-robados_0_257575012.html.

In Spain, the few cases of stolen babies that have reached the justice system (although there have rarely been any accused convicted for these crimes) have always concerned the crimes of illegal detention and false documentation.¹⁶⁷ It is surprising that none of these alleged crimes seem to properly gather or refer to the experience suffered by women as victims. Illegal detention refers to the child as the victim, and false documentation as a crime against the public interest. It is obvious that one of the direct victims of these practices was the baby concerned, but I argue that the mother was as well. After all, this practice targeted women directly, and it did so during a period where women were still considered second class citizens.¹⁶⁸ Moreover, not every woman was equally vulnerable to this practice. Different variables such as education, class, age or civil status played a main role. It was mainly single, uneducated, low-income and young women who were affected by this practice. Not every victim shared all of these characteristics, but many did. An example that illustrates the practice of stealing babies and the vulnerable position of the women who were targeted by this practice is the case of Cristina Moracho Martín.¹⁶⁹

Cristina Moracho Martín always suspected that her son, born on 14th May 1984, never died at the Hospital Clínico San Carlos, in Madrid. Around 2010-2011, after several investigative journals started to publish some cases, she contacted some of the civil society organisations that had been recently created to deal with this problem that affected victims all around the country. There, she was advised to look for her medical certificates at the Clínico San Carlos. At the hospital, and after making the administrative officials some questions that put them on guard, she was first denied that she had ever been at the hospital the dates she referred to. After insisting several times, she was given a document that stated that she entered the hospital on the 14th May 1984 at 11pm, where she gave birth to a dead baby by “intrauterine anoxia”¹⁷⁰.

She couldn't believe her eyes when she read that sentence, since Cristina Moracho Martín had given birth to her son Miguel Angel on the 14th May 1984 at her house in Madrid all by herself. At that time, she was 17 years old and unwedded, although she lived with the father of the child she expected and her 15 months old daughter. During labour she was alone at her place, with her daughter. After giving birth to a crying and breathing baby she called an ambulance, since she still needed to expel the placenta. Once in the Clínico San Carlos, her son was taken to a different room, allegedly to check that the baby was healthy. She was asked many questions, she thought for medical reasons, while she demanded to see her son. After some time, she was told that her son had died; that she should forget about it, focus on her daughter and that she would have more children in the future. She wanted to see the body, but she was told that she couldn't, that the

¹⁶⁷ José Luis Gordillo (n 164). Page 51.

¹⁶⁸ *Ibid.* Page 10.

¹⁶⁹ See Annex 2.

¹⁷⁰ Intrauterine anoxia is the medical term for lack of oxygen in blood and vital organs.

babies that died before 24 hours of life belonged to the hospital and that the body was already out the Clínico San Carlos to be buried in a mass grave. She demanded to be given the address where the body of her son was to be buried, but she was told that she had no access to that place and that she should forget. Next day, a woman at the hospital who Cristina believed was a social worker asked her to sign a document authorising her to take care of the body. Cristina insisted to see the body but again she received the same reply as the day before, and at the same time she told herself she shouldn't be suspicious of a social worker who worked at the hospital and probably knew better. When the social worker was about to leave, Cristina asked if she needed her husband's signature as well, and suddenly the social worker's face changed: Aren't you unwedded?" "Yes" replied Cristina, but she explained that she lived with the father of the baby. The social worker then said the father's signature wasn't needed, and that she did not need to tell her partner. Cristina asked for some death certificate of her son, but she was told such documents didn't exist for her case.

Cristina Moracho's case resembles those of many Spanish women whose babies had allegedly died in hospital, but their bodies were never given to the family. Neither Cristina nor her partner were able to see the child after he was taken to the incubator, not even once they were told the child had died. Victims of these procedures and practices were always advised by the medical personnel (many times nuns, who worked at the maternity wards) not to see the bodies, arguing that it was better to forget and move on the soonest possible. In a similar case¹⁷¹, concerning the case of María José Juárez Colmenares, her sister Valentina allegedly died in 1947 after four days in the incubator. Their father was determined not to leave the hospital until he was shown the body. However, he had to do so once he was threatened with calling the Guardia Civil should he not leave. In other cases that occurred years after 1947, insistent parents who wanted to see the body were only allowed to see a dead baby from the door far away from the place in a room where the body was laying. Now, many parents suspect that those bodies never were the bodies of their children.¹⁷² Some of the personnel working at hospitals by the time this happened have stated that there was always the frozen body of a dead baby in the hospital, should any relative insist on seeing the body of their alleged dead baby.¹⁷³

But, where were all the missing children going to? Many testimonies of the few adoptive parents that have come forward to testify state that the person responsible for the adoption was usually either a nun working at the hospital or a doctor. Some state that they had no idea where the babies were coming from, while others admit that there were reasonable grounds to believe something strange was happening at the hospital. That was the case of Inés Pérez, adoptive mother of Inés

¹⁷¹ See Annex 1.

¹⁷² Esteso Poves (n 163). Pages 80 and 130.

¹⁷³ *Ibid.* Page 99.

Madrigal. Inés Pérez was a married woman who couldn't have children, so in 1969 she faked a pregnancy following the advice of a doctor¹⁷⁴ in the Clínica San Ramón in Madrid. After some time, the same doctor would give her a baby and sign a public document stating that the baby was the biological daughter of Inés Pérez.¹⁷⁵

The people responsible for this business would always make sure that the children were sold to wealthy, Catholic families.¹⁷⁶ In exchange for the baby, adoptive parents would pay around 50.000 pesetas of the time (around 100.000 current euros) at least.¹⁷⁷ Moreover, adoptive parents would always come from provinces far away from the children's place of birth to take the babies.¹⁷⁸ In some cases, some of the babies were even adopted by foreign parents, many times with the help of the embassy of the state where the adoptive parents were coming from.¹⁷⁹ When the babies were given to adoptive parents abroad, these would usually come from South-American countries such as Chile¹⁸⁰ or Mexico¹⁸¹. That was the case of Ligia Graciela Ceballos Franco.¹⁸² When she discovered she was adopted in Spain, she was also told that her adoptive parents had been advised to burn her Spanish passport upon arrival to Mexico when she was still a baby. Moreover, she was also registered in the Mexican Civil Registry as the biological daughter of her adoptive parents.¹⁸³ All of these inconsistencies are also replicated in other cases of victims who suspect they could have been stolen children of this illegal adoption network as well, and who are demanding justice in order to know their true origins.¹⁸⁴ For reasons that I will present in section 4, the participation of the Francoist state in this systematic and generalized plan for the abduction of babies is more obvious than it appears at a first glance. As I will expand on the referred section, any official Spanish state policy on forced adoptions is difficult, if not impossible, to prove without access to undisclosed secret documents. This, however, does not prove there to be any absence of a policy, nor does it negate the existence of a practice widely known at the time that the Spanish government facilitated through various acts and significantly by choosing not to take action against this practice.

¹⁷⁴ For legal concerns, I prefer not to reproduce the name of the accused doctor.

¹⁷⁵ Alberto Pozas, "Primera petición de cárcel contra un médico por el robo de bebés", CADENA SER, Madrid, 12/01/2017-07:44 h CET
http://cadenaser.com/ser/2017/01/12/tribunales/1484183007_852407.html

¹⁷⁶ Esteso Poves (n 163). Pages 116 and 122.

¹⁷⁷ *Ibid.* Page 98.

¹⁷⁸ *Ibid.* Page 85.

¹⁷⁹ *Ibid.* Page 167-168.

¹⁸⁰ *Ibid.* Page 161.

¹⁸¹ Amnistía Internacional España, "Amnistía Internacional presenta en México el caso de un bebé robado durante el franquismo", 12 February 2017. <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/amnistia-internacional-presenta-en-mexico-el-caso-de-un-bebe-robado-durante-el-franquismo/>

¹⁸² See Annex 3.

¹⁸³ *Ibid.*

¹⁸⁴ Esteso Poves (n 163). Pages 159-173.

3.3 The stealing of babies: a women's reproductive rights violation and violence against women

As I stated in the previous section, whenever a case of a stolen baby during Francoism or early democracy has reached the justice system in Spain, it has until now been under the charges of illegal detention of the child and false documentation of the medical reports. As true as it might be that the facts concerned may amount to such crimes, it seems unfair that the treatment and suffering these women endured are never addressed as such by the justice system. The truth in these Spanish legal cases is that illegal detention of the child is the closest legal figure in the Spanish legal system where the facts the stolen babies and illegal adoptions can be framed. However, if we look beyond the current limitations and inaction of the Spanish legal system, the international human rights regime is free of such limitations. Moreover, as I presented in chapter 2.2, a current problem with TJ is the lack of recognition of those human rights violations committed in the private sphere as something that TJ has to deal with. Although at first sight it may seem that those violations committed by private individuals have nothing to do with the conflict or regime under the focus of a transitional justice agenda, the truth is that many times the outbreak of a conflict or the establishment of an oppressive regime, as was the case of Spain, further increases women's vulnerability to violations committed in their private sphere.¹⁸⁵

During Francoism, the few improvements towards legal equality that women had acquired in the previous regime were erased, and women were forced to go back to their homes in the private sphere.¹⁸⁶ Moreover, women didn't have the same rights as men, and for most of their legal transactions they always needed the permission of a man, be him their fathers or husbands.¹⁸⁷ This perception, by law and society, of women as second class citizens played a role in the way women's bodies were instrumentalised for different purposes, being one of those the stealing of babies. Moreover, other factors such as class, age, or civil status also played a role in the choice of victims for such purposes. Francoism worsened women's lives and limited their rights, making women more vulnerable to violations in their private sphere. The direct perpetrators of the atrocities referred to in the previous section were not representatives of the State, such as Foreign Affairs ministers or Heads of State; but private individuals, such as doctors and nuns taking on the role of midwives. In the following lines, I will first present the legal context in which women were to live during Francoism, and which increased women's vulnerability to violations by private individuals. After that, I will subdivide the section into two subsections to argue how the

¹⁸⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30. Para 34.

¹⁸⁶ Matilde Peinado Rodríguez, *Enseñando a señoritas y sirvientas: Formación femenina y clasismo en el franquismo*. Los libros de la catarata, 2012. Pages 18,19 and 29.

¹⁸⁷ Clive Beadman, "Abortion in 1940s Spain: the social context", *Journal of Gender Studies*, Vol. 11, No. 1, 2002. Page 405.

referred facts amount not only to violations of women's reproductive rights, but also to violence against women. Both sections will also provide for the human rights basis for the potential responsibility of states for the crimes committed by private individuals, a logic that should be incorporated into the transitional justice agenda.

It is no secret that many times states restrict or widen women's rights over their own bodies and reproductive health depending on their own birth rate agenda. That was the case of Spain after the civil war, when Franco passed different pro-natalist legislation. For instance, after the second child, the regime would give "thirty pesetas for the third child, with fifteen peseta increments for each subsequent offspring until the twelfth, when the aid increased to fifty pesetas."¹⁸⁸ These policies "promised benefits for families and offered interest-free state loans for couples wishing to marry, as well as prizes for large families with more than three children that included cash bonuses and discounts on various services."¹⁸⁹ However, working mothers couldn't enjoy these benefits, which is logic taking into account Francoism's attempt to limit women's role in society to their homes and the family.¹⁹⁰ On the other hand, abortion was criminalised under all circumstances.¹⁹¹ The Catholic Church was the right hand of the Francoist State, an alliance that was further proven in 1957 when Franco replaced all his Falange's ministers with members of the *Opus Dei*¹⁹², a very conservative Spanish branch of the Catholic Church. Moreover, women were obliged to stop working once they got married,¹⁹³ and only after 1961 were they allowed to continue working with their husband's permission.¹⁹⁴ In addition to that, they also needed marital permission to certain business transactions.¹⁹⁵

Women's destiny was marriage and the bringing up of children in the domesticity of the home. After 1939, Franco addressed the following message to women of Spain:

You still have things to do, you have to reconquer the home. You have to bring up the child and the Spanish woman. You have to make women healthy, strong and independent.¹⁹⁶

¹⁸⁸ Jessica Davidson, 'Women, Fascism and Work in Francoist Spain: The Law for Political, Professional and Labour Rights' *Gender & History*, Vol.23 No.2 August 2011, pp. 401–414. Page 404.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Beadman (n 187). Page 56.

¹⁹² Davidson (n 188).

¹⁹³ *Ibid.* Page 405.

¹⁹⁴ *Ibid.* Page 406.

¹⁹⁵ *Ibid.* Page 405.

¹⁹⁶ Azucena Merino, *Mujeres y educación durante el franquismo en imágenes: la Sección Femenina y el Auxilio Social (1934-1977)*. Creaciones Vicent Gabrielle, 2010. Page 12. Free translation for: "Todavía os queda más, os queda la Reconquista del hogar. Os queda formar al niño y a la mujer española. Os queda hacer a las mujeres sanas, fuertes e independientes."

The social order was regulated following the most orthodox Catholic morals, and if in 1941 abortion was made illegal, in 1942 adultery was criminalised, in addition to the abandonment of the marital home and obligations related to the family.¹⁹⁷ For the protection of public morals, Franco's regime would create the "Patronato para la Protección de la Mujer" in 1941 under the auspices of the Ministry of Justice.¹⁹⁸ Women's chastity was to be considered the most valuable of all feminine virtues, and those women violating in any way these public morals were to be considered a danger to the social order.¹⁹⁹ This institution was particularly preoccupied with young women,²⁰⁰ and especially those coming from low-income backgrounds, since economic difficulties were considered the direct cause of the "lack of decency and the perversion of minors".²⁰¹ Young women considered to be "at risk" would be sent to facilities belonging to the "Patronato para la Protección de la Mujer" to be re-educated, in addition to those young unwedded women that were already pregnant.²⁰² With all this information in mind, it is not difficult to suspect that other concerns in addition to money might have played a role in the stealing of babies referred to in section 2 of this chapter. After all, most of the victims were single, young, uneducated pregnant women.

3.3.1 The stealing of babies as reproductive rights violations

The stealing of babies in public and private maternity wards all around Spain may amount to different human rights violations. Women's dignity and autonomy was violated in many different ways through this practice. However, the crimes of illegal detention and false documentation (in the Spanish criminal law) and even that of forced disappearance (in the international criminal law regime) disregard the gendered nature of this reality. As explained above, the perception of the Spanish woman by the Francoist regime and its legal apparatus increased the vulnerability of women, especially those with intersecting identities: young, single, and uneducated pregnant women. It made it easier for private individuals to violate these women's reproductive rights. In this subsection, I will explain how the facts of the case amount to sexual and reproductive rights' violations; although they could amount to many other human rights' violations as well.

