

REFLECTING ON THE IMPACT OF CHILD SOLDIERS IN ARMED CONFLICTS: A CLOSER LOOK INTO THE UGANDAN CASE OF THE PROSECUTOR v DOMINIC ONGWEN

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ABSTRACT

The purpose of this work is to denounce the use of children as soldiers in armed conflicts and investigate current practices violating children's rights due to their involvement with terrorist or military groups. Assess the effectiveness of mechanisms put in place to combat the use of child soldiers by conflict groups, including international legal norms. Examine aspects of the use of military force, criteria for its admissibility, and legitimacy as a means of conflict resolution. Legal analysis and reflection of the Ugandan case of The Prosecutor v Dominic Ongwen and its impact on the lives of other child soldiers. The methodology applied is the qualitative research method appropriate in the legal discipline while using primary, internet, and archival sources. Findings show factors that obstruct the prevention of recruitment and use of child soldiers. Finally, the extent to which children's rights have been violated because of their use as soldiers under International Humanitarian Law. The work benefits legal scholars, professionals, and government policy initiatives.

INTRODUCTION

A child soldier is considered as any person below the statutory age (under 18 years) recruited or used in any capacity by an armed force or group; could be a member or attached to a country's armed forces or any other regular or irregular armed force or group, whether or not they are engaged in armed conflict. Child soldiers serve in a variety of capacities, from combat to logistics and support.ⁱ They could also be used in other ways, such as sex slaves. The term *child soldier* does not only refer to a child carrying or carrying arms, as stated in the Cape Town Principles.ⁱⁱ Because children are more susceptible to influence than adults, they are easy targets for military recruitment. Some people are compelled to join the military, while others choose to do so, often to escape poverty or as a rite of passage into adulthood. Child recruits who survive armed conflicts frequently suffer psychiatric problems, illiteracy, and behavioral dysfunctions such as heightened aggression leading to poverty and unemployment in majority. Research in the UK and the US have also found that the enlistment of adolescent children, even when they are not sent to war, is accompanied by a higher risk of attempted suicide, stress-related mental disorders, alcohol abuse, and violent behavior. Separatist groups have used children for decades.

Recruitment of children as soldiers dates back to the 1980s during the Iran-Iraq war when the first modern use of child soldiers was witnessed. Over the years, children have been used in so many African countries, including Congo, being the first country to use children as soldiers; Sierra Leone, Afghanistan, Nigeria, Philippines, Iran, Iraq, Cameroon and many others. History is filled with children trained for combat, assigned to support roles such as porters or messengers, used as sex slaves, or recruited for tactical advantage as human shields or political propaganda. In 1814, for example, Napoleon enlisted the services of many teenagers in his armies. Throughout the twentieth and early twenty-first centuries, children were used on every continent, with concentrations in Africa, Latin America, and the Middle East. Child soldiers in state armed forces, non-state armed conflicts, and other military organisations may be trained and used for combat, assigned to support roles; thousands of children, for example, served on both sides of the world wars.

Only at the turn of the millennium did international efforts begin to limit the military use of children, with several treaties attempting to restrict children's involvement in armed conflictsⁱⁱⁱ.

According to Child Soldiers International, these agreements have helped reduce child recruitment, but the practice remains widespread, and children continue to be involved in hostilities around the world. Some economically powerful nations continue to rely on 16 to 17-year-old military recruits, and the use of younger children in armed conflicts has risen in recent years as militant groups have recruited large numbers of children.

Over the years, a slew of conventions, treaties, and protocols have been established to eradicate and prohibit children's use as child soldiers. Despite the legal ban, the use of child soldiers in armed conflicts has been on the rise. According to the UN Office for the Coordination of Humanitarian Affairs in 2003 (OCHA), Africa was home to half of all children involved with state armed forces and non-state armed groups worldwide. In 2004, Child Soldiers International estimated that 100,000 children were being used in State and non-state armed forces on the continent; by 2008, the total had risen to 120,000 children, accounting for 40% of the global total^{iv}.

The African Charter on the Rights and Welfare of the Child (1990), ratified by a majority of African states, prohibits all military recruitment of children under 18. Nonetheless, the UN reports that in 2016, there was an upsurge in the recruitment of armed groups in seven African countries, namely, the Central African Republic, the Democratic Republic of the Congo, Mali, Nigeria, Somalia, South Sudan, and Sudan.

