

UNIVERSITY OF NAIROBI  
INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**AN EVALUATION OF THE LAWS THAT GOVERN CHILD  
SOLDIERS IN AFRICA: A CASE STUDY OF DEMOCRATIC  
REPUBLIC OF CONGO (DRC)**

KINUTHIA WANYOIKE  
**(R40/80774/2012)**

SUPERVISOR:  
DR. SABALA KIZITO

A Research Project Submitted In Partial Fulfillment of the Postgraduate Diploma in  
International Relations

**MAY 2013**

**CHAPTER ONE: GENERAL INTRODUCTION**

1.0 Introduction .....1  
1.1 Statement of the Problem .....1  
1.2 Objectives .....2  
1.3 Hypothesis .....2  
1.4 Justification of the study .....2  
1.5 Literature Review .....3  
1.6 Theoretical Framework .....5  
1.7 Research Methodology .....6  
1.8 Chapter Organisation.....7

**CHAPTER TWO: POLICY CONTEXT: NORMATIVE AND INSTITUTIONAL FRAMEWORKS ON CHILDREN AND WAR**

2.1 Introduction.....8  
2.2 Normative Frameworks.....8  
2.2.1 African Charter.....8  
2.2.1.1 Weaknesses of the African charter.....9  
2.2.1.2 Strengths of the African charter.....10  
2.2.2 Rome Statute.....12  
2.2.2.1 Weaknesses of the Rome Statute.....12  
2.2.2.2 Strengths of the Rome Statute.....13  
2.2.3 The Convention on the rights of the child.....14  
2.3 Institutional Framework.....15  
2.4 International Criminal Court.....15  
2.5 Conclusion.....17

**CHAPTER THREE: CHILD SOLDIERS IN DEMOCRATIC REPUBLIC OF CONGO (DRC)**

3.0 Introduction .....18  
3.1 Case Study: Democratic Republic Of Congo (DRC).....18  
3.2 Causes of Conflict.....19  
3.3 Recruitment of Children as Child Soldier.....20  
3.4 Effect of Children Involvement in Armed Conflicts.....23  
3.5 Conclusion .....25

**CHAPTER FOUR: ENFORCEMENT OF THE LAWS THAT DEAL WITH CHILD SOLDIERS.**

4.0 Introduction.....27

4.1 International Humanitarian Law (IHL).....27

4.2 International Criminal Court .....30

4.3 Disarmament, Demobilisation and Reintegration (DDR) .....33

4.4 The Convention on the Rights Of The Child (CRC).....35

4.5 African Charter.....38

4.6 Conclusion .....39

**CHAPTER FIVE: CONCLUSION.....40**

**BIBLIOGRAPHY.....45**

## **CHAPTER ONE: GENERAL INTRODUCTION**

### **1.0 Introduction**

The traditional laws of war were enacted in an era where war was only fought by one state against another state or a group of states against one or many states. However, that concept of war has changed and there are new kinds of wars being fought. Contemporary armed conflicts are fought by the state on one hand and insurgent/rebel groups on the other hand. This has introduced new developments complications the worst being the involvement of children in war and not as civilians but as fighters<sup>1</sup>.

The development of international standards concerning the involvement of children in armed conflict has been significant to eradicate the scourge of child soldiering. However, there have been direct violations of international humanitarian law by governments and rebel forces. The States have an obligation to respect and adhere to international laws and their own national laws which should intern reflect respect for the rest of the world. But how far has international law being obeyed especially when it comes to matters pertaining to war and conflict and in particular child soldiers?

This project paper looks at the international law of war and in particular, the laws that focus on the recruitment and use of children as soldiers in armed combat. An evaluation of these laws will help us understand the usefulness and effectiveness of these laws in African armed conflict. The Democratic Republic of Congo will be the case study in this paper as it provides a clear focus of armed conflict and child soldiering.

### **1.1 Statement of the Problem**

The changing nature of warfare in the post-cold-war era has dramatically increased the number of civilian deaths. Conflicts are characterized by protracted disorder and widespread vulnerability of children and women to the worst possible forms of violence and abuse. Civilians, especially children, have been deliberately targeted by armed forces and groups, and the easy availability of inexpensive light weapons has led to additional recruitment of child soldiers. For many years, child rights advocates sought to raise the standard from age 15 to age 18 by creating a new international treaty to that effect. However, given the strong

---

<sup>1</sup> Alison Dundes Renteln, *The Child Soldier: The Challenge of Enforcing International Standards*, 21 Whittier L.Rev. 13 (1999)

support for the Convention on the Rights of the Child, the idea arose to draft an Optional Protocol to the Convention focusing specifically on the involvement of children in armed conflict<sup>2</sup>.

There are laws and conventions that seek to prevent and protect children from being recruited and used as child soldiers. However the laws that govern child soldiers have not been properly implemented and thus in turn they are not effective to protect children from being recruited as soldiers.

The main problem addressed by this paper is to examine why children in the Democratic Republic of Congo are used as child soldiers despite the fact that there are national laws and conventions in place to prevent and protect children from being recruited and used as child soldiers.

## **1.2 Objectives**

1. The main objective of this paper is to evaluate the strength and weaknesses of the existing laws that deal with the prevention of recruitment and use of children as child soldiers.
2. To examine the reason for the recruitment and use of children as child soldiers.
3. To examine why the laws in place have not been able to curb the recruitment and use of children as child soldiers.
4. To recommend what should be done in order to prevent the continuation of the recruitment and use of children as child soldiers.

## **1.3 Hypothesis**

1. Recruitment and use of child soldiers is a consequence of high rate of unemployment
2. Recruitment and use of child soldiers is a consequence of political instability that has resulted in the lack of disregard of both national and international laws.

## **1.4 Justification and Significance of the study**

This study has both academic and policy justifications.

---

<sup>2</sup> Daniel Helle, Optional protocol on the Involvement of Children in Armed Conflict to the Convention on the Rights of the Child, International Review of the Red Cross, No. 839, p.797-809 (2000)

### **14.1-Academic Justification**

The international child rights movement has prompted the development of international law, policies, and programs concerning the recruitment and use of child soldiers. Four legal frameworks on child soldiers will be discussed that is International Humanitarian Law, International Criminal Court, Disarmament, Demobilisation and Reintegration, Convention on the rights of the child and the African Charter.

Despite the prohibition the laws that govern child soldiers have not being properly implemented and thus there is need to establish the reasons as to why they have not being effective to protect children from being recruited as soldiers

### **1.4.2 Policy justification**

The study is further be justified in that it will be important in the sense that it will provide a basis for strengthening implementation of laws that govern the protection and prevention of the recruitment and use of children as child soldiers.

Study findings will be used to determine what should be done in order to prevent the continuation of the recruitment and use of children as child soldiers.

### **1.5 Literature Review**

Lemarchand<sup>3</sup> discusses the magnitude of children in war especially in Africa. He states that children are not only victims but also agents of the war. He explains the major reason why child soldiers join the rebel groups is due to the fact that most of the times, their families have been killed and the militia becomes the new family. Children volunteer due to lack of any alternative. When these children are captured by government forces and taken back into the communities, the society rejects them seeing them as killers and murderers and thus they opt rejoining the militia, the only family that they know and accepts them as they are. He also shows the lack of effectiveness of the laws of war which in particular protect civilians, this including children. He gives an example of the Fourth Geneva Convention of 1949 which is the Civilians Convention. He states that the civilians' convention reflects the experience of the Second World War. Thus the laws cannot be used in the new types of wars and in particular the armed conflict.

---

<sup>3</sup> Lemarchand, R,(2007), "Consociationalism and Power Sharing in Africa: Rwanda, Burundi and the Democratic Republic of the Congo," in *African Affairs*, Volume 106, Number 422, January, pp:1-20.

Howe<sup>4</sup> discusses the magnitude of the involvement of children in war as child soldiers and also gives a recommendation on how to effectively implement international law in times of war. He gives examples with the Angola Mozambique war and the human right abuses that occurred. He points out in particular to the involvement of children as child soldiers in war. Children suffer as child soldiers, as victims of land mines and young girls are sexually abused and some are also involved in the actual fighting. The effects of war on children are anonymous and range from death, separation from parents or orphaned among others. He states that the use of child soldiers is liked because they are easy to program, they have excessive energy, they are better than adults and any way there is an adult shortage. Also children join out of their free will to secure food, shelter, protection, looting, holding a gun.

Further he states that the protracted length of conflicts combined with the proliferation of small arms and light weapons has made the use of children as child soldiers pragmatic. The longer the conflict is, the more likely that children will be recruited. The persistence of protracted conflicts makes finding volunteers difficult; therefore, prompting rebels and government forces to recruit the nation's youth to alleviate the shortage of manpower. Moreover, when conflicts are protracted, the root causes of the conflict such as poverty or repression are exacerbated, thus motivating the civilian population to join armed groups

Rooke<sup>5</sup> explains that there is a connection between displacement and recruitment. She states that children separated from families during displacement were at risk of becoming child soldiers especially children with no or little education, children from poor sectors of the society or from disrupted family backgrounds. She further states that the question is not whether or not they are compelled or they volunteered. There is need to protect children from recruitment and she states that the Optional Protocol to the Convention on the Rights of the Child states that even states not directly involved in conflict must prevent armed groups from recruiting anyone under the age of 18 years. She recommends that for effective implementation of the international law, children need to be educated of their human rights. In addition, she discusses other reasons why children are recruited; that they are easy to manipulate; they are obedient; learn easily; they have no family to return to after killing them, which is usually their initiation ceremony. It also believed that these children have excessive energy which is to the rebels' advantage, they are better than adults and the fact that there is a shortage of adults. Government and rebels recruit them because they are malleable, cheap to

---

<sup>4</sup> Howe, H. (2001), *Ambiguous Order: Military Forces in African States*, Colorado, Lynne Rienner Publishers, Pp 6,7,23

<sup>5</sup> Rooke, P, (1967), *The Wind of Change in Africa*, Glasgow, Blackie & Son Limited.Pp.,34,67

maintain and easy to dispose. Children born during the war live in it and accept that war is the normal way of life thus they have no hope of living in a country without war.

Lerner <sup>6</sup> starts by giving a history of evolution of the laws of war and ends by evaluating the application, implementation and enforcement of these laws in times of war. Most of these laws have covered the crimes that are committed during internal conflicts and the most common of these crimes is the war crimes and in particular crimes against humanity. Civilization has brought changes into the world especially in relation to laws of war and thus such kind of crimes can and are now punishable in a court of law. However, this has not been very successful especially when it comes to implementing or application of the law. The writer states that the reasons for this are rather obvious. Obviously since states find it difficult to charge their own military personnel with war crimes and even more difficult to hand them over to another unfriendly state to be charged there.

