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IDENTIFYING CHILD PROTECTION STANDARDS IN THE INTERNATIONAL JUDICIAL PROCEDURE

IDENTIFICANDO PADRÕES DE PROTEÇÃO À CRIANÇA NOS PROCESSOS JUDICIAIS INTERNACIONAIS*

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Abstract: Crimes against children are of a significant importance for the international community and hence, many of the studies in the field of international criminal law during the past two decades have focused on this issue. The question that pops up in this context is that how can one evaluate child protection standards in the international judicial procedure. The findings of the present study indicate that crimes against children have not been paid much attention to by international courts. Several protective regulations for children have been laid, but no efficient practical measures have been taken towards punishing the committers of crimes against children. In fact, in spite of perfection of the international criminal laws of child protection, there are still faults and imperfections in practice; as an instance it can be referred to the international criminal court's procedure in dealing with sexual crimes against the children of Congo. In the former case the judges of the court did not pay any attention to any of the statements of the prosecutor, the reasons pointed to by the legal representatives of the victims, and the testimonies of the witnesses. No new accusations regarding sexual crimes were added to the list of the accusations of Lubango and the final verdict of the court was no more than a little influenced by sexual violence. It is worthy of mentioning that the present study is a descriptive research.

Keywords: Child protection. International criminal procedure. International criminal law. Sexual crimes. International criminal court.

Resumo: Crimes contra crianças são de importância significativa para a comunidade internacional e, portanto, muitos dos estudos no campo do direito penal internacional durante as últimas duas décadas focalizaram essa questão. A questão que surge neste contexto é como avaliar os padrões de proteção à criança no processo judicial internacional. As conclusões do presente estudo indicam que os crimes contra crianças não receberam muita atenção dos tribunais internacionais. Vários regulamentos de proteção para crianças foram estabelecidos, mas nenhuma medida prática foi tomada no sentido de punir os autores de crimes contra crianças.

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De fato, apesar do aperfeiçoamento das leis penais internacionais de proteção à criança, ainda existem falhas e imperfeições na prática; como exemplo, pode ser encaminhado ao procedimento do tribunal penal internacional para lidar com crimes sexuais contra os filhos do Congo. No primeiro caso, os juízes do tribunal não prestaram atenção a nenhuma das declarações do procurador, às razões apontadas pelos representantes legais das vítimas e aos depoimentos das testemunhas. Nenhuma nova acusação relativa a crimes sexuais foi acrescentada à lista de denúncias do Lubango e o veredicto final do tribunal não foi mais do que um pouco influenciado pela violência sexual. Vale ressaltar que o presente estudo é uma pesquisa descritiva.

Palavras-chave: Proteção à criança. Procedimento penal internacional. Direito Penal Internacional. Crimes sexuais. Corte Criminal Internacional.

INTRODUCTION

In the context of crimes, there is a need for existence of two actors namely the criminal and the victim. According to Bentham's accounting theory, prior to the committal of the crime, the criminal does some accounting while he/she evaluates both the benefits and harms of the act and if the probable benefits overweighed the harms, he/she would take the action. One component in the calculations of the criminals can be the existence of a victim who is suitable for the crime. Because of their physiological condition, children are usually suitable targets. In fact because of lack of sufficient physical strength, children show less resistance against crimes that take place against them and also their claims are hardly accepted after the occurrence of crimes. This is one reason why they might be afraid of revealing themselves as victims. These problems have caused the adoption of different policies towards protecting children in both international and domestic arenas. This duty in domestic arenas is the task of protective laws and in some cases it is expressed in the form of special criminalization and in some other cases in the form of laying down even more extreme punishments. Based on the aforementioned content, children require special protection and support proportional to their age, growth stage, and special and individual needs. Knowing that children are growing as the most vulnerable stratums of every society children in critical and emergency situations, they are provided with certain supports and rights in critical and emergency situations according to international documents. Hence, in the international system children are provided with two types of support namely as general and specific. By the former it is meant that the children are considered as

