



**THE IMPACT OF ARMED CONFLICT ON CHILD EDUCATION IN THE
DEMOCRATIC REPUBLIC OF CONGO**

BY

JOCONDE MARJORIE MALEKAT

STUDENT NUMBER: 3417437

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University of Western Cape**

**UNIVERSITY of the
WESTERN CAPE**

SUPERVISOR: Professor EBENEZER DUROJAYE

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DECLARATION

I, **Joconde Marjorie Malekat** declare that '**The impact of armed conflict on child education in the Democratic Republic of Congo**', is my work and has not been submitted for any degree or examination in any other university or academic institution. All sources and materials used are duly indicated and acknowledged by complete references.



DEDICATION

To the Congolese children affected by war.



ACKNOWLEDGEMENT

I am humbly thankful to God the Almighty who has provided me with wisdom and divine guidance throughout this research endeavor despite difficulties I went through. Without Him I could not have come this far.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
AP1 AND AP2	Additional Protocols of 1977
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CRC	Convention on the Rights of the Child
DDR	Disarmament Demobilization and Reintegration
DRC	Democratic Republic of Congo
EFA	Education for All
FARDC	Forces Armées de la République Démocratique du Congo
FDLR	Forces Démocratique de Libération du Rwanda

FENECO Federation Nationale des Enseignants Congolais

FPLC Patriotic Forces for the Liberation of Congo

FRPI Front for Patriotic Resistance in Ituri

GCIV Fourth Geneva Convention of 1949

GCPEA Global Coalition to protect Education from Attack

ICESCR International Covenant of Economic, Social and Cultural Rights

ICCPR International Covenant on Civil and Political Rights

ICC International Criminal Court

ICTR International Criminal Tribunal for Rwanda

IDPS Internally Displaced Persons

IHL International Humanitarian Law

IHRL International Human Rights Law

LRA	Lord's Resistance Army
MONUSCO	Mission des Nations Unies pour la Securisation de la Republique Democratique du Congo
OPAC	Optional Protocol on the Involvement of Children in Armed Conflict
SDGS	Sustainable Development Goals
UDHR	United Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
UNTC	Union Nationale des Travailleurs Congolais
UPC	Union of Congolese Patriots



UPCP Union des Patriotes Congolais pour la Paix

UXOS Unexploded Ordinances

WFCLC Worst Forms of Child Labour Convention



ABSTRACT

This study investigates the the impact of armed conflict on child education in the Democratic Republic of Congo. Naturally, armed conflict affects negatively on people's life. In particular, armed conflict affects the education of children as military groups attack schools, schools children and teachers. Ultimately, armed conflicts also affect the quality of education children receive during hostilities. In light of this, the study assesses how the Congolese government, in line with international and regional human rights obligations, responds to the educational needs of children affected by armed conflict.



KEY WORDS

Armed conflict

Education

Child protection

Child's rights

Democratic Republic of Congo

Grave violations

Humanitarian assistance



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CHAPTER ONE: INTRODUCTION

1. Background

The Convention on the Rights of Child (CRC)¹ and the African Charter on the Rights and Welfare of the Child (ACRWC)² were adopted to specifically protect, promote and fulfil the rights of children, globally and regionally. Both the CRC and the ACRWC underpin four cardinal principles that States Parties must uphold, namely: child participation, survival and development, non-discrimination, and best interest of the child.³ Relevant to this study, the CRC and the ACRWC oblige State Parties to protect the rights of those children affected by armed conflict.⁴

Apart from the CRC and the ACRWC, the Fourth Geneva Conventions of 1949 (GCIV)⁵ and the 1977 Additional Protocols⁶ also protect the rights of those children affected by armed conflict. For example, Article 77(2) of Additional Protocol 1 prohibits State Parties or any person to recruit children to into an armed group. In addition, Article 24(1) of GCIV guarantees orphaned and/or separated children access to education, provided they 15 years or below.⁷ Moreover, the occupying power in occupied territories must provide the children with basic proper care, including provision of education.⁸ Article 77 of Additional Protocol I further provides:⁹

‘Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with care and aid they require, whether because of their age or for any other reason.’

¹Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

²Adopted by the Organisation of African Unity on 11 July 1990 and entered into force in November 1999 AU Doc. CAB/LEG/24.9/49 (1990).

³UNICEF ‘Four principles of the Convention on the Rights of the Child’ available at: <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> (Accessed 27 February 2020).

⁴African Committee of Experts on the Rights and Welfare of the Child ‘The impact of conflict and crises on children in Africa’ available at: https://www.acerwc.africa/wp-content/uploads/2018/07/Study_on_the_impact_of_armed_conflict_and_crisis_on_children_in_Africa_ACERWC_FINAL_ENGLISH.pdf (accessed 27 February 2020).

⁵International Committee of the Red Cross ‘Treaties, States Parties and Commentaries’ available at: <https://ihl-databases.icrc.org/ihl/INTRO/380> (Accessed 27 February 2020).

⁶International Committee of the Red Cross ‘Treaties, States Parties and Commentaries’ available at: <https://ihl-databases.icrc.org/ihl/INTRO/380> (Accessed 27 February 2020).

⁷Article 24 (1) of the Fourth Geneva Convention 1949.

⁸See Articles 50 and 94 of the Fourth Geneva Convention 1949.

⁹Furthermore, Article 78(2) of the Additional Protocol I reiterates the need to provide education even in situations where an evacuation takes place.

In light of the above, the 2015 Special Representative of the Secretary General for Children and Armed Conflict report revealed that millions of children are living war zones and high levels of violence.¹⁰ This hampers the children's ability to survive and develop in a physically, psychologically and emotionally conducive environment.¹¹ It is, therefore, not surprising that the United Nations Children's Fund (UNICEF) declared 2014 a devastating year for children because '...children have been killed while studying in the classroom and while sleeping in their beds; they have been orphaned, kidnapped, tortured, recruited, raped and even sold as slaves.'¹²

The changing patterns of warfare has had a devastating impact on the well-being of civilians as they are targeted by who combatants disregard both human rights law and humanitarian law.¹³ As a vulnerable group,¹⁴ armed conflict affects children in several ways as institutions, such as the family, school and health care institutions fail to protect and ensure they have a proper childhood experience.¹⁵ What is more worrisome is that some of the children even partake in armed conflict as child soldiers.¹⁶ Due to disruptions armed conflicts cause, children become refugees and/or internally displaced persons and in some cases separate from their families.¹⁷ In addition, armed conflicts disrupt the supply of food and other basic, which denies children access to basic nutrition and inevitably leaves them malnourished and prone to diseases and/or death.¹⁸

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¹⁰Report of the Special Representative of the Secretary General for Children and Armed Conflict 20 July 2015. (hereafter SRSG-CAAC Report (2015).

¹¹Peacebuilding, Education and Child Protection: Framework of Collaboration, UNICEF, 2013.

¹²'2014: A devastating year for children' (2014) UNICEF New York/Geneva available at http://www.unicef.org/media/media_78058.html (accessed 25 January 2016) (hereafter UNICEF '2014: A devastating year for children' (2014).

¹³United Nations Report of the Secretary-General on the Work of the Organisation, Supplement No. 1 (A/54/1) 1999 para 2.

¹⁴'Six Grave Violations' Special Representative of the Secretary General on children and armed conflict available <https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/> [accessed 03 October 2016].

¹⁵Brett R 'Child soldiers: Law, politics and practice' (1996) 4 (2) *International Journal of Children's Rights* 116.

¹⁶Bellamy C *State of the World's Children 2005: Childhood under Threat* (2005) UNICEF 39 (hereafter Bellamy C (2005).

¹⁷ 'Effects of armed conflict on child health and development: A systematic review' available at: <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0210071&type=printable> (Accessed 27 February 2020).

¹⁸Cox ME 'War, blockades, and hunger: Nutritional deprivation of German children 1914-1924' (2013) available at: http://www.histproj.org/completed/COX_War,%20Blockades,%20and%20Hunger.pdf [accessed 03 October 2016].

Earlier on, this study revealed that the CRC, the ACRWC, the GCIV and its Additional Protocols protect the rights of those children affected by armed conflict, including education. Despite this guarantee, there are rampant attacks on schoolteachers, students and education facilities in countries affected by armed conflict.¹⁹ Within this context, the next section seeks to outline the problem statement of the study on how armed conflict affects the education of children in DRC.

2. Problem statement

As shown in the introductory section above, children in armed conflict need even protection that is more special and care because they are living in hostile environments.²⁰ In DRC, which is the focus of this study, armed conflict has caused decades of widespread violence and insecurity.²¹ Children continue facing serious threats and/or human rights violations, such as risks of and/or recruitment into child soldiers,²² abduction, trafficking and sexual violence.²³ Thus, the armed conflict continue to compromise DRC's children access to, among others, education due to fear of abductions and/or rape.²⁴

Statistics reveal that since April 2012, armed groups have attacked, occupied, looted and destroyed at least 800 schools denying at least 240,000 students ability to go to school.²⁵ By end 2012, the armed conflict had displaced at least 1.5 million children in DRC.²⁶ It is important to highlight that the occupation of schools by the military further diminishes the already insufficient education infrastructure because fighters

¹⁹ Protecting Cultural Heritage in Times of Conflict' available at: https://www.iccrom.org/sites/default/files/ICCROM_18_ProtectingHeritageConflict_en.pdf (Accessed 27 February 2020).

²⁰Madhu G, Parvesh L 'Protection of Child Rights in India: Role of Teachers and Parents' (2013) 2 *Educationia Confab* 37.

²¹Case Studies on Protecting the Right to Education: The Occupied Palestinian Territory and the Democratic Republic of Congo (2014) 12.

²²"Our School Became the Battlefield" Using Schools for Child Recruitment and Military Purposes in Eastern Democratic Republic of Congo available (2015) at <https://www.hrw.org/report/2015/10/27/our-school-became-battlefield/using-schools-child-recruitment-and-military> (Accessed 14 September 2016).

²³Roger I 'Education for children during armed conflicts and post-conflict reconstruction' (2002) 2.

²⁴ DR Congo: Students, Schools at Risk in Conflict Zones (2015) available at <https://www.hrw.org/news/2015/10/27/dr-congo-students-schools-risk-conflict-zones> (Accessed 29 September 2016).

²⁵UNICEF 'DR Congo: Over 600 schools looted or damaged by conflict this year' available at http://www.unicef.org/infobycountry/media_66599.html (Accessed 29 September 2016).

²⁶Contexte Humanitaire dans l'Est du Congo : Dégradation de la situation sécuritaire et humanitaire depuis le début 2012 : Education Cluster, DRC.

sometimes burn the buildings when they are deserting the area to make the place inhabitant for other fighters.²⁷

3. Research question and research objectives

The central question of the research is: What is required of DRC to fulfil the children's right to education during the armed conflict?

The following main objectives will seek to address this research question in the following manner: Firstly, the study will establish the obligations of DRC as contained in specified international treaties that it has ratified, with respect to children, including education. In this section, the study critically discusses the international and regional legal standards in the protection and fulfilment of the children's right to education during the armed conflict.

Secondly, the research paper will analyse constitutional provisions for children relating to education, since these create justiciable obligations for the State. This section will also review a number of legislation giving effect to the identified constitutional provisions. The aim is to analyse Zimbabwe's constitutional and legislative frameworks in guaranteeing children in DRC the right to education as well as compliance with the State's international legal obligations.

Finally, the study will draw conclusions from the findings of its analysis in order to make recommendations to assist government in protecting the rights of children during armed conflicts.

4. Methodology

This research paper is a desktop research. It obtains information from primary sources, such as the CRC, the ACRWC, the GCIV and their relevant protocols. In addition, the concluding observations and recommendations are also useful in providing an explanation of the practical nature of the rights contained in the various treaties and guide State parties, such as DRC on how to realise various rights, including the right

²⁷ War Crimes Prosecution Watch (2015) available at http://publicinternationallawandpolicygroup.org/wp-content/uploads/2015/11/WCPW_Mastersheet_11-2-15.html (Accessed 29 September).

to education. Relevant legislation of DRC will also be taken into account, paying attention to court rulings where applicable.

Apart from the primary sources, the study also makes use of secondary sources, particularly textbooks and journal articles. Other sources such as General Comments and Recommendations, internet resources, reports of international commissions and organisations are also relevant in providing insights into the intentions underlying this study.

5. Literature review

The importance of education in developing countries, such as DRC, is that it fosters economic growth and reduces poverty.²⁸ Coomans²⁹ argues that the right to education, in Articles 13 and 28 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR),³⁰ respectively, fulfils other human rights.³¹ Articles 11 and 28 of the ACRWC and CRC also guarantee children the right to education, respectively. Finally, the Constitution of the DRC guarantees all children the right to education, without discrimination.

Scholars, such as Eke argue that any form of violence is not conducive for teaching and learning in any kind of an environment.³² As Olaniyan puts it, teaching and learning can successfully take place if there are disruptions of peace.³³ Thus, the existence of armed conflict affects teaching and learning due to the trauma as well as other psychological problems associated with exposure to violence. Efforts have been made to secure children's rights through the CRC and the ACRWC that have detailed provisions obligating State Parties, such as DRC, to ensure children's enjoyment of their rights even in situations of armed conflict.³⁴ This includes children who are

²⁸Ugwumba EU & Odom TC 'Boko Haram insurgency: A peril to the achievement of education for all in Nigeria' (2014) 3(1) *International Journal of Education, Learning and Development* 1.

