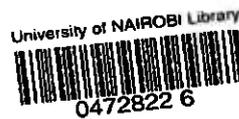


CONFLICTS IN AFRICA AND THEIR EFFECT ON THE
RIGHTS OF CHILDREN – A CASE STUDY OF RWANDA –
1990 – 2004

IKIARA, JACOB MWORIA

A RESEARCH PROJECT IN PARTIAL FULFILMENT FOR
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UNIVERSITY OF NAIROBI
EAST AFRICANA COLLECTION

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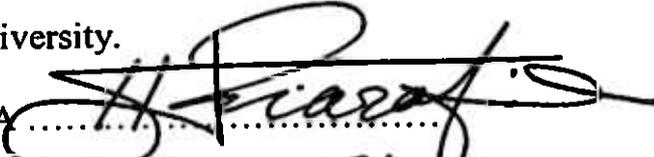
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DECLARATION

This Research Project is my original work and it has never been presented for examination in any other university.

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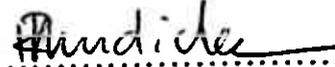
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DATE.....


8/11/2006

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My sincere thanks go to my supervisor Mr. Robert Mudida under whose guidance I have been able to complete this project. To my lecturers, who through discussion gave me motivation to carry on. Special thanks to my wife Zipporah whose moral support I appreciate very much and to my sons Wilfred, Nelson, Daniel for their encouragement during difficult times.

DEDICATION

This work is dedicated to my wife Zipporah for her tireless support, also to my son Wilfred in helping type the work, Nelson and Daniel for their encouragement and understanding during difficult times.

LIST OF ABBREVIATIONS

1. U.N - UNITED NATIONS
2. U.N.H.C.R.C - UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILDREN
3. I.C.R.C - INTERNATIONAL COMMITTEE OF THE RED CROSS
4. U.N.I.C.E.F – UNITED NATIONS CHILDREN’S FUND
5. R.P.F. – RWANDESE PATRIOTIC FRONT
6. D.P.K.O – DEPARTMENT OF PEACE-KEEPING OPERATIONS
7. U.N.H.C.R – UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES.
8. I.L.O – INTERNATIONAL LABOUR ORGANISATION
9. U.N.E.S.C.O – UNITED NATIONS EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANISATION.
10. W.H.O – WORLD HEALTH ORGANISATION
11. ICTR – INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
12. U.N.A.M.I.R-UNITED NATIONS MISSION FOR RWANDA
13. A.U –AFRICAN UNION
14. O.A.U-ORGANISATION OF AFRICAN UNITY
15. U.N.H.C.H.R-UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
16. U.N.A.M.I.R-UNITED NATIONS ASSISTANCE MISSION TO RWANDA
17. A.L.I.R-THE ARMY FOR THE LIBERATION OF RWANDA

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ABSTRACT

The growth and development of international law on the rights of children has not been matched by practice especially in armed conflict situations. Children experiences difficulties due to their vulnerability and also because the rights have to be enforced on their behalf. The aim and objectives of this research project is to determine the extent to which their rights are violated given the nature of armed conflicts in Africa and more so in post- cold war era.

The study is going to elicit debates in academic circles given that new approaches are vital in addressing the challenges of armed conflicts on the rights of children not only in Africa but globally. It will contribute to the re-definition, and development of international law principles on rights of children and the criminal responsibility for those violating the rights. The approaches to the policy formulation and implementation of the rights of children, depends on research and development to which this research will greatly contribute.

The human rights have a historical, philosophical and conceptual framework upon which a wide range of debates have flourished .A critical analysis of this framework with an African perspective will show Africa's contribution to the development of international human rights law. Armed conflicts affects the social, economic, cultural, political aspects of life of communities upon which human rights principles flourish and develops.

The outcome of the research indicates the need for further research in the field of armed conflicts and the legal framework upon which the rights of children are embedded. There a need for a concerted effort by all those involved in addressing the issues of child rights in armed conflicts especially in the designing of policy approaches and implementation for maximum benefits.

However, certain shortcomings were encountered in terms of the scope of the data collection and analysis but nonetheless the findings form a basis for further research and theoretical developments.

CHAPTER ONE

1.0 BACKGROUND

The effects of conflicts in Africa and especially on the children, needs to be understood in the context of the causes of the conflicts as well as their nature. Human rights are based on the social, cultural, economic and political as well as the religious aspects of life that are also the very basis upon which conflicts revolve. The violation of human rights through any form of violence implies trampling on the foundations upon which these human rights principles are founded. The understanding of the conceptual and the theoretical as well as the philosophical basis of human rights principles therefore becomes critical in appreciating the effects of conflicts on human rights under different and changing environments of conflicts in terms of their nature and scope.

Human rights have evolved and developed over the years both in their nature and scope and in different environments. Their theoretical as well as philosophical foundations are perceived differently in different circumstances and hence triggering debates on issues of human rights. However, human rights are universal and inalienable and in the contemporary discourse the phrase “human rights” is used to assert that universal norms or standards that are to all individuals by virtue of being human beings have which no society or state should deny¹. Human rights are viewed from various perspectives which may be ethical, religious, philosophical and legal and therefore different theories of human rights.

¹ J.J, Shestack , *The philosophical Foundations of Human Rights* , 20 Human Rights Quarterly 210,p 1

In contemporary Africa, various scholars and researchers have come up with theories on the causes of conflicts and their effects on human rights, the nature and consequences of conflicts, which are endemic and protracted. There are various theories and approaches to human rights, which have gained significance in analyzing human rights apart from the traditional approaches and perspectives. In Africa, human rights approaches were based on western perspective but researchers and debates on the African perspective to human rights and the contribution of Africa to the growth and development of human rights principles is gaining momentum².

The existing theories on armed conflicts and human rights may not demonstrate the effects of armed conflicts on children, but needs to be analyzed in the context of the conceptual framework. This will indicate the extent of their violations and the inadequacies of the legal basis of these rights.

The African states and governments, apart from being members of the wider international legal framework on international law conventions, have regional instruments based on the unique circumstances in Africa but without derogating the general universal principles of human rights. These include The African Charter on Human and Peoples Rights, The African Charter on the Rights of the Child and the fact that most African states have ratified the international legal instruments on the rights of children. Most African states have ratified international legal instruments on international humanitarian law such as the Geneva Conventions of 1959 and the Additional Protocols of 1977 under which children are protected in times of conflicts. They are also bound by resolutions of the international inter-governmental organizations

² A.M, Cobbah, African *Values and the Human Rights Debate: An African Perspective*, 9 Human Rights Quarterly 309 (1987).

such as the United Nations on matters of human rights and international humanitarian law.

The endemic and protracted conflicts in Africa are a violation of the rights of children which requires the re-examination of the enforcement and observance of the legal provisions contained in these legal instruments³ in order to adequately address the issues on rights of children.

Conflicts in Africa have been perceived by some scholars as due to long standing ethnic and religious hatred over the years while others assume it is due to lack of democracy with violence occurring where there are no opportunities for peaceful resolution of conflicts, for example political disputes. There are those who believe it is due to economic inequalities or the deep rooted legacy of colonialism. However, whatever the causes, all have caused widespread suffering among the African child. Conflicts causes misery, poverty, lack or failure of economic development because once a country stumbles into a conflict, powerful forces tend to lock it into a syndrome of further conflicts or what is termed as conflict trap⁴. The case of Somalia demonstrates the consequences of a country engulfed in a conflict trap because for the more than fifteen years since the overthrow of Siad Barre, all the structures that guarantees the basic fundamental needs of children have been destroyed. The violation of the children's rights is across state boundaries due to the nature and consequences of the conflicts which in the process becomes internationalized⁵. The Greater Horn of Africa and The Great Lakes Region of Africa have for example generated many refugees where children are the worst

³ World Bank, *Breaking the Conflict Trap: Civil Wars and Development Policy* (Washington: World Bank, 2003) pp 53-91.

⁴ Ibid, pg 53.

⁵ M, Mwangi, *Conflict: Theory, Practice and Institutions of Management*, Nairobi, Watermark Publications (2000) pg, 65.

victims, they are internally displaced and become refugees in camps undesirable for the normal growth of children, broken families where children are the most affected, they are recruited as soldiers and used to commit atrocities against their community members, attacked and become victims of violence. Children also suffer in post conflict periods because of the denied and delayed juvenile justice because of the inadequacies in its administration, children are abandoned in streets and engage in prostitution, child headed families increases and their exploitation due to lack of protection, children are denied the parental care and guidance and suffer from HIV/Aids and other diseases.

The effects of conflicts in Africa on human rights in general can be traced from the colonial days through the post-colonial period. Africa has suffered decades of devastating conflicts and wide spread destruction of property and life. Africa has suffered many civil wars and by the beginning of 1990's, it accounted for 43% of the global population of refugees mostly women and children⁶. These conflicts have affected the universal needs for identity, recognition, security, dignity and participation of children, which can only be resolved through alterations in norms, structures, institutions and policies. The violation of human rights generates violence and hence conflicts, often leading to new violations of human rights⁷. The conflicts are generated by the very struggle for the human rights needs driven by economic scarcity, economic policies, and competition for resources which creates tensions and hence conflicts. The overall economic and social consequences of the conflicts on the children include suffering due

⁶S, G, Amoo. *The Challenges of Ethnicity and Conflicts in Africa: The Need for a New Paradigm* U.N.D.P, New York, Jan. 1997.

⁷M, Masese, . *Human Rights Protection "Beyond Intractability"*. (eds) Guy Burgess and Heidi Burgess in Conflict Research Consortium, University of Colorado, Boulder, June 2004 pp 1-15.

to the wars, poverty, starvation, disease, exploitation, oppression and neglect. Out of the 300,000 child soldiers around the world for example, it is estimated that 120,000 of these are African children taking part in wars in Africa⁸. Children suffer psychologically, emotionally, physically leading to continued abuse, oppression and exploitation and hence a denial of the basic fundamental rights as human beings, as citizens and as children⁹.

The African governance systems have been over the years characterized by dictatorships and undemocratic regimes leading to the emergence of the personal leadership phenomena¹⁰ supported by foreign powers for their own ideological, political and economic interests. This gave rise to armed conflicts, for example in Uganda under Idd Amin which caused widespread atrocities especially to children. This generates conflicts in which the children are the main victims through mass killings, sexual exploitation and general lack of basic means of survival and their development like education, shelter, food and parental guidance in hostile environments. Rwanda is a country that suffered the worst atrocities in 1994 in what came to be referred as the Rwanda Genocide and a case that demonstrates the effects of the conflicts on the rights of children. Other comparative cases include the civil wars in Sierra Leone, Liberia, Uganda and Southern Sudan where children have suffered, traumatized emotionally, psychologically, physically and denied access to humanitarian assistance. Children have suffered violations of the rights to life, to health, to education, to an adequate standard of

⁸N, Okwudiba. *Africa Ethnic Conflicts in Africa*, Africa Studies Quarterly, 1998, p 417.

⁹ A, Debbie , *The Future Lost: The Economic and Social Consequences of Child Abuse in Africa*, Africa Economic Analysis, 2005, p. 4

¹⁰H, Gassman, *Political Leaders in Contemporary Africa South of the Sahara* (Westport, Greenwood press) preface xi-xxi.

living and to protection from neglect, oppression, discrimination as well as serving in the military. Conflicts in Rwanda can be termed as structural violence based on the “psycho-cultural factors” forming the root-causes and “the proximate causes” due to the economic, social, political, military structures immediately before the 1994 genocide. The structural factors included poverty, overpopulation and land pressures while the psycho-cultural factors were due to identity, false consciousness, irrational myths, mistrust and fear¹¹ between the Hutus and Tutsis, the two main ethnic groups in Rwanda. During the genocide, children were used to kill their parents or their siblings making them traumatized and stigmatized and therefore affecting their normal growth and development. Up to 1990’s, Rwanda was characterized by an environment of structural violence in terms of social, economic, military and political aspects. By this time, due to the structural adjustment programmes introduced by the Breton Woods, the main cash crop coffee prices had declined leading to economic disruption, there was the threat of civil war against the (R.P.F.) Rwanda Patriotic Front and the fear of domination, there were identity crises between the Hutus and Tutsis due to the long standing ethnic hatred and mistrust as a result of colonialists favoring of the Tutsis. What happened in 1994 in Rwanda is a demonstration of what armed conflict in Africa means on the rights of children despite the existence of an elaborate international legal framework. It is a challenge to the effectiveness of the enforcement mechanism, the role of international community in responding to such conflicts vis-à-vis national interests. The Rwanda case will demonstrate the extent to which the increasing internal conflicts in Africa are a challenge in terms of violation of human rights, the challenges to the state system in

¹¹M, Brown, *“Causes and Implications of Ethnic Conflict”*. M. Brown (Eds) *Ethnic Conflict and International Security* (Princeton University Press) pp 3-27.

Africa, the adequacy or otherwise of the existing international legal framework on the rights and welfare of children, the effects of proliferation of small arms and light weapons and in general the social and economic consequences of armed conflicts.

1.1 STATEMENT OF THE PROBLEM

Conflicts in Africa have affected human rights and especially the rights of children as a result of being endemic and protracted in nature. Children have suffered greatly despite African countries having ratified the major international human rights as well as international humanitarian law instruments. Children have suffered economic deprivation, inequalities, continued marginalization and insecurity and a denial of their basic means of survival in terms of food, shelter, accommodation, health facilities, education and parental guidance, they suffer from HIV/Aids pandemic, abandoned, raped especially the girl child. Children become internally displaced and constitute a greater percentage of the refugees in Africa. The following statistics indicate that the violation of the rights of children in general is a crisis that needs to be addressed. The recent developments in warfare have heightened the dangers for children and in the last decade it is estimated that child victims have include;2 million killed,4-5 million disabled,12 million left homeless; more than 1 million orphaned or separated from their parents and 10 million psychologically traumatized¹².Out of the 300,000 child soldiers in the world,120,000 of them are in Africa.

