

THE SEXUAL EXPLOITATION OF CHILD SOLDIERS IN THE DRC: A VICTIM-CENTERED APPROACH UTILIZING HUMAN TRAFFICKING PRINCIPLES

By JESSICA NANN MADSEN
St. Thomas University, School Of Law
Miami, Florida

Abstract

This article examines the use and recruitment of boy-child soldiers in the civil war of the Democratic Republic of the Congo in the context of international human trafficking instruments and principles by utilizing its victim-center approaches. It further analyzes the effects of gender-mainstreaming on the sexual exploitation of boy-child soldiers and their ability to successfully reintegrate back into society.

Keywords: Boy-child soldiers; Democratic Republic of the Congo; Human Trafficking; Victim-centered Approach; Sexual exploitation; Gender Mainstreaming; International Law

I. Delimitation of the Problem

Introduction

Beginning in the early 1990s, the international community began to pay particular attention to the widespread use of children in armed conflicts throughout Africa.¹ This heightened awareness arose partly due to the extreme hostilities that commenced in the eastern Democratic Republic of the Congo (DRC). The civil war in the DRC has been deemed the worst humanitarian crisis in the world and the widest interstate war in African history.² The war has been fueled by the exploitation of the country's natural resources by local and foreign armies and private enterprises.³ As of 1996 this conflict has caused more deaths than any other war since World War II either from combat, disease, or malnutrition.⁴ It has involved nine African nations, affected the lives of over fifty million Congolese, and has killed approximately 5 million people.⁵ Currently, the DRC is one of the countries of the world with the largest number of child soldiers.⁶ An estimated 30,000 children have been fighting for all armed forces in the civil war since

¹Christina Clark, Child Soldiers: Challenging Sensational Stereotypes, Pambazuka News. Weekly Forum For Social Justice in Africa. Iss. 168 (Aug 2004) available at <http://www.pambazuka.org/en/category/features/23696> [hereinafter Clark]

²Stop Raping Our Greatest Resource: Power to Women and Girls of the Democratic Republic of the Congo, available at http://www.stoprapeindrc.org/index_37.html [hereinafter Stop]

³Id.

⁴Id.

⁵Id.

⁶Protection Project, Democratic Republic of the Congo, available at http://74.125.47.132/search?q=cache:CeQ598nDZmMJ:www.protectionproject.org/human_rights_reports/report_documents/congod.doc+DRC+government+provides+funds+to+armed+forces+that+recruit+child+soldiers&cd=4&hl=en&ct=clnk&gl=us

its inception.⁷ The recruitment and use of children for combat is outlawed by various measures of international human rights, humanitarian, labor, and criminal law, but it has not been fully examined in the context of human trafficking on a global scale. Child soldiering is a unique and severe manifestation of trafficking in persons that involves the unlawful recruitment of children through force, coercion, or fraud to be exploited for their labor or to be abused as sex slaves in conflict areas, and, must be viewed as such.⁸ The benefit of expanding current international instruments that prohibit the recruitment of children into the armed forces to encompass human trafficking guidelines is to prevent the act, protect the victims, and to prosecute the perpetrators. Within these guidelines is a victim-centered approach that requires nations to address the issues of rescuing child soldiers, rehabilitating them, and assisting in the reintegration process.⁹ With these additional approaches, States will be obligated to provide proof of prevention methods, create new or enforce current legislation imposing strict punishments, and provide resources to protect victims of child soldiering. This expansion leads to greater awareness of child soldiering and global cooperation among State parties. More importantly, the emphasis is placed on the victim and towards contributing to the necessary skill building that is essential to reintegrating children back into society.

Additionally, when the individual child's needs are considered utilizing this victim-centered approach under the human trafficking principles, monolithic assumptions about gender roles in armed conflict can be diminished. Although greater awareness is important in responding to the use of child soldiers in the armed forces, thus far, both gender mainstreaming in the recent international bodies specific to children in armed conflicts and popular images have too often sensationalized the issue, with counter-productive consequences.¹⁰ Ubiquitous media images of boys with guns as the epitome of child soldiering and girl sex slaves as the "victims" of conflict obscure the fact that many other children, both male and female, play a variety of different roles in armed conflict.¹¹ All children, both boys and girls, are vulnerable to sexual abuse and exploitation by others in the armed group.¹² However, the global extent of the boy-child soldier who has been sexually exploited in armed conflict remains a major empirical and theoretical concept to be addressed.¹³ The consequences of continuing to neglect boy-child soldiers who have been sexually exploited will only foster perpetuation of its existence and restrict any possibility of recognition,

⁷*Id.*

⁸U.S. Department of State, Trafficking in Persons Report (2008), available at <http://www.state.gov/documents/organization/105655.pdf> [hereinafter TIP]

⁹*Id.* at 5.

¹⁰Clark, *supra* note 1.

¹¹*Id.*

¹²Mark Lorey, Child Soldiers: Care & Protection of Children in Emergencies; A Field Guide, (2001), available at <http://74.125.113.132/search?q=cache:FndGCUYhRtIJ:www.savethechildren.org/publications/technical-resources/emergenciesprotection/ChildSoldiersFieldGuide.pdf+Why+are+boys+the+target+of+child+soldiers%3F&hl=en&ct=clnk&cd=6&gl=us> [hereinafter CS Manual]

¹³Lisa Alfredson, Sexual Exploitation of Child Soldiers: An Exploration and Analysis of Global Dimensions and Trends, available at <http://74.125.47.132/search?q=cache:zcP05tUu7lwJ:www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5RPBPA/%24file/csuscexploit.pdf%3Fopenelement+sexual+exploitation+of+boy+child+soldiers&hl=en&ct=clnk&cd=1&gl=us> [hereinafter Lisa]

prevention, protection, or recovery. Understanding first that child soldiering is a human trafficking matter is crucial to the recognition of the act as child exploitation and in the State's obligations to prevent, protect, and prosecute. Once the international community is able to fully comprehend the nature and extent of the sexual exploitation involved with each individual child attempting to be reintegrated into society, it is only then that we can begin to dismantle the inappropriate preconceived notions about who is being sexually exploited during wartime, and, assist in the rescue, rehabilitation, and recovery process. This article aims to provide a detailed factual basis as to who is a child soldier (Part A), how the dilemma of child soldiering has been viewed by the international community thus far (Part B), an establishment of child soldiering as a form of human trafficking (Part C), and a brief overview of how recent gender mainstreaming has created inequality for boy-child soldiers who have been sexually exploited in the civil war of the DRC (Part D). It will further consider the conflicting claims of the major stakeholders involved, both in the international realm and in the DRC (Part II), the past trends in decision making by the DRC government to combat child soldiering and the sexual exploitation of boy-child soldiers (Part III), prediction of future trends in gender mainstreaming and human trafficking agreements (Part IV), and recommendations for the future of boy-child soldiers in the interest of human dignity (Part V).

