

The Criminal Responsibility of Child Soldier Under International Criminal Law, Case Study: Northern Uganda and Democratic Republic of Congo (DRC)

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“ Universal ratification of the Optional Protocol on the Involvement of Children in Armed Conflict will establish an international moral consensus that no child should take part in hostilities or be involuntarily recruited and that former child soldiers should be assisted by their governments after a life of violence and distress.”

Ban Ki-Moon¹

Abstract

Here and there across the globe “war” has been inevitable in human history. Most of these wars have been included children under their armies. Despite international efforts to protect children where different instruments to protect children have been enacted, Children are kidnapped and recruited into soldiering and encourage committing international crimes as child soldiering itself is a crime. In this regard this paper talks about the criminal responsibility of child soldiers under international criminal law, the case of Northern Uganda and Democratic Republic of Congo; we will establish the case of Lord Resistance army rebels who captured many children from Congo and Northern Uganda to be used against the Republic of Uganda to which it is a main rebel opponent. These children have been used into different atrocities as it will be discussed in this paper .The crucial question which remains :are they criminally liable? To answer this question we will study different international law instruments with a critical comparison of child criminal psychology where we will examine the moral element of the crime commission. Finally it will be a time examine the factors that excluding or including child soldiers prosecutions.

Keywords: Child soldiers, International Criminal Law, Prosecutions, Criminal responsibility

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¹ Ban Ki-moon. (n.d.). AZQuotes.com. Retrieved March 08, 2017, from AZQuotes.com Web site: <http://www.azquotes.com/quote/598000>

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Introduction

It is estimated that some 300,000 children² - boys and girls under the age of 18 - are involved in more than 30 conflicts around the world. Child soldiers are used as combatants, planters, porters and cooks, or forced to provide sexual services. Some are abducted or forcibly recruited, others are forced into poverty, abuse and discrimination, or seek revenge for acts of violence against them or their families. Children are more likely to become child soldiers if they are separated from their families, have left their homes, live in combat zones or have little schooling. They may join the ranks of armed groups because they are the only way to eat every day and survive. In some situations, the participation of children in conflicts as soldiers may even be accepted or encouraged. Children can make war "of their own free will", without understanding the dangers and violence to which they are exposed. In most cases, these children respond to economic, cultural, social and political pressures.

Since the mid-1980s, UNICEF has played a leading role in recommending the following countries to Afghanistan, Angola, Burundi, Colombia, Guinea-Bissau, Liberia, Mozambique, Uganda, Democratic Republic of the Congo, Rwanda, Sierra Leone, Somalia, Sudan and Sri Lanka to demobilize children and to demobilize them. UNICEF and its NGO partners have also provided care, technical advice and sometimes financial support to facilitate the implementation of national disarmament, demobilization and reintegration programs.

By accusing Ugandan and Congolese military leaders of recruiting and using children in Hostilities, the International Criminal Court is breaking new ground. In so doing, the Court must face new and Difficulties related to the need for child-friendly investigations, trials and reparations. Which will raise the issues of their responsibilities.

Thomas Lubanga, currently in detention in The Hague, is accused exclusively of having conscription, enlistment and use in hostilities of children under 15 years of age. Joseph KONY, Vincent OTTI and Okot ODHIAMBO, all three high commanders of the Lord's Resistance Army (Lord's Resistance Army), an active armed group in northern Uganda, are accused of Recruiting children under duress and engaging them in hostilities. While rejoicing of the Prosecutor's interest in child soldiers, the report highlights the many other crimes committed against children, including child soldiers. These crimes must also be as the crimes committed against the victims, child soldiers are seeking to reintegrate. Distinguish between child soldiers and other child victims or victims of their communities complicates the reintegration of these child soldiers and raises complex questions as to the reparations to be granted to them.