International efforts to reduce the number of children in African military organisations began with the Cape Town Principles and Best Practices, developed in 1997. The Principles proposed that African governments sign on to OPAC, which was still being negotiated at the time, and raised the military recruitment age from 15 to 18. In 2007, the Free Children from War Conference in Paris produced the Paris Principles, which refined and updated the Cape Town Principles, applied them globally. They outlined a practical approach to reintegrating current child soldiers.

PROHIBITION OF THE USE OF CHILD SOLDIERS IN CONFLICT SITUATIONS

At the International Level

At the International level, the International Conferences of the Red Cross and Red Crescent in 1986 and 1995 adopted resolutions emphasising the prohibition of child recruitment. All parties to an armed conflict must ensure that all measures, including penal measures, were taken to prevent the recruitment of children into armed forces or armed groups, according to the Plan of Action for the Years 2000–2003, adopted by the 27th International Conference of the Red Cross and Red Crescent in 1999.

The prohibition applied to direct participation in hostilities in international armed conflicts, while it applied to any participation in non-international armed conflicts. According to International Humanitarian Law (IHL), children could not be recruited or used in hostilities; the prohibition was applicable to both international and non-international armed conflicts. Accepting voluntary enlistment was also prohibited under Article 77 of Additional Protocol I and Article 4 of Additional Protocol II, which prohibit the recruitment of children under the age of 15.^v Under the Statute of the International Criminal Court, enlisting children into armed forces or groups constituted a war crime in international and non-international conflicts.^{vi} The International Criminal Court (ICC), governed by the Rome Statute, was the first permanent treaty-based international criminal Court established to help end impunity for the perpetrators of the most severe crimes of concern to the international community. By the principle of complementarity, the ICC's jurisdiction intended to come into play when a State was genuinely unable or unwilling to prosecute alleged war criminals over which it had jurisdiction. The ICC was thus meant to be a last resort if a State failed or could not discharge its duty to prosecute those international crimes properly. *Article 38(3) of the Convention on the Rights of the Child* prohibiting the recruitment of children below the age of 15 is similarly interpreted as banning voluntary enlistment of children and altogether outlawing recruitment of child soldiers. Higher standards of the Optional Protocol also bound most States with armed forces *on the Involvement of Children in Armed Conflict* (OPAC) (2000) and the *Worst Forms of Child Labour Convention* (1999), which forbade compulsory recruitment of those under the age of 18.

Prohibition at the Regional Level

The highest standard in the world was set by the *African Charter on the Rights and Welfare of the Child*, which forbade state armed forces under any circumstances from recruiting children under the age of 18. The *African Charter on the Rights and Welfare of the Child* (ACRWC or Children's Charter), adopted by the Organisation of African Unity (OAU) in 1990 and in 2001 the OAU legally became the African Union entered into force in 1999. Unlike the United Nations Convention on the Rights of the Child (CRC), the Children's Charter was a comprehensive instrument that set out rights and defined universal principles and norms for the status of children. The ACRWC and the CRC were the only international and regional human rights treaties that covered the whole spectrum of civil, political, economic, social and cultural rights of children.

It called for the creation of an African Committee of Experts on the Rights and Welfare of the Child (Committee of Experts); its mission being the promotion and protection of rights established by the African Charter on the Rights and Welfare of the Child, ACRWC. State Parties to the present Charter, in accordance with their obligations under international humanitarian law, protect civilian populations in armed conflicts and take all feasible measures to ensure protection and care of children affected by armed conflicts. Such rules also apply to children in situations of internal armed conflicts, tensions and strife^{vii}.

Prohibition at the National Level (Cameroon)

Cameroon has prohibited the use of children soldiers under its penal and criminal procedure codes. Over the years, the Government of Cameroon has equally ratified a number of International instruments prohibiting use of children as soldiers. In 2013, the Government ratified the *Optional Protocol on the Involvement of Children in Armed Conflicts*; however, it has not ratified the *Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography*^{viii}. Children are also easier to recruit, indoctrinate, and coerce into participating in dangerous situations, ensuring ideological continuation of the organisation. There is also a perceived tactical advantage in using children in combat and terrorist attacks.^{ix} The use of child soldiers is still ongoing in a good number of countries despite the legal instruments prohibiting its use during armed conflicts.^x This study is premised on a series of theories including the *moral theory*, everyone has human rights, which come with responsibilities and/or obligations to respect others, *natural rights* are linked to moral theory

because everyone is born free and has equal rights toward one another. *Social Justice Theory* is based on people's ability to realise their potential in society in which they live.

