Office of the Special Representative of the Secretary-General for

# CHILDREN AND ARMED CONFLICT

## WORKING PAPER N° 1


# The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation

*October 2009 (Updated November 2013)*

Cover photo

*Mine Awareness Programme for Iraqi Children: At Ashawa Primary School, a girl stands next to mine awareness materials used in the Mine Risk Education programme, funded by UNICEF and implemented by the General Directorate of Mine Action and the Iraqi Kurdistan Mine Action Agency, 21 July 2011, Ashawa, Iraq.*
UN PHOTO/Bikem Ekberzade

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# Table of Contents

*Two children stand together as heavy rain falls in a camp of over 18,000 people displaced by post election violence in Kenya's Rift Valley, January 2008, Rift Valley, Kenya.* UNICEF Photo/Georgina Cranston.

# About the Office

The Office of the Special Representative of the Secretary-General for Children and Armed Conflict (OSRSG/CAAC) was established following the groundbreaking report on the Impact of armed conflict on children (A/51/306 and Add.1) presented to the General Assembly in 1996 by Ms. Graça Machel, former Minister of Education of the Republic of Mozambique. This report provided the first comprehensive assessment of the multiple ways in which children were abused and brutalized during armed conflicts. It called the attention of the international community to better protect children affected by armed conflict.

In 1996, the General Assembly adopted resolution A/RES/51/77 which called for the Secretary-General to appoint a Special Representative as a high-level independent voice on this issue. In April 2006, the Secretary-General appointed Ms. Radhika Coomaraswamy as Under-Secretary-General, Special Representative for Children and Armed Conflict. In this capacity, she serves as a moral voice and independent advocate to build awareness and give prominence to the rights and protection of girls and boys affected by armed conflict.

# Preface

*"Mankind owes to the child the best it has to give."*

Preamble, UN Declaration of the Rights of the Child (1959)

The six grave violations against children during times of armed conflict, enumerated by the Security Council in its resolutions, form the basis of the Council's architecture in protecting children during war. The United Nations Moitoring and Reporting mechanism set up around the world feeds into this framework to gather evidence of grave violations against children in reporting to the Security Council. In this Working Paper, the six grave violations are analyzed against their basis in applicable international law. In doing so, we hope to bring clarity to the issues concerned and to strengthen the arguments of child protection partners as they confront these violations in their field of work.

This is the first in a series of Working Papers developed by the Office of the Special Representative for Children and Armed Conflict to the child protection community to advocate for the better protection of children affected by armed conflict. We hope this effort will assist in bringing conceptual clarity to our work and strengthen our advocacy with Member states, parties to conflict, regional organizations and civil society groups.

The current version of Working Paper No.1 is an update and follow-up on the previous version prepared under the guidance of Ms. Radhika Coomaraswamy, former Special Representative on Children and Armed Conflict, and includes the latest Security Council resolutions on children and armed conflict, as well as other recent developments in international law relevant to child protection in times of armed conflict.

Leila Zerrougui
*Special Representative of the Secretary-General*
*for Children and Armed Conflict*
*7 November 2013*

*Children pose in a camp for internally displaced people (IDPs), 22 August 2012, Port-au-Prince, Haiti.* UN Photo/Logan Abassi

# Acknowledgements

The Office of the Special Representative of the Secretary-General for Children and Armed Conflict would like to express its appreciation to the lead authors of this Working Paper: Carolyn Hamilton (Professor of Law at the University of Essex, Director of the Children's Legal Centre and Barrister at 1, Kings Bench Walk, London) and Laurent Dutordoir (Associate Political Affairs Officer at the Office of the SRSG for Children and Armed Conflict).

# Acronyms and Abbreviations

| | |
|---|---|
| OSRSG/CAAC | Office of the Special Representative of the Secretary-General for Children and Armed Conflict |
| CAT | UN Convention against Torture |
| CRC | Convention on the Rights of the Child |
| DDR | Disarmament, Demobilisation, and Reintegration |
| DRC | Democratic Republic of the Congo |
| ECCC | Extraordinary Chambers in the Courts of Cambodia |
| ECOSOC | United Nations Economic and Social Council |
| ICC | International Criminal Court |
| ICCPR | International Covenant on Civil and Political Rights |
| ICTR | International Criminal Tribunal for Rwanda |
| ICTY | International Criminal Tribunal for the former Yugoslavia |
| IHL | International Humanitarian Law |
| IMF | International Military Forces |
| MNF-I | Multi-National Force in Iraq |
| NDS | National Directorate of Security |
| NGO | Non-governmental organization |
| OPAC | Optional Protocol on the Involvement of Children in Armed Conflict |
| POW | Prisoner of War |
| RUF | Revolutionary United Front |
| SCSL | Special Court for Sierra Leone |
| TRC | Truth and Reconciliation Commission |
| UNDP | United Nations Development Programme |

*Displaced Children at Zam Zam Camp, North Darfur, Sudan, 25 June 2012.* UN Photo/Sojoud Elgarrai

# Introduction

*"It is unforgivable that children are assaulted, violated, murdered and yet our conscience is not revolted nor our sense of dignity challenged.*

*This represents a fundamental crisis of our civilization.**

GRAÇA MACHEL

* Graca Machel, *The Impact of Armed Conflict on Children* attached to: UN Note of the Secretary-General, A/51/306 (1996), para. 317.

Protecting children from the effects of armed conflict is a moral imperative, a legal responsibility and a question of international peace and security.[1]

The Security Council has resolved that the protection of children from armed conflict is an important aspect of any comprehensive strategy to resolve conflict, and should be a priority for the international community.[2] The General Assembly and other UN bodies have repeatedly called for special protection afforded to children by all parties to conflict.[3]

## Identifying the Most Serious Violations of Children's Rights in times of Armed Conflict

The Secretary-General identified six grave violations against during armed conflict, based on their suitability for monitoring and verification, their egregious nature and the severity of their consequences on the lives of children.[4] The legal basis for these violations lies in relevant international law, which in turn encompasses international humanitarian law, international human rights law and international criminal law. During armed conflict, international humanitarian law and international human rights law must be respected, with special regard to children who often have no means to defend themselves against abuses.[5] The full range of children's rights, economic, social and cultural as well as political and civil, must be respected, protected and fulfilled.

### The Six Grave Violations Against Children During Armed Conflict

1. Recruitment and use of children
2. Killing or maiming of children
3. Sexual violence against children
4. Attacks against schools or hospitals
5. Abduction of children
6. Denial of humanitarian access

The Security Council's resolutions provided the UN with tools to effectively address grave violations against children during armed conflict, including: the Secretary General's global annual report on Children and Armed Conflict; the listing of parties to conflict responsible for recruitment and use of children, killing and maiming of children, sexual violence against children, and attacks on schools, hospitals and protected persons; the establishment of country-specific Monitoring and Reporting Mechanisms (MRM)[6] on grave violations against children during armed conflict; the creation of the Security Council Working Group on Children and Armed Conflict ( SCWG-CAAC); and the requirement of dialogue with listed parties on the development of concrete and time-bound Action Plans to halt and prevent violations.

A child means "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."

CONVENTION ON THE RIGHTS OF THE CHILD

Customary Rule #135 of International Humanitarian Law: "Children affected by armed conflict are entitled to special respect and protection."