I. The presence of child soldiers in Northern Uganda and Democratic Republic of Congo

² Press Release, Amnesty International, *Child Soldiers: A Global Issue*, ¶ 5 (Sept. 8, 2007), available at <http://mediaforfreedom.com/ReadArticle.asp?ArticleID=4474>; accessed on 7 march 2017

Kony founded the Lord's Resistance Army in 1987, at first to combat Ugandan President Yoweri Museveni, who had seized power a year earlier. Claiming to have been possessed by spirits, Kony at first enjoyed a following of a few hundred and garnered a few minor victories in skirmishes with Museveni's soldiers. His standing changed dramatically in 1994, when Sudanese President Omar Hassan al-Bashir agreed to provide Kony with guns and ammunition in exchange for L.R.A. attacks on the South Sudanese rebels, the Sudan People's Liberation Army, and the Ugandan Army. To create his army, Kony ordered the abduction of thousands of young men and women throughout northern Uganda. Groups of L.R.A. fighters descended on villages, usually late at night, kicking in doors and grabbing terrified young men and women. The youngsters were often forced to kill their family members or friends, as a way to seal their entry into the rebel force and prevent them from ever leaving.³

The LRA terrorized northern Uganda for two decades when, in 2006, they indicated an interest in peace negotiations. These were hosted by Juba, Sudan (now South Sudan), and dubbed the Juba Peace Talks. Meanwhile the LRA set up camp in Garamba National Park in northeastern Congo, gathering its strength and stockpiling food. There is significant evidence that Kony ordered his fighters to attack villages and abduct children in the Democratic Republic of Congo (DR Congo) during the Peace Talks.⁴

In December 2008, when it became clear that Kony wasn't going to sign the agreement, Operation Lightning Thunder was launched. It was the coordinated effort of Uganda, Democratic Republic of Congo, the Central African Republic, and Sudan, with intelligence and logistical support from the United States.

The operation failed. Joseph Kony somehow learned of the attack in the hours before the air-raid and was able to escape. In retribution for the attempted attack, the LRA, led by ICC-indictee Dominic Ongwen, attacked villages in the DR Congo on December 24, 2008, killing 865 civilians and abducting 160 more over the course of two weeks. The LRA fighters were reportedly instructed to target churches, where people would be gathered with their families for Christmas Eve services.⁵

The context in which the recruitment and participation of children in hostilities Northern Uganda is quite different from that surrounding the use of child soldiers in the east of the Democratic Republic of Congo (DRC). Children associated with groups and armed forces are recruited under various circumstances; children therefore experience experiences different and have a perception of themselves that differ from one child to another.

i. How do children become soldiers in Uganda and DRC ?

³ Joseph Kony found at <http://www.newyorker.com/news/news-desk/joseph-kony-and-mutiny-in-the-lords-resistance-army> accessed on 7 March 2017.

⁴ History of war at <https://invisiblechildren.com/challenge/history/> accessed on 7 March 2017.

⁵ *ibid*

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As in other parts of Africa, in the Great Lakes region, children are still Children for their parents and elders in the community, even when they become adults. The Children can never take sides against their elders, including the distant relatives of their ethnic group. The role of children in society is to help their parents and community. It is important to examine these elements in the context of each country. In Democratic Republic of Congo, 47.1% ⁶of the population is under 15 years of age. In Uganda, this percentage is 50.4%⁷. In addition, the average income of these regions is less than \$ 1 per day. As a result, children generally need to contribute to the livelihood of the family and responsibilities such as keeping livestock, collecting wood, transporting water, harvesting, cooking or going to the market.

It is therefore necessary to analyze the recruitment and enrollment of children in a context where poverty and Ethnic affiliations play an important role. Many children, especially in eastern DRC, join the militias in order to defend their own ethnic group, with the consent Tacitly from their elders and parents, or under the powerful influence of the military leaders of their ethnic group. Many others commit themselves driven by great misery, having lost in the conflict, or seeing it as a means of feeding their families or defending their attacks by other groups.

