

**Pitied and then Ignored: International Response to the Plight of Children
in Armed Conflict – the Case of Uganda**

**Submitted in partial fulfilment of the requirements of the degree LLM
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By

Prudence Acirokop

**Prepared under the Supervision of
Prof Henrietta Mensa-Bonsu**

**At the Faculty of Law
University of Ghana**

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DEDICATION

To the millions of children suffering as a result of armed conflict
And to my parents for believing in me

DECLARATION

I, **Prudence Acirokop**, do hereby declare that the work submitted for this dissertation is the result of my personal effort and that this work has not been submitted for any degree in any other university. Where any secondary source has been consulted, it has been duly acknowledged.

Signed:

Date:

Prudence Acirokop

I, **Henrietta Mensa-Bonsu**, have read this dissertation and approved it for examination.

Signed:.....

Date:.....

Professor Henrietta Mensa-Bonsu
(Supervisor)

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INTRODUCTION

Children's rights are the building blocks for securing human rights for future generations and given the immense suffering they endure in armed conflict, children deserve special protection. Children are always the first and the most vulnerable victims of armed conflicts; they become caught up in armed conflict either as civilians or as participants.¹ Even though they may have similar experiences as adults, children are usually physically more vulnerable and more easily manipulated. In addition almost all children are economically, politically, and militarily powerless in situations of armed conflict. As a result, there is a need for laws protecting these children, and a need for warring parties and the world at large to protect them from the brutality and danger of such situations.

Various reports have documented the extent to which children are devastated by the experience of participating in armed conflict.² Too often, armed forces see the abuse and humiliation of civilians, including children, as an integral, or at the least an incidental, part of military strategy. Children are murdered, tortured, detained, or recruited and sent to the front line; girls are raped; and houses and hospitals are razed to the ground. These atrocities have an impact far beyond the immediate damage to the child. They provoke displacement, aggravate levels of malnutrition and risk of disease, separate children from their families and vastly reduce access to education and health services.

During armed conflict many more children die from malnutrition or preventable disease than are killed by bombs or bullets. The United Nations Children's Fund (UNICEF), for example, estimates that "in African wars, lack of food and medical services, combined with the stress of flight, have killed about 20 times more people than have armaments."³ In addition, many more children are wounded psychologically, emotionally, or culturally than are wounded physically and this impact extends far beyond the immediate battle zone.

¹ Research Agenda of the Special Representative of the UN Secretary General on Children in Armed Conflict, (2001) *"Impact of Armed Conflict on Children: Filling the Gaps."* (Hereinafter, *Research Agenda*).

² Human Rights Watch has published: *"Easy Prey: Child Soldiers in Liberia"* (1984), *"Children of Sudan: Slaves, Street Children and Child Soldiers,"* (1995), and *"The Scars of Death: Children Abducted by the Lord's Resistance Army in Uganda"* (1997) among many others.

³ UNICEF, (1996) *"State of the World's Children"*, 20.

In approximately fifty countries, children are suffering as a result of armed conflict and its consequences⁴ and children constitute a disproportionately large percentage of the world's displaced population.⁵ The majority of these conflicts occur in the developing world, which includes the bulk of African states, Latin America and Asia. As though in confirmation of that, it is estimated that 75 per cent of the world trade in arms from the industrialised states is directed towards the developing world.⁶ From Côte d'Ivoire to Nepal, Congo to Columbia, Darfur in Sudan to Sri Lanka; so many of the images that we see of conflict and of the front line burden of conflict are images of children.⁷

The conflict in northern Uganda, which is the focus of this study, has been going on for the last 19 years, and is one of Africa's longest running wars, yet the international community has ignored it.⁸ Jan Egeland, the UN Under-Secretary General for Humanitarian Affairs and Emergency Relief in his address to the Security Council called this crisis "the biggest, forgotten and most neglected humanitarian emergency in the world."⁹ He further stated that the world forgot that the 18-year old war in northern Uganda was about children; kidnapped children, murdered children, and children who commute nightly to town centres to escape violence. 20,000 children in the region have been kidnapped, 90 per cent of the population in three large districts have been displaced and children make up 80 per cent of the insurgency movement. Despite this astonishing number, the international community has ignored their plight.¹⁰

⁴ United Nations General Assembly Note by the Secretary General, (1999) 54th Session Agenda Item 112, "*Protection of Children Affected by Armed Conflict*" UN Doc. A/54/430 (hereinafter *Protection of children*) 5 - 6; Machel, (1996) "*Promotion and Protection of Children: Impact of Armed Conflict on Children*" (hereinafter Machel report) 19, stating that typical perpetrators of sexual violence in armed conflict are either government forces or insurgent armed groups.

⁵ See *Protection of Children* above at 6; Machel Report above 12 stating that twenty million of world's displaced population consists of children.

⁶ Van Bueren (1995), "*International Law on the Rights of the Child*," 226.

⁷ Levine, "*Children as Refugees and Immigrants*" Columbia University Institute in the Child and Family Policy Lecture Series on "*The Future Of Children In A Global Society*" (18 October 2004) <http://www.childpolicy.org/Levine_speech.html> (accessed 14 August 2005).

⁸ Cawthorne, Reuters (28 January 2005), "*UN 'appalling negligent' of Uganda war*".

⁹ Mr Egeland made the remarks during a lengthy briefing of the 15 - member UN Security Council, the body with the authority to order intervention into world crisis spots. He further referred to the situation in northern Uganda as a "moral outrage" of our time. See Oloya, New Vision (27 October 2005) "*UN Official was spot on*."

¹⁰ As above, Mr Egeland further noted that there are over 1,000 humanitarian relief efforts in Darfur in south western Sudan compared to only 65 in northern Uganda, despite the fact that

Role of the International Community

It is generally accepted in international law that governments, in the first instance, are responsible for the implementation and enforcement of human rights.¹¹ The role of international bodies has been to undertake activities designed to encourage and induce governments to fulfil their responsibilities under the relevant international standards; to engage governments in cooperative procedures aimed at assisting them in the implementation of internationally recognized standards and in overcoming difficulties that they may be experiencing in that regard; and to respond to, or attempt to deal with, violations of the internationally recognized rules.¹²

When dealing with alleged violations of such internationally recognized rules, international bodies may resort to fact-finding, conciliation, good offices, examination of complaints through confidential or public procedures, and, if necessary, the expression of concern through the adoption of resolutions or the issuance of public statements and military intervention where necessary.¹³

In this study, therefore, the terms 'response' and 'enforcement' are used in the sense of encouraging and inducing governments and non state actors to fulfil their responsibilities to respect and protect human rights; engaging them in cooperative procedures or in dialogue; assisting them to overcome difficulties; and dealing with alleged violations of human rights and humanitarian law.

The UN Secretary General has repeatedly emphasised in various reports that the international community is yet to enter the "era of application" when it comes to protecting children in conflict situations.¹⁴ The international community has developed an important set of politically and legally binding instruments that highlight the

the scale of the humanitarian crisis in northern Uganda may be of the same level or even more than Darfur.

¹¹ Steinhardt, (2000) *International Civil Litigation: Cases and Materials on the on the Rise of International Law* 76.

¹² Ramcharan, (1983) *The Role of International Bodies in the Implementation and Enforcement of Humanitarian and Human Rights During Non-international Armed Conflict*, 125.

¹³ As above.

¹⁴ See for example *In Larger Freedom: Towards Freedom, Security and Human Rights for All*, UN Doc A/59/2005 (hereinafter, *In Larger Freedom*); *Protection of Children*; *We the Children: End-decade review of the follow-up to the World Summit for Children*, UN Doc A/S-27/3 (4 May 2001) available at <[http://www.unicef.org/specialsession/documentation/ documents/a-s-27-3e.pdf](http://www.unicef.org/specialsession/documentation/documents/a-s-27-3e.pdf)> (accessed 20 July 2005) (hereinafter, *We the Children*).

absolute necessity to guarantee unconditional protection to children in armed hostilities but they are not using them effectively.¹⁵ Compliance with established norms remains, essentially, a dream as a result of lack of concrete commitments from world leaders.¹⁶

One of the fundamental characteristics of the international community is that it is generally an anonymous entity (without a face) when it makes promises and pledges of commitment. However, when the time comes to fulfilling its promises and implementing its decisions, the international community suddenly becomes endowed with an institutional face that is, the United Nations. Hence, the curious feeling that the international community is both pledging to give a better future to every child and reproaching itself for falling short of this great promise.¹⁷

At the international scene, world leaders periodically meeting for a few days take decisions and make promises.¹⁸ The implementation of these decisions is left to the international community's legitimate institutional representatives, which are unable to achieve anything unless the authors of these promises and decisions give the implementing institution the appropriate means and resources. Resources might be pledged, but they are rarely made fully available in a timely manner.¹⁹ The unfulfilled promises generate substantial doubts and widespread skepticism about the real political will of the international community to make their actions speak as loud as their words.²⁰

OBJECTIVE OF THE STUDY

The debate over the effectiveness of the laws to address the situation of children in armed conflict, the political will of the international community to alleviate the plight of children in such situations, as well as the search for effective strategies to address the issue of children affected by war, remains lively and unsettled. This study aims to contribute to the ongoing discussion with a focus on northern Uganda where for the

¹⁵ *We the Children* paragraph 15.

¹⁶ Ayissi, "Protecting Children in Armed Conflict: From Commitment to Compliance," <<http://www.unidir.ch/pdf/articles/pdf-art1727.pdf>> (accessed 20 August 2005).

¹⁷ *We the Children*, paragraph 16.

¹⁸ Usually these leaders are eager to conclude the deliberations as soon as possible and return home.

¹⁹ Ayissi n 16 above.

²⁰ Ayissi n 16 above.

last 19 years children have been suffering as a result of armed conflict with no response from the international community. It appears that the government, the armed forces and the international community have simply ignored their plight.

RESEARCH QUESTIONS

The questions that this study seeks to address are:

- Can international law regarding the protection of children in armed conflict be effective and improve the treatment of children in armed conflict? Can it, or does it actually work?
- Why are the rights of children in armed conflict not always respected and violations not always repressed?
- What should be done in order to meet international standards set out in laws and what is likely to encourage compliance?
- Why has there been scant international action in relation to the plight of children in northern Uganda?

METHODOLOGY

In order to address the research questions posed above, the study will to a limited extent use the qualitative research method to gather data through interviews, but will mostly rely on the review of the available literature, both of primary and secondary sources.

Primary sources: The study will review the various international instruments relating to protection of children in armed conflict, policies and case law.

Secondary sources: The study will make use of extensive publications and articles relating to armed conflicts, its effects on children, laws protecting children in such situation and duty of the international community to protect children among others.

The study will also employ a comparative methodology. It will draw relevant examples from other countries that are experiencing or have experienced armed conflict targeting children. This will not only be to review the international response in these areas, but also to examine how suitable the solutions and remedies they have adopted are in respect of dealing with the problem in Uganda.

LITERATURE REVIEW

As a result of the mounting concern for children affected by war, a growing body of research has examined the impact of war, violence, and other forms of catastrophic social disorganisation on children and some studies have looked at the response of the international community to these conflicts but few studies take into account all the factors involved or make practical suggestions to remedy the problem.

A number of authors have examined this problem, for example, Jenny Kuper²¹ gives a description of the law applicable to child civilians who are victims of armed conflicts, together with an analysis of its application. Kuper rightly concludes that the various instruments dealing with the protection of civilian children in armed conflict reflect at least two rights that apply inalienably to children: the right not to be deprived arbitrarily of life and the right to special protection. She adds, with justification, that these two principles apply both in times of armed conflict and in peacetime.

There are complexities behind the global violations of children's rights as analysed by Geraldine Van Bueren.²² Van Bueren provides a coherent study on the international status of children and the rights that attach to this status. She further demonstrates the potential of international law in protecting the rights of children even in states that are reconstructing their economies. Van Bueren argues that to be effective international law cannot be used in isolation and she seeks to place the rights of the child in their cultural and historical context. She rightly concludes that at least in relation to children, international human rights treaty law and international humanitarian law can no longer be seen as distinct bodies of law.

