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Does Warlord Prosecution/Arrest Help Deter Child Soldiering?

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Master's Thesis

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Abstract

There is an increasing number of child soldiers in modern intrastate wars. The phenomenon of child soldiering dates back centuries, but what is alarming is that the number of youth combatants has been growing. Both sides use them: government and rebel forces. The problem has been under the international radar since 1996 when Graça Machel's report "Impact of Armed Conflict on Children" came out. Recruitment of child soldiers is considered a war crime, crime against humanity, violation of the rights of the child and the worst form of child labor. Thus, the seriousness of the problem cannot be overestimated. However, despite the efforts and attention of United Nations agencies and NGOs, the number of child soldiers does not seem to be reducing. This thesis seeks to establish a causal relationship between prosecution of warlords and the number of child soldiers. Specifically, I argue that prosecution of warlords leads to the reduction in the number of child soldiers. Chapters I and II of this thesis introduce the problem of child soldiering and give an overview of the literature concentrated on this area of study. Chapter III discusses the features of the International Criminal Court (ICC) and Chapter IV describes the first trial before the ICC, that of Thomas Lubanga of the DRC. This case study is relevant to the hypothesis, as it features the first prosecution of crimes related to child soldiering. Chapter V discusses another case study – prosecutions by the Special Court for Sierra Leone on similar charges. These case studies attempt to answer the main question of the thesis: whether prosecution of warlords leads to the reduction in the levels of recruitment of child soldiers. Further, Chapter VI aims to briefly tell the story of former child soldiers by providing their testimonies. Then, Chapter VII attempts to analyse available data to support the hypothesis. Finally, Chapter VIII summarizes the conclusion of this thesis, that prosecutions of warlords have remained

rare to draw a firm causal relationship between the prosecution of warlords and levels of recruitment of child soldiers.

I. Introduction

It breaks our heart to see images of children affected by armed conflicts and, worse, forced to be directly involved in hostilities. While child soldiering is not something new, the Kony 2012 video drew global attention to the problem and reminded the world that hundreds of thousands of children in conflict-torn zones are being killed, raped, maimed and tortured. The phenomenon of child soldiering dates back centuries, but what is alarming is that the number of youth combatants has been growing. The aim of this thesis is to develop an argument in regards to a possible way of containing the increase of the child soldiering.

To understand the depth of the problem of child soldiering, it is crucial to start with the definition of a “child soldier.” In UNICEF’s Cape Town Principles (1997), a child soldier is defined as “any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, and anyone accompanying such groups other than family members. It includes boys and girls recruited for sexual purposes and/or forced marriage. This definition, therefore, does not only refer to a child who is carrying, or has carried, weapons”.¹

According to legal documents, children are young people of 18 years of age and under, characterized by immaturity, both mental and physical. Soldier usually refers to men and women who have skills of warriors. Therefore, terms “child” and

¹ “Cape Town Principles and Best Practices,” (Cape Town, South Africa: UNICEF, 1997), accessed March 1, 2014 [http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf).

“soldier” are incompatible, according to David Rosen.² Existence of the phenomenon of child soldiering is described by the author as a “crisis” in international politics.³

The problem has been on the international radar since 1996 when Graça Machel’s report “Impact of Armed Conflict on Children” came out. Since then, there has been an extensive amount of literature on child soldiers. However, most of it is written by human rights activists, think tanks and NGOs rather than political scientists or academics in general.⁴ Lately, concern with the growing number of youth combatants and the wide spread of this phenomenon across several regions has led to more focus on its root causes and risk factors among children. Another cluster of literature concentrates on the discussion of crimes committed against children by recruiters. This discussion is particularly important to this study, as it clarifies why warlords who use children in armed conflicts should be prosecuted. While it is clearly stated in the Rome Statute of the International Criminal Court that enlisting child soldiers is a war crime, some authors also argue that it can and should be looked at as a crime against humanity. In addition, rape and forced pregnancies, which are crimes against humanity, can also constitute genocide if committed against girls that belong to ethnic minority groups.⁵ Another crime committed against children is the violation of their basic right for education. When caught in armed conflict situations, children are not only stripped of their childhood, but are also denied education. In addition, the International Labour Organization (ILO) calls child soldiering “the worst form of child

² David M. Rosen, *Armies of the Young: Child Soldiers in War and Terrorism* (New Brunswick, NJ: Rutgers University Press, 2005), p. 3.

³ Ibid., 2.

⁴ Vera Achvarina and Simon F. Reich, “No Place to Hide,” *International Security* vol. 31, no.1, 2006, p. 131.

⁵ UNICEF, *International Criminal Justice and Children* (Rome, Italy: UNICEF, 2002), p. 79.

labour”.⁶ According to the UN Trafficking Protocol, child soldiers are also victims of trafficking, even if they join armed groups voluntarily.

That said, it goes without saying that recruiters should be punished. Impunity should end, and arrest of those responsible for grave violation of children’s rights would send a clear message that the use of child soldiers is a war crime that cannot and will not be tolerated.

Unfortunately, it was not until the last decade that the international community started to move away from just “paper protection” and implementing the existing legal documents.⁷ In this regard, prosecution of warlords is critical. Children are bearers of specific rights which should be honored. Therefore, it is our duty as the international community not only to protect children from being recruited in armed forces, but also to punish those who are responsible for the recruitment. Moreover, this thesis argues that prosecution of warlords may lead to the reduction of the number of child soldiers. This is particularly important, because despite the efforts and attention of the United Nations agencies and NGOs, the number of child soldiers does not seem to be reducing.

The first steps in that direction have already been taken by the International Criminal Court (ICC) which indicted members of armed groups in the Democratic Republic of Congo (DRC) and Uganda on war crimes charges, which, inter alia, include enlistment of children under 15 for participation in hostilities.⁸ Moreover, one of these men, Thomas Lubanga, was convicted in 2012. In addition, in 2007, three

⁶ International Labour Organization, *Worst Forms of Child Labour Convention (No. 182)*, adopted in 1999, accessed March 1, 2014, http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C182, Art.3.

⁷ David J. Francis, “‘Paper Protection’ Mechanisms: Child Soldiers and the International Protection of Children in Africa’s Conflict Zones,” *The Journal of Modern African Studies* vol. 45, no. 2, 2007, p. 207-31.

⁸ Coalition to Stop the Use of Child Soldiers, *Child Soldiers: Global Report 2008* (London, UK: Coalition to Stop the Use of Child Soldiers, 2008), p. 13.

leaders of Sierra Leone's former Armed Forces Revolutionary Council, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, were found guilty of war crimes and crimes against humanity, including "conscripting or enlisting children under the age of fifteen years into armed forces or groups, or using them to participate actively in hostilities".⁹ It was the first time that an international tribunal has definitively ruled on the charge of recruitment of child soldiers. The Special Court of Sierra Leone sentenced them to fifty, forty-five and fifty years of imprisonment respectively.¹⁰ In addition, international justice is being pursued via Truth and Reconciliation Commissions in Sierra Leone, Timor-Leste and Liberia. These actions "give teeth" to international law that prohibits the use of child soldiers.¹¹

While the topic of child soldiering is very important, it remains under-researched. There are a number of questions related to this thesis that need further research and analysis. How wide spread is the phenomenon of child soldiering? What are the factors that contribute to the spread of the phenomenon? What can the international community do to contain it? Can arrest and prosecution of warlords deter child soldiering? In this regard, how effective was the prosecution of Lubanga by the ICC to deter others? Will other international courts/tribunals use the Lubanga case as a precedent and prosecute for the use of child soldiers? How can international justice be delivered efficiently and effectively? Will enormous costs of international justice deter further prosecutions of warlords? Will countries, especially in Africa, be willing to cooperate with the ICC and other international tribunals? Finally, how should former child soldiers be treated in terms of duality of their status – both victims and perpetrators?

⁹ Jenny Kuper, "Child "Soldiers" and Civilians – Some Controversial Issues," *University of La Verne Law Review* vol. 29, 2008, p. 20.

¹⁰ Ibid.

¹¹ Ibid., 16.

The purpose of this study is to examine the cause or causes of changes in the number of child soldiers in conflict-ridden countries. Specifically, it seeks to establish a causal relationship between prosecution of warlords and the number of child soldiers. I argue that arrest and prosecution of warlords helps reduce the number of child soldiers. The logic behind this hypothesis is that it discourages future recruiters from enlisting children into their armed forces. In other words, trials would act as a deterrent and a warning against the use of child soldiers. Moreover, arresting and imprisonment of warlords in itself already prevents them from continuing this abuse and operating as freely, as the example of ICC indicted Joseph Kony demonstrates.

Based on the case studies, this thesis seeks to establish a causal relationship between the arrest/prosecution of warlords and the number of child soldiers. Hence, the dependent variable (DV) is the number of child soldiers. The DV is binary – it is either reduction or increase of the number of young combatants. The independent variable (IV) is the prosecution of warlords.

Both qualitative and quantitative research methods will be used in this study to help gather comprehensive evidence and give a more complete picture of the phenomenon. This thesis seeks not only to gather information about numbers, but also find out why and how the phenomenon occurred. Specifically, this work will include data received from interviews with experts, provide clear and precise definitions of the concepts which are central to the study, assume dichotomous variables (prosecuted/not prosecuted), and will discuss in detail one of the cases – the DRC. The significance of this particular case lies in the fact that the first perpetrator prosecuted for recruitment of child soldiers by the ICC, Thomas Lubanga Dyilo, originated from this country. A detailed analysis of this case will help to explain whether there is a causal relationship between the number of child soldiers and

prosecution of warlords. Moreover, such a comprehensive study of the case of the DRC may help explain why that causal relationship is either present or absent. Furthermore, the study will include another case study – prosecutions by the Special Court for Sierra Leone on child soldiering charges. At the same time, this research will use reliable reports issued by UNICEF, the Committee on the Rights of the Child, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, and NGOs for qualitative and numerical information on child soldiers.

In addition, to demonstrate the fact that child soldiering is not a typically African issue, this thesis will comprise the testimonies of former child soldiers from different countries. According to the Office of Special Representative of the Secretary-General for Children and Armed Conflict, these are the countries that are associated with the recruitment of child soldiers: Afghanistan, Central African Republic (CAR), Chad, Colombia, Cote d'Ivoire, Democratic Republic of the Congo (DRC), India, Iraq, Libya, Mali, Myanmar, Pakistan, Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Yemen and Uganda.

While the study seeks to gather reliable information on child soldiering, it should be acknowledged that there are no accurate data on the number of children involved in conflicts due to difficulties related to the measurement of this phenomenon. All data presented in this study are estimates. Therefore, certain limitations of this research should be recognized. In addition, the study looks at countries where the problem of child soldiering persists for decades and excludes instances of the use of child soldiers and prosecution of perpetrators before 1996. Until that year, the problem was largely ignored and the number of youth deployed in military forces is not clear. Nevertheless, this is not to say that this is a new

phenomenon. Children have been used in combat for centuries, including during World War II by both sides. It is purely data-related difficulties that do not allow this research to include cases before 1996.

II. Literature Review

After the adoption of the Convention on the Rights of the Child (1989), publication of the Graça Machel's report *The Impact of Armed Conflict on Children* (1996) and adoption of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000), research has notably increased in what concerns child soldiers.¹² However, according to Achvarina and Reich, most of it is written by human rights activists, think tanks and NGOs rather than political scientists or academics in general.¹³ In this regards, Schultheis draws attention to an interesting development, specifically the popularity of accounts of young combatants, both fiction and non-fiction.¹⁴

To begin with, it is important to introduce a cluster of literature that clears a few misrepresentations regarding the topic of child soldiers. First of all, it is erroneously conceived that this phenomenon concerns only the African continent. It is true, however, that the majority of armed conflicts involving children have been taking place in Africa. According to Vautravers, estimated 100, 000 out of 300,000 child soldiers are active in African countries, such as Burundi, Central African Republic, Chad, Democratic Republic of Congo, Liberia, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and others.¹⁵ However, countries in the Middle East (Afghanistan, Iraq, Israel and the Occupied Palestinian Territories), Asia (India, Myanmar, Nepal, Sri Lanka, Thailand, etc.) and Latin America (Colombia, Peru) are also involved in child soldiering.

¹² Alexandra W. Schultheis, "African Child Soldiers and Humanitarian Consumption," *Peace Review* vol. 20, no. 1, 2008, p. 31.

¹³ Achvarina and Reich, "No Place to Hide," p. 131.

¹⁴ Schultheis, "African Child Soldiers," p. 31.

¹⁵ Alexander J. Vautravers, "Why Child Soldiers are such a Complex Issue," *Refugee Survey Quarterly* vol. 24, no. 4, 2009, p. 96.

Second, one should note that the issue of child soldiers is not a new phenomenon. Specifically, Kaplan and Vautravers, along with other authors, point to the fact that the use of young combatants by Germany during the Second World War is well documented.^{16 17} While not a recent development, the number of child soldiers is argued to have increased with the process of decolonization that sparked intrastate conflicts.¹⁸

Third, due to widely spread images of boys soldiers, girls are not associated with the concept of a “child soldier.” Yet, in their book, which is the result of collaboration between the United Nations University, the Institute of Social Studies and the Hague Academic Coalition, Popovski and Arts estimate that girls actually constitute 40% of 300,000 children associated with armed forces.¹⁹

Finally, Aronowitz clears another misrepresentation, particularly regarding the African continent, that children are abducted or forced to join the armed forces.²⁰ This is only partially true, as there are instances when children “choose” to join armed groups. The reasons may vary from socioeconomic ones to revenge. Nonetheless, it does not lessen the blame of warlords who readily recruit these children into their forces.

Lately, the concern with the growing number of youth combatants and the wide spread of this phenomenon across the regions has led to more focus on its root causes and risk factors among children.

¹⁶ Eben Kaplan, “Child Soldiers around the World,” *The Council on Foreign Relations*, 2005, accessed February 27, 2014, <http://www.cfr.org/human-rights/child-soldiers-around-world/p9331>.

¹⁷ Vautravers, “Why Child Soldiers,” p. 99.

¹⁸ Ibid.

¹⁹ Vesselin Popovski and Karin Arts, “International Criminal Accountability and Children’s Rights.” *Policy Brief 4*(2006): p. 3, United Nations University, <http://unu.edu/publications/policy-briefs/international-criminal-accountability-and-childrens-rights.html>.

²⁰ Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Westport: Praeger Publishers, 2009).

