

CHILDREN, ARMED VIOLENCE AND TRANSITION: CHALLENGES FOR INTERNATIONAL LAW & POLICY

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Good morning. As the first speaker on the first panel, I'd like to break the proverbial ice. Perhaps it is best to do so in two ways. First, I'd like to set out some introductory concepts that may be helpful for listeners (and eventual readers) who may not necessarily be well versed with details regarding child soldiering. Second, I will identify several challenges that I see as quite pressing for international law and policy when it comes to transitioning children from armed violence to a better place. In the interests of clarity and direction, let me say that I will posit seven key challenges.

Before I go any further, however, I'd like to thank Professor Amann and the Georgia Law School for hosting such an auspicious event. What is more, Madame Prosecutor, I would like to thank you and your staff for the herculean efforts that you are undertaking to address the scourge of child soldiering. Tens of thousands of children worldwide become militarized. A much larger number of children become affected by militarization. Child soldiering exists on every continent. It is not limited only to places where international courts presently operate. It ebbs and flows but persists, emerging in recent years in Syria, Iraq, Central African Republic, and Mali—to name only a few places. Many adults, moreover, may have entered military forces and armed groups as children. Dominic Ongwen is an obvious example.

It may be helpful to begin with some definitions. Who is a child soldier? I understand this term to be informed by the 1997 Cape Town Principles and the 2007 Paris Principles. The Paris Principles eschew the phrase “child soldiers,” in fact, and prefer the undoubtedly more accurate “children associated with armed forces or armed groups.”¹ The Paris Principles phraseology is more accurate since it recognizes that militarized children do much more than serve as combatants. The term child soldiers, albeit popular, has also become somewhat antiquated. While accurate, or perhaps because

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¹ UNICEF, *THE PARIS PRINCIPLES: PRINCIPLES AND GUIDELINES ON CHILDREN ASSOCIATED WITH ARMED FORCES OR ARMED GROUPS* (2007), <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>.

of its accuracy, the Paris Principles language is tongue-tying and tongue-twisting. I am therefore going to use the term child soldiers as shorthand. But I understand a child soldier as including spies, sentries, cooks, porters, sex slaves, forced conjugal partners, as well as fighters (whether carrying weapons or not). Also, in line with both the Cape Town Principles and the Paris Principles, the age of eighteen is the terminal point of the protected category of who is a child soldier.² The category therefore is chronological and fixed, rather than liminal and experiential.

In my book *Reimagining Child Soldiers*, I argue that it is very important to acknowledge, and even embrace, the reality that there is no “typical” child soldier. It is imperative to transcend sensationalism and stereotype when talking about child soldiering. A great diversity of experience arises among children who become associated with armed forces and armed groups. Roughly 40% of such children are girls. Some are very young, while many—likely a clear majority worldwide—are in the fifteen to seventeen year old age cohort.³

Many children end up as child soldiers because they are abducted, brutalized, and tortured. Others, however, also exercise a level of initiative in coming forward and either enlisting or, in some cases, affirmatively participating in armed groups and armed forces. Youth politicization, and actualizing politics through martial activities, is not implausible: some children join movements to try to build a better world. Many child soldiers are rescued by humanitarian interventions, but some exit militarized life entirely on their own. Only few child soldiers are involved in the serial commission of what would be acts of atrocity against civilian populations, often including other children. Many child soldiers are victims of brutal indignities. I believe that to effectively deter child soldiering, we need to recognize the diversity and the kaleidoscopic nature of militarization and how it affects children.

Let me turn to the seven challenges I posit for international law and policy. I raise these in the spirit of improving the path of law and policy, and for enhancing our imagined legal consciousness, when it comes to deterring child soldiering and reintegrating children affected by militarization and war.

First, while we can hope that transitions move societies from armed conflict to peace, in reality, transitions proceed from armed conflict to renewed armed conflict. Even in transitions toward peace, in other words

² *Id.*; UNICEF, CAPE TOWN PRINCIPLES AND BEST PRACTICES (Apr. 27–30, 1997), http://www.unicef.org/emerg/files/Cape_Town_Principles%281%29.pdf.

³ See generally MARK A. DRUMBL, REIMAGINING CHILD SOLDIERS IN INTERNATIONAL LAW AND POLICY (2012).

away from armed conflict, the post-conflict society may not be free from violence (criminal violence for example) or autocracy, both of which may impact negatively upon juveniles. Violence exists in peacetime as well. Violence that is public in nature and committed by and against children in times of armed conflict may, after armed conflict, turn into violence committed by and against children that percolates into private spheres, the household, and the city block. International lawyers need to recognize that public violence in armed conflict will not necessarily be eradicated just because armed conflict ends. Violent masculinities, in particular, may operationalize themselves in a variety of private contexts that elude the gaze of the international lawyer and, in many instances, the law altogether (whether substantively or as a matter of application). Transitional justice does not have a good track record in dealing with this situation. South Africa may be evoked as a poignant example.

