



TIME TO IMPLEMENT!

National and international legal instruments related to the recruitment and use of children by armed forces and groups in Uganda

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School children, July 2006
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Front cover:
Ugandan child, July 2006
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UGANDA COALITION TO STOP
THE USE OF CHILD SOLDIERS



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FOREWORD

COALITION TO STOP THE USE OF CHILD SOLDIERS

Created in 1998, the Coalition to Stop the Use of Child Soldiers works to prevent the recruitment and use of child soldiers, to secure their demobilisation and to promote their rehabilitation and reintegration into society.

The Coalition works to achieve these goals through advocacy and public education; research and monitoring; and networking and capacity building.

The International Secretariat is based in London, with a Steering Committee of seven international human rights and humanitarian organisations.¹ The Coalition has regional and national networks in Africa, Asia, Europe, Latin America and the Middle East. In the Great Lakes region, there are active National Coalitions in Uganda, Burundi, and DRC. The Uganda Coalition has been in place since 2003. It is active in Kampala and through partners in the districts which are conducting activities at community level.

More details on the background, the mission, the activities and the publications of the Coalition can be found on the website www.child-soldiers.org.

¹ The Coalition Steering Committee members are Amnesty International, Defence for Children International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service, and the Quaker United Nations Office-Geneva.

INTRODUCTION

Uganda is party to a number of international human rights treaties related to the recruitment and use of children by armed forces and groups. The government has made some efforts to ensure that children enjoy their rights as enshrined in international instruments such as the UN Convention on the Rights of the Child and its Optional Protocols, the African Charter on the Rights and Welfare of the Child and others. Reference to children is made in legal instruments aiming at domestic application including the Constitution of the Republic of Uganda 1995, the Children Act 2000 (Cap 59), the Penal Code Act (Cap 120) and others.

In order to make the law applicable to children in armed conflict accessible to the general public, the Uganda Coalition to Stop the Use of Child Soldiers, coordinated by Concerned Parents Association- Uganda, is honoured to present in this booklet, the existing national and international protection framework relating to the recruitment and use of children in armed conflict.

This booklet aims to reach human rights activists, training officers on children's rights, government officials, the Uganda People's Defence Force and its auxiliary forces. It focuses on the national instruments in the first part and sets out the international ones ratified by Uganda government in the second part.²

I wish to commend the members of the National Coalition for their efforts against the recruitment and use of child soldiers in Uganda. Our particular gratitude goes to the International Secretariat of the Coalition to Stop the Use of Child Soldiers for supporting the compilation, and funding the printing of this booklet.

Finally, I wish to appeal to all duty bearers involved to make the best use of this booklet in order to prevent the recruitment and use of children in armed forces and groups.

Ms. Angellina Atyam

Chairperson Concerned Parents
Association-Uganda

² This booklet only contains factual information; it does not reflect the views or opinions of the Coalition.



1. NATIONAL INSTRUMENTS

– THE CONSTITUTION OF UGANDA

– CRIMINAL LAW
THE PENAL CODE ACT

– MILITARY LAW
THE UGANDA PEOPLE'S DEFENCE
FORCE ACT

– HUMAN RIGHTS INSTRUMENTS
THE CHILDREN ACT
THE NATIONAL POLICY FOR
INTERNALLY DISPLACED
PERSONS

– THE AMNESTY ACT

THE CONSTITUTION OF UGANDA (1995)

The Constitution of Uganda was adopted in 1995 following a national referendum. Other laws and legal acts must be in conformity with the Constitution as it holds the highest legal authority.

SPECIFIC PROVISIONS

The Constitution of Uganda states that a “*child means a person under the age of 18 years*” (Chap. XVII, Art 257 (c)). It stipulates that children under the age of 16 years are “*entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development*” (Chap. IV, Art 34, (4)). The Constitution also states that it is the duty of every citizen of Uganda “*to protect children and vulnerable persons against any form of abuse, harassment or ill treatment*” (Art 17, 1(c)). It also specifies that “*children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law*” (Chap. IV, Art 31(5)).