The inherent dignity of every member of the human family and the prohibition of discrimination on the basis of sex, as well as other grounds, is established in different human rights treaties.²⁰³

¹⁹⁷ Aurora Morcillo Gómez, *En cuerpo y alma: ser mujer en tiempos de Franco*, Siglo XXI de España Editores, S.A., 2015. Page 193.

¹⁹⁸ *Ibid.* Page 196.

¹⁹⁹ *Ibid.* Page 197.

²⁰⁰ *Ibid.* Page 196.

²⁰¹ *Ibid.* Page 194.

²⁰² See Annex 4 concerning the case of María de los Ángeles Martínez Madroño, who was interned at one of these facilities and also believes to be a mother of a stolen baby.

²⁰³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III). Preamble and Articles 1 and 2. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Preamble and Articles 2 and

However, the right to sexual and reproductive health is not defined in any such treaty. Nevertheless, the components of such a right are recognised in different international legal instruments. As recognised by the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in 1995

(...), reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents.²⁰⁴

Reproductive rights had already been defined as human rights in the International Conference on Population and Development held in El Cairo back in 1994,²⁰⁵ and several treaty monitoring bodies have referred to them in their different General Recommendations and Observations. At the referred Fourth World Conference on Women, it was stated that

Reproductive health (...) implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are (...) the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.²⁰⁶

And continued affirming that

(...) These rights rest on the recognition of the basic right of all couples and individuals *to decide freely and responsibly the number, spacing and timing of their children (emphasis added)* and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.²⁰⁷

This perception has been reflected in the work of various UN bodies, such as the Committee on Economic Social and Cultural Rights, which, in its General Comment No. 22 on the right to sexual and reproductive health, stated that

The right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include *the right to make free and responsible decisions and choices, free*

3. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3. Preamble and Article 2.2. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Preamble and Articles 1 and 2. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. Preamble and Article 2.1. UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106. Preamble.

²⁰⁴ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995. Para 95.

²⁰⁵ UN Population Fund (UNFPA), *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994, 1995*, A/CONF.171/13/Rev.1. Foreword.

²⁰⁶ United Nations (n 204). Para 94.

²⁰⁷ *Ibid.* Para 95.

of violence, coercion and discrimination (emphasis added), regarding matters concerning one's body and sexual and reproductive health²⁰⁸

Moreover, the Committee on Economic, Social and Cultural Rights recognizes the importance of sexual and reproductive rights for the enjoyment of other human rights when it states that

Due to women's reproductive capacities, the realization of the right of women to sexual and reproductive health is essential to the realization of the full range of their human rights. The right of women to sexual and reproductive health is indispensable to their autonomy and their right to make meaningful decisions about their lives and health.²⁰⁹

However, it is the CEDAW Committee in its General Recommendation No. 24 on article 12 on women and health which in speaking on the accessibility of high-quality health services for women stated that

Acceptable services are those that are delivered in a way that *ensures that a woman gives her fully informed consent, respects her dignity (emphasis added)*, guarantees her confidentiality and is sensitive to her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity.²¹⁰

In the Spanish case, women's decision-making and dignity had been disrespected when they were taken their babies away from them under the pretext that they were dead. Babies were separated from their mothers without the latter's consent; and although various human rights treaties establish the inherent dignity of every human being, the perpetrators of this crime clearly discriminated against young, single, uneducated pregnant women in relation to their reproductive rights. In the case of *I.V. v Bolivia* concerning a woman who had been sterilized without her consent, The Inter-American Court of Human Rights (IACtHR) established that

Sexual and reproductive health (...) refers to access to reproductive health services as well as access to information, education and means that allow for the exercise of the right

²⁰⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 2016, E/C.12/GC/22. Para 5. See connected to it paragraph 6 as well.

²⁰⁹ *Ibid.* Para 25.

²¹⁰ UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, 1999, A/54/38/Rev.1, chap.I. Para 22.

to freely and responsibly choose the number of children desired and the interval of births.²¹¹

The IACtHR considered in this case that the right to information is essential for obtaining an informed consent,²¹² and that the international obligation that requires it as a prerequisite for any medical intervention is based on the concepts of autonomy and dignity inherent to every human being.²¹³ In the case of Spain, many women who believe their babies were stolen discovered years after giving birth to these babies that they had been administered drugs they hadn't consented to during labour. It wasn't until they asked for the documents related to their pregnancy and childbirth at the hospitals that they found out they had been drugged with sodium thiopentate during labour. This is believed to be the reason why many of these women allege that they fell in a state of semi unconsciousness after childbirth. Because of the effect this drug had on women during labour, it has been argued that they were administered oxytocin in addition to the latter; and the babies were many times extracted with the help of a forceps or a suction cup.²¹⁴ It was also once they asked for their childbirth medical reports under the suspicion that their babies never died that they could read on top of them and in handwriting the word "Adoption".²¹⁵ These mothers never consented for their babies to be adopted by other parents, a violation affecting their private life that clearly interfered with their right to decide on the number, spacing, and timing of their children.

In relation to the right to access health-related information, the Committee on Economic, Social and Cultural Rights established in its General Comment No. 14 that

The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, *access to information (emphasis added)*, (...).²¹⁶

And it restated in a later paragraph that

²¹¹ Inter-American Court of Human Rights, IACtHR, *I.V. v Bolivia*, Sentencia de 30 de noviembre de 2016, Serie C No. 329. Para 157. Free translation for: "La salud sexual y reproductiva (...) se refiere al acceso tanto a servicios de salud reproductiva como a la información, la educación y los medios que les permitan ejercer su derecho a decidir de forma libre y responsable el número de hijos que desean tener y el intervalo de nacimientos."

²¹² *Ibid.* Para 163.

²¹³ *Ibid.* Para 165.

²¹⁴ Soledad Arroyo, *Los bebés robados de sor María: Testimonios de un comercio cruel*. RBA Libros, S.A., 2013. Pages 183-184.

²¹⁵ *Ibid.* Pages 172 and 174. Free translation from: "Adopción".

²¹⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4. Para 3.

The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and *access to health-related education and information (emphasis added)*, including on sexual and reproductive health.²¹⁷

In a recent ruling, The High Court of Uganda at Kampala considered that the refusal of the hospital to show the body of the new born (alleged) dead child to his parents was a violation of their right to access health-related information, in addition to psychological torture.²¹⁸ This situation clearly reflects that of many women in Spain, whose babies' bodies were never given to them, nor were they given the addresses of the places where the babies had supposedly been buried.

Although the direct perpetrators of this atrocities have already been pointed at, the ultimate responsible remains out of scene. The Francoist state never punished nor prevented this from happening. If so, it contributed to it. We already explained in the beginning of section 3 how the Francoist state increased women's vulnerability to violations in the private sphere. According to Economic, Social and Cultural Rights Committee's General Comment No. 22

The obligation to protect requires States to take measures to prevent third parties from directly or indirectly interfering with the enjoyment of the right to sexual and reproductive health. The duty to protect requires States to put in place and implement laws and policies prohibiting conduct by third parties that causes harm to physical and mental integrity or undermines the full enjoyment of the right to sexual and reproductive health, including the conduct of private health-care facilities, (...).²¹⁹

A reasoning similar to that of the CEDAW Committee in its General Recommendation No. 24

The obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations.²²⁰

The Francoist state did not prevent nor punish these crimes. It actually made single, young and working class women vulnerable to this atrocities by legally targeting single mothers with the

²¹⁷ *Ibid.* Para 11.

²¹⁸ The Republic of Uganda, High Court of Uganda at Kampala, Civil Division, Civil Suit No. 212 of 2013, The Center for Health, Human Rights and Development (CEHURD) against The Executive Director, Mulago Hospital Referral Hospital and the Attorney General, before Lady Justice Libya Mugambe. Judgement of 24th January 2017. Pages 5-21.

²¹⁹ Committee on Economic, Social and Cultural Rights (n 208). Para 42.

²²⁰ UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) (n 210). Para 15.

criminalisation of sex outside of wedlock and the creation of institutions such as the “Patronato para la Protección de la Mujer” which considered the disobedience of the orthodox Catholic public morals a threat to the social order. Moreover, the pro-natalist agenda of the Francoist state might provide for reasons for the state’s acquiescence in the commission of these atrocities, although we cannot know for sure.

The mobilisation of Spanish civil society towards the prosecution and recognition of these crimes started few years ago in already established democracy. The Spanish state has a duty towards the victims, and is still on time to make up for some of the atrocities committed during and after Francoism. However, Spain’s reluctance to review its past further decreases the chances of victims to see justice done and be reunited with their loved ones.

3.3.2 The stealing of babies as violence against women

I already mentioned that the facts concerned may amount to different human rights violations. However, because the gendered nature of these crimes is usually overlooked, I want to focus on the facts as constituting violence against women as well.

CEDAW’s General Recommendation No. 19 states that

Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.²²¹

The same General Recommendation also considers that

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.²²²

CEDAW’s definition of gender-based violence has already been used to include cases in which women’s bodies have been instrumentalised for the forced removal of their new born children to be given to other families. That was the already referred case in chapter 2.3.2 in relation to Argentina during the dictatorship. The Inter-American Court of Human Rights stated in the *Gelman v Uruguay* case that the instrumentalisation of the body of María Claudia García for the subtraction of her daughter constituted an aggression against María Claudia García’s maternity and one of the worst reproachable forms of violence against women.²²³ Although in the *Gelman* case the perpetrators were agents of the state, violence against women is not restricted to that

²²¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992. Para 1.

²²² *Ibid.* Para 6.

²²³ Inter-American Court of Human Rights (IACtHR), *Gelman Vs. Uruguay*, Judgement of 24th February 2011. Paras 97-98.

committed by public officials. The referred CEDAW's General Recommendation No. 19 states that

States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.²²⁴

It is worth noting that CEDAW's Committee considers that "Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, (...)." ²²⁵ And that "Such prejudices and practices may justify gender-based violence as a form of protection or control of women."²²⁶ This violence as a form of control may have been influenced by other factors in addition to gender, as established in the Joint General Recommendation of CEDAW and the Committee on the Rights of the Child

(...), the Committees draw States parties' attention to the fact that sex- and gender-based discrimination intersects with other factors that affect women and girls, in particular those who belong to, or are perceived as belonging to, disadvantaged groups, and who are therefore at a higher risk of becoming victims of harmful practices.²²⁷

In the case of Francoist Spain, women were considered subordinate to men, as can be concluded from the laws passed by the Francoist state and referred to at the beginning of section 3 of this chapter. If we take into account CEDAW's definition of gender-based violence, the referred laws and policies passed by the Francoist state may constitute gender-based violence in themselves. In addition to that, other factors such as age and class played a role in the way some women were perceived as a threat to the social order by the Francoist state. After all, young women were one of the groups which the "Patronato para la Protección de la Mujer" was more concerned with, and especially those coming from poor economic backgrounds, since the latter was considered the direct cause of the "lack of decency" in a country which considered chastity the most valuable virtue of a woman. There is no doubt the oppression suffered increased the risk of certain groups of women to become victims of the stealing of babies as another form of gender-based violence, to which the Francoist state turned a blind eye.

3.4 The stealing of babies: a crime against humanity

²²⁴ UN Committee on the Elimination of Discrimination Against Women (CEDAW) (n 221). Para 9.

²²⁵ *Ibid.* Para 11.

²²⁶ *Ibid.*

²²⁷ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 14 November 2014, CEDAW/C/GC/31-CRC/C/GC/18. Para 6.

In Spain, the Amnesty law that was passed after Franco's death in the few years between Franco's death and democracy²²⁸ has been used as an excuse by the Spanish judiciary to refuse to investigate the crimes committed during Francoism, in addition to the principle of non-retroactivity, the application of the principle of the most favourable rule and the principle of legal security.²²⁹ However, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees on non-recurrence, Pablo de Greiff, already stated in its mission to Spain in 2014 that the international obligations undertaken by Spain cannot be overridden by the Amnesty law, nor can crimes against humanity not be investigated and prosecuted.²³⁰

Although Spain has not implemented any TJ measure yet, in 2010, different civil society organisations filed a complaint with the Argentinian judiciary against the Spanish state for the crimes committed during Francoism. The Argentinian judiciary declared itself competent to investigate those crimes under the principle of universal jurisdiction. In 2016, the NGO Women's Link Worldwide asked judge Servini in Argentina to include in the complaint a supplement for the investigation of the crimes committed against women during Francoism with a gender perspective.²³¹ The different crimes demanded to be investigated with a gender perspective referred to sexual violence, forced abortions, electric shocks in the genital area, the stealing of babies or purges with castor oil.²³² In the following subsection, I want to analyse the potential for the stealing of babies in hospitals by private actors to be considered a crime against humanity. I have no doubt that it would be way easier to consider the facts as constituting a crime against humanity if the underlying crime considered was that of forced disappearance, as happened in the Argentinian case of stolen children. However, I would like to explore other potential underlying crimes that make women's reproductive capacity more visible as a protected legal interest. Moreover, the stealing of babies in hospitals is the only gender crime that was not directly committed by the State nor agents of the state during Francoism. I believe this could be a reason why some of the stolen babies, now adults, who are looking for their origins, don't think the Francoist state was responsible for what happened.²³³ Nevertheless, I believe the Spanish state should be responsible for tolerating this practice over the years of Francoism and early democracy.

²²⁸ Ley 46/1977, de 15 de octubre, de Amnistía.

²²⁹ Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Mission to Spain, 22 July 2014. A/HRC/27/56/Add.1. Para 68.

²³⁰ *Ibid.* Paras 71 and 72.

²³¹ Marta Borraz "Interponen en Argentina una querrela histórica por la represión de Franco contra las mujeres", *eldiario.es*, 16/03/2016, http://www.eldiario.es/sociedad/Interponen-ampliacion-argentina-cometidos-franquismo_0_494850817.html.

²³² *Ibid.*

²³³ María José Estesó Poves, *Niños robados: De la represión franquista al negocio*, Diagonal, 2012. Page 125, when it refers to some civil society organizations for the stolen babies in maternity wards who don't want their cases to be considered crimes of Francoism.

Therefore, I also want to explore the potential to make the Spanish state responsible through the figure of crimes against humanity in subsection 2.

Notwithstanding this, I will not take on every detail necessary of analysis for the conviction of the Spanish state for committing a crime against humanity; a study that would very much exceed the focus of this thesis. I will just analyse the aspects referred to above, since I consider some of them to be the reason why some people in Spanish society are reluctant to consider the Spanish state as having any responsibility in the commission of the crimes described.

