

**The protection of children in non- international armed conflict: Lessons from
South Sudan and Democratic Republic of Congo**

Mini-dissertation submitted in fulfilment of the requirements for the degree of Masters in
Human Rights Law

At

Faculty of Management, Commerce and Law

University of Venda

By

SIKHWAI TSHIFHIWA SHERON

19021365

MODULE: DIS 6300

SUPERVISOR: Prof T van der Walt

CO SUPERVISOR: Adv T Skosana

2025

DECLARATION

I, SIKHWAI TSHIFHIWA SHERON, hereby state that the LLM dissertation titled “**The Protection of Children in Armed Conflict under International Law: Lessons from South Sudan and the Democratic Republic of Congo**”, submitted herewith in partial fulfilment of my LLM degree, is my original work, contains no plagiarism, and has, to the best of my knowledge, not previously been submitted by me or any other person to this or any other institution.

Signature of candidate: 

Student Number: 19021365

Signed on this 10 day of February 2025.

ACKNOWLEDGEMENT

“In all your ways, acknowledge him; he will make your paths straight.” Above all, I give thanks to the grace and power of the most -high God, who gave me strength and carried me through writing this mini-dissertation. It is only by his grace that I saw its completion. Prof Tharien van der Walt and Adv Skosana, my dearest supervisors, I sincerely thank you for the support and push you have offered me; your wise words and belief in me made me reach this far it was not an easy journey, but you fought for this day to come.

To my family, thank you for being my pillar of support during this journey; to my husband Nekhavhambe T and our son Wandeme, thank you for all the support you offered to me when I was ready to give up; and to my dearest sister Bridgette Minyuku, thank you for all the financial, emotional support and prayers, you believed in me, and I overcame. My pastor NW Ndou, thank you for being my cheerleader and constantly praying for me in every step of this mini-dissertation. To you, my guardian angels, Mom and Ndivho, you believed in me till your last days on earth, and yes, I have done this to make you proud.

Abstract

Armed conflicts have become increasingly frequent in Africa, particularly in the Eastern and Western regions of Africa. Armed conflict exposes all affected populations to several vulnerabilities and harms. For example, children, as a vulnerable group, experience more problems in this regard. However, armed conflicts are generally regulated internationally through humanitarian law and human rights laws. Accordingly, several United Nations Conventions and Protocols have been adopted to protect the rights of children affected by armed conflict through humanitarian and human rights law. Africa has also adopted landmark regional instruments to enshrine and protect children's rights, such as the African Charter on Rights and Welfare of Children (ACRWC) and the African Charter on Human and Peoples' Rights (African Charter). In essence, Africa's instruments underscore and incorporate provisions of international instruments that carry binding effect at the regional level, and member states are obliged to give these provisions domestic effect through constitutional and legislative processes. This study aims to analyse the extent of legal protection for children in armed conflict in Africa. Furthermore, it addresses the vulnerabilities and implications children exposed armed conflict. The study utilized case studies from South Sudan and the Democratic Republic of Congo, from which occurrences of armed conflict have been persistent and discern how children are protected from the harms of armed conflict. The doctrinal method was used because the information was compiled on a desktop study.

Keywords: Armed conflict, International Humanitarian Law, children, Africa, South Sudan, Democratic Republic of Congo, International law.

LIST OF ABBREVIATIONS:

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	The African Charter on the Rights and Welfare of the Child
AP	Additional Protocols
AU	African Union
CRC	Convention on the Rights of the Child
DDR	Disarmament, Demobilisation, and Reintegration
DRC	Democratic Republic of Congo
FARDC	Armed Forces of the Democratic Republic of the Congo
FDLR	Democratic Forces for the Liberation of Rwanda
GCIV	Fourth Geneva Convention
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IGAD	Intergovernmental Authority on Development
IHL	International Humanitarian Law
IHRL	International Human Rights Law
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MRM	Monitoring and Reporting Mechanism
NSAGs	Non-State armed groups
ICTR	International Criminal Tribunal for Rwanda
ICTY	The International Criminal Tribunal for the former Yugoslavia

NSS	National School Safety
R- SPLM	Real Sudan People's Liberation Movement
SADC	Southern African Development Community
SOMA	United South Sudanese Opposition Movements
SPLM-IO	Sudan People's Liberation Movement-in-Opposition
SSBC	South Sudan Broadcasting Corporation
SSNDA	South Sudan National Democratic Alliance
SSPDF	South Sudan People's Defence Forces
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNMISS	UN Mission in South Sudan
UNSC	United Nations Security Council

Contents

Abstract.....	iii
CHAPTER ONE: INTRODUCTION	1
1.1 BACKGROUND OF THE STUDY	1
1.2 PROBLEM STATEMENT	6
1.3 AIM AND OBJECTIVES	7
1.3.1 Aim.....	7
1.3.2 Objectives	7
1.4. RESEARCH QUESTIONS.....	7
1.4.1 Main research question	7
1.4.2 Secondary research questions	7
1.5 RESEARCH METHODOLOGY	8
1.6 LITERATURE REVIEW	9
1.7. DEFINITION OF KEY TERMS	12
1.8 CHAPTER OUTLINE.....	13
CHAPTER TWO: A CRITICAL ANALYSIS OF THE LEGAL PROTECTION OF CHILDREN IN ARMED CONFLICT IN AFRICA UNDER INTERNATIONAL LAW: REGULATORY FRAMEWORK OVERVIEW	15
2.1 INTRODUCTION.....	15
2.2 STATE OBLIGATIONS.....	16
2.2.1 Democratic Republic of Congo	17
2.2.2 South Sudan.....	18
2.3 NATIONAL IMPLEMENTATION	18
2.3.1 Participation in hostilities	19
2.3.2 Detention and internment.....	19
2.3.3 Death penalty	19
2.3.4 Dissemination.....	20
2.4 HUMANITARIAN FRAMEWORKS PROTECTING RIGHTS OF CHILDREN IN ARMED CONFLICTS	20
2.5 HUMAN RIGHTS FRAMEWORK PROTECTING RIGHTS OF CHILDREN IN ARMED CONFLICT	22
2.5.1 Convention on the rights of the child (CRC)	22
2.5.2 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.....	22
2.5.3 Statute of the International Criminal Court (ICC)	23
2.5.4 The Convention on the Worst Forms of Child Labour 1999.....	24

2.6	AFRICAN REGIONAL FRAMEWORKS ON THE PROTECTION OF CHILDREN'S RIGHTS DURING ARMED CONFLICTS.....	25
2.6.1	African Charter on the Rights and Welfare of the Child	25
2.6.2	Model law on children affected by armed conflict in Africa	26
2.7	SUMMARY	27
CHAPTER THREE: OVERVIEW OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS CONCERNS FOR CHILDREN IN ARMED CONFLICT ZONES.....		28
3.1	INTRODUCTION.....	28
3.2	HUMANITARIAN CONCERNS	28
3.2.1	Vulnerable Children	29
3.2.2	Technical implications on ratifying and adopting provisions on special care and protection under international law	33
3.3	HUMAN RIGHTS CONCERNS.....	34
3.3.1	Classifying child victim of armed conflict	34
3.3.2	Child justice and access to justice concerns	36
3.4	SUMMARY.....	38
CHAPTER FOUR: THE IMPACT OF ARMED CONFLICT IN SOUTH SUDAN AND THE DEMOCRATIC REPUBLIC OF CONGO AND THE LEGAL FRAMEWORK.....		39
4.1	INTRODUCTION.....	39
4.2	THE ARMED CONFLICT SITUATION OF SOUTH SUDAN: IMPLICATIONS FOR CHILDREN	40
4.2.1	Killing of children	42
4.2.2	Displacement of Children	42
4.2.3	Child soldiers	43
4.2.4	Sexual violence.....	44
4.2.5	Ethnic cleansing	45
4.2.6	Child marriages	46
4.3	SOUTH SUDAN LEGISLATIVE DEVELOPMENTS TO ADDRESS THE SITUATION ...	46
4.4	HUMANITARIAN AND HUMAN RIGHTS PROTECTION RESPONSES AND CHALLENGES.....	47
4.4.1	Applicable law: South Sudan Critical Reflection	52
4.5	ARMED CONFLICT IN THE DEMOCRATIC REPUBLIC OF CONGO.....	54
4.5.1	Child soldiers	55
4.5.2	Sexual violence.....	55
4.5.3	Infringement on the right to education.....	56
4.5.4	Displacement of children and forced evictions	57

4.5.5	Killing, torture and acts of violence against of children	57
4.6	DRC LOCAL DEVELOPMENTS TO ADDRESS THE HUMAN RIGHTS AND HUMANITARIAN CONCERNS	58
4.6.1	Human rights and humanitarian protection responses and challenges	60
4.6.2	Applicable law: DRC obligation towards children	64
4.7	SUMMARY	66
	CHAPTER FIVE: SUMMARY, CONCLUSION, AND RECOMMENDATION	67
5.1	SUMMARY OF THE STUDY	67
5.2	CONCLUSIONS	69
5.3	RECOMMENDATIONS	70

CHAPTER 1: INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 BACKGROUND OF THE STUDY

According to the statistics, there has been a 34% increase in the number of children living in conflict zones since 2010 and a 170% rise in incidents of grave violations against children, as verified by the United Nations.¹ As of mid-2020, nearly 44,000 people were registered as missing across Africa, with children constituting 45% of these cases.² This statistic emphasizes the extensive scale of family separations due to armed conflicts. Of the ten worst conflict-affected countries with a high risk on a child, six are in Africa. This demonstrates an urgent need for the protection of children in situations of armed conflict across the continent. In view of the foregoing, Burundi, DR Congo, Ethiopia, Kenya, Rwanda, Sudan, and Uganda have confirmed participation in the non-international armed conflict. Without a doubt, the implications of armed conflict have had global repercussions, affecting communities across Africa. However, the aftermath has been particularly devastating in many African countries, where the consequences have been more profound and long-lasting.³

In other words, the adverse effects of armed conflicts on the global community involve the victims of the concomitant human rights violations, and the entire African region cannot be overstated.⁴ Further harm towards the global community includes the disintegration but not limited to the loss of generations of human capital, economic devastation, breeding of future rebels through the use of child soldiers, the proliferation

¹ Muzinge Chibomba, 'Protection of Children Affected by Armed Conflict in Africa' retrieved from <https://www.comesa.int/protection-of-children-affected-by-armed-conflict-in-africa/> (accessed on 21 January 2025).

² International Committee of the Red Cross, Africa: What happens when children find themselves in a conflict situation? Retrieved from https://www.icrc.org/en/document/africa-children-in-armed-conflict-situations?utm_source=chatgpt.com (accessed 17 April 2025).

³ Lisa Magarrell, 'Reparations for massive or widespread human rights violations: sorting out claims for reparations and the struggle for social justice' 2003 (22) Windsor YB Access Just, p. 1 at 21.

⁴ African Charter on Human and Peoples' Rights, 'Study on Transitional Justice and Human and Peoples' Rights in Africa' 2019, retrieved from <https://achpr.au.int/sites/default/files/files/2020-11/achprtransitionaljusticeeng.pdf> (accessed on 22 January 2025).

of arms and resulting implications for national security, societal disintegration, and erosion of community bonds, are but a few implications.⁵

Armed conflicts have led to massive displacement, hunger, and diseases, resulting in millions of people in need of humanitarian aid.⁶ In addition, armed conflicts have led to gross human rights violations and abuse, including sexual violence, child soldiering, and forced displacement.⁷ In this situation, children are likely to be exposed to at least six grave violations during armed conflict. These violations include killing or maiming of children, recruitment or use of child soldiers, rape and other forms of sexual violence against children, abduction of children, attacks against schools or hospitals and denial of humanitarian access to children.⁸ On the other hand, the violations of armed conflicts are identified due to their ability to be monitored and quantified, their egregious nature, and the severity of their consequences on the lives of children.⁹ Certainly, armed conflicts have far-reaching effects on continents, people, economies, and political stability. Therefore, addressing these conflicts requires a comprehensive approach that includes support for social and international cooperation.¹⁰

Further findings reveal that armed conflicts have the potential to result in indiscriminate attacks, recruitment and use of child soldiers, sexual violence, and forced displacement, which have severe implications for children's freedom and security.¹¹ Thus, children are exposed to direct violence, witnessing atrocities, and experiencing loss and trauma, which

⁵ African Charter on Human and Peoples' Rights 1979, arts 60 & 61, also see African Charter on the Rights and Welfare of the Child 1990, art 46, Protocol on the Establishment of an African Court on Human and Peoples' Rights 1998, art 7.

⁶ Thomas Pogge, 'World Poverty and Human Rights' 2012 (volume 1, issue 1) Ethics and International Affairs, p1 at 1.

⁷ Sandra Fredman, 'Providing Equality: Substantive equality and the positive duty to provide' 2005 (volume 21, issue no. 2) South African Journal on Human Rights Human Rights 21,p163 at 182.

⁸ United Nations: Office of the Special Representative of the Secretary-General for Children and Armed Conflict 'Annual Report of the Secretary-General on Children and Armed Conflict' Retrieved from <https://childrenandarmedconflict.un.org/document/annual-report-of-the-secretary-general-on-children-and-armed-conflict> (accessed on 21 January 2025).

⁹ ACRWC 1998, arts 5 & 16.

¹⁰ *Ibid.*

¹¹ United Nations International Children's Emergency Fund, 'How children have become frontline targets in armed conflicts' retrieved from <https://www.unicef.org/children-under-attack/six-grave-violations-against-children> (accessed on 24 January 2025).

often lead to physical injuries, disabilities, mental health disorders, and even death.¹² In addition, when essential necessities like healthcare, education, and social assistance are disrupted, they are even more vulnerable and impede their growth and opportunities.

In its resolutions, the United Nations Security Council undertook basic steps and measures to protect children's rights during armed conflict.¹³ Monitoring and Reporting mechanisms set up around the world use this framework to gather evidence of grave violations against children in reporting to the Council. According to Customary Rule 135 of International Humanitarian Law, several maxims underpin the modern laws of armed conflict, such as civilians, adults or children, being respected, non-combatants being protected, and unnecessary human suffering being avoided.¹⁴ These measures are articulated in Common Article 3 of the Geneva Conventions 1949, which requires, as a minimum standard, humane treatment for persons taking no active part in hostilities with a general protection covering children. In this case, children are also afforded specific protection laws through international humanitarian law, human rights law, and treaty and customary law.¹⁵ The jurisprudence of international courts and tribunals, and legal instruments illustrate this. For instance, the International Criminal Court (ICC) has addressed the recruitment and use of child soldiers in cases like *Prosecutor v. Thomas Lubanga Dyilo*,¹⁶ where Lubanga was convicted for enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities, regional human rights agreements and the resolutions of the United Nations General Assembly and Security Council are further sources underpinning the illegality of the Six Grave Violations against children in situations of armed conflict.

¹² *Ibid.*

¹³ United Nations 'Monitoring and Reporting on Grave Violations' retrieved from <https://childrenandarmedconflict.un.org/tools-for-action/monitoring-and-reporting/> (accessed on 12 May 2024).

¹⁴ Geneva Convention IV; art 3, 27-34 art. 75 AP I; art. 4, 13 AP II. See also the official International Committee of the Red Cross Commentary on the 4th Geneva Convention 1949: Oscar Uhler and Henri Coursier, Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary, ICRC, Geneva 1958.

¹⁵ American Convention on Human Rights, Organization of American States 1969 Humanitarian law, art. 77 AP I; art. 4 AP1977 Human rights law: art. 19, 'Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.'

¹⁶ *Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06, 14 March 2012 para [42] (hereinafter referred to as the *Dyilo* case).

Another measure introduced includes the Paris Principles, a set of guidelines for the protection and reintegration of children associated with armed forces or armed groups, adopted in 2007.¹⁷ The genesis of the Paris Principles can be traced back to the 1990s when the international community recognized the need to address child soldiers.¹⁸ In 2007, the Paris Principles were adopted by the UN General Assembly, providing a comprehensive framework for the protection and reintegration of children associated with armed forces or armed groups.

Article 5 of the African Charter prohibits torture, cruel, inhuman, or degrading treatment regarding armed conflicts and the protection of civilians, including children; this instrument does not have a specific article equivalent to Article 3 of the Geneva Conventions. However, the Charter addresses the right to life, dignity, and protection from violence and discrimination, which are relevant in armed conflicts. Common article 3 of the Geneva Conventions also provides that persons taking no active part in the hostilities shall, in all circumstances, be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.¹⁹ Armed conflicts have, for the longest period, cast a dark shadow over the African continent, wreaking havoc on the lives of its most vulnerable citizens, the children.²⁰ This study seeks to delve into the harrowing consequences of armed conflict on the rights of children in Africa. It focuses on the case studies of Sudan and the Democratic Republic of Congo (DRC). While it is evident that armed conflict affects children's rights in multifaceted ways across the continent, this study narrowed its scope to the lessons learned from these two jurisdictions. This demonstrates that the African continent has been marred by numerous armed conflicts, each with its unique dynamics and implications for children's rights.

The African Charter on the Rights and Welfare of the Child (ACRWC), adopted in 1990, also addresses the issue of child soldiers. Article 22 of the ACRWC states that 'States Parties shall take all necessary measures to ensure that no child shall take a direct part

¹⁷ Convention on the Rights of the Child 1989, art 2.

¹⁸ *Ibid*, art 3 (1).

¹⁹ Geneva Conventions 1949, Common art 3.

²⁰ United Nations, Report of the SRSG for Children and Armed Conflict to the Human Rights Council, 'Children in Armed Conflict Face Multidimensional Risks, Vulnerabilities, Concerted Action Needed as We Work on the Next 25-Years of the CAAC Mandate', 2023.

in hostilities and refrain in particular from recruiting any child'.²¹ The Paris Principles were adopted under the ACRWC through regional consultation and consensus-building among African states, civil society organizations, and international experts. The Paris Principles were adopted to operationalize Article 22 of the ACRWC and provide a practical framework for the protection and reintegration of child soldiers in Africa.

This study narrowed its focus to the Sudanese Civil War and the Congolese Civil War for several reasons. First, both conflicts have had protracted and devastating impacts on the lives of children, making them pertinent case studies for analysis. Secondly, the Sudanese Civil War represents a conflict of identity and religion.²² Lastly, Sudan and the Democratic Republic of Congo (DRC) have witnessed different levels of intervention through international humanitarian aid and from human rights organizations. This provides an opportunity for evaluation of the effectiveness of these interventions in distinct contexts.²³ Both South Sudan and the DRC have ratified international conventions such as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,²⁴ Convention on the Rights of the Child and implemented national policies to protect children's rights during conflicts.²⁵

This study examined the adequacy and effectiveness of Africa's International Humanitarian Law (IHL) mechanisms and humanitarian interventions within the context of armed conflict. It placed primary emphasis on the application of International

²¹ Canadian Human Rights Commission, 'Survey of National Human Rights Institutions art 33.2 of the Convention on the Rights of Persons with Disabilities', 2021.

²² The Center for Preventive Action, 'Conflict in the Democratic Republic of Congo', retrieved from <https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo> (accessed on May 14 2024).

²³ Erin Bijl, Welmoet Wels, and Wilbert van der Zeijden "On Civilian Harm: Examining the complex negative effects of violent conflict on the lives of civilians' Civilian Harm'book launch. PAX, 2021, p 1 at 72.

²⁴ United Nations General Assembly Session 54 Resolution 263, Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography A/RES/54/263 13 June 2024. https://treaties.un.org/doc/source/docs/A_Res_54_263-E.pdf.incomplete

²⁵ United Nations, Andreea Campeanu, 'UN lauds South Sudan as country ratifies landmark Child Rights Treaty'2015 retrieve from <https://news.un.org/en/story/2015/05/497732#:~:text=The%20United%20Nations%20has%20hailed%20South%20Sudan%E2%80%99s%20ratification,protecting%20and%20promoting%20the%20rights%20of%20all%20children>, (accessed on 30 June 2024).

Humanitarian Law (IHL) as the *lex specialis*, while also considering the complementary role of international human rights law. The analysis further explored the practical impact of international initiatives, including United Nations peace operations such as Disarmament, Demobilisation, and Reintegration (DDR) programs. By narrowing the focus to these two case studies, this study aims to dissect the unique challenges and opportunities that emerge in the realm of children's rights protection amidst armed conflict. In doing so, it hopes to unearth valuable insights and lessons that can be applied across the continent to ameliorate the plight of children affected by armed conflict.²⁶ This study is pertinent in providing a comprehensive understanding of the issues at hand and contributing to the ongoing discourse on the development and enhancement of international humanitarian law and human rights instruments to better protect the rights of children in Africa's turbulent landscape.²⁷

1.2 PROBLEM STATEMENT

The major issue is that several African countries that are affected by armed conflict do not have adequate legal mechanisms to protect children, because there is uncertainty concerning the application of relevant legal interventions where there is a violation of international human rights. As a result, there are no adequate protective measures in place to protect children in armed conflict, thus creating a gap in law. To advance the goal of protecting children during armed conflict and ending the impunity of perpetrators, the United Nations Security Council (UNSC), in its resolution²⁸ established a Working Group to address its effect on Children's rights. Additionally, the United Nations introduced a Monitoring and Reporting Mechanism (MRM) to systematically monitor, document, and report on heinous abuses of the rights of children in situations of armed conflict.²⁹ Therefore, this study focuses on addressing the implications of armed conflict on the rights of children in Africa.

