

**A CRITICAL ANALYSIS OF THE LAWS ON THE RIGHTS OF CHILDREN
INVOLVED IN ARMED CONFLICT IN UGANDA: A
HUMANRIGHTSPERSPECTIVE**

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DECLARATION

I, **APOLOT STELLA EKWENY** do hereby declare that, this dissertation is my original work and it has never been submitted to any other University or Institution whatsoever in its entirety or in part for the award of any degree or diploma. Other works cited or referred to are accordingly acknowledged.

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This is to certify that this work was compiled under my supervision and is now ready for submission with my approval

Signature.....

Date.....

MR. EDGAR BAGUMA

ACKNOWLEDGEMENT

I express my gratitude to God for His guidance during the entire process of compiling this Dissertation. My heartfelt appreciation extends to my supervisor, Mr. Edgar Baguma, for his valuable insights, unwavering support, corrections, and guidance throughout the Dissertation journey. Through your mentorship, I have come to understand the depth of research. Thank you. I am grateful to my family for their support, care, and patience in helping me complete this Dissertation. Without them, I would not have succeeded.

DEDICATION

I dedicate this Dissertation to every person, civic organization, and governmental entity, both in Uganda and globally, that has endeavored to prevent and combat the involvement of children in armed conflicts. Their efforts have served as a guiding light for the children who have been victims of such conflicts or who have participated, either directly or indirectly, in any armed confrontations.

LIST OF CASES

1. Prosecutor v. Anto Furundzija, Judgment, Trial Chamber, 10 December 1998, Case No. IT-95-17/1-T.
2. Prosecutor V Charles Ghankay Taylor (Judgment Summary) SCSL-03-1-T, Special Court for Sierra Leone, 26 April 2012.
3. Prosecutor v. Dominic Ongwen No. ICC. 02/04-01/15.
4. Prosecutor v. Kupreškić et al (1999) Case No. IT-95-16-A
5. Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06-3375.
6. Uganda v. Thomas Kwoyelo, Constitutional Appeal No. 1 of 2012.

LIST OF INTERNATIONAL INSTRUMENTS

1. African Charter on Human and Peoples' Rights, 1986.
2. The Universal Declaration of Human Rights, 1948.
3. The International Covenant on Civil and Political Rights (ICCPR), 1976
4. The Convention on the Rights of the Child, 1989.
5. The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, 2000.
6. The African Charter on the Rights and welfare of the child, 1990.
7. The Rome Statute of the International Criminal Court, 1998.
8. The Convention on the Worst Forms of Child Labour, Convention 182, 1999.
9. The Paris Commitments and Principles, 2007.

LIST OF NATIONAL STATUTES

1. The Constitution of the Republic of Uganda 1995, As Amended.
2. The Uganda Peoples Defence Force (UPDF) Act, Cap 330

LIST OF ACRONYMS AND ABBREVIATIONS

AU	African Union
Cap.	Chapter
CAR	Central African Republic
CRC	Convention on the Rights of a Child.
DRC	Democratic Republic of Congo
EA	East Africa
ECHR	European Court of Human Rights
HCMA	High Court Miscellaneous Application
HSM	Holy Spirit Movement
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP	Internally Displaced Persons
ICRC	International Commission of the Red Cross
IHL	International Humanitarian Law
IHRC	International Human Rights Law
J	Justice
JA	Justice of Appeal
JJA	Justices of Appeal
JSC	Justice of Supreme Court
MoGLSD	Ministry of Gender, Labour & Social Development
NGO's	Non-Governmental Organisations
NRA	National Resistance Army
NRM	National Resistance Movement
No.	Number
Plc.	Public Limited Company
UDHR	Universal Declaration of Human Rights
UGX	Uganda Shillings.
UK	United Kingdom
SCSL	Special Court for Sierra Leone

SRSG-CAAC and Armed Conflict.	Special Representative of the Secretary-General for Children
PTSD	Post-Traumatic Stress Disorder
UPDF	Uganda Peoples Defence Force
UN	United Nations
USA	United States of America

ABSTRACT

This dissertation examines the existing Human Rights Laws and evaluates their effectiveness in safeguarding children during armed conflicts. This study aims to determine whether the enforcement of these Human Rights Laws, particularly regarding the protection of children in armed conflicts in Uganda and globally, has been achieved. It has been posited that for a robust system to effectively address the violations of children's rights during armed conflicts, International Human Rights Law (IHRL) and International Humanitarian Law (IHL) impose a responsibility on States, as signatories, to protect their civilians, a legal obligation they must fulfill. The question of whether this has been realized in Uganda and other countries currently facing armed conflicts that impact children both directly and indirectly remains a contentious issue.

The research gives a deeper analysis of the impact of armed conflicts on children in Uganda and globally, and also discusses the best practices for children involved in armed conflicts and the ways forward. Furthermore the study discusses the various mechanisms of the application of human rights as regards protection of children during armed conflicts and fostering their access to justice.

The study gives a comparative analysis between Uganda and other nations recently affected by armed conflicts such as the Democratic Republic of Congo, South Sudan, and Syria, Palestine, Ukraine and the range of human rights laws and policies aimed at safeguarding children in situations of armed conflict and the implementation of such human rights provisions and other laws as regards the protection of children involved in armed conflicts.

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CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

The recruitment of children as soldiers in military forces or armed groups, compelling them to participate in combat, remains a prevalent issue in modern armed conflicts. The humanitarian consequences are often devastating and irreversible, affecting not only the children involved but also their families and communities. Those who engage in hostilities may inadvertently forfeit their childhood and endure lifelong psychological scars¹. This research study aims to analyse the available Human Rights Laws in place and the extent to which they have protected children in armed conflicts.

1.1 Defining Child soldiers and Armed Conflict

A child soldier is defined to mean any person below eighteen years of age who has been, recruited or used by an armed force or armed group in any capacity².

Armed conflict means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State: provided, that such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply³.

Armed conflict may be international, that is, between two (2) or more States, including belligerent occupation; or non-international, that is, between governmental authorities and organized armed groups or between such groups within a state. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature⁴.

¹International Commission of the Red Cross (ICRC), “Guiding Principles for the Domestic Implementation of a Comprehensive System of Protection for Children Associated with Armed Forces or Armed Groups”, Advisory Service on International Humanitarian Law, (2009) 370. Available at: <https://www.icrc.org/en/document/domestic-implementation-comprehensive-system-protection-children-associated-armed-forces-or>. (Accessed on 20 April 2023)

²International Bureau for Children’s Rights, “Children and Armed Conflict: A Guide to International Humanitarian and Human Rights Law” (2010) 324.

³D. Fleck, *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, Oxford, 1995, p. 40.

⁴D. Schindler, *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163, 1979-II, p. 147.

Children are human beings, but they are also a naturally vulnerable population in need of specialized protections⁵. Children being used as child soldiers in armed conflict can be weighed as one of the lowest practices of regularized or institutionalized child abuse. Notwithstanding, hardly anything is known about the purview and nature of this abuse and the consequent experiences of children enrolled in an armed faction⁶.

Children are recruited and used by armed groups around the world both government and other armed groups for a variety of reasons⁷. It is generally easier to abduct, subjugate, and manipulate children than adults. Children are more impressionable and vulnerable to indoctrination. They can learn skills and tasks quickly, and they can be fast and agile on a battlefield. They are more willing than adults to take risks⁸.

The protection of the rights and welfare of children in armed conflicts has been a going concern and constantly been developing tremendously since time immemorial and its impact on society has been so immense, and so fast that the laws in place to regulate the protection of children in armed conflicts have seemed to have lagged behind⁹. This has created an opportunity for belligerents and all other individuals and armed groups involved in different forms of conflicts to seize this opportunity to recruit children into their ranks and hence creating problems both nationally and internationally for Human Rights¹⁰. And to escalate this problem further, the implementation of the provisions on the protection of children in armed conflicts have not been completely enforced by both International organisations and states charged with the obligation to protect children in armed conflicts.

The underlying framework for the protection of children during armed conflicts derives from three bodies of International law, International Humanitarian Law (IHL), International Human Rights Law (IHRL) and International Criminal Law (ICL).

⁵A, Bagattini. 'Children's well-being and vulnerability', (2019) *Ethics and Social Welfare*, 13(3), pp. 211-215.

⁶M, Legassie, D, Johnson and C, Gribbin. 'Definitions of Child Recruitment and Use in Armed Conflict: Challenges for Early Warning', (2023) *Civil Wars*, 26(3), pp. 430-454.

⁷L, Cleave and W, Watkins., *Child soldiers and early warning* (2020). *Allons-y: Journal of Children, Peace and Security*, 4, 61-72.

⁸S, Gates. 'Why do children fight? Motivations and the mode of recruitment'. In: A. Özerdem and S. Podder, eds. *Child soldiers: from recruitment to reintegration*. (London: Palgrave Macmillan UK, 2011) 29-49.

⁹M, Denov. *Child soldiers and iconography: portrayals and (mis)representations* (2012). *Children & Society*, 26 (4), 280-292.

¹⁰C.M, Faulkner., J, Powell and T, Lasley. *Funding, capabilities and the use of child soldiers* (2019). *Third World Quarterly*, 40 (6), 1017-1039.

Notably, the legal framework protecting children during armed conflicts consists of the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, the 1989 Convention on the Rights of the Child and its Optional Protocol, the Universal Declaration of Human Rights of 1948, Customary International Law, the Statute of the International Criminal Court, The Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) among others.

However, this particular research focuses on a critical analysis of International Human Rights Law (IHRL) and the extent to which it as protected the children involved in armed conflict.

1.2 Background to the Study

Historically, from ancient times through the Middle Ages, the conduct of warfare was characterized by brutality and a lack of comprehensive regulations. While some minimal guidelines were established, such as prohibitions against the use of poisoned weapons and the obligation to honor treaties, ceasefires, and truces, there were no protections for individuals¹¹. All enemy property and personnel were deemed legitimate spoils of war, allowing the victor to manage them at their discretion. This included the seizure and appropriation of goods and movable assets, as well as the annexation or subjugation of territory. The treatment of individuals was entirely at the victor's whim, with no initial differentiation made between genders, ages, or combatant status¹².

However, the twentieth century witnessed the establishment of numerous treaties aimed at formalizing the rights and responsibilities of combatants, particularly concerning the protection owed to vulnerable groups, such as children, which is the focus of this study.

By the end of the twentieth century, as the nature of conflicts shifted from inter-state to intra-state, the involvement of children in armed conflicts reached unprecedented

¹¹M, Denov. Child soldiers and iconography: portrayals and (mis)representations (2012). *Children & Society*, 26 (4), 280-292.

¹²Robert, K and Richard, H (2008), *An Introduction to the International Law of Armed Conflicts*, (Hart Publishing, Oxford-Portland Oregon, 2008) 37. Available at: <https://www.corteidh.or.cr/tablas/26269.pdf> (Accessed on 22 January 2025)

levels¹³. This study examines the profound impact of war on children and their communities, highlighting the ongoing crisis surrounding the use of children in warfare, which persists despite the existence of various human rights laws intended to mitigate this issue.

The involvement of children in armed conflict is a phenomenon that dates back to the earliest periods of human history. Evidence of children's participation in warfare can be traced from ancient Greece to the 12th century¹⁴. This issue is thus recognized as a historical and global concern.

In Uganda, between June 2002 and July 2003, Human Rights Watch reported approximately 8,400 instances of child abductions¹⁵. These abductions were typically followed by arduous journeys through the bush, which constituted a violation of International Humanitarian Law concerning the rights and welfare of children. The physical hardships endured were compounded by further abuses, including psychological torment, killings, and coercion to commit acts of violence and theft within their communities¹⁶.

The abductions and associated human rights violations in Northern Uganda resulted in a situation where around 20,000 children were effectively taken hostage and exploited as instruments in the political and military conflict between the Museveni government and the Lord's Resistance Army (LRA). While the LRA was responsible for these abductions, the Ugandan government also bore responsibility for failing to prioritize the protection of its children.

These abductions and related human rights abuses in Northern Uganda became a mass hostage taking where 20,000 children were used as political tools in the event of power and military struggle between the Museveni government and the Lord's

¹³Angucia, M , 'Children and War in Africa: The Crisis continues in Northern Uganda'(2009) 26 *International Journal on World Peace*, 77. Available at: <https://www.jstor.org/stable/20752896?seq=1>. (Accessed on 23 January 2025)

¹⁴Angucia, M 'Children and War in Africa: The Crisis continues in Northern Uganda' (2009) 26 *International Journal on World Peace*, 77-95. Available at: <https://www.jstor.org/stable/20752896?seq=1>. (Accessed on 23 January 2025)

¹⁵Human Rights Watch, 'Abducted and Abused: Renewed Conflicts in Uganda' (2003) *Human Rights Watch*, Washington, London. Available at: <https://www.hrw.org/reports/2003/uganda0703/>. (Accessed on 24 January 2025)

¹⁶Eichstaedt, P *First Kill Your Family: Child Soldiers of Uganda and the Lord's Resistance Army* (Lawrence Hill Books, 2009) . Available at: <https://www.chicagoreviewpress.com/first-kill-your-family-products-9781613748091.php>. (Accessed on 24 January 2025)

Resistance Army (LRA). While the LRA was a culprit of abductions, the government of Uganda was a culprit of not giving priority in protecting its children¹⁷. Uganda, a signatory to the International Instruments guaranteeing children's rights failed to observe and preserve such rights, which also tantamount to violation of International Human Rights Laws.

For more than 15 years, children had been abducted by the LRA and forced into bondage as child soldiers, sex slaves, and porters of weaponry and heavy loot. Some were held for a short time and released; others are taken to southern Sudan and held captive for years. Approximately 80 percent of the LRA hierarchy were child kidnappees. A projection of the sum of kidnappees vary, ranging from 20,000 to 25,000. Although most were forced to commit atrocities as abductees, children were hostages taken against their own will¹⁸.

1.2.1 National Resistance Army (NRA) and the use of child soldiers

The involvement of child soldiers in modern African conflicts has been significant. Since the 1980s, the issue of child soldiers has emerged as a critical humanitarian and human rights concern. The portrayal of child soldiers is frequently used to illustrate the 'barbarism', dehumanization, and trauma associated with contemporary warfare; however, such representations may obscure the intricate realities of children's experiences within armed groups during times of conflict¹⁹.

