

# CHILD SOLDIERS: AN INSIGHT INTO THE USE OF CHILDREN IN THE BATTLE FIELD

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## INTRODUCTION

Children have largely been recruited across the globe to serve as child soldiers, aiding governmental or armed rebel groups in achieving their respective objectives within internal armed conflicts. Research states that ‘hundreds of thousands of children’ below 18yrs of age serve as child soldiers in various nation-state across the globe.<sup>1</sup> Countries such as the Democratic Republic of the Congo, Sierra Leone, South Sudan, Yemen, Somalia, and Libya are internationally recognized as ranking among the most salient and worst offenders of the international community’s ban against the use of child soldiers in states’ internal armed conflicts.<sup>2</sup> UNICEF defines ‘child soldier’ as any person below 18yrs of age who has been coerced or recruited by a

regular or irregular armed group in any capacity; such as cooks and messengers.<sup>3</sup>

*The recruitment and use of children during conflict is one of the six grave violations<sup>4</sup> identified and condemned by the UN Security Council.* Each year the UN receives reports of children associated with armed groups who are as young as 8-9 years old associated with armed groups. A question often arises that whether these child soldiers be treated as victims of the war or as war criminals?

## UN REPORT ON CHILDREN AND ARMED CONFLICT, 2018 AND THE PRESENT SITUATION

The UN released its annual report on child soldiers in 2018 and the scenario it showcases is very disturbing.<sup>5</sup> A total 56 non-state armed

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### PREFERRED CITATION

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<sup>1</sup>*Facts About Child Soldiers*, HUMAN RIGHTS WATCH (Dec. 3, 2008), <http://www.hrw.org/news/2008/12/03/facts-about-child-soldiers> (last visited on Jun. 15, 2019).

<sup>2</sup>*Topics of Special Interest*, U.S. DEPARTMENT OF STATE (2012), <http://www.state.gov/j/tip/rls/tiprpt/2012/192359.htm> (last visited Jun 105, 2019).

<sup>3</sup>*Child recruitment by armed forces or armed groups*, UNICEF (Mar.22, 2011), [https://www.unicef.org/protection/57929\\_58007.html](https://www.unicef.org/protection/57929_58007.html) (last visited on Jun 105, 2019).

<sup>4</sup>*The six grave violations*, UNITED NATIONS, <http://childrenandarmedconflict.un.org/effect-of-conflicts/six-grave-violations/> (last visited on Jun 105, 2019).

<sup>5</sup>*Children attacked, recruited & abused in conflict as UN ‘list of shame’ names offenders*, CHILD SOLDIERS INTERNATIONAL (2018), <https://www.child-soldiers.org/news/children-attacked-recruited-abused-in-conflict-as-contentious-un-list-of-shame-reveals-worst-global-offenders> (last visited Jun. 20, 2019).

groups have been listed along with 7 state armed forces that are responsible for enlisting child soldiers in the year 2017. The situation has worsened in some conflict-stricken countries like South Sudan, Syria, Nigeria and Central African Republic where child abductions have increased in an alarming rate and exploitation of girls still continues.

The Saudi-led coalition in Yemen is said to be one of the parties which is making progress. But ironically, according to the UN report, this party has caused the killing and incapacitating 670 children. Furthermore, it has caused attacks on 19 schools. The DRC's condition has worsened due to its continuation in violence and unrest specifically in Central Kasai region. Thousands of children are being recruited in the armed groups in and around Central Kasai. In the very first six months of 2018, a total 43 cases of children being used as suicide bombers have been recorded in Nigeria. Most of it can be traced to the infamous group namely Boko Haram.<sup>6</sup>

The reports of December 2018 showcased that a recorded 5000 children were killed or incapacitated in Afghanistan alone. Moreover a recorded 4 lakh children suffer from serious malnutrition in Yemen. A total 1478 schools have been shut down in Mali, Bigger and Burkina Faso.<sup>7</sup>

UNICEF published a note in March 2019 stating that there are around 19,000 children are being associated with the armed group and armed forces, who are currently operating in South Sudan.<sup>8</sup> On 27<sup>th</sup> September 2018 South Sudan became the 168<sup>th</sup> country to sign the optional protocol to the convention on rights of the child<sup>9</sup>, where it did agree to disband the recruitment or use of children under the age of 18 for the purpose of armed conflict. As per the reports from Monitor and Reporting Mechanism, even after signing of Peace Agreement in 2018 and several other UN commitments for child protection and care, the recruitment has not to come to a standstill. There is limited or no local mechanism to deal with child

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<sup>6</sup>Nigeria: UN report details 'grave violations' against children by Boko Haram, OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL FOR CHILDREN AND ARMED CONFLICT (2017), <https://childrenandarmedconflict.un.org/nigeria-un-report-details-grave-violations> (last visited Jun. 20, 2019).