civilians and are also provided with international humanitarian rights. On the other hand, by specific supports it is pointed to the support that is only provided for certain individuals with certain characteristics, physical conditions, sexual conditions and etc. in general, the children are considered as civilians and are therefore provided with the entire general supports considered for civilians by international humanitarian rights. In spite of existence various child protection provisions, the lack of existence of a common procedure against child victimization is considered as one of the principal issues of the international community. This is while the judicial procedure has an effective role in this context. The present study tends to investigate child protection standards in the international judicial procedure. On this basis, the primary question of the present study is what are the child protection standards in the international judicial procedure? The research hypothesis can be: the international judicial procedure does not basically have an effective role in providing criminal support for victimized children. In fact some efforts have been made towards protecting children including prohibition of use of children in military activities, and prohibition of sexual crimes against children. For the purpose of investigation of the formerly mentioned question and hypothesis, I firstly refer to the legal sources of prohibition of using children in military activities, and sexual violence against them, and next I analyze the judicial procedure's approach in this context.

SUPPORTING VICTIMS IN INTERNATIONAL CRIMINAL LAW

In international criminal law, supporting victims, especially children is defined in the form certain indices which are elaborated on in brief in the following before trying to investigate support of children in the judicial procedure.

NONDISCLOSURE OF THE IDENTITIES OF WITNESSES AND VICTIMS

The article 68 of the statute of the international criminal court is concerned protecting witnesses and victims. However, protecting victims of crimes and witnesses is obviously not in conflict with the criterions of fair judgment and also does not require the forfeiture of any of its certain essential embodiments. The statute of the international criminal court explicitly makes

these supports conditional to being free from any conflict with the rights of the defendant and fair trial principle. The former statute also clarifies that the court must create a balance between the two essential goals of protecting the witnesses and conducting a fair trial. The issue whether the court's order necessitating the nondisclosure of identities of witnesses is consistent with the embodiments of a fair trial or not is considered as a significant issue in the procedure of the international criminal court.

GRANTING SPECIAL REPRESENTATION TO VICTIMS

As the first in the history of international criminal courts, the statute of the criminal court of Rome granted the right of acquiring legal; representatives to victims so that they could have a part in taking back what rightfully belongs to him/her. However the statutes of the courts of former Yugoslavia and Rwanda lack such an article. Similar to the most of European countries, the domestic laws of Yugoslavia envisage for victim's right of having a legal representative. The s2 of the article 68 of the statute of Rome gives the court the authority to give the victims the right to have a legal representative. This article states: in case of an influence on the personal interests of victims, the court provides them with the ability to state their issues and opinions, which would in proper stages of the trial and in case of not having any conflicts with the right of the defendant in getting a fair trial, be considered by the court. in addition, in cases accepted by courts as appropriate according to the procedure code, the issues and opinions of the victims can be expressed through their legal representatives. On the other hand, the Rome Statute has created a major evolution in rights of victims of international crimes. This includes the involvement of the victims in the process of trial. The issue worthy of debate is that considering the numerousness of the victims of international crimes, how is this practically executable? It should be pointed out that the court must create a balance between its main goals of fair trial and the victims' right to participate in the trial. A large number of victims in a case must not weaken the fairness of the trial. The procedure of the international criminal court has tried to create this balance in two ways: first, through limiting the maximum number of representatives (attorneys) of victims, and second, through laying down a condition for the entry of the representatives to the process of trial. Regarding the former limitation, the victim who is willing

to grant representation to another person must send a written request to the board of trustees of the court. This board will try to incorporate the opinions and perspectives of both the prosecutor and the defendant prior to announcement of a verdict. The other limitation aims for the entry of the legal representatives (attorneys) to the process of trial. The s2 of the article 63 of the Rome Statute provides the victims with the ability to express their opinions and issues which will be considered by the court in certain stages of the trial (s1 article 89).

VICTIM'S ROLE IN DETERMINATION OF THE PUNISHMENT

Compensation for the harms caused by criminals is one of the most essential concerns of victims. However, many of the victims are readily considered as plaintiffs and this shows that the society formally recognizes the pains of the victims. Determination of punishments is an issue that is considered highly important by many victims. The judges of the international criminal court have a relatively intuitive eligibility for imposing punishments on the defendant. The judges will pay attention to several factors while making decisions. This is usually done based on common international laws and the procedures of special international courts such as the international criminal courts of former Yugoslavia and Rwanda.