Not all children enlist themselves in armed forces and not any child is recruited by armed groups, guerillas and terrorist organizations. In other words, some children are more at risk of being recruited. Hence, it is imperative to explore the risk factors, analyze them and take appropriate measures to prevent the phenomenon.

David Rosen, one of the best-known experts in the field of child soldiers, states that the main root causes include changes in the modern warfare, emergence of small arms, and special vulnerability of children.²¹

In the literature authors distinguish several risk factors. First, UNESCO reports that child soldiers are most likely to come from poor countries, particularly rural areas close to conflict zones.²² Parents may ask their children to join the forces, especially if they are in a dire state of poverty and are promised some monetary or material benefits by recruiters. Tienfenbrun, Professor of International Law at Thomas Jefferson School of Law, also reports that there are known cases of girls forced to become soldiers by their family if their marriage prospects were deemed poor.²³ In addition to poverty, ethnic marginalization, family circumstances, domestic violence, displaced status and lack of economic, education and employment opportunities are also listed among the risk factors.²⁴ Tienfenbrun also points out that the AIDS epidemic leaves a lot of children without parents.²⁵ When children are left orphans in the streets, they are at most risk to be recruited. Likewise, the issue concerns displaced youth. In this regard, Francis and Czyz point out that representatives of different armed fractions often visit refugee camps to recruit children under false

²¹ Rosen, "Armies of the Young," p. 9.

²² Susan Tienfenbrun, "Child Soldiers, Slavery and the Trafficking of Children," *Fordham International Law Journal* vol. 31, no. 2, 2007, p. 433.

²³ Ibid., 432.

²⁴ Aronowitz, *Human Trafficking*, p. 106; Francis "Paper Protection," p. 212; Tienfenbrun "Child Soldiers," p. 429.

²⁵ Magdalena Czyz, "Stopping the Use of Child Soldiers. A Global Perspective," *EPU Research Paper*, 2008, p. 5.

²⁶ Tienfenbrun, "Child Soldiers," p. 429.

premises.²⁷ For instance, from reports by the UN Mission in Central African Republic and Chad it is known that in the period between 2007 and 2010 different active armed forces in these countries recruited children inside refugee camps for internally displaced people.²⁸ In addition, children that grow up in militarized and conflict-torn environment perceive joining the armed forces a normal way of life. In other words, the so-called “mental militarization” may be considered a risk factor.²⁹ It is also important to note that the context of war-torn environment may induce children to join the armed forces voluntarily for security purposes. Specifically, Aronowitz and Vautravers maintain that in some countries carrying a weapon is a sign of physical power and recognition and, thus, can guarantee access to food and other commodities.³⁰ That is what Czyz calls a context when “a gun equals a meal ticket”.³¹ Moreover, according to Child Soldiers International (CSI), children are more at risk of being recruited in a state where there is no law that would prohibit involving children in hostilities.³² The Organization recommends that countries enforce legislation that would protect children from “direct” and “indirect” participation. Some countries legally allow for recruitment of young individuals under 18, for example the UK and Canada. In few states, including Cuba and Israel, compulsory recruitment from the age of 17 is practiced. Such a policy being a risk factor, Child Soldiers International urges states to review their policy and consider raising the recruitment age to 18.³³ Moreover, children are especially at risk if there are no domestic laws criminalizing

²⁷ Francis, “Paper Protection”, p. 213; Czyz “Stopping the Use of Child Soldiers,” p. 9.

²⁸ UNODC, *Global Report on Trafficking in Persons 2012* (Vienna: United Nations publication, 2012), p. 77.

²⁹ Czyz, “Stopping the Use of Child Soldiers,” p. 11.

³⁰ Aronowitz, *Human Trafficking*; Vautravers “Why Child Soldiers.”

³¹ Czyz, “Stopping the Use of Child Soldiers,” p. 5.

³² Child Soldiers International, *Louder than Words: An Agenda for Action to End State Use of Child soldiers* (London: Oxford, 2012), p. 8.

³³ *Ibid.*, 10.

child enlisting into armed forces.³⁴ Additionally, children that do not have a proof of age are considered to be more vulnerable to exploitation.^{35 36} This concerns countries that still have not implemented the birth registration practice. UNICEF estimates that in Sierra Leone only 66% of children born in urban areas between 1999 and 2000 were registered and only 40% of children born in rural areas.³⁷ In addition, it is assessed that each year about 51 million births remain unregistered in developing countries.³⁸ Thus, Child Soldiers International calls for alternatives to verify date of birth to be put in place. Furthermore, in countries where military recruitment is not subject to objective control, children are more likely to get recruited.³⁹ This might be partly attributed to corruption, when not only laws protecting children are not enforced, but also when forces supporting the central power or government itself use child soldiers. Finally, they argue that children are more at risk in countries recipients of arms. Therefore, the authors of the report strongly advise that transfer of weapons be stopped to countries whose armed groups are known to recruit children.

Additionally, it is important to review reasons behind child recruitment. To begin with, many authors, including Aronowitz, argue that children are often caught by the armed groups for a simple reason of being more submissive and easier controlled than adults.⁴⁰ Children also get easily indoctrinated and brainwashed. In this regard, there are known cases of recruitment of children from religious schools. Specifically, according to research carried out by Aronowitz, in Pakistan children

³⁴ Ibid., 15.

³⁵ Ibid., 11.

³⁶ Rebecca Surtees, *Child Trafficking in Sierra Leone* (Vienna, Austria: UNICEF, 2005), p. 48.

³⁷ Ah-Jung Lee, "Understanding and Addressing the Phenomenon of 'Child Soldiers': The Gap between the Global Humanitarian Discourse and the Local Understandings and Experiences of Young People's Military Recruitment," *Working Paper Series No.52* (Refugee Studies Center: University of Oxford, 2009), p. 14.

³⁸ Mariana Muzzi, "UNICEF Good Practices in Integrating Birth Registration into Health Systems (2000-2009); Case Studies: Bangladesh, Brazil, The Gambia and Delhi, India," *UNICEF Working Paper* (New York: United Nations Children's Fund, 2010), p. iii.

³⁹ Child Soldiers International, *Louder than Words*, p. 14.

⁴⁰ Aronowitz, *Human Trafficking*, p. 106.

between 7 and 15 years are reported to have been recruited to carry out suicide bombings.⁴¹ In addition, Czyz and Cahn underline the fact that children require less food and easier adapt to new settings, even if it is a combat environment.^{42 43} Furthermore, they are viewed as cheap force and “unlimited resources”.⁴⁴ In other words, in many underdeveloped countries the percentage of individuals under 18 years may reach and in certain countries exceed half of the total number of the population. To top that, many authors, including Tiefenbrun, Francis and Czyz point to the fact that technological developments of arms made them light enough for children to carry.⁴⁵ Guns like Soviet-produced AK-47 and American-made M-16 are easy to use and reassemble even by children as young as 10.⁴⁶

Although it is considered that children are forced into soldiering, there are instances when children “choose” to join armed groups. In this case, however, we cannot really talk about availability of other options. Usually, it is the lack of choice that pushes young individuals to lead the life of risk. For instance, Aronowitz and Czyz reason that some children having their parents killed by some guerilla groups seek revenge and join the opposition armed forces.⁴⁷ Finally, as discussed above, socioeconomic reasons may lie behind such a “choice.”

Another cluster of literature concentrates on discussion of crimes committed against children by recruiters. This discussion is particularly important to this thesis, as it clarifies why warlords who use children in armed conflicts should be prosecuted.

⁴¹ Ibid., 105.

⁴² Czyz “Stopping the Use of Child Soldiers”, p. 5.

⁴³ Nancy R. Cahn, “Poor Children: Child Witches and Child Soldiers in Sub-Saharan Africa,” *Ohio State Journal of Criminal Law* vol. 3, 2006, p. 414.

⁴⁴ Vautravers, “Why Child Soldiers,” p. 103; Tiefenbrun, “Child Soldiers,” p. 421.

⁴⁵ Tiefenbrun, “Child Soldiers,” p. 428; Francis, “Paper Protection”; Czyz, “Stopping the Use of Child Soldiers.”

⁴⁶ Monique Ramgoolie, “Prosecution of Sierra Leone's Child Soldiers: What Message is the UN Trying to Send?” *Journal of Public and International Affairs* vol. 12, 2001, p. 148.

⁴⁷ Aronowitz, *Human Trafficking*; Czyz, “Stopping the Use of Child Soldiers,” p. 10-11.

While it is clearly stated in the Rome Statute that enlisting child soldiers is a war crime, Obokata, Professor of International Law, also argues that it can and should be looked at as a crime against humanity.⁴⁸ The author looks at the definition of crime against humanity and comes to the conclusion that harm to “mental and physical health” as well as enslavement are also committed against the children. Rape is also included in the definition of a crime against humanity. In this regard, girls are especially vulnerable, although sexual abuse against boys was also reported. Girls get raped, impregnated and are forcefully taken as leaders’ “wives”.⁴⁹ In addition, UNICEF’s report indicates that rape and forced pregnancies can also constitute genocide if committed against girls that belong to ethnic minority groups.⁵⁰

Moreover, Skinner, a former chairman of the anthropology department at Columbia University, asserts that children suffer psychological damage due to witnessing violence.⁵¹ Negative psychological consequences and their severity depend on the duration and nature of participation. Czyz explains that children that have directly participated in killings recuperate with more difficulty.⁵² For instance, one 13-year-old boy who was serving in the Khmer Rouge army could not get rid of recurring visions that one of his victim’s intestines turn into snakes and strangle him.⁵³

In addition, children suffer from confusion, anger, depression and guilt. What worsens the situation is that their own communities often reject them for having committed atrocities. However, along with psychological impact, Czyz stresses the

⁴⁸ Tom Obokata, “Trafficking of Human Beings as a Crime against Humanity: Some Implications for the International Legal System,” *The International and Comparative Law Quarterly*, vol. 54, 2005, p. 445-457.

⁴⁹ Czyz, “Stopping the Use of Child Soldiers,” p. 4.

⁵⁰ UNICEF, *International Criminal Justice and Children*, p. 79.

⁵¹ Elliott P. Skinner, “Child Soldiers in Africa: a Disaster for Future Families,” *International Journal on World Peace*, vol. 16, no. 2, 1999, p. 13.

⁵² Czyz, “Stopping the Use of Child Soldiers.”

⁵³ *Ibid.*, 12.

presence of physical injuries – loss of limbs, eyes, scars, etc. For example, a lot of child soldiers from Liberia that fought for Charles Taylor’s “small boys units” had hernia.⁵⁴ Moreover, girls contract sexually transmitted diseases and HIV/AIDS. They get impregnated and give birth in unsanitary conditions or are forced to do abortions, which can be life-threatening as well. Below is one of the horror stories of a female child soldier interviewed by Human Rights Watch:

‘Sarah’ was abducted at the age of 13 from Koinadugu town in Koinadugu district when RUF and AFRC rebels besieged the town. She was brutally raped vaginally and anally by five RUF rebels after which she was given to one of them as a wife. In Koinadugu town that day the rebels killed 35 women including ‘Sarah’s’ grandmother who they cut and beat. Afterward, ‘Sarah’ was taken to live in the rebel camp and to serve her ‘husband’. She was later raped by two other commanders when her ‘husband’ was on patrol.⁵⁵

Another crime committed against children is violation of their basic right for education. When caught in armed conflict situations, children are not only stripped of their childhood, but are also denied education.

The Report of the Special Representative of the Secretary General on Children and Armed Conflict (2013) includes such violations against children, as killing and maiming children; recruiting or using child soldiers; using children as human shields; attacks against schools and hospitals; rape and other sexual violence; abduction; denial of humanitarian access.⁵⁶ What is more, there is disturbing information that sometimes children are used as live mine detectors.⁵⁷

⁵⁴ Ibid., 12.

⁵⁵ Surtees, *Child Trafficking in Sierra Leone*, p. 40.

⁵⁶ The Report of the Special Representative of the Secretary General on Children and Armed Conflict. 2013. A/68/267. Accessed March 1, 2014, <http://www.childrenandarmedconflict.un.org>.

⁵⁷ Aronowitz, *Human Trafficking*, p. 103-104.

Furthermore, youth individuals are often drugged to feel fearless on the battlefield. Drugs serve as a “moral booster” and according to some researchers may vary from marijuana, cocaine, alcohol or a mixture of cocaine and gunpowder.^{58 59}

Violence is often used not only to recruit children, but also to keep them submissive. If they dare to disobey, all sorts of “tactics” may be used against them. For instance, there are reported cases of children being boiled alive if they try to escape.

The number of child casualties due to conflicts is high. In Afghanistan alone, in 2012 the UN country task force reported 1,304 conflict-related casualties.⁶⁰ Among those, 283 child deaths and 507 cases of injuring of children, including the ones resulting in child suicide bombings, were attributed to Taliban forces. Unfortunately, in many countries crimes against children are committed with impunity. For instance, the U.S. 2012 Trafficking in Persons (TIP) Report states that in Burma military officials and private groups continue to recruit young individuals with impunity. The use of child soldiers and lack of accountability in military ranks in this regard placed Burma on Tier 2 Watch List.⁶¹

Further, Aronowitz and Czyz indicate that once children are enlisted in armed groups, they are forced to kill, rape, mutilate and commit other atrocities, including against their parents and neighbors.⁶² They are often forced to eat human flesh or kill their family as a part of their initiation.⁶³ While it is true that child soldiers committed and commit serious war crimes, it is necessary to remember that duties that children perform after being recruited vary. Specifically, a child soldier may be a spy, a cook,

⁵⁸ Czyz, “Stopping the Use of Child Soldiers,” p. 4.

⁵⁹ Aronowitz, *Human Trafficking*, p. 107.

⁶⁰ *Report on Children and Armed Conflict*, 2013.

⁶¹ U.S. Trafficking in Person Report 2013, accessed April 3, 2014, <http://www.state.gov>, p. 112.

⁶² Aronowitz, *Human Trafficking*, p. 106; Czyz, “Stopping the Use of Child Soldiers,” p. 4.

⁶³ Tiefenbrun “Child Soldiers,” p. 424.

a messenger or a fierce fighter. Many of them are exploited in multiple ways simultaneously. It is important to keep that in mind, since one should not generalize their experiences, although we refer to them all as “child soldiers.”

