

ORIGINAL ARTICLE

INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS

Reproductive violence against child soldiers

Rosemary Grey*

The University of Sydney, Sydney Law School, Sydney, Australia
Email: rosemary.grey@sydney.edu.au

Abstract

Children associated with armed forces or armed groups ('child soldiers') experience conflict in highly differentiated ways, including in their exposure to gender-based violence. Cognisant of that reality, this article seeks to enrich current understandings of gender-based violence against female child soldiers by focussing on one relatively under-examined type: reproductive violence against female child soldiers. It revisits relevant cases from three jurisdictions which have most engaged with female child soldiers: the International Criminal Court, Special Court for Sierra Leone, and Colombian national courts. In each jurisdiction, the author closely examined publicly available court records, in order to detect references to (mostly uncharged) acts of reproductive violence against girls in armed groups. Forms of reproductive violence against child soldiers identified through this method include forcible impregnation and/or forced pregnancy, forced maternity, forced contraception and forced abortion, being forced to bear children before being sufficiently developed themselves, and the denial of reproductive health care. The article then explores how such reproductive violence might be charged as war crimes and crimes against humanity in future cases. This lens on child soldiers is especially timely, given the recent 'reproductive violence' turn in the field of international criminal law.

Keywords: reproductive violence; child soldiers; slavery; International Criminal Court; Special Court for Sierra Leone

1. Introduction

In 1977, when the Additional Protocols to the Geneva Conventions first defined the recruitment and use of children in hostilities as violations of the laws of armed conflict,¹ the children in question were widely assumed to be boys. For example, the 1987 commentary on these new prohibitions explains that:

*The author acknowledges conversations that informed her perspective including with civil society and academics involved in advocating for the increased visibility of reproductive autonomy in the proposed Crimes Against Humanity Convention, as well as earlier discussions with Patricia Sellers, the ICC Prosecutor's Special Adviser on Slavery Crimes, and Kim Thuy Seelinger, the ICC Prosecutor's Special Adviser on Sexual Violence in Conflict.

¹1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, Art. 77(2); 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, Art. 4(3)(c).

Recent conflicts have all too often shown the harrowing spectacle of boys, who have barely left childhood behind them, brandishing rifles and machine-guns and ready to shoot indiscriminately at anything that moves.²

In the intervening years, a more nuanced picture has emerged about the diverse experiences of children associated with armed forces or groups ('child soldiers', to use the popular term) as a result of critical legal scholarship, evidence in war crimes prosecutions, and civil society advocacy. Displacing the dominant imagery of child soldiers as a mass of rifle-brandishing boys, the term is increasingly used by scholars and practitioners of international criminal law to describe any child who has been recruited (voluntarily or otherwise) into a state's armed forces or an armed group, and whose roles in and around combat vary widely, as does their agency, their degree of physical and psychological development, and their moral culpability.³

This more varied approach is reflected in the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, a guideline developed by UNICEF and civil society in 2007, which has since been endorsed by 112 states.⁴ Aimed at preventing the militarization of children and supporting them post-demobilization, the guideline relates to any child 'who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes', regardless of whether they took a direct part in hostilities.⁵ The *Principles* define a 'child' to mean under 18 in accordance with international human rights law,⁶ however in international criminal law, a 'child soldier' generally means under 15 years of age.⁷

In addition, cases before the Special Court for Sierra Leone (SCSL) and International Criminal Court (ICC) concerning the war crimes of conscripting, enlisting and using child soldiers⁸ have shed light on the diverse experiences of girl soldiers. In particular, these cases have shown that girls in armed groups often serve multiple roles, including performing the same tasks as their male counterparts such as combat, carrying weapons, guarding ammunition), but also tasks reserved mostly for female recruits, such as being forced to have sex with, and to perform domestic labour for, their commanders.⁹ This increased awareness of girls' experiences in armed groups has helped to close impunity gaps and led to more gender-informed reparations. It also has potential implications beyond the courtroom, including incentivizing Disarmament, Demobilization, and Reintegration (DDR) programs to be more attentive to the needs of girls.¹⁰ However, international criminal tribunals are yet to grapple with the full range of gender-based crimes to which female

²Y. Sandoz, C. Swinarski, and B. Zimmerman (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Geneva: International Committee of the Red Cross (1987), Para. 3183.

³E.g. M. Denov, *Child Soldiers: Sierra Leone's Revolutionary United Front* (2010); M. Drumbl, *Reimagining Child Soldiers in International Law and Policy* (2012); S. Mouthaan, 'Barefoot, Pregnant and in the Kitchen: Am I a Child Soldier Too?', (2015) 51 *Women's Studies International Forum* 91. See also the emphasis on diversity among children in ICC OTP, *Policy on Children* (December 2023), available at www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf.

⁴The *Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (February 2007), available at www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf. See also UNICEF and Save the Children, *Paris Principles Operational Handbook* (2022).

⁵*Ibid.*, Art. 2.2.

⁶E.g. 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Arts. 1 and 2.

⁷This use of the term accords with the protections set forth in Rome Statute of the International Criminal Court, Arts. 8(2)(b)(xxvi) and 8(2)(e)(vii); Protocol I, *supra* note 1, Art. 77(2) and (3); Protocol II, *supra* note 1, Art. 4(3)(c) and (d).

⁸See Rome Statute, *ibid.*, Art. 8(2)(e)(vii) ('conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities' in an international armed conflict) and Art. 8(2)(b)(xxvi) ('conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities' in a non-international armed conflict).

⁹See Section 3 of this article.

¹⁰Girls have historically been sidelined, if not overlooked entirely in DDR programs. See: *Prosecutor v. Thomas Lubanga Dyilo*, Written Submissions of the United Nations Special Representative of the Secretary-General on Children and Armed

child soldiers are exposed. In particular, their experiences of reproductive violence have remained largely unaddressed. As a result, charges have not reflected the full range of wrongdoing against children in and associated with armed groups, judgments have only partially reflected the lived experience of victim-survivors, and reparations have not addressed the totality of harms.

Seeking to support a shift in practice, this article takes a deep dive into the historically under-examined issue of reproductive violence against female child soldiers, and identifies pathways for prosecuting such violence as crimes under international law. Taken as a whole, it demonstrates that proactively considering reproductive violence can deepen current understandings of the incentives for, and consequences of, the recruitment of female child soldiers. The article proceeds in four parts. First, it explains the concept of reproductive violence: a concept that has recently emerged as a prominent theme in international criminal law scholarship and practice. Next, it revisits publicly available court records from three jurisdictions that have led the way in addressing crimes against child soldiers: the ICC, SCSL and Colombian courts.¹¹ By trawling the evidence, submissions, and judgments in relevant cases, I identify glimpses of (mostly uncharged) reproductive violence against girls abducted by and integrated into armed groups.¹² Third, I turn to legal analysis, exploring how such reproductive violence might be charged as war crimes and crimes against humanity, if the glimpses solidified into solid evidence. Strategies for investigation, as well as prosecution, are discussed. Finally, I offer some brief conclusions and identify some areas for further research.

2. Reproductive violence

Over the past 30 years, gender-based crimes have been increasingly viewed as among the most serious crimes under international law. The arc of progress has been so well documented that only the briefest of summaries is needed here.¹³ In short, we have gone from seeing major gaps around gender-based violence in the Nuremberg and Tokyo Tribunals, to a detailed examination of sexual violence against civilians (especially female civilians) in the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR),¹⁴ and more recently, to the recognition of an extended range of sexual, reproductive, and gender-based crimes in the ICC's legal framework, practice, and policies.¹⁵ This extended range includes sexual crimes against men, women, boys and girls (both civilians and combatants), as well as non-sexual violations that the ICC Office of the Prosecutor has rightly characterized as gender-based persecution, such as the Taliban's evisceration of women's civil and political rights in Afghanistan.¹⁶ Admittedly, progress toward accountability for gender-based violence has not been

Conflict Submitted in application of Rule 103 of the Rules of Procedure and Evidence, ICC-01/04-01/06-1229-AnxA, T.Ch. I, 18 March 2008, Para. 26.

¹¹The IMT, IMTFE, ICTY, ICTR, and ECCC did not prosecute the conduct of recruiting and using child soldiers: C. Aptel, *Atrocity Crimes, Children and International Criminal Courts: Killing Childhood* (2023), 68–91.

¹²Further evidence of reproductive violence potentially exists in the confidential, unredacted court documents.

¹³E.g. C. Niarchos, 'Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia', (1995) 17(4) *Human Rights Quarterly* 649; K.D. Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (1997); H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (2000), Ch. 10; R. Copelon, 'Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law', (2000) 46 *McGill Law Journal* 217; L. Chappell, *The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy* (2016).

¹⁴A.-M. de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR* (2005); S. Brammertz and M. Jarvis (eds.), *Prosecuting Conflict-related Sexual Violence at the ICTY* (2016).

¹⁵R. Grey, *Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court: Practice, Progress and Potential* (2019).

¹⁶*Situation in the Islamic Republic of Afghanistan*, Request for Authorisation of an Investigation Pursuant to Article 15', ICC-02/17-7-Red, P.T.Ch. III, 20 November 2017, Paras. 115–21; *Situation in the Islamic Republic of Afghanistan*, Prosecution's Application under Article 58 for a Warrant of Arrest against Haibatullah AKHUNDZADA, ICC-02/17-224-

uninterrupted. There have been steps backward as well as forward in each of the above international courts, and in semi-international courts such as the SCSL¹⁷ and Extraordinary Chambers in the Courts of Cambodia (ECCC).¹⁸ But the general trend has been toward accountability: over time, gender-based crimes have been increasingly codified, investigated, and prosecuted in the field of international criminal law.

The current interest in reproductive violence builds on these developments. The concept of reproductive violence has been defined by scholars of international criminal law to mean violations of ‘reproductive autonomy’, being the right of individuals to exercise agency with respect to decisions about their fertility, or whether, when and with whom to reproduce.¹⁹ As a symbolic level, delineating reproductive violence from other harms is a way to express that reproductive violence violates a distinct interest, being reproductive autonomy. At a practical level, delineating reproductive violence from other types of violence may prompt justice actors to consider the myriad ways that a person’s reproductive autonomy is violated in the context of war crimes, crimes against humanity, genocide, and aggression, in a world where such violations have often been overlooked in the past.

The term ‘reproductive autonomy’ entered the ICC’s lexicon in the early 2020s in the *Ongwen* case. Specifically, the Trial and Appeals Chamber agreed that ‘reproductive autonomy’ is the unique legal interest protected by the crime of forced pregnancy, in line with submissions by the Prosecution, victims’ legal representatives and *amici curiae* to that effect.²⁰ Building on that jurisprudence, the ICC Office of the Prosecutor made reproductive violence a distinct theme in its

Red, P.T.Ch. II, 23 January 2025. See also the charges of gender-based persecution in relation to Mali, Darfur, and the Central African Republic: *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Second Corrigendum to the ‘Prosecution Closing Brief, ICC-01/12-01/18-2475-Corr2-Red, T.Ch. X, 24 April 2023, Paras. 512–26; *Prosecutor v. Mahamat Said Abdel Kani*, Prosecution’s Trial Brief, ICC-01/14-01/21-359-Red, 28 July 2022, Paras. 316–20; *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Second Corrected Version of ‘Document Containing the Charges, ICC-02/05-01/20-325-Anx1-Corr2-Red, P.T.Ch. II, 22 April 2021, Counts 21 and 31.

¹⁷V. Oosterveld, ‘Forced Marriage and the Special Court for Sierra Leone: Legal Advances and Conceptual Difficulties’, (2011) 2(1) *J. International Humanitarian Legal Studies* 127; V. Oosterveld, ‘Evaluating the Special Court for Sierra Leone’s Gender Jurisprudence’, in C. Jalloh (ed.), *The Sierra Leone Special Court and its Legacy: the impact for Africa and International Criminal Law* (2014), 234.

