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Children and Youth in Marine Piracy: Causes, Consequences and the Way Forward

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Aeneas Campbell, The Roméo Dallaire Child Soldiers Initiative

Founded by retired lieutenant-general and celebrated humanitarian Roméo Dallaire, we are a global partnership committed to ending the use and recruitment of child soldiers worldwide, through ground-breaking research, advocacy, and security-sector training.

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For more information please contact:

info@childsoldiers.org

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Introduction

According to the Failed States Index Data 2011, created by the Fund for Peace Organization, 6 countries most affected by piratical activity fall within the top 15 most fragile states. This includes Somalia, Cote d'Ivoire, Guinea, Pakistan, Yemen and Nigeria. Piracy is not the main factor as to why these countries are fragile, at the same time, not all fragile littoral states have marine piracy. However, this does demonstrate the importance of looking at the broader social, political and economic environment that enables piracy. Understanding the human factors associated with piracy activity and the root causes is critical to the development of solutions to address piracy.

The Dalhousie Marine Piracy Project (DMPP) has undertaken such an integrated and interdisciplinary approach to addressing the problem of contemporary piracy and its impact on the shipping and coastal communities. In so doing, it comprehensively examined the four interdependent themes of Law and Governance, Socio-Economic, Operational Responses, and Information Management; assessed current literature on the topic of contemporary marine piracy; and, through analysis of that work, highlighted potential areas for policy development and implementation.

Piracy appears to develop where weak or non-existent government and enforcement capabilities, impoverished coastal communities, and shipping targets exist in relatively close proximity. Other elements such as organized criminality, youth unemployment, political conflict and even natural disasters may also contribute to the likelihood of piracy emerging as a major threat to shipping in a particular region. The DMPP has examined the economic, political and social conditions, which have led to contemporary outbreaks of piracy with the intention of identifying and evaluating the effectiveness of current and proposed responses to piracy.

This paper highlights an important and growing issue identified from the DMPP research. Of deep concern is the increasing evidence that children and youth are being recruited by piracy gangs with little recognition among those responsible for addressing piracy and the complexities this introduces. For this particular problem, however, it is important to note that systematic collection of data on this matter does not currently exist and as such, it has been difficult to conduct a clear, evidenced-based assessment of the situation. As such, three key objectives of this paper are: (i) to raise the awareness of the failure to address the question of the involvement of children and youth by those involved in either studying or addressing piracy and (ii) to provide a rationale for the collection and accessibility of disaggregated data on those

committing piracy by those who are capturing, releasing, reporting and prosecuting those involved in piracy activity and (iii) to provide possible alternatives to addressing marine piracy by focusing on the challenges posed by the involvement of children and youth. In addition, it should be noted that many who are involved in studying or addressing marine piracy have failed to pose questions regarding the involvement of children and youth. This means that a critical gap in the data collection, research, and responses to marine piracy have yet to be considered as a potential approach in the overall effort to halt or reduce marine piracy.

The rights of the child

The UN Convention on the Rights of the Child (UNCRC) notes that in Article 1 the term 'child' means *every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier*. The UNCRC is one of the most universally accepted international conventions, with 139 signatories and 192 parties to the Convention (United Nations, 2012). This has implications for the age at which an individual can be charged for the offense of piracy, and the procedures that must be followed in the handling of young offenders.

It is estimated that there are 2.2 billion people in the world below the age of 18 years and 2 billion of these children live in the developing world (World Population Awareness, 2010). These demographics have an impact on the involvement of children in criminal activity and armed conflict as far too often the current balance of power in the world leads to the exploitation of the innocent and less powerful. (Whitman, 2012, p. 75)

Children and youth pirates

The evidence that does exist with respect to the use of children and youth in piracy activity indicates that the socio-economic factors (poverty, armed violence, lack of educational or employment opportunities, orphans, displacement, and exposure to disease) that make children vulnerable for use by armed groups exists in each of the major areas in which piracy currently is reported. In addition, in many of the regions where piracy exists, children are being used by terrorist groups, criminal gangs and within state and non-state armed groups (e.g. Somalia, Nigeria, Haiti) (UN SRSR Report of 2012). Therefore the use of children and youth by pirate groups could be viewed as a natural extension of these armed groups. A large reason for this use can also

be attributed to factors that would impact the use of children in piracy, such as: poverty, high youth unemployment, weak state structures that lead to lack of social programming. It may be argued that the current demographics showing children constituting at least 50 percent of the population, in addition to the average life expectancy rates that may impact the average age of the workforce and easy access to small arms and light weapons also play a key role. Additionally, children are often being born into families that have partaken in piracy activity, such as in Somalia, and are therefore being exposed at a young age to the business.