<sup>7</sup>'They are slowly killing education': schools shut down and teachers terrified in Burkina Faso, THEIR WORLD (2018), <https://theirworld.org/news/burkina-faso-conflict-schools-shut-down-teachers-in-hiding> (last visited Jun. 20, 2019).

<sup>8</sup>Child Protection, UNICEF (2019), <https://www.unicef.org/southsudan/media/1836/file/UNICEF-South-Sudan-CP-Briefing-Note-Mar-2019.pdf> (last visited Jun. 23, 2019).

<sup>9</sup>South Sudan: UN Special Representative for Children and Armed Conflict Welcomes Accession to OPAC, U OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL FOR CHILDREN AND ARMED CONFLICT (September, 2018), <https://childrenandarmedconflict.un.org/south-sudan-accession-opac/?platform=hootsuite> (last visited Jun. 23, 2019).

protection which places children in an explosive and abusive environment.<sup>10</sup>

## HOW CHILDREN GET INVOLVED IN ARMED CONFLICTS

Recruitment of children in armed forces is advantageous for those who recruit them. Because of their tender age, their minds can be easily manipulated and influenced.

According to Human Rights Watch, “Children are most likely to become child soldiers if they are poor, separated from their families, displaced from their homes, living in a combat zone or have limited access to education.” In some cases, surprisingly, impoverished parents offer their children to armed groups in exchange for some level of financial relief.<sup>11</sup> Many armed groups also target children simply because they are “young, immature, impressionable, and physically smaller than adults.”<sup>12</sup> Researchers are also beginning to notice a rising trend where children are used in war-related suicide missions.<sup>13</sup> The armed groups’ systematic, predatory behaviour of plucking children out of school, therefore, extinguishes any chance

for the affected children to receive an acceptable degree of formalized, quality education.<sup>14</sup>

Some conclude it as a voluntary recruitment but isn’t this kind of recruitment any less forced or manipulated? After their recruitment, they are trained for various purposes like for combat, spying, sending and receiving messages, cooking and cleaning etc.

However it cannot be denied that there are child soldiers who actively participate in war aggressions. The fact that some ISIS child executioners brutally shot 25 Syrian regime soldiers in front of a large bloodthirsty crowd at ancient ruin of Palmyra, raises a doubt whether they are the victim or really a war criminal?<sup>15</sup>

## SHOULD CHILD SOLDIERS BE PUNISHED LIKE ORDINARY WAR CRIMINALS?

International documents only prohibit the recruitment of children below age 15 in armed forces but don’t mention anything about prosecuting them. The option of

<sup>10</sup> UNICEF, *supra* note 15.

<sup>11</sup> Sara a. ward, *Criminalizing the victim: why the legal community must fight to ensure that child soldier victims are not prosecuted as war criminals*, 25 GJLE 821, 825 (2012).

<sup>12</sup> Tracey b. c. Begley, *The Extraterritorial Obligation to Prevent the Use of Child Soldiers*, 27 AM. U. INT’L L. REV. 613, 618, 628-29 (2012).

<sup>13</sup> Fletcher forum, *Protecting Children in Armed Conflict: A Conversation with Radhika Coomaraswamy*, 36 FLETCHER F. WORLD AFF. 5, 7 (2012).

<sup>14</sup> Addison I. Boyland, *Sending mixed messages on combating the use of child soldiers through unilateral economic sanctions:*

*The U.S.’s manipulation of the child soldiers prevention act*, 2008, 22.2 MS INT’L L. REV. 669, 675 (2014).

<sup>15</sup> *Slaughter in the Roman amphitheatre: Horrific moment ISIS child executioners brutally shoot dead 25 Syrian regime soldiers in front of bloodthirsty crowds at ancient Palmyra ruin*, MAIL ONLINE (2015), <https://www.dailymail.co.uk/news/article-3149469/Slaughter-amphitheatre-ISIS-executioners-brutally-shoot-dead-25-Syrian-regime-soldiers-bloodthirsty-crowds-ancient-Palmyra-ruin.html> (last visited on June 19, 2019).

prosecuting child soldiers is left to the national legislatures. Additional Protocol I, 1977 clearly states that children below 15 cannot be recruited into armed forces.<sup>16</sup>

Some statutes like the Roman Statute<sup>17</sup> and the Statute of the Special Court for Sierra Leone<sup>18</sup> also condemn the same. But since the definition of a child soldier consists of children below 18 it can be deduced that children between the age group of 15 and 18 can be held criminally liable.