President Museveni of Uganda, who himself employed child soldiers during the guerrilla conflict that established his regime in 1986, emphasizes that in traditional African societies, particularly among the Banyankole, children were trained in military skills²⁰. In a 1985 interview regarding the young soldiers who were part of his successful National Resistance Army (NRA), commonly referred to as Kadogos or young soldiers, President Museveni defended the practice of utilizing child soldiers by referencing African traditions. He pointed out that in many African cultures, children

¹⁷World Vision, 'Pawns of Politics: Children, Conflict and Peace in Northern Uganda' (2004). Available at: <https://resourcecentre.savethechildren.net/node/2380/pdf/2380.pdf>. (Accessed on 28 January 2025)

¹⁸World Vision, 'Pawns of Politics: Children, Conflict and Peace in Northern Uganda' (2004) 18. Available at: <https://resourcecentre.savethechildren.net/node/2380/pdf/2380.pdf>. (Accessed on 28 January 2025)

¹⁹S, Hynd. Trauma, Violence, and Memory in African Child Soldier Memoirs (2021). *Cult Med Psychiatry*. 45(1):74-96.

²⁰Kanyehamba, G.W. (2002). *Constitutional and Political History of Uganda: From 1894 to the Present*. Kampala: Fountain Publishers Ltd.

as young as four were instructed in the art of warfare, although they were not permitted to engage in combat until they reached an appropriate level of maturity. Nevertheless, the Ugandan government, under his administration, has since prohibited the recruitment and deployment of children in armed conflicts²¹.

It is therefore not unexpected that during the guerrilla conflict of the National Resistance Army (NRA) from 1981 to 1986, which led to President Museveni's rise to power, child soldiers, commonly referred to as 'Kadogos', played a pivotal role in the overthrow of both the Obote II administration and General Okello's military regime in 1985 and 1986, respectively²². The NRA defended its enlistment of child soldiers as a necessary measure to safeguard orphans whose parents had been killed by government forces, leaving them with no alternative but to join the army²³.

According to Kaihura, in February 1981, Yoweri Museveni initiated a guerrilla campaign against Milton Obote's government, which had assumed power through fraudulent elections in 1980. This conflict was centered in the Luwero Triangle of central Uganda. In response, the government forces launched an offensive to expel the NRA from its strongholds in the densely populated Luwero Triangle, resulting in attacks on villages, destruction of homes, and the indiscriminate killing of innocent civilians, including men, women, and children. Many children, particularly orphans and those whose parents were unaccounted for, remained with the NRA²⁴.

Kaihura further notes that due to the absence of a defined frontline in the Luwero Triangle conflict, it was crucial for the children to be equipped to defend themselves, as they would inevitably become embroiled in the clashes between the NRA and the UNLA (Ugandan National Liberation Army). Following the NRA/M's assumption of

²¹Kanyehamba, G.W (2006). Kanyehamba's Commentaries on Law, Politics and Governance, Kampala: Renaissance Media Ltd.

²²Ibid (note 21)

²³Ibid (note 20)

²⁴Kaihura, K. (2000). Uganda: The Integration of Child Soldiers into the School System. France: Published by the Association for the Development of Education in Africa (ADEA).

power in 1986, child soldiers were temporarily demobilized and enrolled in primary education, but many were subsequently reintegrated into the military²⁵.

In the late 1980s, Uganda faced a significant military crisis characterized by a high number of children, primarily orphans, who had become affiliated with the army. Government estimates indicated that there were thousands of kadogos (child soldiers), the majority of whom were under sixteen years old. Shortly after Museveni assumed power, his press office declared that these kadogos would be disarmed and placed in schools specifically established for their education. The inaugural institution, the Mbarara Kadogo School, commenced operations in February 1988, enrolling approximately 800 students aged five to eighteen, as reported by the school's commander. A key objective of the government was to prevent these students from aligning with anti-NRA rebel factions that continued to oppose government authority. By 1990, kadogos were no longer present in regular army units.

1.3 Statement of the Problem

Recruiting or using children under the age of 15 as soldiers is incontrovertibly prohibited under international humanitarian law²⁶. Furthermore, international human rights law clearly states 18 years as the minimum legal age for participation in hostilities²⁷. Recruitment and use of children under the age of 15 is prohibited by the Convention on the Rights of the Child and the Additional Protocols to the Geneva Conventions²⁸. The rule that children must not be recruited into armed forces or armed groups and that children must not be allowed to take part in hostilities is considered customary international law, applying equally in situations of international and non-international armed conflict, and to both Government armed forces and non-State armed groups. The CRC and its Optional Protocol on Trafficking and Exploitation unequivocally affirm that children must enjoy protection from torture,

²⁵Kaihura, K. (2000). Uganda: The Integration of Child Soldiers into the School System. France: Published by the Association for the Development of Education in Africa (ADEA).

²⁶ MRM Field Manual: Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict. OSRSG-CAAC, UNICEF & DPKO, April 2010, pp. 482-488. Available at: www.mrmtools.org. [Accessed on 28/11/2021]

²⁷ MRM Field Manual, 'Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict' (2010) 482-488, OSRSG-CAAC, UNICEF & DPKO, April 2010, pp. Available at: www.mrmtools.org. (Accessed on 27 January 2025)

²⁸Ibid (n 10 above).

cruel, inhuman or degrading treatment, a protection broadly accepted as encompassing acts of rape and sexual violence²⁹.

However, with all the stated laws and mechanisms in place to protect children against the conduct of armed conflict and against involvement and participation in armed conflicts, both international armed conflicts and non-international armed conflicts still persists in contemporary society today.

Therefore, despite all of these developments in the legal terrain on IHRL, the use of child soldiers remains serious and as such, a great deal still has to be done to protect children from engagement in armed conflicts. International treaty formulation does not unquestionably drive towards national implementation. National implementation of the law on the protection of children in armed conflicts is not only a national problem but a worldwide issue. There are several laws in place to protect children involved in armed conflicts, but these laws are not being completely implemented and enforced.

1.4 Objectives of the study

1.4.1 General Objective

The general objective of this study is:-

- a) To analyse the human rights laws on the protection of children engaged in armed conflicts and the extent to which the rights and welfare of children have been protected by such laws.

1.4.2 Specific Objectives

- a) To identify the existing human rights laws in place to protect children that are involved in armed conflicts and the extent to which the human rights laws have been implemented, and how effective they are in Uganda.
- b) To examine the impact of armed conflict on the human rights of children in Uganda.
- c) To assess the extent to which the existing human rights laws have addressed the problem of the use of children in armed conflict.
- d) To make recommendations on how to protect children that are involved in armed conflicts.

²⁹Articles 34, 35, and 37 of the Convention on the Rights of the Child, Article 3, CRC's Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).

1.5 Research Questions

- a) What are the existing human rights laws in place to protect children that are involved in armed conflicts and the extent to which the human rights laws have been implemented, and how effective they are in Uganda?
- b) What is the impact of armed conflict on the human rights of children in Uganda?
- c) What extent have the existing human rights laws have addressed the problem of the use of children in armed conflict?
- d) What recommendations are in place to address the problem of children involved in armed conflicts?

1.6 Hypothesis of the Study.

The study proceeds on the following major assumption;

Human rights laws aimed at protecting children in armed conflicts are inadequate and inflexible to implement and enforce.

1.7 The Scope of the Study

This study covered the geographical areas of Uganda, in particular the conflict in Northern Uganda between 1986-present. The rationale behind this to ascertain the reforms brought by the constitution and other legislations enacted thereafter and their effect on protection of children involved in armed conflict in Uganda and internationally. This research report will be carried out between January to May 2025.

1.8 Justification of the Study

The justification of the study is grounded on different reasons. The growing insecurity and threats for children during armed conflicts which has led practitioners to investigate how the global, regional and national policy, legal and human rights framework could be enhanced in order to boost the threshold of safeguarding children. Regrettably, in realism, it is revealed that children are targeted more than ever, combatants use illegal and nefarious means in order to achieve their goals and the international community seems impotent and incapable to defend them. To make matters worse, the extremist reality in which humanitarians operate, could not make people optimistic about the future, even though important steps could be taken towards a better protective framework.

As a result, this study could benefit policy makers, scholars or students in finding all the legal tools protecting children during armed conflicts, the existing gaps in their protection and potential solutions. The recommendations are not new and will not iron out all the impediment as such. Nonetheless, the study assembles current tools and

adds clear-cut elements in terms of the probable solutions on child protection during armed conflict.

1.9 Significance of the Study

The protection of children engaging in armed conflict is one of the most imposing problem in contemporary Human rights law, which has attracted considerable attention in the last decade.

Addressing the question of the engagement of children in armed conflicts is a complex task that relies upon adopting best practices in legislation, policy and procedures and resources.

A study of this nature will provide an in depth analysis, study and comparison of the policies and practices of combating the usage of children in armed conflicts and therefore establishing their accomplishments or achievements and shortcomings and way forward, if any.

The study is embarked upon to assess the extent to which the existing human rights laws have addressed the question of the engagement of children in armed conflicts in Uganda by critically analysing available laws in place. Therefore the study undertakes to bring to the limelight and attention of the concerned bodies and the public at large that the problem of children engaging in armed conflicts either voluntarily or forcefully needs to be addressed urgently and needs to be given more attention than it is currently being given.

The study is also further undertaken to add to the existing literature on the existing law on the protection of children in armed conflicts and to fill gaps on the existing knowledge on the topic.

There is a growing tendency on the international plane to view children almost exclusively as victims of armed conflict and consider them as unable to understand their own actions in the context of the conflict. It is claimed that their immaturity does not allow them to distinguish right from wrong or to fully comprehend the consequences of their acts; they are pawns in the adult game of war. Consequently, it is argued that children are not culpable and, thus, should not be prosecuted³⁰. In similar terms, though expressly referring to children as perpetrators, the non-legally

³⁰Amnesty International (2000), "Child Soldiers: Criminals or Victims?", at pp. 6-7; Schmidt(2007), 'Volunteer Child Soldiers as Reality: A Development Issue for Africa', 2 New School Economic Review, p. 60.

binding Paris Commitments encourage states to consider children ‘primarily as victims of violations against international law and not only as alleged perpetrators’³¹.

State action regarding the prosecution of children who are suspected to have committed war crimes is constrained by IHL and IHRL norms, both legal regimes applying in times of armed conflict.

Human rights law instruments such as the International Covenant on Civil and Political Rights or the more specific UN Convention on the Rights of the Child (CRC) do not ban the prosecution of children. In fact, they detail the rights of children facing justice, thereby acknowledging that children can be held legally accountable. Article 40 of the CRC offers a legal framework requiring that when children are tried the process be fair and take into account their specific needs and vulnerabilities, while the non-binding Beijing Rules, which spell out standard minimum rules for the administration of juvenile justice, provide for a more elaborate set of norms applicable to the trials of juvenile offenders³².

None of the international instruments dealing with the prosecution of children/juveniles set an age for criminal responsibility in national courts though. While it is recognized that the determination of “child” or “adult” is a social construction that may be difficult to define. An assessment on a case-by-case basis would be difficult as it would require ascertaining the intellectual development of children at the time they committed the crime, bearing in mind that all children mature at different rates.

As the Committee on the Rights of the Child has explained, the assessment of children’s criminal responsibility should not be based on criteria of subjective or arbitrary nature (such as with regard to the attainment of puberty, the age of discernment or the personality of the child)³³. Thus, along with Article 40(2) of the UNCRC, which requires states to establish ‘a minimum age below which children shall be presumed not to have the capacity to infringe penal laws’, General Comment no. 10 of the Committee on the Rights of the Child specifies that age should be the

³¹International Committee on the Red Cross (ICRC) (2007), The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups (Paris Commitments), consolidated version (2007), para. 11, Available at <http://www.icrc.org/eng/assets/files/other/the-paris-commitments.pdf>. [Accessed on 1/12/2021]

³²UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), GA Res. 44/33, 29 November 1985.

³³Committee on the Rights of the Child, Report on the Tenth Session, UN Doc. CRC/C/46, 18 December 1995, para. 218.

only criterion³⁴. This threshold of age fixed by law determines when the judicial authorities are allowed to intervene and judge that the perpetrator of an act qualifies as having committed an offence.

Wars and situations of gross human rights abuses or widespread political instability disrupt the lives of children to such an extent that they may provide the context leading some children notably child soldiers and children involved in violent youth militia to become involved in the commission of grave crimes. Situations such as the genocide in Rwanda in 1994 and the long conflict in Sierra Leone throughout the 1990s constitute chaotic and bewildering environments. As a result, many norms and values are discarded, and some children are coerced to participate in crimes or are sometimes encouraged to do so by their families, communities, friends or teachers. When a sense of normality returns, there may be insistent demands to bring to justice those responsible for such crimes, including children.

For children, free and willing acknowledgment of criminal conduct can contribute to their rehabilitation and reintegration into their families and communities. However a criminal process is often inappropriate for juvenile offenders, even in modified forms, rather children should be dealt with using restorative processes that promote diversion, mediation, truth-telling and reconciliation. International criminal jurisdictions have not prosecuted children, considering that children are not among those who bear the greatest responsibility in these crimes. They have thus provided strong arguments to those advocating for more restorative alternatives to criminal justice when dealing with children in conflict with the law, even for the gravest crimes such as international crimes.

1.10 Literature Review

Javier Alcalde³⁵ analyses contemporary questions concerning the protection of children taking part in armed conflicts and whether IHRL protects such children. The author asserts what he feels should be the minimum age for recruitment into armed

³⁴Committee on the Rights of the Child, General Comment no. 10 (General Comment no. 10), UN Doc. CRC/C/GC/10, 25 April 2007, para. 30. This, however, is challenged by psychological research. See Veale, 'the Criminal Responsibility of Former Child Soldiers: Contributions from Psychology', in Arts and Popovski, p. 105.