¹² United Nations Children's Fund, U.N.I.C.E.F.Reports 2003.

The African child has suffered sexual exploitation and abuse, denied justice and non-observance of the rule of law and juvenile justice system. The denial of the basic fundamentals of life means the violation of their rights.

Africa has the highest number of child combatants because of recruitment of child soldiers by both the governments and insurgents contrary to international humanitarian law principles. The law prohibits the recruitment of children below the ages of eighteen years and most African states are signatories to legal instruments guaranteeing this protection. Children in armed conflict areas are used as porters, spies, mine clearance manning road blocks and the girl child for sexual exploitation and as wife's to the combatants¹³.

During armed conflicts, the use of child soldiers is a preferred tactic because they can easily be trained and take orders unlike adults. The availability of small arms and light weapons increases the vulnerability of children since they get used to handling weapons at a tender age, therefore effecting their growth and development. They become psychologically, emotionally, physically traumatized to the extent that post-conflict rehabilitation and re-integration into normal life in society becomes a challenge and hence loss of generations¹⁴.

In situation and environments characterized by armed conflicts, children are brought up in conditions characterized by a breakdown of political, social and economic infrastructure, the delivery of essential services, and maintenance of judicial and legal systems. There is the breakdown of communities and households through death and

¹³ UNICEF-Programme Publications, May 1999, U.N.I.C.E.F Staff Working Papers Evaluation, Policy and Planning Series Number EPP-99-001, *Children in Armed Conflicts*, pp 234-260.

¹⁴ A, Debbie *The Future Lost: The Economic and Social Consequences of Child Abuse in Africa*, Africa Economic Analysis, pp 1-4.

displacement, diseases and loss of economic capacity weakens or destroys children's immediate source of care and protection¹⁵.

Rwanda is a country that has suffered conflicts from the colonial through post colonial periods with devastating effects on children. The country consists of two main ethnic groups-the Hutus and Tutsis-whose relationship has been characterized by periodic conflicts partly as a result of structures established by colonialists which have been the cause of conflicts throughout its history. The conflicts have also been due to psycho-cultural factors related to identity, false consciousness, irrational myths, mistrust and fear¹⁶. By the 1990's the social, political, economic and cultural environment was ripe for eruption of intense conflicts which culminated in the 1994 Rwanda Genocide causing widespread violation of children's rights. The I.C.R.C. recorded about 120,000 unaccompanied children in the aftermath of the genocide through 1996, a conservative figure considering the duration of the war¹⁷.

Ethnic differences also cause conflicts in Africa through ethnic mobilization in power struggles especially in power politics. Children are used in the process and become victims of the struggles. The case of ethnic differences in Rwanda between the Hutus and Tutsi's which led to the 1994 Rwanda Genocide clearly demonstrates the extent to which ethnic violence and conflicts in Africa violates the rights of children.

¹⁵ Op cit,pg 8

¹⁶S, Utterwulghe, *Rwanda's Protracted Conflict: Considering the Subjective Perspective in Conflict Resolution Strategies*, the Online Journal of Peace and Conflict Resolution issue 2.3 /August 1999 pp 1-27

¹⁷ Human Right's Watch Report 2000.

1.2 OBJECTIVES OF THE STUDY

1. To investigate and determine the extent to which the conflicts in Rwanda between 1990 and 2004 affected the rights of children.
2. To investigate and determine how the social, economic and cultural basis of child rights were affected during the Rwanda genocide.
3. To explore the role if any played by children during the Rwanda Genocide.
4. To explore the extent to which international law provisions on human rights and humanitarian law were violated during the Rwanda Genocide.
5. To investigate the human rights position of children in post-genocide Rwanda.

1.3 JUSTIFICATION FOR THE STUDY

This research project is justified on the basis of both academic and policy level dimensions.

At the policy level, the recommendations reached will contribute to the decision making processes on the increasing concerns of the violation of children's rights in Africa during armed conflicts and how children can be protected and their dignity maintained. Some of the atrocities meted against children, for example mass murder, like it happened in Rwanda where children were the targets of extermination in order to eliminate one ethnic group needs to be classified as crime against humanity. This research project will greatly contribute to this debate in international forums. The study will also challenge the issues of legal representation of children in articulating their rights and the juvenile justice system since children lack the legal capacity to represent themselves. Rwanda is the first country to try perpetrators of the genocide who were children at the time of committing the atrocities bringing out the issues of criminal responsibility of children and the need for justice both at the national and international level.

The international legal instruments relating to children are mainly treaty law in which its enforcement depends on whether the state in question has ratified the particular treaty or placed reservations, making enforcement a problem. The issued on the rights of children need to be placed in the realm of customary international law and this project will contribute to the emerging debates in this field.

During armed conflict, children are used by both the governments and insurgents as objects for their own ends and as propaganda tools and therefore a violation of their human dignity and special needs. This means that for proper policy formulations and

implementation, there should be close linkage between the various bodies involved in the welfare of children, for example the civil society, local community groups, governments as well as insurgents despite the challenges that may be encountered.

The growth and development of the international criminal law jurisprudence is fast becoming a reality in which concepts like individual criminal responsibility and definition of crimes against humanity, genocide and war crimes are being redefined with the changing nature of conflicts and challenges. Regarding the effects of armed conflicts on rights of children, the research will contribute in ensuring that children are not compromised and especially due to their lack of legal capacity and legal representation on matters affecting their welfare.

Conflict resolution and management in Africa through peacekeeping operations is one of the major tasks of states and governments. The nature of present day peacekeeping missions is multi-dimensional involving human rights as a component in their operations as well as incorporating the civil society, the military and humanitarian aid organizations. The human rights concerns of children in such environments requires a coordinated approach of all the organizations involved, making this research project vital and therefore contribute to the policy formulation and implementation by the various interest group and organizations involved.

The research findings will critically coordinate the existing theories on the nature and effects of armed conflicts in Africa and especially on the rights of children. It will broaden the meaning and application of the existing principles, concepts, values, guidelines applicable in formulating a legal framework on the rights of children in situations of armed conflict.

There is a lot in terms of research work and debates especially on human rights in the context of African perspective and Africa's contribution to the existing body of knowledge on human rights. This research project will also contribute to this debate and therefore putting into perspective the misconceptions or otherwise of other research findings. It is through challenging of the already existing research findings and therefore new findings that the rights of children in armed conflicts can effectively be addressed on the basis of factual approach. A lot of scholarly work is required in the understanding of conflicts in Africa especially by African researchers to which the findings of this research will immensely contribute apart from being a reference material for scholars and students of conflict management and human rights especially the rights of children. It will strengthen the epistemological orientation on conflict and human rights approaches and especially in the changing perceptions of conflicts and human rights debates in Africa.

1.4. HYPOTHESES

1. Children in Africa suffer the worst atrocities during armed conflicts.
2. Armed conflicts in Africa are a major contributor to the violation of the rights of children.
3. The Rwanda Genocide of 1994 was a challenge to the existing international legal instruments on the rights and welfare of children in Africa.

1.5. LITERATURE REVIEW

The literature on the rights of children by human rights scholars, researchers, child rights experts, the civil society as well as national and international organizations and other stakeholders shall be important in this research proposal. This body of literature when analyzed in the context of the causes and effects of the various types of conflicts in Africa will illustrate the effects such conflicts have on the rights of children. Such conflicts that are due to the structural, underlying, proximate or trigger causes have caused the systematic violation of the rights of children in Africa on a massive scale.

The first part of my literature review will focus on the causes of conflicts in Africa analyzed in the context of their effects on the rights of children. In this part, my concern will be to point out what scholars have written on the effects of conflicts in Africa generally as well as particular country case studies where children have suffered the most.

The second part of the literature review will be on the philosophical and conceptual basis of the rights of children. Here the concern is generally a brief on the existing legal basis of children's rights and their manifestation in environments of various forms of violence. I will also briefly attempt at the African perspective on the emerging human rights debates generally with a bias towards the rights of children and changing nature of conflicts in Africa. As well as the emerging human rights debates.

1.5.1 THE EFFECTS OF CONFLICTS ON THE RIGHTS OF CHILDREN

As earlier pointed, the aim of this section is to look at the existing scholarly works on the effects of conflicts on the rights of children in the general causes of conflicts. General Olusegun Obasanjo¹⁸, points out that Africa is the arena of some of the worst conflicts in the world whose causes include the consequences of the inherited boundaries, ethnic hatreds that undermine and destabilize societies. This means the disruption and destruction of the basis of national cohesion and unity with disastrous consequences on the rights of children in terms of education, health and the right to protection, the recruitment of children by both government and insurgents into the armed forces.

Mwagiru¹⁹ in his analyses of violent conflicts in the Horn of Africa and the Great Lakes Region of Africa has demonstrated how the internationalization of conflicts creates such problems as generation of refugee's children, internally displaced children who are malnourished and lacking in care and protection. The breakdown of the social, economic, cultural structures that support the basis of the rights of children becomes systematically destroyed in the process. Examples include the Somalia Republic classified as a failed state in which thousands of children were internally displaced, their support structures no longer in place. In Northern Uganda, the Lords Resistance Army has been notorious in recruiting child soldiers, sexual exploitation of the young girls who become wives of the soldiers. The conflicts in the Lakes Region have generated

¹⁸O, Obasanjo, *Conflict Resolution in Africa*: I.W. Zartman and F.M. Deng, Brookings Institutions, Washington D.C (1991) Preface.

¹⁹M, Mwagiru, Conflict: *Theory, Practice and Institutions of Management*. Nairobi, Watermark Publications, (200) p 65.

refugees, most of them children who are spread in countries of Congo, Uganda, Southern Sudan and Tanzania.

Gurr²⁰ underscores the significance of class and ethnicity as sources of group mobilization and therefore conflicts in Africa. The conflicts are due to the communal identification, the economic interest and political associations. The role of children in such environments is the realization that identifying with certain ethnic group(s) has certain consequences and so spreads hatred, mistrust perpetuating the violence and therefore continued violation of their fundamental human rights.

Throughout the post-colonial era, Africa has experienced despotic and totalitarianism with the support of foreign regimes. The idea was the “regime security”²¹ by the African leaders, which means the use of all means including suppression of any resistance. In the process of the violence between the regimes and the insurgents, the children play a significant role in terms of their recruitment as child soldiers, spies, in the clearing of mines and so acting as shields, staffing roadblocks and sometimes used to kill their kin and kith as a way of eliminating a particular ethnic group. Out off the 300,000 child soldiers around the world, it is estimated that 120,000 of these are African children taking part in wars in Africa²².

The economic and social abuse of children leads to suffering caused by wars and poverty, ignorance, starvation, disease, exploitation, oppression and neglect. In his

²⁰ T,R,Gurr , *Theories of Political Violence in the Third World* , F.M.Deng and I.W.Zartman (eds) Conflicts Resolution in Africa, The Brookings Institution, Washington D.C.(1991) p 153.

²¹ C,D, Kevin ,and T,Shaw . *Africa's Challenge to International Relations Theory*, F.M.Deng and I.W.Zartman (eds) Conflicts Resolution in Africa, The Brookings Institutions, Washington D.C.(1991) pp 65-111.

²²N, Okwudiba, *Ethnic Conflicts in Africa*. *Africa Studies Quarterly* 1998 p 417.

analysis of ethnic conflicts in Africa, Lederach²³ argues that one should not talk of “ethnic identity”, but Identity conflict”. Ethnic conflicts are due to the unequal distribution of resources within the community and between the individuals. This forms the basis of group mobilization by the elite class and therefore structural violence. In such circumstances, children suffer the worst atrocities because they are denied the basic needs of survival such as food, shelter and clothing a fundamental right of the child.

Brown²⁴ looks at the structural dimensions and their effects in Africa to illustrate ethnic conflicts. The African state is weak and characterized by discriminatory institutions, discriminatory economic systems and unequal development and modernization policies, as well as cultural discrimination because of different values and norms practices. Such structural characteristics create structural violence and a denial of the basic survival needs of children.

Conflicts arise also from problems basic to all populations according to Stedman²⁵. The “tugs and pulls” of the different identities as a result of differential distribution of resources and competition for what is right, fair and just causes structural violence. In the midst of these tugs and pulls the structures that support and ensures the guaranteeing of the rights of children takes a back stage or is not there. Such structures include health and educational facilities.

²³J. Lederach, *Beyond Prescription: New Lenses for Conflict Resolution, Training Across Cultures* (Waterloo, Ontario) 1992 p 50.

²⁴S.J.Brown, and K.M.Schaub, (Eds) *Resolving Third World Conflicts: Challenges for a New Era* (Washington, United States Institute for Peace) 1992 p 15.

²⁵S. J. Stedman, *Conflict and Conflict Resolution in Africa: A Conceptual Framework*, F.M.Deng and I.W.Zartman (Eds) *Conflict Resolution in Africa*, The Brookings Institutions, Washington D.C. 1991 pp 367-399.

Burton's theory²⁶ on the "relationship between basic and development of protracted conflicts" illustrates how and why conflicts arise between individuals and in the international relations. Conflicts are caused by the human behaviors conditioned by needs which are fundamental drives and motivations that cannot be repressed. These human needs are based on "universal and genetic needs" such as the need for identity, food, shelter, clothing or development and unless such needs of individuals are met, protracted conflicts will always be there. Individuals and groups try to pursue these human needs regardless of the consequences and out of the frustrations caused by the unfulfilled needs, conflicts arise. The 1994 Rwanda Genocide was the culmination of a long period of dissatisfaction between the Hutus and Tutsi's over unfulfilled human needs. Such unfulfilled human needs were at the individual as well as societal level to the extent that every possible method was used in achieving them. The frustrations experienced led to the killing of children of one ethnic group in order to wipe out the community and widespread use of children as combatants, manning roadblocks, spies' saboteurs and general camp followers. The first generation human rights are the basic human needs which are original and cannot be suppressed. The values impressed by institutions may however alienate individuals and so violates their rights causing structural violence and further denial of the human needs satisfaction.

