



**"Child Soldiers in the 21st Century. *The case of the Democratic Republic of Congo - Legal and Sociopolitical Perspectives*"**

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## **Abstract**

Throughout the history of mankind, war proved to be unavoidable. Unfortunately, in most wars, children have been included in a variety of ways (Kabano, 2016). In spite of numerous global initiatives to provide protection for underage war victims, they are still being abducted and made to serve as soldiers, while contributing to the perpetration of international crimes, as child use in military force is considered a violation of international law (Kabano, 2016).

The aim of this paper is to highlight the significant problem of child conscription and the wider participation of children in armed conflict within the Democratic Republic of Congo (DRC). In the course of describing the existing state conditions and focusing on the legal framework, we will be able to address the shortcomings in these areas that contribute to the fact that child recruitment remains unsolved, while the extensive reference to the crucial psychological, social and political dimensions of the problem will shed a light on the need to find alternative solutions, particularly in relation to dealing with childhood trauma and reintegration issues.

DRC illustrates in the best way the complex issue of child recruitment, which is sustained by ongoing armed conflicts rooted in colonialism, lack of state guarantees, and the abundance of mineral resources. In this landscape, it is important to acknowledge that traditional legislative approaches to justice administration, as well as Western methods for managing child trauma, may not be fully effective. Therefore, it is necessary to explore alternative approaches in addition to the strict focus on state reconstruction.

This thesis has been submitted in partial fulfillment of the requirements for the degree of Master of Arts in Human Rights and Migration Studies, Department of Balkan, Slavic and Oriental Studies/ Department of International and European Studies, University of Macedonia.

I hereby declare that this thesis is entirely my own work. All information used has been processed according to the legal and academic principles governing research and intellectual property. I have cited all the sources which have been used and I avoided any action that constitutes plagiarism. I know that plagiarism can be punished with revocation of my master's degree.

The approval of Master's Thesis by the examiners does not necessitate that they share the author's views.

**Maria Xanthopoulou**

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## List of acronyms

ADF	Allied Democratic Forces
AFDL	Alliance of Democratic Forces for the Liberation of Congo
ANSA	Armed Non State Actor
APCLS	Alliance of Patriots for a Free and Sovereign Congo
AU	African Union
CNDP	National Congress for the Defense of the People
CRC	Convention on the Rights of the Child
DDR	Disarmament Demobilization and Reintegration
DRC	Democratic Republic of the Congo
FARDC	Armed Forces of the DRC
FDLR	Democratic Forces for the Liberation of Rwanda
FOCA	Forces Combattantes Abacunguzi
FPLC	Patriotic Forces for the Liberation of Congo
FRPI	Front for Patriotic Resistance in Ituri
ICC	International Criminal Court
IHL	International Humanitarian Law
LRA	Lord's Resistance Army
MONUSCO	United Nations Organization Stabilization Mission in the DRC
M23	March 23 Movement
NDC - Renovè	Nduma Defense of Congo - Renovated

NGO	Non-Governmental Organization
OAU	Organization of African Unity
PTSD	Post-Traumatic Stress Disorder
RCD	Rally for Congolese Democracy
RED-TABARA	Resistance pour un Etat de Droit - Tabara
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
UNSCR	United Nations Security Council Resolution
UPC	Union of Congolese Patriots



## **Introduction**

Twenty-first century military conflicts are predominantly dominated by armed non-state actors (ANSAs), reflecting a phenomenon which is barely addressed by international law (Allen, 2021). As evidenced by their ongoing disregard for fundamental principles of humanitarian law, ANSAs demonstrate limited compliance with international regulations (Allen, 2021). They are the most prevalent force recruiting child soldiers in the world, while those based in the Democratic Republic of Congo (DRC) have a reputation for being among the most aggressive in their activities (Allen, 2021).

Child soldiers are used by the paramilitary groups in a variety of ways, sometimes serving as troops, farmers, caretakers or cooks and every so often as subjects of forced sexual pleasure (Kabano, 2016). Some of the children are forcibly taken from their families and similarly recruited, while others are obliged to live a life of scarcity, mistreatment and unfairness, seeking retribution for violent acts suffered by themselves or members of their families (Kabano, 2016). Children who live in war zones or lack basic education are more vulnerable to recruitment due to the fact that it performs as a survival mechanism (Kabano, 2016).

Minors are often motivated to participate in war, either by family or the local society, while even if participation is voluntary, they are unable to fully grasp the dangers to which they are subjected (Kabano, 2016). For that reason, international community is uncertain as to whether child soldiers can be held criminally responsible, albeit, in reality, child soldiers are responding to economic, cultural, social and political pressures (Kabano, 2016)

It is a challenging process to grasp how power is allocated and used in DR Congo, given the number and diversity of the key state actors involved (Verweijen, 2016). With hundreds of ethnic groups and dialects, DRC consists of regions with different political-economic patterns and a multitude of competing dynamics

(Verweijen, 2016). Eastern Congo is just as fractured and complex in its militaristic scene (Stearns and Vogel, 2015). The disparity in governance has its origins in the colonial era and has influenced Congo's post-independence political order in a great extent (Verweijen, 2016).

*“When they came to my village, they asked my older brother whether he was ready to join the militia. He was just 17 and he said no; they shot him in the head. Then they asked me if I was ready to sign, so what could I do – I didn’t want to die.’*

*- A 13-year-old former child soldier from the Democratic Republic of the Congo” (Nair, 2017, p. 40)*

## **PART 1. “The crime of children participating in armed conflict”**

### **1. Definitions and clarifications**

So that we can fully understand the degree of complexity of child recruitment, we must first examine some important issues.

Article 1 of the Convention on the Rights of the Child defines a child as any person under the age of 18 years, whether the age of majority is reached earlier or later, in accordance with the applicable law of each country (Adedokun Olatokunbo Ogunfolu, 2016). Article 2 of the African Charter on the Rights and Welfare of the Child describes a child as any person below the age of eighteen years old (Adedokun Olatokunbo Ogunfolu, 2016).

In general, even if 18 years of age is a very important criterion to consider when referring to the issue of child recruitment (Adedokun Olatokunbo Ogunfolu, 2016) there is no other accurate designation of a child in global humanitarian law (Dutli, 1990 cited in Adedokun Olatokunbo Ogunfolu, 2016, p. 5). A child soldier is defined as a boy or girl under the age of eighteen who participates in armed conflict, through national armies or paramilitary groups, whether by force and violence or voluntarily (Adedokun Olatokunbo Ogunfolu, 2016). A child soldier may also perform other types of service by force, as described above, without necessarily participating directly as an armed combatant in the field (Adedokun Olatokunbo

Ogunfolu, 2016). The above definition is therefore extended to minors actively participating in any form or way in the armed groups (David J., 2007). Child soldiers can often be under or at the age of ten years old and the majority of them continue to be boys (Marcel, 2001, cited in Adedokun Olatokunbo Ogunfolu, 2016, p. 5).