Sassòli, Marco, 'The Implementation of International Humanitarian Law': Current and Inherent Challenges. In: Yearbook of international humanitarian law, 2007 (vol. 10) p 45 at 55.

²⁷ African Union, 'African Charter on the Rights and Welfare of the Child,' available at: <https://au.in/en/treaties/african-charter-rights-and-welfare-child> (accessed on 16 October 2023).

²⁸ UN Security Council in UNSC, Resolution 1612 of 2005.

²⁹ *Ibid.*

1.3 AIM AND OBJECTIVES

1.3.1 Aim

This study aims to study the adequacy of international law's legal mechanisms to protect children's rights during the armed conflict in Africa, drawing insights and lessons from the experiences of South Sudan and the Democratic Republic of Congo.

1.3.2 Objectives

- (a) To critically analyse the documented plight of children in armed conflicts across Africa, focusing on the experiences in South Sudan and the Democratic Republic of Congo (DRC).
- (b) To evaluate the extent of protection afforded to children under international humanitarian law, emphasizing its application in African conflict zones.
- (c) To examine the effectiveness and limitations of international humanitarian law and international human rights law in protecting children in the conflicts in South Sudan and the Democratic Republic of Congo.
- (d) To propose policy recommendations and legal reforms that could enhance the protection of children in armed conflicts, drawing from findings from the situations in South Sudan and the DRC.

1.4. RESEARCH QUESTIONS

1.4.1 Main research question

- a) Is the legal protection of children in armed conflict in Africa under IHL and IHRL adequate?

1.4.2 Secondary research questions

- a) To what extent are the humanitarian and human rights of children protected during armed conflicts in Africa?
- b) How have international legal frameworks been applied in South Sudan and the Democratic Republic of Congo to protect children in armed conflict?

- c) How can international law be strengthened to better protect children in armed conflicts, considering the lessons from South Sudan and the Democratic Republic of Congo?

1.5 RESEARCH METHODOLOGY

Research methodology is the process through which research is conducted. It seeks to inform the reader about the tools used to conduct the research, why they are relevant to the study, how the problem has been described, and what research method has been applied or is to be applied. It explains why one approach to a study is adopted over the other.³⁰

This study adopted the doctrinal research method and infuses it with comparative study. Doctrinal research methods are used to develop legal conclusions through the analysis of court decisions, legislation, doctrines, policies, and other authoritative instruments³¹. Through a desktop mode, doctrinal studies efficiently uncover unknown facts through the review of available legal instruments.

The purpose of adopting a comparative study in this study is to draw lessons from other countries, such as South Sudan and the Democratic Republic of Congo. The questions relating to this topic can be quickly answered by a synopsis desktop search of information rather than the empirical approach where fieldwork is a requirement. Thus the doctrinal method is the perfect approach to achieve the objective of this research. The study utilized primary sources of law such as case law, legislation, conventions, international and regional instruments, other administrative rules, and regulations. The study also utilised secondary sources of law, which include journal articles, books, and other authoritative sources. The study also adopted a case study approach by using DRC and Sudan as purposefully selected case studies for pinpointing major violations of children's rights during the armed conflict in an African context and assessing the intervention and utility of any available African legal mechanisms in these case studies. This research perspective allowed the researcher to make proper suggestions for regulating a specific

³⁰ Mimansha Patel & Patel Nitin, 'Exploring research methodology' 2019 (vol no.6 issue 6) International Journal of Research and Review p 48 at 55.

³¹ Devadasan Pradeep, 'Legal Research- Descriptive Analysis on Doctrinal Methodology., International Journal of Management, 2019 (vol 4) Technology, and Social Sciences' (IJMTS), p 95 at 103.

issue and provide guidance for future research.³² This study seeks to investigate the legal and policy framework for safeguarding the freedom of security of children during armed conflict-related violations.

1.6 LITERATURE REVIEW

Smith investigated approaches towards armed conflicts globally.³³ This included describing the underlying causes and nature of armed conflicts and the implications towards humanitarian and human rights specifically for children. The findings shared insights about the complexity of armed conflicts and how children's rights are grossly affected and infringed. This paves the way for more studies to explore other legal mechanisms to address the humanitarian and human rights threat. In addition, further studies could examine the legal framework and developments about armed conflict from a global landscape, narrowing it down to the African context to suit the context of this study. As part of addressing pertinent issues and trends in the legal framework, this study could recommend feasible preventative legal mechanisms in addressing international humanitarian law and human rights interests of children during armed conflict within the Africa context. This study underscores the urgent need for comprehensive efforts to address the consequences of war crimes on children's freedom and security. These efforts should include the implementation of international legal frameworks, such as the Convention on the Rights of the Child and the Rome Statute of the International Criminal Court, to hold perpetrators accountable and provide justice for the victims.³⁴

According to the Stockholm International Peace Research Institute's (SIPRI) 2000 Yearbook, Africa is the most conflict-ridden region of the world and the region in which the number of armed conflicts is on the increase.³⁵ From the Democratic Republic of Congo (DRC) to Sudan, Somalia, Uganda, Rwanda, and Sierra Leone, armed conflicts

³² *Ibid.*

³³ Rhona KM Smith, 'International Human Rights Law' (Oxford University Press 2022), p 1 at 120.

³⁴ Sylvie Langlaude, 'The Right of the Child to Religious Freedom in International Law' 2007, Nijhoff Publishers p 63 at 9.

³⁵ Michael Rosenthal, *World Armaments and Disarmament: SIPRI Yearbook*, 1974. Stockholm International Peace Research Institute (Cambridge, Mass.: The MIT Press, and Stockholm: Almqvist and Wiksell, 1974. Pp. 526. Sw. kr. 75.00.) 1977, vol no. 4 American Political Science Review 71 p 3 at 545.

have become a common denominator of statehood, as peace and security remain elusive.

In its report to the United Nations High Commissioner for Refugees, DRC noted that it had undertaken to implement legislative, judiciary, and constitutional provisions on the basis of ratified instruments such as the CRC and its Optional Protocols.³⁶ According to Nanima,³⁷ at least one in every four African children lives in an armed conflict zone. Six of the ten worst countries for children to grow in or live in are in Africa, and these are the Central African Republic, the DRC, Mali, Nigeria, Somalia, and South Sudan. This shows that the selected case study countries (Sudan and DRC) are already on statistical indexes for being the worst child environments and are scourged by armed conflict. In Addition, Nanima notes that the crimes and violations that occur during armed conflict, including violations of children and their rights, are grounds that justify interrogating the effect of armed conflict.³⁸ While Nagamine focuses on interrogating economic crimes in an armed conflict context, the literature supports the basis of this study.³⁹ However, this study interrogates the occurrence of violations of children's rights and the adequacy of legal mechanisms to protect children from such violations.

According to Boekhout, armed conflict is generally an outcome of the tenacity and resourcefulness of opposing armed groups who assume *de facto* control and can, as a result, benefit from such control.⁴⁰ This aspect is recognized as the first issue due to how most places that experience armed conflict are characterized by poverty, and place victims at the mercy of the armed groups.⁴¹ Therefore, children are inherently a more vulnerable group part of victims, and the perpetrators can exploit, commercialize and

³⁶ DRC 'Thousands of Children Face Escalating Violence and Exploitation Amid Intensifying Conflict' Report on children in armed conflict: (CRC/C/OPAC/COD/1), retrieved from <https://childrenandarmedconflict.un.org/2024/11/drc-thousands-of-children-face-escalating-violence-and-exploitation-amid-intensifying-conflict/> (accessed 1on 0 January 2025).

³⁷ Robert Doya Nanima 'An evaluation of the adequacy of the African Charter on the Rights of the Child concerning economic crimes in armed conflict 2020(vol 4 (1)) Journal of Anti-Corruption Law 58 at 58.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Tim Boekhout van Solinge 'The illegal exploitation of natural resources by Letizia Paoli (ed), *The Oxford Handbook of Crime and Criminal Justice Oxford* (Oxford University Press 2014): p1 at 4.

⁴¹ *Ibid.*

involve victims as semi-autonomous participants or through forced labour.⁴² In this context, children are forced to either be warring participants, forced to work in hazardous environments, and, where they indicate an inability to do so, are subjected to abuse in the forms of sexual abuse and violence.⁴³ In this regard, Boekhout's assertions are of significant relevance to this study as they define some of the violations and abuses that children face in armed conflict times. The main difference between Boekhout and this study is that this study pursues a critical inquiry into whether Africa possesses effective legal mechanisms to protect children from these violations and abuses, and if not, then draw recommendations on how children's rights can be protected under armed conflict circumstances.

This is relevant to this study as it indicates the vulnerabilities and violations that children are exposed to as an outcome of armed conflict. The need for immediate response or protection mechanisms becomes more imminent, considering children are a vulnerable group. The vulnerability of children is underscored in several instruments; for instance, Protocol II Additional to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts in Part II, states that children shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care.⁴⁴

The UN Security Council Report on Armed Conflict 2018 indicates that armed conflict-related violations of children take away the protection given to children by families, society, and law, resulting in victimization and exploitation in the forms of both targets and perpetrators of violence.⁴⁵ Additionally, the report on the armed conflict, which, among other armed conflicts, reported on the impact of armed conflict in the DRC in 2017. The report also noted some partnership and preventative mechanisms that can be undertaken to combat the violation of children in armed conflict.⁴⁶ They note that preventing violations

⁴² *Ibid* p 2.

⁴³ *Ibid* p 4.

⁴⁴ The Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts states in Part II, art 4 (3) (a).

⁴⁵ UN Security Council 2018 Report on Armed Conflict at the 72nd session of the General Assembly "Promotion and protection of the rights of children: promotion and protection of the rights of children" (A/72/865-S/2018/465) p 1 at 3.

⁴⁶ *Ibid*.

against children affected by armed conflict should be a primary focus of the international community.⁴⁷ The failure to do this is regarded as not only exposing children to further detrimental circumstances but also exacerbating the fighting between the belligerent⁴⁸ These factors are essential in this study to further draw the need for Africa to be actively involved in resolving armed conflict without only waiting for the UN Security Council or invocation of UN Conventions or UN Security Council measures. In other words, member states and neighbouring states are urged to enter bilateral agreements that result in frameworks for the protection of children during armed conflict.⁴⁹

Coomaraswamy⁵⁰ notes that children are seriously affected by armed conflict as both victims target functional institutions of justice, with armed groups fighting to recruit as well as disrupt all forms of functional justice mechanisms. Therefore, this places the African child affected by armed conflict in a more vulnerable position, which further begs the question of the adequacy of African mechanisms for responding to and addressing violations of children during armed conflict.

According to Harvey, some of the international instruments have weaknesses that make it challenging to regulate and safeguard children's protection in armed conflict.⁵¹ The inadequacy in respect of Africa's mechanisms to enhance and censure protection of children during armed conflict becomes more imminent in the context where it can be shown that the inadequacies are not only in African mechanisms but also in the available international mechanisms which African instruments refer to and incorporate regionally.

1.7. DEFINITION OF KEY TERMS

⁴⁷ *Ibid* p 5.

⁴⁸ *Ibid*.

⁴⁹ *Ibid* p 1.

⁵⁰ Radhika Coomaraswamy, 'Protecting Children in Situations of Armed Conflict: Interview with Radhika Coomaraswamy' 2012(Journal of Human Rights Practice (vol 4) p 155 at 159.

⁵¹ Rachel Harvey, *Children and armed conflict: A guide to International Humanitarian and Human Rights Law* (International Bureau for Rights 2010) p 135 at 140.

Armed conflict refers to organized and prolonged violence involving armed forces or groups, which may be between states (international armed conflict) or within a state (non-international armed conflict). These conflicts are characterized by weapons, sustained combat, and significant casualties among the involved parties, which often include military personnel and, in many cases, civilians.

Children: In the context of armed conflict, children are defined as individuals under the age of 18 who are vulnerable to the adverse effects of war and violence.

International Humanitarian Law (IHL) is a set of rules that seek to limit the effects of armed conflict, particularly by protecting individuals who are not participating in the hostilities, including civilians and children, and by restricting the means and methods of warfare.

International Human Rights Law (IHRL) consists of a set of international rules, established by treaty or custom, that recognize and protect the dignity and rights of all human beings, including children, at all times, whether in peace or during armed conflict. While IHL applies specifically during armed conflicts, IHRL is always applicable, providing additional layers of protection.

1.8 CHAPTER OUTLINE

Chapter One: Introduction

This chapter outlines the background of the study and problem statement and shading light on what other scholars have to say about the literature on the topic.

Chapter two: The adequacy of protection of children in armed conflict in Africa under international law

This chapter builds a regulatory framework of how children's interests and rights are regulated and provided under International Humanitarian law and the human rights law system, among other mechanisms. This is to establish that a regulatory system is in place at various levels.

Chapter three: Overview of humanitarian and human rights concerns for children in armed conflict zones

This chapter offers a focused critique of selected issues that hinder the effective protection of children in armed conflict. These issues tend to be more theoretical and cross the legal and ethical lines simultaneously such as the concerns regarding models of child justice during armed conflict, classification of child victims and non-victims, technical complexities imminent across international treaty law that requires ratification for binding effect as compared to other forms of international law (customary and declarations). The chapter exposes some key nuances and grey areas that have become the subject of concern over International Human Rights Law and International Humanitarian Law as effective response and protection mechanisms for children in an armed conflict context.

Chapter four: The impact of armed conflict in South Sudan and the Democratic Republic of Congo and the legal framework

This chapter provides a comprehensive analysis of the armed conflict situation in DRC and South Sudan, defining the key challenges of children in these two contexts. The chapter further looks at the developments in the deployment of international, regional, and national frameworks as response mechanisms and the challenges imminent in this regard to provide an overall critical assessment of the effectiveness of the mechanisms to remedy the plight of children in this regard.

Chapter five: recommendations and conclusion

This chapter draws recommendations and concludes the study.

CHAPTER 2

A CRITICAL ANALYSIS OF THE LEGAL PROTECTION OF CHILDREN IN ARMED CONFLICT IN AFRICA UNDER INTERNATIONAL LAW: REGULATORY FRAMEWORK OVERVIEW

2.1 INTRODUCTION

This chapter explores the legal framework and developments geared toward protecting children's rights in an armed conflict context. International humanitarian law provides broad protection for children during armed conflict. The protection of children in armed conflict remains a critical concern for many African nations. With countless instances of children suffering unimaginable hardships due to ongoing conflicts, the continent's commitment to international legal standards becomes paramount. This chapter delves into the various international instruments designed to safeguard children in such dire situations, focusing on the African Charter on the Rights and Welfare of the Child (ACRWC) adopted by the Organization of African Unity (now African Union) in 1990 and entered into force in 1999. Every African country except South Sudan and Somalia has ratified it. The UN Convention on the Rights of the Child (CRC) and the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), to which all African countries are signatories, showcase their commitment to protecting children's rights. It examines the implications for African countries, highlighting the responsibilities and benefits for signatories compared to non-signatories. This chapter sets the stage for a deeper understanding of how legal mechanisms can be strengthened to offer more comprehensive protection to the most vulnerable members of society amid conflict by exploring these regulatory frameworks.

Signatory countries must align their national legal frameworks with these instruments.⁵² This involves enacting laws and regulations that protect children's rights and ensuring their implementation and enforcement. Countries are obliged to report periodically on

⁵² African Union, 'The Africa Platform on Children Affected by Armed Conflict welcomes the African Union's adoption of two significant policies on child protection' 2022, retrieved from <https://www.peaceau.org/en/article/the-africa-platform-on-children-affected-by-armed-conflict-welcomes-the-african-union-s-adoption-of-two-significant-policies-on-child-protection>, (accessed on 15 August 2024).

their progress.⁵³ The African Committee of Experts on the Rights and Welfare of the Child and the UN Committee on the Rights of the Child review these reports and provide recommendations. Signing these instruments often leads to international support and cooperation, both technical and financial, to help implement and enforce child protection measures.

African countries must become signatories to these international instruments to effectively protect children in armed conflict, align their national laws with international standards, and ensure robust enforcement mechanisms. This commitment enhances the protection of children's rights and contributes to broader peace and security across the region. In other words, children benefit from the general protection for civilians not participating in the hostilities. The civilians not taking part in the armed conflict are guaranteed humane treatment and are covered by international law⁵⁴ on the conduct of hostilities. Given the vulnerability of children, the Geneva Conventions of 1949,⁵⁵ and their Additional Protocols of 1977 (API and APII)⁵⁶ lay down a series of rules that provide special protection for children. Children who take direct part in hostilities do not lose that special protection. The Additional Protocols, the 1989 Convention on the Rights of the Child,⁵⁷ and its recent Optional Protocol also set limits on children's participation in hostilities.⁵⁸ In the African region, the African Charter on the Rights and Welfare of a Child protects children in armed conflicts.

2.2 STATE OBLIGATION

Before we discuss international humanitarian law and international human rights law on the protection of children in armed conflicts, it is essential to first establish whether states have an obligation to uphold these international rules. This subsection discusses the

⁵³ Robert Doya Nanima, Resolution on the Appointment of a Special Rapporteur Children and Armed Conflict, retrieved from <https://www.acerwc.africa/en/special-mechanisms/thematic-areas/special-rapporteur-children-and-armed-conflict> (accessed on 21 January 2025).

⁵⁴ *Ibid.*

⁵⁵ Geneva Conventions, 1949.

⁵⁶ Geneva Conventions Protocol Additional to the of 12 August 1949: and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I) and (Protocol II) 1977.

⁵⁷ Convention on the Rights of the Child 1989.

⁵⁸ *Ibid.*

obligation of member states to the international humanitarian law and international human rights legal framework.

2.2.1 Democratic Republic of Congo

The Democratic Republic of the Congo (DRC) has endured decades of armed conflict involving various armed groups and government forces. In such contexts, the application of International Humanitarian Law (IHL) is crucial for protecting children and other vulnerable populations.

The 1949 Geneva Conventions and their 1977 Additional Protocols form the cornerstone of IHL, providing comprehensive protections for individuals not participating in hostilities, including children. Specifically, Article 77 of Additional Protocol I prohibits the recruitment and use of children under the age of 15 in hostilities, recognizing such acts as war crimes.⁵⁹ Furthermore, the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), to which the DRC is a party, set 18 as the minimum age for compulsory recruitment and direct participation in hostilities.⁶⁰ These instruments obligate the DRC to take all feasible measures to prevent the involvement of children in armed conflict and to ensure their protection and care during such situations.

Additionally, United Nations Security Council Resolution 1261 of 1999 explicitly condemns the targeting of children in armed conflicts, including their recruitment and use as soldiers.⁶¹ The resolution calls upon all parties to comply with their obligations under international law, particularly the Geneva Conventions and the CRC, to ensure the protection and welfare of children during armed conflicts.

⁵⁹ Protocol I, 1977. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I). United Nations Treaty Series 1125, (17512).

⁶⁰ Wikipedia, Children in the military; retrieved from https://en.wikipedia.org/wiki/Children_in_the_military?utm_source=chatgpt.com (accessed 17 April 2025).

⁶¹ Wikipedia, United Nations Security Council Resolution 1261 retrieved from https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_1261?utm_source=chatgpt.com (accessed 17 April 2025).

2.2.2 South Sudan

South Sudan has experienced ongoing conflict since its independence in 2011, with significant violations of IHL. Geneva Conventions 1949 and Additional Protocols 1977, being one of the key instruments, require the provision of protection for those not participating in hostilities, including children.⁶² In other words, South Sudan has an obligation to ensure the humane treatment of children, prevent their recruitment into the armed forces, and protect them from the effects of hostilities. Hague Conventions focus on the conduct of hostilities and the means and methods of warfare, emphasizing that South Sudan must adhere to limitations on the use of weapons and military tactics to minimize harm to children. International Human Rights Law (IHRL) remains applicable in times of peace and conflict,⁶³ ensuring the protection of children's rights. Lastly, the Convention on the Rights of the Child 1989 focuses specifically on children's rights. It implies that South Sudan must ensure the survival, development, and participation of children and protect them from violence, exploitation, and abuse.

2.3 NATIONAL IMPLEMENTATION

Despite the rules laid down by international law, thousands of children are nevertheless taking an active part in hostilities and are themselves the innocent victims of those events. States have the primary responsibility to put an end to this situation. Regarding the Vienna Convention on the law on treaties and international law, a state must accede to, ratify, or be a signatory to an international instrument for the instrument to be binding on the state concerned.⁶⁴ In this regard, states are required to ratify the treaties and instruments protecting children in armed conflict and thereafter to take national measures adapted to their legal systems to implement these treaties. Whether in legislative or other form, these measures are intended to enable States to respect and ensure respect for the rules laid down by the treaties.

⁶² *Ibid.*

⁶³ International Committee of the Red Cross (ICRC). ; Geneva Conventions and Additional Protocols'. ICRC official retrieved from: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0173.pdf (accessed on 24 August 2024).

⁶⁴ United Nations, Vienna Convention on the Law of Treaties 1969, Treaty Series, (vol 1155) retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (accessed on 22 January 2025).