²⁹Coomans F 'In search of the core content of the right to education' in Chapman A & Russell S (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 219-20.

³⁰Adopted by the UN General Assembly resolution 217 A (111) of 10 December 1948.

³¹Coomans F 'In search of the core content of the right to education' in Chapman A & Russell S (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 219-20.

³²Eke E *Child Development in a Changing Cultural Context* (2000) 43.

³³Olaniyan OD 'Effect of Boko Harm insurgency on the educational system' (2015) 24(2) *Journal of Research Development* (2015) 6.

³⁴See Articles 22 and 38 of the ACRWC and the CRC, respectively.

displaced, abandoned, and orphaned or children who do not have access to health care or education.³⁵

Targeted attacks against schools during armed conflict could force schools to close down which in effect deprives children access to education.³⁶ The abduction, kidnapping, forced recruitment of teachers and schoolchildren as well as damage of education facilities diminishes access to education.³⁷ For instance, in 2014 the government of DRC had to forbid at least 31 000 children from going to school due to *militia* attacks on schools.³⁸ As a result, DRC has a high rate of out of schoolchildren due to armed conflict.

A 2015 study by Torrente et al reiterates that education is indispensable to the development of individuals and nations.³⁹ The study argues that improving the quality of social and pedagogical interactions at school is particularly to DRC because schools can play a protective role for students who face various forms of adversity due to armed conflict.⁴⁰ In terms of quality school interactions, the study revealed that there were positive impacts on students' perceptions of supportive schools and teachers, but negative impacts on students' perceptions of predictability and cooperation in the school and classroom.⁴¹

Another 2013 study by Lokuge *et al* researched on the impact of armed conflict on the mental health and wellbeing of children and adolescents. It revealed that the uptake by children and adolescents could be improved through the provision of child and adolescent-specific mental health service information, the use of community-based

³⁵UNHCR 'Refugee Children: Guidelines on Protection and Care' available at: <https://www.unhcr.org/3b84c6c67.pdf> (Accessed 27 February 2020).

³⁶SGRG-CAAC Report (2015) para 18.

³⁷O'Mally B 'The longer-term impact of attacks on education systems, development and fragility and the implication for policy responses' Background paper prepared for the Education for All Global Monitoring Report (2011) UNESCO 2.

³⁸Annual Report of the Secretary General (2015) para 63.

³⁹Torrente C et al. 'Improving the quality of school interactions and student well-being: Impacts of one year of a school-based program in the Democratic Republic of Congo' 2015 1(1) *Journal on Education in Emergencies* 49.

⁴⁰Torrente C et al. 'Improving the quality of school interactions and student well-being: Impacts of one year of a school-based program in the Democratic Republic of Congo' 2015 1(1) *Journal on Education in Emergencies* 50.

⁴¹Torrente C et al. 'Improving the quality of school interactions and student well-being: Impacts of one year of a school-based program in the Democratic Republic of Congo' 2015 1(1) *Journal on Education in Emergencies* 77.

outreach activities, and linkage to other sectors of the health system to target such exposures.⁴²

Finally, Aber et al also argue that improving children's learning and development in conflict-affected countries is critically important for breaking the intergenerational transmission of violence and poverty.⁴³ For this reason, the study seeks to investigate the extent DRC is guaranteeing children their right to education during armed conflict.

6. Significance of study

Armed conflicts rob children of the benefits of childhood that will help them grow into responsible adults and contribute meaningfully to the society. Armed conflicts exposes children to human rights abuses, such as lack of education that children in non-armed conflicts would not necessarily suffer. Armed conflicts have a negative impact on the child's right to education as they affect school attendance, the adequacy of education infrastructure, which breeds fear of safety in the schools.

This thesis seeks to expand on the existing body of knowledge regarding the protection, promotion and fulfilment of children's rights during armed conflict in DRC. This study is useful to the government of the DRC in responding to the plight of children denied access to education during armed conflict.

7. Limitation of study

This thesis limits its focus to the impact of the armed conflict in the Democratic Republic of Congo on the child's right to education. The thesis does not also undertake an experimental research and relies on existing work (both qualitative and quantitative) carried out by various stakeholders on the subject matter.

8. Overview of chapters

Chapter 1: Introduction

This chapter introduces and gives an overview of the subject matter.

⁴²Lokuge K et al 'Mental health services for children exposed to armed conflict: Médecins Sans Frontières' experience in the Democratic Republic of Congo, Iraq and the occupied Palestinian territory' 2013 *Paediatrics and International Child Health* 33(4) 270.

⁴³Aber J et al. 'Promoting children's learning and development in conflict-affected countries: Testing change process in the Democratic Republic of the Congo' 2017 *Development and psychopathology* 29(1) 53.

Chapter 2: Legal framework for the protection of children affected by armed conflict under international Law

This chapter discusses specific provisions of both international human rights law and international humanitarian law as minimum standards of protecting the right to education of children affected by armed conflict.

Chapter 3: Legal framework protecting the rights of children in Democratic Republic of Congo

This chapter discusses DRC's national legal framework in protecting the children's right to education. It also considers regional and international instruments that obligate DRC to protect the right to education of children, especially during armed conflict.

Chapter 4: The impact of armed conflict on the child right to education in Democratic Republic of Congo

This chapter considers the impact of armed conflict on the children's right to education in DRC. The chapter further looks at the impact of armed conflict on school attendance, educational infrastructure, educational personnel as well as the quality of education. Finally, the chapter assesses the government's response to the problem having regard to its international and regional human rights obligations to protect and fulfil the child's right to education.

Chapter 5: Conclusion and Recommendations

This chapter draws conclusions from chapter findings and makes relevant recommendations on DRC can improve access to education of children even in the face of armed conflict.

CHAPTER TWO: INTERNATIONAL LAW STANDARDS ON THE PROTECTION OF THE RIGHTS OF CHILDREN AFFECTED BY ARMED CONFLICT

2.1 Introduction

As noted in chapter 1, the gross violation of children's rights, including education in DRC.⁴⁴ In 2017, UNICEF revealed that: 'clashes between militias and security forces have displaced thousands of families and left 850,000 children without access to essential services like education and healthcare'.⁴⁵ In addition, the armed groups have attacked at least 400 schools, which is hindering parents to send children to school.⁴⁶ Research also shows that armed conflicts affect the educational rights of children because children become involved (directly or indirectly) in the conflict.⁴⁷ It is therefore trite to allude to the old African adage that says when two elephants fight it is the grass that suffers.⁴⁸ In the context of DRC, the grass is symbolic of the vulnerable children who suffer the brunt of the on-going crisis.

Despite the untold sufferings and struggles that children suffer in armed conflicts, various international human rights treaties are useful in protecting children's rights in war times.⁴⁹ This chapter therefore presents the international law standards applicable to DRC for the protection of the rights of children affected in armed conflict. The aim of the chapter is to specifically answer the research question, "what are the available

⁴⁴Nilsson AC *Children and Youth in Armed Conflict* (2013) 938; Global Education Cluster 'Case studies on protecting the right to education: The occupied Palestinian territory and the Democratic Republic of Congo' (2014) 4.

⁴⁵UNICEF '850,000 children displaced by violence in Democratic Republic of the Congo's volatile Kasai region' available at https://www.unicef.org/infobycountry/media_98540.html (accessed 20 March 2018).

⁴⁶UNICEF 'DR Congo: Children's access to education under threat from ongoing violence in Kasai region' available at https://www.unicef.org/infobycountry/media_100838.html (accessed 20 March 2018).

⁴⁷Mezmur notes that armed conflicts exploit most children as combatants while others perform functions, such as porters, spies, cooks, messengers, lookouts, and even suicide bombers. See, Mezmur BD 'Children at both ends of the gun: child soldiers in Africa' in Sloth-Nielsen J (ed) *Children's rights in Africa: A legal perspective* (2008) 200.

⁴⁸Speake J *Oxford Dictionary of Proverbs* (2015) 90.

⁴⁹These include the Four Geneva Conventions and their two Additional Protocols; Convention on the Rights of the Child (CRC); African Charter on the Rights and Welfare of the Child (ACRWC); the International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Provisions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); the Rome Statute of the International Criminal Court (Rome Statute) and the African Women's Protocol are also relevant in this discussion.

protections under international law for children during armed conflicts?” posed in chapter 1.

2.2 Guaranteeing the survival needs of children in armed conflict

The GCIV in addition to the two Additional Protocols make up the body of international humanitarian law.⁵⁰ In the context of children, the GCIV contains specific provisions, which ensure that the needs of children be given special priority concerning material for relief, distribution of food, medical care, and family reunification.⁵¹ In addition, Additional Protocol I provides for the protection of children and their interests during international armed conflicts.⁵² Similarly, Additional Protocol II provides for similar protections but protects children as well as their interests during non-international armed conflicts.⁵³

More importantly, Article 54 of the Additional Protocol I prohibits starvation as a means of warfare because food and water are indispensable means of survival. According to Kolb and Hyde, Article 54 prohibits attacks that have the negative effect of depriving a civilian population, including children the necessities for survival.⁵⁴ The phrase ‘necessities for survival’ indicates that foodstuffs, water as well as medical care are the prerequisites for one’s survival. This clearly shows that the international humanitarian law frames its provisions in a manner that provide a holistic protection of the physical and psychological wellbeing of the civilian population. The study, therefore, submits that international humanitarian law prioritises the preservation of life for a civilian population.

The above observation dovetails with core rules of human rights law that are applicable in times of emergency. For example, some human rights such as the right to life is non-derogable, even in time of emergencies.⁵⁵ Indeed, the non-derogable

⁵⁰The Fourth Geneva Convention of 1949 protects children as members of the civilian population, who are nonparticipants in the armed conflict. The other three Conventions deal with soldiers and prisoners of war, without making specific provisions on children.

⁵¹See articles 14, 17, 23, 24, 38, 50, 82, 89, 94, and 132 of the fourth Geneva Convention.

⁵²See articles 14, 17, 23, 24, 38, 50, 82, 89, 94, and 132 of Additional Protocol I.

⁵³See articles 4, 6, 78, and 79 of Additional Protocol II.

⁵⁴Kolb R and Hyde R *An Introduction to the International Law of Armed Conflicts* (2008) 147.

⁵⁵However, a non-international armed conflict allows human rights that are derogable to be suspended in times of emergency if the concerned government proclaims the suspension of certain rights. Failure to do so, all of the human rights ordinarily applicable to its territory in time of peace will remain in force. See, Conte A ‘Counter-terrorism and human rights’ in Joseph S and McBeth A (ed) *Research Handbook on International Human Rights Law* (2010) 531.

'right to life' enshrined in Articles 5, 6, and 6 of the ACRWC, CRC and International Covenant on Civil and Political Rights (ICCPR) continues to apply in times of armed conflict, taking into account the rules of international humanitarian law.⁵⁶ The State Parties' obligation to 'ensure, to the maximum extent possible, the survival, protection and development of the child' implies that Member States parties must ensure that children, for example, have food, access medical care as well as protected from physical and psychological abuse during an armed conflict or peacetime.⁵⁷ Thus, international humanitarian law operates in *renvoi* with human rights law, complementing each other preserving the lives of particularly a civilian population.

In summation, both international humanitarian law and international human rights law recognise the children's rights to right to shelter, food, medical services and life. The realisation of these rights has the desirable effect of creating a conducive environment, which promotes, protects and fulfils the educational rights of children affected by war.

2.3 Protection of children against participation in armed conflict

The recruitment of children in armed forces does not only destroy their lives physically, but also destroys their intellectual (educational) livelihoods when they drop out of school to be involved in war.⁵⁸ In January 2018, UNICEF revealed that militias and armed groups recruited at least 3000 children in DRC in 2017 alone.⁵⁹ This shows that children continue to suffer devastating consequences of hostilities in DRC.

Taking cognisance of child participation in war and how it can affect the educational welfare of children, Article 4(3)(c) of Additional Protocol II prohibits children who

⁵⁶It is important to note that while human rights law strictly prohibits killing, the same does not hold true in international humanitarian law. However, this does not mean international humanitarian law is a *lex specialis* overriding human rights law, but rather complement each other. See, Milanovic M 'Norms conflicts, international humanitarian law and human rights law' in Ben-Naftali O (ed) *International Humanitarian Law and International Human Rights Law* (2011) 115.

⁵⁷See article 5 and 6 of the ACRWC and CRC, respectively.