COMMENTARY

The definition of a child given in the Constitution of Uganda meets the one of the United Nations’ Convention on the Rights of the Child (CRC) which states that “*a child is an individual under 18 years*” (Art 1). Also in line with the CRC are the provisions concerning the protection of children against abuses and harmful practices which stipulate that “*States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development*” (Art 32 (1))

THE CHILDREN ACT³ (2000)

Adopted in 1997, it constitutes the only national legislation specifically dedicated to the rights of children. Amongst other things, the Act gives to Local Councils the responsibility to “*safeguard and promote the welfare of children*” in their area, establishes family and children’s courts and makes provisions for children charged with offences and other related matters.

SPECIFIC PROVISIONS

According to Section 2 of the Act, “*a child is a person below the age of 18 years.*” Section 8 stipulates that “*no child shall be employed or engaged in any activity that may be harmful to his or her health, education or mental, physical or moral development*”. It states that “*a person who unlawfully removes a child from the lawful custody of another person, institution or organisation commits an offence*” and is liable to a fine or to imprisonment (Section 73 (4)). Finally, it stipulates that “*the minimum age of criminal responsibility shall be 12 years*” (Section 88).

COMMENTARY

While the Act does not address the issue of child soldiers, its definition of a child is in line with the CRC. While the Act set-up a minimum age of criminal responsibility as required under Article 40 (3) (a) of the CRC and Article 17 (4) of the African Children’s Charter, Rule 4(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), otherwise known as the Beijing Rules, recommends that “*the minimum age should not be fixed at too low an age level, bearing in mind the facts of a child's emotional, mental and intellectual maturity*”. In addition, the Children Act’s joint Schedule⁴ stipulates that a child has the right “*to exercise, in addition to all the rights stated in this Schedule and this Act, all the rights set out in the United Nations’ Convention on the Rights of the Child and the Organisation for African Unity Charter on the Rights and Welfare of the African Child with appropriate modifications to suit the circumstances in Uganda, that are not specifically mentioned in this Act*” (Section 4 (c)).

³ Chapter 59 of the Laws of Uganda.

⁴ The first schedule sets the guiding principles in the implementation of the Act.

THE PENAL CODE ACT⁵ (CAP 120)

It is the code that specifies offences and prescribes penalties. It makes provisions for severe sentences in cases of abduction and sexual violence.

SPECIFIC PROVISIONS

With regard to abduction, the Penal Code states that any person, whether male or female, who “unlawfully takes another person under the age of 18 years out of the custody of any of the parents or of any other person having lawful care or charge over that person, commits an offence and is liable to imprisonment for 7 years” (Section 126 (b)). In addition, Section 247 stipulates that “any person who kidnaps or abducts any child under the age of 14 years with the intention of taking dishonestly any movable property from the person of such child commits a felony and is liable to imprisonment for 10 years”. The Code also punishes with high sentences defilement, and sexual abuse against minors. According to Section 375(2) of the Penal Code Amendment Bill, the author of a rape is liable to imprisonment for a term which may extend to 20 years.

COMMENTARY

The Ugandan Penal Code creates some strict offences, including abduction and sexual offences such as rape and defilement, which have a bearing on the treatment of children in situations of conflict. However, defilement is a concept that has not been recognized in international law.

Ugandan child at water pump,
Mpata, July 2006
© Jeff McConnell



⁵ Chapter 120
of the Laws of
Uganda

THE AMNESTY ACT⁶ (2000)

The Amnesty Act 2000 provides amnesty to “any Ugandan, who has at any time since 26th day of January 1986, engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by actual participation in combat; collaborating with the perpetrators of the war or armed rebellion; committing any other crime in the furtherance of the war or armed rebellion or assisting or aiding the conduct or prosecution of the war or armed conflict” (Part II, Section 3 (1)), and who wishes to abandon rebellion. The amnesty is a pardon extended by the government to a group or class of persons, usually for a political offence; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted⁷. That Act has been successively renewed, and is now extended until May 2008. Until then, any Ugandan wishing to abandon rebellion will be granted amnesty, without risk of criminal prosecution or punishment in a national court for offences related to the insurgency. The Amnesty Commission is the body established by the Parliament to provide overall leadership, guidance and coordination in the implementation of the amnesty.