When a child enters a force or armed group voluntarily or under duress, the Armed group becomes its new community. To mark the importance of this new hierarchy, The armed group organizes symbolic ceremonies of integration, often marked by a psychological manipulation. During these ceremonies, the child is often forced to commit of crimes as a transitional rite. The members of the group do not fail to remind that the criminal acts sometimes committed against their families have destroyed the bond between them, the Thus preventing them from returning home. Finally, military hierarchy conditions children betray their commander. The latter sometimes remain important people in the lives of children,even after their demobilization. As a result, parents are afraid that the child reintegrate and no longer wish to respect family and community obligations. Conversely, Many children, especially young people, are afraid of not being loved and accepted return. Others will find it difficult to reintegrate, especially if they occupy a high armed group and have become accustomed to finding food, drugs or other use of force.

These first remarks highlight some difficult issues related to the prosecution of crimesenlisting, conscripting and using children under the age of 15 in hostilities Are the subject of arrest warrants issued against Thomas Lubanga, commander of the UPC in Eastern DRC, Joseph Kony, Vincent Otti and Okot Odhiambo, all members of the The Lord's Resistance Army (LRA), an active armed group in northern Uganda and southern Sudan.

II. The child soldiers and International Law

The minimum age for criminal liability represents the age at which an individual can be legally prosecuted for crimes. Under international law, an adult is understood to be an

⁶ DRC age structure found at

http://www.indexmundi.com/democratic_republic_of_the_congo/age_structure.html accessed on 8 March 2017

⁷ Uganda age structure retrieved from http://www.indexmundi.com/uganda/age_structure.html accessed on 8 March 2017.

individual who has attained the age of eighteen years.⁸ In this section we are going to consider child under some international instrument.

i. The international Humanitarian law

The Geneva Conventions of 1949 do not specifically address the participation of children in armed forces. However, the Additional Protocols to the Geneva Conventions contain Provisions on the use of children in armed conflict. Section 77 (2) of the Protocol thus requires States Parties to take all possible measures to To prevent children who have not reached the age of 15 from directly taking part in hostilities.

ii. The international human rights law

The Convention on the Rights of the Child reaffirms this principle in its Article 38: "States Parties Take all possible measures in practice to ensure that persons who do not Attained the age of fifteen years do not participate directly in the hostilities. "Like the Convention The rights of the child is a matter of human rights, it also applies in peace.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children In armed conflict contains more detailed provisions concerning the association of children with armed groups. In particular, it requires States parties to take all necessary to ensure that members of their armed forces who have not reached the age of 18 do not participate directly in hostilities.

iii. The international customary law

It is generally accepted that the recruitment of children under the age of 15 into the armed forces is prohibited by a rule of customary international law obliging States to take all possible measures to ensure that persons who have not The age of fifteen do not take direct part in the hostilities. This rule is the result of a negotiations leading up to the adoption of the Convention on the Rights of the Child and the States declared that the protection afforded to children in armed conflict should be lower than that imposed by the First Protocol. In the Sam Hinga Norman case, the Appeals Chamber of the Special Court for Sierra Leone⁹ also concluded that the recruitment and the use of children under 15 years of age in hostilities was prohibited by international customary law . Although there is not, as yet, a uniform practice with respect to the minimum age for recruitment, there is agreement that it should not be below 15 years of age. In addition, Additional Protocol I and the Convention on the Rights

⁸ Article one of the Convention on the Rights of the Child, 20 November 1989, (entered into force 2 September 1990) [CRC].

⁹ Additional Protocol I, Article 77(2) (adopted by consensus) (ibid., § 502); Additional Protocol II, Article 4(3)(c) (adopted by consensus) (ibid., § 503); ICC Statute, Article 8(2)(b)(xxvi) and (e)(vii) (ibid., § 513); Statute of the Special Court for Sierra Leone, Article 4 (ibid., § 515); Convention on the Rights of the Child, Article 38(3) (ibid., § 381).

