

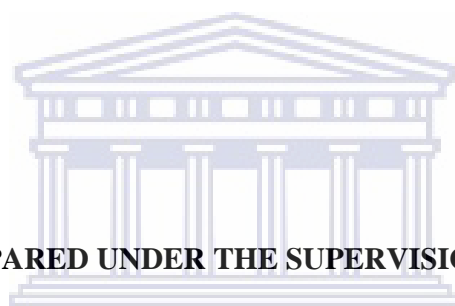
**THE ROLE AND EFFECT OF SMALL ARMS IN THE RECRUITMENT OF CHILD  
SOLDIERS IN AFRICA: CAN THE INTERNATIONAL LAW BE STRENGTHENED?**

**By**

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**A MINI-THESIS SUBMITTED TO THE LAW FACULTY OF THE UNIVERSITY OF  
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THE MPhil DEGREE.**



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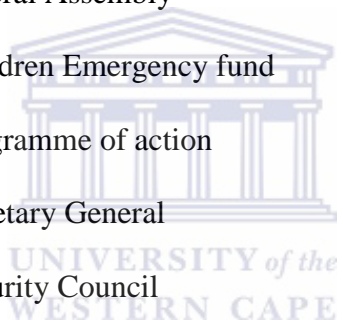
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## LIST OF ABBREVIATION

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

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



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## CHAPTER ONE

### 1.1. INTRODUCTION

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

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

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

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

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

Accessed March 10, 2010.

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

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

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

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

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

<sup>8</sup> Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accessed February 15, 2010.

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

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

Accessed: September 20, 2009.

<sup>22</sup> Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Despite the above successes and advances made, Coomaraswamy noted that the year 2010 also witnessed some concerns, such as the trend of children being used as instruments of violence, including child suicide bombers. Also of grave concern has been the number of deaths and injuries through aerial bombardment in the new technologies of war.<sup>39</sup>

The issue of small arms on which the world keeps ominously silent as the subject of the lucrative trade, is also a major concern. However, whenever the issue of small arms is tabled for discussions, it is treated as an issue totally divorced from the problem of child soldiers.<sup>40</sup> Meanwhile the ample supply of small arms at low cost makes it possible to fit out a battalion of child soldiers both cheaply and quickly with minimum training.<sup>41</sup> Thus small arms have been viewed as having the strongest potential to render distress and misery on children than any other weapons.<sup>42</sup> “On the other hand, to characterise the use of children as a result of small arms is no different from the tobacco industry’s claim that it only produces and markets tobacco products which does not make the industry responsible for the cancer that results from smoking.”<sup>43</sup>

As a solution, Fottrell states that the only realistic way to ensure the protection of children in conflict situation is to eliminate armed conflict itself, and the achievement of world peace would clearly be the ideal solution.<sup>44</sup>

### 1.3. LITERATURE REVIEW

Generally speaking on research carried out on this issue of child soldiers and small arms, Stohl rightly observes that the use of small arms by and against children has direct impact, for example, deaths, injuries, human rights violations, psychological traumas, refugee and internal displacements, devastation of families, reduced primary health and education, food security, economic activities and a culture of violence. She further observes that the use of

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<sup>39</sup> Ibid.

<sup>40</sup> Online articles: *Commentaries and Papers Child Soldiers Starts*.

Available: [http://www.achart.ca/publications/child\\_soldiers.html](http://www.achart.ca/publications/child_soldiers.html) . Access March 15, 2010.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Fottrell, D. (2000) *Revising Children’s Rights; 10 years on the United Nation Convention of the Rights of the Child*. P: 113.

child soldiers is also an unfortunate reality with the reliance on small arms in conflict.<sup>45</sup> In like manner, Happold noted that children disproportionately suffer from the effect of war not because they are themselves targeted but because the family and community structure as well as educational and health systems on which they rely are disrupted or destroyed.<sup>46</sup> According to Danso, modern conflicts are characterised by the proliferation of light weapons such as AK-47s and grenades as opposed to the nuclear and biological weapons of the cold war era, explaining that the development of light weapon's trade takes the child soldier from the margin to the very heart of modern conflicts. She also observed that an AK47 can transform a ten or 12 year old child into an effective instrument of destruction.<sup>47</sup> According to Happold, the development of modern weaponry has permitted children in hostilities at a young age. He explains that the worldwide availability of cheap, lightweight automatic weapons has meant that children can participate in combat on a far more equal footing with adult combatants than in any previous period.<sup>48</sup> Machel's works show that the increasing widespread exploitation of children as child soldiers is one of the most vicious characteristics of recent armed conflict.<sup>49</sup>

Two main reports worth mentioning are the 2008 Global Child Soldiers Report by the Coalition to Stop the Use of Child Soldiers,<sup>50</sup> as well as the 2011 report by Ms Cosmarawamy R. (the Special Representative the UN Secretary General for Children and Armed Conflict) on promoting and protecting children's rights.<sup>51</sup>

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<sup>45</sup>Stohl R. (2002). Targeting Children: Small Arms and Children in Conflict: *Center for Defense information: Spring 2002- Volume IX, Issue 1.*

Available: <http://www.watsoninstitute.org/bjwa/archive/9.1/smallarms/stohl.pdf> .Access March 9, April 2009.

<sup>46</sup> Happold M. (2005). *Child soldiers in international law.* Page 6.

<sup>47</sup> Twum- Danso A. (2003) *Africa's Young Soldiers: The Co-option of Childhood.* P:17.

<sup>48</sup> Happold M. (2005). Child soldier in international law: P: 4-5.

<sup>49</sup> Machel, G. (2001). *The Impact of War on Children* P:7.

<sup>50</sup> Coalition to stop the use of child soldiers: *Child Soldiers Global Report 2008*

Available: <http://www.chils-soldiers.org/Library/global-reports> . Access March 13, 2010.

<sup>51</sup>Coomaraswamy R. Children and armed conflict: *Statement by the SRSG Radhika Coomaraswamy for Childremand Armed Conflict to the General Assembly's third Committee: Promotion and Protection on the Rights of Children.*

Available: <http://www.un.org/children/conflict/english/pr/2011-10-12270.htm>.



#### **1.4. RESEARCH QUESTIONS**

The main questions behind this research are: What is the role and effect of small arms in Africa. Can the existing international legal instrument be strengthened? If so, how?

#### **1.5. THE TITLE OF MINI THESIS**

The title of this mini thesis shall be;

“The role and effect of small arms in the recruitment of child soldiers in Africa: Can International Law be strengthened?”

#### **1.6. METHODOLOGY**

This research will be based on existing library documents, and literature on the subject being researched.



#### **1.7. TEN KEY WORDS**

The Convention of the Rights of the Child  
The Committee on the Rights of the Child  
Child Soldier  
Small Arms and Light Weapons  
Human Rights Law  
African Charter of the Rights and Welfare of the Child  
UN Security Councils  
Conflict Transformation  
Optional Protocol to the Convention of the Right of the Child on the involvement of Children into  
The Special Representative the UN Secretary General for children and armed Conflict  
Armed Conflict  
UN Program of Action and  
The UN Security Council Resolution

## **1.8. OVERVIEW OF CHAPTERS**

The thesis will consist of five chapters.

Chapter one will set out the methodology on which the study is based, highlighting the basic structure of the study.

Chapter two will look at the nature of the problem in relation to the extent to which the international children's rights instruments protect and apply to the children in the region, with specific focus on Child Soldiers in International Humanitarian Law, International Law as well as the Regional instruments.

Chapter three will focus on the current actions of child soldiers and the proliferation of small arms.

Chapter four will examine the extent to which international law has dealt with the problem.

Chapter five: This chapter will be drawing the conclusions as to whether International law sufficiently accommodates the small arms debate, and provides proposals for the reduction of the flow of small arms and the strengthening of international law.



## CHAPTER TWO

### 2. THE LEGAL FRAMEWORK PROTECTING CHILD SOLDIERS IN AFRICA

#### 2.1. Introduction

While the phenomenon of child soldiers has existed for decades in Africa, it only started receiving intense attention in the last two decades. Instruments of law protecting the rights of children can be traced back to the first Declaration on the Rights of the Child adopted by the League of Nations in 1924. The Declaration recognises that the status of childhood deserves special care and affection and also laid down other guiding principles towards the welfare of the child.<sup>52</sup> In 1948 the United Nations General Assembly adopted the Universal Declaration of Human rights which proclaimed equal rights to all human beings and specifically recognises a child's special care and assistance.<sup>53</sup> It should be noted that the special protection enjoyed by children is not limited to peace time but extends to conflict situations. Children are being protected and accorded special care within the ranks of international human rights law, the international humanitarian law (IHL) as well as international criminal law. Although the provisions of human rights law are not specifically designed to protect people during armed conflict situations, a handful of articles are, however, applicable.<sup>54</sup>

Though some aspects of human rights law will be dealt with, the main focus of this chapter will be the plight of child soldiers and their legal protection. The protection of children within the IHL is guaranteed in two ways; protection from recruitment and from taking part in hostilities.<sup>55</sup>

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<sup>52</sup> Ruppel O. *The protection of children's rights under international law from a Namibian perspective*. Available: <http://www.kas.de/upload/auslandshomepages/namibia/ChildrenRights/Children.e.pdf>  
Accessed: 05/10/2010.

<sup>53</sup> Fonseca B. (2001). The protection on child soldiers in international law. *Asian-Pacific Journal on Human Rights and the Law* 2001, Volume 2, Number 2, P:78.

<sup>54</sup> Harvey R. *Children and armed conflict. A guide to international humanitarian and human rights law*. Available: [http://www.essex.ac.uk/armedcon/story\\_id000044.pdf](http://www.essex.ac.uk/armedcon/story_id000044.pdf).  
Accessed: 05/10/2010.

<sup>55</sup> ICRC. International humanitarian law-Treaties & Documents. *Optional Protocol to the Convention on the Rights of the Child involved in armed conflict*. 25<sup>th</sup> May 2000.  
Available: <http://www.icrc.org/ihl.nsf/Full/595?Opendocument>.

This chapter will analyse the instruments protecting children during conflict. It will also look at how international and regional law prohibits or restricts the recruitment and use of child soldiers. The instruments discussed include: the four Geneva Conventions of 1949 and their two additional protocols, the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the Rome Statute of the International Criminal Court (ICC), and the Optional Protocol of the Convention on the Rights of the Child Involved in Armed Conflict (OPAC). It will also look at the provisions of the International Labour Organisation (ILO) in relation to child soldiers and the role played by UN Security Council resolutions. The Rome Statute and the International Criminal Court (ICC) will not be part of this chapter because it will be discussed in a subsequent chapter.

## 2.2. INTERNATIONAL HUMANITARIAN LAW (IHL)

The International Humanitarian Law (IHL), hereafter described as the law of war or armed conflicts, is regarded as that part of law that governs relations between states.<sup>56</sup> IHL aims at limiting the effects of armed conflict for humanitarian reasons to protect persons who are no longer taking part in hostilities, the sick, and wounded, prisoners as well as civilians.<sup>57</sup> The IHL extends protection to children in armed conflict within the provisions of its instruments. The basic instrument of international humanitarian law in which children are given some kind of protection, though not specific to participation of children in armed forces, will be the Geneva Conventions of 1949.<sup>58</sup> However, children benefit from the general provision provided for civilians who are not participating in hostilities and are guaranteed humane treatment covered by the provisions of warfare.<sup>59</sup>

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Accessed 05/10/2010.

<sup>56</sup>ICRC. (2010 Overview). *War and international humanitarian law*. Available: <http://www.icrc.org/eng/war-and-law/overview-war-and-law.htm>.

Access 05/11/2010.

<sup>57</sup>Ibid.

<sup>58</sup>Topa I. (2007). Prohibition of child soldiering –International legislation and protection of perpetrators. *International law. Hanse law Review Vol.3. No.1.* P:111.

<sup>59</sup>Ibid. P:111.

### 2.2.1. The Four Geneva Conventions of 1949

The initial standards for the prohibition of the recruitment and use of children in armed conflict are embodied in the provisions the Geneva Conventions of 1949 and their Additional Protocols of 1977.<sup>60</sup> The four Geneva Conventions were adopted on the 12<sup>th</sup> of August 1949 and entered into force on the 21<sup>st</sup> of October 1950 and together with their Optional Protocols of 1977 form the core of international humanitarian law.<sup>61</sup> They contain rules of limiting the barbaric nature of war, and protecting people who do not take part in fighting (civilians, medical aid workers), and those who can no longer fight (wounded, sick, shipwrecked and prisoners).<sup>62</sup> Of the four Geneva Conventions, only the fourth Geneva Convention caters for civilian population, thus providing some protection to children. A total of 194 states have ratified the Conventions meaning they too enjoy universal support and are applicable to all countries.<sup>63</sup>

One weakness of the four Geneva Conventions, in relation to modern day conflicts in general and in the African context in particular, is that the Convention applies only to international conflicts and fails to consider conflicts of non-international character.<sup>64</sup> Nevertheless, Article 3, common to the four Geneva Conventions, deals with situations on non-international armed conflict and requires humane treatment for all persons in enemy hands, without any adverse distinction.<sup>65</sup>

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<sup>60</sup> Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict-Towards Universal Ratification. *The Journal of Children's Rights* 18. P:537.

<sup>61</sup> Mezmur B.D. (2006). Children at both ends of the Gun: child soldiers in Africa. In Sloth Nielsen J. (ed 2008) *Children's Rights in Africa. A legal perspective*. P:200.

<sup>62</sup> ICRC. *The Geneva Conventions of 1949 and their Optional Protocols. 29-10-2010. Overview.*

Available: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

Accessed: 15/10/2011.

<sup>63</sup>Ibid.

<sup>64</sup>Harvey R. *Children and armed conflict: A guide to international humanitarian and human rights law.*

Available: [http://www.essex.ac.uk/armedcon/story\\_id000044.pdf](http://www.essex.ac.uk/armedcon/story_id000044.pdf).

Access: 05/10/2010.

<sup>65</sup> *The Geneva Conventions of 1949 and their Optional Protocols. 29-10-2010. Overview.*

Available: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

Accessed: 15/10/2011.

### 2.2.2. The Optional Protocol of 1977 to the Geneva Convention

Besides providing general protection to civilians, the two Additional Protocols of 1977 provide some specific provisions on the involvement of children in armed conflicts in both international and internal conflicts. Article 77 of the Additional Protocol I of 1977 particularly provides specific protection to children during armed conflict of international character. It requires that state parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take direct part in hostilities and in particular they shall refrain from recruiting them into their armed forces.<sup>66</sup> This article is remarkable for the fact that it marked the first time that the issue of child soldiers is addressed in a binding international document.<sup>67</sup> It also sets the minimum age of recruitment into armed forces and the direct participation of children into hostilities. But the 15 years limit (and not 18 years) set for children's participation and recruitment was criticised.<sup>68</sup> It is uncertain if the provision prohibits voluntary recruitment.

Concerning the recruitment and use of children within internal armed conflict, article 4 (3) (c) of the Additional Protocol II of 1977 provided similar special protection to child soldiers. It asserts that children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take direct or indirect part in hostilities.<sup>69</sup> Article 4(3) (d) provides that children under 15 years of age who do take part in hostilities and whom enemy forces captured do not lose the same special protection.<sup>70</sup> One important weakness of the Additional Protocol II of 1977 is its failure to establish a system of

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<sup>66</sup>ICRC. *International Humanitarian Law: Treaties and Documents*. Protocol Additional to the Geneva Convention, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Available: <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>. Accessed: 05/10/2010.

<sup>67</sup>Harvey R. *Children and armed conflict: A guide to international humanitarian and human rights law*. Available: [http://www.essex.ac.uk/armedcon/story\\_id000044.pdf](http://www.essex.ac.uk/armedcon/story_id000044.pdf). Accessed: 05/10/2010.

<sup>68</sup>Ibid.

<sup>69</sup> ICRC. *International Humanitarian Law: Treaties and Documents*. Protocol Additional to the Geneva Convention of 12 August of 1949 and relating to Victims of Non-International Armed Conflicts. (Protocol II of 8 June 1977). Available: <http://icrc.org/ihl.nsf/full/475?OpenDocument>. Accessed: 05/10/2010.

<sup>70</sup> Ibid. Art 4 (3) (C).

implementation and supervision to ensure compliance.<sup>71</sup> Though it applied to non-international conflict, it does not apply to riots and sporadic acts of violence which have not attained the level of internal armed conflict.<sup>72</sup>

Additional Protocol II maintained the age of 15 as a minimum age for recruitment and participation in hostilities.<sup>73</sup>

## 2.3. INTERNATIONAL HUMAN RIGHTS LAW

### 2.3.1. The Convention on the Rights of the Child (1989)

Human rights instruments in general and the Convention on the Rights of the Child of 1989 (CRC) in particular also protects children affected by armed conflict. The CRC was unanimously adopted by the United Nations General Assembly (UNGA) in 1989 and it became the first legally binding instrument to accord special protection to all categories of children at all times.<sup>74</sup>

This human rights treaty has been ratified by almost all the states of the world, except Somalia and the United States of America and serves, as opposed to IHL, in both times of peace and conflict. Ms Yanghee Lee (then Chair Person of the Committee on the Rights of the Child), on the occasion of the 18<sup>th</sup> anniversary of the CRC observed that the CRC is the only international human rights treaty that enjoys almost universal ratification.<sup>75</sup> She also noted that the CRC provides legal standards and guidelines for regional and national implementation.<sup>76</sup>

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<sup>71</sup> Mezmur B. D. (2006). Children at both ends of the Gun: child soldiers in Africa. In Sloth- Nieslen J. (ed 2008) *Children's Rights in Africa. A legal perspective*. P:201.

<sup>72</sup> Ibid. P:201.

<sup>73</sup> Ibid. P:201.

<sup>74</sup> Unicef. *The Convention on the Rights of the Child*.

Available: <http://www.unicef.org/crc/>.

Accessed: 05/10/2010.

<sup>75</sup> Yanghee L. *18 candles. The Convention on the Rights of the child reaches Majority*.

Available: <http://www.ohchr.org/Documents/publications/crc18.pdf>.

Access: 11/10/2010.

<sup>76</sup> Ibid.

On her part, Ms. Louise Arbour (Former UN High Commissioner for Human Rights (OHCHR)), said that the obligation of state parties outlined in the Convention are underpinned by the concept of non-discrimination, best interest of the child, the right to life, survival and development and respect for the views of the child.<sup>77</sup> Thus by acceding (ratifying) to the CRC, national governments commit themselves to ensuring and protecting children's rights, to hold themselves accountable for this commitment before the international community. State parties further commit to submit periodic reports to the international community.<sup>78</sup> Thus the CRC will remain legally binding to all nations that have ratified it. The CRC defines a child as any human being below the age of 18 years, unless, under the law applicable to the child, majority is attained earlier.

The CRC is predominantly a human rights treaty but article 38 qualifies it as an IHL treaty which protects children in times of conflicts. Article 38 of the CRC establishes 15 years as the minimum age limit for direct participation in hostilities and asserts that state parties to take all feasible measures to ensure that persons who have not attained the age of 15 years do not take direct part in hostilities and to refrain from recruiting any person who has not attained the age of fifteen years into the armed forces. However, in recruiting among those persons who have attained the age of 15 but have not attained the age of 18, priority must be given to those who are oldest.

It should be noted that the above clauses in the article concerning child soldiers can be given some credit for they encompass international humanitarian law as well as human rights law.<sup>79</sup>

Though the article has provisions similar to those of article 77 of Additional Protocol 1 of 1977, it does confirm that the prohibition of the recruitment of children less than fifteen is a

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<sup>77</sup> Arbour L. *18 candles. The Convention on the Rights of the Child Reaches majority.*

Available: <http://www.ohchr.org/Documents/publications/crc18.pdf>.

Accessed: 11/10/2010.

<sup>78</sup> Unicef. *The Convention on the Rights of the Child.*

Available: <http://www.unicef.org/crc/>.

Accessed: 11/10/2010.

<sup>79</sup> Ang F. (2005). *A commentary on the United Nations Convention on the Rights of the Child; article 38. Children in Armed Conflict: P: 9.*



blanket prohibition applying to peace as well as war times.<sup>80</sup> Article 38 has only extended protection to children under 15 years of age as opposed to other children between 15 and 18 years of age.<sup>81</sup>

One of the major controversies of the CRC is that its definition sets 18 for someone to be considered a child and 15 as a minimum limit with regards to military service. In all other respects, 18 years is a set limit for participation of children which is in line with the definition of a child but with regards to military recruitment and participation, the age limit for participation is lowered to 15 years. Thus while guaranteeing protection to those below 15, those between 15 and 18 years are left vulnerable for recruitment.<sup>82</sup> Toope, observed that, the Convention will not mean much to children in the developing countries because of the lack of political will and the lack of intention of the north to transfer substantial resources to the south.<sup>83</sup> In the same light, the convention may have little or no impact to many countries where the abuse of children's human dignity is greatest.<sup>84</sup>

### 2.3.2. Critiques of the Convention on the Rights of the Child

The CRC is lauded for elevating the child to the status of an independent rights-holder, enabling children's issues to be at the center of the mainstream human rights agenda.<sup>85</sup> Article 38 (b) and (c) proved to be the most contentious in the entire Convention and almost failed to achieved consensus.<sup>86</sup>

As observed by the International Commission of Red Cross (ICRC), Article 38 of the CRC is subject to criticism for two reasons; firstly because all other provisions protect the child until it has reached the age of 18 years but this article limits military recruitment at 15 years. Secondly, the article made no improvement to the existing standards set by the Optional Protocol 1 of 1977.<sup>87</sup> With regards to voluntary participation of children in hostilities, state

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<sup>80</sup> Happold M. (2005). *Child soldiers in international Law*. P. 72.

<sup>81</sup> Ibid. P: 72.

<sup>82</sup> Twum-Danso A. (2003). *African Young soldiers. The co-option of childhood*. P: 18.

<sup>83</sup> Toope S. J. (Ed Michael Freeman). (1996). *Children's Rights. A Comparative perspective*. P: 34.

