Child soldiers from a legal perspective
A literature based case study of the
Democratic Republic of Congo,
Sierra Leone and Uganda.

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“One of the most sacred of human laws is the requirement that children should be protected from cruelties, since they represent the future of humanity. Their abusive recruitment into armed conflicts is a grave breach of this sacred law: it is a war crime and, indeed, should also be treated as a crime against humanity.”¹

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ABSTRACT

This thesis seeks to analyze the international humanitarian laws and human right laws governing the involvement of children in armed conflicts. As the international law prohibiting the involvement of children in armed conflict progress on paper, progress within the states falls behind, thus creating a gap between progress in law and the enforcement of this law on the ground. The international community needs to take steps to bridge this gap so the practice on the ground is adequate with the international law. This thesis will examine the efficiency of the international legal instruments and examine what factors are preventing the implementation of the international law within the different states. Three different case-studies will be conducted of three African countries: the Democratic Republic of Congo (DRC), Uganda and Sierra Leone in order to examine what the states, the society, local actors and the international community are doing to prevent the involvement of children in armed conflict.
PREFACE

While not knowing that much about the contemporary situation of child soldiers the decision was made to examine the phenomenon of child soldiers closer. The literature found, highlighted that despite the development of strong legal instruments the last two decades, minor achievements has been made to prevent the recruitment and use of child soldiers globally. The legal frameworks have been ratified by most of the countries in the world during the last three decades, but most intra-state conflict parties are still recruiting and using children in their armed forces.

Further research will be conducted in this thesis in order to receive more knowledge about the legal prohibitions on the participation of children in armed hostilities and how the international community together with states and other national actors addresses the lack of protection of children in contemporary armed conflicts globally. The outcome of this thesis is to contribute in small scale in the process to find a durable solution to the issues concerning child protection in civil wars, in order for children to receive the life they deserve.
ACRONYMS

Additional Protocol I  Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
Additional Protocol II  Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts African Union
ADF/NALU  Allied Democratic Forces/National Liberation Army of Uganda
AFDL  Alliance of Democratic Forces for the Liberation of Congo
AFRC  Armed Forces Revolutionary Council
APC  All People Congress
CDF  Civil Defence Forces
CNDP  National Congress for the Defence of the People
CSUCS  Coalition to Stop the Use of Child Soldier
CSI  Child Soldier International
CSUCS  Coalition to Stop the Use of Child Soldiers
DDR  Disarmament, Demobilization and Reintegration
DRC  Democratic Republic of Congo
FARDC  Armed Forces of the Democratic Republic of Congo
FDLR  Democratic Forces for the Liberation of Rwanda
FRF  Republican Federalist Forces
Geneva Convention I  Geneva Convention (I) of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
Geneva Convention II  Geneva Convention (II) of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
Geneva Convention III  Geneva Convention (III) of 12 August 1949 relative to the Treatment of Prisoners of War
ICC  International Criminal Court
ICC  Interim Care Centre
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>ICL</td>
<td>International criminal law</td>
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<tr>
<td>IDP</td>
<td>Internal Displaced Person</td>
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<td>IGO</td>
<td>Inter-governmental organisation</td>
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<td>IHL</td>
<td>International humanitarian law</td>
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<td>IHRL</td>
<td>International human rights law</td>
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<td>ILO Convention</td>
<td>Convention on the Worst Forms of Child Labour (No. 182, 1999)</td>
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<td>LRA</td>
<td>Lord Resistance Army</td>
</tr>
<tr>
<td>LURD</td>
<td>Liberians United for Reconciliation and Democracy</td>
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<tr>
<td>MONUC</td>
<td>UN mission in the Democratic Republic of Congo</td>
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<tr>
<td>MONUSCO</td>
<td>UN Organization Stabilization Mission in the Democratic Republic of Congo</td>
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<tr>
<td>MRM</td>
<td>Monitoring and Reporting Mechanism</td>
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<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>NPRC</td>
<td>National Provisional Ruling Council</td>
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<tr>
<td>RUF</td>
<td>Revolutionary United Front</td>
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<td>SLPP</td>
<td>Sierra Leone People’s Party</td>
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<td>UCDP</td>
<td>Uppsala Conflict Data Program</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UN CRC</td>
<td>UN Committee on the Rights of the Child</td>
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<td>UNAMSIL</td>
<td>UN Mission in Sierra Leone</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>UNIOSIL</td>
<td>UN Integrated Office for Sierra Leone</td>
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<td>UPDF</td>
<td>Uganda People’s Defence Forces</td>
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CHAPTER ONE

1.1. INTRODUCTION

The realization of ending the involvement of children in armed conflicts has been far from successful, despite the development of international legal instruments the last 30 years, which strongly prohibit the involvement of children in armed conflict. The greatest achievements have been the adoption of the Convention of the Rights of the Child (UN 1989), which legally protects children under 15 years of age from taking direct part in hostilities and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (UN 2000), which raises the age bar to 18 years old. Both these treaties was quickly ratified by hundreds of states and in 2001, one year after the Protocol was adopted, 70 states had established in national law, a recruitment age of 18 years and in 2012 the number was around 100 states. Despite this strong protection, states and non-state actors in ongoing conflicts globally continue to actively recruit, abduct, and directly use children in hostilities. The majority of these children are in non-state armed groups, but between 1998 and 2008 it was reported that at least 25 states involves children into their national armies, which indicate that minor progress have been made.

It is reported that the situation of children involved in armed conflict has improved looking at the statistic. The figure for the first half of 2012 was less than ten states. However, just in a few cases this reduction of children associated with armed groups is directly attributable to the specific protection measures taken by the state. In most cases this decrease of children involved in armed conflict is due to the fact that the conflict simply has ended. The progress in the protection of child soldiers has developed on paper, but it is clear that lot has to be done before children in armed conflict all around the world are protected from the involvement in armed forces.

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2 Child Soldier International (CSI) 2012, p. 17
4 CSI 2012, p. 17
1.2. RESEARCH PROCESS

1.2.1. THE AIM AND OBJECTIVES

In this thesis the efficiency and the sufficiency of the contemporary international humanitarian and human rights law instruments will be examined in order to determine whether or not these legal instruments constitute an efficient tool in preventing the involvement of children in armed conflicts. Therefore a critical assessment of the relevant international humanitarian law (IHL), international human rights law (IHRL), international criminal Law (ICL), international labour standards and the African regional standard will be conducted. To be able to examine the situation for children within the conflicts on micro level, a literature based case study of three African countries, the DRC, Uganda and Sierra Leone will be carried out. All of these three countries have been blacklisted by the UN for the large scale recruitment and uses of children taking place by all parties inside these countries. Through the case study of these three countries it will be established what has been done by international and national actions to prevent the involvement of children in armed groups and to improve the protection of children in armed conflicts. By doing this, it will be examined whether undertaken commitments by states have been translated into real and durable protection for children in the form of legal and practical safeguards against their involvement in armed conflict in state armed forces or otherwise - what kind of obstacles the process is facing and what kind of lessons can be drawn from this case for potential applicability in other post-conflict societies.

The main research questions are:

- How does the existing legal regime governing child soldiers protect the rights of children in armed conflicts in the Democratic Republic of Congo, Uganda and Sierra Leone?
- What factors prevent and obstruct the process of the prevention of the recruit and use of child soldiers within these states?
- Are there any similarities between DRC, Uganda and Sierra Leone?
- Main challenges identified for the implementation of the international humanitarian legislation?
1.2.2. RELEVANCE TO THE FIELD OF HUMANITARIAN ACTION

The persistent use of children by both state and non-state armed forces in new or reignited conflicts globally raises serious questions about how far international commitments made, and obligations entered into by states, have been translated into effective strategies to protect children against the involvement in armed conflicts. The ongoing recruitment and use of children points to the need for a critical assessment on what else needs to be done to prevent the use of child soldiers by states and insurgent groups. In rising to the challenge of prevention, the Child Soldier International (CSI) argues that effective strategies depend on the development and application of tools able to analyze the risks children are facing regardless of the states are currently experiencing armed conflict or not. However, the establishment of these tools are extremely important within states where the use of child soldiers has become an established fact. Despite the increasing level of international attention to the phenomenon of children and armed conflicts and the international legal instruments, more has to be done to protect the current child soldiers and the children at risk of becoming child soldiers. Many humanitarian organizations, present within the armed conflicts, are struggling to find durable solutions. According to the CSI’s global report of child soldiers’ mutual co-ordinated responses by multiple actors are required to achieve the goal of preventing children’s involvement in armed conflict.\(^5\) The issue of children associated with armed forces need to be on the agendas of conflict prevention, peacemaking and mediation to peace-building and longer-term development. At the same time more research on the issue is needed to be able to develop adequate and timely interventions to protect children in armed conflict.

1.2.3. RESEARCH LANDSCAPE

The increased attention from the international and national scholars, humanitarian professionals and researchers of the phenomenon of child soldiers started in the beginning of the 1990s. Much of the literature have strived to gain a more precise understanding of why armed forces recruit and abduct children, why children join violations themselves, why children choose to leave these groups and what problems they are facing after they left.

The first major and multi-country study of armed conflict and children was published in 1996. The initiative to the report was taken by the General Assembly 1993 highlighting the lack of

knowledge on the subject. An expert, Graca Machel, was appointed to carry out a study containing recommendations about the involvement of children in armed conflicts, existing standards and future improvements of preventative and protective measures and about the physical and psychological recovery and social integration of children having been involved in armed conflicts. The report unleashed a steady stream of research during the years that followed.6

Machel’s report, written in the post-Cold-War period, draw international attention to the changing nature of contemporary conflicts, explaining that most of the conflicts arising after the end of the Cold War were characterized by intra-state hostilities, one-sided violence, low intensity fighting, irregular armed forces and increased violence directed against civilians.7 The “new wars” theory is present in several contemporary researches of child soldiers,8 despite that these theories have been highly questioned and refuted by others.9 The new type of warfare and the increased accessibility to efficient small arms, easy for small children to handle, are given by modern research as an explanation to the increased involvement of children in armed conflict.10

Goodwin-Gill and Cohn (1994) early identified that children could be the initiators to armed hostilities owing to social, political and economic factors, which have been restated by the majority of the literature that followed. For example Brett and Specht (2004) argues that grievance factors such as poverty, loss of parents or guardians, lack of economic opportunity or educational opportunity, ethnicity and political beliefs could motivate children to pick up arms themselves.11 According to Honwana (2004) these factors are strongly connected to the general collapse social and economic structures within the society. She argues “the disruptions caused by globalisation, war, and disease promoted an environment of basic instability and global conflict that exacerbated generational disconnections and dramatically impaired the capacity of households and communities to nurture and protect children.”12

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6 Machel (1996)
7 Dupuy and Peters (2010, p. X and 142
9 See for example: Melander, Öberg and Hall (2006)
11 Brett and Specht (2004), p. 4
12 Honwana (2004), p. 159
In the late 1990s another perspective of child soldiering were presented and highlighted in the report by Machel (1996). She had identified that girls were victims of gender-based violence, which very often is being used as a weapon of war in intrastate conflicts. Earlier researches, as well as governmental, nongovernmental and international programs, have not been focusing on the impact of war on girls. Girls often suffer sexual violations, both when soldiers passes by, attack, and rape girls and women in villages and when girls are being kidnapped by the soldiers and systematic sexual violated inside the military camp on a daily bases.

Mats Utas, a scholar at Uppsala University, have together with other scholars been working extensively on the participations of girls in several African wars and their status in the post-conflict period. He has been examining how these girls are able to cope with their traumatic experiences and what kind of support, if any; they are given from the local community and the international community. Further he has been examining the role of traditional healing practices on victims of sexual abuse. He, and others with him, argues that the healing offered now by the international organisations, which mainly based on western psychology, needs to be evaluated in order to conduct efficient and specified support for these girls outside the western context.

Brett and Specht (2004) urge, that if the circumstances leading to the participation of children in hostilities are not being changed, these children are likely to rejoin even after being disarmed. Jo de Berry states in his article that the process of legal prohibitions on the participation of children in hostilities are unlikely to be effective unless there is an account of the contexts and realities in which children come to fight; other authors agrees with him. Honwana (2006) describes in her research that "we must go beyond the clear-cut demarcations between child and adult, and between innocence and guilt, to examine the intricate ways in which the condition of the child soldiers cut across established categories."

This paper will not examine the root-causes of the participation of children in armed conflicts, but instead examine why the involvement of child soldiers are increasing despite the fact that

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13 Machel (1996)
14 Honwana (2004), p. 91
15 See for example: Ericsson Baa and Utas (2012), Coltuer, Persson and Utas (2008)
16 See for example: Honwana (1999)
17 Utas (2009)
18 Brett and Specht (2004), p. 64-65
19 Berry, 2001, p. 93
21 Honwana (2006; p. 4)
we today have strong international legal instruments prohibiting children to participate in hostilities. The ambition in this thesis is to answer this question, by examine the different legal instruments and to identify the difficulties of prevention and protection of children in armed conflicts.

1.2.4. METHODOLOGY

In order to determine the efficiency of the protection provided for children in armed conflict, all the relevant legal devices covering the involvement of children in armed conflict will be critically examined, even if they are not currently ratified by DRC, Uganda or Sierra Leone. This is so, because of their global relevance and the way in which they create standards and norms of minimum standards. The areas of law being pertinent include humanitarian law, human rights law, international criminal law and international law on child labour. In order to determine whether or not these legal devices are covering all the different aspects of the involvement of children in armed conflict, they will be examined relative to four different categories of circumstances:

1) Recruitment and roles of children associated with armed groups,

2) Integration of children into armed groups,

3) Children's participation in hostilities,

4) Disarmament, demobilization and reintegration of children involved in armed conflict

The assessment of international legal instruments addressing the involvement of children in armed conflicts will, accordingly, constitute the foundation of the research done in this paper.

In seeking to assess the relevance and the efficiency of the international legal instruments this paper will do a literature based case study of three different countries: the DRC, Uganda and Sierra Leone. These three countries have been identified in earlier research as some of the most affected countries by the use of children in armed conflict in Africa.22 This paper will seek to identify the factual and legal issues these different countries are facing in their prevention and protection of children in armed conflict. The anticipation is that significant similarities and differences are to be detected and analysed. By combining the examination of the international legal instruments with the findings in the case studies, the anticipation is that

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22 See for example; Mezmur (2009), p. 199
this paper will provide new perspectives about the effectiveness of the legal devices and the factors affecting the effectiveness of the implementation process on national level.

