

ADVANCING JUSTICE FOR CHILDREN:

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

RESEARCH PAPER
MARCH 2021



ADVANCING JUSTICE FOR CHILDREN:

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



Save the Children



**OXFORD INSTITUTE
FOR ETHICS,
LAW AND
ARMED CONFLICT**



EXECUTIVE SUMMARY

Children are among the principal victims of violations 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. The KDUP LQÁLFWHG RQ FKLOGUHQ LQ ZDU DQG RWKHU VLWXDWLRQs 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 LQWHUQDWLRQAL 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 ÁQGLQJ 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 Children launched its [Stop the War on Children](#) campaign to reassert the norms, standards, policy, practice and rules relating to the SURWHFWLRQ RI FKLOGUHQs by this campaign. The campaign was centred around XSKROGLQJ VWDQGDUGV DQG QRUPV IRU WKH SURWHFWLRQ RI perpetrators of violations and crimes to account and taking practical action to protect FRQÁLFW DIIHFWHG FKLOGUHQ DQG WR HQDSDU WKHLU UHFRY

¹ Save the Children, [Stop the War on Children](#)

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 UHFOL civilian population that disproportionately affect FKLOGUHQ H J DWDFNV RQ KRVS LWDQV

the Children and the Oxford Programme on International Peace and Security at the %ODYDWQLN 6FKRRO RI *RYHUQPHQW·V ,QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &RQALFW (S& agreed to a partnership grounded in pillar two of Save the Children’s new strategy, [holding perpetrators of violations and crimes affecting children to account](#). The 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 indict](#).³

Section I of this Research Paper addresses the [BRVW FRPPRQO\ LGHQWLÀHG EDUULHUV](#) to the effective investigation, documentation, and indictment of violations and crimes affecting children. 3DUW\$HÁ\ DGGUHVHV WKH LPSRUWDQFH RI SXUVXLQJ DFFRXQWDELOLW\ IRU and violations affecting children, as well as the [need for intersectional approaches](#) – DQG VSHFLÀFDOO\ JHQGHU DQG DJH GLVDJJUHDJH DQDO\VLV² LQ FROOHFWLQJ D information and evidence for the purposes of investigation, documentation and criminal accountability. It is essential to [HQVXUH WKDW FKLOGUHQ DUH QRW UHQGHUHG LQYLVLEOH E\ DGXO FHQWULF DSSURDFKHV WR DFFRXQWDELOLW\ WKH\ DUH QRW ¶XQ VLWXDWHG·](#). [seen as a homogenous group](#). Capturing the full breadth of their experiences is crucial, in order to understand the reasons 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\ LGHQWLÀHG E\ NH\ H[S independent research, which are [DWLWXGLQDO ÁQDOFLDO cases VWUXFWXUDO mutually reinforcing](#). \$Q DQDO\VLV RI WKH DSSURDFK WDNHQ E\ 81 IDFW ÁQGLQJ DQG LQYHVW ERGLHV DQG E\ LQWHUQDWLRQDO FULPLQDO FRXUVV DQG WULEXQDOV KHUHDIUHU ¶DFFRXQWDELOLW\ PHFKDQLVPV· WR WKHVH LVVXH LV FRQWDLQHG DW \$QQH[,

AMONG THE MAIN BARRIERS IDENTIFIED ARE:

2YHUDUFKLQJ DQG DWLWXGLQDO EDUULHUV VXFK DV

- } [7KH ¶LQLELOLVDWLRQ RI FKLOGUHQ](#) both in situations of war/protracted 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 UHQGLWHP SRZHUPHQ RI FKLOGUHQ FRPSRXQGHG E\ WKHLU OHJDO disenfranchisement](#) and their lack of representation in political entities and civil society organisations;

³: KLOH WKH FKDUJHV RQ ZKLFK DQ DFRXMXGLZLDO VROÀDVPULFODUWHVDFHMRW term “to indict” is used in this Research Paper to denote a decision to prosecute. This paper does address other relevant aspects of accountability such as trial proceedings, truth commissions, reparations, and domestic remedies DQG LQVWLWXWLQDO UHIRUPV)XUVKROGFRQVWLQJLQWLRQRI FKLOGUHQ DV serious violations of international human rights and humanitarian law are also not discussed in this paper. 7KXJKRXW WKLV 5HVHUFK 3DSHU E\ ¶XQ VLWXDWHG· ZH PHDQ QRW SODFHG LQ WKH FRQWH[W RI RWKHU LGHQWLÀHG EDUULHUV XUEDQXUDO JHQGHU DELOLW\ FODV DJH WKDW LQIRUP WKH DQDO\VLV DQG XQGHUVWDQG LQJ RI WKH H[SHULHQFH RI SDUWLFXODU particular context that is being documented.

- } [Conditions on the ground](#), which cannot, however, be solely remedied through the adoption of a child-competent approach;
- } [7KH GHJUHHWRGLHFRÀHG E\ SDUWLFXODU, coupled with a lack of prioritisation of the investigation and prosecution of violations and crimes affecting children; and,](#)
- } [/LPHW DFFHVV WR WKH PRYWKH SURSHUOLGHQFH](#) which is often quite limited for ‘conduct’ violations as compared to ‘treatment’ violations.

6WUXFWXUDO EDUULHUV VXFK DV

- } [/DRI EX\ LQ, compounded by a 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;
- } [\)DLOXH WR VXVWDLQDEO\ DQG HIIHFWLYHO\ PDLQVWUHDPL investigation, documentation, and prosecution strategies](#) both by non-judicial and judicial accountability mechanisms, resulting in a tendency to see such accountability as something warranting additional, thus separate, consideration;
- } [&RÁDWLQJWLJDLQJ YLRODWLRQV DQG FULPHV DIIHFWLQJ 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 of ad hoc PHFKDQLVPV LQFOXGLQ 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](#)
- } [/DRI SURSHU FKLOG FRQVWUDLQWV](#) for the fact that where expertise is DYDLODEOH LW LV UDUHO\ VSHFLÀF WR FKLOGUHQ RU VWUJ
- } [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 be drawn from the pursuit of [DFFRXQWDELOLW\ IRU VH\[XDO PHQVH violations 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 WKH GRFXPHQDWLRQ LQYHVWLQJLJDLWLRQ DQ DFFRXQWDELOLW\ IRU 6*%9 KDV EHQHÀWHG IURP WKH VXSSRU be fully formed when it comes to accountability for crimes/violations affecting children. In 3DUW\$RI6HFWORQZLH that, in recent years, allowed for 6*%9 FULPHV WR EHFRPH PRUH RIDIRIWRGLHQWHUQDWLRQ which [FRPPRO EDUULHUV H\[LWV RU KDYH H\[LWVHG EHWZHHQ DF](#) accountability for violations and crimes affecting children, and which [OHVVRQV FRXOG EH](#)

learned IURP WKH KDOWLQJ SURJUHVV WRZDUGV 6*%9 MXVWLFH :H DOVR KLJKOLJKW [important non-judicial accountability mechanisms](#); all accountability mechanisms; entities [differences](#) EHWZHHQ 6*%9 FULPHV DQG YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ WKDW WRXJK 4+5 DQG 81 :RPHQ -XVWLFH 5DSLQ 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 behind these changes. RUJDQLVDWLRQV ,Q SDUWLFXODU ZH UHFRPPHQG

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

WKH LGHQWLÀHG EDUULHUVR WR DFFRXQWDELOLW\ IRU FULPHV DQG YLRODWLRQV¹ DIIHFWLQJ FKLOGUHQ ,Q

SDUWLFXODU LQ 3DUW \$ RI 6HFWLRQ ... ZH DQDO\ZH

D QHVW SROLWLFDO EDUULHUVR

1. In placing accountability on violations and crimes affecting

- } 7KH QRHEX MOG SROLWHE State and Diplomatic Levels to maintain focus
 on the issues, and open and sustain dedicated funding streams;
 } 7KH QRHEX MDWH VWUXFWXUHV ZLWKLQ WKH 2IÀFH RI WKH +LJK &RPPLVVLRQHU IRU +DSSQ
 5LJKWV 2+&+5 WR EHHWHU VXSSRUW the documentation and investigation of violations
 DQG FULPHV DIIHFWLQJ FKLOGUHQ E\ QRQ MXGLFLDO DFFRXQWDELOLW\ PHFKDQLVHV
 by providing methodological and operational guidance to accountability mechanisms;
 by supporting the GHYHORSPHQW RI D SRRO RI H[SHUWLHV in support of mechanisms;
 by creating a structure for the fast deployment of experts, including experts
 seconded from domestic jurisdictions; and by further enhancing cooperation with
 , QWHUQDWLRQDO &ULPLQDO &RXUWV 6SHFLDO \$GYLVHU RQ &KLOGUHQ LQ DQG DIIHFWLQJ
 &RQÀLFW
 } 7KH QHHG RQ WKH SDUW RI PDQGDWHV WKHPVHOYHV ERWK MXGLFLDO DQG QRQ MXGLFLDO
 DGRSW VSHFLÀF SROLFLHV VWUDWHJLHV including with regard to cooperation with relevant
 accountability actors, and to monitor and evaluate their implementation; and,
 } The QHHG IRU EHHWHU DQG PRUH VXVWDLQHG RXWUHDFK ZLWQHVV SURWHFWLRQ DQG
 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 & RQV' case, which we believe can inform our analysis and discussion on innovative strategies at the international level. We argue that domestic prosecutions can be a powerful tool to ensure domestic accountability for child rights violations and crimes affecting children, including through secondments and loans to judicial and non-judicial accountability mechanisms; and to ensure domestic accountability for child rights violations, at all times ensuring

- 7 KH EXLOGLQJ RI UHOLDLQJ LQJSSDW WLFXODU FDV, WKURXJK ORQJ WHUP PHQWRULQJ which can have positive ripple effects on other cases in the jurisdiction;
 - The focus on ensuring that victims and their families remain central to the process obtained at every stage;
 - CHVWPHQW LQ EXLOGLQJ RUJSSDW WLFXODU FDV, WKURXJK ORQJ WHUP PHQWRULQJ that can collaborate and coordinate 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, the centring of the problem, among stakeholders, both national and international; and,
 - 7 KH EXLOGLQJ RI UHOLDLQJ LQJSSDW WLFXODU FDV, WKURXJK ORQJ WHUP PHQWRULQJ 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.

,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

3

That all DFFRXQWDELOLW\ ZKHUHQ MXGLFLDO RU QRQ MXGLFLDO LQ QDWXUH

D 'HYHORS DQG RU HQKDQFH VWDII as a Key Demand: DQG FRPSHWHQ\

that investigations are child-competent; that lessons learned and best practices VWHPPPLQJ IURP ORFDO DQG LQWHUQDWLRQDO DFFRXQWDELOLW\ HIIRUWV DUH HIÀFDLQW OH OHCHH DQG UHWDULDW systematically compiled and shared; and that a child-centred analysis of crimes and violations is systematically integrated into accountability efforts;

E , P, SUYH WKH UHFUXLWPHQW RI LQYHVWLJDWRUV ZLWK VSHFLÀF H[SHUWLVH RQ KRZ WR LQYHVWLJDWH

crimes against children, including engaging in active efforts to recruit from national jurisdictions, 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, including by requiring trainings by such experts for mechanisms staff;

F :LWK VSHFLÀF UHIHUHQFH WR QRQ MXGLFLDO DFFRXQWDELOLW\ PHFKDQLVPV

have the necessary capacity in international human rights and criminal law;

G (QVXUH WKHUHQ D VSHFLÀF VWDII DOLVW H[SHUWLVH – whether in the form of D VSHFLÀF XQLW LQ WKH JHQHUDO RLAHU VWHFHGXUH RU DV D 6SHFLDO \$

in the operational aspects of investigation and 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 8QGV FURUH WKDW WKH , & & V 3ROLF\ RQ &KLOGUHQ ZKHUH UHOHYDQW FDQ DQG VKRXOG LQIRUP

the approach of the accountability mechanisms in respect of developing a child-competent approach to the investigation and analysis of international crimes affecting them;

I \$GRSW WKHPDWLF SROLFLHV DFFRP, SROSLQJ RSHUDWLRQDO JXLGHOLQHV

requirements on investigators and prosecutors with regard to the prioritisation of the investigation and documentation of violations and crimes against children;

J , QHVW LQ HIIHFWLYH & KDW the mandates and activities of the

mechanisms are understood at the local level;

K \$GYRFDWH IRU IXQGV IRU DQG ZKHUH IXQGV DUH DYDLODEOH HQVXUH DGHTXDWH ZLWQHVV

SURWHFWLRQ DQG SV\FKRQRUPDWXUHV

good understanding by the affected communities of the mandate and activities of accountability mechanisms and of the protection structures available to them;

L 'HYHORS NQRZOHGJH VKDULQJ FKDQQHOV DQDQJ DFFRXQWDELOLW\ PHFKDQLVPV

the creation of dedicated focal points to secure periodic meetings, foster exchange of knowledge and best practices between in-house experts, and 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, KDW the Belco Drafts

imposed upon the latter by their own mandates.

4

That HQWLWLHV VXFK DV 2+&+5 DQG 81 :RPHQ -XVWLPH 5DSLJ 5HVSRQVH ZKLFK VXSSRUW

DFFRXQWDELOLW\ PHFKDQLVPV WKURXJK WKH SURYLVLRQ RI VWDII

D &RQWRQXFWLYHO\ VHHN IXQGLQJ DQG VXSSRUW WR HQDEOH WKH FRQVLVWHQW EXLOGHQJ URVWHU

RI LQGLYLGXDOV 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;

E \$FWLYHOV UHFUXLWPHQW H[SHUWLVH RSHUDWLRQDO MXULVGLFWLRQV

F 'HYHORS RU DGRSW LQWHUQDO FKLOG FRPSHWHQW VWDQGDUG RSHUDWLQJ SURFHGXUHV PHWKRGV

DQG RSHUDWLRQDO JXLGHOLQHV for the investigation and documentation of violations and crimes affecting children;

G 'HYHORS NQRZOHGJH DFFRXQWDELOLW\ H[SHUWLVH DQG LQ W

OHCHR between non-judicial accountability mechanisms for which OHCHR staff serve

as a model for

5

That QRQ JRYHUQPHQWDO DQG FLYLO VRFLHW\ RUJDQLVDWLRQV

D 6XS SRDGYRFD\ HIIRUWV IRU DQG DGYRFDWLQJ ZLWK 6WDV

funding streams for the building and provision of expertise in the investigation and

GRFXPHQDWLRQ RI FRQÁLFW UHODWHG YLRODWLRQV DQG

through expert rosters;

E &RQWLW\ UDLVH WKH QHHG WR RSHUDWLRQDO DFFRXQWDELOLW\

for violations and crimes, DIIHFWLQJ FKLOGUHQ LQ SROLWLFDO DQG GLSORPDWLFIRU

6HFXULW\ &RXQFLO WKH 81 *HQHUDO \$VHPEO\ DQG 81 +X

bilateral and multilateral meetings with States;

F :RUN ZLWK 6WDWHV WR HQWHU WR WHDW accountability

mechanisms H[SOLFLO\ SULRULWLHV WKH LQYHVWLJDWLRQ DQG

and crimes affecting children in the accountability mechanisms' mandate and legal

frameworks;

G 6XS SRD PHFKDQLVPV · RXWHU the mandates and activities

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 ,QGSHQGHHQW &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
IIMM	Independent Investigative Mechanism for Myanmar
IMT	, QWHUQDWLRQDO 0L0LWDU\ 7ULEXQDO DW 1XUHPEHUJ
IMTFE	International Military Tribunal for the Far East
, 1*2	International non-governmental organisation
-55	-XVWLFH 5DSLQ 5HVSRQVH
METS	Methodology Education and Training Section of the OHCHR
MRM	Monitoring and Reporting Mechanism on grave violations against ehil dren
Myanmar FFM	Independent International Fact-Finding Mission on Myanmar
1*2	1RQ JRYHUQPHQWDO RUJDQLVDWLRQ
OHCHR	2IÀFH RI WKH +LJK &RPPLVVLRQHU IRU +XPDQ 5LJKWV

OTP	2IÀFH RI 7KH 3URVHFXWRU ,QWHUQDWLRQDO &ULPLQD
PHR	Physicians for Human Rights
PTC	Pre-Trial Chamber, International Criminal Court
558	5DSLQ 5HVSRQVH 8QLW RI WKH 2IÀFH RI WKH +LJK&RP
SCSL	Special Court for Sierra Leone
6*%&&8	6H[XDO DQG *HQQHU %DVHG 9LROHQFH &ULPHV DJDLQ ,QYHVWLJDWLYH 7HDP WR 3URPRWH \$FFRXQWDELOLW\ I Da'esh/Islamic State in Iraq and the Levant
6*%9	6H[XDO DQG *HQQHU %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 6HFUHDU\ *HQU &RQÁLFW
656* 69\$&	6SHFLDO 5HSUHVHQWDWLYH RI WKH 6HFUHDU\ *HQU \$UPHG &RQÁLFW
Syria Commission	, QGHSHQGHHQW ,QWHUQDWLRQDO &RPPLVVLRQ RI ,QTXL Republic
81	8QLWHG 1DWLRQV
81, & ()	81 ,QWHUQDWLRQDO &KLOGUHQV (PHUJHQF\)XQG
81, 7\$'	81 ,QYHVWLJDWLYH 7HDP WR 3URPRWH \$FFRXQWDELOL by Da'esh/Islamic State in Iraq and the Levant
816&	81 6HFXULW\ &RXQFLO



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METHODOLOGY 20

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9LRODWLRQV DQG FUL3P HV DIIHFWLQJ FKLOGUHQ

\$S&WFKHV WR LQYHVWLJDWLRQ DQG GRFXPHQWDWLRQ WK

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1. Introduction90
\$WWLWXGLQDO DQG VWUXFWXUDO EDUULHUV WR DFFRXQWDELOLW\ IRU FULPHV DI
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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

perpetrators of violations of international human rights law and international humanitarian law affecting children to account, including those amounting to crimes under international law; and to enable their recovery.

Peace and Security at the Blavatnik School of Government's Institute for Ethics, Law, and 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.

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.

and the Programme. In particular, the Programme is spearheading new, ground-breaking research centred on the improvement of international investigations aimed at supporting criminal accountability for atrocity crimes. This report, which dovetails

⁵ Save the Children, [The World's Most Vulnerable Children](#) (2019).

⁶ For ease of reference, the term "crimes affecting children" is used throughout this paper to denote both crimes affecting children and crimes against children.

frameworks within DFFRXQWDELQW\ PHFKDQLVPV LQFOXGLQJ UHOHYDQW WRROV UHVRXUFHV VNLOOV
DQG VHQVLWLYLW\ WR HQJDJH ZLWK FKLOGUHQ DQG EHWWHU VWUDWHJLHV WR EROVWHU DQG HQUJLVH 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.) L Q D O O \ D O O H [S H U W V Z K R K D G F R Q V H Q W H G W R E H 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

WKH RSSRUWXQLW\ WR
)HGHULFD ' . \$i\$he Executive Director of the Oxford Programme on International
 3HDFH DQG 6HFXULW\ ,QVWLWXWH IRU (WKLFXV /DZ DQG \$U
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 DQG LQWHUQDWLRQDO MXVWLFX LQFOXGLQJ WKH SURMHFW
 D SURMHFW WR DGYLVH RQ WKH SHUPDQHWW VXSSRUW QHH
 mandates. She is the author of The Accountability Turn in Third Wave Human Rights Fact-
 Finding DQG WKH OH DQ DQWKRULW\ Society Documentation of
 Serious Human Rights Violations

human rights law, including children's rights, international humanitarian law and international criminal law, and a research consultant with the Oxford Programme on

6DUHWD \$WKD ESK UULVWHU DQG 9LVWLWQJ)HOORZ RI 3UDFW
RQ ,QWHUQDWLRQDO 3HDFH DQG 6HFXULW\ ,QVWLWXWH IR
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SURMHFW 10RYLQJ IURP IDFW ÀQGLQJ WR FDVH EXLOGLQJ
VXSSRUW QHHGHG WR IXOÀO LQWHUQDWLRQDO LQYHVWLJD
Legal Consultant on projects directed towards furthering accountability efforts for crimes
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WR SUHVHQW DQG LV D KXPdq ULJKWV H[SHUW ZLWK H[WH
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.

[\\$ Xélie Lamaziere](#) LV 6HQLRU +XPDQLWDULDQ \$GYRFDF\ \$GYLVRU D
 \$GYRFDF\ RIÀFH WR SUHVHQW DQG FRPELQHV VWURQJ
 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 KXPDQLV
 notably Médecins sans Frontières and0 pGHFLQV GX 0RQGH ERWK DW KHDG
 OHYHOV LQFOXGLQJ LQ VHYHUDO FRQÁLFW DIIHFV
 occupied Palestinian territo &KDG 6XGDQ DQG 'HPRFUDWLF 5HSXEOLF
 DOVR ZRUNHG DV WKH *HQGHU 3URJUDPPH &RRUGLQDWRU I

Keyan Salarkia LV D &RQÁLFW DQG +XPDQLWDULDQ \$GYLVHU DW 6DYH WKH &KLOGUHQ 8. WR
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KXPDQLWDULDQ HPHUJHQFLHV DFURVV (DVW DQG 6RXWKHUQ \$IULFD DQG \$VLD DV ZHO\ DV LUVKHU
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 2IÁFHU
\$VVRFLDWH /HJDO 2IÁFHU DW ,&7< DQG ZDV GHSOR\HG E\ -XVWLFH 5DSLQ 5HSHQVLYH
LQ WKH 2IÁFH RI WKH 3URVHFWRU RI WKH ,&& 6KH KDV DGGLWLRQDO H[SHUWLVH LQ FKLOGUHQ
SURWHFWLRQ JDLQHG ZKLOH ZRUNLQJ DV DQ \$GYRFD\ \$GYLVHU IRU 6DYH WKH &KLOGUHQ

The authors are grateful to 3URIHVVRUV 'DRL\$NDOOHUL, and 6DQQL
6DUDK 4XDUWHU for their intellectual and operational support, respectively;
as well as to 0LND\OD %LVYUWHOOQD YDQDQHW for their
invaluable research assistance and to a range of colleagues from across Save the Children,
including Kiran Kothari, Pien Klieverik, Günvor Knag Fylkesen, and (ZD 6DSLHJ\QVND.

7KLV SURMHFW DOVR EHQHÁWHG IURP UHVHDFK E\ D %ODYDWQLN 6FKRRO RI *RYHU
Public Policy student, provided as part of his degree requirement in the summer of 2019.
We are grateful to Rhodes Scholar 6DPHHU 5DVV for his diligent preparatory work.

CONTRIBUTING EXPERTS

The key experts consulted for this research are listed below. The experts provided their
views in a personal capacity, and these do not necessarily represent the views of their
respective organisations.

- \$OLFHTrial Lawyer, International Criminal Court. Former ICC Investigator and lead
on investigations of crimes affecting children.
- 3URIHVVRU \$QG, Commissioner, Commission on Human Rights in South
Sudan and Professor of International Law, Graduate Institute of International and
Development Studies.
- \$QQH 6FKRRO 2IÁFH 81 /LDLVRQ IRU WKH 2IÁFH RI WKH
RI WKH 6HFUHWDU\ *HQHUDO IRU &KLOGUHQ DQG \$UPHG &R
- %HGH 6KH, Deputy Director, Human Rights Watch.
- 3URIHVVRU & Professor of Practice of International Law, Fletcher School of
/DZ DQG 'LSORPDF\ 7XIUV 8QLYHUVLW\ 'LUHFWRU RI 3ROLF
International Federation of the Red Cross and Red Crescent Societies and Senior Policy
DQG /HJDO \$GYLVHU 81 2IÁFH RI WKH +LJK &RPPLVVLRQHU
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5LJKWV 2IÁFH RI WKH +LJK &RPPLVVLRQHU IRU +XPDQ 5LJK
,QWHUQDWLRQDO &HQWUH IRU 7UDQVLWLRQDO -XVWLFH
/HJDO 2IÁFHU ,&75
- 'DOLOD 6HQH \$FDGHP\ RI ,QWHUQDWLRQDO +XPDQLWDULDQ
- 'DQLHOH, 3HDGVRL 3URJUDPPHV *UHDW /DNHV 75,\$/ ,QWHUQ
- 3URIHVVRU 'DRL\$NDOOHUL RI 3XEOLF ,QWHUQDWLRQDO /DZ D
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- 'LDUUD 6HQRU \$GYRFD\ \$GYLVHU RQ &KLOG 5LJKWV 6DYH
- (PLO\ .HQH 3ROLF\ 6SHFLDOLVW 7UDQVLWLRQDO -XVWLFH 81
- (ULQ *DO, QYHVLJDWRU ,QWHUQDWLRQDO &ULPLQDO &RXU
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SURLGHG E\ -XVWLFH 5DSLQ 5HSHQVLYH 81 :RPHQ
&RPPLVVLRQ RI ,QTXLU\ RQ /LE\

- [\)DGHO \\$EGXPHFKDQ](#) LYH 'LUHFWRU 6\ULDQ 1HWZRUN IRU +XPDQ 5LJKWV SUHVVHQW [Patricia Viseur Sellers](#) 6SHFLDO \$GYLVRU RQ *HQQHU WR WKH ,&& 3 \$GYLVRU IRU *HQQHU \$FWLQJ +HDG RI WKH /HJDO \$GYLV
- [Federica Tronchin](#),+HDG RI ,QWHUQDWLRQDO -XVWLFH 3URJUDPPH DQG 6HQLRU *HQQHU DQG &KLOG 5LJKWV \$GYLVRU -XVWLFH 5DSLJ 5HVSQRVH
- [Grace Pelly](#) %DUULVWHU &KDUWHU &KDPEHUV)RUPHU /HJDO \$GYLVRU 5HSRUWLQJ 2IÄFH [Rosalind Sipos](#) /HJDO 2IÄFHU ,,,0)RUPHU /HJDO 2IÄFHU 8QLW 7HDP WR 3URPRWH \$FFRXQWDELOLW\ IRU &ULPHV &RPPLW)RUPHU /HJDO \$GYLVRU 5HSRUWLQJ 2IÄFHU DQG &RPPLVVLRQ RQ +XPDQ 5LJKWV LQ 6RXWK 6XGDQ
- +XJR [Senior](#) Research Fellow, 2[IRUG ,QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &RQÁLFW 8QLYHUVLW\ RI 2[IRUG
- ,PPD *XHUUDV \$GYLVRU RQ &KLOG 5LJKWV 6HFUHW DULDW RQ 81 *OREDQ 6WXG\ [6K\DPDOD \\$ODHQQHU](#) DQG &KLOG 5LJKWV \$GYLVRU ,QGH 0HFKDQLVP IRU 0\DQPDU ,,00)RUPHU \$VVLVWDQW 'LUHF 5LJKWV 'HIHQFH ODZ\HU ,&& 3URVHFXWLRQ OD Geneva. 3URVHFXWLRQ ODZ\HU 6SHFLDO &RXUW IRU 6LHUUD /HRO
- ,QJULG (OOLRW (SHUW 3UHYHQWLQJ 6H[XDO 9LROHQFH ,QLWLDWLYH
- -DPHV 'HQVH [Helen Salmerón](#), \$GYLVRU ,QGHSHQGHQW ,QWHUQDWLRQDO &RPPLVVLRQ RI ,QTXLU\ RQ WKH 6\ULDQ \$UDE 5HSXEOLF
- -DY [Léon Salmerón](#), \$GYLVRU ,QGHSHQGHQW ,QWHUQDWLRQDO &RPPLVVLRQ RI ,QTXLU\ RQ WKH 6\ULDQ \$UDE 5HSXEOLF
- .DLWOLQ +XPDQ DULDQ 3ROLF\ DQG \$GYRFD\ 6SHFLDOLVW 81,&()
- [Karen Naimer](#), 'LUHFWRU RI 3URJUDP RQ 6H[XDO 9LROHQFH LQ &RQÁLFW =RQHV 3K\VLFLDQV IRU +XPDQ 5LJKWV \$VVRFLDWH 3URIHVVRU &HQWHU IRU *OREDQ \$IIDLUV 1HZ <RUN 8QLYHUVLW\ RI 2[IRUG 0HUWRQ &ROOHJH 5HVHDFK 2IÄFHU DW WKH : 'HSXW\ &RXQVHO DW WKH ,QGHSHQGHQW ,QTXLU\ &RPPLWWHH LQWR WKH 8QLWHG 1DWLRQV 210\IRU \$UPHG &RQÁLFW Food Programme.
- .DWH *Lamir [St Philips Chambers](#). Former Legal Consultant, Independent ,QWHUQDWLRQDO)DFW)LQGLQJ 0LVVLRQ RQ 0\DQPDU 'HIHQFH &RXQVHO ,Q\ &ULPLQDO &RXUW SUHVVHQW
- [Katherine Cocco](#) &KLOG 3URWHFWLRQ 6SHFLDOLVW 81,&()
- .DWK\ 5REHUWV, 7KH &HQWHU IRU -XVWLFH DQG \$FFRXQWDELOLW\
- [Katie Wepplo](#), &KLOG 3URWHFWLRQ 6SHFLDOLVW &KLOG 3URWHFWLRQ LQ (PHUJHQFLHV 81,&()
- [Kiran Kothari](#), \$GYLVRU Save The Children Sweden.
- [Kirsty Sutherland](#), %DUULVWHU %HGIRUG 5RZ 9LVVLWLQJ)HOORZ RI 3UDFWLFH WKH 2[IRUG ,QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &RQÁLFW 3URJUDPPH RQ ,QWHUQDWLRQDO 3HDFH DQG 6HFXULW\ 8QLYHUVLW\ RI 2[IRUG
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- 0D[LQH 0DUFKWRU 7UDQVLWLRQDO -XVWLFH &OLQLF
- 0LFKHQ \$QDO\VW RQ DQG 81 5HSUHVVHQWDWLYH 6DYH 7KH &KLOGUHQ
- 0LFKHOOH -DUYLV Deputy Head, IIIM.
- 0LND\OD %03KU0 &0DQGLGDWH LQ 3XEOLF ,QWHUQDWLRQDO /DZ DW WKH 8QLYHUVLW\ RI 2[IRUG :RUFHVWHU &ROOHJH 5HVHDFK DQG ([FXWLYH \$VVLVWDQW WR)HGHULFD '\$OHVVDDQGUD DW WKH 2[IRUG ,QVWLWXWH IRU (WKLFV /DZ DQG \$UPHG &RQÁLFW
- [Nicole Samson](#), 6HQLRU 7ULDO \$WWRUQH\ ,QWHUQDWLRQDO &ULPLQDO &RXUW