According to part "a" of the s1 of the article 145 of the ICC (International Criminal Court) rules of procedure and evidence, the whole of every punishment must reflect the criminal's level of criminal misconduct. The ICC rules of procedure and evidence considers for extenuating and aggravating qualities in determination of punishments. The causes of extenuation and aggravation of punishment are causes that whenever combined with the situation of occurrence of crime, will either result in extenuation or aggravation of punishment of a criminal. Matching the situations with the personality of the victims and execution of justice while considering for public opinions are amongst the most important advantages associated with extenuating and aggravating qualities of punishments.

Based on the part "c" of the s1 of the article 145 of the ICC rules of procedure and evidence, while determining punishments, the ICC takes into consideration the amount of inflicted damages especially damages inflicted on the victims and their families. The current support provided for the victims has had different manifestations including compensation for

victims, but it has always been the necessary precondition for suspension of punishments. However, in the context of determination of punishment it has had different manifestations for the ICC. On this basis and according to the part "a" of the s2 of the article 145 of the ICC rules of procedure and evidence, the defendant's efforts towards compensation of inflicted damages on the victim is considered as an extenuating quality. The extenuating qualities of punishment have also been considered by the procedures of the exclusive courts of the UN. Some of the verdicts announced in the ICC of former Yugoslavia too include a separate part regarding the influence of committed crimes on the victims. For example, declaration of regrets and showing that the defendant wants to reconstruct compromise in the area has been considered as an extenuating quality.

THE RIGHT TO RECEIVE RECOVERY

Compensation for the losses of war crimes has traditionally been dependent on the interventions of the national countries of the victims aiming at negotiating and receiving compensation. On this basis, in past the victims were not able to receive compensations without the support of their national governments. After the approval of the Declaration of Basic Principles of Justice for Victims of Power Misuse in 1985, and according to the s8 of the part "a" of this declaration, receiving compensation is considered as a personal right of victims and hence, they no longer require the intervention of their national government in order to be benefitted by this right.

Though the ICC of former Yugoslavia and ICC of Rwanda have not anticipated for the compensation of damages inflicted in the victims, the very first efforts for providing the victims with the right to be compensated were made in the exclusive court of Rwanda; however the efforts were unfruitful. Exclusive courts do not put out any orders regarding compensation for damages caused by crimes. In these courts, the victims take their cases to their national cases and refer to the condemnation of committers by exclusive courts.

Considering the emphasis and focus of private organizations on the issue of recovery of victims during the debates related to the drafts of the Rome Statute in the preliminary committee of the General Assembly, the issue gained importance rapidly and became one of the most

important issues under investigation. In this regard, disagreements were exhibited referring to the inability of the ICC in paying compensations to victims as well as concerns regarding allocation of financing sources. Some lawyers believe that the concept of international compensation is a vague and deceiving concept since its practical realization is faced with numerous obstructions.

Regarding this belief, it is inferred that the cost of compensating the damages caused by international crimes is too high and the ICC is just not able to keep up with it. In addition, even if the ICC does not have any problems in terms of acquiring the required credits, still compensation for all of the victims will not be truly realized. Many of the damages caused by international crimes are irreparable and irrecoverable.

According to the s2 of the article 75 of the statute of ICC, the court can put out an order regarding the compensation for damages inflicted on the victims. In necessary cases the court can order to pay the compensation by the Trust Fund for Victims (TFV). Based on the report that was provided in the conference on the reviewing of the Rome Statute, 1 million euros are currently saved by TFV for payment of victims' compensations in future verdicts of the court.

PROTECTION FOR VICTIMIZED CHILDREN IN THE INTERNATIONAL PROCEDURE

In this part of the article I have tried to investigate the international procedure's support for victimized children. The reality is that in international criminal law, verdicts reflecting protection of child victims are very limited. On this basis, in the present paper I have tried to investigate two domains that have been criminalized in the context of child protection. These domains include using children in military activities and sexual crimes, which are considered as the most prevalent felonies against children in international arenas. Prior to investigating the procedure, the legal sources of prohibition of using children in military activities and sexual crimes in international laws would be expressed.