¹⁸S. Studzinsky, ‘Neglected Crimes: The Challenge of Raising Sexual and Gender-Based Crimes before the Extraordinary Chambers in the Courts of Cambodia’, in S. Buckley-Zistel and R. Stanley (eds.), *Gender in Transitional Justice* (2012), 88; T. de Langis, ‘“This Is Now the Most Important Trial in the World”: A New Reading of Code #6, the Rule against Immoral Offenses Under the Khmer Rouge Regime’, (2014) 3 *Cambodia Law and Policy Journal* 61; R. Killean, ‘An Incomplete Narrative: Prosecuting Sexual Violence Crimes at the Extraordinary Chambers in the Courts of Cambodia’, (2015) 13(2) *Journal of International Criminal Justice* 331; S. Williams and E. Palmer, ‘The Extraordinary Chambers in the Courts of Cambodia: Developing the Law on Sexual Violence?’, (2015) 15 *International Criminal Law Review* 452; V. Oosterveld and P.V. Sellers, ‘Issues of Sexual and Gender-Based Violence at the ECCC’, in S. Meisenberg and I. Stegmiller (eds.), *The Extraordinary Chambers in the Courts of Cambodia: Assessing Their Contribution to International Criminal Law* (2016), 321; R. Grey, ‘Seen and Unseen: Sexual and Gender-Based Crimes in the Khmer Rouge Tribunal’s Case 002/02 Judgment’, (2019) 25(3) *Australian Journal of Human Rights* 466.

¹⁹E.g. Askin, *supra* note 13, 397–403; K. Boon, ‘Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent’, (2001) 32 *Columbia Human Rights Law Review* 625; A.C. Scott, ‘Prosecution of Reproductive Crimes Committed During the Halabja Attack in the Iraqi High Tribunal’, (2010) 6 *Publicist* 1; R. Grey, ‘The ICC’s First “Forced Pregnancy” Case in Historical Perspective’, (2017) 15(5) *Journal of International Criminal Justice* 905; C. Lavery and D. de Vos, ‘Reproductive Violence as a Category of Analysis: Disentangling the Relationship between “the Sexual” and “the Reproductive” in Transitional Justice’, (2021) 15(3) *International Journal of Transitional Justice* 616; T. Altunjan, *Reproductive Violence and International Criminal Law* (2021); R. Grey, ‘Reproductive Crimes in International Criminal Law’, in I. Rosenthal, V. Oosterveld, and S. SáCouto (eds.), *Gender and International Criminal Law* (2022), 231; A. Zammit Borda, ‘Putting Reproductive Violence on the Agenda: A Case Study of the Yazidis’, (2024) 26(1) *Journal of Genocide Research* 94.

²⁰*Prosecutor v. Dominic Ongwen*, Trial Judgment, ICC-02/04-01/15-1762-Red, T.Ch. IX, 4 February 2021, (*Ongwen* Trial Judgment), Paras. 2717, 2722; *Prosecutor v. Dominic Ongwen*, Judgment on the Appeal of Mr Ongwen against the Decision of Trial Chamber IX of 4 February 2021 Entitled ‘Trial Judgment’, ICC-02/04-01/15-2022-Red, A.Ch., 15 December 2022, (*Ongwen* Appeal Judgment), Paras. 18, 41, 1063.

2023 *Policy on Gender-Based Crimes*.²¹ The previous 2014 gender policy governed the investigation and prosecution of ‘sexual and gender-based crimes’ generally, but made no reference to reproductive violence, reproductive autonomy, or similar.²² But the 2023 version – spearheaded by Professor Kim Thuy Seelinger, serving as Prosecutor’s Adviser on Sexual Violence in Conflict – consistently refers to ‘sexual, reproductive and other gender-based violence’, thereby elevating reproductive violence to a new level of prominence. The 2023 policy notes that the Rome Statute expressly enumerates three forms of reproductive violence: ‘forced pregnancy’ as a war crime and crime against humanity; ‘enforced sterilization’ as a war crime and crime against humanity; and genocide by ‘imposing measures aimed at preventing births’ within a national, ethnic, racial, or religious group.²³ Other illustrative examples mentioned in the policy include ‘forced use of contraception, forced abortion, forced breastfeeding, denial of essential reproductive healthcare or physical violence aimed at reproductive organs’.²⁴ Unpacking the concept of ‘reproductive violence’, the policy explains:

Attacks on reproductive autonomy violate the right of individuals to exercise agency with respect to decisions about their fertility, or whether, when and with whom to reproduce. This form of violence can also affect the individual’s actual ability to have children. As with other forms of gender-based violence, reproductive violence violates fundamental rights to dignity and bodily integrity. Reproductive violence can be committed against persons of any gender, age, or condition, including LGBTQI+ persons, children, and persons with disabilities. It can also be committed against a group, as through systematic measures enacted to control or prevent collective reproduction.²⁵

Other recent ICC policies to specifically consider violations of reproductive autonomy are the Office of the Prosecutor’s 2023 *Policy on Children*²⁶ and the 2024 *Policy on Slavery Crimes*.²⁷

In recent years, reproductive violence has also been picked up as a valuable analytic category by other bodies in the field of international criminal law. For example in 2024, UN Women partnered with the NGO Global Justice Center to produce detailed guidelines for United Nations (UN) fact-finding mission and commissions on inquiry on documenting reproductive violence amounting to violations of international human rights law and to war crimes, crimes against humanity, and genocide.²⁸ The impact of those guidelines can be seen in recent reports by UN investigations in Israel and Occupied Palestine²⁹ and Sudan,³⁰ among others. Reproductive violence has also

²¹ICC OTP, *Policy on Gender-Based Crimes* (December 2023), available at www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf (2023 *Policy on Gender-Based Crimes*).

²²ICC OTP, *Policy Paper on Sexual and Gender-based Crimes* (June 2014), available at www.icc-cpi.int/sites/default/files/iccdocs/otp/Policy_Paper_on_Sexual_and_Gender-Based_Crimes-20_June_2014-ENG.pdf.

²³See 2023 *Policy on Gender-Based Crimes*, *supra* note 21, Para. 37.

²⁴*Ibid.*

²⁵*Ibid.*, Para. 36.

²⁶ICC OTP, *Policy on Children* (December 2023), available at www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf, Paras. 27, 32, 33.

²⁷ICC OTP, *Policy on Slavery Crimes* (December 2024), available at www.icc-cpi.int/sites/default/files/2024-12/policy-slavery-en-web.pdf (2024 *Policy on Slavery Crimes*), Paras. 3, 36, 41, 61, 62, 68, 71.

²⁸UN Women and Global Justice Centre, *Documenting Reproductive Violence: Unveiling Opportunities, Challenges, and Legal Pathways for UN Investigative Mechanisms* (2024), available at www.unwomen.org/en/digital-library/publications/2024/09/research-paper-documenting-reproductive-violence-unveiling-opportunities-challenges-and-legal-pathways-for-un-investigative-mechanisms.

²⁹Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/79/232 (2024), at Paras. 96 and 102.

³⁰Findings of the Investigations Conducted by the Independent International Fact-Finding Mission for the Sudan into Violations of International Human Rights Law and International Humanitarian Law, and Related Crimes, Committed in the Sudan in the Context of the Conflict That Erupted in Mid-April 2023, UN Doc. A/HRC/57/CRP.6 (2024), Paras. 204, 206–7.

become more prominent in some domestic jurisdictions where international criminal law is enforced, particularly Colombia, as the final section of this article explains. And in the lead-up to negotiations for a Convention to Prevent and Punish Crimes against Humanity, several states have expressed support for enumerating a new crime against humanity of 'reproductive violence'.³¹ In this context of a heightened awareness of reproductive violence in the field of international criminal law, a 'reproductive violence' lens on child soldiers is especially timely.

3. Case studies

In writing this article, one of my main goals was to furnish readers with concrete examples of reproductive violence against girls in armed groups (henceforth, 'girl soldiers'), so that subsequent discussions of investigation and prosecution strategies are grounded in lived experience. To that end, I reviewed publicly available court records from the SCSL, ICC and Colombian courts, all of which reveal examples of reproductive violence against girls soldiers. Unearthing those examples required some digging around, particularly in earlier SCSL and ICC cases, where references to reproductive violence were scattered and indirect. However, once one makes reproductive violence their conscious entry point into these cases, numerous examples – some clear-cut, some more veiled – start to come into view.

3.1. Special Court for Sierra Leone

Discussions of gender crimes and the SCSL tend to focus on forced marriage, an offence charged using available crimes against humanity such as 'sexual slavery' and 'other inhumane acts'.³² But on closer examination, the SCSL's cases also reveal a litany of reproductive violations, including against young women and girls who can be described as child soldiers. Illustrative examples appear in the testimony of TF1-094, a prosecution witness in the AFRC case. TF1-094 was approximately 12 years old, and premenstrual, when abducted by the Sierra Leone Army (SLA).³³ While under the SLA's control, she received weapons training,³⁴ was supplied with matches to burn down civilian vehicles and homes,³⁵ and was shot at by enemy forces.³⁶ In the Trial

³¹Global Justice Center, 'Draft Articles on Prevention and Punishment of Crimes Against Humanity Should Advance Justice for Reproductive Autonomy', 5 October 2023, available at www.globaljusticecenter.net/draft-articles-on-prevention-and-punishment-of-crimes-against-humanity-should-advance-justice-for-reproductive-autonomy/; K. Adams, 'Progress on Gender Justice Continues as States Consider Next Steps on Draft Crimes Against Humanity Treaty', *Just Security*, 18 November 2024, available at www.justsecurity.org/104884/gender-progress-crimes-against-humanity-treaty/.

³²This jurisprudence originated in the AFRC case, in which the Prosecutor led evidence that government forces and rebel groups had abducted women and girls and then distributed them to male fighters for use as 'wives': a designation that included forced sexual relations with one particular fighter, and forced labour within his household. No crime of 'forced marriage' appeared in the SCSL Statute, but the Prosecutor charged the imposition of abusive domestic relationships using the crime against humanity of 'other inhumane acts'. However, the majority of the Trial Chamber (Judge Doherty dissenting) preferred to characterize that conduct as 'sexual slavery', and further found that the facts relevant to sexual slavery were subsumed by the war crime of 'outrages on personal dignity' in this case. The 2008 AFRC Appeal Judgment endorsed Judge Doherty's approach, and convictions for the imposition of 'forced marriages' were subsequently entered under 'other inhumane acts' in the RUF case. But in Taylor, the Trial Chamber reverted to characterizing the same conduct as 'sexual slavery', and this was not challenged on appeal. See: Oosterveld, 'Forced Marriage and the Special Court for Sierra Leone: Legal Advances and Conceptual Difficulties', *supra* note 17; Oosterveld, 'Evaluating the Special Court for Sierra Leone's Gender Jurisprudence', *supra* note 17; P.V. Sellers, 'Wartime Female Slavery: Enslavement?', (2011) 44 *Cornell International Law Journal* 118; N. Jain, 'Forced Marriage as a Crime Against Humanity: Problems of Definition and Prosecution', (2008) 6 *Journal of International Criminal Justice* 1013; J. Gong-Gershowitz, 'Forced Marriage: A "New" Crime Against Humanity?', (2009) 8 *Northwestern Journal of International Human Rights Law* 53.

³³AFRC case, Trial Judgment, SCSL-04-16-T, T.Ch. II, 20 June 2007, Paras. 1078–9.

³⁴AFRC case, Transcript of 13 July 2005, T.Ch. II, 32–3.

³⁵*Ibid.*, 43.

³⁶*Ibid.*, 45.

Judgment, her evidence is cited in respect of Count 9 (sexual slavery as an outrage on personal dignity),³⁷ but not Count 12 (conscripting, enlisting, or using children to participate actively in hostilities). Nonetheless, she can properly be described as a ‘child soldier’ in the sense described in this article’s introduction, given her experience of weapons training and combat.³⁸

As with many female abductees, TF1-094 was also forced to assume roles that her captors viewed as befitting women and girls. She was assigned as the ‘wife’ of a soldier named Andrew: meaning that he could sexually assault her and extract from her forced domestic labour.³⁹ She became pregnant within a month of this sexual violence,⁴⁰ and when Andrew learned this fact, he told her not to abort the pregnancy.⁴¹ At six months pregnant – a stage when most pregnancies are easily observable – abdominal pain prevented her from keeping pace with the other recruits. For that transgression, she was beaten around the waist by an SLA commander.⁴² She gave birth at full term (the publicly available court records do not reveal whether she delivered with medical care), but the child was stillborn.⁴³

Witness TF1-094’s testimony is suggestive of several forms of reproductive violence. Most obviously, the war crime of ‘forced pregnancy’. This war crime was not expressly listed in the SCSL Statute, but is defined in the Rome Statute to mean ‘the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law’.⁴⁴ Notably, there is no requirement in that definition that the victim carries the pregnancy to term. Thus, the crime can still occur if after some period of unlawful confinement, the victim terminates the pregnancy, or miscarries, or dies before giving birth. In the ICC’s *Ongwen* case (discussed below), the Appeal Chamber upheld the defendant’s conviction of forced pregnancy on the basis that he unlawfully confined two women whom had been ‘made forcibly pregnant’ through rape, and that his intent for such confinement was to carry out certain ‘grave violations of international law’, namely, to continue subjecting them to rape and other Rome Statute crimes.⁴⁵ It seems that Witness TF1-094 was likewise ‘forcibly made pregnant’ and then unlawfully confined with an intent to carry out ‘grave violations of international law’, including intending to continue to sexually assault her and to continue using her to participate actively in hostilities.

