

Just Planet input to the report of the Special Rapporteur on violence against women and girls to the Human Rights Council on prostitution and violence against women and girls.

## COERCION AND VIOLENCE AS A FACTOR IN THE SEXUAL EXPLOITATION OF GIRLS RECRUITED AND USED AS CHILD SOLDIERS

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## COERCION AND VIOLENCE AS A FACTOR IN THE SEXUAL EXPLOITATION OF GIRLS RECRUITED AND USED AS CHILD SOLDIERS

The recruitment and use of children in armed conflict is a continuing and concerning aspect of the occurrence of armed conflicts and hostilities in the world,<sup>1</sup> and girls are disproportionately affected by conflict related sexual violence.<sup>2</sup> One aspect of this is the sexual exploitation of girls in the course of their association with, and use by, armed groups and forces.<sup>3</sup>

In the context of the call for input to the report of the Special Rapporteur on violence against women and girls relating to sexual exploitation and connected violence against them, this input seeks to highlight an historic and continuing problem associated with the practice of recruitment and use of children in armed conflict and hostilities. It is hoped that by highlighting this issue at an international level, then the prospects of providing protection of, and succour for, the victims of such exploitation may ultimately become realisable.

Two particular international instruments, the 'Cape Town Principles and Best Practices' on the prevention of recruitment of children into armed forces and groups (Cape Town Principles),<sup>4</sup> and the 'Principles and guidelines on children associated with armed Forces or groups' (Paris Principles) of 2007,<sup>5</sup> provide encompassing definitions of the roles that children who are recruited and used by armed forces or groups are prevailed upon to take within them. Such children are referred to within the Cape Town Principles by the short description of 'child soldiers'.<sup>6</sup> Girls are included within those encompassing definitions in both instruments as being 'used ... for sexual purposes',<sup>7</sup> and 'recruited for sexual purposes and for forced marriage'.<sup>8</sup> It is understood therefore, within the international community, that this is a real and recurring problem; for as the recruitment, use, injury and death, escape, attainment of majority, and demobilisation of child soldiers occurs, more child soldiers are recruited in the same, and in different places, and further children are brought through the 'revolving doors' of the armed groups and forces that recruit them.<sup>9</sup> So whilst the recruitment of child soldiers goes on, so the recruitment of girls who will be sexually exploited goes on.

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<sup>1</sup> Report of the Secretary-General on Children and Armed Conflict, 5 June 2023 A/77/895-S/2023/363 (SG CAC Report), paragraph 4.

<sup>2</sup> SG CAC Report paragraph 11.

<sup>3</sup> Mazurana, McKay, Carlson, and Kasper, Girls in fighting forces and groups: their recruitment, participation, demobilization, and reintegration, *Journal of Peace and Psychology*, 8(2) 97-123 2002 (Mazurana, McKay, Carlson and Kasper), pp 465 to 466; Mazurana and McKay, Child Soldiers what about the girls, *Bulletin of the Atomic Scientists*, 57:5 30-35 2001 (Mazurana and McKay); Denov, Girl soldiers and human rights: lessons from Angola, Mozambique, Sierra Leone and Northern Uganda, *The International Journal of Human Rights*, Vol 12 No 5 813-836 2008 (Denov), p 814; Mouthaan, Barefoot, pregnant and in the kitchen: am I a child soldier too? *Women's Studies International Law Forum* 51(2015) 91-100 (Mouthaan), p 92.

<sup>4</sup> Cape Town Principles and Best Practices adopted at the symposium on the prevention of recruitment of children into the armed forces and on demobilization and social reintegration of child soldiers in Africa, 27-30 April 1997.

<sup>5</sup> Principles and guidelines on children associated with armed forces or armed groups – The Paris Principles – February 2007.

<sup>6</sup> Cape Town Principles.

<sup>7</sup> Paris Principles.

<sup>8</sup> Cape Town Principles.

<sup>9</sup> Wessells, *Child soldiers from violence to protection*, First Harvard University Press, 2009 (Wessells), p 9.

