

## **ACCOUNTABILITY FOR THE USE OF CHILD SOLDIERS IN AFRICA**

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### **Abstract**

*The use of child soldiers is a phenomenon rampant in the developing world especially in sub-Saharan Africa. The international response to curb and eliminate this unwholesome abuse of children's rights is examined through the two 1977 Additional Protocols to the 1949 Geneva Conventions, the 1989 Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict. The 1999 International Labour Organization Convention 182 on the Worst Forms of Child Labour and the operation of the 2002 Statute of the International Criminal Court (ICC) are employed in the analysis of the use of child soldiers in Africa. The African response to the prevalence of child soldiers within Africa is analysed through the 1999 African Charter on the Rights and Welfare of the Child. It is established that political leaders and war lords in Africa employed children in armed conflicts as soldiers with impunity. The 2012 conviction and imprisonment for the use of child soldiers of former Liberian president, Charles Taylor, by the Special Court for Sierra Leone and of Thomas Dyilo of the DRC by the ICC signalled a shift from impunity to accountability for the use of child soldiers in Africa.*

### **1. Introduction**

European treaties in the seventeenth and eighteenth centuries considered those of twelve years old and below as children as exemplified in the 1675 treaty between France and Netherlands as well as the 1777 treaty between Sweden and Denmark.<sup>1</sup> The inadequacy of Article 77(2) of 1977 Additional Protocol I (AP I) and Article 4(3) of Additional Protocol II (AP II) to the 1949 Geneva Conventions on International Humanitarian

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<sup>1</sup>Van Bueren, G., *The International Law on the Rights of the Child* (London: Martinus Nijhoff, 1995) 333.

Law as well as Article 38 of the 1989 Convention on the Rights of the Child<sup>2</sup> manifested in the usage of the minimum age of 15 years to qualify for recruitment into armed forces and participation in armed conflict. The inadequacy of the set age of 15 years in Africa, the continent most ravaged by the scourge of child soldiers was evident. Africa's response, to tackle the inadequacy of 15 years, manifested in the form of the African Charter on the Rights and Welfare of the Child of 1990 (ACRWC) which entered into force on 29 November, 1999 and raised the minimum age of recruitment to eighteen years. The use of child soldiers by war lords in Liberia, Sierra-Leone, Cote d'Ivoire, Somalia, Democratic Republic of Congo was fuelled by the quest for political power and the looting of natural resources to fund their armies. Charles Taylor when he was the serving Head of State of Liberia, was judged by the Special Court for Sierra Leone as not having immunity from prosecution for the use of child soldiers among other charges he was being prosecuted for in his involvement in the conflict in Sierra Leone.<sup>3</sup> Paragraph fourteen of the report of the Secretary-General of the United Nations on the establishment of the Special Court for Sierra Leone, stated that Article 4 of APII relating to non-international armed conflict has for long been considered as customary international law, especially since the establishment of the International Criminal Tribunal for Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) which recognized the individual criminal responsibility of an accused person and recognition of war crimes under the Rome Statute which was then not yet in force.<sup>4</sup>

The Rome Statute came into force in July

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<sup>2</sup> Came into force on 2 September, 1990, full text available at: <http://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf> (accessed on 20 January 2016).

<sup>3</sup> Full text available at: <http://www.sc-sl.org/scsl/Public/SCSL-03-01-Taylor/SCSL-03-01-I-059.pdf>, see also: C. Jalloh, <http://www.asil.org/insigh145.cfm> (accessed on 22 January 2016).

<sup>4</sup> Full text of the Report of the Secretary-General of the United Nations on the establishment of the Special Court for Sierra Leone is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/661/77/PDF/N0066177.pdf?OpenElement> (22 January 2016).

2002.<sup>5</sup> On 27 September, 2005 the International Criminal Court (ICC) established under the Rome Statute amended the warrant of arrest originally issued against Joseph Kony the leader of the Ugandan LRA to include the use of child soldiers.<sup>6</sup> The ICC in 2006 also filed charges against Thomas Lubanga Dyilo for the use of child soldiers under the age of fifteen in the Ituri district of the DRC.<sup>7</sup> The warrant of arrest indicated a violation of Article 8(2)(b)(xxvi) or Article 8(2)(e)(vii) of the Rome Statute.<sup>8</sup> The demobilization of child soldiers is also a complicated process as the recent experience of the Democratic Republic of Congo demonstrates.<sup>9</sup> Article 19 of the CRC directs state parties to prevent all forms of physical and mental violence against children and General Comment No. 13 of the Committee on the Rights of the Child issued on 18 April, 2011 reiterates “the right of the child to freedom from all forms of violence” while maintaining the relevance of the two optional protocols to the CRC in the abolition of violence against children.<sup>10</sup>

Today the use of children as soldiers is still a worrisome violation of children’s rights as evidenced by the 18 October 2010 ICRC New York statement to the United Nations on the

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<sup>5</sup> <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> (accessed on 22 January 2016).

