

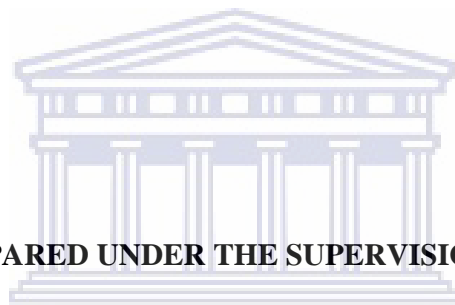
**THE ROLE AND EFFECT OF SMALL ARMS IN THE RECRUITMENT OF CHILD  
SOLDIERS IN AFRICA: CAN THE INTERNATIONAL LAW BE STRENGTHENED?**

**By**

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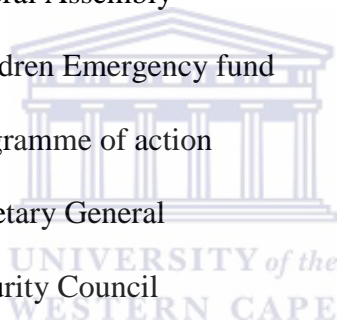
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## LIST OF ABBREVIATION

ACWRC	African Charter on the Rights and welfare of a child
AU	African Union
AK-47	Kalashnikov
CDI	Centre for Defense Information
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
ECCAS	Economic community of Central African States
ECOWAS	Economic Commission of West African States
FPLC	Patriotic Force for the Liberation of Congo
ICC	International Criminal Court
ICRC	International Commission of the Red Cross
IDP	Internally Displaced people
IHL	International Humanitarian Law
IRIN	Integrated Regional Information Network
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal tribunal of Yugoslavia
LRA	Lord Resistance Army
MRM	United Nation Monitoring and Reporting Mechanism
NACIWA	National anti-corruption institution in West Africa
NGO	Non-Governmental Organisations
OUA	Organisation of African Unity

OHCHR	Office of the United nations High Commissioner for Human Rights
OPAC	Optional protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict
SADC	Southern Africa Development Commission
SCSL	Special Court of Sierra Leone
SRSG-CAAC	Special Representative to the Secretary General for Children and Armed Conflict
TI	Transparency International
UN	United Nations
UNCAC	United nation Convention against Corruption
UNGA	United Nations general Assembly
UNICEF	United Nations Children Emergency fund
UNPOA	United Nations Programme of action
UNSG	United nations Secretary General
UNSC	United Nations Security Council
UPC	Congolese Patriotic Union
WHO	World Health Organisation



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## CHAPTER ONE

### 1.1. INTRODUCTION

It is an unfortunate and cruel reality that both government and armed groups used child soldiers during armed conflict.<sup>1</sup> Child soldiers have become an integral part of government forces as well as insurgent groups in Africa and elsewhere.<sup>2</sup> Most of them are being exploited as combatants, while others perform functions, such as porters, spies who are able to enter small spaces, cooks, messengers, lookouts, and even suicide bombers.<sup>3</sup> Some of the most disturbing aspects of child soldiering are that some of them are being forced to kill or are themselves killed, sexually abused and are exposed to drugs.<sup>4</sup> The use of child soldiers in conflicts is not a recent phenomenon and has indeed become a common practice that characterises modern conflicts.<sup>5</sup>

Recruitment is usually carried out forcefully or voluntarily by both government and rebel forces. The difference between these two types of recruitment is not always clear since their decision to join is always influenced by external factors.<sup>6</sup> Examples of such reasons for voluntary recruitment include the desire to revenge, adventure, peer pressure, and need for belonging and survival. Concerning the reason for survival, some argue that, the children do not actually choose freely to become combatants, but are rather forced by circumstances.<sup>7</sup> There are numerous reasons for the continuous targeting of children by armed forces and armed groups. These include shortage of combatants, the fact that children are easy to train physically and psychologically, and also that children are obedient and are readily available.<sup>8</sup> The recruited children are compelled to take part in brutal induction ceremonies, where they are threatened and forced to kill or witness the killing of someone they know.<sup>9</sup>

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<sup>1</sup> International Review of the Red Cross: Humanitarian Debate: *Law Policy, Action International Committee of Red Cross*: Vol: 85, No. 852, 2003.

<sup>2</sup> International Law to Stop the Use of Child soldiers.