³⁵Alcalde, J 'Are children in armed conflict protected by international law?' (2004) 205-216, Kalingga Magazine. Pusat Kajian dan Perlindungan Anak (PKPA)/Center for Study and Child Protection and UNICEF Indonesia. October-December 2004. Available at: https://www.researchgate.net/publication/266202588_Are_children_in_armed_conflict_protected_by_international_law. (Accessed 6 February 2025)

conflicts. In his argument, the author states the minimum age for direct participation in hostilities and for compulsory recruitment by government forces. In discussing this, the author cites the Optional Protocol to the Convention on the Rights of the child, 2000. He argues that the aforementioned law generally strengthens protection for children taking part in armed conflict. For example raising the minimum age for direct participation in hostilities and for compulsory recruitment by government forces from 15 to 18 years, he also calls on states to raise the minimum age for voluntary recruitment, and to implement strict safeguards for voluntary recruitment under-18 years. Finally, he calls for the prohibition of all recruitment (Voluntary and forced) of under-18's by non-governmental armed groups. The author's work is a welcomed addition to this research study on addressing the problem of use of children in armed conflicts, both in Uganda and worldwide, however, he fails to mention that it is practically impossible for all countries who are signatories to the convention to have a standardized age for recruitment of children into armed conflicts. Further still, the author fails to mention the issue of child emancipation where children can legally be independent of their parents/guardians before the age of 18, and conduct themselves like adults.

Graca Machel³⁶ argues that millions of children are caught up in conflicts in which they are not merely bystanders, but targets. And with many of such children falling victim to a general onslaught against civilians; while many more perish as part of a calculated genocide. The author states that other children suffer the effects of sexual violence or the multiple deprivations of armed conflict that expose them to hunger or disease. Just as shocking, thousands of young people are cynically exploited as combatants. With regards to the conflict in Uganda, the author offers an insight into the use of children in armed conflicts. She argues that although the majority of child soldiers are boys, armed groups also recruit girls, many of whom perform the same functions as boys. She uses examples in Guatemala where rebel groups use girls to prepare food, attend to the wounded and wash clothes. Girls may also be forced to provide sexual services. Here, the author cites an example of Uganda, where girls who

³⁶Graca, Machel 'Impact of Armed Conflict on Children: Report of the expert of the Secretary-General' (1996) 1-20. Submitted pursuant to General Assembly resolution 48/157. Available at: https://www.un.org/ga/search/view_doc.asp?symbol=A/51/306&Lang=E&Area=UNDOC. (Accessed on 8 February 2025)

are abducted by the Lord's Resistance Army are married off to rebel leaders. If the man dies, the girl is put aside for ritual cleansing and then married off to another rebel. This in essence is inconsistent in every way to International Humanitarian laws. The author's work is a welcomed addition to this research study on addressing the problem of active engagement of children in armed conflicts, both in Uganda and internationally. On Graca Machel's understanding of contemporary armed conflicts. The author extensively discusses the conduct of war and its effect on children. The author urges for better recognition of violation of the rights of children and young people and also further encourages the establishment of the protective measures in conflict areas. The author further warns of the changing dynamics of war in coming centuries and states that such conducts of war have an increasingly negative effect on civilians, and that such civilians are considered no more than "collateral damage" that have become an explicit and direct targets of weaponry.

On the contemporary conduct of armed conflicts. The author argues that wars are led more commonly within the country's borders instead of between countries. The author asserts further that warfare has changed also in terms that it includes the activities of both the governmental army and non-state paramilitary forces and militias, of different origin and ideological orientation, which are perpetrating atrocities and acts of terror on civilians. The author argues that most of these wars are protracted causing whole generations to grow up in war zones or refugee camps.

Although the author's report has significantly influenced international policy and advocacy regarding child protection, it fails to sufficiently consider the unique experiences and difficulties encountered by girl child soldiers, who frequently endure sexual violence and exploitation. Furthermore, the author overlooks the fundamental causes of this issue. The report primarily addresses the effects of armed conflict on children, rather than investigating the root causes of conflict and their repercussions on children. Additionally, it heavily depends on existing human rights and humanitarian frameworks, which may not adequately meet the intricate needs of children in conflict zones. The recommendations put forth in the report, including the establishment of a Special Representative on Children and Armed Conflict, necessitate effective execution and follow-up to ensure a significant impact.

Tejaswini Ranjan³⁷ offers an insight into children taking an active part in armed conflicts. The author asserts that under international law, the use of children under 18 in armed conflict is generally prohibited, and the recruitment of children under 15 is a war crime. Still globally, hundreds of thousands of children are enlisted into government armed forces, paramilitaries, civil militia and an array of alternative armed groups. She further states that two-thirds of states confirm that under-18 enrollment should be banned to prohibit forced child soldiers, as well as 16 and 17 year-old armed force volunteers. The vulnerable group of children are those who are poor, displaced from their families, have limited access to education, or live in a combat zone are more likely to be forcibly recruited. In addition there is the dilemma of children who are not forced to be soldiers but themselves volunteer because they feel societal pressure and are under the feeling that volunteering will provide a form of income, food, or security, and willingly join the group. In consonance with the author, “child antagonists discharge a variety of tasks inter alia taking part in active combat, planting mines and explosives; carrying out scouting, spying, acting as baits or decoys, messengers or guards; coaching, exercise, drill or other arrangements; logistics and support operations, portering, cooking and domestic housework; and sexual slavery or other enrollment for sexual purposes. Girls, according to the author, make up an estimated 10 to 30 percent of child soldiers used for combat and auxiliary schemes. These girls are peculiarly susceptible when it comes to sexual violence. This is of much significance to this particular essay and the need to effectively enforce the protection of children in armed conflicts both nationally and international. This is the case in Northern Uganda in the LRA conflicts where a number of children were forcefully abducted and others volunteered to join the conflict in some capacity. However, the author fails to acknowledge that the minimum of conscription into any armed group is not 18 years in every state as the author seems to purport in her research, and implementation of the same has posed difficult in recent years.

³⁷Ranjan, T ‘Children in Armed Conflict’ (2013) 2 *Journal of Business Management & Social Sciences Research* (JBM&SSR) ISSN No: 2319-5614. Available at: <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.407.5807&rep=rep1&type=pdf>. (Accessed 8 February 2025)

Pangalangan, R.L.A.³⁸ discusses the criminal culpability of child soldiers turned war criminals. Basing upon facts from the ICC case of *Prosecutor v. Dominic Ongwen*, the author delves into the doctrinal questions embodied in *Prosecutor v. Dominic Ongwen*. A contest of strength between liabilities, as imposed under IHL and ICL, and protection, as symbolized and incorporated throughout IHRL, IHL, and ICL. The author seeks to confront the difficult question of holding the child soldier, who climbed the ranks, accountable. His argument is on the basic tenet of criminal justice meaning: ‘an act done by me against my will is not my act (“Actus me incito factus non est meus actus”). For this reason, the author further asserts that involuntary actions caused by either external restraints on volition or internal interference with cognition are expressly excluded by the Rome Statute from criminal responsibility. In other words, he argues that the difficult social background of victims turned perpetrators should be taken into account when holding them liability for the crimes that they participated in. The author reasons that a person’s criminal behavior may at times be caused by extrinsic factors beyond his or her control. Accordingly, when environmental pressure create a propensity to commit crime, it would be a transgression and outrage to determine culpability to the aforesaid persons.

The author however fails to acknowledge the purpose of criminal justice which is to punish the perpetrators, although I support the assertion that such factors such as the rotten social background of the victim turned into perpetrator should be taken into account as mitigating factors when holding such persons criminally liable. If such offenders and perpetrators were to be left off scotch-free, then the principles of IHL would not be implemented and the many innocent children and other protected groups like women and prisoners of war who have suffered atrocities as a result of the actions of these perpetrators would have been denied justice.

Marco Sassòli et al³⁹ argue that children, like women, are first protected by IHL if they are wounded, sick or shipwrecked, as civilians and as members of the civilian population. These children also profit from a unique safeguard because of their

³⁸Raphael, L.A.P ‘Dominic Ongwen and the Rotten Social Background Defense: The Criminal Culpability of Child Soldiers Turned War Criminals,’ (2018) 33 *American University International Law Review*. Available at: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1961&context=auilr>. (Accessed on 10 February 2025).

³⁹Marco, S., et al, The Protection of Civilians against Arbitrary Treatment, in Marco Sassòli, Antoine A. Bouvier, Anne Quintin (eds) *How does law protect in War?* (1999) 7-10, International Committee of the Red Cross (ICRC).

susceptibility. Without exception armed conflict leaves multifarious children utterly devoid of supplies or detached from their families, a position that makes them even more vulnerable. IHRL and IHL therefore render them special protection with specific rules aimed at protecting children from the effects of aggression, and any other form of immoral or improper assault, or from any other menace stemming out of the general circumstances of a strife situation. This work provides the gist upon which this entire study is premised, because the study will critically analysis the extent to which IHRL has protected children in armed conflicts and the shortcomings faced in implementing the principles and provisions of IHRL.

1.11 Methodology

The researcher utilized secondary data, taking into account various sources from where she was able to obtain the same. For example libraries, media, websites and internet. In so doing, the researcher was not confronted with the problems that are usually associated with the collection of original or primary data.

Secondary data means data that are already available. They pertain to the data (information) which have previously been collected and analysed by someone other than the researcher⁴⁰.

The secondary data that was obtained and analyzed included books, statutes, case law, Journals, newspapers, official government reports published and unpublished material, policies, legislation, and official records, but also information available in the internet that would be relevant to the study.

The research was conducted through visiting different online-libraries. In conducting a library research, libraries like the Law Collection of the University of Dar-es-salaam in Tanzania, and the Africana section of the library was visited. This is because they all contained sources which dealt with this respective area of research. The Hamu Mukasa library at Uganda Christian University, Mukono, libraries was visited. The library has archives section for Newspapers that contains information on children involvement in armed conflict in Uganda and internationally. The Makerere University Law Library was visited to acquire information that was used in carrying out this study. The research study did not stop at simply assessing various sections of different online-libraries. Websites and computer assisted searches were also used.

⁴⁰Kothari, C., (1980), *Research Methodology, Methods and Techniques*, 2nd Edition Wiley Eastern Ltd, New Delhi p. 111.

Several websites that were visited and contained intriguing and important literature regarding the research topic included; Human Rights Watch, United Nations High Commissioner for Refugee-The UN Refugee Agency and several other websites that contained information that was relevant to the research. Media outlets like film and television also provided relevant information on the research study courtesy of YouTube.

Conducting a library research was helpful in reviewing the existing literature on the topic and finding out whether the existing laws have addressed the issue of children engaging in armed conflicts and whether the law equally protects the rights and welfare of such children involved in such conflicts. Alternatively, the reasons why the data collection method will be used can be discussed as;

The researcher did not have to worry about incurring expenses in terms of travel, payment of informants and accommodation.

The increase in modern technology has transformed the acquisition of information. It has made it possible to obtain reliable secondary data at the click of a button, and also to verify the authenticity of the same.

The methods of data collection employed by the researcher will save time and leave plenty of room for comparative analysis of the issues on the research study undertaken.

1.12 Limitations of the study

A first significant limitation of the study was that the study is premised on secondary data and the researcher was unable to conduct field research in order to do away with the ethical issue of authenticity of data. However, the researcher adopted a purely doctrinal legal research, involving a prevailing state of legal doctrine involving the use of child soldiers under human rights laws. The researcher therefore undertook doctrinal legal research, through adopting one or more legal propositions, principles, rules or doctrines as a starting point and focus of her study. These principles, rules or doctrine were located in statutory instruments, judicial opinions among others. These principles were used by the researcher in a holistic manner to make an analysis and formulate her conclusions on this study. The researcher therefore organized this study

around legal provisions, principles, concepts or doctrines and judicial statements relating to the participation of children in armed conflict.

A second limitation was associated with the choice of the case studies. Despite having the chance to use numerous examples of contemporary or past armed conflicts, the researcher focused on the LRA crisis in Northern Uganda, which as of now is not actively taking place. But nonetheless this crisis was a humanitarian emergency which attracted massive attention from the international community due to their severity and impact it had on civilians, in particular the children and their involvement in the crisis.

1.13 Chapter Synopsis

This research encompasses five chapters which explore the analysis of the efficacy of the application of the human rights laws on protection of children during armed conflicts in Uganda. The chapters can be elucidated in the following paragraphs:

Chapter one gives the study a foundation.

Chapter two gives a deeper analysis of the impact of armed conflicts on children in Uganda and globally, and also discusses the best practices for children involved in armed conflicts and the ways forward.

Chapter three focuses on International law on child protection in armed conflict paying attention to International Human Rights Law provisions on the protection of children.

Chapter four analyses and gives a comparative analysis between Uganda and other nations recently affected by armed conflicts such as the Democratic Republic of Congo, South Sudan, and Syria, Palestine, Ukraine.

Chapter five deals with recommendations and conclusions by the researcher.

CHAPTER TWO
NON LEGAL ASPECTS
THE IMPACT OF ARMED CONFLICT ON THE HUMAN RIGHTS OF
CHILDREN IN UGANDA

2.0 Introduction

The issue of minors involved in armed conflict constitutes a serious infringement of human rights, crossing both geographical and cultural lines⁴¹. According to estimates from the United Nations, millions of children are impacted, enduring violence and exploitation in settings where their protection should be a priority. International humanitarian law seeks to protect these vulnerable groups, yet the suffering of these children frequently goes unnoticed⁴². Gaining insight into their experiences is essential for tackling the wider consequences of armed conflict and promoting a more empathetic global response.

Since gaining independence from Britain in 1962, the Republic of Uganda has experienced both challenges and achievements. The initial two decades of independence were marked by the oppressive and militant regimes of General Idi Amin Dada and former President Milton Obote, leading to political repression, ethnic discrimination, human rights violations, and over 600,000 fatalities⁴³. Since 1986, President Yoweri Museveni, who ascended to power through a military coup, has mitigated the widespread armed conflict that plagued Uganda and has fostered economic development, notable health advancements, and, until recently, enhanced security and stability⁴⁴. Although the 1980s brought improvements to the Republic of Uganda, they also resulted in the devastation of its Northern regions due to armed conflict. The roots of this conflict can be traced back to the corruption and ethnic and economic discrimination that have persisted since independence⁴⁵. A focus on a Holy Movement emerged in 1986, intensifying the civil armed conflict in the Northern

⁴¹Tim Allen, Jackline Atingo, Dorothy Atim, James Ocitti, Charlotte Brown, Costanza Torre, Cristin A Fergus, Melissa Parker, What Happened to Children Who Returned from the Lord's Resistance Army in Uganda?, *Journal of Refugee Studies*, Volume 33, Issue 4, December 2020, Pages 663-683.

⁴²H, Porter. *After Rape: Violence, Justice, and Social Harmony in Uganda*. (Cambridge: Cambridge University Press,2017).