<sup>6</sup> <http://www.icc-cpi.int/iccdocs/doc/doc97185.PDF> (Accessed on 22 January 2016).

<sup>7</sup> <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Reports+and+Statements/Press+Releases/Press+Releases+2006/> (accessed on 22 January 2016).

<sup>8</sup> <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Reports+and+Statements/Press+Releases/Press+Releases+2006/Issuance+of+a+Warrant+of+Arrest+against+Thomas+Lubanga+Dyilo.htm> (accessed on August 15, 2011), <http://www.icc-cpi.int/iccdocs/doc/doc191959.PDF> (accessed on 22 January 2016).

<sup>9</sup> Democratic Republic of the Congo: former child soldiers going home ICRC Feature 12-08-10, <http://www.icrc.org/eng/resources/documents/feature/congo-kinshasa-feature-110810.htm> (accessed on 22 January 2016).

<sup>10</sup> Full text of General Comment 13 is available at: [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf) (accessed on 21 January 2016).

“Promotion and protection of the rights of children.”<sup>11</sup> On 29 September 2009 at the Ministerial Side Meeting on Paris Principles and Paris Commitments, at the United Nations General Assembly, the ICRC issued its “statement on recruitment and use of children in hostilities.”<sup>12</sup> It is also pertinent to recall that the ICRC organized meeting of experts at Geneva from 7-9 December 2009 on Children Associated with Armed Forces or Armed Groups: Implementation of International Norms on the Recruitment and Participation of Children in Armed Conflicts. The meeting of experts resulted in the document published in April 2011 entitled: Guiding Principles for the Domestic Implementation of a Comprehensive System of Protection for Children Associated with Armed Forces or Armed Groups.<sup>13</sup> This builds on the 2003 ICRC bulletin entitled: Legal Protection of Children in Armed Conflict,<sup>14</sup> the 2009 publication: Children in War<sup>15</sup> and the 2004 Children in War.<sup>16</sup>

## **2. Who is a Child?**

Article 2 of the African Charter on the Rights and Welfare of the Child defines a child as ‘every human being below the age of eighteen years.’ Article 1 of the Convention on the Rights of the Child had earlier defined a child as any person below the age of 18 years ‘unless under the law applicable to the child, majority is attained earlier.’ 18 years as the threshold of adulthood becomes important when we explore the age of recruitment into armed forces. “There is no precise definition of a child in international

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<sup>11</sup> <http://www.icrc.org/eng/resources/documents/statement/united-nations-children-statement-2010-10-18.htm> (accessed on 22 January 2016).

<sup>12</sup> <http://www.icrc.org/eng/resources/documents/statement/paris-commitments-children-statement-290909.htm> (accessed on August 15, 2011).

<sup>13</sup> Full text available at: <http://www.icrc.org/eng/assets/files/2011/guiding-principles-children-icrc.pdf> (accessed on 22 January 2016).

<sup>14</sup> Full text available at: [http://www.icrc.org/eng/assets/files/other/ang03\\_03\\_juridique\\_newlogo.pdf](http://www.icrc.org/eng/assets/files/other/ang03_03_juridique_newlogo.pdf) (accessed on 22 January 2016).

<sup>15</sup> Full text available at: [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_4015.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_4015.pdf) (accessed on 22 January 2016).