INTRODUCTION

1. Children are among the principal victims of violations 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 LQWHUQDWL DQG FULPLQDO ODZ DV ODLG RXW LQ WKH 81 &RQYHQWLRQ number of other international instruments. However, while preventing, monitoring DQG UHVSRQGGLQJ WR YLRODWLRQV RI FKLOGUHQ V ULJKWV 81 LQWHUQDWLQRQDO SHDFH DQG VHFXULW\ DJHQGD IRU RYH QRW UHFHLYHG VXVWDLQHG DWWHQWLRQ IURP 81 IDFW ÁQG 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

11 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 GLVSURSRUWLQRDWHO\ 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 children¹² 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 VSHFLÁFDOO\ WR DGGUHVV WKH UHVSRQVLELOLW\ RI SHUSHWUDWRUV KDV QRW \HW EHHQ ÁUPO\ RU VXIÁFLHQWO\ VHLJHG E\ D 6WDWH RU 6WDWHV ZLOOLQJ to push the issue forward. Consequently, there has been limited advocacy, coalition- EXLOGLQJ RU IXQGLQJ GLUHFWHG WRZDUGV WKL VLVXH \$GGLWLRQDOO\ PRVW 81 7KHV\EHWLRQ DGGUHVHV WKH PRVW FRPPRQO\ LGHQWLÁ investigation, documentation and indictment of violations and crimes affecting children. It is divided into two parts.³ DUW\$HÁ\ DGGUHVHV WKH LPSRUWDQ 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 VSHFLÁFDOO\ JHQGHRO\ DQG DJH GLVDJ Part B sets RXW WKH SULQFLSDO EDUULHUW WR DFFRXQWDELOLW\ LGH independent research which are DWWLWXGLQDO ÁQDOFLDO DQG VWUXFW structural, and, in many cases, mutually reinforcing. \$Q DQDO\VLV RI WKH DSSURDFK WDNHQ E\ WKH ÁUVW DQG VRPHWLPHV RQO\ DWWHPSW WR OD\ WKH IRXQG DWLRQV IRU MXVWLFLHQ\ QHJDWLYH ERGLHV DQG LQWHUQDWLRQDO FULF UHIHUHG WR DV ¶DFFRXQWDELOLW\ PHFKDQLVPV\ WR WK

5. ,QWHUQDWLRQDO LQYHVWLJDWLYH RU IDFW ÁQGLQJ PLVVLQJ RU PHFKDQLVPV DQG FRQVWUXULQJ WKH DSSURDFK WDNHQ E\ WKH ÁUVW DQG VRPHWLPHV RQO\ DWWHPSW WR OD\ WKH IRXQG DWLRQV IRU MXVWLFLHQ\ QHJDWLYH ERGLHV DQG LQWHUQDWLRQDO FULF UHIHUHG WR DV ¶DFFRXQWDELOLW\ PHFKDQLVPV\ WR WK 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 7KHV\ DUH DWWLWXGLQDO ÁQDOFLDO DQG 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[O\ DV O\VERQJ, HQFRQJ, and DLQJWRQ 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, WKH 81 V\VVHP DQG 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

independent research which are DWWLWXGLQDO ÁQDOFLDO DQG VWUXFW structural, and, in many cases, mutually reinforcing. \$Q DQDO\VLV RI WKH DSSURDFK WDNHQ E\ WKH ÁUVW DQG VRPHWLPHV RQO\ DWWHPSW WR OD\ WKH IRXQG DWLRQV IRU MXVWLFLHQ\ QHJDWLYH ERGLHV DQG LQWHUQDWLRQDO FULF UHIHUHG 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 FK PLGVW RI DUPHG FRQÁLFW 2I WKHVH PLOOLRQ OLYH LC WKDW LV FRQÁLFW JRQHV ZLWK PRUH WKDQ EDWWOH U O\VERQJ, HQFRQJ, and DLQJWRQ to violations of children’s rights, during armed FRQÁLFW LQ SDUWLFXODU KDV IRUPHG SDUW RI WKH 81 6H and security agenda for over two decades, since the publication of Graça Machel’s JURXQG EUHDNLQJ VWXG\ RQ WKH LP\$SDUWII DUPHG FR Report addressed the enforcement of standards and the mechanisms for monitoring FRQÁLFW UHODWHG YLRODWLRQV DJDLQVW FKLOGUHQ QRV system for the protection of children must be based on the accountability of JRYHUQPHQWV DQG RWKHU DFWRUV 7KL VLVXH LQ WXUQ UHTX monitoring”.¹⁷ One of the key steps taken by the Security Council in that regard was WKH FUHDWLRQ LQ RI D ORQLWRULQJ DQG 5HSRUWLQJ LQIRUPDWLRQ RQ ¶JUDYH YLRODWLRQV¹⁸ DJDLQVW FKLOGU

81 *HQHUDO \$VSHFW RI \$UPHG &RQÁLFW RQ &KLOGUHQ 8QLWHG 1DWLRQV 5HSRUW RI WKH H[SHUW RI WKH 6H[O\ERQJ, HQFRQJ, and DLQJWRQ to violations of children’s rights, during armed FRQÁLFW LQ SDUWLFXODU KDV IRUPHG SDUW RI WKH 81 6H and security agenda for over two decades, since the publication of Graça Machel’s JURXQG EUHDNLQJ VWXG\ RQ WKH LP\$SDUWII DUPHG FR Report addressed the enforcement of standards and the mechanisms for monitoring FRQÁLFW UHODWHG YLRODWLRQV DJDLQVW FKLOGUHQ QRV system for the protection of children must be based on the accountability of JRYHUQPHQWV DQG RWKHU DFWRUV 7KL VLVXH LQ WXUQ UHTX monitoring”.¹⁷ One of the key steps taken by the Security Council in that regard was WKH FUHDWLRQ LQ RI D ORQLWRULQJ DQG 5HSRUWLQJ LQIRUPDWLRQ RQ ¶JUDYH YLRODWLRQV¹⁸ DJDLQVW FKLOGU

16 Supra note 12.

17 Machel Report, Supra note 4, para 205.

18 See 81 6HFXULW\ &RXQFLO 6 5(6 -XO\

28. Investigating and [SURVFHXWLQJ LQWHUQDWLRQDO FULPHV LV DQ H](#) task, regardless of the age of the victim. Some obstacles are due to a lack of personal⁶ or territorial jurisdiction;⁷ 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 H[DPSOH

>,W ZDV YHU\ GLIÄFXOW@ WR SURYH WKH DJH RI FKLOGU is absolutely [QR GRFXPHQWDWLRQ DERXW DJH DQ\ VRUW RI GR](#) 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 [REWDLQH VFKRROV FKHUFKHV 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 \HUV FRQVFULSWLRQ LV FULWLFDO \(YHQ D \HUV 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 Ä\[VXF](#) ~~PSKDWLFWXND SUREOHPV~~

29. \$JH GLVDJJUHJDWHG DQDO\HV PHDQLQJ WKH DQDO\HV RQ FKLOGUHQ EDVHG RQ WKHLU DJH UHTXLUH D VLJQLÄ 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 reports⁹

46)RU H[DPSOH 5XOH RI WKH ,&7<·V 5XOHV RI 3URFHGXUH DQG (YLGHQFH DV D to ascertain whether "the indictment prima facie, concentrates on the most senior leaders suspected of being most responsible for the crimes." IDLOLQJ ZH [KHQDQYH YDOXDWLRQ](#) WKH MXULVGLFWLRQ RI WKH 7ULEXXDO IDLOLQJ ZH ,&7< 5XOHV RI 3URFHGXUH DQG (YLGHQFH ,7 5HY -XO\ 7KLW DPHQG RI 81 6HFXULW\ &RXQFLO 5HVROXWLRQ 6 5(6 \$XJXVW DQG 5H ODUFK ZKLFK FRQFHUQH 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 ,QWYLHZ ZLWK \$OLFH =DJR)HEUXDU\ 7KH O\DQPDLOHQWHW AQGLQJ OLVLVLR WKDW LW ZDV D ELW DUELWUDU\ LQ WKH FDPV EHFDXVH GLGQ·W UHDOO\ PH FRQFHSW DPRQJ WKDW SRSXODWLRQ \$QG DOVR WKHUH ZDVQ·W JUHDW GRFXPH FHUWLÄFDWHV QRQH RI WKHP KDG ,·V \$ ORW RI SHRSOH GLGQ·W NQRZ KRZ RO ODUFK ,QWHUYLHZ ZLWK \$OLFH =DJR \$SULO

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. 0RUHRYHU LQ PDQ\ DUPHG FRQÁLFWV DQG VLWXDWLRQV RI SURWUDFWHG DUPHG YLROHQFH DFURVV 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 SURVFHXWRU 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\ VSHFLÄFDOO\ IRFXV RQ WKHP >FKLOGUHQ@ DV D GLVWLQFW . but now when I look back, I feel that [it 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 VHSUDUDWH DFW RI WHUURULVLQJ WKHP" ZHUH WKH SHUSHWUDWRUV WU\LQJ WR DFKLHYH " :K\ ZHUH WKH\ WDUJHWHG " :K\ ZHUH FKLOGUHQ EHLQJ UDSHG RU [WUOSH LQ IURQW RI KLV RU KHU SDUHQWV" WKDW RSSRUWXQLW\ WR XQGHUVWDQG VRPH 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, [via not address the special harm that was caused to them](#) by the crimes that were committed and how they had been impacted. ([PSKDVLV RXUV](#)

25. 2ZLQJ WR VRPH RI WKH EDUULHUV LGHQWLÄHG 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 [PXOWLSOH EDUULHUV](#) to the documentation, investigation, and indictment of violations and crimes affecting children. These barriers are [WWLWXGLQDO ÄDQFLDO DQG structural](#) and, in many cases [mutually 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.

27. 1HYHUWKHOHVV WKUHH FULWLFDO FRQVLGHUDWLRQV PXVW EH ERUQH LQ PLQG the track record of accountability mechanisms.

43 6HH JHQHURDO & RDOLWLRQ WR 3URFHGXUH DQDO\HV [on education on women and girls'](#) 1RYHPEHU 6ROG [QKHOOXHQ DQG \\$UPHG &RÁLFW WKH 3LWIDOOV RI D 12QH 6LJH \)LWV \\$OO· DSSURDFK](#).,p. 130. 44 &HFLOLQJ DFBG WKH 3UHYHQWLRQ RI ODVV \$WURFLWLHV \$ FKLOG FHQWULF DSSURDFK , in Children and the Responsibility to Protect %LQD ··&RVWD DQG /XNH *ODQYLOOH HGV %ULOO 1LMKRII SS ,QWHUYLHZ ZLWK 6K\DPDOD \$ODJHQGD ODUFK

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 ~~are~~ ^{are} ~~de~~ ^{are} ~~combat~~⁶⁶ 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

VXFK DV VFKRROV DQG SOD\JURXQGV
WKH PLOLWDU\ XVH RI VSHFLÅFDOO\ S
VXFK DV PHGLFDO VWDII DQG IDFLOLV

indictments of international criminal tribunals, or indeed universal jurisdiction cases of international crimes indicates 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\ FRQÀUPDWLRQ WKDW WKH VFKRRO DQG DQ\RQH LQVLGH LW ZHUH Q 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 DWDFNV WKH HHHFWL 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 LBRHOVHO\GLÀFXOW IRUHTXHOWO\ F\OLGLOLD ERXV GRVYLUHU LO UHODWL

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 QHHG WR KROG LI QRW LQIRUPDWLRQ DERXW W concerning military strategies, and the processes of effective decision-making surrounding such attacks in the area of control at that time.

37.)RU WKHVH UHDVRQV JUHDWHU RSHQLQJV H[LVW IRU FULPLQDO DFFRXQWDELOLW\ crimes arising from treatment violations, and only a much narrower path to DFFRXQWDELOLW\ H[LVW IRU ZDU FULPHV UHODWLQJ WR FRQGXFW RI KRVLQJ 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 VWUXFWXUDO EDUULHUV ² HDFK ZLWK ÀQDQFL the investigation, documentation, and indictment of crimes affecting children, as addressed below.

Access to the most probative evidence is often quite limited for ‘conduct’ violations as compared to ‘treatment’ violations

\$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 G H V F U L E H G L Q \$ Q Q H [, D W U 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 UHÁHFWLY HQGLDI EUROGH W RK EKWGRGUFDQ linked in part to their conceptualisation as passive objects, lacking in agency and requiring protection⁶⁸ The adoption of the Convention on the Rights of the Child & 5& LQ LQ ZKLFK FKLOGUHQ·V ULJKWV RUJDQLVDWU 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.

41. However, the **DJHQF\ RI FKLOGUHQ GRHV QRW QHJDWH WKHLU** for special protection. Children are not identical to adults, and **differentiated WUHDWPHQW RI WKH KLUGV LMXVWURÀHG IRU VSHFLÀF 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 affecting them.⁷⁰

42. 1RWZLWKVWDQGLQJ WKLW SDUDGLJP VKLIW FKLOGKRRG
E\ PDQ\ DV LQIHULRU WR DGXOWKRRG

[The] prevailing idea is that children are incomplete, that they are 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 table.⁷²

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

68 'U \$OLV RWHULHUV Translational Justice Processes- Still sidelined *HQGHU DQG :DU ,QWHUQDWLRQDO
RULHQGLQJ LQFLAERFMRB HGV 6 ORXWKDQ DQG 2 -XUDVJ ,QWHUQDWLRQDO S

69 Ton Liefwaard, 1\$FFHV V WR MXVWLFH IRU FKLOGUHQ WRZDUGV D VSHFLÅF UHVHDFK D
 ,QWHUQDWLRQDO -RXUQDO RI &KLOGUHQ.V 5LJKWV S
 70 \$RLH 1RODQ 1&KLOGUHQ D&KLOGUHQ-PRGLF (IRU&K
 +DUW

71 Ibid.
,QWHUYLHZ ZLWK 'U \$OLVRQ %LVVHW)HEUXDU\

overarching issue that affects all the other barriers discussed below.

6WUXFWXUDO EDUULHUV

Lack of buy-in from States

44. 7KH IRXQGDWLRQDO EDUULHU [DQG WKH KLJK ODFN RI VVWDLQHG](#) [for the issue of accountability for violations](#) and crimes affecting children⁷³

45. \$V H[DPSOHV RI WKH SRWHQWLDO VLJQLÀFDQFH RI 6WDWH VXSSRUW RQH H[SHU] DWWHQWLRQ SDLG E\ /LHFKWHQVWLQ WR WKH FULPH RI DJJUHVVLRQ DQG RI WK WR LVVXH RI FRQÁLFW UHODWHG ⁷⁴VH[XDO DQG JHQGHU EDVHG YLROHQFH

46. 7KLV ODFN RI EX\ LQ IURP 6WDWHV LV QRW VSHFLÀF WR WKH LVVXH RI FKLOGUHQ UHÁHFWV D EURDGHU UHOFWDQFH RQ WKH SDUW RI 6WDWHV WR LQFOXGH VSHFL resolutions establishing accountability mechanisms. In the discussions surrounding the scope of the mechanisms' mandates, States have tended to refrain from HQJDJLQJ RQ VSHFLÀF FRQWHQWLRXV LVVXH VXFK DV FULPHV DJDLQVW FKLOGUHQ instead on general issues pertaining to the overall scope of mandates, and issues on ZKLFK DJUHHPHQW FRXOG EH VHFXUHGXULQJ PDQGDWHV. QHJRWLDWLRQV \$V 6 6HFWLRQ ,, WKH LQFUHDVHG DWWHQWLRQ SDLG E\ 6WDWHV WR 6*%9 LVVXH UH\ LQÁXHQLQJ HIIRUVV XQGHUWDNHQ E\ ZRPHQ YLFWLPV DQG DGYRFDWHV DV ZH to bring those issues to the forefront of the international agenda. To date, children DQG H[SHUVV 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 UHTXLUV WKH HQJDJHPHQW RI WKH 81 V\WHP 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 FRQYHQHU DQG IDFLOLWDWHV FROODERUDWLRQ RQ FKLOG SURWHFWLRQ DPRQJ 81 HQWLWLHV 7KH UROH RI WKH 656* &\$\$& LV DPRQJ RWKHUV WR DVVHV SURJUHVV DFKLHYHG DQG VWHSV WDNHQ [to overcome challenges in strengthening the protection of children in situations of](#) DUPHG FRQÁLFW WR raise awareness and promote the collection of such information; [and to foster international cooperation to ensure respect for children's rights](#) The Special Representative OHGV WKH GUDIWLQJ RI WKH 81 6HFUHWDU\ *HQHUDO V DQXDO UHSRUW RQ &KLOGUHQ DQG [\\$UPHG &RQÁLFW](#) DQXDO UHSRUWV WR WKH 81 *HQHUDO \$VVHPEO\ DQG WKH 81 +XPDQ 5LJKWV &RXQFLO

⁷³ Interview with expert.

⁷⁴ Interview with expert.

⁷⁵ See *infra* p. 42.

⁷⁶ See *infra* p. 52.

⁷⁷ [5HVROXWLRQ \\$ 5\(6](#)

49. 81, &() WKH 'HSDUWPHQW RI 3HDFH 2SHUDWLRQV DQG WKH DQG 3HDFHEXLOGLQJ \$IIDLUV DUH DFFRXQWDEOH WR WKH WKH LPSOHPHQWDWLRQ RI SURWHFWLRQ PDQGDWHV LQ FR ZRUN FORVHO\ ZLWK WKH 656* &\$\$& RIÁFH DW 81 KHDGTXD SDUWLHV WR [the Accountability Task Force on Monitoring and Reporting](#) WKH WDVN IRUFH LV FR FKDLUH E\ 81, &() DQG WKH KLJK FRXQWU\ W\SLFDOO\ WKH 6SHFLDO 5HSUHVHQWDWLYH RI V +XPDQLWDULDQ &RRUGLQDWRU 7KH WDVN IRUFH LV UHVS 050 \$OO 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 SDUWLHV [in order to enhance the accountability of responsible parties, and to respond to and prevent future grave](#) YLRODWLRQV DJDLQVW FKLOGUHQ DIIHFWHG E\ FRQÁLFW

50. The MRM was established by the Security Council to foster accountability and 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. \$FFRXQWDELOLW\ LQ 6HFWLRQ LV\ LQJ SDUWLHV WR FRQÁLFW FR 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 ÁUVW VWHS LQ DFFRX 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. 6WDWHV DUH [responsible for](#) [the](#) [protection of children in situations of](#) [violence](#) [and](#) [to](#) [foster international cooperation to ensure respect for children's rights](#) [The](#) [Special Representative](#) [OHGV](#) [WKH](#) [GUDIWLQJ](#) [RI](#) [WKH](#) [81](#) [6HFUHWDU\](#) [*HQHUDO](#) [V](#) [DQXDO](#) [UHSRUW](#) [RQ](#) [&KLOGUHQ](#) [DQG](#) [\\$UPHG](#) [&RQÁLFW](#) [DQXDO](#) [UHSRUWV](#) [WR](#) [WKH](#) [81](#) [*HQHUDO](#) [\\$VVHPEO\](#) [DQG](#) [WKH](#) [81](#) [+XPDQ](#) [5LJKWV](#) [&RXQFLO](#)

51. Recruitment and use, killing and maiming, rape and other forms of sexual violence, abductions, attacks on schools and hospitals, denial of humanitarian assistance.

52. 2Q D SUDFWLFD OYHO XQOLNH WKH 2IÄFH RI WKH 6SHFLDO 5HSUHVHQWDWLYH *HQUHDO RQ 6H[XDO 9LROHQFH LQ &RQÁLFW WKH 2IÄFH RI WKH 656* &\$\$& GRHV RRV KDVH D 81 WHDP RI H[SHUWV WR DVVLVW QDWLRQDO DXWKRULWLHV LQ VWUHQJWKHQLQJ WKH UXOH RI UDZ ZLWK WKH DLP RI HQVXULQJ FULPLQDO DFFRXQWDELOLW\ IRU SHUSHWUDWRUV RI LQ W related sexual violence

53. 0RUHRYHU WKH PDQGDWH RI WKH 656* &\$\$& LV FXUUHQWO\ OLPLWHG WR PRQLWU UHSRUWLQJ RQ WKH VL[JUDYH YLRODWLRQV DJDLQVW FKLOGUHQ LQ FRQÁLFW VL... she is not in a position to support the investigation of these or other violations against children, and does not have the ability to support mandates that are geared towards criminal law-based investigations and criminal prosecutions.

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 GRFXPHQDWLRQ RI JUDYH YLRODWLR ZLWK SDUWLHV WR FRQÁLFW LQ RUGHU WR HQG DQG SUHYHQW JUDYH YLRODWLR SULQFLSOHV SUHYHQW LW IURP HQJDJLQJ LQ FULPLQDO DFFRXQWDELOLW\ HIIRUW 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 SUDFWLWLRLQHUV ZKLOH 81,&() UHPDLQV D VWURQJ YRLFH DGYRI criminal accountability, it does not have the mandate to engage in criminal or other accountability mechanisms⁸³

55. \$ VLPLODU FKDOOHQJH DULVHV ZLWK UHJDUG WR FLYLO VRFLHW\ RUJDQLVDWLRQV DQG ORFDO QRQ JRYHUQPHQWDO RUJDQLVDWLRQV , 1*2V ZRUNLQJ RQ FKLOGUHQ YDVW PDMRULW\ RI ODUJH 1*2V KDVH SULPDULO\ DQ RSHUDWLRQDO PDQGDWH IRFXV RU D PL[RI ERWK \$V D UHVXOW WKH\ UDUHO\ GRFXPHQW YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ IRU DFFRXQWDELOLW\ SXUSRVH \$W WKH ORFDO OHYHO L are increasingly alert to, and focused on, the documentation of violations and crimes affecting children. However, in both cases, the information is not always collected in accordance with the standards of proof required by criminal accountability.

56. These three factors combined – the **ODFN RI VXVWDLQHG DQG FRPSUHKHQVLYH IRFXV E\ States, UN leadership, and civil society** – have profound implications, and the **RYHUDUFK\ of meaningful accountability for violations and crimes affecting children** is not always in place. **FKLOGUHQ EHFDXVH LW PHDQV WKDW**

- a. There is **limited 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 UHVROXWLRQV DQG WR VWDII PDQGDWHV ZLWK FKLOG VSHFLÄF H[SHUWLVH LQ FRQWUDVW WR 6*%9 D QF consequently, little incentive to mainstream child-competent approaches to accountability⁸⁴

b. The **funding** that would be required to overcome some of the principal barriers WR DFFRXQWDELOLW\ H J E\ GHSOR\LQJ H[SHUWLVH GL training local documentation entities on the importance of documenting crimes DIIHFWLQJ FKLOGUHQ DQG RI DGRSWLQJ FKLOG FRPSHW is not available⁸⁵

c. In turn, this **GHDUWK RI IRFXVHG DGYRFD\ E\ 6WDWHV DQG , FRQVHTXHQW LPSDFW RQ IXQGLQJ ÅOWHU GRZQ YHU\ T** resources that local documentation groups receive when working on the ground.)DGHO \$EGXO *KDQL ([HFXWLYH 'LUHFWRU RI WKH 6\ULD 61+5 UHFDOOHG WKDW KLV LQYHVWLJDWRUV KDG PXO WKHLU VNLOOV RQ GRFXPHQDWLRQ RI 6*%9 FULPHV E suggested or provided to do the same when it comes to documenting crimes DJDLQVW FKLOGUHQ o ,&() ,P QLQH \HDUV ZLWK WKH >6\ULD@ FRQÁLFW DQG , 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 children⁸⁶

Failure to mainstream child-competent approaches in investigation, documentation and prosecution strategies

57. \$V KLJKOLJKWHG FKLOGUHQ KDYH EHFRPH LQFUHDVLRQJ mechanisms. However, the fact remains that investigating and documenting violations and crimes affecting children is rarely understood as forming part of D PDLQVWUHP KXPdq ULJKWV DQG RU FULPLQDO LQYHVWLJDW warranting additional and separate consideration This belief is linked to the WHQGHO\ GHVFULEHG DERYH WR YLHZ FKLOGUHQ DV LQY

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 crimes. This narrow focus – only looking at the sexual crimes committed against women and not other crimes suffered by women makes me believe that the challenges are many, not only investigating these sorts of crimes, but also because certain categories of victims, stakeholders, and crimes are simply overlooked.

⁸² ,QW YLHZ ZLWK 656* &\$\$& VWDII

⁸³ Interviews with two distinct experts.

⁸⁴ ,QW YLHZ ZLWK HSHUWV DQ FKLOG VROGLHUV RWKHU WKDQ WKH FRQFHUQ DERXW YXOQHUDEOH ZLWQHVVHV W8D,QWYEDZ ZLWK 3DWULFLD 9LVHXTDQDQGLVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO 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KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FRPPHQWU\ > @ ZDV DERXW VH[XDO YLROHQFH > @ 7KHU MXVW LVQVWUHQJWKHQLQJWKHUXOHRIUDZZLWK6RZH KDYH LPSXQLW\ JDSV WKDW FRQLQXH WR H WKDW LV WU\LQJ WR DPSOL\ DQG HFR WKH ZRUN RI WKH 3URVHFXWRU (YHQ LI \RX ORRN DW WKH DGYDQFHV IURP WKH 1QDOFLOQDELOLW\ RU FRPLWPHQW DQG WKH LQWHUQDO VWUXFWXUH FRQLFWLRQ KRQVWO\ PRVW RI WKH FR

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

&HUWDLQO\ ZH NQHZ WKDW WKH FKDUJHV GLG QRW UHĀHFW 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, [SHR SOH·V PLQGV ZHUH IRFXVHG RQ WKL V 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 non-judicial 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 light in practice, this invisibilisation can lead to a [DLOXUH WR DGRSW GHOLEHUDWH VWUDWHJLV 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 [Investigating violations and crimes affecting children is generally conflated with interviewing children](#)
JHQHUDOO\ FRQĀDWHG ZLWK LQWHUYLHZLQJ FKLOGUHQ DQG ZKHWKHU or not it is appropriate to interview children remains a highly divisive question in the judicial and non-judicial community of experts working on international accountability issues.
\$PRQJ WKH FKDOOHQJHV RIWHQ FLWHG DUH WKH HWKLFDO GLOHPPDV posed by the risk of retraumatising a child witness, and
FRQFHUQV WKDW FKLOGUHQ PD\ QRW EH VHHQ DV VXIĀFLHQWO\ reliable witnesses. One expert highlighted that the necessary
LQYROYHPHQW RI SDUHQWV RU OHJDO JXDUGLDQV DQG LQ VDPH LQVWDQFHV LQWHUPHGLDULHV LQ WKH SURFHVV FDQ DOVR QHJDWLYHO\ DIIHFW the evidence collected,
JLYHQ WKH LQĀXHQFH WKH\ DUH OLNHQ\ WR KDYH RQ WKH FKLOG contrast, many continue to see adult victims and witnesses as more articulate and
PRUH UHOLDEOH LQ DGGLWLRQ WKH IDFV WKDW WKH FRQVHQW RI D WKLUG S RU OHJDO JXDUGLDQ LV QRW UHTXLHG IRU WKHP WR EH LQWHUYLHZHG ,QWHUY thus perceived by many to be an easier and less risky task in domestic criminal investigations, these
ULNVV DUH PLWLJDWHG E\ WKH IDFV WKDW LQWHUYLHZV RI FKLOGUHQ are [FRQGXFWHG E\ H\[SHULHQFHG DQG VROGLHU\ WUDLQHG SUDFWLWL RQHUV](#).
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 retraumatisation. These challenges, combined with an absence of appropriate technical expertise, and of internationally agreed standards and best practices on when and how to interview children, can [translate into a reluctance to investigate violations and crimes affecting children](#).

62. \$W WKH VDPH WLPH LW LV SRVVLEOH WR LQYHVWLJDWH YL 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 WKL V LW HQWLUHO\ ZKHUH FKLOGUHQ FDQQRW EH LQWHUYLHZHG
[FROOHFWLQJ DQG DQDO\VLV](#) ⁹⁵ and by [Screening adults](#) ⁹⁶ [FROOHFWLQJ SDUHQWV RU RWKHU UHODWLYHV RU PHGLFDO SV\FKRVRFL the alleged crime or violation affecting the child](#). It might also entail the [integration RI D FKLOG FRPSHWHQW IRFXV LQ WKH UHYLHZ RI GRFXPHQ WKH VSHFLĀF ZD\ LQ ZKLFK FKLOGUHQ PLJKW KDYH EHHQ 2020 thematic report on children produced by the Independent International & RPPLVLRQ RI ,QTXLU\ RQ WKH 6\ULDQ \\$UDE 5HSXEOLF UH information, including family members, medical professionals and legal actors. Similarly, the ,\[QGHSHQG HQW & RPPLVLRQ RI ,QTXLU\\]\(#\) ⁹⁷ \[WR LQYHVWLJDWH DQG GRFXPHQW WKH LPSDFW RI WKH FR UHSUHVHQWDWLYHV RI ORFDO DQG LQWHUQDWLRQDO 1*2V in Gaza, Israel and the West Bank and medical doctors who worked in hospitals in Gaza and the West Bank\]\(#\).](#)

63. Moreover, [contrary to what is generally assumed](#), [LW ZLOO QRW DOZD\ EH WUD DOO FKLOGUHQ WR KDYH WR UHFRXQW WKHLU H\[SHULHQFH to be interviewed will vary depending inter alia on their age and level of maturity](#)
[ZKLFK IXUWKHU XQGHUFRUHV ZK\ DQ\ YLHZERHFWLRQDO 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 [UHVSHFW RI FULPLQDO SURVHFXL RQV](#)

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 DJDLQV WKHP as long as you are not willing to interview children, that is a great disservice to them](#). The 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

88 Interview with Lina Biscaia, 26 February 2020.
89 Interview with expert.
90 Interview with expert.
91 Interview with expert.
92 ,QWHUYLHZ ZLWK H[SHUW [GHODQVHQ DQG H\[SHUW GHODQVHQ](#) [IRU LQWHUQDWLRQDO FULPHV WKH FRQWULEXWLRQ](#) [international criminal courts](#) 81, &() ,QRFHQWL 5HVHDFK &HQWU \$XJXV SS
93 Interview with Erin Gallagher, 28 February 2020. ICC OTP Policy dealt with these issues at length, setting forth a framework designed to allow participation of children according to these evolving capacities. See & 273 Policy on Children, [KWWSV ZZZ LFF FSL LQW LFFGRFV RWS](#) .B273B,&&B3ROLF\ RQ &KLOGUHQB(QJ 3')
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 be done in a screening interview and requires an in-depth interview with a skilled investigator.
98 Human Rights Council, [ZKH\ KDYH HUDVHG WKH GUHDPV RI P\ FKLOGUHQ](#) ⁹⁹ , FKLOGUHQ·V U \$ + 5 & & 5 3 SDUD
99 Human Rights Council, [5HSRUW RI WKH GHWDLOHG ĀQGLQJV RI WKH & RPPLVLRQ RI ,QTXLU](#) + 5 & & 5 3 - XQH SDUD
100 Interview with expert.

