





ADVANCING JUSTICE FOR CHILDREN:

innovations to strengthen accountability for violations and crimes affecting children in conflict

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EXECUTIVE SUMMARY

Children are among the principal victims of international human rights law and international humanitarian law, including those amounting to core international crimes under international law, such asinter alia, war crimes, crimes against humanity and genocide. They also constitute half of the world's forcibly displaced population. The KDUP LQÁLFWHG RQ FKLOGUHQ LQ ZDU DQG RWKHU VLWXDWLF suffer the full gamut of international crimes, including torture, sexual violence, enforced disappearance, intentional starvation, other inhumane acts, and indiscriminate attacks. They are vulnerable to recruitment and use as child soldiers, a moniker that contains within it a panoply of egregious violations and human rights abuses. Such abuses have a destructive impact on children's overall well-being, development and mental health.

&KLOGUHQ EHQHÀW IURP SURWHFWLRQ XQGHU LQWHUQDWLRQ criminal law. However, while preventing, monitoring and responding to violations of FKLOGUHQ·V ULJKWV LQ FRQÁLFW KDYH IRUPHG SDUW RI WKH peace and security agenda for over two decades, their plight has not received FRPSUHKHQVLYH DWWHQWLRQ IURP DOO 81 IDFW ÀQGLQJ DQG criminal courts and tribunals. Impunity negatively affects children's right to development DQG WKH ZHOO EHLQJ DQG VWDELOLW\ RI FRPPXQLWLHV WKH the adults they will become. It further affects children's right to a judicial remedy and reparations and strips them of an opportunity to participate in the judicial process.

In 2019, its centenary year, Save the Childrelaunched its Stop the War on Children campaign to reassert the norms, standards, policy, practice and rules relating to the SURWHFWLRQ RIFKHetheelphillas bithistal raphiding fall for the centred around XSKROGLQJ VWDQGDUGV DQG QRUPV IR Uholding H SURWHFWLRQ R perpetrators of violations and crimes to account taking practical action to protect FRQÁLFW DIIHFWHG FKLOGUHQ DQG WR HQD Savel WKHLU UHFRY

¹ Save the Children, Stop the War on Childre'n

² For ease of reference, the term "crimes affecting children" is used throughout this paper to denote both crimes against FKLOGUHQ WKDW DUH FRQVWLWXWHG LI WKH YLFWLP LV D FKLOG H J UHFU civilian population that disproportionately affect FKLOGUHQ H J DWWDFNV RQ KRVSLWDOV

the Children and the Oxford Programme on International Peace and Security at the % ODYDWQLN 6FKRRO RI *RYHUQPHQW·V,QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &R Q № Pnditigons pnshe gound, which cannot, however, be solely remedied through the agreed to a partnership grounded in pillar two of Save the Children's new strategy, holding perpetrators of violations and crimes affecting children to accountThe partnership aimed to generate the insight and analysis required to leverage much-needed change in the way this question is addressed by international criminal justice.

Drawing on extensive desk research and the insights of practitioners, academics, and activists working on these issues, we have sought to identify barriers which prevent perpetrators being held to account and meaningful and practical strategies and solutions to overcome or mitigate those barriers. This Research Paper focuses on the investigation and documentation of violations and crimes affecting children, and on the decision to

Section I of this Research Paper addresses the RVW FRPPRQO\LGHQWLAHGEDUULHUV to the effective investigation, documentation, and indictment of violations and crimes affecting children. 3 D U EWU \$ H Á \ DGGUHVVHV WKH LPSRUWDQFH RI SXUVXLQJ DFFRXQWDELOLW \ IRU and violations affecting children, as well as theeed for intersectional approaches -DQG VSHFLÀFDOO\ JHQGHU DQG DJH GLVDJJUHJDWHG DQDO\VHV 2 LQ FROOHFWLQJ D information and evidence for the purposes of investigation, documentation and criminal accountability. It is essential toHQVXUH WKDW FKLOGUHQ DUH QRW UHQGHUHG LQYLVLEOH E\ DGX(FHQWULF DSSURDFKHV WR DFFRXQWDEan Obthan/they WardKriDtW WKH\ DUH QRW ¶XQ VLWXDWHG . } & RQÁDWLYRHOV WRLJLDOWLQJ YLRODWLRQV DQG FULPHV DIIHFWLQ seen as a homogenous groupCapturing the full breadth of their experiences is crucial, in order to understand thereasons why targeting children may be of strategic importance to perpetrators, as well as the intensity and severity of the harm children may suffer. Part B VHWV RXW WKH SULQFLSDO EDUULHUV WR DFFRXQWDELOLW\ LGHQWLAHG E\ NH\ H[S independent research, which are DWWLWXGLQDO ÀQ and Hill hard tases VWUXFWXUDO mutually reinforcing. \$Q DQDO\VLV RI WKH DSSURDFK WDNHQ E\ 81 IDFW AQGLQJ DQG LQYHVW ERGLHV DQG E\ LQWHUQDWLRQDO FULPLQDO FRXUWV DQG WULEXQDOV KHUHDIWHU ¶DFFRXQWDELOLW\ PHFKDQLVPV· WR WKHVH LVVXHV LV FRQWDLQHG DW \$QQH[,

AMONG THE MAIN BARRIERS IDENTIFIED ARE:

2YHUDUFKLOJ DOG DWWLWXGLODO EDUULHUV VXFK DV

- 7 K H Y¶LVQL E L O L V D W both On-site attions of wat/but dtracted armed violence and in accountability processes; including a level of indifference pertaining to children's issues, linked in part to the conceptualisation of children as passive objects, lacking in agency and requiring protection;
- } 7KH UHOODUWLHYPSRZHUPHQW RI FKLOGUHQ FRPSRXQGHG E\ WKHLU OHJDO disenfranchisement and their lack of representation in political entities and civil society organisations;

:KLOH WKH FKDUJHV RQ ZKLFK DQ DFFRXMHXG LZFLLODOO VRARUQAÈLD ID IPVIDE VARLUDROODHDIHUHHVQXFEHMWHKIV W term "to indict" is used in this Research Paper to denote a decision to prosecute. This paper doesaddress other relevant aspects of accountability such as trial proceedings, truth commissions, reparations, and domestic remedies DQG LQVWLWXWLRQDO UHIRUPV)XUW Kpolehpuletrankohrskohrlinkießhalnkießhalnkeish

6 * % 9 FULPHV WR EHFRPH PRUH RID I RafrtXBV, weblingtbligtbtQ W H U Q D W L R Q Serious violations of international numan rights and humanitarian law are also not discussed in this paper.

7 KRUX J K R X W W K L V 5 H V H D U F K 3 D S H U E \ ¶ X Q V L W X D W H G · Z H P H D Q Q R W S O D F H G L Q W K H F R Q W H [W R I R W K H U L G H Q W L A H U V X U E D Q U X U D Q U

particular context that is being documented.

adoption of a child-competent approach;

- 7 KH GHJUHHWRRQ LH/OFNURI\HG inEdecSdungkwhitchFokhangestov/pursue, coupled with a lack of prioritisation of the investigation and prosecution fviolations and crimes affecting children; and,
- } /LPHL105/DFFHVV WR WKH PR.V.WMicSiblofttenDquliteLlmhittedHof LGHQFH 'conduct' violations as compared to 'treatment' violations.

6WUXFWXUDO EDUULHUV VXFK DV

- } /DN RIEX\ LQ, doint politide of North 2/ODFN RI81 DQG FLYLO VRFLHW\ DF focussed constituency which results in a lack of sustained engagement and prioritisation of accountability for crimes against/affecting children in international fora, and inconsistent funding being provided to build and sustain the expertise needed to deliver such accountability:
- })DLOXUH WR VXVWDLQDEO\ DQG HIIHFWLYHO\ PDLQVWUHDP investigation, documentation, and prosecution strategies oth by non-judicial and judicial accountability mechanisms, resulting in a tendency to see such accountability as something warranting additional, thus separate, consideration;
 - children, which is something accountability mechanisms often shy away from, for a range of reasons we identify;
- 5HVRXUFH DQG EXUHDXFUDWLF FRQVWUDLQWV DQG ODFN R which are not exclusive to accountability for crimes and violations affecting children, but rather linked to the design and operationalisation offd hoc PHFKDQLVPV LQFOXGLO among others, drawn-out recruitment processes and other challenges in the 'start-up' phase of mandates, and the lack of standardised methodological and operational tools IRU LQIRUPDWLRQ FROOHFWLRQ
- } / DN RISURSHU FKLOG F. 67 Ph. 6 falct/t/thatQw/trienel expolentiste/vist. VH DYDLODEOH LW LV UDUHO\ VSHFLAF WR FKLOGUHQ RU VWU mechanisms:
- Silos and limited cooperation among actors including among accountability mechanisms, and between accountability mechanisms and other actors and groups conducting documentation on the ground; and,
- Lack of outreach and engagement with families and communities which seriously limits the ability to relate and build trust with communities on the ground, and affects the information collection process.

In Section II, we analyse which lessons and solutions can down from the pursuit of DFFRXQWDELOLW\ IRU VH[XDO 1060; 6% 9JHQike Hiddlatifins and crimes ROHQFH DIIHFWLQJ FKLOGUHQ DFFRXQWDELOLW\ IRU 6*%9 KDV KLVW international criminal law. However, its investigation has now become an important pillar of international justice. Of course, the documentation, investigation, and prosecution of violations and crimes affecting children raise particular challenges, not all of which DUH FRPPRQ WR WKH GRFXPHQWDWLRQ LQYHVWLJDWLRQ DQ DFFRXQWDELOLW\ IRU 6*%9 KDV EHQHÀWHG IURP WKH VXSSRU be fully formed when it comes to accountability for crimes/violations affecting children. In 3 D U W \$ R I 6 Hrr Ede/theRd@velopmZrhts that, in recent years, allowed for

learned IURP WKH KDOWLQJ SURJUHVV WRZDUGV 6*%9 MXVWLFH : H DOVR KLJKOLJKW impartemental interpretability mechanisms; all accountability mechanisms; all accountability mechanisms; all accountability mechanisms; all accountability mechanisms. differences EHWZHHQ 6*%9 FULPHV DQG YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ WXKFDKWDRVX21K&W+5 DQG 81:RPHQ-XVWLFH 5DSLG 5HVSRQVH Z to be considered, including, for example, the nature and strength of the forces and actors mechanisms through the provision of staff; and non-governmental and civil society RUJDQLVDWLRQV .Q SDUWLFXODU ZH UHFRPPHQG behind these changes.

In Section III we turn to discussing potential strategies and solutions to overcoming

WKH LGHQWLÀHG EDUULHUV WR DFFRXQWDELOLW IRU FULPHV DQG YLRODWLRQV DIIHFWLQJ FKLOGUHQ .Q SDUWLFXODU LQ 3DUW \$ RI 6HFWLRQ ,,, ZH DQDO\VH

- 7 K H Q R HEGX MO G S R O lat/thle letate@and blibTothlat@ levels to maintain focus on the issues, and open and sustain dedicated funding streams;
- 3 7KH QRHFGUMVDWH VWUXFWXUHV ZLWKLQ WKH 2IÀFH RI WKH +LJK &RPPLVVLRQHU IRU +XBBBQHVVLQJ FULPHV DJDLQVW FKLOGUHQ DQG UHODWHG 5 L J K W V 2 + & + 5 W R E H W W H U V X S S R U W the documentation and investigation of violations DQG FULPHV DIIHFWLQJ FKLOGUHQ E\ QRQ MXGLFLDO DFFRXQWDELOLW\ PHFKDQLVEV\$ CLOQFFDDXVOG GQJDQG DGYRFDWH ZLWK RWKHU VWDWHV WR \ by providing methodological and operational guidance to accountability mechanisms; by supporting the GHYHORSPHQW RID SRRO RIHISHUWLVH in support of mechanisms: by creating a structure for theast deployment of experts, including experts seconded from domestic jurisdictions; and by further enhancing cooperation willte
- &RQ:ÁLFW → 7KH QHHG RQ WKH SDUW RIPDQGDWHV WKHPVHOYHV ERWK MXGLFLDO DQG QRQ MXn6ekHānlisbn6s: WR DGRSW VSHFLÀF SROLFLHV VWUDWHJLHV including with regard to cooperation with relevant
- accountability actors, and to monitor and evaluate their implementation; and, The QHHG IRU EHWWHU DQG PRUH VXVWDLQHG RXWUHDFK ZLWQHVV SURWHFWLRQ D@n@ndnfrfinkfi Row such mandates can best support the building and provision of social support to enhance communication and cooperation with local actors and affected communities.

In Part B of Section III, we draw from the successes of domestic prosecutions in the 'HPRFUDWLF 5HSXEOLF RI WKH &RQQalvRmuċ£as&,whiDhQwG SDUWLFXODUO∖ WKH believe can inform our analysis and discussion on innovative strategies at the international OHYHO .Q SDUWLFXODU ZH QRWH

- WR DGGUHVV WKH VSHFLÀF QHHGV DQG ULJKWV RI FKLOG YLFWLPV LQFOXGLQJ EXW, Q1RRVOØHPLHVQHVGRWR&KLOGUHQ LQ \$UPHG &RQÁLFW WKH 25 victims of sexual violence;
- } 7KH EXLOGLQJ RYQLQHUGDLQQLQJSSDW WLFXODU FDV.H WKURXJK ORQJ WHUP PHQWRULQJ which can have positive ripple effects on other cases in the jurisdiction;
- obtained at every stage; }, QYHVWPHQW LQ EXLOGLQJ RUtha6s 62a kJubb/MllabFota6e 12a nbb/ 6co@rdinateQ FRDOLWLRQV

The focus on ensuring that victims and their families remain central to the process

- in relation to focused advocacy designed to draw attention and elicit sustained funding to support accountability for crimes against children; } The building of partnerships and coalitions, whether engaged in on-the-ground work or higher-level advocacy, theentring of the problem, D VWURQJZLOOLQJQHVV WR FROODERUDWH
- among stakeholders, both national and international; and, } 7KH EXLOGLQJ RI UHOLDQNFLORXOGVLAQLJSW KRU RVX U K V WR U H I DPSOH WKH W U D L Q L Q J and mentoring of those charged with investigations and prosecutions, together with
- LQIRUPDWLRQDO HPSDWKHWLF RXWUHDFK WR YLFWLPV DQG WKHLU IDPLOLHV strategies for tackling structural barriers a greater likelihood of success.

D , QY H V W S R O L IN place acting Qac Edur Bab i Wry Dido violations and crimes affecting

That States

- children securely on the international agenda, including through consistently raising the need to strengthen such accountability in political and diplomatic fora, most SURPLQHQWO\ DW WKH 81 6HFXULW\ &RXQFLO DQG WKUR of accountability mechanisms.
- DOG SURYLVLRO RI HISHUWLVH LO WKH LOYHVWLJDWLRO violations and crimes against children, including through the establishment/ backing RI VWUXFWXUHV WKURXJK ZKLFK VXFK H[SHUWLVH FDQ EH non-judicial accountability mechanisms. This could include dicated funding for
- ,QWHUQDWLRQDO &ULPLQDO &RXUW·V 6SHFLDO \$GYLVHU RQ &KLOGUHQ LQ DQG DIIH FWWKHGFEU/H\$DUVPLFRGQ RI D URVWHU RU QH[XV RI H[SHUWLVH on the crimes affecting children to be deployed into non-judicial and judicial accountability

- F \$GYRFDWH IRU DQ DQDO\W LwThichOnavLel InhamIndartes: relating 1n HQWLWLHV some manner to addressing violations and crimes against children, with the objective
- UHOHYDQW HISHUWLVH DQG LQIRUPDWLRQ EHQHÀFLDO WI mechanisms.
- G ODN DYDLODEOH GRFAlthe/in/westigattonsanduclobclum/entation of violations and crimes affecting children, including through secondments and loans to judicial and non-judicial accountability mechanisms;
- H (QRUFH GRPHVWLFDOO\ LQFR Lih StePlatilo Bitol/oth i Collection i Q ning Htts. Jacq od WLRQDO act to ensure domestic accountability for child rights violations, at all times ensuring that all internationally recognised fair trial rights are respected:
- } 7KHYGHORSPHQW RIPXOWLGLVFLSOLQDU\SDUWQHUVKLSV ZLWK FRPSOHPHQWDU\H∥SĦDWLMHWKHQWARRQ RQ WKH 5LJKWV RIWKH &KLOG WKH 2S Children, Child Prostitution and Child Pornography, and the Optional Protocol of the

Convention of the Rights of the Childon a Communication Procedureas measures to improve accountability for child rights under domestic and international human rights law.

LQFOXGLQJ WKURXJK HIIHFWLYH RXWUHDFK SURJUDPPHV DQG WKDW WKHLU LQIRUPHG FRQVHQW LV

- That 81 ERGLHV HPSRZHUHG WR HVWDEOLVK MXGLFLDO DQG (mechanisms VXFK DV WKH 81 6HFXULW\ &RXQFLO 81 +XPDQ 5LJ \$VVHPEO\
 - D Clearlyprioritise the investigation and documentation of violations and crimes affecting children in accountability mechanism mandates and resolutions, including by adopting deliberate strategies, policies, and operational guidance to this end;
 - E \$XWKRULVH EXGJHWV ZLWK GHGLFDWHOM the QGV IRU WKH S investigation and documentation of violations and crimes affecting children:
- ZKLFFKSHJTDXYHH/WQVQSRHYFDLIANCEWINHHHHRBORIGHN World Ordsentations, on mandates' progress in the investigation and documentation of violations and crimes affecting children.

Q OLJKW RI WKH DERYH DQDO\VLV LQ WKH ÀQDO SDUW RI WKLV 5HVHDUFK 3DSHU 6HFWLRQ .9 ZH set out our recommendations to States: 81 ERGLHV HPSRZHUHG WR HVWDEOLVK MXGLFLDO

- That all DFFRXQWDELOLWZ\KIPHWPKKHDUQMVXPGVLFLDORUQRQMXGLFLDOLQQDWXUH
 - D'HYHORS DQG RU HQKDQFH VWDIals Ei Re-8 mile einstil einstil non G FRPSHWHQF

that investigations are child-competent; that lessons learned and best practices

VWHPPLQJ IURP ORFDO DQG LQWHUQDWLRQDO DFFRXQWDELOLW\ HIIRUWV DUH HIÀFLDHQWKM BSCHCUHWDULDW systematically compiled and shared; and that a child-centred analysis of crimes and

violations is systematically integrated to accountability efforts;

including by requiring trainings by such experts for mechanisms staff;

- violations is systematically integrate on to accountability efforts;

 E , PSRUYH WKH UHFUXLWPHQW RI LQYHVWLJDWRUV ZLWK VSHFLÀF H[SHUWLVH RQ KRZ WR LQYHVWLJDWH crimes against children, including engaging in active efforts to recruit from national iurisdictions, in order to capitalise on domestic criminal investigators' formal training and up-to-date experience interviewing children and ensure that they are all equipped with the relevant legal and investigative skillset, including skills to document and investigate of violations and crimes affecting children, and ensure that this expertise translates in child-competent approaches across all operational aspect of their work,
- F:LWK VSHFLÀF UHIHUHQFH WR QRQ M&MGuteFthaDsCaffDFFRXQWDELOLW\PHFKDQLVPV have the necessary capacity in international human rights and criminal law;
- G (QVXUH WKHUHHGD) WHZVLDOWHKG WISDEN WILDOLVW H[SHUWLVH-whether in the form of D VSHFLÀF XQLW LQ WKH JHQHUDOG TRLÀ FHW Y WHOP XE FING SGUHG RU DV D 6 SHFLDO \$ in the operational aspects of investigationand documentation, including a greater involvement in periodic reviews of investigation plans and strategies and the related legal analysis, and to facilitate and promote a broad-based competence on addressing crimes against children throughout institutions;
- H 8QGWFURUH WKDW WKH .&&·V 3ROLF\ RQ &KLOGUHQ ZKHUH UHOHYDQW FDQ DQG VKRXOG LQIRUP the approach of the accountability mechanisms in respect of developing a childcompetent approach to the investigation and analysis of international crimes affecting
- I \$GRSW WKHPDWLF SROLFLHV DFFRP, Sindposing StringentRSHUDWLRQDO JXLGHOLQHV requirements on investigators and prosecutors with regard to the prioritisation of the investigation and documentation of violations and crimes against children;
- J. OYHVW LQ HIIHFWLYH SR tKYAN/thlehmanfdates/an/dlaciv/lijes.bf.thle/ mechanisms are understood at the local level:
- K \$GYRFDWH IRU IXQGV IRU DQG ZKHUH IXQGV DUH DYDLODEOH HQVXUH DGHTXDWH ZLWQHVV SURWHFWLRQ DQG SV\afiskanRinteghtaff tcollington bentVirtUeXisfutitingXaUHV good understanding by the affected communities of the mandate and activities of accountability mechanisms and of the protection structures available to them:
- the creation of dedicated ocal points to secure periodic meetings, foster exchange of knowledge and best practices between in-house expertend ultimately capitalise on the lessons learned from the new strategies and policies developed by these bodies;
- M Similarly. that LQIRUPDWLRQ DQG GDWD WKDW FRXOG DVVLVW WKH ZRUN RI DFFRXQWDELOLW\ PHFKDQLVPV EH VKDUHG E\ RW.Kwithhiin tBeelcoDisffrationBeUV DQG HQWLWLHV imposed upon the latter by their own mandates.
- That HQWLWLHV VXFK DV 2+&+5 DQG 81 :RPHQ -XVWLFH 5DSLG 5HVSRQVH ZKLFK VXSSRUW DFFRXQWDELOLW\ PHFKDQLVPV WKURXJK WKH SURYLVLRQ RI VWDII
 - D & R Q W IRQ IX IFWWLYHO \ V H H N I X Q G L Q J D Q G V X S S R U W W R H Q D E O H W K H F R Q V L V W H Q W E X L O G L Q J U R V W H U RILQGLYLGXDOV VWDIIZLWK VSHFLÀF H[SHUWLVH in the investigation and documentation of violations and crimes affecting children, with the objective that rostered individuals be immediately operational once a mandate is activated;
 - E \$FWLYHOUN FILLH XXILW RUHOHYDQW H[SHUWoh/toltbleRrosteQDWLRQDO MXULVGLFWLRQV
 - F 'HYHORS RU DGRSW LOWHUQDO FKLOG FRPSHWHOW VWDQGDUG RSHUDWLQJ SURFHGXUHV PHWKRGV

DQG RSHUDWLRQDO JXLGHOLQfort the Virtue stightidus benéd HFW EHVW SUDF documentation of violations and crimes affecting children;

- G'HYHORS NQRZOHGJH 10 KRIBLOLIJQUIRFVKWDHQUQHHGO MISHUWV DQG LQ W OHCHR between non-judicial accountability mechanisms for which OHCHR staff serve
- That QRQ JRYHUQPHQWDO DQG FLYLO VRFLHW\ RUJDQLVDWLRQ\
 - D 6XSSNR LDGYRFDF\ HIIRUWV IRU DQG DGYRFDWLQJ ZLWK 6WD funding streams for the building and provision of expertise in the investigation and GRFXPHQWDWLRQ RI FRQÁLFW UHODWHG YLRODWLRQV DQG through expert rosters;
 - E & R Q \ HQWWO\ U D L V H W K H Q H H G W Fror Viol/Latibhls@add/triffchesQ D F F R X Q W D E I DIIHFWLQJ FKLOGUHQ LQ SROLWLFDO DQG GLSORPDWLF IRU 6HFXULW\ &RXQFLO WKH 81 *HQHUDO \$VVHPEO\ DQG 81 +X bilateral and multilateral meetings with States:
 - F: RUN ZLWK 6WDWHV WR Lehn@powerled-Ito VestaldDiskn/a@countra@ikkyLWLHV mechanisms H[SOLFLWO\ SULRULWLVH WKH LoQvhóllettvórvky LJDWLRQ DQG and crimes affecting children in the accountability mechanisms' mandate and legal
 - G 6 X S SVR UPHFKDQLVPV R X WsbJ tHatD tFieldr mya/Mdlatets Mahell aldtivlitie/s are understood at the local level.

ABBREVIATIONS USED IN THIS REPORT

Cols	Commissions of Inquiry
CDF	&LYLO 'HIHQFH)RUFH 6LHUUD /HRQH
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of the Congo
(/\$&	2[IRUG ,QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &RQÁLFW
FFM)DFW ÀQGLQJ 0LVVLRQ
Gaza Commission	8QLWHG 1DWLRQV ,QGHSHQGHQW &RPPLVVLRQ RI ,QTXLU\ RQ WKH *D]D FRQÁLFW
ICC	International Criminal Court
, & -	,QWHUQDWLRQDO &RXUW RI -XVWLFH
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IICI	Institute for International Criminal Investigations
IIIM	International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most VHULRXV FULPHV XQGHU ,QWHUQDWLRQDO /DZ FRPPLWWHG LQ WKH 6\ULDQ \$UD Republic since March 2011
IIMM	Independent Investigative Mechanism for Myanmar
IMT	,QWHUQDWLRQDO OLOLWDU\ 7ULEXQDO DW 1XUHPEHUJ
IMTFE	International Military Tribunal for the Far East
, 1 * 2	International non-governmental organisation
- 5 5	-XVWLFH 5DSLG 5HVSRQVH
METS	Methodology Education and Training Section of the OHCHR
MRM	Monitoring and Reporting Mechanism on grave violations against children
Myanmar FFM	Independent International Fact-Finding Mission on Myanmar
1 * 2	1RQ JRYHUQPHQWDO RUJDQLVDWLRQ
OHCHR	21ÀFH RI WKH +LJK &RPPLVVLRQHU IRU +XPDQ 5LJKWV

OTP	21ÀFH RI 7KH 3URVHFXWRU ,QWHUQDWLRQDO &ULPLQE
PHR	Physicians for Human Rights
PTC	Pre-Trial Chamber, International Criminal Court
5 5 8	5DSLG 5HVSRQVH 8QLW RI WKH 2IÀFH RI WKH +LJK &RF Rights
SCSL	Special Court for Sierra Leone
6 * % & & 8	6H[XDO DQG *HQGHU %DVHG 9LROHQFH &ULPHV DJDLQ,QYHVWLJDWLYH 7HDP WR 3URPRWH \$FFRXQWDELOLW\ IDa'esh/Islamic State in Iraq and the Levant
6 * % 9	6H[XDO DQG *HQGHU %DVHG 9LROHQFH
61+5	6\ULDQ 1HWZRUN IRU +XPDQ 5LJKWV
South Sudan Com mission	Commission on Human Rights in South Sudan
656* &\$\$&	6SHFLDO 5HSUHVHQWDWLYH RI WKH 6HFUHWDUV *HQHL &RQÁLFW
656* 69\$&	6SHFLDO 5HSUHVHQWDWLYH RI WKH 6HFUHWDUV*HQHU \$UPHG &RQÁLFW

Syria Commission

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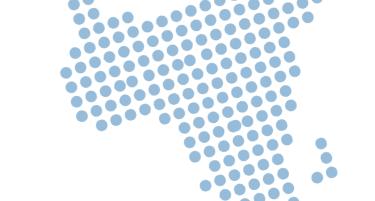
81,7\$'

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,QGHSHQGHQW ,QWHUQDWLRQDO &RPPLVVLRQ RI,QTX Republic

81 ,QWHUQDWLRQDO &KLOGUHQ·V (PHUJHQF))XQG

81 , QYHVWLJDWLYH 7HDP WR 3URPRWH \$FFRXQWDELOL by Da'esh/Islamic State in Iraq and the Levant



8QLWHG 1DWLRQV

81 6HFXULW\ &RXQFLO



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2. Important differences 74

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% $ & . * 5 2 8<u>1</u>' 19
) 8 1 ' , 1 *__ 20
METHODOLOGY_20
 Research objectives 20
 Research methods 20
 Research ethics approval 22
$ % 2 8 7 7 + ( $ 8 <u>7</u> + 2 5 6 23
,1752'8&7<u>,2</u>1 29
6(\&7,21, \&20021/<, '(17,), ('\%$55,(56727+(,19(67,*$7,21'28)))
1', 1', 870(17, 2), 9, 2/$7, 216 $1', 85, 0(6, $) (&7, 1* &+, /'5(1 31)
3$57 $ & 2<u>317</u>(;7
    9LRODWLRQV DQG FUL3PHV DIIHFWLQJ FKLOGUHQ
   $S$DFKHV WR LQYHVWLJDWLRQ DQG GRFXPHQWDWLRQ WK
   analysis 34
3$57 % %$<u>55</u>,(56 36
 1. Overarching barriers_37
    $WWLWXGLQDO EDUULHUV 41
 3. Structural barriers 42
6(\&7,21,, \&\&2817\$\%,/,7<)25 6(;8\$/\$1'*(1'(5\%\$6('9,2/(1\&(\&7,21)))))
02'(/ 72 %( 5(3/, 85$7('"
1. The ad hoc tribunals 59
 2. The Special Court for Sierra Leon 64
 3. The International Criminal Court 66
     +DUGZLULQJ OHVVRQV OHDUQHG -XVWLFH 5DSLG 5HVSRQ
3$57 % /(66216 <u>7/1</u>$51('
 1. Similar barriers for justice for marginalised group 31
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$&&2817$%,/,7<)25 9,2/$7,216 $1' &5,0(6_$))(&7,1* &+,/'5(1 76
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BACKGROUND

In 2019, its centenary year, Save the Children launched its Stop the War on Children campaign to reassert the norms, standards, policy, practice, and rules relating to WKH SURWHFWLRQ RThe thile op Glads both is campaign Are Eethtred DURXQG XSKROGLQJ VWDQGDUGV DQG QRUPYHolding WKH SURWH perpetrators of violations of international human rights law and international humanitarian law affecting children to account, including those amounting to coincternational crimes under international law, DQG WDNLQJ SUDFWLFDO DFWLRQ WR SURWHFW and to enable their recovery.

\$JDLQVW WKLV EDFNJURXQG 6DYH WKH &KLOGUHQ DQG WKH Peace and Security at the Blavatnik School of Government's Institute for Ethics, Law, and \$UPHG &RQÁLFW (/\$& DJUHHG WR D SDUWQHUVKLS JURXQGH new strategy - holding perpetrators of violations and crimes affecting children to account - to generate the insight and analysis required to leverage much-needed change in the way this question is addressed by international criminal justice.

(/\$& LV DQ LQWHUGLVFLSOLQDU\ UHVHDUFK ,QVWLWXWH DW 2 WKH ODZV QRUPV DQG LQVWLWXWLRQV WKDW UHVWUDLQ UI SDUW RI WKLV PLVVLRQ (/\$& KDV HVWDEOLVKHG D 3URJUDPP Security to provide a space for research on the critical challenges facing the laws, norms, and institutions affecting the maintenance and enforcement of international peace and global security.

%RWK DWURFLW\ SUHYHQWLRQ DQG LQWHUQDWLRQDO MXVWL and the Programme. In particular, the Programme is spearheading new, groundbreaking research centred on the improvement of international investigations aimed at supporting criminal accountability for atrocity crimes. This report, which dovetails

⁵ Save the Children, 6 W R S W K H : DU R Q & KLOGUHQ 3 U R W H F, W2019Q J F KLOGUHQ L Q V W F H Q W 6 For ease of reference, the term "crimes affecting children" is used throughout this paper to denote both crimes D J D L Q V W F K L O G U H Q W K D W D U H F R Q V W L W X W H G L I W K H Y L F W L P L V D F K L O G H J civilian population that disproportionately affect FKLOGUHQ H J DWWDFNV RQ KRVSLWDOV

WKLV ODWWHU VWUDQG RI UHVHDUFK IRFXVHV RQ WKH ZRUN RI 81 IDFW ÀQGLQJ DQEDpetriQ Wette Vs Webstet dDfW ibtert thews in light of their ability to provide a range of diverse ERGLHV DQG LQWHUQDWLRQDO FULPLQDO FRXUWV DQG WULEXQDOV ¶DFFRXQWDELQDensylvectRvets.FinthcDocQn.tq. interval and local insight, and expertise in the various stages 6SHFLÀFDOO\ ZH VRXJKW WR LGHQWLI\ VWUDWHJLHV DQG VROXWLRQV WR RYHUFRPHRIE©BUÐXPHUQWWDRWWRKQH LQYHVWLJDWLRQ DQG LQGLFWPHQW RU WKRXJK QRW DOO HISHUW UHVSRQVHV UHÁHFW WKHLU RZQ Y investigation, documentation, and indictment of violations and crimes affecting children LQ FRQÁLFW DQG RWKHU VLWXDWLRQV RI SURWUDFWHG DUPHG YLROHQFH LQFOXGLW ZDX FHUWHHN PD\ EH DIÀOLDWHG 7KH VDPSOLQJ RI NH\ H[S crimes against humanity and genocide. This report doesnot address other relevant comprehensive representation of all possible perspectives, but rather an overview of the aspects of accountability such as trial proceedings, truth commissions, reparations, and main issues arising at the operational, structural, and strategic levels, as well as strategies

GRPHVWLF UHPHGLHV DQG LQVWLWXWLRQDO UHIRUPV)XUWKHU WKH VSHFLÀF VLW Xa1001 VA6001 VA60 perpetrators of international crimes and other serious violations of international human rights and humanitarian law will not be addressed in this report.

FUNDING

This research was funded by Save the Children and supported with resources from the Oxford Programme on International Peace and Security and the Oxford Blavatnik School of Government.

METHODOLOGY

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UHVHDUFK REMPHFlinkHfvanvz betweenwinkestigation/documentation efforts and criminal \$JDLQVW WKH EDFNJURXQG ODLG RXW LQ WKH LQWURGXFWLRQ RXU

\$QDO\VH WKHKDBSVHOHFW 81 IDFW ÀQGLQJ DQG LQYHVWLJDWLYH ERGLHV WR WKH • Lessons that could be learned from the halting progress towards accountability for LQYHVWLJDWLRQ DQG GRFXPHQWDWLRQ RI®YLRODWLRQV DQG FULPHV DIIHFWLQJ FK BEOVER Under-based violence and crimes;

\$QDO\VH WKHKDISSURVHFXWRUV LQ LQWHUQDWLRQDO FULPLQDO FRXUWV DQG WULEXQDOV WR WKH LQYHVWLJDWLRQ DQG LQGLFWPHQW RI FULPHV DIIHFWLQJ FKLOGUHQ

ODS DQG DQDO\VH WKWH WFRPWPIKIND HEIDH EIWHLWH LQYHVWLJDWLRQ DQG documentation of violations and crimes affecting children for the purposes of DFFRXQWDELOLW\ LQFOXGLQJ FULPLQDO LQYHVWLJDWLRQV XS WR WKH LQGLFWPH&QRVQÁSLKFDW H6186*W&U\$L\$D&O DQG RQ 6H[XDO 9LROHQFH LQ \$UPHG & RQ

.GHQWLMDWQ ♥ R VROXWLRQV DQG VWUDWHJLHV WR RYHUFRPH WKHVH EDUULHUV

Research methods

This was a qualitative study with a mixed methods approach involving expert interviews, extensive desk research, consultations, and an online expert workshop.

Twenty-one key experts were interviewed, including academics, lawyers, investigators, DQG SURVHFXWRUV IDPLOLDU ZLWK WKH ZRUNLQJV RI 81 IDFW ÀQGLQJ DQG LQYHVW ლფოს which was held which which was held which which was held which was held which which was held which which which was held which was held whi and international criminal courts and tribunals. We also interviewed representatives of international and local civil society organisations engaged in the investigation and documentation of crimes affecting children.

for ease of reference the term "to indict" is used in this Research Paper to denote a decision to prosecute.

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7 This Research Paper focuses on the investigation and documentation of violations and crimes affecting children, and RQ WKH GHFLVLRQ WR LQGLFW :KLOH WKH FKDUJHV RQ ZKLFK DQ DFFXVHG ZLOO VWDQG WULDO DUH VXEMHFW WR MXGLFLDO FRQAUPDWLRQ

.QWHUYLHZV ZHUH FRQGXFWHG EHWZHHQ audio-recorded, with interviewees' consent, and automatically transcribed using Otter \$ U W L À F L D O , Q W H) Onto riviews Overet based low/azsorbi-structured questionnaire, DJUHHG E\ WKH 8QLYHUVLW\ RI 2[IRUG DQG 6DYH WKH &KLOGI

.QIRUPDWLRQ ZDV VRXJKW RQ D EURDG UDQJH RI WRSLFV LQ

- · Contextual information on the prevalence of violations and crimes affecting children in experts' countries or regions of focus;
- The scope and quality of investigation/documentation and/or prosecutorial efforts, and respondents' own role within such efforts, where relevant;
- · Structural, attitudinal, and other barriers to the investigation/documentation of violations and crimes affecting children, as well as factors that bolstered or supported efforts to investigate and/or prosecute;
- · Strategies or practices adopted to overcome or mitigate barriers and challenges to investigating and/or prosecuting violations and crimes affecting children;

LQYHVWLJDWLRQV XS WR WKH LQGLFWPHQW SKDVH RI WULD

([WHQVLYH GHVN UHVHDUFK ZDV DOVR FRQGXFWHG \$00 RI WK PHFKDQLVPV ZHUH DQDO\VHG WRJHWKHU ZLWK UHOHYDQW UH DQG RI WKH 6SHFLDO 5HSUHVHQWDWLYHV RI WKH 6HFUHWDU\ * DSSOLFDEOH 81 SROLF\ GRFXPHQWV DQG JXLGHOLQHV LQFOX(DQG PRQLWRULQJ 9DULRXV DFDGHPLF WH[WERRNV DQG DUWLF affecting children were also consulted. Relevant indictments and cases of international criminal courts and tribunals were also analysed, together with any available policies FRQFHUQLQJ FKLOGUHQ)RU D IXOO OLVW RI WKH VRXUFHV FR

Q DGGLWLRQ WKH 8QLYHUVLW\ RI 2[IRUG DQG 6DYH WKH &KI DQG 6HSWHPEHU ZLWK WKH SDUWLFLSDWLRQ RI [

input on the current landscape of accountability for crimes and violations affecting FKLOGUHQ LQ DUPHG FRQÁLFWV LQFOXGLQJ HILVWLQJ EDUUL positive examples of accountability, both current and past. Experts also contributed to EUDLQVWRUPLQJ RQ WKH FKDQJHV WKDW ZRXOG QHHG WR RF institutional levels to ensure that child-centred policies are included in investigative and accountability mandates; the development and strengthening of child-sensitive procedural

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^{\$\}text{WRPDWLFDOO\ JHQHUDWHG WUDQVFULSWV WKHQ ZHQW WKURXJK D SURFHVV} errors had been made, for example, due to software being challenged by accents.

frameworks within DEFRXQWDELOLW\PHEKDQLVPV LQEOXGLQJ UHOHYDQW WRROV UHVRXUEHV VNLOOV DQG VHQVLWLYLW\ WR HQJDJH ZLWK FKLOGUHQ DQG EHWWHU VWUDWHJLHV WR EROVWHU DQG HQHUJLVH WKH child rights constituency around issues of accountability for crimes and violations affecting

children.

Experts invited to the workshop were subsequently given the opportunity to provide written feedback on the interim report, which has been taken into account by the authors.)LQDOO\ DOO H[SHUWV ZKR KDG FRQVHQWHG WR EH LGHQWLÀHG DQG TXRWHG KDG WKH RSSRUWXQLW\ WR review and approve the quotes they provided, for accuracy and also how they were being contextualised in the report. The list of experts that contributed to this research, whether at the workshop, in writing, or via interviews, can be found on page 21.

Research ethics approval

This research project was considered by the Blavatnik School of Government's Departmental Research Ethics Committee, in accordance with the procedures laid down

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ABOUT THE AUTHORS

) H G H U L F D ' · \$isthevexedutive Difector of the Oxford Programme on International 3HDFH DQG 6HFXULW\ .QVWLWXWH IRU (WKLFV /DZ DQG \$\| RI *RYHUQPHQW 8QLYHUVLW\ RI 2[IRUG 6KH OHDGV UHVHD DQG LQWHUQDWLRQDO MXVWLFH LQFOXGLQJ WKH SURMHFV D SURMHFW WR DGYLVH RQ WKH SHUPDQHQW VXSSRUW QHH mandates. She is the author of he Accountability Turn in Third Wave Human Rights Fact-DQGWKHOHBIAnd DOX Work CRVII Seclet WD6 chumentation of Serious Human Rights Violations

E\ WKH 8QLYHUVLW\ RI 2[IRUG IRU HWKLFDO DSSURYDO RI DOO UHVHDUFK LQYROYLQJH ΚΣΒΡΩΘΟΕΡΕΝΟΥΙΚΑΙΑΝΙΚΟΝ 6WUHHW &KDPEHUV /RC 5 H I H U H Q F H Q X P E H U humanitarian law and international criminal law, and a research consultant with the Oxford Programme on .QWHUQDWLRQDO 3HDFH DQG 6HFXULW\ .QVWLWXWH IRU (W

> %ODYDWQLN 6FKRRO RI *RYHUQPHQW 8QLYHUVLW\ RI 2[IRU 6 DUHWD \$LWKD DESDKUULVWHU DQG 9LVLWLQJ)HOORZ RI 3UDFW

> RQ ,QWHUQDWLRQDO 3HDFH DQG 6HFXULW\ ,QVWLWXWH IRU %ODYDWQLN 6FKRRO RI *RYHUQPHQW 8QLYHUVLW\ RI 2[IRU SURMHEW ¶ORYLQJ IURP IDEW ÀQGLQJ WR FDVH EXLOGLQJ VXSSRUW QHHGHG WR IXOÀO LQWHUQDWLRQDO LQYHVWLJD Legal Consultant on projects directed towards furthering accountability efforts for crimes FRPPLWWHG LQ 6\ULD DQG ,UDT 3UHYLRXVO\ VKH VHUYHG WKH 6\ULD &RPPLVVLRQ WKH /LE\D &RPP DQG DV 8

ZRUNHG DV SDUW RI 'HIHQFH DW WKH .&& 6LHUUD /HRQH

9HURQLTXH \$XEHUW LV /HDG RQ &KLOGUHQ DQG \$UPHG &RQ WR SUHVHQW DQG LV D KXPDQ ULJKWV H[SHUW ZLWK H[WF investigating children rights violations, war crimes and crimes against humanity involving

FKLOGUHQ DV YLFWLPV ZLWQHVVHV DQG SHUSHWUDWRUV VKH ZRUNHG DV 'HSXW\ 'LUHFWRU RI WKH \$IULFD 3URJ Democratic Republic of the Congo. She held posts at the Council on Foreign Relations

DQG 81,&() 6KH LV &R &KDLU RI WKH *OREDO (GXFDWLRQ IURP \$WWDFN DQG KDV SXEOLVKHG H[WHQVLYH International and Save the Children.

\$ Xelie Lamaziere LV 6 HQLRU + XPDQLWDULDQ \$ GYRFDF\ \$ GYLVRU D WR SUHVHQW DQG FRPELQHV VWURQJ \$GYRFDF\ RIÀFH and advocacy and technical expertise in international humanitarian law, refugee issues, child rights, gender issues and international legal accountability mechanisms. She worked DV +XPDQLWDULDQ \$IIDLUV \$GYLVRU IRU YDULRXV KXPDQLW notably Médecins sans Frontières and0 p G H F L Q V G X 0 R Q G H E R W K D W K H D G OHYHOVLQFOXGLQJ LQ VHYHUDO FRQÁLFW DIIHFW occupied Palestinian territo/\ &KDG 6XGDQ DQG 'HPRFUDWLF 5HSXEOLF DOVR ZRUNHG DV WKH *HQGHU 3URJUDPPH &RRUGLQDWRU I

23

Keyan Salarkia LV D & RQÁLFW DQG + XPDQLWDULDQ \$GYLVHU DW 6DYH WKH & KLOGUHQ 8. SUHVHQW ZLWK HIWHQVLYH ZRUNLQJ NQRZOHGJH RI WKH VLWXDWLRQ RI FKLOGUHQ LQ DUPHG FRQÁLFW KXPDQLWDULDQ HPHUJHQFLHV DFURVV (DVW DQG 6RXWKHUQ \$IULFD DQG \$VLD DV ZCONTRIBUTING EXPERTS related to starvation and humanitarian access.

Vanessa Gée is a senior legal professional specialised in international criminal law, international humanitarian law, and international human rights law. She is currently D /HJDO \$GYLVHU LQ D 'HIHQFH WHDP DW WKH .&& 6KH SUHYLRXVO\ VHUYHG DV /HJDO 2IÀFHU \$VVRFLDWH /HJDO 21ÀFHU DW , & 7 < DQG ZDV GHSOR\HG E\ -XVWLFH 5DSLG 5 Filhé SteR Ox by errits consulted for this research are listed below. The experts provided their LQ WKH 21ÀFH RI WKH 3URVHFXWRU RI WKH ,&& 6 KH KDV DGGLWLRQDO H[SHUW lighted in La Que list of their SURWHFWLRQ JDLQHG ZKLOH ZRUNLQJ DV DQ \$GYRFDF\ \$GYLVHU IRU 6DYH WKH &KLQe@pledttv@ organisations.

The authors are grateful to 3 U R I H V V R U V 'abn & 'R. IS QI ID QD GHU L, Hain & tib D Q Q 6 D U D K 4 X D U W H for Phi in Linguell & ctular and operational support, respectively: as well as to 0 L N D \ O D % U7 LVHYUH W H O O Q D Y D Q D% QHQQHW K6HtkFeirakkd invaluable research assistance and to a range of colleagues from across Save the Children, including Kiran Kothari Pien Klieverik Günvor Knag Fylksenesand (ZD 6DSLH]\QVND.

Public Policy student, provided as part of his degree requirement in the summer of 2019. We are grateful to Rhodes Schola6 DPHHU 5 DVftcrtthcs drivingent by paratory work.

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- 3 U R I H V V R U \$ Q G, Cothrizmissioners Coopuration on Human Rights in South Sudan and Professor of International Law, Graduate Institute of International and Development Studies.

RI WKH 6HFUHWDU\ *HQHUDO IRU &KLOGUHQ DQG \$UPHG &R

- % H G H 6 K, HD Spott Director, Human Rights Watch.
- 3 U R I H V V R U & Professoriof Psatticle Of International Law. Fletcher School of /DZ DQG 'LSORPDF\ 7XIWV 8QLYHUVLW\ 'LUHFWRU RI 3ROLF International Federation of the Red Cross and Red Crescent Societies and Senior Policy DQG /HJDO \$GYLVHU 81 2IÀFH RI WKH +LJK &RPPLVVLRQHU 6WDUW XS WHDP ,,,0 6HQLRU /HJDO 3ROLF\ WR WKH + 5LJKWV 2IÀFH RI WKH +LJK &RPPLVVLRQHU IRU +XPDQ 5LJK .QWHUQDWLRQDO &HQWUH IRU 7UDQVLWLRQDO -XVWLFH /HJDO 2IÀFHU ,&75
- 'DOLOD 6*HHRODHOYHD \$FDGHP\ RI .QWHUQDWLRQDO +XPDQLWDUL
- 'DQLHOH, HDGVRL3URJUDPPHV *UHDW /DNHV 75.\$/ .QWHUQ
- 3 URIHVVRU 'D S3RURSINHDVQVQ BU RI 3 X E O LF, Q W H U Q D W L R Q D O / D Z D 2[IRUG &R 'LUHFWRU RI WKH 2[IRUG ,QVWLWXWH IRU (WKLF
- 3URIHVVRU 'LDQH (PDLODLH \$PQQQW : RRGUXII &KDLU LQ ,QWHU DQG)DFXOW\ &R 'LUHFWRU RI WKH 'HDQ 5XVN .QWHUQDWLR *HRUJLD 6FKRRO RI /DZ VLQFH 6SHFLDO \$GYLVHU WR V 3URVHFXWRU RQ &KLOGUHQ LQ DQG DIIHFWHG E\ \$UPHG &R(
- 'LDUUD6'HQSRU \$GYRFDF\ \$GYLVRU RQ &KLOG 5LJKWV 6DYH
- (PLO) .HQ3QXHQ/LF\ 6SHFLDOLVW 7UDQVLWLRQDO -XVWLFH 81
- (ULQ *DO,QQDYJHKMHWULJDWRU ,QWHUQDWLRQDO &ULPLQDO &RXU) .QYHVWLJDWLRQV 3K\VLFLDQV IRU +XPDQ 5LJKWV 9LROHQFH, QYHVWLJDWRU H[SHUW SURYLGHG E\ -XVWLFH 5 6\ULD &RPPLVVLRQH[XDO DQG6 *HQGHU %DVHG 9LROHQFH .Q SURYLGHG E\-XVWLFH 5DSLG | 15 dHebbe8dend | hvitehnation 61 81 : RPHQ &RPPLVVLRQ RI ,QTXLU\ RQ /LE\D

- DGHO \$EGXIDHFIXIDWOLYH 'LUHFWRU 6\ULDQ 1HWZRUN IRU +XPDQ 5LJKWV SUHVHQWPatricia Viseur Sellers 6 SHFLDO \$GYLVRU RQ *HQGHU WR WKH , & & 3
- Federica Tronchin,+HDG RI,QWHUQDWLRQDO-XVWLFH 3URJUDPPH DQG 6HQLRU *HQGHU DQG *GYLVRU IRU *HQGHU \$FWLQJ+HDG RI WKH /HJDO \$GYLVF &KLOG 5LJKWV \$GYLVRU -XVWLFH 5DSLG 5HVSRQVH
- Grace Pelly % DUULVWHU & KDUWHU & KDPEHUV) RUPHU /HJDO \$GYLVRU 5HSRUWLQJ 2IÀF•HRosalind Sipos /HJDO 2IÀFHU ,,,0) RUPHU /HJDO 2IÀFHU 8QLW 7HDP WR 3URPRWH \$FFRXQWDELOLW\ IRU &ULPHV &RPPLW &RPPLVVLRQ RQ +XPDQ 5LJKWV LQ 6RXWK 6XGDQ)RUPHU /HJDO \$GYLVRU 5HSRUWLQJ 2IÀFHU DQG +XJR 6SSerbioPResearch Fellow, 2[IRUG, QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG & RQÁLFW &RPPLVVLRQ RQ +XPDQ 5LJKWV LQ 6RXWK 6XGD0
- 8QLYHUVLW\ RI 2[IRUG
- 6K\DPDOD \$OĎHRQŒGHUDDQG &KLOG 5LJKWV \$GYLVRU .QGHS PPD *XHUUD\/\$'GHYOLJ\DRGUR RQ &KLOG 5LJKWV 6HFUHWDULDW RQ 81 *OREDO 6WXG\ OHFKDQLVP IRU O\DQPDU ,,00)RUPHU \$VVLVWDQW 'LUHF RQ &KLOGUHQ 'HSULYHG RI /LEHUW\ 21ÀFH RI WKH +LJK &RPPLVVLRQHU IRU +XPDQ 5ĽJKWV 'HIHQFH ODZ\HU ,&& 3URVHFXWLRQ OD Geneva. 3URVHFXWLRQ ODZ\HU 6SHFLDO &RXUW IRU 6LHUUD /HR(
- QJULG (OOLRWW ([SHUW 3UHYHQWLQJ 6H[XDO 9LROHQFH ,QLWLDWLYH 6 R Q L D 0 X O O, H+UX B D Q S 5 DLUJ 6K W V \$ G Y L V R U 8 1
- -DPHV 'HQ\HOBZRI &RQÁLFW DQG +XPDQLWDULDQ 3ROLF\ DQG \$GYRFDF\ 6DYH 7KH. 6WHSKDQLH %DUERXU \$GYLVRU &RPPLVVLRQ IRU ,QWHU(
- \$PEDVVDGRU 6W6HS108LHRQU59DLSVSLWLQJ)HOORZ RI 3UDFWLFH Z • -DYLérret/Salmerón, \$GYLVRU , QGHSHQGHQW , QWHUQDWLRQDO &RPPLVVLRQ RI , QTXLU\ RQ |RU (WKLFV /DZ DQG \$UPHG &RQÁLFW 3URJUDPPH RQ , QV WKH 6\ULDQ \$UDE 5HSXEOLF 8QLYHUVLW\ RI 2[IRUG
- DLWOL,Q+X%-DXQ/LKWDULDQ 3ROLF\ DQG \$GYRFDF\ 6SHFLDOLVW 81,&()

- 7 K R P D V 0, Deptito Director, Physicians for Human Rights.
- Food Programme.
- DWH * LHEalvisteQ St Phillips Chambers. Former Legal Consultant, Independent .QWHUQDWLRQDO)DFW)LQGLQJ 0LVVLRQ RQ 0\DQPDU &ULPLQDO &RXUW SUHVHQW
- Katherine Cocco & KLOG 3URWHFWLRQ 6SHFLDOLVW 81,&()
- DWK\ 5REHUWV. 7KH &HQWHU IRU -XVWLFH DQG \$FFRXQWDELOLW\
- Katie Wepplo, & KLOG 3URWHFWLRQ 6SHFLDOLVW & KLOG 3URWHFWLRQ LQ (PHUJHQFLHV 812, 10 & Byrmese women's right activist.
- QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &RQÁLFW 3URJUDPPH RQ ,QWHUQDWLRQDO 3HDFH DQG 6HFXULW\ 8QLYHUVLW\ RI 2[IRUG
- ODULD /LQD6%QVRDL/DHJDO \$QDO\VWHJD.OD \$QDO\VW 6\ULD & R P P L V V L R Q /HJDO \$QDO\VW *D]D &RPPLVVLRQ \$QDO\VW ,QWHUQDWLRQDO &ULPLQDO &RXUW \$QDO\VW .&7<
- OD[LQH ODWFHXFWRU 7UDQVLWLRQDO -XVWLFH &OLQLF
- OLFKHO \$QLJLOHDFOWHRU DQG 81 5HSUHVHQWDWLYH 6DYH 7KH &KLOGUHQ
- 0 L F K H O O H D U Y L V Deputy Head, IIIM.

• Kiran Kothari, \$ G Y L V R U Save The Children Sweden.

- OLND\OD % LOBKU O L& DO QVG LG DWH LQ 3XEOLF .QWHUQDWLRQDO /DZ DW WKH 8QLYHUVLW\ RI 2[IRUG :RUFHVWHU &ROOHJH 5HVHDUFK DQG ([HFXWLYH \$VVLVWDQW WR)HGHULFD '-\$OHVVDQGUD DW WKH 2[IRUG ,QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &RQÁLFW
- Nicole Samson 6 H Q L R U 7 U L D O \$ W W R U Q H \ . Q W H U Q D W L R Q D O & U L P L Q D O & R X U W

- Valentina Falco 7HDP /HDGHU &KLOG 3URWHFWLRQ DW 81 3HDFH
- 'HIHQFH &RXQVHO .Q\• Veronic Wright +HDG RI WKH 6H[XDO DQG *HQGHU %DVHG 9LROH 81.7\$')RUPHU 6HQLRU /HJDO \$GYLVHU DQG 2IÀFHU LQ &K the International Criminal Tribunals.
 - < H H + OWNXC Instructor and Lecturer on Law, International Human Rights Clinic, 8QLYHUVLW\ RI + DUYDLLUGH FWRUSURHI VON DO OWPDU 3URJUDP IRU
 - = D P D 1 H I I Director, Child Rights Division, Human Rights Watch.

INTRODUCTION

- Children are among the principal victims of international human rights law and international humanitarian law, including those amounting to core international crimes under international law, such as inter alia, war crimes, crimes against humanity and genocide. They also constitute half of the world's forcibly displaced population.
- 2. 7KH KDUP LQÁLFWHG RQ FKLOGUHQ LQ DUPHG FRQÁLFW DQG is egregious; their suffering takes many forms. Children are killed and maimed in indiscriminate onslaughts against civilian populations and when civilian objects, in particular schools and hospitals, are destroyed. Owing to their unique vulnerability UHODWHG WR WKHLU DJH DQG FDSDFLW\ FRXQWOHVV FKLO violence, including rape, sexual slavery, unlawful detention, abduction, disappearance DQG WRUWXUH ,PDJHV RI FKLOGUHQ XVHG E\ SDUWLHV WR functions have become ubiquitous in modern warfare. Longer-term, exposure to armed FRQÁLFW LQVHFXULW\ DQG YLROHQFH PD\ KDYH D GHVWUX well-being, development, and mental health.
- 3. &KLOGUHQ EHQHÀW IURP SURWHFWLRQV XQGHU LQWHUQDWIDQG FULPLQDO ODZ DV ODLG RXW LQ WKH 81 &RQYHQWLRQ number of other international instruments. However, while preventing, monitoring DQG UHVSRQGLQJ WR YLRODWLRQV RI FKLOGUHQ·V ULJKWV 81 LQWHUQDWLRQDO SHDFH DQG VHFXULW\ DJHQGD IRU RYFQRW UHFHLYHG VXVWDLQHG DWWHQWLRQ IURP 81 IDFW ÀQG from international criminal courts and tribunals. While the primary responsibility to investigate and prosecute violations and crimes affecting children lies with States, LQ VLWXDWLRQV RI DUPHG FRQÁLFW RU RWKHU YRODWLOH armed violence, national authorities might be unwilling or unable to prevent and remedy violations and crimes affecting children, and to hold perpetrators to account. This lack of accountability perpetuates impunity, weakens the rule of law, and

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For ease of reference, the term "crimes affecting children" is used throughout this paper to denote both crimes

DJDLQVW FKLOGUHQ WKDW DUH FRQVWLWXWHG LI WKH YLFWLP LV D FKLOG H J

FLYLOLDQ SRSXODWLRQ WKDW GLVSURSRUWLRQDWHO\ DIIHFW FKLOGUHQ H J

undermines the prospects of long-term peace and stability. Impunity negatively affects children's right to development and the well-being and stability of communities they OLYH LQ DQG ULVNV LQÁXHQFLQJ QHJDWLYHO\ WKH DGXOWV WKH\ ZLOO EHFRPH .W IXUWKHU DIIHFWV children's right to a judicial remedy and reparations and strips them of an opportunity to participate in the judicial process.

- 4. Despite the publication of Graça Machel's landmark 1996 study on the impact of war on children; and considerable advocacy and campaigning efforts by civil society and international organisations, the urgent need to strengthen accountability for YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ DQG VSHFLÀFDOO\ WR DGGUHVV RI SHUSHWUDWRUV KDV QRW \HW EHHQ ÀUPO\ RU VXIÀFLHQWO\ VHL]HG E\ D 6WDWH RU 6WDWHV ZLOOLQJ to push the issue forward. Consequently, there has been limited advocacy, coalitioncivil society organisations working on children's rights have a mixed or exclusively KXPDQLWDULDQ PDQGDWH WKH IXOÀOPHQW RI ZKLFK GHSHQGV RQ WKHLU FRQWLQXHONGIdnone It is otivipaled into two parts.3 DU EWU \$ HÁ \ DGGUHVVHV WKH LPSRUWD (to access affected communities. In turn, this means that there is no accountabilityfocused constituency driving to ensure that international documentation and investigation entities and international criminal courts and tribunals have the resources and expertise to effectively address violations and crimes affecting children.
- FRXUWV DQG WULEXQDOV PRVW RIWHQ PDQGDWHG DQG VXSSRUWHG E\ WKH 81 FRQ YZASEB, YYVVVAN HYPEINFORCING. \$Q DQDO\VLV RI WKH DSSURDFK WDNHQ E\ WKH ÀUVW DQG VRPHWLPHV RQO\ DWWHPSW WR OD\ WKH IRXQGDWLRQV IRU MXVWLFPHQIQRULQFYKHIOVUJJHDQWLYH ERGLHV DQG LQWHUQDWLRQDO FULF Through this research, we seek to identify the efforts undertaken by these accountability mechanisms to respond to violations and crimes affecting children. We shed light on the many barriers to the effective investigation, documentation, DQG LQGLFWPHQW RI VXFK YLRODWLRQV DQG FULPHV 7KHVH DUH DWWLWXGLQDO structural, and, in many cases, mutually reinforcing.
- 6. In addition, we analyse the innovative strategies underpinning advances to reduce the impunity gap for violations and crimes of sexual and gender-based violence and consider what lessons can be learned from the gender justice movement.
- 7. Finally, we highlight best practices stemming from the domestic efforts in the Democratic Republic of the Congo, a country that has become the epicentre of innovative approaches to the investigation and prosecutions of international crimes LQ QDWLRQDO FRXUWV SDUWLFXODUO\ ZLWK UHJDUG WR FRQÁLFW UHODWHG VH[XID OPrèVerfitr@,HmQrfitohlin@, alnoulre@pontuling to violations of children's rights, during armed children.
- 8. While there are no easy answers, this Research Paper seeks to highlight potential solutions - particularly for States, accountability mechanisms, W K H 8 1 V V W H P D Q G non-governmental organisations - and makes recommendations on how to overcome and navigate some of these barriers and improve the prospects for accountability and justice.