Girls are recruited by armed forces and armed groups, as boys are, through a mixture of forced recruitment, through voluntary enlistment driven by necessity, whilst some are born into armed groups.<sup>10</sup> Forced recruitment occurs through, inter alia, abduction, gang pressing, pressure on parents and society leaders to give children up, and through forms of conscription.<sup>11</sup> So called voluntary recruitment may occur for sometimes complex reasons, namely domestic exploitation and abuse, including sexual abuse at home, to protect themselves when parents or guardians have been killed, or to protect others in the family in conditions of absence of means of survival.<sup>12</sup> There is no clarity as to how young girls may be when at risk of recruitment into armed groups or forces, but examples of girls as young as nine or ten years being forcibly recruited, appear in reported accounts.<sup>13</sup> Both the Cape Town Principles and the Paris Principles categorise the upper age of such recruited children as eighteen.<sup>14</sup> It is clear from current reporting by the United Nations that the number of non-State armed groups that recruit and use child soldiers far outnumber States' armed forces that do so,<sup>15</sup> thus the issue of the recruitment and use of girls is both one that is embedded within the system of armed groups that operate, mostly, in civil wars in the world, and is complicated by the difficulties of enforcing international law in respect of their actions and processes. Although the proportion of girls recruited by armed groups, as opposed to boys, cannot accurately be gauged and will inevitably differ amongst separate groups, in studies of significant non-State armed groups that operated in past major internal armed conflicts, proportions of between 30% and 40% of the children recruited and used by such groups were girls.<sup>16</sup> Though the number of girls being used by non-State armed groups within the world is impossible to know, it is clear that their incidence is very high, and thus a clear and present problem.

Recruited girls are the subject of sexual exploitation and violence. Reports show that, though sexual exploitation as a fundamental part of the daily life within an armed group is not universal amongst armed groups, it is in fact widespread and significant.<sup>17</sup> Typically, girls are forced to have penetrative sex with other recruits and commanders, and such rapes occur with regularity; the problem is compounded by examples of such acts being repeated by different perpetrators closely in time.<sup>18</sup> In addition girls are reported to have been made to become 'wives' of important fighters or commanders within groups, or have been given to fighters as rewards for successes in operations.<sup>19</sup> Such treatment of girls was the subject of convictions before the International Criminal Court (ICC) of Dominic Ongwen in February 2021.<sup>20</sup> The

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<sup>10</sup> Mazurana, McKay, Carlson and Kasper pp 105 to 109; Brett and McCallin, *Children the invisible soldiers*, Radda Barnen 1998 (Brett and McCallin) pp 49 to 68; Wessells pp 37 to 42 and 88 to 93.

<sup>11</sup> Mazurana, McKay, Carlson and Kasper pp 105 to 109; Brett and McCallin pp 49 to 68; Wessells pp 88 to 93.

<sup>12</sup> Brett and Specht, *Young soldiers why they choose to fight*, International Labour Organisation 2004 (Brett and Specht), pp 88 to 95; Brett and McCallin pp 57 to 68.

<sup>13</sup> Mazurana and McKay p 33; Denov p 817.

<sup>14</sup> Cape Town Principles; Paris Principles.

<sup>15</sup> SG CAC Report pp 43/48.

<sup>16</sup> Mazurana, McKay, Carlson and Kasper p 105.

<sup>17</sup> Mazurana, McKay, Carlson and Kasper p 111; Wessells p 94; Denov pp 819 to 820.

<sup>18</sup> Wessells p 94; Denov pp 819 to 820.

<sup>19</sup> Wessells pp 94 to 96; Mazurana, McKay, Carlson and Kasper pp 100 and 113; Denov pp 819 and 820.

<sup>20</sup> For consideration of related development of ICL: Maloney, *Ending impunity for forced marriage in conflict zones: the need for greater judicial emphasis on the human rights of girls*, JICJ Vol 19-2 May 2021 pp 327 to 358; Maloney, O'Brien, Oosterveld, *Forced marriage as the crime against humanity of 'other inhumane acts' in the international criminal court's Ongwen case*, ICLR 23(5-6) 705 to 730; Maloney, O'Brien, Oosterveld, *Symposium*

negative effects upon the girl victims are many, and cause much suffering. Among these effects are the physical wounds caused through forced penetrative sex upon children, the resultant pain and infection resulting therefrom, the contraction of sexually transmitted diseases, including HIV/AIDs with its particular implications, and the psychological effects of rape.<sup>21</sup> In addition, pregnancies resultant upon such rapes lead variously, to birthing complications consequent on the conditions and lack of healthcare and medical expertise available within armed groups, to impossible choices given to girls to abort or give away their babies, and to excess morbidity amongst the babies that are born.<sup>22</sup> In the aftermath of conflict, former girl recruits continue to suffer the physical and psychological scars of their exploitation, and also marginalisation by their former communities.<sup>23</sup>

