

Ending the Involvement of Children in Armed Conflict in the Democratic Republic of the Congo

This essay assessed the measures taken by the Democratic Republic of the Congo (DRC) to protect children from involvement in armed conflict using a model of human rights reform. Inadequate judicial systems, policies, and legislation were diagnosed as hindering the DRC's protection measures. This essay recommended that NGOs and other states work with the DRC to end the recruitment of child soldiers by increasing the DRC's capacity to protect children's rights.

Key Words: Children, Human Rights, Armed Forces, Conflicts

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Introduction

Armed forces and groups have taken advantage of the social disruptions created by civil wars to recruit children to fight within their ranks.¹ In recent times, children have become more favourable choices for recruits due to the proliferation of small arms, which are easy to use.² Although many children have been recruited by force, others have joined voluntarily due to economic or social pressures or being seduced by promises of glory and excitement.^{3 4} These children have been forced to take part in acts of violence that have seriously deteriorated their emotional, mental, and physical health.⁵

Despite international efforts to stop the recruitment of child soldiers, children continue to take part in armed conflict within war torn states. The Democratic Republic of the Congo (DRC) is one such example. Although the civil war ended in 2003, children in the DRC continue to be recruited by the armed forces, the Forces armees de la Republique Democratique du Congo (FARDC), and various armed groups such as Uganda's Lord's Resistance Army (LRA).⁶ Thousands of children have been captured by these groups, unlawfully detained, and, in some instances, tortured.⁷

In this essay I will critique the effectiveness of the efforts of the DRC government to protect children from involvement in armed conflict. Firstly, I will outline the developments at the international level to protect children from recruitment into the armed forces. I will then outline Hoadley's 10-step process for human rights reform

¹ Sarah Kenyon Lischer, "War , Displacement, and the Recruitment of Child Soldiers in the Democratic Republic of the Congo", in Simon Reich and Scott Gates (eds.), *Child Soldiers in the age of fractured states*. (Pittsburgh: University of Pittsburgh Press, 2010), 144.

² Ibid.

³ Alcinda Manuel Honwana, *Child Soldiers in Africa* (Philadelphia: University of Pennsylvania Press, 2006), 1.

⁴ "Child recruitment by armed forces or armed groups", *UNICEF*, <http://www.unicef.org/protection/57929_58007.html> [accessed 29 April, 2012].

⁵ Ministry of Foreign Affairs and Trade, *New Zealand Handbook on International Human Rights* (Wellington: Ministry of Foreign Affairs, 2008), 91.

⁶ "Report to the Committee on the Rights of the Child in advance of the DRC initial report on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict", *Coalition to stop the use of Child Soldiers*, April 2011, 3.

⁷ Ibid, 4.

before using steps 5-9 of this process to analyse the measures the DRC government has implemented to protect children from participating in armed conflict. For each step I will provide recommendations for how the DRC government, NGOs, and other states can improve the DRC's protection measures. Finally, I will discuss the potential political difficulties that the proposed recommendations may face and conclude by suggesting how these difficulties may be overcome.

International Efforts to Protect Children from Recruitment by the Armed Forces

Since the 1970s there have been many developments at the international level to protect children from involvement in armed conflict. In 1977 the UN adopted three Additional Protocols to the Geneva Conventions of 1949 that set the minimum age for recruitment into the armed forces for both domestic and international armed conflict at 15.⁸ Thereafter, the UN Commission on Human Rights appointed a special working group to draft the Convention on the Rights of the Child (CRC). Following many years of negotiations, the UN General Assembly adopted the CRC in 1990.⁹

The CRC, however, failed to adequately address the protection of children from armed conflict.¹⁰ Article 38, the only provision pertaining to the involvement of children in armed conflict, declared that states should 'take all feasible measures' to ensure the protection of children involved in armed conflict. This Article implied that the protection of children is a matter of feasibility, rather than necessity.¹¹ In order to strengthen the protections of children from recruitment by the armed forces, the UN General Assembly commissioned Graca Machel to conduct a report on the impact of armed conflict on children in 1994. In her report, Machel recommended that all governments ensure children under the age of 18 cannot be conscripted into the armed forces.¹²

⁸ "International Standards", *Child Soldiers International*, < <http://www.child-soldiers.org/childsoldiers/international-standards> > [accessed 11 May, 2012].

