

# When a child is not a child: The scourge of child soldiering in Africa

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## Summary

*The important place of children as integral to every country's future has been documented in legal, political, social and economic doctrine on domestic, regional and international platforms. Human rights instruments and covenants all espouse the protection of the child with concomitant rights and state obligations. Yet, despite this, in several countries in Africa, one finds children being abused through the wholly unconscionable practice of child soldiering. Whilst this scourge is not only an African problem, it is recognised that the dilemma is critical in Africa. This article examines the reasons why any country and/or military group/person would introduce children to armed conflict, the effect of such engagement on the child victim, and the international and African regional legal conventions. Taking cognisance of the continued abuse of children as participants in armed conflict, the writer makes recommendations for the elimination of the crisis, at both national and international levels. If the terror is allowed to continue unchecked, the consequences for Africa will, inevitably, be the emergence of a generation of disaffected individuals with concomitant limitations for growth and development personally and for Africa, as a whole. This is not the legacy of the African renaissance.*

## 1 Introduction

The phrase 'child soldiers' appears to be a patent antithesis; yet various research reports and articles in the popular press make reference to the reality of hundreds of children across the world participating in war and hostilities as combatants and supporting resources. Reports from

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Human Rights Watch indicate the shocking statistics of children being used in armed conflict in more than thirty countries around the world.<sup>1</sup> Brett estimates the number of child soldiers worldwide at 300 000<sup>2</sup> and Twum-Danso notes that about 120 000 of them are in Africa.<sup>3</sup> The evidence presented by the Coalition to Stop the Use of Child Soldiers makes for even more harrowing reading, with reportedly higher numbers of children being exploited in armed conflict worldwide. According to their report, '[m]ore than 500 000 children under 18 have been recruited into state and non-state armed groups in over 85 countries worldwide. At any one time, more than 300 000 of these children are actively fighting as soldiers . . .'<sup>4</sup> Analysing the various reports, it is clear that the problem is not limited to one country or geographic region, but it is described as being most prevalent and critical in Africa.<sup>5</sup> The

<sup>1</sup> Human Rights Watch 'Stop the use of child soldiers: Facts about child soldiers' <http://www.hrw.org/campaigns/crp/index.htm> 1 (accessed 10 November 2005).

<sup>2</sup> R Brett 'Child soldiers: Causes, consequences and international responses' in E Bennett *et al* (eds) *ACT against child soldiers in Africa: A reader* (2000) 18. See also Twum-Danso (n 1 above) 12 and BBC World Service 'Children in conflict' <http://www.bbc.co.uk/worldservice/people/features/childrensrights/childrenofconflict/> 1 (accessed 10 November 2005).

<sup>3</sup> Twum-Danso notes that, of the estimated 300 000 children exploited as child soldiers, 120 000 are in Africa. A Twum-Danso *Africa's young soldiers: The co-option of childhood* (2003) 12.

<sup>4</sup> IRINnews.org 'Too small to be fighting in anyone's war' <http://www.irinnews.org/webspecials/childsoldiers/default.asp> 1 (accessed 10 November 2005).

<sup>5</sup> The Coalition to Stop the Use of Child Soldiers confirms unequivocally that 'Africa has the largest number of child soldiers' Coalition to Stop Child Soldiers 'Frequently asked questions' <http://www.child-soldiers.org/childsoldiers/questions-and-answers> 1 (accessed 17 May 2007). See also Choike 'Child soldiers' [http://www.choike.org/nuevo\\_eng/informes/972.html](http://www.choike.org/nuevo_eng/informes/972.html) 1 (accessed 10 November 2005) and Amnesty International 'Child soldiers' <http://web.amnesty.org/pages/childsoldiers-index-end> 1 (accessed on 10 November 2005). The following examples from various reports provide a more graphic illustration of the extent and nature of the problem confronting Africa: In Uganda, the rebellion of the Lord's Resistance Army (LRA) against the government has been on-going since the 1980's. One UN Report records that since the beginning of the resistance campaign, approximately 30 000 children have been abducted to serve by the LRA: United Nations 'Uganda: Child soldiers at the centre of mounting humanitarian crisis' <http://www.un.org/events/tenstories/story.asp?storyID=100> 1 (accessed 10 November 2005). The report continues: 'The most disturbing aspect of this humanitarian crisis is the fact that this is a war fought by children — minors make up almost 90% of the LRA's soldiers. Some recruits are as young as eight years, inducted through raids on villages. They are brutalised and forced to commit atrocities on fellow abductees and even siblings. Those who attempt to escape are killed. For those living in a state of constant fear, violence becomes a way of life and the psychological trauma is incalculable.' United Nations 'Uganda: Child soldiers at the centre of mounting humanitarian crisis' <http://www.un.org/events/tenstories/story.asp?storyID=100> 1 (accessed 10 November 2005). Other reports from Human Rights Watch indicate that in October 2005 there was definite evidence that the Ivorian government had begun recruiting Liberian children who had previously participated in Liberia's civil war to go into combat alongside other combatants: Reuters Foundation (1) 'Alerting humanitarians to emergencies' <http://www.alertnet.org/thenews/newsdesk/HRW/aa2c8d3c3f4ca971df0f695211847956.htm> 1 (accessed 10 November 2005). Evidence to support this allegation came from a series of

majority of the children recruited into armed service range in age from 15 years to 18 years. There are, however, reports indicating that children as young as seven years have been part of armed conflicts.<sup>6</sup>

Accepting these facts, the next (uninformed) assumption that is often made is that such an unconscionable practice must be the activity of illegitimate and/or rebel groups. However, again this myth must be dispelled, as the references to children in armed conflict speak to their deliberate recruitment by armed opposition groups, paramilitaries and also the civil militia.<sup>7</sup> Recruitment further appears to have little gender bias and both male and female children are recruited into armed conflict.<sup>8</sup>

## 2 Understanding children's participation in the armed forces

Children join the armed forces for a number of reasons. In some cases, their actions are completely voluntarily, in other instances they act out of desperation, whilst other children become victims of participation because they are forced or abducted into the army.