This paper has been prepared by an extensive literature review, by examining books from the Uppsala University Library, published articles from recognized international journals, as well as reports and documents from international humanitarian organisations. The case studies of the DRC and Uganda will be based mainly on reports prepared by the Special Representative of the Secretary-General for Children and Armed Conflict. Other reports that will be used for the case studies are from the Child Soldiers International (formerly known as the Coalition to Stop the use of Child Soldiers), which is a well known coalition between leading human rights and humanitarian organizations, and they have delivered several Child Soldiers Global Reports (2004/2008) holding detailed information about each country. Owing to the fact that the armed conflict in Sierra Leone ended officially in 2002, when the disarmament and demobilization of armed groups was completed, this country will be included in order to compare the progress of prevention and prohibition of children involved in armed conflicts before and after the coming into being of Optional Protocol of the CRC. More in-depth research has been conducted within Sierra Leone and will be included in the case study of Sierra Leone. These in-depth studies are conducted by Krijn Peters and Restoy.

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24 Amnesty International; Defence for Children International; Human Rights Watch; International Federation Terre des Hommes; International Save the Children Alliance; Jesuit Refugee Service; the Quaker United Nations Office – Geneva; and World Vision International
25 Peters (2011a), War and the Crisis of Youth in Sierra Leone and Peters (2011b), The Crisis of Youth in Postwar Sierra Leone: Problem Solved?
26 Coulter (2009), Bush wives and girl soldiers : women's lives through war and peace in Sierra Leone.
CHAPTER TWO

2. INTERNATIONAL LAW

This chapter assesses the relevant international humanitarian law (IHL), international human rights law (IHRL), international criminal law (ICL), international labour standards and the African regional standard directly addressing the involvement of children in armed conflict. The level of protection the treaties provide for children directly or indirectly and the legally binding nature of international legal instruments on parties to an armed conflict will be examined. The relevant IHL examined are the four Geneva Conventions and Additional Protocol I which apply only to international armed conflicts. Additional Protocol II applies to non-international armed conflicts. The relevant IHRL examined are the Convention on the Rights of the Child (CRC 1989), the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol 2000) and the African Charter on the Rights and Welfare of the Child (ACRWC 1990). The Rome Statute (1998) of the International Criminal Court (ICC) is covering the international criminal laws and the Convention on the Worst Forms of Child Labour (ILO Convention, 1999) covers the international law on child labour. All these conventions apply to both international and non-international armed conflicts.

2.1. THE RECRUITMENT AND ROLES OF CHILDREN ASSOCIATED WITH ARMED GROUPS

International Humanitarian Law

The four Geneva Conventions and the two Additional Protocols constitutes the foundation of international humanitarian law. The Geneva Conventions are only applicable in international conflicts; however, one common article (art. 3) applies to internal conflicts. This article protects the civilians and members of armed forces, who are not taking an active part in the hostilities, because they have laid down their arms or are unable to fight owing to sickness, wounds or detention. These persons are to be treated humanely, “without any adverse


28 Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”

Combatants and prisoners of war are addressed in the three first Geneva Conventions. Children are not being addressed directly, although they are included as non-participant. The third Geneva Convention is expressing in art. 16, that the age of the person could give reason for privileged treatment as prisoner and consideration when it comes to the form of labour during the detention.

In the fourth Geneva Convention children, below 15 years of age, are treated as persons needed special protection and treatment and are considered to be in need of protection from the effects of the war. This includes evacuation and establishment of safety zones and access to food, health care, education, accommodation and to the other family members. When separated from their family, reunification is a high priority. The only time the convention refers to children (as persons under the age of 18) is when it refers to death penalty and forced labour by the occupying power. This Convention does not present a special protection for child soldiers as such.

Additional Protocol I and II address the protection of victims of international and internal conflicts and assess the protection of children. Both the Protocols protect children from being recruited into armed forces, but there are some significant differences. The first Additional Protocol, applicable to international conflict, prohibits children under the age of 15 years to take “direct” part in hostilities. The state parties have the main responsibility to take all “feasible measures” to ensure this and the states have to “refrain” from recruiting them into their own armed forces. The Additional Protocol II, which is applicable to internal conflicts, provide a stronger protection by stating that children under the age of 15 years are prohibited to be recruited into armed groups or forces and to take part in hostilities, regardless of direct or indirect participation.

Article 77 in Additional Protocol I, consist of an additional part, which the other Protocol is lacking. This part states that if recruitment is carried out among youth between the ages 15-18 years, then the oldest has to be chosen first. The Additional Protocol II states that even if children take direct part in hostilities, they still have to be provided with the care and aid they need.

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29 Geneva conventions art. 3(1)
30 Fourth Geneva Convention, see art. 14, 17, 23, 24, 50, 85 and 132
31 Fourth Geneva Convention, see art. 51 and 68
32 Additional Protocol I, art. 77
33 Additional Protocol II, art. 4
34 Additional Protocol I, art. 77
One of the two weaknesses of Additional Protocol II is that no monitoring and reporting mechanism is connected to the Protocol, in order to assure the implementation of the provisions by the states. The other weakness is that the Protocol does not apply on lower levels of hostilities, such as tension, riots or strife.

**International human rights law**

The CRC (1989) gives an ambiguous impression, by first stating that children are every person under the age of 18 years, but then, when it comes to the prohibition of the child recruitment, it only prohibit children under the age of 15 years to be recruited into armed forces. The explanation for this ambiguous situation was that states could not agree on a straightforward position as to the age limit of 18 years old, when it came to the recruitment of children. One of the main opponents were the US, which allowed children as young as 16 into their own national army.

The same words as in the Additional Protocol I are used in the CRC with two exceptions. The CRC uses the word “must” instead of “shall” take all feasible measures and refrain from recruiting any person under the age of 15 years. The Additional Protocol I uses the word “children”, but the CRC uses the word “person” to describe those under the age of 15 years. According to the CRC states are obligated to take all “feasible measures to ensure the protection and care of children who are affected by an armed conflict”. States shall also take all appropriate measures to prevent the abduction of children.

The ACRWC (1990) followed shortly after the CRC and provides a stronger protection for children in armed conflicts. The ACRWC covers international, internal conflicts, riots and isolated and sporadic acts of violence. The Charter rose the allowed recruitment age to 18 years and demand that states “must take all necessary measures to ensure that no child takes a direct part in hostilities and refrain, in particular, from recruiting any child.”

By the end of the 1990’s the international concern of the phenomenon child soldiers had grown strong. The need for a stronger protection than the CRC provides for children in armed conflict was identified by many actors within the international society. It led to the adoption

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35 Additional Protocol II, art. 4  
36 Mezmur (2009), (children’s right), p. 201  
38 CRC (1989), art. 38  
39 CRC (1989), art. 35  
40 ACRWC (1990), art 2 and 22
of the Optional Protocol (2000) to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The major difference relative to the CRC was the recognition of the importance to identify the root causes of child recruitment and to identify and protect the groups of children most vulnerable to recruitment.\textsuperscript{41} The same wording as in the CRC is used to prohibit children from direct participation in hostilities, except from the fact that the minimum age is raised to 18 years. Children under 18 years are not allowed to be compulsory recruited by the armed forces of the states. The voluntary age is however still 15 years.\textsuperscript{42} Non-governmental armed groups are not allowed to recruit children under any circumstances.\textsuperscript{43} When it comes to non-governmental armed groups the Optional Protocol urge states to “illegalize” and “criminalize” the recruitment and use of children in order to prevent it from happen.\textsuperscript{44}

The Optional Protocol has solved the issue of voluntary recruitment by urging the need of safeguards within states, to ensure that the recruitment is genuinely voluntary. It is important that the child has the consent from the parents to join, that the child is fully aware of what military service is all about and that the child can give some proof of his/her age. States are also reminded that children under the age of 18 years still are under special protection. However, the meaning of “special protection” is not elaborated further.\textsuperscript{45}

\textbf{International Criminal Law}

Two issues with the wording in the previous treaties have been identified. One of the issues is the use of the word “recruit”. The other is the use of the word “direct” participation in hostilities. Four different forms of recruitment have been identified by researcher\textsuperscript{46}: compulsory, forced, voluntary and induced. Compulsory is the obligatory military training which exists in many countries globally and is regulated by domestic laws. Induced is a kind of forced recruitment, but without the obvious threats. This has been taken into consideration when the Rome Statute (1998) on the ICC was drafted and therefore the word “to enlist” is used instead of “recruiting” to grasp every form of forced and voluntary recruitment.\textsuperscript{47} According to the Rome Statute the enlistment and the use of children under the age of 15 years in national armed forces is considered a war crime, which means that it is a violation of

\textsuperscript{41} Optional Protocol preamble.
\textsuperscript{42} Optional Protocol, art. 1, 2 and 3(1)
\textsuperscript{43} Optional Protocol, art. 4(1)
\textsuperscript{44} Optional Protocol, art 4(2)
\textsuperscript{45} Optional Protocol, art 3(a-d)
\textsuperscript{46} See for example; Brett and McCallin (1996), p. 41, Singer (2009), 57-69, Howana (2004), p. 58
laws and customs of international character.\textsuperscript{48} It was clarified during the drafting of the Rome Statute that participation of children in hostilities includes both the direct participation and participation in other activities strongly connected with warfare, such as scouting, spying, sabotage, the use of children as decoys, couriers or at military checkpoints.\textsuperscript{49}

**International law on child labour**

The ILO Convention includes the forced and compulsory recruitment of children under the age of 18 years to use them in armed conflicts as the worst form of child labour. The Convention does not prohibit voluntary recruitment.

**Customary law**

The customary international humanitarian law prohibits the recruitment of children and their participation in hostilities in both international and internal armed conflicts. There is however no universal accepted age limit of recruitment, but it is clear that children should not be below 15 years of age.\textsuperscript{50} The same goes for the participation of children in hostilities.\textsuperscript{51} Children affected by armed conflict are entitled to special respect and protection and states have the major responsibility for the realization of this right. This protection includes among other things the protection from any form of sexual violence, and from separation from the family, access to education, food and health care, evacuation to safety zones established by states, and reunification with the family.\textsuperscript{52}

**Cross-border recruitment**

In many cases of child soldiering, cross-border recruitment is a common scene. However this phenomenon has not been clearly addressed by human rights instruments.\textsuperscript{53} The Optional Protocol states in the text in the preamble, which is not legally binding on the parties to the treaty, “condemning with gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a

\textsuperscript{48} Rome Statute (1998), art. 8(2)(b)(xxvi) and 8(2)(e)(vii)  
\textsuperscript{50} Customary IHL- Rule 136. Recruitment of Child Soldiers  
\textsuperscript{51} Customary IHL-Rule 137. Participation of Child Soldiers in Hostilities  
\textsuperscript{52} Customary IHL - Rule 135. Children affected by armed conflict are entitled to special respect and protection  
\textsuperscript{53} Mezmur (2009) (children’s right), p. 208
State, and recognising the responsibility of those who recruit, train and use children in this regard”.

2.2. INTEGRATION OF CHILDREN INTO ARMED GROUPS

The treatment of the child soldiers within the armed groups differs enormously globally. Brett and McCallin (1996) argues that in some armed forces children are provided with food, accommodation, time for play and in some cases also education, i.e. the needs and abilities of each child are taken into consideration when forming the military life within the armed groups. In many other cases the children are treated inhumanely, and murder, maltreatment, abuse and neglect becomes part of the children’s reality within the armed groups. To find out the level of protection of children associated with armed groups an examination of the international instruments will be carried out.

Fundamental rights in humanitarian law

The international humanitarian law conducted by the four Geneva Conventions and their Additional Protocols provide persons, who are not taking a direct part in hostilities or have laid down their arms, with fundamental rights in non-international conflicts. The common Article 3 in the Geneva Conventions addresses all the parties within non-international conflicts. Every person not taking an active part in hostilities is to be treated humanely without any discrimination be it race, colour, religion or faith, sex, birth or wealth etc by all parties of the conflict. Any violence to life, health or the physical and mental well-being of persons is prohibited. Further the Article 3 proclaims that all parties to the conflict are prohibited to commit any of the following acts: murder, mutilation, torture and cruel, inhuman and degrading treatment or punishment at any time. Additional Protocol I and II also submit that threats to commit any of those actions are prohibited. Degrading attacks on women particular sexual violence such as rape, forced prostitution and indecent assault is also prohibited. The Additional Protocol II refers to the Article 3 in the preamble of the treaty as fundamental humanitarian principles. However, the purpose with the Additional Protocol II was to strengthen the protection of victims of non-international conflicts. Article I states that

54 Optional Protocol (preamble)
55 Brett and McCallin (1996), p. 91
56 Gates (2011), p. 35-45
57 Geneva Conventions I-IV, art. 3
58 Additional Protocol I, art. 75(2)(e) and Additional Protocol II, art. 4(2)(h)
this Protocol is applicable in situation such as: “armed conflicts /…/ which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations”\textsuperscript{60} As mentioned in the beginning of this chapter, the Additional Protocol does not apply to situations such as: “internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature”\textsuperscript{61}

**Fundamental rights in international human right law**

The CRC strongly stresses the fact that the normal way of children is to grow up within a family environment, “in an atmosphere of happiness, love and understanding”\textsuperscript{62} Further the CRC refers to children as persons who have not reach the same maturity as adults and therefore need special protection. Children should grow up in “the spirit of peace, dignity, tolerance, freedom, equality and solidarity.”\textsuperscript{63} It encompasses civil rights and freedoms, family environment, basic health and welfare, education, leisure and cultural activities and special protection measures for children. Children are entitled to engage in play and culturally and artistic activities.\textsuperscript{64} More fundamentally the CRC encompasses the civil rights and freedoms, basic health and welfare and education of the child. Further the CRC imposes on states to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”.\textsuperscript{65} However, this only applies to situations where the child remains in the care of its family or legal guardian or another person responsible for the care of the children.\textsuperscript{66} If the child is temporarily or permanent away from his or hers family environment, the child is entitled special protection and assistance provided by the state.\textsuperscript{67}

The ACRWC provides similar protection for children against violence, apart from the inclusion of torture and inhuman or degrading treatment.\textsuperscript{68} The ideal that children in armed

\textsuperscript{60} Additional Protocol II, art. 1(1)
\textsuperscript{61} Additional Protocol II, art. 1(2)
\textsuperscript{62} The CRC (preamble)
\textsuperscript{63} The CRC (preamble)
\textsuperscript{64} CRC (1989), art. 31(1-2)
\textsuperscript{65} CRC (1989), art. 19(1)
\textsuperscript{66} CRC (1989), art. 19(1)
\textsuperscript{67} CRC (1989), art 20 (1)
\textsuperscript{68} ACRWC, art. 16(1)
conflict are entitled to special respect and protection is said to have reached the status of customary international law. Sexual violence is also prohibited by customary law, and includes men and women, adults and children alike.  