Bass<sup>7</sup> pays particular attention to child soldiers in chapter 7. Examples of countries with child soldiers are Angola, Burundi, Congo Brazzaville, DRC, Ethiopia, Liberia, Rwanda, Sierra Leone, Sudan and Uganda. In war zones children work as soldiers, sex slaves, minesweepers, spies, messengers, guards, porters, wives and governments and rebel recruit them because they are cheap to maintain and easy to dispose. He also discusses the issue of voluntary recruitment and says that while children may be forcibly recruited by both government armies and opposition groups, they are sometimes the first to voluntarily join these groups. Their motivation lies in the social, economic, and political issues defining their lives. Experts have estimated that voluntarily participation exceeds forced recruitment.

## **1.6 Theoretical Framework**

There has been various international instruments that have set up in order to prohibit the recruitment of children as soldiers.

The major international instruments include the optional protocol of 1977 that was formally adopted by the United Nations General Assembly in 2000 was established by the 1977.

In addition to the Optional Protocol on the involvement of children in armed conflict, three other instruments relating to child soldiers were adopted and entered into force in recent years. All three support, and in one case strengthen, the standards set by the Optional

---

<sup>6</sup> Lerner, N. (1996), "Ethnic Cleansing", in Dinsten, Y and Tabory, M, (eds.), *War Crimes in International Law*, Hague, Kluwer Law international. Pp11,29,50

<sup>7</sup> Bass, L, (2004), *Child Labor in Sub-Saharan Africa*, Colorado, Lynne Rienner Publisher, Pp12,19,74



Protocol. The African Charter on the Rights and Welfare of the Child, which entered into force in November 1999, was the first regional treaty to establish 18 as the minimum age for all recruitment and participation in hostilities<sup>8</sup>. Convention No. 182 of the International Labour Organization concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was adopted in June 1999 and entered into force in November 2000. International Labour Organization Convention No. 182 declares that forced or compulsory recruitment of children for use in armed conflict is among “the worst forms of child labor,” and calls for programmes of action to eliminate child soldiering with “all necessary measures to ensure the effective implementation and enforcement including the provision and application of penal sanctions or, as appropriate, other sanctions”.

Finally, the Rome Statute establishing the International Criminal Court reflects an historic development in the campaign against the use of children in armed conflict. It defines the following acts as war crimes: “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” in an international armed conflict and “conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities” in a non-international armed conflict.<sup>9</sup>

All of these developments are encouraging, but they have not been enough, as documented violations reveal a disconcerting gap between commitments made to end the use of children in conflict, and the reality of current recruitment practices. There is need to ensure that they are implemented to the letter of the words. As development of international law concerning child soldiers’ progresses on paper, progress on the ground lags behind, thus creating a gap between progress in the law and the enforcement of this law on the ground.

## **1.7 Research Methodology**

This research will be conducted with the use of secondary data. The laws that have been enacted to protect child soldiers are more than enough. International law and policy cover considerable ground in their efforts to eradicate child soldiering and promote the well-being of current and former child soldiers. There are many publications on child soldiers and the UN continues to enact more laws almost every day to protect the lives of the children and the recruitment and use of children as soldiers.

---

<sup>8</sup> African Charter 22(1)

<sup>9</sup> Article 26 of the Rome Statute

## **1.8 Chapter Outline**

This paper is organized into five chapters.

Chapter one is the introduction to the study. It discusses the Statement of the Problem, Objectives, Hypothesis, Justification and Significance of the study, Literature Review, Theoretical Framework, Research Methodology and Chapter Outline.

Chapter two is on Policy context: Normative and Institutional international framework on children and war. This chapter analyses the existing normative and institutional instruments and the laws that deal with child soldiers.

Chapter three is on child soldiers in Democratic Republic of Congo which is the case study in this paper. It commences with a brief history of the Democratic Republic of Congo. The Chapter discusses the cause of war, reasons for recruitment of children and the effects of children involvement as child soldiers with a focus of Democratic Republic of Congo which is the case study.

Chapter four is on enforcement of the laws that deal with child soldiers. This chapter analyzes the laws governing the use of children in armed conflict. Despite the prohibition of the use of child soldiers in armed conflict in international law, States and non-State actors continue to actively recruit, abduct, and directly use children, some as young as eight, in hostilities.

Chapter five is the conclusion. It concludes that until the root causes of child recruitment and participation are dealt with, children will continue to volunteer in armed conflicts and government and non-government armed forces will continue to recruit them. Further focus needs to shift from developing the law relative to child soldiers to actually enforcing it and discusses several ways of dealing with the menace of child soldiering.

## **CHAPTER TWO:**

### **POLICY CONTEXT: NORMATIVE AND INSTITUTIONAL FRAMEWORKS ON CHILDREN AND WAR.**

#### **2.1 Introduction**

This chapter analyses the existing normative and institutional instruments and the laws that deal with child soldiers. The child soldiers gave a message to the world and we must listen, “[s]o that other children don't have to pass through this violence”- a young girl who escaped the LRA in Uganda<sup>10</sup>. In response to this message, the international community has established international norms, tribunals and the ICC to stop the use of child soldiers in conflict.

#### **2.2 Normative Framework**

There are several laws that have been enacted in order to deal with this issue of child soldiers. These include the Rome statute, the African charter and The Convention on the rights of the child. This chapter looks at each of the normative frameworks herein above and discusses its strengths and weakness.

##### **2.2.1 African Charter**

The African Charter on the Rights and Welfare of the Child (1990) is the only regional charter addressing child soldiers. It came into being on November 1999 and it sets the minimum age at 18 years. The definition of a child is limited in relevance to the socio-cultural, traditional and environmental construction of childhood in Africa. Childhood is a social and historical construction that needs to be protected. In the African societies, children are regarded as a source of wealth and security for the future.<sup>11</sup>

There is the UNICEF Cape Town Principle on Child Soldiers of 1997. It sets 18 years as the minimum age of recruitment. This law is of limited practical effect. It has normative standards with no binding legal obligations. Attempts have been made to update them to take into consideration the lessons learned, advances in International Community's Law and legal

---

<sup>10</sup> Pham, P, Vinck, P and Stover, E, (2008), “ The Lord's Resistance Army and Forced Conscription in Northern Uganda,” in *Human Rights Quarterly*, Volume 30, Number 2, May, pp:406.

<sup>11</sup> Francis, J. D, (2007), “‘Paper Protection’ Mechanisms: Child Soldiers and the International Protection of Children in Africa's Conflict Zones,” in *The Journal of Modern African Studies*, Volume 45, Number 2, June, pp: 227.

standards relating to child protection, and how to mobilize broader political and geographical endorsement of the principles<sup>12</sup>.

Most states in conflict or war-torn states have not ratified most of these laws and those that have ratified some of the international treaties; they have not been able to incorporate them into domestic law. Some of the war-ravaged countries are reluctant to ratify them because of the strategic military and/ political benefits of recruiting children in armed conflicts. In the UN backed war crimes tribunal special court of Sierra Leone conscription constituted war crimes. International focus has led to international advocacy groups such as the London-based Coalition to Stop the Use of Child Soldiers.

### **2.2.1.1 Weaknesses of the African Charter**

Ironically, Africa is the only continent with a region-specific child rights instrument, the African Charter on the Rights and Welfare of the Child, but arguably has the worst record for protecting children's rights during conflict.

Pursuing child protection architecture at the AU has great advantages. Under Chapter VII of the UN Charter, the AU should complement the efforts of the UNSC in the maintenance of peace and security, and in particular in dealing with the issue of child soldiers. Unfortunately, despite encouragement from the UN, the AU has engaged only in an ad hoc manner with the issue.

Despite its good intentions, the Charter has shortcomings. The Charter doesn't protect children from life imprisonment without the possibility of release. Further under the African charter there is no provision for alternative measures to criminal proceedings such as diversion or community rehabilitation. The Charter also does not mention explicitly the right to remain silent, the right to be protected from retroactive legislation, the right to challenge detention or the right to be compensated for miscarriages of justice.

Under Article 20<sup>13</sup> dealing with issues of parental responsibility, provision is made for 'domestic discipline' to be 'administered with humanity and in a manner consistent with the inherent dignity of the child.' This appears to leave the door open for the physical and humiliating punishment of children

---

<sup>12</sup> Ibid.

<sup>13</sup> African Charter on the Rights and Welfare of the Child

Further Article 31<sup>14</sup> creates responsibilities for the child which are an important element of their participation in society. One of the duties spelt out in the Charter is for children to respect their parents, superiors and elders at all times. This Article needs to be reconciled with the child's right to freedom of expression, association and thought which may at times be in conflict with Article 31. There is no provision for parents or guardians to be able to access social security or social insurance to maintain a child's standard of living.

In addition, the Charter is only binding on States that have ratified it. This is a weakness on itself as the states that have not ratified are not bound by the rules of the charter.

Also the charter provides that any custom, tradition, cultural, or religious practice that is inconsistent with the rights and obligations contained in the present Charter shall to the extent of such inconsistency be null and void.<sup>15</sup> This provision leaves it open for State Parties to use cultural or religious inconsistencies with the African Charter as a pretext for non-compliance with the Charter. Regardless of these shortcomings, the Charter compliments the CRC and international humanitarian law concerning child soldiers, in particular those involved in internal conflicts.

Lastly, as the AU is nearer to where atrocities are committed, it can use its legitimacy and credibility as assets, representing consensus on the continent's wish to deal with the problem of child soldiers, which has become a typical African phenomenon. However the AU relies on the global mechanism, which has been noted as being flawed. The AU as a body should be able to pursue its policy on children and armed conflict, react to events, and have the flexibility needed to deal with situations of armed conflict involving the recruitment of children as they unfold but it has failed.

### **2.2.1.2 Strengths of the African Charter**

While built on the same principles as the UN Convention on the Rights of the Child, the African Charter highlights issues of special importance in the African context. Article 22<sup>16</sup> encourages states parties to respect and ensure respect for the rules of international humanitarian law applicable in armed conflicts that affect the child, as well as to take all necessary measures to ensure that no child shall take a direct part in hostilities. Further, it requires states parties, in accordance with their obligations under international humanitarian

---

<sup>14</sup> Ibid

<sup>15</sup> Ibid., at art. 22 (3).

<sup>16</sup> Ibid

law, to protect the civilian population in armed conflicts and ensure the protection and care of children who are affected by armed conflicts. Such rules also apply to children in situations of internal armed conflicts, tension and strife.