<sup>84</sup> Ibid. P:33.

<sup>85</sup> Fotrell D. (2000). *Revisiting Children's rights. 10 years of the UN Convention on the Rights of the Child*. P:1.

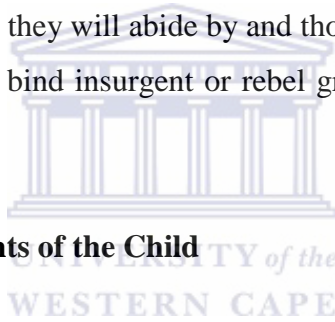
<sup>86</sup> Ibid. P:107.

<sup>87</sup> ICRC. *International Humanitarian Law-treaties and Documents*. Available : <http://www.icrc.org/ihl.nsf/INTRO/595?open> Document.

forces were not given any absolute prohibition obligation.<sup>88</sup> According to a report presented by the Center for Defense Information (CDI), article 38 laid more emphasis on direct participation in hostilities.<sup>89</sup> Thus emphasis on direct participation actually was viewed as undermining the standard of protection afforded by other IHL as it only prohibits direct participation, whereas the Additional protocol II also offers protection against indirect participation during internal conflict.<sup>90</sup>

Though the provisions of article 38 specifically address the issues of child soldiers, they however fail to impose an absolute duty on state parties, to ensure the care and protection of children during hostilities.<sup>91</sup>

One of the weaknesses of the CRC is that it relies on the national government to enforce and implement the norms of the convention.<sup>92</sup> The strength of the CRC and other international human rights laws becomes meaningless should States that are bound by them be allowed to selectively choose those provisions they will abide by and those they will not.<sup>93</sup> The fact that the obligations of the CRC do not bind insurgent or rebel groups makes it insufficient and weak.<sup>94</sup>



### 2.3.3. The Committee on the Rights of the Child

To enforce the implementation of the provisions of the CRC, a Committee on the Rights of the Child was created and charged with monitoring state parties, receiving reports on how

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Accessed: 11/10/2010.

<sup>88</sup> Fontana B. (1997). *Child Soldiers and International Law*.

Available: <http://www.iss.co.za/pubs/asr/6N03/Fontana.html>.

Accessed: 13/10/2010.

<sup>89</sup> The Center for Defense Information. *Invisible Soldier: Child Combatant*.

Available: [http://www.thirdworldtraveler.com/Life\\_Death\\_ThirdWorld/Child\\_Soldiers.html](http://www.thirdworldtraveler.com/Life_Death_ThirdWorld/Child_Soldiers.html).

Accessed: 13/10/2010.

<sup>90</sup> Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict-Towards Universal Ratification. *The Journal of Children's Rights* 18.

<sup>91</sup> Harvey R. *Children and Armed Conflict. A guide to International Humanitarian and Human Rights law*.

Available: [http://www.essex.ac.uk/armedcon/story\\_id/000044.pdf](http://www.essex.ac.uk/armedcon/story_id/000044.pdf).

Accessed: 13/10/2010.

<sup>92</sup> Mbangi G.K.(2009). *Good intentions, Little effect: International Norms and the use of child soldiers*.

Available: <http://etd.ohionk.edu/send-pdf.cgi/Mbangi%Grace.pdf?bgsu1256696958>

Access: 17/10/2010.

<sup>93</sup> Mulira D.B. (2007). *International legal standards governing the Use of Child Soldiers*.

<sup>94</sup> Fontana B. (1997). *Child soldiers and International Law*.

Available: <http://www.iss.co.za/pubs/asr/6N03/Fontana.html>.

Accessed: 17/10/2010.

the provisions have been implemented, devising and recommending innovative methods on implementation and finally to provide technical assistance.<sup>95</sup> It is also charged with the monitoring the implementation of the two Optional Protocols.<sup>96</sup> The work of the Committee however experienced some difficulties; one of which was the unwillingness and inability of African national governments to initiate effective steps that will curb the recruitment and use of child soldiers.<sup>97</sup> The Committee on the Rights of the Child is only an implementation mechanism of the CRC to those countries which are in compliance but cannot punish or enforce compliance to adhere with the CRC norms.<sup>98</sup> Thus there is no enforcement mechanism, making the Committee depend only on domestic law and political will of individual nations.<sup>99</sup>

The Committee is further weakened by the fact that it is not able to respond to situations of emergency and cannot make ad hoc recommendations on current cases. Furthermore, the committee has no competence to deal with communications from individual complaints or impose sanctions on offenders.<sup>100</sup>

#### 2.3.4. Conclusion

Hamilton saw the necessity to note that heated argument resulted with regards to the fact that the present provisions of the CRC were not adequate and effective in the protection of children.<sup>101</sup> As a result of the above observations, criticisms and arguments relating to the weakness of article 38, an Optional Protocol to the Convention on the Rights was proposed with the aim of raising the age limit in article 38.

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<sup>95</sup> Ramesh A. *UN Convention on the Rights of the child. Inherent weakness.*  
Available: <http://www.jstor/stable/4410687>.  
Accessed: 05/10/2010.

<sup>96</sup> UN OHCHR. Committee on the Rights of the Child.  
Available: <http://www2.ohchr.org/english/bodies/crc/>.  
Accessed: 05/10/2010.

<sup>97</sup> Accord: 2002. *African Journal on Conflict Resolution* . Volume 2: NO 2. P. 33.

<sup>98</sup> Mulira D.B. (2007). *International Legal Standards Governing the use of Child Soldiers.*  
Available: [http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1085&context=stu\\_llm](http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1085&context=stu_llm).  
Accessed: 13/10/2010.

<sup>99</sup> Ibid.

<sup>100</sup> Harvey R. Available: [http://www.essex.ac.uk/armedcon/story\\_id/000044.pdf](http://www.essex.ac.uk/armedcon/story_id/000044.pdf).  
Accessed: 13/10/2010.

<sup>101</sup> Hamilton C. & El-Haj T. *Armed conflict: The protection of children under international law.*  
Available: [http://www.essex.ac.uk/armedcon/story\\_id/00057.html](http://www.essex.ac.uk/armedcon/story_id/00057.html).  
Accessed: 17/10/2010.

## 2.4. The African Charter on the Rights and Welfare of the Child (ACRWC)

The African children did not receive the full attention they deserved prior to the adoption of the ACWRC. There was no specific protection of children during situation of conflicts although they were guaranteed protection by adult and parents under the African Charter on People's Rights. The African children had some protection from the CRC, The Organisation of African Unity (OAU) decided to adopt a regional instrument, the ARCWC representing the African concept of human rights.<sup>102</sup> Viljeon identified two reasons for adoption of the Charter; political as well as legal. Politically, the OAU's reaction was motivated from the perception of exclusion of African states during the drafting process of the CRC. Legally, there was the need for a regional human rights instrument dealing with issues pertinent to children in Africa.<sup>103</sup> Another reason stems from the fact that the CRC did not articulate the issue of the use of child soldiers in strong and enforceable terms required by the scale of its inhuman practice in Africa.<sup>104</sup>

Before the adoption of the ACRWC, the African Regional System had adopted 1979 the Declaration on the Rights and Welfare of the Child by the General Assembly of Heads of States and Governments of OAU at its 16<sup>th</sup> ordinary session in Monrovia, Liberia. Following the Declaration, the need to take all appropriate measures to protect and promote the rights and welfare of the child was earmarked.<sup>105</sup> The ACWRC was adopted on the 11<sup>th</sup> of July 1990, by the Assembly of Heads of States and Governments of the OAU, at its 26<sup>th</sup> ordinary sessions in Addis Ababa. The Charter required the ratification of fifteen member states of the OAU before it could enter into force. It took almost 10 years for this number to

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<sup>102</sup> loyd A.(2002). Evolution of the African Charter on the Rights and Welfare of the child and the Committee of Experts: Raising the gauntlet. *The International Journal of Children's Rights* 10: P:179-180.

<sup>103</sup> Viljeon F. The African Charter on the Rights and Welfare of a child. A compilation of Publications on the African Charter on the Rights and Welfare of the Child and the African Committee of Experts on the Rights and Welfare of the Child. *Community law Centre*. P; 218.

<sup>104</sup>Center For Conflict Resolution. Children and armed conflict in Africa. *A policy seminar hosted by the Center for Conflict Resolution, the Office of the UN High Commissioner for Human Rights, South Africa Regional office Johannesburg.*

Available:

[http://www.reliefweb.int/sites/reliefweb.int/files/resources/A912B2432DC95A25C125747COO4E3DEF.vol\\_2\\_3-ArmedConflict.pdf](http://www.reliefweb.int/sites/reliefweb.int/files/resources/A912B2432DC95A25C125747COO4E3DEF.vol_2_3-ArmedConflict.pdf).

Accessed: 13/10/2010.

<sup>105</sup> Lloyd A. (2002). *Evolution of the African Charter on the Rights and Welfare of the child and the Committee of Experts: Raising the gauntlet*. P:180.

be attained, causing it to enter into force on the 29 of November 1999.<sup>106</sup> The ACRWC therefore became the first legally binding, of all the regional systems to adopt a treaty specifically dealing with children's related issues, providing for the promotion, protection and monitoring of the rights and welfare of the child.<sup>107</sup> Of the 53 countries in the continent, only 47 have ratified the charter.<sup>108</sup> It should be noted that the creation of the charter was not to counter the role of the provisions of the CRC on the continent but to compliment it.<sup>109</sup>

Of the 48 articles contained in the Charter, article 22 specifically provides protection to children in situations of armed conflicts. The article requires that state parties to the present charter shall take all necessary measures to ensure that no child takes direct part in hostilities and refrain in particular, from recruiting any child (article 22 (2)).<sup>110</sup>

#### **2.4.1. Similarities and Differences in Article 22 of ACRWC and Article 38 of CRC**

Looking at the provisions of this article and the language, one will be able to notice some similarities existing between article 22 of the ACRWC and article 38 of the CRC. The charter is similar to the CRC in the sense that they all have the principles of non-discrimination and safeguarding the best interest of the child.<sup>111</sup>

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<sup>106</sup> Vilgeon F. The African Charter on the Rights and Welfare of a child. A compilation of Publications on the African Charter on the Rights and Welfare of the Child and the African Committee of Experts on the Rights and Welfare of the Child. *Community law Centre*. P: 215.

<sup>107</sup> Lloyd A. (2002) Evolution of the African charter on the Rights and Welfare of the Child and the Committee of expert. Raising the gauntlet. *The International Journal of Children;s Rights* 10P: 179.

<sup>108</sup> Human Rights Library. *African charter on the Rights and Welfare of the Child* (OAU Doc CAB/LEG/249/49(1990), enter into Force N02 1999. Ratification information.

Available: <http://www.umn.edu/humanrts/instree/afchildratification.html>.

Accessed: 25/10/2010.

<sup>109</sup> CRIN. *African Committee on the Rights and Welfare of the Child* .

Available: <http://www.crin.org/resources/infoDetails.asp?ID=18065>.

Accessed: 25/10/2010.

<sup>110</sup> ARWWC. OAU Doc.CAB/LEG/24.9/49 (1990), enter into force Nov. 29,1999.

Available: [http://www.africa-](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20ON%20THE%20RIGHTS%20AND%20WELF%20OF%20CHILD.PDF)

[union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/a.%20ON%20THE%20RIGHTS%20AND%20WELF%20OF%20CHILD.PDF](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20ON%20THE%20RIGHTS%20AND%20WELF%20OF%20CHILD.PDF).

Accessed: 25/10/2010.

<sup>111</sup> CRIN. *African Committee on the Rights and Welfare of the child*.

Available: <http://www.crin.org/resources/infoDetails.asp=1865>.

Though similar in many instances, the two articles are however different in many ways; Article 22 of the Charter sets an outright prohibition in the recruitment and use of children below 18 years while article 38 of the CRC sets 15 years as the minimum for recruitment.<sup>112</sup> Another difference between the two articles lies in the use of measures; while the Convention uses all “feasible measures”, the charter uses the expression “all necessary measures” which according to the Charter obliges States to do something.<sup>113</sup> Another difference stems from the fact that the Convention uses the phrase “no persons” whereas the Charter uses the phrase “no child” making the Charter to be more focused.<sup>114</sup> Similarly, a child is defined in article 2 of the ACRWC, like in article 1 of the CRC as every human being below the age of 18 years, yet the CRC allows for an exception in cases where majority is attained earlier under applicable law, which is not applicable to the Charter. By not giving room for any exception, encompasses the ACRWC a wider sphere of child protection.<sup>115</sup>



#### 2.4.2. Critique of the ARCWC

The charter is lauded for its exceptional efforts towards a straight 18 ban on the recruitment and use of children in hostilities. Despite the ban, Happold still regards the Charter as generally unsuccessful.<sup>116</sup> The Charter also gained some credit for being the most forward thinking amongst the regional systems and development of law.<sup>117</sup> The ACRWC also received criticism from Ang, with regards to the practical impact of the Charter; she observed that the charter in general remains a course yet to be seen and that it is still ineffective and immature.<sup>118</sup> According to Bell and Abrahams, the Charter can be praised for three reasons; it is the only legally binding treaty in the world which handles children with

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Accessed: 25/10/2010.

<sup>112</sup>Olowu D. (2002). *The international Journal on Children's Rights 10. Protecting children's Rights in Africa. A critique of the African Charter on the Rights and Welfare of the Child* . P: 130.

<sup>113</sup>Gose M. (2002). *The African Charter on the Rights and Welfare of the Child. Community law centre*. P: 78.

<sup>114</sup>Ibid. P:77.

<sup>115</sup> Brems E. (2001). *Human Rights: Universality and Diversity* P: 138.

<sup>116</sup>Happold M. (2005). *Child Soldiers in International Law*. P: 84.

<sup>117</sup>Ibid. P: 85.

<sup>118</sup>Ang F. (2005). *A Commentary on the United Nations Convention on the Rights of the Child . Article 38. Children and armed Conflict*. P: 6.

respect of international humanitarian law, affording greater protection of children.<sup>119</sup> It is the only regional charter in the world which specifically mentions child soldiers and recognises the fact that child soldiers have become an international law issue.<sup>120</sup> Finally, the Charter is the first and only regional treaty to establish eighteen as the minimum age for recruitment and direct participation in hostilities.<sup>121</sup>

It is important to note here that the ARCWC did not regulate the conduct of non-state armed groups even though they are parties to most internal armed conflict and account for a high percentage of unregulated recruitment of child soldiers.

### 2.4.3. The Committee of Experts on the Rights and Welfare of the Child

The ACWRC established and put in place an 11 member's implementation team under the name "The Committee on the Rights and Welfare of the Child". The Committee comprises individuals considered to be people of high moral standard, integrity, impartiality and competence in matters of the rights and welfare of the child, and serving in their personal capacity to promote and protect the rights contained in the Charter.<sup>122</sup>

Beside promoting and protecting the rights contained in the charter, the Committee of Experts will also make sure these provisions are implemented and enforced which falls in line with article 42 of the Charter defining the functions of the committee.<sup>123</sup> The committee

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<sup>119</sup>Bell K. & Abrahams D. *The use of child soldiers in armed conflict*.

Available: [www.sabinet.co.za/abstracts/obiter/obiter\\_v29\\_n2\\_a3.html](http://www.sabinet.co.za/abstracts/obiter/obiter_v29_n2_a3.html).

Accessed: 18/10/2010.

<sup>120</sup>Ibid.

<sup>121</sup>Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict-Towards Universal Ratification. *The International Journal of Children's Rights* 18. P:539.

<sup>122</sup>ACRWC. The African charter on the Rights and Welfare of the child, OAU Doc.CAB/LEG/249/49(1990), entered into force 29 November 1999.

Available:[http://www.africa-](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHTS%20WELF%20OF%20CHILD.pdf)

[union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/a.%20C.%20ON%20THE%20RIGHTS%20WELF%20OF%20CHILD.pdf](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHTS%20WELF%20OF%20CHILD.pdf).

Accessed: 19/10/2010.

<sup>123</sup>Lloyd A. (2002) *Evolution of the African charter on the Rights and Welfare of the Child and the Committee of experts. Raising the gauntlet*. P: 186.

Available: [http://hernonline.org/HOL/page?handle=heinjournals/intjhrb10&div=209\\_sent=1&collection-](http://hernonline.org/HOL/page?handle=heinjournals/intjhrb10&div=209_sent=1&collection-journal)

[journal](http://hernonline.org/HOL/page?handle=heinjournals/intjhrb10&div=209_sent=1&collection-journal).

is also responsible for the collection and documentation of information, provision of encouragement to national and local institutions concerned with the rights and welfare of the child and finally the commissioning of interdisciplinary studies.<sup>124</sup>

Mezmur's studies on the Committee of Experts highlight that countries member states have not taken their reporting obligation seriously.<sup>125</sup> During the 6<sup>th</sup> meeting of the Committee in 2005, the number of overdue state party reports had grown to 33. Nevertheless, the deadlock was broken at the 7<sup>th</sup> meeting in 2009 when Egypt and Nigeria submitted the first reports. The studies noted that even countries whose nationals are members of the Committee have not yet reported.<sup>126</sup> The committee, which is charged with the promotion of the rights of the child, was weakened by inadequate funding and resources with which to carry out its functions. This will affect the implementation of the provisions.<sup>127</sup>

The Committee finds it difficult to carry out its functions because the people of Africa particularly those of the rural areas where the bulk of recruitment is done, are largely illiterate and ignorant of the existence of the charters.<sup>128</sup> It is important to note here that the Committee's mandate was limited to state parties and therefore has no power over non-state parties or armed groups.

Contemporary conflicts in Africa are basically fought at internal levels which are responsible for the high number of child soldiers being used. But the provisions of the Charter did not address or extend some kind of protection of children in situations of internal

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Accessed: 19/10/2010. P: 186.

<sup>124</sup>Ibid. P186.

<sup>125</sup> Mezmur BD. The African Committee of Experts on the Rights and Welfare of the Child: an Update. *African Human Rights Journal* 6. P: 560.

<sup>126</sup> Mezmur BD. The African Committee of Experts on the Rights and Welfare of the Child: an Update. *African Human Rights Journal* 6. P: 561.

<sup>127</sup> Affa'a -Mindzie M. (2007). *Comments & analyses. Regional protection of child rights in Africa.*

Available: <http://www.pambazuka.org/en/category/comment/44416>.

Accessed: 25/10/2010.

<sup>128</sup> Lloyd A. (2002). *African human rights law journal. A theoretical analyese of the realities of children rights in*

*Africa. An introduction to the African charter on the rights and welfare of the child.*

Available:

<http://heinonline.org/HOL/page?handle=hein.journal/afrihurli2&div=9&gsent=1&collection=journals#40>.

Accessed: 25/10/2010.



conflict; the emphasis has all along been on international conflict. Similarly the mandate of the Committee of experts did not specifically provide for situations of internal conflict, strife and hostilities.

## 2.5. The International Labour Organisation (ILO)

The International Labour Organisation joined the campaign to end the recruitment and use of child soldiers, by adopting the Convention 182 on the Worst Form of Child Labour, which was the outcome of the 87<sup>th</sup> session of the General Conference of the ILO on 17 June 1999. At the session, the governing body of the organisation decided to enact a legally binding instrument amongst its member states.<sup>129</sup> The Convention commits each member which ratifies the Convention to take immediate and effective action to ensure the prohibition and elimination of the worst form of child labour as a matter of urgency (article 1).<sup>130</sup>

The term “worst form of child labour” includes all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, forced or compulsory labour, includes forced or compulsory recruitment of children in armed conflict (article 3).<sup>131</sup> According to Fottrell, the Convention incorporates a ban on forced recruitment under 18 years but at the same time failed to place a total ban on the use of children in all respect such as voluntary recruitment which is equally an issue.<sup>132</sup> Mezmur mentioned that, what is absent from the list of worst form of child labour is a total ban on the use of children in armed conflict. According to him, the language of the Convention only covers the most

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<sup>129</sup> Convention 182 on the Worst Form of Child Labour, 1999. Adopted on 17 June by the General Assembly of the International Labour Organisation at its eighty-seven session. Entry into force: 19 November 2000. Accessed: 05/10/2010.

<sup>130</sup> ILO. Convention 182 on the worst form of Child Labour, 1999. Adopted on 17 June by the General Assembly of the International Labour Organisation at its eighty-seven session. Entry into force: 19 November 2000.

Available: [www.ilo.org/ipec/facts/ILOConventiononchildlabour/lang--en/index.htm](http://www.ilo.org/ipec/facts/ILOConventiononchildlabour/lang--en/index.htm).

Accessed: 05/10/2010.

<sup>131</sup> Ibid. Article 3.

Available: [www.ilo.org/ipec/facts/ILOConventiononchildlabour/lang--en/index.htm](http://www.ilo.org/ipec/facts/ILOConventiononchildlabour/lang--en/index.htm).

Accessed: 05/10/2010.

<sup>132</sup> Fottrell D. (2000). *Revisiting Children's Rights: 10 years on the United Nation Convention on the Rights of the Child*. P107.

horrific aspects of the use of child soldiers, such as compulsory recruitment or abduction, but those recruited through voluntary means were not protected by the ILO convention.<sup>133</sup> Some criticisms hold that the Convention has some loop holes because it does not address all participation in armed conflict.<sup>134</sup>

## **2.6. The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflicts (OPAC)**

In an effort to end the recruitment and use of children in armed conflict, and respond to criticisms on the controversial article 38 of the CRC, and to end the continuous pressure from international organisations and Non-Governmental Organisations, the United Nation General Assemble adopted the OPAC on May 25<sup>th</sup> 2000. The aim of the idea was to raise the minimum recruitment age into armed forces from 15 to 18 years.<sup>135</sup> The Protocol established 18 years as the minimum age for direct participation into hostilities, for compulsory recruitment and for any recruitment or use in hostilities by non-governmental armed groups.<sup>136</sup> Article 1 demand that States Parties shall take all feasible measures to ensure that members of their armed forced who have not attained the age of 18 years do not take a direct part in hostilities.<sup>137</sup> Article 2 of the OPAC stipulate that State Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.<sup>138</sup> While placing a ban on compulsory recruitment by state parties in article 2, the provisions of article 3 of the OPAC however calls on member states to raise the minimum age for voluntary participation of persons into their national armed forces from that set out in article 38, paragraph 3 of the Convention on the Rights of the Child, taking

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<sup>133</sup> Mezmur B.D. (2006). Children at both ends of the gun. Child soldiers in Africa. In Sloth-Nielsen J. *Children's rights in Africa. A legal perspective* (ed. 2008) P: 203.