A. Definition of a Child Soldier

"The youngest patient seen at the MSF [Médecins sans Frontières] clinic has been a 10 year old boy who was raped by an armed man, while his mother was violated by two others."¹⁴ This boy-child soldier from the DRC is just one of an estimated 300,000 boys and girls, under the age of 18, who are involved in more than 30 armed conflicts worldwide.¹⁵ Although most child soldiers are between 15 and 18 years old, significant recruitment starts at the age of 10 and the use of even younger children has been recorded.¹⁶ While there is no precise universally accepted definition of a child soldier, both the United Nations Children's Fund (UNICEF) and the Coalition to Stop the Use of Child Soldiers (CSUCS), produced a definition based on The Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, which defines a child soldier as: any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members.¹⁷ The definition includes girls recruited for sexual purposes and for forced

¹⁴Doctors Without Borders, I have no Joy, I have No Peace of Mind." Médecins sans Frontières (MSF) Medical, Psychological, and Socio-Economic Consequences of Sexual Violence in Eastern DRC at 16 (2004) available at http://doctorswithoutborders.org/publications/reports/2004/sexualviolence_2004.pdf [hereinafter MSF]

¹⁵UNICEF, Fact Sheet: Child Soldiers, available at <http://www.unicef.org/emerg/files/childsoldiers.pdf>

¹⁶Amnesty Int'l, About Child Soldiers, available at <http://www.amnestyusa.org/children/child-soldiers/about-child-soldiers/page.do?id=1021176>

¹⁷UNICEF, Fact Sheet: Child Soldiers, available at <http://www.unicef.org/emerg/files/childsoldiers.pdf>

marriage.¹⁸ It does not, therefore, only refer to a child who is carrying or has carried arms.¹⁹

B. Perceptions about Child Soldiering

The majority of boys and girls become involved in a variety of armed political groups such as government-backed armies or paramilitary units, militias, and rebel forces.²⁰ Other groups include those opposed to the central government or groups composed of a specific ethnic or religious faction fighting each other or the government to protect territory or resources.²¹ An individual child may be recruited in one of three ways: through forced abduction, by the government army, or “voluntarily.”²² The most common means of recruitment is forced abductions of young children from their homes, the streets, schools, or orphanages.²³ Although there is this notion of “voluntary” enlistment of children into the armed forces, children rarely join willingly. Most children who do “voluntarily” join a political group do so in order to survive. Children are extremely susceptible to recruitment if they are living in or near a conflict zone, if they are separated from or without caregivers, are socially or economically marginalized, or a member of a targeted minority group.²⁴ While it has been generally understood that children, both boys and girls, are recruited into the armed forces to be used as combatants, they are also made to unlawfully serve as porters, cooks, spies, guards, messengers, and servants.²⁵ Many young girls are forced to marry or have sex with male combatants and are at high risk for unwanted pregnancies.²⁶ Children have young malleable minds that can be easily manipulated, forced, or subjugated by older commanders into committing atrocities. They are agile, quick, small in size, and can be used on the battlefield to slip through enemy lines unnoticed to carry bombs and be effective spies.²⁷ Children are more likely to be loyal and take risks.²⁸ They are considered cheap labor and eat very little.²⁹ They can be easily desensitized with the use of drugs and the falsity that they are fighting for the loss of their family members.³⁰ Children are forced to commit severe barbaric acts against each other, their families, and their communities.³¹ Children are frequently killed or brutally wounded with limited medical assistance.³² Demobilization, disarmament, and reintegration programs (DDR) have been created throughout the

¹⁸Id.

¹⁹Id.

²⁰Coalition to Stop the Use of Child Soldiers, Some Facts, available at <http://www.child-soldiers.org/childsoldiers/some-facts> [hereinafter Coalition]

²¹Id.

²²CS Manual, supra note 12.

²³Id. at 16.

²⁴Id. at 17-18.

²⁵TIP, supra note 8, at 21.

²⁶Id. at 21.

²⁷CS Manual, supra, note 12, at 3.

²⁸Id. at 17.

²⁹GoalUSA, Vulnerable Children, Child Soldiers, (2007), available at <http://www.goalusa.org/about/Vulnerable%20children.pdf>

³⁰CS Manual, supra, at note 12, at 5.

³¹Tip, supra note 8, at 23.

³²Coalition, supra note 20.

world, both during and after a conflict, in an effort to assist child soldiers in gaining the necessary skills to return to their communities.³³ However, these programs lack the funding and resources required to be effective.³⁴ In recent years, progress has been made in the creation of an international legal and policy framework in the protection of children in the armed forces.³⁵

C. Child Soldiering as a Form of Human Trafficking

Child trafficking has become a serious problem that has attracted worldwide attention.³⁶ Trafficking of children violates the inherent right of a child to grow up in a protective environment and the right to be free from all forms of abuse and exploitation.³⁷ It violates the universal human right to life, liberty, and freedom from slavery in all its forms.³⁸ The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Protocol") was the first international treaty to address human trafficking.³⁹ It requires a transnational comprehensive approach in the countries of origin, transit, and destination which includes measures to prevent trafficking, punish the traffickers, and protect the victims, including the protection of human rights. It created a globally accepted definition of "trafficking in persons," to mean, the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁴⁰ Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices similar to slavery, servitude or the removal of organs.⁴¹ The list of the forms of human trafficking are meant to be non-exhaustive, allowing for the inclusion of child soldiering in its definition. The consent of a trafficked victim becomes irrelevant if the means are proven.⁴² A child is defined as an individual under the age of 18.⁴³ All three elements of action (recruitment), means (force/coercion/threat), and purpose (exploitation) must be met in order to prove the act of human trafficking has taken place by the perpetrator.

³³*Id.*

³⁴*Id.*

³⁵Coalition, *supra* note 20.

³⁶ILO/IPEC, Rapid Assessment Report in Trafficking of Children into Worst forms of Child Labor, including Child Soldiers in Uganda, (Feb 2007), available at http://www.ilo.org/public/english/region/afpro/daressalaam/download/c_trafficking_uganda.pdf [hereinafter ILO]

³⁷*Id.* at 5.

³⁸*Id.* at 5.

³⁹The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, November 15, 2000, G.A. Res. 55/25, U.N. Doc. A/Res/55/383 available at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> [hereinafter Protocol]

⁴⁰*Id.* art. III.

⁴¹*Id.*

⁴²*Id.*

⁴³*Id.*

The DRC acceded to the Palermo Protocol October 28, 2005, in which it became legally bound to the terms of both the United Nations Convention against Transnational Organized Crime and the Palermo Protocol.⁴⁴ The current domestic and public international laws and policies addressing the concerns of child soldiers have not been sufficient. Considering child soldiering as a form of human trafficking combines both a human rights and criminal perspective that demands a global response ensuring more State obligations and victim protection. The global community needs to undertake and execute human trafficking instruments in an effort to provide child soldiers, especially sexually exploited boy-child soldiers, with a holistic approach to rehabilitation and reintegration.

D. The Boy-child Soldier and his Sexual Exploitation: the Case of DRC

Sexual violence has been an intimate partner of war throughout human history, but due to the chronic under-reporting by both victims and authorities, determining its extent in armed conflicts is extremely difficult.⁴⁵ A variety of analyses on gender and conflict ignore or under estimate the gender-based violence that is committed against the boy-child soldier.⁴⁶ It is well known that war and sexual exploitation against women and girls go hand and hand.⁴⁷ What is less realized is that armed conflict and its aftermath bring sexual danger for boys as well.⁴⁸ Child sexual exploitation is defined as a situation in which a person takes unfair advantage of some imbalance of power between themselves and an individual under the age of 18 in an effort to sexually use them.⁴⁹ In the last decade, sexualized violence against boys, including rape, sexual torture, and sexual humiliation, mutilation of the genitals, sexual enslavement, and forced incest; has been reported in 25 armed conflicts throughout the globe.⁵⁰ If this were to include the number of cases of sexual exploitation of boys that have been displaced by war, the list would encompass 59 armed conflicts.⁵¹ The problem of sexual exploitation against the boy-child soldier is not unfamiliar to the humanitarian community.⁵² Many international organizations, UN agencies, governmental and nongovernmental, and, international and national courts have acknowledged this issue.⁵³ However, sexual exploitation of the boy-child soldier remains largely undocumented.⁵⁴ When the international community began to pay particular attention to the topic of child soldiers and sexual exploitation, through the use of mainstreaming gender issues in the creation of its instruments, it began to lose sight of this major

⁴⁴UNDOC, available at http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-trafficking_protocol.html

⁴⁵Human Security Report, Part III Assault on the Vulnerable at 107 (2005), available at http://www.humansecurityreport.info/HSR2005_PDF/Part3.pdf

⁴⁶*Id.* at 110.

⁴⁷Wynne Russell, *Sexual Violence Against Men and Boys*, at 22 available at <http://www.fmreview.org/FMRpdfs/FMR27/12.pdf> [hereinafter Russell]

⁴⁸*Id.*

⁴⁹Lisa, *supra* note 13 at 1.

