

Child Soldier Recruitment in Sub-Saharan Africa: Jurisprudential Advances, Causal Factors, And Persistent Challenges^(*)

Assoc. Prof. Dr. Uche NNAWULEZI^(**)

Dr. Jacques KABANO^(***)

Dr. Obinna Nnana OKEREKE^(****)

Abstract

This study examines child soldier recruitment jurisprudence in sub-Saharan Africa, where state collapse and unrest enable minors' conscription. Using doctrinal methodology, it assesses causal factors and regional legal frameworks shaped by the International Criminal Court (ICC) and hybrid tribunal prosecutions. Key drivers include political instability, non-state armed groups, indoctrination, economic desperation, and societal collapse. Jurisprudential advances feature rulings by ICC, such as Lubanga and Ongwen and instruments (African Charter on the Rights and Welfare of the Child

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^(**) University of Lay Adventists of Kigali, Faculty of Law, International Humanitarian Law / Human Rights Law, Kigali, Rwanda.

E-posta: uche.augustus@unilak.ac.rw.

Orcid: 0000-0003-2718-3946.

^(***) University of Lay Adventists of Kigali, Faculty of Law, Kigali, Rwanda.

E-posta: jakatuholy18@gmail.com; j.kabano@unilak.ac.rw.

Orcid: 0000-0002-0248-9204.

^(****) Federal University Wukari, Taraba, Nijerya.

E-posta: barristerobinnaokereke@gmail.com.

Orcid: 0009-0008-8793-5693.

(ACRWC), Malabo Protocol). Persistent challenges impede eradication: ambiguous “child”/“child soldier” definitions; debates on minors’ accountability; male-centric approaches; Malabo Protocol non-ratification; lack of statutory reparations; and insufficient Disarmament, Demobilization, and Reintegration (DDR) programs. Harmonised legal reforms, gender-sensitive frameworks, ratifying pending instruments (e.g., Malabo Protocol), and strengthened institutions are essential. Recommendations include an Africa-specific minor definition (under 18), criminalising all recruitment, and prioritising reparative justice.

Keywords

Sub-Saharan Africa, Malabo Protocol, International Criminal Court, Child Soldiering, Armed Conflicts.

Sahra Altı Afrika’da Çocuk Asker Alımı: Hukuksal Gelişmeler, Nedensel Faktörler ve Kalıcı Zorluklar

Öz

Bu çalışma, devlet çöküşü ve karışıklığın reşit olmayanların askere alınmasını mümkün kıldığı Sahraaltı Afrika’daki çocuk asker alma içtihadını incelemektedir. Doktrine dayalı bir metodoloji kullanılarak, nedensel faktörler ve Uluslararası Ceza Mahkemesi (UCM) ve karma mahkemeler yargılamaları tarafından şekillendirilen bölgesel yasal çerçeveler değerlendirilmektedir. Temel etkenler arasında siyasi istikrarsızlık, devlet dışı silahlı gruplar, endoktrinasyon, ekonomik çaresizlik ve toplumsal çöküş yer almaktadır. İçtihadı gelişmeler arasında kararlar (Lubanga, Ongwen) ve belgeler (Afrika Çocuk Hakları ve Esenliği Sözleşmesi (ACRWC) ve Malabo Protokolü) yer almaktadır. Durumun ortadan kalkmasını engelleyen süregelen zorluklar; muğlak “çocuk”/”çocuk asker” tanımları; reşit olmayanların hesap verebilirliğine ilişkin tartışmalar; erkek merkezli yaklaşımlar; Malabo Protokolünün onaylanmaması; yasal tazminatların eksikliği; ve yetersiz Silahsızlandırma, Terhis ve Topluma Kazandırma (DDR) programlarını içermektedir. Uyumlaştırılmış yasal reformlar, toplumsal cinsiyete duyarlı çerçeveler, bekleyen belgelerin (örneğin Malabo Protokolü) onaylanması ve güçlendirilmiş kurumlar elzemdir. Öneriler arasında Afrika’ya özgü bir reşit olmayan tanımı (18 yaş altı), tüm işe alımların suç sayılması ve onarıcı adalete öncelik verilmesi yer almaktadır.

Anahtar Kelimeler

Sahra Altı Afrika, Malabo Protokolü, Uluslararası Ceza Mahkemesi, Çocuk Askerler, Silahlı Çatışmalar.

Introduction

The recruitment and utilisation of child soldiers continues to represent a grave global concern, characterised by substantial regional variations as evidenced by data verified by the United Nations.¹ Africa accounts for approximately 50-60% of all verified cases on an annual basis, with countries such as the Democratic Republic of the Congo (DRC)², Somalia³, and Nigeria⁴ consistently reporting the highest numbers due to protracted conflicts involving numerous armed groups. The Middle East and North Africa region accounts for approximately 25-30% of the verified incidents, with conflicts in Yemen (where children constituted over 30% of UN-verified recruited cases in 2023) being a significant contributing factor.⁵ In Asia, verified cases account for approximately 10-15% of the global total, with critical situations being observed in Myanmar (where state forces and ethnic armed groups recruited hundreds of children), Afghanistan, and the Philippines.⁶ In the Americas, verified incidents represent less than 5% of the global total. However, there is severe recruitment by criminal gangs and non-state groups in Colombia and Central America.⁷ Globally, over 8,500 children were verified as having been recruited or used in 2023 alone, a conservative estimate given the severe underreporting, with Africa bearing the highest burden, followed by the Middle East and Asia.⁸

The practice of enlistment, deployment, along with the drafting of minors into military activities as soldiers in Africa has been condemned for being against international law and other regional instruments and jurisprudences.⁹ Child soldiers are minors who have engaged in military activities through their interactions

¹ United Nations, Report of the Secretary-General on Children and Armed Conflict, UN Doc A/78/842-S/2024/384 (15 May 2024)

² Id, para 21

³ Id, para 27

⁴ Id, para 33

⁵ Id, para 40-48

⁶ Id, para 53-61

⁷ Id, para 66-73

⁸ Id, para 10-11, Annex 1

⁹ IHL/IHRL Treaties (Geneva Protocols, CRC, OPAC) that prohibit the act; Regional Human Rights Law (ACRWC) that prohibits it with a higher standard ("under 18"); International Criminal Law (Rome Statute) that criminalizes it as a war crime; International Jurisprudence (SCSL, ICC) that prosecutes and punishes it, confirming its status as a peremptory norm of international law.

with military personnel or paramilitary groups as members. Child soldiering as a concept is the act of drafting or deployment of vulnerable minors into military activities, violence and warfare irrespective of whether they are armed or not.¹⁰ This is an infringement on their basic rights of living, which is sporadically spreading across Africa.¹¹ War and armed conflicts are deadly, violent combinations that have no space for children.¹² This is because there is no history of armed conflict or deadly violence that emanates or is caused by children anywhere in the world.¹³ They are vulnerable civilians who should not participate in wars.

The argument of the paper is centred on the fact that whether minors willingly engaged in military activities or were coercively recruited, their protection in law is paramount.¹⁴ Whether they voluntarily or involuntarily participate in warfare, or are recruited as soldiers into military activities or paramilitary groups, obviously impacts their vulnerability.¹⁵ In Africa, the foregoing is disturbing as so many minors are confronted with the challenges of warfare due to incessant political unrest orchestrated by bad governance.¹⁶ In numerous countries such as Uganda, Liberia, South Sudan, Rwanda, Sierra-Leone, Central African Republic, DRC, Nigeria, Mali, Somalia, Sudan, amongst others, minors were enlisted in military activities as military personnel by armed services or paramilitary groups forcefully or from their own volition.¹⁷ Child participation in war is unnatural and an aberration of their existence, as wars disaggregate and disorient their social environment.¹⁸ The plight of engaging minors in military hostilities as combatants, abusers of human rights, sex prisoners, involun-

¹⁰ F Mary-Jane, 'Child Soldiers and International Law: Patchwork Gains and Conceptual Debates' [2005] (7) *Hum. Rights Rev.*, 27 - 34.

¹¹ *ibid.*

¹² K Peters, *War and the Crisis of Youth in Sierra-Leone* (Cambridge University 2011) 62-80.

¹³ K Bairstad, 'Preventing Recruitment of Child Soldiers: The ICRC Approach' [2008] (27) (4) *Refugee Survey Quarterly*, 146 - 149.

¹⁴ J McBride, *The War Crime of Child Soldier Recruitment* (Asser Press 2014) 84- 86.

¹⁵ S. Freeland, 'Mere Children or Weapons of War - Child Soldiers and International Law' [2008] (29) *University of Laverne Law Review* 19-23.

¹⁶ J A Romero, 'The Special Court for Sierra Leone and the Juvenile Soldier Dilemma' [2004] (2) *North Western University Journal of International Human Rights* 17.

¹⁷ R Machure and M Denov, 'I Didn't Want To Die, So I Joined Them: Structuration and the Process of Becoming Boy Soldiers in Sierra-Leone' [2006] (18) *Terrorism and Political Violence*, 119-127.

¹⁸ M Denov, *Child Soldiers, Sierra-Leone's Revolutionary United Front* (Cambridge University Press 2010) 100.

tary workers, message-bearers, spies, and collaborators in Africa is a disturbing phenomenon.

The existence of armed conflicts prevents families and communities from exercising adequate protection and provisions of basic requirements for vulnerable members of their families.¹⁹ In addition, the analysis of the paper revealed that during military hostilities, a good number of girls became displaced and homeless, trying to find shelter elsewhere, and are faced with several challenges arising from illness, traumatic conditions, diseases, along deaths brought about by military hostilities.²⁰ Girl child soldiers also engage in other related military activities that are less tasking, such as surveillance duties, espionage, along with provisions of health care services, as well as domestic work. Sometimes, they are forced into a marital relationship with the leaders of military forces, thereby resulting in unprepared pregnancies, stillbirths, and motherhood, among others.²¹

Over the years, child soldiering developed into a global custom and was globally tagged as an unlawful act perpetrated during military hostilities. For this reason, the African Community undertook the tasks of developing regional legislations along with guidelines geared towards the safety of minors who are engaged in military hostilities. In this sense, a good number of African regional instruments evolved as human rights instruments, humanitarian rules, along rules on criminal matters. This paper examines jurisprudential advancement along with growth in conscription of minors into military activities in Africa, with the aim of highlighting challenges that impede the efforts to stall the threat.

Despite significant advances in jurisprudence prohibiting the recruitment of child soldiers through regional frameworks and landmark international prosecutions, Sub-Saharan Africa continues to grapple with the widespread use of child soldiers due to unresolved definitional ambiguities, systemic causal factors including political instability and the proliferation of non-state armed groups and persistent challenges such as the non-ratification of the Malabo

¹⁹ R Grey, 'Sexual Violence Against Child Soldiers: The Limits and Potentials of International Criminal Law' [2014] (16) (4) *International Feminist Journal of Politics* 612-616.

²⁰ D McKay and S. Mazurana, 'Child Soldiers: What About the Girls?' [2001] (57) (5) *Bulletin of Atomic Scientists* 30-35.

²¹ J D Humphreys, *Child Soldiers: When Boys and Girls Are Used in War* (Kids Care Press 2015) 48.

Protocol, gender-insensitive approaches and the absence of enforceable reparations. Harmonised legal reforms and strengthened institutional mechanisms are therefore necessary.

To this end, the paper is structured as follows. Section II examines the factors that drive the recruitment of children. Section III deals Challenges of the Emerging African Jurisprudence on Conscription of Minors in Military Hostilities. Section IV evaluates legal and institutional frameworks. Section V analyses the development of African criminal jurisprudence on child soldiering through landmark cases. Finally, Section VI concludes by synthesizing the findings and presenting consolidated recommendations and a way forward for strengthening legal frameworks, enhancing accountability, and ensuring effective reintegration.