Available : [http://internationlaffairs.suite101.com/article.cfm/child\\_soldiers](http://internationlaffairs.suite101.com/article.cfm/child_soldiers).

Accessed March 10, 2010.

<sup>3</sup> Mezmur D B. 2008, Children at Both Ends of the Gun: Child Soldiers in Africa. In Sloth-Nielsen, J. *Children Rights in Africa. A legal Perspective*. P: 200.

<sup>4</sup> Ibid. P: 200.

<sup>5</sup> Twum- Danso A. ( 2003). *Africa's Young Soldiers. The Co-option of Childhood*: P:1.

<sup>6</sup> Coomaraswamy R. *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed Conflict-towards Universal Ratification*. P: 540.

<sup>7</sup> Twum Danso A. (2003). *Africa's Young Soldiers. The Co-option of Childhood*: P:10.

<sup>8</sup> Ibid.

<sup>9</sup> Hackenberg, M. (2000). *Can the Optional Protocol for the Convention of the Rights of the Child protect Ugandan Child Soldiers*. Indiana International and Comparative Law. P: 421-422.

The fate of child soldiers in conflicts is increasingly determined by the proliferation and nature of small arms.<sup>10</sup> In a report presented to the United Nations on the effects of armed conflict on children, Machel observed that the increased use of children in armed conflict can be attributed to, inter alia, the proliferation of inexpensive light weapons.<sup>11</sup> Stohl, highlighted that “ researchers are increasingly uncovering and examining the link between small arms and the use of children in conflict and have come out with the view that the availability of small arms is without question a contributing factor to the use of child soldiers”.<sup>12</sup>

Small arms can be defined as weapons designed for individual use, and range from revolvers, self-loading pistols, assault rifles, sub machine guns, AK-47, hand grenades, hand guns, to anti personal landmines.<sup>13</sup> Small arms are tools friendly to child soldiers and their widespread proliferation may make the use of children more attractive and feasible. However, the relationship is not casual nor does small arms circulation serve as an indicator for the use of children in conflict.<sup>14</sup> Some experts are of the opinion that “there is not necessarily a direct cause and effect relationship between small arms and the use of child soldiers”, nevertheless, child soldiers are used in areas where forces are in short supply.<sup>15</sup> It should be noted that the presence of small arms has made child combatants just as effective as adults and to a large extent erased the distinction between adult and child combatants.<sup>16</sup> In the first report on small arms on the 24<sup>th</sup> of April 2008, the UN Secretary General (SG) Ban Ki Moon urged countries to increase their collection and sharing of data on small arms pointing out that at present, most conflicts are fought using small arms and light weapons.<sup>17</sup>

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<sup>10</sup>World Council of Churches: *Statement on the control of small arms and light weapons*: Available: <http://www.oikoumene.org/statement.1250.0.html> . Access February 15, 2010.

<sup>11</sup> Hackenberg, M. (2000). Can the Optional Protocol for the convention of the Rights of the Child protect Ugandan Child Soldiers. *Indiana International and Comparative Law*. P: 422.

<sup>12</sup> Stohl, R. *Under the gun: Children and small arms*. Africa Security review Vol. 11 No 3, 2002.

<sup>13</sup> Machel, G. (2001). *The impact of War on Children* P: 120.

<sup>14</sup> Stohl, R.: Targeting Children Small arms and Children, *Center for Defense information: Spring 2002-Volume IX, Issue 1*. P:278.

<sup>15</sup> Ibid. P:278.

<sup>16</sup> Ibid. P:278.

<sup>17</sup> Kostova B. UN Radio: *Secretary-General Urges Information-Sharing on small arms*.

Available: <http://www.unmultimedia.org/radio/english/detail/37160.html> . Access: January 25, 2010.

He added that more human rights abuses such as rape, torture and forced recruitment of children are committed with the aid of these than any other weapons.<sup>18</sup> Furthermore, the availability of small and light weapons facilitated the recruitment of child soldiers since they are easy to carry, operate, and maintain.<sup>19</sup>

The proliferation, use and misuse of small arms have devastating impact on children in general and child soldiers in particular. Some of these consequences include death, injuries, development of a culture of violence, hindrance to education, health and development, psychological imbalance, long term trauma, separation from families, family displacement, instilling in them terrorist ideas, and above all, rendering the children to be recruited as child soldiers.<sup>20</sup> These impacts have been recognised internationally but efforts to control small arms and efforts to protect children have remained separated. Thus the child soldier phenomenon has demonstrated the importance of linking their recruitment to small arms initiatives.<sup>21</sup> There has neither been full examination of the issues concerning child soldiers and small arms nor the full enforcement of norms and standards to protect them.<sup>22</sup> If we continue to treat these issues separately, then the drive to end the use of child soldiers will be difficult to achieve.

