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**MPALA INTERNATIONAL UNIVERSITY  
FACULTY OF LAW**

**RECRUITMENT OF CHILD SOLDIERS IN  
ARMED CONFLICTS IN THE GREAT LAKES  
REGION: THE ROLE OF LEGAL AND HUMAN  
RIGHTS INSTRUMENTS IN THE PROTECTION  
OF CHILDREN'S RIGHTS**

**BY**

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### Declaration

I Ssemwanga Fredrick hereby declared that this work is my own, original and has not been submitted to any other University for any other or similar award.

Signed  Date 9/11/2011

SSEMWANGA FREDRICK

Submitted and approved under the supervision of my Supervisor Mr. Busingye Godard

Signed  Date 9/11/11

## Dedication

This research report is dedicated to all those CHILDREN who have survived the dangers of armed conflicts in different parts of Africa.

## Acknowledgement

I take this opportunity to thank all those who have positively contributed to the success of this noble task.

I particularly thank Mr. Busingye Godard for supervising me and for the guidance and support he offered throughout this journey.

Lastly, I thank my family and friends for the support, spiritual and financial, that you extended to me as I struggled to have this work put together.

May God reward you abundantly

## Acronyms and Abbreviations

NGOs .....	Non Governmental Organizations
ICC .....	International Criminal Court
DRC .....	Democratic Republic of Congo
LRA .....	Lords Resistance Army
CRC .....	Convention on the Rights of the Child.
UPDF .....	Uganda People's Defence Forces
STDs .....	Sexually Transmitted Diseases
IDPs .....	Internally Displaced Camps
ARLPI .....	Acholi Religious Leaders Peace Initiative
GUSCO .....	Gulu Support the Children Organization
DDR .....	Disarmament, Demobilization and Reintegration Program
UNICEF .....	United Nations International Children's Emergency Fund.

## List of Statutes

1. The Amnesty Act of 2000
2. Penal Code Act Cap 120, Laws of Uganda
3. The Uganda People's Defense Forces Act of 2005
4. The Children Act Cap 59, Laws of Uganda.

## International Instruments

1. Geneva Declaration of the Rights of the Child of 1924
2. Universal Declaration of Human Rights (UDHR) 1948
3. Geneva Conventions of 1949
4. Declaration of the Rights of the Child of 1959

5. International Covenant on Economic, social and cultural Rights (ICESCR) 1976
6. International Covenant on Civil and Political Rights (ICCPR) 1976.
7. Declaration of the Rights and Welfare of the African Child, 1979
8. African Charter on Human and People's Right. (ACHPR) 1981
9. African Charter on the Rights and Welfare of the Child
10. Convention on the Rights of the Child (CRC)
11. International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
12. Rome Statute of the International Criminal Court (ICC), 2002
13. Maputo Declaration on the use of children as child soldiers.
14. Convention on the Elimination of all forms of Discrimination against Women (CEDAW)

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## CHAPTER ONE

### 1.0 INTRODUCTION AND BACK GROUND TO THE STUDY

#### 1.1 Introduction

The Great Lakes Region which constitutes of Uganda, Kenya, Tanzania, Rwanda. The Democratic Republic of Congo and Burundi is a region that has been invariable embroiled in wars and conflicts spanning decades. Broadly, a number of factors are responsible for this state of affairs ranging from social, cultural, economic and political factors. More specifically however, divergence in political thought and opinion, ethnicity, imperialistic tendencies, the struggle for wealth and natural resources, national movements for liberation and territorial ambition have been cited as some of the factors fueling civil strife in this region<sup>1</sup>.

The immediate effect of these wars has been death of millions of people, displacements and destruction of property and infrastructure. Evidently a death blow has also been dealt on any development efforts in the region thus leading to poverty and suffering. Regional governments channel a lot of national revenue to respond to attacks and /or organize peace talks that often do not deliver any meaningful results. The democratic process which is an ideal for development has also been slowed down by this political instability.<sup>2</sup>

Outstandingly, all these conflicts have been able to defy all odds and persist in spite of enormous efforts by the concerned governments to end them and restore peace and harmony. To explain this, it has been found that a systematic and thorough process of recruitment<sup>3</sup> of ragtag armies constituted mainly of children as young as 12 years has fundamentally contributed to sustaining rebel armies<sup>4</sup> other factors notwithstanding. Among other reasons, children are easy targets for capture and abduction and often offer effective fighting forces suitable to the interests of perpetrators of rebellion. They also less question orders while others are easily impressed into any arrangement where they will be feared.<sup>5</sup>

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<sup>1</sup> Kathryn C. troyer, The Mental –Health Needs of Child Soldiers in Uganda: A Case Study of structural Violence, the University of Denver at [http://www.du.edu/korbel/cord/symposia/2006/2006\\_troyer.pdf](http://www.du.edu/korbel/cord/symposia/2006/2006_troyer.pdf).

<sup>2</sup> Great Lakes Regional Consultation on the protection and development of children affected by armed conflict, 6-8 December 2000, Kampala Uganda, conference report.

<sup>3</sup> The Machel Review 1996 – 2000. A critical analysis of progress made and obstacles encountered in increasing protection for war affected children.

<sup>4</sup> Ibid I, at any one given time, more than 300,000 children under the age of 18 are being used in hostilities as soldiers – not just as targets but perpetrators of atrocities.

<sup>5</sup> Human Rights Watch, the Scars of Death: children abducted by the LRA in Uganda, September 1997



As such, the rebels in the most dehumanizing manner raid villages in war zones where they abduct defenseless children and forcefully conscript them into their forces. This is followed by rudimentary training which prepares them for the war front. Many of them die there while a few lucky ones escape back to their villages. The children are also faced with many other challenges such as exhaustion, hunger, dehydration as well as untreated injuries and diseases. This is on top of separation from their families and disruption or total loss of their education.

Most troubled regions of the Great Lakes Region particularly Northern Uganda have seen a return of some degree of normalcy and peace at least for the last three years, thanks to the attempts of the collapsed Juba Peace talks and the just concluded Operation Lightning thunder.<sup>6</sup> It is however important to note that the failure to capture or kill Joseph Kony or at least sign a peace agreement stakes this calm. As long as there are still children in the region whether former child soldiers or not, fresh abductions can take place and war can resume. Already, it is feared that many children have been captured in the Congo by fleeing Kony rebels implying that fresh attacks on children can happen and a cycle of war continues. A generation of children has been lost to war thus destroying not only their own future but that of the community as a whole<sup>7</sup>. Even if these children are not mobilized externally, they are capable of mobilizing themselves to involve in all sorts of mischief.

Consequently, it is imperative that efforts be taken to deal with the issue of child soldiers. So far, civil society and Non Governmental Organizations (NGOs) assisted by government have spearheaded the rehabilitation of former abductees and provided them with psychosocial treatment. Whereas these efforts can not be underestimated, it is my considered opinion that there is a lot more the government can do to address the issues of child soldiers.

At a glance, there is no evident legal inclined effort that has been undertaken by the government.<sup>8</sup> There is no proper policy or law dealing with child soldiers specifically or a separate court to deal with crimes committed in the war front. There are no specific penalties put in place for those who recruit children and generally no prohibitive law for any future probable recruitment in spite of the gravity of this problem. Government has also neither undertaken efforts to educate people about

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The Daily Monitor, March 17, 2009 Northern Leaders criticize withdrawal. Pg 4.

A Save the Children Conference Report of the Great Lakes Regional Consultation on Protection and Development of children affected by armed conflict, 6<sup>th</sup> to 8<sup>th</sup> December 2000, Kampala Uganda.

Ibid

their problem. Government has also neither undertaken efforts to educate people about their rights nor cautioned them about dangers of violating International Humanitarian law.

This research will review the efforts so far undertaken by the government and civil society to address the problem of child soldiers and then explore the steps that can be taken in form of revitalizing and empowering the entire legal mechanism to address the problem of child soldiers. The research will focus on the legal mechanism to address the problem of child soldiers. The research will focus on the legal system mostly because it offers an enhanced preventive mechanism and has actually not been utilized as much as it should have been. The legal system shall include the law makers, the law itself and the judicial framework. Further, the research will view child soldiers and their plight using the lens of children's rights as provided in Uganda's Municipal legislation as well as Regional and International instruments.

**1.2 Back ground to the Study**

The conflicts in the Great Lakes Region of Africa date as far back as pre-colonial times when several European states were scrambling for a part of mother Africa. They faced resistance in areas<sup>9</sup> that had organized leadership and a spirit to defend their land. When they eventually overpowered these areas attributably due to their superior weaponry and ruled, mild resistance against them still persisted throughout their stay. This resistance took very many forms ranging from protests, agitation to armed resistance in other areas. How the colonial masters responded<sup>10</sup> to this resistance has been found to have a bearing on the conflicts that emerged in the region in post colonial times. For instance in Uganda, the British pitied Buganda against Bunyoro kingdom and later when independence was granted, Buganda was given special status plus many other privileges<sup>11</sup> as reward. This however was to be short-lived.

As independent Uganda crawled to it's feet, there was a clash between the Kabaka of Buganda, Edward Mutesa who was the ceremonial President and Apollo Milton Obote who was the executive Prime Minister. The root of the struggle was Buganda Kingdom's special status<sup>12</sup> enjoyed within

<sup>9</sup> In Uganda, Bunyoro Kingdom strongly resisted colonial rule led by their fierce leader Omukama Kabalage. In other parts of East Africa, several rebellions sprouted especially in the late 1950s as the struggle for independence took shape. In Kenya, the Mau Mau rebellion is reckoned for having given the Europeans a test of their own medicine while the Maji Maji rebellion in the then Tanganyika also offered considerable resistance.

<sup>10</sup> Ibid

<sup>11</sup> Buganda kingdom was given the two counties of Buyaga and Bugangazi which were cut from Bunyoro as a reward. This sparked off a conflict that subsequent leaders of Uganda had to grapple with.

<sup>12</sup> Special status was accorded by the 1963 Constitution of Uganda.

Uganda which was meant to be a sovereign state akin to a republic. This power feud reached its historical climax when Obote's forces attacked the Kabaka's palace at Lubiri in 1966 and drove him and his forces out into exile where he later died. This incident is of great significance in Uganda's history in a twofold manner. Firstly, the 1962 independence constitution was overthrown marking the start of disrespect for constitutionalism by future Ugandan leaders. Most importantly however, gun rule which later defined the method of change of power<sup>13</sup> in Uganda was born. Remarkably, all the turbulence Ugandan has faced is largely attributed to this one incident.

Fast forward to 1986 and a then popular liberation movement, the National Resistance Movement (NRM) took over power from General Tito Okello Lutwa after a five year guerilla struggle. Almost immediately, new conflicts started or continued in most parts of Uganda. One having its roots in Alice Lakwena's defeated rebellion the Holy Spirit Movement however stood out led by Joseph Kony her cousin. The Lords Resistance Army started mainly as an Acholi led war supported by elders and religious leaders. Its agenda was however not clear with its leader stating that he desired to establish leadership based on the Ten Commandments whereas many of his early supporters thought he wanted to liberate them. This resistance has persisted for now over two decades taking many twists and turns that were defined by various factors. At one point, the rebellion was reported to have supported from the Sudan government which was revenging alleged Ugandan support for John Garang's SPLM that was at the same time giving Sudan a hard time. Other support was said to come from the Acholi in the Diaspora.

All the above factors notwithstanding, the insurgency which has lasted as long as the ruling NRM regime has had a heavy toll on Northern Uganda claiming millions of lives and internally displacing millions more. By 2007, it was estimated that over 12 million people displaced<sup>14</sup> were living in IDP camps spread all over Northern Uganda. Infrastructure in the region was in tatters and in total disrepair while the social fabric was in a dire state. The people in the region had become dependent on donor aid with agencies such as the World Food Programme (WFP) permanently stationing there to help feed the hungry population that could not produce crop in the region and these have

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<sup>13</sup> There has virtually never been any peaceful change of power in Uganda. Amin took power in 1971 through a military coup. He was overthrown by joint forces of Tanzania and Uganda dissidents there. Obote II was overthrown by General Tito Okello Lutwa who was also pushed out by the gun.

<sup>14</sup> Rights of Children in conflicts; an evaluation of Japanese official development assistance in Acholi land, Northern Uganda. Pg 15, the Internal Displacement Monitoring Centre (IDMC) 2007 reported number of IDPs in northern Uganda as of November 2007. The number had reduced from 2 million people at the height of the displacement around 1998 to 2000.

continued to stay there offering all sorts of assistance ranging from material support to medical and psychosocial treatment for trauma suffered as a result of war and long suffering.

Over the period the insurgency has dragged on, the government of Uganda has attempted various measures to end the war spending billions of shillings every year on this war as a priority. The predominant measure has been armed attacks commanded by all the various army generals the country boasts of but all this has yielded no results or short-lived and often meaningless moments of peace to the people in the region at various stages of the war. These operations have been punctuated by several failed attempts at peace negotiations often between a somewhat unwilling government and a rebel outfit with no precise agenda or political programme. The two most prominent ones were the 1994 one brokered by Betty Bigombe a then former Minister from Northern Uganda and the recently collapsed Juba Peace Talks started in 2006<sup>15</sup> and mediated by Riek Machar of the Southern Sudan government. This latter one attracted a lot of attention and support from the hitherto unsupportive international community and availed a new spirit of optimism to the suffering people, the government and other stakeholders.