That said, it goes without saying that recruiters should be punished. Unfortunately, it was not until the last decade that the international community started to move away from what Francis called “paper protection” and began to implement the existing legal documents.⁶⁴ In this regard, prosecution of warlords is critical. In the words of David Crane, Prosecutor at the Special Court for Sierra Leone, impunity cannot exist in the 21st century.⁶⁵ Many authors call prosecution of Thomas Lubanga by the International Criminal Court (ICC) a historic moment and “victory”.⁶⁶ Up until now, there have been 7 prosecutions of child soldiers’ recruiters: one by the ICC and six by the Special Tribunal for Sierra Leone. While everybody agrees that prosecution of those who use children in armed conflicts is important, there are no clearly stated arguments in the existing literature that there is a direct correlation between prosecution of warlords and reduction of the number of child soldiers.

⁶⁴ Francis “Paper Protection.”

⁶⁵ David M. Crane, “Dancing with the Devil: Prosecuting West Africa’s Warlords: Current Lessons Learned and Challenges,” In Edel Hughes, William A. Schabas and Ramesh Thakur, eds., *Atrocities and International Accountability* (Tokyo: United Nations University Press, 2007).

⁶⁶ John Kiess, “The End of Impunity?” *Christian Century* vol. 129, no. 13, 2012, p. 12-8.

III. The Purpose of the International Criminal Court

Creation of the permanent international criminal court was long awaited given the bloody atrocities that took place in the 20th century. Prosecution for the gravest crimes first depended on national courts. As Kirsch rightly points out, the problem lay in the fact that these national courts were unwilling or unable to act, often due to involvement of the state in such violence.⁶⁷ Simply put, the objective of the permanent international criminal court would be to bring punishment to those who would otherwise go unpunished for the gravest crimes. Therefore, the international community realized that to prevent impunity, it was necessary to create an international criminal justice organ. However, it was only after the end of the Cold War, that the international community began to agree on a wider range of topics, including the general objectives of the ICC.⁶⁸

A Diplomatic Conference was convened in June and July 1998 to try to reach a consensus on the final draft of the Statute. At the conference there were almost 160 state representatives, 33 intergovernmental organizations, more than 200 NGOs, and 400 journalists present.⁶⁹ There were 120 states that voted in favor, while 7 against and 21 abstained.⁷⁰ Thus, on 17 July 1998, the Rome Statute (the Statute) establishing the International Criminal Court (ICC) was adopted. On 1 July 2002, after having

⁶⁷ Philippe Kirsch, "The Role of the International Criminal Court in Enforcing International Criminal Law." In Charlotte Ku and Paul F. Diehl, eds., *International Law: Classic and Contemporary Readings*, 3rd ed., (Boulder, CO: Lynne Rienner Publishers, 2009), p. 237.

⁶⁸ Philippe Kirsch, "The International Criminal Court: Current Issues and Perspectives," *Law and Contemporary Problems* vol. 64, no. 1, 2001, p. 3.

⁶⁹ Jose E. Alvarez, "The New Treaty Makers." In Charlotte Ku and Paul F. Diehl, eds., *International Law: Classic and Contemporary Readings*, 3rd ed., (Boulder, CO: Lynne Rienner Publishers, 2009), p. 104.

⁷⁰ Joanna Harrington, Michael Milde and Richard Vernon, "Introduction," In Joanna Harrington, Michael Milde and Richard Vernon, eds., *Bringing Power To Justice? The Prospects of the International Criminal Court* (London: McGill-Queen's University Press, 2006), p. 4.

been ratified by 60 states, the Statute entered into force. In 2003, its first eighteen judges and prosecutors were appointed.

The ICC, based in The Hague, the Netherlands, became the first permanent international criminal court, preceded by ad hoc tribunals including the Nuremberg and Tokyo Tribunals, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone. Unlike the ad hoc tribunals, the ICC is the first and only court created by an international treaty. The Nuremberg and Tokyo tribunals were established by the victorious allies after the end of the World War II, while ICTY and ICTR were set up by the Security Council.⁷¹ Kirsch emphasizes the fact that those tribunals were limited in their nature.⁷² First of all, not many states participated in the creation of those courts. Second, they are bound to certain geographic location and address specific events in the past. Third, their creation implied not only huge costs and delays, but also the political will of states. Without the will of the international community, the perpetrators' acts went unpunished. Therefore, these tribunals did not present a real deterrent. Eventually, there was a need for a permanent international court that would prosecute the gravest international crimes, but, at the same time, would not have those limitations.⁷³

While most governments, NGOs and civil society seem to approve of the International Criminal Court and claim it to be a powerful tool in combating against impunity, there are opponents of this relatively new international judicial institution. Critics argue that the Court intrudes on state sovereignty and represents a tool of politicized prosecutions. In addition, they view the ICC as unaccountable and

⁷¹ Kirsch, "The Role of the International Criminal Court", p. 238.

⁷² Ibid.

⁷³ Ibid.

undemocratic. Yet, Wippman argues that both proponents and opponents of the Court overstate the real abilities of the ICC.⁷⁴

Features of the ICC

Kirsch notes that there are a number of misperceptions about the Court.⁷⁵ First of all, it is not a court of universal jurisdiction. Its jurisdiction is limited to the State Parties to the Rome Statute. It means that it can only address the crimes committed by nationals or on territory of those countries that consented to the jurisdiction of the ICC.⁷⁶ The exception applies only when the case is referred by the United Nations Security Council. Second, the Court's jurisdiction is also limited in time. Specifically, it does not exercise jurisdiction over events that happened before the Statute entered into force on 1 July 2002.⁷⁷ Third, there are three ways a case can be referred to the ICC: by the Security Council, by a member State or it can be undertaken by the independent Prosecutor. To illustrate, the Prosecutor started investigating situations in Uganda, Mali, the Democratic Republic of Congo and the Central African Republic after referrals by State Parties.⁷⁸ The request to investigate the situations in Kenya and Cote d'Ivoire was initiated by the Prosecutor and the authorization was granted to him.⁷⁹ Similarly, it was the Security Council that referred the situations in Darfur, Sudan, and Libya to the ICC. In this case, the Court can investigate the situation, although neither Sudan nor Libya is a Party to the Rome Statute.⁸⁰ Mentioning the Security Council, it is also important to note that it can ask the Court to freeze an

⁷⁴ David Wippman, "Exaggerating the ICC." In Joanna Harrington, Michael Milde and Richard Vernon, eds., *Bringing Power To Justice? The Prospects of the International Criminal Court* (London: McGill-Queen's University Press, 2006), p. 101.

⁷⁵ Kirsch, "The Role of the International Criminal Court", p. 239.

⁷⁶ Ibid.

⁷⁷ Margaret P. Karns and Karen A. Mingst, *International Organizations: the Politics and Processes of Global Governance* (Boulder: Lynne Rienner Publishers, 2010), p. 480.

⁷⁸ International Criminal Court Website, accessed March 17, 2014, http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx.

⁷⁹ Ibid.

⁸⁰ Kirsch, "The Role of the International Criminal Court," p. 239.

investigation for a one-year period, which is renewable. However, the Security Council so far has showed its determination to adhere to Article 26 of the Rome Statute (“Irrelevance of official capacity”) and chose not to defer cases against Uhuru Kenyatta of Kenya and Omar al-Bashir of Sudan, both sitting heads of states. Furthermore, the International Criminal Court only deals with the most serious violations. Specifically, it has jurisdiction over “persons for the most serious crimes of international concern”, which include genocide, war crimes, crimes of aggression and crimes against humanity.⁸¹ It is important to note, however, that although the Court has the right to try a case on the crime of aggression, it has not yet done so.⁸² For many years the problem lay in the disagreement among the States Parties to the Rome Statute on the definition of the crime of aggression. Finally, during the 2010 Review Conference that took place in Kampala, Uganda, the States agreed on the amendments related to the definition and the ICC’s jurisdiction over this crime. As of 11 June, 2010, the crime of aggression means “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”.⁸³ This amendment, which is hailed as “the historic achievement”, is inserted after article 8 of the Statute. Nonetheless, the Court shall not exercise jurisdiction over this crime until 2017. On the one hand, this provision raised concerns that “the legal vacuum until 2017” might encourage leaders to commit the crimes of aggression

⁸¹ Rome Statute of the International Criminal Court, art.1.

⁸² Kirsch, “The Role of the International Criminal Court,” p. 240.

⁸³ Resolution RC/Res.6*, *The International Criminal Court Review Conference*, 2010, accessed March 27, 2014, http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf.

before the set date.⁸⁴ On the other hand, the States Parties' ability to find common ground and make jurisdiction over this crime "operational" is a significant step forward.⁸⁵ Another provision of the amendment states that in cases related to States non-Parties to the Statute the Security Council has to determine whether an act constitutes the crime of aggression, which restricts the Prosecutor's ability to.⁸⁶

To continue, unlike the International Court of Justice, the ICC has jurisdiction over individuals as opposed to the states. In addition, no one, except children, is immune from the ICC's jurisdiction, be it a head of state or a military leader.⁸⁷ Further, unlike the ICTY and the ICTR, the ICC is based on the principle of complementarity, which means that it is a "court of last resort".⁸⁸ It is created to "back up" national judicial systems if they are unable or unwilling to prosecute perpetrators or if these proceedings are not genuine. It implies that the case would be inadmissible if a national court already undertook its investigation or prosecution. Additionally, according to Article 75, the ICC can order reparations to victims and their families. In other words, it does not only concentrate on prosecuting criminals, but also tries to attend to victims' needs. First, however, the Court has to establish "the scope and extend of any damage, loss and injury to, or in respect of, victims".⁸⁹ The reparations can be paid through a Trust Fund. Assets appropriated from convicted perpetrators are transferred to the Fund.⁹⁰ In addition, the Trust Fund also consists of States and

⁸⁴ Mauro Politi, "The ICC and the Crimes of Aggression: A Dream that Came Through and the Reality Ahead," *Journal of International Criminal Justice*, vol. 10, 2012, p. 270.

⁸⁵ Ibid.

⁸⁶ Resolution RC/Res.6*.

⁸⁷ Karns and Mingst, *International Organizations*, p. 479.

⁸⁸ The Rome Statute, Art. 16.

⁸⁹ The Rome Statute, Art. 75.

⁹⁰ Catherine Lu, "The International Criminal Court as an Institution of Moral Regeneration: Problems and Prospects." In Joanna Harrington, Michael Milde and Richard Vernon, eds., *Bringing Power To Justice? The Prospects of the International Criminal Court* (London: McGill-Queen's University Press, 2006), p. 204.

voluntary donations.⁹¹ Without financial assistance, victims may not be able to transform their lives from victimhood to normalcy and achieve reintegration. The Trust Fund is also aimed to provide other forms of assistance, including physical and psychological rehabilitation. In this regards, it is important that the ICC takes into consideration interests of women and children victims.⁹² Currently, the Fund is assisting former child soldiers in Uganda and the DRC, including 500 girls who were victims of rape or other forms of sexual violence.⁹³ Last but not least, the Court relies on States' cooperation every step of the way, including executing arrests and enforcing sentences, since the Court has no army or police force of its own.⁹⁴ It is necessary to note that it relies on all states, not only Parties to the Statute, to provide cooperation and assistance. Finally, the ICC is independent and is not part of the United Nations, although it has cooperative and institutional ties with the UN.

The Court consists of four organs: the Presidency, the judicial Divisions, the Office of the Prosecutor (the OTP) and the Registry.⁹⁵ The Presidency, composed of three judges, is responsible for general administration of the ICC, except the Office of the Prosecutor. These judges are elected by their fellow judges for a three-year term. Their specific functions are outlined in the Statute. The Judicial Divisions, consisting of 18 judges, comprises three Chambers: the Pre-Trial Division, The Trial Division and the Appeals Division. Each judge is assigned to a chamber according to his/her

⁹¹ Mariana Goetz and Carla Ferstman, "Victims, Perpetrators or Heroes? Child Soldiers before the International Criminal Court," *REDRESS*, 2006, accessed March, 26, 2014, <http://www.redress.org/downloads/publications/childsoldiers.pdf>, p. 26.

⁹² Kirsch, "The Role of the International Criminal Court," p. 241.

⁹³ "Children and Justice During and in the Aftermath of Armed Conflict," *Working Paper #3*, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 2011, accessed March, 14, 2014, http://childrenandarmedconflict.un.org/publications/WorkingPaper-3_Children-and-Justice.pdf, p. 26.

⁹⁴ Kirsch, "The Role of the International Criminal Court," p. 242.

⁹⁵ The International Criminal Court, "The Structure of the Court," 2014, accessed March 3, 2014, http://www.iccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx.

expertise and the functions of each Division. This is done to ensure that each Chamber's overall qualifications represent a combination of knowledge of criminal law and international law. The Office of the Prosecutor receives referrals and all information relating to crimes within the jurisdiction of the ICC to conduct investigations, gather evidence and then, if the case is approved by the Pre-Trial Chamber, prosecute before the Court. Argentinean-born Luis Moreno-Ocampo became the first Prosecutor to lead the OTP. Some would call him proactive, others would refer to his efforts and tactics as bold or even aggressive, but he undoubtedly emphasized by his actions that even heads of states are not immune to prosecution. The Office is currently headed by Prosecutor Fatou Bensouda from the Gambia. The Prosecutor is elected by States Parties for a nine-year term. The Prosecutor is assisted by Deputy Prosecutor, currently James Steward of Canada. Finally, the Registry deals with non-judicial matters of the Court, including administrative tasks and services. The Registry, headed by the Registrar, the main administrative officer, functions under the supervision of the President of the Court.

The ICC is funded by States Parties. The budget is prepared by the Office of the Prosecutor and then consolidated by the Registrar. That draft budgetary framework is afterwards presented to the Assembly of States Parties. The latter established a Committee on Budget and Finance (Committee), a board of 12 independent experts with financial background, which assesses the budget proposal and makes recommendations.⁹⁶ Oftentimes, these recommendations are directed at budgetary cuts. The Assembly revises these suggestions and decides on the final budget framework. The total is then allocated between States Parties depending on

⁹⁶ Jonathan O'Donohue, "Financing the International Criminal Court," *International Criminal Law Review*, vol. 13, 2013, p. 274.

their gross national income and other criteria.⁹⁷ O'Donohue argues that budget drafting presents a challenge to the Court, because the latter has to present its budget proposal in advance.⁹⁸ It means that the Court has to predict how many investigations would be initiated, how many criminals would be detained, how many trials would taken place, etc.