The first significant attention given by the media to the use of children in piracy was as a result of the Maersk Alabama attack in the Gulf of Aden in April 2009 (Estes, 2009). Following on from this incident, the Indian Navy discovered that 25 out of 61 pirates that were arrested were under the age of 15 years, 4 of whom were estimated to be just 11 years old (Pandit, 2011). Based on 2011 media reports our research showed that child pirates on trial comprise the following numbers:

Country of trial	Numbers of pirates on trial	Number of pirates on trial under 18 years
France	6	1
India	61	38
Germany	10	3
Malaysia	7	3 – 15 years old 2 – 18 year olds
USA	3*	3

**In the US: regarding one yacht hijacking, one on trial is 15 years old; the Maersk Alabama has four pirates on trial which includes one 16 year old that was shot, one between 17-19 years old that has been sentenced to 34 years.¹*

¹ See the following newspaper articles for sources for numbers of child pirates:
http://articles.timesofindia.indiatimes.com/2011-03-17/india/29138233_1_pirates-arabian-sea-piracy, <http://news.blogs.cnn.com/2011/02/11/3-teenage-boys-face-death-in-malaysia-piracy-case/>, <http://vorige.nrc.nl/international/article2548321.ece>,
<http://www.dailymail.co.uk/news/article-1332009/Ten-Somali-pirates-hijacked-naval-ship-trial-Germany.html>, http://www.upi.com/Top_News/World-News/2012/02/20/Italy-to-try-accused-Somali-pirates/UPI-49821329782555/,
<http://www.euronews.com/2011/11/15/france-tries-somali-men-accused-of-piracy/>,<http://the.moderatevoice.com/28756/somali-pirate-wanted-us-protection-hes-16-years-old/>

On marine piracy, UN SRSG member, Ms. Coomaraswamy, commented that a jailed pirate in Puntland had told her that, former pirates who had become wealthy, increasingly relied on child recruits to seize ships for ransom (Maritime Safety and Security News, 2010). Many of the people in charge of piracy operations are not out on the seas themselves, but on shore in their homes in Somalia or Kenya. The people they actually send out to “do the dangerous stuff are young children and youth, between the ages of 15, 16 and 17,” says Coomaraswamy. She also stated that if an international criminal tribunal is convened to deal with the perpetrators of acts of piracy, no child should be tried in the same court as adults. Instead, child pirates should be rehabilitated and integrated back into their communities. (Maritime Safety and Security News, 2010).

Children are viewed as desirable by armed groups, just as they are by criminal gangs, in part due to their lack of accountability under legal proceedings, depending on the national laws in question. It is therefore imperative to ensure that the leaders and organizers of armed groups and criminal activity are held responsible for the use of children. As Ishmael Beah, former child soldier from Sierra Leone and International Advocate for Children’s Rights, states: “No child has ever started an armed conflict” (Johnson, Morantz, Seignor, Zayed, & Whitman, 2012, p.4). Much like the situations of child soldiers in armed conflict, children used as pirates are not the organisers of the activity and addressing an end to the crime requires addressing the business model at its core. (Dalhousie Marine Piracy Project: Socio-Economic Module Report, 2012)

Our research at this point has confirmed parallels between the recruitment of child soldiers and child pirates. In both cases, children and youth are used by armed groups for the same reasons:

- They are vulnerable and easily manipulated;
- They are fearless and do not understand the long-term consequences of their actions;
- They are cheap;
- They are plentiful in many developing countries;
- Their small size may be advantageous;
- They are easily indoctrinated.

