

Preventing the Use of Child Soldiers: the Role of the International Criminal Court

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Introduction

We have reached a point in history that is characterized by internal conflict and violence. Atrocities are committed on a daily basis against innocent civilians in alarmingly violent and cruel manners. At the same time, we are also witnessing a new era in international law and criminal responsibility. One can only hope that the International Criminal Court (ICC) can effectively punish those responsible for gross violations of human rights and thereby deter future would be criminals of this nature.

One of the most disturbing aspects of present day conflict is the use and abuse of children as soldiers in armed conflict. For many parts of the world, the future is extremely bleak when analysed in the context of the use of child soldiers. There are obvious and disturbing consequences for the future of a country that employs children as soldiers – a violent society, adults that face serious psychosocial trauma, the breakdown of families, even further spread of HIV and STDs, young adults that have no formal education or skills training, and unemployment. It is estimated that there are 300,000 child soldiers utilised in more than 30 countries worldwide either as combatants or as auxiliaries. [1] Approximately 120,000 of these child soldiers are found within Africa. [2]

Criminal responsibility must be sought for the use of child soldiers. The International Criminal Court has presented the world with an opportunity to have those responsible for the use of child soldiers to be held responsible. The Rome Statute, adopted in 1998, has made it a war crime for governments and rebel or opposition groups to recruit children under the age of 15 or to use them in national, regional and international conflicts. [3] The merits and de-merits of such a provision shall be discussed further on in the paper.

The thrust of this paper is to analyse the use of child soldiers in two particular conflicts - Sierra Leone and the Democratic Republic of the Congo (DRC) – and to assess the role of the International Criminal Court in efforts to halt the use of child soldiers. Can the ICC deter the use of child soldiers by armed groups via prosecution of those leaders responsible for their use in armed conflict? The DRC and Sierra Leone have been chosen due to the many similarities in the two conflicts and also due to their extensive use of children as soldiers. Additionally, it has recently been stated by the Prosecutor for the ICC, Mr. Luis Moreno-Ocampo, that the DRC may be the first case for the ICC to investigate and try. Sierra Leone has its own UN Special Court dealing with the war crimes committed in their conflict and the use of child soldiers as a war crime is also a crime being dealt with by that court.

This paper shall not go into great detail about the conflicts in Sierra Leone and the DRC. Rather it shall analyse the issue of child soldiers in the context of both conflicts. In addition, the paper shall highlight the international legal instruments that are applicable to the use of child soldiers. Finally, the paper shall attempt to suggest how the ICC can contribute meaningfully to the halt of the use of child soldiers in armed conflict.

Overview of the Problem of Child Soldiering

Under international law, the definition of a child has not always been clear. The UN Convention on the Rights of the Child (UNCRC) states that a child is any individual under the age of 18 years. The African Charter on the Rights and Welfare of the Child also states that a child is any human being under the age of 18 years. However, the UNCRC allowed the age of protection of children to be lowered with regards to military service – leaving children between the ages of fifteen and eighteen vulnerable to recruitment. [4] The International Criminal Court stipulates in Article 8 (2) (e) (vii) that it is a war crime to recruit children under the age of 15 or use them in armed conflicts. Hence, for the purposes of this paper, children shall be referred to as any human being under the age of 18. However, the legality of the ICC with respect to child soldiers shall be discussed in more detail below.

As mentioned above, there are approximately 300,000 child soldiers being used in 30 countries worldwide. We can expect that these figures are a conservative estimate because obtaining accurate data on child soldiers from the armed groups that employ them is often extremely difficult. In any case, it is obvious that the numbers are staggering and action needs to be taken.