<sup>134</sup> Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict-Towards Universal Ratification. *The Journal of Children's Rights* 18. P: 539.

<sup>135</sup> Fotrell D. (2000) *Revisiting children's rights: 10 years of the UN Convention on the Rights of the Child*. P107

P107.

<sup>136</sup> Human Rights Watch World Report (2001), *Special Issues and Campaigns: Child Soldier Campaign*. Available: <http://199.173.149.120/wr2k1/special/child.html><http://199.173.149.120/wr2k1/special/child.html>. Accessed: 19/10/2010.

<sup>137</sup> Unicef. *A guide to the Optional Protocol on the involvement of children in armed conflict*. Available: [http://www.unicef.org/publications/files/option\\_protocol\\_conflict.pdf](http://www.unicef.org/publications/files/option_protocol_conflict.pdf).

Accessed: 19/10/2010.

<sup>138</sup> Ibid.

account of the principles contained in that article and recognising that in that Convention, persons under 18 years are entitled to special protection.<sup>139</sup> The provision however requires states to put safeguards in place to ensure that voluntary recruitment is genuinely genuine. Ms. Coomaraswamy noted that the above distinction place between compulsory and voluntary recruitment is not always clear, since some external circumstances such as poverty and lack of physical protection might induce the children to join voluntarily.<sup>140</sup> For this reason, child protection actors such as the Coalition to stop the use Child Soldiers, United Nation High Commission for Refugees as well as the Committee of the Rights of the Child advocated for a straight 18 limit for both compulsory and voluntary recruitment.<sup>141</sup> However, it is believed that should the straight 18 ban be extended to voluntary and compulsory recruitment, it would have provided a broader protection.

A remarkable provision of the OPAC is article 4(1), which states that, armed groups that are distinct from armed forces of the state should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.<sup>142</sup> Thus placing a complete ban to armed groups from recruiting or use in hostilities persons under 18 years. The most important aspect of article 4 it that the OPAC include the conduct of non-state armed groups and recognising that in most modern day conflicts, the majority of child soldiers are recruited by non-state armed groups.<sup>143</sup>

Since the entry into force of the OPAC, only 132 countries have signed and ratified it while some sixty countries have not yet acceded. However, in an ongoing campaign “Zero under Eighteen” explained it chapter one, Ms. Coomaraswamy, believed that the universal ratification would give the OPAC the broadest possible legitimacy and force and will certainly contribute towards international realisation of children’s rights.<sup>144</sup>

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<sup>139</sup> Ibid.

<sup>140</sup> Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - Towards Universal Ratification. *The Journal of Children’s Rights* 18. P: 540.

<sup>141</sup> Ibid. P: 540.

<sup>142</sup> Unicef. *A guide to the Optional Protocol on the involvement of children in armed conflict*.

Available: [http://www.unicef.org/publications/files/option\\_protocol\\_conflict.pdf](http://www.unicef.org/publications/files/option_protocol_conflict.pdf).

Accessed. 19/10/2010.

<sup>143</sup> Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict-Towards Universal Ratification. *The Journal of Children’s Rights* 18. P: 540.

<sup>144</sup> Ibid. P: 549.

### 2.6.1. Critique of the OPAC

Happold observed that, Article 1 of the OPAC does not ban the entire participation by children in hostilities, thus giving room for child soldiers to be employed to perform other roles which still put them at risk.<sup>145</sup>

The Optional Protocol's primary concern was the plight of child soldiers, and to raise the minimum age required for compulsory and voluntary recruitment as well as direct participation in hostilities to 18 years, but it failed with regards to setting a standard age for both compulsory as well as voluntary recruitment of children by both government and militia groups.<sup>146</sup> The Protocol failed to adequately address the issue of voluntary recruitment of children below the age of 18 years into government forces.<sup>147</sup> This, according to Webster, could result in an unfortunate situation should a country recruit sixteen year old children into its armed forces and at the same time prosecute internal armed groups for using the same age group.<sup>148</sup> The parental consent advocated by the OPAC for voluntary recruitment could also result in failure, since some parents themselves encourage their children to join the military for the simple reason of survival.<sup>149</sup>

Though the Optional Protocol is considered a milestone in the fight against the use of child soldiers, it failed to completely protect all children from armed conflicts and its consequences.<sup>150</sup>

The Optional Protocol was also criticised for the fact that it allowed states that had not ratified the CRC (United States of America and Somalia) to ratify the Optional Protocol,

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<sup>145</sup> Happold M. (2005). *Child Soldiers in International Law* P: 77.

<sup>146</sup> Bell K. & Abrahams D. *The use of children in armed conflict*.

Available: [www.sabinet.co.za/abstracts/obiter/obiter\\_v29\\_n2\\_a3.html](http://www.sabinet.co.za/abstracts/obiter/obiter_v29_n2_a3.html).

Accessed: 18/10/2010.

<sup>147</sup> Ibid.

<sup>148</sup> Mbungu G.K. (2009). *Good Intentions, Little effects: International Norms and the use of Child Soldiers*.

Available: <http://www.etd.ohionk.edu/send-pdf.cgi/mbungu%Grace.pdf?bgsu1256696958>.

Accessed: 13/10/2010.

<sup>149</sup> Silva J.R. (2007-2008) Child Soldiers: A Call to the International Community to Protect Children from War; *Suffolk Transnational Law Review: Vol: 31 No 3. P: 703*.

<sup>150</sup> Ibid.

thus as some argue, diminishing the significance of the CRC.<sup>151</sup> According to the Protocol, these countries are allowed to become parties to the Protocol but in doing so agree to abide by those parts of the CRC relevant to the Optional protocol.<sup>152</sup> Furthermore, the Optional Protocol fails to put in place mechanisms to monitor, verify and enforce its provisions thus making it difficult to implement the Protocol.<sup>153</sup>

## **2.6.2. The CRC Committee Concluding Observation for country Reports under OPAC**

The Committee on the Rights of the Child is the body of independent experts that monitors implementation of the CRC by its State parties. It is charged with monitoring and implementing the provisions of the OPAC.<sup>154</sup> Under article 8 of the OPAC, the Committee will receive countries reports on how the provisions are implemented, draw conclusions and make recommendations. For the record, article 8 (1) of OPAC which requires all state parties to submit regular reports to the Committee on the Rights of the child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provision on participation and recruitment. States must report initially two years after acceding to the Convention and then every five years.<sup>155</sup> Since 2005, the committee has consistently been receiving country reports on their efforts of implementing the OPAC provisions. It is important to note here that the powers of the Committee are limited to receiving reports from states Parties and making recommendations. It cannot receive individual reports or take actions on current happenings. Even though the OPAC recognises that non-state actors recruit the majority of children, the Committee has no powers to regulate their actions.

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<sup>151</sup>Shara A. *Human Rights Brief. A Legal Resource for the International Human Rights Community*: Vol. 10. Issue.

Available: <http://www.wcl.american.edu/hrbrief/10/3child.cfm>.

Accessed: 19/10/2010.

<sup>152</sup> McRae, R. G. & Hurbert D. (2001). *Human Security and the New Diplomacy: Protecting people and Promoting Peace*. P: 158.

<sup>153</sup>Ibid.

<sup>154</sup> OHCHR. Committee on the Rights of the child.

Available: <http://www2.ohchr.org/tbru/crc/CRC-C-OPAC-SDN-CO-1.pdf>.

<sup>155</sup> OPAC. Adopted and open for signature, Ratification and accession by General Assembly Resolution A/RES/54/263 of 25 May 2000, entry into force 12 February 2002.

Available: <http://www2.ohchr.org/english/law/pdf/crc-conflict.pdf>.

Accessed: 13/10/2010.

In 2010, ten reports were considered amongst which include reports from Sudan and Sierra Leone. This chapter will look in detail the recommendations made with regards to the report submitted by Sudan.

### **2.6.3. Sudan Report under OPAC presented on the 21<sup>st</sup> of September 2010**

The Sudanese delegation presented replies from a list of questions from the CRC Committee on the rights of the child. In accordance with states replies and in consideration of the initial report of Sudan, (CRC/C/SDN/1), at the 1563<sup>rd</sup> meeting 21<sup>st</sup> September 2010, at its 1583<sup>rd</sup> meeting 1<sup>st</sup> October 2010 the following concluding observations were arrived at;

On matter concerning implementation, the committee observed that the designated National Council for child welfare as the leading agency for coordinating the implementation of child rights, lacked adequate human and financial resources to fulfill its mandate, which resulted in the ineffectiveness in its role at national, regional and municipal levels. The Committee recommends that the State Party ensures that adequate human and financial resources be made available to the National Council for Child Welfare with the view to ensure effective coordination of plans and policies among the agencies involved in the implementation of the Optional Protocol at all levels.

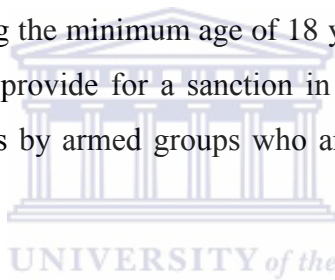
Concerning independent monitoring, the committee welcomes the adoption of the National Human Rights Commission Act in 2009 but expresses concern that the Commission is not yet established and there is no independent national mechanism to monitor the implementation of the OPAC, to receive complaints of child rights violations and to take appropriate action.

In that regard, the Committee urges the state party to proceed with the establishment of the National Human Rights Commission and ensure that it is in conformity with the principle relating to the status of national institutions (Paris Principles, General Assembly resolution 48/134 of 20 December 1993). The State should ensure that the Commission is vested with the competence to receive and follow up complaints of violations of child rights and provide with sufficient human and financial resources to ensure its independence and efficacy.

On the issue of voluntary recruitment of children, the committee lauded the state for issuing directives to respect the set age of 18 for recruitment in accordance with the 2007 Armed Forces Act but was also concerned with reports of children being associated with the Sudanese Armed forces and Government-backed militias. The Committee urges the State to take effective measures to end the recruitment of children into its armed forces and affiliated armed groups, including through effective monitoring of the recruitment process at all levels of the military.

It also urges the State Party to ensure that all military codes, manuals, rules of engagement and other military directives are adopted in accordance with the provisions of the Optional Protocol.

Concerning the prohibition of recruitment by non-state armed groups, the committee notes that the 2007 Armed Forces Act criminalises the recruitment of persons who do not meet the conditions of recruitment, including the minimum age of 18 years. It also notes that the state party's penal legislation does not provide for a sanction in the case of the recruitment of children and their use in hostilities by armed groups who are not part of the State Party's military.



In that regard, the Committee expressed concern at reports of the forced recruitment of children into armed groups, including the Justice and Equality Movement and the Sudanese Liberation Army (LRA), and girls are frequently abducted by the LRA for the purpose of sexual slavery.

The committee also regretted that armed groups recruiting children into their ranks continue to enjoy impunity with respect to the offences set out in the Optional Protocol.

The Committee therefore urges the States Party to strengthen its efforts to prevent and punish the recruitment of children and their use in hostilities inter alia by providing effective and dissuasive penalties for the recruitment and use of children in hostilities by armed groups.<sup>156</sup>

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<sup>156</sup>Committee on the Rights of the Child, 55th session, 13 September -1<sup>st</sup> October 2010. Concluding observation on SudanCRC/C/OPAC/SDN/CO/1.  
Available: <http://www2.ohchr.org/tbru/crc/CRC-C-OPAC-SDN-CO-1.pdf>.

## 2.7. The United Nations Security Council Resolutions (UNSC)

The UN Security Council also adopted a series of resolutions toward ending the practice of child soldiers by calling on the warring parties to take measures for the protection of children. The Security Council also calls on the establishment of monitoring and reporting mechanisms on children and armed conflicts. This mechanism will be tasked with documenting six categories of grave abuse on children including the recruitment and use of child soldiers in armed conflict.<sup>157</sup>

Security Council Resolution 1261 (1999) affirms that the protection and wellbeing of war affected children makes up an integral part of the agenda on peace and security.<sup>158</sup> It further acknowledges that children are being targeted during armed conflict especially in vulnerable areas.<sup>159</sup> It however calls on states to take actions on issues like recruitment and use of child soldiers and the proliferation of small arms.<sup>160</sup>

Resolution 1314 (2000) reaffirms its strong condemnation on the deliberate targeting of children during situations of armed conflict and the harmful and widespread impact of armed on children and the long term consequences this has for durable peace, security and development (paragraph 1).<sup>161</sup>

Resolution 1460 (2003) calls on the Secretary General to include in his report specific proposals on ways to ensure monitoring and reporting in a more effective and efficient way within the existing United Nations systems on the application of the international norms and

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<sup>157</sup> Coalition to stop the use of child soldiers. *Child Soldiers. Global report 2008*. P: 14.

Available: [www.childsoldiersglobalreport.org/files/country\\_pdfs/FINAL\\_2008\\_Global\\_Report.pdf](http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf).

Accessed: 05/10/2010.

<sup>158</sup>Harvey R. *Children and armed conflict. A guide to international humanitarian and human rights law*.

Available: [http://www.essex.ac.uk/armedcon/story\\_id000044.pdf](http://www.essex.ac.uk/armedcon/story_id000044.pdf).

Access: 05/10/2010.

<sup>159</sup>Ibid.

<sup>160</sup>UNSC. Resolution S/RES 1261/1999, adopted by the Security Council at its 4037<sup>th</sup> meeting of 25<sup>th</sup> August 1999.

Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99?248/59/PDF/N994859.pdf?OpenElement>.

Accessed: 05/10/2010.

<sup>161</sup> UNSC. Resolution S/RES 1314/2000 adopted by Security Council at its 4185<sup>th</sup> meeting on the 11 August 2000.

Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/604/03/PDF/N0060403.pdf?OpenElement>.

Accessed: 05/10/2010.



standards for the protection of children in situations of armed conflict in all its various aspects paragraph 16 9(c)).<sup>162</sup>

Resolution 1612 (2005) strongly condemns the recruitment and use of child soldiers by parties to armed conflict in violation of international obligations applicable to them and all other violations and abuses committed against children in situations of armed conflict (Paragraph 1).<sup>163</sup> The resolution also establishes the UN-led monitoring and reporting mechanism (MRM) on children and armed conflict and operational country level task forces charged with monitoring and reporting on six grave violations which include the recruitment and using child soldiers (Paragraph 2).<sup>164</sup> A UNSC Working Group to review reports submitted under the MRM monitor progress in the development and implementation of the time bound action plan by warring parties to end the recruitment and use of child soldiers and to consider relevant information was also established (paragraph 8).<sup>165</sup>

Resolution 1998 of 2011 strongly condemns all violation of international law involving the recruitment and use of children by parties to armed conflict, as well as their re-recruitment, killing and maiming, rape and other sexual violence, abduction, attacks on school or hospitals and denial of humanitarian access by parties to armed conflict and all other violation of international law committed against children (paragraph 1).<sup>166</sup>

According to a Watch List report on children and armed conflict published in 2009, the Security Council has made important progress on its agenda on children and armed conflict,

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<sup>162</sup> UNSC. Resolution S/RES 1460 (2003) , adopted by the Security Council at its 4695<sup>th</sup> meeting on January 30<sup>th</sup> January, 2003.

Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/231/16/PDF/N032116.pdf?OpenElement>.

Accessed: 25/10/2010.

<sup>163</sup>UNSC. Security Council Resolution 1612 adopted by the Security Council at its 5235<sup>th</sup> meeting on the 26 July 2005.

Available: <http://daccessdds.un.org/doc/UNDOC/GEN/N05?439/59/PDF/N0543959.pdf?OpenElement>.

Accessed: 25/10/2010.

<sup>164</sup> Ibid. Paragraph 2.

<sup>165</sup>Ibid. paragraph 8.

<sup>166</sup> UNSC. Resolution S/RES 1998 (2011) adopted by the Security Council at its 6581<sup>st</sup> meeting on 12 July 2011.

Available: <http://www.un.org/children/conflict/ documents/Res1998.pdf>.

Accessed: 15/11/2011.

yet much work is still to be done to consolidate progress and guaranteed that these efforts lead to tangible impact on the ground.<sup>167</sup> It regrettably notes that only nine out of 64 armed forces and groups listed in the annexes have signed action plans to stop the recruitment and use of child soldiers. The slow pace as expressed by stakeholders is because the action plan is limited to the recruitment and use of child soldiers leaving out other grave violations which are equally important.<sup>168</sup> Furthermore, lack of access to certain conflict areas has limited the UN Secretary General's ability to list or delist from the annexes to his annual report certain armed forces and non-state groups that recruit and use child soldiers.<sup>169</sup>

One important report relevant to child soldiers which is worth mentioning is the 2008 Global Child Soldiers Report by the Coalition to Stop the Use of Child Soldiers. According to the report, international organisations have focused a lot of attention and deployed enormous resources to end the recruitment and use of children in armed conflict but their results still fall short of expectation.<sup>170</sup> The report stated that a small number of states persist not only in recruiting children but also in exposing them to the physical and psychological dangers of combat thus proving resistance to pressure and persuasion by international organisation.<sup>171</sup> Also important to note here is the statement on the promotion and protection of child soldiers by the SRSO, Ms. Radhika Coomaraswamy (see page 6, chapter 1).

## 2.8. Conclusion

The inhuman practice of recruiting and using children in armed conflict occupies a central place on many international agendas. Enormous efforts have been put in place in attempt to

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<sup>167</sup> Watchlist on children and armed conflict. (2009). UN Security Council Resolution 1612 and beyond: Strengthening protection for children in Armed Conflict. P: 2.

Available: <http://reliefweb.int/sites/reliefweb.int/files/resources/B47350B9C3111673C12575C9006152B8-Watchlist-PolicyPaper-colour-LOWRES.pdf>.

<sup>168</sup> Ibid. P: 2.

<sup>169</sup> Ibid. P: 2.

<sup>170</sup> Coalition to stop the use of child soldiers. (2008). *Child Soldiers Global Report*.

Available: <http://www.child-soldiers.org/library/global-reports>.

Accessed: 27/10/2010.

<sup>171</sup> Coalition to stop the use of child soldiers. (2008). *Child Soldiers Global Report*.

Available: <http://www.child-soldiers.org/library/global-reports>.

Accessed: 27/10/2010.

address the issue of child soldiers as discussed in the above legal instruments. The efforts to end the use of child soldiers are clearly stated in black and white but the fact that the practice has not ceased is a clear indication that those efforts are inadequate and or that implementation fell short of expectation. Thus the recruitment and use of children in armed conflict in Africa still continues to be a problem.

Since the above moral prohibitions and resolutions have not achieved their intended goal, this thesis proposes that it would be best to tackle the issue through elimination of the principal factors leading to the recruitment and use of child soldiers. The next chapter will be looking at the phenomenon of child soldiers, the reasons for their continuous involvement in armed conflict on the continent of Africa with emphasis on the proliferation of small arms in the region.



## CHAPTER THREE

### THE ROLE AND EFFECTS OF SMALL ARMS ON CHILD SOLDIERS

#### 3.1. Introduction

Recapitulating on a quotation by former US president, Jimmy Carter, he said “war may sometimes be a necessary evil. But no matter how necessary, it is always evil, never good. People throughout history have fought wars and wars continue to rage. At any moment, there is war taking place at one place or another or there are plans for war. Although they differ in intensity and instrument used, the outcome is the same; people are killed, maimed, displaced and traumatised. Despite their retrograde influence on humanity, war and violent conflict are here to stay”.

In contemporary Africa, conflict has been the most discussed issue, where almost half of the 53 countries have witnessed active or just completed conflict. The continent has also witnessed a great shift in the nature and method of conflicts. Before, wars were basically for national protection or between states with a marked frontline battle field but recently, the majority of conflicts are being fought within the national territory, involving in most circumstances government forces against irregular rebel forces with no defined front line or battle field.<sup>172</sup> Almost all of the conflicts fought within the national borders involve government and rebel forces resulting in untold civilian casualties amongst whom are innocent children. Besides being the victim killed innocently, they have increasingly become the subjects of targeted attacks and military recruitment as child soldiers. Ms. Coomaraswamy noted that the diversity in armed groups, state and non-state, and the widespread and easy availability of small arms and lights weapons (SALW) has led to the recruitment and use of thousands of child soldiers worldwide.<sup>173</sup>

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<sup>172</sup> Ngang K. C. (2007). *Small Arms and Light Weapons, Africa new Weapons of Mass Destruction (WMDS). The Role of Small Arms and Light Weapons in Conflict and Insecurity in Sub-Saharan Africa*. Available: <http://www.aspr.ac.at/epu/research/che.pdf>. Accessed: 27/02/2011.

<sup>173</sup> Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed Conflict- towards Universal Ratification. *International Journal of Children's Rights* 18. P: 535.

The focus of this chapter is on the phenomenon of child soldiers, their interdependency with small arms and how these weapons on children impacts upon children. This chapter will also look at some legal instruments regulating the flow of small arms.