International Committee of the Red Cross

## A Legal Foundation to Act Upon

The purpose of this Working Paper is to detail the legal basis for asserting that the six grave violations against children in armed conflict are grave breaches and violations of applicable international law. This paper is designed to assist child protection advocates around the world in their mission to protect children and end impunity for violations against children. The protection of children affected by armed conflict is humanity's legal and moral commitment.

## The Six Grave Violations: Key Legal Sources

### International humanitarian law

- The Four Geneva Conventions (1949)
- Additional Protocols to the Geneva Conventions (1977)
- Rome Statute of the International Criminal Court (1998)
- Customary international humanitarian law

### International human rights law

- Convention on the Rights of the Child (1989) and its Optional Protocols (2000/2012)
- UN Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Regional human rights instruments
- ILO Conventions 29 (1930) and 182 (1999)
- Convention against Torture (1984)
- Customary international human rights law

### International jurisprudence

- Case law of the International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone
- The Rome Statute and case law of the International Criminal Court
- Case law of the International Court of Justice

### Security Council Resolutions on children and armed conflict

- 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011) and 2068 (2012).

Note: International treaties bind only those States that have signed and ratified them, while customary law is universally binding.

*At a demobilization ceremony in Sudan, adolescent boys walk away from the weapons they once carried as child soldiers.*
UNICEF Photo/Stevie Mann

# Grave Violation 1

## Recruitment and use of children

*Parties to conflict must not recruit or use children as combatants or other support roles.*

*Parties to conflict must prevent children from participating in hostilities.*

Recruiting or using children under the age of 15 as soldiers is incontrovertibly prohibited under international humanitarian law.[7] Furthermore, international human rights law clearly states 18 years as the minimum legal age for participation in hostilities.[8]

### Recruiting and Using Children Under 15 Years

Recruitment and use of children under the age of 15 is prohibited by the Convention on the Rights of the Child and the Additional Protocols to the Geneva Conventions.[9] The rule that children must not be recruited into armed forces or armed groups and that children must not be allowed to take part in hostilities is considered customary international law, applying equally in situations of international and non-international armed conflict, and to both Government armed forces and non-State armed groups.[10] Judicial affirmation came in 2004, when the Special Court for Sierra Leone (SCSL) ruled in the Hinga Norman case that the recruitment and use of children in armed conflict is a war crime under customary international law.[11] In addition, the statutes of the international tribunals for the former Yugoslavia, Rwanda and Sierra Leone also declared that the recruitment and use of children under the age of 15 years in armed conflict is a war crime. The Rome Statute of the International Criminal Court (ICC) echoes this stance.[12]

The criminal cases before the SCSL and the ICC are evidence of the position the international community has taken regarding recruitment and use of children in armed conflict.[13] Individual commanders and political leaders are being increasingly held accountable for the recruitment and participation of children under the age of 15 in hostilities.

### Recruiting and Using Children under 18 years

International human rights law has further strengthened the acceptable minimum age for direct participation in hostilities and raised it to 18 years. The Convention on the Rights of the Child's Optional Protocol on the Involvement of Children in Armed Conflict (2000) requires State parties to increase to 18 years the minimum age for compulsory recruitment and for direct participation in hostilities. Those countries that continue to permit voluntary recruitment of children under the age of 18 must introduce strict safeguards.[14] In addition, the Optional Protocol prohibits non-State armed groups under any circumstances from recruiting or using children under 18 years.[15]

Similarly, while not outright banning the recruitment of children under 18 in Government armed forces, Additional Protocol I of the Geneva Conventions and the Convention on the Rights of the Child both require that when recruiting children between 15 and 18 years old, priority should be given to the oldest.[16] The International Labor Organization's Convention No. 182 on the Worst Forms of Child Labor declares that recruiting children below the age of 18 is "one of the worst forms of child labor."[17] ILO Recom-

"The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces."

Article 77(2), Additional Protocol I to the Geneva Conventions

States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

Art. 22, African Charter on the Rights and Welfare of the Child

mendation 190 accompanying this convention, as well as the Security Council all call for countries to criminalize child recruitment.[18] National legislation and military manuals in a number of countries increasingly reflect this practice.[19] The Paris Principles on Children Associated with Armed Forces or Armed Groups (2007) to protect children from unlawful recruitment suggests States to ensure that armed groups within their territory do not recruit children under the age of 18 and that the States themselves respect the international standards for recruitment.[20] The African Charter on the Rights and Welfare of the Child (1999) prohibits "recruitment and direct participation in hostilities of any person under the age of 18 years."[21]

## Release and reintegration of children

When children associated with armed forces or armed groups are captured by opposing armed forces, the special protections afforded to them by international humanitarian law by virtue of their age remain applicable.[22] (See also Working Paper No. 3 on Children and Justice published in September 2011).

Moreover, the Optional Protocol insists that parties to conflict pay particular attention to all children involved in hostilities during the disarmament, demobilization and reintegration process, including special programs to provide for the "psychological recovery and social reintegration" of these children into society.[23] (See also the Paris Principles on Children Associated with Armed Forces or Armed Groups)

## The Lubanga case before the ICC

On March 2012 , the International Criminal Court convicted Lubanga Dyilo of committing war crimes consisting of the enlisting and conscripting of children under the age of 15 into the Forces partriotiques pour la libération du Congo and their use for active participation in hostilities. He was sentenced by the ICC to a total period of 14 years of imprisonment. The Lubanga case was the first of its kind before the ICC. Of great significance was the Court's acceptance that the line between voluntary and involuntary recruitment is legally irrelevant in the context of children's association with armed forces or armed groups in times of conflict. The court also decided to apply a broad interpretation of the term "active participation in hostilities" to ensure justice and protection for all children associated with armed conflicts from those on the front line to the boys and girls who were involved in multiple roles supporting the combatants.

*A boy reaches through bars at a prison for juveniles, Haiti.* UNICEF Photo/Roger LeMoyne

## The Charles Taylor case before the Special Court for Sierra Leone

On 26 April 2012, the SCSL found former President of Liberia, Charles Taylor, guilty of aiding and abetting war crimes committed by the Revolutionary United Front (RUF) during the 1991-2002 civil war in Sierra Leone. The Special Court sentenced Taylor to 50 years in prison and this sentence was upheld by the Appeal Chamber in September 2013. The Court's judgement against Charles Taylor marks the first time that a former Head of State has been convicted of war crimes against children that were committed by an armed group found not to be under his direct command and control but to which he gave his practical assistance, encouragement and moral support. The Special Court was also the first international court to determine that the recruitment and use of children aged less than 15 years constituted a war crime under customary international law.

## Detention of children allegedly associated with armed groups

Unlawful or arbitrary detention of children is prohibited under international humanitarian and human rights law. The arrest, detention or imprisonment of a child shall be in conformity with national law, in line with international standards, and only be used as a measure of last resort and for the shortest appropriate period of time. Children as well as all other detainees must be treated humanely, including an absolute ban on torture and cruel, inhuman and degrading treatment. In addition, special protections must be afforded to all children by virtue of their age. In some cases, children are being placed in administrative detention, which can be defined as the deprivation of liberty of a person initiated or ordered by the executive branch of Government, not the judiciary, outside the criminal law context without criminal charges. Administrative detention is "lawful" in exceptional circumstances, only when provided for and carried out in accordance with national law and accompanied by certain procedural safeguards for children, including regular judicial review. In other cases, children are being prosecuted for unlawful acts committed while associated with armed groups. In such a situation, legal safeguards and fair trial principles, such as legal presentation, must be upheld. The CRC specifies, however, that States should seek alternative diversionary measures away from the judicial system, which are in the best interest of the children and promote their rehabilitation into society.