<sup>16</sup> [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0577k\\_children\\_in\\_war\\_kit.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0577k_children_in_war_kit.pdf) (accessed on 22 January 2016).

humanitarian law.”<sup>17</sup> Articles 27-34 of the Geneva Convention IV of 1949 provide protection from wars for civilians including children who are not participants in international armed conflicts.<sup>18</sup> Article 75 of the 1977 AP I to the 1949 Geneva Conventions regulating international armed conflicts repeats and reinforces the protection for civilians guaranteed by Geneva Convention IV. Article 77 of AP I specifically protects children during international armed conflicts.<sup>19</sup>

### **3. Who is a Child Soldier?**

A child soldier can be classified as a boy or girl below eighteen years of age who “volunteers” or is forced to participate in armed combat by national armies or rebel groups. A child soldier can also be forcibly employed as a load carrier, courier, scout, and cook in addition to direct participation as an armed child combatant during armed conflicts. Child soldiers could sometimes be as young as ten years and are majorly male with girls also forcibly recruited.<sup>20</sup> The 1996 United Nations sponsored study on the impact of armed conflict on children otherwise known as the Graca Machel Report galvanized international efforts at curbing the scourge of child soldiers.<sup>21</sup> The United Nations Security Council Resolutions 1261 of 1999, 1314 of 2000, 1379 of 2001, 1460 of 2003, and 1539 of 2004 all aimed at ending the recruitment and use of child soldiers culminated in the 2005 report by the Secretary-General of the United Nations on children and

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<sup>17</sup> Dutli, M.T. ‘Captured Child Combatants’ September-October 1990 *International Review of the Red Cross*, 421, 422

<sup>18</sup> Full text of GC IV is available at: <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument> (accessed on 22 January 2016).

<sup>19</sup> Full text of Additional Protocol I to the 1949 Geneva Conventions is available at: <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument> (accessed on August 5, 2011).

<sup>20</sup> Marcel, G. *The Impact of War on Children* (London: Hurst & Company, 2001) 7.

<sup>21</sup> Full text of the report titled “Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children” is available at: [http://www.unicef.org/emerg/files/report\\_machel.pdf](http://www.unicef.org/emerg/files/report_machel.pdf) (accessed on 22 January 2016).

armed conflict.<sup>22</sup> This report was updated seven months later in September 2005 on the progress made in arresting the recruitment of child soldiers by a report of the special representative of the Secretary-General of the United Nations for children and armed conflict.<sup>23</sup> The 1997 Cape Town Principles on child soldiers in Africa were formulated to address the root causes of the recruitment of children in armed conflicts in Africa.<sup>24</sup> In December 1998, both the European Parliament and the World Council of Churches observed that more than 300,000 children under eighteen years of age were engaged as child soldiers globally. In 1999 in Maputo, Mozambique, an African Conference on the use of children as soldiers also arrived at a global figure of over 300,000 child soldiers. This is now commonly known as the Maputo Declaration. In the year 1999, there was also the European Conference on the use of children as soldiers which was held in Berlin and the conference also reached a consensus on a global figure of 300,000 child soldiers. This became known as the Berlin declaration. Furthermore, in the year 2000, the Asia-Pacific Conference on the use of children as soldiers also concluded that 300,000 child soldiers operated worldwide. This was tagged as the Kathmandu Declaration on the use of children as soldiers.

No accurate figure exists for the actual global number of child soldiers.<sup>25</sup> “Oft-quoted estimates of the number of children associated with or affected by armed conflict and child trafficking and of those in conflict with the law – to name but three areas – are outdated, not fully reliable and generally believed to vastly

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<sup>22</sup> Full text of the report is available at: [http://www.unicef.org/emerg/files/SG\\_report\\_cac.pdf](http://www.unicef.org/emerg/files/SG_report_cac.pdf) (accessed on 22 January 2016).

<sup>23</sup> Full text available at: [http://www.unicef.org/emerg/files/report\\_SRSG\\_cac.pdf](http://www.unicef.org/emerg/files/report_SRSG_cac.pdf) (accessed on 22 January 2016).

<sup>24</sup> Full text available at: [http://www.unicef.org/emerg/files/Cape\\_Town\\_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) (accessed on 22 January 2016).

<sup>25</sup> Facts and Figures on Child Soldiers, 2008, <http://www.childsoldiersglobalreport.org/content/facts-and-figures-child-soldiers> (accessed on 29 January 2016); Child Soldiers Global Report 2008, [http://www.childsoldiersglobalreport.org/files/country\\_pdfs/FINAL\\_2008\\_Global\\_Report.pdf](http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf) (accessed on 29 January 2016).

underestimate the true scope of the abuse.”<sup>26</sup> In 2007 fifty-nine countries came together in Paris and committed themselves to ending the scourge of child soldiers.<sup>27</sup> A complimentary “Paris Principles” with more detailed guidance and fully known as “The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups” was issued in February 2007.<sup>28</sup> Girls are also impacted by armed conflict in so many diverse ways and they are more vulnerable especially the younger they are.<sup>29</sup>