The contribution of colonialism to violation of human rights in Africa and by extension to children needs to be viewed from a wider perspective of the social, economic and political developments. Africa has a "right to development" and the African child has a right to share in "the common heritage of mankind and a right to

²⁶J, Burton, (Eds) *Conflict: Human Needs Theory*, Macmillan, London, 1990.

natural wealth and resources in order to meet the right to peace and security²⁷. However, the structural conflicts and violence as a result of unequal international economic order results in unfulfilled needs causing structural violence of the basic needs of children.

According to World Bank, human rights can be guaranteed through individual participatory and democratic policies compatible with ethnic diversity. Increased political stability guarantees political rights and civil liberties, secure property rights and transparent adjudication of disputes arising thereof.

The contemporary armed conflict in Africa is seldom conducted on a clearly defined battlefield. The conflicts takes place in cities and villages with the civilians as the preferred target, there is propagation of terror as a tactic and physical elimination or mass displacement of certain categories of population especially the children as a strategy of eliminating a particular group or community. What follows are breaches of the rights of children which includes mutilation, rape, forced displacement, denial of the right to food and medicines, diversion of aid and attacks on medical personnel and hospitals. They become the means to achieve a strategic goal to the extent that even low intensity conflicts generate enormous human suffering. According to the United Nations Office for Humanitarian Affairs²⁸ it makes it difficult to provide the humanitarian assistance especially where the peace-keeping personnel are also involved in the violation of the rights of children through rape and prostitution.

²⁷L,S, Senghor, Senegalese President speech during meeting of the African experts preparing the Draft African Charter on Human and Peoples Rights in Dakar 28th November to 8th December 1979.

²⁸United Nations Office on Humanitarian Affairs 9U.H.O.H.A. 1999). Respect for Humanitarian Mandates in Conflict Situations, U.N. Publication.

The social struggles in Africa²⁹, and especially in the process of decolonization, have shaped the development of human rights regimes and democratic expansion. This includes the broadened definition of refugees and the principle of non-refoulement. The African Charter on the Rights and Welfare of Children contains the unique needs of the African child which takes into consideration the traditions and culture of Africa but still retaining the general principles of the rights of children. The emergence of ethnic conflicts and the subsequent spreading and variation is dependent on several factors ranging from individual extremism, beliefs and impact of metanorms on individual behavior³⁰ The widespread genocide in Rwanda was in many instances attributed to the Tutsi's trusting the Hutus and those who sought refuge in churches were killed thinking that they were in safe places. Most of those killed were children and women running away from the massacres and also from being forced into participating in the killings. During the genocide, 10,000 to 30,000 Hutu moderates were killed for refusing to take part in the violence. Children were used to kill their parents or their siblings in whom they have been psychologically, emotionally traumatized to the present day. They live with the stigma associated with the killings affecting their normal growth and development. The effect of the individual behavior was also to extend the violence over a wider range of targets and area whose net effect is widespread violation of the rights of children.

The proliferation of small arms and light weapons and the increased armed conflicts within states has caused a lot of suffering to children. The availability of

²⁹P, T, Zeleza, *The Struggle for Human Rights in Africa*. Paul Tiyambe Zeleza and Philip J. McConaughay (Eds) Human Rights, the Rule of Law and Development in Africa (2004) p 26.

³⁰R, Bhavnani and Baker *Localized Ethnic Conflict and Genocide: Accounting for Differences*, University of Michigan, Department of Political Science, August 13th 1999.

firearms makes it easier for children to use the weapons at a tender age and grow up knowing only violence. The recruitment of child soldiers is preferred by both governments and insurgents because children can be molded easily to engage in killings in the process becomes traumatized. Out of the 300,000 child soldiers in the world, it is estimated that 120,000 of these are African children who have been forced and recruited to take part in wars and fighting in some African countries such as Sudan, Sierra Leone, Uganda, Rwanda and Burundi³¹. The participation of children ranges from spying, mine clearance and manning checkpoints, young girls provide sexual services for adult combatants. Since armed conflict does not discriminate in terms of gender or age, child soldiers often suffer greatly from the physical and psychological effects of armed conflicts. They are exposed to the atrocities of murder, torture and sexual abuse.

According to Human Rights Watch³², Rwanda's children have seen the worst of humanity. As a result of the 1994 genocide, there has been a breakdown of the traditional protection structures including the family networks, the judicial system, and education systems with children suffering unspecified atrocities, a violation of their fundamental human rights as children. The net effect is a cycle of abuse and exploitation affecting thousands of Rwandan children. During the genocide, children suffered in terms of rape, torture, slaughter of children who were targeted as a way of eliminating the Tutsi's as a community. The policy was expressed thus-To exterminate the "big rats", the "little rats" had to be killed. This expression indicates that the children suffered the worst of the crimes against humanity in Rwanda. Children witnessed or were used to kill their family

³¹ Anup Shah-*Children, Conflict and the Military in Rwanda*-[Http://www.globalissues.org](http://www.globalissues.org)-2003(cited on 10th February 2006)

³²Human Rights Watch Reports 1999,2000,2001,2002,2003.

members, kill their own brothers and sisters to the extent that violence became part of their life, a disorder exemplified by many children in Rwanda even up-to-date.

After the 1994 genocide, the environment and circumstances under which most of the children found themselves, were even more degrading to their dignity. Many of those below eighteen years were kept in overcrowded prisons where many became sick and even death. The inadequate legal counsel and other due process protections guaranteed under Rwandan and international law makes it even worse because of the delayed justice. Large numbers of children were left on their own due to governments failure to protect them from abuse and exploitation; many also became orphaned in the genocide or the wars as well as due to the scourges of the HIV/Aids epidemic. Those who survived the genocide took advantage of the vulnerable children and exploited them for their labor and denied them property forcing them to the worst environment in the streets only to face the unbearable street life of harassment and starvation.

The reports and interviews conducted between 1995 and 2002³³ with children in Rwanda, child rights experts, social workers representatives and staff of local and international organizations, U.N.I.C.E.F. and the Rwandan government documents widespread violations of the rights of children in post-genocide Rwanda. According to the interviews thousands of the children were arbitrarily arrested and denied prompt access to justice, others abused, exploited for their labor or property or denied education by their relatives or guardians. This made many to migrate to urban centers adopting street life and a life of despair and mistreatment by the authorities.

The International Committee of the Red Cross in its reports has also documented massive violations of children's rights during the Rwanda genocide and noted that

³³United Nations Children's Fund, U.N.I.C.E.F. REPORT 1999, "*The Status of the Child in the World*"

children are the most vulnerable of the victims of armed conflicts situations and their aftermath. Children are protected under the international humanitarian law in that they are considered as protected persons, respect for their life, physical and moral integrity, torture, coercion, corporal punishment, collective penalties and reprisals are prohibited³⁴. The I.C.R.C through its Tracing Agency³⁵ had many missing children in its camps and played the role of uniting families by exchanging family messages and re-uniting families separated by the conflicts. Interviews with the communications office of the I.C.R.C. in Nairobi indicates that when they intervene in armed conflicts, the condition of the children is one characterized by malnourished children, those of children without any knowledge of what is happening and the whereabouts of their parents or brothers and sisters and so traumatized. Children are kept in refugee camps where before initial rescue measures are taken suffered the most. Most children followed the multitude of migrants into Congo, Uganda and Tanzania as refugees where many died on the way or recruited into the forces and engaged in the massacres. There was widespread sexual abuse of the women and the girl child, their moral and physical dignity undermined, and left to fend on their own.

The United Nations Secretary General³⁶ in his report towards the goals adopted at the 1990 summit on children noted that “the world was plunged into a decade of ethnic conflict and civil wars that was characterized by deliberate violence against children on a

³⁴ J.P, Layover, “*Refugees and Internally Displaced Persons-International Law and the Role of the I.C.R.C.*”, International Review of the Red Cross, March-April 1995, no. 305, pp 162-180

³⁵ S, Singer, “*The Protection of Children During Armed Conflict Situations*”, International Review of the Red Cross, May-June 1986, pp 3-36.

³⁶ Koffi Annan.*The Causes of Conflicts and the Promotion of Durable Peace and Sustainable Development in Africa.* 1998 Report to the U.N. Security Council Para 8-11

vast scale..... “He noted that conflicts virtually affect all the social and economic issues affecting the children. Vital health and education services are paralyzed leaving children and women vulnerable to sexual abuse and exploitation, hunger and disease.

The due process of guarantees accorded to children under international human rights law, apply to children accused of genocide as for any other crime. They have a right not to be detained arbitrarily or unlawfully. The primary objective in placing juveniles in an institution should be to provide the “care, protection, education and vocational skills”. In Rwanda, about 14,000 children of between 14 and 18 years continue to languish in overcrowded prisons due to lack of adequate juvenile justice system³⁷. Special Minor Benches in law were established but face problems in that juvenile defendants receive no special due process protections in the justice system. states are encouraged to develop specialized courts and procedures for juveniles, afford children the basic guarantees for a fair trial, including the right to be presumed innocent until proven guilty, to be informed promptly and directly of the charges against them, to have prompt access to legal and other assistance and have their cases heard without delay³⁸. Rwanda is the first country to try people for acts of genocide committed while they were a child which raises the issue of punishment and at the same time the victim’s entitlements to special care aimed at their rehabilitation and re-integration into society. There is the issue of balancing the community’s need for justice against the interests of the child made worse by the scale and horror of the crimes committed. Since the end of the genocide, some 5,000 minors were arrested arbitrarily and most detained in inhumane

³⁷ Human Rights Watch Report, 2000.

³⁸M, Graca, *Impact of Armed Conflict on Children*, G.A.Doc A/51/306, August, 1996,section iv “Reconstruction and Reconciliation”

conditions. In June 2000, U.N.I.C.E.F estimated that 4,000 such minors, all now young adults remained in prison³⁹ for lack of adequate and delayed legal representation.

For purposes of critical analyses of the effects of conflicts on the rights of children, I have chosen to look at the situation of children in two countries of Sierra Leone and Uganda. This will demonstrate the differences and similarities of the basis of violation of child rights in Africa.

The conflict between the Museveni government and the Lord's Resistance Army (LRA) in northern Uganda for the last twenty years is characterized by the use of children in their struggles. According to reports and research by civil society as well as the government sources, children abducted by the rebels are used to kill each other in order to make them accustomed to the habit of killing without fear. Children are normally at the frontline in the battles making them shields of their commanders for a fight they know nothing about. Although the motive of the LRA is to overthrow the Museveni government, it appears devoted most of the time to attacks on civilian's population. They raid villages, loot stores and homes, burn houses and schools and rape, mutilate and slaughter the civilians. The young children are taken after the raids often of the years between 14 and 16 but at times as young as 9 years both boys and girls. Children are tied to one another and forced to carry heavy loads of looted goods. Those who resist or attempt to escape or unable to proceed are killed by other children using crude weapons such as clubs and machetes. The children are normally taken to LRA camps in Southern Sudan and Eastern Congo. The lack of basic needs makes them malnourished and suffers from diseases and hunger. In the camps, children serves the rebels, those young are made to run errands, fetch water and cultivate the land while the girls serve as the commanders

³⁹ U.N.I.C.E.F REPORT 2003.

“wives”. Discipline at the camps is enforced through violence and threats and children are at the disposal of the rebels in terms of their labor, bodies and their lives. They help in raiding villages for food, were used to fight against Sudanese Peoples Liberation Movement and Uganda government and abducting other children. The Lords Resistance Army use of children is an example of a troubling world relying on child soldiers. The proliferation of inexpensive light weapons has contributed to the increased use of children as soldiers⁴⁰. Those children who escape abduction find their villages were destroyed, parents killed or fled to towns.

The effect of the conflicts in northern Uganda is the destruction of the social-economic base of the region because the village schools have been burnt and healthcare facilities raided. The action of the LRA violates the most elementary principles of international humanitarian law. It is a blatant violation of Common Article 3 of the Geneva Convention of 1949, which establishes the minimum rules binding on all parties in internal armed conflicts. Common Article 3 states that people taking no active part in an internal armed conflict (including combatants who are wounded, or who have surrendered or been captured) must be treated humanely and in particular forbids the taking of hostages, the use of murder, mutilation, cruel treatment, torture and humiliating and degrading treatment. The Lord’s Resistance Army’s treatment of children violates the most basic principles of both customary international law and of human morality through their activities of abductions, looting and killing.

Those children escaping from captivity are normally in poor shape, sick and malnourished, depressed and having low esteem. They suffer from sexually transmitted

⁴⁰ G, Machel, U.N. *Study on the Impact of Armed Conflict on Children* G.A., Doc A/51/306, August 1996. Section iv “Reintegration and Rehabilitation”.

diseases including HIV/Aids. The Uganda government often makes use of the escaping children as propaganda tools by displaying their conditions publicly in order to defeat the militias. The northern Uganda today faces an acute humanitarian crisis especially the districts of Guru and Kitgum. There is total collapse of infrastructure, education affected in that schools and teachers are the targets. In 1996⁴¹ an estimated 60,000 school aged children had been displaced and the number of schools fell drastically. Health care systems disrupted affecting the most basic non-emergency services increasing the infant mortality at the rate of 172 per thousand live births.