Both the CRC and the ACRWC specifically prohibit the use of drugs and alcohol.  

However, it is important to remember that the treaties only apply to State Parties, which have signed and ratified the documents.

**Fundamental rights in international criminal law**

The Rome Statute lists murder, abduction and restriction of liberty, torture or actions causing physical or mental suffering, sexual violence or the denial of fundamental life goods, such as food, water or medical attention as a crime against humanity. The Rome Statute takes account of the reproductive outcome of sexual violence and includes forced pregnancy as a war crime, however only when the intention is to disturbing the ethnic structure.

2.3. CHILDREN’S PARTICIPATION IN HOSTILITIES

The Additional Protocol I, the CRC, its Optional Protocol and the ACRWC only prohibit children’s “direct” participation in hostilities. Other activities strongly connected with children in armed groups, such as scouting, spying, sabotage, porters and the use of children as decoys, couriers or at military checkpoints are not included in “direct” participation. However, it is important to remember that in cases where children take part in hostilities, they lose the general protection granted to civilians but retain the special protection enjoyed by children.

**International humanitarian law**

Except from the obligations stressed in article 3 of the four Geneva Conventions, the third Geneva Convention states that prisoners are to be treated alike, but the age of the person could be criteria for privileged treatment, for example to decide the labour of the prisoner in accordance of the person’s age.

The Fourth Geneva Convention prohibits that death penalty  

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69 Customary IHL – Rule 135. Children and Rule 93. Rape and Other forms of Sexual Violence  
70 CRC (1989), art. 33 and ACRWC, art. 28  
71 Rome Statute, art 7  
72 Goodwin-Will & Cohn (1994), p. 61  
73 See for example Additional Protocol I, art. 77 and Additional Protocol II, art. 4(d)  
74 Third Geneva Convention, art. 16 and 49
is applied to persons under the age of 18 years, by the time of the offence and states that minors accused or convicted of offences, must receive privileged treatment.\(^7^5\)

The Commentary of the Article 77 of the Additional Protocol I states that the participation of children in armed conflicts is inhuman. Child soldiers are pictured as “boys, who have barely left childhood behind them, brandishing rifles and machine-guns and ready to shoot indiscriminately at anything that moves.” Thereafter it is argued that child soldiering has to come to an end, not only for the sake of the children, but also for the sake of the victims of their actions.\(^7^6\)

The Additional Protocol I states that if the children take a direct part in hostilities and will be detained by the adverse party for reasons related to the armed conflict, they will retain the special protection, which indicates special respect and the protection from indecent assault and the parties must give them the care and aid they need. Children must be kept in quarters separated from adults, if not family members are present \(^7^7\) The Additional Protocol II states that they require care and aid, even if they participate directly in hostilities. Death penalty is not applicable to children under 18 years of age, by the time the crime was committed.\(^7^8\)

**International human right law**

The CRC stresses the fact that the states have the major responsibility of protecting children involved in armed conflict.\(^7^9\) Each state is obligated to establish a minimum age for children to be recognized as having infringed the penalty law. If children are being accused of offences, they are to be treated “in a manner consistent with the promotion of the child’s sense of dignity and worth”\(^8^0\). The treatment of the child during detention are expected to result in the reoccurrence of the child’s respect for human rights and fundamental freedoms, the reintegration after the final release, where the child could find a meaningful place in society.\(^8^1\)

Article 40 in the CRC addresses the situation when children are accused of offences and recall the importance of children having their human rights and fundamental freedom respected at all levels of the process. States are also obliged to come up with more appropriate care,

\(^{75}\) Fourth Geneva Convention, art. 68 and 76  
\(^{76}\) Commentary of Additional Protocol I, paragraph 2(3183)  
\(^{77}\) Additional Protocol I, art. 77  
\(^{78}\) Additional Protocol II, art. 4(d)  
\(^{79}\) CRC (1989), art. 38  
\(^{80}\) CRC (1989), art. 40(1)  
\(^{81}\) CRC (1989), art 40(1)
guidance and supervisions facilities than prison. The ACRWC only states that children recognized of having infringed the law are entitled special protection free from torture and inhuman treatment. In armed conflict, strife or tension the state is responsible for the protection of children. The Optional Protocol does not address these issues more than that it highlights the special protection of children under the age 18 years.

In the Rome Statute, the ILO Convention and the customary laws, the consequences of children participating in hostilities are not being addressed.

2.4. DISARMAMENT, DEMOBILIZATION AND REINTEGRATION

International humanitarian law

The international law treaties do not give any provisions regarding the Disarmament, Demobilization and Reintegration (DDR) programs for child involved in armed conflicts. This could be justified by the fact that these treaties only deal with the laws of war and therefore only applies in times of conflict. Yet it may still be argued that the release and reintegration of child soldiers many times take place during armed conflicts and that the respect for and obligations regarding civilians under the four Geneva Conventions and their Additional Protocols would be relevant during this time span.

International human rights law

Article 39 of the CRC is to the effect that states shall take all appropriate measures to promote physical and psychological recovery and social reintegration of children victims of any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment and punishment, or armed conflicts. This recovery is to take place in an environment, which fosters health, self-respect and dignity of the child. If children are separated from their families, states are obligated to do everything in their power to find and reunite them. If the reunion of the children and their families is not possible for a numerous of reasons, states have the responsibility to provide the children with other caretakers, temporarily or permanently.

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82 CRC (1989), art 40(3)(b) and 40(4)
83 ACRWC, art. 17and 22
84 Optional Prjotocol, art. 3(1)
86 CRC (1989), 9(4) and 22(2)
The ACRWC provides a similar protection to children associated with armed conflicts. The CRC also stresses the fact that states have the responsibility of bringing home children who for some reasons are abroad. The Optional Protocol states that parties to the convention are required to ensure the demobilization of children associated with armed conflicts and to give technical and financial assistance (those in position to do so) to ensure the rehabilitation and social reintegration of children affected of the armed conflict. If they cannot ensure this they are to seek the help of actors’ within the international community.

**International law on child labour**

Article 7 of the ILO Convention stresses the importance of removing the children from the worst forms of child labour and then to ensure their rehabilitation and social integration into society. For a successful integration, education and vocational training are the most important tools. To prevent children from being victims of the worst forms of child labour it is important according to ILO Convention to identify the children at most risk. Girls are often forgotten in the rehabilitation and integration process.

### 2.5. RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES BY THE DRC, UGANDA AND SIERRA LEONE

All three countries have signed and ratified the four Geneva Conventions and both their Additional Protocols. Though, the DRC did not ratify the Additional Protocol II until in 2002, much later than the other countries. The CRC was signed and ratified by the DRC in 1990 and the Optional Protocol, the ILO and the ACRWC where ratified in 2001 and the Rome Statute in 2002. Sierra Leone ratified the CRC in 1990, the Rome Statute in 2000, the Optional Protocol in 2002, together with the ACRWC. The ILO in 2011, Uganda ratified the CRC in 1990, the ACRWC in 1994, the ILO in 2001, the Rome Statute in 2002 and the Optional Protocol in 2008.

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87 ACRWC, art. 25
88 CRC (1989), art. 11
89 Optional Protocol, art. 6(3) and 7
90 ILO, art. 7(b-e)
91 UN committee on the rights of the child, DRC (2011), p. 11
CHAPTER THREE

3. RESEARCH FINDINGS

3.1. CASE-STUDY OF THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT - DEMOCRATIC REPUBLIC OF CONGO

The limited capabilities of national bodies, the prolonged armed conflict and its many parties with constantly shifting constellations have all complicated the child protection process within the DRC. Great achievements have been reached by actors within the international community, but long term development strategies have been hard to bring forward in the context of the armed conflict.

BACKGROUND

The DRC had a central role in the First World War in Africa which began in 1998. The armed group Alliance of Democratic Forces for the Liberation of Congo (AFDL) managed with support from Rwanda and Uganda to take control over many provinces of the DRC and to take the power from the current president, Kabila. President Kabila had allies in Angola, Chad, Namibia and Zimbabwe, which supported him in the fight against AFDL. In 1999 the Security Council succeeded in its attempt to make the different parties of the conflict to sign a ceasefire agreement. Then in 2003 a peace agreement was finally signed by the parties. Shortly after representatives from the former government, key actors from armed groups, other politicians and key leaders from civil society formed a transitional government. The transitional government lasted until 2006, when the first election, since independence from the British rule in 1961, was accomplished and Joseph Kabila became president. One year later, in 2007, the first government was established. During the transition period (2003-2006), the first initiative was taken to address the inadequate state authority and the national wide insecurity. The national army and the other armed groups active in the conflict underwent a unification program with the objective to create a new unified national army - the Armed Forces of the Democratic Republic of Congo (FARDC). During the same period a DDR-process was initiated. A smaller unit of the peacekeeping force UN mission in the DRC

93 Lusaka Ceasefire Agreement in July 1999 between the Democratic Republic of the Congo (DRC) and five regional States (Angola, Namibia, Rwanda, Uganda and Zimbabwe) in July 1999.
(MONUC) stayed in the country to assist the transition government whenever needed. MONUC had been present in the country since the beginning of the transitional period.95

One of the major problems in the DRC is the constantly shifting constellation of the armed groups, which means that the international and national actors have constantly changing settings to consider and adjust to, in the process towards stabilization and security within the country. Improvements of the situations take longer time to achieve as groups disappear and some comes to. One example of this is what happened after the election in 2006. The election led to the reoccurrence of the conflict as the National Congress for the Defence of the People (CNDP) tried to overthrow the new government. After three years another peace agreement was signed between the government and the CNDP but in 2012 the armed group had regrouped into new units - the new movement M23. These units complained about the little progress done by the government and they initiated the conflict again.96

According to the Security Council many armed groups have been active within the armed conflict in the DRC the last decade and have committed violations against children. The main groups are: the national army FARDC, the militia Mai-Mai groups and the CNDP. Other foreign groups active in the conflict are the Rwandan group: the Democratic Forces for the Liberation of Rwanda (FDLR), the Ugandan armed groups: the Allied Democratic Forces/National Liberation Army of Uganda (ADF/NALU), the Lord Resistance Army (LRA) and the Republican Federalist Forces (FRF).97 Though, over twenty groups have been listed as active within the conflict.98

RECRUITMENT AND INTEGRATION OF CHILDREN INTO THE ARMED GROUPS

It was first in 1996 that the presence of children within the armed forces where noticed and addressed by governmental actors. The general staff of the Congolese Armed Forces and the Ministry of Human Rights developed a national action plan during 1999 to promote and protect the human rights of the children and prevent children younger than 16 years (the national military law only concerned children under the age of 16 years by this time) from being used in hostilities by the armed groups.99 The plan was to outlaw the recruitment and

95 Global report DRC (2008), p. 106
96 UCDP, see DRC
98 UN committee on the rights of the child (UN CRC), DRC (2011), p. 19
99 UN CRC, DRC (2011), p. 13 and 16
the use of children, as well as the distribution of weapon to children. These measures started the demobilization process within the country and led to the adoption of the national law in 2000, stipulating that all the armed groups were obligated to release children younger than 18 years (in accordance with the international legal instruments) from their forces and thereafter put an end to their recruitment of children. However, not until 2006 a child was recognized by the national law as a person younger than 18 years. Children were simply not allowed to participate in any activities that meant handling weapons, regardless if the child has voluntarily recruited or recruited by force.

Despite the intentions to outlaw the recruitment of children, all the parties to the conflict have been responsible for the large number of recruitment of children the last decade. The recruited children are usually between the ages of 12-17 years. The FARDC units, both the ones which had completed the national unification program, and those awaiting unification, have together with the local defence Mai Mai groups been responsible for the largest number of child recruitment.

In the DRC the level of sexual violence is in general extremely high, and the national police force and FARDC units have been identified as the main perpetrators by the first report of the Security Council (2006). The FARDC units were responsible for 50 per cent of the violations committed and the police 19 per cent. These violations have repeatedly occurred during FARDC’s military operations to find key leaders in other armed groups in DRC. The reason given of the high level of violations committed by FARDC is that they are assumed to have low capacity and little training. To address these issues, a lot of resources have been committed the training of police, military and judiciary by actors within the international community, such as UNICEF, MONUC, RCN Justice & Démocratie, Avocats sans Frontières, Save the Children UK and the ICRC. The training varied in time and incorporated sections about the human rights’ connected to the child.

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102 UN CRC, DRC (2011), p. 14
104 Global report DRC (2004), p. 51
109 UN CRC, DRC (2011), p. 26
According to a survey, conducted among international actors working in the DRC, children usually stay within the armed groups for a period of five years and children from the rural areas are most at risk of being recruited. Recruited children in all armed groups were many times forced to witness and commit violations, often against their own family members, other children or random civilians as a way of brutalizing them. Many of the children lived under harsh conditions in the military camps and they were often beaten or receiving other cruel treatment by the commanders, especially if they failed at exercises or tried to escape.

Both boys and girls, as young as 12 years, participated in hostilities. Sometimes with barely any training at all they were sent to the front line to fight. Girls in particular have often been sexual exploited and given to the commanders as their wives. Because of the maltreatment the children are often injured for life.

In the North-eastern and Eastern provinces of the DRC, where the armed conflict has been the most intense, it was estimated in 2004 that the armed groups consisted of 40 percent children, which indicate that the children inside the conflict zones risks recruitment the most. Overall the number of children being recruited by the different parties was strongly connected to the intensity of the conflict. The UN report states that 30 percent of the recruited children are being forced into the armed forces by abduction. 13 percent of the children have been victims of sexual violence. 2 percent are used for other roles such as carrying the belongings of the group. In many cases the armed forces have been targeting special places were larger groups of children are present at the same time, such as schools. In other cases children, who were living unprotected on the street, were abducted and forced to join the armed forces. In some rare cases it was also reported that children were even being taken straight from the reintegration programs managed by local NGOs.

