

THE PHENOMENON OF CHILD SOLDIERING: EXAMINING THE LEGAL FRAMEWORK FOR ITS REGULATION*

Abstract

This paper focuses on the phenomenon of child soldiering by examining the legal framework for its regulation. It discusses briefly the origin, causes and effect of child soldiering and evaluates several measures identified which can minimize the use of children as soldiers. The paper concludes with the hope that the intensification of efforts by international organizations and cooperation of all concerned, the problem will be minimized.

Introduction

The problem of child soldiering is not common to Africa. It is a global problem, prevalent in Africa due to quest for power, religious fondness and or regional emancipation. According to a UN report, “up to half of the world child soldiers are in Africa”¹. The major reasons for this large participation is due to poverty, broken homes, lack of formal education and religious fanaticism. The United Nations (UN) estimate² puts the number of child soldier to about 100,000 child soldiers in Uganda, Liberia, Democratic Republic of the Congo and Sudan. This raises a number of human rights issues, especially in Africa where this increase has been more visible than any other continent.

Who is a Child Soldier

A child soldier is defined as any person less than eighteen years of age, who is coarsed into any regular or irregular armed force or group³. It includes all children become member of an armed group, either by abduction from their homes, conscription, compulsory/obligatory service, voluntary enlistment, recruited for the purpose of taking up arms.

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¹ UN Office for the Coordination of Humanitarian Affairs, News and Analysis, December 2003

² United Nations for the coordination of Humanitarian Affairs, News and Analysis, December 2003

³ See the Cape Town Principles and Best Practices adopted by the NGO Working Group on the Convention on The Right of The Child and UNICEF at a symposium on the Prevention of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldier in Africa in April 1997.

Article 1 of the United Nation Convention on the Right of the Child (UNCRC) 1989, defines “a child as every human being below the age of 18 years”⁴ This is in line with the Optional Protocol to the Convention on the Rights of the Children in Armed Conflicts, which came into force in February 2002. Going by this definition, the Convention⁵ sets a lower age of fifteen as the minimum age for recruitment and participation in armed conflict. It is imperative to point out here that perhaps, the essence of the lower limit of the age fifteen may have been due to the fact that some gifted or over grown children below eighteen are sufficiently developed both physically and mentally to cope with war situations.

According to UNICEF when children are under the age of eighteen and become part of a regular or irregular armed force and or a group in any capacity, either as spectators, cooks, porters or messengers, or accompany such groups, other than family members, they are child soldiers.⁶

The Origin of Child Soldiering

According to Mobley,⁷ the word child soldier was coined from a set of “angry African youth” in possession of a machine gun.

That was not always the case in the past.

The use of child soldier has been the norm for thousands of years in many societies, all over the world. It existed in various forms. Its history can be traced back to the Spartans of Ancient Greece, who built an extreme militaristic society, where boys or children who were less than seven years, were taken from their homes and brought up in military training camps. The Ottoman Turks were known to kidnapped young Christian boys and brainwashed and converted them into loyal and faithful war machines for the Sultan or the ruler of the Ottoman Empire service. It was also a practice in countries like the United States and the United Kingdom where children were mainly used for support roles in armed conflicts between the middle age and the 18th century. At that time the drummer boy was the iconic figure in American military history, and the British Navy frequently used small boys as aides in their fleet.⁸

Spartan child soldiers were used as warriors in the middle belt and Europe at that time and were called Janissaries. Islam however prohibited the use of children under fifteen for war, a practice not explicitly prohibited by Christianity and Judahism.

In Africa however, before the 19th century, the practice of child soldiering was alien as children were treasured as figures of the future of the community. However, it is sad to note that there is a common belief in modern time that when people think about the concept of child soldier today, it is with reference to the practice in Africa.

⁴ Under the Nigerian Criminal Code, a child is an offender under 14 years.

⁵ Art 38 of 1989 United Nation Convention on the Right of the Child

⁶ UNICEF (2001)

⁷ Victor Mobley, ‘The History of Child Soldier’ [Suit 101.com/articles/the history of child soldier](http://Suit101.com/articles/the%20history%20of%20child%20soldier).

It is the general belief that this problem emerged as a result of the fact that able bodied adults/males fled their homes, towns and cities for their lives in the times of war thereby making vulnerable their homes, towns, cities. The situation left children as the group to defend their communities.