I. Factors Responsible for Child Soldiering in Africa

The reasons children join state military apparatus or militia organizations, along with the rise in conscription of minors in military activities jurisprudence in Africa, are wide and subjective. Many children are influenced by religion, ideology, indoctrination, family values, hopelessness, vulnerability, identity formation and burning desire for revenge to join armed groups during war situations in Africa. It has been opined that although some children join armed forces of their own volition, many are coerced as armed groups raid villages and target places in search of children of various ages to serve as soldiers.

A. Expansion of an Ill-Equipped Army

Children are coerced into serving as child soldiers to complement an ailing army. Underscoring this position, it has been pointed out that an estimate of 30,000 minors from Ituri extractions of the Democratic Republic of Congo were forcefully kidnapped or conscripted into Thomas Lubanga's military group; adding that, Lubanga used minors as bodyguards and promoted policies of forceful kidnapping of minors to sustain the hostilities and fill up his ill-equipped military.²² In corroborating the foregoing findings, Quenivet states:

That the real issue here is that minors are construed as persons below the age of eighteen years who are engaged in military activities and

²² R Brownman, 'Lubanga, the DRC and the African Court: Lessons Learnt From the First International Criminal Court Case' [2007] (7) *African Human Rights Law Review* 412 at 417.

*are made to participate in all manner of conflicts, spying along with information gathering, pottering, facilitations of health care assistance, executions of household activities, caring for babies, engaging on errands for nursing mothers, embarking on search for foods errands, participating in unlawful acts like kidnapping and or coaching other minors in criminal activities.*²³

In this context, most minors are taken for military training, tortured and indoctrinated into the non-state groups. In most cases, the ones captured are used to abduct others and terrorize the villages, thereby breaking the bonds of vulnerability ascribed to them by the communities.²⁴ The abducted children are turned into lethal soldiers and once they have killed, it becomes a sign of promotion and proper assimilation into the non-state armed group.

B. Maintenance of Military Bond

In some cases of forcible recruitment, children are coerced into killing their parents or cutting off some private parts of their relatives as an incentive to their military bond.²⁵ This act obviously puts the children in endless trauma and guilt as they have killed the people they would return to and may not be forgiven by the community they came from. They are taught lectures on the exigency of toppling the Government and are strengthened by war songs used to instigate hate against the Government they fight against. Hence, violence is instilled in them and through the tactics of isolation, torture and intimidation, the 'abductors' force the children to obey commands.²⁶ They are coerced to kill escapees, train other children and loot villages. The foregoing acts infiltrate peer pressure and ideological formation amongst the children.

²³ N Quenivet, 'Does and Should International Law Prohibit the Prosecution of Children for War Crimes' [2017] (28) (2) *EJIL* 324.

²⁴ E K Baines, 'Complex Political Perpetrators: Reflection on Dominic Ongwen' [2009] (47) *Journal of Modern African Studies* 163-170.

²⁵ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Annual Report on Children and Armed Conflict (2023) UN Doc A/78/840, para 47; Human Rights Watch, Coercion and Intimidation of Child Soldiers to Participate in Violence (2008) <<https://www.hrw.org/news/2008/04/16/coercion-and-intimidation-child-soldiers-participate-violence>> accessed 31 May 2025, 15.

²⁶ D Keen, 'When War Itself is Privatized: The Twisted Logic That Makes Violence Worthwhile in Sierra Leone' *Time Literary Supplement*, 29 Dec 1999 13-14.

C. War Time Pseudo Security

Due to violence and insecurity, infiltrated by war and conflict, children join armed groups in order to escape poverty and abuse. Young boys, just like in Uganda joined the 'Lords Resistant Army' (LRA) after their families and homes were destroyed by government armies or the rebel groups.²⁷ Their Commanders became paternal to the boys, cared for and trained them, and the result which they preferred to be with the LRA than their war-torn families. The foregoing position has been argued that minors engaged in militia activities in Africa as a result of how they construed act of hostilities as civilians.²⁸ In this sense, districts, along with society, ironically become a theatre of warfare to them. Furthermore, these militias in their military activities oftentimes descend on districts and trading places in search of foodstuffs and sometimes kidnap minors to join them as supplementary or emergency soldiers. Children engulfed in battle battlefield feel unprotected, and this informs their engagement in military activities in order to be secured, and hence resorts to carrying guns for pseudo-protection.²⁹ The breakdown of societal structures and family bonds during conflicts contribute to children joining armed groups. Structures like schools, hospitals, family unity, and economic breakdown, among others, instigate idle hungry children to join the armed forces.

D. Societal Pressures

In this context, it may be argued that engagement of minors in military activities sometimes appears to be an unintentional act. Sometimes, using the word 'volunteer' to justify their engagement in military activities is completely wrong. In a similar vein, reasons given sometimes to justify their engagement stem from issues bordering on starvation, hardships, parental neglect, demise of parents or relatives and lack of basic health care facilities to attend to their health challenges.³⁰ Hence, volunteering means minors engaging in military

²⁷ A Dyregrov and Others, 'Children Exposed to Warfare: A Longitudinal Study' [2002] (15) *Journal of Traumatic Stress* 59-68.

²⁸ C E Kammel and J L Roby, 'Institutionalized Child Abuse: The Use of Child Soldiers' [2000] (50) (6) *Internationalized Social Work* 740-754.

²⁹ M Mandani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton University Press 2001) 12-16; A T Danso, 'African Young Soldiers: The Co-option of Childhood' (Monograph No 82 of Institute of Security Studies 2003) 12-14.

³⁰ S Freeland, 'Mere Children of Weapons of War - Child Soldiers and International Law' [2008] (29) *U La Vern Law Review* 27-28.

activities or militia organisations on their own accord. According to Justice Robertson:

*Accepting intentional involvement in military activities by minors should not be construed as it is presented. There are several reasons that informed their engagement which may be as a result of hardships and by so doing he will be paid for it or due to anxiety of being attacked as they need to be protected. Sometimes, they resort to military activities because of emotional or ethical reasons bordering on fighting a just cause or to be celebrated as a hero for the liberation struggle.*³¹

The above may suggest that volunteering of children does not stem from actual voluntary disposition but affected by many external factors. Machel argues in favour of this on the basis that these minors engaged in military activities on their own accord, though it be orchestrated by several reasons bordering on ethical, financial or persuasions arising from political decisions. By so doing, these minors submit themselves to the military organizations looking at the benefits therein as a member.³²

E. Avoidance of Harsh Treatments

It is imperative to note that several contemporary armed conflicts are characterized by their engagement and conscription of minors in military activities, especially of girl children.³³ Hence, no matter how children join armed groups, whether on the battlefield or incarcerated, the fact remains that they are exposed to attacks because of their vulnerabilities to harsh maltreatment.³⁴ In Uganda, most girls joined military activities so as to escape the challenges of economic hardship caused by war. Some of them joined to get protection and

³¹ *Prosecutor v Sam Hinga Norman*, Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) Case No SCSL-2004-14-AR72(E) 1, 9 Special Court for Sierra Leone, 31 May 2004.

³² G Machel, *Impact of Armed Conflict on Children, Report of Graca Machel: Selected Highlights* (UN Dept of Public Information 1995) paras 38-39, 43.

³³ Office of the Special Representative of the Secretary General for Children and Armed Conflicts, 'Child Recruitment and Use' available at <<http://www.childrenandarmedconflict.un.org/thegraveviolations/child-soldiers>> accessed on 28 March 2025.

³⁴ ICC, Trial Chamber, *Prosecutor v Bosco Ntaganda* ICC-01/04-02/06 18 July 2019 para 79. On June 2014, the Trial Chamber unanimously confirmed all the charges that the ICC Prosecutor preferred against Ntaganda and found that rape and sexual slavery of the girl soldiers could constitute war crime under Article 8 (2) (e) (vi).

power as they ignorantly thought soldiers were inviolable and untouchable.³⁵ Notably, some girls used as ‘wives’ by ‘Lords Resistant Army Leaders’(LRA) are sexually abused and as a result are infected with venereal diseases or unplanned pregnancies, amongst others.³⁶

F. Gullibility

Some rebel leaders tend to recruit child soldiers because children can easily be controlled and manipulated. A good example of manipulation can be related to one of the interviews by the UN report:

“They told us we were defending our land from invaders. They gave me a uniform and said I’d be a hero. Later, they gave me drugs and forced me to burn villages. They said if I refused, the enemy would kill my family.”³⁷

As a result, they are ready and willing to carry out the dastardliest destruction during conflicts.³⁸ It is however, contended that freedom fighters or armed factions most times engaged in conscription of minors in military activities because of their abilities to confront dictatorial regimes in Africa.³⁹ In recent years, a good number of minors in Africa were unlawfully conscripted into militia activities, dissident military groups, resistance fighters, secessionist movements and terrorist organization, among others. This is the case in some African Countries, such as Chad Republic using the ‘United Front for Democratic Change’ with about one thousand child soldiers.⁴⁰ While in DRC it was about thirty thousand minors conscripted into military activities.

³⁵ P Urvin, ‘Ex-Combatants in Burundi, Why They Joined, Why They Left, How They Fared’ (Working Paper No 3, Worthington D C World Bank 2007) 11.

³⁶ H Boshoff, *Completing The Demobilization, Disarmament and Reintegration Process of Armed Groups in the Democratic Republic of Congo And The Link to Security Sector, Reform of FARDC: Mission Difficult!* (Institute For Security Studies 2010) 3-12.

³⁷ UN Security Council, Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo (26 April 2010) UN Doc S/2010/369, para 17.

³⁸ S Rugumanu and U Gbla, *Studies in Reconstruction And Capacity Building in Post Conflict Countries in Africa: Some Lessons From Sierra Leone* (The African Capacity Building Foundation, 2004) 2-16.

³⁹ D Bergner, *Soldiers of Light* (Penguin 2005) 183-186.

⁴⁰ M Frulli, ‘A Turning Point in International Efforts to Apprehend War Criminals: The UN Mandates Taylor’s Arrest in Liberia’ [2006] (4) (2) *Journal of International Criminal Justice* 351-361.

In a similar vein, about thirty thousand minors comprised of boys and girls, were conscripted into military activities by the Lord's Resistance forces in Uganda noted to be the worst ever seen in the history of humanity.⁴¹ Also, this same situation applies to Chad, Rwanda along Uganda where certain factors arising from bad governance structures led to conscription of minors into military activities and all kinds of illegalities. In Africa, forceful enlistment of minors in military activities oftentimes results in unwarranted beating of these minors to agree to join their armed groups. Apart from physical violence, hunger, poverty, revenge, family dislocation, economic and political impoverishment terrorists' ideological and religious reasons exist among others.⁴²

G. Collapsed Society

Child conscription along with engagement in military activities as soldiers, whether by government military personnel or not, is governed by several factors.⁴³ It is argued that a significant number of children who enlist and participate in armed conflicts are forcibly recruited.⁴⁴ Many of those child soldiers were abducted from their homes,⁴⁵ while countless others were captured from public places such as markets, worship places, camps amongst others.⁴⁶ In an interview with Human Rights Watch, one former child responded that:

*"They raided our village at night. They shot my father and took me. I was tied with ropes and forced to carry looted goods. If you cried, they beat you. If you tried to run, they killed you. There was no choice."*⁴⁷

⁴¹ S Dancy, 'Imputed Criminal Liability and the Goals of International Justice' [2007] (20) (2) *Leiden Journal of International Law* 377-404.

⁴² L Aghedo and O Osumah, 'The Boko Haram Uprising: How Should Nigeria Respond?' [2012] (33) (5) *Third World Quarterly* 853-859; O B Amao, 'A Decade of Terror: Revisiting Nigeria's Interminable Boko Haram Insurgency' [2020] (33) *Security Journal* 357-36.