3.4.1 The underlying crime

In the Argentinian case of the stolen children, the facts, understood to be part of a systematic attack against a civilian population, were considered a crime against humanity by the Argentinian judiciary.²³⁴ It was also considered that the facts constituted enforced disappearance, which formed the basis of the underlying crime.²³⁵ According to the International Convention for the Protection of All Persons from Enforced Disappearance, the latter is considered to mean

(...) the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.²³⁶

This definition is reflected in the Inter-American Convention on Enforced Disappearance of Persons, which was used in the Argentinian ruling to conclude that the facts constituted enforced disappearance.²³⁷ Moreover, “any act of enforced disappearance is an offence to human dignity”, as stressed by the UN General Assembly resolution 47/133 of 18 December 1992.²³⁸ In that sense, I consider that the ruling could be extrapolated to the case of stolen children in Spain. The facts could also be framed as constituting enforced disappearance. And although in the Argentinian case the perpetrators of the violation were agents of the state, the definition of enforced disappearance also encompasses those acts committed by “persons or groups of persons acting with the authorization, support or acquiescence of the State”.

²³⁴ Tribunal Oral en lo Criminal Federal n°6 de la Capital Federal. Poder Judicial de la Nación. Carlos E. Poledo, Secretario de Cámara. Buenos Aires, Sentencia de 17 de Septiembre de 2012.

²³⁵ *Ibid.* Page 283.

²³⁶ UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006.

²³⁷ Tribunal Oral en lo Criminal Federal n°6 de la Capital Federal (n 234). Page 283.

²³⁸ UN General Assembly, *Declaration on the Protection of All Persons from Enforced Disappearances*, 12 February 1993, A/RES/47/133.

In the *Gelman v. Uruguay* case referred to in the previous section 3.3.2, when speaking of the enforced disappearances of María Macarena Gelman and her parents, the Inter-American court considered that the right to moral integrity of the grandfather of María Macarena had been violated. Moreover, it also considered that many times, enforced disappearances constitute cruel and inhumane treatment for the relatives of those disappeared persons, who can't find out the truth and facts related to the fate of their loved ones.²³⁹ Even though in the Spanish case the enforced disappearance type would acknowledge the pain and suffering endured by the relatives of the stolen children, the crime as such wouldn't necessarily cover the way women's bodies were instrumentalised for the purposes of stealing their babies. That is the reason why I want to explore other alternative or joint types of underlying crimes that could more clearly reflect the way women's bodies were instrumentalised by the doctors and midwives that directly perpetrated the crimes. Reading through Article 7.1 of the Rome Statute of the International Criminal Court, which refers to crimes against humanity, section (g) states that when committed against a civilian population and as part of a widespread or systematic attack, may amount to crimes against humanity the following acts:

Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;²⁴⁰

The last part of this article referring to "other forms of sexual violence of comparable gravity", taking into account that appears directly after enforced sterilization in the sentence, is the first one that catches my attention. In the previously referred case in section 3.3.1 of *I.V. v Bolivia*, concerning enforced sterilization, the Inter-American court stated that the international obligation to acquire someone's informed consent prior to any medical intervention is based on that person's self-determination and autonomy, respect to that person's dignity and her or his (in the concrete ruling her) right to liberty.²⁴¹ Moreover, the Inter-American court also considered that sexual and reproductive rights encompassed the right to freely decide on the number and spacing of children,²⁴² a right that, as has been analysed in section 3.3.1, was also violated in the Spanish case of the stolen children. Because of these similarities concerning the values and the legally protected rights violated in *I.V. v Bolivia* concerning enforced sterilization and the Spanish case of the stolen children, I thought that the facts at issue in the latter case could be considered as constituting "any other form of sexual violence of comparable gravity" according to Article 7.1 (g) of the Rome

²³⁹ Inter-American Court of Human Rights (IACtHR), *Gelman Vs. Uruguay*, Judgement of 24th February 2011. Paras 133 and 134.

²⁴⁰ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998. Para 7.1 (g).

²⁴¹ Inter-American Court of Human Rights, IACtHR, *I.V. v Bolivia*, Sentencia de 30 de noviembre de 2016, Serie C No. 329. Para 165.

²⁴² *Ibid.* Para 157.

Statute. However, the Elements of Crimes of the Rome Statute, when referring to “any other form of sexual violence of comparable gravity”, state that

The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.²⁴³

Although the “incapacity to give genuine consent” clearly reflects the situation of the women whose babies were stolen from them under the pretext that they were dead in the Spanish case, the “sexual nature” of the act as stated in the article makes me believe the Spanish case may fit better somewhere else. The part of article 7.1 (g) of the Rome Statute that refers to “any other form of sexual violence of comparable gravity” was included in the article based on the *Akayesu* case before the ICTR, where the concept was applied to a case where a female student was ordered to strip and forced to perform gymnastics before a large crowd of people.²⁴⁴ That scenario makes me think that that part of the article is there to be applied to crimes of a sexual nature as something different to the reproductive rights violation that occurred in the Spanish case of stolen babies.

Faced with the impossibility to conclude that the Spanish case could be considered as a “form of sexual violence of comparable gravity” to the acts enumerated in Article 7.1 (g) of the Rome Statute, I want to draw attention to Article 7.1 (k), which refers to

Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

In the Elements of Crimes of the Rome Statute, when referring to this article, it is stated that

Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.

Taking into account that, according to the Elements of Crimes, “character” refers to the nature and gravity of the act,²⁴⁵ the enforced sterilization and the stealing of babies could share this similar character requirement. According to Haenen, “human rights law can be used as a source for determining the scope of other inhumane acts, but only those human rights violations that are of a character similar to enumerated inhumane acts in Article 7(1) of the Rome Statute (...), will

²⁴³ International Criminal Court (ICC), *Elements of Crimes*, 2011. Article 7.1 (g)-6, Crime against humanity of sexual violence. Elements 1.

²⁴⁴ Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law*, Third Edition, Oxford University Press, 2014. Page 372. Para 984.

²⁴⁵ International Criminal Court (ICC) (n 243). Article 7.1 (k). Elements 2. Footnote 30.

qualify as other inhumane acts.”²⁴⁶ And in referring to this requirement she states that “The acts that are currently listed in the Rome Statute as inhumane acts protect the right to life (...), bodily integrity (torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity), and liberty (...).”²⁴⁷ According to the ICTY, this former *eiusdem generis* rule should be used for the purposes of assessing the gravity of the act.²⁴⁸ In this sense, the stealing of babies directly targeted women’s capacity to reproduce, interfering with their bodily integrity. In both the case of enforced sterilization and the stealing of babies as happened in the Spanish case, the sexual and reproductive right to health is violated, directly affecting the right to self-determination and autonomy of the victim. Although in the case of enforced sterilization the victim is forever deprived of its capacity to reproduce, in the Spanish case women’s capacity to reproduce was appropriated by the direct perpetrators of the crime, who took the children out of their mothers’ custody right after childbirth. In the referred case of *I.V. v Bolivia*, the Inter-American court stated that the enforced sterilization that *I.V.* had been subject to was a cruel and inhuman treatment contrary to human dignity.²⁴⁹ In comparing it to the Spanish case, I consider that the stealing of babies also shares this inhuman nature.

3.4.2 Potential perpetrators

According to the Elements of Crimes of the Rome Statute, in reference to Article 7 concerning crimes against humanity, it is stated that

“Attack directed against a civilian population” in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population.²⁵⁰

The term “policy” is interpreted in a broad sense as a “planned, directed, or organized crime, as opposed to spontaneous, isolated acts of violence,²⁵¹ and “need not be explicit or clearly and precisely stipulated.”²⁵² This policy must be committed by a State or organization; however, in

²⁴⁶ Iris Haenen, “Classifying Acts as Crimes Against Humanity in the Rome Statute of the International Criminal Court”, 14 German L.J. 796 2013. Page 820. Citation omitted.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.* Page 817.

²⁴⁹ Inter-American Court of Human Rights (n 241). Para 270.

²⁵⁰ International Criminal Court (ICC) (n 243). Article 7, Crimes against humanity, Introduction 3. Citation omitted.

²⁵¹ Gerhard Werle and Florian Jessberger (n 244). Page 342, para 901.

²⁵² *Ibid.* Page 342, para 902.

the Spanish case of the stolen children, Spanish authorities have tried to argue that the crimes committed had nothing to do with Francoism and therefore the latter shouldn't be considered responsible for what happened.²⁵³ Moreover, what should be regarded as "organization", as opposed to "State" or state-like agents? Is there a way to hold the direct perpetrators of the stealing of babies in the Spanish case accountable for committing crimes against humanity? In the following pages, not only will I try to explore the possibility of making the direct perpetrators of the Spanish case of stolen babies accountable, but also I will explore the potential of making the Francoist state itself accountable for this crime against humanity committed by private actors.

According to Werle and Jessberger, the "meaning and scope of the term 'organization' remains unclear."²⁵⁴ There is no doubt concerning the fact that the term includes "groups of persons that govern a specific territory"²⁵⁵, as was established at the ICC by the Pre-Trial Chamber (PTC) decision of 30 September 2008, in the *Katanga and Ngudjolo Chui* case:

Accordingly, in the context of a widespread attack, the requirement of an organisational policy pursuant to article 7(2) (a) of the Statute ensures that the attack, even if carried out over a large geographical area or directed against a large number of victims, must still be thoroughly organised and follow a regular pattern. It must also be conducted in furtherance of a common policy involving public or private resources. Such a policy may be made either by groups of persons who govern a specific territory or by any organisation with the capability to commit a widespread or systematic attack against a civilian population.²⁵⁶

It is argued that "in addition to paramilitary units," which many times during conflict govern a specific territory, the part referring to "any organization with the capability to commit a widespread or systematic attack" refers to "terrorist organizations."²⁵⁷ However, is the group formed by doctors, midwives, notaries and other professionals involved in the stealing of babies to be considered a "terrorist organization"? If not, could the sentence "any organization with the capability to commit a widespread or systematic attack" be applied to other groups beyond terrorist organizations? I argue for the latter. In the PTC decision of 31 March 2010 concerning the situation in the Republic of Kenya, it was stated that:

²⁵³ María José Estesó Poves, "Se ha querido desvincular el robo de niños de la memoria histórica", Entrevista a Soledad Luque, *Diagonal*, 09/12/2016, 10:45. <https://www.diagonalperiodico.net/saberes/32482-se-ha-querido-desvincular-robo-ninos-la-memoria-historica.html>.

²⁵⁴ Gerhard Werle and Florian Jessberger (n 244). Page 343, para 904.

²⁵⁵ *Ibid.*

²⁵⁶ *Katanga and Ngudjolo Chui*, ICC (PTC), decision of 30 September 2008, para 396. Citation omitted.

²⁵⁷ Gerhard Werle and Florian Jessberger (n 244). Page 343, para 904.

With regard to the term "organizational", the Chamber notes that the Statute is unclear as to the criteria pursuant to which a group may qualify as "organization" for the purposes of article 7(2) (a) of the Statute. Whereas some have argued that only State-like organizations may qualify, the Chamber opines that the formal nature of a group and the level of its organization should not be the defining criterion. Instead, as others have convincingly put forward, *a distinction should be drawn on whether a group has the capability to perform acts which infringe on basic human values (emphasis added)*:

the associative element, and its inherently aggravating effect, could eventually be satisfied by 'purely' private criminal organizations (emphasis added), thus not finding sufficient reasons for distinguishing the gravity of patterns of conduct directed by 'territorial' entities or by private groups, given the latter's acquired capacity to infringe basic human values.²⁵⁸

In the Spanish case of the stolen babies, from the number of victims and the testimonies as reflected in section 2 of this chapter reflecting the *modus operandi*, it can be inferred that the doctors, midwives, anesthetists and professionals involved were capable of performing acts that infringed on basic human values following a systematic policy. In the referred case of *Katanga and Ngudjolo Chui* it was established that:

The term "systematic" has been understood as either an organised plan in furtherance of a common policy, which follows a regular pattern and results in a continuous commission of acts or as "patterns of crimes" such that the crimes constitute a "non-accidental repetition of similar criminal conduct on a regular basis."²⁵⁹

In the Spanish case of stolen babies, there was a pattern of crimes that is reflected in the testimonies of the large number of mothers who were victims of this practice: the use of drugs without the women's consent during labour, the lack of access to information concerning the babies or their bodies, the falseness in public documents stating that the adoptive mothers were the biological ones, the illegal detention of children to be sold to other families,...are all evidence of the existence of a common policy between all the professionals involved for the commission of this crime against humanity. Moreover, I consider the alleged number of victims (around 180.000) and the geographic area affected (all around Spain) to be enough grounds to believe that the practice constituted a widespread, in addition to systematic, attack on the civilian population.²⁶⁰ I consider these arguments to be enough in order to hold the doctors and nuns

²⁵⁸ ICC (PTC), decision of 31 March 2010 (Situation in the Republic of Kenya), para 90.

²⁵⁹ *Katanga and Ngudjolo Chui*, ICC (PTC) (n 256). Para 379. Citations omitted.

²⁶⁰ Gerhard Werle and Florian Jessberger (n 244). Page 339, para 895, when it considers the term "widespread" to be a quantitative element inferred from both the number of victims and the geographic area affected.

responsible for the stealing of babies in Spain accountable for the crimes committed. However, would it be possible to hold the Francoist state accountable instead?

That during the years of Francoism a pro-natalist legislation and policy prevailed in the country has already been explained in section 3.3. With that in mind, it is easy to see a common interest in the stealing of babies and the pro-natalist concerns of the state at the time. However, as stated at the end of section 2 of this chapter, any official Spanish state policy on forced adoptions is difficult, if not impossible, to prove without access to undisclosed secret documents.

According to the Elements of Crimes of the Rome Statute regarding crimes against humanity, a “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population.”²⁶¹ In this sense, if the state was required to actively promote or encourage the policy in order to make the state responsible, in the face of the impossibility to access undisclosed secret Spanish documents concerning a forced adoption policy, it would be impossible to hold the Francoist state accountable. Nevertheless, the footnote in the Elements of Crimes following that statement stresses that: “Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack.”²⁶² This is more in line with other international criminal tribunals’ decisions. In the *Kupreskic et al* case the ICTY stated that:

The need for crimes against humanity to have been *at least tolerated by a State (emphasis added)*, Government or entity is also stressed in national and international case-law. The crimes at issue may also be State-sponsored or at any rate may be part of a governmental policy or of an entity holding de facto authority over a territory.²⁶³

Such jurisprudence has led some scholars to argue that when there is a duty to protect, “tolerance of an attack on a civilian population is sufficient” for the purposes of making the state accountable.²⁶⁴ This argument can also be inferred from other ICC decisions, as the PTC decision of 3rd October 2011 concerning the situation of the Republic of Côte d’Ivoire,²⁶⁵ or the PTC conformation of charges in *Ruto et al.*, where the PTC stated that:

The Chamber also considers that an attack which is "planned, directed or organised", as opposed to "spontaneous or [consisting of] isolated acts", satisfies the policy requirement.

