

Girl children soldiers: potential need for an increased protection under the international law of human rights and the international humanitarian law

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I. INTRODUCTION

The aim of this article is to present, first of all, the international legal framework that regulates a rather generic protection of the girl children soldiers, the legal and practical issues raised by this matter and, consequently, analyze whether an increased protection under the international law of human rights and international humanitarian law is needed².

As underlined by Mary-Jane Fox³, the topic of child soldiers has received wide exposure in the recent years, though until recently this appeared to rest on the assumption that all child soldiers were boys. Until 1998, the UN Security Council had not even discussed the issue of child soldiers. In April 2000, the UN Commission on Human Rights (Res. 2000/59) approved the two draft optional protocols to the Convention on the Rights of the Child dealing with the involvement of children in armed conflict. The girl soldiers who existed among their ranks were even less acknowledged or noticed, despite the fact that they are currently estimated to comprise approximately between one-tenth and one-third of all child soldiers and have been found to exist in almost all non-state political armed groups. Moreover, according to Noelle Quénivet⁴, current research on children in armed conflicts concentrates on child soldiers and, more particularly, boys engaged in combat duties, thereby associating child soldiers with a boy holding a gun. When girls are mentioned in the context of armed conflict, it is in connection with sexual abuse and gender-based violence. Yet, this picture fails to take into consideration the reality, inasmuch girls are also involved in many

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² According to Quaker United Nations Office, the estimates indicate that up to a third of the child soldiers are girls, www.quino.org.

³ Mary-Jane Fox, *Girl Soldiers: Human Security and Gendered Insecurity*, Security Dialog, Vol.35(4): 465-479, 2004.

⁴ Noëlle Quénivet, *Girl Soldiers and Participation in Hostilities*, The African Journal of International and Comparative Law, 2008.

activities relating to fighting. In addition to performing many of the duties that boy soldiers do, girls perform other duties. Specifically during the war in Sierra Leone (but reportedly also in Burundi, Uganda, Liberia, Democratic Republic of Congo and Angola), girl soldiers not only fought, but mined for diamonds and fulfilled other duties for armed groups, such as spying, cooking, cleaning and performing sexual services.

Nevertheless, the study of girl soldiers still falls within the larger issue of child soldiers, primarily because both boy and girl soldiers legally belong to the special category of minors or children, and as such are entitled to specific rights and protection. However, it is clear there is an additional and disturbing gendered component to the girls' experience and this has increasingly demanded more attention.

The use of girl children soldiers is an issue unsolved yet by the international law – neither from its human rights perspective, nor the humanitarian law perspective. Existing international laws addressing child soldiers had failed to address the complexities of the girl soldier experience; new laws created in response to the campaign against child soldiers further exacerbated this gender imbalance. Nonetheless, facing the existing situations in many countries in Africa, in some Latin American countries or in East Asia, we witness the creation of an emerging legislation in this respect with many international organizations, non-governmental organization, as well as internationally reputed scholars raising vocally the importance of a much better defined and conceptualized legal framework with respect to the use of girl children soldiers by armed forces and groups.

The issue, nevertheless, requires introspection from both angles and needs both an *a priori* approach (for prevention purposes), as well as an *a posteriori* approach (for correction and/or sanctions purposes; or, at least, from a perspective related to the social reintegration of the victims' need).

The international legal provisions in this respect are better defined with respect to the protection of women and the protection of children. One may say that girl soldiers fall somewhere at the edge between the two. It should be pointed out that the issue of girl soldiers is first and foremost a child-protection issue, and perhaps should only be linked to theories on women in conflict in limited ways. It is equally true that, while according to the law the primary girl soldiers' identity is that of a child, rather than a women, though according to

their experience, they are targeted for specific maltreatment because they are female who are vulnerable and unprotected victim.

The level of vulnerability of this category of individuals – girl children – requires a more special attention within the broader concept of child soldier. Why a special attention for girls?