²¹ Kuper (1997) *International Law concerning civilian children in armed conflict*, Oxford: Clarendon Press.

²² Van Bueren (1995) *The International Law on the Rights of the Child*, Martinus Nijhoff publishers.

Rachel Brett and Margaret McCallin²³ argue that children are “invisible” soldiers, in that those who employ them deny their existence and no record is kept of their numbers and ages, or the ages are falsified. Nevertheless, the authors estimate that there may be a quarter of a million children serving in government armed forces or armed opposition groups. The authors adequately describe that existing provisions contained both in international humanitarian law instruments and in the Convention on the Rights of the Child are too often disregarded in practice.

Nonetheless, the authors are very pessimistic about the relevance and efficiency of humanitarian law. For instance they write that 1977 Additional Protocol II, on non-international armed conflicts, has been officially applied only twice (in El Salvador and the Philippines), whereas such was recently the case in Bosnia, Colombia, Georgia, the Russian Federation, Rwanda and Tajikistan. The recommendations contained at the end are addressed almost exclusively to the United Nations High Commissioner for Refugees (UNHCR), UNICEF and Non Governmental Organisations (NGOs). Little attention is paid to the role and activities of governments and armed groups that the researcher believes should be the first focal point in addressing the implementation of international human rights and humanitarian laws in relation to the protection of children in armed conflict.

Guy Goodwin-Gill and Ilene Cohn²⁴ examine various typical conflicts and they analyse the issue of child soldiers in depth, closely studying each of the factors which give rise to this phenomenon. A search for the reasons why children participate in hostilities reveals that their recruitment by armed groups is influenced by many widely divergent factors: the economic, social and political causes of the conflict, peer group pressure, fear, threats, the wish to feel safe or to take revenge.

The authors have the merit of looking into a subject, which is rarely addressed, that is, the mental and physical disorders caused in children by their participation in hostilities or a period spent in detention. Noting that a significant part of international human rights law is based on the protection of children and young persons up to the age of 18, the authors believe that a total ban on the participation of these children in hostilities is a fundamental objective to be attained within the coming years.

²³ Brett and McCallin, (1996) *Children: The invisible soldiers* Radda Barnen, Stockholm.

²⁴ Goodwin-Gill and Cohn, (1994) *Child Soldiers, the Role of Children in Armed Conflicts*, Clarendon Press, Oxford.

A World Vision report²⁵ discusses how the conflict in northern Uganda has been misunderstood and overlooked for decades. It highlights this tragic struggle for power involving children, who are used as pawns for military and political reasons and also outlines what must be done to end this brutal, drawn-out conflict. The report does not however consider how international law that is in place could be used to solve the problem in northern Uganda an aspect the researcher considers worthy of discussion.

Elliot P Skinner²⁶ states that in African civil wars of the last twenty years, an increasing number of combatants have been as young as 8 or 10, with girl fighters being increasingly recruited. He concludes that many of these children will not be able to raise viable families or lead viable societies or protect human rights unless the international system promptly addresses the scourge of the so-called "children soldiers".

This study will take into account all the factors involved in the suffering of children in armed conflict and will make practical suggestions to remedy the problem with focus on the war in northern Uganda.

OVERVIEW OF CHAPTERS

The study is divided into four chapters; chapter one discusses the internal and international armed conflict dichotomy. It further discusses legal protection that exists under international law for children. An overview of the current standard-setting efforts, enforcement and implementation of these laws is also considered in the chapter.

Chapter two considers particular risks faced by children in armed conflict including the child soldier phenomenon; refugee and Internally Displaced Persons (IDPS); sexual abuse and exploitation of children; and the impact of landmines and unexploded ordnances on children. The chapter finally looks at actions the international community can take to protect children in compliance with international law.

²⁵ World Vision, (2004) *"Pawns of Politics: Children, Conflict and Peace in Northern Uganda"*.

²⁶ Skinner, (1995) *"Child soldiers in Africa: A disaster for future families"*, Columbia University

Chapter three gives a background to the conflict in northern Uganda; it discusses the groups of children at risk and the failure to prioritise the protection of children by all actors at the local and international level.

Chapter four draws a conclusion and gives recommendations to the on going search for effective strategies to address the plight of children affected by war with focus on northern Uganda. These recommendations are addressed to the government, the armed group and the international community.

CHAPTER ONE

INTRODUCTION

In the past decade, human rights and humanitarian NGOs have recorded endless examples of children caught up in armed conflict. These children are murdered, tortured, sexually abused, abducted and ill treated in every conceivable way. International law is meant to create a climate in which children are better provided for but has seemingly failed to do so.²⁷ This therefore, puts emphasis on the fact that law itself cannot achieve much; its effectiveness depends on the way in which it is enforced and implemented. This chapter discusses the internal and international armed conflict dichotomy. It further considers the existing legal protection available for children under international law, the current standard setting-efforts and implementation of the rules of international law. The last section of the chapter discusses other available initiatives that are likely to strengthen the impact of the relevant laws.

LAW OF ARMED CONFLICT

The law of armed conflict is based on a fundamental though truly artificial distinction between international and non-international armed conflict. Modern day conflicts clearly show that this distinction is an outdated phenomenon,²⁸ but the distinction is deeply entrenched in the Geneva Conventions,²⁹ and was maintained and confirmed with the adoption of the two Protocols in 1977.³⁰ Protocol I applying solely to international armed conflict and Protocol II to non-international armed conflict.

²⁷ Kuper, "Children in armed conflict: some issues of law and policy" in Fottrel (ed) (2000) "Revisiting Children's Rights: 10 years of the UN Convention on the Rights of the Child," 109.

²⁸ Suter, (1984) "An International Law of Guerrilla Warfare" 149.

²⁹ The Geneva Conventions of August 12 1949.

³⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (8 June 1977)(hereinafter Protocol I) and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflict 8 June 1977 (hereinafter Protocol II).

This distinction is significant because it entails a fundamental division in the content and scope of protection of victims of war in these supposedly different situations.³¹ Common article 3 of the Geneva Conventions, which governs armed conflict not of an international character, does not clearly define what these conflicts are. The attempt at a definition given by Protocol II is very general,³² and excludes situations of internal disturbances and tensions even with acts of violence as forming part of armed conflict.³³ State practice has shown the difficulty involved in applying this definition to the numerous conflicts that take place within a state.³⁴

In addition to that, modern conflicts do not correspond to the criteria set out in Protocol II, particularly the condition of effective territorial control.³⁵ At the same time, increased external intervention in most internal conflicts, the nature of military equipment used and the fact that the civilian population especially children are exposed to the same degree of danger makes this distinction obsolete.³⁶

Experience has shown that a state against which a war is being waged within its own territory by an internal group would prefer to characterize the conflict as internal rather than an international conflict because common article 3 is far from the functional equivalent of the legal regime applied by common article 2 which governs international armed conflict. As a result of respect for state sovereignty, common article 3 lacks any monitoring device; the obligations are cast in general terms and above all, do not require mandatory supervision by an impartial humanitarian body as required by common article 2.

That said however, Protocol II recalls that the humanitarian principles enshrined in common article 3 is the foundation of respect for the human person in cases of

³¹ Abi-Saab, "Humanitarian law and internal conflicts: The Evolution of a Legal Concern," in Delissen and Tanja (eds), (1991) "Humanitarian Law of Armed Conflict: Challenges Ahead", 209.

³² Article 1 of Protocol II.

³³ Article 1(2) of Protocol II.

³⁴ Kwakwa, "Jus in Bello Interno: The Present and Future Law," in Moore(ed) (1974) "Law and Civil War in the Modern World" 518, 523. Argues that the perception of the conflict by the participants and by third states will turn on a subjective appraisal of the lawfulness of a government, the existence of a state, and the boundaries of the participants; so long as states and governments are left free to pursue their own recognition policies, just so long will determinations of the nature of the conflict have a highly subjective character.

³⁵ Article 1 of Protocol II.

³⁶ Kwakwa n 34 above 221.

armed conflict not of an international character.³⁷ The Protocol emphasizes the need for basic protection for the humans under the principles of humanity and dictates of the public conscience even in cases not covered by this legal regime.³⁸ Protocol II further recognizes the fact that international human rights law applies concurrently with humanitarian law in times of armed conflict without distinction.³⁹ The relationship between the two regimes is so close that the UN General Assembly issued a resolution on the development of the law of war entitled "*Respect for Human Rights in Armed Conflicts.*"

It has further been argued that the Geneva Conventions and the Additional Protocols are detailed and specific elaboration of fundamental principles of humanity in the context of war without distinction.⁴⁰ This is precisely the line of argument that the International Court of Justice (ICJ) adopted in its decision in the *Nicaragua case*, where it expressed itself in detail on the customary nature of the general principles of humanitarian law.⁴¹ The ICJ resolved the major problem relating to the basis of obligation of humanitarian law, by affirming that the fundamental general principles of humanitarian law belong to the body of general international law and apply in all circumstances, for the better protection of victims of war.

In addition, the International Criminal Tribunal of Yugoslavia (ICTY) decided that customary rules of armed conflict now require protection of civilians from hostilities as well as prohibitions of means of warfare proscribed in international armed conflicts and ban of certain methods of conducting hostilities among others.⁴² In other words, the principles of humanitarian law have attained the status of customary law therefore the classical distinction between internal and international conflicts is obsolete. Customary international law typically binds all parties to a conflict, whether state or non-state actors.

³⁷ Paragraph 1 of the Preamble to Protocol II.

³⁸ Paragraph 4 of the Preamble to Protocol II.

³⁹ Paragraph 2 of the Preamble to Protocol II.

⁴⁰ Kwakwa n 32 above 222.

⁴¹ ICJ reports (1986) 14.

⁴² Tadic V Prosecutor (1997) ICTY.

EXISTING LEGAL PROTECTION

Humanitarian law has afforded some degree of protection to children, but initially treated them only as civilians.⁴³ The Hague Convention No. 4 Respecting the Laws and Customs of War on Land (1907) enshrined principles respecting and promoting family life and in so doing indirectly protected the rights of children.⁴⁴ The Second World War overtook attempts by The International Committee of the Red Cross and the International Union for Child Welfare to draft a separate Convention for the Protection of Children in Emergency and Armed Conflict.⁴⁵ After the Second World War, the Fourth Geneva Convention of 1949 gave general protection to children as civilians in unoccupied and occupied territories.⁴⁶ The principles of the Fourth Convention are of universal application; therefore, a state party cannot excuse itself from applying the Convention because it claims to be fighting a 'just war', a 'jihad' or a war of self-defence.⁴⁷

The Fourth Convention made a tremendous achievement in codifying and regulating the conduct of armed conflicts but the changes that occurred in armed conflicts since its adoption left a lacuna in respect to the protection of children. Most notable was the absence of prescribed minimum age for the participation of children in hostilities and special protection for children caught up in the increasing number of armed conflict.⁴⁸ In 1974, the Declaration of the Protection of Women and Children in Emergency and Armed Conflict⁴⁹ reinforced the need to safeguard the civilian population in armed conflicts.⁵⁰ In addition Common Article 3 of the Four Geneva Conventions⁵¹ affords

⁴³ Kuper n 21 above, Chapter 4.

⁴⁴ Article 46 of the Hague Convention No. 4.

⁴⁵ Van Bueren n 22 above, 329.

⁴⁶ Convention Relative to the Protection of Civilian Persons in Time of War, (12 August 1949), articles 4, 14, 17, 23, 24, 25, 26, 38, 49, 50, 51, 68, 76, 81, 82, 89, 94, and 132 are of specific concern to civilian children in armed conflict and children living in occupied territories.

⁴⁷ Van Bueren n 22 above, 330.

⁴⁸ Van Bueren n 22 above, 331.

⁴⁹ General Assembly Resolution, 29th Session (1974) "Declaration on the Protection of Women and Children in Emergency and Armed Conflict", Resolution 3318 (hereinafter Declaration).