COMMENTARY

The Amnesty Act is silent about the age of the person to be granted amnesty and includes no specific provisions on child soldiers. The Amnesty Commission concluded that only children over 12 years old can qualify for amnesty, since this is the age of criminal responsibility in Uganda. Therefore, any child between 12 and 18 who has been involved in war or armed rebellion may approach the Uganda Amnesty Commission for the processing of their amnesty application. Child rights advocates expressed concerns that granting amnesty to children would stigmatize children who are victims of the insurgency.

An outstanding and thorny issue concerns the treatment of those responsible for serious abuses against children and grave violations of international law. In October 2005, the International Criminal Court (ICC) issued arrest warrants for five senior members of the rebel Lord's Resistance Army (LRA⁸). In May 2006, a new provision of the Amnesty Act was introduced and indicated that the Minister of Internal Affairs can officially exclude an individual from amnesty but with the approval of the parliament⁹:

⁶ Chapter 294 of the Laws of Uganda.

⁷ Black's Law Dictionary, 8th edn. (St. Paul, MN, Thomson 2004).



Tigers club drop-in centre,
Kampala, July 2006
© Jeff McConnell

“A person shall not be eligible for grant of amnesty if he or she is declared not eligible by the Minister by statutory instrument made with the approval of Parliament” (Section 2A). In July 2006, the President said in a statement that the rebel leader would be granted amnesty if “he responds positively to the talks...and abandons terrorism” thus contravening the Rome Statute. The agreement on accountability and reconciliation of the Juba Peace Talks refers to the commitment to “prevent impunity and promoting redress in accordance with the Constitution and international obligations and recalling, in the connection, the requirements of the

Rome Status of the ICC and in particular the principle of complementarity”.

JURISPRUDENCE

International human right law jurisprudence holds that national laws that grant amnesty for serious international crimes (such as crimes against humanity, genocide and war crimes) are contrary to any state’s international obligation to investigate, prosecute, and punish human rights violators. UN Commission on Human Rights, Resolution 2002/79 para 2, provides that *“amnesties should not be granted to those who commit*

violations of humanitarian and human rights law that constitute serious crimes”. In January 2006, in Resolution 1653, the Security Council strongly condemned specifically the LRA and other armed groups operating in the Great Lakes region, and urged *“all States concerned to take action to bring to justice perpetrators of grave violations of human rights and international humanitarian law”*. Furthermore, *“total amnesties”* are in direct violation of the Constitutive Act of the African Union (AU), which expressly include among its principles the *“condemnation and rejection of impunity”* (Art 4(o)).

⁸ In December 2003, the Uganda President referred the situation in Northern Uganda to the ICC Prosecutor to investigate crimes committed by the LRA pursuant to Art. 14 of the ICC Statute, which permits State Parties to that treaty to “refer to the ICC Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed.”

⁹ To date no name has been produced under that mechanism.

THE UGANDA PEOPLE'S DEFENCE FORCE (UPDF) ACT¹⁰ (2005)

This Act provides for the establishment and regulation of the Ugandan national army.

SPECIFIC PROVISIONS

The UPDF Act sets the age of 18 years as the minimum age for the recruitment of persons into the armed forces: *"No person shall be enrolled into the Defence Forces unless he or she- is at least 18 years of age and has attained such level of education as may be prescribed"* (Section 52 (2) (c)). In addition, *"every person who*

wishes to be recruited into the Defence Forces shall first get the recommendation of his or her Village Local Council" (Sections 51 and 52).