Apart from the already regulated aspects of the (1) direct involvement in hostilities of children and (2) the voluntary and involuntary recruitment of the children in armed forces which are going to be subject of a further analysis, additional features of vulnerabilities should be taken into consideration when analyzing the implications of girl children soldiers in armed conflicts:

- girls are physically more vulnerable than boys;
- girls are more easily and often subject to sexual abuses; they are frequently used for sexual purposes;
- implicitly they are much often exposed to serious health and mental diseases;
- girls give birth to children that are furthermore, at their turn, rejected by the community and society;
- girls themselves are likely to be stigmatized and rejected by their community if it is known that they have been used by and armed force or an armed group.

As underlined by the “Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups” (adopted in February 2007)⁵, in general, the situation of girls can be very different in relation to: (i) the reasons and manner in which they join the armed forces or armed groups, (ii) the potential for their release, (iii) the effects that the experience of being in the armed force or armed group has on their physical, social and emotional well being; and (iv) the consequences this may have for their ability to successfully adapt to civilian life or reintegrate into family and community life after their release.

⁵ The Paris Principles, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007.

II. APPLICATIONS OF THE CURRENT LEGAL STANDARDS TO GIRL SOLDIERS

The use of girl soldiers and its other derivative consequences are currently condemned by international humanitarian law rather than international human rights law. The international covenants do not address in a specific manner the question of whether girl children soldiers should receive a special human rights protection before or in parallel with a humanitarian law protection.

The following is a summary of the **general legal framework** that provides potential international legal instruments (conventional provisions, statutes of international tribunals, soft-law provisions) aiming to prevent and punish the unlawful involvement of girl soldiers in armed conflict situations (or with relevance for this subject matter).

1. The UN Convention on the Rights of the Child

The Convention⁶ is progressive in many respects, by going to great lengths to protect both boys and girls from human rights abuses. Girls who are sexually abused during armed conflict situations tend to fall through the enumerated protections laid out in the Convention. Several articles of the Convention address specific human rights abuses that girls face all over the world. Moreover, as Cynthia Price Cohen has pointed out⁷, the Convention breaks the “linguistic tradition” of using the masculine singular possessive pronoun. Throughout the Convention, the term “child” is used whenever is possible; in situations in which it is necessary to use a singular possessive pronoun both “his” and “hers” appear.

Hence, the relevant provisions of the Convention from our perspective are:

- It mentions in Article 2 paragraph 2 that: “States parties shall take all appropriate measures to ensure that **the child is protected against all forms of discrimination** (including the discrimination based on gender) or punishment”;

⁶ Convention on the Rights of the Child, U.N.G.A Res. 44/25, 44 UN GAOR, Supp. (no.49), UN Doc. A/44/49, November 20, 1989, 1577 UNTS 3 (entered into force on September 2, 1990).

⁷ Cynthia Price Cohen, *The United Nations Convention on the Rights of the Child: a Feminist Landmark*, 3 WM. & Mary J. Women & L. 29, 41 (1997).

- Article 3 paragraph 1 proclaims the **best interest of the child** in all actions concerning children;
- Article 8 regulates the “**right of the child to preserve his or her identity**, including nationality, name and family relations” (we will see further the consequences of the implications of children in hostilities with respect to the risk of losing identity);
- Article 24 speaks about the right of the child to the enjoyment of the highest attainable **standard of health** and to facilities for the treatment of illness and rehabilitation of health;
- Article 32 offers children protection from **economic exploitation**;
- Article 33 aims at protecting the children from the illicit **use of narcotic drugs** and psychotropic substances;
- Article 34 regulates the obligation of the States parties to **protect the child from all forms of sexual exploitation and sexual abuse**;
- Article 36 requires the protection of the child against all forms of exploitation prejudicial to any aspects of the child’s welfare;
- Article 38 which deals specifically with the **children involved in hostilities** and the application of the relevant rules of international humanitarian law⁸;
- Article 39 requires the promotion of physical and psychological **recovery and social reintegration** of a child victim to armed conflicts.