⁵⁸Cervantes-Duarte L and Fernández-Cano A 'Impact of Armed Conflicts on Education and Educational Agents: A Multivocal Review' (2016) 20(3) *Revista Electrónica Educare* 238-261

⁵⁹UNICEF 'Democratic Republic of the Congo: violence in Tanganyika and South Kivu fuels one of the world's worst displacement crises for children' available at https://www.unicef.org/infobycountry/media_102495.html (accessed 20 March 2018). See also, Child Soldiers International 'Monthly news round-up: Congo recruitment rises; Al-Shabaab targeting schools; and more...' available at <https://www.child-soldiers.org/news/monthly-news-round-up-congo-recruitment-rises-al-shabaab-targeting-schools-and-more> (accessed 12 December 2018).

have not attained the age of fifteen years to ‘neither be recruited in the armed forces or groups nor allowed to take part in hostilities’. The wording of this provision is clear and unequivocal: it proscribes any child below the stipulated age of fifteen years to take part, directly or indirectly, in an armed conflict.⁶⁰ In addition, Article 4(3)(d) supplements Article 4(3)(c) providing ‘that the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured.’ Thus, international humanitarian law offers protection to children as civilians, which reinforces the point that it is in the best interests of children to prohibit them participating in hostilities.

It is then not surprising that the strong worded protection of children against participation in armed conflict dovetails with the CRC,⁶¹ which is the international child specific treaty. Article 38 of the CRC jointly enjoins states parties to respect and to ensure respect for relevant rules of international humanitarian law. In addition, children under 15 should not take a direct part in hostilities and states parties must refrain from recruiting those under 15 and give priority to the oldest among those under 18. Lastly, in accordance with international humanitarian law, states parties must ensure protection and care of children affected by armed conflict.⁶² The Rome Statute of the International Criminal Court (Rome Statute) gives effect to the CRC and international humanitarian law by trying persons charged with committing war crimes, crimes against humanity, and genocide.⁶³ For example, it is a war crime to conscript or enlist children under the age of fifteen years into national armed forces or use them to participate actively in hostilities in international armed conflict and the same is true in the case of an internal armed conflict.⁶⁴ Thus, while the CRC and the Additional Protocol II prohibit states parties from recruiting children under 15 into armed forces, the Rome Statute criminalises such offenders as perpetrators war crimes.

⁶⁰Van den Herik L *The contribution of the Rwanda tribunal to the development of international law* (2005) 205. See also a similar by Gose on the minimum marriageable age in Gose M *The African Charter on the Rights and Welfare of the Child: An Assessment Of The Legal Value Of Its Substantive Provisions By Means Of A Direct Comparison to the Convention on the Rights of the Child* (2002) 53.

⁶¹On the 27th September 1990, DRC became the 45th country to ratify the CRC.

⁶²It is important to point out that DRC is not a state party to ACRWC. However, see articles 22 and 38 of the ACRWC and CRC, respectively.

⁶³DRC ratified the Rome Statute of the International Criminal Court (Rome Statute) on 11 April 2002.

⁶⁴See articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Rome Statute.

These legal standards undoubtedly enhance the protection of children against participation in armed conflicts.

However, the minimum age of recruitment as provided by the CRC and the Additional Protocol II is problematic as they allow persons between fifteen and eighteen years to partake in hostilities.⁶⁵ This age prescription of 15 violates Article 1 of the CRC, but most importantly Articles 2 and 22(2) of the ACRWC. The ACRWC unequivocally proscribes states parties to recruit a child (a person less than 18 years) into armed forces or take any other direct or indirect part in hostilities.⁶⁶ The legal gaps found in the CRC and the Additional Protocol II of allowing the recruitment of children in hostilities encourages states parties to bypass the age requirement stipulated by articles 1 and 22 of the CRC and the ACRWC and recruit children aged 15 or above but below 18 in the armed force.⁶⁷ The African Women's Protocol in Article 11(4) also calls upon states parties to 'take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier'.⁶⁸

It then suffices to argue that Articles 38 and 4(3)(c) of the CRC and the Additional Protocol II are an oversight as they stand in the way of all attempts to prevent or prohibit the participation of all children, which is anyone below 18 years, in armed conflict. This legal gap also set a bad precedence for the Rome Statute, which adopted the age 15 as the benchmark for commission of a war crime of recruiting children into armed forces. This leaves persons between 15 and 18 years with little or no protection insofar as the criminalisation of their use in hostilities is concerned. Harvey further argues that these treaties fail to address the issue of recruitment of children into armed groups by non-state forces.⁶⁹ These provisions are also in conflict with the African

⁶⁵For example, article 1 of the CRC defines a child as 'any person under the age of 18' and yet article 38 prescribes 15 as the minimum age for *children* to take part in hostilities. Similarly, Article 4(3)(c) of Additional Protocol II that allows children aged 15 or above to take part in hostilities is also in violation of article 1 of the CRC.

⁶⁶Ang F A *Commentary on the United Nations Convention on the Rights of the Child (Article 38 Children in Armed Conflict)* (2005) 26.

⁶⁷Commenting on the CRC, van Bueren argues that the drafters of the Convention failed to recognise that it is not the form of conflict but the best interest of the child, which ought to predominate in international law. See, van Bueren G *The International Law on the Rights of the Child* (1998) 332.

⁶⁸Article 11(4) of the African Women's Protocol.

⁶⁹Harvey R *Children and armed conflict: A guide to international humanitarian and Human rights laws* (2003) 27 available at https://www1.essex.ac.uk/armedcon/story_id/000044.pdf (accessed 22 February 2018).

Children's Charter that sets 18 as the minimum age for eligibility of child participation in armed conflicts.

The failure by the CRC to prescribe 18 as the minimum recruitment age was met with controversy. This criticism led to the initiation of the drafting and subsequent adoption of the CRC Optional Protocol on the Involvement of Children in Armed Conflict (OPAC).⁷⁰ In curing the lapse in the CRC, the OPAC provides in Article 1 that states parties must ensure that members of their armed forces who have not attained the age of 18 do not take direct part in hostilities.⁷¹ Article 2 further forbids states parties from compulsory recruitment of persons who have not attained the age of 18 years into their armed forces.⁷²

It is therefore plausible to conclude that, despite some legal gaps identified in the above analysis, international law treaties constitute a laudable framework for the protection of children against participation in armed conflicts. The guarantees against participation of children in armed conflicts has the desirable effect of creating a conducive environment, which promotes, protects and fulfils the educational rights of children. Instead of going to war, children would go to school and acquire an education.

2.4 Protection against sexual abuse and exploitation

One of the grave human rights violations during armed conflicts includes sexual violence against school going children and teachers.⁷³ UNICEF has identified more than 800 cases of sexual abuse and the organisation believes that the true scale of sexual violence against children is much larger.⁷⁴ For girl children, sexual abuse could

⁷⁰DRC ratified the CRC Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) 11 November 2001.

⁷¹For a commentary on article 1 of OPAC, see Vandewiele T 'Optional Protocol: The Involvement of Children in Armed Conflicts' in Alen A *et al* (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (2006) 25-26.

⁷²However, article 3(3) seems to allow states parties to recruit children into their national armed forces, if they meet certain conditions insofar as ensuring that such recruitments are not forced or coerced.

⁷³UNICEF 'Nothing can justify terrible acts of abuse against women and children in Kasai' available at https://www.unicef.org/infobycountry/media_100600.html (accessed 20 March 2018).

⁷⁴UNICEF 'Democratic Republic of the Congo: violence in Tanganyika and South Kivu fuels one of the world's worst displacement crises for children' available at https://www.unicef.org/infobycountry/media_102495.html (accessed 20 March 2018).

lead to unwanted pregnancies that can force them to drop out of school and look after their young infants.⁷⁵

To ensure protection against sexual abuse that may affect the educational wellbeing of children, Article 27 of the GCIV requires parties to conflict to ensure that they protect women, including girls ‘against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault’.⁷⁶ Sellers and Rosenthal argue that Article 27 ‘is not only fundamental to the enforcement of IHL, but also vital to ensure the evolution of the doctrine of humane treatment, the overarching principle of humanitarian law’.⁷⁷ It is therefore not surprising that Article 76(1) of the Additional Protocol I, which is identical to the text of Article 27 of the GCIV, reiterates the protection of women against rape, forced prostitution, and indecent assault.⁷⁸ The International Committee of the Red Cross hails Article 76 for its applicability both to women affected by the armed conflict and those who are not.⁷⁹ In doing so, Article 76 develops the GCIV by extending the circle of its beneficiaries to all women and girls in the territory of parties involved in the conflict.⁸⁰ This has the desirable effect of strengthening the protection of women and girls against sexual abuses before, during and after conflicts.

Similar to the GCIV and the two Additional Protocols is article 39 of the CRC, which also requires states parties ‘to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the

⁷⁵CRC Committee ‘Concluding observations on the combined third to fifth periodic reports of the Democratic Republic of the Congo’ (2017) paras 39 and 40.

⁷⁶It is true that apart from making children direct combatants, parties involved in armed conflicts often sexually assault, rape and force particularly girls to become war sex slaves, which article 27 of the Fourth Geneva Convention prohibits. See also, Harvey R *Children and armed conflict: A guide to international humanitarian and Human rights laws* (2003) 47 available at https://www1.essex.ac.uk/armedcon/story_id/000044.pdf (accessed 22 February 2018).

⁷⁷See, Sellers P and Rosenthal I ‘Rape and other sexual violence’ in Clapham A, Gaeta P and Sassòli M (eds) *The 1949 Geneva Conventions: A Commentary* (2015) 345.

⁷⁸The text of article 76 paragraph 1 is also a repetition of paragraph 2(b) of Article 75 (*Fundamental guarantees*), with the addition of a reference to rape.

⁷⁹ICRC *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987) para 3151.

⁸⁰It is therefore clear that rape, forced prostitution, and indecent assault are among the acts that ‘are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilians or by military agents’. See, Sellers P and Rosenthal I ‘Rape and other sexual violence’ in Clapham A, Gaeta P and Sassòli M (eds) *The 1949 Geneva Conventions: A Commentary* (2015) 347.

child'.⁸¹ Indeed, the obligation to respect the GCIV and the two Additional Protocols would include, among others, protecting children against rape, forced prostitution, and indecent assault during war times.⁸² The CRC even goes further than international humanitarian law requiring states parties in Article 39 'to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts'. According to Berkman, Article 39 provides that countries must establish 'social programs to mentally and physically rehabilitate the victims of sexual exploitation once they have been removed from the exploitative environment' as well as taking steps to reintegrate such victims into society.⁸³ It is therefore evident that protection of children against sexual abuse remains the CRC's priority be it during the armed conflict or in peacetime.

Although Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not have express provision(s) that protect women and girls from sexual violence, the work of the CEDAW Committee does. For example, the CEDAW Committee in General Recommendation 19 on violence against women provides that violence against women is also sex-based discrimination that violates article 1 of the Convention and, as such, 'impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions', including 'the *right to equal protection* according to humanitarian norms in times of international or internal armed conflict'.⁸⁴ The CEDAW Committee further clarifies in General Recommendation 30 on women in conflict prevention, conflict, and post-conflict situations that 'in situations that meet the threshold definition of non-international or international armed conflict, the CEDAW and international humanitarian law apply concurrently and their different protections are complementary, not mutually exclusive'.⁸⁵ Thus, CEDAW similar to CRC works hand in glove with international humanitarian law in protecting

⁸¹For general background reading, see: van Bueren G *International Law on the Rights of the Child* (1995); Hodgkin R and Newell P (eds) *Implementation Handbook for the Convention on the Rights of the Child* revised edition (2007).

⁸²Article 34 of the CRC also resonates with article 38 in that while the former calls for the protection of children against sexual exploitation in peacetime, the latter does the same during an armed conflict.

⁸³Berkman ET 'Responses to the International Child Sex Tourism Trade' (1996) 19(2) *Boston College International and Comparative Law Review* 407.

⁸⁴General Recommendation 19, Violence against Women, 1992, CEDAW/C/GC/19, para 7(c)

⁸⁵General recommendation 30, on women in conflict prevention, conflict and post-conflict situations (2013) para 20.

particularly girl children against sexual exploitation during the armed conflict or in peacetime.⁸⁶

Similar to the analysis of protection against participation in armed conflict, the Rome Statute also gives effect international laws, discussed above, that call upon states parties to protect civilians against sexual abuse and exploitation. For example, the Rome Statute in Article 7(1)(g) considers ‘rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity’ as a crime against humanity. Since crimes against humanity and war crimes are among the crimes within the jurisdiction of the Court,⁸⁷ it means that the Court has the power to trial, convict and sentence anyone before it in relation to rape, sexual slavery and other forms of sexual exploitations committed during armed conflicts.⁸⁸ For example, in 2011, the International Criminal Tribunal for Rwanda (ICTR) convicted Pauline Nyiramasuhuko for genocide, war crimes, and crimes against humanity, including rape committed in 1994 in Rwanda.⁸⁹

Ultimately, these laws strengthen the protection of children against sexual abuses before, during and after conflicts. For girl children in particular, it also protects them from sexual abuses that would result in unwanted pregnancies. These unwanted pregnancies would hinder or delay girls from going school and instead force them to stay at home and look after their young children.

2.5 Protection of the right to education

⁸⁶See also article 11(3) of the Maputo Protocol, which requires states parties to:

‘undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction’.

⁸⁷See article 5 of the Rome Statute for a list of crimes within the jurisdiction of the Court.

⁸⁸The Rome Statute also defines sexual slavery as a war crime in articles 8(2)(b)(xxii), 8(2)(e)(vii), and a crime against humanity in article 7(1)(g).

