Little Girls Lost: Can The International Community Protect Girl Soldiers?

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INTRODUCTION

The use of children as soldiers in armed international and noninternational (or internal) conflicts is an immense and heartbreaking issue facing the international community. Although the reality of these conflicts makes it difficult to obtain an accurate and reliable number of children engaged in them, it has been estimated that approximately 300,000 children participate in armed conflicts around the globe. In addition to the active participation of children in military conflicts, approximately half a million children have been "'conscripted' into paramilitary organizations, guerilla groups and civil militias in over 85 countries."  

Children engage in a variety of roles while serving in armed conflicts. In addition to actively fighting in these conflicts, children are also used as "spies, lookouts, medics, porters, cooks [and] agricultural laborers." Children also have additional dangerous duties such as placing landmines and engaging in sexual activities. 

It is estimated that of the children participating in armed conflicts around the globe, one third are girls. The purpose of this Comment is to highlight the plights and particular problems faced by these girls. Girls who are not active participants on the front line of armed conflicts, but who engage in daily military or paramilitary operations, are caught in a grey area and are currently unprotected by international law. The goal of this Comment is to draw attention to this group, and to emphasize the need for the law to evolve from protecting the

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6. See infra, part II.
(mostly male) children on the front lines to protecting those (especially girls) participating in other aspects of armed conflict. This Comment will focus on the differences between the involvement of girls and boys in armed conflicts, including why and how girls participate and the effects participation has on their physical and mental health. The focus will then shift to the current state of international and regional laws and the protections (or lack thereof) they afforded to girls and the increasing movement towards protection for all child soldiers.

I. Boy Soldiers vs. Girl Soldiers — Is There a Difference?

Due to the enormity of the child soldier problem it is easy to lump all the child participants into a single category, children. However the international community’s failure to recognize the different experiences of boys and girls in armed conflict—from how these children became involved with the conflict, to how they are treated within their organization—leaves many children involved without legal protection.7

A. Involvement in Armed Conflict

Boys and girls usually enter into armed combat in similar ways: they are either abducted into service, or they volunteer.8 Though abduction of children for use in armed conflict is similar regardless of the gender of the child, some of the reasons why a girl may choose to volunteer her services to the government or nongovernmental fighting forces are distinct from those of boys.9

“Abduction occurs when [children] are kidnapped or seized by fighting forces or groups and forced to serve in them. . .”10 General abduction tactics include targeting areas where children are known to frequent such as schools, markets and places of recreation.11 Reports estimate that between 1990 and 2002, twenty-seven countries reported abductions of girls for service within fighting forces or groups.12 Many

9. Brett, supra note 8, at 3.
10. Mazurana, supra note 3, at 106.
11. Id. at 107 (citing Coalition to End the Use of Child Soldiers, Child Soldiers Global Report (2001)).
12. Id. at 106-07. (Table 3 indicating the 27 countries reporting abductions of girls into armed forces or groups).
of the girls who are abducted for service in armed conflicts are exposed to sexual exploitation and used for the sexual gratification of the men in the organizations that abducted them.\textsuperscript{13}

However, not all girls who participate in armed conflicts have been abducted; many volunteer.\textsuperscript{14} Often a girl “volunteers” to participate in armed conflicts because her options otherwise are so limited that she really has no choice.\textsuperscript{15} A child, boy or girl, has very few options when armed conflict ravages his or her homeland; they either “join the military, become a street child, or die.”\textsuperscript{16} In certain circumstances it is almost impossible for a child to resist entry into armed conflict, due to “hunger, poverty, abandonment, the death of parents and family, disease and the lack of even basic medical services or the threat of violence or property confiscation.”\textsuperscript{17}

At the same time, girls face circumstances and situations that give rise to gender-specific reasons why she may choose to volunteer her life and body to the military or fighting forces.\textsuperscript{18} Three gender-specific issues have been identified which affect a girl’s choice to volunteer for armed conflict: domestic problems, protection and equality.\textsuperscript{19}

Some girls volunteer to serve in armed conflict in order to get out of what they see as “an impossible domestic situation.”\textsuperscript{20} These girls may be subject to mental, sexual and/or physical abuse at the hands of their nuclear or extended families.\textsuperscript{21} They may also be subject to “domestic exploitation such as working in the home or looking after younger siblings.”\textsuperscript{22} Girls in these situations feel like there are no options for them within their home or community and the only escape from the lives they currently lead is to leave them behind and join fighting forces that may provide protection and comfort.\textsuperscript{23}

\begin{thebibliography}{9}
\bibitem{14} \textit{Id.}; and Mazurana, \textit{supra} note 3, at 106.
\bibitem{15} Mazurana, \textit{supra} note 3, at 106.
\bibitem{17} Freeland, \textit{supra} note 2, at 305.
\bibitem{18} Brett, \textit{supra} note 8, at 3.
\bibitem{19} \textit{Id.}
\bibitem{20} Brett, \textit{supra} note 13, at 32.
\bibitem{21} \textit{Id.}; and \textit{See} Susan McKAY, \textit{Girlhoods Stolen: The Plight of Girl Soldiers During and After Armed Conflict}, in \textit{A World Turned Upside Down: The Social Ecologies of Children in Armed Conflict} 89-109, 94-95 (Neil Boothby, Michael Wessells, \& A. Strang eds., 2006).
\bibitem{22} Brett, \textit{supra} note 8, at 3.
\bibitem{23} McKay, \textit{supra} note 21, at 94-95.
\end{thebibliography}
Some girls choose to join armed forces to protect themselves from the horror of the world around them. In areas devastated by armed conflict some girls volunteer to survive; they find it is beneficial for their health and safety to join the fight rather than wait for the fight to reach them. "Given the high level of physical and sexual abuse of girls in . . . armed conflicts, the decision to take up arms rather than waiting to be raped, maimed and/or killed is a rational decision for . . . girls."