⁵⁰Russell, *supra* note 47 at 22.

⁵¹*Id.*

⁵²*Id.*

⁵³*Id.* at 22.

⁵⁴*Id.* at 22.

concern. Gender mainstreaming is the process of assessing the implications for both men and women of any planned action, including legislation, policies or programs, in all areas and at all levels.⁵⁵ The goal is to achieve gender equality.⁵⁶ However, beginning with the creation of international instruments such as the Vienna Declaration and Program of Action (VDPA), through to the more recent bodies such as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRCAC), the humanitarian community has imbued the world with a sense of gender inequality. The particular needs of the girl-child soldier are almost always emphasized in the media, UN resolutions, international treaties, and national legislation; however, the needs of the boy-child soldier are rarely addressed.

This lack of action globally has directly affected the measures conducted on both a regional and national level to a silent epidemic occurring right in its backyard. In Africa, sexual exploitation of children is on the rise over the entire continent.⁵⁷ Young boys are often recruited into the armed forces not only to fight, but also to sexually service the soldiers.⁵⁸ Rape and sexual exploitation in the civil war of the DRC has become so prevalent that virtually no family has been left untouched.⁵⁹ Almost all girls and some boys have reported being raped or sexually exploited by their commanders or other soldiers in the armed group.⁶⁰ The rape of young boy soldiers is often accompanied by acts of extreme violence, including bayonet or gunshot wounds to their genitals.⁶¹ Although very few boys have given detailed accounts of their attacks, several victims have sought treatment at centers assisting victims of sexual violence, such as the MSF clinic which has several locations throughout the DRC.⁶² These limited contacts with boy-child soldiers who have been sexually exploited in the armed conflict of the DRC provide an empirical basis from which the State's can assess and implement the necessary resources for successful recovery. Without recognition of this problem, there can be no resources or services in place for boys attempting to be rehabilitated and reintegrated. Boy-child soldiers should not have to live in further fear after demobilization due to social taboos and retaliation. States must be required, through the assistance of human trafficking instruments, to assure boy-child soldiers who have recently been demobilized that they will receive the adequate protection and resources to properly be rehabilitated and reintegrated with human dignity.

⁵⁵Women's Commission for Refugee Women and Children, *Masculinities: Male Roles and Male Involvement in the Promotion of Gender Equality: A Resource Packet* at 4 (2005), available at http://74.125.47.132/search?q=cache:zfk3_sXbeHUJ:www.unicef.org/emerg/files/male_roles.pdf+negative+effects+of+mainstreaming+gender+on+boy+child+soldiering&cd=8&hl=en&ct=clnk&gl=us

⁵⁶*Id.* at 4.

⁵⁷Free the Children, *Sexual Exploitation*, available at <http://www.freethechildren.com/getinvolved/geteducated/sexualexploitation.htm>

⁵⁸*Id.*

⁵⁹WatchList, *Country Reports. Democratic Republic of the Congo, Gender-Based Violence*, available at http://www.watchlist.org/reports/files/dr_congo.report.20060426.php?p=11 [hereinafter WatchList]

⁶⁰UNHCR, *Child Soldiers Global Report 2004-DRC*, available at <http://www.unhcr.org/refworld/country,,CSOAL,,COD,456d621e2,49880668c,0.html>

⁶¹Amnesty Int'l, *DRC: Arming the East, Armed Sexual Violence*, available at <http://www.amnesty.org/en/library/asset/AFR62/006/2005/en/103a9c0c-d4d2-11dd-8a23-d58a49c0d652/af620062005en.html>

⁶²MSF, *supra* note 14.

II. The Conflicting Claims

A. Recruiters

From the perspective of the recruiters, a prominent factor in the recruitment of child soldiers lies in their plenitude.⁶³ With more than half of the entire population in the DRC under the age of 18, the selective pool of potential soldiers becomes very attractive for commanders to draw from.⁶⁴ The entire population in the DRC is 57.5 million, while there are only 57,000 reported lawful soldiers in the government armed forces.⁶⁵ Faced with the shortages in manpower, the armed forces turn to younger sources to fulfill their ranks.⁶⁶ Children are easily persuaded into carrying out orders for persons in authoritative positions, remain relatively loyal due to their lack of commitment to their lost family unit, and lack inhibitions which allow them to become a deadly weapon when called upon.⁶⁷ Their size, agility, and stamina all become appealing qualities to the brigade as these allow for the soldier to perform a multitude of activities that are quite difficult for adults.⁶⁸ With the new advancements in technology, children are able to carry large lightweight lethal guns at extremely low prices.⁶⁹

In a conflict zone, many children are suffering from familial, economic, social, and educational hardships. Recruiters are often seen as insidious manipulative men who abduct or forcibly recruit children into their group. However, these men are fighting for a cause, a belief in liberation for their people, or for a better life. Whether or not this belief is foundationless is irrelevant, because many of the soldiers genuinely perceive their actions to be in defense of their rights. They may imagine that they are acting in the best interests of the child by recruiting them into their group by offering a better life once they have “won” the war. While most troops are familiar with both national and international laws criminalizing the use of child soldiers, many are not, or, are not able to decipher the ages of the children during the recruitment process. If the national government is not enforcing the child recruitment laws, the commanders may believe they are outside the reach of formal prosecution. They may deem all of the atrocities or violations of the child’s rights, such as sexual exploitation, as merely a necessity and/or consequence of warfare. The recruiters cannot function alone without the assistance of outside sources. Although many of the children are recruited into nongovernmental armed forces, both the DRC and the US government have been implicated in supporting armed opposition groups that recruit child soldiers.⁷⁰

⁶³Timothy Webster, *Babies with Arms: International Law and Child Soldiers*, 9.39 Geo. Wash. Int’l L. Rev. 227, 234-5 (2007).

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰Amnesty Int’l, *Help End the Use of Child Soldiers*, available at <http://www.amnestyusa.org/children/child-soldiers/background--help-end-the-use-of-child-soldiers/page.do?id=1191009>

B. Parents

The parent(s) or caregiver(s) of children living in a conflict zone may contribute knowingly or unintentionally to the recruitment of their children into the armed forces. Children who are brought up in a wealthier, more educated, intact family unit are often left undisturbed by the armed forces, or the parent(s) can ransom them back.⁷¹ If children are raised in impoverished or marginalized backgrounds, or, eventually become separated from their family, they are more likely to be recruited as soldiers.⁷² Hunger and poverty frequently drive parents to offer their children for services.⁷³ Some parents surrender their children because they are not able to take care of their basic needs, while others may expect returns from recruiters after they overthrow the government successfully.⁷⁴ Armies may even pay the child's "wages" directly to the family.⁷⁵ Caregivers may encourage their daughters to enlist if their marriage prospects look dim.⁷⁶ Or the parent themselves may join the armed group, enlisting the child with them.⁷⁷ Parents might view their children joining the armed forces as a way of protecting both their children and themselves.

Parents tend to be rather ignorant to trafficking trends and sell their children to recruiters who promise work, education, and shelter for their children.⁷⁸ They are often unaware of the ban on the recruitment of children in the armed forces and can be easily persuaded by manipulating trained officers to enlist their children in exchange for alleged perks.⁷⁹ Or soldiers can force the caregiver to "consent" to the surrender of their child over to the armed group or threaten their lives if they refuse.⁸⁰ The parent's awareness of the possibility of armed groups abducting their children has forced them to live in fear. They are afraid to send their children to work or to school which has only added to the cycle of poverty in the family dynamic. Their basic right to personal security is being impeded and they are not able to provide a protective environment for their families. There is no opportunity for sustainable development in a conflict zone and the recruiters repeatedly take advantage of the vulnerabilities of the breakdown of the family unit.