‘GRQ·W WDON WR WKH FKLOGµ \$V ORQJ DV \RX GRQ·W WDON WR WKH FKLOG L67. GLIÄFXOW IRU LQYHVWLJDWRUV RU SURVHFWRUV WR ÄUVW HYHQ UHODWH WR against children, when you don’t even have that connection to them. Secondly, [we will never understand the real gravity and impact and all of ZKDW ZH WDONHG DERXW ZLOO UHPDLQ LQ WKH DEWUDFW LI \RX GRQ·W KH DU 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 LQWHUQDWXORXJKRFXUWV"

64. There is no doubt that an abundance of caution is necessary when engaging children directly. Indeed, numerous studies have found that [interviews conducted LQ PXOWLSOH ORFDWLRQV DQG RU E\ SUDFWLWLQRQHUV ZKR PD\ QRW KDYH WKH UHTXLVIWH training can FRQWULEXWH WR UHWHODPDWHYQDOOGUHQ](#) However, children may also be 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-VSHFLÄF H[SHUWL VH DQG H[SHULHQFH

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

65. \$ QXPEHU RI EDUULHUQDOORXJKRFXUWV H[SHUWL VH DQG [investigative mechanisms ZHUH DOVR LGHQWLÄHG](#)

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 H VWDEOLVKPHQW PHDQLQJ WKDW WKHUH LV RIWHQ OLPLWHG WLPH WR H[SHUWL VH investigations¹⁰⁴ In addition, uncertainty and delays around resources affect the ability to recruit experts with the necessary expertise, and to secure an adequate DOORFDWLRQ RI IXQGVRQV that violations and crimes affecting children are not perceived as forming a mainstream part of the information planning DQG JDWKHULQJ SURFHVV HYHQ ZKHUH WKH\ DUHH[SHVVVO\ DOOXGHG WR LQ WKH IRXOGDWLRQDO GRFXPHQWV RI WKHVH ERGLHV WKH\ DUH RIWHQ QRW SULRULWL VH E\ LQYHVWLJDWRUV RQ WKH ground.

101 ,CHW YLHZ ZLWK 6K\DPDOD \$ODJHQGUD 0DUFK

102 Olivia Lind Haldsson, [%DUQDKXV 4XDOLW\ 6WDQGDUV 6XPPDU\ JXLGDQFH IRU PXOWLGLVFLSOLQDU\ DQG LQWHUDJHQF\ response to child victims and witnesses of violence](#) Council of the Baltic Sea States Secretariat and Child Circle, The PROMISE Project series, pp. 4, 33.

6HFW LQVWDQFH 6DUD)HUUR 5LEHLUR DQG 'DQD YDQ GHU 6WUDWHQ 3RQWR] RQ EHKDOI RI WKH 8.)RUHLJQ 6HFW LQVWDQFH 6DUD)HUUR 5LEHLUR DQG 'DQD YDQ GHU 6WUDWHQ 3RQWR] RQ EHKDOI RI WKH 8.)RUHLJQ 6HFW LQVWDQFH 6DUD)HUUR 5LEHLUR DQG 'DQD YDQ GHU 6WUDWHQ 3RQWR] RQ EHKDOI RI WKH 8.)RUHLJQ

104 OHCHR, [RPPLVLRQV RI QTXLU\ DQG \)DFW \)LQGLQJ OLVLVLRQV RQ QWHUQDWLRQDO +XPDQ 5LJKWV DQG +XPDQLWDO Guidance and Practice](#), p. 30.

6HFRQG WKH FXUUHQW VWUXFWXUHV ZLWKLQ 2+&+5 GR QR effective support to ad hoc entities¹⁰⁵ 2+&+5 WKURXJK LWV 5DSLQ 5HVSRLQV generally internally recruits and deploys staff, and provides secretariat functions as well as logistical and security support¹⁰⁶ 7KH 558 KDV GHYHORSHG DQ LQWHU of staff who can be deployed, through a contingency fund, in human rights and KXPDLWDULDQ HPHUJHQFLHV DQG WKDW FDQ SURYLGHV 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.

68. In practice, however, it was reported that the start-up phase of every new mechanism is a challenge¹⁰⁸ One particular area of concern is the [lack of guidance and training RQ FULPHV DIIHFWLQJ FKLOGUHQ SURYLGHG E\ 2+&+5 SUH phase of the mandate](#).

69.)RU H[DPSON DV RXWOLQH LQ \$QQH[, LQ \$XJXVW W\)DFW)LQGLQJ OLVLVLRQDOORXJKRFXUWV DQG [thematic report on the FRPPLVLRQ RI VH\[XDO DQG JHQGHU EDVHG YLROHQFH 6*%9 2017 military ‘clearance’ operations¹⁰⁹ \\$OWKRJK WKH UHSRUW GRHV QRW F VHFWRU RQ 6*%9 FULPHV SHUSHWUDWHG DJDLQVW FKLOG ways in which girls and boys were targeted throughout.](#)

70. :KLOVW WKH 0\DPDU))0 ZDV DEOH WR LQYHVWLJDWH DQG FULPHV DJDLQVW JLUOV DQG ER\ IRU WKH SXUSRVHV RI W consideration of the way these particular crimes were committed against and DIIHFWHG JLUOV DQG ER\ RI GLIIHUHQW DJHV That level of nuance missed, and could potentially have been captured with adequate training and tools.

Lack of dedicated expertise

71.)RU QXPEHU RI EDUULHUQDOORXJKRFXUWV H[SHUWL VH DQG [to have a dedicated focal point on children on staff¹²](#) 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[SODLQH generally, at the international level, on investigating and documenting violations and

6DWH \$VKUDSK DQG)HGHUQDOORXJKRFXUWV DQG [%DUQDKXV 4XDOLW\ 6WDQGDUV 6XPPDU\ JXLGDQFH IRU PXOWLGLVFLSOLQDU\ DQG LQWHUDJHQF\ response to child victims and witnesses of violence](#) Council of the Baltic Sea States Secretariat and Child Circle, The PROMISE Project series, pp. 4, 33.

106 OHCHR, [Responding to pressing human rights issues](#) September 2009.

107 OHCHR, [2+&+5 LQ WKH :RUOG PDNLQJ KXPDU ULJKWV D UHODLW\ RQ WKH JURXQG , QWHUYLHZV ZLWK WZR EULWDELFW H\[SHUWL VH \\$OVR VH](#)

109 Established by the Human Rights Council in March 2017 inter alia to establish the 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 ‘H[VXULQJ IXOO DFFRXQWDELOLW\ IRU SHUSHWUDWRUV DQG MXV \$+5 5(6 , 24 March 2017.

Human Rights Council, [6H\[XDO DQG JHQGHU EDVHG YLROHQFH LQ 0\DPDU DQG WKH JHQGHUQDOORXJKRFXUWV DQG \[%DUQDKXV 4XDOLW\ 6WDQGDUV 6XPPDU\ JXLGDQFH IRU PXOWLGLVFLSOLQDU\ DQG LQWHUDJHQF\ response to child victims and witnesses of violence\]\(#\) Council of the Baltic Sea States Secretariat and Child Circle, The PROMISE Project series, pp. 4, 33.](#)

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Human Rights Council, [6H\[XDO DQG JHQGHU EDVHG YLROHQFH LQ 0\DPDU DQG WKH JHQGHUQDOORXJKRFXUWV DQG \[%DUQDKXV 4XDOLW\ 6WDQGDUV 6XPPDU\ JXLGDQFH IRU PXOWLGLVFLSOLQDU\ DQG LQWHUDJHQF\ response to child victims and witnesses of violence\]\(#\) Council of the Baltic Sea States Secretariat and Child Circle, The PROMISE Project series, pp. 4, 33.](#)

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Human Rights Council, [6H\[XDO DQG JHQGHU EDVHG YLROHQFH LQ 0\DPDU DQG WKH JHQGHUQDOORXJKRFXUWV DQG \[%DUQDKXV 4XDOLW\ 6WDQGDUV 6XPPDU\ JXLGDQFH IRU PXOWLGLVFLSOLQDU\ DQG LQWHUDJHQF\ response to child victims and witnesses of violence\]\(#\) Council of the Baltic Sea States Secretariat and Child Circle, The PROMISE Project series, pp. 4, 33.](#)

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Human Rights Council, [6H\[XDO DQG JHQGHU EDVHG YLROHQFH LQ 0\DPDU DQG WKH JHQGHUQDOORXJKRFXUWV DQG \[%DUQDKXV 4XDOLW\ 6WDQGDUV 6XPPDU\ JXLGDQFH IRU PXOWLGLVFLSOLQDU\ DQG LQWHUDJHQF\ response to child victims and witnesses of violence\]\(#\) Council of the Baltic Sea States Secretariat and Child Circle, The PROMISE Project series, pp. 4, 33.](#)

Failure to share expertise on lessons learned and best practices

85. /HVVRQV OHDUQHG DQG EHVW SUDFWLFHV DUH QRW V\VWHPDWLFDOO\ VKDUHG EH
\$FFRUGLQJ WR RQH H[SHU WKH 6RXWK 6XGDQ &RPPLVVLRQ GLG QRW GUDZ IURP
Policy on Children when designing its information-gathering strategy, and analysing
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 V
expertise on child-competent approaches to international crimes, they have to date
QRW EHHQ DSSURDFKHG HLWKHU E\ WKH 6\ULD &RPPLVVLRQ RU 81,7\$' RQ EHVW SU

Cooperation with and training of first responders

86. /RFDO DQG LQWHUQDWLRQDO 1*2V FDQ SODFH WKH UROH LQ EULGJLQJ WKH JDS between accountability mechanisms and local communities. They DUH RIWHQ WKH 1ÀUVW UHVSRQGHHV. WKH LQWHUQDWLRQDO FULPHV DUULYLQJ DV scene long before international investigators, and are well positioned to document violations and, crucially, to preserve evidence of crimes that may fall within the mandate of non-judicial accountability mechanisms, and/or subject-matter jurisdiction of the IC@.Once international investigators are in 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.

87. 7ZR VXEVDQWLDO EDUULHUV WR HIIHFWLYH 1*2 SDUWLFLSDWLRQ DQG FRRSHUDW
LGHQWLÀHG)LUVW PDQ\ 1*2V KDYH PDQGDWHV WKDW PD\ QRW LQWHUVHFW ZLWK
judicial and non-judicial mechanisms, e.g. because they are **focused on humanitarian**
DVVLVWDQFH DQG RU FKLOG SURWHFWLRQ DQG DUH DV D UHVXOW UHOXFWDQV
unaware of how to do so effectively and without compromising their mandate.

88. 7KLV ZDV LGHQWLÀHG 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 VSHFL
H[SHUWLVH DQG WUDLQLQJ RQ WKH GRFXPHQWDWLRQ RI YLRODWLRQV DQG FULPH
children. This can be a barrier to future criminal investigations and prosecutions,
JLYHQ WKDW YLRODWLRQV DQG FULPHV GRFXPHQWHG E\ 1*2V FDQ KHDYLO\ LQÁXH
LQFLGHQWV JHW VHOHFWHG DQG SULRULWLVHG 7KH 6\ULDQ 1HWZRUN IRU +XPDQ

KDV EHHQ LQYHVWLJDWLQJ FRQÁLFW UHODWHG YLRODWLRQ
has been documenting the impact of the war on the country's children through a
GHGLFDWHG WHDP RI LQYHVWLJDWRUV DQG DQDO\VWV 'VL
/ ZH FDQ DFWLRQ
are following the crimes against children [...] because highlighting the crimes against
WKH FRKLOGUHQ VKRZV WKH LQWHQVH YLROHQFH RI WKH FR
FKLOGUHQ LV WHOOLQJ KRZ PXFK WKH DWDFNHUV DUH >V
61+5 KDV SURGXFHG D QXPEHU RI WKHPDWLF UHSRUWV RQ
SHQÁHG IRU IXUWKHU WUDLQLQJ IURP VSHFLDOLVW RUJDQL
on how to conduct interviews with children

I think we need more training. We already got general training and, R Q V R P H V There are many 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 V K H needed for us to enhance our capacity, [...] yet, no one has offered this.

90. \$V RQH H[SHUW H[SODLQHG MXGLFLDO DFFRXQWDELOLW\ R
HIIRUWV WR GHYHORS DQG VWUHQJWKHQ WKH LQIRUPDWLR
81 ZKLOH SUHVHUYLQJ WKH LPSRUWDOLW\ RI WKHVH NH\

Engagement with families and communities on the ground

91. The availability and strength of witness protection and psychosocial structures are essential to guide and delineate the scope of the mechanisms' engagement with families and communities on the ground, and to ensure that investigations are conducted in a safe environment, conducive to trust, and result in solid information-sharing dynamics. However, witness protection and psychosocial structures are at times 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.

92. Partly due to their restricted mandate, and the sensitivities surrounding the mechanismsdo not always have the resources or infrastructure to effectively protect and support individuals who provide information, including children and their families.

investigate and document crimes against children relates to their lack of resources to provide witness protection and psychological support, etc. There are none of those resources available, which raises the question of whether COIs should even be engaging directly with children, since they

140 Interview with expert.

,QWUUYLHZ ZLWK .DUHQ IDLPHU 0DUFK
 ' .SOHVVDQGU Q7KH \$FFRUGWDELOLW 7XUQ LQ 7KLUG :DYH +XPDQ 5LJKWV)DFW)LQGLQJ ,8WUHFKW -RXUQDO RI
 ,QWUQDWLRQDO DQG (XURSHQ /DZ SS [Handbook of Oil & Gas](#)) 6 &RXFK HW DO
[Documentation of Serious Human Rights Violations](#) 3XEOLF ,QWUQDWLRQDO /DZ 3ROLF\ *URXS
 8 & WHLOH 6FKRRO RI /DZ + [FIPD Responders Way International Workshop on Collecting and](#)
[SDDQ\ILQJ \(YLGHQFH RI ,QWUQDWLRQDO &ULPHV](#) , September 2014, p.4.

144 Interview with Rosalind Sipos, 3 March 2020.

best-practices for civil society documentation of international crimes, in fact, advise against interviewing children

146 Interview with expert. For potential solutions, see also individualisation of War Project, Oxford Institute for Ethics,
/DZ DQG SUPHG & RQÁLFW DQG (["Humanitarian Act of Engagement with a Good World"](#))
[PHFKDQQLVPV LQ VLWXDWLRQDQ DQ DDUU PHG FRQÁLFW](#).

2Q WKH SDUSPWWQFUPRI ZLWQHVV SUPPUNWHI Accountability for Retention SWHO
FULPHV WKH FRQWULEXWLRO RI LQWHDUQDLWRQDO FULPLQDO FRXUWV'

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 KYLQJ LGHQWLÀHG UHIHUUDO SDWKZD\ 7KRXXJK 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 families⁹⁰
94. Due to the aforementioned barriers, the LQIRUPDWLRQ FROOHFWLRQ SURFHVV FDO affected children, to disclose crucial information H J 6 * % 9 FULPHV DUH QRWRULRXVO XQGHU UHSRUWHG EHFDXVH RI VWLJPD IRU H[DPSON
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.

¹⁴⁸ Interview with Rosalind Sipos, 3 March 2020.
, QWYHLZ ZLWK H[SHUW 6HH DOVR \$Q 0LFKHOV ¶\$V LI LW ZDV KDSSHQLQJ DJDLQµ V QHVHV LQ SDUWLFXODU ZRPHQ DQG FKLOGUHQ DW WKH 6SHFLDO &RXUW IRU 6LHUUD HGV International Criminal Accountability and the Rights of Children +DJXH +DJXH \$FDGHPLF 3UHVV pp. 133-145.
, QWYHLZ ZLWK H[SHUW 6HH DOVR \$Q 0LFKHOV ¶\$V LI LW ZDV KDSSHQLQJ DJDLQµ V QHVHV LQ SDUWLFXODU ZRPHQ DQG FKLOGUHQ DW WKH 6SHFLDO &RXUW IRU 6LHUUD HGV international criminal courts’ 81, &() ,QQRFHQWL 5HVHDUFK &HQWUH \$XJXVW SS



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 DZDUHQHV RI WKH VFDOH DQG VFRSH RI VH[XDO YLROHQGFH LQ FRQÁLFW LQ WKH 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. 1HYHUWKHOHV 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.

97. This section is divided in two parts. Part A traces the developments that, in UHFHQW \HDUV DOORZHG LQYHVWLJDWLRQ DQG SURVHFXWLRQ RI 6*%9 FULPHV WR EHFRPH mainstreamed within international justice. Part B highlights lessons learned from this PDLQVWUHDPLQJ DV ZHOO DV LPSRUWDQW GLIIHUHQGFHV EHWZHHQ WKH LVVXH RI 6*%9 FULPHV and crimes affecting children, such as the nature and strength of the forces and DFWRUV ZRUNLQJ WR UDLVH WKHLU SURÁOH LQ WKH LQWHUQDWLRQDO MXVWLPH V\VWHP.

98. ,Q WKH ODVW WZR GHFDGHV VLJQLÁFDQW developments have been JUHVV KDV EHHQ PDGH to investigate, analyse, and prosecute crimes of sexual and gender-based violence, SDUWLFXODU\ DJDLQVW ZRPHDQ & SHUHQ RI GLIIHUHQW WHDFWRUV LQFOXGLQJ WKH LQÁXHQFLQJ HIIRUWV RI FLYLO VRFLHW\ DQG RI SRZHU IXO IHPDOH DGYRFDWHV WKH ZLGHV SUHDG UHSRUWLQJ RQ VH[XDO YLROHQGFH FRPPLWWHG LQ WKH %DONDQV ERDQ LQWHUQDWLRQDO during the Rwandan genocide; the writing and advocacy of jurists; contributions to jurisprudence made, in particular, by judges and lawyers in international and hybrid FULPLQDO WULEXQDOV DQG DQ HPSKDVLV RQ DFFRXQWDELOLW\ IRU 6*%9 E\ 81 HQWLWLHV LQFOXGLQJ 81 :RPHQ DQG WKH 2IÁFH RI WKH 6SHFLDO 5HSUHVHQWDWLYH RI WKH 6HFUHWDU\ *HQHUDO RQ 6H[XDO YLROHQGFH and related by greater attention.

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 WKH LQIRUPHG FRQVHQW RI D FKLOG\ SDUHQW RU OHJD JXDUGLDQ WKHUH DUH VSHFLÁF SURWRFROV ZKLFK JRYHUQ & WKH FRQVWUJ WKH LQWHUQDWLRQDO FKLOGUHQ 7KHVH LVVXH ZHUH DGGUHVVHG E\ WKH ,& 273 3ROLF\ RQ &KLOGUHQ VHH ,& 273, QWHUQDWLRQDO +XPDQLDULDQ /DZ &RPPLWWHG LQ WKH)RPHU <XJRVODY Children, [KWWSV_ZZZ_LFF_FSL_LQW_LFFGRFV_RWS_B273B,&&B3ROLF\ RQ &KLOGUHQB\(QJ 3'\)](#) \$V KLJQHFWLRQ , LW LV HPSKDVLVHG KRZHYHU WKDW FULPHV DIIHFWLQJ FKLOGUHQ FDQ EH HIIHFWLYHO\ LGFRPHQDQJ 1DZVHFRWLLQJ &RQÁLFW 5HODWHG 6H[XDO YLROHQGFH DW WKH OLFKHOOH -DUYLV HGV 2[IRUG 8. 2[IRUG 8QLYHUVLV\ 3UHV SS +DUW 6DORZD\ ZDV DSSRLQWHG *HQGHU \$GYLVRU LQ DQG VHUYPHG WLOO +DUW QWHUQDO FRPPLWWHV WR DGGUHVV 6*%9

153 On the developments in the jurisprudence of the ad hoc WULEXQDOV VHH [Prosecuting Wartime Rape ¶ DQG 2WKHU *HQGHU 5HODWHG &ULPHV 8QGHU QWHUQDWLRQDO /DZ \(\[WUDRUGLQDU\ \\$GYDQFHV \(QGXULQJ 2EVWUDLQV](#)

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 FRPPLVLRQ RI LQWHUQDWLRQDO FULPHV 3DWULFLD 6SHFLDO \$GYLVRU RQ *HQGHU DGYLVHG

100. In 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 gender-based violence, as well as the broader movement advocating for gender justice.¹⁵⁴

PART A. TRACING THE HALTING PROGRESS TOWARDS ACCOUNTABILITY FOR CRIMES OF SEXUAL AND GENDER-BASED VIOLENCE

7KH DG KRF WULEXQDOV

100. During the very early stages of the ad hoc tribunals, if a commitment was there to 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 tribunals' operational and strategic agendas. In 1994, the Chief Prosecutor – at WKH WLPH RI ERWK WKH ,&7< DQG ,&75² DSSRLQWHG D /H to “address the prevalence of sexual assault allegations committed in the former Yugoslavia and Rwanda”¹⁵⁵ 7KH \$GYLVRU ZDV WDVNHG WR L SURYLG UHODWHG FULPHV DQG LQWHUQDO ZRPHQ\ SROLF\ LVVXH WKH 3URVHFXWLRQ 6HFWRQ DQG LLL DVLVW WKH ,QH to pursue evidence of sexual assaults. 3DWULFLD 9LVHXU 6HOOHUV VHUYPHG from 1994 to 2001.¹⁵⁷ 7KH UROH KRZHYHU KDG VHYHUH OLPLDWHV was [QWV LQWHUQDWLRQDO LQWR VSHFLÁF LQYHVWLJDWLRQV DC proposed policies](#) among senior management, or through the investigation and trial teams, rendering her impact contingent on the willingness of the leadership and staff

%HUNHOH\ ,QWHUQDWLRQDO /DZ -RXUQDO 288, 317. ,QWHUYLHZ ZLWK 3DWULFLD 9LVHXU 6HOOHUV)HEXDU\ 155 Patricia 9LVHDOHUV ¶HQGHU 6WUDWHJ\ LV QRW D /X[XU\ IRU ,QWHUQDWLRQDO & DQG *HQGHU %DVHG &ULPHV %HIRUH ,QWHUQDO W-LRQDOH\ 6DZ 3ROLQDO &RXUWV WKH LQWHUQDWLRQDO FKLOGUHQ WKH ,QWHUQDWLRQDO 7ULEXQDO IRU WKH 3URVHFXWLRQ \$FRPHQDQJ 1DZVHFRWLLQJ &RQÁLFW 5HODWHG 6H[XDO YLROHQGFH DW WKH OLFKHOOH -DUYLV HGV 2[IRUG 8. 2[IRUG 8QLYHUVLV\ 3UHV SS +DUW 6DORZD\ ZDV DSSRLQWHG *HQGHU \$GYLVRU LQ DQG VHUYPHG WLOO +DUW QWHUQDO FRPPLWWHV WR DGGUHVV 6*%9

, PDQLVKLPZH ZHUH LQGLFWPHG EXW QR FKDUJHV RI VH[XDO YLROHQFH ZHUH LQF
) ROORZLQJ SUHVXUH IURP 5ZDQG DQ FLYLO VRFLHW\ OHG E\ WKH \$VVRFLDWLRQ
* HQRFLGH RI \$SULO WKH 3URVHFHWLRQ DQQRXQFHG LW ZRXOG DPHQG WKH
against the three accused as soon as possible to include charges of rape. Months
ODWHU WKH 3URVHFHWLRQ ÀOHG WKH PRWLWR WR DPHQG WKH LQGLFWPHQW EX
Prosecutor Carla del Ponte withdrew the motion. When Prosecution witnesses
gave evidence at trial concerning sexual violence, the Coalition for Women's Human
5LJKWV LQ &RÁLFW 6LAWKRUH QVLUHE DLWLVH & DGGRQH LQ
Akayesu ZKHQ WKH VDPH VLWXDWLRQ RFFXUUHG XUJLQJ WKH 7ULDO &KDPEHU WR
the Prosecution to amend the indictment to include sexual violence charges. The
Prosecution opposed the Coalition's motion, arguing that the matter of what to charge
was within their sole discretion. The Chamber denied the Coalition motion and
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

107. Development in 2004, it was determined that no rape charges had been brought
 E\ WKH 3URVHFXWRU.V 2IÀFH LQ R 12 Of these WKHQ DGMXGLFDWHG FDVHV
 21 completed cases, there were 18 convictions and three acquittals. Of the
 convictions, 90% of those judgments contained no convictions for rape. Combined
 with the attitudinal barriers highlighted above, these statistics suggest a reluctance to
 SXUVXH HYLGHQFH By the ICTR Prosecution on 10/11/2005.

108. 7 K H U H S R U W I X U W K H U R E V H U Y H G

Over the past decade [VH\[XDO YLROHQFH FULPHV DW WKH ,&75 KDYH QHYHU EHHQ IXOO\ DQG FRQVLVWHQWO\ LQFRUSRUDWHG LQWR WKH LQYHVWLJDWLYH I](#)
[prosecution strategy](#) [RI WKH 3URVHFWRU.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 (PSKDV LV RXUV

109. Later ICTR indictments, such as those in the case against SH PDQJD *DFXPELWVL
 0XKLPDQD DQG 0XYXQ\L would include charges of sexual violence, with the Trial
 DQG \$\$\$SHDOV &KDPEHU FRQWULEXWLQJ WR LQWHUQDWLRQDO FULPLQDO MXULVS
 JUDSSOLQJ ZLWK WKH LVVXHV RI FRQVWLPDQ GFRHUFHQ 7KH \$\$\$ULO

179 7KURVHFWRU YWVDOJHDXUD 1R , & 75 \$PHQGHG7,KGBURFHQXWRJ-DQXDU\

180 When questioned about this, del Ponte is reported to have said, can do this because I am a woman. If I were a man, there would be a ~~IXVM~~ ~~RZUR~~ ~~MRXU~~² - ~~XVWLFH~~ ~~LV~~ ~~WRR~~ ~~6ORZ~~, p. 15.

181 7K8URVHFVWURU Y 1WDJHUXUD %DNDP EBNL & DQGV PPDQ RQZKH \$\$\$OLFWDWLRQ WR)LOH DQ
\$PLFXV &XULDH %ULHI \$FFRUGLQJ WR 5XOHV RI WKH 5XOHV RI 3URFHGXUH DQG (YLGHQ
IRU :RPHQ V +XPDQ 5LJKWV Trial Chamber II, 24 May 2001 DWLRQV

1RZURMHH	6XSUD	QRWH	S	LY
1RZURMHH	6XSUD	QRWH	S	LY
1RZURMHH	6XSUD	QRWH	S	LY

185 Supra note 176.

R I of CoSeZ vs BnWdMnH
 L Q GdFvPwHtM
 K W WkKst UvVrHdly BkKvRvE
 E\ ODWHU À Q8Y0Q\LCasK

F100S 8DQGP DUN LQ WKH SURVHF FXWLRQ RI PHOSCU EDVHG YLR
 Y 1DKLPDQD HW DO a trial of three media leaders charged in relation to their roles
 in promoting extremist Hutu ideology, inciting hatred, and exhorting listeners and
 readers to murder Tutsis during the 1994 genocide in Rwanda, often described
 DV WKH 1PHGLD FDVH· ,WV 7ULDO -XGJPHQW FKDUDFW
 gendered language as methods to execute the direct and public incitement elements
 RI JHQRF LGH 7KH 7ULDO PDSXPHQW WLSLQJ kill children as
 S part of the targeted language of direct and public incitement to commit genocide.
 E DUULGH LWLRQDO VHQWHQFHV IRU 6*%9 ZHUH KDQG HG GRZQ E\
 QJ WDFXIRYLRQD F100S 8DQGP DUN LQ WKH SURVHF FXWLRQ RI PHOSCU EDVHG YLR

111. In the years that followed Akayesu, there was greater emphasis on properly investigating and charging crimes of sexual violence at the ICTY as well. One notable example is the investigation by female lawyers and prosecutors at the ICTY of the south-east of Sarajevo. The team led the development of evidence of sexual violence, used by the accused as part of a campaign of ethnic cleansing. The investigation, and subsequent prosecution, culminated in the Kunarac et al. case, which was used by an international criminal tribunal of enslavement as a crime against humanity. Other landmark cases included the Gotovina et al. case, which was used by an international criminal tribunal of enslavement as a crime against humanity. The investigation, and subsequent prosecution, culminated in the Kunarac et al. case, which was used by an international criminal tribunal of enslavement as a crime against humanity. Other landmark cases included the Gotovina et al. case, which was used by an international criminal tribunal of enslavement as a crime against humanity.

186 7KHR3WHFXWRU Y 0LN2DHOH 0RKLLR76DGGJRHQW DQG 6H\$VWHO FH S SDUD
546.

187 7KHR3MHFXWRU Y 'UDJROMXEH.XRDUF HW7DQ7XGJJP,Final Chamber, 22
)HEUXDU\ &DVH 1R ,7 _____,7 \$\$\$SHSOV- &KDPEGV,The Prosecutr
Y \$QWR)XUDQGLMD,7-XGJJP,Final Chamber, 10 December 19987KDUFLVVH OXYXQ\ L Y 7KH

3URVHFXWUR &DVH 1R_&75 \$\$\$ULCS SHDOV -XGJPHQW
188 7KHR3HFXWUR Y 1D&DVH 1R_&75 \$\$\$ULCS SHDOV -XGJPHQW

189 7KHR3WHFXWRU Y % ~~DJRVRU D H~~³⁷ ~~QXGJPHQW DQ~~¹⁸ December 2006 The
3URVHFXWRU Y 1\UDPDV~~XKXNR RW~~^{7D} % XVS~~SD~~¹⁸ December 2015 Karemara and
~~UXGHQHPEVH Y 7KDVRURHF&WTRU \$~~⁶ ~~HSHVPHCEHU~~¹⁸ % DJRVRUD DQG .DUHP
stand out for breaking the practice of never convicting for sexual violence at a distance.