⁴³ I Bear, *A Long Way Gone: Memoirs of a Boy Soldier* (Sarah Crichton Books 2007) 90-91; K E A Kaoma, 'Slave, Hero, Victim: The Child Soldier Narrative in Context' (PHD Thesis, University of Toronto 2017) 67.

⁴⁴ S Tiefenbrun, 'Child Soldiers, Slavery and the Trafficking of Children' [2006] (31) *Fordham International Law Journal* 423.

⁴⁵ *ibid.*

⁴⁶ A B Abott, 'Child Soldiers - The Use of Children as Instruments of War' [2006] (23) *Suffolk Transnational Law Review* 514.

⁴⁷ Human Rights Watch, *Abducted and Abused: Renewed Conflict in Northern Uganda* (HRW Report, July 2003) 42.

It should be stressed that several minors are compelled to join military forces due to social, economic and political reasons. In a collapsed state, children have no alternative means of survival other than being conscripted into military activities as a means of livelihood. Another former child soldier in Sierra Leone told the Sierra Leonean Truth Commission that:

*"I joined because there was no food. My parents were dead, and my uncle's family could not feed me. The commander said I would eat every day and have power. I was 12. I didn't want to kill, but hunger makes you do anything."*⁴⁸

Note also that some parents encouraged their children to accept military activities as a result of the financial gains and recognitions attached to the status of military personnel. The foregoing positions suggest that these reasons informed their involvement in military activities without knowing the corresponding consequences of their decisions.⁴⁹ It is trite that military hostilities become a challenging phenomenon situation where minors are engaged in military activities, thereby exposing them to all manner of brutal attacks that deny them the opportunities of going to school.⁵⁰

H. Ideological Indoctrination

Another important factor stems from attitudinal behaviour or propaganda sometimes carried by parents that engagement in military activities provides security of the family in situations of military hostilities, and for this singular reason, minors see it as means of livelihood and protection of their families in case of any hostilities. It should be noted that with singular reasons, engagement of minors in military activities becomes a means of achieving one's desire in life, and no longer a forbidden offence in Africa. Although some of the children are forcibly recruited, many associate themselves with one faction or another because of the advantage of avenging the killing of relatives, father,

⁴⁸ Sierra Leone, Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission (TRC Report 2004) vol 3A, ch 3, para 89.

⁴⁹ S R Jennifer, 'Child Soldiers: A Call to the International Community to Protect Children From War' [2008] (24) *Suffolk Transnational Law Review* 686- 688.

⁵⁰ M Happold, *Child Soldiers in International Law* (Manchester University Press 2005) 13-14; U J Nsongurua, 'War is Not Child's Play! International Law and the Prohibition of Children's Involvement in Armed Conflicts' [2006] (20) (1) *Temple International & Comparative Law Journal* 63-64.

brothers, sisters or guardians. Note that cases of child recruitment in state armed forces during peace situation is unknown in Africa. Rather it is conflicts, hostilities and wars that engender usage of minors in military activities either the government or militia organizations.

I. Political Crises

In all, crisis is the central and immediate factor that fuels child soldiering in Africa. Children are known to play with toys and not to fight with deadly and lethal weapons. Whether by voluntary or forceful recruitment, child soldiers' agency is in issue. To this end, whether the child soldier finds him or herself with Governmental troupes or militia organizations, same foregoing factors applies to both groups.⁵¹ No girl child would opt as a sex slave and no boy child would be coerced to shoot his parents to death or be killed in peace time. Distilling from the foregoing, political crises, violence and societal breakdown orchestrated by war or armed conflict fuelled conscription of minors in military activities in Africa. This situation applies to Sierra Leone, Liberia, South-Sudan, Rwanda, Mali, Somalia and Uganda, amongst others, where child soldiering held sway. However, the causal factors to child soldiering in Africa are wide and evolving.

II. Challenges of the Emerging African Jurisprudence on Conscription of Minors in Military Hostilities

It is trite that jurisprudential developments on conscription of minors in military activities in the region of Africa remained overwhelming, as lots of challenges glooms and famished the regional efforts aimed at exterminating the menace.⁵² Some of the issues are discussed hereunder.

A. Jurisprudential Quandary Over Age Baseline of Criminal Liability

Notably, an acceptable age of criminal responsibility(AACR) of a minor in juxtapositions with the atrocious activities within the menace of child soldiering has become a global concern especially in the African continent.⁵³ The

⁵¹ S Hynd, 'Trauma, Violence and Memoir in African Child Soldier Memoirs' [2021] (45) *Culture, Medicine and Psychiatry* 74-67.

⁵² J Madubuike-Ekwe, 'International Legal Standards Adopted to Stop the Participation of Children in Armed Conflicts' [2005] (11) *Annual Survey of International and Comparative Law*, 28-36.

⁵³ For a more elucidation on African Regional Framework, see S E Kabo, 'Baby Factories; A New Phase of Human Trafficking and Human Rights Violation in Nigeria' [2014] (1) (4) *Research Academy of Social Sciences* 182-183.

AACR is important as it determines the age frame a child can be prosecuted within the global criminal law.⁵⁴ In absence of binding customary global standards on AACR, prosecution of child offenders is left open to the laws applicable to states where the offence is committed. This practice leads to a potentially slippery situation as the states may have different 'ages' for child's criminal responsibility which may not be akin to international standard.⁵⁵ This problem poses an enforcement clog within the legal framework provisions in Africa as it obviously distorts the *mens rea* principle in proof of a crime.

B. Jurisprudential Debate Over the Age for Child's Protection in Armed Conflict

There are jurisprudential debates on legal instruments on the age of protection for the child embroiled in military hostilities. There are divisions between safety of minors below 15 years old and under 18 years old, which does not benefit the minor.⁵⁶ This suggests that in order to determine the above ages, it requires adequate facilities on child birth registration. The burden created by the lack of adequate birth registration data process of children in Africa is ostensibly far reaching in consequence.⁵⁷

Adequate registration of births enhances realizations of the minors' best interests, especially as regards accessibility to basic social services.⁵⁸ How this could be achieved during military hostilities remained a tenuous issue. Undoubtedly, a cursory look at the interplay between the acceptable standards of

⁵⁴ D Cipriana, *Child Rights and Minimum Age of Criminal Liability: A Global Perspective* (Ashgate Publishers 2009) 230 - 232; R Authur, 'Rethinking the Criminal Responsibility of Young People in England and Wales'[2012] (20) (1) *European Journal of Crime, Criminal Law and Criminal Justice* 13-29.

⁵⁵ The Penal Code Cap 89 Laws of Northern Nigeria 1963, section 50 provides that "No Act is an offence which is done by a child under 7 years of age or by a child above 7 years of age but under 12 years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of such act". The same is in Pari material with section 15 of Kaduna State Penal Code 2017. However, Lagos State Criminal Code Law 2015 in section 30 dealing with immature age states that a person under the age of 10 years is not criminally responsible for any act or omission.

⁵⁶ CRC, art 38 protects children under 18 years while, the ACRWC art 22 protects children of under 18 years.

⁵⁷ R C Changani, 'Nigerian Child and Primary Healthcare', *This Day Newspaper*, Dec.16, 1999,12. Note that in Nigeria, by the provision of the Third Schedule, Part 1 Section 24(b) of the 1999 Constitution, National Population Commission has the powers to establish and maintain machinery for continuous and universal registration of births and deaths.

⁵⁸ ACRWC, art 29.

the age of minors below 15 years and 18 years is not to the benefits of minors in Africa seen as persons within age bracket of the latter. This demonstrates the convoluting murky conceptual debates on non-compliance to international instruments on the age for child soldier protection in armed conflict.

C. Conflict in Jurisprudential Denotation of Child and Child Soldier

The question, who is a 'child' or who is a 'child soldier' remains a conceptual subterfuge in the wake of indeterminate age process.⁵⁹ Ostensibly, the non-binding definition of a child soldier by international and regional standards presents the phenomenon as a child's play. This is because the status of a child does not change in peace or war situations. A child cannot be defined as one below 18 years of age as provided in Article 1 CRC and Article 2 ACRWC, while a child soldier is one below 15 years of age. He should be considered a minor in all circumstances. This shows that non-consensus on proper interpretations of 'who a child is' along with 'what determines a minor conscripted into military activities, without doubts affects effective proscriptions in the acceptable guidelines relating to conscription of minors in military activities. In such context, this problem poses an enforcement disparity within the legal framework provisions in Africa, as it dims and disaggregates the applicability of juvenile administration of justice.

D. Non-Specific Instrument for Child Soldiering

The absence of a definite legal regime on conscription of minors in military activities remained a big lacuna in international law. There are variegated standards on conscription of minors in military activities. Parenthetically, issues of conscription of minors in military activities appears slippery and is tackled by multidimensional legal standards that cut across IHL, International Human Rights Law (IHRL), International Criminal Law (ICL) along with International Labour Organization (ILO), among others. Aside the above, the rule that minors under 15 years of age shall not be engaged or allowed to involve in military hostilities has evolved into 'Customary International Law' (CIL).⁶⁰ It should be noted, however, that conscription of minors in military activities construed

⁵⁹ Humanium, 'Child Soldiers' 2020 1, accessed from <<https://www.humanium.org/childsoldiers>> on 27 March 2025.

⁶⁰ The norm as provided in various legal framework that children under the age of 15 years do not take part in armed conflicts is recognized as customary international Law. See CRC, arts 38(3), Rome Statute of ICC, art 8(2)(b)(xxvii) and 8(2)(e)(vii), SCSL art 4(c).

as CIL has created a binding norm to states armed forces and non-states armed groups on its global prohibition.⁶¹ It is imperative to highlight that judicial pronouncement was made by Special Tribunal for Sierra Leone in 2004 in Sam Hinga Norman Case which attest to foregoing customary international law.⁶² A major impediment is that the catchment of protection in the norm is children of under 15 years as against under 18 years provided by article 22 of ACRWC.

E. Male Chauvinistic Approach to Child Soldiering

A cursory look at the child soldiering activities underlines the child combatant in active violent action. It foreshadows the masculine war front functions of child soldiers, obviating the gender divides intricate in the process. On this note, the active roles of male child soldiers are more considered, irrespective of the major roles of female child soldiers. In addition, no clear restrictions on indirect engagement of girl child in military hostilities by the legal framework. Aside from the foregoing, the inchoate dichotomy between direct and indirect participation is a crucial gap. This is because the clause 'participate actively in hostility' as provided in many statutes has generated several questions on whether only direct kind of involvement in military hostilities or not are captured?⁶³ Having identified the these situations, it may be rightly said that the foregoing curiously opens up the debate whether indirect participation in hostilities as carried out by children, females inclusive, used as cooks, spies, sex slaves, pseudo wives etc. are prohibited by the legal standards. In all, gender gender-blind approach to girl child participation in armed conflict quivers the enforcement efficacy of the legal framework in Africa.

F. Non-Statute Punitive Sanction for Child Soldiering

The failure of international, African regional, and domestic laws to specifically prohibit the conscription and use of child soldiers is a serious and worrisome gap in the effort to eliminate this practice.⁶⁴ This scenario holds sway in many African

⁶¹ Additional Protocol I, Article 77(2) (adopted by consensus) (ibid., § 379); Convention on the Rights of the Child, Article 38(3) (ibid., § 381).

⁶² *Prosecutor v Hinga Norman, Fofana and Kondewa*, Case No SCSL - 04-14-T 53.

⁶³ Rome Statute, art 8(2) (b) (xxvi), 8(2)(e)(viii), SCSL, art 4(c), Geneva Convention 1949, Common art 3, Art 72(2) of Additional Protocol I, art 4(3)(c) of Additional Protocol II, ACRWC art 22(2) and CRC, art 4 (3)(c).