In America it is on record that a war medal was awarded by the Secretary of War, William Stanton on September 16, 1863 to Willie Johnson, who was 13 years old and only 5 feet tall as a result over growth. Willie Johnson had enlisted in the army at the age of 11 and was awarded the highest medal for his bravery during the Peninsula Campaign when he was 12.

Commenting on the phenomenon of child soldier, Jezequel states that;¹⁰

The much publicised figure of the child soldier in Africa is placed in context in this historiographical survey: the author ties it to the general subject of children in war which has affected America and Europe at different times- and reveals the necessity of developing a history of child status in Africa. In the case of African conflicts, the issue of children at war was initially the prerogative of humanitarian organizations. In the 1990s, sub-Sahara Africa was marked by a long series of civil conflicts (in Liberia, Sierra Leone, Somalia, Burundi, Rwanda, the Democratic Republic of Congo, Sudan, Ivory Coast, etc). In international opinions the heavy use of child soldier constitutes one of the principal characteristics of these post-cold war of African crises. Indeed the image of the African child bearing a Kalashnikov bigger than himself has come to symbolize a typical Africa brand of violence, to the eyes western countries and a barbaric sense violence and callousness beyond the bounds of acceptable and rational standard.

In examining the above statement in relation to Nigeria, child soldier has often surfaced in several forms, between 1966 and 1991 during the regional Nigerian-Bafria war, children were recruited for various uses ranging from soldiering, support services. In recent time, the Boko haram¹¹ insurgency in Northern Nigeria, has triggered another case of child soldiering in the region. This group has brainwashed children in the Northern Nigeria to pick arms and fight with the understanding that they would be bewitched to a virgin girl in Heaven if killed in the process.

⁸ Lewis D Eigen, "Child Soldiers Are Unfortunately Nothing New << Scriptamus" (Scriptamus, word press, com/2009/11/02/child_soldier_are_unfor, 30k) Retrieved February 2013.

¹⁰ Jezequel, "Child Soldiers in Africa, "A Singular Phenomenon" (www.diplomatic.grouv,fr/IMG/pdf/0605) JEZEQUEL UK, pdf. Retrieved February 2013.

¹¹ An Islamic fundamentalist group which holds the view that western education is evil.

All these goes back to either personal interest or group of interest for succession of power.

It is noteworthy to state, that most of the children not only fight for armed groups , but are sponsored by some governments.¹² Children are usually abused by the armed forces recruiting them and in extreme cases, they have been forced to take part in the torture and execution of their own relatives¹³. History has it that, Resistencia Nacional de Mozambique (RENAMCO)¹⁴ was known for kidnapping/abduction of children. When these children are abducted, they are given ad-hoc training as soldiers and forced to kill relatives and other members of their community. General opinion has it that voluntary participation exceeds cases of forced recruitment.¹⁵

Their reasons for volunteering is due to shortage of employable jobs or education opportunities or to escape from domestic violence and that reprisal plays an important role when a family member loses his/her life in an armed conflicts. Other incentives are the need for foods and other essentials which play a role in voluntary enlistment in war. Children accompany the armed forces in search of food and security, eventually join their ranks. In reality joining the armed forces may be perceived as the only survival strategy during any civil war. There are no reliable estimates of the number of children within government or opposition forces, or paramilitary or even self-defense units. Most often the existence of child soldier is denied.

The harmful effects of child soldiering are many, it results in the early death of children, and the reduction of youths and teenagers in some communities. It is also worthy to note that in recent times clash between communities in Nigeria have witnessed the use of child soliders. They have in many cases been abused by adults and the rich in the society seeking brute power.

¹² “Deusche Koordiation Kinderssoldaten”, The German branch of the International Coalition to stop the Use of Child Soldier.

¹³ <http://www.unicef.org/sowc96pk/presum1.htm>. The Press Summary referred to Sierra Leone.

¹⁴ The Mozambican National Resistance(RENAMCO:Portuguese:Resistencia Nacional Mocambicana) is a conservative political party in Mozambique led by Afonso Dhlakama. It fought against the FRELIMO in the Mozambican civil war and in the ZANU movement led by Robert Mugabe from 1975-1992. RENAMCO was founded in 1975 following mozambique’s independence as an anti-communist political organization.