190 -RKQDJDQVWLFH LQ WKH %DONDQV 3URVHFHWLQJ :DU8QULPHVLMQ WKH KLFDJR
3UHVV S

191 7KBURVHFWRU Y 'UDJRDMXHE 1RQDTDF HW DZGJJP, HRC
&DVH 1R ,7 ,7 \$\$\$SHDGP &DDPEHU -XQH

192 \$V HDOU\ DV WKH 7ULDO &KDPEHU VHLJHG RQ WKH 0XFLY FDUH DV D SUHFH
FULPLQDO WULEXQDOV TXDOLIL\ QKHU\ DV WULF RIGU\ DV WKH F6H HW DO &
7-XGJPHU\DO &KDPEHU 1RYHPEHU _____ &D\$S1RDV &KDPEHU GJPHQW
)HEUXDU\ ,Q WKH V\XUWDS 7ULDO &KDPEHU PDGH FUXFLDO UHPDUNV RQ WK
I R the context of international Writings. Holding that rape may also be prosecuted as a grave breach of the Geneva
&RQYHQWLRLQV DV D YLRODWLRQ RI WKH ODZV DQG FVXWRPVL\ ZDU DQG WKD
3URVHFVWRU Y \$QWRH\XUQC &KDPEHU 'HFHPHU SDUD
WKLV FDUH WKH V\XDO YLROQH FRQFLWLRQV ZHUH XSKHOG E\ WKH \$\$\$HD
\$\$\$HDV &KDPEHU -XO\ SDUDV &KDSWHU 9...

193 Ibid.

knowledge on gender-sensitive outreach amongst the OTP staff and encouraged female victims to share their experiences with the OTP, but also introduced confusion within the affected communities between outreach, information-sharing, and requests for evidence.²⁰²

114. Yet, in the 2004-2008 trials of the head and two senior commanders of the Civil
'HIHQFH)RUFHV &') D JRYHUQPPHQLYHEDRNHGHIDPHGLJLQX

ZHUH UHQGHU. The Prosecution had failed 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 CDF.

Obstacles in building trust with women and girls within the CDF-held territory. These were caused by persisting cultural beliefs casting doubts on the involvement of the CDF in the crimes, and social norms preventing women from accusing members of the CDF. UNICEF and the CDF were not able to find a suitable intermediary to build trust and collect evidence, including by female investigators.

Four months before the start of trial, the Prosecution attempted to amend its indictment to include charges of rape, sexual slavery, forced marriage, and other forms of sexual violence.⁹⁶ Their motion was denied in a majority decision of the Trial Chamber, because it was brought too late in the process.⁹⁷ The Prosecution then sought leave to appeal the decision,⁹⁸ and when leave to appeal was also denied,

LW DSSSHDOHG GLUHFWO\ WR WKH \$SSSHDOV &KDPEHU ZKLFK JURISDICTION OVER THE MATTER THE CONSEQUENCE WAS THAT any evidence that directly or

IFKQDJHRLRWHO\UHODWHGWRDQDFWRIVH[XDOYLROHQF
LDQGPVSVQOZWOHVHVH\LOEOXGLO\VXIIYIYRIIVZKRVR

violence or forced marriage were not permitted to do so, and all references to sexual violence and forced marriage were expunged from the transcripts. Later, the War Crimes Office, in its report on the trials, would state, "[i]n the CDF case, sexual violence has effectively become an

invisible war crime.²¹⁰

W D O D Q G

DDOHLH 2RVWHUYHOG 17KH 6SHFLDO &RXUW IRU 6LHUUD /HRQH LQLWLDO VW
 LULH GASHKWHUHG KUH FRUPE ULDOQ /DZ 5HYLHZ :RPHQ LQ DQG DW ZDU SS
 VWLH GSHUVRG FDOQR ULF KGH OFLQW BUH YDQ 9LROHQFH 5HFHQW 'HYHORSPHQWV LQ
 WKH Hor, Sierra Leone DF\ War Crimes Study Center, p. 5.

supra note 202, pp. 139-140.
 id p. 140.
 In its request, the Prosecution argued that “>) @ HDUV H[SUHV VHG E\ SRWHQWLDO ZLWQHVVHV LI WH
 testify meant that the Prosecutor could not have easy access to the newly acquired evidence at the time that

02HFLVLRQV RQ VH[XDO
KXHUZO &KDPEHU -XGJH %RXWHW GLVYHQWLQJ KHOG WKDW LW ZRXOG EH SU

Be added without undue delay. If the prosecution was allowed to add four new counts to the indictment at this stage of the proceedings, particularly in circumstances where evidence upon which those counts were founded was XFDV L X D E H Q Q W O H D 3 W R E A H F X Q W H R U Y T E D P X H O + L Q J D 1 R U P Decisive V D O & D V H 1 R (U R V H F X W L R Q 5 H T X H V W I R U / H D T H A C H M R o b e r t 2 0 M a y 2 0 0 4 p a r a s 3 3 5 , 5 5 6 2 P 6 4 . Q W

KHR3UHFHXWRU Y 6DPXHO +LQDWHIRUPDQGHW DO 3URVHFHXWLRQ-V \$\$\$SOLFDFWLRQ
QWHUORFXWRU\SSSHDQJDQLQV WKH HFLVLRQ RQ WKH 3URVHFHXWLRQ-V 5HT
DQWOLRQ RQURUHLQGLQD RQDQ DQG-SQLHX RQGHZD 6&6/ 37

KHR3MHFXWRU Y 6DPXHO +LQJD 1RUPDQ 0RLQLQD)RIDQD DQ
 SSSOLFDFWLRQ IRU /HDYH WR)LOH DQ ,QWHUORFXWRU SSSHDQ \$JDLQVW WKH 'L
 SPHQG WKH ,QGLFWPHQW \$JDLQVW 6DPXHO +LQJD 1RUPDQ 0RLQLQD)RIDQD DQ

.HQGDOO DQG 6WDJJV VXSUD QRWH

+DUGZLULQJ OHVVRQV OHDUQHG -XVWLFH 5DSLQ 5HVSQRVH and g

125. One lesson that was learned from the Akayesu case, and bolstered by the failures to fully and consistently investigate and prosecute sexual violence at the ICTR and 6 & 6/ ZDV WKDW MXULU Sguzing Hronof Bequa Violence, or the gendered dimensions of international crimes was QRW VXIAFLHQW WR LQIXVH JHQGHU justice into all stages of investigatory and prosecutorial strategies. Rather, an

Interview with expert.
 Interview with expert. See also [R1AFLDO ZHEVLWH](#) RI -XVWLFH 5DSLQ 5HVSQRVH
 This comprises 54% women, 42% from the Global South, speaking more than 90 languages and representing more
 than 100 nationalities. See [R1AFLDO ZHEVLWH](#) RI -XVWLFH 5DSLQ 5HVSQRVH
 Interview with expert.
 - XVWLFH 5DSLQ 5HVSQRVH
 Interview with expert.
 Interview with Federica Tronchin, 17 March 2020.
 , QWHUYLHZ ZLWK & pFLOH \$SWHO 0DUFK

130. ,Q WKH 81 6HFUHWDU\ *HQHUDO\ V 5HSRUW WR WKH 6HFXULW\ &RXQFLO RQ :RPHQ 6HFXULW\ GHOLYHUHG D PDQGDWH WR 81 :RPHQ WR HQVXUH WKDW HYHU\ &RPPHVLVRQ RI WKH HQWLW\ LWVHOI LQ WKH FDUV IRU H[D
DQG 6HFXULW\ GHOLYHUHG D PDQGDWH WR 81 :RPHQ WR HQVXUH WKDW HYHU\ &RPPHVLVRQ RI WKH HQWLW\ LWVHOI LQ WKH FDUV IRU H[D
Inquiry had a dedicated gender expert on it. There are currently 240 experts on the
specialist roster;²⁴⁰ D IDFW ZKLFK KDV IDFLOLWDWHG VLJQLÀFDQWO\ WKH ´UDLVLQJ RI VWDQGDUJ
IRU WKH LQYHVWLJDWLRQ RI 6*%9µ

131. 6LQFH -55 DQG 81 :RPHQ KDYH GHSOR\HG H[SHUWV WR HYHU\ &RPPHVLVRQ RI
Inquiry and most Fact-Finding Missions, as well as the Syria HMM, in some cases,
such as the Commission of Inquiry on Syria, they deploy multiple experts at the same
WLPH FRYHULQJ DQ UDOJH RI UROHV LQFOXGLQJ JHQGHU DGYLVRUV 6*%9 LQYHVW LQWHUWVFRQD 6*%9
GHGLFDWHG LQWHUWVFRQD 6*%9

a. 6\ULD &RPPHVLVRQ H[SHUWV KDYH EHHQ GHSOR\HG WR WKH 6\ULD &RPPHVLVRQ
RI ,QTXLU\ &R, LQFOXGLQJ 6*%9 LQYHVWLJDWRUV DQG JHQGHU DGYLVRUV
H[SHUWLHV KHOSHG WR EULQJ WKH SURPLQHFW UROH RI 6*%9 LQ WKH 6\ULDQ FRQVWLWXUHQ IRU ZLWK DQG FRQFHUQLQJ VXUYLYRUV RI FRQ
WKH VXUIDFH DQG ZDV NH\ WR WKH &RPPHVLVRQV ÀUVW UHSRUW RQ WKH LVVXH
GLJQLW\µ 6H[XDO DQG JHQGHU EDVHG YLROHQFH LQ WKH 6\ULDQ \$UDE 5HSXEOL
UHSRUW ZKLFK ZDV WKH ÀUVW RI LWV NLQG GHWDLOHG 6*%9 DJDLQVW ZRPHQ
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
order.²⁴⁶

b. 0\DQPDU 720 JHQGHU DGYLVRUV 6*%9 LQYHVWLJDWRUV DQG D IRUHQVLF
SV\FKRORJLWV VSHFLDOLVHG LQ 6*%9 FRQWULEXWHG WR WKH))0\ V 6HSHPEHU
report, in which sexual violence was documented. \$FFRUGLQJ WR RQH IRUPHU))0
ODZ\HU WKH 6*%9 DGYLVRUV DQG LQYHVWLJDWRUV LQWHUYLHZHG YLFWLPV DQG
that their experiences were adequately captured in the FFM report on the
LVVXH 7KLV ZDV D FRQWH[W LQ ZKLFK 6*%9 ZDV VR SUHYDOHQW WKDW LW ZRXOG
event, have been a focus for the FFM. However, having an expert’s sign off was
UHDVVXULQJ WR WKH &RPPHVLVRQHUV \$ VLPLODU H[SHUWLHV LQ UHVSHFW RI FKLOGUHQ ZRXOG
have been useful.²⁴⁸

132. In the intervening years, and as a result of the momentum generated by these
GHYHORSPHQW WKH LQYHVWLJDWLRQ DQG GRFXPHQWDWLRQ RI 6*%9 KDV UHFHLYHG VLVWLUHG
DWWHQWLRQ DQG VXSSRUW IURP 81 0HEHU 6WDWHV QRWDEO\ &DQGD WKH 8QLWHG .LQGRP
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
GRFXPHQWDWLRQ DQG LQYHVWLJDWLRQ RI 6*%9 LQ WKH PDQGDWHV DQG LQYHVWLJDWLYH SURRWHV

239 81 6HFXULW\ [Report of the Secretary-General on women, peace and security](#), 2012/732, 2 October 2012.
240 Interview with expert.
241 -55 \$QQXDO 5HSRUW S 7KH DWWHQWLRQ SDLG WR 6*%9 E\ &R,V))0V LV VWURQJO\ OLQNHG WR WKH -55 URVWHU EHLQJ SXW LQ SODFH
243 Interview with expert.
244 -55 \$QQXDO 5HSRUW S 2WKHU H[SHUWV LQFOXGHG D IRUHQVLF LPDJH H[SHUW IRUHQVLF SDWKORRJLVWV
and military experts.
245 Human Rights Council, [\\$ +5& 5\(6](#), 8 March 2018.
246 ,Q HDUO\ -XVWLFH 5DSLQ 5HVSQRVH 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 IIM on the
FROOHFWLRQ RI HYLGHQFH -55 KDV DOVR FRQWULEXWHG FUXFLDO H[SHUWLHV LQ VXSSRUW RI FULPLQDO SURRWHV
the cases of Hisne Habé EHIRUH WKH ([WUDRUGLQDU\ \$IULFDQ &KDPEHUV .KLX 6DPSKDQ DQG 1XRQ &KH DW WKH
([WUDRUGLQDU\ &KDPEHUV LQ WKH &RXUW RI &DPERGLD DQG %RVFR 1WDJDQGD DW WKH ,&&
247 Human Rights Council, [5HSRUW RI WKH LQGHSHQGQW IDFW &DGLQJ PLVHVWPHQW IDQPDU](#)
-55 \$QQXDO 5HSRUW S RWKHU -55 H[SHUWV LQFOXGHG D FKLOG SV\FKRORJLWV WR PHQWRU WKH)DFWV LQ
OLVVLRQ WHDP RQ LQWHUYLHZLQJ FKLOG YLFWLPV DQG VXUYLYRUV DQG D PLOLWDU\ DQDO\W
248 Interview with expert.

Q no 6-HDFH accountability mechanisms²⁴⁹; and a [steady stream of funding](#) either
GLVFRQWU\ WR WKH HQWLW\ LWVHOI LQ WKH FDUV IRU H[D
Women to facilitate their deployment of experts.

133. 0RUHRYHU WKH VXSSRUW RI 81 0HEHU DOVR
[RI QDWLRQDO LQLWJWLYHV](#) 6*%9 JOREDO UHDFK VXFI
.LQJGRP\ V 3UHYHQWLQJ 6H[XDO 9LROHQFH ;QLWLDWLYH\ -Z
The expert consultations that took place under this initiative resulted in the
development of an [authoritative international protocol](#) DQG EHVW SUDFWLFH JXLGH
LQWHUWVFRQD 6*%9

134. More recent is the ongoing development of the Murad Code²⁵⁰ named after, and
VXSSRUWHG E\ 1REHO 3HDFH 3UL]H :LQQHU 1DGLD 0XU
global consultative initiative aimed at building and supporting a community of better
Q\DFWLRQ IRU ZLWK DQG FRQFHUQLQJ VXUYLYRUV RI FRQ
objective is to respect and support survivors’ rights, and to ensure work with survivors
to investigate, document, and record their experiences is safer, more ethical, and
JOREDO H[SHUWV LQ XSKROGLQJ WKHLU KXPDQ ULJKWV 7K
2021.

135. In conclusion, progress remains to be made to improve the reductive understanding
RI JHQGHUHG H[SHUWLHV DV SHUWDLQLQJ WR FULPHV DJDLQ
of crimes against/affecting women, with crimes of sexual violence; the tendency
to exclude men and boys from the community of victims and survivors of sexual
violence; and the failure to adequately document crimes committed on the basis of
sexual orientation or gender identity.²⁵¹ \$W WKH V DSHUWPHQW LQ
those charged with pursuing accountability for international crime that [investigating,
GRFXPHQWLQJ DQG SURVHFXLQJ FULPHV RI VH\[XDO DQG
essential](#) DQ\

PART B. LESSONS LEARNED

6\ULD &RPPHVLVRQ IRU MXVWLFH IRU PD

136. Those working to close the impunity gap when it comes to violations and crimes
affecting children face many of the initial attitudinal and structural barriers faced by
those seeking to strengthen understandings of gender in the investigation, analysis,
and prosecution of international crimes

249 Human Rights Council, [\\$ +5& 5\(6](#), 24 March 2017, paras. 11, 13; Human Rights Council, [Report of the
LQGHSHQGQW LQYHVWLJDWLYH 0HEHQVFRQVWU\](#) 0\ DQSDU \$ +5&
250 [Report of the High Commissioner of Human Rights on the 70th anniversary of the Universal Declaration of Human Rights](#), 2017/23, 20 March 2017, paras. 11, 13; Human Rights Council, [Report of the
JRY XN JRYHUQQPHQW RUJDQLVDFLRQV SUHYHQWLQJ VH\[XDO YLROHQFH LQ FRQ
6DUUUR 5LEHUR DQG 'DQD YDQ GHU 6WUDWHQ 3RQWR\] RQ EHKDOI RI WKH 8
LQWHUQDWLRQDO 3URWRERO RQ WKH 'RFXPHQWDWLRQ DQG LQYHVWLJDWLRQ RI
'RFXPHQWDWLRQ RI 6H\[XDO 9LROHQFH DV D &ULPH RU 9LRODWRQ RI ,QWHUQDW
251 \[Human Rights Council, Report of the High Commissioner of Human Rights on the 70th anniversary of the Universal Declaration of Human Rights\]\(#\), 2017/23, 20 March 2017, paras. 11, 13; Human Rights Council, \[Report of the
LQGHSHQGQW LQYHVWLJDWLYH 0HEHQVFRQVWU\\]\(#\) 0\ DQSDU \\$ +5&
252 \[Human Rights Council, Report of the High Commissioner of Human Rights on the 70th anniversary of the Universal Declaration of Human Rights\]\(#\), 2017/23, 20 March 2017, paras. 11, 13; Human Rights Council, \[Report of the
JRY XN JRYHUQQPHQW RUJDQLVDFLRQV SUHYHQWLQJ VH\\[XDO YLROHQFH LQ FRQ
6DUUUR 5LEHUR DQG 'DQD YDQ GHU 6WUDWHQ 3RQWR\\] RQ EHKDOI RI WKH 8
LQWHUQDWLRQDO 3URWRERO RQ WKH 'RFXPHQWDWLRQ DQG LQYHVWLJDWLRQ RI
'RFXPHQWDWLRQ RI 6H\\[XDO 9LROHQFH DV D &ULPH RU 9LRODWRQ RI ,QWHUQDW
253 \\\$RI QDWLRQDO ODZV ZRUGZLGH GHQ\ RI PHQ LQ FRQÁLFW DIHFWHG 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, \\[QWR WKH PDLQVWUHP \\\\$GGUHVVLQJ VH\\\[XDO YLRO\\]\\(#\\)
254 "It's KLQ WKHUH KDV EHHQ JUHDW SURIHVVLRQDO JURZWK LQ WKH DUHD ,W SUR
FDQ GDUH VD\ WKDW WKH\UH DJDLQVW LW 1RW SXEOLFO\ ,QWHUYLHZ ZLWK 3\]\(#\)](#)

Attitudinal barriers

137. There has been [lack 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 LQFIRUHG

138. 7KDW VRPH FULPHV DUH PRUH OLNHO\ WR EH LQYHVWLJDWHG DQG LQGLFWHG LV D

7KDW·V YHU\ PXFK WKH ZD\ LW ZDV ZLWK VH[XDO YLROHQFH LQ WKH ÀUVW \HDUV 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 ENOUGH 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 WKH WUHDQV" :H·OO DVN VRPHRQH μ TXHVWLRQ RI.²⁵⁵ ~~SRQSWDQ ZKDW~~

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

140. The marginalisation of certain ‘groups’ of victims and survivors has an impact on the DFFRXQWDELOLW\ SURFHVV 7KH JHQHUDO XQGHHUHSRUWLQJ RI 6 * %9 FULPHV DQG YLRODWLRQV DIIHFWLQJ FKLOGUHQ LV UHÁFWHG LQ WKH JHQHUDO SDXFLW\ RI HYLGHQFH for collection by investigators dealing with social taboos. Moreover, concerns over risks of retraumatisation of vulnerable victims and witnesses have also affected WKH FROOHFWLRQ RI 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. What VWDUWV DV DQ DWLWXGLQDO EDUULHU ZKLFK LQWR VLIJQLÁFDQW VWUXFWXUDO REVWDEOHV WXUQ UHLQIRUFHV KDUPIXO DWLWXGHV SDUDO\VLQJ WKH DFFRXQWDELOLW\ SURFHVV

141. \$V D UHVXOW IRU PDQ\ \HDUV VH[XDO YLROHQFH DJDLQVW ZRPHQ DQG JLUOV ZDV LJQ

142. 'RFXPHQDWLRQ ERWK DV D UHFRJQLWLRQ RI WKH FULPHV DQG DV D SDWK WR DFFRXQWDELOLW\ 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 documentation the intersectional nature

255 ,QWHUYLHZ ZLWK 3DWULFLD 9LVXU 6HOOHUV)HEUXDU\
256 For a discussion of the impact of intersecting marginalised identities on people’s access to justice, see Committee on the Elimination of Discrimination against Women, HQUHO UHFRPPHQGDWLRQ 1R RQ JHQGHU EDVHG YLROHQFH DJDLQVW ZRPHQ ZKLFK XSGDWHG JHQHUDO UHFRPPHQGDWLRQ 1R &('\$: & * &
257 1RZURMHH ² <RXU -XVWLH LV WRR 6ORZ, p. 10, fn. 8
258 Interview with expert.

RI WKH LQWLRODWR EH the young person who LV SUREDEO\ PRVW ORVW WKHQ ZKHQ ZH WU\ DQG ÀQG WKH situations. That’s the person that disappears²⁵⁹

143. It is equally true that 7·KH YLRODWLRQV DQG FULPHV DIIHFWLQJ PHU URXWLQHO\ UHQGHUHG OHVV YLVLEOH LQ MXVWLH SURFH often understood reductively. The entry point for making women and girls visible in the international criminal sphere has come through the crime of sexual violence. The entry points for understanding the crimes that children, and particularly boys, suffer LQ FRÁLFW LV WKH ZDU FULPH RI UHFUXLWPHQW DQG XVH age in hostilities

I see this enormous focus on child soldiers – the recruitment and use of ENOUGH \$QG RI FRXUVH WKDW LV VKRFNLQJ DQG RXJ I see, in the practice of international and internationalised courts, what I would call an almost RYHU IRFXV RQ WKDW SDUWLFXODU LVVXH In their practice, it almost seems like this is the only thing that happens WR FKLOGUHQ LQ FRÁLFW LV WKDW WKH\ DUH UHFUXLW EUXWDOLVHG HVVHQWLDOO\ \$QG LI \RX DUH D JLUO VRQ VH[XDO SXUSRVHV \$QG , ÁQWLDQV WR UHWZHUQ H[SHUWV RI ZKDW KDSSHQ WR.²⁶⁰ ~~FKESGDQVLRQ FRÁLFW~~

Structural barriers

113. Similar VWUXFWXUDO EDUULHUV EROVWHUHG E\ DQG LQ WXU 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. FULPHV DQG WKH HIIRUWV RI WKH WULEXQDOV WR LQWHJURXQGHUHLQWLRQ RI WKH PRVW DGHTXDWH LQ was either perceived as requiring separate attention and structures or, in some LQVWDQFHV PDLQVWUHDPHG LQ FRUH LQYHVWLJDWLRQV SDUWLQJ

One of the things that we can learn from the past judicial mechanisms is that sexual violence usually falls out when it is isolated [...] We understand better now that it’s not the errant soldier who ran off and did something in the midst of this ZLHGSHDQ DQG \VWHPDWLF DWDFN EXW WKDW VH[X] attack.²⁶¹

114. On the ground, there was both little funding for, and with a few exceptions as previously discussed little recognition of the need for outreach to communities ZKR KDQ 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:²⁶² \$FFRUGLQJ WR DQ H[SHUW PDQ\ RI WKH FKDO

259 ,QWHUYLHZ ZLWK 'U \$OLVRQ %LVVHW)HEUXDU\
260 ,QWHUYLHZ ZLWK 'U \$OLVRQ %LVVHW)HEUXDU\
261 ,QWHUYLHZ ZLWK 3DWULFLD 9LVXU 6HOOHUV)HEUXDU\
262 ColSyria, ‘7KH &DPH 7R 'HVWUR\ μ .6.6 &U·H·X·J·Q·V·W·X·H·D·J·T·S·D·D YLRODWLRQV VSHFLÁFDOO\ VXIIHUHG E\ <DJLGL 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 V
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 VHQVLWLYH
and those seeking to strengthen accountability for violations and crimes against or
affecting children.

116. First and foremost are the
RIWHQ XQUHFRJQLVHG SROLWLFDO FRPSOH[LWLHV VXUURXQGLQJ
DFFRXQWDELOLW\ IRU YLRODWLRQV. While there is more
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. 7KL V KDV FUHDWHG D VLJQLÀFDQW VWUXFWXUDO EDUULHU DQG UHVXOWHG LQ D ODE
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 6WDWHV
SURÀOH LQLWLDWLYHV VXFK DV WKH 8QLWHG .LQJGRP V 3UHYHQWLQJ 6H[XDO 9LROH
that the issue remains in public view. 6WDWHV DOVR SURYLGH D VLJQLÀFDQW VRXUFH RI
funding, and pressure for results. & pFLOH \$SWHO ZKR KHDGHG WKH ,,,0 VWDUW XS WHDP
UHPHPEHUHG VHYHUDO VWDWHV VSHDNLQJ DERXW WKH LPSRUWDQFH RI GRFXPHQWLQJ
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 FROOHFWHG. Support of key work programmes that 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
against women or crimes against children.²⁶⁸ (PSKDVLV RXUV

118. Second, and as described in Section I, there is no natural home inside the UN for 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.

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 PDQG
ZKLFK UHTXLUH DFFHVV WR 7ILHEWHQW FRPPHQFLW\ 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

²⁶³ Interview with expert.
²⁶⁴ Interview with expert.
²⁶⁵ ,WYLHZ ZLWK & pFLOH \$SWHO ODUFK

survivors.²⁶⁶ The existence of an accountability-focused constituency has been a
KIRZQ ÀFDQW IDFWRU LQ DFKLHYLQJ MXVWLFH IRU 6*%9 FUL
pursue a gendered approach to accountability, such as the Women's International
League for Peace and Freedom in London; advance a progressive gendered
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
service delivery, rather than accountability or advocacy.

119. That there are more organisations working on gender justice within the sphere
of international and local criminal accountability is a result, inter alia, of the fact
that VWURQJ ZRPHQ DGYRFDWHV DUH LQFUHDVLQJO\ H VWDEO
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
DV PHQWLRQH GAEV FHDVHQ WKHH[DPSOH 6LPLODUO\ WKR
UHOHYDQW SRVWV DW -55 DQG 81 :RPHQ KDYH WR GDWH P

120. It is becoming increasingly common for children to enter the public sphere to
advocate for their rights.²⁶⁸ However, the number of child advocates remains
marginal, and too often their voices are channelled through interactive segments or
performative advocacy. While civil society organisations, such as Terre des Hommes
and Defence for Children International, have undertaken capacity-building efforts at
the international and local levels, to promote and drive children's participation and
advocacy in local and international fora, children are often not fully included in
strategic and policy discussions, nor do they contribute directly to recommendations
addressed to decision-makers.²⁶⁹

121. &RQVXHQWO\ FKLOGUHQ DUH VWLOO ODUJHO\ GHSHQGH
DQG WR SULRULWLHV WKHLU ULJKWV. Despite an increased
LQÁXHQFH DQG LQ VRPH LQVWDQFHV D UROH LQ GHFLVLV
legal, cultural, and social structures mean 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 non-
governmental actors on strengthening accountability for crimes against children.

²⁶⁶ Interview with expert.
²⁶⁷ Interview with expert.
²⁶⁸ 6HH[DPSOHV RI JRRG SUDFWLFH LQ FKLOGUHQ V DQG \CHQD as AHO V SDUWLF
FDWHV 6WUHQJWKHQ LQJ &KLOG DQG <RXQJ 3UHQV SDUWLFSDWLRQ LQ \$GY
Save the Children, W V DQ DERXW FKLOGUHQ VHYHQ JRRG H[DPSOHV DQG WHQ VWHS
in reporting to the Committee on the Rights of the Child 2011.
²⁶⁹ See for instance, interview with child advocates during the interactive segment preceding discussions
FRPPHPRUDWLQJ WKH DGRSWLRQ RI WKH &5 & *HQH DPHQWLQO\ \$OHQDU\ W
1RYHPEHU KWWSV ZZZ XQ RUJ SUHV HJ JD GRF KWP
²⁷¹ Supra note 12.