Violations of international law (IL) implicit in the sexual exploitation and invasion of girls are reflected, inter alia, in a variety of offences within the statute of the ICC and in the policies of its OTP,<sup>24</sup> in breaches of international human rights law (IHRL), in particular under the Convention on the Elimination of Discrimination against Women (CEDAW),<sup>25</sup> and in breaches of international humanitarian law (IHL).<sup>26</sup> IL also regulates and limits the practice of recruitment and use of children in armed conflicts and hostilities, through a number of international instruments within IHL, IHRL and international criminal law (ICL).<sup>27</sup> These provisions unfortunately do not correspond completely, and thus do not provide sufficient protections for all child soldiers, whether they be girls or boys. The most comprehensive of the international law provisions that seek to protect children is article 4 of the Optional Protocol to the Convention on the Rights of the Child 2002 (OPCRC), which prohibits the recruitment and use of children (persons under the age of eighteen) by armed groups for use in hostilities. IHL and ICL provisions only cover situations of armed conflict and not situations of lesser hostilities; within that context the provisions exclude child soldiers over the age of fourteen, and are more comprehensive in respect of internal rather than international armed conflicts. In IHRL, the material provisions of the respective international instruments are collectively more comprehensive in regulating armed groups than States' armed forces, and also regulate situations of armed conflict only.

There is in addition the problem of enforcement of IL. The UN Secretary-General recently indicated that '[b]latant and systematic disregard for [IHL] and [IHRL] continues to severely affect the protection of children';<sup>28</sup> and even though significant convictions for offences

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in pursuit of intersectional justice at the international criminal court: group two – the 'other inhumane act' of forced marriage in prosecutor v Ongwen, OJ 3 May 2022.

<sup>21</sup> Mazurana, McKay, Carlson and Kasper pp 112 to 114; Denov p 820.

<sup>22</sup> Mazurana, McKay, Carlson and Kasper pp 114 to 115.

<sup>23</sup> Denov pp 823 to 824.

<sup>24</sup> ICCSt articles 7.1(g) and (k), 8.2(b)(xxii) and 8.2(e)(vi).

<sup>25</sup> See i/p CEDAW general recommendations 19 and 35 (GE 35 paras 1, 4 – 6, 9, 16, 21 – 24, 27 - 33).

<sup>26</sup> See i/p AP I articles 76 and 77.1, GC CA3, and AP II articles 4.2(e) and 4.3; and OTP Policies: on Children 2023 i/p paragraph 24; on the Crime of Gender Persecution 2022 i/p part IV.

<sup>27</sup> AP I 1977 article 77.2, AP II 1977 article 4.3(c), CRC 1989 article 38.2 and 38.3, ILO C182 Worst Forms of Child Labour Convention 1999 articles 1 to 3(a), African Charter on the Rights and Welfare of the Child 1999 article 22.2, Optional Protocol to CRC 2002 articles 1 to 4, ICCSt articles 8.2(b)(xxvi) and 8.2(e)(vii).

<sup>28</sup> SG CAC Report paragraph 12.

involving child soldiers have been achieved in international courts and tribunals, the numbers of prosecutions brought have been relatively small.<sup>29</sup>

The exploitation of girls in this context requires recognition, prevention, protection, prosecution, and reparation; we look to IL and States for all of those.

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<sup>29</sup> Notably: Prosecutor v Alex Tamba Brima, Special Court for Sierra Leone, 20 June 2007; Prosecutor v Issa Hasan Sessay and Morris Kallon, Special Court for Sierra Leone, 2 March 2009; Prosecutor v Thomas Lubanga Dyilo, International Criminal Court Trial Chamber, 14 March 2012; Prosecutor v Charles Ghankay Taylor, Special Court for Sierra Leone, 18 May 2012; Prosecutor v Bosco Ntaganda, International Criminal Court Trial Chamber 8 July 2019; Prosecutor v Dominic Ongwen, International Criminal Court Trial Chamber 4 February 2021.