⁴³P Mutibwa, *Uganda Since Independence: A Story of Unfulfilled Hopes*, (London: Hurst & Company; 1992), p. 45

⁴⁴Ibid

⁴⁵Ibid

districts of Gulu, Pader, and Kitgum⁴⁶, collectively known as Acholi land, due to the significant presence of Uganda's 4% Acholi ethnic group⁴⁷. Despite differing accounts of how the conflict in Northern Uganda began, the destruction, loss of life, and consequences of the armed conflict are widely acknowledged.

Northern Uganda's grapple conflict, starkly demonstrated the devastating impact of armed conflict on children, with over 50,000 child abductions contributing to the rise of child soldiers⁴⁸. Both male and female child soldiers face the repercussions of unlawfully serving as combatants, messengers, porters, and sexual slaves⁴⁹. The most immediate consequence of armed conflict is human casualties, with children being particularly susceptible, as their growth, childhood, and adolescence have been profoundly affected by the realities of armed conflict⁵⁰. The armed conflicts of the 1990s resulted in the deaths of over 2 million children and displaced more than 20 million from their homes⁵¹. The phenomenon of child soldiers is a tragic consequence of such violence, with approximately 300,000 children serving as soldiers globally at any moment, in violation of international agreements like the International Labor Organization Convention of 1982 and the African Charter on the Rights and Welfare of the Child.

2.1 Comprehending the Challenges Faced by Children in War Zones

The involvement and suffering of minors in armed conflict encompasses their participation in warfare and the violence associated with it. This includes children who are directly engaged in hostilities, those affected by the consequences of conflict, and those living in unstable environments⁵². The situation of these children raises serious concerns for international humanitarian and human rights law and ethical standards. The far-reaching effects of armed conflict on children are evident in multiple ways⁵³.

⁴⁶H.M Behrend, Alice Lakwena & the Holy Spirits: War in Northern Uganda 1985 – 87, (Oxford: James Currey; 1999), p.38

⁴⁷Women's Commission for Refugee Women and Children, *Against All Odds: Surviving the War on Adolescents*, (New York: Women's Commission for Refugee Women and Children; 2001), p.72

⁴⁸L Poole et al., *Invisible Children*, (Uganda: Oxford Publishers, 2006), p. 121

⁴⁹M Gow et al., *The Right to Peace: Children and Armed Conflict* (Switzerland: World Vision International; 2000), p. 26

⁵⁰G. Machel, *Impact of War on Children*, (London: Hurst and Company; 2001), p. 67

⁵¹*Ibid*

⁵²D.M, Rosen. *Child Soldiers: A Reference Handbook*. (Santa Barbara, CA: ABC-CLIO, 2012)

⁵³M, Wessels. *Child Soldiers: From Violence to Protection*. (London: Harvard University Press, 2006).

Physically, they may sustain injuries or disabilities, while psychologically, the trauma can result in enduring emotional challenges⁵⁴. Additionally, displacement heightens their vulnerability, frequently leading to refugee status, which separates them from their families and communities⁵⁵. The recruitment and utilization of children in armed conflict contravenes international standards and further jeopardizes their well-being. Many are forced or manipulated into joining armed factions, often facing severe exploitation and abuse. This breach significantly hinders their development and prospects for rehabilitation⁵⁶. Tackling the issues faced by children in armed conflict necessitates acknowledgment of their specific needs and rights. Humanitarian legal frameworks and ethical guidelines inform interventions designed to safeguard these at-risk populations, ensuring their protection and facilitating their recovery and reintegration into society.

2.2 The Effects of Armed Conflict on Children

Armed conflict has a profound and complex impact on children, fundamentally changing their quality of life. The repercussions of such conflicts include a variety of physical, psychological, and social challenges that may persist into adulthood. Physical effects often manifest as injuries, malnutrition, and inadequate access to essential healthcare services. Numerous children endure disabilities resulting from violence, which heightens their vulnerability and exacerbates their marginalization in society⁵⁷.

Psychologically, armed conflict leads to trauma, anxiety, and depression. Exposure to violence significantly disrupts children's emotional stability, hindering their capacity to learn and participate in normal social interactions, ultimately obstructing their developmental progress⁵⁸. Displacement and refugee status further intensify the difficulties faced by children in conflict zones. Forced to leave their homes, these

⁵⁴Boyden, J., & Gibbs, S. *Children and war*. (Geneva, Switzerland: United Nations, 1997).

⁵⁵Cohn, I. A call for state action to prevent the recruitment and use of children as soldiers in state armed forces and state allied armed groups (2014). *Journal of Human Rights Practice*, 6, 182–190.

⁵⁶Steel, Z., Chey, T., Silove, D., Marnane, C., Bryant, R. A., & van Ommeren, M. Association of torture and other potentially traumatic events with mental health outcomes among populations exposed to mass conflict and displacement: A systematic review and meta-analysis (2009). *JAMA: Journal of the American Medical Association*, 302, 537–549.

⁵⁷I, Idris. *Children and Armed Conflict: Effects and Interventions*(2024). K4DD Rapid Evidence Review 45. Brighton, UK: Institute of Development Studies.

⁵⁸Molly R. Wolf, Shraddha Prabhu and Janice Carello, “Children's Experiences of Trauma and Human Rights Violations around the World”, in Lisa D. Butler, Filomena M. Critelli and Janice Carella (eds), *Trauma and Human Rights: Integrating Approaches to Address Human Suffering*, (Palgrave Macmillan, Cham, 2019).

children experience instability, loss of community, and interruptions in their education, all of which contribute to a cycle of vulnerability that can endure for generations⁵⁹.

2.2.1 Physical consequences of armed conflict on children

The physical consequences of armed conflict on children are severe and can have lasting effects⁶⁰. Exposure to violence, whether through direct combat or witnessing atrocities, often results in serious injuries, ranging from gunshot wounds to amputations, which significantly affect their mobility and overall health⁶¹. Additionally, children in conflict zones are at heightened risk of malnutrition and disease due to the collapse of healthcare systems. The lack of access to clean water and nutritious food leads to long-term developmental challenges, impairing their growth and cognitive abilities⁶². Moreover, many children are compelled to flee their homes, increasing their risk of physical harm during displacement. Refugee camps frequently lack sufficient medical facilities, resulting in children not receiving prompt treatment for their injuries or illnesses. This deficiency in care exacerbates the physical challenges they already endure due to armed conflict⁶³.

The physical repercussions of warfare on children highlight the critical necessity for humanitarian efforts and compliance with international laws aimed at safeguarding vulnerable groups. It is essential to tackle these concerns for the welfare and future of the affected children⁶⁴.

2.2.2 Psychological impact

The psychological impact on children in conflict zones is significant and complex. Exposure to violence, trauma, and loss can result in serious mental health issues, such as post-traumatic stress disorder (PTSD), anxiety, and depression⁶⁵. These conditions impede emotional growth and may persist long after the conflict concludes. Children

⁵⁹R,Dybdahl., C, Dangmann & O, Solberg. Young children’s development after forced displacement: A systematic review (2022). *Child and Adolescent Psychiatry and Mental Health*, 18(1), 20

⁶⁰Michelle Slone and Shiri Man, “Effects of War, Terrorism, and Armed Conflict on Young Children: A Systematic Review, 2016 ”, *Child Psychiatry and Human Development*, Vol. 47, No 6.

⁶¹SRSG CAAC, *The Six Grave Violations against Children during Armed Conflict: The Legal Foundation*, UN, New York, 2013.

⁶²Report of the Secretary-General on Children and Armed Conflict, UN Doc. A/67/845, 15 May 2013; Report of the Secretary-General on Children and Armed Conflict, UN Doc. A/72/865, 16 May 2018.

⁶³Ibid

⁶⁴P.W, Singer. *Children at War*. (Berkeley, CA: University of California Press,2006)

⁶⁵Ilse Derluyn, Eric Broekaert, Gilberte Schuyten and Els De Temmerman, “Post-Traumatic Stress in Former Ugandan Child Soldiers”, 2004 *The Lancet*, Vol. 363, No. 9412.

may also suffer from a disrupted sense of safety and trust⁶⁶. The ongoing threat of violence and instability complicates their ability to form relationships and maintain social ties, leading to feelings of isolation and withdrawal, which further intensifies their mental health struggles. Additionally, the stigma associated with mental health issues often discourages children from seeking assistance. In numerous regions affected by conflict, mental health resources are limited, leaving children susceptible to unresolved psychological trauma⁶⁷. Without adequate intervention and support, the enduring effects can hinder their futures and perpetuate cycles of violence and instability. Addressing the psychological needs of these children necessitates comprehensive strategies that incorporate mental health care into humanitarian aid initiatives. Providing children with coping strategies and facilitating their reintegration into secure environments can promote resilience and recovery, ultimately enhancing their overall well-being in the aftermath of conflict.

2.3 Status of Displacement and Refugees

Displacement denotes the involuntary relocation of individuals, frequently resulting in refugee status, particularly among minors affected by armed conflict⁶⁸. This situation emerges when hostilities disrupt communities, compelling families to abandon their homes in pursuit of safety, shelter, and essential resources. Children displaced by armed conflict encounter a multitude of challenges. They often find themselves in refugee camps, where resources are scarce, and their safety is at risk. The psychological impact of displacement can have enduring consequences, intensifying the vulnerabilities of these children⁶⁹. Moreover, displaced children often face obstacles to education and healthcare. Access to formal education is frequently interrupted, resulting in educational deficits that can hinder their future opportunities. This scenario creates a cycle of instability that continues to marginalize them within

⁶⁶Lamaro P. Onyut, Frank Neuner, Elisabeth Schauer, Verena Ertl, Michael Odenwald, Maggie Schauer and Thomas Elbert, "Narrative Exposure Therapy as a Treatment for Child War Survivors with Post traumatic Stress Disorder: Two Case Reports and a Pilot Study in an African Refugee Settlement", *BMC Psychiatry*, Vol. 5, No. 1, 2005.

⁶⁷Nargis Islam, Nishat F. Rahman and Naila Z. Khan, "Trauma and Mental Health in the Rohingya Camps: One Year On", in *BRAC Health Watch: Health Sector's Response to the Rohingya Crisis*, BRAC University, 2019.

⁶⁸United Nations High Commissioner for Refugees (UNHCR). *World at war: Global trends forced displacement in 2014*.(2015). Geneva, Switzerland: Author.

⁶⁹C, Dangmann., O, Solberg & P.N, Andersen.. *Mental health problems in unaccompanied young refugees and the impact of post-migration stressors* (2022). *Child and Adolescent Psychiatry and Mental Health*, 16(1), 87

host communities⁷⁰. Initiatives aimed at assisting displaced children must incorporate comprehensive strategies that address both their immediate requirements and long-term integration. Prioritizing humanitarian law and ethical considerations is essential to ensure that the rights of children in armed conflict are upheld, promoting resilience and recovery for affected populations⁷¹.

2.4 Recruitment and Use of Children in Armed Conflict

The enlistment and utilization of minors in armed conflicts pertains to the practice of incorporating children into military factions or groups, frequently in contravention of international regulations⁷². This concerning issue affects children worldwide, carrying profound consequences for their growth and future. Armed factions may recruit minors through coercion, abduction, or societal pressures. In regions marked by instability, children are especially susceptible and may be enticed by assurances of safety or monetary rewards, complicating the ethical considerations surrounding their involvement in conflicts. The functions of children in armed conflicts vary significantly, ranging from combatants to auxiliary roles, such as messengers or scouts. This exploitation not only jeopardizes their physical well-being but also subjects them to severe psychological distress, hindering their capacity to reintegrate into society after the conflict⁷³. Tackling the recruitment and use of children in armed conflict necessitates a comprehensive understanding and cooperation among international stakeholders. Initiatives aimed at addressing this challenge rely on the robust enforcement of humanitarian laws and the advancement of global child protection efforts⁷⁴.

2.5 Humanitarian Law and Children in Armed Conflict

International humanitarian law, particularly as defined by the Geneva Conventions, aims to safeguard individuals not engaged in hostilities, including children affected by

⁷⁰Claudia Catani, “Mental Health of Children Living in War Zones: A Risk and Protection Perspective”, *World Psychiatry*, Vol. 17, No. 1, 2018.

⁷¹Lisa D. Butler, Filomena M. Critelli and Janice Carella, *Trauma and Human Rights: Integrating Approaches to Address Human Suffering*, Palgrave Macmillan, Cham, 2019.

⁷²T. Allen and K. Vlassenroot (eds) (2010) *The Lord’s Resistance Army: Myth and Reality*. London: Zed Books.

⁷³Aptel, C. “The Protection of Children in Armed Conflicts”. In: Kilkelly, U., Liefwaard, T. (eds) *International Human Rights of Children*. International Human Rights. (Springer, Singapore, 2019).

⁷⁴Ibid

armed conflict⁷⁵. This legal framework acknowledges the heightened vulnerability of children and strives to protect them from the catastrophic consequences of warfare. Children involved in armed conflict are granted specific protections under international humanitarian law, which forbids the enlistment of minors into armed forces and establishes standards for their treatment during times of conflict⁷⁶. Breaching these laws can result in severe war crimes, emphasizing the critical protections owed to these young individuals. Furthermore, humanitarian law mandates that conflicting parties ensure the welfare of children, which encompasses providing essential medical care, education, and psychosocial support in conflict scenarios⁷⁷. Consequently, the international community bears the responsibility of upholding these legal standards to protect children's rights. Adhering to humanitarian law is not only a legal requirement but also a moral obligation. Effectively addressing the issues faced by children in armed conflict through robust legal frameworks is vital for fostering peace and facilitating the long-term recovery of affected communities⁷⁸.

2.6 Ethical Considerations in Addressing Children in Armed Conflict

Engaging with children in situations of armed conflict necessitates a thorough ethical evaluation, particularly concerning their rights and protection. It is imperative that children are not regarded merely as tools of war; rather, their dignity and independence must be preserved⁷⁹. This requires an acknowledgment of their distinct vulnerabilities in comparison to adults.

Fundamental ethical principles encompass:

Child Rights: Adhering to the Convention on the Rights of the Child necessitates prioritizing children's rights to safety, security, and education.

Informed Consent: It is crucial to obtain informed consent from children for rehabilitation programs, while also considering the involvement of parents or guardians.

⁷⁵ICRC. International Humanitarian Law and the Challenges of Contemporary Armed Conflicts,. 31st International Conference of the Red Cross and Red Crescent(2011) .