COMMENTARY

This provision is in compliance with the African Charter on the Rights and Welfare of the Child, which increased to 18 years the age limit for recruitment (Art 22 (2)). However, the Act does not contain any provision for criminal responsibility of those who would recruit children under 18.

Children in IDPs camp, Gulu, July 2006 © Jeff McConnell



THE NATIONAL POLICY FOR INTERNALLY DISPLACED PERSONS (2004)

The National Policy for Internally Displaced Persons (IDPs) was designed to bring Ugandan legislation in line with the principles enshrined within the UN Guiding Principles on Internal Displacement (1998). This policy seeks to *"harmonize and integrate all efforts in support of the protection and assistance of the Internally Displaced Persons in Uganda"*.

SPECIFIC PROVISIONS

The safety of children in IDP camps is of paramount importance, especially in a context of hostilities where they can be exposed to forced recruitment into fighting forces. The Policy thus states that *"the UPDF, the Ugandan Police and specialised units of other national security agencies shall ensure that no IDP child under eighteen is recruited and takes direct part in hostilities or any activity of the armed forces"* (Chapter three). In addition, section 3.7 of this chapter reads that *"families, which are separated by displacement, should be reunited as quickly as possible [...] particularly when children are involved"*.

COMMENTARY

The policy (a non-legally binding document) is in line with article 1 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, which asks government forces not to involve children under 18 directly in hostilities. It goes even further than the Protocol when encompassing *"any activity of the armed forces"* which suggests that children under 18 shouldn't take on support roles either.

¹⁰ Chapter 307 of the Laws of Uganda.



2. INTERNATIONAL INSTRUMENTS

INTERNATIONAL HUMANITARIAN LAW

- ADDITIONAL PROTOCOLS I AND II (1977) TO THE GENEVA CONVENTIONS.

INTERNATIONAL HUMAN RIGHTS LAW

- CONVENTION ON THE RIGHTS OF THE CHILD (1989)
- AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (1999)
- ILO 182 WORST FORMS OF CHILD LABOUR CONVENTION (1999)

- OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS (2000)
- UN RESOLUTIONS

OTHER INTERNATIONAL DEVELOPMENTS

- ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (1998)
- PARIS COMMITMENTS/ PARIS PRINCIPLES (2007)

ANNEXE

- DEFINITIONS

ADDITIONAL PROTOCOLS TO THE FOUR GENEVA CONVENTIONS OF 1949 (1977)

RATIFIED BY UGANDA IN 1991

While the Geneva Conventions do not specifically mention child soldiers as such, their additional protocols are the first binding international documents to address the issue of the recruitment and deployment of children.

ADDITIONAL PROTOCOL I

Article 77(2) states that *“parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, the parties to the conflict must endeavour to give priority to those who are oldest”*.

This applies to international conflict only. Article 77 does not explicitly prohibit indirect participation of

children under 15. Furthermore, it is unclear whether recruitment of children between 15 and 18 years refers to compulsory recruitment, voluntary enrolment or both.

ADDITIONAL PROTOCOL II

Article 4(3) provides that *“children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”*.

This Protocol applies to internal armed conflicts. The language used by Article 4 is stronger than that used by the rules governing international armed conflict as it does not distinguish direct and indirect participation in hostilities but it clearly prohibits enlistment and use of children under 15 years.

CONVENTION ON THE RIGHTS OF THE CHILD (1989)

RATIFIED BY UGANDA IN 1990

This is the most widely ratified UN convention. The CRC marks the formal and explicit recognition of children’s rights by the international community and is considered a comprehensive guiding tool in child protection strategies.

SPECIFIC PROVISIONS

- The CRC defines a child as a *“human being below the age of 18 years, unless, under the law applicable to the child, majority is attained earlier”* (Article 1).
- *“States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities”* (Article 38 (2)) and *“shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest”* (Article 38 (3)).

- *“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of...armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”* (Article 39).