But ‘forced pregnancy’, as defined in the Rome Statute, is not the only form of reproductive violence identifiable in TF1-094’s testimony. It appears she was also subjected to ‘forced impregnation’, a term distinguishable from ‘forced pregnancy’ insofar as it implies being impregnated through force, threat, coercion etc, but without the elements of unlawful confinement and specific intent.⁴⁶ There can be no doubt that this act constitutes a severe

³⁷See *AFRC case*, Trial Judgment, *supra* note 33, Paras. 1069–188.

³⁸This observation about TF-094 echoes Sellers’ broader critique that in the *AFRC* case, neither the Prosecution nor the Trial Chamber sufficiently examined evidence of abducted girls as relevant to the conscription enlistment, or use of children in hostilities. See Sellers, *supra* note 32, 132.

³⁹*AFRC case*, Transcript of 13 July 2005, T.Ch. II, 29, 32.

⁴⁰*Ibid.*, 29, 34, 49.

⁴¹See *AFRC case*, Trial Judgment, *supra* note 33, Para. 1080.

⁴²*AFRC case*, Transcript of 13 July 2005, T.Ch. II, 41.

⁴³*Ibid.*

⁴⁴See Rome Statute, *supra* note 7, Art. 7(2)(f).

⁴⁵See *Ongwen* Trial Judgment, *supra* note 20, Paras. 3056–62; see *Ongwen* Appeal Judgment, *supra* note 20, Paras. 1041–104.

⁴⁶This is how the term ‘forced impregnation’ was understood during the negotiations for the 1998 Rome Statute. However, at the insistence of states who wanted to criminalize the conduct of forcibly *keeping* a woman pregnant, rather than only the initial act of forcibly *making* her pregnant, in response to reports of such conduct in the Bosnian war, the Rome Statute instead includes the crime of ‘forced pregnancy’, defined in Art. 7(2)(f) to mean ‘the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law’. See C. Steains, ‘Gender Issues’, in R.S. Lee (ed.), *The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results* (1999), 357 at 365–9.

violation of reproductive autonomy, and of human dignity and bodily integrity, even without the unlawful confinement and special intent required by the crime of ‘forced pregnancy’. But the circumstances by which TF1-094 *became* pregnant are not the only points to note. It is also relevant to consider her autonomy with respect to the duration of that pregnancy. In particular, her decision not to abort may have been the result of force or coercion. The Trial Chamber states that Andrew ‘told the witness not to abort the pregnancy and he would take care of her’, but this statement must be interpreted in light of the extreme power imbalance in their relationship (he, an armed male adult; she, an unarmed female child) and Andrew’s status as her abuser and captor. Forcing or pressuring a person not to abort a pregnancy (conceived consensually or otherwise) might be described as ‘forced continuation of pregnancy’ and, if that person consequently gives birth, ‘forced delivery’.⁴⁷

Here, we must acknowledge that a person who has been forcibly impregnated might nonetheless choose to proceed to full term, and/or might love and accept the resultant child. That can and does happen, and is the pregnant person’s prerogative. But this does not retroactively entitle others to violate her reproductive autonomy: the wrongdoing lies in removing their agency in such a physically, psychologically, and socially significant sphere of life. Forced impregnation and forced pregnancy can also have significant economic implications, particularly when perpetrators refuse to take responsibility for the resultant children, as the Prosecutor said happened for many women and girls forcibly impregnated by commanders in Sierra Leone.⁴⁸ In such circumstances, prevailing social and cultural conditions tend to mean that the economic impacts are borne by the mothers, who are ultimately left with responsibility for childcare when fathers are absent. The economic burden of providing for children is significant, and is especially difficult to bear for young mothers whose income-earning capacity is constrained by gendered barriers to employment and limited educational opportunities.

Potentially, TF1-094 also experienced a form of reproductive violence akin to what scholar Kelly Askin calls ‘forced loss of pregnancy’,⁴⁹ if her stillbirth was caused by the beatings, extreme stress, or other ill-treatment to which she was subjected by members of the SLA.⁵⁰ We can also note that she was placed under major physical and psychological strain while in SLA captivity, including during pregnancy, and that the restrictions placed on her liberty and movement precluded her from accessing reproductive healthcare. The imposition of these restrictions and conditions point to yet another form of reproductive autonomy, which we might call ‘denial of reproductive health’.

At the SCSL, reproductive violence against female child soldiers can also be seen in the *Taylor* case. Prosecution witness Akiatu Tholley is a case in point. As with TF1-094, this witness was young and premenstrual when abducted by an armed group (the Trial Chamber estimated her age as under 14 at that time).⁵¹ Unlike in previous SCSL cases, in *Taylor* the Trial Chamber seemed open to reading particular witnesses as *both* child soldiers *and* survivors of sexual violence. For instance, the Chamber viewed Tholley as a victim of the war crime of conscripting and using

⁴⁷This conduct is distinguishable from ‘forced pregnancy’ which as noted above, is restricted to situations where the victim becomes pregnant by force and is then unlawfully confined with one of two special intents (to alter the ethnic composition of a population, or to carry out other grave violations of international law).

⁴⁸*AFRC case*, Prosecution Final Trial brief, SCSL-04-16-T, OTP, 6 December 2006, Para. 1870 (emphasis added).

⁴⁹Askin defines the proposed offense of ‘forced loss of pregnancy’ as intentionally and forcibly causing abortion or miscarriage; we might add intentionally and forcibly causing a stillbirth to that list. She explains ‘Repeatedly kicking or punching a woman known to be pregnancy in the stomach area, which results in the loss of the pregnancy, would be covered under this offence. A medical procedure of curette or abortion against the person’s will would be covered. Repeatedly raping a woman known to be pregnant would also be covered under this offence, if the rape results in a loss of pregnancy’. See Askin, *supra* note 13, 399–400.

⁵⁰A person could experience forced pregnancy and forced pregnancy loss with respect to the same gestation: each is a separate and significant violation of reproductive autonomy.

⁵¹*Prosecutor v. Charles Ghankay Taylor*, Trial Judgment, SCSL-03-01-T, T.Ch. II, 18 May 2012 (*Taylor* Trial Judgment), Para. 1454.

children in hostilities⁵² and of the crime against humanity of sexual slavery.⁵³ It accepted that a commander named James abducted and raped Tholley, made her carry weapons, taught her to use an AK-47 and a pistol, and forced her to consume marijuana and cocaine to overcome her fear of combat.⁵⁴ The drugs, she testified, meant that ‘at that time I never was crying, I was never feeling to go back home [sic] and so I was now brave enough to do wicked things’.⁵⁵ Tholley stated that she was forced to live in James’ household, where she continued to be raped by him and was beaten by him and his other ‘wives’.⁵⁶ In addition, James sent her on a food-finding mission, during which she was forced to shoot a civilian woman and abduct her children.⁵⁷ The sexual violence perpetrated by James resulted in three consecutive pregnancies (in Tholley’s words, he ‘impregnated me three times in the jungle when I was not matured for that’).⁵⁸ The first and second pregnancies were ‘wasted’ (when asked to clarify, she confirmed that this meant miscarriage).⁵⁹ The third was terminated in a UNICEF hospital after she escaped captivity: one hopes with her informed consent, although that is not expressly stated in the public redacted version of her testimony.⁶⁰

Here, once again, we have evidence of what can be called ‘forced impregnation’ (the initial conception), ‘forced pregnancy’ (unlawful confinement once forcibly impregnated), and possible ‘forced loss of pregnancy’ (if the two miscarriages can be attributed to ill-treatment within captivity). The fact that Tholley was able to access a medically safe abortion in respect of her third pregnancy does not negate the characterization of this as a ‘forced pregnancy’. That term does not require that the victim actually gives birth, or that the confinement lasts for the whole pregnancy; it will suffice that the victim was unlawfully confined with one of the required special intents for any portion of the pregnancy.⁶¹

Empirical research suggests that the forms of reproductive violence against child soldiers glimpsed in the *AFRC* and *Taylor* cases were not isolated examples. For example, in her study of child soldiers in the RUF (another armed group involved in Sierra Leone’s civil war), Denov found that ‘[g]irls sometimes became pregnant as a result of rape’, and adds that ‘many of the babies died soon after birth due to malnutrition, lack of health care and disease and, in some cases, abuse’.⁶² Similarly, in the *AFRC* case, the Prosecution argued ‘[m]any of the women victimized by this practice [of “forced marriage”] bore children fathered by these commanders’.⁶³ But despite the apparent prevalence of ‘forced impregnation’ and/or ‘forced pregnancy’ in SCSL cases, no specific charge was laid for these acts of reproductive violence, potentially because such acts are not expressly listed in the SCSL’s war crimes provisions.⁶⁴ However, several SCSL Chambers regarded the ‘forced pregnancy’ endured by female abductees as relevant to establishing the crime of sexual slavery or forced marriage as an ‘other inhumane act’.⁶⁵ In this way, the SCSL laid down some

⁵²*Ibid.*, Paras. 1451–6, 1506–9.

⁵³*Ibid.*, Para. 1179.

⁵⁴*Ibid.*, Paras. 1453, 1507.

⁵⁵*Prosecutor v. Charles Ghankay Taylor*, Transcript of 27 October 2008, T.Ch. II, 19213.

⁵⁶*Ibid.*, 19203, 12209, 19212.

⁵⁷*Ibid.*, 19203, 12212–12216.

⁵⁸*Ibid.*, 19275.

⁵⁹*Ibid.*, 19220.

⁶⁰*Ibid.*

⁶¹For agreement, see: *Prosecutor v. Dominic Ongwen*, Amici Curiae Observations on the Rome Statute’s Definition of ‘Forced Pregnancy’ by Dr Rosemary Grey, Global Justice Center, Women’s Initiatives for Gender Justice and Amnesty International, ICC-02/04-01/15-1938, A.Ch., 23 December 2021, Para. 21.

⁶²See Denov, *supra* note 3, 124.

⁶³By contrast, forced pregnancy is listed in the article on crimes against humanity: See *AFRC case*, Prosecution Final Trial Brief, *supra* note 48, Para. 1870 (emphasis added).

⁶⁴Statute of the Special Court for Sierra Leone (SCSL Statute), Art. 2(g).

⁶⁵*AFRC case*, Appeal Judgment, SCSL-2004-16-A, A.Ch., 22 February 2008, Para. 190; see *Taylor* Trial Judgment, *supra* note 51, Para. 427.

early jurisprudence on prosecuting reproductive violence, including against girls who can be described as ‘child soldiers’.

3.2. International Criminal Court

3.2.1. DRC cases

A close examination of ICC cases concerning the use of child soldiers in the Democratic Republic of the Congo (DRC) reveals further evidence of reproductive violence. The first case to be tried in the ICC, *Lubanga*, is a case in point. Thomas Lubanga Dyilo was the commander-in-chief of the UPC-FPLC, an armed group known for its use of child soldiers, among other crimes. He was charged with the war crimes of ‘[c]onscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities’ in an international and/or non-international armed conflict pursuant to Articles 8(2)(b)(xxvi) and/or 8(2)(e)(vii) of the Rome Statute. Much ink has been spilled over the failure by the (then) ICC Prosecutor, Luis Moreno Ocampo, to include charges of sexual violence in this case, notwithstanding evidence that girls in the UPC-FPLC were routinely raped by their commanders, and that boys in the group were forced to commit acts of sexual violence (constituting sexual violence against those boys as well as against the persons assaulted).⁶⁶ Less has been written about reproductive violence in this case, although as I have previously noted, there are signs that girl soldiers in the UPC-FPLC endured this also.⁶⁷

For example, Prosecution Witness P-0007, a UPC-FPLC insider, testified: ‘[i]f the women got pregnant, they were either driven out of the camp or had an abortion.’⁶⁸ Judge Elizabeth Odio Benito, who had taken a keen interest in girl soldiers’ experience throughout the trial, asked the witness to elaborate:

JUDGE ODIO BENITO: This decision to have an abortion was made by the girls themselves or by somebody else?

P-0007: The decision to have an abortion was made by the commanders. The commander would say if a girl gets pregnant, she should no longer stay in the camp. Consequently, if a girl saw she got pregnant, she had an abortion not to be chased out of the camp.