⁶⁴ Countries like Nigeria, Sierra-Leone, Uganda, Kenya, Liberia, Sudan, South Africa have no provision for punishment for the usage child soldiers in their child rights instruments.

countries' Child Rights Laws, which express that child soldiering, although pronounced an offence in the legal framework, is weak in enforcement.⁶⁵ Take, for instance, the Child Rights Act 2003 of Nigeria did not provide any penalty for the perpetrators of child soldiering.⁶⁶ However, it contains penal sanctions for other offences such as child marriage and betrothal, exposure of a child to drugs, removal of a child from the custody of parents, forced labour, sexual intercourse, tattoo and skin marks, among others.⁶⁷ This gap is heavy, if not filled, gives a warrant for the continuation of the offence and leaves the trial Court with no specific statutory penalty but the use of subjective discretion to punish.

G. Lack of Financial Strength for Reparation Programmes

Paucity of funds needed to settle issues of restitutions or indemnify casualties of child soldiering remained another daunting challenge. In light of the provisions of the Rome Statute as contained in Article 75(2), Courts are empowered to make orders on reparations in respect of persons sentenced, child soldiering inclusive. In this sense, the abilities of the Courts in pooling out resources to compensate victims through its 'Endowment Fund for Casualties' when convicted remained indigent, and challenging. This sends a mixed signal on the enforcement, as many child soldier victims may miss out on reparations due to a lack of funds.⁶⁸ Reparation, being a post-war and transitional empowerment scheme, is salutary for the sustenance of a former child soldier into civilian life. In all, the absence of financial resources renders it porous and culminates in circling around the problem of inadequate enforcement of the legal framework.

H. Upsurge of Militia Groups

Non-compliance with IHL guidelines by militias, as well as the concomitant effects of internationalization of military hostilities, posed grave obstacles to the im-

⁶⁵ Coalition To Stop the Use of Child Soldiers: Child Soldiers Global Report 2018, 11-18, accessed on 30 March 2025 from <www.childsoldiers.org>; R Monique, 'Prosecution of Sierra Leone's Child Soldiers,' [2002] (12) *Journal of Public and International Affairs* 145-146. See F Leveau, 'Liability of Child Soldiers Under the International Criminal Law' (2013) (4), *Osgoode Hall Review of Law and Policy* 36-38.

⁶⁶ Child Rights Act 2003, Act No 26 Laws of the Federation of Nigeria 2004 came into force on 31st day of July, 2003.

⁶⁷ *ibid*, arts 21-23, 24(1)(2), 25 and 27.

⁶⁸ Rome State, art 79 (i); W M U, 'What is Reparative Justice? (Marquette University Press 2010) 1-4.

plementation of the prohibition of child soldiering in Africa. Although it is not in dispute that IHL binds the armed groups, addressing effective and adequate strategies and methodologies to improve their level of adherence remains challenging.⁶⁹ This is considering the fact that the baseline expectation of their adherence is low and that child soldiering in Africa exists more within the ranks of rebel armed groups than Governmental forces. To this end, advancement in military hostilities unfurls gaps for growth or boom in the conscription of minors in military activities. Since child soldiering exists more within the domain of militia cluster, their adherence, along with the applicability of the guidelines of IHL, IHRL, ICL and ILO, among others remained slim. This obviously dries the enforcement powers of the legal framework.

I. Non-Ratification of Malabo Protocol

Be that as it may, expanding criminal jurisdictions of the African Court of Justice and African Court of Human Rights with the 'Malabo Protocol'⁷⁰ and its non-ratification by Member States has raised a lot of vexed questions in ICL.⁷¹ Being a regional instrument which prohibits and penalizes war crimes, protects children of under 18 years from armed conflicts, makes provisions for restitutions for prisoners of war, along with the non-efficacy of the Court, clearly presents a picture of what has posed a great threat to the eradication of conscription of minors in military activities in Africa and a subterfuge. Furthermore, whether the existence of the Courts adjudicatory powers on criminal matters genuinely or adequately satisfies the interplay between ICC along with domestic legal procedures contained in Article 17 of Rome Legislations have raised concerns in ICL remained unsettled.⁷² In all, the non-functionality of the Court due to non-ratification by Member States is a minus to the African regional system in stemming international crimes such as child soldiering.

⁶⁹ Coalition to Stop the Use of Child Soldiers, 'Democratic Republic of Congo' 2011 12, 15, accessed on 3 March 2025 from <www.child-soldier.org>.

⁷⁰ Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights', AU Doc No STC/Legal/Min. 7(1) Rev 1 (14 May 2014) [Malabo Protocol]. The AU Assembly adopted the Malabo Protocol on 30 June 2014 at its 23rd Ordinary Session vide AU Doc. No Assembly/AU/Dec 529 (XXIII).

⁷¹ S D Mueller, 'Kenya and the International Criminal Court (ICC); Politics, the Election and the Law' [2014] (8) (1) *Journal of Eastern African Studies*, 25-42.

⁷² J Falligant, 'The Prosecution of Sudanese President Al-Barshir: Why a Security Council Referrals Would Harm the Legitimacy of ICC' [2010] (27) (4) *Wisconsin International Law Journal*, 727-756; T F Yerima, 'African Commission of Human and Peoples Rights as an Institution for Conflict Resolution in Africa: Flying or Fledgeling' [2012] (1) *Journal of Contemporary Law* 14 - 15.

J. Quagmire Over Trial of Infants for War Crime Offences

Whether to prosecute child soldiers who commit offences during armed conflict has raised lots of concerns in ICL forms the basis of the argument of the paper in this regard. It must be emphasized that the Special Court for Sierra Leone (SCSL) was applauded for its commitments and advancements made that informed the expansions on the use of special tribunals by the United Nations as measures geared towards accelerated hearings and determinations of unlawful acts perpetrated during military hostilities or such acts of inhuman nature around the globe.⁷³ Imperatively, article 7 (II) (B) (3) gives the SCSL jurisdiction to try juveniles,⁷⁴ while the ICC, in its article 26 has no jurisdiction to prosecute minors. This discrepancy puts the prosecutorial powers of the Tribunals on conscription of minors in military activities in jurisprudential debates in ICL. There is no regional Court in Africa to cure the above situation as Malabo Treaty, which provides for an African Criminal Court, remains unratified.

K. Lack of Resources for Post War Reparation Scheme

In Africa, lack of fund to implement disengagement, withdrawal along with rehabilitation of armed minors poses a big problem in post-conflict trauma on children. This is because, disengagement, withdrawal, along rehabilitation are healing processes which alleviate the already created tension of hostilities. Aside from the foregoing, the regulatory mechanisms in Africa, such as the ACRWC do not anticipate disengagement, withdrawal, and rehabilitation in their provisions. This has caused a lot of external infiltrations by funders and donors, affecting the independence of the process. To this end, whether the convulsion of children and adults in the DDR mechanism is effective in Africa is still unresolved.⁷⁵ In Nigeria, for example although not on child soldiering,

⁷³ Compare the proposed criminal jurisdiction of the African court system. See T Yerima, 'Proposed Criminal Jurisdiction of the African Court of Justice and Human Rights: Some Foreseeable Fundamental and Problematic Issues' [2015] (7) *Kogi State University Law Journal* 89-90; T F Yerima, 'Comparative Evaluation of the Challenges of African Regional Human Rights Courts' [2011] (4) (2) *Journal of Politics and Law* 120.

⁷⁴ C C Jalloh, 'The Contribution of Special Court for Sierra Leone to the Development of International Law' [2007] (165) *African Journal of International and Comparative* 165-170; A MacDonald, 'Sierra Leone's Shoestring Special Court' [2002] (84) (85) *IRRC* 121-129.

⁷⁵ Countries like Nigeria, Sierra Leone, Uganda, Kenya, Liberia omitted DDR in their Child Rights Legal Framework. I Bear, *A long Way Gone: Memoirs of a Boy Soldier* (Sarah Crichton Books 2007) 15-32; T S Betancourt and Others, 'Child Soldiers: Reintegration Pathways to Recovery and Reflection From the Field' [2008] (29) (2) *Journal of Developmental and Behavioural Paediatrics* 138-141.

the DDR programs of Niger Delta militants did not dichotomize between the adult and the children.⁷⁶ The admixture of children and adults in the African regional policy of DDR adds more burden to post trauma cure of the child soldiers and re integration processes.

L. Non-Provisions of Facilities and Training for Post War Officials

The non-provision of adequate training, finance and facilities for transitional justice personnel like the peacekeepers on child soldiering in the legal framework is a minus. A post-war program that is deficient and short-term faces a challenge of implementation. Worsening the scenario is the lack of gender dimensioned studies on child soldiering, especially in relation to peace-keeping programs and policies in Africa. The plights of girl-child soldiers are more worrisome, as they are more traumatized and marginalized. More so on gender insensitivity on child soldiering, it is not clear to what extent IHL protects the armed girl child exposed to all kinds of sexual assaults by individuals engaged in peace keeping mission.⁷⁷ Peace keeping mission cuts across the vagaries of legal framework and its non-inclusion in the standards is a gap begging for urgent attention.

M. Child Soldiers as Villains and Victims

The conflicts in DRC Congo, Sierra-Leone and Uganda among others illustrate an alarming participation along with strong involvement minors in military activities. The double-faced role of armed minors as casualties as well as perpetrators of unlawful acts draws conceptual understanding of child soldiering into muddy debates on their agency or accountability. Scholars are divided on their vulnerability and culpability.⁷⁸ Some argue that child soldiers, as the name implies, cannot form opinion on crimes committed during armed con-

⁷⁶ K Hill and L Harvey, 'Rehabilitation Programmes for African Child Soldiers' [2003] (15) (3) *Peace Review* 279-285; K E Miller, and A Rasmussen., 'War Exposure Daily Stressors and Mental Health in Conflict and Post Conflict Settings: Focused and Psycho Social Frameworks' [2010] (7) (1) *Social Science and Medicine* 7-16.

⁷⁷ R Grey, 'Protecting Child Soldiers From Sexual Violence by Members of the Same Military Force. A Reconceptualization of International Humanitarian Law?' International Crimes Database, ICD Brief 10 April, 2015; *The Prosecutor v Bosco Ntaganda*, Decision pursuant to Article 61(7) (a) and (b) of the Rome Statute, ICC - 01/04-02/06-309, 9 June 2014, Pretrial Chamber II, para.31.

⁷⁸ K Faith, 'Perpetrators and Victims: Prosecuting Children for the Commission of International Crimes' *African Journal of International and Comparative Law* [2009] (14) (1) 141-142.

flict. Furthermore, whether they volunteer to be child soldiers, is motivated by coercion as their *actus reus* cannot correspond their *mens rea*. A counterargument holds that child soldiers who grasp the consequences of their actions should still be held accountable for committing serious crimes during conflict, and exempting them is unjust. These debates are injurious to the advancement of African jurisprudence on conscription of minors in military activities.

N. Non-Binding Decisions of African Experts Committee (AEC)

African Experts Committee (AEC) have championed causes against child soldiering, though their powers are advisory in nature. It is worthy to note that the major compliance gap exists more on the part of militia organizations in the reports and recommendations made by AEC. The militia organizations appear to have limited features as contained in the mandate of AEC. This stems from the fact that while Charter based organs exercise powers widely, treaty-based ones like the Committees are confined in scope to their mandates. In all, the lack of penal sanctions by the Committees and treaties on erring Member States failing to carry out recommendations is pathetic. The foregoing challenges are found to be a draw-back and extirpate the enforcement efficacy of African Union's institutional mechanisms established in the regulatory mechanisms designed to curb wide spread of conscription of minors in military activities in African region.