CASE STUDY: THE PROSECUTOR V DOMINIC ONGWEN (A JUDGEMENT OF MANY FIRSTS)

The case of Dominic Ongwen is one of many firsts for the International Criminal Court (ICC). It was the first state self-referral and the first investigation of atrocities by the Office of the Prosecutor (OTP) after the establishment of the Court. In addition, the case was the first on the situation in Uganda to be tried, involving the largest number of charges and modes of liability against a single perpetrator, as well as the widest range of sexual crimes ever brought to trial before the ICC. Lastly, Ongwen was the first person to be charged with, and declared guilty of the crime of forced marriage as a distinct crime under article 7(1)(k) of the Rome Statute and, most importantly, the first abducted child soldier found guilty for the commission of the same crimes that he had earlier suffered. Several aspects of the judgment deserve further analysis as they illustrate the prospects and limitations of international criminal law.

Background

Soon after President Yoweri Museveni seized power in 1986, the conflict in northern Uganda began. The *Holy Spirit Movement*, established under the leadership of Alice Lakwena, was one of the most prominent rebel groups and came close to attacking Uganda's capital. In 1987, after the *Spirit* leader of the group fled to neighboring Kenya, Joseph Kony formed the *Lord's Resistance Army* (LRA) from the remnants of the *Holy Spirit Movement*. Under Kony's leadership, who was an alleged *Spirit* medium like Lakwena, the LRA eclipsed other rebel groups operating in northern Uganda and became one of Africa's most brutal militia forces. The LRA used children as a vital resource, continuously abducting children to join their ranks. The boys were usually forced to fight while the girls were turned into sex slaves or forced to marry men in the LRA (bush wives). It was estimated that the LRA abducted approximately 25,000 children and youths into its ranks.^{xi} Following the self-referral by Uganda in December 2003, the OTP began investigations into the situation in July 2004, issuing a sealed warrant of arrest a year later for five leaders of the LRA including Ongwen.

Ten years after the issuance of the unsealed warrant of arrest, in January 2015, Ongwen was surrendered to ICC custody by the Central African Republic and made his first appearance before the Court. After the announcement and confirmation of charges against Ongwen, the trial began in December 2016^{xii}.

Facts of the Case

Dominic Ongwen was born in 1975 in Coorom, a small town located about 40 kilometers (km) southwest of Gulu, the biggest city in Uganda's northern region and the regional center. His early years were quite peaceful. Like any other child within his age group (9-14 years old), he loved the good things of life and participated in fun activities such as dancing and singing. However, his life took a different turn one morning in 1987 when he and a number of his friends were kidnapped *while en route* to school by the Lord's Resistance Army (LRA). At the time, Dominic Ongwen was said to be between the ages of 9-14. Dominic Ongwen endured excruciating suffering in the LRA during his early days. The LRA fighters chained his hands, had him carry heavy weights, and threatened him all the time, just like they did to other abductees.

He attempted to flee with three others shortly after his kidnapping in 1987, but when they failed, he was forced to skin alive one of the other abductees as a warning- a common strategy to discourage people from leaving the ranks. Ongwen went through thorough indoctrination and training, much like every other LRA *recruit*. The renowned LRA leader Joseph Kony, a skilled tactician and psychic, took note of him because of his skills and will to fight. With Joseph Kony's trust, Dominic Ongwen, also known as the *white ant*, quickly rose through the ranks of the rebels and was promoted from battalion commander to commander of the *Sinia Brigade* to the rank of brigadier by the time he was in his late 20s^{xiii}.

However, Dominic Ongwen's relationship with Joseph Kony was described as fractious, as Joseph Kony ordered a brutal beating of Dominic Ongwen towards the end of 2014 on the claims of insubordination. In poor health, Dominic Ongwen managed to flee from Kony's camp in Southern Darfur, Sudan, with the aid of another combatant, and eventually made it to the neighbouring Central African Republic (CAR). As part of a campaign by the African Union (AU) to combat the LRA, he was captured by CAR rebels and given to American Special Forces in CAR^{xiv}.