⁵⁰ The Declaration was drafted bearing in mind the need to provide special protection of women and children belonging to the civilian population, see Preamble.

some protection to civilians by extending fundamental humanitarian protections to non-combatants.⁵²

International law only directly addressed the question of children participating in armed conflict with the adoption of the two 1977 Protocols to the Geneva Conventions⁵³ regulating this phenomenon for the first time.⁵⁴ Protocol I prohibits all types of child involvement in armed conflict in the territories of the states in conflict.⁵⁵ Protocol II provides that "children who have not attained the age of 15 years shall neither be recruited in the armed forces or be allowed to take part in hostilities."⁵⁶ This article has been interpreted to mean that children are also prohibited from involvement in any military operations including transporting ammunition and foodstuffs, or acts of sabotage.⁵⁷

Protocol II is binding on states as well as armed opposition groups who bear the responsibility of allowing children to take part in armed conflicts.⁵⁸ Thereby extending the scope of protection for victims in internal armed conflicts. Unfortunately only 136 states have ratified it and usually states also deny its application to the conflicts in which they are involved claiming that they are mere internal disturbances.⁵⁹ Protocol II however, makes no mention of children older than 15 years, limiting protection to only some children.

⁵¹ Article 3 of the Geneva Conventions.

⁵² Common Article 3 does not specify law of war for non-international conflict, and does not contain a "grave breaches" provision mandating criminal punishment.

⁵³ Protocol I.

⁵⁴ Articles 77 and 78 of Protocol I guarantees special protection for children and has been ratified by 144 states.

⁵⁵ Article 77 of Protocol I.

⁵⁶ Article 4(3)(c) of Protocol II, outlaws the participation of children in armed including voluntary recruitment.

⁵⁷ Reis, (1977) "*Trying the Future, Avenging the Past: The Implications of Prosecuting children for Participation in Internal Armed conflicts*," 644.

⁵⁸ Article 1(1) and 4(3)(c) of Protocol II read together binds state parties as well as armed groups not to recruit children under the age of 15 years.

⁵⁹ Reis n 59 above, 641; article 1(2) limits the application of Protocol II not to include situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not armed conflicts.

Actual implementation of the Protocols is limited to conflicts where the sovereign government recognizes the status of the insurgent forces.⁶⁰ In addition, these two Protocols to the Geneva Conventions set a very low standard required of states, that is, "all feasible means" to protect children from warfare. Such a low standard makes it easier to claim that it was not feasible to avoid involving children in conflict, thereby failing to protect many children. The shortcomings of international humanitarian law, were recognised by the international community,⁶¹ and this has led to striking legal advances to better respect, protect and promote the rights of children, especially those caught up in armed conflicts.

The adoption of the Convention on the Rights of the Child (CRC) in 1989 was a significant step. The CRC is the most widely ratified human rights treaty in the world today.⁶² The drafting of the CRC offered an opportunity to raise standards of international humanitarian legal protection to children in armed conflicts. Article 38 requires state parties to use all 'available', rather than all 'feasible' measures to keep children uninvolved in the conflict. This standard eliminates any justification for the military use of children under the age of 15 years.⁶³ The CRC nevertheless did not solve the problem of the age limit and without any modifying language there is no consideration for the minors above the age of 15 years.

Almost immediately after the CRC entered into force, the CRC Committee began to consider an Optional Protocol in order to raise the minimum age of participation in hostilities to 18 years.⁶⁴ The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was adopted by the General Assembly of the United Nations in 2000. The Protocol requires state parties to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take part in hostilities and persons below the age of 18 are not compulsorily recruited in the armed forces.⁶⁵

⁶⁰ Article 1(1) of Protocol II.

⁶¹ Machel Report, 62 states that the articles in place to protect children cannot be considered adequate to ensure the safety and survival of children trapped in armed conflicts.

⁶² The CRC has been ratified by all UN member states with the exception of Somalia and USA.

⁶³ Article 38(2) of the CRC.

⁶⁴ LeBlanc (1995) *"The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights"*, 155-156.

⁶⁵ See Articles 1 and 2 of the Optional Protocol to the CRC.

Article 3 further obligates state parties to maintain safeguards with respect to voluntary recruitment, including, certifying that such recruitment is genuinely voluntary; obtaining informed consent of the person's parents or legal guardians; informing recruits of the duties involved in military service; and requiring reliable proof of age prior to acceptance into military service. The Optional Protocol extends this obligation to armed groups distinct from armed forces of a state, not to recruit or use in hostilities persons below the age of 18 years.⁶⁶ It further obliges states to take all feasible measures to prevent such recruitment and use, and adoption of legal measures necessary to prohibit and criminalize such practices.⁶⁷

The African Charter on the Rights and Welfare of the Child, (African Charter) adopted in 1990 is the only regional human rights instrument protecting children, which focuses on armed conflict. The African Charter breaks new ground by extending the ambit of international humanitarian law as it applies to children. It forbids the use of child soldiers and obliges state parties to take all necessary steps to ensure that no child shall take a direct part in hostilities and to refrain in particular from recruiting any child.⁶⁸ The African Charter defines a child as any person of the age of 18 and below⁶⁹ and applies not only to children caught up in armed conflicts but also to lower levels of violence like tension and strife.⁷⁰

The International Labour Organisation (ILO) adopted a Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour in 1999.⁷¹ Use of child soldiers appears as part of the definition of "the worst forms of child labour."⁷²

⁶⁶ Article 4 of the Optional Protocol.

⁶⁷ Article 4(2) of the Optional Protocol.

⁶⁸ Article 22(2) of the African Charter.

⁶⁹ Article 2 of the African Charter.

⁷⁰ Article 22(3) of the African Charter.

⁷¹ Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, (1999), ILO 87th Session (ILO Convention).

⁷² Article 3(a) ILO Convention.

The Rome Statute for the International Criminal Court (ICC Statute)⁷³ attempts to address the issue of child soldiers. It states that no one under the age of 18 years will be tried in the tribunal.⁷⁴ The ICC Statute makes it a war crime to recruit children 15 years and below to participate in armed conflict, including conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities.⁷⁵

FURTHER STANDARD SETTING EFFORTS

The issue of protecting children brought together 71 Heads of State and Government on 30 September 1990 in New York. These decision-makers noted that “each day, countless children around the world suffer immensely as casualties of war and violence” and they resolved to take action to guarantee child security in circumstances of armed violence.⁷⁶ They adopted the World Declaration on the Survival, Protection and Development of Children (World Declaration). Among other important points, these leaders promised to “work carefully to protect children from the scourge of war and to take measures to prevent further armed conflicts, in order to give children everywhere a peaceful and secure future”.⁷⁷

The Graça Machel study on the impact of conflict on children that came out in 1996 was a hugely important landmark.⁷⁸ The issue of conflict and children was placed firmly and squarely at the centre of the international, political agenda; and there have been very important ramifications since. The appointment of a UN Special Representative of the Secretary General for children and armed conflict and the Optional Protocol on the Convention on the Rights of the Child are significant

⁷³ Adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, at Rome, (17 July 1998).

⁷⁴ Article 26 of the ICC Statute.

⁷⁵ Article 18 of the ICC Statute.

⁷⁶ On 29-30 September 1990 the largest gathering of world leaders in history assembled at the UN to attend the world summit for children. The world summit adopted the Declaration on the survival, protection and development of children and Plan of Action for Implementing the Declaration in the 1990s <www.unicef.org/wsc/> (accessed on 23 August 2005).

⁷⁷ Paragraph 20 of the World Declaration.

⁷⁸ The UN Secretary General pursuant to General Assembly Resolution 48/157 of 20 December 2003 appointed Graça Machel an expert to undertake a study on the impact of armed conflict on children. The study was undertaken with the support of the UN Centre for Human Rights and UN Children's Fund.

advances to the development to the Human Security Agenda.⁷⁹ There have been several Security Council resolutions, specifically on children and armed conflict,⁸⁰ as well as more broadly on the protection of civilians in conflict, women, peace, and security. The Land Mines Convention was adopted and very quickly become one of the most ratified human rights treaties in the world.

The CRC, its Optional Protocols and the African Charter, are unusual treaties because they are expressly concerned both with the principles of international human rights treaty law and application of international humanitarian law. In relation to the protection of children, these can no longer be seen as distinct bodies of international law and this is reinforced by the appointment and mandate of the Special Rapporteur on the Protection of Children in Armed Conflict.⁸¹ A key question remains; is the international law regarding children in armed conflict effective and does it actually work?

The short answer to this question is 'no' international law or actions based on it, are not of much use to children in situations of armed conflict. The laws must be backed up by implementation. The next section discusses some of the available enforcement mechanism provided by these laws

IMPLEMENTATION AND ENFORCEMENT OF THE RELEVANT LAW

The basic objective of the laws to protect children is not detection and punishment for breaches but rather the maintenance of certain basic standards in situations of armed conflict. The question of punishment for breaches only arises in the light of failure in the basic objective. Nonetheless, as in any area of law, the linked question of breach and enforcement are clearly significant.⁸² Issues pertaining to implementation and enforcement rightly may be referred to as the most important practical aspects of the protection of children in armed conflict. The initiatives that are

⁷⁹ The Human Security Agenda is a political agenda which seeks to move beyond the classic approaches to peace and security, to looking at the human impact of conflict; it focuses on the protection of civilians in conflict, on child soldiers, women and girls, landmines, small arms, and other more humane and human aspects of the peace and the security agenda.

⁸⁰ UN Security Council Resolutions on children in armed conflict 1261 (1999), 1306 (2000), 1314 (2000), 1379 (2001), 1460 (2003).

⁸¹ Van Bueren n 23 above 349-350.

⁸² McCoubrey and White, (1995) *International Organisations and Civil Wars*, 255.

likely to strengthen the impact of the relevant law include, creating the right political climate, education, war criminal sanctions and the exposure of abuses.

Criminal Sanctions at the National Level

State parties undertake to enact any legislation necessary to punish persons guilty of grave breaches of the Geneva Conventions after ratification.⁸³ States are also bound to prosecute in their own courts any person suspected of having committed a grave breach of the Conventions, or to hand that person over for judgment to another State. In other words, perpetrators of grave breaches, that is war criminals, must be prosecuted at all times and in all places, and states are responsible for ensuring that this is done.

Though a state's criminal laws apply only to crimes committed on its territory or by its own nationals, international humanitarian law goes further in requiring states to seek out and punish any person who has committed a grave breach, irrespective of his nationality or the place where the offence was committed.⁸⁴ This principle of universal jurisdiction is essential to guarantee that grave breaches like the kind committed against children are effectively repressed.

Such prosecutions may be brought either by the national courts of a different states or by an international authority. In this connection, the UN Security Council set up the International Criminal Tribunals for the former Yugoslavia and Rwanda in 1993 and 1994, respectively, and more recently, a UN supported tribunal, the Special Court of Sierra Leone was set up to put to trial those accused of crimes committed during the conflicts in those countries.

There are a number of problems with domestic prosecution of these crimes. One of the problems is that of due process. As much as Protocol II sets out basic procedures to be followed⁸⁵ practical problems of implementation remains. States

⁸³ Article 49 of the Geneva Conventions.

⁸⁴ Article 49 of the Geneva Convention.

⁸⁵ Article 3(1)(d) regulates sentencing without prior judgement pronounced by a legally constituted court; article 6(3) that the convicted person should be advised of any further judicial remedy; article 6(4) which prohibits the imposition of the death penalty on persons below the age of 18 years; article 6(2) (a)-(f); accused to be informed of charges against him, right and means of defence, conviction on the basis of personal responsibility, act must have been criminal at the time of its commission, and no retrospective imposition of harsher punishments.

may not have the good faith of following the procedures laid down to prosecute persons they were conflicting with. Another significant problem is that government forces may have significantly contributed to the breaches and the state may not be willing to prosecute its own forces, this would mean that the question of impunity is not addressed.

War Crime Tribunals

These tribunals are established with the purpose of bringing justice and challenging impunity of perpetrators. War crime tribunals offer a rare chance for the world leaders and citizens to scrutinize both the deplorable decisions made by particular leaders, and the atrocities committed by the soldiers and agents of those leaders. The forum, are created with the purpose of ensuring that masterminds and perpetrators of grave violations of human rights are justly punished.