COMMENTARY

The Convention applies to both internal and international conflicts as in peacetime. Similar to the two Geneva Additional Protocols, it only concerns children under 15 years and not those between 15 and 18 years although it considers them as children. Also, only states are bound by the provisions of the convention. Non-state armed groups are excluded. The Convention attempts to promote not only the disarming of children but also attend their mental health and social needs.

¹¹ Somalia and USA are the only two countries that have not ratified the convention.

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (1990)

RATIFIED BY UGANDA IN 1994

This is a regional treaty which was adopted by the Organisation of the African Union, OAU (now the African Union) and entered into force in November 1999. It is the only regional treaty in the world that addresses the issue of child soldiers.

SPECIFIC PROVISIONS

Article 2 defines a child as “any human being below the age of 18 years”. The Charter obliges states parties to “take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child” (Art 22 (2)). States should also “take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife” (Art 22 (3)).

COMMENTARY

The wording of article 22 (2) is stronger than in both the CRC and its Additional Protocol. The Charter concerns all children under 18 years old who are involved in either international or internal armed conflicts. Although it specifically refers to children directly involved in hostilities, the Charter also provides that states shall refrain “from recruiting any child”. This can be interpreted as encompassing children involved in support functions to combat.

Violations of the Charter shall be addressed by the African Court of Human and People’s Rights. The Court shall issue an advisory opinion regarding the dispute submitted to it (Article 4, Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court of Human and People’s Rights). An advisory opinion is non-binding upon a state and, therefore, does not provide an effective mechanism for enforcement.

In 1999, the Maputo Declaration on the use of Children as Soldiers called for the end of recruitment and use of children under 18 years.

ILO CONVENTION ON THE WORST FORMS OF CHILD LABOUR (NO. 182) (1999)

RATIFIED BY UGANDA IN 2001

This convention adopted by the International Labour Organisation (ILO) commits each state which ratifies it to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (Art 1).

SPECIFIC PROVISIONS

Children are defined, in line with the CRC, as “all persons under the age of 18” (Art 2) It stipulates that the term “the worst forms of child labour” comprises “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict” (Art 3).

Recommendation 190, accompanying Convention 182, encourages states to make such recruitment a criminal offence.

COMMENTARY

The Government of Uganda has been a member of ILO’s International Programme on the Elimination of Child Labour (ILO-IPEC) since 1998. Through the Ministry of Gender, Labor, and Social Development, the Government has created several institutions and put in place policies to address child labor issues. The Ministry houses the Child Labor Unit, which was created to develop policies and programs on child labor and, in consultation with additional stakeholders, has developed a draft National Policy on Child Labor. The Ministry also provides the Secretariat for the National Steering Committee on Child Labor and oversees the National Council of Children.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS (2000)

RATIFIED BY UGANDA IN 2002

SPECIFIC PROVISIONS

- The Protocol raises the age for direct involvement in hostilities from 15 to 18 for state armed forces: “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities” (Article 1).
- It prohibits the compulsory recruitment of children under 18 into national forces: “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces” (Article 2).
- States Parties must raise the minimum age for the voluntary recruitment of persons into their national armed forces from 15 (as set out in the CRC) to 16 and must further implement specific safeguards to ensure that recruitment is truly voluntary and not coerced (Article 3).
- The Protocol includes stronger provisions for rebel groups: article 4 provides that “Armed groups

that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”. Furthermore, “States Parties must take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices”.

- Regarding children who have already been forcibly recruited, States Parties are “to take all feasible measures to ensure” that these children are demobilized and to “accord such persons all appropriate assistance for their physical and psychosocial recovery and their social reintegration” (Article 7(3)).

COMMENTARY

The Protocol is applicable both in times of conflict and of peace. It concerns national armed forces and as well as other armed groups, although provisions relating to the latter are more stringent. Nonetheless, it is important to note that the Protocol still allows states to recruit children over 16 on a voluntary basis.