An interesting remark concerns the corroboration of Article 3 which proclaims the best interest of the child with Article 38 that obliges Parties to respect and ensure respect of international humanitarian law applicable to them in armed conflicts which are relevant to the child. The *travaux préparatoires* of the Convention revealed that one of the issues of controversy and, perhaps, the hotly debated questions, during the drafting process, was the age at which children should be permitted to take part in armed conflict⁹. Moreover,

⁸ Article 38 (2) mentions that “States Parties shall take feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.”

⁹ H. Steiner, Ph. Alston, *International Human Rights in context – text and materials*, 2nd ed, Oxford University Press, 2000.

Germany's declaration at ratification of the Convention mentions that: "The Government regrets the fact that, under Article 38 (2) of the Convention, even fifteen-years-old may take part in hostilities as soldiers, because this age limit is incompatible with the consideration of a child's best interest as of Article 3 (1) of the present Convention."

2. **The Optional Protocol to the Convention on the Rights of the Child on the Involvement of the Children in Armed Conflict**¹⁰ does not specifically address the plight of female child soldiers, but focuses instead on raising the minimum age of lawful participation in armed combat.

3. **The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography**¹¹ offers significant protection for girl children from sexual abuse, but fails to tie the sexual abuse of girls to their roles in armed combat.

4. **The African Charter on the Rights and Welfare of the Child**

The African Charter¹² does offer significant protection for child soldiers; also, it does prohibit sexual exploitation (Article 27). However, unlike the Convention on the Rights of the Child, the traditional masculine singular pronoun is used interchangeably with "his/her" through the text.

5. **The Geneva Conventions and the two Additional Protocols to the 1949 Geneva Conventions**

The Geneva Conventions¹³ offer specific protection for civilians, including children, in both international and non-international conflicts.

¹⁰ The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, U.N. GAOR, U.N. Doc. A/54/RES/263 (entered into force on February 12, 2002).

¹¹ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, G.A. Res. 263, U.N. GAOR, 54th session, Annex II, U.N. Doc. A/RES/54/263 (entered into force on January 18, 2002).

¹² African Charter on the Rights and Welfare of the Child, 1990, OAU Doc. CAB/LEG/24.9/49 (entered into force on November 29, 1999).

¹³ Geneva Conventions: Convention (I) for the amelioration of the conditions of the wounded and the sick in armed forces in the field, Geneva, 12 August 1949; Convention (II) for the amelioration of the conditions of wounded, sick and shipwrecked members of armed forces at sea, Geneva, 12 August 1949; Convention (III) relative to the treatment of prisoners of war, Geneva, 12 August 1949 and Convention (IV) relative to the protection of civilian persons in time of war, Geneva, 12 August 1949, 75 U.N.T.S. 31.

Additional Protocol I¹⁴ prohibits the recruitment of children (under 15) for participation in direct hostilities in international conflicts (Article 77).

Protocol II¹⁵ prohibits children (under 15) in non-international conflicts from being recruited or allowed to participate, directly or indirectly, in hostilities, including voluntary enlistment (Article 4).

6. The International Labor Organization Convention no.182 on the Prohibition and Immediate Action for the elimination of the Worst Forms of Child Labor¹⁶ defines forced and compulsory recruitment of children in armed conflict as one of the worst forms of child labor.

7. The Convention on the Elimination of all forms of Discrimination against Women¹⁷ protects women's rights and consequently can protect girls in a derivative fashion. The Convention provides, for example, the right of women to enter into marriage with their free and full consent. The Convention also prohibits child marriage.