The tribunals further, have forced forgotten or hidden atrocities to be retold by survivors. One of the arguments in support of war crimes tribunals is that they act as a deterrent to potential war criminals. In fact, this idea was one of the main arguments behind a push to construct a permanent international criminal court, The International Criminal Court.

International Criminal Court (ICC)

The ICC Statute entered into force 01 July 2002 as an initiative to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole⁸⁶ and to contribute to the prevention of such crimes. The ICC Statute recognises that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity⁸⁷ and recruitment of child soldiers is included in the definition of a war crime.⁸⁸

⁸⁶ Article 5 of the ICC statute limits the jurisdiction of the Court to the most serious crimes of concern to the international community as a whole, these crimes are, genocide, crimes against humanity, war crimes and the crime of aggression.

⁸⁷ Paragraph 2 of the Preamble to the ICC Statute.

⁸⁸ Article 8(b)(xxvi) of the ICC Statute.

An important aspect of the ICC is that it has jurisdiction to try nations that may not be state parties to the ICC Statute if the UN Security Council makes a referral of the situation to the ICC Prosecutor⁸⁹ or if the crimes are committed by nationals of a non-state party in the jurisdiction of a state party.⁹⁰ But the ICC can only try parties for crimes committed after its establishment, which leaves out a great majority of crimes committed before 2002. On a positive note, persons responsible for these crimes can be tried in national courts since the ICC does not replace national tribunals, but complements them by offering an arena for hearing claims that may be too complicated or extensive for a national court. Like all tribunals the ICC largely lacks anticipation and prevention qualities.

OTHER INITIATIVES TO STRENGTHEN THE IMPACT OF THE LAWS

Dissemination

Ignorance of the law is one of the main explanations for its non-observance.⁹¹ Knowledge of existing law is a necessary, though not a sufficient, condition for effective implementation of the relevant laws. It is important that the relevant laws should be disseminated not only among the armed forces but also among all persons likely to be affected by armed conflict, such as civilians, including children and media personnel. No matter how comprehensive it may be, the laws protecting children in armed conflict will have no practical value if the armed forces as well as the general public do not know it.

Most states in the world have signed treaties obliging them to disseminate such information for example the Geneva Conventions and its Additional Protocols and the CRC.⁹² Clearly as more people become familiar with it, the more likely compliance with the law becomes, after all children who learn the basic principles of international human rights and humanitarian law are potentially soldiers for tomorrow. Further, in

⁸⁹ Article 13(b), for instance the UN Security Council made a referral of the situation in Darfur in Sudan to the ICC Prosecutor.

⁹⁰ Article 14 of the ICC Statute.

⁹¹ McGowan, (1975) *“Training in the Geneva and the Hague Conventions: A Dead Issue?”* 51.

⁹² See Article 144 of the Geneva Convention, Article 38 of Protocol I, and Article 42 of the CRC.

complying with their general dissemination obligations, governments may inform non-governmental forces about the rules of law protecting children in armed conflict.

Training of the Military Personnel

The members of the armed forces are the most direct participants in an armed conflict. In large measure, the most serious or grave violations of the law are most likely to be carried out by soldiers in the battlefield.⁹³ This makes the instructions on the law relating to children in armed conflict to military personnel a very important task. Ideally such training should take place in times of peace so that military personnel develop the appropriate reflexes to act in compliance with the laws when in combat.⁹⁴

There are at the moment many initiatives in operation as regards such training, for example, initiatives of Olara Otunnu's office, UN Peacekeeping Forces, Save the Children organisations and UNICEF. An important function of such training is precisely to make soldiers and others aware that they could be criminally liable for the ill treatment of children in armed conflict and that individual soldiers bear individual responsibility for blatantly unlawful acts. It is hoped that at least self-interest might then restrain the commission of such acts against children. Ironically it could be argued that self-interest might only result in soldiers or others making a greater effort to conceal the evidence of their crimes.⁹⁵

Appropriate Political Climate

Another factor that may encourage compliance is the creation of a political climate, both at the national and the international level, in which abuse of children in armed conflict becomes totally unacceptable. Indeed the UN seems to be gathering momentum in this direction, as evidenced by a number of recent initiatives directly or indirectly encouraging better treatment of children in armed conflict. Most relevant is

⁹³ Kwakwa, (1992) *"The International Law of Armed Conflict: Personal and Material Fields of Application,"* 172.

⁹⁴ Kuper n 21 above, 110

⁹⁵ As above.

the Security Council various resolutions specifically on the protection of children in situations of armed conflict.⁹⁶

In addition, the UN Secretary General has issued a bulletin stating that all UN forces should act in accordance with international humanitarian law.⁹⁷ Further, he has recently presented a report to the Security Council on the protection of civilians in armed conflict, and the Security Council has, partly in response to that report, passed a resolution on civilian protection in armed conflict.⁹⁸

Committee on the Rights of the Child (Committee)

The Committee is the UN body charged with monitoring the implementation and enforcement of the CRC. The CRC does not contain a derogation clause; it applies in its entirety even in times of war and emergency. The Committee can therefore, exact some influence on behalf of children in armed conflict, both within the UN and more widely. The enforcement mechanism of the Committee includes commenting on state practice in respect of its obligations under the CRC, when conducting its regular reviews of country reports.⁹⁹

The Committee has other pertinent functions such as holding days of discussions on specific topics and via the General Assembly, requesting the Secretary General to undertake studies regarding the rights of children. Indeed it was the use of this later mechanism that led to the Machel Report, which, in turn, resulted in the creation of the office of the UN Special Representative of the Secretary General for Children in Armed Conflict.¹⁰⁰

⁹⁶ These are Resolutions, 1261 (1999), 1306 (2000), 1314 (2000), 1379 (2001), 1460 (2003).

⁹⁷ Observance by United Nations Forces for International Humanitarian Law, Secretary General bulletin UN Doc ST/SGB/1999/13.

⁹⁸ UN Doc S/1999/957, 8 September and UN Doc. S/RES/1265, 1999 respectively. This resolution is only one of the many passed over the years by the UN relating to civilian protection in situations of armed conflict see also UN GA Res 2444(XXIII), UN GA Res. 2597(XXIV) and UN GA Res 2675(XXV).

⁹⁹ The Country reports are submitted by member states every 5 years.

¹⁰⁰ UN Doc ST/HR/4.Rev.16 (1998).

Zones of Peace

Creation of the 'zones of peace' is a recent innovation where combatants agree to a cease fire during which children are immunised and supplies delivered, as has happened for example in El Salvador, the Lebanon, and the Sudan.¹⁰¹ In the 1991 Gulf War too, UNICEF and WHO managed to bring into Iraq one shipment of basic medical and health supplies.

In September 1999, Olara Otunnu, the Special Representative of the UN Secretary General of Children in Armed Conflict, negotiated an agreement with the leadership of one of the armed factions (the RUF) in Sierra Leone that they would allow a humanitarian team to visit zones under their control, as a first step to releasing children held behind their lines. He also obtained commitments by two armed factions (the RUF and CDF) and the government of Sierra Leone not to recruit children under 18. He also had similar discussions in Colombia. These agreements though not honoured in practice indicate that the issue of treatment of children is on the Human Security Agenda.

CONCLUSION

There is no doubt that the world has recognized the plight of children in armed conflict and there is no shortage of ideas to improve the situation. Punishment of individuals for war crimes has received much greater attention over the past decade than ever before but great challenges still remain and children continue to suffer in armed conflict.

¹⁰¹ Kuper n 21 above, 113.

CHAPTER TWO

INTRODUCTION

Existing international law has contributed to the effort to alleviate the suffering of children in armed conflicts but as discussed in the previous chapters the laws have not achieved much and children continue to suffer as a result of armed conflict. This chapter considers particular risks faced by children in armed conflict; the child soldier phenomenon; refugee and Internally Displaced Persons (IDPS); and sexual abuse and exploitation of children. The chapter further discusses the impact of landmines and unexploded ordnances on children and finally discusses action in accordance with international law to ensure the observance and compliance with the relevant laws.

PARTICULAR RISKS FACED BY CHILDREN IN ARMED CONFLICT

Child Soldier Phenomenon

A very disturbing aspect of present day conflict is the use and abuse of children as soldiers in conflict. For many parts of the world, the future is extremely bleak when analysed in the context of the use of child soldiers,¹⁰² to accept the use of child soldiers in conflict is to accept the destruction of our future.¹⁰³ The term 'child soldiers' applies to children under the age of 18 years who are recruited into armies either as indirect participants¹⁰⁴ or frontline combatants for both government forces or armed rebel groups. Usually adolescents are the targets but children as young as 7 years have also been recruited.¹⁰⁵ UNICEF estimates that there are 300.000 children

¹⁰² Twum-Danso, (April 2003) "*Africa's Young Soldiers: The Co-option of Childhood*", 12.

¹⁰³ UN Secretary General, Kofi Anan at the UN Special Session on children, May 2002.

¹⁰⁴ For instance some of the children act as servants, porters, guards, spies, cooks and sexual slaves.

¹⁰⁵ Machel Report states that the youngest child soldier is 7 years and that younger children are being recruited everyday.

engaged as soldiers in 30 countries worldwide.¹⁰⁶ Some 120.000 children are fighting in Africa alone,¹⁰⁷ with similar numbers in Asia and South America.¹⁰⁸

A number of reasons have been advanced for this now widespread phenomenon; children are perceived as “cheap” and “expendable” recruits who can be indoctrinated to commit atrocities, or even suicidal actions;¹⁰⁹ and the proliferation of small arms, which can easily be handled by children, contributes to the problem.¹¹⁰

The modes of recruitment vary, some children are abducted from schools or refugee camps; others are coerced with threats by the armed forces; others join because of promises of food or money and still others join to escape relentless poverty and social discrimination.¹¹¹ The children who join armed groups voluntarily usually do so because they do not have much of an option. For example, some children join armed groups because they are separated from their families and that is the only way to ensure the survival of the child. In some cases, the children join because of poverty and when that is the only way to ensure the survival of the child and his family. Still others join because of collapse of basic social services such as educational and health centres.¹¹²

Child soldiers encounter the extreme violence of modern war and the risk of injury, death, malnutrition, and manipulation with drugs or alcohol. Girls are particularly

¹⁰⁶ See *State of the world's children*.

¹⁰⁷ Johnson, (1989) “*The Structuring of a Legacy: Military Slavery in Northeast Africa*”, 72–88 states that around 20% of the 60.000 combatants who fought the civil war in Liberia were children; Finnegan, (1992), “*A Complicated War: The Harrowing of Mozambique*,” reports that at least 10.000 children participated in the fighting in Mozambique; European Union, (March–April 2002) “*Democratic Republic of Congo: Children in the Frontline*,” <http://europa.eu.int/comm/development/publicat/courier/courier191/en/en_016_ni.pdf> (accessed 10 June 2005), reports that thousands of children are fighting in Congo, for a cause they don't know or no longer understand; UNICEF News line (5 March 2002), “*UNICEF calls for release of child soldiers by LRA*” <<http://www.unicef.org/newsline/02pr06lra.htm>> reporting that at least 20.000 children have been abducted from northern Uganda to be used as soldiers, porters and sex slaves.

¹⁰⁸ Amnesty International Press Release, (16 June 2004), “*Day of the African Child: unending Plight of child soldiers*.”

¹⁰⁹ See for example Graca Machel reporting that the youngest children rarely appreciate the perils they face, when the shelling starts the children get overexcited and forget to take cover. Some commanders deliberately exploit such fearlessness in children, even supplying them with alcohol or drugs.

¹¹⁰ Cohn and Goodwin-Gill, “*Child soldiers: The Role of Children in armed conflict*” 96.

¹¹¹ Skinner n 26 above, 42.

¹¹² Brett and McCallin n 23 above, 86.

vulnerable to sexual exploitation, including infection with HIV/AIDS. This exploitation continues even after their release. Child soldiers find it extremely difficult to reintegrate into the community, and they face risk of rejection for the horrific acts they may have committed.¹¹³ Exposure to horrific violence, compounded by separation from family, breakdown of social structures and rejection, have long-term consequences including addiction to violence, psychological trauma and physical disability on the children.