2.3.1 Participation in hostilities

A State bound by the Optional Protocol to the Convention on the Rights of the Child should take legislative measures prohibiting and punishing both compulsory recruitment into the armed forces of children under 18 years of age.⁶⁵ States Party to the Convention on the Rights of the Child should take legislative measures prohibiting the conscription or enlistment in its armed forces of children under 15,⁶⁶ and measures ensuring that priority in recruitment is given to the oldest among those aged between 15 and 18. States Party to APII shall take legislative measures prohibiting the recruitment of children under 15 and any participation by them in internal conflicts.⁶⁷ To take advantage of the principle of complementarity, the States party to the ICC Statute should ensure that their national criminal legislation makes it possible to prosecute persons who have recruited children under 15 years of age or who have used children as active participants in hostilities.⁶⁸

2.3.2 Detention and internment

States party to the 1977 Additional Protocols should take legislative or other measures to ensure that any child under 15 years of age who is arrested, detained or interned for reasons relating to conflict enjoys the special protection provided by international humanitarian law.⁶⁹

2.3.3 Death penalty

The States party to GCIV and the Additional Protocols should take legislative measures under penal and military law to prohibit the pronouncement or execution of a death sentence against anyone aged less than 18 years at the time of the offense when the offense is related to an armed conflict.⁷⁰

⁶⁵ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000, arts 2 & 6.

⁶⁶ United Nations General Assembly, CRC1989, art 38.

⁶⁷ Protocol Additional to the Geneva Conventions of 1949 & relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977, art 4 (3).

⁶⁸ United Nations. Rome Statute of the II ICC, Treaty Series, 1998 (vol 2187), p. 3. retrieved from: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (accessed on 13 December 2024), Court Article 8 (2) (b) (xxxvi) and e (vii).

⁶⁹ Note 62, Protocol II 1977, Art. 77, para. 3; API and Art. 4, para. 3d APII.

⁷⁰ *Ibid.*

2.3.4 Dissemination

A large-scale effort to promote knowledge of and compliance with international humanitarian law is required to ensure true respect for children. States are legally obliged to engage in dissemination activities. Thus, States should include child-specific protection in peacetime training and exercises at all levels of the armed and national security forces. Likewise, consideration should be given to introducing this subject into the curriculum of universities and specialized institutions, as well as organizing campaigns to raise awareness among the public, particularly among children and adolescents.⁷¹

2.4 HUMANITARIAN FRAMEWORKS PROTECTING RIGHTS OF CHILDREN IN ARMED CONFLICTS

This section explores international humanitarian law on protecting children from participating in hostilities/armed conflicts. International human rights law and international humanitarian law share the goal of preserving the dignity and humanity of all, though IHL and international human rights law are complementary bodies of international law that share some of the same aims. Both IHL and human rights law strive to protect the lives, health, and dignity of individuals from different angles, which is the essence of some of the rules is similar.

Although IHL and human rights law prohibit torture or cruel treatment, prescribe basic rights for persons subject to the criminal process, prohibit discrimination, contain provisions for the protection of women and children, and regulate aspects of the right to food and health.⁷² However, there are important differences between them: their origins, the scope of their application, and the bodies that implement them. While IHL applies exclusively in armed conflict, human rights law applies at all times such as in peacetime and during armed conflict. However, unlike IHL, some human rights treaties permit

⁷¹ Christela Molima, 'Narrowing the Gap in the Access to Justice for Child Victims in Post-conflict Societies: An Analysis Stemming from the Construction of Child Soldiers in International Law and Policy' 2023 (vol 17) The International Journal of Transitional Justice p 1 at 2.

ICCR, 'What is the difference between IHL and human rights law', retrieved from <https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law> (accessed on 22 January 2025).

governments to derogate from certain obligations during public emergencies that threaten the life of the nation.

In essence, IHL binds all parties to an armed conflict and thus establishes an equality of rights and obligations between the State and the non-State sides for the benefit of everyone who may be affected by their conduct.⁷³ Human rights law explicitly governs the relationship between a State and persons who are on its territory and/or subject to its jurisdiction, laying out the obligations of States vis à vis individuals across a wide spectrum of conduct.

Over the years, the General Assembly, the Commission on Human Rights, and, more recently, the Human Rights Council have considered that, in armed conflict, parties to the conflict have legally binding obligations concerning the rights of persons affected by the conflict.⁷⁴ Although different in scope, international human rights law and international humanitarian law offer a series of protections to persons in armed conflict, whether civilians, persons who are no longer participating directly in hostilities, or active participants in the conflict. International Humanitarian Law (IHL) and International Human Rights Law (IHRL) as recognized by international and regional courts, as well as by United Nations organs, both bodies of law apply to situations of armed conflict and provide complementary and mutually reinforcing protection relevant to children.⁷⁵

Customary International Humanitarian Law provides that children affected by armed conflict are entitled to special respect and protection in situations of both international and non-international armed conflict.⁷⁶ This obligation is reflected in the rules of the Geneva Conventions and their Additional Protocols that articulate specific measures for treating children including the State practice.⁷⁷

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ United Nations, 'Legal protection of Human Rights in armed conflict' 2011, retrieved from <https://digitallibrary.un.org/record/717182?v=pdf>, (accessed 29 August 2024)1 at p 1.

⁷⁶ Jean-Marie Henckaerts *Customary International Humanitarian Law: Volume I: Rules* (Cambridge University Press 2005) p 175 at 190.

⁷⁷ Ahmed Al-Dawoody, & Vanessa Murphy. 'International humanitarian law, Islamic law and the protection of children in armed conflict' 2019 (vol 101(911) *International Review of the Red Cross* 551 at 556.

2.5 HUMAN RIGHTS FRAMEWORK PROTECTING RIGHTS OF CHILDREN IN ARMED CONFLICT

2.5.1 Convention on the rights of the child (CRC)

Adopted by the UN General Assembly on 20 November 1989 and entered into force on 2 September 1990, defines a child as any person under the age of 18.⁷⁸ However, article 38 uses the lower age of 15 as the minimum for recruitment or lawful participation in armed conflict,⁷⁹ yet in accordance with other provisions of IHL.

This treaty, which has been universally ratified, covers all the child's fundamental rights. Article 38 extends the field of application of Article 77 API to non-international armed conflict.⁸⁰ Article 38 urges States Parties to take all feasible measures to ensure that those aged less than 15 years do not take a direct part in hostilities and that priority be given in recruitment to the oldest of those aged between 15 and 18.⁸¹ It falls short of the ban on direct or indirect participation laid down by APII.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict⁸² was drafted to increase the minimum age set out in the previous Convention. It raises the minimum age for compulsory and forced recruitment into the armed forces to 18 years. It also exhorts armed groups not to recruit or use children under the age of 18 and requires State Parties to take all feasible measures to criminalize such practices.⁸³ This protocol is detailed below.

2.5.2 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted on 25 May 2000, strengthens protection for children in armed conflict.⁸⁴ In terms of the Protocol, the States Parties must take all feasible

⁷⁸ Convention on the rights of the child 1989.

⁷⁹ *Ibid*, art 38.

⁸⁰ *Ibid*.

⁸¹ *Ibid*.

⁸² Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002.

⁸³ *Ibid*, art 4(1).

⁸⁴ *Ibid*.

measures to ensure that members of their armed forces who have not reached the age of 18 years do not take direct part in hostilities;⁸⁵ compulsory recruitment into the armed forces of persons under 18 years of age is prohibited.⁸⁶ In other words, the States Parties shall raise the minimum age for voluntary recruitment from 15 years.⁸⁷ This rule does not apply to military academies;⁸⁸ armed groups distinct from the national armed forces should not, under any circumstances, recruit (whether on a compulsory or voluntary basis) or use in hostilities persons under the age of 18 years, and the States Parties must take legal measures to prohibit and criminalize such practices.⁸⁹

2.5.3 Statute of the International Criminal Court (ICC)

The Statute, adopted in Rome on 17 July 1998, defines the involvement of children under the age of 15 in armed conflict as a war crime falling within the Court's jurisdiction.⁹⁰ This relates to the recruitment and use of children in an international armed conflict or into the national armed forces or other armed groups during a non-international armed conflict.⁹¹ According to the principle of complementarity, the Court has jurisdiction in situations where a State is unable or unwilling to prosecute. To take advantage of this principle and ensure national repression, States should adopt legislation enabling them to prosecute the perpetrators of such crimes.

The Rome Statute for the ICC, which serves as a powerful tool that considerably reinforces advocacy for children targeted amid armed conflict⁹² outlaws as a war crime is the act of conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.⁹³ In the language of the Rome Statute, such an act constitutes one of the other serious violations of the laws and

⁸⁵ OPAC, art 1.

⁸⁶ *Ibid*, art 2.

⁸⁷ *Ibid*.

⁸⁸ *Ibid*, art 3.

⁸⁹ *Ibid*, art 4.

⁹⁰ Rome Statute for the International Criminal Court 1998, art 8, para 2b [xxvi].

⁹¹ *Ibid*, para 2e [vii].

⁹² *Ibid*.

⁹³ Rome Statute for the ICC, art 8(e) (vii).

customs applicable in armed conflicts not of an international character within the established framework of international law.⁹⁴

Rape and other acts of sexual violence against civilians have been prosecuted in the ad-hoc criminal tribunals established to punish the perpetrators of major crimes in several conflicts. In the cases of *Rwandwa v Akayesu* and alternatively *Musema*.⁹⁵ In the cases of the former Yugoslavia, the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted individuals solely on charges of sexual violence for the first time in history. In *Prosecutor v. Furundžija*⁹⁶ and *Prosecutor v. Kunarac, Kovač, and Vuković*, the accused were found guilty of rape, torture, and enslavement. These rulings reinforced that sexual violence, including rape and sexual enslavement, constitutes a serious violation of international law and can be prosecuted independently as war crimes and crimes against humanity.⁹⁷

More recently, the Special Court for Sierra Leone (SCSL) expanded legal recognition of gender-based crimes by establishing that forced marriage is also an offense under international law. In the AFRC case *Prosecutor v. Brima, Kamara, and Kanu*,⁹⁸ the SCSL ruled that forced marriage is a distinct crime against humanity, separate from sexual slavery or rape, because it imposes a marital status that leads to prolonged enslavement and abuse. This ruling was reaffirmed in the RUF case *Prosecutor v. Sesay, Kallon, and Gbao*,⁹⁹ strengthening the legal framework for prosecuting gender-based crimes in conflict settings.

2.5.4 The Convention on the Worst Forms of Child Labour 1999

The Convention on the Worst Forms of Child Labour provides that each member state that ratifies the Convention must take immediate measures to prohibit and eliminate the forced or compulsory recruitment of children to be used in an armed conflict as one of the worst forms of child labour.¹⁰⁰ The Convention on the Worst Forms of Child Labour

⁹⁴ *Ibid*, art 8(e).

⁹⁵ *Prosecutor v. Akayesu*, ICTR (1998); see also *Prosecutor v. Musema*, ICTR (2000).

⁹⁶ *Prosecutor v. Furundžija* (1998).

⁹⁷ *Prosecutor v. Kunarac, Kovač, and Vuković* (2001).

⁹⁸ *Prosecutor v. Brima, Kamara, and Kanu* (2008)

⁹⁹ *Prosecutor v. Sesay, Kallon, and Gbao* (2009),

¹⁰⁰ *Ibid*.

pursues the necessary measures to ensure that children are protected from armed conflicts (either recruitment, during, or after the armed conflicts). It can be said that the international legal framework is almost adequate for the protection of children in armed conflicts. After exploring International Humanitarian law and International Human Rights law, the following sub-section of this chapter explores the African regional framework for protecting children in armed conflicts.

2.6 AFRICAN REGIONAL FRAMEWORKS ON THE PROTECTION OF CHILDREN'S RIGHTS DURING ARMED CONFLICTS

Like the international legal framework, the African region's legal framework has also developed to prevent children's participation in armed conflicts. This subsection explores the African region's legal framework for protecting children from armed conflicts.

2.6.1 African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child of 1990 was adopted by the Organization of the African Union and came into force in November 1999. The Charter defines a child as anyone below 18 years.¹⁰¹ Article 22 of the African Charter on the Rights and Welfare of the Child,¹⁰² incorporates similar provisions to the Convention on the Rights of the Child (and its protocol) and the Geneva Convention (and its protocols). This section provides for the protection of children from hostilities. Article 22(1) provides that 'states Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child'.¹⁰³ The provisions of this sub-article create a duty on the part of the state, a harmful duty, to prevent children's participation in armed conflicts. This duty is extended to sub-article 2, which provides that "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child".¹⁰⁴

¹⁰¹ *Ibid.*

¹⁰² *Ibid*, art 22.

¹⁰³ *Ibid*, art 22(1).

¹⁰⁴ *ibid*, art 22(2).

2.6.2 Model law on children affected by armed conflict in Africa

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) held an open session on 8 May 2014, which led to the drafting of the Model law on children affected by armed conflict in Africa.¹⁰⁵ In its preamble, the Model law on children affected by armed conflict in Africa cites that it is aimed at recognizing the devastating effects of armed conflict on all children, realizing the necessity of special care and assistance, guidance, and education for children to develop all of their inherent potentials in a peaceful and conflict-free environment.¹⁰⁶

The model law on children affected by armed conflict in Africa has the following two crucial objectives: to give effect to the African Charter on the Rights and Welfare of the Child and other relevant international and regional treaties to which the State is a party and to provide specific guidance to national legislators in Africa on the content and provisions of effective laws that would be binding at the national level to uphold the rights of children in the context of armed conflict.¹⁰⁷ Like many other international instruments, the model law defines a child as any person under 18.¹⁰⁸

Article 6(1) of the model law provides that states shall take all necessary measures to ensure that children in areas affected by armed conflict continue to enjoy the rights guaranteed by domestic and international law.¹⁰⁹ This provision is to be found under international humanitarian law/ international human rights law and the African region African Charter on the Rights and Welfare of a Child. Article 7 of the model law extends the obligation under article 6(1) as far as ‘proportionality’ and ‘distinction’. Article 7(1) provides that for the State’s obligations under international humanitarian law to protect the civilian population in armed conflicts, the States and its competent authorities shall take all necessary measures to ensure the protection and care of children affected by an

¹⁰⁵ African Committee of Experts on the Rights and Welfare of the Child, ‘Model law on children affected by armed conflict in Africa’ retrieved from https://reporting.acerwc.africa/sites/default/files/2023-07/Model%20Law%20on%20CAAC_2023_English.pdf (accessed on 23 January 2025).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ African Committee of Experts on the rights and welfare of the child, ‘Model law on children affected by armed conflict in Africa’ (2023), art 6 (1)p 1 at 8.

armed conflict.¹¹⁰ Article 7(2) provides that the State and its competent authorities shall ensure that the principles of ‘distinction’ and ‘proportionality’ apply specifically to children. Children shall not be subjected to direct attacks, and all steps should be taken to ensure the minimum possible casualties of children because of armed conflict.¹¹¹

From the model law discussed above, the commitment of the African region to the protection of children in armed conflicts is clear. The model law sets the guidelines for incorporating African regional instruments and international legal framework by member states into their domestic law. An African state wishing to incorporate the provision under the African region’s legal framework and internal legal framework can use the model law as a template for a successful and effective incorporation of this critical framework for protecting children in armed conflicts.

2.7 SUMMARY

This chapter examined the legal protection of children in armed conflict in Africa under international law, starting with an introduction that outlined key legal frameworks. The state obligations explained that countries must follow international laws protecting children during conflicts. The humanitarian frameworks also highlighted laws like the Geneva Conventions that provide special protections for children. The human rights framework section focused on the Convention on the Rights of the Child and its Optional Protocol, which prohibits child recruitment. The role of the International Criminal Court was also discussed in prosecuting those who use child soldiers. The chapter also reviewed the Convention on the Worst Forms of Child Labour, which bans child recruitment in warfare. The African regional framework section explored the African Charter on the Rights and Welfare of the Child, which strengthens protections for children in armed conflicts. The model law on children in armed conflict in Africa was introduced as a guideline for African states to improve national laws. This chapter concludes that international and African laws exist to protect children in armed conflict, but stronger enforcement is needed.

¹¹⁰ *Ibid*, art 7(1).

¹¹¹ *Ibid*, art 7(2).

CHAPTER THREE: OVERVIEW OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS CONCERNS FOR CHILDREN IN ARMED CONFLICT ZONES

3.1 INTRODUCTION

The previous chapter looked at the legal framework, regulatory instruments on humanitarian law and human rights law of children in the context of armed conflict. Furthermore, it defined the provisions under IHL, which concerned the basic needs of children provided by certain personnel such as the Red Cross, Non-Governmental Organisation, and United Nations personnel or other persons who find themselves guardians of children in the armed conflict context. The chapter also distinguished the regulatory framework on International Human Rights Law (IHRL) of children in armed conflict.

This chapter is focused on giving an overview of the key concerns arising over the scope and framing of international humanitarian Law and the human rights of children in the wake of an armed conflict. This entails defining the key challenges that children potentially face or the concerning realities that they are exposed to during armed conflicts. This chapter aims to ring-fence the discussion from the previous chapter, creating a coherent thread between the regulatory framework and the context of concerns giving rise to the necessity for such a framework. This will further connect with the forthcoming chapter in confirming the issues established and in this chapter as issues of concern in empirical realities of children in armed conflict-ridden South Sudan and DRC. In essence, a discussion of the nature of this chapter is fundamental and justified towards not only defining the key concerns and but challenges but also laying the basis for critically analysing the pathways for redress through the lens of law as well as critiquing the adequacy of the available legal mechanisms to respond to the concerns.

3.2 HUMANITARIAN CONCERNS

In terms of the 2022 United Nations Secretary-General Annual Report on Children in Armed Conflict, the nature of armed conflict in contemporary times is giving rise to new concerns of both humanitarian and human rights nature. These issues arise due to the

changing tactics and dynamics of warfare, including technological advancements, the rise of non-State armed groups, and the increasing urbanization of conflict zones.¹¹² A key clarification on some of the concerns is that Armed groups increasingly attack schools and hospitals, either directly or indirectly, as part of their military strategies. The humanitarian impact that arises is that it disrupts access to education and healthcare, leaving children vulnerable to preventable diseases, malnutrition, and exploitation. It also flows to human rights impact, in which the attacks violate the rights of children to education, health, and safety, as recognized under international human rights law and the Geneva Conventions. The core elements around which these concerns revolve include but are not limited to the definition of a child,¹¹³ the nature of child participation and involvement in armed conflict,¹¹⁴ and the nature of government involvement and protection of children¹¹⁵ in this regard. The following discussions focus on some humanitarian concerns with a significant interplay between IHL's effectiveness and the actual vulnerability of children in armed conflict. The IHL rules on the conduct of hostilities aim to strike a balance between military necessity and humanity, seeking to protect civilians from attacks and effects of hostilities but equally to limit the suffering of combatants.

3.2.1 Vulnerable Children

For IHL to apply to the circumstances of children, the children must fit the category of non-combatant civilians who are deserving of human treatment. Under IHL, the State parties involved in the conflict bear the primary responsibility for applying IHL provisions.

¹¹² United Nations General Assembly & United Nations Security Council Children and Armed Conflict, 2022 Report of the Secretary-General UN Doc A/76/871-S/2022/493, retrieved from [https://reliefweb.int/report/world/children-and-armed-conflict-report-secretary-general-a76871-s2022493-enarruzh#:~:text=The%20report%20includes%20trends%20regarding%20the%20impact%20of,in%20its%20resolution%201612%20%282005%29%20and%20subsequent%20resolutions.\(accessed on 22 December 2024\).](https://reliefweb.int/report/world/children-and-armed-conflict-report-secretary-general-a76871-s2022493-enarruzh#:~:text=The%20report%20includes%20trends%20regarding%20the%20impact%20of,in%20its%20resolution%201612%20%282005%29%20and%20subsequent%20resolutions.(accessed on 22 December 2024).)

¹¹³ Geneva Convention, art 50; Protection of Civilian Persons in Time of War: African Charter on the Rights and Welfare of the Child 1990 art 77(2) of Protocol I; art 4(3) of Protocol II; art 2, arts 1 and 38; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000 art 1 of Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999.

¹¹⁴ African Charter; art 38(2) of the CRC; arts 1-4 of the Optional Protocol; art 3(a) of ILO Convention 182; Article 77 of Protocol I; art 4(3) (c) of Protocol II; art 22(2).

¹¹⁵ Geneva Convention IV Art 50; art 77(2) of Protocol I; art 4(3) (c) of Protocol II; art 22(2) of the African Charter; art 38(3) of the CRC; arts 1-3 of the Optional Protocol.

This includes ensuring the protection of civilians, including children, and adhering to the rules outlined in the Geneva Conventions and their Additional Protocols. Furthermore, in non-international armed conflicts, NSAGs are also bound by Common Article 3 of the Geneva Conventions and Additional Protocol II,¹¹⁶ which require them to respect fundamental protections for civilians and children. Humanitarian Organizations such as the International Committee of the Red Cross (ICRC), UNICEF, and other international and local NGOs play a critical role in operationalizing IHL. They provide aid, monitor compliance with IHL, and advocate for the rights and protection of children in conflict zones.

The above-mentioned State Actors and humanitarian organizations can remedy the situation affecting children utilizing IHL because they can invoke IHL provisions to evacuate children from conflict zones. For instance, Article 49 of Geneva Convention IV prohibits forcible transfers or deportations of protected persons but allows temporary evacuation to protect children from harm.¹¹⁷ IHL mandates the facilitation of humanitarian relief efforts. Humanitarian organizations can provide food, medical aid, and psychosocial support to children affected by conflict. Without reservation, Article 23 of Geneva Convention IV ensures the free passage of essential supplies for children.¹¹⁸ In addition, States and humanitarian agencies are obligated under Article 26 of Geneva Convention IV to trace and reunite separated children with their families.¹¹⁹ Furthermore, States are further required to treat detained children humanely and protect their rights under Article 77 of Additional Protocol I and Article 4 of Additional Protocol II. This ensures that children are detained separately from adults and receive proper care. For the same reason,¹²⁰ Article 77 of Additional Protocol I prohibits the recruitment of children under 15 into the armed forces and their direct participation in hostilities. Accordingly, humanitarian actors can advocate for adherence to these rules and support demobilisation and reintegration programmes.