²⁶¹ International Criminal Court (ICC) (n 243). Article 7, Crimes against humanity, Introduction 3. Citation omitted.

²⁶² International Criminal Court (ICC) (n 243). Article 7, Crimes against humanity, Introduction 3. Footnote 6.

²⁶³ *Kupreskic et al.*, ICTY (TC), judgement of 14 January 2000, para 552.

²⁶⁴ Gerhard Werle and Florian Jessberger (n 244). Page 345, para 910.

²⁶⁵ ICC (PTC), decision of 3 October 2011, (Situation in the Republic of Côte d’Ivoire), para 42.

*The implementation of a policy can consist of a deliberate failure to take action (emphasis added), which is consciously aimed at encouraging such attack.*²⁶⁶

However, the referred footnote from the Elements of Crimes concerning the deliberate failure to take action on the part of the state also states that “The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.”²⁶⁷ In the case of Spain, the state not only made women more vulnerable to the abuses that led to the stealing of babies in public and private maternity wards around the country, but even today is reluctant to convict those allegedly accused of committing such crimes. Such reluctance is reflected in the case of María Josefa Juárez Colmenar,²⁶⁸ where the state attorney filed her case claiming that from the documents belonging to the hospital it was clear that her sister died after 7th February 1947. This is at odds with the document extracted from the Civil Registry, which states that her sister, who María Josefa believes was a stolen baby, died on the 6th February 1947. These inconsistencies extracted from two different public documents (in Spain, false declaration on a public document has always been a crime), in addition to other documents that María Josefa presented for her case, were not sufficient grounds to believe that a crime had been committed according to the state attorney. So far, only one legal case has made it to the trial phase, which is currently ongoing.²⁶⁹ On top of this, some of the stolen babies, now adults, point to diplomats and military officers as responsible in their illegal adoption from Spain (section 3.2) and from the mid 50’s most of the prominent members of the government belonged to the *Opus Dei*, an orthodox branch of the Catholic church. It is worth to bear this in mind if we take into account that nuns, working as midwives, appear in every victim’s testimony as playing a main role in the alleged crime. A proper investigation upon all of these facts on the part of the Argentinian judiciary could provide for the necessary evidence to conclude that the Francoist state deliberately turned a blind eye to these atrocities against women’s reproductive rights, consciously encouraging such a crime against humanity.

4 Conclusion

I began this thesis making some criticisms of TJ from a gender and economic and social rights perspective. As presented in chapter 2.1, in TJ settings, economic and social rights violations have usually been overlooked or underrated by international criminal tribunals and TRC’s in comparison to civil and political rights violations. In international criminal tribunals, economic

²⁶⁶ *Ruto et al.*, ICC (PTC), decision of 23 January 2012, para 210.

²⁶⁷ International Criminal Court (ICC) (n 243). Article 7, Crimes against humanity, Introduction 3.

Footnote 6.

²⁶⁸ See Annex 1.

²⁶⁹ ABC Madrid, “Abierto el primer juicio por robo de bebés en España: fianza de 465000 euros para el doctor Vela”, 21/02/2017, 10:08h. http://www.abc.es/espana/madrid/abci-abierto-primer-juicio-robo-bebes-espana-fianza-465000-euros-para-doctor-vela-201702211008_noticia.html.

and social rights violations have usually been presented as the context where other “more important” civil and human rights violations occurred. And although in some occasions economic and social rights violations have been perceived as constituting a war crime or a crime against humanity, the facts have rarely been referred to as an economic and social right violation to begin with, further overlooking the enforceability and prosecutorial nature of these violations as such. In the reports of TRCs, economic and social rights violations have also been presented as constituting the overall context within which civil and political rights violations occurred (case of South-African TRC). However, more advances have been seen in the recognition of economic and social rights violations and their reparation. Nevertheless, as happened in the case of Timor-Leste TRC, when there is a limited budget for the reparation of victims, usually civil and political rights violations are considered to have priority over the compensation of economic and social rights violations. Concerning TJ criticisms from a gender perspective, what is usually the focus of TJ mechanisms is the extraordinary violence that women experience as a result of a conflict or a repressive regime. However, the violence experienced by women during so called “peace time” remains largely unaddressed. If this happens, and TJ mechanisms, as TRC’s for instance, don’t address some of these inequalities pre-existing the conflict, the access of women victims of conflict to the reparation they deserve may be further obstructed. Moreover, there is a link between the ordinary violence experienced during “peace time” and the extraordinary violence experienced during conflict or a repressive regime. However, the extraordinary violence suffered in the latter contexts may not always be acknowledged as a human right violation worthy of reparation or recognition by TJ mechanisms. Although it has been recognized by CEDAW Committee that conflict situations further increase the vulnerability of women to human rights violations, the sexual violence perpetrated by private individuals as opposed to that perpetrated by individuals belonging to paramilitary groups or armed forces is beyond the focus of TJ mechanisms, as stated by the Appeals Chamber in the *Rutaganda* case before the ICTR. This can also be applied to domestic violence, which allegedly increases massively during and after conflict; however, is rarely the focus of any TJ setting. In the end of chapter 2, I presented two situations where TJ measures were applied to the stealing of children: Australia and Argentina. In the former, a report was issued by the Human Rights and Equal Opportunity Commission for the documentation of the Aboriginal and Torres Strait Islander children’s separation from their families. However, the government ruling at the time the report was made public refused to consider the Australian state responsible for what happened, alleging that the current Australian state didn’t have to pay for the crimes committed by the Australian state in the past and refusing to follow the recommendations of the report. Moreover, the inquiry was still unable to bring forward a single mother victim of this practice, whose pain and suffering made it impossible to communicate her experience. In the Argentinian case, the National Commission on the Disappearance of Persons documented the forced disappearances of pregnant women and their

babies during the dictatorship of Jorge Rafael Videla. The investigation of the facts undertaken by this Commission was later used by the judiciary to judge the criminal responsibility of those allegedly accused to have committed the crimes described in the National Commission's report *Nunca Más*. The facts considered to constitute a crime against humanity by the tribunal who convicted former dictator Videla for the stealing of babies to be given to other families were tried as constituting enforced disappearances. However, the instrumentalisation of women's bodies for the stealing of babies was not considered an underlying crime as such.

Faced with this scenario, I attempted to present the Spanish case of the stolen babies during Francoism and early democracy and explore what implications could the criminalization of the Spanish case have not only for gender justice in Spain but also for the overall debate on gender and economic and social rights in TJ. Among the many crimes committed against women after the civil war in Spain and the instauration of the Francoist regime, different laws were passed for the legal forced removal of babies from their Republican mothers in prison settings to be either given to families closed to the political ideology of the Francoist regime, or to institutions for minors, where they were expected to be taught in the values and ideas of Francoism. Moreover, since the instauration of Francoism, the regime expected women to go back to the private sphere of their homes. Women's role was to marry and have children within the pro-natalist politics of the Francoist regime. Abortion and adultery were criminalized, and institutions were created for the re-education of "fallen women" in the virtues, according to the regime, of chastity and virginity; as was the institution of the Patronato para la Protección de la Mujer. In this way, the Francoist regime made young, uneducated, single pregnant women vulnerable to the abuse by doctors, nuns in the role of midwives and other professionals who stole their babies in private and public maternity wards around Spain to give them to other wealthier, Catholic families; not only from Spain but also from abroad. These women were told that their babies were born dead or had died hours later in the incubators, and either were not shown their bodies or were shown the bodies of other frozen babies who were not their children. Those babies, whose mothers were made to believe that had died, were adopted by other families without their biological mothers' consent. I argued that this abuse constitutes a flagrant violation of these women's reproductive rights, in violation of their right to self-determination, autonomy and respect for their dignity. Moreover, it also constituted a horrendous form of violence against women. It was a direct attack on their specific reproductive capacity and seriously inhibited their ability to enjoy their right to health on a basis of equality with men.

The instauration of different TJ measures by the Spanish state to deal with the crimes committed during Francoism seems rather unrealizable at the moment. However, and despite the political tensions preventing this from happening, I argue that a proper inclusion of a gender perspective in a hypothetical transitional justice agenda for Spain would take into account the stealing of

babies by private actors, and not only the crimes committed directly by the State, as crimes of Francoism for two reasons: First, the Francoist state itself increased women's vulnerability to violations in their private sphere; and second, when this happened, as was the case of the stolen babies that constitutes a sexual and reproductive rights violation and violence against women, the Francoist state turned a blind eye to these abuses. Although the legal discrimination against women present during Francoism was erased by the 1978 Spanish Constitution that initiated the current democracy in Spain and established women's legal equality to men, the fact that the legal and social discrimination against women present during Francoism increased women's vulnerability to violations in their sexual and reproductive rights by private actors needs to be acknowledged. This acknowledgement *per se* wouldn't make the Francoist state legally responsible for the stealing of babies by private actors; but its acquiescence and tolerance in the face of these abuses would, as argued in chapter 3 sections 3 and 4. In the hypothetical establishment of a Spanish TRC, this logic should be taken into account for the purposes of documenting the stealing of babies by private actors as crimes of Francoism and exploring the potential reparations for such sexual and reproductive rights violations and violence against women, as could be the establishment of public DNA banks for the purposes of reuniting mothers and babies separated at birth. Moreover, the legal and political discrimination against women instated by the Francoist regime should come under the focus of this hypothetical TRC's mandate as constituting gender-based violence, and not just referred to as a cause of other human rights violations (as could be the stealing of babies). Including a gender and economic and social rights perspective into this hypothetical TJ agenda would consider this discrimination as a human rights violation in itself.

The adjudication of the crimes committed by the Francoist state is another potential form for Spain to fulfil its TJ duties. However, due to Spain's reluctance to investigate any of such crimes, in 2010 a complaint was filed with the Argentinian judiciary for the investigation of the crimes committed by the Francoist regime. Over the last years, different civil society organizations and victims have presented supplements to be included in the complaint for the investigation of the crimes of Francoism, including women and children who were victims of the stealing of babies in private and public maternity wards around Spain. However, other victims of these abuses consider that their cases have nothing to do with the crimes committed by the Francoist regime. They directly point their fingers to the doctors and nuns in the role of midwives who allegedly stole their babies, but see no link to the Francoist regime. Nevertheless, a wider look into the context in which these abuses happened makes me disagree with that conclusion. The regime made certain groups of women vulnerable to these abuses, and the Catholic church was always very close to the regime, even forming part of its government from the mid 50's; a fact worth of attention if we take into consideration the role of nuns in this illegal adoption network and human

rights violation. With the proper investigation, the Argentinian judiciary could find enough evidence to hold the Spanish state accountable for the deliberate tolerance of this crime against humanity. Moreover, if the investigation of the stealing of babies in maternity wards around Spain made it to the trial phase, the Argentinian judiciary would have a very good chance to expand the term “organization” beyond terrorist organizations to include the doctors and nuns as privates acting in furtherance of a policy to commit a crime against humanity. For the purposes of applying a gender perspective to the adjudication of the crimes committed during Francoism, the Argentinian judiciary could go beyond the act of enforced disappearance to include the reproductive rights violations as constituting an inhuman act which in conjunction with the enforced disappearance of babies constituted a widespread and systematic attack against a civilian population. This would, on the one hand, render more visible the violation of the right to reproductive health as an economic and social right violation constituting a crime against humanity and, on the other hand, expand the term “organization” beyond terrorist organizations to include the doctors and nuns acting as private individuals in furtherance of a policy with the potential to commit a widespread and systematic attack on a civilian population. Such jurisprudence would not only satisfy part of the need for justice in Spain for the crimes committed by the Francoist state against women, but also set a good precedent for the overall debate on gender and TJ concerning the recognition of human rights violations against women committed by private individuals beyond agents of the state, paramilitary groups and terrorist organizations.

BIBLIOGRAPHY

Books

Albertson Fineman, M. and Zinsstag, E., *FEMINIST PERSPECTIVES ON TRANSITIONAL JUSTICE, From International and Criminal Justice to Alternative Forms of Justice*. Series on Transitional Justice, volume 13, Intersentia (May 2013).

Arroyo, S., *Los bebés robados de sor María: Testimonios de un comercio cruel*. RBA Libros, S.A., 2013.

Esteso Poves, M., *Niños robados: de la represión franquista al negocio*. Diagonal, November 2012.

Fisac Seco, J., *Dios es...de Derechas*, SEPHA Edición y Diseño, SL., 2009.

González Duro, E., *Las rapadas: El franquismo contra la mujer*, Siglo XXI de España Editores, S.A., 2012.

Gordillo, J., *Los hombres del saco: Resurge la trama de los bebés robados*. SAN PABLO, 2015.

Merino, A., *Mujeres y educación durante el franquismo en imágenes: la Sección Femenina y el Auxilio Social (1934-1977)*. Creaciones Vicent Gabrielle, 2010.

Morcillo Gómez, A., *En cuerpo y alma: ser mujer en tiempos de Franco*, Siglo XXI de España Editores, S.A., 2015.

Peinado Rodríguez, M., *Enseñando a señoritas y sirvientas: Formación femenina y clasismo en el franquismo*. Los libros de la catarata, 2012.

Sanchez, P., *Individuas de dudosa moral, la represión de las mujeres en Andalucía (1936-1958)*, Crítica, 2009.

Vinyes, R., *Irredentas: Las presas políticas y sus hijos en las cárceles de Franco*, Ediciones Temas de Hoy, S.A. (T.H.), 2002.

Werle, G. and Jessberger, F., *Principles of International Criminal Law*, Third Edition, Oxford University Press, 2014.

Academic articles

Aguilar, P., “Jueces, Represión y Justicia Transicional en España, Chile y Argentina”, revista internacional de sociología (ris) Vol.71, mayo-agosto, 281-308, 2013.

Arbour, L., “Economic and Social Justice for Societies in Transition”, United Nations High Commissioner for Human Rights, Second Annual Transitional Justice Lecture hosted by the Center for Human Rights and Global Justice at New York University School of Law and by the International Center for Transitional Justice, 25 October 2006, New York University School of Law, New York.

