Child soldiers and the law of armed conflict: A case study of Northern Uganda

Name: Ogolla Jean
Reg. No: K50/75611/09

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November, 2012
DECLARATION

I, Ogolla Jean hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed .............................................. Date ..............................................

Ogolla Jean

This project has been submitted for examination with my approval as University Supervisor;

Signed .............................................. Date ..............................................

Dr. Anita Kiamba
Northern Uganda has undergone a long civil strife period since the year 1986. Significant numbers of children have been recruited by the LRA as combatants or in other roles including cooks, porter and wives. Many have been victims of forced recruitment and attack, and many participated in killing.

A brief glance at Africa, and in particular Northern Uganda, would suggest that the methods adopted to deal with conflict prevention have achieved little success. It is clear that there are complex causes of conflict and that one cannot view conflict in a narrow sense, but must take account of economic and social factors to truly understand its causes and process. The conflict that this study captures is that experienced in Northern Uganda where children are recruited by rebel group Lords Resistance Army (LRA) and made to fight each other as soldiers and often conduct killings.

Although obvious ethical problems attend descriptions of child soldiers as damaged goods, even well-intentioned labels such as ‘child soldiers’ pose serious problems. While there may be value in designating separately children who have had particular kinds of experiences likely to have particular developmental impacts, categorisation often sets the stage for stigmatisation and marginalisation.

It is imperative to protect children from armed conflict by passing specific legislation that outlaws recruitment of children to armed conflict. Once such legislation is in place, it is necessary to build a strong institutional framework for implementation. The Republic of Uganda has not been successful in this regard.
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>AMREF</td>
<td>African Medical Research Foundation</td>
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<tr>
<td>ARLPI</td>
<td>Acholi Religious Leaders Peace Initiative</td>
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<tr>
<td>AIDS</td>
<td>Acquired Immuno-Deficiency Syndrome</td>
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<td>AP</td>
<td>Additional Protocols</td>
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<td>BBC</td>
<td>British Broadcasting Corporation</td>
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<td>CMS</td>
<td>Church Mission Society</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<td>GB</td>
<td>Great Britain</td>
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<td>GC</td>
<td>Geneva Conventions</td>
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<td>GOSS</td>
<td>Government of South Sudan</td>
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<td>GUSCO</td>
<td>Gulu Support the Children Organisation</td>
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<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICC Statute</td>
<td>Rome Statute of the International Criminal Court</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ICTFY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>IDP</td>
<td>Internally Displaced Persons</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>IMT</td>
<td>International Military Tribunal at Nuremberg</td>
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<td>IMTFE</td>
<td>International Military Tribunal for the Far East at Tokyo</td>
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<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam</td>
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<td>LRA</td>
<td>Lord’s Resistance Army</td>
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<tr>
<td>NEAC</td>
<td>National Evangelical Anglican Congress</td>
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<td>NRA</td>
<td>National Resistance Army</td>
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<td>NGO</td>
<td>Non-Governmental Organisations</td>
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<td>NUPI</td>
<td>Northern Uganda Peace Initiative</td>
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<td>OCHA</td>
<td>Office for the Coordination of Humanitarian Affairs</td>
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<td>PTSD</td>
<td>Post-Traumatic Stress Disorder</td>
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<td>RUF</td>
<td>Revolutionary United Front</td>
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<td>STDs</td>
<td>Sexually Transmitted Diseases</td>
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<tr>
<td>SPLM/A</td>
<td>Sudan People’s Liberation Movement/Army</td>
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<td>TFG</td>
<td>Transitional Federal Government</td>
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<td>UN</td>
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<td>UNICEF</td>
<td>United Nations International Children’s Emergency Fund</td>
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<td>UNLA</td>
<td>Ugandan National Liberation Army</td>
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<td>UPDA</td>
<td>Uganda People’s Democratic Army</td>
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<td>UPDF</td>
<td>Uganda People’s Defence Force</td>
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<td>UPDM</td>
<td>Uganda People’s Democratic Movement</td>
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<td>US</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>VIPs</td>
<td>Very Important Persons</td>
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DEDICATION

This study is dedicated to my dear son Jabali Otieno. It is after your birth that I experienced first hand and understood what child protection entails. I will forever protect you Jabali my love.
ACKNOWLEDGEMENTS

This study has been made possible with the help of various actors to whom I am eternally grateful. First, I would like to thank my parents for all their support and encouragement. Their role in this study was huge and very crucial, without which, admittedly, I would not be presenting the study. I shall be forever indebted to my parents for this. Second, I must acknowledge the input of my supervisor who constantly critiqued my work and ensured I put in hours on end to come up with a project acceptable by the institute. Her effort and time spent issuing guidance are commendable. Third, I appreciate the efforts of all my course instructors who instilled in me the theoretical know-how and offered practical insights that enabled me undertake this project. Fourth, I acknowledge the support network of my classmates with whom we sailed in the same boat. Fifth, I am thankful to my colleagues at my workplace who assisted me to brainstorm and allowed me a conducive environment to research. Sixth, I acknowledge the help I received from the library staff at African Medical Research Foundation (AMREF) where I was able to research and obtain a large volume of scholarly articles. Seven, I extend general appreciation to all persons who played a role in this study, whatever the contribution, the outcome of such assistance has been positive. Last, but definitely not least, I thank the Almighty for the strength, wisdom and resilience accorded to me to push forth and conclude the study.
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CHAPTER ONE
INTRODUCTION

In many countries around the world, particularly in parts of Africa where years of factional fighting, civil wars and cross-border conflicts have raged, children and the youth have been forced into violence not only as victims, but also as perpetrators. For various reasons, the number of child soldiers has been growing in recent decades, far surpassing the numbers the number of children who participated in wars during the cold war era.\(^1\) By the start of the twenty first century, an estimated three hundred thousand children worldwide were involved in fighting forces. The growing number of child soldiers is due in part, to the fact that wars are now more often fought internally, within a country’s own borders, among rebel armies and factions vying for power with the government and states.\(^2\)

Many children involved in armed conflict are not cognitively mature enough to comprehend the seriousness of what they are made to do. This immaturity makes them less likely to contradict orders and more likely to be fearless. They are therefore the ideal tools to be used in the hazardous and inhumane activities in the front line. However, their immune cognitive development does not mean that the effects of trauma are less than those shown in adults. What the children go through in the formative years of their lives will have lasting effects on their personality. These children will carry to their adult life the belief that violence is the easy way to achieve their goals. For

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example a child soldier who is recruited at fifteen years and serves as a combatant for five years is acclimatised to battle and transits from childhood to adulthood within a conflict environment. Experiences in childhood help adults to judge right from wrong. For these children, their war-enmeshed experiences will be the determinants. Other children in war torn areas who are not directly involved in the battlefield as soldiers live in constant fear of being killed, captured or having some harm coming to their families. These children suffer from post traumatic-stress disorder.3

The involvement of children in armed conflict is a form of child abuse4. The inherent emotional abuse and acts or omissions by caregivers may cause behavioural, cognitive, emotional or mental disorder in the child. Reasons for recruitment to armed conflict include self volunteering, desire to revenge, desire to be seen as a freedom fighter or martyr, means of supporting ones family, forceful abduction and surrendering due to fear of abduction. Whatever justifications put forth or excuses given, children’s involvement in war should be frowned upon, as they can not truly comprehend their action in war. Children are unable to give informed consent and for all intents and purposes, they lack the legal capacity to do so. Child involvement in armed conflict adversely affects the child’s right to unhindered growth and to identity as a child.5 At this critical juncture, children should be declared a zone of peace, a concept that involves protecting the rights of children in times of war, avoiding their involvement in armed conflict, and giving high priority to their physical and mental rehabilitation.6

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5 Ibid
6 Derluyn, Broekaert, Schuyten and Temmerman, “Post-traumatic stress in former Ugandan Child Soldiers” op cit.
Definitions of “children in armed conflict” generally include only those that are ‘involved’, that is child soldiers. A child soldier has come to mean:

“any child – boy or girl – under the age of eighteen who is compulsorily, forcibly, voluntarily recruited or otherwise used in hostilities by armed forces, paramilitaries, civil defence units or other armed groups.

1.1 Background to the Research Problem

Child involvement in armed conflict is not novel and has been present in society from time immemorial. This study shall investigate the attempts that have been made to do away with child soldiers in Uganda and shall investigate the reasons why such attempts have proved wanting. In so doing, this study shall look at the institutional and legislative framework in Uganda with a view to understanding why children are recruited to fight as soldiers in the northern region. Law reform has been on going as is evidenced by the additional protocols to the four Geneva Conventions of 1949 and the more recent Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The involvement of children in armed conflict as envisaged by international law encapsulates direct participation in hostilities, voluntary recruitment into armed groups and compulsory recruitment by governments.

In Uganda, the legislative instrument that protects the rights of children is the Children Act. It defines a child as a person below eighteen years of age and outlaws harmful practices being visited on a child. The Act makes due regard to the welfare

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9 Children Act, Chapter 59, Laws of Uganda (1997)
principles of the child giving children a right to social amenities in situations of armed conflict. The Act further gives the child a right to stay with his or her parents or guardian. International humanitarian law provides broad protection to children. In the event of armed conflict, either international or non-international, children benefit from the general protection provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities. Given the particular vulnerability of children, the Geneva Conventions of 1949 (GCIII and GCIV) and their Additional Protocols of 1977 (API and APII) lay down a series of rules according them special protection. Children who take direct part in hostilities do not lose that special protection. The Additional Protocols to the 1989 Convention on the Rights of the Child and its recent Optional Protocol in particular, also set limits on children's participation in hostilities. However, with all these laws in place, their coming into play is frustrated by the lack of enforceability of international law, which is dependent upon states for ratification.

The National Resistance Army, led by President Yoweri Museveni, which had been fighting to overthrow the former regime of Milton Obote since 1981, continued the fight against the military regime and after four days of fighting in Kampala took over the country in January 1986. Among its first priorities was the re-building of a nation state from a country reduced after 15 years of misrule and violence into feuding factions. By involving all ethnic groups in the government, as well as most of the main political parties, the pragmatic Museveni largely succeeded in this. Peace was restored to almost all the country, except the northern border area near Sudan, where small rebel groups concentrated, and where arms were readily available from the civil war in Sudan.
The Lord's Resistance Army (LRA) is an outlawed group in Uganda that came into existence in 1986 in North Uganda when the current president, Yoweri Museveni, took power. It is led by Joseph Kony, a charismatic and malignant dictator who has no ideology other than periodic vague statements about ruling a country by the Ten Commandments. The LRA has been reported to have killed innocent people. Abduction of children and their forced submission to commit atrocities is the most depressing and horrifying tactic of the LRA.\(^1\)\(^2\) Civil war has ravaged northern Uganda for over twenty years. The situation has been characterised as one of the world's worst humanitarian crises, where civilians, particularly children are most affected.\(^3\)

1.2 Statement of the Research Problem

The LRA is a rebel group that operates in northern Uganda where the Acholi are the dominant ethnic community. The LRA is comprised of mostly children as they are the easy targets, often kidnapped on the belief that they can be easily brainwashed and made to carry out tasks, that the adult LRA members would wish them to do, easily without eliciting questions or resistance. Children in northern Uganda live in constant fear of recruitment to LRA and those who have already been recruited often try to escape, which has led to a phenomena of 'night commuting' where children walk for very long distances searching for safety. This project entails a specific analysis of child soldiers in northern Uganda who are abducted by the LRA and forced to fight deadly battles, in the process killing and maiming their own against their will. In light of the

\(^{10}\) Smith, "Children pack the Rural Focus Uganda shelter in Gulu in December in an effort to escape abduction by members of the Lord’s Resistance Army" America Press Inc., 29\(^{th}\) March, 2004, P. 13

\(^{11}\) Dagne, "Uganda: Current Conditions and the Crisis in North Uganda" Congressional Research Service (2009), P. 3
forgoing, will enforcement and strengthening of the institutional framework in Northern Uganda contribute positively in reducing child soldiers in the region?

1.3 Objectives of the Study

1. To determine if children are accorded adequate protection under International Humanitarian Law.
2. To interrogate whether the Republic of Uganda fails or achieves the criteria of the international legal regime with regard to protection of children in armed conflict.
3. To investigate the various peace initiatives in Uganda and interrogate the success or otherwise of the attempts to end the use of children as soldiers.
4. To determine if the institutional frameworks and legal enforcement mechanisms in the Republic of Uganda are watertight.

1.4 Literature Review

In most analyses of armed conflict, children are typically regarded as passive, incidental victims or inconsequential actors. In current intrastate, ethno-political conflicts, however, children play an increasing role both as soldiers and, along with other non-combatants, as targets and victims in fighting at the community level. The increasing participation in political violence of children, many of whom have little schooling, job training or other means of meeting their basic needs, presents profound obstacles to the construction of peace. Furthermore, current patterns of community-level fighting victimise children, enabling soldiering and the continuation of cycles of armed conflict.\(^\text{12}\)

The issue of child soldiers has become an issue of global concern. Hundreds of thousands of soldiers under the age of eighteen are part of fighting forces in conflicts in numerous countries around the globe. The armed conflict in Northern Uganda has gone against ‘traditional’ warfare between states in which there are clearly defined boundaries between civilians and combatants, between the frontline and the rear. Instead, as internal or civil wars, multiple armed groups and forces within existing state boundaries has fought this conflict.

1.4.1 Literature Review on Legislative Framework

As outlined in the Paris principles (2007) an ‘armed group’ refers to groups distinct from armed forces defined by Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The war in Northern Uganda has been protracted and marked by extreme violence and brutality against civilians, including physical, sexual and psychological torture, disfigurement and mutilation, and significant portions of the population have become either refugees or internally displaced persons. The conflict has left each country with devastated educational and health systems, stockpiles of weapons and generations of adults and children, both boys and girls severely affected by the economic, political, social, psychological and physical health effects of the war.

Dridi posits that children and youth have been pulled into violence not only as victims, but also as perpetrators. This is an unfortunate situation considering

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13 Coalition to Stop the Use of Child Soldiers, Global Report (2008), London
14 The armed group referred to here is the LRA.
that the international legal instruments meant to protect the children in this regard failed
to do so. The United Nations Convention on the Rights of the Child set the minimum age
for recruitment into the military and other armed groups at fifteen years.\textsuperscript{17} A protocol
 appended in the year 2000 that came into force in the year 2002 established the minimum
age at eighteen years.\textsuperscript{18} This Protocol\textsuperscript{19} gives states power to permit voluntary
recruitment into their national armed forces persons under the age of eighteen years.

International legislation pre-supposes that once a human being has
attained the age of majority, he has acquired the necessary maturity to be forcefully
recruited into armed conflict. International law further gives room to nation states to
prescribe the minimum age applicable to the specific country at which a child can
voluntarily be absorbed into armed conflict. This is the avenue used to recruit persons
below eighteen years into armed conflict, as children as young as nine years of age using
the ticket ‘voluntary choice’ can be engaged in armed militia groups.

This study suggests that the age at which a person can be voluntarily
involved in armed conflict should be at least eighteen years. This reasoning is informed
by the age at which a human being is presumed to be able to make informed consent and
attains a status of adulthood. By so doing, the concept of child soldiers will be
extinguished and outlawed. Furthermore, it will be proposed that the age at which human
beings can be forcefully recruited to armed conflict be raised to twenty one years, the
argument here being simply according human beings their universal right to life and self
preservation and taking into account that this right is usurped when persons are made to

\textsuperscript{17} United Nations Convention on the Rights of the Child (1989), Article 38
\textsuperscript{18} Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed
Conflict (2002), Article 1
\textsuperscript{19} Article 3, Clause 3
fight in armed battalions. One may make the counter argument that whether a human being is eighteen or twenty-one years of age he is an adult and is entitled to the protection of his right to life. This is the point at which this writer will vouch for affirmative action arguing that the younger the human being, the more protection he ought to be accorded by law.

1.4.2 Literature Review on Child Soldiers

Brett & McCallin correctly point out that in light of the hardships, economic pressures and situational complexities surrounding children’s decisions to enter the military, the term ‘voluntary’ is ill suited to most recruitment situations. Problems of definition also abound. Brett & McCallin state that the term ‘soldier’ is used for a member of any kind of regular or irregular armed force or armed group in any capacity and those accompanying such groups. The difficult is that neither ‘armed force’ nor ‘armed group’ is defined precisely. In the wider literature, it is unclear how to count loosely organised youths who throw stoned and do not wear uniforms in situations such as the Occupied Territories. In addition, analysts use terms such as ‘armed conflict’ and ‘political violence’ that differ in scope, raising additional questions about who ought to be counted as ‘soldiers’.

A second definitional problem concerns the term ‘child’. In contrast to developed nations, many cultures define individuals as adults if they have participated in the culturally appropriate rites of passage, which often occur around the age of puberty. Developmental science has tended to embrace a universal model of childhood and to

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overlook the fact that ‘the child’ is a socially constructed idealisation that reflects the values and agendas of particular researchers, cultures and traditions.\textsuperscript{22}

The Machel Study and Brett & McCallin avoid simplistic characterisations and situate children within particular cultures. Both, however, embrace the universalism of the Convention of the Rights of the Child and set eighteen years as the minimum recruitment age for the military. Very much at issue is who defines childhood. Although this question has scientific dimensions, it is also about power and values. Although the Machel study and Brett & McCallin cannot be faulted for not having resolved these thorny issues, they might have done more to point out their magnitude and implications.

Much of the literature on child soldiers focuses on their involvement and demobilisation within a framework of international rights discourses. They typically lack situated analyses of these discourses in local circumstances. The children of the LRA present a unique dilemma for this project, as they pose major threats to the social category of childhood and to the overall security of the Ugandan nation, for the nation is a sentimental space in which children are encouraged to grow into responsible adult citizens. Yet universal notions of childhood proliferated in Uganda by international organisations do not fit neatly into the local context. Understandings of childhood must therefore be historically, culturally and geographically situated.\textsuperscript{23}

The north of Uganda has suffered insecurity, manifested by violence against civilians, abductions and displacement. This insecurity has resulted in death, loss of property and disruption of development activities. Children are losing vital education


opportunities; and they are forced into child prostitution, child soldiering and other forms of bondage.24 Young people are considered a generation both threatened and threatening to the Acholiland and the nation, a situation rarely accounted for in normative theories of childhood and family. As Stuart Aitken points out:

"Mythic renderings of parenthood and childhood foster political identity formation and social placement, but they do not reflect the day to day work of parenting, nor do they anticipate adequately the complex changes of daily living that accompany child rearing."25

The conditions for children in northern Uganda are not only seen as abnormal but also unacceptable. Their situations alienate them from most normative concepts of ideal childhood, which presume a certain level of security and infrastructure usually absent from war zones. Even United Nations (UN) mandates to protect children in war can not be neatly implemented in northern Uganda because children have already suffered the trauma from which the UN hopes to shield them. At this point, the Convention on the Rights of the Child has already failed to protect their rights.26

Even if fratricide is common, the rebels seldom regard their violent practices in such terms. Child rebels are instead encouraged, even forced, to kill adult people. Villagers will naturally beg for their lives when child rebels, who occasionally are even known to them by name and origin, arrive in the homesteads.27

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1.4.3 Literature Review on Institutional Framework and Law Enforcement

It has been suggested that the LRA is a cult controlling vast numbers of people and they keep them in something akin to imprisonment. No government protection is given to those at the camps. Even the Kony people can come up to the camp and abduct people near the camps. It is obviously a crime of gigantic proportions. Although some of the camps were the inevitable result of people fleeing to market centres to escape the rebel attack, it is also true that Museveni was operating a scorched earth policy to punish the Acholis.