In 2005, the Office of the Prosecutor (OTP) at the International Criminal Court (ICC) issued arrest warrants against five prominent leaders of the LRA, 3 of which only Dominic Ongwen was apprehended by the Court. The United States even offered the sum of 5million US dollars as reward for information leading to his arrest in 2013. He was later transferred to the International Criminal Court (ICC) in 2015 after his surrender. Dominic Ongwen was the first member of Uganda's brutal Lord's Resistance Army (LRA) to go on trial in a landmark case before the International Criminal Court keenly watched by thousands of victims.^{xv} He was issued a warrant of arrest on the basis of 70 counts of war crimes and crimes against humanity committed between July 2002 and December 2005, considered a fully responsible adult and as a commander of the LRA in his mid to late twenties.

Case Proceedings

The trial in this case opened on 6 December 2016. The Prosecution and Defense completed presentation of their evidence. The Legal Representatives of Victims also called witnesses to appear before the Chamber. On 12 December 2019, the Presiding Judge declared the closure of the submission of evidence in the case. The closing briefs were filed on 24 February 2020. The closing statements took place from 10 to 12 March 2020. Over the course of 234 hearings, the Office of the ICC Prosecutor, Fatou Bensouda, presented a total of 109 witnesses and experts. The Defense team led by Krispus Ayena Odongo presented a total of 63 witnesses and experts and 7 witnesses and experts were called by the Legal Representatives of the Victims participating in the proceedings. The judges ensured the respect of the rights guaranteed by the Rome Statute to each of the parties, including the right to question the witnesses.^{xvi}

A total of 4095 victims, represented by their legal counsels Joseph Akwenyu Manoba, and Francisco Cox, as well as Paolina Massidda, respectively, had been granted the right to participate in the proceedings. They expressed their position on matters heard before the Chamber and were authorised to examine witnesses on specific issues.

The Trial Chamber issued 70 oral decisions, and 506 written decisions during the trial phase of the proceedings. The total case record, consisting of the filings of the parties and participants. On 4 February 2021, the Trial Chamber of the International Criminal Court ("ICC" or "Court") found Dominic Ongwen guilty of a total of 61 crimes against humanity and

war crimes, committed in Northern Uganda between 1 July 2002 and 31 December 2005. They related to attacks on four camps, guarded by the security forces, set up for those forced to flee their homes because of rebel raids. He was also convicted of charges relating to sexual slavery and conscripting and using children under the age of 15 in hostilities.

The ICC Trial Chamber composed of Judge Bertram Schmitt, Presiding Judge, Judge Péter Kovács and Judge Raul Cano Pangalangan, analysed the evidence submitted and discussed before it at trial and found, beyond any reasonable doubt, that Mr. Ongwen was guilty of the following crimes: Attacks against civilian population such as murder, attempted murder, torture, enslavement, outrages upon personal dignity, pillaging, destruction of property and persecution; committed in the context of four specified attacks on the Internally Displaced Persons' camps which included the *Pajule IDP Camp*, situated at Aruu County, Pader District which faced attacks committed by several hundred LRA fighters, including Dominic Ongwen in the early mornings of October 10 2003, the *Odek IDP Camp*, situated in Odek Sub-County, Omoro County, Guly District on April 29 2004. Although Dominic Ongwen did not join the attack himself, it was however carried out by the LRA soldiers who simply acted on the orders of Dominic Ongwen. The *Lukodi IDP camp*, situated in Bungatira Sub-County, Aswa County, Guru District on May 19 2004, facing an attack staged by Dominic Ongwen and the *Abok IDP Camp* situated in Ngai Sub-County, Apac district on June 8 2004.

A number of gender based crimes he committed against seven women (*whose names and individual stories were specified in the judgment*) who were abducted and placed into his household – forced marriages, torture, rape, sexual slavery, enslavement, forced pregnancies and outrages upon personal dignity^{xvii}. A number of further sexual crimes he committed against girls and women within the Sinia brigade including the crime of conscripting children under the age of 15 into the Sinia brigade and using them to actively participate in hostilities.

Dominic Ongwen abducted children himself, saw them as his soldiers “*You call those kids children, but I call them my soldiers. So we are talking about my soldiers*”.