III. Legal Framework and Institutional Mechanisms

The jurisprudence of conscription of minors in military activities in Africa manifested with the development of legal and institutional frameworks discussed as follows:

A. African Charter on the Rights and Welfare of the Child (ACRWC), 1999

The ACRWC provides opportunities to respect International Humanitarian Law (IHL) standards relating to military hostilities and children.⁷⁹ With a cursory look at article 22 and article 2, it appears that an acceptable standard of interpretation of a minor in the context of their engagement in military hostilities is to be construed as persons under 18 years.⁸⁰ This shows that a direct 18 years

⁷⁹ C Droege, 'The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict' [2007] (40) (2) *Israel Law Review* 310 - 311.

⁸⁰ ACRWC art 2 provides that a child means every human being below the age of 18 years, while art 22(2) provides that states parties shall take all necessary measures to ensure that no child shall take a direct part in hostilities.

benchmark test is adopted as a determining factor for ascertaining who is a minor or an adult with respect to qualifications for participation in military activities. Sometimes, the question has always been why the engagement of minors in military activities in the region of Africa has remained a common practice. Do the provisions of Articles 22 and 2 of ACRWC only exist on paper or as mere academic knowledge? These questions and more will be addressed in this paper. The analysis of the paper demonstrates that ACRWC has shortcomings that largely affect the enforcement mechanisms of the treaty. First, it retained the 'full participation in conflict' with respect to conscription of minors in military activities.⁸¹ With this development, it can be concluded that the treaty omits indirect participation connected to combatancy, such as exploratory survey, surveillance, wrecking, along with engagement of minors in military errands, or roadblocks.⁸²

The paper shows that ACRWC does not specifically emphasize issues of conscription of minors in military activities by militias. It has been argued that although article 22 of the ACRWC is silent on the category of people, groups, or institutions it addressed, it could be implied that government military officers along with militia groups of whatever kind, are within the contemplation of the instrument. Notwithstanding the above shortcomings, its straight 18 years definition of a minor is very apposite to jurisprudential interpretations of conscription of minors in military activities.⁸³

B. African Council of Experts on Rights and Welfare of the Child (ACERWC), 1999

ACERWC is a useful institutional mechanism in the fight against child soldiering. The first communication on child soldiering presented at the sixth assembly of the ACERWC borders on issues of conscription of minors in military activities during military hostilities that erupted in the Northern part of Uganda between the Lord Resistance Army (LRA) and the Ugandan Government.⁸⁴ Before delving into the

⁸¹ Article 22(2) ACRWC

⁸² ICC: *The Prosecutor v Thomas Lubanga Dyilo*, ICC 601/04601/06, Trial Chamber I decision on confirmation in paragraph 247 and 628, of Charges, 2 Jan 2007.

⁸³ Danwood M Chirwa, 'The Merits and Demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10(2) *International Journal of Children's Rights* 157.

⁸⁴ Table of cases available at: <www.acerwc.africa/table-of-communications/>, *Hansungule and Others (on behalf of children in Northern Uganda) v The Government of Uganda*, Communication 1/2005, 2005 (Uganda Decision). The Communication related specially to events in Northern Uganda from 2001 to 2005.

communication, ACERWC embarked on information gathering in Uganda in order to ascertain the true situation of things as presented.⁸⁵ The analysis of the paper shows that minors were conscripted into military activities, resulting in several assaults on minors as well as endangering the lives of these minors, who are vulnerable to all manner of brutal attacks.⁸⁶ Some of the proposals made by ACERWC were the compelling need to incorporate in the Ugandan statutory regulations on criminal matters punishment for persons who engaged minors into military activities, and to conduct a comprehensive DDR programme, amongst others. The process of filing communication, which includes the exhaustion of local remedies, is a big snag as the ACERWC does not have jurisdiction to entertain the matter, no matter how urgent. Furthermore, the lag in the follow-up mechanism of ACERWC affects the enforcement of its recommendations and enhances State Parties' non-compliance. Also, the fact that the recommendations of the ACERWC do not carry punitive power on enforcement affects its findings and severely undermines their impact and perpetuates a culture of impunity for the crime of child soldiering.

Comparatively, within the AU's institutional mechanism,⁸⁷ Peace along with the Security Council (PSC)⁸⁸ is seen as an enforcement mechanism, which is patterned closely like the UNSC.⁸⁹ Just like the latter, it has binding and punitive powers, while the Protocol Relating to the Establishment of PSC vide Article 7 imbues PSC with the powers over repression of war crimes, a reconciliatory body along with post-war rehabilitation programmes in Africa. Unlike the UNSC, which can make a referral of issues bordering on conscription of minors in military activities to the ICC, the PSC has no such punitive and referral powers within the

⁸⁵ *ibid*, para 17.

⁸⁶ *ibid*, para 81.

⁸⁷ Constitutive Act of the African Union, 11 July 2000, OAU Doc CAB/LEG/23.15 (2000) (entered into force 26 May 2001) (Constitutive Act). M Tiyanjana, "The Constitutive Act of the African Union and Institution Building in Post-Colonial Africa" [2003] 16:1 *Leiden Journal of International Law* 157 at 157-70.

⁸⁸ Constitutive Act, *supra* note 1, art 5(2). The African Union Peace and Security Council (AU PSC) was established under the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 9 July 2002, online: <[http://www.au.int/en/sites/default/files/997peace and Security.pdf](http://www.au.int/en/sites/default/files/997peace%20and%20Security.pdf)> (entered into force 26 December 2003) [AU PSC Protocol]. Accessed on 31 March 2025.

⁸⁹ Security Council is one of the 6 Principal organs of United Nations: Art 24(1) of the Charter of the United Nations, 26 June 1945, can TS 1945, No. 7 [UN Charter], designates the UN Security Council as the primary body responsible for determining threats to, and maintaining, international peace and security.

regime of AU. To be specific, the Committee of Experts, being a quasi-judicial institution, referrals from PSC ought to be automatic. In other words, the Committee of Experts could use PSC to enforce its recommendations, both being AU enforcement institutions.⁹⁰ The synergy between both institutions could enhance the effective enforcement of the provisions of the ACWRC on child soldiering. This is bearing in mind that the UNSC sometimes assigns such powers on executions on global peace and security matters to other regional frameworks performing the same functions as the AU's PSC to handle.⁹¹ This is because regional organs can play salutary partnership roles in line with the prescribed guidelines of the UN while maintaining global harmony and safety measures, a principle that holds particular relevance for the African continent.⁹²

C. African Court of Justice and Human Rights (ACJHR), 2005

The African Union (AU) created Criminal Chambers inside the structure of ACJHR (Merged Court), and in June 2014 converged in Malabo to endorse a Protocol for the amendment of the Treaty on ACJHR, recognised as 'Malabo Protocol'.⁹³ In this context, this Protocol grants powers to ACJHR bordering on international criminal jurisdictions along with corporate criminal liability.⁹⁴ Due to a lack of ratification by the African States, the said criminal jurisdiction, which includes war crimes and reparations to victims of war crimes, has not taken off.

The Malabo Protocol, though not in force yet, criminalizes a wide mirage of offences, of which article 28(A) (1) of the ACJHR imbues it with prosecutorial powers over individuals who perpetrated unlawful acts during military hostilities.⁹⁵ With the provisions of the Treaty, engagement of minors below the stat-

⁹⁰ African Union 'Peace and Security Council 1110st Meeting; para 21 accessed from <peace.au.org/en/1110st meeting of the PSC> on 31 March 2025.

⁹¹ P K Tieku and T Kwasi, 'The AU's New Security Agenda: is Africa Closer to a Pax Pan African' *International Journal* [2005] (60) (4) 937-938; C R Majinge, *Regional Arrangement and Maintenance of International Peace and Security: The Role of AU Peace of Security Council* (Cambridge University 2016) 1-4.

⁹² United Nations Charter, Chapter VIII.

⁹³ Malabo Protocol, art 11, provides that the Protocol shall enter into force 30 days after 15 members deposit instruments of ratification with the Court; G Werle, *The African Criminal Court: A Commentary in the Malabo Protocol* (TMC Asser Press 2011) 30 -37.

⁹⁴ A H Ekori, 'The AU Debacle with the ICC: The Creation of the African Criminal Court', *Int'l Jour. of L. and Society* [2021] (4) (2) 67-70.

⁹⁵ Malabo Protocol, art 28 B-M provides for the elements of the Crimes; V Nmehielle, 'Sad-dling' the New African Regional Human Rights Court with International Criminal Jurisdiction: Innovative, obstructive, Expedient?' *African Journal of Legal Studies* [2014] (7) 41-42.

utory age of 18 years in military activities amounts to unlawful acts perpetrated during military hostilities and punishable, unlike the Rome Statute, which protects those under 15 years, which is limited and not African-friendly. Be that as it may, the non-ratification of the Protocol to the ACJHR is a big challenge to ICL development in Africa. Had it come into force, the non-conformity with acceptable guidelines on statutory age required for protection of minors in military hostilities, along with the reparations provision, would be cured in Africa. The still born positions of the Malabo Protocol make prosecutions unlawful acts involving enlistment of minors perpetrated during military hostilities a subterfuge.

D. Regulatory Framework of Sierra-Leone Tribunal, 2000

The consequences arising from engagement of minors in military activities gave rise to the creation of a special tribunal by the UN and the Sierra Leonean Government⁹⁶ in line with Resolution 1315 of the SC.⁹⁷ The mission mandate of Sierra Leone Tribunal is unique as it handles cases arising from violations of IHL, unlawful acts perpetrated against human beings bordering on conscription of minors in military activities during military hostilities, along with such unlawful acts contained in Sierra Leonean legislation.⁹⁸ Regrettably, this legislations failed to define the terms 'child', 'child soldier', 'persons who may be seen as major culprits or provide a basis of identifying such acts'. These appear to be great challenges in terms of prosecutions of the perpetrators.

The effective prohibition of child soldier conscription is critically important, given its devastating effects on minors and their communities. It was this grave necessity that led to the creation of Sierra Leone's Special Court. This Tribunal became a foremost model for global criminal justice because it was a hybrid court, where national judicial officers sat alongside international judges.⁹⁹ A contentious provision of the Tribunal especially on issues bordering

⁹⁶ N Fritz and A Smith, 'Current Apathy for Coming Anarchy: Building the Special Court for Sierra-Leone' [1995] (25) *Fordan International Law Journal* 391, 394; B Akinrinade, 'International Humanitarian Law and the Conflict in Sierra-Leone' [2001] (15) *Notre Dame Journal of Law, Ethics and Public Policy* 391.

⁹⁷ SCSL was established in 2000 vide UN Doc S/RES/1315. The court was dissolved in 2004.

⁹⁸ SCSL, art 4(c).

⁹⁹ C Shocken, 'The Special Court for Sierra-Leone; Overview and Recommendations' [2002] (2) *Beckley Journal of International Law* 432; Human Rights Watch, 'Getting Away With Murder, Mutilation and Rape, A Human Rights Watch Report 10 3(3) June 1999 8 - 11.

on conscription of minors, focused on revocation of the amnesty given to the perpetrators of the unlawful acts during military hostilities through the Lome Peace Agreement, which ended the civil war in Sierra Leone.¹⁰⁰ Looking forward, the provisions of the article 10 of the Regulatory Framework of Sierra Leone Tribunal provide that pardons given to individuals within its powers with regard to the unlawful acts mentioned in Article 2 up to 4 should not be seen as a restriction on prosecutions of matters pending before it.¹⁰¹ This remained a complete departure from the pardon given to perpetrators of unlawful acts of criminal nature contained in Article 11 of the Lome Agreement.¹⁰² This appears to be the first challenge faced by the Tribunal at its sitting in March 2003 on child soldiering offences, among others. This challenge hinders the Tribunal from proceeding with the substantive matters bordering on several indictments relating to the jurisdictional powers of the Tribunal.¹⁰³

In addition, it must be emphasized that the provisions of Article 4(c) clearly provide what amounts to the enlistment of minors below 15 years of age into military activities as an unlawful act in violation of the rules of IHL. The above expressions demonstrate the regulatory frameworks' combinations of child soldiering and other offences together, as this differs from Article 8 of the Rome Legislations, which clearly construed conscription of minors as unlawful acts perpetrated during military hostilities.¹⁰⁴ In a similar vein, the analysis of the paper revealed that issues bordering on forceful abductions of minors into certain acts that do not depict active engagement in military activities arising

¹⁰⁰ SCSL, art 10; H M Binningsbo and K Dupuy, 'Using Power Sharing to Win A War: The 'Implications of the Lome Agreement in Sierra-Leone' [2009] (44) (3) *African Spectrum* 87 - 89; K Gallagher, 'Note, No Justice, No Peace: The Legalities and Realities of Amnesty in Sierra-Leone' [2000] (23) *Jefferson Law Review* 149, 156.