SECTION I.

COMMONLY IDENTIFIED BARRIERS TO THE INVESTIGATION, DOCUMENTATION AND INDICTMENT OF VIOLATIONS AND CRIMES AFFECTING CHILDREN
WKH UHVSRQVLELOLW\

EXLOGIQJ RU IXQGIQJ GLUHFWHG WRZDUGV WKLV LVVXH \$GGLWLRQDOO\ PRVW 891 DJKH-QVF6HFWDLORQ DGGUHVVHV WKH PRVW FRPPRQO\ LGHQWLÀ investigation, documentation and indictment of violations and crimes affecting

pursuing accountability for crimes and violations affecting children, as well as the need for intersectional approaches to collecting and evaluating information and evidence for the purposes of investigation/documentation and criminal accountability, DQG WKH QHHG IRU VSHFLÀFDOO\ JHQ@PlainUBsPstQG DJH GLVDJ

RXW WKH SULQFLSDO EDUULHUV WR DFFRXQWDELOLW\ LGH 5. , QWHUQDWLRQDO LQYHVWLJDWLYH RU IDFW ÀQGLQJ PLVVLRQV RU PHFKDQLVPV DQG indeprenteritore search Rvoligh gareDWWLWXGLQDO ÀQ landal, Firlindan oy DQG VWUXFV

UHIHUUHG WR DV ¶DFFRXQWDELOLW\ PHFKDQLVPV· WR WK

PART A. CONTEXT

Violations and crimes affecting children

10. Children are disproportionately affected by war and other situations of mass violence. \$W WKH WLPH RI ZULWLQJ PLOOLRQ RI WKH ZRUOG.V FA PLGVW RI DUPHG FRQÁLFW 21 WKHVH PLOOLRQ OLYH LO WKDW LV FRQÁLFW JRQHV ZLWK PRUH WKDQ

FRQÁLFW LQ SDUWLFXODU KDV IRUPHG SDUW RI WKH 81 61 and security agenda for over two decades since the publication of Graça Machel's VWXG\RQWKHLP6STDeFWMachRellDUPHGFF JURXQG EUHDNLQJ Report addressed the enforcement of standards and the mechanisms for monitoring FRQÁLFW UHODWHG YLRODWLRQV DJDLQVW FKLOGUHQ QRY system for the protection of children must be based on the accountability of

monitoring".¹⁷ One of the key steps taken by the Security Council in that regard was RID ORQLWRULQJ DQG 5HSRUWLQ. WKH FUHDWLRQ LQ LQIRUPDWLRQ RQ ¶JUDYH YLRODWLRQV: DJDLQVW FKLOGUH

31

JRYHUQPHQWV DQG RWKHU DFWRUV 7KLV LQ WXUQ UHTX

81 *HQHUDO \$,\text{\text{yPVSHDPFEVO}\text{\text{RI}} \$\text{\$UPHG & RQÁLFW RQ & KLOGUHQ & QLWHG } 1DWLRQV 5HSRUW RI WKH H[SHUW RI WKH 61H4F State) Othildren,6WRS WKH : DU RQ & KLOGUHQ * H Q G H U 0 D W W H U V 2020, p. 10. 81*\$25 81 6HFXULW<u>6\ 5&(P6XQFLO</u> \$XJXVW WKH ODFKHO 5HSRUW VW 6HVVLRQ 81 '2& \$ \$ G G - X O \ 5 (6 13 While this Research Paper does not address the challenges faced, and solutions developedalbactors of the 16 Supra note 12.

DFFRXQWDELOLW\ FKDLQ H J WKH MXGLFLDU\ RXWUHDFK VWDII LVVXHV DIIHFWLQJ WKH DFWLYLWLHV DQG RTS INNIBIODENNRep8000, VupRal nothek4-pbirtel 2085F WRUV will be highlighted, where relevant. 18 See 81 6HFXULW\ &RXQFLO 6 5(6 - X O \

- 12. The VL[JUDYH YLQBQWLRQG E\ WKH 81 6HFUHWDU\ *HQHUDO RQ WKH EDVLV RI their particularly egregious nature, the severity of their consequences for children, DQG WKHLU VXLWDELOLW\ IRU PRQLWRULQJ DQG UHSRUWLQJ DUH L NLOOLQJ DQG weightlift acocoldande with Wheter hage and maturity. States bear primary responsibility UHFUXLWPHQW RU XVH RI FKLOGUHQ LLL DWWKWHDJFNV RQ VFKRROV RU KRVSLWDOV IRUPV RIVH[XDO YLROHQFH Y FKLOG DEGXFWLRQ DQG YL WKH GHQLDO RIKXPD@nld/\shDoulddldoDnopre to raise the visibility of these violations and crimes, especially access. Each of the six grave violations can constitute breaches of international human rights and humanitarian law, and may, under certain circumstances, attract individual criminal responsibility. In 2019, more than 25,000 grave violations were YHULÀHG E\ WKH 050 LQ 20 FRXQWU\ VLWXDWLRQV
- 13. \$ V X Q G H U O L Q HO D FEK H O D

psychological implications!

:DU YLRODWHV WKH ULJKWV RI HYHU\ FKLOG WKH ULJKW WR OLIH WKH ULJKW W6RFabiling Zola Williess violations and crimes affecting children undermines long-term family and community, the right to health, the right to development of personality and the right to be nurtured and protected. Many of today's FRQÁLFWV ODVW WKH OHQJWK RID 'FKLOGKRRGµ PHDQLQJ WKDW IURP ELUWK WRpeboloideuh@ake up over half of the population. \$ORQJ ZLWK DGXOW PHPEHUV RI adulthood, children will experience multiple and accumulative assaults. Disrupting the social networks and primary relationships that support children's physical, emotional, moral, cognitive and social development in this way, and for this duration, can have profound physical and

- 14. The Security Council has underscored "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against children", and the need "for alleged perpetrators of crimes against children LQ VLWXDWLRQV RI DUPHG FRQÁLFW WR VIOLATIONS AND W WR MXVWLFH WKURXJK national justice systems and, where applicable, international justice mechanisms and mixed criminal courts and tribunals in order to end impunity".22 7 KH 81 6 HFUHWDU\ *HQHUDO K SRVW FRQÁLFW MXVWLFH DQG WUXWK V attention to the full range of children's war-time experiences.
- 15. However, and despite their magnitude, frequency, and devastating impact, violations and crimes affecting children have not received FRPSUHKHQVLYH DWWHQWLRQ IURP 81 bodies or from most international criminal courts and tribunals. This lack of attention weakens the rule of law; children, like

crimes affecting children have (DV) PHERPHQGHG WKDW

HHNLOJ PHEKDQLVPV 'SD\ V\VWHPDWLF

COMPrehensive attention from **UN fact-finding** <u>and investigative</u> DQG LQYHVWLJDWLYH bodies or from most international criminal courts and tribunals

peace and stability, both of which are essential to the safety and development of FKLOGUHQ ,Q PDQ\ FRQÁLFW DIIHFWHG DQG SRVW FRQÁLF WKH\ ZLOO KDYH VXIIHUHG YLROHQFH KRZHYHU FKLOGUH LV PRUH OLNHO\ WR KDYH IDU UHDFKLQJobtQeG ORQJ WHUP I DELOLW\ WR DFFHVV WKHLU ULJKWV DQG RQ WKHLU RYHU FRQGLWLRQV WKH\ H[SHULHQFH DV FKLOGUHQ ZLOO KHDYL psychological development 17. Children's development may also be negatively affected if they lack effective access to remedies. More so than adults, children, as the future generation, will inherit post-FRQÁLFW DJUHHPHQWV DQG LQLWLDWLYHV 7KH\ PXVW WKI SURFHVV RI GHYHORSLQJ WKRVH LQLWLDWLYHV

adults, have the right to an effective remedyin respect of gross violations of

the Ynsubelth & high Rto Jar Reffective remedy, but accountability mechanisms can

documentation and investigation. Further, in addressing violations and crimes

accordance with their best interests.

LQ \$UWLFOH RIWKH

international human rights law and/or international humanitarian law. Children also

have a right to be heard in matters affecting them, and for their views to be given due

affecting children, accountability mechanisms should take stock of best practices and

lessons learned in terms of child participation in order to ensure that where children are taking part in proceedings, they are doing so in the safest way possible, and in

VLQFH WKHVH PHFKDQLVPV RIWHQ SURYLGH WKH ÀUVW DQ

,I \RX H[FOXGH FKLOGUHQ > @ \RX·UH RQO\ GRFXPHQWL if you have a population where a massive percentage of that population is made up of what are essentially children, then you are really losing

8QLYHUVDO 'HFODUDWLRQ RI +XPDQ 5LJKWV \$UWLFOH

19 6HH JHQ2HIÀBFEICRI WKH 6SHFLDO 5HSUHVHQWDW1LRQU & KDISCHGUU1RQ DQKSH\$6IP[HCU & RKQÁLFW 9LRODWLRQV \$JDLQVW &KLOGUHQ 'XULQJ \$187 H 6 E&Hruqálfw 7KH /HJDO)RXQGDWLRQ.
20 81 *HQHUDO \$VVHPEO\ 81 168Hrixuduwhq&bxqqfdddfd FRQálfw 5HSRUW RI WKH 6HFUHWDU\ *HQHUDO. 21 Machel report, para. 30.

22 8 16 H F X U L W \ 6& 5R(X6 Q F L O V_6H H5 (DSOVR \$ X J X V \scripts/RES/1379 - X O \ SDUD 1RYHPEHU

23 81 6HFXULW\ &RXQFLO 88K1H000HUH000 D\$0Y6Y HDPLEFOHG FRQÁLFW 5HSRUW RI WKH 6HFUHWDU\ *HQHUDO. 6HSWHPEHU DFWLRQ SRLQW

24 'U \$ O L V RWOChilde Wild than sitional justice processes – still sidelined hi 'Gender and War, International and 7UDQVLWLRQDO -XVWLFH 3HUVSHFWLYHV 6RODQJH 0&RXLVOKHD1\$30616WQHG 2OJD -XUDV] HGV , Q W H U V H Q W L D national Criminal Justice and Child Protection' LQ ¶&KLOGUHQ DQG 7UDQVLWLRQDO -XVWLFH 7UXWK 7HOOLQJ \$FFRXQWDELOLW\ DQGXVWLFH &pFLOH \$SWH@KDJQQKZJ9LDJQQKZHO/HDGGVLVBKFK¶LOG VHQVLWLYH DSSURDFK W 5HFRQFLOLDWLRQ 6KDUDQMHHW 3DUPDU 0LQG\ -DQH 5RVHPDQ HW DO HGV 81,&()

7UHDWPHQW RU 3XQLVKPHQW DQG \$UWLFOH RI WKH UHSDUDWLRQ LQ FDVH RI YLRODWLRQV RI LQWHUQDWLRQDO KXPDQLWDULDQ OD UHVSHFWLQJ WKH /DZV DQG &XVWRPV RI :DU RQ /DQG RI 2FWREHU LV SDUW RI FXVWRPDU\ LQWHUQDWLRQDO ODZ DSSOLFDEOH WR QRQ LQWHUQDW IRU WKH ,QWHUQDWLRQDO &ULPLQDO &RXUW 5RPH 6WDWXWH DOVR LQFRUSRUI the jurisdiction of the Court; see also 8 1 * H Q H U D O _\$ V V H P E O \ \$ 5 (6 ODUEK DQG *XLGHOLQHV RQ WKH 5LJKW WR D 5HPHG\ DQG 5HSDUDWLRQ IRU 9LFWLPV R 6HULRXV 9LRODWLRQV RI ,QWHUQDWLRQDO +XPDQLWDULDQ /DZ 26 6RXHV RI WKH OHJDO SURWHFWLRQ RI FKLOGUHQ LQ FRQÁLFW LQFOXGH 81 &RC WLRQDO 3URWRFRO WR WKH &RQYHQWLRQ RQ WKH 5LJKWV RI WKH &KLOG RQ WK &RQYHQWLRQ 3URWRFRO \$GGLWLRQDO WR WKH *HQHYD &RQYHQWLRQV RI \$X 9LFWLPV RI,QWHUQDWLRQDO \$UPHG &RQÁLFWV 3URWRFRO, DQG UHODWLQJ WR WKH 3URWHFWLRQ RI 9LFWLPV RI 1RQ .QWI 1977. For an overview of the legal framework, see , QWHUQDWLRQDO &RPPLWWHH RI WKH 5HG &URVV International Humanitarian Law, ¶/HJDO 3URWHFWLRQ RI & 2003\$ Schalheled Fat@na\$QLCP ¶H/GHJ8DRQQ ÁLFW 6RXUFHV 6WUXFWXUH DQG \$FERQX3QUMRDMEHLFOWLWQJOBKKOQUWHRQVLQ \$UPHG &RQÁLFW RI WKH &5& 28 1 R3 H D F H : L W K R X W - X V W L F H 81, & () In Qe Q 2R of The H Q r L Millo a l 5] L Is X i C H 2 In U C I K R X W - X V W L F H 81, & () In Qe Q 2R of The H Q r L Millo a l 5] L Is X i C H 2 In Qe X i C I R 3 H D F H : L W K R X W - X V W L F H 81, & () In Qe Q 2R of The H Q r L Millo a l 5] L Is X i C H 2 In Qe X i C I R 3 H D F H : L W K R X W - X V W L F H 81, & () In Qe Q 2R of The H Q r L Millo a l 5] L Is X i C I R 3 H D F H : L W K R X W - X V W L F H 81, & () In Qe Q 2R of The H Q r L Millo a l 5] L Is X i C I R 3 H D F H : L W K R X W - X V W L F H 81, & () In Qe Q 2R of The H Q r L Millo a l 5] L Is X i C I R 3 H D F H : L W K R X W - X V W L F H 81, & () In Qe Q 2R of The H Q r L Millo a l 5] L Is X i C I R 3 H D F H I R 3 H D F H 1 I

81 6HFXUL<u>W\ &RXQFLO ¶7KH 5XOH RI/DZ DQG 7UDQVL</u>WRepPo@ofthe-XVWLFH LQ &F 6HFUHWDU\ *HQHUDO 6 \$XJXVW

29 'U \$ O L V R Q % L V V H W 'Children in transitional justice process262: still sidelined?'

25 Provisions on the right to a remedy for victims of violations of international human rights law are fouintly alia,

&LYLO DQG 3ROLWLFDO 5LJKWV \$UWLFOH RI WKH

& \$OLVRQ %LVVHW 'Children in transitional justice processes 264till intelletiated national

\$XJXVW 6 D Y H Stdfo Ithe & WarLoo Ghilddre Qi, 20/19, pp. 22-27.

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&RQYHQWLRQ DJDLQVW

&RQYHQWLRQ RQ WKI

D VLJQLÄFDQW FRPSRQHQW RI WKH WUXWK WKDW LV ORVW IURP WKH DFFRXQW RI

the past. So, you are essentially building an incomplete account. [...] If children are excluded from that initial truth-telling, truth-seeking process, then that aspect of the truth is not fed forward. Consequently, they become excluded from reparations packages, which are often built around what is found in truth-seeking, and from legislative reform.

18. Children should therefore be a central focus of international efforts to investigate, document, and indict international crimes and violations in order to give effect to the legal standards designed for their protection, to combat impunity, and to enhance the prospects of long-term peace and a stability for all. However, and as described LQ \$QQH[, inDpFaEtReXQWDELOLW\PHFKDQLVPV KDYH KLWKHUWR EHHQ DGXOW FHQWI DQG KDYH ODUJHO\ IDLOHG WR SULRULWLVH FKLOG FRPSHWHQW DSSURDFKHV WR and documentation. Consequently, perpetrators have rarely been brought to justice, and children's experiences of war and armed violence have either been eclipsed or reduced to child soldiering and sexual violence.

\$SSURDFKHV WR LQYHVWLJDWLRQ DQG GRFXPHQWDWLR(importance of an intersectional analysis²

- 19. Children, like all other social groups, differ from each other in terms of age, gender, race, socio-economic status, and other conditions. While all children suffer in war DQG ZLOO EH KDUPHG E\ YLUWXDOO\ DQ\ YLRODWLRQ RI WKHLU ULJKWV ZKHWKHU Lofflide for istances of victimisation denied access to healthcare, humanitarian assistance or education, or being IRUFLEO\ UHFUXLWHG LQWR DQ DUPHG JURXS DEGXFWHG RU VXEMHFWHG WR VH[XDQhoYI)LpaseitheQgents in need of protection. it is important to recognise the diversity of children's lived experiences, and the differential impact of armed violence based on their personal characteristics, including their gender and age. Such an analysis is necessary in order to meaningfully XQGHUVWDQG WKH LQWHUVHFWLRQDO DQG PXOWL GLPHQVLRQDO UHDVRQV ZKQG PDLPHG LQ JUHDWHU QXPEHUV WKDQ JLUOV FRPSULV WDUJHWLQJ FKLOGUHQ PD\ EH RI VWUDWHJLF LPSRUWDQFH WR SHUSHWUDWRUV DV case Och Police or maimed reported by the MRM in 2018, compared intensity and severity of the harm children may suffer.
- 20. Further, acknowledging that children are not a homogenous group is key in order to develop appropriate and safe avenues of engagement with them. For example, the particular characteristics of a potential child victim or witness will inform decisions around whether and how to interview them, and how the informed consent of their parent or legal quardian should be secured; these characteristics will also be relevant to the assessment of a child's ability to recall events, as well as the reliability and weight of the information and evidence the child provides.

21. However, and despite the fact that the foundational instruments of accountability mechanisms increasingly explicitly refer to children and that a child's age and vulnerability may be taken into account by investigators, prosecutors and trial judges, in practice these mechanisms have largely failed to capture the breadth of children's experiences in war and mass atrocity settings based on their evolving capacities and FRPSHWHQFLHV DQG WKH VSHFLÀF DQG GLIIHUHQWLDWHG \$ V D U FIN K K OD OSVU H Q D U H I U H TIT X B I Q OSV OZ VL NIV X Q WWXLHWL XU D D WHHG Q R W L G F WKHLU LQWHUVHFWLQJ LGHQWLWLHV XQVSHFLÀHG DQG WI

In an attack against the civilian population, not understanding what has happened to children is almost inadvertently not recognising the existence of a large part of the attack. [....] W · V Q R W D E R X W D G G L Q J F K L O G l EDFNWe Cave to enter with the mentality that children are there[...] You could tell any of these past stories through the eyes of a child, and it would be a valid 'crimes against humanity' case or a valid 'genocide' case. You could almost drop all the adults. That would be a radical way of looking at it. Evidentiary wise, if you had good witnesses, the case could be told just from what happened to the children. [To prove] an attack against the civilian population, [investigating] merely what happened to WKH FKLOGUHQ ZRXOG DOPRVW VXIÀFH > ORRN DW WKDW > DV LI@ 38 W(KPHS KFDX VLDVG UR HX Q VDUH LQYLVLEOH

22. Without an effective JHQGHU DQG DJH GLV Dhe ekublerite Tockels left G DQDO\VLV which, in turn, perpetuate narratives that downplay their agency and cast children as

23. Whilst it is beyond the scope of this paper to exhaustively detail the gendered impacts RI FRQÁLFW RQ FKLOGUHQ WKH IROORZLQJ H[DPSOHV DUH ZKLFK ZHUH UHFRUGHG DV JLUOV IARTULISIS WKH VH[Z because boys are often allowed greater freedom of movement than girls, and spend PRUH WLPH RXWVLGH LQ WKH FRPPXQLW\ ZKLFK LQFUHDVI unexploded ordnance, and explosive remnants of war. \$ G R O H V F H Q W E R \ V L Q S D U are more likely to be perceived as posing a security threat, and are at higher risk of detention and torture or ill-treatment, or of being targeted for recruitment. Second, while attacks on education are devastating for all children, boys and girls often face GLIIHUHQW JHQGHUHG ULVNV *LUO VWXGHQWV DQG IHPDO targeted by groups who oppose girls' education on ideological grounds. Many girls

QWHUYLHZ ZLWK 'U \$OLVRQ %LVVHW) H E U X D U \ , QWHOTER ZEWK 0 30 EV KW / 1 1 1 1 1 2 1 2 1 W K O 30 EV KW / 1 1 2 1 2 1 W K O 30 EV KW / 1 2 1 2 1 W K O 30 EV KW / 1 2 1 2 1 W K O 30 EV KW / 1 2 1 W K O 30 EV KW / 1 2 1 W K O 30 EV KW / 1 2 1 W K O 30 EV KW / 1 2 1 W K O 30 EV KW / 1 2 1 W K O 30 EV KW / 1 2 1 W K O 30 EV KW / 1 2 1 W K O 30 EV KW / 1 2 1 W KW / 1 W KW severity of discrimination that individuals may face depends on the number and interplay of their personal character

LVWLFV WKDW JHQHUDWH GLVFULPLQDWLRQ DJDLQVW WKHP 7KH LQWHUSOD\ RI LGHQWLWLHV OLQNHG WR JHQGblumbhled QLFLW\ UHOLJLRQ UDFH

VH[XDO RULHQWDWLRQ GLVDELOLW\ QDWLRQDO RULJLQ DJH HWF UHVXOWV LQ H[SHULHQFHV RI H[FOXVLRQ DQ 6 VPHVPQHVHVBV 6 HOOHUV)HEUXDU\
XQLTXH WR WKRVH ZLWK PXOWLSOH LGHQWLWLHV 7KLV LV NQRZQ DV PXOWLSOH GLVFULPLQDWLRQ 7KH LQWHY 80 PPHVPQ PPHVPQHVHVBV 90 PPHVPQ 5 LJKWV ,QYHV GLVFULPLQDWLRQ LV DQDO\VHG E\ LQWHUVHFWLRQDO DQDO\VLV ZKLFK DFNQRZOHGJHV WKDW KXPDQ ULJKWV Y 20 PPHVPQ 5 LJKWV PPHVPQ 1 LQWH 1 LQWR +XPDQ 5 LJKWV PPHVPQ 1 LQWR +XPDQ 5 severity of discrimination that individuals may face depends on the number and interplay of their personal character RULHQWDWLRQ FODVV KHDOWK & WD SMX MU HWFQ ZVIHW K DWHQ CGJH UHQ 25 H BU F SLQ WR + XPDQ 5 L J KWV 0 RQ L WRULQJ. Manual on Human Rights Monitoring 7KLV VHFWLRQ DGGUHVVHV JHQGHU DQG DJH RQO\ 33 OHCHR, & KDSWHU; & K, LT (2a) Girly IM anual for LHulm AN Rights Monitoring, 2001.

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Arab Republic' \$ +5 & &53

³⁴ Save the Children, Stop the War on Children', 2019, pp. 22, 27.

³⁵ Moreover, in some circumstances, age is also material to determining whether a criminal offence has been disclosed, ICC OTP Policy on Childre K, W W S V ZZZ LFF FSL LQW LFFGRFV RWS B273B, & B3ROLF\ RQ & KLOGUHQB(QJ 3') H J SS > @ > @ > @

^{*}HQHYD\$<u>FDGHP\ ¶'LVDEL</u>OL\$NF\D**G:GIB**L\$FU% HGH&ÀRQQIÁ1LRFW. 81 & RPPLW *HQHUDO PHDVXUHV RI LPSOHPHQWDV Rights of the Child,*HQHUDO FRPPHQW QR Rights of the Child 1 R Y H P E H U * H Q G H U 0 D W W H U V . p. 20. 40 Save the Children, 6 W R S W K H : D U R Q & K L O G U H Q

who are forced to interrupt or end their education prematurely are at risk of forced early marriage, often framed by the family as a way of 'protecting' the child.

- 24. ORUHRYHU LQ PDQ\ DUPHG FRQÁLFWV DQG VLWXDWLRQV RI SURWUDFWHG DUPHG ZYRHHQPHJFKJkQJ EDUULHUV the world, children are often deliberately targeted. \$ V VXFK DQ DJH DQG JHQGHU disaggregated analysis can be key to evincing and understanding the motivations of perpetrators and ensure justice for the victims. Recounting her experiences as D SURVHFXWRU DW WKH 6SHFLDO &RXUW IRU 6LHUUD /HRQH 6&6/ 6K\DPDOD \$O[explained how, in one case, investigators and prosecutors failed to expressly consider WKH SRWHQWLDO QH[XV EHWZHHQ WKH DJH RI UDSH YLFWLPV ZKR ZHUH DQG intent of those who had targeted them, potentially resulting in an incomplete picture RI WKH QDUUDWLYH DQG DQ RYHUO\ QDUURZ LQGLFWPHQW
 - GLG QRW UHDOO\ VSHFLÀFDOO\ IRFXV RQ WKHP >FKLOGUHQ@ DV D GLVWLQFW but now when I look back, I feel that was a lost opportunity to actually understand that children were not really incidental victims of crimes, EXW WKH\ZHUH LQ IDFW WDUJHWHG. We lost the chance to recognise that, and beyond that to ask why were they targeted. [...] Was there an impact, that of committing a crime against the child in front of her parents in a SDUWLFXODU FRPPXQLW\": DV WKDW D VHSDUDWH DFW RI WHUURULVLQJ WKHP" ZHUH WKH SHUSHWUDWRUV WU\LQJ WR DFKLHYH" :K\ ZHUH WKH\ WDUJHWHG" :K\ ZHUH FKLOGUHQ EHLQJ UDSHG RU NWOIOSHG LQ IURQW RI KLV RU KHU SDUHQWV" WKDW RSSRUWXQLW\ WR XQGHUVWDQtatVRPH RI WKH SROLFLHV EHKLQG FULPHV ZHUH FRPPLWWHG \$QG VHFRQGO\ , DOVR IHHO WKDW EHFDXVH ZH GLG QRW JL them that distinct category of being a group of victims of their own, wiel not address the special harm that was caused to then by the crimes that were committed and how they had been impacted. (PSKDVLV RXUV
- 25. 2ZLQJ WR VRPH RI WKH EDUULHUV LGHQWLÀHG EHORZ WKHVH IDFWRUV DUH QRW captured by accountability efforts, even when violations and crimes affecting children are documented and investigated.

PART B. BARRIERS

- 26. There are P X O W L S O H E D U U L H U V to the documentation, investigation, and indictment of violations and crimes affecting children. These barriers ar WWLWXGLQDO ÀQDQFLDO DQG structural and, in many casesmutually reinforcing. These include, among others, WKH DEVHQFH RI D 6WDWH DQG RU 81 DQG RU FLYLO VRFLHW\ GULYHQ FRQVWLW> accountability; the failure to mainstream child-competent approaches to investigation and documentation; the complexities and ethical dilemmas around interviewing children and corresponding lack of expertise at the international level; resource constraints; and challenges to effective knowledge and expertise sharing, cooperation and coordination, among key stakeholders.
- to ascertain whether "the indictmentprima facie, concentrates on the most senior leaders suspected of beingnost

 27. 1HYHUWKHOHVV WKUHH FULWLFDO FRQVLGHUDWLRQV PXVW EH ERUQH LQ PLQG Z Kethologibilel YRDJOFXLDPWVLQLJWKLQ WKH MXULVGLFWLRQ RI WKH 7ULEXQDOµ IDLOLQJ Z the track record of accountability mechanisms.

43 6 H H J H Q H*100 DROE O YO & R D O L W L R Q W R 3 U*1R is\\(\text{Neir F_M\(\text{in}\)}\) (\(\text{LG}(\text{ix})\) (\(\text{LG}(\text{ix})\)) (\(\text{LG}(\text{ix})\) (\(\text{LG}(\text{LG}(\text{IX})\) (\(\text{LG}(\text{LG}(\text{LG}(\text{LG}(\text{IX})\) (\(\text{LG}(\tex 6RODO KHOORUXHYOK DDOG SUPHG & ROÁLFW WKH 3LWIDOOV RI on education on women and girls' 1 R Y H P E H U D ¶2QH 6L]H)LWV \$OO. DSSURDFK.,p. 130.

28. Investigating and SURVHFXWLQJLQWHUQDWLRQDO FULPHVLVDQ H task, regardless of the age of the victim. Some obstacles are due to a lack of personal or territorial jurisdiction others arise out of structural conditions on the ground, and cannot be solely remedied through the adoption of a child-competent approach. For example, in order to prosecute the recruitment and use of child soldiers, it is necessary to obtain evidence of the age of an alleged victim. That evidence is not always available. In the DRC investigations at the International &ULPLQDO &RXUW IRU HIDPSOH

>,W ZDV YHU\ GLIÀFXOW@ WR SURYH WKH DJH RI FKLOGU is absolutely QR GRFXPHQWDWLRQ DERXW DJH DQ\ VRUW RI GF am not talking about an ID, even schools ledger, civil registry documents. parents' documents. In a certain context, age was not being celebrated. Your birthday is not as important as in other places. So, there's no opportunity for parents to obtain any reliable document about the age of their children [...] In terms of also where those documents could be REWDLQHG VFKRROV FKXUFKHV KRVSLWDOV FLYLO UH nothing. What we found most often was that the data was completely inconsistent. There were 15 different data sources [concerning children's DJH@ 1RW RII E\ RQH GD\ EXW DOVR LQ WHUPV RI \HDUV FRQVFULSWLRQ LV FULWLFDO (YHQ D \HDU FDQ PDNH D for other types of crimes, but in terms of that particular crime we were SXUVXLQJ LQ WKH /XEDQJD FDVH LW EHFDPH YHU\ FRPS one really could provide any reliable data. Then, we resorted to forensic examination but it was too late.: H QHYHU IRXQG D VROXWLRQ WR EH K WR WKDW :H FDQQRW À [V∜X FKP SIKWDUXLFW KX MID VO SUREOHP V

29. \$JH GLVDJJUHJDWHG DQDO\VHV PHDQLQJ WKH DQDO\VH\ RQ FKLOGUHQ EDVHG RQ WKHLU DJH UHTXLUH D VLJQLÀ resources. It has been pointed out that in light of the duration of the mandates of non-judicial accountability mechanisms, and the investment needed to undertake such an analysis, the 'return on investment' - should these bodies include such analysis in their reports - may be limited, unless underlying data can subsequently be shared with judicial accountability mechanisms susceptible of relying on the reports?

^{44 &}amp; HFLOLD 5 D8FREG WKH 3UHYHQWLRQ RI 0 DVV \$WURFLWLHV \$ FKLOG FHQWULF DSSURDFK, in Children and the Responsibility ty to Protect % LQD '-&RVWD DQG /XNH *ODQYLOOH HGV %ULOO 1LMKRII QWHUYLHZ ZLWK 6K\DPDOD \$ODJHQGUD

^{46)}RU H[DPSOH 5XOH RI WKH ,&7<.V 5XOHV RI 3URFHGXUH DQG (YLGHQFH DV D

^{,&}amp;7< 5XOHV RI 3URFHGXUH DQG (YLGHQFH ,7 5HY RI 81 6HFXULW\ &RXQFLO 5HVROXWLRQ 6 5 (6 DQG 5H 0 D U F K ZKLFK FRQFHUQHG WKH ,&7<.V FRPSOHWLRQ VWUDWHJ\

⁴⁷ For example, Syria, Myanmar, Iraq and South Sudan are not, at the time of writing, parties to the Rome Statute.

^{48 ,} QH/WYLHZ ZLWK \$OLFH = DJR) H E U X D U \ 7KH 0\DQPDILdo)r@mfelxWbeAQGLQJ0LVVLR WKDW LW ZDV D ELW DUELWUDU\ LQ WKH FDPSV EHFDXVH GLGQ·W UHDOO\ PH FRQFHSW DPRQJ WKDW SRSXODWLRQ \$QG DOVR WKHUH ZDVQ·W JUHDW GRFXPH FHUWLÀFDWHV QRQH RI WKHP KDG ,'V \$ ORW RI SHRSOH GLGQ·W NQRZ KRZ RO

[,]QWHUYLHZ ZLWK \$OLFH =DJR \$SULO

30. International prosecutors enjoy varying degrees of discretion in choosing whether or not to initiate investigations and, thereafter, even if the evidence collected discloses aprima facie case, on whether to prosecute and on what charges⁵¹ The exercise of prosecutorial discretion is both necessary and desirable for a number of reasons including, amongst others, the vast number of crimes and VXVSHFWV SRWHQWLDOO\IDOOLQJZLWKLQ WKHLU MXULVGLFWLRQ DQG WKH ÀQLWHLWHDVORPXLLNFVHLVE ON XVQKOHLW \$UWLFOH RIWKH 5RPH 6WDWX\ disposal, as well as the limitations placed upon prosecutors by their governing frameworks, and the exercise of judicial oversight over decisions to prosect te.

of the Court – and thus the power of the Prosecutor – to the investigation and

which were not ranked by order of importance "merely provided a catalogue of considerations to be considered as whole when deciding to pursue an investigation and prosecution" and that focused case selection policy was not

prosecution of persons who bore "the greatest responsibility" for crimes.

- 31. For example, with regard to the International Criminal Tribunals for the Former <XJRVODYLD ,&7< D®QIGQ5ZDQGMDKH,887156HFXULW\ &RXQFLO SDVVHG</p> a resolution calling on the tribunals to indict onlythe most senior leaders suspected of being the most responsible 7 KH 2 I Å FH R I W KH 3 U R V H F X W R U 2 7 3 at the ICTR reviewed its caseload and adopted a policy for selecting cases by UHIHUHQFH DPRQJ RWKHU WKLQJV WR WKH QDWXUH RI WKH FULPH ZLWK VSHFLÀF BQGPWKH FDVH WR SURFHHG WR WULDO WKH 37& PXVW EHLQJ VLQJOHG RXW IRU SURVHFXWLRQ LQFOXGLQJ 6*%9 FULPHV WKH UROH SOD\ (e) Wildle (fice) to the destriction to be lieve that the person committed perpetrator, and with a view to ensuring accountability for crimes perpetrated DFURVV WKH JHRJUDSKLF VSUHDG RI \$WTKeHimFaRtXQWU\ RU LQ VSHFLÀF ORFDWLRQV RI FULPHV RQ 2 DQG WKH DJH RI 2 YLFWLPV ZHUH QRW DPRQJ WKH H[SUHVVO\ LG 183Q WKN H, 68 & 273 LVVXHG D 3ROLF\ 3DSHU LQ
 - "there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court's. The charges which the Prosecutor intends to SXUVXH PXVW DOVR EH DSSURYHG E\ MXGJHV ,Q RUGHU each of the crimes charged ?? ZKLFK LGHQV FULWHULD 7KH 6WDWXWH RI WKH 6&6/ VSHFLÀFDOO\ OLPLWHG WKH SHUVRQDO MXULthle @xlenfeistle bffp@secutorial discretion in the selection and prioritisation of FDVHV IRU LQYHVWLJDWLRQ DQG SURVHFXWLRQ .H\ IDFV RI FDVHV DUH WKH JUDYLW\ RI FULPHV LQFOXGLQJ DVV

32. \$W WKH .&& WKH 3URVHFXWRU LQ FRQGXFWLQJ SUHOLP

ZKHWKHU WKHUH LV D 'UHDVRQDEOH EDVLVµ WR EHOLH'

DSSOLFDWLRQ PD\ EH PDGH WR WKH 3UH 7ULDO &KDPEHU

of a thunkind in the result of the result of

investigation OHDGLQJ WR D SURVHFXWLRQ ZLWK Da UHDVRQDE

WKHLU FRRSHUDWLRQ ZLWK WKH 21ÀFH DQG WKH SRWHQ

whether or not to open a formal investigation, is statutorily required to consider

being committed; the crime falls within the jurisdiction of the court; the case

crime, including its nature and impact, the interests of victims; and whether

proceeding with an investigation "would not serve the interests of justice" If, on investigation, the Prosecutor decides to select one or more cases for prosecution,

impact on victims; the degree of responsibility of alleged perpetrators; and the

and exonerating evidence; the prospects of obtaining additional evidence,

and any risks to its degradation; the OTP's capacity to effectively conduct the

of suspects before the Court, either by arrest and surrender, or pursuant to a

of crimes affecting children, prosecutors retain a discretion in deciding whether to

gender violenceand crimes committed against childrenpersecution, or the imposition of conditions of life on a

group calculated to bring about its destruction" and at paragraph 65 that "the impact of crimes may be assessed

summons to appear. In either case, the prosecution must satisfy the Chamber that

- SURVHEXWRUV ZKR ZHUH DSSRLQWHG E\ DQG DFWHG LQ WKH QDPH RI WKHLU VWDWHV :KLOH WKH 1XUHPEHUJ &KDohimHestaglatirTex betaffecting children With regard to the prioritisation of cases, prosecutors to "VHWWOH WKH AQDO GHVLJQDWLRQ RI PDMRU ZDU FULPLQDOV WR EH WULHG E\ WKH 7ULEXQDOµ \$UWLFOH were stipulated for determining who to indict. 77KH 3URVHFXWRU VKDOO LQLWLDWH LQYHVWLJDWLRQV H[RIÀFLR RQ WKH EDVLV Ron cases that it can conduct an effective and successful 51 6HH H & 6, W TO W X W H \$ U W L F O H tion obtained from any source [...] [and] assess the information received or obtained and devide ther there is a VXIÀFLHQW ÉD VILV \$W RV ISFLORHFHHG 188R Q p@inhaWableLbase @k@istv/tobeRroosebcbtood stMaiD SUHSDUH DQ LQGLFWPHQW > « @ 7KH LQGLFWPHQW VKDOO EH WUDQVPLWWHG WR D MXGJH RI WKH 7ULDO & KDPEHU La Threes of factions include the of quality of the available incriminating judge of the Trial Chamber to whom the indictment has been transmitted shall review it. , I V D W L V À H G W K D W D S U L P D I D F L H FDVH KDV EHHQ HVWDEOLVKHG E\ WKH 3UR WHFX&W7R U6 WKDHWXKWDHO SOUFWRLQFÀOUHPV WKH LQGLFWPHQW and 18 contain equivalent provisions.
- 52 See e.g. ICY, 3 U R V H F X W R/U 0YX/F'LHHOODLQIG & DRQ 16 AQLWH AQDQFLDO DQG KXPDQ UHVRXUFHV DQG FDQQRW UHDOLVWLFDOO\ EH H[SHFWHG WR SURVHFXWH HYHU\ RIIHQ & Ψ ΔΙΕΨΑ ΚΑΙΙΗ Ο ΒΙΙΗ within the strict terms of its jurisdiction. It must of necessity make decisions as to the nature of the crimes and the of fenders to be prosecuted t is beyond question that the Prosecutor has a broad discretion in relation to the initiation of investigations and in the preparation of indictments 53 ,Q FRQRVUNDKHW1WUHPEHUJ 6WDWXWH ZKLFK SURYLGHG IRU WKH LQGLFWPHQW RI 'PDMRU ZDU FULPLQDOVµ RQO\ \$JU**buhn**nhoonbl
- IRU WKH 3URVHFXWLRQ DQG 3XQLVKPHQW RI WKH 0DMRUChaDebloskibeLPLQDOV RI WKH (XURSHDQ \$[LV 3RZHUV DQG WKH International Military Tribunal \$ X J X V W \$ U W Charter of the International Military Tribunal for the Far East at and Kdd tribum als/were/loroa/deRand/Valkdwed for the investigation 34. In light of the foregoing, even where an investigation reveals ma facie evidence \$ U W and prosecution of bersons responsible for serious violations of international humanitarian law/ithout further TXDOLÀFDWLRQV ZKLFK TXLFNO\ OHG WR PDMRU GHOD\V 8SGDWHG 6WDWXWH RI WKH ,QWHUQDWLRQDO &ULPLQDO Yugoslavia 6 H S W H P E H U \$U W Statute of the International Criminal Tib Whal for Rwanda 6 H H 8 1 6 8 V R S O X W L R Q \$XJXVW DQG 5HVROXWLRQ
- 0 D U F K WKH 2IÀFH RI WKH 3URVHFXWRU DGRSWHG D IRUPDO VHW RI FULWHULD ZLWK D YLHZ WR_HQDEOLQJ DQ HIIHFWLYH 55 \$W WKH &7< 10 DOORFDWLRQ RI UHVRXUFHV DQG WKH IXOÀOPHQW RI WKH 7ULEXQDO.V PDQGDWH)LYH FULWHULD ZHUH GHYHSBR75MHBR3MSHIFIXWRRQU KHDJV WS KIMLS RZHU WR LQLWLDWH D IRUPDO LQYHVWŁJDWLRQ SXUVX WLRQ LQ KLHUDUFK\ XQGHU LQYHVWLJDWLRQ DYDLODELOLW\ RI ZLWQHVVHV DQG HYLGHQFH VHULRXV YLRODWLURDOOD EH\ JW KQHX BIE H6UH FRXUVLLWF\W&LRR X/QFLO 7KH 3URS\UHRFSXUWLRR:UPRLDW\XD SQU bijeket the 10eilen bjylyddaidh the hfull RXV YLRODWLURDOOD EH\ JW KQHX BIE H6UH FRX UYLLWF\W&LRR X/QFLO 7KH 3URS\UHRFSXUWLRR:UPRLDW\XD SQU bijeket the 10eilen bjylyddaidh the hfull RXV YLRODWLURDOOD EH\ JW KQHX BIE H6UH FRX UYLLWF\W&LRR X/QFLO 7KH 3URS\UHRFSXUWLRR:UPRLDW\XD SQU bijeket the 10eilen bjylyddaidh the hfull RXV YLRODWLURDOOD EH\ JW KQHX BIE H6UH FRX UYLLWF\W&LRR X/QFLO 7KH 3URS\UHRFSXUWLRR:UPRLDW\XD SQU bijeket the 10eilen bjylyddaidh the hfull RXV YLRODWLURDOOD EH\ JW KQHX BIE H6UH FRX UYLLWF\W&LRR X/QFLO 7KH 3URS\UHRFSXUWLRR:UPRLDW\XD SQU bijeket the 10eilen bjylyddaidh the hfull RXV YLRODWLURDOOD EH\ JW KQHX BIE H6UH FRX UYLLWF\W&LRR X/QFLO 7KH 3URS\UHRFSXUWLRR:UPRLDW\XD SQU bijeket the 10eilen bjylyddaidh the 10ei DQG QDWXUH RI DFWV SROLF\ FRQVLGHUDWLRQV H J DGYDQFHPHQW RI LQWHUQDWLRQDO MXULVSUXGHQFH ZISQVQBW KRDUQLQY IDDXHW KRDUQLQY IDDXHW KR RDUQLQY IDDXHW IDDXH QDWLRQDO FRXUWV WR SURVHFXWH SRWHQWLDO V\PEROLF RU GHWHUUHQW YDOXH RI SURVHFXWLRQ DQG R519 KOFFRPOLIDHR DE LEVEN DE LEVE DW SDUDJUDSK SURYLGHV WKDW 'WH H J SRWHQWLDO GHIHQFHV DQG OHJDO LPSHGLPHQWV WR SURVHFXWLRQ +RZHYHU LW KDV EHHQ PDLQWDLQHGUWLRDW WHXIHIWF WURLWWKUHLDSHFLÀF HOHPHQWV RI HDFK RIIHQFH VXFK DV NLOOLQ

50, W LWHOGRKRZHYHU WKDW WKH &KDUWHUV RI WKH 1XUHPEHUJ DQG 7RN/R 7ULEXQDOV DIIRUGHG QR IRUPDO LQGHSHQGIPPPPPSPNJALIVPPPQSZLWK D IRFXV RQ XQGHU SURVHFXWHG

- GHVFULEHG KHUHLQ RQFH WKH 273-V AOWHULQJ SURFHVV RFFXUUHG SULQFLSDOO\ E\ UHIHUHQFH WR WKH SURFHGW LIQWWLD LOOW BY CONSISTENCY OF A CONTROL OF A CONT LQ WKH :RUN RI WKH ,QWHUQDWLRQDO &ULPLQDO Criddria Marco Docizina bhdwkh)RUPHU <XJRVODYLD. SS \$UWLFOH 5RPH 6WDWXWH Selecting Core International Crimes Cases 0 R U W H Q % H U J V P R H G) R U X P I R U , Q W H U Q D W L R Q D O & U L P L Q D O D Q G + X P D Q L W D U L D Q 5RPH 6WDWXWH \$UWLFOH \$UWLFOH 5RPH 6WDWXWH 56 \$ Q H2 E R W H 2 G R U D ¶ & D V H 6 H O H F W L R Q D Q G 3 U L R U L W L] D W L R Q & U L W H U L D L Q W K H : R U N R I W K H , Q W H U Q D W L R Q D O 68 (QDT.P.P.) log DPG per bir L (Ea XeOS E) (eQuito in Radid Prioritisation, September 2016, pp. 12-15. The operationalisation of the
- 5ZDQGD. SS Criteria for Propritizing and Selecting Core International Crimes Case® RUWHQ % HUJVPR HG)RUXPIRU, QWHUQDWLRQDO &ULPLQDO DQG +XPDQLWDULDQ /DZ 3XEOLFDWLRQ 6HULHV 57 \$ U W L F O H Statute of the Special Court for Sierra L 60&66 / 6 W D W X W H
- ,&& V 3ROLF\ RQ &KLOGUHQ ZLOO EH IXUWKHU DQDO\VHG LQ 6HFWLRQ ,,, 3DUW 64 Ibid, p.16 65 Ibid, p.17.

38

select a case for prosecution and proffer charges.

35. Finally, when it comes to war crimes prosecutions, some cases DUH HDVLHU WR EXLOG WKDQ RWKHUV

humanitarian law encompass both violations against rules concerning the treatment of civilians and those who alters de combat⁶⁶ and violations of rules concerning the conduct of hostilities. 'Conduct of hostilities' violations centre on the means and methods of warfare and include, for example, indiscriminate attacks; attacks directed towards or military use of civilian objects

to treatment GLUHFWHG WRZDUGV RU VXFK DV VFKRROV DQG SOD\JURXQGV WKH PLOLWDU\ XVH RI VSHFLÀFDOO\ SVIRIATION HG SHUVRQV DQG REMHFWV VXFK DV PHGLFDO VWDII DQG IDFLOLWLHV \$ FXUVRU\ ORRN DW WKH

indictments of international criminal tribunals, or indeed universal jurisdiction cases of international crimesindicates that the majority of war crimes prosecutions concern 'treatment' violations. This is largely because access to the most probative evidence is often quite limited for 'conduct' violations as compared to 'treatment' violations.

36. For example, building a case in relation to torture and killings in a detention centre - itself a challenging exercise - would usually require minimis, accounts of survivors and witnesses concerning the crimes and those involved in the criminal conduct; medical records detailing injuries and/or cause of death; photographs of injuries and/or bodies; and/or satellite imagery of mass grave sites. In contrast, building a case related to the aerial bombardment of a school would require QRW RQO\ FRQAUPDWLRQ WKDW WKH VFKRRO DQG DQ\RQH LQVLGH LW ZHUH QRW PLOLWDU\ objectives, but also, at a minimum, the location and value of any military targets LQ WKH YLFLQLW\ DQ LGHQWLÀFDWLRQ RI ZKLFK IRUFHV FRQGXFWHG WKH ERP PXOWLSOH SDUWLHV KDYH WKH FDSDFLW\ IRU DHULDO DWWDFNV WKH HIIHFWL structures through which the orders to bomb emanated; the information that fed into the decision to launch such an attack; and whether there was a good-faith assessment of that evidence. Often, there is little to no information provided by the military forces involved, making a proportionality assessment and the pinpointing of individuals responsible within complex command structures LPPHQVHO\GLIAFXOW &RQVHTXHQWO\ EXLOGLQJ D FDVH GRVVLHU LQ UHODWL... .affecting them.70 an attack often requires investigations involving specialist expertise, including military and ballistic experts, specialists on the structure and capacity of particular units or groups, as well as access to insiders or defectors. These latter would concerning military strategies, and the processes of effective decision-making surrounding such attacks in the area of control at that time.

Access to the

evidence is often

quite limited for

as compared

'conduct' violations

most probative V RI LQWHUQDWLRQDO

- 37.) RU WKHVH UHDVRQV JUHDWHU RSHQLQJV HILVW IRU FULPLQDO DFFRXQWDELO crimes arising from treatment violations, and only a much narrower path to DFFRXQWDELOLW\ H|LVWV IRU ZDU FULPHV UHODWLQJ WR FRQGXFW RI KRVWLOL.... including those that tend to disproportionately affect children.
- 38. In addition to the above-mentioned general challenges to investigating, documenting, and indicting international crimes, there are also attitudinal and Transitional Justice Rerspectives HGV 6 0RXWKDQ DQG 2 -XUDV] , QWH Reinhallow WLD S

 VWUXFWXUDO EDUULHUV 2 HDFK ZLWK ÀQDQFLDO LPSOLFDWLRQV WKDW DUH PRULHQL\(\) S HELLOS F6 NV BLHUV LQ , QWHUQDWLRQDO /DZ 283

 the investigation, documentation, and indictment of crimes affecting children, as the investigation, documentation, and indictment of crimes affecting children, as addressed below.

\$WWLWXGLQDO EDUULHUV

Invisibilisation of children

- 39. While the experiences of children in war and other situations of protracted armed violence are increasingly captured by accountability mechanisms, in practice. the focus of these institutions has largely been on adult perpetrators, and on the experiences of adult victims and survivors. \$ V GHVFULEHG LQ \$ QQH[, affecting children are often addressed as part of the broader crimes committed against the civilian population, and/or in the sentencing process, with limited age-disaggregated analyses of how children of varying ages are affected by the violence. Where children are explicitly considered, the experiences of boys have hitherto generally been reduced to recruitment and use of children in hostilities, and those of girls to sexual and gender-based violence.
- 40. It has been said that the lack of sustained focus on children by accountability PHFKDQLVPV LV UHÁHFWLYHQRGILDIHEWHRODIGHHUWRKEN/WORGULFIDIC linked in part to their conceptualisation as passive objects, lacking in agency and requiring protection. The adoption of the Convention on the Rights of the Child LQ ZKLFK FKLOGUHQ.V ULJKWV RUJDQLVDW UROH DQG LWV QHDU XQLYHUVDO UDWLÀFDWLRQ KDYH regard, as States recognised that children are rights-holders, whose voices need to be heard and perspectives understood.

DWU

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- 41. However, the DJHQF\ RI FKLOGUHQ GRHV QRW QHJDWH WKHLU for special protection. Children are not identical to adults, and ifferentiated WUHDWPHQW RI WWKMFIULHVLWXDWULRÄOHHGIRU VSHFLÄF SURWH - and the law's - treatment of children. The CRC seeks to strike a meaningful balance between these competing interests by ensuring that children's needs for protection and support are met, while maximising their autonomy and capacity for self-determination by requiring their participation and consultation in decisions
- 42. 1RWZLWKVWDQGLQJ WKLV SDUDGLJP VKLIW FKLOGKRRG E\ PDQ\ DV LQIHUL"RU WR DGXOWKRRG

becoming, and that adulthood, particularly male adulthood, is the goal; instead of seeing children as competent, capable social actors in their own right, with valid observations and experiences to bring to the table72

43. \$V IXUWKHU GLVFXVVHG LQ WKLV SDSHU WKH SHUVLVWLQ

QWHUQDWLRQDO -RXUQDO RI &KLOGUHQ.V 5LJKWV S 70 \$RLIH 1RODQ ¶&KLOGUHQ D&LGLGORGFLLHRQHFVRQNRPLHR (UFLRUCKRWPVLF 5LJKWV + D U W

[,]QWHUYLHZ ZLWK 'U \$OLVRQ %LVVHW)HEUXDU\

⁶⁶ E.g. torture, sexual violence, and unlawful killings.

overarching issue that affects all the other barriers discussed below.

6WUXFWXUDO EDUULHUV

Lack of buy-in from States

- 44. 7 KH IRXQGDWLRQDO EDUULHU QQFIQWRLÀEHKG LQ MVKRLPV 6UWHDSVRHUWV DVQ GV KH WKHODFN RIVXVWDLQ Honocther/ssuberof acebynthability of a violations and crimes affecting children?
- 45. \$V HIDPSOHV RI WKH SRWHQWLDO VLJQLÀFDQFH RI 6WDWH VXSSRUW RQH HISHUV DWWHQWLRQ SDLG E\ /LHFKWHQVWHLQ WR WKH FULPH RI DJJUHVVLRQ DQG RI Wk WR LVVXHV RI FRQÁLFW UHODWHG *VH[XDO DQG JHQGHU EDVHG YLROHQFH
- 46. 7 KLV ODFN RI EX\ LQ IURP 6 WDWHV LV QRW VSHFLÀF WR WKH LVVXH RI FKLOGUHC50.11 The MRM was established by the Security Council to foster accountability and UHÁHFWV D EURDGHU UHOXFWDQFH RQ WKH SDUW RI 6WDWHV WR LQFOXGH VSHFI resolutions establishing accountability mechanisms. In the discussions surrounding the scope of the mechanisms' mandates, States have tended to refrain from HQJDJLQJ RQ VSHFLÀF FRQWHQWLRXV LVVXHV VXFK DV FULPHV DJDLQVW FKLOGI instead on general issues pertaining to the overall scope of mandates, and issues on ZKLFK DJUHHPHQW FRXOG EH VHFXUHG GXULQJ PDQGDWHV. QHJRWLDWLRQV \$V (6HFWLRQ .. WKH LQFUHDVHG DWWHQWLRQ SDLG E\ 6WDWHV WR 6*%9 LVVXHV UH\ LQÁXHQFLQJ HIIRUWV XQGHUWDNHQ E\ ZRPHQ YLFWLPV DQG DGYRFDWHV DV ZH(to bring those issues to the forefront of the international agenda. To date, children DQG H[SHUWV RQ FULPHV DJDLQVW FKLOGUHQ KDYH \HW WR DFKLHYH WKH VDPH | capacity.
- 47. Without such progress, there is a risk that children will remain invisible to the foundational instruments of judicial and non-judicial accountability mechanisms, as well as in their case selection strategies and criteria.

Lack of UN and civil society accountability-focussed constituency

48. 3URWHFWLQJ FRQÁLFW DIIHFWHG FKLOGUHQ UHTXLUHV WKH HQJDJHPHQW RI WKH 81 V\VWHP DV D ZKROH 7KH 6SHFLDO 5HSUHVHQWDWLYH RI WKH 6HFUHWDU\ *HQHUDO IRU &KLOGUHQ DQG \$UPHG &RQÁLFW 656* &\$\$& VHUYHV DV WKH OHDGLQJ 81 DGYRFDWH IRU WKH SURWHFWLRQ DQG ZHOO EHLQJ RI FRQÁLFW DIIHFWHG FKLOGUHQ 7KH 6SHFLDO 5HSUHVHQWDWLYH DFWV DV D FRQYHQHU DQG IDFLOLWDWHV FROODERUDWLRQ RQ FKLOG SURWHFWLRQ DPRQJ 81 HQWLWLHV 7KH UROH RI WKH 656* &\$\$& LV DPRQJ RWKHUV WR DVVHVV SURJUHVV DFKLHYHG DQG VWHSV WDN F8Qc LEQVF 16WDWW 14HW 1910 16 HHFQUHUDO KDV UHSRUWHG DQQXDOO\ WR WKH 6HFXULW\ &RX to overcome challenges in strengthening the protection of children in situations of DUPHG FRQÁLFW WR raise awareness and promote the collection of such information;

RQ &KLOGUHQ DQG DSQJ@HXCX BRIQMÁVL FDWQQXDO UHSRUWV WR WKH 81 *HQHUDO \$VVHPEO\ DQG WKH 81 +XPDQ 5LJKWV &RXQFLO

WKH 6HFUHWDU\ *HQHUDO·V UHSRU\ FKLOGUHQ DQG DUPHG FRQÁLFW \$V RI VHULRXV YLRODWLRQV RI WKH ULJKWV RI FKLOGUHQ LQ ZDU HLWKHU LQ VLWXD QH[, µ RU LQ VLWXDWLRQV WKDW PD\ EH EURXJKW WR WKH DWWHQWLRQ RI WK and to foster international cooperation to ensure respect for children's rightshe

Special RepresentativeO H D G V W K H G U D I W K H G U D I W K H G U D I W K H G U D I W K B U D I W K B U D I W K B U D I W K B U D I W K B U D I W K B U D I W K B U D I W K B U D I W K B U D I W C D U D C D U *XLGHOLQHV ORQLWRULQJ DQG 5HSRUWLQJ OHFKDQLVP RQ *UDYH 9LRODWLRQV

- 79 \$FWLRQ 30DQV DUH GHVLJQHG WR HQG DQG SUHYHQW JUDYH YLRODWLRQV DJDL \$UPHG &RQÁLFW ZKLFK FRPSULVHV DOO PHPEHUV RI WKH 6HFXULW\ &RXQFLOYLRODWLRQV SHUSHWUDWHG E\ SDUWLHV OLVWHG LQ \$QQH[, DQG,, DQG WKH L PHDVXUHV WR LPSURYH WKH SURWHFWLRQ RI FRQÁLFW DIIHFWHG FKLOGUHQ 81,&())LHOG 0DQXDO 0RQLWRULQJ DQG 5HSRUWLQJ 0HFKDQLVP 050 RQ *UD VLWXDWLRQV R.I \$UPHG &RQÁLFW
- 81 Recruitment and use, killing and maiming, rape and other forms of sexual violence, abductions, attacks on schools and hospitals, denial of humanitarian assistance

- 73 Interview with expert.
- 74 Interview with expert.
- 75 Seeinfra p. 42.
- 76 See infra p. 52
- 77 <u>5HVROXWLRQ</u> \$ 5(6

ZRUN FORVHO\ ZLWK WKH 656* &\$\$& RIÀFH DW 81 KHDGTXD SDUWLHV WR FR COLEAN CONTINUTY DalskHFo COLE ON Wholehicoring and Reporting WKH WDVN IRUFH LV FR FKDLUHG E\ 81,&() DQG WKH KLJK FRXQWU\ W\SLFDOO\ WKH 6SHFLDO 5HSUHVHQWDWLYH RI \ +XPDQLWDULDQ &RRUGLQDWRU 7KH WDVN IRUFH LV UHVS 050 \$00 UHOHYDQW 81 HQWLWLHV LQ WKH FRXQWU\ DUH X which is responsible for, among other things, monitoring and reporting on grave YLRODWLRQV DJDLQVW FKLOGUHQ DQG GHYHORSLQJ FRQF DJUHHPHQWV ZLWK WKH SDUWLPINYONWPRTOWPRKONERNOGENROQÁLFW \$FWL accountability of responsible parties, and to respond to and prevent future grave YLRODWLROV DJDLOVW FKOLOGUHO DIIHFWHG EV FROÁLFW

49. 81,&() WKH 'HSDUWPHQW RI 3HDFH 2SHUDWLRQV DQG WKH DQG 3HDFHEXLOGLQJ \$IIDLUV DUH DFFRXQWDEOH WR WKH

WKH LPSOHPHQWDWLRQ RI SURWHFWLRQ PDQGDWHV LQ FR

FRPSOLDQFH ZLWK LQWHUQDWLRQDO ODZ DQG FKLOG SURV of the MRM is to enhance the accountability of states and non-state armed groups of grave violations against children in order to end and prevent grave violations. \$FFRXQWDELOnteNANiaLOLESOHXQOWLV\LQJSDUWLHVWRFRQÁLFWFF violations, and engaging with said parties to prevent and end grave violations against children. The recommendations of the Secretary-General's Report and the Security &RXQFLO.V :RUNLQJ *URXS RQ &KLOGUHQ DQG \$UPHG &RQÁ country task forces to advocate, monitor and ensure implementation by parties to WKH FRQÁLFW 7KH\ FDQ VHUYH DV D ÀUVW VWHS LQ DFFR another tool to enhance accountability of responsible parties and include a set of measures geared towards that end, such as requests to criminalise the six grave violations against children; as well as to investigate and prosecute those that commit such violations nationally.

