



# CARDOZO LAW INSTITUTE *in Holocaust and Human Rights*

## HUMAN RIGHTS AND ATROCITY PREVENTION CLINIC

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**Submitted to:**

Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

[hrc-sr-saleofchildren@un.org](mailto:hrc-sr-saleofchildren@un.org)

**Re:** Contribution to HRC report 2023

Dear Special Rapporteur Ms. Mama Fatima Singhaté,

Thank you very much for the opportunity to inform the Special Rapporteur's annual thematic report on reparations for child victims and survivors of sale and sexual exploitation, to be presented to the 52nd session of the Human Rights Council in March 2023.

**Concurrent legal protections: slavery, the slave trade, and human trafficking prohibitions**

Children have historically and are today subjected to acts of slavery and the slave trade. Slavery and the slave trade exist as two related, yet distinct, international crimes, humanitarian prohibitions and non-derogable human rights violations. International law's prohibitions of slavery and the slave trade, in all their forms against adults and children, have obtained *jus cogens* status with attendant *erga omnes* obligations of states. Human trafficking—a human rights violation and transnational crime—often is confused or conflated with the human rights prohibitions and international crimes of slavery and the slave trade. Protection from human trafficking exists distinct from and *in addition to* slave trade and slavery prohibitions. This letter aims to clarify and underscore that children are afforded protection from all three of these prohibitions of slavery, the slave trade and human trafficking in conflict and non-conflict settings.

To further understand the overlapping, yet distinct, safeguards that the prohibitions of the slave trade and trafficking offer, please see the following article entitled, "Missing in Action: The International Crime of the Slave Trade," *Journal of International Criminal Justice*, Volume 18, Issue 2, May 2020, p. 517–542, and also available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3583564](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3583564). For an article that details these distinctions under international human rights law, please see "Disaggregating Slavery and the Slave Trade," 16 FIU L. Rev. 515 (2022), available at: <https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1528&context=lawreview>.

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Given these separate avenues for redress and reparations under international law, this letter urges the Special Rapporteur to consider including in her thematic report that:

“The intentional sale of a child into a situation of slavery or to maintain a child in a situation of slavery constitutes perpetration of the slave trade as per the 1926 Slavery Convention, the 1956 Supplementary Slavery Convention, and customary international law.<sup>1</sup> Perpetration of the slave trade does not require exercise of powers attaching to the rights of ownership over a person. Perpetration of the slave trade and slavery can occur in tandem and alongside other crimes, such as human trafficking. Therefore, any and all mechanisms for accountability and redress should be employed whenever available to ensure full reparation for such crimes perpetrated concurrently against children.”

### **Impunity gaps: Contemporary occurrences of slavery and slave trade crimes against children**

This contribution highlights impunity gaps as they relate to contemporary occurrences of slavery crimes, including enslavement and the slave trade, committed as war crimes in conflict settings and as crimes against humanity in conflict and non-conflict settings by state and non-state armed actors against children. These contemporary occurrences of slavery crimes as they relate to your mandate include, for example, crimes committed against children enslaved and slave traded from Southern to Northern Libya;<sup>2</sup> children in Ukraine “adopted” or slave traded to Russia;<sup>3</sup> children enslaved and slave traded in Iraq,<sup>4</sup> Syria,<sup>5</sup> Ethiopia,<sup>6</sup> the Democratic Republic of Congo, or Uganda. Such crimes form part of situations either currently within

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<sup>1</sup> Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 1926 (hereafter, ‘1926 Slavery Convention’). Art. 1(1) defines slavery as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, 266 U.N.T.S. 40 (1956) (hereafter ‘1956 Supplementary Slavery Convention’). The preamble of the Supplementary Slavery Convention reiterates the objectives of the United Nation Charter and the United Nations common standard of achievement that for all nations and peoples that slavery and the slave trade be prohibited in all their forms.

<sup>2</sup> The International Criminal Court, Office of the Prosecutor, [Twenty-Third Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 \(2011\)](#), 21 April 2022, p. 14-15.

<sup>3</sup> United Nations Office for the High Commissioner for Human Rights, [Human rights concerns related to forced displacement in Ukraine: Ilze Brands Kehris, Assistant Secretary-General for Human Rights at Security Council Open Meeting on Ukraine](#), 7 September 2022.

<sup>4</sup> *The Revival of Slavery Before the Hour*, 4 DABIQ 15; see also Patricia Viseur Sellers & Jocelyn Getgen Kestenbaum, [Missing in Action: The International Crime of the Slave Trade](#), 18 J. INT’L CRIM. JUST. 517 (2020), p. 8.

<sup>5</sup> United Nations Human Rights Council, [‘They came to destroy’: ISIS Crimes Against the Yazidis](#), UN Doc. A/HRC/32/CRP.2, 15 June 2016, § 55-57.

<sup>6</sup> United Nations Office of the High Commissioner for Human Rights, [Ethiopia: Critical moment to strengthen fight against trafficking in the Tigray, Afar, and Amhara](#), 3 October 2022.

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the jurisdiction of the International Criminal Court (ICC) or situations which may be within the jurisdiction of the ICC in the future. Such contemporary occurrences of slavery and the slave trade crimes committed against boys and girls are manifested in a myriad of factual circumstances, such as children born enslaved, enslaved child soldiers, *ting ting* girls,<sup>7</sup> children as combatants between 15 and 18 years old, and child migrants.