### 3.2. Child Soldiers

The term child soldier refers to any person under 18 years of age who is or has been recruited or used by an armed force or armed groups in any capacity including but not limited to children (boys or girls) used as cooks, porters, spies, fighters or for sexual purpose. It does not only refer to a child who is taking or has taken a direct part in hostilities.<sup>174</sup> Though Africa has been titled “the most fertile ground for the recruitment of child soldiers”, the issue is not limited to the continent but it is rather a world phenomenon.<sup>175</sup> The use of child soldiers has a long history, dating back in the year 1212 where tens of thousands of children participated in the Crusades and in the Napoleonic wars where they were placed under the boys division.<sup>176</sup> The last twenty years witnessed some tremendous increased in the use of child soldiers as well as the highest number of legal standards prohibiting the practice have been nicknamed “the era of child soldiers”.<sup>177</sup>

The 2008 global report on child soldiers proves that although it is impossible to calculate the number of children involved in armed forces and groups, it is clear that there are some tens of thousands of child soldiers exist in all regions of the world and almost inevitably wherever there is armed conflict.<sup>178</sup> Wessell holds that if these children stand side by side, locked their hands and spread their arms, they will form a human chain of over 250 miles long. This chain simply shows the magnitude of adults’ and societies’ failure in their

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<sup>174</sup> UNICEF. (2008). The Cape Town Principles and Best practices.  
Available: [http://www.unicef.org/emerge/files/Cape\\_Town\\_Principles%281%29.pdf](http://www.unicef.org/emerge/files/Cape_Town_Principles%281%29.pdf) .  
Access: 10/02/2010.

<sup>175</sup> Malsen S. (Coordinator for the Coalition to Stop the Use of Child Soldiers, an international NGO Coalition launched in June 1998). Practice and implementation. The use of Children as soldiers: the right to kill and be killed. *The international Journal for children rights* 6: 445-541,1998 P:445.

<sup>176</sup> Webster T. (2007). Babes with Arms. International law and child soldiers; *The Geo. Wash. International Law Review* Vol. 39. P: 229.

<sup>177</sup> Ibid. P: 229.

<sup>178</sup> The Coalition to Stop the Use of Child soldiers. Child Soldiers global report 2008.  
Avaiabile: [http://www.childsoldiersglobalreport.org/files/country\\_pdfs/FINAL\\_2008\\_Global\\_report.pdf](http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_report.pdf).  
Accessed: 08/02/2011.

responsibilities to protect and care for children.<sup>179</sup> The 2008 report noted that the figures for conflicts do not reveal the whole picture, stating that the military recruitment of children (under18) and their use in hostilities is a larger phenomenon that still takes place in one form or another, in at least 86 countries worldwide.<sup>180</sup> The following reasons account for the difficulty in calculating the exact figures of child soldiers at any given time in Africa; most military commanders frequently conceal information and deny access to observers, Armed groups usually operate in dangerous and inaccessible zones for the observers and lastly many children perform support roles and are not visible in military operations.<sup>181</sup>

Children (both boys and girls) caught up in armed conflict are being used in many ways; some take direct part in hostilities within government and insurgent groups or receiving training, others perform related tasks such as cooks, laying land mines, being informants, spies able to enter small spaces, body guard scouting, mounting check points, suicide bombers and detectors of human mine.<sup>182</sup> According to Sandra Rocha, instead of enjoying their normal childhood activities, most African children are being denied their childhood through their involvement and roles played in violent conflict. Worse still, these children have not been given the opportunity to exercise their young minds with toys and other games but their toys are replaced with AK-47 assault rifles, similarly, instead of attending schools, they are being trained in the battlefield.<sup>183</sup>

Not long ago there was the myth that the term child soldiers goes with the masculine gender or means boy soldiers, but recent research has brought to light the situation of girls during armed conflicts thus wiping out the gender boundary.<sup>184</sup> The use of girl soldiers, though

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<sup>179</sup> Wessell M. (2006). *Child soldiers. From violence to protection*. P:2.

<sup>180</sup> The Coalition to Stop the Use of Child soldiers. *Child Soldiers global reports 2008*.

Available: [http://www.childsoldiersglobalreport.org/files/country\\_pdfs/FINAL\\_2008\\_Global\\_report.pdf](http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_report.pdf).

Accessed: 08/02/2011.

<sup>181</sup> Coalition to Stop the Use of Child Soldiers. *Questions & answers*.

Available: <http://www.child-soldiers.org/childsoldiers/questions-and-answers>.

Accessed: 8/02/2011.

<sup>182</sup> Mezmur B.D. (2000) Children at both ends of the gun. Child soldiers in Africa; in Julia Sloth-Nielsen: *Children's Rights in Africa. A legal perspective ed.* (2008) P: 200.

<sup>183</sup> Rocha S. *The African Child Soldier*.

Available: <http://scsci.flinders.ed.au/global/Africa/sandrarocha/childsoldiers/ChildSoldiers.htm-ftn1>.

Accessed: 08/02/2011.

<sup>184</sup> Wessell G. Michael. (2006). Wessell M. (2006). *Child Soldiers. From Violence to Protection*. P:2.

less frequent is equally very disturbing. Their degree of participation in warfare is greater than generally recognised.<sup>185</sup>

The most disturbing role of girl child soldiers is that they are often subjected to serve as sexual slaves or forced wives to military commanders.<sup>186</sup> Most of the military commanders use the tactics of victimisation to compel girls to be their wives. Some girls who refused to give into the demands of senior soldiers are tortured or killed in front of other girls, a move to instil fear in other girls and make them know that they have no choice when approached.<sup>187</sup> In the words of a 13 year old girl abducted by rebel groups in Burundi, “*I don’t know how many people had sex with me. A man would come, then another and another. You could not refuse...they say they would kill you if you ran away.*”<sup>188</sup> The situation of girls in arms conflict is often characterised by fear, uncertainty and above all silence. They sometime remain silent even if they are burning or hurt inside. They actually do not know who comes next to violate them and will not dare to complain or agitate. Thus they are silent recipients of sexual violence. This silence may continue long after the conflict for fear of stigma or that they might not be re-integrated into their societies. Thus the experiences of girl child soldiers should not in any way go unmentioned and the assumption that child soldiers constitute only boys should be erased.

It is worthwhile noting here that the CRC, OPAC as well ACWRC that prohibit the use of child soldiers do not specifically cater for these experiences of girls.<sup>189</sup> However, the particular need of girl soldiers was emphasised in the UN Security Council Resolution 1325 adopted in 2000, which reaffirmed that international community had to pay special attention to girl’s vulnerability during war, giving the appalling nature of systematic sexual abuse and the use of rape as a weapon of war in some modern conflicts.<sup>190</sup> According to Machel,

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<sup>185</sup> Mezmur B. D.(2006). *Children at both ends of the guns: Child soldiers in Africa*; in Julia Sloth-Nielsen. (2008) *Children’s Rights in Africa. A legal Perspective* ed. P: 207.

<sup>186</sup> Ibid P: 207.

<sup>187</sup> Rocha S. *The African Child Soldier*.

Available: <http://scsci.flinders.ed.au/global/Africa/sandararocha/childsoldiers/ChildSoldiers.htm-ftn1>.

Accessed: 08/02/2011.

<sup>188</sup> Ibid.

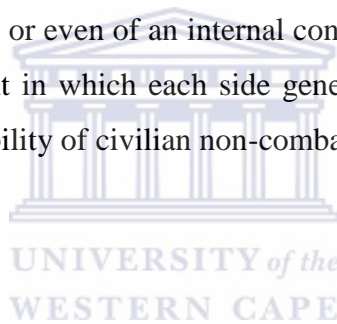
<sup>189</sup> Mezmur B. D. (2006). *Children at both ends of the gun. Child soldiers in Africa*. in Julia Sloth-Nielsen. (2008). *Children’s Rights in Africa: A legal perspective* ed. P:208.

<sup>190</sup> IRIN. (2003). *In-Depth Child soldier: Africa, too small to be fighting in anyone’s war*.

nearly all girls abducted into armed groups are forced into sexual slavery, subjected to physical and emotional violence and also forced to provide other personal services.<sup>191</sup>

### 3.3. Recruitment of child soldiers

The recruitment and use of child soldiers has remained constant practice over the years. Both government forces and insurgent groups have become increasingly reliant on the recruitment of children to help fight their battles.<sup>192</sup> The majority of children are aged between 15 and 18 and in some cases they are as young as seven years.<sup>193</sup> This has violated the straight 18 cut off age for the recruitment and use of children set up by the OPAC and ACWRC.<sup>194</sup> According to Ms. Coomaraswamy, most child soldiers are recruited forcibly by armed groups roaming the streets, school, and villages in search of new recruits.<sup>195</sup> Machel also views modern day conflict as “war today just simply does not match the traditional conception of two opposed armies; or even of an internal conflict pitting an opposition force against the established government in which each side generally abide by the rules of the game; respecting the basic inviolability of civilian non-combatants and the special protection due to the young.”<sup>196</sup>



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Available: <http://www.irinnews.org/indepthmain.aspx?indepthID=24&reportID=66280>.

Accessed: 08/02/2011.

<sup>191</sup> Machel G. (2000). *The Impact of Armed conflict on Children. A critical review on progress made and obstacles encountered in increasing protection for war-affected children.*

Available: [www.unifem.org](http://www.unifem.org) P: 9.

Accessed: 10/02/2011.

<sup>192</sup> Kallis M. *Child soldiers in Africa: Solution to a complex dilemma.*

Available: [file:///GG/childsoldiers in Africa solution and delimma.htm](file:///GG/childsoldiers%20in%20Africa%20solution%20and%20delimma.htm).

Accessed: 08/02/2011.

<sup>193</sup> <sup>193</sup> IRIN. (2003). *In-Depth Child soldiers. Africa, too small to be fighting in anyone's war*

Available: <http://www.irinnews.org/indepthmain.aspx?indepthID=24&reportID=66280>

Accessed: 08/02/2011.

<sup>194</sup> Mezmur B. D.(2006). Children at Both Ends of the Guns: Child soldiers in Africa, in Julia Sloth-Nielsen. (2008). *Children's Rights in Africa. A legal Perspective ed*; P: 204.

<sup>195</sup> Coomaraswamy R. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed Conflict- towards Universal Ratification. *International Journal of Children's rights* 18. P: 536.

<sup>196</sup> Rosen D. M. (2005). *Armies of the young: child soldier in war and terrorism.* P:13,



### 3.3.1. Forced or Compulsory Recruitment

Thousands of children or child soldiers today are forced to join the ranks of armed groups against their own will.<sup>197</sup> Most rebels' forces are not interested in winning converts into their combatants; instead they resort in stealing other people's children.<sup>198</sup> Some local insurgents or military leaders who could not meet recruitment quotas resort to kidnapping, press-gangs or abducting children.<sup>199</sup> This type of recruitment is usually carried out with victimisation, terror and horror while inflicting fright and fear upon the children. Once they are recruited and taken into ranks of the forces, they go through a conditioning process, in order to toughen them or turn them into ruthless killing machines. In this process, children are forced to kill or maim their friends or family members, participate in torture, rape and are also beaten.<sup>200</sup> Another conditioning method is that children are continually being placed under the influence of drugs such as Marijuana, amphetamines, crack cocaine, or even deadly homemade cocktail made from gun powder and other local substances. This is aimed at making them into fearless killers with no emotional feelings.<sup>201</sup> Most humanitarian concern is on the forced recruitment and the abusive exploitation of children used as soldiers.<sup>202</sup>

A brief case study on Uganda shows that the Uganda government fought against the Rebels in northern Uganda for almost a decade. The rebel groups lead by Joseph Kony, (who claimed to be a spiritual leader), had ruthless warlords and slave masters who exercised power through terrorising civilians.<sup>203</sup> The LRA lacked support from the Acholi region

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<sup>197</sup> Kallis M. *Child soldiers in Africa: Solution to a complex dilemma*

Available: <file:///GG/childsoldiersin africa solution and dilemma.htm>.

Accessed: 08/02/2011.

<sup>198</sup> Foreign Policy Magazine. *Africa's forever wars. Why the continent's conflict never end...*

Available: [http://www.foreignpolicy.com/articles/2010/02/22/africa's\\_forever\\_wars](http://www.foreignpolicy.com/articles/2010/02/22/africa's_forever_wars).

Accessed: 10/02/2011.

<sup>199</sup> Kallis M. *Child soldiers in Africa: Solution to a complex dilemma*

Available: <file:///GG/childsoldiersin africa solution and dilemma.htm>.

Accessed: 08/02/2011.

<sup>200</sup> Ibid.

<sup>201</sup> Sandra Rocha. *The African Child Soldier*.

Available: <http://scsci.flinders.ed.au/global/Africa/sandrarocha/childsoldiers/ChildSoldiers.htm-ftn1>.

Accessed: 08/02/2011.

<sup>202</sup> David M. Rosen. (2005). *Armies of the young: child soldier in war and terrorism*. P:16.

<sup>203</sup> Akhavan P. (2005). The Lord Resistance Army's Case> Uganda's Submission of the first state referral to the international Criminal Court. *The American Journal of International Law*. Vol: 99. No 2 (April 2005). P: 407.

where it is based and had no volunteers to join its military ranks, thus resolving to used abduction and forcible conscription of village children as the primary means of fortifying the army.<sup>204</sup> The LRA also takes pride in its gruesome massacre and adopted brutal tactics by torturing parents and employing to give up their children and forcing some of them to hack their own self. For example on July 25 2003, forty eight people were hacked to death near the town of Kitgum.<sup>205</sup> At the start of the conflict, about 25000 children were abducted. The number increased by 10000 between May of 2002 to May 2003. And between 2003 and 2004, 20000 more children were abducted.<sup>206</sup>

A declaration by Soldier Child International described Ugandan harvesting of children by the various factions in Northern Uganda.<sup>207</sup> Once harvested, they are kept in captivity for numerous days by the Lord Resistance Army (LRA), they are then being modelled into fierce killers by forcing them to carry heavy loads and to kill fellow children. The adults on their part initiate them through baptism with Shea Butter, telling them that the butter will help trace children who attempt to escape.<sup>208</sup>

### 3.3.2. Voluntary Recruitment

A substantial number of African children offer to participate in violent conflict voluntarily. According to Centre for Defence Information (CDI) the vast majority of child soldiers are not forced into participating in armed conflict but they are subject to many subtle manipulations and pressures that are more difficult to eliminate than forced recruitment.<sup>209</sup>

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Available: <http://www.jstor.org/stable/1562505>.

Accessed: 08/02/2011.

<sup>204</sup> Ibid. P:407.

<sup>205</sup> Ibid. P:408.

<sup>206</sup> Coalition to stop the use of child soldiers. *Child Soldiers Global report 200*. P: 388.

Available: [http://www.childsoldiersglobalreport.org/file/country\\_pdfs/FINAL\\_2008\\_Global\\_Report.pdf](http://www.childsoldiersglobalreport.org/file/country_pdfs/FINAL_2008_Global_Report.pdf).

Accessed: 09/02/2011.

<sup>207</sup> Rosen D. M. (2005). *Armies of the young: child soldier in war and terrorism*. P: 16.

<sup>208</sup> Silva Jennifer R. (2007-2008). A call to the international community to protect children from war: *Suffolk Transnational Law Review Vol 31*. P:698.

<sup>209</sup> Kallis M. *Child soldiers in Africa: Solution to a complex dilemma*.

Available: <file:///GG/childsoldiersin africa solution and dilemma.htm>.

Accessed: 08/02/2011.

In her ground breaking report presented to the United Nations General Assembly, Machel (1996) dismissed the idea of voluntary recruitment in the context of Africa, noting that the choice to join is not exercised freely but is driven by several external forces such as poverty, social and economic pressures. Thus the choice to join cannot be regarded as free and fair.<sup>210</sup>

Holding a similar opinion, Dumbi, in a paper on child soldiers, noted that there are many instances where volunteering into armed services in conflict zones involved no free exercise of free will, noting that many child volunteers are from poor families, some are orphans and desperate, some fear retaliation while some are lost and alone.<sup>211</sup> In a research carried out by Brett on adolescent volunteering, proved that there are certain key underlying factors in the decision of children to join armed forces or armed groups when not abducted or forced to do so. These factors may include, war, education, employment, poverty and the family.<sup>212</sup> Ms Coomaraswamy the Special Representative for Children and Armed Conflict, explained that some children who join voluntarily are pushed by factors such as economic hardship, lack of opportunity, sense of belonging, ideological attraction, feeling of revenge or mere survival.<sup>213</sup> As a consequence of the above conditions, children are easily enticed by the offer of modest wages and opportunity should they join the ranks of armed forces.<sup>214</sup>

### 3.4. Factors Leading to the Continued Recruitment of Child Soldiers

A major factor that has led to the continuous use of child soldiers is the unwillingness or inability of African states to initiate effective measures that will curtail the problem.<sup>215</sup> Most states have modified the domestic laws protecting children and have ratified international

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<sup>210</sup> Mezmur B. D. (2006). *Children at both ends of the gun. Child soldiers in Africa*; in Julia Sloth-Nielsen. (2008). *Children's Rights in Africa: A Legal perspective*. ed. P: 206.

<sup>211</sup> Dumbi M. (2009). *Child Soldiers: Agency Enlistment and Collectivization on innocence*. Washington & Lee Public Legal Studies Research Paper Series.  
Available: <http://ssrn.com/abstract=1424110>.

<sup>212</sup> Brett R. (2003). *Affaires current issues and comments: Adolescents volunteering for armed forces or armed groups*. *IRRC December 2003* Vol 85. No: 852. P:864.

<sup>213</sup> <sup>213</sup> Coomaraswamy R. *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed Conflict- towards Universal Ratification*. *International Journal of Children's rights* 18.

<sup>214</sup> Kallis M. *Child soldiers in Africa: Solution to a complex dilemma*.  
Available: <file:///GG/childsoldiersin africa solution and dilemma.htm>.

Accessed: 08/02/2011.

<sup>215</sup> Ibid.

legal standards such as the CRC and OPAC which set 18 as the minimum age for recruitment and participation and also banned all child recruitment groups outside official government.<sup>216</sup> But these laws are either poorly practically implemented or not applied.<sup>217</sup> Thus with the lack of implementation of existing legal standards, armed groups may freely recruit and use children in hostilities.

In fact, most observers agreed that military commanders prefer children because they are cheap and unthinkably obedient fighters. Children are also easier to mould into expendable combatants or fearless killers and their underdeveloped ability to assess dangers means they are often willing to take risks and difficult assignments that adult and older teenagers refuse.<sup>218</sup> Sometimes the choice to recruit is as a result of shortage of soldiers especially when conflicts persist for long. Children are always readily available and plentiful resources for military commanders who need a steady troop supply in conflict zones.<sup>219</sup>

Most humanitarian activists are of the opinion that children are continuing being recruited and conscripted as soldiers because they are vulnerable and unprotected.<sup>220</sup> In a report issued by the UN Secretary General, Ban Ki Moon on the 29 of Jan. 2008 mentions the close link between the recruitment of children and internally displaced persons, noting that the lack of security around refugees and IDP camps and a convenient concentration of vulnerable children provide a fertile recruitment ground.<sup>221</sup>

Also, birth registration systems in Africa have contributed to the problem by allowing children below the minimum age to be recruited.<sup>222</sup> The poor birth registration results in

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<sup>216</sup> Wessells M. Children, Armed conflict and Peace. *Journal of Peace Research*. Vol: 35. No: 5 P: 639.

<sup>217</sup> Kallis A. M. *Child soldiers in Africa: Solution to a complex dilemma*.

Available: <file:///GG/childsoldiersin africa solution and dilemma.htm>.

Accessed: 08/02/2011.

<sup>218</sup> IRIN (Integrated Regional Information Network). Special report: Child soldiers 2003.

Available. [www.irinnews.org/pdf/in-depth/child-soldiers-IRIN-IN-DEPTH.pdf](http://www.irinnews.org/pdf/in-depth/child-soldiers-IRIN-IN-DEPTH.pdf).

Accessed: 08/08/2011.

<sup>219</sup> Vision. Child soldiers 2008 issues.

Available: [www.vision.org/visionmedia/articles.asp.x?id=6684](http://www.vision.org/visionmedia/articles.asp.x?id=6684).

Accessed: 08/08/2011.

<sup>220</sup> Rosen D. M. (2005). *Armies of the Young. Child soldiers in war and terrorism*. P :16.

<sup>221</sup> Ban Ki Moon. UN News Service. *Children Recruitment continues in over a dozen countries*.

Available: <http://www.un.org/apps/news/story.asp?newsID25440&Cr=children&Cr1conflict>.

Accessed: 24/01/2011.

<sup>222</sup> Kallis A. M. *Child soldiers in Africa: Solution to a complex dilemma*.

Available: <file:///GG/childsoldiersin africa solution and dilemma.htm>.

Accessed: 08/02/2011.

some children being recruited according to their size and not age. Furthermore, poor birth registration will deter the respect of Article 3 (d) OPAC, which requires persons to provide reliable proof of their age prior to acceptance into national service.

Contemporary conflict in Africa and the rest of the world have witness a change in the nature of conflict as well as advances technology with regards to the instrument used. Technological advances have in turn led to a change in the type of combatants. Modern day conflicts in Africa have witnessed an influx and misuse of small arms. The following pages will give an in-depth explanation on small arms and their role in the recruitment and use of child soldiers.

### 3.4.1. Small Arms

During the cold war era, most states relied on heavy and high-maintenance equipment such as fighter-jet, helicopters, tanks as well as transport aircraft, as opposed to the post-cold war era where small arms have become the weapons of choice.<sup>223</sup>

The state-to-state transfer of heavy equipment lost its usefulness at the end of the cold war in favour of the widespread availability of these weapons.<sup>224</sup> These weapons have in recent days become the most preferred tools of warfare, typically used in internal armed conflicts, guerrilla warfare as well as terrorist attacks. Thus as observed by Machel, the most widely used weapons of mass destruction today are not nuclear or biological but small arms and light weapons.<sup>225</sup> The quest for the acquisition of these weapons by Government and rebel forces has grown tremendously in the last two decades. Income generated from natural resources, such as timber, petroleum, and diamonds has been used to purchase these weapons.<sup>226</sup> The proliferation of these weapons in Africa and other parts of the world is regarded as a fuel of conflict and has contributed to both intensity and duration of conflicts<sup>227</sup> Thus one can rightly affirm that the recent conflicts in Africa have been fought

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<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Machel G. (2001). *The impact of war on children*. P: 19.

<sup>226</sup> SAWG (Small Arms Working Groups). *Consequences of the proliferation and misuse of small arms and light weapons*.