Current Cases

Within the first year of the functioning of the ICC, more than five hundred requests to start investigations have been filed at the office of the Prosecutor.⁹⁹

As of 2014, there were 21 cases in 8 situations on the ICC agenda, all of which refer to situations in African countries. The Darfur situation is an important precedent, since it was the first case referred by the Security Council. While the US was initially opposed to the referral, it later abstained.¹⁰⁰ Several Sudanese officials, including President al-Bashir, were indicted by the ICC for killing thousands of civilians and displacing many more. It is proven that the Sudanese President played a major role in committing genocide. Moreover, he did not allow the international community to intervene and help cease the bloodshed.¹⁰¹ However, since Sudan, which has not ratified the Statute, does not acknowledge the authority of the International Criminal Court, no officials were turned over to the Court.¹⁰² At the same time, a case against a sitting president raised condemnation from the African Union, Organization of Islamic Cooperation and the Arab League. Moreover, leaders of African states called

⁹⁷ Ibid., 275.

⁹⁸ Ibid.

⁹⁹ Harrington, Milde and Vernon, "Introduction," p. 3.

¹⁰⁰ Karns and Mingst, *International Organizations*, p. 480.

¹⁰¹ Rachel Bohlen, "Questioning Authority: A Case for the International Criminal Court's Prosecution of the Current Sudanese President, Omar Al-Bashir," *George Washington International Law Review*, vol. 42, 2010, p. 687.

¹⁰² Karns and Mingst, *International Organizations*, p. 480.

for withdrawal from the ICC, arguing that it specifically targets the continent of Africa.¹⁰³

Future of the ICC

Kirsch argues that the ICC alone is never going to be able to end impunity.¹⁰⁴ The success of the Court depends on its State Parties and cooperation of the international community in general. Furthermore, since this Court is based on the principle of complementarity, States will continue to be the primary sources of justice. Nonetheless, it is important that all states ratify the Statute for the Court to have a truly universal embrace.¹⁰⁵ In addition, it is important to reiterate the fact that cooperation of states is crucial to the ICC. Without it, there would be no trials. At the same time, Kirsch points out that support of the international organizations, particularly the United Nations, is critical.¹⁰⁶ It includes activities in the field and institutional ties, e.g. agreements. Furthermore, cooperation with regional organizations is necessary for expanding capacities of the Court, for example a cooperation agreement with the European Union.¹⁰⁷ Kirsch also attaches a significant role to NGOs and civil society. The latter help spread information about the Court, its objectives and press governments that have not ratified the Statute to do so. These actors can help clear misconceptions about the Court, which, in turn, would bring the latter a wider support and legitimacy among the peoples.

The creation of the court was a unique achievement, a historic milestone. Indeed, already in 2004, Kofi Annan stated that the ICC “was already having an important impact by putting would-be violators on notice that impunity is not assured

¹⁰³ Ibid., 481.

¹⁰⁴ Kirsch, “The Role of the International Criminal Court,” p. 242.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

and serving as a catalyst for enacting national laws against the gravest international crimes”.¹⁰⁸

¹⁰⁸ Report of the Secretary-General, “The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies,” S/2004/616*, 2004, accessed March, 4, 2014, <http://www.unrol.org/files/2004%20report.pdf>, p. 16.

IV. Case of the Democratic Republic of Congo (DRC): the Trial of

Thomas Lubanga Dyilo

They cannot forget the beatings they suffered; they cannot forget the terror they felt and the terror they inflicted; they cannot forget the sounds of their machine guns; they cannot forget that they killed; they cannot forget that they raped and that they were raped.

Luis Moreno-Ocampo, Opening Statement, *Lubanga Trial*¹⁰⁹

Thomas Lubanga Dyilo (Thomas Lubanga) of the Democratic Republic of Congo became the first person to be found guilty by the International Criminal Court (the ICC; the Court) for recruitment and enlistment of child soldiers. Moreover, he is the first person in the history of the Court to ever be convicted. Lubanga was convicted for crimes committed from July 1, 2002 to December 31, 2003 while he was the President of *Union de Patriotes Congolais* (UPC) and Commander-in-Chief of *Forces Patriotiques pour la Libération du Congo* (FPLC). It is interesting that although he was allegedly occupying these positions before July 2002, the ICC could not prosecute him for earlier period, because it can only investigate crimes that took place after the Statute entered into force on July 1, 2002. Since the case of Lubanga was the first case tried before the ICC, there were no precedents to rely on.¹¹⁰ Thus, the international community watched the case very closely, since the outcome of the trial would be very important in creating such a precedent.¹¹¹

¹⁰⁹ Luis Moreno-Ocampo, *Opening Statement, The Case of the Prosecutor vs. Thomas Lubanga Dyilo, ICC-01/04-01/06*, International Criminal Court, accessed April 30, 2014, <http://www.icc-cpi.int/NR/rdonlyres/89E8515B-DD8F-4251-AB08-6B60CB76017F/279630/ICCOTPSTLMO20090126ENG2.pdf>.

¹¹⁰ Kristin Gallagher, "Towards a Gender-Inclusive Definition of Child Soldiers: the Prosecutor vs. Thomas Lubanga," *Eyes on the ICC* vol. 7, no. 1, 2010-2011, p. 123.

¹¹¹ Scott Baldauf, "Hague Court Issues its First Guilty Verdict against Congo Warlord Lubanga," *Christian Science Monitor Website*, 2012, accessed May 1, 2014, <http://www.csmonitor.com/World/Keep-Calm/2012/0314/Hague-court-issues-its-first-guilty-verdict-against-Congo-warlord-Lubanga>.

Despite recent international attention to child soldiering due to the charges against Mr. Lubanga, the practice is hardly a new phenomenon. Children have been used in wars throughout history. Among the known accounts of the use of youth in military are the following: drummer boys in the American Revolution and powder monkeys in the War of 1812, the Mexican War, and the Civil War.¹¹² In addition, the Nazis established training camps to prepare youth for battle, including via indoctrination, a process that often began when a child was ten years of age.¹¹³ Brown also reports that during the Iran-Iraq War, Iranian President Ali-Akbar Rafsanjani declared that “all Iranians from 12 to 72 should volunteer for the Holy War”.¹¹⁴ Child soldiers who joined the Iranian forces were given keys to keep around their necks for entry into paradise. Today, the Islamic militant group al-Shabab is accused of using child soldiers in Somalia.¹¹⁵ As observed, child soldiering has never stopped and, thus, the trial of Thomas Lubanga represents an opportunity for a precedent-setting decision regarding the use of child soldiers.¹¹⁶ It will help to spread what Hochschild calls “the Pinochet effect”.¹¹⁷ After Pinochet was indicted by Spain while undergoing health procedures in London, he was held in house arrest for a few months, until he was set free due to his ill condition. Yet, this incident possibly made dictators reconsider their travel arrangements.¹¹⁸ The same might apply to the situation with the convicted Lubanga. The verdict of the ICC might have current and future perpetrators think twice before recruiting child soldiers. To support the argument, according to Hochschild, after the Lubanga trial began, people in Eastern Congo, reported to have

¹¹² Gallagher, “Towards a Gender-Inclusive Definition of Child Soldiers,” p. 115.

¹¹³ Ibid.

¹¹⁴ Ian Brown, *Khomeini's Forgotten Sons: The Story of Iran's Boy Soldiers* (London: Grey Seal, 1990), p. 2.

¹¹⁵ Gallagher, “Towards a Gender-Inclusive Definition of Child Soldiers,” p. 116.

¹¹⁶ Ibid.

¹¹⁷ Adam Hochschild, “The Trial of Thomas Lubanga,” *The Atlantic*, vol. 1, 2009, p. 82.

¹¹⁸ Ibid.

seen few child soldiers. Even if they were a part of militia groups, they were kept more or less out of public eye.¹¹⁹ In addition, Richard Pituwa, the founder of the Bunia district radio station, although critical of the ICC in general, said that Lubanga's trial helped lessen the violence. He reasoned that the thinking of warlords have changed: "Now they begin to fear: *if I become a big chief they might come for me*".¹²⁰

Background

Ituri, approximately the size of West Virginia, is a district of the Province Orientale of the DRC which borders Uganda on the east and Sudan on the north.¹²¹ The population consists of approximately 18 ethnic groups, the biggest of which are the Hema, the Lendu and the Ngiti. Traditionally, the Lema are farmers, while the Lenda are land owners, cattle herders and traders. The Lendu are typically better-off and, thus, are much hated for their wealth.¹²²

Ituri is an area rich in natural resources, particularly gold, diamonds, timber and oil. Desire to control this district with its resources has caused and deepened the conflict by creating mistrust and rivalry between ethnic groups. Mongbwalu, the town located 45 km from Bunia, the capital of Ituri, is particularly known for the world's most important gold mines.¹²³ For these reasons, the district of Ituri has been in the center of two successive conflicts in the DRC. Basically, the Congo has been entangled in internal conflict since 1998. The conflict claimed lives of more than 5.5 million people.¹²⁴ The "First Congo War" raged between 1996 and 1997 and resulted

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid., 78.

¹²² Ibid., 78.

¹²³ Sonja C. Grover, "Case 9: The Prosecutor vs. Thomas Lubanga Dyilo (Democratic Republic of Congo)," In *Prosecuting International Crimes and Human Rights Abuses Committed against Children: Leading International Court Cases* (London: Springer, 2010), p. 479.

¹²⁴ Gallagher, "Towards a Gender-Inclusive Definition of Child Soldiers," p. 122.

in the overthrow of President Mobutu Sese Seko by an armed force headed by Laurent Kabila. The “Second Congo War” started at least in 1998, with its peak in 1999-2003, and it still continues. Militiamen from both tribes sow terror by burning each other’s villages, gang-raping women and mutilating victims.¹²⁵ Because of the brutality of the war and all the terror that has been taking place, the DRC acquired the name “rape capital of the world”.¹²⁶ This period, known for heightened levels of violence, is also marked by struggle between several armed groups trying to gain control of Ituri. The conflict between the Hema and the Lendu escalated, inter alia, due to manipulations of external actors, mostly Uganda and Rwanda, who favored one ethnic group or another at different times. In the early 2000s, the Ugandan and Rwandan Government Officials supported the Hema, specifically the FPLC, headed by Lubanga. This support included financial aid, military training as well as supply of arms and ammunition.¹²⁷ The crimes that Lubanga is accused of took place in the Ituri district in the aforementioned context.

Thomas Lubanga, the President of the UPC and the Commander-in-Chief of the FPLC, was born on December 29, 1960, in Djiba, then the Republic of Congo, to the Hema family. After receiving his education, in 1999/2000, Lubanga appeared in the political arena of the region and eventually became a member of the Assembly of the Province of Ituri.¹²⁸ In 2000, he decided to create his own political and military organization with the purpose to secure control of Ituri.¹²⁹ That year, Thomas Lubanga became the leader of a Hema militia group. That group operated in the Ituri region, but did not have a name at the time. They were known to use children in their

¹²⁵ Hochschild, “The Trial of Thomas Lubanga,” p. 78.

¹²⁶ Michele Kelemen, “In War Zones, Rape is a Powerful Weapon,” *NPR Foundation*, 2009, accessed March 13, 2014, <http://www.npr.org/templates/story/story.php?storyId=114001201>.

¹²⁷ Grover “Case 9,” p. 480.

¹²⁸ *Ibid.*, 488.

¹²⁹ *Ibid.*

armed force to gain control of the area. When Lubanga took control of that militia group, he transformed it according to his vision: “a hybrid political-military structure” composed of the UPC and the FPLC.¹³⁰ As a commander of this joint political-military structure, he used his skills and influence to secure support and legitimacy for his group in the DRC, Uganda and Rwanda.¹³¹ He also was able to retain control of the gold mines in the town of Mongbwalu which became a valuable source of finance for the group. That also made Lubanga and his group an attractive party for external supporters that were interested in taking advantage of Ituri’s abundant resources.¹³²

The UPC/FPLC routinely recruited child soldiers. It is known that Lubanga and his militia invaded a school to conscript the whole fifth-grade students.¹³³ Not only the UPC/FPLC recruited children, they also forced recruited youth to abduct other children, boys and girls, including under the age of 15.¹³⁴ Moreover, with the help of propaganda, this armed militia urged Hema families to send their children to join their military ranks.¹³⁵ In order to prepare this youth for combat, the UPC/FPLC installed military training camps in several locations, including Centrale, Rwampara, Mandro, Irumu, Bule, Bogoro, Sota, Mongbwalu and Bunia.¹³⁶ Trainees, including children under 15, were taughts basic combat skills, discipline and weaponry use for an average period of two months.¹³⁷ Top-ranking commanders like Thomas Lubanga, regularly visited those training camps and could not have not noticed children trainees.¹³⁸ Not only did he know about the use of child soldiers in his militia, but he also used children under 15, including between 12 and 14 years of age, as his personal

¹³⁰ Ibid., 478.

¹³¹ Ibid.

¹³² Ibid., 490.

¹³³ Hochschild, “The Trial of Thomas Lubanga,” p. 78.

¹³⁴ Grover, “Case 9,” p. 486.

¹³⁵ Ibid.

¹³⁶ Ibid., 487.

¹³⁷ Ibid.

¹³⁸ Ibid.

bodyguards.¹³⁹

Due to the aggravation of the conflict, in 2003 the Security Council decided that the situation in Ituri and Bunia constituted “a threat to the peace process in the Democratic Republic of the Congo and to the peace and security in the Great Lakes region”.¹⁴⁰ In spring 2004, President Kabila of the DRC referred the situation in the country to the ICC (the DRC ratified the Rome Statute of the International Criminal Court on 11 April 2002).¹⁴¹ The Prosecutor started investigating the situation in the DRC in July 2004 and on February 10, 2006 an arrest warrant was issued for Thomas Lubanga Dyilo.¹⁴² He was later arrested and on March 17th that same year he was transferred to the Hague detention center from Kinshasa Penitentiary and Re-education Center.¹⁴³ In August he was officially charged with six counts of war crimes, including conscription and the use of child soldiers under 15 in hostilities.¹⁴⁴ First, Thomas Lubanga was charged with three war crimes in the context of a conflict of a non-international character, pursuant to Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute: conscripting children into armed groups, enlisting children into armed groups, and using children for active participation in hostilities. Second, on 29 January, 2007, the Pre-Trial Chamber confirmed the above charges against Thomas Lubanga and also ordered him to stand trial on three additional war crimes of similar conduct in the context of a conflict of an international character, based on Articles

¹³⁹ Ibid., 497.

¹⁴⁰ Security Council Resolution, S/RES/1484, 2013, accessed March 21, 2014, http://www.un.org/docs/sc/unsc_resolutions03.html.