Whether or not caregivers are forced to surrender or "voluntarily" enlist their children into an armed group, many are well-aware that sexual violence is prevalent in the civil war of the DRC. They may have witnessed it first-hand or been victims themselves. Although it is widely understood that this atrocity is being used as a weapon of war, following the rape or sexual exploitation of women and girls, many of their families and communities ostracize them, condemning them and their children to live in poverty. However, very little is known about the family's perspective on boy

⁷¹Id.

⁷²United Nations Impact of Armed Conflict on Children available at <http://www.un.org/rights/concerns.htm> [hereinafter Impact]

⁷³Id.

⁷⁴LO, supra note 36 at 33.

⁷⁵Impact, supra note 72.

⁷⁶Id.

⁷⁷CS Manual, supra note 12 at 17.

⁷⁸LO, supra note 36 at 9.

⁷⁹CS Manual, supra note 12 at 16.

⁸⁰LO, supra note 36 at 33.

sexual exploitation in the armed forces as there is limited data on this issue. In light of the community's reaction to young women and girls being raped or exploited, it could be presumed that boys would be receiving similar, if not worse, treatment.

C. Children

One of the most alarming trends relating to children and armed conflicts is their active participation as soldiers.⁸¹ Children of all ages are being forced, coerced, and induced to become combatants.⁸² Manipulated by adults, these children are drawn into a world of violence they are too young to resist and with consequences they cannot possibly imagine.⁸³ Surrounded by constant violence and conflict, they may "volunteer" for the protection they believe carrying a weapon will afford them.⁸⁴ Participating in an armed group may be seen as a way to gain power or status.⁸⁵ This can become particularly appealing to children who have been victimized, perpetuating a cycle of violence.⁸⁶ It can also be a way for the child to seek revenge for any mistreatment or victimization by the opposing group.⁸⁷ Numerous children tend to feel a sense of hopelessness about the future and view joining the group as a way of gaining back control over their lives.⁸⁸ Children may have no other choice but to join if they have lost one or both family members or have no access to other forms of protection.⁸⁹

Children have not yet acquired the necessary cognitive developmental skills to assess the risks and decisions they will be forced to endure in a conflict.⁹⁰ They are not fully aware of the dangers that lie ahead. They do not realize they will be desensitized with drugs, alcohol and gunpowder, and, forced to commit murder and rape against their loved ones and other children. They are not told they will be forced to work in harsh conditions, carrying numerous weapons and hiding in the bushes for days without food or water-with the possibility of death looming over their heads. Boy-child soldiers are not told they will be repeatedly raped and sexually exploited by their commanders at gunpoint. Once children have become soldiers, it is extremely difficult to reintegrate them back into society. Most children find it very hard to take orders from civilians after it was they who once decided if these civilians were going to live or die. They experience harsh withdrawal symptoms from the narcotics they have become addicted to in which the DDR programs are not equipped to handle. They suffer from post traumatic stress disorder (PTSD), flashbacks, and nightmares. Numerous children do not have families to return to and face the possibility of being re-recruited. If they are returned to a caregiver, it becomes very arduous for the child to regain sometimes years of childhood that have been lost. Learning to be a child again and go back to school after putting down their weapon is an enormous defeat.

⁸¹Impact, *supra* note 72.

⁸²*Id.*

⁸³*Id.*

⁸⁴*Id.*

⁸⁵CS Manual, *supra* note 12 at 17.

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸*Id.*

⁸⁹*Id.*

⁹⁰CS Manual, *supra* note 12 at 17.

D. International Community

1. Children in Armed Conflict

Until the adoption of the United Nations Convention on the Rights of the Child (UNCRC), there was no universal definition of a child.⁹¹ It defines a child to mean any individual below the age of 18 years unless under the law applicable to the child, majority has been attained earlier.⁹² The Convention further requires that the States are obligated to ensure that children under the age of 15 are not to take direct part in armed conflicts and for children that have reached the age of 15, but not yet 18, the parties to the conflict are to give priority to the older children in the recruitment process.⁹³ State parties have a duty to take the necessary measures to ensure the successful reintegration of child victims in an armed conflict.⁹⁴ The DRC ratified this Convention on October 27, 1990 in which it consented to all of the terms of the treaty.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRCAC) was created setting the minimum age for direct participation in hostilities, recruitment into armed conflicts by nongovernmental or governmental armed forces, and compulsory recruitment by governments at 18.⁹⁵ States may begin to accept volunteers for the armed forces at the age of 16, but it must provide a binding declaration at the time of ratification or accession, stating the voluntary age and the specific safeguards for such recruitment.⁹⁶ Each State party has a duty to take the necessary legal and administrative measures to implement and enforce the Protocol in its own jurisdiction.⁹⁷ Each State, after two years of ratification, has to provide a report to the Committee on the Rights of the Child, providing comprehensive measures it has taken to implement the provisions on participation and recruitment.⁹⁸ The DRC ratified the Optional Protocol on November 11, 2001, with no declarations concerning the acceptance of voluntary recruitment of children into the armed forces at the age of 16.⁹⁹ The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty-based international criminal court established to prosecute war crimes, crimes against humanity, and genocide.¹⁰⁰ The Rome Statute's definition of war crimes in an international armed conflict includes, conscripting or enlisting children under the age of 15 into the

⁹¹United Nations Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N. Doc. A/Res/44/25, available at <http://www.unhcr.ch/html/menu2/6/crc/treaties/crc.htm> [hereinafter CRC]

⁹²Id. at art. 1.

⁹³Id. at art.38.

⁹⁴Id. at art 39.

⁹⁵Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, G.A. Res. 54/263, U.N. Doc. A/Res/54/263, art. 3 available at <http://www.unhcr.ch/html/menu2/6/protocolchild.htm>

⁹⁶Id. at art. 3.

⁹⁷Id. at art. 7.

⁹⁸Id. at art.8.

⁹⁹United Nations Treaty Collection Database, Chapter IV Human Rights, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en

¹⁰⁰International Criminal Court: About the Court, available at <http://www2.icc-cpi.int/Menus/ICC/About+the+Court/>

national armed forces or using them to participate actively in the hostilities.¹⁰¹ In its definition of war crimes in an internal conflict the statute includes, conscripting or enlisting children under the age of 15 into the national armed forces or using them to participate actively in the hostilities.¹⁰² When this international treaty was drafted, all delegates agreed that the terms “participate” and “using” would prohibit not only a child’s direct participation in the hostilities, but also their active participation in military activities such as spying, scouting, sabotage, and, the use of children as couriers, decoys, or at military checkpoints.¹⁰³ The use of children in direct support functions is also prohibited.¹⁰⁴ The DRC government ratified the Rome Statute on April 11, 2002, becoming a State party to the ICC.¹⁰⁵

On June 25, 1993, representatives of 171 States adopted by consensus the Vienna Declaration and Program of Action (VDPA) of the World Conference of Human Rights.¹⁰⁶ The Plan of Action was created to renew the world community’s commitment to the promotion of the fundamental basic human rights, paying particular attention to the rights of women, children, and disabled persons.¹⁰⁷ It called upon all States to integrate the UNCRC into its national legislation.¹⁰⁸ It declares that national and international mechanisms should be for the defense and protection of children, especially the girl-child in armed conflicts.¹⁰⁹ It requests of all States and parties to an armed conflict to abide by international, national, and human rights guidelines with respect to children.¹¹⁰ National plans of action should be created to combat the problem of children in armed conflict.¹¹¹ It called upon the Committee of the CRC to study the question of raising the minimum age of recruitment.¹¹²

The United Nations Security Council has passed a number of resolutions that condemn the use and recruitment of children in armed conflicts.¹¹³ The United Nations has been instrumental in the creation of international treaties, resolutions, committees, and representatives in promoting the prohibition of the use and recruitment of children in the armed forces, and, ensuring their protection. Additionally, there have been

¹⁰¹The Rome Statute of the International Criminal Court, July 17, 1998, at 8, A/CONF.183/9, art. 8(2)(b)(xxvi), available at http://www2.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf [hereinafter Rome]

¹⁰²*Id.* at 9.

¹⁰³Coalition, *supra* note 20 at International Standards.