In the first two instances, where children voluntarily join the fighting forces, in many cases the underlying reason was a need for security, taken in whatever form. Research shows that children often join the

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interviews conducted with Liberian ex-combatants (including three children aged between 13 and 17 years). The interviewees all indicated that they had been approached by recruiters from either Liberia or Côte d'Ivoire to join the government forces in Côte d'Ivoire in the fight against the anticipated civil unrest. In further describing some of the militia camps inside Côte d'Ivoire, they reported that these bases housed several hundred Liberians — 'with dozens of Liberian children' — most of whom had also fought with the Liberian rebel group': Reuters Foundation (1) (above) 2; P Kouassi 'Ivory Coast recruiting Liberian child soldiers' *The Guardian* 29 October 2005 7. Reports from Bujumbura deal with anecdotal evidence of children as young as 12 years who were taken off the streets by Tutsi militia men in Burundi to join in their fight against the Hutu rebels. The number of children used in the conflict between the Hutu majority and Tutsi minority varies, but a guesstimate appears to place the figure at approximately 3 000: Reuters Foundation (2) 'Alerting humanitarians to emergencies' [http://www.leadingthecharge.com/stories/news\\_0099188.html](http://www.leadingthecharge.com/stories/news_0099188.html) 1 (accessed 10 November 2005). In another report, an 11 year-old boy fleeing his village outside Bujumbura, which had been razed by violence, found himself taken with the tide of refugees to Sudan. Here he was immediately recruited by Sudanese rebels and immediately put to war. This was his life for the next nine years until he was rescued by the United Nations forces: Reuters Foundation (1) (above) 1-2. For additional case studies and references, see Bennett *et al* (n 3 above) 35-67.

<sup>6</sup> n 4 above, 1.

<sup>7</sup> United Nations 'Impact of armed conflict on children' <http://www.un.org/rights/concerns.htm> 1 (accessed 10 November 2005).

<sup>8</sup> Twum-Danso (n 1 above) 39. As an example, Human Rights Watch reports that in Ethiopia and Uganda it is estimated that almost one-third of child soldiers are, in fact, female. Human Rights Watch (n 2 above) 1.

army after their homes had been decimated by fighting in the area and their family scattered and/or killed in the fighting. In such circumstances, for these children left alone, the 'army' provided a refuge where the recruits were assured of shelter, food and protection.<sup>9</sup> These children are drawn into the fighting force which becomes a 'safe haven' and surrogate home for them. In this case, the task of removing children from the armed situation becomes even more difficult because the children simply have nowhere else to go. In many cases, once removed from the fighting forces, the only alternative for the child would be to either rejoin the armed forces or go into a life of crime. Without a very strong support system or remedial intervention, these children become excellent targets for re-recruitment.

There are also examples of children who joined the various armed forces because of the financial incentive provided. For instance, in the case of children being recruited for the fighting in Côte d'Ivoire, children interviewed by Human Rights Watch indicated that they were lured with offers of cash — between \$300 and \$400 — if they were prepared to take up arms. Others indicated that, in addition to the money for their own services, they were given 'money, rice and clothing to encourage their friends to join'.<sup>10</sup> In many of these cases, the initial contact was made by someone known to and trusted by the children.

Yet other voluntary recruits saw the armed force to which they attached themselves as a means of doing something to avenge family killings. Simbulan notes that in yet other cases, the passion and motive

<sup>9</sup> Yet, art 24 of the Fourth Geneva Convention, 1949 (ie the Convention dealing with the protection of civilian persons in time of war) makes special provision for a child's welfare in times of conflict. It states: 'The parties to the conflict must take the necessary measures to ensure that children who are orphaned or separated from their families as a result of war, are not left to their own resources . . . The parties to the conflict must facilitate the reception of such children in a neutral country for the duration of the conflict (my emphasis). Quite apparently, the intention of the Convention is that children during times of conflict receive special protection, even if it requires their transfer from the zone of hostility to a place of safety. Unfortunately, in many of the cases cited above, there is no adherence to this rule and, in fact, children in situations of vulnerability are seen as an easy target for growing the numbers of the fighting forces. Interestingly, this is not only an African crisis. Reports from the Philippines are that Filipino children also regard the taking up of arms as a way out of poverty: Inq7.net 'Kids take up arms as a way out of poverty, study says' [http://news.inq7.net/nation/index.php?index=18story\\_id=56680](http://news.inq7.net/nation/index.php?index=18story_id=56680) 1 (accessed 16 November 2005). In Southern Afghanistan, a 14 year-old boy serving as a military policeman admitted to interviewers that 'life was tough but that he had to join the "army" to earn some money for his family' (n 4 above, 2). According to IRIN, this boy is one of about 8 000 children believed to be under arms in Afghanistan.

