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Barefoot, pregnant and in the kitchen: Am I a child soldier too?



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SYNOPSIS

International law protects children from abuse, including sexual abuse, and from discrimination based on gender. It also prohibits the recruitment and use of child soldiers, but these provisions do not distinguish between boys and girls and their different experiences of armed conflict. International law also protects women from sexual violence or from discrimination based on gender, but does so without age distinction. This does not mean that girls' experiences of armed conflict are entirely precluded. For instance, the Cape Town Principles and Paris Principles single out girls as being specifically used for sexual purposes. However, no concrete international law provision attempts to protect girl child soldiers from sexual violence carried out by a member of the armed group they belong to.

Consequently, an explicit link is missing within these different provisions to ensure that the use of child soldiers is understood widely enough to include sexual abuse against girls.

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Introduction

International criminal law prohibits the recruitment and use of children under the age of 15 by military commander and political leaders (ICC Statute (2002), Article 8(2)(b)(xxvi) & Article 8(2)(e)(vii)). International criminal tribunals, such as the Special Court for Sierra Leone (SCSL) and the International Criminal Court (ICC), have focussed some of their case law on this war crime (AFRC cases, 2007; SCSL, 2004; SCSL, 2007a; SCSL, 2009 March 2; SCSL, 2012). This article focuses particularly on the ICC's Lubanga judgement which found Thomas Lubanga Dyilo guilty of committing, jointly with others, the crime of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities in the context of an internal armed conflict in violation of article 8 of the ICC Statute (ICC, Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-2901, decision on sentence pursuant to Article 76 of the Statute, & 10 July, 2012, Section 97). However, as argued by Drumbl (2012) international criminal law has too simplistic a view of child soldiers and does not incorporate the full spectrum of the child soldiering experience.

To acknowledge the experiences of child soldiers is far from straightforward. After all, the circumstances surrounding armed conflicts are exceptional due to the violent nature

of war in which economic, social, community and family units are fragmented or broken down. Families are uprooted and forced to flee which increases the chances of dispersion and makes children more vulnerable to recruitment. Children may be forcefully recruited or manipulated into enlistment. Armed forces or groups may benefit from the recruitment and use of children, because they are less likely to call into question adult commanders, eat less and can be paid less. Children may also wilfully choose to become combatants as a survival mechanism to access food or shelter. Once they have been recruited, the roles allocated to child soldiers range from taking an active part in hostilities as fighters, suicide bombers, spies or guards to providing support as human shields, cooks, cleaners or porters. Additionally, many girls are forced into domestic and sexual slavery or suffer other forms of sexual violence. Within this variety of realities, how can the term 'child soldier' be constructively defined to guide policy needs?

International law protects children from abuse, including sexual abuse and from discrimination based on gender. It also prohibits the recruitment and use of child soldiers, but these provisions do not distinguish between boys and girls and their different experiences of armed conflict (United Nations Convention of the Rights of the Child (adopted 20 November, 1989), Articles 34, 2 and 38 and United Nations optional

protocol to the convention on the rights of the child on the involvement of children in armed conflict (adopted 25 May, 2000)). International law also protects women from sexual violence or from discrimination based on gender, but does so without age distinction. This does not mean that girls' experiences of armed conflict are entirely precluded. For instance, the Cape Town Principles and Paris Principles single out girls as being specifically used for sexual purposes, but no concrete international law provision attempts to protect girl child soldiers from sexual violence carried out by a member of the armed group they belong to (UNICEF, 1997; UNICEF, 2007). Consequently, an explicit link is missing within these different provisions to ensure that the use of child soldiers is understood widely enough to include sexual abuse against girls. Thus the protection international criminal law currently affords girls is insufficient. The Lubanga judgement highlights that international law has only just begun to scratch the surface and is not yet able to adopt a comprehensive approach. The Court's narrow interpretation of what child soldiering entails is restrictive. The issue of child soldiering is addressed from a very one-sided and masculine point of view focussing on the use of child soldiers as those who actively participate in armed conflict, whilst overlooking some of the gendered support roles, such as sexual services, which are inherent to the recruitment and use of child soldiers. Despite well-documented harms related to sexual and domestic abuse suffered particularly, but not exclusively by girl child soldiers, the judgement failed to acknowledge the specific harms that girl child soldiers face. International criminal law criminalises rape, sexual slavery, forced pregnancy and other forms of sexual violence as war crimes and crimes against humanity that can serve as a basis for the prosecution of the harms of sexual violence suffered by girls (ICC Statute, 2002, Articles 8(2)(b)(xxii, 8(2)(e)(vi) & 7(1)(g)). However, I suggest that international criminal law should develop a similarly gendered understanding of the war crime to recruit and use child soldiers. One that takes into account the variety of roles performed by children and includes these experiences in the prohibition of the recruitment and use of child soldiers, in order to protect children from the threats posed by the opposing armed groups, but also from within their own armed group.