8. The UN Security Council Resolution 1325 on Women, Peace and Security

The Security Council Resolution¹⁸ is the first resolution ever passed by the Security Council that specifically addresses the impact of war on women and girls, and their contributions to conflict resolution and sustainable peace. Also, another important feature brought by the Resolution is the provision that stresses the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts. In its follow up Reports from 2002¹⁹ and 2004²⁰, on the full implementation of the UNSC Resolution 1325 (2000), the UN Secretary General observes the fact that the protections available under international human rights law apply to women

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, UN Doc.a/32/144 Annex I, 1125 UNTS no.17512 (entered into force on 7 December 1978).

¹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, UN Doc.a/32/144 Annex II, 1125 UNTS no.17512 (entered into force on 7 December 1978).

¹⁶ International Labor Organization Convention no.182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 1999.

¹⁷ Convention on the Elimination of All Forms of Discrimination against Women, December 18 1979, 1249 U.N.T.S. 13 (entered into force on September 3, 1981).

¹⁸ UNSC S/RES/1325 (2000) on Women, Peace and Security.

¹⁹ United Nations, Report of the Secretary General on women, peace and security, S/2002/1154.

²⁰ United Nations, Women and Peace and Security, Report of the Secretary-General, S/2004/814.

and girls on the basis of non-discrimination and also recognizes the contribution brought by other international covenants (the Geneva Convention in the field of humanitarian law; the statutes of international criminal tribunals etc). It nevertheless reveals the fact that other forms of violation affecting women and girls need to be adequately acknowledged in the legal regime. It also points out that the reality on the ground is that humanitarian and human rights law are blatantly disregarded by parties to conflicts and women and girls continue to be subject to sexual and gender-based violence and other human rights violations.

While neither of the above conventional provisions offer specific regulations over the involvement and participation of girl soldiers in the hostilities, the jurisprudence of the relevant international criminal tribunals and their statutes create a more defined and specific indication of a need for additional protection of the girl soldiers.

9. The Rome Statute of the International Criminal Court

The Statute²¹ states, in its Article 8 (2) (e) (vi), that rape, sexual slavery and other forms of sexual violence perpetrated in non-international wars can be considered war crimes and prosecuted in the ICC. In tying sexual violence to the experience of war, the Rome statute furthers the understanding of the experiences of girl soldiers in the international legal area.

10. The Statutes of the International Tribunal for the Former Yugoslavia (ITFY), the International Criminal Tribunal for Rwanda (ICTR) and the Sierra Leone Special Court (SLSC)

Indirectly, by means of interpretation, the statutes of the above mentioned international tribunals offer instruments of punishment in case of unlawful involvement of girl children in armed conflicts.

All of the above documents prohibit the crimes against humanity (Article 5 of the Statute of the Tribunal for former Yugoslavia, Article 4 of the Tribunal for Rwanda and Article 3 of the Sierra Leone Special Court).

²¹ The Rome Statute of the International Criminal Court, July 1998, U.N. Doc. A/CONF (entered into force on July 1, 2002).

The **Statute of the Rwanda Tribunal** brings an important novel feature of the indictments for crimes against humanity through **letter (e) of Article 4** which stipulates among the crimes against humanity “the violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, violations that shall include “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”.

This represents a strong attention to sexual crimes, particularly systematic sexual violence against women. Mass rape and other organized forms of sexual violence and humiliation have been frequent and often used as instruments of fear, shame and ethnic cleansing.²²

A similar provision is also found in the Sierra Leone Special Court Statute. In addition, Articles 4 and 5 of the Statute of the Sierra Leone Court introduce important regulations over the subject matter.

Hence, Article 4 lists as “serious violation of international humanitarian law”:

- “- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

- Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.”

Article 5 – “Crimes under Sierra Leonean law” enlarges the jurisdiction *in rem* of the Court, stipulating that the Special Court shall have the power to prosecute persons who have committed under Sierra Leonean law:

“[...] a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):

- i. Abusing a girl under 13 years of age, contrary to section 6;
- ii. Abusing a girl between 13 and 14 years of age, contrary to section 7;
- iii. Abduction of a girl for immoral purposes, contrary to section 12.”