Debate on the Case

Two versions of Ongwen emerged during his trial: one of a brutal killer, the other of a traumatised child soldier who grew up to be a conflicted man. The case of Ongwen illustrated the complexity of the balance between culpability and victimisation. This complexity could

be identified in the opposite case narratives presented by the prosecution and the defense. Ongwen was presented as a cruel mass murderer and fearless commander of the LRA by the prosecution while the defense depicted him as a young boy abducted, victimised, and indoctrinated into the LRA^{xviii}. Throughout its course, the case sparked diverse reactions regarding whether or not Ongwen's abduction and former victimisation by the LRA should play a role in the decision of the Court. The argument supported that Ongwen's victimisation should have legal relevance to the judgment of the Court as a failure to incorporate his past brutal experiences would be unjust. Conversely, it could also be argued that, whilst recognising former child soldier experiences, the crimes committed during their adulthood should permit accountability to ensure, among others, justice for the victims. A middle ground could be that the recruitment as a child soldier and the resulting experiences served as a mitigating factor in the sentencing proceedings of a convicted perpetrator, as required under rule 145 of the Rules of Procedure and Evidence.

Verdict of the Case and its Significance

Ongwen was charged with 70 counts of war crimes and crimes against humanity. These were alleged to have been committed between July 2002 and December 2005 in northern Uganda while he was the commander of the LRA. Ongwen's charges encompassed a total of 49 counts of war crimes and crimes against humanity related to attacks on four camps for internally displaced persons (IDPs), namely Pajule, Odek, Lukodi, and Abok as have been mentioned above. Furthermore, the charges included 19 counts of sexual and gender-based crimes, as well as two counts of war crimes for the conscription and use of child soldiers^{xix}.

Dominic Ongwen was charged under four modes of criminal liability. More precisely, the defendant was charged with direct individual criminal responsibility under article 25(3)(a) of the Rome Statute; the ordering, solicitation, or induction of crimes under article 25(3)(b); making of other contributions to the commission or attempted commission of crimes by group of persons acting with a common purpose under article 25(3)(d); and, lastly, with command responsibility as a leader of the LRA under article 28(a)^{xx}.

In its judgment, the ICC found the defendant guilty on 61 counts. More specifically, ICC Trial Chamber IX found Ongwen guilty beyond reasonable doubt for the attacks against the civilian population and destruction of property committed in the context of the attacks to the

IDP camps of Pajule, Odek, Lukodi, and Abok. Ongwen was found guilty of sexual and gender-based crimes against women and girls within the Sinia Brigade. Lastly, he was found guilty of the war crime of conscripting children under the age of 15 into an armed group and using them to actively participate in hostilities^{xxi}.

The Chamber also found that the defendant was fully responsible for all the crimes of which he had been convicted and did not find evidence that supported the claims of mental disorder during the relevant period for the charges. Moreover, the Trial Chamber did not find that Ongwen committed these crimes under duress or under any threats as he willingly stayed in the LRA and rose in ranks, becoming one of its top commanders, with witness testimony revealing that he was acting independently of Kony^{xxii}.

The decision of the Trial Chamber offered several significant legal insights that deserve further analysis. Forced pregnancies and marriages were litigated for the first time as distinct punishable crimes before the ICC, with forced pregnancies being tried for the first time in international criminal law in general. In addition to being stipulated as distinct crimes, the defendant was found guilty of those crimes. This development signified a more victim-centered approach by the Court, aiming to capture the totality of crimes suffered by the victims of the LRA. Furthermore, victims of forced marriages were usually discriminated against and stigmatised by their communities, after returning with children born out of such marriages, which did not conform to their cultural standards. The conviction of Ongwen for those crimes may be the first step in the recognition of victims' experiences and their reintegration in their communities.

Moreover, the ICC faced the affirmative defenses of mental disease and duress for the first time. The ICC's judgment regarding mental disease showcased existing difficulties. So far, there were no provisions or guidelines in international criminal law regarding the assessment of reliability and thus, admissibility of psychiatric examinations as evidence, which was especially challenging in cases such as Ongwen's where conflicting evidence was presented. Another problem was the lack of guidelines with regards to the content and methods used in clinical assessment of the defendant. Even though methodological considerations played a significant role in the decision of the Trial Chamber, the prosecution and the defense were not in agreement regarding the methodology employed. Overall, the case of Ongwen

demonstrated the need for guidelines that would ensure reliability and admissibility of expert reports in cases of psychiatric assessment to safeguard protection of fair trial rights of the defendants.^{xxiii}

Dominic Ongwen, pleaded not guilty, and further said he should have been regarded as a victim also, telling the Court: *It's none of the people against whom the LRA committed atrocities*” however, on the same 4 February 2021, the Trial Chamber of the International Criminal Court (ICC) issued its verdict in the case; Ongwen was found guilty of 61 out of 70 counts of war crimes and crimes against humanity, which he committed between July 2002 and December 2005 and was later sentenced to 25 years imprisonment by the Court^{xxiv}.