¹¹⁶ Geneva Conventions, art 3.

¹¹⁷ *Ibid*, art 49.

¹¹⁸ *Ibid*, art 23.

¹¹⁹ *Ibid*, art 26.

¹²⁰ AP II, art 77.

In the DRC, children are extensively recruited by armed groups, and many are subjected to forced labour, sexual violence, and combat roles. DRC often lacks the capacity to enforce IHL or protect vulnerable populations due to weak governance and ongoing instability. While IHL provides a robust legal framework, its implementation is hindered by the fragmentation of armed groups and the State's inability to prosecute violations. Humanitarian organisations like the ICRC and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) have played a significant role in monitoring violations, negotiating the release of child soldiers, and providing aid. However, these efforts are often localised and insufficient to address the scale of the problem.

In South Sudan, children face grave violations, including recruitment by armed forces, displacement, and sexual violence. The government has signed action plans to end the use of child soldiers but struggles with enforcement due to ongoing civil conflict and political instability. Since the beginning of modern international humanitarian law (IHL) in 1864, the international community has understood that successful implementation depends on actors at the domestic level.¹²¹ This is because domestic actors must comply with their national laws, hence IHL treaties mandate adopting domestic measures to facilitate compliance. International humanitarian actors have been crucial in protecting children, negotiating access to conflict zones, and providing relief. The South Sudan Child Act 2008, aligned with IHL principles, offers additional legal safeguards, but enforcement remains a challenge,¹²² it is a common cause that IHL relies on State compliance and voluntary adherence by non-State Armed Groups (NSAGs), making enforcement difficult in weak or failed states like DRC and South Sudan.

The core focus of IHL is to provide broad protection to non-combatants, and given the context of children's peculiar vulnerabilities, special protection rules apply to children. Notably, children directly involved in the armed conflict do not forfeit their special protection. This leads to questions regarding the standard of vulnerability of children by

¹²¹ Michael Bothe, Thomas Kurzidem and Peter MacAlister-Smith 'National Implementation of International Humanitarian Law: Proceedings of an International Colloquium Held at Bad Homburg', 1988.

¹²² Act 10, 2008, s 34(4).

which the application of IHL becomes justifiable. This is important because IHL provides for fundamental protections related to the evacuation of children from conflict zones to designated safe zones,¹²³ provision of aid and care,¹²⁴ identification of children and reunification with family,¹²⁵ provision of education and cultural environment,¹²⁶ protection of arrested, detained or interned children,¹²⁷ exemption from harsh penalties such as death penalty.¹²⁸

Despite the endeavours of IHL and the fact that states have an obligation to protect children under the age of 15 under IHL, key issues arise with regard to the fact that under Geneva Convention II, the vulnerability analogues fall away for children who directly participate in hostilities. This is a total distinction and contradiction to the IHRL position. The text emphasizes the importance of not viewing children as combatants who, when captured, would be granted the status of prisoners of war according to Geneva Convention II. The Fourth Geneva Convention includes several articles specifically designed to offer special protection to children. The experiences of the two world wars highlighted the necessity for such protection; however, this principle was not explicitly stated within the Convention itself. Protocol I addresses this oversight by articulating in Article 77 that "children shall be entitled to special respect and must be safeguarded against any form of indecent assault". Certainly, the parties to the conflict are obliged to provide them with the care and assistance they need, whether due to their age or for any other reason. To a certain extent, the vulnerability criteria under IHL are not broad enough to complement how children are regarded as a vulnerable group under international humanitarian law.¹²⁹ The gap in this regard gives concern to the fact that a clash between

¹²³ Geneva Conventions arts 14, 17 & 24; art 78 Additional Protocol I, paras 2, 3, 49 & 132, Additional Protocol II, art 4.

¹²⁴ *Ibid*, arts 23, 24, para. 1, & 38, para. 5, 50 & 89, para 1 Additional Protocol I & art. 4 (para 3 Additional Protocol II).

¹²⁵ *Ibid*, arts 24, 26 & 49, Additional Protocol I paras 5 & 78, Additional Protocol II paras 3b & 6.

¹²⁶ *Ibid*, Additional Protocol I art 4 (para. 3(a) Additional Protocol II).

¹²⁷ *Ibid*, art 51, para 2, 85 & 89.

¹²⁸ *Ibid*, art 68, para 4; Additional Protocol I & Additional Protocol II art. 6, para 4.

¹²⁹ ICRC, 'Children protected under International Humanitarian Law' 2010, retrieved from <https://www.icrc.org/en/document/protected-persons/children-protected-international-humanitarian-law-ihl#:~:text=They%20are%20guaranteed%20the%20general%20protection%20of%20non-combatants%2C,by%20the%20Geneva%20Conventions%20and%20the%201977%20Protocols> (accessed on 25 January 2025).

IHRL and IHL interests may prevail where children are direct participants in an armed conflict where IHL allows for their arrest, detainment, and imprisonment as justifiable, whereas human rights provide otherwise as will be shown under the human rights concerns discussion below. This concern leaves children's protection marred by uncertainties, considering that evidence indicates increased participation of children as combatants and labourers in armed conflicts of contemporary times.¹³⁰

3.2.2 Technical implications on ratifying and adopting provisions on special care and protection under international law

Under developments in international law, the Fourth Geneva Convention of 1949 and Additional Protocols of 1977 require special protection of children in armed conflict.¹³¹ Concerns have arisen over the efficacy of international law, mainly when it is in the form of a Convention that requires a state to ratify and adopt it or otherwise not make reservations to specific provisions that protect children's varied interests. In this regard, the concerns pertain to how to address a situation of a country experiencing armed conflict where children are victims if the country concerned has not ratified or implemented the applicable convention. To circumvent this gap, Singer suggests that by virtue of most countries worldwide being party to the UN Charter and some of the Geneva Conventions after the World War, these instruments must be fused with child protection provisions as part of disseminating and implementing existing international humanitarian law.¹³² Singer alludes that this can aid in addressing concerns that there are inadequate protections for children's special needs in force.¹³³

The International Crescent of Red Cross argues that in advancing the protection of children in an armed conflict, the focus must not be on trying to introduce new legal instruments and provisions. However, the focus should be on strengthening existing legal norms which consist of the focus should be on strengthening existing legal norms, which consist of more than 30 articles from them and other Non-governmental Organizations

¹³⁰ Sandra Singer 'The protection of Children during Armed Conflict situations' International tracing and Welfare,' The British Red Cross Society (1986 International Review of the Red Cross) p133 at 152.

¹³¹ Fourth Geneva Convention, Protocol I, art 77.

¹³² Singer (n 124) at 140.

¹³³ *Ibid* at 132.

that address various aspects of children's rights and protections during such conflicts. Strengthening the implementation and enforcement of these provisions can significantly advance the protection of children without the need for additional legal instruments. While the distinction in perspectives is between the efficacy of a Convention that needs ratification and commitment or a Declaration that applies notwithstanding ratification, it is argued that to seal off the issue of special care and protection of children, there must be a specific Convention in which such provisions are elaborated for armed conflict instances.¹³⁴

3.3 HUMAN RIGHTS CONCERNS

Human rights concerns arise from the branch of law that seeks to protect individuals and groups, particularly vulnerable groups, while simultaneously defining the role and duties or obligations of states towards respect, protection, and promotion of human rights.¹³⁵ Human rights are generally universal, developed from treaty law such as the Universal Declaration of Human Rights and Convention on the Rights of the Child at the basis driven by the need to address human rights concerns; thus, they find relevance in all instances undermining full recognition of or enjoyment of human rights as in the context of this study.

3.3.1 Classifying child victim of armed conflict

In general, human rights are a necessitated response or mechanism that can be referred to and be established in instances of alleged violation leading to the victimization of another through the conduct of another, which undermines or limits values such as freedoms, equality, dignity, and general well-being.¹³⁶ One of the increasing concerns with regard to armed conflict pertains to construing a universally acceptable class of child victims.¹³⁷ This stems from established empirical evidence that distinguishes between different circumstances of victimhood of children, particularly questioning whether a former child soldier can be classified as a child victim, particularly in the absence of

¹³⁴ *Ibid* at 135.

¹³⁵ *Ibid* at 153.

¹³⁶ *Ibid* at 133.

¹³⁷ Kimbuku Jean Chrsostome Kiyala 'Challenges of Reintegrating Self-Demobilised Child Soldiers in North Kivu Province: Prospects for Accountability and Reconciliation via Restorative Justice Peace-making Circles' 2015 (vol 16 (2)) Human Rights Review p 99 at 115.

coerced enlistment.¹³⁸ This issue is broadened by the fact that in principle and law, children are prohibited from being enlisted as child soldiers or labourers during armed conflict; however, under empirical realities, children have been found to voluntarily enlist as soldiers or for labour labourers.

In IHRL, regardless of different protocols applying to the circumstances of child victims in armed conflict, a child is any human being under the age of 18 years except for where majority status is acquired earlier under specific laws relevant to the child.¹³⁹ The impact of armed conflicts on children around the world reached devastating and likely record levels in 2024; a staggering 473 million children, nearly 19% of the world's children, were living in conflict zones worldwide, a record high. This period saw many children displaced from their homes, deprived of education, healthcare, and necessities while bearing the brunt of violence¹⁴⁰. For instance, in Gaza and Ukraine, the number of verified child casualties in the first nine months of 2024 surpassed the total in 2023. Additionally, a sharp rise in sexual violence against children was reported in conflict areas such as Haiti. The same is observed in the case of recent events in the Russian-Ukraine international armed conflict of 2023, South Sudan 2013 to the present day, and DRC 2002 to present-day non-international armed conflicts. It is important to note that the actual direct and indirect participation of children in forms such as soldiers or labourers had not taken root with the same level it has in contemporary times. Children were victims facing extreme levels of violence. labourers and in, particularly on a voluntary basis the increased participation of children to the benefit of fighting groups, either soldiers or labours, and particularly on a voluntary basis, gives rise to whether these can be classified as victims. The focus of international law and practice indicates, regardless, that it focuses on recruiting children instead of the participation of children. Additional focus is on the fact that children must not forfeit their protection under the law for prosecution to remain

¹³⁸ *Ibid.*

¹³⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949 IV, art 50; art 77(2) of Protocol I; Protocol II art 4(3) ; African Charter on the Rights and Welfare of the Child 1990 art 2 ;United Nations Convention on the Rights of the Child 1989 arts 1 and 38 ; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000 art 1 .

¹⁴⁰ UNICEF, 'Not the new normal' 2024 'one of the worst years in UNICEF's history' for children in conflict' retrieved from <https://news.un.org/en/story/2024/12/1158561> (accessed on 1 January 2024).

reserved for the perpetrators of violations of human rights and humanitarian law. The gap noted in this study pertains to the fact that this approach focuses on children coerced and forced to participate, but there are no provisions relating to children who voluntarily participate in armed conflict.

3.3.2 Child justice and access to justice concerns

Violations and hostilities in international law are violations of IHL that occur during armed conflict in most armed conflict contexts; addressing the occurrence of violations and hostilities puts emphasis on the aftermath of the violence; however, secondary to that is the issue of justice for children. The models of child justice are complicated and sensitive towards children's best interests. In this regard, the best model for child justice in an armed conflict context has not been established, and this is worsened by the fact that armed conflict times are chaotic and disrupt normal judiciary and justice system processes.¹⁴¹ Bemaka describes the challenge in this regard as being characterized by the distinctions between living rights, social justice, and translation, which are all fundamental phases in an armed conflict context, and each stage may have different child justice outcomes than the other.¹⁴² The argument is that living rights allude to the fact that law can come alive in different or contradictory ways in a social context, which means an armed conflict context as a social context can dictate different outcomes of the standard of living law norms.¹⁴³

The above can be argued to reflect accurately in armed conflict contexts where children's rights, despite being guaranteed in international, regional frameworks and national laws, still become challenging to implement and protect in that context. The solution to this concern and phenomenon remains uncertain. Bameka¹⁴⁴ opines that:

[t]his notion allows scholars interested in the study of these various expressions to go beyond jurists' interpretation of the law to explore in what terms international norms relating to children's rights are invoked by actors who mobilize them. This

¹⁴¹ Christelle Molima Bameka, 'Narrowing the Gap in the Access to Justice for Child Victims in Post-conflict Societies: An Analysis Stemming from the Construction of Child Soldiers in International Law and Policy' 2023 (vol no 1) The International Journal of Transitional Justice, p 141 at 150.

¹⁴² *Ibid* at 140.

¹⁴³ *Ibid* at 150.

¹⁴⁴ *Ibid* at 147.

notion could help in highlighting the discrepancies between international and local understandings of human rights that may occur during the application of the law on the ground.

On the other hand, social justice alludes to the contradiction and interactions that can occur in a field because of varied understandings of children's rights.¹⁴⁵ This norm has been used in other studies to expose conflicting interpretations of legal norms regarding child soldiers and their ability to access child justice when socially painted as 'child soldiers.'¹⁴⁶ In the case of translations, this entails that from the moment of conception of a law to its implementation phase in the local context, multiple interpretations and comprehensions arise at both levels the international level to local levels and again from local to the international level.¹⁴⁷ An example pertains to the whole meaning of 'child soldiers' as a concept and how they are translated in the international and national courts when justice is concerned. These issues are related to what components of child justice or access to justice for children in armed conflict can entail on a universal standard. UN Security Council Resolutions are commended for influencing soft law and international law, particularly towards juvenile justice concepts.¹⁴⁸ The 2019 general comment on juvenile justice by the UNSC emphasizes that child soldiers in armed conflict contexts accused of committing crimes must be treated primarily as victims of a violation of international law. Further to this, non-judicial processes are recommended as a priority for the rehabilitation and post-conflict justice model for children.¹⁴⁹ In essence, it can be argued that the trend that clears confusion is to regard children as victims of violations of law and models of restorative justice are exempted in as much as the atrocities concerned

¹⁴⁵ *Ibid.*

¹⁴⁶ Genser Jared and Bruno Stagno Ugarte, eds, 'The United Nations Security Council in the age of Human Rights,' Cambridge University Press, retrieved from <https://www.cambridge.org/core/books/united-nations-security-council-in-the-age-of-human-rights/3118E3FB96A6E981DEB6C8EFA81A2385> (accessed on 27 January 2025).

¹⁴⁷ Hanson, Karl, and Olga Nieuwenhuys, 'A Child-Centered Approach to Children's Rights Law Living Rights and Translations,' in Jonathan Todres, and Shani M. King (eds), *The Oxford Handbook of Children's Rights Law*, (2020; online edn, Oxford Academic, 7 May 2020), <https://doi.org/10.1093/oxfordhb/9780190097608.013.6> (accessed 31 Jan. 2025).

¹⁴⁸ Christelle Molima Bameka 'Narrowing the Gap in the Access to Justice for Child Victims in Post-conflict Societies: An Analysis Stemming from the Construction of Child Soldiers in International Law and Policy' (2023) *International Journal of Transitional Justice* p 141 at 147.

¹⁴⁹ Victoria Martín De La Rosa, & Elena Domínguez Romero, 'Epistemic and Non-Epistemic Modals: The Key to Interpreting the Spirit of Counter-Terrorism United Nations Security Council Resolutions' 2021 (vol 180) *Journal of Pragmatics*, p 89 at 93.

were committed by children in an armed conflict context. This approach, if standardised, can reduce the gap in access to justice for child victims of armed conflict-related crimes.

The issue of sexual violence against girls has been more closely examined by the ICTY and the International Criminal Tribunal for Rwanda (ICTR). The International Criminal Tribunal for the former Yugoslavia (ICTY) had the opportunity to look at this issue in the Kunarac case,¹⁵⁰ which concerned sexual violence committed against young women who were detained in a camp and were without any defence. The youngest girl was only 12 years old at the time and the oldest 20 years old. The Tribunal considered that they were vulnerable, particularly when they were young. Consequently, girls should benefit from special protection during wartime in order to prevent them from becoming easy targets. Indeed, this is a decisive case as it is the first time that sexual assault and sexual slavery have been recognized as a crime against humanity.

3.4 SUMMARY

This chapter delves into the humanitarian and human rights concerns facing children in armed conflict zones, emphasizing the profound vulnerabilities these children endure and the limitations of existing legal frameworks. It begins by discussing the evolving nature of modern warfare, marked by urbanization, technological advancements, and the proliferation of non-state armed groups, which expose children to unprecedented levels of harm. While International Humanitarian Law (IHL) categorizes children as non-combatant civilians deserving special protection, including provisions for evacuation, family reunification, and protection from recruitment or harsh penalties, the realities on the ground reveal significant gaps in enforcement. In countries like the Democratic Republic of Congo (DRC) and South Sudan, these gaps are starkly evident. In the DRC, children are recruited as soldiers, forced into labour, or subjected to sexual violence, with weak governance and fragmented armed groups undermining IHL's effectiveness. South Sudan, despite adopting action plans to end child soldier recruitment, continues to see grave violations due to political instability and ongoing conflict. The analysis highlights a troubling contradiction between IHL and International Human Rights Law (IHRL). IHL

¹⁵⁰ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Trial Judgment), IT-96-23-T & IT-96-23/1-T, *International Criminal Tribunal for the former Yugoslavia* (ICTY), 22 February 2001.

allows for the detention of children directly involved in hostilities and grants them prisoner-of-war status and IHRL views all children, regardless of their roles, as victims requiring care and rehabilitation. The chapter also explores broader issues, such as the difficulty in classifying children who voluntarily participate in conflicts as victims and the challenges of providing justice in chaotic conflict environments, where restorative justice models are often overlooked. Furthermore, it critiques the reliance on state ratification and compliance for implementing protections, noting that enforcement gaps leave many children unprotected. Thus, chapter three underscores the inadequacy of current legal mechanisms in addressing the complex and evolving vulnerabilities of children in armed conflict, calling for more robust, practical, and child-centred approaches.

CHAPTER 4

THE IMPACT OF ARMED CONFLICT IN SOUTH SUDAN AND THE DEMOCRATIC REPUBLIC OF CONGO AND THE LEGAL FRAMEWORK

4.1 INTRODUCTION

This chapter explores the devastating impact of armed conflicts on children in South Sudan and the Democratic Republic of Congo (DRC). The chapter aims to paint a clear

picture of the dire reality for children in these regions while evaluating the adequacy of laws and interventions designed to safeguard their rights. It highlights the unimaginable suffering children endure due to violence, displacement, and exploitation. This chapter examines whether laws and treaties are effectively protecting children in these conflict zones by focusing on local and international legal frameworks. It also critiques the response mechanisms in place, asking whether they are sufficient to address the needs of children caught in these violent environments.

4.2 THE ARMED CONFLICT SITUATION OF SOUTH SUDAN: IMPLICATIONS FOR CHILDREN

South Sudan has been experiencing incessant armed conflicts that have become a series of ongoing hostilities since 2013.¹⁵¹ The cause of the hostilities was political rifts between Slava Kiir and Riek Machar that resulted in the removal of Machar as vice president, leading to armed violence. The two hostile groups, the Dinka and Nuer, are formed along ethnic lines, with each ethnic group supporting its politician in this rift. The Centre for Preventive Action reports that from the moment of the breakout of the armed hostilities, the combatants targeted civilians along the opposite ethnic lines committing atrocious acts and crimes, including rape, sexual violence, destruction of property, looting, and recruitment of children into their armed groups' ranks.¹⁵²

The first international response mechanism that resulted in a short ceasefire was the threat of sanctions supported by the Intergovernmental Authority on Development (IGAD), resulting in a peace treaty signed in 2015. The aftermath was the retention of Marcha to the Vice Presidency in 2016 after spending the previous hostilities period in exile outside the country. However, armed conflict ensued once again in 2016, immediately after his return. In this instance, the hostilities were between government forces and opposition factions, resulting in the immediate displacement of tens of thousands of people. In 2017 and 2018, peace agreements were negotiated; however, they were subsequently breached by the government forces and collective opposition forces. In 2018, marking 5

¹⁵¹ Centre for Preventive Action, retrieved from <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan> (accessed on 1 October 2024).

¹⁵² *Ibid.*

years of armed conflict, Uganda and Sudan mediated another peace agreement, resulting in the Khartoum Declaration of Agreement of Cease-fire and a pledge for power sharing.¹⁵³ The final agreement of the treaty included government forces, opposition, and rebel forces. Despite these steps towards peace, reports continued to be issued on the continued occurrence of instabilities and violence across certain parts of the country.