⁹ Thomas Hammarberg. "The UN Convention on the Rights of the Child – And How to Make it Work", *Human Rights Quarterly*, 12 (1) (1990), 97.

¹⁰ "Convention on the Rights of the Child", *Office of the United Nations High Commissioner for Human Rights*, <http://www2.ohchr.org/english/law/crc.htm> [accessed 3 May, 2012].

¹¹ Hammarberg, "UN Convention", 101.

¹² "Promotion and Protection of the Rights of children: Impact of armed conflict on children", *United Nations*, 26 August, 1996, 54.

In light of this Report, the General Assembly created the Office of the Special Representative of the Secretary General for Children and Armed Conflict in 1997. This Office worked together with UNICEF, regional organisations, and the Coalition to Stop the Use of Child Soldiers (The Coalition) to raise international awareness of the effects of armed conflict on children, encourage policymakers to develop international norms for the protection of children from armed conflict, and develop an Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OP).¹³

As a result of these efforts, the OP was adopted in 2000 and came into force in 2002. States party to the OP are required to take all measures to assure children in their armed forces who are not 18 do not take direct part in hostilities (Article 1), ensure that children under 18 are not compulsorily recruited to armed forces (Article 2), and ensure safeguards to protect the voluntary recruitment of children under 18, for example that children are informed of the duties involved in military service (Article 3,3).¹⁴

Since the adoption of the OP, Governments have taken various measures to protect children from armed conflict. In 1998 the Rome Statute of the International Court established a permanent court to deal with individuals charged with war crimes, including the recruitment of children under the age of 15 into the armed forces. During the same year the African Union adopted the African Charter on the Rights and Welfare of the Child, which required states to prevent children from being involved in armed conflict. In 2007 states adopted the Paris Commitments and Principles on the Association of Children in Armed Forces, which outlined legal principles and long-term measures to put an end to recruitment of children into the armed forces.¹⁵

¹³ "Actions", *Office of the Special Representative of the Secretary-General for Children and Armed Conflict*, < <http://www.un.org/children/conflict/english/actions.html>> [accessed 4 May, 2012].

¹⁴ *NZ Handbook*, 208-209.

¹⁵ "International Standards".

10 Steps Towards Protecting Human Rights ¹⁶

According to Hoadley, successful human rights reform generally takes the following steps:

1. Human rights investigators identify human rights violations and devise visions for more equitable treatment of victims.
2. Human rights advocates specify minimum standards of human rights treatment.
3. NGOs and other activists develop a deeper consensus on human rights standards.
4. Opinion leaders and NGOs lobby political leaders around their cause.
5. Governments respond to international standards by adopting human rights standards in legislation, policy, and justice systems.
6. Governments negotiate international agreements on human rights standards then refine them with declarations.
7. Governments act through international organisations to delegate to states the responsibility of adopting human rights treaties.
8. Governments, UN bodies, and NGOs monitor compliance with human rights standards.
9. Governments create national or international courts to prosecute individual violators of human rights.
10. Governments act unilaterally or multilaterally to intervene in states failing to protect victims of human rights violations.

In the next section I will apply steps 5-9 to critique the DRC government's current measures to protect children from involvement in armed conflict and provide recommendations for further measures of protection. However, as the DRC government ratified the CRC and OP before it adopted human rights standards into law, I will discuss step 6 prior to step 5.

¹⁶ Stephen Hoadley, "Ten Steps Towards Protection of International Human Rights (HR)", *Syllabus for Political Studies 750 International Relations and Human Rights*. (Auckland: University of Auckland, March 2012), 2.