Limitations of International Criminal Law in the Dominic Ongwen Case

After more than four years of trial proceedings, Dominic Ongwen was found guilty. The Trial Chamber's judgment in Ongwen's case illustrated both prospects and limitations of international criminal law. On the one hand, the judgment signposts a new era in which the ICC can follow a more victim-centered approach in its proceedings. On the other hand, it illustrates the limitations of international criminal law in cases of complex social and political realities, such as those faced in cases of child soldiers.^{xxv}

THE RIGHTS OF CHILDREN VIOLATED AS A RESULT OF THEIR INVOLVEMENT AS CHILD SOLDIERS

International human rights norms are vastly debated in the contemporary world for the protection and realisation of basic human rights. For the purpose of clarity focus here will be on norms related to the child protection, of child soldiers. The Convention on the Rights of the Child, (CRC) spells out the norms of child protection. Optional Protocol to the Convention on the Rights of Child (CRC) was adopted in May 2000 and entered into force in February 2002, specifically deals with protection of children during armed conflicts, emphasised on non-recruitment of children under the age of eighteen in the armed forces. The Optional Protocol includes the conduct of non-state armed actors, recognising that in many contemporary armed conflicts the majority of child soldiers are recruited by non-state armed groups. In the traditional view of international human rights law only States have obligations

and can become parties to treaties. The conduct of non-state armed actors is supposed to be regulated by domestic law. The language used in the Optional Protocol reflects the strong views of the international community to limit the behaviour of such informal armed groups. The procedure for dealing with non-state actors by the international community is however missing. Articles six (6) and seven (7) deal with rehabilitation and social reintegration of child soldiers into the society^{xxvi}.

Initially the rules against recruitment of child soldiers were embodied in the Geneva Convention of 1949 and its additional protocol of 1977, article 77, '*Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces*'. Article 4(3)(c) of the Additional Protocol II, applicable to non-international armed conflicts, states that '*Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities*'.

The International Labour Organisation's Worst form of Child Labour Convention 182 was adopted on 16th June 1999 and came into force on 19 November 2000. It commits each State which ratifies it to "*take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency*". The term "child" applies to all persons under the age of 18 years and the worst forms of child labour include all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (Article 3a)^{xxvii}.

The rights of children internally displaced are guaranteed similarly as other children.

States are under a duty to respect, protect and fulfil these rights as a duty under International law. Guiding principles on internal displacement in 1998 were adopted by the General Assembly although they are not binding but they spell out the rights of the internally displaced people and the State responsibility towards them. All the principles laid down are mentioned as rights in the International Human Rights treaties and International Humanitarian Law treaties. The principles were adopted to reassure the importance of HR and IHL norms during armed conflicts.

Various rights of children embodied in international legal instruments

There are various rights and freedoms of the child embodied in international legal instruments to wit: right to privacy, education, health and health services, participation, children's rights, freedom of thought, conscience and religion. Also these instruments protect children from child labour and child trafficking. This work lays emphasis on the CRC and the African Children's Charter because they are the basic instruments that contain provisions relating to children's rights.

1. Right to Privacy

Children have a right to privacy, a right enshrined in the African Charter on Human and Peoples Rights in its Article 10, *No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to attacks upon his honour, or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks*^{xxviii}. This provision properly guarantees children's rights even though the child's right to privacy is subject to the right of parents or legal guardians to exercise reasonable supervision over the conduct of the child. The CRC also guarantees the child's right to privacy as per its article 16 but unlike the African Children's Charter that recognises the role of parental supervision, the CRC does not take into account such a role^{xxix}. This is evident in article 16. It states that "*Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes*".

2. Right to Education

This right of a child to education is geared towards preparing the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect, and friendship among all people's ethnic, tribal, and religious groups. The right to education is a universal entitlement to education recognised in the international Covenant on Economic, Social and Cultural Rights as a human right that includes the right to free, compulsory primary education for all; an obligation to develop secondary education accessible to all, in particular by progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education; ideally by the progressive introduction of free higher education. An important aspect of the right to education accorded to children is the nature of

primary education which should be free. This aspect is reiterated in the CRC which provides that all Children have the right to a free primary education in the promotion of educational development in Africa^{xxx}.