<sup>10</sup> Reuters Foundation (1) (n 5 above) 2. Ellis also notes that in Liberia '[m]any of the Liberian youths who joined Charles Taylor's NPFL to overthrow the Doe administration saw the civil war as an opportunity to acquire property and riches': S Ellis 'Liberia's warlord insurgency' in C Clapham (ed) *African guerillas* (1998) 158.

were not necessarily based in personal or private loss but rather in the child's belief in the creed of the armed group and the lack of trust in the government.<sup>11</sup>

In all of these instances, however, despite the apparently voluntary nature of their conduct, the social, economic, political and psychological pressures associated with the joining exercise and the concomitant lack of real understanding of the issues involved cannot be over-emphasised. Machel makes a stronger statement, arguing aggressively that child soldiers can never be seen as 'voluntary recruits', as she notes that when the only options are survival or death/poverty, the choices of the children can hardly be called free and fair.<sup>12</sup>

The second broad category of child soldiers pertains to those children who are simply abducted into the fighting forces from their homes at night or from their schools. Reports also indicate that when a village has been massacred, the attacking forces make a deliberate effort to seize children who appear homeless and/or orphaned.<sup>13</sup>

Many of the children interviewed report that, having been recruited either by force or voluntarily, they are then made to commit various atrocities against their own communities, friends and family. The armed groups compel such actions as a means of ensuring that the children are effectively stigmatised and unable to return to their homes and communities.<sup>14</sup> Most children, however, say that they remained with and continued to follow orders in the army because they were terrified of the repercussions of leaving. Several indicated that they were repeatedly threatened with death if they contemplated leaving.<sup>15</sup> However, for others (as stated above), the army became the only life they knew. If they left, they realised that they would be on their own.

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<sup>11</sup> Inq7.net (n 9 above) 4. In reading the anecdotal evidence, it is always interesting to note, however, that whilst the ideology of the freedom fighter may be the predisposing reason for some child soldiers, with just as many others, the end result is that even the most honourable cause is quickly shattered when children are made to actually participate as part of the armed group. A Honduras case study succinctly sums up this shattered dream and the concomitant impact on the child. 'At the age of 13, I joined the student movement. I had a dream to contribute to make things change, so that children would not be hungry. . . . Later I joined the armed struggle. I had all the inexperience and the fears of a little girl. I found out that girls were obliged to have sexual relations to alleviate the sadness of the combatants. And who alleviated our sadness after going with someone we hardly knew? . . . There is a great pain in my being when I recall all these things. . . . In spite of my commitment, they abused me, they trampled my human dignity. And above all, they did not understand that I was a child and that I had rights.' See United Nations (n 7 above) 2.

<sup>12</sup> G Machel *The impact of war on children* (2001) 11.

<sup>13</sup> See R Peacock & K Booyens 'Victimisation vulnerability of children' in L Davis & R Snyman (eds) *Victimology in South Africa* (2005) 184.

<sup>14</sup> See S Stavrou & R Stewart 'The reintegration of child soldiers and abducted children: A case study of Paloro and Pabbo, Gulu District, Northern Uganda' in Bennett *et al* (n 3 above) 35. See also Human Rights Watch (n 2 above) 2.

<sup>15</sup> n 2 above, 1.

### 3 Why children?

Whilst there can be no excuse or justifiable explanation for why children would be targeted to participate in wars, conflict and hostilities, the reality is that it is happening. In analysing this situation, observers tend towards general agreement on the reasons why children have been and are still being exploited in armed conflict. Firstly, the children abducted (and even those who volunteer) are generally a cheap resource. They can be paid less and also eat less and are regarded as more expendable than adult soldiers.<sup>16</sup> Secondly, as a result of their vulnerability and emotional and physical immaturity, children are generally less demanding, more malleable and obedient than adults. They can also be better manipulated, generally and specifically in these circumstances because they tend not to properly understand and question the issues. Children are often also described as 'fearless soldiers'. This is again often because they cannot comprehend and/or begin to imagine the consequences of what is expected of them. They simply take instructions or, if they dare to show resistance, they are cowed into submission. This was borne out by a 14 year-old respondent recruited by the Guatemalan army, who stated to Human Rights Watch: 'They forced me to learn how to fight the enemy, in a war that I didn't understand why it was being fought.'<sup>17</sup> Another 16 year-old girl abducted by the Lord's Resistance Army in Uganda stated:<sup>18</sup>

One boy tried to escape [from the rebels], but he was caught . . . His hands were tied, and then they made us, the other new captives, kill him with a stick . . . I knew this boy from before [and when] I refused to kill him, they told me they would shoot me . . . After we killed him, they made us smear his blood on our arms. . . . They said we had to do this so we would not fear death and so we would not try to escape . . . I still dream about the boy from my village who I killed. I see him in my dreams, and he is talking to me and saying I killed him for nothing, and I am crying.

An ex-combatant from Burundi stated: 'It was terrible . . . When you heard shooting all you wanted to do was run away, but if you did, your own guys would shoot you.'<sup>19</sup>

<sup>16</sup> Reuters Foundation (1) (n 5 above) 2. Research studies indicate that children abducted by armed forces are, generally, children from poorer homes. When a child from a wealthy home is abducted, the trend is usually to release the child after the requested ransom has been paid. See Twum-Danso (n 1 above) 13.

<sup>17</sup> Human Rights Watch 'Stop the use of child soldiers: The voices of child soldiers' <http://hrw.org/campaigns/crp/voices.htm> 1 (accessed 9 January 2006).

<sup>18</sup> n 17 above, 1.

<sup>19</sup> See Reuters Foundation (2) (n 5 above) 1. This statement was made by a 17 year-old boy from Burundi who had been part of the Tutsi militia since the age of 12 years.

Lastly, and most importantly, IRIN contends children are used simply because countries can use them. The reality is that 'little effective action has been taken against those who violate the conventions and international agreements'.<sup>20</sup> For example, in Liberia, the United Nations (UN) Peace Keeping Mission indicated that they were aware of the problem and were 'actively monitoring the situation' on Liberia's borders.<sup>21</sup> However, the reality is that, in the meantime, children continue to be trafficked into armed conflict on a daily basis in the area.

#### 4 The consequences of child soldiering

Without being hierarchical or exhaustive, it would appear that the impact of child soldiering on the child victim is, at least, three-fold. This includes, broadly, physical danger, psychological trauma and educational stultification.