Arbour, L., ‘Economic and Social Justice for Societies in Transition’ 40 N.Y.U. J. Int’l L. & Pol. 1 2007-2008.

Beadman, C., “Abortion in 1940s Spain: the social context”, *Journal of Gender Studies*, Vol. 11, No. 1, 2002.

Boesten, J., “Analyzing rape regimes at the Interface of War and Peace in Peru” *The International Journal of Transitional Justice*, Vol. 4, 2010, 110–129, doi: 10.1093/ijtj/ijp029.

Buss, D., “Performing Legal Order: Some Feminist Thoughts on International Criminal Law”, *International Criminal Law Review* 11 (2011).

Cahill-Ripley, A., ‘Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights’ 32 *Neth. Q. Hum. Rts.* 183 2014.

Davies, S. and True J., “Reframing conflict-related sexual and gender-based violence: Bringing gender analysis back in”, *Security Dialogue* 2015, Vol. 46(6) 495-512.

Davidson, J., ‘Women, Fascism and Work in Francoist Spain: The Law for Political, Professional and Labour Rights’ *Gender & History*, Vol.23 No.2 August 2011, pp. 401–414.

Funston, L., Herring, S., & ACMAG, ‘When Will the Stolen Generations End? A Qualitative Critical Exploration of Contemporary ‘Child Protection’ Practices in Aboriginal and Torres Strait Islander Communities’, Education Centre Against Violence, New South Wales Health, Sexual Abuse in Australia and New Zealand, June 2016, Volume 7(1): 51-58.

Haenen, I., “Classifying Acts as Crimes Against Humanity in the Rome Statute of the International Criminal Court”, 14 *German L.J.* 796 2013.

Lambourne, W. and Rodriguez Carreon, V., ‘Engendering Transitional Justice: a Transformative Approach to Building Peace and Attaining Human Rights for Women’ *Hum Rights Rev* (2016) 17: 71. doi:10.1007/s12142-015-0376-0.

Nagy, R., ‘Transitional Justice as Global Project: Critical Reflections’ *Third World Quarterly*, Vol. 29, No. 2, 2008.

Orford, A., “Commissioning the truth”, *Columbia Journal of Gender and Law*, 15, 2006.

Rose, L., “Women’s Land Access in Post-Conflict Rwanda: Bridging the Gap Between Customary Land Law and Pending Land Legislation”, *Texas Journal of Women and the Law*, Volume 13.

Schmid, E., “War Crimes Related to Violations of Economic Social and Cultural Rights” (2011) 71(3) *Heidelberg Journal of International Law*.

Schmid, E. and Nolan, A., ‘Do No Harm’? Exploring the Scope of Economic and Social Rights in Transitional Justice’ *The International Journal of Transitional Justice*, Vol. 8, 2014, 362–382, doi:10.1093/ijtj/iju015 Advance Access publication: 14 September 2014.

Sharp, D., “Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice”, 35 *Fordham Int'l L.J.* 780 2011-2012.

Van den Herik, L., “Economic, Social and Cultural Rights - International Criminal Law's Blind Spot” (2013) *Grotius Centre Working Paper 2013/002-ICL* (University of Leiden 2013).

Lazzara, J., “Kidnapped Memories: Argentina’s Stolen Children Tell their Stories”, *Journal of Human Rights*, 12:319–332, 201.

Treaties and Conventions

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998.

UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006.

UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106.

National laws

Orden de 30 de marzo de 1940, BOE n. 97 de 6/4/1940.

Decreto de 23 de noviembre de 1940 sobre protección a huérfanos de la revolución y de la guerra, BOE n. 336 de 1/12/1940.

Ley de 4 de Diciembre de 1941 sobre inscripción de niños repatriados y abandonados, BOE n. 350 de 16/12/1941.

Ley 46/1977, de 15 de octubre, de Amnistía.

UN Documents

UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992.

UN Security Council, *Security Council resolution 827 (1993) [International Criminal Tribunal for the former Yugoslavia (ICTY)]*, 25 May 1993, S/RES/827 (1993).

UN Security Council, *Security Council resolution 955 (1994) [Establishment of the International Criminal Tribunal for Rwanda]*, 8 November 1994, S/RES/955 (1994).

UN Population Fund (UNFPA), *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994*, 1995, A/CONF.171/13/Rev.1.

United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995.

UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, 1999, A/54/38/Rev.1.

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4.

UN Security Council, *Security Council resolution 1325 (2000) [on women and peace and security]*, 31 October 2000, S/RES/1325 (2000).

The Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, U.N. Doc S/2004/616 (Aug. 23, 2004).

UN Security Council, *Security Council resolution 1820 (2008) [on acts of sexual violence against civilians in armed conflicts]*, 19 June 2008, S/RES/1820 (2008).

UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30.

Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Mission to Spain, 22 July 2014.A/HRC/27/56/Add.1.

Consejo de Derechos Humanos, Informe del Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Pablo de Greiff, Misión a España: comentarios del Estado al informe del Relator Especial, 17 de septiembre de 2014, A/HRC/27/56/Add.3.

Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 14 November 2014, CEDAW/C/GC/31-CRC/C/GC/18.

Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 2016, E/C.12/GC/22.

United Nations, Guidance Note of the Secretary-General, United National Approach to Transitional Justice (March, 2010).
https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.

IIOO and NGOs' documents

International Center for Transitional Justice (ICTJ), Factsheet “What is Transitional Justice?” (ICTJ,2009) at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> last accessed 13 March 2017.

ICTJ, Factsheet: “Las desaparecidas y las invisibles: Repercusiones de la desaparición forzada en las mujeres”, Marzo 2015.

Parliamentary Assembly of the Council of Europe, Recommendation 1736, 17 March 2006, Doc. 10737.

Amnistía Internacional España, “Amnistía Internacional presenta en México el caso de un bebé robado durante el franquismo”, 12 February 2017. <https://www.es.amnesty.org/en-que->

[estamos/noticias/noticia/articulo/amnistia-internacional-presenta-en-mexico-el-caso-de-un-bebe-robado-durante-el-franquismo/](#).

Court cases

Before the ICTY

Prosecutor v. Kupreskic et al. (Trial Judgement), IT-95-16-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 14 January 2000.

Prosecutor v. Dragomir Milosevic (Trial Judgment), IT-98-29/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 12 December 2007.

Before the ICTR

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor (Appeal Judgement), ICTR-96-3-A, International Criminal Tribunal for Rwanda (ICTR), 26 May 2003.

Before the ICC

Katanga and Ngudjolo Chui, ICC (PTC), decision of 30 September 2008.

Prosecutor v Omar Hassan Ahmad Al Bashir ("Omar Al Bashir") (International Criminal Court PreTrial Chamber I, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir) ICC-02/05-01/09 (4 March 2009).

ICC (PTC), decision of 31 March 2010 (Situation in the Republic of Kenya).

ICC (PTC), decision of 3 October 2011, (Situation in the Republic of Côte d'Ivoire).

Ruto et al., ICC (PTC), decision of 23 January 2012.

Before the IACtHR

Inter-American Court of Human Rights, IACtHR, *Gelman Vs. Uruguay*, Judgement of 24th February 2011.

Inter-American Court of Human Rights, IACtHR, *I.V. v Bolivia*, Sentencia de 30 de noviembre de 2016, Serie C No. 329.

Before national courts

Tribunal Oral en lo Criminal Federal n°6 de la Capital Federal. Poder Judicial de la Nación. Carlos E. Poledo, Secretario de Cámara. Buenos Aires, Sentencia de 17 de Septiembre de 2012. La desaparición forzada de personas como delito de lesa humanidad.

Juzgado Central de Instrucción nº5, Audiencia Nacional. Madrid. SUMARIO (PROC.ORDINARIO) 53 /2008 E. AUTO.

The Republic of Uganda, High Court of Uganda at Kampala, Civil Division, Civil Suit No. 212 of 2013, The Center for Health, Human Rights and Development (CEHURD) against The Executive Director, Mulago Hospital Referral Hospital and the Attorney General, before Lady Justice Libya Mugambe. Judgement of 24th January 2017.

Truth and Reconciliation Commissions' reports

Truth and Reconciliation Commission of South Africa Report. Volume Five. Presented to President Nelson Mandela on 29 October 1998.

Timor-Leste Commission for Reception, Truth and Reconciliation. Final Report 3 (2006). Chapter 7.9 Economic and Social Rights.

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia). Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. [Sydney]: [Human Rights and Equal Opportunity Commission], 1997.

National Commission on the Disappearance of Persons (CONADEP), Nunca Más (Never Again) report-1984.

Dissertations

Zaragoza Montejano, A., "Impunity in Spain: From the Franco-Era Times to the Garzón case", MA dissertation, 15/09/2011, School of Law, University of Essex.

Internet resources and media journals

ANTENA3 TV: "Una supuesta 'niña robada' se reencuentra con su madre biológica después de 28 años", El Diario, antena3.com, Madrid, 30/06/2011. http://www.antena3.com/programas/el-diario/supuesta-nina-robada-reencuentra-madre-biologica-despues-anos_20110630571f65be4beb287a291b9282.html#.

Marlasca, C., "La justicia perdida de los niños robados", eldiario.es, 07/05/2014, a las 20:49h. http://www.eldiario.es/sociedad/justicia-perdida-ninos-robados_0_257575012.html.

Pozas, A., "Primera petición de cárcel contra un médico por el robo de bebés", CADENA SER, Madrid, 12/01/2017-07:44 h CET http://cadenaser.com/ser/2017/01/12/tribunales/1484183007_852407.html.

Larrañeta, A., “Presentan la primera querrela sobre los crímenes del franquismo contra las mujeres”, Nacional, 20 minutos, 16/03/2016 at 10:59 h. <http://www.20minutos.es/noticia/2698973/0/querrela/crimenes-genero/franquismo/>

Borraz, M., “Interponen en Argentina una querrela histórica por la represión de Franco contra las mujeres”, eldiario.es, 16/03/2016, http://www.eldiario.es/sociedad/Interponen-ampliacion-argentina-cometidos-franquismo_0_494850817.html.

Esteso Poves, M., “Se ha querido desvincular el robo de niños de la memoria histórica”, Entrevista a Soledad Luque, Diagonal, 09/12/2016, 10:45. <https://www.diagonalperiodico.net/saberes/32482-se-ha-querido-desvincular-robo-ninos-la-memoria-historica.html>.

ABC Madrid, “Abierto el primer juicio por robo de bebés en España: fianza de 465000 euros para el doctor Vela”, 21/02/2017, 10:08h. http://www.abc.es/espana/madrid/abci-abierto-primer-juicio-robo-bebes-espana-fianza-465000-euros-para-doctor-vela-201702211008_noticia.html.

Nunca Más Home Page. http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_000.htm

United Nations Human Rights, Office of the High Commissioner, Biography of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff (Colombia), <http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/PablodeGreiff.aspx>

ANNEX 1.- CASE OF M^aJOSÉ JUAREZ COLMENARES

It includes:

- Decree of the District attorney in Spanish
- Free translation
- Death certificate in Spanish
- Free translation
- Certificate from the Parish in Spanish
- Free translation

DECRETO
DEL ILMO. SR. FISCAL JEFE
D. [REDACTED]

En Madrid a quince de junio de
dos mil doce.

Las presentes Diligencias de investigación nº 69/2011 se incoaron como consecuencia de la denuncia dirigida a la Fiscalía General del Estado por D. Antonio Barroso Berrocal, en nombre de la Asociación ANADIR y de D^a. María José Juárez Colmenar, por la posible comisión de un delito de sustracción de menores, detención ilegal y falsedad en documento público.

En el presente supuesto, el Fiscal Instructor propone que proceda el archivo de las presentes diligencias, tras practicar las diligencias que consideró adecuadas, concretamente, tras el escrito y declaración de la denunciante, y el examen de la documentación aportada y ello por las siguientes razones:

- 1- La denunciante narra en su escrito de denuncia y en su declaración que el día 2 de febrero de 1947, en la Clínica Santa Cristina de Madrid, su madre D^a M^a Josefa Colmenar Bernardino, dio a luz una niña, que se llamó Valentina, su padre la vio el día 6 de febrero y cuando volvió el día 8 le dijeron que había fallecido. Ni su padre ni su madre se querían marchar del hospital si no les daban la niña, y les amenazaron con la Guardia Civil si no lo hacían. Sus padres hace años que han fallecido.
- 2- Aportó la denunciante los siguientes documentos: certificado de nacimiento y defunción de la niña Valentina, de donde se extrax que nació no el día 2 si no el día 3, y el día de fallecimiento resulta ilegible. Informe de la Empresa Mixta de Servicios Funerarios donde consta que se produjo el enterramiento el día 8 de febrero de 1947 y que los restos pasaron al osario común el día 16 de abril de 1958
- 3- Por su parte el fiscal instructor interesó del hospital la remisión de las historias clínicas de la madre y la hija, y de la misma, que también fue remitida copia por la denunciante, se desprende que la enfermedad que padeció la niña fue bronconeumonía, y que el parto fue el 3 de febrero a las 19 horas y el fallecimiento no pudo ser antes del 7 de febrero ya que ese día a las 6 horas se le inyectó Prostibrine. Por tanto no pudo fallecer como dice la denunciante el día 6, dato que no consta en ningún documento.

- 4- Las sospechas de la denunciante, y de sus padres antes de fallecer, que se justifican con la poca información que recibió en el momento histórico del parto y por el hecho de que no le mostraran al bebé fallecido, carecen de la fuerza suficiente para pensar en la imputación de ningún delito. La discrepancia en las fechas, tanto del nacimiento, que en ningún lugar consta que fuera el día 2, si no el día 3, y lo mismo cabe decir del día del fallecimiento, en realidad no aportan ninguna razón que sea suficiente indicio de que se haya cometido algún delito. La imposibilidad de tomar declaración a quienes podrían aportar alguna luz, toda vez que han fallecido, tampoco favorece la investigación.
- 5- Por último el hecho constatado de que los restos del bebé enterrado hayan pasado al osario común hace imposible practicar la diligencia de comparación de ADN que eliminaría definitivamente las dudas de la denunciante.

Por lo anterior, procede acordar el ARCHIVO de las presentes Diligencias, debiendo notificarse a los denunciantes, haciéndoles saber que si no están conformes con esta decisión, podrán, conforme al art. 773 de la L.E.Crim., reiterar la denuncia ante el órgano judicial competente.

Así lo decreto y firmo.