Efforts by the DRC Government to Prevent the Recruitment of Child Soldiers and Recommendations for Reform

Step 6: Negotiating International Agreements

The DRC government was amongst the first states to ratify the CRC on 27 September 1990 and the OP on 11 November 2001.^{17 18} At the time of signing the OP, the DRC government made a binding declaration that set the minimum age for voluntary recruitment into the armed forces at 18 years of age.¹⁹

The DRC government has further demonstrated a commitment to ending the recruitment of child soldiers by ratifying both the African Charter on the Rights and Welfare of the Child and the International Labour Organisation Convention 182 concerning the elimination of child labour in 2001, the Rome Statute of the International Criminal Court (ICC) in 2002, the Additional Protocols to the Geneva Convention in 1982 and 2002, and the Paris Principles and Commitments in 2007.^{20 21}

Recommendations

The DRC has ratified all the major conventions protecting children from participation in armed conflict. However, in future the DRC government should ratify the UN's proposed Optional Protocol to the CRC on a communications procedure, which would enable individuals or groups to file complaints to the Committee of the Rights of the Child if a state fails to comply with the CRC and Optional Protocols.²² This would open the door

¹⁷ "Status of Convention on the Rights of the Child", *United Nations*, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> [accessed 3 May, 2012].

¹⁸ "Status of Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict", *United Nations*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en [accessed 3 May, 2011].

¹⁹ "Report to the Committee", 6.

²⁰ *Ibid.*

²¹ "Child recruitment by armed forces"

²² "Optional Protocol to the Convention on the Rights of the Child on a communications procedure", *United Nations*, <<http://www.childrightscoalitionasia.org/wp-content/uploads/2012/02/OPCRC-Text-GA-ARes66138.pdf>> [accessed 20 October, 2012].

for complaints against the DRC regarding the involvement of the children in the armed forces.

Step 5: Adopting Human Rights Standards in Legislation, Policy and Justice Systems

Legislation

The DRC government had reformed its Constitution, the Labour Code, the Military Judicial Code, the Penal Code, and the Code of Criminal Procedure to better address human rights standards. However, the government has not enacted legislation to implement the Rome Statute of the ICC. This has hindered the efforts of the ICC to indict Bosco Ntaganda for recruiting children to participate in armed conflict in the DRC.²³

Policy

The DRC government has not implemented a consistent training programme to inform military officers about official government and FARDC policies for verifying the age of recruits and preventing the entry of children into military bases.²⁴ As a result, belligerent military leaders continue to recruit child soldiers, while other leaders have a poor understanding of what constitutes a child in the armed forces and have trouble identifying child soldiers among their ranks.²⁵

Justice Systems

The government of the DRC has not adequately reformed its justice system in order to improve its human rights standards. The justice system within the DRC is weak and as a result, the DRC is not able to conduct legitimate proceedings against recruiters of child soldiers.²⁶ Only four perpetrators have been prosecuted. All of these individuals have been tried within the military, rather than the civilian, justice system. However, due

²³ “Democratic Republic of the Congo: The Congolese government must arrest and surrender Bosco Ntaganda to the ICC”, *Amnesty International*, 19 April, 2012. <<http://www.amnesty.org/en/library/asset/AFR62/004/2012/en/62924de2-c8ad-4b2d-832f-d68bb01776fb/afr620042012en.pdf>> [accessed 3 May, 2012].

²⁴ “Report to the Committee”, 12.

²⁵ *Ibid.*

²⁶ “Report to the Committee”, 12.

to political and military interference in the judicial process, those who have been convicted have in some instances escaped and returned to the armed forces.²⁷

Recommendations

Legislation

Legislation alone will not guarantee the protection of children from involvement in the armed forces. However, the DRC government should nevertheless pass legislation to enact the Rome Statute of the ICC into domestic law, as this would better enable the government to arrest Bosco Ntaganda and send him to the ICC for prosecution.

Policy

The DRC government should reform its military policies in order to halt the recruitment of child soldiers. The government should work in conjunction with UN child protection agencies to train FARDC members to identify children within their ranks and release them from service.²⁸ The government should also make officers' entry into the future army training programmes contingent on officers' release of all children under their control.²⁹

Justice Systems

The DRC government should provide training to judges on the Child Protection Code, which criminalises the recruitment of children into the armed forces.³⁰ This would strengthen the DRC's justice system improve the enforcement of child protection laws. The DRC government should also try perpetrators in civilian, rather than military, courts, in order to limit military interference in the judicial process. Other actors, such as the US and the EU, who have strong interests in promoting democratic practices, should assist the DRC better educating and training those working in the legal system. This measure would help reduce corruption within the DRC judiciary.