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of the Child require that, in recruiting persons between 15 and 18, priority be given to the older ones.¹⁰

iv. Congolese and Ugandan laws**a. Ugandan law**

The 1995 Ugandan Constitution states in Article 17 that it is the duty of every citizen Ugandan to defend Uganda.¹¹ Although the Constitution makes no mention of the recruitment and of the use of children, the Statute of the Ugandan National Resistance Army sets the minimum age For recruitment at 18 years. Article 34 of the Constitution also defines the child as Persons under the age of 16 and stipulates that children have the right to be protected from social exploitation or economical and should not be associated with hazardous tasks that could interfere with Their education or harm their health or physical, mental, moral or social development.¹²

b. Congolese law

The new Constitution adopted on 19 February 2006 does not explicitly prohibit the recruitment of children; Article 41 provides only general safeguards for the protection of minors, thus punishable the abuse of minors and imposing an obligation on the public authorities to protect children and to bring perpetrators of violence against children to justice. Article 41 defines the minor child as any person who has not yet attained the age of 18 years.

v. The international criminal court statute and child soldier

The International Criminal Court "does not have jurisdiction over a person who is under the age of 18 years at the time of the alleged commission of a crime ". With regard to children, the ICC will focus on children as victims and not as authors.

By describing war crimes as "conscripting or enlisting children of Under the age of 15 in the armed forces or to actively participate in hostilities ", the Statute Of the ICC is a step forward from the previous standards which merely States to "refrain" from using children in hostilities or to take "all measures to ensure that persons who have not attained the age of 15 years are not directly involved in hostilities. The use of children seems to cover direct participation in combat but also participation combat-related military activities such as espionage, sabotage, recognition or mail. All support activities at the front, such as meal preparation, the collection of wood or the transport of food would be included. Non-front-line support activities like

¹⁰ Additional Protocol I, Article 77(2) (adopted by consensus) (ibid., § 379); Convention on the Rights of the Child, Article 38(3) (ibid., § 381).

¹¹ Duty of a citizen found in article 17 of the Ugandan constitution.

¹² Rights of children under article 34 of the Ugandan constitution.

domestic work for an officer, would not be included. Like the other crimes of the recruitment of children must reach a sufficient level of severity to a prosecution by the ICC.

III. The responsibility of child soldiers

Child soldiers are led to commit international crimes, which in legal terms is not without consequences. Those responsible for international crimes must be convicted but what about the guilt of child soldiers under international criminal law?

Many children are victims of armed conflict, not only as civilians but also as soldiers. Given the growing number of children involved in armed conflicts, legal norms have emerged to protect them and to regulate their participation. Despite these efforts, the legal texts do not clearly define the recognition of child soldiers' guilt.

When children become soldiers, by choice or not, they are most often subjected to ill-treatment by recruiters. They are regularly abused, drugged, etc. In order to alter their capacity for discernment when committing a crime. Moreover, the age of international criminal responsibility is not clearly defined, leaving a margin of interpretation for countries and tribunals. However, the 1959 Declaration of the Rights of the Child recognizes worldwide the lack of maturity and personal development of children.

But the problem persists: are they liable or are not? Below we examine some reasons of children having any liability.

i. Rationale for prosecuting child soldiers

The International Criminal Court (ICC) has no jurisdiction to try children¹³. The Statute of the Special Court for Sierra Leone (which is competent to try crimes committed during the "Diamond War") is competent to try children aged between 15 and 18 at the time of the offense. It is clear from these two examples that the responsibility of child soldiers who have committed crimes under international law differs according to the courts. International criminal law is not clear on the issue of the minimum age for criminal liability.