Some semblance of peace and normalcy began to once again descend on Northern Uganda following the cessation of hostilities as part of the process of negotiations and the assembly of the rebels outside Uganda in Ri Kwangba. A good number of people left IDP camps and returned to their homes after 23 years and started normal life carrying out trade and opening up gardens. Local Acholi reconciliation processes notably Mato Oput took center stage with returning former rebels reconciling with their communities and families. The UPDF started withdrawal from some of the areas they previously occupied and currently, a police force is being deployed in the area.

As the negotiations went on however, there were various factors that hung over their success. One big one and probably the one which predicted the success of the negotiations was the arrest warrant issued by the International Criminal Court (ICC) for the arrest of Joseph Kony and four other commanders some of whom have since died. These warrants followed a 2004<sup>16</sup> request by the government of Uganda forwarded to the ICC to take over the issue of Kony that had then been

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<sup>15</sup> The New Vision, December 15, 2008, pg 3 – Chronology of the Peace Talks. On September 4<sup>th</sup> 2006, peace delegates reassembled in Juba for a third round of talks following the signing of a cessation of hostilities agreement on August 26<sup>th</sup>. Talk resumed on September 7<sup>th</sup>.

<sup>16</sup> The government referred the LRA rebellion to the ICC for investigation. In 2005, the court indicted LRS chief Joseph Kony and Commanders Okot Odhiambo, Dominic Ongwen, Vincent Otti, Raska Lukwiya and Charles Tabuley and issued arrest warrants for them.

declared out at the eleventh hour refusing to sign thus leading to the collapse of the peace talks that had been christened “peace joke” by some skeptics.

The government of Uganda which now thought it had reclaimed credibility for being a party willing to negotiate and the rebels not willing found an opportune moment to now respond with what it does best, military attacks. In November 2008, the operation Lightning Thunder started in the Garamba Forest National Park of the Democratic Republic of Congo with the aim of wiping out Kony rebels and possibly capturing or killing Kony and his commanders. The merits of this operation are debatable but what is important for this paper is that no clear success has been recorded at least so far. Peace in the North hangs in limbo as long as Joseph Kony and his commanders remain at large.

As stated earlier, it is the view of this author that the recruitment of children as soldiers by the rebels has been the life hood of the long rebellion. These children in the early days of the war were captured or abducted from both their homes as well as schools. The abduction<sup>17</sup> of the 139 girls from the Aboke School in Apac district stands out as one of the major defining moments of child abduction. Many other innocent children were also abducted and forcefully conscripted into rebel ranks. Adults owing to their understanding and possessing better judgment were never captured but instead killed by their own children under orders from the rebels.

Given the duration of the rebellion, it is evident that a whole generation of children<sup>18</sup> from the region has been denied their childhood and a healthy regeneration distorted. Whereas some have been resettled, many more linger on their own harboring thoughts of mixed revenge, regret and remorse which if exploited by anyone can have them possibly reengaging in rebellion. Now that those who recruited them are at large, there is so far no a hundred percent guarantee that those who recruited them are at large, there is so far no a hundred percent guarantee that they may be recaptured and used again in rebellion. As the operation against fleeing Kony rebels raged on in Garamba Forest national Park in the DRC, reports indicating that the rebels were freshly capturing children to rebuild their forces and launch a counter attack were released. The war has taken a spillover effect to become a regional war implying that child soldiers recruited in any of the countries involved affect all the others thus necessitating reaction.

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<sup>17</sup> Saturday Monitor March 21<sup>st</sup>, 2009, pg 3 the Untold Story of the last Aboke girl.

<sup>18</sup> Case Studies, Adolescent programming in conflict and post conflict situations – UNICEF Surviving the war in Northern Uganda, May to July 2001

By 1998, the issue of child soldiers particularly with regard to the Kony rebellion had captured quite considered attention from several stakeholders<sup>19</sup>. These appreciated the nature of the problem and geared efforts to deal with it. Their response as thus far been centered on psychosocial rehabilitation as well as economic and social intervention through provision of food, clothing and shelter. There has evidently been neither visible legal intervention nor any other efforts taken in that course. It is probably an effort that can be spearheaded by the government but it has also shown no action in this area.<sup>20</sup>

It is noteworthy however that there is a body of law that addresses the plight of children caught up in armed conflict both in Municipal as well as International and Regional instruments. There are also very many structures established in Uganda to deal with children's affairs. Their success in as far as child soldiers are concerned is however hinged on government will/ commitment and what it does or can do to enforce them. The administrative and enforcement mechanisms of government should accordingly come in handy if child soldiers are to be dealt with.

This research will against the backdrop of social response examine ways in which legal intervention can be employed to deal with the damage already done to children recruited as soldiers, established legal mechanisms to ensure future protection of children, set clear penalties for any future perpetrators of rebellion and recruitment and ensure that institutions responsible for ensuring children's rights are held accountable.

### **1.3 Statement of the Problem**

There is currently relative peace in Northern Uganda thanks to the various interventions the latest being the collapsed Juba Peace Talks and the Operation Lightning Thunder. Despite the serenity, the aftermath of war in the region can not be avoided. The devastation done over the last 23 years is vivid and the effects of war will inevitably continue to be felt and seen t least for some time into the future.

In it's midst, the country is confronted with the issue of child soldiers but unfortunately refuses to give it the due attention it deserves. These were the main players in the war, leading the frontline, looting villages, abducting and killing fellow children, carrying out intelligence for the rebels and planting landmines among many other assignments. Whereas many died in the war, others managed

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<sup>19</sup> Ibid

to escape and are struggling to survive in their communities and rehabilitation centers albeit under the weight of stress, trauma, and feelings of bitterness, revenge, guilt consciousness, regret, low self esteem and a host of all inexpressible trauma related conditions.

Furthermore, whilst the issue of child soldiers is viewed merely as a psychosocial problem requiring psychosocial therapy, I contend that it is actually a much more serious issue. It is not just an economic or social or military issue but also a legal issue necessitating appropriate legal response. The law has a significant bearing and relevance to the protection of children in armed conflict. The misconception that it is a meager issue actually explain the kind of response it has drawn which rotates around provision of psychosocial therapy and economic or social response for example resettlement, provision of education, food and medical assistance.

Without shrouding or underestimating these efforts, this research will seek to explore all ways through which the legal mechanism can be used to address the issue of child soldiers. So far, it is not evident that any culprit has been prosecuted in any court of law let alone establishment of a law to prohibit future recruitment of child soldiers. More so the war in the North and the peace as well as the failure of the Operation Lightning Thunder to not only wipe out Kony but capture or kill him. Moreover the rebellion has now taken a new shape regional in nature with the war spilling over to the Democratic Republic of Congo and drawing in the involving of other states and entities such as the MONUC forces and the Central African Republic.<sup>21</sup>

Inasmuch as one is expected to laud achievements so far made and not to spell doom, it does not imply refusal to deal with the now vivid recipes of future conflicts in the region. It only takes reorganization of a few rebels, fresh abduction and recruitment of children and the conflicts takes shape again<sup>22</sup>. Former child soldiers may indeed be few but they still remain a time bomb that can be sparked off with ease if their needs are not responded to. They can be forced back together with fresh abductees into rebellion voluntarily or involuntarily.

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<sup>20</sup> Ibid

<sup>21</sup> The Daily Monitor, March 17, 2009, Highlights of Operation Lightning Thunder, by Tabu Butagira, pg. 4

<sup>22</sup> Addressing the Parliamentary Committee on Defense on the state and results of the operation lightning thunder on 2<sup>nd</sup> April 2009 in Parliament, the chief of Defense Forces did not rule out the possibility of future conflict in the region especially if the achievements of the Operation were not furthered by other interventions.

Kony has also recently<sup>23</sup> been reported to be abducting children in the Congo to rebuild his forces. This region is notorious for having child armies with one former rebel leader from there Thomas Lubanga<sup>24</sup> now arraigned before the ICC charged for recruiting child soldiers. It is therefore imperative that other government efforts be continued but this should also include bold steps taken through the legal channel to deal with perpetrators of war as well as establish legal mechanisms to operate as a check for any future possibility of conflict involving the recruitment of innocent children into rebel ranks or their exploitation in whatever way. It is also time for the government to implement the International and regional instruments it has signed to protect the rights of children especially those caught up in war situations.<sup>25</sup>

#### **1.4 Objectives of the Study**

The aims and objectives of this research shall include inter alia;

1. To understand how and why the recruitment of children as soldiers in rebel forces sustains long conflict in the Great Lakes Region.
2. To review the efforts of government as well as other agencies in addressing the plight of these children over the last ten years, that is, the period 1998 to 2008.
3. To investigate the rights of Children violated when they are forcefully recruited as child soldiers and enlighten on the importance upholding them paying particular regard to their vulnerability.
4. To review the Municipal law and International and regional instruments dealing with child protecting in situations of armed conflict.
5. To identify the role of the legal system in ensuring the rights of the child in light of the problem of recruitment of child soldiers. The legal system shall include Municipal law, International and regional instruments plus the judicial framework.

#### **1.5 Hypothesis**

The recruitment of child soldiers sustains civil wars and conflicts in the Great Lakes Region through providing an easy recruitment process and indispensable cheap effective fighting forces at the battle front.

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<sup>23</sup> The Sunday Vision , June 7, 2009 , LRS has kidnapped 200 villagers including 50 children in Dakwa, a village in North Eastern Congo about 200 KM from it's boarder with The Central Africa Republic. The rebels looted, burnt houses, shops, a health center and a catholic mission.

<sup>24</sup> <http://www.hrw.org/sites/default/files/features/cong-launch/index.html/>

<sup>25</sup> John Felton, Are more aggressive efforts needed to protect children at <http://www.cumc.columbia.edu/dept/sph/popfam/fm/faculty/documents/CongressionalQuarterlyJuly2008.pdf>.



There is an existing body of law in Municipal legislation as well as Regional and International instruments which establishes children's right and is meant to ensure their cognizance, observance and enforcement at all times including times of war and conflict.<sup>26</sup>

It is the role of government to take all possible steps to ensure that rights of children are observed and enforced at all times including times of war.

## **1.6 Scope of the Study**

This research will cover mainly Northern Uganda which has faced a longstanding conflict that has drawn very many children onto the frontline and experienced unspeakable abuse of children's rights.

The author will not hesitate to draw examples from Uganda's immediate neighbor, the Democratic Republic of Congo with which many commonalities are shared pertaining to conflict. Joseph Kony the leader of the Lords Resistance Army (LRA) has escaped from Uganda to the Congo creating spillover effect of the conflicts and reshaping into a regional perspective.

Thomas Lubanga, a former rebel leader from the Congo has also been arraigned before the International Criminal Court to answer to charges of child soldiers recruitment. This occurrence will provide useful insight to this research.

The final report of this research will have five chapters.

The first chapter will have the main introduction, a historical background to the study, the objective of the research, it's rationale/ significance, it's scope, literature review, hypothesis and the methodology.

The second chapter will show the various rights of children violated when they are forcefully recruited as child soldiers and enlighten on the importance of upholding them paying particular regard to their vulnerability.

The fourth chapter will show how and why the recruitment of children as soldiers in rebel forces sustain long conflicts in the Great Lakes Region.

The fifth and last chapter will have the conclusion and the main recommendations of the research.

### 1.7 Rationale / significance of the Study

Capture of children and subsequent recruitment in rebel ranks which involves rigorous training affects the psycho-social wellbeing of the children and inhibits their physical growth and development. Missing education and participation in their communities follows suit with resultant breakdown in community organization and order.

Child recruitment into armed forces creates a cycle of war if not responded to using all the available means. There are laws available to deal with this issue in the bill of Rights covered under Chapter 4 of the 1995 Constitutional of Uganda, municipal legislation as well as various Regional and International instruments dealing with protecting of children under all possible circumstances including war. The recruitment of children which has led to the violation of children's rights among which is the deprivation of life or threat to life, separation from their families, education disruption, displacement as well as torture and abuse has been responded to adequately using the stated legal regime.

Furthermore, the government through its elaborate machinery is charged with the role of ensuring that the rights of children are upheld and protected. The most effective one as far as children's rights and their protection is concerned is the entire legal system which includes the lawmaking institutions, the judiciary which implements the law and the enforcement mechanism which is to be found in the Police Force.<sup>27</sup>

### 1.8 Literature Review

There is literature available on the issue of child soldiers but this has mainly dwelt on exposing or showing the plight of children recruited into armed forces. It also offers certain general recommendations on how to arrest the worsening situation. It however does not specify the role of

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<sup>26</sup> Protection of children in war and conflict, a compilation of laws and legal standards. Law and Society Trust, Colombo, 2001

<sup>27</sup> J.M.Aliro Omara, the role of national institutions in the protection of human rights in armed conflicts, FHRI –Regional conference in Northern Uganda, 6 – 9 July 1997.

the legal system in addressing the problem of child soldiers as a way of upholding the rights of the child.