⁸⁹Pauline Nyiramasuhuko became the first woman the International Criminal Tribunal for Rwanda indicted as well as the first woman indicted for “rape as a crime against humanity” in the whole history of international criminal law. See, *Butare, Prosecutor v Nyiramasuhuko (Pauline) and ors*, Decision on the prosecutor’s allegations of contempt, the harmonisation of the witness protection measures and warning to the prosecutor’s counsel, Case No ICTR-97-21-T. See also, Global Policy Forum ‘International Criminal Tribunal for Rwanda’ available at <https://www.globalpolicy.org/international-justice/international-criminal-tribunals-and-special-courts/international-criminal-tribunal-for-rwanda.html> (accessed 12 December 2018).

International humanitarian law protects the right of children to education in situations of armed conflict.⁹⁰ This law not only strengthens the legal framework for the protection of education in times of armed conflict, but also makes provision for specific situations. For example, Article 24(1) of the GCIV makes provision for education of orphaned or unaccompanied children. Article 50 also makes provision for education of children under military occupation so does article 94 for interned children and young people. The Additional Protocol I further provides in Article 78(2) that an evacuation must take account of the need for continuity in a child's education. Article 26 of the GCIV requires each party to a conflict to facilitate the reunion of families dispersed, encourage the work of organisations engaged in doing so provided they are acceptable, and conform to security regulations.

In addition, Article 4(3)(a) of the Additional Protocol II also makes provision for education children during non-international armed conflicts. The UDHR declared education a basic human right for every person,⁹¹ as reaffirmed by the ICESCR,⁹² CRC,⁹³ ACRWC,⁹⁴ and the African Women's Protocol.⁹⁵ Clearly, international humanitarian law makes a positive contribution to the legal framework for the protection of education in emergencies.⁹⁶ This protects the right to education in all

⁹⁰Under international humanitarian law, school buildings are protected civilian objects and therefore benefit from humanitarian principles of distinction and proportionality. This has the effect of depriving millions of children their right to education in order to realise their potential. See article 18 of the Fourth Geneva Convention; Office of the United Nations Special Envoy for Global Education 'Nobel Prize winners join UN education envoy in kidnapped girls plea' available at <http://educationenvoy.org/media-release-nobelwinners-join-un-education-envoy-in-kidnapped-girls-plea/> (accessed 27 February 2018).

⁹¹Article 26 of the UDHR; Caswell T et al 'Open content and open educational resources: Enabling universal education' (2008) 9(1) *The International Review of Research in Open and Distributed Learning* 1-11.

⁹²Articles 13 and 14 of the ICESCR; Kalantry S, Getgen JE and Koh SA 'Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR' (2010) 32(2) *Human Rights Quarterly* 253-310.

⁹³Articles 28 and 29 CRC; Verheyde M *Article 28: The Right to Education* (2006).

⁹⁴Article 11 of the ACRWC; Budoo A 'Adoption of a human rights approach to budgeting as a step to realising the right to education in African countries' in Onuora-Oguno AC, Egbewole WO and Kleven TE (ed) *Education Law, Strategic Policy and Sustainable Development in Africa: Agenda 2063* (2017) 32.

⁹⁵Article 12 of the African Women's Protocol; Budoo A 'Adoption of a human rights approach to budgeting as a step to realising the right to education in African countries' in Onuora-Oguno AC, Egbewole WO and Kleven TE (ed) *Education Law, Strategic Policy and Sustainable Development in Africa: Agenda 2063* (2017) 32-33.

⁹⁶Coomans F 'In search of the core content of the right to education' in Chapman A & Russell S (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 219-20; Nikolai S 'Education in Emergencies: A tool kit for starting and managing education in emergencies' (2003) 6.

situations, including crises and emergencies resulting from civil strife and war.⁹⁷ Keeping schools open or reopening schools is a way of maintaining or reintroducing normal life into a community and reassures children and their parents. School enrolment serves as a ‘barometer’ of a community’s perceived hope for the future.⁹⁸ It is therefore logical that the right to education, in times of armed conflict, seeks to protect all persons who are not or are no longer taking part in the hostilities, in particular children.⁹⁹

Due to displacement, children leave the place where they are able to have access to school to a place where they have no provision for education. For this reason, the UN Guiding Principle on Internal Displacement¹⁰⁰ in principle 23 requires concerned authorities to ensure that internally displaced children receive free and compulsory education.¹⁰¹ Similarly, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)¹⁰² requires states parties to provide internally displaced children with, among others, education.¹⁰³ The convention requires State Parties to provide special protection for and assistance to internally displaced persons with special needs.

Under international humanitarian law, school buildings are protected civilian objects and therefore benefit from humanitarian principles of distinction and proportionality.¹⁰⁴ This has the effect of depriving millions of children their right to education in order to realise their potential. In addition, the occupation of school facilities by fighting forces creates a culture of fear, leaving children and teachers unwilling or unable to return to the classroom.¹⁰⁵ Fighting forces also target schoolteachers by killing or sexually abusing the. This causes teachers to flee for

⁹⁷O’Mally B ‘The longer-term impact of attacks on education systems, development and fragility and the implication for policy responses’ Background paper prepared for the Education for All Global Monitoring Report’ (2011) 2.

⁹⁸Roger I ‘Education for children during armed conflicts and post-conflict reconstruction’ (2002) 3(2002) *Disarmament Forum* 46.

⁹⁹Arnold JS ‘New Armor for Children in Armed Conflict: Child Rights Education in the Disarmament, Demobilization, Rehabilitation, and Reintegration Process’ (2005) 2 *Education in Emergencies and Post-Conflict Situations: Problems, Responses and Possibilities* 62-70.

¹⁰⁰UN Guiding Principles on Internal Displacement 22 July 1998 ADM 1.1, PRL 12.1, PR00/98/109.

¹⁰¹Principle 23(3).

¹⁰²Adopted by the Special Summit of the African Union held in Kampala, Uganda on 22 October 2009 and entered into force on 6 December 2012.

¹⁰³Article 9(2)(b) Kampala Convention.

¹⁰⁴Article 18 of the Fourth Geneva Convention.

¹⁰⁵ UNICEF ‘150,000 children in Greater Kasai region need emergency support to continue education’ available at https://www.unicef.org/infobycountry/media_96397.html (accessed 21 March 2018).

safety, which means they would not be able to go to work and children would not acquire the education.¹⁰⁶ It is therefore crucial to ensure that the right to education not only protects children but teachers and school buildings to ensure an optimum environment that promotes the best interests of children insofar as education is concerned.

2.6 Conclusion

This chapter highlighted some of the major international standards, which protect the educational welfare of children in armed conflict. What is clear from this discussion is that children's rights take priority over circumstances, such as participation in conflict or sexual abuse that hinder children from realising the right to education during a war crisis. This chapter lays the foundation for chapter 3, where DRC's legal framework will be analysed in its guaranteeing children the right to education during wartime.



¹⁰⁶UNICEF 'Nothing can justify terrible acts of abuse against women and children in Kasai' available at https://www.unicef.org/infobycountry/media_100600.html (accessed 20 March 2018).

CHAPTER THREE: LEGAL FRAMEWORK PROTECTING THE RIGHTS OF CHILDREN IN THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

3.1 Introduction

The virtue of being a child does not only reflect the period between birth and becoming an adult but it has a huge significance in terms of the standards and quality of their life throughout that period.¹⁰⁷ This indicates that the absolute rights of children can be viewed from the aspects of how they are nurtured, raised, safeguarded, survive and are involved in all the significant activities in their environment. Numerous international law instruments specifically aim at protecting and upholding children's rights. This chapter focuses on the various international and regional instruments that seek to protect the rights of the child globally during armed conflict, as well as in the DRC legal system paying particular attention to the child's right to basic education. More importantly, it must be noted that the DRC has incorporated some international treaty provisions into its Constitution as well as other numerous national laws to protect the rights of children.

3.2 International and regional protection of children's rights

DRC attained independence on the 30 June 1960 and has since adopted numerous treaties that protect, promote and fulfil the rights of children. As a monist state,¹⁰⁸ DRC fuses international treaty provisions with its national law thereby making both international treaties applicable in the country. For example, the ICESCR indicates the guidelines concerning the age in which any aspects of employing a child are restricted.¹⁰⁹ This implies that Member States must domesticate these provisions, including the right to education.

In addition, the ICCPR¹¹⁰ places a lot of expectation on the parents or guardians, the community, the government of a member country to ensure the protection of children's rights, without any form of bias.¹¹¹ Some of these rights include the right

¹⁰⁷Bellamy C *State of the World's Children 2005: Childhood under threat* (2005) 3.

¹⁰⁸Mwagiru M 'From Dualism to Monism: The Structure of Revolution in Kenya's Constitutional Treaty Practice' (2011) 3 (1) *Journal of Language, Technology and Entrepreneurship in Africa* 145.

¹⁰⁹Article 10(3) ICESCR.

¹¹⁰Adopted by the General Assembly of the UN on 19 December 1966.

¹¹¹Article 24 ICCPR.

to life,¹¹² freedom of speech,¹¹³ and movement.¹¹⁴ The ICCPR ensures that some of the most significant rights that include the right to life,¹¹⁵ freedom of speech,¹¹⁶ and movement are upheld and protected.¹¹⁷ The instrument also contains rights that ensure the prevention of torture or any operation of discrimination concerning children.¹¹⁸ The DRC ratified the ICCPR¹¹⁹ indicating that they are adopting the prevention of the abuse of civil and political rights that apply to both adults and children in the country. It is important to have this instrument in application for the purposes of safeguarding the vulnerability aspects that are in existence by virtue of being a child.

As observed earlier, the CRC is the principal international instrument that protects the rights of children. DRC ratified the CRC on 27 September 1990. DRC based this action on ensuring that there should be additional and effective measures that will protect its vulnerable citizens from a very young age.¹²⁰ The CRC emphasises that children have the absolute right to life.¹²¹ In addition, children are by right entitled to an adequate standard of living¹²² and the right to appropriate basic education.¹²³ This instrument highlights that the most effective and practical way of ensuring that these rights are achieved is through the provision of equal opportunities and free primary education to all¹²⁴ the children in a particular society. On the 11 of November 2001, the DRC adopted more instruments to ensure the protection of children's rights in terms of the Optional Protocol on the Convention on the Rights of the Child on the

¹¹²Article 6 ICCPR.

¹¹³Article 19 ICCPR.

¹¹⁴Article 12 ICCPR.

¹¹⁵Article 6 ICCPR.

¹¹⁶Article 19 ICCPR.

¹¹⁷Article 12 ICCPR.

¹¹⁸Article 26 ICCPR.

¹¹⁹United Nations Human Rights. (2018). Ratification Status for Democratic Republic of the Congo. *United Nations Human Rights*. Available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=48&Lang=EN (Accessed 18 November 2018.)

¹²⁰Rosa S & Dutschke M 'Children's rights at the core: The use of international law in South African cases on children's socio-economic rights' (2002)22 *SAJHR* 230 (hereafter Rosa S & Dutschke M (2002).

¹²¹Article 6 CRC.

¹²²Article 27 CRC.

¹²³Article 28 CRC.

¹²⁴Article 28 CRC.

Sale of Children, child prostitution and Child Pornography.¹²⁵ The country went further and adopted the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict on 8 September 2000 and it came into force on the 11 November 2001.¹²⁶ Article 12 of the CRC aims to ensure that the favourable conditions of the children remain a priority. The DRC is therefore required to ensure that it pays close attention to this requirement in its policy formulation and implementation.

The CRC clearly stipulates that special care is of cardinal importance and has to be attributed to children regardless of the fact that they find themselves being in the same circumstances as adults.¹²⁷ This entails that there should be clear standards or measures created and attributed to the fulfilment of these special needs.¹²⁸ One of the most important principles to observe in the application of the CRC instrument is the realisation of children as human beings that deserve respect and absolute rights.¹²⁹

The CRC in its application allows a Committee concerning Children's rights to obtain various reports from its Member States. The DRC upon becoming a member of this treaty has managed to submit five reports to the Committee.¹³⁰ The reports indicated that the country has major challenges about aspects of armed conflict that seriously negatively affects the rights of children in the country.¹³¹ There is a general lack of resources and structures that can assist in the monitoring and management of the children's affairs in order to promote their rights.

¹²⁵ Ratification Status for Democratic Republic of Congo available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=48&Lang=EN (accessed on 28 December 2018)

¹²⁶ Ratification Status for Democratic Republic of Congo available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=48&Lang=EN (accessed on 28 December 2018)

¹²⁷ Cervantes-Duarte L and Fernández-Cano A 'Impact of Armed Conflicts on Education and Educational Agents: A Multivocal Review' (2016) 20 (3) *Revista Electrónica Educare* 2.

¹²⁸ Scott C & Alston P 'Adjudicating constitutional priorities in a transnational context: A comment on Soobramoney's legacy and Grootboom's promise' (2000) 16 *South African Journal on Human Rights* 22.

¹²⁹ Scott C & Alston P 'Adjudicating constitutional priorities in a transnational context: A comment on Soobramoney's legacy and Grootboom's promise' (2000) 16 *South African Journal on Human Rights* 22.