Children are innocent and especially vulnerable. Children are less equipped to adapt or respond to conflict. They are the least responsible for conflict, yet suffer disproportionately from its excesses. [5]

Graca Machel asserted that child soldiering is a global problem that occurs more systematically than most analysts have previously suspected. [6] Child soldiering occurs throughout the world, but it cannot be denied that a large proportion of these child soldiers are found in Africa. The majority of African conflicts are internal and violent in nature. Indeed, recent African civil wars have been particularly brutal and bloody and violence against civilians is a characteristic of modern warfare. [7] Quite often these internal conflicts are a result of the combination of corruption by officials, economic hardship faced by the majority of the population, a breakdown in basic social services and manipulation of the people by elites. These tensions, in turn, create an environment in which children become targets for recruitment by both government forces and opposition groups. [8]

Children that are vulnerable to recruitment into armed groups are often those that come from the poorest sections of society, do not have families, and those found in conflict zones. [9] Children have been used as soldiers by both rebel groups and government forces in many conflicts, however this is particularly evident in Sierra Leone and the DRC conflicts. Some children are forcibly recruited and others are 'volunteers'.

Lack of accurate birth registration in many African countries leaves children under the age of 18 at a high risk. [10] Many of the armed groups also undertake deliberate strategies to recruit children into their ranks. In Mozambique, the Mozambican National Resistance forced new recruits to kill someone from their own village. [11] This was done with the aim of cutting bonds between families and communities of the recruited children and thereby making it nearly impossible for the children to return to their homes. Other methods of forced recruitment include abduction from homes and schools, the use of mind-altering drugs, and physical threats to the children.

There are some that argue that children also 'volunteer' to become soldiers. Although the reasons children 'volunteer' include a desire for revenge, adventure, fun seeking, a sense of belonging and peer pressure, most of the evidence points to survival as the primary reason for enlisting. [12] It is for this very reason of survival, that others have argued that the children are not actually choosing freely to become soldiers, but rather that they are forced to do so due to socio-economic factors beyond their control. Graca Machel points out that joining an armed group is often a response to a variety of pressures – economic, social and cultural. [13]

Children are often utilised as soldiers for a variety of reasons. Their comparative agility, small size, and the ease with which they can be physically and psychologically controlled, are regarded as advantages by military commanders. [14] In addition, the use of small arms and light weapons in modern conflict has meant that children as young as ten years are capable of carrying and handling these weapons. Children are often good as spies and messengers. Common roles for children to play are as porters, standing guard, manning checkpoints, messengers, spies, laying or clearing landmines, stealing and foraging for food and performing household duties. [15] Many children are also used in active combat roles.

Girl soldiers face the additional burden of being taken as 'wives' by commanders or used as sexual slaves. It should be noted that boys have also been documented as suffering sexual abuse within their roles as child soldiers. The obvious consequences of this abuse are: contraction of HIV/AIDS and other STDs, psychosocial trauma, and childhood pregnancy.

Child soldiers are often plied with alcohol and drugs prior to going into battle. In addition, these children are treated as harshly as their adult counterparts. Many children are maimed or killed in battle due to their lack of maturity, training and education. The psychological consequences of children's participation in armed conflict ranges from aggression and revenge, to anxiety, fear, grief and depression. Furthermore, the use and abuse of children by armed groups can result in low self-esteem, feelings of guilt, violent behaviour, shame, as well as lack of trust and confidence. [16]

Children are often not welcomed back into their families and communities after they have served as combatants. Many are viewed as a burden to their families due to their physical disabilities acquired during battle, in addition to their newly acquired behavioural problems. Due to the fact that most children who are recruited into armed groups come from disadvantaged or poor homes, the fact remains that their families are often even more disadvantaged after the conflict is over and therefore even less capable of providing for an additional mouth to feed. It is painfully obvious that the use of child soldiers is exacerbating the breakdown of families and society within Africa.

The Democratic Republic of the Congo

It has been reported by UNICEF that as many as one-third of the DRC's children have been forced to take up arms. [17] According to the United Nations, the armed forces using child soldiers within the DRC are: the DRC Government Forces (FAC), the Congolese Liberation Movement (MLC), the Congolese Rally for Democracy (RCD), the Congolese Rally for Democracy (RCD)-National, the Congolese Rally for Democracy (RCD)-ML, Union of Congolese Patriots (UPC), Lendu Militias, Patrick Masunzu's forces, Ex-FAR/Interahamwe, and Mai Mai militias.