¹⁵ Human Right Watch 2 April 2004.

When used as soldiers, it sometimes become difficult for the children to return to the community¹⁶. These children later become orphans and dependent on the armed forces which kidnapped him. In other instances, they are regularly drugged by their commanders to increase their aggressiveness, thereby making them lethal warriors.¹⁷ For example, it is reported that the average age of RENAMO combat unit was 16 years of age. The Lord's Resistance Army led by Joseph Kony in Uganda has similar recruitment methods. Forced recruitment and incidence of child recruits seem to be high when there is manpower shortage. In Liberia new recruits were mostly composed of street and other disadvantaged children.

In post-conflict situations, children who have fought wars, are extremely exposed to violent behaviors, drug and alcohol addiction, forceful demand, stress and other psychological problems and are usually enlisted under regular army as a way-forward. One challenge resultant from it is that the children used as soldiers may never receive formal education in their life time and so are likely to be denied the opportunity to read or write. This can constitute hinderance to their reintegrations into the society upon disengagement.

Barbaric cases have been mentioned of even recruiting girls within the age of eight as paramilitary, subjects of comfort and sexual abuse in addition to combat duties. Sometimes their captures dare them to be hardened. To demonstrate it, during their training, children are meant to kill friends or members of their own families to remove in them guilt feelings. But whatever position one takes, it is accepted that they should be treated as criminals. they are merely victims of armed conflicts.

The Effects of Child Soldiering

The use of child soldiers in armed conflicts constitutes one of the most terrible breach of human rights and even worse is the social, physical, mental and economic effect. War has serious effects on children. The sense of security, essential of childhood is compromised.

Also common amongst the hazard of war on child soldiers is the force or voluntary abuse of drugs and alcohol and other controlled substance. Another form of hazard is the scorn, stigma or humiliation faced by these children during and after the war by their fellow combatant (in the time of war for their lack of expertise or maturity) and the community for their activities in the time of war. They are often isolated or shut out by members of their communities because they are seen as a menace to the society.

¹⁶ Child soldier Global Report 2004. Retrieved <http://www.child soldier.org>

¹⁷ Custer, M. "Punishing Child Soldier: The Special Court for Sierra Leone and the Lessons to be learnt from the United States Juvenile Justice System" 19 Temp Int'l & Comp. L.J 449, 2006

It is worthy to note that some of the the boys become dangerous, violent and take to robbery on disengagement. The girls return as “injured goods ”to their communities and family. This is especially so where they have suffered from sexual assault or have given birth to a baby with an unknown father. The experience of a young girl (from a case study in Honduras¹⁸) says it all;

At the age of 13, I joined the student movement. I had a dream to contribute to make things change, so that the children would not be hungry. ... Later I joined the army struggle. I had all the inexperience and the fears of a little girl. I found out that girls were obliged to have sexual relations to alleviate the sadness of the combatants. And who alleviated our sadness after going with someone we hardly knew? There is great pain in my being when I recall all these things ...in spite of my commitment, they abused me, and they trampled my human dignity. And above all, they did not understand that I was a child and that I had rights.

Conflicts have a disorderly effect on the family structure which is essential in the integration of child soldiers. In Liberia, experience has shown how a community is unwilling to have anything to do with these diminutive killers¹⁹. For girls that have been sexually abused, their reintegration within the community may be unworkable and the chances that they may join prostitution circles are high due to societal frustration. It is just as Brett and McCallin said;

In fact the individual child soldier is essentially transitory. Within a few years he or she will be an adult soldier, a former soldier, or dead. At times, this may seem irrelevant: although the individual change, the process continues. However as the recruitment of child soldier progresses, so its effect on the societies concerned becomes cumulative²⁰

Whether this concept is accepted or not, it is a common believe that the involvement of children in armed conflict has a momentous effect on their development, with particular emphasis on identity structure, social isolation, violence, education and economic potential. In all respect, why a child should be made to suffer the evil of adult greed.

Causes of Child Soldiering

A lot of factors have been commented on as the possible cause of child soldiering. A few examples include poverty, vulnerability of children, low income, high rate of unemployment, broken homes and single parenting, religious and political gains, etc.

¹⁸ United Nations, Impact of Armed Conflict on Children, Report of the expert of the Secretary General, Graca Machel, UN Document A/51/306 and Add. 1, New York, 1996.