## **1.2. LEGAL FRAMEWORK FOR THE PROTECTION OF CHILD SOLDIERS**

There are a number of international legal instruments as well as small arms initiatives to protect and eliminate the use of child soldiers completely. Despite every effort put in place, a lot still remains to be done since little progress has been made to solve the problem.<sup>23</sup>

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<sup>18</sup> Ibid: 2009.

<sup>19</sup> Machel, G. (2001). *The Impact of War on Children*. P: 119.

<sup>20</sup> Stohl, R. : Under the Gun: Children and Small Arms: African Security Review

Available: <http://www.iss.co.za/pules/asr/11no3/stohl.html> .

Accessed February 15, 2010.

<sup>21</sup>Stohl R. (2001). Biting the Bullet: Putting Children First: *Building a Framework for International Action to Address the Impact of small Arms on Children*.

Available: <http://www.smallarmsnet.org/issues/themes/childrenfirst05.pdf> .

Accessed: September 20, 2009.

<sup>22</sup> Ibid.

<sup>23</sup> Mezmur, D.D. (2008). *Children at Both Ends of the Gun: Child Soldiers in Africa*. P: 200.

The Convention of the Rights of the Child (CRC) is the most comprehensive and highly ratified child rights instrument which ensures some sort of protection to children in both peace and war times.<sup>24</sup> The CRC is applauded for being the first global instrument that explicitly recognised children's rights, which state parties undertake to respect and ensure.<sup>25</sup> The CRC is regarded as the landmark in the history of childhood rights no matter one's perspectives.<sup>26</sup> The CRC is earmarked as the only binding international children legal instrument to have incorporated civil political, social and economic rights.<sup>27</sup> Article 38 of the CRC, is the provision that provides for special protection to children affected by armed conflict. It obliges states to take measures to ensure that children under the age of 15 years do not take part in hostilities and refrain from recruiting that category of people into the armed forces. In addition, it compels states to take feasible measures to ensure that persons who have not attained the age of 15 years do not take direct part in hostilities. Furthermore, it stipulates that state parties must refrain from recruiting any person who has not attained the age of 15 years into the armed forces. In recruiting among those persons who have attained the age of 15 years but have not attained the age of 18, state parties shall endeavour to give priority to those who are oldest.<sup>28</sup> The age limit of 15 years for recruitment found in article 38 of the CRC is contradicted by article 1 of the same convention which defines the child as any person below 18 years.<sup>29</sup>

Amongst all the regional human rights systems around the world, the African Charter on the Rights and Welfare of the Child (ACRWC) singles itself out to be the only regional body with a legally binding instrument on the rights of the child containing an International humanitarian Law (IHL) provision.<sup>30</sup> Thus it became the first comprehensive regional children's rights treaty geared towards the protection of children in Africa.<sup>31</sup> It is also the first regional treaty to establish 18 as the minimum age for recruitment and direct participation in hostilities, by calling on member states to refrain from recruiting any child

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<sup>24</sup> Ibid: P:201.

<sup>25</sup> Mower, G. (1997). *The Convention on the Rights of the Child. International Law Support for Children*. P: 3.

<sup>26</sup> Freeman, M. (1996). *Children's Rights. A comparative Perspective*. P: 1.

<sup>27</sup> Habeeb, W. (2007). *Africa, Progress and Problems. Civil Wars in Africa*. P: 20.

<sup>28</sup> Mezmur, B.D. (2008), *Children at Both Ends of the Gun: Child Soldier in Africa*. P: 201.

<sup>29</sup> Ibid P:201.

<sup>30</sup> Ang, F. (2005). *A Commentary on the United Nation Convention on the Rights of the Child Article 38 Children and Armed Conflict* P: 4.

<sup>31</sup> Mezmur, B.D (2006). *The African Committee of Experts on the Rights and Welfare of the child. An update. African Human Rights Law Journal*. Volume 6. N0: 2. P: 549.

less than 18 years. This prohibition includes both voluntary as well as compulsory recruitment.