¹³⁰ Nice N *The Impact of poverty on Children's Rights in the Democratic Republic of Congo* (University of Pretoria 2015) 30.

¹³¹ Nice N *The Impact of poverty on Children's Rights in the Democratic Republic of Congo* (University of Pretoria 2015) 30.

DRC has also been a signatory of the Convention on the Worst Forms of child Labour Convention (WFCLC) since 20 June 2001 and it came into operation from 28 March 2001. Article 7 of the Convention requires State parties to prevent child labour and provide free and basic education to the children in their nations.¹³² The Convention describes a child as a human being who is below 18 years. Despite being a signatory, the National Labour Code in Article 133 indicates that children who are 15 years old may still be able to work as long as there is special permission for this activity.

Regionally, DRC ratified the African Charter on Human and Peoples' Rights (ACHPR)¹³³ on 20 July 1987. Concerning, the right to education the Charter guarantees every person, including children the right to education.¹³⁴ The Constitutive Act of the African Union (AU) introduced new standards to Africa that require that people be treated with justice and ensure that their rights are not violated and people in its member states are protected.¹³⁵ Before this instrument was introduced, there was only the African Commission on Human and Peoples' rights that assured the protection and promotion of these rights.¹³⁶

There is also the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (African Women's Protocol), which DRC is a Member State.¹³⁷ This instrument advocates for the provision of rights to life,¹³⁸ education,¹³⁹ and acceptable quality of life¹⁴⁰ to both young and adult women. Article 12 eliminates all forms of discrimination against women and further emphasises the need of similar opportunities and access to all aspects of education and training. Article 10 further requires the DRC to elevate the active participation of women in various initiatives

¹³²Worst forms of child labour convention 1999.

¹³³Adopted by the Organisation of African Unity Assembly in 1981 and entered into force on 21 October 1986.

¹³⁴Article 23 of the African Charter on Human and peoples' rights.

¹³⁵ Hansungule M 'African courts and the African Commission on Human and Peoples' Rights' available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.490.6079&rep=rep1&type=pdf> accessed (27 November 2018).

¹³⁶Hansungule M 'African courts and the African Commission on Human and Peoples' Rights' available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.490.6079&rep=rep1&type=pdf> accessed (27 November 2018).

¹³⁷Adopted by the Assembly of the African Union at the second summit of the African Union in Maputo Mozambique on 21 July 2003.

¹³⁸Article 4 of the Maputo Protocol.

¹³⁹Article 12 of the Maputo Protocol.

¹⁴⁰Article 18 of the Maputo Protocol.

that result into education for peace and advancement of culture and reduction of conflict.

Lastly, DRC is yet to adopt the ACRWC into its national law, this an important instrument to ensure the protection of the children's rights. This thesis urges DRC to adopt the ACRWC to ensure that any issues pertaining to abuse of children's rights can be brought forward to the Commission on children's rights for adjudication.

3.3 The Constitution of the Democratic Republic of Congo and National law instruments protecting child rights in DRC

The DRC has enacted and implemented various national laws that serve to carry out different functionalities in the country. The application of these laws and regulations also protects children in the country in a plethora of ways. Some of the national laws that have been formulated in the country will be outlined below:

3.3.1 The Constitution of the Democratic Republic of Congo

The Constitution¹⁴¹ outlines the construction and operation of the government and its various structures about political, judicial processes and citizenship.¹⁴² The DRC Constitution emphasises the right to life¹⁴³ the right to education¹⁴⁴ and the right to an adequate standard of living.¹⁴⁵

The Constitution also emphasises that the children in DRC have the right to basic free education that applies without any form of discrimination.¹⁴⁶ Despite this mandate, basic education is not free,¹⁴⁷ forcing many children abscond school due to financial constraints.¹⁴⁸ The Constitution also stipulates that there should be a general

¹⁴¹Constitution de la République Démocratique du Congo telle que modifiée par la loi no 11/002 du 20 Janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 Février 2006.

¹⁴² Legal definition of Constitution available at <http://www.duhaime.org/LegalDictionary/C/Constitution.aspx> (accessed on 29 November 2018).

¹⁴³The Constitution of the Democratic Republic of Congo, 2005, Article 16.

¹⁴⁴The Constitution of the Democratic Republic of Congo, 2005, Article 43.

¹⁴⁵The Constitution of the Democratic Republic of Congo, 2005, Article 48.

¹⁴⁶The Constitution of the Democratic Republic of Congo, 2005, Article 43.

¹⁴⁷Children's Rights in the Democratic Republic of Congo: Stakeholder Report on DRC available at https://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/WV_COD_UPR_S06_2009.pdf accessed on 1 December 2018)

¹⁴⁸ Eger K 'An Analysis of Education Reform in Sub-Saharan Africa' http://scholarship.claremont.edu/cmcl_theses/1419 (Accessed 8 December 2018)

application concerning the quality of living in the country. However, the country has dismally failed in offering this basic right to its citizens. The country has not managed to offer necessities like electricity and clean water. In most of the country's provinces, its citizens travel long distances just to be able to access water that is not even suitable for healthy purposes.¹⁴⁹

3.3.2 Child Protection Law

Democratic Republic of Congo government adopted into its law the protection of children about the CRC in January 2009.¹⁵⁰ There is also an incorporation of articles of a 1990 colonial Penal Code on juvenile delinquency that was utilised for the purposes of dealing with children that were deemed delinquent. This law conferred criminal liability from the young age of 16 and this resulted in many children facing severe or harsh penalties like death penalty or life imprisonment.¹⁵¹ However, the child protection law stipulates that a human being is considered a child up until the majority age of 18 and it further points out that everyone has the right life,¹⁵² the right to education¹⁵³ and the right to an adequate standard of living.¹⁵⁴ Taking into account one of the Child Protection Law above-mentioned namely "the right to education" one might conclude that even though the DRC considers the Child Protection Law, it is still far from being a country where children are to a greater extent protected.

Despite DRC not a Member State to the ACRWC, this regional instrument remains one of the most important tool in regard to Child Protection Law and relevant for the evaluation of the current child protection national law. It gives specific orientations in these matters. Therefore, when reading the Congolese Child Protection Law with the ACRWC lens, it seems that the Congolese child protection law is consistent with the ACRWC resolutions. Identical to the ACRWC,¹⁵⁵ the Child Protection Law forbids

¹⁴⁹La situation des Droits de l'enfant en République Démocratique du Congo, Sixième Examen périodique Universel, Mécanisme de surveillance de l'influence des droits de l'homme du conseil des droits de l'homme des Nations Unies, Avril 2009.

¹⁵⁰World Vision. (2009). Children's Rights in the Democratic Republic of Congo: Stakeholder Report on DRC. *Submission by World Vision - For Universal Periodic Review, Sixth Cycle.* https://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/WV_COD_UPR_S06_2009.pdf (Accessed 8 December 2018)

¹⁵¹Loi no 09/001 du 10 Janvier 2009 portant protection de l'enfant (Child Protection Law).

¹⁵²Article 13 of Child Protection Law.

¹⁵³Article 24 of Child Protection Law.

¹⁵⁴Article 44 of Child Protection Law.

¹⁵⁵Article 22 of the ACRWC

the enrolment of children into the armed forces and recommends the government or any relevant organizations to ensure that no child is directly or indirectly active in armed conflicts action and hostilities.¹⁵⁶ It necessitates mentioning that the Child Protection Law is not only consistent with the ACRWC but it also echoes Article 38 of the CRC requiring that children be from abuse and participation in hostilities. In addition, Article 39 arranges for psychological and physical recovery and social rehabilitation of children perturbed by military operations in milieu that develop children's self-respect, dignity and health.

3.3.3 Penal Code

Before the enactment of the Penal Code,¹⁵⁷ the Congolese Criminal law as provided by so many international and regional instruments did not criminalise many criminal offences.¹⁵⁸ However, after the revision of the criminal law, there were changes made regarding sexual violence and the protection of victims of such criminal acts. These laws were now in application by borrowing some principles and guidelines as stipulated or set up by various international and regional instruments.¹⁵⁹ Children's rights were also highly considered in the newly revised criminal law. Article 167 of the Penal Code stipulates that the commission of any indecent act against children will attract a prison sentence of six months to five years at least. Further, Article 168 of the Penal Code indicates that an act that is carried out with violence, deception or threat against children will receive a prison sentence of five to fifteen years at least.

Similarly, the International Criminal Court (ICC) has been reinforced to fight the impunity related to war criminalities against children. In keeping with the above on 10 July 2012, one of the Congolese warlords Thomas Lubanga who was found guilty of crimes against children was sentenced to an effective 14-year jail term and later on 1 December 2014, the sentence was confirmed and reinforced by the Appeal Chamber.¹⁶⁰ According to Amnesty International, the above sentence relates to the impunity against war criminalities and it highlights that the ICC is empowered to

¹⁵⁶ Article 53 of the Child Protection Law

¹⁵⁷ Congolese Penal Code, 2006.

¹⁵⁸ Preamble of the Penal Code.

¹⁵⁹ Article 168 of Penal Code.

¹⁶⁰ *The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06.

prosecute any transgressor of the law as well as ensure that justice prevails. The ICC readily prosecutes offences against humanity, extermination and war crimes.¹⁶¹

3.3.4 Labour Law

The Constitution of the DRC in its Article 36 clearly stipulates that the possession of a working opportunity is a sacrosanct right and a sacrosanct duty meaning that the people and the government in the country have to take initiative to ensure that the nation is developed.¹⁶² The purpose of the labour laws in the DRC serve to provide suitable working conditions for the people in the country who have attained majority in order to be able to look after children and other people they are responsible for.¹⁶³ The labour laws also serve to ensure that children in the country are protected and are not exposed to any form of exploitation concerning working.¹⁶⁴ The Congolese Labour Code, Article 133 stipulates that a child is considered to work at the age of 15 if there is a special arrangement and the child will be under special or close supervision. The labour laws in the DRC also provide for the protection of children about work termination, night shift and overtime. Despite the enactment of all these laws and regulations, there is a lack of adherence to these provisions due to the underdevelopment of the country and the instability and violence.

Consistent with the above observation, the ICESCR recommends States to fix the limit age below which paid works or child employment should be forbidden.¹⁶⁵ In this perspective, Article 38(3) of the CRC stipulates 15 as the minimum age for enrolling children into the armed groups.¹⁶⁶ Therefore, recruiting children under the age of 15 in any kind of armed forces or their participation in conflicts is a war crime.¹⁶⁷ On the contrary, the ILO Resolution No. 182, under its Article 2 mentions that, the appellation 'child' should relate to all individuals under 18 and the ILO Resolution No.138 offers not the same minimum ages, liable on the categories of employment in

¹⁶¹Landmark ICC verdict over the use of child soldiers' Amnesty International 14 March 2012 available at <https://www.amnesty.org/en/latest/news/2012/03/landmark-icc-verdict-over-use-child-soldiers/> [accessed 28 February 2019]

¹⁶²The Constitution of the Democratic Republic of Congo, 2005.

¹⁶³Nice N *The Impact of poverty on Children's Rights in the Democratic Republic of Congo* (University of Pretoria 2015) 40.

¹⁶⁴Loi No 015/2002 du 16 Octobre 2002 portant Code du Travail.

¹⁶⁵Article 10(3) ICESCR.

¹⁶⁶Art 38 (3) of the CRC.

¹⁶⁷Art 8(2) (b) (xxvi) and 8 (2) (e) (vii) of the Rome Statute of the ICC.

question. To hire someone for work, Article 2 (3) proposes an all-purpose minimum age of at least 15 years while the minimum age for employment to dangerous work is below 18 years.¹⁶⁸

3.4.5 Congolese Family Law

The Congolese family law stipulates that a minor is any person below the age of civil majority of 18 years.¹⁶⁹ This age has now been set at 18 years by the constitution of the country. The operation of family law in the country serves to protect the rights of the children and their nationality. The family law application of “the best interest of the child” formulation indicates that in a situation where a child is born in DRC but to parents that are not citizens of the country, that child may obtain citizenship in a case where it is highly unlikely that the child can obtain the natural parents citizenship; for instance where the nationality of the parents is deemed to be transferable by *jus soli* due to the country in which the child was born in.¹⁷⁰

The existence of Family Law ensures the protection of the child to be assigned a name, the right to have it registered, it confers the duty on the parent’s to take care of the child; furthermore it also safeguards the rights of the child in the event of the death of one or both parents.¹⁷¹ The Sexual Violence Act also protects children under the age of 18 against early marriages and sexual exploitation exerts an influence on the understanding of the prejudiced term of Article 352(1) of the Family Code. This prejudiced term specifies that, ‘marriage may not be contracted by a man who is under the age of 18 or a woman who is under the age of 15’.¹⁷²

3.4 Conclusion

This chapter discussed the legal framework that is available for the protection of children in the Democratic Republic of Congo (DRC). This chapter considered the regional and international instruments under which Congo acquires obligations to

¹⁶⁸R Hernández-Pulido and T Caron ‘Protection of children and young persons’ in ILO Fundamental rights at work and international labour standards (2003) at 95.

¹⁶⁹Loi no 87/010 du 1er Aout 1987 portant Code de la famille (Congolese Family Law) article 5 and article 219.