USING CHILDREN IN MILITARY ACTIVITIES IN INTERNATIONAL CRIMINAL LAW

Child labor sometimes manifests itself in the form of using children in military activities. According to estimations, currently more than 300 thousand underage children are involved in armed conflicts. Specific laws have been laid towards protecting children against participation in armed conflicts. One of these laws is the article 38 of the convention on child rights. This article emphasizes on the necessity of prohibition of entry of the under-15-years-old children to armed conflicts as well as their acceptance in military forces. In spite of the article 38, there are still children who are being used in armed conflicts and military forces. On this basis the UN was forced to approve yet another protocol prohibiting the entry of children to armed conflicts. For this purpose and towards the completion of the convention on child rights, a work-group was formed by the UN. The result of the efforts of this group was codification of the arbitrary protocol of the convention on child rights regarding children's participation in armed conflicts. In the views of the human rights commission and the child rights committee, the codification of the former protocol and its execution were effective steps towards maximal protection of children's interests. The former protocol was approved by the general assembly in 2000 and until the October of 2005 it was already signed by 121 countries and had 102 member countries. In attempt to perfect the article 38 of the convention on child rights, the minimum allowed age for entry to armed conflicts and military activities was set to 18 years instead of the previous regulation of 15 years. In addition, in its article 1 it obliges the governments to take the necessary measures for prevention of participation of underage children in armed conflicts in addition to adoption of certain other legal and executive measures and solutions that guarantee the effective execution of the regulations of the protocol (s1 article 6). Not only the countries are obliged to execute the protocol, but also for the purpose of guaranteeing of forced execution of the protocol the protocol every member country is expected to issue a report to the human rights committee regarding the actions that have been taken towards the execution of the protocol (s1 article 8). The reporting process will then have to be repeated every five years (s2 article 8). Protecting child rights is important to the extent that according to the part "b" s26 Article 8 of the statute of ICC, both forced and voluntarily mobilization of under 15 year old children in

national armed forces or using them in military activities are considered as war crimes and the committers would be prosecuted by ICC. According to the statute, not only using children in international armed conflicts is considered as war crime, but also according to the part "c" s7 of the same article, using children in domestic and civil wars is viewed the same as well. The important point to mention is that the statute does not make any difference between the forced and voluntary use of children.

PROCEDURE

Before anything there is a need to say that one of the most radical military groups involved in the civil war of Sierra Leone between 1991 and 2002 was the United Revolutionary Force. The Sierra Leone Civil War left approximately 120000 dead among whom there were tens of thousands of civilians including children who were either killed, raped, amputated or kidnapped for slavery. In the case of Revolutionary Council of Armed Forces v. Revolutionary United Front, the preliminary court defined forced recruiting as intractably recruitment while arbitrary recruitment was defined as a process through which people voluntarily sign up for the military. In any case, using children under 18 is a crime and the consent of the child does not have any effects on the responsibility of the committer.

The special representative of the secretary-general of UN in child affairs and armed conflicts and the work group of the Security Council in child affairs and armed conflicts believe that law makes no difference between voluntary and forced recruitment. In the case of civilian protection forces, the preliminary court adopted a special approach towards recruiting and stated that the word recruiting should be defined under the light of the global Red Crescent committee's interpretation of part "c" of the s3 of article 4 of the second protocol supplementary to Geneva Conventions. According to this section, the principle of prohibition of recruiting prohibits voluntary registration. Not only that children should not be recruited or employed, but also they should be banned from participating in wars (i.e. military operations such as data collection, ammunition carrying and or carrying foods). The primitive court explicated that signing up can be either forced or voluntarily. The appeal court provided an extensive definition for signing up and explicated that signing up includes any behavior that accepts a child as a part of a militia.