The last gender-specific reason for a girl to volunteer for service in armed conflict is equality. "Some girls join [fighting forces or groups] because they specifically want, and want to prove, their equality with boys." In many countries around the world girls are believed to be inferior to boys, and girls may perceive service in armed forces as a way to be seen as an equal. Such equality is sought through educational and career opportunities the girls believe will follow from their involvement with fighting forces and groups. Some fighting forces use a girl's desire to be an equal as a recruitment tool and "appeal to girls precisely on the grounds that they will be treated as equals, given skill training and enabled to take on leadership roles." Unfortunately, the dream of equality rarely comes to fruition as many of the girls who volunteer based on this premise find they are still forced into subservient domestic and sexual roles, as well as required to fight, with little chance for the promised leadership opportunities.

B. Girls’ Roles in Armed Conflict

Girls and boys serving in armed conflict perform many different and overlapping duties. The gender of the fighter, or the way he or she was recruited, does not inevitably determine the role(s) a child will assume in armed conflict. Just because a girl volunteered for service does not mean that she will necessarily be on the front lines

24. Brett, supra note 8, at 3.
25. Id.
26. Id.
27. Id.
28. Id.
30. McKay, supra note 21, at 95.
31. Brett, supra note 13, at 33.
32. Id. at 34.
33. See generally Mazurana, supra note 3, at 109-11; McKay, supra note 21, at 95.
34. Mazurana, supra note 3, at 109.
holding a gun. Similarly, just because a girl was abducted kicking and screaming from her home does not necessarily mean that she will be subject to sexual violence and exploitation.

Girls perform a variety of integral and supporting functions in the daily life and operations of armed conflict. Some of the essential roles girls play include, combatants on the front line, spies, informants, providers of combat training to new members, providers of medical aid, workers sweeping for and laying landmines, as well as conducting suicide bombing missions. Girls are also given many supporting roles to carry out that are usually "reflective of the tasks that they would perform during the non military course of their lives." These roles include the traditional domestic duties some girls were attempting to escape when volunteering for service, such as gathering food and preparing meals, cooking, cleaning and child bearing, rearing and care.

The last and most horrific of the roles performed by girl soldiers is that of sexual partner. Girls involved in many armed conflicts are often directed or forced to provide sexual gratification to the men and boys in their organizations. Many girls submit to this role and often these girls become pregnant and/or infected with one or more sexually transmitted diseases or they may contract a myriad of other medical maladies that specifically affect women. Another danger for girls cast as sex slaves is being traded like a commodity. It is a practice of certain armed forces to trade the sexual and domestic service of their girls as rewards to highly regarded male members of the organization.

35. Id. at 109-111; Yvonne E. Keairns, The Voices of Girl Child Soldiers, http://www.quno.org/newyork/Resources/QUNOchildsoldiers.pdf (last visited Feb. 14, 2008) (according to the testimony of former girl soldiers in Sri Lanka sex was prohibited and violators were severely punished. In one armed group in Colombia women got to choose whether or not they consented to sex).

36. See McKay, supra note 21, at 95.

37. Id.


39. Id.

40. Id. at 110.

41. See id. at 113-15.

42. Id. at 111.

43. Id. (for example, in certain countries, Uganda, Columbia and Sierra Leone "male commanders are rewarded with abducted girls forced to become their wives and sexual and domestic slaves.")
C. Effect of Armed Conflict on the Physical and Mental Health of Girls

Many girls who engage in active and supporting roles in armed conflict experience episodes of violence and degradation, which are bound to have severely adverse effects on their mental and physical well-being. Many abductees are “tortured, beaten, forcibly fed drugs, shot at, cut with knives, forced to perform hard manual labor, and deprived of adequate food.”44 Girls are also subject to continuous sexual violence by members of their organizations.

Girls engaged in armed conflict in most of the world are adversely affected by the conditions in which they are forced to live and survive. Problems occur due to both the physical and sexual abuses these girls suffer. Their hygiene sexual and reproductive health are neglected, causing a variety of maladies that often go untreated.45 Health issues such as sexually transmitted diseases, delayed or stopped menses, pregnancy complications and various others are rampant within these groups and cause the girls afflicted by them severe and sometimes lifelong debilitating problems.46

Of particular concern are the issues faced by the girl soldier who is used for the sexual gratification of the men and boys in the group. Though not all girls who become soldiers are raped, those who are suffer physically in a way that boy soldiers almost never do. Sexually transmitted diseases, reproductive health issues, pregnancy and subsequent abortions, forced or not, affect the physical health of girl soldiers in a way they might never have experienced as civilians.

Often the perpetrators of rape will have one or more sexually transmitted diseases (STD), which they will pass to the victim.47 Diseases such as syphilis, gonorrhea, chlamydia and HIV/AIDS run rampant in many fighting forces and go untreated due to insufficient medical care in the field.48 Certain STDs, if left untreated, can often cause pelvic inflammatory disease, a “painful abdominal condition

45. Mazurana, supra note 3, at 113-15.
46. Id.
that . . . can cause lifetime reproductive problems." A staggering example of the consequences of forced sex is found in Sierra Leone, where it has been estimated that between seventy percent and ninety percent of rape victims suffered from a sexually transmitted disease, including HIV/AIDS. With rape (and lack of proper medical care) also comes a variety of physical problems which can affect a girl's reproductive system. Girls in fighting forces frequently suffer "genital injuries and infections, such as swelling, fistulas, vaginal discharge, genital itch and pain," often from their vaginas being torn during forced sex. Such "profound trauma to genital, urinary and anal regions caused by sexual violence only increases [a girl's] vulnerability to sexually transmitted diseases," such as those discussed above, which can often lead to lifetime suffering.

Pregnancy is another major concern and trauma suffered by girls in fighting forces. Depending on a variety of factors, including the particular fighting force of which they are a member, a girl soldier who becomes pregnant will either be encouraged to have the child or forced to abort it. When a girl has an unwanted pregnancy she may be forced to have an unsafe abortion or perform a self-induced abortion, both of which may prove fatal. In a study of sexual violence in three countries conducted by a Canadian human rights group, Rights and Democracy, thirty percent of underage female participants in armed conflict became pregnant.