¹⁴¹ Williams 2011, 1079.

¹⁴² Gallagher 2010-2011, 122.

¹⁴³ Jay Williams, “The International Campaign to Prohibit Child Soldiers: a Critical Evaluation,” *The International Journal of Human Rights*, vol. 15, no.7, 2011, p. 1079.

¹⁴⁴ Anthony C. Diala, “Victims’ Justice and Re-Characterizing Facts in the Lubanga Trial at the ICC,” *Eyes on the ICC* vol. 7, no.1, 2010-2011, p. 61.

8(2)(b)(xxvi) and 25(3)(a) of the Rome Statute.¹⁴⁵

It is important to note that in regards to these charges, the Special Representative of the Secretary-General for Children and Armed Conflict argued that there should not be made a distinction between enlistment and forced recruitment. She pointed out that “even the most voluntary acts can be a desperate attempt to survive by children”.¹⁴⁶ Further, she explained that in the context of armed conflict, the line between voluntarily and involuntarily is very vague.

While many consider the verdict a “victory” and “landmark” decision, there are those who express criticism towards the ICC. First, it is argued that the charges should have been broader in spectrum. Specifically, serious crimes such as mass murder, rape, sexual violence and torture did not become a part of the charges against Lubanga despite the fact that the UPC is known to have committed such atrocities. For instance, REDRESS, the human rights organization with its headquarters in London, argues that girls who have endured rape and sexual enslavement, “the worst atrocities that child soldiers endure,” have been overlooked by excluding those charges.¹⁴⁷ Not only that, but most DDR programs are already male-oriented and have not been adapted to fit girls’ needs.¹⁴⁸ However, Prosecutor Luis Moreno-Ocampo clarified that the prosecution did not have enough evidence to charge Lubanga with crimes related to sexual violence.¹⁴⁹ Second, Clark points out that the Court singled out the Ituri region for investigation, leaving meanwhile victims in other areas, including Northern and Southern Kivu and Katanga, “wonder if justice will ever

¹⁴⁵ Grover, “Case 9,” p. 478.

¹⁴⁶ “Children and Justice,” p. 28.

¹⁴⁷ Goetz and Ferstman, “Victims, Perpetrators or Heroes?” p. 61.

¹⁴⁸ Goetz and Ferstman, “Victims, Perpetrators or Heroes?” p. 15.

¹⁴⁹ Luis Moreno-Ocampo, Q&A, Human Rights Forum at City College of New York, April 2, 2014.

arrive”.¹⁵⁰

Investigation

Bernard Lavigne, a French magistrate, was appointed as the head of the investigation team. According to the account he provided on the witness bench, his team started to look into the situation based on the documents provided by the UN and NGOs and tried to identify what militia groups are in particular responsible for the most serious crimes.¹⁵¹ Later, they narrowed down the list to two groups: the UPC (Hema ethnic group) and FNI/FRPI (Lendu ethnic group).

Lavigne later recalled difficulties that his team had encountered.¹⁵² The situation was very unstable and it was too dangerous to leave Bunia, which was protected by the UN, for Ituri where militia was still very active.¹⁵³ Both Lavigne and Sebire, one of the investigators, testified that travelling outside Bunia was dangerous due to the existence of roadblocks created by armed groups.

It took two years for the ICC to establish its own base in Bunia. Initially, in the absence of an ICC compound, investigators had to stay in difficult circumstances, often without a shower.¹⁵⁴ Investigators used to rotate every ten days, but there were too few of them for someone to stay in the field on a permanent basis.¹⁵⁵ It was also difficult to find public locations where they could safely meet potential witnesses without attracting unnecessary attention. The investigators were also afraid that if they

¹⁵⁰ Phil Clark, “In the Shadow of the Volcano: Democracy and Justice in Congo,” *Dissent*, 2007, p. 34.

¹⁵¹ Bernard Lavigne, “ICC, the Prosecutor vs. Thomas Lubanga ICC-01/04-01/06,” Witness Deposition DRC-OTP-WWW-0582, 2010, accessed March 26, 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1298089.pdf>, p. 20.

¹⁵² *Ibid.*, 22-23.

¹⁵³ Caroline Buisman, “Delegating Investigations: Lessons to be Learned from the Lubanga Judgment,” *Northwestern Journal of International Human Rights*, vol. 11, no. 3, 2013, p. 34.

¹⁵⁴ Lavigne, “ICC, the Prosecutor vs. Thomas Lubanga ICC-01/04-01/06,” p. 75.

¹⁵⁵ Buisman, “Delegating Investigations,” p. 34.

traveled openly searching for potential witnesses, they would put witnesses in danger of retaliation from their own communities.

Due to the dangers and difficulties of the investigation, the Office of the Prosecutor (OTP) decided to proceed as follows: first, rely on the MONUC and NGOs that were investigating violations of human rights in the eastern part of the DRC; second, use intermediaries, usually local persons, to facilitate contact with potential witnesses without raising suspicions.¹⁵⁶ The use of these local informants was seen at the time as “best practices,” since it represented a safer means of searching for potential witnesses, as these people had access to local communities and, unlike foreigners, did not raise suspicions.¹⁵⁷ After interviewing people, these intermediaries would travel with potential child soldiers’ witnesses to a safer place to meet with the representatives of the OTP.¹⁵⁸

Another difficulty related to the safety of intermediaries themselves. The investigators feared that informants would be subjected to threats or abductions from their own communities if it became known that they had assisted in providing incriminating information against militia leaders, who at that point in time were still popular among some locals. Indeed, informants themselves wanted to make sure that their identity was protected.¹⁵⁹ In addition, investigators also sought to avoid creating the perception that cooperation with the ICC was risky business, since that perception might create unwillingness to provide any information.

¹⁵⁶ Ibid., 35.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid., 34.

Trial

The trial started in January 2009, led by Prosecutor Luis Moreno-Ocampo.¹⁶⁰ The prosecution presented 28 witnesses over the course of 22 weeks. At least nine witnesses who testified were former child soldiers and were recruited when they were under 15.¹⁶¹ These testimonies included accounts of physical brutality, psychological abuse, murder, rape and starvation.¹⁶² Children rarely testify as witness, because such participation may be connected to some difficulties. These difficulties can be illustrated in the case of the first former child soldier, given the pseudonym Dieumerci, testifying experience:

Upon taking the stand, Dieumerci testified that when in fifth grade he, along with other school children, was kidnapped by soldiers and taken to a military camp. As the hearing progressed, Dieumerci became frightened and eventually recanted his testimony entirely. Two weeks later, Dieumerci took the stand again and repeated his initial testimony, explaining that, the first time he gave evidence before the court, a lot of things went through his mind; in particular, he felt threatened and scared by the presence of the defendant, his former recruiter and commander, in the courtroom. When called a second time, Dieumerci gave evidence from behind a screen. The defendant was no longer able to make eye contact or to intimidate the witness.¹⁶³

This clearly demonstrates that children who give evidence need special protective measures. Furthermore, involvement of child witnesses can be entangled with risks for children. First, children may face retaliation, especially when they live in the same community with perpetrators. Second, participation in trials, particularly cross-examination, the need to re-live past events to give evidence, may re-traumatize child witnesses.¹⁶⁴ In this regard, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict regrets that children are not

¹⁶⁰ Williams, "The International Campaign to Prohibit Child Soldiers," p. 1081.

¹⁶¹ "Children and Justice," p. 15.

¹⁶² Williams, "The International Campaign to Prohibit Child Soldiers," p. 1081.

¹⁶³ "Children and Justice," p. 16.

¹⁶⁴ Ibid.

allowed to give pre-recorded testimony. The ICC also does not allow for the use of intermediaries who would put questions in a simpler language.¹⁶⁵

Therefore, children testifying against perpetrators have to receive support and protection before, during and after a trial. When establishing its mechanisms of using former child soldiers' as witnesses, the ICC relied on the framework developed by the Special Court for Sierra Leone. Specifically, the ICC Victims and Witnesses Unit is charged with responsibilities related to both short-term and long-term protection mechanisms, safety arrangements, medical and psychological support including gender-sensitive measures for victims of sexual violence. Moreover, since child witnesses need to be familiarized with the courtroom, persons to be present and the overall procedures, a support person can be assigned to assist him/her throughout the whole trial proceeding. The Unit prepares children to give evidence and informs them on the procedures in the courtroom.¹⁶⁶

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

Chapter V. Experiences and Testimonies of Child Soldiers

"The first time I went into battle I was afraid. But after two or three days they forced us to start using cocaine, and then I lost my fear. When I was taking drugs, I never felt bad on the front. Human blood was the first thing I would have every morning. It was my coffee in the morning... every morning."¹⁶⁷

-Ibrahim, 16

While the images of child soldiers are ubiquitous these days on media coverage, academic articles, and working papers, not all of them tell the stories behind children with guns and their experiences of "childhood gone awry".¹⁶⁸ Their experiences are often generalized in either positive or negative light. For instance, child soldiers are portrayed by some media as a "lost generation," "evil sociopaths," "barbarians," etc.¹⁶⁹ Moreover, it is pointed out that these child perpetrators should be imprisoned instead of being reintegrated into "the very communities they tortured".¹⁷⁰ Such an extreme view goes in contrast with child protectionist organizations that argue that children are immature and cannot hold responsibility for those acts. In other words, child soldiers are solely victims of conflicts. Thus, youth combatants are categorized either as barbarians or as victims. In portraying children in such narrow categories, the whole idea of their complex reality and divergent experiences are lost.¹⁷¹

Booker also argues that experiences of child soldiers are often simplified and sensationalized in the media. It is not only the media that is interested in the

¹⁶⁷ Aronowitz, *Human Trafficking*, p. 107.

¹⁶⁸ Myriam Denov, "Child Soldiers and Iconography: Portrayals and (Mis)Representations," *Children and Society*, vol. 26, 2012, p. 280.

¹⁶⁹ Skinner, "Child Soldiers in Africa," p. 9; Francis, "Paper Protection," p. 209.

¹⁷⁰ Joshua A. Romero, "The Special Court for Sierra Leone and the Juvenile Soldier Dilemma," *Northwestern Journal of International Human Rights*, vol. 2, no. 1, 2004, p. 12.

¹⁷¹ Denov, "Child Soldiers and Iconography," p. 283.

phenomenon of child soldiering. Hollywood's attention to the subject bore its fruit – the film "Blood Diamonds." However, experts would contend that these descriptions are not adequate. Specifically, Booker explains: "The weakness of Blood Diamonds is that it does not give the viewers a realistic picture of the plight of child soldiers...Female child soldiers are not mentioned at all. Furthermore, any brainwashing, mental trauma, and physical abuse that child soldiers experience is not eliminated with a hug..."¹⁷²

Therefore, no doubt, no one can better tell their stories than former youth combatants themselves. That is why this thesis seeks to introduce individual experiences told by former child soldiers themselves.

Apart from numerous interviews conducted by researchers, humanitarian and social workers, the autobiographies of former child soldiers particularly stand out: Ishmael Beah's "A Long Way Gone: Memoirs of a Boy Soldier" (2007), Senait Mehari's "Heart of Fire: One Girl's Extraordinary Journey from Child Soldier to Soul Singer" (2006) and Emmanuel Jal's "War child: A Boy Soldier's Story" (2009). All these life stories were written when these individuals finally found new homes. Beah was able to tell about his experience as a child soldier in the Sierra Leone government army after having moved to New York. Jal tells the story of his life in the Sudan People's Liberation Army (SPLA) after having settled in England, and Mehari, from her new home in Germany, gives an account of her experiences in an Eritrean Liberation Front (ELF) training camp.¹⁷³

Ishmael Beah was twelve when the Sierra Leone government army recruited him. In his memoirs, Beah describes the day-by-day terrors of being actively involved

¹⁷² Teresa A. Booker, "Blood Diamond," *Political Communication*, vol. 24, no. 3, 2007, p. 354.

¹⁷³ Allison Mackey, "Troubling Humanitarian Consumption: Reframing Relationality in African Child Soldier Narratives," *Research in African Literatures*, vol. 44, no. 4, 2013, p. 101.

in hostilities. Once an innocent child, he was now forced to fight someone else's war. This former child soldier vividly describes all the circumstances of his daily life as a child combatant: AK-47s, drugs, killing sprees, etc. These are a few excerpts from his accounts:

The rebels captured him and demanded to know what parts of the forest people were hiding in, but the imam refused to tell them. They bound his hands and feet with wire, tied him to an iron post, and set fire to his body. They didn't burn him completely, but the fire killed him.¹⁷⁴

I held my AK-47 with my right hand, its mouth pointing to the ground. I had attached an extra magazine with adhesive tape to the one inside the gun. I had my bayonet on my left hip and some magazines and loose bullets in my side pack.¹⁷⁵

His captors promoted the use of drugs to make him and children like him fierce and fearless in the battle. Beah smoked marijuana, used cocaine and "white pills" to which he later became addicted:

The combination of drugs gave us a lot of energy and made us fierce. The idea of death didn't cross my mind at all and killing had become as easy as drinking water.¹⁷⁶

The five men were lined up in front of us on the training ground with their hands tied. We were supposed to slice their throats on the corporal's command. The person whose prisoner died quickest would win the contest... The corporal gave the signal with a pistol shot and I grabbed the man's head and slit his throat in one fluid motion.¹⁷⁷

According to Beah, the military used not only physical training to turn children into hardened soldiers, but also psychological pressure. Specifically, Beah and his young companions were constantly reminded of the loss of their families. Such rhetoric, along with steady use of drugs, replaced young combatants' moral

¹⁷⁴ Ishmael Beah, *A Long Way Gone: Memoirs of a Boy Soldier* (New York: Farrar, Straus and Giroux, 2007), p. 44.

¹⁷⁵ Ibid., 116.

¹⁷⁶ Ibid., 122.