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

PART A. STRATEGIES AND SOLUTIONS

146. The Government of the Republic of Serbia is essential to ensure that accountability for crimes and violations against children stays high on the agenda of the Government and the public. The Government has highlighted as one of the numerous challenges faced by leading organisations the need to ensure that 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

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 VWDIAQJ DQG UHVRXUFHV ZLW¹ KQDQZL, Support For Cms XSSRUW WKH DQG))0V LV GLYLGHG EHWZHHQ GLIIHUHQW RIÀFHV QRWLF 558 DQG WKH 0HWKRGRORJ\ (GXFDWLRQ DQG 7UDLQLQJ 6K the recruitment into the Cols and FFM, while METS supports training, formation of JXLGHOLQHV DQG EHVW SUDFWLFHV DQG RYHUVHHV WKH C 558 QRU 0(76 DUH GHGLFDWHG h² R³ R⁴ R⁵ R⁶ R⁷ R⁸ R⁹ R¹⁰ R¹¹ R¹² R¹³ R¹⁴ R¹⁵ R¹⁶ R¹⁷ R¹⁸ R¹⁹ R²⁰ R²¹ R²² R²³ R²⁴ R²⁵ R²⁶ R²⁷ R²⁸ R²⁹ R³⁰ R³¹ R³² R³³ R³⁴ R³⁵ R³⁶ R³⁷ R³⁸ R³⁹ R⁴⁰ R⁴¹ R⁴² R⁴³ R⁴⁴ R⁴⁵ R⁴⁶ R⁴⁷ R⁴⁸ R⁴⁹ R⁵⁰ R⁵¹ R⁵² R⁵³ R⁵⁴ R⁵⁵ R⁵⁶ R⁵⁷ R⁵⁸ R⁵⁹ R⁶⁰ R⁶¹ R⁶² R⁶³ R⁶⁴ R⁶⁵ R⁶⁶ R⁶⁷ R⁶⁸ R⁶⁹ R⁷⁰ R⁷¹ R⁷² R⁷³ R⁷⁴ R⁷⁵ R⁷⁶ R⁷⁷ R⁷⁸ R⁷⁹ R⁸⁰ R⁸¹ R⁸² R⁸³ R⁸⁴ R⁸⁵ R⁸⁶ R⁸⁷ R⁸⁸ R⁸⁹ R⁹⁰ R⁹¹ R⁹² R⁹³ R⁹⁴ R⁹⁵ R⁹⁶ R⁹⁷ R⁹⁸ R⁹⁹ R¹⁰⁰ R¹⁰¹ R¹⁰² R¹⁰³ R¹⁰⁴ R¹⁰⁵ R¹⁰⁶ R¹⁰⁷ R¹⁰⁸ R¹⁰⁹ R¹¹⁰ R¹¹¹ R¹¹² R¹¹³ R¹¹⁴ R¹¹⁵ R¹¹⁶ R¹¹⁷ R¹¹⁸ R¹¹⁹ R¹²⁰ R¹²¹ R¹²² R¹²³ R¹²⁴ R¹²⁵ R¹²⁶ R¹²⁷ R¹²⁸ R¹²⁹ R¹³⁰ R¹³¹ R¹³² R¹³³ R¹³⁴ R¹³⁵ R¹³⁶ R¹³⁷ R¹³⁸ R¹³⁹ R¹⁴⁰ R¹⁴¹ R¹⁴² R¹⁴³ R¹⁴⁴ R¹⁴⁵ R¹⁴⁶ R¹⁴⁷ R¹⁴⁸ R¹⁴⁹ R¹⁵⁰ R¹⁵¹ R¹⁵² R¹⁵³ R¹⁵⁴ R¹⁵⁵ R¹⁵⁶ R¹⁵⁷ R¹⁵⁸ R¹⁵⁹ R¹⁶⁰ R¹⁶¹ R¹⁶² R¹⁶³ R¹⁶⁴ R¹⁶⁵ R¹⁶⁶ R¹⁶⁷ R¹⁶⁸ R¹⁶⁹ R¹⁷⁰ R¹⁷¹ R¹⁷² R¹⁷³ R¹⁷⁴ R¹⁷⁵ R¹⁷⁶ R¹⁷⁷ R¹⁷⁸ R¹⁷⁹ R¹⁸⁰ R¹⁸¹ R¹⁸² R¹⁸³ R¹⁸⁴ R¹⁸⁵ R¹⁸⁶ R¹⁸⁷ R¹⁸⁸ R¹⁸⁹ R¹⁹⁰ R¹⁹¹ R¹⁹² R¹⁹³ R¹⁹⁴ R¹⁹⁵ R¹⁹⁶ R¹⁹⁷ R¹⁹⁸ R¹⁹⁹ R²⁰⁰ R²⁰¹ R²⁰² R²⁰³ R²⁰⁴ R²⁰⁵ R²⁰⁶ R²⁰⁷ R²⁰⁸ R²⁰⁹ R²¹⁰ R²¹¹ R²¹² R²¹³ R²¹⁴ R²¹⁵ R²¹⁶ R²¹⁷ R²¹⁸ R²¹⁹ R²²⁰ R²²¹ R²²² R²²³ R²²⁴ R²²⁵ R²²⁶ R²²⁷ R²²⁸ R²²⁹ R²³⁰ R²³¹ R²³² R²³³ R²³⁴ R²³⁵ R²³⁶ R²³⁷ R²³⁸ R²³⁹ R²⁴⁰ R²⁴¹ R²⁴² R²⁴³ R²⁴⁴ R²⁴⁵ R²⁴⁶ R²⁴⁷ R²⁴⁸ R²⁴⁹ R²⁵⁰ R²⁵¹ R²⁵² R²⁵³ R²⁵⁴ R²⁵⁵ R²⁵⁶ R²⁵⁷ R²⁵⁸ R²⁵⁹ R²⁶⁰ R²⁶¹ R²⁶² R²⁶³ R²⁶⁴ R²⁶⁵ R²⁶⁶ R²⁶⁷ R²⁶⁸ R²⁶⁹ R²⁷⁰ R²⁷¹ R²⁷² R²⁷³ R²⁷⁴ R²⁷⁵ R²⁷⁶ R²⁷⁷ R²⁷⁸ R²⁷⁹ R²⁸⁰ R²⁸¹ R²⁸² R²⁸³ R²⁸⁴ R²⁸⁵ R²⁸⁶ R²⁸⁷ R²⁸⁸ R²⁸⁹ R²⁹⁰ R²⁹¹ R²⁹² R²⁹³ R²⁹⁴ R²⁹⁵ R²⁹⁶ R²⁹⁷ R²⁹⁸ R²⁹⁹ R³⁰⁰ R³⁰¹ R³⁰² R³⁰³ R³⁰⁴ R³⁰⁵ R³⁰⁶ R³⁰⁷ R³⁰⁸ R³⁰⁹ R³¹⁰ R³¹¹ R³¹² R³¹³ R³¹⁴ R³¹⁵ R³¹⁶ R³¹⁷ R³¹⁸ R³¹⁹ R³²⁰ R³²¹ R³²² R³²³ R³²⁴ R³²⁵ R³²⁶ R³²⁷ R³²⁸ R³²⁹ R³³⁰ R³³¹ R³³² R³³³ R³³⁴ R³³⁵ R³³⁶ R³³⁷ R³³⁸ R³³⁹ R³⁴⁰ R³⁴¹ R³⁴² R³⁴³ R³⁴⁴ R³⁴⁵ R³⁴⁶ R³⁴⁷ R³⁴⁸ R³⁴⁹ R³⁵⁰ R³⁵¹ R³⁵² R³⁵³ R³⁵⁴ R³⁵⁵ R³⁵⁶ R³⁵⁷ R³⁵⁸ R³⁵⁹ R³⁶⁰ R³⁶¹ R³⁶² R³⁶³ R³⁶⁴ R³⁶⁵ R³⁶⁶ R³⁶⁷ R³⁶⁸ R³⁶⁹ R³⁷⁰ R³⁷¹ R³⁷² R³⁷³ R³⁷⁴ R³⁷⁵ R³⁷⁶ R³⁷⁷ R³⁷⁸ R³⁷⁹ R³⁸⁰ R³⁸¹ R³⁸² R³⁸³ R³⁸⁴ R³⁸⁵ R³⁸⁶ R³⁸⁷ R³⁸⁸ R³⁸⁹ R³⁹⁰ R³⁹¹ R³⁹² R³⁹³ R³⁹⁴ R³⁹⁵ R³⁹⁶ R³⁹⁷ R³⁹⁸ R³⁹⁹ R⁴⁰⁰ R⁴⁰¹ R⁴

273)HG HULFD '\$OHVVDQGUD 6DUHW 6VUKEDSKUDQG6WCHSKGLCHVDSFQI)RQWHG E\ 8
0DQGDWHV 3HUVSHFWLYHV IURP &XUHQW DQG)RPHU 6WDII 3DUW , , 2SLQ
15HERPPHQGDWLRQV RI WKH *URXS RI 3UDEFWLW DQXIDU RQ)DFW)LQGLQJ DQG

275 6 X S U D note 273.

LQ WKH ZHOO UHFHLYHG UHSRUW 7KH\ KDYH HUDVHG
FKLOGUHQ.V ULJKWV LQ 24 SKEDS 600000 DOW \$600000 5HSR
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 strengthened the capacity of investigators to develop strategies for the investigation and secure partnerships.²⁸⁵ \$ V PRUH H[SHUWV DUH HPEHGGH teams, their added value will, it is hoped, be recognised, and result in an ingrained acknowledgement that dedicated investigations of violations and crimes affecting children are essential, and the need for expertise to support this.

156. The success and sustainability of such deployments depend on the cooperation of accountability mechanisms. One of the key challenges is to ensure the order 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 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 accountability with regard to the experts' engagement, and deliverables.

W KHU 157 \$ Q R W K H U N H F K D Q O H Q J H W R W K H V X V W D L Q D E L O L W \ R I W K
H Q W L W \ Z L W K L Q W K H 8 1 Q R U D Q \ 8 1 c o n s i s t e n t l y f u n d i n g D W H K D V F F
this expertise L Q F R Q W U D V W W R 6 * % 9 H [S H U W V Z K R D U H U H F U X L
E \ 8 1 : R P H Q \$ V K L J K O L J K W H G L Q 6 H F W L R Q , Q H L W K H U 8 1 ,
C H H Q H I S H U W V V X L W D E O H I R F D O S R L Q W V 7 R G D W H - 5 5 K D V E H H Q I X Q G H G

158. S X V W D L Q D E O H I X Q G L Q J I R U F K L O G U L J K W V H [S H U W L V H E R
D Q G I * 2 V W D I I Z L W K
or directly to the entities recruiting for a position requiring child rights expertise.
In interviews for this report, various States known to be generally supportive of
I R U P G Y D O F L O J L W H U Q D W L R Q D O F U L P L Q D O D F F R X Q W D E L O L W \
A Q D Q F L D O V X S S R W D Q G D G Y R F D F \

159. 2WKHU NH\ UHFRPPHQGDWLRQV RQ WKH RSHUDWLRQ RI WKH
Q ER O VWHU WKH
H Q
X F W L R Q R I
ICJ-led training should develop a strong and primary focus on strategies and
avenues to investigate violations and crimes against or affecting children without
interviewing children, that encompass age-disaggregated and intersectional
analysis²⁸⁹ as well as the application of relevant legal standards and analysis to
information collection;

282 Human Rights Council; [7KH\ KDYH HUDVHG WKH GUHDPV RI P\ FKLOGUHQ\ FKLOGUHQ\ V U](#)
 \$ +5 & & 53 -DQXDU\
 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 0DUFK 3DWULFLD 9LVHXU 6HOOHUV
 289 Interview with expert.

- Experts should include individuals from national jurisdictions who are skilled with providing mental health and psychological support to children during investigations;²⁹⁰ [VXFK H\[SHUWV PD\ UHWXUQ WR WKHLU MXULVGLFWLRQV DW WKH HQG](#) of their knowledge or geographical spread; [\(PSKDVLV RXUV](#)
- [\(\[SHUWV S\KRXLGGH WUDLQLQJ DQG PHQWRULQJ WR RWKHU PHPEHUV RI VWDII](#) to humanitarian law in the occupied Palestinian territory, and particularly in Gaza. The Designation focused on what the Commission described as “an ongoing military intensive bombing and shelling of residential neighbourhoods, schools and hospitals, resulting in scores of civilian casualties, including 551 children”.
- [7HUPV RI UHIHUHQFH VKRXOG LQFOXGH](#) [DWITH](#) [HSRUWLQJ OLQH WR VHQLRU PDQDJHPHQW](#) 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.

UHDOO\ GLIÄFXOW VLWXDWLRQV > @ , WKLQN WKH PRQ people who have spent their careers doing this, investigating crime. With the Commission much more important than International Criminal Law knowledge or geographical spread: [\(PSKDVLV RXUV](#)

162. [7KH HWK\ NHUHS HQFH RI WKH *DJD &RPPLVVLRQ LOOXVWUDWHV](#) ZLWK VXFK EDFNJURXQG 7KH &RPPLVVLRQ ZDV HVWDEOLVH &RXQFLO RQ -XO\ WR LQYHVWLJDWH YLRODWLRQV RI humanitarian law in the occupied Palestinian territory, and particularly in Gaza. The Designation focused on what the Commission described as “an ongoing military intensive bombing and shelling of residential neighbourhoods, schools and hospitals, resulting in scores of civilian casualties, including 551 children”.

163. The Commission formally began work in September 2014, and reported to the Human Rights Council in September 2015. [5LJKWV &RXQFLO BQXVXODHOO\ IRU D &R, D FKLOG SURWHFW](#) [VSHFLÄFDOO\ UHFUXLWHG IURP WKH QDWLRQDO V\VWHP](#) % resourced, the adviser investigated both crimes affecting children and crimes against children. [WKH HQG XOW SRSXODWLRQ 1RQH WKHOHV DFFRUGLQJ WR](#) [VXFKEDVLRQ WKH DGYLVHU V SUHVHQFH ZDV EHQHÄFLDO](#) [FKLOGUHQ ZDV GRFXPHQWHG](#)

She spoke with everyone who had information on crimes against children, whether they were victims, whether they were witnesses, whether [WKH\ ZHUH IURP 1*2V 6KH VSRNH ZLWK HYHU\RQH 6KH S](#) 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, educational impact, the whole range²⁹⁹

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 work. This suggests that [H\[SRVXUH WR H\[SHUWLHV PD\ QRW EH HQRXJK DW](#) [H\[SRVXUH WR H\[SHUWLHV PD\ QRW EH HQRXJK DW](#) training, in this case within [OHCHLV DOVR UHTXLHG](#)

160. [:KLOH -55 GHSOR\PHQWV FDQ EH SDUWLFXODUO\ YDOXDEOH WKH\ GR QRW DOZD\](#) [VXVWDLQDEOH VROXWLRQ IRU ORQJHU WHUP PDQGDWHV H J WKH ,,00 RU ,,,0](#) ,Q [VXFKEDVLRQ WKH DGYLVHU V SUHVHQFH ZDV EHQHÄFLDO](#) [FKLOGUHQ ZDV GRFXPHQWHG](#) it is preferable for the expertise to form part of the core and ongoing structure of the organisation rather than to be available on an ad 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 staff on short-term contracts.

Draw from national jurisdictions: the experience of the 2014 United Nations Independent Commission of Inquiry on the 2014 Gaza conflict (‘Gaza Commission’)

161. [\\$FFRXQWDELOLW\ PHFKDQJLQJ ZRXLGGH](#) [LEVLRQV ZRXLGGH](#) [IURP](#) [HLWKHU GLUHFWO\ RU WKURXJK D FKLOG VSHFLÄF URVWHU DV GHVFULEHG DERYH](#) [DV PDQ\ GRPHVWL](#) 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 [they just know how to do this](#). They know how to ask the right follow ups, they know how to be [VHQLWLYH WKH\ KDYH WKLV LQQDWH SURWRFRO DV WR KRZ WR PDQDJH D GLIÄFXOW](#) [VLWXDWLRQ \\$QG WKDW LV QRW WDXJKW > @](#) [7KDW LV \HDUV RI EHLQJ LQYHVWLJDWRUV LQ](#)

²⁹⁰ [7KH SURUWDQFH RI UHFUXLWLQJ GRPHVWL FULPLQDO LQYHVWLJDWRUV WR WKH URVWHU ZDV DOVR KLJKOLJKWHG](#) [E\ \(ULQ *DOODJKHU](#) [7KH\ DUH WUXO\ WKH RQH WKDW DUH PXFK PRUH FXWWLQJ HGJH WKDW DUH GRLQJ LW HYHU\ VLQJOH GD\ \\$QG](#) [WKH VSHFLÄFDOO\ IRU D &R, D FKLOG SURWHFW](#) [VSHFLÄFDOO\ UHFUXLWHG IURP WKH QDWLRQDO V\VWHP](#) % resourced, the adviser investigated both crimes affecting children and crimes against children. [WKH HQG XOW SRSXODWLRQ 1RQH WKHOHV DFFRUGLQJ WR](#) [VXFKEDVLRQ WKH DGYLVHU V SUHVHQFH ZDV EHQHÄFLDO](#) [FKLOGUHQ ZDV GRFXPHQWHG](#)

²⁹¹ Interview with expert.

²⁹² Interview with expert.

²⁹³ [CHU YLHZ ZLWK H\[SHUW \\$QRWKHU H\[SHUW ZDV VLPLODUO\ RI WKH YLHZ WKDW D UHSRUWLQJ OLQH WR VHQLRU](#) [PDQDJHPHQW](#) 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.

²⁹⁷ Human Rights Council, [5HSRUW RI WKH GHWDLOHG ÄGGLQJV RI WKH &RPPLVVLRQ RI ,QTXLU](#) [+5& &53 -XQH SDUD](#)

²⁹⁸ [7KH &RPPLVVLRQ FROG WFKDQ](#) [LQYHVWLJHV ZLWK YLFWLPV DQG ZLWQHVVHV](#) [PDQDJHPHQW](#) [5HSRUW RI WKH GHWDLOHG ÄGGLQJV RI](#) [&RPPLVVLRQ RI ,QTXLU RQ, part 14. *DJD &RQÄFW](#)

²⁹⁹ Interview with Lina Biscaia, 26 February 2020.

³⁰⁰ Interview with Lina Biscaia, 26 February 2020.

applies to all preliminary investigations, investigations, and prosecutions carried out by the OTP and, in the event of a conviction, to sentencing and reparations. Its

177. 7KH IROORZLQJ SRLQWV DUH SDUWLFXODUO\ UHOHYDQW

" 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 2IAFH ZLOO LQ RUGHU WH suffered, seek to KLJKOLJKW WKH PXOWLFHQWLF LPSDFW Of the crimes on children, a DOO VWDJHV RI LWV ZRUN SDUD

1, &() 1*2V

ROLFKH 2018 WRPLWV WR DGRSWLQJ D 1FKLOG FRPSHWHQW. I
KL best interests are a primary consideration but do not necessarily prevail over other
LQWHUHVWV LQ WKH FRQGXFW RI LWV SUHOLPLQDU\ H[D
LRQ. The selection of a father and evidence. The EHVV LQWHUHVW RI WKH FKLO
assessed having regard to WKH LQGLYLGXVH SPAOC E\ UHIHUHQFH
DJH VH\ JHQGHU DQG WKH FKLOG.V VRFLDO DQG FXOW\

- In conducting preliminary investigations, the OTP will “pay particular attention to information received on crimes against **Displaced Children**” and analyse in particular the general context within which these alleged crimes have occurred **SDUDV :LWK UHVSHFW WR crimes against or affecting children as “particularly grave”** given “the commitment made to children in the Statute³²¹ and “the fact that children enjoy special recognition and protection under

On conducting investigations, the OTP will, from the initial stage, carefully consider crimes against children and **proactively** to determine whether such crimes were committed in the situations under investigation and prosecution of crimes affecting children are in the interests of justice

- 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. [5HFRJQLVLQJ WKDW FKLOGUHQ DUH FDSDEOH RI J](#)

319 Interview with expert.

HVVP \$QWR VHH ~~DDDD~~ XULQJ -XVWLFH ,QWHJUDWLQJ WKH &RQYHQWLRQ RQ WKH 5I

Judgments and Processes of the International Criminal Court * D - , Q W . O & R D \$ D L O D E O H D W

KWWSV GLJLWDOFRPPRQV ODZ XLDQHGXUIMHESPHRQ The Spin Rights Convention and

QWHUQDWLRQDO & ULPLDGLR VVXEHQDO RI QWHUQDWLRQDO Children 'LDQH OD
is : LOOLRR \$ CEKDE DEDTHGLGLH & DSDOLRO WR QWHUQDWLRQDO & ULPLDGLR /D

321 7KHROLF\ RQ & KLO Comm. v. M.D. addressing crimes against or affecting children can be found

LQ YDULRXV SURYLVLRQV RI WKH 6WDWXWH LQFOXGLQJ LQ LWV HQXPHUDWLQJ
FRQVFLSLRQ DQG XVH RI FKLOGUHQ XQGHU WKH DJH RI AIWHHQ HDUV WR SDU
RU XVHP IRLFLOH WUDQVHU RI FKLOGUHQ DQG FKLOG WUDIAFNQJ DQG DOV
WLQJ DERXW RWZELWQHUVXOGLQJ GHGLFDWHG WR HGXFDLRQ &KLOGUHQ DUH D
/ DJDWHG DQGHZLQ DUH SURVULEHG E\ WKH 6WDWXWH D DFW PDGH H\SELF

WKH 2IÄFH ZLOO DOVR FRQVLGHU WKH DDEODELOLW\ RI DOWHUQDWH HYLGHQFH
ZLWQHVVHV SK\VLFDQ DQG GRFXPHQWU\ LWHPV DQG VFLHQWLÄF RU H[SHUW H
SDUD

LQWHUQDWLRQDO FULPHV \$FFRUGLQJO\ 2+&+5 PD\ UDLVH
 WKHQPHFKDQLVPV ZRXOG EHQHAW IURP FRQVLGHULQJ WKH
 ZRUN LQ RUGHU WR DGGUHVVRPH RI WKH EDUULHUV LGH

- In selecting charges, the OTP will make full use of the regulatory framework to 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

- The OTP will seek to support the work and strengthen cooperation with relevant actors, including early responders SDUDV 322 \$W WKH SUHOLPLQDU\ H[DPLQDWLRQ VWDJH WKH 2IÀFH ZLOO DVVHVW WKH H[LVWHQFH RI UHOHYDQW SRWHQWLDO VRXUFHV RI LQIRUPDWLRQ DQG RU VXSSRUW IRU YLFWLPV SDUD ZLWK WKHP WR YHUL\ LQIRUPDWLRQ RQ DOOHJHG FULPHV SDUD \$W WKH stage, the establishment of contacts and networks within the community will be SULRULWLWHG WR VXSSRUW RSHUDWLRQDO DFWLYLWLHV SDUD

178. :KLOH WKH SROLF\ LV OHVV WKDQ ÀYH \HUV ROG LW KDV UHSRUWHGO\ UHVXOWHG
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](#)³²³ \$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
DULVLQJ IURP WKH HYLGHQFH KDYH EHHQ H[SORUHG 7KLV FRQVWLWXWHV VLJQLÀF
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 consideration.²⁴

179. ~~\$ QXPEHU RI LQWHUQDO PHFKDQLRYHJH EHHQ SXW LQ SODFH WR~~
~~implementation of the Policy~~, including training and testing of staff members on its
 application,⁹²⁶ 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 addressed. ~~set~~ was
 recommended that monitoring of the Policy could be strengthened by systematically
 LQYROYLQJ WKH 6SHFLDO \$GYLVHU RQ &KLOGUHQ LQ WKH SHULRGLF UHYLHZ SURFHVV

180. Beyond the OTP, it is clear that the & · V 3ROLF\ RQ &KLOGUHQ FDQ DQG VKRXOG LQIRUP WKH DSSURDFK RI RWKHU MXGLFLDO DQG WK with QRQ MXGLFLDO DFFRXQWDELOLW\ PHFKDQLVPV incorporate genetic information from the victim's family members in the investigation and analysis of DNA evidence.

The new 'accountability focused' mechanisms

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 that it will draw on these “valuable insights” in its work.

for ensuring an effective approach to such crimes includes recruiting the relevant expertise, developing policies and operational guidelines and ensuring their ongoing implementation and revision, as well as regular training for all staff members.

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 children⁹¹.

183. Q \$XJXVW WKH ,,,0 UHSRUWHG WKDW LW KDG EHJXQ W
LAF DQW SURJUHVV by third parties, and underscored the importance of determining whether existing
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 GHVLJQH

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 VSHFLÀF 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 \$XJXVW WKH ,,,0 UHSRUWHG WKDW LW KDG EHHQ SU
incorporate gender perspectives. It further indicated that it would, during the next

322 \$FFRUGLQJ WR DQ H[SHUW LQWHUYLHZHG LQFUHDVHG H[QDJH[PHQW
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.

CHWYLHZ ZLWK H[SHUW \$W SUHVHQW WUDLQLQJ LV RQ\ DYDLODEOH IRU 273 VWDII PHPEHUV DQG LW KDV
WKDW WUDLQLQJ DOVR EH SURYLGHG WR 'HIHQFH WHDPV ,QWHUYLHZ ZLWK DWH *LEVRQ 0DUFK

326 Interview with expert.

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

328 Interview with expert.

329 81 *HQHUDO \$M\$BFBORI WKH QWHUQDWLRQDO PSDUWLDO DQG QGHSHQGHQW
WLRQYHSHVHWDLRHCDEGVKHHRVHFHXUDE QR RI SHUVRQV SHSVRQVLEOH IRU WKH ORVW
&RPPLWWHG LO WKH 6ULO DO 6SHEOLV LQFH ODUFX \$)HEUX

330 81 *HQHWDQ ~~SMHSHORI~~ WKH ,QWHUQDWLRQDO ,PSDULDO DQG ,QGHSHQGHW
 ,YHVWLJDWLQJ DQG 3URVHFXLRLQ RI 3HUVRQV 5HSRVLEOH IRU WKH ORVW
 &RPLWWHG LQ WKH 6\ULDQ SUDE 5HSXEOLF VLQFH 0DUFK \$)HEUX

331 81 *HQHUDO \$\$\backslash\$HPEO\)HEUXDU\ SDUD

332 81 *HQHUDO \$VHSRQVRI WKH QWHUQDWLRQDO PSDUWLDO DQG QGHSHQGHW
EHHQYHHFRPLDQGRQ DQG 3URVHFHWLRO RI 3HUVRQV 5HVSROVLEOH IRU WKH ORVW
&RPPLWWHG LQ WKH 6ULDO \$UDE 5HSXEOLF VLQFH 0DUFK \$ \$XJXV

333 81*HQHUDO \$~~YMBREO~~\RI WKH QWHUQDWRQDO ,PSDUWLDO DQG ,QGSHQGHHQW
and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian
\$UDE 5HSXEOLF VLQFH 0DUFK \$)HEXDU\ SDUD

WKH ÀUVW SKDVH RI LWV VWUDWHJ\ RQ VH[XDO DQG JHQGHU EDVHG YLROHQFH

187. 7KH IXOO QDPH RI WKL V GHGLFDWHG XQLW ZKLFK LV SDUW RI WKH 21st FH RI)LHOH
LV WKH 6H[XDO DQG *HQQHU %DVHG 9LROHQFH &ULPHV DJDLQVW &KLOGUHQ 8QLW
E\ LWV DFURQ\ 6*%&&8 ,W LV VSHFLÀFDOO\ FKDUJHG ZLWK ZRUNLQJ DORQJVLGH
,QYHVWLJDWLRQ 8QLWV WR LQYHVWLJDWH DFWV FRPLWWHG E\ ,6,/ LQYROYLQJ VH
EDVHG YLROHQFH DQG FULPHV DIIHFWLQJ FKLOGUHQ 81,7\$' UHSRUWV WKDW LW KD
VSHFLÀF VWDQGDUG RSHUDWLQJ SURFHGXUHV DQG EHVW SUDFWLFHV ZLWK UHVSH
engagement with victims of sexual and gender based violence and with children.³⁴²
6*%&&8 VWDII LQFOXGH LQGLYLGXDOV ZLWK H\SHUWLHV LQ LQWHUYLHZLQJ FKLOGU

HIGGS Taking stock of these developments, and of the commitment of the mechanisms
 to develop knowledge-sharing channels, an expert has suggested creating a focal
 SRLQW WR VHFUXH SHULRGLF PHHWLQJV IRVWHU H[FKDQJH
 O G , QYWZMHLQDWLIRQH H[SHUWV DV ZHOOR DV ZLWK WKH VWDII R
 L W UNIQ®PZQ
 G H and policies developed by these bodies.

190. , Q RUGHU WR UHDFK WKRVH 1*2V WKDW DUH ZLOOLQJ WR F
LRQ accountability actors, but that lack information about how this can best be achieved,
it is essential that effective outreach strategies are put in place so that the
RVHFHXFDQGRDWHUVRDQG DFWLYLWLHV RI QRQ MXGLFLDO DQG MXGL
DE 5HSXEOLF VLQFH
understood at the local level. Improved communication and cooperation would lead
RVHFHXFDQGRDWHUVRDQG DFWLYLWLHV RI QRQ MXGLFLDO DQG MXGL
DE 5HSXEOLF VLQFH
to better understanding among all relevant local stakeholders of the importance of

348 Interview with expert.

342 ,QWHUYLHZ ZLWK 9HURQLF :ULJKW 0DUFK

information-sharing with these mechanisms, and would ensure that the views of local stakeholders are taken into consideration by accountability mechanisms. The newer DFFRXQWDELOLW\ PHFKDQLVPV VXFK DV WKH ,,,0 ,,00 DQG 81,7\$' KDYH HPSKDVLV\SHRQGLJQHG D SURWRFRO RXWOLQLQJ SULQFLSOHV 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.

191. [SGHTXDW H ZLWQHVV SURWHFWLRQ DQG SV\FKRVRFLDO VWUXFWXUH DQG V XVWDLQLJ 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 activities³⁴⁹ (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 GHSHQ 1DWLRQDO WULDOV DUH D QH DU LQHYLWDELOLW\ IRU VLWXDWLRQV RI PDVVY FROODERUDWLRQV RI PDVVY atrocity and mass violence where the jurisdiction of the ICC is not engaged, such as the case currently in respect of Syria and Iraq, amongst others. The importance of GRPHVWLQ SURVHFXWLRQV LV DOVR EXLOW LQWR WKH IUDPHZRUN RI ,&& WKH FRPSOHPHQWDULW\ SULQFLSOH GHULYHG IURP SDUDJUDSK RI WKH 5RPH 6WDWXWH SUHDPEOH DQG \$UWLFOH 18, 19, 20, and 53, recognise and promote the primary role of national jurisdictions in the investigation and prosecution of international crimes³⁵⁰.

193. \$OWKR XJK PRVW QDWLRQDO MXULVGLFWLRQV IDFH VLPLODU EDUULHUV WR LQYHVWLJDWLQJ DQG SURWHFW WKHP IURP EDWWOHÀHOG LQMXULHV LQ WKH FROODERUDWLRQV RI PDVVY 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.
350 6HFRQG LQVWDQFH 3ULQFLSOH)RVWULQJ IURP LQYHVWLJDWLRQV VXSURW LQ ,UDT
351 [Protocol of Cooperation between the International Independent and Impartial Mechanism and Syrian Civil Society Organisations participating in the Lausanne Platform](#) \$SULO
352 Human Rights Council, [\\$ +5& \\$XJXVW SDUDV](#)
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 DQG LWV 6HFRQG \$GGLWLRQDO 3URWRFROV WKH &RQYHQWLRQ DJDLQVW 7RUVXUH DQG -XWKHU S
354 ,ELG ,QWHUYLHZ ZLWK .DUHQ 1DLPHU 0DUFK
355 ,QWHUYLHZ ZLWK .DUHQ 1DLPHU 0DUFK

&RQJR '5& QRWDEO\ LQ UHVSHFWKavumu case, have DJDLQVW FROODERUDWLRQV RI PDVVY underscored how effective domestic prosecutions are a key part of a sustained struggle against impunity, empower local justice actors, and serve to uphold the rule RI ODZ 2 WKH DEVHQFH RI ZKLFK LV D VLJQLÀFDQW GULYHU SULQFLSOH 195. 7KH &RQJROHVH MXVWLQV V\ VWHP EROVWHUHG E\ FOLQLFLQJ FLYLO VRFLHW\ RUJDQLVDWLRQV LQWHUQDWLRQDO 1*2V DQGLJQHG 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 HCPDOH 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. %HWZH HQ -DQXDU\ DQG 'HFHPEHU &RQJROHVH MXG 39 cases on indictments containing international crimes that had occurred between DQG GXULQJ QRQ LQWHUQDWLRQDO DUPHG FRQÁLFV .LYX DQG 6RXWK .LYX ³⁵⁴ This included the creation and 'use of mobile gender courts to try cases of rape and other forms of sexual violence. Their LPDFW KDV EHHQ VLJQLÀFDQW %HWZH HQ 2FWREHU DQGLJQHG D PRELOH JHQGHU FRXUW RSHUDWLQJ LQ 6RXWK .LYX KHDU for rape, 82 convictions for other offences, and 67 acquittals³⁵⁵.