Joseph Kony, the leader of LRA, claims that he received the blessing to fight Museveni’s government from his elders. It is said that the then chief Yona Odida of the influential Payira aristocratic clan blessed his nephew, a certain Major Opiya of the Uganda People’s Democratic Movement (UPDM), the initial ‘army of the earth’ that mounted resistance to Museveni in the north. Major Opiya was presented with the branches of the oboke olwoedo tree and spittle (lau) but most likely not with the fire-sticks (lapii). Chief Odida blessed Major Opiya as an uncle is supposed to bless a nephew about to leave on any kind of mission. The blessings took place immediately after the fierce Corner Kilak battles in late 1986 and early 1987. More than a thousand people from both sides died and the rebels eventually withdrew, defeated by the Ugandan Army.

Thus, even if blessings of the elders were offered to the rebels, as is suggested by the above version, the rebels were not presented with fire sticks, and they

29 Ibid

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were thus not given the proper warfare go-ahead legitimised by any collective Acholi leadership. Today the issue of warfare blessing of Joseph Kony is highly contested. In 1987 Kony was a spiritual adviser to the UPDM rebels, but it is not clear if he was present when Major Opiya met with chief Odida.\textsuperscript{32}

War was the constant occupation of the Acholi before the Government took over their country and usually took the form of night raids on the villagers. Missionary accounts supported the image of the Acholi as lacking proper leadership but still potentially suitable for recruitment to the armed forces. On the whole one would call them a fine race physically but not warlike. Probably if they had a leader, they would make a fighting tribe.\textsuperscript{33} The Acholi are held to be a primitive and violent people who take ‘to soldiering like ducks to water’, as the pioneer colonial administrator once wrote, or a ‘fighting race’ with ‘warlike instincts’, as an old-time missionary argued. Or now in contemporary terminology, the Acholi are even said to be genetically violent, as a non-Acholi officer in the Ugandan army claimed. In this way, influential commentators promote ethnicity, and more specifically Acholi ethnic identity as a central explanation for the conflict and its violence. A homogenous picture is painted. These accusations, one elder concluded, are nothing but political gimmicks.

Nevertheless, it would be wrong to suggest that Acholi people have no problem in existentially comprehending the war. The present war fought with helicopter gunships, tanks, armoured vehicles, machine guns and landmines, with some many unidentified killers and with military strategies of mass abduction of minors, the burning

\textsuperscript{32} Finnstrom, “In and out of culture: fieldwork in war-torn Uganda” \textit{Critique of Anthropology}, Vol. 21, No. 3 (2001), pp. 247-258

of villages, forced mass-displacement, looting of cattle, destruction of crops and the rape of civilians in a systematic manner, is of course something new to the Acholi society. Obviously, the practice of war grossly abuses the non-war moral order.

1.4.4 Literature Review on Peace Initiatives in Northern Uganda

A number of attempts in the past at a negotiated settlement with the LRA failed, in large part due to LRA intransigence and due to the government of Uganda's inconsistent positions. The first serious effort was launched by former Ugandan government minister Betty Bigombe in the early 1990s with the full support of President Museveni. In 1993, Bigombe made contact with the LRA leadership and the LRA initially expressed interest in a negotiated settlement. Efforts to create peace and reconciliation have been attempted, notably the introduction of the Amnesty Act in the year 2000 by the Government of Uganda, to provide assurances of no retaliation and to offer incentives to all those willing to abandon the uprising.

In December 2003, Ugandan President Yoweri Museveni made a formal request to the International Criminal Court (ICC) to investigate the actions of the LRA in northern Uganda. Museveni's request was not publicly revealed until January 2004, when the prosecutor announced it. Of course, this cast an enormous shadow over the work of the Amnesty Commission. It also effectively meant that the ICC is in sense acting on behalf of the Ugandan state, even though the Ugandan government is itself involved in the conflict. This has certainly created an awkward position. The chief prosecutor of the

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34 Dagne, "Uganda: Current Conditions and the Crisis in North Uganda" Congressional Research Service (2009), P. 5
35 Nannyonojo, "Conflicts, Poverty and Human Development in Northern Uganda" The Round Table, Vol. 94, No. 381 (2005), Pp. 473-488
36 Alen, "War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention" London: Crisis States Research Centre, Development Studies Institute, London School of Economics (2005), Pg. 39
ICC determined that there was a reasonable basis to open an investigation, and did so in July 2004. One year later, the chief prosecutor issued warrants for the arrest of Joseph Kony and four other senior members of LRA.37

A permanent Ceasefire Agreement was signed on the 26th day of August 2006, between the Government of the Republic of Uganda and the Lord’s Resistance Army.38 The comprehensive peace agreement signed in Sudan had depleted LRA resources and stability, removing the LRA’s once secure base of operations, and the ICC has issued its first ever indictments for the top leadership of the LRA, stirring coordination between governments in Kampala and Khartoum. Overall, the war is receiving more significant attention from the international community.39

Cohn and Goodwin-Gill, in their ground breaking work found that using existing support structures, incorporating traditional practices, values and beliefs, and providing treatment in home settings rather than institutions all made a key difference in the successful treatment of traumatised children who had participated in war.40 The protection, rights and well-being of children must be integrated into the processes of peace, pos-conflict recovery and reconstruction. The LRA is obliged by international law immediately to cease cruel, inhuman and degrading treatment, and deliberate killing of civilians or abductees; to release all abductees still being detained; and to allow the humanitarian agencies full, safe and unhindered access to the affected areas.41

38 Agreement on a Permanent Ceasefire; Juba, Sudan (2006)
41 Nannyonjo, “Conflicts, Poverty and Human Development in Northern Uganda” The Round Table, Vol. 94, No. 381 (2005), Pp. 473-488
The nature of armed conflict has changed since the rise of globalisation and the end of the Cold War. Now wars predominantly take the lives of civilians, over half of whom are children.\textsuperscript{42} The phenomenon of child soldiers is inextricably linked to a crisis of the state as manifested in civil conflict.\textsuperscript{43}

It has been suggested that efforts to create peace in northern Uganda have not been enough, or at least they have not been sincere. The people of northern Uganda have borne disproportionately the brunt of the suffering caused by the conflict. Displacement, abduction, mutilation and despair are a reality for the Ugandans that live in the north, yet their voices have been largely eclipsed in fray.\textsuperscript{44}

The LRA rebels, with bases in southern Sudan, have resorted to terror warfare, and they have abducted several thousand minors.\textsuperscript{45} In late 1999 the Ugandan parliament passed a blanket amnesty in an effort to end the war,\textsuperscript{46} but the government was later to request the International Criminal Court to intervene.\textsuperscript{47} In October 2005 the court issued warrants of arrest for the rebel leadership, provoking rebel attacks on the international Non-Governmental Organisations (NGOs) and western individuals. Fithen and Richard’s note on the Revolutionary United Front (RUF) rebels in Sierra Leone also says something about the Ugandan rebels. ‘Collapse into fatalistic violence and random

\textsuperscript{44} Quinn, “Getting to Peace? Negotiating with the LRA in Northern Uganda” Human Rights Review (2009), Pp. 55-71
\textsuperscript{45} Amnesty International, “Breaking God’s Commands’: the destruction of childhood by the Lord’s Resistance Army” (1997), London
\textsuperscript{46} Acholi Religious Leaders Peace Initiative, “Seven times seven: the impact of the amnesty law in Acholi” (2002)
\textsuperscript{47} Branch, “International justice, local injustice: the International Criminal Court in northern Uganda” Dissent 51 (2004), pp. 22-26
killing is a development which might have been foreseen to opponents of the RUF,’ they note, ‘had they been less busy denying the movement’s reasons to exist’.\(^{48}\)

The evolving war has caused an enormous humanitarian catastrophe in northern Uganda. In late 2005, about ninety percent of the Acholi people and more than 1.5 million of the total population in northern Uganda were internally displaced. They live in a chronic state of emergency as highlighted by a growing bulk of reports.\(^{49}\) It has been an intrinsic part of the Ugandan army’s counterinsurgency warfare to clear the countryside and concentrate civilians in camps.\(^{50}\) In this regional war of proxies, the Sudanese government until recently supported the LRA, while the Ugandan government throughout the years has supported the Sudan People’s Liberation Movement/Army (SPLM/A) in Sudan. Since the 2005 peace deal between the SPLM/A and the Sudanese government, the common enemy is now global terrorism and the LRM/A.

1.5 Justification of the Study

The use of children as soldiers has been universally condemned as abhorrent and unacceptable. This is the case although the condemnation has not been put into action in that the vice is still visible in northern Uganda. The openness of Uganda to researchers since the late 1980s combined with a continuous supply of external funding has resulted in a quite substantial literature. However, the regions of the north, comprising about a quarter of the whole country, have been neglected. While various aid


agencies have commissioned studies, there has been much less in the way of in-depth field research, and the generally positive image of Uganda under president Museveni has been almost exclusively based on information from the south. The consequences of the war in ‘Acholiland’ are occasionally acknowledged and discussed in the international media, but rarely with any serious analysis. Yet, by any standards, this must rank as one of the world’s worst humanitarian disasters.  

1.6 Theoretical Framework

The study will be informed by dualism which stresses that the rules of the systems of international law and municipal law exist separately and can not purport to have an effect on, or overrule the other.

Municipal law governs the domestic aspects of government and deals with issued between individuals and between individuals and the administrative apparatus, while international law focuses primarily upon the relations between states. Nevertheless, there are many instances where problems can emerge and lead to difficulties between the two systems. In a case before a municipal court a rule of international law may be brought forward as a defence to a charge. There may also be questions as to the precise status of a municipal legal rule before an international tribunal.

Like positivists, dualists view the nature of inter-state and intra-state relations as fundamentally different and find a disparity between the legal structure employed on the one hand by the state and on the other hand as between states. Where

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53 Ibid
municipal legislation permits the exercise on international law rules, this is on sufferance as it were and is an example of the supreme authority of the state within its own domestic jurisdiction, rather than of any influence maintained by international law within the internal sphere.\textsuperscript{64}

The Republic of Uganda is a dualist state. The Constitution of Uganda does not contain a provision incorporating the general rules of international law to form part of the laws of Uganda. Furthermore, monist states, unlike Uganda, expressly include in their Constitution a provision to the effect that a treaty or convention ratified by the state shall form part of the laws of the state under the Constitution. The theory of dualism will thus assist in understanding the literature that has been reviewed in this project, for example the state made a decision to grant blanket amnesty to the perpetrators of war crimes who owned up and later on the International Criminal Court issued warrants of arrest against the suspected perpetrators. This example reveals some disparity between the international arena and local boundaries of Uganda.

1.7 Hypotheses

1. There exists sufficient international legislation to protect children from being recruited to armed conflict as soldiers.

2. There exists sufficient municipal legislation in Uganda to protect children from being recruited to armed conflict as soldiers.

3. There are insufficient institutions in Uganda to govern children recruited to armed conflict as soldiers.

4. The peace initiatives in Northern Uganda were insufficient.

\textsuperscript{64} Oppenheim "International Law" pg. 53
1.8 Methodology of the Research

This study will be based on qualitative research methods and in particular the use of the library. The study will adopt the descriptive, explanatory and exploratory approach by studying the child soldiers in Uganda and inquiring into the legal protection accorded to children in armed conflict by putting together and assessing the data that already exits hence ousting the need for quantitative research methods.


Relevant books including Rachel Brett’s “Young Soldiers: Why they choose to fight” and Cohn & Goodwin-Gill’s “Child Soldiers: The Role of Children in Armed Conflict” on the subject will be borrowed from University of Nairobi library. These texts clearly bring out the concept of child soldiers. Other books that need to be
referred to frequently, like Malcom N Shaw’s “International Law”, will be purchased to form part of the author’s collection. This book lays down the role of municipal rules in international law and is useful in compiling the theoretical framework of this study. Also an analysis and review of books, journals, papers and other available literature on the issue of children in armed conflict and the situation in Northern Uganda will be carried out. A comprehensive analysis of secondary data will be undertaken in this regard.

The data will be analysed using content analysis. Content analysis is a technique for making inferences by objectively and systematically identifying specified characteristics of responses and objectively identifying and using the same approach to relate trends. The results will be presented under identified themes.

This research will be mainly qualitative and will be aimed at making discoveries in line with the fundamental questions raised in the statement of the research problem and not testing hypothesis.

1.9 Chapter Outline

This research will be divided into five chapters, which will be titled as follows: Introduction; Legislative Framework on Child Soldiers; The Recruitment of Children as soldiers; Peace Initiatives in Northern Uganda; and Conclusion and Recommendations.

Chapter one introduces the topic of the research study by contextualizing the research problem and providing a justification for this study. The chapter also presents a literature review where the relevant literature by other scholars on the issue of children in armed conflict, legislative provisions and peace initiatives are laid down.
Theoretical framework adopted by the study that emerges from the said literature review is also presented. The chapter ends by giving the data collection and data analysis methods that will be used by the study.

Chapter two analyses the relevant provisions of the international instruments in comparison to the national legislation in Uganda relating to armed conflict. The strengths and weaknesses of the legal provisions in force are critically analysed in an attempt to bring out the legal protection accorded to children involved in armed conflicts. The institutions within which these legal provisions are implemented are analysed in this chapter.

Chapter three investigates the reasons behind the armed conflict visited upon the children of northern Uganda. It further looks at the impact of armed conflict on children.

Chapter four identifies and analyses various attempts that have been made in an effort to bring peace to the region. The efforts of the former Ugandan government minister, Bigombe, the role of international actors such as the United States of America and the International Criminal Court to bring an end to the conflict is also brought out.

Chapter five concludes the research and provides suggestions on areas for further study including better reintegrating child soldiers to society within the context of Uganda.
CHAPTER TWO

LEGISLATIVE FRAMEWORKS ON THE PROTECTION OF CHILDREN IN ARMED CONFLICT

This chapter shall lay down in detail the legal protection accorded to children in armed conflict and especially those who are recruited as soldiers. Customary international law shall be considered in line with the historical development of jurisprudence on protection of child soldiers. The chapter will analyse international humanitarian law on child protection and give a brief overview on the workings and mandate of the International Committee of the Red Cross (ICRC). Individual criminal responsibility shall be considered vis a vis group responsibility in international criminal law. Various legal instruments outlining the age of recruitment of soldiers shall be analysed and the discrepancies in their provisions clearly brought out. The Chapter will also analyse the laws of Uganda that provide for children.

One of the most alarming trends in armed conflict is the participation of children as soldiers or in supporting roles for example as cooks, porters and wives for armies. A child soldier is a boy or girl under the age of eighteen who is compulsorily or voluntarily recruited or otherwise used in hostilities by armed forces, paramilitaries, civil defence units, or other armed groups.¹

Customary international humanitarian law as it traditionally related to children centred on the two notions of the general protection of civilians in time of armed conflict, and the special protection of those groups regarded as being particularly

vulnerable to the effects of war. Both concepts have received considerable attention in the literature on humanitarian law and need not be reviewed in detail. In broad terms however, the general protection of the civilian population may be seen as encompassing the notions of not attacking them, of preventing the effects of war from harming them to the greatest extent possible, and of not using them as hostages against attack. The special protection of specific groups included the sick, the elderly, the infirm, children and mothers of young children. The obligations could include the removal of these groups to specially designated safe areas or camps and the provision of extra supplies for food or shelter. In general, the intent was to reduce the impact of the conflict as far as possible for those least able to cope with its effects.

Although these concepts were well recognised in humanitarian law, they remained largely uncodified, meaning not laid down in writing to form part of the law, until the adoption of the Fourth Geneva Convention in 1949. Following the Second World War, it became apparent that children, "... in violation of one of the most sacred of human laws – the law that children must be protected since they represent humanity’s future", had been victimised by the war to a greater extent than ever before. It is therefore a strange lacuna of the Fourth Convention that, while it set out to remedy this problem, children are not specifically included in the only provision stating the principle

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2 Khushalani, "Dignity and Honour of Women as Basic and Fundamental Human Rights" (1982)
5 Pictet, Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (ICRC, 1958), pg. 248
of special protection. Nonetheless, the continuous reference to children in the provisions designed to assist in the implementation of the principle makes it clear that this omission was not intended to detract from the customary international law on this point.

Since World War II, a more realistic and progressive approach has been reaffirmed, namely, that international criminal law is binding upon states that have ratified the relevant conventions, individuals and other actors irrespective of how it is enforced, and that it can be enforced directly through international tribunals as evidenced by the International Military Tribunal at Nuremberg (IMT) and the International Military Tribunal for the Far East at Tokyo (IMTFE). Enforcement of International Criminal Law through criminal sanctions has, however, been entrusted primarily to states that incorporate international criminal law proscriptions in their national criminal justice systems and enforce them domestically. To complement enforcement, it is the customary duty of states to initiate prosecution or to extradite those reasonably accused of international crimes. This duty derived from a formula developed by Hugo Grotius calling for "aut dedere...aut punire" meaning extradite or prosecute. However, the assumption that international criminal law is only enforced through states, a process that Bassiouni terms "indirect" enforcement, as opposed to enforcement through international bodies, is not correct. A direct international enforcement system also exists for example as evidenced by the ad hoc international criminal tribunals at Nuremberg and Tokyo established by the allies after World War II. A permanent International Criminal

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6 Article 16 of the Fourth Geneva Convention states, *inter alia*, “The wounded and sick as well as the infirm, and expectant mothers, shall be the object of particular protection and respect”. Article 50 comes close to stating the principle for children, but its scope is more restricted.

Court (ICC) with limited jurisdiction has also been created under the Rome Statute for an International Criminal court.


These International Conventions also apply to Uganda. Accordingly, the problem that this study investigates, that is of recruitment of child soldiers in Uganda, the reasons thereto, and attempts made to reduce the recruitment of child soldiers can also be addressed via these international legislative framework. However, being a developing country, Uganda has put in place strong institutional mechanisms and bodies to ensure respect and upholding of the principles embodied in these instruments. Since Uganda is fighting rebel groups who do not respect law and as such International Humanitarian Law can not be enforced upon such rebel groups. Hence, the argument made by this study that Uganda must strengthen its enforcement mechanism in trying to achieve a reduction of child soldiers.