3. Right to Health and Health Services

Generally, the right to health is stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, Civil and Political Rights. Article 14 (1) and (2) of the African Children's Charter ensures that every child has the right to enjoy the best attainable State of physical, mental and spiritual health and has access to health facilities. Article 24 of the CRC also plays the same role in protecting the child's right to health. Both international instruments have an admirable concern and effort in protecting children's rights. The CRC even goes further in its provision, by urging rich countries to help poor countries in the provision of health services, protecting children's health.

4. Right to Participation

Children have the right to participate in various activities of their choice, as long as it does not hurt their wellbeing. These activities may be social, economic or cultural in nature. Article 12 of the African Children's Charter, State parties recognise the right of a child to rest, leisure and engage in play or recreational activities. Article 31 of the CRC grants same right to a child. Such activities help a child to be learned, educated and have knowledge about certain aspects of life, thus fostering child development. However, in the African society, some of the cultural activities are harmful to children.^{xxxi} The African traditional ethnics may view it to be normal but it violates children's rights example is the killing of twin babies, killing of albino children, Female Genital Mutilation and breast ironing of girl children. That is why Articles 1 (3) and 21 of the African Children's Charter aims at protecting children from such cultural activities which violate their human rights. Article 36 of the CRC also ensures protection of children from activities which result in ill treatment of children. Therefore, children are free to participate solely in activities that make them happy and healthy.

5. Freedom of Thought, Conscience and Religion

The international legal instruments protect a child's freedom of thought, conscience and religion. A child is free to think and feel in whatever way he or she prefers.

As per article 9 of the African Children's Charter and article 14 of the CRC children are free to choose any religion of their choice. Recognition of parental guardians notwithstanding; owing to the fact that children are vulnerable and can easily go the wrong way Therefore, the role of parents is essential in guiding their children in the knowledge and practice of their rights and freedoms^{xxxii}.

6. Right to Life, Survival and Development

The right to life means that children should be able to live normal lives, to survive and grow up in proper conditions.^{xxxiii} Article 6(1) and (2) of the Convention on the Rights of the Child provides that States parties recognise that every child has the inherent right to life, and should ensure to the maximum extent possible the survival and development of the child.

7. The Right to Freedom from Violence, Torture and Harm

Every child deserves freedom from abuse, they should be free from harmful work, drugs, sexual abuse, human trafficking, corporal punishment, emotional and psychological abuse, harmful detention, war, and any other form of exploitation. Children have the right to seek legal and medical help if they get hurt or abused They should be free to make complaints about abuse to third parties, and abusers of children should receive prosecution to the fullest extent of the law.

8. Right to Reparation

If a child is victimised, traumatised, displaced, separated from their parents, or otherwise subject to harm, they should receive reparation and rehabilitation. Children have the right to receive help after enduring any type of pain, trauma or neglect, so they can regain their health, dignity and identity. Every child has the right to receive legal help and fair treatment Governments should provide resources to assist children from poor and disenfranchised communities.

Protection of children's rights during armed conflicts

Another area where children's rights are protected in situations of armed conflicts involves recruitment of children by rebel groups such as the Boko Haram Islamic jihadist terrorist group network which has spread to Chad and Northern Cameroon. They forced many children out of formal education and made them child soldiers The protection of children from recruitment

into the armed forces is enshrined in article 22(2) of the African Children's Charter. It enjoins States to ensure that no child takes direct part in hostilities. The CRC also protects children in armed conflicts as per article 3. This right has been further developed to establish a ban on compulsory recruitment for children under 18.^{xxxiv} The African Children's Charter departs slightly from the guarantee under the CRC because it prohibits recruitment of persons below 18 years while the CRC only prohibits recruitment of youths below 15 years. However, an attempt to partially redress this situation is found in the Optional Protocol to the CRC.^{xxxv} The protection of children in armed conflicts is also guaranteed in the Geneva Convention of 1949. This Convention recognises children as the subjects of special respect and protects them against any form of indecent assault. Parties to conflicts are therefore obliged to provide them with the care and aid they require. As a result of their vulnerability, children benefit from the general protection of international humanitarian law. The 1977 Additional Protocols to the Geneva Conventions prohibit recruitment and participation in hostilities by children. Recognition of a universal age limit of 18 by the international community has still not been achieved. The ICRC and its partners in the Red Cross and Red Crescent Movement are pressing for such a limit through further development of both international and national law. In the field, the ICRC assists the demobilisation of child soldiers and provides psychological and other support to enable their reintroduction to a normal life.^{xxxvi} Children detained as the result of an armed conflict must be treated humanely, kept with their family group or separated from adult prisoners or detainees.