⁷⁶Krasniqi, Safet & Hoti, Rilind & Shala, Valton & Uka, Mirvete. . Customary Sources of International Humanitarian Law, Geneva Conventions and their Relationship with the Second Additional Protocol of the Geneva Conventions of 1949 Relating to the Protection of Victims in the Non- International Armed Conflicts (2023). Integrated Journal for Research in Arts and Humanities. 3. 113-119.

⁷⁷Myriam, Denov and Bree Akesson. Children Affected by Armed Conflict: Theory, Method, and Practice. (Columbia University Press, 2017).

⁷⁸Cohn, Ilene, and Guy S Goodwin-Gill, *Child Soldiers: The Role of Children in Armed Conflict* (Oxford; Oxford University Press, 1994)

⁷⁹Ibid

Protection of Identity: It is imperative to protect the identities of children impacted by conflict to help restore their sense of normalcy.

Ethical frameworks should guide both policy and practice, emphasizing a child-centered approach. Acknowledging the needs and voices of children promotes resilience and empowerment, ensuring their potential is recognized even in the most challenging circumstances of armed conflict.

2.7 Best Practices for children involved in armed conflicts

Rehabilitation programs for child soldiers have proven to be effective in addressing the challenges faced by children in armed conflict⁸⁰. Organizations such as UNICEF and War Child provide specialized support that emphasizes psychological healing, education, and skill development. These initiatives aim to reintegrate former child soldiers into society, enabling them to reclaim their childhood. Community-based strategies are vital in offering continuous support to children affected by conflict⁸¹. Local NGOs frequently collaborate with communities to establish safe environments for children, enhancing resilience through peer support and educational opportunities. This grassroots engagement ensures that children feel valued and understood within their communities⁸².

Rehabilitation programs for child soldiers are designed to facilitate the reintegration of these vulnerable individuals into society following their harrowing experiences in armed conflict⁸³. Typically, these programs include various elements such as psychological counseling, vocational training, and educational support, customized to meet the specific needs of each child. Such programs are vital for restoring a sense of normalcy and community belonging in areas often affected by conflict. Vocational training is a crucial aspect of rehabilitation, providing children with skills necessary for employment and self-sufficiency. In Uganda, organizations like World Vision facilitate opportunities for former child soldiers to acquire trades such as carpentry and tailoring, promoting economic independence and social reintegration. Education is a key focus in rehabilitation, highlighting the significance of schooling for former

⁸⁰R, Haer. Children and armed conflict: looking at the future and learning from the past (2019). *Third World Quarterly*, 40(1), 74-91.

⁸¹James Garbarino, Amy Governale, Danielle Nesi, *Vulnerable children: Protection and social reintegration of child soldiers and youth members of gangs*, (2020), *Child Abuse & Neglect*, Volume 110 (1).

⁸²A, Honwana. *Child Soldiers in Africa*. (Philadelphia, PA: University of Pennsylvania Press, 2005).

⁸³World Bank. *Demobilization and Integration in Uganda: Laying the Foundation for Post-conflict Recovery by Building Regional Peace*. Washington, DC: World Bank (2013).

child soldiers⁸⁴. Programs that provide educational opportunities often aim to fill learning gaps, ensuring these children gain the knowledge required to forge a successful future beyond armed conflict.

2.8 Prospective Insights on Youth in Armed Conflict

The situation regarding children in armed conflict is changing, influenced by heightened global awareness and advocacy efforts. As humanitarian initiatives gain traction, there is an increasing acknowledgment of children's rights and the critical need for their protection during times of conflict. Future approaches will focus on embedding child protection within peace talks and the rebuilding process after conflicts. Important players, such as governments and non-governmental organizations, are stressing the importance of establishing legal frameworks that prohibit the recruitment of children and impose penalties on those who violate these laws.

Education is becoming a crucial component of rehabilitation programs designed to reintegrate children impacted by armed conflict. Innovative strategies that emphasize mental health and psychosocial support are vital to addressing the enduring effects of trauma faced by these children. The influence of technology will also reshape the delivery of aid and communication, improving global awareness and mobilization efforts. Together with community engagement, these strategies aim to foster sustainable environments for children, enhancing their recovery and future well-being in societies emerging from conflict. The ongoing challenge of children in armed conflict requires immediate attention from the global community. Adhering to humanitarian law and ethical standards is vital for safeguarding these vulnerable individuals who suffer the most from violence and instability. We must collectively push for strong interventions and support systems. By cultivating an environment that prioritizes the rights and welfare of children, we can strive towards a future devoid of the devastation caused by war and conflict.

2.9 Conclusion

In the last ten years, armed conflicts have evolved in ways that significantly threaten peace and human welfare. The enduring nature of these conflicts is evident in nations such as Afghanistan, Colombia, Iraq, South Sudan, Syria, and Yemen, among others.

⁸⁴World Vision, *Pawns of Politics - Children, Conflict and Peace in Northern Uganda* (2004)

Armed conflicts greatly contribute to the unprecedented levels of global human displacement. They impose a severe burden of suffering on children, who represent nearly half of the population in most war-affected countries and constitute half of the world's refugee demographic. While attention is often focused on the physical assaults against children and their families, as well as the extensive destruction caused by bullets, bombs, shrapnel, landmines, and unexploded ordnance, the comprehensive impact of war on children becomes clear when considering the vast psychological damage inflicted upon them, the disruption and toxic conditions of their social environments, the lack of access to essential needs and safety, and the erosion of vital social support systems for their well-being. If these issues are not addressed, many children will be compelled to endure avoidable suffering, may become entangled in persistent cycles of violence, and societies risk undermining the development of one of their most valuable assets-their children. Therefore, prioritizing the well-being of children in both armed conflict and post-conflict environments is crucial. However, providing adequate support presents numerous challenges. Current challenges include security risks and operational difficulties, such as the threats present in conflict areas, limited access to impacted populations, insufficient funding, and a disjointed humanitarian framework.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS GOVERNING CHILDREN AND ARMED CONFLICTS: A HUMAN RIGHTS PERSPECTIVE

3.0 Introduction

Numerous laws have been established with clear and specific guidelines to address the persistent issue of child involvement in armed conflicts. Additionally, there are common criminal policies designed to promote uniform legislation and international collaboration. Among these are;

3.1 International Human Rights Law

Although International Humanitarian Law (IHL) is often referred to as the 'Law of Armed Conflict' and is considered to take precedence over Human Rights Law, the latter provides comprehensive provisions for the protection of children that can be applied during armed conflicts⁸⁵. This study will critically examine the Convention on the Rights of the Child and its Optional Protocols.

3.1.1 Convention on the Rights of the Child, 1989.

According to the Convention on the Rights of the Child⁸⁶, parties are prohibited from recruiting individuals under the age of fifteen into their armed forces. Furthermore, when enlisting individuals aged fifteen to eighteen, parties are encouraged to prioritize those who are older.

The Convention establishes fifteen as the minimum age for recruitment or participation in armed conflict. It is noteworthy that the Convention on the Rights of the Child is the most widely ratified international treaty, with 192 state parties⁸⁷. However, from its inception, the Convention faced significant criticism for several reasons. One major concern was that it set a recruitment age limit of fifteen, diverging from the general standard of eighteen, despite addressing the critical issue of children being primary victims in armed conflicts. Secondly, there have been concerns that the convention merely replicates Additional Protocol I to the Geneva Convention of 1977, which addresses the prohibition of recruitment and participation. Critics argue that the convention duplicates Article 77 of Protocol I, which is relevant in the context of

⁸⁵The Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC), 'Six Grave Violations against Children during Armed Conflicts: The Legal Foundation'(2013). Available at: <https://childrenandarmedconflict.un.org/publications/Workingpaper-1-SixGraveViolationsLegalFoundation.pdf>. (Accessed on 20 March, 2025).

⁸⁶Article 38 (3) of the Convention on the Rights of the child, 1989.

⁸⁷Article 38 (2) of the Convention on the Rights of the child, 1989.

international armed conflict. As a result, the convention has faced criticism for lacking originality in its approach to the protection of children involved in armed conflict. In light of these concerns raised by the international community regarding the plight of children affected by such conflicts, the United Nations initiated efforts following the establishment and implementation of the Convention on the Rights of the Child to raise the minimum age for the recruitment and participation of children in armed conflicts to 18 years⁸⁸.

3.1.2 The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, 2000.

The Optional Protocol to the Convention on the Rights of the Child concerning the involvement of Children in Armed Conflict, established in 2000, stipulates that parties must ensure that individuals under the age of 18 are not subject to compulsory recruitment into their armed forces⁸⁹.

Article 3 further specifies that States Parties are required to increase the minimum age for voluntary enlistment in their national armed forces, as outlined in Article 38(3) of the main convention, while considering the principles contained in that article, which recognizes that individuals under 18 are entitled to special protection. This principle is reiterated in Articles 4, 5, 6, and 7.

The Optional Protocol to the Convention on the Rights of the Child, 2000, regarding the involvement of Children in Armed Conflict, establishes 18 as the minimum age for direct participation in hostilities, conscription into armed groups, and compulsory enlistment by governments. This protocol has been ratified by 144 countries.

In 2009, a campaign was launched to urge international leaders to take decisive action against the use of child soldiers, resulting in the collection of over 250,000 red hand-prints from at least 101 countries. Various events were organized across numerous nations to raise awareness about the ongoing issue of child soldiers. These initiatives included marches, petition drives, special exhibitions, educational programs in schools, and the presentation of red hand-prints to members of congress and parliament.

⁸⁸Daniel, Helle 'Optional Protocol on the Involvement of children in armed conflict to the Convention on the Rights of the Child,' (2000) *International Review of the Red Cross*, No. 839. Available at: <https://www.icrc.org/en/doc/resources/documents/article/other/57jqge.htm>. (Accessed on 19 March, 2025).

⁸⁹Article 2 of the Optional Protocol to the Convention on the Rights of the Child, 2000.

3.2 African Charter on the Rights and welfare of the child, 1990.

The African Charter on the Rights and Welfare of the Child, established in 1990, includes Article 22(2), which mandates that signatory parties refrain from recruiting children. This charter is the only regional treaty globally that specifically addresses the issue of child soldiers, asserting that individuals under 18 should not participate in hostilities and that states must avoid conscripting minors.

3.3 Constitutional /National Legal Framework

3.3.1 The Constitution of the Republic of Uganda, 1995 (As Amended)

According to the Constitution of the Republic of Uganda, 1995 (as amended), Article 34(5) defines children as individuals under the age of sixteen.

The Constitution guarantees children protection from social and economic exploitation, prohibiting their involvement in work that is dangerous, harmful, or detrimental to their education and overall development⁹⁰. The recruitment and use of children in armed conflicts constitute a violation of their rights and welfare as outlined in this constitutional provision. Such involvement has significant physical and psychological impacts on children.

3.3.2 The Uganda Peoples Defence Force (UPDF) Act, 2005

The Uganda Peoples Defence Force (UPDF) Act of 2005, specifically Cap 330, establishes that individuals under the age of 18 are ineligible for military recruitment⁹¹. Local authorities, including elected members of village Local Councils, are tasked with overseeing the recruitment process for military and paramilitary forces. These officials possess knowledge of the residents in their jurisdictions and are responsible for verifying the ages of recruitment candidates. However, the enforcement of the UPDF Act faces significant challenges, particularly in age verification. The country's birth registration system is unreliable, leading to many individuals lacking the necessary birth certificates to confirm their ages. Issues arise when families collaborate with local councils to misrepresent the ages of children. Additionally, age determination in rural areas is often ambiguous and inconsistent, influenced by factors

⁹⁰Article 34 (4) of the Constitution of the Republic of Uganda, 1995 (As amended).

⁹¹Section 52 (2) (c) of the UPDF Act, 2005.

such as school attendance, physical development, and the responsibilities children undertake⁹².

To address these concerns, the UPDF has established child protection units in key barracks, in collaboration with Save the Children Uganda. Officers assigned to these units are reported to have received training in human rights and child protection. In August 2004, President Museveni indicated that an increasing number of rebels were surrendering to the UPDF, motivated by the expectation of receiving fair treatment upon claiming amnesty⁹³.

3.4 National Institutional Frameworks.

In Uganda, several key institutional agencies have been established to tackle the issue of child involvement in armed conflicts. These include;

3.4.1 Uganda Human Rights Commission

The Uganda Human Rights Commission is a constitutional body created by the government to oversee and monitor human rights violations. It features a dedicated child rights desk and produces annual reports that highlight various rights violations, including those affecting children in armed conflicts. These reports detail the Commission's role in monitoring the recruitment of children into armed forces. However, it is essential to verify these reports to ensure the accuracy and reliability of the information provided by the Commission.

3.4.2 The Judiciary

As an independent branch of government, the Judiciary plays a crucial role in safeguarding children's rights. It is tasked with the overall administration of justice for minors and the protection of their rights through legal proceedings. Within its framework, the Judiciary includes Family and Children's Courts, which are specifically designed to address matters concerning children's welfare and to adjudicate all criminal cases involving minors, except for those punishable by death or cases where a child is charged alongside an adult.

⁹²Committee On The Rights Of The Child, 'Consideration of Reports Submitted By States Parties Under Article 8, Paragraph 1, of The Optional Protocol to The Convention On The Rights Of The Child On The Involvement Of Children In Armed Conflict' Paper presented to the United Nations, 16th August 2007.

⁹³United States Department of State, U.S. Department of State Country Report on Human Rights Practices 2003 - Uganda, 25 February 2004, Available at: <https://www.refworld.org/docid/403f57b68.html> (Accessed 18 March, 2025).

In instances of severe international crimes such as genocide, crimes against humanity, or war crimes, children often find themselves among the victims, suffering both physically and psychologically⁹⁴. While children are primarily victims of these heinous acts, they may also be involved in their perpetration. Regardless of their role as victims, witnesses, or alleged offenders, children engage with criminal justice systems, including international and hybrid courts established to prosecute such international crimes.

3.5 Culpability of children involved in Armed Conflicts

The question of accountability for international crimes committed by minors presents one of the most intricate legal and ethical dilemmas within the realm of international criminal justice. Although children are generally exempt from the jurisdiction of international criminal courts, they can sometimes be the perpetrators of severe offenses, including those classified as international crimes. The reality is that individuals under the age of 18 often engage in hostilities and participate in various activities such as combat, guarding, intelligence gathering, transporting goods, providing medical aid, performing household tasks, caring for younger siblings, running errands for nursing mothers, delivering supplies, searching for food, assisting in looting villages, and participating in the abduction and training of other minors⁹⁵. Given that some children actively engage in hostilities, they may be implicated, either directly or indirectly, in the perpetration of war crimes. A notable case is that of Dominic Ongwen, who, as a former child soldier involved in armed conflict, was tried by the International Criminal Court (ICC), exemplifying the complexities surrounding the culpability of child offenders.