¹⁰⁴*Id.*

¹⁰⁵International Criminal Court: State Parties, DRC, available at <http://www2.icc-cpi.int/Menus/ASP/states+parties/African+States/Democratic+Republic+of+the+Congo.htm>

¹⁰⁶United Nations Vienna Declaration and Program of Action of the World Conference of Human Rights, July 12, 1993, A/CONF.157/23, available at [http://www.unhcr.org/refugees/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.org/refugees/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument) [hereinafter Vienna]

¹⁰⁷*Id.*

¹⁰⁸*Id.* at no. 21.

¹⁰⁹*Id.* at no. 21.

¹¹⁰*Id.* at no. 29.

¹¹¹*Id.* at no. 47.

¹¹²*Id.* at no. 50.

¹¹³G.A. Res. 1261, U.N. Doc. A/Res/1261 (Aug. 30, 1999). G.A. Res. 1314, U.N. Doc. A/Res/1314 (Aug. 11, 2000). G.A. Res. 1379, U.N. Doc. A/Res/1379 (Nov. 20, 2001). G.A. Res. 1460, U.N. Doc. A/Res/1460 (Jan. 30, 2003). G.A. Res. 1539, U.N. Doc. A/Res/1539 (Apr. 22, 2004). G.A. Res. 1612, U.N. Doc. A/Res/1612 (July 26, 2005) available at <http://www.un.org/Docs/sc/> [hereinafter Resolution]

several major NGOs that have been critical in providing global awareness, preventing the use and recruitment of children in armed conflicts, and promoting their successful recovery and reintegration. Such NGOs include the Coalition to Stop the Use of Child Soldiers, UNICEF, Amnesty International, Human Rights Watch, and the International Save the Children Alliance. All of these NGOs work to promote the adoption of international and domestic laws that prohibit the use of children in the military. Each of the organization's goals is to advocate, through the use of public education, research and monitoring, for the protection of child soldiers. They lay the legal and moral ground work for the protection of human rights to bring greater justice and peace to all children around the globe. The African Charter on the Rights and Welfare of the Child is the only regional treaty in the world to address the issue of child soldiering.¹¹⁴ It defines a child to mean every human being below the age of 18.¹¹⁵ It does not allow for children between the ages of 15 and 18 to be voluntarily conscripted into the military. It only states that all individuals are considered a child until they reach the age of majority and cannot enlist into the military until such a time. State parties must take all necessary measures to ensure that no child takes part in the direct hostilities and must refrain from recruitment into the armed group.¹¹⁶ The DRC government is not a party to this Charter.¹¹⁷

The international humanitarian community has a significant stake in ensuring the rights of our children are upheld and protected through the creation of effective measures outlined in the treaties. Children are our future and without providing each of them with their basic human rights, the outlook for tomorrow will not be promising. All of these international bodies and treaties have been instrumental in promoting the prohibition of the use and recruitment of children into the armed forces throughout the globe. Nevertheless, incorporation and implementation of these international guidelines into regional and domestic laws is as equally as important to the creation of the treaty and ratification.

2. Child Sexual Exploitation

The UNCRC became the first international treaty to place comprehensive duties on States to ensure the rights of children and to protect them from all forms of abuse, exploitation and violence. The fundamental premise of the UNCRC is that no single article can be interpreted independently and the entire Convention must be viewed as indivisible. Within the text of the UNCRC, it obligates States to take all appropriate legislative, administrative, educational, and social measures to protect children from sexual abuse and exploitation.¹¹⁸ State parties are to undertake to protect all children from all forms of sexual exploitation and abuse, and, must participate in bilateral and multilateral measures to prevent it.¹¹⁹ It provides for the physical and psychological

¹¹⁴Coalition, supra note 20 at International Standards.

¹¹⁵Compendium of Key Human Rights Documents of the African Union 63 (Christopher Heyns & Magnus Killander eds., 3rd 2007).

¹¹⁶Id. at 69.

¹¹⁷Id. at 357.

¹¹⁸CRC, supra note 91 at art. 19.

¹¹⁹Id. at art. 34.

recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse.¹²⁰

The Rome Statute of the ICC covers not only war crimes, but also crimes against humanity. Included in the category of crimes against humanity is enslavement, which includes trafficking, rape, sexual slavery, and/or any other form of sexual violence when committed as part of a widespread attack.¹²¹ Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity can constitute a war crime.¹²² The Palermo Protocol includes in its definition of “trafficking in persons,” the element of exploitation. This very broad universally accepted definition encompasses the sexual exploitation of both boy and girl soldiers that have been recruited into the armed forces.¹²³ The Palermo Protocol provides the physical, psychological, and social recovery measures of child victims necessary for the States to guarantee their successful reintegration.¹²⁴ The VDMA of 1993 recognizes the human rights of women and the girl-child to be inalienable, integral and indivisible, and, that the international community must work towards the eradication of gender discrimination.¹²⁵ It urges governments, agencies, and NGOs to intensify their effort to ensure the protection and promotion of the human rights of the girl-child.¹²⁶ It requests of all governments to repeal any current legislation/laws or customs/practices that discriminate against or cause harm to the girl-child.¹²⁷ It declares that gender-based violence and all forms of sexual exploitation must be eliminated.¹²⁸ Violations of the human rights of women in situations of armed conflict are violations of international human rights and humanitarian law.¹²⁹ The violations include systemic rape and sexual slavery.¹³⁰ Effective measures are required to combat sexual exploitation and abuse of children.¹³¹ It does not highlight the sexual abuse or exploitation of boy-child soldiers and the particular measures needed to address this major area of concern.

The particular needs of the girl-child soldier were emphasized in the United Nations Security Council Resolution 1325 (2000).¹³² This Resolution demanded the immediate and complete cessation of sexual violence and abuse of women trapped in armed conflicts.¹³³ The United Nations Security Council's previous Resolutions on children and armed conflict not only discuss children generally, but also the particular needs of the girl-child soldier and stress its importance.¹³⁴ However, there is no

¹²⁰*Id.* at art. 39.

¹²¹Rome, *supra* note 101 at 3-4.

¹²²*Id.* at 4, 7.

¹²³Protocol, *supra* note 39.

¹²⁴*Id.*

¹²⁵Vienna, *supra* note 169 at no. 18.

¹²⁶*Id.* at no.18.

¹²⁷*Id.* at no. 49.

¹²⁸*Id.* at no. 18.

¹²⁹*Id.* at no.38

¹³⁰*Id.* at no. 38.

¹³¹*Id.* at no. 48.

¹³²G.A. Res. 1325, U.N. Doc. A/Res/1325 (Oct. 31, 2000), available at <http://www.un.org/Docs/sc/>

¹³³*Id.*

¹³⁴Resolution, *supra* note 113.

separate United Nations Security Council Resolution dedicated to the needs of the boy-child soldier who has been sexually exploited. The African Charter on the Rights and Welfare of the Child address the issue of child sexual exploitation in detail. It obligates States to protect all children from all forms of sexual exploitation and sexual abuse.¹³⁵ It especially demands preventive measures in areas such as the inducement, coercion, or encouragement of a child to engage in any sexual activity, or the use of children in prostitution, or pornographic activities.¹³⁶

Although each of the above mentioned international and regional bodies have been critical to the recognition of child exploitation, particularly sexual exploitation, the creation of such treaties has interfered with the adequate assessments of who is being victimized, especially in an armed conflict. The international humanitarian community cannot lose sight of these innocent male victims by focusing solely on girl-child soldiers. One boy-child soldier victim of sexual exploitation is too many and the fact that not enough discourse is taking hold on this issue speaks volumes.

3. Human Trafficking

The United Nations Convention against Transnational Organized Crime is the main international instrument developed in the fight against transnational organized crime.¹³⁷ It establishes a link between trafficking in persons with the State's obligations to promote cooperation to combat and prevent organized crime. It has been supplemented by three main Protocols to target specific areas of organized crime, particularly trafficking in persons (Palermo Protocol). This Convention in conjunction with the Palermo Protocol becomes instrumental in providing that trafficking occurs both internally and across border.¹³⁸ The Palermo Protocol was the first global legally binding instrument with a universally accepted definition of trafficking in persons that promotes the prevention of the act, the prosecution of perpetrators, and protection for victims.