Despite the attempts at peace, concerns about the political question of concentration of power continued to create tensions, and the parties agreed to form a transitional unity government 100 days from the day of effect of the 2018 peace treaty. The contentious issue delaying progressive government reformation pertained to whether South Sudan should return to being a 32 or 10 States country. On 14 February 2020, it was announced that South Sudan would return to being a 10-States country, and a government of National Unity was formed on 22 February of the same year. In addition to this was the dissolution of parliament and reforming parliament to include rebel groups in the power-sharing process in terms of the peace treaty of 2018, which only occurred in May 2021. However, before all of these attempts were affected, the NAS had already started voicing disgruntlement and causing violence in certain parts of the country in 2019, a year after the 2018 peace treaty. This also includes three other rebel groups that had not been added to the peace agreement of 2018 consisting of South Sudan National Democratic Alliance (SSNDA), the SS-UF of Paul Malong and the Real Sudan People's Liberation Movement (R- SPLM) of Pagan Amum, resolved to unite their collective mission under "United South Sudanese Opposition Movements" (SSOMA).¹⁵⁴

In 2021, the leader of the government of national unity, Machar of SPLM-IO, was toppled and replaced by a lieutenant who intensified clashes between loyal forces of Machar and other sides, leading to another wave of deaths of combatants and civilians.¹⁵⁵ At the time of writing of this study, South Sudan continues to face instability and armed conflicts that

¹⁵³ Khartoum Declaration of Agreement of Cease-fire, retrieved from <https://www.peaceagreements.org/viewmasterdocument/2109> (accessed on 23 January 2025).

¹⁵⁴ Centre for Preventive Action, (n 147).

¹⁵⁵ Al Jazeera 'South Sudan's Vice President Machar deposed by party,' retrieved from <https://www.aljazeera.com/news/2021/8/4/south-sudans-vp-machar-deposed-by-party-military-wing>, (accessed on 12 June 2024).

continue to expose South Sudanese citizens to dire human rights and humanitarian crises. The conflict between the government, opposing forces and their allied militias, including inter-communal violence in certain parts of the country, continues to increase deaths, injuries, atrocious experiences and displacement of thousands of civilians, including children.¹⁵⁶ The continued status of the armed conflict in South Sudan has been blamed partially on the failure of the government to fulfil critical milestones set under the peace treaty of 2018, which includes the adoption of legislative and institutional reforms towards the end of the transitional government era in 2024.¹⁵⁷

4.2.1 Killing of children

In April 2018, it was reported that over 400,000 people had been killed, and 10.6% of them constituted children. A 2023 report indicates that people continue to be killed across different counties. For instance, the governor of Warrap State, Manhiem Bol Malek, was reported to be responsible for approximately 20 extrajudicial killings in 2023, which significantly affected children.¹⁵⁸ In January 2023, armed youths from the White Army from the Lour Nuer and Bor Dinka tribes engaged in acts of violence against the Murle villages in the Greater Pibor Administrative Area, resulting in the deaths and abductions of women and children.¹⁵⁹ In the exact incidence, health and education facilities, as well as civilian properties and humanitarian warehouses, were looted and destroyed, worsening the vulnerabilities of children in need of essential services.

4.2.2 Displacement of Children

In 2018, at least 4 million people were displaced from the time of the commencement of the armed conflict, with 1.8 million being internally displaced and 2.5 million fleeing to neighbouring countries such as Uganda and Sudan. At this point, this was the third largest displacement and refugee case after Syria and Afghanistan. Of utmost concern is that

¹⁵⁶ Tirana Hassan 'The Human Rights System is under threat: A call to Action' Human Rights Watch (2024) retrieved from <https://www.hrw.org/world-report/2024/country-chapters/south-sudan> (accessed on 01 October 2024).

¹⁵⁷ *Ibid.*

¹⁵⁸ U.S Department of State, '2023 Country Reports on Human Rights Practices' retrieved from <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/> (accessed on 10 March 2024).

¹⁵⁹ *Ibid.*

86% of the affected persons were women and children.¹⁶⁰ As of 2023, UNICEF reports that at least 450,000 children have been forced to flee their homes during armed conflict. In addition, it notes that increased humanitarian aid is needed as at least 82,000 children cross into neighbouring countries to seek refugee while at least 368,000 more are internally displaced.¹⁶¹ UNICEF notes that largely, the armed conflict has exposed children to highly traumatic events as they are driven from their homes in search of relatively safe spaces elsewhere. With Uganda becoming the largest refugee camp for South Sudan people, UNICEF notes that areas receiving displaced people internally and externally are also already affected by multifaceted crises. In essence, essential services and humanitarian capacity are already over-exerted, and change in seasons is projected to worsen the circumstances of children, particularly in rainy seasons where humanitarian access becomes limited, the risk of diseases increased, and disruption in cross-border movement and potentially increase in costs of food which can lead to increased food insecurity.

In the wake of a conflict outbreak in April 2024, it is reported that an estimated 9.4 million people in South Sudan have been driven away from their homes, 4.9 million being children who also need urgent humanitarian assistance.¹⁶²

4.2.3 Child soldiers

The use of child soldiers in South Sudan has been reported as occurring under both governmental and non-governmental forces. Regardless of reports relating to the government's use of child soldiers dropping significantly over the years, the practice continues across non-governmental militias.¹⁶³ Between 2013 and 2015, the United Nations verified at least 13 000 serious violations of which at least 6 300 were cases of recruitment and use of children as combatants. As of 2016, the number of children

¹⁶⁰ Al Jazeera, (n 150).

¹⁶¹ UNICEF Press Release 'Sudan violence forces at least 450,000 children to flee their homes' retrieved from <https://www.unicef.org/southsudan/press-releases/sudan-violence-forces-least-450000-children-flee-their-homes#:~:text=NEW%20YORK%20FAMMAN%20FNAIROBI%20FIDAKAR%20C%2012%20May%2023%20%E2%80%93%20UNICEF%20is,move%20affected%20by%20the%20ongoing%20conflict%20in%20Sudan> (accessed on 15 October 2024).

¹⁶² Hassan, (n 152).

¹⁶³ U.S Department (n 154).

recorded to have been recruited or participating in armed conflict as child soldiers stood at 17000 with 1300 recruited in 2016 alone. The 2018 peace treaty embodies provisions that required the demobilisation and reintegration of child soldiers from ranks of the SSPDF, SPLA-IO, the Nuer White Army and other groups involved in community defence.¹⁶⁴ From April 2022 to March 2023, it was further reported that the Secretary of State of South Sudan determined governmental armed forces, police, and other security forces were recruiting and using child soldiers during that entire period.¹⁶⁵

4.2.4 Sexual violence

By 2016, incidents of sexual violence rose by 60% in areas such as Equatoria's Amadi State, which became the epicentre of sexual violence.¹⁶⁶ A survey by the UN reported that 70% of women and children sheltered in refugee camps in this area since the begging of the conflict had been raped, primarily by police and soldiers, and at least 80% of women and children in the same area had been forced to witness these acts of sexual violence.¹⁶⁷ The SPLA was reported to have issued militias of young men with weapons and instructed them to retain rebel-held areas and, in turn, loot and plunder any other resources as their remuneration, leading to women and children being sexually violated. This was also reported to be acts not merely incidental to war, but an ethnic cleansing instrument employed to humiliate and revenge along ethnic lines.¹⁶⁸ The circumstances of the sexual violence were reported by Zainab Bangura to be 'the worst sexual violence than anywhere else in the world.'¹⁶⁹

¹⁶⁴ *Ibid.*

¹⁶⁵ Department of State's annual Trafficking in Persons Report, retrieved from <https://www.state.gov/trafficking-inpersons-report> (accessed 01 October 2024).

¹⁶⁶ Fox News, 'Rape reaches epic proportions in South Sudan's civil war,' retrieved from <https://www.foxnews.com/world/rape-reaches-epic-proportions-in-south-sudans-civil-war?msockid=3b7501628bbe60aa3898140d8abe61769> (accessed on 25 March 2024).

¹⁶⁷ Lizzie Dearden, The Independent 'Women and children being raped and slaughtered as South Sudan conflict worsens famine threatening millions' retrieved from <https://www.independent.co.uk/news/world/africa/south-sudan-famine-dec-emergency-appeal-women-children-rape-murder-war-crimes-refugees-uganda-a7630201.html>, (accessed on 10 October 2024).

¹⁶⁸ Peter Martell 'First Raise a Flag: How South Sudan Won the Longest War but Lost the Peace' (Oxford University Press (2019) p 1 at 90.

¹⁶⁹ *Ibid.*

It was reported that between June and September 2021, General James Nando of the SSPDF, an army general was responsible for instigating and perpetuating through his subordinates 64 instances of rape and sexual violence against civilians, including children.¹⁷⁰ In the attack, at least 505 women and 63 young girls were abducted. On the other hand, forces of the SPLM-IO unleashed scores of violence in Western Equatoria, where 887 civilians, including children, were abducted with at least 43 women and young girls raped and gang raped on the spot. From February 2022 to April, the government-aligned forces and some of their allied militia unleashed scores of violence Commissioner Gordon Koang of Koch and Gatluak Nyang commissioner of Mayendit, where they focused on sexual slavery, including rape and gang rape of abducted women and young girls as incentives for combatants.¹⁷¹

4.2.5 Ethnic cleansing

As the hostilities in Sudan were not only between government forces and rebel forces but more defined along ethnic lines as different ethnic groups supported different armed groups, acts of violence along ethnic lines occurred repeatedly. For instance, the 2014 Bentiu massacre, wherein ethnic undertones to conflict and massacre led the Dinka tribe made troops and Mathiang Anyoor to carry out pogroms, with the aid of house-to-house searches of Nuer tribes, leading to the death of several persons of Nuer tribe including children.¹⁷² In 2013-2017, the Commission of Human Rights in South Sudan noted that the government was conducting social engineering pursuant to the transportation of 2000 people of the Dinka tribe to abandoned areas and killing them, groups of which included children.¹⁷³ Further reports by the UN Special Adviser on Prevention of Genocide in 2011-2017 indicated similar concerns.¹⁷⁴

¹⁷⁰ U.S Department, (n 154).

¹⁷¹ *Ibid.*

¹⁷² John Walsh 'International Business Times Where Is Genocide'? UN South Sudan Report Details Ethnic Cleansing Amid Civil War' retrieved from <https://www.ibtimes.com/where-genocide-un-south-sudan-report-details-ethnic-cleansing-amid-civil-war-2504572> (accessed on 26 November 2024).

¹⁷³ *Ibid.*

¹⁷⁴ ABC News 'South Sudan: UN warns of 'social engineering' amid looming threat of genocide' retrieved from <https://www.abc.net.au/news/2017-03-15/un-warns-of-south-sudan-27social-engineering27/8354958> (accessed on 20 January 2025).

4.2.6 Child marriages

One of the concerning outcomes of the armed conflict in South Sudan is reports of forced child marriages that have occurred over time. The UN Children's Fund reports that an estimated 52% of girls in South Sudan have become married before turning 18 because of armed conflict-induced circumstances.¹⁷⁵ The estimate relating to boys who have been married before turning 18 has not yet been provided. However, the problem is reported to affect both genders of children.

4.3 SOUTH SUDAN LEGISLATIVE DEVELOPMENTS TO ADDRESS THE SITUATION

The signing of peace accords and treaties between the fighting parties came with milestones that must be achieved towards restoring political balance and peace, including adopting and developing legislation that can safeguard children's interests. National Security Service (NSS) Act which was revised in 2014.¹⁷⁶ The Act sought to limit the NSS's broad powers, including those linked to human rights violations, and introduce greater accountability. However, this process has not been smooth; for instance, in January 2024, the South Sudan parliament passed an Act on the constitutional-making process. The adoption of the new Constitution stalled as parties lacked commitment towards setting up the necessary mechanisms and structures.¹⁷⁷ Another upset regarding local developments pertains to the Commission for Truth, Reconciliation and Healing and Compensation and Reparations Authority set by the Ministry of Justice. The supporting legislation for this initiative has not yet been adopted and a Hybrid Court for South Sudan of the 2018 peace treaty remains unestablished at the time of writing. All these developments have the potential for positive outcomes for children who continue to be affected by the armed conflict, and the non-execution is exacerbating the negatives and vulnerabilities of children.

¹⁷⁵ Anyier Chaat Paul, UNICEF, 'Ending child marriage should not be a choice but a necessity' retrieved from <https://www.unicef.org/southsudan/stories/ending-child-marriage-should-not-be-choice-necessity> (accessed on 20 June 2024). .

¹⁷⁶ National Security Service Act, 2014.

¹⁷⁷ Hassan, (n 152).

In June 2024, South Sudan Ratified the African Union (AU) Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and made reservations on specific provisions such as discouraging polygamy, rights on sexual and reproductive health, specifically rights to choose whether to conceive, the number and spacing and rights to contraceptives and safe abortion care.¹⁷⁸ In addition, the National Security Service (NSS) Act of 2014 was revised to limit the agency's broad and unnecessary powers. Human Rights Watch reports that the NSS has been responsible for gross human rights violations, which justified revising the empowering act to create more accountability and critique the agency's power to arrest, detain and conduct surveillance.¹⁷⁹ In essence, the local developments continue to shrink the space for redress and the potential to address key root issues that could address the conflict and the concerns over human rights and humanitarian concerns of children in South Sudan. The key issue is that in these legal and general developments, the government has not made a single act or proposal for mechanisms to safeguard the interests of children through legislative and other means. This is a big gap and challenges at the local level, which can be argued to be further perpetuating circumstances of children as the responsible officials and structures appear to ignore the plight of children, making all other parties assume a similar attitude.

4.4 HUMANITARIAN AND HUMAN RIGHTS PROTECTION RESPONSES AND CHALLENGES

The UNICEF and Red Cross have been the leading organisations regarding humanitarian responses to the needs of affected persons and children, in particular in armed conflict-ridden South Sudan. For instance, UNICEF has overseen provisions of emergency health kits, essential supplies, and medicines to primary health centres and hospitals to support the overall treatment of the injured and promote access to life-saving and essential health services.¹⁸⁰ UNICEF is also focused on assisting displaced children to reintegrate with

¹⁷⁸ *Ibid.*

¹⁷⁹ Human Rights Watch, 'South Sudan: Revise National Security Service Bill' retrieved from <https://www.hrw.org/news/2023/07/27/south-sudan-revise-national-security-service-bill> (accessed on 12 December 2024).

¹⁸⁰ James Maiden, UNICE 'Sudan violence forces at least 450 000 children to flee their homes' retrieved from <https://www.unicef.org/southsudan/press-releases/sudan-violence-forces-least-450000-children-fleetheir-home> (accessed on 1 October 2024).

their families and provide relative safety while continuing to provide essential services such as nutrition supplies and keeping most facilities functioning in affected areas. This also includes the provision of sanitation, water, and hygiene supplies to newly displaced children.

UNICEF has stepped up to work with governments and partner organisations to advance aid and essential services to vulnerable children, focused on particular groups of children, such as nutrition services for children under five or those suffering from acute malnutrition.¹⁸¹ UNICEF is also intensifying other programmes such as health screening and children vaccinations, providing essential medicines, and ensuring sustained access to health care and services.

UNICEF is advancing child protection and gender-based violence prevention response mechanisms, including psychological support, child-friendly spaces, case management and referral to specialised services.¹⁸² At the core of humanitarian aid by UNICEF is also tracking families and reunifying them with their children, managing cases of unaccompanied and separated children as well as protecting children from childhood statelessness. UNICEF also ensures the provision of education to children of host and refugee groups, further ensuring adolescents have access to inclusive, quality education and learning opportunities in a relatively safe and protective environment. UNICEF calls upon the international community to support its efforts through funding and resources to address the growing crisis of children in particular and other affected groups of persons. The key challenge to humanitarian aid is sustained support from the international community to foot the costs of the aid and physical and political related barriers to access more affected children who require protection. For instance, in December 2022, UNICEF made a call for 10.3 billion dollars in emergency funding to support children in areas affected by armed conflict, catastrophe and climate crises, showing that 1.6 billion would deliver life-saving services and humanitarian aid to 27 million children in Eastern and Southern Africa in 2023 alone.¹⁸³ In this call, they highlighted the hot spots for

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ UNICEF, 'appeals for US\$10.3 billion emergency funding to support children affected by conflict, catastrophe and climate crises around the world' retrieved from

humanitarian aid need to include conflict-ridden South Sudan and the DRC, which will be discussed below. In particular, South Sudan was recorded to need an estimated 217 million just to cater for the humanitarian needs of children affected by armed conflict.¹⁸⁴

The above correlates with the findings by the Centre for Preventive Action in July 2024 to the effect that South Sudan is currently facing the worst humanitarian crises in the world, exacerbated by climate change, macroeconomic shocks and spill-over of nearby civil war in Sudan.¹⁸⁵ As part of humanitarian aid and human rights protection, additional peacekeepers and urgent forces were deployed to conflict-ridden regions after the escalation of inter-communal violence, which resulted in an increase in deaths of civilians, abductions and displacements.¹⁸⁶ Regardless of an election being scheduled for December 2024, which could result in peace and protection of children in the long term, there are concerns that the current political climate of South Sudan does not promise a guarantee of a free and fair election, let alone stability in the post-election phase.¹⁸⁷

Another challenge with implementing full humanitarian aid pertains to attacks on aid operators. It is reported by the UN Mission in South Sudan (UNMISS) that as of August 22 2024, South Sudan is the most dangerous place for aid workers.¹⁸⁸ The responsible authorities have not conducted investigations or prosecutions of officials accessed of instigating and facilitating attacks on civilians, properties and aid workers.¹⁸⁹ From 2013 to 2023, at least 143 humanitarian workers were killed, with 24 killed in the first half of 2023.¹⁹⁰

A further challenge implicating effective human rights and humanitarian responses that can protect children is the constrained civic and political space. For instance, standard processes such as due process and custodial safeguards to protect accused people or

<https://www.unicef.org/southsudan/press-releases/unicef-appeals-us103-billion-emergency-fundingsupport-children-affected-conflict> (accessed on 01 October 2024).

¹⁸⁴ *Ibid.*

¹⁸⁵ Centre for Preventive Action, 'Instability in South Sudan' retrieved from <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan> (accessed on 1 October 2024).

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ Hassan, (n 152).

¹⁸⁹ *Ibid.*

¹⁹⁰ U.S Department, (n 154).

civilians, in general, are significantly undermined.¹⁹¹ The South Sudan Broadcasting Corporation (SSBC), responsible for media coverage which could report the experiences of civilians and children, has been dramatically undermined as staff members and journalists are reported to be arrested, never charged, held in poor conditions, denied access to legal representation and other standard due process safeguards.¹⁹² The UN Commission of Human Rights in South Sudan further reported that in October 2023, the government was ensuring systematic repression of media, human rights, human rights defenders and civil society, including using media censorship, intolerance and restriction of civic and political activities.¹⁹³ This carries significant weight as a challenge to the protection of human rights and humanitarian entitlements of children during armed conflict and is contrary to international law (IHRL and IHL).

Other international actors have been at the centre of the South Sudan armed conflict, attempting to put the conflict to a halt, which would subsequently ensure the safety of children. For instance, in February 2024, Pope Francis, the Archbishop of Canterbury and the General Assembly of the Scotland Church had an ecumenical visit to South Sudan.¹⁹⁴ They called upon other faith leaders in South Sudan, making a call that they must play a role in shunning the violence and become highly vocal about injustice.¹⁹⁵ In March 2023, the UN Security Council renewed the mandate of the United Nations Mission to South Sudan for another year and in April of the same year, the UN Human Rights Council renewed the mandate of the Commission on Human Rights in South Sudan for an additional year.

The UN Security Council also renewed sanctions on South Sudan until 31 May 2024, inclusive of targeted assets freeze, travel bans on officials accused of perpetrating crimes,

¹⁹¹ Hassan, (n 152).

¹⁹² United Nations, 'South Sudan: UN Inquiry's report finds that entrenched repression imperils prospects for peace, human rights and credible elections' retrieved from <https://www.ohchr.org/en/press-releases/2023/10/south-sudan-un-inquiry-report-finds-entrenched-repression-imperils#:~:text=The%20report%2C%20titled%20%E2%80%9CEntrenched%20Repression%3A%20the%20systemic%20curtailment,actors%2C%20both%20in%20and%20outside%20of%20the%20country> (accessed on 20 January 2025).

¹⁹³ *Ibid.*

¹⁹⁴ Hassan, (n 152).

¹⁹⁵ *Ibid.*

and perpetuating or instigating gross human rights violations. This also included an arms embargo.¹⁹⁶ The AU Peace and Security Council called for removing these sanctions in June 2023, arguing that it would help facilitate the peace deal's implementation. This was, however, followed by the first sanctions from the US in June 2023, dedicated to resolving conflict-related sexual violence. These sanctions were directed at the army Major General James Nando and Alfred Futiyo a governor of Western Equatoria affiliated with army opposition groups.

Regarding the 2018 peace treaty, the AU Commission has the mandate to oversee the establishment of the Hybrid Court for South Sudan, which will be responsible for adjudicating and developing legal orders relating to armed conflict-related gross violations, including those affecting children. However, the AU Commission failed to realise this due to reluctance to press Sudanese authorities.¹⁹⁷

Regionally, there have also been efforts to supplement the UN efforts at protecting human rights. For instance, the deployment of 4000 Regional Protection Force in 2016 and around Juba and other parts of Sudan after a surge in violence. The force mandate was to provide a secure environment for civilians, strengthen security over key facilities and routes for the movement of people, and deliver essential services and humanitarian aid.

In essence, the South Sudan armed conflict has met all criteria that justify the deployment of humanitarian and human rights protection mechanisms, such as; reaching a level of armed violence of a certain degree of intensity beyond internal disturbances and tensions and with at least one side in the conflict being non-state armed group exhibiting significant levels of organisation which makes them party to the armed conflict.¹⁹⁸ The duration of the conflict is over a decade, the level of material destruction, the number of civilians fleeing, displaced, and dying, and the involvement of the United Nations are all indicators of a conflict that still requires concrete resolution, particularly when reports continue to indicate the heightened levels of vulnerability and suffering of children.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 Geneva Convention IV and Additional Protocols I and II.