Since 1998, the DRC has been ravaged by two successive conflicts. It is estimated that approximately 4.7 million people have died in the DRC's five-year civil war. [18] The DRC is a country blessed with immense natural resources such as: diamonds, coltan, copper and gold. Corruption, personal wealth, and international meddling have all contributed to the conflict within the DRC. The DRC is ranked at 152nd on the UNDP Human Development Index of 174 countries. There are huge problems with displaced persons and a breakdown in institutional and public services, which leads to the separation of children and no means of reuniting them with their families. Many children are lured into fighting by armed groups as a mechanism for survival. [19]

Fighting in the northeastern section of the DRC has been particularly violent. Aid workers in Ituri have estimated that more than half of the estimated 15, 000 fighters who make up the UPC are under 18 years, some are as young as eight. [20] The UPC defends the use of the

children by claiming they are all orphans who are used for light manual labour. [21] However, while the UPC should be held responsible for their actions, every armed group within the DRC is responsible for using children as soldiers. The author personally witnessed the extensive use of child soldiers during my time working with the Facilitator for the inter-Congolese dialogue.

Ituri is a region of dense forests, which make it easy for the various groups with young children in their ranks to hide them. [22] Although many of the armed groups in the DRC do not go out of their way to hide the fact that they use child soldiers. Many groups prefer to have younger soldiers because they are easier to manipulate. *Kadogos* is the name given by the Congolese to the 'little ones' that fight. These children have been abducted, drugged, and brainwashed. According to Catholic priests in Bunia, half of the combatants in Ituri province are under the age of 15. [23]

Former President Laurent Kabila had used child soldiers to support his military since 1996. He recruited thousands of young child soldiers to support his military campaign against the Mobutu regime. [24] During his time as President, Laurent Kabila repeatedly promised the international community that his government would demobilise and reintegrate the child soldiers. However, on August 7, 1998, an official communiqué was aired on national radio calling for children and youth between twelve and twenty years old to enlist in the armed forces in response to the RCD insurgency from the East. [25] As of November 1998, it was found that one out of every fourteen FAC soldiers was under the age of thirteen. [26]

In February 2001, UNICEF found 163 Congolese child soldiers in Uganda. [27] The children were housed in a political re-education school since August 2000. The children found ranged in age from 9 to 17 years. It was found that all of the children wished to return home to their families located in Bunia, northeastern DRC. [28] These children had been part of a larger group of 694 Congolese that had been airlifted from Bunia for political re-education in Uganda.

In March 2003, the Pretoria Agreements were signed by all of the Congolese Parties to the Conflict to install a transitional government in the DRC. Recent reports have indicated that the Congolese transitional ministers have been sworn in. There are provisions within the peace agreement, which call for a Truth and Reconciliation Commission to hold those responsible for the crimes against humanity in the DRC. However, it is unlikely that those particular ministers of the newly formed transitional government will effectively bring their current and former counterparts to trial for crimes against humanity and even less so for the use of child soldiers due to the fact that all factions are equally culpable. It is however more significant that the ICC may take up the case against the DRC leaders in the northeast for their crimes against humanity and other gross human rights violations. This will be discussed in more detail in the final section of the paper.

Sierra Leone

The war in Sierra Leone has often been characterised as one of the most brutal to have ever taken place in history. The Revolutionary United Front (RUF) rebel force was led by Foday Sankoh, a former military leader in Sierra Leone, and pitted against the pro-government self-defence militias called the Kamajors. President Kabbah was democratically elected in 1996 but his reign was short lived. In May of 1997 rebel fighters overthrew him. However, an ECOMOG force (West African peacekeepers) came to Kabbah's rescue and ousted Foday Sankoh and his rebels in February 1998. This forced the rebel group members to retreat into the bush and re-organise. By October of 1998, attacks from the rebel group had intensified. Sankoh was then sentenced to death by the Government of Sierra Leone for treason. The rebels advanced towards Freetown in December of 1998 to free Sankoh.