The internet is rich in information on child soldiers and particularly helps to show the extent of the problem in Northern Uganda which is the area of study. Following the current trial of Thomas Lubanga for child soldier recruitment, there is also invaluable information on child soldiers in the Democratic Republic of Congo which will be used.

**In Child Soldiers; Rehabilitation and Social Reintegration in Liberia by Teferi Sendabo<sup>281</sup>** the author in his research sought to understand why children are recruited into armed forces and how, after the war, they can be reintegrated into normal life. He found that children obey orders without questioning unlike adults thus the interest in recruiting them. They are also easy to control and when empowered with basic skills, weapons and uniforms, they offer an effective fighting force.

He notes that these children need to be rehabilitated because their rights have already been violated and are a potential danger to society if they are not reintegrated. Making them fight and not rehabilitating them creates a society with no future. Highlighting the need to be rehabilitated, he observes at Pg. 60 that,

“The risk is clear, if you do not replace the gun with another alternative, then for sure the soldiers are likely to return earlier practices....the effects of war are not limited to death.....many children were in a short time transformed into adulthood. They have forgotten about themselves being children and have acted as adults. They actively or passively took part in acts like killing, rape and looting, acts which had been unknown to them before”.

Sendabo calls upon the world community in general and the society with child soldiers in particular to develop methods and strategies on how to rehabilitate and reintegrate child soldiers, based on the context of each country. Systematically acquired information from different countries dealing with problem is valuable to support a successful rehabilitation and social reintegration. He notes at Pg. 64 –65 thus,

*“Understanding the problem becomes the starting point to advocate for a policy against the use of children as soldiers. It does not stop by making policy statements and declarations but also helps the effort to rehabilitate the child soldiers when the damage has already taken place.”*

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In his recommendations, Sendabo stresses the responsibility of every national state to care for its people. They must have a long term perspective in order to minimize conflicts and to build sustainable peace. States must identify and develop local capacity to reinforce the prevention of the use of children as soldiers, support comprehensive international agreements that prohibit every form of child exploitation and dehumanization and advocate for a binding agreement to bring an end to the use of children as soldiers.

**The report of the African Conference on the use of Child soldiers** lists among others force or influence from both the government and rebel forces, environmental impact I form of; presence of war, breakdown of civil society/traditional values and family structures, values, lack of educational facilities and basic social services, extreme poverty, attractive military images in the media, inadequate or unimplemented legal stands as well as sometimes the children’s own desire to fight as some of the reasons why the children participate in war.

The Graca Machel report of the **Impact of Armed Conflict on Children** to the United Nations Assembly of 1996 reveals the full extent of children’s involvement in the various armed conflicts raging around the world. It notes that millions of children are today caught up in conflicts in which they are not merely bystanders but targets that are cynically exploited as combatants. The report notes that the increased use of children in war is a result of the changing character of warfare in the world today which is characterized by intra – state rather than inter-state wars.

The report notes further that the recruitment of children is made easy by the proliferation of light weapons, which are cheap and readily available. Also, family protection, government and community support systems have slipped away and made children prone to war exploitation.

Consequently, the report recommended a global campaign to stop the recruitment of children under 18 years. That all peace agreements should specifically address the need to demobilize and

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reintegrate child soldiers back into society. Implement additional Protocols to the Convention on the Rights of the Child.

**Cole. P. Dodge and Magee Raundalen: Reaching Children in War. Sudan, Uganda and Mozambique.** The book presents a valuable look at what it is that children suffer in the wake of adult violence and some of the measures that can be taken to help them recover and cope. It notes that children suffer most in conflicts and need psychosocial support to help them in dealing with the trauma of war. It also notes that certain damage done to children as a result of war can never be repaired. War induced childhood trauma or other extreme experiences can affect the individual and society for decades<sup>30</sup>. The book describes the processes of capture, abduction and recruitment of child soldiers. It does not however suggest any legal intervention to deal the challenge posed by child soldiers to their respective communities.

**Shattered Innocence: Testimonies of children abducted in Northern Uganda, a UNICEF/World Vision report,** it notes that the ongoing abduction and abuse of children in Northern Uganda is one of the most serious violations of children's rights anywhere in the world. It is a situation that requires extraordinary action. It notes also that child abduction has been used to terrorize populations and to sustain the rebel army since the beginning of the conflict. The book reflects testimonies of former abductees. They all tell a story of brutal abduction, forceful conscription, suffering, murder, trauma and regret.

From words of Action, Final conference report for the International Conference on war affected Children, September 10<sup>th</sup> to 17<sup>th</sup> 2000. This conference recommended among others the ending of targeting of children in conflicts as potential recruits and called for leadership and political will among the leaders to end recruitment and bring to book all the perpetrators of heinous crimes of war. The conference in strong terms called upon states to fulfill their legal obligations both under municipal law as well as international law.

## **1.9 Methodology**

The area to be studied is Northern Uganda as stated above with other examples drawn from mainly the Democratic Republic of Congo and other jurisdictions.

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The research will mostly take the form of desk research coupled with in-depth analysis. Information will be obtained from among others; the internet, Library materials, published books, research and workshop reports, newspapers and the electronic media.

Where deemed necessary, interviews will be conducted with experts on issues of child soldiers especially those dealing with their rehabilitation and resettlement.

Interviews with Judicial officers on the role of the Judiciary in enforcing children's rights will also be conducted.

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## **CHAPTER TWO**

### **2.0 MAJOR HUMAN RIGHTS INSTRUMENTS ON THE RIGHTS OF THE CHILD**

#### **2.1 Introduction**

The challenge of involvement of children in war especially as combatants is notorious for having grave consequences on any given society that it not only destroys lives at that particular moment, but it continues to haunt the community forever especially by damaging a whole generation of children. As such, there has been considerably good response to the challenge of child soldiers globally and even in the domestic perspective. Several legal instruments exist dealing with the rights of children generally while others seek to tackle war affected children specifically. Chapter 2 will deal with these various legal instruments highlighting the safeguards they have put in place to ensure children's rights. Of paramount importance will be the Convention on the Rights of the Child (CRC) which is the ultimate international convention dealing with children's rights. The chapter will further show the extent to which the international legal regime has been domesticated in order to have a national perspective.

The rights of children fall under Human Rights law and International humanitarian law. The Cape Town Principles and Best practices define a child soldiers as: "any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposed and forced marriage.

#### **2.2 The Pre Convention on the Rights of the Child (CRC) period**

The Convention on the rights of the Child is the most comprehensive international document that deals with the rights of children. It was borne as a build up to earlier human rights documents and consequent to several international efforts that had aimed at ensuring the special protection of children especially those affected by armed conflicts.

The Geneva Declaration of the Rights of the Child of 1924 and the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 established that every child by reason of his/her physical and mental immaturity needs special safeguards and care, including appropriate legal protection before and after birth. The Universal Declaration of Human Rights is

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another widely quoted human rights document that establishes that all persons are born free and are equal in dignity and rights.

Other documents whose provisions have a crucial bearing on children's rights include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and People's Rights, the Declaration of the Rights and Welfare of the African Child, the African Charter of the Rights and Welfare of the African Child and the Geneva Conventions and their additional Protocols.

### **The Geneva declaration of the rights of the Child of 1924**

This was arguably the first attempt by the international community to recognize children as rights bearers. It recognized that mankind owes to the child the best that it has to give. Under principle one, it declares that every child must be given means for normal development both materially and spiritually. Relevant to child soldiers, principle three declares that a child must be the first to receive relief in times of distress and must be free from exploitation under principle four.

### **The Universal Declaration of Human Rights (UDHR) 1948**

In 1949, the all important Universal Declaration of Human Rights (UDHR) was adopted by the United Nations. This declaration has since informed all the subsequent conventions dealing with human rights. Article 1 of the declaration recognizes the inherent right of every person to enjoy rights and declares that everyone is born free and is equal in dignity and enjoyment of rights. Article 2 provides that everyone is entitled to rights and freedoms set forth in the declaration regardless any status of which age for children may be part and in Art. 3, the security of person is provided.

Children require recognition under the law which Art.6 of the Declaration has provided. This implies that states have a duty to recognize the established rights of children and accord them the necessary protection at all times.

When children are abducted, they are denied the right to live in a family setting. Art 16(3) of the Declaration recognizes the family as the natural and fundamental group unit of society entitled to protection by society and the state. Abduction of children injures the family unit by taking away children. Art. 5 is important with regard to the cruelty meted on child abductees and provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.



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It must be noted that although not legally binding, the UDHR is universally accepted as setting the standard on human rights.

### **The Geneva Conventions of 1949**

The four Geneva Conventions<sup>31</sup> of 1949 together with their additional protocols<sup>32</sup> (1977) provide the most important international humanitarian law regime relevant to the regulation of the conduct of war both internal armed conflict and international armed conflict. The law seeks to save lives and to alleviate suffering for both combatants and non combatants during armed conflict. It applies both during armed conflict and in its aftermath.

The common Article 3 of the four Geneva Conventions applies in situations of internal armed conflict like the northern and requires all parties to a conflict to among others ensure that persons not taking part in the hostilities whether or not combatants are treated humanly without discrimination. Violence, murder, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity particularly humiliating and degrading treatment, the passing of sentences and the carrying out of executions minus court trials are strictly prohibited at whatever time everywhere with respect to the aforesaid persons.

The first Geneva Convention requires states to enact legislation with effective penal sanctions for persons who commit or perpetuate any breaches of international humanitarian law. They must go ahead to search for perpetrators of crimes and arraign them before courts. States may also hand over such persons for trial to other concerned states.

The first optional protocol<sup>34</sup> relates to protection under international armed conflicts but its pronouncements are relevant to the protection of children. Article 77 affords children special respect and provides that they will be protected against any form of indecent assault given their age and vulnerability. It restricts recruitment to the oldest among children between 15 and 18 years. If arrested or detained with regard to armed conflict, children must be held separately from adults. Additionally, any ensuing legal proceedings must not impose a death penalty for any offence related to armed conflict on person who at the time of the offence had not attained 18 years.

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The second additional protocol <sup>35</sup> develops and supplements the common Article 3 of the Geneva Conventions. The protocol requires that all persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to any conflict are guaranteed protection. It extends special care and protection to children and specifically allows them a right to receive an education both religious and moral, reunion with their families where they have been separated, non recruitment of those below fifteen years in armed forces, and evacuation to safe zones in case of conflict.

#### **The Declaration of the Rights of the Child of 1959**

The declaration followed in step with the Geneva declaration and the UDHR recognizing the need to ensure that every child has a happy childhood which must be ensured by all people and authorities for the good of society. All children are entitled to rights minus discrimination. Principle 9 categorically declares protection for children from all forms of neglect, cruelty and exploitation. Failure to enforce laws on children's rights amounts to neglect on the part of government.

#### **The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976**

The Covenant recognizes rights of children such as education, social security and self determination for all. It obliges every state to take steps individually and through international assistance and cooperation especially economic and technical to the maximum of its available resources to progressively achieve the rights under the covenant. The covenant categorically calls for the adoption of legislative measures. Given that war affected children suffer trauma, the covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

#### **The International Covenant on Civil and Political Rights (ICCPR) 1976**

The ICCPR <sup>37</sup> mainly provides negative rights, which require parties to refrain from doing certain acts that are detrimental to the enjoyment of specified human rights. Relevant to child recruitment, art.2 requires states to avail any persons whose rights or freedoms recognized in the covenant have been violated with effective legal redress and remedies. Their rights must be determined by competent judicial, administrative or legislative authorities that are established by the legal system of the state. Where remedies are granted, states have got a duty to enforce them.

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The covenant under article. 6 provides for the right to life. It specifically bars arbitrary deprivation of life something which child soldier perpetrators use so often in their process of recruitment. It also provides torture or cruel, inhuman or degrading treatment or punishment to all persons.

The covenant under article 24 provides for protection of all children's rights without any discrimination. Child soldiers have got a right to be protected by the state and should not be discriminated against because of their past. In some communities, they have been blamed for their past acts and denied their rights all because they were forced to commit atrocities not out of their own will.

### **Declaration of the Rights and Welfare of the African Child, 1979**

The declaration under its principle one prohibits attacks and bombings on the civilian populations and the infliction of incalculable suffering. It gives special cognizance to women and children as the most vulnerable to such attacks and thus must be protected.

Principle three of the declaration obliges all States to fully abide by their obligations under the international instruments to which they are party particularly to the Geneva Conventions and their optional protocols. Emphasis is placed on all those laws relevant to the respect of human rights in armed conflicts with special protection accorded to the protection of women and children.

### **The African Charter on Human and People's Right (ACHPR) 1981**

This Charter<sup>38</sup> is important to the rights of the child since it goes ahead to recognize group rights on top of individual rights, a scenario which is positive since regional instruments elsewhere do not recognize group rights. Group rights are those held by individual within a specified group. Child soldiers are a group with rights and it can thus be said that the charter offers them protection.

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

The Charter<sup>39</sup> establishes significant protection for child soldiers. Under article. 22(2) it uses strong language against the use of children in hostilities. It calls upon all state parties to take all necessary measures to ensure that no child takes a direct part in hostilities and that the states themselves refrain from recruiting any child. They must then extend the prohibition to non state actors. Under article. 17 it lays down the procedure for the trial of juvenile offenders which is relevant to those incidents when child soldiers are tried.