197. This section focuses on, and seeks to draw insight from, one of the most successful LQYHVWLJDWLRQV DQG SURVHFXWLRQV RI FRQÁLFV UHODWLYH FKLOGUHQ WKH SURVHFXWLRQ RI &RQJROHVH PLOLWLD PH YLOODJH RI .DYXPX LQ 6RXWK .LYX ,Q -XO\ D PLOLWLD the conviction of 11 men, including a sitting lawmaker, for [rape as a crime against humanity perpetrated against young girls](#) LQ .DYXPX RYHU D WKUHH \HDU SHU 198. Between 2013 and 2016, at least 42 girls, aged between 18 months and 11 years, ZHUH DEGXFWHG IURP WKHLU KRPHV LQ WKH PLGGOH RI WKH FROODERUDWLRQV RI PDVVY raped, and subsequently abandoned. The perpetrators, members of a local militia group, targeted these girls for their virginal hymen blood, in the belief that it would SURWHFW WKHP IURP EDWWOHÀHOG LQMXULHV LQ WKH FROODERUDWLRQV RI PDVVY 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 IRUH³⁵⁶ VLF PHGLF

354 ,QWHUYLHZ &HQWHU 7KH 7UPEXQWDELOLW\ LQ (DVHUQ '5& -XO
355 Open Society Foundations, [-XVWLQ LQ '5& 0RELOH &RXUWV &RPEDW 5DSH DQG ,PSXQLW\ LQ](#)
356 ODQFHV, [QWHUYLHZ IURP DQGLJQHG DQGLJQHG DQGLJQHG](#) D PRGH RI PHGLFROHJDO FROODERUDWLRQ .D
357 ,ELG ,QWHUYLHZ ZLWK .DUHQ 1DLPHU 0DUFK
358 ,QWHUYLHZ ZLWK .DUHQ 1DLPHU 0DUFK

'HVSLWH WKH DYDLODELOLW\ RI WKLV HYLGHQFH HIIRUWV E\ 3DQJL.V DIÄOLDWHG OHJDO EXFUVHQRXQG SUHVHQW FKDOOHQJHV IRU HYHU\RQH HY
considerable national and international media and advocacy efforts, local civilian
prosecutors refused to initiate an investigation.³⁵⁹ In response to this inaction, the
YLFWLPV. OHJDO UHSUHVHQWDWLYHV VxFFHVVIXOO\ ÄOHG WKH FRPSODLQWV EHIRUH WKH
courts on the basis that there was prima facie evidence that the crimes alleged
DPRXQWHG WR FULPHV DJDLQVW KXPDIKavmucasey ZLOO EH H[SORUHG EHORZ WKH
as it is commonly referred to, stands as an H[DP SOH RI GRPHVWLFXGLFLDO DXWKRULWLHV
ZRUNLQJ DORQJVLGH LQWHUQDWLRQDO DQG RWKHU ORFDO SDUWQHUV WR WDFN 204. FROODERUDWLRQDO FKDOOHQJHV
DQG VRFLDO LVVXH V LQ RUGHUWRBKRHWKH DZRXQWDEOLW
related crimes committed against children³⁶⁰

\$WWLWXGLQDO DQG VWUXFWXUDO EDUULHUV WR DFFRXQWDELOLW\ IRU
FULPHV DIIHFWLQJ FKLOGUHQ LQ WKH '5&

200. The DRC's self-referral to the ICC in 2002 was a catalyst for domestic accountability
efforts.³⁶¹ 7KH ÄUVW LQYHVWLJDWLRQV DQG SURVHFHWLRQV SUHGRPLQDQWO\ LQ UHVSFW RI
FULPHV LQYROYL³⁶² began in 2005 but were reportedly weak owing 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 actors.

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
upwards.³⁶⁴

202. Child victims in the DRC face both attitudinal and structural barriers to accountability.
\$WWLWXGLQDOO\ LQ UHVSFW RI UHFUXLWPHQW FULPHV VSHFLÄFDOO\ WKHVH LQFOXGH DSHUEHSWLRQ
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 UHVSFW RI WKH RWKHU YLRODWLRQV FRPPLWWHG GXULQJ WKH UHFUXLWPHQW SURFHV. H J
WRUWXUH RWKHU LQKXPDQH DFWV³⁶⁵ VH[XDO YLROHQFH RU HQVODYHPHQW

203. \$W WKH VWUXFWXUDO OHYHO WKHUH LV D ODFN RI H[SHUWL VH IURP DOO WKH GLIHHQV DFWLYV
GRFXPHQDWLRQ 1*2V SURVHFHWLUV DQG MXGJHV

7KHUH KDV EHHQ D ORW RI DWWHQWLRQ IURP GRQRUV IRU > @ FRQÁLFW UHODWLRQV
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 KAVmucasey ZKZRN IRQ FDVHV OLNH

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
own solution on the spot and ad hoc DQG LW LV QRW JHQHUDOLVHG \$QG
would say that, in general, the Congolese system is not up to the task of
investigating and prosecuting crimes against children.

204. FROODERUDWLRQDO FKDOOHQJHV gathered by clinicians at Panzi hospital were not complete and accurate
information, in light of the very young age of some of the victims and survivors, and
ensuring their safety and security – as well as that of their families, who were afraid
of retaliatory violence.³⁶⁷

2YHUFRPLQJ EDUULHUV D WKUHH SURQJ

Training

205. 3+5 HVWDEOLVKHG D SURJUDPPH RQ 6H[XDO 9LROHQFH LQ
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
professionals, the programme also seeks to build trust, and to GHYORS PXOWL VHFW
FROODERUDWLRQ in the provision of medical care and services for victims and survivors,
and in the pursuit of accountability.³⁶⁸

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,
developed with the assistance of PHR, which was based on international best practice
and adapted to the local context. The documentation process included interviewing
the child survivors, a process which was overseen by an expert sexual violence
clinician brought in by PHR.³⁶⁹

207. The forensic evidence gathered by clinicians at Panzi hospital was subsequently
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-
year period, were not isolated, but formed part of a broader systematic campaign.

Multi-sectoral collaboration and mentoring

208. In addition to effective documentation, the H[LVWHQFH RI D QHWZRUN RI HQJD
between medical actors and local police PDGH FROODERUDWLRQ DQG LQIRUP

359 , QW YLHZ ZLWK .DUHQ 1DLPHU 0DUFK , QWHUYLHZ ZLWK QLGLOQLHOH 3HULVVL)HEUXDU\ 2+&+5 ¶
/LWLJDWLRQ IRU VH[XDO DQG JHQGHU EDVHG YLROHQFH /HVVRQV OHDUQH :RUNVRS UHSRUW', 2019, p. 10; /DQF 367
note 356.
360 OHCHR, 6WUDWHJLF /LWLJDWLRQ IRU VH[XDO DQG JHQGHU EDVHG YLROHQFH /HVVRQV OHDUQH :RUNVRS UHSRUW 2019, p. 6.
361 Interview with Daniele Perissi, 28 February 2020.
362 \$FRUGLQJ WR 75, \$/ , QWHUQDWLRQDO LQYHVWLJDWLRQV DQG SURVHFHWLRQV ODUJHO\ IRFXVHG RQ WKH NLQGHU
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 also 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.
367 , QW YLHZ ZLWK .DUHQ 1DLPHU 0DUFK , QWHUYLHZ ZLWK QLGLOQLHOH 3HULVVL)HEUXDU\ 2+&+5 ¶
368 , QW YLHZ ZLWK .DUHQ 1DLPHU 0DUFK , QWHUYLHZ ZLWK QLGLOQLHOH 3HULVVL)HEUXDU\ 2+&+5 ¶
369 , QW YLHZ ZLWK .DUHQ 1DLPHU 0DUFK , QWHUYLHZ ZLWK QLGLOQLHOH 3HULVVL)HEUXDU\ 2+&+5 ¶
370 , QW YLHZ ZLWK .DUHQ 1DLPHU 0DUFK , QWHUYLHZ ZLWK QLGLOQLHOH 3HULVVL)HEUXDU\ 2+&+5 ¶

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 case³⁷¹:

209. In 2014, PHR mobilised a multidisciplinary task force which included clinicians, ODZ\HUV SROLFH RIÄFHUV SURVHFWRUV MXGJHV FRPPXQLW\ DFWLYLVWV IURP 1*2V DQG 02186&2 WKH 81 2UJDQLVDW&RQQ6WDELOLVDWLRQ 0LVVLRQ LQ '5 WKH WDVNIRUFH ZDV MRLQHG E\ 75,\$/ ,QWHUQDWLRQDO D 6ZLVV EDVHG OHJDO 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 advocacy³⁷²

210. \$FFRUGLQJ WR 75,\$/ ,QWHUQDWLRQDO ´7KH PXOWLGLVFLSOLQDU\ H[SHUWL VH WKDW LV RIIHUG 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 WKH VRPHWLPHV VHOÄVKQHV RI WKHLU RZQ DJHQGDV DQG WU\ WR SXW WKHLU H[SHUWL VH WKH disposal of the whole system [...] that was one key ingredient³⁷³.

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 LQVXIÄFLHQW

7KH PHQWRULQJ DQG ZRUNLQJ WRJHWKHU ZLWK H[SHUWV RQ VSHFLÄF 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 GRN\CHAVE 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. 0H EHLQJ LQ *HQHYD ZLOO QRW PDNH WKH GLIIHUHQFH 0\ FROOHDJXH EHLQJ WKHUH DQG EHLQJ DOVR &RQJROHVH ODZ\HUV KXPdq ULJKWV defenders, that is what makes the difference³⁷⁴ (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 phase³⁷⁵:

213. \$QRWKHU FULWLFDO DVSHFW ZDV WKH GHHS HQJDJHPHQW EHWZHHQ WKH IDPLOLHV children and the wider community, and the legal and medical professionals. They

371 ,QWYLHZ ZLWK .DUHQ 1DLPHU 0DUFK /DQFHW 17KH FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ· .DUHQ 1DLPHU 0XULHO 9ROSHOOR 0XNZHJH 9RO -XQH

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.

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

Pre-recorded video interviews by paediatric forensic experts

214. Investigators and prosecutors working on the case did not have expertise on how to interview child victims and witnesses and did not initially consider that this was QHFHVVDU\ ´7KHVH SROLFHPHQ ZDQWHG WR LQWHUURJDW D GXOWV EHFDXVH WKH\ GRQ·W 75,\$/ ,QWHUQDWLRQDO RQZDV to persuade them that specialist psychologists should be brought in to assist with the HYLGHQFH FROOHFWLRQ

It was challenging to have the national system accept that and go along ZLWK WKDW \$QG WKDW ZDV SRVVLEOH RQO\ EHFDXVH ZH relationship with them. We were implanted in the country, we wouldn't just come from some other place and say “we have the solution”.

215. ,Q´HFHPEHU 3+5 3DQJL +RVSLWDO \$FFRUGLQJ WR 75,\$/ ,QWHUQDW 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 @ORFDO 3DQJL SV\FKRORJLVW \$FORVH RQZDV 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 were followed E\ D SK\VLFD . Etica Procedures 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\ GLIÄFXOW IRU WKH questioned by police³⁷⁹

The interviews were conducted in a safe location by a specialist paediatric forensic psychologist, and a local Panzi psychologist

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 victims³⁸⁰. In other words, it was not used as evidence of

376 ,QWYLHZ ZLWK .DUHQ 1DLPHU 6WUDFWHJLF /L2W·V QHFHVVDU\ WKDW WKH GLVFXVVLHQ ZLWK D SV\FK ODQJXDJH VRPH DGMHFWLYHV WKDW DOORZHG WKH SROLFH DQG DOORZHG D PLOLWLD EHFDXVH WKHUH ZDV WKH UHFUXUHQW LPDJH RI UHG VKLUWV DQG WKHUH ZDV WKH VSHFLÄF XVH RI ODQJXDJH RI FHUWDLQ ZRUGV WKDW OLQN ZLWKFUDIWK WKDW WKH ORFDO H[SHUWV NQHZ ZDV UHODWHG WR WKLV PLOL FRXOGQ·W UHDOO\ UHFRJQLVH RU LGHQWLI\ WKH LQGLYLGXDO SHUSHWUDWUW

377 Interview with Daniele Perissi, 28 February 2020.

378 Interview with Daniele Perissi, 28 February 2020.

379 ,QWYLHZ ZLWK 'DQLHOH 3HULVVL)HEUXDU\ ,QWHUQDWLRQDO RQZDV 79 DOOR .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ· .DUHQ 1DLPHU 0XULHO 9ROSHOOR 6RPH RI WKHP LQ WKH GLVFXVVLHQ ZLWK D SV\FK ODQJXDJH VRPH DGMHFWLYHV WKDW DOORZHG WKH SROLFH DQG DOORZHG D PLOLWLD EHFDXVH WKHUH ZDV WKH UHFUXUHQW LPDJH RI UHG VKLUWV DQG WKHUH ZDV WKH VSHFLÄF XVH RI ODQJXDJH RI FHUWDLQ ZRUGV WKDW OLQN ZLWKFUDIWK WKDW WKH ORFDO H[SHUWV NQHZ ZDV UHODWHG WR WKLV PLOL FRXOGQ·W UHDOO\ UHFRJQLVH RU LGHQWLI\ WKH LQGLYLGXDO SHUSHWUDWUW

380 Interview with Daniele Perissi, 28 February 2020.

the acts or conduct of the accused, as the general rule is that there is a right to cross-examination in respect of evidence relied on to establish the criminal responsibility of an accused³⁸¹ : KH WKHU SULRU UHFRUGHG WHVWLPRQ\ ZLOO EH DGPLVVLEOH LQ D JLYHQ FDVH DVXUH WKDW YLFWLPV DQG WKHLU IDPLOLHV UHPDLQ FHQWURXJK DQ HIIHFWLYH RXWUHDFK SURJUDPPH DQG WKHLU WHFKQRORJ\ obtained at every stage;

, Q DGGLWLRQ VRPH RI WKH DGXOW ZLWQHVVHV IDPLO\ PHPEHUV ZHUH DOORZHG WR JLYH HYHWHQ FKLOGLQJ RU SODWLFDO Fab and Coordinate RQ FDUHED advocacy RQ FDVH advocacy to draw attention and elicit sustained funding to support SURWHFW WKHLU LGHQWLWLHV H J IXOO\ YHLOHG EHKLQG VFUHHQ ZDOOV DQG XVLEOH accountancy for DRC's girls children; WHFKQRORJ\

Lessons learned

217. The Kavumu FDVH LOOXVWUDWHV WKH CHALLENGES AND OPPORTUNITIES THAT THE LOCAL, NATIONAL AND INTERNATIONAL STAKEHOLDERS, AND THE ATTENTION FROM INTERNATIONAL MEDIA, WERE CRUCIAL DETERMINANTS OF THE SUCCESSFUL PROSECUTION OF THE CASE. 75, \$/·V DVVHVVP HQW is that sustainable funding for international organisations involved in the process is also vital, in order to replicate and streamline the Kavumu DSSURDFK ‘\$V LW VWDQGV now, [the systematisation of sharing expertise cannot be 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

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 H J LQ UHVSFW 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 QG WKH & HQWUDO \$ULOQHU KAVUMU MODEL F RQ KRZ WR EHVW and strengthen the capacity of relevant actors, having regard to the rules of evidence DQG VRFLR FXOWXUDO FRQWH[W]³⁸⁶ RI WKRVH SDUWLFXODU MXULVGLFWLRQV

219. The Kavumu FDVH RIIHUV WKH IROORZLQJ OHVVRQV

- 'HYHORS PXOWLGLVFLSOLQDU\ SDUWQHUVKLSV ZLWK FRPSOHPHQW DU\ H[SHUWLVH to address WKH VSHFLÄF QHHGV DQG ULJKWV RI FKLOG YLFWLPV LQFOXGLQJ EXW QRW OLPLWHG WR YLFWLPV RI sexual violence;

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

381 6HH HWL\$OH 5RPH 6WDWXWH DQG 5XOH , & 5XOHV RI 3URFHGXUH DQG (YLGHFH

382 Interview with Daniele Perissi, 28 February 2020; DQFPHWK FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. .DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9RO -XQH

383 /DQFPHWK FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. .DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9RO -XQH

384 /DQFPHWK FDVH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. .DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9RO -XQH

385 Interview with Daniele Perissi, 28 February 2020.

386 , QW YLHZ ZLWK .DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH RI .DYXPX D PRGHO RI PHGLFROHJDO FROODERUDWLRQ. .DUHQ 1DLPHU 0XULHO 9ROSHOOLHU 'HQLV 0XNZHJH 9RO -XQH



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 XC 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 VSHFLÄF VHWV I DQG VH[XDO DQG JHQQHU 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. 7KLV 5HVHDUFK 3DSHU KDV H[DPLQHG WKH DWWLWXGLQDO that prevent or slow progress in achieving accountability for crimes and violations DIIHFWLQJ FKLOGUHQ LQ FRQÁLFW 0DQ\ RI WKHVKH DUH PX E\ SHUVLVWLQJ SRZHU G\QDPLFV LQÁXHQLQJ 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 HIAFLHQWO\ LQFOXGH FKLOG PHFKDQLVPV \$PLG VORZ SURJUHVV LW DSSHDUV WKDW WH 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

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 expertise-sharing 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 States

- 387 , Q DUFXODWLQJ WKLW UHFRPPHQGDWLQJ WKLW 5HVHUFK 3DSHU GUDZV IURP WKH ZRUN RI WKH 2[IRUG 8QLYH
\$QFKRULQJ \$FFRXQWDELOLW\ IRU ODVW \$WURFLWLHV D SURMHFW WR DGYLW RQ WKH SHUPDQHFW VXSSRUW C
international investigative mandates

c) **Establish a Domestic Fair Trial and Accountability Mechanism** to investigate and document child rights violations and crimes affecting children, including through secondments and loans to judicial and non-judicial accountability mechanisms;

d) **Establish a Domestic Fair Trial and Accountability Mechanism** in the investigation and documentation of child rights violations and crimes affecting children, including through secondments and loans to judicial and non-judicial accountability mechanisms;

e) **Establish a Domestic Fair Trial and Accountability Mechanism** to investigate and document child rights violations, and act to ensure domestic accountability for child rights violations, at all times ensuring that all internationally recognised fair trial rights are respected;

f) **Ratify the Convention on the Rights of the Child, the Optional Protocol on the Convention on the Rights of the Child on a Communication Procedure, the Convention on the Rights of the Child on Child Protection, the Convention on the Rights of the Child on Child Prostitution and Child Pornography, and the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure** as measures to improve accountability for child rights under domestic and international human rights law.

- Clearly prioritise 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;
- Strengthen the investigation and documentation of violations and crimes affecting children; and
- Improve the investigation and documentation of violations and crimes affecting children, including through oral presentations, on mandates' progress in the investigation and documentation of violations and crimes affecting children.

- c) In non-judicial accountability mechanisms ensure that staff have the necessary capacity in international human rights and criminal law;

D VSHFLÅF XQLW LQ WKH JHQHUDO GRÅFH VWHFHVXHG RU DV D 6SHFLDO \$

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;

- e) 8QGHUVFRUH WKDW WKH , &&·V 3ROLF\ RQ &KLOGUHQ ZKHUH UHOHYDQW FDQ DQG VKRXOG 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 DFFRPSDQHG E\ RSHUDWLRQDO JXLGHOLQHV imposing 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 as 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 dedicated local points to secure periodic meetings, foster exchange of knowledge and best practices between in-house experts, 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, with the constraints UV DQG HQWLWLHV imposed upon the latter by their own mandates.

- c) Partner with States on ensuring that UN entities empowered to establish accountability mechanisms H[SOLFLWO\ SULRULWLHV WKH LQYHVWLJ documentation of violations and crimes affecting children in their mandate and legal frameworks;
- d) 6XSSRUW PHFKDQLVPV· RXWUHDFK VWUDWHJLHV so that their are understood at the local level.

That HQWLWLHV ZKLFK VXSSRUW DFFRXQWDELOLW\ PHFKDQLVPV WKURXJK WKH SURYLVLHQ RI VWDII VXFK DV 2+&+5 81 :RPHQ DQG -XVWLFH 5DSLJ 5HVSRQVH

- a) &RQLQXH WR DFWLYHO\ VHHN IXQGLQJ DQG VXSSRUW WR HQDEOH WKH EXLOGHQ RI D URVWHU RI LQGLYLGXDOV DQG VWDII ZLWK VSHFLÅF H[SHUWLHV 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) \$FWLYHO\ VHHN RUHOHYDQW H[SHUWLHV to the roster
- c) 'HYHORS RU DGRSW LQWHUQDO FKLOG FRPSHWHQW VWDQGDUG RSHUDWLQJ SURFHGXUHV PHWKRGV DQG RSHUDWLRQDO JXLGHOLQHV WKDW UHÁFW EHVW SUDFWLFHV for the investigation and documentation of violations and crimes affecting children;
- d) 'HYHORS NQRZOHGJH VKDULQJ FKDQQHOV H[SHUWLHV DQG LQ WKH FDVH RI OHCHR, between non-judicial accountability mechanisms for which OHCHR staff VHUYH DV WKH 6HFUHDULDW

That QRQ JRYHUQPHQDO DQG FLYLO VRFLHW\ RUJDQLVDWLRQV

- a) 6XSSRUW DGYRFD\ HIIRUW IRU DQG DGYRFDWH ZLWK 6WDWHV IRU VXVWDLQDEOH funding streams for the building and provision of expertise in the investigation DQG GRFXPHQDWLRQ RI FRQÁLFW UHODWHG YLRODWLRQV DQG FULPHV DIIHFWLQJ FKLOGUHQ including through expert rosters;
- b) &RQLVWHQWO\ UDLVH WKH QHGHVWUHQW WKHQ DFFRXQWDELOLW\ for violations and crimes affecting children in political and diplomatic fora, including but not limited to SUHVHQDWLRQV 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 ÀQGLQ
DQG LQWHUQDWLRQDO FULPLQDO FRXUWV DQG WULEXQDO\
- the documentation, investigation and indictment of violations and crimes affecting
children.

PART A. THE UND HOME MECHANISMS

7UDGLWLRQDO IDFW ÀQGLQJ ERGLHV

2. 81 ad hoc mechanisms can play a key role in establishing an accurate record of the facts and recognising and documenting the harm suffered by victims. In 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 proceedings⁸⁹. Increasingly, they are also directed by mandating bodies to identify suspected perpetrators and recommend measures to ensure accountability⁹⁰ and/or to evaluate transitional justice initiatives in the country under investigation.⁹¹
3. This section focuses on the work of the Independent International Commission of Inquiry on Human Rights in South Sudan.
- of these mandates has attempted to investigate and document violations and crimes
- efforts have been limited⁸⁹³

388 See Catherine Harwood, '+XPDQ 5LJKWV LQ)DQF\ 'UHV" 7KH 8VH RI ,QWHUQDWLRQDO &UL
&RXQFLO &RPP\VLVROV RI QTXLU\ LQ 3XUYXLW RI \$FWRXQWDELQ\', *Grotius Centre*

389 OHCHR, <RPPLVLRQV.RI.QTXLU.DQG.DFW.LQGLQJ.OLVLRQV.RQ.QWHUQDWLRQI>
[Guidance and Practice](#)', pp. 62-63.

390 (J ,QGHSHEGGLWLRQDO &RPPLVLRQ RI ,QTXLU\ RQ WKH 6\ULDQ \$UDE 5HSXEODU
overview, see note 142 pp.59-76.

391 (J & RPPLVVL 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
WKURXXJK WKH 81 AHOG PLVVLRQ RQ WKH JURXQG DV RSRVRHG WR YLD LQGHSH
The three mechanisms discussed here have been selected because they all have received the UHVV mandate
"to identify suspected perpetrators and recommend measures to ensure accountability". In other words, they have
EHHG GLUHFWO\ DIHFWHG 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 H VWDEOLVKHG 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 YLROHQFH 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 VSHFLÀF VXE VHFWRUQV RQ FKLOGUHQ RI WKH SHULRGLF UHSRUWV FRQWDLQ VHFWRUQV GRFXPHQLQJ WKH LPSDFW RI WKH FRQÁLFW RQ FKLOGUHQ LQFOXGLQJ WKH violations, as well as the detention of children associated with ISIL and the impact of siege warfare on pregnant women and children.

6. \$ UHSRUW SXEOLVKHG WKH QKDUDVHG WKH GUHDPV RI P\ FKLOGUHQ IRFXVHV H[FOXVLYHO\ RQ WKH LPSDFW RI WKH FRQÁLFW RQ FKLOGUHQ EHWZHHQ DQG VWDUW RI WKH FRQÁLFW DV GRFXPHQWHG E\ WKH &RPPLVVLRQ DQG SUHVHQWV ÁGGLQJV 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 PXQLWLRLQV DQG FKHPLFDO ZHDSRQV \$ UDSLR in large-scale aerial and ground campaigns damaged key civilian infrastructure, including [schools](#) and [hospitals](#) UHVXOWLQJ LQ KLJK QXPEHUV RI FKLOG FDXDOWLHV \$QRWKHU GHYDVWDWLQJ WDFWLF ZDV WKH XVH RI VLHHJ ZDUIDUH E\ PRVW SDUWLHV WR WKH FRQÁLFW 7RZQV and villages were besieged, accompanied by near-constant shelling and aerial bombardment, causing scores of civilian casualties, including children. Such tactics SUHYHQWHG WKH ÁRZ RI IRRG DQG PHGLFLQH LQWR DIIHFWHG DUHDV ,QVWDQFHV RI FKLOGUHQ DYING from malnutrition, dehydration or other preventable deaths linked to the [denial of humanitarian assistance](#) were also documented.³⁹⁷

394 81 +XPDQ 5LJKWV &RXQFLO \$XJXVW +XPDQ 5LJKWV &RXQFLO 2012; Human Rights Council, [S +5 & 5\(6](#) , 17 October 2012; Human Rights Council, [S +5 & 5\(6](#) , 8

395 Human Rights Council, [Resolution S-17/1](#) \$XJXVW SDUD +XPDQ 5LJKWV &RXQFLO -XQH +XPDQ 5LJKWV &RXQFLO October 2012, para. 4; Human Rights Council, [S +5 & RES/31/17](#) \$SULO SDUD

396 [KWWSV_ZZZ_RKFU_RUJ_HQ_KUERGHLV_KUF_LLFLV\ULD_SDJHV_LQGHSHQGHQWLQWHUQDWLRQDOFRPPLVVLRQ_DVS](#) FKLOGUHQ V ULJKWV LQ WKH 6\ULDQ \$UDE 5405 Human Rights Council, [7KH\ KDYH HUDVHG WKH GUHDPV RI P\ FKLOGUHQ](#) FKLOGUHQ V ULJKWV LQ WKH 6\ULDQ \$UDE

397 Human Rights Council, [7KH\ KDYH HUDVHG WKH GUHDPV RI P\ FKLOGUHQ](#) paras. 21-30.

South Sudan

7. The South Sudan Commission was established by the Human Rights Council on 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 appropriate.³⁹⁸ 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.³⁹⁹ The resolutions delineating the VFRSH RI WKH &RPPLVVLRQ V PDQGDWH VSHFLÀFDQ\ FRQFLO human rights law and international humanitarian law against children, including the recruitment and use of children and attacks on schools.⁴⁰⁰

8. The South Sudan Commission has, to date, issued four periodic reports, which FRQWDLQ OLPLWHG ÁGGLQJ WKH violations documented by the Commission is the [recruitment and use of children](#).⁴⁰¹ \$ V RI -XO\ DSSUR[LPDWHQ 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 children were used as cooks, guards and couriers, others actively participated in hostilities. Children were recruited through abductions, recruitment drives and the extortion of their family members; in other instances, they ‘voluntarily’ joined armed JURXSV GXH WR ODFN RI ÁQDQFLDQ\ The Commission has also reported on [VH\[XDO DQG JHQGHU-based violence](#); [killing and maiming](#); attacks on [education](#); and [IRUFLEOH GLVSODFHPHQW](#)⁴⁰³

Myanmar

9. The Myanmar FFM was established by the Human Rights Council in March 2017, LQWHUADOLSD the 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 investigating and documenting violations and crimes against children, however it does “encourage” the Government of Myanmar to take measures to address discrimination and prejudice against children.⁴⁰⁵

10. The Myanmar FFM produced two thematic reports [SH\[XDO DQG JHQGHU EDVHG YL](#) [GLOFHH](#) RI FKLOGUHQ

398 Human Rights Council, [S +5 & 5\(6](#) \$SULO ,Q LWV ÁUVW UHSRUW WR WKH +5 & WKH HPSKDVLVHG WKDW LWV RULJLQDO PDQGDWH GLG QRW H[WHQG WR FRQGXFWLQJ monitor and report; accordingly, the methodology adopted was based on OHCHR and international standards for KXPdq ULJKWV PRQLWRULQJ \$ +5 & 5(6 5LJKWV &RXQFLOSDUD

399 Human Rights Council, [S +5 & 5\(6](#) \$SULO +XPDQ 5LJKWV &RXQFLOSDUD 2018; Human Rights Council, [S +5 & 5\(6](#) \$SULO ,Q LWV ÁUVW UHSRUW WKH &RPPLV The Commission was initially mandated to monitor and report on the situation of human rights in South Sudan

400 Human Rights Council, [S +5 & 5\(6](#) \$SULO SDUDV +XPDQ 5LJKWV &RXQFLO \$SULO SDUDV +XPDQ 5LJKWV &RXQFLO SDUDV +XPDQ 5LJKWV Council, [S +5 & 5\(6](#) \$SULO SDUDV

401 Human Rights Council, Commission on Human Rights in South Sudan, [Int SV_ZZZ_RKFU_RUJ_\(1_+5%RGLHV_+5 & CoHSouthSudan/Pages/Index.aspx](#)

402 Human Rights Council, Report of the Commission on Human Rights in South Sudan, [S +5 &](#) -DQXDU\ 2020, paras. 45-57.

403 Human Rights Council, Report of the Commission on Human Rights in South Sudan, [S +5 &](#) , 6 March 2017, paras. 42-44; ‘Report of the Commission on Human Rights in South Sudan’, [S +5 &](#) , 13 March 2018, paras. 28-33; ‘Report of the Commission on Human Rights in South Sudan’, [S +5 &](#) , 12 March 2019, paras. 40, 45, 48-53.