In January 1999, the rebels entered Freetown and began a vicious campaign of slaughter against innocent civilians. It is estimated that the rebel groups amputated approximately 1,500 people within the first few days of entering Freetown. [29]

The conflict in Sierra Leone has been characterised as a brutal and complex conflict that has its roots in years of misrule and war in neighbouring Liberia. [30] This conflict was fuelled by diamonds and growing gaps between the rich and the poor of Sierra Leone. Just as in the conflict in the DRC, the people of Sierra Leone were easily manipulated and coerced by rebel groups who claimed to be fighting against corruption. Also similar to the DRC situation was the fact that basic social services such as health, sanitation and education had deteriorated to the point where life expectancy had dropped to age twenty-one in 1987. [31] In July of 1999, the Government and the RUF signed a formal peace accord. The war in Sierra Leone resulted in the deaths of over 30,000 civilians as well as the displacement of over half the country's population. [32] The RUF had embarked on illegal diamond mining and exportation to finance its war efforts. The government on the other hand was strapped for cash and paid its supporters by giving them the right to inflict violence and freedom to loot. [33]

The use of child soldiers in Sierra Leone has been notorious. Thousands of children had been abducted and participated in horrible atrocities such as beheadings, amputations, rape, and burning people alive. Children were often given drugs to overcome their fear to commit atrocities. These children then developed dependency upon these drugs. Other children were forced to drink blood each morning to give them strength. It is not surprising that Sierra Leone was ranked as one of the worst places in the world to be a child, second only to Angola which ranked first. [34]

In 1998, the National Committee for Disarmament, Demobilisation and Reintegration (NCDDR) was formed. Disarmament was a necessary pre-requisite to lasting peace in Sierra Leone. This particular office was also required to deal with child soldiers. To date, a total of 6, 845 child ex-combatants have been officially demobilised between the ages of 6 – 17 years. [35] Out of these children only 529 girls have disarmed, although it is quite obvious that more girls took part in the conflict. [36]

As in the conflict in the DRC, all of the warring factions in Sierra Leone utilised child soldiers. The NGO, Children Affected by War, estimated that 10,000 child soldiers existed in Sierra Leone during the time of the war. [37] It is significant to note that 50% of the population in Sierra Leone are under eighteen and therefore not surprising that such a long and protracted war would eventually require the use of children by armed groups.

The NCDDR states that there are still children who have not disarmed officially but may have simply melted into their communities. Ex-combatant children generally face the following problems in Sierra Leone: stigmatisation and hostility by peer groups and other members of their community, addiction to drugs, attachment to ex-commanders and restlessness. [38]

With regards to Sierra Leone, Abdullah and Muana argue that: Central to an understanding of the war in Sierra Leone is the role of alienated youth, especially lumpen youth in the urban and rural areas, for whom combat appears to be a viable survival alternative in a country with high levels of urban unemployment, where the economy is dominated by a precious mineral sector in long-term decline. [39]

It is abundantly clear that societal problems, particularly those affecting children, must be addressed in the quest to halt the use of child soldiers. Rehabilitation programs are also

extremely important. It would appear that in general, Sierra Leone has taken this call for rehabilitation of child soldiers seriously, but still requires financial aid to assist these programmes.

Following the end of the conflict in Sierra Leone, the International Community had a duty to address the crimes committed against innocent civilians. In particular, the International Criminal Tribunals in the Former Yugoslavia and Rwanda had created significant precedents for such a call in Sierra Leone. However, due to the significant financial commitment involved with the establishment of such courts, the UN Security Council was not receptive to the proposal of outlining the creation of yet another UN tribunal. [40] With this fact in mind, the UN Security Council authorised the creation of a Special Court to prosecute those who bear the greatest responsibility for war crimes, crimes against humanity, and other serious violations of international humanitarian law committed in Sierra Leone. [41] The Special Court works in conjunction with the domestic courts of Sierra Leone. The Special Court can only try those responsible for crimes committed since 30 November 1996. It will not try everyone responsible but only the 'big fish' responsible for the overall conduct of the war.

Each indictee is charged with being responsible for multiple human rights violations, including murder, rape, sexual slavery, mutilation and the conscription of child soldiers. [42] President Charles Taylor has also been indicted for war crimes in connection with his backing of the RUF. However, to date he has eluded the throngs of the Special Court. It is significant that these major war criminals have been indicted and those they have also been charged for the conscription of child soldiers. This could herald a significant step forward in the battle to halt the use of child soldiers. There is a chance for the Special Court to set a major precedent on this issue.