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### **2.3 The Convention on the Rights of the Child (CRC) and its Optional protocols**

The Convention<sup>40</sup> on the Rights of the Child with regard to child soldiers and their subsequent displacement bases upon the background that the family is the fundamental group of society and the environment for the growth and well-being of all its members and particularly children. The family, it asserts should fully assume its responsibilities within the community and avail all the necessary protection and assistance to children in an atmosphere of happiness, love and understanding. With this, a child is assured of full and harmonious development of his or her personality.

Specially, the convention defines a child under Art. 1 to mean every human being below the age of eighteen years with exception to jurisdictions where majority age is attained earlier. Under Art. 6 states parties recognize that every child has the inherent right to life and therefore must strive to ensure the survival and development<sup>41</sup> of the child.

It provides under Art. 9 that states must ensure that children are not separated from their parents against their will except where the separation is legal and as an action in the best interests of the child<sup>42</sup> as in cases where a child had been neglected or is abused by his or her parent.

The convention explicitly under Art. 35 requires states parties to prevent the abduction of children for whatever purpose by taking all appropriate national, bilateral and multilateral measures. With regard to armed conflict where abduction is pervasive, the convention under Art. 38 requires states to respect and ensure respect for rules of international humanitarian law relevant to the child in situations of armed conflicts. Specially, the states must take all feasible measures to prevent children below fifteen years from not taking part in hostilities neither on the government side nor the rebel forces. The convention however falls short on this issue. Having defined a child to be one below 18, it was not proper for the convention to allow recruitment below 18 let alone allowing states an allowance to recruit the oldest among those 15 and 18 years.

States are enjoined to ensure the protection of the civilian population especially children during and after war. For child soldiers for instance, states under Art. 39 are enjoined to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of armed conflicts in an environment which fosters the health, self – respect and dignity of the child.

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Among the challenges cited by scholars as to why rebels continue to terrorize children is ignorance on their part of international humanitarian law. Art. 42 of the convention however requires states by all possible means to have the principles and provisions of the Convention widely known by all people including children and those who recruit them into rebel armies.

Much as the Convention was a good step towards the realization of children's rights on the war front, there were some weaknesses it had but fortunately these have been remedied by the adoption of two Optional protocols<sup>43</sup> and various general comments. These have elaborated on the different rights and the steps that must be taken by states to ensure that they are realized. They particularly elaborate the provisions relating to the impact of armed conflict on children noting its pervasiveness and long endurance. It is the argument in this paper that failure to adequately respond to the consequences of conflict on children will have an enduring dire impact on peace, security and development. The adoption of this protocol is therefore timely to help to tame the situation.

The first optional protocol as such condemns targeting of children and places where they are nurtured such as schools and hospitals to conscript them into armed forces. It recognizes the special needs of children vulnerable to recruitment owing to their economic or social status or gender and seeks to take into consideration the causes of child involvement in armed conflicts rooted in the economic, social and political situations when dealing with problem. It affirms the Rome Statute of the International Criminal Court which criminalizes the conscription or use of children below 15 years in hostilities as war crime and has gone ahead to raise the age of recruitment to 18 and above<sup>44</sup>

The protocol obligates states to stop compulsory recruitment of children below 18 years into their armed forces<sup>45</sup>. Where they have been recruited, they must not take a direct part in hostilities. To ensure this, the protocol has raised the minimum age of voluntary recruitment from 15 to 18 years by elaborating on Art.38(3) of the Convention on the Rights of the Child. It calls upon states to adopt all feasible measures such as legal and administrative to ensure the effective implementation<sup>46</sup> and enforcement of these provisions.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography is another law relevant to the use of girl child soldiers as sex slaves. It recognizes that girls are vulnerable to sexual exploitation in any society. It does not however specifically address the issue of girls involved in armed conflict.<sup>47</sup>

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Of particular significance to this research is the adoption of legal measures such as prohibition and criminalization <sup>48</sup> of recruitment or use of children in hostilities as way of curbing recruitment by non state armed groups. General comment <sup>49</sup> No. 5 of 2003 has helped to elaborate on this duty as follows. It recognizes the need to have effective remedies to redress violations it at all children's rights are to have any gist. It however noted children's difficulty in pursuing remedies for their rights owing to their special and dependent status<sup>50</sup>. As such there is need for special attention to be geared towards providing child – sensitive procedures to children and their representatives particularly access to independent complaints procedures and to Courts redress. Where any right has been breached, reparation should be availed including compensation. The Committee stresses that economic, social and cultural rights as well as civil and political rights must be regarded as justifiable.

Other measures include the states' duty to ensure that the principles and provisions of the protocol considering its significance are widely known to the entire population and seriously promoted by all appropriate means. General Comment No. 5 of 2003 has helped to elaborate on the implementation of this. The general comment recognizes the

Need for all individuals to know their rights. It reiterates the conventional anomaly of disregarding children's rights thus recognizing the importance of Art.42 of the CRC. The continuation of this anomaly is a threat to the realization of children's rights especially if their family members, teachers and care-givers do not understand the implications of the Convention and its confirmation of the equal status of children as subjects of rights.

States should therefore develop a comprehensive strategy for disseminating knowledge of the Convention to all sound and sundry in a lifelong process. Information on both governmental and non-governmental entities involved in the implementation and monitoring of the CRC should be availed as well as their contacts. The text of the Convention should be translated into local dialects for dissemination to adult communities and child –friendly versions for children. Illiterate people should be catered for specially using innovative means.

To help children acquire more knowledge of their rights, rights education should be incorporated into the school curricula <sup>53</sup>. Of greater emphasis however is the states duty to implement and enforce

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human rights standards as an obligation which avails more practical and visible learning for children everywhere within their community. They see harmony and live to act in harmony. Finally, the media is a critical player, which through its own innovativeness as well as by state regulation can play a vital role in the dissemination of human rights knowledge.

The optional protocol also calls upon states to demobilize and reintegrate any victims of illegal recruitment within their respective state jurisdictions. This should be coupled with provision of other assistance such as physical and psychological recovery. In concert with this paper it is noted that children involved in armed conflict are a special kind requiring special attention and intervention. The CRC requires all states to treat all children within their jurisdictions without discrimination<sup>54</sup> of any kind. In fulfilling this obligation, states must enthusiastically identify individual children and groups of children the recognition and realization of whose rights may demand special measures. Such children this research has identified are child soldiers. General comment No. 5 of 2003 in furtherance of this obligation implores states to disaggregate data collection to enable discrimination or potential discrimination to be identified or detected. Consequently any detected discrimination would require changes in legislation, administration and resource allocation.

The International Labour organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

This convention<sup>55</sup> gives an expansive definition of a child soldier by including child soldiering among the worst forms of child labour. Art. 3 of the convention defines the term worst of child labour to include inter alia forced or compulsory recruitment of children for use in armed conflict.

### **The Rome Statute of the International Criminal Court (ICC), 2002**

The statute<sup>56</sup> is a significant step in the development of international law relevant to the protection of children involved in armed conflict. Article 8(2)(e)(vii) of the criminalizes the conscription of children under 15 into armed forces or their use in hostilities of a non –international nature as a war crime that is prosecutable by the ICC. With regard to girl child soldiers who suffer disproportionately during armed conflict, art8(2)(e)(vi) provides that rape, sexual slavery, and other forms of sexual violence perpetrated in non –international wars can be considered war crimes and prosecuted in the International Criminal Court.

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## **The Maputo Declaration on the use of children as child soldiers**

*Mozambique, from 19 –22 April 1999*

The declaration among others condemned whatever form of use of child soldiers whether voluntary or forced that is currently taking place. It first and foremost calls upon all African States to promote an environment that favours the safe and healthy development of children. As such, they must end the recruitment of all children below 18 years of age into their armed forces and ensure that measures are in place to prevent re-recruitment.

The declaration also calls upon states to provide a systemized birth registration and identify documents for children or sworn affidavits from parents or community elders. States should endeavour to demobilize into safety all currently serving in the armed forces after which they must ensure the physical and psycho-social rehabilitation and effective reintegration into society of the child soldiers.

Furthermore states are bound to bring to justice all those who continue to recruit or use children. In the same spirit, the declaration pay particular regard to upholding of international and regional human rights law in particular the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

States must also ensure that neither the death penalty nor life imprisonment without possibility of release is imposed for offences committed by persons below 18 years of age and that child participants in armed opposition groups are not charged with or convicted of treason. The declaration in furtherance of its views calls upon the Secretary General to submit an annual report on the use of children as soldiers. States should provide resources for alternatives to children induced by circumstances to volunteer to join armed forces or armed groups.

## **The Girl Child**

Armed conflict is notorious for meting the evil abuse of human rights on children. The girl child however bears a heavier and disproportionate burden of abuse given that on top constitution the fighting forces, she is subjected to sexual slavery and abuse.



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The United Nations has recognized this exceptional abuse and continuously takes measures to ensure special protection for women and girls. At its 4213<sup>th</sup> meeting, the Security Council on 31 October 2000 adopted resolution 1325<sup>57</sup> which inter alia calls upon states to incorporate a gender perspective into their peace keeping operations especially when negotiating or implementing peace agreements. The special needs of women and girls during rehabilitation and post –conflict reconstruction should be specifically provided for. The resolution implores all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls. It reiterates state obligations under the Geneva Conventions and their additional Protocols and most important of all, the CRC and its optional protocols and most important of all the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and its optional Protocols of 1999.

Protection from gender-based violence (GBV), rape, sexual abuse and all other forms of violence in situations of armed conflict is to be enforced by all states. All perpetrators of these must be brought to book and prosecuted in order to end impunity. They must also not benefit from amnesty provisions which are today highly used by states as a compromise to attain peace.

With regard to former girl-child soldiers, the resolution promotes inclusion of special disarmament, demobilization and reintegration plans. The resolution implored the Secretary General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace –building and the gender dimensions of peace processed and conflict resolution, and submit a report to the Security Council and to all Member States.

On 19<sup>th</sup> June 2008, the Security Council adopted another resolution (1820) reaffirming its commitment to fully implement Resolution 1325 (above) which seeks to eliminate all forms of violence against women and girls and end impunity with regard to abuse of women and girls during and after armed conflicts. It was necessary given the widespread, persistent and systematic brutality and range of gender based violence. It noted that violence, intimidation and discrimination which erode women's capacity and legitimacy to participate in post –conflict social organization were critical obstacles to the resolution of conflicts.

It therefore stressed that sexual violence used as a tactic of war to deliberately and systematically attack against civilian populations can significantly exacerbate situations of armed conflict and may

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impede the restoration of peace and security. Steps must therefore be taken to prevent and respond to acts of sexual violence in order to ensure peace and security.

Parties to armed conflict must uphold the principle of command responsibility and train troops on the categorical prohibition of all forms of sexual violence against girls and women. The resolution called for the exclusion of sexual violence crimes from amnesty laws. States must instead prosecute any perpetrators to end impunity for such acts.

Measures to address sexual violence committed during and in the aftermath of armed conflict must be ensured. Judicial and health systems must be developed to provide sustainable assistance to victims of sexual violence in armed conflict.

### **The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**

The convention protects women's rights implying that girls are derivatively covered as well. The Convention provides for the right of women to enter into marriage with their free and full consent something which rebels disregard and instead rape and forcefully marry girl child soldiers. It also prohibits child marriage and requires states parties to enact laws that establish a minimum age for marriage and make marriage registration necessary. This has the effect of making the marriages of LRS commanders to female child soldiers illegal. The convention also calls for states to provide all women with reproductive health support. This would help to cover former abductee girl child soldiers who particularly suffer from rape and sexually transmitted diseases.

### **2.4 Domestication of the Child protection legal regime**

The Committee of the CRC encourages its domestication in National Constitutions reflecting key principles in the CRC particularly recognition of children as rights holders alongside adults. To further ensure implementation of children's rights additional legislation reflecting principles in the CRC i.e articles 2,3,6 and 12 is indispensable to given it legal effect. Specialized statutes on issues such as education, health and justice must also echo the principles and standards of the CRC. Where possible all the localized legislations should surpass the CRC in promoting children's rights.

Apart from ratification of international and regional instruments, the local municipal law does not contain concrete provisions to help ensure protection of child soldiers.

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## **The Constitution of The Republic of Uganda 1995**

The constitution of Uganda recognizes children and their rights under chapter 4 which is the bill of rights. Among the key provisions relevant to children's rights are:-

Article 21 of the constitution which provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection before the law. Children are equal to adults in the enjoyment of rights and should not ordinarily be sidelined just because they are children.

Article 34(3) provides that no child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs. Recruitment of children and taking them to jungles amounts to deprivation of children of their rights to education and medical treatment.

Article 24 which provides that no person shall be subjected to any form of torture, cruel, inhuman or degrading treatment and punishment. Recruitment and killings done by children under orders from adults amount to cruel inhuman a degrading treatment.

Article 34(1) subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled to bring them up. The process of recruitment normally involved not only separating children from their parents, but very often killing of the parents by the children themselves under command. This is done to de-link children from humanity and initiate them into a life of military service forever.