In the DRC many of the armed forces were formed by members from the same ethnic group. According to the 2004 global report families were sometimes forced to contribute financially or give their children to the armed groups of the same ethnic group. If they refused the armed

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110 UN CRC, DRC (2011), p. 21
111 Global report, DRC (2004), p. 52
112 Global report, DRC (2004), p. 52
113 Global report, DRC (2004), p. 52
114 Coalition to Stop the Use of Child Soldiers (CSUCS), DRC (2011), p. 11
115 Global report DRC (2004), p. 51
groups were threatening to take their children by force. Nevertheless it was common that parents were enlisting their children into these groups, especially if they were ensured protection or wages for the services of their children. The traditional beliefs of these ethnic groups have in some cases contributed to the recruitment and use of children in armed conflicts. For example, widespread among the Mai Mai groups is the belief that children possess mystical powers, which will protect the commanders and other soldiers participating hostilities and children have therefore been recruited as protection for members within these local defence units. It was estimated in 2004 that as many as 50 per cent of the Mai Mai groups consisted of children and that 50 per cent of these children were under the age of 15 years.

Many boys and girls joined the armed groups more or less voluntarily, because joining armed groups was seen as an opportunity for them to escape poverty, ensure their survival, defend their communities, or to avenge human right violations against their family members. Many times the recruited children were given the task to recruit other children, often under gunpoint. The large number of Internal Displaced Persons (IDPs) could also have contributed to the fact that many children became more vulnerable to recruitment and in many cases chose to seek protection inside the armed groups. In 2006 it was reported that 1.6 million IDPs were located inside the DRC.

CROSS-BORDER RECRUITMENT

Cross-border activities have been common between DRC, Uganda and Rwanda. Foreign parties from Uganda and Rwanda have been active in the conflict in the DRC. Even if Ugandan and Rwandan troops were forced to leave the country at the beginning of the 21 century by international forces, they still continued to carry out military operations in the DRC or supported other groups to do it. One armed group from Rwanda, the FDLR was active since 2004 in the 2013 ongoing conflict and two armed groups from Uganda, the ADF/NALU and the LRA, have been active since 1998 and 2007, respectively. All these groups have been contributing to the high number of recruitment in the DRC.

119 Global report DRC (2004), p. 54
120 CSUCS, DRC (2011), p. 11
121 CSUCS, DRC (2011), p. 11
125 Global report DRC (2004), p. 52
The recruitment of boys and girls from refugee camp at the country borders has been common. Foreign children or the Congolese children inside refugee camps were usually promised employment in the DRC and because of the lack of other options inside the refugee camp, they usually accept. However, instead of employment they received military training and they were often forced to fight.\textsuperscript{126}

DISARMAMENT, DEMOBILISATION AND REINTEGRATION

According to the national legislative instruments in 2000, all the parties to the conflict had to release all the children in their armed groups and stop the recruitment of children thereafter, which very few groups actually did.\textsuperscript{127} Different national bodies have been developed throughout the decade to take the responsibility for the demobilisation and reintegration process. BUNADER (national office for the demobilization and reintegration of child soldiers) from 2001 to 2003, CONADER (national commission for disarmament and reintegration) between 2004 and 2007 and by UEPN-DDR (national implementation unit for the national disarmament) from 2007 and onward. They have all been responsible for the national awareness-programs launched in 2001 and with help from religious institutions and NGOs they have managed to reach out to larger areas of the country.\textsuperscript{128}

Part of the transitional period, which started in 2003, was the establishment of DDR-programs for the former combatants not willing to be reemployed by the new national army. Due to insufficient management of the program, many of the former combatants were not being reemployed by the new national army or did not receive wages as promised. The insufficient management of the program resulted led to the constant entering and dropping out of armed groups and the reconfiguration of the different armed groups.\textsuperscript{129}

Special DDR-programs were conducted for children under the age of 18 years. However, it was very difficult to verify the ages of the children owing to the fact that less than one third of the Congolese children are being registered at birth.\textsuperscript{130} It was decided, that if the age of children could not be confirmed by birth certificates or such, the children were to be examined by medical personnel. It was assumed that the medical personnel would be able to

\textsuperscript{127} UN CRC, DRC (2011), p. 13
\textsuperscript{128} UN CRC, DRC (2011), p. 15 and 18
\textsuperscript{130} CSUCS, DRC (2011), p. 12
verify the age of the children by examine their teeth.\textsuperscript{131} During the initial state of the development of disarmament and demobilization procedures it was decided that the local NGOs closest to the demobilized children would meet up with the children at their location and begin the DDR process straight away. This turn out to be practically impossible because of long distances and lack of resources and infrastructure.\textsuperscript{132}

Children are in some cases being abducted straight from the child care centres. The threats towards the child protection agents working with the separation of children have increased within the conflict areas. The staffs of the child protection agencies are facing insecurity during the demobilisation process of the armed groups and they are being threatened by members of the armed groups. One child protection agent was killed during an attempt to separate children from the armed groups. Even child protection advisers of MONUC have been threatened.\textsuperscript{133} Many of the armed groups, even the ones integrated into the national forces, were denying the existence of children within their armed groups and were in many different ways trying to obstruct the demobilization process of children. According to the 2006 report children are being left behind when their armed groups are joining the integration process of the army, because the commanders fear accusations of recruitment of children.\textsuperscript{134}

In the beginning of the transitional period in 2003 it was estimated that 30,000 children were awaiting demobilization from the national army FARDC and the other parties of the armed conflict in the DRC. The MONUC was responsible for the monitoring of the release of the children. Part of the objective of the unification program was to facilitate an efficient disarmament and demobilisation of children associated with armed groups. If the children were separated from the armed groups during the unification process, the government and the international community could easier control the separation of children.\textsuperscript{135} However, the number of children was constantly changing because of the constant recruitment of children and the low level of efficiency.

Another factor complicating the separation of children were the fact that many of the armed groups awaiting unification left the children behind, because the commanders feared

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\textsuperscript{131} UN CRC, DRC (2011), p. 17  \hfill \textsuperscript{132} Security Council report DRC (2006), p. 11-12  \\
\textsuperscript{133} Security Council report DRC (2007), p. 5-6  \\
\textsuperscript{134} Security Council report DRC (2006), p. 7  \\
\textsuperscript{135} Security Council report DRC (2006), p. 2
\end{flushright}
accusation of recruitment of children. However, since the transitional process was established in 2003, some achievements towards ending the recruitment of child soldiers in the DRC have been made, nevertheless, and by 2011 it was estimated that 40,000 children had been released from armed groups within the DRC. However, because of limited support, children were at risk of facing new threats, such as harassments and re-recruitment, especially within the conflict zones.

The identification and separation of girls remains a challenge in all regions. The fact that the girls were seen as wives to the commanders led to that they were registered as such by the DDR-programs and then left without support. Their “husbands” often thought that the girls belong to them and they did not allow them to be among the children when the armed groups were obligated to release them during the demobilisation process. The girls often stayed with their “husbands”, because they feared punishment if they escaped or stigmatisation if they re-entered the society. The girls were often suffering from reproductive outcomes owing to the sexual violence, such as pregnancy, diseases and injuries. The girls seeking the DDR support themselves were many times left without help, because of the fact that the DDR-programs focusing on girls had only recently been established in the DRC.

In 2005 many child centres were up and running, managed by child protection agencies. The UNICEF is responsible for the coordination of the DDR programs in the DRC and is together with a numerous number of NGOs in charge of the execution of several DDR activities. Further they are conducting identification of children within armed groups and family tracing and unification. The NGOs within the DRC have been focusing on local actors in transit and reintegration activities for children, such as improvement of the community based protection activities, putting the children in educational programs or economic reintegration activities and do follow-ups on their progress. The social and economic activities, for the children to benefit from, have not been able to provide the children with any long-term opportunities owing to poor coordination and limited opportunities for children in general. The NGOs conducting these programs are also struggling with their funding for these types of activities. In some cases the opportunity to get monetary contribution within the adults

program attracts the children to lie about their age to receive the economic benefits as well. Boys and girls who left the armed groups choose in some cases to return to the armed groups, because of the lack of other options, such as education or deployment in the society.\textsuperscript{142}

If children were being captured by the national army, they were only to be detained for maximum 48 hours and then they were to be transferred into special child care facilities to receive more long term care. The children stayed in these child care centres until the families were found and the child could return home or other arrangement could be made.\textsuperscript{143} Nevertheless many children were put in detention, where they were being maltreated and beaten in order for FARDC to receive information from them about other armed groups. Other times children were forced to spy on other armed groups or re-recruited into the FARDC units and forced to participate in hostilities. Families were many times forced to pay ransom for their children, if they wanted to collect them from the military centres.\textsuperscript{144}

In 2004 \textit{The Defence and Armed Forces law} stated that children were not to be compulsory enlisted into the national army and that military courts were not allowed to prosecute children younger than 18 years who had committed war crimes. Those children had to be handed over to the civil courts or to the child protection centres to receive proper DDR-support. However it is important to note that this only meant children who had been enlisted into the armed forces through illegal recruitment methods.\textsuperscript{145} Despite the new law, it occurred that children were arrested and tried before military court for reasons such as obeying orders or for more severe crimes such as murder or rape, even if the national law is prohibiting it. It is reported that at least 12 children have been sentenced to death after their prosecutions and many more have been executed without a proper trial.\textsuperscript{146}

In 2005 the Army Chief of Staff of the FARDC announced that recruitment and use of children were prohibited within the units of FARDC.\textsuperscript{147} He ensured that harsh punishment would follow the violations of this command. His announcement was supported by UNICEF and MONUC and led to the increcent of investigations of the violations reported by MONUC and committed by the FARDC, but close to none of the investigations led to

\textsuperscript{143} Security Council report DRC (2006), p. 9-10
\textsuperscript{144} Security Council report DRC (2007), p. 9
\textsuperscript{146} CSUCS, DRC (2011), p. 8
\textsuperscript{147} Global report DRC (2008), p. 107
prosecution of perpetrators, as it was stated.\textsuperscript{148} Child recruitment was still not prioritised. One of the unforeseen outcomes of the DDR-process during and after the transitional period was that the former child soldiers from integrated armed groups were re-recruited by the FARDC units. It is estimated that 78 per cent of all the former child soldiers were integrated into the FARDC units and the CNDP contributed with most child soldiers.\textsuperscript{149}

**PEACEKEEPING FORCES AND MONITORING AND REPORTING MECHANISM**

After the ceasefire agreement was signed by the parties to the conflict in 1999, the MONUC was established to monitor the ceasefire progress and the process to get the foreign armed groups to leave the DRC. Eventually MONUC have received additional tasks from the Security Council and assumed the major responsibility for the child protection within the DRC.\textsuperscript{150} The focus and tasks of the MONUC have been strongly related to the development of the national laws and military policies, capacity-building and prevention of armed conflict. In 2010 the mandate of the MONUC changed and the accurate task became the protection of the population and humanitarian personnel from direct threats of physical violence and give support to the government in its stabilization and peace consolidation efforts. The name of the mission was now the *United Nations Organization Stabilization Mission in the Democratic Republic of the Congo* (MONUSCO).\textsuperscript{151}

In accordance with UN resolution 1612 (2005) the Security Council established a *Monitoring and Reporting Mechanism* (MRM) in 2005, which had the task of monitor and report on the violations against children committed by the parties to the conflict. The intention was for a neutral body to continuously gather information about the violations against children committed by the parties to the conflict and the mandate of the MRM would end only if the violations ended. The MRM especially focused on the six grave violations against children listed by the UN, killing and maiming, sexual violence, abduction, recruitment and use of children in armed groups, attacks on schools and hospitals and denial of humanitarian access for children.\textsuperscript{152} The information gathered was meant to be used in the development of

\textsuperscript{148} Security Council report DRC (2006), p. 6  
\textsuperscript{149} Security Council report DRC (2006), p. 6  
\textsuperscript{150} MONUC "background" found at: http://www.un.org/en/peacekeeping/missions/monuc/background.shtml, visited 2013-04-28 and UPCD "DRC"  
accurate, timely and objective international, regional and local interventions with the objectives of ending the violations against children in armed conflict and to remind the different parties to the conflict of their obligations and commitment to the international child protection laws. Its first country report, based on information from MONUC, UNICEF and actors within the society, was conducted by the Security Council in 2006. The ongoing conflict has prevented the MRM from gaining full access to all the provinces within the DRC and still in 2011, there were some areas outside its range.

Several attempts by the government have been made to negotiate with the armed groups. The negotiations have included the issue of recruitment and use of children in the armed conflict and smaller agreements were met with several of the minor armed groups within the conflict. However the major groups did not participate in any of these negotiations.

The governments of the DRC and Rwanda met in 2007 to address the issue of cross-border activities. They decided that they, with joint forces and with support by the MONUC, would dismantle the biggest threat at that time, the Rwandan armed group FDLR. Despite cooperation between the countries, the cross-border activities continued and in 2007 it was reported that children were being recruited into armed groups in east DRC from both DRC and Rwanda. In 2009 the CNDP ensured there assistance in the armed operation against the FDLR, which led to that some of the units of the CNDP, entered the unification program and led to the increcent speed of the unification process.

CONCLUSION

In accordance to national legal instruments recruitment of persons younger than 18 years has the last decade been forbidden. Noting further, persons under the age of 18 years are not allowed to participate in any act which includes handling weapons. In accordance to the same national legislation the armed groups had to release all the children within their units. However, the recruitment and use of children in hostilities have continued in large scale and

156 UN CRC, DRC (2011), p. 21
the demobilization and disarmament process, which started in year 2000, have only resulted in a smaller number of released children.

One of the major problems has been to establish stabilization and security within the DRC. International and national actors have had limited access to the conflict areas, where most of the recruitment of children appears. These actors also have had limited access to remote villages where children are being recruited into the local defence units, especially the Mai Mai groups. The strong ethnic solidarity among the population contributes to the fact that families are feeling obligated to give their children to the groups of the same ethnic groups. The involvement of foreign armed groups in the armed conflict and the cross-border recruitment further complicates the prevention of child recruitment.