All the international conventions and most domestic rules acknowledging the importance of the welfare of the child reflect on the fundamental importance of a child's right to life, to safety, health, security and protection, to education, to shelter and food, and to dignity and respect. Child soldiers, however, have all of these rights violated — not only are they forced to perpetrate barbaric acts of violence against others, but they have also had to experience such violence perpetrated against their own persons. In reading about the lives of children exposed to war, one immediately recognises the real potential for these children to develop the symptoms of post-traumatic stress disorder. The corollary is that they become depressed, disaffected individuals with persisting patterns of problematic behaviour and functioning. Alcohol or substance abuse becomes common in adult life and many of the victims demonstrate a marked difficulty in establishing and maintaining social relationships. Many present later in life with an overwhelming fear of the unknown. This was supported by the report on child soldiers published by the World Health Organisation in 1996.

For many of the children, participation in the armed conflict may mean death or, at the very least, physical mutilation and/or psychological marring. In considering the psychological effects of child soldiering on the lives of the victims, one must be cognisant of one of the greatest abuses perpetrated against these children, namely, the loss of their childhood. Playing is a luxury to them and many of the affected children have been forced to commit grievous harm against strangers and, worse still, against people known and close to them. For example, reports taken from Angola point to child soldiers fighting for UNITA being forced to kill their relatives and neighbours and to loot their own

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<sup>20</sup> n 4 above, 2.

<sup>21</sup> Angola Press 'UNMIL: Liberian child soldiers recruitment was foreseen' 10 November 2005 1 (accessed 9 January 2006).

villages.<sup>22</sup> Twum-Danso also refers to health issues and the probability of these children contracting sexually transmitted diseases, respiratory tract infections, worm infestations and other illnesses due to poor hygiene.<sup>23</sup>

From the research it would appear that, as members of the armed group, the children are required to participate in all aspects of contemporary warfare — they are taught to march, exposed to the manoeuvres of combat and trained in deception and camouflage. In most cases, the younger children are used as cooks, spies, porters, scouts, messengers and look-outs. However, in some conflict situations, their direct involvement in actual combat is also a reality. BBC World Service reports that in many cases the smallest boys are placed closest to the enemy because of the view that they are fearless and unpredictable.<sup>24</sup> These children are typically provided with AK-47, Kalashnikov or M-16 rifles, which they are then expected to use.<sup>25</sup> Children have also been used to serve as human mine detectors and been part of obvious suicide missions.<sup>26</sup> Girls are especially vulnerable, being used not just for soldiering but also for sexual gratification.<sup>27</sup>

Another very serious consequence of child soldiering is the introduc-

<sup>22</sup> Twum-Danso (n 1 above) 29. Similarly, based on its interviews with child soldiers in Sierra Leone, Human Rights Watch provides evidence of children being forced into the armed situation and being made to participate in beheadings, amputations, rape and burning people alive (n 2 above, 2). Another 14 year-old ex-combatant told interviewers, 'I've seen people get their hands cut off, a 10 year-old girl raped and then die, and so many men and women burned alive . . . So many times I just cried inside my heart because I didn't dare cry out aloud' (n 2 above, 1).

<sup>23</sup> Twum-Danso (n 1 above) 35.

<sup>24</sup> BBC World Service (n 3 above) 2.

<sup>25</sup> See Stavrou & Stewart (n 14 above) 35. It is suggested that the proliferation of light weaponry in the form of Kalashnikov, AK-47 and M-16 rifles has now made it much easier for young children to carry arms. See IRINnews.org (n 4 above) 2; also Amnesty International [http://www.amnestyusa.org/child\\_soldiers/index.do](http://www.amnestyusa.org/child_soldiers/index.do) 1 (accessed 10 November 2005). The AK-47 and M-16 rifles are also easy to operate and with this, one can only assume that more and even younger children will now be deployed into active combat, exacerbating an already vicious scourge. In fact, BBC World Service already reports that boys as young as eight years are being armed with AK-47 rifles and sent into war. BBC World Service (n 3 above) 2. See also generally the Report of the UNICEF Workshop 'Disarming children and youth' held in Ghana in September 2002, published by UNICEF.

<sup>26</sup> n 2 above, 1.

<sup>27</sup> See Stavrou & Stewart (n 14 above) 48-9 who cite the following case studies: 'I was defiled by some older boys (could not remember how many) when we were being marched to the rebel camp. After returning from Sudan, I was a wife to one rebel commander, then another junior commander and then to two "older" rebel soldiers (one was younger than she). I had one child who died when he was a few days old. I was a slave to the rebels for 19 months.' In the second case study, the young soldier states, 'I was abducted at the age of nine, I was a good soldier and by the age of 14, I was given my first wife (she was 17 years old at the time). When I turned 18, I was rewarded with a second wife (then 14 years old). I have had two children with the one and one child with the other.' In Northern Uganda, Human Rights Watch spoke to girls who were part of the rebel army who revealed how, after being impregnated by rebel commanders, they were made to strap their babies on to their backs 'and then continue to take up arms against Ugandan security forces' (n 2 above, 2).



tion of many of the children to addictive narcotic substances. Twum-Danso reports that children forced to take part in atrocities of combat are often given drugs to overcome their fear or reluctance to fight.<sup>28</sup> Boys described these pills as making them feel completely fearless during the fighting. In a Human Rights Watch interview, a 13 year-old former child soldier from Liberia stated:<sup>29</sup>

They gave me pills that made me crazy. When the craziness got in my head, I beat people on their heads and hurt them until they bled. When the craziness got out of my head, I felt guilty. If I remembered the person I went to them and apologised. If they did not accept my apology, I felt bad.

For many children who participate in hostilities, the biggest problem is being accepted back as a normal child in society. Many of the community members fear the children or treat them with wariness, believing that they could easily take up arms again and threaten the stability of the community.<sup>30</sup> For those children who are accepted back into the community, many experience difficulties fitting in with their peers. A further real problem is that, in most cases, the ex-combatants would have received no education whilst in the armed forces and where education structures remain and continued learning is possible, when they are re-introduced to the schooling system, they would have to be placed in grades lower than their age and peer groups. (In many instances, however, the notion of further schooling is a *non sequitur* with the educational facilities completely destroyed by the fighting.)