²⁷ "Report to the Committee" 24.

²⁸ Ibid, 2.

²⁹ Ibid.

³⁰ Ibid, 24.

Step 7: Implementing Human Rights Treaties

The DRC government has undertaken efforts to implement its obligations as per the treaties mentioned in Step 6. The DRC government issued the Presidential Decree of 9 June 2000 mandating that all children under the age of 18 be removed from the armed forces. Furthermore, the 2004 Defence and Armed Forces Law authorises only the conscription of individuals over the age of 18 to the armed forces.³¹ These measures have reduced the number of children within the FARDC.

The government has also adopted The Child Protection Code in 2009, which prohibits the recruitment or use of children below the age of 18 and commits state authorities to ensure children are released from the armed forces. However, the Code remains largely unimplemented by armed forces and groups within the DRC, allowing the recruitment of child soldiers to persist.³²

Additionally, the DRC government has been criticised in the UN Periodic Review for failing to develop an effective strategy to ensure that child soldiers are demobilised from the armed forces and reintegrated into society.³³ The Committee on the Rights of the Child observed that fewer than 50 per cent of released child soldiers access reintegration support programmes and these programmes often fail to address the medical and psychological needs of former child soldiers.^{34 35} Furthermore, some demobilisation centres are poorly staffed, allowing child recruiters to recapture children for participation in armed conflict.³⁶

³¹ “Report to the Committee”, 8.

³² “Annual Report 2011: Democratic Republic of the Congo”, *Amnesty International*, <<http://www.amnesty.org/en/region/democratic-republic-congo/report-2011#section-37-6>> [accessed 3 May, 2012].

³³ “Universal Periodic Review of Democratic Republic of the Congo”, *United Nations Human Rights Council*, 18 September, 2009 <http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A_HRC_WG6_6_COD_2_E.pdf> [accessed 20 October, 2012], 6.

³⁴ *Ibid*, 2.

³⁵ “Committee on the Rights of the Child: Democratic Republic of the Congo”, *United Nations Convention on the Rights of the Child*, 18 April 2011 <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.COD.1_en.pdf> [accessed 4 May, 2012], 15.

³⁶ Lischer, “War , Displacement, and the Recruitment of Child Soldiers”, 156.

Recommendations

The DRC government should distribute the Child Protection Code to within the military and the general community in order to raise awareness about child protection procedures and to emphasise the importance of protecting children's rights.³⁷

Implementation of the code would dramatically strengthen child protection, as the Code criminalises the abduction, rape, and torture of children.³⁸

Additionally, the Committee of the Rights of the Child has recommended that the DRC government establish a comprehensive reintegration strategy for former child soldiers in order to ensure all former child soldiers receive the assistance and support they need to make the transition back into society.³⁹

INGOs and other governments should also assist the DRC government analyse the social, economic, and cultural context, that has contributed to the recruitment of child soldiers in the DRC. This will better enable the DRC government to develop specific strategies and programmes that better address the root causes of children's involvement in the armed forces and the motivations of child recruiters.⁴⁰ Other governments should also provide the DRC government with financial assistance to strengthen, coordinate, and better implement the DRC's current programmes and legislation to stop the recruitment of child soldiers.

Step 8: Monitoring Compliance

The DRC has established a number of state institutions to monitor compliance with its obligations under the OP and CRC including the National Office for the Demobilisation and Reintegration of Child Soldiers, the Ministry of Human Rights, the National Council for Children, and a national system of Children's Courts.⁴¹ However, some of these

³⁷ "Report to the Committee", 2.

³⁸ Ibid, 7.

³⁹ "Committee on the Rights of the Child: Concluding Observations: Democratic republic of the Congo", *United Nations Committee on the Rights of the Child*, 10 February 2009, <<http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-COD-CO2.pdf>> [accessed 20 October, 2012], 16.

⁴⁰ "The Paris Principles: Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups", *February 2007*, <<http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>> [accessed 20 October, 2012], 11.