¹⁰¹ SCSL art 2 provides for crimes against humanity, art 3 relates to violations of article 3 Common to the Geneva Conventions and art 4 contains other serious violations of international humanitarian law.

¹⁰² Surprisingly, the Lome Accord specially granted rebel leader Foday Sankoh absolute and free amnesty despite his reputation as one of the dangerous war crime violators of human rights.

¹⁰³ Amnesty was argued in the cases of (i) *Prosecutor v Morris Kallon and Brima Bazzy Kamara* (Decision of the Appeals Chamber, SCSL-04-15 PT-060 (ii) *Prosecutor v Allieu Kondewa*, (Decision of Appeals Chamber, SCSL -04-14-T-128-7347 (iii) *Prosecutor V Augustine Gbao*, (Decision on Appeals Chamber, SCSL-04-15-PT-14) and *Prosecutor v Moinina Fofana*, (Decision on Appeals Chamber SCSL-04-15 P1-14.

¹⁰⁴ Art 8 (2) (b) (xxvi) and 8(2)(e)(vii) of the Rome Statute of ICC is specific on child soldiering as a war crime; Samuel Hinga Norman's case (Appeals Chamber, *Prosecutor v Hinga Norman*, Decision on lack of jurisdiction (child recruitment) 31 May 2004) paras 3 -6.

from activities like catering, housework, forced prostitution, false marital union, spying, amongst others appear to be lawful and permissible.¹⁰⁵ Consequently, ancillary engagement in conflict that is not completely forbidden by the Sierra-Leone Tribunal cannot be executed by the Tribunal. These raise several issues that the Tribunal might encounter in the course of its adjudicatory procedures. A similar situation arose in Article 4(c) of the Special Court for Sierra Leone (SCSL), which is in contradiction with the Sierra Leonean Child Rights Act that was enacted later in 2007 concerning the proper interpretations of conscription of minors in military activities as one below the statutory age of 18.¹⁰⁶ Moreso, the above Act provides that:

- (i) *Every minor is entitled to adequate safety from engagement in military hostilities or similar acts of violence, and in accordance with the statutory age of enlistment of persons in military activities which is 18 years of age.*¹⁰⁷

In the same vein, the provisions of Section 28(ii) (g) prohibit conscription of minors in military activities. The above provisions are in tandem with the operational acceptable age of 18 years¹⁰⁸ for conscription of a child in military activities, which the provisions of SCSL appear to be a departure from the above provisions by emphasising 15 years and above.¹⁰⁹ Furthermore, in this adverse and traumatic context, restitutions remained a vital element aimed at guaranteeing justice for the aggrieved persons whose human rights were abused.¹¹⁰ This restitution goes a long way to assist the aggrieved persons who have faced extremely difficult and painful situations, but regrettably, issues of restitution are not found in the provisions of SCSL.

¹⁰⁵ I A Daudu and L S Schulika, 'Armed Conflicts in Africa: Examining Sexual Violence as an Instrument of War' [2019] (8) (1) *Journal of African Union Studies* 31-35.

¹⁰⁶ Child Rights Act 2007, No 7 Supplement to Gazette Extra Ordinary Vol CXXX VII No 48 3rd Sept 2007, Article 28(1).

¹⁰⁷ Compare the ACRWC, art 22 and OPAC, arts 2 and 3(10), Protocol to the African Charter on Human Peoples Rights on the Rights of the Women in Africa, arts 1(k) and 11, ILO Convention No 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, arts 1 and 3.

¹⁰⁸ Compare the ACRWC, art 22.

¹⁰⁹ Compare the ACRWC, art 22.

¹¹⁰ Compare ICC, art 75(2); E Divertmann, *The Reparation System of the ICC: Its Implementation, Possibilities and Limitations* (Brill 2010) 1-6.

E. Treaty on the African Charter on Human and Peoples Rights and the Rights of Women in Africa, 2005

As a priority issue aimed at safeguarding women's rights in the region of Africa, in the month of July 2003 in Maputo, Mozambique, the Treaty on African Charter on Human and Peoples Rights on Rights of Women in Africa (Maputo Protocol)¹¹¹ emerged and became operative in 2005. Regrettably, ACHPR, a parent Treaty recognized as African Charter does not specifically provides provisions on child soldiering. However, it provides in articles 2, 18 and 66 for distinct treaties or consents to arguments some lapses found in the regulatory framework. It is upon this pedestal that Committee of Heads of Governments of former OAU in its Thirty-first Regular Meeting at Addis Ababa, Ethiopia in June 1995 mandated ACHPR to come up with a Treaty specifically on rights of women in the region of Africa. The foregoing gave rise to the emergence of a Treaty on women. Although, Treaty on Women centred on women, however it is girl child specific in protection as its definition of women encompasses girls vide paragraph (k) of its preamble. This is a salient development above other women treaties.¹¹² The protections accorded to women and girls in article II are very explicit particularly given its emphasis on proscription of child soldiering. Within the human rights and humanitarian law contexts, it is pertinent to note that the references made by Women Protocol on them have potential impacts on prohibitions of child soldiering.¹¹³ The ending wordings in article II (1) provide thus 'that affecting the populations, especially womenfolk' and article (2) 'despite the populations to which they belong in situations of military hostilities', are clearly very good feminist protection in military hostilities.

These provisions of Article 3, enjoins Contracting Parties to criminalize certain acts, prosecute offenders and get justice for women, refugees, returnees,

¹¹¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003. It is sequel to the African Charter on Human Peoples' Rights (African Charter) adopted 27 June 1981 by the 18th Assembly of Heads of State of the Organization of African Unity at Nairobi.

¹¹² The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), opened for signature on 18 Dec 1979, 1249 UNTS 13 and entered into force 3 Sept 1981. Unlike the Women Protocol, it did not include the girl child in its protective clauses; S Emerry, *Human Rights and Gender Violence: Translating International Law Into Local Justice* (University of Chicago Press, 2005) 90.

¹¹³ In *Prosecutor v Anto Foruntzya*, the Trial Chamber of the ICTY emphasized that the general principle of respect for human dignity was the basic underpinning of both IHRL and IHL, Case No IT 95 17/IT, judgment of 10 Dec 1998, para 183.

Internally Displaced Persons (IDPs), from any manner of conflict, sexual assaults, along with other manner of sexual exploits.¹¹⁴ State parties are enjoined to ensure that such acts are penalized as war crimes, genocide, unlawful acts perpetrated against human beings, also perpetrators of the unlawful acts should be accountable for the crimes committed. Be that as it may, the protection given to women in article II (3) of the Women Protocol is limited in scope. The omission of 'and other women in other conflict situations' to widen its horizon is a lacuna. This is because hostilities can cause statelessness, joblessness, widowhood, childlessness apart from asylum seekers, internally displaced, refugees and returnees are captured in the regulatory mechanisms.¹¹⁵ The paper analysis of the Women Protocol shows that safety of women from all manner of violent act, sexual assaults along with all manner of sexual violence as provided by the Women Protocol is also not encompassing.

The omission of the words 'and other abuses' to capture a wider range of hostility proves ill against the enforcement of women and girls' rights and these lacunas are not healthy for the enforcement of the foregoing provisions of Treaty on Women.

However, this Treaty failed to defined girl child. Its stipulation that girl children under 18 years are not to take part in direct hostilities is a boom for the 'straight 18 years bracket of non-recruitment of child soldiers in Africa.'¹¹⁶ However, the specification of direct participation in hostility alone, disregarding indirect participation, is a lapse. The addition of indirect participation would have broadened the protection hemisphere against girl child involvement in hostility or their recruitment as soldiers.¹¹⁷ This omission propels the jurisprudential debate on the thin line of difference and similarities in what

¹¹⁴ Amnesty International, 'Rape and Sexual Violence: Human Rights Law and Standard in International Criminal Court,' Paper 2011 at 17-27.

¹¹⁵ N Shahnazarian and U Ziermer, 'Women Confronting Death: War Widows Experiences in the South Sudan' [2018] (19) (2) *Journal of International Women's Studies*, 30.

¹¹⁶ Child Soldiers International, Annual Report (2017 - 2018) <www.childsoldiersinternational.org> accessed on 21 March 2025. The Organization reports that their 2018 annual report theme 'Why 18 Matters' challenges the assumption by analyzing the implications of recruiting children into military forces.

¹¹⁷ B H William, *The Law of Targeting* (Oxford University Press, 2012) 51 - 55; B S Francoise, *The Practical Guide to Humanitarian Law* (3rd ed, Rowman & Littlefield 2013) 59 - 66; C Emily, *Identifying the Enemy: Civilian Participation in Armed Conflict* (Oxford University Press 2015) 21 - 23; Y Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (2nd ed, Cambridge University Press 2010) 146 - 152.

amounts to straightforward or unintended engagement in conflict by children. Women Protocol imbues the African Court on Human and Peoples Rights with an interpretative power of the instrument emanating from its enforcement.¹¹⁸ Declaring an act a war crime requires Courts with adjudicatory powers on criminal justice to prosecute and enforce such offences.

In this sense, ACHPR lacks prosecutorial powers on criminal matters and cannot assume jurisdiction.¹¹⁹ Hence, the provisions of the penalisation of violent acts against women and girls as contained in Article II (3) appear impossible to enforce within the African regional Court framework. Also, the African Commission imbued with certain powers to act on behalf of the Court, has no criminal jurisdiction nor powers to penalize unlawful acts arising from unlawful acts perpetrated during military hostilities, genocidal acts, and unlawful conduct against human beings.¹²⁰ They only have interpretative powers. Hence, they cannot punish any offender of Article 3 of the Women's Protocol. Rather, the obligation to punish is subjectively relegated to states parties to enforce. Worst still, the Women Protocol has no provision on the DDR policies and programmes for the adequate assimilation of former female soldiers back into society. Another hurdle is that where relevant States Parties are yet to make resolutions, any correspondence should be deposited at the African Commission first and foremost. This implies that before a matter is accepted by the African Commission, it must arise from violations of African Charter guidelines as contained in Article 56(2) of which the Women's Protocol is inclusive and protected.

IV. African Criminal Jurisprudence on Child Soldiering

Africa ranks first on the list of trials of international crimes and child soldiering cases brought before the ICC, along with Sierra-Leonian Special Tribunal Court. Synoptically, the above, as highlighted below in this work, shows the development of African jurisprudence on child soldiering.

¹¹⁸ Women Protocol, art 27 provides that the African Court on Human and Peoples Rights shall be seized with the matters of interpretation arising from the application or implementation of this protocol.

¹¹⁹ The African Court on Human and Peoples Rights (ACHPR) came into force on January 25, 2004 and was established via article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the ACHPR.

¹²⁰ Women Protocol, art 32; T F Yerima, 'Over Two Decades of African Commission on Human and Peoples Rights: Flying or Fledgeling' [2012] (12) *Global Journal of Human Social Science, Arts and Humanities* 3. - 4.