This approach was similar to the approach adopted in the verdict issued for the Revolutionary Council of Armed forces. This approach also overcomes the issue of distinction between voluntarily and forced recruitment, because in the subject of National United Front the primitive court stated that the prosecutor has failed to provide a reason for voluntary signing up. The victims of the case of Thomas Lubango back the verdict of the primitive court. this verdict states that voluntary recruitment is no different than forced recruitment in terms of children and the word children in the literature of armed forces includes all children. In addition prohibition of recruitment of underage children includes any participation of children in military organizations. On this basis, also the young girls who are taken by armed forces for house services or sexual slavery are covered by the statute. Regarding the difference between the phrases "direct participation" and "active participation in war", it is inferred that the codifiers of the statute meant that the latter phrase includes extensive activities. Another group of the victims back the approach adopted by the primitive court and believe that both the voluntary and forced recruitments are forms of recruitment and that the principle prohibiting the use of children in armed forces holds for both of these forms. In the view of the appeal court, the interpretation of the statute of ICC includes the regulations laid in the Vienna Convention on law of treaties which explicate that the rule governing the interpretation of the law is to consider the phrases based on the subject and purpose. It was also explicated that s3 article 21 of the statute of ICC believes that the interpretation and execution of the law stated in the statute are functions of obvious norms of human rights. In addition to referring to the procedure of the special court, the primitive court explicated that although the verdicts of international courts are not applicable to the concept of article 21 of the statute of ICC, the purpose and phrasing of the article that considers recruitment of children under 15 years old as a crime are consistent with and similar to the content of the article 8 of the ICC statute. On this basis the procedure of special court can help with the interpretation of regulations of the statute of ICC in this context. Part "c" s2 article 4 of the second protocol supplementary to the Geneva Conventions states that recruiting and using under 15 years old children in civil armed conflicts is prohibited.

Regarding the recruitment of children in armed groups, the special court explicates that these groups may be governmental or private. This finding is based on the interpretation of the Former Yugoslavia ICC in the case of Tadich. In fact part "b", s26 of the article 8 is related to

international armed conflicts and national armed forces while the part "e" of s7 of article 8 is related to civil armed conflicts and national groups.

Both phrases of direct participation and active participation in war are existent in the literature of Geneva Law and it seems that active participation in war guarantees participation in military operations.

The procedure of the ICC of Rwanda considers no difference between the words active and direct. The primitive ICC of Rwanda explicated in the case of Acasio that these words are synonyms. S2 of the article 43 of the adjoining protocol to the Geneva Conventions believes that direct participation is a right for the members of the armed forces of the parties of the war. S3 of the article 51 of the same protocol states: civilians are provided with the support envisaged in this section, unless they have direct participation in war. While interpreting the s3 of the article 51 The World Red Crescent Committee stated: the immunity envisaged for civilians is conditioned to not having a direct participation in war. On this basis, direct participation in war means that the person undertakes war actions and causes damages to the equipment or soldiers of the other side. On this basis, direct participation in war is defined as taking part in battles and does not include activities such as collection and transferring of military information or, transportation of arms and ammunition. On this basis, the first protocol adjoining Geneva Conventions does not ban the use of children for aforementioned purposes. By taking a look at the procedure of the special court which is inspired by the report of primitive committee of establishment of ICC it can be inferred that active participation in war includes direct participation in battles and military activities related to them. The report of the primitive committee of establishment of ICC explicated that the phrases of direct participation in battle and active participation in military activities include use of children as messengers and or military and do not include activities that have no explicit relation to war and conflict such as transportation of food. However using children in direct supporting of war such as transportation of equipment and supplies to the front or some other activities that take place on the front lines are included.

A vague definition has been provided in the case of revolutionary council of armed forces. This is because the provided opinion was too extensive compared to what was expected by the codifiers of the statute, and every support for an operation during a war was considered

as active participation. For example supplication of food is a type of active participation in war. While the no difference has been made in this regard in the case of civilian defense forces, the primitive court in the case of revolutionary united front provided several examples of active participation and explicated that attacking civilians, kidnapping peacekeepers, protecting the commanders, pulling out patrols and military inspections, guarding military goals, and espionage are considered as active participation. However doing normal daily chores of the commanders and or using children in food supplication missions are not considered as active participation in war.

SEXUAL CRIMES AGAINST CHILDREN IN THE INTERNATIONAL CRIMINAL LAW

As it was mentioned earlier, sexual crimes are the most prevalent type of crime against children in international criminal law. In the following sections I firstly will express the international regulations on sexual crimes against children and then, I will explain the judicial procedure in this regard.