Although the Charter is only a regional instrument, it is far more reaching than the CRC. Unlike the CRC, the Charter recognizes that a child is anyone below eighteen, including those involved in armed conflict. Also, unlike Additional Protocol II, the Charter applies to internal skirmishes, tension, and strife and therefore recognizes that the rights and welfare of a child are of more value than the type of conflict they are involved in.

Moreover, the Charter uses stronger language (necessary measures) than the CRC (feasible measures) in ensuring State Parties' protection of children involved in armed conflict. The Charter's implementation mechanism, which is very similar to that of the CRC in that it has a similar reporting system, accepts complaints from non-party States, individuals, organizations, and non-governmental organizations.

Further Article 27<sup>17</sup> deals with Sexual exploitation and sets out that state parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and these are more prone to affect the children during war.

Also the issue of decentralization is strength on the African charter. Decentralising the operational aspects of protecting children during armed conflicts to the AU makes sense, and will ease the burden on the UN. It will also place greater responsibility on African states to deal with the issue of child soldiers. Further to redeem itself from its non-committal stance on issues related to the rights of children, the AU has to develop a coherent strategy and offer robust leadership to pressure deviant states and armed groups to comply with international law.

In conclusion, the AU could, for instance, require states in which violations of children's rights have been reported by the continental monitoring mechanism to criminalise such violations in domestic law and prosecute them via national jurisdictions. It could also build on its existing protection mechanisms where training packages on children and armed conflict for civilian and uniformed personnel could be developed. A designated AU Special Representative on Children and Armed Conflict could be considered. Thus, instead of putting the global mechanism at the centre of dealing with the problem of African child soldiers, the AU should instead take the lead in dealing with this persistent phenomenon. If it fails to do so it risks losing its credibility as the guarantor of African peace and security.

---

<sup>17</sup> Ibid

## 2.2.2 Rome Statute

The Rome Statute creates the International Criminal Court (ICC) and gives it jurisdiction to investigate and try individuals accused of serious war crimes, crimes against humanity, and genocide. As children are increasingly the victims of atrocities – whether targeted directly, harmed as a consequence of violent attacks against their parents, or coerced to act as combatants in hostilities – this Court provides an important new mechanism for implementing existing child protection standards. Thus, participation in the ICC is a concrete step in the fulfilment of many obligations incorporated into the Convention on the Rights of the Child (CRC) and its Protocols.

In addition to providing a means for states to enforce these obligations collectively, membership in the Court will encourage States Parties to draft new domestic legislation with complementary child protection provisions.<sup>18</sup>

### 2.2.2.1 Strength of the Rome Statute

Children’s rights incorporated into the Rome Statute include laws punishing crimes committed against children, recognition that separate procedures are necessary to establish the criminal responsibility of children, special measures protecting children as victims and witnesses during judicial proceedings, and requirements that judicial staff have expertise on children’s issues.

The Rome Statute protects children in three ways; *children as perpetrators, children as victims and witnesses*. The Rome Statute criminalizes the conscription, enlistment or use in active hostilities of child soldiers under the age of fifteen years, both in international and non-international armed conflicts.<sup>19</sup>

The Rome Statute criminalizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence as both war crimes and crimes against humanity.<sup>20</sup>

The Rome Statute provides that individuals under the age of 18 at the time of their alleged crime cannot be tried by the ICC.<sup>21</sup> The children who are perpetrators are herein

---

<sup>18</sup> Weller, M.(2002), “Undoing The Global Constitution: UN Security Council Action On The International Criminal Court,” in *International Affairs*, Volume 78, Number 4, October, pp: 695

<sup>19</sup> The Rome statute,Article 7(1g)

<sup>20</sup> Ibid,Article 26

<sup>21</sup> Ibid,Article 56

protected and the main concern is the best interests of the child. Further the arrest, detention, or imprisonment of a child shall be used only as a measure of last resort.<sup>22</sup>

The Rome Statute includes procedures protecting the rights of children in their interactions with the Court that is protecting children as victims and witnesses including:

The Rome statute requires the Prosecutor to be sensitive to the interests of children during investigations and prosecutions, including making special arrangements for child witnesses to testify in private.<sup>23</sup>

Two, it establishes victims and Witnesses Unit (VWU) to provide counselling, protection and other forms of support for child victims.<sup>24</sup>

Three, Establishing a Victim's Representation and Reparations Unit to provide victims counsel with facilities and experts, and to establish principles regarding reparations to victims.<sup>25</sup>

Four, ensuring that judges, legal advisors in the Prosecutor's Office and court staff will have expertise in issues pertaining to violence against children.

Moreover, the Rome Statute creates a Victim's Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court and their families.<sup>26</sup> To avoid re-traumatizing child survivors, the ICC will carefully protect children who testify in court. It is the explicit responsibility of all branches of the Court to ensure the safety, psychological health, and confidentiality of child witnesses. The Court will make special arrangements before, during, and after the trial to ensure the safety of children and their families.

#### **2.2.2.2 Weaknesses of the Rome Statute**

The Rome Statute endeavors to lay the foundations for an institution that will lift the blanket of impunity that now covers atrocities almost everywhere. With all its weaknesses, the Statute consistently underscores the point that one of the Court's primary purposes will be to protect victims of the most horrendous crimes. The Statute should not be dismissed as a

---

<sup>22</sup> Ibid, Article 43

<sup>23</sup> Ibid, Article 43(8)

<sup>24</sup> Ibid, Article 43(6)

<sup>25</sup> Ibid, Article 79

<sup>26</sup> Ibid, Article 36(8b)



flawed and unworkable document; rather, it should be supported by states and its strengths should be promoted.

When 120 nations voted for an International Criminal Court on 17 July 1998, they voted for a Statute that, if implemented in good faith, will be an effective mechanism for holding accountable those individuals who commit the worst breaches of international humanitarian law and other specified crimes.

### **2.2.3 The Convention on the Rights of the Child (CRC)**

The 1989 Convention on the Rights of the Child (CRC) provides children with protection during times of war and peace. The CRC became the most ratified human rights treaty in history with 191 of the 193 participating nations ratifying it at record-breaking rates. The CRC addresses the use of child soldiers by providing that “State Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.” The “law applicable to them” must include not only treaties to which States are parties but also relevant rules of customary international law. Although these rules of customary international law are unclear, both international and domestic laws prohibit certain acts.

Despite the widespread global acceptance of the CRC, several imperfections render it incapable of protecting children in armed conflict.

Article 38<sup>27</sup> has been subject to considerable criticism. First, it is the only provision in the Convention that deviates from the general age limit of eighteen. Specifically, while Article 1 of the Convention defines a child as everyone under the age of eighteen, Article 38 redefines a child as everyone under the age of fifteen for purposes of recruitment and participation in armed conflict.

Second, with respect to the prohibition against recruitment and participation, Article 38<sup>28</sup> is mostly confined to repeating Article 77 of Additional Protocol I of the Geneva Conventions. In so doing, it not only brought nothing new, but could also detract attention from the stronger standard contained in Additional Protocol II of the Geneva Conventions, which provides a more absolute prohibition for the use of child soldiers in non-international armed conflicts.

---

<sup>27</sup> The 1989 Convention on the Rights of the Child

<sup>28</sup> Ibid

Furthermore, the CRC has a large number of reservations. Reservations like these weaken the requirements of the CRC. International human rights law, especially that concerning the world's children, becomes meaningless if States bound by it are permitted to pick and chose those provisions they will abide by and those they will not.

In addition, the CRC has no enforcement mechanisms, therefore making its enforceability dependent upon the domestic laws of each nation. However, the CRC has an implementation mechanism that uses a periodic reporting system by the State Parties to the Committee on the rights of the Child, which monitors implementation of the provisions recognized in the CRC. The Committee can make suggestions and other forms of constructive criticism to the State Party but it cannot punish non-compliance or force compliance even though compliance is requested by the Committee.

## **2.3 Institutional Frameworks**

Enforcement of the laws is a major issue and it's key to the fight against child soldiering. The international criminal court is a major institutional framework that is governed by the Rome statute and its ore to the discussion on child soldiers.

### **2.3.1 The International Criminal Court (ICC)**

The 1998 Rome Statute of the International Criminal Court (ICC) includes child soldiering as a war crime. The Statute prohibits national forces or other groups from conscripting or enlisting children under the age of 15 whether or not directly taking part in conflict. The crime of conscripting children under 15 is considered a war crime in either international or non-international conflicts. The Court, established in 2002, began investigating crimes within its jurisdiction in 2003. The investigations include the Democratic Republic of Congo, Central African Republic, Uganda and Darfur. The first case to be brought before the Court involves the Democratic Republic of Congo and the use of children as soldiers.

The ICC has several achievements in terms of protecting the victims and the defendants:

The International Criminal Court has being active in promoting victim participation. In response to the sensitive nature of cases within its jurisdiction, the Court has established safeguards to protect the rights of both defendants and victims. The safeguards include voice and face distortion for witnesses who testify at trial. These safeguards are for the benefit of the witness only. For example witnesses in the Lubanga trial testified in separate rooms with face and voice distortion and were assisted by the Victims and Witness Unit of the Court.

However, the prosecution must disclose the identity of the witnesses it wishes to call at the trial in order to allow the defense to prepare an adequate defense. Nevertheless, in limited situations the prosecution is permitted to wait longer before disclosing information to the defense usually to protect the safety of the witness. Former child soldiers are especially vulnerable to intimidation, threats and possible retaliation; therefore, the ICC safeguards are essential to encourage them to testify<sup>29</sup>.

Two, trust fund for victims. In September 2002, the ICC established the Trust Fund for Victims (TFV) to further assist victims and families in rebuilding their lives and communities. The TFV's mission is to support programs which address the harm resulting from crimes under the jurisdiction of the ICC by assisting victims to return to a dignified and contributory life within their communities. The mandate of the TFV is set out in Articles 47 and 79(2) of the Rome Statute and in Rule 98(5) of the Court's rules of evidence and procedure. The Court, pursuant to Article 79(2), may order money and other property collected through fines or forfeiture to be transferred to the TFV. Under Article 79, Rule 98(5) allows the resources of the TFV to be used for the *benefit* of the victims. Article 47 includes psychological or physical rehabilitation and material support as a benefit<sup>30</sup>.

Additionally, the TFV provides grants for approved projects provided field assessments are carried out to ensure a project directly addresses the harm caused by conflict and targets the most vulnerable victims of crimes within the jurisdiction of the Court. For example, projects are underway in the DRC and Northern Uganda to assist with the psychological support and material support for ex-child soldiers and abducted children. The funds for these projects are collected through voluntary contributions by agreements; however, non-governmental donations are accepted so long as the donations benefit victims and are non-discriminatory.