According to research by Amnesty International and other human rights advocates in Sierra Leone, and interviews with children themselves, more than 5,000 children under the age of 18 years both boys and girls, have fought as combatants in Sierra Leone's internal armed conflicts. Many children, fighting in the rebel forces and governments have been abducted from their homes and families and forced to fight at very young age. The victims have also been perpetrators of human rights abuses, sometimes against their own families and communities. Children are used to carry goods, cook, collect firewood and girls raped and forced into sexual slavery. According to the Special Representative of the United Nations Secretary General for Children and Armed Conflict in Sierra Leone, by September 1999, more than 10,000 children have been serving as child soldiers in various fighting groups. By the time a peace agreement was signed on July 7th 1999, between the government and armed opposition Revolutionary United Front, child rights violations in Sierra Leone were characterized by widespread, deliberate and arbitrary killings, amputations of limbs, mutilation, rape and other forms of sexual violence. The post conflict period was not conducive to the children either, in the care centers, former

⁴¹ Human Rights Watch Report 1997.

combatants are provided with medical treatment, food, education and recreation and psycho-social rehabilitation. Majority of those in these centers suffer from bullet wounds or other injuries, malnutrition, respiratory and skin infections and sexually transmitted diseases including HIV/Aids.

The psychological effects of the conflicts on children are severe. Many have killed, mutilated or raped or have witnessed the atrocities. By 1999, many had limbs severed and rape of girls and women was systematic, often under the influence of drugs. Former child combatants, after disarming and demobilization are aggressive and violent indicating behavioral problems, suffer nightmares, alienation, outbursts of anger and inability to interact socially.

Through resolution 1314 (2000) on Children and Armed Conflicts of 11th August 2000, the U.N Security Council⁴² underlined “the importance of giving consideration to the special needs and particular vulnerabilities of girls affected by armed conflicts, including inter-alia those heading households, orphaned, sexually exploited and used as combatants” and urged that “their human rights protection and welfare be incorporated in the development of policies and programmes including those for prevention, disarmament, demobilization and re-integration”.

The recruitment and use of children under 15 years as combatants is prohibited by both international human rights law and international humanitarian law. Use of child combatants violates the rights as enshrined in the U.N. Convention on the Rights of Child of 1989 ratified by Sierra Leone on 18th June 1990 by depriving them of a family environment, education and basic health care.

⁴² United Nations Security Council, Children and Armed Conflict, 2000.

The U.N. Committee on the Rights of the Child 2000 Report⁴³ on Sierra Leone expresses “its deep consternation at the very high number of children who have been forcibly recruited into the armed forces, including children at least as young as five years old and who have been forced to commit atrocities against other people, including other children and members of their community”. The Committee noted that it was “deeply saddened by direct effects of the armed conflicts on all child victims, including child combatants and is concerned with the tragic loss of life and severe psychological trauma inflicted upon them”. According to the Save the Children-Sierra Leone, hundreds of thousands of children still are displaced and living in internally displaced camps, with relatives or in poor quality housing in the towns. They suffer breakup of their families and communities, with their mutual support systems, the loss of their home, property and often access to education and health services. During the eight year conflict 1991-1999, more than 15,000 children were attached to the fighting forces many as a result of forcible abduction.

The literature review so far has been on the effects of conflicts in Africa generally on children and more so during the Rwanda genocide of 1994. I have also included two additional cases of Sierra Leone and Uganda for purposes of an understanding off what is happening in conflict prone areas of Africa in as far as the rights of children are concerned.

⁴³ United Nations Commission for Human Rights Report, 2000.

1.5.2. LITERATURE ON THE PHILOSOPHICAL AND CONCEPTUAL BASIS OF THE RIGHTS OF CHILDREN.

The principal legal basis of the rights of the children is enshrined in various international legal instruments and subsequently domesticated by the state parties to these instruments. The United Nations Convention on the Rights of the Child⁴⁴ is the principle international legal instrument on the rights of children. African states and Governments adopted the African Charter on the Rights and Welfare of the Child⁴⁵ in recognition of the unique needs of the African child but still embodying the principles of United Nations Convention on the Rights of Child. The U.N. General Assembly regularly adopts resolutions aimed at strengthening the principles of children's rights based on the works of its specialized organizations for example the U.N.H.C.R, U.N.I.C.E.F. The U.N Security Council also passes and adopts resolutions in declaring certain armed conflicts as crimes against humanity, genocide, violations of international human rights and international humanitarian law principles. Many of the African states and governments have ratified the legal instruments and domesticated them into their national laws making the use of children in armed conflict a violation of their fundamental rights. The African Charter on Human and Peoples Rights, in its preamble takes into consideration "the

⁴⁴ The United Nations Convention on the Rights of the Child, 1989.

⁴⁵ The African Charter on the Rights and Welfare of the Child, 1990/1999.

values of their historical tradition and the values of African civilization which should inspire and characterize their reflections of the conception of human rights". The preamble to the African Charter on the Rights of the Child reaffirms the state parties' adherence to the principles of the rights and welfare of the child contained in the relevant legal instruments on the rights of the child.

Human rights are universal in nature; it is what people possess by virtue of being human. A right is a term that can describe a variety of legal relationships. It can mean an entitlement, immunity from having a legal status altered. It sometimes indicates a privilege to do something or a power to create a legal relationship⁴⁶. The emphasis of the United Nations' Charter on respect for fundamental human rights and human dignity without any form of discrimination created the foundation for universalisation of a broad score of human rights.

⁴⁶J.J. Shestack, *The Philosophic Foundations of Human Rights*, 20 Human Rights Quarterly 210(1998) pp 1-15.

1.5.3 HUMAN RIGHTS DEBATES-THE AFRICAN PERSPECTIVE

The African social organization clearly reveals the cohesiveness of the African society and the importance of kinship to family life. Africans do not have the concept of nuclear family and operate within the broader arena of extended family. In the context of African community set-up, respect, restraint, responsibility and reciprocity were the basis of relationships from the youngest to the oldest in society. Individual rights were always balanced against the requirements of the group. The concept of responsibility offered a network of security as well as imposing the burden of obligations and the dignity of individuals and the community. Checks and balances, a relationship that ensured that rulers did not become dictatorial marked the African political systems. Through the communal system, the minimum economic rights in the context of group solidarity and collective responsibility were guaranteed, unlike the western theories that advance human motivation on self-interests.⁴⁷ Since African states are members of the United Nations and other relevant institutions it is assumed that, they accept the foundations for human rights promotion and protection elaborated therein.

The inability to guarantee the human rights provisions in Africa has been due to several factors. At the institutional level there are no provisions made for the social-economic and cultural rights to support the basic needs of individuals and community. This is due to the factor of underdevelopment necessitated by the neocolonial development strategies. The right to “self-determination” in Africa has acquired the

⁴⁷ Cobbah J.A.M. *African Values and the Human Rights Debate: An African Perspective*, 9 Human Rights Quarterly 309 (1967) pp 15-18.

meaning of the incumbent ruling class determining what and for whom “development” means or is meant for. The rights of the people to participate in governance, a right to which they are entitled to, is hampered by the low level of consciousness to achieve these objectives because of alienation from the mainstream of governance. Most of the population is ignorant of the law and therefore the majority cannot pursue the notions of equality before the law and equal protection. The principles of the rule of law, which implies respect for fundamental human rights, democracy and the imperatives of obedience to the law is influenced by the arbitrariness of the principle of separation of powers between the executive, judiciary and the legislature⁴⁸.

Human rights struggle in Africa have been the products of concrete social struggle for the political as well as social-economic rights. African scholars have argued that the continents own histories of struggle and human rights preoccupations are also distinct from other environments and that Africa has contributed to the field of human rights. This includes such areas as the right to self-determination and the broadening of the definition of refugee and the principle of non-refoulment in the refugee law. The concept of people’s rights as opposed to that of human and the expansion of the traditional scheme of human rights to embrace third generation rights such as the right to development⁴⁹.

The ideal environment for guarantee and enjoyment of the fundamental human rights is one of peace and harmony. The existence of any form of violence implies humankind is not able to obtain the social goals vital for his existence as an independent human being.

⁴⁸ O. E. Osita, *Human Rights Issues and Violations: the African Experience*, George W. Shepherd, Jr and Mark O.C. Anikpo (Eds) *Emerging Human Rights: The African Political Economy Context* (1990) pp 18-26.

⁴⁹P,T, Zeleza, *The Struggle for Human Rights in Africa*, Paul Tiyambe Zeleza and Philip J. McConnaughay (eds) *Human Rights, the Rule of Law, and Development in Africa* (2004) p 26.

The rights of children are recognized internationally through treaty law and customary international law. The legal provisions need to be analyzed in the context of armed conflicts in Africa. By so doing the research will demonstrate the interrelationship between the two.

The United Nations Conventions on the Rights of the Child makes children's rights have a universal character and therefore to be observed and implemented by all state parties.

The United Nations espouses and emphasizes the rights of children through its specialized agencies such as the United Nations Children's Fund. The United Nations Secretary-General's office and the U.N. Security Council often adopts resolutions on specific issues affecting children's rights on a regular basis that binds the state parties for example the optional protocol to the U.N. Convention on the Rights and Welfare of the Children in armed conflict and the minimum age for the recruitment of children as combatants.

The African states and governments adopted and ratified the African Charter on the Rights and Welfare of the child alongside the U.N.C.R.C to cater for the special needs of the African child in 1990 but came into force in 1999. The unique character of the African Charter is that it provides an individual complaint procedure and those under 18 years have a higher protection. In its preamble, the charter notes the critical concern of most African children due to such factors as armed conflicts. It also takes note of the unique position of children in African societies and therefore the need for protection under the various international conventions and instruments.

The state parties have an obligation to domesticate the provisions according to their constitutional processes. A child is defined as every human being below the age of 18 years.⁵⁰

The African Charter contains comprehensive provisions of the rights of the child and the child's responsibility and establishes a committee on the rights of children under part two of the charter.

The Rome Convention of 2002 established the International Criminal Court (ICC) at the Hague whose jurisdiction includes crimes against humanity, genocide, war crimes. It has also widened the scope of criminal responsibility to individual level.

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⁵⁰ *The African Charter on the Rights and Welfare of the Child*-Article 1 & 2.

1.6. METHODOLOGY

The methodology that I intend to use will involve the use of both primary and secondary data. I will obtain the secondary data from academic journals, reference books, materials from the internet which will be both empirical and secondary data. Apart from the university library, the researcher will visit institutional resource centers for example the I.C.R.C library, the ministry of home affairs documentation center on matters of children and the National Council for the Welfare of Children Services situated at the Kenya Re-insurance Plaza building. The researcher will also use research materials from internationally recognized organizations such as United Nations Children's Fund, Amnesty International, and Human Rights Watch among others.

The use of questionnaires (a specimen at the back of this project) through which I intend to interview the office dealing with matters of children at the I.C.R.C. regional offices on the enforcement of the international humanitarian law, the U.N.H.C.R offices on matters and condition of children in refugee camps and the problems they encounter, the U.N.I.C.E.F offices in Nairobi on matters of the welfare and rights of children. The method to be used is the direct method in the administration of the questionnaire by visiting their offices. However, the researcher will not engage any research assistants in the process of administering the questionnaire.

The collection of secondary data will involve a review of the scholarly works of academicians in the disciplines of conflict related studies, the human rights issues and specifically children's rights legal experts and specialists. There are also non-governmental organizations whose views and opinions, their research findings and reports are credible and accepted internationally. Such organizations in the area of human rights and conflicts include Amnesty International, Human Rights Watch whose

annual reports and research findings the researcher will extensively quote and use as secondary data. The reports of the United Nations specialized organizations for example the U.N.I.C.E.F, reports of the U.N Secretary General's Special Representative on matters of children's rights as well as U.N. Security Council Resolutions will be quoted to support the arguments and analysis of the problem.

The project is thematically arranged in chapters and sub-topics.

Chapter one is on the background, problem statement and the objectives of the study, the justification and hypotheses to be tested, the literature review, the framework of analysis and the methodology of data analysis.

Chapter two is on the effects of armed conflicts in Africa in terms of the social-economic aspects, child soldiers, refugee children and post-conflict situations of children.

Chapter three is basically on the Rwanda Genocide from 1990-2004 and the effects on child rights.

Chapter four is the summary, conclusion, recommendations and problems encountered in the process of carrying out the research.

CHAPTER TWO

2.0 AN OVERVIEW OF THE EFFECTS OF CONFLICTS ON THE RIGHTS OF CHILDREN IN AFRICA.

2.1 INTRODUCTION.

This chapter deals with the overall effects of armed conflicts within the African context with cases from the prone areas of conflicts. By so doing the researches intends to demonstrate the depth and how widespread the conflicts affects the rights of children, despite most of the African states having ratified the international legal instruments on the rights of children and domesticated them. The endemic and protracted conflicts have been a source of massive violations of the rights of children. They have caused misery, poverty, social-economic deprivation; children are recruited as soldiers both by governments and insurgents a violation of their dignity and worth. The basic needs of children in terms of education, parental care and guidance, food, clothing, shelter and health facilities and services are denied. They become internally displaced and refugees in camps where the conditions of living are not conducive to their welfare. Children become separated from their family units at a tender age and reduced to a life of misery in urban centers, the girl child suffers sexual exploitation and harassment and they become infected and affected by HIV/Aids and other sexually transmitted diseases⁵¹.

⁵¹ G Graca, *U.N Study on the Impact of Armed Conflict on Children*. G.A.Doc A/51/306, August 1996.

The post-conflict periods are characterized by suffering and denial, the collapse of the support structures of children's basic needs for example the juvenile justice system and children's priorities become secondary⁵². They suffer psychologically, emotionally, physically and continued abuse, oppression and exploitation, traumatized and denied humanitarian assistance due to frequent attacks on humanitarian aid workers. They also suffer humiliation and abuse by those supposed to protect them such as aid workers and peacekeepers. Such incidents have been reported in areas where peacekeepers have been deployed such as D.R.Congo, Sierra Leone and Liberia.