*Mohammad Amin, 18, a former child soldier, looks at the countryside from atop the crumbling roof of a barracks in the village of Bagram on the Shomali Plain in the Central Region province of Parwan, Afghanistan.* UNICEF Photo/Kate Brooks.

# Grave Violation 2
## Killing and maiming of children

*Parties to conflict must protect children from being killed, maimed or injured.*

> Persons taking no active part in the hostilities shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> Common Article 3, Geneva Conventions (1949)

The right of civilians not to be arbitrarily deprived of life and the prohibitions against killing or maiming civilians are principles firmly enshrined in international humanitarian law, international human rights law and international jurisprudence.

The prohibition of violence to civilians, including children, in particular murder, mutilation, cruel treatment and torture is a principle of customary international law, with universal applicability in all situations of armed conflict.[24] Common Article 3 of the Geneva Conventions is the most recognized source for this fundamental protection. It is universally applicable, allows no derogation and is binding on both Government armed forces and non-State armed groups.[25]

*An injured young girl pictured outside Mansehra District Hospital, which was later evacuated following the earthquake that hit Pakistan on 8 October; 22 October 2005, Mansehra, Pakistan.* UN PHOTO/Evan Schinder.

### Principles of "Distinction" and "Proportionality"

The two key principles of the law of armed conflict, distinction and proportionality, are enshrined in the Geneva Conventions and their Additional Protocols are considered customary international humanitarian law.[26] They apply to both Government and non-State armed groups in all situations of armed conflict.[27] The principles aim to protect civilians against the effect of hostilities and prevent unnecessary "collateral damage" resulting from combat operations. They prohibit indiscriminate and disproportionate military attacks, as well as direct attacks against civilians.[28] Such attacks may in some circumstances amount to grave breaches of international humanitarian law.

The principle of proportionality prohibits military attacks if they result in civilian death or injury, or damage to civilian objects that is excessive when compared to the concrete and direct military advantage anticipated from the attack.[29]

The principle of distinction demands that parties to conflict distinguish between civilians and combatants at all times and that attacks must not be directed against civilians.[30] The use of indiscriminate weapons, such as landmines, cluster munitions and chemical weapons, are contrary to the law of armed conflict and contravene multiple international treaties.[31]

The Security Council and General Assembly have repeatedly passed resolutions affirm-

ing their "strong condemnation of the deliberate targeting of civilians or other protected persons in situations of armed conflict".[32] In 2009, through its resolution 1882, the Security Council added patterns of killing or maiming of children in contravention of applicable international law as an additional trigger for the listing of parties to conflict in the Secretary-General's Annual Report on Children and Armed Conflict. The Office of the Special Representative for Children and Armed Conflict, together with partners, prepared field guidance for its implementation.

## Protecting Children from Serious Injury

Torture and cruel, inhuman or degrading treatment and mutilation are explicitly prohibited in international and non-international armed conflicts and by all parties by the Geneva Conventions and their Additional Protocols.[33] On the contrary, parties to conflict are obliged to provide the wounded and sick with the medical care they require when circumstances allow.[34] By virtue of their age, children also enjoy special protection under the Geneva Conventions, including an obligation that all parties to a conflict prioritize the welfare during hostilities of vulnerable groups, including children.[35]

## An Inherent Right to Life

International human rights law stresses the paramount importance of the "right to life, liberty and security of person." States have a responsibility to ensure these rights are respected, protected and fulfilled.[36] The CRC recognizes "that every child has an inherent right to life" and State parties must ensure to the "maximum extent possible the survival and development of the child."[37] The Committee on the Rights of the Child tasked to monitor the practices of States relating to the Convention, has designated this inherent right to life as one of four guiding principles of the entire Convention.[38] The African Charter on the Rights and Welfare of the Child (1990) and other regional human rights instruments also reflect the basic children's right to life and the right to be free from torture and abuse.[39] Furthermore, the Convention against Torture (CAT) includes an absolute prohibition on torture and inhuman or degrading treatment, even during wartime.[40] The ICCPR and the CRC also prohibit the capital punishment of children.[41]

The growing body of international criminal jurisprudence recognized that willful killing in conflict situations may amount to war crimes or crimes against humanity.[42] The international tribunals for Rwanda, the former Yugoslavia and Sierra Leone have successfully prosecuted commanders for murder, arbitrary killing, torture and other forms of ill-treatment against civilians, and have held commanders legally accountable for crimes committed by their soldiers.[43] The Rome Statute of the International Criminal Court (1998) also stated that killing or causing serious bodily harm to civilians may in certain circumstances amount to war crimes, crimes against humanity or even genocide.[44] Furthermore, the International Criminal Tribunal for the Former Yugoslavia (ICTY) recognized in the *Kunarac, Kovač and Vuković* (2001) case that when children are the victims of murder, torture or injury it amounts to "aggravating circumstances" of such crimes, warranting lengthier than ordinary prison terms for perpetrators.[45]

> The principle of distinction between civilian and military targets is one of the "cardinal principles of international humanitarian law" and one of the "intransgressible principles of international customary law."
>
> Nicaragua Case, International Court of Justice

*UNRWA Summer Fun Weeks 2013 for Gaza Children; 03 July 2013, Gaza.* UN Photo/Shareef Sarhan.

# Grave Violation 3
## Sexual violence against children

*Parties to conflict are prohibited from subjecting children to rape and other forms of sexual violence.*

"Children shall be the object of special respect and shall be protected against any form of indecent assault."

Article 77(1), Additional Protocol I to the Geneva Conventions

Rape and other forms of sexual violence against children, both boys and girls, are serious violations of international human rights law and may amount to grave breaches of international humanitarian law.[46] Acts of sexual violence may constitute a war crime, a crime against humanity or a constitutive act with respect to genodice. In 2009, the Security Council, in resolution 1882, added sexual violence against children as an additional trigger for listing parties to conflict in the Secretary-General's Annual Report on Children and Armed Conflict. The Office of Children and Armed Conflict, together with partners prepared field guidance for its subsequent implementation.

*Fatima, a 16-year-old girl, an unwanted pregnancy after being assaulted. Mogadishu, Somalia.* UNICEF Photo/Giacomo Pirozzi

Rape and other forms of sexual violence during armed conflict are prohibited under the Geneva Conventions and their Additional Protocols. Child-specific provisions of these treaties specifically forbid sexual violence against children.[47] The obligation of humane treatment under Common Article 3 implicitly prohibits rape or any other sexual violence, be it against adults or children. Article 27 of the 4th Geneva Convention explicitly prohibits such acts stating that: "Women [including girls] shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."[48]

The international tribunals for the former Yugoslavia and Rwanda, as well as the European Court of Human Rights and the Inter-American Commission on Human Rights, have recognized that rape amounts to torture and is absolutely prohibited.[49] Moreover, a number of international treaties prohibit the sexual abuse and exploitation of adults and children. These include the Convention against Torture (1984), the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) and the Vienna Declaration of the World Conference on Human Rights (1993).[50]

The ICCPR and the Convention for the Elimination of all Forms of Discrimination Against Women (1979) (CEDAW) affirm a women's right to liberty and security of person and to be free from discrimination.[51] The CRC and its Optional Protocol on Trafficking and Ex-

ploitation unequivocally affirm that children must enjoy protection from torture, cruel, inhuman or degrading treatment, a protection broadly accepted as encompassing acts of rape and sexual violence.[52] Regional human rights instruments such as the African Charter on the Rights and Welfare of the Child (1990) also explicitly forbid sexual violence against children.[53]