¹⁹ P.W.Singer(Winter 2005/2006) “Child Soldier” Retrieved August 4, 2009

²⁰ Brett & McCallin Op.Cit., p 191

Franklyn Bai Kargbo summarized these reasons thus;

“There are several characteristics with areas around the world which use child soldiers in conflict have in common. They are most likely than not to be low income developing countries with collapsed infrastructure, high unemployment, moribund economic and educational system, and non functioning government. Bad governance, ethnic rivalry, or high illiteracy rate may be the cause for this. These conditions had to entrench disparities in economics or social circumstances, causing affected youths to feel particularly marginalized. Consequently, these children become alienated, distrust the system and are available as cheap manpower to form factions in armed conflicts.”²¹

The primary source²² of child soldiering is summarised in a report published by SIPRI²³ stating that the major participants in armed conflicts “are aggravated by personal gain”. It added that “greed is manifested in many forms, from large scale diamond trading by military and political leaders to village pillars by youths with guns”. In light of the above, it can be said that groups or individuals who exert power and wealth in particular societies are usually motivated by selfish interest and personal gains, causing them to take advantage of the vulnerability children. Going by the scope on the effect of child soldiering and its consequential direct or indirect impact on victims (family of direct victims) and the society at large, including the recurrent nature of this phenomenon, it is crucial that positive action has to be taken to prevent further spread, improve and alleviate the plight of the child victims in hostile conditions.

Statutory Provisions Against the use of Child Soldiers

Over the years, the international community²⁴ have set laws which seek to regulate the conduct of armed conflict and by extension child soldiering. According to BECKER, J.O²⁵;

...a span of just two years of campaigning, three important new treaties were adopted that significantly strengthened legal norms regarding the use of child soldiers. In July 1998, 120 governments adopted the Rome Statute for the International Criminal Court defining the conscription, enlistment or use in hostilities of children under the age of fifteen as a war crime. Less than a year later, in June 1999, the member states of the International Labor Organization acted to prohibit the forced recruitment of children under age eighteen for use in armed conflict as part of the worst forms of Child Labor Convention 182. And in May 2000, the UN adopted the Optional Protocol to the Convention on the Rights of the Child.

²¹ See Franklin Bai Kargbo, “International Peace Keeping and Child Soldiers: Problems of security and Rebuilding” 37 *cornel International L.J* 485

²² The Washington, January 1st, 2004, “What hope for peace in our time”

²³ Stockholm International Peace Research Institute

²⁴ Primarily the United Nations.

²⁵ Becker, J.O “Children as Weapons of War: New Visibility and the Emergence of New Legal Norms”(www.unhcr.org/reworld/pdfid/403ba6d44.pdf) Retrieved February 2013

International Human Right Law

The United Nations Convention on the Right of a Child (CRC)²⁶, provides the strongest basis of law and guiding principles on child protection and well being. Most significantly, in May 2000, the UN General Assembly adopted the Optional Protocol on the involvement of children in Armed Conflict to the CRC. The Optional Protocol is a document that provides the strongest instrument to date prohibiting the use of those less than eighteen years of age. It replaces Article 38 of the CRC which proclaimed that “State parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not part in hostilities”. The Optional Protocol adds that its state parties shall take all feasible measures to ensure that persons below the age of 18 do not take part in hostilities and that they are not compulsorily recruited into the armed forces²⁷.

Furthermore, it obligates states to “take all feasible measures to prevent such recruitment and use, it includes the adoption of legal measures necessary to prohibit and criminalize such practices”. In the same vein, the optional protocol, requires demobilisation of children within their jurisdiction, who have been recruited or used in hostilities, and to provide assistance for their physical and psychological recovery and social reintegration²⁸.

On the other hand, the Optional Protocol Article 3 states that;

States Parties that permit voluntary recruitment children under the age of 18 into their national armed forces shall maintain safeguards to ensure, as a minimum, that:

- a) Such recruitment is genuinely voluntary;
- b) Such recruitment is done with the informed consent of the person’s parents or legal guardians;
- c) Such persons are fully informed of the duties involved in such military services, and
- d) Such persons provide reliable proof of age prior to acceptance into national military services

By the above stipulation, the Optional Protocol leaves room for government to set the age required for voluntary recruitment into the army. The Optional Protocol appears to live no room for substantial justice to child soldiers considering the varying age minimum open to children vulnerable to recruitment. To say the least, the fundamental right of a child to good upbringing, formal education and future leadership of the community has been surrogated by child soldier syndrome, as the current adult global resolution for economic and political powers leaves children exposed to abduction into armed conflict.