#### **4. The Age of Recruitment**

Up till the last decade of the twentieth century children between the ages of ten and eighteen in over twenty countries were trained as soldiers and twenty-five countries utilized children in battle even when they had not reached voting age.<sup>30</sup> 1977 was the year that an international minimum age of fifteen was set as the threshold for recruitment. Article 77 (2) of the 1977 AP I on international armed conflicts to the 1949 Geneva Conventions states that: “In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the parties to the conflict shall endeavour to give priority to those who are oldest.” Article 4 (3) (c) of 1977 AP I regulating non international armed conflicts stipulates that: “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to

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<sup>26</sup> UNICEF, *The State of the World’s Children 2011*, p. 19, full report available at: [http://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report\\_EN\\_02092011.pdf](http://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report_EN_02092011.pdf) (accessed on 29 January 2016).

<sup>27</sup> Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, full text available at: <http://www.unicef.org/spanish/protection/files/pariscommitments.pdf> (accessed on 29 January 2016).

<sup>28</sup> Full text available at: <http://www.icrc.org/eng/assets/files/other/the-paris-principles.pdf> (accessed on 29 January 2016).

<sup>29</sup> Florence, Tercier Holst-Ronnes, *Violence against girls in Africa during armed conflicts and crises*, Second International Policy Conference on the African Child, Addis-Ababa, 11-12 May, 2006, full text available at: <http://www.icrc.org/eng/assets/files/other/international-policy-conference.pdf> (accessed on 29 January 2016).

<sup>30</sup>Van Bueren, G. above, at footnote 1, at 336.

take part in hostilities.”<sup>31</sup>

Twelve years later, Article 1 of the 1989 Convention on the Rights of the Child which entered into force on second September, 1990 defined a child as any person below the age of eighteen, but it surprisingly permitted under Article 38(3) the recruitment into armies of a child aged fifteen years.<sup>32</sup> Article 38 of the CRC only repeated the provisions of Article 77 (2) of the 1977 AP I and negated the more robust protection against the recruitment of child soldiers offered by Article 4 (3) (c) of 1977 AP II regulating non international armed conflicts. It also assimilated the weakness of API which only forbids children under fifteen from direct participation in armed conflicts and fell short of AP II applicable to non-international armed conflicts which stipulates that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.” “This led the United Nations, NGOs as well as the International Red Cross and Red Crescent Movement to lobby for an upward review from fifteen to eighteen years in an optional protocol to the Convention on the Rights of the Child.”<sup>33</sup>

Children have also “voluntarily” joined armies or armed groups for different reasons<sup>34</sup>. But circumstances exist that negate purported willingness or voluntariness supposedly exhibited by children in joining armies or armed groups. Article 8(2)(xxvi) of the 1998 Rome Statute which came into force on 1 July 2002, makes “Conscripting or enlisting children under the age of fifteen

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<sup>31</sup> Full text of Additional Protocol I to the 1949 Geneva Conventions available at: <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument> (accessed on 29 January 2016).

<sup>32</sup> Full text available at: <http://www.icrc.org/ihl.nsf/FULL/540?OpenDocument> (accessed on August 15, 2011) and at: <http://www2.ohchr.org/english/law/pdf/crc.pdf> (accessed on 29 January 2016).

<sup>33</sup> Daniel H. Optional Protocol on the involvement of children in armed conflict to the Convention on the Rights of the Child, 2000, No. 839, <http://www.icrc.org/eng/resources/documents/misc/57jqqe.htm> (accessed on 29 January 2016).

<sup>34</sup> Brett, R., Adolescents volunteering for armed forces or armed groups, December 2003, VOL. 85 N° 852, *International Review of the Red Cross*, 857-866, full text available at: [http://www.icrc.org/eng/assets/files/other/irrc\\_852\\_brett.pdf](http://www.icrc.org/eng/assets/files/other/irrc_852_brett.pdf) (accessed on 29 January 2016).



years into national armed forces or using them to participate actively in hostilities” a war crime in international armed conflict . Article 8(2)(e)(vii) also provides the same prohibition for non-international armed conflicts.