There is an increasing trend in the international community to regard children primarily as victims of armed conflict, perceiving them as incapable of understanding their actions within the context of warfare. It is argued that their lack of maturity prevents them from distinguishing right from wrong or fully grasping the repercussions of their behavior; they are seen as mere pawns in the adult conflicts. As a result, it is contended that children should not be held accountable and, therefore,

⁹⁴Cecile, Aptel 'Children and Accountability for International Crimes: The Contribution of International Criminal Courts', (2010) 1, Innocenti Working Paper No. 2010-20. Florence, UNICEF Innocenti Research Centre.

⁹⁵Noëlle Quéniévet , 'Does and Should International Law Prohibit the Prosecution of Children for War Crimes?' (2017) 28 *The European Journal of International Law*, Oxford University Press, 433-455.

should not face prosecution⁹⁶. Similarly, the non-legally binding Paris Commitments, while explicitly acknowledging children as perpetrators, urge states to view them predominantly as victims of violations of international law rather than solely as alleged offenders⁹⁷.

State actions concerning the prosecution of children suspected of committing war crimes are limited by the norms of International Humanitarian Law (IHL) and International Human Rights Law (IHRL), both of which are applicable during armed conflicts.

IHL governs behavior in times of armed conflict. The Geneva Conventions and Additional Protocol I, relevant in cases of international armed conflict, establish a mandatory framework for state parties to investigate and prosecute individuals who have committed acts defined in Article 50 of the Geneva Convention I, Article 51 of the Geneva Convention II, Article 130 of the Geneva Convention III, Article 147 of the Geneva Convention IV, and Article 85 of Additional Protocol I. Consequently, states are required to seek out and prosecute individuals, whether they are members of the armed forces (under the principle of state responsibility) or private individuals (under the principle of due diligence), for serious violations. In contrast, there is no equivalent treaty obligation for non-international armed conflicts. Additionally, certain war crimes are not included in the grave breaches provisions. Rule 158 of the International Committee of the Red Cross (ICRC) Study on Customary International Humanitarian Law addresses these circumstances, stating that states must investigate war crimes allegedly committed by their nationals or armed forces, or occurring on their territory, and, if warranted, prosecute the suspects. They are also required to investigate other war crimes within their jurisdiction and prosecute suspects as appropriate, regardless of the type of armed conflict⁹⁸. Therefore, it can be contended that states have a responsibility to investigate alleged war crimes and, if necessary, prosecute the suspects, which may include child soldiers. However, IHL does not establish a criminal system for prosecuting violations. Given that the grave breaches provisions in the Geneva Conventions lack sufficient detail to function independently

⁹⁶Amnesty International, 'Child Soldiers: Criminals or Victims?', (2000) 6-7; Also see Schmidt, 'Volunteer Child Soldiers as Reality: A Development Issue for Africa', (2007) 2 *New School Economic Review*, 60.

⁹⁷International Committee on the Red Cross (ICRC), *The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups (Paris Commitments)*, consolidated version (2007), para. 11, Available at <http://www.icrc.org/eng/assets/files/other/the-paris-commitments.pdf>. (Accessed on 18 March, 2025).

⁹⁸Roht-Arriaza, 'State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law', (1990) 78 *California Law Review*, pp. 465-467.

as a criminal code, it falls upon states to enact national legislation to address these issues.

Human rights legal frameworks, including the International Covenant on Civil and Political Rights and the more focused UN Convention on the Rights of the Child (CRC), do not prohibit the prosecution of minors. Instead, they outline the rights of children involved in legal proceedings, thereby recognizing the potential for legal accountability among youth. Article 40 of the CRC establishes a legal framework that mandates fairness in trials involving children, taking into consideration their unique needs and vulnerabilities. Additionally, the non-binding Beijing Rules provide a comprehensive set of standards for the administration of juvenile justice, detailing norms applicable to the trials of young offenders⁹⁹.

However, none of the international legal instruments addressing the prosecution of minors specify an age for criminal responsibility within national jurisdictions. The classification of an individual as a "child" or "adult" is acknowledged as a social construct that can be challenging to define. Evaluating this on a case-by-case basis poses difficulties, as it necessitates an understanding of the intellectual maturity of children at the time of the offense, recognizing that children develop at varying rates.

As articulated by the Committee on the Rights of the Child, the evaluation of a child's criminal responsibility should not rely on subjective or arbitrary criteria, such as the onset of puberty, the age of discernment, or the child's personality traits¹⁰⁰. In alignment with Article 40(2) of the UNCRC, which mandates that states establish a minimum age below which children are presumed incapable of violating penal laws, General Comment No. 10 from the Committee emphasizes that age should be the sole criterion¹⁰¹. This legally defined age threshold determines when judicial authorities may intervene and assess whether an individual has committed an offense.

Conflicts and severe human rights violations, along with widespread political turmoil, significantly disrupt the lives of children, potentially leading some, particularly child soldiers and those involved in violent youth militias, to engage in serious criminal activities. Historical events, such as the 1994 genocide in Rwanda and the prolonged

⁹⁹UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), GA Res. 44/33, 29 November 1985.

¹⁰⁰Committee on the Rights of the Child, Report on the Tenth Session, UN Doc. CRC/C/46, 18 December 1995, para. 218.

¹⁰¹Committee on the Rights of the Child, General Comment no. 10 (General Comment no. 10), UN Doc. CRC/C/GC/10, 25 April 2007, para. 30. This, however, is challenged by psychological research. See Veale, 'the Criminal Responsibility of Former Child Soldiers: Contributions from Psychology', in Arts and Popovski, p. 105.

conflict in Sierra Leone during the 1990s, created chaotic and disorienting conditions. Consequently, many societal norms and values were abandoned, and some children were either forced or encouraged by their families, communities, peers, or educators to partake in criminal acts. Once a semblance of normalcy is restored, there are often strong calls for accountability for those who committed these crimes, including minors.

For children, the voluntary and honest recognition of their criminal actions can aid in their rehabilitation and reintegration into their families and communities. However, traditional criminal justice processes are frequently unsuitable for young offenders, even in modified formats. Instead, restorative approaches that emphasize diversion, mediation, truth-telling, and reconciliation should be employed. International criminal courts have refrained from prosecuting minors, recognizing that they do not hold the primary responsibility for these offenses. This perspective has bolstered arguments in favor of restorative justice alternatives when addressing juvenile offenders, even in cases involving serious international crimes.

3.6 Conclusion

Uganda is dedicated to fully realizing the rights of children as outlined in the Convention on the Rights of the Child and its subsequent Protocols. The Ugandan government has made significant efforts to eliminate the involvement of children in armed conflict, as demonstrated by the policies and initiatives implemented. The primary challenge has been the Lord's Resistance Army (LRA), which has led to internal displacement and suffering among children during the conflict. However, the government has introduced stringent measures aimed at ending internal displacement in northern Uganda and ensuring the safety of children from abduction and fear, as previously discussed.

3.7 Best protection to children taking part in the conduct of war.

The Additional Protocol II to the Geneva Conventions, which pertains to internal conflicts, offers enhanced protection for children involved in warfare. This is particularly important as it explicitly prohibits the recruitment of children under the age of 15 into armed forces and their participation in hostilities, whether directly or indirectly. However, the term "participation" presents challenges: while it clearly includes children engaged in activities such as scouting, spying, and sabotage, as well

as those used as decoys, couriers, or stationed at military checkpoints, it raises questions about children assigned to other roles, such as cooks, porters, or servants, and those exploited for sexual purposes. A negative interpretation could be especially harmful for girls, who may be unlawfully recruited more frequently than boys for these roles, which are often deemed less significant, and who are also at a higher risk of sexual assault and exploitation.

CHAPTER FOUR

COMPARATIVE ANALYSIS BETWEEN UGANDA AND OTHER COUNTRIES THAT HAVE RECENTLY FACED ARMED CONFLICT

4.0 Introduction

According to the United Nations Children's Fund, approximately 473 million children worldwide are affected by armed conflict¹⁰², with 80 million displaced from their homes and countries due to such violence¹⁰³. These alarming figures highlight the severe impact of war on children, significantly disrupting their lives and often placing them in direct danger. Protecting all children in armed conflict is not merely a peripheral concern but a significant global challenge for international children's law and its enforcement. This issue is particularly complex as children in conflict zones encounter both longstanding and emerging threats in various contexts. They are vulnerable to the same challenges faced by children globally, whether in times of peace or conflict, including domestic and sexual violence, gender inequality, poverty, malnutrition, and preventable diseases. The risks associated with these issues are intensified during conflicts, as families and communities frequently disintegrate in such circumstances¹⁰⁴.

4.1 Comparative Analysis between Uganda and Other Countries that have recently experienced Armed Conflict

Uganda, similar to other nations recently affected by armed conflicts such as the Democratic Republic of Congo, South Sudan, Palestine, Ukraine and Syria, has enacted a range of human rights laws and policies aimed at safeguarding children in situations of armed conflict. Nevertheless, the effectiveness of these laws and policies varies considerably among different countries. The LRA crisis in Northern Uganda is currently inactive; however, it was a humanitarian emergency that garnered significant attention from the international community due to its severity and the

¹⁰²Gudrun Østby and Siri Camilla Aas Rustad (2024) 473 million Children Live in Conflict Zones. Available at: <https://blogs.prio.org/2024/10/473-million-children-live-in-conflict-zones/>. [Accessed 17 May 2025].

¹⁰³Secretary-General Annual Report on Children and Armed Conflict (2024). Available at: <https://childrenandarmedconflict.un.org/document/secretary-general-annual-report-on-children-and-armed-conflict-3/>. [Accessed 15 May 2025]

¹⁰⁴Hutchinson A, Waterhouse P, March-MacDonald J, Neal S, Ingham R (2016) Understanding early marriage and transactional sex in the context of armed conflict: protection at a price. *Int Perspect Sex Reprod Health* 42(1):45-44.

profound impact it had on civilians, especially children who were involved in the crisis.

4.1.1 Key Distinctions

Legal Frameworks: Uganda has ratified significant international agreements, such as the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Conversely, nations like South Sudan encounter difficulties in enforcing international human rights laws due to persistent conflict and fragile governance.

Protection Mechanisms: Uganda has implemented protective measures, including the Uganda National Action Plan on Children in Armed Conflict, aimed at preventing the recruitment of children and safeguarding them during armed conflicts. Similarly, countries like the DRC have formulated comparable plans, yet their execution is obstructed by ongoing violence and instability.

Challenges: Nations affected by armed conflicts universally face obstacles in ensuring the safety of children, especially in regions characterized by weak governance, insufficient resources, and continuous violence.

4.1.2 Similarities

Child Recruitment: All nations experiencing armed conflicts have witnessed the recruitment of children by armed factions, underscoring the urgent need for enhanced protective measures.

Humanitarian Response: Humanitarian organizations and international entities have been instrumental in delivering aid and protection to children impacted by armed conflict across these nations.

Need for Accountability: There is a universal requirement for accountability mechanisms in all countries affected by armed conflicts to ensure that those responsible for human rights abuses against children are brought to justice.

This comparative analysis underscores the significance of context-specific strategies for the protection of children in armed conflict, while also highlighting the necessity for reinforced legal structures, effective protective measures, and accountability.

4.2 The impact of Armed Conflict on Children in Selected Countries

Contemporary internal conflicts generally inflict greater harm on civilians compared to inter-state wars, as combatants increasingly prioritize the targeting of civilians as a strategic goal¹⁰⁵. This violation of humanitarian principles and the Geneva Conventions regarding warfare also affects humanitarian workers, who are often denied access to victims in conflict areas or are subjected to attacks themselves¹⁰⁶. Societies devastated by armed conflict endure significant losses in human life and experience economic, political, and social disintegration.

Children, in particular, face unimaginable horrors during these conflicts. In the last decade, estimates suggest that up to four million children have lost their lives due to armed conflicts¹⁰⁷. Additionally, three times that number have sustained serious injuries or permanent disabilities, many as a result of landmines, while millions have been left with psychological scars from the violence. Numerous others have been compelled to witness or even participate in acts of extreme violence. The pervasive insecurity and trauma stemming from the atrocities faced by the civilian population represent another grim legacy of these conflicts. Such conflicts generate profound emotional and psychosocial stress linked to attacks, the loss of loved ones, separation from parents, and the destruction of homes and communities. Many children develop issues such as flashbacks, nightmares, social withdrawal, increased aggression, depression, and a diminished outlook for the future. These mental health and psychosocial challenges persist long after hostilities have ended, hindering children who may represent half of the population from fully engaging in education or contributing to post-conflict recovery.

4.2.1 Ukraine

Given the recent developments in Ukraine, it is crucial to underscore the necessity of ensuring peace and safeguarding the welfare of all children in the region. The ongoing

¹⁰⁵Adesola, Olowokere (2016), 'Comparative Analysis of the Impact of Armed Conflict: On Child Education in Selected Africa States'. *International Journal of African and Asian Studies*, Vol. 26(1), pp.41-48.

¹⁰⁶Sadako, Ogata, (2000) *United Nations High Commissioner for Refugees, to the Security Council of the United Nations on the Situation of Refugees in Africa*, New York, 13 January Brookings Institution Press, Washington D.

¹⁰⁷Supra (note 105)

conflict presents an immediate and escalating danger to the lives and well-being of approximately 7.5 million children in Ukraine¹⁰⁸.

The ongoing violence has resulted in the deaths, injuries, displacement, and profound distress of children¹⁰⁹. Hundreds of thousands of children and their families have been forced to flee their homes, with over two million refugees escaping the country since 24 February 2022¹¹⁰, predominantly comprising women and children seeking safety.

For an international armed conflict (IAC) to be recognized, there must be an engagement of armed forces involving at least two states. The conflict between the Russian and Ukrainian armed forces qualifies as an IAC, regulated by international humanitarian law¹¹¹, particularly the four Geneva Conventions of 1949 (1949 GCIV) and its first additional protocol of 1977 (API), along with customary international humanitarian law.