UN RESOLUTIONS

UN GENERAL ASSEMBLY RESOLUTION 51/77 (1996)

The United Nations Security Council (UNSC) recommends the appointment of a Special Representative on the Impact of Armed Conflict on Children to assess the progress achieved, raise awareness and foster international cooperation on this issue.

UN SECURITY COUNCIL RESOLUTION 1261 (1999)

This was the first UN resolution to clearly condemn the recruitment and use of children in armed conflict worldwide. The UNSC calls on UN and governments to intensify efforts to end the recruitment and use of child soldiers, and to include children in disarmament, demobilization, and reintegration (DDR) programs as well as peace processes. It urges states parties “to take into account the special needs of the girl child throughout armed conflicts” and acknowledges “the deleterious impact of the proliferation of arms, in particular small arms [...] on children”

UN SECURITY COUNCIL RESOLUTION 1314 (2000)

The UNSC condemns deliberate targeting of children in situations of armed conflict; calls on parties to respect international law, including the Optional Protocol and to demobilize and reintegrate child soldiers. It also highlights the link between the illicit trade in natural resources and armed conflict and deems it necessary “to include, where appropriate, child protection advisers in future peacekeeping operations”.

UN SECURITY COUNCIL RESOLUTION 1379 (2001)

The UNSC urges governments to ratify the Optional Protocol, to consider “legal, political, diplomatic, financial and material measures” to ensure that parties to armed conflict respect international norms protecting children and asks the Secretary-General to produce a “naming and shaming” list of parties to armed conflict that recruit or use children in situations that are on the Security Council’s agenda or may threaten international peace and security. It urges regional organizations to address cross-border recruitment and abduction of children and expand regional initiatives to prevent the use of child soldiers. It also calls on parties to armed conflict to demobilize and reintegrate child soldiers.



UN SECURITY COUNCIL RESOLUTION 1460 (2003)

The UNSC calls on parties to armed conflict that recruit or use child soldiers to immediately halt such practices. It expresses its intention to enter into dialogue with parties to armed conflict recruiting or using children *“in order to develop clear and time-bound action plans to end this practice”* and consider *“taking appropriate steps”* in case of inaction in the part of recruiting parties on its list. It also highlights states’ responsibility *“to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children”*.

UN SECURITY COUNCIL RESOLUTION 1539 (2004)

The UNSC acknowledges states advances, especially in advocacy and development of norms and standards, but expresses deep concern over the lack of progress on eradicating the use of child soldiers despite four prior resolutions. It requests the Secretary-General to urgently devise *“an Action Plan for a systematic and comprehensive monitoring and reporting mechanism, which utilizes expertise from the United Nations system and the contributions of national Governments, regional organizations, non-governmental organizations in their advisory capacity and various civil society actors, in order to provide timely, objective, accurate, and reliable information on the recruitment and use of child soldiers in violation of applicable international law and on other violations and abuses committed against children affected by armed conflict”*.

UN SECURITY COUNCIL RESOLUTION 1612 (2005)

The resolution requests the Secretary-General to implement a monitoring and reporting mechanism for violations committed by governments and insurgents, beginning with countries on the Security Council’s agenda, and subsequently to parties listed in the second annex. It establishes a Security Council Working Group (consisting of all members) to review reports from the new monitoring and reporting mechanism, monitor development and implementation of action plans, and a demand to offending parties to prepare action plans for ending violations against children. It is an essential step towards taking action against groups that violate the rights of children in armed conflict. The 6 violations and abuses committed against children affected by armed conflict tackled by this resolution are:

1. Killing and Maiming
2. Abduction
3. Recruitment and use of child soldiers
4. Attacks on Schools & Hospitals
5. Sexual Violence
6. Denial of Humanitarian access

UGANDA TASK FORCE ON MONITORING AND REPORTING

Annex II of the December 2006 Secretary General report on children and armed conflict lists as parties in Uganda that recruit or use children in situation of armed conflict not on the agenda of the Security Council, or in other situation of concern, bearing in mind other violations and abuses committed against children:

1. The Lord’s Resistance Army (LRA).
2. The Uganda People’s Defence Forces (UPDF) and the Local Defence Units (LDUs).

A Uganda Task Force on Monitoring and Reporting (UTFMR) child’s right violations within the framework of Security Council resolution 1612 was set up in June 2006.