However, on the issue of whether or not the prosecution of those responsible for the use of child soldiers would halt their use in the future, the NCDDR replied, "it would minimise the recruitment of children but not necessarily deter."

International Legal Standards

With the respect to the use of child soldiers, international humanitarian law, international human rights law, international criminal law and international labour law all apply. The following international legal instruments outlaw the use of child soldiers: 1977 Additional Protocols to the Geneva Conventions, the Convention on the Rights of the Child, Child Soldiers Optional Protocol to the CRC, the African Charter on the Rights and Welfare of the Child, the Rome Statute of the ICC, and the ILO Worst forms of Child Labour Convention 182.

The UN General Assembly adopted the Child Soldiers Optional Protocol to the CRC on 25 May 2000. This Protocol establishes 18 as the minimum age for direct participation, compulsory recruitment, or recruitment for use in non-governmental armed groups. The Optional Protocol entered into force on 12 February 2002, to date 111 countries have signed and 54 have ratified. States that ratify the Protocol are expected to reform national legislation in order to comply with its standards. A monitoring mechanism is also introduced that requires States parties to submit regular reports to the Committee on the Rights of the Child detailing implementation measures. "With the coming into force of the Optional Protocol we have a universal standard which is also a rallying call to the international community to work more diligently to promote adherence and hold accountable those parties that fail to comply and which continue to use children as weapons of war," said Mr. Otunnu. [43]

One of the most significant aspects of the Optional Protocol lies in the fact that it raises the minimum age of recruitment from fifteen to eighteen years. The African Charter on the Rights and Welfare of the Child (1999) was another agreement, which established eighteen as the minimum age of recruitment and participation in warfare. ILO Convention 182 (1999) included forced and compulsory recruitment of children under the age of 18 years among the worst forms

of child labour. [44] Hence, prior to 1999, international legal documents dealing with recruitment of child soldiers had set the minimum age of recruitment at fifteen years. Many have put forth arguments suggesting that particular countries should be able to determine whether recruitment at fifteen years is acceptable based on each individual country's culture and security concerns. However, while many would support the recruitment of children at fifteen years, the very same individuals would be unlikely to suggest that the right to vote should be given at fifteen years.

The UN Security Council Resolution 1314 (August 2000) emphasised the responsibility of all countries to exclude from amnesty arrangements anyone responsible for grave crimes against children. It also called for measures against the illicit trade in natural resources such as diamonds, which fuels the wars and contributes to the massive victimisation of children. This resolution has, at the very least, highlighted the importance of holding those responsible for such criminal use of children in armed conflict. It also drew a direct link between the exploitation of natural resources and the use of child soldiers in armed conflict. Undoubtedly, the wars in Sierra Leone and the DRC are examples of this particular phenomenon. The plight of children in armed conflict has certainly attained an increasing level of international attention over the last five years.

The ICC and Prosecution for the Use of Child Soldiers

The Rome Statute of the International Criminal Court was adopted in 1998. As mentioned previously in this paper, the Rome Statute made it a war crime to recruit children under the age of fifteen or to use them in armed conflict. Article 8 (2) (e) (vii) states that it is a war crime to use, conscript, and enlist children the elements of which are the following:

1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such a person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

It is significant that the ICC addressed and included the use of child soldiers as a war crime. However, at the same time it creates some ambiguity in the international law pertaining to the use of child soldiers due to the fact that international legal documents that followed in 1999 and 2000 have risen the minimum age from fifteen to eighteen years. The wording used within the Rome Statute is derived from the UNCRC and Additional Protocol 1 to the Geneva Conventions. The term recruiting appeared in an earlier draft, but was replaced with 'conscripting or enlisting' to suggest something more passive, such as putting the name of a person on a list. [45] Hence, one must pose the question of whether or not the minimum age would have been increased to eighteen within the Rome Statute had it been written after the year 2000. The fact that international legal standards have recently increased the minimum age should make it a priority for the ICC to consider amending the Rome Statute or to create a similar Optional Protocol to the Rome Statute as was created for the UNCRC.