²⁶ Article 38

²⁷ Article 2 of the Additional Protocol: Adoption by the UN General Assembly of a new treaty prohibiting the use of children under 18 in combat, May 25, 2000

²⁸ (Art 6(3) Optional Protocol). “Letter from UN Representative to Military Commission” CBC News, October 27, 2010.

The United Nations Declaration on the Protection of Women and Children in Emergency and Armed Conflict offers protection to children during the period of war, armed conflict and other emergency situations. Under Art 8(2) (b) (xxvi) of the Rome Statute of the International Criminal Court, adopted in July 1998 and entered into force in 1 July 2002; “Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” is a war crime which necessitate prosecution in the international court without immunity.

Despite the above declaration, child soldier prosecution by these bodies is treated on case by case basis and to the extent that countries involved do not belong to the world powers to derail the law eg, China, Europe, America and Russia. The irony of this concept lies on dictatorship and economic and war powers. Surprisingly, every day, child soldier phenomenon is globally condemned unequivocally within available laws relating to human right. Then, where lies the protection of child soldier in practice? All laws and declarations on child soldier should be harmonized to mark out a standard on child soldier protection.

International Humanitarian Law

The four Geneva Conventions and their additional protocol of 1977 contain a good number of provisions specifically devoted to the protection of children’s right. Article 77(2) of the Additional Protocol 1 of 1977 to the four Geneva Conventions states;

- a) States parties undertake to respect and to ensure respect for rules of the IHL applicable to/in armed conflict which are relevant to the child
- b) State parties must take measures to ensure that those who have not attained the age of 15 do not take part in hostilities. This treatment excludes children who volunteer for armed service.
- c) State parties shall refrain from recruiting any person who has not attained the age of 15 into the armed forces. In recruiting among those persons who have attained the age of 15 years, but not attained 18, state parties must endeavor to give priority to those who are oldest²⁹

Article 77(3) of the first Additional Protocol provides that such children, upon their being captured by the enemy shall however continue to enjoy the special protection accorded under international humanitarian law. In the conduct of an armed conflict not of an international character, Article 4 of Protocol 11 prohibits the recruitment of children into armed groups or to permit such children to participate in hostilities³⁰.

Article 8 of the Statute of the International Criminal Court also provide protection to children as it requires the non-recruitment of children under the age of 15 or allowing them to participate in hostilities in war times. Persons recruiting this category of children into the armed group would be punished.

²⁹ Optional Protocol to the Convention on the Right of the Child on the involvement of children in armed conflict, Article 1 and 2, <http://www.unhcr.ch/https://menu2/2/6/protocol.id>.

³⁰ See Article 4(3) of the 2nd Additional Protocol of 1977.

Other international humanitarian laws that apply to all children in all circumstances and address the issues of child soldier in a similar vein with the above conventions are Article 3, 4 of Protocol 11 Additional to the Geneva Convention of 12 August 1949, relating to the protection of victims Non-International Armed Conflicts, adopted in 1977;

The United Nations' Convention on the right of the child which defines a child to mean "every human being below the age of eighteen years" ³¹ re-enforces the foregoing provisions by prohibiting the recruitment of children below the age of fifteen years to take part in hostilities ³². It is rather curious that the Convention ³³ which sets the age of majority of eighteen years could permit the recruitment of persons of fifteen years to participate in hostilities. This inconsistency can be said to have watered down by the provision of its Optional Protocol on the involvement of children in armed conflicts which under its Article 2 extends the protection of children during armed conflicts by prohibiting the compulsory recruitment of persons under the age of 18 into the armed forces of states.