Armed conflicts destroy lives of children in that the nature of warfare has turned homes and villages into battlefield. The most fundamental rights of children, that is, the right to life and survival, to physical and mental development are violated during armed conflicts. The entire fabric of society crumbles resulting in deaths as a result of direct involvement in the violence. Armed conflicts create the worst environments for the protection of human rights because entire populations suffer from violations of their most fundamental basic rights⁵³. The kind of child rights that needs protection during armed conflicts is provided under international law. Among these is the United Nations Convention on the Rights of a Child. Children need to be protected in armed conflicts as victims of that conflict.

⁵² J, Lederach, *Beyond Prescription: New Lenses for Conflict Resolution, Training Across Cultures*, Waterloo (Ontario) 1992 p 50.

⁵³ A, Debbie, *The Future Lost: The Economic and Social Consequences of Child Abuse*, Africa, Africa Economic Analysis pp1-4.

2.2. ARMED CONFLICTS, CHILD SOLDIERS AND THE RIGHTS OF CHILDREN

Out of the 300,000 children around the world engaged in armed conflicts, it is estimated that 120,000 of these are Africans taking part in wars in Africa⁵⁴. Children play a major role in conflicts in Africa both under the government and insurgents as child soldiers. They equally serve as spies, in the clearing of mines and therefore acting as shields, staffing of roadblocks, raiding villages and looting for food and other requirements for the rebels. The Lord's Resistance Army in Uganda which has been fighting the Museveni government is a case where children have been engaged in burning houses and schools, mutilate and slaughter civilians to the extent that the international community has condemned the militias of crimes against humanity, war crimes and genocide. In the rebel camps, children are made to run errands, fetch water and cultivate land while the girls serve as the commanders "wives". In Uganda, the ongoing negotiations between the government and the militias offer a ray of hope for the children held since they have agreed to free them. However this will depend on the sustainability of the negotiations and the final outcome of the negotiations. More than 5,000 children under the age of 18 years both boys and girls have fought as combatants in Sierra Leone's internal armed conflicts from 1990⁵⁵. The victims have also been perpetrators of human rights abuses, sometimes against their own families and communities. According to the U.N Secretary General's Special Representative for Children and Armed Conflict

⁵⁴ N, Okwudiba *Ethnic Conflicts in Africa. Africa. Studies Quarterly*, 1998, pg 417.

⁵⁵ Amnesty International Reports, 2000.

for Sierra Leone, more than 100,000 children have been serving as child soldiers in Sierra Leone by 1999, an indication of the seriousness and danger to children.

By the time children are brought to centers for rehabilitation, demobilization and re-integration, they are aggressive and violent indicating behavioral problems, suffer nightmares, alienation, outbursts of anger and inability to interact socially. Children enlist in conflicts for several reasons which include patriotism as it happened during the prolonged conflict between Ethiopia and Eritrea, the revenge for past grievances as in the Hutu and Tutsi conflict in Rwanda. Children may simply attach themselves to an army as their only hope of surviving the social dislocation of war. However, the majority of cases are coercive, for example the Renamo's abducting of batches of children from their home villages during the Mozambique civil war. But whether the enlistment is on own free will or forcibly conscripted, their involvement in armed conflict is dangerous since they are ill-equipped to cope with the physical dangers involved, their immaturity and are deprived of the normal process of socialization and education.⁵⁶ The African Charter on the rights and Welfare of Children prohibit the use of children in armed conflicts and other in human treatments⁵⁷. The easily available small arms makes it easier for children to use weapons and grow knowing only violence. It makes demobilization and reintegration into society of these children who are traumatized and especially into the same society that they were forced to fight and kill difficult. The 1999 Maputo Declaration was passed to reduce and eventually eliminate the use of children as soldiers in Africa but these declarations are disregarded by those involved in the violence.

⁵⁶ G, Machel, *U.N. Study on the Impact of Armed Conflict on Children*. G.A. Doc A/51/306, August 26, 1996, Section IV "Reconstruction and Reconciliation".

⁵⁷ Articles 15, 16, 22, 27.

Many of the children recruited into armed forces, become accidental victims of bombings, raids or landmines, targeted perhaps because of their membership to a particular religious or ethnic group or because they represent the future of a community. The destruction of the basis of children survival and growth, means destroying the hope for the future not only of the children but the entire continent. The impact of armed conflict means loss of lives, the normal structures of society that support children from physical harm-families, communities, hospitals, schools, water supplies, transport are undermined or destroyed. Diseases and lack of primary health care makes children vulnerable to a whole range of diseases. Death of parents means children are deprived of their chief source of emotional and physical protection within a family⁵⁸. The most dangerous places for children in Africa are the Sudan, Congo and Uganda due to wars that have brought death, disease and displacement. The latest reports indicate that 1.8 million children have been affected by the three year conflict in Sudan's Western Darfur Region where they risk being recruited as child soldiers, suffer disease and malnutrition, loss of families, burnt villages, rape and sexual abuse⁵⁹. The Lord's Resistance Army in Uganda is the worst offender of children's rights through recruiting, indoctrination, battle tactics, where many children have been physically and mentally traumatized. More than 25,000 children serve as soldiers and sex slaves, under Lord's Resistance Army.

⁵⁸ G, Machel, *Report on the Impact of Armed Conflict on Children* (A/51/306), August, 1996.

⁵⁹ United Nations Children's Fund, U.N.C.E.F. Reports 2006.

2.3. SOCIAL-ECONOMIC IMPACT OF ARMED CONFLICT ON THE RIGHTS OF CHILDREN.

Armed conflicts also affect the social, economic and political structures that are the foundations of the basic needs of children in many ways. The African child continues to suffer the effects of war, poverty, ignorance and disease partly perpetuated by armed conflicts. There is malnutrition, starvation, disease especially the HIV/Aids, through sexual abuse and exploitation, rape during armed conflicts. Children are affected and infected by HIV/Aids which increase poverty, HIV/Aids related illness all conspiring to deny children care and support and opportunities needed to ensure the basic needs for a healthy life. There is lack of parental affection, economic exploitation through child labor and sexual exploitation. Over a half a million children missed years of school in Liberia in 2003⁶⁰ as a result of armed conflicts during that countries internal conflict. Children suffer exploitation, oppression and neglect leaving them psychologically and physically traumatized. The African girl child is under constant threat of sexual, physical and emotional abuse, children are subjected to conditions of slavery in the rebel camps by providing labor as cooks, looting for food and killing of villagers. In Uganda, the Lord's Resistance Army has been using children to terrorize civilians in the districts of Kitgum and Guru. Everywhere in Africa children are abused, oppressed, exploited and denied basic rights as humans, as citizens and as children. The victims suffer harmful psychological, emotional and physical effects the rest of their lives. They are condemned

⁶⁰ Amnesty International Annual Reports 2001, *West Africa: Guinea, Liberia and Sierra Leone: A Human Rights Crises for Refugees and the Internally Displaced*

to a lifetime of object poverty having been denied education and deprived of their childhood. According to U.N. Secretary General Koffi Annan, “the world has been plunged into a decade of ethnic conflicts and civil wars that were characterized by deliberate violence against children on a vast scale”. More children have suffered from armed conflicts and violence since the 1990 summit on children. Vital health and education services are paralyzed and scarce resources diverted to war leading to uprooting and impoverishment and loss of livelihood. The breakdown of communities and households through death displacement, disease and loss of economic capacity weakens or destroys children’s immediate source of care and protection⁶¹. The African Charter on the Rights and Welfare of the Child which echoes the United Nations Convention on the Rights of Children and which many African states have domesticated clearly prohibits the social economic exploitation of children⁶². During the 1990’s, African children were faced with the anticipated calamities of HIV/Aids and war. The impact of the pandemic on children has been catastrophic because those most affected are the young-parents, teachers, doctors-who fall ill, die causing close-knit families and communities to disintegrate. The effect and implications is on the delivery of health and other essential services, plunged into absolute poverty, end of formal education and diminished future prospects. In his report on progress towards the goals adopted at the 1990 summit, the U.N Secretary General Koffi Annan noted, “the world was plunged into a decade of ethnic conflict and civil war that was characterized by deliberate violence against children on a vast scale”. The eastern region of Democratic Republic of Congo

⁶¹ A, Debbie, *The Future Lost: The Economic and Social Consequences of Child Abuse*. Africa Economic analysis pp 1-14.

⁶² African Charter Articles 10, 11, 12, 14, 15, 16 & 27.

has experienced the worst deaths since fighting begun in 1998, majority being children. War virtually affects all the social and economic issues affecting children like the vital health and education services, which are paralyzed and scarce development resources diverted to war, communities uprooted and impoverished by loss of livelihoods leaving women and children vulnerable to sexual assault and exploitation, hunger and disease. According to records and interviews from the Children's Documentation Centre of the Ministry of Home Affairs in Kenya and the National Council for the Welfare of Children Services, children suffered the most during the tribal clashes of the 1990's in Kenya.

Children suffer from psychological trauma related to violence; children are victims of rape and other physical abuse and takes responsibilities of caring for families, a burden that is physically and emotionally too heavy for them. Armed conflicts leads to breakdown in administrative and other government provided services resulting in "secondary effects of armed conflicts" which have serious repercussions for children. Lack of birth registration has a serious effect on the nationality of a child a fundamental entitlement under the U.N. Convention on the Rights of the Child.

Children suffer from ethnic discrimination and displacement as refugee's returnees and internally displaced persons because entire communities leave their homes.

2.4 IMPACT OF ARMED CONFLICT ON REFUGEE CHILDREN

In Africa the endemic and protracted conflicts has made many children be internally displaced and others refugees. In 1999, it was reported that six of the ten countries generating the largest number of refugees were in Africa and that overall, more than 6 million Africans had been displaced because of conflict many of them children⁶³. The eastern region of Democratic Republic of Congo, The Great Lakes Region, The Greater Horn of Africa and the West African countries of Guinea, Sierra Leone and Liberia are the worst hit regions generating many refugees and internally displaced persons.

Children are the targets of violence as well as its perpetrators forced to commit brutal atrocities against members of their own families. In Darfur Region almost two million people have fled their villages for camps that offer little protection from attacks. Camp life is characterized by restricted freedom of movement, overcrowded and epidemics are common. Epidemics of nutrition-related diseases are common and the children's ability to learn is permanently affected. Refugee children face forcible recruitment into the armies of guerrilla fighters; they are denied the right to family life and parental care and guidance due to broken families and the camp life. Socialization of children according to their own cultural values is denied. Education never constitutes a priority and the structure of life in refugee camps promotes indolence among adolescents⁶⁴. In West Africa, the armed conflicts in Guinea, Liberia, Sierra Leone where the conflicts have been rampant, reports of extensive exploitation of refugee

⁶³ S. Wolfson and N, Wright, *A UNHCR Handbook for the Military in Humanitarian Operations*, Jan 1995, UNHCR 12/1994.

⁶⁴ B, Harrell-Bond, *Are Refugee Camps Good for Children?* New Issues in Refugee Research, Working Paper No 29, American University in Cairo, The Journal of Humanitarian Assistance, August 2000 pp 1-10.

children has been reported⁶⁵. There has been the use of humanitarian aid services and assistance as a tool of exploitation and the sexual exploitation of children by the international peace-keepers and community leaders⁶⁶. International Humanitarian Law asserts that children's rights must be respected during armed conflicts, but children are often torn from their families, pressed into serving as soldiers, held in captivity or simply killed. According to interviews with I.C.R.C, communications office in Nairobi⁶⁷, their work involves ensuring that children in war have adequate access to medical care, food and water, and when possible reunites them with their families. It also campaigns against recruitment of child soldiers and reminds all parties to the conflict of their obligations towards children. When the I.C.R.C intervenes in situations of armed conflict, the condition of children is one of desperate, hunger-stricken and internally displaced children.

During the genocide in Rwanda, millions of people fled to neighboring states especially Zaire. This tidal wave brought with it not only hunger, thirst and exhaustion but numerous accidents, deaths while those who survived suffer distressing conditions. At the end of July 1994, the number of refugees created by the war and the massacres was estimated at 2.5 million distributed as follows 2.2. million at Goma, 500,000 in Sud-Kivu, 300,000 to 400,000 in the Republic of Tanzania, 150,000 in Burundi and 10,000 to 120,000 in Uganda majority of who were the children⁶⁸. The condition in the refugee camps were characterized by famine, disease the main culprits being children.

⁶⁵ Op cit pg 52.

⁶⁶ United Nations Office for the Coordination of Humanitarian Affairs, *OCHA-Civil-Military Relationship in Complex Emergencies*-An IASC Reference Paper, 28th June, 2004 pp 2-17.

⁶⁷ International Committee of the Red Cross, Communications Office, Nairobi.

⁶⁸ Report of *The U.N. Commission on Human Rights Situation in Rwanda*, July 1994.

Young unaccompanied and orphaned children in the Great Lakes have grown in refugee camps in Zaire, Burundi, Rwanda where language is a mixture making it impossible to identify their country of origin resulting in lack of nationality and citizenship. Population group whether racial, linguistic, religious, social or otherwise, that is prevented from gaining access to basic primary school education can never aspire to significant administrative or political representation within its country⁶⁹. Armed conflicts can jeopardize the lives on entire national population more so if it lasts for a long period through psychological or physical trauma and the complete destruction of the national infrastructure as it happened in Southern Sudan.

⁶⁹ A, Debbie, *The Future Lost: The Economic and Social Consequences of Child Abuse in Africa*, Africa Economic Analysis pp 1-4.