## Rape and other Forms of Sexual Violence as International Crimes

International criminal law explicitly criminalizes rape and sexual violence during wartime and judicial recognition of its customary status in international law came in 1998 with a number of ground-breaking judgments by the ICTY.[54] The statutes of the SCSL, ICTR and ICTY all cite rape and sexual violence as war crimes and crimes against humanity.[55]

Sexual violence against civilians has been prosecuted by several international tribunals established to punish the perpetrators of international crimes. At the ICTR—the Akayesu (1998) and Musema (2000) cases.[56] —and at the ICTY—the Furundžija (1998) and Kunarac (2000) cases, a number of accused have been convicted for rape, torture and enslavement. This was the first time in history that an international tribunal convicted individuals solely on charges of sexual violence against women and girls.[57] In addition, the SCSL established that "forced marriage" is also an offence under international criminal law when it found three militia leaders guilty of crimes against humanity for forcing girls into marriage.[58]

The Rome Statute of the ICC states that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or "other forms of sexual violence of comparable gravity" may constitute war crimes and crimes against humanity.[59] Jean Pierre Bemba Gombo, a former leader of a Congolese armed group, is currently standing trial at the ICC on war crimes and crimes against humanity charges resulting from allegations of rape and other abuses by troops under his command.[60]

## Other relevant Security Council Resolutions

In 2008, the Security Council, in its resolution 1820 on "Women, Peace and Security" recognized for the first time that "sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security".[61] This has been further taken up by the Security Council through resolutions 1888 (2009), 1960 (2010) and 2106 (2013).

State parties must "protect the child from all forms of sexual exploitation and sexual abuse."

Article 37, Convention on the Rights of the Child

"Acts of sexual violence can be prosecuted as constituent elements of a genocidal campaign."

Akayesu case, International Criminal Tribunal for Rwanda

*First Day of School; 2 September 2012, Gaza.* UN Photo/Shareef Sarhan

# Grave Violation 4

## Attacks against schools and hospitals

*Parties to conflict must not attack schools or hospitals, education or medical personnel.*

"...the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

Article 48, Additional Protocol I, Geneva Conventions

Schools and hospitals are civilian institutions that often provide shelter and protection, and tend to the needs of children during conflict. Attacks against schools or hospitals are, in principle, contraventions of well-established international humanitarian law, including customary norms, and may constitute war crimes and crimes against humanity.[62]

### Protecting Civilian Objects

The 4th Geneva Convention prohibits the targeting of civilian objects, emphasizing the importance of schools and hospitals to the civilian population especially children.[63] Deliberately targeting schools or hospitals in the absence of military necessity is prohibited under the general legal principle of distinction, meaning that civilian objects must be distinguished from military objectives and protected against the consequences of military operations. This is a customary norm of international law applicable to all parties to conflict in all conflict situations.[64]

The protection afforded to schools and hospitals is comprehensive: according to inter-

*Children at an orphanage; 22 August 2013, Les Cayes, Haiti.* UN Photo/Logan Abassi

national customary and treaty law a party to conflict must guard against targeting or attacking schools and hospitals amidst the civilian population, as well as safeguard from attack the schools and hospitals found within its own civilian population or those that fall under its control.[65] The deliberate targeting or destruction of schools or hospitals (or other civilian objects) may amount to grave breaches of the law of armed conflict.[66] The sole exception to the blanket protection afforded to schools and hospitals is "unless and for such time as they are military targets", which means being used for military purposes.[67]

Furthermore, international humanitarian law makes clear that if in the "fog of war" there is a doubt whether a school or hospital is a military or civilian object, the basic working presumption must be that a building normally dedicated to civilian purposes is presumed to remain a civilian object.[68]

Other international legal instruments citing this prohibition include the Convention on Certain Conventional Weapons, Amended Protocol II and Protocol III, which ban, respectively, the use of mines and incendiary weapons against schools, hospitals or other civilian objects.[69] The International Court of Justice has also declared the protection of civilians and civilian objects of paramount importance under international humanitarian law.[70]

Hospitals and medical personnel, the providers of primary medical care and assistance to the civilian population, are explicitly afforded special protections under international law dating back to the very origins of international humanitarian law with the 1864 Geneva Convention and the Hague Conventions of 1899 and 1907.[71] It is a maxim of customary international law that medical personnel and facilities, exclusively assigned as such must be respected and protected in times of armed conflict.[72]

The Convention on the Rights of the Child recognizes the paramount importance of children's right to education and right to health.[73] These rights are also reflected in international and regional legal instruments, including the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966), which address the right of all persons to enjoy "the highest attainable standard of physical and mental health" and the right of every child to education.[74] The targeting and destruction of schools or hospitals obviously constitutes an obstacle to fulfilling these rights.

Scores of countries have enshrined the precept of forbidding the targeting of schools and/or hospitals into national legislation and the military manuals governing the conduct of their armed forces.[75]

The ICTY has developed solid jurisprudence on the necessity to protect schools and hospitals from attack, for example in the Kupreskic (2000) and Kordic & Cerkez (2001) cases.[76] The Rome Statute extends the criminal accountability for these acts (or "failures to protect"), providing the ICC explicit jurisdiction to prosecute and punish those that intentionally target schools or hospitals during armed conflict. Such acts amount to war crimes regardless of whether they occur during an international or non-international armed conflict.[77]

## SCR 1998 on attacks on schools and hospitals

In July 2011, Security Council Resolution 1998 added attacks and threats of attacks on schools, hospitals and protected persons in relation to schools and hospitals to the existing triggers for listing in the annexes of the Secretary-General's Annual Report on Children and Armed Conflict. While access to education and health care in times of armed conflict is a serious concern, the military use of schools and hospitals, however, is not a criterion for listing. The Office of the Special Representative for Children and Armed Conflict, together with partners, prepared field guidance for the resolution's implementation, providing practical tools for the better protection of schools and hospitals and protected persons, with a particular focus on enhancing the understanding of the international legal framework; strengthening monitoring and reporting; and promoting advocacy and dialogue with parties to conflict.

"The cardinal principles... constituting the fabric of humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects..."

International Court of Justice (1996)

## Military use of Schools

In SCR 1998, the Security Council urged parties to conflict to refrain from actions that impeded children's access to education, and specifically requested the Secretary-General the continuation of monitoring and reporting on the military use of schools. The use of schools for military purposes puts children at risk of attack and hampers children's right to education, resulting in reduced enrolment and high drop out rates, especially among girls and may also may lead to schools being considered targets for attack.

In November 2012, an expert group of Member States, regional organizations, military experts, child protection actors, education specialists, and international humanitarian and human rights lawyers developed the Lucens Guidelines on the military use of schools, outlining a series of principles for Government endorsement. The Guidelines aim at increasing knowledge and understanding, improving monitoring and reporting, advocating for clear and explicit domestic legislation on the interaction of military forces with schools and school children, as well as for the Lucens Guidelines" inclusion in military training and doctrine.

*Former child soldiers play football, outside a UNICEF-assisted transit centre for recently released former child soldiers, Ndele, Bamingui-Bangoran Prefecture, Central African Republic.* UNICEF PHOTO/BRIAN SOKOL

# Grave Violation 5
## Abduction of children

*Parties to conflict must not abduct children.*

Abducting or seizing children against their will or the will of their adult guardians either temporarily or permanently and without due cause, is illegal under international law. It may constitute a grave breach of the Geneva Conventions and in some circumstances amount to war crimes and crimes against humanity.