With regard to girls, even though they are less often recruited (Marcel, 2001, cited in Adedokun Olatokunbo Ogunfolu, 2016, p. 5), they are significantly affected by the war conflicts in various ways, with the youngest being the most vulnerable (Florence, 2006)

## **2. International legal background on child soldiers**

The Convention on the Rights of the Child declares in Article 38 that States must make sure minors under the age of 15 are abstaining from any direct participation in military activities, providing protection specifically for children during international armed conflicts (Kabano, 2016). The Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict also contains provisions, in relation to the involvement of minors with armed groups, in great detail (Kabano, 2016)

From the other hand, the African Charter on Children explicitly prohibits the recruitment of minors (Arts, 1993), setting a high standard for all international legal systems (Chirwa, 2002). On the contrary, the Geneva Conventions of 1949 is not exclusively concerned with the involvement of minors in the army, but the Additional Protocols to the Geneva Conventions declare in section 77 (2) the same principles declared in Article 38 of the CRC (Kabano, 2016). In general, Articles 27-34 of the 1949 Geneva Convention IV protect civilians from war, including children not involved in international armed conflict, while Article 75 of the 1977 Additional Protocol I to the 1949 Geneva Convention reinforces the protection of civilians guaranteed by Geneva Convention IV as it defines the rules of engagement in international armed conflicts (Adedokun Olatokunbo Ogunfolu, 2016).

If someone considers the frequency with which Africa is confronted with internal tensions, it seems necessary to revise the protection of civilians so that it is

not only guaranteed in "armed conflicts", but also in apprehension and violent shifts, because armed conflicts require the existence of insurmountable violence in order to trigger IHL, likewise with Article 38 of the CRC (Arts, 1993). All the above create a powerful example of the number of possibilities that regional instruments have in order to ensure the rights of the child holistically.

The African Charter complements the content of the CRC by highlighting the areas that are daily ravaged by conflict and other disasters, making the lives of the majority of African children unbearable (Arts, 1993). Although the impact of the African Charter for Children is yet to be seen in the coming years, the fact that some states that have not ratified other major international instruments have ratified the African Charter for Children (Arts, 1993) remains positive.

In terms of prosecution, a person must be of a certain age in order for prosecution to be permissible (Kabano, 2016). The ICC is unable to adjudicate any case in which the perpetrator appears to be under 18 years of age at the time he/she is accused of committing the crime, while the Court seems to treat minors primarily as victims rather than as perpetrators (Kabano, 2016).

The ICC Statute is advanced compared to what existed before, as it defines war crimes in detail (enlistment of minors under 15 and active participation in hostilities) without being content with general declarations (Kabano, 2016). A major drawback is still the fact that it will only prosecute in very serious cases (Kabano, 2016). The use of children covers general military activity, other auxiliary activity in the field and active participation in hostilities while it does not include support activities unrelated to the battlefield (Kabano, 2016).

On 10 January 2009, the DRC designated the Child Protection Law 09/001 of 2009 (Kiyala, 2018). This legislation on minors was born out of the United Nations Convention on the Rights of the Child (1989) and the 2006 Constitution of the Democratic Republic of Congo (Kiyala, 2018). In article 10 of the above legislation it is affirmed, *inter alia*, that matters relating to juvenile court proceedings are referred to magistrates' and juvenile courts and that no minor child shall be deprived of his or her liberty in an unlawful or arbitrary manner (Kiyala, 2018).

The law, in general, states that any form of deprivation of childhood freedom should be considered a last choice and treated as a provisional tool, thus promoting

restorative justice, social restitution, conformity and coherence with UN universal norms (Kiyala, 2018), subjects that will be analyzed in the last chapter.

The arrest and detention of a minor should also be done in special institutions for treatment or rehabilitation and for a short period of time, so that rights such as physical, moral and mental health are protected and the unfair treatment of imprisoned minors and former child soldiers is eliminated (Kiyala, 2018).

Overall, with regard to child soldiers and criminal responsibility, global policy and international law are in stark contrast to what actually happens in practice (Steinl, 2017). International law and policy is strictly focusing on protecting children from the armed conflict, failing to actually keep them away from involvement and violence (Steinl, 2017). The gap between child soldiers being both victims and perpetrators of actions forbidden by international legislation is filled by 'common' criminal law, where the rules on how to take into account this dual status are nearly non-existent (Steinl, 2017). On the one hand there is the international law regulation on child soldiers, through which they are protected as victims of armed conflict, while, on the other hand, there is the canonical international law which comes to fill the gap when referring to child soldiers as perpetrators of crimes (Steinl, 2017). Both sets of regulatory norms are disconnected from each other, while the double role of child soldiers and the twofold need to protect them is practically non-existent (Steinl, 2017).

### **3. Legal framework – Observations**

The international community has done well in creating universal instruments to punish child recruitment and standards to prohibit it (Nair, 2017). It has focused on child protection and this is evident from the evolution of international mechanisms, such as the ban on the forced and voluntary recruitment of children under the age of 15, the increase of the minimum age of recruitment to 18 years and the explicit criminalization of the act of child recruitment (Nair, 2017). Unfortunately, these developments in legislation have not currently resulted in any significant reduction in the use of children in armed conflict (Nair, 2017). The widespread and cruel recruitment of children in order to participate in hostilities

coupled with the worsening living conditions of them due to prolonged battles requires ongoing vigilance and dedication from the entire global community (Nair, 2017).

This continued prevalence of child recruitment may result from various flaws in the legislation, related to ambiguities, broad formalities or compromises (Nair, 2017). National laws are very important in the humanitarian setting and that is the reason why any form of protection cannot be achieved without the respect of every state (Nair, 2017). Therefore, the governments of each state must comply with the obligations arising from their national legislation (Nair, 2017).

Fortunately, the huge increase in directives by the international community to eliminate child recruitment has led to a concomitant increase in state regulation and *opinio juris* with the purpose of criminalizing child recruitment (Nair, 2017). Thus, since the signing of the Rome Statute, child recruitment has been legally consolidated and is now considered a crime under international law and customary international law (Nair, 2017), as mentioned above.