¹⁷⁷ Ibid., 125.

remorse over killings with ferocity:

Over and over in our training he would say that same sentence:
Visualize the enemy, the rebels who killed your parents, your family,
and those who are responsible for everything that has happened to
you.¹⁷⁸

As seen from Beah's account, child soldiers had to witness unimaginable horrors as well as commit atrocities themselves. Luckily, Beah was rescued and later came to live in the United States. Although he survived the war, his experience undoubtedly had a traumatic impact on him. Now he writes books and advocates for child soldiers. Yet, thousands of other children have not gotten a chance to start a normal life.¹⁷⁹

The most tragic accounts of child soldiers include witnessing the violent death of their own relatives. Worse, if they are forced to kill their own families as a part of their brutal initiation:

I did not kill anyone for the first four days of my captivity and then, on the fifth day, they said I had to prove I wasn't scared, they took me back to my village and ordered me to kill my father. At first, I said no, I can't kill my father, but then they said they'd kill us all and started beating me with a panga [machete]. I took the panga and cut him up. I then saw them do it to my mother. The first night, I was haunted by visions of my father as I tried to sleep. I could only cry silent tears as the rebels could not know that I regretted what I had done. They do it so that you can't go back home.
- "Okello John," recruited by the Lord's Resistance Army (LRA) at the age of fourteen.¹⁸⁰

The rebels told me to join them, but I said no. Then they killed my smaller brother. I changed my mind.

¹⁷⁸ Ibid., 112.

¹⁷⁹ Troy Green, "Eradicating the Use of Child Soldiers: Is the World Doing Enough?" *Regent Journal of International Law*, vol. 7, 2010, p. 396.

¹⁸⁰ Euan Denholm, "Uganda: Former Child Soldiers Excluded in Adulthood," *Amnesty International*, 2005, accessed April 8, 2014, <http://www.amnesty.org/en/news-and-updates/feature-stories/uganda-former-child-soldiers-excluded-adulthood-20051014>.

L., age seven.¹⁸¹

If you join the paramilitaries [the AUC in Colombia], your first duty is to kill. They tell you, "Here, you are going to kill." From the very beginning, they teach you how to kill. I mean when you arrive at the camp, the first thing they do is kill a guy, and if you are a recruit they call you over to prick at him, to chop off his hands and arms (A., age twelve).¹⁸²

A sixteen-year-old Susan, abducted by the Lord's Resistance Army in Uganda, testifies to the following cruelties surrounding an attempted escape of a boy:

One boy tried to escape, but he was caught. They made him eat a mouthful of red pepper, and five people were beating him. His hands were tied, and then they made us, the other new captives, kill him with a stick. I felt sick. I knew this boy from before. We were from the same village. I refused to kill him, and they told me they would shoot me. They pointed a gun at me, so I had to do it. The boy was asking me, "Why are you doing this?" I said I had no choice. After we killed him, they made us smear blood on our arms. I felt dizzy. They said we had to do this so we would not fear death, and so we would not try to escape.¹⁸³

A Peruvian woman recruited by the Shining Path at the age of 11 recalls the following:

They beat all the people there, old and young, they killed them all, nearly 10 people...like dogs they killed them...I didn't kill anyone, but I saw them killing...the children who were with them killed too...with weapons... they made us drink the blood of people, we took the blood from the dead into the bowl and they made us drink...then when they killed the people they made us eat their liver, their heart, which they took out and sliced and fried...And they made us little ones eat.¹⁸⁴

¹⁸¹ Peter W. Singer, *Children at War* (Berkeley and Los Angeles, CA: University of California Press, 2006), p. 3.

¹⁸² *Ibid.*, 4.

¹⁸³ Aronowitz, *Human Trafficking*, p. 108.

¹⁸⁴ Mary B. Geske and Mark Ensallaco, "Child Soldiers and Human Rights," In Mark Ensallaco and Linda C. Majka, eds, *Children's Human Rights: Progress and Challenges for Children Worldwide* (US: Rowman and Littlefield Publishers Inc. 2005), p. 114.

Many child soldiers' accounts contain description of rebels mutilating pregnant women, cutting them open with machetes. For instance, a 15-year old girl, forced to become a rebel's "wife," witnesses the following scene:

The rebels started to discuss whether she was carrying a boy or a girl. They bet on the sex of the baby so they decided to check it. "Kill Man No Blood" split open her belly. It was a boy. One of the other rebels took the baby out and showed everyone that it was a boy. The baby was still alive when he threw it on the ground next to the woman but it died shortly after.¹⁸⁵

Khin Maung Than, recruited at the age of thirteen into the Burmese Army, offers a similar account:

We captured about fifteen women and children. . . three babies and four others who were under eighteen. They took the babies away from their mothers. We gathered them in one place and sent a report to headquarters by radio. . . . The order that came over the radio was to kill them all. . . . Then six of the corporals loaded their guns and shot them. They fired on auto. The women had no time to shout. I saw it. I felt very bad because there were all these people in front of me, and they killed them all. Their bodies were left there. The soldiers were holding the babies and the babies were crying. Two of them were less than a year old, maybe nine or ten months. One was maybe fourteen or fifteen months old. After the mothers were killed they killed the babies. Three of the privates killed them. They swung them by their legs and smashed them against a rock. I saw it.¹⁸⁶

Other kinds of mutilations are described in countless former child soldiers' testimonies. Below is one of many examples of amputations. A 15-year-old victim describes how RUF soldiers targeted hands:

They dragged us, they had us get down on our knees and put our arms on a concrete slab. They had others standing over us and holding us from behind. One rebel did all the cutting. A few had both hands cut off; others just one. And then they walked away. I couldn't

¹⁸⁵ Human Rights Watch, "We'll Kill You if You Cry: Sexual Violence in the Sierra Leone Conflict," *Human Rights Watch*, vol. 15, no. 1, 2003, p. 35.

¹⁸⁶ Human Rights Watch, "Testimonies from 'My Gun was as Tall as Me': Child Soldiers in Burma," *Human Rights Watch*, 2002, accessed April 8, 2014, <http://www.hrw.org/news/2002/10/15/testimonies-my-gun-was-tall-me-child-soldiers-burma>.

even bury my arm. And now I don't think I'll ever find someone to marry me.¹⁸⁷

Many accounts of former child soldiers contain descriptions of drugs often used to make child soldiers brave. Alcohol, marijuana, cocaine and even gunpowder were used to suppress fear:

I'd take drugs like marijuana, alcohol, tobacco. Also, GP [gun powder] – more people do that – they take drugs to stop fear. They gave us pieces of paper and put gunpowder in it and forced us to eat it. I didn't want to eat it but they beat us if you didn't. It makes you crazy. It made you want to go fight.¹⁸⁸

[The rebels] cut me ... and they put the cocaine, and after which they cover that with a plaster... I valued nothing and my head started turning...
(Testimony of a child witness at the Special Court for Sierra Leone).¹⁸⁹

Similarly, Beah describes:

I took turns at the guarding posts around the village, smoking marijuana and sniffing *brown-brown*, cocaine mixed with gunpowder, which was always spread out on the table, and of course taking more of the white capsules, as I had become addicted to them.¹⁹⁰

In addition to undergoing violence and brutality, Denov, who conducted interviews with former child soldiers from Sierra Leone, found that many of them did not have access to adequate nutrition and medical services. Testimonies demonstrate this:

There was never enough to eat... we had no medicines to take care of our wounds... I constantly missed my family and longed to be with them and to live the way we used to.¹⁹¹

¹⁸⁷ Kieran Mitton, "Irrational Actors and Process of Brutalization: Understanding Atrocity in the Sierra Leonean Conflict (1991-2002)," *Civil Wars*, vol. 14, no.1, 2012, p. 111.

¹⁸⁸ Lucinda Woodward and Peter Galvin, "Halfway to Nowhere: Liberian Former Child Soldiers in a Ghanaian Refugee Camp," *Annals of Association of American Geographers*, vol. 99, no. 5, 2009, p. 1009.

¹⁸⁹ Kyra Sanin and Anna Stirnemann, "Child Witnesses at the Special Court for Sierra Leone," *For War Crimes Studies Center* (University of California, Berkeley, 2006), p. 3.

¹⁹⁰ Beah, *A Long Way Gone*, p. 121.

¹⁹¹ Denov, "Child Soldiers and Iconography," p. 287.

Particularly horrifying are ordeals of girls that are abducted by rebel forces.

Below is one of the horror stories of a female child soldier:

'Sarah' was abducted at the age of 13 from Koinadugu town in Koinadugu district when RUF and AFRC rebels besieged the town. She was brutally raped vaginally and anally by five RUF rebels after which she was given to one of them as a wife. In Koinadugu town that day the rebels killed 35 women including 'Sarah's' grandmother who they cut and beat. Afterward, 'Sarah' was taken to live in the rebel camp and to serve her 'husband'. She was later raped by two other commanders when her 'husband' was on patrol.¹⁹²

M.M. was eleven, when she was kidnapped by the militia members of the Revolutionary United Front (RUF) in Sierra Leone:

I was raped by seven child combatants, who were aged between fifteen and sixteen years old, on the way to Kailahun. I was raped in my vagina and anally. Other rebels and also civilians saw me being raped but the civilians were too afraid to protect me. My aunt put native herbs on my genital area but I bled for five days. The RUF had medicine but would not give it to us civilians. My aunt carried me on her back, as I could not walk because of the pain. It took us five days to reach Kailahun. A rebel commander wanted my aunt to be his wife but she refused so he killed her. In Kailahun, I was not raped again. Since my rape, I have only experienced irregular periods and my belly is always swollen like I am pregnant.¹⁹³

Even when their ordeal as child soldiers comes to an end, former child soldiers have hard time reintegrating into society. As one former child soldier explained:

Seven months ago in exile, someone came to me and said, "I know who you are and you killed my father and I will seek revenge." I know they are right. I find people chasing me everyday, saying, "You killed my father." But I need resettlement because there can be no peace. I don't believe that home is safe for me.¹⁹⁴

¹⁹² Surtees, "Child Trafficking in Sierra Leone," p. 40.

¹⁹³ Human Rights Watch, "Child Soldiers in Burma," p. 30.

¹⁹⁴ Woodward and Galvin, "Halfway to Nowhere," p. 1010.

VI. Other Cases Presentations: The Trials before the Special Court for Sierra

Leone (SCSL)

Background

Sierra Leone is a coastal country in Western Africa which borders with Guinea and Liberia. The population, over five and a half million, is ethnically divided into sixteen groups.¹⁹⁵ Among the largest ethnicities are the Temne (35%) in the north and the Mende (31%) in the south.¹⁹⁶ A former British colony, Sierra Leone gained its independence in 1961. Initially, the state was under the one-party rule of the All People's Congress (APC). Corruption, discrimination and financial mismanagement led to the failure of state institutions and impoverishment of the population, despite the fact that the country has huge deposits of natural resources, such as gold, diamonds, rutile and bauxite.¹⁹⁷ That led, in turn, to the creation of the Revolutionary United Front (RUF) in 1984, which aimed to ouster the government.¹⁹⁸ As a result of the invasion of the RUF rebels on March 23, 1991 from Liberia, Sierra Leone sunk into a decade-long civil war.¹⁹⁹ In the beginning, the RUF consisted of Sierra Leonean and Liberian fighters, sponsored by Charles Taylor's National Patriotic Front Liberia (NPFL).²⁰⁰ The leader of the RUF movement, Foday Sankoh, was a former army corporal who allegedly received training in Libya with Taylor.²⁰¹ By 1995, the RUF quickly gained control in the east and south of the country, including most of the

¹⁹⁵ HRW, "Sexual Violence in the Sierra Leone Conflict," p. 9.

¹⁹⁶ CIA Factbook, *Sierra Leone*, accessed March 1, 2014, <https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html>.

¹⁹⁷ HRW, "Sexual Violence in the Sierra Leone Conflict," p. 9.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid., 10.

²⁰¹ Ibrahim Abdullah and Patrick Muana, "The Revolutionary United Front of Sierra Leone: A Revolt of the Lumpenproletariat," In Christopher Clapham, ed., *African Guerillas* (Bloomington: Indiana University Press, 1998).

diamond deposit areas.²⁰² They captured and trained civilians, including children, to boost their ranks.²⁰³

The spread of RUF control caused the formation of pro-government militias known as the Civil Defences Forces (CDF), of which the Kamajors (“hunters”) were the largest.²⁰⁴ The CDF started as the Eastern Region Defence Committee in 1993-1994 and was only charged by the government to protect their own chiefdoms. It later grew into the CDF when in 1996 Sam Hinga Norman was appointed deputy minister of defense and the leader of the CDF.²⁰⁵ The government was providing this movement with food, training and military supplies.²⁰⁶ Like the RUF, this movement is known to have committed serious abuses against the civilian population.

Sierra Leone experienced a series of coups since 1992 when in 1997 Major Johnny Paul Koroma overthrew President Ahmad Tejan Kabbah’s government and declared the military rule by the Armed Forces Revolutionary Council (AFRC).²⁰⁷ The rebels from the RUF were later invited to join the AFRC in the new government and the offer was accepted.²⁰⁸ In 1998, with the support of the Nigerian-led troops of the Economic Community of West African States Monitoring Group (ECOMOG), President Kabbah was reinstated and the RUF/AFRC were expelled from Freetown, the capital of Sierra Leone. The battle for the capital and ensuing rebel occupation of Freetown later took place which led to massive human rights abuses and violations of international humanitarian law.²⁰⁹ Civilians were killed and mutilated, girls and

²⁰² HRW, “Sexual Violence in the Sierra Leone Conflict,” p. 10.

²⁰³ Valerie Oosterveld, “Prosecutor v. Issa Sesay, Morris Kallon & Augustine Gbao,” *The American Journal of International Law* 104(1, 2010, p. 74.

²⁰⁴ Oosterveld, “Prosecutor v. Issa Sesay, Morris Kallon & Augustine Gbao,” p. 74; HRW, “Sexual Violence in the Sierra Leone Conflict,” p. 10.

²⁰⁵ HRW, “Sexual Violence in the Sierra Leone Conflict,” p. 10.

²⁰⁶ Ibid.

²⁰⁷ Ibid., 11.

²⁰⁸ Oosterveld, “Prosecutor v. Issa Sesay, Morris Kallon & Augustine Gbao,” p. 75.

²⁰⁹ HRW, “Sexual Violence in the Sierra Leone Conflict,” p. 12.

women were raped, and whole neighborhoods with their residents were set on fire.²¹⁰

In addition, after this infamous January 1999 AFRC/RUF attack on Freetown, 4,800 children were reported missing, of this number 60% were female.²¹¹

In the end of 2000, the government and the RUF signed a cease-fire agreement, within the framework of which the parties agreed to, inter alia, disarm and release child soldiers and abductees.²¹² By January 2002, the parties officially declared the termination of the armed conflict.²¹³

Special Court for Sierra Leone (SCSL)

On January 16, 2002, the government of Sierra Leone and the United Nations signed a bilateral agreement establishing the Special Court for Sierra Leone.²¹⁴ The creation of a credible court that would finally bring peace and justice was initiated by President Kabbah of Sierra Leone. This idea was approved by the United Nations Security Council in resolution 1315 adopted on August 14, 2000. The UN Secretary-General Kofi Annan was then mandated by the Security Council to negotiate an agreement with the government of Sierra Leone to establish such a court.²¹⁵ Finally, in April 2002 the Statute of the Special Court for Sierra Leone entered into force.²¹⁶ The jurisdiction of the SCSL encompassed crimes against humanity, war crimes and other serious violations of international humanitarian law, along with violations of Sierra Leonean domestic laws concerning abuse of underage girls, destruction of

²¹⁰ Ibid.