404 Human Rights Council, [S +5 & 5\(6](#) , 24 March 2017.

405 Human Rights Council, [S +5 & 5\(6](#) , 24 March 2017, para. 14.

LQ 0\DQPDU DQG WKH JHQQGHUHG LPSDFW⁶ and LWV HWKQLF FRQÁLFWV (FRQRPLF ,QWHUHVWV RI WKH 0\DQPDU⁷ DuwePasowDU\ 6HSWHPEHU periodic reports between 2017 and 2019⁸ ,Q LWV \$XJXVW UHSRUW WKH))0 indicated that it “strictly avoided interviewing children”, unless it could do so with the appropriate safeguards in place⁹. 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, including [killing and maiming, recruitment and use, WRUWXUH DUELWUDU\ GHW and other crimes](#) and [fair EOH GLVSODFHPPHQW access](#).⁴⁰ The most detailed documentation of crimes against children is in the thematic report on [VH\[XDO DQG JHQQGHUHG DFWKÀQ GHWHUHL during the 2017 military ‘clearance’ operations](#), Rohingya 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’⁴¹. 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.⁴²

7KH QHZ ¶DFFRXQWDELOLW\ IRFXVHG· PHFKDQLVPV

11. 7KUHH RI WKH PRVW UHFHQQGHUHG ERGLHV WKH [International Impunity](#) ,QGHSHQGHQW to assist the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the 6\ULDQ \$UDE 5HSXEOLF VLQ [United Nations Investigative Team](#) WKH [WR 3URPRWH \\$FFRXQWDELOLW\ IRU 81,7\\$V ZRPPKWWHG E\ 'D·HVK ,6,/ ZRUNV LQ ,UDQGHSHQGHQW ,QYHVWLJDWLYH OHFVKDQLVP IRU 0\DQPDU KDYH DQ H\[SUHVV QH\[XV WR FULPLQDO DFFRXQWDELOLW\ \\$V ZHOO DV LGHQWL\LQJ ZLWK SHFWHG IDFW ÁQGLQJ ERG\ DQG LQ SDUWLF WKH LQIRUPDWLRQ FROOHFWHG E\ WKH IDFW ÁQGLQJ PLV](#) perpetrators, they are mandated to collect, preserve and analyse relevant information DQG HYLGHQFH RI LQWHUQDWLRQDO FULPHV DQG WR SUHSDUH FULPLQDO FDVH ÁOHV WGDW PD\ EH XVHG E\ GLIIHUHQW MXULVGLFWLRQV DV D EDVLV IRU SURVHFHWLRQV \$V D UHVXOW ZKHQ FROOHFWLQJ evidence, they are bound to apply more stringent standards of proof than traditional IDFW ÁQGLQJ ERGLHV

12. The IIM is mandated to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses LQ 6\ULD VLQFH 0DUFK DQG WR SUHSDUH ÁOHV LQ RUGHU WR IDFLOLWDWH DQG DQG FULPLQDWLRQV DJDLQW FRVLDUHQ RIRQGLQJ LV 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 ÁQGLQJ ERG\ WKH 6\ULD &RPPLVVLRQ DUH FRPSOHPHQWDU\ The IIM is expected to work in close collaboration with the Commission, and in particular to collect, consolidate and preserve evidence and information gathered by the Commission, where relevant⁵

13. 81,7\$' LV PDQGDWHG WR VXSSRUW GRPHVWLWLF HIIRUWV W by collecting, preserving, and storing evidence of acts that may amount to war FULPHV FULPHV DJDLQVW KXPDLW\ 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, pro-government militias or international forces⁵ 81,7\$'·V LQLWLDO LQYHVWLJDW SHU LWV VHFRQG SHULRGLF UHSRUW WR WKH 6HFXULW\ FRPPLWWHG E\ ,6,/ DJDLQVW WKH <DJLGL FRPPXQLW\ LQ crimes committed by ISIL in Mosul between 2014 and 2016, including crimes against children.⁴⁷

14. The IIMM is mandated to collect, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since DQG WR SUHSDUH ÁOHV IRFXVLQJ RQ WKH FULPLQDO 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 crimes”⁴⁸. 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.⁴⁹ Similarly to the IIM, the IIMM is expected to collaborate ZLWK SHFWHG IDFW ÁQGLQJ ERG\ DQG LQ SDUWLF WKH LQIRUPDWLRQ FROOHFWHG E\ WKH IDFW ÁQGLQJ PLV

15. It is not possible at this stage to meaningfully assess how the newer mechanisms have addressed crimes against children, given that they have only been operational for a few years⁵¹ DQG WGDW WKHLU LQYHVWLJDWLYH OHFVKDQLVP IRU 0\DQPDU KDYH DQ H[SUHVV QH[XV WR FULPLQDO DFFRXQWDELOLW\ \$V ZHOO DV LGHQWL\LQJ ZLWK SHFWHG IDFW ÁQGLQJ ERG\ DQG LQ SDUWLF WKH LQIRUPDWLRQ FROOHFWHG E\ WKHLU UHODWHG IDFW ÁQGLQJ ERGLHV ,UDQGHSHQGHQW ,QYHVWLJDWLYH OHFVKDQLVP IRU 0\DQPDU KDYH DQ H[SUHVV QH[XV WR FULPLQDO DFFRXQWDELOLW\ \$V ZHOO DV LGHQWL\LQJ ZLWK SHFWHG IDFW ÁQGLQJ ERG\ DQG LQ SDUWLF WKH LQIRUPDWLRQ FROOHFWHG E\ WKHLU UHODWHG IDFW ÁQGLQJ ERGLHV

16. The IIMM is expected to work in close collaboration with the Commission, and in particular to collect, consolidate and preserve evidence and information gathered by the Commission, where relevant⁵

416 81 6HFXULW 6 & REXQFLO , 22 September 2017.

417 \$WKLUG LQYHVWLJDWLRQ UHODWHV WR WKH PDVV NLOOLQJ RI XQDUPHG ,UDQGHSHQGHQW UHSRUW SDUD \$V RI 1RYHPEHU 81,7\$' KDG H[SDQGHG WK LQFOXGH FULPHV FRPPLWWHG DJDLQVW &KULVWLDO .DND·L 6KDEDN 6XQQ LUG UHSRUW RI WKH 6SHFLDO \$GYLVHU DQG +HDG RI WKH 8QLWHG IDWL Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, S/2019/878 1RYHPEHU SDUD

418 81 +XPDQ 5LJKW V+ & REXQFLO October 2018.

419 81 +XPDQ 5LJKW V+ & REXQFLO October 2018, para. 1.

420 81 +XPDQ 5LJKW V+ & REXQFLO 2FWREHU SDUD D 81 *HQHUDO \$VVHPEO ence of the Myanmar Mechanism \$ -DQXDU\ SDUDV D

421

422

406 Human Rights Council, \$ +5& &53 \$XJXVW

407 Human Rights Council, \$ +5& &53 , 16 September 2019.

408 Human Rights Council, \$ +5& &53 , 12 September 2018; \$ +5& &53 \$XJXVW

409 Human Rights Council, \$ +5& &53 \$XJXVW SDUD

410 See e.g Human Rights Council, \$ +5& &53 , 12 September 2018, paras. 39, 61, 63-64; 5& \$ gust 2019, paras 30, 57-62;

411 Human Rights Council, \$ +5& &53 , paras. 69-83.

412 Human Rights Council, \$ +5& &53 , paras. 154-167.

413 6HH IRU LQVWDQFH 81 \$HQHUDO \$VHQFHU SDUD

414 81 *HQHUDO \$VHQFHU -DQXDU\

415 81 *HQHUDO \$VHQFHU 'HFHPEHU 81 *HQHUDO \$VHPHQW -DQXDU\ SDUD SDUDV \$QQH SDUD

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 mandate.²³ These efforts are discussed in the body of the report EXW LQ EULHI VXPPDU\ LQFOXGH UHFUXLWLQJ \ 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.

17. 7R UHPHG\ DQ XUJHQW QHHG IRU DFFRXQWDELOLW\ LQ
ad hoc and hybrid tribunals have been set up to prosecute core international crimes
when domestic jurisdictions were unwilling or unable to do so. \$OWKR XJK WKHVH
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 justice.⁴²⁷

18. 7KH , QWHUQDWLRQDO & ULPLQDO &RXUW , && GLIIHUV LQ V
complementary to that of national courts.²⁸ This regime, which distinguishes the
court from ad hoc and hybrid tribunals, aims to encourage States to comply with their
primary responsibility to investigate and prosecute core international crimes.

19. This section will analyse, albeit not exhaustively, the approach of the International
 0LOLWDU\ 7ULEXQDO ,07 WKH ,QWHUQDWLRQDO 0LOLWDU
 WKH ,QWHUQDWLRQDO &ULPLQDO 7ULEXQDO IRU WKH IRUPH
 &ULPLQDO 7ULEXQDO IRU 5ZDQGD ,&75 WKH 6SHFLDO &R
 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 humanity.³²

22. 6FRUHV RI FKLOGUHQ ZHUH YLFWLPLVHG E\ \$[LV IRUFHV GX
they are not mentioned in the founding instruments of the IMT or the IMTFE nor are
FKLOG VSHFLÀF FULPHV L H FULPHV WKDW 438 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 population¹³⁴ 3URVHFXWRUV DW 1XUHEHUJ 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
regard and the Tribunal considered this evidence as part of the broader war crimes
DE 5HOXLE FULPHV DJDLQVW KXPDLW\ SHUSHWUDWHG DJDLQVW

H DUH &RQYHQWLRQ
LRQ IRU WKH
QHJD &RQYHQWLRQ
UHFNHG OHPEHUV
KH 7UHDWPHQW RI
&RQYHQWLRQ

428 The WCA is an independent body and is statutorily barred from exercising jurisdiction over a case *alia* if it is being
 LQYHVWJLDJWHG RU SURVHF\XWHG E\ D 6WDWH ZKLFK KDV MXULVGLFWLRQ RYHU
 RU XQDEOH WR JHQXLQHO\ FRQGXFW WKH LQYHVWJLDJWLQR RU SURVHF\XWLQR
 IXUWKHU DFWLQR E\ WKH &RXUW \$UWLFOH 5RPH 6WDWXWH *UDYLW\ W\XUQV
 LQFOXGLQJ ZKHWHKHU WKH FULPHV ZHUH ~~not~~ ^{See Policy Rule on Case Selection and}
[Prioritisation](#), September 2016.

D429 Informal Paper, WLCROT. [The principle of complementarity in practice](#), 2003, p. 3.

430 Interview with expert.

431 \$JUHHPHQW IRU WKH 3URVHFHWLRQ DQG 3XQLVKPHQW RI WKH 0DMRU :DU &ULPL
PHQW Charter of the International Military Tribunal \$XJXVW \$UW Charter of the International Military Tribunal for
the Far East at Tokyo - DQXDU\ \$UW

H 432 \$JUS\$UWHQW\$State\$ WKH 3URVHF\$XWLRQ DQG 3XQLVKPHQW RI WKH 0DMRU :DU &ULPL
&KDUWHU RI WKH ,QWHUQDWLRQDO 0LQDWU\ 7ULEXQDO &KDUWHU RI WKH ,QW
W4320FH\$UWHM\$QW IRU WKH 3URVHF\$XWLRQ DQG 3XQLVKPHQW RI WKH 0DMRU :DU &ULPL
WKH &KDUWHU RI WKH ,QWHUQDWLRQDO 0LQDWU\ 7ULEXQDO \$XJ 6WD
&ULPLRDO\$XQLVKPHQW RI 3HUVRQV *XLOW\ RI :DU &ULPH &ULPH \$JDLQV 3HDFH
&KDUWHU RI WKH ,QWHUQDWLRQDO 0LQDWU\ 7ULEXQDO \$XJ 6WD

GV DW 7RN\R -DQXDU\
434)RU DQ RYHUYLHZ 'International Child Protection' pp.82 al.

423 * HQUUDO Report of the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the

6\ULDQ \$UDE 5HSXEOLF\$VLQFH 0DUJFKXUD\ SDUD *HQHUDO \$VVHPEO\ Report of
WKH.QWHUQDWLRQDO.PSDUWLDO DQG.QGHSHQGHQW 0HEKDLVP WR \$VVLVW LQ WKH.QYHVWLJDWLQJ DQ
5HVSRQVLEOH IRU WKH 0RVW 6HULRXV &ULPHV XQGHU.QWHUQDWLRQDO /DZ &RPPLWWHG LQ WKH 6\ULDQ \$U
0DUFK \$ \$XJYV SDUD 2Q WKH UHFUXLPHQW RI FKLOGUHQ.V ULJKWV H[SHUW VHH 7H
5HIHUUQH DSSHQGHG DV DQ \$QH[W 8.1, part 12. HHUDO \$VVHPEO\

424 7KH PDHQQQLWLRQDO FRQYHQWLRQV WKDW LQFOXGH DQ H[SOLFWR REOLJDWLRQ IRU 6WDWHV WR SURVHFVWH DUH &RQYHQWLRQ
RQ WKH 3UH\HQWLRQ DQG 3XQLVKPHQW RI *HQRF LGH *HQRF LGH &RQYHQWLRQ \$UWLFOH 9, &RQYHQWLRQ IRU WKH
\$PHOLRUDWLRQ RI WKH &RGLWLRQ RI WKH :RXQGH DQG 6LFN LQ \$UPHG)RUFHV LQ WKH)LHG)LUVV *HQYD &RQYHQWLRQ
\$UWLFOH &RQYHQWLRQ IRU WKH \$PHOLRUDWLRQ RI WKH &RGLWLRQ RI :RXQGH 6LFN DQG 6KLSZUHFNHG 0HEHUV
RI \$UPHG)RUFHV DW 6HD 6HFRQG *HQYD &RQYHQWLRQ \$UWLFOH &RQYHQWLRQ 5HODWLYH WR WKH 7UHDWPHQW RI
3ULVRQHUV 7KLUG *HQYD &RQYHQWLRQ \$UWLFOH)RXUWK *HQYD &RQYHQWLRQ \$UWLFOH &RQYHQWLRQ
DJDLQVW 7RUWXUH DQG 2WKHU &UXHO ,QXPDU RU 'HJUDGLQJ 7UHDWPHQW RU 3XQLVKPHQW \$UWLFOH 428 The Code of Civil Procedure and
&RQYHQWLRQ IRU WKH 3URWHFWLRQ RI \$OO 3HUVRQV IURP (IRUFHG 'LVDSSHUHQDQFH \$UWLFOH LQYHVVLDJWHG RU

425 81 6HF~~XULW~~YLRXQQLHORM/DZ DQG 7UDQVLWLRQDO -XVWL~~SH~~also & RQ
81 6HF~~XULW~~6 & RQ QFLO -XO\ "Recalling 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; Stressing the need for alleged perpetrators of crimes against children in situations of
DUPHG FRQÁLFW WR EH EURXJKW WR MXVWLFW WKURXJK QDWLRQD
PHFKDQLVPV DQG PLIH FULPLQDO FRXUWV DQG WULEXQDOV LQ R

426 81 6HFXULW\ S/R&S82Q FLO0D\ 81 6HFXULW\ &RXQFLO1R YH B EHI

\$JUHHHPHQW EHWZHHQ WKH 8QLWHG 1DWLRQV DQG WKH *RYHUQPHQW R
Court for Sierra Leone - D Q X D U \

427 8SGDWHG 6WDWXWH RI WKH ,QWHUQDWLRQDO &ULPLQDO 7ULEXQDO IRU
of the International Criminal Tribunal for Rwanda - D Q X D U \ \$ U W Statute of the Special Court for Sierra

jurisdiction provisions. However, the applicability of this regime can be derived from other provisions of their

WKHLU YXOQHUDELWLW\ DQG DJH ZDV DQ DJJUDYDWLQJ IDFWRU D ÀQGLQJ ZKLF RQ DSSHDO \RXQJ DQG HOGHUO\ ZRPHQ QHHG VSHFLDO SURWHFWLRQ LQ RUGHU them from becoming easy targets⁵⁰ \$W WKH 7&753UQVHFXWRU 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 QRWHG WKDW .DPEDQGD KDG DFNQRZOHGJHG WKDW ‘KH IDLOHG LQ KLV GXW\ WR safety of the children and the population of Rwanda⁵¹”

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 WKH FULPLQDQ WUHQXODWRU VRKDYH H[SUHVVO\ DGGUHVVG FRQÁLFW UHODWHG WR FULPLQDQ SESL LQJ FKLOGUHQ ZDV HVWDEOLVKHG LQ -DQXDU\ IROORZLQJ D UHTXHVW E\ WKH *RYHUQPHQW /HRQH WR WKH 8QLWHG 1DWLRQV WR FUHDWH DQ LQGHSHQGHHQ VSHFLDO FRXUVH 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 WHUULWU\ RI 6LHUUD /HRQH VLQFH 1996.⁴⁵⁴

30. Children played a prominent role in the Sierra Leonean civil war, both as victims and SHUSHWUDWRUV \$OO DPHG JURXSV LQ 6LHUUD /HRQH SXUVXHG D VWUDWHJ\ RI 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 WUDLQH RIWHQ XQGHU WKH LQÁXHGFH RI GUXJV DQG DOFRKRO WR FRPPLW FU all, were subjected to a process of psychological and physical abuse which continually blurred the link between victims and perpetrators⁵

31. 7KH 6LHUUD /HRQHDQ FRQÁLFW ZDV WKH ÀUVW WLPH WKDW LQWHUQDWLRQDO FU
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

450 ICTY, 7KH 3URVHFxWURU Y .XQDUDý HW DO -XGJPHPS Chamber, 22 February 7
2001, paras. 864, 867, 874-875; -XGJPHPS SHDOV & KDPEHU -XQH SDUD VHH DOVR , & 75 The
3URVHFxWURU Y -HDQDOR\$N -XGJPHPS SHDOV & KDPEHU -XQH SDUD

452 The SCSJ is 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, & (D) DFKHO 6WGX\ \HDU 6WUDWHJLF 5HYLHZ &KLOGU 2009, p. 67. \$UPHG &RQÁLFW LQ D &KDQJLQJ :RUOG.

454 \$WLFS0414 of the Special Court for Sierra Leone 6&6/ 6WDWXWH 7KH &RXUW FORVHG LQ DIWHU ZKLFK

WKH 5HVLGXDO 6SHFLDO &RXUW IRU 6LHUUD /HRQH ZDV HVWODEO SVKHG WR RYHUVHH LWV FRQ

455 6LHUUD VHKRKHDTQG 5HFRQFLOLDWLRQ 5HSRUW)LQGLQJV SDUDV

456 Luc Côté '3URVHFXWLQJ &KLOG 5HODWHG &ULPHV DW WKH 6SHF, in *Open*
'LVFXVVLRQ RQ 7UDQVLWLQRQD -XVWLPH DQG &KLOGUHQ 81, &()

As to whether to indict former child soldiers was left to the decision of the Prosecutor, who made an early policy choice not to prosecute juveniles. In 2003, the Prosecutor 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 FRQWDLQH D QXPEHU RI SURYLVLRQV and generic international crimes affecting children, including the war crimes of R H QXSRPLQJ WKH enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities; outrages upon personal dignity; sexual violence and enslavement as crimes against humanity; and abusing girls under the DQG 14 or abducting girls for 'immoral purposes' under Sierra Leonean law. 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 8 Q L W H G) U R Q W Y L S B) H I H Q F H #61) B U P H G) & U F H V 5 H Y R O X W L R Q D U & R X Q F L G #62 as well as former Liberian president, Charles Taylor in each of these cases, counts relating to the recruitment and use of child soldiers were included.

34. 7KH LQGLFWPHQWV LVVXH LQ WKUHH RI WKH IRXU FDVHV RI 6 LQFURGHG FRXQWV RI UDSH DQG VH[XDO VODYHU\ as a crime against personal dignity as a war crime. These charges were largely based on evidence of sexual violence against civilian women and girls, and, to a lesser extent, on evidence of sexual violence against girl soldiers forcibly abducted by armed groups. 1\$FHHFHUJ WR D IRUPHU 6&6/ SURVHFXXWRU WKL V 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 IRWKHU LQKX I GHQWPHQW RI FLYLOLDQ ZRPHV with respect to the OV E\ WKH CDF case, the prosecution did not, however, include any sexual violence offences in

457 6HHWSLFOHV DQG 6&6/ 6WDWXWHSK&6DO3X&6LHFXWRUW62VAFH 1LOO 1RW
Children' 1RYHPEHU

458 6&6/ 7KH 21A FVHIF WARDEN UJLQJ WKH QDXJXUDO:RUOG 'D' \$JDLQVW &KLOG /DE
459 \$WIEOHV J E DQG 6&6/ 6WDWXWH

460 J L P H Y Q D Q I L I Q R W Q Q Q 7 Q W D W X W H
 460 L H O H D G H V R L R K H 58 Z H U H L Q L G L F W H G) R G D \ S D C N R H F X W D P % R F W D L H D V W D C
 6 H V D \ S D V H 1 R 6 L G L M E N T Q D I I E Q Q I I I I V D Q Q R Q 3 I U R V H E X W R I I Y Q I I I I

SCSL-03-07-1-Indictment, 0DUFK \$XJXVWLQH *EDR 3URV&FXMR Y6854 JXVWLQH *ED

461 KWWS ZZZ UVFO RUJ 58) KWPO

06PZ ZDV -XQH 6DPXH+LQJD 1RPDQ 3URVHFWRIURY 160800Z +LQJD 1RPDQ

462 7KUQHGDGHUV RI WKH \$)5& ZHUH LQGRFXWHG \$OM ZOOHED7DIED7ULPD &DVH 1R

Indictment 0DUFK ,EUDKLP %DJ\A .DPDOD 3URVHFXWRU Y 6DQWLJLH %R
Indictment 0DI DQG 6DQWLJLH %RUERU .DQX 3URVHFXWRU Y 6DQWLJLH %R
Indictment GHSWHDEHU \$IRYHWK BKOO 3DYQ BHPDD 3DY DQVR LOGLWE

6HSWHPEHU \$IRXUWK -RKQQ (3DXO .RURPD ZDV DOVR LQGLFW
 463 6LHUHQHQQZZZ UVFV RUJ \$)5& KWPO
 3URVHEUWHX 3KDUOHV *KRONL ZDROH 3DVH 1R

463 3URVHFHXWRU Y & KDUOHV *KDQNDI 7-DIGIT 2012 March 2012, Indictment
464 3URVHFHXWRU Y & KDUOHV *KDQNDI 7-DIGIT 2012 March 2012, par 8
071 10037 3URVHFHXWRU Y & KDUOHV *KDQNDI 7-DIGIT 2012 March 2012, par 8

871-1207; 3URVHF XW RU Y , SOH & DVED 100665-100665 PDCV DDO & KDPEHU , -XQH
 paras. 966-1188; 3URVHF XW RU Y , VVD & DVM D10R 6665-100665 PDCV DDO & KDPEHU ,
 6000 paras. 261, 650 and 656

465 E.g. 3URVHF~~X~~W~~R~~U Y &KDUOHV *KDQND\ 7D\ORU 7ULDO &KDPEHU -XGJPHQW SDUD

466 1LQBUJHQKQOQ 6ROGLHUV DQG WKH 3DUDPHWHUV RI ,QWHUQDWLWDO &ULPL
/DZ

046R Rosemary Clark [CH] XND 9LROHQFH DJDLQVW &KLOG 6ROGLHUV 7KH /LPLWV DQG 3RW
 ,QWHUQDWLRQDO -RXUQDO RI)HPLQLVW 3ROLWLFW 9IROXPH 1R

XVHG E\ WKH 6&6 KDV QRW VSHFLAFDOO\ KLJKOLJKWHG WKH LVVXH RI VH[XDO
HVVVP\@.YLFWLPV > @ ZHUH LGHQWLHG SUHGRPLQDQWO\ DV ¶FLYLOLDQV. ¶ZRP
SROGHUHV FRPEDWDQW RU PHPEHU RI DUPHG JURXS.”

the original indictments \$V GLVFXVVHG LQ 6HFWLRQ , , 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.

35.)LQDOO\ FKDUJHV ZHUH EURXJKW IRU WKH YHU\ ÀUVW WLPH LQ DQ LQWHUQDWLRQDO tribunal, in respect of the widespread and systematic abduction of civilian women DQG JLUOV DQG WKHLU IRUFLEOH TPDUULDJH. WR UHEHO ÀJKWHUV DQG VXEVTXHGW H[SRVW WKH WRXUW WKH ÀUVW WHUHQDOU Y 7KRPDV /XEDQJ enslavement, rape, forced labour and forced pregnancy. These crimes were charged LQ WKH \$)5& DQG 58) FDUHV DV D FULPH DJDLQVW KXPDLW\ XQGHU WKH UHVLGXDO LPSRUWDU\ of ‘other inhumane acts’⁴⁶⁹ D GHFLVLRQ ZKLFK ZDV DÌÀUPHG E\ WKH \$SSHDOV &KDPEHU

The International Criminal Court

36. This IRFXV RQ WKH UHFUXLWPHQW DQG XVH RI FKLOG VROGLHUV DQG RQ VH[XDO DQG JHQGHU EDVHG YLROHQFH KDV ODUJHO\ FRQWLQXHJ EHIRUH WKH ,&&.

37. The ICC was established in 2002 following the entry into force of the 1998 Rome 6WDWXWH ,W LV WKH ÀUVW DQG RQO\ SHUPDQHGW LQWHUQDWLRQDO FULPLQDO FRXUWLQDO subject-matter jurisdiction over war crimes, crimes against humanity and genocide, FRPPLWWHG RQ RU DIWHU -XO\ E\ D 6WDWH 3DUW\ RU LQ WKH WHUULWU\ RI D 3DUW; or on the territory of a State that has accepted the jurisdiction of the Court; RU ZKHUH VXFK FULPHV DUH UHIHUUHG WR WKH 3URVHFXWU E\ WKH 81 6HFXULW\ &RXQFLO DFWLQJ XQGHU &KDSWHU 5V, RI WKH 81 &KDSWHU KDV VXEMHFW matter jurisdiction over the crime of aggression, provided that certain conditions and SURFHGXUHV DUH VDWLVÀHG

38. ORVW FULPHV ZLWKLQ WKH VXEMHFW PDWHU MXULVGLFWLRQ RI WKH ,&& DIIHFW FKLOGUHQ 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 3URVHFXWU Y 6DP +LQJD 1RUPDQ [Decision on Prosecution Request to Leave to 37 \\$PHQG WKH](#), Trial Chamber II, May 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 3URVHFXWU Y \$OH[7DPED %ULPD dismissed this charge, on the grounds that the evidence presented was not capable of establishing a crime of forced marriage distinct 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 SDUDV 7KLV GHFLVLRQ ZDV RYHUWXUQHJ RQ DSSHDO WKH \$SSHDOV &KDPEHU KROGLQJ WKDW WKH SUDFWLFH 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 RVWUDFLV DWR RFRWRULF WLSOH QDREOH\W LFRQOHQW BQ, -XGJPHQW \$SSHDOV &KDPEHU)HEUXDU\ SDUDV

471 \$WLFOHV DQG 5RPH 6WDWXWH

472 \$WLFOHV ELV DQG ELV DQG WHU 5RPH 6WDWXWH 7KH 3URVHFXWU KDV WKH SRZHU WR LQLWLDWH D IRUPDORPHQV VWDWLWYHV IRU *HQGHU -XVWLH DQG WKH ,QWHUQDWLRQDO &HQWHU SXUVXDQW WR D 6WDWH 3DUW\ UHIHUUO RU D &KDSWHU 9,, UHIHUUO E\ WKH 81 6HFXULW\ &RXQFLO 7KH 3URVHFXWU FRQWUROV DQ IRUPDORPHQV VWDWLWYHV IRU *HQGHU -XVWLH DQG WKH ,QWHUQDWLRQDO &HQWHU FDVH LQ RQGHU EH DGPLVVLEOH XQGHU \$WLFOH 5RPH 6WDWXWH WKHUH DUH VXEVDQWLDO UHVRQV LQYHVWLJDQWV SURSULR PRWX subject to being granted prior authorisation by the Pre-Trial Chamber. In each FDVH LQ GHFLGLQJ ZKHWHU WR LQLWLDWH DQ LQYHVWLJDWLRQ WKH 3URVHFXWU LV UHTXLUHG WR KDYH D 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 \$WLFOH 5RPH 6WDWXWH WKHUH DUH VXEVDQWLDO UHVRQV LQYHVWLJDWLRQ ZRXOG QRW VHU\H WKH LQWHUHVW RI MXVWLH \$WLFOH DQG 5RPH 6WDWXWH

473 7KRPH 6WDWXWH H[FOXGHV FULPLQDO UHVSQVLELOLW\ RYHU PLQRUV LQ FRQWUDVW WR WKH 6&6/ 6WDWXWH 6WDWXWH

474 \$WLFOHV E [[YL DQG H YLL 5RPH 6WDWXWH

as a constitutive act of genocide⁷⁵ FKLOG WUDIAFNLQJ DV D IRUP RI WKH humanity of enslavement⁷⁶ 1XPHURXV RWKHUV DUH JHQHULF LQWHUQDWLRQDO can disproportionately affect children, including torture and torture-related crimes; attacks against buildings dedicated to education and healthcare; persecution; and sexual and gender-based crimes⁷⁷.

The [United Nations Use of child soldiers](#) was charged in the majority of the arrest warrants and indictments issued during Prosecutor Luis Moreno Ocampo’s tenure 7KH WRXUW WKH ÀUVW WHUHQDOU Y 7KRPDV /XEDQJ opened in 2009 and was based exclusively on three counts of war crimes for 15 or using them to participate in hostilities⁷⁹ In its 2012 landmark ruling, a Trial Chamber found the accused guilty of all three counts and sentenced him to 14 years of imprisonment⁴⁸⁰ 2Q 'HFHPEHU WKH \$SSHDOV &KDPEHU FRQ and sentence⁴⁸¹ 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 organisations in light of the widespread allegations that Lubanga bore responsibility for many other ICC crimes against children in Ituri, including crimes of sexual violence against the child soldiers themselves. Further, the weaknesses of the protection framework for victims and witnesses, and the use by the Prosecution of intermediaries, drew criticisms. Evidentiary challenges pertaining to allegations of coaching of witnesses/victims by intermediaries were successfully brought by the Defence and resulted in the Trial Chamber disregarding in its judgment documentary evidence of child soldiers called by the Prosecution on the basis of its unreliability.

40. ,Q DGGLWLRQ WR FULPHV RI UHFUXLWPHQW DQG XVH WKH WHUHQDOU LQYHVWLJDWLRQ DQG FKDUJH VH[XDO DQG JHQGHU DJDLQVW JLUOV LQ D QXPEHU FRQWLQJHWH WHUHQDOU ZRQGLUHV were authorised in 7KH 3URVHFXWU Y \$KPDG 0XKDPDG +D 0XKDPDG \$OL \$EG \$O 5DKPDQ 1\$OL .XVKD\E in respect of all

475 \$WLFOH H 5RPH 6WDWXWH \$WLFOH G 5RPH 6WDWXWH LPSRVLWLRQ RI PH ELUWKV ZLWK WKH JURXS

476 \$WLFOH F 5RPH 6WDWXWH

477 2ÌÀF RIRWKH FKLOGUHQ 1RYHPEHU SS

478 'U \$OLVRQ & LQYHVWLJDWLRQ LQ WUDQVLWLRQDO SXVWLH SHUHFHQW WKH WHUHQDOU LQYHVWLJDWLRQ :DUUDQW RI \$UHVW IRU -RVHSK RQ LVVXHJ RQ -XO\ DVH DV DPHQ 1R ,&& 3UH 7ULDO &KDPEHU , 6HSWHPEHU :DUUDQW RI \$U ,&& 3UH 7ULDO &KDPEHU , -XO\ :DUUDQW RI , \$UHVW 3UH 7ULDO &KDPEHU , -XO\ LQ 3URVHFXWU WHUHQDOU 3UH 7ULDO &KDPEHU , \$XJXVW 3URVHFXWU , DWDQJD DQG \$PHQGHG 'RFXPHQW &RQWLQJ WKH &KDUJH Br-Trial Chamber IWR \$WLFOH

479 3URVHFXWU Y 7KRPH /XEDQJ [Document Containing the Charges](#), Pre-Trial Chamber I, ,&& \$XJXVW

480 7KH 3URVHFXWU Y 7KRPH /XEDQJ 'LQJLP, Trial Chamber, 14 March 2012; 7KH 3URVHFXWU Y 7KRPH /XEDQJ 'LQJLP, Trial Chamber, 14 March 2012; [Decision on Sentence pursuant to \\$WLFOH RI WKH 6WDWXWH](#)

481 7KH 3URVHFXWU Y 7KRPH /XEDQJ 'LQJLP, Trial Chamber, 14 March 2014.