## 5 International law

There is no gainsaying that the international world is cognisant of the problem of child soldiers. As a result, the use of child soldiers has been expressly prohibited by various international treaties under international human rights law, humanitarian law, criminal law and even the labour law.

### 5.1 The Additional Protocols to the four Geneva Conventions of 1949

The Geneva Conventions of 1949 set out in detail the general rules of international humanitarian law dealing *inter alia* with the rights and obligations in respect of children in situations of armed conflict. The two Additional Protocols reflect the rules as relevant to specific situa-

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<sup>28</sup> Twum-Danso (n 1 above) 14. The narcotic 'cocktails' given to the children include marijuana and gunpowder, cane juice and gunpowder or, in that latter case, cane juice and gunpowder mixed with an amphetamine to make them feel 'strong and brave'.

<sup>29</sup> Human Rights Watch (n 17 above) 2.

<sup>30</sup> Reuters Foundation (1) (n 5 above) 2.

tions, namely the protection of victims of international armed conflicts (Additional Protocol I, 1977) and the protection of victims of non-international armed conflicts (Additional Protocol II, 1977).

Both of the Additional Protocols prescribe 15 years as the minimum age for children to be recruited into or used for armed hostilities — both at government and non-government levels. Specifically, article 77 of Additional Protocol I (which deals with international armed conflict) requires that:

The Parties to the conflict *shall take all feasible measures* in order that children who have not attained the age of 15 years do not take a *direct part* in hostilities and, in particular, they shall refrain from recruiting them into their armed forces (my emphasis).

Article 4(c) of Additional Protocol II — which covers non-international armed conflict — states more directly:

Children who have not attained the age of fifteen years *shall neither be recruited in the armed forces or groups nor be allowed to take part in hostilities*.

Reading the two sections, one identifies several limitations. Firstly, the cut-off age of 15 years is too young. In most aspects of legal engagement, the norm of general application is for any person under 18 years of age to be regarded as a child. Given the character of armed conflict and the consequent impact on the mental, physical and psychological well-being of the participant, one could reasonably argue that the age limit should, in fact, be raised rather than lowered. Secondly, the rule in respect of non-international armed conflict — article 4(c) — is far more peremptory than the rule in respect of international conflicts. This is difficult to understand or explain: One would have anticipated that the rule in respect of both situations would, at least, be the same. By simply requiring that state parties in international armed conflict take all ‘feasible measures’ provides a claw-back, causing the rule to be emasculated.

Furthermore, article 77 deals only with children’s engagement in ‘direct’ hostilities. However, research shows that a very large percentage of the children participating in armed conflict are used for activities collateral to the direct fighting. A serious limitation of the rule is the failure to refer to and specifically proscribe such indirect engagements, as well.

## 5.2 The Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child, which came into effect after the Geneva Convention and the Additional Protocols, describes a ‘child’ as someone under the age of 18 years: However, for the specific purpose of engagement in armed conflict, the Convention (article 38) defers to the Geneva Conventions and specifically uses the lower age of 15 years as the minimum for recruitment or engagement in any form of armed hostilities. However, article 38 does urge state parties to take

all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.<sup>31</sup> In a further effort to provide a minimal additional layer of protection, article 38 (paragraphs 2 and 3) also requires that priority be given in recruitment to the oldest of those aged between 15 and 18 years.<sup>32</sup>

### 5.3 The Optional Protocol to the Convention on the Rights of the Child, 2002

The Optional Protocol, '[d]isturbed by the harmful and widespread impact of armed conflict on children' and '[c]ondemning the targeting of children in situations of armed conflict', deals specifically with the engagement of children in armed conflict. Previous international standards had permitted children as young (and immature) as 15 years to be recruited for purposes of armed conflict. The Optional Protocol takes a positive step in providing expressly for 18 years as the minimum age for a child to be compulsorily recruited into armed groups, or for direct participation in armed conflict. Article I of the Protocol states:

State parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

The Protocol, however, still does not prevent armies accepting children younger than 18 years old who voluntarily sign up for 'service', nor does it prohibit children younger than 18 years from being used for involvement other than in *direct* armed conflict situations. However, article 3 (covering voluntary recruitment) asks state parties to raise the minimum age to 18 years. Vandewiele notes that the phrasing of this article is, in fact, a compromise position. By way of explanation, he notes that the Committee on the Rights of the Child expressly supported the notion of an 18-year minimum age for voluntary recruitment; however, there was opposition from various state parties based on (i) the view that 17 years was an appropriate minimum age for voluntary recruitment based; and/or (ii) the argument that the 18 year age limit would 'undermine an important accessory purpose of military service, namely educating young people'.<sup>33</sup>

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<sup>31</sup> Note again the failure to be more authoritative. Rather, the Convention also uses the phrase 'feasible measures'. Additionally, the reference in the Convention is limited to *direct* participation in hostilities.

<sup>32</sup> G van Bueren *The international law on the rights of the child* (1998) 337.

<sup>33</sup> T Vandewiele *A commentary on the United Nations Convention on the Rights of the Child — Optional Protocol: The involvement of children in armed conflicts* (2006) 31. See also Harvey who confirms 'the resistance of states, and more particularly the USA, to change their practice of recruiting and deploying under-18s'; R Harvey *Children and armed conflict. A guide to international humanitarian and human rights law* (2003) 27.

Article 4 of the Optional Protocol is especially relevant, as it expressly sets out conduct applicable to armed groups that are distinct from armed groups of a state. It is a welcome development on the Convention on the Rights of the Child, which applies only to state parties.<sup>34</sup> In dealing with children participating in armed conflict on behalf of non-state armed groups, the Optional Protocol, 2002, is, however, far more vehement. Article 4 states:

- 1 Armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
- 2 State parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalise such practices.

