



**American
Red Cross**

Child Soldiers

INTERNATIONAL HUMANITARIAN LAW

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“I’ve seen people get their hands cut off, a 10-year-old girl raped and then die, and so many men and women burned alive . . . so many times I just cried inside my heart because I didn’t dare cry out loud.”

—A 14-year-old girl abducted in January 1999 by a rebel group in Sierra Leone

“I still dream about the boy from my village who I killed. I see him in my dreams, and he is talking to me and saying I killed him for nothing.”

—A 16-year-old girl after demobilization from an armed group in Central Africa

Overview

In 2009, tens of thousands of children were recruited or used by armed groups in at least 18 countries around the world. Child soldiers, or as aid organizations define them, “children associated with armed forces or armed groups,” perform a range of tasks, including combat functions (e.g., using weapons, laying mines and explosives and acting as guards), scouting or acting as couriers, training and conducting drills or other armed group preparations, carrying out logistics and support functions (e.g., acting as porters, cooks and other forms of domestic labor) and sexual slavery.

Why Children Become Involved in Armed Conflict

Children are especially vulnerable to military recruitment because they may be easily manipulated and can be drawn into violence when they are too young to resist or understand what is happening. They are most likely to become child soldiers if they are poor, separated from their families, displaced from their homes, living in a combat zone or have limited access to education. For this reason, orphans and

refugees are particularly vulnerable to recruitment. Many children join armed groups because of economic or social pressure, or because they believe that the group they are joining will offer food or security. Others are forcibly recruited or abducted by armed groups.

International Law

Children receive special protection under international humanitarian law (IHL) and international human rights law during armed conflict. During both international and non-international armed conflicts, children benefit from the general protection provided for civilians not taking part in hostilities. Civilians must be protected from the effects of military operations, allowed to receive assistance and guaranteed humane treatment. Because children have particular vulnerabilities, the third and fourth Geneva Conventions (GC III and GC IV) of 1949 and the Additional Protocols (APs) of 1977 provide children, even those who take direct part in the hostilities, with special protections. The APs, the 1989 Convention on the Rights of the Child (CRC) and its Optional Protocol on the Involvement of Children in Armed

The Red Cross and International Humanitarian Law

The Red Cross and the Geneva Conventions were born when Henry Dunant witnessed the devastating consequences of war at a battlefield in Italy. In the aftermath of that battle, Dunant argued successfully for the creation of a civilian relief corps to respond to human suffering during conflict, and for rules to set limits on how war is waged.

Inspired in part by her work in the Civil War, Clara Barton would later found the American Red Cross and also advocate for the U.S. ratification of the first Geneva Convention.



T.A. Voeten/ICRC

To Learn More

To learn more about international humanitarian law, and find opportunities to promote these rules through the free curriculum Exploring Humanitarian Law, visit www.redcross.org/ihl. Ask your local Red Cross chapter for more information about IHL classes.

Conflict also set limits on children's participation in hostilities.

Definition of Child Pursuant to International Law

In article 1 of the CRC, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

The GCs and the APs have different age-limits for different protective measures for children. However, "children under 15 years" is the most common age-limit. For example:

At 18 years old, a person may be subject to: compulsion to work in occupied territory (GC IV, art. 51), pronouncement of the death penalty (GC IV, art. 68, and AP II, art. 6(4)), execution of the death penalty (AP I, art. 77(5)).

At 15 years old, a person may be subject to: losing protective measures to ensure that orphans and children separated from their families are not left on their own (GC IV, art. 24); that they receive the same preferential treatment for aliens as for nationals (GC IV, art. 38(5)); losing preferential measures in regard to food, medical care and protection, which may have been adopted prior to occupation (GC IV, art. 50); losing the protective measure that requires additional food for interned children be given in proportion to their physiological needs (GC IV, art. 89); and to losing protection from recruitment and participation in hostilities (AP I, art. 77(2), and AP II, art. 4(3)(c)).

At 12 years old, a person may be

subject to: not being included in the arrangement for children to be identified by the wearing of identity discs, or by some other means (GC IV, art. 24).