The Preamble to the Rome Statute of ICC underlines that State Parties are “mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.” The Rome Statute includes several provisions acknowledging specificities as they relate to children as victims-survivors of international crimes.<sup>8</sup> The Office of the Prosecutor’s Policy on Children outlines specific ways in which children may be affected by international crimes, including enslavement as a crime against humanity and forced conscription and enlisting as a war crime.<sup>9</sup> Despite the aspiration of the Preamble to the Rome Statute, its current form under both crimes against humanity and war crimes falls short of protecting children from or redressing all forms of slavery and the slave trade that children endure in different ways across their age and gender continuum.<sup>10</sup> Due to the lack of slave trade as enumerated act of crimes against humanity and war crimes as well as slavery as an enumerated act of war crimes, the Rome Statute contains structural legal deficiencies that result in significant impunity gaps for acts of slavery and the slave trade and, in particular, as committed against children.

### **Ongwen Judgment: Discriminatory and incomplete accounting for the enslavement of children**

The case of Dominic Ongwen illustrates the quintessential criminal conduct inflicted by the Lord’s Resistance Army (LRA) in Uganda, in particular, slavery and the slave trade crimes committed against children. The *Ongwen* judgment details how Ongwen oversaw the enslavement of children, women, and men. It stipulates how the enslavement of civilians initially allowed the LRA to control and loot territory, then to replenish the ranks of LRA fighters, especially with boy child soldiers. Moreover, it demonstrates how enslavement furnished LRA fighters, including Ongwen, with prepubescent girl-child domestic workers called *ting tings*.<sup>11</sup> Concurrently, enslavement and the slave trade also ensured the continual supply of

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<sup>7</sup> Patricia Viseur Sellers & Jocelyn Getgen Kestenbaum, [Conflict-Related Sexual Violence Symposium: Conversations Under the Rome Statute—Enslavement and Slave Trade](#), OPINIO JURIS (June 11, 2021).

<sup>8</sup> Rome Statute, art. 36 (8) (b), 42 (9), 54 (1) (b) and 68 (1) respectively relating to the qualifications, nomination and election of judges, the Office of the Prosecutor, the duties, and powers of the Prosecutor with respect to investigations, the protection of the victims and witnesses and their participation in the proceedings.

<sup>9</sup> The International Criminal Court, Office of the Prosecutor, [Policy on Children](#), November 2016, p. 12, 21.

<sup>10</sup> [Prosecutor v. Dominic Ongwen](#), ICC-02/04-01/15-1762-Red, §§ 2143, 2247-49, 2253-54, 3056-62.

<sup>11</sup> [Prosecutor v. Dominic Ongwen](#), ICC-02/04-01/15-1762-Red, §§ 217, 2143.

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sexually mature girl-children and women as so-called wives, or “sex slaves.” In short, enslavement functioned as military supply or quartermaster operations to refurbish continually the LRA with enslaved persons of all ages and genders.<sup>12</sup>

The enslavement, defined as the exercise of any or all of the powers attaching to the rights of ownership over children by the LRA in Uganda, including all acts over children’s sexual autonomy and integrity, are not wholistically addressed in the *Ongwen* judgment.<sup>13</sup> The slave trading of children is completely ignored. The Rome Statute’s omission of the slave trade structurally impedes the full adjudication of abduction and distribution of the *ting tings*, the boy-child soldiers, and all persons ultimately enslaved under crimes against humanity. Concurrently, the Rome Statute’s legal impediment to pursue slavery and the slave trade of the *ting tings* or the boy-child soldiers as a war crime under Article 8 obstructs redress and reparations for enslaved children.

The *Ongwen* judgment provides an opportunity to identify structural deficiencies in the Rome Statute that impedes reparations and redress for child-survivors of slavery and the slave trade. Relatedly and more broadly, it invites reflection on lessons learned as to how slavery crimes, acts of slavery and the slave trade, ought to be understood and characterized in accordance with international law more broadly: Children are granted legal protection from slavery crimes, including slavery and the slave trade, as violations of international criminal law, international humanitarian law and international human rights law. This triangular protection, with foundations in international customary law, can advance redress and reparations for the myriad of ways in which children are harmed by slavery and the slave trade along their age continuum.

### **Looking ahead: multi-sectoral stakeholder responses to slavery and slave trade crimes against children**

In closing we would like to reiterate that all involved stakeholders from first responders to civil society organizations, humanitarian actors, medical and psycho-social support providers, States and donors, are in a position to strengthen the redress and reparations for slavery crimes, both slavery and the slave trade, committed against children. Enhancing multisectoral stakeholders’ historical and contemporaneous understanding of slavery and the slave trade crimes is critical to the creation of measures providing enhanced redress and reparations to enslaved children now and in the future.

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<sup>12</sup> Patricia Viseur Sellers & Jocelyn Getgen Kestenbaum, [Conflict-Related Sexual Violence Symposium: Conversations Under the Rome Statute—Enslavement and Slave Trade](#), OPINIO JURIS (June 11, 2021).

<sup>13</sup> Ibid.

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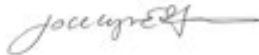
We remain available to offer any additional legal sources, clarifications, jurisprudence, analysis, or other explanation.

Sincerely yours,



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