This indeterminacy indicates that there is no categorical objection to the prosecution of children. Therefore, it is important to examine the rationales upon which international criminal law could rely, if it was decided that child soldiers could be prosecuted. Several arguments can be developed. First, such prosecutions are in accordance with the aim of international criminal justice. Second, they seem to be authorized by international human rights law. Third, most domestic systems allow prosecutions of child soldiers and, in fact, some have done so. Finally, we are currently witnessing a case within international criminal law, that of Dominic Ongwen, indicating that the prosecution of individuals for crimes committed as children may be possible.¹⁴

¹³ Art. 6 of Rome statute

¹⁴ Leveau, Fanny. "Liability of Child Soldiers Under International Criminal Law." *Osgoode Hall Review of Law and Policy* 4.1 (2014):36-66.accessible at <http://digitalcommons.osgoode.yorku.ca/ohrlp/vol4/iss1/2> , visited on 8 Mar. 17

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The idea that children can be prosecuted when they commit crimes is supported by the international community through wide ratification of the CRC, but also through ratification of regional treaties. For instance, the African Charter on the Rights and Welfare of the Child ("African Charter") contains a provision on the administration of juvenile justice.¹⁵

Different national jurisdictions allow the prosecution of children who commit crimes and international human rights law acknowledges this fact. In addition, it also gives conditions under which such prosecutions can occur. For example , it limits the range of sanctions by formally prohibiting the capital punishment . Because international human rights law does not prevent domestic prosecutions from prosecuting child soldiers, it means then that international human rights law does not go against prosecution of child soldiers at the international level as long as special standards are respected.

i. Rationale for excluding the prosecution of child soldiers

A child is unable to express his free will while choosing or abducted to be a soldier. The principles of criminal law does not allow responsibilities to someone who had no capacity to use his or her intention. Children are viewed by most as victims rather than authors.

a. Responsibility of recruiter

Recruitment and use of children as war crimes The above analysis shows that the prohibition on the recruitment of children under the age of 15 and their direct involvement in hostilities is well established in conventional international law and Is now part of customary international law.¹⁶ This, however, is not sufficient for the violation of these rules to entail the individual criminal responsibility of the person who recruited the child or who used it to participate in the hostilities. For individual criminal responsibility to be challenged, it is necessary to establish not only the primary rules, which prohibit behavior, but also secondary rules, which criminalize violations. The Rome Statute of the International Criminal Court, which entered into force on 1 July 2002, lays down as one of the war crimes for individual criminal responsibility "conscripting or enlisting children under 15 Years "(in the armed forces, whether national or non-national, or in armed groups) as well as" actively participating in hostilities ".¹⁷

The recruitment and use of children under the age of 15 is also criminalized by the Statute of the Special Court for Sierra Leone. The first draft of the Statute, proposed to the Security Council by the Secretary-General of the United Nations, contemplated the "forced abduction and enlistment of children under 15 years of age from serious violations of international humanitarian law" In armed forces or groups with a view to their active participation in

¹⁵ African Charter on the Rights and Welfare of the Child, 11 July 1990, OAU Doc CAB/LEG/24.9/49 (entered into force 29 November 1999), arts 17 and 30.

¹⁶ In this regard: Report of the Secretary-General on the establishment of a Special Court for the Sierra Leone, UN Doc. S / 2000/915, 4 October 2000, para. 17.

¹⁷ Georges and Rosemary Abi-Saab, "War crimes" in Hervé Ascensio, Emmanuel Decaux and Alain Pellet (eds.), International Penal Law, Pedone, Paris, 2000, pp. 265-285

hostilities ". This very restrictive formulation varied from the Statute of the International Criminal Court. Only abduction of children under the age of 15 and forced recruitment into armed forces or groups was criminalized. Involving children in hostilities was not considered per se, but rather as the subjective element (*mens rea*) of the two previous crimes.