Finally, major achievements of the international community include the current prosecutions of Thomas Lubanga by the ICC and of former Liberian President Charles Taylor by the Special Court for Sierra Leone.

---

<sup>29</sup> The African Non-Governmental Organization Coalition for International Criminal Court, (2008), London, Routledge pp:18

<sup>30</sup> Ibid, Pp.20

## **2.4 Conclusion**

The international community must continue to punish those responsible for recruiting, enlisting and forcibly abducting children to participate in hostilities. Further, governments must be pressured to end the practice of rewarding suspected criminals with government positions. Governments that fail to comply with ending the use of child soldiers must face serious consequences from the international community.

Finally, the international community must provide adequate rehabilitation to child soldiers so that they may be successfully reintegrated into their families and communities. Reintegration programs for ex-child soldiers cannot be limited to vocational training; instead, these programs must include psychological and emotional counseling. In order to prevent re-recruitment children must be given the tools to succeed not only financially but also emotionally in order to end the cycle of violence.

## **CHAPTER THREE:**

### **CHILD SOLDIERS IN DEMOCRATIC REPUBLIC OF CONGO (DRC)**

#### **3.0 Introduction**

This chapter will discuss the child soldiers in Democratic Republic of Congo. It commences with a brief history of the Democratic Republic of Congo. The Chapter discusses the cause of war, reasons for recruitment of children and the effects of children involvement as child soldiers with a focus of Democratic Republic of Congo which is the case study.

#### **3.1 Case Study: Democratic Republic of Congo (DRC)**

##### **Historical Background**

Zaire was a creation of King Leopold II of Belgium. This was done during the Berlin Conference of 1884-1885 which later led to the scramble for Africa. The first democratic local elections were held in 1957 and the Abako party led by Joseph Kasavubu won. In the years 1958/59 there were riots in Elizabethville (Lubumbashi) and Leopoldville (Kinshasa) which forced the Belgian authorities to make concessions and begin political modernization. In February 1960, there was a meeting at Brussels which agreed that Congo should become independent on 30<sup>th</sup> June that the same year. A new constitution was drafted which established six provincial governments each with similar powers to those assigned to the central government.<sup>31</sup> The Congo crisis took four years. On 30th May, Patrice Lumumba became Congo's prime minister because his Congo National Movement won most seats while Joseph Kasavubu became the president of Congo thus head of state. However, the new government did not manage to keep the country as one for a long period since on 5th July the Force Publique, Congo army, mutinied over pay and working conditions.<sup>32</sup>

Joseph Desire Mobutu, a former journalist, was an informant for the Belgian secret police. Mobutu was a dictator who was backed by the military forces of US, France and Belgium.<sup>33</sup> In 1965, Mobutu declared himself as president after putting down several rebellions. From 1967 to 1986, Kabila held out a war against Mobutu in a tiny mountainous region in the eastern Congo.

In 1997, Laurent Kabila arrived in Kinshasa at the head of a foreign army. He drove Mobutu into exile. In January 16, 2001, Kabila was assassinated by either one of his

---

31 Nzongola-Ntalaja, G., (1998), "From Zaire to The DRC," in Current African Issues, Number 20, pp:6-8

32 Rooke, P, (1967), the Wind of Change in Africa, Glasgow, Blackie & Son Limited. Pp134

33 Ibid, Pp125

bodyguards or one of his disaffected young soldiers. His son Joseph Kabila succeeded him as president at the age of 29 years becoming the youngest president in the world. His coming into power paved way for the implementation of the Lusaka peace accord and there was the sending of peacekeeping troops into Congo for the first being one hundred and ten Uruguayans troops. In mid-2001, he accepted the Lusaka accords and agreed to a peace convention that would bring all sides together. It is estimated that four million people have died since 1998 due to direct and indirect effects of the ongoing conflict.<sup>34</sup>

### **3.2 Causes of conflict**

The following are the causes of the conflict in the Democratic Republic of Congo (DRC):-

#### **1. Resources**

One of the major causes of conflict in Democratic Republic of Congo (DRC) is the fight over minerals especially in the mineral-rich Katanga province. This is the reason why Moise Tshombe had this secession in this province so as to enjoy the minerals and the economic benefits that came along.<sup>35</sup>

#### **2. Non-preparation for independence**

There was a false political expectation of what might follow after independence. The Belgians were still in control of the Congo army. There was no change or promotion for Congolese in public officers including the army. There were inadequate preparations by Belgians when they left Congo and gave them their independence on June 1960 independence. There are different reasons why this is regarded as a cause of war in Congo. Firstly, there were 150 different tribes thus unity in Congo difficult. There were also violent and chaotic elections, which were won by the Congolese National Movement (MNC). Despite the fact that the Belgians gave Congo their independence, they still held most of the powerful positions in the country and this led to a mutiny on July 1960 by Congolese army due to officer posts that were still held by Belgians. Therefore it seems that the Belgians were not ready to leave Congo. Richest province in minerals, Katanga, was still held by the Belgians and declared it independent under Moise Tshombe<sup>36</sup>.

---

<sup>34</sup> Edgerton, R, (2002), *Africa's Armies from Honor to Infancy*, Colorado, Westview Press. Pp 243

<sup>35</sup> Le Pape, M, (2004), "Democratic Republic of Congo, Victims of No importance", in Weissman, F, (ed.), *In the Shadow of 'Just Wars'*, London, C. Hurst & Co (Publishers) Ltd. Pp 67

<sup>36</sup> Op cit, Nzongola-Ntalaja, G., (1998), pp. 78

### **3. Tribalism/ethnicity**

Tribal rivalries were aggravated by unemployment which caused disorders to break out again almost immediately and calm was not restored until 1965, when General Joseph Mobutu of the Congolese army (USA and Belgians) crushed all resistance and took over the government himself<sup>37</sup>.

### **4. Rwanda genocide and its aftermath**

The Tutsi genocide in Rwanda and its immediate consequences has been a factor that has accelerated the Congo war. The Hutu leaders were involved in ethnic cleansing which mobilized the Hutu population in mass murder. This transformed the DRC as an arena of conflict and war.<sup>38</sup> The main players in Congo are seen by many as greedy warlords, with ready-made armies at their disposal and a dear interest in enriching themselves. Continued war could be their best way of doing this. This war also benefited the neighboring countries.<sup>39</sup>

### **3.3 Reasons for recruitment**

Traditionally, children were protected by cultural presumptions that they were noncombatants. Wars today do not occur on well-defined battlefields but in cities and towns, making the abduction of children from schools, buses, churches, and villages easier for recruiters. Moreover, because of the post-Cold War surplus, there are as many as 500 million small arms around the globe. Consequently, the increased reliance on small arms and light weapons has made using children as soldiers practical since these weapons are easily obtainable, relatively cheap, and easy to use and transport. Unlike earlier weapons, which required precision aiming and physical strength, these weapons are ultra-light automatic weapons that can be carried and fired by children as young as ten. With the firepower of such weapons, children can become deadly combatants. Unfortunately, trade in these arms is largely unregulated and embargoes are rarely respected. To make matters worse, government control over the trade in small arms and light weapons has decreased because private companies produce most of the small arms and light weapons. A recent survey showed that 600 manufacturing firms in approximately ninety five countries produce small arms, light weapons, or other types of ammunition and parts.<sup>40</sup>

---

<sup>37</sup> Lowe, N, (1997), *Mastering Modern World History*, London, MacMillian Press. pp 243

<sup>38</sup> *Op Cit*, Nzongola-Ntalaja, G., (1998), pp. 79

<sup>39</sup> *Ibid*, pp. 78

<sup>40</sup> Colleen C. Maher, *The Protection of Children in Armed Conflict: A Human Rights Analysis of the Protection*

The protracted length of conflicts combined with the proliferation of small arms and light weapons has made the use of children as child soldiers pragmatic. The longer the conflict is, the more likely that children will be recruited. The persistence of protracted conflicts makes finding volunteers difficult; therefore, prompting rebels and government forces to recruit the nation's youth to alleviate the shortage of manpower. Moreover, when conflicts are protracted, the root causes of the conflict such as poverty or repression are exacerbated, thus motivating the civilian population to join armed groups.<sup>41</sup>

Once recruited, children are used as spies, porters, and cooks. Although boys are more likely to be recruited than girls, opposition forces recruit girls, whom they often rape and force to become wives of combatants. The children are used as human mine detectors and frontline troops by opposition forces because they are easy to manipulate and are considered expendable. These children are turned into fierce fighters through brutal indoctrination and inducement through the use of hard drugs and alcohol. The children are sent out to commit atrocities against civilians, including their own families. Children like this end up depending on their captors and even identifying with their cause, since they have nowhere else to go.

Both armed opposition groups and national armed forces use actual physical force and threats to recruit under-age children. Several rebel groups and national armed forces around the world practice forced recruitment of under-age children by abducting children from schoolyards, buses, market places, streets, churches, or refugee camps. The dominant explanatory account is that those child soldiers who commit extraordinary international crimes are forced by commanders and, hence, operate under extreme duress; they are incapacitated by compelled ingestion of narcotics and alcohol; they are brainwashed and socialized by the endemic violence that envelops them; and they are plagued with fears of brutal punishment.<sup>42</sup>

While children may be forcibly recruited by both government armies and opposition groups, they are sometimes the first to voluntarily join these groups. Their motivation lies in the social, economic, and political issues defining their lives. Experts have estimated that voluntarily participation exceeds forced recruitment. The term "voluntary" in reference to the use of child soldiers is questionable, given the brutal conditions that motivate children to join armed forces.

---

Afforded to Children in Warfare, B.C. Third World L.J. 297, 301 (1989).

<sup>41</sup> Ibid, Pp. 303

<sup>42</sup> Ann Davison, Child Soldiers: No Longer a Minor Issue, 12 Willamette J. Int'l L. Disp. Resol. 124, 141 (2004)



Children volunteer for the armed forces because of what they have experienced personally: poverty, death, loss, displacement, religious motivations, need for revenge, and collapse of social structure. In response to these experiences, children find themselves volunteering with armed groups. In addition, children's surroundings influence their decision to volunteer in armed conflict. A child's social environment influences the way they see things. Families, peer groups, and religious or other community-based groups may exert pressure that leads or encourages children to join armed hostilities. A child's surrounding has an impact on a child's decision to participate in hostilities. For example, if a community's perception of war is based on ethnic cleansing or religious fanaticism, this perception is passed on to the child, who in turn feels motivated and justified to participate in effecting a change in ethnicity by volunteering their services in armed conflict. Also, peer pressure, hopelessness, family loss, desires for revenge, and the loss of a support structure makes joining an armed group seem like a better alternative. Lastly, conflicts leave children orphaned, displaced, or responsible as heads of household when one or both parents are killed or are away fighting<sup>43</sup>.