Forced recruitment is prima facie deprivation of liberty for which the constitution under Art. 23(1) has prohibited. This recruitment done in total breach of the law does not fall within the allowance for deprivation provided under that article.

The constitution also avails everyone with a right to education under Art 30 it goes on to further accord children special status by obliging that state and the parents of a child to ensure that the child acquires an education.

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Several statutes have been enacted in pursuance of the general rights provided under the constitution with the main one being the Children's Act which seeks to provide protection to children.

### **The Children Act Cap 59**

The children's Act provides general principle applicable to the observance of children's rights without necessarily providing for children involved in armed conflict. It defines a child under S.2 as a person below the age of eighteen years.

Key to the Act are welfare principles which are supposed to be the guiding principles in any matter concerning children. They are set out in the First Schedule the Act. Where the state, a court, a local authority or any person determines any question with respect to the upbringing of a child, the child's welfare is of paramount consideration. The rights of the child must be upheld within the shortest time limit because any delay is likely to be prejudicial to the welfare of the child. When making decisions concerning children regard must be had to their ascertainable wishes and feelings considering their age and understanding. The child's physical, emotional and educational needs, the likely effects of any changes in the child's circumstances and any harm that the child has suffered or is at the risk of suffering must all be considered. These provisions are relevant to the situations of child soldiers given that their situation has many times not been given the due cognizance it deserves in light of the above considerations.

Specifically, the Act provides for certain rights relevant to children affected by conflict. Under section 6, every child has a right to live with his/her parents or guardians. In view of the heavy loads that children are forced to carry while in war jungles, section 8 of the Act prohibits the use of children in any activity that may be harmful to their health, education or mental, physical or moral development. The recruitment of children and their subsequent use in carrying loot, ammunition and actual involvement in combat injures all aspects of their lives.

The Act also contains provisions with regard to trial of children before courts of law. The Family and Children's Court is vested with jurisdiction to hear and determine all criminal charges against a child with the exception of offences punishable by death or those offences where a child is jointly charged with an adult. This provision is relevant given that most of the children in Northern Uganda have committed crimes under the command of adults. If these adults are arraigned before courts of

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law for their heinous crimes, the involvement of these children may present some challenges to court procedure.

Under S. 102 a child's right to privacy must be respected throughout the court proceedings in order to avoid harm being caused to him or her by undue publicity.

### **The Uganda People's Defense Forces Act (UPDF)**

This Act has incorporated international standards on recruitment and provides the official government policy on recruitment. Voluntary recruitment is for only adults above 18 years who are ably bodied and healthy. Article 51 of the Act stipulates that authority to recruit persons into the Defense Forces is vested in the Defense Forces Council composed of persons of integrity. The Act states that every person who wishes to be recruited into the Defense Forces has to first get recommendation from the village local council which confirms parental consent and the person having attained the mandatory age of 18 years. Applicants must also present a birth certificate. The UPDF has also created a Human Rights Desk to ensure compliance with international standards.

### **The Amnesty Act**

This Act provides for amnesty for Ugandans involved in acts of a war-like nature in various parts of the country. Under S.3(1), the Act covers all persons who have engaged in war or armed rebellion against the government by actual participation in combat, collaboration with the perpetrators of the war or armed rebellion or committed any other crime in the furtherance of war or armed rebellion since 26<sup>th</sup> January 1986. The act of assisting or aiding the conduct or prosecution of the war or armed rebellion is also subject of amnesty. These people are allowed a safe passage back into their communities if they denounce rebellion. They are given assistance to settle as non combat people. This law is very relevant to child soldier protection given that they also commit crimes for which government has discretion to hold them accountable.

### **Penal Code Act Cap 120**

The penal Code Act provides the definition of abduction which is relevant to the abduction and recruitment of children in armed forces. S. 241 defines abduction to mean any person who by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.

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## **CHAPTER THREE**

### **3.0 CHALLENGES ENCOUNTERED BY CHILD SOLDIERS IN ARMED CONFLICTS**

#### **3.1 Introduction**

Chapter three seeks to demonstrate the gravity of the problem of child soldier recruitment and why there is need to urgently respond to it. It is the author's view that continued and unabated recruitment helps to sustain long conflict in the Great Lakes Region. To this end, the chapter discusses the heinous practice of recruitment of children into armed forces showing the various factors that facilitate a cyclical process of recruitment and conflict. The reasons as to why children are an easy target lie in the suitable environment of capture and abduction, the nature of training they are given, the arms they carry and eventual roles they play at the warfront.

The chapter will also show the various rights of children that are violated at three different levels. The abduction process, the period spent in abduction and rebellion and the post abduction treatment of child soldiers. The effect of recruitment of child soldiers on the children themselves, the community and the country at large will also be shown. As a case study the chapter will consider two boys at Kigo prison who were sentenced to death for having participated in the Northern war.

#### **3.2 The Process of Abduction and Recruitment**

Among the many consequences of the war in the North was the death of millions of people as well as untold displacements of people internally within the country. Over and above these however, children had to bear a disproportionate brunt of the war in the north and indisputably suffered the most. They were recruited into armed forces at a tender age an occurrence tantamount to stealing away their childhood and future. Grace Machel describes different ways in which children are recruited to include conscription, press ganging or kidnap, forcible recruitment and reckons that some present themselves for service but not on a purely voluntary basis as it may appear.

Whereas abduction and recruitment was done mainly by rebel forces, allegations of state recruitment of juveniles remained rife. The UPDF had particularly been accused for human rights violations including forcible recruitment of child soldiers, and subsequent detention and torture of rescued or surrendering children thus making the situation even more complex.

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As stated above. Recruitment of children into armed forces included both voluntary and compulsory recruitment. Whereas the former was common with government forces

Especially for former child soldiers, the latter was the method used by rebel forces. Voluntary recruitment particularly posed a challenge since the aspect of human rights of children to make their own choices come into play. It may be argued for the armed forces that the children freely consented to the recruitment. It is however important that adults take cognizance of children's development and bar such recruitment since children need to develop spiritually, physically and morally in a serene environment with others. The strict observance of the age limits set in the different legal regimes was therefore necessary.

Compulsory recruitment mainly took the form of capture and abduction and it was the most notorious method of recruitment that ravaged northern Uganda from the onset of conflicts there in 1987. The global report on child soldiers by the United Nations<sup>69</sup> estimates that Kony, a violent, self-styled prophet, abducted or forced nearly 25,000<sup>70</sup> children into his army between 1986 and 2005. On a worldwide scale the number of child soldiers is disputed but estimates put it at over 250,000.<sup>71</sup> The abductors mainly rebel forces targeted young children of between 10 to 18 years depending on their catch.

Attacks took place both during the day and at night depending on the proximity of the area to main towns such as Gulu and Kitgum. At night, children were found in the most vulnerable state, when asleep and then taken. During the day, the rebels mainly targeted schools and secluded villages to capture children who were often found fetching water or performing other domestic chores. In other instances, transport routes were targeted with rebels ambushing and abducting.

Irrespective of where the children were found, coercive and dehumanizing measures were applied by the rebels. In typical fashion, the rebels ambushed a village and in the most brutal manner subjected all people to corporal punishment even for no offence at all. Children were then singled out and prepared to leave. Any relatives of the abductees were killed as a first step towards disorienting the children and fully recruiting them into the rebel force. This made them to lose a sense of humanity and respect for life. The gun, they were told was their new father, mother, brother and sister and their only source of life<sup>72</sup>. Cultural taboos against killing were also demystified.

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The family members were killed many times by the child himself on orders from rebel commanders<sup>73</sup>. The kids easily killed their relatives because at that particular point, they were under threat for their own lives. Their parents were killed to foster a sense of lack of belonging, of no home to go to. Bondage with the family was therefore cut and new identification was created with the rebels. This bond carried on even after these children escaped or rescued and it was this that posed a threat to future peace. They had fear for not only the rebels who coerce them into all these heinous crimes but government forces which indiscriminately bombarded rebel hideouts.

Any child who tried to escape during abduction was killed and this acts as a signal to all those other children harboring similar plans to discard them as fast and as possible or risk facing the same fate. They were also commanded to murder recaptured child soldiers or children who were unable to keep up with the unit. Many were forced to participate in cannibalism or the drinking of their own urine as a punishment.

During abduction, women and girls were particularly more vulnerable as they were raped by the rebels in the sight of the children and killed thereafter in extreme circumstances. A 2001 survey found that in Gulu, girls actually identified rape and defilement as their third most important concern behind insecurity, abduction and murder and displacement.

The rebels then looted any property and food available before setting off for a long journey to the jungles. The children for hardening purposes were made to carry the loot. They walk through thick bushes, hills, rocks and across rivers where they sustain wounds and bruises which often went untreated. Those who could not match fast enough were killed.

At this stage, children's rights were violated on various fronts. Survivors, who were mainly the younger and weaker ones witnessed torture, lost their family members and were displaced away from their communities where they lived in perpetual fear. It is important to note that the rebels merely killed adults and never forced them to join rebel forces because they were difficult to deal with compared to children. Only children could learn to kill arbitrarily especially under command of their seniors.

Meanwhile, for those abducted, it was a mark of the beginning of terror and agony. They experienced innumerable abuses of rights while in the bush. The right to life, right to grow up in a



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The children while part of the rebel forces were continuously ordered to fight their own communities and killed them so that their respect for family was shattered. Where this failed, brutal and slow killing of those who attempted to escape back to these families was carried out. This was designed to instill fear and discipline in the children and to sever any reverence they may have had for life and family ties.

Rape and defilement were closely linked to the abduction and recruitment of children with sexual abuse being an integral part of the military culture of armed forces or guerilla groups<sup>79</sup>. Machel states that female child soldiers were forced to provide sexual services and often became sexual slaves in addition to serving in armed combat. They were distributed to rebel commanders as wives and concubines and produce children for them even when they were not ready for childbirth. They thus suffered the more as compared to boys and ended up acquiring sexually transmitted diseases (STDs) after suffering torture such as the burning of their hair where they resisted. As an example that raised international concern, girls from St Mary's Aboke School in Apac district were captured by rebel forces in 1996, made to walk through jungles and those who could not be released or rescued were turned into wives.

Whereas some girls reported that serving as wives brought some privileges such as fewer hours of work per day and better food. Others differed and reported horrific sexual abuse and exploitation, which resulted into STDs. They lost their purity and pay for this later by being rejected by their families or communities. To make matters worse, many programmes designed to prevent the recruitment of child soldiers and aid in their rehabilitation offered insufficient aid to girls. International instruments also offer blanket protection for child soldiers without specifying girls.

Back to their communities, captivity meant poverty set in as economic activities were on standstill and this affected children's right to education and their parents' ability to take care of them. There was no food and they were dependent on donations from WFP or looting depending on where they were.

During this time also, teachers were displaced, schools were destroyed and children fear going to schools following the abduction which implied a poor security situation. As a result their right to education was violated.

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food and new uniform to have them join the army instead of going back to their communities purportedly to do nothing. The children were also ordered to give military information about their time with the rebels and guide the UPDF to LRA camps and training grounds thus exposing them to danger.

Among the several agencies that received children were both governmental and non governmental and these engaged in the process of reintegrating them. These include inter alia, the Amnesty Commission, the Acholi Religious Leaders Peace Initiatives (ARLPI) and NGOs such as World Vision and the Gulu Support the Children Organization (GUSCO), the International Organization for Migration (IOM). These mainly placed the children in facilities where they were provided with a full domestic package including food, accommodation and counseling. Where the children had not been placed in these facilities, they directly went back to their communities where they may have undergone traditional cleansing ceremonies.

In spite of the above two windows for rehabilitation of child soldiers however, they still suffered in the post abduction period on two fronts. First was the threat of rebels who continue pursuing them for escaping. It was noted that any escape from rebels exposed the children to the worst torture and death more than any other crime they could commit while in captivity. This made these children to live in unending fear implying that they could not easily reintegrate into society. Another obstacle was certain members of the community who found former child soldiers welcome for various reasons. Whereas some were rejected purely for the atrocities they committed, others were dreaded for the potential harm they could or stand to cause to the community. They were thus ostracized and condemned for their participation in atrocities. Reports particularly indicate that for returning mothers, communities were often less welcoming. In other instances children trying to escape from the LRA were killed by communities in retaliation for the actions of the LRA.

In an excerpt from the Human Rights website, a child from northern Uganda commented on their circumstances on return from the bush thus,

*"My parents ran away when they saw me. I had to follow then they thought I would abduct them.....we feel different because of the way other children look at us, it seems as if we are not children born from this land. They view us as though we come from a different place".*

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Girl child soldiers particularly suffered a lot because they produced children for rebels. Having been used as sex slaves, girls bear children. These children were however rejected as illegitimate, born to LRA rebel fathers thus suffered from stigmatization and rejection by their mothers' communities. Being born of rape and starting childhood in war zones almost implied facing extreme misery and aggression forever.