The UTFMR is co-chaired by the United Nations Children’s Fund (UNICEF) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) and includes Save the Children in Uganda (SCiU) and the Uganda Human Rights Commission. The UTFMR submitted the first report on Uganda which was presented to the Security Council Working Group on Children and Armed Conflict in May 2007.

The UTFMR has engaged on advocacy activities around the Government Action Plan and conducted visits to UPDF/LDUs facilities.

Awareness ceremony for Peace Week celebration, on children rights against their recruitment and use, West Nile District, 21 September 2007, Uganda, Uganda Coalition



THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (1998)

RATIFIED BY UGANDA IN 2002

The Rome Statute establishes a permanent court to try persons charged with committing war crimes, crimes against humanity, and genocide. The treaty came into force and the court came into being in 2002. States Parties, the International Criminal Court (ICC) Prosecutor, or the Security Council could refer a case to the ICC involving a person or persons who conscripted or used children as soldiers during hostilities.

SPECIFIC PROVISIONS

The Statute considers that “conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities” is a war crime (Art 8 (2) (b) (xxvi)). Therefore, those who enlist children under the age of 15 are subject to prosecution by the ICC.

COMMENTARY

When drafting the treaty, delegates agreed that the terms “using” and “participate” would prohibit not only children’s direct participation in combat, but also their active participation in military activities linked to combat, such as scouting, spying, sabotage, and the use of children as decoys, couriers, or at military checkpoints. Also prohibited is the use of children in “direct” support functions such as carrying supplies to the front line. The statute also defines sexual slavery as a crime against humanity (Art 7 (1) (g)). The Rome Statute does not apply, however, to children involved in hostilities who are over 15 years old and the ICC only has jurisdiction for crimes committed after 1 July 2002. After a referral by President Museveni, the ICC, in October 2005 unsealed its first ever arrest warrants against five LRA senior commanders. The LRA’s leader and four other top leaders are accused of crimes against humanity and war crimes, including murder, forced enlisting of children, enslavement and sexual enslavement.

THE PARIS COMMITMENTS AND PRINCIPLES (2007)

The *Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups* are the result of a global review of the Cape Town Principles initiated by UNICEF almost a decade after they were agreed. A major international conference entitled “Free children from war” took place in Paris in February 2007 in which Ministers and representatives of countries strongly reaffirmed their collective concern at the plight of children affected by armed conflict.

Uganda was among 58 governments which endorsed the text.

- States commit themselves “to take all feasible measures, including legal and administrative measures, to prevent armed groups within the jurisdiction of our State that are distinct from our armed forces from recruiting or using children under 18 years of age in hostilities” (Art 4).

- They also adhere to “the principle that the release of all children recruited or used unlawfully by armed forces or groups shall be sought unconditionally at all times, including during armed conflict, and that actions to secure the release, protection and reintegration of such children should not be dependent on a cease-fire or peace agreement or on any release or demobilisation process for adults” (Art 5).
- The accompanying Paris Principles states that “A child associated with an armed force or armed group refers to any person below the age of 18 years of age who has been recruited or used by an armed group or force in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken direct part in hostilities” (Art 2 (1)).

¹² The “Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa” were the result of a symposium conducted by UNICEF and an NGO Working Group on the Convention on the Rights of the Child. It has since been superseded by the Paris Principles (2007).

ANNEXE

DEFINITIONS

ABDUCTION

"Abduction" is not a term recognised in international law. However, it features in the Rome Statute in the Elements of Crimes for the crime against humanity as *"enforced disappearance of persons"* which *"means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time"* (Art 7 (1)(i) and Art 7 (2)(i)).