According to the Secretary-General, such a choice was explained by the "questionable character of the crime defined in the Statute of the International Criminal Court under customary law". The first version of the Statute therefore criminalized not the specific elements of a new crime but rather actions already constituting crimes per se.¹⁸

While it is true that there were already examples of States' partiality in favor of criminalizing the recruitment and use of child soldiers before November 1996¹⁹, a practice and *opinio juris* sufficient to establish a customary norm In this regard did not materialize until the adoption of the Statute of the International Criminal Court on 17 July 1998²⁰. The travaux préparatoires of the Statute of the Court show substantial agreement by States in favor of the criminalization of conduct Already prohibited under general international law.²¹ Some States, such as Canada,²² have explicitly recognized the customary nature of the formulation of crimes adopted in Rome

b. Responsibility of commander

If the criminal responsibility of an individual who has recruited or used Child under the age of 15 is clearly established, it should not be omitted the responsibility of that same person, as superior Hierarchy, for the acts committed by the child.²³ A child may himself Commit acts constituting a grave breach of international humanitarian law. If, under certain conditions, the

¹⁸ According to the Report, the elements of the crime under Article 4 (c) of the proposed Statute of the Special "(A) the abduction which, in the case of Sierra Leonean children, was initially the crime charged And constitutes in itself a crime under Article 3 common to the Geneva Conventions; B) forced recruitment In the most general sense - notwithstanding the administrative formalities; And (c) the processing and use of The child, among other degrading treatments, as a "combatant child". Report of the Secretary-General On the establishment of a Special Court for Sierra Leone, op. Cit. (Note 8), para. 18

¹⁹ Resolution 2, adopted by consensus at the 26th International Conference of the Red Cross and Red Crescent, which "also strongly condemns the recruitment and enlistment of children under the age of 15 in the armed forces or Armed groups, which constitutes a violation of international humanitarian law, and demands that those responsible for such acts be brought to justice and punished "(Resolution 2, point C, littera c, italics in the original). The Resolution is available on the ICRC website

²⁰ On the other hand, see the arguments of the defense in the Special Court of Sierra Leone, The Prosecutor v. Sam Hinga Norman, Preliminary Motion Based on Lack of Jurisdiction: Child Recruitment (SCSL-2003-08-PT), 26 June 2003, para. 9

²¹ «There was very broad agreement at the meetings of the Preparatory Committee and at the Rome Conference that the conscription or enlistment or use of the participation of child soldiers should be a war crime under the jurisdiction of the ICC». Cottier, Fenrick, Viseur Sellers et Zimmermann, op. cit. (note 61), p. 259.

²² Section 6 (4) of the Crimes Against Humanity and War Crimes Act states: "For the purposes of this section, the offenses referred to in sections 6 and 7 and subsection 2 Of Article 8 of the Rome Statute are, as of 17 July 1998, crimes under customary international law and can be committed before that date ... ". Canada, Crimes Against Humanity and War Crimes Act, 2000, c. 24. <<http://laws.justice.gc.ca/en/C-45.9/30976.html#rid-31010>>

²³ See the ICC Statute, Article 28, entitled "Responsibility of Military Chiefs and others hierarchical superiors ".

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child may be criminally Responsible, his or her supervisor may also be held liable for his acts.²⁴

The first person to stand trial at the ICC for enlisting children under 15 was former Democratic Republic of Congo (DRC) warlord Thomas Lubanga. His trial at The Hague is nearing completion after he allegedly recruited underage children into the Patriotic Forces for the Liberation of the Congo (FPLC) during the conflict in Ituri, a district in the eastern DRC, between 2002 and 2003.

c. Psychological development of the child and consequences of the required mens rea element

The defense of infancy is a form of defense known as an excuse so that defendants falling within the definition of an "infant" are excluded from criminal liability for their actions, if at the relevant time, they had not reached an age of criminal responsibility. An accused can be found liable under international criminal law only when the actus reus is committed with intent²⁵.

An important side to take into consideration in any discussion on the criminal liability of children is the ability for one child to act with this required intent. Many authors have written on the psychological development of the child and the subsequent ability to intend to commit a criminal act.²⁶ This is a problem, in the sense that, from a psychological point of view, some children should be able to be found liable under international criminal law while others should not.