Mr. XXXXXXXXXXXX

The following investigation Inquiries No. 69/2011 started as a consequence of the claim filed before the General State attorney by Mr. Antonio Barroso Berrocal, on behalf of ANADIR association and M^a José Juárez Colmenar, because of the possible commission of a crime of subtraction of minors, illegal detention and falsity on a public document.

In the present case, the District attorney proposes the archive of these present inquiries, after having practised the inquiries considered adequate, concretely, after the written statement and declaration of the claimant, and the exam of the documentation brought before me, and this because of the following reasons:


- 1- The claimant tells in her claim and in her declaration that on 2nd February 1947, in the Clinic of Santa Cristina in Madrid, her mom M^a Josefa Colmenar Bernardino, gave birth to a baby girl, who was named Valentina, her father saw her the 6th of February and when her father came back on the 8th he was told that the baby girl had died. Neither the father nor the mother wanted to leave the hospital without the baby girl's body, and they were threatened with the Guardia Civil shouldn't they leave. The parents died years ago.
- 2- The claimant brought before me the following documents: birth and death certificate of the baby girl Valentina, where it can be inferred that the baby girl was born on the 3rd and not the 2nd of February, and the day of her death is illegible. Report of the Mixed Funerary Services Company where it is stated that the burial happened on the 8th February 1947 and that the rests were transferred to the mass ossuary on 16th April 1958.
- 3- The District attorney demanded from the hospital the medical reports of the mother and daughter, and from that same documents, a copy of which was also brought before me by the claimant, it can be inferred that the baby girl died of bronchopneumonia, and that the birth happened on 3rd February at 19 h and that the death couldn't have happened before the 7th February since that day at 6 the baby girl was injected with Prostibnine. Therefore the baby girl couldn't have died on the 6th of February as the claimant says, a fact that is not contained in any document.

- 4- The claimant and her parents' suspicions before they died, justified by the little information available of the historical time of the birth and because they weren't shown the body of the dead baby girl, lack the strength necessary to think in the imputation of a crime. The disagreement over the dates, both the birth, that nowhere says it was the 2nd of February, but on the 3rd, and the same with regards to the day of the death, actually don't provide for any single reason that is indication enough that a crime has been committed. The impossibility to gather a declaration from those who could shed some light over the issue, since they have passed away, doesn't make the investigation easier.

- 5- Finally the verified facts that the rests of the baby have been transferred to the mass ossuary make it impossible to conduct a comparative DNA inquiry that would definitely erase the claimant's doubts.

Because of all of the above, it is appropriate to order the ARCHIVE of the present Inquiries, with the due notification to the claimants, letting them know that shouldn't they agree with this decision, they could, according to article 733 of the L.E.Crim., reiterate the claim before the competent judicial authority.

So I decree and sign



 REPÚBLICA DE COLOMBIA

TENENCIA DE ALCALDIA

 MINISTERIO DE JUSTICIA

 OFICINA DE REGISTRO

DISTRITO DE *Carepa*

 [Redacted Area]

 Expediente No. *100*

 Folio No. *15*

 De *Valentina María Rodríguez*

 de *Carepa*

 No. *15*

 De *Carepa*

 En virtud de los datos de esta Tenencia de Alcaldía

 y que el título de compra de terrenos a esta Tenencia

 está libre de cargas puede inscribirse en el registro

 mercantil de la ciudad.

 Medellín, *14 de Febrero de 1974*

 [Signature]

 [Stamp]

Nº 0895564 /09

Certificación Gratuita
 Ley 15/1965, de 24-12



SPAIN

CITY HALL

MINISTRY OF JUSTICE

The Congress DISTRICT

Mr. XXXXXXXXX

Situated in O'Donnell street

Number 55, room _____, manifests

That the baby girl Valentina Juarez Colmenar,

In the street of O'Donnell, number 55, room _____, has died

on the 6th February

and inferred from the reports of this City Hall,

that the deceased lack any resources

and was considered to be poor, it can be conceded to her body

a charitable burial.

Madrid, 11th February 1947

The City Hall Secretary

PARROQUIA DE NTRA. SRA. DE COVADONGA

c/. Francisco Silvela, 2
Teléfono 91 725 20 32
Fax 91 724 16 32
28028 MADRID

Madrid 20 de Julio 2012

Consultado libro de Defuncion del
año 1947 no consta Dña Valentina
Suarez Colmenero.



PARISH OF NTRA. SRA. DE COVANDONGA

c/Francisco Silvela, 2

Teléfono 91 725 20 32

Fax 91 724 16 32

28028 Madrid

Madrid 20th July 2012

Consulted the book of deceases
of 1947, Valentina Juarez Colmenar
is not registered on it.

ANNEX 2.- CASE OF CRISTINA MORACHO MARTÍN

It includes:


- Testimony of Cristina Moracho Martín in Spanish
- Free translation

Cristina Moracho Martín

HOLA YO BUSCO A MI HIBO SIETEMESINO QUE NACIO VIVO EN UN PARTO DOMICILIARIO EL DIA 14-MAYO-1984,YO TENIA 17 AÑOS Y ESTABA SOLA EN CASA CON MI HIJA JESICA DE 15 MESES, TUVE AL NIÑO, EL CUAL NACIO LLORANDO Y NO PARO DE LLORAR,GEMIR Y PATALEAR DURANTE UNAS DOS HORAS APROXIMADAMENTE,LE CORTE Y ANUDE EL CORDON UMBILICAL,LE ENVOLVI EN UNA TOALLA Y TRAS PEDIR AYUDA YA QUE NO TENIA TELEFONO,VINO EL MEDICO DE GUARDIA A CASA,LE PUSO OXIGENO Y MUCHO ALGODON POR EL PECHO(PARA MANTENERLE MAS CALENTITO)Y NOS LLEVARON A MADRID(YO VIVO EN VILLALBA)Y POR LA URGENCIA Y ESTAR MAS CERCA NOS LLEVARON AL HOSPITAL CLINICO SAN CARLOS,JUSTO ANTES DE LLEGAR EL NIÑO DEJO DE LLORAR,CERRO LOS OJITOS Y SE QUEDO QUIETECITO(PUDO DORMIRSE)AL LLEGAR ALLI A EL SE LO LLEVARON POR UN LADO Y A MI POR OTRO YA QUE YO PERDI MUCHA SANGRE Y NO HABIA EXPULSADO LA PLACENTA,ME ESTUVIERON PREGUNTANDO(YO PENSE QUE POR CURIOSIDAD Y MANTENERME DESOPIERTA)AHORA PIENSO QUE SACANDOME INFORMACION,YO NO PARE DE PREGUNTAR POR MI HIBO Y ME DECIAN QUE LO ESTABAN EXAMINANDO Y REANIMANDO QUE LUEGO LO VERIA,YO SEGUI INSISTIENDO,Y ME DIERON QUE LO SENTIAN PERO EL BEBE HABIA MUERTO,QUE ME OLVIDARA,QUE ERA MUY JOVEN,QUE YA TENDRIA MAS,QUE TENIA UNA NIÑA YA QUE ME NECESITABA,YO DECIA QUE NO PODIA HABER MUERTO,PORQUE TENIA MUCHA VITALIDAD Y GANAS DE VIVIR,APARTE DE BUENOS PULMONES QUE NO PARO DE DEMOSTRARLO,YO PEDI VERLO UNA Y OTRA VEZ,Y MI PAREJA QUE LLEGO A VERLO VIVO,SE FUE A LLEVAR A MI HIJA CON MI HERMANA Y LLEGO DESPUES AL HOSPITAL CON MIS PADRES,ELLOS TAMBIEN PIDIERON VERLE,PERO NOS DABAN LARGAS,A ELLOS LES DECIAN QUE SE MARCHARAN QUE YO TENIA QUE DESCANSAR,COMO SEGUIMOS PIDIENDOLO NOS DIERON QUE LO SENTIAN PERO SE LE HABIAN LLEVADO YA(CREO QUE FUE SU EXCLUSA, YA QUE A MI NO PODIAN ENSEÑARME OTRO BEBE MUERTO,SI LO TENIAN YA QUE YO CONOCIA A MI BEBE Y ME DARIA CUENTA)YO LES INCREPE QUE DONDE SE LO HABIAN LLEVADO,QUE ERA MIO Y ME LO TENDRIAN QUE DAR A MI,ME DIERON QUE NO QUE LOS ABORTOS O FETOS DE MENOS DE 24 HORAS ELLOS TENIAN UN CONVENTO CON EL ESTADO Y SE HACIAN CARGO DE ENTERRARLOS,YO PREGUNTE QUE DONDE PARA IR,Y ME DIERON QUE ME OLVIDARA(SU FRASE FAVORITA)QUE ALLI NO PODIA IR, YA QUE COMO ESTOS NIÑOS ESTABAN SIN REGISTRAR NI BAUTIZAR LOS ENTERRABAN EN FOSAS COMUNES Y HAY NO DEJABAN ENTRAR,(YO PENSE QUE ERA EL OSARIO,PORQUE EFECTIVAMENTE HAY NO DEJAN).AL DIA SIGUIENTE FUE UNA SEÑORA VESTIDA DE CALLE QUE YO PENSE QUE ERA TRABAJADORA SOCIAL A QUE FIRMARA UN DILUUMENTO AUTORIZANDO HACERSE CARGO DEL CUERPO,YO FIRME SIN LEERLO(COMO IBA A DESCONFIAR DE PERSONAL SANITARIO QUE SE SUPONEN QUE ESTAN PARA AYUDARTE),ELLA SABIA MI HISTORIA Y ME VOLVIO A DECIR QUE ME OLVIDARA,QUE YA TENDRIA MAS,QUE ERA MUY JOVEN Y UNA NIÑA DE 15 MESES...ME PREGUNTO NOMBRE APELLIDO Y FECHA DE NACIMIENTO,AL IRSE LA PREGUNTE SI MI MARIDO NO TENIA QUE FIRMAR,Y TRAS PONER CARA DE ASOMBRO Y PREGUNTARME:¿PERO TU NO ERES MADRE SOLTERA?YO LA RESPONDI QUE SI PERO QUE TENIA MI PAREJA QUE ERA EL PADRE DE MIS HIJOS,ELLA ME PREGUNTO NOMBRE,APELLIDOS Y FECHA DE NACIMIENTO,(PERO LO DE EL NO LO ANOTO)Y ME DIO QUE NO HACIA FALTA QUE EL FIRMARA Y QUE NO SE LO DIERA.TAMBIEN FUE A VERME UNA MONJA QUE SABIA MI HISTORIA,ME SOLTO EL MISMO DISCURSO QUE LAS DEMAS DE QUE ME OLVIDARA...Y ADEMAS ME DIO QUE PENSARA QUE ERA LO MEJOR QUE PODIA HABERLE PASADO A MI BEBE,Y QUE ERA UN ANGELITO QUE ESTABA EN EL CIELO VELANDO POR MI.CUANDO ME DIERON EL ALTA EN EL INFORME PONIA QUE HABIA TENIDO UN PARTO DOMICILIARIO DE VARON MUERTO DE 31 SEMANAS,EL CUAL LLEVABA EL CORDON SECCIONADO Y ANUDADO CORRECTAMENTE Y SIN SIGNOS DE MACERACION(QUE NO OLIA MAL,COMO ERA LOGICO, YA QUE NACIO VIVO)YO LES DJE QUE PORQUE PONIAN MUERTO,SI MI HIBO NACIO VIVO,ME DIERON OTRA VEZ LO DE QUE SI VIVEN MENOS DE 24 HORAS SE LES CATALOGA COMO" ABORTO O FETO