Schools, which would otherwise occupy their time, are closed or destroyed, and the fields they would otherwise cultivate are off-limits because of mines. Children who find themselves in this vulnerable situation face the risk of being recruited or being receptive to ideological propaganda which encourages them to join armed groups.<sup>44</sup>

There is a connection between displacement and recruitment. Children separated from their families during displacement are at risk of becoming child soldiers. This is especially children with little or no education, poor sectors of society or from disrupted family backgrounds. Children from well off children are sent abroad or to other parts of the country with no war. In Sierra Leone for example, the youth were regarded as a political label denoting political contestation and social position rather than biological age. The youth in particular region were experiencing socio-economic marginalization and powerlessness and thus they were used as an electioneering asset for politicians.<sup>45</sup>

---

<sup>43</sup> Ibid, pg. 256

<sup>44</sup> Ibid

<sup>45</sup> Christensen and Utas, 2008:516-518

Another reason why the child soldiers join the rebel groups is due to the fact that most of the times, their families have been killed and the militia becomes the new family. Children volunteer due to lack of any alternative. When these children are captured by government forces and taken back into the communities, the society rejects them seeing them as killers and murderers and thus they opt rejoining the militia, the only family that they know and accepts them as they are.<sup>46</sup>

Further when the children join the forces, they get access to rifles which they use for economic opportunities which include looting and pillage. Thus, war is seen as a path to personal enrichment and empowerment through the gun. Also they use the guns to dramatize scenes from violent Hollywood movies, for example, Rambo. Children good fighters because they are young and want to show off; easy to manipulate; easy to manage when moved further from their homes; think it's a game so they are fearless.<sup>47</sup>

Some of the other reasons why children are recruited are that they are easy to manipulate; they are obedient; learn easily; they have no family to return to after killing them, which is usually their initiation ceremony. It also believed that these children have excessive energy which is to the rebels' advantage, they are better than adults and the fact that there is a shortage of adults. Government and rebels recruit them because they are malleable, cheap to maintain and easy to dispose. Children born during the war live in it and accept that war is the normal way of life thus they have no hope of living in a country without war.<sup>48</sup>

### **3.4 Effects of children involvement as child soldiers**

Customary international law is violated whether children become soldiers voluntarily or as a result of forced recruitment. Exposure to armed conflict through direct participation or via the resulting breakdown of community support systems traumatizes childhood development. Malnutrition, disease, sexual exploitation, mental abuse, and physical injury are some of the many hardships faced by child soldiers. According to a UNICEF report<sup>49</sup>, in DRC, all parties to the armed conflict recruit and use children, some as young as 7. The

---

<sup>46</sup> Brett, Rl,(2001), "Recruiting Child Soldiers," in *Refugees*, Volume 1, Number 122, pp:19-20.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> UNICEF, 1994:4-5

forced recruitment of children increased so dramatically in late 2002 and early 2003 that observers described the fighting forces as armies of children. In 2002, 42 violent conflicts occurred in the world and 29 of these were considered severe crises. In DRC, an estimated three million people have lost their lives in the last three years of conflict. Most of those affected by conflict remain inside their own country, living in destitute or insecure circumstances.

Child soldiers are subjected to dangerous risks, some of which are beyond the normal perils of war. They are made to walk across fields ahead of their abductors and to plant landmines or clear fields of landmines, and therefore are the first to die if they miss a mine. Child soldiers are forced to suffer the rigors of military life. The younger children collapse under the heavy loads. Malnutrition, respiratory and skin infections, and other ailments are frequent. Child soldiers face the additional risk of drug and alcohol abuse, which is often used to desensitize them from violence.

Girl soldiers are particularly at risk of sexual exploitation. They are raped, abducted for sexual exploitation, and forced into marriages or prostitution. Sexual exploitation has a devastating impact on the physical and emotional development of the victim. Unwanted and unsafe sex is most likely to result in unwanted pregnancies and sexually transmitted diseases like HIV/AIDS, which affect the immediate and future sexual reproductive health of the girl and the mortality of the girl child soldier. Girls that have been repeatedly raped face the risk of chronic pelvic inflammatory disease and death. Some commit suicide because of the humiliation they suffer, while others flee from their homes leading to ostracism and further displacement.<sup>50</sup>

Besides the risks of death or physical injury in combat, child soldiers also suffer psychosocial consequences of participation. Under the CRC, every child is entitled to receive such “protection and care as is necessary for his or her well-being,” and State Parties are obliged to “ensure to the maximum extent possible the survival and development of the child.”<sup>51</sup> Child soldiers that have suffered traumatic experiences like executions and violent

---

<sup>50</sup> Sexual and Gender-Based Violence Against Children, available at <http://www.un.org/special-rep/children-armedconflict/English/SexualViolence.html>

<sup>51</sup> Convention on Rights of Child, Art3(2), 6(2)

acts experience nightmares and flashbacks. They live in fear of rejection and in fear of legal or physical retribution for the acts they committed during conflict. Sometimes families or communities reject former child soldiers because of the abuses they carried out during conflicts or because the family or community fears violent retribution for the acts committed by the child soldier.

In the Congo war, the Congolese children have been orphaned by the conflict and left to fend for themselves and this makes them to be easily manipulated into forced labour in the mines or with rebel groups. The Government of Rwanda recruited children to serve in its armed forces alongside militias it has backed in the civil war in the DRC and in Burundi. This country still struggles with its past ethnic disparity. Hutu refugees from Rwanda provided a breeding ground for instability in the DRC in the late 1990s.<sup>52</sup>

There have been direct violations of international humanitarian law by governments and rebel forces. Escalation of conflict often brings the targeting of hospitals, clinics and schools, leaving people without vital services. Family members become separated from each other causing their support networks to breakdown and render children vulnerable. Civilians are not accidental victims of war but actually its very target.<sup>53</sup>

The Governments of the countries concerned are most immediately responsible for protecting civilians in conflict within their states and when such protection fails, it's the responsibility of the international community and the UN Security Council to act. Children who have perpetrated or fallen victim to extreme violence need to receive psychological treatment. Successful recovery programs allow children to resume their normal childhood while learning to live in an environment of peace.

### **3.7 Conclusion**

It does not seem that the use of child soldiers is going to end soon especially because the conflicts in Africa do not look like they are about to end. In fact, the conflicts are spreading to the neighboring countries that have not experienced the war and therefore a shifting of the means into the next country.

---

52 Oxfam International, (2003), "Protecting Civilians in Conflict," in *Beyond The Headlines*, pp :22

<sup>53</sup>Ibid, pp:13

There are many factors which lead to the involvement of children in armed conflict. There are permanent, deep-rooted socioeconomic factors which contribute to children joining armed forces and armed groups. And in such contexts, a fluctuating security situation will produce more specific reasons, or “triggers” for the recruitment of children (whether it is voluntary or forced). The causes of children’s involvement in conflict are therefore complex and multi-layered. It is nearly impossible to address them all effectively.

In a nutshell, governments and the rebel groups need to appreciate the importance of childhood and respect it. Only if this happens, will the use of children as child soldiers in war cease to exist.<sup>54</sup>

---

<sup>54</sup> Nzongola-Ntalaja, G., (1998), “From Zaire to The DRC,” in *Current African Issues*, Number 20, pp:6-17

## **CHAPTER FOUR:**

### **ENFORCEMENT OF THE LAWS THAT DEAL WITH CHILD SOLDIERS**

#### **4.0 Introduction**

This chapter analyzes the laws governing the use of children in armed conflict. Despite the prohibition of the use of child soldiers in armed conflict in international law, States and non-State actors continue to actively recruit, abduct, and directly use children, some as young as eight, in hostilities.

Over the past two decades, the international child rights movement has prompted the development of international law, policies, and programs concerning the use of child soldiers. Yet in spite of the stronger laws and advocacy that have resulted in United Nation's Security Council resolutions, international agreements, domestic legislation, and establishment of country-specific ad hoc tribunals, both national armies and rebel groups continue to recruit and use children in armed conflict. This chapter analyses four legal frameworks and its issues on child soldiers that is International Humanitarian Law, International Criminal Court, Disarmament, Demobilisation and Reintegration, Convention on the rights of the child and the African Charter.

#### **4.1 International Humanitarian Law (IHL)**

International humanitarian law is the body of law that establishes rules that seek to limit the effects of armed conflict by protecting non-combatants and by restricting the means and methods of warfare. International humanitarian law is codified in the four 1949 Geneva Conventions and the two 1977 Additional Protocols. The scope of international humanitarian law relative to the use of children in armed conflict is rather limited, especially in conflicts of a non-international nature.

The 1949 Geneva Conventions anticipate two types of conflicts: "all cases of declared war or of any armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them," and "the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties." In short, the 1949 Geneva Conventions anticipate both international and non-international conflicts. Common Article 3 of the Geneva Conventions applies to internal armed conflicts and sets out basic protections which apply to "persons taking no active part in the conflict."<sup>55</sup> Further, Common Article 3 affords protections to persons taking no active part

---

<sup>55</sup> L. Wells, *Crimes Against Child Soldiers in Armed Conflict Situations: Application and Limits of International Humanitarian Law*, 12 *Tul. J. Int'l & Comp. L.* 287, 292 (2004).

in conflicts, persons who take a direct part in hostilities fall outside the ambit of this protection, thus losing all protection guaranteed under Common Article 3 of the Geneva Conventions. Therefore, since Common Article 3 does not explicitly address the issue of child combatants, children who directly participate in armed conflicts are not protected by the Geneva Conventions, thus falling between the gaps of international humanitarian law<sup>56</sup>.

However, where there are gaps or contradictions in international humanitarian law, the long-standing Martens Clause recalls and confirms the most basic standard: “In cases not covered by specific international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.” This position is supported by the International Law Commission and is restated, verbatim, in Article 1(2) of Additional Protocol I. The Martens Clause is important because through its reference to customary law, it stresses the importance of customary norms in the regulation of armed conflict.<sup>57</sup>

Another problem with the application of Common Article 3 relates to the refusal of States to admit its applicability. The lack of a clear definition of armed conflict in Common Article 3 “gave rise to a great number of interpretations and its applicability was often denied.” However, due to the obligations contained in Common Article 3 are considered customary international law, “rebels and governments against which they fight are always bound by the duties and obligations of Common Article 3,” regardless of whether they deny its applicability. Nevertheless, the four Geneva Conventions, despite their good intentions, fail to adequately protect child soldiers, especially those in internal armed conflict.<sup>58</sup> The 1977 Additional Protocols to the Geneva Conventions were the first international instruments to regulate the role of children in armed conflict. Additional Protocol I, which applies to conflicts of an international nature, obligates parties to the conflict to “take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.” Also, “in recruiting among those persons who have attained the age of fifteen

---

<sup>56</sup> Plattner, D, (1992), “Assistance to the Civilian Population: the development and present state of International Humanitarian Law” in *International Review of the Red Cross*, Volume 288, May-June, pp:259

<sup>57</sup> Dieter, F,(1991), “Implementing International Humanitarian Law: Problems and Priorities” in *International Review of the Red Cross*, Volume 281, March -April, pp:140-153.