482 ,QDUFK ZKHQ WKH DUHVW ZDUUDQW ZDV PDGH SXEOLF D QXPEHU R IRUPDORPHQV VWDWLWYHV IRU *HQGHU -XVWLH DQG WKH ,QWHUQDWLRQDO &HQWHU SXUVXDQW WR D 6WDWH 3DUW\ UHIHUUO RU D &KDSWHU 9,, UHIHUUO E\ WKH 81 6HFXULW\ &RXQFLO 7KH 3URVHFXWU FRQWUROV DQ IRUPDORPHQV VWDWLWYHV IRU *HQGHU -XVWLH DQG WKH ,QWHUQDWLRQDO &HQWHU FDVH LQ RQGHU EH DGPLVVLEOH XQGHU \$WLFOH 5RPH 6WDWXWH WKHUH DUH VXEVDQWLDO UHVRQV LQYHVWLJDQWV SURSULR PRWX subject to being granted prior authorisation by the Pre-Trial Chamber. In each FDVH LQ GHFLGLQJ ZKHWHU WR LQLWLDWH DQ LQYHVWLJDWLRQ WKH 3URVHFXWU LV UHTXLUHG WR KDYH D 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 \$WLFOH 5RPH 6WDWXWH WKHUH DUH VXEVDQWLDO UHVRQV LQYHVWLJDWLRQ ZRXOG QRW VHU\H WKH LQWHUHVW RI MXVWLH \$WLFOH DQG 5RPH 6WDWXWH

483 JDUH WRPPH & HW LQWHUQDWLRQDO UHVRQV 'HQGHU & WHUHQDOU RI FRQ & HQWLDO OHW 2006; Rosemary Grey and Louise Chappell 3URVHFXWLQJ 6H[XDO DQG *HQGHU %DVH &ULPHV D RIRWKH FKLOGUHQ 1RYHPEHU SS 7KH 3URVHFXWU Y 7KRPDV / &DVH 1R ,&& -XGJLP, Trial Chamber, 14 March 2012, paras. 178-484; [Redacted Decision on Intermediaries](#) 0XKDPDG \$OL \$EG \$O 5DKPDQ 1\$OL .XVKD\E

484 7KH 3URVHFXWU Y 7KRPH /XEDQJ 'LQJLP, Trial Chamber, 14 March 2012, paras. 178-484.

civilian girls as a crime against humanity and war crime in Darfur in 2008 the
accused in 7 KH 3URVHF~~XWRU~~ Y *HUPDLQ .DWDQ~~WR~~ DQG 0DWKLHX 1JRGMXOR &KXL
charged, inter alia, with rape and sexual slavery of girls as war crimes and crimes
against humanity in the DRC;⁴⁸⁶ and the 2009 indictment in 7 KH 3URVHF~~XWRU~~ Y -HDQ
Pierre Bemba & HQWUDO \$IULFDQ 5HSXEOLF LQFOXGHG FKDUJHV RI UDSH RI D
girl.⁴⁸⁷

E 0\DQPDU ² ,QGHSHQGHQW ,QWHUQDWLRQDO)DF

0HFKDQLVP 0DQGDPWH

“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 WKLUV\ VHYHQWK VHVVLRQ µ [^]

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLĀF WR YLRQDWLRQV RI FULPHV against children?

:KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLĀF WR FULPHV DJDLQVW FKLOGUHQ encourages the Government of Myanmar to take the measures necessary to address discrimination and prejudice against women, children and members of ethnic, religious and linguistic minorities DFURVV WKH FRXQWU\µ [^] ,W DOVR ZHOFRPHV WKH end 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 LGHQWLĀFDWLRQ 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 UHTXLUPHQWV ODQJXDJH DERXW WKH QHHG WR

1R

<HPHQ ² *URXS RI (PLQHGW ([SHUWV

0HFKDQLVP 0DQGDPWH

“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 ĀHOGV RI LQWHUQDWLRQDO ODZ FRPPLWWHG E\ DOO SDUWLHV WR WKH FRQĀLFW VLQFH 6HSWREHU 2015, including on their extent and whether they may constitute international crimes, with a view to FRQWULEXWLQJ WR WKH ĀJKW DJDLQVW LPSXQLW\ WR LGHQWLĀ DOO and abuses in Burundi with a view to ensuring full accountability; to formulate recommendations on steps to be taken with a view to guaranteeing that the authors of these violations and abuses, UHJDUGOHVV RI WKHLU DĀOLDWLRQ DUH KHOG DFFRXQWDEOH IRU V DDXKRULWLHV DQG DOO RWKHU VWDNHKROGHUV LQ SDUWLFXODU 8\ WKH ĀHOG SUHVHQFH RI WKH 2ĀFH RI WKH +LJK &RPPLVVLRQHU LQ < 8QLRQ DQG WKH \$IULFDQ &RPPLVVLRQ RQ +XPDQ DQG 3HRSOHV 5LJ 1DOW UHOHYDQW RQ WKH EPPHGLDWH LPSURYHPHQW RI WKH VLWXDWL LPSXQLW\ WR SUHVHQW DQ RUDO EULHĀQJ WR WKH +XPDQ 5LJ 1DOW UHOHYDQW RQ WKH EPPHGLDWH UHSRUW GXULQJ DQ LQWHUDFWLYH GLDORJXĀ UHSRUW WR WKH *HQHUDO \$VWHPEO\ DQG RWKHU UHOHYDQW LQWHUQDWLRQDO

507 The Independent International Fact-Finding J 0LVVLRQ RQ 0\DQPDU VHW XS E\ WKH +XPDQ 5LJKWV &RXQFLO LQ UHVR OXWLRQ KDQGHG RYHU LWV HYLGHQFH RI VHULRXV FULPHV XQGHU LQWHUQDWLRQDO ODZ WR WKH ,00 ,VV PDQGDWH HQGHG LQ September 2019. 7KH 5HVROXWLRQ ĀUVW HVDUOLVKHG WKH *URXS RI (PLQHGW ([SHUWV RQ <HPHQ DQG WKH DQG 5HVROXWLRQ ĀUVW HVDUOLVKHG WKH &RPPLVVLRQ RI ,QTXLU\ DQG WKH renewed its mandate.

support for national, regional and international efforts to promote accountability for human rights YLRQDWLRQV DQG DEXVHV LQ <HPHQµ [^] 5HVROXWLRQ ´7R VXLW to the High Commissioner, by the time of the thirty-ninth session of the Human Rights Council, to be IROORZHG E\ DQ LQWHUDFWLYH GLDORJXĀµ [^] 5HVROXWLRQ

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH against children?

:KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLĀF WR FULPHV DJDLQVW FKLOGUHQ 2019 Resolutions express concerns about “the allegations of violations of international humanitarian law and violations and abuses of human rights law in Yemen, including those involving grave violations against children attacks on humanitarian workers, civilians and civilian infrastructure, including medical facilities and missions and their personnel, as well as schools” UHVDPEOH S RI DOO UHVROXWLRQV 7KH\ IXUWKHU FRQGHQ WKH ´RQJRLQJ YLRQDWLRQV of international humanitarian law in Yemen, including those involving the widespread recruitment WKH UHVROXWLRQV (WUHQV\ SDUWLHV WR WKH DUPHG FRQĀLFW « DQG D DQG XVH RI FKLOGUHQ UHOHYDQW RQ WKH EPPHGLDWH LPSURYHPHQW RI WKH VLWXDWL including...schools µ [^] RI DOO UHVROXWLRQV 7KH\ DOVR GHPDQG WKDW ´D end the recruitment and use of children and release those who have already been recruited, and calls Q\DOO DOO SDUWLHV WR FRSHUDWH ZLWK WKH 8QLWHG 1DWLRQV IRU taking into consideration the relevant recommendations made by the Secretary-General in his report RQ FKLOGUHQ DQG DUPHG FRQĀLFW 5HVROXWLRQV ´ RI WKH UHVROXWLRQV (WUHQV\ SDUWLHV WR WKH DUPHG FRQĀLFW RI WKH &KLOG DQG WKH 2SWLRQDO 3URWREROV WKHUHW RQ WKH LGHQWLĀ DOO and abuses in Burundi with a view to ensuring full accountability; to formulate recommendations on steps to be taken with a view to guaranteeing that the authors of these violations and abuses, UHJDUGOHVV RI WKHLU DĀOLDWLRQ DUH KHOG DFFRXQWDEOH IRU V DDXKRULWLHV DQG DOO RWKHU VWDNHKROGHUV LQ SDUWLFXODU 8\ WKH ĀHOG SUHVHQFH RI WKH 2ĀFH RI WKH +LJK &RPPLVVLRQHU LQ < 8QLRQ DQG WKH \$IULFDQ &RPPLVVLRQ RQ +XPDQ DQG 3HRSOHV 5LJ 1DOW UHOHYDQW RQ WKH EPPHGLDWH LPSURYHPHQW RI WKH VLWXDWL LPSXQLW\ WR SUHVHQW DQ RUDO EULHĀQJ WR WKH +XPDQ 5LJ 1DOW UHOHYDQW RQ WKH EPPHGLDWH UHSRUW GXULQJ DQ LQWHUDFWLYH GLDORJXĀ UHSRUW WR WKH *HQHUDO \$VWHPEO\ DQG RWKHU UHOHYDQW LQWHUQDWLRQDO

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLU LQFRUSRUDWH FKLOG VSHFLĀF H[SHUWLHV"

1R

%XUXQGL ² &RPPLVVLRQ RI ,QTXLU\

0HFKDQLVP 0DQGDPWH

´7R FRQGXFWD WKURXJK LQYHVWLJDWLRQ LQWR KXPDQ ULJKWV YLRQDWLRQV 2015, including on their extent and whether they may constitute international crimes, with a view to FRQWULEXWLQJ WR WKH ĀJKW DJDLQVW LPSXQLW\ WR LGHQWLĀ DOO and abuses in Burundi with a view to ensuring full accountability; to formulate recommendations on steps to be taken with a view to guaranteeing that the authors of these violations and abuses, UHJDUGOHVV RI WKHLU DĀOLDWLRQ DUH KHOG DFFRXQWDEOH IRU V DDXKRULWLHV DQG DOO RWKHU VWDNHKROGHUV LQ SDUWLFXODU 8\ WKH ĀHOG SUHVHQFH RI WKH 2ĀFH RI WKH +LJK &RPPLVVLRQHU LQ < 8QLRQ DQG WKH \$IULFDQ &RPPLVVLRQ RQ +XPDQ DQG 3HRSOHV 5LJ 1DOW UHOHYDQW RQ WKH EPPHGLDWH LPSURYHPHQW RI WKH VLWXDWL LPSXQLW\ WR SUHVHQW DQ RUDO EULHĀQJ WR WKH +XPDQ 5LJ 1DOW UHOHYDQW RQ WKH EPPHGLDWH UHSRUW GXULQJ DQ LQWHUDFWLYH GLDORJXĀ UHSRUW WR WKH *HQHUDO \$VWHPEO\ DQG RWKHU UHOHYDQW LQWHUQDWLRQDO

507 The Independent International Fact-Finding J 0LVVLRQ RQ 0\DQPDU VHW XS E\ WKH +XPDQ 5LJKWV &RXQFLO LQ UHVR OXWLRQ KDQGHG RYHU LWV HYLGHQFH RI VHULRXV FULPHV XQGHU LQWHUQDWLRQDO ODZ WR WKH ,00 ,VV PDQGDWH HQGHG LQ September 2019. 7KH 5HVROXWLRQ ĀUVW HVDUOLVKHG WKH *URXS RI (PLQHGW ([SHUWV RQ <HPHQ DQG WKH DQG 5HVROXWLRQ ĀUVW HVDUOLVKHG WKH &RPPLVVLRQ RI ,QTXLU\ DQG WKH renewed its mandate.

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÅF WR
against children?

: KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLÀF WR FULPHV DJDLQVW FKLOGUHQ
expresses concern about “the continuous and accelerated deterioration of the human rights,
economic and humanitarian situation in Burundi, in particular the situation of women and children
^ ,W DOVR VWURQJO\ FRQGHPQV ´DOO YLRODWLRQV DQG DEXVHV RI KXPdq ULJKWV LQ %
particularly those involving mass arbitrary arrests and detention, including cases involving children
^ 7KH 5HVROXWLRQ H[SUHVVHV FRQFHUQ DW ´WKH FRQWLQXRXVO\ ZRUU\LQJ KXPdq U
humanitarian situation in Burundi, which particularly affects women and children ^

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'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH
LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLHV"
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1 R

6\ULD D 6\ULD 2 &RPLVLRQ RI ,QTXLU\

0HFKDQLVP 0DQG DWH

"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 VX

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

KHOG DFFRXQWDEOHµ ^ RI 5HVROXWLRQ 6 DQG ^ RI 5HVROXWLRQ ´7R XUJHQWO\

comprehensive, independent and unfettered special inquiry, consistent with international standards,

into the events in El-Houleh and, if possible, to publicly identify those who appear responsible for

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

WKH FRPPLVVLRQ WR SURYLGH D IXOO UHSRUW RI WKH ÂQGLQJV RI LWV VSHFLDO LQTXLU\ W

&RXQFLO DW LWV WZHQWLHWK VHVVRQ DQG WR FRRUGLQDWH DV DSSURSULDWH ZLWK UH

PHFKDQLVPVµ ^ RI 5HVROXWLRQ 6 ´7R FRQGXFWDQ LQWHUQDWLRQDO WUDQVSDUHQW

prompt investigation into abuses and violations of international law, with a view to hold to account

those responsible for violations and abuses, including those that may amount to crimes against

KXPDLW\ DQG ZDU FULPHVµ ^ RI 5HVROXWLRQ

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR
against children?

:KLOH WKH PDQGDWH LWFHOI LV EURDG DQG QOROXWHQ LF 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”

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 ^

5 H V R O X W L R Q condemns the extensive violations of children's rights committed by

5H V R O X W L R Q 6
mandate.

ÀUVW HVWDEOLVKHG WKH &RPPLVVLRQ RI ,QTXLU\ DQG DOO VXEVTXHQRW UHVROXWLRQV UHQHZHG LWV

The Syrian authorities, including against male detainees and children

WKH 5HVROXWLRQ
5HVROXWLRQ condemns “the continued widespread and systematic gross violations of human rights and fundamental freedoms by the Syrian authorities and the Government-controlled X UnlloGShEthaDoo adStFwRd heavy weapons and force against civilians, massacres, arbitrary executions, extrajudicial killings, the killing and persecution of protestors, human rights defenders J L and journalists. Arbitrary detention, enforced disappearances, interference with access to medical treatment, torture, sexual violence and ill-treatmentincluding against children”

5 HVROXWLRQ condemns "all violations and abuses committed against children and
 D E R X W V O E S C H I G W R W R F R P S O \ Z L W K W K H L U R E O L J D W L R Q V X Q G F
 release of all persons arbitrarily detained including childrenu ^

5HVROXWLRQV DQG denm “the gross and systematic abuse of women's
and children's rights E\ WKH VR FDOOHG ,VODPLF 6WDWH LQ ,UDT DQG WKH
the enslavement and sexual abuse of women and girls enforced disappearances and the forced
recruitment and abduction of children, ^ DQG ^ 7KH UHVROXWLRQV IX
“all violations and abuses of international human rights law and all violations of international
humanitarian law, including against women and children” ^ DQG ^

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”

X F K Y H R D O H L R Q V D Q U E R R A G A I N T C I V I L I A N O B J E C T S , S U C H A S S C H O O L S . . . A N D T H E Q H J D W L Y H H I I H F W V R I W K H R Q J R L Q J F R Q A L F W R Q W K H U L J K W V D Q

to medical care and other humanitarian assistance as well as to education, including schools,

\ F E E L S T H E V I O L A T I O N S A N D A B U S E S O F I N T E R N A T I O N A L H U M A N R I G H T S L A W A N D V I O L A T I O N S O F I N T E R N A T I O N A L H U M A N I T A R I A N L A W , A S A P P L I C A B L E , A N D D E P L O R E S I N P A R T I C U L A R T H E I M P A C T O F T H E D E N I A L O F H U M A N I T A R I A N A C C E S S O N T H E I R L I V E S A N D W E L L - B E I N G μ ^

5 H V R O X W L R Q expresses concern at the situation of women, children, especially
W R H W K H A N P R C A L S D I S P L A Y / who remain among the most vulnerable to violence and abuse”
H O B Y U H D P B O H L W S G 1 D Q F R Q W H P C H M K F W V R I W K H R Q J R L Q J F R Q Á L F W
W of children including new access to medical care and other humanitarian assistance as well as to
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 I S U H V H V F R Q F H U
suffering of children resulting from the escalation of violence, harsh weather conditions and lack
R I V D I H U H I X J H D Q G F D O O V X S R Q D O O S D U W L H V À J K W L Q J L Q W K H

Y humanitarian workers to reach children and 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 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 DE including WKH GRFXPH women and children being taken hostage by the so-called Islamic State in Iraq and the Levant 'DHVK μ ^

5 HVROXWLRQV also demand "the
immediate release of all persons arbitrarily detained including women, children, ^ ^

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH
LQFRUSRUDWH FKLOG VSHFLÀF H\SHUWLHV"

1 R

E 6\ULD², QWHUQDWLRQDO ,PSDU⁵WLDO DQG ,QGH

0HFKDQLVP 0DQG DWH

“To closely cooperate with the Independent International Commission of Inquiry on the Syrian
\$UDE 5HSXEOLF WR FROOHFW FRQVROLGDWH SUHVHUYH DQG DQDO\ VH HYLGHQFH RI YLRO
KXPDQLWDULDQ ODZ DQG KXPDQ ULJKWV YLRODWLRQV DQG DEXVHV DQG WR SUHSDUH ÀOHV
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 WKH VH FULPHV LQ DFFRUGDQFH ZLWK LQWHUQDWLRQDO ODZ

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR
against children?

1 R

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH
LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"

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 against children μ ^ S DQG ^ S)XUWKHU WKH ,,,0 'ZLOO SURYLGH FOHDU VHUYLFH UHIHUUDO 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 V\ ^ S 7KH WHUPV DOVR PHQWLRQH WKDW 'GXH FRQVLGHUDWLRQ ZLOO EH JLYHQ WR DSSRL in the areas of sexual and gender-based crimes and justice for childrenμ ^ S)XUWKHU WKH +HDG and Deputy Head of the IIM “will be assisted in their work by a secretariat composed of impartial and H[SHULHQFHG SURIHVVRQDO DQG DGPLQLVWUDWLYH VWDII ZLWK H[SHUWL VH LQ WKH IROORZL 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 violence children's rights and crimes against childrenμ ^ S DQG ^ S

7KHHQWDLWRQDO ,PSDUWLDO DQG ,QGSHQGHHQW penfekt QLV P , ,0 LV FRPSOHPHQWDU\ WR WKH ,QGH
,QWHUQDWRQDO &RPPLVVLRQ RI ,QTXLU\ RQ WKH 6\ULDQ \$UDE 5HSXEOLF &R, :KLOH WKH &R, IRFXVHV R
information, publicly reporting recent broad patterns of violations, abuses and emblematic incidents, making
recommendations, not only to Member States, the IIIM primarily builds on the information collected by others, in
SDUWLFXODU WKH &RPPLVVLRQ E\ FROOHFWLQJ FRQVROLGDWLQJ SUHVHUYLQJ DQG DQDO\VLQJ HYLGHQF
facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or
tribunals.

512 IIIM, Terms of Reference <https://www.llp.org.uk/LLP-XQ-RUJ-WHUPV-RI-UHIH-UHQFH-RI-LLP>

DERXWKV6XGQGH²RRPLVVL³Q RQ +XPDQ 5LJKWV

0HFKDQLVP 0DQG DWH

"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

WLRQVUFQDVLVRHQDDQDLQLHJLRLQDO PHFKDQLVPV LQFOXGLQ
LQRXWKHXWRQIDWLKHL\$DWVHDQ 8QLRQ DQG LWV \$IULFDQ &RP

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

DEXVHHWROXWLRQ5HVROXWLRQ

Y L R O N D W H L R I G V R O X W L R Q H V V W D W X W R U \ S U R Y L V L R Q V F R Q W D L Q O D
against children?

ongoing human rights violations and abuses and violations of international humanitarian law in South Sudan, including...the recruitment and use of children, attacks on schools, W IX U W Parties to end and prevent human rights violations and abuses committed against children, and calls upon all parties to end immediately the unlawful recruitment of children and to release all children that have been unlawfully recruited to date u ^

serious and ongoing gross human rights violations and abuses and violations of international humanitarian law...
 WKDW ZHUH SHUSHWUDWHG E\ DOO SDUWLHV WR WKH FRQÁÁ and LQFOXGLQJ '
 S ~~the exercise of~~ violence against women and children 3UHDPEOH S

[illegible]

7KH 5HVROXWLRQ H[SUHVVHV DODUP RYHU WKH DUPHG FRQÁLFW DQG YLR
“violence against children, the unlawful recruitment and use of children by armed groups, and attacks on schools
and hospitalsµ 3UHDPEOH S , W IXUWKHU FRQGHPQV ´WKH RQJRLQJ YLRODWLRQ
violations of international humanitarian law in South Sudanincluding...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 dateµ ^ /DVWO\ LW XUJHV WKH *RYHUQPHQW RI 6RXWK 6XGDQ ´WR LQ
abuses, particularly against women and children ^
GLUHFWO\ FROOHFWLQJ

TH DQG SUHSDUHV ÀOHV WR

513 7KH 5HVROXWLRQ ÀUVW HVWDEOLVKHG WKH &RPPLVVLRQ RQ +XPDQ 5LJKW
its mandate.


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'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH
LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"
```

1 R

.DVDw 5HJLRQ 'HPRFUDWLF 5HSXEOLF RI &RQJR ' ([

0HFKDQLVP 0DQG DWH

"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
UHFRQFLOLDWLRQ DQG WR PDNH UHFRPPHQGDWLRQV LQ WKLV UHJDUG DV DSSURSULDWHµ
in an enhanced interactive dialogue at its fortieth session, and... to participate in an interactive
GLDORJXH DW LWV IRUW\ ÀUVW VHVVLRQµ ^

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJH VSHFLÀF WR
against children?

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 the conflict. The recruitment and use of child soldiers... and the destruction of homes, schools, hospitals”

3UHDPEOH S ,W WDNHV QRWH RI WKH VWDWHPHQW RI WKH 6SHFLDO 5HSUHVHVDU\ *HQHUDO IRU &KLOGUHQ DQG \$UPHG &RQÁLFW RQ \$SULO 2007 LQ ZKLFK VGLVSURSRUWLQJ LPDQV RI 2007, especially killings, mining and burning children alive

3UHDPEOH S ,W DOVR FRQGHQV DOO DFWV RI YLROHQFH LQFLWHPHQW hatred and ethnic violence, human rights violations and violations of international humanitarian law

FRPPLWWHG E\ DOO SDUWLHV RI WKH FRQÁLFW XVW WKH inuding violence and abuse against women and children, the unlawful recruitment and use of child soldiers

Further, it condemns in particular violations and abuses committed against children, who were the ÁUVW YLFWLPV RI WKH YLROHQFH DQG WKH FRQGLWLRQV LQ ZKLFK WKH\ ZHUH FRPPLWWHG 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-sensitive

VLWLYH LVVXH IRU FKLOGUHQ LQYROYHG LW DPHG FRQÁLFW RQFHUQ WKH VWDWHPHQW of the team of international experts on WKH FRQLQXLQJ UHFUXLWPHQW DQG XVH RI FKLOGUHQ E\ WKH .DPXLQD 1VDSX DQG %DQD 0LOLWLDV

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJH
LQFRUSRUDWH FKLOG VSHFLÀF H[SHUWLVH"

1 R

514 81 +XPDQ 5LJKWV &RXQFLO 5HVROXWLRQ KWWSV DS RKFKU RUJ GRFXPHQWV GSDJHBH DVS["VL \$ +5&
5(6 !

DERBY WITH 79 H H G W R

0HFKDQLVP 0DQGDWH

'7R VXSSRUW GRPHVWLF HIIRUWV WR KROG ,6,/ 'D·HVK DFFRXQW evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide FRPPLWWHG E\ WKH WHUURULVW JURXS ,6,/ 'D·HVK LQ ,UDT WR 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 DXWKRULWLHV RU LQYHVWLJDWLRQV FDUULHG RXW E\ DXWKRULW 5HVROXWLRQ

^against 7 children? WLF LSDWH

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 widespread attacks directed against civilians, its violations of international humanitarian law and abuses of human rights, particularly those committed against women and children and including those motivated by religious or ethnic grounds, and its recruitment and training of foreign terrorist fighters; and

recruitment and use of children in persons, rape, sexual slavery and other forms of sexual violence;

and its destruction of cultural heritage, including archaeological sites.

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTX
LQFRUSRUDWH FKLOG VSHFLÀF H\SHUWLHV"

:KLOH WKH PDQGDWH LWWHOI LV EURDG DQG QRW FKLOG VSHFLÄF
 "before the Investigative Team make 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 WUDIÄFNLQJ RI SHUVRQV DQG SURWH
 KHULWDJHµ ^)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,
in particular where it involves sexual violence, gender violence or violence against children ^
 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"

DERXW WKH QHHG WR

515 7KH 5HVROXWLRQ ÀUVW HVWDEOLVKHG WKH 81 'QYHVWLJDWLYH 7HDP WR
'D.HVK .VODPLF 6WDWH LQ .UDT DQG WKH /HYDQW 81.7\$' DQG WKH 5HV

&HGWUDO \$IULFDQ 5HSXEOLF ² &RPPLVVLRQ RI ,QTX

0HFKDQLVP 0DQG GDWH

“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 LQIRUPDWLRQ WR help identify the perpetrators of such violations and abuses, point to their possible criminal responsi ELOLW\ DQG WR KHOS HQVXUH WKDW WKRVH UHVSQVLEOH DUH KHOG DFFRXQWDEOHµ ^

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJD VSHFLĀF WR YLRODWLRQV RU FULPHV against children?

:KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLĀF 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 3UHDPEOH S 7KH UHVROXWLRQ ‘XUJHV transitional authorities to develop and implement disarmament, demobilization and resettlement programmes for...children associated with armed forces and groups ^ ,W GHPDQGV 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 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 groupsµ ^ ,W FDOOV XSRQ ‘DOO SDUWLHV WR DUPHG FRQĀLFW LQ WKH &\$5 LQFOXGLQJ former Seleka elements and anti-Balaka elements, issue 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 hospitals IXUWKHU FDOOV XSRQ 7UDQVLWLRQDO \$XWKRULWLHV WR PDNH DQG LPSOHPHQW VSHFLĀF FRPPLWPHQWV RQ WLPHO\ investigation of alleged abuses in order to hold perpetrators accountable and to ensure that those UHVSQVLEOH IRU VXFK YLRODWLRQV DQG DEXVHV DUH H[FOXGHG IURP WKH VHFUXLW\ VHFWRUµ ^ /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 FRQĀLFW LQ YLRODWLRQ RU DOSOHFHQ LQWHUQDWLRQDO ODZ

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV ODQJXDJD DERXW WKH QHHG WR LQFRUSRUDWH FKLOG VSHFLĀF H[SHUWLHV"

1 R

RFFXSLHG 3DOHVWLQLDQ WHUULWRU\ ² &RPPLVVLRQ

0HFKDQLVP 0DQG GDWH

“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

516 The commission was dispatched as part of HRC resolution S-28/1, on 1 May 2018, [KWWSV_ZZZ_RKFKU_RUJ](#) (1 [HRBodies/HRC/ColOPT/Pages/OPT.aspx](#)

tions and abuses, including those that may amount to war crimes; to identify those responsible; to 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 responsibility, for such violations and abuses, and on protecting civilians against any further assaults; DQG WR SUHVHQW DQ RUDO XSGDWH WKHUHQ WR WKH &RXQFLO DW UHSRUW DW LWV IRUWLHWK VHVLRQµ ^ 'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV FRQWDLQ ODQJXDJD children? :KLOH WKH PDQGDWH LWVHOI LV EURDG DQG QRW VSHFLĀF WR FULPHV 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 RI LQWHUQDWLRQDO KXPdqLWDULDQ ODZ LQWHUQDWLRQDO resolutions, and expresses its grief at the extensive loss of life, including of children women, health WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV LQFRUSRUDWH FKLOG VSHFLĀF H[SHUWLHV"

'R WKH UHVROXWLRQV VWDWXWRU\ SURYLVLRQV KDYH UHTXLUHPHQWV LQFRUSRUDWH FKLOG VSHFLĀF H[SHUWLHV"

1 R





5RKLQJ\ D UHIXJHH 6DMLGD LQ &R[.V %D]DU %DQJ
XVHG WR RZQ DERXW VHYHQ FRZV AYH JRDWV DFU
ORYHG RXU OLIH LQ 0\ DQPDU ·µ:H VXIIHUG D ORW ZK
when they chased us. They shot a man before our very eyes. It took 10 days to reach
Bangladesh."For three days, we didn't eat. We spent eight days waiting by the sea,
then we crossed the border by boat. Some people died in the heat. Some people
were shot. We were so scared. Me and my three younger siblings were crying."We
feel happy in Bangladesh. We have support from Save the Children and we can
learn reading and writing, and play. I like my new friends. We share our secrets with
HDFK RWKHU DQG SOD\ WRJHWKHU ·µ1H[W \HDU , ZDQV
In Myanmar, I had a sewing machine and I used to decorate dresses. I want to sew
dresses here too and decorate them with rhinestone and crystals.'

3KRWRJUDSK +DQQD \$GFRFN 8. 6WRULHV 7HDP