MUERTO",YO LES PEDI UN CERTIFICADO DE DEFUNCION,ENTERRAMIENTO Y DE DONDE LO HABIAN ENTERRADO,ELLOS ME DIJERON QUE NO HABIA NADA MAS QUE ESE INFORME DE ALTA ERA LO UNICO QUE HABIA EN ESTOS CASOS. YO SIEMPRE CREI EN MI INTERIOR QUE MI HIJO NO HABIA MUERTO,PERO ME DECIAN LOS ALLEGADOS QUE COMO LO TUVE YO,LO VI VIVO Y LUEGO NO LO VI MUERTO POR ESO ME DABA ESA SENSACION.YO MISMA TENIA UNA LUCHA INTERNA PORQUE DECIA :¿COMO VA HA ESTAR VIVO?,SI QUIEN LO TENGA TIENE QUE CRIARLO Y MANTENERLO,PERO QUIEN NOS IBA A DECIR LA TRAMA ORGANIZADA DE VENTA DE BEBES QUE TENIAN.TRAS OIR LO DEL REPORTAJE DE MARIA ANTONIA IGLESIAS EN INTERVIU PENSE ESO PORQUE ES EN SAN RAMON SI LLEGA A SER EN EL CLINICO,AFIRMO QUE ES LO QUE LE PASO A MI HIJO,PERO NI POR LA IMAGINACION SE ME PODIA PASAR QUE ERA POR TODA ESPAÑA,YO NUNCA LO SUPERE Y ME JURE QUE NO IBA A TENER MAS HIJOS,MI HIDA SIEMPRE HA PENSADO TAMBIEN QUE NO MURIO(Y MI MARIDO QUE MURIO EN EL AÑO 2000,NO SE LO LLEGABA A CREER QUE ESTUVIERA VIVO,EL PENSABA QUE POR LO QUE SUCEDIO,YO NO LO HABIA SUPERADO).A ULTIMOS DEL 2010 Y PRIMEROS DEL 2011,YO ME PONGO A INDAGAR A RAIZ DE UNA PUBLICACION EN EL "20 MINUTOS" SOBRE UNA NIÑA ROBADA EN EL CLINICO MES Y MEDIO ANTES DE LO MIO,HABLO CON ESA MADRE,CON FLOR DIAZ(QUE ESTABA EN LA ASOCIACION ANADIR)Y PIDO DOCUMENTACION,EN EL CLINICO DESPUES DE CONFIRMARME QUE MI HISTORIA ESTA INFORMATIZADA VIENDO DE QUE IBA EL TEMA ME CONTESTAN QUE NO LA TIENEN Y QUE YO NUNCA ESTUVE INGRESADA EN ESE HOSPITAL,POR NO DARME UN CERTIFICADO NEGATIVO ME DIERON LOS RESULTADOS DE ANALIZAR LA PLACENTA(LO CUAL TODO ERA CORRECTO).EN EL LEGAJO DE ABORTO DICEN QUE INGRESE ALLI EL DIA 14-MAYO-1984 A LAS 11 DE LA NOCHE-Y-ALLI TUVE A ESA HORA Y LUGAR A MI BEBE,EL CUAL NACIO MUERTO POR "ANOXIA INTRAUTERINA"(OSEA QUE NACIO MUERTO POR NO TENER OXIGENO EN LA SANGRE NI EN LOS ORGANOS VITALES)UN NIÑO QUE NACIO VIVO,LLORANDO Y LLEGO AL HOSPITAL CON EL OXIGENO PUESTO,¡INCREDIBLE!,QUE DESPUES DE EXAMINARLO EL MEDICO FORENSE COMO PRESENTA DESCOMPOSICION AUTORIZA A LOS FUNCIONARIOS DEL CEMENTERIO DE LA ALMUDENA A QUE LE ENTIERREN A LAS 24 HORAS.Y EN EL CERTIFICADO DE ENTERRAMIENTO PONE QUE LO ENTERRARON EN QUINTO LUGAR EN LA ZONA QUE TENIAN HABILITADA PARA ESE FIN EL DIA 20,OSEA SEIS DIAS DESPUES DE MORIR SUPUESTAMENTE,LLEVANDOSELO TAN CORRIENDO QUE NO NO LO ENSEÑAN Y DESCOMPUESTO COMO FIRMAN QUE ESTABAIESO NO SE LO CREE NADIEY PONE QUE A LOS ONCE AÑOS LO EXUMARON Y LO METTERON EN EL OSARIO(YO SIEMPRE HE OIDO QUE EN LAS TUMBAS PROVISIONALES LOS TIENEN 10 AÑOS Y LUEGO AVISAN A LA FAMILIA POR SI SE HACEN CARGO)EL CEMENTERIO DEBIA INFORMAR AL HOSPITAL Y ESTE A LA FAMILIA,LO CUAL NO HACIAN PORQUE NO LES INTERESABA.LA FISCAL ME ARCHIVO LA DENUNCIA PORQUE DEJO QUE TODO ESTABA BIEN,ERAN ERRORES ADMINISTRATIVOS Y HABIA UN CERTIFICADO DE ENTERRAMIENTO,¡SE CREEN QUE SOMOS TONTOS!.YO PIENSO QUE MI HIDO NO LO SABE PORQUE DE MOMENTO NO ME BUSCA,YO TENGO ECHAS LAS PRUEBAS DE ADN,A EL AL SER SIETEMESINO LE HAN PODIDO RECONOCER EN SU DIA O HASTA DOS MESES DESPUES,YO SEGUIRE BUSCANDOLE Y HACIENDO LO QUE PUEDA DENTRO DE MIS POSIBILIDADES,YMIENTRAS VIVA LA ESPERANZA ES LO ULTIMO QUE SE PIERDE,Y ESPERO ENCONTRARLO ALGUN DIA ,JUNTARLE CON SU HERMANA QUE LA MARIA MUCHA ILLUSION ENCONTRARLE,E INTENTAR ZANGAR ESTE CAPITULO TAN DOLOROSO DE MI VIDA,"FNCONTRANDO A MI HIDO MIGUEL ANGEL"(ESE NOMBRE YA LE TENIA ASIGNADO DESDE ANTES DE NACER SU HERMANA,YA QUE SI ERA NIÑO SE IBA A LLAMAR ASI).

Firmado y DNI


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HELLO, I'M LOOKING FOR MY PREMATURE BORN SON WHO WAS BORN ALIVE AT HOME ON 14TH MAY 1984. I WAS 17 YEARS OLD AND WAS ALONE AT MY PLACE WITH MY 15 MONTHS OLD DAUGHTER, JESSICA, WHEN I HAD THE BABY. HE WAS BORN CRYING AND WOULDN'T STOP FOR ABOUT 2 HOURS APPROXIMATELY. I CUT THE UMBILICAL CHORD AND MADE A KNOT AROUND IT, PUT A TOWEL AROUND THE BABY AND AFTER ASKING FOR HELP, THE DOCTOR ON CALL CAME HOME. HE PROVIDED THE BABY WITH OXYGEN AND PUT HIM COTTON ON HIS CHEST (SO THAT HE WOULD BE WARMER). WE WERE TAKEN TO MADRID (I LIVE IN VILLALBA) AND BECAUSE OF THE URGENCY AND THE PROXIMITY WE WERE TAKEN TO THE HOSPITAL CLÍNICO SAN CARLOS. RIGHT BEFORE WE GOT THERE THE BABY STOPPED CRYING, HE CLOSED HIS EYES AND WAS QUIET (HE FELL ASHLEEP). WHEN WE GOT THERE WE WERE TAKEN TO DIFFERENT ROOMS BECAUSE I WAS LOOSING A LOT OF BLOOD AND HADN'T EXPELLED THE PLACENTA YET. I WAS THEN ASKED MANY QUESTIONS (I THOUGHT OUT OF CURIOSITY AND TO KEEP ME AWAKE); NOW I THINK THEY WANTED TO TAKE INFORMATION OUT OF ME. I WOULDN'T STOP ASKING FOR MY SON AND THEY TOLD ME HE WAS BEING EXAMINED AND REANIMATED AND THAT I WOULD SEE HIM LATER. I KEPT INSISTING, AND THEY TOLD ME THEY WERE SORRY, BUT THE BABY HAD DIED. THEY TOLD ME THAT I SHOULD FORGET ABOUT IT, THAT I WAS VERY YOUNG AND WOULD HAVE MORE IN THE FUTURE, AND THAT I ALREADY HAD A DAUGHTER WHO NEEDED ME. I SAID HE COULDN'T HAVE DIED, BECAUSE HE HAD A LOT OF VITALITY, IN ADDITION TO STRONG LUNGS AS HE HAD ALREADY SHOWN. I ASKED TO SEE HIM AGAIN AND AGAIN, AND MY PARTNER WHO HAD MANAGED TO SEE HIM ALIVE AT THE HOSPITAL TOOK MY DAUGHTER TO MY SISTER'S AND CAME LATER TO THE HOSPITAL WITH MY PARENTS. THEY ALSO ASKED TO SEE THE BABY, BUT WERE MANY TIMES IGNORED. THE PERSONNEL AT THE HOSPITAL TOLD MY PARENTS TO LEAVE SINCE I NEEDED SOME REST, BUT BECAUSE WE KEPT INSISTING THEY TOLD ALL OF US THAT THE BODY OF THE BABY HAD BEEN TAKEN AWAY ALREADY (I THINK THAT WAS THEIR EXCUSE SINCE THEY COULDN'T SHOW ME A DIFFERENT DEAD BABY, SINCE I HAD SEEN MY BABY AND I WOULD NOTICE IT). I KEPT ASKING THEM WHERE HAD THEY TAKEN MY BABY, THAT IT WAS MY BABY AND THAT THEY SHOULD HAVE GIVEN HIM TO ME. THEY TOLD ME THAT IN CASES OF ABORTIONS AND BABIES THAT DIED BEFORE 24 HOURS OF LIFE IT WAS THEIR DUTY TO BURY THEM BECAUSE THEY HAD AN AGREEMENT WITH THE STATE. I ASKED WHERE WERE THE BABIES BURIED SO THAT I COULD GO VISIT MY BABY, AND THEY TOLD ME THAT I SHOULD FORGET (THEIR FAVOURITE SENTENCE) THAT I COULDN'T GO

THERE, THAT SINCE THESE BABIES WERE NEITHER REGISTERED NOR BAPTIZED THEY WERE BURIED IN MASS GRAVES AND ACCESS THERE WAS NOT ALLOWED (I THOUGHT THAT WAS THE OSSUARY, CAUSE ACCESS THERE IS NOT ALLOWED). NEXT DAY A WOMAN THAT I THOUGHT WAS A SOCIAL WORKER WITHOUT A UNIFORM CAME TO MAKE ME SIGN A DOCUMENT SO THAT SHE COULD TAKE CARE OF THE BODY. I SIGNED THE DOCUMENT WITHOUT READING IT, HOW WAS I GOING TO DISTRUST SANITARY PERSONNEL WHO WAS SUPPOSED TO BE THERE TO HELP ME! SHE KNEW MY STORY AND TOLD ME AGAIN TO FORGET, THAT I WOULD HAVE MORE BABIES IN THE FUTURE, THAT I WAS VERY YOUNG AND ALREADY HAD A 15 MONTHS OLD DAUGHTER... SHE ASKED FOR MY NAME, SURNAME AND DATE OF BIRTH, AND WHEN SHE WAS ABOUT TO LEAVE I ASKED HER WHETHER SHE NEEDED MY HUSBAND'S SIGNATURE. SHE SEEMED SURPRISED AND ASKED ME: BUT AREN'T YOU UNWEDDED?" I TOLD HER I WAS, BUT THAT I HAD A PARTNER WHO WAS THE FATHER OF MY CHILDREN. SHE THEN ASKED ME FOR MY PARTNER'S NAME, SURNAME AND DATE OF BIRTH (BUT SHE DIDN'T WRITE THAT INFORMATION DOWN) AND TOLD ME THAT HIS SIGNATURE WASN'T NEEDED AND THAT I SHOULDN'T TELL HIM EITHER. A NUN WHO KNEW MY STORY ALSO CAME TO SEE ME. SHE TOLD ME THAT SAME TALE THAT I SHOULD FORGET ABOUT WHAT HAPPENED...SHE ALSO TOLD ME THAT THAT WAS THE BEST THING THAT COULD HAVE HAPPENED TO THE BABY, THAT NOW HE WAS A LITTLE ANGEL WHO WAS IN THE SKY TAKING CARE OF ME. WHEN I LEFT THE HOSPITAL I WAS GIVEN A REPORT WHICH SAID THAT SHE HAD GIVEN BIRTH TO A STILLBORN BABY OF 31 WEEKS, WHO WAS WITH THE UMBILICAL CHORD SECTIONED WITH A KNOT AROUND IT AND WITHOUT SIGNS OF MACERATION (HE DIDN'T SMELL BAD, WHAT IS LOGICAL BECAUSE HE WAS BORN ALIVE). I ASKED THE PERSONNEL WHY DID IT SAY THAT HE WAS BORN DEAD WHEN HE WAS BORN ALIVE, AND THEY REPLIED THAT WHEN THE BABY DIES WITHING 24 HOURS OF LIFE IS SUPPOSED TO APPEAR IN THE DOCUMENTS AS "ABORTED OR STILLBORN BABY". I ASKED THEM FOR A DEATH AND BURIAL CERTIFICATE, AS WELL AS FOR THE PLACE WHERE HE HAD BEEN BURIED, AND THEY TOLD ME THAT FOR THESE CASES THERE WERE NO SUCH DOCUMENTS. I ALWAYS BELIEVED THAT MY SON HADN'T DIED, BUT MY LOVED ONES ALWAYS TOLD ME THAT THAT WAS ONLY MY FEELING BECAUSE I NEVER SAW HIM DEAD. I HAD A FIGHT WITHIN MYSELF, I WONDERED: HOW IS HE GOING TO BE ALIVE? THAT MEANS THAT THERE WOULD NEED TO BE SOMEONE OUT THERE TAKING CARE OF HIM AND BRINGING HIM UP" BUT HOW WAS I SUPPOSED TO KNOW ABOUT THE ORGANISED MARKET THEY HAD WITH THESE BABIES. WHEN I HEARD

OF THE STOLEN BABIES ARTICLE THAT MARÍA ANTONIA IGLESIAS PUBLISHED IN THE INTERVIÚ JOURNAL I THOUGHT: IT IS BASED ON WHAT HAPPENED IN THE CLÍNICA SAN RAMÓN, IF IT REFERRED TO THE CLÍNICO SAN CARLOS I'D SWEAR THAT WHAT THE ARTICLE DENOUNCES IS WHAT HAPPENED TO MY SON". BUT I COULD HAVE NEVER IMAGINED THAT THAT WAS HAPPENING ALL AROUND SPAIN. I NEVER GOT OVER IT, AND PROMISED MYSELF I WOULD NEVER HAVE CHILDREN AGAIN. MY DAUGHTER ALWAYS THOUGHT THAT THE BABY DIDN'T DIE TOO (MY PARTNER WHO DIED IN 2000 NEVER BELIEVED HE WAS ALIVE, HE THOUGHT IT WAS JUST MY IMAGINATION BECAUSE I HADN'T BEEN ABLE TO GET OVER IT). BETWEEN THE END OF 2010 AND THE BEGINNING OF 2011, I STARTED INVESTIGATING MY CASE AFTER I READ AN ARTICLE IN THE "20 MINUTOS JOURNAL" ABOUT A STOLEN BABY IN THE CLÍNICO SAN CARLOS WHO WAS BORN A MONTH AND A HALF BEFORE I GAVE BIRTH. I SPOKE TO THE MOTHER OF THE STOLEN BABY, AND WITH FLOR DÍAZ (WITH WAS IN THE ANADIR ASSOCIATION) AND WENT TO THE CLÍNICO SAN CARLOS TO ASK FOR SOME DOCUMENTS. IN THE HOSPITAL THEY TOLD ME THAT MY MEDICAL REPORTS ARE ALL KEPT ELECTRONICALLY IN THE COMPUTER, BUT AFTER FINDING OUT WHAT MY CONCERNS WERE ABOUT THEY TOLD ME THAT THEY DIDN'T HAD THE DOCUMENTS I WAS LOOKING FOR THERE AND THAT I HAD NEVER BEEN HOSPITALIZED IN THERE. THEY LATER GAVE ME THE REPORT OF MY PLACENTA BEING ANALYSED (WHICH SAID THAT EVERYTHING WAS CORRECT). IN THE FILE OF ADOPTION IT SAID THAT I ENTERED THE HOSPITAL ON 14TH MAY 1984 AT 11 IN THE NIGHT, AND THAT THERE AT THAT TIME I GAVE BIRTH TO MY BABY, WHO WAS STILLBORN BY "INTRAUTERINE ANOXIA" (MEANING THAT HE WAS BORN DEAD BECAUSE HE DIDN'T HAVE OXYGEN NEITHER IN HIS BLOOD NOR IN HIS VITAL ORGANS). A CHILD WHO WAS BORN ALIVE, CRYING AND WHO WAS TAKEN TO THE HOSPITAL WITH THE OXYGEN SUPPLIER, INCREDIBLE! IT SAID ALSO THAT AFTER EXAMINATION BY THE FORENSIC SURGEON, BECAUSE THE BODY PRESENTED SIGNS OF DECOMPOSITION, HE AUTHORIZED THE CIVIL SERVANTS FROM THE CEMENTARY OF THE ALMUDENA TO BURY THE BABY WITHIN 24 HOURS. THE BURIAL CERTIFICATE SAID THAT HE WAS BURIED IN THE FIFTH SITE OF THE PLACE HABILITATED BY THE END OF THAT DAY, THE 20TH MAY 1984. THAT MEANS 6 DAYS AFTER HE HAD SUPPOSEDLY DIED, WHEN HE HAD BEEN SUPPOSEDLY TAKEN OUT OF THE HOSPITAL SO URGENTLY THAT HIS BODY COULDN'T BE SHOWN TO US AND WITH SIGNS OF DECOMPOSITION AS THEY CLAIMED, NO ONE WOULD EVER BELIEVE THAT! THE BURIAL CERTIFICATE ALSO SAID THAT 11 YEARS AFTER THE BURIAL THE BODY WAS EXHUMATED AND