Many international instruments outlaw the use of child soldiers and some efforts have been undertaken to document the experience of children fighting as soldiers, so that international institutions could formulate effective policies for example the studies by Radda Barnen (the Swedish Save the Children organization).¹¹⁴ The United Nations has also sponsored comprehensive research projects on this subject and appointed a UN Representative to the Secretary General on Children in armed conflict.

Refugee and Internally Displaced Persons (IDP)

In armed conflicts, people flee in large numbers in a search for a safer place to stay, sometimes they cross borders, sometimes not. The destinations determine whether they will become IDPs in their own countries or refugees in another country. Africa and Asia have been the most affected by massive population turmoil but no region has escaped either the phenomenon itself or its ramifications. Wherever it occurs, displacement has a profound physical, emotional and developmental impact on children and increases their vulnerability.¹¹⁵

In 2000, UNHCR estimated that there are 50 million refugees and IDPs worldwide.¹¹⁶ IDPs often face a more insecure future than refugees because they are trapped in an ongoing conflict and it is often difficult to find a safe place to stay. Despite the immense problems facing IDPs the international community has failed to address

¹¹³ Havery, *“Children in armed conflict: a guide to international humanitarian and human rights law”*, 34.

¹¹⁴ See Radda Barnen, (1996) *“Children: The Invisible Soldiers?”*

¹¹⁵ Machel Report, 22.

¹¹⁶ See <www.unhcr.ch/children/glance.html> (accessed 14 September 2005)

their plight directly, the mandate of the UN agencies is limited and there is a reluctance to intervene in conflicts to assist IDPS.¹¹⁷

At least half of all refugees and IDPs are children who at a crucial and vulnerable time in their lives, are brutally uprooted and exposed to danger and insecurity. During flight, millions of children are separated from their families and communities and without them; the children are more vulnerable to dangers facing all children in armed conflict. During the journey, the children are physically abused, exploited and abducted into military groups, or they perish from hunger and disease.¹¹⁸ Where IDP and refugee camps are established, they are frequently not well resourced and the conditions are usually appalling. Many children die from curable diseases as a result of overcrowding, poor sanitation, lack of food and clean water. There are usually no health facilities within reach, education is at best limited and at worst non-existent.¹¹⁹

International law affords protection to refugees; the 1951 Convention Relating to the Status of Refugees sets out the legal status and obligations in regard to refugees. The definition given under this Convention does not distinguish between children and adults¹²⁰ but states are obliged to ensure a certain minimum standard of treatment to everybody within their jurisdiction if they meet the criteria of refugees. UNHCR has begun to address specific needs of refugee children and from 1972 onwards a series of UN General Assembly Resolutions have acknowledged UNHCR's special expertise and consequently encouraged its involvement in situations of IDPS.¹²¹

There is no specific legal protection for IDPs and as a result of their huge and growing number and lack of international action for them, the Representative to the Secretary General on IDPs was appointed in July 1992. The Representative developed the Guiding Principles on IDPs,¹²² which has been widely disseminated to states and international organizations. There are specific provisions relating to

¹¹⁷ Harvey n 109 above, 36.

¹¹⁸ Machel Report 26.

¹¹⁹ As above.

¹²⁰ Article 2 of the 1951 Convention.

¹²¹ Mattar and White (March 2005) Consistent and Predictable Responses to IDPs: A Review of UNHCR's Decision Making Process 7. See GA Res 48/116 of 20 December 1993 that helped define UNHCR's mandate in accordance to Article 9 of UNHCR Statute.

¹²² Document No E/CN.4/1998/53/ Add.2 (1998).

protection of IDP children and these include entitlement to assistance and protection taking into account their special needs,¹²³ protection against recruitment and use in hostilities,¹²⁴ reunification of separated children with their families¹²⁵ and free and compulsory education at the elementary level.¹²⁶ Unfortunately the Guiding Principles are not legally binding. Therefore, despite the similar or even worse situation of IDP children, the legal protection accorded to them is not the same as those accorded to children who cross borders.

Sexual Abuse and Exploitation

It is well documented that that during conflicts, children are vulnerable to sexual abuse. As much as both boys and girls are victims of these crimes; girls tend to be disproportionately affected. Sexual violence against children prevalent during armed conflict takes many forms including rape,¹²⁷ forced prostitution, being compelled to exchange sexual favours for essential items, forced cohabitation or marriage, forced impregnation, forced abortion and sexual humiliation amongst others, which are used as weapons of war. The main perpetrators of sexual violence and sexual abuse are the military, and it has been documented that that the presence of peacekeeping forces has favoured the development of child prostitution.¹²⁸ In addition other persons who have been recruited to assist the war torn communities have subjected the children to sexual exploitation.¹²⁹

¹²³ Principle 4(2).

¹²⁴ Principle 13(1).

¹²⁵ Principle 17(3).

¹²⁶ Principle 23 (2).

¹²⁷ Ayissi and Poulton (eds) (2001), *Bound to Cooperate: Conflict, Peace and People in Sierra Leone*; Ellis, (2001), *The Mask of Anarchy*, New York University Press, reporting that raping children became a ritual in the Sierra Leonean and Liberian civil wars.

¹²⁸ Machel Report describes how after signing the peace treaty in 1992, in Mozambique, soldiers of United Nations Operation in Mozambique recruited girls aged 12 to 18 years into prostitution. She further states that in 6 countries out of the 12 were the research for the report was conducted; the arrival of peacekeeping troops has been associated with a rapid rise in child prostitution.

¹²⁹ UNHCR and Save The Children, (February 2002) *Note for Implementing and Operational Partners on Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Finding and Recommendations and Assessment Mission, 22 October to 30 November 2001.*

Children are subjected to sexual violence in a multitude of places, including detention camps specifically set up for that purpose,¹³⁰ at check points and border crossings,¹³¹ in public places,¹³² and in refugee and IDP camps.¹³³ Often sexual violence takes place in front of others, including family members.¹³⁴

Sexual exploitation has a devastating impact on physical and emotional development of children. Unsafe sex is likely to lead to sexually transmitted diseases and HIV/AIDS, which not only affect immediate health but also future sexual and reproductive health and mortality of the child. Adolescents usually suffer in silence after the trauma of sexual abuse; they often fear reprisals from those who attacked them or rejection by their families, not to mention the sheer personal humiliation and anguish which causes so many children withdraw into a shell of pain and denial.

Children are protected from sexual exploitation and abuse and by general provisions protecting civilian population in armed conflict¹³⁵ and the ICC Statute includes rape and related offences in the definition of war crimes and crimes against humanity.¹³⁶

Land Mines and Unexploded Ordnances

There are trends in the conduct of hostilities that have led to the disproportionate victimization of children. The uncontrolled proliferation of light weapons of all kinds has caused severe suffering to millions of civilians especially children in armed conflict.¹³⁷ Many of these weapons have a devastating impact not only during the

¹³⁰ Machel Report 30.

¹³¹ Human Rights Watch, (1996) *“Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath”*, 39.

¹³² Machel Report 30.

¹³³ UN OCHA Report on northern Uganda (2004) *“When the Sun Sets: We Start to Worry.”* <<http://www.irinnews.org>> (accessed 31 June 2005) (hereinafter, *When the Sun Sets*).

¹³⁴ Human Rights Watch (1977) *“Scars of Death: Children Abducted by the Lord’s Resistance Army,” Abducted by the Lord’s Resistance Army in Uganda*, <www.hrw.org/reports/1997/Uganda0303> (accessed 10 October 2005) (hereinafter, *Scars of Death*).

¹³⁵ Article 27 of the Geneva Convention, articles 75(2)(b) and 76(1) of Protocol 1 and article 4(e) of Protocol II.

¹³⁶ See Article 7(1)(b), article 8(b)(XXII) and 8(2)(e)(VI) of the ICC Statute.

¹³⁷ *Research Agenda* 14.

period of conflict, but for decades after. Landmines and unexploded ordnance probably pose the most sinister and persistent danger.¹³⁸ Today, children in at least 68 countries live amid the contamination of more than 110 million landmines. Added to this number are millions of items of unexploded ordnance, bombs, shells and grenades that failed to explode on impact.¹³⁹

These weapons pose a particular danger for children because children always go out to play and are naturally curious and likely to pick up strange objects they come across. In addition children may not recognize or be able to read warning signs, or spot the weapons when they come across them. Child soldiers are particularly vulnerable, as they are often the personnel used to explore known minefields. Usually the victims of mines and unexploded ordinances are concentrated among the poorest sectors of society, where people face danger every day when cultivating their fields, herding their animals or searching for firewood, tasks carried out by children in most societies.¹⁴⁰

Even where children themselves are not the victims, these weapons have an overwhelming impact on their lives. Mine incidents often financially devastate families already living on the edge of survival. In addition, when a parent is a mine casualty, the loss of ability to work can substantially weaken the care and protection available to children. Children may in turn be forced to fend for themselves; majority may end up living in the streets and are prone to sexual exploitation and recruitment by armed forces.

Customary international law prohibits the use of weapons of a nature to cause superfluous injury or unnecessary suffering and weapons that are inherently indiscriminate. Protocol II of the Convention on Conventional Weapons¹⁴¹ specifically regulates the transfer and use of all landmines and also includes rules for mapping minefields and removal of mines at the end of a conflict.

¹³⁸ *Machel Report* 26.

¹³⁹ *Machel Report* 26.

¹⁴⁰ *Machel Report* 26.

¹⁴¹ On Prohibition or Restriction on the use of mines, booby traps and other devices (1996 Amended Protocol II).

INTERNATIONAL ACTION IN COMPLIANCE WITH INTERNATIONAL LAW

The Good Office of the UN Secretary General

Secretary-General Waldheim in his first annual report to the General Assembly, in 1972, asserted that "the unwritten moral responsibility which every Secretary-General bears does not allow him to turn a blind eye when innocent civilian lives are placed in jeopardy on a large scale."¹⁴² The Security Council has through Resolution 1460 expressed its intention to support the Secretary General in entering into dialogue with the parties to a conflict regarding the protection of children in armed conflict.¹⁴³

This practice by the Secretary-General of good offices in the field of human rights has become part of international customary law.¹⁴⁴ The recent appointment and mandate of the UN Special Representative of the Secretary General for children in armed conflict and the appointment of a Special Rapporteur on the Protection of Children in Armed Conflict are all initiatives designed to assist the Secretary General in his good office in relation to children in armed conflict.

The good office of the Secretary General is a method of finding peaceful solutions to disputes and humanitarian problems.¹⁴⁵ It includes forms of diplomatic assistance such as informal contacts and consultations with parties to a dispute, diplomatic action designed to express international concern, to induce the parties into talks and to assist them in finding a suitable framework for settlement, mediation, conciliation, and coordination, inquiries and fact-finding to reach an amicable solution.¹⁴⁶ In the past decade, the Secretary General has extensively used his good office to attempt and minimise the plight of children in armed conflict for example in Angola, Sierra Leone, Sudan, Liberia, Columbia, Sri Lanka, Eritrea, Ethiopia among others.

¹⁴² UN Document A/8701/Add.1, section IX (1972).

¹⁴³ Paragraph 4 of Security Council Resolution 1460.

¹⁴⁴ Ramcharan, (1982) *"The Good Offices of United Nations Secretary General In the Field Of Human Rights,"* 55.

¹⁴⁵ Pechota, (1972) *"The Quiet Approach: A study of the Good Offices Exercised by the Secretary General in the Course of Peace,"* UNITRA 13.

¹⁴⁶ Ramcharan, (1987) *"Keeping Faith with the United Nations,"* 152.

Security Council

The Security Council is the organ of the UN that has primary responsibility for the maintenance of international peace and security.¹⁴⁷ The Charter confers on the Security Council a wide range of powers in Chapter VI and VII. Chapter VI contains mainly recommendatory powers enabling the Security Council to encourage peaceful settlement of disputes, whereas Chapter VII powers contain a mixture of recommendatory and mandatory enforcement powers to enable the Council to take action in respect to threats to peace, breaches of the peace and acts of aggression.