2.5. POST-CONFLICT SITUATIONS AND THE RIGHTS OF CHILDREN IN AFRICA

Although conflicts in Africa are endemic and protracted, periods of peace do not mean any better for children because of the environments already created. Efforts at peace building and peace making take the center stage after the conflicts. There are strategies aimed at re-integration, demobilization, tracing and re-unification of children to their families as a way of making them have normal life and creating the institutional and legal framework to ensure that the fundamental rights of children are in place. The African Charter provides for the treatment of children after the conflicts and which every state or party to the conflict is supposed to adhere to⁷⁰ Where peace has been agreed and peace agreements signed, there is deployment of peace-keeping missions under the relevant international organizations mostly under the United Nations, for example UNAMIR in Rwanda, or the African Union as in Darfur Region of Southern Sudan. Humanitarian aid, assistance and civil society organizations are involved in different and varying activities to cater for the needs of children and which faces a lot of challenges for example attacks on humanitarian aid personnel and facilities.

The juvenile justice system in cases of violation of human rights or involvement of children in the atrocities is also a concern because of the legal implications and due process of law. What is of concern in my case is the role if any of the different organizations to the violation of human rights and especially those of children in these difficult circumstances. In Rwanda, by 2003⁷¹, as many as 400,000 children who were between 14 and 18 years during the genocide continued to languish in overcrowded

⁷⁰ *The African Charter on the Rights and Welfare of the Child*, Articles 16, 22, 23, 24, 27.

⁷¹ The U.S Department of State-Rwanda-Country Reports on Human Rights Practices-2003 pp 1-20.

prisons where the overburdened juvenile system cannot cope. Many children are left on their own after the conflicts where protection from abuse and exploitation by the governments is not adequate. Children have been orphaned by Aids and others have their parents imprisoned and desperately in need of protection. In Sierra Leone, many children were mutilated and limbs cut while in Rwanda those placed under foster care were only worth their labor and their poverty, as domestic servants. The traditional societal networks becomes severely eroded by poverty, HIV/Aids epidemic with many children migrating to urban centers as street children only to find themselves vulnerable to harassment by Rwanda law enforcement agents. This causes child-headed families, lack of protection, education and basic health care leaving many children traumatized and exploited. Those children taken for fostering have suffered and complained of exploitation, discrimination and torture making many of them grow without education and deprived of their property⁷².

Rwanda is the first country to try people for acts of genocide committed while they were children. These people needed to be punished and at the same time are entitled to special care and protection aimed at rehabilitation and reintegration into society. Some 5,000 “minors” in Rwanda have been arrested since the end of the genocide and detained under inhumane conditions for years without trial⁷³ which against the minimum rules provided by the United Nations on Juvenile Deprived of their Liberty and the so called Beijing Rules on Juvenile Justice System. Conditions in prisons and at the centers for children are normally below the recognized international standards as set out in the U.N Rules for the protection of Juveniles Deprived of their Liberty as well as the U.N

⁷² Op cit pg 57.

⁷³ Human Rights watch Publications, 2003.

Standard Minimum Rules for the Treatment of Prisoners which provide for conditions under which children may be confined. Children should access education and vocational training and separated from adults in detention⁷⁴ in order for the children to obtain the basic human needs and guaranteeing of their fundamental rights.

The personnel involved in humanitarian aid assistance and the peacekeepers have on many occasions violated the rights of children. Cases of rape by these peacekeepers have been reported in virtually all conflict areas under U.N. peacekeeping missions. For example in Sierra Leone, in March 2000 cases of rape, kidnapping and murder with impunity by the rebels were reported despite the growing presence of U.N. peacekeepers, evidence of involvement of U.N. Italian contingent in child prostitution in Mozambique were reported in 1994⁷⁵ despite the fact that they are supposed to be protecting the interests of children as one of their main roles.

The condition of children in post-conflict situations also indicates that their basic human needs are not immediately met and continue to suffer abuse and neglect. The breakup of the social-cultural structures like the family unit, community set-ups that form the basis of children's wellbeing makes it difficult to immediately cater for the needs of the children. The needs of children do not form a priority in the task of rebuilding the countries infrastructure leaving the work to civil society organizations that have their own interests.

⁷⁴ Convention on the Rights of the Child Article 37, International Covenant on Civil and Political rights Article 10(2)(b), Additional Protocol 1 to the Geneva Convention of 1949 Article 77, Additional Protocol II To The Geneva Convention, Article 6 and Article 68 of the Fourth Geneva Convention.

⁷⁵ Lederer J.D. *Human Rights Violations of U.N. and Peacekeeping Missions*, July 2000.

2.6. CHAPTER SUMMARY

Armed conflicts affect the rights of children in all dimensions leaving them vulnerable. Children suffer from the social-economic consequences of wars and the breakup of the structures that support the basic needs of the children. Children suffer from breakup of family networks, abandoned, neglected, orphaned, psychologically, emotionally and physically traumatized. They are denied education, health care facilities, parental care and guidance and constantly in conflict with the law. Children are recruited as child soldiers in combat; they are used to commit atrocities against their kin and kith which affects their normal growth because of psychological traumas. They are forced to become refugee and internally displaced where conditions are not any better because of diseases, rape and constant threats.

The rights of children are also violated by humanitarian aid workers and the peacekeepers. Cases of rape, child prostitution and the use of aid as a tool of sexual exploitation have been reported in many areas under United Nations peace keepers. The international legal framework on the rights of children is very clear and all the atrocities on children are a violation of their rights⁷⁶. Africa needs to take appropriate measures to contain the escalating violence which is a challenge to the Millennium Development goals by 2015 as set out by the United Nations. Any meaningful development depends on a well developed human resource base among other factors which is achievable if nurtured from an early stage of a child's life.

⁷⁶UNICEF-Programme Publications, *Children in Armed Conflict*, May 1999, U.N.I.C.E.F. Staff Working Papers, Evaluation, Policy and Planning Series Number EPP-99-001, PP 234-260.

CHAPTER THREE

3.0. CONFLICTS IN RWANDA AND THEIR EFFECT ON THE RIGHTS OF CHILDREN-1990-2004

3.1. INTRODUCTION

The effects of conflicts on the rights of children discussed in the previous chapter gives the general overview in the continent. The case of Rwanda was chosen by the researcher because of the magnitude of the conflicts that took place during this particular period. The atrocities committed which were genocidal in nature exposed the extent to which conflicts can cause suffering. Those suffered the most were children because of their vulnerability. The Rwanda genocide of 1994 was the result of conditions which had developed over a period of time. The country had been experiencing endemic and protracted conflicts because of multiple and complex underlying structural (social, economic political and communal) and psycho-cultural factors between the two main ethnic groups of the Hutus and Tutsi's. These factors led to an environment of high political, economic and social underdevelopment which manifested itself over communal identity needs. Social conflicts arose due to the structural deprivation and communal or identity cleavages as a result of economic, social political inequalities between the two ethnic groups⁷⁷. The institutional arrangements in Rwanda destroyed the original traditional set-ups giving rise to structural violence. The genocide destroyed the country's social fabric, human resource base, institutional capacity and the social-economic infrastructure upon which human needs and the fundamental rights are based.

⁷⁷ S, Utterwulghe, *Rwanda's Protracted Social Conflict: Considering the Subjective Perspective in Conflict Resolution Strategies*, The Online Journal of Peace and Conflict Resolution, Issue 2.3/August 1999 pp 1-17.

Rwanda's children have seen the worst of humanity, in that during the genocide set in motion by a group of politicians with an attempt to retain power, had devastating consequences on their fundamental basics of survival. Their dignity and worth as children were trumped on as human beings, as citizens and as children when these are guaranteed under international law. The traditional protection structures for children including the family networks, the judicial systems and the education systems were destroyed. Children were victims and also perpetrators of the genocide given the circumstances they found themselves in. As a result many children who survived the unspecified atrocities are still the victims of systematic human rights violations in the face of daunting challenges of rebuilding a society devastated by both war and poverty and where protection of children's rights is sidelined.

The 1994 genocide violated the rights of children on a massive scale. There was rape, torture and slaughter of children along with other massacres across the country. They targeted children for killing-to exterminate the "big rats", they said, one must also kill the "little rats". Many children were massacred and those who managed to escape death were raped and tortured, they witnessed the killing of their family members, seeing children kill other children to the extent that they were psychologically traumatized to live a normal life⁷⁸.

The Rwandan government needs to do more to break the cycle of abuse and exploitation that affected thousands of Rwandan children by establishing structures and institutions that support the guaranteeing of the basic needs of children.

⁷⁸ A Shah, *Conflicts in Africa, The Case of Rwanda*, <http://www.globalissues.org/Geopolitics/Africa/Rwanda> cited on 19th August 2006.

3.1.1. SOCIAL-ECONOMIC EFFECTS OF THE ARMED CONFLICT ON THE RIGHTS OF CHILDREN

The social and economic rights of children are guaranteed under the relevant international legal instruments. The African Charter⁷⁹ deals a lot on the social-economic aspects of children in all circumstances. All African states and governments have ratified the instrument and therefore are bound to adhere to the provisions. The United Nations Charter on the Rights of the Child from which all other regional instruments derive their foundations makes the rights of children of universal nature. Rwanda has ratified the two main legal instruments and so obliged to adhere to their provisions. What happened during the genocide was a violation of the fundamental basis of children's rights on a massive scale.

Many children during and after the genocide were left on their own because the government could not protect them from abuse and exploitation. On Rwanda's Green Hills, up to 400,000 children, about 10% of Rwanda's children, struggle to survive without one or both parents. Children were orphaned in the genocide or in the war, others by HIV/Aids and others had their parents in prison on charges of genocide desperately denied the protection of parents and parental guidance⁸⁰. Those children living under the care of foster parents are vulnerable and worth only their labor and their property. They are exploited as domestic servants, denied education and their family land taken. The traditional society networks were severely eroded by poverty, HIV/Aids pandemic and the war.

Those children who had been denied education, exploited for their labor or their property at home migrated to city streets to fend for themselves. In these city streets, they

⁷⁹ *The African Charter on the Rights and Welfare of the Child* (1990/1999).

⁸⁰ Human Rights Publications 2003.

suffered constant harassment by the law enforcement officials and arbitrary arrests. Girls in the streets are frequently raped by those supposed to protect them. According to interviews conducted between 1995 and 2002 by child rights experts, social workers, representatives and staff of local and international organization, the U.N.I.C.E.F and offices of Rwandan government⁸¹, indicates a widespread violation of the rights of children in post-genocide Rwanda. Many of the children according to the interviews have been victims of conflict, they have been arbitrarily arrested and denied prompt access to justice. Those living in the country side have been abused, exploited for their labor, exploited for their property or denied access to education, health care facilities, parental guidance and care. In urban centers, the children are often harassed and sexually abused and exploited.

The abuse and denial of the rights of children in Rwanda during and after the genocide is against international law requirements as provided in the United Nations Convention on the Rights of the Child, The African Charter on the Rights and Welfare of the Child and other relevant United Nations resolutions and conventions⁸². Thousands of children were forced to join military operations during the conflict and forced to commit atrocities against their will while many suffered emotional trauma from these experiences since many of them were imprisoned after the genocide.

Children suffered discrimination and displacement in Rwanda during the genocide as refugees, returnees and internally displaced persons because entire communities left their homes. They went to seek refuge in other parts of the country and across international borders such as Eastern D.R.Congo where children suffered the most

⁸¹ United Nations Children Fund, U.N.I.C.E.F *State of the World's Children 1996 report, section on Children in War.*

⁸² *The African Charter on the Rights and Welfare of the Child Articles* 11, 14, 15, 16, 18, 19, 21, 27.

in the camps, diseases, HIV/Aids and themselves in the midst of most direct violent acts, witnessed the killings of large numbers of people even their own parents. The children found themselves in camps where camp life was characterized by overcrowding and lacking basic survival means such as water leading to epidemics and other diseases. The overcrowding and poor knowledge of basic sanitation and hygiene causes illness⁸³. There is lack of access to education since schools were closed during the genocide. The separation of children from their parents or other guardians limits children's access to education, health services and adequate nutrition. Unaccompanied children form child headed households; others are informally adopted meaning they were denied the corresponding legal responsibilities and obligations.

The streets of Rwanda are home to children surviving on begging with no access to education or health services. They have been driven into street life by the genocide and wars where they suffer from lack of resources and problems of insecurity. The continued stigmatization and exclusion from the social-economic activities of their communities will have a long term effect on the children in terms of their participation in national development in Rwanda.

The destruction of educational infrastructures is one of the greatest setbacks during armed conflict that takes equivalent years to replace imposing greater strain on the society's ability to recover from war. During the genocide so many teachers fled or were killed in Rwanda, a challenge that is experienced up-to-date.

Many children died during the genocide as a result of direct fighting or from knife wounds, bullets, bombs and also malnutrition and diseases caused by the armed conflicts. There was interruption of food supplies, destruction of food crops and

⁸³ T.W.Bannet, *Using Children in Armed Conflict: A Legitimate African Tradition?* Pp 4-21.

agricultural infrastructure, and the disintegration of families and displacement of populations, destruction of health services and programmes of water and sanitation systems which had a heavy toll on children. Population movements, rapes, sexual violence and breakdown of established social values increases the potential for the spread of diseases especially HIV/Aids an epidemic that Rwanda is currently struggling with.