The United States has been catalytic in its efforts to combat human trafficking both in its own country and abroad. The United States made human trafficking a federal crime by adopting the Victims of Trafficking and Violence Protection Act (TVPA).¹³⁹ The creation of the TVPA provided for a range of new protections and assistance to victims.¹⁴⁰ It is guided by three aspects of federal government activity to combat human trafficking: protection, prosecution, and prevention.¹⁴¹ On December

¹³⁵Compendium of Key Human Rights Documents of the African Union 71(Christopher Heyns & Magnus Killander eds., 3rd 2007).

¹³⁶Id. at 71, art. 27 (a),(b),(c).

¹³⁷United Nations Convention Against Transnational Organized Crime, November 15, 2000, G.A. Res. 55/25, U.N. Doc. A/Res/55/383 available at <http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>

¹³⁸Id. at art. 34(2).

¹³⁹Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), available at <http://www.state.gov/documents/organization/10492.pdf> [hereinafter TVPA].

¹⁴⁰Department of Justice, Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004, (September 2005) at 4, available at http://74.125.47.132/search?q=cache:n_J1xhVqkPMJ:www.justice.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf+TIP+report+created+by+DOJ&cd=8&hl=en&ct=clnk&gl=us

¹⁴¹Id. at 4.

19, 2003, this Act was reauthorized to mandate new information campaigns to confront the sex tourism industry, added refinements to the federal criminal laws, and created new civil actions that allowed victims to sue their traffickers in federal court.¹⁴² On December 21, 2005, Congress passed the reauthorization of the TVPA to provide \$361 million over the next two years to combat human trafficking.¹⁴³ It endeavors to combat international human trafficking by addressing the needs of vulnerable populations in post-conflict settings, as well as domestic trafficking by instituting prevention methods for its own citizens.¹⁴⁴ The TVPA (2000) requires the Secretary of State to submit a report to Congress with respect to the status of severe forms of trafficking in persons by June 1 of each year.¹⁴⁵ This led to the creation of the Trafficking in Persons Report. Under Secretary Condoleezza Rice's authority, the Department of State issues an annual Congressionally-mandated Trafficking in Persons Report (TIP) that assesses foreign government actions in combating human trafficking and the protection of victims. The TIP Report began in 2000 in conjunction with the TVPA and issued its first report to Congress in 2001.¹⁴⁶ In 2008, it released its 8th annual report to the Department of State.¹⁴⁷ The purpose of the report is to raise international awareness, to highlight the efforts of the global community, and to encourage foreign governments to take effective measures to combat human trafficking.¹⁴⁸ The TIP Report emphasizes the "three P's"-prevention, prosecution, and protection-and also the "three R's"-rescue, rehabilitation, and reintegration-to assist in the recovery process of the victims.¹⁴⁹ It is the most comprehensive global report on the efforts of all governments to combat severe forms of human trafficking.¹⁵⁰ The report created a Three-Tiered System for rating foreign government's compliance with the minimum standards laid out in the TVPA for combating human trafficking.¹⁵¹ The DRC government was placed on the Tier 2 WatchList in the 2008 TIP report for its failure to provide evidence of its efforts to combat trafficking in persons over the last year.¹⁵² The TIP Report lists child soldiering as one of the major forms of human trafficking that involves the unlawful recruitment of a child through force or coercion to be exploited for labor or sexual purposes in conflict areas.¹⁵³ Although it recognizes a distinction between boy and girl soldier sexual exploitation, it does acknowledge that they are both susceptible to sexual

¹⁴²Victims of Trafficking and Violence Protection Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003), available at <http://74.125.47.132/search?q=cache:ufO8CFhz01EJ:www.state.gov/documents/organization/28225.pdf+TVPA+2003&cd=1&hl=en&ct=clnk&gl=us>

¹⁴³Victims of Trafficking and Violence Protection Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006), available at <http://74.125.47.132/search?q=cache:EEhJsb5SNGcJ:www.coherentbabble.com/PublicLaws/HR972PL109-164.pdf+TVPA+2005+Public+Law+109-164+Stat.&cd=2&hl=en&ct=clnk&gl=us>

¹⁴⁴*Id.* at 3539.

¹⁴⁵TVPA, *supra* note 139 at 10.

¹⁴⁶CBS News, Modern Day Slavery: Victims are Mainly Women and Children Seeking a Better Life, (July 12, 2001), available at <http://www.cbsnews.com/stories/2001/07/12/opinion/diplomatic/main301205.shtml>

¹⁴⁷TIP, *supra* note 8 at 5.

¹⁴⁸*Id.* at 5.

¹⁴⁹*Id.* at 5.

¹⁵⁰*Id.* at 8.

¹⁵¹*Id.* at 10.

¹⁵²*Id.* at 44.

¹⁵³*Id.* at 21.

abuse and at high risk for STIs.¹⁵⁴ It demands that all nations, NGOs, and international organizations must work together to disarm, demobilize, and reintegrate all child soldiers.¹⁵⁵

The most recent U.S. human trafficking instrument is the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.¹⁵⁶ Highlights of this groundbreaking legislation include the creation of two new offenses, conspiracy and obstruction, and the protection of child soldiers by refusing to provide military assistance to countries that recruit children into the armed forces.¹⁵⁷ This Act is vital in recognizing and accepting that the recruitment and use of child soldiers into the armed forces is a form of human trafficking because it condemns the act, promotes international cooperation, offers rehabilitative services to victims abroad, and prohibits military funding to non-complying countries. The Secretary of State submits a report detailing what countries have violated the minimum standards of the TVPA and is subject to prohibition of military funding.¹⁵⁸

The Council of Europe Convention on Action against Trafficking in Human Beings was the first and only regional treaty created to combat human trafficking.¹⁵⁹ This is a comprehensive treaty that mainly focuses on the protection of victims and the safeguard of their rights. It aims to prevent trafficking and to prosecute the perpetrators. It provides for the setting up of an effective independent monitoring system made up of experts capable of controlling the implementation of the obligations contained within the Convention (GRETA).¹⁶⁰ It applies to all forms of trafficking, including sexual exploitation of children, whether national or transnational.¹⁶¹ It applies to all victims; boys, girls, women and men. This narrow interpretation works to provide and guarantee gender equality for all victims. The treaty is open for signature to all member States in Europe, the non-member States that participated in its elaboration and by the European Community, and, for accession by other non-member States.¹⁶² The DRC government has not acceded to the Convention.¹⁶³ With the recent establishment of the momentous international and regional human trafficking instruments, child soldiering has come to the forefront of global concern. The generating bodies all work to prevent the act, prosecute the perpetrators, and protect

¹⁵⁴*Id.* at 21, 23.

¹⁵⁵*Id.* at 23.

¹⁵⁶William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), available at <http://74.125.47.132/search?q=cache:5-2qEfl26YsJ:www.usdoj.gov/olp/pdf/wilberforce-act.pdf+William+Wilberforce+Act+2008&cd=3&hl=en&ct=clnk&gl=us>

¹⁵⁷*Id.* at Sec. 222. Enhanced Penalties for Trafficking Offenses. Sec 1589(6)(c) Holding Conspirators Accountable/Sec. 1351(3)(f). Obstruction-Sec. 1583(a)(3)/Sec. 1589(4)(B)(b)/ (5)(D)(d)/(6)(c). Child Soldiers Title IV. Sec. 404 Prohibition.

¹⁵⁸*Id.* at Sec. 404(b)(1).