The Geneva Conventions Common Article 3 requirement of humane treatment for civilians implicitly but undeniably prohibits the abduction of children.[78] Forced displacement or deportation of a civilian population, both of which are express prohibitions in the Geneva Conventions may also include instances of child abduction.[79] Abduction may also amount to "enforced disappearance" and is thereby prohibited by several international legal instruments.[80] Moreover, hostage-taking is forbidden by the International Convention Against Taking of Hostages, Common Article 3 and other provisions of the Geneva Conventions.[81] The arbitrary deprivation of liberty is prohibited under customary international law, with universal application to all parties to conflict, Government armed forces or non-State armed groups alike.[82]

The abduction of a child violates the rights of the child and family, as recognized by the Convention on the Rights of the Child, the ICCPR and the UDHR.[83] European, American and African regional human rights instruments also proscribe the abduction of children.[84]

### The Consequences of Abduction

In and of itself, abduction during armed conflict may amount to a serious violation of international humanitarian law and of children's rights.[85] However, the magnitude of the violation is compounded by the consequences that often follow a child's abduction in a conflict zone, including trafficking and enslavement. Child abduction, in the emblematic case of the Lord's Resistance Army in the central African region for example, often leads to other acts constituting grave violations against children, including: recruitment and use of children (see Grave Violation 1), killing and maiming (see Grave

"State parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."

Article 35, Convention on the Rights of the Child

UNICEF Photo/Michael Kamber

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Article 9, International Covenant on Civil and Political Rights

Violation 2) and rape and other forms of sexual violence (see Grave Violation 3).

The illicit transportation of children by Government armed forces and non-State armed groups across borders during armed conflict for exploitation constitutes one of the worst forms of child trafficking.[86] The Convention Against Transnational Organised Crime's Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2003) expressly forbids all forms of human trafficking including for forced recruitment, prostitution and sexual slavery.[87]

The abduction of children as part of a pattern of disappearances, for participation in hostilities, for enslavement and for other forms of exploitation is prohibited under international law, including the Optional Protocol on Trafficking and Exploitation and other international instruments outlawing human trafficking and slavery.[88]

The ICC's Rome Statute states that "unlawful confinement" is a grave breach of the Geneva Conventions and may amount to a war crime.[89] Perpetrators of hostage taking or enforced disappearances are subject to criminal accountability before the ICC.[90] Additionally, the ICC has jurisdiction to hold to account those that enslave or deport children, or forcibly transfer them from one group to another.[91] The ICTY has established jurisprudence on some of the more egregious types of abductions: enforced disappearances and abduction leading to enslavement. In the Kupreskic (2000) and Kunarac (2001) cases, the ICTY stated that "enslavement as a crime against humanity is customary international law" and that enforced disappearance of persons was an inhumane act, which also amounted to a crime against humanity.[92]

*A group of children on the streets behind Lido Beach in the Kaaraan District; 6 August 2012, Mogadishu, Somalia.* UN Photo/Stuart Price

# Grave Violation 6

## Denial of humanitarian access

*Parties to conflict must not deny humanitarian access for children.*

Denial of humanitarian access to children and attacks against humanitarian workers assisting children are prohibited under the 4th Geneva Convention and its Additional Protocols.[93] Such a denial of access or attack may constitute a war crime and a crime against humanity.[94]

Moreover, it is a principle of customary international law that parties to conflict must allow and facilitate aid to any civilian population in need, subject to their control.[95] Provision of such relief must be impartial in character and conducted without any adverse distinction, for example based on race, age or ethnicity.[96]

Consent to provide relief to a civilian population including to children must not be refused by a party to conflict on arbitrary grounds, and each party must refrain from deliberately impeding the delivery of relief supplies to civilians in need in areas under its control.[97] The Security Council, the General Assembly and the Human Rights Council have repeatedly condemned such impediment.[98] Denying humanitarian access to children may violate several basic human rights, including the right to survival and the right to be free from hunger, fundamental rights enjoyed by all people.[99]

In relief operations, children are entitled to special attention and must be provided with the care and aid they require.[100] The Convention on the Rights of the Child has several provisions that necessitate the facilitation of humanitarian relief to children in need, including ensuring that children seeking refugee status "receive appropriate protection and humanitarian assistance."[101]

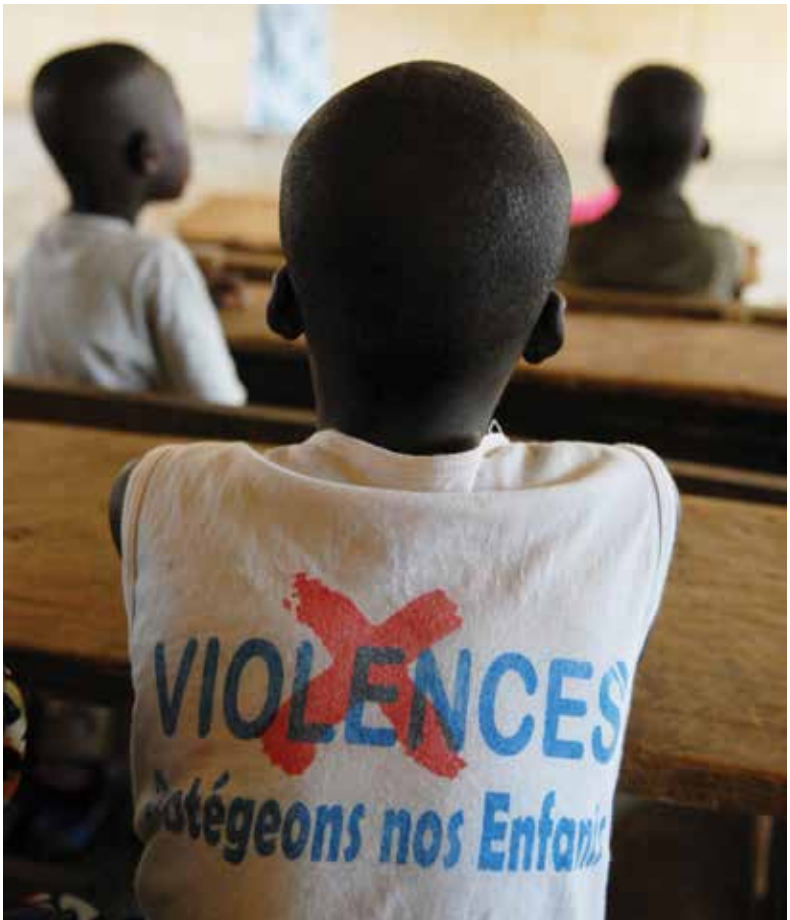
### Ensuring Access to Internally Displaced and Refugee Children

The Guiding Principles on Internal Displacement are a non-binding set of international standards unanimously adopted by the General Assembly in 2005. They include the tenet that "the primary duty and responsibility for providing humanitarian assistance

"The child shall in all circumstances be among the first to receive protection and relief."

Principle 8,
UN Declaration on the Rights of the Child

UNICEF Photo/XXXXXXXXXXXXXXXXXX



"Parties must also permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases. And when distributing humanitarian relief priority must be given to such persons as children, expectant mothers and maternity cases."