¹⁷⁰Article 9 of Congolese Law.

¹⁷¹Article 5 and article 219.

¹⁷²CRC Consideration of reports submitted by States parties under article 44 of the Convention: CRC: DRC (2008) para 66 at 16

protect the rights of the children. The chapter further outlined the national laws DRC formulated to protect the rights of children.

The next chapter looks at how armed conflict in the DRC affects the children's rights in general. The chapter will pay special attention in indicating how armed conflict affects the children's access to education in particular.



CHAPTER FOUR: THE IMPACT OF ARMED CONFLICT ON THE CHILD RIGHT TO EDUCATION IN DEMOCRATIC REPUBLIC OF CONGO

4.1 Introduction

Naturally, armed conflict affects education in many ways. Most tragically, it results in the death or displacement of teachers, education staff and students.¹⁷³ To illustrate the above statement, it has been reported that 58% of primary schools in Mozambique were destroyed and closed as a result of its long civil war.¹⁷⁴ In Iraq, the level of destruction was even higher 85% of schools were destroyed. In Bosnia and Herzegovina, 50% of its schools required repair or reconstruction as a result of the war.¹⁷⁵ This implies that schools and places of learning are often casualties of armed conflict.

However, it must be noted that the right to education guaranteed and protected by the ICESCR, CRC, ACRWC as well as other international instruments is not suspended in situations of armed conflict. Concerned and moved by the alarming consequences and effects of brutal armed conflicts on education, the former Special Rapporteur on the Right to Education, Vernor Munoz (2008) noted in his report that ‘security in schools’ does not only mean physical, psychological and emotional safety, but also an uninterrupted education in conditions conducive to knowledge acquisition and character development, form part of the right to education.¹⁷⁶ Hence, States have the obligation to respect, protect and fulfil the right to education whether or not an emergency situation exists.¹⁷⁷ Having said that this chapter focuses on the impact of armed conflict on the children’s right to education in DRC. Particular attention is devoted to its impact on school attendance, educational infrastructure, educational personnel as well as its impact on the quality of education provided. The chapter also assesses the government’s response to the problem having regard to its international

¹⁷³The quantitative impact of conflict on education (2010) *UNESCO Institute for Statistics* 5.

¹⁷⁴ Bruck T ‘Macroeconomic Effects of the War in Mozambique’ (1997) *QEH Working Paper Series QEHWPS11* 40.

¹⁷⁵The quantitative impact of conflict on education (2010) *UNESCO Institute for Statistics* 5.

¹⁷⁶Report of the Special Rapporteur on the Right to Education ‘Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Right to education in emergency situations’ A/HRC/8/10 20 May 2008 para 21 (hereafter Report of the Special Rapporteur on the Right to Education (2008)).

¹⁷⁷Report of the Special Rapporteur on the Right to Education (2008) para 37.

and regional human rights obligations to protect and fulfil the child's right to education.

4.2 The impact of armed conflict on the child right to education in DRC

As was highlighted in the preceding chapter, children are vulnerable beings and particular targets in armed conflicts and wars all over the world. UNICEF ranks the DRC as the country with the highest number of children used as soldiers known as ('kadogo') which is a Swahili term meaning "little ones," sexual slaves, spies and labourers.¹⁷⁸ Schools have proved not be safe havens for children in times of armed conflict in Congolese conflict-affected areas. Many have been abducted on their way to school by rebel groups to serve as child soldiers¹⁷⁹ and schools have been ransacked by police and rebels and occupied by the army and the rebel group CNDP.¹⁸⁰ One of the most tragic aspects of the war is the sexual abuse of women in general and more especially of young girls. UNESCO reports that rape as a weapon of war is an extremely widespread problem in the country. For example, in 2005 there were 25,000 reported cases of rape in eastern DRC.¹⁸¹ Despite the international law and others considering rape as war crime. The fear of being raped has resulted in students boycotting school in times of armed conflict.

Children, in many of the armed conflict zones, children constitute the majority of casualties. Alarmingly, these children die not by guns or in combat but from preventable and treatable diseases. In DRC, at least 2.7 million children have died due to the armed.¹⁸² Considering these disastrous situations, DRC adopted an action plan to prevent armed forces from recruiting children and violating any of their human rights.¹⁸³ DRC also works hand in glove with the United Nations to remove child soldiers from armed groups and prevent further re-recruitment.

¹⁷⁸Martin B 'Child Alert Democratic Republic of Congo: Martin Bell reports on children caught in war' (2006) *United Nations Children's Fund (UNICEF)* 4.

¹⁷⁹ UNICEF 'Forced recruitment of child soldiers in DRC' available at https://www.unicef.org/media/media_52762.html [accessed 20 December 2018].

¹⁸⁰O'Malley B *Education under attack* (2010) 61.

¹⁸¹Martin B 'Child Alert Democratic Republic of Congo: Martin Bell reports on children caught in war' (2006) *United Nations Children's Fund (UNICEF)* 3.

¹⁸²Tara G & Jennifer L. "*The Use of Rape as a Weapon of War in Darfur, Sudan* (2004) 7 -12.

¹⁸³Briefing on the recruitment and use of children in the Democratic Republic of the Congo (DRC) to the UN Security Council Working Group on Children and Armed Conflict (2014) 2 available at <https://www.refworld.org/pdfid/53eb6c8e4.pdf> [accessed 20 December].

It is reiterated that the right to education is one of the severely affected rights of children in armed conflicts. This is so due to death, abduction, kidnapping, forced recruitment as soldiers, torture, illegal detention and sexual violence of children.¹⁸⁴ In addition, necessities become scarce and curtails free movement of children.¹⁸⁵ Furthermore, armed groups occupy school buildings, which they later demolish when moving to another place.¹⁸⁶ The international humanitarian law, however, protects, among others, schools¹⁸⁷ as civilian objects free from military occupation.

The GCIV mandates State Parties to a conflict to ensure the maintenance of children who are fifteen and below who have orphaned or separated from their families because of the war.¹⁸⁸ Article 24 further obligates Member States that the affected children exercise their religious and educational rights in all circumstances.¹⁸⁹ Considering the stance adopted in the GCIV it therefore follows that conflicting parties should refrain from either attacking schools or appropriating them for military purposes. Pertaining to the attacks on educational infrastructure during armed conflict, the Additional Protocol 1 lays down rules, which attempt to offer protection to civilians. Article 52 of AP1 provides that:

‘Civilian Objects must not be the object of attacks or reprisals. Civilian objects are all objects, which are not military objectives, that is to say, objects that do not make effective contribution to military action. In the event of doubt, schools are presumed not to be military objectives.’

Unfortunately, it has been observed that during armed conflict, schools are targeted or sometimes if they are not targeted the generalized insecurity forces them to close down. According to UNICEF, the 2012 hostilities have doubled the number of schools attacked to over 600 in North Kivu province and in September 2012, 250 additional schools have been occupied or looted in the North and South Kivu

¹⁸⁴O'Malley B 'The longer-term impact of attacks on education on education systems, development and fragility and the implications for policy responses' (2011) *Education for All Global Monitoring Report* 1.

¹⁸⁵O'Malley B *Education under Attack* (2010) 59-60.

¹⁸⁶O'Malley B *Education under Attack* (2010) 59-60.

¹⁸⁷Article 18 GCIV 1949.

¹⁸⁸Article 24 GCIV 1949.

¹⁸⁹Article 24 GCIV 1949.

provinces.¹⁹⁰ Fighting forces also target school teachers by killing or sexually abusing the children and their teachers. These dire situations result in preventing millions of children from their right to education, yet schooling would help children realize their potential,¹⁹¹ fulfil their dreams and achieve their plans as the future leaders of the nation. Teachers and children flee for safety as they are often targeted by armed groups.¹⁹²

Having presented the impact of armed conflict on the child right to education in DRC, the following sub-sections discuss the most common child abuse observed in the eastern part of DRC.

4.2.1 Abduction and forced recruitment of children

Consistent with the prevailing inhumane conditions during armed conflict in DRC children face serious human rights violations, teachers and children are killed, maimed or injured.¹⁹³ Children face risks of recruitment, abduction, trafficking, sexual violence and exploitation and suffer from conflict-related diseases that are fueled by poisonous gases used during times of war, malnutrition and death.¹⁹⁴ Different reports and observations reveal that the widespread recruitment of children throughout the DRC is an abhorrent reality that creates fear and insecurity for children, teachers and parents. This situation is an obstacle to education, not only because children are not attending school but also because of the kidnapping, fear, psychological trauma and reintegration problems.¹⁹⁵

In the eastern province of DRC, all armed factions have been accused of recruiting children and have used them as soldiers, spies, or ammunition carriers.¹⁹⁶ For

¹⁹⁰ UNICEF 'DR Congo: Over 600 schools looted or damaged by conflict this year' available at http://www.unicef.org/infobycountry/media_66599.html [Accessed 24 December 2018].

¹⁹¹ SGRG-CAAC Report (2015) para 18.

¹⁹² UNICEF 'Nothing can justify terrible acts of abuse against women and children in Kasai' available at <https://www.unicef.org/press-releases/nothing-can-justify-terrible-acts-abuse-against-women-and-children-kasai-unicef> (accessed 20 March 2018).

¹⁹³ World has failed to protect children in conflict in 2018 available at <https://reliefweb.int/report/world/world-has-failed-protect-children-conflict-2018-unicef> [accessed 24 December 2018]

¹⁹⁴ The Impact of Conflict on Women and Girls in West and Central Africa and the UNICEF Response (2005) 4 available at https://www.unicef.org/emerg/files/Impact_conflict_women.pdf [accessed 24 December 2018]

¹⁹⁵ The Hidden Crisis: Armed Conflict and Education, EFA Global Monitoring Report, 2011.

¹⁹⁶ Children and Armed Conflict: the Democratic Republic of Congo, Child Rights International network.

instance, Mission des Nations Unies pour la Securisation de la Republique Democratique du Congo (MONUSCO) reported that M23 recruited 150 child soldiers in 2012.¹⁹⁷ The DRC Monitoring and Reporting Mechanism also recorded that the Lord's Resistance Army (LRA) abducted and recruited 35 and 147 children, respectively. UNICEF also revealed that 188 and 46 children were released from armed forces and national forces, respectively.¹⁹⁸ In 2013, the Mai Mai Sheka abducted 20 children.¹⁹⁹ The children and other abductees were forced by the fighters to march for six consecutive days through the forest from Lwibo to Pinga.²⁰⁰

The United Nations Security Council (UNSC) urges parties involved in armed conflict to refrain from actions that impede children's access to education.²⁰¹ The UNSC's resolutions on children in armed conflict provide the UN with tools to effectively address grave violations against children. The Council has established a strong normative framework to end and prevent grave violations against children through UNSC Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2068 (2012), and 2143 (2014). The Secretary-General is authorised in resolution 1379 (2001)²⁰² to hold State and non-state parties to conflict responsible for the recruitment and use of children in the annexes to his annual report on children and armed conflict.²⁰³ Killing and maiming of children and sexual violence against children was added in resolution 1882 (2009)²⁰⁴ while recurrent attacks on schools and hospitals were added in resolution 1998 (2011).²⁰⁵

¹⁹⁷ In its management of the security crisis, the DRC must not lose sight of child rights available at <https://www.child-soldiers.org/news/press-release-in-its-management-of-the-security-crisis-the-drc-must-not-lose-sight-of-the-rights-of-children> [accessed 24 December 2018].

¹⁹⁸ UNICEF Humanitarian Update: DRC: August 2012.

¹⁹⁹ DR Congo: Wanted Rebel's Troops Instil Fear (2015) available at <https://www.hrw.org/news/2015/01/06/dr-congo-wanted-rebels-troops-instill-fear> [accessed 24 December 2018].

²⁰⁰ DR Congo: Wanted Rebel's Troops Instil Fear (2015) available at <https://www.hrw.org/news/2015/01/06/dr-congo-wanted-rebels-troops-instill-fear> [accessed 24 December 2018].

²⁰¹ Resolution 1998(2011) para 4, Resolution 2143(2014) para 17, Resolution 2225 (2015) para 1. United Nations 'Impact of Armed Conflict on Children' Report of the Expert of the Secretary General, Graca Machel submitted pursuant to General Assembly Resolution 48/157 August 1996 A/51/306 (hereafter Machel G (1996) para 199.

²⁰² Adopted by the UNSC at its 4423rd meeting on 20 November 2001 S/RES/1379 (2001) (hereafter Resolution 1379(2001).

²⁰³ Resolution 1379 (2001) para 16.

²⁰⁴ Adopted by the UNSC at its 6176th meeting on 4 August 2009 (S/RES/1882 (2009) para 3.

²⁰⁵ Adopted by the UNSC at its 6581st meeting on 11 July 2011 (S/RES/1998 (2011) para 3 (hereafter Resolution 1998(2011)).