Both Ukraine and Russia are signatories to the 1949 GC IV and API¹¹². IHL safeguards civilians and non-combatants from the dangers of armed conflict, which includes children. It governs the conduct of hostilities and the methods of warfare employed by all conflict parties¹¹³. A fundamental principle is that all parties must consistently differentiate between combatants and civilians, ensuring that civilians are never intentionally targeted or utilized as human shields. Children receive primary protection under IHL when they are injured, ill, or shipwrecked, as they are considered civilians and part of the civilian population. Their inherent vulnerability also grants them additional protection¹¹⁴. Armed conflicts invariably leave many

¹⁰⁸UNICEF. (2022). Conflict in Ukraine poses immediate threat to children. UNICEF. Available at: <https://www.unicef.org/emergencies/conflict-ukraine-pose-immediate-threat-children>. [Accessed on 18 May 2025]

¹⁰⁹J.W, Denton (2022) Ukraine crisis: What can business do for children and their families? International Chamber of Commerce. Available at: <https://iccwbo.org/publication/ukraine-crisis-what-can-business-do-for-children-and-their-families/>. [Accessed on 18 May 2025]

¹¹⁰Council on Foreign Relations. (2022) Conflict in Ukraine, Global Conflict Tracker. Council on Foreign Relations. Available at: <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine>. [Accessed on 18 May 2025]

¹¹¹Human Rights Watch. (2022). Russia, Ukraine & International Law: On Occupation, Armed Conflict and Human Rights. Human Rights Watch.

¹¹²International Committee of the Red Cross. (1977). Treaties, States parties, and Commentaries-States Parties-Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. ICRC databases on international humanitarian law.

¹¹³Supra (note 111)

¹¹⁴Sassòli, M., Bouvier, A., & Quintin, A. (2014). Civilian population. In How does the law protect in war? (p. 325). ICRC.

children without resources or separated from their families, exacerbating their vulnerability.

Specifically, Article 77, subsection one of the Additional Protocol I states that children are entitled to special respect and must be safeguarded against any form of indecent assault¹¹⁵. International Humanitarian Law (IHL) seeks to prevent the involvement of children in armed conflicts. Parties engaged in conflict are prohibited from enlisting individuals under the age of fifteen into their military forces and must ensure that they do not participate directly in hostilities, as stipulated in Article 77, subsection two of the Additional Protocol I.

Furthermore, in addition to IHL, international human rights law is applicable during times of armed conflict. Both Ukraine and Russia are signatories to several regional and international human rights treaties, including the 1948 Universal Declaration of Human Rights (1948 UDHR), the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (1950 ECHR) (Council of Europe, 1953), the 1967 International Covenant on Civil and Political Rights (1967 ICCPR), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984 CAT), and the 1989 Convention on the Rights of the Child (1989 CRC).

These treaties provide guarantees for fundamental rights, many of which align with the rights afforded to combatants and civilians under IHL. It is crucial to recognize that the rights of children are violated not only during armed conflicts but also in the aftermath of such conflicts.

Article 6 of the 1989 CRC asserts that “state parties shall ensure to the maximum extent possible the survival and development of the child¹¹⁶”. Therefore, both Russia and Ukraine have an obligation to ensure the survival of children.

The 1989 Convention on the Rights of the Child (CRC) encompasses all essential rights of children affected by armed conflict, including articles 24, 27, and 28. Additionally, it includes specific provisions regarding armed conflict in articles 38 and 39. These articles are further enhanced by the Optional Protocol to the CRC

¹¹⁵Supra (note 112)

¹¹⁶United Nations Human Rights Office of the High Commissioner. (2021). Treaty bodies Treaties. Treaty bodies Treaties. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=37&Lang=EN. [Accessed on 18 May 2025]

concerning the involvement of children in armed conflict, established in 2000 (hereafter referred to as the Optional Protocol 2000), to which both nations are signatories. The Optional Protocol 2000 fortifies the safeguarding of children in armed conflict, particularly through article 1, which forbids children from engaging in direct hostilities¹¹⁷, article 2, which bans the compulsory recruitment of individuals under eighteen into armed forces, and article 3, which raises the minimum age for voluntary recruitment from fifteen years¹¹⁸.

Negative effects on children

The last eight years of conflict in eastern Ukraine have caused significant and enduring damage to children. As the conflict intensifies, the immediate and tangible risks to the children of Ukraine have escalated¹¹⁹. Attacks have targeted homes, schools, orphanages, and hospitals. Civilian infrastructure, including water and sanitation systems, has also been affected, leaving millions without access to safe drinking water. Regrettably, the crisis in Ukraine has adversely impacted the well-being of children and will continue to do so. Furthermore, the repercussions of this conflict are both physically and psychologically harmful to children caught in the crossfire of armed conflict.

4.2.2 Democratic Republic of Congo

For over three decades, the ongoing conflict in the Democratic Republic of the Congo (DRC) has resulted in the loss of more than six million lives, including a significant number of children. With the conflict escalating sharply in 2024, it is crucial to highlight the effects of these hostilities on children's rights, as well as the violations and systemic issues they encounter in this perilous environment.

Additionally, it is vital to underscore the importance of peace-building efforts and sustained humanitarian assistance. The situation in the DRC has deteriorated since the onset of hostilities, with the repercussions of these armed conflicts on children being both severe and enduring. In 2022, there were 3,400 documented instances of serious violations against children in the DRC, which included 1,600 children conscripted by armed factions, 700 fatalities due to the conflict, and at least 290 incidents of sexual violence. Moreover, since the beginning of 2023, over one million individuals have

¹¹⁷United Nations Human Rights Office of the High Commissioner. (2000, May 25). Optional Protocol to the Convention on the Rights of the Child. OHCHR. Available at: <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>. [Accessed on 18 May 2025]

¹¹⁸Ibid

¹¹⁹Supra (note 108)

been newly displaced in the DRC, raising the total number of displaced persons to over 6.1 million¹²⁰. A report from 2024 revealed that 36% of child murders and mutilations, 25% of sexual violence incidents against children, 18% of cases involving the recruitment or use of children in combat, and 19% of child abductions occurred, with the majority (87%) of these serious violations taking place in combat zones.

Furthermore, incidents of sexual violence against women and children remained prevalent in 2023 and saw an increase in 2024. In May, 150 cases of gender-based violence were reported, including 114 rapes¹²¹. The rise in violence in eastern DRC, which has resulted in the displacement of at least 400,000 individuals in North Kivu since the beginning of 2024, poses a significant threat to children, increasing the risk of violence unless protective measures are enhanced¹²². Over the years, there has been a persistent increase in violence, with reported violations and abuses rising by nearly 5% since April 2024. This surge can be linked to ongoing confrontations between the M23 and various armed factions against the Armed Forces of the DRC (FARDC) in the southeastern region of Masisi and the northern area of Rutshuru¹²³.

The Democratic Republic of the Congo's responsibilities regarding child welfare

The Democratic Republic of the Congo's responsibilities regarding child welfare have been significantly enhanced since the 1990s through the establishment of a robust legal framework aimed at safeguarding children's rights. This has been achieved by adopting and ratifying various international and regional instruments, particularly the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child¹²⁴. To fulfill the obligations undertaken during the CRC ratification, the DRC has undertaken reforms of several national legal instruments,

¹²⁰BBC News Africa (2023). The worst place in the world to be a child. Excerpt from BBC News. Available at: <https://www.bbc.com/afrique/articles/cg3e87nlm2go> [Accessed on 18 May 2025]

¹²¹UN Info (2024). DR Congo: the majority of abuses against children in North Kivu noted in combat areas (UNHCR). Excerpt from UN Info Available at: <https://news.un.org/fr/story/2024/06/1146291#:~:text=For%20the%20only%20month%20of,have%20stills%20increased%20in%202024.> [Accessed on 18 May 2025]

¹²²UNICEF (2024). DR Congo: displaced children facing numerous dangers. Excerpt from UNICEF Available at: <https://www.unicef.fr/article/rdc-les-enfants-deplaces-en-proie-a-de-nombreux-dangers/>. [Accessed on 18 May 2025]

¹²³UN Press. (2024). DRC: The Security Council authorizes MONUSCO to support the Southern African Development Community Mission in the DRC. Excerpt from UN Press. Available at: <https://press.un.org/fr/2024/cs15785.doc.htm#:~:text=This%20afternoon%2C%20the%20Council, support%20the%20Mission%20of%20.> [Accessed on 18 May 2025]

¹²⁴Ponabana DRC (2024). The legal framework for children in the Democratic Republic of Congo. Excerpt from Ponabana DRC. Available at: <https://ponabana.com/textes-legaux/> [Accessed on 18 May 2025]

including the labor code, military justice code, and family code¹²⁵. Furthermore, the DRC has consistently prioritized the best interests and welfare of children within its Constitution, which defines a child as “any person, without distinction of sex, who has not yet reached 18 years of age”¹²⁶. Additionally, the DRC has strengthened its legal framework for the protection of children's rights by enacting the law on child protection in 2009, criminalizing sexual violence through Law No. 06/019, which amends the Criminal Procedure Code of 2006, and revising the Family Code in 2016¹²⁷. Nevertheless, these legislative measures fall short in addressing the extensive impact of armed conflicts on children's rights.

The anticipated resolutions in the Democratic Republic of the Congo (DRC)

In light of the consequences stemming from armed conflicts in the Democratic Republic of the Congo (DRC) and their subsequent escalations, the Security Council, on August 6, 2024, passed a resolution that authorizes the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) to assist the Southern African Development Community Mission in this nation (SAMIRDC), which has been operational in the DRC since 2023¹²⁸. It is crucial for regional stakeholders and the international community to intensify their efforts towards achieving a peaceful political resolution to the conflict, thereby securing a lasting peace agreement that safeguards the fundamental rights of children, who constitute over half of the country's population¹²⁹. This strategy necessitates collaboration and the unification of efforts among various sectors and their stakeholders to ensure a coordinated approach and evaluation of humanitarian needs and resource mobilization¹³⁰. Despite some advancements over the past decade, the situation for children and women in the DRC remains dire, with the specific needs of children and adolescents often overlooked.

¹²⁵UNICEF (2019). The 30th anniversary of children's rights: historical progress and undeniable results, which, however, benefit only a few of the world's poorest children. Excerpt from UNICEF. Available at: <https://www.unicef.org/drcongo/communiqués-de-presse/30-ans-droits-enfant-progres-resultats#:~:text=On%20September%2027%201990%2C%20i.e.,of%20equality%20of%20opportunity>. [Accessed on 18 May 2025]

¹²⁶Constitution of the DRC (2011). Article 41. Excerpt from the Constitution of the DRC. Available at: <https://www.leganet.cd/Legislation/JO/2011/JOS.05.02.2011.pdf>. [Accessed on 18 May 2025]

¹²⁷Supra (note 124)

¹²⁸Supra (note 123)

¹²⁹Supra (note 122)

¹³⁰OCHA (2024). Humanitarian Response Plan in DR Congo. Excerpt from OCHA. Available at: <https://www.unocha.org/publications/report/democratic-republic-congo/rep-dem-du-congo-2024-plan-de-reponse-humanitaire-en-un-clin-doeil#:~:text=The%20Humanitarian%20Response%20Plan,8.7%20million%20people>. [Accessed on 18 May 2025]

4.2.3 South Sudan

The historical conflicts in South Sudan trace back to the First Sudanese Civil War (1955-1972) and the Second Sudanese Civil War (1983-2005), driven by religious and cultural discord between the northern government and the southern Sudanese populace¹³¹. The Comprehensive Peace Agreement in 2005 concluded the Second Sudanese Civil War, leading to a referendum in which the people of South Sudan voted for and achieved independence in 2011.

Following this independence, politically motivated tribal conflicts ignited the South Sudanese Civil War from 2013 to 2018, which was ultimately resolved by the Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCSS). The prolonged conflicts in South Sudan have severely affected children, with the recent hostilities resulting in all six grave violations against minors. Despite the R-ARCSS being signed, violence persists in certain regions of the country. The ongoing insecurity has exacerbated the humanitarian crisis, with food shortages stemming from climate-related shocks, economic turmoil, and the influx of refugees and returnees from the conflict in Sudan, leading to acute malnutrition among children. Additionally, violence directed at humanitarian workers hinders aid delivery to children in conflict-affected areas. Children displaced by the conflict and separated from their families frequently find themselves in precarious situations on the streets, rendering them susceptible to violence and exploitation¹³².

4.2.3 Palestine

The ongoing conflict in the Gaza Strip, which commenced on October 7, 2023, has resulted in the highest number of casualties in the history of hostilities between Gaza and Israel¹³³. As of January 28, 2024, at least 10,000 of the 26,400 fatalities recorded in Gaza were Palestinian children¹³⁴. By October 24, 2023, the daily toll of children

¹³¹Lucy-Opoka (2024) Children's Rights in Armed Conflict and Post-conflict Peacebuilding. Available at: <https://www.humanrightshere.com/post/children-s-rights-in-armed-conflict-and-post-conflict-peacebuilding>. [Accessed 18 May 2025]

¹³²Ibid

¹³³Oxfam (2024) Daily death rate in Gaza higher than any other major 21st Century conflict. Available at: <https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major-21st-century-conflict-oxfam> [Accessed 18 May 2025]

¹³⁴OCHA (2024) Hostilities in the Gaza Strip and Israel | Flash Update #104 [EN/AR/HE]. Available at: <https://reliefweb.int/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-104-enarhe>. [Accessed 18 May 2025]

killed or injured was estimated at 400¹³⁵. Furthermore, as of January 20, 2024, nearly one million children were reported to be internally displaced within Gaza, predominantly in the southern Rafah governorate, which borders Egypt and is currently the most densely populated area in the Gaza Strip¹³⁶. Prior to the onset of the current conflict, children represented 47% (1.1 million) of Gaza's population; since October 7, 2023, the conflict has impacted nearly all of them. These children face threats of death, injury, and the loss of family and homes, while also suffering from physical and psychological trauma¹³⁷. The violence has resulted in the destruction of safe havens such as schools and hospitals, as well as the obstruction of humanitarian aid, leaving children in overcrowded shelters with limited access to essential goods and services¹³⁸. The hostilities have a particularly severe impact on children under five years old, displaced children, unaccompanied and separated children, and those with disabilities or with disabled family members, as they often cannot escape attacks and are at heightened risk of abandonment, malnutrition, and trauma¹³⁹.