If the pregnant girl soldier can bring her child to term, the birth presents its own problems. Girls are often unable to obtain adequate care during pregnancy and many girls are forced to deliver without medical assistance, which can result in the death of the mother (leaving the child an orphan within the fighting forces), the death of the child, or both. Even if both mother and child survive childbirth, dangers remain. The mother may reject the child, or the child may be
the victim of infanticide at the hands of the mother's fighting forces or enemies. 59

Aside from the possibility of being killed during battle, the physical consequences of being a girl in armed conflict are numerous and devastating. Girls in this situation suffer greatly from the physical effects of being a developing woman without proper medical care and treatment and often undergo physical trauma as a result of forced sexual intercourse and childbirth.

The psychological consequences of participation in armed conflict are devastating for girls and differ from the consequences suffered by boys due to the psychological damage caused by sexual violence. 60 "In the aftermath of sexual assault, girls experience shock, loss of dignity, shame, low self esteem, poor concentration and memory, persistent nightmares, depression and other posttraumatic stress effects [.]." 61 Girls also experience "hopelessness, worthlessness, despair and rage." 62

Such psychological effects are compounded by the treatment girls receive by the men and boys who committed the sexual acts 63 and the stigma that followed them from their homes into the fight. 64 They are stigmatized as being "used products" by men and boys within the fighting forces. 65 Also, in many of the communities devastated by armed conflicts, sex prior to marriage, even as a victim of rape, stigmatizes a woman as unmarriageable and morally compromised, 66 or "impure, contaminated . . . an abomination" and in certain areas is believed to bring bad luck to her family and community. 67 Girls who return from armed conflict mothers of children born of sexual violence are not the only ones who suffer from the stigma associated with their time in the armed forces; their children suffer a similar fate. These children may be "branded as 'undesired,' 'children of bad mem-

59. Id.
60. Id.
61. Id.
62. Kostelny, supra note 44.
63. Mazurana, supra note 3, at 115.
64. Leibig, supra note 7, at ¶ 2 (citing Price Cohen, supra note 29, at 41. Girl children in many third world countries are stigmatized as "the lowest of the low. . . ").
66. McKay, supra note 21, at 96.
67. Kostelny, supra note 44 (citing the views and beliefs of communities in rural Sierra Leone).
ories’ or ‘children of hate.’”68 As a result of the shame placed on both
the mother and child a girl who returns to her community after con-

ict may find herself and her child rejected by her family.69

There are significant differences between boys and girls involved
in armed conflict as soldiers throughout the world. Yet, the question
remains, if these children have wholly different experiences based on
their gender and role in armed conflicts, what is the international
community doing to protect girl soldiers who suffer physical and sex-

al abuse at the hands of the fighting forces? As will be demonstrated
in section III, the protection of girls in this situations by the interna-
tional community is almost nonexistent.

II. DOES INTERNATIONAL LAW SUFFICIENTLY PROTECT GIRLS?

Currently there are three key pieces of United Nations (U.N.)
legislation that attempt to regulate and protect civilians, women, and
children in war and conflict-torn areas. The focus of this section is
whether such legislation offers sufficient, if any, protection for girl
soldiers involved in international and internal armed conflicts.

A. The Geneva Conventions of 194970 and Additional

Protocols of 197771

After World War II, the international community came together
on August 12, 1949 to adopt the four Geneva Conventions. The pri-

mary protections provided by these agreements were for military per-

sonnel, prisoners of war and civilians (including children).72 All four

68. Mazurana, supra note 3, at 115 (citing Physicians for Human Rights, Preliminary
Findings and Recommendations on the Health Consequences of Human Rights Violations
During the Civil War (2000) (unpublished report, on file with Physicians for Human
Rights).

69. Id.

70. Geneva Convention for the Amelioration of the Condition of the Wounded and
Sick Armed Forces in the Field, August 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter
Geneva Convention I]; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, August 12, 1949, 6
Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S.
135 [hereinafter Geneva Convention III]; Geneva Convention Relative to the Protection
of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75

71. Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to
the Protection of Victims of International Armed Conlicts, June 8, 1977, 1125 U.N.T.S. 3
[hereinafter Protocol I]; Protocol Additional to the Geneva Conventions of 12 Aug. 1949,
and Relating to the Protection of Victims of Non-International Armed Conlicts, June 8,

72. See Geneva Conventions I-IV.
conventions include Common Article 3, which applies in cases of "conflict[s] not of an international character" which occur within the boundaries of a party state and bind each party to provisions which protect persons not actively engaged in the conflict. Subsection 1 of Common Article 3 mandates that all persons not directly participating in noninternational conflicts must be treated humanely and as such prohibits "violence to life and person, in particular murder of all kinds . . . ; taking of hostages; [and] outrages upon personal dignity, in particular humiliating and degrading treatment." The four Geneva Conventions did not specifically address the problem of children's participation in armed conflicts, and this issue was not addressed by the Conventions until the adoption of two Additional Protocols in 1977. Protocol I focused on the protection of victims in international conflict while the focus of Protocol II was the protection of victims in noninternational conflict.

Article 76 of Protocol I addresses the protection of women in international conflicts. Subsection 1 of this article states, "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault." This Protocol states specifically that women are to be treated in a special manner and protected from any form of sexual violence that may occur during the confines of war.