²² *Prosecutor v. Akayesu*, Trial Chamber, International Criminal Tribunal for Rwanda, 1998, Case no. ICTR-96-4-T.

12. Other **soft law instruments**, such as the “**Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups**” or its predecessor “**Cape Town Principles and Best Practices on the Prevention and Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa**” outline the importance of a special treatment for girl soldiers. At section 4, the Paris Principles state that “it is important that the differences between girls’ and boys’ experiences are understood and taken into account by all actors and that programming for children who are or who have been associated with armed forces or armed groups explicitly reflects the particular situation of both girls and boys.”²³

III. GIRLS’ INVOLVEMENT IN ARMED CONFLICT SITUATIONS FROM RECRUITMENT TO POST CONFLICT SOCIAL REINTEGRATION STAGES - SPECIFICS ENCOUNTERED

▪ Recruitment or use of girls in armed forces or groups

The use of girls as “wives” for combatants or other forced sexual relations, actual forced marriage and the use of girls for domestic labor or logistical support in armed conflict constitute acts of recruitment or use and can be thus contrary to fundamental human rights and humanitarian law and standards if not also contrary to the national law.

One important dimension from this perspective is the **voluntary recruitment** issue with respect to girl soldiers. What are the reasons behind girls volunteering in armed forces or groups? Many of them for the same reasons as for boys’ joining also lead or drive girls to join armed forces or armed groups without being abducted or physically forced.

However, there are also some particular factors or ones that are stronger or more prevalent amongst girls. These include:

- domestic exploitation or abuse;
- their own protection: given the high level of physical and sexual abuse of girls in some current armed conflicts, the decision to take up arms rather than waiting to be raped or killed is a rationale decision for teenage girls;

²³ The Paris Principles, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, para 4.1, February 2007.

- finally, some girls join because they specifically want to prove their equality with boys.²⁴

- **Direct and active participation in hostilities**

Clearly the participation of children in hostilities is outlawed by international humanitarian law, human rights law and international criminal law. I will not tackle this issue, but I will rather focus on the application of this rule to girl soldiers.

The main general understanding is that a **direct participation** describes “acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces” (Commentary to the Additional Protocol of the Convention on the Rights of the Child). During the negotiation process of the ICC Statute it was argued that the expression “participate actively” covers not only direct participation in combat activities but also military-related activities such as scouting, spying, sabotage, working as couriers, bringing military supplies to the frontline, acts that are mainly provided by girls during hostilities. As a result of the definition of “participation” that covers many activities and is therefore not limited to taking a direct part in combat or deployment to the frontlines, the activities of such girls fall within the remit of the proscription and those using them can be prosecuted for doing so.²⁵

- **Indirect participation in hostilities**

Both direct and indirect participation of the children in the hostilities are forbidden by the international law, although for the indirect participation in hostilities one may affirm that there is a lack of clear prohibition.

Most activities in which girls are involved are related to domestic labor, such as cooking, fetching water and wood, cleaning and caring for the sick and wounded.²⁶ Although these activities are vital for group survival in terms of logistics and important for the continuation of fighting as it sustains the armed group, they are unlikely to fall within the scope of the definition of indirect participation. It is also contended that providing sexual services is inevitably part of a girl’s “duty” within the armed group. Moreover, their lives are

²⁴ Rachel Brett, *Girl Soldiers: Challenging the Assumptions*, Quaker United Nations Office, 2002.

²⁵ Noëlle Quénaviet, *Girl Soldiers and Participation in Hostilities*, African Journal of International and Comparative Law, 2008.

²⁶ Report of the Preparatory Committee on the Establishment of an International Criminal Court, Draft Statute and Draft Final Act, UN Doc. A/Conf.183/2/Add, 14 April 1998.

exposed to different forms of violence including gender-based violence (gang rapes, sexual torture etc). Such activities cannot be viewed as participation in the hostilities.