### **5. The Incentive for the use of Child Soldiers**

Armed conflicts in Burundi, Cambodia, Colombia, Myanmar, Liberia, Central African Republic, Chad, Cote d’Ivoire, Democratic Republic of Congo, Northern Uganda, Southern Sudan, Sudan, among others witnessed the active use of child soldiers. The principal incentive for the use of child soldiers was the lack of fear and immature evaluation of risks by child soldiers at the battle front compounded by their exposure to hard drugs and alcohol before being deployed to the battle front. Another incentive was the proliferation of small arms and light weapons easy to assemble and handle by children which served as a major catalyst in the deployment of child soldiers to the frontlines.<sup>35</sup> The inexperienced nature of a child renders him or her prone to frontline deployment.<sup>36</sup> In 2002, 36 countries had children under the age of eighteen in government armies, paramilitaries and armed opposition groups involved in armed conflicts.<sup>37</sup>

### **6. The Scourge of Child Soldiers**

Africa today accounts for a sizeable number of children engaged as soldiers in the world. West Africa in the previous twenty years, specifically, Liberia, Sierra Leone and Cote d’Ivoire suffered at one point from the scourge of child soldiers.<sup>38</sup> The Special Court for Sierra Leone in Count II of the Indictment of Charles Ghankay Taylor, the former Liberian President, charged him with “conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities.” He was estimated by security analysts to have employed 15, 000 children as combatants in Liberia and

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<sup>35</sup>Marcel G. above at footnote 20, at 119.

<sup>36</sup> Van Bueren, G. above, at footnote 1, at 336.

<sup>37</sup> Newsweek 13 May 2002, 34.

<sup>38</sup> Robertson, G. *Crimes against Humanity* (London: Penguin, 2000) 202.

Sierra Leone. The late Foday Sankoh and other RUF commanders in Sierra Leone under Taylor's directives abducted around 10, 000 children for use as child soldiers. The RUF plundered the diamond mines in Sierra Leone and laundered them through Charles Taylor in Liberia.<sup>39</sup>

In 2002, Africa had an estimated number of 120, 000 child soldiers with Joseph Kony of the LRA in Northern Uganda accounting for 30, 000 of them.<sup>40</sup> It must be noted that both the RUF and the government of Sierra Leone recruited children around the age of ten years into their forces.<sup>41</sup> For the sole purpose of survival, a great number of children in Africa have been forced to join armed groups. Out of a multitude of pressures predisposing children to joining armies, poverty has been the foremost one. Poverty stricken parents donate their children to armies, who pay to them directly, wages accruing to their children employed as child soldiers.<sup>42</sup> In Mozambique, Renamo rebels recruited children younger than ten years of age and turned them into killers.<sup>43</sup> The African conference on the use of children as soldiers which is referred to as the Maputo Declaration on the use of children as soldiers, acknowledged "that poverty, injustice, displacement, lack of access to education, the proliferation of small arms and other factors contribute to the recruitment of children as soldiers."

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

The African Charter on the Rights and Welfare of the Child was adopted in 1990 and it came into force on 29 November 1999 after the fifteenth ratification. It sets a higher standard of protection for children than the Convention on the Rights of the Child.<sup>44</sup>

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<sup>39</sup> The Economist, London, 14 May, 2005, 60.

<sup>40</sup> West Africa, London, 22-28, April, 2002, 14.

<sup>41</sup> Zarifs, I. 'Sierra Leone's search for justice and Accountability of child soldiers', The Human Rights Brief, (spring 2002) Volume 9, Issue 3, 19.

<sup>42</sup> Marcel, G. above at footnote 20, at 11.

<sup>43</sup> British Medical Association, The Medical Profession and Human Rights (London: Zed Books, 2001) 436.

<sup>44</sup> Viljoen, F., "Africa's contribution to the development of international human rights and international humanitarian law", African Human Rights Law Journal 2002(2(1)), 8-39, at 22.

Article 22(2) of the ACRWC forbids the recruitment of children below the age of eighteen into national armies and armed groups, while it directs state parties “to ensure that no child shall take a direct part in hostilities.” In other words any child below the age of eighteen must not be allowed to engage in armed combat. The ACRWC promotes the best interests of the child by forbidding his or her involvement in armed conflicts.<sup>45</sup> The ACRWC in clear terms forbids the use of child soldiers in Africa. This momentum against the use of child soldiers in Africa was carried along to the International Labour Organization by African countries, supported by their counterparts from the South into the International Labour Organization Worst Forms of Child Labour Convention 182 of 1999.