¹⁵⁹The Council of Europe Convention on Action Against Trafficking in Human Beings, May 16, 2005, C.E.T.S. N. 197, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG>

¹⁶⁰*Id.*

¹⁶¹*Id.*

¹⁶²*Id.*

¹⁶³*Id.*

innocent child victims. The child-centered approach focuses on immediate rescue, adequate rehabilitation, and successful recovery. The continuing theme of international cooperation and State obligations ensures universal accountability in effectively combating child soldiering, particularly sexual exploitation of boy-child soldiers in armed conflicts.

E. DRC Government

The February 2006 DRC Constitution defines a child as an individual under the age of 18.¹⁶⁴ All forms of exploitation of children are punishable by law and public authorities are under an obligation to protect the youth from threats to their health, education, and development.¹⁶⁵ The organization of a military or paramilitary formations, private militias or youth armies is prohibited by law.¹⁶⁶ A May 2005 circular issued by the military prosecutor instructed regional and local military prosecutors to initiate proceedings against all those accused of child recruitment or use in military operations.¹⁶⁷ It also instructed them to refer recruited children accused of crimes to a competent civilian court or to the official DDR program for demobilization.¹⁶⁸ A comprehensive Child Protection Code was approved by the two Chambers of Parliament (National Assembly and Senate) in the course of the ordinary session and was submitted to the President for promulgation and publication in 2008.¹⁶⁹ It prohibits the forced recruitment of children or their use in armed conflict (Article 50a), as well as the enlistment or use of children in the national armed forces, the police and armed groups (Article 73).¹⁷⁰ It criminalizes rape (Article 175), sexual slavery (Article 189), with prison terms ranging from seven to 25 years.¹⁷¹ It also criminalized a wide range of other sexually exploitative acts.¹⁷² As of April 2009, NGOs such as Amnesty International were still pleading with the DRC government to implement the new Child Protection Code to ensure the safety of the child soldiers.¹⁷³ Also highlighted within the new 2006 Constitution was the clarification of the

¹⁶⁴Coalition to Stop the Use of Child Soldier, Child Soldier Global Report, DRC, at 106 (2008) available at http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf [hereinafter CS Global]

¹⁶⁵*Id.* at art. 41 and 42.

¹⁶⁶*Id.* at art. 190.

¹⁶⁷*Id.*

¹⁶⁸*Id.*

¹⁶⁹UN Committee on the Rights of the Child, CRC, Written Replies by the Government of the DRC Concerning a List of Issues to be Taken up in Connection with the Second Consideration of the Periodic Report of the DRC, (Dec, 24, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.COD.Q.2.Add1.doc>

¹⁷⁰CS Global, *supra* note 164 at 107.

¹⁷¹*Id.*

¹⁷²*Id.*

¹⁷³Amnesty Int'l, Democratic Republic of Congo: Submission to the UN Universal Periodic Review: Sixth session of the UPR Working Group of the Human Rights Council, November-December 2009), available at <http://www.amnesty.org/en/library/asset/AFR62/009/2009/en/28861dee-1df4-4f4d-af4f-bc9f53bae608/afr620092009en.html>

definitions of rape and sexual attacks.¹⁷⁴ It introduced a 20 year minimum sentence to those that are found guilty.¹⁷⁵ This recent expansion of the rape law included male victims.¹⁷⁶

Although the U.S. Government contended that the DRC government has not fully complied with the minimum standards of the TVPA (2000), the DRC government alleged it made three arrests of suspected traffickers.¹⁷⁷ Under the DDR programs, the DRC government also stated it demobilized 3,563 child soldiers.¹⁷⁸ The government lacks the necessary resources to adequately not only address human trafficking, but also the basic level of security in the country.¹⁷⁹ The country's military and justice system are practically nonexistent as a result of the war.¹⁸⁰ From the perspective of the DRC government, it has made numerous efforts to ratify almost all of the international treaties and worked as effectively as possible to create national laws that protect children in the armed forces given the current state of the country. The DRC government would argue it has signed all peace agreements to end the civil war and requested rebel forces leave the country. The government would contend it has welcomed and worked closely with NGOs and the United Nations in the implementation of DDR programs throughout the country. It acknowledges the widespread use of child soldiers both in its own army and in rebel forces, but keeping these ranks free from children is quite difficult due to lack of awareness, proof of age, and other factors related to war. The government's efforts in prosecuting traffickers have been limited and the current laws do not cover all forms of labor trafficking, but it did create the sexual violence statute with severe penalties. A transitional government's capabilities are rather restricted when operating in a civil war. It is making every effort possible to combat child soldiering and sexual violence.

III. Past Trends

While it appears the DRC government made numerous attempts to not only ratify international treaties, but also to implement them into its national legislation, very little has been carried out in the legal system to effectuate these laws and policies. The only known criminal prosecution at the national level of a military leader for enlisting a child soldier was in the DRC.¹⁸¹ However, DRC militia commander Jean-Pierre Biyoyo was convicted in a court of Military Court of crimes for child recruitment and use in the armed forces, but escaped from prison and is now reported to be commanding a

¹⁷⁴United Nations Population Fund, *Legacy of War: An Epidemic of Sexual Violence in the DRC*, (November 26, 2008), available at <http://www.unfpa.org/public/News/pid/1399>

¹⁷⁵*Id.*

¹⁷⁶Russell, *supra* note 47 at 23.

¹⁷⁷*Id.* at 1.

¹⁷⁸*Id.* at 1.

¹⁷⁹*Id.* at 1.

¹⁸⁰*Id.* at 1.

¹⁸¹The Coalition to Stop the Use of Child Soldiers, *Letter to Security Council Members for Debate on Children and Armed Conflict*, at 5 (April 2009), available at http://www.childsoldiers.org/Child_Soldier_Coalition_letter_to_Security_Council_members_for_debate_on_children_and_armed_conflict.April09.pdf

battalion of the DRC armed forces in South Kivu.¹⁸² Bosco Ntaganda was made a general in the Congolese army, despite being wanted on an arrest warrant by the ICC for the war crime of enlisting and using children in the armed forces.¹⁸³ Conversely, child soldiers who have been disarmed and demobilized have been arbitrarily detained in direct violation of its own laws, rather than treated primarily as victims.¹⁸⁴ Some have been sentenced to terms of imprisonment for desertion of the armed group.¹⁸⁵ Many who have been convicted for military offenses are facing a death sentence.¹⁸⁶ Although the DRC is a party to the UNCRC, it has already executed one 14-year-old child soldier who was convicted of war crimes.¹⁸⁷

The DRC government was placed on the Tier 2 WatchList by the U.S. government because of its inability to provide increasing evidence of combating trafficking in persons.¹⁸⁸ The DRC government claimed to have made three whole arrests, but many other warrants were not issued.¹⁸⁹ Although its own laws specifically state that child recruitment into the armed forces is illegal, the DRC government did not make efforts to identify or protect victims of trafficking among 200 child soldiers in its own army.¹⁹⁰ The DRC government army (FARDC) is still recruiting and abusing children.¹⁹¹ The sophisticated and broad Congolese law prohibiting rape, including the rape of male victims, rarely is instituted and offenders often go unpunished. The DRC government expanded this law as a result of the repeated acts of sexual violence that have taken place throughout the country since the war broke out almost 15 years ago. There has been mass media coverage depicting the horrific acts of sexual violence that have become a daily phenomenon in the DRC, particularly against children.¹⁹² There is a national campaign (V-Day) and a strong presence of multiple NGOs in the DRC that are actively working towards preventing sexual violence.¹⁹³ Not only is the FARDC still actively recruiting children into its army, but it is also responsible for the on-going sexual violence.¹⁹⁴ When impunity is so widespread, the State must begin to take responsibility to implement the law, or, both the military and governmental personnel

¹⁸²*Id.* at 5.

¹⁸³Human Right Watch, UN: Punish Abuse of Children in War, (April 28, 2009), available at <http://www.hrw.org/en/news/2009/04/27/un-punish-abuse-children-war>

¹⁸⁴CS Global, *supra* note 164 at Facts and Figures on Child Soldiers.