⁴¹ "Committee on the Rights of the Child", 15.

institutions, like the Children’s Court, are not yet operational.⁴² Additionally, the institutions that are operational are limited in their capabilities to effectively monitor human rights due to a lack of financial support, resources, and training for staff.⁴³ As a result of these problems, NGOs such as UNICEF and the ICRC do most of the work in monitoring human rights violations in the DRC.⁴⁴

Recommendations

UNICEF and the ICRC should provide local human rights committees with the necessary training, equipment, and financial resources that they require to independently monitor human rights violations within the DRC.⁴⁵ These measures would reduce the DRC government’s dependence on humanitarian agencies for protecting children from armed conflict in the long term.

Additionally, the Committee on the Rights of the Child and the UN Human Rights Council should continue to draw attention to the DRC’s government’s consistent failure to comply with the CRC and Optional Protocols. By doing so, these organisations could successfully exert pressure on the DRC to reform its child protection regime.

Step 9: Creating National and International Courts

The DRC government has not created a national or international court dedicated to the prosecution of recruiters of child soldiers.

Recommendations

Due to the weaknesses of the DRC court system, the government should request that the UN establish a Special Court to prosecute perpetrators, similar to the Special Court for Sierra Leone established in 2002. Alternatively, the DRC government could work with governments from other states that have high rates of child soldier recruitment, such as Uganda and Rwanda, to set up an International Court. This could prevent

⁴² “Report to the Committee”, 8.

⁴³ Ibid.

⁴⁴ “Committee on the Rights of the Child”, 23.

⁴⁵ “Universal Periodic Review”, 21.

perpetrators from moving to other states, as has been the case with the LRA moving from Uganda to the DRC.

Political Difficulties the Proposed Remedies May Face

Steps 5 and 7: Adopting Human Rights Standards and Implementing Human Rights Treaties

Due to high levels of corruption, lack of developed infrastructure, shortage of financial resources, and lack of political will within the DRC government, well meaning members of government and the judicial system may not have the capabilities to enforce the proposed policies and legislation regarding human rights protection. Furthermore, even if military officials are able to distribute and enforce the Child Protection Code in line with the DRC's treaty obligations, the DRC government may not be able to ensure leaders of armed rebel groups such as the LRA do the same. This is because these armed groups operate outside the control of the DRC government.

Step 8: Monitoring Compliance

UN agencies and NGOs may not have the resources or finances to effectively help the DRC government improve its human rights monitoring capabilities. The DRC government may also be reluctant to be trained by NGOs, as the government may perceive this as an attempt by NGOs to take over the governance of the DRC.

Step 9: Creating an International Court

It may be difficult for DRC officials to convince the UN to establish a Special Court or the support of the DRC, Uganda, and Rwanda governments to establish an International Court. This is because the establishment of such courts is both a time consuming and costly process.⁴⁶ Furthermore, the UN may not be willing to establish a separate court for the prosecution of child soldiers, as this already falls under the jurisdiction of the ICC.

⁴⁶ Stephen Hoadley, "The International Criminal Court", *Handout for Political Studies 750 International Relations and Human Rights*. (Auckland: University of Auckland, May 2012), 1.

In light of these difficulties, Western states, NGOs and the UN should employ additional methods, such as economic sanctions, public condemnation, and political pressure to compel the DRC government to better protect children from involvement in armed conflict. If these methods are used in conjunction with a commitment from these actors to provide the financial assistance, political will, and resources needed to strengthen the DRC government's legal and political institutions, the DRC's capacity and political will to halt the recruitment of child soldiers should increase.

Conclusion

Essentially, the success of efforts by NGOs, human rights activists, and governments to address the involvement of children in armed conflict at the international level have not been replicated within the DRC at state level. The DRC government has encountered difficulties implementing legislation and policies to stop the recruitment of child soldiers due to a lack of political will, finances, and a failure to address the root causes of children's involvement in the armed forces. Therefore, it is up to non-corrupt states, UN institutions, and well equipped NGOs to build up the capacity of poverty stricken governments like the DRC to implement programmes and strategies that address the economic, social and cultural factors leading to the recruitment of child soldiers. These measures, used in conjunction with political pressure and financial assistance, will help to definitively end the recruitment of children to armed forces.

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