To be prosecuted for an international crime, the person should have committed the *actus reus* and must have the required *mens rea*. It is easy to prove that the child has committed the act but what about his intention? Psychological studies have proved that children don't really understand the consequences of their actions until reaching a certain age.<sup>19</sup>

According to basic principles of international humanitarian law, non-fighters lose their protected status once they start actively participating in aggressions and hostilities. So if this principle is applied, then children

above 15 years of age who actively participate in such activities can be held responsible for violation of international humanitarian law. Only those children should be prosecuted who have acted on their own free will i.e. without the influence of alcohol, drugs etc. In this case, the retributive and deterrent theories cannot be applied.

Prosecuting child soldier is not a modern theory. For instance, in the Bommer case<sup>20</sup> three girls were charged with war crime of theft and receiving stolen goods. Two of the three girls were sentenced in this case. Another harsher instance is that of Democratic Republic of Congo where a 14 year old child was executed and eight others were given death sentence. In 2001, the Human Rights Watch (HRW) interfered in the trials of child soldiers in DRC and stopped the execution of four boys who were given death sentence.<sup>21</sup> The same situation can be seen in Uganda where two child soldiers of age 14 and 16 respectively were given death sentence but due to the intervention of the HRW, they were saved and charges were withdrawn.<sup>22</sup>

<sup>16</sup>*Child Soldiers*, AMERICAN RED CROSS (2011), [https://www.redcross.org/content/dam/redcross/atg/PDF\\_s/Family\\_\\_\\_Holocaust\\_Tracing/IHL\\_ChildSoldiers.pdf](https://www.redcross.org/content/dam/redcross/atg/PDF_s/Family___Holocaust_Tracing/IHL_ChildSoldiers.pdf) (last visited on Jun. 19, 2019).

<sup>17</sup>*Role of International Criminal Court*, UNITED NATIONS, <https://childrenandarmedconflict.un.org/our-work/role-of-the-icc/> (last visited on Apr. 12, 2017).

<sup>18</sup>Joshua A. Romero, *The Special Court for Sierra Leone and the Juvenile soldier dilemma*, 2 NJIHR 2, 9 (2004).

<sup>19</sup>Darija Markovic, *Child Soldiers: Victim or war criminals?*, RAUN, Dec. 14, 2014, 1, 6.

<sup>20</sup>*Trial of Alois and Anna Bommer and their daughters*, PERMANENT MILITARY TRIBUNAL (Feb. 19, 1947), [http://www.worldcourts.com/imt/eng/decisions/1947.02.19\\_France\\_v\\_Bommer.pdf](http://www.worldcourts.com/imt/eng/decisions/1947.02.19_France_v_Bommer.pdf). (last visited on Jun. 21, 2019).

<sup>21</sup>Matthew Happold, *Child Soldiers in International Law* (Manchester University Press, 2005) 142.

<sup>22</sup>Katherine Fallah, *Perpetrators and Victims: Prosecuting Children for the Commission of International Crimes*, 14 AJICL 83-103 (2008)

CRC has laid down that there can be no capital punishment for the child soldiers.<sup>23</sup> In 2007, the Committee on the rights of the child recommended abolishment of all forms of life imprisonment for children under 18 years of age.<sup>24</sup> Social rehabilitation and restorative justice is in the best interest of juvenile justice. Case to case analysis should be done by the courts. Circumstances of each child are different and this aspect should be considered while prosecuting the child soldiers.

### **IMPACT ON CHILDREN RECRUITED AS SOLDIERS**

The impact of the child soldiers is not realized until they are set free from the armed rebellion. Many children, due to persisting presence in the war-torn surrounding face great social detriment at the point of reintegration.<sup>25</sup> The foremost problem that will be faced by a child soldier will be displacement from family, friends and neighbourhood. And if at all the child's family has not already died due to war, external aggressions or poverty or illness the

recruiting members order the child to kill his family.<sup>26</sup>

Due to continuous exposure to traumatic atmosphere, many children develop post-traumatic stress disorder (PTSD), which is common among individuals who have witnessed any such traumatic event, like death or serious injury at least once in his life which has disturbed his mental state.

### **IMPORTANT JUDICIAL PRONOUNCEMENTS**

The International Court of Justice stated in *DRC v. Uganda*<sup>27</sup> stated that there have been credible information and evidences regarding training of child soldiers being held in Uganda People's Defence Forces (UPDF). The Union Nations Organization Stabilization Mission in the Democratic Republic of the Congo has time and again in its reports confirmed the deportation of child soldiers across the borders, failure to prevent the continuous recruitment of Child soldiers etc.