INTERNATIONAL CRIMINAL REGULATIONS

Sexual misuse of children is not a new problem and throughout the history it has manifested itself in different varying shapes. This is a phenomenon above any boundary or time and it along all its different manifestations have always pursued a single goal. Though its previous manifestations were only in forms of sexual assault and early marriage, instead nowadays it has more manifestations one of which may be sexual tourism. Although nowadays in most countries sexual relation between two persons who do not have marital relationship is not considered as a crime under consent of both sides, but it is only limited to adults and it does not include having sexual relationships with underage children. In fact in this case, the legislators do not pay attention to the consent of the child and believe that they are not able to tell the difference between good and evil in some cases and hence, they cannot give consent on formation of a sexual relationship and even if they do declare so and we too give credit to their consent, still

there is a need for prosecution because of the dangers such relationships impose on their health and wellbeing.

Social obscenity has caused a very high dark figure for this crime and usually most of the victims of this crime are afraid to disclose their experiences. Regarding children, the dark figure is even higher. Most of those who have been raped during their childhoods are afraid to disclose the event and tend to hide it. It has been frequently observed that many of those who were sexually abused during their childhood come up and try to disclose their experience after that the perpetrator has been arrested after too many rapes. Many of the children, who have been abused during their childhood, have raped other children in their adulthood as an act of revenge. A study on sexual abuse in Canada by the committee of sexual crimes against children (1998) showed that 53% of Canadian females and 31% Canadian males have been sexually abused during their childhood, but they were afraid to disclose it.

Nowadays, in addition to sexual assault, sexual tourism which is comprised of trafficking of children to special areas is also considered as a sexual crime against children. Child trafficking is more profitable than drug trafficking because the drugs can only be used once, but in human trafficking, the person can be used repeatedly. Economic poverty has been extremely effective on the emergence of this phenomenon. But still we can't deny the faults and weaknesses of governments and interventions of other governments that provoke the former phenomenon. This can be witnessed in the newly independent countries of former Soviet Union. While the rates of trafficking of women and children were too small before the collapse of former Soviet Union, after the collapse of the central government and formation of newly independent republics all at once the rates of trafficking of women and children to Europe increased. Among these countries it can be pointed to Lithuania and Moldavia. In addition, some times the high profits of trafficking results in involvement of state agents in trafficking of women and children too; as instances it can be referred to Thailand and Cambodia.

The figures related to trafficking are horrible and it is said that currently there are two million children mostly girls being used in sex industry.

Another form of sexual abuse of children is pornography. This phenomenon was in pas very limited and could only be seen on magazine and newspaper pages, but nowadays it has become more deployed and it has even found its way into the mobile industry. Pornography can

be in the either forms of audio or video, however the more prevalent and risky type is the video pornography. This crime can have deteriorating effects on a child. In most cases, those who create the images and videos rape the children by themselves. In addition the images can help with intimidation of the children. The extensiveness of child pornography has become concerning for international organizations such as UNICEF. In addition for the purpose of overcoming these concerns, regulations have been laid among which it can be referred to the article 24 of the convention non child rights, emphasizing the necessity of governments' support for children against sexual crimes. The article 3 of the convention 182 of the International Labor Organization considers the use of children in prostitution and pornography as the worst types if child labor. Due to the criticalness of the issue of sexual abuse of children, the global society has decided to adopt certain practical measures against this issue. One of these actions was the approval of the protocol of prevention and punishment of persons especially women and children, that adjoined the Palermo convention. For the purpose of providing further support for children, the s3 of the article 3 of the protocol states that child trafficking holds even in presence of consent of children. The criticism that this protocol has received is that it does not pay any attention to the trafficking of children within the borders of a country. In fact the protocol is applicable only when the victim is trafficked from one country to another. For this reason it is suggested that trafficking within the borders of a country should be considered as a crime as well. In other words, instead of focusing on the illegal exiting of persons from the borders of their countries, human trafficking must focus more on the goals of illegal exploiting of people, especially forced prostitution. During the summer of 1991, conflicts occurred in the Ituri territory in Africa and the result was occupation of certain natural resources of the land by certain groups. Between the July of 2002 and December of 2003, several armed conflicts occurred that caused armed confrontation between the formerly mentioned groups and neighboring countries. Lubango, the founder of the forum of patriots of Congo in 2000, was in charge of the military of Congo in between the September of 2002 and late July of 2003. In 2002, reports received stating that the former military faction has taken control of the city of Bonia and parts of the Ituri territory. In the same time, there several reports coming in pointing to sexual abuse of female children who were organized as military forces among the forces commandeered by Lubango. The latest document elaborating on protecting children against