51. It is important to note that the MRM is not a mechanism for criminal accountability or investigations, nor for truth and reconciliation processes. However, information provided through public Reports of the Secretary General has drawn the attention of - and triggered action by - competent judicial organs in the past

- 52. 2Q D SUDFWLFDO OHYHO XQOLNH WKH 2IÀFH RI WKH 6SHFLDO 5HSUHVHQWDWLYH
 HQHUDO RQ 6H[XDO 9LROHQFH LQ &RQÁLFW WKH 2IÀFH RI WKH 656 &\$\$& GRHV ORW KDYH D
 81 WHDP RI H[SHUWV WR DVVLVW QDWLRQDO DXWKRULWLHV LQ VWUHQJWKHQLQJ WKH UXOH KI ODZ ZLWK
 WKH DLP RI HQVXULQJ FULPLQDO DFFRXQWDELOLW\ IRU SHUSHWUDWRUV RI LQ W b. The fundingthat would be required to overcome some of the principal barriers
- 54.) RU LWV SDUW 81,&() DV D SULPDU\ LPSOHPHQWHU RI WKH 050 DW FRXQWU\ OHY balance its child rights monitoring mandate with its humanitarian and operational mandates, which include preventing and responding to grave violations. While 81,&() LV ZHOO SODFHG WR VXSSRUW WKH GRFXPHQWDWLRQ RI JUDYH YLRODWLR ZLWK SDUWLHV WR FRQÁLFW LQ RUGHU WR HQG DQG SUHYHQW JUDYH YLRODWLR(SULQFLSOHV SUHYHQW LW IURP HQJDJLQJ LQ FULPLQDO DFFRXQWDELOLW\ HIIRU W v believes strongly in the need for accountability for child rights violations. However, its unique role in the MRM, and its operational imperatives, make it challenging IRU 81,&() WR GLUHFWO\ VXSSRUW DFFRXQWDELOLW\ HIIRUWV RXWVLGH WKH VFR,Q WKH YLHZ RI SUDFWLWLRQHUV ZKLOH 81,&() UHPDLQV D VWURQJ YRLFH DGYRI criminal accountability, it does not have the mandate to engage in criminal or other accountability mechanisms?
- c. In turn, this GHDUWK RI IRFXVHG DGYRFDF\ E\ 6WDWHV DQG , FRQVHTXHQW LPSDFW RQ IXQGLQJ ÀOWHU GRZQ YHU\ T resources that local documentation groups receive when working on the ground.
)DGHO \$EGXO *KDQL ([HFXWLYH 'LUHFWRU RI WKH 6\ULI 61+5 UHFDOOHG WKDW KLV LQYHVWLJDWRUV KDG PXO WKHLU VNLOOV RQ GRFXPHQWDWLRQ RI 6*%9 FULPHV E suggested or provided to do the same when it comes to documenting crimes DJDLQVW FKLOGUHQ

WR DFFRXQWDELOLW\ H J E\ GHSOR\LQJ H[SHUWLVH GL

DIIHFWLQJ FKLOGUHQ DQG RI DGRSWLQJ FKLOG FRPSHV

training local documentation entities on the importance of documenting crimes

, \cdot P Q L Q H \ H D U V Z L W K W K H > 6 \ U L D @ FR Q Á L FW D Q G , FD on gender violence or sexual violence or violence against woman is ten times the focus or speaking about abuses against children. Lots of organisations are focusing on this. But few organisations are reporting on children.

55. \$ VLPLODU FKDOOHQJH DULVHV ZLWK UHJDUG WR FLYLO VRFLHW\ RUJDQLVDWLRQFailure to mainstream child-competent approaches in investigation, documentation DQG ORFDO QRQ JRYHUQPHQWDO RUJDQLVDWLRQV , 1*2V ZRUNLQJ RQ FKLOGUHQand prosecution strategies YDVW PDMRULW\ RI ODUJH 1*2V KDYH SULPDULO\ DQ RSHUDWLRQDO PDQGDWH D PROBER OF THE RESEARCH OF THE RESEA

56. These three factors combined – the ODFN RIVXVWDLQHG DQG FRPSUHKHQVLYH IRFXV E\
States, UN leadership, and civil society – have profound implications, and the
RYHUDUFK Lto Onlea in Dot United Authoritability for violations and crimes affecting
FKLOGUHQEHFDXVH LWPHDQVWKDW

affecting children. However, in both cases, the information is not always collected in

accordance with the standards of proof required by criminal accountability.

a. There is alimited drive to ensure that violations and crimes affecting children
are addressed in the design, composition, or implementation of mandates

H J D IDLOXUH WR V\VWHPDWLFDOO\PHQWLRQ FKLOGUHQ LQ HVWDEOLVKLQJ UHV Remediated against women and not other crimes suffered by DQG WR VWDII PDQGDWHV ZLWK FKLOG VSHFLÀF H[SHUWLVH LQ FRQWUDVW WR 6* **Women*Qriffakes me believe that the challenges are many, not only consequently, little incentive to mainstream child-competent approaches to investigating these sorts of crimes, but also because certain category accountability.4*

FULPHV

\$V KLJKOLJKWHG FKLOGUHQ KDYH EHFRPH LQFUHDVLQJO\
mechanisms. However, the fact remains that investigating and documenting
violations and crimes affecting children is rarely understood as forming part of
D PDLQVWUHDP KXPDQ ULJKWV DQG RU FULPLQDO LQYHVW
warranting additional and separate considerationThis belief is linked to the
WHQGHQF\ GHVFULEHG DERYH WR YLHZ FKLOGUHQ DV LQ\

I think the problem is not one of lack of information but the lack of attention to these crimes. I really see a parallel to the lack of attention

WR FULPHV DJDLQVW ZRPHQ IRU PDQ\ PDQ\ \HDUV \$QG tribunals looked at crimes against women, they only looked at it for sexual crimes. While many women suffered from sexual crimes, women were targeted in many other ways, and suffered many other crimes, beside sexual crimesThisnarrow focus – only looking at the sexual because dagainst women and not other crimes suffered by women against women and not other crimes suffered by investigating these sorts of crimes, but also because certain categories of victims, stakeholders, and crimes are simply overlooked.

related sexual violence

^{82 ,} QHWU Y L H Z Z L W K 656* & \$ \$ & V W D I I

⁸³ Interviews with two distinct experts.

^{84 ,} CHWIYLHZ ZLW2KW KNIHSUHWWW DQ FKLOG VROGLHUV RWKHU WKDQ WKH FRQFHUQ DERXW YXOQHUDEOH ZLWQHVVHV WANFD, NQHWUDYE BIG HZPLLWFK 3DWULFLD 9LVHXTUble Bin Herboadbohrdul sufructures) Hasbedunstiza dobessed or made FRPPXQLW\@ GRHV QRW \HW H[LVW > @ 7KLV LV D VSDFH ZKHUH WKHUH·V QHLWKHU >D@ 6WDWH QRU >D@ FLYLWDK\DRWFIDH MX\QKDEN. CQVV\SLUML RUHQ WF\\ 6R ZH KDYH LPSXQLW\ JDSV WKDW FRQWLQXH WR HWADW LV WU\LQJ WR DPSOLI\ DQG HFKR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI\RX ORRN DW WKH DGYDQFHV IURRUP WWXHH Å1QWDDQJHDLQDCGDD ELOLW\ RU FRPPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQYLFWLRQ KRQHVWO\ PRVW RI WKH FRPPHQWDU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHUH MXVW LVQ·WQWHDWLHZ ZLWK &pFLOH \$SWHO 0DUFK

58. \$GGLWLRQDOO\ EHFDXVH WKH FRQFHSWLRQ RI ZKDW FKLOGUHQ VXIIHU LQ ZDU L WR FKLOG VSHFLÄF FULPHV VXFK DV UHFUXLWPHQW DQG XVH RI FKLOG VROGLHU' violence, attempts are rarely made to proactively collect evidence of other crimes DIIHFWLQJ FKLOGUHQ)RU HIDPSOH LQ WKH /XEDQJD FDVH

&HUWDLQO\ ZH NQHZ WKDW WKH FKDUJHV GLG QRW UHÁHFW WKH W\SH RI FULP committed against children in Ituri. [...] I think [that is] because the investigation plan included [only] recruitment, conscription and use of child soldiers. So, SHRSOH·V PLQGV ZHUH IRFXVHG RQ WKLV UHJDUGOHVV RI whether they had other evidence. It was just geared towards whether the evidence was meeting what we had selected, and this is what we had selected.88 (PSKDVLV RXUV

- 59. Even where children are explicitly referred to in the establishing resolutions of nonjudicial accountability mechanisms, they may still be overlooked in practice.
- 60. While it has been noted that, even in the absence of a concerted strategy, information and evidence regarding children may nonetheless come to lightn practice, this invisibilisation can lead to al DLOXUH WR DGRSW GHOLEHUDWH VWUDWHJLHV IRU FROOHFWLQJ information and evidence of violations and crimes affecting children and, consequently, to fully capture the ways in which they are victimised.

Interviewing children

61. Investigating violations and crimes affecting children is JHQHUDOO\ FRQÁDWHG ZLWK LQWHU YLHZÍGATÍNG KLOGUHQ DQG ZKHWKHU or not it is appropriate to interview children remains a highly violations and or not it is appropriate to interview children remains a highly crimes affecting divisive question in the judicial and non-judicial community children is generally
Wconflated with H HWKLFDO GLOHPPDV of experts working on international accountability issues. \$PRQJ WKH FKDOOHQJHV RIWHQ FL posed by the risk of retraumatising a child witness, and FRQFHUQV WKDW FKLOGUHQ PD\ QRWINTERVIEWINGCHILGERYIÀFLHQWO\ reliable witnesses. One expert highlighted that the necessary LQYROYHPHQW RI SDUHQWV RU OHJDO JXDUGLDQV DQG LQ VRPH LQVWDQFHV LQWHUPHGLDULHV LQ WKH SURFHVV FDQ DOVR QHJDWLYHO\ DIIHFW vv the evidence collected, JLYHQ WKH LQÁXHQFH WKH\ D₺By OLNHO\ WR KDYH RQ WKH FKLOG contrast, many continue to see adult victims and witnesses as more articulate and PRUH UHOLDEOH LQ DGGLWLRQ WR WKH IDFW WKDW WKH FRQVHQW RI D WKLUG \$ RU OHJDO JXDUGLDQ LV QRW UHTXLUHG IRU WKHP WR EH LQWHUYLHZHG .QWHU\ thus perceived by many to be an easier and less risky taskin domestic criminal investigations, these ULVNV DUH PLWLJDWHG E\ WKH IDFW WKDW LQWHUYLHZV RI FKLOGUH are FRQGXFWHG E\ H[SHULHQFHG DQG & VIrSchdriffralst]OO\ WUDLQHG SUDFWLWLRQHUV. similar expertise is often lacking at the international level. Moreover, in non-judicial accountability mechanisms in particular, the absence of witness protection and

psychosocial support structures may explain the reluctance of investigators to engage directly with children, given the potential risk to of retraumatisationThese challenges, combined with an absence of appropriate technical expertise, and of internationally agreed standards and best practices on when and how to interview children, cantranslate into a reluctance to investigate violations and crimes affecting children.

- 62. \$W WKH VDPH WLPH LW LV SRVVLEOH WR LQYHVWLJDWH Y Mainstreaming child-competent methods and strategies within investigations supports actively seeking alternative sources of information and evidence that can FRUURERUDWH FKLOGUHQ.V RZQ WHVWLPRQ\ ZKHUH WKLV LW HQWLUHO\ ZKHUH FKLOGUHQ FDQQRW EH LQWHUYLHZH FROOHFWLQJ DQG DQDO\V Land by Sonter rope with Rad adultes HV XI FIK ROUWWLQJ SDUHQWV RU RWKHU UHODWLYHV RU PHGLFDO SV\FKRVRFI the alleged crime or violation affecting the child. It might also entail theintegration RID FKLOG FRPSHWHQW IRFXV LQ WKH UHYLHZ RI GRFXPH WKH VSHFLÄF ZD\V LQ ZKLFK FKLOGUHQ PLJKW KDYH EHHQ 2020 thematic report on children produced by the Independent International &RPPLVVLRQ RI,QTXLU\ RQ WKH 6\ULDQ \$UDE 5HSXEOLF U information, including family members, medical professionals and legal actors. Similarly, the, QGHSHQGHQW & RPPLVVLRQ RI, QT Xwas JableRQ WKH WR LQYHVWLJDWH DQG GRFXPHQW WKH LPSDFW RI WKH FR UHSUHVHQWDWLYHV RI ORFDO DQG LQWHUQDWLRQDO 1*2V in Gaza, Israel and the West Bank and medical doctors who worked in hospitals in Gaza and the West Bank.
- 63. Moreover, contrary to what is generally assumed: LW ZLOO QRW DOZD\V EH WUD DOO FKLOGUHQ WR KDYH WR UHFRXQW WKHLU HISHULHQFH to be interviewed will vary depending ter alia on their age and level of maturity ZKLFK IXUWKHU XQGHUVFRUHV ZK\ DQYetQtMsHstth\HFWLRQDO assumption that often prevails. It is partly rooted in persisting power dynamics, linked to the invisibilisation of children and/or the tendency to view them as a homogenous group, which overlook the agency of the individual child who may wish to recall his/ her experience. In turn, this can undermine accountability efforts, particularly in UHVSHEW RI FULPLQDO SURVHEXWLRQV

I think it is where we are hitting a bit of a dead end, because there is somewhat a certain trepidation of conducting investigations where you need to interview children and get their story of the crimes that were FRPPLWWHG DJDLQVW WKHP asRloung ZaskynDuWareWKH\ VDZ \$QG IR not willing to interview children, that is a great disservice to themThe general attitude is always that interviewing children is a matter of last resort. [...] There is a certain belief that the 'do no harm' principle means

SDUD

46 47

- X Q H

⁸⁸ Interview with Lina Biscaia, 26 February 2020.

⁸⁹ Interview with expert.

⁹⁰ Interview with expert

⁹¹ Interview with expert.

^{92 ,} CHWUYLHZ ZLWK H[SHUW 168HKH_0016]WHRQ & DOFTS: 185 XWQHWODELOLW \ IRU LQWHUQDWLRQDO FULPHV WKH FRQWULEXWLRQ iRVestigator international criminal courts' 81,&(),QQRFHQWL5HVHDUFK&HQWUH \$XJXVW

⁹³ Interview with Erin Gallagher, 28 February 2020CC OTP Policy dealt with these issues at length, setting forth a framework designed to allow participation of children according to these evolving capacities. S&& 2 7 3

_B273B,&&B3ROLF\ RQ &KLOGUHQB(QJ 3') Policy on Children, KWWSV ZZZ LFF FSL LQW LFFGRFV RWS

⁹⁴ Interview with expert.

⁹⁵ Interview with expert.

⁹⁶ Taking into account, however, that such information is often prone to sensationalising certain types of crimes, such as the recruitment of child soldiers, or crimes of a sexual nature, and that open-source information might not always duly protect the safety, well-being, and identity of child victims.

⁹⁷ Generally speaking, this cannot done in a screening interview and requires an in-depth interview with a skilled

⁹⁸ Human Rights Councij, 7KH\ KDYH HUDVHG WKH GUHDPV RI P\ FKLOGUHQµ, FKLOGUHQ·V L \$ +5& & 53 SDUD

⁹⁹ Human Rights Council, 5 H S R U W R I W K H G H W D L O H G À Q G L Q J V R I W K H & R P P L V V L R Q R I

^{+5&}amp; &53 100 Interview with expert.

GLIÀFXOW IRU LQYHVWLJDWRUV RU SURVHFXWRUV WR ÀUVW HYHQ UHODWH WR against children, when you don't even have that connection to them. Secondly, we will never understand the real gravity and impactand all of ZKDW ZH WDONHG DERXW ZLOO UHPDLQ LQ WKH DEVWUDFW LI \RX GRQ·W KHDU the children themselves [...] Domestically, you can't charge child rape without talking to a child. So, if all domestic countries are doing it, why DUHQ.W WKH LQW1HUQPDSWKDR/QDORXERXUWV"

64. There is no doubt that an abundance of caution is necessary when engaging children directly Indeed, numerous studies have found thatterviews conducted LQ PXOWLSOH ORFDWLRQV DQG RU E\ SUDFWLWLRQHUV ZKR PD\ QRW KDYH WKH UHTXIVI WH 68. In practice, however, it was reported that the start-up phase of every new mechanism safely interviewed, and giving an account will not necessarily be a retraumatising experience, or be against a child's best interests, provided that adequate safeguards are in place. These include assessing at the outset whether an interview is contrary to the best interests of the child; ensuring that appropriate psychosocial support is available; conducting the interview in a child-friendly setting; having an accompanying adult present; and ensuring the interviewer has the relevant child-

Resource and bureaucratic constraints, and lack of timely and effective support

VSHFLÀF H[SHUWLVH DQG H[SHULHQFH

- 65. \$ QXPEHU RIEDUULdeblynVan@bp@nbltlelr@ofal/VlRocW8K1HIDFW ÀQGLQJDQG investigative mechanisms ZHUH DOVR LGHQWLÀHG
- 66. First, ad hoc non-judicial accountability mechanisms are generally set up on an urgent basis, in response to allegations of serious violations of international human rights and/or humanitarian law and/or international crimes. In most cases, they are directed to complete their investigations and report back to the mandating body in a relatively short period of time, such as six months to one year from the GDWH RI HVWDEOLVKPHQW PHDQLQJ WKDW WKHUH LV RIWHQ OLPLWHG WLPH WR 九尺尺点 木皮似 计UV WR and those 9 Q R VOX MVX Cande Froic DO DFFRX Q W DELOLW \ P investigations.194 In addition, uncertainty and delays around resources affect the ability to recruit experts with the necessary expertise, and to secure an adequate DOORFDWLRQ RIIXQGVGWeRthAthliolasionLsQnYdHchYMA/sLatheachMdLRQV children are not perceived as forming a mainstream part of the information planning

´GRQ W WDON WR WKH FKLOGμ \$V ORQJ DV \RX GRQ W WDON WR WKH FKLOG L67. 6HFRQG WKH FXUUHQW VWUXFWXUHV ZLWKLQ 2+&+5 GR QF effective support to ad hoc entities 9 2 + & + 5 WKURXJK LWV 5DSLG 5HVSRQV generally internally recruits and deploys staff, and provides secretariat functions as well as logistical and security supporte 7 KH 558 KDV GHYHORSHG DQ LQWHU of staff who can be deployed, through a contingency fund, in human rights and KXPDQLWDULDQ HPHUJHQFLHV DQG WKDW FD@ SURYLGH V Within OHCHR, there is also the Methodology Education and Training Section, which develops policy, methodological tools, manuals, guidelines, training materials, and other resources in key areas of human rights work and applicable international law, and also provides training.

> is a challenge. One particular area of concern is thack of guidance and training RQ FULPHV DIIHFWLQJ FKLOGUHQ SURYLGHG E\ 2+&+5 SUH phase of the mandate.

- 69.) RU H [DPSOH DV RXWOLQHG LQ \$QQH [, LQ \$XJXVW) D F W) L Q G L Q J 0 L V Vol. ROQ DRQOP DD UDS QUE DD UDS QUE DO UDS QUE D FRPPLVVLRQ RI VH[XDO DQG JHQGHU EDVHG YLROHQFH 6** VHFWLRQ RQ 6*%9 FULPHV SHUSHWUDWHG DJDLQVW FKLOG ways in which girls and boys were targeted throughout.
- 70. :KLOVW WKH 0\DQPDU))0 ZDV DEOH WR LQYHVWLJDWH DQG FULPHV DJDLQVW JLUOV DQG ER\V IRU WKH SXUSRVHV RI W consideration of the way these particular crimes were committed against and DIIHFWHG JLUOV DQG ER\V RI GLIIHUHQW DJHV That level of nuand missed, and could potentially have been captured with adequate training and tools.

Lack of dedicated expertise

to have a dedicated focal point on children on staff: In most instances, gender experts that are deployed usually have a dual function and are in charge of investigating and documenting both gender-based violations and crimes and those DJDLQVW RU DIIHFWLQJ FKLOGUHQ 7KLV FDQ EH H[SODLQFDQG JDWKHULQJ SURFHVV HYHQ ZKHUH WKH\ DUH H[SUHVVO\ DOOXGHG WR LQ WKH LRXQGDWLRQDO GREATHY WKHV DUH RIWHQ QRW SULRULWLVHG E\ LQYHVWLJDWRUV RQ WKH GREATHY WKHVH ERGLHV WKH\ DUH RIWHQ QRW SULRULWLVHG E\ LQYHVWLJDWRUV RQ WKH

101 , QHWUYLHZ ZLWK 6K\DPDOD \$ODJHQGUD 0 D U F K

ground.

Guidance and Practice, p. 30.

¹⁰² Olivia Lind Haldosson, % DUQDKXV 4XDOLW\ 6WDQGDUGV 6XPPDU\ JXLGDQFH IRU PXOWLGLVFLSOLQDU\ DQG LQWHUDJHQF\ man rights violations and abuses at the hands of military and security forces in Myanmar and particularly in Rakh response to child victims and witnesses of violence ouncil of the Baltic Sea States Secretariat and Child Circle, The PROMISE Project series, pp. 4, 33.

[&]amp;RPPRQZHDO<u>WQKW ØILÅGEDIWLRQDO 3URWRFRO RQ WKH 'RFXPHQWDWL</u>RQ DQG ,QYHVWLJDWLRQ RI 6H[XDO 9LROHQFH LÁQLÆSWQÁ&FW &53 % HVW 3UDFWLFH RQ WKH 'RFXPHQWDWLRQ RI 6H[XDO 9LROHQFH DV D & ULPH RU 9LRODWLRQ RI, QWHUQDWLRQ101 OHumbar, FSgotsn 6 exaticities 4.5 % . see e.g. paras. 69-83, 154-167.

March 2017, p. 239. 104 OHCHR, & RPPLVVLRQV RI, QTXLU\ DQG) DFW) LQGLQJ 0 LVVLRQV RQ, QWHUQDWLRQDO + XPDQ 5 LJKWV DQG + XPDQLW Dtd the gendered impacts of violations in their reports and recommendations and, since 2009, have had dedicated

⁶ D WHD \$ V K U D S K D Q G) H G HOUNL UF 10 F W S X OU H D V D N Q G O D H Q J H V & R Q I U R Q W H G E \ 8.1 \$ F F R X Q 3 H U V S H F W L Y H V I U R P & X U U H Q W D Q G) 2R F W P R I E U H G W D I I 36 D H W D Q V 22 S L S Q R K F X U U L Q V J \$ F F F IRU ODVV \$WDR3FLRWLHHF/W WR \$GYLVH RQ WKH 3HUPDQHQW 6XSSRUW 1HHGHG WR dates', Oxford Programme on International Peace and Security, 2020.

¹⁰⁶ OHCHRResponding to pressing human rights issuesSeptember 2009.
107 OHCHR,2+&+5 LQ WKH :RUOG PDNLQJ KXPDQ ULJKWV D UHDOLW\ RQ WKH JURXQG QWHUYLHZV ZLWK WZR Supris, 1/1/105.QFW H[SHUWV \$OVR VHH

¹⁰⁹ Established by the Human Rights Council in March 201inter alia to establish the facts and circumstances of hu

ine State, with a view to HQVXULQJIXOO DFFRXQWDELOLW\ IRU SHUSHWUDWRUV DQG MXV \$ + 5 & 5 (6 , 24 March 2017.

⁶HRW LQVWDQFH 6DUD)HUUR 5LEHLUR DQG 'DQDP YDQ GHU 6WUDWHQ 3RQWKR] RQ EHKDOI RI WKH 8.)RUHLJ1100 Human Rights Council,6H[XDO DQG JHQGHU EDVHG YLROHQFH LQ 0\DQPDU DQG WKH JHQC \$ X J X V W

[&]amp;RPPLVVLRXQLURID,QQG)DFW AQGLQJ OLVVLRQV DUH UHTXLUHG WR GHYRWH VSHF

^{6 * % 9 ,} Q Y H V W L J D W R U V * H Q G H U D G Y L V R U V R Q V W D I I

crimes affecting children! Second, the context and time constraints under which mission planning and design occur, the evolution of the scope of the mechanisms' mandate, and the uncertainties over the length of mandates, combined with the lack RIDGHTXDWH EXGJHW DOORFDWLRQV IRU VSHFLÀF H[SHUWLVH FDQ OLPLW PDQGDW/hb/lation/ls-for/Lcom/Les/Werte/dRocumented, in the case of targeted killings, for example, UHFUXLW DQG GHSOR\ TXD® Berkstrlusse off the Seldhat Denhogens KaffRUW QRWLFH DUH JHQHUDOO\ GHSOR\.HHO3weVer,PthPey Zlob. hVottkallways 2hecoessatrily have the requisite legal expertise, in terms of human rights law and criminal law, with

74. :KLOH WKHUH ZDV D JURZLQJ DZDUHQHVV RI WKH LPSDFW I QR GHOLEHUDWH VWUDWHJ\ LQFOXVLYH RI D FKLOG FRPSH WR FROOHFW LQIRUPDWLRQ DERXW YL.R. WIDEN WILL LINE OF THE LINE OF

VSHFLÀF LQIRUPDWLRQ DERXW WKH DJH VHI DQG JHQGHU systematically captured. Similarly, when documenting indiscriminate attacks, the HISHULHQFHV RI FKLOGUHQ ZHUH QRW DOZD\V EURXJKW WI

. UHPHPEHU GXULQJ WKH VLHJH RI \$OHSSR RQH PDQ DW

72. : LWKRXW WKH UHTXLVLWH FKLOG VSHFLÄF HISHUWLVH WKHUH LV D ULVN ERWK WKDW"Oth Qurto (Rright) Right (Page 16) that the child, no breast milk". collection plans will not adequately cover violations and crimes affecting children, DQG RU WKDW WKHVH ZLOO QRW EH DQDO\VHG DQG UHSRUWHG LQ D PDQQHU WKDW IXWOODWHAHFWOY (YHQ LI \RX MXVW LQYHVWLJDWH DWWDFN) children's experiences, having regard to their age, gender, and other intersecting identities.¹¹⁶ Moreover, unlike international criminal courts and tribunalsD G KRF non-

judicial accountability mechanisms are not governed by a Statute with enumerated crimes, but their operations are guided by foundational documents which evolve

DQDO\VWV ODFN WKH VSHFLÀF H[SHUWLVH DQG VNLOOV UHTXLUHG WR DGGUHVV YLROÐXWLVRŒVHFDDDXXVH WKHKPDSUKHD VFLKVLŒRŒXWHYQ crimes affecting children, their DELOLW\WRIXOO\FRQVLGHUDQGDQDO\VHWKHLQIRUPDWLRQ collected, susceptible of falling within the scope of their mandates? D \ E H O L P L W H G.

\$V RQH H[SHUW SXW LW

consequences for investigations, as described below.

:KHQ DQ LQYHVWLJDWRU KHDUV WKDW D FKLOG ZDV PDGH WR EH D ÀJKWHU LQ a militia, because of all the developments of the last 20 years, the investigator immediately knows to investigate child soldiers. Butte recruitment might encompass a whole host of other violationsincluding HQVODYHPHQW DV FKLOG WUDIÀFNLQJ HWF >These are] separate crimes that VKRXOG EH LQYHVWLJDWHG >DV VXFK@ 8QOHVV VRPHRQH LV DEOH WR SLQSRLQW WFKPDPWSDULVRQ LV WKDW WKH &RPPLVVLRQ GLG KDYH D VSH it will not get that.117 (PSKDVLV RXUV

73. With regard to the, QGHSHQGHQW, QWHUQDWLRQDO &RPPLVVLRQ RI, QTXLU\ RQ WKH 6\ULDQ

\$ U D E 5 H S & \EUOLIDF & R P \Pfor \examble \text{AlmBeQ} at the onset of its mandate, the

even though children make up a substantial part of the civilian population, and have

EHHQ GLVSURSRUWLRQDWHO\ DIIHFWHG E\ WKH YLROHQFH \$FFRUGLQJ WR D IRUPH Uan by by indest a grain of the children are systematically investigated. Further, with regard who served before the recruitment by the Commission of a child rights expert, "we

hardly had anything on children. So, you go through interview after interview trying

WR ÀQG WKLV RQH OLQH \RX FRXOG WDNH WR SXW LW OD\EH EHFDXVH ZH GLGQ·W KDRYUHOWDKQIFDIU ..00 UHOLHG RQ VWHPPHG IU®P WKH UHSRU\ experts".119

there are patients, women, doctors and nurses. We know that there are patients who are children. They could try to get information from these

ZRPHQ RU DERXW BVutKithlve/shtigatfok/slr@v@rldtild t@y [...] (YHQ ZKHQ WKH\ ZRXOG VD\ 'QLQH FKLOGUHQ GLHGu DQ

Has anyone ever asked him, "can you pass the phone, is she okay with

I think having a focal point for children in the team would have informed

WR UHÁHFW FKDQJHV LQ WKH VFRSH RI WKHLU UHVSHFWLYH PDQGDWHV ,I LQYHVWLJDMHRQUGVHD"QuG WKH\ ZRXOGQ·W NQRZ 7KH\ GLGQ·W DVN WKF

75. 7KLV ZDV DOVR WKH&RIPPHVZ/LLWRKQ WRKQH+&IPDQ 5LJKWV LQ 6RX 6RXWK 6XGDQ & RDPVPIDV MRLUR PCHU VWDII PHPEHU REVHUYHG

in South Sudan, where a lot of them don't have legal guardians. I think there were some people within the team who felt uncertain about the appropriate ways to engage with children. I guess the equivalent DQG, WKLQN WKDW WKDW KHOSHGPWRD×/LV@ EULQJ IRFX\ RXUV

VRPH RI WKH FRQYHUVDWLRQV Desippeciánny HQJDJLQJ ZLWK FI

76. This ODFN RI SULRULWLVDWLRQ RI FKLOG FRPSHWHQW DSSUI QDUUDWLYH RI WKH FRQÁLFW RYHUZKHOPLQJO\ UHÁHFWHG WKH H[SHULHQFHV RI DGXFOUWIXWFXWILHPDFFRXQWDELOHLOWeveE Withredgetd Mod Xh6:ICE.LoDeO ERGLHV

expert noted that since the development of the 2016 ICC policy on children, violations

to the Myanmar international accountability efforts, much of the evidence that the

,QWHUQDWLRQDO &RXUW RI -XVWLFH ,&- WKH ,&& DQG ,C

The focus of the FFM reports on group dynamics, discriminatory laws against the Rohingya, and alleged clearance operations is likely to shape to a great extent the focus of the investigations to be conducted by new accountability mechanisms and judicial accountability mechanisms working on the case.

¹¹³ Interviews with three distinct experts

[,] QHWUYLHZV ZLWK WZR GLVsWopkaQonoFreMOSH[SHUWV \$OVR VHH

¹⁵ Supra note 105

[.]W LSKHDPVLVHG WKDW HYHQ ZLWK SUH GHSOR\PHQW WUDLQLQJ DQG VXSSRUW LW LV LPSRUWDQW WR KDYH FKLOG VSHFLÀF H[SHUWLVH on teams. The short-term nature of the mandates inevitably restricts staff's ability to fully absorb and apply any
WUDLQLQJ´多处® R K GQHIGHG WR KDYH D IXOOHU FRPPLWPHQW IRU SHRSOH WR OHDUQ WR XQGHUWDNH WUDLQLQJ1200 kits % pilerto D\

HUV RQ WRS RI WKDW WUDLQLQJ YLD WKH HISHULHQFH \$QG WKHQ \RX NQRZ WKH OLWWOH LQVWLWXWLRQD 0021P IIHtenRew with Likria 1841scki ia Wek Field Likria 1841scki ia Wek RXW WKH GRRU LQ D ZKLOH 7KHQ \RX VWDUW DG KRF.LQJ HYHU\WKLQJ µ ,QWHUYLHZ ZLWK 3DWULFLD 6HOOH1122/Establijshle@flby 16h@Httluhman Rights Council in 23 March 2016 nter alia to monitor and report on the situation of

¹¹⁷ Interview with expert (VWDEOL WK4HG+EXPDQ 5LJKWV &RXQFLO RQ \$XJXVW

committed in Syria since March 2011; establish the facts and circumstances that may amount to such violations and of the crimes perpetrated; and where possible, identify those responsible with a view to ensuring that perpeWUDWRUV RI YLRODWLRQV LQFOXGLQJ WKRVH WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0123 IDteFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0123 IDteFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDteFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTeFreren WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTEFRER WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTEFRER WKDW PD\ FRQVWLWXWH FULPHV DJDLQVW KXPDQLW\ DUH KH0126 IDTEFRER WKDW PD\ FRQVWLW PD\ F

Rights CounciResolution S-17/1 \$ X J X V W

¹¹⁹ Interview with Lina Biscaia, 26 February 2020.

human rights in South Sudan; provide guidance on transitional justice and accountability, as appropriate; and de WR LQYHVWLJDWH DOO DOOHJHG YLRODWLRQV RILQWH Utemphel/dintk reponsibility for, all leged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence.

¹²⁴ Interview with expert.

¹²⁵ Interview with expert.

77. ,Q DGGLWLRQ WR WKH ODFN RI FKLOG VSHFLÀF HISHUWLVH RU WKH DGRSWLRQ R80. \$V IRU WKH ,&& WKH *HQGHU DQG &KLOGUHQ 8QLW HVWDI approaches to investigations, another reported barrier to effective investigation and documentation of crimes affecting children is thack of the appropriate legal H[SHUWLVH ZLWKLQ WHDPValMaov, staff-jediciaed contountability mechanisms are from OHCHR and most of them have a background in human rights reporting rather than human rights law and/or criminal law: \$ V KLJKOLJKWHG DERYH 2+&+5 GRHV QRW VHHP WR SURYLGH VSHFLÀF WUDLQLQJ RQ YLRODWLRQV DQG FU children or any general legal training This means that investigators do not always know what to look for, or that the information collected does not always disclose YLRODWLRQV RI DSSOLFFDEOH OHJDO VWDQGDUGV

Where expertise is available, it is rarely structurally ingrained within the mechanisms

- 78. The mandates and terms of reference of the newer mechanism's WKH 128, 00 ,,, 10 DQG 810,-716cognise the need WR KDYH FKLOG VSHFLAF DQG FULPLQDO ODZ H [S H U W L V H. In practice, with the exception of type dilaMsthenits that have EHHQ HVWDEOLVKHG E\ WKHVH PHFKDQLOVPV FRYHU ERWK 6*%9 DQG FKLOGUHQ
- 79. 7KH ULVN RI KDYLQJ D VLQJOH XQLW DV WKH IRFDO SRLQW IRU ERWK 6*%9 DQG FRLOW HQ FRLOW HAS LAND A STREET A PROPERTY OF A CONTROL OF A teams might lose sight of children in practice, given the greater levels of awareness D U R X Q G³³ Moreover, if thesespecialist units are not structurally ingrained within core investigations DV ZDV WKH FDVH DW 81,7\$' LQ WKH HDUO\ GD\V RI LWV FUHDWLRQ this can reinforce the perception that violations and crimes affecting children are not PDLQVWUHDP EXW VHSDUDWH IURP ¶RÜGLQDU\ FRUH FULPHV LQYHVWLJDWLRQV \$V RQYHYWLJDWRUV DQDO\VWV RU ODZ\HUV DPRQJ RWKHUV 81,7\$' VWDII PHPEHU QRWHV

% HFDXVH WKHUH ZDV D VSHFLÀF DGYLVRU WR GHDO ZLWK JHQGHU LW UDLVHG WKH question in investigation planning of whether it should be mainstreamed into general planning or should be left to have a separate freestanding JHQGHU LQYHVWLJDWLRQ SODQ E\ WKH JHQGHU DGYLVRUV" \$QG VR WKHUH.V DOPRWW and alignment.

a question about whether, if you have a separate specialised focal point or advisor, does it almost work against mainstreaming into the main

LQYHVWLJDWLRQ" 7KH VDPH DSSOLHV WR WKH TXHVWLRQ RI KDYLQJ D VSHFLÀF IRFUU point or advisor on children34

126 Interview with expert; als@upra note104.

127 Interview with expert

.QGHSHQYHMQWLJQWLYH 0HFKDQLVP IRU 0\DQ<u>BD45&85(6X</u>B**D**60b5eLJKWV &RXQFLO

129 International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons UHVSRQVLEOH IRU WKH PRVW VHULRXV FULPHV XQGHU .QWHUQDWLRQDO /DZ FRPPLWWHG LQ WKH 6\ULDQ \$UD 81 *HQHUDO \$VVHPEO\ \$DQXDU\ 8QLWHG 1DWLRQV,QYHVWLJDWLYH 7HDP WR 3URPRWH \$FFRXQWDELOLW\ IRU &ULPHV &RPPLWWHG E\ 'D·HVK,6 6HSWHPEHU 81 *HQHUDO \$NHWHMPHEO\GDWHG -DQXDU\ IURP WKH 6HFUHWDU\ *HQHUDO DGGUHVVHG WR WKH 3UHVLGHQW *HQHUDO \$VVHPEO\ \$QQH[,QGHSHQGHQW ,QYHVWLJD<u>W\$LYH </u>02MFKDQLVP IRU 0\DQPDU 7HUPV RI 5HIHUHQFH SDUD 8 1 Tehns & Reference of the life to Support Domestic

(IIRUWV WR +ROG ,6,/ 'D·HVK \$FFRXQWDEOH RI \$FWV WKDW OD\ \$PRXQW WR :DU &ULPHV DQG &ULPHV DJDLQVW +XPDQLW\ DQG Genocide Committed in Iraq, established pursuant to Security Council resolution9 February 2018, para.15; IIIM, 135 Interview with expert.

Terms of Referencepara. 32. 81,5" KDV D 6H[XDO DQG *HQGHU %DVHG 9LROHQFH &KLOGUHQ 8QLW FKDUJHG ZLWK ZRUNLQJ DORQJVLGH WKH)LZH @ 15H RI WKH 3URVHFXW RRUY PHOTHOCHINICHEN, , QYHVWLJDWLRQ 8QLWV WR LQYHVWLJDWH DFWV FRPPLWWHG E∖, 6, / LQYROYLQJ VH[XDO DQG JHQGHU EDVHG Y37Z Findbertview-fiveth bexapeds. Modern Roogle-b-Och fielden it, particularly psychologists, have delivered training on interviewing against children; The IIIM has focal points on addressing crimes against children embedded throughout all relevant professional categories in its organisational structure. These focal points comprise a working group which develops and oversees the implementation of the IIIM's dedicated strategy on accountability for crimes against children.)RU H[DPSOH LW ZDV REVHUYHG WKĎW WKH ,&&·V *HQĞHU DQG &KLOGUHQ 8QLW LQ LWV HDUO\ VWDJHV ZDV children". , QWHUYLHZ ZLWK H[SHUW 134 Interview with Rosalind Sipos, 3 March 2020.

of staff with legal and psychosocial expertise, has focused in its early stages of RSHUDWLRQ RQ SV\FKRORJLFDO DVVHVVPHQWV RI YXOQHU FKLOGUHQ WR GHWHUPLQH WKHLU ÀWQHVV IRU LQWHUYL investigation of crimes affecting children themselves. Since the adoption of the Policy on Children in 2016, addressed in detail in Section 1 the role of the unit has reportedly evolved, and its views are increasingly sought during the investigation plans, peer review, and evidence review, and to assist with the conduct of interviews RIFKLOGUHQ +RZHYHU WR GDWH WKH OXEGOLIDOM OR RHV QRW V of investigation strategies around crimes affecting children³⁷

81. In the context of international criminal courts and tribunals, one key expert observed that the degree of integration of individual experts on children appeared, in practice, to depend on the discretion of senior staff members, and related to the importance JLYHQ WR VXFK FULPHV '(DFK WULDO WHDP LV D NLQJGRP the need for an expert on crimes against children but, in practice, it wouldn't necessarily be seen as important by the head of the trial teams"

crimes against children, who are then embedded throughout all relevant categories RI WKH RUJDQLVDWLRQDO VWUXFWXUH LQFOXGLQJ LQIRUF LQIRUPDWLRQ FROOHFWLRQ DQG LQYHVWLJDWLRQV DQG D These focal points have expertise in crimes against children, and are employed as crimes against children, comprised of the focal points, oversees the implementation of the IIIM's strategy on children, including by developing practical tools. The for crimes against children, which seeks to strengthen the integration of a focus on children by staff into their day-to-day work, and to encourage cross-sectional

- 83. \$FWRUV LQYROYHG LQ GRFXPHQWDWLRQ DQG DFFRXQWDEL DQG MXGLFLDO PHFKDQLVPV DQG ORFDO VDoQki6g LQWHUQDWL in silos. \$Q H[SHUW SRLQWHG RXW WKH QHHG IRU EHWWHU FR between specialists involved in accountability efforts.
- 84. \$V GHWDLOHG EHORZ WKLV VWDWH RI DIIDLUV LV WKH UH of various actors to effectively share their expertise, and to agree on collaboration strategies. It FDQ FRQVWLWXWH D VLJQLÀFDQW EDUULHU WR DFF PHFKDQLVPV PD\ EH UHOXFWDQW IRU HWKLFDO UHDVRQV LQFOXGLQJ FKLOGUHQ ZKR KDYH DOUHDG\ EHHQ WKH VXE documentation processes

QWHUYLHZ ZLWK 3DWULFLD 9LVHXU 6HOOHUV

139 Interview with expert. The issue is not exclusive to groups working around accountability for crimes against or affect LQHOFOCHOGUHQ 6HH ,QWHUQDWLRQDŎ %SDOOS\WVRFRDWYRQF:UDRJZ6SHIGPBIQG&RQREHWU LQHG DUHDV IROORZLQJ D PDSSLQJ RI RUJDQLVDWLRQV ZRUN RQ DPHOLRUDW al crimes - XO\

53

Failure to share expertise on lessons learned and best practices

GHGLFDWHG WHDP RI LQYHVWLJDWRUV DQG DQDO\VWV 'VL 85. /HVVRQV OHDUQHG DQG EHVW SUDFWLFHV DUH QRW VVWHPDWLFDOOV VKDUHG EHW Zarte Iffollow Dnote this experience against children [...] because highlighting the crimes against \$FFRUGLQJ WR RQH HISHUW WKH 6RXWK 6XGDQ &RPPLVVLRQ GLG QRW GUDZ IURP WWKK H&R&KVOGUHQ VKRZV WKH LQWHQVH YLROHQFH RI WKH FF Policy on Children when designing its information-gathering strategy, and analysing FKLOGUHQ LV WHOOLQJ KRZ PXFK WKH DWWDFNHUV DUH >V 61+5 KDV SURGXFHG D QXPEHU RI WKHPDWLF UHSRUWV RQ evidence of the reported violations and crimes in South Sudan Further, although 3K\VLFLDQV IRU +XPDQ 5LJKWV 3+5 DUH DFWLYH LQ 6\ULD DQG ,UDT DQG KDYH VSHHEQÀHFIG IRU IXUWKHU WUDLQLQJ IURP VSHFLDOLVW RUJDQI expertise on child-competent approaches to international crimes, they have to date on how to conduct interviews with children

QRW EHHQ DSSURDFKHG HLWKHU E\ WKH 6\UL® &RPPLVVLRQ RU 81.7\$' RQ EHVW SUDFWLFHV

local communities.

Cooperation with and training of rst responders

86. /RFDO DQG LQWHUQDWLRQDO 1*2V FDQ between accountability mechanisms and local communities. They scene long before international investigators, and are well positioned to document violations and, crucially, to preserve evidence of crimes role in bridging that may fall within the mandate of non-judicial accountability mechanisms, and/or subject-matter jurisdiction of the IC@.Once international investigators arein situ, local actors can potentially contribute critical information to support investigations, provide leads on potential evidence, and assist investigators to identify and access reliable and secure in-country contacts.

SLOCA MINH UROH LQ EULGJLQJ WKH JDS international NGOs the gap between accountability mechanisms and

RQ VRPH VTShelteFatreArrifialty specialised organizations doing this work [...] but I think we can share experiences with regards to the documentation of crimes affecting children... [...] I think it is required to have further training from specialised organizations and experts on [...] how to be more sensitive when we present questions [to children]. It is DUH RIWHQ WKH ¶ÀUVW UHVSRQGHUV. W Can play the WLRQDO FULPHV DUULYLQJ DW W heleded for us to enhance our capacity, [...] yet, no one has offered this.

I think we need more training. We already got general training and,

has been documenting the impact of the war on the country's children through a

90. \$V RQH H[SHUW H[SODLQHG MXGLFLDO DFFRXQWDELOLW\ HIIRUWV WR GHYHORS DQG VWUHQJWKHQ WKH LQIRUPDWLF 81 ZKLOH SUHVHUYLQJ WKH LPS®UWLDOLW\ RI WKHVH NH\

KDV EHHQ LQYHVWLJDWLQJ FRQÁLFW UHODWHG YLRODWLR

Engagement with families and communities on the ground

91. The availability and strength of witness protection and psychosocial structures are 87. 7ZR VXEVWDQWLDO EDUULHUV WR HIIHFWLYH 1*2 SDUWLFLSDWLRQ DQG FRRSHUDWLRS 2HUDWLRS LGHQWLÀHG)LUVW PDQ\ 1*2V KDYH PDQGDWHV WKDW PD\ QRW LQWHUVHFW ZLWK WARR COmmunities on the ground, and to ensure that investigations are conducted in a safe environment, conducive to trust, and result in solid informationtimes lacking, or face serious challenges within accountability mechanisms. The absence of such structures within some of the mechanisms raises serious doubts about the protection of witnesses, and can have a negative impact on the decisions of investigators and/or prosecutors to pursue accountability efforts.

resources to provide witness protection and psychological support, etc.

92. Partly due to their restricted mandate, and the sensitivities surrounding the QHJRWLDWLRQ SURFHVV SHUWDLQLQJ WR WKHLU HVWDEOL mechanisms do not always have the resources or infrastructure to effectively protect and support individuals who provide information, including children and their families.

QHWYLHZ ZLWK)DGHO \$EGXO *KDQL 6\ULDQ 1HWZRUN IRU +XPDQ 5LJKWV best-practices for civil society documentation of international crimes, in fact, advise against interviewing children
XQOHVV SULRU WUDLQLQJ DQG H[SHUWLVH LV DFTXLUHG RQ KRZ VXFK LQWHU\

\$ ÀQDO SRLQW DERXW WKH DELOLW\ RI >&RPPLVVLRQV R

- judicial and non-judicial mechanisms, e.g. because they affecused on humanitarian DVVLVWDQFH DQG RU FKLOG SURWHFWLRQ DQG DUH DV D UHVXOW UHOXFWDQW W Sharing dysamics However witness protection and psychosocial structures are at unaware of how to do so effectively and without compromising their mandate.
- 88. 7KLV ZDV LGHOWLÄHG DV D EDUULHU LQ 6RXWK 6XGDQ

¶>:@KHQ ZH ZHUH WU\LQJ WR HQJDJH ZLWK VRPH RI WKH 1*2V LQ 6RXWK Sudan, who document a lot of things related to children, in the course of them trying to provide support and humanitarian assistance, they were very reticent about engaging with us, and providing information, even statistical information, about children in general!

89. Second, where ORFDO 1*2V DUH IRFXVHG RQ DFFRXQWDELOLW\ WKH\ RIWHQ ODFN VSHFLÀF H[SHUWLVH DQG WUDLQLQJ RQ WKH GRFXPHQWDWLRQ RI YLRODWLRQV DQG FULPHV DIINF WLQD document crimes against children relates to their lack of children. This can be a barrier to future criminal investigations and prosecutions,

JLYHQ WKDW YLRODWLRQV DQG FULPHV GRFXPHQWHG E\ 1*2V FDQ KHDYLO\ LQÁXHQFH ZKLFK none of those resources available, which raises the question of LQFLGHQWV JHW VHOHFWHG DQG SULRULWLVHG 7KH 6\ULDQ 1HWZRUN IRU +XPDQ 5LJKWWV F 6015 should even be engaging directly with children, since they

140 Interview with expert.

,QWHUYLHZ ZLWK .DUHQ 1DLPHU 0DUFK

SOHVVDQGU<u>10716H \$FFRXQWDELOLW\ 7XUQ LQ 7KL</u>UG :DYH +XPDQ 5LJKWV)DFW)LQGLQJ-, 8WUHFKW -RXUQDO RI ,QWHUQDWLRQDO DQG (XURSHDQ /DZ SS Harfdbook of Oith Soch GUD) 6 & RXFK HW DO

Documentation of Serious Human Rights Violations 3 X E O L F , Q W H U Q D W L R Q D O / D Z 3 R O L F \ * U R X S

8 & %NHUOH\ 6 FKRRORI/DZ + XFPSDRQsp5obdleKsWAM/In8erhQtibMaJ Work\$hop on Collecting and

\$QDO\]LQJ (YLGHQFH RI ,QWHUQDWLRQDO &ULPHV ·, September 2014, p.4. 144 Interview with Rosalind Sipos, 3 March 2020.

F., S. Couch, et a Handbook on Civil Society Documentation of Serious Human Rights Violation V & Sole D43. 146 Interview with expert. For potential solutions, see alsodividualisation of War Project, Oxford Institute for Ethics, /DZ DQG \$UPHG &RQÁLFW DQG ('MJULHBIRSTHTiBINQctpQB'\eliMjaLq\eliMthalq\eliMthenV\Hth)aodRubHalQifFH PHFKDQLVPV LQ VLWXDW LRQD QRXIDDUU PHG FRQÁLFW.

2Q WKH SDUSDRUKW QVQ YQFLPPRIZLWQHVV SUR MICHAETH SAMBL BCCCDum MAEHHHY F&rein Febra Sibln a SSWHO FULPHV WKH FRQWULEXWLRQ RI LQWHUQDWLRQDO FULPLQDO FRXUWV' 81,&()

do not have a full set of tools to follow a proper victim-centred approach. While this is also true for adults, this is more easily addressed through KDYLQJ LGHQWLÀHG UHIHUUDO SDWKZD\V 7KRXJK LQ D SODFH there is limited availability, and identifying appropriate referral pathways takes time, something that is in short supply given the short timeframes within which COIs operate. But this issue is even more stark as it relates to children, where a higher duty of care would apply.

- 93. By contrast, international criminal courts and tribunals are equipped with witness protection and psych-social support structures. However, it was also reported that the effective protection and support of individuals providing information and evidence remains challenging in practice. Investigators can encounter challenges in building a VXIÀFLHQW OHYHO RI WUXVW ZLWK IDPLOLHV DQG FRPPXQLWLHV victims and survivors, a related lack of awareness around the availability of protection PHDVXUHV DQG WKH VKRUW GXUDWLRQ RI ÀHOG PLVVLRQV OLPL connect with the community or families:
- 94. Due to the aforementioned barriers, the LQIRUPDWLRQ FROOHFWLRQ SURFHVV FDQ DIIHFWHG E\ WKH XQZLOOLQJQHVV RI IDPLOLHV DQG FRPPXQLWL affected children, to disclose crucial information H J 6 * % 9 FULPHV DUH QRWRULRXVO XQGHU UHSRUWHG EHFDXVH RI VWLJPD IRU HIDPSOH
- 95. Before turning to possible solutions to overcome these barriers, the next section will identify applicable lessons learned from the documentation, investigation, and indictment of sexual and gender-based violence crimes, which has witnessed considerable, if halting, progress in the past decades.

⁵HIXJHH FKLOGUHQ IURP 6\ULD DW D FOLQLF LQ 5DPWKD QRUWKHUQ -RUGDQ

¹⁴⁸ Interview with Rosalind Sipos, 3 March 2020.

QHWYLHZ ZLWK H[SHUW 6HH DOVR \$Q 0LFKHOV \P \$V LI LW ZĐV KDSSHQLQJ DJDLQ μ V QHVVHV LQ SDUWLFXODU ZRPHQ DQG FKLOGUHQ DW WKH 6SHFLDO &RXUW IRU 6LHUUD HGV International Criminal Accountability and the Rights of Child Meh + DJXH + DJXH \$FDGHPLF 3UHVV pp. 133-145.

[,] QHWUYLHZ ZLWK H[SHU<u>W&K6日BU&HpOELDOOHG\$1SIMPHROXQWDELOLW\IRU L</u>QWHUQDWLRQDO FULPHV international criminal courts' 81,&(),QQRFHQWL 5HVHDUFK &HQWUH \$XJXVW

SECTION II.

ACCOUNTABILITY FOR SEXUAL AND GENDER-BASED **VIOLENCE CRIMES: A MODEL TO BE REPLICATED?**

96. +LVWRULFDOO\ 6*%9 FULPHV OLNH YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ marginalised in international criminal law. Their investigation has now become

an important pillar of international justice. The documentation, investigation, and prosecution of violations and crimes against children raise particular challenges, not all of which are common to the documentation, investigation, and prosecution of sexual and gender-based crimes. This is particularly the case when it comes to

the interviewing of child survivors and child witnesses. The differences in access to information about these crimes also affects accountability - while there was little

DZDUHQHVV RI WKH VFDOH DQG VFRSH RI VH[XDO YLROHQFH LQ FRQÁLFW LQ WKH PART ADTRACING THE HALTING PROGRESS of documentation and investigation, current technology and efforts by local actors to raise awareness and report ongoing violations and crimes ease the access and

exposure to information about crimes and violations against/affecting children. 1HYHUWKHOHVV WKH SURJUHVV PDGH LQ WKH SXUVXLW RI DFFRXQWDELOLW\ IRU VH[XDO DQG

gender-based crimes illuminates innovative solutions on which attempts to strengthen accountability for violations and crimes affecting children may draw.

to crimes of sexual and gender-based violence against men and boys; the wide range of other crimes directed against women and girls; and the need for intersectional gender expertise in approaches to collecting and analysing information and evidence for the purpose of criminal accountability.

99. In the interviews conducted for this Research Paper, multiple interviewees referred to the lessons that could be learned from the efforts and approaches of those who sought, and continued to seek, to strengthen accountability for crimes of sexual and gender-based violence, and with it, a more gender-sensitive analysis of the planning DQG FRPPLVVLRQ RI LQWHUQDWLRQDO FULPHV 3DWULFLD 6SHFLDO \$GYLVRU RQ *HQGHU DGYLVHG

[I] relation to accountability for crimes committed against children, make sure you learn from what worked and didn't work – and doesn't work and will not work – when it comes to the efforts of jurists, practitioners. and activists working to strengthen accountability for sexual and genderbased violence, as well as the broader movement advocating for gender iustice.154

TOWARDS ACCOUNTABILITY FOR CRIMES OF SEXUAL AND GENDER-BASED VIOLENCE

7KH DG KRF WULEXQDOV

97. This section is divided in two parts 3 D Utlaces the developments that, in UHFHQW \HDUV DOORZHG LQYHVWLJDWLRQ DQG SURVHFXWLRQ mainstreamed within international justicePart B highlights lessons learned from this PDLQVWUHDPLQJ DV ZHOO DV LPSRUWDQW GLIIHUHQFHV EHWZHHQ WKH LVVXHV RI and crimes affecting children, such as the nature and strength of the forces and

98. ,QWKHODVWWZRGHFDGHVVLJQnlimÀgnEaiDinQgWMeSededRJUHVVKDVEHHQPDGH to investigate, analyse, and prosecute crimes sexual and gender-based violence, SDUWLFXODUO\ DJDLQVW ZRPDHFORDQQ&SHJQLFUHOWRI7GHLUVHLUVHGSWYHIDWFRVRUV LQFOXGLQJ WKH LQÁXHQFLQJ HIIRUWV RI FLYLO VRFLHW\ DQG RI SRZHUIXO IHPDOH WKH ZLGHVSUHDG UHSRUWLQJ RQ VH[XDO YLROHQFH FRPPLWWHG LQ WKH %DONDQV during the Rwandan genocide; the writing and advocacy of jurists; contributions to jurisprudence made, in particular, by judges and lawyers in international and hybrid

TULPLQDO WULEXQDOV DQG DQ HPSKDVLV RQ DFFRXQWDELOLW\ IRU 6*%9 E\ 81 HQWLWLHV LQFOXGLQJ 81 :RPHQ DQG WKH 2IÀFH RI WKH 6SHFLDO 5HSUHVHQWDWLYH RI WKH 6HFUHWDU\

*HQHUDO RQ 6H[XDO 9:LWRthQithhassFoothmeLrQlate&eRvQurésalteFbatterntion

151 One of the key challenges with regard to the investigation, documentation and prosecution of crimes affecting children is interviewing child victims and witnesses, as discussed in Section I. In addition to the need to obtain

Children, KWWSV ZZZ LFF FSL LQW LFFGRFV RWS

100. During the very early stages of the d hoc tribunals, if a commitment was there to WR FHERPH investigate and prosecute sexual violence, this was often undercut by a combination of factors, including attitudinal factors, and reluctance to prioritise the issue on the 6* % 9 F J L P H V tribunals operational and strategic agendas. In 1994, the Chief Prosecutor – at and crimes affecting children, such as the nature and strength of the forces and

WKH WLPH RI ERWK WKH , & 7 < DQG , & 75 2 DSSRLQWHG D / H

DFWRUV ZRUNLQJ WR UDLVH WKHLU SURÀOH LQ WKH LQWHUQDWLRQDO MXVWLFH V\VWHP

to address the prevalence of sexual assault allegations committed in the former Yugoslavia and Rwanda^{ts}: 7 KH \$GYLVRU ZDV WDVNHG WR L SURYLG

UHODWHG FULPHV DQG LQWHUQDO ZRPHQ·V SROLF\ LVVXH\ WKH 3URVHFXWLRQ 6HFWLRQ DQG LLL DVVLVW WKH ,QYH to pursue evidence of sexual assaults: 3 DWULFLD 9 LVHXU 6 HOOHUV VHUYHO from 1994 to 2001. TKH UROH KRZHYHU KDG VHYHUH OLPLWDWLF WAS CRWF WOWHOUDWHG LQWR VSHFLAF LQYHVWLJDWLRQV DO

59

proposed policiesamong senior management, or through the investigation and trial

DQG 2WKHU *HQGHU 5HODWHG &ULPHV 8QGHU ,QWHUQDWLRQDO /DZ ([WUDRUGLQDU\ \$GYDQFHV (QGXULQJ 2EVWIDRUDHLVQWHUQDO FRPPLWWHHV WR DGGUHVV 6*%9

[%]HUNHOH\,QWHUQDWLRQDO/DZ-RXUQDO288,317. QWHUYLHZ ZLWK 3DWULFLD 9LVHXU 6HOOHUV

¹⁵⁵ Patricia 9 L V 16 X 10 O O H U V ¶* H Q G H U 6 W U D W H J \ L V Q R W D / X [X U \ I R U . Q W H U Q D W L R Q D O 8 DQG *HQGHU %DVHG &ULPHV %HIRUH .QWHUQD\$WLRRDDDDDHUHBGRDLQDO &RXUWV WKH LQIRUPHG FRQVHQW RI D FKLOG·V SDUHQW RU OHJDO JXDUGLDQ WKHUH DUH VSHFLÀF SURWRFROV ZKLFK JRYH8U1068WK¶H5 HFSRFQUGWK FRWW WKH ,QWHUQDWLRQDO 7ULEXQDO IRU WKH 3URVHFXWLRQ RILQWHUYLHZV RIFKLOGUHQ 7KHVH LVVXHV ZHUH DGGUHVVHG E\ WKH ,&& 273 3ROLF\ RQ &KLOGUHQ VHH ,&& 273,03WGUDQLRQDO +XPDQLWDULDQ /DZ &RPPLWWHG LQ WKH)RUPHU <XJRVOD' B273B,&&B3ROLF\ RQ &KLOGUHQB(QJ 3') 5HSRUW WR WKH 816& SDUD

^{\$}V KLJHGQLJQKW6HFWLRQ . LW LV HPSKDVLVHG KRZHYHU WKDW FULPHV DIIHFWLQJ FKLOGUHQ FDQ EH HIIHFWLYHOOLGFRFIXONEDHNQ-FDXDQHXG 1 DBNIZEDV1HDFEXWVLQJ & RQÁLFW 5HODWHG 6H[XDO 9LROHQFH DW WKF OLFKHOOH -DUYLV HGV 2[IRUG 8. 2[IRUG 8QLYHUVLW\ 3UHVV and investigated without interviewing child survivors and witnesses. 153 On the developments in the jurisprudence of thead hoc WULEXQDOV VHH-toseldu@n@Wartin&eVRNatureQ ¶ +DUWWHH 6DORZD\ ZDV DSSRLQWHG *HQGHU \$GYLVRU LQ DQG VHUYHG WLOO

members to enforce it: \$ OWKRXJK QRW IRUPDOO\ DEROLVKHG WKH \$GYLVRU ZDV XOWLPDWH Od evidence collection, which resulted in the exclusion of sexual violence charges from assigned to work on trials, and the role became 'diluted' through assignments the original indictment 166 to other core functions: 9 7 KH ODFN RIUHVRXUFHV WKH EURDGQHVV RIWKH \$GYLVRU·V

101. The deepening understanding of the importance of documenting sexual violence was crystallised in the 7 U L D O - X G blePHrbSeloUtdr Q Akayesu, before the

of staff members were clear and concerning drawbacks.

ICTR® The ODQGPDUN MXGJPHQW GHÀQHG WKH FULPH RI UDSH LQ LQWHUQDWLRQDO OD Zaillaredto investigate and prosecute sexual violence. The Coalition submitted an

determined that targeting members of a protected group for rape and other acts of sexual violence constituted causing seriously bodily or mental harmer a constitutive

DFW RIJHQRFLGH 7KDW WKLV MXGJPHQW FDPH RXW RIWKH, & 75 ZDV ÀWWLQJ WKHtelst M/n dbn M/c bun h/c LQKHUHQWO\DSSUR[LPDWH RIVH[XDOYLROHQFH FRPPLWWHG GXULQJ DQG DV SDUtoWredRuesWalkdrHtinuance to investigate crimes of sexual violence, which resulted

Rwandan genocide remain shocking. Estimates range from 250,000 to 500,000 rape

YLFWLPV GXULQJ WKH VKRUW SHULRG RI WKH JHQRFLGH IURP \$SULO WR -XQH that does not account for the number of multiple rapes and gang rapes suffered.