The different standards for state and non-state parties that are prescribed in Additional Protocols I and II, 1977, are repeated in the Optional Protocol and the expressed difficulty of the writer to understand the purpose is re-iterated. In this regard, Vandewiele also notes that the distinction has the very real potential to undermine the Protocol 'since it is unlikely that armed groups are willing to obey rules that place them in a more constraining situation than their adversaries'.<sup>35</sup>

The Optional Protocol clearly seeks to find a synergy with human rights and humanitarian law principles in further providing explicitly for the re-integration as well as demobilisation of former child soldiers.<sup>36</sup> There is no mention of the latter provision in the Convention on the Rights of the Child and it is an important addition in the Optional Protocol. The provisions of the Optional Protocol also seek to comply with the International Labour Organisation's Worst Forms of Child Labour Convention 182, 2000.

#### **5.4 The International Labour Organisation's Worst Forms of Child Labour Convention 182, 2000**

In describing a 'child', the Convention includes all persons under the age of 18 years and in proscribing the worst forms of child labour, article 3(a) specifically includes 'forced or compulsory recruitment of children for use in armed conflict'. Articles 3 and 38, however, provide that a child of 16 years may voluntarily present him or herself for recruitment into armed service. Article 3(3) then attempts to ameliorate the possibility of abuse, setting out specific safeguards to be met when children younger than 18 years are permitted to join the national armed forces. These include:

- (a) recruitment must be genuinely voluntary;

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<sup>34</sup> Vandewiele (n 33 above) 39.

<sup>35</sup> Vandewiele (n 33 above) 41.

<sup>36</sup> Vandewiele (n 33 above) 9.

- (b) reliable proof of age must be provided;
- (c) recruitment is carried out with the informed consent of the child's parents or legal guardians. Such informed consent shall include a complete knowledge of the duties involved such as military service.

Whilst laudable in spirit, one needs to remember that in many cases of recruitment of child soldiers, poverty is a strong influencing factor. In such cases, parents may offer their children as soldiers with the understanding that the army will pay the child's wage directly to the family.<sup>37</sup> In the case of girl children joining the armed forces, another dimension emerges in respect of those young women considered to have no or limited marriage prospects. In such cases, they are actively coerced and 'sold' to the army so that they will not be a continuing burden to the family.<sup>38</sup>

### 5.5 The Rome Statute of the International Criminal Court, 1998

The Statute is an attempt to regulate the activities of the international criminal court and to set out its parameters of activity. Within this context, the Statute defines war crimes, providing for both state conduct as well as non-governmental internecine conflict. Under this definition, article 8(2)(b)(xxvi) makes it a crime of war to conscript or enlist 'children under the age of 15 years into national armed forces' or to use them 'to participate actively in hostilities'; whilst article 8(2)(e)(vii) covers internal armed conflict referring to the conscription or enlistment of children under the age of 15 years 'into armed forces or groups or using them to participate actively in hostilities'. The Statute again refers to the cut-off age as 15 years: However, more positively, the Statute provides greater redress and takes the level of legislated protection a small step further in that it expressly proscribes both the direct participation in hostilities as well as the indirect missions for which many children are used. The problem with this provision is its enforceability. Many states do not have the necessary domestic legislation to enable them to prosecute offenders for war crimes. The introduction of such laws under municipal legislation will not only assist with the repression of such crimes at national level, but for states who are parties to the ICC, it will also facilitate the use of the principle of complementarity, allowing the International Criminal Court to have jurisdiction in situations where a state is unable or unwilling to prosecute offenders.

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<sup>37</sup> n 7 above, 2.

<sup>38</sup> As above.

### 5.6 The African Charter on the Rights and Welfare of the Child, 1999

This is the only charter at a regional level dealing with the issue of child soldiering and children in armed conflict. It was adopted by the Organisation of African Unity (OAU) and came into force in November 1999. The Charter does not make the distinction between people younger than 18 years and those younger than 15 years: A child is simply anyone younger than 18 years. Article 22(2) provides:<sup>39</sup>

State parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child.

The Charter compositely addresses both issues of age and nature of hostilities that appear to confound the other international instruments. Yet, Africa remains one of the guiltier regions when it comes to child soldiers. This once again raises the age-old dilemma of the chasm between the written protections and the enforcement of the international and regional standards within the national state authorities. This is evident from the numbers of children being used in armed conflict, from the fact that little (or nothing) appears to be done to sanction the renegade parties, and also from the fact that most peace treaties have seldom remembered the existence of child soldiers and provision for remedial support and their reintegration. Special provision is seldom made and the children, despite being especially vulnerable, are left on their own. However, a positive note is the response of Burundi. It is reported that, since the signing of the peace accord, from 2004 onwards, Burundi has commenced a programme of demobilising child soldiers from the army, civil defence forces and rebel factions. The test will be to monitor the sustainability of these programmes.<sup>40</sup>

## 6 Conclusion

The consequences of child soldiering for Africa must impact, directly, on the growth, development and re-generation programmes earmarked for the upliftment of the continent, on the ability of Africa to take her place as a player in the global arena, and in promoting the human rights ethos underpinning the African renaissance. *A priori*, all states have a fundamental responsibility to end the use of child soldiers in Africa.

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<sup>39</sup> However, eg, in Chad, where UNICEF has identified children between eight and 11 years in the military, the government has defended their position with the argument that it has never knowingly signed up children into the Chadian army. 'It's young people who forge their birth certificates,' said the Minister for External Relations. 'If they come to sign up we cannot know they are lying.' S Hancock 'Chad demobilises child soldiers' <http://news.bbc.co.uk/2/hi/africa/6640351.stm> 1 (accessed 17 May 2007).

<sup>40</sup> Reuters Foundation (1) (n 5 above) 2.