PLACED IN THE OSSUARY (I ALWAYS BELIEVED THAT IN THE PROVISIONAL GRAVES PEOPLE WERE BURIED FOR 10 YEARS AND THEN THE FAMILY IS CONTACTED IN CASE THEY WANT TO TAKE THE BODY). THE CEMENTARY SHOULD HAVE CONTACTED THE HOSPITAL AND THE HOSPITAL SHOULD HAVE CONTACTED THE FAMILY, BUT THEY DIDN'T DO THAT BECAUSE IT WAS AGAINST THE HOSPITAL'S INTEREST. THE DISTRICT ATTORNEY FILED MY COMPLAINT BECAUSE SHE SAID THAT EVERYTHING WAS ALRIGHT AND THOSE WERE JUST ADMINISTRATIVE MISTAKES AND THERE WAS A BURIAL CERTIFICATE, THEY BELIEVE WE ARE STUPID! I BELIEVE MY SON DOESN'T KNOW ANY OF THIS BECAUSE HE HASN'T STARTED LOOKING FOR ME. I HAVE DONE ALL MY DNA TESTS, AND HE COULD HAVE BEEN RECOGNIZED EITHER ON HIS BIRTHDAY OR TWO MONTHS AFTER SINCE HE WAS BORN AFTER THE 7TH MONTH OF GESTATION. I WILL KEEP LOOKING FOR HIM AND DOING EVERYTHING I CAN TO FIND HIM, AND WHILE I'M ALIVE I'LL NEVER LOSE HOPE. I HOPE TO FIND HIM SOME DAY, INTRODUCE HIM TO HIS SISTER WHO IS ALSO VERY EXCITED TO FIND HIM, AND CLOSE THIS PAINFUL CHAPTER OF MY LIFE: LOOKING FOR MY SON MIGUEL ANGEL (THAT WAS THE NAME I WAS GOING TO GIVE TO MY FIRST CHILD, WHO IN THE END WAS A FEMALE, HER SISTER).

SIGNED AND ID

CRISTINA MORACHO MARTÍN

ANNEX 3.- CASE OF LIGIA GRACIELA CEBALLOS FRANCO

It includes:

- Testimony of Ligia Graciela redacted by Amnesty International in Spanish
- Free translation

15 febrero 2017

México-Bebés robados en España

Perfil Ligia Graciela Ceballos Franco

Ligia Ceballos Franco (Lily) tenía casi 34 años cuando el mundo que había conocido hasta entonces se tambaleó. Sus padres, o las personas que consideraba eran sus padres hasta ese momento, le confesaron que ella no era su hija biológica. Le contaron cómo, en mayo de 1968 viajaron desde Yucatán a Madrid para "conseguirla", ya que ellos no podían tener hijos.

Le explicaron las condiciones bajo las que había sido llevada desde España hasta México. Primero, solicitaron orientación y ayuda al Arzobispo de Yucatán, quien se comunicó con el Arzobispo de Madrid, quien les recomendó viajar a España para poder adoptar una niña.

Siguiendo las recomendaciones del Arzobispo, viajaron a Madrid. Cuando llegaron, les dijeron "os tenemos preparado algo especial. Pero aún no ha nacido". Días después nació una niña: el 29 de mayo de 1968, en la misma fecha del nacimiento de Lily. Por orden de la Diputación Provincial de Madrid, esa misma niña les fue dada en prohijamiento, tras lo cual, la llevaron a México en julio de ese mismo año. Los padres adoptivos de Lily recuerdan cómo antes de salir de España les aconsejaron "quemad el pasaporte y los papeles de la niña al llegar a México".

Tras tener conocimiento por primera vez de la historia de su origen, muchas fueron las dudas e interrogantes que se sucedieron con el paso de los años. La necesidad de conocer la verdad llevó a Lily a desplazarse a España en el año 2005, donde pudo recabar algunos testimonios acerca de su nacimiento de acuerdo con los cuales habría nacido en España pero con otro nombre. Además, en el camino pudo conocer otras historias que guardaban muchas similitudes con la suya.

La búsqueda de Lily prosiguió, y no fue hasta el año 2010 cuando consiguió que las autoridades españolas le entregaran su partida de nacimiento española. En dicha partida figuraba el nombre que varios años antes escuchó por primera vez: María Diana Ortiz Ramírez.

Siguiendo la pista de María Diana, Lily pudo encontrar indicios que apuntaban insistentemente en una misma dirección: Lily y María Diana son la misma persona. Pero en sus dos partidas de nacimiento, la mexicana y la española, los padres biológicos no coinciden.

Según la información con la que cuenta Lily, el día 3 de junio de 1968 una niña ingresó en el *Instituto Provincial de Puericultura de Madrid*, también conocido como la "inclusa". En los datos de ingreso aparecían como padres de esta niña dos nombres sin apellido: Rafael y Marta, ambos mencionados como "supuestos". Y una sola descripción: "Camisa, jubón, pico, faja, toalla de felpa, jersey de lana blanca y mantita de color rosa".

Dos días después, esta niña fue bautizada e inscrita en el *Registro Civil del Distrito de Congreso* con el nombre de **María Diana Ortiz Ramírez**. En dicho Registro se hizo constar que María Diana nació el 29 de mayo de 1968. Poco más de un mes después, el 11 de julio de 1968, el presidente de la *Diputación Provincial de Madrid*, concedió el prohijamiento de la niña María Diana Ortiz Ramírez a los señores *Nazarío Ceballos Traconis* y su esposa *Ligia Graciela Franco Aguilar*. El 19 de julio de 1968, María Diana fue entregada en prohijamiento de manera oficial.

Por los derechos humanos en todo el mundo
Premio Nobel de la Paz 1977. Declarada de utilidad pública (Acuerdo Consejo Ministros 31 julio 1981)

Hoja 1 de 2

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15 February 2017

Mexico- Stolen babies in Spain

Ligia Graciela Ceballos Franco's profile

Ligia Ceballos Franco (Lily) was almost 34 years old when the world she had known until that momento started shaking. Her parents, or the people she had believed to be her parents until that moment, told her that she wasn't their biological daughter. They told her how, back in May 1968, they had travelled from Yucatán to Madrid to "get her", since they couldn't have children.

They explained to her the conditions under which she had been taken from Spain to Mexico. First, they had asked for help and orientation to the Archbishop in Yucatán, who contacted the Archbishop in Madrid. This last one advised them to come to Spain in order to adopt a baby girl.

Following the Archbishop's recommendations, they travelled to Madrid. When they arrived, they were told that "we have prepared something very special for you. But hasn't been born yet." Days after a baby girl was born: on 29th May 1968, same birth date as Lily. By order of the Diputación Provincial de Madrid, that baby girl was given to the married couple, and after that they took her to Mexico with them in July of the same year. Lily's adoptive parents remember how before departing from Madrid they were advised to "burn the passport and the papers of the baby girl once you arrive in Mexico."

After knowing the story of her own origins, Lily had many questions and doubts during the following years. The need to know the truth drove Lily to travel to Spain in 2005, where she gathered some testimonies about her own birth according to which she was born in Spain but under a different name. Moreover, during that process she came to know other people's stories with many similarities to her own.

Lily's search continued, and it wasn't until 2010 that she managed to get from the Spanish authorities her own Spanish birth certificate. In that certificate she read the name she had heard for the first time many years before: María Diana Ortiz Ramírez.

Following María Diana's trace, she could find other hints that pointed insistently to the same direction: Lily and María Diana are the same person. But on her two birth certificates, the Mexican and the Spanish one, the biological parents are different people.

According to the information Lily has gathered, on the 3rd of June 1968, a baby girl was taken to the *Instituto Provincial de Puericultura de Madrid*, also known as "the foundling home". In the data belonging to María Diana's entry in that place, as parents appear two names without surnames: Rafael and Marta, both mentioned as "supposed". And one single description: Shirt, doublet, peak, belt, plush towel and pink blanket".

Two days after, that baby girl was baptised and registered in the *Registro Civil del Distrito de Congreso* under the name of **María Diana Ortiz Ramírez**. In the same Registry it had been declared that María Diana was born on the 29th May 1968. Around a month and some days after that, on 11th July 1968, the President of the *Diputación Provincial de Madrid* offered that baby girl's custody to Mr. Nazario Ceballos Traconis and her wife, Ligia Graciela Franco Aguilar. On 19th July 1968, María Diana was officially adopted.

ANNEX 4.- CASE OF M^a DE LOS ÁNGELES MARTÍNEZ MADROÑO

It includes:

- Testimony of M^a de los Ángeles Martínez Madroño in Spanish
- Free translation

Me llamo María de los Ángeles.

Mi historia empezó cuando tenía 17 años, en 1975, yo vivía en mi casa de ~~XXXXXX~~ 26 bajo B. La casa era de mi madre ya fallecida desde 1971. Por allí entonces tenía 13 años, 4 hermanos mayores que yo. Estos según se casaron se independizaron, quedándonos yo y mi hermano Ramón, el cual se echó una novia la cual se quedó embarazada, Marisa ~~XXXXXX~~, viniendo a vivir ambos conmigo y a hacer de mi vida un infierno; hasta que me quedé embarazada de mi novio ~~XXXXXX~~, el cual quería que abortase y me ofreció dinero para pagarlo que me negué posteriormente me dejó.

Mi cuñada Marisa, al ver que para ellos era un estorbo me ingresó sin mi permiso en la protección de la mujer de Peñagrande.

Cuando me presente allí, me recibió Sor María para meterme en ese lugar mientras esta hablaba con Marisa y mi hermano Ramón. Estos luego de ser ingresada no iban a verme ni se preocupaban por mí, ni por mi hija.

El día 7 de enero de 1976, rompí aguas y me llevaron a la sala de parto, senté en el trono y vinieron Sor María y 2 chicas más. Sor me puso una sabana que no permitía ver, y al nacer la criatura, Sor María me dijo que "esta cosa está muerta", ahí me puse a llorar de dolor y de pena mientras esta envolvía a "la niña" en una sabana y la pesó, indicando que esta pesaba 1500 gramos.

Segundos después de haber parido, una de las chicas se llevó a la niña y la sustituyó un objeto para posteriormente ser envuelta con la sabana.

Yo me di cuenta de esto, porque mientras pesaba a "la niña". No vi una gota de sangre, cosa que al paso de los años me he ido dando cuenta.

Al día siguiente, Sor María me dijo que dejara de llorar, que era joven para tener más hijos y me indicó que me hicieron una autopsia y esta indicaba que la niña murió una semana antes de nacer de una parada cardiovascular.

Después de esto, le pregunté que donde estaba la criatura, y ella me dijo que fue enterrada en los jardines y yo, ciega, no me entere de la vil mentira. A los 3 días llamé a un hermano y vino a buscarme ya que Sor María me quería mandar a otro sitio.

Mi hermano le preguntó que pasó con la niña y María contestó de malas maneras que la niña no era nada, que era un simple feto de 6 meses.

Yo siempre di a mi hija por muerta hasta que empecé a investigar buscando en el Centro de la Almudena de Peñagrande hace pocos años. Esto de recordar todo el pasado me provocó una depresión tremenda. Ahora veo todo tan claro, a mi ginecólogo el Doctor ~~XXXXXX~~. Y hace poco, una compañera de ese centro me dijo que vio a mi hija y me dijo que era guapísima y linda.

Atentamente: María de los Ángeles Martínez Madroño



My name is M^a de los Ángeles.

My story started when I was 17 years old, back in 1975. At that time I lived at my home in XXXX XXXXX Street, 26, ground floor B. The house belonged to my mother, who had passed away in 1971. When she died, I was 13 years old and have had four older brothers. As they were getting married they also started to have their own independent lives; so in the end it was only me and my brother Ramón left. Ramón had a girlfriend, named Marisa XXXXXXXXX, who later got pregnant. Then both came to live with me, and my life became a hell. I became pregnant with the child of my boyfriend at the time, XXXXXXX XXXXXXX XXXX XXXXXXXXXX. He offered me money to pay for an abortion, but since I refused he abandoned me.

My sister in law, Marisa, considering that I was an obstacle for her and my brother, send me to one of the facilities belonging to the Patronato para la Protección de la Mujer in Peñagrande, without my consent. When I got there, Sor María was waiting, and she started speaking with Marisa and my brother Ramón about my internment. Neither of them came to visit me nor my unborn child during my internment.

On 7th January 1976, I broke waters and was taken to the delivery room. I sat on the throne and Sor María and two other women came to assist me during labour. Sor put a blanket over me that prevented me from seeing anything, and when my baby was born, Sor María told me: This thing is dead.” I started crying out of pain and sorrow while she wrapped the “baby girl” in a blanket and weighted it. The baby weighted 1500 grams according to her.

Now I suspect that one of the two women could have taken the baby away right after I delivered the baby and brought instead an object to be wrapped in the blanket and weighted. I’ve come to realise this with time, since while the “baby girl” was being wrapped and weighted, I didn’t see a drop of blood.

Next day Sor María told me to stop crying, that I was young and would have more children in the future. She also said that an autopsy was practised on the baby, and the results had been that the baby had died a week before I gave birth by a cardiovascular arrest.

After that, I asked her for the body; she told me the baby had been buried in the gardens and I, blind as I was, believed her. Three days after that I called one of my brothers, since the nun wanted to take me to another facility.

My brother asked for the baby and María answered in a very insensitive way that the baby was nothing, a simple 6 months old fetus.

I always thought my baby had died, until I started searching for documents in the Centro de la Almudena de Peñagrande some years ago. Having to revisit the past made me fall into a deep

depression. Now I see everything so clear, like my gynecologist Doctor XXXXXX. Recently, a fellow intern from that center told me that she saw my daughter, that she was beautiful and pretty.

Yours faithfully: María de los Ángeles Martínez Madroño