The participation of children in non-international armed conflicts is regulated by the Additional Protocols to the Geneva Conventions of 1949 (1977). The Contracting Parties of Protocol I agree to take all feasible measures to prevent children
under the age of fifteen from taking a direct part in hostilities. This rule prohibits recruitment into the armed forces, but the vague phrase “take all feasible measures” at the same time allows the issue of general prohibition to be evaded. In recruiting persons between the ages of fifteen and eighteen years, priority shall be given to those who are the oldest. This means persons between the ages of fifteen and eighteen years are no longer viewed as children and could be understood as legitimate targets of war. Some experts stress that these provisions allow the voluntary enlistment of children as soldiers. In Dulti’s view, recruitment covers voluntary registration, which would mean that armed forces or groups are not allowed to enlist children under the age of fifteen.

Additional Protocol II applies to conflicts between a government and an organised armed group, which means civil war. It absolutely prohibits all forms of direct and indirect participation of children under the age of fifteen and lists certain essential protections for non-combatants. But both Additional Protocols still leave gaps: There is no minimum age limit for childhood, no definition of the terms ‘direct’ and ‘indirect participation’ and no application to lesser forms of disorder as riots or isolated acts of violence.

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8 Thulin, “Child Soldiers – The Role of the Red Cross and Red Crescent Movement” *Humanitares Volkerrecht*, 3 (1992), pg. 142
11 Dulti, “Captured Child Combatants” *International Review of the Red Cross*, 9 (1990), pg. 424
The Convention on the Rights of the Child (1989) includes the whole spectrum of children’s rights and is widely ratified. It provides the basic principle best interest of the child and, for example, obliges states parties to guarantee the physical and psychological recovery and social reintegration of children who have been victims of war. Graca Machel emphasises the Convention’s acknowledgement of the distinct legal personality of children. Although a child is generally defined as a person under eighteen years, the article related to children in armed conflicts restates the fifteen year rule. It repeats the Additional Protocol I to the Geneva Conventions with all its failings. For example, there is no definition of the words ‘to take all feasible measures to prevent children from taking a direct part in hostilities’. However, countries like Sweden and Switzerland made separate declarations that guarantee the age of eighteen as a minimum for recruitment into the armed forces.

The African Charter on the Rights and Welfare of the Child (1990) takes up the minimum age for child soldiering and prohibits the recruitment and direct participation of children under the age of eighteen in armed conflicts. A number of similar regional declarations have emerged for example the Capetown Principles adopted by the participants in a symposium organised by the UN Children’s Fund (UNICEF) in South Africa in 1997, the Montevideo Declaration adopted by the participants in Latin American and Caribbean Conference (Uruguay 1999) and the Berlin Declaration adopted by the participants in a European Conference (Germany 1999).

14 Article 39
15 United Nations, “Impact of Armed Conflict on Children” Report of the expert of the Secretary-General, Ms. Graca Machel, submitted pursuant to General Assembly resolution 48/157 (1996), pg. 65
The International Labour Organisation (ILO) adopted a 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, such as pornography, prostitution and child soldiering. The treaty forbids the forced or compulsory recruitment, but not voluntary enlisting of children under the age of eighteen into armed conflict.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000) prohibits all recruitment of children by armed groups but allows governmental forces to recruit volunteers under the age of eighteen. The protocol requires governments to deposit a binding declaration stating the minimum age they will respect. The Optional Protocol is doubtless an innovation to reach non-governmental entities. The countries that blocked a total ban on the use of children as soldiers were United States, United Kingdom and Australia.\(^1\)

2.1 Historical Development of the International Legal Protection of Children in Armed Conflict

The protection of children in armed conflicts was one of the earliest concerns of the international law on the rights of the child; the standard of protection was, however, minimal. The Hague Convention Respecting the Laws and Customs of War on Land 1907 incorporated only the principle of respect for family life without considering whether children with or separated from their families were entitled to additional levels of protection.\(^2\) Furthermore, even though the Declaration of the Rights of the Child 1924 owed its origins to the concern for children affected by armed conflicts in the Balkans, it

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\(^2\) Hague Convention No. 4 (1907), Art. 46
provided only that in times of distress children should be the first to receive relief. In 1938, however, the International Conference of the Red Cross asked the International Committee of the Red Cross to co-operate with the International Union for Child Welfare to study the possibility of providing protection under a convention, and in 1939 they produced a draft Convention for the Protection of Children in Emergency and Armed Conflict. On 12th January 1939 the draft was accepted but work to secure its adoption was somewhat overtaken by events. The issue re-emerged in 1946 when a draft Convention for the protection of children in the Event of International Conflict or Civil War was submitted by the Bolivian Red Cross to the Preliminary Conference of Red Cross Societies of the Study of the Geneva Conventions. The resolution recommended that the provisions of the draft Convention should be incorporated into the future Geneva Convention on the Protection of Civilians in preference to an additional fifth treaty. This study notes that the Convention does not abrogate Hague Convention No. 4, which still remains in force.

The Geneva Convention on the Protection of Civilians 1949, Geneva Convention 4, incorporates 17 articles of specific concern to children, affording general protection to children as civilians and special protection for children living in both unoccupied and occupied territory. The considerable achievements of the Geneva Diplomatic Conference in 1949 in reaching sufficient consensus to codify and regulate the conduct of armed conflicts ought not to be underestimated, but the changes in warfare since the Conventions were adopted in 1949 revealed several lacunae in relation to children. Of particular concern were the absence of any prescribed minimum age for child participation in hostilities and the lack of specific additional protection for children.

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19 Bueren, “International Documents on Children” (1993), Art. 3
caught up in an increasing number of internal armed conflicts. The General assembly of the United Nations attempted to address several of these issues in 1974 when it adopted the Declaration on the Protection of Women and children in Emergency and Armed Conflict.\textsuperscript{20} According to the Preamble the Declaration was drafted: “Bearing in mind the need to provide special protection to women and children belonging to the civilian population.” Hence the issue of child combatants was beyond its scope. In retrospect the Declaration proved to be of greater value in terms of its overall strategic importance than in its normative status. The adoption of the Declaration assisted in the acceptance of provisions relating to the special protection of children in the two Additional Protocols to the Geneva Conventions.\textsuperscript{21}

However, although the two protocols provide greater protection for children against the effects of hostilities\textsuperscript{22} and for the first time regulate the participation of children in the conflict, the potential of the protocols is at present somewhat limited for children because fewer States are party to the Protocols than to the Geneva Conventions themselves. Hence, the drafting of the Convention on the Rights of the Child presented an ideal opportunity to seek to raise the standards within a less contentious framework. It was an opportunity, however, which was not fully seized: standards were not raised, and in one significant area they were arguably lowered.\textsuperscript{23} In sharp contrast the African Charter on the Rights and Welfare of the Child does not break new ground by extending the ambit of international humanitarian law as it applies to children.\textsuperscript{24} Article 22(3) of the

\begin{footnotes}
\item[20] Bueren, “International Documents on Children” (1993), Art. 3
\item[21] Adopted in 1977 by the Diplomatic Conference, which held its first session in 1974.
\item[23] Thompson, “Africa’s Charter on Children’s Rights – A Normative Break with Cultural Traditionalism” (1992) pg. 41
\item[24] Ibid
\end{footnotes}
African Charter applies not only to children caught up on armed conflicts but also to "tension and strife", thus importantly protecting children caught up in the lower levels of violence. The drafters of the African Charter, in contrast with those who drew up the Geneva Protocols and the Convention on the Rights of the Child, proved to be sufficiently far-sighted to recognise that the best interest of the child ought to predominate in international law and not the form and level of the conflict.

The four Geneva Conventions 1949 are silent both on the recruitment of children into the armed forces and on their direct or indirect participation in military operations such as female children cooking for soldiers, fetching for the soldiers water and fulfilling sexual desires of the male soldiers. It was not until the entry into force of the two Protocols that this situation was partly remedied. For both international and internal armed conflicts the Protocols establish fifteen years as the minimum age of recruitment, although, in international conflicts, when recruiting children aged between fifteen and eighteen the oldest should be recruited first. This standard is reiterated in the Convention on the Rights of the Child.

There does, however, seem to be some uncertainty about the precise definition of recruitment. According to Dulti the word "recruitment" includes both compulsory and voluntary enrolment, so that parties to the conflict would also be under a duty to refrain from enrolling children under fifteen years of age who volunteer to join the armed forces. During the drafting of Article 77(2) of Protocol 1 the International Committee of the Red Cross (ICRC) had initially proposed that States should refrain not

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25 Article 77(2) Protocol 1, Article 4(3) Protocol 2
26 Article 77(2) Protocol 1
27 Article 38(3)
28 Dulti, "Captured Child Combatants" (1990), pg. 278
only from recruiting children under fifteen years in their armed forces but also from accepting their voluntary enrolment. Geneva Convention IV expressly uses the term "voluntary enlistment" thereby implying a difference between recruitment and voluntary enlistment.

In 1970, following three years of work and debate, the UN General Assembly adopted a series of five resolutions dealing with international humanitarian law. Through these resolutions the member states of the UN reaffirmed their belief in the continuing validity of many basic humanitarian principles. Despite their unequivocal language, these same States also recognised the urgent need to reassess the substance of these principles and to draft new "legal instruments for reaffirmation and development of humanitarian law applicable in armed conflict" to reflect the rapidly changing circumstances of both international and internal armed conflicts. The supervision of this task was undertaken by the ICRC, with the blessing of the General Assembly.29

The 1974 General Assembly’s Declaration on the Protection of Women and children in Emergency and Armed Conflict reflected the growing concerns to recognise wars of national liberation and self determination as international armed conflict30 and also to strengthen the role of international law in internal armed conflicts, in particular the incorporation of the concepts of civilian protection and special protection. Although the principle of special protection was reaffirmed, the problem of who was entitled to it was not specifically dealt with.31

The Hague Conventions of 1899 and 1907 codified, among others, a set of regulations governing land warfare and to a lesser extent sea warfare. The four Geneva Conventions of 1949, building upon the work of the Hague Conventions, further extended the protective regime for the victims of war, whether they be wounded and sick members of the armed forces in the field, wounded, sick and shipwrecked members of armed forces at sea, prisoners of war or civilian persons. All four Geneva Conventions provided limited protection to victims of conflicts ‘not of an international character’ through Article 3. The next major step in codification came with the two 1977 Protocols Additional to the Geneva Conventions. Protocol I, dealing with International Armed Conflicts, supplements all four Geneva Conventions. Protocol II, dealing with non-international armed conflicts supplements common Article 3.32

Considerably less accommodation has been made for the regulation of intra-state conflicts, Protocol II notwithstanding. The international community’s demurral to agree upon a regulatory system for intra-state conflicts systems in part from its reluctance to interfere in either the internal affairs of sovereign states or in the conduct of parties to a civil conflict where the outcome and partisanship may remain poorly defined. Nevertheless, such wars have proven to be exceedingly destructive for non-combatants and the effects appear unmanageable without some system of regulation.

Protocol II, which consists of only twenty-eight articles compared to the one hundred and two articles of Protocol I, expands and exemplifies protections provided to persons at risk because of civil war. Protocol II applies to all armed conflicts not of an internal nature which take place in the territory of a High Contracting Party and involve its armed forces and combatants of an organised opposition who are under responsible

command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. Protocol II does not apply to internal disturbances such as riots, demonstrations and isolated acts of violence, because these do not amount to an organised contestation over power. Protocol II again affirms the tenets of common Article 3, which are taken as fundamental guarantees for all persons. Protocol II further provides that children are to be evacuated to safe areas when possible and reunited with their families.

By lowering the threshold for the recognition of the protective needs of non-combatants to a level consistent with humanitarian norms, Protocol II has rendered the distinction between insurgency and internal disturbances problematic, particularly at lower levels of violence for example terrorist campaigns within a country. This development is a source of great unease for governments and armed forces alike. In practice, this complication can prove counterproductive for the protective regime envisaged by Protocol II. Given that in most civil wars significant destruction has already occurred before the theoretical protections can be applied, governments may actually raise the threshold that must be passed before belligerency is recognised, and in the process contribute to higher levels of civilian casualties. In the interval between insurrection and recognition of belligerency, the national laws of an individual country will take precedence. 33

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2.2 Recent Trends on the International Legal Protection of Child Soldiers

The American Red Cross defines international humanitarian law (laws of war) as the branch of international law that "encompasses both humanitarian principles and international treaties that seek to save lives and alleviate suffering of combatants and non-combatants during armed conflict".34

Recent developments in international humanitarian law are reflective of its growing intersections with international human rights law. Traditionally, these two branches of international law have addressed separate sets of issues: international humanitarian law has been concerned with treatment of combatants and non-combatants by their opponents in wartime, while international human rights law has been concerned with relationship between states and their own nationals in peacetime. Yet, even in earlier times, they shared a fundamental concern: a commitment to human dignity and welfare, irrespective of the status of the individual (combatant or non-combatant) and the circumstances under which his rights and responsibilities are to be exercised (peacetime or wartime).35

Article 38 of the 1989 UN Convention on the Rights of the Child (CRC) declares, "States Parties should take all feasible measure to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities". In the year 2000, the United Nations adopted to Optional Protocol to the Convention on the Rights of the Child, establishing eighteen as the minimum age for the participation of children in hostilities. Although the protocol prohibits non-governmental forces from recruiting

34 The American National Red Cross, "Humanity in the Midst of War" (1993) pp 1-9
children below the age of eighteen years, it allows states to establish a minimum age for voluntary recruitment that is not necessarily eighteen.

The CRC speaks very directly to the situation of millions of children who are exposed to the impact of armed conflicts: “Every child has the inherent right to life, and States shall ensure to the maximum extent possible the survival and development of the child.” It specifies that “children exposed to armed conflict shall receive special protection” and that “no child shall take part in any hostilities.”

In 1994, the UN appointed Graca Machel, former minister of education of Mozambique, to study the impact of armed conflict on children. The 1996 final report, Impact of Armed Conflict on Children, was a milestone in our understanding of the problem of war affected children and provided the first comprehensive and most compelling assessment of the many ways in which children are abused and brutalised in the context of armed conflict.\(^6\)

In 1997, in response to the Machel report, the UN appointed Olara A. Otunnu as Special Representative for Children and Armed Conflict. Otunnu was to be a public advocate and moral voice on behalf of children whose rights and welfare have been and are being violated in armed conflict.\(^7\)

The world has progressed on this topic since the Machel report. In January 2000, consensus was attained on the text of the Optional Protocol on the Involvement of Children in Armed Conflicts. In addition, there was the initiative of the Rome Statute of the International Criminal Court, which makes the violation of children’s rights a war crime.


\(^7\) Ibid
In the year 2000, the UN adopted the Optional Protocol to the Convention on the Rights of the Child, establishing eighteen years as the minimum age for the participation of children in hostilities. Although the protocol prohibits non-governmental forces from recruiting children below the age of eighteen, it allows states to establish a minimum age for voluntary recruitment that is not necessarily eighteen.

These approaches are reiterated, albeit only in non-binding form, in the Declaration on the Protection of Women and Children in Emergency and Armed Conflict. Article 4 of the Declaration provides: “All efforts shall be made by States involved in armed conflicts ... to spare women and children from the ravages of war. All the necessary steps shall be taken.” In unwelcome contrast, Article 38 (4) of the Convention on the Rights of the Child incorporates the phrase “all feasible measures” rather than “all necessary measures” as the standard by which States Parties are obliged to ensure the protection of children affected by armed conflict. Although Article 38(4) links this duty with their existing obligations under international humanitarian law, and places States Parties under a duty to ‘ensure’ children’s protection, at the very least, in the heat of battle, Article 38(4) muddies the waters at a time when clarity is most needed. Those seeking to protect child civilians are forced to rely upon either international customary law or the provisions of Article 41 which states that nothing in the Convention on the Rights of the Child ‘shall affect’ any provisions in applicable international law which are ‘more conducive to the realisation of the rights of the child.’

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38 The term ‘feasible’ means possible to do easily or conveniently. ‘Necessary’ on the other term is more compelling language and if the term were used in the Convention it would mandate the states to do all that is possible to protect children in armed conflict.
39 “In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by armed conflict.”
40 Meron, “Human Rights and Humanitarian Norms” (1989), pg. 66
For States which are party to the Geneva Conventions and Protocols the higher standard will apply. However, it is discouraging to observe the majority of States negotiating a treaty on children’s rights are willing to risk giving children’s lives a lower priority as compared to military feasibility.

The Geneva Conventions of 1949 and the Additional Protocols bestow a special status on the International Red Cross and Red Crescent Movement, especially the International Committee of the Red Cross (ICRC). Article 10 of Convention Four provides: “The provisions of the present Convention constitute no obstacle to the humanitarian activities which the international Committee of the Red Cross or any other impartial humanitarian organisation may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.” Article 11 states that the ICRC may “assume the humanitarian functions performed by Protecting Powers under the present convention.” The ICRC is also invested with the right to visit protected persons who are detained and to make supplications for them.

The assumption by the ICRC of ‘the humanitarian functions performed by Protecting Powers’ has been expanded under Protocol I. Article 5, paragraph 4 states that: “If ... there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross ... to act as a substitute.” The clear implication is that the ICRC can fully substitute for a protecting power and not as before confine itself to the humanitarian aspects of the Protecting Power’s mandate.

A protecting power is a state which represents the interest of another state’s citizens in times of humanitarian crises. For example Nigeria can be described as a protecting power when it intervened in the Sierra Leone conflict with the assistance of Economic Community of West African States (ECOWAS). Such intervention led to restoration of order and setting up of the United Nations war tribunal for the Sierra Leone. This tribunal recently convicted Charles Taylor.
Despite the special status\textsuperscript{42} defined by the 1949 Geneva Conventions and the Additional Protocols, the ICRC and other Red Cross Movement organisations function in an environment of strict neutrality and their involvement in civil wars, and in cross-border wars as well, rests entirely on the invitation of involved High Contracting Parties. Hence, both the initial involvement and ongoing humanitarian missions require the continuing permission of either warring states or belligerents. This dependency limits the repertoire of the Red Cross response to appeals to ethics and reason in those instances where the requirements of signed Treaties are not being satisfied. This dependency also involves a procedural etiquette that seems to place respectability over efficacy. The ICRC discusses issues of human rights abuses or Treaty violations entirely in private with the offending party. While redress may be requested, infractions are never made public by the ICRC or other Red Cross Movement Personnel until the cessation of hostilities.\textsuperscript{43}

To emphasise the importance of this doctrine, in 1965 the ICRC included neutrality as one of the Seven Fundamental Principles of the Red Cross Movement. This Principle states that “In order to continue to enjoy the confidence of all, the movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature”.\textsuperscript{44}

The Charter of the ICRC does not allow the ICRC to publicly document non-compliance with the Geneva Conventions or Protocols, no matter how egregious. The Red Cross self-censors such publicity as a non-neutral act, adversely affecting its

\textsuperscript{42} Article 18 of the Additional Protocol II to the Geneva Conventions empowers relief societies such as Red Cross to offer their services for the performance of their traditional functions in relation to the victims of armed conflict. Furthermore, Article 14 of the Fourth Geneva Convention of 1949 invites the ICRC to facilitate establishment of safety zones in times of peace and after the outbreak of hostilities.