## 7 Recommendations

Without doubt, the regional and international laws succeed in raising the issues around child soldiering. They have created visibility for the problems and have placed them squarely on the international and regional agenda — and for this the laws are laudable. However, from the foregoing discussion, there are also patent shortcomings in the rules which appear to allow (within the parameters of the law) that children (in the ordinary sense of the word) continue to be used in situations of armed hostility.<sup>41</sup>

In light of the foregoing discussions, the following recommendations are presented:

At a national level, the first step to achieving the commitment to eliminate child soldiering on the continent would be for states to sign and ratify all the relevant treaties, both international Conventions and the African Charter on the Rights and Welfare of the Child. Secondly, ratifying states must take immediate steps to reduce their international obligations to practicable domestic legislation. In many African countries, however, whilst there may not be explicit statutes dealing with humanitarian law and children in combat, there will be a code that entrenches fundamental human rights and provides for the rights and protections of children in the country. Thus, it cannot be said that at a national level Africa is completely silent on the exploitation of children in armed conflict — what must be conceded is that countries have not been as explicit as they could have been in their domestic/municipal laws on the subject and in the enforcement of the laws and the prosecution of offenders. However, having said that, the writer raises the following examples of positive

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<sup>41</sup> An example of this is the United Kingdom. *Young Minds Magazine* reports that in the British armed forces, 16 year-old children are recruited to all three branches of the military and the country continues to deploy under 18 year-olds in war fighting situations. They state: 'The British army specifically targets recruitment at low income, high unemployment, disadvantaged areas where children with few academic or career prospects are able to sign up to six year minimum service contracts at 16 years of age, seduced by glamorous images of travel, machismo, and attaining employable skills . . . For many the prospect of a secure future, with a paternalistic employer and a sense of importance will offer some hope in an otherwise bleak and impoverished life with few prospects' <http://www.youngminds.org.uk/magazine/77/walker.php> 2 4-5 (accessed 10 November 2005). In its 2000 report, Amnesty International questions the prevalence of proper informed consent when such children are taken into the armed forces. Typical to these situations, the recruiting force preys upon the children's economic and mental vulnerability. In support of their action, the government noted that once trained in the armed forces, the children are deemed to be 'professionals' and are, accordingly, treated as such. To distinguish them from the unit would destabilise the unit and impair its effectiveness, would 'be demoralising and unpopular, and add to the training burden' <http://www.youngminds.org.uk/magazine/77/walker.php> 3 (accessed 10 November 2005). Noteworthy is the fact that they are the only European country to use 18 year-old children in conflict situations: <http://www.youngminds.org.uk/magazine/77/walker.php> 2 (accessed 10 November 2005). See also Vandewiele (n 33 above) 21.

action by various African states: Firstly, it is noted that the Special Court for Sierra Leone (established in 2002 — three months after the coming into force of the Optional Protocol — to prosecute persons who committed serious violations of international humanitarian law between 1991-2002) issued its first indictments in 2003 and they included an indictment against the former Liberian President Charles Taylor. The indictment includes express charges against Taylor for recruiting or using children under the age of 15 years in combat.<sup>42</sup> In Uganda, UNICEF is currently working with the Ugandan military in the process of identifying all underage soldiers in the army and seeking to get them out, and also in Chad, where the government has signed a deal with UNICEF to begin demobilising child soldiers from its national army.<sup>43</sup> Similarly, In Côte d'Ivoire, the European Commission's Humanitarian Aid Department (ECHO) and UNICEF have been working with the communities to assist in the programme to demobilise and reintegrate former child soldiers and prevent them from being recruited back into conflict.<sup>44</sup> Thirdly, to effectively eliminate the scourge of child soldiering, consistent and tough pressures by other African states, all governments and international agencies against those governments and armed groups that recruit children for conflict must be maintained. For example, what has had limited success in the past are travel and economic sanctions against individuals from countries and rebel movements identified as abusing children for purposes of warfare. Fourthly, public awareness, education and information campaigns within the state during peace times are integral to the success of such a programme of action. It stands to reason that the promotion of the rights of, and respect for children, in times of peace will be far more relevant and effective: Then, if war becomes a reality, the engaging parties are already imbued with the relevant principles of human rights and humanitarian law with the attendant domestic penalties attaching to intentional violations of the law. Such awareness will also promote public/community reaction to groups/states (ab)using children for military service.

At an international level, in November 2002, the report of the UN Secretary-General to the Security Council specifically identified five countries where children were being used in armed conflict. (These were not the only countries, but they happened to be amongst those countries that had been specifically placed on the Security Council's agenda.) After the chorus of disapproval from civil society at the fact that some of the worst violating countries had not been named, at its meeting in January 2003, the Security Council requested (Resolution 1640) that the Secretary-General provide information about protecting

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<sup>42</sup> Coalition to Stop the Use of Child Soldiers (n 5 above) 3.

<sup>43</sup> BBC News 'Uganda army recruiting children' <http://news.bbc.co.uk/1/hi/world/africa/4266789.stm> 2 (accessed 17 May 2007); Hancock (n 39 above) 1.