## **PART 2. “Child Soldiers in DRC”**

### **1. The conflict in DRC**

In the pre-war period of the 1990s, eastern Congo had a fairly rich historiography, as Congolese historians did some excellent work (Mathys, 2017). During the 1990s, prior to the conflict, historians in eastern Congo produced several noteworthy works (Mathys, 2017). Nevertheless, contemporary researchers tend to focus on present-day developments and events since the 1990s, which often leads to a limited exploration of how past events shape current circumstances (Mathys, 2017). Focusing on violence within a narrow timescale hinders our ability to fully comprehend the processes driving it (Reid, 2011), thus academics should address how the past is linked to the present, specifically in Rwanda and eastern Congo (Mathys, 2017).

In 1885, the Belgian King Leopold II declared the "Free State of Congo" to be his property (Arieff, 2022). His government became infamous for plundering Congolese wealth and committing monstrous injustices (Hochschild, 2006, cited in

Arieff, 2022, p.3). The Belgian administration was the one which converted the region into a colony in 1908 (Hochschild, 2006, cited in Arieff, 2022, p.3). In 1960, Belgium acknowledged Congo's national independence, coinciding with the ascension of nationalist Patrice Lumumba as prime minister (Arieff, 2022). Instability, often fed by foreign forces, later erupted, triggering a rebellion, in wealthy Katanga province, that led to Lumumba's assassination in 1961(Arieff, 2022).

In 1960, one of the oldest Peacekeeping Missions of the United Nations was set up in Katanga, too (United Nations, 2001). The Congolese authorities requested United Nations troops to defend the DRC against foreign attacks on 12 July 1960 (United Nations, 2001). In the following days, the Council demanded that Belgium pulls its soldiers out of the country and granted further humanitarian and military aid, until the national security forces were fully capable of carrying out their duties (United Nations, 2001).

In 1965, Col. Joseph Mobutu rose to power by taking advantage of the uprising and introduced a more centralized and dictatorial constitution (Arieff, 2022). Mobutu's quest for a powerful national identity was the impetus for his decision to rename the DRC Zaire (Arieff, 2022). In the context of Cold War tensions in Africa, Mobutu's thirty-two-year dictatorship was supported by the United States and various other Western powers (Arieff, 2022). It is also alleged that the president has used electoral fraud, violence and nepotism to consolidate and maintain his power, while diverting vast amounts of national resources to himself (Arieff, 2022). Consequently, for many Congolese, small-scale acts of fraud became an alternative financial support system (Arieff, 2022).

Local hostilities acquired a wider territorial character with the appearance of Rwandan Hutu displaced populations in the Democratic Republic of Congo, following the Rwandan genocide in 1994 (Mathys, 2017). Violent inter-group tensions were largely confined to the local level, but since 1996, the region has been the scene of five major outbreaks of uncontrollable and catastrophic violence (Mathys, 2017).

The first outbreak involved an attempt by Rwandan troops to put an end to all the refugee camps that housed more than a million exiles who escaped the genocide

(Mathys, 2017). The military, starting from the end of October 1996, launched incursions into the camps (Mathys, 2017). The chosen targets were fighters and leaders who had organized and carried out the genocide and the ones that supposedly began attacking Rwanda from the Congolese camps (Mathys, 2017). In truth, however, the Rwandan refugees being attacked included many defenseless men, women and children, obliged to escape into Congo but were slaughtered in the raids instead (Mathys, 2017). Alongside the Rwandan refugees, millions of Congolese were impacted by the incursions and were subjected to different forms of degradation (Mathys, 2017).

In 1996, Rwanda and Uganda supported a revolt against Mobutu under the leadership of Laurent Kabila, an exiled Congolese fighter (Arieff, 2022). In the spring of 1997, the Rwandan authorities merged a number of Congolese anti-Mobutu groups, into a single combat group, the well-known as AFDL (Mathys, 2017). In May 1997, after a prolonged campaign through Congo, the RPA, which was the main body of the post-genocide Rwandan administration, defeated Mobutu with the help of their DRC supporters (Mathys, 2017). The aforementioned events led to Laurent Kabila assuming power in 1997 and renaming the country as the DR Congo (Arieff, 2022). The conflict that followed was acknowledged as the 'First' Congo war (Stearns, 2012).

During the first war, nearly the entire African society and the rest of the world welcomed Mobutu's downfall (Sreenivas A, 2022). A financial contribution was also made by France in terms of support (Sreenivas A, 2022). Mobutu tried unsuccessfully to convince international community that his regime had been destroyed due to foreigners (Sreenivas A, 2022). As his army retreated on all fronts, it looted, raped and massacred Congolese villagers, but the United Nations and the Organization of African Unity (OAU) failed to criticize what was happening (Sreenivas A, 2022).

In August 1998, partly aligning to the strong anti-Rwandan sentiment in Congo, Kabila attempted to push the Rwandans out, triggering a third-wave Rwandan invasion (Mathys, 2017). This was the start of the Second Congo War, which, at one point, included no fewer than nine African countries (Mathys, 2017). Rwanda and Uganda send troops to the Democratic Republic of Congo to support local rebels (Arieff, 2022). As part of this attack, a few important groups were formed, like the RCD, the CNDP and last but not least the notorious M23 (Mathys, 2017). Each of



these groups had its own agenda. However, they were also supported and supplied with weapons by the Rwandan state (Mathys, 2017). As a result, excessive justification of violence occurred in Congo, as this move was perceived as another kind of Rwandan invasion and as a cover up for the exploitation of the country's natural wealth (Mathys, 2017).

The narratives that the State of Rwanda is implementing an expansionary policy against the DRC have been instrumentalised across borders in eastern Congo (Mathys, 2017). The distorting approach of analyzing contemporary attacks by Rwanda fueled historical discourses, especially as far as the allegedly expansive inclinations of Rwandan Tutsis were concerned (Mathys, 2017). This context was deployed to legitimize the perpetration of aggression against all those who spoke the Rwandan dialect in DRC or the Congolese Tutsis, who were perceived as the ultimate expression of the above mentioned Rwandan strategies (Mathys, 2017). Thus, victim narratives were used to justify the exercise of violence by portraying it as a type of self-defense, since such stories repeatedly enclosed powerful historical reference points (Mathys, 2017).

Regularly, pre-emptive attacks take place due to historical memories (Boas and Dunn, 2013, cited in Mathys, 2017, p. 479). The development of discourses in the Rwandan context between 1990 and 1994 may have influenced the collective memory that emerged in Congo and that tragedy's reference to the past served as a warning of the future (Mathys, 2017).