\textsuperscript{44} Ibid
capability to continue humanitarian relief efforts. While such constraints are essential to the ICRC’s mandate, its inability to make public egregious violations of the Treaties involves a potential collusion with the violating party in the creation of civilian hardships and the displacement of refugees both internally and across international borders.45

2.3 International Criminal Law

The war criminal sickens the conscience of civilized society.46 War crimes are repulsive, heinous acts. War carried out under the most civilized laws of armed conflict is horrible, but its horrors are greatly exacerbated by those brutal acts of plunder, torture, rape and murder that humanitarian laws of war forbid. Such vile acts affect not only those against whom they are perpetrated; they appal and offend all of humanity.

Joyner has alleged that war criminals often operate with the knowledge and assistance of local political and legal authorities and thus domestic law does little to deter these actors.47 Prevention and punishment of war crimes thus becomes legal concerns and moral obligations, not just for those governments in whose territory crimes occurred, but for all states. Indeed, the effective prosecution and punishment of war criminals remain essential to the prevention of such crimes, the protection of human rights and fundamental freedoms, and the promotion of international peace and security.

The Hague Convention of 1907 prohibited resort to certain methods of waging war. Many of these prohibitions had been enforced long before the date of the Convention, but since 1907 there have certainly been crimes, punishable as offences

against the law of war; yet the Hague Convention nowhere designates such practices as
criminal, nor in any sentence prescribed, nor any mention made of a court to try and
punish offenders. For many years past, however, military tribunals have tried and
punished individuals guilty of violating the rules of land warfare laid down by this
convention.48

Amongst the contributions at the IMT in Nuremberg (1946) was that
international law is concerned with the actions of sovereign states and provides no
punishment for individuals and further, that where the act in question is an act of State,
those who carry it out are not personally responsible, but are protected by the doctrine of
sovereignty of the State. In the opinion of the Tribunal, both these submissions must be
rejected. That international law imposes duties and liabilities upon individuals as well as
upon states has long been recognised.49 In light of the foregoing, Joseph Kony of the
LRA ought to be tried as an individual at the ICC.

Building upon the legal foundation and precedent laid in 1945 by the
International Military Tribunal at Nuremberg50 and the Article VI provisions of its
Charter,51 the statute of the International Criminal Tribunal for the Former Yugoslavia
(ICTFY) articulates four groups of offences for which persons may be prosecuted as war
criminals under modern international law. These offences include: grave breaches of the
four Geneva Conventions of 1949, violations of the laws or customs of war, acts of
genocide and crimes against humanity.

48 Harris, “Cases and Materials on International Law” *Sweet & Maxwell, International Student Editions, 5th*
ed. (1998), pg. 741
49 Ibid
50 Joyner, “Enforcing Human Rights Standards in the Former Yugoslavia: The Case for an International
War Crimes Tribunal” (1994), pg. 22
51 Article VI defined the jurisdiction of the court.
A criminal organisation is analogous to criminal conspiracy in that the essence of both is co-operation for criminal purposes. There must be a group bound together and organised for a common purpose. The group must be formed or used in connection with the commission of crimes. This definition should exclude persons who had no knowledge of the criminal purposes or acts of the organisation and those who were drafted by the state for membership, unless they were personally implicated in the commission of acts declared criminal by the relevant international laws. Membership alone is not enough to come within the scope of these declarations.\(^{52}\)

Membership in an organisation declared to be criminal under international law can raise certain issues concerning individual and group responsibility. In general, mere membership in such an organisation does not directly create individual criminal responsibility. However, membership coupled with other facts might be relevant to personal responsibility as a conspirator with respect to international crime. Most countries require proof of some form of conspiratorial involvement.

The Penal Code, Chapter 120 Laws of Uganda at section 56 defines a society as "a society means any combination of two or more persons whether the society is known by name or not." It further states that a society is an unlawful society if formed for any of the following purposes or if it encourages or supports any such purpose: levying war or encouraging or assisting any person to levy war on the government or the inhabitants of any part of Uganda; killing or injuring or inciting to the killing or injuring of any person; committing or inciting to the acts of violence or intimidation; disturbing or inciting to the disturbance of peace and order in any part of Uganda.

\(^{52}\) Harris, "Cases and Materials on International Law" _op cit_
Section 57 goes further to state that any person who manages or assists in the management of an unlawful society commits a felony and is liable to imprisonment for seven years. Section 58 provides that a person who is or holds himself or herself out as being a member of an unlawful society; knowingly allows a meeting of an unlawful society or of any members of an unlawful society to be held in any house, building or enclosed or unenclosed place belonging to or occupied by him or her over which he or she has control; or utters any speech or prints, publishes, sells, offers or exposes for sale or distributes any publication, which, in the opinion of the court is likely or calculated to encourage the support of an unlawful society commits an offence and is liable to imprisonment for a period not exceeding three years.

It is worth noting that in the Republic of Uganda the minimum age of criminal responsibility is twelve years. A child is defined as a person below the age of eighteen years. The Children Act of Uganda makes provision for children charged with offences and empowers the police to dispose of cases at their discretion and without recourse to formal court hearings where a child is arrested. The Act permits the police to release an arrested child under justifiable circumstances and with caution.

"Internal conflict" has been defined as violent or potentially violent political disputes whose origins can be traced primarily to domestic rather than systemic factors, and where armed violence takes place or threatens to take place primarily within the borders of a single state. Examples include violent power struggles involving

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53 Penal Code, Chapter 120 Laws of Uganda
54 Ibid
55 Children Act, Chapter 59, Laws of Uganda at Section 88
56 Children Act, Chapter 59, Laws of Uganda at Section 2
57 Children Act, Chapter 59, Laws of Uganda at Section 89
58 Brown, (ed.) “The International Dimensions of Internal Conflict” Harvard University, Cambridge (1966), pg. 1
civilian or military leaders, armed ethnic conflicts and secessionist campaigns, challenges by criminal organisations to state sovereignty, armed ideological struggles and revolutions. Internal conflict is the most pervasive form of armed conflict in the world today. The majority of conflicts within which grave human rights violations have been perpetrated are internal conflicts, and as such raise difficult issues, issues different from those that criminal justice at the national level is accustomed to dealing with. When nationals of one state are killed or persecuted by the military of another state, management of such conflict is feasible. However, when nationals of one state are killed or persecuted by the apparatus of that state, then the issue is a much broader and more complicated one. The parameters are different, and the context is different. What is being asked of here is the addressing of the institutions of the state which constitute the basis of the state and its legitimacy. This raises the question as to the applicability of the traditional criminological paradigm. How law deals with addressing these issues goes beyond its traditional role as sanctioner and prosecutor.

The principle of individual criminal responsibility is fundamental to punishing war crimes. The Statute of the ICTFY addresses this concern in Article 7 as it assets that “a person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present Statute, shall be individually responsible for the crime.” The ICTFY thus confronts the principle that individuals may be held criminally liable under international

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59 Ibid
law, even though their conduct might have been considered valid or even mandated by
domestic law.

Several factors suggest the feasibility of applying universal jurisdiction to
bring contemporary war criminals to justice. First, war crimes are often committed in
locations where they can not be prevented or punished easily such as within the sovereign
jurisdiction of states. This suggests the necessity of extending universal jurisdiction, not
only to ensure prosecution for these heinous acts, but also to serve as viable means for
deterring similar crimes in the future. Second, war crimes in the current era are typically
committed within the territory of a particular state caught up in internal conflict. The
motivations for war crimes in these situations are not usually state or public purposes.
Rather, they are committed for private gain, personal revenge and generic hatred often
involving cruel, inhumane savagery. No lawful justification can support their plan,
purpose or execution.61

The universality principle stems from the notion that any state could have
the legal competence and jurisdictional authority to define and punish particular offences,
regardless of whether that state had any direct connection with the specific offences at
issue. War crimes are international criminal offenses. That is, in the vies of the IMT at
Nuremberg “an international crime is an act universally recognised as criminal, which is
considered a grave matter of international concern and for some valid reason can not be
left within the exclusive jurisdiction of the state that would have control over it under
ordinary circumstances.” Jurisdiction over these crimes must be international as well.

61 Joyner, “Arresting Impunity: The Case for Universal Jurisdiction in Bringing War Criminals to
Accountability” Law and Contemporary Problems, Accountability for International Crimes and Serious
War criminals commit offences that are acutely reprehensible acts. These offences often promote private goals, but may be government sponsored as well. For example the Nazi trials in Nuremberg were government sponsored. The German generals were on trial and the court found that even though the atrocities committed against the Jews and others were part of government policy, offenders could not rely on the command responsibility doctrine. This doctrine is to the effect that an individual is criminally responsible for his or her actions and may not use the defence that the orders to commit offences were issued by his or her superiors. This legal doctrine is applicable in war crimes. Also, the killings of ethnic Albanians in former Yugoslavia was part of government policy as was revealed during the trial of former president Milosevic. Since these offences undermine and destabilise the international order, they are concerns of the world’s legal system, rather than the sole province of individual governments. States thus have a universal interest in apprehending and punishing war criminals. No state has a superior interest as against other states in punishing war criminals. Such offenders may be lawfully captured in any state and brought for trial in the courts of any nation. Indeed, several developments of international legal doctrine intimate that the world community has accepted the lawful right for all states to prosecute war criminals. These developments include the evolution of international criminal law, the erga omnes and jus cogens doctrines, and the generally universal condemnation of these offences.\(^6^2\) Erga omnes is a legal doctrine meaning rights and obligations that are owed to all individuals or states without distinction. Jus Cogens is a Latin maxim used in legal terminology. In

\(^6^2\) Joyner, “ Arresting Impunity: The Case for Universal Jurisdiction in Bringing War Criminals to Accountability” Op Cit
criminal law the term is often used to refer to the body of peremptory principles or norms from which no derogation is permitted.

International Law protects children from individual criminal responsibility. The Rome Statute of the International Criminal Court (ICC Statute) at Article 26 excludes from the jurisdiction of the Court any person who was under eighteen years at the time of the alleged commission of a crime.\(^6\) Thus the children of the LRA can not be tried hence no international criminal conviction may be brought upon the children who committed atrocities in Northern Uganda. Furthermore, under Article 31 of the ICC Statute a ground for exclusion of criminal responsibility is that the conduct of the alleged criminal was caused by duress resulting from a threat of imminent death or of continuing imminent serious bodily harm. It can arguably be stated that the children of LRA acted under duress as a person below the age of eighteen years is unable to give informed consent. This study supports this argument. The drafters of the ICC Statute had child protection in mind and this is evident in a section of the preamble to the said statute that reads “Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.”\(^5\)

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\(^6\) Rome Statute of the International Criminal Court (2007)
\(^5\) Ibid
2.4 Controversy surrounding Age of Recruitment of Soldiers

The issue of age limits has created variance in definitions of child soldiers. In the Convention on the Rights of the child of 1989, Article 38 (2) and (3) states that state parties shall ensure that children aged less than fifteen years should neither participate in conflict nor be recruited into armed forces.65

The age limit of fifteen years that is given in article 38 is a deviation from the definition of a ‘child’ as given in article 1. Article 1 states that a human being is considered a child when below eighteen years. It is, however, consistent (and worded nearly exactly alike) with the Additional protocols I of 1977 to the 1949 Geneva Convention article 77 (2). The Conventions make it a war crime to use children aged less than fifteen as soldiers. Moreover there is a strong trend towards eighteen as an age limit, as seen for instance in the various provisions of the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict. The organisations that work on the problem of child soldiering like World Vision, Kindernothilfe and Coalition to Stop the Use of Child Soldiers all hold that no child below eighteen should be recruited, be it forced or not, and this is clearly the dominating tendency today, although other limits are sometimes used in practical demobilisation programs.68

The focus of attention with regard to child soldiers has tended to be on abducted children or those forced or coerced into fighting. Many children claim to have volunteered to join armed combat. Moreover, when negotiating the Optional Protocol to

65 Convention on the Rights of the Child (1989), Art. 38
66 Ibid
67 Additional protocols I of 1977 to the 1949 Geneva Convention, Art. 77
the Convention on the Rights of the Child on involvement of children in armed conflict, some governments claimed the right to continue to recruit volunteers under the age of eighteen years and indeed still do so, although others have raised their minimum age for recruitment.69

The compromise initially agreed for the Optional Protocol was that a complete ban be imposed on all compulsory recruitment of persons under eighteen years old into armed groups and on the compulsory conscription of such persons into government armed forces, but that governments be required only to raise the age of voluntary recruitment from that specified in the Convention on the Rights of the Child, in other words that a new absolute minimum be set in that respect of sixteen years. Article 2 of the Optional Protocol reads: “States parties shall ensure that persons who have not attained the age of eighteen years are not compulsorily recruited into their armed forces.” Article 3.1 of the same Protocol reads: “States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed force from that set out in article 38, paragraph 3 of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognising that under the Convention persons under the age of 18 years are entitled to special protection.”70

However, because many disapproved of this, instead of stipulating a minimum age of sixteen, the protocol requires that on becoming a party to it a State must deposit a legally binding declaration setting out its minimum voluntary recruitment age and this declaration can be changed only in order to strengthen it. Article 3.2 of the Optional Protocol reads: “Each State Party shall deposit a binding declaration upon

70 Ibid
ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced."\textsuperscript{71}

 Armed conflicts are inherently brutalising and their very nature makes it impossible for those under eighteen years to give free and informed consent. However, the European Commission of Human Rights has observed that the use of children aged over fifteen in the military did not amount to forced labour provided there is parental consent to the original recruitment. The exploitation argument admittedly does possess superficial moral attractions. Yet a deeper line of enquiry would raise the question that if armed conflicts are so brutalising that children are unable to consent, why are adults able to consent?

 In this light the preamble to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict notes that the states parties are convinced that raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning the children.

2.5 Legal Protection of Children in Armed Conflict

International humanitarian law provides broad protection for children. In the event of armed conflict, either international or non-international, children benefit from the general protection provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities. Given the particular vulnerability of children, the Geneva Conventions of 1949 and their additional protocols of 1977 lay down a series of rules according them special protection. Children who take direct part in hostilities do not lose that special protection.\(^7\) The Additional Protocols, the 1989 Convention on the Rights of the Child and its Optional Protocol, in particular, also sets limits on children’s participation in hostilities.

The United Nations Security Council Resolution 1379 (2001) on Children in Armed Conflict calls upon parties to armed conflict to respect fully the relevant provisions of applicable international law relating to the rights and protection of children in armed conflict, in particular the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, the United Nations Convention on the Rights of the Child (1989), the Optional Protocol thereto (2000), and the amended Protocol II to the Convention on Prohibition or Restriction on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively injurious or to Have indiscriminate Effects, the International Labour Organisation Convention No. 182 on Elimination of the Worst Forms of Child Labour and the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, and notes the inclusion as a war crime in the Rome Statute of

\(^7\) Geneva Conventions of 1949
the conscription or enlistment of children under the age of fifteen years into the national armed forces using them to participate actively in hostilities.

Participation by children in armed hostilities occurs too frequently. This participation may range from aiding combatants, for example bringing them weapons and munitions and carrying out reconnaissance missions to the actual recruitment of children as combatants in national armed forces and other armed groups. The 1977 Additional Protocols were the first international treaties to cover such situations. Thus Additional Protocol I obliges states to take all feasible measures to prevent children under fifteen years from taking direct part in hostilities. It expressly prohibits their recruitment into the armed forces and encourages parties to give priority in recruiting, among those aged from fifteen to eighteen, to the oldest. Additional Protocol II goes further, prohibiting both recruitment and the participation, direct or indirect, in hostilities by children under fifteen years.

Despite the abovementioned rules, children who take direct part in international armed conflict are recognised as combatants and in the event of their capture are entitled to prisoner-of-war status under the Geneva Conventions of 1949. The Additional Protocols provide that child combatants under fifteen years are entitled to privileged treatment in that they continue to benefit from the special protection accorded to children by international humanitarian law. Several children take active part in hostilities and states have the primary responsibility to put an end to this situation. States should include the concept of child specific protection in peacetime training and exercises at all levels of the armed and national security forces.

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73 Protocol I Additional to Geneva Convention of 1949, Article 77
74 Additional Protocol I Article 77, paragraph 3 and Additional Protocol II Article 4, paragraph 3d.
In its continuing effort to combat the growing menace of using children as soldiers, the United Nations Security Council adopted resolution 1539 (2004) recalling States’ responsibilities to “end the impunity and to prosecute those responsible for genocide crimes against humanity, war crimes and other egregious crimes penetrated against children. The resolution also called upon parties to prepare within three months concrete time-bound action plans to halt recruitment and use of children in violation of the international obligation applicable to them. Under the Rome Statute of the International Criminal Court, the enlistment of children under fifteen years of age or using them to participate actively in hostilities is classified as a war crime, while the optional Protocol to the convention of the Rights of the Child requires States parties to set a minimum age of eighteen for compulsory recruitment and participation in hostilities.

Although various advances have been made for the protection of children affected by armed conflict, particularly in the areas of advocacy, the resolution notes a lack of overall progress on the ground where parties to the conflict continue to violate relevant provisions of the international laws aimed at protecting these children.

Chapter 4 of the Constitution of the Republic of Uganda guarantees human rights and freedoms. Article 34 makes provision for specific rights of children including their protection from social economic exploitation. The said article further outlaws employment or requirement to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental spiritual, moral or social development. This study supports this provision and finds it useful in protection children from involvement in armed conflict.

The Constitution as supreme law in Uganda, defines the social norms for the care and protection of children and supersedes all traditional practices which are in conflict with the rights of the child. This study finds this commendable, however, the real challenge is in the process of translating these legislative measures into practical applications which ensure that such rights are enjoyed by children.

The Children Statute is a milestone in child care and protection because it makes both care and protection legally enforceable. The statute brings together principles and provisions included in the Convention on the Rights of the Child. In particular it recognises the key role of the family, community and state as partners in the care and protection of children.

The areas of concern about the implementation of the Children Statute are: although the Department of Probation and Child Protection in the Ministry of Gender and Community Development has mandate to ensure the implementation of the Statute, this department is grossly under-funded, under-resourced, and heavily dependent on donor funding which is not always forthcoming. Further, although a task force has been established to develop a National Implementation Strategy, and government has provided support ‘in kind’, the major operational costs are being underwritten by child-oriented International Non-Governmental Organisations. Government must, however, make a commitment to provide sufficient resources to ensure the effective implementation of Statute and this study finds that the Ugandan government has failed in this regard.