Article 77 of Protocol I provides for the protection of children as civilians and attempts to regulate their use as soldiers. Subsection 1 of the article mandates that children in general are to receive "special respect and [they] shall be protected from any other form of indecent assault . . . [and] provide[d] . . . with the care and aid they require." Subsection 2 specifically addresses the issue of child soldiers, and requires that the parties to the convention take "all feasible measures" to ensure that children under fifteen are not directly participating in armed conflicts, including recruitment into armed service by the parties themselves. This subsection also provides that when parties are

73. See id. at common art. 3.
74. Id.; Leibig, supra note 7, at ¶ 40.
75. See Protocol I and Protocol II.
76. Id.
77. Protocol I art. 76 (1).
78. Id.
79. Id. at art. 77.
80. Id. at art. 77(1).
81. Id. at art. 77(2).
recruiting children between fifteen and eighteen they "endeavour to give priority to those who are oldest." 82

Neither of the sections in this protocol goes far enough to aid children or women. Women who are not involved in the conflict are protected against sexual violence and children who are not involved in the conflict are protected only if it is "feasible" to prohibit them from being recruited to join the fighting in armed conflicts. Additional Protocol I to the Geneva Convention fails to address the possibility that female children under fifteen may be recruited by parties to a conflict but not used as direct participants (which is the current practice in many nations).

The relevant portions of Protocol II are found in article 4 and are listed as "fundamental guarantees." 83 Generally article 4(1) provides protection and respect to all persons who do not directly participate in hostilities and guarantees their humane treatment under all circumstances. 84 With respect to women who are not involved directly in hostilities, article 4(2)(e) prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault." 85 Article 4(3)(c) reiterates the protections established for recruitment of children under Additional Protocol I. This section provides that "children who have not attained the age of fifteen years shall neither be recruited in the forces or groups nor allowed to take part in the hostilities." 86 Unlike Protocol I, there is no "feasibility" provision that would allow children under fifteen to take part in hostilities. This section makes clear that the use of children under fifteen, either directly or indirectly, during noninternational armed conflicts is prohibited. 87

B. The Convention on the Rights of the Child and Optional Protocols Thereto

The Convention on the Rights of the Child (CRC) was presented by the U.N. in 1989 and as of June 2004 has been ratified by every participating U.N. country, with the exception of the United States of America and Somalia, who have signed the Convention but never rati-

82. Id. at art. 77(2).
83. Protocol II art. 4.
84. Id. at art. 4(1).
85. Id. at art. 4(2).
86. Id. at art. 4(3)(c).
87. Leibig, supra note 7, at ¶ 40.
Based on the overwhelming majority of countries that have agreed to be bound by the terms of the Convention, it appears to be a crucial piece of protectionist legislation for children. Under the CRC a child is defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." The CRC further states "in all actions concerning children . . . the best interest of the child shall be a primary consideration."

The CRC explicitly prohibits sexual violence against children in article 34, which protects children against "all forms of sexual exploitation and sexual abuses," while article 35 prohibits participating parties from engaging in the sale and trafficking of children. Though the articles in the CRC are couched in gender-neutral language (the terms used are "child" and "children"), this section can be read as specifically protecting girls who are typically (though not exclusively) sexually abused.

The CRC specifically addresses the issue of children in combat in article 38. Unfortunately, the CRC follows the language of the Additional Protocols to the Geneva Convention and offers little more protection than they do. Under article 38(2) of the CRC, ratifying nations are required to take "all feasible measures" to ensure that children under the age of fifteen do not directly participate in armed conflicts. This language mirrors the language of Protocol I almost exactly, although it goes a step beyond Protocol I in that it requires countries that ratified the convention to be responsible for doing everything feasible to keep children out of direct hostilities, while Protocol I only required the parties to the conflict to take such measures. Subsection 3 of article 38 restricts ratifying countries from recruiting children under fifteen into their armed services and requires that, when recruiting those children who are between fifteen and eighteen, the countries attempt to recruit the oldest children first. Again this language mirrors that of Protocol I and offers similarly limited protection for children participating in armed conflict.

90. CRC art. 1.
91. Id. at art. 3.
92. Id. at art. 34.
93. Id. at art. 35.
94. Id. at art. 38.
95. Id. at art. 38(2).
96. CRC art. 38(2).
97. Protocol I art. 77(2).
The CRC offers protection to both boys and girls in a variety of ways, including specific protections against sexual exploitation (in articles 34 and 35) and specific protection from service and recruitment into armed conflict for children under fifteen (under article 38). But the CRC is contradictory in its own terms. It purports to offer definitive protections for children and begins by defining a child as anyone under eighteen years old, yet it fails to protect every child under eighteen from participation in armed conflict. The CRC places children between the ages fifteen and eighteen in a gray area of protection and regulation. It also fails to protect against a child’s indirect participation in armed conflict, because article 38 addresses only direct participation in hostilities.\(^{98}\)

Like the Geneva Convention before it, the CRC alone fails to fully address issues that arise when children are utilized as direct and indirect participants in armed conflicts. Due to this failure the U.N. presented two optional protocols to the CRC in 2000; the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol I) and on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol II).\(^{99}\)

Abigail Leibig, in her article *Girl Child Soldiers in Northern Uganda: Do Current Legal Frameworks Offer Sufficient Protection?*,\(^{100}\) notes that the division of the protections afforded to children in the Optional Protocols, into protection against participation in armed conflict, and protection against sexual exploitation and violence, is a division based on gender.\(^{101}\) “Boys (and some girls)” are protected by the Optional Protocol on the Involvement of Children in Armed Conflict while “girls (and some boys)” are protected under the Optional Protocol against the Sale of Children, Child Prostitution and Child Pornography.\(^{102}\)

Under article 1 of Optional Protocol I, the minimum age for participation in armed conflict was raised from fifteen to eighteen. Article 1 provides, “parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18

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98. CRC at art. 38(2).
100. 3 NW. U. J. INT’L HUM. RTS. 6 (2005).
101. Id. at ¶ 33.
102. Id.
years do not take direct part in hostilities." The language in article 1 is similar to that in article 38 of the original Convention on the Rights of the Child in that it only requires that actors take "all feasible measures" to keep children from taking direct part in armed conflicts. Where the two articles diverge, and where Optional Protocol I has increased protections, is in their age restrictions. The minimum age for participation has been increased from fifteen years old (in the original CRC) to eighteen years old under Optional Protocol I.