The initial cases to be heard by the ICC will inevitably set some very crucial precedents. It will be important to take note of how the ICC handles the prosecution of war crimes and in particular of the use of child soldiers as a war crime. Just as issues relating to war crimes against women have received increasing attention through the efforts of the International Criminal Tribunal for Rwanda and the Former Yugoslavia, it is key that the ICC brings attention to war crimes that affect children. It is encouraging to note that the ICC has made it a priority to hire legal advisors, prosecutors and judges that have expertise on issues such as the impact of armed conflict on

children. As mentioned earlier on in the paper, the situation in the DRC may be the first case to be investigated and prosecuted by the ICC. The DRC is one of 499 communications received by the ICC for possible prosecution. Mr. Luis Moreno-Ocampo has been appointed as the first Chief Prosecutor of the ICC and he has publicly commented that his office will be closely monitoring the situation in the DRC. According to the 33rd Edition of the European Newsletter on the ICC, Mr. Moreno-Ocampo stated, "that since 1 July 2002, more than 5,000 people have died in Ituri as a direct consequence of crimes that could constitute genocide, war crimes, or crimes against humanity." The Prosecutor further announced that he will begin with a preliminary examination and will seek additional information from international organisations before launching a formal investigation.

The gravity of the situation in Ituri is one, which demands the attention of the ICC. Additionally, the extensive use of child soldiers in Ituri is a war crime that cannot be forgotten. Hence, the fact that the Prosecutor has chosen to focus the first efforts of the ICC on the DRC, and in particular the Ituri region, gives one great hope that an important precedent will be set with respect to the criminality of the use of children as soldiers. The UN Security Council discussed the situation in the DRC and the referral to the ICC on 18 July 2003. Mr. Ileka, DRC Representative to the United Nations stated,

"We are very concerned about reports that the recruitment of child soldiers in the region continues, in particular, most recently, the information that the majority of FNL-rebels killed in recent fighting near Bujumbura were only 11 -15 years old. We share the Secretary-General's view that militia leaders (such as Lubanga) must be held accountable for such acts and other gross abuses of human rights and humanitarian law. I would also like to draw attention to the fact that the recruitment of child soldiers is a crime according to the Rome Statute of the ICC." [46]

It is also encouraging to note that the use of child soldiers in the DRC has been well documented by several NGOs and UN organisations, thereby providing ample evidence for the Prosecutor. One of the necessary elements for prosecuting those responsible for recruiting and using child soldiers will be proving that they knew or should have known that the child was under fifteen years of age. Many African children have been denied their basic right to a birth certificate due to a variety of reasons associated with poverty, lack of social welfare services and lack of education. Additionally, many people that have been born within the DRC have been denied citizenship by the Congolese Government due to their ethnic background. The Tutsi population within the Eastern DRC has been subjected to well over 30 years of oppression and denial of their basic rights to citizenship. In essence, there will be many children who do not hold any official documentation that proves their age nor origin. This could therefore be a potential stumbling block for the ICC in connection with prosecution for the war crime of conscripting and enlisting child soldiers because it is conceivable that military commanders will argue that to the best of their knowledge the children were over fifteen years of age. Of course, the Court will need to assess the credibility of such a claim in the light of the circumstances, and would be unlikely even to consider a defence of mistake of fact that did not have an air of reality to it. [47] One of the greatest needs of children who have been used as child soldiers is that of rehabilitation and reintegration. These child soldiers are the future of Africa and it is essential that their psychosocial trauma be addressed, as well as a need for education, skills training and an escape from poverty. As such, the ICC should aim to provide redress for those children that have suffered this fate. A special victim's fund should be created for children affected by armed conflict at the hands of those convicted by the ICC. The Rome Statute allows the Court to address the issue of reparations to victims, establishing general rules for 'restitution, compensation and rehabilitation. [48]