The Local Government Statute mandates the vice chairperson of the resistance council to protect children’s welfare. Unfortunately there was no systematic

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76 The Children Act, Chapter 59, Laws of Uganda (1997)
programme to equip the vice chairpersons to fulfil their responsibilities, although this work has been undertaken by Non Governmental Organisations in some districts, for example World Vision in Jinja. Local councils have great potential for ensuring the care and protection of children at grassroots level but the process of decentralisation was not facilitated by the necessary capacity building. Thus, the potential of increased support for children’s rights is being hampered by limited resourcing and skills development.
CHAPTER THREE
THE RECRUITMENT OF CHILDREN AS SOLDIERS

This Chapter aims to investigate the reasons behind the existence of child soldiers. It considers the possibility of voluntary recruitment of children to armed conflict and also brings out the various reasons that lead to children being compulsorily recruited to fight in armed conflict. The Chapter will look at the history of the conflict in Northern Uganda from a political perspective in attempt to further understand why children are recruited as soldiers in the region. This chapter shall then examine how armed conflict impacts on children. It shall study the psychological, emotional, physical and overall effects of war on children.

Child soldiers can not only be seen as victims of the wider political-economic context in which they live but must also be credited with agency and volition in the decisions that take them to fight.1 The study can not assume that children and young people are 'strangers to power and violence in the world'.2 Even in the mire of war, children can be seen to make the decision to fight from the subjective appraisal of their options and safety. They might not understand this in terms of state-level political process but more in terms of how they understand their personal social relations and future.3

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2 Dawes, “Psychological Discourse About Political Violence and its Effects on Children” Paper presented at Mental Health of Refugee Children Exposed to Violent Environments, Oxford Refugees Studies Program (1992), pg. 4
3.1 Reasons for Recruitment of Children as Soldiers

There are several reasons identified by this study for the growing problem of child soldiers. One reason is the proliferation of inexpensive and light weapons. Previous weapons were too heavy and cumbersome for children to use. The lighter and cheaper assault rifles, such as the Soviet made AK-47 or the American M-16 are light and simple to use. The rifles have also become much cheaper and more widely available.\(^4\) Small arms make the process of killing less expensive and more widely achievable – even children can handle many of the modern light weapons of war. In addition, a fundamental feature of civil wars is the making of civilian communities into battle grounds as a strategy of securing political control.\(^5\) As the tide of civil war takes over people’s lives and homes, young people may be forcibly conscripted and abducted into armed groups.

Another reason this thesis has identified that has occasioned the increase of child soldiers is poverty. Poverty is not only persisting in the age of globalisation; it is becoming more entrenched. Today the richest have eighty-five percent of the wealth, and the poorest have just one percent.\(^6\) These levels of poverty and misery represent a massive denial of human rights that can generate only more violence and conflict.

While most child soldiers are recruited by conscription, abduction or coercion, some also volunteer. For them, joining an army may be the only way to escape starvation and death, and a military unit may serve as a refuge, providing a kind of surrogate family. Children who have lost their parents may go with the military as a

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\(^6\) Aristide, “The Persistence of Poverty in the Age of Globalisation” *Speech delivered at the University of North Carolina, chapel Hill* (1997), pg. 2
means of survival; impoverished children and their parents may view soldiering as a path to material gain and a better life; and children who have experienced attack, loss and community destruction may seek protection or revenge.7

Some children enter military activity for excitement or prestige, while others seek to demonstrate machismo or to achieve power amidst living conditions suffused with powerlessness and despair. Issues of identity, nationalism and ideology may also loom large. Brett & McCallin correctly point out that in light of the hardships, economic pressures and situational complexities surrounding children’s decisions to enter the military, the term ‘voluntary’ is ill-suited to most recruitment situations.

In Uganda in the year 1986, the National Resistance Army had an estimated three thousand children, many under age sixteen, including five hundred girls. Most of the children had been orphaned and looked on the army as a replacement for their parents.8 Hunger, poverty and lack of opportunities not only drive children to volunteer but may also compel parents to offer their children for service. Children volunteer when they believe that this is the only way to guarantee regular meals, clothing, or medical attention.9

Indeed the picture of children carrying guns and being forced to fight as underage soldiers is evidence of failed institutional frameworks and lack of proper and adequate systems in place for enforceability of the law that protects children in armed conflict. This study posits that war destroys and distorts all social relations so that those

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who are children during this time can not help but be part of the lost generations faced
with the loss of innocence. Child soldiers are taken to be part and parcel of this
apocalyptic nightmare. Social relations during conflict are more nuanced than the
prospect of being destroyed and undermined. Political conflict changes social relations, it
changes the dynamics of gender, power and generation, but it does not obliterate them.\textsuperscript{10}
The way that these social relations are changed and influenced by the conflict is at the
heart of children's subjective experience of war and what may take them to fight.\textsuperscript{11}

Children are exploited as soldiers because, in war zones, children are
readily available, cheap and useful to troop hungry commanders, who cloak their abuse
of children. Commanders frequently prefer child soldiers because they can be
manipulated and terrorised and are often willing to accept the most dangerous
assignments because they lack a full sense of their own morality. Worldwide there are
over 500 million lightweight weapons such as the AK-47 assault rifle that enables even
ten year-olds to be effective combatants.\textsuperscript{12}

Also, many children decide to join armed groups without explicit
coercion, although their decisions can not be regarded as voluntary because they are
nearly always bound by desperation and survival needs. Family considerations frequently
loom large in children's decisions to join and exhibit a mixture of push and pull factors.\textsuperscript{13}
Push factors are visible in youth's decisions to join armed group as a means of escaping
an abusive family situation. Not uncommonly, girls decide to join armed groups to escape

\textsuperscript{11} Green, "Fear as a Way of Life" \textit{Cultural Anthropology}, Vol. 9, No. 2 (1994), pp. 227-256
\textsuperscript{12} Renner, "Arms Control Orphans" \textit{The Bulletin of the Atomic Scientists}, Vol. 55, No. 1 (1999), pp. 22-26
\textsuperscript{13} Brett & Specht, "Young Soldiers: Why They Choose to Fight" \textit{Boulder, CO: Lynne Rienner} (2004)
forced marriages that they do not want.\textsuperscript{14} Extreme push factors arise when children’s families have been killed or when they have been separated from parents or customary caretakers who might have provided care and protection. Orphans and separated children frequently decide to join armed groups, as a means of obtaining food, security and healthcare. Family level pull factors are visible in children’s decisions to join armed groups to be with older siblings, an uncle or a father.

Desire for revenge may lead youths to join armed groups. Psychologically, the desire for revenge justifies killing as a form of retribution. Revenge motives frequently go hand in hand with cognitive images of the people who had committed the wrong doing as evil, savage, even demonic, figures. By dehumanising the adversary, such enemy images carve the world into good and evil, exclude the adversary from the moral universe and absolve on of responsibility of killing and atrocities.\textsuperscript{15} Even atrocities and acts of terrorism may seem justified to people who harbour extreme enemy images.

Power, glamour and excitement also feature in children’s decisions to join armed groups.\textsuperscript{16} For youth who have grown in abject poverty and who have been attacked and have felt powerless, the gun and the military uniform confer a measure of power and prestige that they could not have obtained through other means. The excitement of wielding a gun and participating in military activities offers a stark contrast to the boredom and lack of opportunities youth experience in quiet rural villages such as Gulu. The excitement offered by military life is a strong incentive for youth who are at a stage in their lives at which risk taking is normal and encouraged by peers.

Children also join armed groups out of disaffection with a political, social and economic system that has failed them. Lack of educational opportunities, which children see as necessary for building a positive future, is one of the main sources of alienation. The paucity of jobs in many war zones like North Uganda where the rate of unemployment has been featured as high as eighty percent also corrodes youths’ sense of hope. Lacking education, jobs and a sense of hope and living deeper and deeper in poverty, many youth in war zones spend long hours idling on the streets where they become easy prey for recruiters who make inflated promises about better life through joining the armed group.

Ideology and political socialisation exert strong influence over youths’ decisions to join armed groups. Opposition groups recruit successfully by playing on youth’s sense of victimisation, social injustice and disaffection as well as their sense of idealism and commitment to their religion. As part of the struggle, oppressed people construct ideologies that justify the use of violence as an instrument for achieving liberation and political goals that are unattainable through peaceful means. In such societies, poverty and deprivation may be less potent motives than the beliefs and ideas of oppression and liberation that form part of the socialisation process for even middle class children. Adults and youth alike use propaganda as a means of motivating youth to join the struggle. During the Taliban era in Afghanistan, for example, adults used religious schools, madrassahs, to teach youth to hate and fear outsiders such as the United States. Following the September Eleventh attack, when the United States forces

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attacked the Taliban, youth who had been indoctrinated in the madrassahs in Pakistan swelled the ranks of the Taliban.\(^{18}\)

For young people who adhere to powerful ideologies, terrorism is a natural extension of their participation in armed conflict. In Sierra Leone for example, Small Boys Units participated in mutilations where the Revolutionary United Front (RUF) participated in mutilations where the RUF cut off villagers’ arms and hands as a means of terrorising and controlling villages. Many people, young or old, become terrorists because they believe terrorist activity is their highest commitment to the religion or cause of liberation, and is necessary to overcome evil, win eternal salvation and defeat the dehumanised.\(^{19}\) In Sri Lanka, for example, the Liberation Tigers of Tamil Eelam (LTTE) selects girls who show strong motivation and the ability to blend in to be suicide bombers. Girls who martyr themselves receive a heroes welcome, which is celebrated by the community and confers great prestige on the girls’ family.\(^{20}\) In Palestine, Hamas proclaims youth suicide bombers are martyrs and celebrates their actions in ways that win the family enormous respect.\(^{21}\) Although it has often been suggested that terrorists, whether youth or adults, are mentally ill or deranged, little or no evidence supports this view.\(^{22}\)

These examples illustrate that the youth are not passive pawns in armed conflict but are actors who find meaning and identify in what they see as the struggle for


\(^{21}\) Singer, “Children at War” New York: Pantheon (2005)

\(^{22}\) McCauley, “Psychological Issues in Understanding Terrorism and the Response to Terrorism” In Stout, ed. The psychology of terrorism Vol. III, Theoretical Understandings and Perspectives, Westport, CT: Praeger (2002), Pp. 3-29
justice. If finding meaning in life is a powerful incentive for everyone, it is a particularly strong motive for teenagers, who are at a stage in their lives when they are trying out different identities and deciding on their role and place in society. Particularly in situations of social injustice, humiliation, powerlessness and hopelessness toward the future, extremist ideologies exert strong grip on young people because they awaken youthful idealism regarding a better life and they answer youths’ overarching questions of identity and direction in life.

3.2 Historical Background to Conflicts in the Acholi region of North Uganda

Overt, wide-scale violence and unpredictable behaviour by rebel groups do not happen in stable societies. They result from insidious and neglected processes which produce a chaos which is not at all sudden or incidental. This is true of Northern Uganda, where both the new and the old order were unstable long before the LRA came to exist. In order to understand the conflict in Northern Uganda, two crucial characteristics of the recent political history of Uganda need some further explanation: the widening gap between north and south and the militarisation of politics.

From the early post-independence period onwards, no effort was put into making the army a national institution. The army was used instead to promote the political survival of the governments in power. Collier and Reinikka argue that using repression, particularly via the military, for ‘solving’ political problems indicates that

Uganda at independence lacked resilient democratic institutions. The army was not only biased in favour of northerners but also tribally skewed towards the Acholi.

President Museveni seized power in January 1986, ousting General Tito Okello Lutwa, an ethnic Acholi from the north. This was taken particularly hard by a people who saw themselves under the colonial regime as the military backbone of the nation. Museveni’s NRM unilaterally abrogated a treaty signed six months earlier by Museveni, General Okello and Kenyan President Moi in Nairobi in December 1985. As Museveni’s fighters pushed north from Kampala, Okello’s Ugandan National Liberation Army (UNLA) fled, slaughtering the population in revenge as they withdrew. The Red Cross believes that three hundred thousand people died in the Luwero Triangle alone. The Acholis of the UNLA retreated over the border into Sudan where they regrouped, but their unpunished and unforgiven atrocities haunt Uganda still. The National Resistance Army (NRA) followed and behaved like an occupation force. Okello’s military junta of Acholi dominated forces formed the Uganda People’s Democratic Army (UPDA) to oppose the NRA. The NRA was renamed the Uganda People’s Defence Force (UPDF) in 1995. Since taking power in 1986, the NRA has faced continuous opposition from armed rebel movements. Atrocities committed by rogue elements of the NRA around Gulu and Kitgum in an otherwise disciplined campaign to stabilise Uganda as a whole still fuel anti-Museveni feeling.

In April 1987, Joseph Kony started his own armed movement by drawing support mostly from the Acholi UPDA deserters. His movement, first called the Lord’s

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27 Gersony, “The anguish of Northern Uganda: results of a field-based assessment of the civil conflicts in Northern Uganda, report submitted to the US Embassy Kampala and USAID Mission, Kampala” (1997), Pg. 8
Salvation Army and later the United Democratic Christian Force, became the Lord’s Resistance Army (LRA) in 1994. The LRA is said to have no political aims beyond opposing the NRM government, but it has conducted a reign of terror mainly against the local Acholi in Gulu, Kitgum and Pader, who were accused of being supporters of the government. This effectively disrupted normal life, as the LRA is said to be the most brutal group in Sub-Saharan Africa. The NRA’s bad behaviour toward people in the north – including harassment, rape and looting tended to engender support for Kony’s rebels until the early 1990s, when Kony’s brutality began to outweigh that of Museveni’s army.

In November 2003, UN Under-Secretary for Humanitarian Affairs Jan Egeland made his first visit to Kitgum in Northern Uganda. What he found there stunned him. The man who later shocked the world with his report on Darfur regarded Kitgum as “far beyond what we see in Iraq and Palestine”. The international neglect he described as “a moral outrage”.

Twenty-five thousand children had been abducted; many tortured, mutilated, put to death for minor infractions – or simply never seen again. Perhaps a hundred thousand people had died often horrific deaths. Up to a million people were now in camps at the mercy of Joseph Kony’s LRA or, equally iniquitous, of the government troops meant to be protecting them. Some had lived in those camps for nearly a decade, starving, unschooled and without most basic amenities. And the world had simply forgotten – or never knew.

28 Nannyonjo, “Conflicts, Poverty and Human Development in Northern Uganda” The Round Table, Vol. 94, No. 381 (2005), Pp. 473-488
30 Reagan, “It’s for You to Give a Hand: Analytical Proposal for Peace in Northern Uganda” Gulu: Office of MP for Aswa County, Gulu (2003), pg. 4
According to the United Nations, the most disturbing aspect of this humanitarian crisis is the fact that this is a war fought by children on children – minors make up almost ninety percent of the LRA’s soldiers. Some recruits are as young as eight and are inducted through raids on villages.

Ugandans and the international community alike tend to view LRA children simultaneously as victims and perpetrators of political instability. With the spread of dominating western-influenced global notions on childhood through media, aid organisations and United Nations declarations, many adults can not conceptually reconcile violence like that of the LRA with the purported innocence and purity of childhood.\(^1\) On the other hand, many adults laud the child soldiers who participated in the current government’s guerrilla war for liberating the nation in 1986. Museveni’s NRA retained about six thousand five hundred child soldiers. Most were orphaned in fighting, and the NRA provided for their basic needs. Though most played auxiliary roles, much was made in the international media of the gun-toting children on the frontlines upon the eve of liberation.\(^2\) Museveni argued that the NRA was justified in enlisting children to fight because their social, cultural and religious futures were at stake,\(^3\) but he quickly removed under-age soldiers from combat and many blended back into society. Others have claimed that child soldiers are a natural extension of the African traditional age set system in which young men were warriors, but the argument rests on more pliable African definitions of youth that range from adolescence to any adult not yet married.

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These are some of the divergent notions of childhood and children's agency affecting amelioration of the situation in Northern Uganda.

This study has identified in the foregoing paragraphs that various factors have contributed to the use of children as soldiers in Uganda.

3.3 Impact of armed conflict on children

The LRA, with ninety per cent of its force being children, has become a classic case of the most disturbing aspect of a humanitarian crisis. Children are brutalised and forced to commit atrocities on fellow abductees and even siblings. Those who attempt to escape are killed. A study published on March 13, 2004 by the United Kingdom-based scientific journal, The Lancet, reports that child soldiers who had served in the LRA rebel group and were forced to kill or watch other people being killed, may remain traumatised for years after being released. The study that surveyed some 300 former child soldiers found that over half of those abducted at an average age of twelve had been seriously beaten, seventy seven percent had witnessed someone being killed, thirty nine percent had killed another person and thirty nine percent had abducted other children. Over one third of the girls had been raped, while eighteen percent had given birth while in captivity. Since these former child soldiers are often blamed and stigmatised for the countless atrocities they committed – mostly against their own people – their psychological recovery and reintegration can be seriously complicated.

Of 71 children who completed a questionnaire to assess post-traumatic reactions, 69 showed clinically significant symptoms, the Lancet reported. Almost all of them had experienced a number of traumatic events, on average six each. About six per
cent had seen their mother, father, brother or sister being killed, while two per cent had participated in killing their father, brother or another relative, the study revealed. Over one third of the children were found to have no mother, while two thirds had no father.

Although this study focuses on the children involved directly in the battlefield as child soldiers, we cannot forget the other children in war-torn areas who live in constant fear of being killed, captured, or having some harm come to their families. Symptoms similar to those reported in child soldiers have been reported in these children as well.\(^3\)\(^4\) and even children who are exposed to the violent and gruesome happenings in the war by way of the media can also show features of post traumatic-stress disorder.\(^3\)\(^5\)

Children involved in armed conflict are frequently killed or injured during combat or while carrying out other tasks. They are forced to engage in hazardous activities such as laying mines or explosives, as well as using weapons. Child soldiers are usually forced to live under harsh conditions with insufficient food and little or no access to healthcare. They are almost always treated brutally, subjected to beatings and humiliating treatment. Punishments for mistakes or desertion are often very severe. Girl soldiers are particularly at risk of rape, sexual harassment and abuse as well as being involved in combat and other tasks.

Traditionally, children have been regarded as innocents or as unfortunate victims of war, not as actors. In contemporary ethno-political conflicts, however, children are increasingly political actors and are victimised on a massive scale by attack, loss of

parents, landmines, displacement, and sexual violence. Without addressing psychological problems associated with victimisation and soldiering, it will be very difficult to break ongoing cycles of violence, to engage in effective post-conflict reconstruction, or to create a positive future for millions of children. Children in war zones experience multiple, chronic stressors, and damage increases exponentially as function of the number, frequency and severity of the risk factors to which a child has been exposed.