JUDGE ODIO BENITO: Thank you. And finally, if the abortion take [sic] place, were there in the camp facilities where the girls could have their abortions?

P-0007: There wasn’t – there weren’t any facilities at the camp where they could have abortions. They did things themselves. They took medicine, traditional medicine to have an abortion. They had abortions alone.

JUDGE ODIO BENITO: And finally, did you yourself witness this young Gegere girl dying, 14 years old, because she tried an abortion?

⁶⁶Regarding girl soldiers, see: *Prosecutor v. Thomas Lubanga Dyilo*, Women’s Initiatives for Gender Justice: Request Submitted pursuant to Rule 103 (1) of the Rules of Procedure and Evidence for Leave to Participate as Amicus Curiae in the Article 61 Confirmation Proceedings’, ICC-01/04-01/06-403, P.T.Ch. I, 7 September 2006; N. Hayes, ‘Sisyphus Wept: Prosecuting Sexual Violence at the International Criminal Court’, in W. Schabas, Y. McDermott, and N. Hayes (eds.), *The Ashgate Research Companion to International Criminal Law: Critical Perspectives* (2013), 7; K.O. Smith, ‘Prosecutor v. Lubanga: How the International Criminal Court Failed the Women and Girls of the Congo’, (2011) 54(2) *Howard Law Journal* 467; see Mouthaan, *supra* note 3; see Chappell, *supra* note 13, 110–14; Y.M. Brunger, E. Irving, and D. Sankey, ‘The Prosecutor v Thomas Lubanga Dyilo’, in L. Hodson and T. Lavers (eds.), *Feminist Judgments in International Law* (2019), 409. Regarding boy soldiers, see Grey 2019, *supra* note 15, 131–132, 255–256.

⁶⁷See Grey, *supra* note 15, 136.

⁶⁸*Prosecutor v. Thomas Lubanga Dyilo*, Transcript of 18 March 2009, ICC-01/04-01/06-T-150-Red3-ENG, T.Ch. I, 35. Note: the Trial Chamber ultimately found P-0007’s evidence to be unreliable. Here, I am presenting his evidence as indicative of reproductive violence that could occur within ranks, without speaking to the veracity of his particular claims. See: *Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, T.Ch. I, 5 April 2012 (*Lubanga* Trial Judgment), Paras. 246–7.

P-0007: Yes. Where I was, there was a girl from the Gegere ethnic group. She had tried to have an abortion and then got problems and died of these.⁶⁹

In *Lubanga*, further details of reproductive violence also emerged at trial through questioning by the legal representatives for victims (LRV). For instance, one LRV questioned Prosecution witness P-0046, a MONUC Child Protection Advisor who had interviewed numerous former UPC-FPLC child soldiers. The witness testified that ‘some of the girls [from the UPC-FPLC] became pregnant as a result of rape by commanders’,⁷⁰ and that upon becoming pregnant, some girls

were thrown out. That’s the expression they used . . . They said that they felt thrown out when they were no longer useful, useful for combat, and when they could no longer satisfy the sexual pleasures of those who were subjecting them to sexual abuse.⁷¹

The witness further explained that life after the UPC-FPLC was particularly hard for those who had borne children as a result of sexual violence, stating:

[R]euniting these girls with their original communities, re-inserting them, was always something that was difficult. They were stigmatised. Often they had children whose fathers were not present. Frequently they had very low self-esteem, and there were families burdened with children. So re-inserting these girls was difficult. There was a lot of work that had to be done. A lot of mediation had to be provided so that not only the biological family but the community would accept them without stigmatising them in any particular way.⁷²

Witness P-0046 also testified that of the girls who became pregnant as a result of sexual violence within the UPC-FPLC, ‘some of them had abortions, voluntary or involuntary’.⁷³ She described the physical state of former girl soldiers as ‘quite deplorable’, explaining:

I have in mind the situation of one of these young girls who had had several abortions and who had to be referred to the emergency unit of the hospital in Bunia for care, and she spent a lot of time in hospital before she could recover. Now, with respect to the others, some of them returned pregnant. After spending several months or even several years in armed groups without receiving appropriate care, the type of care you give to a pregnant woman, they needed attention with respect to their feeding . . . One of them said that she sustained an abortion. It was involuntary. It stemmed from the difficult living conditions or difficult conditions under which they were living. Others said they had – they had engaged in voluntary abortion.⁷⁴

In response to the emerging testimony of sexual and reproductive violence against UPC-FPLC child soldiers, several LRVs attempted to change the parameters of the *Lubanga* case. Four months into the trial, they asked the Trial Chamber to use Regulation 55 (which allows a trial chamber to modify the legal characterization of the facts), in order to introduce new charges to capture the various uncharged acts of violence that prosecution witnesses had described.⁷⁵ This request cited

⁶⁹*Ibid.*, 35–6.

⁷⁰*Prosecutor v. Thomas Lubanga Dyilo*, Transcript of 9 July 2009, ICC-01/04-01/06-T-207-Red2-ENG, T.Ch. I, 31.

⁷¹*Ibid.*, 37.

⁷²*Ibid.*, 39.

⁷³*Ibid.*, 31.

⁷⁴*Ibid.*, 36–7.

⁷⁵*Prosecutor v. Thomas Lubanga Dyilo*, Joint Application of the Legal Representatives of the Victims for the Implementation of the Procedure under Regulation 55 of the Regulations of the Court, ICC-01/04-01/06-1891-tENG, 22 May 2009.

evidence from the trial record showing that child soldiers in Lubanga's group were raped, whipped, beaten, and forced to consume drugs.⁷⁶ Relevantly, for present purposes, it also referred to 'the events pertaining to the inhuman and/or cruel treatment of girls who had become pregnant as a result of being raped, including girls under the age of 15 years', citing the precise portion of P-0007's testimony in which he answered Judge Odio Benito's questions on forced abortion.⁷⁷ The LRVs proposed that the war crimes of 'cruel or inhumane treatment', and the war crime and crime against humanity of 'sexual slavery', would be appropriate for these various forms of abuse.⁷⁸ However, the request to add new charges did not succeed for procedural reasons. Namely, Regulation 55 allows trial judges to change the legal characterization of *facts already confirmed* by the pre-trial chamber, but does not permit them to add charges based on facts alleged for the first time at trial. In short, the evidence of sexual and reproductive violence came too late.⁷⁹

At the end of the *Lubanga* trial, the Prosecution's closing brief referenced the evidence of reproductive violence that had emerged through questions from the LRVs and the Bench. Describing the conditions at UPC-FPLC training camps, the brief noted:

Sexual abuse was "systematic" throughout the training camps. Pregnancy resulted, and abortion was an option only if the commanders decided so. Miscarriages were a consequence of the poor living conditions. W-0046 described their psychological and physical state as "quite catastrophic".⁸⁰

Ultimately, however, there was no accountability for sexual or reproductive violence in this case. Consistent with findings by the Appeals Chamber, the Trial Chamber could not hold Lubanga accountable for the acts of rape, forced impregnation, forced pregnancy or forced abortion described at trial because the Prosecution had not included those factual allegations at the confirmation of charges stage. Therefore, the allegations of sexual and reproductive violence fell outside the factual scope of the case.⁸¹ The Appeals Chamber also clarified that Lubanga was not liable for reparations in respect of harms associated with sexual and gender-based violence, including any reproductive violence against child soldiers in his armed group.⁸² In that sense, the *Lubanga* case failed the UPC/FPLC child soldiers who had experienced sexual and reproductive violence within the group. It also disappointed a broader constituency of scholars and human rights defenders who had hoped the ICC's jurisprudence on sexual and gender-based crimes would start strong, given the solid foundation laid by the jurisprudence of the ICTY and ICTR, as well as the inclusion of a wide range of sexual and gender-based crimes in the Rome Statute.

Nonetheless, the *Lubanga* case generated useful judicial guidance on the war crimes of conscripting or enlisting children under the age of 15, or using them participate actively in hostilities. In particular, the appeal judgment clarified that the phrase 'using them to participate actively in hostilities' is not limited to what IHL calls 'direct participation in hostilities'. Hence, this war crime does not only prohibit deployment of child soldiers in battle; it prohibits using them for

⁷⁶*Ibid.*, Para. 33.

⁷⁷*Ibid.*

⁷⁸*Ibid.*, Para. 17.

⁷⁹*Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeals of Mr Lubanga Dyilo and the Prosecutor Against the Decision of Trial Chamber I of 14 July 2009 entitled 'Decision Giving Notice to the Parties and Participants that the Legal Characterisation of the Facts may be Subject to Change in Accordance with Regulation 55(2) of the Regulations of the Court', ICC-01/04-01/06-2205, A.Ch., 8 December 2009.

⁸⁰*Prosecutor v. Thomas Lubanga Dyilo*, Prosecution Closing Brief, ICC-01/04-01/06-2748-Red, 1 June 2011, Para. 205.

⁸¹See *Lubanga* Trial Judgment, *supra* note 68, Paras. 36, 629-30; *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr Thomas Lubanga Dyilo Against His Conviction, ICC-01/04-01/06-3121-Red, A.Ch., 1 December 2014.

⁸²*Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeals Against the 'Decision Establishing the Principles and Procedures to Be Applied to Reparations' of 7 August 2012 with AMENDED Order for Reparations (Annex A) and Public Annexes 1 and 2, ICC-01/04-01/06-3129, A.Ch., 3 March 2015, Paras. 196-9.

the transmission of military information, transportation of arms and munitions, and provision of supplies, *inter alia*.⁸³ A question left open is whether the sexual abuse of child soldiers by their commanders also constitutes ‘using them to participate actively in hostilities’. In a separate opinion attached to the *Lubanga* trial judgment, Judge Odio Benito answered that question in the affirmative.⁸⁴ But the majority trial judgment and the appeal judgment did not engage with this question of law, and it remains undecided today.⁸⁵

The subsequent *Ntaganda* case also included reference to reproductive violence against child soldiers. Like Lubanga, Bosco Ntaganda was a high-level commander in the UPC-FPLC. But unlike Lubanga, he was charged with gender-based crimes in a timely fashion, at the pre-trial stage. Among other things, Prosecutor Fatou Bensouda charged him with the war crimes of rape and sexual slavery pursuant to Article 8(2)(e)(vi) of the Rome Statute based on evidence that girl soldiers in the UPC-FPLC were subjected to sexual violence by their commanders and by other soldiers in the group. This made Ntaganda the first ICC defendant to be charged with ‘intra-group’ sexual violence, i.e. sexual violence whose alleged victims and perpetrators were part of the same fighting force.

Reproductive violence was not separately charged in *Ntaganda*. However, it was mentioned fleetingly in the Prosecutor’s Document Containing the Charges (DCC), which stated that in the period relevant to the charges, ‘UPC/FPLC commanders and soldiers raped and sexually enslaved their soldiers without regard to age, including child soldiers under the age of 15. *Some child soldiers became pregnant as a result of their rape*.’⁸⁶ There was no further reference to pregnancy, and none to forced abortion, in the DCC.⁸⁷ However, the brief mention of forced impregnation at least ensured that this form of reproductive violence against child soldiers was part of the factual scope of the case, enabling further evidence of forced impregnation to surface at trial.

Once the *Ntaganda* trial began, further details of reproductive violence emerged. Witness P-0083, a former UPC-FPLC child soldier, gave a first-hand account of her ordeals. The Trial Chamber accepted her evidence of undergoing training in a UPC-FPLC camp and being raped by multiple UPC-FPLC soldiers.⁸⁸ Her testimony further revealed that, before turning 15, she became pregnant as a result of rape. During that pregnancy, she continued to take part in battles and patrols.⁸⁹ After receiving medical treatment for a battle injury – during which the hospital staff informed the witness that she was pregnant – she returned to her village and learned that her parents had died.⁹⁰ Her trauma and her pregnancy prevented her from completing primary school. In her words, ‘How could I go back to school? My head wasn’t working well and I was pregnant.’⁹¹ The *Ntaganda* judgment notes that the witness ‘gave birth to a child without knowing who the father was.’⁹² As to how (or whether) this teenage mother with limited education and no

⁸³*Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr Thomas Lubanga Dyilo Against His Conviction, ICC-01/04-01/06-3121-Red, A.Ch., 1 December 2014, Paras. 323–8.

⁸⁴*Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute (Odio Benito), ICC-01/04-01/06-2842, T.Ch. I, 5 April 2012, Paras. 15–21.

⁸⁵Some commentary suggests that the sexualized use of child soldiers could in certain circumstances fall within the war crime of ‘using them to participate actively in hostilities’, if charged at the appropriate time. See Grey, *supra* note 15, 314–17.