The transition process, which started in 2003, was supposed to ease the DDR-process of the different armed groups, but instead it resulted in constantly shifting constellation of armed groups and an increased recruitment and use of children in hostilities. This development was most pronounced within the national army units, the FARDC. These units re-recruited many of the demobilized children from other armed groups. Lack of resources and insufficient management led to massive dropouts of armed groups from the DDR-programs. Many armed groups hid the fact that they had children within their units, because they feared accusation of child recruitment. Girls were not released, owing to the fact that they had been given to commanders and other soldiers as wives and were therefore seen as their belongings.

The social and economic activities provided by the program to the demobilized children could not provide any long-term opportunities for children owing to insufficient coordination and limited opportunities for children in general. This led to the fact that many children chose to re-enter the armed groups, because of lack of other options. Inside the armed groups they had better access to education and protection than they had within their home village or elsewhere.

Regardless of the national legal initiative and the national demobilization process, all the parties to the conflict have been responsible for the large number of recruitment of children the last decade, despite efforts done by international actors to educate and train for example FARDC units. The limited capabilities of the national bodies not many perpetrators were being arrested and prosecuted. The harsh punishment, pledged by the Army Chief of Staff, to those who recruited and used children within their units were not being enforced owing to lack of resources during investigation and many times ignored by the national justice system.
Great achievements have been reached by actors within the international community, but long term development strategies have been hard to bring forward in the context of the armed conflict.
3.2. CASE-STUDY OF THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT - UGANDA

The Uganda-situation, when it comes to the protection of children in armed conflict, has been different from the situation in DRC. There are fewer parties to the conflict in Uganda than in the DRC. The only parties listed by the Security Council are the national army *Uganda People’s Defence Forces* (UPDF), their local defence units and the armed group *Lord’s Resistance Army* (LRA), which also has been active within the DRC, since 2007.\(^{159}\)

BACKGROUND

Since the independence in 1962 from the British rule a lot of different armed forces have tried to seize the power over the country. This has indicated in series of civil wars and government changes, until 1986 when Musevini overthrow the current government and announced himself president and managed to stay in control since then. The LRA was formed in 1986 by Joseph Kony and he launched several military operations towards the government, trying to take the power from Musevini. Since then, the armed conflict has mostly been between the armed forces of the president and the LRA. Despite several attempts during the 1990s, the conflict was unable to bring to an end, owing to the political and economical advantages the conflict brings to its parties. During the conflict, over a million people from the Northern areas were forcibly displaced during the military missions conducted by the national army and in order to survive they were often forced to seek aid from humanitarian agencies.\(^ {160}\)

The LRA received support from the Sudanese government between 1994 and 2005. However, the support ended with the signing of the peace agreement and thereby the end of the Sudanese civil war. Not until 2006 negotiations between the government and the LRA was conducted and after three months they signed a cease fire agreement. In 2007 it was stated that the LRA was no longer active within the borders of Uganda, but their violations against children continued in DRC, southern Sudan and the Central African Republic.\(^ {161}\)


\(^{160}\) Allen and Vlassenroot (2010), p. 12 and 14f

\(^{161}\) Security Council report Uganda (2007), p. 4
RECRUITMENT AND INTEGRATION OF CHILDREN INTO THE ARMED GROUPS

The Uganda People’s Defence Force and the local defence units

In the end of the 1990’s local defence units were introduced to protect the IDP camps and the roads in Northern Uganda. According to the People Defence Forces Act, children were allowed to participate in these units if they had the consent of the local village council. Many times the local village council also provided the children with birth certificates for a smaller fee and due to the lack of effective monitoring at the local level; this made it a difficult problem to tackle. Many of the families within the different communities saw these units as an opportunity for extent protection or to receive wages if they had their children to join. Children were sometimes seen as property of family and subordinated to families and clans.162 Despite the harsh conditions within the army, many of the children saw it as the only option to survival, education or employment to be recruited by any of the armed forces. The local defence units were not specifically regulated by national law, but they operate under the UPDF and could be tried before one of their courts when laws or orders were being violated, but that was far from the reality.163

The current national law recognised children as persons under the age of 18, however according to traditional ideal; they were only children when they were living under the care of their parents, regardless if they were older than 18 years and the other way around.164 As in the DRC the birth registration is low in Uganda and could be one of the explanations for this traditional verification of the maturity of the child.165 The lack of birth registration complicated the age verification of the children associated with the armed groups, caused the government to establish the Uganda Registration Service Bureau Act (URSB) in 2004 to increase the birth registration within the country. So far it has been installed in 29 districts, but the birth registrations in these districts have not yet reach the efficiency expected.166

In 1995 the Ugandan government called upon every citizen to submit to military training in order to defend the country. Children younger than 16 years were not allowed to participate and were recognised by national laws to be entitled special protection against any forms of

165 African committee of experts on the rights and welfare of the child (African Committee) (2010), p. 3
166 Ministry of gender, labour and social development (2010), p. 5 and African Committee (2010), p. 3
abuses.\textsuperscript{167} Not until 2002 it was stipulated by national law that any child younger than 18 years was not to be compulsory recruited or voluntary enlisted into armed groups. The 2005 \textit{Uganda People Defence Forces Act} (developed after the ratification of the Optional Protocol)\textsuperscript{168} prohibits the recruitment of children below 18 years, but according to the country report in 2006 the government forces were still recruiting children, sometimes younger than 15 years, into their local defence units throughout 2007.\textsuperscript{169} As mentioned before, many of the children joined the local defence units on voluntary basis, lacking other options, such as education and employment. The voluntary recruitment was the reason for the continuing recruitment of children into these units, even when no other recruitments were reported anywhere else.\textsuperscript{170}

As in the DRC the members of the national army, the UPDF, and the local defence units were responsible for many of the violations against children, such as killing, beating and raping them.\textsuperscript{171} After the visit in 2006 by the Special representative of children and armed conflict Uganda agreed to the necessity of an action plan containing strategies and legislation regarding the recruitment and use of children associated with the armed groups.\textsuperscript{172} However the Ugandan government did not accept the accusations from the UN of the continuing recruitment of children by the UPDF and the local defence units. The denial of recruitment and use of children from the government, led to the agreement between the national army and the Task Force to execute inspections of military facilities and military trainings of both UPDF and their local defence units, in order to single out children in the armies.\textsuperscript{173} In 2009 it was stated that the UPDF did not have any children younger than 18 inside their units and the action planned was signed. The action planned contained policies regarding the necessity of the cooperation with international actors, the prevention of recruitment of children, awareness raising and capacity building activities, release and reintegration of former child soldiers and necessity to decrease the level of impunity when violations occur.\textsuperscript{174}

\textsuperscript{167} Global report Uganda (2008), p. 346
\textsuperscript{169} Global report Uganda (2008), p. 346
\textsuperscript{170} Global report Uganda (2008), p. 346
\textsuperscript{171} Global report Uganda (2008), p. 345
\textsuperscript{174} Security Council report Uganda (2009), p. 2-3
The Lord Resistance Army

However, as already mentioned, the UPDF and the local defence units were not the only major perpetrators within Uganda. The LRA has for the last 23 years fought against the Ugandan government and has been responsible for the abduction and enlistment of children during the whole conflict time.\footnote{Security Council report Uganda (2009), p. 6} After the government of Sudan had signed its peace agreement in 2002 it started to cooperate with the Ugandan government and together they launched a military attack against the LRA units, still active within Southern Sudan, forcing the armed group to leave Sudan and return to Uganda. The outcome of this military operation was the extreme increase of intensity of the armed conflict in Uganda. It was estimated that 10,000 children were recruited and used by the LRA during 2002 and 2003 and that approximately 25,000 and 38,000 children have been abducted by the LRA between 1986 and 2006.\footnote{Global report Uganda (2004), p. 105} In 2005 UPDF increased their military pressure on the LRA, which forced the LRA into DRC and back into Southern Sudan, which led to increased violations against children within these countries. In July 2006 the Ugandan government managed to initiate negotiation with the LRA which after three months led to the signing of the ceasefire agreement.\footnote{Global report Uganda (2008), p. 346} According to the UN report, the LRA was no longer active within Uganda after 2006, but LRA continued the recruitment and use of children in the DRC, Southern Sudan and the Central African Republic.\footnote{Security Council report Uganda (2007), p. 4}

The situation for the children within the LRA was similar as for the children in the armed groups in the DRC, where children were used both in hostilities and for support roles. The girls were given to the commanders or other soldiers to become their wives as in the armed groups of the DRC. And as stated in the case-study of the DRC girls were not released by their “husbands”. Girls who have given birth to children within the LRA feared returning to their community in case they would face rejection.\footnote{Global report Uganda (2008), p. 347} However there is one major difference in the abduction and recruitment patterns of children in Uganda compared to the DRC. This was the fact that children were usually abducted during the nights.\footnote{Ministry of gender, labour and social development (2010), p. 34}

The high number of abduction of children during night by the LRA led to the intervention of night commuting, which was developed throughout 2004 with help from actors within the
international community, such as UNICEF, Save the Children in Uganda and other local NGOs. This phenomenon meant that children were gathering in common places, usually in towns or larger communities, during nights for safety. Some of these temporary shelters were even equipped with guards. The situation has however improved enough over the years and many of the night commuters can now stay in more terminate places, without having the fear of becoming an victim of the terror strongly connected to the armed conflict, however there are still insecurity to address within the country.\textsuperscript{181}

The children in armed conflict were forced to witness and commit violations against their own family members, other children and civilians. To murder a family member was in many cases seen as the first step of the integration process into the armed group. The LRA was, and still are, known for their extreme violent punishment of children who were not able to adjust to the new settings or the children who tried to escape.\textsuperscript{182} The children were often exposed to violence to make them less sensitive to the warfare. They were all the time threatened by their commanders, saying that if they tried to escape they would be exposed to horrifying punishment. In 2006 the Special Representatives for children and armed conflict visited Uganda and they were shocked over the violations that had been committed by the LRA within the conflict zones against the civilians.\textsuperscript{183}

During the 21 century, the government denied any recruitment of children under the age of 18 years into the national army and the local defence units. It blamed the parents or the key leaders in the communities to lie about the age of the children and the government was ensuring that if children were found within their armies they immediately pulled them out.\textsuperscript{184} However, not different from the development in the DRC, many of the children who left the LRA themselves or the ones who were captured or rescued by the UPDF, where the ones facing the greatest risk of being re-recruited into the national army to fight against the LRA. As in the DRC children were in many cases detained for longer than the maximum 48-hours by the UPDF in order for the national army to gain information from the children about the positions of the LRA units and their supplies.\textsuperscript{185}

\textsuperscript{181} Ministry of gender, labour and social development (2010), p. 34
\textsuperscript{184} Global report Uganda (2004), p. 105 and 106
CROSS-BORDER RECRUITMENT

The Task Force was concerned with the difficulties of monitoring and reporting on the violations committed by the LRA since they left Uganda. When the LRA crossed the border to DRC that the Monitoring and Reporting Mechanism (MRM) in the DRC now had the responsibility to monitor and report on the activities of the LRA. However the Task Force soon realised that the issue was too large for one country alone to handle. The LRA were active within the DRC, Sudan and Central African Republic. The task force initiated deliberations with the governments in the three other countries in order to develop a MRM only monitoring and reporting the activities of the LRA, regardless in which country activities were pursued.\textsuperscript{186}

As already stated in the chapter about the DRC, Ugandan armed groups have also been contributing to the high levels of the recruitment of children in the DRC. When the Ugandan troops took part in the armed conflict in the DRC they were recruiting children into their units. In 2003 Ugandan forces were forced to leave the DRC by international troops, but their support to other armed groups continued until all the troops were back inside Uganda. Some of the groups continued to be active within the Congolese conflict even after the end of the Ugandan support.\textsuperscript{187}

DISARMAMENT, DEMOBILISATION AND REINTEGRATION

The first initiative to DDR-programs was taken by the regional Multi-Country Demobilization and Reintegration Program operating in the Great Lake region, which was funded by the World Bank. However, children who escaped the LRA were forgotten by these regional programs.\textsuperscript{188} Instead they ended up in military facilities, where they either were detained by the national army or handed over to the military child protection unit. This meant that there were few civilian child-protection agencies available to take care of the returning children. Less than half of the returning children were signed up for the reintegration program owing to fear of the national army or the fear of rejection from their communities if it came out that they had been associated with the LRA. Children who registered with the reintegration program were provided with start packages and certificate proving their amnesty status.\textsuperscript{189}


\textsuperscript{187} Global report Uganda (2004), p. 105

\textsuperscript{188} Global report Uganda (2004), p. 107

\textsuperscript{189} Global report Uganda (2008), p. 347
There were other options to the military reintegration programs. During the conflict some NGOs had established child care centres where children were given more than just packages and certificates. They received health care; including psychological help and the centres also helped the children unite with their families. They received some education or skill based training. Since the 1990s these NGOs had helped approximately 20 000 children, but the standard varied enormously between different programs. They were not correctly equipped to helped children who have experienced such level of violence and ill-treatment.190

The biggest problem in Uganda after the recruitment had ceased was the release of the children from LRA in particular. The government guaranteed amnesty to the members of the armed groups who submitted themselves to the disarmament procedure in 2000 and thereafter every six months. However, in 2002 several persons who had received amnesty were arrested and prosecuted for terrorism, since the prohibition of terrorism actions came into force in 2002. In 2004 the government withdraw the opportunity to receive amnesty for the commanders of the LRA. The Amnesty Act was from the beginning expected to increase the release of children and the disarmament of armed groups, but without result. In 2008 there had been no signs of the release of children from armed groups, the LRA in particular. The LRA stated that they had released all the children taken by force, and that the children remaining within the armed groups were related to commanders and other soldiers within the units. In order for the international community to decide the level of truth in this statement, it urged the LRA to give a list of all the children they conducted, which never happened.191

It was recognised by the Special representative of children and armed conflict that there was no agreement between the neighbouring countries how they would deal with former child soldiers of the LRA belonging in any of the other countries. They had to come up with a sufficient strategy together. The only country which had started addressing this issue was Sudan. Within Sudan the Ministries of Social Development planned to implement proper DDR-programs able to return the children safely to their home countries. Thereafter the Ministries of Social Development planned to implement this in all the neighbouring countries.192

In 2006 the UN country team commenced an UN-led MRM in Uganda namely the *Uganda Task Force on Monitoring and Reporting* and as in the DRC the MRM assisted the government in the development of the child protection actions within Uganda. Different from the MRM in DRC, the Task Force in Uganda involved local actors into their MRM. For example the Task Force trained a cluster of staff from local NGOs to strengthen the MRM of violations committed against children within Uganda. This training was funded by the Coalition of child soldiers and UNICEF. The Task Force also supported the introduction of child protection committees at local level. The idea was to involve adults, with authority over the life of the children, such as local key leaders, parents, teachers etc in the development of the child protection at the local level. The committees were given the tools to prevent and to address violations against children within the society, where the issues associated to the return of child soldiers and protection of children risking recruitment of armed groups.