Available: [http://www.cdi.org/pdfs/SAWG\\_small\\_arms\\_fact\\_sheet\\_2006.pdf](http://www.cdi.org/pdfs/SAWG_small_arms_fact_sheet_2006.pdf).

Accessed: 5/03/2011.

<sup>227</sup> Renner M. (1997). Small Arms , Big impact: The next challenge of disarmament. *Worldwatch Paper 137*. P: 10.

with the aid of small arms and it will not be an exaggeration to say that these weapons have contributed to some extent to the political disintegration as well as protracted conflict situations in many African countries.<sup>228</sup>

Small arms are defined as weapons designed to be used by individuals and they include revolvers and self-loading pistols, rifle and carbines, sub-machine guns, assault rifles, light machine guns, AK-47s, hand guns and antipersonnel landmines.<sup>229</sup> The most widely used of all these assault rifles is the AK-47, also known as Kalashnikov (name of inventors) and manufactured by the former Soviet Union. These assault rifles are difficult to track and control, thus data on these weapons in circulation at any time is hard to obtain.<sup>230</sup> An estimated statistic shows that some 70 million AK-47 have been produced in some 100 different forms. These weapons have remained in use since 1947 by armies in 78 conflicts worldwide.<sup>231</sup>

Africa in particular is awash in sea of AK47 automatic rifles since they are cheap. More so, this weapon is easily carried, maintained and assembled by a ten year old child.<sup>232</sup> Africa has thus become the dumping ground of inexpensive surplus small arms which has in turn posed a threat to peace from all the four corner of the continent.<sup>233</sup> In Mozambique, one of the countries with the largest number of these rifles, an AK-47 is emblazoned on their national flag.<sup>234</sup>

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<sup>228</sup> Amoa B. D. (2006). *Comment & analysis: The Role of Small arms in Africa Civil Wars*. Available: <http://pambazuka.org/en/category/comment/37270>.

<sup>229</sup> Machel G. (2001). *The Impact of war on children* P:120.

<sup>230</sup> Renner M. (1997). *Small Arms , Big impact: Te next challenge of disarmament*. Worldwatch Paper 137. P: 19.

<sup>231</sup> Ibid: P:19.

<sup>232</sup> Reyneke E. (2000). *Small arms and light weapons in Africa. Illicit proliferation, circulation and trafficking*. P: 57.

<sup>233</sup> Ibid. P: 57.

<sup>234</sup> Renner M. (1997). *Small arms, Big Impact: The next challenge of Disarmament*. P: 19.

### 3.4.2. Factors favouring the increased proliferation of small arms

The production and circulation of these weapons has increased tremendously over the last two decades. An estimated 640 million small arms are currently circulating around the world and Africa alone accounts for an estimated 100 million.<sup>235</sup> Beside the increase in production, other factors favouring the continuous circulation ranges from the fact that they are cheap, light, durable and easy to maintain<sup>236</sup> to the fact that their lethal nature of these weapon (AK-47) are capable of firing around 600 rounds per minute as long as the trigger remain pressed down.<sup>237</sup> Other factors include;

#### 3.4.2.1. Porous Borders

It will be necessary to also mention here that large parts of the borders between African countries are not checked. Though with numerous customs officers and mechanisms are deployed in the field, the borders stills remained porous and unchecked thus making it easier for large quantity of small arms to be smuggled across these borders.<sup>238</sup> Although many African countries have instituted and strengthened border security in a drive to stem the flow of small arms, but large numbers of small arms are smuggled access porous borders, occasionally disguised as harmless materials.<sup>239</sup>

#### 3.4.2.2. Globalisation

The increased circulation of small arms in Africa is also accelerated by the advent of globalisation. Tom Palmer of the Cato Institute blames globalisation advocates for free

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<sup>235</sup> Amoa D. B. (2006). *Comment & analysis: The Role of Small arms in Africa Civil Wars*. Available: <http://pambazuka.org/en/category/comment/37270>.

<sup>236</sup> Renner M. (1997). Small arms, big impact: the next challenge of disarmament. World Watch paper 137 October 1997. P: 11.

<sup>237</sup> Ngang K. C. (2007). *Small arms and Light Weapons, Africa new Weapons of Mass Destruction (WMDS). The Role of Small Arms and Light Weapons in Conflict and Insecurity in Sub-Saharan Africa*. Available: <http://www.aspr.ac.at/epu/research/che.pdf>.

Accessed: 27/02/2011.

<sup>238</sup> Ibid.

<sup>239</sup> Stohl R. and Myerscough R. *Sub-Saharan Small Arms: The Damage continues. Current history 106 May 2007. P: 230*.

Available: [www.cdi.org/PDFs/Stohl-MyerscoughCurrentHistory.pdf](http://www.cdi.org/PDFs/Stohl-MyerscoughCurrentHistory.pdf).

Accessed: 15/04/2011.

market forces with minimal economic barriers in order to increase world development. This to some extent has expanded black market activities, limited customs regulation and border control and made trafficking of these weapons easier. For example in 2002, traffickers acquired 5000 AK-47 from Yugoslavia army stocks and moved them from Serbia to Liberia under the pretext of a legal transaction with Nigeria.<sup>240</sup> This occurred because officials are being bribed to conceal some information and also dealers can easily acquire forged licenses or paper work.

This thesis is of the view that, the absence of an International Convention regulating the production, trade, possession of small arms and light weapons has contributed enormously in proliferation of these weapons.

### **3.5. The link between the proliferation of small arms and the recruitment of child soldiers**

Recounting the words of Archbishop Desmond Tutu, "*It is immoral that adults should want children to fight their wars for them ...there is simply no excuse, no acceptable argument for arming children*".<sup>241</sup>

An understanding of link between the proliferation of small arms and the recruitment and use of child soldiers will help understand the role played by small arms in the very recruitment of child soldiers. Though not directly caused by small arms, child soldiering can be considered as an impact of uncontrolled proliferation of these weapons, because they take advantage of the weight and simple nature of some of these weapons.<sup>242</sup> For example, armed groups in Congo DRC equip some 30000 -35000 child soldiers with AK 47s.

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<sup>240</sup>Malhota A. (2011). *Eurasia Review: Globalisation and illicit trade of small arms and light weapons*. Available: <http://www.eurasiareview.com/globalisation-and-the-illicit-trade-of-small-arms-and-light-weapons-15012011>.

Accessed: 25/03/2011.

<sup>241</sup>Singer P. W. (2003). *Fighting Child Soldiers*.

Available: [http://findarticles.com/articles/mi\\_mOPBZ/is\\_3\\_83/ai\\_109268904/](http://findarticles.com/articles/mi_mOPBZ/is_3_83/ai_109268904/).

Accessed: 20/02/2011.

<sup>242</sup>Control Arms: (26 June 2006). The AK-47: The World's favorite killing Machine.

Available: <http://www.oxfam.org/sites/www.oxfam.org/files/AK-47.pdf>.

Accessed: 21/02/2011.



According to Julia Freedson, information about the proliferation of small arms and the impact of armed conflict on children is available, but information and analysis of the direct linkages between small arms and children or child soldiers remains largely undocumented.<sup>243</sup> Thus the issue of small arms which the world keeps ominously silent on the subject of the lucrative trade is also a major concern. Whenever the issue of small arms is tabled for discussions, it is treated as an issue totally divorced from the problem of child soldiers.<sup>244</sup>

From the above note, it will be of prime importance when treating issues of child soldiers to include discussions on the interdependency between the issue of small arms and child soldiers.

In the same light, David Rosen echoed that “A second conceptual humanitarian narratives ties the child soldier phenomenon to the small arms trade”.<sup>245</sup> He observed that the central argument is that the availability of lightweight, easy to carry weapons has transformed the role children play in war. To him, in old wars, children only serve supporting roles such as spies, messengers, lookouts as opposed to new wars where light weapons enabled them to fill the ranks of combatants.<sup>246</sup> The correlation between the unprecedented increase in child soldiers and the availability of small arms has existed since the end of the cold war.<sup>247</sup>

In a paper published in 2009 by the United Nations office for Disarmament Affairs, The UN Special Rapporteur Ms. Coomaraswamy noted that the key issue is the link between child soldiers and armed conflicts.<sup>248</sup> In his first report on small arms 17<sup>th</sup> April 2008, the UN

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<sup>243</sup> Freedson J. (2002). *The Impact of Conflict on Children. The role of small arms.*

Available: <http://www.unidir.org/pdf/articles/pdf-art1730.pdf>.

Accessed : 20/02/2011.

<sup>244</sup> Online articles, *Commentaries, papers. Child soldiers starts.*

Available: [http://www.achart.ca/publications/child\\_soldiers.html](http://www.achart.ca/publications/child_soldiers.html).

Accessed: 20/ 02/ 2011.

<sup>245</sup> Rosen M. David. (2005). *Armies of the Young: Child soldiers in war and terrorism.* PP: 14.

<sup>246</sup> Ibid: P14.

<sup>247</sup> Online articles, *commentaries, papers. Child Soldiers and Weapons of Mass Destruction.*

Available: [http://www.arcart.ca/articles/publications/child\\_soldiers.html](http://www.arcart.ca/articles/publications/child_soldiers.html).

Accessed: 20/02/2011.

<sup>248</sup> Coomaraswamy R. Child soldiers and small arms: the link. In conflict of interest: children and the gun in zones of instability. UNODA Occasional Paper N0 14. February 2009. P: 1.

Available: <http://www.un.org/disarmament/HomePage/ODAPublications/OccasionalPapers/PDF/OP14.pdf>.

Accessed: 15/11/2011.

Secretary General Ban Ki Moon noted that small arms facilitate a vast spectrum of human rights violation including killing, maiming, torturing, sexual violence and forced recruitment of children by armed groups of forces.<sup>249</sup>

Children as young as eight years of age have been taught how to fire an assault rifle. Thus experiencing the consequences of the gun at an early age can be the key influence on a child's decision to become combatant or a reason why some children view guns as a legitimate tool for conflict resolution.<sup>250</sup> According to Stohl, researchers are increasingly uncovering and examining the link between small arms and use of child soldiers in conflict and have determined that the availability of small arms is without question a contributing factor to the use of child soldiers.<sup>251</sup>

McIntyre and Weiss also made an analysis of the link between the demand for small arms and the participation in violence or armed conflict.<sup>252</sup> They observed that "The implication is that conflicts that absorb and otherwise affect children could have entirely different dynamics in the absence of small arms and light weapons. In fact non-violent conflict is an essential part of transformation and one in which children engage universally as they challenge authority and values and seek identity and independence. But children need safe spaces in which to do so."<sup>253</sup>

However, not all hold the opinion that small arms play a greater role in the recruitment of child soldiers. Some think that, although small arms are tools friendly to child soldiers, their

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<sup>249</sup> Security Council: Small arms report of the Secretary General S/2008/258 on the 17 April 2008.  
Available: <http://daccess-adsny.un.org/doc/UNDOC/GEN/NO8/303/05/PDF/NO830305.pdf?OpenElement>.  
Accessed: 08/02/2011.

<sup>250</sup> SAWG. *Consequences of the proliferation and misuse of small arms and light weapons*.  
Available : [http://www.cdi.org/pdfs/SAWG\\_small\\_arms\\_fact\\_sheet\\_2006.pdf](http://www.cdi.org/pdfs/SAWG_small_arms_fact_sheet_2006.pdf).  
Accessed: 5/03/2011.

<sup>251</sup> Stohl R. *Targeting Children. Small arms and children in conflict*.  
Available: [www.watsoninstitute.org/bjwa/archive/9.1/smallarms/stohl.pdf](http://www.watsoninstitute.org/bjwa/archive/9.1/smallarms/stohl.pdf).  
Accessed: 25/02/2010.

<sup>252</sup> Vandergrift K. (2005). *Background Research paper. Small Arms, children, and Armed Conflict*  
Available: [www.worlddivision.ca/.../finalResearch-Paper-for-small-arms-and-children-October-2005.pdf](http://www.worlddivision.ca/.../finalResearch-Paper-for-small-arms-and-children-October-2005.pdf)  
Accessed: 28/02/2011 P: 9.

<sup>253</sup> Ibid: P: 9.

widespread proliferation may make the use of child soldier more feasible and attractive.<sup>254</sup> However, the relationship is not mutual nor does small arms proliferation serve as an indicator for the use of children.<sup>255</sup> Some say that “there is not necessary a direct cause and effect relationship between small arms and the use of child soldiers.”<sup>256</sup> Some practitioners claim that there is virtually no hard evidence that the spread of small arms has anything to do with the use of child soldiers even though some advocates describe it as self-evident.<sup>257</sup> They argued that the AK-47 has been available since 1949 and has been used by national liberation groups, as well as rebels, long before the child soldier crisis.<sup>258</sup>

This thesis is of the view that the presence of conflicts and small arms form the core on the whole issue of using children in hostilities. However any one of them should be eliminated, then the use of child soldiers will be greatly reduced

### **3.6. Effects of small arms on child soldiers In Africa**

The proliferation and use of small arms by and against children during conflict and in post armed conflict periods accounts for a number of negative consequences on society in general and children in particular. The consequences on children can be sub-divided into direct and indirect consequences.

#### **3.6.1. Direct Consequences**

##### **3.6.1.1. Death and Injury**

A good number of children have been victims of direct attack with the use of small arms resulting in an untold number of deaths, injuries while others are left with long-term psychological trauma. According to Machel, small arms have extinguished more young

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<sup>254</sup> Stohl R. *Targeting children: Small arms and children*.  
Available: <http://www.watsoninstitute.org/bjwa/archive/9.1/smallarms/stohl.pdf>.  
Access: 24/01/2011.

<sup>255</sup> Ibid P: 278.

<sup>256</sup> Ibid.

<sup>257</sup> Rosen M. David. (2005). *Armies of the Young: Child soldiers in war and terrorism*. P: 14.

<sup>258</sup> Ibid.

lives than they have ever protected.<sup>259</sup> The exact number of children killed or injured directly from small arms can hardly be known since most small arms fatalities and injury are rarely noted.<sup>260</sup> However estimates shows that over the last decades about two million have been killed, six million have been left with psychological damage, seriously injured or permanently disabled.<sup>261</sup>

### 3.6.1.2. Human Rights Abuses

The availability and use of small arms accounts for a wide variety of human rights abuses such as killing, rape and sexual assault against children, torture, forced recruitment of children, indiscriminate executions and forced displacement.<sup>262</sup> Children continue to suffer from such abuses in both conflicts as well as post conflict situations thus even normal peaceful situations, small arms are also used to violate human rights.<sup>263</sup>

### 3.6.1.3. Refugees and internal displacement

Conflict fuelled by small arms often causes massive population displacement, uprooting millions of children and their families from their homes and making them vulnerable to disease, death, violence, military recruitment as well as sexual assault.<sup>264</sup> In a report entitled “Putting Children First”, Stohl, estimated that more than 22 million children have been

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<sup>259</sup> Machel. G. (2000). *International conference on war affected children. The impact of armed conflict on children.*

Available: <http://www.strategicnetwork.org/pdf/kb5736.pdf>.

Accessed: 27/02/2011.

<sup>260</sup> R. Stohl. *Putting Children first. Building a framework for international action to address the impact of small arms on children.*

Available: [www.international-alert.org/pdf/Btb\\_brf11.pdf](http://www.international-alert.org/pdf/Btb_brf11.pdf).

Accessed: 27/02/2011.

<sup>261</sup> Ibid.

<sup>262</sup> SAWG. *Consequences of the proliferation and misuse of small arms and light weapons.*

Available: [http://www.cdi.org/pdfs/SAWG\\_small\\_arms\\_fact\\_sheet\\_2006.pdf](http://www.cdi.org/pdfs/SAWG_small_arms_fact_sheet_2006.pdf).

<sup>263</sup> R. Stohl. *Putting Children first. Building a framework for international action to address the impact of small arms on children.*

Available: [www.international-alert.org/pdf/Btb\\_brf11.pdf](http://www.international-alert.org/pdf/Btb_brf11.pdf).

Accessed: 27/02/2011.

<sup>264</sup> Stohl R. Targeting Children: Small Arms and Children in conflict. *The Brown Journal of World Affairs. Spring 2002. Vol IX, issue 1.*

Available: <http://www.watsoninstitute.org/bjwa/archive/9.1/smallarms/stohl.pdf>.

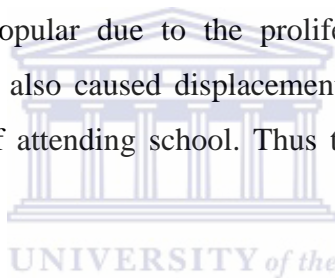
Accessed: 27/02/2011.

displaced by war within and outside their countries.<sup>265</sup> Most children displaced from their homes and community often face the problem of lack of shelter, inadequate food or health facilities which intend result in poor health and deaths.

### **3.6.2. Indirect Impacts of small arms on children**

#### **3.6.2.1. Reduced Educational Opportunities**

Children in areas devastated by conflict fuelled with small arms often give up their education dreams. Small arms do not only cause the devastation of educational facilities, instability or limit access to education but the entire performance of children since most of their learning years are wasted in the battle field operating these weapons. For example, in Congo children attend school at irregular intervals due to the frequent inter-ethnic attacks, an activity which has become popular due to the proliferation of small arms.<sup>266</sup> The circulation and use of small arms also caused displacement of populations which in turn makes children lose the chance of attending school. Thus the proliferation of small arms inhibits education.<sup>267</sup>



In a UNICEF report on Angola, small arms fuelled conflict has prevented millions of children from receiving education, school are closed down and parents are afraid to send their children to school for fear of abduction.<sup>268</sup> In some conflict areas, going to school is a high risk since children are easily abducted while going to school and even more schools turn out to be targets for attacks and forced recruitment.<sup>269</sup>

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<sup>265</sup>Stohl R. *Putting Children First. Building a framework for international action to address the impact of small arms on children.*

Available: [www.international-alert.org/pdf/Btb\\_brf11.pdf](http://www.international-alert.org/pdf/Btb_brf11.pdf).

Accessed: 27/02/2011.

<sup>266</sup> Stohl R. (2002). *Under the Gun. Children and Small arms.*

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

Access: 10/03/2011.

<sup>267</sup> Ibid.

<sup>268</sup>Stohl R. *Putting Children first. Building a framework for international action to address the impact of small arms on children.*

Available: [www.international-alert.org/pdf/Btb\\_brf11.pdf](http://www.international-alert.org/pdf/Btb_brf11.pdf).

Accessed: 27/02/2011.

<sup>269</sup> Vandergrift K. Lochhead D. & Steinmann R. (2005). *Background Research Paper: Small Arms, Children and Conflict.*

Available: [www.worldvision.ca/.../finalResearch-Paper-for-Small-Arms-and-Children-October-2005.pdf](http://www.worldvision.ca/.../finalResearch-Paper-for-Small-Arms-and-Children-October-2005.pdf)

### 3.6.2.2. Lack of Health Services

The presence of small arms during and after conflict often impedes the provision of basic health services. In many circumstances, children suffer from diseases that could have been prevented or treated as a result of inadequate health services.<sup>270</sup> In other words, diseases that are not fatal turn out to be fatal.<sup>271</sup> Due to the state of insecurity caused by small arms circulation, the monitoring of treatable diseases is inhibited, delivery of health care services and vaccination programmes are cancelled.<sup>272</sup>

As a result of the lack of health services, infant mortality turns out to be very high while some other children suffer from long protracted illnesses. The use of small arms for sexual exploitation on children can result in unwanted pregnancies, sexually transmissible diseases such as HIV/AIDS. This abuse of children sometimes has a lasting impact on their health and development.<sup>273</sup>



### 3.6.2.3. Lack of Food and Humanitarian Assistance

Another effect of small arms proliferation and use during and after the conflict is that humanitarian relief activities and assistance are inhibited. Humanitarian relief agencies find it difficult to supply food stuff and aid to needy children because of rampant insecurity.<sup>274</sup> Thus as a result of the availability and use of these weapons, children's access to food is

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Accessed: 10/03/2011.

<sup>270</sup> Stohl R. (2002). *Under the Gun. Children and small arms.*

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

Accessed: 10/03/2011.

<sup>271</sup> Ibid.

<sup>272</sup> Stohl R. Targeting Children: Small Arms and Conflict. *The Brown Journal of World Affairs. Spring 2002. Vol IX, issue 1.P: 284.*

Available: <http://www.watsoninstitute.org/bjwa/archive/9.1/smallarms/stohl.pdf>.

Accessed: 10/03/2011.

<sup>273</sup> R. Stohl. *Putting Children first. Building a framework for international action to address the impact of small arms on children.*

Available: [www.international-alert.org/pdf/Btb\\_brf11.pdf](http://www.international-alert.org/pdf/Btb_brf11.pdf).

Accessed: 27/02/2011.

<sup>274</sup> Stohl R. targeting Children: Small arms and conflict. *The Brown Journal of World affairs. Spring 2002. Vol. IX. Issue 1. P:285.*

limited or inhibited leading to malnutrition during and after the conflicts.<sup>275</sup> The circulation and use of these weapons also diminishes many other support structures.

In a nutshell, the former Special Representative of the Secretary General, Mr. Olara A. Otuma, in a paper presented to the ECOWAS session in 2003 painted a painful picture on the situation of children in conflicts fuel by small arms. He said “It is painful to witness the lives of so many African children being destroyed by wars: children being killed, or maimed; children made orphans; children uprooted from their homes and displaced within their countries and across the borders as refugees; children being raped and sexually abused; children deprived from education and health care; children exploited as child soldiers and children left with emotional scars and trauma”.<sup>276</sup>

### 3.7. Protection of Children from Small Arms

The interrelation between small arms and child soldiers and the devastating consequences caused by these weapons on children should form the basis and motivate international action programs to curb the illicit flow of small arms. Curbing the proliferation and misuse of small arms has not been the focus for international arms control during the cold war era. International arms control efforts were focused on major weapons.<sup>277</sup> However, the last decade has witnessed some changes, though there are still no internationally global accepted standards regulating the production, trade and possession of small arms.<sup>278</sup> The production, trade, proliferation and misuse of these weapons are dangerously out of control, leaving enormous pressure on international community to address principles governing the transfer of small arms and light weapons.<sup>279</sup> But most often when tabled for discussion, they are treated separately from one another. Adala Ochiengy, stated in a paper presented at the Africa peace Forum-Kenya, that the unregulated trade in small arms fuels conflicts, undermines

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<sup>275</sup> Ibid. P; 285.