In addition, Article 1 of the Additional Protocol enjoins states to take all feasible measures to ensure that member of their armed forces who have not attained the age of eighteen years do not take a direct part in hostilities ³⁴. It is sad to note that even though the Optional Protocol constitutes a significant development in the right direction, it is however a mere step towards the eradication of the recruitment and direct participation of child soldier in hostilities. Indeed one major and significant shortcoming of the protocol is its failure to fix the age for the voluntary recruitment of persons into the armed forces as eighteen years. ³⁵

International Labour Organisation

Another instrument is the international Labour Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour adopted unanimously in June 1999 as ILO Convention No 182 and came into force on 19th November, 2000. It is one of 8 ILO fundamental conventions³⁶. By ratifying this convention, 132 parties to the convention committed themselves to take immediate and effective measures to secure the prohibition and elimination of the worst form of child labor as a matter of urgency. According to Article 3 of the Convention, the term "worst form of child labour" comprises:

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 conflicts and hostilities.

³¹ See Article 1 of United Nations Convention on the Rights of the Child

³² See Article 38 Ibid

³³ The UN Convention on the Right of the Child

³⁴ Article 3 of the Optional Protocol further require states to raise the minimum age to 15 years

³⁵ Angwe, B. "The International Legal Regime Prohibiting Child Soldier" In Contemporary Issues in International Law, Essays in Honour of Hon. Justice Tobi, F.E.E. Enugu; Chenglo Ltd, 2006, pp. 118.

³⁶ UNICEF; Optional Protocol to the Convention on the Rights of the Child

In addition, the Statute of the International Criminal Court makes it a war crime to conscript or enlist children under the age of fifteen or use them in hostilities in both international and non-international armed conflict.

Regional instruments are also important. For countries within the African Union, the African Charter on the Rights and Welfare of the Child recognizes a child to mean every human below the age of 18 years³⁷. It states further in Article XX11 that; State Parties shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child. Such rules are applicable in situations of internal armed conflicts, tension and strife.

Laws of Federal Republic of Nigeria

In line with the laws of Federal Republic of Nigeria, Section 34(1) of the Nigerian Child Right Act³⁸ provides that:

“No Child shall be recruited into any of the branches of the armed forces of the Federal Republic of Nigeria”. Equally instructive is section 34(2) of the Act³⁹ which states that:

“The Government or any other agency or body shall ensure that no child is directly involved in any military operation or hostilities”

These provisions are instructive in that they prohibit the recruitment and participation of children into the armed forces. It is however desirable that the provisions be extended to include such prohibition to non state actors, militias and even politicians that use children in internal armed conflict situations.

Measures Adopted to stop the use of Child Soldiers

Every child comes from a community/society and if local communities are guided by rules meant to monitor national and international laws on age of recruitment of a child soldier, then government, non-governmental organizations, religious groups and civil society in general should comply with the laws. In light of these, therefore, these groups should play important roles in establishing ethical framework that guides children participation in armed conflicts and with that, child soldier should be check mated if not totally eradicated.

In some countries⁴⁰, ethnic groups and the mothers of child soldiers have formed organizational pressure group to pressure on authorities for the release of under-age soldiers. Furthermore, active, early documentation and tracing of unaccompanied children in refugee or displaced persons camps has yielded some result.

³⁷ See Article 11

³⁸ The Child Rights Act, No 26 of 2003

³⁹ Ibid

⁴⁰ Such as El Salvador, Guatemala, Paraguay

People have advocated the locating of refugee camps far from conflict zones the intent is to reduce the chances of children being enticed or recruited into warring groups. Often than know, children by virtues of their curiosity admire uniform groups and guns, the opportunity to be part of this society should be discouraged by ensuring non visibility of the group around children.

In the Special Court in Sierra Leone⁴¹, one of the cases charged against Charles Taylor is the use of child soldiers. He was convicted and sentenced to fifty years imprisonment. This step will help to serve as a deterrent to other African leaders, who would like to recruit children as child soldiers in the times of conflict. The BBC⁴² reported that

The International Criminal Court (ICC) has found the Congolese warlord Thomas Lubanga guilty of recruiting and using child soldiers between 2002 and 2003. It is the court's first verdict since it was set up 10 years ago. He will be sentenced at a later hearing. He headed a rebel group during an inter-ethnic conflict in a gold rich region of Democratic Republic of Congo.

The prosecution accused him of using children as young as nine as bodyguards and fighters. In a unanimous decision, the three judges said evidence proved that as head of the Union of Congolese Patriots (UPC) and its armed wing, Lubanga bore responsibility for the recruitment of child soldiers under the age of fifteen who had participated actively on the frontline and their deaths in the conflict.