The case study of the LTTE in Sri Lanka highlights many of the key parallels between child soldiers and child pirates. Over the course of the 30-year conflict in Sri Lanka, the LTTE repeatedly “...recruited and used children, some as young as nine, as soldiers...”(Amnesty International, 1998) According to estimates made by the Sri Lankan government, at least 60 percent of LTTE

fighters were below the age of 18, though a study of actual LTTE casualties would suggest that some "...40 percent of the [group's] fighting force consisted of boys and girls between the ages of 9 and 18" (Hogg, 2006) These underage soldiers were frequently made to fight at the war's front lines and were often used in the capacity of suicide bombers.

As part of its military strategy, the LTTE maintained "...the most comprehensive naval networks among the [US-designated] foreign terrorist organizations..." (Karunaratne, *Asian Tribune*. 21 April 2009) This branch of operations, called the Sea Tigers, launched a multitude of attacks upon international cargo ships, including several – such as the Greek-registered freighter "Stillus Limassul" – that were carrying weapons to be used by the Sri Lankan military (Karunaratne, *Asian Tribune*. 21 April 2009). Like its army, the LTTE's naval branch actively recruited and deployed child soldiers. Indeed, there is evidence that during periods of LTTE-sponsored disarmament of child soldiers, underage members of the Sea Tigers were surreptitiously retained, as they had frequently received resource-intensive training that made them particularly strong military assets (Hogg, 2006) It was also common for "very young Tamils (some as young as 13) [to be] pressed into service to fill the [naval] ranks as the long-running insurgency depleted LTTE manpower."(Povlock, 2011)

It should be noted that while many children are abducted and forcibly recruited, others may join "voluntarily". However, the "voluntary" enlistment must be understood in terms of the limited choices and circumstances that may exist in the context of a particular country. Many children are vulnerable to being abducted or recruited into armed groups due to the following reasons:

- Extreme Poverty;
- Displacement;
- Separation from their families;
- Limited social and educational opportunities;
- Exposure to armed conflict.

In Somalia, which demonstrates the highest involvement of child and youth pirates, it appears as if most young people are joining on a "voluntary" basis. Joining a pirate group will potentially improve one's social and economic status and position in society and young and wealthy pirates are challenging the authority of both elders and Islamic teaching (Atallaha, 2011, para 22). In Southeast Asia, attacks are carried out by low-ranking members of the syndicate, or by recruits from the area. The latter are typically composed of either "unemployed or desperate fishers" who have the nautical skills needed

to navigate and participate in the attack (Liss, 2011, p.113) or urban youth on “standby” (Frecon, 2011, p.61). This reality for youth is further entrenched with ideas that pirates are viewed as champions, fighters for justice, and men to be admired (Liss, 2003).

In Nigeria, young unemployed men, in particular, are frequently enticed into the organized pirate gangs operating in the Delta region by “promised riches, fancy cars, luxury goods and weapons” (Nincic, 2009, p.7), such that these gangs are increasingly composed of younger members. It has also become recognized that in Nigeria, social mobility and the struggle for survival now necessitate the use of violence as “society gradually stopped recognizing merit and force became a plausible avenue to the top of social and economic strata with drug trafficking, smuggling and other perceived moneymaking ventures like armed robbery, seen as ways to get rich quickly” (Oruwari & Opuene, 2006, p. 4).

In Latin America there is less direct evidence of the use of youth in piracy operations. However, the coupling of crime with high levels of unemployment in the region is undisputed. There is also anecdotal evidence to suggest the use of children by criminal gangs has been prevalent in Colombia, Brazil, Haiti, Honduras, El Salvador and Guatemala.

Criminal employment of children

With half the population of countries in the Horn of Africa being under the age of 18, a large number of pirates caught are juveniles. Their situation is extremely similar to that of child soldiers. They are readily available, financially desperate, under or uneducated with little expectation of employment, and continuously exposed to the violence and degradation found in failed and failing states (Whitman, 2012).

The enticement of apparent wealth that piracy can bring, coupled with more aggressive forms of coercion, has resulted in a serious increase in the number of juvenile members of pirate crews. Traditionally, international programs, which target the criminalization of youth, have focused on the street gangs and drug trade, which are by far the most prevalent employer. The 1990 UNGA resolution on the Instrumental Use of Children in Criminal Activities focused on the threat to the children's well-being, and called for measures to eliminate the criminal employment of children by adults (Skinnider, 2009).