¹⁸⁵*Id.*

¹⁸⁶*Id.*

¹⁸⁷U.N. Wire, Rights Group Seeks Pardon for Condemned Child Soldiers, (May 3, 2001), available at http://www.unwire.org/unwire/20010503/14568_story.asp

¹⁸⁸US Embassy Kinshasa Report, Democratic Republic of the Congo (Tier 2 WatchList), (2008), available at <http://74.125.47.132/search?q=cache:k6oK4-eizY0J:kinshasa.usembassy.gov/media/pdf/tip-2008-report---drc.pdf+DRC+placed+on+Tier+2+WatchList&cd=1&hl=en&ct=clnk&gl=us>

¹⁸⁹*Id.*

¹⁹⁰*Id.*

¹⁹¹CS Global, *supra* note 164 at 107-8.

¹⁹²David McKenzie, Even Where Fighting Has Ended, Sexual Violence Scars Women and Children in DRC, UNICEF, DRC (Aug. 4, 2006), available at http://www.unicef.org/infobycountry/drcongo_35223.html

¹⁹³Stop, *supra* note 2.

¹⁹⁴Georgianne Nienaber, DR Congo: Report Says 100,000 Civilians at Risk of Attack and Humanitarian Aid Desperately Needed, (April 29, 2008), available at http://www.huffingtonpost.com/georgianne-nienaber/dr-congo-report-says-1000_b_192585.html

will continue to believe they are beyond the reach of national prosecution. The officials of the DRC government deceptively appear to be innovative in its proactive responses to the unlawful recruitment of child soldiers and sexual violence occurring throughout its country by ratifying almost every applicable international treaty, creating modern national laws, and cooperating with multiple global NGOs and nations. The unfortunate reality is the FARDC is still actively recruiting children and sexually exploiting them and civilians without fear of prosecution. Only child soldiers themselves should fear being prosecuted by a military court with the possibility of being executed.

IV. Prediction

With the legal framework of human trafficking still in its infancy, both the international humanitarian community and nation States can collectively endeavor to ensure acceptance and implementation of these innovative victim-centered approaches. In just a small amount of time, global actors have continued to perfect the principles outlined in the creation of the very first Protocol which entered into force in 2003. This will greatly effect future actions taken by national governments. The unified enforcement of the TIP Report, TVPA and the recent Wilberforce Act against the DRC government will significantly reduce its ability to continue to afford military action or to further recruit children through prohibitions, sanctions, and international shaming. These instruments will financially assist in the long-term rescue, rehabilitation, and recovery process of child soldiers. Through on-going campaigns, media coverage, and a strong NGO presence on the ground in the DRC, the barbaric act of child soldiering will catch widespread attention. This will lead to the generation of more international and regional treaties defining child soldiering as a form of human trafficking and demanding the State's obligation to provide victim assistance and protection.

Former rebel leader Thomas Lubanga of the DRC became the first ever to stand trial at the ICC for recruiting children into the armed forces.¹⁹⁵ Two other officials are in ICC custody for conscripting children into their armed group in the DRC civil war.¹⁹⁶ Other similar arrest warrants have been issued and it is likely the ICC will continue to take legal action against top military officials who have enlisted children into their armed forces.¹⁹⁷ The International Criminal Tribunal for Rwanda created the first universally accepted definition of the crime of rape as a crime against humanity in the Jean Paul Akayesu case.¹⁹⁸ It is therefore not unlikely to see future changes in the Rome Statute or customary international law concerning human trafficking with respect to child soldiering or sexual exploitation. The power of the ICC lies in its jurisdiction over the most serious crimes of concern to the international community. Human trafficking is a crime that shocks the conscience and is of grave magnitude that warrants universal jurisdiction. While it is currently only accepted as a transnational

¹⁹⁵Human Rights Watch, The International Criminal Court Trial of Thomas Lubanga, (January 23, 2009), available at <http://www.hrw.org/en/news/2009/01/22/international-criminal-court-trial-thomas-lubanga>

¹⁹⁶*Id.*

¹⁹⁷*Id.*

¹⁹⁸Berna Namata, Rwanda: Violence Against Women-Rape, Crime of Genocide, The New Times, (November 25, 2008), available at <http://allafrica.com/stories/200811250099.html>

crime, in light of the rapid global response, it is probable that human trafficking will become an international crime. Once human trafficking becomes an international crime, universal jurisdiction would allow the nation States (DRC) to prosecute the human trafficker (recruiter) irrespective of the territory it has been committed in or the nationality of the child victim or perpetrator. This becomes especially vital in the DRC where there are nine different States involved, both internally and across borders in its civil war. Once the act of human trafficking reaches *jus cogens* and triggers universal jurisdiction, the DRC will have a duty to exercise it, provided it implements it into its own laws.

The acceptance of human trafficking as an international crime will lead to a positive change in universalizing one definition of a child and one definition of the age of recruitment. Additionally, by its extension, all forms of sexual exploitation and abuse committed against a child, male or female, in the armed group will also become an international crime, thereby enhancing the penalties. The time honored paradigms and mainstreaming of gender issues has placed sexual exploitation of boys in the shadows. However, there is a slow moving trend towards the recognition of boys as victims and to the inclusion of males in both national and international bodies. It is likely that the international humanitarian community will continue to see progress in this area through research and changes in laws and policies. Improvement is plausible provided the underlying goal is gender equality for all victims. With the inclusion and acceptance of human trafficking instruments into the international community, it is conceivable to envision a sudden growth in long-term DDR programs assisting child soldiers in the reintegration process.

V. Recommendations

The number one urgent priority is to ensure immediate action is taken to disarm and demobilize all children under the age of 18 from the civil war in the DRC. All peace agreements should include detailed measures to be taken for the active participation of child soldiers and their demobilization and reintegration. The international community, States, NGOs, and private entities should all work together to provide the necessary financial assistance to secure long-term DDR programs with multiple locations throughout the DRC. These programs must provide a holistic approach to addressing the safety and well-being of each child. Family reunification or locating a secure home for each child must be a goal of every DDR program. They must offer alternative livelihoods which include vocational and educational training to assist in opening up future opportunities and limiting the possibility of re-recruitment. Socializing children back into the civilian population requires strong community involvement. The society has a major stake in caring for boys returning home from the armed conflict and having a public order of human dignity. Their contribution is vital to the economic prosperity of not only the country, but also to the family unit. Other programs and NGOs, such as Ajedi-Ka, the MSF Clinic, and Heal Africa that are working in conjunction with the DDR programs must all be committed to ensuring that their programs are sensitive to gender-specific vulnerabilities. There must be clear and easily accessible reporting systems for sexual abuse and exploitation for children in both the military and civilian populations. Improvements can be made at the grassroots level in all of these programs, particularly with respect to the sexual exploitation of

boy-child soldiers if organizations that are operating in the DRC begin to collect systemic data by increasing their efforts to identify victims. Greater acceptance and awareness by the international community of its existence should be fueled by notions of gender equality and not by highlighting the concerns of one gender over the other. Boy-child soldier victims of sexual abuse and exploitation need to be fully represented in both the international and national justice systems.

The DRC government has numerous sophisticated laws that include male victims in its rape offenses and to protect against the recruitment and use of children under the age of 18. The Child Protection Code goes even farther in its protection of children in armed groups and who have been sexually victimized in the conflict, but has not yet been enforced. The DRC government must take responsibly and action to implement its current laws to protect its children. It has to make stronger efforts to comply with the human trafficking guidelines and work towards improving its Tier status. A major goal for the international community should be for the creation of a new treaty or protocol that defines a child to be any human being under the age of 18 without equivocation and the age of recruitment to be the same. There should be a global consensus that human trafficking is an international crime warranting universal jurisdiction that together encompasses the crimes of child soldiering and sexual exploitation of both boys and girls. Through the use of the media, United Nations Resolutions, committees and representatives, the humanitarian community needs to include boy-child soldier victims of sexual abuse and exploitation in all its forms to begin to diminish the time honored paradigms of gender roles.