<sup>58</sup> Plattner, D, (1992),op cit., pp:259

years but who have not attained the age of eighteen years the parties to the conflict shall endeavor to give priority to those who are oldest.”<sup>59</sup>

Additional Protocol II extends its protections to children involved in non-international armed conflicts by providing that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.” This total prohibition is stronger than that in Protocol I, since it prohibits voluntary enlistment and indirect participation. That is to say that, not only can a child not be recruited or enlist himself, but furthermore, he will not be allowed to take part in hostilities. Moreover, Additional Protocol II extends special protections to children in conflict by providing that children who have not attained the age of fifteen, who end up participating in hostilities despite the provisions of sub-paragraph c, shall continue to enjoy the special protections afforded them by Article 4.<sup>60</sup>

Unfortunately for the child soldier, Protocol I and II do not establish minimum humanitarian standards of treatment that ought to apply to those children that participate in armed conflict, but instead focuses on the unrealistic ban on their participation in war. Although the Protocols prohibit the recruitment and participation of children less than fifteen years- old in armed conflict, those who do decide to participate are recognized as combatants and lose the protections afforded civilians under international humanitarian law. However, as mentioned above, these children continue to enjoy the special protections provided by Article 4(d) if they participate in hostilities. Nevertheless, States will only be bound by Additional Protocol II if they have ratified the treaty or have made a valid unilateral declaration of intent to respect the rules of international humanitarian law. Other armed groups, however, will be bound by the rules of customary international law relating to the conduct of hostilities and treatment of vulnerable groups, such as children.<sup>61</sup>

In summary, international humanitarian law, as it stands today, is incapable of addressing the problem of child soldiers in armed conflicts, especially conflicts of a non-international nature. There are no international conflicts today in which children are fighting to which Additional Protocol I would apply.<sup>62</sup> Most of the conflicts children are involved in

---

<sup>59</sup> Meurant, J, (1981), “Action by the International Committee of the Red Cross in the event of breaches of International Humanitarian Law,” in *International Review of the Red Cross*, March-April, pp:1.

<sup>60</sup> Protocol I and II, 145, art. 77(2) and art. 4(3) (C), respectively; Convention on the Rights of the Child.

<sup>61</sup> L. Wells., *op cit.*, p. 287.

<sup>62</sup> Chen Reis, *Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in*



today are internal in nature and because of the high threshold issues in Additional Protocol II, children participating in internal conflicts cannot benefit from it. Also, Additional Protocol II is rarely ratified by the State in conflict, and Common Article 3 of the four Geneva Conventions places no restrictions on the recruitment or participation of children in armed conflict. International humanitarian law's limited scope prevents it from protecting the world's most vulnerable children, child soldiers, while human rights instruments adopted to make up for these limitations lack enforcement mechanisms, therefore rendering the much-needed protection for child soldiers inadequate.

#### **4.2 International Criminal Court (ICC)**

Besides international humanitarian law, human rights law, and labor law, regulating the use of child soldiers in armed conflict; international criminal law plays a vital role in punishing those that violate these rules<sup>63</sup>. The Rome Statute of the International Criminal Court (ICC) is one of the instruments created by the international community that pertains to a child soldier's legal status and addresses criminal acts that are not limited by territorial boundaries. The Rome Statute gives the court the jurisdiction to prosecute anyone who conscripts or enlists children below fifteen years of age or uses them to participate actively in both international armed conflicts and internal hostilities.

The "commanding authority doctrine," codified in the Rome Statute, gives the ICC's jurisdiction to reach those who order children to commit crimes. The question as to whether child soldiers committing crimes are victims or criminals is one issue with which the international community has had to struggle. This is an uneasy question because of the uncertainty of where international law, humanitarian law, and human rights law stands in relation to this matter. This uncertainty and lack of clarity is based on the premise that children cannot form the requisite mens rea to commit crimes of genocide, war crimes, or crimes against humanity.

Adding to this is the fact that the international community prefers rehabilitation as a way of handling child soldiers as opposed to taking a punitive approach.<sup>64</sup> The United Nations

---

Internal Armed Conflict, 28 Colum. Hum. Rts. L. Rev., 629, 637 (1997).

<sup>63</sup> Daryl A. Mundis, The Creation of New Ad Hoc International Criminal Tribunals and Other International Efforts to prosecute Violations of International Humanitarian Law, 35 Int'l. Law 631, 633 (2001);

<sup>64</sup> Article 5 of the U.N. Standard of Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) of 1985.

Secretary General's proposal to create a special "juvenile chamber" in the Sierra Leone Special Court, which would prosecute those between fifteen and eighteen years of age that had committed war crimes, was severely criticized by nongovernmental organizations and human rights groups, resulting in its quick withdrawal.<sup>65</sup> The withdrawal of this proposal largely shows that the international community would rather categorize child soldiers as victims and not criminals. On the other hand, those who have suffered atrocities at the hands of child soldiers often need to see their perpetrators held accountable in some way or another. For example, after the Rwanda genocide, public opinion favored holding children responsible. Many Rwandans believed that if a child was mature enough to distinguish between a Tutsi and a Hutu and commit murder, then a child was mature enough to be punished.<sup>66</sup>

Nevertheless, Article 26 of the ICC Statute<sup>67</sup> provides that no one under eighteen years of age at the time of commission of a war crime, crime against humanity, or genocide shall be tried in the tribunal. This presumably means that an eighteen-year-old, who is considered a minor under international law, may volunteer to fight in combat and knowingly commit a war crime, and yet not have to suffer criminal liability. However, supposedly, this does not stop any state from prosecuting those who have committed war crimes when they were under eighteen-years old in their domestic courts.

In the past two decades, there has been a number of crucial initiatives to end impunity for grave violations against children. The Rome Statute of 1998, which established the International Criminal Court (ICC) in 2002, recognized "conscripting or enlisting children under the age of 15 and using them to participate actively in hostilities" as a war crime. Since the Statute came into force, crimes committed against children during armed conflict have figured prominently in indictments issued by the ICC in the Democratic Republic of the Congo, Uganda, and the Central African Republic<sup>68</sup>.

In the first case before the Court, Thomas Lubanga Dyilo, a former warlord from eastern DRC was found guilty on the charges of recruiting and using child soldiers under the age of 15 in the Ituri conflict from 2002 to 2003. The International Criminal Court's

---

<sup>65</sup> Bruce Zagaris, U.N. Considers Potential of Prosecuting Minors for War Crimes in Sierra Leone, 16 No. 11 Int'l. Enforcement L.Rep. 1020 (2000)

<sup>66</sup> Daryl A. Mundis, *op cit.*, p.631

<sup>67</sup> Article 26 of the Rome Statute

<sup>68</sup> Mendes, E.P., 2010. Peace and justice at the International Criminal Court: A court of last resort. Edward Elgar Publishing Ltd.: Cheltenham.

conviction, in March 2012, of Thomas Lubanga was an important step towards ending impunity for such crimes. However, at national level, the Congolese authorities have consistently failed to effectively investigate and bring to justice those suspected of recruiting and using children in hostilities. The ICC recognized in its judgment, that the distinction between voluntary and forced recruitment is artificial and recognized the broader interpretation of the definition of child soldiers to include girls and boys who serve in support roles<sup>69</sup>. In this sense, the judgment set important international jurisprudence on the crime of recruiting child soldiers and set a precedent for future cases and prosecutions in national courts.

The trial against alleged Congolese warlords Germain Katanga and Mathieu Ngudjolo Chui commenced on 24 November 2009 and was the ICC's second trial. Katanga and Ngudjolo Chui were accused of war crimes and crimes against humanity allegedly committed in the village of Bogoro in the Ituri district of eastern DRC from January to March 2003. They were tried for alleged murder or willful killing, inhumane acts, sexual slavery, rape, cruel or inhuman treatment, using children to participate actively in hostilities, outrages upon personal dignity, intentional attack against the civilian population, pillaging and destruction of property.<sup>70</sup>

On 18 December 2012, Ngudjolo Chui—who the prosecution alleged was the leader of a Lendu militia group active in the Ituri region of eastern DRC—was found not guilty the charges brought against him. Judges stated that the prosecutor had failed to present sufficient evidence to prove beyond all reasonable doubt that Ngudjolo Chui was responsible for the commission of the alleged crimes during the attack on Bogoro village. This was on the basis of insufficient evidence having been presented by the prosecution that Ngudjolo Chui was the commander of Lendu combatants during the attack and due to certain key witnesses being found not to be credible. The Judges emphasized, however, that their decision did not mean that no crimes were committed in Bogoro or that the people of the community had not suffered in the attack. The Chamber ordered the immediate release of Ngudjolo Chui. However, Katanga found guilty, acquitted of sexual and child soldiers crimes<sup>71</sup>.

---

<sup>69</sup> 'Rome Statute of the International Criminal Court', United Nations, 1998, <http://untreaty.un.org>.

<sup>70</sup> Silva, J. R., 2008. Child soldiers: A call to the international community to protect children from war. *Suffolk Transnational Law Review*, 31, pp. 681-710.