**CONCLUSION**

Since 1995 children younger than 16 years has been recognized by national legislation to receive special protection and have not been allowed to participate in any military training. However, in Uganda, as in the DRC, it has been difficult to control the recruitment of children within the local defence units established to protect the villages locally. Harmful traditions, such as the one where children are seen as property to the families, led to children being forced by their families to participate in military training and hostilities. Without proper birth certificates and efficient monitoring at local level this kind of child recruitment and use of children in armed conflict has been difficult to prevent. Despite the fact that the local defence units operated under the national army, these units have continued to recruit children younger than 18 years without the risk of facing prosecution. In order to overcome the problem of child violations within the local societies, staffs from local NGOs, along with other key persons within the communities, have been trained by international actors to improve the child protection.

It has been identified by the international community that the main perpetrators belonged mainly to the national army or the local defence units, something that the Ugandan government has denied frequently. Not until 2009, the international community stipulated that children were not being used by the different units belonging to the national army or the local

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defence units. Despite these improvements inside Uganda the cross-border recruitment have been difficult to prevent. Ugandan troops have recruited children from the DRC when they took part in the armed conflict in the DRC and after the troops were forced to leave the DRC, these forces continued to support other armed groups inside the DRC, which have continued to recruit and use children in hostilities. Also the LRA continued the recruitment and use of children in the DRC, Southern Sudan and the Central African Republic after the ceasefire agreement in 2006 had put an end to their recruitment within Uganda. There has been little initiative to come up with a sufficient strategy including these countries together, in order to put an end to the cross-border recruitment.

As in the DRC, the DDR-process led an increase of child recruitment by the national army. Many of the children who had been a part of the LRA units faced great risk of being re-recruited by the national army in order for them to use these children in their fight against the LRA. At the same time those children were often denied access to the DDR-programs and they were instead handed over to the national army or military child protection units. This meant that they had none or limited access to special support and reintegration programs, which provided children with health care, education or skill based training, start packages and certificates proving their amnesty status. The certificates were supposed to protect the children from being arrested and prosecuted, but already in 2002 several persons, who had received amnesty, had faced prosecution. Since the amnesty act also were given to commanders, international and national actors anticipated that the amnesty act would increase the release of children, but in 2008 there were still no signs of release from armed groups, in particular not from LRA units.
3.3. CASE-STRUDY OF THE INVOLVMENT OF CHILDREN IN ARMED CONFLICT – SIERRA LEONE

BACKGROUND

When Sierra Leone became independent in 1961 from the British rule, the power was concentrated to a few people inside the country. This “indirect rule” was a very common construction of power during the colonial era. Key leaders within the indigenous structure were responsible for the order and economy and these persons responded directly to the British rule.196 In 1978 the country was developed into a one-party state by the All People Congress (APC), where its president was controlling the country in a patrimonial way, which led to a growing resentment among the population.197 The Revolutionary United Front (RUF) entered the eastern part of Sierra Leone from Liberia in 1991 in order to overthrow the APC. It quickly gained control of the eastern areas of Sierra Leone. However, in 1992 a small armed group of young soldier succeeded to overrule the APC, and the new government was called National Provisional Ruling Council (NPRC). This new government, which challenged the old system, became popular among youth.198 The RUF was almost defeated in 1993 by the new and empowered NPRC and withdrew to rainforest along the borders of Sierra Leone and Liberia. However the few hundred members remaining managed to continue their resistance and used the marginalized terrain to launch their ambushes and hit-and-run attacks.199

In 1996 the NPRC lost their control over the country after the parties agreed to ceasefire. The first democratic election was held, which was won by the Sierra Leone People’s Party (SLPP). Except from one year between 1997 and 1998, when a new regime was installed - Armed Forces Revolutionary Council (AFRC), the SLPP remained in power between 1996 and 2007.200

The conflict did not officially end until the beginning of 2002, even if the peace agreement between the parties was signed in 1999.201 During the 11 years of armed conflict in Sierra Leone, the conflict rapidly became very complex, with lot of different parties, such as the APC, the NPRC, the RUF, the Civil Defence Forces (CDF), the SLPP and different foreign

196 Global report Sierra Leone (2008), p. 297
197 Peters (2011b), p. 78
198 Pham (2005), p. 89-90
199 Peters (2011b), p. 79
200 Peters (2011a), p. 73, 75-76
201 Global report Sierra Leone (2008), p. 297
armed groups from Liberia, Côte d’Ivoire and Guinea. Later on peace enforcers such as Economic Community of West African States Monitoring and Observation Group (ECOMOG), UN Mission in Sierra Leone (UNAMSIL) and British troops interfered in the armed conflict. Sierra Leone and the neighbouring countries were affected by cross-border activates both from the national army and the other armed groups, supporting and executing operations in the neighbouring countries. The peace process in Sierra Leone became vulnerable due to the cross-border activity by these other countries.²⁰²

Peters (2011a) argues that the root causes of the war were the lack of education and job, owed to the centralization of power and resources and the weak local governance.²⁰³ Aning and McIntyre (2006) further proclaims; “over-centralisation of state machinery, rural isolation and ethnic politics, corruption and abuse of power as well as neglect and misuse of the youth characterised that period in Sierra Leone’s history.”²⁰⁴ The situation for the population in Sierra Leone degenerated and the country ended up facing poverty, insecurity and poor human development. After years of armed conflict Sierra Leone ended up being the least developed country in the world in 2005.²⁰⁵

RECRUITMENT AND INTEGRATION OF CHILDREN INTO THE ARMED GROUPS

It is estimated that between 10 000 and 30 000 children have been both voluntarily and forcibly recruited by all the parties to the armed conflict in Sierra Leone. This, despite the fact, that voluntarily recruitment of children younger than 17,5 years old has been prohibited by national laws since 1961 (without the permission from parents or legal guardians).²⁰⁶ Most of these children were associated with the units of the RUF and the CDF.²⁰⁷ After the conflict was declared to be over in 2002, there have been no reports on child recruitment of the parties originating from Sierra Leone, except from the CDF units, which were out of reach of the DDR-process in 2003.²⁰⁸ In Uganda the average time for a child to stay within the armed group were five years. In Sierra Leone the reintegration process was obstructed by the fact that the children had been so long inside the armed groups that they had forgotten about their parents. The children were systematically given drugs in order for them to participate in

²⁰³ Peters (2011a), p.12
²⁰⁴ Aning and McIntyre (2005), p. 68
²⁰⁵ Global report Sierra Leone (2008), p. 297
hostilities and to become violent and fearless. When the conflict was over, many children had
developed a drug addiction.209

As children associated with the Ugandan LRA, children in Sierra Leone were also forced to
kill their relatives or to participate in raids in their own community. But this type of violations
against family members and other loved ones had another dimension in Sierra Leone. The
action was not only meant as an initiate rite into the armed group, but also as a method for the
armed groups to preclude the return of the children and in that way ensure their loyalty and
this type of actions were systematically used by several of the armed groups.210 Many
children got the name of the units carved into the skin and by doing that they were marked by
their commanders.211 The roles of the children do not differ from the child soldiers in the
DRC and Uganda, where they served as combatants. Many times the girls served as porters,
fighters and as wives to some of their captors. The age of the girls ranged from 13 to 25 years
old and more than 50 per cent were under the age of 15 years.212

In 2004 the armed forces recruitment policy stipulated that the compulsory and voluntarily
recruitment of children younger than 18 years were prohibited. In 2006 the prohibited
voluntary recruitment age, recognised by the national law, was raised to 18 years. A child was
recognised by the national law in 2007 as a person below the age of 18 years and by then all
forms of recruitment of children under the age of 18 years were prohibited by national law.
According to the national legislation children were not allowed to use weapons.213

The APC

The army of APC was ill-prepared and poorly equipped to challenge the threat by the RUF.
The army consisted of less than 3000 soldiers with very little military experience and with
out-dated weaponry at its deposal. This led to the recruitment of marginalised and excluded
youth by the commanders of the army. They trained the youth to become fighters and to
become their personal body guards. Killed soldiers were replaced by children, receiving the
exact same role as the dead soldier.214

209 Global report Sierra Leone (2008), p. 299
210 Restoy (2006), p. 3
211 Global report Sierra Leone (2008), p. 299
212 Global report Sierra Leone (2008), p. 299
213 Global report Sierra Leone (2008), p. 297-298
214 Peters (2011a), p.64
NPRC

The NPRC successfully recruited youth into their new national army, owed to the young age of the commanders and soldiers. Unemployed youth, street children and other excluded groups could easily identify themselves with the young commanders and soldiers of the NPRC. The NPRC expanded its army from a number 3000 soldiers to 15000-20 000 in a short period of time. These new recruits did not receive sufficient military training; however their knowledge of the local terrain were highly valued in its resistance against the RUF. 215

The CDF

According to the Global Report (2004 and 2008), the only armed forces, which managed to maintain their units even after the disarmament process in 2002 and 2003, where the CDF units.216 After the RUF had entered the country in 1991, these units where established within different local communities to protect the local populations from the increasing violence of both armed groups and the national army. These local units were controlled by the village key leader and constructed as such that each Kamajor (local hunters) were responsible for a smaller unit of young apprentices and each unit were responsible to protect the village from attacks of other armed groups. The NPRC encourage the initiative from the local communities and supported their involvement in the armed conflict. When the conflict intensified these units grew in numbers, involving more and more members of the younger generation.217 Naturally, these local defence units were responsible for a large number of child recruitments. The CDF units were particular successful of recruiting children from inside IDP camps, utilizing the youths desire to reclaim their abandoned land from the RUF.218 These units were assumed to be very successful, because they were more aged balanced than most of the RUF units or units of the NPRC, which consisted mostly of youth.219

The RUF

When the RUF first entered the country in 1991, it assumed that the growing resentment of the population against the government would lead to voluntarily recruits among the local population. However, the majority of the voluntary recruits came from the already

215 Peters (2011a), p. 65
218 Global report Sierra Leone (2004), p. 96
219 Peters (2011a), p. 73
marginalized groups, consisting of youths with few prospect of proper education or job.\textsuperscript{220} Despite the attention of the RUF, their popularity soon declined, owed to its increasing violence towards the local population. After the RUF had been forced into the rainforest in 1993 by the new empowered army they had limited access to find new recruits. It therefore embarked on a massive recruitment exercise; targeting mostly children. Between 1994 and 1997 the majority of the children were forcibly recruited. Most of the abduction of children took place during its raids in villages looking for food and other items. They forced children to carry the looted items back to the camp. However, owed to the fact that the children now knew the way to their camp, it was too big of a risk to release the children and they were forcibly recruited into the RUF. Many of the children were recruited from schools and villages inside the RUF-controlled territories.\textsuperscript{221}

According to Peters (2011b), the RUF consisted mainly of youth, where 70\% was under the age of 25 and 30 - 50\% was under the age of 18.\textsuperscript{222} Most of the children recruited were between 14 and 18 years old, however the RUF had special units consisting of very young children, so called Small Boys and Girls Units.\textsuperscript{223} However, according to Restoy (2006), the RUF did not allow children younger than 16 years to participate in hostilities, in case they were captured and forced to give up information about its location to their captures. Instead these children had to perform minor operations within communities and committing violations on the civilians living there.\textsuperscript{224} It was also common that commanders used under aged minors as body guards when they were out on their missions. These bodyguards received some protection themselves by this commander from maltreatment and abuse of other fighters and other commanders.\textsuperscript{225}

As the children had been abducted by the RUF, they were forced to walk to its camps located in very remote areas. There they received training, ranging from weeks to months. The RUF found it important that the children became familiar with their ideology during their training. The location of the camp hindered the children from escaping, owed to the fact that the location where they were abducted could be days away from the camps. The RUF had deliberately been creating so called ‘death zones’ around the camps both for protect the camps from intruders, but also to hinder the recruits from escaping. The population of the

\begin{flushleft}
\textsuperscript{220} Peters (2011b), p. 78  \\
\textsuperscript{221} Peters (2011b), p. 81  \\
\textsuperscript{223} Peters (2011b), p. 80  \\
\textsuperscript{224} Restoy (2006), p. 5  \\
\textsuperscript{225} Peters (2011b), p. 82-83
\end{flushleft}
surrounding villages had either been killed or forced to move. The isolation of the camps facilitated the feeling of connection and over a period of time the majority of the children saw their older commanders as father figures.\textsuperscript{226}

Another factor which contributed to the few escapes of children involved with the RUF, was the fact that the CDP and the NPRC where known to treat anyone associated with the RUF badly and in some cases these two groups have been carrying out executions. This created the camps of the RUF to safe zones for these abducted children.\textsuperscript{227}

When children were sent on their own missions the RUF rewarded the children based on the success of the mission, regardless of the difficulty of the mission. In that way, if they showed themselves fearless during a mission, even the younger children could receive senior ranks. This system, however, induced more violence than necessary among the young fighters. In 1997 when the RUF struggled to maintain their control of the territories, the leadership where weakened and the looting of the young fighters happened out of range of the commanders control.\textsuperscript{228}

Children who tried to escape where given a punishment decided by the whole camp and the punishment were executed in front of the others. The most common punishment for desertion was either to be tortured or killed by other children. The commanders could protect the children from punishment, but in return they demanded total obedience.\textsuperscript{229}

DISARMAMENT, DEMOBILISATION AND REINTEGRATION

In the Lomé Peace Agreement had explicitly stressed that the special needs of children are to be addressed in the DDR-process.\textsuperscript{230} The DDR process started in 2002 and lasted for one year. During this year it was estimated that approximately 6 800 children had been demobilised from the armed forces and reunited with their families.\textsuperscript{231} During the DDR process there were different programs for children under the age of 18 years and for adults. It was never considered that many of the adults entered the armed forces as children and therefore needed some special support for their experiences as child soldiers. The adults had to hand in a gun to