<sup>276</sup> Office of the Special Representative of the Secretary General for Children and armed Conflict (2003). *Statement to the ECOWAS Heads of States Summit*.

Available: <http://www.un.org/children/conflict/english/jan2003ecowas.html>.

Accessed: 04/04/2011.

<sup>277</sup> Renner M. Small Arms, Big Impact: The next challenge of disarmament. Worldwatch paper 137. P:54-55.

<sup>278</sup> Ibid. P:55.

<sup>279</sup> Adala O. (IANSA). Regulating international transfer of small arms.

Available: <http://www.un.org/events/smallarms2006/pdf/iansa.apf%20kenya.pdf>.

Accessed: 10/03/2011.

development, imperils human security, causing suffering and misery to children.<sup>280</sup> It is important to look at existing international and regional regulation on the proliferation of small arms and how children are being protected.

### 3.8.1. Global Instruments

#### 3.8.1. The UN Programme of Action (POA)

The first global conference on small arms was held New York from the 9-20 July in 2001, expressed concern about the illicit manufacture, transfer and circulation of small arms and light weapons, and their excessive accumulation and uncontrolled spread in many regions of the world.<sup>281</sup> Also members present at the conference were concerned about the devastating consequences of these weapons on children.<sup>282</sup> The conference saw the need for global action to prevent, combat and eradicate the illicit trade of small arms in all aspects, by adopting the POA.

The central purpose of the POA was to prevent, combat and eradicate the illicit trade in small arms and light weapons in all aspects and reduced the consequences on children.<sup>283</sup>

The POA calls on states to develop national legislative control on illicit small arms production, trafficking, transfer, weapons collection and destruction and stockpile management.<sup>284</sup>

One of the weakness is that the POA was that it is not a formal agreement to which states could become party, thus states were no bound by any legal conclusion.<sup>285</sup> Thus states had

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<sup>280</sup> Ibid.

<sup>281</sup> Conventional Arms: *Program of Action to prevent, combat and eradicate the illicit trade of small arms in all its aspect.* (UN Document A/conf.192/15).

Available: <http://disarmment.un.org/cab/poa.html>.

<sup>282</sup> Ibid.

<sup>283</sup> United Nation Development Programme (UNDP). (2008). *How to guide small arms and light weapons legislation.*

Available: [http://www.undp.org/cpr/documents/sa\\_control/SALWGuide\\_Legislation.pdf](http://www.undp.org/cpr/documents/sa_control/SALWGuide_Legislation.pdf).

Accessed : 10/03/2011.

<sup>284</sup> Conventional Arms: *Program of Action to prevent, combat and eradicate the illicit trade of small arms in all its aspect.* (UN Document A/conf.192/15).

Available: <http://disarmment.un.org/cab/poa.html>.

Accessed: 10/03/2011.

<sup>285</sup> African Council of Religions Leaders. (Religions for Peace). *Small arms and lights weapons: Africa. A Resource guide fr religions for peace.*



no legal commitment to implement the provisions of the POA. It also did not have any clear implementing mechanism put in place, thus its success was based voluntary co-operation by member states<sup>286</sup> The POA's main information source is from states reports but it did not specify the frequency with which states will report and the information they should include in the reports.<sup>287</sup> Sarah Parker in the Small Arms Survey Working Paper 9, noted that, since the adoption of the POA, no state in Africa has reported every year. For example Libya, Malawi and Tunisia reported for the first time in 2010.<sup>288</sup>

Mr. Sergio Duarte, High Representative for Disarmament Affairs regretted that the POA proposes neither a benchmark nor cut –off date and does not provide a specific framework to facilitate international assistance and cooperation.<sup>289</sup> It is important to note here that the POA did not address the issue of possession nor does it indicate how to regulate small arms among civilian populations (especially children). Similarly, it did not consider non-state actors or states official misuse of arms.<sup>290</sup>

### 3.8.2. The United Nations Security Council (UNSC)

The UN Security Council is also concerned with the issue of small arms and has adopted a series of resolutions to enforce strong action on the issue of small arms and children.

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Available: [http://www.un.org/disarmament/education/docs/SALW\\_Africa.pdf](http://www.un.org/disarmament/education/docs/SALW_Africa.pdf).

Accessed: 08/09/2011.

<sup>286</sup> Bromund T & Kopel D. (2010). *As the UN's Arms Trade Treaty Process Begins, UN's Programme of Action on small Arms shows Dangers.*

Available: <http://www.heritage.org/Research/Report/2010/07/As-the-UNs-arms-Trade-Process-Begins-UNs-Programme-of-Action-on-Small-Arms-Shows-Its-Dangers>.

Accessed: 28/03/2010.

<sup>287</sup> Parker S. (2010). National implementation of the UN small arms Programme of Action and National Tracing Instruments . *Small Arms Survey Working Paper 9*. P:18.

<sup>288</sup> Ibid :24.

<sup>289</sup> Bromund T & Kopel D. (2010). *As the UN's Arms Trade Treaty Process Begins, UN's Programme of Action on Small Arms shows Danger.s*

Available: <http://www.heritage.org/Research/Report/2010/07/As-the-UNs-arms-Trade-Process-Begins-UNs-Programme-of-Action-on-Small-Arms-Shows-Its-Dangers>.

Accessed: 28/03/2010.

<sup>290</sup> African Council of Religions Leaders. (Religions for Peace). Small arms and lights weapons: Africa. A Resource guide for religions for peace.

Available: [http://www.un.org/disarmament/education/docs/SALW\\_Africa.pdf](http://www.un.org/disarmament/education/docs/SALW_Africa.pdf).

Accessed: 08/09/2011.

Resolution 1460 of 2003 addresses the small arms by calling member states, in accordance with the POA, to prevent, combat and eradicate the illicit trade in small arms and light weapons, to take effective action through, inter alia, conflict resolution and the development and implementation of national legislation, in a manner which is consistent with existing responsibilities of states under international law, to control the illicit trade in small arms to parties in armed conflict that do not fully respect the relevant provisions of applicable law to the rights and protection of children in armed conflict.<sup>291</sup>

Resolution 1539 of 2004 focuses on measures of the implementation of control on the illicit trade in small arms, ending the use of child soldiers as well as establishing effective monitoring and reporting mechanisms. The resolution urges member states to take appropriate measures, in particular while considering sub regional and cross border activities to curb the link between illicit trade in natural and other resources, the illicit trafficking in small arms and light weapons, cross border abduction and recruitment and armed conflict, which can prolong armed conflict and intensify of its impact on children.<sup>292</sup>

Resolution 1612 of July 2005 mainly focuses on establishing modalities for member states to enact a monitoring and reporting mechanism on the use of child soldiers and other abuses of children in armed conflict.<sup>293</sup> The resolution also expresses concern about the link between the use of child soldiers and the illicit trafficking of small arms and light weapon. It further stresses the need for all states to take measures to prevent and put an end to such trafficking.<sup>294</sup>

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<sup>291</sup> UN Security Council. Security Council Resolution S/Res/1460/2003, adopted by Security Council at its 4695 meeting on 30 January 2003.

Available: <http://daccess-adds-ny.un.org/doc/UNDOC/GEN/N03/231/16/PDF/N0323116.pdf?OpenElement>  
Accessed: 28/03/2010.

<sup>292</sup> UN Security Council. Security Council Resolution S/Res/1539/2004, adopted by Security Council at its 4948 meeting on 22 April 2004.

Available: <http://daccess-adds-ny.un.org/doc/UNDOC/GEN/N04/318/63/PDF/N0431863.pdf?OpenElement>  
Accessed: 28/03/2010.

<sup>293</sup> Vandergrift K & Lochhead D. *Small arms, Children and armed conflict. A framework for effective action.*  
Available: [http://www.worldvision-institute.de/\\_downloads/allgemein/A-Framework-for-Effective-Action.pdf?mysid=bqruxvtz](http://www.worldvision-institute.de/_downloads/allgemein/A-Framework-for-Effective-Action.pdf?mysid=bqruxvtz).

<sup>294</sup> UN Security Council. Security Council Resolution S/Res/1612/2005, adopted by the Security Council at its 5235 meeting on the 26 July 2005.

Available: <http://daccess-adds-ny.un.org/doc/UNDOC/GEN/N05/439/59/PDF/N0543959.pdf?OpenElement>  
Accessed: 28/03/2010.

Though measures have been taken by the Security Council to improve the protection of child soldiers in conflict situations, it has not yet taken adequate action on the proliferation of small arms. The above resolutions (1460 and 1539) resorted to moral calls for nations to take effective measures and not oblige them to prevent, combat and eradicate the illicit trade in small arms, thus making no development from that of the POA. In order to stop the circulation of small arms, the Security Council placed arms embargoes on a number of African Countries (for example, Liberia, Somalia, Angola's UNITA Movement, Rebels in Congo DRC, and Ivory Coast) but this did not stop weapons from reaching their African destination because that there is limited capacity and resources to implement them as well as lack of political will. Another reason for the weakness is the porosity of Africa's border which facilitates circulation of weapons in violation of UN arms embargoes.<sup>295</sup>

### **3.8.2. African Regional Measures**

Concerned with the devastating consequences of conflicts fuelled by small arms on the African continent in general and women and children in particular, and in an effort to implement the POA, three legally binding agreements have been adopted to address the issue of small arms proliferation, and its humanitarian impacts. These organisations include; the Economic Community of West African States (ECOWAS) Conventions on importation and manufacturing of light weapons, The Nairobi Protocol which covers the Great Lakes Region and the Horn of Africa, and finally the Southern Africa Development Community (SADC) protocol covering southern African states.

#### **3.8.2.1. Economic Community of West African States (ECOWAS)**

In 2006 member states of the ECOWAS region signed a Convention on Small Arms and Light Weapons to strengthen their effort to control the proliferation of small arms, to build upon the moratorium which is no longer in place and to establish a more comprehensive

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<sup>295</sup> Vines A. (2007). Can UN arms embargoes in Africa be effective? *International Affairs* 83, issue 6. P: 1121.

regional approach to control small arms and light weapons<sup>296</sup> The Convention established a legally binding agreement covering a broad range of issues which include: civilian possession, stockpile management, record keeping, transfer control, border control, disposal, awareness rising and information exchange.<sup>297</sup> The Convention calls on member states to ban the transfer of small arms within their national territory and also to institute a ban on the transfers of these weapons to non-states actors that are not explicitly authorised by the exporting members (article 3 of the Convention).<sup>298</sup>

Implementation of the ECOWAS Convention was divided into national and regional levels. At national level, the Convention calls for the implementation by National Commissions to co-ordinate implementation of the Convention, while ECOWAS Executive Secretary will be responsible for coordinating implementation at the regional level.<sup>299</sup> Though the Convention draws some attention to gender perspective and local manufacturing, it failed to address the position of children. The ECOWAS Convention can be applauded for the adoption of article 14, which prohibits the possession and use of small arms by civilians. The article also regulates the minimum age of possession though the age limit was not stipulated.<sup>300</sup> This Thesis suggests that the Convention should harmonise all national control measures and to strengthen border control mechanisms with the region.

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<sup>296</sup> United Nation Development Programme (UNDP). (2008). *How to guide small arms and light weapons legislation*.

Available: [http://www.undp.org/cpr/documents/sa\\_control/SALWGuide\\_Legislation.pdf](http://www.undp.org/cpr/documents/sa_control/SALWGuide_Legislation.pdf).

Accessed: 10/03/2011.

<sup>297</sup> Ibid.

<sup>298</sup> ECOWAS. *ECOWAS Convention on small arms and light weapons: Their ammunition and related materials*. Adopted at the thirtieth ordinary session of the authority of heads of states and governments, Abuja 14 June 2006

Available: [http://www.grip.org/research/ECOWAS\\_Convention\\_ENG.pdf](http://www.grip.org/research/ECOWAS_Convention_ENG.pdf).

Accessed: 10/03/2010.

<sup>299</sup> United Nation Development Programme (UNDP). (2008). *How to guide small arms and light weapons legislation*.

Available: [http://www.undp.org/cpr/documents/sa\\_control/SALWGuide\\_Legislation.pdf](http://www.undp.org/cpr/documents/sa_control/SALWGuide_Legislation.pdf).

<sup>300</sup> ECOWAS. *ECOWAS Convention on small arms and light weapons: Their ammunition and related materials*. Adopted at the thirtieth ordinary session of the authority of heads of states and governments, Abuja 14 June 2006

Available: [http://www.grip.org/research/ECOWAS\\_Convention\\_ENG.pdf](http://www.grip.org/research/ECOWAS_Convention_ENG.pdf).

Accessed: 10/03/2010.

### 3.8.2.2. The Great Lakes region and the horn of Africa

In an effort to strengthen the Nairobi Declaration of 2001, member states of the Great Lake Region and the Horn of Africa signed the Nairobi Protocol in April 2004 which entered into force in May 2006.<sup>301</sup> This is a legally binding document that commits the signatory states to concrete action that include mandatory gun registration, a ban on civilian ownership of military assault rifles and to end the impact of small arms in the Great Lakes region.<sup>302</sup>

It urges its member states to outlaw the illicit manufacturing, trafficking, possession and misuse of small arms and light weapons, while obliging them to address the problem of internal conflicts which makes the flow of these weapons into the region.<sup>303</sup> The Protocol also calls on member states to establish criminal offences under their national law the following acts: illicit trafficking, manufacturing and possession of small arms and light weapons.<sup>304</sup> Implementation of the Nairobi Protocol is assigned to the Regional Centre for Small Arms (RECSA), which is charged with the implementation of the Protocol and to institute mechanisms for sharing information across the region.<sup>305</sup> The Nairobi Protocol failed to address the transfers and possession of small arms by non-state groups.

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<sup>301</sup> United Nations Development Programme (UNDP). (2008). How to guide small arms and light weapons legislation.

Available: [http://www.undp.org/cpr/documents/sa\\_control/SALWGuide\\_Legislation.pdf](http://www.undp.org/cpr/documents/sa_control/SALWGuide_Legislation.pdf).

Accessed: 10/03/2011.

<sup>302</sup> African Council of Religions Leaders. (Religions for Peace). Small arms and light weapons: Africa. A Resource guide for religions for peace.

Available: [http://www.un.org/disarmament/education/docs/SALW\\_Africa.pdf](http://www.un.org/disarmament/education/docs/SALW_Africa.pdf).

<sup>303</sup> Che K. N. (2007): *Small arms and light weapons, Africa's true weapons on WMDs. The role of small arms SALW in conflict and insecurity in sub-Saharan Africa.*

Available: <http://www.aspr.ac.at/epr/research/che.pdf>.

Accessed: 03/04/2011 P: 83-84.

<sup>304</sup> The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.

Available: <http://www.recsasec.org/pdf/Nairobi%20Protocol.pdf>.

Accessed: 15/11/2011.

<sup>305</sup> United Nations Development Programme (UNDP). (2008). How to guide small arms and light weapons legislation.

Available: [http://www.undp.org/cpr/documents/sa\\_control/SALWGuide\\_Legislation.pdf](http://www.undp.org/cpr/documents/sa_control/SALWGuide_Legislation.pdf).

Accessed : 10/03/2011.

### 3.8.2.3. Southern African Development Commission (SADC)

The SADC Region adopted a Protocol on the Control of Firearms, Ammunition, and Related Materials was adopted and entered into force in November 2004. The main objective of the SADC Protocol was to combat, prevent and eradicate the illicit manufacturing of firearms, ammunition and other related materials, to promote the legal uniform and minimum standards in the manufacturing, control, possession, import, export and transfer of firearm, and facilitate cooperation and exchange of information and experiences on issues in the region.<sup>306</sup>

It calls on state parties to enact the necessary legislation and take other measures to establish criminal offences under their national law to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use.<sup>307</sup> The Protocol further calls on states to take other measures to sanction criminally or civilly or administratively under their national laws the violation of arms embargoes mandated by the UN Security Council.<sup>308</sup>

Though the SADC protocol prohibits possession and use of firearms by civilian, it failed to regulate the possession by non-state actors and also failed to prohibit or ban the transfer of small arms to non-state actors.

### 3.8.2.4. Economic Community of Central African States (ECCAS)

Amongst all the other regions, the ECCAS region remains the only region in the entire continent afflicted with conflict without a legally binding instrument, a declaration or a moratorium geared towards preventing, combating and eradicating the illicit production and

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<sup>306</sup> SADC. *Protocol on the control of Firearms, Ammunition and other related materials*. Available: <http://www.sadc.int/index/browse/page/125#3>.

Accessed: 10/03/2011.

<sup>307</sup> Ibid. Article 5 (1).

<sup>308</sup> Ibid. Article 5 (2).

use of small arms.<sup>309</sup> The region however established and agreed on a licensing system in 2003 in its pursuit to control importation, exportation and transport of small arms.<sup>310</sup>

The continent of Africa should not only rely on sub-regional measures for the implementation of the regulation of the UN POA. However, this thesis calls for an African Convention of small arms through the harmonisation of all the regional measures.

### 3.9. Conclusion

For as long as small arms continue to be the weapons of choice and a tool to resolve African internal conflicts, their effects on children will not cease. Insecurity and periodic violence will be the order of the day. Weak economic political situations will continue. Limited educational and health facilities, hunger and early mortality of the vulnerable and poor societies and above all the disturbing phenomenon of child soldiers will continue to be an issue.

This chapter has to some extent presented the situation of child soldiers, the causes, methods of recruitment and or factors the lead to their involvement in armed forces. What is necessary at the moment is a sustainable solution to the issue. A good number of legally binding instruments to that end have been adopted at the international as well as the regional level. These include laws regulating the age of participation, recruitment and the trade of small arms. But the present situation proves that these laws are either ignored or poorly implemented. It is therefore important for the law makers to either look for alternative ways to implement the existing laws or to strengthen them. The next chapter will look at how these laws could be strengthened.

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<sup>309</sup> Ngang K.C.. (2007): *Small arms and light weapons, Africa's true weapons on WMDs. The role of small arms SALW in conflict and insecurity in sub-Saharan Africa.*

Available: <http://www.aspr.ac.at/epu/research/che.pdf>.

Accessed: 03/04/2011 P: 83-84.

<sup>310</sup> Ibid.

## CHAPTER FOUR

### STRENGTHENING THE EXISTING LAWS ON THE PROTECTION OF CHILD SOLDIERS

#### 4.1. Introduction

There is no doubt that international community has deployed enormous efforts towards the protection of children's rights. Many binding legal instruments in that regard have been adopted at both international and regional level. Implementation committees to make sure that these laws implemented have been appointed. A lot of good recommendations have been made so as to ensure that the laws on the rights of children are respected. The fact remains that the intended goal of these laws has yet to gain considerable grounds. One might be tempted to say that these laws are being ignored or intentionally violated by those who are supposed to implement them, or draw some kind of conclusion that laws were not strong enough to gain total respect from all. This is because, the same inhuman treatment and violation of children's rights is still going on. In other to prevent future recruitment of child soldiers, this thesis is advocating for the strengthening of the existing instruments. As Kallis puts it: "prevention ought to be a priority, not that the international community should wait for child soldiering to occur before they come afterward to pick the pieces".<sup>311</sup>

This chapter will be looking at ways of strengthening the flaws of the provisions protecting children during situations of armed conflict within the existing instruments discussed in chapter two. It will also be looking at effectiveness of their implementing organs. In addition, it will attempt to make suggestions towards the improvement of the legal standards relating to child soldiers. Furthermore, it shall discuss the Rome Statute of the International Criminal Court (ICC) with the aim of strengthening the existing instruments in relation to children in situations of armed conflicts. Finally it will link corruption to the recruitment of child soldiers.

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<sup>311</sup> Kallis M. *Child Soldiers in Africa: Solutions to a complex dilemma*. Available: [file:///GG/childsoldiers in Africa solution and delimma.htm](file:///GG/childsoldiers%20in%20Africa%20solution%20and%20delimma.htm). Accessed: 08/02/2011.



## 4.2. The Convention on the Rights of the Child

There are however considerable loopholes within the articles protecting children during armed conflicts. The CRC developed four working principles which include the principles of Non-discrimination (Article 2 of the CRC adopted in 1989) and the best interest of the child (Article 3 of CRC adopted in 1989, participation (article 12) and also that of life, survival and development. It is on the basis of these principles that the loopholes should be addressed and strengthened. It is believed that there have been movements towards strengthening the provisions of the Convention though the efforts have been piecemeal.<sup>312</sup> Even though the OPAC was adopted to strengthen some of the provisions on the Convention, it is important that the Convention itself be looked at for possible amendment, since it still remains the legal standard. The concern of the section will be to strengthen weaknesses spelt out in Chapter two on articles 1 and 38 of the Convention since they relate directly to the subject matter.

To strengthen the above provisions with regards of the weaknesses within the above mentioned articles, the following suggestions can be made:

The definition of a child is to be restructured without variations or exemption to any class of child (majority) and must be universally accepted without limits to any home law, religion or culture. The interpretation of the definition should be the same across the globe by all, according to the principle of non-discrimination, and the age limit of a child should be reflected in all other articles within the Convention.

Concerning the protection measures to be taken by States, a more duty bound obligation should be given to States parties and the Convention should address the phrase “all feasible measures” and adopt the use of “necessary measures” (steps), which require States to take more than feasible measures. In so doing, the Convention should be able to advance the necessary measures to be taken and make them universal without any further exemption or preference.

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<sup>312</sup> Grover S. (2004). The International Journal of Children Rights: *On Recognizing children universal rights: What need to change in the Convention on the Rights of the Child*. Vol. 12, P: 267.