IHL aims to limit the impact of war on children. Regrettably, the very nature of today's conflicts generates greater need to be made on the ground. The recruitment and use of children by armed forces or armed groups is a grave violation of child rights and international humanitarian law. A good example is the case of Dominic Ongwen, who was kidnapped on his way to school and forced to take to arms. He was denied his right to freedom, education and many more. All he knew from childhood was how to handle a gun.

CONCLUSION

There are numerous institutional legal frameworks for the promotion and protection of children's rights during armed conflicts. These institutions have and are still playing

indispensable roles in promoting and protecting these rights; every government should take the responsibility to provide protection for children's safety during conflicts within its jurisdiction. Weaknesses become visible when States are unable or unwilling to prevent their recruitment into armed forces or groups. There is a need therefore for a more consenting political will among States toward protection of children from recruitment in armed groups. Well established international humanitarian conventions and protocols set up to protect children from being recruited during armed conflicts, yet while this protection is not absolute, children continue to be victims of child soldiers during armed conflicts all over the world. Preventive actions should be initiated at the earliest possible stage of a conflict for example, addressing the deep rooted causes.

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ENDNOTES

ⁱ <https://childrenandarmedconflict.un.org/six-grave-violations/child-soldiers/>

ⁱⁱ A set of recommendations for governments and communities adopted at an international symposium in 1997.

ⁱⁱⁱ https://en.wikipedia.org/wiki/History_of_children_in_the_military

^{iv} https://en.wikipedia.org/wiki/History_of_children_in_the_military.

^v (P I, Art. 77 (2); P II, Art. 4(3) (c)).’

^{vi} (ICC Statute, Article 8(2)(b)(xxvi) and (e) (vii)).

^{vii} https://www.achpr.org/public/Document/file/English/achpr_instr_charterchild_eng.pdf

^{viii} <https://www.theadvocatesforhumanrights.org/res/byid/8619>

^{ix} article: Roos Haer (2019) Children and armed conflict: looking at the future and learning from the past, *Third World Quarterly*, 40:1, 74-91, DOI: 10.1080/01436597.2018.1552131

^x their Nina H.B Jorgenson’s *Role and Circumstances of Children in Terrorist Groups*

^{xi} <https://www.icc-cpi.int/news/dominic-ongwen-declared-guilty-war-crimes-and-crimes-against-humanity-committed-uganda>

^{xii} <https://www.icc-cpi.int/news/dominic-ongwen-declared-guilty-war-crimes-and-crimes-against-humanity-committed-uganda>

^{xiii} <https://www.icc-cpi.int/news/dominic-ongwen-declared-guilty-war-crimes-and-crimes-against-humanity-committed-uganda>

^{xiv} <https://www.icc-cpi.int/news/dominic-ongwen-declared-guilty-war-crimes-and-crimes-against-humanity-committed-uganda>

^{xv} <https://www.icc-cpi.int/sites/default/files/itemsDocuments/ongwen-verdict/2021.02.03-Ongwen-judgment-Summary.pdf>

^{xvi} <https://www.icc-cpi.int/sites/default/files/itemsDocuments/ongwen-verdict/2021.02.03-Ongwen-judgment-Summary.pdf>

^{xvii} <https://www.icc-cpi.int/sites/default/files/itemsDocuments/ongwen-verdict/2021.02.03-Ongwen-judgment-Summary.pdf>

^{xviii} <https://www.humanrightspulse.com/mastercontentblog/the-prosecutor-v-dominic-ongwen-a-judgment-of-many-firsts>

^{xix} <https://www.humanrightspulse.com/mastercontentblog/the-prosecutor-v-dominic-ongwen-a-judgment-of-many-firsts>

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^{xxxiii} <https://deliverypdf.ssrn.com/delivery.php?ID17&EXT=pdf&INDEX=TRUE>

^{xxxiv} <https://www.icrc.org/en/doc/war-and-law/protected-persons/children/overview-protected-children.htm>

^{xxxv} <https://www.icrc.org/en/doc/war-and-law/protected-persons/children/overview-protected-children.htm>

^{xxxvi} <https://www.grin.com/document/349811>