4.4.1 Applicable law: South Sudan Critical Reflection

In the context of armed conflict, once the conflict has been classified as either non-international or international, specific laws become applicable immediately towards resolving the situation. In the case of South Sudan, the armed conflict is classified as non-international, and specific laws are applicable. However, this study questions the effectiveness thus far, considering the duration of the armed conflict that has dragged on to the present day without resolution but increased human vulnerabilities.

South Sudan is a party to the four 1949 Geneva Conventions, and all parties who find themselves in conflict are bound by article 3, common to the 1949 Geneva Conventions.¹⁹⁹ Article 3 provides that the basic minimum standard of human rights must be respected, including humane treatment of all persons without distinction of anyone either not or no longer taking an active part in the hostilities.²⁰⁰ The article further prohibits murder, mutilation, torture, cruel, inhuman, and degrading treatment, hostage-taking, and unfair judicial processes. It is clear from the above discussions that the provisions of this article have been grossly violated, and relevant actors have taken little action to swiftly address and bring the rule of law in this context.

South Sudan is a party to the 1977 Additional Protocol II, specifically applicable to incidences of non-international armed conflict such as the one in South Sudan.²⁰¹ Although territorial control has shifted hands over the course of years of armed conflict, the Sudan People's Liberation Movement/Army-in-Opposition SPLM/A-IO party has been shown to have dominant territorial control in South Sudan. Protocol II accords the SPLM/A-IO with the authority to engage in sustained and concerted military operations, impose discipline, enforce, and implement Protocol II. However, the reports and evidence over the years indicate that at times, organs of state-affiliated and overseen by the SPLM/A-IO are at the core of perpetuating and instigating gross human rights violations instead of instilling discipline, order and full implementation of Protocol II, which speaks directly to enforcement of humanitarian and human rights protections. The violations applicable in this regard range from perpetuating further violence to the actual blockade

¹⁹⁹ *Ibid*, art 3.

²⁰⁰ *Ibid*.

²⁰¹ Additional Protocol II 1977.

of humanitarian aid and aid workers, which has been recorded to significantly affect children in need of humanitarian aid.

In addition to the international humanitarian law above, International human rights apply, such as the African Charter on Human and People's Rights and the African Charter on Rights and Welfare of the Child. These frameworks are fundamental to the protection of the basic rights of children during armed conflict. These rights range from the right to life, adequate housing, best interests of the child, right to education, right to everyday family life and environment, and right to access essential elements such as water, health among many others which are inaccessible and have been grossly infringed on as a result of human rights violations.²⁰²

In essence, the environment in South Sudan and the continued hostilities have led to innumerable gross violations of the human rights of civilians, and children with little to no recourse and redress. The human rights state continues to be dire in South Sudan, and implementation of relevant law seems to be the key lacking factor, particularly from parties expected to be at the forefront of enforcing and protecting such human rights and humanitarian laws for all civilians and children. This discussion on South Sudan concludes that the state of armed conflict is far from resolvable, and with the postponement of its elections to December 2026 without the adoption of legal reforms, the projections of increased violence and instability are higher, which also translates to increased vulnerabilities for children. On paper, the course of redress and protecting children in South Sudan is the continued enforcement of all relevant mechanisms, including key IHRL and IHL. At the current rate, it can be argued that it has not received full implementation, particularly because the leading government officials refused to adopt, adapt and implement the mechanism to protect civilians and children. The South Sudan government has not taken credible steps to identify and punish officials and others who are responsible for gross human rights violations, regardless of possessing the ability to apply relevant and empowering laws at the regional and international levels.

²⁰² African Charter on Human and People's Rights, 1979: see also African Charter on Rights and Welfare of the Child, 1999.

4.5 ARMED CONFLICT IN THE DEMOCRATIC REPUBLIC OF CONGO

The armed conflict in the DRC is recorded to have lasted longer phases than that of South Sudan. The conflict in DRC has been an ongoing crisis since the end of the Second Congo War 1998-2002. The conflict involves more than 120 different armed groups in east DRC, North Kivu and South Kivu, with the most active groups including the Allied Democratic Forces, Cooperative for the Development of the Congo, the March 23 Movement and several local *Mai Mai* militias.²⁰³ This is in addition to rebel groups and the governmental

Armed Forces of the Democratic Republic of the Congo (FARDC) troops, intervening national and international organisations and forces from the United Nations known as MONUSCO, SADC, and East African Community Regional Force.²⁰⁴

The conflict commenced in 2004 between the DRC armed forces and the Hutu Power group Democratic Forces for the Liberation of Rwanda (FDLR) and was broadly in three phases, with the current conflict being the third phase.²⁰⁵ In the conflict, government forces had the National Congress for the Defence of the People as their main opposition in 2009 and after a ceasefire. This developed into hostilities with rebel Tutsi forces that became the dominant opposition forces. Recent times have been marked with growing ethnic factions such as the *Mai Mai* factions from 2012, which became one of the strongest opposition groups in 2017, ADF leading extreme violence incidences from 2017 to 2021.²⁰⁶ From 23 March 2022 to 2023, the March 23 Movement (M23) has become the most dominant opposition force, unleashing scores of violence and terror.²⁰⁷ The current conflict has been attributed to the illegal exploitation of minerals and resources, a view supported by the UN but denied by academics and independent researchers.²⁰⁸ In 2023,

²⁰³ Esdras Tsongo, Al Jazeera 'What is the latest conflict in DR Congo about?' retrieved from <https://www.aljazeera.com/features/2022/6/21/explainer-what-is-the-latest-conflict-in-the-drc> (accessed on 12 January 2025).

²⁰⁴ Paulina Zidi 'DRC: Uganda's support for M23 rebels pointed out by a new report by UN experts' retrieved from <https://www.rfi.fr/fr/afrique/20240708-rdc-soutien-ouganda-aux-rebelles-du-m23-pointe-nouveau-rapport-onu> (accessed on 19 January 2025).

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ Karen Woody, 'Conflict Minerals Legislation: The SEC's New Role as Diplomatic and Humanitarian Watchdog' 2012 (vol 81) Fordham Law Review p 1 at 15.

the UN Special Convoy noted that after the resurfacing of the M23 and FDLR becoming dominant rebel armed militias, there are growing concerns that the conflict in areas such as the Great Lakes Region could lead to further tensions with other countries such as Rwanda.²⁰⁹ These developments have led to significant violations of the humanitarian and human rights of civilians and children, in particular, as will now be discussed below.

4.5.1 Child soldiers

In 2022, the UN Annual Report on Children and Armed Conflict noted that the DRC had the highest number of gross violations against children in armed conflict in the world for two consecutive years (2021 and 2022). At least 3 377 verified cases of gross violations were reported for 2021-2022, with 46% of them being recruitment and use of children as child soldiers, some recruited as young as 5 years.²¹⁰ The recruited children are reported to be used either in supporting roles or in active combat as guards and spies. At least 26 children were reported to be used as fetish keepers, a term analogous to children recruited and used because of a belief that they possess magical powers.²¹¹ Such children are used in ceremonial rituals that involve deep cuts to the abdomen, and those who survive these rituals are placed at the front lines because of their perceived powers.²¹²

4.5.2 Sexual violence

Incidents of serious sexual violence, including sexual assault, rape, gang rape of women and young girls, have been reported by the UN Human Rights Commission (UNHRC).²¹³ It is reported that women and young girls are abducted and incorporated into militias to serve as sex slaves. An incident that received widespread international condemnation was in 2012 when FARDC troops engaged in systematic rape of women and girls for over

²⁰⁹ Centre for Preventive Action, (n 147).

²¹⁰ United Nations Office for the Coordination of Humanitarian Affairs, 'DRC remains epicentre of child suffering in war as country tops world list of grave violations against children' retrieved from <https://reliefweb.int/report/democratic-republic-congo/drc-remains-epicentre-child-suffering-war-country-tops-world-list-grave-violations-against-children> (accessed on 01 October 2024).

²¹¹ *Ibid.*

²¹² Sonja Grover, '*Humanity's Children: ICC Jurisprudence and the Failure to Address the Genocidal Forcible Transfer of Children*' (2012) Springer Science & Business Media, p 1 at 13.

²¹³ United Nations High Commissioner for Refugees, 'Sexual violence on the rise in DRC's North Kivu' retrieved from <https://www.unhcr.org/uk/news/briefing-notes/sexual-violence-rise-drcs-north-kivu> (accessed on 26 January 2025).

3 days, prompting the army to engage in investigations and prosecutions of perpetrators.²¹⁴ The result was the 2014 Minova Trial, the biggest sexual violence tribunal in DRC's history, where more than 1000 victims were identified. However, only a few testified out of safety concerns, resulting in the convictions of a few junior officers.²¹⁵ In 2015, there was another surge in incidences of sexual violence because of reduced funding towards safe sanctuaries for women and girl's protection.²¹⁶

In the first quarter of 2022, there were at least 38 000 verified cases of sexual and gender-based violence against women and girls in North Kivu province alone.²¹⁷ A sharp 37% increase in the same sample was recorded in the first quarter of 2023.²¹⁸ Some of the target areas for these acts are city camps hosting more than 600 000 displaced women and young girls, which results in hundreds of them being sexually violated, forcefully raped, and forced into prostitution, particularly when they move about to search for food, firewood and other basic goods. The Doctors Without Borders group reported in 2023 that the degree of sexual violence affecting internally displaced women and young girls had reached unprecedented levels of catastrophic scale, with the provision of care to at least 674 victims every two weeks since April 2023.²¹⁹ These developments are aimed at strengthening legal protection against several forms of sexual violence, particularly for children who have become high-risk targets in the armed conflict context, as well as enhancing access to justice for the victims.

4.5.3 Infringement on the right to education

UNICEF reports that the conflict in DRC's eastern parts has resulted in severe implications for children's access to education between 2022 and 2023.²²⁰ At least three-

²¹⁴ *Ibid.*

²¹⁵ UNICEF, 'Conflict in eastern DRC is having a devastating impact on children's education' retrieved from <https://www.unicef.org/press-releases/conflict-eastern-drc-having-devastating-impact-childrens-education> (accessed 12 January 2025).

²¹⁶ Emma Reynolds 'How military mass rape was buried' retrieved from <https://www.news.com.au/world/africa/how-military-mass-rape-was-buried-in-congo/news-story/53c3e776044dcc7082ab1a6fdbb5b4c6> (accessed on 23 January 2025).

²¹⁷ Amnesty International 'Democratic Republic of the Congo 2023' retrieved from <https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/democratic-republicof-the-congo/report-democratic-republic-of-the-congo> (accessed on 1 October 2024).

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ UNICEF 'Conflict in eastern DRC is having a devastating impact on children's education' retrieved from <https://reliefweb.int/report/democratic-republic-congo/conflict-eastern-drc-having-devastating->

quarters of a million children are recorded to have been affected by the insecurity that disrupted education services.²²¹ At least 2 1000 schools in North Kivu and Ituri provinces were forced to close because of the insecurity. Children of school-attending age are missing out on essential and basic education, as their families must flee conflict-ridden regions. Only a few children are reported to manage to access UNICEF-supported Child-Friendly Spaces or Temporary Learning Centres.²²² There are few facilities under which children may sit for their final examinations in order to obtain formal qualifications because of the armed conflict. The figures collated by UNICEF for 2022 and 2023 indicate that at least 1700 schools were forced to close due to insecurity or being controlled by armed groups, and nearly 300 schools are incapable of operating because they have been converted into shelters for displaced people.

4.5.4 Displacement of children and forced evictions

Amnesty International reports that nearly 7 million people were estimated to be internally displaced, with Ituri and Nord-Kivu provinces being the most affected in 2022.²²³ UNICEF reports that between 2022 and 2023, nearly 240 000 children were forced to live in camps around Goma after being displaced and forced from their homes in the North Kivu and Ituri provinces.²²⁴ It is reported that children are forced to live under inhumane conditions and overcrowded camps. At the beginning of the M23 conflict in 2022, at least 5.3 million people faced immediate displacement, affecting a significant number of children.

4.5.5 Killing, torture and acts of violence against children

Several incidents of armed groups' widespread attacks on civilians, killing, torturing or forcing other civilians to watch other horrific acts carried out on others are some of the concerns of the impacts of the DRC as they directly affect children as primary or secondary victims. In 2023 June reports of attacks on civilians by Cooperative for the Development of the Congo (CODECO), an ethnic-Lendu armed militia attacked a rival

impact-childrens-education#:~:text=GOMA%2C%20Democratic%20Republic%20of%20the%20Congo%2C%2029%20March,the%20eastern%20Democratic%20Republic%20of%20the%20Congo%20%28DRC%29 (accessed on 02 January 2025).

²²¹ *Ibid.*

²²² *Ibid.*

²²³ Amnesty International, (n 215).

²²⁴ *Ibid.*

ethnic Hema community, killing over 4000 and wounding and abducting scores of women, girls and children.²²⁵ On the same day, in a different camp, at Lala, the same group hacked at least 46 people for defiance while others watched, half of whom were children. In turn, the Hema community retaliated, attacking Lendu ethnic villages, killing and wounding scores of people including children.²²⁶

The UN Joint Human Rights Office reported that in 2023, in the western region and Tshopo province disputes and central DRC, disputes arose over more than 500 people and the displacement of 77 000 others. In other provinces, such as Nord-Kivu and Ituri they experienced new displacements estimated to be over 500 000 newly displaced persons, including children. By early 2023, when fighting resumed between the Congolose government forced and Rwandan-backed M23 rebels, at least 145 000 people were displaced in the first half of the month alone.²²⁷

4.6 DRC LOCAL DEVELOPMENTS TO ADDRESS THE HUMAN RIGHTS AND HUMANITARIAN CONCERNS

In the armed conflict context, there were 468 million children affected globally in 2023, living in armed conflict zones and at risk of violence.²²⁸ However, DRC was reported in 2023 to have the highest number of violations against children worldwide for two consecutive years. In essence, many children have either been displaced or live in inhumane conditions, at risk of violence of their rights, denied access to basic services and many other harrowing uncertainties. As the first line of defence, it is important to look at what the DRC government has done to protect children from armed conflict-related implications.

In February 2023, the Congolese government adopted a Draft National Transitional Justice Policy to establish judicial mechanisms for addressing heinous crimes and human

²²⁵ Human Rights Watch, 'DR Congo: Deadly Militia Raid on Ituri's Displaced' retrieved from <https://www.hrw.org/news/2023/07/24/dr-congo-deadly-militia-raid-ituris-displaced> (accessed 30 December 2024).

²²⁶ *Ibid.*

²²⁸ UN, 'UN agencies warn of worsening humanitarian and human rights crisis in eastern DR Congo' retrieved from <https://news.un.org/en/story/2025/01/1159651> (accessed 5 February 2025).

rights violations in the armed conflict context.²²⁹ However, no further steps were made to implement, ensure accountability and enhance access to justice and effective remedies.

In May 2023, DRC referred a request to the Office of the Prosecutor of the ICC for an investigation to be initiated into alleged crimes within the ICC's jurisdiction, accusing Rwandan-backed rebels since 2022.²³⁰ The ICC accepted the request and embarked on a three day investigative excursion to DRC, meeting Congolese and UN officials, civil society members and representatives of victims. At the end of the excursion, the ICC prosecutor signed a memorandum of understanding with DRC, providing for enhancement of cooperation and complementarity between the ICC and DRC; however, nothing materially substantive has occurred further since.

In October 2023, DRC enacted into law a human rights defenders law which empowers the state to regulate the status and activities of civil society organisations and human rights defenders.²³¹ It aimed to consolidate processes of defending human rights in the armed conflict context using State resources and channels by requiring human rights defenders to register with the National Human Rights Commission before disseminating any information regarding human rights in the conflict context, among others.²³²

The High Military Court of DRC had little progress in 2022, in the prosecution of several defendants for the murder of two UN investigators, Zaida Catalan and Michael Sharp and their Congolese Interpreter, Betu Tshintela and their drivers.²³³ The judicial failed to uncover the entire truth. This directly correlates to failing to prosecute or investigate perpetrators of grave human rights violations, who, on further investigation are potentially violators of children's rights. In essence, as an upper military trial court responsible for adjudicating matters of serious human rights violations in the armed conflict context, the

²²⁹ Ibid.

²³⁰ FIDH, 'DRC: The renewal of ICC investigations in North-Kivu raises new hopes for victims' retrieved from <https://reliefweb.int/report/democratic-republic-congo/drc-renewal-icc-investigations-north-kivu-raises-new-hopes-victims> (accessed 22 January 2025).

²³¹ International Service for Human Rights, 'DRC adopts national law to protect, promote rights of defenders' retrieved from <https://ishr.ch/latest-updates/the-drc-adopts-a-national-law-to-protect-and-promote-the-rights-of-human-rights-defenders/> (accessed 15 May 2024).

²³² Ibid.

²³³ Human Rights Watch, 'World Report 2023 - Democratic Republic of Congo' retrieved from <https://www.ecoi.net/en/document/2085408.html> (accessed 12 January 2025).

court must instil confidence and demonstrate the ability to protect human rights and enhance access to justice and effective remedies, particularly for children. Further to this, the same court also failed to determine culpability for the December 2018 massacres in Yumbi territory, where more than 535 people were killed, including children.²³⁴

Other local strategies for accountability and justice that are important in this regard include the failure to secure militia leader Guidon Shimiray Mwiswa wanted by the DRC government for heinous crimes, including child recruitment and rape.²³⁵ The same militia leader continued to oversee similar operations in North Kivu, currently the most destabilised area in DRC, forming coalitions with other armed groups to fight against Congolese authorities. Such a development tells of the little assurance towards the protection of children in the armed conflict context as the direct perpetrators and instigators of violations of children can manage to escape authorities and expand their operations further.²³⁶ Another example of failure at the local level is the failure to arrest the head of police, General John Numbi who was involved in countless serious violations and abuses as well as implicated in the 2010 assassination of prominent human rights advocate Floribert Chebeya and his driver. The General was reported to have fled DRC in 2021 and remains at large.

4.6.1 Human rights and humanitarian protection responses and challenges

The collation of human rights and humanitarian law is held higher in the process of addressing grave violations and creating a system to support and safeguard civilians affected by armed conflict. In this case, DRC's greatest challenge in terms of humanitarian responses is funding related. The longer duration and severity of the armed conflict have severely undercut humanitarian response, resulting in continued and increasing food shortages, inadequate health care and shelter, children missing out on school and inadequate basic services, including physiological care for survivors and victims of

²³⁴ Ronald Naluwairo, 'Improving the administration of justice by military courts in Africa: An appraisal of the jurisprudence of the African Commission on Human and Peoples Rights' *African Human Rights Law Journal* p 43 at 51.

²³⁵ *Ibid* p 60.

²³⁶ *Ibid*.

violence and abuse.²³⁷ Organisations spearheading the protection of children through humanitarian aid in DRC, such as Save the Children, other donors and NGOs have been collectively calling upon world leaders and UN Member States to assist in protecting children in DRC through prioritising funding for essential services to support children affected by the conflict.²³⁸ Furthermore, the call also directs towards pushing the DRC to ratify policies and frameworks that are relevant to protecting children and subsequently implementing them domestically.²³⁹

As of 2023, Save the Children heightened its efforts at humanitarian response in DRC, to support existing care systems, training local leaders and communities on preventive and response strategies to exploitation and abuse as well as enhancing access of children and families to primary health care through mobile clinics.²⁴⁰ Save the Children has also been working on enhancing access to education for children through initiatives to build classrooms, train educators and distribute learning materials.²⁴¹ Save the Children has been stationed and working in the DRC since 1994 to advance humanitarian needs and stands as one of the most experienced response of humanitarian assistance organisations to date. They have managed to deploy their team to provide services including health care, medical supplies to clinics, sanitation, education kits, and shelter for displaced populations.²⁴² In 2022, Save the Children had more than 2.5 million displaced people in their camps, with 1.1 million being children. The evidence shows that despite the scaled-up humanitarian efforts, the number of affected children and the multifaceted challenges continue to overwhelm the available resources.

Despite efforts of humanitarian aiders, a harrowing 23.4 million persons are facing food insecurity, making DRC the most food insecure country in the world now of writing. In addition, urgent security support, medical aid and other humanitarian aid are needed to

²³⁷ UN OCHA 'DRC remains the epicenter of a child suffering in war as country tops the world list of grave violations against children' Save the Children retrieved from <https://reliefweb.int/report/democratic-republic-congo/drc-remains-epicentre-child-sufferingwar-country-tops-world-list-grave-violations-against-children> (accessed on 01 October 2024).

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ Save the Children, 'Education' retrieved from <https://www.savethechildren.net/what-we-do/education> (accessed 22 July 2024).

²⁴² Centre for Preventative Action (n 183).

safeguard the well-being of civilians affected by the conflict, including children. In 2023, more than 1.1 million Congolese nationals sought refuge outside the national board.