### **8. The International Labour Organization Worst Forms of Child Labour Convention 182**

On 17 June 1999, the ILO Convention on the Worst Forms of Child Labour Convention 182 was adopted and it came into force on 19 November 2000. Article 2 of the Convention defined a child as a person under the age of eighteen years. Article 3(a) of the Convention defined the worst forms of child labour to include: “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.” Article 6 imposes an obligation on States “to design and implement Programmes of action to eliminate as a priority the worst forms of child labour.” The global movement in raising the age of recruitment into armies and deployment into the battlefield crystallized into the form of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

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<sup>45</sup> Lloyd, A., “A Theoretical analysis of the reality of children’s rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child,” *African Human Rights Law Journal* 2001(2(1)), 11-32, at 20.

### **9. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

On 25 May, 2000, through Resolution 54/263, the United Nations General Assembly unanimously adopted the optional protocol on the Involvement of Children in Armed Conflict and it entered into force on 12 February, 2002.<sup>46</sup> Under the same Resolution 54/263 the second optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was adopted and it entered into force on 18 January, 2002.<sup>47</sup> For children already employed in armies States Parties to the optional protocol on the Involvement of Children in Armed Conflict under Article 1 must ensure that soldiers below “the age of 18 years do not take a direct part in conflicts.” Article 2 also prohibits compulsory recruitment by State Parties of any person under the age of 18 years. To correct the anomaly of the minimum age of 15 years permissible for voluntary recruitment into armies contained in Article 38(3) of the Convention on the Rights of the Child, the optional protocol in Article 3(1) recommends that State Parties should raise the minimum age of voluntary recruitment while taking into consideration that persons under 18 years are entitled to special protection.

Safeguards are introduced by the optional protocol for voluntary recruitment of persons under the age of 18 years. Article 3(3) safeguards stipulates that recruitment of a child must be voluntary with the consent of the parents or legal guardians and the child must be informed of the duties involved in military service. The child must also provide documentary proof of his or her age before recruitment into a national army. Article 4 of the optional protocol states that: “Armed groups that are distinct from the armed forces of a State should not under any circumstances, recruit or use in hostilities persons under the age of 18 years.” This arguably should have checked war lords from the use of child soldiers in Liberia, Sierra Leone, Uganda and the Democratic

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<sup>46</sup> Full text available at: <http://www2.ohchr.org/english/law/pdf/crc-conflict.pdf> (accessed on 29 January 2016).

<sup>47</sup> Full text available at: <http://www2.ohchr.org/english/law/pdf/crc-sale.pdf> (accessed on 20 February, 2016).

Republic of Congo. States Parties are also enjoined by Article 4(2) “to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices” by armed groups.

It is regrettable that the optional protocol permitted state parties voluntary recruitment of children under the age of 18 years. Despite the safeguards and requirements for consent of parents for voluntary recruitment, there is enough room for strong parental influence (based on selfish needs and likely payments and rewards to be received from government or armed groups) to wrongly persuade the child to partake in armed conflict without any consideration of the best interest of the child. Article 5 of the optional protocol, nevertheless, took notice of more progressive instruments, like the African Charter on the Rights and Welfare of the Child which set 18 years as the minimum age of recruitment for States Parties. Article 5 of the optional protocol states that: “Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.”

#### **10. Children as Victims**

Girls and boys between the ages of ten to sixteen years of age have been trained for various tasks to assemble and fire light weapons in combat, serve as cooks, sex slaves, wash clothes. Some of them became or eventually become infected with sexually transmitted and life threatening diseases. The above atrocities have been perpetrated in Afghanistan, Burundi, Cambodia, Colombia, Chad, Central African Republic, Liberia, Laos, Libya, Myanmar, Northern Uganda, Russia, Rwanda, Sierra Leone, Sri-Lanka, Somalia, Thailand, Ethiopia, Eretria, Southern Sudan, Sudan and Yemen. In 2011, the above violations of children’s rights occurred in Cote d’Ivoire, Southern Sudan, Sudan, and still continue in the Democratic Republic of Congo, Afghanistan, Russia, Somalia, Libya, Pakistan, Sudan and Yemen.