\textsuperscript{226} Peters (2011b), p. 81-82 and 85
\textsuperscript{227} Peters (2011b), p. 82
\textsuperscript{228} Peters (2011b), p. 84-85
\textsuperscript{229} Peters (2011b), p. 85
\textsuperscript{230} Global report Sierra Leone (2008), p. 298-299
\textsuperscript{231} Global report Sierra Leone (2004), p. 97 and Global report Sierra Leone (2008), p. 298
be able to get start packages, which children did not have to do.\textsuperscript{232} As in the DRC many of the programs implemented during the DDR process were led by actors from the international community and many of these actors were not able to assure sustainability and address the magnitude of problems. The protection of children at risk for recruitment and re-recruitment then becomes still inadequate. The poor coordination and the lack of national guidelines and policies led to confusion. For example UNICEF, one of the main actors within the demobilization and reintegration process, identified the issue that only 8 per cent of the girls had participated in the DDR-programs. UNICEF re-launched programmes in 2003 special for girls, but because of lack of resource the programs denied the access of the girls awaiting demobilization.\textsuperscript{233} As in the other two countries, many girls were not released by their “husbands” and also many girls feared stigmatization if they re-entered the society and they stayed with the armed group.\textsuperscript{234}

Owing to the lack of support, many of the former combatants from the demobilized armed groups within Sierra Leone became re-recruited by Liberian armed groups.\textsuperscript{235} There were still some child recruiting activities going on in Sierra Leone in 2005 by Liberians United for Reconciliation and Democracy (LURD). Children from Sierra Leone were recruited to fight in Liberia.\textsuperscript{236}

After the signing of the peace agreement, the population experienced the exact same situation as before the conflict started in 1991. The youth had as little opportunity for education and employment as before and during the conflict. In many cases children chose to join the foreign armies, because they hoped for better economic opportunities.\textsuperscript{237} Demobilized children under the age of 15 were sent to Interim Care Centres (ICCs), which were under the care of UNICEF and child protection agencies, after which they were reunited with their families, went to foster families, or entered educational projects. Those aged 15-17 could go into training and employment programs up to nine months and at the end of these programs they start up kit. However, in many cases they were unable to make effective use of their training because of the weakness of the economy and the start up kits only lasted for a few months. To that extent the DDR programs had not taken economic realities into account and had given insufficient consideration to sustainability. The levels of economic deprivation

\textsuperscript{232} UN Committee on the rights of the child (CRC), Sierra Leone (2009), p. 3
\textsuperscript{233} Global report Sierra Leone (2008), p. 97
\textsuperscript{234} Global report Sierra Leone (2008), p. 298
\textsuperscript{235} Global report Sierra Leone (2008), p. 96
\textsuperscript{236} Global report Sierra Leone (2008), p. 297
\textsuperscript{237} Global report Sierra Leone (2008), p. 297 and UN CRC, Sierra Leone (2009), p. 3
reportedly were a factor in some of Sierra Leone former combatants, including former child soldiers, returning to fighting in for example Liberia.\textsuperscript{238}

To establish the age during voluntary enlistments, birth certificates were the most evidential document. However it was recognised that these cannot be provided everywhere and attestation from key leaders within the community was also accepted. Still in 2008 the birth rate was low, especially in the remote areas of the countries.\textsuperscript{239} It was established that children also had to finish at least two years secondary education to be able to voluntary join the UPDF. However, two years only gave you a low rank position, in order to gain a higher rank the children had to complete a higher education.\textsuperscript{240}

The truth and reconciliation commission was established under the 1999 peace agreement. The commission finished its report, containing more than 8000 statements. To give children the opportunity to tell their story was a priority for the truth and reconciliation commission. The number of youth was very high in Sierra Leone, and therefore the truth and reconciliation did not want to forget about them.\textsuperscript{241} The special court for Sierra Leone was considering the two aspects of the child soldier, one as victim and one as perpetrator. However it was decided, since so many children were recruited into all the armed groups during the conflict that the main perpetrators were the commanders and not the children. Nine persons from the three main armed groups faced prosecution. They were prosecuted for the recruitment of children and the use of children in hostilities along with other violations.

The UN established the UNAMSIL in 1999, when the ceasefire was in place. In 2002 the UNAMSIL announced the beginning of the disarmament process. The United Kingdom monitored and supported the dissolution of the former national army and the formation of the new one. As in the DRC the UN Mission body was responsible for the child protection. It trained the members of the police and the national army in order for them to take the main responsibility over the establishment of security and the protection of the population. UNICEF sponsored the training of the police and army and together with other actors lobbying for child protection issues to become a part of the agenda. In 2005 the UNAMSIL had to leave space for the establishment of the \textit{UN Integrated Office for Sierra Leone} (UNIOSIL). The UNIOSIL had the responsibility to promote and assist in the peace and

\textsuperscript{238} Global report Sierra Leone (2008), p. 298-299  
\textsuperscript{239} UN CRC, Sierra Leone (2008), p. 7  
\textsuperscript{240} UN CRC, Sierra Leone (2009), p. 4  
\textsuperscript{241} For further information, see: http://www.sierraleonetrc.org/, visited 2013-11-29
capacity building process and to help developed the national legislation in order to fight impunity.\textsuperscript{242}

When the conflict ended other problems reoccurred. Unemployment is a widespread problem in many of the countries within the region. The problem of child labour had reached enormous proportions, especially within the mining sector. Economic and sexual exploitations still are major issues.\textsuperscript{243} In 2008 Sierra Leone had adopted a Childs Rights Act which addresses the protection of children’s human rights. However, the lack of coordination and proper institution able to alter the responsibility has obstructed a successful implementation.\textsuperscript{244} In 2008 the country still had not managed to establish an adequate follow up mechanism and secure the financial resources able to ensure the success of the implementation. The situation has improved in Sierra Leone, but the economic, social and human factors within the society still have to be addressed. Many of the problems during the conflict, such as the vulnerability of girls and women for sexual violence and harmful traditions, have not been solved along the increased political stability.\textsuperscript{245}

**CONCLUSION**

By the time the conflict started in Sierra Leone the prospect of education and opportunity of employment for the high number of youth was lacking, owed to centralisation of power, corruption and ethnic politics. Poverty, insecurity and poor human development spread across the country. The armed conflict was characterized by the many parties participating and unlike the armed groups in the DRC and Uganda; the armed groups consisted mostly of youth and owed to the low age of commanders and other soldier, the armed groups became very successful at recruiting other children. Many children and youth joined the armed groups voluntarily and these groups became the only “family”, education and way of living they knew about. Many children joined the armed groups for security and survival. The violations the children have to commit against their families were not only seen as a initiate rite, but also as a method for the armed groups to preclude the reintegration of the children into the society and a way for the armed groups to ensure loyalty from these children. For example, the RUF also created so called death zones around the camps to prevent children from escaping.

\textsuperscript{242} Global report Sierra Leone (2008), p. 297
\textsuperscript{243} UN CRC, Sierra Leone (2009), p. 16
\textsuperscript{244} UN CRC, Sierra Leone (2009), p. 3
\textsuperscript{245} UN CRC, Sierra Leone (2009), p. 3-4
Unlike the DRC and Uganda, where the average time for children to stay inside the armed groups was five years, children in Sierra Leone stayed with the groups for so long they forgot about any other way of living. The voluntarily recruitment grew in number when the conflict intensified, despite the fact that voluntarily recruitment for children younger than 17.5 years old had been prohibited since 1961 in Sierra Leone (unless the children had permission from parents or legal guardians). The lack of security forced the local communities to take the matter into their own hands and they established different local defence units to protect the local population. These armed groups grew in number and involved more and more children. When the conflict ended in 2002 these local defence units where the only armed groups which managed to maintain their units after the DDR-process in 2002 and 2003, and continue to actively recruiting children.

Owed to insufficient and non-adequate DDR-programs, children were still facing the risk of being recruited or re-recruited, especially by foreign armed groups. The few demobilized girls did not receive the support they needed and were often denied access to the DDR-programs. The situation for youth had not improved during the years of conflict and they still had little or none prospect of education or employment, despite the training and the start-up kit they received during the DDR-process. The economic deprivation led to the fact that many of the former combatants returned to armed groups or voluntarily joined foreign armed groups in for example Liberia.

Not until 2007 national legislation proclaimed that compulsory and voluntarily recruitment of children younger than 18 years were prohibited. Birth certificates were the most evidential document, but still today the birth rate is low. During the truth and reconciliation process it was decided that the main perpetrators were the commanders and not the children. However, only nine persons faced prosecution for the recruitment and use of children in hostilities and other violations. Stronger methods are required to help develop the national legislation in order to fight the widespread impunity. In 2008 Sierra Leone adopted a Child Rights Act, which addressed the protection of children. However, by this time the magnitude of child labour had reached enormous proportions and economic and sexual exploitation was still a major issue. The political situation in Sierra Leone has improved during the last century, but in order to ensure a secure and stable future for youth, the economic, social and human situation also have to be addressed and improved alongside the political stability.
3.4 CONCLUSION FROM CASE-STUDIES OF THE DRC, UGANDA AND SIERRA LEONE

THE RECRUITMENT OF CHILDREN

Regardless of when the countries signed and ratified the international humanitarian conventions, the recruitment and involvement of children into armed conflicts have been prohibited for a longer period of time according to the national legislation. In all three countries the recruitment of children has been prohibited according to the national legislation. In Sierra Leone the recruitment of children younger than 17,5 years had been prohibited since 1961. In the DRC the recruitment and involvement of children, younger than 16 years, were prohibited by national law since 2000. In Uganda the compulsory recruitment into the national army were prohibited for children under the age of 16 and had been since 1995. In 2002 recruitment of children, younger than 18 years, became prohibited for all the parties of the conflict according to the national law. Nevertheless, all the parties to the armed conflicts within the DRC, Uganda and Sierra Leone are all responsible for the large number of recruitment of children, even if the national law prohibited it. The intensity of the armed conflicts has affected the number of children being recruited into the armed groups. The involvement of children in Uganda and Sierra Leone did not officially end until the armed conflict was over.

In all three countries the local defence units, established within the local communities to protect the local population from attacks of other armed groups, are involving many children into their armed forces. In the DRC it is the militia Mai Mai groups, in Uganda the LDUs and in Sierra Leone the CDF units. The village leaders were controlling these groups and children were allowed to take part in these units. In Sierra Leone exceptionally many children were recruited by these groups and the local hunters, the so called Kamajor, became responsible for the military training of the youth. These local defence units have been a part of the local communities, which increases the transparency of these units. As we have seen from the case-studies, these units have been harder to integrate in the DDR-programs, owed to the fact that they are located in remote areas and consists of many smaller units scattered over larger areas. The local defence units have been in a better position to demand the families living there to 'donate' money, goods or even their own children, than many other of the armed groups. As in
the example of Sierra Leone, the local defence units continued to integrate children, even after all the other armed groups had stopped the recruitment.

Children, the majority between the ages of 12 and 18 years, have been actively recruited by all the parties of the different conflicts and the armed groups has in general consisted of a high percent of children. The numbers of forced and voluntarily recruitment differed. In Sierra Leone the majority of the armed groups consisted of youth between 12 and 25. It was common in these armed groups that even children under the age of 18 could possess commander posts if they showed themselves successful on the battlefield or during other missions. The average time for children to stay was in the DRC and Uganda approximately 5 years, but exceptionally longer for the children in the armed groups in Sierra Leone. It is reported that the reintegration process of children were obstructed by the fact that children have stayed so long within the armed groups, that they did not remember anything about their families or home communities.

Although recruiting underage children strongly constitutes a criminal offence in these three countries, instances of prosecution are practically unknown, still today. The problem within the DRC is the absence of investigations, because of lack of economic resources, transport and material. Fees are demanded at every level of the legal procedures and complicates for the individual to turn to the national authorities when violations occur. Human right abuses against civilians including rape and murder are widely committed by armed groups involved in hostilities. Those suspected of committing abuses continued to enjoy near-total impunity.

**Cross-border recruitment**

Cross-border recruitment was a common phenomenon in all three countries and foreign groups have contributed to the large number of recruitment of children. The international humanitarian conventions address states directly and are binding within the state-territory. However, the armed groups are not bound by the national boundaries as governments and their forces. Owing to the lack of access to the conflict zone many groups have been able to operate unnoticed from the outside world. In the DRC, many of the foreign armed groups were forced by international troops to leave the country, but these groups continued to carry out operations within the DRC or supported the military operations of other armed groups already present in the DRC. As mentioned, armed forces accused of child recruitment have dissolved the current units and then formed new. In that way they have managed to escape
prosecution. In several cases they have escaped into a neighbouring country to operate out of reach of law and reforms. The original countries of these armed groups are nevertheless still responsible for them. The Ugandan government was held accountable by the international community for the actions of the LRA within the conflicts of other countries.

**Integration of children into armed forces**

Unlike what Brett and McCallin argued – that the treatment of children in armed groups differs enormously globally – the findings of the case-studies implies that the treatment of children has been quite similar in all the armed groups within the DRC, Uganda and Sierra Leone. The children receive military training ranging from days to months. Children are being threatened, maltreated, abused and even killed within the armed groups. Girls are often sexually exploited and given to the commanders as their wives. Children are many times forced to commit or witness horrific violations of their family members, relatives or random civilians. Inside the camp they can be forced to decide and execute cruel punishment of other children, if there has been an attempt to escape or similar. As in the RUF in Sierra Leone children could receive some protection of a commander, but only if they have proved themselves loyal to this particular commander.

**Participation in hostilities**

Both girls and boys have been participating in hostilities in all armed groups, even if some children are receiving other roles within the military camp. Even if the older children are prioritized to participate in hostilities, far too many of the younger children have also been sent to the frontlines. Younger children could also be given smaller mission and conduct raids in the nearby villages. They are also forced to act as bodyguards for the commanders within the armed groups, as for example in the RUF units in Sierra Leone. The Mai Mai groups in the DRC thought children to posses mystical powers and therefore could protect the commanders and the other soldiers participating in hostilities. The RUF in Sierra Leone is the only example of an armed group which are said to have an age limit of 16 years for the participation in hostilities.