²¹¹ Gus Waschefort, "Justice for Child Soldiers? The RUF Trial of the Special Court for Sierra Leone," *International Humanitarian Legal Studies*, vol. 1, 2010, p. 190.

²¹² HRW, "Sexual Violence in the Sierra Leone Conflict," p. 12.

²¹³ Ibid.

²¹⁴ Ibid., 63.

²¹⁵ Security Council Resolution 1315, S/RES/1315 (2000), 2000, accessed 12 April 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/605/32/PDF/N0060532.pdf?OpenElement>, p. 2.

²¹⁶ Charles C. Jalloh and Simon M. Meisenberg, *The Law Report of the Special Court for Sierra Leone. Volume I. Prosecutor v. Brima, Kamara and Kanu (The AFRC case)* (Leiden: Martinus Nijhoff Publishers, 2012), p. xxiii.

property and arson.²¹⁷ Article 1 of the SCSL mandates the court to try “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996”.²¹⁸

As the Court became operational in 2003, 13 indictments were issued and, nine years after its establishment, ten trials took place: three joint and one separate trial.²¹⁹ The most prominent single case was that of then-Liberian President Charles Ghankay Taylor who was convicted in 2012 and whose sentence was re-affirmed by appeals judges in 2013. The joint trials were the proceedings against senior members of the AFRC, the CDF and the RUF. These started in 2004-2005 and ended with the last judgment in October 2009.²²⁰ By December 2005, the prosecution presented 191 witnesses in these three cases. Of these, 13 were former child combatants who testified against perpetrators on allegations of conscripting and enlisting children under age 15 into the armed forces.²²¹

The main difference between the Lubanga case and the cases tried before the SCSL is that Lubanga was solely charged with child-soldiering crimes. However, The AFRC case was the first conviction by an international tribunal on crimes related to child soldiery.²²² Moreover, the Special Court for Sierra Leone was the first international tribunal to try and convict persons for forced marriage as a crime against humanity (RUF trial), and for attacks directed against United Nations peacekeepers

²¹⁷ Statute of the Special Court for Sierra Leone, *Special Court for Sierra Leone Home Page*, accessed April 9, 2014, <http://www.sc-sl.org/LinkClick.aspx?fileticket=uCIndIMJeEw%3D&>.

²¹⁸ *Ibid.*

²¹⁹ Jalloh and Meisenberg, *The Law Report of the Special Court for Sierra Leone. Volume I*, p. xxiv.

²²⁰ Binta Mansaray, “Foreword.” In Jalloh Charles C. and Simon M. Meisenberg, eds., *The Law Reports of the Special Court for Sierra Leone. Volume I. Prosecutor v. Brima, Kamara and Kanu (The AFRC case)* (Leiden: Martinus Nijhoff Publishers, 2012), p. ix.

²²¹ Sanin and Stirnemann, “Child Witnesses at the Special Court for Sierra Leone,” p. 13.

²²² Mark A. Drumbl, “Prosecutor v. Thomas Lubanga Dyilo. Décision sur la confirmation des charges. Case No. ICC- 01/04-01/06,” *The American Journal of International Law*, vol. 101, no.4, 2007, p. 845.

(RUF trial).²²³

The AFRC trial

The first trial to conclude was the so-called “AFRC case” against the commanders Alex Tamba Brima (aka “Gullit”), Brima Bazzy Kamara, and Santigie Borbor Kanu (aka “Five-Five”) who, as superiors, bore personal responsibility for the heinous crimes committed by the AFRC. On 20 June 2007, the three men were found guilty of 11 out of 15 counts of war crimes, crimes against humanity and other serious violations of international humanitarian law, including conscripting and enlisting children under 15 years and using them actively in the hostilities. They were then sentenced to fifty, forty-five and fifty years of imprisonment respectively.²²⁴ It was the first time that an international tribunal has definitely ruled on the charges of child soldiers’ recruitment.²²⁵ This move has been welcomed by human rights advocates as a significant step forward, demonstrating that recruitment and use of children in hostilities was one of the most serious crimes.²²⁶

The RUF trial

The Revolutionary United Front (RUF) were infamous for ruthlessly recruiting child soldiers, including aged eight and nine, in their ranks.²²⁷ Although the atrocities carried out by the RUF date back to 1991, the Special Court only had jurisdiction over crimes that happened after November 1996.

In 2003, the SCSL issued indictments against three RUF members Issa Hassan Sesay, Morris Kallon and Augustine Gbao who constituted the leadership of

²²³ The Residual Special Court for Sierra Leone Website, accessed April 12, 2014, <http://www.rscsl.org>.

²²⁴ Jalloh and Meisenberg, *The Law Report of the Special Court for Sierra Leone. Volume I*, p. xxiv.

²²⁵ Steven Freeland, “Mere Children or Weapons of War – Child Soldiers and International Law,” *University of La Verne Law Review*, vol. 29, 2008, p. 20.

²²⁶ Coalition to Stop the Use of Child Soldiers, *Global Report 2008*, p. 300.

²²⁷ Waschefort, “Justice for Child Soldiers?” p. 190.

this rebel movement.²²⁸ This trial is commonly known as the RUF case. Two other senior commander, Foday Sankoh and Sam Bockarie, died before the start of the legal proceedings.²²⁹

It is known that Sesay held commanding positions within the RUF. Specifically, he took over the leadership role after Sankoh was arrested in 2000.²³⁰ According to the judgment, among other crimes, Sesay authorized training of civilians, including children, to expand their ranks. Moreover, he himself had Small Boys Units (SBUs) under his direct supervision and actively used some of them in hostilities.²³¹

Likewise, Kallon and Gbao occupied high-ranking positions within the RUF and later the RUF/AFRC and were only subordinated to Sankoh, Koroma and Sesay.²³² Kallon was an influential commander and was responsible for mounting a number of attacks in which the use of child soldiers was ubiquitous. He also had bodyguards under the age of 15.²³³ The SCSL also found that Kallon was responsible for abduction and training SBUs.²³⁴

Unlike the other two commanders, Gbao was found not liable for conscription and use of child soldiers in hostilities. According to the Trial Chamber, the Prosecution failed to provide sufficient evidence that this individual made a significant input to the practice of the use of child combatants.²³⁵

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Trial Chamber Judgment, *Prosecutor vs. Sesay, Kallon, Gbao*, Special Court for Sierra Leone, 2009, accessed on April 9, 2014, <http://www.sc-sl.org/LinkClick.aspx?fileticket=D5HojR8FZS4%3d&tabid=215>, p. 14.

²³¹ Ibid., 618.

²³² Waschefort, "Justice for Child Soldiers?" p. 191.

²³³ Trial Chamber Judgment, *Prosecutor vs. Sesay, Kallon, Gbao*, p. 620.

²³⁴ Ibid.

²³⁵ Ibid., 654.

The CDF case

Sam Hinga Norman was indicted by the SCSL on 7 March 2003 and two other former leaders of the pro-government movement CDF, Moinina Fofana and Allieu Kondewa, the 2nd and 3rd in the command hierarchy, were indicted in June 2003.²³⁶ It was later decided to conduct a joint trial of these three militiamen. However, the leader of the CDF, Norman, died in February 2007 from natural causes.²³⁷ Therefore, the case against him was closed. In late 2007, the case Prosecutor vs. Fofana and Kondewa was completed.

One of the accused, Moinina Fofana, was convicted on four out of eight counts of charges, but he was not found guilty of conscription and enlistment of children under 15 in the CDF ranks or using them in hostilities.²³⁸ On the opposite, the other accused, Allieu Kondewa, was initially found guilty on these charges and on 9 October 2007 was convicted to seven years of imprisonment for this specific crime.²³⁹ It is known that Kondewa carried out rituals initiating new members to the Kamajors, the most powerful group in the CDF. Therefore, the Prosecutor argued that he had known about the recruitment of children under 15 in their ranks. To demonstrate, the Prosecution called on the witness who was initiated to the Kamajors at the age of 13.²⁴⁰ However, on May 28, 2008, after the Defense's Appeal, the child soldiering charges were overturned by the Appeals Chamber. The latter ruled that initiation does not equal enlistment. It also found that "Witness TF2-021 had already

²³⁶ Special Court for Sierra Leone Website

²³⁷ Coalition to Stop the Use of Child Soldiers, *Global Report 2008*, p. 300.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Trial Chamber Judgment, *Prosecutor vs. Moinina Fofana and Allieu Kondewa*, 2007, accessed April 2, 2014, <http://www.sc-sl.org/CASES/ProsecutorvsFofanaandKondewaCDFCase/TrialChamberJudgement/tabid/175/Default.aspx>, p. 21537.

been enlisted before Kondewa initiated him into the Kamajors.²⁴¹

The Charles Taylor Case

Of even more significance is the trial and subsequent conviction of Charles Ghankay Taylor. The judgment by the SCSL sends a clear message that no one is exempt from prosecution on charges related to crimes against children.²⁴²

Taylor was indicted on March 7, 2003, on 17 counts of war crimes, crimes against humanity, and other serious violations under international humanitarian law.²⁴³ In 2006, the charges were reduced to 11 counts, which, inter alia, included conscription and enlistment of child soldiers under 15 and using them actively in hostilities.²⁴⁴

In August 2003, Taylor's forces suffered a defeat in the Liberian civil war. As a result, he was offered asylum in Nigeria, which he accepted. Although Taylor was residing in Nigeria, he continued engaging in activities that undermined peace and stability in West Africa.²⁴⁵

After his indictment, Taylor tried to challenge it by arguing that he was a sitting head of state at the time of the indictment. However, both the Trial Chamber and then the Appeals Chamber motioned that his status as a head of state did not prevent him from being tried by an international criminal tribunal.²⁴⁶ In March 2006, he was arrested by the Nigerian government headed by President Obasanjo and transferred to custody of the SCSL. However, due to security concerns, he was then

²⁴¹ Appeals Chamber Judgment, "Prosecutor vs. Moinina Fofana and Allieu Kondewa (Case No.SCSL-04-14-A)," 2008, accessed 12 April 2014, <http://www.scs-sl.org/CASES/ProsecutorvsFofanaandKondewaCDFCase/AppealJudgement/tabid/194/Default.aspx>.

²⁴² Freeland, "Mere Children or Weapons of War," p. 21.

²⁴³ Daniel C. Turack, "Ending Impunity in Africa: The Charles Taylor Trial at the Special Court for Sierra Leone," *Journal of Third World Studies*, vol. 2, 2009, p. 191.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ "Taylor's Trial – Background," *New African*, June 2012, p. 21.

moved to the ICC facilities in the Hague within a few months.²⁴⁷ There were concerns that if he had been put on trial in Freetown, there might have been major violence in the area aiming at halting the legal proceedings against him. In other words, this decision was influenced by concerns over peace and stability in both Liberia and Sierra Leone.²⁴⁸

After 420 trial days dragged over a three-year period, with 115 witnesses having testified, the case was formally closed on 11 March 2011.²⁴⁹ The prosecution proved beyond a reasonable doubt that Mr. Taylor was assisting or even encouraging conscription and enlistment of children under 15 and using them in hostilities.

²⁴⁷ Ibid.

²⁴⁸ Coalition to Stop the Use of Child Soldiers, *Global Report 2008*, p. 214.

²⁴⁹ "Taylor's Trial – Background," p. 21.

VII. Data Analysis

The prosecution of Thomas Lubanga, the rebel leader operating in the Democratic Republic of Congo, by the International Criminal Court and the subsequent guilty verdict were widely welcomed by the international community. Not only did the verdict send a strong message to those who recruit and use child soldiers, but it also established in practice that recruitment and enlistment of child soldiers and their active use in hostilities is a war crime. According to Navi Pillay, the UN High Commissioner for Human Rights, the verdict had sent “a strong signal against impunity for such grave breaches of international law that will reverberate well beyond the D.R.C.”.²⁵⁰ There have been similar prosecutions by the Special Court for Sierra Leone (SCSL) and other international tribunals, but the ruling by the independent permanent criminal court seems to carry a particular importance. Referring to trials by the ICC and the SCSL, the Special Representative of the Secretary-General for Children and Armed Conflict Leila Zerrougui noted that “these are all important precedents to promote accountability for those who violate children’s rights”.²⁵¹ Special Representative of the Secretary-General for Children and Armed Conflict also expressed hope that “these judgments by international tribunals will also serve as examples and useful precedents for national courts, where prosecution for recruitment and use of children continue to remain rare”.²⁵² The Secretary-General expressed a similar view admitting that “investigations, prosecutions and trials of adult perpetrators of grave violations against children remain rare.” However, he emphasizes that they are a crucial tool in stopping impunity and enforcing compliance with children’s rights.²⁵³

²⁵⁰ Marlise Simons, “Congolese Rebel Convicted of Using Child Soldiers,” *New York Times*, March 15, 2012, p. A12.

²⁵¹ Stephanie Tremblay, “Charles Taylor’s Conviction Upheld: A Message that Recruiters of Child Soldiers will be Held Accountable,” *Office of the Special Representative of the Secretary-General for*

There are views, including among those in the DRC, that after the prosecution of Thomas Lubanga, fewer child soldiers have been seen. However, there is no data available on the number of child soldiers before and after the Lubanga trial to be able to construct a straightforward cause-and-effect argument. Security-related issues restrict access to collecting data. Moreover, the clandestine nature of child soldiering prevents us from measuring the numbers of children associated with armed groups. In other words, since even the most notorious groups try to deny that they use combatants under 15, they are not going to share child soldiering statistics within their ranks with human rights workers or academics. Hence, there is not much hard evidence when it concerns the number of child soldiers. Even the number of 300,000 is an estimate that has been circulating in reports since the 1996 Graça Machel report. Recently this number was changed to 250,000, given that some conflicts, including those in Angola, Sierra Leone and Liberia, terminated.²⁵⁴ Still, this figure is a pure estimate. Thus, while child soldiering is a widely discussed topic among human right activists, it is understudied in terms of collecting reliable data.