<sup>71</sup> *Ibid.*

### **4.3 Disarmament, Demobilisation and Reintegration (DDR)**

The initial framework for the peace process and the DDR of combatants in the DRC was founded in the 1999 Lusaka ceasefire agreement that supposedly ended the second Congolese war. This accord focused on the withdrawal of foreign regular and irregular armed groups from the DRC. It stipulated that foreign armies were to return to their countries of origin and that foreign armed groups, including former Rwandan army elements and the Hutu-militia, were to be disarmed by the UN mission (MONUC), repatriated, and processed through respective receiving the existing 'loyalist army', would be incorporated into a new national army, the FARDC. It was also agreed that this new army would immediately undergo a process of integration (fusion and restructuring) that would involve: (i) the reduction of numbers through an offer of voluntary demobilization, and (ii) the re-training and re-equipping of the remaining forces before re-deployment.<sup>72</sup>

The Disarmament Demobilisation and Reintegration (DDR) process is an important process in dealing with child recruited into armies of rebels. However, it has several shortcomings. Firstly, many peace processes in Africa now include some form of DDR operation, efforts to bring perpetrators of war crimes and human rights violations to justice tend to lag example Alpha Fall and the ICTJ. The lag comes because DDR is considered immediate security priorities thus peacekeeping missions seek to quickly implement them.<sup>73</sup>

DDR programs benefit ex-combatants while transitional justice initiatives focus on victims. These victims seek accountability, ex-combatants seek to minimize or reduce accountability. DDR and transitional justice efforts have common long-term goals which include: reestablishing the rule of law; rebuilding trust; preventing renewed violence; and reconciling communities. In South Africa, amnesty was used to uncover the truth and foster national reconciliation. In the year 2000, an Amnesty Act was passed in Uganda and by December 2006, 15,000-21,000 LRA soldiers had submitted. In communities where violence had subsided, many people have regarded the amnesty as an important tool for peace and for recovering children who had been kidnapped by the rebels<sup>74</sup>.

According to human rights activists, failing to prosecute those who committed the worst atrocities ignores the suffering of their victims, hinders long-term reconciliation and perpetuates a culture of impunity that can contribute to future abuses. Under international law,

---

<sup>72</sup> Harsch, E, (2007), "Linking Disarmament With Justice," in *Africa Renewal*, Volume 21, Number 3, October, pp:11

<sup>73</sup> Ibid

<sup>74</sup> Ibid

there can be no amnesty for war crimes or crimes against humanity. In the Initial Peace Accord in Sierra Leone (1999), negotiators agreed to a sweeping general amnesty for all the factions and combatants. However, citing international law, the UN specifically disavowed the amnesty provision. A later peace agreement included a limited amnesty but also established a Truth and Reconciliation Commission (TRC) to gather information about atrocities and a special court for Sierra Leone to try a number of those most responsible<sup>75</sup>.

In DRC, the DDR process ought to have been complete before the 2006 elections but the process has been slow due to the of lack of political commitment and many militia commanders are determined to maintain their hold on power to protect their economic interest. Also failure to provide reintegration support to the fighters who opted for the DDR programme is another hindrance to the process.<sup>76</sup> Under the Paris commitments which were passed during the Free Children from War Conference it is acknowledged that the safety of children is the state's responsibility. African signatories are Burundi, Chad, Cote'd'ivoire, Democratic Republic Congo, Somalia, Sudan and Uganda. It also stated that no amnesty should be given and also that child soldiers who have committed crimes should not be regarded only as perpetrators but primarily as victims of violations against international law.<sup>77</sup>

In conclusion, the Disarmament Demobilisation and Reintegration (DDR) programme is a good and important initiative to assist the children who have been involved in war and conflict as perpetrators. However, it would be useless if no funds are allocated to it or if the people in charge of the institutions are the same people who were the commanders in the rebel groups. To these children, it is an extension of the group.

#### **4.4 The Convention on the Rights of the Child (CRC)**

The 1989 Convention on the Rights of the Child (CRC) provides children with protection during times of war and peace. The CRC became the most ratified human rights treaty in history with 191 of the 193 participating nations ratifying it at record-breaking rates. The CRC addresses the use of child soldiers by providing that "State Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child."<sup>78</sup> The "law applicable to them" must include

---

<sup>75</sup> Ibid

<sup>76</sup> Baaz, Maria, and Stern, Maria, (2008) "Making Sense of Violence: Voices of Soldiers in the Congo (DRC)," in *The Journal of Modern African Studies*, pp: 57.

<sup>77</sup> Op Cit Harsch, E, (2007), pp: 33

<sup>78</sup> Convention on the Rights of the Child, art. 38 (4)

not only treaties to which States are parties but also relevant rules of customary international law. Although these rules of customary international law are unclear, both international and domestic laws prohibit certain acts.<sup>79</sup>

Despite the widespread global acceptance of the CRC, several imperfections render it incapable of protecting children in armed conflict. Article 38 has been subject to considerable criticism. First, it is the only provision in the Convention that deviates from the general age limit of eighteen. Specifically, while Article 1 of the Convention defines a child as everyone under the age of eighteen, Article 38 redefines a child as everyone under the age of fifteen for purposes of recruitment and participation in armed conflict. Second, with respect to the prohibition against recruitment and participation, Article 38 is mostly confined to repeating Article 77 of Additional Protocol I of the Geneva Conventions. In so doing, it not only brought nothing new, but could also detract attention from the stronger standard contained in Additional Protocol II of the Geneva Conventions, which provides a more absolute prohibition for the use of child soldiers in non-international armed conflicts.<sup>80</sup>

Furthermore, the CRC has a large number of reservations. Reservations like these weaken the requirements of the CRC. International human rights law, especially that concerning the world's children, becomes meaningless if States bound by it are permitted to pick and chose those provisions they will abide by and those they will not.

In addition, the CRC has no enforcement mechanisms, therefore making its enforceability dependent upon the domestic laws of each nation. However, the CRC has an implementation mechanism that uses a periodic reporting system by the State Parties to the Committee on the Rights of the Child, which monitors implementation of the provisions recognized in the CRC. The Committee can make suggestions and other forms of constructive criticism to the State Party but it cannot punish non-compliance or force compliance even though compliance is requested by the Committee.

In light of the growing awareness and concern within the international community of the plight of children affected by armed conflict, an initiative was taken to campaign for the adoption of an Optional Protocol to the CRC that would raise the minimum age of recruitment and participation in hostilities to eighteen years. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted on May

---

<sup>79</sup> Ibid

<sup>80</sup> Daniel Helle, Optional protocol on the Involvement of Children in Armed Conflict to the Convention on the Rights of the Child, *International Review of the Red Cross*, No. 839, p.797-809 (2000)

25, 2000, generally strengthens protection for children in armed conflict: it establishes an international standard for the employment of children in armed conflict; it codifies a legal norm by which States can be held accountable; it sets a minimum age requirement that makes it more

difficult for governments and non-state actors to fabricate the ages of children employed in armed conflict; it encourages States to implement existing national laws and policies or enact domestic standards that will reflect the standards enunciated in the statute; and it raises public awareness regarding the use of child soldiers.

However, the Optional Protocol is not flawless and most of its pitfalls are on account of its vagueness, which affects its effectiveness.

Article 1 of the CRC, whose wording is repeated in the preamble of the Optional Protocol, stipulates: “For the purposes of that Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.<sup>81</sup> As regards the scope of the obligation in Article 1, two weaknesses must be mentioned.

The first weakness relates to the obligation imposed on States: States have a duty to “take all feasible measures to ensure” that persons who have not attained the age eighteen do not take part in hostilities. This standard recognizes that, in exceptional circumstances, withholding or withdrawing soldiers eighteen years of age or younger will not be “feasible.” As interpreted in law of war treaties, including Geneva Protocol I, the term “feasible” has been understood to mean that which is practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. This Article would have provided children better protection if States had undertaken to “take all necessary measures.”<sup>82</sup>

The second weakness relates to the extent of the protection provided children against being involved in hostilities. Specifically, children who have not attained the age of eighteen are protected from taking a “direct part in hostilities.” This text, as mentioned above, is

---

<sup>81</sup>Ibid;

<sup>82</sup> Michael J. Denise, Newly Adopted Protocols to the Convention on the Rights of the Child, 94 Am. J. Int’l L. 789, 791 (2000).

weaker than the corresponding clause in Additional Protocol II, which precludes all participation by stipulating that children shall not be allowed to “take part in hostilities.”<sup>83</sup>

Article 3<sup>84</sup>, seen as a big achievement, raises the minimum age for voluntary recruitment from fifteen to sixteen years of age, in accordance with the declaration to be submitted by States upon ratification or accession to the Optional Protocol. As noted, these declarations may be strengthened at any time but not weakened. Therefore, a declaration can only be withdrawn in favor of a declaration specifying a higher minimum voluntary recruitment age into the government armed forces and not a lower one. Although raising the age limit from fifteen to sixteen years is a welcome development, Article 3 weakens the protection provided by the entire Optional Protocol, especially Article 2<sup>85</sup>, because, in practice, determining whether child soldiers have been voluntarily recruited may be difficult.<sup>86</sup>

#### **4.5 African Charter**

In 1990, the Organization of African Unity adopted the African Charter on the Rights and Welfare of the Child. The Charter, in no uncertain terms, offers protection to children involved in armed conflict by providing that “State Parties to this Charter shall undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflicts which affect the child.<sup>87</sup>” State Parties are also instructed to “take all necessary measures to ensure that no child shall take a direct part in hostilities and shall refrain, in particular, from recruiting any child.”<sup>88</sup> Although the Charter is only a regional instrument, it is far more reaching than the Convention on the Rights of the Child (CRC.)<sup>89</sup> Unlike the CRC, the Charter recognizes that a child is anyone below eighteen, including those involved in armed conflict.

---

<sup>83</sup> Ibid.

<sup>84</sup> Convention on the Rights of the Child

<sup>85</sup> Ibid

<sup>86</sup> Ibid pg 792,793,paras. 31-32, 118-24

<sup>87</sup> African Charter 22(1)

<sup>88</sup> Ibid, 22(2)

<sup>89</sup> Convention on the Rights of the Child, art. 45 (d)



Also, unlike Additional Protocol II, the Charter applies to internal skirmishes, tension, and strife and therefore recognizes that the rights and welfare of a child are of more value than the type of conflict they are involved in<sup>90</sup>. Moreover, the Charter uses stronger language (necessary measures) than the CRC (feasible measures) in ensuring State Parties' protection of children involved in armed conflict. The Charter's implementation mechanism, which is very similar to that of the CRC in that it has a similar reporting system, accepts complaints from non-party States, individuals, organizations, and non-governmental organizations.<sup>91</sup>

Despite its good intentions, the Charter has shortcomings. First, the Charter is only binding on States that have ratified it. Second, "Any custom, tradition, cultural, or religious practice that is inconsistent with the rights and obligations contained in the present Charter shall to the extent of such inconsistency be null and void." This provision leaves it open for State Parties to use cultural or religious inconsistencies with the African Charter as a pretext for non-compliance with the Charter. Regardless of these shortcomings, the Charter compliments the CRC and international humanitarian law concerning child soldiers, in particular those involved in internal conflicts.

In conclusion, the African Charter is the only regional law in the world which protects child soldiers yet it has not been implemented in any of the countries in Africa. The question that needs to be answered then is why states fail to implement the laws despite ratifying and acceding to them. The other view would be give more mandate to the regional bodies and the United Nation (UN) so that they are able to ensure compliance with the laws enacted.