When a complaint concerning a threat to peace is brought before it, the Council's first action is usually to recommend to the parties to try to reach agreement by peaceful means. In some cases the Council itself undertakes investigations and mediation. It may appoint special representatives or request the Secretary General to do so or use his good offices. The Council may further set forth the principles for a peaceful settlement.¹⁴⁸

When a dispute leads to fighting, the Council's first concern is to bring it to an end as soon as possible. In many cases the Council has issued cease-fire directives, which have been instrumental in preventing wider hostilities. The Council also usually sends UN Peacekeeping forces to help reduce tensions in troubled areas, to keep opposing forces apart and create conditions of calm in which peaceful settlement may be sought. The Council may further decide on other enforcement measures for example economic sanctions or collective military action if the other actions fail.¹⁴⁹

Pursuant to article 34 of the UN Charter, Security Council has authorized fact finding missions to report on armed conflicts for example the Nicaraguan conflict in 1988, several of the former Soviet Republics and new states in 1992, Haiti in 1993, Sudan in 2004, Mozambique in 1992, Somalia in 1993 among others.

¹⁴⁷ Article 24(1) of the UN Charter.

¹⁴⁸ See <www.un.org/Depts/dhl/resguide/speck.htm> (accessed October 01 2005).

¹⁴⁹ As above.

Presidential Statements

Presidential statements constitute an informal expression of the will of the Security Council. In these statements, the President may on behalf of the Council call upon the parties involved in a conflict to work towards a peaceful resolution of the dispute. The statements may further express concern of the Council for the deterioration of the security situation within a country or region; it may reaffirm the importance of negotiated agreements and stress the obligations of the parties to ensure the implementation of such agreements.¹⁵⁰

Economic Coercion

The powers to use economic sanctions are contained in article 41 of the UN Charter, which provides that “the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions and it may call upon members of the United Nations to apply such measures. These may include the complete or partial interruption of economic relations...” To this effect, the Security Council has deployed mandatory weapon sanctions against a number of regimes in armed conflict. For example against Iraq from 1990, Yugoslavia in 1992, Haiti 1993 and the rebel held areas in Angola in 1993. The Security Council has used the powers under article 41 to impose mandatory sanctions very frequently, this indicates its faith in its effectiveness to combat and control armed conflict and the suffering of civilians.

UN Peacekeeping

The concept of peacekeeping is not specifically mentioned in the UN Charter. It evolved as a pragmatic solution in the early years of the UN when it became apparent that some of the UN Charter provisions relating to the maintenance of international peace and security could not be implemented as envisaged.¹⁵¹ As a

¹⁵⁰ See for example Presidential statements, S/PRT/2005/43 of 22 September 2005 on the situation in Burundi, S/RST/2005/39 of 19 August 2005 on the situation in Guinea Bissau, S/PRST/2005/28 of 6 July 2005 on the situation in Cote d'Ivoire among others available at <www.un.org/Depts/dhl/resguide/speck.htm> (accessed October 01 2005).

¹⁵¹ White, (1995) *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security*, Manchester University Press 183.

rule, peacekeeping missions are established by the Security Council through Resolutions spelling out the mandate of the force in a particular situation.¹⁵²

Peacekeeping missions are usually established under Chapter VII of the UN Charter when a situation is deemed to constitute a threat to international peace and security.¹⁵³ Mandate of the Peacekeeping missions have included among others, implementation of peace agreements, disarming warring groups, making warring groups observe ceasefire, performing functions relating to humanitarian assistance, and protection and promotion of human rights. In recent years, the Security Council has passed a number of resolutions calling upon members of peacekeeping forces to make the protection of children in armed a priority in their missions.¹⁵⁴

CONCLUSION

There is no doubt that armed conflict anywhere is a threat to international peace and security and the UN Secretary General and Security Council have often intervened to provide humanitarian aid to a suffering civilian population, ostensibly for the protection of children and to bring armed conflict to an end. Indeed there are extreme examples where such actions have proved harmful to children, like the rise in child prostitution following the arrival of UN peacekeeping forces in a number of countries, the notorious killings and torture of young Somalis by peacekeeping forces and in Iraq where a number of children died as a result of the UN economic sanctions. Having said that, however, there have also been a number of very successful UN endeavors to protect children in armed conflict and to bring conflicts to an end. Unfortunately, there have also been instances where the UN has not taken any concrete action to intervene in situations of gross violations of human rights and humanitarian law.

¹⁵² See UN Department of Peacekeeping operations, <www.un.org/Depts/Speck.htm> (accessed 01 October 2005).

¹⁵³ See for example Security Council Resolution 1590 of 24 March 2005 in the Sudan, Security Council Resolution 1509 of 19 September 2003 in Liberia and Resolution 1545 of 21 May 2004 in Burundi among others available at <www.un.org/Depts/dpko/missions/> (accessed 01 October 2005).

¹⁵⁴ See for example S/RES/1612 (2005) July 26 2005, S/RES/1559(2004) April 22 2004, S/RES/1460(2003) January 30 2003, S/RES/1379(2001) November 20 2001, S/RES/1314 (2000) August 11 2000. Available at <www.un.org/Depts/dhl/resguide/speck.htm> (accessed 01 October 2005).

CHAPTER THREE

INTRODUCTION

There have been a number of insurgencies in Uganda since Yoweri Museveni's National Resistance Army/Movement (NRA/M) took power in January 1986. The most protracted of these conflicts is the ongoing war in northern Uganda, which has lasted for 19 years. This conflict has almost completely destroyed northern Uganda's agriculture-based economy and has severely weakened the region's social structures. Although this conflict has been described as one of the worst humanitarian crises in the world, international response has been intermittent, uncoordinated and insufficient to a large extent. How has this come about? In this chapter the study gives a brief background to the conflict, discusses the vulnerable groups of children and the failure to prioritise the protection of children by all actors at the local and international level.

BACKGROUND TO THE CONFLICT IN NORTHERN UGANDA

Uganda's post-colonial history has been one of violent coups and numerous armed rebellions with no accountability for atrocities committed against the people. As a result, successive governments have hunted down and exacted extra-judicial revenge on soldiers and civilian populations associated with the ousted regimes. This has culminated in a cycle of fear, hate, anger, mistrust, and more violent vengeance dividing Ugandans along regional and ethnic lines.¹⁵⁵ Thus, armed rebellion in the northern Uganda against a regime that was perceived as a threat to local interests was seen as the normal course of politics.¹⁵⁶

After the current Ugandan President Yoweri Museveni and his NRA took power in 1986 from General Tito Okello Lutwa, there was a widespread fear in northern Uganda, especially among the dominant ethnic group, the Acholi, that reprisal killings would ensue for atrocities committed during the previous regimes when the Acholi

¹⁵⁵ Refugee Law Project, (February 2004) "*Behind the Violence*", Working Paper No. 11, 7. (Hereinafter, *Behind the Violence*)

¹⁵⁶ *Behind the Violence*.

people dominated the army. As a result, Okello's ousted troops and their many civilian supporters formed the Uganda People's Democratic Army (UPDA) and led a popular revolt against Museveni's regime.

Though the UPDA was defeated, its remnants and other dissidents came together to form the Holy Spirit Movement (HSM), led by Alice Auma "Lakwena."¹⁵⁷ For almost a year, Lakwena maintained the HSM insurgency, coming within 80 kilometres of the capital, Kampala, before she was defeated and fled into exile.¹⁵⁸ In 1987, Joseph Kony, cousin to Alice Lakwena, reorganised remnants of the HSM in an attempt to complete the push for state power.¹⁵⁹ Kony's forces are now known as the Lord's Resistance Army (LRA).

In 1994, the National Islamic Front (NIF), the military junta ruling Sudan, began supporting Kony in retaliation for government of Uganda allegedly supporting the Sudan People's Liberation Army (SPLA).¹⁶⁰ Inside Sudan, the LRA received a safe haven, training, and weaponry, but war weariness, coupled with a loss of faith in the LRA as a "liberating" force for the Acholi, led to a decline in volunteer recruits. The LRA then resorted to child abductions and the massacre of civilians. This led to informal displacement where villagers sought refuge with family members by sleeping in the bush at night.

The Museveni regime's response to the rebellion in northern Uganda has been characterised by a mixture of direct military offensives, abortive peace negotiations and the forced displacement of civilians into "protected villages". The search for a military victory over the LRA has consistently dominated the conflict scenario, thereby contributing to the deterioration of human security in the region and children continue to suffer life threatening lack of food and other basic services; they continue to face sexual and other violence at the hands of both the LRA and UPDF forces and the uncertainty as to whether they will be abducted and forced into the bush by the LRA, or pushed into the UPDF or militia units.

¹⁵⁷ 'Lakwena' is an Acholi word meaning prophet and Alice Lakwena claimed to be a prophetess sent by God, possessed by a spirit that was guiding her for the good of the Acholi people.

¹⁵⁸ Alice Lakwena continues to reside in a refugee camp in Kenya, though there are reports of negotiations with the government of Uganda to resettle her in Uganda.

¹⁵⁹ Kony claimed that he inherited the spiritual power from Alice and that he was anointed by God to continue with the work she was doing.

¹⁶⁰ SPLA is a southern Sudanese rebel movement that was fighting for the independence of southern Sudan from the Islamic dominated government of Sudan.

Every aspect of life in northern Uganda has been disrupted; hundreds of thousands of people have been forced to flee from their homes due to attacks by the LRA and in 1996; the government ordered a large number of people into 'protected villages' commonly referred to as IDP camps. This was a military strategy designed to protect civilians from the LRA but also aimed at undermining civilian support of the rebel group.¹⁶¹ The IDP camps, usually lacks basic facilities and services essential for subsistence. In addition, the camps are far off, isolated and dangerous to get to and the LRA usually attack humanitarian relief envoys, making humanitarian aid inaccessible to the people.

In addition, there are usually only a handful of soldiers to protect a large camp of over 40.000 civilians. The IDPs stated that when the LRA mounts their raid, the soldiers are the first to run, even when they try to protect the people, they cannot overcome the LRA attacks because they are few in number.¹⁶² The objective of the security of civilians underpins the logic and influences the lay out of the camps, in which the centre is seen as the most secure because the LRA gets to you last. The fight for the centre has led to massive overcrowding and congestion.

CHILDREN AT RISK

The LRA abducted, killed and injured thousands of children in isolated villages, IDP camps, schools and Sudanese refugee camps.¹⁶³ In addition, the LRA attacked humanitarian relief convoys carrying food to northern Uganda as well as other relief convoys transiting northern Uganda to IDP camps in southern Sudan.¹⁶⁴ Largely obscured by the scale of LRA violence is a pattern of human rights violations, especially against children involving UPDF soldiers.

¹⁶¹ Global Solutions, "*Uganda in crisis*" <www.globalsolution.org/uganda/ugandaincrisis.htm> (accessed 20 February 2005)

¹⁶² Interview conducted with the camp elder in Pabo Camp on the 22 December 2004.

¹⁶³ For a detailed chronology of events and child abductions see the Acholi Religious Leaders website, <www.acholipeace.org>.

¹⁶⁴ As above.

Many NGOs operating in the northern Uganda have documented scores of killings, dozens of rapes and hundreds of beatings by the UPDF soldiers.¹⁶⁵ There is a general problem of impunity for soldiers who commit serious crimes against civilians. While many have been arrested and charged, few have been tried.¹⁶⁶ Northern Uganda is in the grip of a serious humanitarian crisis; children are principal targets and victims of violence. This has resulted into the creation of 3 groups of vulnerable children: abducted children and returnees; internally displaced children; and “night commuters.”

Abducted Children and Returnees

In 1988, the rebels began abducting children both boys and girls and as young as 8 or 9 years. Current statistics reflect that the number of abductees is between 40.000 and 50.000 children.¹⁶⁷ These children are abducted from villages and IDP camps. In 1990, the LRA established a routine of raiding schools. During these raids, books are looted and supplies burnt, teachers are beaten, abducted and some killed and pupils are abducted.¹⁶⁸ Those who attempt to escape are killed, the rebels force the other abducted children to kill them, usually with clubs or machetes. Any child who refuses to participate in this killing may also be beaten or killed.