Given the suffering, the children once back in the community stop trusting adults and lived in traumatic conditions found that their whole family died in war. The psychological torture and anguish from the bush carried on affecting their entire lives and any possible chances of psychological recovery. They suffered from sadness and depression because some had ever become orphans. Fear and anxiety, insecure feelings about the likelihood of fresh recapture intensive images and thoughts of war and bloodshed, dreams and nightmares all combined to worsen the situation. Recollection of bush war events affected their general understanding of life and disorganized them. This distress was only helped by counseling provided by some local NGOs . Given the high numbers of children affected however, this was often inadequate and therefore only acted as a mitigation measure.

Returnee children also suffered from an adjustment disorder given the sharp transformation. First, they rapidly adjusted to a rebel's life when abducted and then readjusted back to a civilian life when reintegrated. They thus faced difficulty defining their identity during and after their participation in an armed conflict. Exposure to violence and unusual principles made them to have personality disorders thus losing the ability to empathize with others and display of aggressive, militaristic or manipulative behavior. They viewed violent behavior as a normal practice and also developed a mentality of revenge.

The children found it difficult to re-enroll in school because they were far behind in their studies compared to other children of their age. The period spent in transitioning from a rebel's life to civilian life often excluded them from the education system as well.

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### **3.5 Factors aiding Child Recruitment**

The Machel report on the Impact of armed conflict on Children comprehensively documented the dynamics responsible for the recurrent recruitment of child combatants.

Machel says commanders preferred children because they were viewed as more obedient and easier to manipulate than adult soldiers. They were inherently fearless and reckless and it were these aspects that the rebels sought to exploit. This had something to do with their childhood and idealism which when clumped together made them a soft target vulnerable to manipulation by adults. The situation was even made worse when they were given drugs and alcohol in combat to suppress their pain and ensure their conformity and submission. They thus did not question orders and often acted out of blind obedience to engage in fearless killing.

The courage these children gathered to kill was compounded by the fact that they made to kill their own family members and friends. They could thus continue to unthinkingly kill because they were aware of no families to go back to for protection or even to offer them protection. This therefore made them the most effective soldiers.

Machel also emphasized the impact of modern development of light firearms. There were cheap and lightweight arms which allowed for vast employment of young and physically immature soldiers to participate in armed conflicts.

Machel also pointed out adolescence as a factor aiding recruitment. She said the lure of ideology was strong in early adolescence when young people were developing personal identities and searching for a sense of social meaning. They enlisted out of feelings of helplessness, vulnerability, peer pressure and identity formation. Children's desire also made some to desire to fight and kill as a way of revenging for their suffering or woes. In other cases, others thought fighting was a game. Their childhood and environmental factors indoctrinated them into thinking that handling a gun was "cool" thus join rebel forces where the opportunity was readily available.

Machel also listed economic consideration as a factor aiding recruitment. Some children joined rebel armies simply to survive. Children needed protection and because conflict destroyed all economic means and strip families of alternative opportunities for resources and financial support due to persistent conflict, the children found themselves in a position where they had to survive.

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They thus joined or were recruited to provide essentials needed for personal and family survival. Relatedly, some were promised rewards by the rebels especially where looting was involved. The incidence of this method of recruitment was however lower than the coercive method.

Children were also pressed into military service occasionally as the last desperate resort for losing families.

### **3.6 Unabated Recruitment and the Cycle of War**

It is now widely accepted that recurring recruitment of children into armed forces significantly contributed to creating a cycle of war which must be broken.<sup>99</sup> The Great Lakes Region has several initiatives aimed at ending the conflicts prevalent in the region such as peace talks and joint offensives like Operation Lightening Thunder in the Garamba Forest National Park in the Democratic Republic of Congo. Response to child soldiers however remains dismal.

The Kony war had no specific agenda yet it required fresh recruits to survive. His commanders were all illiterate or ill educated people who just followed what their chief commanded them to do. Consequently recruitment continued and it was sadly done by child soldiers who brutally captured other children to be recruited.

As shown above, family members of child soldiers were often killed many times by the children themselves on orders from rebel commanders. In the end, the children were left with no family and established a new bond with the rebels which carried on even after they escaped or rescued. They posed traits of fearlessness and recklessness which could be freshly exploited by subversive people leading to fresh recruitment and conflict and consequently a threat to current stability.

The extent of human rights violations occasioned by recurring recruitment of children and conflict is unforgivable and must be dealt with using all available means to the government and the international community. Alyi Patrick Lalur<sup>101</sup> appreciates the cyclical nature of child soldiering and suggested thus,

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“ These cycles could be broken by protection of Human Rights, more Intellectual commitment and imposition of the universal international machinery that challenges impunity of those committing the atrocities”.

It is this author's view that impunity is particularly one factor which has not been adequately dealt with. There is however a window of opportunity in the comprehensive legal regime dealing with the protection of children during armed conflict as shown in chapter two. It is this that needs to be fully implemented to break the cycle of war.

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## **CHAPTER FIVE**

### **4.0 EFFORTS TO ADDRESS THE CHALLENGE OF CHILD SOLDIERS**

#### **4.1 Introduction**

The preceding chapter has shown the heinous mode of child abduction and recruitment and the various rights of children that were violated. In chapter two, various legal instruments both on the domestic and international plane have been put in place to address the issues of child combatants. This represents a significant step towards protection of children's rights in conflict situations. Upon this background, chapter four seeks to examine the efficacy of the aforementioned legal framework in addressing the conditions of child soldiers as discussed in chapter three. To this end, its strengths and weaknesses in addressing issues of child soldiers will be examined. Specifically, the steps so far taken by the government of Uganda will be appraised. Alternative approaches that have been undertaken in other jurisdictions will also be considered to establish their applicability in the Uganda situation particularly the establishment of a special court and a truth and reconciliation commission. The chapter will further show the legal framework can be optimally used to realize children's rights.

#### **4.2 Evaluation of child Protection measures and the law**

All others notwithstanding, the cardinal instrument against which all efforts to address issues of child soldiers must be measured is the Convention on the Rights of the Child (CRC) and its Optional Protocols. It has a noticeable impact on the issues of children in armed conflict and recognizes them as rights bearers. The Optional protocols establish an international standard for the use of children in armed conflict by specifying the minimum age requirement for recruitment at 18, encourages states to enforce exiting domestic laws and increase awareness of the child soldiers' issues and also codifies a legal standard for holding states responsible for any breaches of the foregoing.

The CRC is the most widely ratified human rights convention in the history of the United Nations with all countries in the world ratifying it except the United States and Somalia. Uganda adopted and ratified the CRC in August 1990 and its Optional protocols in May 2002. other instruments relevant to children's rights in armed conflict include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights and Welfare of the African Child, the African Charter of the Rights and Welfare of the African Child and the Geneva Conventions and their additional Protocols.

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As to whether the adoption of these international laws has helped to address the human rights situation of child soldiers is debatable. State party reporting is the chief implementation and monitoring mechanism for international law given that the state is the primary object of law. Reports submitted help in analyzing whatever success has been registered. A critical look at the CRC however exposes various flaws especially with regard to this nature of enforcement which is indisputably the most critical. A State's discretion to report its own record of abuses of human rights as envisaged by the CRC together with the different conventions and declarations addressing the rights of children in armed conflict is subject to abuse and may not therefore show the actual truth on ground.

International law also lacks the coercive force of municipal law thus aggravating the already bad situation. Some states exercise their sovereign right not to ratify it implying that they are not bound by the universal minimum standards on whatever issue a particular instrument seeks to regulate.

By mainly asking states to merely refrain from human rights abuses, international law anomalously leaves out other possible rights violators such as rebels who commit the worst crimes. There is no reporting mechanism, for such violators and monitoring them is a serious challenge that again requires a state's cooperation.

Uganda's first report submitted to the Committee on the Rights of the Child in 1996 noted violation of the CRC with particularly 17 breaches including inter alia the lack of adequate legislation to accord girls full rights, the violation of rules of international humanitarian law applicable to children contrary to art. 38 of the CRC and continued abduction, killing, and torture of children. In a step forward however, its first periodic report on the Optional Protocol to the CRC on the involvement of children in armed conflict showed that some success had been registered by the government in addressing issues of child soldiers albeit with some weaknesses as follows.

The government has a role to disseminate information on the CRC and its Optional Protocol among children, parents, professionals and affected communities and the army/military. This role also extends to non state actors who include rebels. A critical examination however shows that government has not taken any bold steps to ensure that articles of the CRC are widely known to the public. Human rights education to children in school curricular is missing in the educational system.



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Rebels are vividly ignorant on the law protecting children particularly in relation to conflicts and no publications have been in any local languages.

As for the military the government established a Directorate in the UPDF charged with monitoring human rights violations in the army as well as investing, disseminating, educating and establishing programs on human rights. The Directorate takes both military and civilian complaints after they have initially been referred to the Uganda Human Rights Commission (UHRC). Furthermore, UHRC can investigate the army on its own initiative and has got access to military documents. With continued explicit rights violations in the army as seen in chapter three, doubts are cast on the worth of this directorate.

The Optional Protocol to the CRC obliges the government to support former child soldiers by providing all appropriate assistance for their physical and psychological recovery and social reintegration. This has been done through the grant of unconditional amnesty to former child soldiers followed by a Disarmament, Demobilization and Reintegration program (DDR) for the children. Civil society and Non Governmental Organizations (NGOs) assisted by government<sup>109</sup> have been at the forefront of this by principally offering psychological treatment in rehabilitation centers. The centers further provide a safe haven for children after long years in jungles to meet their basic needs, and kick start the reintegration process which involves assisting the children to readjust to civilian life socially and economically. The organizations<sup>110</sup> also carry out follow up programs to ensure that the children fully reintegrate into society.

There is however serious criticism leveled against DDR programs. It is contended that they fail to appreciate the particularities of a conflict and are applied in blanket form and in isolation. The result is that they offer only a surface solution to an intricate problem thus remaining inadequate for the specific situation of former child soldiers. Children often stay too long in holding solidarity centers mixed with adults before being relocated to rehabilitation centers. They do not take active participation in the DDR processes save for being on the receiving end. In the end, the former child soldiers remain insulated and stigmatized upon reintegration implying that the DDR programs do not meet their intended goals and lack a deterrent effect. When opportunity for rebellion arises, such children are easily re-recruited and take up arms which pose a danger for lasting stability.<sup>111</sup>

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The generalized nature of DDR programs and their consequent failure is evident in the way girl child soldiers are treated. These have specific needs but are often treated in a uniform manner with boys. They in most cases returned from the bush with children and suffered from sexually transmitted diseases which boys were less likely to suffer. They also suffered more from stigmatization in their communities where they were considered unclean and “used goods”. At worst, they were rejected by their own communities. As such they required special programs such as child care, reproductive health support and even more psychosocial therapy as compared to their male counterparts. A generalized DDR program however overlooked this.

Children born to these girls were particularly unwanted because of their fathers’ rebel status. They were excluded from their paternal clan and cannot inherit property given that property can only be inherited through the paternal line. They forever rely on their mothers for their livelihood yet paternalism does not favor inheritance by women. To worsen situation, their mothers lack skills and education to earn a living . The CRC and its Optional Protocol on the involvement of Children in Armed Conflict do not specifically address the plight of such female child soldiers. The Optional Protocol on the Sale of Children, Child prostitution and child Pornography<sup>114</sup> which covers some protection for girl children is limited to sexual abuse but is unfortunately not particular to armed conflict and the sexual abuse girls suffer in armed combat.

Relating to exclusion of girls above, the ICCPR obligates state parties to ensure the protection of children without any discrimination. In the north however, former child soldiers particularly girls as stated above experience discrimination from the communities where they resettled. They face difficulty being accepted back by the local population save for a few who benefited from a traditional reconciliatory process called “*mato oput*”.

The generalized nature of DDR programs has been christened a universalistic approach and is criticized on a global scale. Lindsay Shorr takes issue with the universal approach and states thus,

*“ In so far as children have become a vital weapon of warring parties .....involved in 75% of the world's conflicts, it has developed into a pressing modern conundrum.... An approach that seeks either to ignore or do nothing with former young combatants is no longer viable”*

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She goes on to argue that approaches so far undertaken by international institutions and instruments to deal with child soldiers take a universalistic approach which define child soldiers by age and apply an unvarying standard of prevention in response to every occurrence of child soldiering. The universalism is neither deterring the use of child soldiers nor providing appropriate post conflict reintegration of child soldiers.

Shorr instead suggests a pluralist approach to post –conflict treatment of child soldiers. Using the case of Liberia, she proposes the opportunity to institutionalize an active juvenile chamber for the prosecution and rehabilitation of former child soldiers. The chamber would incorporate DDR principles and encourage a changed understanding of who a child soldier is and the appropriate post conflict treatment.

Whereas the government has role to ensure that DDR programs operate to help children, it has ignored its role. There is reported insufficient coordination between the government and NGOs. This poses a challenge to the effectiveness of the DDR by leaving the bulk of work to NGOs some of which lack adequate funding. The government by doing this fails to fulfill its role as required under the CRC.