Known as the "World War of Africa", the Second Congo War triggered a massive international crisis and is reported to have resulted in an estimated 3.3 million casualties (International Rescue Committee (IRC), 2007). This war was much more controversial, as Angola, Zimbabwe and Namibia supported Kabila, while Rwanda, Uganda and Burundi led the anti-Kabila forces, since the DRC was a member of the Southern African Development Community (Sreenivas A, 2022). Moreover, Sudan, Chad and Libya entered the war, so as to aid Kabila, while he was also receiving support from a number of French speaking countries in West Africa (Sreenivas A, 2022). Lusaka ceasefire treaty and the subsequent Sun City summit ended the Second World War (Grynberg and Singogo, 2021).

In 2001, one of Kabila's guards killed him leading to his son, Joseph Kabila, assuming the presidency (Arieff, 2022). He simultaneously pursued a peace initiative supported by the United Nations, through which combat forces were removed and Congolese renegades were incorporated into the state, under a 2002 peace treaty (Arieff, 2022). Kabila was the prime minister of a transitional government from 2003 to 2006 and he presided over the ratification of a new constitution by a national vote (Arieff, 2022).

Meanwhile, in 2004, Laurent Nkunda, an ally of Kabila, rose up in rebellion, leading his own army, the CNDP, against the FDLR (Hutu rebels), which was accused of targeting Tutsis (Grynberg and Singogo, 2021). Nkunda is said to have received support from Rwanda's president and by 2008 he was fighting fiercely against both the FDLR and the DRC regime in an effort to control the Kivu region (Grynberg and Singogo, 2021). In 2009, the DRC and Rwanda reached an arrangement for the launching of a united campaign against Nkunda, who was arrested by the state of Rwanda and was detained there (Grynberg and Singogo, 2021).

During 2006, the Democratic Republic of Congo held its first competitive “democratic” elections since liberation and President Kabila was declared the winner of this voting, which was marked by tension and violence (Arieff, 2022). DRC's nascent state structures and weak governance fell apart in the years that followed, as Kabila and members of his family were accused of massive corruption and patronage, while conflicts in the eastern region were strengthened by rebel groups in favor of Rwanda (Arieff, 2022).

Kabila's re-election in 2011 was the result of a fragile electoral process that many stated had little integrity (The Carter Centre, 2011). In the run-up to the elections, which were scheduled for 2016, concerns surrounding Kabila's transition had a dominating presence in national politics (Arieff, 2022). Voting had been constantly postponed, in the name of fighting Ebola and government control forces cruelly repressed opponents' demonstrations (Arieff, 2022).

In April 2012, M23 continued attacks in eastern DRC (Grynberg and Singogo, 2021). The group engaged in violent clashes with the FARDC (the government's armed forces), becoming the cause of immense population movements (Mathys,

2017). Not surprisingly, this attracted huge attention worldwide and was the number one topic of discussion between the officials of the Congolese government and the inhabitants of Goma and Bukavu, as it was evident that M23 was close to gaining control of Goma by November 2012 (Mathys, 2017). In accordance to the UN, they were recipients of material and other support from Rwanda (Grynberg and Singogo, 2021), an assertion that revived the tension between the two countries (Mathys, 2017), even though this is a charge that Rwanda has refused to confirm (Reuters, 2022).

“When one refers to M23 he refers to the Rwandan State” said Richard Muiyiyi, Congo's then interior minister, in September 2012 (Mathys, 2017). At the same time, statements based on the rhetoric that Rwanda has a strategy to conquer the East were dominant, as growing public dissatisfaction aroused due to government's inability to provide security (Doevenspeck, 2011).

What is more, the UN negotiated a regional agreement in 2013, according to which neighboring countries would approve to withhold any support for armed groups based within the DRC and Kinshasa would commit to proceed with an institutional and security-sector reform (Arieff, 2022). However, M23 never fully demobilized and Kinshasa never fully implemented its 2013 commitments (Arieff, 2022).

Elections finally occurred in late 2018 amid deep internal, provincial and worldwide pressure, with Félix Tshisekedi as the frontrunner and Kabila not standing for re-election (Arieff, 2022). Félix Antoine Tshisekedi Tshilombo gained the election succeeding Kabila, who had been at the helm of the country for 18 years (The World Bank, 2022). It was not until then that the DRC experienced its first democratic transfer of power in 62 years of national autonomy (The World Bank, 2022). The introduction of free education, enhanced accountability and a general civil service reorganization pointed to the development of a new social agreement between the state and its people (The World Bank, 2022). Despite war prevention and stabilization management, uncertainty remained in the country, even though an emphasis was given on soothing war in the East (The World Bank, 2022).

The FDLR are still engaged in fighting (Grynberg and Singogo, 2021). Silently supported by Kabila's former government, FDLR is totally militia resistant (J. Stearns and Vogel, 2015). Likewise, ADF which was shaped in 1995 and said to be

al-Qaida-linked, has enjoyed the support of Ugandan expatriates and remain active in North Kivu (Grynberg and Singogo, 2021). The above situation has directed ongoing fighting in the Kivus, while there are also concerns regarding escalation in extremism and money laundering, as gold smuggling is also alleged to have been carried out by both groups (Grynberg and Singogo, 2021).

## **2. Current Situation – Natural Resources Theory**

As discussed above, numerous armed groups are still fighting against the Congolese army and MONUSCO, while attacking civilians (OHCHR, 2022). Since November 2021, M23 have re-emerged, further destabilizing the region (OHCHR, 2022).

The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) was created by the Security Council with the aim of closely monitoring the peacekeeping process, after the Second Congo War (Zordi, Sumantri and Madjid, 2022). Overtime, this force operated mainly on the ongoing conflicts in Ituri, Kivu and Dongo regions (Zordi, Sumantri and Madjid, 2022). Before the adoption of Security Council Resolution (UNSCR) 1291, which extended MONUC's (later MONUSCO) responsibilities and involvement in the area, UNSCR resolution 1258 was introduced with the purpose of observing and reporting the military progress and conformity regarding peace maintenance (UNSCR, 1999). Currently, UNSCR resolution 2612, issued in 2021, is the main tool used for peace missions to be held in the area (UN, 2021).

In 2022, the East African Community agreed to deploy regional troops, led by Kenya, to help the Democratic Republic of Congo combat rebels in its eastern provinces (UN High Commissioner for Refugees (UNHCR), 2022b). More recently, the UN stated that it had received information about clashes between the M23 and local troops in Kissiche, in which many civilians were killed, but did not provide any figures (Reuters, 2022).

In North Kivu, the FARDC and M23 forces engaged in intense hostile behavior during 2022, causing widespread shift of population, severe human rights abuse and hatred discourse (UN High Commissioner for Refugees (UNHCR), 2022b). In South Kivu reality remains the same (UN Security Council, 2022).