3.1.2. CHILD SOLDIERS AND THE VIOLATION OF CHILDREN'S RIGHTS

The African Charter⁸⁴ provides that state parties should respect and ensure respect for the rules of international Humanitarian Law that affects the child. They are supposed to take necessary measures to ensure that children do not take direct part in hostilities and refrain recruiting any child and at the same time ensure their protection is guaranteed both in internal and international conflict situations. The use of children in Rwanda was therefore against the very foundations of the rights of children

The Rwandan Patriotic Front used thousands of child soldiers as it sought to fight the government and later the genocidal related activities. Since 1998, the Rwanda government has continued fighting armed groups in the country many of them led by soldiers or militia of the former government. On both sides, children have been used as part of their fighting forces. The Army for the Liberation of Rwanda in its attacks of the 2001 actively used children in battles as porters, as domestic servants, as decoys to shout or otherwise make noise to distract or frighten opponents during battles or as spies. Many of these children had been abducted in eastern Congo where they were refugees. Children joined the combatants for several reasons which included the search for food, and protection, many had been separated from their parents or had died from the genocide and the 1997-1998 insurgency. Children captured and detained in camps

⁸⁴ *The African Charter on the Rights and Welfare of the Child*, Article 22

suffered hunger, desperation and were detained together with adults. Those demobilized and rehabilitated through government programmes still suffer emotional and psychological disorders⁸⁵. In 2002, the government of Rwanda enacted a law prohibiting military service for children under 18 years but still incidences of recruitment into the Local Defense Force, government organized civilian military group were reported. There was deliberate recruitment of children as combatants, which was made easier by the proliferation of inexpensive light weapons and the use of crude weapons such as machetes. Children were used as soldiers in a variety of functions such as support roles, as cook's porters, messengers and spies and girls forced to provide sexual services which implies great risk and hardships. Children were subjected to degrading and humiliating treatment in order to subordinate them to authority.

3.1.3. CHILDREN AS VICTIMS AND TOOLS OF VIOLENCE

The emergence of conflicts creates environments that make children victims or tools of violence. They become refugees, separated from their parents and sexually exploited, imprisoned with their mothers, abused and tortured which is against the legal provisions of international human rights law⁸⁶.

Thousands of children were slaughtered during the genocide mostly by machetes and gunfire. Many of them bear the evidence of the genocide in amputated limbs and scars from machete wounds and witnessed death, children killing other children and inflicting injuries, rape and sexual assault, pregnant women were killed something which had not occurred in the previous armed conflicts in Rwanda. When the Rwanda Patriotic Front was fighting to take control of the country and defeat the genocidal government, its

⁸⁵ A, Shah, Conflicts *in Africa*, <http://globalissues.org/Geopolitics/Africa/Rwanda>, cited 18th August 2006.

⁸⁶ *The African Charter on the Rights and Welfare of the Child*, Articles 15, 16, 19, 23, 25, 27.

members also killed civilians including children. They killed without regard to age, sex or ethnic group⁸⁷. Many of the children were also killed in camps in Rwanda, refugee camps in Zaire and those who sought refuge in the forests of Zaire. Because of the emotional, social, psychological, behavioral trauma's, many had refused to join their families during the reunification and reintegration efforts according to the I.C.R.C reports in Nairobi.

Children were also used as tools of genocide and while others were recruited into the guerrilla force or enlisted in the army. They also participated actively in the genocide and because of their emotional and mental immaturity; they were susceptible to manipulation through propaganda. They were forced to commit murder, raped women and young girls, burned and destroyed houses, stole property and used to identify people hiding to the militia's and acted as informers.

3.1.4 JUVENILE JUSTICE STSTEM AND THE GENOCIDE

Those children in conflict with the law have a right to special treatment taking due regard to the child's dignity and worth, no child should be detained, deprived of his liberty, tortured, inhuman or degrading treatment or punishment. The child shall be presumed innocent until proved guilty and is entitled to legal representation. The reintegration and reformation into the family and social rehabilitation should be the objective of the juvenile justice system⁸⁸.

Rwanda is the first country to try people for acts of genocide committed while they were children. Those convicted must be punished but at the same time should be seen as victims entitled to special care aimed at their rehabilitation and reintegration into society.

⁸⁷ Ibid ,Article 3

⁸⁸ The African Charter on the Rights and Welfare of the Child, Article 17.

This becomes difficult given the scale and horror of the crimes committed and balancing the community's need for justice against the interests of the child. The Rwandan government has an obligation to deliver justice and at the same time establish a juvenile system conducive to the welfare of the child. This is a challenging task given other priorities in the process of recovering from the genocide. There are over 4,000 children who were between the age of 14 and 18 during the genocide still languishing in overcrowded prisons. Their cases are not given priority because of the overburdened justice system and inadequate legal representation and other due process guaranteed under Rwandan and international law. Many of these are now young adults who had been arrested arbitrarily and detained under inhuman conditions. The government has a responsibility to punish those guilty of the crime of genocide in accordance with the national and international law. The question is the legal responsibility of the children's involvement in the genocide considering that they were used as channels of propaganda and susceptible to manipulation by adults in positions of authority⁸⁹. The children were also accused of being planners or perpetrators of the genocide and tried together with adults against the international law provisions. The right to legal representation was not guaranteed in violation of the International Convention on Civil and Political Rights which guarantees free legal assistance "in any case where the interests of justice so requires"⁹⁰ and the Convention on the Rights of the Child which guarantees accused children "legal or other appropriate assistance in the preparation and presentation of his or her defense". The gacaca jurisdiction which entered into force in March 2001 was an attempt to have grassroots based judicial system but does little concerning the children.

⁸⁹ Human Rights Watch Publications, <http://www/globalissues/Africa/Rwanda>, cited 12th August 2005.

⁹⁰ Human Rights Reports, 2000.

By 2002, U.N.I.C.E.F, and Rwandan government had started projects to deal with juvenile justice issues on matters of representation at trial and drafting a law on juvenile justice. Under Rwandan and international law, a child's age at the time of the crime determines his or her criminal responsibility. In Rwanda the fact that records were destroyed during the war and births never recorded makes it difficult to verify the ages of detainees. In 1994, many children were detained without regard for legal formalities or their rights. The Rwandan prisons and lockups were filled and the conditions were life threatening since children were kept together with adults contrary to fundamental requirements in the relevant international standards setting a stage for a host of long term systemic rights violations. The prison population as a result of the genocide overstretched the capacity of the country's judicial and detention facilities. Conditions of detention fell below the Standard Minimum Rules for the Treatment of Prisoners⁹¹ and below the United Nations Standard Minimum Rules for the Administration of Juvenile Justice⁹². Children in detention have suffered with adults from violations of their basic rights because they are rarely detained as required by the minimum standards away from adult prisoners and detainees.

3.1.5. REFUGEE CHILDREN AND VIOLATION OF THEIR RIGHTS

The African states and governments have an obligation to ensure that children seeking refugee status either accompanied or not receive appropriate protection and assistance as provided in international human rights and humanitarian instruments which the states are

⁹¹ International Covenant on Civil and Political Rights Article 14(3) (b), U.N. Convention on the Rights of the Child Article 14(2)(b).

⁹² Approved by the U.N. Economic and Social Council through its Resolutions 663c (xxiv) of 31st July 1957 and 2067(1xii) of 13th May 1977.

parties. They should cooperate with other organizations which protect and assist refugees and help in reunifying the families⁹³.

According to reports of the United Nations High Commissioner for Refugees, U.N.I.C.E.F, United Nations High Commissioner for Human Rights, children in refugee camps suffered physical violence when returning from refugee camps in 1995⁹⁴. Authorities carried out arrests of adults and children during the massive repatriation of Hutu refugees from Zaire (now Congo) and Tanzania in late 1996 and detained in overcrowded inhumane conditions for several years. This is a miscarriage of justice, detention and mistreatment of children below the age of criminal responsibility.

Life in refugee camps is characterized by the authoritarian nature of their administration. The inhabitants are depersonalized and people become numbers without names. There is persistent shortage of food, a major cause of malnutrition among children. Camps are artificial environments where everyone is restricted in their freedom of movement, overcrowded and epidemics a common feature making the ability of children to learn difficult. These incidences have been reported in Kakuma Refugee Camp in Kenya which also accommodates refugees from Rwanda. The camps became targets for regular attacks from across borders for purposes of kidnappings and recruitment of the children into the armies of guerrilla fighters during the 1997-1998 insurgencies⁹⁵.

⁹³ Op cit, Article 23.pg 69.

⁹⁴ U.N.I.C.E.F.-Programme Publications-*Children in Armed Conflict* May 1999 pp 234-261.

⁹⁵ B,Harrell-Bond,*Are Refugee Camps Good for Children? New Issues in Refugee Research*, Working Paper No 29,The Journal of Humanitarian Assistance, American University of Cairo, August 2000.pp 1-10

Refugee camp life affects family life because children are denied parental guidance and parental responsibility of the parents to the children⁹⁶. Many families are broken and children cared for by one parent or without either of the two. This makes children heads of families and therefore growing up under abnormal conditions. The social-cultural norms and practices, under which families are used are eroded especially when parents and the children are forced to depend on a system which they have no control of affecting their self-esteem and dignity⁹⁷ a very vital component of human needs. In order to guarantee these basic human needs, political, social, economic structures that promote the development of the children must be put in place in terms of their legitimacy and valued relationships in society.

The camp life is also characterized by domestic violence as a result of anxiety and depression. Children grow up in conditions which do not permit their socialization according to the values of their own culture⁹⁸. There is also psychological impact as a result of the passive, dependent and unquestioning life in the camps. The social-physical environment in the refugee camps, under which children grow, fosters dependent passive way of life. There is also general lack of social amenities adequate for all and even though the UNHCR ensures that primary schools are available, education never constitutes a priority. The structures of life in camps promote indolence among adolescents. This age group is a threat to social life and perpetrates sexual violence. The Rwanda genocide violated the rights of children on an unthinkable scale, setting a long

⁹⁶ *The African Charter on the Rights and Welfare of the Child*, Articles 18,19,20,25.

⁹⁷ Known as the *Beijing Rules* and adopted by the U. N. General Assembly Resolutions 40/33 of 29th November 1985.

⁹⁸ H, B, Barbara, *Are Refugee Camps Good for Children? Journal of Humanitarian Assistance-New Issues in Refugee Research*, Working Paper No. 29 August 2000. pp 1-10.

systemic violation of their rights. Hundreds of children were left without parental care, were victims of abuse and exploitation on an ongoing basis. Many migrated to city streets where they suffered violence at the hands of law enforcement agents, while others languish in prison without trial for crimes of genocide allegedly committed while they were children.

Rwanda being party to U.N Convention on The Rights of the Child and to the African Charter on the Rights and Welfare of the Child has a responsibility to protect the rights of children through reconstruction and reconciliation which must be the basis of measures that will protect children's rights in the future⁹⁹. The United Nations Convention on the Rights of the Child requires that states take measures to promote recovery and reintegration of child victims of armed conflicts. Ten years later, children of Rwanda are still suffering the consequences of a conflict created exclusively by adults for their own interests. There are an estimated 101,000 children that are heading approximately 42,000 households. They have lost parents for various reasons which include murder during the genocide, others died of HIV/Aids and others in prison for genocide related crimes¹⁰⁰. U.N.I.C.E.F and other civil society organizations are helping a generation of children to reclaim their lives especially in areas of health, counseling and education. During the Rwanda genocide, millions of people fled to neighboring states especially Zaire. This tidal wave brought with it not only hunger, thirst and exhaustion but numerous accidents, deaths while those who survived suffered distressing conditions. At the end of July 1994, the number of refugees created by the war and the massacres

⁹⁹Graca G. Impact of Armed Conflict on Children, Doc A/51/306, August 1996 Section IV "Reconstruction and Reconciliation".

¹⁰⁰ U.N.I.C.E.F Publication, 2004 Rwanda: Ten Years after the Genocide.

was estimated at 2.5 million distributed as follows:- 2.2 million at Goma, 500,000 in Sidu-Kivu, 300,000 to 400,000 in the Republic of Tanzania, 150,000 in Burundi and 10,000 to 120,000 in Uganda¹⁰¹ majority of who were children.

3.1.6. SUMMARY

The Rwanda conflicts from the 1990's through 2004 whose climax was the 1994 genocide, clearly demonstrates the difficulties experienced by children in Africa. The internal nature of the post-cold war armed conflicts is a challenge to the legal and conceptual framework of the rights of children that requires a critical analysis.

The Rwanda genocide and related conflicts thereafter had far reaching consequences on children in terms of their social, economic, cultural and political rights which are guaranteed under international human rights law and international humanitarian law.

¹⁰¹ Report of the *U.N. Commission on Human Rights Situation in Rwanda. July, 1994.*

4.0. CHAPTER FOUR

4.1. SUMMARY

This paper is an attempt to illustrate the extent to which the unfolding nature of armed conflicts in post-cold war Africa is affecting the children who are the foundations of future development of the continent. The rights of children as provided in international legal instruments are being challenged which calls for further research on the way forward.

The first chapter lays down the background information in the context of the stated problem, the objectives and justification of choosing the topic as a field of study. The chapter contains a detailed literature review of armed conflicts and the rights of children, the conceptual and philosophical basis of the rights with an African perspective and the ranging debates on human rights. The chapter ends with the conceptual framework and the methodology of analyzing the data.

The second chapter is an overview of the conflicts in Africa and their effects on the rights of children. The effects are discussed thematically in order to achieve the objectives of the study. These includes the social-economic aspects, child soldiers, refugee children, and the post-conflict dimensions all in the context of armed conflicts based on the national and international legal provisions on child rights.

The third chapter is specifically on the Rwanda conflicts from the 1990's but first gives a brief introduction. Like in second chapter, the analysis is thematically arranged purposely to clearly demonstrate the relationship between the armed conflicts and the rights of the children as provided in international and national legal instruments. The sub-topics are on

the social-economic aspects, child soldiers, children as victims and tools of violence, the administration of the juvenile justice system, and children as refugees all discussed in the context of armed conflicts in Rwanda from 1990.