Article 23, 4th Geneva Convention

to internally displaced persons lies with national authorities. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced (for further information see Working Paper 2 on The Rights of Internally Displaced Children)."[102]

International humanitarian law demands that humanitarian personnel have adequate access to refugee and displaced populations, including children.[103] Additionally, regional human rights instruments and numerous Security Council Resolutions demand parties to conflict to provide access for relief personnel to refugee and displaced populations (often with special reference to the plight of children), and ensure their basic human needs are adequately met.[104]

*A boy peeks out a tent provided by the UN Refugee Agency (UNHCR) at the camp for Syrian refugees; 7 December 2012, Islahiye, Turkey.* UN Photo/Mark Garten


## Protection of Humanitarian Personnel

The protection of humanitarian relief personnel and their equipment is one of the oldest maxims of the law of armed conflict.[105] Humanitarian personnel, their equipment and the buildings or other objects they utilize are afforded specific protection under the Geneva Conventions and their Additional Protocols.[106] Parties to conflict must ensure freedom of movement for authorized humanitarian personnel, subject only to imperative military necessity.[107] Medical transports and facilities are specifically provided with further protections., which are recognized as customary international law.[108]

The United Nations is the largest supplier and operator of humanitarian relief operations. The 1994 Convention on the Safety of United Nations and Associated Personnel was enacted to reinforce the sanctity of their relief personnel.[109] Security Council Resolutions have repeatedly voiced concern at the targeting of humanitarian aid workers and UN mission staff. The Security Council has repeatedly condemned attacks against UN humanitarian relief workers as "clear violations of international humanitarian law" and similarly, adopted resolutions after specific instances of aid workers being targeted or hurt in arme conflicts.[110]

The denial of humanitarian access attracts criminal accountability, even in times of war. For example, the SCSL declared it a war crime and in 2009 handed down the first ever convictions by an international tribunal to three militia leaders for targeting humanitarian workers and peacekeepers in deliberate attacks.[111] The ICTY established that depriving inmates of food and other vital services in detention centers constitutes the basis for the charges of war crimes and crimes against humanity.[112] The Rome Statute underscores that intentional attacks against a peacekeeping or humanitarian assistance mission acting in accordance with the UN Charter constitute a war crime.[113] Furthermore, under the Statute's definitions, using starvation as a method of warfare or willfully impeding relief supplies may amount to a war crime or even genocide.[114]

# Conclusion

*"State parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."*

Article 38, Convention on the Rights of the Child

In summary, each of the Six Grave Violations against children during armed conflict may constitute:

- Grave breaches of the Geneva Conventions and their Additional Protocols
- Violations of customary norms of international law
- Violations of obligations contained in the Convention on the Rights of the Child and other international and regional human rights treaties
- War crimes or crimes against humanity under the Rome Statute.

Perpetrators of the Six Grave Violations, and their military commanders and political leaders, have been and will continue to be held accountable for their crimes:

- Under national laws and military codes of justice
- Under international criminal law and the International Criminal Court

Governments, international organizations regional organizations and civil society must work together to strengthen the mechanisms of monitoring, reporting and bringing to justice perpetrators of grave violations against children in times of armed conflict. Children are amongst the most vulnerable in any society and any conflict. Impunity for violations against children during armed conflict must end; our children deserve protection.

*Children play next to a police station with bullet holes; 28 August 2013, Gao, Mali*
UN Photo / Marco Dormino

# Further Information

- Special Representative of the Secretary-General on Children and Armed Conflict:
  childrenandarmedconflict.un.org
- United Nations Chidren's Fund (UNICEF):
  www.unicef.org
- International Committee of the Red Cross:
  www.icrc.org
- Watchlist on Children and Armed Conflict:
  www.watchlist.org
- Child Rights Information Network:
  www.crin.org
- Human Rights Watch:
  www.hrw.org

# Endnotes

1 Additionally, the UN Security Council has characterized crimes against children during wartime as a 'potential threat to international peace and security' the Council leaves open the possibility of imposing more stringent sanctions, or even intervening under Chapter 7 of the UN Charter in response to such crimes. See UNSC Resolutions cited below.

2 See, for example, United Nations Security Council Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011) and 2068 (2012)

3 See, for example, UN General Assembly Declaration, *A World Fit For Children,* appended to A/Res/S-27/2 (2002) which was unanimously adopted. Also: A/Res/62/141 (2008), A/Res/63/241 (2009).

4 S/2004/72.

5 Human rights treaty law applies at all times, but certain treaty-provisions allow for suspension in times of emergency. See, for example, art. 4 *International Covenant on Civil and Political Rights (1966).*

6 For more information on the MRM refer to the MRM Field Manual: Monitoring and Reporting Mechanism on Grave Violations Against Children in Situations of Armed Conflict. OSRSG-CAAC, UNICEF & DPKO, April 2010 (www.mrmtools.org).

7 See, for example: ICRC, as above n. 13, p. 482-488.

8 Ibid.

9 Art. 77(2) AP I; art. 4(3) AP II; art. 38 CRC

10 Customary Rule 136 and 137 in: ICRC, as above n. 13 , p. 482

11 Art. 4(c) *Statute of the Special Court for Sierra Leone* (2002). *Prosecutor v. Hinga Norma (Decision on Preliminary Motion), SCSL (May 2004).* In 2007 the *SCSL* which has paid special attention to the prosecution child-recruiters found three commanders guilty of crimes against humanity and war-crimes for, *inter alia*, recruiting children under the age of 15 and allowing them to participate in hostilities: *Prosecutor v. Hinga Norman, Fofana and Kondewa,* SCSL (2007).

12 Art. 8(2)(b) and 8(2)(e) Rome Statute.

13 See, for example, a most recent conviction by the SCSL: *Prosecutor vs. Alec Tamba, Brima, Brazzy Camara and Borbor Kanu* (20 June 2007)

14 Art. 1-3, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict* (2000) See also: Principle 9, *Declaration of the Rights of the Child* (1959): 'The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.'

15 Art. 4, *Optional Protocol to the CRC on children and armed conflict* (2000)

16 Art. 77(2) AP I

17 Art. 1-3 *International Labor Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999). See also: art. 3(1) of *ILO Convention No. 138*, 'Minimum Age Convention' (1973): 'The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.'

18 International Labor Organization, *Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999)*; UNSC Resolution 1882 (2009)

19 According to the ICRC's study of international practices no contrary state practice was found. See: above n. 13 , p.483 for citations of several countries' legal provisions.

20 Para. 4 of *Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups* (2007)

21 Art. 22, *African Charter on the Rights and Welfare of the Child* (1990).

22 Art. 77 AP I; art. 4 AP II.

23 Art. 6, 7 Optional Protocol CRC (armed conflict).

24 Common article 3 *Geneva Conventions* (1949). See also: art. 12, 50 Geneva I; art. 12, 51 Geneva II; art. 13, 17, 87, 89, 130 Geneva III; art. 5, 27, 32, 147 Geneva IV; art. 75, 77 AP I; art. 4, 13 AP II; Customary Rules 87, 89-92, 135 of the International Committee of the Red Cross (Henckaerts, Doswald-Beck eds.), *Customary International Humanitarian Law Vol. 1: Rules,* Cambridge University Press (2005). Art. 147 Geneva IV lists "grave breaches" of the Conventions.