This conclusion is supported by neuroscientific research. Professor Naomi Cahn suggests that even though "the law has not historically depended on brain science, (...) the modern study of neuroscience offers the prospect of identifying more specific causes [related to adolescents' criminal behaviours]."²⁷ In her paper dealing with the impact of neuroscience on understanding child soldiers' actions, she mentions that early abuse and neglect can change the structure of children's brains: "when children are abused or neglected, their brains may develop so that they overact to situations that are threatening so that delinquent behavior results from the brain using these early lessons of fear to defend itself."²⁸ These elements show that child soldiers are different from adults because their psychological and biological development is different. These observations must be taken into account when examining their criminal liability. Another huge

²⁴ In the case of a serious breach of international humanitarian law, "responsibility for such a violation rests with the authorities of the Party to the conflict who recruited and enlisted the children". Dutli, op. Cit. (Note 35), p. 462.

²⁵ Rome Statute, supra note 1, art 30.

²⁶ Jean Piaget, *The Moral Judgement of the Child* (London: Routledge & Kegan Paul, 1932) [Piaget]; L Kohlberg, *Child Psychology and Childhood Education - A Cognitive Developmental View* (New York: Longman, 1987).

²⁷ Naomi Cahn, "Poor Children: Child "Witches" and Child Soldiers in Sub-Saharan Africa" (2006) 3 Ohio St J Crim L 413 at 429.

²⁸ Ibid at 426.

difficulty in determining whether child soldiers could be held liable under international criminal law is the fact that international law does not provide for a minimum age of criminal liability.²⁹

Psychological studies show a child's understanding of the world is fundamentally altered during adolescence, suggesting he or she does not possess the same abilities to act independently or appreciate the rights of others as an adult and should be shielded from liability for crimes arising from war. A child's grasp of the political world changes dramatically between ages twelve or thirteen and fifteen or sixteen; a child's cognitive mode changes, his or her authoritarian views of the political system sharply decline, and he or she achieves a capacity for ideology.³⁰

d. ONGWEN CASE STUDY

Ongwen, according to his own testimony in 1988, was kidnapped by the LRA at the age of fourteen as he walked to Koro Abili Primary School. However, it has often been reported that he was nine or ten, and also that he was carried by other captives all the way up to the LRA's main military bases because he was 'too little to walk'. Once abducted, he was tortured and forced to watch violent rituals of people being killed and subsequently indoctrinated, while still a child, as an LRA fighter. He then rose within the ranks and eventually became head of one of the four LRA brigades.³¹

During the period from 1 July 2002 to an unspecified date in 2004, the LRA, an armed group, allegedly carried out an insurgency against the Government of Uganda and the Ugandan Army (also known as the Uganda People's Defence Force - UPDF - and local defence units - LDUs). There are reasonable grounds to believe that the LRA had been directing attacks against both the UPDF and LDUs and against civilian populations, and that, in pursuing its goals, the LRA had engaged in a cycle of violence and established a pattern of "brutalization of civilians". This had been carried out by acts including murder, abduction, sexual enslavement, mutilation, and mass burnings of houses and looting of camp settlements. Civilians, including children, are believed to have been abducted and forcibly "recruited" as fighters, porters and sex slaves to serve the LRA and to contribute to attacks against the Ugandan army and civilian communities. In the context of this insurgency, it is alleged that the Pajule IDP (October 2003), the Odek IDP (April 2004), the Lukodi IDP (May 2004) and Abok IDP camps (June 2004), were attacked and that in his capacity as Brigade Commander of the Sinia Brigade of the LRA, Dominic Ongwen would have ordered the commission of

²⁹ See Leveau and Fanny at 39.