4.2.2 Displacement of children and teachers

As stated in the introduction of this section, the armed conflict and displacements of the population has adversely the lives of the youth and children in the DRC. The majority of the Congolese who flee the country as refugees are children. Statistics reveal that 53 percent of Congolese refugees are 18 years old or younger. The pattern and scale of widespread and recurring displacement has severely impacted the lives of children and their access to education. Reports have indicated that by end 2012 over 2.4 million civilians including children were forced into displacement.²⁰⁶ In North and South Kivu, Maniema and Province Orientale, a total of 1.5 million children were displaced.²⁰⁷ As at 2017, DRC had 2.7 million internally displaced children. Displaced children have difficulties accessing education due to school destruction and/or occupation.²⁰⁸ However, in areas prone to intense conflict across the DRC, schools could particularly be vital in protecting children. Unfortunately, it has been observed that the destruction, occupation or closure of these places of learning increase children's risks of exploitation, abuse and recruitment in armed groups.²⁰⁹

Displacement has other consequences such as the occupation of schools by the armies. Consequently, classes are disrupted; school supplies and infrastructure are looted, damaged or destroyed. Classrooms and other school buildings have been used as canteens, dormitories, military barracks or ammunition storage centres.²¹⁰ Equally important, school buildings and infrastructure have been damaged or destroyed, furniture has been used as firewood, latrines have been overused and learning materials looted and destroyed. In some other circumstances, schools have been occupied by militias and armed forces at night and during the day children were resuming their classes. As can be imagined in such circumstances unexploded

²⁰⁶Contexte Humanitaire dans l'Est du Congo : Dégradation de la situation sécuritaire et humanitaire depuis le début 2012 : Education Cluster, DRC.

²⁰⁷Contexte Humanitaire dans l'Est du Congo : Dégradation de la situation sécuritaire et humanitaire depuis le début 2012 : Education Cluster, DRC.

²⁰⁸'Our School Became the Battlefield' Using Schools for Child Recruitment and Military Purposes in Eastern Democratic Republic of Congo (2015) available at <https://www.hrw.org/report/2015/10/27/our-school-became-battlefield/using-schools-child-recruitment-and-military> [accessed 25 December].

²⁰⁹Case Studies on Protecting the Right to Education: The Occupied Palestinian Territory and the Democratic Republic of Congo (2014) 14.

²¹⁰UNICEF 'DR Congo: Over 600 schools looted or damaged by conflict this year' available at <https://news.un.org/en/story/2012/12/427962-over-600-schools-looted-or-damaged-dr-congo-violence-year-unicef> [accessed 24 December 2018]

ordinances (UXOs) and ammunition have been found in school premises and all around the schools.²¹¹

Even though, accessing quality and safe education remains a key priority, it has been sadly found that education in the eastern part of DRC is often jeopardized by problems of insecurity in camps, spontaneous sites and host communities. Children are constantly at risk of attacks, the presence of armed groups, the risk of recruitment and sexual exploitation. As children and teachers flee from renewed hostilities or recurring episodes of fighting, children are separated from their families; schools are abandoned, or shut down, disrupting the school year and school examinations.

4.2.3 Impact on school attendance

The conflict and the humanitarian crisis have seriously undermined children's education and their access to quality education and the safety and dignity of students and educators has been seriously violated.²¹² Armed conflict has undoubtedly had a devastating impact on the country's education system in general.²¹³ The situation of insecurity in eastern provinces of DRC has had a significant impact on children's school attendance. The Global Coalition to Protect Education from Attack (GCPEA) reported in 2017 that 150 000 children were out of school due to rampant attacks on schools, students and teachers.²¹⁴ Attacks and occupation of schools have also had a severe impact on host communities as children in surrounding villages are also deprived of access to education to the same extent as displaced children.²¹⁵ This situation is consistent with the fact that children sometimes choose not to go to school due to their family's safety fears in the midst of conflict or the need to supplement their

²¹¹ Extracted from the 'Needs Analysis Framework – Education Cluster OPT – Consolidated Appeals Process 2012-2013' available at http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Occupied_Palestinian/files/CAP_oPt_Needs_Analysis_Framework_2012_EN.pdf [accessed 28 December]

²¹²Case Studies on Protecting the Right to Education: The Occupied Palestinian Territory and the Democratic Republic of Congo (2014) 12.

²¹³Tfaily R, Diab H, Kulczycki A 'Educational Disparities and Conflict: Evidence from Lebanon' (2013) 8 (1) *Research in Comparative and International Education* 55.

²¹⁴ Global Coalition to protect Education from Attack (GCPEA) available at <http://www.protectingeducation.org/news/150000-children-out-school-violence-rocks-dr-congo-region> [accessed on 29 December].

²¹⁵'Elimu Kwanza' A brighter future for the children of DRC: Safe education for internally displaced children in the Democratic Republic of Congo available at https://www.warchildholland.org/sites/default/files/bijlagen/node_7209/17-2015/childrenofpeace-report-2015_warchild.pdf [accessed 29 December 2018].

family's income amidst conflict related financial loss.²¹⁶ School attacks, occupation and presence of armed groups and military not only expose children to serious risks²¹⁷ but they also affect school attendance. If a school is occupied by armed forces or groups or if armed groups are seated along school routes, it can often be perceived that there is a threat of sexual violence particularly for girls.²¹⁸

In keeping with the above the alarming increase of sexual violence against schoolchildren can be considered as one of the causes of negative school attendance in affected areas. Other causes are child recruitment as well as child and teacher casualties. The displacement also impacts school attendance because of limited opportunities the host schools offer. They lack enough capacity to welcome many students and they also lack sufficient learning space and adequate materials. In addition a major obstacle for IDPs to access host community school is the payment of school fees. Even though education should be free from grade one to five many teachers, who are not on the government payroll, claim illegal fees from children and parents.²¹⁹ Teachers themselves are displaced, leaving significant gaps in the provision of quality education and further burdening the already overstretched education system.

Eastern province schools were high profile target of the conflicting parties.²²⁰ In these areas, the school buildings were the only two basic permanent structures.²²¹ Hogg discusses this phenomenon in her book "the impact of war on children". Hogg mentions that education can be as simple as organized play. Recreational activities such as sports, drawing and music are fundamental in helping children cope with the

²¹⁶Elimu Kwanza' A brighter future for the children of DRC: Safe education for internally displaced children in the Democratic Republic of Congo available at https://www.warchildholland.org/sites/default/files/bijlagen/node_7209/17-2015/childrenofpeace-report-2015_warchild.pdf [accessed 29 December 2018].

²¹⁷Case Studies on Protecting the Right to Education: The Occupied Palestinian Territory and the Democratic Republic of Congo (2014) 14.

²¹⁸Global Coalition to protect Education from Attack (GCPEA) 'Protecting the rights of the child in humanitarian situations' (2017) 2.

²¹⁹Case Studies on Protecting the Right to Education: The Occupied Palestinian Territory and the Democratic Republic of Congo (2014) 14.

²²⁰Izenose J '(Children in Armed Conflict Situations : A case study of Nigeria and DRC) available at https://www.academia.edu/26778903/CHILDREN_IN_ARMED_CONFLICT_SITUATIONS_A_CASE_STUDY_OF_NIGERIA_AND_DEMOCRATIC_REPUBLIC_OF_CONGO [accessed 4 March 2019].

²²¹Izenose J '(Children in Armed Conflict Situations: A case study of Nigeria and DRC) available at https://www.academia.edu/26778903/CHILDREN_IN_ARMED_CONFLICT_SITUATIONS_A_CASE_STUDY_OF_NIGERIA_AND_DEMOCRATIC_REPUBLIC_OF_CONGO [accessed 4 March 2019].

trauma of conflict. Informal classes or play sessions help re-establish a daily routine and give children more confidence in themselves, their families and their community.²²² Nevertheless in the DRC conflict zones, many children have no chance to attend school because of a morbid fear of attack. According to the UNICEF, Schools are a target for attacks, recruitments and political indoctrination, discouraging many families from sending their children to school.²²³

In April, 2011, security forces opened fire from pod-mounted guns on an Allied Democratic Forces meeting on the premises of Bidhya Higher Secondary School in Binayak in DRC, killing and injuring several children, and forcing other students to witness the horrific incident.²²⁴ Following the incidents, various schools in that area reportedly remained closed for several days. It therefore comes as no surprise that most children are forced to stay out of school in fear of recruitment and possible death. In the province of South Kivu, 82 primary schools and 9 secondary schools were reported occupied by both armed groups and the displaced people.²²⁵ In December 2012, protection and education actors in South Kivu province documented the occupation of 11 primary schools and 6 secondary schools in Minova, Bulenga and Kalungu and 15 primary and secondary schools in Bweremana by armed factions.²²⁶ In Katanga, the destruction of 19 schools in 15 villages deprived children of their access to education and jeopardized their chances of returning to school on time. This led to an increase in the number of drop-outs due to persistent insecurity and fear.²²⁷ It must be noted that during the conflict teachers become vulnerable as they become targets of sexual abuse by the soldiers. This causes teachers to flee for safety, which

²²² Izenose J '(Children in Armed Conflict Situations: A case study of Nigeria and DRC) available at https://www.academia.edu/26778903/CHILDREN_IN_ARMED_CONFLICT_SITUATIONS_A_CASE_STUDY_OF_NIGERIA_AND_DEMOCRATIC_REPUBLIC_OF_CONGO [accessed 4 March 2019].

²²³ UNICEF, *Humanitarian Report*, (2009)154 available at https://www.unicef.org/har09/files/HAR_2009_FULL_Report_English.pdf [accessed 5 March 2019]

²²⁴ Izenose J '(Children in Armed Conflict Situations: A case study of Nigeria and DRC) available at https://www.academia.edu/26778903/CHILDREN_IN_ARMED_CONFLICT_SITUATIONS_A_CASE_STUDY_OF_NIGERIA_AND_DEMOCRATIC_REPUBLIC_OF_CONGO [accessed 4 March 2019].

²²⁵ OCHA, Bulletin humanitaire provincial : Province du Sud Kivu, 2012 en revue.

²²⁶ Note de Plaidoyer de la communauté humanitaire au Sud Kivu : 10 Décembre 2012

²²⁷ Case Studies on Protecting the Right to Education: The Occupied Palestinian Territory and the Democratic Republic of Congo (2014) 14.

means they would not be able to go to work and children's basic right to education is affected.²²⁸

To conclude this section, it should be noted that several factors have contributed to keeping children out of school in DRC, with external factors being exacerbated by conflict.²²⁹ Travel routes to and from school are dangerous for schoolchildren travelling long distance by foot, parents are afraid of sending their children to school while students are afraid of going to school and preferred staying home and working to contribute to a failing family income crisis.²³⁰

Having discussed the impact of armed conflicts on the child right to education in DRC, in the following section I intend to present the Congolese government's response to this impact.

4.3 The government's response to the impact of armed conflict on child education in DRC

The rampant gross human rights violations prevalent in times of conflict in the world and particularly in the DRC has resulted in the protection of the civilian including children becoming a legal and moral commitment, as well as a question of international peace and security.²³¹ According to UN agencies for peace and under international law, national governments bear primary responsibility to respect, protect and promote the rights of children within their jurisdiction as well as bringing perpetrators of grave violations against children to justice.²³² The role of the UN and the international community is to ensure the protection of children against grave violations of their rights in countries affected by armed conflict.

²²⁸UNICEF 'Nothing can justify terrible acts of abuse against women and children in Kasai' available at https://www.unicef.org/infobycountry/media_100600.html (accessed 20 March 2018).

²²⁹'Elimu Kwanza' A brighter future for the children of DRC: Safe education for internally displaced children in the Democratic Republic of Congo available at https://www.warchildholland.org/sites/default/files/bijlagen/node_7209/17-2015/childrenofpeacereport_2015_warchild.pdf [accessed 29 December 2018].

²³⁰'Elimu Kwanza' A brighter future for the children of DRC: Safe education for internally displaced children in the Democratic Republic of Congo available at https://www.warchildholland.org/sites/default/files/bijlagen/node_7209/17-2015/childrenofpeacereport_2015_warchild.pdf [accessed 29 December 2018].

²³¹OSRSG-CAAC Working Paper No 1(2013) 9.

²³²Office of the Special Representative of the Secretary General for Children and Armed Conflict Working Paper No. 3 'Children and justice during and in the aftermath of armed conflict' (2011) 9.

4.3.1 Congolese teachers' unions and movements

To fight against the violation of the rights of teachers as well as school children in the DRC, Congolese teachers are grouped in unions and other civilian movements to fight against, contest and denounce and condemn any kind of abuse and violation of teachers and school children's rights. La Federation Nationale des Enseignants Congolais (FENECO) and Union Nationale des Travailleurs du Congo (UNTC)²³³ has published a statement aimed at "adding the voices of educators to the distress calls emanating from this part of the DRC's territory against this scourge unfairly imposed to pillage the nation's wealth", said its General Secretary, Augustin Tumba Nzuji.²³⁴ This scourge has deprived so many survivors of the hope of learning to read, write and do arithmetic," he said. "Today, in the face of the Millennium Development Goals and Education for All (EFA), more has been destroyed than developed in the DRC."²³⁵

The UNTC had noted in a statement issued on 12 July 2012 that: "the wars in eastern DRC are having serious repercussions on the education of school-age boys and girls, and are daily claiming the lives of our fellow teachers and social educators."²³⁶ The union has urged the government to improve the living and working conditions of teachers and others.