## **11. Children as Violators of Human Rights**

It is rather intriguing or paradoxical that child soldiers as victims on the one hand would also on the other hand become vicious and murderous killing machines. In this light, Camus the writer observed that every individual has the capacity of becoming an executioner and such individual can also become a victim.<sup>48</sup> In Burundi, Chad, Cambodia, Colombia, the Democratic Republic of Congo, Northern Uganda, Mozambique, Sierra Leone, Sudan and Liberia, children were widely employed in their armed conflicts which witnessed mutilations and murders of innocent civilians on a large scale. In Sierra Leone, children took part in mutilations and murders of innocent civilians including children and infants on a large scale.<sup>49</sup> The trial and conviction of Charles Taylor at the SCSL for the use of child soldiers in the murder and mutilation of the civilian population of Sierra Leone during its internationalized armed conflict is a graphic illustration of how children were and are still employed in Africa to violate international humanitarian law and human rights law. Child soldiers still violate human rights and laws of armed conflict humanitarian guarantees of civilians in Northern Uganda and the Democratic Republic of Congo.

## **12. From Impunity to Accountability**

In October 2000, a Special Court for Sierra Leone (SCSL) was established by a treaty between the United Nations and the government of Sierra Leone. The objective of the treaty according to Article 1 of the Statute of the SCSL was to prosecute “persons most responsible for serious violations of International Humanitarian Law and Sierra Leone Law committed in the territory of Sierra Leone since 30 November 1996.”

On 31 May, 2004, the SCSL in its ruling over the motion of Sam Hinga Norman, (which alleged that at the time of his indictment for the use of child soldiers, the use of child soldiers

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<sup>48</sup> Camus, A., *Neither victims nor executioners* (Chicago: World Without War Publications, 1972).

<sup>49</sup> Human Rights Watch, *Getting Away with Murder, Mutilation and Rape: New Testimony from Sierra Leone*, (New York: Human Rights Watch, 1999).

had not crystallized into a crime under customary international law); ruled at Paragraph 52 that:

The rejection of the use of child soldiers by the international community was widespread by 1994. In addition, by the time of the Graca Machel Report, it was no longer possible to claim to be acting in good faith while recruiting child soldiers (contrary to the suggestion of the Defence during the oral hearing). Specifically **concerning Sierra Leone, the Government acknowledged in its 1996 Report to the Committee on the Rights of the Child** that there was no minimum age for conscripting into armed forces ‘except the provision in the Geneva Convention that children below the age of 15 years should not be conscripted into the army.’ This shows that the government of Sierra Leone was well aware already in 1996 that children below the age of 15 should not be recruited. Citizens of Sierra Leone, and even less, persons in leadership roles, cannot possibly argue that they did not know that recruiting children was a criminal act in violation of international humanitarian law.<sup>50</sup>

International criminal law has responded to the scourge of child soldiers in the form of the Rome Statute of the International Criminal Court. But the age of fifteen was unfortunately accepted as the benchmark of prohibition of the use of child soldiers instead of eighteen years. It criminalizes the conscripting or enlisting of children under the age of fifteen years into national armies or

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<sup>50</sup> [http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72\(E\)-131-7383.pdf](http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72(E)-131-7383.pdf), [http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72\(E\)-131-7398.pdf](http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72(E)-131-7398.pdf), dissenting opinion of Justice Robertson: [http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72\(E\)-131-7413.pdf](http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72(E)-131-7413.pdf), [http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72\(E\)-131-7430.pdf](http://www.sc-sl.org/scsl/Public/SCSL-04-14-PT%20CDF/SCSL-04-14-T-131/SCSL-04-14-AR72(E)-131-7430.pdf) (accessed on 20 February, 2016).

armed groups or deploying them in battle during international armed conflict and non-international armed conflict. On 27 September, 2005 the International Criminal Court amended the warrant of arrest originally issued against Joseph Kony the leader of the Ugandan LRA to include the use of child soldiers.