Also according to Wikipedia⁴³

The International Criminal Court investigation in Uganda or the situation in Uganda is an ongoing investigation by the International Criminal Court (ICC) into 'The Lord's Resistance Army insurgency', which has been taking place in Northern Uganda and neighboring regions since 1987. The Lord's Resistance Army is a Christian based group led by Joseph Kony that is accused of numerous human right violations including massacres, the abduction of civilians, the use of child soldiers, sexual enslavement, and torture and pillaging.

Following the referral of the situation to the ICC by the government of Uganda in December 2003, warrants of arrest was issued in 2005 for Joseph Kony, Raska Lukwiya, Okot Odhiambo, Dominic Ongwen and Vincent Otti, becoming the first people to be indicted by the court. The Proceeding against Lukwiya was terminated in July 2007 following his death on 12 August 2006.

⁴¹ Prosecutor v Charles Taylor SCSL-2003-PT.

⁴² British Broadcasting Corporation 22nd March 2012.

⁴³ Wikipedia, "International Criminal Court investigation, retrieved February 2013.

In Nigeria, children who were involved in Niger Delta agitation for exploitation and oppression of the people of the Niger Delta and devastation of the natural environment by public-private partnerships between the federal Government of Nigeria and corporations involved in the production of oil in the Niger Delta. At several occasions, both the military heads of state and duly elected presents, have at one time or the other granted amnesty to children involved in arm conflict, notably among them is amnesty granted by the late Umaru Musa Yar' Adia. The children beyond amnesty granting, some were sent back to school while others trained in various trades around the world as part of rehabilitation.

In the current Boko Haram crises in northern Nigeria also, children involved as child soldier have been asked to lay their arms and come forth for pardon and training to discourage them from been involved in religious conflict. It is also important to mention, that some of the children even when cut in the conflict are taken to rehabilitation homes in line with the rules of the African Charter on the Rights and Welfare of a child and other international laws on child soldier.

Decided Cases on Child Soldiers as Deterants

In *Prosecutor v Joseph Kony and ors*⁴⁴, Odiambo was allegedly criminally responsible for ten counts on the basis of his individual criminal responsibility (article 25(3)(b) of the statute including two counts of crimes against humanity (murder-article 7(1) (a); enslavement- article 17(1)(c); and eight counts of war crimes (murder-article 8(2)(c)(i); internationally directing an attack against a civilian population- article 8(2)(e)(i); Pillaging-article 8(2)(e)(v); forced enlisting of children.

It is important to note that international law does not prohibit the prosecution of children who commit war crimes, but article 37 of the United Nation Convention on the Right of the Child does limit the punishment a child can receive and this include capital punishment and life imprisonment without the possibility of release⁴⁵.

In the wake of the civil war in Sierra Leone, the UN sanctioned the special court for Sierra Leone (SCSL) to try the participants for war crimes and other breach of humanitarian law. The statute of the SCSL gave the court jurisdiction over persons aged 15 and older. However, the Paris Principle and Guidelines on Children associated with armed group states that those children who participated in armed conflict:

“...who are accused of crimes under international law allegedly committed while they were associated with armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles”.

⁴⁴ ICC-02/04-01/05

⁴⁵ The Paris Principles and Guidelines of Children associated with armed groups, February 2007. Section, “Treatment of children accused of crimes under international law” P. 9.

Article 7 of the SCSL reflected the above as it did not rule out prosecution but emphasized rehabilitation and society's reintegration. David Crane the first Chief Prosecutor of the Sierra Leone Tribunal, chose to interpret the statute so that the tribunal's policy was to prosecute those who recruited the children, rather than the children themselves no matter how heinous the crimes they had committed.

However, in the *U/S v Omar Khadr* case⁴⁶, the prosecutors took a different view from David Crane and tried Khadr on serious charges as murder, attempted murder, providing material support for terrorism and spying. They alleged that he committed these offences in Afghanistan while fighting for the Taliban against the United States while he was sixteen years old. If found guilty under the U/S law, such a crime carries a maximum penalty of life imprisonment. In a letter to the US military commission at Guantanamo after the plea of guilty had been heard but before the announcement of sentence, Radhika Coomraswamy, the UN secretary-general's special representative for children in armed conflict, wrote that Khadr represent the 'classic child soldier narrative: recruited by unscrupulous groups to undertake actions at the bidding of adults to fight battles they barely understand', and suggested that Khadr be released into a rehabilitation program.