The LRA tie the children to one another and force them to carry heavy loads of looted goods as they march them off to the ‘bush’. When shooting breaks out, the conscripts are often unable to escape. The children who survive the long journey to the LRA bases are forcefully indoctrinated into the LRA's grand vision of an Acholi nation based on the Ten Commandments. The LRA military indoctrination consists of beatings, rape, and the severing of limbs using the use of machete.¹⁶⁹

¹⁶⁵ Jackson (2002) “*The March of the Lord's Resistance Army: Greed or Grievance in Northern Uganda?*” 13 *Small Wars and Insurgencies*.

¹⁶⁶ Human Rights Watch (March 2003) “*Stolen Children: Abduction and Recruitment in Northern Uganda*” Vol 15 No 7 (A) 8 <www.hrw.org/reports/2003/Uganda0303> (accessed 3 July 2005) (hereinafter, *Stolen Children*) stating that the fact that these violations have been allowed to continue is the result of failure by the political authorities at the highest level, including President Yoweri Museveni himself, to give questions of justice in northern Uganda sufficient priority.

¹⁶⁷ Hedlund “*Children Used in War*” <<http://graphic.pepperdine.edu/perspectives/2005/2005-3-31-uganda.htm>> accessed 26 May 2005.

¹⁶⁸ *The Scars of Death*.

¹⁶⁹ Petraitis, “*Joseph Kony's Spirit War*” <<http://www.infidels.org/library/morden/>> (accessed on 1 March 2005).

Children are further made to participate in unimaginable abominable acts of hostility on innocent civilians. They are required to take an initiation ceremony in terms of which they have to mutilate or kill friends and relatives and sprinkle the blood on their hands so that they become psychologically entrenched to join and remain loyal to the rebel army.¹⁷⁰

The LRA enforces discipline through a combination of violence and threats. Children who do not perform their assigned duties to the satisfaction of the rebel leaders are beaten. Children who flout rebel orders are beaten or killed, often by other abducted children.¹⁷¹ Failed escape attempts continue to be punished by death and successful escape lead to retaliation: if one sibling escapes, the rebels often kill the other sibling, or return to the child's home village and slaughter any surviving relative.¹⁷² Eighty to ninety percent of LRA fighters are abducted children who are regularly killed in combat.¹⁷³

The children who manage to escape LRA captivity often suffer post-traumatic disorders, including nightmares, sleeplessness, hallucinations, fainting, visual disorder, withdrawal, and a feeling of hostility and despair. Those who are no longer in the army fear the stigma of the past acts.¹⁷⁴ Some of the children have no home to return to and some have not been accepted by their families and communities. It has been documented that some of the children have returned to the rebels because they have nowhere to go and no one to look after them.¹⁷⁵ No rehabilitation programmes has been extended to these children.

Some of the returnees have been recruited by the UPDF and are serving in the army on a full time basis. The available statistics show that at least 700 former abductees have been incorporated into the UPDF. The UPDF does not dispute the recruitment

¹⁷⁰ Human Rights Watch, (2003) *"Abducted and Abused: Renewed Conflict in Northern Uganda"* (hereinafter, *Abducted and Abused*).

¹⁷¹ As above.

¹⁷² As above.

¹⁷³ UN OCHA, (2003) *"Report on Northern Uganda"* <<http://www.irinnews.org/wedspecials/northernuganda/default.asp>> (accessed 10 October 2005).

¹⁷⁴ Lamwaka, *"The Power of Story Telling and Reading in Healing Children Orphaned and Traumatised by War in Northern Uganda"* <www.acholipeace.org> (accessed 24 August 2005).

¹⁷⁵ World Vision, (2004) *"Pawns of Politics: Children, Conflict and Peace in Northern Uganda"* (hereinafter, *Pawns of Politics*)

of under age soldiers. Major Shaban Bantariza, the UPDF spokesperson justifies this conduct by stating that the children have misrepresented their age in order to secure employment. He further stated that the children have become social misfits in society and that they perpetrate atrocities on civilians hence they can only pay back by serving the nation in UPDF.¹⁷⁶

'Night Commuters'

As a result of the increasing number of abductions, tens of thousands of children commonly referred to as 'night commuters' in northern Uganda travel miles on foot to towns and city centres to sleep in bus stations, churches, storefronts and on the street. Estimates of up to 50.000 'night commuters' make this nightly trip.¹⁷⁷ Many travel on barefoot and empty stomach, some without even a blanket for up to 8 km and go back every morning to their villages.¹⁷⁸

In the places where the children take refuge, they have no access to water; food and toilet facilities are limited.¹⁷⁹ They are further abused both en route and at night. These children are vulnerable to theft and physical abuse from other children as well as adults. They may also be tempted to drinking, drugs and sexual abuse since no adult supervision is available to them.

In addition, the children, particularly girls, are at risk of sexual harassment and assault. They get attacked on the way and at the sleeping places. The perpetrators are reportedly adolescent boys and men. However, UPDF soldiers have also been accused of raping female night commuters.¹⁸⁰ A nurse at Lacor Hospital stated that 14 and 15 year old girls taking shelter at the hospital at night are particularly susceptible to sexual exploitation. The UPDF who are supposed to protect the people use money to bribe the young girls into having sex with them.¹⁸¹ It is further reported that UPDF soldiers take young girls to the rooms of UPDF soldiers getting treatment

¹⁷⁶ The defence minister however denies this, see "Army not recruiting child soldiers-Mbabazi" <<http://www.parliament.go.ug/details.hei?newsId=629>> (accessed 14 July 2005).

¹⁷⁷ *When the Sun Sets*.

¹⁷⁸ Afrol News, 12 November 2004 quoting Jan Egeland, UN's Emergency Relief Coordinator.

¹⁷⁹ See *When the Sun Sets* and *Abducted and Abused*.

¹⁸⁰ *When the Sun Sets*.

¹⁸¹ Interview conducted in December 21 at Lacor hospital in Gulu.

at the hospital in the night.¹⁸² The prevalence of sexual assault and exploitation is well known amongst authorities, but no steps have been taken to provide protection to the children.

In an attempt to draw international attention to the plight of children, many religious leaders slept on the streets with the night commuters for a number of nights.¹⁸³ Many said that it is impossible for children to get rest at night. The generation of children emerging in northern Uganda is worrying; they are children who have been exposed to violence as a way of life.¹⁸⁴

IDP Children

About half of the populations in Gulu and Kitgum districts live in IDP camps.¹⁸⁵ An estimated 53 per cent of the people in the IDP camps are children who live in shocking and appalling conditions. For example in Pabo camp, one of the largest camps, about 42,000 people live within a radius of two kilometres in crowded grass thatched huts.¹⁸⁶ Malnutrition rates among the children range from 7 to 21 per cent, and anywhere from 1,052 to 15,000 people share a single water source. A further indication of the severity of this crisis is the upswing in HIV/AIDS prevalence rates. National prevalence rates for Uganda are estimated at 6.2 per cent and declining, but rates in the war-affected areas are almost double that of the national average, at 11.9 per cent.¹⁸⁷

Humanitarian operations are risky affairs for those who attempt to deliver assistance to the IDPs. Travelling to any of the 59 camps scattered IDP camps is only possible

¹⁸² Interview conducted on 5 December 2004, at Lacor Hospital in Gulu.

¹⁸³ New Vision (22 July 2003) "*Religious Leaders Protest Northern Conflict*".

¹⁸⁴ Interview conducted in December 20 2004 with Davide Naggi coordinator of AVSI an Italian NGO in northern Uganda. Dr Naggi is one of the many people who spent with the children on the streets in July 2003.

¹⁸⁵ There are about 59 IDP camps in the Acholi sub region.

¹⁸⁶ Jackson, (2002) "*The March of the Lord's Resistance Army: Greed or Grievance in Northern Uganda?*"¹³ "*Small Wars and Insurgencies*" 29.

¹⁸⁷ UN Sub-Commission on the promotion and Protection of Human Rights 53 session Agenda Item 2 <<http://www.webcom.com/hrin/parker/suborwsu.htm>> (accessed 3 May 2005).

with heavy military escorts, and only when the security situation is calm.¹⁸⁸ Among the many aid organizations working in Uganda, only the United Nations World Food Programme (WFP) was able to establish a security arrangement with the UPDF that enables it to make frequent food distributions to the camps.¹⁸⁹ Even then, the WFP distributes food and the next day the LRA comes and takes the food and kidnaps children to carry the food.¹⁹⁰

Fire has often ravaged these camps leaving the residents homeless;¹⁹¹ thousands of children are orphaned and heading households, and few, especially the girls are able to attend school or find sufficient means to support or protect themselves; this has forced girls into early marriages. Educational and health system has been disrupted; schools and hospitals have closed or been displaced, leaving the children without the basic health care or education. Humanitarian assistance fall short of the needs of the children, and they suffer ongoing abduction and increased domestic and sexual violence.¹⁹²

In July 2003, some 20,000 children marched through the streets of northern Uganda. The message in the placards they were holding was clear; "We don't want to become killers"; "we do not want to die"; "we children want peace"; "we children are appealing for help".¹⁹³ The government of Uganda and all international actors who could have intervened on behalf of the children have ignored their appeal. The children are growing up helpless and neglected.

INTERNATIONAL COMMUNITY AND THE CHILDREN

The Ugandan government that holds the primary responsibility for the protection of, and assistance to, its citizens has thus far failed to live up to this obligation. The role

¹⁸⁸ UN OCHA, "*Humanitarian aid in northern Uganda*" <www.irinnews.org> (accessed 11 October 2005).

¹⁸⁹ UNOCHA, "Humanitarian crisis" <www.irinnews.org> (accessed 11 October 2005).

¹⁹⁰ According to Charles Uma, Gulu District Disaster Management Committee stated that they have failed to transport any food items or give assistance to the IDPs. Medical supplies, food and other items meant for the IDPs are rotting in stores.

¹⁹¹ For instance, in January 21 and 23 2005, fire raged the Agweng IDP camp killing a number of people and rendering a lot more homeless.

¹⁹² *Abducted and Abused*.

¹⁹³ As n 183 above.

should have then fallen on the international community to undertake activities designed to encourage and induce the government to fulfil its responsibility under the relevant international standards; or to engage the government in cooperative procedures aimed at assisting them in the implementation these rules; or to attempt to deal with, violations of these rules. However, the international community has made the welfare and the protection of the children of northern Uganda secondary to other political goals.

Perhaps the first ray of hope for the children came through the First International Conference for War-Affected Children in 2000, held in Winnipeg, Canada.¹⁹⁴ The Winnipeg Agreement was signed by the governments of Uganda and Sudan, with the governments of Canada and Egypt acting as guarantors. This agreement made the protection of children a priority, with commitments to work for the release of abducted children, to end the use of child soldiers, and to improve protection of children affected by the conflict. This agreement was however, never implemented. The governments of Canada and Egypt chose to give priority to maintaining good relations with governments of Sudan and Uganda, rather than holding them publicly accountable for their commitments to children. The one agreement that put children first was scuttled through a failure of diplomacy to take children and their welfare seriously.

In 2003, there was an increase in the efforts to highlight Uganda within the UN, the 2003 report of the UN Special Representative for Children and Armed Conflict to the Security Council¹⁹⁵ makes references to the situation of children in northern Uganda; a photo essay on the 'night commuters,' prepared and distributed by the UN Office of the Coordinator of Humanitarian Affairs (UNOCHA), attempted to bring international attention to this issue; similarly, the high profile visits of Jan Egeland, UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator was a helpful attempt to highlight the plight of the children.

Many international appeals for the protection of children have been made to the UN and world leaders, many young Ugandans have in addition attended international conferences such as the 2002 UN General Assembly for Children. Each time their stories shocked listeners and drew compassionate response and each time they

¹⁹⁴ Otto, "Implementing the 1999 Nairobi Agreement," <www.c-r.org/accord/uganda/accordii/implementing.shtml> (accessed 08 October 2005).

