



# Sexual Violence against Child Soldiers

*An Analysis of the Development of International Criminal and Humanitarian Law*

Chiun Min Seah

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*“And one day she discovered that she was fierce, and strong,  
and full of fire, and that not even she could hold herself back  
because her passion burned brighter than her fears.”*

- Mark Anthony

This rings true because of all of you and I would be grateful for it, *always*.

Hachiko, in the midst of purgatory,  
you saved and unconditionally love me.

*Thank you.*

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*“I am not even sure what a smile looks like anymore.  
What my eyes look like when they sparkle.  
Will I never gather the strength and make peace with my past?  
Will I forget the pain that they inflicted on my body, in my soul?”<sup>1</sup>*

## I. Introduction

It is not a peculiar phenomenon that the aggregate of girls, boys, women, and men who experienced sexual violence during both international and non-international armed conflicts is inexhaustible. As such, there is an overwhelming number of reports, books, cases, journals, and decisions that were penned regarding numerous incidents of child soldiers being inter alia, raped, forced to be sexual slaves and wives, sexually mutilated, and so on. ‘Rape is more than a symptom of war or evidence of its violent excess. Rape in war is a familiar act with a familiar excuse.’<sup>2</sup> In a military environment where the combatants are almost always male-dominated, sexual violence appears to be institutional and an ‘inevitable by-product of the necessary game called war’.<sup>3</sup>

Child soldiers are increasingly enlisted and conscripted by armed forces, either forcefully or voluntarily recruited both by government military forces as well as insurgent groups. Portrayals of children carrying firearms or trained to be ruthless terminators depicted in the media are disturbing but children’s participation in wars is not a contemporary issue. Children have historically been involved in armed conflicts and they sometimes

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<sup>1</sup> Goran Šimić, *The Disintegration of the Soul*, 2016.

<sup>2</sup> Susan Brownmiller, *Against Our Will; Men, Women, and Rape*, (Simon and Schuster New York, 1975), p. 32.

<sup>3</sup> *Ibid.*



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The subjects of child soldiers and conflict-related sexual violence have recurrently been explored but issue of child soldiers who are being sexually violated during armed warfare seem to be a legal gap in international criminal and humanitarian law. International humanitarian law does not generally regulate the conduct of combatants towards other combatants in the same armed group as the conduct of fighters towards soldiers on the same side of the conflict would presumably be monitored by their own internal discipline framework. Whilst there may be a universal understanding that any harmful attacks would be against the enemy, sexual violence is inflicted extensively on both sides equally and in this context, against child soldiers who have limited protection by the law and their own militaries.

On that account, this book examines how international criminal law punishes perpetrators who sexually abuse child soldiers within their own troops and how international humanitarian law protects these victims. The distinction between direct/indirect and active participation and its significance/consequences is explored as well as question of when sexual slavery begins and ends with regards to participation of child soldiers and the issue of membership of child soldiers in armed forces.

This book also investigates if children who were conscripted and enlisted as child soldiers have separate standards of accountability for the crimes they commit, specifically with regards to the ongoing case of *Dominic Ongwen* at the International Criminal Court as its point of convergence. Despite the promising progress *Bosco Ntaganda's* case at the ICC has made, it falls short with engaging in these complex legal questions as it assumes that sexual slavery and participation in hostilities occur at separate times when neither of these exist in a vacuum. Therefore, the limits of international criminal law and humanitarian law in this sphere is delved into with reference to relevant case laws.