Lendu and Hema fighting in Ituri have been ongoing since November 2021, with Lendu armed forces targeting Hema and refugee camps (UN High Commissioner for Refugees (UNHCR), 2022a). Hema villagers are strongly resisting, prompting further moves of population (UN High Commissioner for Refugees (UNHCR), 2022a). The Hema and Lendu groups have been engaged in sporadic fighting with each other over land and other resources for the past two decades (Schlein, 2019). Human Rights Watch senior researcher Suliman Baldo warned that Bunia district is in a serious situation, as there are hints that those two groups identify with the Hutu and the Tutsi (Human Rights Watch, 2001). The Lendu seem to have a sense of kinship with the Hutu, while the Hema are Tutsi-influenced (Human Rights Watch, 2001). Even though these two groups have long fought for dominance over the land, their association with the genocide has the potential to turn the dispute into widespread catastrophe (Human Rights Watch, 2001).

With Ugandan soldiers opposing the ADF in the north-east and Burundi's RED-Tabara in South Kivu, the current crisis is even more complex, as it involves regional dimensions (UN High Commissioner for Refugees (UNHCR), 2022b).

Following violence across North Kivu and Ituri, President Tshisekedi declared a military rule, on 3 May 2021, which human rights defenders claim to have led to increased civilian deaths and human rights infringements (Sengenya and Huon, 2022). Congolese and Rwandan heads of state have held several rounds of talks to try to defuse the crisis, reaching an agreement on a ceasefire in Luanda (Reuters, 2022). US Secretary of State, Antony Blinken, announced that he had a fruitful discussion with Paul Kagame, the leader of Rwanda, about the importance of establishing peace and stability in the east of the Democratic Republic of Congo (Reuters, 2022), but Rwanda's foreign secretary, Vincent Biruta, wrote on the Twitter platform that M23 should not be equated with Rwanda, as it is not the responsibility of Rwanda (Reuters, 2022).

As already cited, the propaganda often went beyond Rwandan political concerns and was perceived as an imperialistic project against DRC's independence. The alleged claims attributed to Rwanda aiming to the creation of a balkanized DRC (Mathys, 2017). In the above theory, Rwanda is seen as an instrument of the "West", which is only paying attention to looting Congo's wealth (Heuning, 2015).

Out of all Africa's mineral-rich states, DRC has had the longest hostilities, driven by its natural wealth (Sreenivas A, 2022). Congo is affluent in gold, diamonds and copper, among a number of other minerals, in addition to significant oil and gas resources (Sreenivas A, 2022). Moreover, it is the nation with the richest biodiversity in Africa, even though DRC is among the world's poorest populations (Sreenivas A, 2022).

Congo's army is taking advantage of the minerals it controls so as to fuel the war, enhance its financial standing and strengthen its grip on power (Diemel and Hilhorst, 2019). In addition to gold and the sale of titanium, tantalum and tin from the east, diamonds were considered a top export in 2018, with about 15.6 million carats fueling the war in the area, along with the trade of the aforesaid natural resources (Grynberg and Singogo, 2021).

Available research offers findings of a potential connection among natural resources and forced recruitment of children by rebel groups. Richards (2014) states that after gaining control of the natural resources and increasing governmental support, one of the rebel groups that were formed, the Mai-Mai group, involved more heavily in the conscription of children. The use of children in war reduced the rebels' need for further support and diluted any initiative to reduce violence (Haer, Faulkner and Whitaker, 2020). Beber and Blattman (2013) ran a random test within the sub-Saharan rebellions discovering that the ease of access and exploitation of natural resources can contribute to the recruitment of children and reinforce their status as forced laborers, although the findings are inconclusive.

Studies also show the way through which armed groups who are linked to the exploitation of natural resources brutally use children in war, partially in order to increase their own benefits (Haer, Faulkner and Whitaker, 2020). LRA kidnaps children in DR Congo, South Sudan and Central African Republic for forced labor,

which includes diamond and gold mining (Huynh, DCosta and Lee-Koo, 2015). In Sierra Leone and DRC children are often used as mine workers and transporters of minerals (Denov, 2010; Rosen, 2005; UNICEF, 2009). Thus, a link between wealth creation and the forced recruitment of minors is observed, even if this evidence has not been analyzed on a larger scale (Haer, Faulkner and Whitaker, 2020).

### **3. Country Report/ Violations**

The ICC (in the exercise of its mandate) prosecuted the leaders of Congo and Uganda for the forced recruitment of minors, taking a new approach regarding the protection of human rights (Kabano, 2016). The first person to be indicted for using a minor under the age of 15 in military operations was the former leader of the Democratic Republic of Congo, Thomas Lubanga, who was convicted at The Hague after recruiting underage children into the FPLC during the conflict in Ituri between 2002 and 2003 (Kabano, 2016). At this point we need to point out that in the Democratic Republic of Congo, 47.1% of the population is under 15 years of age (Kabano, 2016).

During 2003, it was indicated by a survey regarding the happenings in Ituri that out of the 15.000 UPC troops, 40 % were children (McBride, 2014). When the researchers interviewed Thomas Lubanga about the matter, he stated that there are few children under the age of 18 in his troops and even when they come across children, a rare case in his opinion, none of them were coerced into joining (McBride, 2014). Contrary to his statement, the report suggested that children who were loitering outside their schools were abducted and Hema tribal families especially were coerced into surrendering them for enlistment (McBride, 2014).

DRC was among the first countries to ratify the statute for the International Court (the Rome Statute) which entered into force on July 2002 (McBride, 2014). When President Kabila reported the situation concerning child soldiers in the DRC to the ICC, the court had limited scope regarding the examination of the crimes, as it was competent to review only those that took place after July 2002 (McBride, 2014). In any case, this event was a historic one for the DRC, as the principle of ‘complementarity’ was firstly seen to operate in international law (McBride, 2014).

The Office of the Prosecutor begun to review the case on June 2004 and Thomas Lubanga was arrested on February 2006 (McBride, 2014).

Lubanga risked life imprisonment if the Court convicted him of child recruitment (McBride, 2014). On the tenth of July 2012, ICC imposed a 14-year sentence to Lubanga (Tynes, 2018). The court concluded that there was ample evidence indicating that children were being recruited by force and used as bodyguards for top officers as well as for him personally (International Criminal Court, 2017, as cited in Tynes, 2018, p. 213)

Generally speaking, the majority of challenges arose during the trial of this new crime were effectively addressed by the Court (McBride, 2014). It was confirmed that the willingness of minors to participate was not considered defense in these cases, thereby reinforcing child protection (McBride, 2014). The other key point was that all minors who came across with the hazard of recruitment were classified as child soldiers and their actual participation was of secondary importance (McBride, 2014).