As a result of the controversial age limit issue of Article 38 of the CRC, the idea of an Optional Protocol to the Convention of the Rights of the Child involved in Armed Conflict (OPAC) with the aim of raising the minimum age limit of participation and recruitment from 15 to 18 years was proposed.<sup>32</sup> The OPAC was adopted and opened for signature, ratification and accession on the 25<sup>th</sup> of May 2000. After receiving the first ten ratification, the OPAC entered into force and became legally binding on the 12<sup>th</sup> of February 2002.<sup>33</sup> The Protocol establishes 18 as the minimum age for compulsory recruitment and participation in hostilities. Currently, the Office of the Special Representative to the Secretary General (SRSG) for children and armed conflict, in cooperation with United Nations Children Emergency Fund (UNICEF) and Office of the High Commissioner for Human Rights (OHCHR) are running a two year campaign called “zero under eighteen” to promote the universal ratification of OPAC by its tenth anniversary of its entry into force in 2012.<sup>34</sup> The campaign focuses on two aspects; firstly, to encourage states that have not yet ratified the protocol to do so and to establish 18 years as a minimum age for voluntary recruitment into armed forces, when depositing the binding declaration under article 3. Secondly, to urge states which have already ratified the Protocol but have not adopted the straight 18 position on voluntary recruitment to amend their binding declarations.<sup>35</sup>

The UN Security Council Resolution 1998 of 2011 while acknowledging the fact that the implementation of resolution 1612 of 2005 and 1882 of 2009 has generated progress, condemns in strong terms the violation of applicable international law involving the recruitment and use of children by parties to armed conflict, as well as their recruitment, killing and maiming, rape and other sexual violence, abductions, attacks against schools and

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<sup>32</sup> Foltrell, D. (2000). *Revisiting children's rights. 10 years of the UN Convention on the Rights of the Child*. P:107.

<sup>33</sup> Coomaraswamy R. (2010) . The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict-Towards Universal Ratification: *International Journal of Children's Rights* 18 (2010). P: 537.

<sup>34</sup> Ibid P: 548.

<sup>35</sup> Ibid. P:549.

hospitals and denial of humanitarian access by parties to armed and all violation of international law committed against children in conflict situations.<sup>36</sup>

Concerning the circulation of small arms, the UN Program of Action (PoA), to prevent, combat and eradicate the illicit trade on small arms and light weapons which came into force in July 2001 raises the concern about the devastating consequences of small arms on children, many of whom are victims of armed conflict or are forced to become child soldiers. Member states taking part at the conference were urged to prevent, combat and eradicate the illicit trade of small arms in all aspects as well as adopting regional measures to prevent combat and eradicate the manufacturing and transfer of small arms.<sup>37</sup>

In a statement issue to the General Assembly's third Committee, the SRSG, Radhika Coomaraswamy, highlighted some important developments during the year 2010 with regards to the protection of children affected by conflict through encouragement and challenges. She also earmarks some successes which include the release and reintegration of some 11,000 children associated with armed forces and armed groups. Also highlighted in her statement were new plans signed by the UN and the Government of Afghanistan on 30 January 2011 and the Chadian Security Forces on 16 June 2011 to cease the recruitment of children as well as to release those already recruited. She also noted some progress towards universal ratification of the OPAC, stating that, since the launching of the Campaign, additional 15 member states have signed, ratified and acceded to the OPAC.<sup>38</sup>

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<sup>36</sup> United Nations Security Council: Resolution S/RES/1998 (2011), adopted by the Security Council at its 6581 meeting on 12 July 2011.  
Available: <http://www.un.org/children/conflict/documents/Res1998.pdf>.  
Accessed: 11/11/2011.

<sup>37</sup> Conventional Arms: *Program of Action to prevent, combat and eradicate the illicit trade of small arms in all its aspect*. (UN Document A/conF.192/15). Available: <http://disarmament.un.org/cab/poa.html> .  
Accessed: March 09, 2010.

<sup>38</sup> Coomaraswamy R. Children and armed conflict: Statement by the SRSG Radhika Coomaraswamy for Children and Armed Conflict to the General Assembly's third Committee: Promotion and Protection on the Rights of Children.  
Available: <http://www.un.org/children/conflict/english/pr/2011-10-12270.htm>.  
Accessed: 11/11/2011.

























































































































































































