102. The original indictment in Akayesu FRQÀUPHG RQ) HEUXDU\ GLG QRW FRQWDLQ charges of sexual violence. However, as witnesses - the majority of whom were

ZRPHQ WKHVH EHLQJ PRUH OLNHO\ WR KDYH VXUYLYHG WKH JHQRFLGH 2 WHVWLÀHGcasebstóffSetrubsfQaFjd+ 1GLQG DnEbbskeftqjrbanan and of a campaign of sexual violence was entered into the court record. This led the

-XGJHV WR LQYLWH WKH 3URVHFXWLRQ WR DPHQG WKH LQGLFWPHQW WR LQFOXGH FSKeXDabl volorblet/ficet? WMINE the Drosecution is not required to violence. 164 The Prosecutor eventually amended the charges allowing the judgment

of the Tribunal to PDNH ÀQGLQJV RQ FULPHV RI VH[XDO YLROHQFH DQG KROG WKH DFFXVHGcrimes, the decision to indict rests on having evidence accountable for thosecrimes. However, the Prosecution's initial failure to link acts of

UDSH DQG VH[XDO YLROHQFH WR WKH FKDUJHV KDYH EHHQ LGHQWLÀHG DV D VLJQLÀDE flou Qdde/d. EVMDeddeLabchdhitdals for rape were handed down,

0 L F K H CYOLHV - DDQUG 1 D MIZE V1HDFEXWLL Q J & R Q Á L F W 5 H O D W H G 6 H [X D O 9 L R O H Q F H D W W K H , & 7 <, Serge Brammertz and OLFKHOOH -DUYLV HGV 2[IRUG 8. 2[IRUG 8QLYHUVLW\ 3UHVV

DQG JRYHUQPHQW RIAFLDOV \$QGUp 1WDJHUXUD (PPDQXH WKH FRQFHUQ WKDW WKH ¶VSHFLDOLVHG WHDP PRGHO. ZRXOG FRQÁLFW ZLWK WKH PDLQVWUHDPLQJ RI 6*%9 LQYHVWLJDWLRQV E\ DOO teams. Ibid. p. 76.

161 The 3 U R V H F X W R U Y - H D & D&DDHX OF R\$ N, D&JHX GV P, HITTER WORLD HAMBER I, 2 September 1998. While there was evidence of sexual violence, no directly related prosecutions took place at the International OLOLWDU\ 7ULEXQDO DW 1XUHPEHUJ ,07 DQG WKH ,QWHUQDWLRQDO 7ULEXQDO IRU WKH)DU (DVW 6HH \$QQH ODWLRQ 8QLYHUVLW\ RI 8WUHFKW SS Brouwer, 6 X S U D Q D W L R Q D O & U L P L Q D O 3 U R V H F X W L B LQD FF W & LFF J L B Q O W K RHO, H& Q F H D Q 7 0 K H W K & H & D Q G W K H ICTR ,QWHUVHQWLCDHH DOVR +LOO\ ORRGULFN (YHQ .KHQ DQG \$ORQD +DJD\)UH\ 16LOHQFH DW WKH 1XUHPEHUJ 168 7KHR3MHFXWRU Y -HDQ&DDHO1BND&FFXX 7 &RDOLWLRQ IRU :RPHQ.V +XPDQ 5LJ 7ULDOV 7KH ,QWHUQDWLRQDO OLOLWDU\ 7ULEXQDO DW 1XUHPEHUJ DQG 6H[XDO &ULPHV DJDLQVW :RPHQ LQ WKHsittaRGR FPXPXW/ %ULHI 5HVSHFWLQJ \$PHQGPHQW RI WKH ,QGLFWPHQW DQG 6XSSC 35 : RPHQ·V 5LJKWV /DZ 5HSRUWHU43.

162 The 3 URVHFXWRU Y - HD QQ D8\DHX OF R\$N, DQ\\FX DF, BHTAQHVChamber I, 2 September 1998, para.

163 6 WSKDQLH '.\$:RRPODQ 6 FRUQHG IRU WKH '/HDVW & RQGHPQHGµ:DU &ULPH 3UHFHGHQW DQG 3UREOHPV ZLWK Prosecuting Rape as a Serious Crime in the International Criminal Tribunal for Rwanda · 13 Columbia - RXUQDO RI*HQGHU DQG /DZ 1 Economic and SootHath Coluno WHICOSTOCI, Commission on Human Rights Report on the Situation of Human Rights in Rwanda (& 1 is notable, however, that the ICTR did not prosecute any sexual violence cases in which men were victims, though there was evidence to suggest that acts of sexual violence had been committed against Tutsi men and boys as part of the genocide. Testifying in the ICTR Baxwara case, Lieutenant-General Roméo Dallaire, Force Commander of of mutilated male genitalia. 7 K H 3 U R V H F XWRRUD YH W% D 🐿 & D V H 1 R , & 75 7UDQVFULSW RI 3URFHHGLQJV 7ULDO 6HH DOWDRNLROULL & HOW KINCE HOW THORELEH ODNLQJ 6HQVH RI /DZ ,QWHUQDWLRQDO Chamber L - D Q X D U \ & ULPLQDO 3URVHFXWLRQV RI'/LDQJ\$HP\6(F5DDGGABhKD):1000-anhtluGcenideon inithe Tilwentieth

&HQWXU\ \$ &RPSD/BRDQVGBYQH 85.WX % ORRPVEXU\ 6 H HR UI H [D P S O H \$ N V_KODNOH G M L\$HOZZZZ N W N 1 D Y L 3 L O O 2DR W RD Telbholatic Courier D G K X 0 H K U D '\$Q ,QWHUYLHZ ZLWK 1DYL 3LOOD\- /DFXQD 1RYHPEHU

165 7KHR3MHFXWRU Y -HDQ& B B B M O1 \$ N D& 版野米Q G H G , Q G L F W Q H Q W 6 H H L Q S D U W L F X O D U

FRXQW 6HH DOVR IRRWQRWH RI %HWK 9DQ 6FKDDFN·V DUWLFOH ¶(QJHQGHULQJ*HQRFLGH 7KH \$ND\HV<u>XX&ゆ外件 7KH QWHUQDWLRQDO &ULPLQ</u>DO 7ULE\$POHDO FIRO SQDXEDV\$W\2ERWHFQ\D(%) 1 BND WKD Y BND Y B DPHQGHG LQGLFWPHQWV ZHUH GUDIWHG GXULQJ \$SULO DQG OD\ EXW WKDW WKHVH UHPDLQHG FRQAGHQWLDO DW WKH WLPH I

PDQGDWH DQG SHUFHSWLRQV WKDW 6*%9 FULPHV GLG QRW QHHG WR EH WKH IR F10/33VThReste DynoNunwof-bir 62akt/hbg bleoQelopments in threste generation to the second of the convergence of four factors. First, the HQGXULQJZLOOLQJQHVV RIYLFWLPV violence to come forward and give evidence? Second, thelegal activism of civil society DQG LQ SDUWLFXODU WKH &RDOLWLRQ IRU :RPHQ. Situations, formed by feminist activists who, in 1996, mobiled around the ICTR's

amicus curiaebrief, successfully calling upon the Trial Chamber to use its inherent authority to invite the Prosecution to amend the indictment. Third, following witness

in the Prosecution's own amended indictments. \$QGIRXUWK DQGPRUHIUHTX ² albkn/g/WHeDgAdLis/WWHLHF ZRUN RI WKH - XGJHV who invited the Prosecution to amend the original indictment to include sexual violence in its charges.

The decision to

indict rests on

upon which a

having evidence

conviction against

can be founded

the named accused

61

104. Yet, the legal avenues opened by Akayeswere, for a long time, not seized upon by international prosecutors. In the 1] DELUELINGE COOTR Prosecutor withdrew the charges of

set out the reasons foits decision not to charge certain upon which a conviction against the named accused can

in the 1 L \ L W H J H N D, 0 Kambik@andla canses, the ICTR Prosecution failed to appeal the grounds for those

acquittals.¹⁷⁷ The Prosecution provides no public reasong for decisions not to appeal.

8VWDDLWHWQRMLGDO JHQGHU DQG VH[XDO YLROHQFH 2 WKH OHJDF\ RI WKH .&75 167 Supra note 165.

3URVHFXWLRQ RI 5DSH DQG 2WKHU 6H[XDO 9LROHQFH ZLWKLQ WKH &RPSHWHQF (PDLROPICIDWULFLD 6HOOHUV SuptraRnhottel PROE.HU \$OVR

170 See, for example, note 163 and note 164.

171) RU D GHWDLOHG FULWLTXH RI WKH OHJDF\ RI WK'HGSJNHDQ, EI M M L70JLD 160 Q-FXFGJJDP HH Q7WK HV Akayesu Case Before the International Criminal Tribunal for Rwanda Human Rights Advocacy Stories, Founda WLRQ 3UHVV 6 Procently DH&100 00 U6 DV & QLM V 5 HVHD U9 PD KQ 360 P5KHD UD P1 NR 2 (QJHQGHULQJ * HQRFL 7 KH 3 URVHFXWRU&DYVH6 HIURXV, K DSeRtenperial Chamber I, 5February 1999, para. 4.

174 7 K B U R V H F X W R U Y & L W HH Q J R L P D & Q + B X G J P H Q W D Q G 76 U H L D V W D H & K E D I P E H U , , \$SULO

3, 4, 34. ODVDQQ *DOODJKHU = RH /L'(DQGGQGHHSDDQ3U-DXN/DWLFH : RPHQ DQG WKH 3URVHFXWL

9 L R O H Q F H L Q , Q W H U Q D W L R Q D Ontestrilatio Fall Republiciast 81 dRuxx 41 of Mr. Politics 227-249. 177 8156' %HQD1LRZU.RMM-LH-XVWLFH LV WRR 60RZµ :LOO WKRIY,H&PF6HIDLO 5ZDQGD-V U 1RZURMHH ² <RXU -XV**S**/SLFH LV WRR 6ORZµ

7 KBIURVHFXWRU Y 1 W D J H U X U D H WSGeD1 OR Z U&R D1 G J H X J X R X V& 7-5K DD DM IL-F77H B LINV WRR 6 O R Z μ 9 D Q 6 F K D D F N Q G H U L Q Jpp: 12/2028. IS becal D V R % H W K 9 D Q 6 F K D D F N ¶Obstacles On The Road To General Policy R (1) 1 Pol

PDQLVKLPZH ZHUH LQGLFWHG EXW QR FKDUJHV RI VH[XDO YLROHQFH ZHUH LQFOXG&HKODPEHU -XGJPHQW KHOG WKDW 'FRHUFLRQ LV DQ HOHPHO,) ROORZLQJ SUHVVXUH IURP 5ZDQGDQ FLYLO VRFLHW\ OHG E\ WKH \$VVRFLDWLRQ RIoflo@sezt\s & Role \w/defn\than factor in the crime of rape. Further, this Chamber *HQRFLGH RI \$SULO WKH 3URVHFXWLRQ DQQRXQFHG LW ZRXOG DPHQG WKH LQGotoFolder Opinion that circumstances prevailing in most cases charged under against the three accused as soon as possible to include charges of rape. Months international law, as either genocide, crimes against humanity, or war crimes, will be ODWHU WKH 3URVHFXWLRQ ÀOHG WKH PRWLRQ WR DPHQG WKH LQGLFWPHQW EXW Wallnkfolst wh/livelstally consentite. This followed jurisprudence Prosecutor Carla del Ponte withdrew the motion. When Prosecution witnesses coming out of the ICTY's Kunaraand) X U X Q (assed, MhD) would be strengthened E\ ODWHU À QO SAY SQ QO\LL®cashel.KH gave evidence at trial concerning sexual violence, the Coalition for Women's Human 5LJKWVLQ &RQÁLFW 6LaMnikku8okNinia-ROEN/ULVHXIEPDLWWWHOKDDGQGRQHLQ Akayesu ZKHQ WKH VDPH VLWXDWLRQ RFFXUUHG XUJLQJ WKH 7ULDO &KDPEHU WR F12100 \$ 1920 QGPDUN LQ WKH SURVHFXWLRQ RI PHOSEGIHGIU EDVHG YLR the Prosecution to amend the ndictment to include sexual violence charges. The Y 1 D K L P D Q D H W D O a trial of three media leaders charged in relation to their roles in promoting extremist Hutu ideology, inciting hatred, and exhorting listeners and

Prosecution opposed the Coalition's motion, arguing that the matter of what to charge was within their sole discretion. The Chamber denied the Coalition motionand following a Defence motion, excluded from the trial all evidence of uncharged crimes.

106. The absence of charges of sexual violence, occurring consistently across a span of cases at the ICTR, gave rise to ULWLFLVPV DERXW WKH 3URVHFXWLRQ.V IDLOXUH WR GHYHORS D FRPSUHKHQVLYH VWUDWHJ\ RU SUHFLVH ZRUN SODQ WKDW FRXOG RYHUFRPH EDUUSLOHOLWLRQDO VHQWHQFHV IRU 6*%9 ZHUH KDQGHG GRZQ E\

HQFRXQWHUHG WR WKH HIIHFWLYH LQYHVWLJDWLRQ RI WKHVH FULPHV DQG EULQJ WIXIFIXIP YEALO (A) PRI YEALO (VH[XDO YLROHQFH LQWR WKH FRXUWURRP

107. , Q D UHYLHZ RI, & 75 MXULVSUXGHQFH FRQGXFWHG E\ 8.1 5 HVHDUFK , QVWLWXWH IRU in the lower of sexual violence at the ICTY as well. One notable Development in 2004, it was determined that no rape charges had been brought R 1/2 ON thouse WKHQ DGMXGLFDWHG FDVHV E\ WKH 3URVHFXWRU.V 2IÀFH LQ 21 completed cases, there were 18 convictions and three acquittats. Of the convictions, 90% of those judgments contained no convictions for rageCombined with the attitudinal barriers highlighted above, these statistics suggestraluctance to SXUVXH HYLGHQFH Boyl the HCTTR IProsecution Outplucatif 2005.

108. 7 K H UHSRUW IXUWKHU REVHUYHG

> Over the past decade VHIXDO YLROHQFH FULPHV DW WKH . & 75 KDYH QHYHU EHHQ IXOO\ DQG FRQVLVWHQWO\ LQFRUSRUDWHG LQWR WKH LQYHVWLJDWLYH DQGused to intimidate, persecute, and terrorise the civilian population. \$V RI 6HSWHPEHU prosecution strategy RI WKH 3URVHFXWRU·V 2IÀFH >

Investigators receive no training on interviewing methodology for rape victims, and the majority of the investigators are male. Often investigators come from backgrounds where they have not had any experience with this issue, or they believe this is not a crime that deserves serious attention.185 (PSKDVLV RXUV

109. Later ICTR indictments, such as those in the case again&tH P D Q] D * D F X P E L W V L 0 X K L P D Q D D Q G 0 X Y X Q \ L would include charges of sexual violence, with the Trial DQG \$SSHDOV &KDPEHU FRQWULEXWLQJ WR LQWHUQDWLRQDO FULPLQDO MXULVSUXGJHQXPPPPPPVH Y 7&BVJHJRRYHF&XW6RU \$ 6HGSJVPHRQHHU JUDSSOLQJZLWK WKH LVVXHV RI FRQDVXHKQ PVDMQDQG FRHUFLRQ 7KH \$SULO

179 7 K BIUR V H F X W R U YH W1 VD O J H & DX VI HD 1 R , & 75 \$ P H Q G H G 7, KQHG L3 FUVR F H Q XVW R6U - TO Q X D U \ Bagambiki & D V H 1 R , & Mctictment, 9 October 1997.

180 When questioned about this, del Ponte is reported to have saïd, can do this because I am a woman. If I were a man, there would be a I X V M R Z U R MRHXHU2 - X V W L F H L V W R R 6 O R Z, p. 15.

181 7KBHURVHFXWRU Y 1WDJHUXUD %&DDNDHPERNL& THEFT OF ICOLOR OF ICO IRU: RPHQ.V + XPDQ 5 L J K W V, Triat Clba Ph DeÁIL, 124 Mag/ 12001 X D W L R Q V 1RZURMHH 6XSUD QRWH S LY 1RZURMHH 6XSUD QRWH S LY

1RZURMHH 6XSUD QRWH

185 Supra note 176.

gendered language as methods to execute the direct and public incitement elements RIJHQRFLGH 7KH 71LDLKOLOP 2003Q 60x alminheQ bballsltoQkill children as part of the targeted language of direct and public incitement to commit genocide.

7ULDO -XGJPHQW FKDUDFW

SDUD

readers to murder Tutsis during the 1994 genocide in Rwanda, often described

DV WKH ¶PHGLD FDVH· ,WV

111. In the years that followed Akayesu there was greater emphasis on properly example is the investigation by female lawyers and prosecutors at the ICTY of the VH[XDO YLROHQFH SHUSHWUDWHG GXULQJ WKH PDVVDFUH) south-east of Sarajevo. The team led the development of evidence of sexual violence, DQG IRFXVHG RQ EXLOGLQJ D FDVH WKDW UHÁHFWHG WKH used by the accused as part of a campaign of ethnic cleansing. The investigation, and subsequent prosecution, culminated in the unarac et al MXGJPHQW WKH ÀUVW FRQYLFWLRQV E\ WKH ,&7< RI UDSH DV D FULPH DJDLQVW I by an international criminal tribunal of enslavement as a crime against humanity. Other landmark cases included 7 K H 3 U R V H F X W R U Yand Took Prosedutor X Q G æ L M D Y = G U D Y № RRapeX in particular, was recognised as a powerful weapon of war,

2016, 78 of the 161, or 48% of the accused before the ICTY, had been indicted on

) HEUXDU\ & DVH 1R ,7 ______,7 \$SSHD\$OV- & GDPHE GIVThe Prosecoutor
Y \$QWR) XU&XDQVG-He 1. RVI D, 7-XGJP, Firial VD hamber, 10 December 1998,7 KDUFLVVH 0 XYXQ\L Y 7 KH) H E U X D U \ 3URVHFXWRU &DVH 1R__,&75 \$\$\$UL\$OSSHDOV -XGJPHQW 188 7 K H R3VLH F X W R U Y 1 D&KD. P ID QIER H, W& 7 ID Q X G J P 7 H Q W D Q 3 2 De©ehmDed V 2 H 0 (3) F H 189 7 K H R3MH F X W R U Y % D& DRAHR U BD H & W 7 D-CX G J P7H Q W D Q18 Declerolber 120008; Filhe 3 URVHFXWRUY 1\LUDPDV&XDXXXHNRRHW, &D705 % X_VM\$DDDebb/mBebr2015Q Koleremera and %DJRVRUD DQG .DUHP stand out for breaking the practice of never convicting for sexual violenge a distance.

190 - RK-QDJD-QXVWLFH LQ WKH %DONDQV 3URVHFXWLQJ : DU8 & UYFH UV LLVQ WKK & K+LDF-DXHR 3UHVV S 191 7 K BIUR V H F X W R U Y 'U D J R OD DNI WHE 1 TR Q D7U D F H TV D703 G J P, FFria 1700 hamber, 22 February

186 7KHR3VLHFXWRU Y OLN D&HDOVH 01XRKL, R&D*Q DG J%RH7Q W DQG 6H\$Q\$WLHQQFH S

187 7 KHR3MHFXWRU Y 'UDJRO MUDX MEH. XIORD UTDF HW7D Q7X GJP, FFFF (a)TV0/hamber, 22

,7____ \$\$\$\$\$HDGJPBKDWPEHU -XQH WKH 7ULDO &KDPEHU VHL]HG RQ WKH 0XFLý FDVH DV D SUHFH &DVH 1R ,7 192 \$V HDUO\ DV FULPLQDO WULEXQDOV TXDOLI\L®KIHUSDUSRHVÐIF XDWFRUJFY R≓GWIRÐUYWFXUDHXF6⊾KHHHW DO 8 LDO &KDPEHU 1RYHPEHU <u>&</u>D\\$BS1HRDQ7V &KD\$PEHЫGJPHQW ,Q WKKDHV)HXUWXQ163636UMDDO &KDPEHU PDGH FUXFLDO UHPDUNV RQ WI 7-XGJPHZUWLDO &KDPEHU 1RYHPEHU)HEUXDU\

&RQYHQWLRQV DV D YLRODWLRQ RI WKH ODZV DQG FXVWRPVTReI ZDU DQG WKD 3 UR VHFX WRUY \$ O& NO P(H) X1 URX Q OS-aX LGM/19 HTQUWLDO & KDPEHU 'HFHPE⊓HU WKLV FDVH WKH VH[XDO YLROHQFH FRQYLFWLRQV ZHUH XSKHOG E\ WKH \$SSHO \$SSHDOV &KDPEHU SDUDV - X O \ &KDSWHU 9,,,

sexual violence charges. Of these, 36 were ultimately convicted other cases, evidence of sexual violence was not charged but adduced at trial as part of the overall prosecution case, and subsequently recorded in trial judgments.

112. 1 R W Z L W K V W D Q G L Q J W K L V L Q F U H D V H G D W W H Q W L R Q D Q G I R F X V R Q 6 * % 9 L Q L Q W K H D I W H U P D W K R I Akayesuand Kunaraç 196 a certain reluctance persisted in the ad hoc tribunals to fully grapple with sexual and gender-based violence crimes, alongsideR X E W V DER X W K R Z to most effectively document and investigate crimes of this nature

The Special Court for Sierra Leone

marriage between the OTP and victims and community members, Ibid, pp. 142-148.

and gender-based violence', TKH & DPEULDQ / DZ 5HYLHZ : RPHQ LQ DQG DW ZDU

201 9DOHULH 2 R3VUNR HV UHY PHOVG Q 1 6 H X DO 9 L R O H Q F H D W', WQXWH/D Z HUFULO 10, 18 Be3ce/mibler I R U 6 L H U U D / H R Q H

113. \$OO RI WKH 6SHFLDO &RXUW IRU 6LHUUD /HRQH·V &KLHI 3URVHFXWRUV VWDWHG WK Down and girls with women and girls within the CDF-held territory. These LQYHVWLJDWLRQ DQG SURVHFXWLRQ RI®6*%9 ZDV D NH\ SULRULW\ IRU WKHLU 2IÀFH were caused by persisting cultural beliefs casting doubts on the involvement of the 6 & 6 / 6 W D W X W H W K H 3 U R V H F X W L RCOF IN the Himes, Want Go Gal norms preventing women from accusing members of &RQVHTXHQWO\ DQG LQ OLQH ZLWK \$UWLFOH QXPEHU RI 6*%9 DGYLVRUV DV ZHOO DV LQYHVWLJDWRUV ZLWK H[SHUWLVH LQ JHQGWHKWLVLHQVLHQYHPXQL*Wlhvestigstor%.u9tinFallelly Poterbyl a suitable investigations and analysis, and, with in the case of local staff, a solid knowledge and cultural understanding of Sierra Leone. The aim was to HVWDEOLVK LQWHJUDWHG PXOWL GLVFLSOLQDU\ LQYHVWLJDWLRQ WHDPV, composed of national and international staff with complementary expertise, able to conduct multifaceted, contextualised, and gender-sensitive investigations: , Q DGGLWLRQ WKH ÀUVW 3URVHFXWRU FRPPLWWHG WR VWHS up outreach efforts to vulnerable communities through the organisation of town hall meetings with affected communities to build trust, explain the court's mandate,

indictment to include charges of rape, sexual slavery, forced marriage, and other forms of sexual violence. Their motion was denied in a majority decision of the Trial Chamber, because it was brought too late in the process. The Prosecution then sought leave to appeal the decision, and when leave to appeal was also denied, LW DSSHDOHG GLUHFWO\ WR WKH \$SSHDOV &KDPEHU ZKLF DQG WR LQIRUP FRPPXQLWLHV DERXW WKH 2IÀFH RI WKH 3URVHFXWRU·V LQWHUHVW julis Qictor Bowl the matter The consequence was that ny evidence that directly or DW D YDULHW\ RI FULPHV LQFOXGLQJ 6*%9 7KHVH HIIRUWV VWUHQJWKHQHG WKH HIFKPQJHHBRWHO\ UHODWHG WR DQ DFW RI VHIXDO YLROHQF LQDGPLV\$OODLWQHVVHV LQFOXGLQJ VXUYLYRUV ZKR VR violence or forced marriage were not permitted to do so, and all references to sexual 195 :KLOH QR VSHFLÀFX FØDYULJRHOVHRQIFMHZHUH LQFOXGHG LQ WKH ,QGLFWPHQW DJDLQVW 5DGLVODY .UVWLÝ HYLGHQFH yiolence and forced marriage were expunged from the transcripts. Later, the War ZDV DGGXFHG LQ UHODWLRQ WR WKH UDSH RI %RVQLDQnkZbBnWedenQ LQ 3RWRÿDUL 7KH 7ULDO &KDPEHU UHFRJQLVHG UDSH DQG HWKQLF FOHDQVLQJ 2 TXDOLI\LQJ UDSHV LQ 3RWRÿDUL DV 'QDWXUDO DQG IRUHVHHDEOH FRQVHTXHQF&UEPHIKH 6HWKXCGEHV &HQWHU DW WKH 8QLYHUVLW\ RI &DOLIR cleansing campaign", 7 KH 3 URVHFXWRU Y 5 DGLVODY-X GV PWH TOUND OV H& K B P F THU \$7X J X V W the trials, would state, [i]n the CDF case, sexual violence has effectively become an 2001; 7KH 3URVHFXWRU Y 5DGLVODY...UVWL\\$\$ S&SDHMDHO\VR&K\D\PEHU\\$ -\$\\$SQUILPOHQW SDUDV invisible war crime'210 6HH DOVR ZKNWHWDYFNORGI WKH,&7 < DQG,&75 RQ 6H[X&DKO SDWQHGU*HQGHU %DVHG 9LROHQFH-LQ 6WHULR DQG 6FKDUI HGV 7KH/HJDF\ RI \$G +RF 7ULR WQDOOV LQ ,QWHUQDWLRQDO &ULPLQDO /DZ &83 ICTY cases, however, marked a success with regard to accountability for sexual crimes. For example, in the Luki ý case, sexual and gender-based violence was originally missed out of indictments; this had serious consequences ZKHQ MXGJHV UHIXVHG WR JUDQW SHUPLVVLRQ WR DPHQG WKHYLQGLFWPHQW &RQYHUVHO\ LQ WKH ãDLQRYLÝ HW DO DQG cases, trial judges failed to recognise sexual violence as a foreseeable consequence of ethnic cleansing campaigns, and to accept that it was committed with the same discriminatory intent as other crimes forming part of the same campaign. The prosecution appealed the decision, and the precedents were overturned, leading to the emergence

9DOHULH 2RVWHUYHOG ¶7KH 6SHFLDO &RXUW IRU 6LHUUD /HRQH LQLWLDO VW
RI VRPH RI WKH ,&7<·V PRVW SURJUHVVLYH MXULVSUXGHQFH RQ FRQÁLFW UHODWHG VH[XDO YLROHQFH 7KLV V WglduldteGbalsWdK/Mbl@nddeG7KUHH R&PDUPGEULDQ /DZ 5HYLHZ :RPHQ LQ DQG DW ZDU

SS campaign. The prosecution appealed the decision, and the precedents were overturned, leading to the emergence IRU WKH ,&7< ZDV HQJHQGHUHG WKDQNV WR VWURQJ DGYRFDF\ E\ D QHWZRUN RI ODZ\HUV LQVLGH WKH 2IÀFH201RIÓROV18HFDXONGRUL6K18H19QHDXONGRUL6K19H9Q0FHLQW ISJHJX D1P 9LROHQFH 5HFHQW 'HYHORSPHQWV LQ DQG PHDQLQJIXO H[SHUWLVH RQ JHQGHU EHLQJ HPEHGGHG LQ GLIIHUHQW SDUWV RI WKH 2IÀFH ,Q DGGLWLRQ Wolferfor, Skietre L@oHeJDF\War Crimes Study Center, p. 5. 204 Supranote 202, pp. 139-140. project, which was under way at the time, also helped heighten the level of the awareness of these issues within the 3ÚRVHFXWLRQ V RIÀFH DQG DPRQJKN/H/QDBODRDDDPDH/HIPJH-QUM-HZGLAZHARVQ,VI 205 Ibid p. 140. 206 In its request, the Prosecution argued that' >) @ HDUV H[SUHVVHG E\ SRWHQWLDO ZLWQHVVHV LI Wh -XO\ ãDLQRYLý HW \$\SHD7O -XGJPBQ\DU\ , 7R U H Y-LXýG J P, 123Q W testify meant that the Prosecutor could not have easy access to the newly acquired evidence at the time that HGV 3URVHFXWLQJ &RQÁLFW 5HODWHG 6H[XDO 9LROHQFH DW WKH, &7< 2[IRUG 8. 2[IRUG 8QLYHUVLW\ 3UHVVLQFDUFHUDWLRQ RI WKH \$FFXVHG WKDW FUHDWHG WKH FRQGLWLRQV IRU WKH\
-DUYLV DQG %UDPPHW] HGV 3URVHFXWLQJ &RQÁLFW 5HODWHG 6H[XDO 9LROHQFH DW WKH, &7< &83 3URVHFXWRU Y 6DPXHO +LQJD 1RUPBeQuelst/Mor De@ve to&adole/the Radicenteent/ 9DOHULH 2 R3VUVRHVUHYFNIOVGQ¶ 6H[XDO 9LROHQFH DW', WQXWM/10 Z HUFUU O 10, 18 BeckelmiblerIRU 6LHUUD /HRQH DJDLQVW 6DPXHO +LQJD 1RUPDQ 0RLQLQD)RIDQD DQG \$OOLHX RQGHZD 6&6 9DOHULH 2RVWHUYHOG ¶7KH 6SHFLDO &RXUW IRU 6LHUUD /HRQH LQLWLDO VWUXFWXUDO DQG SURFHGXUD 02062HFLVLRQV RQ VH[XDO and gender-based violence',7 KH & DPEULDQ /DZ 5HYLHZ :RPHQ LQ DQG DW ZDU 207 7KHUTDO &KDPEHU -XGJH %RXWHW GLVVHQWLQJ KHOG WKDW LW ZRXOG EH SUI 199 4XWLQJ 'DYLG &UDQH ÀUVW 3URVHFXWRU RI WKH 6&6/ DWWHQWLRQ ZDV SDLG WR HQVXUH WKDW 'PRVW RI WKRtv be trkdd by thout 'ur@ we Belay K the prosecution was allowed to add four new counts to the indictment at this OTP had 'at least some, if not solid, experience in gender crimes at the domestic level, so everybody understood' stage of the proceedings, particularly in circumstances where evidence upon which those counts were founded was WKH LPSRUWDQFH RI IRFXVLQJ RQ 6*%9µ 2RVWHUYHOG ¶7KH 6SHFLDO &RXUW IRU 6LHUUD /HRQH LQLWLDO VWUDXYDDWLDO OHD SW REWH-DXQWHRU Y TB6D PXHO +LQJD 1RUP D6QisHrWnDO &DVH 1R procedural decisions on sexual and gender-based violence KH & DPEULDQ / DZ 5HYLHZ : RPHQ LQ DQG DW ZDU, 46 3 URVHFXWLRQ 5 HTXHVW IRU / HDTN/aHCN/a/ricbe\$, 120HM2a/G20104K/b/a/rasQ35, 155, 162P64.QW

9DOHULH 2RVWHUYHOG ¶7KH 6SHFLDO &RXUW IBIddisionLaModelsionLambdis

210 .HQGDOO DQG 6WDJJV VXSUD QRWH

knowledge on gender-sensitive outreach amongst the OTP staff and encouraged

114. Yet, in the 2004-2008 trials of the head and two senior commanders of the Civil

ZHUH UHQGHUTTH & Prosecution had tailed to charge rape and other crimes of sexual violence, as well as forced marriage, as another inhumane act in its 2003 indictment, claiming that their early investigations had not uncovered

enough evidence to support sexual violence counts against members of the @DF.

intermediary to build trust and collect evidence, including by female investigaters.

Four months before the start of trial, the Prosecution attempted to amend its

female victims to share their experiences with the OTP, but also introduced confusion

within the affected communities between outreach, information-sharing, and requests

'HIHQFH)RUFHV &') DJRYHUQPFHQQLWPHEVDRNIHVGH[DXUDRDHKGLJRUDRHX

Q WKLV FDVH LQYHVWLJDWRUV HQFRXQWHUHG GLIÀFXOW

208 7KHR3MHFXWRU Y 6DPXHO +L&CDJVDH1RRUP6D&C6/HW DO 3URVHFXWLRQ.V \$SSOLFDWLRQ

209 7 K H R3MH F X W R U Y 6 D P X H O + L&QDI/DH 1 RRU P 608Q6 /H W D O Majority Decision on the Prosecution's

<u>QWHUORFXWRU\ \$SSHDO \$JDLQVW WKH 'HFLVLRQ RQ WKH 3URV</u>HFXWLRQ.V 5HT

\$SSOLFDWLRQ IRU /HDYH WR)LOH DQ ,QWHUORFXWRU\ \$SSHDO \$JDLQVW WKH '

integral part of their becoming and being used as child soldiers.

115. 1 HYHUWKHOHVV WKH SULRULWLVDWLRQ RI 6 * % 9 FULPHV E \ WKH SURVHFXWLRQ L Q118REWINDENDED OFFS DXV/2HAVIND gender-based violence against girl soldiers emerged resulted in 10 of the 13 accused being charged with the crimes against humanity of rape and sexual slavery, and the war crime of outrages upon personal dignit six of the accused were also charged with forced marriage under the heading of the crime against humanity of 'other inhumane acts', underscoring that seemingly gender-QHXWUDO FULPHV PD\ EH VWURQJO\ JHQGHUHG \$OO LQ DOO DQG QRWZLWKVWDQGLQQnalmbferkwleintDasEfafredsQsfafling that it "strongly deprecates the attitude of the former of charges of sexual violence in the CDF case, the SCSL jurisprudence, with regard to the crimes of forced marriage as an 'other inhumane act', and the crime of sexual slavery, marked a step forward?

WKURXJKRXW WKH WULDO ,Q WKH 7ULDO -XGJPHQW WKH I subjected to violence and rape, but were left without an avenue to convict due to the failure to charge these crimes on the indictment This was recognised as a VHULRXV IDLOXUH E\ WKH SURVHFXWLRQ DQG LQ LWV -XO'

119. 3 DWULFLD 9 LVHXU 6 HOOHUV LQ D ODWHU LQWHUYLHZ ZRX

probative evidence, KDG LW EHHQ WKRURXJKO\ LQYHVWLJDWHG DO

of injustice' that extended to the reparations phase: \$ V WKH , & & · V UHSDUDWLRQV

QR VSHFLÀF UHSDUDWLRQV IRU VH[XDO DQG JHQGHU EDVH

Given the evidence or information on sexual violence that came out in

initially in the charges or even amended into the charges. So, this takes

implications for the unrecognised victims of sexual violence, and set off a 'cascade

WKH UHDFK RI UHSDUDWLRQV ,Q ODUFK

court, it appears to me that there was the potential for even greater

Prosecutor in relation to the issue of sexual violence:"

The International Criminal Court

116. Similar to thead hoc tribunals, the founding documents of the International Criminal &RXUW , & LQFOXGHG D FRPPLWPHQW WR WKH LQYHVWLJDWLRQ DQG SURVHFXWLRQ LS baEkHd-the beginning, to the conception of the initial investigation and FRQVLVWHQW ZLWK \$UWLFOH RI VH[XDO DQG JHQGHU EDVHG YLROHQFH ,Q RI Worksecution strategies. 7KH GHYHORSPHQW RI JHQGHU DQG VH[XDO 5RPH 6WDWXWH WKH *HQGHU DQG &KLOGUHQ 8QLW ZDV HVWDEOLVKHG ZLWKLQ WKH, QγχηΗυρλΑμή ΡΙΥΝΑΙΑΡΟΝ ΡΧΗ WYPASHK D W WW DRAK WAKH EHJLQQLO Division. Comprised of staff with legal and psychosocial expertise, it was set up WR VXSSRUW WKH LQYHVWLJDWLRQ DQG SURVHFXWLRQ RI 6*%9 FULPHV DQG FULPHD DQG FULPHD Investigate and indict sexual violence in the ED Qab had children. The unit was expected to advise the Prosecutor, and provide support to all divisions within OTP dealing with victims and witnesses of such crimes at all stages of operations213 8QIRUWXQDWHO\ DQG VLPLODU WR WKH OLPLWDWLRQV RI WKH /HJDO \$GYLframeWork linked the conviction to the measures of repair, and as there were no LQ WKH HDUO\\HDUV RI WKH ,&7< DQG ,&75 WKH 8QLW V H[SHUWLVH ZDV GLUHFWHGhawges-Options for sexual and gender-based crimes, these crimes fell outside advising on, and supporting, trauma-informed interactions with survivors and witnesses. Itwas QRW LQWHJUDWHG RU HPEHGGHG LQWR VSHFLÀF LQYHVWLJDWLRQV DQG Kalth Sugh reparations would be available for the former child soldiers, there would be no power to shape investigation strategies RU LQÁXHQFH WKH ZRUN RI WKH WULDO WHDPV GXULQJWKHWHUPRIWIKBIVÀKUVJMKO&&KK3WUHROYHLIQX&MHRFUWLRQ.KRZHYHU WKH 8QLW's role has evolved over the yearnsplanes its more active role in investigations.215

121. \$IWHU)DWRX %HQVRXGD WRRN RIÀFHmDrk/pcbbcRvk/HFXWRU LQ DSSURDFK WR.6% UBJEGL, PQ-PG/HU ZDV WKH 6SHFLDO \$GYLVRU OTP between 2012 and 2016. 3 D W U L F L D 9 L V H X U 6 H O O H U V Z K R Z D V 6 S 3URVHFXWLRQ 6WUDWHJLHV GXULQJ WKDW SHULRG ZDV D WKH 21ÀFH RI WKH 3URVHFXWRU SXEOL SUH WULDO EULHI ahd Gender Based Crimes: , QWURGXFLQJ WKH SROLF\ %HQVRXGD HF PHVVDJH WR SHUSHWUDWRUV > «@ PXVW EH FOHDU VH[XD0 LQ FRQÁLFW ZLOO QHLWKHU EH 2WROHUDWHG QRU LJQRUHG

117.) RUWKH, & & - 77 KÄHU 3/ UVR 17 BI 17 M W, Rhlein-19 rosek utto DLQisl Moreno 2FDPSR GHFLGHG WR IRFXV RQ RQH VSHFLÀF VHW RI FULPHV WKH ZDU FULPHV RI HQQLVWLQJ -XQH FRQVFULSWLQJ DQG XVLQJ FKLOG VROGLHUV .Q DQ \$XJXVW prosecutors detailed the charges against Lubanga, sexual violence suffered by girl soldiers was noticeably absent from references to the crime of 'using children to participate actively in hostilities²:6 This was despite the fact that there was evidence attesting that girl child soldiers were subjected to sexual slavery and rape as an

122. Since / XEDQ JDDQ G PRUH YLVLEO\ VLQFH WKH LPSOHPHQWDWLR has been SURJUHVV ZKHQ LW FRPHV WR WKH LQYHVWLJDWLRQ crimes WKRXJK QRW QHFHVVDULO\ UHÁHFWHG LQ XOWLPDWH Bemba was charged with the rape of men, women, and children during the non-

9DOHULH 2 R_WS\WOODMANDITOMHITOEGSpe@fal Court for Sierra Leone on the Prosecution of Gender-Based Ctimes \$PHULFDQ -RXUQDO RI*HQGHU 6RFLDO 3ROLF\ WKH /DZ QR

212 On the developments regarding the interpretation of the crime of sexual slavery and the adoption of gender-VHQVLWLYH DSSURDFKHV 7KHH+ BIDQGHWLHX BIRV SWHXWYHHORH RIWKH 6SHFLDO &RXUW IRU 6LHUUD /HRQH SURJUHVV LQ WKH 5HYROXWLR & RUQHOOW, HQ GV HUWFQODWW LR Q DFOH CDVZ V-R X U Q D O D PRUH QXDQFHG YLHZ RI 6&6/ MXULVSUXGHQFH RQ 6*%9 LVVXHV VHH 9DOHULH 2RVWHUYHOG ¶7KH 6SHFLDO &RXUW IRU 6LHUUD /HRQH.V &RQVLGHUDWLRQ RI *HQGHU EDVHG 9LRQXIRQDFQD 5&RQWVULEHXWHZJ WR 7UDQVLWLRQDO -XVWLFH. March 2009, pp. 73-98.

217 . DW\ *ODV<u>WallenderDurkbZingdagCharges to Cover RdpeQVWLWXWHIRU:DU</u> 3HDFH 5HSRUWLQJ 218 7 KHR3MHFXWRU Y 7 KRPD & D/X/HEDIORJD, & &LOR Decision on Sentence pursuant to \$UWLFOH RITWUKLHD6W&DKWD7RWEHU,

213 2 I À F H R I W K H 3 U R V H F X W R U Q W H U Q D W L R Q D O & U L P L Q D O 28014 X U W Policy Paper on Sexual and Gender-Based Crimes 214 Interview with Lina Biscaia, 26 February 2020.

219 FIDH Press Release & ULPHV RI VHIXDO YLROHQFH DQG WKH /XEDQJD & DVH →HW DV RQH H[SHUW SRLQWHG RXW '7KH SRVLWLRQ IRU WKH KHDG RI WKH 8QLW KDV >RQO\ UHFHQWO\@ EHHQ MDa@ch/200LBWLVHG 6LPLODU

WR WKH ,&7< ,&75 QHLWKHU WKH OHJOO RIÀFHU·V SRVLWLRQ QRU WKDW RI DQ LQFRPLQJ KHDG KDYH HTXLY 1200 HLOQNINSHEONN 18 VF 10 10 QFR PLQJ KHDG KDYH HTXLY 1200 HLOQNINSHEONN 18 VF 10 10 QFR PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 10 QFF PLQJ KHDG KDYH HTXLY 18 VF 10 QFF PLQJ KDYH TY 10 QFF PLQJ KDYH LQYHVWLJDWLYH WHDP OHDGHUV RU VHQLRU WULDO RIÀFHUV 1HLWKHU 6&6/ QRU WKH ([WUDRUGLQDU\ &KDPEHU\HE®P\#H® &RXUWV RI &DPERGLD KDG KDYH GHVLJQDWHG *HQGHU \$GYLVRUV &\$\$& LQLWLDWLYHV VKRXOG EH DZDUH RI WKLV SDW 1920/107/18/HIR3NQHVFXXIXIPD&KDYXHDC003801/104-01/11/1060-381/29 __-XGJPHQW RQ WKH_DSSHDOV DJDLQ UHVRXUFHG JUDGHG SRVW IRU /HJDO \$GYLVRU IRU *HQGHU 7KLV LV QRW D QRUP DW LQWHUQDWLRQDO MXGLFLDOHFHFKBQLFVPWDEQQ\$/XWQJ WKH SULQFLSOHV DQG SURFHGXUHV WR EH DSSOLHG by expert. October 4, 2020.

RUGHU IRU UHSDUDWLRQV \$QQH[\$ DQG SXEOLF DQQH[HV DQG \$SSHDOV & F 222 21ÀFH RIRW H F X3WRU, QWHUQD POLICY PapleO or & Subtuella Qui Do Gond & r PSX seld W Crim 2614. 223 Coalition for the ICC, (OLPLQDWLQJ VH[XDO YLROHQFH LXQQIHRQÁLFW WKURXJK WKH , & &

216 TKHURVHFXWRU Y TKRPD&V&/XEDQJD '\\$QRH[6XEPLVVLRQ RI WKH 'RFXPHQW &RQWDLQLQJ WKH &KDUJHV SXUVXDQW WR \$UWLFOH D DQG RI V\$KHXNLWWW RI (YLGHQFH SXUVXDQW WR 5XOH

LQWHUQDWLRQDO DUPHG FRQÁLF2Wn March/120x16H B&rhba WUDO \$IULFDQ 5HSXEOLF understanding of sex and gender, including the surfacing of under-investigated crimes was convicted of rape as a war crime and a crime against humanityThis decision against women and girlshad to seep into the more mechanical and structural ZDV KRZHYHU UHYHUVHG RQ -XQH ZKHQ WKH \$SSHDOV &KDPEHU DFTXLWWHG aspects of pursuing justice This required UHFUXLWLQJ SHRSOH ZLWK UHOHYD WKH 3URVHFXWLRQ ÀOHG QHZ FKDUJHV DJDLQVW %RVFR Bemba of all charges²⁶ . Q 1WDJDQGD ZKLFK LQFOXGHG FKDUJHV RI VHIXDO YLROHQFH FRPPLWWHG DJDLQVW FHKYLDOGXYDRWOHGWHKUHVHIWHQW WR ZKLFK D EURDGHU VSDQ RI FU GXULQJ WKH FR@¤ÁľKWVLFQRWWHD5V&WHG ZLWK WKH ÀUVW LQGLFWPHQW DJDLQVW KLP notably against communities to which less attention is paid. issued in 2006, which did not contain any crimes of sexual violenee., Q - X O \ WKH 7ULDO &KDPEHU IRXQG 1WDJDQGD JXLOW\ RI DJDLQVW KXPDQLW\ LQFOXGLQJ FKDUJHV RI UDSH VH[XDO VODYHU\ DJDLQVW FLYLDQDDQWWDLQGWLRQ RI 6*%9 E\ DFFRX6QtWdDLEddoneW\ PHFKDQLVP

FRXQWV RIZDU FULPHV DQG 126LI\$RQHRWKHU UHOHYDQW GHYHORSPHQW ZLWK GLUHFW LPSDF DJDLQVW FKLOGUHQ ZLWKLQ KLV RZQ DUPHG JURXS DQG FRQVFULSWLQJ DQG HQOL-VXW MQLFHFK5LDOSQLGH5QHVSRQVH -55 UR5/5W YH LS DRU WH QSHHUWK LL SCH ÀRUQ ZLWK 81,)(0 DQG WKHQ ZLWK LWV VXFFHVVRU 81:RPHQ V expertise to national and international accountability mechanisms, including OHCHR-EDFNHG GRFXPHQWDWLRQ HQWLWLHV WKH PDMRULW\ RI Z

&RPPLVVLRQV RI,QTXLU\ GHPRQVWUDWHV WKH LQFUHDVI

KDYLQJ GHGLFDWHG IXQGLQettirldRulplinWerkfatDst/Vuchtufess HbUWLVH, and

and gender in investigation strategies! +DUGZLULQJ OHVVRQV OHDUQHG -XVWLFH 5DSLG 5HVSRQ

123. Akayesu PDUNHG WKH EHJLQQLQJ RI NH\ GHYHORSPHQWV LQ WKH 6*%9 MXULVSUXGHQFHsupFooR of the investigation and prosecution of war crimes, crimes against humanity, notably of gendered legal analysis, cafd hoc and hybrid tribunals \$10 PHQWLRQHG these developments can be attributed to an increasing recognition of the gendered dimension of international crimes by the judiciary, the legal activism of civil society RUJDQLVDWLRQV DQG LQ VRPH LQVWDQ FLHQV WKH JUDGXDO SULRULWLVDWLRQ RI 6*a/Mg psychosocial counsellors. The majority have a mix of domestic and international investigative and prosecutorial strategies, the allocation of related expertise, and structural changes in investigative teams.

124. However, despite this increased focus, examples of failures or resistance to fully LQYHVWLJDWH SURVHFXWH DQG DGMXGLFDWH VH[XDO YLROHQFH SHUVLVW \$ ODFN RQWARQBO FULPLQDO FRXUWV DQG WULEXQDOV UH 6*%9 FULPHV LQ LQYHVWLJDWLYH DQG SURVHFXWRULDO VWUDWHJLHV VWHPPLQJ IURAD 66 VA TWLCHO NXVWLFH PHFKDQLVPV H J WUXWK DQG I in collecting evidence, or a lack of available or embedded gender expertise, and a judicial resistance to recognising the gendered nature of international crimes still FRQVWLWXWH VLJQLÀFDQW EDUULHUV WR WKH IXOO FRQVLVWHQW DQG VXFFHVVIXO LQYHVWLJDWLRQ DQG

125. One lesson that was learned from thakayesucase, and bolstered by the failures to fully and consistently investigate and prosecute sexual violence at the ICTR and 6 & 6 / ZDV WKDW MXULre/costunixing letricon by to differences on the gendered dimensions of international crimeswas QRW VXIAFLHQW WR LQIXVH JHQGHU justice into all stages of investigatory and prosecutorial strategies. Rather, an

127. - 55 LV D VWDQGE\ PHFKDQLVP IRU WKH UHFUXLWPHQW DQG genocide, and other serious human rights violations. There are currently around H[SHUWV RQ WisKindludiofocrlub Rank attribution an rights investigators, human rights monitors, prosecutors, military and legal analysts, forensic experts, experience²³⁴ -55 H[SHUWV DUH UHFUXLWHG RQWR WKH URVWHU

& ULPLQDO, QYH * VOYnicel to this term of the control of the contr LQWHUQDWLRQDO DQG UHJLRQDO DFFGRNXCQeMYtDesELOLW\ PHFKD

society organisations engaged in the documentation of international crimes and human rights abuses:36

and training programme, delivered by the Hague-based Institute for International

LQ SDUWQHUVKLS ZLWK WKH ... &. DQG 81 :RPHQ -55 6 * % 9 - XVWLFH ([SHUWV 5RVWHU ZKLFK LV D VXE URVWHU F 7KLV SDUWQHUVKLS ZDV ERUQ RXW RI WKH UHFRJQLWLRQ long been neglected by international law, and that there was a need to enhance DFFRXQWDELOLW\IRU FRQÁLFW UHHGSBWWG 6010%H9H87QGSHSUHWKK ZLWK WKH VSHFLDOLVW NQRZOHGJH DQG WUDLQLQJ WR EH DQDO\VH DQG SURVHFXWH VH[XDO DQG JHQGHU EDVHG YL VHFRQGHG WR DFFRXQVEDBUO:RVFHQHFKDQLVPV

129. 2 QH H[SHUW SRLQWHG RXW WKDW WKH SHUVLVWHQFH RI 8 FRQYLQFLQJ 2+&+5 RI WKH PHULWV RI VXFK GHSOR\PHQWV WKH FRQVLVWHQW HIIRUWV RI 81 :RPHQ DOVR GUHZ DWWH

under the age of 15 years into an armed group, and using them to participate actively

now on appeal.

SURVHFXWLRQ RI 6*%9

in hostilities. He was sentenced to 30 years imprisonment. The 1 W D J D Q G D case is

69

^{224 7}KBIURVHFXWRU Y -HDQ 3L&HDUMHH19RHP, & D *R, PXEEROLF 5HGDFWHG 9HUVLRQ RI WKH \$PHQGHG Document Containing the Charge, Pre-Trial Chamber II, 30 March 2009, para 39.

^{225 7}KBURVHFXWRU Y -HDQ 3L&HDDVDHH 19RHP, BLB *RPXEGRJPHQW SXUVXDQW WR \$UWLFOH Statute, Trial Chamber III, 21 March 2016.

^{226 7} K H \$ S S H D O V & ikter River left that the chironical acts, including rape, added by the Prosecutor after the &RQÀUPDWLRQ HFLVLRQ E PHDQV RÍ GLVFORVXUH DQG LQFOXVLRQ LQ DX[LOLDU GRFXPHQWV GLG QRW IDOO STATER LSUCH RELCANACION DQG FLUFXPVWDQFHV GHVFULEHG LQ WKH FKDUJHSVURLVQHFVXHWIRRV YRI SHUDWQLBDHHUUH RI WKH 6WDWXWH 7KH Bemba Gombo & DVH 1R ,&& _XGJPISQW RQ WKH DSSHDO RI OU -HDQ 3LHUUH %HPED *RPER DJDLQVW 7ULDO &KDPEHU , , , V 1-XGJPHQW SXUV\$X50SQH/D OWR &\$KUDVPIEHOUH -RQ HVKH 6 VS D WDXWH. Bemba Gombo & D V H 1 R , & &

^{227 7}KBURVHFXWRU Y % & DIFRI 17W D J & D & Q G D'HFLVLRQ 3XUVXDQW WR \$UWLFOH D DQG E RIWKH Rome Statute 3 U H 7 U L D O & K D P E H U . .

^{228 7}KBURVHFXWRU Y % R&VDFVRH 11VRDJ, BA & -G11004DUUDQW R BU\$HUVFHUV 10VO & KDPEHU

^{229 7}KHR3MJHFXWRU Y %R&VIFTRH1WMRDJD,8Q&GD <u>-XGJP</u>HTQUMLDO &KDPEHU 9, -XO\

²³⁰ The ICT/ case 3 URVHFXWRU Y 'XÄNR 7DGLý ZDV WKH ÀUVW LQWHUQDWLRQDO ZDU FULPHV WULDO LQYROYLQJ HYLGH264FIlhterRilewWilth/ EXXDec0. violence. The charges concerned sexual mutilation in the Omarska Camp, and resulted in convictions for the war crime of cruel treatment and the crime against humanity of other inhumane acts. Sexual violence was not, however, V S H F L À F D O O \ F K D U J H CS ÜPROV PWFKYHW B QU GYL <u>F VX PI N B W D G L</u> ý , **Z** S L Q L7R Q QDVQHGU QXDGWI PIRIQQ IDVO Criminal Tribunal for the former Yugoslavia., 7 May 1997.

²³¹ Interview with expert.

²³² Interview with expert. See alsoR I À FLDO ZHEVLWH RI - XVWLFH 5DSLG 5HVSRQVH

²³³ This comprises 54% women, 42% from the Global South, speaking more than 90 languages and representing more than 100 nationalities. See, RIAFLDO ZHEVLWH RI - XVWLFH 5DSLG 5HVSRQVH

^{235 -} X V W L F H 5 D S IS Q (5) XHDV (5) R5(0H) VS IRR U W ¶-55 \$QQXDO 5HSRUW HPSKDVLV

²³⁶ Interview with expert.

²³⁷ Interview with Federica Tronchin, 17 March 2020.

^{238 ,}QWHUYLHZ ZLWK &pFLOH \$SWHO 0 D U F K

130. . Q WKH 81 6HFUHWDU*HQHUDO·V 5HSRUW WR WKH 6HFXULW\ &RXQFLO RQ :RPHQInon6-HudDcFal-accountability mechanisms, and a steady stream of funding either DQG 6HFXULW\ GHOLYHUHG D PDQGDWH WR 81 :RPHQ WR HQVXUH WKDW HYHU\ &RPPLGNLWLHRFQW RN WR WKH HQWLW\ LWVHOI LQ WKH FDVH IRU HID Inquiry had a dedicated gender expert on #. There are currently 240 experts on the Women to facilitate their deployment of experts. specialist roster;40 D IDFW ZKLFK KDV IDFLOLWDWHG VLJQLÀFDQWO\ WKH ´UDLVLQJ RI VWDQGDUGV IRU WKH LQYHVW4LJDWLRQ RI 6*%9µ 133. ORUHRYHU WKH VXSSRUW RI 81 OHPEdebylelon@nylefnDWHV KDV DOVI RIQDWLRQDOLQLZWKLDFWKLDY\HSVLBIGI \BW*F% \D JOREDO UHDFK VXF 131. 6 L Q F H -55 DQG 81 :RPHQ KDYH GHSOR\HG H[SHUWV WR HYHU\ &RPPLVVLRQ RI LQJGRP·V 3UHYHQWLQJ 6H[XDO 9LROHQFH ⊕QLWLDWLYH∙ Z Inquiry and most Fact-Finding Missions, as well as the Syria IHMIn some cases, The expert consultations that took place under this initiative resulted in the such as the Commission of Inquiry on Syria, they deploy multiple experts at the same development of anauthoritative international protocol DQG EHVW SUDFWLFH JXLGH WLPH FRYHULQJ DQ UDQJH RI UROHV LQFOXGLQJ JHQGHU DGYLVRUV 6*%9 LQYHVW WWWDHW B B FX PD HQGGW.D WLRQ RI 6*%9 GHGLFDWHG LQWH*U, SQU SHDWHWU LVFRQD6U* %9 134. More recent is the ongoing development of the Murad Codenamed after, and a. 6\ULD &RPPLV\\$\5.RHQ\SHUWV KDYH EHHQ GHSOR\HG WR WKH 6\ULD &RPPLVVLRQ VXSSRUWHG E\ 1REHO 3HDFH 3UL1H :LQQHU 1DGLD 0XU RI,QTXLU\ &R, LQFOXGLQJ 6*%9 L@+YTHsVWLJDWRUV DQG JHQGHU DGYLVRUV global consultative initiative aimed at building and supporting a community of better H[SHUWLVH KHOSHG WR EULQJ WKH SURPLQHQW UROH RI 6*%9 LQ WKH 6\ULDQ FRQ HDFWW LVFRH IRU ZLWK DQG FRQFHUQLQJ VXUYLYRUV RI FRO WKH VXUIDFH DQG ZDV NH\ WR WKH &RPP.LOVRVLWQPV ÀUVW UHSRUW RQ WKH LVVXH objective is to respect and support survivors' rights, and to ensure work with survivors

GLJQLW\µ 6H[XDO DQG JHQGHU EDVHG YITReOHQFH LQ WKH 6\ULDQ \$UDE 5HSXEOLFto investigate, document, and record their experiences is safer, more ethical, and

UHSRUW ZKLFK ZDV WKH ÀUVW RI LWV NLQG GHWDLOHG 6*%9 DJDLQVW ZRPHQ JÆBIDN HPHQFWLYH LQ XSKROGLQJ WKHLU KXPDQ ULJKWV 7K and boys committed in Syria since the uprising in 2011, and highlighted that SDUWLHV WR WKH FRQÁLFW UHVRUWHG WR VH[XDO YLROHQFH DV D WRRO WR LQVWLO IHDU KXPLOLDWH and punish, or, in the case of terrorist groups, as part of their enforced social 135. In conclusion, progress remains to be made to improve the reductive understanding RI JHQGHUHG H[SHUWLVH DV SHUWDLQLQJ WR FULPHV DJD order.246 of crimes against/affecting women, with crimes of sexual violence; the tendency b. 0\DQPDU 7\I&R JHQGHU DGYLVRUV 6*%9 LQYHVWLJDWRUV DQG D IRUHQVLF to exclude men and boys from the community of victims and survivors of sexual SV\FKRORJLVW VSHFLDOLVHG LQ 6*%9 FRQWULEXWHG WR WKH))0.V 6HSWHPEHU violence; and the failure to adequately document crimes committed on the basis of report, in which sexual violence was documented. \$FFRUGLQJ WR RQH IRUPHU))0 sexual orientation or gender identity? \$ W W K H V DsPnbW WhetenPv lingta Wedlo ODZ\HU WKH 6*%9 DGYLVRUV DQG LQYHVWLJDWRUV LQWHUYLHZHG YLFWLPV DQG thb&e\characteristic black b

that their experiences were adequately captured in the FFM report on the GREXPHQWLQJ DQG SURVHEXWLQJ FULPHV RI VHIXDO DQG LVVXH 7KLV ZDV D FRQWH[W LQ ZKLFK 6*%9 ZDV VR SUHYDOHQW WKDW LW ZRXOGesselmQal. DQ\ event, have been a focus for the FFM. However, having an expert's sign off was UHDVVXULQJ WR WKH &RPPLVVLRQHUV \$ VLPLODU HISHUWLVH LQ UHVSHFW RI FKLOGUHQ ZRXOG have been useful:48

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PART B. LESSONS LEARNED

132. In the intervening years, and as a result of the momentum generated by these

GHYHORSPHQWV WKH LQYHVWLJDWLRQ DQG GRFXPHQWDWLRQ RI 6*%9 KDV UHFHLBLP VXV WDLLQEG UULHUV IRU MXVWLFH IRU PD DWWHQWLRQ DQG VXSSRUW IURP 81 0HPEHU 6WDWHV QRWDEO\ &DQDGD WKH 8QLWHG .LQJGRP

and Sweden. This has provided engines of advocacy at the highest political and

diplomatic levels, political support to – and concomitant pressure on – entities linked to criminal accountability. This ensured, in some cases, a prominent role for the

affecting childrenface many of the initial attitudinal and structural barriers faced by those seeking to strengthen understandings of gender in the investigation, analysis, GRFXPHQWDWLRQ DQG LQYHVWLJDWLRQ RI 6*%9 LQ WKH PDQGDWHV DQG LQYHVWLJDaWdlpYbstecsfilbhloRinternationtal Norimes

8 1 6 H F X U L, Weepockt RofXhQ EdcQtary-General on women, peace and secural/2012/732, 2 October 2012.