The fourth chapter is the summary of all the other chapters, the conclusion and recommendations, the problems and obstacles experienced in the process of carrying out the research and the way forward.

4.2. CONCLUSION

The violation of the rights of children in situations of armed conflict in Africa reveals a trend in which children basically suffer the most both as victims and perpetrators of the human rights violations¹⁰². Africa suffers from endemic and protracted structural violence¹⁰³ which denies the children the basic needs and hence a violation of their rights. The extent to which children's rights are violated should be a concern for the national and international community through establishment and enforcement of the structures and laws that are not only binding to state parties, but also capable of guaranteeing these rights.

Children suffer enormous consequences in that they are recruited as child soldiers, become refugees in foreign countries and internally displaced and separated from their families. The recent developments in warfare have significantly heightened the dangers for children. During the last decade, it is estimated that child victims of armed conflict have included, 2 million killed, 4-5 million disabled, 12 million left homeless, more than a million orphaned or separated from their parents and some 10 million psychologically

¹⁰² S.Sandra.*The Protection of Children in Armed Conflicts*, International Review of the Red Cross, may-june 1986,pg 10

¹⁰³ S Utterwulghe.*Rwanda" Protracted Social Conflict: Considering the Subjective Perspective in Conflict Resolution Strategies*. The Journal of Peace and Conflict Resolution, Issue No 2.3, August 1999, pp 1-27.

traumatized¹⁰⁴. The conflicts also poses a challenge in the social, economic, cultural, religious and political structures that supports the basic needs of children from the family level up to the national and international levels. The post-conflict circumstances are also a challenge to the enjoyment of human rights because of the support structures already destroyed once a country stumbles into a conflict trap¹⁰⁵. The case of Somalia is an example to which ethnic conflicts have destroyed the structures that supports the enjoyment of human rights. From the research findings the following can be noted:

The structural characteristics of the African states have been a source of structural violence. These were created and perpetuated during the colonial and post-colonial Africa and which could not withstand the post-cold war international relations¹⁰⁶. These challenges resulted in armed conflicts after the 1990's as demonstrated by the 1994 Rwanda Genocide. Children in Rwanda were both victims in that the social, economic, cultural, political rights were violated by the collapse of the support structures and also perpetrators as a result of situations they found themselves in. They were recruited as child soldiers and forced to commit atrocities against their communities. The psycho-cultural factors such as mistrust and fear, false consciousness, irrational myths all related to identity entrenched into the structures of society and perpetuated over the years finally culminated in violent clashes of the 1990's which affected the rights of children in Rwanda on a massive scale.

¹⁰⁴ A, Shah, *Children, Conflict and the Military, Rwanda*. <http://www.globalissues.org/Geopolitics/Children> cited 19th August 2005.

¹⁰⁵ A Debbie, *The Future Lost: The Economic and Social Consequence of Child Abuse in Africa*. Africa Economic Analysis, pp 1-4.

¹⁰⁶ World Bank, *Breaking the Conflict Trap. Civil War and Development Policy*. Washington D.C, 2003, PP 51-93.

The impacts of the armed conflicts on children are direct and indirect in many ways. Directly children suffer from lack of the most basic needs of survival such as food, shelter, clothing, ending up as refugees and internally displaced. The post conflict social economic challenges on children includes diseases such as HIV/Aids as a result of sexual exploitation and rape, lack of parental care, guidance and protection, missed opportunities in terms of education and health care services posing lifelong effects on the rights of children. Children suffer psychologically, emotionally and physically making reintegration and rehabilitation during post-conflict peace resolution and settlement initiatives a challenge to those involved in the process¹⁰⁷. The number of children recruited as child soldiers in Africa is alarming which is against the international human rights and international humanitarian law provisions to which most African states are parties.

The breakup of conflicts and subsequently the structural basis of communal life in Africa generate refugees and internally displaced people majority being children¹⁰⁸. The children are reduced to a camp life and therefore denial of the parental guidance and care. They are denied a right to cultural norms and practices of their communities and therefore socialization according to their own cultural values.

Post-conflict situations also create circumstances that violate the rights of children in that the structural setups will have already disintegrated. The strategies adopted and aimed at reintegration, demobilization, tracing and reunification of children and the involvement of different organizations for example the civil society, intergovernmental

¹⁰⁷ M, Machel, Report on the *Impact of Armed Conflict on Children*, A/51/306, August, 1996, Section IV "Reconstruction and Reconciliation".

¹⁰⁸ B, Harrell-Bond, *Are Refugee Camps Good for Children? New Issues in Refugee Research*, Working Paper No 29, The Journal of Humanitarian Assistance, pp 1-10.

organization and governments have been noted to abuse the rights of children. Peace-keeping missions under the United Nations have occasionally been reported to have been involved in sexual exploitation of children¹⁰⁹. There are also cases of humanitarian aid assistance being used as a tool of exploitation and those who suffer most are the children.

The enforcement of the rights of children as provided in the international legal instrument is hampered by the enforcement mechanisms provided under international law which is the reporting and inquiry procedure. The procedure requires submitting regular reports to an international committee on steps taken to fulfill treaty obligations. The weaknesses of the procedure are that the committees cannot receive complaints from other states or organizations neither do they have powers to penalize those states that have violated children's rights. The committee can only give comments and recommendations for improvement making it difficult to enforce the rights of the children. This enforcement is left to the legal infrastructures and political goodwill of the states. The juvenile justice system in post genocide period in Rwanda illustrates the weaknesses in the administration of justice as concerns children.

The participation in hostilities of persons who have not attained the age of 18 years is harmful to them physically and psychologically. Participation in hostilities both directly or indirectly is a risk for the life of a child and hampers the harmonious development and the realization of the rights which are inherent to their human dignity including the right to a family environment, to education and health, to a nationality or not to be subject to ill-treatment or exploitation¹¹⁰. In order to ensure the full realization

¹⁰⁹ *A UNHCR Handbook for the Military on Humanitarian Operations*, January 1995,

¹¹⁰ United Nations Children's Fund, U.N.I.C.E.F.-Programme Publication-*Children in Armed Conflicts* May 1999, UNICEF Staff Working Papers, Evaluation, Policy and Planning Series Number EPP-99-0041, pp234-261.

of children's rights as recognized by the international human rights law and international humanitarian law, state parties should not recruit into their armed forces persons below the age of 18 years, and voluntary enlistment should not be used to allow for the direct or indirect participation in hostilities of children.

The findings based on the armed conflicts in Africa are the same in other conflict prone areas of the world. The children will be victims of violence as is evident in such areas as the Middle East conflict region, Afghanistan, and the indiscriminate acts of terrorists the world over. The international community therefore needs to rethink the approaches to conflict management strategies.

4.3. RECOMMENDATIONS

From the research findings based on the data available to the researcher, and the conclusions arrived the following is recommended:

Firstly, state parties to the various international legal instruments, resolutions and recommendations of the United Nations and other regional organizations that African states are parties, should undertake to protect children within their jurisdiction from abuse and exploitation. This is by establishing structures and institutions that guarantees the protection of the children's rights. States are obliged to refrain from recruiting children as combatants and should ensure respect for rules of international humanitarian law affecting children during armed conflicts. There should be the establishment of appropriate legislative and administrative measures in which those involved in violence are bound¹¹¹. The civil society and other intergovernmental organizations should have their efforts recognized in the implementation of the provisions once established. Given

¹¹¹ O.A.U Council Resolution, Resolution of the *Plight of African Children in Situations of Armed Conflict*. CM/RES 1659/LXIV REV.1 1996.

the problems of enforcement of the treaty obligations, criminal liability on the persons who conscript children should be considered. The example of the Lord's Resistance Army where Kony the rebel leader is wanted for war crimes against children is an approach in the right direction.

Secondly Peace agreements between the insurgents and the governments should contain comprehensive list of international human rights laws to ensure the observance of the rights of children. Measures such as institutional and legislative reform should be part of the peace building process¹¹².

Thirdly, the United Nations under the relevant treaty provisions should undertake a study on the ways and means of improving the protection from adverse effects of armed conflicts. This should be in co-operation with the relevant specialized agencies, other United Nations bodies, non-government organizations and the International Committee of the Red Cross¹¹³. This should be by conducting research into classifying the violations of the rights of children under international customary law.

Fourthly, there should be attempts to organize "corridors of peace" or "days of tranquility" for the sake of humanitarian needs although it is bound to encounter problems because of the nature and means of warfare employed. The current legal framework should be ratified by all states for effective implementation of standards and the improvement of the existing normative framework.

Fifth, there should be an effective protection of children in armed conflicts in order to realize all the rights of the child inherent in their dignity and essential to the full and

¹¹² *UNOCHA, Civil-Military Relationship in Complex Emergencies*-An IASC Reference Paper, 28th June 2004

¹¹³ Jean-Marie Henckaerts, *Study on Customary International Humanitarian Law: A contribution to the Understanding and Respect for the Rule of Law in Armed Conflict*, International Review of the Red Cross, vol 87, Number 857, March 2005, pp 175-211.

harmonious development of the child's personality. This should involve the grassroots structures based on the African cultural and traditional set-ups. Education and training on human rights principles can play an important role especially for those dealing and working with the children such as the military and other relevant groups. Mediation and reconciliation as means of preventing armed conflicts should be encouraged based on awareness of the political grounds for the existence of armed conflicts. Preventive measures, within the framework or regional integration blocs and the security brigades as proposed in the African Union Charter, should aim at preventing the involvement of children in armed conflicts¹¹⁴.

Sixth, the promotion of the physical and psychological recovery and social reintegration of children who are victims or been affected by an armed conflict should be the aim of policymaking decisions. This should be on an environment that fosters the health, self-respect and dignity of the child. To protect the family environment, ensuring the provision of essential care and assistance, access to health, food and education is an effective method of protecting children in armed conflicts. There should be prohibition of torture, abuse or neglect, death penalty and the preservation of the child's cultural environment. Humanitarian aid assistance through such measures as creation of days of tranquility and corridors or peace will promote the protection of human rights¹¹⁵. In order to promote the physical and psychological recovery and social reintegration, the involvement of the family and the local communities should play a pivotal role in the process.

¹¹⁴ United Nations Children's Fund UNICEF Programme Publications-*Children in Armed Conflict*, May 1999, pg 246.

¹¹⁵ Ibid pg 246.

Seventh, the world should not wait for the outbreak of hostilities, as it happened in Rwanda and many other situations in Africa, before states take measures. The underlying causes of violence should be addressed and invest more resources in mediation and conflict resolution.

During conflicts, the needs of girls and women should be taken care of through specific community based measures in order to guarantee their security because of the terrible threat they face of sexual violence and rape. Those traumatized need education and counseling, women in times of conflict should access skills training because their economic burdens are greater. Child soldiers require rehabilitation to prevent them from drifting into a life of further violence, crime and hopelessness. International war tribunals such as the International Criminal Tribunal for Rwanda should have the support and the resources to bring perpetrators of child rights to justice. Emergency relief efforts should be seen as part of a process to help rebuild a society's capacity and promotes development. Both adult and child soldiers require rehabilitation with the aim of rebuilding communities for reconciliation purposes and to address the psychological damage that children suffer¹¹⁶. Standards on children's rights should be understood by all those dealing with the care of children. Everyone professionally concerned with the protection of children during armed conflict should be familiar with both the humanitarian and human rights law. All military personnel including the peace-keeping personnel, U.N. agencies and humanitarian organizations should be trained and educated to disseminate the information and on their responsibilities towards civilians and especially women and children. The U.N agencies and international civil society should play a crucial role in facilitating the awareness and implementation of children's rights by

¹¹⁶ Op cit pg 247.

governments and local communities. The health and psychological well-being and education should be the basis of all humanitarian interventions.

Eighth, armed conflicts affect all aspects of child development in terms of physical, mental and emotional traumas. These aspects should be taken into account in designing programmes on children and not only to focus on the physical vulnerability. Emergency and reconstruction assistance should give priority to the prevention of further traumatic experiences by preventing further family reparation, preventing gender based violence and supporting the survivors in their efforts to heal and rebuild their social networks and therefore enhancing the people's ability to help themselves.

APPENDICES

QUESTIONNAIRE

NAME OF PERSON – BILL OMAMO

POSITION – PROGRAMME OFFICER

**NAME OF INSTITUTION – INTERNATIONAL COMMITTEE OF THE RED CROSS
(I.C.R.C.-NAIROBI OFFICE)**

1. **What was the role of the I.C.R.C. concerning thee children in Rwanda,**
 - A) **During the time when the genocide was going on.....**
 - B) **The post genocide activities in catering for the needs of children**
.....
.....
2. **Explain the treatment of the children when undertaking the massacres**
.....
.....
3. **What can you say was the role of children in the massacres?**
.....
.....
4. **In what ways were the children involved in the genocide?**
.....
.....
5. **Explain the condition in the prisons and detention camps were the children were confined.**
.....
.....
6. **How was the family unit affected by the genocide?**
.....
.....
7. **Are there children still in detention camps and prisons? If so for what reasons?**
.....
.....

-
8. During the mass movement of people to neighboring countries how were children affected?
-
-
9. Explain the condition in the refugee camps in relation to the children
-
-
10. What can you say are the traumatic disorders portrayed by children after the genocide and insurgents?
-
-
11. What problems did you encounter when carrying on the tracing and unification of families after the genocide?
-
-
12. Where the rules of engagement in terms of means and methods as provided in international humanitarian law observed?
-
-
13. What would you say are the immediate needs of child once in the refugee camps?
-
-
14. What mechanisms were put in place to try the perpetrators of genocide considering they were below the age of majority?
-
-
15. What challenges were encountered if any
16. What measures has the Rwandan government taken to guarantee the rights of the children in terms of legal and institutional reform.....

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