In taking Uganda as the case study, this thesis has identified that the north of Uganda has suffered insecurity, manifested by violence against civilians, abduction of children and displacement of the population. This insecurity has resulted in death, loss of property, and disruption of development activities. Children have lost vital educational opportunities; they have been placed at a greater risk of contracting HIV/AIDS and other Sexually Transmitted Diseases (STDs). Children are forced into child prostitution, child soldiering and other forms of bondage.

Since the Second World War, a growing literature has examined the psychosocial impact of war on children and the connections between children, armed conflict and peace. Scholarship, however often has difficulty staying abreast of rapid changes in the global arena. To fill the need for a global study aimed at discerning the larger picture of how armed conflict impacts on children, the United Nations (UN) commissioned the first global study of the impact of armed conflict on children – the ‘Graca Machel Study’ or the ‘Machel Study’. A powerful document that has far-reaching

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implications for human rights, social reconstruction and peace, the Machel Study is a landmark intended to reshape thinking about and intervention on behalf of children.

The Machel Study posits that psychological effects of armed conflict on children are always situated in a wider set of interacting effects concerning poverty, health, security and failure to meet basic needs. This holistic approach counters the tendency sometimes visible in the psychological literature to focus too narrowly on children’s emotional needs, as if they were somehow more important than food, water and other necessities.39

Children affected by armed conflict may exhibit both acute and chronic reactions, both of which are normal responses to highly stressful events. Prominent among the acute psychological disturbances is trauma, which is typically associated with problems of flashbacks, nightmares and sleep disturbances, concentration problems, heightened alertness or hyper-vigilance, and avoidance of people and situations that evoke memories of the traumatic events. In diverse Western cultures, acute trauma coupled with these symptoms often falls under the clinical diagnostic Post-Traumatic Stress Disorder (PTSD).40 The chronic stresses associated with armed conflict may lead to problems such as aggression41, depression42, truncated moral development43, changed attitudes and beliefs and diminished hope for the future.44

41 Boothby, “Mobilising Communities to Meet the Psychosocial Needs of Children in War and Refugee Crises” in Apfel & Simon (1996), pp. 149-164
44 Cairns, ed. “Children and Political Violence” op cit
The Machel Study recognises that children’s responses vary according to situational factors such as the intensity, quality, duration, number and frequency of the stressors. Although children exposed to multiple stressors show greater psychological impact, the effects of violence vary according to the nature of the stressors and the role played by children. Children’s resilience in the face of stress depends on protective factors such as the presence of a well-functioning caregiver who can provide effective emotional support. Unaccompanied children, particularly under the age of seven years are at much greater risk of psychological damage. Personal factors such as age, gender, level of development and temperament also influence children’s reactions to war-related stresses. In countries such as Angola, where life is coloured by spiritual cosmology, a child soldier who has killed may present symptoms such as guilt and sleeplessness, but the deeper problem may be his belief that he is haunted by the un-avenged spirits of those he killed.

The war in northern Uganda has led not only to material impoverishment of Acholi-land but also to the breakdown of previously well-regulated relationships both between men and women and between generations. Elements of Acholi cultural practice that have proved beneficial in promoting improved relations and resolving conflicts have been eroded through state-formation processes. There is widespread resentment amongst adults of ‘modern’ influences, including the current favourable economic position of

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women and moves towards guaranteeing the rights of women and children. Frustrations and tensions caused by people's inability to fulfil their expected roles generate further sources of conflict gripping Acholi-land in a vicious circle of violence. The foregoing state of affairs generates a trickle down effect that impacts negatively on the children of northern Uganda.

Within Acholiland, the nature of the conflict in northern Uganda can fundamentally be explained as one between generations, where, because of the war, reciprocity and interdependence have broken down into fear, guilt and suspicion. The children have been deprived of the benefit of education and there has been a deep cultural anxiety over the fate of intergenerational relationships. Young people are thus considered a generation both threatened and threatening to Acholiland and the nation, a situation rarely accounted for in normative theories of childhood and family. As Aitken points out, "Mythic renderings of parenthood and childhood foster political identity formation and social placement, but they do not reflect the day to day work of parenting, nor do they anticipate adequately the complex changes of daily living that accompany child-rearing." Because their experiences transcend the boundaries of mythic renderings of childhood norms, both local and international, LRA children challenge the culturally understood social category of childhood and the overall security of the nation as a sentimental space in which children are presumed innocent and encouraged to grow into responsible adult citizens. In a country where ideal notions of childhood and nationhood

50 El-Bushra, "Fused in Combat: Gender Relations and Armed Conflict" Development in Practice, Vol. 13, No. 2/3 (2003), pp. 252-265
are in high states of ideological flux and are integrally linked to the country’s
development, the threat is especially salient.

The conditions for children in northern Uganda are abnormal and unacceptable. However, one reason that the children are aware that their situations alienate them from most normative concepts of childhood – especially those perpetuated by international aid organisations - is because these concepts are very much based on UN proliferated western notions of ideal childhood which presume a certain level of security and infrastructure usually absent from war zones. Even UN mandates written to protect children in war cannot be neatly implemented in northern Uganda because children have already suffered the trauma from which the UN hopes to shield them.\textsuperscript{52}

CHAPTER FOUR

PEACE INITIATIVES IN NORTHERN UGANDA

The chapter shall visit what has been done in northern Uganda in an effort to create peace and harmony in the midst of armed conflict and the involvement of children as soldiers in the said conflict. The chapter shall further investigate what the citizens of Uganda have done to create peace. It shall outline specific instances and persons who have attempted to broker peace and shall give the periods within which such initiatives were made. Attempts by the Ugandan Government to end the conflict and the approaches taken by the government shall be looked into. Further, the initiatives of the international community to intervene shall be looked into and the contributions of the United States (U.S.) and Great Britain (G.B.) to end the conflict shall be critiqued. In all these peace initiatives that shall be visited, the study shall note that there were attempts generally to end the conflict in the region. However, the children involved in armed conflict as soldiers were never prioritised in these peace initiatives.

The war between the Ugandan government and the Lord's Resistance Army (LRA) long standing and brutal. Yet, like so many of the wars in sub-Saharan Africa, it has remained forgotten due to both inept governance and the silent complicity of the international community. While much of the Western world, especially the United States (U.S.) government, has hailed Uganda the success story of Africa, the people of northern Uganda have been left to face immense suffering. Their voices have been stifled and their crisis marginalised leaving a ruined people yearning for hope.¹

The U.S. government, dating back to the early days of the Clinton administration has fostered a strong working relationship with the government of Uganda that has given it geo-strategic position to pressure Sudan. President Museveni of Uganda has supported and worked closely with the United States in combating HIV/AIDS and now international terrorism. Yet, while this strong bilateral relationship has grown, Washington has remained quiet and relatively inactive toward the gross assault on human life plaguing the north of the country. Until recently, Washington had simply supported military efforts to end the war, providing no support to catalyse a peaceful resolution to the conflict. The military approach, favoured by President Museveni, has, at best failed, and at worst, perpetuated the conflict.²

The war in northern Uganda is a complex conflict fuelled not only by the fighting of the LRA, waging war against the Ugandan government and terror against the Acholi civilian population, but also by the grievances of Ugandans in the North against the existing government from which many feel excluded. The consequences of the war can not be overstated. At the end of the year 2003, Jan Egeland, the United Nations undersecretary-general for humanitarian affairs, told the British Broadcasting Corporation (BBC): “I cannot find any other part of the world that is having an emergency on the scale of Uganda that is getting so little international attention” More than thirty thousand children aged seven to seventeen have been kidnapped from towns and camps, forced into soldiering and sexual slavery.

A dual approach inclusive of both military activity and peace negotiations has been employed by the Ugandan government and supported by the international community in dealing with the conflict. The government has, however, expressed doubts about the potential impact of peace negotiations and has demonstrated more support for the military approach. Yet their reliance on the military has had dubious effects. First, difficult terrain prevents the Ugandan military from successfully finding the LRA's leader, Joseph Kony, and from defeating his army. Second, after every major Ugandan military offensive, the LRA has responded by increasing attacks on civilians. Further, ethical concerns arise given the fact that abducted children comprise the majority of the LRA ranks, and thus constitute the majority of deaths in battle. Finally, a military victory would likely not address and possibly even perpetuate the roots of this conflict, which lie in socio-political divide between northern and southern Uganda.³

This study does not support the military approach adopted by the Ugandan government and finds this approach to be inefficient as there are no systems in place to effectively implement the attempted military war against the LRA. The institutions tasked with fighting the LRA in Uganda face economic challenges and thus leaves implementation of the task at hand incomplete. In the alternative, this study supports other modes of approaching the LRA such as mediation and offering incentives in the form or amnesties to the rebel leaders in exchange for self-surrender and testimonies. This view is informed by the institutional challenges faced by the country.

Alongside the military operations, there have been attempts at peaceful mediation. Numerous third parties, such as the Community of Sant’Egidio, the Carter Centre and the Acholi Religious Leaders Peace Initiative have made some gains, but have

³Ibid
ultimately failed in their attempts to bring about real and substantive peace. The closest attempt at succeeding was Betty Bigombe’s effort in 1994 to facilitate peace talks, which was hours away from success when it collapsed. Bigombe, a rare leader who is trusted by both the LRA and the Ugandan government, returned to northern Uganda in 2004 and has since worked tirelessly to revitalise the peace process.4

1992 and 1993 were years when the conflict had been reduced in intensity and many Acholi people were cherishing in the illusion that peace was already restored. The government seized this opportunity to start formal peace talks with the remnants of the LRA in the year 1994. The key person in the whole process was the Minister for the North, Betty Bigombe, an Acholi resident in Gulu town, who gathered support of the chiefs and elders. There were secret meetings between Kony, his army commander Komakech Omona and Bigombe, leading to a cease-fire and safe-conduct guarantees.5

This study has noted that in all these attempts to create peace, the main focus was at ending the blood shed and getting the rebels to surrender and lay down their arms. The attempts at peace were aimed at creating relative calm in the region and resettling the internally displaced persons. Child protection was not prioritised in these peace attempts. Discussions on child soldiers was not a main agenda in the peace talks.

The government of Uganda launched Operation North Campaign in the early nineties. This was designed to deny the LRA support in the North and to arm the civilian population with bows and arrows, known then as the Arrow Group. The operation failed and created strong animosity between the government and elements in northern Uganda. The Bigombe initiative ended when President Museveni threatened to

4 Ibid
use force against the LRA and demanded its surrender. Other initiatives, both local and regional, failed to produce tangible results.6

In late 2004 up to 2005, Bigombe made contacts with the leadership of the LRA and the LRA also had appointed two senior commanders, Vincent Otti and Sam Kolo, as negotiators in this new initiative. The peace initiatives stalled in 2005 when Kolo defected to the government side and the government of Uganda began its military campaign. Resolution of the conflict through military means was not successful, in part due to ineffective operations against the LRA and an apparent lack of will by the government to end the conflict through a negotiated settlement.7

This study supports the attempts by the former minister Bigombe as her attempts to broker peace were made almost single handedly with little support if at all from the government which she served. Such attempts were beneficial for the country since they did not eat into the state machinery and did not require strong watertight institutions for implementation.

In October 2005, the International Criminal Court (ICC) issued arrest warrants for five top LRA leaders, including Kony. Following speculation that the Ugandan government was going to yield to the LRA’s demand that ICC arrest warrants be annulled, President Museveni announced on July 19, 2007, that warrants for the top LRA leaders will remain in place until a peace agreement was reached:

“We are not going to ask the ICC to lift the arrest warrants. If the LRA leaders don’t conclude the peace talks they could be arrested and taken to the ICC or get killed. If they

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6 Dagne, “Uganda: Current Conditions and the Crisis in North Uganda” Congressional Research Service (2009), pg. 6
7 Ibid
concluded the peace deal, that is when the government can write to the ICC to say we have found an alternative solution."^8

In December 1999, Sudan and Uganda signed an accord in which each country agreed to stop supporting rebel activity within the other country’s borders. The governmental Uganda Peoples’ Defence Force (UPDF) made the Lord’s Resistance Army retreat into Sudan. In 2002, Uganda signed another agreement with Sudan and yet another peace deal between Uganda and Sudan was being negotiated in the late 2003. Meanwhile the UPDF directed its efforts against Kony in a campaign called “Operation Iron Fist,” which has by all accounts failed. A few months after the 2002 agreement the LRA was back operating in northern Uganda. Critics have argued that more efforts should go into peace talks with the rebels and into dealing with the problems underlying the conflict rather than focusing simply on military strategy, which has ended up killing more innocent women and children than actual rebels. As a result of heightened attacks by Kony and no end in sight to the conflict, about 34 Lango, Acholi and Teso members of parliament walked out of the assembly on November 20, 2003, and refused to return until peace was restored to their areas. They said their many proposals for peace had been ignored.^9

Winning the peace in northern Uganda through negotiations is a difficult endeavour given the nature of the LRA. The rebel group, formerly funded by the Government of Sudan, lacks a clear political agenda. Further, there is significant mistrust between LRA leadership and the government of Uganda, hindering serious negotiations.

^8 Ibid
At the end of 2004, a scheduled signing of a ceasefire – Ms. Bigombe’s second near-reaching of a peace agreement – fell apart when the LRA backed out.\textsuperscript{10}

More recent developments have, however, presented new opportunities for effective negotiations and consequent resolution of the conflict. Bigombe has sustained contact with Kony, and has facilitated meetings between LRA and government officials. Increased communication has allowed Kony to give clarity to rebel demands, namely guarantees for post-conflict security and livelihood. Further, the implementation of the Comprehensive Peace Agreement in Sudan has discontinued much of the LRA’s financial support. The International Crisis Group has provided key recommendations for more ambitious mediation and reintegration strategies to win the peace. But such strategies need support from the international community to rebuild trust and ensure accountability.\textsuperscript{11}

Following September 11, 2001, President Museveni became a staunch supporter and ally to the U.S.-led “war on terror.” In 2002, the government passed a Suppression on Terrorism Act, which declared an immediate death penalty for terrorists and collaborators of terrorists. Further, President Museveni was quick to become one of the first and only African Leaders to support the U.S. invasion of Iraq in March 2003, even though the majority of the Ugandan population opposed the war. In response, the U.S. has provided substantial and increased amount of military aid to Uganda.\textsuperscript{12}

Uganda’s alliance with the United States has only empowered President Museveni’s commitment to a military victory over the LRA. The U.S. has historically supported the military approach as opposed to a peaceful resolution brought about by

\textsuperscript{10} Ibid
\textsuperscript{11} Ibid
\textsuperscript{12} Ibid
negotiations. The influx of military assistance has perpetuated the Government of Uganda’s resolve to defeat the LRA militarily. Further, president Museveni, modelling the language of his potent ally, has labelled the LRA as “terrorists” and “criminals”, language that has only further alienated and pushed the LRA away from negotiations. This language is further nebulous given that most of these “terrorists” and “criminals” are abducted children between the ages of seven and seventeen. Finally, the United States has even gone out of its way to hinder efforts towards negotiations. In early 2004 when Betty Bigombe was planning to return to Uganda to revitalise the peace process, she was approached by a U.S. State Department official who told her not to return to the country.  

Washington later begun to articulate a shift in policy, claiming that the military approach must be complemented with serious peace negotiations. In 2003, the United States Agency for International Development (USAID) commissioned the Northern Uganda Peace Initiative (NUPI) to support local peace and reconciliation initiatives. In 2004, the Congress of the United States passed the Northern Uganda Crisis Response Act (S.2264) that declared at Section 3, Article 1 that the United States should “work vigorously to support ongoing efforts to explore the prospects for a peaceful resolution of the conflict in northern and eastern Uganda.” This Act further called on the U.S. government to support relief efforts, development projects, resettlement of internally displaced peoples, protection of civilians, human rights monitoring and rehabilitation of abducted children. Yet, although this shift in language has been hopeful, it has been just that: a linguistic shift. The U.S. Embassy in Kampala does maintain communication with Bigombe, but has not provided her with any logistical or financial assistance. The U.S.