⁸⁶*Prosecutor v. Bosco Ntaganda*, Document Containing the Charges, ICC-01/04-02/06-203-AnxA, 10 January 2014, Para. 100 (emphasis added).

⁸⁷See *Prosecutor v. Bosco Ntaganda*, Updated Document Containing the Charges, ICC-01/04-02/06-458-AnxA, 16 February 2016.

⁸⁸*Prosecutor v. Bosco Ntaganda*, Trial Judgment, ICC-01/04-02/06-2359, T.Ch. VI, 8 July 2019 (*Ntaganda* Trial Judgment), Paras. 174–88. Regarding whether she was abducted by the UPC-FPLC, P-0083’s evidence was inconsistent and was therefore deemed unreliable by the Trial Chamber. However, the Chamber found her evidence on military training and sexual violence credible.

⁸⁹*Prosecutor v. Bosco Ntaganda*, Transcript of 30 November 2016, ICC-01/04-02/06-T-168-Red2-ENG, T.Ch. VI, 34–5.

⁹⁰See *Ntaganda* Trial Judgment, *supra* note 88, Para. 174.

⁹¹*Prosecutor v. Bosco Ntaganda*, Transcript of 1 December 2016, VI, ICC-01/04-02/06-T-169-Red2-ENG, T.Ch. 71.

⁹²*Ntaganda* Trial Judgment, *supra* note 88, Para. 174.

parental support managed to provide for her child in a context where mothers in her position faced social stigmatization,⁹³ we can but wonder.

Other witnesses provided corroborating evidence of reproductive violence against UPC-FPLC child soldiers. Witness P-0046, the same MONUC Child Protection Officer who testified in *Lubanga*, repeated her observations about UPC-FPLC girl soldiers becoming pregnant through rape and having to abort.⁹⁴ P-0055, a high-level UPC-FPLC insider whose evidence the Trial Chamber found credible, referred to pregnancy among the group's '*personnel militaire féminin*' or 'PMFs' (female soldiers, including girls).⁹⁵ He stated: '[t]here were some pregnancies. In fact, there were some PMFs who had children, who had delivered these children when they were in those camps'.⁹⁶ This witness did not describe such pregnancies as 'forced', but the context of widespread rape logically means that many (if not all) of the pregnancies he observed in the camps were forced.

Taking these testimonies into account, the Trial Chamber rejected Ntaganda's claim that nobody became pregnant at UPC-FPLC training camps.⁹⁷ It concluded that 'female members of the UPC/FPLC were regularly raped and subjected to sexual violence' by male UPC/FPLC soldiers and commanders, and that 'a number of these female members of the UPC/FPLC became pregnant during their time in the UPC/FPLC'.⁹⁸ The Trial Chamber convicted Ntaganda in relation to the rape and sexual enslavement of girl children in the UPC/FPLC, and that conviction was upheld on appeal.⁹⁹ This was the first ICC case to confirm that 'intra-group' sexual violence can indeed amount to war crimes under the Rome Statute. Ntaganda was found liable for reparations for a wide range of harms arising out of the rape and sexual slavery for which he was convicted, including reparation for the discrimination and social rejection faced by children born as a result of such sexual violence.¹⁰⁰

By clarifying that certain forms of interpersonal violence within an armed group can constitute war crimes, the *Ntaganda* case set an important precedent. This finding is already having ripple effects beyond the ICC, particularly in Colombia – a point to which I return later. Yet if we look back on the case with a heightened sensitivity to reproductive violence, the absence of charges for forced pregnancy becomes conspicuous. It seems likely that this crime was established with respect to child soldiers who, after becoming pregnant through rape, were prevented from leaving because the UPC/FPLC leadership wanted to continue subjecting them to 'grave violations of international law', including continuing to use them to participate actively in hostilities before they turned 15, and/or subjecting them to further sexual violence. This observation about a potential gap in the *Ntaganda* charges demonstrates the value of an increased attention to reproductive violence going forward.

3.2.2. *Uganda cases*

The ICC's two Uganda cases, *Ongwen* and *Kony*, illuminate additional aspects of reproductive violence against girl soldiers. Both cases concern crimes allegedly committed by members of the

⁹³Children born as a result of sexual violence, as well as their mothers, faced rejection from their communities'. See: *Prosecutor v. Bosco Ntaganda*, Sentencing Judgment, ICC-01/04-02/06-2442, T.Ch. VI, 7 November 2019, Para. 113.

⁹⁴*Prosecutor v. Bosco Ntaganda*, Transcript of 14 June 2016, ICC-01/04-02/06-T-101-Red-ENG, T.Ch. VI, 68.

⁹⁵Regarding the term 'PMFs', see: *Ntaganda* Trial Judgment, *supra* note 88, Paras. 406–8.

⁹⁶*Prosecutor v. Bosco Ntaganda*, Transcript of 24 February 2016, ICC-01/04-02/06-T-71-Red3-ENG, T.Ch. VI, 94.

⁹⁷See *Ntaganda* Trial Judgment, *supra* note 88, footnote 1160.

⁹⁸*Ibid.*, Para. 407.

⁹⁹*Prosecutor v. Bosco Ntaganda*, Judgment on the Appeals of Mr Bosco Ntaganda and the Prosecutor Against the Decision of Trial Chamber VI of 8 July 2019 Entitled 'Judgment', ICC-01/04-02/06-2666-Red, A.Ch., 30 March 2021 (*Ntaganda* Appeal Judgment).

¹⁰⁰*Prosecutor v. Bosco Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, T.Ch. VI, 8 March 2021, Para. 183(c); *Prosecutor v. Bosco Ntaganda*, Judgment on the Appeals Against the Decision of Trial Chamber VI of 8 March 2021 Entitled 'Reparations Order', ICC-01/04-02/06-2782, A.Ch., 12 September 2022, Paras. 652–61.

Lord's Resistance Army (LRA), a rebel group that has been at war with Uganda's armed forces since the late 1980s. The LRA is known for recruiting children for combat-related activities, but also for the purposes of forced maternity. In other words, one of its key reasons for forcibly recruiting girls and young women was to make them bear children who would be born into LRA captivity and incorporated into its ranks. Thus, reproductive violence was a means to sustaining and increasing the group's numbers. As a 2022 report of the UN Secretary General explains:

During the conflict in northern Uganda, thousands of young girls were abducted by the Lord's Resistance Army (LRA) and, *to replenish the group's forces, forced to bear children before their reproductive systems had matured*, resulting in long-term physical and psychological harm; an estimated 8,000 children were born as a result.¹⁰¹

Here, the UN report recognizes forced maternity as among the LRA's key rationales for abducting children. In addition, it points to another form of reproductive violence experienced by girls associated with armed groups, namely being forced to bear children before being sufficiently physically and psychologically developed to do so.

In May 2005, Prosecutor Ocampo sought warrants of arrest for LRA leader Joseph Kony and four of the group's other senior commanders, including Dominic Ongwen. The warrants were issued under seal just two months later, but the LRA cases then stalled and gathered dust until Ongwen's unexpected surrender to the ICC in 2015. His appearance prompted Prosecutor Bensouda to revive the Uganda investigation, leading to the addition of further charges not included on Ongwen's 2005 arrest warrant. These included forced pregnancy as a war crime and crime against humanity against two witnesses who had been assigned to Ongwen as 'wives', referred to as P-0101 and P-0214, at least one of whom also participated in military activities during early pregnancy.¹⁰² When those charges were confirmed in 2016, Ongwen became the first person to be charged by an international court with forced pregnancy as a war crime or crime against humanity.¹⁰³

At trial, the Prosecution highlighted the centrality of reproductive violence to the LRA's *modus operandi*, arguing that the group abducted, raped and enslaved women and girls 'who would give birth to future LRA fighters',¹⁰⁴ and that 'the LRA was implementing a policy of abducting young girls for sex and procreation'.¹⁰⁵ In 2021, the Trial Chamber convicted Dominic Ongwen of forced pregnancy, *inter alia*.¹⁰⁶ In 2022, that conviction was upheld on appeal.¹⁰⁷ Ongwen was found liable for extensive harms arising from the crimes of which he was convicted, including 'permanent damage to reproductive system; miscarriage; physical harm due to pregnancy and child bearing; health complications during childbirth', the distress associated with caring for children born as a result of forced pregnancy to LRA soldiers, the pain of having to later 'choose'

¹⁰¹UN Security Council, Women and Girls Who Become Pregnant as a Result of Sexual Violence in Conflict and Children Born of Sexual Violence in Conflict: Report of the Secretary-General, UN Doc. S/2022/77 (2022), Para. 7 (emphasis added).

¹⁰²*Prosecutor v. Dominic Ongwen*, Document Containing the Charges, ICC-02/04-01/15-375-AnxA-Red, P.T.Ch. II, 22 December 2015. In relation to military activities, P-0101 testified: 'When I was initially abducted as a recruit we were taken to Sudan. We were trained. We were trained how to fight. We were beaten. I was taught I was a soldier, but I wasn't a soldier for a very long time because I immediately shortly thereafter I conceived and I had a baby. And as a mother I did not have a gun.' *Prosecutor v. Dominic Ongwen*, Transcript of 9 November 2015, ICC-02/04-01/15-T-13-Red-ENG, P.T.Ch. II, 65.

¹⁰³*Prosecutor v. Dominic Ongwen*, Decision on the Confirmation of Charges Against Dominic Ongwen, ICC-02/04-01/15-422-Red, P.T.Ch. II, 23 March 2016.

¹⁰⁴*Prosecutor v. Dominic Ongwen*, Transcript of 21 January 2016, ICC-02/04-01/15-T-20-ENG, P.T.Ch. II, 26.

¹⁰⁵*Prosecutor v. Dominic Ongwen*, Prosecution's Pre-Trial Brief, ICC-02/04-01/15-533, T.Ch. IX, 6 September 2016, Para. 48.

¹⁰⁶*Prosecutor v. Dominic Ongwen* Trial Judgment, *supra* note 20, Paras. 3056-62.

¹⁰⁷*Prosecutor v. Dominic Ongwen* Appeal Judgment, *supra* note 20.

between such children and husbands who rejected them, and being scorned for having a child out of wedlock.¹⁰⁸

The *Ongwen* case does not reveal much about reproductive violence against children specifically (P-0101 was at least 21 at the time of the first charged forced pregnancy, P-0214 was at least 20).¹⁰⁹ However, it represents the start of the ICC's practice in prosecuting reproductive violence as distinct criminal acts, which was a significant development in ICC practice. The case also identified a range of obstetric or reproductive injuries experienced by women and girls in the LRA – including 'risky pregnancies', sexual and reproductive health diseases, infertility, and excessive menstrual bleeding – indicating that these are injuries to explore in cases where girl soldiers are exposed to sexual and reproductive crimes.¹¹⁰ In addition, the *Ongwen* case prompted the ICC Appeals Chamber to clarify the elements of forced pregnancy, thereby laying a strong foundation for the Office of the Prosecutor to charge this crime in respect of both adult and child victims – including children soldiers – at the next opportunity.

The Office has taken up that opportunity in the next Uganda case, concerning LRA leader Joseph Kony. Kony is still yet to appear before the ICC, but following the *Ongwen* appeal judgment, Prosecutor Karim Khan shook the dust off his case by seeking confirmation of the charges *in absentia*. The confirmation hearing *in absentia* – a first in the ICC's history – occurred in September 2025, with all charges confirmed in November that year.¹¹¹ Extending the allegations of reproductive violence far beyond what was charged in *Ongwen*, the *Kony* DCC alleges that 'hundreds' of women and girls who had been abducted by the LRA, including girls aged under 15, were impregnated through rape.¹¹² The amended DCC adds charges of forced pregnancy *inter alia* against a witness who was around 12 when she became a forced 'wife' to Kony in 1993, after having been abducted by the LRA in 1991.¹¹³ As the ICC's jurisdiction only commenced on 1 July 2002, all charges in the case relate to acts allegedly committed after that date. Hence, the charges relating to this witness refer to a particular pregnancy in 2005, when she was in her late teens. However, the surrounding allegations are that Kony began to sexually assault her as early as 1993, and that she became pregnancy 'several times' as a result, indicating that her earliest forced pregnancies may potentially have been during her own childhood.¹¹⁴

Of note, recently publicized court records show that there were signs of reproductive violence against girl soldiers in the *Kony* case since the beginning. The Prosecutor's 2005 arrest warrant application cites evidence that Kony told one abducted girl 'that her purpose, like that of the other abducted "wives", was to give birth to expand the "clan"'.¹¹⁵ Another abductee was forced to take

¹⁰⁸*Prosecutor v. Dominic Ongwen*, Reparations Order, ICC-02/04-01/15-2074, T.Ch. IX, 28 February 2024, Paras. 290, 296, 301, 302.