As of 2014, there are still tens or even hundreds of thousands of children remaining within armed groups, despite the fact that the United Nations set a goal to eliminate child soldiering by 2016. While there is no specific data on the number of child soldiers in each country where such phenomenon exists, there are definitely trends, although they may be subtle, that can give a sense of what is going on in the field.

One such aspect is the changes in the number of armed groups and forces that

Children and Armed Conflict, 2013, accessed April 26, 2014, <http://childrenandarmedconflict.un.org/press-release/charles-taylors-conviction-upheld/>.

²⁵² Ibid.

²⁵³ Secretary-General Report, "Children and Armed Conflict. Report of the Secretary-General," 2013, accessed April 20, 2014, http://www.un.org/ga/search/view_doc.asp?symbol=A/67/845, p. 4.

²⁵⁴ Scott Gates and Simon Reich, "Introduction," In Scott Gates and Simon Reich, eds., *Child Soldiers in the Age of Fractured States* (Pittsburg: University of Pittsburg Press, 2010), p. 11.

have been recruiting child soldiers. The Annual Report by the Special Representative of the Secretary-General may shed light on the situations in countries that are listed in this report. Looking at the progress made in previous year, the Secretary-General can take some parties off the list of “naming and shaming.” To speak of numbers, the 2014 report included 48 groups that are known to recruit and use children into their ranks, while in the 2013 report there were 52 such armed groups. In the 2012 report, the number of such groups was 54, while in 2011 it was 59. To compare, in 2009 there were 63 armed groups that recruited child soldiers. There is a clear decrease in the number of groups that enter this “naming and shaming” annex. For instance, Uganda’s successful implementation of a plan to delist children in 2009 of the Ugandan People’s Defense Forces (UPDF) and its allied armed group the Local Defense Units was carried out and then verified by the UN that recruitment and use of children by these parties terminated.²⁵⁵ Pro-government armed groups in Côte d’Ivoire and Sri Lanka have also been recently removed from the annexes, as they no longer recruit children. Although miniscule, there are positive changes.

Another trend is associated with the higher release rate of children. Rebel groups are more willing to cooperate. Some analysts argue, for example, that the willingness of the Lord’s Resistance Army (LRA) in Northern Uganda to negotiate with the government in 2006 was nothing but a result of the ICC’s indictment of the LRA’s leaders, including Joseph Kony.²⁵⁶ By February 2006, a total of 17,457 children in DRC had been released from the armed forces and groups, and entrusted with child protection agencies, according to the National Commission for Demobilization and Reintegration (CONADER). Of these children, 2,761 were girls

²⁵⁵ Child Soldiers International, *Louder than Words: An Agenda for Action to End State Use of Child Soldiers* (Oxford, UK: Oxuniprint, 2012), p. 115-116.

²⁵⁶ Priscilla Hayner, *Negotiating Justice: Guidelines for Mediators*, Centre for Humanitarian Dialogue and International Center for Transitional Justice (Geneva: Centre for Humanitarian Dialogue and International Center for Transitional Justice, 2009), p. 17.

and 14, 696 were boys.²⁵⁷

Also, there has been noted a reduction in the number of instances of child recruitment in certain countries. For instance, in the Philippines, according to the annual report by the Secretary-General, the country task force recorded 11 incidents of recruitment and use of children, of those 23 being boys and 3 girls between 12 and 17 years of age. That figure represents a decrease in 2012, given that there were 26 instances of recruitment involving 33 boys and 21 girls in 2011.²⁵⁸ Moreover, the report states that children abducted by LRA in the DRC in 2012, in contrast to previous years, were used mainly as porters to carry looted goods, rather than to participate in attacks.²⁵⁹ In Somalia, for example, some 2,000 children were reported to have been abducted for military training by the Eritrean-backed Somali armed opposition group *Al-Shabaab* in 2010, but closer to 1,000 in 2011.²⁶⁰

In addition, fewer child casualties have been documented in certain countries. For instance, in the 2012 report, the Central African Republic country task force documented 10 cases of the killing of children, as opposed to 88 in 2011.²⁶¹ The number of attacks against schools and hospitals significantly decreased during the reporting period, with 7 verified cases in 2012, as opposed to 477 in 2011.²⁶² In the Democratic Republic of Congo, there were reportedly at least 68 child casualties in 2013, compared to 154 documented in 2012. In addition, a minimum of 96 children were maimed by the Mayi Mayi group in 2013 in comparison to 113 cases in 2012.²⁶³

²⁵⁷ "Struggling to Survive: Children in Armed Conflict in the Democratic Republic of the Congo," 2006, *Watchlist of Children and Armed Conflict*, accessed April 30, 2014, http://www.watchlist.org/reports/pdf/dr_congo.report.20060426.pdf, p. 46.

²⁵⁸ Secretary-General Report (2013), "Children and Armed Conflict," p. 41.

²⁵⁹ *Ibid.*, 20.

²⁶⁰ Child Soldiers International, *Louder than Words*, p. 87-88.

²⁶¹ Secretary-General Report (2013), "Children and Armed Conflict," p. 11.

²⁶² *Ibid.*, 14.

²⁶³ Preliminary Secretary-General Report (2014), "Children and Armed Conflict."

It is very difficult to calculate the number of child soldiers engaged in armed groups. What can be known is the number of children that could escape, were released or participated in Demobilization, Disarmament and Reintegration (DDR) programs. However, these numbers were quite low. First, not every former child soldier is lucky to encounter international agency workers upon escape to receive help. Some just try to start over without sharing their past with anybody, since there is a stigma attached to being a child soldier. Furthermore, not all former child soldiers qualify to participate in DDR Programs. For instance, it is a well-known fact that for a long time girls were excluded from DDR programs. In addition, even if some children manage to escape from their "bush families," there is no way to find out how many more children remain in the ranks of armed groups. First of all, rebels leaders are highly unlikely to share the statistics of the number of child combatants within their ranks. Second, child soldiering mostly exists in conflict areas, where war makes everything more difficult, including measurement.

VIII. Conclusion

The use of children in armed conflicts is an extremely disturbing phenomenon. It is a violation of children's rights, a war crime and a crime against humanity. It has been a global concern for almost two decades since the Graça Machel report came out. This report then led to the adoption by the General Assembly of resolution A/RES/51/77 (1996) establishing the mandate of the Office of the Special Representative of the Secretary-General for Children and Armed Conflict. The next important steps included the adoption of the Optional Protocol to the Convention on the Rights of the Child (2002) and the creation of a Monitoring and Reporting Mechanism in 2005, which allows for monitoring and reporting instances when children are recruited.²⁶⁴ Along with other legal instruments, these tools became significant in changing the universal attitude towards child soldiers. Nowadays, 152 states agree that children should not be embroiled in armed conflicts.²⁶⁵ However, these developments were not enough to end the use of children in battlefields.

While child soldiering is not a recent development, the number of child soldiers is argued to have increased with the growth of intra-state conflicts. Children have become preferred fighters in conflict-ridden countries, because they are easier to manipulate and indoctrinate due to their immaturity. The proliferation of lightweight arms has also contributed to the spread of the phenomenon of child soldiering. In addition, the context of today's conflicts, poverty and lack of social and economic

²⁶⁴ Child Soldiers International, *Prevention in Cure: Can Rehabilitation and Reintegration Programs Contribute to Preventing the Recruitment and Use of Children in Conflict*, International Conference: Children and youth affected by armed conflict: where to go from here? 25-27 September 2013, Kampala, Uganda (London: Child Soldiers International, 2013), p. 2.

²⁶⁵ Ibid.

opportunities exacerbate the problem. Children have been used as cooks, porters, spies, messenger, fighters as well as sent into minefields and used in suicide missions.

Although there are no exact numbers, it is estimated that hundreds of thousands of children are trapped in armed rebel groups and government forces worldwide. As of 2014, the use of child soldiers has been reported in 21 countries: Afghanistan, Central African Republic (CAR), Chad, Colombia, Cote d'Ivoire, Democratic Republic of the Congo (DRC), India, Iraq, Libya, Lebanon, Mali, Myanmar, Pakistan, Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Yemen and Uganda.²⁶⁶

This thesis underlines the importance of the topic of child soldiering. Although it is a widely discussed issue, there is very limited information on the subject, especially when it concerns figures. While many agree that this phenomenon has to be eliminated, despite numerous action plans and other efforts by international agencies, children continue to be recruited into armed forces, both by rebel and government actors. Previous sections of this work discuss literature targeting the root causes behind the recruitment of child soldiers and tools aimed at reducing and eliminating the phenomenon. Further, the thesis demonstrates why recruitment of children into armed groups and forces constitutes a crime and describes the traumatic experiences of children associated with military and paramilitary elements. It, thus, emphasizes that prosecution of the recruiters of child soldiers is crucial to the very existence of this phenomenon.

In addition, this thesis sought to establish a causal relationship between prosecution of warlords and the number of child soldiers. Specifically, I argued that arrest and prosecution of warlords helps to reduce the practice of the recruitment of

²⁶⁶ Secretary-General Report (2013), "Children and Armed Conflict."

children into armed forces and, therefore, leads to a decrease in the number of child soldiers involved in conflicts. To support this hypothesis, the thesis includes case studies where perpetrators were convicted for the recruitment/enlistment and the use of children in hostilities. The first significant case that the thesis considered was the prosecution of Thomas Lubanga, a rebel leader of UPC/FPLC movement in the Democratic Republic of Congo, by the International Criminal Court in March 2012. Prosecuted exclusively for child soldiering crimes, he was sentenced to fourteen years of imprisonment. While such a verdict on child-soldiers-related crimes was the first in the history of the permanent international criminal court, similar convictions were made earlier by a hybrid tribunal, the Special Court for Sierra Leone (SCSL). Not only did the Special Court issue a guilty verdict to five top-ranking rebel leaders (the RUF case, the AFRC case and CDF case), but it also sentenced former Liberian President Charles Taylor for child soldiering crimes. These trials can indeed be called path breaking, as they draw international attention to the crimes committed against children recruited into armed forces. These verdicts remind the world of what is already stated in international legal instruments, i.e. recruitment of children under 15 is a war crime. Moreover, they set a historical precedent for future trials and signal that such crimes will not and cannot be tolerated.

The trials by the SCSL were significant in putting into practice international legal instruments condemning child soldiering. These were the first warnings given to future recruiters of child combatants. However, there is no demonstrative correlation between these trials and the elimination of child soldiering in Sierra Leone and Liberia. In this case one may argue that the termination of conflict caused cessation of child recruitment.

Therefore, the main focus is on the situation in the Democratic Republic of Congo. Many authors and human rights activists hailed the guilty verdict passed to Lubanga as a landmark. There is a common perception that this outcome would force future recruiters of child soldiers to think twice. There has even been information that fewer child soldiers have been seen after the Lubanga trial. Indeed, this and previous prosecutions might play a role in the reduction of the child soldiering phenomenon. However, there is no hard statistical evidence to support the argument. Even though Lubanga's military group is no longer active and there have been reported higher releases of child combatants in comparison to previous years, these are only indirect indicators of the results of trials of warlords and cannot be relied upon to support the main hypothesis.

While child soldiering has not been eliminated in the DRC, it is clear that the trial of Lubanga alone will not suffice. Prosecution of warlords has been too rare to discourage the recruiters of youth combatants. Therefore, more violators have to be brought to justice for the world to see clear results. In addition, it is of paramount importance that more needs to be done along with a much better job of monitoring the situation in the field of study of child soldiers, because currently we do not possess enough data to answer very important questions about their status.

To be clear, this thesis does not claim that prosecution of warlords is a panacea for the elimination of the child soldiering phenomenon. However, it is an important tool in an overall effort to stop this phenomenon from occurring. In addition, to prevent this phenomenon we have to address its root causes. Those vary from socioeconomic reasons, including poverty, marginalization and ethnic discrimination, to a lack of appropriate domestic laws. Therefore, prevention measures should address all these causes. In other words, education campaigns and

implementing domestic laws alone will not suffice. Governments have to eliminate ethnic discrimination, stop proliferation of small arms, establish peace and security, and implement other important measures to fight and prevent the phenomenon of child soldiering. At the same time, the prosecution of warlords by the Special Court for Sierra Leone, including the former warlord and President of Liberia Charles Taylor, and the Congolese warlord Thomas Lubanga Dyilo by the International Criminal Court for war crimes, particularly the use of child soldiers, gives hope that the situation will improve. To be sure, however, one needs more than just convictions of a few perpetrators to create justice for former child soldiers. As long as perpetrators are at large, the recruitment and re-recruitment despite DDR programs are not going to stop. The prosecution of warlords should be a joint effort of national governments and international community. International courts and tribunals should complement the work of national judicial system in prosecution of warlords. It is true that theoretically too many courts and resources would be needed to prosecute all violators of international law related to child soldiering, but after a certain threshold, a strong practice on both national and international levels would be established that might lead to a gradual disappearance of the problem of young combatants.

Finally, while this study seeks to contribute to the field of child soldiering by bringing attention to a possible way to reduce the phenomenon, it has a number of limitations. First of all, it should be admitted that there is no accurate data on the number of children involved in armed conflicts worldwide. All the data presented in this thesis are estimates produced by UNICEF and NGOs, working with former child soldiers or towards the elimination of the phenomenon. Furthermore, the study did not focus on the instances of the use of child soldiers before 1996, although children have been used in combat for centuries. For the purpose of this study, this specific time

frame was chosen to reflect recent developments on the ground and in the field of the study of child soldiers. These shortcomings lead to suggestions for further research. More attention should be paid to the monitoring of the situation on the ground that has to improve to enable researchers to gather numerical data on the youth used by armed groups and forces in different countries. This would allow looking at trends of child soldier recruitment in states over the years and making a prognosis for the future. Lastly, in regards to the argument made by some scholars that prosecutions of warlords do not reach the public that most needs it,²⁶⁷ I would recommend broadcasting past and future trials of perpetrators of child soldiers via television and radio stations to expand the reach of the news, since the outreach is as important as the verdict. If we want perpetrators to be deterred, we have to spread the news that their crimes are no longer to be tolerated.

²⁶⁷ Mark Kersten, "Lubanga and the Trouble with ICC Deterrence," Justice in Conflict Website, 2012, accessed April 30, 2014, <http://justiceinconflict.org/2012/03/20/lubanga-decision-roundtable-lubanga-and-the-trouble-with-icc-deterrence/>.

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