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246 See Brett and McCallin (1996), p. 91
Disarmament, Demobilization and Reintegration

The DDR-processes in the different countries have been quite insufficient. The attempt in the DRC to separate children from the armed groups participating in the unification was not very successful. Tens of thousands of children were separated from the armed groups; however, the number of children, who needed to be disarmed and demobilized, continued to grow because of the continuing recruitment of children by the parties of the conflict. Besides many of the identified and separated children were being re-recruited by the FARDC units and sent back to the frontline or forced to give up information and spy on other armed groups. The findings in the case-studies indicate that the protection of children at risk for recruitment and re-recruitment is still inadequate, especially within the conflict zones. The same happened in Uganda, where the separated children from the LRA was re-recruited by the UPDF and forced to participate in the fighting against the LRA.

In Sierra Leone many children chose to be re-recruited by foreign armed groups when they realized that they had little opportunity for education or job. The lack of opportunities was the reason why many children had joined armed groups in the first place. Many children had been spending so long time within the armed forces and had little to return to. As mentioned earlier, the average time for children to be within armed groups in the DRC and Uganda was approximately five years, but the children in Sierra Leone that time was much longer. It was outspoken that almost every armed group in Sierra Leone forced their child recruits to kill their own family or similar cruelties to make it almost impossible for the children to return and in that way ensuring the loyalty of the children towards the armed group. It was also well known that the name of the armed group was carved into the skin of the children to make sure they would stay within the group.

The separation of girls has long been an unsolved issue that all the DDR-programs are facing. Girls were many times registered as wife to the commanders and left without proper support. The girls themselves feared punishment if they escaped and stigmatization if they tried to re-enter the home community. However, one major difference worth mentioning, which makes the situation in Sierra Leone quite unique, is that the DDR-process was under-developed during the 1990s and in the beginning of the 21 century. The DDR-programs set up for girls could not provide the proper support, owed to lack of proper resources and were forced to deny girls access to these programs.
The high level of impunity

It is a grave concern that the serious violations of children’s rights are seldom prosecuted in any of these three countries. In 2002 a Special Court for Sierra Leone was established. Its task is to prosecute the persons bearing the biggest responsibility for the violations committed during the civil war, which only include a dozen persons among the thousands of perpetrators.

In the Northern part of Uganda few have access to justice. The general lack of access to civilian justice (owed to a militarization of law and order functions as a result of the conflict) coupled with an absence of civilian police officers specially trained to handled cases involving children (as victims or as suspects) and the relative ignorance of the magistrates regarding domestic provisions related to child rights and welfare, make children more vulnerable with respect to obtaining legal remedies for violations and harm suffered.247

The recruitment and use of children have been criminalized in the DRC, but so far only a handful of military and armed group leaders have been arrested and prosecuted. Instead of prosecution dozens of others were promoted to senior military or governmental positions. These prosecutions have taken place within the military, rather than civilian, justice system. Two of the prosecutions took place within the military court, before the introduction of the Child protection Code and relied on charges for disobeying orders and abduction and two of charges of war crimes or war crimes against humanity. In the four cases war crimes charges for the recruitment and use of children under the age of 15 years in hostilities were not upheld by the military court.248

248 CSUCS, DRC (2011), p. 20-21
CHAPTER FOUR

4.1. CHALLENGES TO PREVENTION AND PROTECTION OF CHILDREN INVOLVED IN ARMED CONFLICTS

It becomes clear from the assessment of the international legal standards in the chapter 2 that the rights of the children in situation of armed conflict are well provided for. The international humanitarian conventions have been signed and ratified by the majority of states globally. Despite this fact the rights of the children are continually being violated in armed conflicts globally. In this chapter the main challenges of the prevention of the involvement of children in armed conflict and the protection of children in armed conflict will be discussed and explained in further detail.

The international actions are many times guided by the child protection framework for children in armed conflict by the UN and carried out by the UN peace keeping missions and the UN country teams working within the countries. This framework was finalized in the 2005 resolution and based on conclusions drawn from four UN resolutions since 1999\(^2\) about the issue of protection of children affected by armed conflicts. According to the resolution the implementation of the child protection actions did not keep up with the development of international laws addressing this issue. The states were reminded of their responsibility to assure the implementation of the international laws within their territories. At the same time it was recognised that weak national bodies and infrastructures of those states affected by armed conflicts, prevented the implementation to reach all the way down to grass-root level. The UN bodies together with the other actors within the international community were urged to put the protection of children onto the peace agenda.\(^2\)

The 2005 resolution stressed the importance of putting an end to the trafficking of small arms, condemned the recruitment of children by the parties to the conflict, demanded the construction of an action plan and stressed the importance of implementing Monitoring and Reporting mechanisms (MRM) into countries with ongoing armed conflicts, in order to improve the protection of children affected of armed conflicts. Further it emphasised the cooperation between the national government, the UN and the civil society actors to put an end to the violations. The national government also must include the armed groups into the

\(^2\) UN Resolution 1261 (1999)
dialogue to guarantee the protection of children. The UN peacekeeping missions and the UN country teams have the responsibility to assure the follow-up of the resolution. All actors within the member states also have the responsibility to interpose when there are cross-border activities violating the children’s rights.

**Binding nature of the international humanitarian legislation**

The international humanitarian convention have been rapidly signed and ratified by states globally. Unfortunately, this act does not guarantee that the rights are truly provided for. Only states are entitled to sign and ratify international humanitarian conventions, however, as soon as the convention has been ratified the international laws hold all the parties to internal conflicts accountable. The challenge that governments and the international community are facing is to put pressure on the armed groups participating in the conflict. Honwana (2006) argues that the irregular nature of these oppositional armed groups make them less vacant to external pressure. The fact that the oppositional armed groups are responsible for the largest number of child recruitments globally witness of the ignorance of these groups of the international humanitarian conventions. According to Honwana (2006) the irregular nature of armed conflicts and the lack of state structures during and after armed conflicts can create an “ethical vacuum” in which breaches of the international humanitarian conventions or laws and norms within the society are countered with ignorance and impunity.

**Impunity**

According to Machel (2001) are the legal tools not sufficient enough at national, regional and international level, to end the high degree of impunity that we see in many armed conflicts globally. She continues by arguing that the international legal instruments have not been implemented with enough force to protect children in armed conflicts. In many armed conflicts, the civil courts have been replaced by military courts and therefore the civilians are excluded for the judicial system. According to the report of *Coalition to Stop the Use of Child Soldiers* (2011), military courts are only for prosecutions against soldiers and national police. However, in countries, as the DRC, where the national police and units of the national army

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251 UN Resolution 1612 (2005), p. 2  
252 UN Resolution 1612 (2005), p. 4  
253 UN Resolution 1612 (2005), p. 5  
257 Machel (2001), p. 142 and 150
belong to the main perpetrators of violation committed against the population the prosecution can be obstructed by the police and army. This contributes to the lack of confidence in the national justice system.\textsuperscript{258}

Meron (1998) states that: “Internal strife and even civil wars are still largely outside the parameters of war crimes and the grave breaches provisions of the Geneva conventions.\textsuperscript{259} By the implementation of the Rome Statute (1998), an attempt was made to give the recruitment and use of children the status as a war crime.\textsuperscript{260} However, since the International Criminal Court was established in 2002, only one has been prosecuted and sentenced to prison for the recruitment and use of children in armed conflict. The trial was against Thomas Lubanga Dylio from the DRC. The trial opened in 2009 and Lubanga was sentenced to prison for 14 years in 2012.\textsuperscript{261} The ineffectiveness of the ICC is a fundamental reason why the court could not be used as an efficient tool to end the issue of impunity in armed conflicts globally.

\textbf{Bottom-up approach}

Even if the states are responsible for the protection of children within their state-territories, Honwana (2006) argues that the implementation of the international legal instruments can never become efficient, unless they are implemented and understood in the local context.\textsuperscript{262} According to the African Committee the ACRWC is relatively unknown, even by governments in many countries. The solution is to translate these international humanitarian conventions into national laws and national languages.\textsuperscript{263} It is important that the content of these conventions are spread to different stakeholders within the society, such as schools, health facilities, social workers, religious and community key leaders.\textsuperscript{264}

As the findings in the case-studies implies, the local communities are responsible for a large number of recruitment. Parents and village leaders are many times sending the children to participate in armed conflicts. Therefore the international and national legislation must be implemented into the communities and transformed into local custom and practice.\textsuperscript{265}

\textsuperscript{258} CSUCS, DRC (2011), p. 22
\textsuperscript{259} Meron (1998), p. 188
\textsuperscript{260} Machel (2001), p. 143-144
\textsuperscript{261} For further information: http://www.iccnow.org/?mod=drctimelinelubanga, visited 2013-11-29
\textsuperscript{262} Machel (2001), p. 147
\textsuperscript{263} African committee (2010), p. 4 and Machel (2001), p. 147
\textsuperscript{264} African committee (2010), p. 4 and Honwana (2006), p. 159
\textsuperscript{265} Machel (1996), p. 48
In accepting the role of the Committee on the Rights of the Child, state parties have also recognized that the protection of children is not just a national issue, but a legitimate concern of the international community. This is especially important since many of the most serious violations of children's right are taking place in situation of conflict where there is currently no functional national government. One of the greatest challenges has become protection (hospitals, school or similar has become targets).

**Age limit for the participation of children in armed conflict**

In the DRC, Uganda and Sierra Leone the lack of birth registration and age verification of the children were obstructing the identification of children involved in armed conflicts. However, Machel (1996) argues that armed groups are well aware of the fact that they are enlisting small children. Even if the age limit is set to 18 years old instead of 15 years, it will not protect the smaller children from being recruited into the armed groups. Mezmur (2009) disagree with her statement and state that: “if the age limit is fixed at 18 years, the recruitment of very young children could certainly be avoided, as their reduced physical appearance would speak for itself.” According to Honwana (2006) however, the problem lies within the social construction of childhood. The transition between childhood and adulthood are based in the local context and is affected by both social and economic conditions. The different definitions of childhood which exist globally are obstructing the implementation of the international humanitarian legislation. Nevertheless, the age limit set by the international humanitarian conventions can be used as an efficient tool in identifying the children not fulfilling the minimum requirements. More research is needed in order to fully address the gap between the international legal instruments and the understanding of childhood on grass-root level.

**The limited resources of the NGOs**

Owed to lack of human resources and insufficient funding, the NGOs are many times unable to contribute to the prevention and protection of children involved in armed conflicts. The international community has a responsibility to make sure that the protection of children in armed conflict is provided for. As mentioned before, children become involved in armed

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266 Machel (1996), p. 48  
267 Honwana (2006), p. 158  
268 Mezmur (2009), p. 204  
269 Honwana (2006), p. 157
conflict in failed states, with no capacities to protect the children within its territory and prevent violations against children from happening. The armed conflict is also preventing the families from protecting their own children and it is important that these families are offered safety zones provided by the state or the international community. However, inequities of funding obstruct the NGOs present from give sufficient support for those children. Machel (2001) argues: “Funding decisions are often determined by political or strategic interests rather than on the basis on the need. They are also influenced by public concern and by media attention.”

The lack of coordination among the NGOs is another factor contributing to the insufficient assistance given to the children. In the case-studies it became obvious that insufficient DDR-programs were unable to address the root-causes of the recruitment of children and thereby the recruitment and re-recruitment of children continued. Marginalized youth lack the opportunity for education and job and without the proper guidance of families or other caretakers, these children becomes vulnerable to recruitment or criminal activities. The youth in Sierra Leone were as marginalized from social, economic and political processes before the armed conflict as after and many of the young children chose to be re-recruited into foreign armed groups.

The NGOs and the international community have limited access to the conflict zones, where unfortunately the most children are being violated. From the findings in the case-studies we have seen that children are being abducted straight from the child care centres. Staff of the NGOs are often threatened and hindered from performing their tasks by different armed groups. It is reported that the NGOs are not welcomed when they are reporting occurrence of violations within some communities, owed to the fact that the communities are used to handle the matter themselves. Further, violations can occur when the local populations are reporting violations to a NGO themselves and the accused person is responding with revenge.

Although, the international community and the NGOs lack the sufficient funding and human resources, it is important to remember that most of the programs implemented in different

274 Watchlist on Children and Armed Conflict (2008), p. 6
armed conflicts and addressed the release and integration of children in armed groups, have been led by international agencies and a few initiatives are taken by the government itself. The international actors’ lack of possibilities to assure sustainability and address the magnitude of the conflict is crucial for the improvement of prevention and protection of children in armed conflicts.
CHAPTER FIVE

5.1. CONCLUSION

Both the international humanitarian legislation and the national legislations within the DRC, Uganda and the Sierra Leone provide a strong protection for children in armed conflict. However, the level of impunity and the lack of sufficient justice system within these three countries, obstruct the prevention of the involvement of children in armed conflict. Owing to the fact that the recruitment of children is so strongly connected to the intensity of the conflict, then it seems that the only way to end the recruitment is to end the conflict, as in Sierra Leone. State parties to the CRC are responsible for all children, however, the irregular nature of the armed opposition groups make it difficult to hold these groups accountable for recruitment and use of children within these groups. All the three countries are struggling with cross-border recruitment and the oppositional armed groups are moving freely across the borders to neighbouring countries. The protection of children has become an international concern within all these three countries, however, due to the insecurity within the conflict zones, the international actors have limited access to the worst affected areas. It is important that the international actors are present within these three countries since they did not have a functioning government. National and international strategies to protect children must empower and build the capacities of women, families and communities to address the root causes of conflict and strengthen local development.

One of the greatest challenges has become the disarmament, demobilization and reintegration of children associated with the armed groups. Politicians and soldiers have long recognized that they can achieve many of their objectives if they fight within agreed standards of conduct. Considerations and concerns in the area of protection have lead to the development of two main bodies of law, humanitarian law and human rights law, which form the legal bases that afford children protection in situations of armed conflict.

No rule provides that a child may become a combatant, but limits are places instead on the authorities that control the recruitment process. It may not always be feasible to ensure implementation at every level, however, particularly where forces are dispersed among a population whose younger members themselves actively seek to participate: the challenge here includes giving the broadest dissemination to humanitarian law principles, seeking out
alternatives to enlistment or participation, and clarifying the implications of international obligations for those engaged in hostilities
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