Prior to colonization, children were respected by the majority of people in DRC and as a matter of fact there were various local customs that accompanied the path to adulthood (Kiyala, 2019). For the period of colonization, there was a failure of family and social structures to protect children, which was clearly influenced by the rise of extremist movements (Kiyala, 2019). The involvement of children in such movements was the most troubling issue facing DRC and during 1996 many were the underage children who volunteered freely to participate in the hostilities (Kiyala, 2019). Unfortunately, in the course of 1998 circumstances worsened and forced recruitment became commonplace (Fery, Roudil and Eguren, 2012).

In accordance with Bell, it is estimated that 30.000 children were members of military groups in DRC, participating in war activities, while many of them grew up in these conditions (Bell 2006). Coalition to Stop the Use of Child Soldiers reported that in 2008 around 7.000 minor soldiers in areas like Ituri, Katanga, North and South Kivu were involved in the government's army, some in local or foreign military operations, burdened with all sorts of tasks (Fery, Roudil and Eguren, 2012). The minors were taken from their homes, school, playground and the fields, while some of them were even abducted from refugee camps near the borders with Uganda or



Rwanda (Kiyala, 2019). At this point, it should be emphasized that those children who freely participated in military groups, as the ones mentioned above, usually did so either for reasons of personal safety, defense or revenge for the loss of their relatives (Grey, Brett and Specht, 2005)

Official statistics indicated that child recruitment stopped in 2003 (Human Rights Watch 2008). A few years later, the opposing parties in DRC were forced to release all children occupied with military activities, due to the Goma peace agreement in 2008, although neither the use of children as soldiers stop nor their vulnerability decreased (Human Rights Watch 2008). The forced recruitment of minors worsened by the increase and complexity of armed conflicts in the eastern part of the country, involving more than 50 different local military groups and at least 5 foreign ones (Stearns 2014, p. 158). Moreover, the uninterrupted illegal activities of extremist groups, which have ceased and resumed all these years, combined with the insurrections that have continued at the same pace in Northern Kivu and Southern Kivu have inevitably led to the above crime (Kiyala, 2019).

Even worse, in some groups, such as the notorious Mai - Mai rebel group, the practice of using children in martial activities is far from peripatetic, as they rely on the superstition that children have magical properties and they are invulnerable after the completion of certain rituals (Jourdan 2011, p. 100). Jourdan (2011) very aptly analyzes that the Mai-Mai believe that children are able to obtain magical properties through a ritual with water, which when prepared in a certain way made them invulnerable to enemy attacks (Kiyala, 2019). Similarly, children were believed to be healers in some areas in Congo, in the sense that they granted magic potions which gave immortality to combatants during battle (Fery, Roudil and Eguren, 2012). Therefore, it is evident that in order to deal with the Mai-Mai child militia it is necessary to seriously throw light on the notion that childhood is associated with the supernatural (Kiyala, 2019).

Child conscription by CNDP, the Mai-Mai group and the FDLR group was a significant subject in a proposal prepared by the UN Secretary General for the UN Security Council in 2008, as it had turned in a humanitarian crisis since then (Human Rights Watch 2005). Unfortunately, the above beliefs, combined with the socio-

economic problems of the country, led to the failure of the majority of programs for disarmament and reintegration of child soldiers (Kiyala, 2019).

The Mai-Mai remains the most notorious child recruiters to this day and among the most active military groups, being famous not only for using minors as soldiers, but for abducting and mistreating them in the eastern DRC along with the FDLR (Kiyala, 2019). In reality, they are organized on the basis of their ethnic characteristics and are only fighting for their personal interests and the benefit of the communities, in terms of land, power and wealth (Fery, Roudil and Eguren, 2012). Mai-Mai's commander, Gedeon Kyungu Mutanga, was accused of crimes against humanity in Katanga for which he never served time, because it was decided that charges of war crimes were not valid when war had not been officially declared (Fery, Roudil and Eguren, 2012).

If we compare the Mai-Mai with other groups operating in the region, significant disadvantages will rise which are related to their military and political superiority (Kiyala, 2019). What ranks them among the most dangerous is the fact that they continue to resist any peace or neutrality agreement (Kiyala, 2019). Specifically, in addition to refusing to release children who are part of their troops so that they can return to their families, they continue to regularly supply and use weapons to minors (Kiyala, 2019).

The described conditions have worried local NGOs, leading them to initiate a dispute with the government on the issue (Kiyala, 2019). The dispute lies on the fact that Mai – Mai's methods of operation include creating large contact nets with members of the Kinshasa Government and keeping ties with other important politicians in the district where they operate (Mushi 2012). As a result, the inability of the largely corrupted government to reduce chronic violence and insecurity in the region has increased the vulnerability and exploitation of children in all the areas of eastern Congo controlled by the Mai-Mai (Fery, Roudil and Eguren, 2012).

Last but not least, in addition to illegal anti-governmental military groups, it is known that children are also used as soldiers by official government agencies (Stearns and Verweijen 2013). Laurent-Désiré Kabila kept recruiting minors via a door-to-door technique in Katanga, North and South Kivu etc (Kiyala, 2019). Similarly, the same

actions were taken by Laurent Nkunda, leader of the RCD, party with regard to its troops (Coalition to Stop the Use of Child Soldiers 2008).

In a relatively recent report by Security Council under the heading “Children and Armed Conflict” it is presented that around 1,662 children, including 177 girls, were taken away from paramilitary groups in the DRC, as a result of United Nations’ efforts to eliminate the humanitarian crisis in Africa (United Nations 2017, p. 12). Moreover, until 2017, over forty minors were removed from ANSAs operating in that area, with the cooperation of the Geneva Call, an NGO which was shaped in 2000 and is responsible for raising awareness of human rights inside ANSAs (Bongard and Heffes, 2019).

The United Nations (UN) will withdraw around 2,000 troops from eastern Congo by the end of April as part of the first phase of the peacekeeping mission's gradual withdrawal from the country. This information was confidently reported by the head of the mission (Reuters, 2024). The UN Security Council has approved the end of the mission following a request by DRC's President, Felix Chisekedi, in September for a faster withdrawal of peacekeepers (Reuters, 2024). The withdrawal will occur in three phases, starting with South Kivu, and the 14 UN bases in the province will now be taken over by Congolese security forces. UN peacekeepers will withdraw from North Kivu and the Ituri region in two subsequent phases, as reported by Reuters in 2024.