These measures should also include provisions to remove children already involved in hostilities from the official armed forces as well as from the rebel armed groups. Thus, as Kallis noted, to strengthen the CRC, non-state actors need to be pressured to respect its provisions though they are not signatories. He explained that if governments alone adhere to the norms set by the convention, the door will be open for non-state actors to abuse children. Therefore, both States and non-state actors should be pressured to adhere to the standard set by the convention through careful monitoring by UN agencies, non-governmental organisations as well as international media.<sup>313</sup>

Since most states parties have little or no control over armed groups, the Convention should formulate a provision that covers internal conflict with jurisdiction over non-governmental armed groups. In so doing, the Convention will have the power to place an obligation on non-state armed groups from recruiting children below the age of 18 years.

#### **4.3. The Optional Protocol to the CRC**

The first step towards strengthening Article 38 of the CRC was the adoption of an Optional Protocol to the CRC but according to Van Bueren this will represent a squandered opportunity if its sole purpose is to raise the minimum age.<sup>314</sup> The most important facets of the OPAC were the age recruitment as well as a state reporting system. OPAC however witnesses some divisive issues at the level of age of voluntary recruitment, age of participation into hostilities, and whether it should be applicable to non-state actors.<sup>315</sup> With reference to the criticisms and weaknesses of the OPAC discussed in Chapter two, the following suggestion to strengthen the above weaknesses can be put forward:

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<sup>313</sup> Wessells M. Child soldiers. Bulletin of the Atomic Scientists, Chicago Nov/Dec 97.

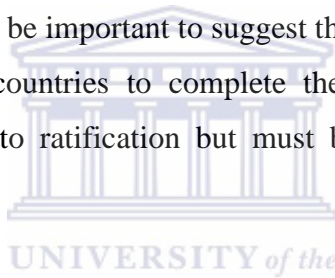
Available: [http://pangaea.org/street\\_children/africa/armies.htm](http://pangaea.org/street_children/africa/armies.htm).

Accessed: 16/06/2011.

<sup>314</sup> Sheppard A. (2000). Is the Optional Protocol evidence of an emerging “straight-18” consensus? *The International Journal of Children’s Rights*. P:46.

<sup>315</sup> Snyder R. The Optional Protocol of the Convention on the Rights of the Child on involvement in armed conflict. in McRae, Robert Grant: (2001) *Human Security and the New Diplomacy: Protecting People and Promoting Peace*. P: 153.

A key step towards strengthening the OPAC is a campaign for its universal ratification and to enforce its implementation. Firstly, steps to ensure that those states that have neither signed nor ratified to do so should be undertaken at all cost. Secondly, those states that have only signed but have not yet ratified should do well to complete the process of ratification. This suggestion is included in a campaign “Zero under 18” launched by the office of the Special Representative to the Secretary General on Children and Armed Conflict (SRSG-CAAC) in co-operation with United Nations Children Emergency fund (UNICEF) and Office of the High Commissioner for Human Rights (OHCHR) to promote the universal ratification of the OPAC by the 10<sup>th</sup> anniversary of its entry into force in 2012.<sup>316</sup> According to Ms. Coomaraswamy, (Special representative to the United Nations Secretary General for children and armed conflict), the major challenges to achieve universal ratification include financial budgets, human resources and technical capacities especially for small States.<sup>317</sup> In view of the above challenge, it will be important to suggest that the UN should put in place a method of assistance to enable countries to complete their ratification process. Such assistance should not be limited to ratification but must be extended to the process of implementation and reporting.



One of the aims of the campaign is to encourage all States to raise the age of voluntary recruitment to a minimum of 18 years and if necessary, to amend their binding declaration under article 3 of OPAC. This suggestion is honourable but it will be important for the entire article 3 to be amended by placing a complete ban on the recruitment persons under the age of 18 years with no exceptions. After this, all states shall be obliged to amend their declaration under article 3 of the OPAC.

Another major step towards strengthening the OPAC is to exert extra pressure on non-state actors to respect its provisions even though they are not signatories. According to Bennett, rebel forces are simply not amenable to the ordinary methods of enforcing international law and any attempt to get them to respect children’s rights will depend entirely on their

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<sup>316</sup> Coomaraswamy R. (2010). The Optional protocol to the Convention on the Rights of the child on Involvement of Children in Armed Conflict-Towards Universal Ratification: *International Journal of Children Rights* 18. P: 548.

<sup>317</sup> Ibid. P:549.

willingness to cooperate.<sup>318</sup> Article 3 of the Optional Protocol placed a ban on the recruitment and use of children under the minimum set age of 18, but the reality on the ground shows a different picture. Thus the jurisdiction of the Protocol will be extended directly over non-states rather than relying on State parties.

The Committee on the Rights of the Child which is mandated to implement and enforce the provisions of the CRC and its Optional Protocol has been strengthened with extra powers to carry out effective duties. Firstly, the Committee has to be given the added duty of receiving reports on alleged violations of the Convention from individuals, receive reports on ad hoc situations and given authority to take action. The Committee should also deploy its own report agencies instead of relying on reports submitted by States parties. The activities of non-state armed groups must also be reported to the Committee which in turn must be able to take action.

Secondly although the Committee makes suggestions and recommendations to States parties, it should be given the necessary means to enforce the standards of its recommendations in the field by providing assistance to States parties. The five years' time frame for states to submit their report should be reduced to at least two, as five year is a very long time for the life of a child to be destroyed and be transformed.

The implementation of the CRC and the OPAC should not be the sole responsibilities of the Committee but must be the responsibility of governments and other international institutions, The UN agencies particularly UNICEF, ILO, WHO, UNHCR, Human Rights Centre and Crime Prevention units, as well as NGO, the Media, the Academic Communities, teachers, social workers adults and even children as individuals.<sup>319</sup> The UN Security Council which is the UN body capable of taking action should also be given the mandate to assist the Committee in taking action on those states and non-state armed groups that continue to violate the standards of the CRC.

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<sup>318</sup> Bennett E., Gamba V. & Van de Merwe D.(2000) *Act against child soldiers in Africa: A Reader*. P:105.

<sup>319</sup> Hammarberg T. (1990). *The UN Convention on the Rights of the Child-And How to Make it Work*. P: 102-103.

The Optional Protocol should be looking forward towards creating a unique independent protection institution similar to ICRC and not just a Committee that receives reports and gives recommendations. This body which will be geared towards protecting children in conflict situations should be equipped with financial, human and technical resources and bound by a legally binding provision within the Protocol. This institution should however be mandated with the duties of: protecting children in conflict situations who are not associated with any armed groups but are still vulnerable; given the powers of removing children involved in armed groups and taking direct and indirect part in hostilities; reporting cases of persistent violators and finally to ensuring their reintegration into their societies.

#### **4.4. The African Charter on the Rights and Welfare of the Child**

The ACRWC which was developed to reflect the African tradition established two working principles; the principle of non-discrimination (Article 3) and the best interest of the child (Article 4 (1)). In this regards every activity concerning children should be in line with the above principles. Despite this call and coupled with the ban on the recruitment and use of children (Article 22), the situation of children and their adherence to states and armed groups have diminished especially during conflict situations.

However, one of the weaknesses that need to be strengthened is the fact that the Charter did not consider those groups of children recruited for other related duties other than direct hostilities, but was concerned with children who took direct part in hostilities. Another weakness remarked on is the fact that the Charter sounded as if it had no jurisdiction over non-state armed groups for it did not mention this group in its provision or spell out any duties on them. The same applies to states that have neither signed nor ratified the Charter. Lastly, the article failed to mention the minimum age of recruitment and participation in hostilities.

Despite these weaknesses, some measures can be put in place to strengthen the situation. The first will be to campaign for its complete ratification and a renewed commitment of all

the States and to enable the Charter to have jurisdiction over all the State parties. This should be done by making sure that all the States parties are given with the necessary human, financial and technical facilities that they require.

Secondly, Article 22 (2) of the Charter should be amended to ban the recruitment of children irrespective of whether they are to be used in hostilities or to perform other duties. This article must also make mention of the 18 years limit which is the minimum age of recruitment and participation. A binding legal duty must also be given to non-state armed groups and not just to state parties.

#### **4.5. The International Labour Organisation (C182)**

The International Labour Organisation (ILO) also shows some concern on the issue of child soldiers by adopting the C 182 of the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour as mentioned above. The provisions of the Convention as mentioned in Chapter 2, oblige states to take some effective measures also encountered some failures as can be seen in chapter 2.

To achieve the intended objectives of Convention C182, provisions pertaining of child soldiers must be strengthened and enforced.

The Convention C182 must be able to look into the different types (compulsory and voluntary) of recruitment of children into armed conflicts and must include other hostilities which expose children to physical and psychological stress rather than limiting it to national and international armed conflict. Such a provision should have jurisdiction over Government as well as non-states armed groups.

The Convention C182 should adopt a provision which addresses some of the causes of the worst form of child labour, which limit the choices of children such as corruption, poverty as well as small arms. This provision should be a duty of all States parties to ensure that action

is taken to address those causes and to ensure that children are not vulnerable to such practices.

An independent implementation and monitoring committee must be put in place and charged with the mandate of implementing its provisions and be able to take immediate action on those that persistently practice these forms of child labour.

#### **4.6. The Rome Statute of the International Criminal Court (ICC)**

As part of the effort towards strengthening the existing provisions on the protection of children's rights in general and the prohibition of child soldiers in particular, the ICC appears to be the right peg in the hold. The Rome Statute of the ICC also came up as a significant international instrument for the protection and use of children in hostilities. The idea of permanent court came after the UN established the Convention on the Prevention and Punishment of Crime of Genocide in 1948.<sup>320</sup> The Rome Statute of the ICC was adopted and opened for signatures and ratification in 1998 and finally came into force on July 1, 2002 following the 60<sup>th</sup> ratification of the treaty.<sup>321</sup>

Thus the International Criminal Court (ICC) is the first and only global permanent international court intended to counter impunity, with jurisdiction to prosecute individuals for "the most serious crimes of concern to the international community" as referred to in the statute.<sup>322</sup> The Rome Statute also became first international treaty where the recruitment and use of children in hostilities is recognized as a war crime.<sup>323</sup> The structure, rules and operation of the ICC therefore reflect the experiences of the ad hoc international criminal tribunal for Yugoslavia and Rwanda but it differs significantly from them. The ICC is also

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<sup>320</sup> Bennett E., Gamba V. & Van de Merwe D.(2000). Act against child soldiers in Africa: A Reader. P: 109.

<sup>321</sup> Freeland S. (2008). Mere Children or Weapons of War-Child Soldiers and International Law. *University of La Verne Law review* 24657\_Vol:29 No 24 Side B 04/8/2008: P:42.

<sup>322</sup> Schiff N. B. (2008). *Building the International Criminal Court*. P: 9.

<sup>323</sup> Honwana A. (2008). Children involvement in war: Historical and social context: *Journal of the History of Childhood and Youth* (v.1.1). P: 143.

built upon the range of national legal systems and incorporates elements common to other international organisations.<sup>324</sup>

Before the adoption of the Rome Statute of the ICC, earlier human rights relating to the protection of children during armed conflicts have put in place accepted norms and means of implementation (chapter 2). But the ICC moved a step forward by criminalising the act of recruitment (conscription and enlisting) and using children in hostilities and prosecuting those responsible.<sup>325</sup> It considers the recruitment or enlistment and use of children in hostilities as a war crime.<sup>326</sup> Article 8(2) (b) xxvi relates to national armed forces, while article 8 (2) (e) (Vii) deals with non-state armed groups. These articles state that the conscription or enlistment of children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities will be considered as war crimes.<sup>327</sup>

The fact that children continue to take part in hostilities shows that most provisions of the existing human rights and humanitarian laws were not implemented or taken seriously. Thus the coming into force of the ICC provides an important new mechanism and a concrete step for implementing and fulfilling the obligations of the existing child protection standards.<sup>328</sup>

The objectives of the ICC with regards conscription or enlisting children and using them in hostilities, is to persecute transgressors and rehabilitate the victims; to combine mechanisms of the civil law traditions with common law precepts.<sup>329</sup> The ICC encouraged its member states to draft new domestic legislation with complementary child protection provisions.<sup>330</sup>

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<sup>324</sup> Schiff N. B. (2008). *Building the International Criminal Court* P: 2.

<sup>325</sup> The Redress Trust. (2006), Victims, Perpetrators or Heroes. *Child Soldiers before the International Court* Available: [http://www.essex.ac.uk/armedcon/story\\_id/000403.pdf](http://www.essex.ac.uk/armedcon/story_id/000403.pdf). P: 29.  
Accessed: 07/08/2011.

<sup>326</sup> Ibid. P: 29.

<sup>327</sup> The Rome Statute of the ICC: *text of the Rome Statute circulated as document A/CONF.183/9 of July 1998 and corrected by process-verbaux of 10 November 1998, 30 November 1999, 8 May 2000, 17 January 2001 and 16 June 2002. The Statute entered into force on 1 July 2002.*  
Available: [http://www.untreaty.un.org/cod/icc/statute/english/rome\\_statute\(e\).pdf](http://www.untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf).  
Accessed: 06/19/2011.

<sup>328</sup> AMICC. The International Criminal Court and Children' Rights.  
Available. <http://www.amicc.org/docs/childrenFAQs.pdf>.  
Accessed: 10/08/2011.

<sup>329</sup> Schiff N. B. (2008). *Building the International Criminal Court* P: 2.

<sup>330</sup> AMICC. The International Criminal Court and Children' Rights.



Beside the above objectives, this thesis looks at the ICC as an important organ of international law that could strengthen the existing norms protecting children during conflict through accountability. A similar message was sent during the signing of the Paris Principles in 2009 which endorsed the commitment to strengthen the existing child protection framework by ensuring accountability and the global fight against impunity for crimes against children.<sup>331</sup>

In the same light, the UN Special Rapporteur Ms. Coomaraswamy, stated that there cannot be peace when individuals are not held accountable for such grave violations against children nor can there be any comfort when children are not given the support to deal with the psychological and physical consequences of such crimes.<sup>332</sup> To ensure such accountability, the ICC has been mandated with international jurisdiction. The ICC according to the Special Rapporteur has been instrumental in bringing the issue of children in armed conflict to the attention of the international community and ending the cycle of impunity for perpetrator of grave violations against children.

Thomas Lubanga Dyilo of the Democratic Republic of Congo was the first to be indicted by the ICC. He was charged for enlisting and conscripting children under the age of 15 years as child soldiers and of using them in hostilities between September 2002 and August 2003.<sup>333</sup> Lubanga was arrested on these charges in March 2006 and transferred to the ICC in The Hague. His case was the first to be tried by the ICC and also the first individual to be brought before the court for war crime solely for enlisting and conscripting children under

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Available: <http://www.amicc.org/docs/childrenFAQs.pdf>.

Accessed: 10/08/2011.

<sup>331</sup> Ministerial Follow-Up-Forum to the Paris Commitments and Paris Principle on Children Associated with Armed Forces or Armed Groups. September 29, 2009.

Available: <http://www.un.org/children/conflict/english/29-sept-2009-paris-principles-meeting.html>.

Accessed: 09/08/2011.

<sup>332</sup> Statement by SRSR Radhika Coomaraswamy at the Ministerial Follow-Up Forum to the Paris Commitments and Paris Principles on Children Associated with Armed Forces or Armed Groups 29 September 2009.

Available: <http://www.un.org/children/conflict/english/29-sept-2009-paris-principles-meeting.html>.

Accessed: 09/02/2011.

<sup>333</sup> Human Rights Watch. (January 23, 2009). *The International Court Trial of Thomas Lubanga*.

Available : <http://www.hrw.org/en/news/2009/01/22/international-criminal-court-trial-thomas-lubanga# Has the Lubanga trial had any impact on the recruitment of children in congo>.

Accessed: 12/07/2011.

15 and using them to participate in hostilities.<sup>334</sup> The ICC has also issued warrant of arrest for Bosco Ntaganda who collaborated with Lubanga and charged with similar crime.<sup>335</sup>

Thus, Lius Moreno Ocampo, ICC Chief Prosecutor, underlined that “regardless of the outcome of the proceedings of the Lubanga’s case, the case will represent a huge step forward in the struggle against these serious crimes against children. Child’s conscription destroys the lives and future of thousands of children around the world”.<sup>336</sup> The deputy prosecutor Mrs. Fatou Bensouda added that choosing to prosecute for recruitment and use of child soldiers will demonstrate that there will be no impunity for those that are responsible for these crimes committed in the DRC. She added that the conscription and use of child soldiers represent the most brutal and troubling legacies of war.<sup>337</sup>

The ICC is also investigating three leaders of the Lord Resistance Army in Uganda charged with the abduction of more than 25,000 children for use as child soldiers over the last 20 years. The group’s leader Joseph Kony and the two others are still at large and are also reported to be abducting and killing children in DRC.<sup>338</sup>

#### **4.6.1. Weaknesses of the ICC with regards to the recruitment and use of children in hostilities**

The adoption of the ICC and the intention that no crime considered a war crime or a crime against humanity will go unpunished was greeted with great expectation. Similar expectation was echoed in 2002 by the then secretary General on the United Nations Kofi Anan stating that the new ICC would deter future war criminals and bring nearer the day when no ruler, no state, no junta and no army anywhere will be able to abuse human rights

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<sup>334</sup> Ibid.

<sup>335</sup> Ibid.

<sup>336</sup> Topa I. (2007). Prohibition of child soldiering-international legislation and prosecution of perpetrators: *Hanse International Law Review. Vol .3. No 1.* P: 114.

<sup>337</sup> Gilbertson J. A. (2008). Little girls lost: Can international community protect girls soldiers? *University of La Verne Law Review. Vol. 29.* P: 241.

<sup>338</sup> Human Rights Watch. (January 23, 2009). *The International Court Trial of Thomas Lubanga.*

Available: <http://www.hrw.org/en/news/2009/01/22/international-criminal-court-trial-thomas-lubanga#> Has the Lubanga trial had any impact on the recruitment of children in congo.

Accessed: 12/07/2011.

with impunity.<sup>339</sup> But these expectations were simply described by Goldsmith as unrealistic dreams especially on matters concerning the recruitment and use of child soldiers and other war crimes. A good number of reasons and or weaknesses account for failure of the ICC. It is important to note here that most, if not all, the reasons will be limited to the recruitment of child soldiers.

One of the weaknesses of the ICC with regards to the recruitment and use of child soldiers is the fact that it failed to set a standard definition of a child which should be the limit for special protection as well as a standard definition of child soldiers.

Although it recognises the use of child soldiers as war crime, it however does not indicate other categories of children that do not actively participate in hostilities.<sup>340</sup> When determining the age of recruitment of children, the Rome Statute limited its protection to children under the age of 15 years as the case in the 1949 Geneva conventions and the CRC. Thus it failed to extend protection to children between 15 and 18 years.

More still, the 15 years limit is in contradiction with article 26 of the same Statute giving the court no jurisdiction over any person who was under the age of 18 years at the time of the alleged commission of a crime.<sup>341</sup> This implies on the one hand that there exists a prohibition on the recruitment of children less than 15 years and on the other hand, there is no criminal wrong doing in engaging children of 15 to 17 years to take part in armed conflict of which the ICC has no mandate to examine their actions.<sup>342</sup> According to Freeland, this situation may encourage the recruitment of children in the responsibility free age bracket, meaning that there will be no criminal responsibility under the specific war crime provision relating to child soldiers should one recruit children in the category.<sup>343</sup> Furthermore, it seems

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<sup>339</sup> Goldsmith J. (2003). *The Self-Defeating International Criminal Court: 70 University of Chicago Law review: 2003-heinonline*. P: 89.

<sup>340</sup> Waruzi B. T. (22 January 2010). How to define "child soldiers" debate at Lubanga's trial.

Available: [http://www.coalitionfortheicc.org/blog/?p=510&langswitch\\_lang=en](http://www.coalitionfortheicc.org/blog/?p=510&langswitch_lang=en).

Accessed: 12/07/2011.

<sup>341</sup> Art 26. of the Rome Statute of the ICC: text of the Rome Statute circulated as document A/CONF.183/9 of July 1998 and corrected by process-verbaux of 10 November 1998, 30 November 1999, 8 May 2000, 17 January 2001 and 16 June 2002. The Statute entered into force on 1 July 2002.

<sup>342</sup> Freeland S. (2008). *Mere Children or Weapons of War-Children and International Law: University of La Verne Law review 24657\_Juv\_29-1 Sheet No 30 Side B 04/8/2008*. P:50.

<sup>343</sup> *Ibid*. P:51.

as if the Rome Statute has completely avoided confronting the issue of the criminal responsibility of child soldiers.<sup>344</sup>

The Rome Statute did not put a ban on the recruitment and use of children in hostilities, instead it defined the conscription and enlisting of children as a war crime article 8 (2) (b) xxvi, and article 8 (2) (e) (Vii). Even though recruitment and use of child soldiers is considered a crime, the ICC can only take action when these crime is consider a serious art. 5(1). (The jurisdiction of the Court shall be limited to the most serious crime of concern to the international community as a whole or is in large numbers, article 8 (1) the Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes).<sup>345</sup> In this regard, the Statute did not define what aspect of recruitment of child is considered serious and what number is considered large scale. It can be perceived that the recruitment and use of children may still continue unpunished as long as it is not in a large scale.

Even though the State may be perceived as being unwilling or unable to prosecute perpetrators, the ICC has no jurisdiction to intervene immediately. It has to rely on the Security Council or the state in question to refer the situation to it in accordance with art.13 (b) & 14 (1) of the Rome Statute.

Being an independent criminal institution, it is important to be backed by its own enforcement body, but the ICC has no inherent enforcement powers but depends solely on member states to carry out arrests and transfer defendants to The Hague. The ICC finds it difficult to easily carry out arrests because it does not have its own police, it rely solely on states to enforce its orders and decisions.<sup>346</sup>

One important criticism of the ICC which might cause some divisions came from amongst African states in which they declare that the ICC is biased. The reason for this is that all the

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<sup>344</sup> Ibid. P:51.

<sup>345</sup> Ibid Art 8(1).