A pilot project in South Africa, between 2004 and 2007, titled Children Used by Adults in the Commission of Crime (CUBAC) undertook to study the

problem in the Western Cape, and examined how agencies and government could cooperate to eliminate the problem. Once again, this was directed largely at drug gangs in the slums of Johannesburg and Cape Town (ILO, 2006).

Traditionally, the problem of the criminal employment of children was viewed as a national problem. While it can be found in many places around the world, it has been addressed within the national perspective since it involves criminal activities taking place within an individual country, and the problems of one country would not necessarily affect its neighbours or even more distant states. However, piracy is different given its far reaching effects on members of the shipping industry and global trade. In this case, child pirates have become a global area of concern, and since it may be viewed as an international problem, it may be amenable to an international solution.

It has been emphasized by those involved in the elimination of child exploitation that child piracy is a means of bringing the problem to the attention of those in countries far removed from the actual hardship (Whitman, 2012). It also has a major advantage in that child pirates operate in the international waterways, and are being picked up and detained by foreign naval forces. This makes them not only the responsibility of the detaining forces, but also more accessible to programs designed to remove them from criminality.

There is also a strong belief among those working with child soldiers, that a child or juvenile pirate faces exactly the same situation, in terms of danger to life, exploitation by adults, and other abuses. If there is no real quantifiable difference between a child soldier and the child pirate, then there are those who would advocate making the employment of children in piracy a crime for which the International Criminal Court should have jurisdiction. This has a number of attractive features, the main one being that it would place those organizers and backers of piracy in an extremely dangerous legal position, as they would be subject to international arrest warrants and extradition to face the Court.

International anti-piracy advocates have long been complaining about the lack of mechanisms that can be used to institute legal action against kingpins or organizers of maritime piracy (SaveOurSeafarers, 2011). Especially in a situation like the Horn of Africa where a large percentage of pirates are under the age of 18, making the employment of juvenile pirates an "international" crime could have a major deterring effect on those who stand behind the enterprises. Treating major piracy leaders who employ child pirates the same as the warlords who employ child soldiers, issuing international arrest warrants, and holding high-profile criminal trials, would make the

employment of child Pirates an extremely risky activity. Unlike the number of pirates, the total number of major piracy organizers and kingpins is likely to be fairly small. While states are generally not in favour of establishing another expensive tribunal to deal with piracy per se, the use of some of the existing mechanisms to prosecute the organizers/backers may be an attractive option. Prosecuting them for the criminal employment of children may be a politically more acceptable justification than the participation in "transnational organized crime".

Child pirates and international law

There is considerable debate as to whether a child pirate is actually a legally identifiable and recognized category of defendant. Some jurisdictions have treated all piracy suspects the same, irrespective of apparent age, while others spend considerable time and effort determining the age of suspects and ensuring that those who are identified as juveniles are treated appropriately by the legal system.

There are two approaches to this issue. One seeks to identify what is called the Minimum Age of Criminal Responsibility (MACR) while the other applies the standards of the United Nations Convention on the Rights of the Child (UNCRC). However, there is some incompatibility between these approaches. The former tries to determine at what age an individual may be prosecuted for the crime of piracy. The concern is how to prosecute using age appropriate legal procedures. The latter focuses on the welfare of the child and safeguarding the rights afforded through legal protection.

The minimum age of criminal responsibility is determined as age at which an individual can be tried for a serious crime. This age appears to vary between 10 and 16 years with England and Wales at the low end of the spectrum and Scandinavian countries and Canada at the upper end (Cipriani, 2009).

Article 37 of the UNCRC requires that no child be subject to torture and inhuman or degrading treatment, capital punishment, or life in prison without possibility of release. Arrest, detention or prison shall be used only as a measure of last resort and for the shortest appropriate period of time. The Convention goes on to specify safeguards and procedures to ensure that juveniles who may be accused of crimes are protected and treated with dignity. It should be noted that it is recommended that juveniles are reintegrated into society as quickly as possible.