Second challenge: I think we need to recognize that the mental health of former child soldiers may not necessarily be as fragile as we may fear. Child soldiers are resistant, and in many cases resilient. Their strengths need to be leveraged in post-conflict transitions and in building a citizen-empowered polity. But this is not to say that child soldiering's effects are innocuous or incidental. Great pain abounds despite the resilience. In addition to psychological trauma and recovery, it's very important for former child soldiers to receive occupational training, medical care and rehabilitation for physical injuries, conflict resolution skills, education, and job preparation. It's a tall order, to be sure. But focusing excessively on mental health aspects diffuses attention from the diversity of mechanisms and tools that may enhance individual recovery and collective well-being.

Third: criminal trials for adult recruiters, abductors, and enlists of children are central to the accountability process. The *Lubanga* conviction has considerable expressive value; as did the Special Court for Sierra Leone's convictions on child soldier related charges.⁴ However, in and of themselves, these prosecutions and sentences are not enough. These trials can only deliver so much. Their value should not be over-marketed, nor should international lawyers over-promise. A pressing need arises to deracinate the structural factors that conspire to fuel the conditions in which young people become militarized. Also helpful is to seriously consider much broader remedial action, including, reparative justice and remedial justice. If we focus exclusively on courtrooms and jailhouses, we are hewing to a very

⁴ Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC 01/04-01/06, Judgment (14 March 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf>.

narrow approach instead of engaging with the pluralistic possibilities that the law has to offer.

The fourth challenge revolves around the false simplicity of categorizing age. If the law takes eighteen as a chronological benchmark, it may come down very hard on people in 18, 19, 20, 21, 22 year-old age bracket. Compelling neuro-scientific evidence suggests that physiological development continues to ferment in the eighteen to twenty-five age bracket. Conversely, persons in the sixteen and seventeen year-old bracket may have more in common with their contemporaries just over the hump of adulthood than their contemporaries in the thirteen to fifteen cohort. If it makes a lot of hay out of a simple birthday, the law may come down very exigently and very heavily on young adults, even though young adults may suffer comparable harms and constraints in times of conflict to those faced by older juveniles. Perhaps it is the ineluctable fate of law simultaneously to indulge, on the one hand, while being too exigent, on the other. Such is the inevitability of law's predilection to draw bright-lines. And bright lines are simple. Their simplicity, however, belies the much thornier realities of safeguarding human rights where it really matters—not in the law books but on the ground. Human rights activists might look more critically at the convenience of chronological bright lines so that we can do better, however inconveniently.

Fifth, as I argue in my book, transitional justice is useful when it comes to facilitating the reintegration and rehabilitation of militarized youth, while also helping to reconstruct societies that have been plagued by violence, including violence committed against children and violence committed by children.⁵ While I eschew criminal trials, restorative, reparative, and, in some instances, customary and ceremonial forms of justice can play a very valuable role in re-anchoring children implicated in the commission of acts of atrocity within society while also delivering some sense of justice for victims and survivors. Categories of victim and perpetrator become very ambiguous in places where children act violently, and are made to act violently, and fine-grained methods of transitional justice that eschew the binary reductionism of penal sanction may be particularly apposite in such contexts. Many individuals who suffer in conflict at the hands of children may also be children. These children, too, have a right to see their best interests promoted.

Let me turn to my final two points. International law and policy would do well to recognize, and revel in, the fundamental tension that lurks within

⁵ DRUMBL, *supra* note 3.

children's rights discourse. On the one hand, international human rights law protects juveniles. On the other hand, international human rights law emancipates and empowers juveniles. We need to do better at building a culture of juvenile rights. Yet when lawyers and policy-makers present children as enfeebled, as helpless and hapless, as victimized, broken, and incapable—and when we articulate that as a basis to protect children—we may very well be doing them a disservice. Vibrant citizenship, juvenile rights, and stakeholderhood assume capacity, ability, confidence, strength, and agency. Protecting children may, therefore, be in tension with recognizing their political will and capacity to make important choices for themselves: freedom of expression, freedom of association, reproductive rights, their ability to have input in custodial determinations, their autonomy at times to refuse medical treatment. In many post-conflict societies, age-driven gerontocratic pressures that may create conditions for children to become militarized often persist after militarization ends. These lingering pressures, then, serve as a conduit for re-militarization or re-criminalization. One way to quash, or at least relieve these pressures, is to generate a robust culture of juvenile rights that views young people as able to discharge their obligations, as being able to be held responsible for their conduct, to command the respect of others, and to claim societal and communal obligations.

My final point: The focus on militarized youth, in my opinion, should not divert our attention from children who are criminalized in violent social contexts that fall short of the elements of armed conflict. Patterns of recruitment in gangs and syndicates that engage in drug trafficking, sex trafficking, and dangerous labor practices, often bear similarities to patterns of recruitment into armed groups and armed forces. In the end, a holistic view of youth who endure, transcend, suffer, and propagate violence is, in my opinion, a propitious path forward to build on the significant accomplishments effected by law and policy over the past two decades. Thank you for your time.