A. African Criminal Jurisprudence before the ICC

1. The Thomas Lubanga Case - DRC

Generally speaking, issues surrounding the convictions and sentences of Thomas Lubanga in the Matter of Prosecutor v. Thomas Lubanga Dyilo on the offence of enlistment of minors in military activities appear to be a follow-up decision of ICC bordering on restitutions.¹²¹ Thomas Lubanga is a Congolese warlord charged with the offence of conscription of minors in military activities during the Congolese military hostilities. In this judgment of the Criminal Tribunal held on 14th March 2012, Thomas Lubanga got his jail term on 10th July 2012 for a term of 14 years for recruiting, enlisting, and engaging minors in military activities between 2002 - 2003.¹²² His appeal failed as per the Appeal Judgment of 1st December 2014. In the judgment of the Tribunal on restitutions and with respect to the provisions of Article 75(1) of the Rome Statute, Trial Chambers established basic guidelines bordering on issues of restitutions along with their implementation on 7th August 2012.¹²³

The case of Thomas Lubanga developed the criminal jurisprudence of African State Party referral to ICC, forcible enlistment of minors below 15 years of age as soldiers, reparations, along with ICC's Trust Fund for Victims Scheme (TFVS) applications. The conviction of Thomas Lubanga by the International Criminal Court (ICC) in 2012 is widely regarded as a cornerstone in African jurisprudence and the global fight against child soldiering. It established a powerful precedent as the first-ever international conviction solely for the war crime of conscripting, enlisting, and using children under 15 in hostilities.

Lubanga's conviction in 2012 was celebrated internationally as a watershed moment for justice. However, the narrow focus on child recruitment in Ituri communities, which excluded sexual violence and massacres, left victims feeling that their full suffering had been ignored. Reparations were delayed for

¹²¹ Lubanga was found guilty by the ICC of crimes committed within September 2002 to August 2003 within the meaning of articles 8(2)(vii) and 25(3)(a) of the Rome Statute: ICC - 01/04-01/062842, Judgment pursuant to article 74 of the Rome Statute, 14 March 2012, para 1358.

¹²² M E Kurth, 'The Lubanga Case of the ICC: A Critical Analysis of the Trial Chamber's Finding on Issues of Active Use, Age and Gravity' [2013] (5)(2) *Goettingen Journal of International Law* 431 - 453.

¹²³ The Prosecutor v Thomas Lubanga Dyilo, Reparation Order, ICC - 01/04-01/06-3129; Compare Prosecutor v Bosco Ntaganda, Order for Reparations, ICC - 01/04-01/07-3728 24 March 2017.

years, and community projects funded by the Trust Fund for Victims (e.g., vocational training) reached only a fraction of survivors. Many considered the 14-year sentence to be lenient, given the scale of the atrocities committed. Crucially, ex-combatants were reintegrated without being held accountable, which bred resentment among families whose children were never returned. The trial's legal precision clashed with local expectations of holistic justice, further fuelling scepticism about the ICC's disconnect from victims' lived realities.

2. The Germain Katanga Case- DRC

Germain Kantanga's Trial Judgment was laid down by the ICC on the 7th March 2014 and was later sentenced to twelve years imprisonment for an unlawful act perpetrated in the village of Bogoro on 24th February, 2003, which includes murder, attacks on civilians, demolitions of personal belongings, along with devastations made on 23rd May 2014.¹²⁴ His case developed the jurisprudence of accessory to killing and community massacre, collective and symbolic reparations order of the ICC.

The conviction of Katanga for the Bogoro massacre provided an initial symbolic validation to the survivors. However, the court's pioneering collective reparations directive, designed to facilitate community reconstruction, encountered challenges in its implementation. The financial resources allocated for educational institutions and healthcare facilities have been mismanaged by intermediaries, with minimal involvement from local stakeholders. The omission of individual compensation, particularly for widows and orphans, was met with criticism from the victims. The sentence reduction (12 years for murder and pillage) was perceived as inadequate, thus perpetuating narratives of elite impunity. While the case represented a legal innovation, it also exposed the limitations of top-down reparations mechanisms when divorced from community agency, in terms of achieving tangible healing or fostering trust in the justice system.

3. The Bosco Ntaganda Bosco - DRC

Bosco Ntaganda, another Congolese indicted of 18 counts charged bordering on unlawful acts perpetrated during military hostilities, along with unlawful acts

¹²⁴ The Prosecutor v German Katanga, decision on the confirmation of charges, ICC - 01/04-01/07 - 717, 30 September 2008 1-226 and Judgement pursuant to art 74 of the Rome Statute, available at <https://www.ICC-cpi.int/site//default/files/court_Recordss/CR2015_21206.pdf> accessed on 24 March 2025.

of inhuman nature perpetrated on 8th July 2019 by the ICC. These unlawful acts were perpetrated during military hostilities perpetrated at the Ituri provinces of Eastern DRC between 2002 to 2003. On 8th July, he got a jail term of 30 years on all 18 counts charged and thereafter was imprisoned. This jail term appears to be the longest jail sentence ever imposed by the ICC.¹²⁵ His case developed the criminal jurisprudence of sexual violence and rape of persons of the same camp, civilian attacks, attacking protected objects, engagement of children and minors below 15 years as military personnel and reparations order of the ICC.¹²⁶

The conviction of Ntaganda represented a significant development in the field of international criminal law, as it was the first time that sexual violence against child soldiers within an individual's own military ranks had been prosecuted. For the Congolese communities concerned, this acknowledgement proved to be of pivotal significance; nevertheless, it was perceived as insubstantial by a considerable number. Survivors of these incidents, who wished to remain anonymous, were not granted direct reparations due to the fear of stigma that they faced. While his 30-year sentence is the ICC's longest to date, it is eclipsed by the ongoing activities of armed groups in Ituri. Local observers noted the incongruity of the situation, with Ntaganda facing justice while commanders implicated in similar crimes remained at liberty. The trial's focus on legal precedent (e.g., same-camp rape as a war crime) felt detached from daily insecurity, thereby underscoring the ICC's limited deterrent effect.

4. The Dominic Ongwen Case-Uganda

Interestingly, Dominic Ongwen was arraigned on a 70-count charge of an unlawful act perpetrated against human beings along with an unlawful act perpetrated during military hostilities, before the ICC.¹²⁷ His trial set a lot of novel records in African jurisprudence in ICL. The investigation into Ongwen's matter is the first to be undertaken since the creation of the ICC in 2002, and he is one of the first five warlords of the LRA charged therein, vide a referral.

¹²⁵ The Prosecutor v Bosco Ntaganda Judgment with Public Annexes A.B, and C ICC - 01/04-02/06 - 2359 8 July 2019: 1 - 539 available at <https://www.ICC-CPI.int/sites/default/files/CourtRecords/CR2019_03568> accessed on 27 March 2025.

¹²⁶ Prosecutor v Katanga (Judgment pursuant to Article 74 of the Statute) ICC-01/04-01/07-3436, TC VIII (7 March 2014); Prosecutor v Katanga (Order for Reparations pursuant to Article 75 of the Statute) ICC-01/04-01/07-3728, TC II (24 March 2017).

¹²⁷ Situation in Uganda, in the case of the *Prosecutor V Dominic Ongwen*, ICC - 02/04 - 01/IJ-T-259-ENG ET. WT 04-02-2021 1/42.

He is the first accused with child victim-perpetrator status and the first of the LRA commanders to be prosecuted by the ICC. Historically, Ongwen is the first of the warlords of LRA to surrender himself willingly for trial; the first to be arraigned for a greater number of count charges of 70 and also, first around the globe and South of the Sahara to be charged with forced pregnancy by ICC and in ICL. His case is one of the recent child soldier-related matters that reached the appellate jurisdiction of the ICC. It was the first time also ICC made a charge of forceful marriage, another dehumanising act, amounting to unlawful acts perpetrated against human beings, to an accused. Be that as it may, on 4 February, 2021, Dominic Ongwen was found guilty and was sentenced on 61 criminal charges ranging from unlawful acts perpetrated against human beings, along with unlawful acts perpetrated during military hostilities bordering on conscription of minors in military activities who are below fifteen years of age as soldiers.¹²⁸ For committing the foregoing unlawful acts, ICC convicted and imposed a joint jail term of 25 years of incarceration on Dominic Ongwen on 6 May 2021.¹²⁹ The foregoing issues formed an advancement of the criminal law jurisprudence before the ICC.

The trial of Ongwen exemplified the victim-perpetrator paradox, as it involved a former child soldier being prosecuted for alleged atrocities. Northern Ugandan communities were profoundly polarised. The conviction, which saw the accused receive a sentence of 25 years' imprisonment for 61 crimes, was viewed by some as a long-overdue form of justice for the victims of the Lord's Resistance Army (LRA). Conversely, others, particularly fellow abductees, viewed the conviction as a means of exoneration for Joseph Kony. It is important to note that reparations were excluded for crimes committed prior to 2002 (the ICC's temporal cut-off point), resulting in the exclusion of a significant number of individuals. The trial served to exacerbate the already existing tensions between traditional *Mato oput* (reconciliation) rituals and Western retributive justice. While the document is of historical significance, it did not address the ongoing communal divisions or deliver reparations to marginalised clans, leading to widespread disillusionment.

¹²⁸ *ibid*, Trial Judgment, 1069, the verdict. On 4 February 2021, the ICC Trial Chambers IX found Ongwen guilty of 21 counts of war crimes and 30 counts of crimes against humanity, conspicuously charging the crime of forced pregnancy as both war crime, and crime against humanity.

¹²⁹ *ibid*, sentencing decision 138.

B. African Criminal Jurisprudence: Case study of the Sierra Leonean Special Tribunals

Sierra Leonean Special Tribunals emerged in 2002 and had a life span of two years as an ad hoc court.¹³⁰ Some of its trials developed the criminal jurisprudence on child soldiering and are discussed hereunder.

1. The Trials of the Leader of the Revolutionary United Front (RUF)

Sierra-Leonian Special Tribunals made its foremost charges on unlawful acts of conscription of minors on RUF militia leaders and others like Sessay, Kallon, along with Gbao in January 2004.¹³¹ From the proceedings of the Special Tribunals, three of the accused persons standing trial are found culpable of perpetrating unlawful acts against human beings, conscription of minors in military activities, along with other grievous acts bordering on violations of the rules of IHL. On appeal, the Court reduced the jail term to 52, 40 and 25 years for Sessay, Kallon and Gbabo individually.¹³² Besides the abovementioned unlawful acts, the jurisprudence concerns different categories of military hostilities prevalent around the globe today.

2. Armed Forces Revolutionary Council (AFRC) Trial

In June 20th 2007, Alex Tamba, Brima Bazzy Kamara, along Santigue Borbor Kanu, who are high-ranking officers of AFRC, were all arraigned by Trial Chambers II of Sierra Leonean Tribunals on 11 counts of unlawful acts perpetrated during military hostilities along with unlawful acts perpetrated against human beings.¹³³ On July 19th 2007, the accused persons Brima, and Kanu, got jail terms of 50 years, while Kamara got a 45-year jail term.¹³⁴ These convictions

¹³⁰ The Special Court for Sierra Leone was established in 2000 vide U.N. DOC S/RES/1315.

¹³¹ Prosecutor v Sessay, Kallon Trial Judgment Case No. SCSL - 04 - 15-T Judgment 677-87 March 2 2009 accessed from <<http://www.sc-cl.org.org/linkclick.aspx?fileticket=buPKIWX%&tabid=215>> on 27 March 2025.

¹³² Prosecutor v Sessay, Appeal Judgment Case No. SCSL-04-15-A Judgment 477-80 (Oct 26 2009) accessed from <<http://www.SC-SL-org/linkclick.aspx?filedticket=CFgVJR FNF 7mq%33dabid=218>>. Accessed on 25 March 2024.