<sup>44</sup> S Westerbeek 'UNICEF and ECHO reintegrate child soldiers in C?ted'Ivoire' [http://www.unicef.org/infobycountry/cotedivoire\\_39645.html](http://www.unicef.org/infobycountry/cotedivoire_39645.html) 2-3 (accessed 17 May 2007).



children, especially children in armed conflict, in all his country-specific reports. The litmus test of efficacy and resolve to do something about the problem will be, however, to see what steps the UN takes against the offending countries. As the international NGO, Coalition to Stop the Use of Child Soldiers, noted, the issue can never be seen as settled (and therefore no longer necessitating active engagement and intervention) simply because it has been noted and its prevention has been legislated.<sup>45</sup>

Further, those recruiting children must be identified and prosecuted. In this regard, the UN needs to be more aggressive in (i) monitoring the use of child soldiers and (ii) publicising such activities — the so-called ‘naming, blaming and shaming’ of wayward countries and/or non-government (rebel) organisations. Human Rights Watch advocates that all information on recruitment and the use of child soldiers should be submitted to the monitoring and reporting mechanisms established by the UN Security Council under Resolution 1612 of 2005.<sup>46</sup> In this way, a co-ordinated and coherent global plan of action can be implemented. In addition, having identified recalcitrant countries, education campaigns in the local communities, informing them of the domestic and international standards in respect of child soldiers, can help reduce the chance of children being re-recruited or enticed back into the armed forces.<sup>47</sup>

In addition, according to the enabling International Criminal Court Statute, the recruitment and use of children under the age of 15 years is a war crime. Consequently, Human Rights Watch recommends that the International Criminal Court, in dealing with the issue of war crimes in countries, ‘should include the recruitment and use of child soldiers in [any] ICC investigation’ within an identified jurisdiction.<sup>48</sup> Further, the international communities must be urged to reconsider the age of participation as prescribed in the other international conventions.

Also, children who have been involved in armed conflict need to be demobilised. The Optional Protocol to the Convention on the Rights of the Child specifically recognises this fact, making it a requirement for governments to take ‘all feasible measures’ to ensure that children recruited or used in violation of the Protocol are demobilised (article 6). In such cases, governments are required to provide appropriate rehabilitation and reintegration assistance.<sup>49</sup> However, the efficacy of this provision may be limited. In the first instance, it must be recognised

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<sup>45</sup> Choike (n 5 above) 1.

<sup>46</sup> Reuters Foundation (1) (n 5 above) 3.

<sup>47</sup> n 7 above, 3.

<sup>48</sup> Reuters Foundation (1) (n 5 above) 3.

<sup>49</sup> See Vandewiele (n 33 above) 54, who refers to social and financial re-integration and includes measures such as access to interim care, education and vocational training as well as compensation and support services for children traumatised or permanently injured.

that the atrocities witnessed by many of the children will never permit complete psychological rehabilitation.<sup>50</sup> Secondly, as far as girl soldiers are concerned, regard must be had to their circumstances, and Brett notes especially the complexities involved in re-integrating girls who are mothers after the war or who are known to have been involved in sexual relationships.<sup>51</sup> Thirdly, after the fighting and hostilities have abated, most countries have few financial resources to accommodate plans for the demobilisation and recovery of children who were the casualties of the fighting. In many instances, if anything is to be done, it is left to the international world to take the necessary steps. However, even this is not always successful. For example, in the Human Rights Watch report it is indicated that '[a]fter Liberia's civil war ended in 2003, some 101 000 combatants — including 11 000 children — were disarmed and demobilised under a United Nations-sponsored program'.<sup>52</sup> However, many of the ex-combatants interviewed for the report admitted that after being demobilised, they were approached to join the fighting mission in Côte d'Ivoire. They had themselves then been responsible for recruiting other children for the government of Côte d'Ivoire.<sup>53</sup> The reason repeatedly presented for their reversion to armed activity was often traceable back to economic desperation.<sup>54</sup> One cannot over-emphasise the importance of financial support and programmes of financial aid for the demobilised children. In most cases, the already few opportunities to earn a living are aggravated by the social suspicion and exclusion that follows them. Reverting to soldiering where they have a place to stay and food is sometimes the only alternative.<sup>55</sup> This problem has become patently evident in Uganda where

<sup>50</sup> As Terburgh notes, 'You may ask: "What does the psyche of a child soldier resemble?" And the answer may be: "It resembles a burned down city with an infrastructure that is in chaos."' El Terburgh 'The child soldier: Psychological trauma' in Bennett *et al* (n 3 above) 21.

<sup>51</sup> Brett (n 3 above) 9.

<sup>52</sup> Reuters Foundation (1) (n 5 above) 2.

<sup>53</sup> As above.

<sup>54</sup> This fact is confirmed by Brett (n 3 above, 9), who states that one of the further problems of re-integration is the difficulty of separating the child from the soldier. She notes that from her research, she identified that many of the ex-combatants 'found it difficult to cope with the loss of status, and of the physical, economic and other power without a gun, especially where the economy is in poor shape . . .'

<sup>55</sup> One of the reasons that may be advanced for the lack of success of the disarmament and reintegration programmes is the reality of the huge financial commitment involved. Eg, the Liberian programme notes that it is currently facing a funding shortfall of US\$10 million needed to cover the reintegration of some 43 000 ex-combatants; Reuters Foundation (1) (n 5 above) 3. Those children who have been fortunate to have participated in the educational and vocational programmes for ex-child combatants have their own concerns. They note that in many instances their personal economic plight and the lack of money in the home had forced them to abandon the programmes: Reuters Foundation (1) (n 5 above) 3. Recruiters from Liberia are, obviously, aware of this situation and exploit the circumstances to lure the children back into fighting — currently on behalf of Côte d'Ivoire, but one would imagine that they would do it for anyone, provided their fee were paid.

young children, many aged between 16 and 17 years, who were released by the Lord's Resistance Army under a special amnesty, have now returned to the military to fight for the Ugandan army. The army justifies its conduct by arguing that its route is the 'lesser of the two evils' as there is the reality that, if they do not accept the recruits, they will return to the rebel movement as 'they have no alternate employment'.<sup>56</sup>

Too many children in Africa are engaged in the vicious activities of armed conflict and warfare. Without immediate attention to the problem and concomitant action, the plausible reality for Africa will be the creation a brutalised, violent generation who know nothing except sadism and aggression. This cannot be the twenty-first century legacy for which Africa has struggled.

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<sup>56</sup> BBC News (n 44 above) 1-2.