<sup>346</sup> Human Rights Watch. (January 23, 2009). *The International Court Trial of Thomas Lubanga*. Available: [http://www.hrw.org/en/news/2009/01/22/international-criminal-court-trial-thomas-lubanga#\\_Has\\_the\\_Lubanga\\_trial\\_had\\_any\\_impact\\_on\\_the\\_recruitment\\_and\\_use\\_of\\_children\\_in\\_congo?htm](http://www.hrw.org/en/news/2009/01/22/international-criminal-court-trial-thomas-lubanga#_Has_the_Lubanga_trial_had_any_impact_on_the_recruitment_and_use_of_children_in_congo?htm). Accessed: 12/07/2011.

cases that have been brought before the court are African defendants.<sup>347</sup> This criticism was made at the ICC review conference in Kampala- Uganda. Currently, the court is holding investigations on situations in Uganda, Central African Republic, Kenya, the Democratic Republic of Congo and the Darfur region of Sudan.<sup>348</sup> Whereas there are many other nations in the world where many children are being recruited and used in hostilities, such as in Burma (Myanmar), Afghanistan, Sri Lanka and Thailand, the ICC has however not made any move.<sup>349</sup> To this effect, the ICC's powers will not be respected and the recruitment of children will be continued with impunity. It is also criticised for the fact that its prosecution efforts take too much time to accomplish very little. An example can be seen in the case of Thomas Lubanga whose case began in 2006 and no outcome has resulted yet.

With regards to the above weaknesses and criticisms one can describe it as a toothless bull dog or a self-defeating institution according to Jack Goldsmith. Even though, according to the UN Special Rapporteur, "the ICC has made talking, venting and acting against war crime, and crimes against humanity legitimate and created a network of activists and agencies who are in position to support victims seeking justice for the crimes committed against them,"<sup>350</sup> a lot still needs to be done with regards conscription and use of children in hostilities.

The very first suggestion towards strengthening the child soldier provision in the Rome Statute of the ICC should consider as a war crime the conscription and enlisting of children under limit of 18 years. This also will be in line with art. 26 of the Statute which sets 18 years as the limit age for the court to charge children for war crime and to be brought before the court.

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<sup>347</sup> Padmanabhan V. (2010) From Rome to Kampala: The US Approach to the 2010 ICC review conference. Special report No: 55 of April 2010. P:10.

<sup>348</sup> Human Rights Watch. (January 23, 2009). *The International Court Trial of Thomas Lubanga*. Available: [http://www.hrw.org/en/news/2009/01/22/international-criminal-court-trial-thomas-lubanga#\\_Has\\_the\\_Lubanga\\_trial\\_had\\_any\\_impact\\_on\\_the\\_recruitment\\_and\\_use\\_of\\_children\\_in\\_congo?htm](http://www.hrw.org/en/news/2009/01/22/international-criminal-court-trial-thomas-lubanga#_Has_the_Lubanga_trial_had_any_impact_on_the_recruitment_and_use_of_children_in_congo?htm). Accessed:12/07/2011.

<sup>349</sup> Ibid.

<sup>350</sup> Coomaraswamy R. Opening remarks at the ICC Seminar "Understanding child Soldiers and the Need for Education, 24 August 2011. The Hague, the Netherlands.

Instead of criminalising the conscription, enlisting and use of children in hostilities a war crime, the Rome Statute of the ICC should rather place a complete ban on the conscription and every form of using children under the age of 18 years by both government and non-state armed groups during hostilities.

The Rome Statute of the ICC can be strengthened should it be given a universal jurisdiction which will enable it to abolish the number of exception that is making the court weak. This makes it unable to arrest or prosecute some people responsible for the conscription, enlisting and use of children in hostilities. To achieve a universal jurisdiction, every nation should be urged or assisted to ratify the Statute and to render every nation's equality and liability before the law.

For the ICC to succeed, requires the full support of all nations, firstly through the ratification and secondly by taking every possible steps to insure that its provisions are implemented.<sup>351</sup> Thus as of the 10<sup>th</sup> of October 2011 only 119 states have ratified the Statute of which 33 are African states.<sup>352</sup> The universal jurisdiction will be able to abolish the exception of State Sovereignty (which turns out to be a safe territory for most wanted abusers) and address even the travelling dictator exception.<sup>353</sup> As a result, all charged for conscription of children will be traced and arrested even if they are found in a State other than where the crime was committed.

Apart from having a universal jurisdiction, the ICC should be made independent from the Security Council. Though the SC may refer situations or cases of conscription and use of children in hostilities, it should not have any further control over the court. Furthermore, the five permanent members of the SC should be stripped of their veto powers.

Rather than relying on member states to arrest and transfer defendants to The Hague, the ICC should possess its own enforcement powers as well as reporting mechanisms. This will

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<sup>351</sup> The Coalition for the Rome Statute of the ICC. States Parties to the Rome Statute of the ICC 119 Ratification as of the 10 of October 2011.

Available: [http://www.iccnw.org/documents/RATIFICATIONbyRegion\\_10October2011\\_eng.pdf](http://www.iccnw.org/documents/RATIFICATIONbyRegion_10October2011_eng.pdf).

Accessed: 19/11/2011.

<sup>352</sup> Ibid.

<sup>353</sup> Goldsmith J. (2003). *The Self-Defeating International Criminal Court: 70 University of Chicago Law review: 2003-heinonline. P: 91.*

enable the arrest of all those charged and who are still at large or those in senior positions and are protected by their States.

Ever since the ICC came into force in July 2002, the seat has been in The Hague and all those prosecuted have been transferred and detained at the ICC head-quarters. The ICC's concentration in The Hague has been responsible for the slow process in the execution of its duties. To ensure speedy process, the ICC must embark on decentralisation process with the creation of regional courts to harmonise all proceedings.

#### **4.6.2. The ICC and the proliferation of small arms**

As mentioned in the previous chapter, the availability and circulation of small arms, helps to prolong conflict and is greatly responsible for the recruitment and use of child soldiers in large numbers. It has become the most weapons used in committing war crimes defined by the ICC. For example; crimes like genocide, crimes against humanity and war crimes are not committed with heavy artillery but by people who take up small arms against others in their countries.<sup>354</sup>

The production and circulation is carried out in both legal and illegal manners and supplied to rightful as well as wrong hands. Attempts to curb the proliferation have been made both at national, regional as well as international levels but success is still to be attained. Success in the control of small arms circulation will hardly be effective without employing the offices of the ICC.<sup>355</sup> But the Rome Statute of the ICC itself has not listed the excessive production of small arms as a war crime. Worse still, the use of small arms by adults and children has not been prohibited by the ICC. Nevertheless, when these weapons are used to commit

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<sup>354</sup> Murungi B. (2001). Campaign for an International Criminal Court. *Small arms and Humanitarian: Community. Developing a strategy for action.*  
Available: [http://reliefweb.int/sites/reliefweb.int/files/resources/C2EF49C121082011C1256C4000C4DCA-iansa-small-nov01htm#\\_Toc12165131](http://reliefweb.int/sites/reliefweb.int/files/resources/C2EF49C121082011C1256C4000C4DCA-iansa-small-nov01htm#_Toc12165131).

Accessed: 07/08/2011.

<sup>355</sup> Boivia A. (2005). Complicity and Beyond: International Law and the Transfer of Small Arms and Light Weapons. *International Review of the Red Cross*. Vol. 87 Number 859 September 2005. P: 482.

serious war crimes or genocide, the individual is held accountable while the manufacturers and suppliers are not penalised.<sup>356</sup>

Although the art. 8 (b) (xx) mentions employing of weapons, projectiles and material of warfare which are of such a nature as to cause superfluous injuries and sufferings as war crime it fails to specifically address the issue of small arms which constitute a global risk. The most unfortunate part of it is that the disastrous role of small arms in conflict is hardly noted. However, the undisputed reality is that the ever increasing influx of small arms in marginalised regions is a decisive catalyst for a conflict to turn into a full scale war.<sup>357</sup> For example, the 2003 Sudanese conflict witnessed the use of G3 and AK 47 assault rifles which lead to the death of over 400,000 civilians and forced about two million people to flee their homes. Little is been done by the ICC to bring the producers and suppliers to account.<sup>358</sup> However, the ICC Chief Prosecutor Luis Moreno Ocampo accuses the Sudanese Minister of state for humanitarian affairs Mohamad Ahmed Harun of having supplied the Janjaweed-militia with G3 assault rifles. In May 2007, a warrant was issued by the judge and no arrest was made.<sup>359</sup>

The campaign towards curbing the excessive proliferation of small arms will not be successful if the violators of the norms to limit arms transfers are not held accountable by attaching criminal responsibility to the act of supplying weapons to persons responsible for committing war crimes, crimes against humanity or genocide.<sup>360</sup> Beside the illicit supply of arms, the international criminal law should begin focusing on the arms supply in the form of “aid and abet” which have the same consequences. This act consists of assistance, encouragement and moral support which have substantial effects on the perpetration of

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<sup>356</sup> Ibid.

<sup>357</sup> Deckert R. (June 2007). Berlin Information -Center for Transatlantic Security (BITS). *The ICC issues warrant because of G3 supplies to Janjaweed*. English translation small arms newsletter of the German Campaign against small arms.  
<http://www.grip.org/bdg/g1754.html>.

Accessed 07/08/2011.

<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Boivia A. (2005). Complicity and Beyond: International Law and the Transfer of Small Arms and Light Weapons. *International Review of the Red Cross*. Vol. 87 Number 859 September 2005. P: 482.



crimes.<sup>361</sup> In an interview with the Human Rights Watch, Mr. Allan White, Chief Investigator of the SCSL stated that “if a person is the principal supplier of arms and knows that the weapons will be misused, then the person certainly would have individual criminal responsibility and be prosecuted”.<sup>362</sup>

It should be noted that the Rome Statute of the ICC establishes criminal responsibility if a person aids, abets or assists in the commission or attempted commission of a crime which includes providing of means (weapons) used in the commission of crimes over which the ICC has jurisdiction is sufficient to give rise to responsibility as an accomplice.<sup>363</sup> But not much has been done by the ICC to criminalise this group. Moreover, the International Review of the Red Cross noted that none of the Statutes of the current international Tribunal; (the International criminal tribunal of Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), the Special Court of Sierra Leone (SCSL) and the ICC) specifically identify for the purpose of establishing criminal liability for aiding in the commission of crime, the provision of weapons or other concrete military assistance as a contributing practical assistance.<sup>364</sup>

Even though the international criminal law provides for the prosecution of arms traffickers, this sector of the law remains largely unexplored. Thus the ICC should step up its programmes or adopt new provisions to criminalise the illicit production and supply of small arms. The ICC should also be able to press a moratorium on the regulation of the manufacturing and supply of small arms especially to countries undergoing political struggle. It should be given the jurisdiction to bring justice to those responsible for the illegal sale of small arms (including supplies in the form of aid), especially to non-state armed groups who in turn recruit and arm children below the age of 18.

Besides banning the conscription and use of child soldiers in hostilities, the ICC should also be looking at some of the factors leading to conflicts and the subsequent recruitment which include the proliferation of small arms as well as corruption.

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<sup>361</sup>Boivia A. (2005). Complicity and Beyond: International Law and the Transfer of Small Arms and Light Weapons. *International Review of the Red Cross*. Vol. 87 Number 859 September 2005. P: 482.

<sup>362</sup> Ibid. P: 484.

<sup>363</sup> Ibid. P:482.

<sup>364</sup> Ibid. P: 483.

#### 4.7. The Special Court of Sierra Leone (SCSL)

The special court of Sierra Leone also raised concern on the issue of conscription or enlisting of child soldiers and using them to participate in hostilities. Though not very significant in international arena, it will be equally important give a brief note on the Special Court of Sierra Leone and its role towards the plight of child soldiers.

The Special Court of Sierra Leone was established as a result of an agreement between the Government of Sierra Leone and the United Nations signed on the 16 of January 2002 following the UN Security Council Resolution 1315 (2000) of 14 August 2000. The court became the first international criminal tribunal to be funded entirely from voluntary contributions from governments of over 40 States worldwide in cash and in kind. The Court according to article 1 of the Statute of the Special Court has the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law committed in the territory of Sierra Leone since 30 November 1996. This also includes those leaders who in committing such crimes threatened the establishment and implementation of the peace process in Sierra Leone.<sup>365</sup>

Just like the Rome Statute of the ICC, the Special Court under Art 4 (c) considered the conscription and enlisting below the age of 15 years into armed forces or groups or using them to participate actively in hostility as a serious crime of international concern. The court shall therefore have power to prosecute persons responsible for these acts which is in violation of international humanitarian Law.<sup>366</sup>

It is unfortunate to note here the provisions of the SCSL did not address the issue of small arms even though as stated above contribute a lot towards the conscription or enlisting and the use of children in hostilities.

However, the Special Court failed to improve on the age limit of 15 years for the conscription and participation into hostilities but maintained the 15 limit set by previous international criminal law provisions. It also exempts persons under 18 years from being

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<sup>365</sup> The Statute of the Special Court of Sierra Leone, January 16, 2002, 2178 U.N.T.S. 145 [hereinafter Sierra Leone Special Court] (cited in text as Sierra Leone Statute). Art 1.

<sup>366</sup> Ibid Art 4.

criminalised. Nonetheless, since the international community has recognised the need to criminalise acts which amount to the recruitment or use of children to participate in conflicts, the special court constitutes an important step.

#### **4.8. Conclusion**

The participation of children in armed conflict has been condemned by many as it entails an immoral or inhuman practice. This practice has put the lives of children at great risk and transformed them into child soldiers, violent individual and fierce murderers. Earlier laws to bring this phenomenon to an end did not produce the expected outcome. Not only were these laws of little strength, but also violated by the public and even those who were expected to implement them. As noted earlier, most if not all those treaties contain mere prohibitions. This gave room for researchers to advocate for stronger laws or to strengthen the existing laws and finally to institute accountability through an effective justice system.

The Rome Statute of the ICC was adopted to take action on all violators. In its efforts to end the child soldiers issue, the ICC defined in stronger terms the conscription or enlisting of children in national forces or use of them in hostilities as a war crime. Though the ICC sent a stronger message to those out there still using child soldiers by arresting and charging some violators, much still needs to be done in the field to prevent further recruitment.

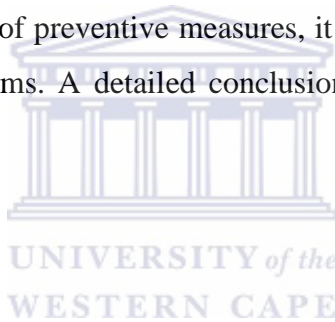
This thesis is therefore of the opinion that the ICC should also focus its attention towards those factors that are root causes for the involvement of children in armed conflicts, that is, curbing the proliferation of small arms (from control of production, supply and the prohibition of the use of these weapons).

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1. Introduction

This study was intended to analyse the issue of child soldiers in Africa and to establish the role small arms play in the recruitment and use of child soldiers in armed conflict. The main argument in this work was centered on the fact the existing legal instruments for the protection of child soldiers were not sufficient to produce a satisfactory result in Africa. This research discussed the role of International human rights law and humanitarian law in the protection of children in armed conflicts and it also examined international criminal law as a strengthening mechanism. As part of preventive measures, it has advocated the reduction of the illicit proliferation of small arms. A detailed conclusion and recommendations of the findings will follow.



#### 5.2. Conclusion

Contemporary conflicts in Africa and elsewhere in the world have left children on the disadvantaged side and often at very high risk. Most, if not all children recruited to take part in hostilities have ended up with either injuries, trauma or even lost their lives. No child soldier, whether taking direct part in hostilities or supportive role, has ever given a positive story. The darkest and the most difficult period of the lives of these children is their forceful or deceitful recruitment into armed conflicts. Even those who managed to survive find it difficult to fit in the society or recover their lost childhood years.

Steven Freeland noted that “for every one of the estimated 800,000 children being forced to participate in armed conflict, there is childhood lost. Those that survive the ordeal are often traumatised and that it becomes practically difficult for them to recover in any way the lost

years, lost sensitivities, lost hope, lost trust and lost optimism”.<sup>367</sup> The most unfortunate part is that some of the children are forced to join at very young ages, some as young as seven years and are compelled to carry out dangerous tasks.

Chapter two discussed the legal campaign towards ending the recruitment and use of child soldiers in situations of armed conflict. The campaign saw the adoption of numerous treaties and conventions in the sectors of human rights law, Humanitarian law, Labour law as well as criminal law. It is important to note that laws are all interrelated and they play important roles in the campaign.

The CRC set the standards for the protection of the children during armed conflict. Article 38 (2) of the Convention required states parties to take “all feasible measures to ensure that persons who have not attained the age of fifteen years do not take direct parts in hostilities”. The age limits for the recruitment of child soldiers article 38 was criticised. On the basis of the criticisms that the CRC allows 15 years for participation in hostilities and because of the need for stronger terms, negotiation started for an Optional Protocol to rectify and strengthened international law on the participation of children in armed conflicts.

The Optional Protocol raised the minimum age for the participation of children in hostilities, for the recruitment of children into armed groups to 18 years. It also instituted in stronger terms a ban on compulsory recruitment, while voluntary recruitment into national armed forces was left at the mercy of each state to determine the age limit.

The ACRWC was adopted in 1990, by the Organisation of African Unity at a regional level. Though no age limit was stipulated, article 22 (2) of the Charter sent a stronger prohibition for the recruitment of children based on its definition of a child, urging states parties to take “all necessary measures to ensure that no child shall take part in hostilities and refrain from recruiting any child”.

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<sup>367</sup> Freeland S. (2008). Mere children or war weapons-child soldiers and international law: University of La Verne Law review 24657\_Juv\_29-1 Sheet No 30 Side B 04/8/2008. P: 53

The International Labour Organisation under Convention 182 also made its mark by classifying the forced or compulsory recruitment and use of child soldiers as the worst form of child labour.

Besides the above legal contributions, the UN embarked on dimension in its campaign to end the inhuman practice of recruiting and using children in hostilities. The issue of child soldiers also appears on a number of Resolutions passed by the UN Security Council with the aim of protecting children from armed conflicts.

It should be noted here that the continuous moral prohibition by law on will not achieve the intended goal if the issue is not approached from the angle of the causes of child recruitment. Chapter three therefore approached the campaign by looking and the factors facilitating the recruitment and use of child soldiers, which included the proliferation of small arms, the contemporary nature of warfare which contributed enormously during this period the continent of Africa championed the course of internal conflicts, the recruitment and use of child soldiers and the illicit circulation of small arms. The thesis brought to the fore that not only are children recruited in various capacities but also there, other evils being perpetrated such as the use of these weapons by and on children, which have left them with long term consequences and injuries.

The involvement of the Rome Statute on the ICC was also discussed in chapter four. The ICC added its voice by taking criminal action on the persistent violators of the standards protecting children during situation of armed conflicts. The provisions on article 8 (2) (b) xxiv and 8 (2) (e) vii, of the ICC define conscripting or enlisting of children under the age of fifteen years into the national armed forces or armed groups or using them to participate in hostilities as a war crime. The ICC with its mandate of prosecuting all those responsible for such crimes was expected to enforced the existing standards protection children during conflict and to be a threat to deter and future attempts. The ICC has already arrested and prosecuted some personalities charged with the recruitment and use of children but has made little impact as compared to the situation on the field.

## 5.2. Recommendations

In order for the international community to be successful in its campaign on the issue of child soldiers the following suggestions need to be put into practice.

To begin with, the weaknesses in international legal norms need to be re-looked at as follows: The standards set by article 38 of the CRC for the recruitment and use of child soldiers in hostilities should be reviewed and the age limit should be raised to 18 years. The new standards should be applicable without exception to all states and non-state actors. Domestication and application of the reviewed standards by all countries should be an obligation.

The CRC Committee on the Rights of the Child which was not given the rights to respond during emergency, or during conflict, should be given the mandate to respond to situations of emergency and to take an “on the spot” recommendation. It should also be given the mandate to accept individual complaints and to assist state parties with the technical and financial capacities to overcome challenges.

Since most states benefit from the exception concerning voluntary recruitment set by OPAC, it is worthwhile to advocate for complete elimination of the term voluntary recruitment. Furthermore, a straight 18 position should be adopted as a universal standard for the recruitment and use of children into hostilities or, better still, OPAC should place a complete ban on the recruitment and use of all persons under 18 years whether directly or indirectly.

The Africa Charter on the Rights and Welfare of the Child applauded for adopting firm position on the issue of child soldiers needs willingness of its member’s states to achieve its motive. Similar the Committee of Experts should be given the necessary financial, material and human support to overcome challenges.

The UN should exert consistent pressure and take action against persistent violators especially on states that always feature on the annexes of the Secretary General reports. The

Security Council should make sure that its sanctions are taken seriously, not just as diplomatic threats.

A global respect on the call for the prevention, eradication and control of small arms proliferation cannot be achieved based on a UN plan of action. To achieve a considerable campaign to combat, prevent and eradicate small arms in all aspects there should be the adoption of an International Convention on Small Arms.

The advocated convention on small arms should be able to determine the intensity of the problem of small arms, determine where the impact is greatest and which human group is highly endangered, and take global measures to prevent, combat and eradicate future proliferation and to establish an inclusive action programme for the campaign. Production and transfers of these weapons should also be regulated globally.





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### **Security Council Resolutions**

Security Council Resolution 1261 of 1999: Adopted by the Security Council at its 4037<sup>th</sup> meeting of 25 August 1999. S/RES/1261/1999.

Security Council Resolution 1314 of 2000: Adopted by the Security Council at its 4185 meeting on the 11 August 2000. S/RES/1314(2000).

Security Council Resolution 1379 of 2001, adopted by the Security Council at its 4423<sup>rd</sup> meeting on 20 November 2001. S/RES/1379 (2001).

Security Council Resolution 1460 of 2003, adopted by the Security Council at its 4695<sup>th</sup> meeting on 30 January 2003 S/RES/1460 (2003).

Security Council Resolution 1612 of 2005, adopted by the Security Council at its 5235<sup>th</sup> meeting on 26 July 2005. S/RES/1612 (2005).