The International Criminal Court in *The Prosecutor v. Joseph Kony and Vincent Otti*,<sup>28</sup> the founder and commander-in chief

<sup>23</sup>Convention on the Rights of the child, G.A. Res. 44/25, U.N. Doc.A/RES/44/25 (Nov. 20, 1989).

<sup>24</sup>Committee Report, *Report of the Committee on rights of the child*, A/63/41 (Jul. 16, 2008).

<sup>25</sup>ELISABETH SCHAUER, THE PSYCHOLOGICAL IMPACT OF CHILD SOLDIERING 311-360 (Springer,2010).

<sup>26</sup>JA Robinson, *The Right of Child Victims of Armed Conflict to Reintegration and Recovery*, 15 PE L.J. 45, 51-52 (2012).

<sup>27</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. REPORTS (Dec. 19, 2005), <http://www.icj-cij.org/docket/index.php?sum=643&p1=3&p2=3&case=116&p3=5> (last visited on Jun. 21, 2019).

<sup>28</sup>*The Prosecutor v. Joseph Kony & Vincent Otti*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/uganda/kony> (last visited on Jun. 23, 2019).

of the Lord's Resistance Army called Joseph Kony was issued an arrest warrant by the ICC Pre-trial chamber II in the year 2005. He was charged for abducting children and forcibly enlisting them into the army to commit war crimes. This is punishable under Articles 8(2)(e)(vii)<sup>29</sup> and 25(3)(b)<sup>30</sup> of the 1998 ICC statute. It was noted that the children were by force recruited as fighters, porters and sex slaves to serve the LRA and to take part in attacks against the Ugandan civil community and army. Vincent Otti was charged with the same offences.

In *The Prosecutor v. Thomas Lubanga Dyilo*, the former president of the UPC (Union des Patriotes Congola) and the commander-in-chief of FPLC was charged for enlisting children under 15 years of age to participate in war hostilities and committing war crimes which is punishable under Article 8(2)(b)(xxvi)<sup>31</sup> and (e)(vii)<sup>32</sup> of the 1998 ICC statute.<sup>33</sup>

In *Koroma's* case, the accused who was the leader of Armed Forces Revolutionary Council (AFRC) was charged for conscripting children under the age of 15

years and forced them to participate in war hostilities. This is punishable under Art. 4(c) of the Statute of the Special Court of Sierra Leone, 2002.<sup>34</sup> AFRC /RUF have been frequently enlisting children below the age of 15 years.<sup>35</sup>

In the *Brima* case, three former non-commissioned officers in the Army of Sierra Leone were accused for enlisting children and forcing them to commit war hostilities. A question arose before the Appeals chamber that whether this crime makes a person individually responsible under Customary International Law. The Court held that this kind of recruitment was held to be a criminal activity even before it was expressly set out as a criminal prohibition in treaty law. The principle of legality and specificity were both upheld.<sup>36</sup>

## SUGGESTIONS AND CONCLUSION

Proper surveillance should be there to keep a check that children under 18 years of age are not recruited in any kind of Police Services or Army organisations etc. Any recruitment of children into armed forces should be

<sup>29</sup>Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

<sup>30</sup>Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted.

<sup>31</sup>Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

<sup>32</sup>Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

<sup>33</sup>*The Prosecutor v. Thomas Lubanga Dyilo*, INTERNATIONAL CRIMINAL COURT (Oct. 2016), <https://www.icc-cpi.int/drc/lubanga/Documents/LubangaEng.pdf> (last visited on Jun. 23, 2019).

<sup>34</sup>Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

<sup>35</sup>*Customary IHL*, ICRC [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule136](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule136) (last visited on Jun. 23, 2019).

<sup>36</sup>*Id.*

criminalised. It should be the duty of the government to spread awareness among its respective country's people against recruitment of child soldiers. Rehabilitation processes should be revamped and made children-friendly. Justice to the juveniles should be ensured.

After World War II, child soldiers issue became prominent due to increased armed conflicts, those of which were not of international character. More and more armed groups started collecting and then

grouping children for the purpose of war soldiers. It would be suggested that the age of criminal liability should be set at 15 and the authors have also given enough argument in favor of that. Not many nation-states have implemented the required rules for prevention of conscripting children into the armed forces in their national legislatures. Further although ICC is playing a preventive and deterrent role in international community in conscription and enlistment of child soldiers; it doesn't have a personal exclusive jurisdiction over it.