In other instances, DDR has been abused by the government. In total disregard of the law, the UPDF a government body has been reported to coerce some children seemingly reintegrated to instead join the government force. Human Rights Watch reported cases of former abductees being tortured by UPDF soldiers then coerced to join the UPDF. The children were also alleged to be recruited into Local Defense Units (LDUs) to provide security to local villages. These were also later used to fight the LRA alongside the UPDF. This makes the problem of child soldiering even more complex given that they fight for both the LRA and the UPDF. Aiyi Patrick Lalur shades more light on child soldiers' use and DDR thus,

*“Demobilization and re-integration of child soldiers is mere change of guards in Uganda as is the case worldwide. Children forcefully recruited by opposition forces are quickly recruited into official government forces after their escape, rescue and or release by the rebel forces. Re-integration means accepting either to be recruited into official armies or benefiting from temporary Amnesties”.*

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The Amnesty Act of 2000 had been made for those who denounced rebellion and agreed on peace. The Act also provides immunity and resettlement packages to all surrendering armed enemies except Kony and five of his generals who were issued with arrest warrants. The Act did not however include specific provisions for Child soldiers, as a result for instance, Human Rights Watch<sup>120</sup> has reported that two former abductees aged 14 and 16 were in 2002 tortured by soldiers and charged with treason since they could not benefit from the amnesty. They were later released on bail to a women's organization in Gulu and charges dropped against them in April 2003 as a result of pressure. In a similar incident, Bushobozi Irumba abducted by the Allied Defense Forces (ADF) at age of 9 was arrested by government at 15 and was due to be arraigned in court on January 9, 2009 charged with plotting to overthrow the government in 2007. All this was contrary to the Optional Protocol to the CRC to which Uganda is signatory.

Relating to the discretionary and unconditional amnesty granted to former child soldiers upon the termination of war or rescue in some instances, disapproval abounds as this is believed to amount to impunity being provided to children who have escaped from the LRA. Accordingly the idea of having to prosecute former child soldiers which is a contradiction to full integration presents itself and indeed deserves mention.

The CRC under art. 40 calls upon states to try as much as possible to find alternatives to judicial proceedings against children. The Rome Statute of the ICC under art. 26 exclusively excludes jurisdiction over persons under 18 years implying that they can not be charged with genocide or war crimes. The rationale of this jurisprudence lies in the idea that children (child Soldiers) do not form the intent to kill but instead the role of obedience nurtured into them pushes them into obeying orders for instance to kill a fact which alludes to make rational decisions and actually understand many of their actions. Furthermore, universalism approach postulates that prosecuting children stands to compromise their rehabilitation and may jeopardize reconciliation and transition to normalcy. As a result, it is preferred that only adults be prosecuted especially where they have been the directing mind behind the actions of children.

A contrary school of thought however differed and believes child soldiers should be dealt with on a case by case basis. A thorough probe into the capacity and accountability of children in armed conflict must be carried out since they commit crimes in violation of international humanitarian and human rights law for which the Geneva conventions 9Convention IV) seek to provide punishment.

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Shorr<sup>123</sup> for instance disregards the idea of viewing child soldiers principally as child victims and ignoring any of their actions. She therefore cautions that international provisions and their ability to inform post conflict designs for the treatment of child soldiers should be viewed with a critical eye.

Relatedly, the use of age as a parameter for determining a child soldier is also argued to be erroneous given the varying conceptualization of childhood in different cultures. A distinction between childhood and adulthood in some societies is not clear cut. Where children in a particular society marry younger with obligations to fend for their family, such ought not to be considered children in the event that they voluntarily join armed forces purely on survival basis. In other areas young people are purposively-

Socialized into aggressive behaviour for which they will be culpable for their actions. Pastoral communities are such an example where children are expected to carry guns and fight as a way of initiation into a adulthood soon after puberty. Children in such communities will therefore knowingly carry guns and join armed groups. In Rwanda children who killed and were able to discriminate between ethnic groups could not be excused and such conduct was found incriminating. In other situations finding individual responsibility for crimes by children is helped by the fact that some child soldiers volunteer and rejoin armed forces or switch sides.

Children's action should therefore according to this school of thought be defined not by age but by the particular nature of their activities during the particular conflict including war crimes, crimes against humanity and genocide implying that children are potential violators of international law deserving punishment. Child soldiers should therefore be treated as perpetrators when they kill unjustifiably.

Machel adds to the dilemma of dealing with children accused of committing war crimes or acts of genocide stating that it presents a complexity of balancing culpability, a community's sense of justice and the best interests of the child. She suggests that prosecution be informed by the contextual understanding of the conflict and the culpable children to avoid stigmatizing or discriminating against certain groups of children or creating recriminations within the victim communities into which former child soldiers are seeking to reintegrate. At all times however the best interest of children must be upheld.

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In another perspective, it is contended that prosecution of former child soldiers helps to discourage future use of child soldiers. Non prosecution would send a signal to subversive forces that they can meet their aims by just using children who are not subject to prosecution thus encouraging impunity. For instance today's adults in the LRA are people who were abducted as children. Excluding them from prosecution poses a serious challenge and may if allowed imply creating a cyclical transformation from childhood to adulthood while committing crimes.

Prosecution is also favoured to facilitate public understanding of child soldiers as both victims and victimizers. The result will be the reduction of stigma attached to them and ease their transition and reintegration into society.

The first Geneva Convention and the CRC require states to enact legislation reflective of international law standards in the protection of children's rights. Municipal legislation is ordinary better in helping to realize the rights of children because it establishes effective penalties and there is available legal machinery to enforce it for example the police force. It is also more easily understood by the local people including potential rebels.

To this end, the government has enacted some laws on various critical aspects spelt out in the CRC. The UPDF Act of 2005 set the age of 18 as the minimum age for recruitment in the army. The 1995 Constitution protects children and pursuant to it, the Children Act to ensure that the rights of children are observed was also enacted. With regard to the innocence of children forced into armed conflict, the government also enacted the Amnesty Act of 2000 to provide a safe passage for persons denouncing rebellion back into civilian life. This Act however does not explicitly mention child soldiers, an anomaly that has seen some face unwarranted prosecution.

Apart from the above laws, there is no other comprehensive or specific law addressing the myriad issues of child soldiers or how to deal with perpetrators. It must however be borne in mind that the CRC's enforceability relies mainly on domestic municipal laws. This lack of a comprehensive law on child soldiers as such spells doom on the realization of children's rights in situations of armed conflict. General comment No. 5 of 2003 on the CRC also calls for effective remedies to redress violations as well as child sensitive procedure with reparation or compensation. The available law however fails to adequately provide such procedure.

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Relating to general comment No. 5, the ICCPR also calls upon state parties to provide legal redress to those affected by human rights violations. Child soldiers have however not got legal redress for having their rights violated. The only step government has taken is to call for prosecution of rebels. It asked the ICC to indict Kony and five other commanders some of whom have since passed on have since been indicted and issued with arrest warrants. This is merely a step but no concrete legal redress has been obtained or seriously sought by government.

*"The Children Act which is supposed to be a comprehensive law for instance does not address children's rights and protection in armed conflicts as desired by the African Charter on Children's rights and the CRC. Like other laws, it plays a secondary role to International and Regional instruments. It follows rather than setting the standard or pace. It generally lacks the special protection of children in war situations. There is therefore a gap which calls for the integration of the CRC provisions in local legislation and so that the country is not just bound. Legal protection of the child should not require one to pick bits and pieces of provisions from scores of statutes or instruments when they can be reduced into a single document."*

In line with CRC, the Maputo Declaration calls for a systematized birth registration but this has not been adequately ensured by the government. In Uganda, birth records are hard to come by in the rural areas of Northern Uganda. Dates of birth are not well documented and it is easy for military forces to play dumb when accused of utilizing children under 15 or 18. The UN Committee noted other challenges to include the problem of false age documents coming from the local councils and difficulties in getting accurate data. Parents have thus been encouraged to register their children at birth which government ensures by requiring birth certificates to be presented in schools as well as compulsory issue by hospitals as proof of birth. A challenge however remains with children born out of hospital. There is also a plan to issue national identity cards but which government has not been keen to enforce.

As measure to fill this gap therefore, whenever there is recruitment, the army team is accompanied by a medical doctor who conducts blood group tests and other medical tests in order to ascertain the age of the recruits. The government also ensures that the Red Cross, the press and interested human rights organizations are represented at recruitment centers as a way of ensuring compliance with age requirements.

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On the Geneva Conventions and their additional protocols I and II, the common article 3 sets out the basic protections afforded to persons not active in domestic armed conflicts like children. The article however fails to directly specify the protection afforded to child soldiers but instead covers them as general combatants.

All this shows the weakness with regard to enforceability at the international level. Alysi Patrick Alur expresses dismay at international efforts thus,

*“The biggest shame is whether the duties of everyone represent to abduct, conscript and force children into killing machines. Not only are these threats universally unacceptable, but also the environment, which they help sustain – on of negative international conditions, hierarchies of power, dominations, oppositions and inconsistencies in application of international laws – is a shame to the world and a threat to the security of us all”.*

United Nations officials and independent human rights<sup>135</sup> groups against the backdrop of poor enforcement warn that the Security Council risks losing credibility for always making empty threats and failure to take action. Several culpable governments and armed groups that persistently recruit and use child soldiers as a result continue this with impunity. For instance, in resolution 1539 in 2004 and resolution 1612 in 2005 on child soldiers, the Security Council threatened to impose sanctions against armed groups that defy international demands to stop using children in combat but it has not taken any action.

#### **4.3. Alternative Approaches**

##### **Establishment of an independent special court**

This has been done in Sierra Leone following joint efforts between the government and the United Nations in its resolution 1315. The Special Court in Sierra Leone is a new model in terms of international law. Article 4(c) of the court's Statute, gives it power to prosecute individuals for conscripting or enlisting children under the age of 15 years into armed forces or groups using them to participate actively in hostilities. This court has so far charged nine perpetrators including former Liberian president Charles Taylor with the crime of recruiting and using children under the age of 15



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as soldiers. It has convicted four for the crime and they are serving prison terms ranging from seven to 50 years.

The court also has power to prosecute former child soldiers who bear the greatest responsibility for war crimes. It however treats them with dignity and with a view to rehabilitate them. The orders for children include care guidance, foster care, supervision orders, community service orders counseling educational vocational training and DDR programs. By this, it balances between incarceration and punishment and the need for criminal justice principles and accountability. As a result, child soldiers are perceived as both victims and victimizers within their specific domestic context which offers a more complete understanding to the question of who a child soldier is.

We should appreciate however that a special court on war crimes has been established in Uganda located in Gulu District Northern. As many have contributed the court is currently faced with a number of logistical and procedural challenges which need to be addressed early enough if it is to be efficient.

### ***Truth and Reconciliation Commissions***

*These commissions promote a dialogue not available in amnesty arrangements and DDR programs. It facilitates disclosure and truth telling in an open forum that encourages the entire community affected by a child soldier's actions to come to terms with the past. Openness on the part of individual child soldiers helps them to accept their actions and move on while also creating a record of truth which helps to pave way for forgiveness from an otherwise hostile community.*

### **Legislation**

In the United States a law has been enacted against the use of child soldiers. The Child Soldiers Accountability Act criminalizes the recruitment and use of child soldiers. It makes it a crime to knowingly recruit or use soldiers under the age of 15 and permits the US to prosecute any individual on US soil for the offense even if the children were recruited or served as soldiers outside the US. The law imposes penalties of 20 years or life in prison if recruitment resulted in a child's death. It also allows the US to deport or deny entry to individuals who have knowingly recruited children as soldiers.

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## Naming and shaming

Naming and shaming is another approach that has been suggested to be used as preventive measure for child soldier use. In a report on children and armed conflict, released in January 2009, United Nations Secretary General Ban Ki-moon identified 40 governments and rebel groups in 13 conflicts that recruited and used child soldiers. The report was a key component of the U.N.'s policy of publicly identifying those who recruit and use child soldiers and condemning them for it pursuant to Resolution 1379 of November 2001. Uganda's army spokesperson responded in strong denial to this report after Uganda was named thereby showing how much influence it can have..

Some governments will particularly respond to shaming for example the Democratic Republic of the Congo which has pledged to stop using child soldiers due to international pressure. With regard to rebels, some have responded to international pressure such as the Tamil Tigers of Sri Lanka, who promote themselves as a reputable group, others have however not responded. Kony and his Lord's Resistance Army for instance have no regard for how they are perceived internationally and are not swayed by having their names published in U.N reports.

### 4.4 Next Steps

In spite of the weaknesses of law enforcement showed above it is hoped that thorough review, political will and drastic intervention by the government and other stakeholders can help to adequately deal with child soldiers. Erine Baines summarizes the situation so far thus,

*"a variety of initiatives to stop the forced recruitment of child soldiers by the LRA and UPDF, and to facilitate the rehabilitation of ex-child soldiers exist....diagnostic of these overlapping, sometimes contradictory efforts would facilitate a coordinated approach among donors, the government, the LRA and civil organizations....Good practices of what works, and does not work, may be necessary. A gender analysis is critical to this analysis."*

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## **CHAPTER FIVE**

### **5.0 MAIN CONCLUSION AND RECOMMENDATIONS TO DIFFERENT ACTORS**

#### **5.1 Introduction**

It is now certain that today's wars are fought mainly by children whose vulnerability and infancy of mind is exploited by adults. The development of new light weaponry as discussed in chapter three plus a host of other factors further exacerbate their use. The gravity of the problem can not longer be undermined neither can society keep dumb as today's only assurance for the future is systematically annihilated. Child recruitment not only shows societal breakdown but is also an early warning of escalation of conflict calling for urgent precautionary measures to be taken.