25 In the *Nicaragua Case,* International Court of Justice (1986), the ICJ stated that common Article 3 of the Geneva Conventions (1949) reflected 'elementary considerations of humanity' constituting a 'minimum yardstick applicable to all armed conflicts.' In *The Prosecutor vs. Tadic*, International Criminal Tribunal for the Former Yugoslavia (1999), the Tribunal found that civilians in non-international armed conflicts are protected by the same common article 3 protections of the Geneva Conventions.

26 Customary Rules 1-24 in: ICRC, *Customary International Humanitarian Law Vol. 1: Rules*, Cambridge University Press (2005), p. 3.

27 See, for example, on the universality of the principles: *Nuclear Weapons Case,* International Court of Justice (1996); *Prosecutor v. Kupreskic*, ICTY (2000).

28 Art. 48, 51, 52, 57 AP I; art.13 AP II; art. 3 *Protocol II, and art. 3 Amended Protocol II to the Convention on Certain Conventional Weapons* (1980);

29 Art. 51, 57 AP II; art. 3 *Protocol II, and art. 3 Amended Protocol II to the Convention on Certain Conventional Weapons* (1980); art. 8(2)(b) *Rome Statute of the International Criminal Court* (1998)

30 Art. 48, 51, 52 AP I; art. 4, 13 AP II; art. 4-7 *Amended Protocol II* and art. 2 *Protocol III to the Convention on Certain Conventional Weapons* (1980); art. 8(2)(e) *Rome Statute of the International Criminal Court* (1998).

31 Art. 35 AP I; art. 6 *Protocol II* and art. 3 *Amended Protocol II to the Convention on*

*Certain Conventional Weapons* (1980); *Ottawa Landmine Ban Treaty (1997).* Cluster munitions are another category of weapons which many are seeking to be outlawed. The *Convention on Cluster Munitions (2008)* has been ratified by 17 States, 13 short of the requisite 30 for the convention to come into force.

32 See for example: UNSC 1882 (2009), UNSC 1296 (2000), UNGA 2444 (1988)—unanimously adopted. (Other resolutions include: UNSC 564, UNSC 1001, UNSC 1181).

33 Art. 147 Geneva IV; art. 75(2) AP I; art. 4(2) AP II.

34 Common article 3 Geneva Conventions; Art. 50 Geneva IV; art. 10 and 11 AP I; art. 5 and 7 AP II.

35 Art. 23, 24, 38, 50, 76 and 89 Geneva IV; art. 70 and 77 AP I; art. 4 AP II.

36 Art. 3, *Universal Declaration of Human Rights* (1948).

37 Art. 6, 37 CRC.

38 World Conference on Human Rights, *Vienna Declaration and Programme of Action (1993),* A/Conf. 157/24).

39 Art. 5, 16 *African Charter on the Rights and Welfare of the Child*, Organization of African States (1990).

40 'No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.' Article 2(2), *Convention against Torture* (1984).

41 Art. 37 *Convention on the Rights of the Child (1989)* ("the CRC"); art. 6 ICCPR; art. 23, 24, 50, 76, 89 Geneva IV; art. 70, 77 AP I; art. 4(3) AP II.

42 For murder to be a crime against humanity it must committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, see Art. 7(1), Rome Statute. Willful killing categorized as a war-crime, see Art. 8(2), Rome Statute.

43 *Prosecutor v. Kordic and Cerkez* , ICTY (2001): Accused guilty of "murder" as a crime against humanity, and "wilful killing" as grave breach of the Geneva Conventions and war-crime. *Prosecutor v. Kupreskic*, ICTY (2000): Accused found "guilty of a crime against humanity (murder)."

44 Murder is categorized as a crime against humanity if it is committed as part of widespread or systematic attack directed against a civilian population, with knowledge of the attack. Art. 6, 7, 8 Rome Statute. Also physical mutiliation, unjustifiable scientific or medical experimentation or treacherously wounding individuals belonging to the hostile nation are also categorized as war-crimes. See Art. 8, Rome Statute.

45 *Prosecutor v. Kunarac, Kovač and Vuković,* ICTY (2001)

46 'Rape and other forms of sexual violence' is not specifically listed in article 147 of 4th Geneva Conventions casting some doubt in some scholars' minds as to its status as a "grave breach" of the Geneva Conventions. Nevertheless most scholars, international and national courts that have decided on the matter conclude that it falls within the reasonable understanding of 'torture or inhuman treatment' or 'serious injury to body or health.'

47 Article 27(2) Geneva IV; art. 75(2), 76(1), 77(1) AP I; art. 4(2)(e) AP II—which specifically adds "rape" to the list of forms of indecent assault. See also: Customary Rule 93 in: ICRC, as above n. 13 , p. 323. Child-specific provisions: Art. 77 AP I; art. 4(3) AP II.

48 Specific provisions in the Geneva Conventions relating to protection against rape and sexual abuse include: Common art. 3; art. 12, 50 Geneva I; art. 12, 51 Geneva II; art.13, 17, 87, 89 Geneva III; art.5, 27, 32, 147 Geneva IV; art. 75 AP I; art. 4(1) AP II; and Rules 87, 89-92 of: ICRC, *Customary International Humanitarian Law,* as above n. 13 , p. 306.

49 See for example: *Prosecutor v. Jean Paul Akayesu*, ICTR (1998) and *Delalic, Celebic* and *Furudzija* cases, ICTY (1998), European Court of Human Rights, *Aydin vs. Turkey* (1997), Inter-American Commission on Human Rights, *Case 10.970 (Peru)* (1996).

50 See for example: Art. 1 *Convention against Torture* (1984); art. 1, *Convention on Suppression of Trafficking and Exploitation* (1949); Part 5, *Vienna Declaration of the World Conference on Human Rights* (1993).

51 Art. 2, 3, 6 ICCPR; art. 1-3 CEDAW.

52 Art. 34, 35, 37 CRC, Art. 3, CRC's *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2000).

53 Art. 27, *African Charter on the Rights and Welfare of the Child* (1990). See also: *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* whose preamble calls for the condemnation and elimination of 'any practice that hinders or endangers the normal growth and affects the physical, emotional and psychological development of women and girls.' See also: Art. 3, 5 *European Convention on Human Rights* (1950); art. 5, 7, 11 *American Convention on Human Rights* (1969).

54 *Prosecutor v. Furundžija* , ICTY (1998).

55 War crimes: art. 3(e) SCSL; art.4(e) ICTR; art. 2 ICTY. Crimes Against Humanity: art.2(g) SCSL; art.3(g) ICTR; art.5(g) ICTY.

56 *Prosecutor v. Akayesu,* ICTR (1998), *Prosecutor v. Musema,* ICTR (2000).

57 *Prosecutor v. Furundžija* , ICTY (1998): The ICTY Trial Chamber noted that prohibition of rape and serious sexual assault in armed conflict under customary international law has gradually crystallized. The Tribunal found the accused guilty of a violation of the laws and customs of war (outrages upon dignity, including rape). *Prosecutor v. Kunarac, Kovac and Vukovic,* ICTY (2000): The ICTY Trial Chamber found the accused guilty of "crimes against humanity (rape)" and "violations of the law of customs of war (rape)."

58 *Prosecutor vs. Alec Tamba Brima, Brazzy Camara and Borbor Kanu* (SCSL, 20 June 2007)

59 Art. 7(1)(c), 7(1)(g), 8(2)(b), 8(2)(c), 8(2)(e) Rome Statute.

60 Confirmation of charges in *Prosecutor v. Jean-Pierre Bemba Gombo*, International Criminal Court, 12-15 January 2009.

61 Resolution 1820 (2008), Adopted by the Security Council at its 5916th meeting, on 19 June 2008.

62 See, for example: ICRC, as above n. 13 , p. 34.

63 Art. 11, 18 Geneva IV, art. 48 AP I. For example, art. 48 AP I states: '…the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.'