#### **4. Push and Pull Factors connected to the phenomenon**

Poverty has been widely reported as one of the main reasons why children result in being recruited as child soldiers, in order to cover their nutrition and housing needs (Shumba, 2022). Pragmatic data indicate that a large proportion of child soldiers in the Congo and worldwide originate from disadvantaged and unstable households (Shumba, 2022). A widespread and well-known tactic that remains is that ANSAs prefer to select children mainly from these types of upbringings (Amnesty International, 1999). When food was provided by a superior commander in a paramilitary group, it is generally implied that ongoing food provision would result in recruitment into the group (United Nations (MONUSCO), 2019). In military groups devoid of ideology, such as Nyatura, Rayia Mutomboki or FDLR, pledges of a meat-

based diet, school attendance, a salary and an overall good standard of living were often played the main role in children's participation, especially when these arguments came from another child who was already in the group (United Nations (MONUSCO), 2019). Even worse, the promise of work alone was enough to make children travel from very far away or even cross borders in order to achieve this goal (United Nations (MONUSCO), 2019). For instance, back to 2017, two 17-year-old teenagers from Tanzania managed to get across the borders of DRC, via Burundi and back into Congo, because they were promised to work in mines, ending up forcibly joining an Islamic paramilitary organization, after having their passports confiscated (United Nations (MONUSCO), 2019). For this reason, even when we refer to cases of voluntary participation of minors in paramilitary organizations, we should think twice about the concept of free will, since economic and political situations leave children without choice (Bloom, 2018).

All these years that DRC has been under the regime of bloody armed conflict, studies and empirical knowledge acquired by scholars have proven that minors have been neglected, due to the lack of socio-political structures, while their displacement has become commonplace (Prashad, 2021). Furthermore, it has been discovered that not only 35% of child soldiers do have parental consent, but parents also appear to actively encourage their children to join the militia in the majority of cases (United Nations (MONUSCO), 2019). In the west, mothers and fathers were guiding their children to participate in Kamuina Nsapu, providing for their initiation rites, similar to the case of an 8-year-old girl who was conscripted by her mother, a member of an armed group herself (United Nations (MONUSCO), 2019).

Peer pressure was a contributing factor in children's decision to join groups like Kamuina Nsapu (United Nations (MONUSCO), 2019). Some minors who were already involved took on the responsibility of encouraging their friends to join as well (United Nations (MONUSCO), 2019). In Ituri, underage boys got involved with FRPI of their own volition, due to the fact that this team contained their friends in its dynamics (United Nations (MONUSCO), 2019). In particular, 14% of all minors who were conscripted along with 39% of all those who volunteered to join in FRPI have used the above reason to justify their participation (United Nations (MONUSCO), 2019).

Protection against extreme situations of life and death is perhaps the greatest

promise the paramilitary groups made to children, as it was extremely important in their daily lives (United Nations (MONUSCO), 2019). Many times the roaming in this life-or-death situation was a result of these same groups, as they threatened and provided children with only a few minutes in order to answer whether they wished to participate (United Nations (MONUSCO), 2019). Hence, accepting participation at gunpoint is not even remotely voluntary, but more of self-preservation condition (United Nations (MONUSCO), 2019).

For reference, the case of NDC-Rénové fighters who took by surprise two siblings, 8 and 15 years old, as they went to the market, in North Kivu, shall be presented. The fighters demanded that the two boys produce proof of payment of the so-called tax imposed by the armed groups in the area, a copy of which was in the possession of only one of the two brothers (United Nations (MONUSCO), 2019). This resulted in the militants being so angry with the minors for this disobedience that they forced the boy who held the cutout to choose between being recruited on the spot or having his brother murdered in front of him, if he did not choose recruitment (United Nations (MONUSCO), 2019). The child had witnessed the cold-blooded murder of two other minors for disobedience in the past and naturally chose to enlist, thus saving his younger brother's life (United Nations (MONUSCO), 2019).

Other times, the participation of children is the pure result of chance, as in the case of a 13-year-old boy who was lost from his family in Nganza, when the Kamuina Nsapu paramilitary group invaded the area and the local population fled out of fear (United Nations (MONUSCO), 2019).

Another significant finding is that the imperative driving conscription was fear of rival paramilitary groups (Bongard and Heffes, 2019). For instance, when Nyatura, a group of Congolese Hutu was established, the Hunde community conscripted several of its children into the APCLS for the protection of the community (Bongard and Heffes, 2019). What is more, ANSA's did not force any children to participate in armed conflict except when they lost fighters in battle, due to the increased or violent conflicts (Bongard and Heffes, 2019). Consequently, the forcible recruitment of minors peaked in cases of bloody hostilities or intense unrest (Bongard and Heffes, 2019).

Despite the unrelenting anti-government rhetoric and demands of guerrillas

such as the FRPI or FDLR in 2016-2017, children who voluntarily participated rarely reported political or ideological motives, as mentioned already (United Nations (MONUSCO), 2019). In contrast, only 22% of the juveniles who voluntarily participated in the Kamuina Nsapu group spoke about the abuses they suffered at the hands of the State and that they intended to overthrow the government, as a motivation for joining (United Nations (MONUSCO), 2019).

The rhetoric of national identity, on the other hand, was a useful tool for proselytizing, which was exploited to the hilt, as when Rayia Mutomboki donated an AK-47 weapon to a young boy with the blessing of using it to protect his community (United Nations (MONUSCO), 2019). By province, the difference laid in the way each military group defined enemy (United Nations (MONUSCO), 2019). In North and South Kivu, minors believed that the enemy was rival military groups, in which racial differences were also found, while in Ituri, all the children who were recruited to the FRPI and the Kamuina Nsapu groups opposed the State, whether they belonged to the FARDC, PNC or other fighters whom they thought to be pro-Government (United Nations (MONUSCO), 2019).

Finally, it was observed that self-defense and revenge were motivating forces mainly among young boys, except in the case of girls in the Kinsais district, who cited the above as reasons for their participation in Kamuina Nsapu group (United Nations (MONUSCO), 2019).

Child conscription inside the DRC is impossible to understand if we do not analyze the number one risk of child kidnapping. Child recruitment was considered to be behind 70% of child abductions acknowledged by the UN ever since 2014 (United Nations (MONUSCO), 2019). Abduction is divided into two types, the targeted and the random one (United Nations (MONUSCO), 2019). Most of the times, resistance from children's families, either in the form of pleading or negotiation was pointless (United Nations (MONUSCO), 2019).

As seen, among the reasons for child recruitment is the fact that children are a cheap labor force, they are easy to exploit and military groups use child recruitment as a standard practice in cases when they need to gain significant advantage over other groups. By doing so, less money is wasted while, at the same time, the group stays committed to the goal (Shumba, 2022). Why not go and plunder a whole community,

kidnap all the minors, make them bear the heaviest of the wealth that was stolen, terrorize them if they proceed with an attempt to go back to their families and use them as domestic or other kind of laborers while they consume half the food an adult male consumes and require significantly less? (United Nations (MONUSCO), 2019).