#### **4.6 Conclusion**

The laws that have been enacted to protect child soldiers are more than enough. International law and policy cover considerable ground in their efforts to eradicate child soldiering and promote the well-being of current and former child soldiers. States adopt treaties and instruments, while also endorsing principles and declarations. Experts issue reports. Organizations draft best practices and "how to" guidelines. Authorities prepare model interventions. Although international interventions have helped reduce specific incidents, the practice of child soldiering still persists. It may shift locally, and abate here and there, but it endures globally. Preventative measures, therefore, remain inadequate.

---

<sup>90</sup> Op. cit., African Charter 22(3)

<sup>91</sup> Ibid 43(1)

All that needs to be done is to ensure that they are implemented to the letter of the words. As development of international law concerning child soldiers' progresses on paper, progress on the ground lags behind, thus creating a gap between progress in the law and the enforcement of this law on the ground.

The international community has undertaken considerable efforts to eradicate the scourge of child soldiering as discussed herein. Mostly, though, these efforts replay the same narratives and circulate the same assumptions. The international community needs to take steps to bridge the gap between progress in the law and the enforcement so that the practice on the ground is at par with the law.

## CHAPTER FIVE:

### CONCLUSION

The number of armed conflicts in Africa is unbelievable. The main reason behind these conflicts is power. The Africans leaders just reaffirm the realist way of thinking that in this world we all working towards getting power since it means everything. Power is denoted in various ways and in particular by getting hold of the resources that are the main source of income. Thus, the search for resources is secondly to the search for power. By attaining power, then it means that you have managed to control the resources in this country. The worst about the want for power is that the ends justify the means and therefore one does not really mind the means of attaining it even if it means the use of children to achieve his/her objectives.

In seeking to ensure that the consequences suffered by child soldiers are addressed, the sources of obligation must be clarified and those responsible for addressing the consequences should be identified. Unfortunately, international law is not always clear in this area. In addition, questions that cannot be answered once and for all are questions like who should intervene, when and how. The responsibility to protect or respond to the needs of child soldiers falls on States and non-governmental entities, who may be parties or adherents to international instruments, parties to the conflict, subjects of national law, and others who are bound by customary international law. However, fulfillment of the formal requirements is complicated by the lack of political will and the availability of only limited resources because of conflicts. Certain obligations like physical integrity, humane treatment, and freedom from torture are never dependent on the availability of resources but must be fulfilled by all parties concerned.

Addressing the consequences of child participation in armed conflict takes place both at national and international levels. For instance, dealing with psychosocial and physical consequences of children's participation in conflict usually takes place at the national and community level. Nonetheless, international legal obligations do offer general principles and a framework for action.<sup>92</sup> The two 1997 Additional Protocols require parties to the conflict to provide children "with the care and aid they require, whether because of their age or any other

---

<sup>92</sup> Susan Shepler, *The Rites of the Child: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone*, 4 J. HUM. RTS. 197, 198 (2005)

reason.” The reference to ‘age or any other reason’ may be interpreted to include trauma due to recruitment; thus, this may imply that there is an obligation on parties to provide rehabilitative services. The CRC further confirms States’ obligations by providing that, “State Parties shall take all appropriate measures to promote the physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.” “Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” In practice, however, providing rehabilitation services to ex-child combatants is not that easily achieved since conflict often coincides with the breakdown of community programs and support systems<sup>93</sup>.

The development of international standards concerning the involvement of children in armed conflict has been significant. The widespread acceptance of the Optional Protocol on the Involvement of Children in Armed Conflict has been a big step forward. However, despite these developments, protracted conflicts and the threat of new ones still call for vigilance and commitment from the international community. Therefore, implementation, reporting, and monitoring mechanisms of existing laws protecting child soldiers need to be strengthened and more practical. These laws need to be enforced to their full measure. Most important, the gap between the developing law and practice on the ground needs to be narrowed by addressing the root causes of child soldiering. This can be achieved by: One, understanding the context in which children become soldiers and using the practical knowledge gained concerning child soldiering to identify practical solutions; Two, building bridges and networking with relevant authorities who have a better understanding of what drives a particular conflict or armed group; and Three, sticking around long enough to see if preventative or responsive interventions work. In so doing, the international community will get a better understanding of the root causes of child soldiering, develop a strong network at both national and international levels that can play a big role in influencing compliance from armed groups, and gain a better understanding of which preventative and responsive programs work, which will help guide implementation of future programs and assistance for war-affected children. Only when the socio-political environment of the child soldier is taken into account will the international community be able to formulate policies that can truly address the problem<sup>94</sup>.

---

<sup>93</sup> Ibid.

<sup>94</sup> P.W. Singer, *Talk is Cheap: Getting Serious about Preventing Child Soldiers*, 37 *Cornell Int’l L.J.* 561, 573 (2004).

All of these developments are encouraging, but they have not been enough, as documented violations reveal a disconcerting gap between commitments made to end the use of children in conflict, and the reality of current recruitment practices. In fact Child Soldiers International has consistently observed that child recruitment continues even in countries that are fully committed to ending this practice, including in those that have concluded Action Plans with the UN. This is the case for six of the eight state armed forces that continue to be listed by the UN.<sup>95</sup>

Chad is emblematic of this gap between commitment and practice for the last 10 years, the government has taken ostensible steps to end the use of child soldiers. In 2002, Chad declared 18 as the minimum age for enlistment into its armed forces when it ratified OPAC. Accordingly, its 2006 Law on the Reorganization of Armed and Security Forces sets the minimum age for recruitment at 18 – which unfortunately did not prevent thousands of children from being used in the conflicts unfolding in the mid-2000s. Military instructions which reflected this minimum age were then issued by the Minister of Defence in 2006 when, at the height of the conflict, Chad was facing international pressure to tackle the issue of child soldiers. From 2007 to 2011, the government and the UN implemented a national program to release and reintegrate children associated with armed forces or groups – over 1,000 children benefitted from this program. In June 2010, Chad hosted a regional conference on “Ending Recruitment and Use of Children in Armed Forces and Groups”; along with five other countries, it signed the N’Djamena Declaration to end child recruitment in the region. Finally, the adoption (in 2011) of the Action Plan on children associated with armed forces and groups, with its full set of preventive measures, represented the most promising step taken by the Chadian government to put an end to the recruitment and use of children in Chad. As the conflict was coming to an end in 2010, as children were being demobilised from fighting forces, and after the Action Plan was signed, many assumed that Chad had successfully resolved the child soldier issue. But when put to the test, these commitments made and these standards adopted didn’t translate into practical safeguards. In effect children continued to be at risk of recruitment and, predictably, dozens of children were formally – but unlawfully – enlisted into the army in 2012 during a nationwide recruitment campaign. To make matters

---

<sup>95</sup> Afghanistan, Chad, DRC, Myanmar, Somalia, South Sudan.

worse, the looming participation of Chadian troops in the armed conflict in Mali raised the prospect of these children being deployed in hostilities abroad<sup>96</sup>.

Demobilization, rehabilitation and reintegration programs can contribute to the practical prevention approach, which tackles the immediate risk of child recruitment. For example: One, information gathered on a case-by-case basis during the release, temporary care and reintegration of children could reveal a great deal about the way in which each child has been recruited and precisely where protection mechanisms failed him or her. This information can in turn strengthen protection mechanisms upstream. Two, the age verification methods that are developed to identify and release children from armed forces and armed groups could also be transferred and used upstream, to set up effective military recruitment procedures to prevent underage recruitment. These are just two examples to encourage us all to think of prevention and cure as two sides of the same coin in order to tackle the problem at both ends and provide more durable solutions.

Clearly, rehabilitation and reintegration programs can play a crucial role in the prevention of child recruitment because they assist greatly in addressing some of the root causes. For example via: psycho-social support to former child soldiers and their families and communities; the provision of income-generating activities; support to access education and vocational training; community-level awareness raising of children's rights; etc. The DRC is one example of what is often called "the revolving door of child recruitment". And more needs to be done to exploit the potential preventive role of rehabilitation and reintegration programs.

It is an utmost humanitarian priority for states and armed groups to ensure that children in their forces are demobilized and provided with appropriate assistance for their physical and psychological recovery and their social reintegration. In addition, responsive programs dealing with the psychosocial and physical consequences of child participation in conflict should be developed and executed. In developing these programs, incorporation of traditional practices, values, and beliefs should be considered. Programs or policies that offer

---

<sup>96</sup> Francis, J. D, (2012), "'Paper Protection' Mechanisms: Child Soldiers and the International Protection of Children in Africa's Conflict Zones," in *The Journal of Modern African Studies*, Volume 45, Number 2, June, pp: 207-231.

incentives for child soldiers to demobilize and reintegrate are important and help reduce delinquency and dissatisfaction of former child soldiers.

Education, as part of the demobilization and reintegration package, would help former child soldiers reenter society and would give them purpose. Article 28 of the CRC<sup>97</sup> recognizes a child's right to education, and obliges State Parties to take various steps to ensure that the right is achieved, "progressively and on the basis of equal opportunity." Unfortunately, most child soldiers that have spent their school-age years as combatants are likely to be more interested in earning money once they hand over their guns. In such cases, programs that provide vocational training, industrial skills training, or agricultural skills training should be designed and executed. Such skills training combined with a loan enable them to establish their own businesses and financial independence, thus bringing about successful reintegration in society<sup>98</sup>.

Forgiveness and reconciliation are also a step that should be considered when dealing with reintegration and rehabilitation of former child soldiers. Most child soldiers commit heinous crimes against civilians, including family members and neighbors during conflicts. Former child soldiers' reintegration into society and transition to civilian life is obviously difficult for both the victims and the child soldiers. Former child soldiers need to be forgiven by society, and this can be done through efforts to help community members understand that child soldiers are also victims. National level policy initiatives to ensure amnesty, family reunification, and follow-up social support should be initiated in the name of reconciliation and psychological healing. Public acknowledgment of human rights violations is an important step toward national reconciliation.<sup>99</sup>

The growth and development of children are continuing processes that require essential nutrients, psychological stimuli, and social interactions. Obstacles that interrupt or block this normal progression can have serious implications on the physical and mental well-being of a child. The recruitment and abduction of children into armed forces is one of the most disruptive obstacles to the healthy development of children. Children that are recruited are

---

<sup>97</sup> Convention on the Rights of Children

<sup>98</sup> Alcinda Honwana, *Innocent & Guilty: Child-Soldiers as Interstitial & Tactical Agents*, in *Makers & Breakers: Children & Youth In Postcolonial Africa* Pg. 31-37

<sup>99</sup> *Ibid*

robbed of a normal life and are denied a normal education, which is essential for their development and promotion of self-esteem.