Article 2 mandates that no one under eighteen is to be "compulsorily recruited" into the armed forces of a signing party. Article 4 regulates armed fighting forces or groups as distinct from governmental fighting forces. Article 4(1) prohibits armed groups (of a non-military or governmental character) from recruiting or using children under eighteen in armed combat. In article 4(2) the signing parties to Optional Protocol I are required to "take all feasible measures" to prevent the recruitment and/or use of children under eighteen in hostilities. The same section also mandates the states to "adopt legal measures necessary to prohibit and criminalize such practices."

The principal purpose of Optional Protocol I was to raise the age of recruitment and participation in armed conflicts, in order to better implement the belief that "best interest of the child are to be a primary consideration in all actions concerning children." Though the minimum age requirement was increased, this Optional Protocol fails to address the issues specific to girl soldiers indirectly involved in armed conflicts, such as sexual exploitation and violence.

It is possible that the U.N. and adopting nations believed that the sexual violence suffered by girls in this situation would be prohibited and punishable under Optional Protocol II.

Optional Protocol II prohibits selling children and using children for prostitution and/or pornography. Article 2 provides a definition for each of these enumerated evils. Under article 2(a) sale of children is defined as "any act or transaction whereby a child is trans-

103. Optional Protocol I art. 1.
104. Id. at art. 1; CRC art. 38(2).
105. Optional Protocol I art. 1; CRC art. 38.
106. Optional Protocol I art. 2.
107. Id. at art. 4.
108. Id. at art. 4(1).
109. Id. at art. 4(2).
110. Id.
111. Optional Protocol I.
112. Optional Protocol II.
113. Id. at art. 2.
ferred by any person or group of persons to another for remuneration or any other consideration.” Child prostitution is defined in article 2(b) as “the use of a child in sexual activities for remuneration or any other form of consideration.” In article 2(c) child pornography is defined as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”

By definition this section protects those girls who were sexually exploited and traded as commodities between fighting forces and groups, but only when money or other valuable consideration exchanged hands or when reduced to images. In a culture where girls are brutally abducted and used for sex by their abductors this Optional Protocol fails them almost completely.

C. The Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court (Rome Statute), promulgated by the U.N. and adopted in 1998, has jurisdiction over “the most serious crimes of concern to the international community as a whole.” As such, in article 5(1)(b) the Rome Statute provides that the International Criminal Court (ICC) has jurisdiction over “[c]rimes against humanity” and in subsection (c) the ICC has jurisdiction over “[w]ar Crimes.”

Article 7 defining “crimes against humanity” lists eleven acts that can be considered a crime against humanity when “committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Under subsection (1)(g) of article 7 “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity,” is considered a crime against humanity.

Though it appears that girl soldiers who are sexually assaulted might be protected under this section that is not necessarily the case. Sexual exploitation and violence is only a crime against humanity when committed as part of a systematic attack against a civilian popu-

114. Id. at art. 2(a).
115. Id. at art. 2(b).
116. Id. at art. 2(c).
117. See Leibig, supra note 7, at ¶ 37.
119. Id. at art. 5(1).
120. Id. at art. 5(1)(b) and (c).
121. Id. at art. 7(1).
122. Id. at art. 7(1)(g).
By its definition the sexual exploitation and violence committed against girls once they have volunteered or been abducted into armed forces is not a crime against humanity. If such violence and exploitation occurs while these girls are civilians, the perpetrators can be tried for their crimes under this section; if such acts occur after the girls are part of armed conflict they lose that protection.

Although girls participating in armed conflict are not protected from sexual violations as crimes against humanity, prosecution of the perpetrators of such sexual violence may be available for these acts as war crimes. Under article 8 of the Rome Statute, various acts are considered war crimes; relevant for our purposes here are two subsections of article 8(2)(b). Article 8(2)(b)(xxii) treats as a war crime the same kind of sexual violence and exploitation prohibited under article 7; however, section 8(2)(b)(xxii) does not require that the victims be part of the civilian population. This section offers more protection for girls who are sexually violated during wartime than offered by the Optional Protocols to the CRC or the Additional Protocols to the Geneva Convention.

Subsection xxvi of article 8(2)(b) deals specifically with child soldiers and national armies or fighting forces. This provision prohibits "enlisting children under the age of fifteen years, into the national armed forces or using them to participate actively in hostilities." One is immediately struck by the minimum age requirement—again we see an international statute that permits the use of children in combat once they are fifteen. In this respect the Rome Statute fails to protect children fifteen to eighteen, as well as all children who may be used in indirect but violent ways.

Article 8(2)(b) addresses international conflict while article 8(2)(c) deals with conflicts of a noninternational character and persons who take no active part in the conflict. The latter subsection provides that any violation of Common Article 3 of the Geneva Conventions constitutes a war crime, such as "committing outrages upon personal dignity, in particular humiliating and degrading treatment." What the Rome Statute fails to do in this section is provide any definition or examples of what can be considered such "outrages." In addition, this section does nothing to protect any child soldier, be-

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123. *Id.* at art. 7(1).
125. *Id.* at art. 8(2)(b)(xxii).
126. *Id.* at art. 8(2)(b)(xxvi).
127. *Id.* at art. 8(2)(b)(xxvi).
128. *Id.* at art. 8(2)(c).
129. *Id.* at art. 8(2)(c)(ii).
cause it only applies to civilians or those who have stopped their participation in the conflict. It therefore would not be applicable once a child joined an armed conflict.¹³⁰

Finally, child soldiers (both boys and girls) who are engaged in noninternational hostilities may be protected under Article 8(2)(e), which applies to armed conflicts between “governmental authorities and organized armed groups or between such groups,” and within the territory of a ratifying state.¹³¹ Under this section of article 8, sexual exploitation and/or violence against a person is considered a war crime and once again there is no requirement that the victim be a civilian or non-participant.¹³² Also prohibited under this section of article 8 is the use, conscription or enlistment of children under fifteen by such armed forces or groups to actively participate in armed conflict.¹³³ This prohibition only protects children under fifteen from directly participating in armed conflict; indirect participation is not addressed.