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13 Ibid
has continued to increase its military assistance to Uganda, changing little in the dynamics of the conflict on the ground.\textsuperscript{14}

The strong working relationship between the governments of the U.S. and Uganda has elevated the influence of U.S. policy and practice toward Uganda. Consequently, the limited attention and support of the U.S. government toward the peace process has hindered substantive efforts to resolve the conflict. The diplomatic efforts of the European troika of Norway, Netherlands and Great Britain in support of peace talks have fallen short without U.S. leadership. With the new opportunities arising for peace in northern Uganda, the United States has an opportunity to change policy to play a key leadership role in ensuring that opportunities for a swift and peaceful resolution are fully exploited.\textsuperscript{15}

The mediator between the government of Uganda and the LRA, Bigombe and her team established the first peace initiative in nearly a decade that had the trust of both sides. Representatives of the Ugandan government met with LRA rebels, demonstrating the government’s commitment to a peaceful settlement. Additionally, many of the LRA commanders accepted the current amnesty law and surrendered. The Comprehensive Peace Agreement in Sudan depleted the LRA resources and stability, removing the LRA’s once secure base of operations, and the International Criminal Court (ICC) issued indictments for the top leadership of the LRA, stirring coordination between governments in Kampala and Khartoum.\textsuperscript{16}

\textsuperscript{14} Quinn, “Getting to Peace? Negotiating with the LRA in Northern Uganda” Human Rights Review (2009), Pp. 55-71

\textsuperscript{15} Ibid

\textsuperscript{16} Ibid
Whereas Kony, the leader of LRA, could end the war simply by surrendering to a well-established amnesty process, it would be irresponsible to leave the future of war and peace in northern Uganda solely in his hands. The burden therefore falls on the Government of Uganda and its allies, especially the United States, to implement a course of action to end the conflict.17

The Church Mission Society (CMS) flew Bishop Ojwang and his wife to Britain in August 2003 to launch the campaign with a news conference at Westminster the next day. BBC's James Naughtie interviewed the Bishop live on the Today Programme and Good Morning Scotland. Convinced that the Museveni government and its troops had failed the north, Bishop Ojwang pleaded for international help. Naughtie suggested that the LRA was a cult “controlling vast numbers of people, and they keep them in something akin to imprisonment”. Ojwang attempted to correct him by saying that “over one million” of his people were being kept in “protected camps” but without protection meaning Ugandan government protection. “No protection is being given to them. Even the Kony people can come up to the camp, and even abduct people near the camps.” Naughtie, unable quite to believe what he was hearing – he struggled with analogies of Western cults when he mentioned David Koresh, Waco and ‘brain-washing’- asked what the church could do. “Because, if it is true that twenty thousand children have been abducted, quite apart from what is being done to grown-up people by way of brain-washing, it's obviously a crime of gigantic proportions.”18

17 Taylor, “Taking Spirituality Seriously: Northern Uganda and Britain’s ‘Break the Silence’ Campaign” The Round Table, Vol. 94, No. 382 (2005), pp. 559-574
18 Ibid
One of the children carrying the petition was the daughter of an Acholi émigré Aldo Okot, a former Catholic priest turned lawyer who received asylum in Britain after the National Resistance Army (NRA) coup. The other was the son of the television satirist Mark Thomas, whose piece about the campaign appeared in New Statesman. In its ‘Break the Silence’ campaign, the CMS has highlighted the killing of the abducted children and the appalling atrocities committed against them.19

Ojwang and Oyelowo made speeches. Ojwang said: “We cannot give up because that means throwing the Bible away... We have to struggle even up to the end.” He also spoke to Lindsay Hilsum, International Editor for Channel 4 News who had covered the NRA campaign in the 1980s; and to several BBC World Service strands later in the day. His interview for Radio Bristol was cited by Valerie Davey, then Labour MP for Bristol West, in an important September 11 memorial speech on the UN to mark the second anniversary of the World Trade Centre bombing. She commended the ‘campaign by churches’ and asked that ministers remember Uganda as they sought to extend the UN remit to intervene in the internal conflict of sovereign nations. Davey’s former constituency coincides with the Diocese of Bristol, which is twinned with Kitgum. Churchmen often ask her to host Acholi clergy on advocacy visits. This twinning, the little known Anglican ‘Companion Diocesan Links’ Scheme, administered from Church House, Westminster, is an un-researched source of encouragement for beleaguered churches. Davey subsequently kept up the pressure, asking several questions of ministers in the House on Uganda, and signing several Early Day Motions.20

19 Ibid
20 Ibid
CMS also arranged for Ojwang to meet the then Foreign Minister for Africa Chris Mullin, on September 17 in Whitehall. The Bishop repeated his view that Uganda needed increased outside intervention. He proposed peace-keepers to protect the camps and suggested that Joseph Kony be hunted down and tried for crimes against humanity.\textsuperscript{21}

Other high profile engagements included addressing five thousand evangelical leaders at the Fourth National Evangelical Anglican Congress (NEAC) at the Winter Gardens, Blackpool – and meeting the new Archbishop of Canterbury Rowan Williams there – the only meeting to which the Archbishop agreed. A photograph of the two men embracing went around the world. Williams told the Bishop he had raised the situation in private with Prime Minister Tony Blair. Ojwang also gave the blessing at the Communion Service for Europe’s biggest Christian youth festival, Greenbelt, before seventeen thousand young people.\textsuperscript{22}

The Bishop’s tour sparked two further years of activity by CMS. Four hundred and fifty congregations around Britain signed up to pray, give and write to their Members of Parliament. One black Pentecostal congregation gave Twenty Four Thousand Pounds for a night shelter to be built in Pader. Luton Borough Council gave permission for the town to host a weekend of fund-raising activities, after one young mother heard a CMS report of Northern Uganda’s abductees, on the local radio, and motivated six churches in the town to take an interest. Media activity in Britain was amplified by strong coverage in the Kampala press thanks to CMS church contacts on the Kampala-based New Vision. The Bishop’s trip to England proved effective. It resulted in

\textsuperscript{21} Ibid
\textsuperscript{22} Ibid
a “considerable increase in political activity” according to foreign and commonwealth officials.\(^\text{23}\)

In November, United Nations Under-Secretary for Humanitarian Affairs Jan Egeland visited Kitgum for the first time. Most Very Important Persons (VIPs) only visit Gulu – reinforcing the isolation of Kitgum, Uganda’s most north-easterly outpost. Egeland was stunned by what he found, describing the international neglect it implied as “a moral outrage.” Egeland’s reaction had a ripple effect with aid agencies. Christian Aid, Tear Fund and Oxfam all increased their aid through appeals, and appointed new expatriate officers to the region. Amnesty International and Oxfam incorporated Kitgum into their Small Arms Campaign, launched later that year, featuring Bishop Ojwang in their publicity film. Before Christmas 2004, when Bob Geldof’s team were researching material to film for six programmes about Africa to be broadcast in the summer of 2005, the BBC World Affairs Correspondent Mike Wooldridge referred the crew to the CMS office. After a series of difficult negotiations, Geldof decided not to go to Darfur, but to film in Kitgum.\(^\text{24}\)

On January 29, 2004 President Museveni and Luis Moreno Ocampo, the then Prosecutor of the International Criminal Court (ICC) announced at a joint press conference at the Hotel Intercontinental, Hyde Park, London that the LRA had been referred for investigation for crimes against humanity. The ICC announced that “the prosecutor has determined that there is a sufficient basis to start planning for the first investigation” into the LRA crimes against humanity. This was a generally unwelcome test case. Even by April 2005 – well over a year later, the Acholi leaders were still

\(^{23}\) Ibid
\(^{24}\) Ibid
unconvinced that enough consultation had taken place to give them the assurance that such a measure would not bring more LRA terror down on everyone's heads. Churchmen, including Archbishop Odama, Chair of the Acholi Religious Leaders Peace Initiative (ARLPI) and Anglican Bishop Onono Onweng of Northern Uganda Diocese, went twice with other religious and traditional leaders to The Hague in March 2005 to express misgivings about the ICC Process. They felt the process had been imposed on them without regard to local sensibilities, or traditional methods of reconciliation, as well as of possible retributive consequences of international interference, which had ample precedents. When Onen Kamdulu, former chief of LRA operations, gave himself up in early 2005, fifty of Kony's forces retaliated on February 21, 2005 by attacking the Alokulum camp and trading centre, about six kilometres south west of Gulu, in an attempt to kill his mother who was known to be living there. The urgent plea for peacekeepers did not bear much fruit.25

ARLPI notably succeeded in lobbying the Ugandan parliament for an Amnesty Bill, which became law in January 2000, guaranteeing safe passage to any rebel, including the commanders. They worked in a context of terror on the one hand, and of government treachery on the other to promote understanding. Priests have been murdered by Kony's rebels and imprisoned by Museveni's soldiers.26 And yet, on January 10, 2005, they secured an invitation for the Acholi Parliamentary Group, religious and other leaders from Gulu to spend the day at the president's ranch in Ankole,

25 Ibid
Western Uganda. According to Bishop Ochola, Deputy Chairman of the ARLPI, this was unprecedented.\textsuperscript{27}

In June 2003, the ARLPI bishops organised a four-night sleepover with night commuters in Gulu bus park to draw in the international community. Night commuters are mostly children who stream into town from local villages and Internally Displaced Persons (IDP) camps for the night. There are thousands of them and, until the year 2004, there were no official shelters for them. They sleep under lorries, and on pathetic pieces of sacking in hospital compounds and on shop verandas. Some even try to study in the available lamplight. Every morning they trek away again, those who can, to school. They travel accompanied only by older siblings and are exposed to inhumane treatment, rape by UPDF Soldiers and possible acquisition of infectious diseases. The sleepover from June 25, 2003 was videoed, and was the desperate speech Bishop Ochola made on the first night, when he exploded the myth of ‘the pearl of Africa’.\textsuperscript{28}

The Sudanese vice-president, Riek Machar mediated over peace-talks leading to a cessation of hostilities on August 26, 2006. Between the year 2006 and 2007 the government of Uganda and the LRA had been actively engaged in an effort to resolve the conflict peacefully. Since then here have been agreements on “comprehensive solutions”, “reconciliation and accountability”, “permanent ceasefire” and “disarmament and demobilisation”. In early 2008, the delegations initialled a “final peace agreement” but on April 10, 2008, Joseph Kony failed to turn up in South Sudan to sign the agreement.

\textsuperscript{27} Taylor, “Taking Spirituality Seriously: Northern Uganda and Britain’s ‘Break the Silence’ Campaign”\textit{ The Round Table}, Vol. 94, No. 382 (2005), pp. 559-574
\textsuperscript{28} Ibid
The cessation of hostilities allowed an estimated four hundred thousand displaced people to return to their homes. In June 2007, the parties signed an agreement on Accountability and Reconciliation. In late October, a LRA delegation went to Kampala for the first time and held talks with senior Ugandan officials. In October, Vincent Otti, the Deputy Commander of the LRA, reportedly was killed in Uganda by Joseph Kony, the head of the LRA. Following this event, a number of senior LRA commanders surrendered to authorities in the Democratic Republic of Congo (DRC) and in Uganda.

In late October 2007, President Museveni visited Washington D.C. and met with President Bush and other senior administrative officials. President Museveni also met with several members of Congress. During his visit, Museveni discussed a wide range of issues, including U.S.-Uganda relations, the crises in Somalia and Darfur, trade and HIV/AIDS. Uganda deployed an estimated one thousand eight hundred peacekeeping troops to Somalia, shortly after Ethiopian forces invaded Mogadishu and installed the Transitional Federal Government (TFG). Ugandan forces were not a major target of the insurgents in Mogadishu, although a number of Ugandan peacekeepers were killed.

The U.S. policy throughout most of the conflict’s history has been to remain silent and continue quietly providing military aid to the Ugandan government; this is irresponsible foreign policy. It has only contributed to further violence and instability in northern Uganda. Using the implementation of the Comprehensive Peace Agreement in Sudan as a successful model for high-level engagement, the U.S. government should

29 Dagne, “Uganda: Current Conditions and the Crisis in North Uganda” Congressional Research Service (2009)
30 Ibid
31 Ibid
take a number of steps to sustain diplomatic and humanitarian assistance to northern Uganda to protect civilians and secure peace. The Northern Uganda Crisis Response Act of 2004 provides a framework for U.S. action and diplomacy to seize this opportunity for peace in northern Uganda.32

August 29, 2006 marked the signing of a supposed truce between the LRA and the Ugandan government, who had been engaged in negotiations in neighbouring southern Sudan. As part of the truce, the LRA would have to release all of the child soldiers, porters and slaves in its possession within three weeks from the signing of the truce to the United Nations and other aid groups. But the deadline passed and scepticism loomed as to the possibility that children in the north would no longer have to fear for their safety.33 The Government of Uganda has faced a number of insurgencies. For many years, the government’s response to such rebellions was simply to ignore them. In 2006, after his re-election as President, Museveni claimed that “the conflict in the north has been finished”. Although the war in northern Uganda and other uprisings continue, the Minister of Internal Affairs continued to claim that “Uganda is a perfectly peaceful country.”34

The people of Northern Uganda have made substantial efforts towards ensuring a lasting peace. One such effort took place in March 2007, when the Acholi held a Wang oo. The wan goo is a traditional talk held in a communal fire place. The Wang oo was organised as a larger peace conference and attended by about one hundred and fifty people who included elders, members of parliament and opinion leaders from the Acholi

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34 New Vision, “Minister Rugunda Woos Indian Investors” (Uganda), 6 May, 2007

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districts of Gulu, Kitgum, Amuru and Pader. It was funded by the Canadian government. It was organised by the Acholi cultural leader, Rwot David. The conference was organised as a buffer between the Ugandan and LRA delegations in Juba both of which had at that time left the negotiations. Delegations from northern Uganda, including the Acholi Parliamentary Group, the office of the Acholi Paramount Chief and the Acholi Religious Leaders’ Peace Initiative were present in Juba for the talks, acting almost as shock absorbers between the two parties. Such groups have provided advice and advocated on behalf of the people of northern Uganda.35

The character of the international community surrounding the Juba talks is itself diverse. The Government of South Sudan (GOSS), under the leadership of Vice President Riek Machar, and, later, President Salva Kiir have been instrumental in getting talks started. It was Machar whom Kony initially approached and who acted as intermediary between the two groups. Their involvement is the reason for the selection of Juba as a venue for the talks.36

Much of the impetus for and interest of the situation in northern Uganda came about when a “group of seven plus one” states banded together to advance the cause. Prior to this time The Group of Seven Plus One is composed of Belgium, Germany, Ireland, the Netherlands, Norway, Sweden and the United Kingdom and Canada. This group pledged to support the peace talks morally and financially. The United Nations, too, increased its involvement in the region. The Security Council formally expressed its support for “bringing to justice LRA leaders responsible for war crimes” and called on the Ugandan government “to ‘commit themselves fully’ to a long-

35 Quinn, “Getting to Peace? Negotiating with the LRA in Northern Uganda” Human Rights Review (2009), Pp. 55-71
36 Ibid
term and peaceful solution to the conflict. Jan Egeland, Under-Secretary General for Humanitarian Affairs, with the Office for the Coordination of Humanitarian Affairs (OCHA), too, exercised considerable influence in the region. He met several times with all parties to the conflict, and went some way to facilitating the Juba talks, providing logistical support and observers. Holmes, Egeland's successor, continued to apply pressure. In December 2006, the then United Nations Secretary General, Kofi Annan, appointed former Mozambican President Joaquim Chissano as Special Envoy dedicated to the Juba talks.

The involvement of the United States, however, is considerably more difficult. It seized on Uganda as its headquarters for all activities in Eastern Africa, particularly since the bombings in Kenya and Tanzania in 1998. Yet the U.S. refused to become involved in the Juba process, despite repeated calls. Although the United States has openly supported the prosecution of the LRA, they have also chosen to support Museveni's offer of amnesty. One obstacle, of course, is that the U.S. is itself not a signatory to the International Criminal Court and has refused to become a signatory.

The Amnesty Act was passed in the year 1999 and subsequently enacted in 2000. The Act states that rebels may receive amnesty if they come voluntarily "out of the bush" – a local colloquialism for the theatre of war – and surrender their arms. The Amnesty Act also provides for the material needs of those who are given amnesty – colloquially known as reporters. This conception of amnesty is substantially different from amnesties that have been implemented in other situations of transitional justice. The

37 New Vision, "UN wants LRA to release captives" (Uganda), 17 Nov., 2006
38 Quinn, "Getting to Peace? Negotiating with the LRA in Northern Uganda" Human Rights Review (2009), Pp. 55-71
amnesty granted in Chile, for example, was granted to military personnel after the conflict was finished and in blanket form, to keep them from being prosecuted in the trials that would come after. The amnesty granted in South Africa as part of the Truth and Reconciliation Commission process was granted on an *ad hoc* basis in exchange for testimony. The amnesty in Uganda has been declared before the end of the conflict. While people in Uganda appear to perceive of the amnesty as having been very much a tool to end the war, there is less clarity over the consequences it might have afterward.\(^9\)

This study finds that initiatives at peace have been made by various actors including the government, non-governmental organisations, international community and various religious organisations. However, such initiatives to create peace have been inadequate as the children of Northern Uganda are recruited as soldiers for the LRA. These child soldiers are recruited due to inadequate institutions to protect them from such recruitment. Legal provisions exist to prevent recruitment of child soldiers as have been captured in Chapter 2 of this study. However, lack of adequate and effective systems for implementation has resulted in the utilisation of children in armed conflict in the Republic of Uganda.

\(^9\) Ibid
CHAPTER FIVE
CONCLUSION AND RECOMMENDATIONS

This study has found that children’s protection from violence, exploitation and abuse is inadequate in the Republic of Uganda. Often, improved legislation is not accompanied by significant changes in state or private practices capacity. The types of programmatic response supported have tended to be curative rather than preventive in nature, addressing symptoms rather than the underlying systems that have failed to protect children.¹

This study concludes its observation by stating that there is need to create and strengthen a protective environment around children. This can be done through; one government commitment and capacity, which would include ratification of international Conventions, without reservations; budgetary provisions for child protection; public declarations of commitment; explicitly ‘child friendly’ policies and support for public prosecutions.

The study further identified a need for protective legislation and enforcement in Uganda which would include incorporation of relevant international standards; prosecution of violators; police and judiciary functioning without interference; accessible redress mechanisms; child friendly and confidential legal procedures; the availability of legal aid; no criminalization of victims; and a juvenile justice regime in place.

Three, protective culture and customs would include an environment in which women and girls face little discrimination; childcare practices do not involve corporal punishment, violence is not a key component of masculine identity, spouses are not required to have female genital mutilation or be underage, peaceful dispute resolution is valued; children are attributed with dignity; recourse to state institutions is common; harmful practices are not underpinned by religious beliefs; sexual exploitation of children is socially unacceptable; and children with disabilities, or orphaned by Acquired Immuno-deficiency Syndrome (AIDS) are not stigmatized.

Four, the study found open discussion useful in that including the engagement of civil society and media would require that harmful phenomena are recognized as such and are reported in the media; that protection failures are acknowledged at the community and national level; that young people are able to refer to such issues at home, at school and with each other; that victims are not threatened or ostracized and that Non-Governmental Organisations and media are able to work with minimum interference.

Five, the study supports the creation of protective children’s life skills, knowledge and participation. This would include an environment in which children are aware that they have rights, are encouraged to form views and express them; are provided with necessary information; are taught problem solving and negotiating skills; have their self-esteem valued by adults; and are listened to with the family, school and community.

Six, Protective Capacity of Families and Communities would include parents and other caregivers observing protective childbearing practices; families
supported for childcare needs; communities supporting and monitoring protection; and the existence of some demographic balance (no adult shortage).

Seven, provision of protective essential services would include education that is free for all children, including former combatants refugees; nondiscriminatory provision of health care including for sex workers and detainees; a functioning social welfare system, with social workers, shelters and hotlines; trained teachers who are present and working; and safe and supportive classrooms.

Eight, protective monitoring, reporting and oversight would include systematic collection of data, transparent reporting of data and review by policy makers; access by independent observers to children in traditionally marginalised groups; and encouragement of and respect for civic review. The study notes that the monitoring, reporting and oversight function is a task of the government of Uganda, which task has not been well implemented due to lack of institutions in place and strong policies to govern such institutions.

5.1 Recommendations

There are certain suggestions to improve the international legal situation in as far as child soldiers are concerned. These suggestions are applicable in Uganda in as far as the children of the LRA are concerned. These include: development of a protocol to raise the minimum age for voluntary enlistment to eighteen years, unilateral declarations interpreting the phrase 'to take all feasible measures to prevent children from taking a direct part in hostilities', institutionalising the ombudsman for children, taking into

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2 Ibid
account the rehabilitation and reintegration of child soldiers in peace treaties and establishing effective systems for registering and documentation of births.

Therefore, this study recommends the strengthening of the institutional framework in the Republic of Uganda as a whole in order to better protect children from recruitment as soldiers. Further, the study recommends the putting in place of an office of administrative justice specifically to look into child protection with a strong watch on prevention from recruitment of children in armed conflict. The study recommends that such institution be labelled office of children’s ombudsman and the same be decentralised with a large outreach in the north of Uganda.