¹⁰⁹P-0101 was aged 15 when abducted in August 1996: *Prosecutor v. Dominic Ongwen*, Transcript of 9 November 2015, ICC-02/04-01/15-T-13-Red-ENG, P.T.Ch. II, 16. P-0214 was aged 17 when abducted in 2000. See *Ongwen* Trial Judgment, *supra* note 20, Para. 2104. The charges of forced pregnancy relate to P-0101's second pregnancy by Dominic Ongwen, which occurred between 2002 and 2004, P-0101's third pregnancy by the defendant in 2004, and P-0214's first pregnancy by him in 2004–2005: see *Ongwen* Trial Judgment, *supra* note 20, Para. 2069.

¹¹⁰*Prosecutor v. Dominic Ongwen*, Common Legal Representative of Victims' Closing Brief, T.Ch. IX, 28 February 2020, footnote 557.

¹¹¹*Prosecutor v. Joseph Kony*, Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits, ICC-02/04-01/05-539, P.T.Ch. III, 12 December 2024.

¹¹²*Prosecutor v. Joseph Kony*, Document Containing the Charges, ICC-02/04-01/05-474, 19 January 2024, (*Kony* DCC), Para. 104.

¹¹³The amended DCC records this witness as aged ten when abducted in 1991 but also ten when selected by Kony in 1993. *Prosecutor v. Joseph Kony*, Amended Document Containing the Charges, ICC-02/04-01/05-591, 17 April 2025, Para. 128; counts 30–39.

¹¹⁴*Ibid.*, Para. 128.

¹¹⁵*Situation in Uganda*, Prosecutor's Amended Application for Warrants of Arrest under Article 58, ICC-02/04-01/05-554-AnxA-Red, P.T.Ch. II, 18 May 2005 (public redacted version released on 31 January 2025), Para. 48 (emphasis added). See also Para. 211; *Prosecutor v. Joseph Kony*, Decision on the confirmation of charges in absentia against Joseph Kony pursuant to articles 61(2)(b) and 61(7) of the Rome Statute, ICC-02/04-01/05-633, 6 November 2025.

medicine that would cause her to start menstruating.¹¹⁶ In line with such evidence, the arrest warrant application alleges that once deemed sexually mature, girls abducted by the LRA were ‘routinely forced to accept male commanders as “husband,” and to accept duties as “wives,” including forced sex and forced impregnation’.¹¹⁷ It further alleges that girls perceived as having reached sexual maturity ‘were expected to have sex with their “husbands” and to bear children’,¹¹⁸ and that ‘the LRA abducted civilian girls and forced them to accept of all of the duties of being a “wife”, which included sex and procreation’.¹¹⁹

Yet although this material was in the case file in 2005, neither the Prosecution nor the pre-trial judges proposed a charge of forced pregnancy at that time. It seems this crime, and the broader concept of reproductive violence, were not widely understood or prioritized in the ICC’s early years. By contrast, the 2024 Kony DCC characterizes the evidence relating to forced impregnation of female abductees (including children) as ‘forced pregnancy’.¹²⁰ That evidence also underpins the charges of enslavement,¹²¹ ‘other inhumane acts’ (forced marriage),¹²² sexual slavery,¹²³ and persecution on age and gender grounds.¹²⁴ It seems that the focus on reproductive violence in the Office of the Prosecutor’s recent policies is starting to translate into practice.

3.3. Colombia

At the domestic level, courts in Colombia are leading the way in addressing reproductive violence against child soldiers. In 2019, the Colombian Constitutional Court decided a case involving a young woman who had been recruited at age 14 by the *Fuerzas Armadas Revolucionarias de Colombia* (FARC). ‘Helena’ (her pseudonym) was forced to use *mesigyna* (a contraceptive injection), so that her utility as a combatant would not be compromised by pregnancy, childbirth, and motherhood. When she nonetheless became pregnant through consensual sex, her commanders made her have an abortion at seven months. The procedure occurred by force and against her wishes, causing lasting physical and psychological pain. Helena was young but arguably not a ‘child’ when the forced abortion occurred (she became pregnant at roughly 18 years old), but it seems she was forced to inject *mesigyna* as early as 14 years old.¹²⁵ Citing the ICC’s *Ntaganda* judgment on intra-group war crimes, the Constitutional Court found that Helena was entitled to reparation as a victim of the armed conflict because her ordeals of forced abortion and forced contraception were war crimes and violations of IHL, as was her recruitment as a minor and forced displacement.¹²⁶ Thus, it formally recognized the violations of her reproductive autonomy as war crimes.

Building on that case, Colombia’s Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz* or JEP), has recognized a pattern of reproductive justice against child soldiers (including

¹¹⁶*Ibid.*, Para. 91.

¹¹⁷*Ibid.*, Para. 55 (emphasis added).

¹¹⁸*Ibid.*, Para. 90 (emphasis added).

¹¹⁹*Ibid.*, Para. 225 (emphasis added).

¹²⁰See Kony DCC, *supra* note 112, Counts 28 and 29.

¹²¹*Ibid.*, Count 15.

¹²²*Ibid.*, Count 16.

¹²³*Ibid.*, Count 27.

¹²⁴*Ibid.*, Count 23.

¹²⁵Sentencia SU-599/19, Corte Constitucional de Colombia, 11 December 2019, available at www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=139733, Paras. 1.3 and 1.4.

¹²⁶*Ibid.*; see Lavery and de Vos, *supra* note 19, 629–30; C. Lavery and D. de Vos, “Ntaganda” in Colombia: Intra-Party Reproductive Violence at the Colombian Constitutional Court’, *Opinio Juris*, 25 February 2020, available at opiniojuris.org/2020/02/25/ntaganda-in-colombia-intra-party-reproductive-violence-at-the-colombian-constitutional-court/.

‘Helena’, who was heard by the JEP in May 2025).¹²⁷ The JEP is the judicial arm of the Colombia’s multi-form transitional justice mechanism. Blending penal and restorative justice, it is seized with 11 ‘macro’ cases – referring to systematic criminality – arising from the armed conflict.¹²⁸ In several cases the JEP has accredited survivors to participate in war crimes proceedings on the basis of having experienced reproductive violence.¹²⁹ However for present purposes, the most relevant is *Case 7*, which focuses on the recruitment and use of girls and boys.¹³⁰

In October 2024, the JEP charged six former FARC leaders in *Case 7* with the war crime of conscripting and using children under the age of 15, along with a suite of other war crimes committed against those children once recruited.¹³¹ The *Case 7* indictment cites the *Ntaganda* case to argue that intra-group violence can amount to war crimes,¹³² but goes further than that ICC case by charging intra-group reproductive violence (including forced contraception, forced abortion, and deprivation of the opportunity for motherhood and fatherhood) as well as intra-group sexual violence.¹³³ It explains the militaristic utility of these acts of reproductive violence as measures to prevent motherhood or fatherhood, which would detract from the group’s membership, efficacy, and safety.¹³⁴ It also embeds these forms of reproductive violence in socially constructed gender roles, explaining that although the FARC formally espoused equality between women and men, in practice the burden of forced contraception fell on women, replicating a gender stereotypes by which childcare and pregnancy prevention are burdens shouldered disproportionately by women.¹³⁵ Deftly encapsulating these ideas, it explains that ‘el estándar de guerrero era un modelo masculino’ (the warrior standard was a male model): the capacity for pregnancy was viewed as antithetical to the group’s aims, as incompatible with the ideal soldier.¹³⁶

¹²⁷Women’s Link Worldwide, ‘Breaking the Silence: Helena’s Testimony Before the Transitional Justice System’, 11 June 2025, available at womenslinkworldwide.org/en/breaking-the-silence-helenas-testimony-before-the-transitional-justice-system/.

¹²⁸On this comprehensive transitional justice mechanisms (the *Sistema Integral de Verdad, Justicia, Reparación y No Repetición*) and the JEP’s role within it, see www.jep.gov.co/Paginas/inicio.aspx; International Center for Transitional Justice, *A Mixed Approach to International Crimes: The Retributive and Restorative Justice Procedures of Colombia’s Special Jurisdiction for Peace* (April 2020), available at www.ictj.org/sites/default/files/ICTJ_Report_Colombia_MixedProcedures.pdf; J.J. Sarkin and I. Pereira Lopes, ‘Reaching for Both Justice and Peace in Colombia: Understanding the Special Jurisdiction for Peace’s Mixed Approach (Using Both Retributive and Restorative Justice) to Deal with International Crimes’, (2023)26(2) *Contemporary Justice Review* 123.

¹²⁹*Caso 5*, Order No. 266 of 2021, 11 October 2021, available at sisjur.bogotajuridica.gov.co/sisjur/normas/Norma1.jsp?i=117930; *Caso 11*, Order SRVR No. 05 of 2023, 6 September 2023, available at relatoria.jep.gov.co/documentos/providencia/s/1/1/Auto_SRVR-05_06-septiembre-2023.pdf. With thanks to María Cecilia Ibáñez García of the Center for Reproductive Rights for these references.

¹³⁰Available at www.jep.gov.co/macrocasos/caso07.html.

¹³¹*Caso 07: Reclutamiento y utilización de niñas y niños en el conflicto armado y otros crímenes cometidos en su contra en el marco de la vida intrafilas, incluyendo malos tratos, tortura, homicidio y violencias sexuales, reproductivas y por prejuicio* [Recruitment and use of children in the armed conflict and other crimes committed against them within the context of military life, including ill-treatment, torture, homicide, and sexual, reproductive, and gender-based violence], Order No. 05 of 2024, 9006310-91.2019.0.00.0001, Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, 9 October 2024, available at relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-005_09-octubre-2024.pdf (*Case 07* Indictment); A. Bermúdez Liévano, ‘FARC Leadership Accused of War Crimes over Child Soldiers’, *Justice Info*, 21 November 2024, available at www.justiceinfo.net/en/138510-farc-leadership-accused-war-crimes-child-soldiers.html.

¹³²See *Case 07* Indictment, *ibid.*, Para. 1477. Further supporting the proposition that intra-group violence can amount to war crimes, the JEP also held at Paras. 1485–6 that Common Article 3 applies because recruited boys and girls are placed *hors de combat* with respect to members of the same armed group that recruited or enlisted them and do not participate in hostilities against members of their own group. The author notes that this does not accord with the prevailing view under IHL, in which the concept of *hors de combat* functions as an exception to the rule permitting the targeting of persons taking direct part in hostilities by an adverse party, rather than as a concept relating to intra-group violence.

¹³³At *ibid.*, Paras. 1494 and 1501–4, these acts are charged using the war crime of torture. At *ibid.*, Paras. 1485–6, forced contraception is also charged using the war crime of outrages on personal dignity.

¹³⁴*Ibid.*, 8.

¹³⁵*Ibid.*, Para. 667.

¹³⁶*Ibid.*, Para. 673.

A final judgment on the factual and legal basis of these charges awaits. However, the indictment illustrates the attentiveness to child soldiers' experiences of reproductive violence, and to the gendered nature of this violence, that this article supports.

4. Implications for legal practice

Having unearthed from SCSL, ICC and Colombian court some types of forms of reproductive violence that female child soldiers experience, this section considers the implications for future cases in the ICC and courts with a similar subject matter jurisdiction. It begins with considerations for investigations, and then proposes some charging strategies.

4.1. Investigations

In UN fact-finding teams, investigators have observed that having an explicit mandate to investigate reproductive violence provides a useful 'hook' for individual team-members to advocate for increased attention and resourcing on this issue.¹³⁷ They have also stressed that the knowledge that reproductive violence amounts to crimes under international law can increase the perceived weight of their findings in this regard.¹³⁸ Similarly, the focus on reproductive violence in the ICC's Office of the Prosecutor's updated *Policy on Gender-Based Crimes*, and that policy's recognition that such violence can amount to crimes under the Rome Statute – gives investigators an explicit impetus to focus on this issue.