It should be noted that the United Nations and other International Non-Governmental Organisations focusing on children in armed conflict hold the view that children associated with armed groups should be primarily treated as victims by virtue of their age and the forced nature of their association with the armed groups. (UNSRSG, 2011, p.28) This must be borne in mind with respect to child pirates as well, as the UNSRSG on Children and Armed Conflict has stated, “even the most voluntary of acts can be a desperate attempt to survive by children with a limited number of options. In such circumstances, any consent given by the child cannot be regarded as truly voluntary in the full sense of the word.” (UNSRSG, 2011, p.29) The grey areas that need to be resolved are related to the interpretation of whether or not the piracy activity is linked to armed conflict. This confusion, highlighted in our research, is based on the fact that, on the one hand, the Convention on the Rights of the Child does not set a minimum age of criminal responsibility for states, but demands that each state sets its own age limit. On the other hand, the Paris Principles of 2007 states “children who are accused of crimes under international law allegedly committed while they were associated with armed forces or groups, should be considered primarily as victims and not as perpetrators.” Hence, the lack of clarity in the context of child pirates highlights the need for the international community to demand clarity so as to best address the interests of the child.

Prosecution of young offenders

Under the law of most of the world’s major industrialized states, a young or juvenile offender must be treated differently from an adult. This would generally mean that they are subject to a different standard of detention before trial, treatment by the investigating authorities for questioning, and type a sentence imposed after conviction, and the location and condition of incarceration.

Currently, there is limited data available on those detained in Somali prisons and on the trials in Kenya and Seychelles. However, it is suspected that a large percentage of these prison populations to be under the age of 18, the age of a child as stipulated under the UN Convention on the Rights of a Child and the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007). According to the UN SRSG on Children and Armed Conflict, children associated with piracy continued to be held in prisons in Puntland. During the year 2010, 10 children convicted were released following the overturning of their sentences by the Bossaso Appeals Court. As of December, three children were in remand. (UNSRSG, 2011)

All of these will have significant implications for the transfer of juvenile piracy suspects for trial, or incarceration after trial. Most prisoner transfer agreements require that the same standard of treatment is accorded to the suspect in the receiving State. Thus, without a recognized standard for juvenile pirates, many jurisdictions will not be able to make use of international transfer agreements for trial or incarceration.

Worst form of child labour

A specific problem exists where underage, or possibly underage piracy suspects are detained or arrested at sea by warships involved in antipiracy activities. Most of the states involved in antipiracy patrols are parties to the International Labour Organization conventions on the worst forms of child labour. State Parties to the Convention have agreed to prevent injuries and protect children from the worst forms of child labour. As noted in article 3c, the term 'worst forms of child labour' include the use of procuring or offering every child for illicit activities. While the section specifically mentions trafficking in drugs, it is not restricted to that activity alone. Under the ILO Convention, and the Recommendations for the elimination of the worst forms of child labour, there is the requirement to prevent the engagement of children in or remove them from the worst form of child labour, protecting them from reprisals and providing for their rehabilitation and social integration. There are measures which address the educational physical and psychological needs as well.

International advocates for the rights of the child strongly argue that the combination of these legal requirements mean that when antipiracy forces apprehend suspected pirates who are under the age of 18, they are legally obliged to put them in a safe and suitable location, and not to return them to the adult criminal gangs to which they belong. This would make 'catch and release' of juvenile pirates a legally problematic area. Arresting and detaining a suspected child pirate would require the arresting forces to apply the legal provisions of their national laws concerning the treatment of young or juvenile offenders, as previously discussed.

However, releasing a group of suspected pirates, which include those believed to be under 18 years old, would be returning the juveniles to a worst form of child labour. It would be the equivalent of releasing a group of underage "drug mules" back to the drug cartel, which employed them in the first place. In practical terms, once a child pirate is in the custody of anti-piracy forces, it may be extremely difficult to discharge obligations with respect to

the rights of the child, being unwilling to criminally prosecute them, and unable to release them into a potentially criminal situation.

Implications of youth involvement in piracy

The age of the pirates is an important factor to consider with respect to the operational and legal responses to contemporary piracy. It can be difficult to ascertain the exact age of the pirates, much like in armed conflicts where children are used as soldiers. Often the harsh living conditions, malnutrition, and disease can have effects on the physical appearance of the individuals concerned. However, just as Demobilisation, Disarmament and Rehabilitation efforts for children by the United Nations have attempted to produce guidelines and objective measures to assess an individual's age, so too could those who are attempting to address child piracy.