The problem with the portions of the Rome Statute that apply directly to the child soldier and sexual violence are that these provisions fail to protect the gamut of the world’s children. Time after time they fail to protect children of any age or gender who are engaged in armed hostilities but are not direct participants (like many of the girls used for domestic and sexual services). Nothing in the Rome Statute criminalizes the use of children indirectly in armed conflicts, which disproportionately affects girls typically used in these ways.

The strongest feature in the Rome Statute for girls is that rape and all other forms of sexual violence and exploitation are expressly criminalized as either crimes against humanity or as war crimes.¹³⁴ Still, there is a concern whether, with so many other atrocities being committed against men, women and children around the world, the ICC will have the time and inclination to prosecute those responsible for the destruction of girl soldiers’ lives through sexual violence, even if these girls never picked up a gun? The hope is that the ICC will see all uses of children in armed combat, whether direct participation or in supporting/indirect roles, as a crime and prosecute accordingly. The ICC has taken steps to protect child soldiers, as noted below, with the arrest and subsequent trials of two rebel leaders for

¹³⁰ See Rome Statute art. 8(2)(c)(ii).
¹³¹ Id. at art. 8(2)(f).
¹³² Id. at art. 8(2)(e)(vi).
¹³³ Id. at art. 8(2)(e)(vii).
¹³⁴ See id. at art. 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi).
violations of the Rome Statute, specifically for use of children as soldiers and sexual assault.\textsuperscript{135}

\section*{III. The African Charter\textsuperscript{136} and Special Statute for Sierra Leone\textsuperscript{137}}

In a report released in October 2007 by the non-governmental organization (NGO) Oxfam, it was estimated that during the period 1990 – 2005 twenty-three African nations were involved in armed conflict,\textsuperscript{138} totaling roughly "thirty eight percent of the world's armed conflicts."\textsuperscript{139} Of the soldiers fighting in these conflicts it is believed more than 120,000 of them are children under the age of eighteen.\textsuperscript{140} The number of girl soldiers used in these conflicts is harder to determine as disarmament, demobilization and reintegration efforts have primarily focused on boys' participation in armed conflict.\textsuperscript{141} Complicating the issue is the fact that "[g]irl's feelings of shame and fear of stigma and retribution may also keep them from disclosing their experiences."\textsuperscript{142} Two important pieces of domestic legislation have entered into force in an attempt to address the child soldier issue. However, as with the above international legislation, these laws fail to recognize the distinct and unique experiences of the girl soldiers, and


\textsuperscript{137} Statute of the Special Court for Sierra Leone, January 16, 2002, 2178 U.N.T.S. 145 \textit{[hereinafter Sierra Leone Special Court]}.\textsuperscript{137}


\textsuperscript{139} IANSA, \textit{supra} note 138, at 5.

\textsuperscript{140} \textit{The Use of Children as Soldiers in Africa: A Country Analysis of Child Recruitment and Participation in Armed Conflict}, http://www.reliefweb.int/library/documents/childsold.htm (the countries with the highest number of child soldiers includes; Algeria, Angola, Burundi, Congo-Brazzaville, The Democratic Republic of Congo, Liberia, Rwanda, Sierra Leone, Sudan and Uganda).\textsuperscript{140}

\textsuperscript{141} Mazurana, \textit{supra} note 3, at 116.

\textsuperscript{142} \textit{Id.}
as such offer little protection from the particular horrors suffered by
them.\textsuperscript{143}

In 1990 the African member states of the Organization of African
Unity (OAU) came together to enact child protection legislation
known as the African Charter on the Rights and Welfare of the Child
(African Charter on the Child).\textsuperscript{144} Pertinent to the discussion of girl
child soldiers are Articles 2, 22, and 27. Article 2 establishes the defi-
nition of “child” as “every human being below the age of 18
years.”\textsuperscript{145} Article 22 addresses the use of children in armed conflict and affirm-
atively requires that parties to the agreement “take all necessary mea-
sures to ensure that no child shall take a direct part in hostilities and
refrain . . . from recruiting any child.”\textsuperscript{146} The strong language used in
the African Charter on the Child seemingly offers considerable pro-
tection for the child soldier, but it must be noted that the protections
afforded to children in armed combat comes in the form of prohibi-
tion on their participation in direct hostilities. Where the African
Charter on the Child fails child soldiers in general, and girls in particu-
lar, is that it does not take into account the non-active roles many
children, especially girls, play in armed conflict. Girls who are direct
participants, those that carry guns on the front lines, can be protected
under Article 22, but the majority of girls who play indirect and sup-
porting roles in the conflicts have no protection at all. Article 27 of
the African Charter on the Child is a prohibition on sexual exploita-
tion and directs that member states protect children from sexual ex-
plotation and sexual abuse.\textsuperscript{147} Member states are specifically directed
to take measures to prevent “the inducement, coercion or encourage-
ment of a child to engage in any sexual activity;”\textsuperscript{148} and the use of
children in prostitution and pornography.\textsuperscript{149}

There are two fatal flaws in the African Charter on the Child with
respect to girl soldiers participating in armed conflict. First, the Afri-
can Charter on the Charter misconceives the roles of the girls in
armed conflict. It protects against sexual exploitation of children and
direct participation in armed conflict but fails to connect the two and
recognize the reality that girls may be fighters or indirect participants
and often suffer sexual abuse while serving as soldiers. “In failing to
tie the sexual abuses to the provisions protecting child soldiers the

\textsuperscript{143} See generally African Charter on the Child; Sierra Leone Special Court.
\textsuperscript{144} African Charter on the Child.
\textsuperscript{145} Id. at art. 2.
\textsuperscript{146} Id. at art. 22(2).
\textsuperscript{147} Id. at art. 27.
\textsuperscript{148} Id. at art. 27(1)(a).
\textsuperscript{149} Id. at art. 27(1)(b) and (c).
African Charter on the Child] sidesteps the predicament of female child soldiers.\textsuperscript{150} The second issue presented by the African Charter on the Child is that it is a regional document, currently ratified by only 37 of the 53 African countries.\textsuperscript{151} Six of the non-ratifying nations were listed in the Oxfam report as countries involved in armed conflicts between 1990 and 2005.\textsuperscript{152} Because the African Charter on the Child binds only those members that are parties to the agreement, the countries that have not ratified it are not subject to its provisions. Nor is it binding on the internal rebel and insurgent groups which proliferate throughout the continent and are responsible for much of the use of children as soldiers.