As Webster explains “the problem of child soldiers plagues boys and girls, but it disproportionately harms girls, who often stomach the additional indignity of sexual slavery and forced marriage to the leaders of armed forces.”²⁷

It is often argued that the language used both in international humanitarian law as well as in human rights law perpetuates an understanding of the child soldier as combatant, excluding girls because of perceptions that they hold only non-combatant roles. Yet, there is no doubt that a broad interpretation of active/direct participation allows for the inclusion of most girls’ activities within the prohibitive provisions. Moreover, as previously underlined, girls are indirectly participating in hostilities, again a violation of international humanitarian law, human rights and criminal law.²⁸

Strictly speaking, one must examine on a case by case basis what was the focus of their activities in order to qualify their participation in the conflict. As the ICTY observed in *Tadic* case, “it is unnecessary to define exactly the line dividing those taking an active part in hostilities and those who are not so involved. It is sufficient to examine the relevant facts of each victim and to ascertain whether, in each individual’s circumstances, that person was actively involved in hostilities at the relevant time.”²⁹

▪ **Post conflict issues – protection of girls who have been associated with armed forces or armed groups; release and reintegration aspects**

As the above quoted Mary-Jane Fox³⁰ would note: Former girl soldiers are stakeholders in the future of their developing and troubled states. Ironically, due to the stigma of their past lives, in post-conflict settings they will be more visible than they ever were during conflict.

Thus it is well known that many girls give birth during or after their time with an armed force or armed group. The surviving children are likely to face numerous child

²⁷ T. Webster, *Babes with arms: International law and child soldiers*, 39 *George Washington International Law Review* (2007).

²⁸ Noëlle Quénaviet, *Girl Soldiers and Participation in Hostilities*, *African Journal of International and Comparative Law*, 2008.

²⁹ *Prosecutor v. Tadic*, Appeals Chamber, International Criminal Tribunal for the Former Yugoslavia, 1995 Case no. IT-94-1-AR72, 2 October 1995

³⁰ M-J. Fox, *supra note 3*

protection problems, starting with health problems, the risk of a lost identity, nationality or family.

Reintegration for girls also raises several issues. Girls face specific consequences from their time in armed forces or armed groups. The stigma facing girls is fundamentally different in kind – it lasts much longer, is critically more difficult to reduce and is more severe.

According to the Paris Principles, the same protection should be applicable to the **release of children** from armed forces and armed groups regardless of whether they are within or outside their country of origin or habitual residence. Girls may often remain in the same armed forces or armed groups while boys are released due, in many cases, to the view that as “wives” or in other domestic roles, girls are not in the same category of “child soldiers” as boys.

IV. CONCLUSIONS

The extent of the girl soldier phenomenon is an emerging one and the international legal context does not yet address it adequately. The majority of the international community admits the necessity of a human rights and humanitarian law protection.

Nevertheless, while it still oscillates between the legal protection of women and the legal protection of children without a clearly separated delimitation of its own, the international protection of the girl soldiers has not gathered, up till now, a firm consensus towards a additional protection from a human rights law perspective.

On the other hand, opinions are better defined towards a further and improved protection of the girl soldiers from the humanitarian law perspective, considering the high level of risk and exposure and, also, the higher vulnerability that girl child soldiers face during and after armed conflict situations.

Moreover, the international practice reveals that the humanitarian law provisions indicate a likeliness of a more rapid change and adaptation to the practical situations than the international human rights law.

Nonetheless, the need for an improved legal framework with respect to protection mechanisms is generally recognized and required by a large majority of States and international organizations.

At the same time, the research also shapes the girl soldiers as a gendered security concern and that, mainly, because their exposure to risks that occur rather outside the actual armed conflict and also lasts long after the termination of the armed conflict situation.

The potential for an increased protection of this high vulnerable category exists. The participants to the international community still have to identify the extent, the features and the instruments that would create and apply this supplementary level of protection.