Beyond expressly mandating the investigation of reproductive violence – including against child soldiers – there are other practical steps that can support justice and accountability in this regard. Dedicated investigator training is critical. The better the investigators are trained to recognize 'red flags' of reproductive violence against child soldiers, the better their prospects of securing the evidence needed to establish the commission of the crimes and the defendant's criminal responsibility. Evidence of commission could include testimony from survivors or eyewitnesses,¹³⁹ records from hospitals or reproductive health clinics, and contemporaneous complaint evidence (e.g. text messages attesting to the violence from the survivor, perpetrator or eyewitnesses), among other things. In jurisdictions applying similar modes of liability to the ICC, evidence to establish a defendant's criminal responsibility might include testimony or records demonstrating their personal involvement in or knowledge of acts of reproductive violence,¹⁴⁰ or that they ordered or incited such acts,¹⁴¹ or intentionally provided expertise or material support to enable such acts,¹⁴² or were aware that their subordinates were committing such acts and yet failed to take all necessary and reasonable measures within their power to prevent, repress or punish the crimes.¹⁴³

Resourcing and training for other members of investigative teams is also necessary. To support survivors of reproductive violence, and to increase the likelihood of timely disclosures of it, psychological support for witnesses is needed. Ideally, field interpreters would be briefed in local slang and euphemisms relating to conception, pregnancy and birth, to reduce the likelihood of relevant information being missed. An example from the above SCSL cases is the Kriol term 'wasted' to mean

¹³⁷See UN Women and Global Justice Center, *supra* note 28, 21.

¹³⁸*Ibid.*, 23.

¹³⁹This recommendation is limited to witnesses with first-hand knowledge of the relevant facts because although hearsay testimony is admissible in the ICC, it carries little probative weight. See Grey, *supra* note 15, 164.

¹⁴⁰See Rome Statute, *supra* note 7, Art. 25(3)(a). E.g. In *Ongwen*, the charges of forced pregnancy relied on evidence that the defendant personally impregnated two women by force and then unlawfully confining them with intent to carry out grave violations of international law.

¹⁴¹*Ibid.*, Art. 25(3)(b).

¹⁴²*Ibid.*, Art. 25(3)(d).

¹⁴³*Ibid.*, Art. 28.

‘miscarried’. Here we see a parallel with sexual violence, which survivors and other lay witnesses often describe in indirect and culturally specific terms.¹⁴⁴

The *Lubanga* case illustrates this point about the value of early attention to reproductive violence within investigative teams. Had the investigators deployed to the DRC been more specifically instructed, resourced, and trained to pursue evidence of forced pregnancy and forced abortion against UPC-FPLC child soldiers from the start, the relevant facts might have been included in DCC, with the result that the conduct could be specifically charged at the pre-trial stage, or eligible for a Regulation 55 re-characterization at trial. In this counter-factual, the identification of evidence of reproductive violence could have been a catalyst for deliberations about appropriate charging strategies as early as the ICC’s first trial.

4.2. Charging strategies

The forms of reproductive violence against girl soldiers that are visible in SCSL, ICC, and Colombian cases include forcible impregnation and/or forced pregnancy, forced maternity, forced contraception and forced abortion, being forced to bear children before they are sufficiently developed, and the denial of reproductive health care. Many of these forms of reproductive violence could be charged as crimes within the jurisdiction of the ICC, or in international, national, and hybrid courts with a similar legal framework.

4.2.1. War crimes

When prosecuting reproductive violence against child soldiers as war crimes, the nature of these offences as intra-group crimes is important. As mentioned above, the ICC’s *Ntaganda* case is the leading precedent on intra-group crimes against child soldiers. Specifically, the case dealt with intra-group *sexual* crimes against child soldiers, but the reasoning has implications for intra-group *reproductive* crimes against child soldiers also.

Recall that Bosco Ntaganda was charged with the war crimes of rape and sexual slavery under Article 8(2)(e)(vi) of the Rome Statute, in relation to acts committed against UPC-FPLC child soldiers by other soldiers in that armed group. Back when Prosecutor Bensouda laid those charges in 2014, there were some lingering doubts as to whether acts of sexual violence could constitute war crimes if the victims and perpetrators belonged to the same fighting force.¹⁴⁵ No previous international court or tribunal had explicitly confirmed that in the past (although the SCSL had implicitly arrived at this position in relation to Akiatu Tholley, as the Pre-Trial Chamber in *Ntaganda* astutely observed).¹⁴⁶ Bringing this issue to the fore, the Defence in *Ntaganda* sought to have the charges of sexual violence against child soldiers struck out on the grounds that ‘crimes committed by members of armed forces on members of the same armed force do not come within the jurisdiction of international humanitarian law nor within international criminal law.’¹⁴⁷

However, the ICC Appeals Chamber confirmed that intra-group sexual violence *could* constitute the war crimes of rape and sexual slavery in both international and non-international armed conflicts, provided that the acts of sexual violence took place in the context of and were

¹⁴⁴On interpretive challenges associated with euphemisms for sexual violence, see: N. Fletcher, ‘Sociolinguistic Challenges of Prosecuting Rape as Genocide at the International Criminal Tribunal for Rwanda: The Trial of Jean-Paul Akayesu’, (2022) 35 *International Journal for the Semiotics of Law* 1597; R. Killean and R. Grey, ‘Interpretation and Translation in Atrocity Trials: Insights from the Khmer Rouge Tribunal’, (2023) 12(2) *Cambridge International Law Journal* 211. See also 2023 *Policy on Gender-Based Crimes*, *supra* note 21, Para. 113.

¹⁴⁵See Grey, *supra* note 15, at 253.

¹⁴⁶See *Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06-309, 9 June 2014, fotonote 318.

¹⁴⁷*Prosecutor v. Bosco Ntaganda*, Transcript 13 February 2014, P.T.Ch. II, at 27.

associated with the armed conflict (the so-called ‘nexus element’).¹⁴⁸ The Chamber explained that its logic did *not* extend to war crimes whose ambit is limited to victims of a certain status (henceforth, war crimes with ‘status requirements’). Examples cited by the Chamber included grave breaches of Geneva Conventions III and IV, as found in Article 8(2)(a) of the Rome Statute, which require that the victim is a prisoner of war or a person ‘in the hands of a Party to the conflict or Occupying Power of which they are not nationals’,¹⁴⁹ and serious violations of Common Article 3 of the Geneva Conventions, as found in Article 8(2)(c) of the Rome Statute, which require that the victim was not taking direct part in hostilities at the time of the offence.¹⁵⁰ But the Chamber found that no such ‘status requirements’ apply to certain war crimes under Article 8(2)(b) and 8(2)(e) of the Rome Statute, including rape and sexual slavery under Articles 8(2)(b)(xxii) and 8(2)(e)(vi).¹⁵¹

In *Ntaganda*, the Appeals Chamber also considered the war crimes of ‘any other form of sexual violence also constituting a grave breach of the Geneva Conventions’ and ‘any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions’, as listed in Articles 8(2)(b)(xxii) and 8(2)(e)(vi) of the Rome Statute, although neither was charged in the case. It found that the reference to the Geneva Conventions in these provisions does *not* mean that any status requirements apply; it is simply a ‘gravity threshold’.¹⁵² Thus, sufficiently grave ‘other forms of sexual violence’ committed against child soldiers by members of their own armed group may constitute war crimes under Articles 8(2)(b)(xxii) and 8(2)(e)(vi), provided the ‘nexus element’ for war crimes is satisfied.

With respect to intra-group reproductive violence against child soldiers, the *Ntaganda* jurisprudence seems to preclude charging certain war crimes due to their ‘status requirements’. Take, for example, the war crimes of ‘mutilation, cruel treatment and torture’ and ‘outrages on personal dignity’ under Article 8(2)(c)(i) and (ii) of the Rome Statute. Both are drawn from Common Article 3 of the Geneva Conventions, and hence apply only to victims ‘taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause’. That status requirement poses no obstacle for prosecuting forms of reproductive violence that necessarily place the victim *hors de combat*, such as forced abortion. But it may create challenges for forms of reproductive violence that can temporally overlap with active combat, such as forced contraception, forced pregnancy, and being forced to bear children before being sufficiently developed.

On the other hand, the *Ntaganda* reasoning permits the use of war crimes with no such ‘status requirements’ in respect of intra-group reproductive violence against child soldiers, including those in active combat. Such war crimes include forced pregnancy and enforced sterilization,¹⁵³ both of which relate directly to reproductive violence, as well as ‘sexual slavery’ and ‘other forms of sexual violence’, which could be interpreted as including reproductive violence too. Note, however, that the latter two crimes require that the perpetrator caused the victim to engage in an

¹⁴⁸*Prosecutor v. Bosco Ntaganda*, Judgment on the Appeal of Mr Ntaganda Against the ‘Second Decision on the Defence’s Challenge to the Jurisdiction of the Court in Respect of Counts 6 and 9’, ICC-01/04-02/06-1962, Appeals Chamber, 15 June 2017, Paras. 46–69 (*Ntaganda*, Appeal Judgment on Counts 6 and 9). This finding was not limited to victims under the age of 15. Rather, the Appeals Chamber found that rape and sexual slavery of victims of *any* age could be a war crime, even if the perpetrators and victims belonged to the same fighting force, so long as the nexus requirements for war crimes was satisfied. Critiquing this decision, the ICC Prosecutor’s current Special Adviser on War Crimes, Kevin Heller, argued that intra-group sexual violence can only amount to war crimes if the victim is *hors de combat* at the time the act of sexual violence took place. See: K.J. Heller, ‘ICC Appeals Chamber Says A War Crime Does Not Have to Violate IHL’, *Opinio Juris*, 15 June 2017.

¹⁴⁹See *Ntaganda*, Appeal Judgment on Counts 6 and 9, *ibid.*, Para. 58.

¹⁵⁰*Ibid.*, Para. 60.

¹⁵¹*Ibid.*, Para. 46.

¹⁵²*Prosecutor v. Bosco Ntaganda*, Judgment on the Appeals of Mr Bosco Ntaganda and the Prosecutor Against the Decision of Trial Chamber VI of 8 July 2019 Entitled ‘Judgment’, ICC-01/04-02/06-2666-Red, A.Ch., 30 March 2021, Para. 49.

¹⁵³See Rome Statute, *supra* note 7, Arts. 8(2)(b)(xxii) and 8(2)(e)(vi).

act of a 'sexual nature'.¹⁵⁴ Diverse conceptions of what 'sexual' means can make this test difficult to apply.¹⁵⁵ However, courts may be more open to classifying acts of reproductive violence as 'sexual' if alerted to the *Hague Principles on Sexual Violence*, a survivor-informed guideline for classifying sexual violence which understands sexual acts to include 'the use, interference, control, or degradation of fluids or tissue associated with sexual and reproductive capacity'.¹⁵⁶ Further support can be found in the approach of the Colombian Constitutional Court, which has ruled that the concept of 'sexual violence' in IHL includes forced abortion and forced contraception.¹⁵⁷

For 'sexual slavery', it is also essential to show that the perpetrator 'exercised any or all of the powers attaching to the right of ownership over one or more persons'.¹⁵⁸ The ICTY Appeals Chamber offered some illustrative examples of *indicia* of exercising such powers, namely 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour'.¹⁵⁹ Going back further in time, the US military tribunal in the *Milch* case identified incursions into marriage and family life as *indicia* of the exercise of powers of ownership over a person.¹⁶⁰ Controlling a person's reproduction is likewise a sound indicator of enslavement, as recognized in the ICC Prosecutor's 2024 *Policy on Slavery Crimes*.¹⁶¹

Reproductive violence against child soldiers is particularly suited to being charged as a slavery crime. Notwithstanding the view that children exercise varying levels of agency within armed groups and that some join up of their own volition – albeit often in response to circumstances of poverty, armed conflict, state failure, and enabled by structural forces such as the proliferation of small arms¹⁶² – many end up in circumstances tantamount to enslavement.¹⁶³ Their labour is controlled, such as when they are made to carry loads and weapons, or serve as guards, or take part in hostilities, or perform domestic labour; their movement is restricted, such as when they are detained in camps or forced to relocate with the group; their psyche is controlled, such as when they are forced to witness and participate in acts of violence, to parrot the group's ideology through songs, chants, etc., and/or to consume drugs or alcohol. It is irrelevant that their commanders have no legal rights of ownership over them: both *de facto* and *de jure* slavery are prohibited.¹⁶⁴

¹⁵⁴2013 ICC Elements of Crimes, Arts. 8(2)(b)(xxii)-2, 8(2)(e)(vi)-2, 8(2)(b)(xxii)-6, and 8(2)(e)(vi)-6.

¹⁵⁵See R. Grey, 'Conflicting interpretations of 'sexual violence' in the International Criminal Court: Recent Cases', (2014) 29(81) *Australian Feminist Studies* 273. Forms of reproductive violence involving acts more typically regarded as 'sexual' include preventing a person who was impregnated by rape from accessing abortion, or causing a person to miscarry as a result of sexual violence. Forms of reproductive violence that may prove more challenging to classify as 'sexual' include forced abortion or forced contraception, which some might regard as medical procedures rather than acts of a 'sexual nature'.