The Special Court for Sierra Leone was established in 2000 via a partnership between the Sierra Leonean government and the United Nations in response to the tragic violence that tore apart the country.\textsuperscript{153} The Statute of the Special Court for Sierra Leone takes the same view of child soldiers as the other documents previously discussed. It prohibits conscription of children into armed conflict in one article and protects against abuse in another.\textsuperscript{154} Article 4(c) gives the court jurisdiction over those who recruit children under the age of fifteen into “armed forces or groups, or using them to participate actively in hostilities.”\textsuperscript{155} Article 5 confers jurisdiction over those persons who violate certain aspects of Sierra Leonean law.\textsuperscript{156} Specifically Article 5(a) allows for the prosecution of anyone who abuses girls in violation of Sierra Leone’s Prevention of Cruelty to Children Act of 1926.\textsuperscript{157} Actionable abuses include abusing girls under the age of thirteen (in some cases fourteen) and abduction of a girl of any age for “immoral purposes.”\textsuperscript{158} The age minimum for recruitment is devastatingly low compared with the African Charter on the Child and girls are protected from “abuse” only if they are under a certain age, an age that doesn’t correspond to the minimum age for recruitment. A strength of the Statute is that it prohibits recruitment into armed

\begin{footnotesize}
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\item \textsuperscript{150} Leibig, supra note 7, at \S 45.
\item \textsuperscript{152} See id; and IANSA, supra note 138, at 3 (for a list of the nations discussed).
\item \textsuperscript{153} S.C. Res. 1315 \S 1, U.N. Doc. S/Res/1315 (Aug. 14, 2000); Sierra Leone Special Court.
\item \textsuperscript{154} Sierra Leone Special Court art. 4(c) and art. 5(a)(i-iii).
\item \textsuperscript{155} Id. at art. 4(c).
\item \textsuperscript{156} Id. at art. 5.
\item \textsuperscript{157} Id. at art. 5(a).
\item \textsuperscript{158} Id. at art. 5(a)(i-iii).
\end{itemize}
\end{footnotesize}
forces and groups or using children as active participants in armed conflict. The "or" is very important, as it purports to offer slightly more protection for the child soldier (at least those who are under fifteen). The court can try non-governmental actors for conscription of children into hostilities whether or not the children directly and actively participated in combat.

Neither the African Charter on the Child nor the Statute of the Special Court for Sierra Leone does enough to remedy the proliferation of child soldiers in hostilities on that continent. The girl soldier appears to be as invisible to the OAU as she is to the international community, only noticed and protected when she is being used for sex or on the front lines of combat.

IV. CAPE TOWN PRINCIPLES

For all of the problems inherent in international and regional legislation regarding child soldiers, there has been a vocal movement to increase the protections provided to children generally and in limited respects, girls.

In April 1997 in Cape Town, South Africa, UNICEF and the NGO Working Group on the Convention on the Rights of the Child held a symposium dedicated to dealing with the tragic issue of child soldiers. The primary purpose for the symposium was to strategize ways to protect children from recruitment in armed conflict and to effectuate their demilitarization, demobilization and reintegration (DDR). The principal goal of the parties in attendance was to increase the age minimum for recruitment to eighteen in all pertinent international legislation. However, in formulating the principles and best practices that became the Cape Town Principles and Best Practices (Cape Town Principles), the symposium created an encompassing definition of child soldier. This definition has the greatest potential for protection of all children in all aspects of armed conflict, and specifically singles out the girl soldier for increased protection. The new definition of child soldier promulgated by UNICEF in the Cape Town Principles and Best Practices defines a child soldier as:

160. Id.
161. Id. at 12.
Any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.\textsuperscript{162}

The Cape Town definition is inclusive of all experiences of children engaged in armed conflicts whether on the front line or in supporting roles. Its revolutionary protection extends to both the girl soldier who plays an indirect role in hostilities and to the invisible unprotected victim in the child soldier tragedy: the girl soldier used as a sexual commodity.

Unfortunately the Cape Town Principles were merely recommendations for the international community and not a required course of action to be followed.\textsuperscript{163} As evidenced by the amount of scholarly work dedicated to the ineffectiveness of current international legislation, it appears that the Cape Town Definition of a child soldiers has not been widely adopted. The failure by the international community to adopt a more protective definition of a child soldier continues to doom the boys and girls of the world to the horrors of armed conflict.

V. The International Criminal Court

In the decade since the Cape Town Symposium, greater attention has been paid to the child soldier pandemic and in recent years, the International Criminal Court has taken an increased interest in preventing the recruitment of child soldiers and prosecuting for sexual violence against women and girls. The first two cases brought before the ICC will be those of Thomas Lubanga Dyilo\textsuperscript{164} and Germain Katanga,\textsuperscript{165} rebel leaders of separate guerilla resistance groups terrorizing the Democratic Republic of Congo (DRC).\textsuperscript{166}

The first person to be brought under the jurisdiction of the ICC is Thomas Lubanga Dyilo the founder and leader of the Union des Patriotes Congolais (UPC).\textsuperscript{167} Lubanga Dyilo is charged with commit-

\textsuperscript{162} Id.
\textsuperscript{164} Press Release, First Arrest for the International Criminal Court, supra note 135.
\textsuperscript{165} Press Release, Second Arrest: Germain Katanga Transferred into the Custody of the ICC, supra note 135.
\textsuperscript{167} Press Release, First Arrest for the International Criminal Court, supra note 135.
ting war crimes in violation of Article 8 of the Rome Statue, specifically article 8(2)(b)(xxvi) which prohibits "conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities." The ICC alleges that Lubanga Dyilo butchered civilians in the DRC province of Ituri and utilized child soldiers in the slaughter.