The UN endorsed classification of a child as anyone under the age of 18, therefore poses a legal problem for those who capture pirates, whether at sea or on land, particularly if a catch and release policy is being followed. It could be argued by defenders of the policy, that it is difficult to prove an individual's age, but this would certainly be hard to support in the case of pirates as young as 11, as was the situation when the Indian Navy captured 61 pirates in March 2011. Twenty five of those captured were suspected to be under 15 years of age, and four of them were judged to be around 11 years old (Pandit, 2011). Returning "children" to a boat with other pirates is in contravention of the responsibility to protect them from economic and social exploitation. It also returns them to a criminal activity, which is one of the activities defined as a worst form of child labour. However, it must be understood that adults use children. Apprehending the "youth/children" who are employed by adult pirate gangs does not adequately address this situation, which must be resolved on land. Children are also plentiful in each of the areas under consideration, and are often viewed as expendable. From an operational response perspective, there is therefore a need to detain the children in conditions that ensure compliance with the Convention on the Rights of the Child while at the same time, pursuing those who place children at risk with the strongest legal instruments available.

Additionally, much like the dilemmas faced by armies around the world who face child soldiers on the frontline, navies who face children used in marine piracy are confronted with ethical and tactical dilemmas. On the one hand a child pirate is still very much a child – someone who is vulnerable, impressionable, frequently irrational and worthy of protection. On the other,

he or she is a pirate– and to deny this fact may be both detrimental to the safety of the security sector actors and not in keeping with the child’s own experience. (Romeo Dallaire Child Soldiers Initiative, 2012)

A moral dilemma presents when adult security sector actors must make critical decisions about engaging children in combat. Studies have shown that the more personal this dilemma is, the more likely it will be the emotional and not the cognitive portion of the brain that is activated¹⁸. Put differently, if a security sector actor has not been properly trained to engage a child soldier, or child pirate, in battle – or if he or she is unfamiliar with the relevant ROEs – he or she will act with emotion and may put all concerned parties in grave danger. (Romeo Dallaire Child Soldiers Initiative, 2012)

ROEs provide security sector actors with guidance on the use of force, reducing hesitation on the battlefield and increasing the likelihood of context-appropriate responses. In some cases, the appropriate response may involve lethal force. The clear delineation of this possibility in ROEs may help alleviate the self-doubt and psychological hardship that adult soldiers or naval officers often experience after a confrontation with children. Unfortunately, most ROEs do not currently make any particular recommendations concerning the proper conduct of security sector actors vis-à-vis child soldiers. As such, it is crucial that security sector actors worldwide lobby for the creation of such operational guidance. Effective pre-deployment training should include role-playing exercises for security sector actors, so as to allow them to rehearse their ROEs.

Navies and private security companies engaged in anti-piracy operations need to start planning and thinking about the implications of children in marine piracy as it pertains to their mission and tactics.

Conclusions

The presence of children 18 years of age in pirate gangs poses a legal, social and operational problem to those attempting to address piracy globally. Although prevent or discouraging children from becoming pirates requires a socio-economic solution, the planning and implementation of operational and legal responses should also be taken into account.. Practices such as “catch and release” fail in this regard as they place children back into a criminal environment and do not address the root causes of the involvement of the children in the first place. More importantly, the policy potentially contravenes international conventions which most, if not all, of the countries practising this policy have a legal responsibility to comply with. Further examination regarding the tactical elements with respect to the use of child soldiers and the use of children in marine piracy must be fully explored. This requires the concerted efforts to collect data with respect to the use of children in piracy globally. Additionally, there is a need for a recognized international standard with respect to the suspected juvenile pirates. This may require the creation of addendums to current international child protection laws and marine law.

Lastly, we must be willing to work with governments, communities, legal bodies, human rights organisations and children’s rights organisations in an effort to develop prevention programmes and rehabilitation programmes for children with respect to marine piracy. We need to think outside of the current mechanisms that are used to address marine piracy and be willing to create new relationships, laws, and approaches.

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