240 Interview with expert.

-55 \$QQXDO 5HSRUW

243 Interview with expert.

244 - 55\$ Q Q X D O 5 H S R U W and military experts.

245 Human Rights Council \$\\$ + 5 \& \& 5 3 3, 8 March 2018.

246 .Q HDUO\-XVWLFH 5DSLG 5HVSRQVH DQG 81 :RPHQ SURYLGHG RQH 6H[XDO DQG *HQGHU %DVHG &ULPHV 6*%& analyst, one SGBC investigator and one SGBC legal advisor to provide legal analysis and advise the IIIM on the

the cases of Hissine Habré EHIRUH WKH ([WUDRUGLQDU\ \$IULFDQ &KDPEHUV .KLHX 6DPSKDQ DQG 1XRQ &KHD DW WKH 253 \$VRI ([WUDRUGLQDU\ &KDPEHUV LQ WKH &RXUWV RI &DPERGLD DQG %RVFR 1WDJDQGD DW WKH ,&&

247 Human Rights Council<u>5 H S R U W R I W K H L Q G H S H Q G H Q W I</u> D F\$W+ \$\delta Q G L Q J P L6/H/S. W EI PFE CH U0 \ D Q P D U

-55 \$QQXDO 5HSRUW S RWKHU -55 H[SHUWV LQFOXGHG D FKLOG SV\FKRORJLVW WR PHQWRU WKH)DF<u>RVR)VQCQL\AHARQW</u> SDSHU SUHSDUHG IRU ZRUNVKRS KHOG DW WKH 2YHUVHDV 'H 0LVVLRQ WHDP RQ LQWHUYLHZLQJ FKLOG YLFWLPV DQG VXUYLYRUV DQG D PLOLWDU\ DQDO\VW 254 "ItKLQN WKHUH KDV EHHQ JUHDW SURIHVVLRQDO JURZWK LQ WKH DUHD ,W SUR 248 Interview with expert.

136. Those working to close the impunity gap when it comes to violations and crimes

7KH DWWHQWLRQ SDLG WR 6*%9 E\ &R,V))0V LV VWURQJO\ OLQNHG WR WKH -55 URVWHU EHLQJ SXW LQ SODF2##9 Human Rights Council, \$ +5 & 5(6 , 24 March 2017, paras. 11, 13; Human Rights Council, \$ council, \$ +5 & 5(6 , 24 March 2017, paras. 11, 13; Human Rights Council, \$ QGHSHQGHQW,QYHVWLJDWLYH 0HFKDQI\$WBJXFW 0\DQ\$DUD\$ +5&
2WKHU H[SHUWV LQFOXGHG D IRUHQVLF LPDJH H[SHUW IRUHQVLF SDWKRORJLVZ60V) PDUDHLQQVH&UFSPUPHRVQHZUHDOWK 3UHHYHDQRV6LPQHQQVH2XADFOH9LROHQFHKWQVS&XRQÁZZEW,QLWLD <u>ÍRY XN JRYHUQPHQW RUJDQLVDWLRQV SUHY</u>HQWLQJ VH[XDO YLROHQFH LQ FRQ 251 6 DUBU)UR 5 LEHLUR DQG 'DQDP YDQ GHU 6WUDWHQ 3RQWKR] RQ EHKDOI RI WKH 8 IQWHUQDWLRQDO 3URWRFRO RQ WKH 'RFXPHQWDWLRQ DQG ,QYHVWLJDWLRQ RI analyst, one SGBC investigator and one SGBC legal advisor to provide legal analysis and advise the IIIM on the

\[
\frac{\text{KFXPHQWDWLRQ RI 6H[XDO 9LROHQFH DV D}}{\text{CFXQLVD QL QQDLEQOH DV KWWSV ZZZ PXUDGFRGH FRP!}}
\]

\[
\frac{\text{KFXPHQWDWLRQ RI 6H[XDO 9LROHQFH DV D}}{\text{CFXQLVD QL QQDLEQOH DW KWWSV ZZZ PXUDGFRGH FRP!}}
\] QDWLRQDO ODZV ZRUOGZLGH GHQ\ RI PHQ LQ FRQÁLFW DIIHFWHG F victim of sexual violence; 70 countries allow for the arrest and prosecution of men who report sexual victimisation due to homophobic laws and policies. See Chris Dolan, QWRWKHPDLQVWUHDP \$GGUHVVLQJVH[XDOYLRC

FDQ GDUH VD\ WKDW WKH\·UH DJDLQVW LW 1RW SXEOLFO\",QWHUYLHZ ZLWK 3

Attitudinal barriers

137. There has been dack of systematic prioritisation RI 6 * % 9 FULPHV E\ WKH prosecutorial leadership. With regard to non-judicial accountability mechanisms, and PRUH SDUWLFXODUO\ ZLWKLQ 2+&+5 WKHUH ZDV DQ LQLWLDO UHOXFWDQFH WR L1693FkrisJesquaeUydrwyerHhateZ*K9/H9Q YLRODWLRQV DQG FULPHV DIIHFWLQJ PHI experts, even where the positions came funded.

138. 7KDW VRPH FULPHV DUH PRUH OLNHO\ WR EH LQYHVWLJDWHG DQG LQGLFWHG LV D Chie Linker Praction alleriam in all lapher echas come through the crime of sexual violence. The of the fact that society considers some victims to hold greater intrinsic value than RWKHUV 3DWULFLD 9LVHXU 6HOOHUV VWDWHG

7KDW·V YHU\ PXFK WKH ZD\ LW ZDV ZLWK VH[XDO YLROHQFH LQ WKH ÀUVW \ H D U V It is not quite that now, but it always seems like an extra. "It is too long to EH RXW LQ WKH ÀHOG WR WDON WR WKH NLGV LW WDNHV WRR ORQJ WR JHW WKDW BKILDOVORODHQ \$QG RI FRXUVH WKDW LV VKRFNLQJ DQG RXJ to talk about sexual violence." Well, those are defensive strategies. 1R RQH ZRXOG VD\ '+RZ ORQJ GLG LW WDNH WR GLJ XS WKDW PDVV JUDYH"µ :KDWHYHU LW WDNHV WR GR LW '<RX GRQ·W KDYH DQ\ IRUHQVLF H[SHUWV" :HOO we'll get a group from around the world. But, wait a second, we don't have a laboratory set up! Well, we'll ask France if we can use its laboratory. :KR·V JRLQJ WR UHIULJHUDWH WKHWUMPDDLQV":H·OO DVN VRPHRQHu

139. 6RPH FRPPXQLWLHV RI YLFWLPV DQG VXUYLYRUV DUH PRUH YLVLEOH WKDQ RWKHStructural barriers

vested with fuller notions of humanity, making it seemingly more incumbent that the crimes against them be recorded and punished. This invisibilisation of 'groups', such as women and children, stems from persisting power dynamics which contribute to perpetuating gender or generational inequalities.

TXHVWLRQ RI.25SROSWDFDV RXXOV

140. The marginalisation of certain 'groups' of victims and survivors has an impact on the DFFRXQWDELOLW\ SURFHVV 7KH JHQHUDO XQGHUUHSRUWLQJ RI 6*%9 FULPHV DQG FQLDQQQ WKH HIIRUWV RI WKH WULEXQDOV WR LQWH YLRODWLRQV DIIHFWLQJ FKLOGUHQ LV UHÁHFWHG LQ WKH JHQHUDO SDXFLW\ RI HYLJÖJHONFOLD DW RH QLOTA ROWLRQ RI WKH PRVW DGHTXDWH LO

for collection by investigators dealing with social taboes. Moreover, concerns over risks of retraumatisation of vulnerable victims and witnesses have also affeacted

WKH FROOHFWLRQ RI HYLGHQFH RQ 6*%9 FULPHV DQG RI YLRODWLRQV DQG FULPHV A HYLGHQFH RQ 6*%9 FULPHV DQG RI YLRODWLRQV DQG FULPHV children. 258 as well as the analysis of the impact of such violations and crimes hat

VWDUWV DV DQ DWWLWXGLQDO EDUULHU ZUKREK LQWR VLJQLÀFDQW VWUXFWXUDO REVWDE of the things that we can learn from the past judicial mechanisms is that

141. \$V D UHVXOW IRU PDQ\ \HDUV VH[XDO YLROHQFH DJDLQVW ZRPHQ DQG JLUOV ZDV LJQRUHGSE)HDG DQG V\VWHPDWLF DWWDFN EXW WKDW VH[X investigators and prosecutors, sometimes in circumstances where maintaining such

72

blindness could perhaps be considered wilful.

142. 'RFXPHQWDWLRQ ERWK DV D UHFRJQLWLRQ RI WKH FULPHV DQG DV D SDWK WR DFFRX OUT OF THE RECOGNITION OF THE NEED TO SOME THE PROPERTY OF THE NEED TO SOME THE RECOGNITION OF THE NEED TO SOME THE PROPERTY OF THE PROPERT

is therefore particularly important for crimes committed against or directly affecting marginalised groups Impunity for these crimes acts to reinforce, rather than challenge, pre-existing norms and patterns of discrimination, both inside and outside the context of unrest or war. With documentatiothe intersectional nature

QWHUYLHZ ZLWK 3DWULFLD 9LVHXU 6HOOHUV 256 For a discussion of the impact of intersecting marginalised identities on people's access to justice, see Committee or the Elimination of Discrimination against Women, HQHUDO UHFRPPHQGDWLRQ 1R RQ JHQGHU EDVHG YLROHQFH DJDLQVW ZRPHQ ZKLFK XSGDWHG JHQHUDO UHFRPPHQGXDOWLRQ 1R 257 1RZURMHH ² <RXU -XVWLFH LV WRR 6ORZ, p. 10, fn. 8

258 Interview with expert.

RIWKH LOWKLR/XLOEGODLOWN R ETHE Volume Rephaled Wild as the one who LV SUREDEO\ PRVW ORVW WKHQ ZKHQ ZH WU\ DQG ÀQG WK situations. That's the person that disappears #59

URXWLQHO\ UHQGHUHG OHVV YLVLEOH LQ MXVWLFH SURFH

often understood reductively. The entry point for making women and girls visible in

entry points for understanding the crimes that children, and particularly boys, suffer LQ FRQÁLFW LV WKH ZDU FULPH RI UHFUXLWPHQW DQG XVI

age in hostilities I see this enormous focus on child soldiers - the recruitment and use of

I see, in the practice of international and internationalised courts, what I would call an almost RYHU IRFX V RQ WK DIMYouSlobokJatVLFX ODU LV VX H their practice, it almost seems like this is the only thing that happens

WR FKLOGUHQ LQ FRQÁLFW LV WKDW WKH\ DUH UHFUXLW EUXWDOLVHG HVVHQWLDOO\ \$QG LI \RX DUH D JLUO VR VH[XDO SXUSRVHV \$QG, ÀQQRGWWCKQD WOYFWF IR UEDHWHZHU10916ÁH IRMX MARA RIZKDW KDSSHQV WR.20FK/PGGDHQVLRQXFUR/QÁLFW

113. Similar V W U X F W X U D O E D U U L H U V E R O V W H U H G E \ D Q G L Q W X U also abound. Initially, there was little State support for ensuring accountability IRU 6*%9 FULPHV QR UHFRJQLVHG RU FXUDWHG SRRO RI H VWUXFWXUH LQWR ZKLFK WR FRQYH\ WKDW H[SHUWLVH LQV

documentation entities, such as the Commissions of Inquiry or Fact-Finding Missions. was either perceived as requiring separate attention and structures or, in some

LQVWDQFHV PDLQVWUHDPHG LQ FRUH LQYHVWLJDWLRQV

WXUQ UHLQIRUFHV KDUPIXO DWWLWXGHV SDUDO\VLQJ WKH DFFRXQWDELOLW\ SURFHVSexual violence usually falls out when it is isolated [...] We understand better now that it's not the errant solider who ran off and did something in the midst of this

attack.261

114. On the ground, there was both little funding for, and with a few exceptions as ZKR KDG VXIIHUHG FULPHV RI 6*%9 DQG D IDLOXUH WR XQ of speaking to investigators was often too high for the victims and their families to

pay. Initially, there was also very little funding for psychosocial support for victims of sexual violence, a state of affairs which continues for child victims of mass atrocity even today \$ FFRUGLQJ WR DQ H[SHUW PDQ\ RI WKH FKDO

QWHUYLHZ ZLWK 'U \$OLVRQ %LVVHW QWHUYLHZ ZLWK 'U \$OLVRQ %LVVHW)HEUXDU\

^{261 ,}QWHUYLHZ ZLWK 3DWULFLD 9LVHXU 6HOOHUV)HEUXDU\
262 ColSyria, <u>7KH\ &DPH 7R 'HVWUR\µ</u>, 6,6 & U\$. PH5 & \$J & 5 & V W W-IXHQ H:D] LTGeLSVDUD YLRODWLRQV VSHFLÄFDOO\ VXIIHUHG E\ <D]LGL FKLOGUHQ ZKR ZHUH KHOG DQG

child rights documentation mirror the one encountered a decade ago with regard WR WKH GRFXPHQWDWLRQ RI 6*%9 EXW FDQ QHYHUWKHOHVV DV H[SHULHQFH KDV VKIRJZQQLÀEBQW IDFWRU LQ DFKLHYLQJ MXVWLFH IRU 6*%9 FU overcome by all stakeholders involved.

Important differences

- 115. There are important, instructive differences between the situation of those seeking to VWUHQJWKHQ DFFRXQWDELOLW\ IRU 6*%9 FULPHV DQG DGYDQFH JHQGHU VHQVLWLY BerDo Sell Pro Fakher han accountability or advocacy. and those seeking to strengthen accountability for violations and crimes against or affecting children. 119. That there are more organisations working on gender justice within the sphere
- 116. First and foremost are the RIWHQ XQUHFRJQLVHG SROLWLFDO FRPSOH [LWLHV VXUURXQGLQJ DFFRXQWDELOLW\IRU YLRODWLRWQHivle BheQeGs mFoWrlmBrHeV DIIHFWLQJ FKLOGUHQ FRQVHQVXV RQ WKH QHHG WR HQG LPSXQLW\ IRU 6*%9 States are more reluctant to centre advocacy on accountability for crimes and violations affecting children. The pursuit of accountability for these crimes or violations can give rise to other kinds of accountability concerns. The legitimacy of military operations and measures taken in the name of national security, such as the detention of children on national security grounds, can be uncovered and called into question when documenting or investigating crimes and violations affecting children. This can shed light on the record of those States which might be implicated in the commission of crimes affecting children and might wish to shield such information from scrutiny.
- 117. 7KLV KDV FUHDWHG D VLJQLÄFDQW VWUXFWXUDO EDUULHU DQG UHVXOWHG LQ D ODEN And A Control of the Civil society organisations, such as Terre des Hommes and comprehensive attention to violations and crimes against or affecting children in the foundational instruments of accountability mechanisms. It is through the support RI 6WDWHV LQ KLJK SURÀOH IRUXPV VXFK DV WKH 81 6HFXULW\ &RXQFLO RU RI 6W DdW Eavy in Koleal Kand international forate, children are often not fully included in SURÀOH LQLWLDWLYHV VXFK DV WKH 8QLWHG .LQJGRP·V 3UHYHQWLQJ 6H[XDO 9LROstrategible and bolicy discussions, nor do they contribute directly to recommendations that the issue remains in public view. 6 W D W H V D O V R S U R Y L G H D V L J Q L À F D Q W V R X U F H R I funding, and pressure for results.&pFLOH \$SWHO ZKR KHDGHG WKH , , , 0 · V VWDUW XS WHDP UHPHPEHUHG VHYHUDO VWDWHV VSHDNLQJ DERXW WKH LPSRUWDQFH RI GRFXPHQ124LQq 00 14 XHQWO\ FKLOGUHQ DUH VWLOO ODUJHO\ GHSHQGH crimes, and being willing to provide dedicated funding, but she could not recall a State speaking to her about ensuring that evidence about crimes against children ZRXOG EH FROOH FsWorld Off of Keyl World Row Walnin MeKitsHithat made funding conditional on taking on sexual crimes, it would probably not have really happened. That's what makes the big difference between sexual crimes and crimes
- 118. Second, and as described in Section I, there is a natural home inside the UNfor an entity which is willing to be the nexus for accountability for crimes affecting children, for raising funds, and to assist in building and disseminating knowledge.

against women or crimes against children: (PSKDVLV RXUV

Third, as highlighted, many civil society organisations, and more particularly large NGOs

ZRUNLQJ RQ FKLOGUHQ.V LVVXHV KDYH D PL[HG RU H[FOXVLYHO\ KXPDQLWDULDQ PDQGDWH ZKLFK UHTXLUHV DFFHVV WR7KDILMHEWHQORWFRWFKDKOFLDWILHHZ/LWK 6*%9

where the numerous organisations working on advocacy for sexual crimes are, with some exceptions, not those engaged in providing health treatment or relief aid to

of international and local criminal accountability is a resulinter alia, of the fact that VWURQJ ZRPHQ DGYRFDWHV DUH LQFUHDVLQJO\ HVWDEC organisations, as well as the fact that women are moving into greater positions of diplomatic and political power in their countries While it is not the exclusive role of women to introduce matters of sex and gender into investigation strategies, charging decisions, or judicial deliberations, the impact of activist female voices has motivated progress in recognising sexual and gender-based violence as international crimes

LQWHUSUHWDWLRQ WR LQWHUQDWLRQDO ODZ VXFK DV WK

IRFXV RQ JHQGHU MXVWLFH VXFK DV :RPHQ·V .QLWLDWLYH D YHU\ IHZ \$Q H[SHUW QRWHG WKDW D VLPLODU FRQVWLW

DWWULEXWLQJ WKLV WR FKLOGUHQ·V ULJKWV 1*2V· IRFXV

DV PHQWLRQHGAKDYESRIYFHDVHQ IVRIVIHH [DPSOH 6LPLODUO\ WKR UHOHYDQW SRVWV DW -55 DQG 81 :RPHQ KDYH WR GDWH

120. It is becoming increasingly common for children to enter the public sphere to advocate for their rights: However, the number of child advocates remains marginal, and too often their voices are channelled through interactive segments or and Defence for Children International, have undertaken capacity-building efforts at the international and local levels, to promote and drive children's participation and addressed to decision-makers?

survivors: The existence of an accountability-focused constituency has been a

pursue a gendered approach to accountability, such as the Women's International League for Peace and Freedom in London; advance a progressive gendered

DQG WR SULRULWLVH WKHLU ULJKW DéspMteRan i Docte absett QWHUHVWV LQÁXHQFH DQG LQ VRPH LQVWDQFHV D UROH LQ GHFLVLR legal, cultural, and social structuresnean that, ultimately, decisions will be taken by adults, to which the ultimate decision-making power is entrusted while there have

been occasions for momentum, such as the publication of Graça Machel's report, there has not been sustained focus, or consistent funding, from governmental or nongovernmental actors on strengthening accountability for crimes against children.

75

&RQVHTXHQWO\ WKHUH LV OLPLWHG SV\FKRVRFLDO VXSSRUW DYDLODEOH WKDW LV GLUHFWO\ WDUJHWHG DW270W Kedde toQilhstalin@ce/inReinverWildcright of thill Kidu o@cates thu @ng the interactive segment preceding discussions FRPPHPRUDWLQJ WKH DGRSWLRQ RI WKH &5& *HQHODONBIWLHQRBOY\$30HQDU\ 263 Interview with expert. 1RYHPEHU KWWSV ZZZ XQ RUJ SUH.VV HQ Interview with expert , QHWYLHZ ZLWK & pFLOH \$SWHO 0DUFK

²⁶⁶ Interview with expert.

²⁶⁷ Interview with expert.

^{268 6} H H | D P S O H V R I J R R G S U D F W L F H L Q F K L O G U H Q · V D Q G \@ hkb(00 d a S Abb(00 O H · V S D U W L F FDWHV 6WUHQJWKHQLQJ &KLOG DQG <RXQJ 3XIQBOH V SSDUWLFLSDWLRQ LQ \$GY 269 Save the Children, W V DOO DERXW FKLOGUHQ VHYHQ JRRG H[DPSOHV DQG WHQ VWHS V

in reporting to the Committee on the Rights of the Chil@011.

²⁷¹ Supra note 12.

SECTION III.

INNOVATION, STRATEGIES, AND SOLUTIONS TO OVERCOMING BARRIERS TO ACCOUNTABILITY FOR VIOLATIONS AND CRIMES AFFECTING CHILDREN

144. In this section of the Research Paper, we lay out potential strategies and solutions that have emerged from our work and research. In 3 D WeWsetSout possible strategies and solutions to overcome some of the barriers to accountability for violations and crimes affecting children described in Section I. Part B describes the DSSURDFK DGRSWHG LQ WKH FDVH RI .DYXPX LQ WKH '5& ZKLFK UHVXOWHG LQ W prosecution, and conviction, of 11 individuals for the rape of young girls living in eastern DRC. From this case, we draw lessons that could have wider application beyond the individual context of the case.

PART A. STRATEGIES AND SOLUTIONS

%XLOG SROLWLFDO EDFNLQJ DW WKH VWDWH DQG GLSOI to maintain focus on the issues, and open and sustain dedicated funding streams

145. Political willingness to put accountability for violations and crimes affecting children securely on the international agenda can bring about increased visibility of these violations and crimes at the political and diplomatic levels and in the foundational instruments of accountability mechanisms; the allocation of dedicated funding streams for the building and provision of expertise; and prioritisation of the issue in LQYHVWLJDWLRQ VWUDWHJLHV \$V QRWHG E\ RQH H[SHUW FRPEDWLQJ VSHFLÀF | crimes and violations affecting children needs to be viewed as a stand-alone issue of importance, in order to generate funding²⁷²

146., QFUHDVHG GLDORJXH DQG FRRSHUDWLRQ RI NH\ DFFRXQWDELOLW\ DFWRUVis essen ensure that accountability for crimes and violations against children stays high on

WKH SROLWLFDO DJHQGD \$ ODFN RI DFWRUV VROHO\ IRFXVHG RQ DFFRXQWDELOLW\ KDV EHHQ highlighted as one of the numerous challenges faced by leading organisations HQJDJHG LQ LQÁXHQFLQJ HIIRUWV RQ WKH LVVXH ,Q WKLV FRQWH[W DQG WDNLQ%VWRFNGRIDWKHRO RI H[SHUWLVH VLJQLÀFDQW LPSDFW RI 81:RPHQ RQ DFFRXQWDELOLW\ IRU 6*%9 WKH HVWDEOLVKPHQW RI D
150. HYHORSLQJ DQG HQKD,QwffhlinQall/addcdvlinDablility-iDleschbafristm\8/, vis 8 1 H Q W L WinterValla to blot-ocate for accountability for violations and crimes

affecting children, and raising funds, has been suggested as a way to mobilise stakeholders, and to generate greater political awareness and willingness to address this issue.

&UHDWH VWUXFWXUHV ZLWKLQ 2+&+5 WR documentation and investigation of violations and FULPHV DIIHFWLQJ FKLOGUHQ E\ QRQ MX mechanisms

- 147. Experts have suggested that aXQLW VKRXOG EH FUHDD Model & ZLWKLQ 2+&+ VXEVWDQWLYH OHJDO DQG RSHUDWLRQDO JXLGDQFH VXSS GXULQJ PDQGDWH VinclvidMngDdvh Wout XXOS lingited Dtd./ Inhvestigating DQG SURYLGLQJ WKH DGHTXDWH OHJDO TXDOLÀFDWLRQV W children and other subjects?3 This would encompass training on applicable law and disseminating practical methodological tools, which would include child-competent LQIRUPDWLRQ FROOHFWLRQ VXFK DV FKHFNOLVWV H J R GRFXPHQWDWLRQ DQG WHPSODWHV H J RQ LQIRUPHG FR IRU LQWHUSUHWHUV HWF WKDW HDFK PLVVLRQ FRXOG W provision of training, pre-deployment or in the initial phases of the mission, would enhance the quality of information collection and analysis and minimise the risk that important data is disregarded. For longer-term mandates, once the start-up phase is FRPSOHWH VXFK HISHUWLVH VKRXOG EH DYDLODEOH ZLWK a view to promoting broad-based competence on addressing crimes against children throughout the mandate or mechanism.
- 148. One expert recommended that this unit be established ithin OHCHR; according to this interviewee, if an external body were to be created, there would be a risk that mandates would not systematically have recourse to2it.Moreover, having an internal mechanism would FRQWULEXWH WR with MOLHONHROLL Leads to the first of the control these issues are mainstreamed, enhance internal capacity, appdeserve institutional memory RQ WKHVH LVVXHV 6XFK D GHGLFDWHG XQLW ZRXOG for the support of Cols, FFMs and the start-up phases of Human Rights Councilmandated entities such as the IIMM, and even Geneva-based entities mandated by RWKHU 81 ERGLHV VXFK DV WKH ...0
- 149. There is a strong argument that this is needed, given the proliferation of such documentation entities over the last decade, without a corresponding increase in VWDIÀQJ DQG UHVRXUFHV ZLW#KOLu@cen2tly; &upp5ort/160RCoMsXSSRUW WKF DQG))0V LV GLYLGHG EHWZHHQ GLIIHUHQW RIÀFHV QRWLF 558 DQG WKH 0HWKRGRORJ\ (GXFDWLRQ DQG 7UDLQLQJ 6 the recruitment into the Cols and FFMs, while METS supports training, formation of JXLGHOLQHV DQG EHVW SUDFWLFHV DQG RYHUVHHV WKH (558 QRU 0 (76 DUH GHGLFDW Ha@InWork@loo@unRenWation)e@nwitieRU RWKHU Rather, their support to these entities runs alongside their OHCHR-directed work.

key to ensuring that investigations are child-competent, that lessons learned and best SUDFWLFHV VWHPPLQJ IURP ORFDO DQG LQWHUQDWLRQDO and systematically shared, and that a child-centred analysis of crimes and violations

²⁷² Interview with expert.

^{273)} HGHULFD '-\$OHVVDQGUD 6DUHW DS \SYVK FDV3K KUDVQQ & K6DVOHCSHK (GH,QH \FD D&SRSQ | ¶UR Q W HG E \ 8 ODQGDWHV 3HUVSHFWLYHV IURP &XUUHQW DQG)RUPHU 6WDII 3DUW ,,, · 2SLQ \$\frac{1}{5}\$HFRPPHQGDWLRQV RI WKH *URXS RI 3UDFWLW-IDRQXHDWX RQ)DFW)LQGLQJ DQG 274 Interview with expert.

^{275 6} X S U D note 273.

is systematically integrated into accountability efforts. In turn, this will create an expectation that violence affecting children must be considered systematically, as is SUHVHQWO\ WKH276FDVH ZLWK 6 * % 9

Create a structure focused on building and disseminating expertise

151. \$GHTXDWHO\ VWDIÀQJ QRQ MXGLFLDO DFFRXQWDELOLW\ PHFKDQLVPV LV SDUWLFXO Strengthened the capacity of investigators to develop strategies for the investigation

RI YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ ZKLFK given the severe time and resource constraints under which mission design and planning usually occur. Building a substantial pool of investigators is critical, particularly because once a mandate is activated, staff must be immediately operational and put their skills into practice. In the case of judicial accountability mechanisms, the deployment of experts offers a solution to overcome skills shortage, and thus strengthen the capacity of teams of analysts and investigators. One solution could be the FUHDWLRQ RID URVWHU RU QH[XV RIH[SHUWLVH RQ WKH LQYHVWLJDWLRD] and the need for expertise to support this. of violations and crimes affecting childrenthat can be deployed into non-judicial and judicial accountability mechanisms, a modeFXUUHQWO\EHLQJH[SORUHGE\-XVWLFH Rapid Response.

documentation, investigation, and prosecution of violations and crimes affecting children; as a result, it is currently building a similar model in respect of these crimes. One expert noted that through the deployment of child rights experts who can investigate crimes against children and apply child-sensitive approaches in human rights investigations, those investigations will set higher and concrete expectations of what a victim-centred and child-rights sensitive investigation looks like and SURYLGH VROLG LPSDFW VWRULHV WKDW FDQ EH FROOHFWHG DQG LQÁXHQFH RWKHULNU GEKLDOOHQJH WR WKH VXVWDLQDELOLW\ RI WK HQWLW\ ZLWKLQ WKH 81 QRU DQ\ 81coonsisteethij tuindsinky DWH KDV F advocacy277

153. -55 KDV IDFLOLWDWHG ZRUNVKRSV RQ WKH H[FKDQJH RI EHVW SUDFWLFHV EHWZHHQEH SHUWW \$ V KLJKOLJKWHG LQ 6HFWLRQ , QHLWKHU 81, and organized IICL led requitment courses with a feetly on investigation of violations and organised IICI-led recruitment courses with a focus on investigation of violations and crimes affecting children - 55 KDV DOVR UHFUXLWHG DURXQG to its specialist roster. These include, for human rights focused investigations, child SURWHFWLRQ RIÀFHUV ZLWK H[SHULHQFH LQ LQYHVWLJDWLRQV RU PRQLWRULQJ DQGKP*2HVWDNXZLGWKDYH WR ÁRZ IURP 6WDWHV 2 ZKHWKHU LW investigation expertise. In each case, a legal background is preferred. For criminal investigation expertise. In each case, a legal background is preferred. For criminal investigations, criminal investigators from national jurisdictions who are trained in LQWHUYLHZLQJ FKLOGUHQ DUH DOVR UHFUXLWHG ,Q OLQH ZLWK WKH SURFHVV IRU other rosters, the focus of the specialist children's roster is on candidates' existing expertise, with the IICI training programme used to observe participants' approaches to work, rather than to equip them with core skills.

154. \$FFRUGLQJ WR RQH H[SHUW WKH GHSOR\PHQW RI FKLOG ULJKWV DGYLVRUV FDQ ERO WWW POW BOOK A Strong and primary focus on strategies and capacity of mandates to develop strategies for the investigation of violations DQG FULPHV DIIHFWLQJ FKLOGUHQ ZKLFINKITHED\ LQFOXGH LQWHUYLHZLQJ FKLOGUHQ GHYHORSPHQW RI VSHFLÀF 6WDQGDUG 2SHUDWLQJ 3URFHGXUHV DQG WKH SURGXFWLR analysis as well as the application of relevant legal standards and analysis to reports that are child-focused: \$Q H[SHUW IURP WKH URVWHU KDV EHHQ GHSOR\HG DV D &KLOG 5LJKWV \$GYLVRU WR WKH 6\ULD &RPPLVVLRQ RI ,QTXLU\ +H SOD\HG D NH\ UROH LQ WKH

documentation and analysis of violations and crimes affecting children, culminating

LQ WKH ZHOO UHFHLYHG UHSRUW '7KH\ KDYH HUDVHG FKLOGUHQ.VULJKWVLQ 24/VSKKVelra6dtbletsDh@ve \$beb@ifevofs/ebdSnXEOLF KXPDQ ULJKWV PRQLWRULQJ SDUWLFXODUO\ LQ WKH 0LGG deployed to the Commission of Inquiry on Burundi.

155. When deployed to non-judicial accountability mechanisms, experts have

156. The success and sustainability of such deployments depend on the cooperation

accountability with regard to the experts' engagement, and deliverables.

LQWHUYLHZEQ7HPWWLOFODWHQ DUH VWLOO EHLQJ LGHQWLÀHG ² WR FROOHFW VROLG LPSDFW VWRULHV LQÁXHQFH DFWRU and secure partnerships: \$ V PRUH H[SHUWV DUH HPEHGGHG LQWR WI teams, their added value will, it is hoped, be recognised, and result in an ingrained acknowledgement that dedicated investigations of violations and crimes affecting

of accountability mechanisms. One of the key challenges is to ensure the HPEHGGHGQHVV RI GHSOR\HG H[SHUWV LQinWKH GLIIHUHQW 152. 7 KURXJK LWV GHSOR\PHQW RI 6*%9 H[SHUWV -55 LGHQWLÀHG D VNLOOV JDS LQ WKHOrder to secure the support of senior staff in the mainstreaming of child rights approaches, and to hold the host mechanisms accountable over their use. The LGHQWLÀFDWLRQ RI FOHDU OLQHV RI UHSRUWLQJ DQG WKI indicators in the experts' terms of reference have been suggested as ways to clarify the mechanisms' needs and expectations from the outset, and to guarantee

this expertise LQ FRQWUDVW WR 6*%9 H[SHUWV ZKR DUH UHFUXL

158.SXVWDLQDEOH IXQGLQJ IRU FKLOG ULJKWV H[SHUWLVH ER In interviews for this report, various States known to be generally supportive of PGYDOFLOJ LOWHUQDWLRQDO FÜLPLQDO DFFRXQWDELOLWY ÄQDQFLDO VXSSRUW DQG DGYRFDF\

159. 2 W K H U N H \ U H F R P P H Q G D W L R Q V R Q W K H R S H U D W L R Q R I W K

interviewing children, that encompass age-disaggregated and intersectional information collection;

avenues to investigate violations and crimes against or affecting children without

²⁷⁶ Interview with expert.

²⁷⁷ Interview with expert

²⁷⁸ Interview with expert.

²⁷⁹ Interview with expert.

²⁸⁰ Interview with expert.

²⁸¹ Interview with expert.

²⁸² Human Rights Councif, 7 K H \ KDYH HUDVHG WKH GUHDPV RI P\ FKLOGUHQ μ FKLOGUHQ \cdot V U \$ +5& &53

²⁸³ Interview with expert. KWWSV ZZZ RKFKU RUJ (1 +5% RGLHV +5 & &R, %XUXQGL 3DJHV &R

²⁸⁴ Interview with expert.

²⁸⁵ Interview with expert.

²⁸⁶ Interview with expert.

²⁸⁷ Interview with expert

^{288 ,} QWHUYLHZV ZLWK &pFLOH \$SWHO 3DWULFLD 9LVHXU 6HOOHUV 289 Interview with expert

- Experts should include individuals from national jurisdictions who are skilled LQ LQWHUYLHZLQJ FKLOGUHQ H J LQYHVWLJDWRUV ZRUNLQJ LQ FKLOG DEXVH XQLWtMink thDaQsOmuch more important than International Criminal Law with providing mental health and psychological support to children during investigations 200 VXFK H[SHUWV PD\ UHWXUQ WR WKHLU MXULVGLFWLRQV DW WKH HQG of their GHSOR\PHQW UDWKHU WKDQ WUDQVLWLRQLQJ LQWR LQWHUQDWLRQDO PHFKDQ1602.P7VKHWHRJSNHHUHLSHQFH RI WKH *DJD &RPPLVVLRQ LOOXVWUDWHV ZLWK VXFK EDFNJURXQG 7KH &RPPLVVLRQ ZDV HVWDEOLV building their skills:91
- ([SHUWV \$\UKR\XLOGGH WUDLQLQJ DQG PHQWRULQJ WR RWKHU PHPEHUV RI VWDIIto HQVXUH ZLGHVSUHDG GLVVHPLQDWLRQ RI NQRZOHGJH DQG HQKDQFH RIÀFH ZLGH FTDeSrnDefsttgtMtion focused on what the Commission described as "an ongoing military beyond the individual investigation or case.
- 7HUPV RI UHIHUHQFH VKRXOG LQFOXGH Dwitthith SRUWLQJ OLQH WR VHQLRU PDQDJHP HeQulting in scores of civilian casualties, including 551 children*. accountability mechanisms, as this may make it more likely that they receive additional support when seeking to mainstream a child-competent analysis and approach; and monitoring and evaluation indicators that allow accountability of the mechanisms over the use of experts:

160.: KLOH -55 GHSOR\PHQWV FDQ EH SDUWLFXODUO\ YDOXDEOH WKH\ GR QRW DOZD\V SWKYLDGOXDOW SRSXODWLRQ 1RQHWKHOHVV DFFRUGLQJ WR VXVWDLQDEOH VROXWLRQ IRU ORQJHU WHUP PDQGDWHV H J WKH ..00 RU ...0 .Q VFXFFKPEDVHRQ WKH DGYLVHU·V SUHVHQFH ZDV EHQHÀFLDO it is preferable for the expertise to form part of the core and ongoing structure of the organisation rather than to be available on and hoc or temporary basis. This is particularly the case given that the success of the work is heavily dependent on building and sustaining relationships of trust with a wide variety of interlocutors, and developing institutional knowledge, which is incompatible with frequent turnover of

Draw from national jurisdictions: the experience of the 2014 United Nations Independent Commission of Inquiry on the 2014 Gaza con ict ('Gaza Commission')

161. \$FFRXQWDELOLW\PHFKDQtle&ruPtMgzEdRnXn@ti@nalEjtHti@dHdti\o\n\URP HLWKHU GLUHFWO\ RU WKURXJK D FKLOG VSHFLAF URVWHU DV GHVFULEHG DERYH criminal investigators possess formal training and up-to-date experience interviewing children.294 \$ V RQH H[SHUW VWDWHV

The police I've worked with from various jurisdictions just know how to do this. They know how to ask the right follow ups, they know how to be VHQVLWLYH WKH\ KDYH WKLV LQQDWH SURWRFRO DV WR KRZ WR PDQDJH D GLIÀF TRING, in this case within OHCHRLV DOVR UHTXLUHG

VLWXDWLRQ \$QG WKDW LV QRW WDXJKW > @ 7KDW LV \HDUV RI EHLQJ LQYHVWLJDWRUV LQ

I DV PDQ\ GRPHVWLF 164. While the presence of the expert meant that the perspectives of children were not ignored in the documentation process, concerns were expressed that the advisor's presence and work did not generate a broader attitudinal change, insofar as crimes against children were still not perceived as a core component of their workThis suggests that H [S R V X U H W R H [S H U W L V H P D \ Q R W E H H Q R X J K D W Y

UHDOO\GLIÀFXOW VLWXDWLRQV > @

people who have spent their careers doing this, investigating crime

humanitarian law in the occupied Palestinian territory, and particularly in Gazza.

FDPSDLJQ ODXQFKHG E\, VUDHOL IRUFHV LQ -XQH

intensive bombing and shelling of residential neighbourhoods, schools and hospitals,

163. The Commission formally began work in September 2014, and reported to the Human

resourced, the adviser investigated both crimes affecting children and crimes against

She spoke with everyone who had information on crimes against children,

WKH\ ZHUH IURP 1*2V 6KH VSRNH ZLWK HYHU\RQH

whether they were victims, whether they were witnesses, whether

good sense, very hard for this to be in the report [...] She left no stone unturned. If we wanted to speak about killing - because, in reality, that was also the major alleged crime against children - not only did she

investigate every incident that involved a substantial number of children,

if it was just one, she also investigated the impact, psychological impact,

5LJKWV &RXQFL⊕ BQX-WXQDHOO\IRU D &R. D FKLOG SURWHFW

VSHFLÀFDOO\ UHFUXLWHG IURP WKH QDWLRQDO V\VWHP %

knowledge or geographical spreate. (PSKDVLV RXUV

- X O \

FKLOGUHQ ZDV GRFXPHQWHG

educational impact, the whole range:99

&RXQFLO RQ

, WKLQN WKH PRO

u ZKL

81

WR LQYHVWLJDWH YLRODWLRQV RI

7KHSLPPUWDQFH RI UHFUXLWLQJ GRPHVWLF FULPLQDO LQYHVWLJDWRUV WR WKH URVWHU ZDV DOVR KLJKOLJKWHG E\ (ULQ *DOODJKHU '7KH\ DUH WUXO\ WKH RQHV WKDW DUH PXFK PRUH FXWWLQJ HGJH WKDW DUH GRLQJ LW HYHU\ VLQJOH GD\ \$QG,QWKHVVUHHZHZHLIVQKJ .DWH *LEVRQ KRZ LW SOD\V RXW LQ WKH FRXUWV > @ , ZRXOG UHDFK RXW WR > @ WKH ODZ HQIRUFHPHQW DJHQFLHV DQ966 MVMRn8mHRights 00066mbil \$\frac{1}{2} + 5 & 5 (6 6) DIÀOLDWHG RUJDQLVDWLRQV WKDW ZRUN ZLWK FKLOGUHQ DQG SDUWQHU ZLWK ODZ HQIRUFHPHQW DJHQFLHV , XRKOBWRIULWWRIULWWRIULQDWLRQDO KXPDQLWDULDQ ODZ DQG LQWHUQDWLRQDO LQYHVWLJDWRUV LQ WKH FKLOG DEXVH XQLWV 21 FRXUVH WKHUH·V D OHDUQLQJ FXUYH IURP GRLQJ WKDW WR LQMWHULWWRIZLQJJ FXUYH JURP GRLQJ WKDW WR LQMWHULWWRIZLQJ FXUYH JURP GRLQJ WKDW WR LQMWHULWWRIZL GANG WHOLW WHO WKH W LAWW WR LQMWHULWWRIZL GANG WHOLW WR LQMWHULWWRIZL GANG WHOLW WR LQMWHULWWRIZL GANG WHOLW WR LQMWHULWWRIZL GANG WHOLW WR LAWW WR LQMWHULWWR WR LQMWHULWWR WR LQMWHULWWR WR LAWW WR LQMWHULWWR WR LAWW DERXW ERPELQJV OHW·V VD\ EXW WKH\·UH JRLQJ WR KDYH WKH IXQGDPHQWDO VNLOOV DQG WKH\ ZLOO KDYH GRRQGGWR WPBQ\VR.QWKHP-XQH ZKHWKHU EHIRUH GXULQJ RU DIWHU WR HVWD DQG WKH\·UH JRLQJ WR KDYH VXFK D FRPIRUW OHYHO > @ , ZRXOG PL[WKHP ZLWK > @ WKH LQWHUQDWLRQDOYLWR DDW LDR.QHV ZDRQJON LRQ JWZKLHWKULPHV SHUSHWUDWHG DQG WR LGHQWLI\ WKRVH UH FKLOGUHQ LQ FRQÁLFW VLWXDWLRQV 81,&() 6DYH WKH &KLOGUHQ DV ZHOO DV WKRVH QDWLRQDO RU ORFDO RU.QDQEFBXWQ WQ ELLOHLJWX\OPDHUDWXXUHV DOO ZLWK D YLHZ WR DYRLGLQJ DQG HQGLQJ ZRUNLQJ ZLWK FKLOGUHQ LQ FRQÁLFW VHWWLQJV FDPSV DQG ZKR XQGHUVWDQG WKH FXOWXUH DQG ORFDO FRDWHHIMHO70R DHFWFRND WDKHDH DQG RQ ZD\V DQG PHDQV WR SURWHFW FLYLOLDQV D CAN PONH VXUH WKDW SHRSOH DUH GRLQJ WKH LQWHUYLHZLQJ LQ D ZD\ WKDW·V JRLQJ WR EHQHÀW D FDVH DQG R&RKXUWHDVLQLWDV WZ. pha@a.W13. HLJKWK VHVVLRQ ZD\ WKDW LV JRRG IRU D FKLOG µ ,QWHUYLHZ ZLWK (ULQ *DOODJKHU

291 Interview with expert.

staff on short-term contracts.

,QHWUYLHZ ZLWK H[SHUW \$QRWKHU H[SHUW ZDV VLPLODUO\ RI WKH YLHZ WKDW D UHSRUWLQJ OLQH WR VHQLRU PaDodQreboe/Wheter/hhbQe-WhanS55780Vw/mWbbleb \$vubhro@issions, Human Rights Coun<u>cell,HSRUW RI WKH GHW</u>DLOHG ÀQGLQJV F affected the expert's ability to work within an existing team, and ensured they received explicit support for their work and their area of focus from within the entity.

294 Interview with expert.

7KH & RPPLVVLR"QveZtDqàte RIIDQGDWHG WR

297 Human Rights Council 5 H S R U W R I W K H G H W D L O H G A Q G L Q J V R I W K H & R P P\$L V V L R Q R I , Q T X +5& &53 - X Q H

298 7KH &RPPLVVLIRQ FRQIG XVFKVDQ LQWHUYLHZV ZLWK YLFWLPV DQG ZLWQHVVHV &RPPLVVLRQ RI, QTXLU\ RQ, pha/rax. H14. *D]D &RQÁLFW

299 Interview with Lina Biscaia, 26 February 2020.

300 Interview with Lina Biscaia, 26 February 2020.

Improved staf ng of non-judicial accountability mechanisms

- 165. In addition to having specialists embedded within teams, there is a need to improve the recruitment of investigators within nonjudicial accountability mechanisms, in order to ensure that they are all equipped with the relevant legal and investigative knowledge, including skills to document and investigate violations and crimes affecting children.
- accountability 166. On a practical level, it is not feasible for a single individual to bear mechanisms sole responsibility for investigating violations and crimes against or affecting children in a given context. Moreover, allocating this task to one team member, irrespective of that team member's capacity as investigator or adviser, reinforces the perception that such crimes are an "extra, rather than a mainstream, component of the investigation that should be addressed by all those involved \$ FFRUGLQJ WR DQ H[SHUW LQYHVWLJDWRUV VKRXOG EH DEOH WR investigate the wide range of patterns of violations reported as they are often interlinked.302

There is a need

to improve the

recruitment of

within non-judicial

investigators

167. The need for enhanced capacity in human rights and criminal law was also KLJKOLJKWHG \$W SUHVHQW D QXPEHU RI VWDII KDYH D EDFNJURXQG LQ KXPDQ UL reporting, but not in human rights law, international humanitarian law or international criminal law, with the consequence that the information that they collect does not always disclose violations of applicable legal standards. It is particularly important for OHCHR to raise the standards of its staff in respect of international criminal law, given that the newer mechanisms are expressly focused on establishing criminal liability.

7KH UROH RI WKH ,&& 3URVHFXWRU·V 6SHFLDO \$GYLVHU RQ &KLOGUHQ LQ DQG DIIHFWHG E\ \$UPHG &RQÁLFW WR FRRSHUDWLRQ ZLWK UHOHYDQW DFFR

167. In December 2012, ICC Prosecutor Fatou Bensouda appointed Professor Diane Marie

301 Interview with Lina Biscaia, 26 February 2020. The required competencies and expertise discussed in this section

investigations, such as the process of interviewing children. Seepra QRWH

\$PDQQ DV KHU 6SHFLDO \$GYLVHU RQ &KLOGUHQ LQ DQG DIIHFWHG E\ \$UPHG &RQÁLFW 6SHFLDO Judicial accountability mechanisms \$GYLVHU RQ &KLOGUHQ 7ZR RWKHU 6SHFLDO \$GYLVHUV ZHUH DSSRLQWHG LQ 9LVHXU 6HOOHUV 6SHFLDO \$GYLVHU RQ ,QWHUQDWLRQDO &ULPLQDO /DZ 3URVHFXWLRQ 6WUDWHJLHV VXEVHTXHQWO\ EHFDPH 6SHFLDO \$GYLVHU RQ *HQGHU DQG 3URIHVVRU /HLOD 1L

6 SHFLDO \$GYLVHU RQ & Until 1Phelste a SeuthDrote Cantriol No sexterad QLW \

6SHFLDO \$GYLVHUV DSSRLQWHG SXUVXDQW WR \$UWLFOH

168. 6 SHFLDO \$GYLVHUV DUH UHFRJQLVHG LQGHSHQGHQW OHJD the Prosecutor on training, policies, and legal submissions. They work on apro bono EDVLV DQG SURYLGH DGYLFH WR WKH 21ÀFH DW WKH UHTXI initiative. They are periodicallin situ and can consult with all teams. They are also available to teams to provide advice on a need-basis during investigations.

- 169. 7KH UROH RI WKH 6SHFLDO \$GYLVHU RQ &KLOGUHQ KDV LQ GUDIWLQJ DQG SXEOLFDWLRQ RI WKH , & & 2º7FBy-V 3ROLF\ RC FRQWUDVW WKH 6SHFLDO \$GYLVHU RQ *HQGHU KDV PDGH of the charges and the case narratives, and provided regular training to staff on the 6*%9 SROLF\
- 170. . Q RUGHU WR UHÁHFW DQG LPSURYH WKH W\SH RI DVVLVWI an internal review of their role and limitations would clarify the duration and scope RIWKHLU DSSRLQWPHQWV DQG WK°H7LKUH OSBYHFFO DROI & QYF LOVXHVUL on Children, for instance, could play a more active role in the operational aspects of situations and cases, including a greater involvement in periodic reviews of investigation plans and strategies. However, it is important to recognise that the extent of this involvement can be limited by there bono nature of the position. \$QRWKHU PRGHO LV IRU 6SHFLDO \$GYLVHUV ZKR DUH JHQ WKURXJK WKHLU XQLYHUVLWLHV D - ' RU 3K ' VWXGHQW at the Court, and serve as theim loco representatives for a set period. These ÜHSUHVHQWDWLYHV ZRXOG EH HPEHGGHG LQ WKH 21ÀFH D

WHDPV DQG WKH 6SHFLDO \$GYLVHUV 7KLV DSSURDFK KDV 6SHFLDO \$GYLVHUV RQ &ULPHV \$JDLQVW +XPDQLW\ /HLOD +XPDQLWDULDQ /DZ 317 LLQ VOXFL&LRQUJP DVFKNDW DOO 6SHFLDO \$GYL assisted by in loco representatives could, for instance, contribute to developing and VWUHQJWKHQLQJ WKH H|FKDQJHV ZLWK WKH 2|ÀFH WR EHV infringing on their independence.

monitor and evaluate their implementation

RIWKH 5RPH 6WDWXWFilmes affecting children in the foundational instruments of international judicial

accountability mechanisms contribute to ensuring an increased attention to crimes against children in investigative and prosecutorial strategies. However, references alone to such crimes in these instruments do not systematically translate into a prioritisation of these crimes. Thadoption of thematic policies, accompanied

E \ R S H U D W L R Qintaposidg\stricoglentrequirements on investigators Interview with Lina Biscaia, 26 February 2020. The required competencies and expertise discussed in this section.

WR PHHW WKH REMHFWLYH RI PDLQVWUHDPLQJ DUH VHSDUDWH IURP WKH VSHFLÀF VNLOOV UHTXLUHG WR FRQGXEW FHUWDLQ VWHSV and prosecutors, are additional indicators of the importance of an issue on the

VWXGLHG KXPDQ ULJKWV ODZ > @ DQG WKHQ WKH\ FRPH WR WKH &R,V ZKHUH WKH\ KDYH WR DSSO\ QRW MX3005 OTRY, P. 80 Q JULBIK WFX OWDRZU) DWRX % HQVRXGD DSSRLQWV 3 DWULFLD 6 H-OOHUV /HLOD EXW WKH *HQHYD & RQYHQW & RQYH DQRQ\PRXV VXUYH\ RI visers, 12 December 2012. 2+&+5 VWDII FRQGXFWHG E\ 2[IRUG 8QLYHUVLW\ GLVFXV 18thuGurbu Q 6DUHWD \$VKUDSK DQG)HGHULFD '-\$OHVVDQ 330bDinte¶view with expert. &KDOOHQJHV &RQIURQWHG E\ 81 \$FFRXQWDELOLW\ 0DQGDWHV 3HUVSHFWLYHV IURP &XUUHQW DQG)RUPHU 65307D Interv8e0Av with expectopinio 6 H H DOVR \$QFKRULQD \$ FRIMHOF WW DWEROSLOWN LINHU FOOD WWK SHWUHRUFPLDWOLHHO/W 308 Interview with expert. 6XSSRUW 1HHGHG WR)XOÀO ,QWHUQDWLRQDO ,QYHVWLJDWLYH 0DQGDWHV 2[IRUG 3URJUDPPH RQ ,QWHUQDW30R Qnfer@evs whith 5xtlerDQG Security, 2020 310 Interview with expert. 304 , E L G 311 Interview with expert.

investigative and prosecutorial agenda, and an important lever in delivering such an agenda.

173. The Principles and Procedures for the Protection of Children in the Special Court for

which provided for a vulnerability assessment before selection was made by the

out by the OTP and, in the event of a conviction, to sentencing and reparations. Its LPSOHPHQWDWLRQ LV RYHUVHHQ 極\ WKH *HQGHU DQG &KLC

177. 7KH IROORZLQJ SRLQWV DUH SDUWLFXODUO\ UHOHYDQW

172.7KH .&& LV WKH AUVW LQWHUQDWLRQDO MXGLFLDO DFFRXQWDELOLW\ PHFKDQLVP WR KDYH DGRSWHG a public and comprehensive policy on what it called "crimes against and affecting children". Prior to this, the SCSL adopted a policy on children, albeit focusing on the LGHQWLÀFDWLRQ DQG SV\FKRVR*F1LdDe93 nb/tXap3pe3aRtb/bb/e/RI FKLOG ZLWQHVVHV publicly available and the extent to which it was incorporated into investigations and prosecutions is unclear.) RU WKHVH UHDVRQV LW LV RQO\ EULHÁ\ PHQWLRQHG KHUH

The OTP recognises that children do not constitute a homogenous group, and that they may be affected differently by crimes based on their sex, gender, or other VWDWXV RU LGHQWLWLHV 7KH 2IÀFH ZLOO LQ RUGHU WI suffered. seek to KLJKOLJKW WKH PX 6f World-crimble 5f oth World GenLaft SDFW

6LHUUD /HRQH ZDV DGRSWHG E\ WKH 6&6/ 3URVHFXWRU LQ FRQVXOWDWLRQ ZLWK 81,&() 1*2V DQG 6LHUUD /HRQHDQ FKLOG SURWHFWLRQ DJHQFLHV 7KH REMHFWLYHV RI WKH SROLFKHZHZOB FWRPLWV WR DGRSWLQJ D ¶FKLOG FRPSHWHQW.

LQWHUHVWV LQ WKH FRQGXFW RI LWV SUHOLPLQDU\ H[D

applies to all preliminary investigations, investigations, and prosecutions carried

D DGRSW JXLGLQJ SULQFLSOHV WKDW ZRXOG VHFXUH WKH FROODERUDWLRQ RI FKLODEst Solldriftes Word between 2011 but do not necessarily prevail over other agencies in the provision of psychosocial support to children in all stages before the

assessed having regard to WKHLQGLYLRGIX 10V 6N HS 19 R LÀOD 6N E \ UHIHUHQFH DJH VH[JHQGHU DQG WKH FKLOG.V VARFLDO DQG FXOW)

of child witnesses during investigations. 174. This instrument provided for a procedure to be used when identifying and interviewing potential child witnesses: \$ SURWRFRO IRU LGHQWLI\LQJ FKLOG ZLWQHVVHV ZDV DGRSWHG

 In conducting preliminary investigations, the OTP will "pay particular attention to information received on crimes against 3 URVHFXWRU DQG FRQÀGHQWLDOLW\DQG VHFXULW\PHDVXUHV ,Q WKLV ZD\ RYHU DorRaftebtin/gHb1fb1/bb1/bb1/ben" and analyse in particular the general context within which these alleged crimes have occurred :LWK UHVSHFW WERmelsUD Children and their SDUDV against or affecting children as "particularly grave" given "the

DOO VWDJHV RI LWV ZRUN SDUD

period, a number of potential child witnesses were interviewed by a specialised investigator, in the presence of a parent or guardian, of whom approximately 20 were

communities commitment made to children in the Statute321 and "the fact crimes on children and their communities ZLOO EH LQFRUSRUDWHG LQWR W

*D - ,QW·O &R**P**\$'DLODEOH DW

FDOOHG WR JLYH HYLGHQFH DW WULDO E\ ZKLFK WLPH PRVW ZHUH RYHU

175. \$VIRUWKH, && 3URVHFXWRU) DWRX %HQVRXGD FRPPLVVLRQHG KHU 6SHFLDO \$GYLVHMat & hi@lren enjoy special recognition and protection under Children to DVVLVW LQ WKH UHVHDUFK GUDIWLQJ DQG SXEOLFDWLRQ RI D VSHFLÀF SROLFLQWHUQDWLRQDO ODZµ \$Q assessment of the impact of the alleged on children, in line with the OTP's commitment to pay greater attention to crimes DIIHFWLQJ FKLOGUHQ \$IWHU DIRXU \HDU FRQVXOWDWLRQ SURFHVV LQYROYLQJ DFD @sble@slm@int and analysis of gravity. Moreover, there is a "strong presumption" that national authorities, representatives of international organisations and civil society organisations, as well as children and young people who had been affected by FRQÁLFW WKH 273 SXEOLVKHG LWV 3ROnLeFexpeRtQ & KLOGUHQ LQ 1RYHPEHU QRWHG 'WKH ZKROH SURFHVV > « @ UHDOO\ HQDEOHG D ORW RI TXHVWLRQLQJ ZLWK LQn Workdblctiag in Vestigations, the OTP will, from the initial stage, carefully consider WKH 3URVHFXWRU RI WKH . & & DQG IXUWKHU UHÁHFWLRQ RQ KRZ WKH\ GR WKHLU ZRUktrinDeQa@aizJsKoD kWfecting children and roactively LQFOXGH VSHFLÀF OLQHV RI

iustice SDUDV

176. 7 KH 3 ROLF \ RQ & KLOGUHQ IROORZV WKH 2 IÀFH · V SUHYLRXV WKHPDWLF SROLFLHV RQ WOTTPHstaff@mWsheldshine Wat 'particular consideration' is given to crimes against or RI-XVWLFH 9LFWLPV. 3DUWLFLSDWLRQ 3UHOLPLQDU\ ([DPLQDWLRQV &DVH 6HOHFWLDRIQHDFQWCLQJ FKLOGUHQ WKURXJKRXW WKH LQYHVWLJDWLRC Prioritisation, and Sexual and Gender-Based Crimes., W LV WKH AUVW SROLF\ SURGXFHG by an international court or tribunal that seeks to comprehensively articulate what it terms "a child-sensitive approach" to accountability for international crimes.It

 When deciding whether to interview or take evidence from a child, the OTP will give careful consideration to the age, development, capabilities, and level of maturity of the child. 5 H F R J Q L V L Q J W K D W F K L O G U H Q D U H F D S D E O H R I J

in :LOOLDP \$ 6F7KOHE & DP EHIGLGJH & RPSDQLRQ WR ,QWHUQDWLRQDO &ULPLQDO /DZ

they prioritise":316

-XOLH 0F%ULGH 7KH :DU &ULPH RI &KLOG 6ROGLHU 5HFUXLWPHQW \$PVWHUGDP 6SULQJHU \$VVHU 3UHVV 319 Sterview with expert. 314 Luc Côté 3 UR VHFXWLQJ & KLOG 5 HODWHG & ULPHV DW WKH 6 SHF, p.D270 & RXUW IRU 6 LHUUD / HRQH D PLG WHUP DVVHVVP\$HQVMR VHH ØDQQBDWXXULQJ - XVWLFH , QWHJUDWLQJ WKH & RQYHQWLRQ RQ WKH 5 315) RU EDENJURXQG RQ WKLV SUREHVV VIH7HKHJH30RHOULDFOORVQ & HOLOOHG DUDNOL RIJSWF 100 PQ & & 2 I À FH RI WKH

3URVHFXWRU 7RZDUG JUHDWHU DFFRXQWDELONLotte/thatlofadu/Revietw Bflthle Red/DLQVW DQG DIIHFWLQJ FKLOGUHQ, &URVV

316 ,QWHUYLHZ ZLWK &pFLOH \$SWHO 0DUFK

317 OTP Policy Paper on Case Selection and Prioritisatio September 2016; Policy Paper on Sexual and Gender-

Policy Paper on Preliminary Examina RollsH P E H U 3ROLF\ 3DSHU RQ 9LFWLPV. Based Crimes - X Q H

84

Judgments and Processes of the International Criminal Court

An assessment of the impact of the alleged crimes on

LQYHVWLJDWLRQ \$SSO\LQJ D FKLOG FRPSHWHQW DSSUR

LQTXLU\to determine whether such crimes were committed in the situations under

investigation and prosecution of crimes affecting children are in the interests of

KWWSV GLJLWDOFRPPRQV ODZ XLJDDQHIGOVDWIMTHINESCPHIME BLOCALES CONVENTION and

321 7 K H3 R O L F \ R Q & K L O @Cohnhr@mle/nl/\ldoDalddlrlebsinly/dribbab/ against or affecting children can be found

,QWHUQDWLRQDOµ&ULPL1ORDUOGĿKVWXEHQDORI,QWHUQDWLRQDHOdréD"Z

³¹² Interview with expert

LQ YDULRXV SURYLVLRQV RI WKH 6WDWXWH LQFOXGLQJ LQ LWV HQXPHUDWLRQV Participation \$SULOBROLF\3DSHU,QWHRMMPVE/HRUI-XVWLFH FRQVFULSWLRQ DQG XVH RI FKLOGUHQ XQGHU WKH DJH RI ÀIWHHQ \HDUV WR SDI 318 , QHWYLHZ ZLWK 'LDQH ODULH \$P7DKQHQFKD) (BIG H & DH) \RI WKH SROLF\ RQ FKLOGUHQ ZDV WKHUH ZDV YHU\ RXJKW WR EH WUHDWHG %XW QRERG\ KDG UHDOO\ FRQFHSWXDOLVHG ZKDW LW PHDQV WR VSHDN RI FULPHV DJDLDQAMNG DEQ CPPHNHEWLLOW DUH SURVFULEHG E\ WKH 6pkm 20xXWH D IDFW PDGH H[SOLF children at the ICC."