64 Art. 48, 52 AP I; Customary Rule 7 in: ICRC, as above n. 13 , p. 25; art. 48, 52 AP I; art. 13(1) AP II; *Nuclear Weapons Case*, International Court of Justice.

65 Customary Rules 10-22 in: ICRC, as above n. 13, p. 34; art. 50 Geneva IV (for occupying powers).

66 Art. 147 Geneva IV; Art. 85 AP I; Customary Rule 10-13 in: ICRC, as above n. 13 , p. 34.

67 Ibid.; art. 52 AP I.

68 Art. 15, 52 AP I; art. 9 -11, 18 AP II.

69 Art. 3 *Amended Protocol II* and art. 2 *Protocol III* of the *Convention on Certain Conventional Weapons.*

70 *Nuclear Weapons Case,* International Court of Justice (1996).

71 Art. 1-3 *Geneva Convention for the amelioration of the condition of the wounded in armies in the field* (1964); art. 15 and 27, *Hague Convention* (1907)

72 Customary Rule 25, 28 in: ICRC, as above n. 13 , p. 79; art. 19 Geneva I; art. 18 Geneva IV; art. 12 AP I; art. 11 AP II.

73 Art. 24, 28 CRC

74 Art. 26, UDHR; art. 12 (- health) and art. 13 (- education) ICESCR (1966); art. 13 *Additional Protocol to the American Convention on Human Rights* (1999); art. 11, 14 *African Charter on the Rights and Welfare of the Child* (1990).

75 For illustrative list of national laws see: ICRC, as above n. 13 , p. 35.

76 *Kupreskic* (2000) and *Blaskic* (2000). In *Kupreskic,* the court stated:: 'The deliberate attacks on civilians or civilian objects are absolutely prohibited by international humanitarian law.' In *Blaskic* case: The ICTY Trial Chamber found the accused guilty of 'unlawful attacks on civilian objects.'

77 Art. 8(2)(b), 8(2)(e) Rome Statute.

78 Common article 3, *Geneva Conventions* (1949); Customary Rule 99 of ICRC, as above n. 13, p. 332

79 Art. 49, 147 Geneva IV; art. 85(4) AP I, art. 17 AP II.

80 Art. 147, GCIV; Art. 2, 25 *International Convention for the Protection of All Persons from Enforced Disappearance (2006); art. 1 UN Declaration on Enforced Disappearance (1992)*; art. 1 *Inter-American Convention on the Forced Disappearance of Persons (1994).*

81 Art. 34, 147 Geneva IV; art. 75(2) AP I; art. 4(2) AP II; Customary Rule 96 of ICRC, as above n. 13 , p. 334; art. 1 *International Convention Against Taking of Hostages (1979).*

82 Customary Rule 99 in: ICRC, as above n. 13, p. 344.

83 Child: Art. 8, 35, 37 CRC; art. 9, 23 ICCPR; art. 9 UDHR. Family: Art. 3, 5; Art. 16, UDHR,

84 Art. 3, 5 *European Convention on Human Rights (1950)*; art. 6-7 *American Convention on Human Rights (1969)*; art. 6 *African Charter on Human and Peoples' Rights (1981)*; art. 23 *African Charter on the Rights and Welfare of the Child (1990).*

85 See footnotes 75-81.

86 Report of the UN Secretary-General on children and armed conflict (2007), S/2007/757.

87 Art. 2-9 *Convention Against Transnational Organised Crime* (2000) and the *Convention's Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2003).*

88 For example, abduction for the purpose of exploitation is child trafficking—prohibited under art. 3 of the CRC's *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2000); art. 3, *European Convention on Human Rights (1950)*; art. 6 *American Convention on Human Rights (1969)*; art. 5 *African Charter on Human and Peoples' Rights (1981).*

89 Art. 8(2)(a) Rome Statute

90 Art. 7(1)(c)-(e), 7(1)(i), 8(2)(a), 8(2)(c) Rome Statute.

91 Art. 6(e), 7(1)(c)-(e), 8(2)(a) Rome Statute

92 *Prosecutor v. Kupreskic et. al,* ICTY (2000); *Prosecutor v. Kunarac, Kovac and Vukovic,* ICTY (2001)

93 Art. 23, 142 Geneva IV; art. 54, 70, 77 AP I, art. 14, 18 AP II.

94 Art. 8(2)(b), 8(2)(e) Rome Statute.

95 Customary Rule 55 in: ICRC, as above n. 13, p. 193. See also: art. 55 Geneva IV.

96 Ibid.; art. 23 Geneva IV; art. 70(2) AP I.

97 Art. 23, 55 Geneva IV; art. 70(3) AP I.

98 See, for example, UNSC Res 824, UNGA Res 55/2, UN Commission on Human Rights Res 1995/77.

99 See, for example, art. 11 and 12 ICESCR; art. 6 CRC.

100 Principle 8, *UN Declaration on the Rights of the Child* (1959).

101 Art. 22(1) CRC; also see: art. 6, 24 and 27 CRC.

102 Principle 25, 30 *Guiding Principles on Internal Displacement*, OCHA 2004.

103 See, for example: Art. 49 Geneva IV; art. 78 AP I; art. 17 AP II.

104 See, for example: Art. 22 CRC; art. 23 *African Charter on the Rights and Welfare of the Child* (1999); art. 9 *Inter-American Convention on Violence Against Women* (1994); art. 4, 19 *Guiding Principles on Internal Displacement* (2004); UN SC Resolutions 688, 819, 999, 1010, 1019, 1124. See also International Committee of the Red Cross, *Customary International Humanitarian Law Vol. 1: Rules,* p466.

105 See, for example, Art. 15, Hague Conventions (1907).

106 Art. 70(4), 71(2) API, art.18(2) APII.

107 Art. 60, 61 Geneva IV; art. 71 AP I; art. 18 AP II; Customary Rule 56, ICRC, as above n. 13, p. 200.

108 Customary Rule 31, 32 in: ICRC, as above n. 13, p. 105.

109 Art. 5, 7 *UN Convention on the Safety of United Nations and Associated Personnel* (1994)

110 UNSC Res. 897 (1994). The UNSC condemned "violence and armed attacks against persons engaged in humanitarian… efforts" in Somalia. Resolution 913 (1994). The UNSC condemned all attacks against humanitarian relief workers in Gorade, former Yugoslavia. The UNSC adopted similar resolutions condemning attacks or demanding that no attacks be directed against humanitarian relief work in Haiti, Angola, Somalia, Liberia, Burundi, and Afghanistan.

111 Art. 4(b) Statute of the SCSL; *Prosecutor vs. Sesay, Kallon and Gbao (RUF Case) (February 2009)*

112 *Prosecutor v. Nikolic.* ICTY (2003), *Prosecutor v. Krnojelac.* ICTY (2002), and *Prosecutor v. Delalic et al.,* ICTY (1998).

113 Art. 8(2)(b) and (e) Rome Statute.

114 Art. 6(c), 8(2)(b) and (e) Rome Statute.

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**http://childrenandarmedconflict.un.org**

http://www.facebook.com/childrenandarmedconflict
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