³⁰ Grossman, Nienke, *Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations* (January 16, 2007). *Georgetown Journal of International Law*, Vol. 38, 2007. Available at SSRN: <https://ssrn.com/abstract=1328982>

³¹ Ongwen retrieved from <http://www.warscapes.com/opinion/dominic-ongwen-and-search-justice> accessed on 10 March 2017

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crimes within the jurisdiction of the Court in the context of these attacks. Mr Ongwen is charged with the following crimes against humanity and war crimes:³²

- War crimes: attack against the civilian population; murder and attempted murder; rape; sexual slavery; torture; cruel treatment; outrages upon personal dignity; destruction of property; pillaging; the conscription and use of children under the age of 15 to participate actively in hostilities;
- Crimes against humanity: murder and attempted murder; torture; sexual slavery; rape; enslavement; forced marriage as an inhumane act; persecution; and other inhumane acts.

As the ICC does not have the competency to prosecute crimes committed by a person under 18 years of ages, only crimes Ongwen committed when he was mature ,are the ones he was accused for. This emphasize the rationale of child prosecution exclusion.

I. REHABILITATION PROGRAMS

Instead of prosecuting children under age eighteen, post-conflict governments should seek alternative methods of addressing the needs of victims of child soldiers and their communities while rehabilitating the child soldiers themselves.³³

Even if the Lord's Resistance Army left Uganda in 2006, the LRA continues to abduct children, forcing the girls to become wives to army commanders and the boys to become soldiers. They are forced to witness and perpetrate terrible war crimes. Given that Kony's rebel army uses brainwashing tactics to instill fear and obedience in those kidnapped, and that Ugandan abductees have been with the LRA for an average of 11 years, escapees need extensive help to recover from the physical and emotional trauma of war. In many cases, those who escape from the LRA also need practical help to trace and be reunited with their families and communities across northern Uganda, Democratic Republic of Congo, Central African Republic, and South Sudan.³⁴

In Uganda , The Children of War Rehabilitation Center has been at the center of many LRA defectors' efforts to start a new life. The center provides the guidance, counseling and trainings needed to support the productivity and social integration of returned LRA combatants.

At the peak of the LRA conflict, the rehabilitation center facilitated the recovery of over 18,000 young people. Today, the small stream of returnees who are welcomed at the center reflects the LRA's weakened capacity and gives hope that this conflict will soon come to an end once and for all.³⁵

³² See <https://www.icc-cpi.int/uganda/ongwen/documents/ongweneng.pdf>

³³ See Grossman, at 10

³⁴ See <https://invisiblechildren.com/program/rehabilitation-project/> accessed on 10 March 2017.

³⁵ See <http://www.mastersimage.com/uganda-part-1-children-of-war-rehabilitation-centre/> accessed on 10 Mar. 17.

In the DRC, The program was run by professionally-trained Congolese rehabilitation specialists and equipped to serve up to 150 children at any given time. It was designed to serve children for six-months before they are reunited with their families, preparing children for successful reintegration into society by seeking to restore their mental health, equipping them to return to school, or, if beyond school age, helping them develop a marketable skill that can be used in the workplace. Most of the activities were focused on teaching children to cope with and understand their trauma. Since its inception in May 2012, Centre Elikya has hosted 200 LRA-affected children from DR Congo in rehabilitation and reintegration programs.³⁶

CONCLUSION

In this article we have attempted to clarify some issues of responsibility related to the problem of child soldiers in northern Uganda and the DRC. International law provides a relatively clear answer to these questions. The recruitment of children under the age of fifteen years and their use for active participation in hostilities constitutes a war crime, confirmed in customary international law, which entails the individual criminal responsibility of recruiters. The responsibility of States and armed groups for violations of international rules prohibiting the recruitment of children and their participation in hostilities is also well established. These violations may constitute a threat to international peace and security, which would - at least in theory - impose sanctions on the part of the UN Security Council.

The main difficulties inherent in these aspects are the application of the law, rather than the interpretation of its provisions. The question of the responsibility of child soldiers who committed crimes under international law is of a completely different nature and finds less direct answers. The examination of international standards in the field of juvenile justice still provides important indications. The best solution for the best interests of the child should be non-judicial procedures such as truth and reconciliation commissions, accompanied by rehabilitation and reintegration programs

³⁶ Invisible child, id.

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