The ICC has received admonitions from humanitarian activist groups for focusing on the use of child soldiers and failing to address the larger issues of civilian mass murder, rape and torture which took place at the hands of Lubanga Dyilo’s UPC. Geraldine Mattioli, a lawyer employed by the Human Rights Watch, expressed the concern with the ICC’s decision stating, “[r]ecruiting children has been practiced in many places in Africa since the 1960s and many Congolese don’t consider this as serious as the massacres and other atrocities[.]” It is just such thinking that has stalled the progress of child soldier protection. In response, Luis Moreno Ocampo, the ICC’s chief prosecutor, stated that the ICC focused on this aspect of the UPC’s actions because he “wanted to highlight the misery of children’s lives.” Deputy prosecutor Fatou Bensouda expressed the ICC’s view of child soldiers in an interview on National Public Radio, stating that choosing to prosecute for recruitment and use of child soldiers “will demonstrate that there will be no impunity for those that are responsible for these types of crimes committed in the [Democratic Republic of Congo]. The conscription, enlistment and active use of children in armed conflict represents one of the most brutal and troubling legacies of war.”

At this juncture it is unknown whether Lubanga Dyilo used girl soldiers to carry out his attacks and if so, whether the gender of the children used will have an effect on his prosecution. Lubanga Dyilo is set for trial in the International Criminal Court on March 18, 2008. While his prosecution is a huge coup for the protection of child soldiers generally, he is being prosecuted under the Rome Statute...
which protects children used as active participants. If girls were conscripted and used indirectly he will not be held legally accountable for the traumas suffered by them.

The second person to be brought before the ICC for violations of the Rome Statute is Germain Katanga, commander of the Force de Resistance Patriotique en Ituri (PRFI). The allegations charge that the PRFI, under the direction of Katanga, killed over 8,000 civilians and forced the displacement of over half a million more from their homes in Ituri during conflicts between the PRFI and other rebel forces. The specific crimes charged stem from a systematic and widespread ethnic attack on the civilian population of Bogoro which occurred between January and March of 2003. Katanga is charged with six counts of war crimes and three counts of crimes against humanity in violation of Articles 7 and 8 of the Rome Statute. Specifically, Katanga is charged, inter alia, with the “sexual enslavement of women and girls” as both a war crime (under Article 8(b)(2)(xxiii) or 8(2)(e)(vi)) and a crime against humanity (under Article 7(1)(g)), and “the use of children under the age of fifteen years to participate actively in hostilities” as a war crime (under Article 8(2)(b)(xxvi) or 8(2)(e)(vii)).

Katanga has been charged with war crimes and crimes against humanity targeted at the civilian population of Ituri and like Lubanga Dyilo, the specifics of his charges are currently unknown. It is not clear if he is being tried for the sexual slavery of women and girls forced to participate in active and indirect roles in the PRFI—which would be a huge step forward in the fight to gain attention for the girl soldier problem—or if the charges stem from sexual abuse of civilian women and children. The charge of conscription of underage participants for active combat could include girls, but will leave any girls who are not active participants in hostilities unprotected, and Katanga free from liability for their suffering. Germain Katanga is scheduled for his first hearing at the end of February 2008.

178. Id.
180. Id.
181. Id.
182. Trial Watch, supra note 177 (Katanga).
The ICC is in the process of investigating other war crimes and crimes against humanity in Africa, including situations in Darfur, Central African Republic and Uganda.\textsuperscript{183} If the first two cases for the ICC are any indication, the ICC and hopefully the international community is ready to place the child soldier issue at the forefront of discussion and reform. In the 10 years since the promulgation of the Cape Town Principles there has been advancement for the general child soldier on the front lines. The ICC is willing to prosecute those that recruit and use children in active combat, and scholars in many fields have written extensively about this once silent issue. What has not improved is the protection for non-active participants, especially girls. Until the global community recognizes that a child soldier can be any child under eighteen, boy or girl, active or indirect participant, soldier and/or sex slave, the movement towards protection for the world's children will stop at the front lines of armed combat. Although protection against such use is important it merely scratches the surface of the problem.

\textbf{CONCLUSION}

Current international and regional laws attempting to regulate the use of child soldiers are gender-biased. They divide the protections offered into protection from active participation in armed conflicts and protection from sexual abuse and exploitation. Not only does such a division misrepresent the use of both girls and boys by governments and fighting forces, it also fails to protect children from many aspects of armed conflict. Wars are not fought just by men with guns; they are fought by the men, women and, unfortunately, children who take on supporting roles such as cooks, messengers, spies, and landmine sweepers. These indirect participants need protection too, especially when this indirect participation involves the rape and sexual exploitation of young girls.

As Leibig argues, "female child soldiers need to be protected by an explicit statement in some international treaty or convention [and to do this] the definition of child soldier needs to be expanded."\textsuperscript{184} Such a definition needs to be inclusive of all aspects of the child soldier experience, both direct and indirect.\textsuperscript{185} Adoption of the Cape Town Principles definition of “child soldier” is a necessary step that the international community must be willing to take. The inclusive

\begin{footnotes}
\footnote{183. Press Release, Second Arrest: Germain Katanga Transferred into the Custody of the ICC, \textit{supra} note 135.}
\footnote{184. Abigail Leibig, \textit{supra} note 7, at \S\ 54.}
\footnote{185. \textit{See} \textit{id}.}
\end{footnotes}
definition best reflects all aspects of a child soldier's tortured life and explicitly gives a voice to the forgotten; girls who suffer in silence as indirect participants and sexual commodities. Until such a definition is adopted by the international community, there is little effective protection offered to the girl soldier.

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