ARMED CONFLICT

The term "armed conflict" is used to refer to both international and non-international conflicts of high and low intensity.

ARMED FORCES, ARMED GROUPS AND ARMED POLITICAL GROUPS, AND FIGHTING FORCES

"Armed forces" generally refer to official government armed forces, including the army, navy and air force¹³.

"Armed groups and armed political groups" refer to non-state or irregular armed groups which use arms for political reasons. They include opposition forces, factional or tribal

groups, armed groups belonging to ethnic or religious minorities and a range of other militia groups. These terms are also sometimes used to refer to armed groups (often paramilitaries and militias) which are backed by or allied to government forces but are not officially part of them.

"Fighting forces" is often used as a collective term to describe armed forces, armed groups and armed political groups in a particular armed conflict.

CHILD SOLDIERS AND CHILDREN ASSOCIATED WITH ARMED GROUPS AND FORCES

A child associated with an armed force or armed group refers to any person below the age of 18 years of age who has been recruited or used by an armed group or force in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken direct part in hostilities .

'Child soldiers' are also referred to by child protection agencies such as Save the Children as 'children associated with armed groups and forces' (CAAF), to emphasise the need for inclusive programmes which provide support to all child soldiers, not only those carrying weapons. The definition is intentionally broad because it seeks to extend protection and inclusion to as many children as possible in DDR programmes. The rationale is that within armed forces and groups roles may be flexible. Whether a child is used as a

combatant, a cook, a porter, a soldier's 'wife' or for any other purpose, they are exposed to the dangers and hardships of war. They may be targeted as enemies or for reprisals by opposing forces. Many are forced to witness or participate in human rights violations or suffer such abuses themselves .

DISARMAMENT, DEMOBILISATION AND REINTEGRATION (DDR) PROGRAMMES

DDR refers to a series of processes ranging from the departure of a child soldier from armed groups or forces to the child's return to civilian life. The three phases are interconnected.

DISARMAMENT

The first step in DDR programmes, "disarmament" entails the assembly of combatants and the development of arms management programmes. It also includes the collection of small arms and light and heavy weapons within a conflict zone. Because many child soldiers do not carry their own weapons, disarmament should not be a prerequisite for the demobilisation and reintegration of child soldiers.

DEMOBILISATION

The second step, "demobilisation", is the formal and controlled discharge of soldiers from the army or from an armed group. Demobilisation includes the verification of the child's participation in fighting forces, the collection of basic information to establish the identity of the child for family tracing and to allow an

assessment of priority needs, and the provision of information to the child about what is likely to happen next.

REINTEGRATION

The third step, "reintegration", is a long-term process that aims to give children a viable alternative to involvement with fighting forces and to help them resume their life in the community. Reintegration can include family reunification (or finding alternative care if reunification is impossible), providing education and training, and devising appropriate strategies for economic, livelihood and psychosocial support .

RECRUITMENT

The term refers to the ways in which people become members of armed forces or groups. It can be compulsory, voluntary and forced. Compulsory recruitment is usually known as "conscriptio", where some citizens are required by law to join the armed forces for a certain period of time. Voluntary recruitment is usually regulated by law or policy for the armed forces, but also refers to a situation when a person is enlisted or joins an armed group without the use of force. Forced recruitment entails the illegal use of force, for instance in the form of abduction or other duress. The lines between compulsory, voluntary and forced recruitment are often blurred. Children may be subjected to various political and economic pressures that provide them with few alternatives to "voluntarily" joining armed forces or armed groups.

¹³ In Uganda, the Uganda People's Defence Force, UPDF.

¹⁴ UNICEF, The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, article 2 (1).

¹⁵ The International Save the Children Alliance. A fighting Chance: Guidelines and Implications for Programmes Involving Children Associated with Armed Groups and Armed Forces. Save the Children Alliance. United Kingdom. 2004.

¹⁶ Coalition to Stop the Use of Child Soldiers. Child Soldiers: Global Report 2004. London, United Kingdom. 2004. Page 355.