The Court is empowered to 'determine the scope and extent of any damage, loss and injury to, or in respect of victims', acting on its own initiative in cases where there is no specific request from the victims themselves. The purpose of this 'determination', it appears, is to enable enforcement

of the rights of victims before national courts....To some extent the Court can control enforcement of the order, but only if there are resources in the trust fund for victims. [49]

There are of course many practical problems with the creation of a Victim's Trust Fund. For example, many of the Court's defendants will undoubtedly plead poverty and it will be extremely difficult for the Court to seize and locate substantial assets of its prisoners. [50] However, without detracting from the seriousness of other victims, it must be recognized that children in particular suffer disproportionately from armed conflict and are ill equipped to seek legal redress without assistance. Additionally, children often turn to armed groups as a means to secure food, healthcare, education and money. Many children are then stripped of these socio-economic means once they leave the armed group. This then results in children returning to be combatants or turning to a life plagued by crime and violence as a means of survival. Hence, there is an urgent need to create a special fund for children affected by armed conflict.

Lastly, there will inevitably be problems associated with the use of child soldiers as witnesses. Many children will undoubtedly feel frightened to offer evidence against or to stand in a courtroom and give testimony against their former commanders. Ex-child combatants often face great difficulty upon returning to their home villages or families because they are viewed as evil or worthless. Therefore, asking them to now turn on their commanders may be difficult. The fear of reprisals against them by others who were part of the same armed group is also a real fear they may face. Generally, the children that become child soldiers do not have a very high level of education and their ability to articulate their plight may also be a hindrance to the effective prosecution of the criminals. It is at this point that the importance of the Victims and Witnesses Unit is evident. Its responsibilities include the provision of protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. [51]

Conclusion

The plight of children in armed conflict is alarming and requires genuine and concerted international efforts. As highlighted within this paper, children in Sierra Leone and the DRC are testimony to the negative impact that child soldiering has on the future and society of a country. Internal conflicts have shattered traditionally held notions of morality. Greed, economic plundering, and power have led us to new heights of grotesque violence. As Graça Machel stated within her report of *The Impact of Armed Conflict on Children*,

...more and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. There are few further depths to which humanity can sink. [52]

The International Criminal Court has provided the world with the opportunity to address corruption, plundering of natural resources, crimes against humanity, denial of human rights, and political leaders that abuse their power. Included within the list of crimes to be addressed at the International Criminal Court is the crime of conscription, enlistment and use of child soldiers. It is time for military leaders and politicians to stand up and be held responsible for the use of child soldiers. Salient reasons as to why children should be used in armed conflict simply do not exist. The International Criminal Court has a duty to children and to humanity to ensure that the protection of children in armed conflict is one of its principle aims. The initial case to be investigated, the DRC, presents an opportunity for the ICC to set an important precedent with respect to the criminality of the use of child soldiers and hence a strong message to all military and political leaders.

Children require our protection and we require their well being so as to ensure peace and stability in the future. It is, therefore, the duty of the United Nations and non-governmental organisations to report on child conscription into armed groups. Additionally, peace agreements must recognize the use of child soldiers and address their rehabilitation and reintegration needs. Unfortunately, children often become soldiers because there is no other alternative for their survival. In the future it may be important to assess the role of “failed states” in the manufacturing of child soldiers and hence their criminality in this regard. Hopefully, the ICC will play a lead role in bringing the necessary attention to the issues related to the use of child soldiers.

In a world of diversity and disparity, children are a unifying force capable of bringing people to common ethical grounds. Children’s needs and aspirations cut across all ideologies and cultures.
[53]

[1] Afua Twum-Danso, *Africa’s Young Soldiers: The Co-option of Childhood*, No. 82, April 2003, Institute of Security Studies Monograph Series, p. 12.

[2] Twum-Danso, p.12.

[3] Twum-Danso, p.18.

[4] Twum-Danso, p.18.

[5] UN Special Representative for Children in Armed Conflict, Olara Otunnu, *Children in Armed Conflict, International Standards for Action*, <<http://157.150.184.6/OSRGCAAC/East.cfm>> (30 July 2003).

[6] Graca Machel, [The Impact of Armed Conflict on Children](#)

[7] Twum-Danso, p.21.