Families bear the most responsibility for the resettlement of formerly abducted children. Thus humanitarian services must focus attention on supporting the families to do this task. This does not mean reducing programmes that provide food, equipment and services to individual formerly abducted children. Supplementing existing programmes with support to families and communities can lessen the tensions that occur in communities when formerly abducted children receive goods that everyone needs.3

In light of the foregoing this study recommends that the Uganda government puts into place a legal framework that addresses the resettlement of formerly abducted children to ensure that they reintegrate with the community.

Such legislation should ensure that all formerly abducted children’s names to be included on appropriate lists for food and other items in order to ensure their reintegration. Camp leaders must determine if miscommunication or misinformation results in formerly abducted children’s names not appearing on the lists of agencies such

as the World Food Programme or of services providing utensils, blankets or seeds to address basic needs. In addition, the government should work with the communities to strengthen efforts to eliminate the harassment of formerly abducted children by community members. Educational programs for community members about how the children were forced to commit violence will need to continue as this may reduce the community’s anger and fear towards them. Families must be instructed in how to officially register complaints, free of charge, about harassment by members of the community.

Another recommendation that this study considers realistic is for the government to increase access to education for all children living in these communities. Although there is universal primary education in Uganda, most formerly abducted children in this study were not attending school because they were not able to pay the fees for uniforms, books and other materials. There was no secondary school in this camp. Supporting access to education for every child in these camps is an important first step in ensuring self-sufficiency and engagement in productive activities. Ensuring that older children have access to age appropriate primary education would encourage those who think they are too old to return to school or who feel out of place with younger students to complete their education.

In coming up with these recommendations, this study found that further study is needed about the resettlement experience of females in Uganda. Some perspectives on females’ experiences in this study differ from what is found in the literature. Exploring these differences may lead to effective strategies that support females’ reintegration into this community.
The study notes that the aim of deconstructing child protection through the protective environment framework laid down above is to put more development muscle behind the implementation of these human rights standards. The gap between dedication to child protection standards in the Convention on the Rights of the Child, its Optional Protocols, and several other instruments; and the experience of violence, exploitation and abuse by hundreds of millions of children is unconscionable. Future protection of children must not only target vulnerable children and legal reforms but must take into account development actors, human rights advocates and bodies that carry political and economic sway to make child protection an active and common cause.4

Differently, one of the main criticisms of the Convention of the Rights of the Child has been its offer of universal solutions without recognition of the local complexities in which it is to be applied.5 The knowledge of those social relations that during a time of conflict will take children to fight is important. There must be recognition of the local power, gender, and generational dynamics that are created in conflict. Some perspectives, especially prevalent in the international media suggest an apocalyptic result of conflict and war on local social relations.6 This study has concentrated on the local circumstances in Uganda at the time children are recruited as soldiers. Thus the recommendations of the study take into account the circumstances within the country.

If states bolstered by global parties such as international advocates, human rights organisations and non-governmental organisations are to move the Convention of the Rights of the Child from its position of universal idealism to practical implementation, there must be consideration of how the said Convention can engage with local contexts. If Article 38 is fully operational, states can profit by creating and promoting conditions of peace based on the knowledge of how conflict affects local social relations. Models for peace might have addressed and redressed this at the local, familial and community levels with the backing of state-level security. Just war will change and create social relations, so will peace. The creation of peace and security needs to be convincing at a local, community and familial level so as to keep children from participating in conflict. It is at the local level of community, family and children themselves that these social relations will be talked about and lived through, and thus knowledge of them can best start by taking on board people’s own perspectives and subjective experiences as a knowledge base for the needs of peace and security. A global proves, perhaps through the media, of recognising and accepting what is unique and operational at a local level will bolster this.\textsuperscript{7}

To fill the need for a global study aimed at discerning the larger picture of how armed conflict impacts on children, the UN commissioned the first global study of the impact of armed conflict on children – the ‘Graca Machel Study’. The study makes numerous policy recommendations which if implemented, would significantly improve children’s well-being. It recommends banning completely the production and use of landmines; increasing the minimum age of military recruitment to eighteen years; modifying international sanctions regimes to provide humanitarian and child-focussed

\textsuperscript{7} Ibid

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exemptions; providing education even in emergency situations; treating rape as a war crime and vigorously strengthening enforcement of the Convention on the Rights of the Child and other standards and legal instruments for the protection of children in situations of armed conflict.  

In the psychological realm, the Graca Machel Study points out the importance of demobilising child soldiers and banning their future recruitment, re-establishing contact between former child soldiers and their families, providing educational and vocational opportunities and or reintegrating former child soldiers into appropriate civilian communities. To assist war-affected children, the study recommends community-based, culturally tailored programs. Ultimately, learning with local communities is necessary for transforming cultures of violence and building cultures of peace. 

Machel recommends that the survival and protection of unaccompanied and separated children be ensured, with priority given to family tracing and reunification. To accomplish this, tighter procedures are required to guarantee that each child has a continuous care-giver, preferably from his or her own family or extended family or, failing that, neighbours, friends, or other substitutes.

Policies are necessary that discourage separation of children from their parents during armed conflict. International principles and procedures must be sensitive to the particular needs of children. Also, family reunification programs must be a central

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9 Ibid
part of emergency humanitarian work. The creation of institutional responses or camps for unaccompanied children should however be a last resort as such centres may actually encourage parents to leave their children where they think they can get proper food and care.¹¹

The government of Uganda must pay much closer attention to their methods of recruitment, and in particular, they must renounce the practice of forced recruitment. They should ensure that all children are registered at birth and receive documentation of age. To be certain that these measures succeed, governments must establish effective monitoring systems and back them up with legal remedies and institutions that are sufficiently strong to carry out our child protective measures.¹²

All peace agreements should include specific measures to demobilise and re-integrate child soldiers into society. There is an urgent need for the international community to support programmes, including advocacy and social services programmes, for the demobilisation and re-integration into the community of child soldiers. Such measures must address the family’s economic security and include educational, life-skills and vocational opportunities.¹³

Peace agreements and minimum age protocols will help lessen the problem of child soldiers, but they will not address the international structures that propagate and encourage the new wars in the first place. The warfare of globalisation increasingly involves paramilitary, rebel and corporate private armies. Until the reasons

¹² Ibid
¹³ Ibid
for recruitment discussed in Chapter three of this study are addressed, children will continue to be recruited and abducted into combatant service.\textsuperscript{14}

Given that the phenomenon of child soldiers can be seen as part of the contemporary nature of war, with the prevalence of civil conflict, it might be said that only a global monitoring of arms and effective conflict prevention will be enough. Other perspectives more sensitive to the question of state sovereignty suggest that the role of the military in internal state politics must be neutralised from within to prevent children from feeling that their best political interest can only be achieved through recourse to violence. Indeed, Uganda has been cited as an effective example of how this might be achieved. Despite its brutal history, the country is now enjoying relative peace and economic development.\textsuperscript{15}

The sheer numbers of children exposed to violence, exploitation and abuse by the LRA should make clear that these are not minor or isolated instances of children falling through the cracks. Rather, the web of factors that would keep them safe scarcely exists. Funding needs to be channelled into high quality evaluations of child protection interventions, and into building a solid base of knowledge that allows comparison of strategies across countries and regions.

The best way to protect children from wars is to stop wars from happening. Movement towards this goal could be attained by promoting equitable development, reducing the wealth gap between countries, stopping the proliferation of weapons sales from the developed to the developing countries by transnational corporations, and finding peaceful ways to resolve conflict. While it is crucial to protect

\textsuperscript{14} Ibid
children from today’s armed conflicts, it is just as important to prevent the outbreak of future wars. The only way of truly protecting children from the impact of armed conflict is to stop the conflicts from occurring. Once a war has started, children’s suffering can only be mitigated.\textsuperscript{16}

The international community can lower the likelihood of intra-national war by addressing these root causes. Corporations must be held accountable for their actions. The Ugandan government must lower the risk of armed conflict by demilitarising its society and reducing the percentage of their gross domestic product spent on military expenditures. Tighter controls need to be placed for example the International Labour Organisation and other UN bodies need to strengthen enforcement of international labour rights as well as establish and enforceable corporate code of conduct. Furthermore, the operations of transnational corporations must be open to more effective citizen, governmental and multilateral regulation.

The research question that this study proceeded upon was whether the enforcement and strengthening of the institutional framework in Northern Uganda would contribute positively in reducing child soldiers in the region. A specific, workable and realistic recommendation that this study will next discuss is reintegration of child soldiers and justice and accountability of offenders.

5.1.1 Reintegration in Northern Uganda

The return of child soldiers to families and communities is of great concern to the people of Uganda. Two important indicators of successful reintegration include reunification with family and reinsertion into the community. Since 1986, the population in Northern Uganda has been under attack by the Lord’s Resistance Army (LRA), a non-governmental armed force. The LRA was initially viewed as fighting a just political cause; however, beginning in 1988, the LRA used violence against the population in the north by abducting children and forcing them into the LRA as combatants. These abductions escalated in frequency and severity in the early 1990s.

Reintegration efforts address formerly abducted children’s physical, psychological and social rehabilitation needs, enabling the returning child to function with daily activities and responsibilities. Reunification of a formerly abducted child with his or her family is a central goal of all reintegration programs. Families and close relatives are formerly abducted children’s most important source of emotional social support; these family experiences provide psycho-emotional scaffolding necessary for developing relationships with others. Additionally, living with relatives reduces the rates for psychiatric symptoms and disorders among children exposed to war. Reinsertion into the community is equally as important in reintegration efforts as family reunification.

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Normative experiences such as preparing formerly abducted children with education and income generating skills re-establishes their roles within the community, their sense of security and stability and their hope for the future. The foregoing has been witnessed in Mozambique, Sierra Leone and Liberia.

Reintegration is a long complex process that is as much about helping children find an appropriate social place as it is about individual rehabilitation, although that, too, is important. This study appreciates that reintegration of a former child soldier can not take place overnight as much effort and skill is required to transform a human being who has been brainwashed as a child into believing that killing is normal and fighting in the battlefield is an everyday pastime. Compounding to the complexity and length of time reintegration takes is the attitude of the community towards former combatants which is quite often discriminatory. Typically, reintegration programs include four key elements. First is family tracing and reintegration efforts that identify the location of children’s families, reunite children with their families and support the families in handling challenges that arise. Second is psychosocial support that helps children come to terms with their war experiences and helps to reconcile the returning children with their communities. Third is livelihood support that includes training in vocational and life skills that enable youth to obtain and hold jobs and also small loans that help them to earn an income. Fourth is education and literacy, which children frequently see as essential for building a positive future.

The World Bank\textsuperscript{25} argues that the reintegration of child soldiers should emphasise three key components: family reunification, psychological support and education, and economic opportunity. When children return from armed conflict, rituals may welcome them back into the community. For example in Uganda \textit{ladit kaka} (elder) carries out routines like pouring liquor with an aim to appease ancestors within village settings and household compounds. This is especially where female former combatants are involved. Also \textit{Wang oo} among the Acholi may be carried out where all members of a family, including former combatants whose lineage has been traced, sit around the fire in the evening and elders taught the young ones. In so doing, the family and clan core values were passed on from one generation to another. Rituals can serve important functions in facilitating psycho-social reintegration, healing and reconciliation with families. They can also be used to impose rules of community behaviour or to convey advice and encourage the children.\textsuperscript{26}

In Uganda, peace education is woven into reintegration programs, although it is frequently not identified explicitly. Reflecting a distinction found in the literature on peace education reintegration programs involve teaching for peace rather than teaching about peace.\textsuperscript{27} This means that the aim is to achieve peace thus the teachings serve a functional purpose rather than a mere educational purpose on what peace building entails. Although former child soldiers may receive an orientation to the peace process when they have been demobilised from armed groups, the emphasis in


most reintegration programs is highly practical rather than didactic. Particularly in situations of ongoing ethnic tension or recent intrastate war, the emphasis is frequently on empathy, reconciliation, building the skills and values of nonviolence and the construction of narratives of living together in harmony. These offer powerful means of breaking through the enemy imaging, extremist ideologies, and social divisions that lead many children to fight.

Even after ceasefires and peace treaties have been signed, societies must find a way of reintegrating significant numbers of underage soldiers who have been trained to kill and who have seen and experienced events viewed as traditionally outside the realm of children. Many war-affected children in Uganda are at risk of continuing cycles of violence, and they may find it difficult to participate fully in education or in wider tasks of development. Intervention and violence prevention efforts are badly needed. Peace and children's well being are inseparable, a point having particular salience in the war-torn Republic of Uganda where children make up nearly half the population.28

Given the major humanitarian disaster that engulfed the conflict-ridden Northern Uganda, an understandable element of urgency has led national and international efforts to conceptualise and implement post-war development assistance projects and programs particularly for children. Within this post-war context, much attention has been directed towards the demobilisation of child combatants, the

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reunification of families, the reconstruction and expansion of national educational systems, and the integration of young people into productive community life.29

After escape or release from captivity, some formerly abducted children in Northern Uganda attend a reception centre (psychosocial rehabilitation centre) to receive counselling, family reunification, socialisation and education or skills training. An estimated eighty four percent of formerly abducted boys and fifteen percent of formerly abducted girls may have attended such a centre.30 However, other children and families choose not to attend and some children abducted for short periods do not attend either. Most formerly abducted children in this study attended either Gulu Support the Children Organisation (GUSCO) or World Vision centres. During their stays at these centres, formerly abducted children were provided with medical treatment, basic needs such as clothing, food and counselling, family tracing and reunification with family. These centres conducted educational programmes teaching children the skills of daily living, cooking, school preparation and other skills training. Socialisation experiences were provided to help children integrate into schools, families and communities and to help them assume positive roles within their communities.31

Significant differences exist in the ways in which psychosocial support is implemented in the humanitarian field.32 Some programmes focus on social cultural interventions, others on psychological interventions specifically for trauma or community

reintegration. The psychosocial support received by formerly abducted children in this study who attended the reception centres appeared to address the social and cultural aspects. In this area of Northern Uganda, reception centres provided little if any psychological assistance; counselling was not provided by trained therapists and follow-up assistance was limited.

In addition to the psychological adaptation to life after captivity, these children have to adapt to living in an Internally Displaced Persons (IDP) Camp. Even if they lived in the camp prior to abduction, returning to the camp still requires adaptation. The impoverishment, the inadequate water, food and shelter, and the general challenges of daily survival can lead to severe distress among war-affected children.

The guiding principle for all recovery and reintegration programmes for war-traumatised children is that they should take place in environments which foster health, self-respect and dignity of the children. Since the Convention has been adopted UNICEF has initiated programmes in Croatia and Serbia training professionals to identify and counsel children displaying symptoms of war. In Uganda, after the end of the civil war the government was faced with the integration of three thousand child soldiers into the school system. There was much debate over whether the children should be educated with other children or in military academies. Partly because of the difficulties

35 Article 39 of the Convention of the Rights of the Child
that these children faced in reintegrating into schools and the effect upon other children, they stayed in the military academies where they continued their education.  

5.1.2 Justice and Accountability of Offenders

Punishment, either through the traditional method of prosecution, or through the also traditional process of shaming through the mechanism of a Truth Commission or lustration legislation, is what the law does best. And it is here that the law may be seen to have the most unambiguous success. Although there are difficult issues of who is exactly to prosecute, the differing layers of liability, and the practicalities of prosecution in the post-regime conflict state, it is clear that punishment does establish a level of accountability. The extent to which it establishes justice however is a difficult question. To address this on the level of the victims, to what extent is justice achieved for them or for the survivors? It is here where we need to distinguish between social justice and legal justice. Does legal justice bring back a lost education or a lost life? No. It may, however, help in other ways. For example, where civil compensation is derived from the criminal system, criminal prosecution is of great significance. Justice operates to differing degrees on the levels of the personal, the communal and the state. This study proposes that the law enforcers should consider and all round approach in administration of justice so as to achieve both social and legal justice. In this way, implementation of the existing legal provisions will be improved thus assist in deterring the LRA and any other rebel groups from recruiting child soldiers.

Amnesties have been singled out as a technique for re-establishing internal public order after its violent disruption within a nation-state. Their compatibility with sanctioning goals will depend on their design and other contextual features. Amnesties are especially useful tools for political negotiators. Whether in a domestic or transnational conflict, the capacity to offer amnesty is an indispensable tool. If the elite and substantial parts of the rank-and-file of one side anticipate that a consequence of a peace agreement will be their prosecution for acts undertaken in the course of conflict, they hardly will be disposed to lay down their arms. The strict application of law in these circumstances may result in continued intense conflict, with the consumption of social values that the law entails, ended only by the elimination or the unconditional surrender of one side. Furthermore, because a political elite often will be highly dependent on the morale and commitment of its rank-and-file, the prospect of a negotiated settlement that secures amnesties for the leadership but not for those in the ranks well may prevent that leadership from concluding an agreement.39

Amnesties also may be important as a technique for stitching together the wounds in civil society that precipitate and often result from conflicts. Article 6(5) of Protocol II Additional to the Geneva Conventions of 1949 provides that “at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.”

However, there are significant protective public order costs to amnesties. The jurist may have the luxury of time to foresee long-term strategy, while the political

negotiator usually faces sharp time demands, requiring quick tactical decisions. Thus the jurist is more likely to appreciate that the most urgent objective in the application of law is not to punish those who may have violated it, but to stop ongoing atrocities, and in so far as possible, to sustain the expectations of law’s effectiveness in the minds of all other potential violators. What is done can not be undone. What is not yet done may yet be prevented. Acts of kindness or grace to current violators, or as is sometimes the case, convenient deals, may have very high, long term costs: potential violators may assume that threats of strict application of law notwithstanding, when the time comes for settlement, they, too, can strike a bargain in which they will be forgiven.\footnote{Ibid}

Forgiveness is indeed a private act. Law may be able to ‘frame’ such an act, however it is not a prerequisite to societal restoration nor reconstruction, and it possibly and element to be left fully outside the scope of law and the goals of post-conflict society. Whether forgiveness is justice (and consequent to its right) is for the victim or survivors to decide. Law has no place here.

It has been argued in most general terms that prosecution post-conflict strengthens respect for the rule of law and legal institutions, whereas the danger in alternative legal mechanisms such as Truth Commissions is that the rule of law is weakened when there is perceived to be little or no accountability. We may be placing too much faith in criminal prosecution if we expect such trial post-conflict to provide the basis for the future of the society. As it has not yet been demonstrated how law can work toward systemic institutional change, it is unclear how law can provide a solid basis for the non-repetition of such societal breakdown. The focus on the past may send the message that this was wrong and should not be repeated, but it does not provide the basis
nor importantly the tools for how such events in the future may be prevented. The debates surrounding such trials and commissions, on the notion of citizenship, political legitimacy, and the rule of law are important, yet may be better incorporated into non-criminal proceedings\footnote{Balint, “The Place of Law in Addressing Internal Regime Conflicts” Law and Contemporary Problems, Vol. 59, No. 4, Accountability for International Crimes and Serious Violations of Fundamental Human Rights (1996), pp. 103-126}


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