Children Not Participating in Hostilities

In the event of an international armed conflict, children not taking part in hostilities are protected by GC IV and AP I, pursuant to the general protection of civilians. They are covered by the fundamental guarantees that these treaties provide, in particular the right to life, the prohibitions on coercion, corporal punishment, torture, collective punishment and reprisals (GC IV, art. 27-34, and AP I, art. 75) and by the rules of AP I on the conduct of hostilities, including both the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians (art. 48 and 51). In the event of non-international armed conflict, children are also covered by the fundamental guarantees for persons not taking direct part in the hostilities (art. 3 common to all GCs, and AP II, art. 4 and 13).

Children are provided further special protection under IHL (AP I, art. 77(1), and AP II, art. 4(3)). In addition to the special protections listed under the abovementioned definition of "child," children are also given, among other things, special consideration with respect to arrest, detention or internment (GC IV, art. 51, 76, 82, 85, 89, 94, 119, 132, AP I, art. 77(3), 77(4), and AP II, art. 4(3)(d)).

Children Participating in Hostilities

AP I relating to international armed conflicts obliges State parties to take all feasible measures to prevent children under 15 from taking direct part in hostilities. It expressly prohibits their recruitment into the armed forces and encourages State parties to give priority in recruiting among those aged from 15 to 18 to the oldest (art. 77). AP II (relating to non-international armed conflicts) goes further, prohibiting both the recruitment and the participation – direct or indirect – in hostilities by children under 15 years of age (art. 4(3)(c)).

Notwithstanding the abovementioned rules, children who take direct part in international armed conflict are recognized as combatants and in the event of their capture are entitled to prisoner of war status under GC III. The APs provide that child combatants under 15 years of age are entitled to privileged treatment in that they continue to benefit from the special protection accorded to children by IHL (AP I, art. 77(3), and AP II, art. 4(3)(d)).

International Criminal Court (ICC)

The International Criminal Court (ICC) was created based on a treaty adopted in Rome, Italy, on July 17, 1993. The Rome Statute, as it is known, came into force on July 1, 2002. It includes in its list of war crimes the conscription or enlisting of children under the age of 15 years into the national armed forces or using them to participate actively in hostilities during an international armed conflict or an armed conflict not

of an international character (art. 8(2)(b)(xxvi)) and (art. 8(2)(e)(viii)). The ICC does not have jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime (art. 26). The United States is not a State Party to the Rome Statute of the ICC.

Thomas Lubanga Dyilo, the first person to be tried by the ICC, is charged with i) enlisting and conscripting children under the age of 15 years into the Forces patriotiques pour la libération du Congo [Patriotic Forces for the Liberation of Congo] (FPLC) and using them to participate actively in hostilities in the context of an international armed conflict from early September 2002 to June 2, 2003, and ii) enlisting and conscripting children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of an armed conflict not of an international character from June 2, 2003 to August 13, 2003.

For more information about the ICC, please refer to the American Red Cross fact sheet on the ICC, located at www.redcross.org/ihl.

Convention on the Rights of the Child (CRC)

The CRC, which came into force on September 2, 1990, covers all the fundamental rights of the child. Under article 38 of the CRC, States party to this treaty shall take all feasible measures to ensure that persons under the age of 15 years do not take a direct part in hostilities (para. 2), and that priority be given in recruitment to the oldest of those aged between 15 and 18 (para. 3). It thus falls short of the ban on direct or indirect participation

laid down by AP II. The United States signed the CRC on February 16, 1995, but has not yet ratified it.

Optional Protocol to the Convention on the Rights of the Child

The Optional Protocol on the involvement of children in armed conflict was adopted on May 25, 2000. For States party to this treaty it states, among other things, that:

- States shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities (art. 1);
- Compulsory recruitment into the armed forces of persons under 18 years of age is prohibited (art. 2);
- States shall raise the minimum age for voluntary recruitment from 15 years. This rule does not apply to military academies (art. 3);
- Armed groups distinct from the national armed forces should not, under any circumstances, recruit (whether on a compulsory or voluntary basis) or use in hostilities persons under the age of 18 years, and the States must take legal measures to prohibit and criminalize such practices (art. 4).

For more in-depth information regarding child soldiers, please consult Module 2 of the American Red Cross Exploring Humanitarian Law curriculum: www.redcross.org/ehl.

Sources:

ICRC, "Legal Protection of Children in Armed Conflict" fact sheet (2003).

Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press: 2005).