sexual abuse is the arbitrary protocol of the convention on child rights regarding selling, prostitution and pornography of children. On the 25th of May of 2000, the General Assembly of the UN issued the resolution of 54/263 which was executed in the November of 2003 after three months after its approval by the tenth country. Currently 114 countries have signed it and 111 countries have become members. After stating an introduction on the necessity of the codification of the protocol and the concerns of the global society about international child trafficking for prostitution and pornography purposes, in its article 1 it obliges the governments to criminalize the selling, prostitution, and pornography of children.

INTERNATIONAL JUDICIAL PROCEDURE

In terms of the level of ICC, the case of Thomas Lubango is the first case including sexual accusations against children. In this case it was claimed that Lubango, the founder and the commander of the Union of patriots of Congo (UPC) and the commander of FPLC is accused of sexual crimes against soldier children. On this basis, the judges on the case spent 220 investigation sessions on the sexual accusations against Lubango and heard from 6 witnesses. After these sessions and hearings, the final statements of the prosecutor, the legal representatives of the victims and the defendant were stated. The primitive court pledged Lubango guilty and sentenced him under charges for recruiting and using children in armed conflicts. This was while before the verdict, the prosecutor had already said that considering certain aspects of the sexual crimes against soldier children, the sexual crimes of the Lubango's case would not be ignored. As time passed, the differences between prosecutor's evidence and the accusations under investigation showed that the prosecutor was not loyal to his promises. This was while at least 15 of the 25 witnesses of the case had testified the occurrence of sexual crimes. The prosecutor still inferred that the witnesses were not willing to testify against the sexual crimes of Lubango and hence, he was left with no choice other than lifting the prosecution of Lubango under these charges. The act of the prosecutor received several criticisms from the academic society and the human rights activists and also some nongovernmental organizations. Human Rights Organizations claimed that more than a third of the soldier children (12500 of the 30000) were systematically exposed to sexual crimes during the conflicts. the activists of women's rights in

international levels pointed to the obvious reasons of kidnapping and raping under 12 years old children by Lubango and his commandeered forces and demanded the prosecutor to undertake more investigations in this regard. They believed that because of lack of an efficient policy in the domain of research on sexual crimes, the prosecutor had failed to do the job and instead swept the problem under the carpet. This was while the accusation of using under 15 years old children in armed conflicts was in direct relationship with the non-stated accusation of sexual aggression, even if the only manifestation of using children in armed conflicts was sexual abuse by soldiers. However, instead of amendment of the indictment, the prosecutor was only pretending that he had considered for the entire aspects of the accusations, including sexual abuse of soldier children.

In the January of 2009 and with the start of the trial of Lubango, the prosecutor made a reference to the sexual crimes that had taken place during recruitment. He claimed that during the mentioned period, the soldier children were asked to kidnap women and bring them to their camps and rape them as a part of their trainings under the commanding of their commanders. In addition, soldier children some of whom were only 12 years old were regularly sexually abused by their commanders and were used for affairs such as cooking, cleaning, espionage and watching out. In fact these soldier children have played several roles at the same time. One moment they are carrying a gun, the next they are preparing food for commanders and the next, they are used for sexual crimes and were killed if showed any resistance.

The legal representatives of former soldier children have approved these facts and emphasized that sexual abuse was done as soon as the children were abducted and this situation continued as long as they were inside the camps. In addition to these, the witness number 38 emphasized that the major role of soldier children was provision of sexual services. The witness number 299 testified that child soldiers had to carry commanders' bags filled with military equipment and act as their wives. Witness number 7 has also emphasized that it was observed several times that commanders asked the soldier children to sleep with them and they could not resist it. The witness number 89 stated that sexual crimes were common behaviors against soldier children. Most of them would become pregnant and hence they would have had been allowed to leave the camps and run for their villages. Witness number 10 who was a former soldier child and his/her testimony has been accepted partially by the court, testified that she had been

regularly subjected to sexual crimes. After the testimonies of the witnesses, the prosecutor used the testimonies of expert witnesses and proved that among the crimes committed by Lubango, sexual crimes can be counted too. The report of the special representative of the general assembly of the UN showed that in these conflicts, soldier children have had two-fold roles. While they were fighters and on watches, they have also been victims of sexual crimes including sexual slavery and forced marriage.