Regional and International security forces and peacekeepers are deployed in conflict zones in order to protect against certain human rights violations and safeguard civilians. However, despite these initiatives, the Centre for Preventative Action reports that the role of international security forces in protecting against violation of human rights has been inconsistent in DRC.²⁴³ For instance, between 2022 and 2023, locals engaged in a series of protests against the presence of MONUSCO forces, with protests escalating into violence, interfering with intervention mechanisms and also exacerbating anti-intervention sentiments among the locals and public officials who developed perspectives of the ineffectiveness of peacekeepers. In May 2023, the Southern African Community (SADC) deployed forces to join and support the UN in stabilisation forces before the December 2023 elections, the forces remain present in DRC at the time of writing. Despite these efforts, in September 2023, President Tshisekedi called upon MONUSCO to leave DRC and for the UN Security Council (UNSC) to acquiesce to the decision without protest.²⁴⁴ The UNSC feared imminent security vacuums and voted to extend the presence of MONUSCO in DRC until December 2024 and currently, MONUSCO is in the first phase of disengagement. The East African Community (EAC) forces had priory disengaged in December 2023 after being present in DRC for one year.

In light of the above, huge security issues have not only been a concern, but the fact that more of the security forces are being forced to leave DRC when the conflict has not stabilised is concerning. This will further implicate children's rights. For instance, the Congolese government forces and residents of Eastern DRC currently grappled with increasing attacks by the Islamic State-Affiliated Allied Democratic Forces (ADF).²⁴⁵ Heavy artillery and fire exchanges, missile attacks and skirmishes between M23,

²⁴³ Wani Ibrahim 'United Nations Peacekeeping, Human Rights, and the Protection of Civilians' *The State of Peacebuilding in Africa: Lessons Learned for Policymakers and Practitioners*, (2021) Springer p 81 at 87.

²⁴⁴ Africa Intelligence, 'DRC Secret details of SADC's decision to send troops to eastern DR Congo' retrieved from <https://www.africaintelligence.com/central-africa/2023/05/15/secret-details-of-sadc-s-decision-to-send-troops-to-eastern-dr-congo,109974882-art> (accessed 19 December 2024).

²⁴⁵ *Ibid.*

Rwandan Troops, DRC government forces and other militia groups remain a common occurrence of grave concern. In essence, the uncertainty regarding the presence of regional and international peacekeeping forces opens a dangerous security vacuum, risking the lives and well-being of civilians.

On the other hand, State machinery continues to be used to suppress other means of expressing human rights and humanitarian needs. For instance, censorship of media, use of arbitrary detention and unfair trials have been cited as some challenges towards civilian and civil society's role in advocating for human rights and humanitarian aid in conflict-ridden DRC. In March 2023, a law curtailing freedom of expression, association and assembly, including a digital code was adopted. Incidences such as the arrest of Stanis Bujakera Tshiamalaa, a journalist in September 2023 over media publications that criticised the government's abduction, unlawful attacks and killings, resulting in denied bail and facing 15 years in prison for a charge of disseminating false information, are indicative of suppressing advocacy for human rights responses. 21 pro-democracy and opposition activists were arrested in June 2023, and some were prosecuted on trumped-up charges for criticising the government's inaction and policy shortcomings in addressing armed conflict-related violence.²⁴⁶ King Mwamisiyo, a civil society representative of the Movement for Change, was arrested in 2022 and sentenced to 5 years in prison in June 2023 by a military appeal court for criticising the state for conducting a state of siege.²⁴⁷ These are just some of the few instances of the State's use of its machinery to suppress voices and advocates for human rights in the armed conflict context, which makes it difficult for others to speak out or for the outside world to be aware of the true nature of events unfolding in DRC. Members of the opposition who criticise the government's inability to address the conflict or related violence are met with harsh responses from the government. For instance, on 20 June 2023, the presidential candidate of the official opposition, Franck Diongo, was arrested in Kinshasa on a charge of possession of dangerous weapons; detained at military intelligence headquarters and later released without a charge a month later. Overall, this affects human rights protection and directly

²⁴⁶ Thomas Fessy, Human Rights Watch 'Prominent Journalist Denied Bail in Congo' retrieved from <https://www.hrw.org/news/2023/09/28/prominent-journalist-denied-bail-congo> (accessed 15 August 2024).

²⁴⁷ *Ibid.*

affects vulnerable groups such as children who already remain unrepresented and voiceless.

The European Union and the United States have imposed targeted sanctions on individuals implicated in human rights violations, primarily commanders of militias in DRC. These sanctions include senior government army officials involved with other rebel groups or supporting such rebel groups as the M23. These sanctions were adopted as mechanisms to send a strong message to the Congolese and Rwandan authorities supporting the M23 and other rebel armed groups. These sanctions also call for accountability. In essence, sanctions are mechanisms to curtail and can be very effective towards deterring perpetrators and instigators of violence against children. However, the degree of efficacy of the sanctions towards protecting the interests and rights of children in armed conflict-ridden DRC has not been established notably because the conflict has not subsided.

UNICEF and World Bank report that the violence in DRC towards children has reached more than alarming levels to the extent that a child born today in DRC is projected to realise only 37% of their full potential.²⁴⁸ This is in comparison to what would be the possibility should the children benefit from a safe or war free environment, access to quality education, and optimal health conditions.

4.6.2 Applicable law: DRC obligation towards children

The DRC has considerably consolidated its approach towards protecting children from a legal perspective. The DRC ratified several instruments on the protection of children and adopted them. These include the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child.²⁴⁹ At the local level, the commitments are reflected through specific legal instruments such as the Labour Code, the Military Justice Code and the Family Code, all of which place the best interest of the child, prohibit the recruitment of children into the military or organised groups with military features or for labour purposes. The Constitution of DRC, in complementing international

²⁴⁸ UNICEF, 'Crises, disasters, and humanitarian emergencies' retrieved from <https://www.unicef.fr/convention-droits-enfants/urgences/> (accessed on 15 January 2025).

²⁴⁹ *Ibid.*

and regional frameworks on the rights of children, defines a child as ‘any person without distinction of sex, who is under the age of 18 years’.²⁵⁰ In 2009, the DRC further adopted a law supplementing the Criminal Procedure Code of 2006 to defend the rights of children against sexual abuse and violence, revising the Family Code in 2016.²⁵¹ Regardless of adopting international and regional frameworks into local law, there is sufficient evidence of the inefficiency of these mechanisms based on the scale of the impact of armed conflict on the rights of children.

The 2012 Kampala Convention²⁵² which the DRC is party to, guarantees that during armed conflict, clashing parties may not violate civilian and humanitarian character where civilians are sheltered or seeking refugee from the conflict. These provisions can be read to also include children. The four Geneva Conventions of 1949 and the First Additional Protocol of 1977 apply to the DRC by virtue of common article 3, which regulates all armed conflicts including fighting involving only non-state armed militias.²⁵³ This is in addition to customary international humanitarian law applicable to non-international armed conflicts.

DRC is party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,²⁵⁴ which provides the guarantee of fundamental human rights. This is applicable in the armed conflict context to the extent that it corresponds with the protection of civilians, including children, from torture, inhuman and degrading treatment or discrimination. In addition, by virtue of being party to the ICC’s Rome statute, justice mechanisms are applicable for all serious violations of human rights that qualify as war crimes or grave breaches listed in the Geneva Conventions. Some of these punishable offences include deliberate, indiscriminate and disproportionate attacks harming civilians, torture and using human shields among others. These grave breaches correspond with occurrences in DRC, and the ICC can be another route for obtaining justice for victims, particularly children while serving as a deterrent for future potential violent acts. The only

²⁵⁰ Constitution of DRC 2011, art 11.

²⁵¹ UNICEF, (n 269).

²⁵² Kampala Convention, 2009.

²⁵³ Geneva Conventions, Additional Protocol I and Customary International Humanitarian Law principles.

²⁵⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987.

drawback is that the ICC is generally a measure of last resort in this regard and may fall short in investigating and prosecuting all persons accused or implicated in serious crimes in Congo.

4.7 SUMMARY

The chapter provides a comprehensive analysis of how armed conflicts in South Sudan and the DRC have profoundly affected children. It begins by detailing the ongoing violence in both countries, characterized by ethnic tensions, political instability, and clashes involving government and non-state armed groups. Children are disproportionately affected, facing horrific realities such as killing, recruitment as child soldiers, sexual violence, forced displacement, and denial of education. These children are often both primary and secondary victims, suffering direct violence and witnessing atrocities.

The chapter also highlights the grave inadequacies in local and international response mechanisms. In South Sudan, peace treaties and legislative reforms have failed to address the root causes of violence or prioritize children's rights, despite repeated attempts at political restructuring. In the DRC, the government has adopted various legal instruments, including the Draft National Transitional Justice Policy and laws targeting gender-based violence, but enforcement remains weak. Armed groups continue to violate children's rights with impunity, and government accountability is lacking. Humanitarian responses, led by organizations like UNICEF and Save the Children, are critical in mitigating the crisis but face significant challenges, including funding shortages, attacks on aid workers, and limited access to conflict zones. Regional and international peacekeeping efforts, such as MONUSCO in the DRC and UNMISS in South Sudan, have struggled to stabilize the regions, leaving security vacuums that further endanger children.

The chapter concludes that while international and regional legal frameworks, such as the Geneva Conventions, the African Charter on the Rights and Welfare of the Child, and the Rome Statute, provide a robust foundation for protecting children, their implementation is inconsistent and inadequate. The ongoing conflicts and lack of political will to enforce these laws exacerbate children's vulnerabilities, leaving them exposed to

harm. This analysis sets the stage for the next chapter, focusing on summary, conclusions, and recommendations.

CHAPTER 5

SUMMARY, CONCLUSION, AND RECOMMENDATION

5.1 SUMMARY OF THE STUDY

This section provides a summary of the overall study. Chapter 1 of this study identified a critical gap in the legal protection of children during armed conflicts, in Africa. It introduces the study by highlighting the increasing prevalence of armed conflict in Africa and its severe impact on children who suffer violations such as recruitment as child soldiers, sexual violence, and displacement. The problem statement identifies a gap in Africa's legal mechanisms to effectively protect children in armed conflict. The research aims to assess the adequacy of international law in safeguarding these children, using South Sudan and the Democratic Republic of Congo as case studies.²⁵⁵ The study's objectives include analysing the plight of children in conflict zones, evaluating international legal frameworks, and proposing legal reforms. The research questions explore whether current legal protections are sufficient and how to improve international law. A doctrinal research methodology focuses on legal analysis through case studies.²⁵⁶ The literature review highlights existing research on child protection in armed conflicts, revealing weaknesses in enforcement and suggesting the need for strengthened legal frameworks.²⁵⁷ Key terms such as armed conflict, children, and international humanitarian law are defined, amongst others, just to mention a few. Finally, the chapter outlines the structure of the dissertation, setting the foundation for the analysis in subsequent chapters.

²⁵⁵ Para 1. above.

²⁵⁶ Para 1.5 above.

²⁵⁷ Para 1.6 above.

Furthermore, chapter 2 examined the legal protection of children in armed conflict in Africa under international law; it outlines the legal frameworks. In dealing with state obligations, it found that countries must follow international laws protecting children during conflicts, giving way to the discussion on humanitarian frameworks highlighted laws like the Geneva Conventions that provide special protections for children.²⁵⁸ The human rights focused on the Convention on the Rights of the Child and its Optional Protocol, which prohibits child recruitment. The role of the International Criminal Court was also discussed in prosecuting those who use child soldiers.²⁵⁹ The chapter also reviewed the Convention on the Worst Forms of Child Labour, which bans child recruitment in warfare. The discussion went further to African regional framework which explored the African Charter on the Rights and Welfare of the Child, which strengthens protections for children in armed conflicts. The model law on children in armed conflict in Africa was introduced as a guideline for African states to improve national laws.²⁶⁰ The summary concludes that international and African laws exist to protect children in armed conflict, but more vigorous enforcement is needed.

Chapter 3 of the study discussed the Humanitarian and Human Rights concerns for children in armed conflict, by which children in conflict zones face risks like recruitment as soldiers, attacks on schools and hospitals, and loss of access to healthcare and education.²⁶¹ The vulnerable children are exposed to violence, forced labour, and displacement, with weak enforcement of international protections in countries like the DRC and South Sudan.²⁶² This further explains that some states have not ratified key treaties, making legal protections harder to apply; it raises human rights concerns and questions about how to classify child soldiers, whether they are victims or responsible for their actions, especially when they join voluntarily. In discussing child justice, the study explains that armed conflicts disrupt legal systems, making it difficult for children to access

²⁵⁸ Para 2.7 above.

²⁵⁹ Para 2.5.3 above.

²⁶⁰ Para 2.6.2 above.

²⁶¹ Para 4.4 above.

²⁶² Para 3.4 above.

justice.²⁶³ The summary concludes that despite legal protections, enforcement gaps and complex challenges leave many children unprotected during armed conflicts.

Chapter 4 examined the impact of armed conflicts in South Sudan and the DRC on children and evaluates the effectiveness of legal frameworks in their protection. It outlines how political instability and ethnic violence in South Sudan have led to the killing, displacement, and recruitment of children as soldiers, along with high rates of sexual violence and child marriages.²⁶⁴ The DRC section highlights similar challenges, including mass child recruitment, attacks on schools, and extreme sexual violence against young girls. Both countries have attempted legislative reforms, but poor enforcement and ongoing conflict have limited progress. Humanitarian organizations like UNICEF and Save the Children provide aid, but funding shortages, attacks on aid workers, and restricted access to affected areas hinder their efforts. International legal frameworks, including the Geneva Conventions and the Rome Statute, exist to protect children, yet poor implementation and lack of political will continue to leave many vulnerable.²⁶⁵ The chapter concludes that while laws and humanitarian efforts provide some relief, children in these conflict zones remain at extreme risk due to persistent violence and weak enforcement of protections.

5.2 CONCLUSIONS

This study concludes that while international law provides a framework for protecting children in armed conflict, its effectiveness in Africa remains limited.²⁶⁶ The experiences of South Sudan and the Democratic Republic of Congo reveal that despite legal provisions they ratified under the Geneva Conventions, the Convention on the Rights of the Child, and regional instruments like the African Charter on the Rights and Welfare of the Child, children continue to face grave violations.²⁶⁷ The persistent recruitment of child soldiers, sexual violence, and displacement highlight the gap between legal protections and their enforcement.²⁶⁸ Weak judicial systems, political instability, and inadequate

²⁶³ Para 3.3.2 above.

²⁶⁴ Para 4.2.6 above.

²⁶⁵ Para 4.7 above.

²⁶⁶ Para 1.1 above.

²⁶⁷ Para 4.4.1 above.

²⁶⁸ Para 3.2.1 above.

accountability mechanisms have made it difficult to safeguard children's rights in conflict zones. These challenges reflect a broader failure of national governments and international actors to translate legal commitments into meaningful protection on the ground.

The findings suggest that legal frameworks alone are insufficient; children will remain vulnerable without stronger enforcement and accountability.²⁶⁹ Addressing this issue requires a multi-faceted approach, including political will from national governments, regional cooperation through bodies like the African Union, and sustained international support. Strengthening national legal systems, ensuring accountability for violations, and prioritizing child rehabilitation and reintegration are essential steps toward meaningful protection. Ultimately, if international and regional commitments are to truly safeguard children in conflict, they must be backed by concrete action, not just legal provisions.

In conclusion, protecting children in armed conflict requires more than legal frameworks; it demands unwavering commitment from all stakeholders. This study highlights that while international and regional laws set a strong foundation, their impact remains limited without proper enforcement,²⁷⁰ accountability, and political will. Governments must prioritize child protection as a central aspect of peace and security strategies to bridge the gap between law and reality. A comprehensive and sustained effort incorporating legal reforms, humanitarian support, and proactive enforcement to ensure that children in conflict zones are not just legally protected but genuinely safeguarded from harm.

5.3 RECOMMENDATIONS

Protecting children in armed conflict requires proactive steps. This study recommends creating safe zones and evacuation routes to secure children and ensure access to essential services.²⁷¹ Humanitarian aid should focus on their needs, including healthcare, education, and psychological support, even in remote conflict areas. Governments have the primary legal and moral obligation under international law, such as the CRC and Additional Protocols to the Geneva Conventions, to protect children in armed conflict. A

²⁶⁹ Para 1.3(d) above.

²⁷⁰ Para 3.2.1 above.

²⁷¹ Para 5.2 above.

multi-stakeholder approach is necessary to protect children in armed conflict effectively. Governments, international organizations, NGOs, armed groups, regional actors, and local communities must collaborate to enforce international laws, create safe zones, and provide essential services. Holding perpetrators accountable and ensuring sustained humanitarian aid is critical to safeguarding the future of conflict-affected children.

As international law offers legal protection for children in armed conflicts through conventions and protocols specifically designed to address their unique vulnerabilities, the study recommends strengthening the enforcement of the international and regional mechanisms by making sure that State actors are held accountable for the violation of children's rights during armed conflict whether as a result of the armed conflict caused by political or gang groups.²⁷² Expanding the jurisdiction of regional courts and improving extradition agreements can enhance enforcement. Governments must be accountable through international pressure, legal action, and sanctions. The ICC and regional courts must have stronger enforcement powers to prosecute child rights violators effectively.²⁷³ The UN must be empowered to impose binding sanctions and peacekeeping measures. NGOs and civil society groups must be supported to continue documenting violations and advocating for reform.

There is a need to prioritize the reintegration and rehabilitation of child victims of armed conflict to ensure children receive the full special protection they are entitled to. The study recommends establishing clear guidelines to define who qualifies as a child victim with binding effect.²⁷⁴ This includes providing a thorough and precise distinction between civilians and combatants, leaving no ambiguity about their status in the context of armed conflict. National governments are primarily responsible for adopting and enforcing DDR policies that align with international standards. They must ensure that child victims of armed conflict are not criminalized and are given proper rehabilitation and reintegration opportunities. Governments should create legal frameworks that clearly define a child

²⁷² Para 4.7 above.

²⁷³ Para 3.2.1 (d).

²⁷⁴ Para 1.1 above.

victim, ensuring that children forced into combat or support roles in armed groups are treated as victims rather than perpetrators.

In conclusion, this study has thoroughly examined the effectiveness of the existing legal mechanisms aimed at safeguarding children affected by armed conflict. Through its analysis, it has become evident that while some measures are in place, gaps and challenges remain that may compromise the protection of these vulnerable individuals. It is highly recommended that a comprehensive study be conducted in a different region to gain a deeper understanding of the situation. This research should determine whether the difficulties faced in protecting children during armed conflicts are isolated to specific areas or if they reflect a broader, global issue. This exploration could pave the way for more effective policies and interventions tailored to meet the needs of children in conflict-affected regions worldwide.

BIBLIOGRAPHY

BOOKS

Al-Dawoody A and Murphy V *International humanitarian law Islamic law and the protection of children in armed conflict* (International Review of the Red Cross 2019).

Bijl E Welmoet W and van der Zeijden W *On Civilian Harm: Examining the complex negative effects of violent conflict on the lives of civilians* On Civilian Harm 'book launch (PAX, Protection of Civilians team 2021).

Boekhout van Solinge T *The illegal exploitation of natural resources The Oxford Handbook of Crime and Criminal Justice Oxford* (Oxford University 2014)

Genser J and Ugarte BS (Eds) *The United Nations Security Council in the age of human rights* (Cambridge University Press 2014).

Grover SC *Humanity's children: ICC jurisprudence and the failure to address the genocidal forcible transfer of children* (Springer Science & Business Media 2012).

Hanson K and Nieuwenhuys O *A Child-Centered Approach to Children's Rights Law Living Rights and Translations* (2020 online edn Oxford Academic).

Langlaude S *The Right of the Child to Religious Freedom in International Law* (Martinus Nijhoff 2007).

Martell P *First Raise a Flag: How South Sudan Won the Longest War But Lost the Peace* (Oxford University Press 2019).

Rhona R K Smith *International human rights law* (Oxford University Press 2018).

Rosenthal MD *World Armaments and Disarmament SIPRI Yearbook 1974* By the Stockholm International Peace Research Institute (Cambridge Mass The MIT Press and Stockholm Almqvist and Wiksell 1974) *American Political Science Review* 71.4 (1977).

Sassòli M *The implementation of international humanitarian law: current and inherent challenges* *Yearbook of International Humanitarian Law* 10 (Cambridge University Press 2007).

Thompson S K Genser J and Stagno B U (eds) *Children and Armed Conflict The United Nations Security Council in the Age of Human Rights* Cambridge (Cambridge University Press 2014).

CASE LAW

The Prosecutor vs Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused), SCSL-04-16-T Special Court for Sierra Leone (20 June 2007).

Prosecutor v. Kunarac, Kovač, and Vuković (2001).

Prosecutor v. Brima, Kamara, and Kanu (2008).

Prosecutor v. Sesay, Kallon, and Gbao (2009).

The Prosecutor v Jean-Paul Akayesu (Trial Judgement) ICTR-96-4-T International Criminal Tribunal for Rwanda (ICTR) (2 September 1998).

Prosecutor v Thomas Lubanga Dyilo ICC-01/04-01/06 (14 March 2012).

Prosecutor v Anto Furundzija (Trial Judgement), IT-95-17/1-T International Criminal Tribunal for the former Yugoslavia ICTY (10 December 1998).

INTERNATIONAL INSTRUMENTS

African Charter on Human and Peoples' Rights 1986.

African Charter on the Rights and Welfare of the Child 1990.

American Convention on Human Rights 1969.

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1987.

Convention on the Rights of the Child 1989.

Geneva Conventions 1949.

Kampala Convention African Convention for the Protection and Assistance of Internally Displace Persons in Africa 2009.