¹⁵⁶See 2023 *Policy on Gender-Based Crimes*, *supra* note 21, at footnote 20.

¹⁵⁷See Sentencia SU-599/19, *supra* note 125, Section 3.3. See also Laverty and De Vos, *supra* note 19, 629–30.

¹⁵⁸See ICC Elements of Crimes, *supra* note 154, Arts 7(1)(c), 7(1)(g)-2, 8(2)(b)(xxii)-2, 8(2)(e)(vi)-2.

¹⁵⁹*Kunarac et al.*, Appeal Judgment, IT-96-23 & IT-96-23/1-A, A.Ch., 12 June 2002, Para. 119.

¹⁶⁰*U.S. v. Milch*, Judgment, 16 April 1947, reprinted in *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10*, Vol. II, 789.

¹⁶¹See 2024 *Policy on Slavery Crimes*, *supra* note 27, at Para. 68. See also: Sellers, *supra* note 32, 132; P.V. Sellers and J. Getgen Kestenbaum, 'The International Crimes of Slavery and the Slave Trade: A Feminist Critique', in Rosenthal, Oosterveld, and SáCouto, *supra* note 19, 157; P.D. Bridgewater, 'Ain't I a Slave: Slavery Reproductive Abuse, and Reparations', (2005) 14(1) *UCLA Women's Law Journal* 89; T.A. Foster, 'The Sexual Abuse of Black Men under American Slavery', (2011) 20(3) *Journal of the History of Sexuality* 445; see Grey 2022, *supra* note 19, 255–6.

¹⁶²See Denov, *supra* note 3; see Drumbl, *supra* note 3.

¹⁶³E.g. Sellers, *supra* note 32, 132; P.V. Sellers and J. Getgen Kestenbaum, 'Conflict-Related Sexual Violence Symposium: Conversations under the Rome Statute – Enslavement and Slave Trade', *Opinio Juris*, 11 June 2021, available at opiniojuris.org/2021/06/11/conflict-related-sexual-violence-conversations-under-the-rome-statute-enslavement-and-slave-trade/.

¹⁶⁴See Sellers and Getgen Kestenbaum, *supra* note 161, 169.

4.2.2. Crimes against humanity

Charging reproductive violence against child soldiers as crimes against humanity may also be viable, provided that the contextual element for crimes against humanity is satisfied. The contextual element as expressed in the Rome Statute, which is used by most UN fact-finding missions too, is that the acts of violence were committed ‘as part of a widespread or systematic attack directed against any civilian population’, pursuant to a state or organizational policy.¹⁶⁵ The reference to a ‘civilian population’ requires some thought. Jurisprudence is yet to specifically clarify whether children who have been incorporated into armed groups are ‘civilians’ in the required sense during times that they participate actively in hostilities (a separate question is whether they fall into the category when prisoners-of-war or otherwise placed *hors de combat*).¹⁶⁶ But even if they are not themselves ‘civilians’, they may still be victims of crimes against humanity provided that the relevant acts were committed as ‘part of’ an attack against a population that is predominantly civilian.¹⁶⁷ Thus in the *Kony* case, the ICC Prosecutor has used a crimes against humanity framework to charge acts of sexual, reproductive, and other violence against children and adults who were abducted by and integrated into the LRA, including children who participated actively hostilities, on the understanding that these acts were committed as part of a wider attack against the civilian population of northern Uganda.¹⁶⁸

Where the contextual element is satisfied, there are multiple options for charging reproductive violence against child soldiers as crimes against humanity. In addition to the two forms of reproductive violence expressly enumerated in Article 7(1)(g) of the Rome Statute, being forced pregnancy and enforced sterilization, ‘enslavement’ under Article 7(1)(c) is also of utmost relevance. The inseparability of reproductive violence from slavery has been discussed above in the war crimes section. Unlike the crime against humanity of ‘sexual slavery’, for ‘enslavement’ there is no need to prove an act of a ‘sexual nature’.¹⁶⁹ Accordingly, ‘enslavement’ is the more efficient charge where both options exist (as they do in the Rome Statute’s article on crimes against humanity, but not its article on war crimes). A further reason to select ‘enslavement’ over ‘sexual slavery’ is that it positions sexual and reproductive violence as one among a multitude of dehumanizing practices that enslaved people endure, whereas using ‘sexual slavery’ arguably oversimplifies most victims’ experience by focusing on the sexual aspect.¹⁷⁰

The crime against humanity of ‘torture’ under Article 7(1)(f) may be apt where prosecutors are seeking to emphasize the grave impacts of reproductive violence on victims, including acute pain, serious obstetric injury, and/or major psychological distress. Unlike the war crime of torture, the crime against humanity of torture is not limited to pain inflicted for the purposes of obtaining information or a confession, punishment, intimidation, coercion, or discrimination.¹⁷¹ It covers acts causing severe physical or mental pain or suffering not arising from lawful sanctions,¹⁷² where the victim was in the perpetrator’s ‘custody or control’, meaning any form of detention or restraint.¹⁷³ Examples might include forced maternity, forced pregnancy loss,

¹⁶⁵See Rome Statute, *supra* note 7, Arts. 7(1), 7(2)(a).

¹⁶⁶G. Werle and F. Jeßberger, *Principles of International Criminal Law* (2020), 381–3; D. Robinson et al., *An Introduction to International Criminal Law and Procedure* (2024), 239–240.

¹⁶⁷E.g. Martić, IT-95-11-A, A.Ch., 8 October 2008, Para. 307.

¹⁶⁸See *Kony* DCC, *supra* note 112, Paras. 5–8 and Counts 15, 16, 17, 19, 20, 23, 24, and 28.

¹⁶⁹See ICC Elements of Crimes, *supra* note 154, Arts. 7(1)(c) compared with 7(1)(g)-2.

¹⁷⁰See Sellers, *supra* note 32.

¹⁷¹See ICC Elements of Crimes, *supra* note 154, Arts. 7(1)(f) compared with 8(2)(a)(ii)-1 and 8(2)(c) (i)-4.

¹⁷²See Rome Statute, *supra* note 7, Art. 7(2)(e); see ICC Elements of Crimes, *supra* note 154, Art. 7(1)(f). ‘The concept of “lawful” refers to international law or national law which is consistent with international law and standards.’ See C. Stahn and C. Hall, ‘Article 7: The Different Subparagraphs’, in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2016), 178 at 272, margin number 134.

¹⁷³See Stahn and Hall, *supra* note 172, at 271, margin number 133.

forced abortion, forced contraception, and being forced to bear children before one is sufficiently developed, depending on whether anaesthetic was available, the level of medical care, sanitation, and cultural safety protocols, and so on. Providing multiple sources of evidence, including expert evidence as well as victim impact statements, may assist in meeting this gravity threshold.

Also relevant is the crime against humanity of '[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health' under Article 7(1)(k) of the Rome Statute.¹⁷⁴ This charge does not necessarily connote lesser suffering than torture.¹⁷⁵ But it can capture reproductive violence in circumstances where the victim was not in the perpetrator's custody or control (for example, if it occurred through deception). If using 'other inhumane acts' in relation to reproductive violence, it is worth noting a 2016 decision of the ECCC, in which the judge ruled it would violate the principle of legality for the ECCC to prosecute the conduct of forcibly impregnating women as an 'other inhumane act' because at the time of the offending (between 1975 and 1979), there was 'no clear human rights standard tied to conduct amounting to forced pregnancy, a violation of which could rise to the level of an "other inhumane act"'.¹⁷⁶ The better view, as argued by the ECCC's international co-prosecutor, is that although neither forced pregnancy nor forced impregnation were expressly defined as crimes against humanity in the 1970s, such conduct clearly violated rights recognised under international law at that time, including the right to human dignity.¹⁷⁷ That an act violates an internationally recognized human right does not automatically make it prosecutable under Article 7(1)(k); the decisive question is whether the act is of a similar 'nature and gravity' to those listed in Article 7(1)(a)–(j). However, it tends to support the use of the charge.¹⁷⁸ This is pertinent to reproductive violence, which offends a litany of internationally recognized human rights, including the right to the highest attainable standard of health, of which 'sexual and reproductive health is an integral part'.¹⁷⁹

'Persecution' is another relevant crime against humanity for charging reproductive violence against child soldiers. A discriminatory animus is required for this crime, meaning victims must have been targeted on certain grounds, including age and gender.¹⁸⁰ Usefully, this crime provides a way to prosecute human rights violations that are not themselves crimes under international law, when committed 'in connection to' an act that is a crime under the Statute, such as the war crime of conscripting, enlisting, or using child soldiers.¹⁸¹

¹⁷⁴See Rome Statute, *supra* note 7, Art. 7(1)(k).

¹⁷⁵See Stahn and Hall, *supra* note 172, at margin number 132. Moreover, the requirement that the 'other inhumane acts' be of a 'similar character' to those listed in Article 7(1)(a)–(j), including torture, means a similar 'nature and gravity' to those acts: see ICC Elements of Crimes, *supra* note 154, Art. 7(1)(k), footnote 30.

¹⁷⁶ECCC, *Case 004*, Consolidated Decision on the Requests for Investigative Action Concerning the Crime of Forced Pregnancy and Forced Impregnation, 004/07-09-2009-ECCC-OCIJ, OCIJ, 13 June 2016, available at www.legal-tools.org/doc/8a078a/pdf, Para. 31.

¹⁷⁷See R. Grey, 'Bred "Like Cattle": Forced Procreation in the Extraordinary Chambers in the Courts of Cambodia', (2024) 5(1) *Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence* 119, at 138–9.

¹⁷⁸For example, in *Ongwen*, the ICC Appeals Chamber viewed the fact that forced marriage violated an internationally recognized human right as a factor supporting its characterization as an 'other inhumane act': see *Ongwen* Appeal Judgment, *supra* note 20, Para. 1021.

¹⁷⁹1966 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, Art. 12(1); Committee on Economic, Social and Cultural Rights, General Comment 22 on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/22 (2016), Para. 1. For other human rights that are violated by reproductive autonomy, see: *Prosecutor v. Dominic Ongwen*, Amici Curiae Observations on the Rome Statute's Definition of 'Forced Pregnancy' by Dr Rosemary Grey, Global Justice Center, Women's Initiatives for Gender Justice and Amnesty International, ICC-02/04-01/15-1938, A.Ch., 23 December 2021, Paras. 32–3.

¹⁸⁰See Rome Statute, *supra* note 7, Art. 7(1)(h).

¹⁸¹*Ibid.*, Art. 7(1)(h) and 7(2)(g).

5. Conclusion

Girl soldiers, referring broadly to female children in and associated with armed groups, are not only at risk of being killed or injured by opposing forces. They are also exposed to gendered violence within their own ranks. Such gendered violence does not only encompass abusing them sexually and forcing them into domestic labour, as past ICC and SCSL cases recognized; it also includes extensive reproductive violence. In particular, girl soldiers are at risk of forcible impregnation and/or forced pregnancy, forced maternity, forced loss of pregnancy, forced contraception and forced abortion, being forced to bear children before their bodies and psyches are ready, and the denial of reproductive health care.

These forms of reproductive violence have tended to fly below the radar in the field of international criminal law. However, a shift is starting to occur. In the ICC, the proposed charges in the *Kony* case include forced pregnancy against ‘hundreds’ of women and girls abducted by the LRA, including girls who were used to participate actively in hostilities. And in Colombia, courts are breaking new ground in their recognition of reproductive violence as crimes under international law, including in respect of child soldiers. It seems that the heightened sensitivity to reproductive violence in the field of international criminal law – as practiced in international, national, and domestic forums – has had implications for investigating and prosecuting crimes against child soldiers.

Looking ahead, there is also scope for further scholarly enquiries child soldiers’ experiences of reproductive violence. For example, future studies may consider reproductive violence against male, trans, and/or non-binary child soldiers, or explore forms of reproductive violence beyond those discussed here, such as the destruction of cultural rites around pregnancy and birth.¹⁸² When it comes to understanding, prosecuting, and designing reparation for reproductive violence against child soldiers, the field of international criminal law is evolving. Survivor-centred research, as well as progressive approaches to investigation and prosecution, can all contribute to this forward movement.

¹⁸²For an example of research into the destruction of cultural birth rites in armed conflict, albeit not in relation to child soldiers, see: P. LeVine, *Love and Dread in Cambodia: Weddings, Births and Ritual Harm under the Khmer Rouge* (2010).