WKH 21AFH ZLOO DOVR FRQVLGHU WKsttchDay adulo DELOLW RI DOWHUQDWH HYLGHQFH LQWHUQDWLRQDO FULPHV \$FFRUGLQJO 2+&+5 PD UDLVH ZLWQHVVHV SK\VLFDO DQG GRFXPHQWDU\ LWHPV DQG VFLHQWLÀF RU HISHUW HYLWGKHQPHFKDQLVPV ZRXOG EHQHÀW IURP FRQVLGHULQJ WKH SDUD

 In selecting charges, the OTP will make full use of the regulatory framework to The new 'accountability focused' mechanisms address the various ways in which children are affected by crimes within the jurisdiction of the Court. In order to capture the totality of the evidence perpetrated jurisdiction of the Court. In order to capture the totality of the evidence perpetrated

181. 7KH ZRUN RI WKH QHZ PHFKDQLVPV 2,,,0 6\ULD 81,7\$',6,
DJDLQVW FKLOGUHQ WKH 2IÀFH ZLOO FRQVLGHU DSSURSULDWH FKDUJHV ZKHUHYHU\VKFDU - LV ODUJHO\ FRQÀGHQWLDO 1RQHWKHOHVV LW HYLGHQFH SHUPLWV SDUD

 The OTP will seek to support the work another getter a cooperation with relevant actors, including early responders SDUDV 322 \$W WKH SUHOLPLQDU\ HIDPLQDWLRQ VWDJH WKH 21ÀFH ZLOO DVVHVV WKH HILVWHQFH RI UHOHYDQW DF SRWHQWLDO VRXUFHV RI LQIRUPDWLRQ DQG RU VXSSRUW IRU YLFWLPV SDUD ZLWK WKHP WR YHULI\ LQIRUPDWLRQ RQ DOOHJHG FULPHV SDUD stage, the establishment of contacts and networks within the community will be SULRULWLVHG WR VXSSRUW RSHUDWLRQDO DFWLYLWLHV SDUD

178. : KLOH WKH SROLF\ LV OHVV WKDQ ÀYH \HDUV ROG LW KDV UHSRUWHGO\ UHVXOWHG implementation and revision, as well as regular training for all staff members. attitudinal change within the OTP, and equipped analysts, investigators, and prosecutors with the tools to approach evidence gathering and analysis in a more holistic, and intersectional, manner \$23 \$Q H[SHUW H[SODLQHG WKDW ERWK WKH 3ROLF\ 3DSHU on Sexual and Gender-Based Crimes and the Policy on Children require investigators and prosecutors to take a step back and consider whether all possible charges and prosecutors to take a step back and consider whether all possible charges

183. Q \$XJXVW WKH ,,,0 UHSRUWHG WKDW LW K
DULVLQJ IURP WKH HYLGHQFH KDYH EHHQ H[SORUHG 7KLV FRQVWLWXWHV VLJQLAF DGW SURJUHVV
by third parties, and underscored the importance of determining whether existing as it illustrates an increased awareness of what needs to be taken into account GXULQJ WKH LQYHVWLJDWLRQ

I think we've made huge progress [...] we've certainly learned our lessons and I think that now [...] we're much more aware of the requirements and what we need to take into consideration⁹²⁴

179. \$ QXPEHU RI LQWHUQDO PHFKDQLntvoPitvortKeDYH EHHQ SXW LQ SODFH WR implementation of the Policy, including training and testing of staff members on its application,525 and ensuring that teams' periodic reports to senior management on the progress of investigations and prosecutions include explicit consideration of the steps taken to comply with the Policy, and how any gaps will be addressedt was recommended that monitoring of the Policy could be strengthened by systematically LQYROYLQJ WKH 6SHFLDO \$GYLVHU RQ &KLOGUHQ LQ WKH SHULRGLF UHYLHZ SURFHV

180. Beyond the OTP, it is clear that the & & · V 3ROLF\ RQ & KLOGUHQ FDQ DQG VKRXOG LQIRUP WKH DSSURDFK RI RWKHU MXGLFLDO DQG WKWHO QRQ MXGLFLDO DFFRXQWDELOLW\

into their approach to violations and crimes affecting children from their periodic UHSRUWV WR WKH 81 LQ ZKLFK WKHLU LQYHVWLJDWLYH V are set out. In particular, the IIIM highlighted lessons learned from other bodies to effectively address overlooked crimes, such as crimes against children, and indicated WRII y D Y That It will draw on these "valuable insights" in its work DQG HQJDJH \$W WKH LAXHVWLJDOWkBQ DUWLFXODWHG D FRPPLWPHQW WR SD\ SDUWL children , WV AUVW SHULRGLF UHSRUW)HEUXDU\ for ensuring an effective approach to such crimes includes recruiting the relevant expertise, developing policies and operational guidelines and ensuring their ongoing

ZRUN LQ RUGHU WR DGGUHVV VRPH Ref WKH EDUULHUV LGF

7KH UHSRUW DOVR XQGHUVFRUHG WKH QHHG IRU FRRSHUD mandates intersect with the Mechanism's work, including those with expertise on gender issues and issues concerning childrend.

WKH ,,,O UHSRUWHG WKDW LW KDG EHJXQ W documentation accurately records the harms experienced by certain categories of victims at risk of being overlooked, including boys and girls In its third periodic UHSRUW)HEUXDU\ WKH ... 0 IXUWKHU VWDWHG WKDW EHLQJ GHVLJQHG

To bring to the surface perspectives and experiences that have tended to be overlooked or misunderstood in the past. In line with its terms RI UHIHUHQFH WKH OHFKDQLVP LV JLYLQJ VSHFLÄF DWW against children as a core part of its work, recognizing that, historically, these categories of crimes have not always been effectively addressed. [...] In the coming period, it will accelerate its focus on strategies for other FDWHJRULHV RI KDUP DW ULVN RI EHLQJ LQVXIÀFLHQWO\ crimes against children[...]33

184., Q \$ X J X V W WKH ... 0 UHSRUWHG WKDW LW KDG EHHQ SU incorporate gender perspectives. It further indicated that it would, during the next

respect to developing a child-competent approach to the investigation and analysis of

policy - is a way to overcome barriers encountered when engaging with families and communities on the ground during investigations. They can help in ways such as providing information that is not reported or assisting the Court to make contact with individuals who may have relevant information, and to avoid manipulation of the process by third parties

³²³ Interview with expert

³²⁴ Interview with expert

QHWYLHZ ZLWK H[SHUW \$W SUHVHQW WUDLQLQJ LV RQO\ DYDLODEOH IRU 273 VWDII PHPEHUV DQG LW KDV EHHQQYHHVRVPLPHDQVG.HQ DQG 3URVHFXWLRQ RI 3HUVRQV 5HVSRQVLEOH IRU WKH 0RVW WKDW WUDLQLQJ DOVR EH SURYLGHG WR 'HIHQFH WHDPV ,QWHUYLHZ ZLWK .DWH *LEVRQ DUFK

³²⁶ Interview with expert.

³²⁷ Interview with Erin Gallagher, 28 February 2020. This recommendation - and its limitations - are discussed in 6HFWLRQ ,,, 3DUW \$

^{329 81 *}HQHUDO \$M\$RPEWOR! WKH ,QWHUQDWLRQDO ,PSDUWLDO DQG ,QGHSHQGHQW 322 \$FFRUGLQJ WR DQ H[SHUW LQWHUYLHZHG LQFUHDVHG HQJDJHPHQW ZLWK ORFDO FLYLO VRFLHW\ RUJDQLVDWLRQQYYHSWHLVDWLLEHCG DEQ GWXWHRVHFXWLRQ RI 3HUVRQV 5HVSRQVLEOH IRU WKH ORVW &RPPLWWHG LQ WKH 6\ULDQ \$UDE 5HSXEOLF VLQFH 0DUFK 330 81 *HQHUDO \$M\$RBEWOR! WKH ,QWHUQDWLRQDO ,PSDUWLDO DQG ,QGHSHQGHQW QYHVWLJDWLRQ DQG 3URVHFXWLRQ RI 3HUVRQV 5HVSRQVLEOH IRU WKH 0RVW &RPPLWWHG LQ WKH 6\ULDQ \$UDE 5HSXEOLF VLQFH 0DUFK
331 81 *HQHUDO \$\$/VHPEO\)HEUXDU\ SDUD

^{332 81 *}HQHUDO SWINSHRRUEWO RÍ WKH , QWHUQDWLRQDO , PSDUWLDO DQG , QGHSHQGHQW &RPPLWWHG LQ WKH 6\ULDQ \$UDE 5HSXEOLF VLQFH 0DUFK

and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian \$UDE 5HSXEOLF VLQFH 0DUFK) H E U X D U \

reporting period, build engagement with relevant sources focused on crimes against children, enhance its in-house expertise, and apply some of the relevant insights from WKH ÀUVW SKDVH RI LWV VWUDWHJ\ RQ VH[XDO DQG JHQGHU EDVHG YLROHQFH 185. In 2020, the IIIM expressed a commitment to allocate additional resources to LQVXIÀFLHQWO\ GRFXPHQWHG FULPHV VXFK DV 6*%9 DQG FULPHV DJDLQVW FKLOGUHINQ oth Tekacobountability mechanisms such as the IIIM and IIMM to improve processes, FRPPLWPHQW 'KDV LQIRUPHG WKH VHOHFWLRQ RI VWUDWHJLF OLQHV RI LQTXLU\ WKIndlebs@ndel@rehatterAsuficDeststesRnObringing justice for crimes affecting children and RIDQDO\WLFDO EORFNV DQG WKH FRQFEMIB®FW&NDOLVDWLRQ RIVSHFLÀF DQDO\WLFDO S6世※9)LQDOO\ 81,7\$'KDV XQGHUWDNHQ WR FRRSHUDWH inter a result, categories of crimes and victims often overlooked in accountability efforts, such as crimes against children, are taken into account in the development of a strategy on a victim-and-survivor-centred approach to justiceThe Mechanism stated that it is currently developing a strategy to capture more of the crimes affecting FKLOGUHQ DQG WKH LPSDF₩/SRotfar, FrwYestxtiQna@idd Hea@nsRhaveWKH FRQÁLFW EHHQ VHW XS WR HQVXUH WKDW H[SHUWLVH RQ VSHFLÀF FULPHV LV HPEHGGHG LQ Welschl: ZRUN RI the team. Each team is, for instance, equipped with a focal point, tasked to ensure that the focus on crimes affecting children is integrated in the overarching collection plan.338 186. 81,7\$' KDV GHYHORSHG VWDQGDUG RSHUDWLQJ SURFHGXUHV DQG EHVW SUDFWLFHVthe Lotil the swere against displaced Rohingya now living in Bangladesh. Crimes of respect to engagement with children as part of its investigationsBased on its SHULRGLF UHSRUWV WR WKH 6HFXULW\ &RXQFLO DV RI 1RYHPEHU investigation units had been designated to undertake investigative work in each of the SULRULW \ DUHDV) LHOG EDVHG DFWLYLWLHV DUH SULRULWLVHG WR ÀOO LGHQWLÀ Hesspeic Doct chrime Dagainst to Rild Ee Millo Over Ger, in February 2020, the IIM Mecruited an evidence base capable of supporting prosecutions for war crimes, crimes against humanity, and genocide: Expert thematic support is being provided internally to facilitate and strengthen the Investigative Team's operations. In particular, "in line with the focus of the Investigative Team on supporting accountability for widespread

+XPDQ 5LJKWV &RXQFLO GHWDLOLQJ LWV VWUDWHJ\ DQG relevant to case selection include the number of perpetrators or victims and whether VH[XDO YLROHQFH ZLOO DOVR EH SULRULWLVHG SDUDV GHGLFDWHG ÀWHROLGQYHVWLJDWH 6*%9 YLROHQFH ZLOO EH EXLOW SDUD UHFRJQLVHV WKH QHHG IRU DFFRXQWDELOLW\ IRU 6*%9 no D * H Q G H U D Q G & K L O G 5 L J K W V \$ G Y L V H U, with a background as a prosecut MXULVGLFWLRQV DQG LQWHUQDWLRQDO FRXUWV DQG VLJ involving crimes affecting children, which suggests that the mechanism intends to EULQJ VSHFLÀF IRFXV RQ WKHVH FULP₩V LQ LWV LQYHVWL

experts drawn from national jurisdictions: It is intended that these experts be

embedded in investigation teams, to provide support and expertise at all stages of the

indicated that it is committed to exchange lessons learned and best practices with

their respective mandates; and the establishment of effective liaison mechanisms

188. The , , 0has, to date, submitted a single periodic report, in September 2019, to the

children is in accordance with international best practices.) X U W K H U 8 1,7 \$ 'KD V

SURFHVV VR DV WR HQVXUH WKDW WKH LQYHVWLJDWLRQ I

&KLOGUHQ DQG \$UPHG &RQÁLFW RYHU WKH SURYLVLRQ RI

EHVW SUDFWLFH LQIRUPDWLRQ UHOHYDQW WR 81.7\$'.V LQ EULHÄQJV EHWZHHQ WKH ,QYHVWLJDWLYH 7HDP DQG WKH 2

EHWZHHQ WKH ÀHOG EDVHG VWDII RI WKH 21ÀFHV DQG WKH

engagement of the Team with victims of such crimes:" to develop knowledge-sharing channels, an expert has suggestedating a focal SRLQW WR VHFXUH SHULRGLF PHHWLQJV IRVWHU H[FKDQJ 187. 7KH IXOO QDPH RI WKLV GHGLFDWHG XQLW ZKLFK LV SDUW RI WKH 2IÀFH RI)LHOG ,EQHYM ZMHLQDWWLHRVQHV H[SHUWV DV ZHOO DV ZLWK WKH VWDII R

LV WKH 6H[XDO DQG *HQGHU %DVHG 9LROHQFH &ULPHV DJDLQVW &KLOGUHQ 8QLW UNit@RazdQultimately to capitalise on the lessons learned from the new strategies E\ LWV DFURQ\P 6 * % & & 8 , W LV VSHFLÀFDOO\ FKDUJHG ZLWK ZRUNLQJ DORQJVLGH MYM/MCMHobiliqidesHuleDveBoped by these bodies. ,QYHVWLJDWLRQ 8QLWV WR LQYHVWLJDWH DFWV FRPPLWWHG E\ ,6,/ LQYROYLQJ VH[XDO DQG JHQGHU EDVHG YLROHQFH DQG FULPHV DIIHFWLQJ FKLOGUHQ 81.7\$' UHSRUWV WKDW LW KDV GHYHORSHG vshflar vwdqgdug rshudwlqj surfhgxuhv dqg ehvw sudfwlfhv zlwk uhvs@atreach,Lwitness protection and psychosocial support to enhance communication and cooperation with local actors engagement with victims of sexual and gender based-violenceand with children 342 6 * % & & 8 VWDII LQFOXGH LQGLYLGXDOV ZLWK H[SHUWLVH LQ LQWHUYLHZLQJ FKLOG的用面fferendinities

*HQGHU %DVHG 9LROHQFH 8QLW KDV FRQWLQXHG WR SURYLGH VXSSRUW ZLWK UH18/9STHaFin/Ng st/VolR of/WhLkstel developments, and of the commitment of the mechanisms

190. , Q RUGHU WR UHDFK WKRVH 1*2V WKDW DUH ZLOOLQJ WR F

334 81 *HQHUDO SOWHBEOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR \$VVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR \$VVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DOWLRQDO , PSDUWLDO DQG , QGHSHQGHQW 0HFKDQLVP WR SVVLVW LQ WKH , QYHVWLJDWLRQ DQG , QGHSHQGHQW 0HFKDQ DQG , QGHSHQG , QGHSHQG , QGHSHQG , QGHSHQ , Q Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian it is essential that effective outreach strategies are put in place so that the \$UDE 5HSXEOLF VLQ\$FH 0DUFK\$XJXVW QWHUQDWLRQDO ,PSDUWLDO DQG ,QGHSHQGHQW OHFKDQLVP WR \$VVLVW LQ WKH ,QYHVWLJDWLRQ DQG 3URVHFXPVDPQQGRD VMHUVRDQG DFWLYLWLHV RI QRQ MXGLFLDO DQG MXGL 5HYSRQVLEOH IRU WKH 0RVW 6HULRXV &ULPHV XQGHU, QWHUQDWLRQDO /DZ &RPPLWWHG LQ WKH 6\ULDQ \$UDE 5Hinderstood at the local level. Improved communication and cooperation would lead March 2011 \$ 336 QWHUQDWLRQDO , PSDUWLDO DQG, QGHSHQGHQW 0HFKDQLVP WR \$VVLVW LQ WKH, QYHVWLJDWLRQ DQG 3URVHFXONDetter HINDERSTANDING Among all relevant local stakeholders of the importance of 5HVSRQVLEOH IRU WKH 0RVW 6HULRXV &ULPHV XQGHU ,QWHUQDWLRQDO /DZ &RPPLWWHG LQ WKH 6\ULDQ \$UDE 5HSXEOLF VLQFH March 2011 \$, QHWUYLHZ ZLWK 9HURQLF : ULJKW 0 D U F K 337 Interview with expert QWHUYLHZ ZLWK 9HURQLF :ULJKW 0 D U F K 338 Interview with expert 339 81 6HFXULWXK8LRUXQV BHOSRUW RI WKH 6SHFLDO \$GYLVHU DQG +HDG RI WKH 8QLWHG 1DWLRQV ,QYHVWLJDWLYH 7HDP ,WRVHUYLHZ ZLWK 9HURQLF :ULJKW 0 D U F K

3URPRWH \$FFRXQWDELOLW\ IRU &ULPHV &RPPLWWHG E\ 'D. H108K , VODPLF 6WDWH LQ , UDT DQG WKH /HYDQW 6 346 81 6HFXULW)\L&LPXXQBHGSRUW RI WKH 6SHFLDO \$GYLVHU DQG +HDG RI WKH 8QLWH 3URPRWH \$FFRXQWDELOLW\ IRU &ULPHV &RPPLWWHG E\ 'D.HVK .VODPLF 6WDWH 1RYHPEHU paras, 73-74.

QWHUYLHZ ZLWK 9HURQLF :ULJKW 348 Interview with expert.

342 ,QWHUYLHZ ZLWK 9HURQLF :ULJKW 0 D U F K

sexual and gender-based violence perpetrated by ISIL, the dedicated Sexual and

stakeholders are taken into consideration by accountability mechanisms. The newer DFFRXQWDELOLW\ PHFKDQLVPV VXFK DV WKH ,,,0 ,,00 DQG 81,7\$' KDYH HPSKDVLVstr@ggle against impunity, empower local justice actors, and serve to uphold the rule the importance of outreach to local stakeholders in public reports and documents. WKH ... O DQG VHYHUDO 6\ULDQ 1*2V VLJQHG D SURWRFRO RXWOLQLQJ SULQFLSOHV .Q \$SULO guiding the engagement between them. These are welcome developments. However, it remains too early to assess whether these arrangements have resulted in meaningful improvements on the grounds.

information-sharing with these mechanisms, and would ensure that the views of local

communication efforts, are also key to ensuring the affected communities understand the mandate and activities of accountability mechanisms, and the protection structures available to them. The Myanmar FFM, for instance, has engaged in sustained and tailored advocacy efforts with the affected communities to share information about their mandate and activities? (IÀFLHQW RXWUHDFK RQ WKDW IURQW LV essential to build trust at community level, and to foster the information-collection process.

PART B. INVESTIGATING AND PROSECUTING CONFLICT-RELATED SEXUAL VIOLENCE AGAINST CHILDREN IN THE DRC: THE KAVUMU CASE

Introduction

192. The importance of national trials to the international criminal justice experiment FRQWLQXHV WR GHHSHQ 1DWLRQDO WULDOV DUH D QHDU LQHYLWDELOLW\ IRU VLWXDWLRQY BI PDVY LQ 6RXWK .LYX ,Q -XO\ D PLOLWC atrocity and mass violence where the jurisdiction of the ICC is not engaged, such is the case currently in respect of Syria and Iraq, amongst others. The importance of GRPHVWLF SURVHFXWLRQV LV DOVR EXLOW LQWR WKH IUDPHZRUN RI , & & WKH FRPSOHPHQWDULW\ SULQFLSOH GHULYHG IURP SDUDJUDSK RI WKH 5RPH 6WDWXWH SUHDPEOH DQG \$UWLFOHV 198. Between 2013 and 2016, at least 42 girls, aged between 18 months and 11 years, 18, 19, 20, and 53, recognise and promote the primary role of national jurisdictions in the investigation and prosecution of international crimes

193. \$OWKRXJK PRVW QDWLRQDO MXULVGLFWLRQV IDFH VLPLODU EDUULHUV WR LQYHVWLJDWLOJ DOG WKHP IURP EDWWOHAHOG LQMXULHV LQ WKH FRO prosecuting crimes and violations against pr affecting children as those encountered by accountability mechanisms, some national justice systems, in collaboration with local and international partners, have endeavoured to develop creative approaches to overcoming these barriers.

194. In the last decade, national prosecutions in the eastern Democratic Republic of the

349 Interview with expert

Cruel, Inhuman or Degrading Treatment or Punishment of 1984; and the International Convention for the Protection of all Persons from Enforced Disappearances of 2006.

&RQJR '5& QRWDEO\LQ UHVSHFWKaFkulmuFckalske,PhlatvYe DJDLQVW FK underscored how effective domestic prosecutions are a key part of a sustained

RI ODZ 2 WKH DEVHQFH RI ZKLFK LV D VLJQLÄFDQW GULYHU

195.7KH &RQJROHVH MXVWLFH V\VWHP EROVWHUHG E\ FOLQLF FLYLO VRFLHW\ RUJDQLVDWLRQV LQWHUQDWLRQDO 1*2V innovative approaches to the investigation and prosecution of international crimes in national courts. This is, particularly so with regard to crimes of sexual violence where

191. \$GHTXDWH ZLWQHVV SURWHFWLRQ DQG SV\FKRVRFLDO VWUXFWXUHV DQG VXVWDLQHHCPDOH FKLOGUHQ PDNH XS D SUHGRPLQDQWO\ ODUJH VXE DQDO\VLV RI WKHVH DSSURDFKHV DQG SDUWLFXODUO\ WKH LQQRYDWLYH VROXWLRQV DGRSWHG WR RYHUFRPH WKHVH discussion on innovative strategies in the investigation and prosecution of crimes affecting children at the international level.

Background to the case

196. % H W Z H H Q - D Q X D U \ DQG 'HFHPEHU &RQJROHVH MXG 39 cases on indictments containing international crimes that had occurred between GXULQJ QRQ LQWHUQDWLRQDO DUPHG FRQÁLF' .LYX DQG 6RXWK .LYX 35LTObis Whole d-thibe Vc nebatibble about use 4. of mobile gender courts to try cases of rape and other forms of sexual violence. Their LPSDFW KDV EHHQ VLJQLÄFDQW %HWZHHQ 2FWREHU D PRELOH JHQGHU FRXUW RSHUDWLQJ LQ 6RXWK .LYX KHD for rape, 82 convictions for other offences, and 67 acquittals.

197. This section focuses on, and seeks to draw insight from, one of the most successful LQYHVWLJDWLRQV DQG SURVHFXWLRQV RI FRQÁLFW UHODV the conviction of 11 men, including a sitting lawmaker, forape as a crime against

ZHUH DEGXFWHG IURP WKHLU KRPHV LQ WKH PLGGOH RI WI raped, and subsequently abandoned. The perpetrators, members of a local militia

decision to target pre-verbal children, some of whom were as young as 18 months old at the time of the alleged crime, reveals an awareness on the part of the perpetrators of potential accountability. These were children who would never be in position to identify the perpetrators or to disclose what had happened to them.

199. The child victims sustained extensive physical and psychological injuries and were referred to the Panzi General Reference Hospital, where they received specialist care. Their injuries were documented by clinicians who had been trained by Physicians for +XPDQ 5LJKWV 3+5 LQ KRZ WR FDSWXUH IRUH®QVLF PHGLF

354 , QHWU Q D W L R Q D O & H Q W H U <u>I'R W SUFID Q X Q WW D FEQ D O W X Y DYQ</u> GF W F D S H L Q (D V W H U Q '5 & - X 0 355 Open Society Foundations, XVWLFH LQ '5& ORELOH &RXUWV &RPEDW 5DSH DQG ,PSXQLW\ LDQG LWV 6HFRQG \$GGLWLRQDO 3URWR356K OD QWFK+HW, Q¶WM KH OF DDWHRRQID.OD YXPX DPRGHORIPHGLFROHJDO FROODERUDWLRQ. . D WKH & RQYHQWLRQ DJDLQVW 7RU9NRXOUH DQG- X2QWHKHU S

91

357 ,ELG ,QWHUYLHZ ZLWK .DUHQ 1DLPHU 0DUFK 358 , QHWUYLHZ ZLWK . DUHQ 1DLPHU 0DUFK

^{350 6} HHRW LQVWDQFH 3ULQFLSOH)RVWBHU7L\$QJ3FFRODFOLHSFOWHLWYH VXSSRUW LQ,UDT

³⁵¹ Protocol of Cooperation between the International Independent and Impartial Mechanism and Syrian Civil Society Organisations participating in the Lausanne Platform \$SULO

^{\$} X J X V W 352 Human Rights Council \$\\$ + 5 &

³⁵³ This is widely recognised in international law. See, Rome Statute of the International Criminal Court; the Convention on the Prevention and Punishment of the Crime of Genocide of 1948; the four Geneva Conventions of 1949 and the WKUHH \$GGLWLRQDO 3URWRFROV WKH +DJXH &RQYHQWLRQ IURP &RQYHQWLRQ IRU WKH 6XSSUHVVLRQ DQG 3XQLVKPHQW RI \$SDUWKHLG RI

'HVSLWH WKH DYDLODELOLW\ RI WKLV HYLGHQFH HIIRUWV E\ 3DQ]L•V DIÀOLDWHG OHJÐROXFUOVLHQZFXOQGSUHVHQW FKDOOHQJHV IRU HYHU\RQH H` considerable national and international media and advocacy efforts, local civilian prosecutors refused to initiate an investigation? In response to this inaction, the YLFWLPV. OHJDO UHSUHVHQWDWLYHV VXFFHVVIXOO\ ÀOHG WKH FRPSODLQWV EHIRUH WWWK sebluFiden Confe Me Bended hoc DQG LW LV QRW JHQHUDOLVHG \$QG courts on the basis that there was prima facievidence that the crimes alleged DPRXQWHG WR FULPHV DJDLQVW KXPDKQakuMhiùcaste! ZLOO EH H[SORUHG EHORZ WKH as it is commonly referred to, stands as arH [DPSOH RI GRPHVWLF MXGLFLDO DXWKRULWLHV ZRUNLQJ DORQJVLGH LQWHUQDWLRQDO DQG RWKHU ORFDO SDUWQHUV WR WDFN 2004L SFOROPISVOJHR OOD DFOX ADVONTOLIC DECKNED VOTOLIC BLANCE INCLUDED BY A SECOND DECKNED VOTOLIC BLANCE AND ACCURATE AND ACCURATE DQG VRFLDO LVVXHV LQ RUGHRUWRR Ð FIKR IH WHK HÐ EZRRUX/QW ÞÆQ Á LFW information, in light of the very young age of some of the victims and survivors, and

we were really faced with the fact that we are not experts. We had some psychologists come from Europe, from Senegal. [...] We had to craft our would say that, in general, the Congolese system is not up to the task of investigating and prosecuting crimes against children.

ensuring their safety and security - as well as that of their families, who were afraid

the aim of enhancing the technical capacity of medical actors, legal experts, and law

enforcement to collect, document, analyse, preserve and share forensic evidence

of sexual violence in order to support local prosecutions of these crimes, in a way

that is survivor-centred and trauma-informed. By bringing together these various

FROOD EinRtble Do Nov IsiNar Qof medical care and services for victims and survivors,

206. In the DRC, training provided by PHR was instrumental in enabling Panzi clinicians to adequately document the physical injuries and ongoing mental trauma of the child

victims/survivors. Clinicians relied on a standardised forensic medical intake form,

and adapted to the local context. The documentation process included interviewing

the child survivors, a process which was overseen by an expert sexual violence

205. 3+5 HVWDEOLVKHG D SURJUDPPH RQ 6HIXDO 9LROHQFH LQ

professionals, the programme also seeks to build trust, and to GHYHORS PXOWL VHFW

\$WWLWXGLQDO DQG VWUXFWXUDO EDUULHUV WR DFFRXQWDELOLW\ IRU FULPHV DIIHFWLQJ FKLOGUHQ LQ WKH '5& 2YHUFRPLQJ EDUULHUV D WKUHH SURQJ FULPHV DIIHFWLQJ FKLOGUHQ LQ WKH '5&

200. The DRC's self-referral to the ICC in 2002 was a catalyst for domestic accountability Training. The DRC's self-referral to the ICC in 2002 was a catalyst for domestic accountability. Training efforts.361 7 K H À U V W L Q Y H V W L J D W L R Q V D Q G S U R V H F X W L R Q V S U H G R P L Q D Q W O \ L Q U H V S H F W R I

FULPHV LQYROYL @Cobeq an an an another by the pertending to a lack of expertise, experience and resources. Since then, there has been a positive evolution in terms of the quantity and quality of investigations, prosecutions, and judicial determinations, due to increased international involvement and funding, better coordination among stakeholders, and enhanced capacity of national acters.

related crimes committed against children³⁶⁰

- 201. Progress has been much slower in respect to crimes against and affecting children, which in the DRC include recruitment and use of child soldiers; killing and maiming; rape and sexual slavery; and forced labour, typically against children aged 10-12 and upwards364
- 202. Child victims in the DRC face both attitudinal and structural barriers to accountability. that child soldiers are not victims but perpetrators, and therefore less deserving of justice and, more broadly, that children in general are less important than adults, so that crimes perpetrated against them tend to receive less attention. Where child recruitment cases are investigated, prosecutors have failed to bring separate charges
- LQ UHVSHFW RI WKH RWKHU YLRODWLRQV FRPPLWWHG GXULQJ WKH UHFUXLWPHQ 2007. STALE ROTE HIS YCVE vidence gathered by clinicians at Panzi hospital was subsequently WRUWXUH RWKHU LQKXPDQH DFW V65 VH XDO YLROHQFH RU HQVODYHPHQW shared with the police, and proved crucial to eventual investigations and prosecutions, as it helped to demonstrate that the rapes, which occurred over a three-
- 203. \$W WKH VWUXFWXUDO OHYHO WKHUH LV D ODFN RI H[SHUWLVH IURP DOO WKH GLIIHJearl perlod, were not isolated, but formed part of a broader systematic campaign. GRFXPHQWDWLRQ 1*2V SURVHFXWRUV DQG MXGJHV @ FRQÁLFW UHOL Multi-sectoral collaboration and mentoring

7KHUH KDV EHHQ D ORW RI DWWHQWLRQ IURP GRQRUV IRU > sexual violence. But all of these commitments and all of this expertise [has not been] replicated when it comes to crimes against children in JHQHUDO \$QG VR ZKHQ ZH KKOZWUMHUW ZRK ZRKUNRIRQ FDVHV OLNH

208. In addition to effective documentation, theH [L V W H Q F H R I D Q H W Z R U N R I H Q J D between medical actors and local policeP D G H F R O O D E R U D W L R Q D Q G L Q I R U P

,QWHUYLHZ ZL<mark>SMAKegid</mark>DQLHOH 3HULVVL)HEUXDU\ 359 , QHWUYLHZ ZLWK . DUHQ 1DLPHU 0DUFK 2+&+5 ¶ /LWLJDWLRQ IRU VH[XDO DQG JHQGHU EDVHG YLROHQFH /HVVRQV OHDUQHG :RUNVKRS UHSRUW, 2019, p. 10; /DQF367W, CH67W SLUHDZ ZLWK .DUHQ 1DLPHU 0DUFK

360 OHCHR, 6 WUDWHJLF /LWLJDWLRQ IRU VH[XDO DQG JHQGHU EDVHG YLROHQFH /HVVRQV OHDUQHG

361 Interview with Daniele Perissi, 28 February 2020.
369 , CHWUYLHZ ZLWK . DUHQ 1 DLPHU 0 DUFK
362 \$FFRUGLQJ WR 75,\$/,QWHUQDWLRQDO LQYHVWLJDWLRQV DQG SURVHFXWLRQV ODUJHO\ IRFXVHG RQ WKH NLOSTOLQHWDYQLQHZDLPWLKQJDRUHKPLKV KHOSHG D ORW WR VWDQGDUGLVH WKH sexual violence against women, and child recruitment and use. Interview with Daniele Perissi, 28 February 2020.

363 Interview with Daniele Perissi, 28 February 2020.

364 Interview with Daniele Perissi, 28 February 2020. See als& KLOGUHQ DQG DUPHG FRQÁLFW LQ WKH 'HPRFUDWLF 5HSXEOLF of the Congo Report of the Secretary General, S/2018/502, 25 May 2018.

365 Interview with Daniele Perissi, 28 February 2020.

366 Interview with Daniele Perissi, 28 February 2020

and in the pursuit of accountability?8

clinician brought in by PHRe

of retaliatory violence:67

.QHWYLHZ ZLWK .DUHQ 1D₺₱₽₽HW0¶ØKN FDVH RI .DYXPX D PRGHO RI PHGLFROH

UHSRUWD 200H9Qp.6.DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9RO

DVFHUWDLQ SDWWHUQV > @ DQG PRGHV RI SHUSHWUDWLRQ WKH PRGXV RSHI EH SHUSHWUDWLQJ WKHVH FULPHV > @ ,Q PDQ\ FRQWH[WV RI PDVV FULPHV > VKRUW SHULRG RI WLPH > @ ,Q WKLV LQVWDQFH > @ RQH FDVH ZRXOG VXUI UHDOO\ RYHU WKH FRXUVH RI WKUHH \HDUV WKDW ZH VDZ XSZDUGV RI FDVH\ FULWLFDO WR EH DEOH WR HVWDEOLVK WKH NLQG RI SDWWHUQ WKDW VKRZHG

SRVVLEOH DQG EXLOW WUXVW DQG D VKDUHG VHQVH RI SXUSRVH and drive between the two

sectors. This was particularly key, given that local prosecutors refused to open an investigation, and that it would take a further three years before the military courts assumed jurisdiction over the case:

209. In 2014, PHR mobilised a multidisciplinary task force which included clinicians,

ODZ\HUV SROLFH RIÀFHUV SURVHFXWRUV MXGJHV FRPPXQLW\ DFWLYLVWV IUR Pre-recorded video interviews by paediatric forensic experts 1*2V DQG 02186&2 WKH 81 2UJDQLVDW&RQQ6WDELOLVDWLRQ 0LVVLRQ LQ '5

WKH WDVNIRUFH ZDV MRLQHG E\ 75,\$/,QWHUQDWLRQDO D 6ZLVV EDVHG OHJDO 1*2, ZRUNLQJ RQ

accountability for international crimes, including in the DRC. Members of the task force met on a monthly basis to strategise on advancing the criminal investigation, protecting the security and safety of the victims/survivors and their families, and to discuss advocacy872

210. \$FFRUGLQJ WR 75,\$/,QWHUQDWLRQDO '7KH PXOWLGLVFLSOLQDU\ H[SHUWLVH WKDW LV RIIHUHG

through the collaboration of different actors is key [...] These different actors, each of them with peculiar expertise, bringing that expertise to gather and try to [...] overcome

disposal of the whole system [...] that was one key ingredient".

211. This level of strategic engagement and mentoring was critical to the success of the Kavumu investigation, as building capacity through training alone would have been LQVXIÀFLHQW

7KH PHQWRULQJ DQG ZRUNLQJ WRJHWKHU ZLWK HISHUWV RQ VSHFLÀF FDVHV > sit together and talk about what kind of evidence do we have for this

case, what kind of additional evidence do we need to have a solid case to

bring forward the charges, how to prepare a trial for international crimes,

which are the kind of measures that you have to put in place in terms of protection, security, psychological care and so on. [...] This is something

DW 75,\$/ WKDW ZH KDYH EHHQ GRYDQDabveRU WKH ODVW IHZ \HDUV > WR KDYH ORQJ WHUP RU DW OHDVW PLG WHUP HQJDJHPHQW [...] you cannot

mentor for a couple of months and then think that you have equipped the participants with something durable, with something sustainable,

especially because you have to consider that these judicial procedures

take a lot of time. [...] You have to have an approach that is [...] rooted

in the country. 0 H EHLQJ LQ *HQHYD ZLOO QRW PDNH WKH GLIIHUHQFH 0\

defenders, that is what makes the difference: (PSKDVLV RXUV

212. In addition to training and mentoring lawyers and local documentation entities, the importance of involving judges ZDV KLJKOLJKWHG ´, W·V QHFHVVDU\ WKDW WKH PDJLVWUDWHV are sensitised and really trained on how to deal in the investigation phase with crimes against children and then in the trial phase 375

213. \$QRWKHU FULWLFDO DVSHFW ZDV WKH GHHS HQJDJHPHQW EHWZHHQ WKH IDPLOLHY /BYVRQVLOHDUQHG :RUNVKRS UHSRUW, 2019, p. 14. children and the wider community, and the legal and medical professionals. They

, QHWUYLHZ ZLWK .DUHQ 1DLPHU 0DUFK

were kept informed at each stage of the legal process and frank conversations were held around security concerns, which were particularly acute in this case. Their feedback was integrated into the monthly meetings and mitigating measures were taken by partners, including providing training and support on how to enhance their protection.376

to interview child victims and witnesses and did not initially consider that this was QHFHVVDU\ '7KHVH SROLFHPHQ ZDQWHG WR LQWHUURJDW DGXOWV EHFDXVH WKH\ GRQ.+W 7K5D,\$*H, D, QQ\HWQDWQLIRQQJDQQZDW to persuade them that specialist psychologists should be brought in to assist with the

It was challenging to have the national system accept that and go along them with peculiar expertise, bringing that expertise to gather and try to [...] overcome

ZLWK WKDW \$QG WKDW ZDV SRVVLEOH RQO\ EHFDXVH ZH

WKH VRPHWLPHV VHOÀVKQHVV RI WKHLU RZQ DJHQGDV DQG WU\ WR SXW WKHLU H[SHUW] VH DW WKH

relationship with them. We were implanted in the country, we wouldn't

were conducted

in a safe location

paediatric forensic

and a local Panzi

95

psychologist.

psychologist

215. , Q 'HFHPEHU

3+5 3DQ]L +RVSLWD The interviews/, QWHUQ collected video interviews of each of the child survivors over the course of six days. The interviews were conducted in a safe location by a specialist paediatric forensic psychologist, and a

just come from some other place and say "we have the solution".

@ORFDO 3DQ]L SV\FKRORJLVW \$ FORVHUY & SPECIALIST 79 DOOR assess the children's responses and behaviour in real time, and to feed questions to the psychologists who then re-framed them in a child-competent way. The interviews we free lowed

E \ D S K \ V L F D O . Stfict Proceedunes were adopted to ensure that international protocols were followed and that

the children were not retraumatised. Informed consent was obtained at every stage, including for forensic photography and

the preparation of medico-legal reports. In this way, the team was able to gather, in a child-centred way, credible evidence of both the mental and physical impact of the FULPHV WKDW ZRXOG KDYH EHHQ YHU\ GLIÀFXOW IRU WKH

FROOHDJXHV EHLQJ WKHUH DQG EHLQJ DOVR &RQJROHVH ODZ\HUV KXPDQ ULJKWV 216. In court, prosecutors successfully applied for the pre-recorded videos to stand as the evidence in place of the child survivors. It is emphasised that in this case, the video

> testimony was used by investigators to glean more information, and, subsequently, was relied on by prosecutors in court to demonstrate the physical and psychological impact of the crimes on the victims. In other words, it was not used as evidence of

, QHWUYLHZ ZLWK .DUHQ 1DLPHU 6WOUDDUWFHKJLF /L2W-L&J+D5W MIRQ IRU VH[XDO DQG JHQGH

questioned by police?9

^{372 /}DQFHW ¶7KH FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. .DUHQ 1DLPHU 0XULHO 9ROSHC380L MHtehvielvHvQtth. Dianiele Perissi, 28 February 2020. 6 RPH RI WKHP LQ WKH GLVFXVVLRQ ZLWK D SV\FI OXNZHJH 9RO

³⁷³ Interview with Daniele Perissi, 28 February 2020

³⁷⁴ Interview with Daniele Perissi, 28 February 2020.

³⁷⁵ Interview with Daniele Perissi, 28 February 2020. of the recommendation about involving judges applies mostly to proceedings in inquisitorial systems.

³⁷⁸ Interview with Daniele Perissi, 28 February 2020.

^{379 ,} QHWUYLHZ ZLWK 'DQLHOH 3HULVVL) H E U X D U \ , QVDVQIEIHYWHʻZTheZdasWeKsf.DUHQ.1DL .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. 2019, 2652.

ODQJXDJH VRPH DGMHFWLYHV WKDW DOORZHG WKH SROLFH DQG DOORZHG D PLOLWLD EHFDXVH WKHUH ZDV WKH UHFXUUHQW LPDJH RI UHG VKLUWV DQG WKHUH ZDV WKH VSHFLÄF XVH RI ODQJXDJH RI FHUWDLQ ZRUGV WKDW OLQN ZLWFKFUDIW WKDW WKH ORFDO H[SHUWV NQHZ ZDV UHODWHG WR WKLV PLOL FRXOGQ.W UHDOO\ UHFRJQLVH RU LGHQWLI\ WKH LQGLYLGXDO SHUSHWUDWRU'

the acts or conduct of the accusedas the general rule is that there is a right to crossexamination in respect of evidence relied on to establish the criminal responsibility of

an accused : KHWKHU SULRU UHFRUGHG WHVWLPRQ\ ZLOO EH DGPLVVLEOH LQ D JLYHQ F.D V 100 V XUH WKDW YLFWLPV DQG WKHLU IDPLOLHV UHPDLQ FI therefore, depends on the material facts at issue, and on what such evidence seeks to prove.

%XLOG RQ WUDLQLQJ SURYLGHG WKURXJK ORQJ WHUP P

WKURXJK DQ HIIHFWLYH RXWUHDFK SURJUDPPH DQG WK obtained at every stage:

,Q DGGLWLRQ VRPH RIWKH DGXOW ZLWQHVVHV IDPLO\PHPEHUV ZHUH DOORZHG WR •JLYQHYHYLMGHQQ FEHKLOGLQJRU ShātbekWindQqobrdbinQateFRDOLWLR(RQ FDPHUD 7KRVH WKDW WHVWLÀHG LQ SXEOLF KHDULQJV ZHUH JUDQWHG VSHFLDO PortHift@clusxed.Labb/vocabb/yRo draw attention and elicit sustained funding to support SURWHFW WKHLU LGHQWLWLHV HJ IXOO\YHLOHG EHKLQG VFUHHQ ZDOOV DQG XVL QQCdounteddiify ffor Drigheys endelinlas Qchildren; WHFKO®RORJ\

Lessons learned

217. The Kavumu FDVH LOOXVWUDWBIYHW WHLOEJH QOBI AWDW RHWHG ORQJ WHUP FDSDFLW GHYHORSPHQW LQWHUYHQWLRQV WR VWUHQJWKHQ WKH WHFKQLFDO NQRZOHGJH RI•P¾ρχνωθείσυν βΗΘΘWLQRQOXGSQJRWKWWRXXJMK IRU H[DPSOH WK DFWRUV DQG IRVWHU!» TMeKWHUFKFORLOFODIOE BQG WALORDOQFLDO VXSSRUW RIQDWLRQDO and international stakeholders, and the attention from international media, were

crucial determinants of the successful prosecution of the case. 75, \$/·V DVVHVVPHQW is that sustainable funding for international organisations involved in the process is also vital, in order to replicate and streamline the avumu DSSURDFK '\$V LW VWDQGV now, [the systematisation of sharing expertise cannot by replicated] if we don't have an approach by donors and then down the line, all actors working on this in order to systematise this knowledge and the sharing of expertise and the lessons learned in that case".385

building of the Kavumu case to a FHQWULQJ RIWKH SUREOHP D VWURQ WR FROODERUDWH DQG D ODFN RI HJR on the part of the actors, both international.

%RWK 75,\$/ DQG 3+5 DWWULEXWH WKH VXFFHVV RI WKH F

mentoring of those charged with investigations and prosecutions, together with LQIRUPDWLRQDO HPSDWKHWLF RXWUHDFK WR YLFWLPV D strategies for tackling structural barriers a greater likelihood of success.

- 218. The view of PHR is that the local medical, legal and law enforcement actors involved
 - LQ WKLV SDUWLFXODU FDVH FRXOG DSSO\ WKH WRROV DQG OHVVRQV OHDUQHG HJ LQ UHVSHFW RI standardised documentation of evidence, informed consent, long-term engagement

ZLWK WKH ORFDO FRPPXQLW\ WR RWKHU FDVHV LQYROYLQJ FKLOG VXUYLYRUV LQ WKH '5& ZLWK less external support. Beyond the DRC, PHR is currently strategising with its partners

LQ .HQ\D DQG WKH &HQWUDO \$11deb@VDtQeK@wHusbuXmExQDeLF RQ KRZ WR EHVW and strengthen the capacity of relevant actors, having regard to the rules of evidence

DQG VRFLR FXOWXUDO FRQWH[W. RI WKRVH SDUWLFXODU MXULVGLFWLRQV

- 219. The Kavumu FDVH RIIHUV WKH IROORZLQJ OHVVRQV
 - 'HYHORS PXOWLGLVFLSOLQDU\ SDUWQHUVKLSV ZLWK FRPSOHPHQWDU\ H[SHUWLVH to address WKH VSHFLÀF QHHGV DQG ULJKWV RI FKLOG YLFWLPV LQFOXGLQJ EXW QRW OLPLWHG WR YLFWLPV RI sexual violence:

D EHWWHU XQGHUVWDQGLQJ RI WKH FRQWH[WXDO HOHPHQW WKDW WKHQ ZHUH XVHG WR FRQIURQW VRPH RI WKH GHIHQGDQWV WKDW KDG EHHQ DUUHVWHG DQG IURP WKDW XQGHUVWDQG PRUH DERXW WKH UROH RI WKH GLIIHUHQW SHUVRQV LQYROYHG μ

^{381 6} H H H W L **\$ 10** H 5RPH 6WDWXWH DQG 5XOH ,&& 5XOHV RI 3URFHGXUH DQG (YLGHQFH

³⁸² Interview with Daniele Perissi, 28 February 2020; DQF¶HWKH FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ

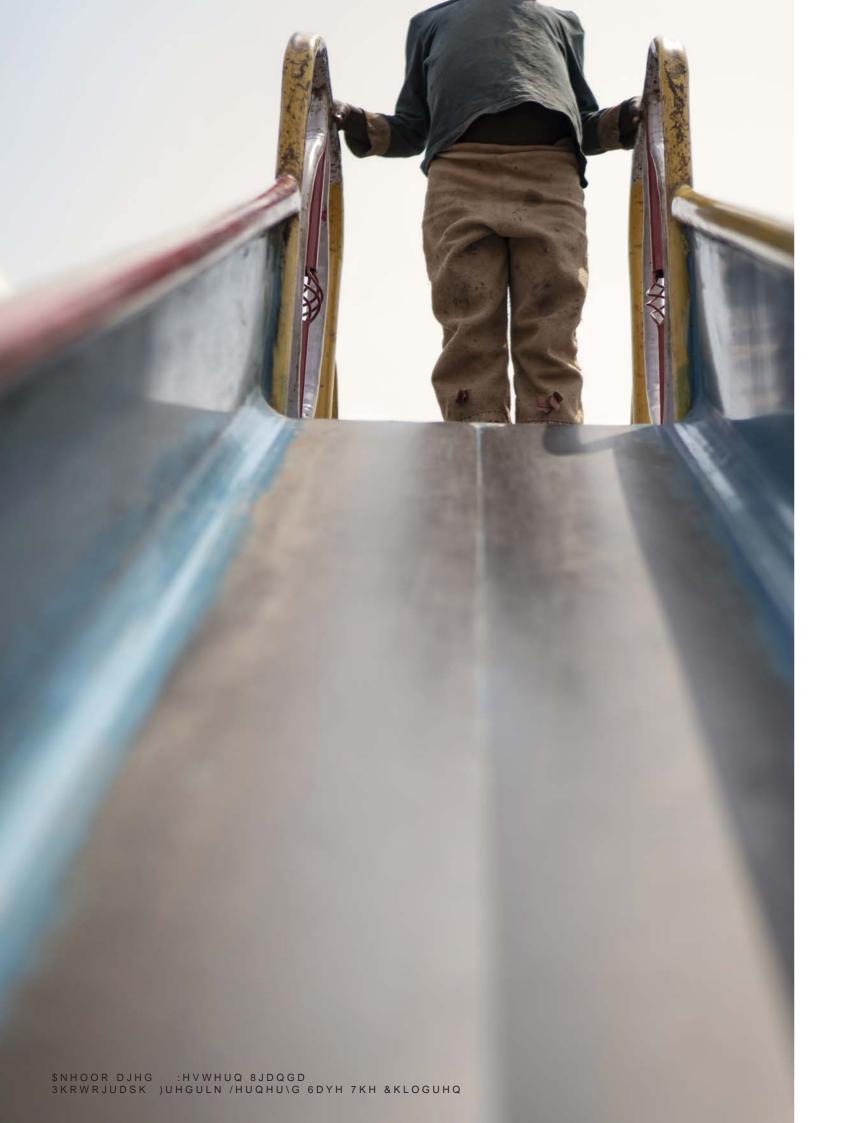
DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9RO - X Q H

^{383 /}DQF¶MMKH FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. .DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9 R O - X Q H

^{384 /}DQF¶MKH FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. .DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9 R O - X Q H

³⁸⁵ Interview with Daniele Perissi, 28 February 2020.

^{386 ,} QHWUYLHZ ZLWK .DUHQ 1DL/PDHQUF #17WKOHD UF DK/H RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9RO



SECTION IV.

CONCLUSIONS AND RECOMMENDATIONS

- 220. Despite their magnitude, frequency, and devastating impact, children's experiences of war and armed violence are not yet systematically captured by accountability mechanisms. Looking back across efforts to secure accountability, it is apparent that accountability-driven mechanisms have been, and largely remain, adult-centric in their approach to the investigation, documentation, and indictment of crimes.

 & KLOGUHQ·V H[SHULHQFHV RI PDVV DWURFLW\ RIWHQ JR X and transcripts of bodies charged with pursuing criminal accountability. When they do appear, children are frequently un-situated and ageless; their experience is presented DV KRPRJHQRXV DQG RIWHQ UHGXFHG WR VSHFLÀF VHWV DQG VH[XDO DQG JHQGHU EDVHG YLROHQFH \$V D UHVXOW children have rarely been brought to justice, and crimes affecting children have remained in the shadow of other crimes.
- 221. 7 KLV 5 HV HDUFK 3 DSHU KDV H[DPLQHG WKH DWWLWXGLQDO that prevent or slow progress in achieving accountability for crimes and violations DIIHFWLQJ FKLOGUHQ LQ FRQÁLFW 0 DQ\ RI WKHVH DUH PX E\ SHUVLVWLQJ SRZHU G\QDPLFV LQÁXHQFLQJ WKH GHFLVL stakeholders, the lack of an accountability-focused child rights constituency committed to join forces, and a lack of investment in the capacity-building efforts UHTXLUHG WR GHYHORS DQG HIÀFLHQWO\ LQFOXGH FKLOG PHFKDQLVPV \$PLG VORZ SURJUHVV LW DSSHDUV WKDW W of children in the work of accountability-driven mechanisms mirrors a reluctance to directly engage with vulnerable victims and witnesses, such as children, and what appears to be a form of disregard for the impact of crimes on children, as well as persisting obstacles to seeing children as rights-holders, whose voices need to be heard and perspectives understood.
- 222. States have not consistently championed justice for crimes affecting children, and there is no accountability-focused coalition persistently calling attention to the issue. This means there is little to no impetus for ensuring that crimes affecting children are addressed or mainstreamed in the design, composition, or implementation of mandates and approaches of those charged with seeking accountability. This has an impact on the funding available to create, build, and provide expertise, particularly in relation to interviewing children, and other resources to those engaged in the investigation of crimes and the building of cases against alleged perpetrators.
- 223. Drawing on extensive desk research, and the insights of practitioners, academics, and activists working on these issues, this paper has sought to identify meaningful and practical strategies and solutions to overcome or mitigate those barriers.
- 224. \$WWHQWLRQ ZDV SDLG WR WKH ZD\V LQ ZKLFK DFFRXQWDE

staffed, including the way in which strategic goals and approaches are set by their leadership to mainstream child-competency into investigations of the crimes and

non-judicial and judicial accountability mechanisms; c) \$GYRFDWHIRU DQ DQDO\WtwlFindth 60avlel InHatholdattest reflatine() 1 HQWLWLHV

YLRODWLRQV WKDW DIIHFW FKLOGUHQ \$WWHQWLRQ ZDV DOVR SDLG WR WKH RSHUDW in Room Droan First to add resign by Hold It is a single for the same of the sam objective of determining how such mandates can best support the building and

and methodological guidance these mechanisms encounter, and which strategies

DQG VROXWLRQV FDQ EH LPSOHPHQWHG WR RYHUFRPH WKHVH FKDOOHQJHV LQFOXGLSUURFYUMDRWQ ORJ UHOHYDQW HISHUWLVH DQG LQIRUPDWLRQ

DQ LQYHVWLJDWLRQ VXSSRUW XQLW ZLWKLQ WKH 2IÀFH RI WKH +LJK &RPPLVVLRQHU lifedlotial+axcroundability mechanisms;

d) 0 D N H D Y D L O D E O H G R P H V W L F H [S H U W L V H in the investigation and doc

Rights;87 creating a structure focused on building and disseminating the necessary

HISHUWLVH ZLWKLQ 81 GRFXPHQWDWLRQ ERGLHV DQG LQWHUQDWLRQDO FULPLQDO FRVYOLIANING ADDICTOR Children, including through secondments and loans

WULEXQDOV RU EROVWHULQJ WKH LQLWLDO ZRUN GRQH E\ - XVWLFH 5DSLG 5HVSRQVH tDjQdCiaBand non-judicial accountability mechanisms; RPHQ LQ WKLV UHJDUG DQG HQVXULQJ WKDW WKHVH ERGLHV DGRSW DQG LPSOHPeHQ(MQIRVLSFHFLGAFPHVWLFDOO) LQFRUSRUDWHG LQWHUQDWLRQI policies and strategies on investigating and prosecuting violations and crimes

rights, and act to ensure domestic accountability for child rights violations, at all times ensuring that all internationally recognised fair trial rights are respected;

affecting children.

f) Ratify the Convention on the Rights of the Child, the Optional Protocol on the QYROYHPHQW RI &KLOGUHQ LQ \$UPHG &RQÁLFW WKH 2S Children, Child Prostitution and Child Pornography, and the Optional Protocol to the Convention on the Rights of the Chilon a Communication Procedure as measures to improve accountability for child rights under domestic and international human rights law.

In addition, we considered what lessons could be learned from the gender justice movement, and from successful domestic accountability efforts in the DRC, including mainstreaming expertise and devising effective modes of cooperation and expertisesharing among key actors within the accountability chain. However, questions remain about the sustainability of these efforts and the setting-up of appropriate fora to facilitate the exchange of knowledge and lessons learned.

That 81 ERGLHV HPSRZHUHG WR HVWDEOLVK MXGLFLDO DQG QR

225., Q OLJKW RI WKH DERYH ZH VHW RXW EHORZ VSHFLÀF UHFRPPHQGDWLRQV WR HDMFekhaRishmb/KVHXFK DV WKH 81 6HFXULW\ &RXQFLO 81 +XPDQ 5LJKV IROORZLQ81 @WROWHW HPSRZHUHG WR HVWDEOLVK MXGLFLDO DQG QRQ MXGLFLDO \$VVHPEO\ accountability mechanisms; all accountability mechanisms; entities which support accountability mechanisms through the provision of staff; and non-governmental and civil society organisations.

a) Clearlyprioritise the investigation and documentation of violations and crimes affecting children in mandates and resolutions, including by encouraging the adoption of deliberate strategies, policies, and operational guidance to this end;

226. 7 K L V S D S H U · V R E M H F W L Y H V Z H U H W R L G H Q W L I \ W K H F K D Q J H V W K D W Z R X O G Q H H G W R in Rest light shibh about vide hit at ion of violations and crimes affecting children; operational, strategic, and institutional levels to ensure that child-centred and childcompetent policies are included in investigative and accountability mandates; assist the development and strengthening of child-sensitive procedural frameworks within

b) \$XWKRULVH EXGJHWV ZLWK GHGLFDWHG IXQGV IRU WKH

DFFRXQWDELOLW\ PHFKDQLVPV LQFOXGLQJ UHOHYDQW WRROV UHVRXUFHV VNLOOV DQG VHQVLWLYLW\ WR HQJDJH ZLWK FKLOGUHQ DQG FRQVLGHULQJ VWUDWHJLHV WR EROVWHU DQGTHAQDHQQJLDYFFTWXQHWDELOZLKWH\WFKHHFUK DMQXGVLFFVLDO RU QRQ MXGLFLDO child rights constituency around issues of accountability from crimes and violations DIIHFWLQJ WKHP 7R DFKLHYH WKHVH REMHFWLYHV LW LV UHFRPPHQGHG

c) 5 H T X H V W V S H F, Linkel Edinby Hth Bolight Wall Webentations, on mandates? progress in the investigation and documentation of violations and crimes affecting

That States

a) Invest political capital in placing accountability for violations and crimes affecting children securely on the international agenda, including by consistently raising the need to strengthen such accountability in political and diplomatic fora, most SURPLQHQWO\DW WKH 81 6HFXULW\ &RXQFLO DQG E\ HQVXULQJ WKDW VSHFLÀF HP Shke Stilly atteb/crimes against children including engaging in active efforts to RQ DGGUHVVLQJ FULPHV DJDLQVW FKLOGUHQ DQG UHODWHG H[SHUWLVH LV LQFOX Gedrfuß from Qnat/lok/allijurisdictions, in order to capitalise on domestic criminal mandates of accountability mechanisms;

ensuring that investigations are child-competent; that lessons learned and best practices stemming from local and international accountability efforts are HIÀFLHQWO\ DQG V\VWHPDWLFDOO\ FRPSOLHG DQG VKDU analysis of crimes and violations isystematically integrated to accountability b) , PSURYH WKH UHFUXLWPHQW RI LQYHVWLJDWRUV ZLWK V

b) \$00RFDWHIXQGV DQG DGYRFDWH ZLWK RWKHU VWDWHV WR VXSSRUW WKH FRQVLV Yehrstu@e Vthat this expertise translates into child-competent approaches across all EXLOGLQJ DQG SURYLVLRQ RI H[SHUWLVH in the investigation and documentation of FRQÁLFW UHODWHG YLRODWLRQV DQG FULPHV DJDLQVW FKLOGUHQ LQFOXGLQJ WK UtdR nixeck/Kanlik/srk/s-lstaff. For longer-term mandates, in particular, where the work

establishment and backing of structures through which such expertise can be HIÀFLHQWO\ SURYLGHG WR MXGLFLDO DQG QRQ MXGLFLDO DFFRXQWDELOLW\ PHFKD QatietyPoVinte7loccutohrs, and developing institutional knowledgemphasis should could include GHGLFDWHG IXQGLQJ IRU WKH FUHDWLRQ RI D URVWHU RU QH[XV RI H[SHUWLEVHHSXW LQ UHFUXLWLQJ LQYHVWLJDWRUV DQDO\VWV DC on the investigation of violations and crimes affecting children to be deployed into

investigators' formal training and up-to-date experience interviewing children and operational aspects of their work, including by requiring training by such experts is heavily dependent on building and sustaining relationships of trust with a wide

who are not deployed in a temporary oad hoc ZD\ EXW UDWKHU IRUP SDUW core and ongoing structure of the mandate.

a) 'HYHORS DQG RU HQKDQFH VWDII FDSDFLoWV\ DQG FRPSHW

c) In non-judicial accountability mechanisms:nsure that staff have the necessary

[,]Q WOUFXODWLQJ WKLV UHFRPPHQGDWLRQ WKLV 5HVHDUFK 3DSHU GUDZV IURP WKH ZRUN RI WKH 2[IRUG 8QLYHUVLW&aWattRPin international human rights and criminal law;

\$QFKRULQJ \$FFRXQWDELOLW\ IRU 0DVV \$WURFLWLHV D SURMHFW WR DGYLVH RQ WKH SHUPDQHQW VXSSRUW QHHGHG V W LIXO A WKHUH DUH GHGLFDWHG VWDII ZLWK VSHFLDOLV V international investional investiona

D V S H F L À F X Q L W L Q W K H J H Q H U D OG 下 L 单 F H W 多 W H D X F H W X G H H G R U D V D 6 S H F L D O \$ in the operational aspects of investigation and documentation, and that these staff have a greater involvement in periodic reviews of investigation plans and strategies and the related legal analysis, and in facilitating and promoting a broad-based competence on addressing crimes against children throughout the institution;

- c) Partner with States on ensuring that UN entities impowered to establish accountability mechanisms H [SOLFLWO\SULRULWLVH WKH LQYHVWLJ documentation of violations and crimes affecting children in their mandate and legal frameworks;
- d) 6 X S S R U W P H F K D Q L V P V · R X W U H D F K V W U D W H J L H V so that their are understood at the local level.
- e) 8 Q G H U V F R U H W K D W W K H , & & · V 3 R O L F \ R Q & K L O G U H Q Z K H U H U H O H Y D Q W F D Q D Q G V K R X O G inform the approach of the accountability mechanisms in respect of developing a
 - child-competent approach to the investigation and analysis of international crimes affecting them;
- f) \$GRSW WKHPDWLF SROLFLHV DFFRP, Shrip @sihgHG E\RSHUDWLRQDO JXLGHOLQHV stringent requirements on investigators and prosecutors with regard to the prioritisation of the investigation and documentation of violations and crimes against children;
- g) Invest in effective outreach strategies, so that the mandates and activities of the mechanisms are understood at the local level:
- h) \$GYRFDWH IRU IXQGV IRU DQG ZKHUH IXQGV DUH DYDLODEOH HQVXUH DGHTXDWH ZLWQHVV protection and psychosocial structures an integral component in ensuring a good understanding by the affected communities of the mandate and activities of accountability mechanisms, and of the protection structures available to them;
- i) 'HYHORS NQRZOHGJH VKDULQJ FKDQQHOV DPRQJ DFFRXQWDELOLW\ PHFKDQLVPV including the creation of dedicatedocal points to secure periodic meetings, foster exchange of knowledge and best practices between in-house expertsol ultimately capitalise on the lessons learned from the new strategies and policies developed by these bodies;
- j) Ensure that LQIRUPDWLRQ DQG GDWD WKDW FRXOG DVVLVW WKH ZRUN RI DFFRXQWDELOLW\PHFKDQLVPV LV VKDUHG E\RW, Kwithlid the 1co fistral/mis UV DQG HQWLWLHV imposed upon the latter by their own mandates.