4.3.2 Action Plan to end the recruitment of children associated with the Congolese armed forces and security services

The government of DRC signed an Action Plan to end the recruitment of children associated with the Congolese armed forces and security services in 2012.²³⁷ The action plan, adopted in the framework of Security Council Resolutions 1612 (2005)

²³³ Fédération Nationale des enseignants et éducateurs sociaux du Congo: Présentation de la FENECO/UNTC, created on 23 July 1967 in Kinshasa DRC.

²³⁴ DRC: Armed conflict puts education in peril available at <https://ei-ie.org/en/detail/1977/drc-armed-conflict-puts-education-in-peril> [accessed 20 December 2018].

²³⁵ DRC: Armed conflict puts education in peril available at <https://ei-ie.org/en/detail/1977/drc-armed-conflict-puts-education-in-peril> [accessed 20 Decembre 2018]

²³⁶ DRC: Armed conflict puts education in peril available at <https://ei-ie.org/en/detail/1977/drc-armed-conflict-puts-education-in-peril> [accessed 20 Decembre 2018].

²³⁷ Children and Armed Conflict: DRC signs agreement to end child recruitment and other conflict related violations against children available at <https://childrenandarmedconflict.un.org/drc-signs-agreement-to-end-child-recruitment-and-other-conflict-related-violations-against-children/> [accessed 27 December].

and 1882 (2009)²³⁸ was signed by Prime Minister, Mr Augustin Matata Ponyo Mapon and the Vice Prime Minister and Minister of Defence, Mr. Alexandre Lubal Tamu, as well as by MR. Roger Meece, Special Representative of the Secretary- General of the United Nations for the Democratic Republic of Congo and by the Deputy UNICEF Representative, Mme Sylvie Fouet.²³⁹ These frameworks are addressing the protection of children affected by armed conflict.

The following excerpt from the Special Representative of the Secretary-general for Children and Armed Conflict witnesses the membership of DRC to initiatives in support to stopping children recruitment in Militias and armed groups. “I congratulate the Government of the DRC for the Action Plan it signed today, which is an expression of the Government’s commitment to provide better protection for Congolese children” (Ms. Leila Zerrougi).

However, even though the government of the DRC has signed the human rights treaty and signed its membership to the organization, it has failed in its obligation under international law to look after its citizens from snatchings and forced enrolment into rebel movements.²⁴⁰ In fact, human rights organisations have stated that the government is guilty for some of the abuses.²⁴¹ It is considered responsible of these violations because its forces and some of the allied forces allegedly commit violations against the non-combatant inhabitants they are alleged to look after.

Consecutive to some of the observed situations of abduction of civilians by rebels, Congolese government armed forces and their allies reveals an established impunity in the violation of international law in DRC. According to local human rights monitors and eyewitnesses, Congolese citizens do not feel secure. This insecurity is due to the fact that the FARDC, the national Congolese army sent to Ituri to protect

²³⁸ Security Council resolution 1882 (2009) on children and armed conflict Available at <https://www.un.org/ruleoflaw/blog/document/security-council-resolution-1882-2009-on-children-and-armed-conflict/> [accessed 30 December 2018].

²³⁹ Children and Armed Conflict: DRC signs agreement to end child recruitment and other conflict related violations against children available at <https://childrenandarmedconflict.un.org/drc-signs-agreement-to-end-child-recruitment-and-other-conflict-related-violations-against-children/> [accessed 27 December].

²⁴⁰ Abeng Z *Forced labour in armed conflict: Special case of Democratic Republic of Congo* (Lund University 2009) 1.

²⁴¹ Human Rights Watch: Overview of Political Crisis in DR Congo and the Human Rights, Security and Humanitarian Consequences available at <https://www.hrw.org/news/2018/04/09/overview-political-crisis-dr-congo-and-human-rights-security-and-humanitarian> [accessed 29 December 2018]

civilians against local militias' abuses devastate the zone turning themselves into the abusive force.²⁴² In keeping with the above, the Congolese army and the rebels were accusing each other for civilian exaction and abduction. However, the eyewitnesses and the local human rights monitors allege that not only the militias but also the FARDC soldiers carry out the exactions and the abductions.²⁴³

Furthermore, even though it has identified the perpetrators of violations in most instances it had remained silent and these criminals were not punished. In light of the above-mentioned situation, it can be concluded that a system of impunity was observed in the DRC justice system. Nowadays, some warlords described as human rights violators in the DRC have been taken to court for their involvement in the conflicts and for harm and damage caused. Based on this action, Human Rights Watch reported that justice is gradually coming into the DRC system. Despite this milestone, other well-known suspects were still free and continue to perpetrate crimes. One of the suspects who was free until 2012 is Bosco Ntaganda.²⁴⁴ He was convicted in 2012 for recruiting and using children as soldiers in Ituri.²⁴⁵ In conclusion to this aspect it should be noted that the violation of the international law is not only the abductions and the exactions but also the failure of the authorities of the DRC to investigate and prosecute those who are accused of committing these crimes and the fact that civilians live in constant fear and are deprived of their freedom as citizens in the war-torn and devastated DRC.

In another aspect of human rights abuse, it has been observed that the Congolese government has a poor record of addressing local conflicts. The common observation of Congolese is that President Joseph Kabila, who inherited the power from his father who was assassinated in 2001, has failed to warrant the safety of the ordinary civilians.²⁴⁶ According to the view of the Office of the high Commissioner for

²⁴² Alison Des Forges, Senior Africa Adviser at Human Rights Watch

²⁴³ Abeng Z *Forced labour in armed conflict: Special case of Democratic Republic of Congo* (Lund University 2009) 7.

²⁴⁴ Profile: Bosco Ntaganda the Congolese 'Terminator' available at <https://www.bbc.com/news/world-africa-17689131> [accessed 27 December 2018].

²⁴⁵ Human Rights Watch: ICC: Trial of Bosco Ntaganda for alleged crimes in the Democratic Republic of Congo available at <https://www.hrw.org/news/2015/08/27/icc-trial-bosco-ntaganda-alleged-crimes-democratic-republic-congo> [accessed 27 December 2018].

²⁴⁶ The stolen childhoods of Kasai, DRC available at <https://www.amnesty.org/en/latest/campaigns/2018/07/the-stolen-childhoods-of-kasai-drc/> [accessed 23 December 2018].

Human Rights, in certain instances the Congolese government and its security forces have instigated local malaises via militias and co-operated in crimes and abuses against its own citizens.²⁴⁷

4.4 Conclusion

This chapter looked at how armed conflict affected the education of children. It also went on to consider its impact on school attendance, educational infrastructure and also the effect of conflict on the quality of education provided. Furthermore, the chapter assessed the government's response to problems having regard to its international and regional human rights obligations to protect and fulfil the child's right to education. The final chapter will draw conclusions from the entire study and make necessary recommendations.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The overall situation of the protection of children's rights in DRC still requires a lot of work particularly with regards to issues about food, housing, education and others basic necessities. The legal protection of the rights of children during armed conflict has been a cause of great concern in different countries and communities over the world. Among the rights of children, the right to education is an essential element in empowering their future. This right, however, has been violated in most if not all countries affected by armed conflicts such as the DRC. Furthermore, there are several instruments put in place to protect children and their rights in armed conflict. Accordingly, this study assessed the impact of armed conflict in DRC on the education of children.

In addition, chapter two discussed the international legal framework on the protection of children affected by armed conflict. The reason for this is that institutions that protect children, families, schools and health facilities, are potential targets in

²⁴⁷The stolen childhoods of Kasai, DRC available at <https://www.amnesty.org/en/latest/campaigns/2018/07/the-stolen-childhoods-of-kasai-drc/> [accessed 23 December 2018].

situations of armed conflict. This study has documented in detail how armed conflict has disastrous consequences for the child's access to education. For example, attacks on schools result in students and teachers abducted and school facilities destroyed. For this reason, chapter three focused on the legal framework protecting children's right to education in DRC. The chapter revealed that DRC has laws that protect every child against abuse and guarantees socio-economic rights, such as education. Despite this, challenges persist, as children remain exposed to violation of their rights in the country.

Furthermore, chapter 4 looked at how armed conflict affected children's education. As shown in previous chapters, armed groups launched targeted attacks against schools, students and teachers. Children and teachers were murdered and wounded during these attacks and school destroyed. Therefore, they have been compelled to avoid school for fear of falling prey during the armed conflict. These attacks in the eastern provinces of the DRC have had a negative impact on school attendance. The Congolese government has done little to implement both international and its national laws on protecting children affected by armed conflict. For instance, many of the Congolese children do not go school since their government cannot rebuild schools destroyed by military groups. Thus, DRC has failed to implement transformative measures so as to alleviate the plight of the affected children.

5.2 Recommendations

5.2.1 Settling of disputes by peaceful means

Armed conflict has never been an amicable way of resolving conflict as it tramples upon the rights of innocent civilians, including children. The study recommends that conflicting parties should resolve disputes amicably and peacefully in order to protect children's rights. As has been highlighted throughout this research it is evident that armed conflict is to the detriment of the children. It is, therefore, recommended the peaceful settling of disputes to avoid subjecting the children to the grave violations of their rights. It is undisputable that a peaceful environment is the ideal ground for development economically, politically as well as socially.

5.2.2 Transformative and nation rebuilding exercise

The aftermath of the armed conflict has undoubtedly left a devastating effect on the welfare of the DRC, especially children. The government must prioritise

transformative measures to heal the wounds of their subjects caused by the armed conflict. The government must rebuild the schools destroyed during the war. The rebuilding of the educational infrastructure will result in the education system receiving a lifeline. It therefore follows that upon rebuilding the destroyed infrastructure the children will once again be able to go back to school. Upon rebuilding schools, the government must strive to ensure that all children enroll to school.

Furthermore, the government and other partners engaged in children protection projects should encourage children to go back to school by subsidising school fees. Schools can also build recreation facilities to encourage children back to school. Another way of motivating children go to these schools is to increase security system, by providing security personnel inside and outside the schools in order to reassure protection of children and their teachers. Again, since armed conflict displaced some children, DRC must also enroll young adults for vocational education that can help sustain their upkeep.

In a bid to get every child back to school that massive demobilisation campaigns must be carried out, child soldiers must be released from duty and rehabilitated and must also undergo proper re orientation and reintegration into the society. Closely linked to the rebuilding of school infrastructure, the government must also pay particular attention to the rebuilding of affected health facilities to ensure adequate health facilities for the children.

5.2.3 Reform in legislation protecting children's rights and its implementation thereof

DRC must adopt a piece of legislation that guarantees child rights protection and implemented effectively. One may argue that in as much as there maybe legislation that protects child's rights in the DRC, it is arguable that it is not as effective. It therefore is of importance to reform legislation that protects children's rights to ensure that it is effective. Those who recruit children as child soldiers should be criminalised and attract a stiffer penalty to deter would be offenders. The use of and destruction of schools during armed conflict should attract a severe punishment. The taking of and holding of children a political and war hostages should be an unpardonable offence.

The disruption of the education sector during armed conflict must be a serious offence that should attract a befitting sentence.

5.2.4 Re-unification of families

Armed conflict displaces many families, and separated children from their loved ones. As noted earlier, separated children face malnutrition, diseases, death and other human rights abuses.²⁴⁸ As such, DRC must assist children locate their parents and re-unite families separated by war. The government also needs to terminate the actions of the FDLR, ADF, Mayi-Mayi Cheka, mainly the enrolment of children into their groups. Actions must be initiated to make sure that such children are demobilised and rescued from FDLR, ADF, Mayi-Mayi Cheka, reinstated and reunited with their families and be registered in schools. The armed groups must also respect their obligations under international humanitarian law by not attacking civilian buildings, such as schools. Where reunification is not possible, correct alternative measures should be determined as any child taken away from parental protection and efforts should be protected and his/her education and social well-being guaranteed.

The UN Mapping Report on the 1993-2003 civil war revealed that DRC does not have satisfactory capacity or enough guarantees of impartiality to certify justice for different kinds of crimes of severe human rights violations, such as those committed during period. Therefore, as considered under the Rome Statute the Congolese battle against impunity necessitates a dynamic revamp at national level so as to conform to the international standards. This dynamic arrangement can establish a mixed and impartial judicial mechanism to guarantee the impartiality of the national judicial system.

Finally, DRC must not disregard or relegate children that were victims, witnesses and actors of violence and war misconducts in armed conflict in the peace process.²⁴⁹ Importantly, the rights of children must not be disregarded both during and after armed conflicts. The DRC should evaluate and ensure that its programmes, laws and policies do not directly or indirectly discriminate the children or violate their rights. The CRC demands DRC to make judicial improvements to facilitate peace-building strategies enhanced by accountability and transparency. Ministerial partnership, especially with

²⁴⁸ Albertyn R, Bickler SW, Van As AB *et al* 'The effects of war on children in Africa' (2003) 19(4) *Paediatric Surgery International* 228

²⁴⁹ Sharon D A *commentary on the United Nations Convention on the Rights of the Child* (1999) 13.

the Ministry of Education and other organisations must work together to reinforce the provision of education to all children, without discrimination. Furthermore, conflict changes risk perception and affects property rights, welfare levels and educational trajectories.



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