The court asked the prosecutor about the relationship between sexual aggression and the case and if there is no relationship between these aggressions and the described events of the accusations of Lubango, how does the prosecutor expect the court to take measures against the sexual crimes of Lubango against child soldiers? The prosecutor, Moreno Ocampo answered: we believe that there are evidence showing that children have been abused under slavery and rape. We believe that these harms were some of the harms done by underage recruiting. However, we do not claim that Lubango himself has committed a rape; rather we claim that Lubango has committed underage recruiting while being aware of the aggressive reality of this deed. What we believe in this case is different than claiming committal of sexual crimes. In our view, sexual crimes such as rape are not specific crimes. These sexual crimes were the results of underage recruiting in military forces. It is important that we keep ourselves limited to recruiting when talking about accusations, because if not so, what we may be able to say finally would be that the children were wives of their commanders and should be supported by the ICC's supportive measures. The reason why the prosecutor has tried to stick to the recruiting accusation is that he wanted to prove that the sexual harms inflicted on the children were caused by recruitment. Commanders commanding to abduct and rape the children have in fact commanded to use them in armed conflicts. The primitive court did not accept the prosecutor's inferences and decided to increase the accusations corresponding to the existing facts. Most of the judges concluded that the indictment must be amended corresponding to the existing evidence pointing to sexual crimes so that only those crimes were proved for which there were reasons at hand. However, the court of appeal did not accept the interpretation of the judges in the primitive court and stated that the judges had made a mistake in their interpretations. The court of appeal mentioned that the court is not allowed to overstep from the investigation of causes and evidence that are related to accusations. The court of appeal inferred that it is only

the prosecutor who can add new reasons and circumstances to the indictment through the authority provided for him/her by the s9 of the article 61. The court stated that considering the fault of the prosecutor and his refusal to mention the sexual accusations in the indictment, the reasons are not sufficient for issuance of a verdict based on the article 74. The court also stated that regarding the statements of the expert witnesses who were called to the court for more information, sexual abuse of children is not covered by the common definition of using children in armed conflicts and this very measure has caused the soldier children to be exposed to dangers such as sexual assault, sexual slavery and other manifestations of sexual violence. Without having to attach these crimes to use of children in armed conflicts, Lubango was found guilty but the final verdict of the court did not include any components of sexual crime.

CONCLUSION

Considering the content of the present paper, it is concluded that although strict and comprehensive policies have been adopted by international criminal law regarding recruitment of children, there are still ambiguities in this context. However, for the purpose of effective protection of children consistent with the other international supportive regulations is to keep the children from the devastating consequences of wars, recruitment and using them in armed conflicts which are considered as instances of war crimes. In two international documents being the statute of the ICC and the statute of the special court, recruitment of children is explicitly referred to as a crime and a guarantee for criminal prosecution of its committers is made. In the context of sexual crimes against children too, several efforts have been made in the forms of laying several criminal regulations. In terms of common international law we have witnesses a significant progression in development of legal criterions for prohibition of recruitment and committal of sexual crimes against children. Two protocols adjoining the Geneva Conventions prohibit the governments from recruitment and direct war participation of people younger than 15 years of age. The global approval of the Convention on child rights and approval of the mentioned protocols by many countries shows the prohibition on recruitment of children internationally. In addition, under the light of procedures of international criminal courts, the global community has showed a suitable reaction to the criminal phenomenon of child

recruitment, rather than committal of sexual crimes against them. It is obvious that the comprehensiveness of the criminal policy of the international society puts more emphasis on the international responsibilities of governments and therefore the preventive criminal policy is amplified while new solutions are provided and new norms are defined and codified through inspirations by judicial procedures.

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