That HQWLWLHV ZKLFK VXSSRUW DFFRXQWDELOLW\ PHFKDQLVPV WKURXJK WKH SURYLVLRQ RI VWDII VXFK DV 2+&+5 81 :RPHQ DQG -XVWLFH 5DSLG 5HVSRQVH

- a) &RQWLQXH WR DFWLYHO\ VHHN IXQGLQJ DQG VXSSRUW WR HQDEOH WKH EXLOGLQJ RI D URVWHU RI LQGLYLGXDOV DQG VWDII ZLWK VSHFLÀF H[SHUWLVH in the investigation and documentation of violations and crimes affecting children, with the objective that rostered individuals be immediately operational once a mandate is activated;
- b) \$ FWLYHOUN FILLH XXLW RUHOHYDQW H [SHUWón to the PosterQDWLRQDO MXULVGLFWLRQV
- c) 'HYHORS RU DGRSW LQWHUQDO FKLOG FRPSHWHQW VWDQGDUG RSHUDWLQJ SURFHGXUHV PHWKRGV DQG RSHUDWLRQDO JXLG for Othle QHV WKDW UHÁHFW EHVW SUDFWLFHV investigation and documentation of violations and crimes affecting children;
- d) 'HYHORS NQRZOHGJH DYK BOQLL QUJR F KWDHQUQHHGON∀[SHUWV DQG LQ WKH FDVH RI OHCHR, between non-judicial accountability mechanisms for which OHCHR staff VHUYH DV WKH 6HFUHWDULDW

That QRQ JRYHUQPHQWDO DQG FLYLO VRFLHW\ RUJDQLVDWLRQV

- a) 6XSSRUW DGYRFDF\ HIIRUWV IRU DQG DGYRFDWH ZLWK 6WDWHV IRU VXVWDLQDEOH funding streams for the building and provision of expertise in the investigation DQG GRFXPHQWDWLRQ RI FRQÁLFW UHODWHG YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ including through expert rosters:
- b) & RQVLVWHQWO\UDLVH WKH QHIffoGvioMaffions/aMdLcFinQeslWKHQ DFFRXQWDELOLW\
 affecting children in political and diplomatic fora, including but not limited to
 SUHVHQWDWLRQV EHIRUH WKH 81 6HFXULW\ &RXQFLO 81 *HQHUDO \$VVHPEO\ DQG 81
 Human Rights Council, as well as in bilateral and multilateral meetings with
 States:



ANNEX I:

REVIEWING THE APPROACH OF ACCOUNTABILITY MECHANISMS TO VIOLATIONS AND CRIMES AFFECTING CHILDREN

1. 7KLV \$QQH[VXPPDULVHV WKH DSSURDFK RI 81 IDFW ÀQGLC DQG LQWHUQDWLRQDO FULPLQDO FRXUWV DQG WULEXQDOV the documentation, investigation and indictment of violations and crimes affecting children.

PART A. THE UND HOMECHANISMS

7UDGLWLRQDO IDFW ÀQGLQJ ERGLHV

- 2. 8 1 ad hoc mechanisms can play a key role in establishing an accurate record of the facts and recognising and documenting the harm suffered by victimsIn investigating and documenting violations, they apply a 'reasonable grounds to believe' standard, which is lower than the 'beyond reasonable doubt' standard of proof used in the context of criminal proceedings. Increasingly, they are also directed by mandating bodies to identify suspected perpetrators and recommend measures to ensure accountability, and/or to evaluate transitional justice initiatives in the country under investigation?1
- 3. This section focuses on the work of the dependent International Commission of ,QTXLU\ RQ WKH 6\ULMAG\USUDDE&RSPI88RKMEROLLYFVQLRQ RQ +XPDQ Rights in South Sudan ¶ 6 R X W K 6 X G D Q & RnEleptenVolchLinkteOnationQlG)DFW)LQGLQJ 0LVVL¶ROQDRQQPDDЫÐ)X\$BYÐZLLOO EH H[SORUHG EHOR of these mandates has attempted to investigate and document violations and crimes DJDLQVW FKLOGUHQ 2ZLQJ WR VRPH RI WKH EDUULHUV LG efforts have been limited

³⁸⁸ See Catherine Hawood, '+XPDQ 5LJKWV LQ)DQF\ 'UHVV" 7KH 8VH RI ,QWHUQDWLRQDO &UL &RXQFLO &RPPLVVLRQV RI ,QTXLU\ LQ 3XUVXLW RI \$FFRXQWDELOLW\- Grotius Centre 389 OHCHR,&RPPLVVLRQV RI ,QTXLU\ DQG)DFW)LQGLQJ 0LVVLRQV RQ ,QWHUQDWLRQ

Guidance and Practice', pp. 62-63.

^{390 (} J , QGHSHGIGBQWL, RQQVDO & RPPLVVLRQ RI , QTXLU\ RQ WKH 6\ULDQ \$UDE 5HSXEO

^{391 (} J &RPPLVVLRQ RQ +XPDQ 5LJKWV LQ 6RXWK 6XGDQ ¶6RXWK 6XGDQ &RPPLVVL

³⁹² Documentary efforts have been in place in Iraq and the DRC as well. However, these efforts have taken shape WKURXJK WKH 81 ÀHOG PLVVLRQ RQ WKH JURXQG DV RSSRVHG WR YLD LQGHSF The three mechanisms discussed here have been selected because they all have received HajnS U H V V mandate "to identify suspected perpetrators and recommend measures to ensure accountability". In other words, they have EHHQ GLUHFWO\ DIIHFWHG E\ WKH ¶DFFRXQWDELOLW\ WXUQ LQ 81 KXPDQ ULJK Accountability Turn', supra note 142.

³⁹³ This section does not exhaustively detail each of the violations documented by these mechanisms, rather, for each context, it gives examples of some of the crimes affecting children which were documented.

Syria

- 4. 7KH 6\ULD &RPPLVVLRQ ZDV HVWDEOLVKHG E\ WKH +XPDQ 5LJKWV &RXQFLO RQ 2011 to investigate all alleged violations of international human rights law committed in Syria since March 2011; establish the facts and circumstances that may amount to such violations and of the crimes perpetrated; and, where possible, identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable. While the Commission's mandate does not expressly refer to crimes against children, since its establishment the Human Rights Council has issued a number of resolutions FRQGHPQLQJ FRQÁLFW UHODWHG Y LROHQFH DJDLQVW FKLOGUHQ LQ 6\ULD
- 5. The Syria Commission has to date produced more than 30 public reports and thematic papers documenting patterns of violations of human rights and humanitarian law, as well as the perpetration, since 2011, of international crimes by the government, pro-government forces, anti-government armed groups, and terrorist organisations, in particular ISIL. Most of these documents contain references to, or SHULRGLF UHSRUWV FRQWDLQ VSHFLÀF VXE VHFWLRQV RQ FKLOGUHQ RI WKH VHFWLRQ GRFXPHQWLQJ WKH LPSDFW RI WKH FRQÁLFW RQ FKLOGUHQ LQFOXGLQJ WRStillities Children were recruited through abductions, recruitment drives and the violations, as well as the detention of children associated with ISIL and the impact of siege warfare on pregnant women and children.
- 6. \$ UHSRUW SXEOLVKH70KH20K-DDYQHXDHW\DVHG WKH GUHDPV RI P\ FKLOGUHQ IRFXVHV H[FOXVLYHO\ RQ WKH LPSDFW RI WKH FRQÁLFW RQ FKLOGUHQ EHWZHHQ The report outlines the multitude and scale of children's rights violations since the VWDUW RI WKH FRQÁLFW DV GRFXPHQWHG EnterWKH & RPPLVVLRQ DQG SUHVHQWV ÀQGLQJV alia, on the killing and maiming RI FKLOGUHQ \$FFRUGLQJ WR WKLV UHSRUW GXULQJ WKH reporting period, children were killed and maimed during protests and home raids conducted by government forces against civilians and civilian areas who supported or were perceived to support opposition forces. Other children died during indiscriminate or disproportionate attacks, including in urban areas, a number of which involved WKH XVH RI EDUUHO ERPEV FOXVWHU PXQLWLRQV DQG FKHPLFDO ZHDSRQV \$ UDSLi@velst@aftildplanedVolumenting violations and crimes against children, however it does in large-scale aerial and ground campaigns damaged key civilian infrastructure, including schoolsand hospitals UHVXOWLQJ LQ KLJK QXPEHUV RI FKLOG FDVXDOWLHV \$QRWKHU and prejudice against childrenge GHYDVWDWLQJ WDFWLF ZDV WKH XVH RI VLHJH ZDUIDUH E\ PRVW SDUWLHV WR WKH FRQÁLFW 7RZQV and villages were besieged, accompanied by near-constant shelling and aerial

394 81 + X P D Q 5 L J K RNésolusidro XS-Q77F1L O \$ X J X V W + X P D Q \$ L+J \$K&W \$7 (& R6 X Q F-LX0Q H 2012; Human Rights Council_\$ + 5 & 5 (6 , 17 October 2012; Human Rights Council\$ + 5 & 5 (6 , 8 \$SIII O

bombardment, causing scores of civilian casualties, including children. Such tactics

dying from malnutrition, dehydration or other preventable deaths linked to tible nial

of humanitarian assistance were also documented of

+ X P\$D-Q5 & L5J(H6W6V, 1& R X Q F L O 395 Human Rights Council Resolution S-17/1 \$ X J X V W SDUD + X P D Q 5 L JSK W/5/& 85R & Q F1IZ October 2012, para. 4; Human Rights Council + 5 & RES/31/17 \$SULO SDUD

396 KWWSV ZZZ RKFKU RUJ HQ KUERGLHV KUF LLFLV\ULD SDJHV LQGHSHQGHQWLQWHUQDWLRQDOFRPPLVVLRQ DVS[40,45,48-53.

397 Human Rights Council, "7KH\ KDYH HUDVHG WKH GUHDPV RI P\ FKLOGUHQ P FKLOGUHQ V ULJKWV LQ WKH 6\ULDQ \$UDE 5466 Multimari. Fights Council. +5 & 5 (6 , 24 March 2017. paras, 21-30.

South Sudan

- 7. The South Sudan Commission was established by the Human Rights Council on
- \$ x 23 March 2016. It was initially mandated to "monitor and report" on the human rights situation in South Sudan, and to provide guidance on transitional justice and accountability, as appropriates In 2017, it was further mandated to determine and report the facts and circumstances of, collect and preserve evidence of, and clarify responsibility for, alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence. The resolutions delineating the VFRSH RI WKH &RPPLVVLRQ.V PDQGDWH VSHFLAFDOO\ FRQ human rights law and international humanitarian law against children, including the recruitment and use of children and attacks on schools.
- 8. The South Sudan Commission has, to date, issued four periodic reports, which FRQWDLQ OLPLWHG 4AQ006 of tole Wolfrigns Folke Lurge Greet Houghe Commission is the recruitment and use of children. \$ V R I - X O \ DSSURILPDWHO 19,000 children, including children under the age of 15, were still in the ranks of the South Sudanese armed forces and armed opposition groups. While some of these phildren were used a scooks, guards and couriers, others actively participated in extortion of their family members; in other instances, they 'voluntarily' joined armed JURXSV GXH WR ODFN RIÀQDQFLD⊙OTh® Elobm©onNesioNni RasVXSSRUW W also reported on VH[XDO DQG JHQGHabbatinstDolling and Ybbyks; Willing and maiming; attacks oneducation; and IRUFLEOH GLOVSODFHPHQW

DQG

Myanmar

9. The Myanmar FFM was established by the Human Rights Council in March 2017, L Q W Htd establistothe facts and circumstances of human rights violations and abuses at the hands of military and security forces in Myanmar and particularly in Rakhine State, with a view to "ensuring full accountability for perpetrators and justice for victims":404 The resolution establishing the FFM does not expressly refer to "encourage" the Government of Myanmar to take measures to address discrimination

10. The Myanmar FFM produced two thematic reports H [X D O D Q G J H Q G H U E D V H G Y L

SUHYHQWHG WKH ÁRZ RI IRRG DQG PHGLFLQH LQWR DIIHFWHG DUHDV .QVWDQFHV_RI FKLOGUHQ

\$SULO ,Q LWV ÀUVW UHSRUW WR WKH +5& WKH 398 Human Rights Council \$\\$ + 5 & 5 (6) HPSKDVLVHG WKDW LWV RULJLQDO PDQGDWH GLG QRW H[WHQG WR FRQGXFWLQ monitor and report; accordingly, the methodology adopted was based on OHCHR and international standards for KXPDQ ULJKWV PRQLWRULQ<u>\$ ++5%PD(05 5</u>LJK\$NSVU&@XQFLSDUD

107

399 Human Rights Council \$ + 5 & 5 (6 \$ S U L O 2018; Human Rights Council \$ + 5 & 5 (6 \$ S U L O 3) + X P D Q \$ L+J5K8W5/(&RXQF\$5ULO \$SULO ,Q LWV AUVW UHSRUW WKH &RPPL The Commission was initially mandated to monitor and report on the situation of human rights in South Sudan

+ X\$P 10 40 & 5 15 (J6K W, V & R X Q F L O 400 Human Rights Council.\$ + 5 & 5 (6 \$ SULO SDUDV +X\$PD-Q&551KWV & \$\$QEOO SDUDV +XPDQ 5LJKV \$SULO SDUDV \$SULO Council, \$ + 5 & 5 (6 SDUDV 401 Human Rights Council Commission on Human Rights in South Suddntt SV ZZZ RKFKU RUJ (1 + 5 % RGLHV + 5 &

CoHSouthSudan/Pages/Index.aspx 402 Human Rights Council, Sport of the Commission on Human Rights in South Sudars, + 5 &

2020, paras, 45-57

403 Human Rights Council, Sport of the Commission on Human Rights in South Sudars, + 5 & ____, 6 March 2017, paras. 42-44; 'Report of the Commission on Human Rights in South Suda<u>6</u>', + 5 & ___,13 March 2018, paras. 28-33; 'Report of the Commission on Human Rights in South Sudah', + 5 & ..., 12 March 2019, paras.

⁴⁰⁵ Human Rights Council. \$\frac{1}{5} \text{ \frac{5}{6}} \text{, 24 March 2017, para. 14.}

LQ 0\DQPDU DQG WKH JHQGHUHG L\$PX\$JDXFWW+RandLWV HWKQLF FRQÁLFWV (FRQRPLF,QWHUHVWV RIWKH 0\DQP®asulvePlats@wLoWDU\ 6HSWHPEHU periodic reports between 2017 and 2019:08 , Q LWV \$XJXVW UHSRUW WKH))0 indicated that it "strictly avoided interviewing children", unless it could do so with the appropriate safeguards in place. Save for the report concerning the economic interests of the military, all of the FFM's reports refer to violations of children's rights and crimes against children, includingilling and maiming, recruitment and use, WRUWXUH DUELWUDU\ GHW beln@lobblerhiaRod@hurhBenbitaFribenEOH GLVSODFHPHQW access.410 The most detailed documentation of crimes against children is in the thematic report on VHIXDO DQG JHQGHUZEKD, FINIGA & GRANDA HOLD FINITED FINITED FOR STANDARD FOR during the 2017 military 'clearance' operationsRohingya girls and young women were gang raped and sexually mutilated by the Tatmadaw on a massive scale, including in public spaces and in detention. Many were killed after being raped, with some girls reportedly 'raped to death'! Several instances of sexual violence against Rohingya boys held in government detention, which amount to torture and crimes against humanity, are also documented, including rape, gang rape, genital mutilation and forced nudity!12

7KH QHZ ¶DFFRXQWDELOLW\ IRFXVHG. PHFKDQLVPV

- 11. 7KUHH RIWKH PRVW UHFH KOLKWINGKIN MALININ MALININ MALININ WKH , Q G H S H Q G H Q Wto @sssistKinDthQ Investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the 6\ULDQ \$UDE 5HSXEOLF VLQUFrlite@NDatibFiskInvestigative, TeamWKH WR 3URPRWH \$FFRXQWDELOLW\ IRU & & 1.P/B V ZKPPKWWHG E\ 'D.HVK ,6./ ZRUNV LQ , U DOIG HDSQHGQ GWHKQHW , QYHVWLJDWLYH 000H FKDQLVP IRU 0 \ DQPDU KDYH DQ H[SUHVV QH[XV WR FULPLQDO DFFRXQWDELOLW\ \$V ZHOO DV LGHQWLI\LQJz/XWkflkkWhGhoDWHG IDFW AQGLQJ ERG\ DQG LQ SDUWLF perpetrators, they are mandated to collect, preserve and analyse relevant information DQG HYLGHQFH RI LQWHUQDWLRQDO FULPHV DQG WR SUHSDUH FULPLQDO FDVH ÀOHV WKDW PD\ EH XVHG E\ GLIIHUHQW MXULVGLFWLRQV DV D EDVLV IRU SURVHFXWLRQV \$V D UHVXQ.Wit is The Hogs in Factor of the Properties of the Stage to Properties of the Properties of the Stage to Properties of the Stage to Properties of the Stage to Properties of the Properties of th
- 12. The IIIM is mandated to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses DQG WR SUHSDUH ÀOHV LQ RUGHU WR IDFLOLWDWH DQG HILES HOLENDWLRQV DJDLWQKK KW SFRK VLDWG LURHOQ RIDROKGLOWOKUDHWQ LV LQ 6\ULD VLQFH 0DUFK fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law, 7KH ,,,0 DQG LWV UHODWHG IDFW ÀQGLQJ ERG\ WKH 6\ULD &RPPLVVLRQ DUH FRPSOHPHQWDU\ The IIIM is expected to work in close collaboration with the Commission, and in

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406 Human Rights Council.$ + 5 & & 5 3
                                             $XJXVW
407 Human Rights Council.$ + 5 & & 5 3 , 16 September 2019.
408 Human Rights Council. $\$ + 5 \& \& 5 \3 \ , 12 September 2018; $\$ + 5 \&
                                                                     &53
                                                                                $XJXVW
409 Human Rights Council $\$ + 5 \& \& 5 3
                                             $XJXVW
410 See e.g Human Rights Council$ + 5 & & 5 3 , 12 September 2018, paras. 39, 61, 63-64:5 &
    gust 2019, paras 30, 57-62
411 Human Rights Council $\$ + 5 \& \& 5 \3 \ , paras. 69-83.
412 Human Rights Council.$ + 5 & & 5 3 , paras. 154-167.
413 6 H H I R U L Q V W D Q F H 8 15 *5H Q H U D O $ \D/OHXPDELO\\
414 81 *HQHUDO $$ \6\V6\PEO\ -DQXDU\
415 81*HQHUDO $$\\\ \$\\\\ \\ \BEO\\
                                                          81 * H Q $H 15 D6O $ V V H P-ED0Q\X D U \
                                     'HFHPFHU
    SDUD
               SDUDV
                                  $QQH[ SDUD
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evidence, they are bound to apply more stringent standards of proof than traditional

particular to collect, consolidate and preserve evidence and information gathered by

IDFW ÀQGL4QJ ERGLHV

the Commission, where relevants

- 13. 81.7\$' LV PDQGDWHG WR VXSSRUW GRPHVWLF HIIRUWV W by collecting, preserving, and storing evidence of acts that may amount to war FULPHV FULPHV DJDLQVW KXPDQLW\ DQG JHQRFLGH FRP to the highest possible standards, for eventual use in fair and independent criminal proceedings, consistent with applicable international law, conducted by competent national courts, with the relevant Iraqi authorities as the primary intended recipients and with any other uses to be determined in agreement with the Government of ,UDT RQ D FDVH E\ FDVH EDVLV 81,7\$' LV IXUWKHU PDQ(investigations being carried out by Iraqi authorities, or in third countries, at their UHTXHVW 81.7\$' GRHV QRW FXUUHQWO\ KDYH D PDQGDW evidence of crimes that may have been committed by governmental forces, progovernment militias or international forces: 81,7\$'.V LQLWLDO LQYHVWLJDV SHU LWV VHFRQG SHULRGLF UHSRUW WR WKH 6HFXULW\ FRPPLWWHG E\ ,6,/ DJDLQVW WKH <D]LGL FRPPXQLW\ LQ crimes committed by ISIL in Mosul between 2014 and 2016, including crimes against children.417
- international crimes and violations of international law committed in Myanmar since DQG WR SUHSDUH ÀOHV IRFXVLQJ RQ WKH FULPLQDC for such crimes in order to "facilitate and expedite fair and independent criminal proceedings in national, regional or international courts and tribunals that have or may in the future have jurisdiction over these crimes¹⁸. The IIMM's establishing resolution contains an explicit reference to the Convention on the Rights of the Child, as an instrument applicable to the work of the mechanism, and highlights concerns over violations of international human rights law and international humanitarian law committed against children: Similarly to the IIIM, the IIMM is expected to collaborate WKH LQIRUPDWLRQ FROOHFWHG E\ WoKH IDFW ÀQGLQJ PL

14. The IIMM is mandated to collect, preserve and analyse evidence of the most serious

have addressed crimes against children, given that they have only been operational for a few years⁴ DQG WKDW WKHLU LQYH Ye2W1LRJQ WYW MKGIOD HDWWH ENRVQ Å appears that some HIIRUWV KDYH EHHQ PDGH LQ WINGHIHMVWUXFWXU and IIMMto ensure that due consideration is given to the evidence and information FROOHFWHG E\ WKHLU UHODWHG IDFW ÀQGLQJ ERGLHV

416 8 1 6 H F X U L W & R6X Q F L O , 22 September 2017. 417 \$WKLUG LQYHVWLJDWLRQ UHODWHV WR WKH PDVV NLOOLQJ RI XQDUPHG ,UD 6HFRQG UHSRUW SDUD **\$V RI 1RYHPEHU** 81,7\$' KDG H[SDQGHG WK LQFOXGH FULPHV FRPPLWWHG DJDLQVW &KULVWLDQ .DND L 6KDEDN 6XQQL 7KLUG UHSRUW RI WKH 6SHFLDO \$GYLVHU DQG +HDG RI WKH 8QLWHG 1DWLR Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, S/2019/878 1 R Y H P E H U 418 81 + X P D Q 5 L J K W V+ && X X Q F L DOctober 2018. 419 81 + X P D Q 5 L J K W V+ & & X X Q & L 3 October 2018, para. 1 SDUD 81 *HQHUDO \$VVHPEO 420 81 + X P D Q 5 L J K W V+ & R X Q F L O 2 F W R E H U D

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SDUDV

108 109

ence of the Myanmar Mechanism\$

considered in their investigations. Most notably, the IIIM highlighted in both its reports its intent to develop effective approaches with regard to crimes against children, in accordance with its mandate23 These efforts are discussed in the body of the report EXW LQ EULHI VXPPDU\ LQFOXGH UHFUXLWLQJ VWDII ZLWK FKLOG VSHFLÀF H[SHUW/trim/deftylrestpodes/ftb/stirt/witch.io/exestigate and prosecute core international crimes. policies and operational guidelines on addressing crimes affecting children; ensuring that referral pathways are in place for child witnesses; and undertaking to cooperate with other actors working on these issues.

PART B. INTERNATIONAL CRIMINAL COURTS AND **TRIBUNALS**

16. Individual States bear the primary responsibility for prosecuting core international crimes.424 Where domestic jurisdictions are either unwilling or unable to provide redress, international criminal courts and tribunals have played a key role in ensuring accountability for serious violations of human rights and humanitarian law.

* HQHUDO \$Réport of Enginternational, Impartial and Independent Mechanismo assist in the investigation

6\ULDQ \$UDE 5HSXEOLF \$VLQFH 0D)UFFKUXDU\

and prosecution of persons responsible for the most serious crimes under International Law committed in the

17. 7R UHPHG\ DQ XUJHQW QHHG IRU DFFRXQWDELOLW\ LQ WLPHV RI FRQÁLFW LQ WKH SDVW GHFDGHV ad hoc and hybrid tribunals have been set up to prosecute core international crimes when domestic jurisdictions were unwilling or unable to do \$0. \$ O W K R X J K W K H V H tribunals had concurrent jurisdiction with national courts over crimes falling within the scope of their mandate, a number of them were also endowed with primacy over national jurisdictions and could request the transfer of investigations or proceedings, in the interests of justice427

5HVSRQVLEOH IRU WKH ORVW 6HULRXV &ULPHV XQGHU ,QWHUQDWLRQDO /DZ &RPPLWWHG LQ WKH 6\ULDQ \$UDE 5HBXFGLF YLPFHV DJDLQVW KXPDQLW\ SHUSHWUDWHG DJDLQVW ODUFK \$ \$XJXVW SDUD 2Q WKH UHFUXLWPHQW RI FKLOGUHQ.V ULJKWV H[SHUWV VHH 7HUPV RI \$XJXVW 5HIHUHQFH DSSHQGHG DV DQ \$QGHE(WR 8,1patal:32HUDO \$VVHPEO\ 424 7KH PDHQQLQWWLRQDO FRQYHQWLRQV WKDW LQFOXGH DQ H[SOLFLW REOLJDWLRQ IRU 6WDWHV WR SURVHFXWH DUH RQ WKH 3UHYHQWLRQ DQG 3XQLVKPHQW RI *HQRFLGH *HQRFLGH &RQYHQWLRQ \$UWLFOH 9, &RQYHQWLRQ IRU WKH \$PHOLRUDWLRQ RI WKH &RQGLWLRQ RI WKH :RXQGHG DQG 6LFN LQ \$UPHG)RUFHV LQ WKH)LHOG)LUVW *HQHYD &RQYHQWLRQ &RQYHQWLRQ IRU WKH \$PHOLRUDWLRQ RI WKH &RQGLWLRQ RI :RXQGHG 6LFN DQG 6KLSZUHFNHG 0HPEHUV RI \$UPHG)RUFHV DW 6HD 6HFRQG *HQHYD &RQYHQWLRQ \$UWLFOH &RQYHQWLRQ 5HODWLYH WR WKH 7UHDWPHQW RI)RXUWK *HQHYD &RQYHQWLRQ \$UWLFOH 3ULVRQHUV 7KLUG *HQHYD &RQYHQWLRQ \$UWLFOH DJDLQVW 7RUWXUH DQG 2WKHU &UXHO ,QKXPDQ RU 'HJUDGLQJ 7UHDWPHQW RU 3XQLVKPHQW \$UWLFOH &RQYHQWLRQ IRU WKH 3URWHFWLRQ RI \$00 3HUVRQV IURP (QIRUFHG 'LVDSSHDUDQFH \$UWLFOH 425 81 6HFXULW<u>VK&HRX6QLIDLHORMII/DZ DQG 7UDQVLWLRQDO -XVW</u>L; SeelelallsqQ &RQÁLFW DQG 3RVW &RQÁLFW 6RFLHWLHV 81 6HFXULW<u>6 & R6XQFLO</u> - X O \ "Recalling the responsibilities of States to end impunity

SDUD

*HQHUDO \$VVHPEO\ Report of

- and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children; Stressing the need for alleged perpetrators of crimes against children in situations of DUPHG FRQÁLFW WR EH EURXJKW WR MXVWLFH WKURXJK QDWLRQDO MXVWLFH V\VWHPV DQG ZKHUH DSSOLFD429D Hrformbat@AdvpleirUp@pde:rt/WCLCROOT_PENde_pht/n2xif/Me/VbLc65/hrhplementarity in practice/2003, p. 3. PHFKDQLVPV DQG PL[HG FULPLQDO FRXUWV DQG WULEXQDOV LQ RUGHU WR HQG LPSXQLW\ μ
- 81 6HFXULW\ &RXQFLO1RSY5H(BEHU 426 81 6 H F X U L W<u>S/R& SX 827Q</u> F L OO D \ \$JUHHPHQW EHWZHHQ WKH 8QLWHG 1DWLRQV DQG WKH *RYHUQPHQW RI 6LHUUD /HRQH RQ WKH HVWDEOLVKPHQWCharter Df tbcSlmterfria Doc Qal Military Tribunal \$XJXVW
- Court for Sierra Leone -DQXDU\ 427 8SGDWHG 6WDWXWH RI WKH ,QWHUQDWLRQDO &ULPLQDO 7ULEXQDO IRU WKH IRUPHU <XJRVODYLD 6HSWHPEH 4832 \$JU\$HIWHQVStatiRte WKH 3URVHFXWLRQ DQG 3XQLVKPHQW RI WKH 0DMRU :DU &ULPL of the International Criminal Tribunal for Rwanda - DQXDU\
 Leone \$XJXVW \$UW 7KH IRXQGDWLRQDO GRFXPHQWV RI WKH ,07 DQG ,07)(GLG QRW FRQWDLQ H[SOLFLW438R6QHHXISHHQHWQW IRU WKH 3URVHFXWLRQ DQG 3XQLVKPHQW RI WKH 0DMRU :DU &UI

jurisdiction provisions. However, the applicability of this regime can be derived from other provisions of their

(XURSHDQ \$[LV 3RZHUV DQG WKH &KDUWHU RI WKH ,QWHUQDWLRQDO 0LOLWDU\ 7ULEXQDO \$XJ *RUDQ 60XLWHU HW DO HGV DW 7RN\R -DQXDU\ ,QWHUQDWLRQDO 0LOLWDU\ 7ULEXQDO IRU WKH)DU Info@nkrakthonBil tokinminRaN\R \$ U W 3URFHGXUH 3ULQF280HV DQGS5XOHV

18. 7KH ,QWHUQDWLRQDO &ULPLQDO &RXUW ,&& GLIIHUV LQ \ complementary to that of national courts? This regime, which distinguishes the court from ad hoc and hybrid tribunals, aims to encourage States to comply with their

- 19. This section will analyse, albeit not exhaustively, the approach of the International OLOLWDU\ 7ULEXQDO ,07 WKH ,QWHUQDWLRQDO OLOLWDU WKH ,QWHUQDWLRQDO &ULPLQDO 7ULEXQDO IRU WKH IRUP &ULPLQDO 7ULEXQDO IRU 5ZDQGD ,&75 WKH 6SHFLDO &RX ICC, to crimes committed against children in their investigations and judgments.
- 20. The focus of these institutions has largely been on adult perpetrators and on the experiences of adult victims and survivors. Where children have explicitly been addressed, in the course of investigations, during trial, or in judgments, the experiences of boys have generally been reduced to recruitment and use in hostilities, and those of girls to sexual and gender-based violence.

7KH 1XUHPEHUJ DQG 7RN\R 7ULEXQDOV

- 21.) ROORZLQJ WKH 6HFRQG : RUOG : DU WKH \$OOLHG *RYHUQP ,07)(WR WU\ DOOHJHG 'PDMRU ZDU FULPLQDOVµ RI WKH (X respectively!31 Both tribunals had jurisdiction over crimes against peace, war crimes, and crimes against humanity32
- they are not mentioned in the founding instruments of the IMT or the IMTFE nor are FKLOG VSHFLÀF FULPHV L H FULPHV WKDW *DUH RQO\ FRQ 1RQH RI WKH GHIHQGDQWV ZHUH LQGLFWHG VSHFLÀFDOO\ children; where children are expressly considered, this is in the context of the broader attack against the civilian population34 3 URVHFXWRUV DW 1 XUHPEHUJ DGGX of children, too young to work, being systematically sent to gas chambers to be killed RQ WKHLU DUULYDO DW H[WHUPLQDWLRQ FDPSV <HW QR V WKH QWHUQDWLRQDO PSDUWLDO DQG QGHSHQGHQW ОНГКОД LVP WR \$VVLVW LQ WKH ,QYHVWLJDWLRQ DQG ЗИР GARD AND A TIID WARD CONSIDERED AND A TOO TO THE BOOK OF T

22. 6FRUHV RI FKLOGUHQ ZHUH YLFWLPLVHG E\ \$[LV IRUFHV G)

- 428 TION WOOD IS QUONNING LAST QUESTOOT and is statutorily barred from exercising jurisdiction over a causeer alia if it is being LQYHVWLJDWHG RU SURVHFXWHG E\ D 6WDWH ZKLFK KDV MXULVGLFWLRQ RYHU RU XQDEOH WR JHQXLQHO\ FRQGXFW WKH LQYHVWLJDWLRQ RU SURVHFXWLRQ IXUWKHU DFWLRQ E\ WKH &RXUW \$UWLFOH 5RPH 6WDWXWH *UDYLW\ WXUQ\ LQFOXGLQJZKHWKHUWKHFULPHVZHUHFSeePPolick/Phidelcondoiaste/SQe/chl/narcu DIIHFWHG I Prioritisation, September 2016.
- 430 Interview with expert. 431 \$JUHHPHQW IRU WKH 3URVHFXWLRQ DQG 3XQLVKPHQW RI WKH 0DMRU :DU &ULPL
- \$ U W Charter of the International Military Tribunal for the Far East at Tokyo - D Q X D U \ \$ U W
- WKH &KDUWHU RI WKH ,QWHUQDWLRQDO 0LOLWDU\ 7ULEXQDO \$XJ IRXQGDWLRQDO GRFXPHQWV VHH \$JUHHPHQW IRU WKH 3URVHFXWLRQ DQG 3XQLVKPHQW RI WKH 0DMRU :DU &ULPILRQDO∀XRQLWMKPHQW RI 3HUVRQV *XLOW\ RI :DU &ULPHV &ULPHV \$JDLQVW 3HDFI &KBLEIWWURRO WIRKHQFLO LQ *HUPDQ\ 1R &KDUWHU RI WKH ,QWI - D Q

434) RU DQ RYHUYLHZ "Interirlationagol Erlin Ontall Jis Stible ten O Child Protection' pp.882 al.

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\$ U W

The judgment of the Tokyo Tribunal similarly refers to the indiscriminate killing of &KLQHVH FKLOGUHQ DQG WKH PDVV UDSH RI \RXQJ JLUOV GXULQJ WKH -DSDQHVH R FaErjiXds 20edV dun RyQne Riclinternational crimes affecting children and heard testimonies China, but as part of the wider attack against civilians.

Thead hoc 7ULEXQDOV

- 23. 7KH,QWHUQDWLRQDO &ULPLQDO 7UL™ANOUTHO IRU WKH)RUPHU <XJRVODYLD ,&7 < , QWHUQDWLRQDO & ULPLQD (3º) Weldela El KoQ (10) LOQ nd li Relestrato Li El Dec Q D . & 75 E\ WKH 81 6HFXULW\ &RXQFLO LQ atrocities in Yugoslavia and Rwanda.
- 24. Both tribunals had jurisdiction over grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity FRPPLWWHG RQ WKH WHUULWRULHV DQG LQ WKH WLPHIUDPHV VSHFLÄHG LQ WKHLU Statutes.438 8 QOLNH WKH ,07 DQG ,07)(D FKLOG VSHFLÀF FULPH ZDV HQVKULQHG LQ WKH 3 URVHFX WHREUTrial Chandous Biolyhlighted that the ad hoc tribunals' Statutes, namely the forcible transfer of children from a national, ethnic, racial or religious group to another, constitutive of the crime of genocide if committed with the intent to destroy, in whole or in part, the group of origin of these children.439 The Tribunals also had jurisdiction over attacks against buildings dedicated to education:⁴⁰ a crime which disproportionately affects children.
- 25. Despite the existence of these provisions, and the evidence that children were YLFWLPLVHG L@ EDROWGKHFSROQLÁFLEWWWHIHUHQFHV WR FKLOG VSHFLÁF FULPHV LQ WKH IRXQGDWLRQDO GRFXPHQWV RI WKHVH WULEXQDOV WKRVH VSHFLÀF SURYLVLRQV KDYH QRW EHHQ OLWLJDWHG \$FFRUGLQJ WR &pFLOH \$SWHO QR VWUDWHJLHV ZHUH SXW LQ SODF442 例中 100 HW RUG H 100 HV RUG HV RU tribunal.
- experiences, status, and vulnerability of children were, in some cases, addressed, as

part of the broader crimes committed against the civilian population. Both Tribunals of crimes involving child victims, includingexual violence, torture, persecution, forcible transfer, murder and extermination, and highlighted the age and vulnerability of children in their judaments DV DJJUDYDWLQJ IDFWRUV LQ OHJDO À

- 27. \$W WKH, &7 < IRU H [DPSOH LQ 7 Kthhe londichen verhat leinkdew RU Y 5DWN the charge of terror and unlawful attack against civilians, contained a number of scheduled sniping and shelling incidents in which children were alleged to have been UHVSHFWLYHO\ LQ UHVSRQVH WR OD Wardeled Win He on Hischool, playing or walking outside their house or on the street. ,Q LWV OHJDO ÀQGLQJV RQ VQLSLQMI DWQKGH V7KUHLODOL&QK1JDLPOEFH VSHFLÀHG WKH WRWDO QXPEHU DQG DJH ₩5 TRNE WKH FKLOG Trial Chamber explicitly noted that the age of the victims was one of the factors taken into account to determine their status as civilians: In other judgments, children's and and turnerability were recognised as aggravating factors in the determination effect of the crimes on the victims, and more particularly the targeting of women and children within the civilian population, constituted an aggravating circumstanceIn the case of 7 KH 3 U R V H F X W R U Y . X Q D U D ý H W D O W K H D F F X V ZLWK DQG XOWLPDWHO\ FRQYLFWHG RI WRUWXUH VH[X KXPDQLW\ DJDLQVW D QXPEHU RI JLUOV VRPH RI ZKRP Z DV EHLQJ DV \RXQJ DV W Z®HrOse/ntten DrQ (Be Àdc/WsteldHt/Qe Trhall DUV Chamber considered that the status of children as victims, referring in particular to

 - LQGLFWPHQW SHULRG DQG WKDW WKH\ DORQJ ZLWK Z-RXRHJQPHZPHWDHQWGKH SUH Opinion, Trial Chamber, 5 December 2003, paras. 579, 592. 443 David Tolbert, & KLOGUHQ DQG LQWHUQDWLRQDO FULPLQDO ODZ WKH SUDFWLFH R
 - International Crim the Rights of Children 7KH + DJXH + DJXH \$FDGHPLF 3UHVV -HQQ\.XS military training and international accountability regarding children LQ . DULQ \$UWV DQG 9HVVHOLQ 3RSRY International Criminal Accountability and the Rights of Children + DJXH \$FDGHPLF 3UHVV Regarding the testimonies, see for instance ICTY, 7 K H 3 U R V H F X W R U &/D V6HV D R L V7O D Y * D O B X E O L F WUDQVFULSW RI+HDULQJ RI WEDwere sleddlassand then we suddenly heard that shells ZHUH IDOOLQJ :H NQHZ WKDW LW ZDV QHDUE\ EHFDXVH RI WKH ORXG QRLVH DQG VWDUWHG WR UXQ DZD\ %XW EHIRUH ZH PDQDJHG WR JHW WR WKH HQV ICTR, 7KH 3URVHFXWRU Y 8010 MB HIORL 0847K5LPDQ 123 7 3XEOLF WUDQVFULSW RI + HD S $\mu 4$ +RZ ROG ZHUH \RX LQ \$SULO ZKHQ WKLV ZDV KDSSHQLQJ V 6WDWXWH RI WKH ,QWHUQDWLRQDO &ULPLQDO:KYHQE\XRQXDZOHLXHURWUKGHHUHG WR XQGUHVV DQG 0LND DOVR XQGUHVVHG ZKDW G LQWURGXFHG LW LQWR P\ VH[XDO SDUWV , DVNHG KLP WR EH PHUFLIXO WR WDNLQJ DGYDQWDJH RI \RX ZKDW ZHUH WKH RWKHU SHUVRQV ZKR ZHUH LQ
- 7KH ,&75 KDG MXULVGLFWLRQ RYHU LQGLYLGXDOV UHVSRQVLEOH IRU JHQRFLGH FULPHV DJDLQVW KXPDQLZWLW KO QKG PV WHULPHXOV WKH RWKHU \RXQJ JLUOV ZKR ZHUH ZLWK PH WKDW LV 0X HOFXHUPHENHOUWHWH DQG 0XNDVLQH GLG \RX VHH ZKDW WKH\ GLG WR 0XUHNDWHW WKH 81 6HFXULW\ &RXQFLO HVWDEOLVKHOKDYCK NFHO[KNEDKOD DQQ WPIUFRXUVH ZLWK \RX" \$, IHOW SDLQ µ 6HH JHQHUDOO\ , (7ULEXQDOV ,50&7 ¶&KLOGUHQ LQ &RQÁLFW (YLGHQFH IURP WKH \$UFKLYHV PEHU DQG DWKWWSV ZZZ LUPFW RUJ VSHFLDOV FKLOGUHQ LQ FRQÁLFW LQGH[KWP
 - 444 ICTY, 7 KH 3 U R V H F X W R U Y& D5/DHW NFR 0 70 B & U W 7 K \$ P H Q G H G , Q G L F W P H Q W, D Q G 6 F K H G 6 F K\$HUGWX O H) StatuteH F H P E H U 6HH LQ SDUWLFXODU 6FKHGXOHG ,QFLGHQWV WKH 7ULDO &KDPEHU PDGH IDFWXDO DQG OHJDO AQGLQJV RQ XQVFKHGXOHG HYLSOUNDER BIRPH LQYROYHG FKLOGUHQ DV YLFWLPV VHH LQ SDUWLFXODU and 24 October 1994, ICTY, 7 KH 3 U R V H F X W R U &/D \6HD W R R, Q-CXIDG P, Frial \6D hamber, 22
 - 1 R YSHUPWEHUG SDUDV 445 ICTY, 7 KH 3 U R V H F X W R U Y & DS VDHV NI R 0.07-DXGGLJVP7H 12,UVL D O & K D P E H U 1RYHPEHU 3190-3191, 3194,
 - 446 ICTY, 7 KH 3 U R V H F X W R U Y& D5\DHW 1\RR 0 10 18 G IL 197H 10\UVL D O & K D P E H U 1RYHPFHU
 - ZZZ LUPFW RUJ VSHFLDOV FKLOGUHQ LQ FRQÁLFW LQGHI KWP 448 ICTY, 7 K H 3 U R V H F X W R U Y & 7DLVKHR P RU , % CX DC all P THYGAI VOTH hamber, 3 March 2000, para. 786.
 - 449 ICTY, 7 KH 3 U R V H F X W R U Y U D J R O M X E . X Q D U D ý H W DO & D V H 1 R .87 37 & F 1RYHPEHU

&RPSDQLRQ WR ,QWHUQDWLRQDO &ULPLQDO /DZ &DPEULGJH 8QLYHUVLW\ 3UHVV 436 7KHHQQDWLRQDO &ULPLQDO 7ULEXQDO IRU WKH)RUPHU <XJRVODYLD ZDV HVWDEOLVKHG E\ WKH 81 6HFXULW\ &R BOQEHOO LQUDQLF ZDV NLOOHG , ZDV LQMXUHG LQ P\ KHDG O;HJ DQG DUP D(VH6H5(6 _. The ICTY had jurisdiction over individuals responsible for grave breaches of the Geneva

435 , ELG) RU DQRW K BIQ HY D BIZ L MCHSHPED, "OnQ: LOOLDP \$ 6 FKDEDV HG The Cambribidge

- Conventions, violations of the laws or customs of war, genocide and crimes against humanity, committed on the WHUULWRU\ RI WKH IRUPHU <XJRVODYLD VLQFH \$UWLFOHV)RUPHU <XJRVODYLD 437 7KHHQQDWLRQDO &ULPLQDO 7ULEXQDO IRU 5ZDQGD ZDVVHBJANKSD9550LVKHG E\ WKH 81 6HFXULW\ &RXQFLO LQ
- YLRODWLRQV RI LQWHUQDWLRQDO KXPDQLWDULDQ ODZ SHUSHWUDWHG LQ 5ZDQGD EHWZHHQ -DQXDU\ DQG DQG RYHU 5ZDQGDQ QDWLRQDOV UHVSRQVLEOH IRU VXFK FULPHV LQ QHLJKERXULQJ FRXQWULHV GXULQJ WKH VDWPKHSWHDDM-RRGD WFHWDLVFØPKWHOI > @ 4 0DGDP:LWQHVV FDQ \RX DOVR WHOO W 6WDWXWH RI WKH ,QWHUQDWLRQDO 7ULEXQDO IRU 5ZDQGD ,Q for the International Criminal Tribunals to continue the jurisdiction, rights, obligations and essential functions of WKH,&7< DQG,&75 KWWS XQVFU7FKPHP,BU72<UDHOV62Q8X7N5LRQF2VHG LQ 'HFHPEHU December 2015 respectively.
- 438 <u>8 S G D W H G 6 W D W X W H R I W K H , Q W H U Q D W L R Q D</u> O & U L P L Q D O 7 U L E X Q D O I R U W K H I R U P H U < X J R V O D Y L D 6 H S W H P E H U of the International Criminal Tribunal for Rwanda \$ U W
- 439 <u>8SGDWHG 6WDWXWH RI WKH ,QWHUQDWLRQD</u>O &ULPLQDO 7ULEXQDO IRU WKH IRUPHU <XJRVODYLD 6HSWHPEHU Statute of the International Criminal Tribunal for Rwanda \$ U W 440 <u>8SGDWHG 6WDWXWH RI WKH ,QWHUQDWLRQD</u>O &ULPLQDO 7ULEXQDO IRU WKH IRUPHU <XJRVODYLD 6HSWHPEHU
- 441 In relation to the former Yugoslavia se€inal Report of the Commission of Experts established pursuant to Security 7KH &RPPLVVLRQ KDV LQIRUPDWLRQ LQGLFDWLQJ WKDW JLUOV DV \RXQJ DV Council Resolution 780 H J SDUD
 - \HDUV ROG > @ KDYH EHHQ UDSHG ZKLO<u>THe EaQu oFSDeShNAhlcY almWthe Failur</u>e+XPDQ 5LJKWV:DWFK ¶ RI813HDFHNHHSLQJ %RVQBBOOXOPOH+HURHJRY2EQWOREHU 'DYLG 7ROEHUW ¶Children and LQWHUQDWLRQDO FULPLQDO ODZ WKH SUDFWLFH RI WKH ,Q,WmHUQDWLRQDO &ULPLQDO 7ULEXQDO IRU WKH IRU447H,US 0-867X1||R&WCODYGLUDHQ, &L7Q< & RQÁLFW (YLGHQFH IURP WKH \$UFKLYHKWWRM)SWKH ,QWHU . DULQ \$UWV DQG 9HVVHOLQ 3RSRYVNL HGV International Criminal Accordant/Abdility and the Rights of Children
 - ,QUHODWLRQW<u>IRSZ5IZODQIGDDDWWI</u>HQ+JX:PRDXOQGSL∕JKŴV:DWFK \$FDGHPLF 3UHVV S Consequences of Genocide and War for Rwanda's Children 9 R O X P H \$ <u>(5XY</u>XJLUR ¶5ZDQGD 7KH 1 R gruesome plight of children during the Tutsi genocide 2 F W R E H U -XVWLFHLQIR QHW

WKHLU YXOQHUDELOLW\ DQG DJH ZDV DQ DJJUDYDWLQJ IDFWRU D ÀQGLQJ ZKLFK ZBsVto WXHSetKeth 160 i6idict former child soldiers was left to the decision of the Prosecutor, RQ DSSHDO '\RXQJ DQG HOGHUO\ ZRPHQ QHHG VSHFLDO SURWHFWLRQ LQ RUGHU W Rivh Sorbalde Yahr @aWW policy choice not to prosecute juveniles In 2003, the Prosecutor them from becoming easy targets \$ W WKH 7 & 745 3 URVHFXWRU Y . DPEDQGD the accused pleaded guilty to genocide and conspiracy to commit genocide, through killing and causing serious bodily harm to "members of the Tutsi population", direct and public incitement to commit genocide and the murder and extermination 'of civilians' as crimes against humanity. Children do not appear in the indictment however, in passing sentence, the Trial Chamber referred to the killing of children and safety of the children and the population of Rwanda:"

28. 7KH .&& DQG WKH 6SHFLDO &RXUW IRU 6LHUUD /HRQH 6&6/ HVWDEOLVKHG LQ 2002 respectively, have been the catalyst for major advances in the pursuit of accountability for crimes against children, albeit hitherto in respect of child recruitment, and sexual and gender-based violence against girls only.

The Special Court for Sierra Leone

- 29. The 6 & 6 / LV FRQVLGHUHG W+K HF LÀLUPVLWQ DNO QWWUHLLEQXIQVID LOR VQ B OK DYH H [SUHVVO \ DGGUHVVHG FRQÁLFW UHODW ** HRAS & Ed Uin LFRe let to Wr Dthe HS 6 S7/L LQJ FKLOGUHQ 34. 7KH LQGLFWPHQWV LVVXHG LQ WKUHH RI WKH IRXU FDVHV ZDV HVWDEOLVKHG LQ -DQXDU\ IROORZLQJ D UHTXHVW E\ WKH *RYHUQPHQW RI /HRQH WR WKH 8QLWHG 1DWLRQV WR FUHDWH DQ LQGHSHQGHQW VSHFLDO FRXUW W TO SHERS I THE BOOK HERS WAT CRIME. These charges were largely based on evidence those most responsible for the commission of crimes against humanity, war crimes and other serious violations of humanitarian law, as well as crimes under applicable 6LHUUD /HRQHDQ ODZ FRPPLWWHG RQ WKH WHUULWRU\ RI 6LHUUD /HRQH VLQFH 1996. 454
- 30. Children played a prominent role in the Sierra Leonean civil war, both as victims and SHUSHWUDWRUV \$00 DUPHG JURXSV LQ 6LHUUD /HRQH SXUVXHG D VWUDWHJ\ RI GHQNKFHHWDYDYDQW RI FLYLOLDQ ZRP™HWOMINDeSPECTUDUHUEOV E\ WKH targeting children. Children were killed, tortured, and subjected to amputation and forced labour. Girls between the ages of 10-14 were targeted for abuse and subjected to rape, sexual slavery and other forms of sexual violence. Other children were abducted and forcibly recruited into the same groups that had murdered their parents, often in front of them. Child soldiers were sexually abused, enslaved and Parents, often in front of them. Child soldiers were sexually abused, enslaved and wudlens, often in front of them. Child soldiers were sexually abused, enslaved and wudlens, work with the sexually abused and wullens, work with the sexually abused and abused and with the sexually abused and with the sexually abused and with the sexually abused and abused abused and abused abused abused and abused ab all, were subjected to a process of psychological and physical abuse which continually blurred the link between victims and perpetrators:
- 31. 7KH 6LHUUD /HRQHDQ FRQÁLFW ZDV WKH ÀUVW WLPH WKDW LQWHUQDWLRQDO FUL FINANCE PROBLECTION FOR SUCCESSION OF THE COLOR OF directly confronted with the question of jurisdiction over juvenile offenders. The SCSL Statute did not exclude criminal responsibility for 15-18 year olds; the decision

2001, paras. 864, 867, 874-875; - X G J P H \$2\$\ship \Ship \D O V & K D P E H U VHH DOVR , &75 The 3URVHFXWRU Y -HDQD3/DHX OR\$NQYH5XQJP75Q5/HDOV &KDPEHU SDUD

451 , & 75 & D V H 1 R , 68 X 5 J P H Q W D Q 4 Septe@nb/e/H1998.H

452 The SCSL as a 'mixed' or 'hybrid' criminal tribunal by jurisdiction and composition. Located on the territory of Sierra Leone but structurally independent from the domestic justice system, the SCSL had a mix of international and national judges and applied both international and domestic criminal law.

453 81,&(DDFKHO 6WXG\ \HDU 6WUDWHJLF 5HYLHZ &KLOGU24609, DO 67G \$UPHG &RQÁLFW LQ D &KDQJLQJ:RUOG-

6&6/6WDWXWH 7KH &RXUW FORVHG LQ 454 \$ W L FSDaltlite of the Special Court for Sierra Leone DIWHU ZKLFK WKH 5HVLGXDO 6SHFLDO &RXUW IRU 6LHUUD /HRQH ZDV HVW<u>MOVEN</u>O 6VKHG WR RYHUVHH LWV FRQWLQXLQJ OHJDO46R EROS enderdady NG ter Proposition of the state www.rscsl.org/

455 6LHUUD WHXRWOKHDTQG 5HFRQFLOLDWLRQ 5HSRUW)LQGLQJV SDUDV

456 Luc Côté 3URVHFXWLQJ & KLOG 5HODWHG & ULPHV DW WKH 6SHF, Linde (Appelled RXUW IRU 6LHUUD / HRQH D PLG WHUP DVVHVVPWHQMWYLFWLPV > @ ZHUH LGHQWLAHG SUHGRPLQDQWO\ DV ¶FLYLOLDQV . ¶ZRP 'LVFXVVLRQ RQ 7UDQVLWLRQDO -XVWLFH DQG &KLOGUHQ 81,&(),QQRFHQWL 5HVHDUFK &HQWUH 1RYHPEHU

declared that "two of the most egregious uses of children are sexual slavery and FRQVFULSWLRQ RI FKLOGUHQ LQWR DUPHG FRQÁLFWV 6LH by both, and we hope to establish a strong precedent that these crimes must end."

- 32. 7KH 6&6/6WDWXWH FRQWDLQHG D QXPEHU RI SURYLVLRQV and generic international crimes affecting children, including the war crimes of using them to participate actively in hostilities; outrages upon personal dignity; sexual violence and enslavement as crimes against humanity; and abusing girls under the Dage Gf 14 or abducting girls for 'immoral purposes' under Sierra Leonean lew.1 R Q H of the indictments included charges under Sierra Leonean law, however.
- 33. The SCSL indicted a total of thirteen individuals, namely leaders of the Revolutionary 8QLWHG) U*R & WY L508) HIHQFH***) & UPH &) & 'UFH V 5 HYROXWLRQD L & R X Q F L O⁶² a\$ \(\psi \) belleas former Liberian president, Charles Taylorin each of these cases, counts relating to the recruitment and use of child soldiers were included.

of sexual violence against civilian women and girlsand, to a lesser extent, on evidence of sexual violence against girl soldiers forcibly abducted by armed groups. 18FYFHRUETLUJ WR D IRUPHU 6&6/ SURVHFXWRU WKLV ZDV D G order to allow a more complete picture of the fate of child soldiers, and especially girl soldiers, to emerge"466 In reality, however, the bulk of the evidence concerning sexual YLROHQFH DQG RI IRUFHG PDUULDJH DV DQ ¶RWKHU LQKX

6 E U P U P G H G F R X Q W V R I U D S H D Q G V H [X D O V O D Y H U \ as a crime aga

457 6 H H W\$LUF O H V 6 & 6 / 6 W D W X W 16 S 16 & 6 D O3 X E 18 1/ F 15 X WDR. W 16 D2 V 1 F 1 F 1 O O 1 R W Children' 1 R Y H P E H U 458 6 & 6 / 7 KH 2 IÀFRIVRHIF WANR ROUS XYULQJ WKH QDXJXUDO : RUOG 'D\ \$ JDLQVW & KLOG /DE

CDF case, the prosecution did not, however, include any sexual violence offences in

6HVD\ &DVH 1R 6lm8dl6ct/ment , ODUFK ORUULV .DOORQ 3URVHFXWRU Y ORUU SCSL-03-07-I, Indictment, 0 D U F K \$XJXVWLQH *EDR 3URV&HDFXHWPIDR Y6 &\$6X/JXVWLQH *ED 7KH FKDUJHV DJDLQVW 6DNRK DQG %RFNDULH ZHUH ZLWI Indictment, \$SULO KWWS ZZZ UVFVO RUJ 58) KWPO

DQG 0RLQLQD)RIDQD 3UR&VDHVFHXWIRU6Y& 16006RrbsQtL,QD-XPQIBIQD 462 7KUGHDGHUV RIWKH \$)5& ZHUH LQGBRFWIFIXGWBOHM 75DDPHED7EXPUELEPD%ULPD & DVH 1R , EUDKLP %DJ]\ .DPDUD 3URVHÆØWRURY 6,&60/DKLP,%DJ]\ .D DQG 6DQWLJLH %RUERU .DQX 3URVHFXWRU Y 6DQWLJLH %R 0 D U F K Indictment Indictment 0 D \ 6HSWHPEHU \$ IRXUWK -RKQQ\ 3DXO .RURPD ZDV DOVR LQGLFW

ÁHG 6LHUUHOW/WHRQHZZZUVFVO RUJ\$)5& KWPO 463 3 U R V H F X W R U Y & K D U O H V * K D Q N D \ 7 D 30MR rch 2020 B V H 1 R 464 3 URVHFXWRU Y & KDUOHV *KDQND\ 7-DX\QD,RP\JFTGAR\QD\ambde\notation 1R, 186Nde\spree /2012, par\text{as} 871-1207; 3 URVHFXWRU Y \$ OH [& DDP\/EHD 1 % U 6 & D-/ \text{As} DB\/\text{DE}\/\text{UD}\/\text{DV}\/\text{UD}\/\text{DE}\/\text{DD}\/\text{DV}\/\text{UD}\/\text{DB}\/\text{DD}\/\text{DV}\/\text{UD}\/\text{DD}\/\text{DV}\/\text{UDD}\/\text{DV}\/\text{DD}\/\text{DV}\/\text{DV}\/\text{DD}\/\text{DV}\/\text{DV}\/\text{DD}\/\text{DV}\/\text{DV}\/\text{DD}\/\text{DV}\/\text{DV}\/\text{DD}\/\text{DV paras. 966-1188; 3 U R V H F X W R U Y , V V D & D V M D10R 6 61 & 60 A X HGW PDH009 W hamber I, 2 March 2009, paras. 801, 950 and 956.

465 E.g. 3URVHFXWRU Y &KDUOHV *KDQND\ 7D\ORU 7ULDO &KDPEHU -XGJPHQW SDUD 466 1LQBUJHQTXKQOG 6ROGLHUV DQG WKH 3DUDPHWHUV RI ,QWHUQDWLRQDO &ULPL

QWHUQDWLRQDO -RXUQDO RI)HPLQLVW 3ROLWLFV 9ROXPH 1R XVHG E\ WKH 6&6/ KDV QRW VSHFLAFDOO\ KLJKOLJKWHG WKH LVVXH RI VH[XDO SROGLHUV FRPEDWDQWV RU PHPEHUV RI DUPHG JURXSV."