Whilst many instruments have been drawn on the issue of child soldiers, they continue to linger as mere pledges and rhetoric accumulating dust on shelves. To make matters worse, more are being called for. It is however prudent that efforts be geared towards pursuing more concrete measures rather than more standards and declarations. Governments and civil society must consider a radical move away from oratory on law and human rights to substantive execution of the same.

Chapter five in this regard summarizes the main findings of this research and looks at the roles different stakeholders can play in efforts to address the problem of child soldiers. The suggested recommendations will fall under two limbs. Those that strictly seek for compliance with international instruments particularly the CRC and its Optional protocols as well as those deriving from innovative measures taken in other jurisdictions that are similarly confronted with the child soldier problem.

#### **5.2 Main Findings**

Estimates place the number of child soldiers worldwide to close to 250,000 taking part in over 50 conflicts. This number can however not be accurate given the varying nature of the various conflicts afflicting the world today. It is also indisputable that both governments as well as paramilitary or non state forces have been involved in the recruitment of child soldiers at one point or another. Uganda is for instance listed among the countries that have used child soldiers as recently as 2004 to 2007. Whereas armed forces have recruited army, the UPDF however strongly denies this allegation.

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The law to protect child soldiers is available as discussed in chapter two. On the part of government, it has been a clear lack of political will to implement the laws. Whereas for the rebels it may be blamed on ignorance and sheer want of care. The rebel commanders are ignorant of the law and act in total disregard of humanity in the way they treat the children. They are not aware of humanitarian or human rights law in the slightest manner.

The people who largely engage in war are illiterate people commanding children. It is such a challenge that because of the ignorance of the law on the part of the rebels, it is hard to educate or inform them about the legal regime. In any case, it would also be inconceivable for a government to purport to teach subversive people humanitarian law in anticipation of continuation of war. Any rational government would instead be expected to do all in its means to keep and maintain peace without any indication to the public of any likely anarchy.

The definition of a child soldier is also a subject of concern given the different perceptions or understanding of who a child is in the different cultures around the world. The Cape Town principles<sup>146</sup> gave a now widely accepted definition of child soldiers as meaning,

*“anyone under 18 who is part of any kind of regular or irregular armed force in any capacity, including cooks, porters, messengers and non-family members accompanying such groups as well as girls recruited for sexual purposes and those forced into marriage”.*

The girl child disproportionally suffers from the effects of involvement in conflict and it is conceded that such a wide definition helps to guarantee special care for her.

Northern Uganda is currently enjoying a certain degree of peace and normalcy which has seen people move out of Internally Displaced People's Camps (IDPs) back to their villages. This owes to a multiplicity of factors among which are the attempted peace talks, the joint offensive, Operation Lightning Thunder which pushed the rebels into the far north west of the Democratic Republic of Congo (DCR) and the Central African Republic as well as international pressure particularly the long arm of the law as vivid the International Criminal Court (ICC) action. There are no reported hostilities in Northern Uganda implying that the use of children in conflict is to date absent.

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Given this state of affairs, it is only logical to sweep the problem of child soldier's right under the carpet recruitment can now only be imagined. On the contrary however, it has been reported that in spite of pushing the LRA out of the country, abduction and recruitment of children still continues by the fleeing forces in parts of the DRC. Whereas recruitment in the DRC is not new, given the political turmoil that has afflicted that country over decades, the presence of a notorious Ugandan rebel there places the conflict at a regional level. This is indication that not all is over and actual conflict can sprout with an available launch pad just next door in the DRC. History also demonstrates that conflict is almost inevitable and children always bear the biggest brunt of any war. They therefore stand the risk of being recruited as child soldiers at any one time.

The examination of Disarmament, Demobilization and Reintegration (DDR) programs in Uganda exposes certain loopholes indicating that some former child soldiers are not fully integrated. These are not only traumatized but may also harbour thoughts of mixed revenge, anger and hopelessness which if exploited by any subversive individuals can have them involve in rebellion again. The example of Liberia has indeed demonstrated that former child soldiers often rejoin armed forces at the slightest available opportunity where they have not been fully reintegrated into society.

### **5.3 Recommendations**

In order to fully address the issues of child soldiers in Uganda, it is prudent to consider the status of implementation of the CRC in Uganda. On 16 September 2008 the Committee on the Rights of the child (the Committee) examined Uganda's initial report on the implementation of CRC and its Optional Protocol on the involvement of children in Armed Conflict. It raised concern over the lack of awareness about the law on children in armed conflict, lack of resources in the Uganda Human Rights Commission (UHRC) to monitor children's rights in general, report of continued presence of children in the armed forces, low birth registration at less than 10 percent, re-recruitment of former child soldiers into the army and Local Defence Units (LDUs), lack of information on children demobilized and reintegrated into society and little control over the sale of small arms and munitions from Uganda to other States or armed groups that may recruit and use children in hostilities. It is therefore recommended that the following action be taken desirably in creative combination.

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## **Government and its agencies**

Government must adhere to international humanitarian law and human rights law as it endeavours to limit the opportunity for the occurrence of war by availing security.

It must ensure strict adherence to the law on recruitment by verifying the age of recruits through different avenues including but not limited to churches, hospitals and local councils. Alongside this should be the effective and transparent demobilization of all children illegally recruited into its own forces particularly LDUs and the army. It should then guarantee such children integrate the handling of released child soldiers. The possibility of stigmatization and victimization of the children should be suppressed through the respect of international standards with regard to truth, justice and reparation.

In line with handling perpetrators accountable, amnesty should not be awarded to those who bear the responsibility for war crimes of child recruitment.

Government should disseminate information about the law particularly the CRC and its Optional Protocol on the use of children in armed conflict. To this end, it should develop a systematic awareness-raising education and training program targeting children, the relevant professional bodies and independent national human rights institutions. The education program should include the publication of all laws in local languages and inclusion of human rights education in school curricula. It must also create national offices for the dissemination of information regarding international humanitarian and human rights law and offer relevant support to NGOs in the distribution of these materials.

Child –specific training for the military and entire security sector on the criminal nature of child recruitment should be integrated in military school curricula with reference to the CRC and its Optional protocols. Emphasis should be placed on how to deal with children and also be exposed to children's behaviour. In addition to the training, the army should be capacitated to monitor the situation of children with respect to their rights and general wellbeing with particular attention to the girl child whose suffering is pervasive. Where any violation is detected, appropriate disciplinary action must be taken immediately. This kind of training should be reviewed and updated regularly.

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The government should drastically reinforce its efforts to provide birth registration for all children in the country in order effectively guarantee that no recruitment takes place among those under 18 years. Comprehensive birth registration should be provided including retroactive measures for unregistered children. This can be done through all institutions of learning by requiring the presentation of authentic birth details.

Whilst ensuring effective implementation of international standards relevant to war affected children, government must enact and adopt national legislation reflective of these standards. Municipal legislation is known to avail more coercive force for governments than international law. The law should then be reviewed continuously in pace with changing international requirements particularly recruitment practices.

Noting the loopholes in DDR programs, the government should ensure design of demobilization exercises which focus on the needs of children especially girls. At all levels, they should be involved in planning and implementation. The children should at all times be separated from adults and where possible their demobilization and reintegration be deinstitutionalized. Political conditionally should not be attached and where amnesty is obtainable, it should be granted judicially. Girl child soldiers must be included in all demobilization schemes with exceptional care given to them in view of their disproportionate anguish. To cap it, the government should support and facilitate the work of Non Governmental organizations working to rehabilitate children formerly associated with armed groups.

In light of the animosity often showed to child soldiers, it is pertinent that government carefully reviews its administration of justice. A multiplicity of interventions must then be applied. Whilst ensuring the establishment and use of truth and reconciliation mechanisms, justice must also be upheld. Amnesty should be granted carefully while taking into account any responsibility for crimes. It is now preferred that older children with greatest responsibility must be tried where necessary and appropriate punishment pronounced. As such, a special court similar to the Sierra Leone model discussed in chapter four may be indispensable to facilitate trial. This will help to recognize children's role as perpetrators of violence and consequently ease their reintegration into a society that may justifiably loathe them.

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It has been noted that development of modern light weaponry has facilitated the use of children in conflicts. The government must therefore employ a range of measures to suppress the availability of such arms both on the supply and demand side. Government should specifically establish control of all arms in the country by developing a central registry of all arms in the country in a transparent manner. They should then all be serialized and a record of all holders maintained and regularly updated.

The government must also consolidate its efforts to disarm all illegal holders and destroy all old and surplus stocks of arms whilst taking into consideration the cultural importance some societies place on gun ownership. Control of illicit proliferation should then be established through improvement of security, use and enforcement of arms embargoes and a constant intelligence campaign to monitor sources and locations of all arms. All purchases should preferably be done by the government and not brokers. Measures for the prosecution of illegal arms sales should then be instituted.

The judiciary is vested with the constitutional mandate to dispense justice under art. 126(2). It has got power to enforce human rights of all individuals in a timely manner while taking into account all social, economic, political and cultural factors in context. It has been suggested above that a special court be established to deal with violations of human rights in war situations given the pervasive nature of conflict in Uganda. Through this court, the Judiciary should monitor the implementation of the CRC together with the regard to children. The judiciary should then exercise its constitutional independence with the constitution as its main point of reference and not state objectives such as “security” to enforce children’s rights. It should then dispense justice fairly and without delay, granting remedies and compensation to the aggrieved children and punishment to perpetrators of human rights violations.

The constitution vests investigative power of human rights abuses in the Uganda Human Rights Commission (UHRC). It however faces logistical challenges which have limited its effectiveness. It is incumbent upon government to facilitate the commission to research on the violation of children’s rights together with NGOs and other relevant agencies as an impartial monitoring and reporting body on violations of children’s rights.



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### **Non Governmental Organizations (NGOs)**

International and local NGOs should strengthen their ability and capacity to monitor and report on violations of children's rights during armed conflict through partnerships.

They should raise awareness with authorities, victims, their families, and civil society about children's rights and their protection. They should also identify and assist victims and witnesses of crimes and provide them with information regarding their right to judicial remedy.

They should supplement government DDR programs by providing child victims with psychosocial and other needs necessary for their reintegration and wellbeing.

NGOs should press for reforms in the national system in order to give effect to children's rights enforcement particularly through remedy and reparation where they have been aggrieved.

### **The International Community**

The United Nations (UN) and international NGOs should initiate partnership with local NGO and work together to ensure enforcement of human rights standards.

Given their strong logistical ability, they should facilitate the capacity building of local NGOs to prevent recruitment of child soldiers and general observance of children's rights.

In partnership with local NGOs, they should carry out child centered research addressing distinct concerns of children. Whilst going this, children should be involved in the design, development and implementation of the research on issues such as abductions and disappearances of children as well as female soldiers.

The United Nations should prepare an annual consolidated report on the situation of children's rights obtained independently from government reports as a check. This will help to ensure limited possibility of falsification by the government. The report should gather and analyze data on children affected by armed conflict, disaggregated by age, gender and geography with special needs of girls boldly covered. Additionally the Committee on the Rights of the Child should develop additional guidelines on reporting to monitor the implementation of the optional Protocol on the involvement of children in armed conflict.

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The UN working together with affected government should undertake further research and action to counter measures that force children into recruitment especially those related to poverty and political differences.

The UN should spearhead the amendment of the CRC to specifically cover girls. A specific prohibition against sexual abuse of girls who are abducted or recruited by armed forces in conflict situations should be included with a heavy penalty attached for the perpetrators. An expansive definition of child soldiers is also necessary in order for girl child soldiers to be fully protected by international law.

The International Criminal Court (ICC) should be used to achieve accountability for criminal conduct involving recruitment of child soldiers. To this end, armed groups, government forces and the population should be informed that international humanitarian law applies with full force and impunity can not be tolerated. All perpetrators should be tried and punished. For elusive rebels, indictments and arrest warrants should be issued which even though are never prosecuted help to halt the liberty of the indicted persons and creates an atmosphere of deterrence against and accountability for future recruitment.

A watch list of countries where situation of children's rights are of particular concern should be compiled. There has been a tendency to ignore perpetrators of child recruitment with impunity especially where they take over government control. This should however end and isolation and call for prosecution of such people be started. The ICC trial of Thomas Lubanga that begun in January 2009 in the Hague is timely and helps to establish a step forward in efforts to ensure responsibility and accountability for the use of children in armed conflict as a war crime prosecutable at the international level. Lubanga is a former leader of the Union of Congolese Patriots (UPC) a militia that operated in Ituri district in northeastern DRC and actively enlisted and conscripted children under the age of 15 as soldiers and used them in combat between September 2002 and August 2003.

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**Non-state actors involved in war**

Non state actors should be urged to commit to international standards for the protection of children's rights.

Where possible commitments to respect children's rights should be sought from armed groups especially those that profess values and aspirations of good governance or those seeking for military legitimacy. The commitments should then be followed up with effective monitoring mechanisms preferably by independent entities.

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