[8] Twum-Danso, p. 26.

[9] R. Brett and M.McCallin. [Children: The invisible soldiers](#).(Stockholm: Radda Barnen, 1998), 20.

[10] Twum-Danso, 29.

[11] M. Wessels, “Child Soldiers,” *Bulletin of the Atomic Scientists*, November/December 1997.

[12] Twum-Danso, 30.

[13] Machel, 11.

[14] D. Keen, When war itself is privatised: The twisted logic that makes violence worthwhile in Sierra Leone, *The Times Literary Supplement*, 29 December 1995, p.13.

[15] Twum-Danso, 33.

[16] Twum-Danso, 36.

[17] UNICEF Homepage, Information by Country, <www.unicef.org/infobycountry/drcongo.html> (30 July 2003) .

[18] "The little ones are merciless killers", *Sunday Times*, Johannesburg, June 8, 2003, p.7.

[19] War Child, Democratic Republic of the Congo, <www.warchild.org.uk/where_work/sierral.asp> (30 July 2003).

[20] BBC News, "DR Congo 'awash' with child soldiers", <www.news.bbc.co.uk/2/hi/africa/2772575.stm> 17 February 2003 (30 July 2003).

[21] "DR Congo 'awash' with child soldiers".

[22] DR Congo 'awash' with child soldiers".

[23] "The little ones are merciless killers".

[24] Human Rights Watch, The Use of Child Soldiers in the Democratic Republic of the Congo, <www.hrw.org/campaigns/crp/congo.htm> (30 July 2003).

[25] HRW.

[26] HRW.

[27] UNICEF, UNICEF Press Release 14 February 2001, DRC Children, <www.unicef.org/newsline/01pr19.htm> (25 July 2003).

[28] UNICEF 14 February 2001.

[29] Jeremy Vine, 'The Victims of Sierra Leone's rebels', 8 March 1999, <www.news.bbc.co.uk/1/hi/world/africa/298754.htm> (8 August 2003).

[30] Caroline Hawley, 'A Country Torn by Conflict', 12 January 1999, <www.news.bbc.co.uk/1/hi/special_report/1999/01/99/sierra_leone/251377.stm> (8 August 2003).

[31] Twum-Danso, 22.

[32] Twum-Danso, 22.

[33] Twum-Danso, 23.

[34] Ibid, p.23.

[35] Official response to questionnaire submitted by the author to the National Committee for Disarmament, Demobilisation and Reintegration Executive Secretariat in Freetown, Sierra Leone, 21 July 2003.

[36] Ibid.

[37] Radio Netherlands, 'Sierra Leone, Child Soldiers', www.rnw.nl/humanrights/html/childsoldiers.html (21 January 2000) [8 August 2003].

[38] National Committee for Disarmament, Demobilisation and Reintegration, *op cit*.

[39] Twum-Danso, 30.

[40] Mark Malan. Sierra Leone, Buidling the Road to Recovery, Institute for Security Studies, ISS Monograph Series, No. 80, March 2003, p. 142.

[41] Articles 2-7 of the Statute of the Special Court for Sierra Leone, as annexed to the Special Court Agreement.

[42] Tom McKinley, 'Catching the Big Fish', *BBC Focus On Africa*, July – September 2003, p. 12.

[43] Joint Press Release by UNICEF and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'Bellamy and Otunnu hail entry into force of Optional Protocol on Child Soldiers,' <www.unicef.org> 12 February 2002, (30 July 2003).

[44] Twum-Danso, 18.

[45] William Schabas. Introduction to the International Criminal Court (Cambridge University Press, Cambridge, 2001), 50.

[46] Coalition for the International Criminal Court Monitor, Excerpts from UN Security Council Meeting on the DRC (18 July 2003), 23 July 2003.

[47] Schabas, 91.

[48] Muttukumaru, Christoper, 'Reparation to Victims', in Lattanzi and Schabas, Essays on the Rome Statute, 303-10.

[49] Schabas, 149.

[50] Schabas, 150.

[51] Schabas, 149.

[52] Machel, 5.

[53] Machel, 10.