Khartoum Declaration of Agreement of Cease-fire 2018.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000.

Prohibition and Immediate Action for Eliminating the Worst Forms of Child Labour 1999.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977.

Rome Statute for the International Criminal Court 1998.

The Convention on the Worst Forms of Child Labour, 1999.

United Nations Vienna Convention on the Law of Treaties 1969.

JOURNAL ARTICLES

Bameka CM Narrowing the Gap in the Access to Justice for Child Victims in Post-conflict Societies: An Analysis Stemming from the Construction of Child Soldiers in International Law and Policy, 2023 Vol 17 Issue 1 International Journal of Transitional Justice 141-156.

de la Rosa VM & Romero ED Epistemic and non-epistemic modals: The key to interpreting the spirit of counter-terrorism United Nations Security Council resolutions 2021 vol 180 Journal of Pragmatics 89-101.

Fredman S Providing Equality: Substantive Equality and the Positive Duty to Provide 2005 21 (2) South African Journal on Human Rights 163–90.

Harvey R Children and Armed Conflict: A Guide to International Humanitarian and Human Rights Law 2003 International Bureau for Children's Rights 1-458. 2

Henckaerts JM Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict 2005 87(857), International Review of the Red Cross 175–212.

Kiyala J Chrysostome K Challenges of reintegrating self-demobilized child soldiers in North Kivu Province: Prospects for accountability and reconciliation via restorative justice peace-making circles 2015 vol no 16(2) Human Rights Review 99-122.

Magarrell L Reparations for massive or widespread human rights violations: sorting out claims for reparations and the struggle for social justice (2003) 22 Windsor YB Access Just (HeinOnline) 1-85.

Naluwairo R 'Improving the administration of justice by military courts in Africa: An appraisal of the jurisprudence of the African Commission on Human and Peoples Rights' African Human Rights Law Journal p 43 at 51.

Nanima RD An evaluation of the adequacy of the African Charter on the rights of the child concerning economic crimes in armed conflict 2020 vol 4 JACL 1-58.

Patel M and Patel N Exploring research methodology (2019) vol 6(3) International Journal of Research and Review 48-55.

Pogge T World Poverty and Human Rights (2005) vol 19 Ethics and international affairs 1-7.

Pradeep MD Legal Research-Descriptive Analysis on Doctrinal Methodology (2019) Vol 4(2) International Journal of Management Technology and Social Sciences (IJMTS) 95-103.

Sandra Singer The protection of Children during Armed Conflict situations International tracing and Welfare The British Red Cross Society (1986) vol 26(252) International Review of the Red Cross(1961-1997) 133-168 Cambridge University Pres.

Wani Ibrahim 'United Nations Peacekeeping, Human Rights, and the Protection of Civilians' The State of Peacebuilding in Africa: Lessons Learned for Policymakers and Practitioners, (2021) Springer p 81 at 87.

INTERNET REFERENCES

ABC News South Sudan: UN warns of 'social engineering' amid looming threat of genocide retrieved from <https://www.abc.net.au/news/2017-03-15/un-warns-of-south-sudan-27social-engineering27/8354958> accessed 20 November 2024.

Africa Intelligence, 'DRC Secret details of SADC's decision to send troops to eastern DR Congo' retrieved from <https://www.africaintelligence.com/central-africa/2023/05/15/secret-details-of-sadc-s-decision-to-send-troops-to-eastern-dr-congo,109974882-art> accessed 19 December 2024.

African Union The Africa Platform on Children Affected by Armed Conflict welcomes the African Union's adoption of two significant policies on child protection retrieved from <https://reliefweb.int/report/world/africa-platform-children-affected-armed-conflict-welcomes-african-unions-adoption-two-significant-policies-child-protection> accessed 22 July 2024.

Al Jazeera South Sudan's Vice President Machar deposed by party retrieved from <https://www.aljazeera.com/news/2021/8/4/south-sudans-vp-machar-deposed-by-party-military-wing> accessed 12 April 2024.

Amnesty International 'Democratic Republic of the Congo 2023' at: <https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/democratic-republicof-the-congo/report-democratic-republic-of-the-congo> accessed 1 October 2024.

Anyier CP UNICEF on child marriages in South Sudan 2024: Ending child marriage should not be a choice but a necessity retrieved from <https://www.unicef.org/southsudan/stories/ending-child-marriage-should-not-be-choice-necessity> accessed 13 January 2025.

Centre for Preventive Action Conflict in the Democratic Republic of Congo retrieved from <https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo> accessed 01 October 2024.

Chibomba M Protection of Children Affected by Armed Conflict in Africa retrieved from <https://www.comesa.int/protection-of-children-affected-by-armed-conflict-in-africa/> accessed 12 January 2025.

Esdras Tsongo Al Jazeera What is the latest conflict in the DR Congo? The Norwegian Refugee Council declared the situation in DR Congo to be the world's most neglected refugee crisis – for the second year running; retrieved from <https://www.aljazeera.com/features/2022/6/21/explainer-what-is-the-latest-conflict-in-the-drc> accessed 22 November 2024.

FIDH, 'DRC: The renewal of ICC investigations in North-Kivu raises new hopes for victims' retrieved from <https://reliefweb.int/report/democratic-republic-congo/drc-renewal-icc-investigations-north-kivu-raises-new-hopes-victims> accessed 22 January 2025.

Human Rights Watch, 'World Report 2023 - Democratic Republic of Congo' retrieved from <https://www.ecoi.net/en/document/2085408.html> accessed 12 January 2025.

ICRC Children protected under international humanitarian law 2010 retrieved from <https://www.icrc.org/en/document/protected-persons/children-protected-international-humanitarian-law-ihl#:~:text=They%20are%20guaranteed%20the%20general%20protection%20of%20noncombatants%2C,by%20the%20Geneva%20Conventions%20and%20the%201977%20Protocols> accessed 25 January 2025.

International Committee of the Red Cross The Hague Conventions of 1899 and 1907 ICRC Official Website retrieved from <https://ihl-databases.icrc.org/ihl/INTRO/195> accessed 21 August 2024.

International Committee of the Red Cross Geneva Conventions and Additional Protocols ICRC Official Website retrieved from

https://www.icrc.org/en/doc/assets/files/other/icrc_002_0173.pdf accessed 21 August 2024.

International Service for Human Rights, 'DRC adopts national law to protect, promote rights of defenders' retrieved from <https://ishr.ch/latest-updates/the-drc-adopts-a-national-law-to-protect-and-promote-the-rights-of-human-rights-defenders/> accessed 15 May 2024.

Lynch j Star Tribune 'South Sudan experiencing ethnic cleansing, UN Report says' retrieved from <https://apnews.com/general-news-d6aa5c0427cd4708a673199400d4e3b8> accessed 22 January 2025.

Natalia J Al Jazeera Atrocities prompt mass exodus in Central Equatoria retrieved from <https://www.aljazeera.com/gallery/2017/2/15/atrocities-prompt-mass-exodus-in-central-equatoria/> accessed on 30 May 2024.

Save the Children, 'Education' retrieved from <https://www.savethechildren.net/what-we-do/education> accessed 22 July 2024.

The Independent 'Women and children being raped and slaughtered as South Sudan conflict worsens famine threatening millions' 14 March 2017 & United Nations 'South Sudan emergency session' retrieved from <https://www.independent.co.uk/news/world/africa/south-sudan-famine-dec-emergency-appeal-women-children-rape-murder-war-crimes-refugees-uganda-a7630201.html> accessed 02 June 2024.

Thomas Fessy, Human Rights Watch 'Prominent Journalist Denied Bail in Congo' retrieved from <https://www.hrw.org/news/2023/09/28/prominent-journalist-denied-bail-congo> accessed 15 August 2024.

Tirana Hassan Democratic Republic of Congo: The human rights system is under threat: A call to action (2023) retrieved from <https://www.hrw.org/world-report/2024/country-chapters/democratic-republic-congo> accessed 01 October 2024.

UN OCHA DRC remains the epicenter of a child suffering in war as country tops the world list of grave violations against children,' Save the Children retrieved from <https://reliefweb.int/report/democratic-republic-congo/drc-remains-epicentre-child-sufferingwar-country-tops-world-list-grave-violations-against-children> accessed 01 October 2024.

UN, 'UN agencies warn of worsening humanitarian and human rights crisis in eastern DR Congo' retrieved from <https://news.un.org/en/story/2025/01/1159651> accessed 5 February 2025.

UNICEF 2024, one of the worst years in history for children in conflict, retrieved from <https://news.un.org/en/story/2024/12/1158561> accessed 27 December 2024.

UNICEF DRC: Displaced children face many dangers retrieved from <https://www.unicef.fr/article/rdc-les-enfants-deplaces-en-proie-a-de-nombreux-dangers/> accessed 30 June 2024.

UNICEF How children have become frontline targets in armed conflicts United Nations Monitoring and Reporting on Grave Violations retrieved from <https://www.unicef.org/children-under-attack/six-grave-violations-against-children> accessed 22 November 2024.

United Nations, The State of Human Rights in the Protracted Conflict in South Sudan retrieved from https://www.ohchr.org/sites/default/files/Documents/Countries/SS/UNMISS_HRD_4December2015.pdf accessed 25 January 2025.

United Nations. Rome Statute of the International Criminal Court. United Nations, Treaty Series, vol. 2187, p. 3, 1998 retrieved from <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> accessed 20 January 2025.

United Nations. Vienna Convention on the Law of Treaties. United Nations, Treaty Series, vol 1155, p. 331, 1969 retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> accessed 22 December 2025.

INSTITUTIONAL REPORTS

ACHPR Study on Transitional Justice and Human and Peoples Rights in Africa Banjul, 2019 Addressing Human Rights Issues in Conflict Situations: Towards a More Systematic and Effective Role for the African Commission on Human and Peoples Rights Banjul 2019.

African Committee of Experts on the Rights and Welfare of the Child Model law on children affected by armed conflict in Africa 2023.

African Union The Africa Platform on Children Affected by Armed Conflict welcomes the African Union's adoption of two significant policies on child protection in 2022 retrieved from <https://www.peaceau.org/en/article/the-africa-platform-on-children-affected-by-armed-conflict-welcomes-the-african-union-s-adoption-of-two-significant-policies-on-child-protection> (accessed 22 December 2024).

Antony J. Blinken 2023 Country Reports on Human Rights Practices: Bureau of Special Rapporteur on Children and Armed Conflict, HON. ROBERT DOYA NANIMA. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I) and (Protocol II) 1977 Democracy Human Rights and Labor.

Canadian Human Rights Commission Survey of National Human Rights Institutions Article 33.2 of the Convention on the Rights of Persons with Disabilities 2021.

Department of State's annual Trafficking in Persons Report retrieved from <https://www.state.gov/trafficking-inpersons-report> (accessed 01 October 2024).

Human Rights Watch on the NSS and the National Security Act 2014 Joint Open Letter: Strengthen Gaps in Amendments to South Sudan's Abusive National Security Service Act retrieved from <https://www.hrw.org/news/2023/07/27/joint-open-letter-strengthen-gaps-amendments-south-sudans-abusive-national-security> (accessed 22 October 2024).

James Maiden Sudan violence forces at least 450 000 children to flee their homes (12 May 2023 Press release) retrieved from: <https://www.unicef.org/southsudan/press-releases/sudan-violence-forces-least-450000-children-fleetheir-home> (accessed 1 October 2024).

Joe Bavier Ban on 'conflict minerals' would hurt Congo's poor Reuters report retrieved from <https://www.reuters.com/article/world/ban-on-conflict-minerals-would-hurt-congos-poor->

idUSJOE5370L7/#:~:text=Banning%20minerals%20exported%20from%20violence-ravaged%20eastern%20Congo%20would,world%27s%20deadliest%20conflict%2C%20a%20study%20said%20on%20Wednesday (accessed 05 January 2025).

UN Commission on Human Rights in South Sudan 2023 October report on systematic censorship South Sudan: UN Inquiry's report finds that entrenched repression imperils prospects for peace, human rights and credible elections retrieved from <https://www.ohchr.org/en/press-releases/2023/10/south-sudan-un-inquirys-report-finds-entrenched-repression->

imperils#:~:text=The%20report%2C%20titled%20%E2%80%9CEntrenched%20Repression%3A%20the%20systemic%20curtailment,actors%2C%20both%20in%20and%20outside%20of%20the%20country (accessed 20 January 2025).

UN Security Council 2018 report on the armed conflict at the 72nd session of the General Assembly Promotion and protection of children's rights: promotion and protection of children's rights.

UNGA and UNSC Children and Armed Conflict: Secretary-General's Report UN Doc A/76/871-S/2022/493 (2022).

UNICEF appeals for US\$10.3 billion emergency funding to support children affected by conflict, catastrophe and climate crises around the world (05 December 2022 Press Release Geneva: New York) retrieved from: <https://www.unicef.org/southsudan/press-releases/unicef-appeals-us103-billion-emergency-fundingsupport-children-affected-conflict> (accessed 01 October 2024).

United Nations General Assembly Session 54 Resolution 263, Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography.

United Nations Office of the Secretary-General's Special Representative for Children and Armed Conflict Annual Report of the Secretary-General on Children and Armed Conflict.

LEGISLATION

Constitution of Congo 2005 (rev 2011).

National Security Service Act 2014.

SIKHWAI TS CHAPTER 1-5 DISSERTATION 23 FEB.docx

by tshifhiwa sheron

Submission date: 24-Feb-2025 11:00AM (UTC+0200)

Submission ID: 2591921421

File name: SIKHWAI_TS_CHAPTER_1-5_DISSERTATION_23_FEB.docx (132.73K)

Word count: 24256

Character count: 140113

ORIGINALITY REPORT

14%

SIMILARITY INDEX

9%

INTERNET SOURCES

14%

PUBLICATIONS

4%

STUDENT PAPERS

PRIMARY SOURCES

1

hugepdf.com

Internet Source

1%

2

dokumen.pub

Internet Source

1%

3

international-review.icrc.org

Internet Source

1%

4

Rain Liivoja, Tim McCormack. "Routledge Handbook of the Law of Armed Conflict", Routledge, 2016

Publication

1%

5

"A Global Handbook on National Human Rights Protection Systems", Brill, 2023

Publication

1%

6

Ibrahim Bangura. "Disarmament, Demobilisation and Reintegration of Ex-Combatants in Africa", Routledge, 2023

Publication

<1%

7

Lenou Tassigne, Romuald. "Uncovering the Social Reintegration of Former Child Soldiers

<1%

in the Democratic Republic of Congo", George Mason University, 2025

Publication

8

Sonja C. Grover. "Prosecuting International Crimes and Human Rights Abuses Committed Against Children", Springer Nature, 2010

Publication

<1 %

9

Da Costa, Reece Irvin. "The Erga Omnes Obligation Towards Children in Armed Conflict", University of Pretoria (South Africa), 2023

Publication

<1 %

10

"International Humanitarian Law and Human Rights Law", Brill, 2008

Publication

<1 %

11

www.onlinelibrary.iihl.org

Internet Source

<1 %

12

Bilonda, Grace Mundela. "The Responsibility of the State on the Violation of the Rights of the Child During the Post-Armed Conflict: The Case of the Democratic Republic of Congo", University of Pretoria (South Africa), 2023

Publication

<1 %

13

libtest.ucu.ac.ug

Internet Source

<1 %

- | | | |
|----|--|------|
| 14 | Jean Chrysostome K. Kiyala. "Child Soldiers and Restorative Justice", Springer Science and Business Media LLC, 2019
Publication | <1 % |
| 15 | Rajnaara C. Akhtar, Conrad Nyamutata. "International Child Law", Routledge, 2020
Publication | <1 % |
| 16 | "International Human Rights of Children", Springer Science and Business Media LLC, 2019
Publication | <1 % |
| 17 | www.biicl.org
Internet Source | <1 % |
| 18 | orbi.lu.uni.lu
Internet Source | <1 % |
| 19 | repository.out.ac.tz
Internet Source | <1 % |
| 20 | culturalrelations.org
Internet Source | <1 % |
| 21 | ihl-databases.icrc.org
Internet Source | <1 % |
| 22 | Ralph Crawshaw, Leif Holmström. "Essential Rules of Behaviour for Police in Armed Conflict, Disturbance and Tension", Brill, 2015
Publication | <1 % |

FACULTY OF MANAGEMENT, COMMERCE & LAW

FACULTY RESEARCH AND INNOVATION INTEGRATED COMMITTEE (FRIIC)

MASTERS ETHICS APPROVAL CERTIFICATE

(CATEGORY ONE)

The table below lists Masters Student from the **Department: Public Law** whose registered Research Project Report is in the **Ethical Clearance Category One**. The Research Report is straightforward without ethical problems (*No risk to humans, animals, or environment*).

#	STUDENT NAME	GENDER	STUDENT#	RESEARCH REPORT TITLE	ETHICAL CLEARANCE#	SUPERVISOR/S
1.	Sikhwai TS	Ms	19021365	<i>The Protection of children in armed conflict under International law: Lessons from South Sudan and Democratic Republic of Congo.</i>	FMCL/25/PIL/03	Prof T Van Walt T Skosana

Approval Period: February 2025 – December 2025

The **Faculty Research and Innovation Integrated Committee** of the **Faculty of Management, Commerce & Law (FMCL)** hereby approve the Research Projects and issue this Certificate as indicated above.

General Conditions

While this ethics approval is subject to all declarations, undertakings and agreements incorporated and signed in the application form, please note the following.

- The project leader (principal investigator) must report in the prescribed format to the REC:
 - Annually (or as otherwise requested) on the progress of the project, and upon completion of the project.
 - Within 48hrs in case of any adverse event (or any matter that interrupts sound ethical principles) during the project.
 - Annually, research projects may be randomly selected for auditing.
- The approval applies strictly to the protocol as stipulated in the application form. Should a change to the protocol be deemed necessary during the project, the project leader must apply for approval of these changes before their implementation. Should there be a deviation from the study protocol, without the necessary approval for the change, the ethics approval is automatically forfeited?
- The date of approval indicates the earliest date that the project may begin. Should the project have to continue after the expiry date; a new application must be made, and a new approval received before or on the expiry date.
- In the interest of ethical responsibility, the FREC retains the right to:
 - Request access to any information or data at any time during the course or after completion of the project,
 - To ask further questions; Seek additional information; Require a further modification or monitor the conduct of your research or the informed consent process.
 - withdraw or postpone approval if:
 - Any unethical principles or practices of the project are revealed or suspected.
 - It becomes apparent that relevant information was withheld from the REC or that information has been false or misrepresented.
 - The required annual report and reporting of adverse events was not done timely and accurately,
 - New institutional rules, national legislation or international conventions deem it necessary.

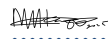
ISSUED BY FACULTY RESEARCH AND INNOVATION INTEGRATED COMMITTEE ON THE 13/02/2025.

FREC CHAIRPERSON: Prof A Kadyamatimba
(Title, Initial, Surname)



(Signature)

FMCL EXEC. DEAN: Prof M Kanyane
(Title, Initial, Surname)


.....
(Signature)

FRIIC PUBLIC LAW STUDENT ETHICS CERT

13 FEB 2025

Final Audit Report

2025-02-13

Created:	2025-02-13
By:	armstrong kadyamatimba (ARMSTRONG.KADYAMATIMBA@UNIVEN.AC.ZA)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZL8olcTJyLSrtJkChDZ884z3aqEcbkMW

"FRIIC PUBLIC LAW STUDENT ETHICS CERT 13 FEB 2025" History

-  Document created by armstrong kadyamatimba (ARMSTRONG.KADYAMATIMBA@UNIVEN.AC.ZA)
2025-02-13 - 11:04:44 AM GMT- IP address: 102.141.72.105
-  Document emailed to Modimowabarwa Kanyane (barwa.kanyane@univen.ac.za) for signature
2025-02-13 - 11:05:52 AM GMT
-  Email viewed by Modimowabarwa Kanyane (barwa.kanyane@univen.ac.za)
2025-02-13 - 11:11:58 AM GMT- IP address: 196.21.175.1
-  Document e-signed by Modimowabarwa Kanyane (barwa.kanyane@univen.ac.za)
Signature Date: 2025-02-13 - 11:12:23 AM GMT - Time Source: server- IP address: 196.21.175.1
-  Agreement completed.
2025-02-13 - 11:12:23 AM GMT



ZEE EDITING AND PROOFREADING SERVICES

PO BOX 663 THOLONGWE 0734

LANGUAGE MATTERS

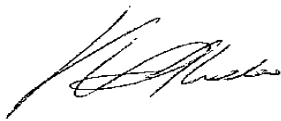
16 February 2025

TO WHOM IT MAY CONCERN

This is to certify that the thesis titled **“The protection of children in armed conflict under international law: Lessons from South Sudan and Democratic Republic of Congo”** by **Sikhwai Tshifhiwa Sheron**, student number **19021365** has been edited and proofread for grammar, spelling, punctuation, overall style and logical flow. The edits were carried out using the “Track changes” feature in MS Word, giving the author final control over whether to accept or reject effected changes prior to submission, provided the changes I recommended are effected to the text, the language is of an acceptable standard.

Please don't hesitate to contact me for any enquiry.

Kind regards



Prof Hlavis Motlhaka (BEDSPF-UL, BA Hons-UL, MA-IUP: USA, PhD-WITS, PGDiP-SUN)

Cell number: 079-721-0620/078-196-4459

Email address: hlavisomhlanga@yahoo.com