This article will examine the Lubanga judgement with respect to the gendered acts related to the recruitment and use of child soldiers and suggest that the ICC has fallen short for victims of gender-based crimes. Part 1 will discuss the concept of child soldiers as a multi-faceted issue. Part 2 will focus on the gendered aspects of child soldiers for girls and boys thus far unaddressed by international criminal law. I conclude that to recognise the experiences of girl child soldiers will be a step in the right direction towards achieving better gender parity.

Children and armed conflict – complex issues and gendered perceptions

The use of the expression 'child soldier' raises a number of issues, not least because it captures the essence of some narratives, in particular that of western humanitarian organisations of 'child soldiers' as inextricably linked to postcolonial wars in which child soldiers, are perceived as solely vulnerable and exploited (War child; Child soldiers; Invisible children). Such a narrative has influenced the manner in which international

criminal law understands and defines child soldiers to the detriment of the more specific gendered experiences, in particular of girl child soldiers.

Defining child soldiers

It is difficult to give a current and up-to-date figure of child soldiers engaged in armed conflict. UNICEF estimates that 300,000 soldiers under the age of 18 are fighting in conflicts around the world. Governmental armed groups and rebel forces have recruited children in conflicts occurring in parts of Latin America, Asia, Europe and the Middle East, in countries such as Afghanistan, Burma (Myanmar), Chad, Colombia, India, Iraq, Occupied Palestinian Territories, Philippines, Sri Lanka, Sudan and Thailand (Annual Report of the Secretary General (2012)).

Historical accounts of wars inform us that children have played a variety of roles to assist the war effort, but not necessarily in the manner in which children were used in armed conflicts of Sierra Leone and DRC. In the past, children did not necessarily actively participate in hostilities. In some cases, children were trained to prepare them as adult soldiers. In Africa, Shaka, the warrior king and founder of the Zulu nation introduced a military organisation that included six-year old boys as apprentice soldiers (Knight, 2006). In other cases, children were used in supporting roles. During the Crusades, children from the age of twelve were used as military aids at the service of the crusaders (Wise, 1978, p. 5). However, at times children did participate in hostilities. During the American Civil War, children were actively involved in the conflict (Gates & Reich, 2009, p. 93). Johnny Clem was ten-years old when he ran away from home to become a drummer boy in the second Michigan regiment. He became famous for exchanging his drum for a gun to shoot a confederate colonel during the battle of Shiloh (Arlington National Cemetery Website). Particularly towards the end of the Second World War, Japan, Russia and Nazi Germany used child soldiers in their fight against each other when their manpower was dwindling. For instance, as the war went on, boys drafted into the Hitler Youth Brigades participated actively in combat (Fass, 2013, p. 151). History therefore suggests that children, more specifically boys, take part in war. They have fulfilled multiple roles in aid of the war effort, a fact which was accepted in most societies until relatively recently. It is therefore not the case that children's participation only occurs in the more recent conflicts (Rosen, 2005, pp. 9–11). However, a distinguishing factor is that children's participation in modern conflict is extremely violent and destructive and that children are used to fragment communities and carry out atrocities, as illustrated by the examples of Sierra Leone and DRC.

From the beginning of Sierra Leone's civil war in 1991 children were forced to contribute to the war effort by both sides to the conflict: the rebel force Revolutionary United Front (RUF) and the pro-government militia, Kamajors. The SCSL has charged all nine of its original defendants with the war crime of recruiting and using child soldiers and so far five accused have been convicted of this crime (AFRC cases, 2007; ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-2901, decision on sentence pursuant to Article 76 of the Statute, & 10 July, 2012; SCSL, 2007a; SCSL, 2009 March 2). The Court found, in particular, that the former Liberian president Charles Taylor, who

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