¹⁹⁵ See Report UN Security Council No S/2003/1053.

went home with hope that international diplomacy would help ease the suffering of the children but nothing significant has been done.¹⁹⁶

The Security Council has since 1999 passed five resolutions on the protection of children in armed conflict.¹⁹⁷ These resolutions call for action by all parties to protect children from abduction, recruitment as child soldiers, and sexual and gender-based violence. Provision of humanitarian assistance, education, demobilisation and reintegration of children are given high priorities. Each resolution is stronger and more specific, reflecting a growing commitment by the Security Council to improve implementation of international humanitarian and human rights laws aimed at protecting children from the impacts of armed conflict. These resolutions have however, not benefited the children in northern Uganda.

Overall the International community has been very slow to acknowledge the extent of the humanitarian crisis and the impact of the conflict on children, thereby, failing to act appropriately. There has in particular been a gap in the provision of direct humanitarian protection services and in monitoring of humanitarian protection conditions and human rights abuses. Among the mandated organisations: UNHCR remains inactive on issues of internal displacement in Uganda; ICRC only resumed its work in northern Uganda in 2004; UNICEF has only recently expanded its protection programme to meaningful levels; and UNOCHA has only recently begun to draft a protection strategy with the Office of the High Commissioner of Human Rights (OHCHR).¹⁹⁸

NGOs have further urged the Security Council to take up the issue of children affected by the conflict, but the Security Council has sidestepped it. The US, Russia and China have thwarted past efforts to place Uganda on the Security Council's agenda.¹⁹⁹ The UN Secretary General has to date failed to evoke Security Council Resolution 1460 to become directly involved in trying to broker a solution to the plight of children Uganda. After 19 years of continuous upheaval, there is yet to be a Security Council Resolution passed on the situation in northern Uganda.

¹⁹⁶ *Pawns of Politics.*

¹⁹⁷ These are Resolution 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), and 1539 (2004).

¹⁹⁸ See Civil Society Organisation for Peace in Northern Uganda (CSOPNU), (December 2004) "*Nowhere to Hide: Humanitarian Threats in Northern Uganda.*"

¹⁹⁹ *Pawns of Politics.*

More general neglect of the protection of children in the conflict is reflected in the overall lack of coherent public political pressure from the international community to influence the LRA, and the government of Uganda, to guarantee the effective protection of children from this vicious cycle of violence. It is also reflected in the lack of coherent public political pressure from international community for a serious, coordinated approach to the peaceful resolution of the conflict.

The reason for this failure lies in political interests both at home and abroad. Many NGO's and aid workers have stated that the World Bank and IMF refer to President Museveni as a new breed of African leaders and to Uganda as a role model for development for the rest of Africa. As a result, the image of the prosperous southern region is projected at the expense of the war torn northern region and no attention is paid to the plight of children as a result of the war.²⁰⁰

NGOs, civil servants and aid workers in the region have further stated that US has an interest in southern Sudan and the war in northern Uganda acts as a good camouflage. There are tanks and other heavy weapons going to the army barracks in pretext of fighting Kony, they merely pass through northern Uganda to the SPLA in southern Sudan.²⁰¹

“Look at the Darfur conflict merely months old, has attracted a lot of international interest, Kofi Anan, the Secretary General paid a visit to Sudan and the UN has already carried out a research and compiled a report on what is going on in the country, while the war in northern Uganda is about to celebrate its 19th birthday and we have not had any guests of that calibre in the international scene paying us visits to find solutions for the protection of children”²⁰².

REFERRAL TO THE ICC

In 2004, President Museveni made a referral to the ICC on the situation in northern Uganda. The ICC Prosecutor has since conducted investigations and announced the issuance of 5 warrants of arrest for top LRA commanders.²⁰³ The LRA, whose top

²⁰⁰ Interview with a cross section of NGOs and aid workers in Gulu district December 2004.

²⁰¹ As above.

²⁰² Statement by James Otto A Secretary General of Human Rights Focus (HURIFO) an NGO working in Gulu district, in an interview conducted in the HURIFO office in December 21 2004. Many other civil servants and aid workers expressed the same sentiments.

²⁰³ BBC News <<http://news.bbc.co.uk/2/hi/africa/4317852.stm>> (accessed October 08 2005).

leaders have expressed fear for the Court's mandate to punish them for horrific crimes, recognise the role of the ICC better than the government. President Museveni invited the Court to exercise jurisdiction, at least in part as a way to gain new leverage over the insurgency. His apparent willingness to consider generous settlements on the fates of top LRA commanders suggest he may believe he can as easily invite the ICC out if a purely political resolution of the war presents itself.²⁰⁴

The people in northern Uganda are divided about the arrest warrants. Some believe that justice must be done, and the warrants should proceed; many more fear that the warrants would destroy the uncertain peace process and lead to terrible new LRA atrocities.²⁰⁵ Given Kony's record of using massacres to make his points, it is quite likely that his initial reaction would be an attempt at spectacular atrocities to show that his insurgency is still a force to be reckoned with. He might also use the ICC's action as justification for walking away from the peace mediation process.

There is another possibility that the arrest of the LRA commanders will bring the conflict to an end to the benefit of the children. The big question now is how these commanders will be arrested. The war in northern Uganda is still active and the LRA is still a threat to the people. Defendants before the Special Court in Sierra Leone and the UN Tribunals for Rwanda and the former Yugoslavia were indicted after those conflicts ended. The issue in northern Uganda is therefore very complex; warrants of arrest issued might well tip the scales inside LRA leadership back toward further war.

CONCLUSION

A combination of war, massive displacement, HIV/AIDS, and poverty has created a world of misery for the children²⁰⁶ but the global indifference to their plight allows the abuses to continue; the children are manipulated; and by most, they are pitied, and then ignored. The UN neglected the genocide in Rwanda in 1994, 10 years later; it is

²⁰⁴ Amnesty International, Press Release (16 November 2004) "*Uganda: Government cannot prevent the International Criminal Court from investigating crimes*" 16 November 2004. <www.amnesty.org> (accessed 13 February 2005).

²⁰⁵ Interview carried out with a cross section of the people in northern Uganda in December 2004.

²⁰⁶ World Vision (October 2004), "*War's Battle-Scarred Innocents*," <<http://www.theage.com.au/articles/2004/10/24/1098556291683.htm?from=storylhs&oneclick=true>> (accessed 16 August 2005).

still apologizing for this neglect. It is the feeling among many Ugandans that the UN is content to wait and apologize to Ugandans too, for failure to act now when they are most needed.

CHAPTER FOUR

CONCLUSION

The challenge of children victimized in armed conflicts is not a result of inadequate laws neither is it a mere political breakdown. It is not just a trite breach of law or a one time humanitarian emergency but it is an unmatched tragedy that challenges us as humans and questions our credibility as decision-makers. The 1990 Declaration stated that there is no task nobler than giving every child a better future and world leaders offered a great promise to make available the resources to meet these commitments. Today, at this very moment the international community is repeatedly proclaiming its faith in the absolute and unconditional necessity to protect growing generations from the scourge of war, ironically we are confronted everyday with the reality of children suffering in every conceivable way as a result of armed conflict.

The depth of suffering and the length of time that the children in northern Uganda have suffered serious abuses represent a significant failure of all actors to effectively uphold the basic rights that lie at the heart of the UN Charter; "to save succeeding generations from the scourge of war."²⁰⁷ When Jan Egeland called the crisis in northern Uganda the biggest, most neglected humanitarian emergency in the world, his remarks were aimed beyond the confines of the Security Council, but to every actor who could have made a difference but chose not to.

The time for a united effort to alleviate the plight of children in northern Uganda and for global peace and security is long overdue. Adequate protection of children in northern Uganda is achievable but it needs a concerted effort from the local to the international level.

RECOMMENDATIONS

Humanitarian protection constitutes the most urgent problem for children in northern Uganda therefore, all responsible parties must focus their immediate efforts on minimising human suffering by putting in place effective protective measures with a

²⁰⁷ Paragraph 1 of the preamble to the UN Charter.

special focus on children. There is a need for consistent, coordinated, high-level diplomacy by all international actors. The study therefore gives the following recommendations:

Government of Uganda

- Continue to pursue the peace process and keep all avenues for dialogue with the LRA open. Be consistent in the commitment to achieving a peaceful resolution to the conflict and the construction of a just and lasting peace.
- Make an unequivocal public commitment to prioritise national resources for the protection of civilians especially children in northern Uganda from all forms of violence, coercion and deprivation. Make security of civilians in IDP camps and urban areas the primary responsibility of the UPDF.
- Immediately release from duty all soldiers and militias who are not able to prove that they are over 18 years of age.
- Establish a civilian oversight mechanism for the demobilization and reintegration of returnees.
- In full consultation with all humanitarian actors establish a common strategy to secure safe unimpeded access to humanitarian assistance for civilians. Increases the numbers of UPDF troops available for humanitarian escorts and enact guidelines to streamline the process by which humanitarian escorts are provided to NGOs.
- Agree to human rights monitoring of all parties to ensure that everyone complies with international human rights and humanitarian laws.

Lord's Resistance Army

- Immediately accept available offers to pursue peaceful negotiations and keep open all avenues for dialogue with the government.

- Immediately stop the attacks upon civilians, abduction of children, cruel and abusive treatment of abductees and release all children and adults still in captivity.
- Immediately agree to discuss issues of humanitarian access with humanitarian actors and provide credible guarantees on safe access for humanitarian agencies to IDP camps and the rural communities.
- Agree to human rights monitoring of all parties to ensure that everyone complies with international human rights and humanitarian laws.

International Donors

- Collaborate in publicly expressing moral outrage at the scale of the humanitarian crisis in northern Uganda and demand that the government works to honour its sovereign mandate on the protection of civilians especially children.
- Openly encourage the Government to move its military resources to defensive protection of civilians. Link direct budget support to government commitment to protect civilians caught up in the conflict.
- Collaborate in applying pressure on the UN Security Council and Secretary General to understand that northern Uganda presents a serious protection crisis. Urge them to take the crisis more seriously, and explore multilateral answers to the problem more aggressively and make northern Uganda a priority for the Human Security Agenda.

UN Secretary General

- Apply UN Security Council Resolution 1460 and seek to enter into dialogue with the parties to the conflict regarding the protection of children in northern Uganda.
- Use your good office to appoint a Peace Envoy for northern Uganda, specifically mandated to improve protection of the security and rights of children under international law and UN Security Council resolutions.

- Appoint a Special Envoy to co-ordinate all UN efforts in the direction of peace, with a particular focus on protection of civilians and accountability for compliance with international law. Include independent human rights monitors to deter abuses by all parties and to engage with all parties on compliance with international laws.

UN Security Council

- More vigorously endorse and support the peace process in Uganda, maintaining pressure on the Government and LRA to peacefully resolve the conflict.
- Immediately place the situation in northern Uganda on the UN Security Council agenda.
- Dispatch a protection focused fact-finding mission, possibly including a Special Envoy on humanitarian protection, to assess the humanitarian crisis in northern Uganda.
- Take specific progressive measures to ensure implementation of Resolution 1539 in northern Uganda including increased monitoring with consequences for failure to comply.
- Take measures to stop the flow of arms to armed forces that abuse children.
- Take measures to support the demobilisation and reintegration of former child combatants, with special attention to the needs of girls involved with fighting forces.

Government of Sudan

- Withdraw military aid and cease all support of the LRA including expelling them from the territory of Sudan.
- Support the peaceful resolution of the conflict in northern Uganda and continue to pursue peaceful negotiations in Sudan.

African Union

- Make use of the new African Union Peace and Security Council and give high priority to the situation in northern Uganda.
- Provide African leadership within international efforts for non-violent conflict resolutions.

ICC Prosecutor

- Ensure that the LRA leaders appreciate that the government and international community could petition the Court to take into account cooperation with the peace process when determining penalties for any convictions.
- In the alternative maintain leverage on the LRA by exercising discretion to hold back the warrants and issue them only if the LRA or the main individuals concerned fail to implement a peace agreement in good faith.

It is time for all actors to make the Secretary-General's call for "an era of application" of international norms and standards for the protection of children affected by armed conflict a top priority; it must never be the children who have to carry the yoke of armed conflict. It is time to turn our moral outrage into concrete action to help where help is most urgently needed for children are our future and their abuse in armed conflict is the destruction of our future.

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