4.3 Conclusion

The issue of children involved in armed conflict constitutes a serious infringement of human rights, cutting across geographical and cultural lines. According to estimates from the United Nations, millions of children are impacted, subjected to violence and exploitation in situations where their protection should be a priority. International human rights and humanitarian laws are designed to protect vulnerable groups, yet the suffering of these children frequently goes unnoticed. It is essential to comprehend their experiences to tackle the wider consequences of armed conflict and promote a more empathetic global response. The enlistment and utilization of children in armed conflict contravene international standards and further jeopardize their well-being. Many are forced or deceived into joining armed factions, often facing extreme exploitation and mistreatment. This violation severely hinders their growth and prospects for rehabilitation. To effectively address the challenges faced by children in

¹³⁵UNICEF (2023) Child casualties in Gaza “a growing stain on our collective conscience”. Available at: <https://www.unicef.org/press-releases/child-casualties-gaza-growing-stain-our-collective-conscience>. [Accessed 18 May 2025]

¹³⁶Supra (note 134)

¹³⁷Ibid

¹³⁸UN (2023) From Despair to Hope: Children Beyond Armed Conflict. Available at: <https://www.un.org/en/exhibits/exhibit/children-beyond-armed-conflict>. [Accessed 18 May 2025]

¹³⁹Rotenberg et al. (2024) Are children with disabilities more likely to be malnourished than children without disabilities? Evidence from the Multiple Indicator Cluster Surveys in 30 countries: *BMJ Nutrition, Prevention & Health*

armed conflict, it is vital to acknowledge their specific needs and rights. Human rights and Humanitarian legal frameworks and ethical guidelines inform efforts to protect these at-risk populations, ensuring their safety and aiding their recovery and reintegration into society.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

The involvement of children in armed conflicts is not a phenomenon exclusive to modern times; however, the international community has recently intensified its focus on this pressing global issue. Estimates suggest that there are as many as 500,000 child soldiers worldwide who are under the age of eighteen. Historically, the concern for child soldiers has primarily centered on their welfare as victims, yet an increasing number of contemporary scholars highlight the complex duality of child soldiers as both victims and perpetrators. Due to the prolonged nature of the conflicts in which they are engaged and the coercive pressures that keep them within armed groups, many children experience this reality throughout their formative adolescent years, ultimately maturing into legal adulthood while still entrenched in these groups¹⁴⁰.

5.1 Conclusion

The infringement of human rights can often arise as a result of armed conflicts. Such conflicts lead to the death and displacement of civilians, alongside severe and systematic violations of human rights. These violations encompass the suppression of freedom of expression and the press, excessive force employed by military personnel, intimidation of political adversaries, sexual violence including rape, summary executions, enforced disappearances, and torture, with some instances resulting in mass atrocities. Additionally, human rights abuses can occur through the obstruction of humanitarian aid and the destruction of essential infrastructure that supports socio-economic activities and social services, which are vital for people's livelihoods. Furthermore, ongoing human rights violations in a prolonged conflict can exacerbate divisions and hostility among conflicting parties. Vulnerable populations, particularly children, frequently endure the most severe human rights violations during conflicts. Sexual violence is a prevalent form of abuse that is particularly rampant in conflict and crisis situations, disproportionately affecting women. Violence against children is another widespread violation in these contexts. Current conflicts and crises have

¹⁴⁰Renee Nicole Souris, (2017), "Child Soldering on trial: An Interdisciplinary Analysis of responsibility in the Lord's Resistance Army. *International Journal of Law in Context* Vol. 13(3) Cambridge University Press, pp. 316-335.

compelled millions of men, women, and children alike to flee in search of safety from suffering, human rights abuses, and starvation. While states are frequently the main offenders of human rights violations, non-state actors also contribute to these abuses in conflict scenarios. This includes non-state armed groups such as rebel factions, opposition groups, terrorist organizations, and other criminal entities, as well as economic non-state actors like multinational corporations and private military and security firms.

5.2 Summary of Findings

The aim of this research was to examine the human rights legislation concerning the safeguarding of children involved in armed conflicts, as well as the degree to which such laws have ensured the rights and welfare of these children..

Chapter I provides a comprehensive introduction to the concept of human rights law and the protection of children under both human rights law and international humanitarian law. It includes a problem statement, research objectives, the scope of the study, a literature review, the justification and significance of the research, and the methodology used for data collection and analysis.

Chapter II examines the effects of armed conflicts on children both in Uganda and worldwide, highlighting best practices for supporting children affected by such conflicts and proposing future strategies. Additionally, it explores the various mechanisms for applying human rights to protect children during armed conflicts and enhance their access to justice. The findings indicate that armed conflicts significantly contribute to unprecedented levels of global displacement, imposing severe suffering on children, who make up nearly half of the population in many war-torn countries and represent half of the global refugee population. While the focus is often on the physical violence against children and their families, as well as the extensive destruction caused by weapons, the broader impact of war on children is evident when considering the profound psychological harm, the disruption of their social environments, the lack of access to basic needs and safety, and the deterioration of essential social support systems for their well-being. If these challenges are not addressed, many children will face unnecessary suffering, may become trapped in cycles of violence, and societies risk jeopardizing the development of one of their most valuable resources, their children.

Chapter III evaluates international law and national laws related to child protection in armed conflicts, focusing on the provisions of International Humanitarian Law and International Human Rights Law. The findings indicate that Additional Protocol II to the Geneva Conventions, which applies to internal conflicts, offers enhanced protection for children participating in warfare. This is particularly significant as it explicitly prohibits the recruitment of children under the age of 15 into armed forces and their involvement in hostilities, irrespective of whether their participation is direct or indirect, in contrast to other laws concerning the protection of children in armed conflicts.

Chapter IV presents a comparative analysis between Uganda and other countries recently impacted by armed conflicts, including the Democratic Republic of Congo, South Sudan, Syria, Palestine, and Ukraine, examining the array of human rights laws and policies designed to protect children in armed conflict situations, as well as the implementation of these provisions. The findings reveal that the issue of children involved in armed conflict constitutes a serious infringement of human rights, cutting across geographical and cultural lines. According to estimates from the United Nations, millions of children are impacted, subjected to violence and exploitation in situations where their protection should be a priority. International human rights and humanitarian laws are designed to protect vulnerable groups, yet the suffering of these children frequently goes unnoticed. It is essential to comprehend their experiences to tackle the wider consequences of armed conflict and promote a more empathetic global response. The enlistment and utilization of children in armed conflict contravene international standards and further jeopardize their well-being. Many are forced or deceived into joining armed factions, often facing extreme exploitation and mistreatment. This violation severely hinders their growth and prospects for rehabilitation. To effectively address the challenges faced by children in armed conflict, it is vital to acknowledge their specific needs and rights. Human rights and Humanitarian legal frameworks and ethical guidelines inform efforts to protect these at-risk populations, ensuring their safety and aiding their recovery and reintegration into society.

Finally, Chapter V encapsulates the study's findings, draws conclusions, and offers recommendations. This chapter synthesizes the research conducted in the previous chapters and proposes strategies for enhancing the protection of children involved in

armed conflicts both in Uganda and globally, ensuring that International Human Rights Law and other relevant laws are effectively and efficiently enforced.

5.3 Recommendations

In the previous chapters, we have observed the challenges faced by International law in its efforts to curtail and eradicate the recruitment and use of children as soldiers, despite the establishment of robust provisions that prohibit such practices. The International community has made significant progress in formulating and refining norms, standards, and regulations against the utilization of child soldiers; however, the implementation of these measures on the ground has been lacking. Currently, children continue to be used indiscriminately as soldiers in various armed conflicts. Additionally, we identify multiple factors contributing to the involvement of children in these conflicts, including forced recruitment through abduction, as well as underlying social, economic, and political issues and their impact on children.

The following are some suggestions from the Researcher aimed at enhancing the protection of children affected by armed conflicts. While these recommendations are not novel and may not resolve all existing challenges, they serve as a foundational step forward.

5.3.1 Enhancing Adherence to International Law.

The international community has reached a consensus that conflicts are governed by rules that obligate all parties involved and aim to safeguard civilians, particularly children. Consequently, the cessation of violations against children is crucial for attaining peace and security, as well as for fostering the sustainable future envisioned in the global development agenda. Nevertheless, many parties to various ratified Conventions fail to implement these laws effectively. Therefore, it is essential to bolster compliance and enforcement of Human Rights Laws and International Humanitarian Law (IHL) obligations through tangible measures aimed at protecting children affected by armed conflicts and ensuring accountability for violations. It is important to recognize that the growing disparity between developed and developing nations, exemplified by Uganda, where instances of child soldiers are present, along with factors such as rapid population growth, dwindling resources, weak national economies, and the ongoing influx of arms into developing countries, has greatly

hindered efforts to eliminate the conscription and recruitment of children as soldiers. States that are parties to IHL Conventions must cease the transfer of weapons to nations known to employ child soldiers.

5.3.2 Adoption and Enforcement of the Convention on the Rights of the Child.

In the researcher's view, to realize this objective, it is essential for all nation-states to universally adopt and enforce the Convention on the Rights of the Child (CRC) along with its two additional protocols regarding child soldiers. Nations must adhere to the CRC's definition of a child and raise the minimum age for military recruitment and participation to eighteen years. While the CRC defines a child as anyone under eighteen, it permits member states to set their own age limits, which can lead to inconsistencies. The researcher firmly believes that the standards and obligations imposed on states by international law should be non-negotiable, and member states should be required to comply. If a member state chooses to establish the age of majority below eighteen, it must do so in the best interest of the child. It is important to note that in many countries, recruiters often assess a child's age based solely on appearance due to the absence of identification documents like birth certificates. Increasing the age limit would offer greater protection to younger adolescents who might be mistakenly recruited under the false assumption that they meet the fifteen-year threshold. The researcher's perspective is aligned with that of Amnesty International regarding the criminal responsibility for child soldiers. The researcher posits that the primary emphasis should be on criminalizing and prosecuting those who recruit child soldiers, regardless of whether the recruitment was coerced or voluntary. If military organizations, governments, and rebel factions refuse to recruit children as soldiers, even if some children volunteer, the phenomenon of child soldiers will cease to exist. This approach would significantly reduce the indiscriminate involvement of children in armed conflicts. Child soldiers should always be regarded as victims, except in exceptional circumstances where it is warranted.

5.3.3 Reintegration of Former Child Soldiers into Communities.

Governments, Non-Governmental Organizations (NGOs), and various international entities must devise effective and sustainable reintegration programs for children who have been recruited or involved in armed conflicts. The conclusion of a significant

conflict does not automatically provide closure for children who have endured violence and atrocities as part of their daily lives. If not professionally supported and reintegrated into society, these children may carry lifelong scars. The reintegration of former child soldiers is crucial for enabling them to lead fulfilling lives and contribute positively to a peaceful society. These children often face trauma and stigma, which can hinder their ability to return to their communities and continue their education. Consequently, many struggle to find their place in society after their experiences. Without sufficient reintegration support and assistance to help them become productive members of their communities, these boys and girls risk perpetuating the stagnation or even regression of peace and development initiatives. Community-based reintegration services that offer psychosocial support should be tailored to help these children reclaim their lives through educational and vocational opportunities, while also addressing their specific needs.

5.3.4 All nations are required to ratify the Optional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflict.

States are obligated to ratify without reservations, implement, and integrate the Optional Protocol into their national laws. In alignment with Article 3 of the Protocol, they are encouraged to submit a binding declaration that establishes 18 as the minimum age for voluntary recruitment and participation in hostilities.

5.3.5 Safeguarding children in armed conflict.

Children must be shielded from retribution, summary execution, arbitrary detention, torture, and other punitive actions in accordance with the Convention on the Rights of the Child and international juvenile justice standards.

5.3.6 Enhanced monitoring and reporting of child rights violations in conflict.

Upholding human rights is a crucial yet often overlooked element of peacemaking, peace-building, and humanitarian efforts. In conflict scenarios, it is essential to allocate additional resources and focus on monitoring, verifying, and reporting violations of child rights and gender-based abuses. To facilitate this, the Office of the High Commissioner for Human Rights should be empowered to perform these duties in all conflict situations. Furthermore, all UN agencies and international and national

organizations with a field presence should establish appropriate channels for reporting observed human rights violations or serious allegations received.

5.3.7 Training and Awareness on Child Rights and Gender Issues.

This research emphasizes the necessity for specialized training and awareness regarding the child and gender aspects of conflict. At the political, policy, and operational levels, such training is essential to ensure the protection of children in conflict situations. Critical considerations include the gender and child rights dimensions of protection, as well as adherence to international humanitarian, human rights, and refugee laws. The current, sporadic training approaches have proven to be ineffective. To advance this agenda meaningfully, a comprehensive action plan must be established, focusing on three key components: the coordination and collaboration of training efforts among the United Nations, member states, regional organizations, and NGOs; resource mobilization; and the quality, content, and standardization of training programs.

5.3.8 Supporting Civil Society Organizations in Child Protection.

National and international civil society organizations are vital in preventing armed conflicts, safeguarding children, and reconstructing societies post-war. This study acknowledges these significant contributions. Particular emphasis is placed on the brave efforts of national humanitarian workers, whose protection has not been adequately ensured by the international community, sometimes resulting in tragic outcomes. Protective measures must be implemented for all frontline individuals who face serious risks while working to safeguard children and women in distress.

5.3.9 Mobilizing Resources for Children Affected by War.

The significant disparity in the mobilization of resources for children impacted by war represents one of the most severe inequalities in the contemporary world. African nations and other developing countries receive considerably less aid compared to their European counterparts. For instance, during the Sierra Leone civil war in 1999, the nation received under \$20 per child, whereas Kosovo received \$216 per child. These deficiencies and inequalities in humanitarian assistance are mirrored in the patterns of official development aid, which is crucial for post-conflict reconstruction. Appeals for support for war-affected children often struggle to align with the distinct, frequently rigid, and compartmentalized funding frameworks. Donors are encouraged to

establish criteria that address the disparities in resource mobilization for children affected by war across various conflict scenarios and to mitigate the institutional, budgetary, and functional obstacles that exist between relief efforts, rehabilitation, and development cooperation.

5.3.10 Enhancing Legal Structures.

Nations that have experienced armed conflicts must enhance their legal structures to safeguard children and ensure accountability for violations of human rights.

5.3.11 Implementing Protective Measures.

The successful execution of protective measures, including national action plans, is vital for preventing the recruitment of children and safeguarding them in situations of armed conflict.

5.3.12 Global Collaboration.

International collaboration and support are critical for delivering assistance and protection to children impacted by armed conflict.

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