Review of the measures adopted to stop the use of Child Soldiers

It would be useful if the international humanitarian Law provisions and those in the convention on the Rights of the Child on child soldier are harmonized to ensure that stringent rules are spelt out to pursue offender and deter further abuse of children. Those States currently unwilling to see the age limit raised to eighteen years need to be persuaded as to its desirability and, in addition, the reasons why children want to join armed forces and/or participate in hostilities need to be examined, with a view to divert the energy of these children along other paths.

Several international organizations have risen to the fore in the fight against the use of child soldiers. Some of these are the Coalition to stop the use of Child Soldier, an international organization that seeks to end and prevent the military recruitment and use in hostilities of child soldiers. This has risen to the fore in the fight against the use of child soldier (both boys and girls below the age of 18) and other human right abuses resulting from their association with armed forces or groups. It seeks the release of child soldiers from armed forces or groups, promotes their successful return to civilian life, and accountability for those who recruit and use them. The Coalition promotes global adherence to the protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

⁴⁶ See Lauren McCollough, *The Military Trial of Omar Khadr: Child Soldier and the Law*, Crimes of War Project, March 10, 2008.

Conclusion

Conflict synonymous with development, acquisition, awareness, fight for right and emancipation of wealth. Therefore, the origin of the use child labor is as old as human history. What is peculiar to Africa is the persistent increase and now unrestrained use of children in armed conflict.⁴⁷

The international communities are eagerly working to make a better future for the children of today and the general public can play a part. We could build a better future for the leaders of tomorrow if we work together with the government, nongovernmental organisations and the societies so that these children are able to remain with their families, acquire better education and be part of the normal societies and or those affected allowed to return to their families to be reintegrated into the society for a better tomorrow. Most often, people see reintegration of child soldier as hopeless. Studies have shown that children and youths involved in armed conflict can be re-engaged positively in a social relations and productive civilian life however, this depends on political will and availability of resources.

Africa Governments should unite and unequivocally ratify and implement other pertinent treaties on the right of a child and incorporate them into national laws. Furthermore, states that have not adopted the Optional Protocol Convention on the rights of the child, should henceforth do so by raising the age of recruitment and participation from fifteen to eighteen years.

In addition, governments and civil societies should create enlightenment programs on the inherent dangers of allowing children to take part in arm conflict. The programme should channel the energy of youth into contributing in positive ways to the creation of the new, post-conflict society

The media should be encouraged to expose the use of child soldier and the need for demobilization

According to the Secretary General of the United Nations;

The role of children in armed conflict should be acknowledged from the onset of peace negotiations and children's right should be identified as an explicit priority in peacemaking, peace building and conflict resolution processes, both in the peace agreement and disarmament, demobilization and reintegration plans⁴⁸

It is imperative to add that all peace agreements should include specific measures to demobilize and reintegrate child soldiers into society. There is an urgent need for the international community to support programmes, including advocacy and social services, for the demobilization and community reintegration of child soldiers⁴⁹. This is particularly important because picking up a gun again is often the easiest way of regaining the respect of the community.

⁴⁷ Stories abound of the use of child soldier in Uganda, Liberia, Sierra Leone, Mali, Congo and Somalia.

⁴⁸ See Secretary General of the United Nations, Report to the Security Council, S/2000/101, 11 February 2000

⁴⁹ The International Rescue committee which deals with Disarmament, Demobilization, and Reintegration (DDR) intervention programmes to bring about security and stability to a region after a conflict. Such programs are carried out in Sierra Leone, Uganda, Angola.

The world community has been moved to abolish the use of child soldier through various legislations such as the Rome Statute of the International Criminal Court, Convention on the Right of the Child, The African Charter on Human and Peoples Right, and the 2002 Protocol to Geneva Convention.

To show the seriousness the world attaches to this crusade, the International Criminal Court has prosecuted some violators of these provisions and is currently investigating some reported cases. It is hoped that with the intensification of efforts by international organizations and the cooperation of all parties concerned, the problem of the use of the child soldier will become a thing of the past.

Finally, child soldiering is not an African phenomenon. It exists in different forms in almost every country or continent of the world.