The ICC in 2006 filed charges against Thomas Lubanga Dyilo for the use of child soldiers under the age of fifteen in the Ituri district of the DRC. The warrant of arrest indicated a violation of Article 8(2)(b)(xxvi) or Article 8(2)(e)(vii) of the Rome Statute. Trial Chamber I of the ICC on 14 March 2012 convicted Thomas Lubanga Dyilo for the use of children under the age of fifteen as child soldiers and on 10 July 2012 sentenced him to fourteen years in prison, which was confirmed by the Appeals Chamber on 1 December 2014.<sup>51</sup>

Charles Taylor, the former president of Liberia faced trial at the SCSL sitting at The Hague in the Netherlands. Among the charges he faced was the use of child soldiers to prosecute the armed conflict in Sierra Leone. On 26 April 2012, the SCSL convicted war lord, Charles Taylor, of all eleven counts including count nine on the use of child soldiers and sentenced him to fifty years imprisonment.<sup>52</sup> The sentence which was challenged by both the Prosecution and Defence on appeal was however affirmed by the appellate chamber of the SCSL on 26 September 2013.<sup>53</sup>

### **13. Rehabilitation of Child Soldiers**

Experts on child psychology and juvenile justice have always battled with the concepts of accountability and rehabilitation of child soldiers. They have opined that children under the age of eighteen years should be rehabilitated and not prosecuted for war crimes or human rights violations committed as

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<sup>51</sup> ICC-01/04-01/06-3173 22-09-2015 1/32 EO RW [https://www.icc-cpi.int/icc\\_docs/doc/doc2063771.pdf](https://www.icc-cpi.int/icc_docs/doc/doc2063771.pdf) (accessed on 16 April 2016).

<sup>52</sup>The Special Court for Sierra Leone, the Residual Special Court for Sierra Leone - The Prosecutor vs Charles Ghankay Taylor <http://www.rscsl.org/Taylor.html> (accessed on 16 April 2016)

<sup>53</sup>SCSL-03-01-A-1389 <http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf> at 305 (accessed on 15 April 2016)



child soldiers.<sup>54</sup> This is in line with the provision of Article 3 of the CRC which gives the best interest of the child primary consideration in all actions concerning children whether such action is being undertaken by courts of law, public or private social welfare institutions, administrative or legislative authorities.

Article 7(1) of the SCSL Treaty provides for the protection availing juveniles aged between 15 and 18 years of age at the time of the commission of a crime. It also takes into account the “young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society and in accordance with international human rights standards, in particular the rights of the child”.<sup>55</sup> The United Nations Children’s Fund (UNICEF), the Coalition of NGOs established in 1998 to stop the use of child soldiers<sup>56</sup> and the ICRC have been at the forefront of the rehabilitation of child soldiers all over the world including Africa.

#### **14. Conclusion**

The goal of international humanitarian law is to impose legal constraints on the waging of war.<sup>57</sup> Armed conflicts serve as the seed from which child soldiers sprout. The root causes of armed conflicts in Africa relate to political-economic and socio-economic factors. Unaccountable political leadership, corruption, lack of a transparent electoral process, poverty, unsustainable agricultural practices, desertification, climate change, and competition for scarce natural resources are some of the factors that have ignited armed conflicts in African societies in recent

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<sup>54</sup> Coomaraswamy, R., “The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict-Towards Universal Ratification,” *International Journal of Children’s Rights* 2010 (18), 535-549.

<sup>55</sup> Tejan-Cole, A. “The Special Court for Sierra Leone: Conceptual concerns and alternatives”, *African Human Rights Law Journal* 2002(2(1)), 107-126 at 112.

<sup>56</sup> <http://www.child-soldiers.org/coalition/the-coalition> (accessed on 20 February, 2016).

<sup>57</sup> Kalshoven, F. and Zegveld, L., *Constraints on the Waging of War* (Geneva: International Committee of the Red Cross, 2001), 204.

times. Globalization and its old form known as colonialism are also responsible for the upheavals in African societies bounded by artificial boundaries cast in stone at the 1884 Berlin Conference among European Powers of the nineteenth century. The Organization of African Unity now known as the African Union has both identified the above factors as predisposing African countries to armed conflicts.

The ban against the recruitment of child soldiers would be meaningless without compliance despite the vast array of provisions in international humanitarian law and human rights law prohibiting the use of child soldiers. We are faced with the stark reality of children under eighteen years still being engaged in armed conflicts despite the plethora of duly ratified conventions churned out by international humanitarian law, international labour law, international criminal law, and international human rights law. It is only extensive domestication, implementation and dissemination in 54 African countries of the extensive protection availing children under international and domestic law that will make war lords desist from the use of children as soldiers in Africa.

Charles Taylor's imprisonment for the use of child soldiers and other war crimes and the conviction of Thomas Lubanga Dyilo by the ICC for the use of child soldiers sends a strong message to African leaders and war lords who are unaccountable to the citizens, that the use of child soldiers in Africa will attract sanctions.