- X Q H

the original indictments \$ V GLVFXVVHG LQ 6 HFWLRQ ,, SDUW \$ WKH SURVHFXWLRQ VRXJKW leave to amend the original indictment in order to include sexual violence charges; this request was rejected by the Trial Chamber on the basis that the application had been made too close to the start of the trial and that adding new counts at such a late stage would prejudice the fair trial rights of the accused.

as a constitutive act of genocide; FKLOG WUDIÀFNLQJ DV D IRUP RI WK humanity of enslavements 1 X P H U R X V R W K H U V D U H J H Q H U L F L Q W H U can disproportionately affect children, including torture and torture-related crimes; attacks against buildings dedicated to education and healthcare; persecution; and sexual and gender-based crimes.

and sentence 481 Luis Moreno Ocampo's decision to focus on child soldiers, and to indict Lubanga on such a narrow basis, was widely criticised by civil society

for many other ICC crimes against children in Itumincluding crimes of sexual

WKH \$SSHDOV &KDPEHU FRO

117

35.) LQDOO\ FKDUJHV ZHUH EURXJKW IRU WKH YHU\ ÀUVW WLPH LQ DQ LQWHUQDWLR39Q DTCoe record to the day of child soldiers was charged in the majority of the arrest tribunal, in respect of the widespread and systematic abduction of civilian women warrants and indictments issued during Prosecutor Luis Moreno Ocampo's tenure DQG JLUOV DQG WKHLU IRUFLEOH ¶PDUULDJH. WR UHEHO ÀJKWHUV DQG VXEVHTXHQW H[SRV"XU"HKHW&RRXUW-7VKHÀUSVUMRWHUFIXDMORU Y 7KRPDV /XEDQJ enslavement, rape, forced labour and forced pregnancy. These crimes were charged opened in 2009 and was based exclusively on three counts of war crimes for of 'other inhumane acts'499 D GHFLVLRQ ZKLFK ZDV DIÀUPHOG E\ WKH \$SSHDOV &KDPEHU to participate actively in hostilities? In its 2012 landmark ruling, a Trial Chamber found the accused guilty of all three counts and sentenced him to 14 years of

The International Criminal Court

- 36. This IR FXV RQ WKH UHFUXLWPHQW DQG XVH RI FKLOG VROGLHUV DQG RQ VH[XDO DQG of garrisations in light of the widespread allegations that Lubanga bore responsibility EDVHG YLROHQFH KDV ODUJHO\ FRQWLQXHG EHIRUH WKH .&&.
- violence against the child soldiers themselves. Further, the weaknesses of the 37. The ICC was established in 2002 following the entry into force of the 1998 Rome protection framework for victims and witnesses, and the use by the Prosecution of 6WDWXWH, WLV WKH AUVW DQG RQO\ SHUPDQHQW LQWHUQDWLRQDO FULPLQDO FRXILLWHOOD FR subject-matter jurisdiction over war crimes, crimes against humanity and genocide, coaching of witnesses/victims by intermediaries were successfully brought by the E\ D 6WDWH 3DUW\ RU LQ WKH WHUULWRU\ RI Befen W and resulted in the Trial Chamber disregarding in its judgment documentary FRPPLWWHG RQ RU DIWHU -XO\ Party; or on the territory of a State that has accepted the jurisdiction of the Court; evidence of child soldiers called by the Prosecution on the basis of its unreliability. RU ZKHUH VXFK FULPHV DUH UHIHUUHG WR WKH 3URVHFXWRU E\ WKH 81 6HFXULW\ &RXQFLO DFWLQJXQGHU &KDSWH^aU \$9V, RRI-WWONH 81 &WKDB W&RR XUUW KDV VXEMHFW 40. , Q DGGLWLRQ WR FULPHV RI UHFUXLWPHQW DQG XVH WI matter jurisdiction over the crime of aggression, provided that certain conditions and

under Ocampo LQYHVWLJDWHG DQG FKDUJHG VH[XDO DQG JHQ SURFHGXUHV DUH VDWLVAHG DJDLQVW JLUOV LQ D QXPEHUS PRR QVJL WV W IEV W U RQ W ZDRQ (D UFUDHVV) were authorised in 2007 in 7 K H 3 U R V H F X W R U Y \$ K P D G 0 X K D P P D G + D 38. ORVW FULPHV ZLWKLQ WKH VXEMHFW PDWW[®]HOÐU MXULVGLFWLRQ RI WKH ,&& DIIHFW FK₀L-XQKGDHÞFÞQDG \$OL \$EG \$O 5DKPDQ ¶\$OL .XVKD\E∙ in respect of al WKHVH WKUHH DUH FKLOG VSHFLÀF HQOLVWLQJ RU FRQVFULSWLQJ FKLOGUHQ XQGHU WKH DJH RI

15 or using them to participate in hostilities as a war crime; forcible transfer of children belonging to a national, ethnical, racial or religious group to another group

468 3 URVHFXWRU Y 6 DP + LQJD 1 RUPDQ Blacksion On People of the control of the c \$ P H Q G W K H , Tois Chraimbler, H2Q MVay 2004, paras. 35, 55, 62, 64. 470 The key contested issue in these cases was whether 'forced marriage' could be framed as a separate crime against

humanity or whether it was a predominantly sexual crime which could be wholly subsumed by the existing charges

of sexual slavery. The Trial Chamber & URVHFXWRU Y \$OH[7DPED %ULPD dismissed this charge, on the grounds that the evidence presented was not capable of establishing a crime of forced marriatistinct from sexual slavery; the relationship between victim and perpetrator was one of ownership – a constituent element of sexual slavery – and the use of the term 'wife' merely indicated the perpetrator's intent to exercise proprietary rights over his victim 7KĹV GHFLVLRQ ZDV RYHUWXÚQHG ŔQ DSSHDO WKH \$SSHDOV &KDPEHU KROGLQJ WKDW WKH SUDFWŁXFŒHRI IRUFHG marriage in Sierra Leone amounted to more than sexual slavery, both in terms of the conduct itself and resulting harm. Perpetrators "intended to impose a forced conjugal association upon the victims rather than exercise an ownership and interest"; this marital relationship entailed mutual obligations for both parties, with the 'wives' being forced to perform domestic duties and sexual intercourse, among others, in exchange for 'protection; the imposition of this arrangement resulted in long-term suffering, arising from the sexual aspect of the crime and long-term social VWLJPDWLVDWLRQ DQG RVWUDFLVBWRLYRQFFXWYRLUFWVL980/HDQCGDPNEHOH6WULFFXDLOHGWUBQ, -XGJPHQW \$SSHDOV &KDPEHU) H E U X D U \ SDUDV 5RPH 6WDWXWH 471 \$ W L F O H V DQG 472 \$WLFOHV ELV DQG ELV DQG WHU 5RPH 6WDWXWH 7KH 3URVHFXWRU KDV WKH SRZHU WR LQLWLDWH D IRUPDØRIPONQLYHV IRU *HQGHU -XVWLFH DQG WKH ,QWHUQDWLRQDO &HC

SXUVXDQW WR D 6WDWH 3DUW\ UHIHUUDO RU D &KDSWHU 9... UHIHUUDO E\ WKH 81 6HFXULW\ &RXQFLO 7KH 3URVFHRQFVDRYDHOWFWKH VFRSH RICOYOKAHodes Qs@seb EXMORENH QDWN letter to&tResQCblink Prosecutor initiate investigations SURSULR PRWX subject to being granted prior authorisation by the Pre-Trial Chamber. In each FDVH LQ GHFLGLQJ ZKHWKHU WR LQLWLDWH DQ LQYHVWLJDWLRQ WKH 3URVHFXWRU LV UHTXLUHG WR KDYH 4881 J6DHUG WRRP 127 64 HW KQHLW LWD KWHLUY BHIXLEVORLLF *UHQGGDHUW-HXGV WY LHEINVLRQ RI FRQ 16 6X 8H XQWWLDO OH W a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed; the FDXVH LV RU ZRXOG EH DGPLVVLEOH XQGHU \$UWLFOH 5RPH 6WDWXWH WKHUH DUH VXEVWDQWLDO UHDVRQV QVIRRin EHCQuit'Him GenVer and Was Quira QRWH DW SS LQYHVWLJDWLRQ ZRXOG QRW VHUYH WKH LQWHUHVWV RI MXVWLFH \$UWLFOHV DQG 5RPH 6WDWXWH

6 W D W X W H 474 \$UWLFOHV E [[YL DQG H YLL 5RPH 6WDWXWH 477 21ÀFH RIRW HIF KONUR dun Children, 1RYHPEHU SS478 'U \$OLVRWON 89KILLYOOXOHUHQLQWUDQVLWLRQDO \$NXVWL6FHHHSHURIFIEL QVVM KYH V8WIDQQDVLGI investigation: DUUDQW RI \$UUHVW IRU -RVHSK .RQ\ LVVXHG RQ _-XO&DVH DV DPHQ(1R ,&& 3UH 7ULDO &KDPEHU,, <u>6HSWHPEHU</u> :DUUDQW RI \$U 3 U H 7 U L D O & K D P E H U . . . - X O \ D L&L DDDV (BH WI RE I, \$\& &U H V W B) , X O \ L Q W LEIR V EL &X L WQ RY LEI \(\frac{1}{2} \) : D L& UDDV CHW1 RR I, & & U H V W BRULH 27NURL VD Q &KDPEHU,, -XO\ LQ W
3UH 7ULDO &KDPEHU, 3 URVH&FDXWHR1URY "&D&VDQJD DQG \$XJXVW SPHQGHG 'RFXPHQW &RQWDLQLQJ WKH &KDUJHV Br&Tikil Chanber IWR \$UWLFO 479 3 URVHFXWRU Y 7 KR&PDDWH/XIE D Q&J&D Document Containing the Charges, Pre-Trial Chamber I, \$XJXVW 480 7KH 3URVHFXWRU Y 7KR&PDDWH/XIRDQ&J&D '\LXOCRJP, Ffr@I\Chamber, 14 March 2012; 7 K H 3 U R V H F X W R U Y 7 K R &P IDD W H / XI R D Q &J &D '\ L O R Decision on Sentence pursuant to \$UWLFOH RIWK MO6\WDWXWH 481 7KH 3URVHFXWRU Y 7KR&PDDWH/XIRDQ&J&D '\LO-RKGJFSH\$D\$VSHDOV &KDPEHU

475 \$UWLFOH H 56RHPHD6OWDRW\$AUWHLFOH G 5RPH6WDWXWHLPSRVLWLRQRIPH

2014 482 . Q0 D U F K ZKHQ WKH DUUHVW ZDUUDQW ZDV PDGH SXEOLF D QXPEHU R

of the International Criminal Court', - X O \ 2006; Rosemary Grey and Louise Chappell3*URVHFXWLQJ 6H[XDO DQG *HQGHU %DVHG &ULPHV

7KH 3URVHFXWRU Y 7KRPDV & D V H 1 R . & & - X G J P, Ffri@l Whamber, 14 March 2012, paras. 178-484; Redacted Decision on 473 7KBRPH 6WDWXWH H[FOXGHV FULPLQDO UHVSRQVLELOLW\ RYHU PLQRUV LQ FRQWUDVW WR WKH 6&6/ 6WDWXW Hhter Shebblikhiles F C9HX EOL 5 RPHOD\

484 7KH 3URVHFXWRU Y 7KR&PDDWH/XIRDQ&U&D \LLOCKJP, Ffri@I\O/Dhamber, 14 March 2012, paras, 178-484.

116

imprisonment.480 2 Q 'HFHPEHU

ELUWKV ZLWK WKH JURXS

F 5RPH 6WDWXWH

civilian girls as a crime against humanity and war crime in Darferin 2008 the accused in 7 KH 3 URVHFXWRU Y *HUPDLQ .DWDQvelreD DQG 0 DWKLHX 1 JRGMXOR & KXL charges 496 charged, inter alia, with rape and sexual slavery of girls as war crimes and crimes against humanity in the DR®; and the 2009 indictment in 7 K H 3 U R V H F X W R U Y - H D Q Pierre Bemba & HQWUDO \$IULFDQ 5HSXEOLF LQFOXGHG FKDUJHV RI UDSH RI D \HDU ROG Conclusion girl.487

and sexual slavery were not enforceable against members of one's own forces; this DUJXPHQW ZDV UHMHFWHG E\ WKH 3UH 7ULDO DQG \$SSHDO

) DWRX % HQVRXGD WKHQ 'HSXW\ 3URVHFXWRU WR 2FDPSR ZDV HOHF4 HT be & 中心中ibunals were set up when increased interest in children's rights and 41. , Q - X Q H 3 URVHFXWRU E\ WKH \$ VVHPEO\ RI 6 W D W H 3 D U W L H V 'D \ V E H I R U H K H U V Z H D U L Q J L Q and price and violations committed against children in armed declared that "in the International Criminal Court, children, including girls, will not be invisible".488 In 2014 she reiterated this pledge, stating that, "in addition to focusing on children who are forced to carry arms, we must also address the issue of children

FRQÁLFWV ZDV HPHUJLQJ DV DQ LVVX The Pentry QWHUHVW LQ L into force of the Convention on the Rights of the Child on 2 September 1990 and who are affected by arms 389 42. The OTP has since LPSOHPHQWHG D QXPEHU RI VWUXFWXUDO FKDQJHV GHVLJQHG WR VKLIWWhy these tribunals paid less attention to crimes affecting children compared to more WKH DWWHQWLRQ RI WKH 2IÀFH DZD\ IURP WKH H[FOXVLYH IRFXV RQ FKLOG VROGLHegent in stitutions of the say, however, that there was a total disregard for

WKH IXOO UDQJH RI ZD\V WKDW FwithinQhQ juriisQctiDnLoff DIIHFWHG E\ FULPHV the ICC 490 % HQVRXGD DSSRLQWHG LQ DIIHFWHG E\\$UPHG & RQÁLFW 3₺ RheHnweksRqabtionLaDdQH 0 DULH \$PDQQ prosecution of crimes against children has been elevated to a strategic priority.\$ 3ROLF\ RQ &KLOGUHQ ZDV D@RSWHG LQ 1RYHPEHU

43. Despite these changes, the PRVW YLVLEOH VKLIW DSSHDUV WR EH WKH LQFOXVLRQ RI D EURDGHU UDQJH RI FK Dalgainhst/girlls:HT00cDinlolidtin0ents/arte 6 * % 9 S D U W L F X O D U O'T KWHL BOUIRAWFHDFQXWW R LIQ Y 2 Q J Z H Q, charges of forced marriage and

IRUFHG SUHJQDQF\ ZHUH EURXJKW IRU WKH ÀUVW WLPH DW WKH ,&& LQ UHVSHFV∯6.RHowneyverµthis £co@u% han palse moeant that WKHU LQGLFWDEOH FULPHV VXFK RI JLUOV LQ QRUWKHUQ 8JDQGD DQG WKHLU GLVWULEXWLRQ WR /RUG.V 5HVLVWDQFADSUPLQAJKSWHWUYHFXWLRQ DQG GHSULYDWLRQ RI DFFHVV WR to serve as domestic servants, forced exclusive conjugal partners, and sex slawes.

\$ Q G X Q O L N H, who re/the Epte Would Prosecutor had sought to argue that VH[XDO YLROHQFH SHUSHWUDWHG DJDLQVW IHPDOH FKLOG VROGLHUV LQ WKH UDQNahiloken elike are victimised by indiscriminate attacks against the civilian population GHV 3DWULRWHV & RQJRODLV 83& E\ PHPEHUV RI WKH 83& ZDV FDSWXUHG E\ WKH am of civilian μοδή ects, such crimes tend to disproportionately affect children in terms of recruitment and use, the Prosecutor in 7 KH 3 URVHFXWRU blrought RVFR 1 WDJDQGD

separate charges in respect of these allegations, for rape and sexual slavery. The Defence challenged the indictment on the grounds that the war crimes of rape

the publication of Graça Machel's seminal report, in 1996, mark the start of the increasing attention paid by the international community to children's rights and the VSHFLÀF SOLJKW RIFKLOGUHQ LQ ₩ &ndelmFavReQxp\%atihl[W RIPDVV [WKH SOLJKW RI FKLOG YLFWLPV \$V DQDQadYnd+cG SUHYLRXVO WKH ÀUVW 6SHFLDO \$GYLVHU RQ &KLOGUHQ Ltriburgals shows that the age and vulnerability of children was taken into account at WKH LQYHVWLJDWLRQ VWDJH DV UHÁHFWHG LQ VRPH ,QGL

> 45. The ICC and the SCSL, set up later, have both been catalysts for major advances in the pursuit of accountability for crimes against children, mainly in respect of the UHFUXLWPHQW DQG XVH RI FKLOG VROGLHUV DQG RI 6*%9

OHJDO ÀQGLQJV RQ FULPHV DQG DV SDUW RI WKH VHQWHQ

ODUJH QXPEHUV RI FKLOGUHQ ZHUH HLWKHU SURVHFXWHO EDVHG RQ DGXOWV · WHVWLP. P. P. On \particular by the addulte and IFXWHG DW of their long-term consequences and traumatic impact. For example, in light of their physical and developmental needs, the hardship caused by sieges, attacks on hospitals or the denial of humanitarian assistance is particularly devastating for children, exposing them to elevated risks of malnutrition and disease, with damaging

485 7KH 3URVHFXWRU Y \$KPDG 0XKDPPDG +DUXQ DQG \$OL 0X&KDDVPHPDB \$ & & EG DO 5DKPDQ '\$OL .XVKD\Eµ :DUUDQWRI\$UUHVWJBUUSDOQW.XRMKSDUB,HahdW318JH\$7KLPLDOGO+8DKLDXPOEHU,

486 7KH 3URVHFXWRU Y *HUPDLQ .DWDQUD & CDVGH0DRWKL&H&X DecishorGoM Xh@R &KX & R Q À U P D W L R QPre-Triél Chabhbler IV30 September 2008 see e.g para 434.

487 ICC,7KH 3URVHFXWRU Y -H&DQVSHLHRUUH&&HPETLVLRQ 3XUVXDQW WR \$UWLFOH of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba GorPbe-Trial Chamber II, 15

488)DWRX %HQVRXGD 3URVHFXWRU HOHFW RI WKH ,QWHUQDWLRQDO &ULPLQDO &RXUW .H\QRWH 6SHHFK EHIR49BHCoMWekfibn ()Quble \$\frac{1}{2} \text{injhel Child} \frac{1}{2} \text{* \$5HVROX} \text{WLRQRYHPEHU} RXQGDWLRQ LTOse Intelligence RolLtille Female Child Soldier and the International Criminal Court' - X O H

489 Fatou Bensouda, & KLOGUHQ DQG , QWHUQDWLRQDO & ULPLQDO - XVWLFH

490 , QHW YLHZ ZLWK 'LDQH ODULH \$PDQQ) H F II X D II \

491 2 I À FRH WKH 3 URVHFXWRU& &3 DUNIN WHSTX WRU & &3 DUNIN WHSTX WHOVE AS DESTRIBITION OF DOOR OF Crimes falling within the scope of their mandates, in the case of the earlier institutions, may explain why these 'LDQH 0DULH \$PDQQ DV 6SHFLDO \$GYLVHUV', 12 December 2012.

, October 2013, p. 27 Strategic goal 3 is to enhance the 492 21ÀFH RIRWHFX3WWRJDWHJLF 30DQ -XQH integration of a gender perspective in all areas of work and continue to pay particular attention to sexual and gender-based crimes and crimes against children.

493 Supra note 101.

494 7KH 3URVHFXWRU Y 'B&PDVQHLIFR2Q&&Z8HQ<u>'HFLVLRQ RQ WKH & RQ</u>ÀPDeFINDaWLRQ RI &KDUJHV Chamber II, 23 March 2016, paras. 86-101.

495 7KH 3URVHFXWRU Y & ADRVHFRR1W, & &LDQ<u>GHDFLVLRQ 3XUVXDQW WR \$</u>UWLFOH WKH 5RPH 6WDWXWH RQ WKH &KDUJHV RI WKHH BU BU BO BO KANKADUP BHIDILQVW-% QENFR 1WDJDQGD 496 7KH 3URVHFXWRU Y % BVFR1RWD&J&DQGD -XG_2PBHQW RQ WKH_DSSHDO RI OU 1W against the 'Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and - X O H

497 David Tolbert, '& KLOGUHQ DQG LQWHUQDWLRQDO FULPLQDO ODZ WKH SUDFWLFH RI W PHU < X J R V O D YLLOD . D &U T.-Q \$ U W V D Q G 9 Hinterholdethoonal Qringinga SARccounthability land the Rights of Children 7KH + DJXH + DJXH \$FDGHPLF 3UHVV 2Q WKH UROH SOD\HG E\

entry into force of the Convention on the Rights of the Child, see David Tolbert, 'Children and international criminal ODZ WKH SUDFWLFH RI WKH QWHUQDWLRQDO &ULLRQLQDDWDLQQU\$LEWQDDDDQ GR 9HWKHOIE

& R B & D V D W L M B V International Criminal Accountability and the RightstoHChildrenX H + DJX H \$ FDGHPLF 3UHVV499 , Q DGGLWLRQ LWHKGDW KEDHMHORW KJHJUH VDWFWRUV VXFK DV WKH QDWXUH RI FRQÁLFV

tribunals paid less attention to crimes against children at the investigation and prosecution stages in comparison to more recent tribunals. David Tolbert, '& KLOGUHQ DQG LQWHUQDWLRQDO FULPLQDO ODZ WKH &ULPLQDO 7ULEXQDO IRU WKHLQRLDPUHLQ SXUWYVODOQ/GLD9H, WSV/HKOLQ 3RSRYVNL HGV Accountability and the Rights of Children 7KH + DJXH + DJXH \$FDGHPLF 3UHVV SS
500 'U \$OLVRWQ & & KLLVOVGHUHQ LQ WUDQVLWLRQDOpM2X2/WLFH SURFHVVHV VWLOO VLGH O

501 7 KLV KDV[SEUHHNQV61\ UHFRJQLVHG E\ WKH "Annongtific wan/bhimesRhattarfaly have a & KLOGUHQ GLVSURSRUWLRQDWH HIIHFW RQ FKLOGUHQ DUH DWWDFNV RQ EXLOGLQJV GHGI E L[DQG DUWLFOH H LY RIWKH 6WDWXWH ZKHQ FRPPL DWWDFNV FRQWULEXWH WR WKH PXOWL OD\HUHG HIIHFW RQ WKH OLYHV RI FKL survival and development," at para. 49.

effects on their growth and cognitive development. With regards to the ICC

VSHFLÄFDOO\ VWXGLHV FRQGXFWHG LQ , WXUL LQ '5& UHYHDO GLVVDWLVIDFWL
emphasis on child recruitment and sexual violence, with many expressing concern
that children who are killed or deprived of food, shelter or medical care during the
FRQÁLFW UHFHLIGHG QR DWWHQWLRQ

47. 7KH IROORZLQJ 7DEOH VXPPDULVHV WKH PDQGDWH DQG FRPSRVLWLRQ RI WZHO LQYHVWLJDWLYH DQG IDFW ÀQGLQJ ERGLHV 7KH PHFKDQLVPV· IRXQGDWLRQDO VFUHHQHG IRU D ODQJXDJH VSHFLÀF WR YLRODWLRQV RU FULPHV DIIHFWLQJ UHTXLUHPHQWV RU ODQJXDJH DERXW WKH QHHG WR LQFRUSRUDWH FKLOG VSHF

0\DQPDU D 0\DQPDU²,QGHSHQGHQW,QYH®VWLJDW

OHFKDQLVP ODQGDWH

"To collect, consolidate, preserve and analyse evidence of the most serious international crimes and YLRODWLRQV RILQWHUQDWLRQDO ODZ FRPPLWWHG LQ 0\DQPDU V facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the IXWXUH KDYH MXULVGLFWLRQ RYHU WKHVH FULPHV LQ DFFRUGDQ PDNH XVH RI WKH LQIRUPDWLRQ FROOHFWHG E\ WKH IDFW ÀQGLQ, KDYH WKH FDSDFLW\ WR GRFXPHQW DQG YHULI\ UHOHYDQW LQIRU engagement and by cooperating with other entities, as appropriate; report on its main activities on an annual basis to the Human Rights Council as of its forty-second session and to the General \$VVHPEO\ DV RILWV VHYHQW\ IRXUWK VHVVLRQu ^

9HQH]XHOD ²)DFW⁵⁰AQGLQJ 0LVVLRQ

OHFKDQLVP ODQGDWH

"To investigate extrajudicial executions, enforced disappearances, arbitrary detentions and torture and other cruel, inhumane or degrading treatment since 2014 with a view to ensuring full DFFRXQWDELOLW\ IRU SHUSHWUDWRUV DQG MXVWLFH IRU YLFWLPV DQG SUHVHQW D UHSRU &RXQFLO GXULQJ DQ LQWHUDFWLYH GLDORJXH DW LWV IRUW\ ÀIWK VHVVLRQµ ^

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR against children?

:KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPHV DJDLQVW FKLOGUHQ XQGHUOLQHV 9HQH]XHOtDe Conrectional 3URWRFROV WKHUHWR RQ WKH LQYROYHPHQW RI FKLOGUHQ LQ DUPHG FRQÁLFW DQG RQ WK prostitution and child pornography µ 3UHDPEOH S 7KH UHVROXWLRQ DOVR 'H[SUHVVHV SDUWLFXODU concern at the disproportionate impact of the crisis on theights of women and childrenµ 3UHDPEOH S

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"

7KH UHVROXWLRQ XUJHV 9HQH]XHOD 'WR WDNH DOO PHDVXUHV QHFHVVDU\ WR HQVXUH WKH accessibility of food, water, essential medicines and health-care services to all those in need, including comprehensive preventive health-care programmesith particular attention to children's and maternal services µ , W IXUWKHU XUJHV WKH LQWHUQDWLRQDO FRPPXQLW\ WR SURYLGH DQG XS VXSSRUW 'WR UHVSRQG WR WKH JURZLQJ QH particular 9 HQH]XHODQV RQ WKH PRYH LQFOX(needs of women, childrenµ ^

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ against children?

:KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÄF WR FU UHDIÄU@nówek/Mikirhon the Right of the Child 3 UHDPEOH S ,W H[SUHVVHV FRQF] ÄQGLQJV RI WKH LQGHSHQGHQW LQW hlld@nówek/re su@idened toOdfn&W ÄQGLQJF witnessed, serious human rights violations, including killing, maiming and sexual violeness part of a widespread and systematic attack on a civilian population warranting criminal investigation DQG SURVHFXWLRQμ ^ ,W DOVR FDOOV IRU FRRSHUDWLRQ EHWZHVWDEOLVKHG E\WKH *RYHUQPHQW RI 0\DQPDU DQG DOO 8QLWHG that all those responsible for crimes involving violations of international law, including violations and DEXVHV RI LQWHUQDWLRQDO KXPDQ ULJKWV ODZ VXFK DV FRQÁLI and the attacks on children perpetrated during the military "clearance" operations in northern Rakhine State DUH KHOG WR DFFRXQWμ ^

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHT> LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"

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The resolution appeals to States, international agencies and other donors to step up support for victims, "possibly through the establishment of a trust fund to address their needs, including the needs of those who have been victims of sexual violence, as well the distribution of the needs of those who have been victims of sexual violence, as well the distribution of the needs of those who have been victims of sexual violence, as well the distribution of the needs of those who have been victims of sexual violence, as well the needs of those who have been victims of sexual violence, as well the needs, including the needs, including

The ToRs also require that "The Independent Investigative Mechanism shall take appropriate measures to respect and ensure respect for the privacy, interests and personal circumstances of victims, in the light of their age, sex, sexual orientation, gender and health and taking into account the nature of the crime, in particular where it involves sexual argender based violence or violence against children

⁵⁰² See e.g the Syria Commission has documeent that the 'ODFN RI DFFHVV WR PHGLFDO FDUH ZKHWKHU DV D UHVXOW RI
GHOLEHUDWH REVWUXFWLRQ RU WKH YDJDULHV RI ZDU KDV SURIRXQGO\ DIIHFWHG FKLOGUHQ 7KHUH LV OLWWOH FDUH DYDLODEOH WR
PRUH YXOQHUDEOH QHZERUQV DQG YDFFLQDWLRQ SURJUDPPHV FRQWLQXH WR EH DIIHFWHG QHJDWLYHO\ E\ WKH FRQÁLFW ,QMXUHG
FKLOGUHQ OLNH DGXOWV VXIIHU GXH WR D ODFN RI PHGLFDO VXSSOLHV 2QH LQWHUYLHZHH ZLWQHVVHG D GRFWRU RSHUDWLQJ RQ
D \HDU ROG FKLOG ZLWKRXW DQDHVWKHVLD LQ -LVU \$O 6KXJKRXU LQ \$SULO +H GHVFULEHG WKH FKLOG DV EHLQJ LQ VXFK SDLQ
WKDW ¶KH ZDV EH\RQG FU\LQJ·μ 5HSRUW RI WKH ,QGHSHQGHQW ,QWHUQDWLRQDO &RPPLVVLRQ RI ,QTXLU\ 703

Republic \$ +5 & \$XJXVW SDUD

503 &pFLOH \$SWHO DQG<u>7 19 UB XLIQUEN QDHQZLQI FIQVEN V BOOK NEW SOWNER V </u>

0\DQPDU 2 ,QGHSHQGHQW ,QWHUQDWLR®QDO)DF

OHFKDQLVP ODQGDWH

"To establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual violence, extrajudicial, summary or arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims, and to present to the Council an oral update at its thirty-sixth session and a full UHSRUW DW LWV WKLUW\ VHYHQWK VHVVLRQµ

against children?

KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPHV DJDLQVW FKLOGUHQ: encourages the Government of Myanmar to take the measures necessaryattories discrimination and prejudice against women, childreand members of ethnic, religious and linguistic minorities , W DOVR ZHOFRPHV WKtoHentol WHSV WDNHQ E\ WKH *RYHUQPHQW RI DFURVV WKH FRXQWU\µ ^ the recruitment of child soldiers and the release of 800 child soldiers and, abhorring their use in Myanmar, urges the Government to consolidate progress further towards a complete cessation of DOO UHFUXLWPHQW DQG XVH RI FKLOG VROGLHUV WKH LGHQWLÀFDWLRQ RI DOO FKLOGUHQ government forces and their immediate release; an end to the arrest, harassment and imprisonment of children accused of desertion; continued efforts to bring perpetrators of child recruitment to justice and to criminalize the recruitment of child soldiers; increasing transparency, including by expanding access to birth registration services to children, including those vulnerable to recruitment; and ensuring the rehabilitation and reintegration of former child soldiers µ

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH LQFRUSRUDWH FKLOG VSHFLAF H[SHUWLVH"

1 R

< HPHQ 2 *URXS RI (P⁶12 QHQW ([SHUWV

OHFKDQLVP ODQGDWH

"To monitor and report on the situation of human rights, to carry out a comprehensive examination of all alleged violations and abuses of international human rights and other appropriate and applicable all alleged violations and abuses of international human rights and other appropriate and applicable

and abuses in Burundi with a view to ensuring full accountability; to formulate recommendations

A H O G V R I L Q W H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L H V W R W K H F R Q Á L F W V L Q F H 6 H S W H P F H U Q D W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q D O O D Z F R P P L W H G E \ D O O S D U W L R Q the possible gender dimensions of such violations, and to establish the facts and circumstances surrounding the alleged violations and abuses and, where possible, to identify those responsible; to PDNH JHQHUDO UHFRPPHQGDWLRQV RQ LPSURYLQJ UHVSHFW IRU DQG WKH SURWHFWLRQ DQG WKH GUG DQG WKH 21AFH RI WKH +LJK &RPPLVVLRQHU LQ rights, and to provide guidance on access to justice, accountability, reconciliation and healing, as DSSURSULDWH WR HQJDJH ZLWK <HPHQL DXWKRULWLHV DQG DOO VWDNHKROGHUV LQ SDUWLFŽEDWH WR HQJDJH ZLWK <HPHQW RI WKH VLWXDV 1DWLRQV DJHQFLHV WKH ÀHOG SUHVHQFH RHIPWHQH 12WHÀHFHD7RWKWRKUHL¥WLJHKV&RPPLVVLRQHU LQ < RI WKH *XOI 6WDWHV DQG WKH /HDJXH RI \$UDE 6WDWHV ZLWK D YLHZ WR H[FKDQJLQJ LQIRUPDHVJARO BODSUGR BLAGO BODSUGR BODSUGR

support for national, regional and international efforts to promote accountability for human rights YLRODWLRQV DQG DEXVHV LQ <HPHQu ^ 5 H V R O X W L R Q to the High Commissioner, by the time of the thirty-ninth session of the Human Rights Council, to be IROORZHG E\ DQ LQWHUDFWLYH GLDORJXHµ ' 5 H V R O X W L R Q

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ OD against children?

KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPH 2019 Resolutions express concerns about "the allegations of violations of international humanitarian law and violations and abuses of human rights law in Yemen, including thoseolving grave 'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR Y Including medical Pacifities and missions and their personnel, as well as schools3 UHDPEOH S RIDOO UHVROXWLRQV 7KH\ IXUWKHU FRQGHPQ WKH 'RQJRLQJ YLRODWLRQ\ of international humanitarian law in Yemen, including thosevolving the widespread recruitment WOKOTO WHY HRRY WKLROG UNINOU BOS ON WLHV WR WKH DUPHG FROALFW « DQG I including...schools µ ^ RIDOO UHVROXWLRQV 7KH\DOVR GHPDQG WKDW 'D end the recruitment and use of children and release those who have already been recruited, and calls % PRO BUÓ SDUWLHV WR FRRSHUDWH ZLWK WKH 8QLWHG 1DWLRQV IRI taking into consideration the relevant recommendations made by the Secretary-General in his report RQFKLOGUHQ DQIG DUR HOW KFHRQÁLÐVOG 5HVROXWLRQV ^ Lastly, It emphasises the commitments and obligations of Yemen under Convention on the Rights RI WKH &KLOG DQG WKH 2SWLRQDO 3URWRFROV WKHUHWR RQ WKH LO on the sale of children, child prostitution and child pornography thereto RIWKH DQG 5HVROXWLRQV ^ RIWKH 5 H V R O X W L R Q

> 'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLI LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH" DERXW WKH QHHG WR

1 R

%XUXQGL 2 &RPPLVVVLRQ RI,QTXLU\

OHFKDQLVP ODQGDWH

'7R FRQGXFW D WKRURXJK LQYHVWLJDWLRQ LQWR KXPDQ ULJKWV YL 2015, including on their extent and whether they may constitute international crimes, with a view to FRQWULEXWLQJ WR WKH AJKW DJDLQVW LPSXQLW\ WR LGHQWLI\ DO UHJDUGOHVV RI WKHLU DIÀOLDWLRQ DUH KHOG DFFRXQWDEOH IRU V DXWKRULWLHV DQG DOO RWKHU VWDNHKROGHUV LQ SDUWLFXODU 8 8QLRQ DQG WKH \$IULFDQ &RPPLVVLRQ RQ +XPDQ DQG 3HRSOHV. 5LJ LPSXQLW\ WR SUHVHQW DQ RUDO EULHÀQJ WR WKH +XPDQ 5LJKWV 8 UHSRUW WR WKH *HQHUDO \$VVHPEO\ DQG RWKHU UHOHYDQW LQWHU

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507 The Independent International Fact-Fin @ J 0 L V V L R Q R Q 0 \ D Q P D U V H W X S E \ W K H + X P D Q 5 L J K W V & R X Q F L O L Q OXWLRQ KDQGHG RYHU LWV HYLGHQFH RI VHULRXV FULPHV XQGHU LQWHUQDWLRQDO ODZ WR WKH ..00 .WV PDQGDWH HQGHG LQ September 2019.

5HVR7KHWL成例VROXWLRQ ÀUVW HVWDEOLVKHG WKH &RPPLVVLRQ RI,QTXLU\ DQG WK 7KH 5HVROXWLRQ AUVW HVWDEOLVKHG WKH *URXS RI (PLQHQW ([SHUWV RQ <HPHQ DQG WKH DOG renewed its mandate. mandate

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR Y the SO ran Walth Britile W, in Bludd in F the Liki Findy of children during demonstrations and the widespread against children? practice of arbitrary detention, torture and ill-treatmentand "the sexual violence committed by the Syrian authorities, including against male detainees and children ^ KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPHV DJDLQVW FKLOGUHQ WKH 5 H V R O X W L R Q expresses concern about "the continuous and accelerated deterioration of the human rights. 5 H V R O X W L R Q condemns "the continued widespread and systematic gross violations of economic and humanitarian situation in Burundin particular the situation of women and childre'h human rights and fundamental freedoms by the Syrian authorities and the Government-controlled particularly those involving mass arbitrary arrests and detentioniscluding cases involving childre'h executions, extrajudicial killings, the killing and persecution of protestors, human rights defenders 5 H V R O X W L R Q H [S U H V V H V F R Q F H U Q D W 'W K H F R Q W L Q X R X V O \ Z R U U \ L Q J K X P D Q U L JaKdVjoVrn Discretion, enforced disappearances, interference with access to medical humanitarian situation in Burundiwhich particularly affects women and childrep ^ treatment, torture, sexual violence and ill-treatment against children 5 H V R O X W L R Q condemns 'all violations and abuses committed against childrenand 'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH DEXBIXHW WOOD SQDHJHWGLHWRWR FRPSO\ ZLWK WKHLU REOLJDWLRQV XQGF LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH" release of all persons arbitrarily detained ncluding childrenu ^ 5 H V R O X W L R Q V Dondemn "the gross and systematic abuse of women's 1 R and children's rights E\WKH VR FDOOHG, VODPLF 6WDWH LQ, UDT DQG WKH the enslavement and sexual abuse of women and girlsnforced disappearances and the forced DQG ^ recruitment and abduction of childrenu ^ 7KH UHVROXWLRQV IX 6\ULD D 6\ULD 2 & R PPPLVVLRQ RI.QTXLU\ "all violations and abuses of international human rights law and all violations of international DOG ^ humanitarian law, including against women and children ' OHFKDQLVP ODQGDWH 5 H V R O X W L R Q expresses concern at the situation of women, children.especially those who are internally displaced, who remain among the most vulnerable to violence and abuse" "To investigate all alleged violations of international human rights law since March 2011 in the Syrian \$UDE 5HSXEOLF WR HVWDEOLVK WKH IDFWV DQG FLUFXPVWDQFHV WKDW PD\ DPRXQW WR VXFK3 LVHLR QV DQWQbeFRRFaQKSabty8710gt\civ\line{k} objects, such as schools... and the QHJDWLYH HIIHFWV RI WKH RQJRLQJ FRQÁLFW RQ WKH ULJKWV DQ the crimes perpetrated and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are to medical care and other humanitarian assistance as well as to education, including schools, KHOG DFFRXQWDEOHµ ^ RI 5HVROXWLRQ 6 DQG ^ RI 5HVROXWLRQ 7 R X U J H Q W O \ F & Qi S X M Wiola Dions and abuses of international human rights law and violations of international comprehensive, independent and unfettered special inquiry, consistent with international standards, humanitarian law, as applicable, and deplores in particular the impact of the denial of humanitarian into the events in El-Houleh and, if possible, to publicly identify those who appear responsible for access on their lives and well-being µ these atrocities, and to preserve the evidence of crimes for possible future criminal prosecutions or a future justice process, with a view to hold to account those responsible, and also requests 5 H V R O X W L R Q expresses concern at the situation of women, children. especially WKH FRPPLVVLRQ WR SURYLGH DIXOO UHSRUW RIWKH ÀQGLQJV RILWV VSHFLDO LQTXLU\ WRthowstetWho and Protection and protection of the most vulnerable to violence and abuse" &RXQFLO DW LWV WZHQWLHWK VHVVLRQ DQG WR FRRUGLQDWH DV DSSURSULDWH ZLWK UHOH3YUDHODWP B8OQHLWSHG 1 DWQ ENB QWG HYPRQ VH WHKFHWY RI WKH RQJRLQJ FRQÁLFW PHFKDQLVPVµ ^ RI 5HVROXWLRQ 6 7R FRQGXFW DQ LQWHUQDWLRQDO WUDQVSDUHQW of controlled to the cont prompt investigation into abuses and violations of international law, with a view to hold to account education, including schools, decries the violations and abuses of international human rights law those responsible for violations and abuses, including those that may amount to crimes against

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR Y hurrownillaritwork to Reblach in the Wildle of the North to the N

: KLOH WKH PDQGDWH LWVHOI LV EURDG DQ $\mathfrak{S}H$ QR $\mathfrak{Q}VX$ WSLHRQL \mathfrak{F} WR FULPHV DJDLQVW FKLOGUHQ condemns "the continued grave and systematic human rights violations by the Syrian authorities, such as arbitrary executions, excessive use of force and the killing and persecution of protesters and human rights defenders, arbitrary detention, enforced disappearances, torture and ill-treatment of detainees, including of children μ $^{\circ}$ 5 H V R O X W L R Q 6 condemns 'the outrageous killing of forty-nine children, all under the age of 10 μ $^{\circ}$

5 H V R O X W L R Q condemns "the extensive violations of children's rights committed by

5HVROXWLRQ 6

mandate

KXPDQLW\ DQG ZDU FULPHVµ ^ RI 5HVROXWLRQ

education, including schools, decries the violations and abuses of international human rights law and violations of international humanitarian law, as applicable, and deplores in particular the impact of the denial of humanitarian access on their lives and well-being µ ^ , W H[SUH Whle HV FRQFHL suffering of children resulting from the escalation of violence, harsh weather conditions and lack RIVDIH UHIXJH DQG FDOOV XSRQ DOO SDUWLHV ÀJKWLQJ LQ WKH V humanitarian by to Rebichichildren that families in need of life-saving assistance, and to prevent and protect children from all exploitation, violations and abuses, including sexual and gender-based violence and child, early and forced marriage, by, among other actions, ending and preventing WKH UHFUXLWPHQW DQG XVH RI FKLOGOWDIHQ\WDKQHG DXLQPHRQQ 6 R WAR releasing children and handing them over to civilian child-protection actors and ensuring that such authorities have access to detained children associated with armed groups ^ ,W H[SUHVVHV concern that "the hostilities have restricted access to or resulted in the loss of civil documentation, thereby limiting freedom of movement and access to essential services, particularly for women, children µ ^ / DVWO\ LW H[SUHVVHV FRQFHUQ DERMININGWKH GRFXPH women and children being taken hostage by the so-called Islamic State in Iraq and the Levant 'DHVK u ^

also Denomber of "the

5 H V R O X W L R Q V

immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate release of all persons arbitrarily detained women, children immediate releas

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"

| 15 R X W K V 6 X G D 0 H 2 G & R R P L V V L ₹3 Q R Q + X P D Q 5 L J K W V

OHFKDQLVP ODQGDWH

children that have been unlawfully recruited to date

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6\ULD 2 ,QWHUQDWLRQDO ,PSDU5WLDO DQG ,QGF

OHFKDQLVP ODQGDWH

"To closely cooperate with the Independent International Commission of Inquiry on the Syrian KXPDQLWDULDQ ODZ DQG KXPDQ ULJKWV YLRODWLRQV DQG DEXVHV DQG WR SUHSDUH ÀOHV LQRRXWOXH6UX CVIRQID FRILODU 8QLRQ DQG LWV \$IULFDQ &RPPLVVLRQ F and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future KDYH MXULVGLFWLRQ RYHU WKHVH FULPHV LQ DFFRUGDQFH ZLWK LQWHUQDWLRQDO ODZµ

"To monitor and report on the situation of human rights in South Sudan and make recommendations for its improvement; to assess past reports on the situation of human rights since December 2013 in order to establish a factual basis for transitional justice and reconciliation; to provide guidance on transitional justice, accountability, reconciliation and healing, as appropriate, and — once the transitional Government of national unity is fully formed, operational and commits to ending the violence against the civilian population and to cooperating with the hybrid court for South Sudan — to make recommendations on technical assistance to the transitional Government of national

unity to support transitional justice, accountability, reconciliation and healing; to engage with other

Monitoring and Evaluation Commission Chair and civil society, with a view to providing support to national, regional and international efforts to promote accountability for human rights violations and DEXV5HVµROXWLRQ5HVROXWLRQ

'R WKH UHVROXWLROV VWDWXWRU\ SURYLVLROV FROWDLO ODOJXDJH VSHFLÀF WR YĽROMDKWHLRIGIVRROUX WWW.RRDHVVVWDWXWRU\ SURYLVLROV FROWDLO OD against children?

1 R

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH D End Po Welde hand by the standard of the LQFRUSRUDWH FKLOG VSHFLAF H[SHUWLVH"

:KLOH WKH PDQGDWH LWVHOILV EURDG DQ® poopRidNeftHaNthLeONNON VSHFLÀF WKH WHUPV RIUHIHUHQFH ZLOO WDNH DSSURSULDWH PHDVXUHV WR UHVSHFW DQG HQVXUH UHVSHFW IRU WKH FRQÀGHQWLDØKW\ SUKYBOKWLORWCHUHSVHWOWV WKH DERYH ^ DQG ^ and personal circumstances of victims, including age, sex, gender and health, and take into account the nature of the crime in particular where it involves sexual violence, gender-based violence or violence) XUWKHU WKH ... 0 'ZLOO SURYLGH FOHDU VHUYLFH UHIHUUDO SDtNef ektZelDne Violence against women and childreun 3UHDPEOH S against children u ^ S DQG ^ S so that vulnerable victims in particular child victims DQG YLFWLPV RI FRQÁLFW UHODWHG VH[XDO YLROHQFH ZKR

FRPH IRUZDUG WR WKH ,,,0 DUH SURYLGHG ZLWK DSSURSULDWH PHGLFDO DQG SV\FKRVRFLDO VXSS7RKUHW 1 5HVRSOXDVQRSQ H[SUHVVHV DODUP RYHU WKH FRQ Á/IDLENNOLD DQG YLROHQFH 7 KH WHUPV DOVR PHQWLRQHG WKDW 'GXH FRQVLGHUDWLRQ ZLOO EH JLYHQ WR DSSRLQWalgathat dziridinferhttobe re-bituitishehttoWuse of child soldiers, and attacks on schools and hospitals 3 UHDPEOH S in the areas of sexual and gender-based crimes an integration in the areas of sexual and gender-based crimes an integration of S) X U W K H U W K H + H D G and Deputy Head of the IIIM "will be assisted in their work by a secretariat composed of impartial and international criminal justice, human rights law, international humanitarian law, criminal investigation and prosecution, the military, forensic matters, including in particular digital forensics, forensic pathology and forensic imagery, witness and victim protection, sexual and gender-based crimes and violenbedren's

rights and crimes against childrenu SDQG S

against children?

KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPHV DJDLC ongoing human rights violations and abuses and violations of international humanitarian law in South Sudan, including...the recruitment and use of children, attacks on schoolsu , W IX U M Kartiels to behalf H V immediately the unlawful recruitment of children and to release all children that have been unlawfully recruited to

serious and ongoing gross human rights violations and abuses and violations of international humanitarian law... WKDW ZHUH SHUSHWUDWHG E\ DOO SDUWLHV WR WKH FRQÁLÆMW LQFOXGLQJ

, W QRWHV WKDW WKH 3HDFH DQG 6 HinlfeXallal "StrironglyRoxinQeFrildediaR tacts/off.stex.stall ULFDQ 8QLRQ and gender-based violence anthe unlawful recruitment of children into military activities 3 U H D P E O H S H[SHULHQFHG SURIHVVLRQDO DQG DGPLQLVWUDWLYH VWDII ZLWK H[SHUWLVH LQ WKH IROORZLQJ f@btbleHcbontelem@s.Ptfhe @n.dpointelem@s.Ptfhe @n.dpointelem@s.Ptfhe @n.dpointelem@s.Ptfhe @n.dpointelem@s.Ptfhe @n.dpointelem@s.Ptfhe @n.dpointelem@s.Ptfhe @n.dpointelem. law in South Sudan, including... the recurring recruitment and use of childrenattacks on schoolsu ^ / D V W O \ it urges "all parties to end and prevent violations and abuses of human rights committed against children, and calls upon all parties to end immediately the unlawful recruitment of children to armed groups and to release all

> 5HVROXWLRQ H[SUHVVHV DODUP RYHU WKH DUPHG FRQÁLFW DQG YLF "violence against children, the unlawful recruitment and use of children by armed groups, and attacks on schools and hospitalsu 3UHDPEOH S .W IXUWKHU FRQGHPQV 'WKH RQJRLQJ YLRODWLRO violations of international humanitarian law in South Sudaincluding...the recurring unlawful recruitment and use of children by armed groups,... attacks on schools , W_XUJHV all parties to end and prevent violations and abuses of human rights committed against children, and calls upon all parties to end immediately the unlawful recruitment and use of children by armed groups and to release all children that have been unlawfully recruited to dateu ^ /DVWO\ LW XUJHV WKH *RYHUQPHQW RI 6RXWK 6XGDQ 'WR LC abuses, particularly against women and children

7KHHQQVDWLRQDO ,PSDUWLDO DQG ,QGHSHQGHQW QbehtFelxtDQLVP ,,,0 LV FRPSOHPHQWDU\ WR WKH ,QGH QWHUQDWLRQDO &RPPLVVLRQ RI .QTXLU\ RQ WKH 6\ULDQ \$UDE 5HSXEOLF &R. :KLOH WKH &R. IRFXVHV RQ GLUHFWO\ FROOHFWLQJ information, publicly reporting recent broad patterns of violations, abuses and emblematic incidents damaking recommendations, notably to Member States, the IIIM primarily builds on the information collected by others, in

SDUWLFXODU WKH &RPPLVVLRQ E\ FROOHFWLQJ FRQVROLGDWLQJ SUHVHUYLQJ DQG DQDO\VLQJ HYLGHQFH DQG SUHSDUHV ÀOHV WR facilitate and expedite fair and independent crimial proceedings in national, regional or international courts or 513 7 K H

512 IIIM, Terms of Referencehttps LLLP XQ RUJ WHUPV.RI UHIHUHQFH RI LLLP

5HVROXWLRQ AUVW HVWDEOLVKHG WKH &RPPLVVLRQ RQ +XPDQ 5LJKW its mandate

DOG HISUHVVHV FRQ

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH LQFRUSRUDWH FKLOG VSHFLAF HISHUWLVH"

ERXW2W8#FH7Q'HHG WR

5 H V R O X W L R Q

OHFKDQLVP ODQGDWH

1 R

DVDw 5HJLRQ 'HPRFUDWLF 5HSXE4OLF RI &RQJR 2

OHEKDOLVP ODOGDWH

"Monitoring, evaluating, providing support and reporting on the implementation by the Democratic Republic of the Congo of the recommendations made by the previous team of international experts LQ LWV UHSRUW LQ SDUWLFXODU ZLWK UHJDUG WR WKH ÀJKW DJDLQVW LPSXQLW\ DQG WKH PRIDWKHINVRR 6 VRVPLRRVOHV VWDWXWRU\ SURYLVLRQV FRQWDLQ UHFRQFLOLDWLRQ DQG WR PDNH UHFRPPHQGDWLRQV LQ WKLV UHJDUG DV DSSURSULDWH in an enhanced interactive dialogue at its fortieth session, and... to participate in an interactive GLDORJXH DW LWV IRUW\ ÀUVW VHVVLRQµ

again's Thill rent WLFLSDWH

'7R VXSSRUW GRPHVWLF HIIRUWV WR KROG .6./ 'D·HVK DFFRXQW

FRPPLWWHG E\ WKH WHUURULVW JURXS ,6,/ 'D.HVK LQ ,UDT WR

DXWKRULWLHV RU LQYHVWLJDWLRQV FDUULHG RXW E\ DXWKRULW

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR Y Wille Son Read attack & Wire Red against children?

KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPHV DJDLQVW FKLOGUHQ with concern "the conclusions of the team of international experts, particularly on serious human rights violations and abuses, and on violations of international humanitarian law by all parties to WKH FRAQUAtion T. Whe recruitment and use of child soldiers... and the destruction of homes, schools, hospitals 4 3 UHDPEOH S , W WDNHV QRWH RI WKH 'V WDWHPHQW RI WKH 6 SHFLDO 5 HSUH Valida QkW db Writic Xillith frestructure, as well as its destruction of cultural heritage, including archaeolog WKH 6HFUHWDU\ *HQHUDO IRU &KLOGUHQ DQG \$UPHG &RQÁLFW RQ \$SULO

GLVSURSRUWLRQDWH LPSDFW RITHELINGON PRODER COMMENTAL LQ WKH .DVD ing and burning children alive 3 U H D P E O H S .W DOVR FRQGHPQV DOO DFWV RI YLROHQFH LQFLWHPHQW WR hatred and ethnic violence, human rights violations and violations of international humanitarian law

FRPPLWWHGE\DOOSDUWLHVUWHURLRWOKHVLFORFOHÁLSFKWXLVOWWKHInDOWNIDayviolence and abuse against women and children, the unlawful recruitment and use of child soldiers u

Further, it condemns in particular violations and abuses committed against children, who were the

excessive use of force and the recruitment and use of children by the militias, calls upon all parties to put an immediate end to these serious human rights violations and abuses, and calls upon the

Government of the Democratic Republic of the Congo to implement, with the support of relevant stakeholders, effective reintegration and rehabilitation programmes, taking into account gender-sen

<u>VLWLYH LVVXHV IRU FKLOGU</u>HQ`LQXDRVOXY®IG LW QBRWHGV ZRQXÁKLFRVQFHUQ WKH VWDWHPHQW of the team of international experts on WKH FRQWLQXLQJ UHFUXLWPHQW DQG XVH RI FKLOGUHQ E\ WKH . DPX L- in particular where it involves sexual violence, gender violence or violence against children

QD 1VDSX DQG %DQD OXUD PLOLWLDV

KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FU

that "the Islamic State in Iraq and the Levant constitutes a global threat to international peace and security through its terrorist acts, its violent extremist ideology, its continued gross, systematic and abuses of human rights, particularly those committed against women and childremd including those motivated by religious or ethnic grounds, and its recruitment and training of foreign terrorist

evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide

should be addressed by the Terms of Reference referred to in paragraph 4, to ensure the broadest possible use before national courts, and complementing investigations being carried out by the Iraqi

WAKIKWHHWYRQXKWYLRQWQBWBW DIIHFWV DOO UHJLRQV DQG OHPEHU 6WD 5HVROXWLRQV .W DOVR FRQGHPQV WKH FRPPLVVLRQ RI DFW\ KRVWDJH WDNLQJ VXLFLGH ERPELQJV HQVODYHPHQW VDOH LQW

in persons, rape, sexual slavery and other forms of sexual violengecruitment and use of children

LQ ZKLFK VKHFG6VVFLW49HVDWKHWUDIÀFNLQJ RI FXOWXUDO SURSHUW\ 3UHDPE

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTX LQFRUSRUDWH FKLOG VSHFLAF H[SHUWLVH"

KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW FKLOG VSHFLÀF ÀUVW YLFWLPV RI WKH YLROHQFH DQG WKH FRQGLWLRQV LQ ZKLFK WKH\ ZHUH FRPPLWWHG "Impartial and experienced professionals, with expertise in the following areas... witness and victim protection; sexual and gender-based crimes and violence; women and child rights; crimes against children WUDIÀFNLQJ RISHUVRQV DQG SURWH KHULWDJHu ^)XUWKHU 'WKH ,QYHVWLJDWLYH 7HDP VKDOO WD ensure respect of the privacy, interests and personal circumstances of victims, in light of their age, sex, sexual orientation, gender and health, and taking into account the nature of the crime, Lastly, the terms also mention that "the Investigative Team shall assist in referring vulnerable victims, in particular child-victims ZRPHQ DQG YLFWLPV RI FRQÁLFW UHODWHG VH[XD to the Investigative Team to relevant bodies so that they are provided with appropriate support"

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH DEARXW WKH QHHG WR LQFRUSRUDWH FKLOG VSHFLAF H[SHUWLVH"

1 R

^{514 81 +}XPDQ 5LJKWV &RXQFLO 5HVROXWLRQ KWWSV DS RKFKU RUJ GRFXPHQWV GSDJHBH DVS["VL \$ +5&

⁵HVROXWLRQ AUVW HVWDEOLVKHG WKH 81 .QYHVWLJDWLYH 7HDP WF 'D-HVK , VODPLF 6WDWH LQ , UDT DQG WKH /HYDQW 81,7\$' DQG WKH

&HQWUDO \$IULFDQ 5HSXEOLF 2 &RPPLVVLRQ RI,QTX

OHFKDQLVP ODQGDWH

"To investigate reports of violations of international humanitarian law, international human rights law DQG DEXVHV RI KXPDQ ULJKWV LQ &\$5 E\ DOO SDUWLHV VLQFH -DQXDU\ WR FRPSLOH help identify the perpetrators of such violations and abuses, point to their possible criminal responsi ELOLW\ DQG WR KHOS HQVXUH WKDW WKRVH UHVSRQVLEOH DUH KHOG DFFRXQWDEOHµ ^

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR Y against children?

:KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPHV DJDLQVW FKLOGUHQ expresses concern over the "increasing violations of international humanitarian law and the widespread human rights violations and abuses, notably by former Seleka and militia groups, in particular those known as the "antibalaka", including those involving... sexual violence against women and children, rape, recruitment and use of children 3 UHDPEOH S 7KH UHVROXWLRQ XUJHV transitional authorities to develop and implement disarmament, demobilization and resettlement programmes for..children associated with armed forces and groups , w GHPallQGV wKDW armed groups, in particular former Seleka elements and anti-Balaka elements, prevent and end the recruitment and use of children, that all parties protect and consider as victims those children who

recruitment and use of children, that all parties protect and consider as victims those children who have been released or otherwise separated from armed forces and armed groups, and emphasizes the need to pay particular attention to the protection, release and reintegration of all children

associated with armed groups

, W FDOOV XSRQ DOO SDUWLHV WR DUPHG FRQÁLFW LQ WKH &\$5 LQFOXGLQJ

former Seleka elements and anti-Balaka elements, tosue clear orders prohibiting all violations and abuses committed against children in violation of applicable international law, such as their recruitment and use, killing and maiming, abductions and attacks on schools and hospitalsd

IXUWKHU FDOOV XSRQ 7UDQVLWLRQDO \$XWKRULWLHV WR PDNH DQG LPSOHPHQW VSHFLÀF FRPPLWPHQWV RQ WLPHO\
investigation of alleged abuses in order to hold perpetrators accountable and to ensure that those

UHVSRQVLEOH IRU VXFK YLRODWLRQV DQG DEXVHV DUH HIFOXGHG IURP WKH VHFXULW\ VHFWRULL ^ /DVWO\ LW

expresses its strong intent to swiftly consider imposing targeted measures, including travel bans and assets freezes, against individuals who act to undermine the peace, stability and security... including through violations of human rights and international humanitarian law, the recruitment and use of

FKLOGUHQ LQ DUPHG FRQÁLFW LQ YLROVDHWXLDROQ YRURDOSHSODFLHFOLEO'H LQWHUQDWLRQDO ODZ

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH DERXW WKH QHHG WR LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"

1 R

RFFXSLHG 3DOHVWLQLDQ WHU&LWRU\ 2 &RPPLVVLRQ

OHFKDQLVP ODQGDWH

"To investigate all alleged violations and abuses of international humanitarian law and international KXPDQ ULJKWV ODZ LQ WKH RFFXSLHG 3DOHVWLQLDQ WHUULWRU\ LQFOXGLQJ (DVW -HUXVDOHP SDUWLFXODUO\ LQ WKH occupied Gaza Strip, in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018, whether before, during or after; to establish the facts and circumstances, with assistance from relevant experts and special procedure mandate holders, of the alleged viola

make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command re sponsibility, for such violations and abuses, and on protecting civilians against any further assaults;

DQG WR SUHVHQW DQ RUDO XSGDWH WKHUHRQ WR WKH &RXQFLO DW UHSRUW DW LWV IRUWLHWK VHVVLRQµ ^
WR FRPSLOH LQIR WRDW BROW WLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH

tions and abuses, including those that may amount to war crimes; to identify those responsible; to

:KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULP demns "the disproportionate and indiscriminate use of force by the Israeli occupying forces against Palestinian civilians, including in the context of peaceful protests, particularly in the Gaza Strip, in vi-RODWLRQ RILQWHUQDWLRQDO KXPDQLWDULDQ ODZ LQWHUQDWLRQI resolutions, and expresses its grief at the extensive loss of life, including of childremomen, health

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLU LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"

1 R

⁵¹⁶ The commission was dispatched as part of HRC resolution S-28/1, on HRBodies/HRC/ColOPT/Pages/OPT.aspx (1 HRBodies/HRC/ColOPT/Pages/OPT.aspx