¹³³ Prosecutor v Brima, Kamara and Kanu, Case No. Scsl - 04-16 T Sentencing Judgment 34-35 (July 19, 2007) accessed from <<https://www.sc-sl.org/link.aspx?File.tick=y3p%2fx moNm6y%dandinbid=173>> on 28 March 2025.

¹³⁴ The Prosecutor v Johnny Paul Koroma, Special Court for Sierra Leone, accessed from <[http://www.scsl.org/case.johnny paul karoma/tabid/188default.aspx\(koroma\)](http://www.scsl.org/case.johnny paul karoma/tabid/188default.aspx(koroma))> on 26 March 2025.

appear to be foremost convictions bordering on unlawful acts of kidnapping of minors for the act of servitude, along with the forceful act of persuading the minors to engage in forced labour of extractions of diamonds. However, on February 22nd 2008, the Appeals Chambers in a unanimous decision allowed their convictions made by the Special Tribunals and certified their convictions as declared by the Special Tribunals. Their trials advanced criminal jurisprudence on the offences of kidnapping of minors for servitude, along with the forceful act of engagement in all manner of labour in the extraction of diamonds as slaves.

3. Civil Defence Forces (CDF) Trials

On August 2, 2007, the Special Court for Sierra Leone convicted two former commanders of the Civil Defence Forces (CDF) armed group, Moinina Fofana and Allieu Kondewa, on charges of murder, cruel treatment, pillage, and collective punishment. Aside from the above charges preferred against Kondewa, an additional count bordering on conscription of minors in military activities was also preferred against him. In the same vein, on October 9th, the accused persons, Fofana, along with Kondewa, received jail terms of six and eight years commencing from the 29th of May 2003, being the date of their convictions by the Special Tribunal.¹³⁵

In light of the above judgment of the Tribunal pronounced on, in a majority judgment delivered on May 28 2008, the Special Appeal Tribunal upturned the pronouncement of the Trial Tribunal raising issues of sentiments beclouding the judgement of the Trial Tribunal, and further pronounced that engagement in any form of violent act that results to commission of mayhem should not be seen as justifications for wrongful acts. Also, in a considered judgment of the Appeal Tribunal, Fofana and Kondewa's jail terms were raised to 15 years and 20 years, respectively.¹³⁶ Their trial expanded the frontiers of criminal jurisprudence that fighting for the civilian populations is not an excuse to commit war crime offences.

¹³⁵ Prosecutor v Fofana, Trial Judgment, Case No. SCSL 04-14. T Judgment Aug 2007, accessed from <[http://www.scsl.org/CASE/prosecutoryfofanaandkondewa\(DFCasetrialchamberjudgment/jabid175default.aspx](http://www.scsl.org/CASE/prosecutoryfofanaandkondewa(DFCasetrialchamberjudgment/jabid175default.aspx)> on 26 March 2025.

¹³⁶ Prosecutor v Fofana, Appeals Judgment Case No. SCSL-04-14-A Judgment May 28 2008, accessed from <[http://www.sc-sl.org/linkclick.aspx?File ticket=9ys\(bJRMly%3d&tabid](http://www.sc-sl.org/linkclick.aspx?File ticket=9ys(bJRMly%3d&tabid)> on 24 Aug 2024.

4. Charles Taylor's Trial

Charles Taylor was an erstwhile Head of State of Liberia arraigned before a Special Tribunal for his involvement in several unlawful acts perpetrated during military hostilities in Liberia, as well as his support to the RUF that led to the destabilisation of Sierra Leone.¹³⁷ The Special Tribunal consentaneously submitted that he is culpable of the preferred eleven count charges bordering deeply on assisting along with facilitating unlawful acts perpetrated during military hostilities and the commission of several humanitarian offences that led to his convictions by the global tribunal in 2012. At the end of the trial, he was convicted to a prison term of fifty years. A notable fact about his convictions is that at the time of his jail terms, he was 64 years which invariably made his convictions in reality a life imprisonment. Interestingly, this pronouncement of the special tribunal was sustained on appeal.¹³⁸

This judgement was seen as a notable one by the Government of Sierra Leone, even though the prison term pronounced by the Special Tribunal cannot be equated with several lives lost during the military hostilities. His trial brought to the fore the criminal jurisprudence of superior responsibility over war crimes supervised and ordered by the subordinates. The trial established that Taylor knew, or had reason to know, that his subordinates were systematically abducting, training, and deploying children under 15 to participate actively in hostilities, a grave war crime, yet he failed to take necessary and reasonable measures to prevent these acts or to punish the perpetrators. His conviction specifically included responsibility for the widespread use of child soldiers, demonstrating how the jurisprudence of superior responsibility holds leaders accountable for atrocities like child soldiering committed by forces they supervise, support, and effectively control.

The 50-year sentence imposed on Taylor in 2012 served as a pivotal moment, underscoring the notion that leaders could not evade accountability. In contrast, the celebrations in Sierra Leone were subdued. It was observed by

¹³⁷ See *Prosecutor v Charles Taylor*, Case No. SCSL - 03-01 SCSL, Press Release, Special Court for Sierra Leone Office of the Prosecutor Chief Prosecutor Announces the Arrival of Charles Taylor at the Special Court March 29, 2006, accessed from <<http://www.scsl.org/linkclick=.aspx?Fileticket=frxpO33h5w1%3d&tabid=160>> on 29 March 2025.

¹³⁸ *Prosecutor v Charles Gbankay Taylor*, SCSL (Appeals Chambers) scsl-0301/A. On September 2013 a five-Judge Panel of the Appeals Chamber upheld conviction and sentence on Charles Taylor.

survivors that the focus of the trial was narrowly focused on aiding RUF rebels, rather than on direct crimes against civilians. It is evident that reparations were never ordered, and the Special Court's limited mandate left systemic issues, such as diamond trafficking, unaddressed. It is a matter of particular significance that mid-level commanders, who instilled terror in communities, were granted amnesties or received more lenient sentences. The "big fish" approach engendered cynicism: while Taylor was detained in a UK prison, local perpetrators were released, and victims received minimal support. The justice spectacle appeared to be divorced from the quotidian struggle for reconciliation and economic justice.

Conclusion, Recommendations and Way Forward

While acknowledging that Africa is known for activities relating to child soldiering arising from national to regional and international military hostilities, it is accurate or conceptually helpful to describe child soldiering as a household enemy that has affected the growth and development of Africa. This paper sought to explore these challenges, in light of notable instances that have been experienced in several countries of Africa embroiled in military hostilities. The findings of the paper highlight significant conscription of minors in military activities and what led to voluntary and involuntary engagement of minors in military activities. It argued that despite several legislations on children's protection and security, conscription of minors in military activities remained unabated in the region of Africa. The paper's findings in this regard show that the legislation on children's rights in the region of Africa lacks the enforcement powers or lacks proper interpretations on what determines the age of a child.

The paper examines a range of measures that could address such inconsistencies or gaps by reviewing the legislation for better performance. In the view of the paper, endorsement or executions of global guidelines like the Malabo Protocol, its adoptions along with implementations of legislations that prohibit conscription of minors in military activities would be the most effective approach to curbing this threat. As for other measures, such as establishing a hybrid court known as the Special Tribunal for Sierra Leone that presided over several trials, it also appears to be the most effective approach to accountability. The paper explored the use of the Special Tribunal to try Charles Taylor, Thomas Lubanga, Joseph Kony, Dominic Ongwen and several others on the unlawful acts of conscription of minors in military activities, which today is

said to have developed the criminal jurisprudence of the unlawful acts of associating minors with military hostilities as soldiers. Accordingly, the paper has argued that the existing legislation and guidelines require further review to incorporate explicit recognition along with clarity on what determines the proper age of a child. It added that the decimal spread of armed conflicts, civil unrests, ethno-regional and religious divisions across Africa increases the growth of child soldiering jurisprudence. The paper in its analysis has these questions on whether the involvement of Non-State Actors in the fight against conscription of minors in military activities could serve as a panacea for the attainment of peace in the region of Africa or not. The article argued that while such engagement can sometimes offer positive results, the question that agitates our minds is whether they will be able to uphold humanitarian principles or be able to achieve humanitarian objectives given their nature. Consequently, this may lead to significant challenges in establishing best practices for taming the tide of conscription of minors in military activities. The article concludes that using collective mechanisms in prioritizing and advancing efforts geared towards strengthening institutional arrangements is capable of addressing the menace of conscription of minors in military activities in the region of Africa.

Taking notes from the article's main discussions, this paper recommends the following undertakings:

African-specific definition: Legal frameworks across Africa should define a 'minor' and a 'child soldier' as anyone under the age of 18, in line with the African Charter on the Rights and Welfare of the Child (ACRWC). This clear, continent-wide definition eliminates ambiguity and ensures that all children under 18 are consistently protected from military exploitation, reflecting regional values and commitments.

Harmonising the minimum age for protection: The global customary law protections, which are currently focused on children under 15, should be amended to protect all children under 18 years of age from direct participation in hostilities and recruitment, as mandated by Articles 2 and 22 of the ACRWC. Raising this global standard is crucial to aligning with the stronger protections already established in African regional law and to better safeguarding adolescents.

Comprehensive Preventive Approach: African states must adopt enduring, all-encompassing preventive strategies that explicitly and effectively prohibit

the conscription or use of children in any military activities. This requires proactive measures beyond legislation, including robust monitoring, community engagement, education and addressing the root causes of recruitment, such as poverty and conflict, in order to prevent it from occurring in the first place.

Adopting Key Instruments: African states should urgently endorse and implement the Malabo Protocol, which expands the jurisdiction of the African Court of Justice and Human Rights, and enact strong national legislation that explicitly criminalises the unlawful conscription and use of children in military activities. This dual approach provides concrete legal tools for prosecution and strengthens regional accountability mechanisms.

Age of Culpability Standard: The internationally accepted minimum age of criminal responsibility for minors involved in armed conflict should be set at 14 years for general crimes, distinct from the 18-year threshold for prosecuting the war crime of child soldiering itself. This distinction acknowledges the developmental capacity of younger adolescents for lesser crimes, while firmly establishing that the use of children under 18 as soldiers is always an adult-perpetrated war crime, thus resolving the victim-perpetrator paradox.

Specific Regional Framework for Child Soldiering: A dedicated African regional legal instrument should be established to address the specific war crime of conscripting, enlisting or using children under the age of 18 in hostilities. This framework would provide definitions, procedures and enforcement mechanisms tailored to the African context, thereby enhancing the prosecution of this crime.

Gender-balanced protections: Legal frameworks and sustainable protection schemes across Africa must explicitly prohibit child recruitment and provide for the care of affected minors. This requires recognising and addressing the distinct vulnerabilities, experiences (including sexual violence) and needs of girls and boys associated with armed forces or groups.

Notwithstanding the vigorous analysis presented in this study, major gaps in the extant scholarship continue, particularly with regard to the long-term efficacy of legal and rehabilitative interventions. It is recommended that future research undertake an empirical evaluation of the socio-legal impact of the Malabo Protocol's potential ratification, with particular reference to its reparations framework, on deterrence and victim restitution in active conflict zones. Furthermore, intersectional studies that examine the compounding of vulner-

abilities to recruitment due to gender, disability and ethnic identity remain underdeveloped; such studies could inform the development of targeted DDR programmes. It is imperative that scholarly attention be directed towards the evolving tactics of non-state armed groups in digital recruitment, and the role of regional economic policies (e.g., resource governance) in mitigating root causes such as poverty. Finally, comparative analyses of traditional justice mechanisms, such as the Mato oput system in Uganda or communal rituals in Sierra Leone, are required to assess their viability as complements to retributive models in restoring the agency of child soldiers. These proposed avenues would address the challenges identified by the paper, while also seeking to bridge the gap between jurisprudence and on-the-ground realities.

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