In addition, children are easy targets for brainwashing and they can demonstrate undivided loyalty (Shumba, 2022). The literature on child recruitment in DRC cites that military groups force children to witness torture on close members of their families in order to urge them to join the group so that they could retaliate (United Nations (MONUSCO), 2019). With regard to girls, the above-mentioned points apply, as well as the fact that they are likely to be sexually abused (Shumba, 2022). Armed groups have full knowledge of minors being incapable of deciding autonomously, while they are capable of agreeing to a life of violence if they learn to live in it (Pravin, 2010, cited in Shumba 2022, p. 32).

The war in DRC has become commonplace and it serves as the most important reason behind the invariable child conscription (Shumba, 2022). War is used as fertile ground for increasing the vulnerability of minors, since it inactivates all social/governmental protection and education schemes while separating families, hence children are left completely exposed to danger (Shumba, 2022).

Starting from 2001, DRC's administration and the majority of DRC's armed political groups were properly dedicated to releasing child soldiers from any military service (Magloire, 2004). Nevertheless, the efforts did not pay off, due to the long-term battles (Magloire, 2004). Above and beyond, studies have shown that the government, although receiving the support of International Amnesty, it did not wish to support the disengagement efforts due to lack of sources, misleading information, relations with actors that undermined the process and poor organization (Amnesty International, 2003).

With regards to war, the analysis should be focused on the root causes of armed conflict and how to address them, as they are inextricably linked to child recruitment (Shumba, 2022).

The causes of violence in Africa are dependent on many factors and vary from country to country, although some commonalities can be identified that have to do

with poverty, the transition to democracy, the political regime, the age of the majority of the population, the lack of high-quality examples from neighboring countries and the poor government policies (Cilliers, 2021). Decolonization is a key factor in the wars and the main cause of the ongoing political unrest in some countries such as the DRC and Burundi (Achankeng, 2013). It is widely known that the march towards independence in these countries was made in haste, with minimum preparation, which foreshadowed an unstable state overwhelmed by fighting (Shumba, 2022). In addition, the state that was created continued to perpetuate colonial elements, consisting of ethnic and regional differentiations that became incompatible due to the great inequalities in power relations and the unequal distribution of national wealth and development opportunities (Fonkem, 2013).

More to the point, regional variations have their roots in the Rwandan genocide, when this crisis brought refugees in the eastern part of the country, who contributed to the general unrest in the DRC (Shumba, 2022). The Democratic Republic of Congo is also witnessing variations in political games with powerful forces competing with each other (Shumba, 2022). The state's mineral wealth has been known to various powerful nations, which finance and control their own paramilitary unions, in order to defend their interests over DRC's mineral wealth (Fonkem, 2013). Meanwhile, all the efforts made so far to put an end to the armed conflicts are being undermined by the lack of institutional and economic capacity of the DRC government itself and the AU in general (The African Union (AU), 2016). These factors should not be analyzed in isolation in order to understand the context of violence and ongoing conflicts in the DRC, as well as the response plans, since they are inextricably linked (Shumba, 2022).

The United Nations Economic Commission for Africa considers armed conflict in the DR Congo area to be a rebirth of the conflicts of the past (United Nations Economic Commission for Africa (UNECA), 2015). Hence, it is imperative to take into serious account history as well when building disarmament strategies or similar policies which focus on reducing the risk of conflict recurrence in the future (United Nations Economic Commission for Africa (United Nations Economic Commission for Africa (UNECA), 2015). Past colonialists were pioneers in addressing Africa's conflicts and the majority of difficulties that progress brought (Shumba, 2022). If the ongoing conflicts stem from colonialism and subsequent state



reconstruction, then the solution must be sought beyond the notion of legality, redistribution of power and high-quality governance (Fonkem, 2013).

### **PART 3. “Sociopolitical and psychological perspectives of the problem”**

#### **1. Matters of transitional justice – Punishment or Accountability?**

Child soldiers almost always go back to the communities in which they were victimized, where most violence has been manifested (Fisher, 2013). The successful reintegration of children is a huge part of social reconstruction in such situations (Fisher, 2013). If we think in terms of fairness, rehabilitation and societal re-establishment, we are invited to ask ourselves whether the acts committed by child soldiers, which, if committed by adults, would be potential crimes against humanity, should fall under the jurisdiction of the International Criminal Court or if we should continue coping with child recruitment through victimizing children and treating them as tools of adults (Fisher, 2013). It has been observed that children who are enlisted as soldiers are often involved in committing serious human rights violations and criminal offenses, such as torture, beatings, killings, and various forms of sexual violence. It is worth noting that in certain instances, their participation in such violent acts may be considered a crime under international law. It is also important to mention that both boys and girls are unfortunately involved in these activities. The Rome Statute of the International Criminal Court defines the core crimes, which encompass genocide, crimes against humanity, war crimes, and the crime of aggression (Steinl, 2017). Even though it seems correct to punish adults for the crime of child recruitment, treating minors only as victims does not give us answers to questions of ethical nature or proper legal treatment of this crime, at the very moment that child soldiers’ reintegration stands as a burning issue worldwide (Fisher, 2013). Lacking effective rehabilitation, social order is unable to overcome the conflict (Fisher, 2013).

It would be reasonable to say that because international criminal law fails to recognize the specificity of child recruitment and therefore is unsuccessful to properly regulate the issue, criminal responsibility for such crimes is impossible to establish under international law (Steinl, 2017). Nevertheless, if we are unable to initiate criminal prosecution and therefore refrain from seeking responsibility, we are generally doing an injustice to the rights of victims and to the interests of States in combating impunity for other serious crimes, with the risk of eroding fundamental

achievements at the global level (Steinl, 2017). Moreover, at the normative level, accountability is required by most treaties and customary international law (Steinl, 2017). Thus, not prosecuting child soldiers for crimes committed by them, under international law, is a problematic solution. The duty to take legal action is essential, serving both as ground work and incentive to battle impunity, in addition to attaining responsibility for severe human rights abuses (Steinl, 2017). On the other hand, reinterpretation is mandatory when the above statements are related to the prosecution of children (Steinl, 2017). It is vital to note that abstention from prosecution does not necessarily mean abstention from accountability, one form of which is prosecution (Steinl, 2017).

Prosecutorial transitional justice interprets the duty to differently prosecute crimes committed by child soldiers from those committed by adult offenders, and this is because there is wide-ranging consensus that they lack responsibility (to a certain degree) for illicit activities (Steinl, 2017). Moreover, international law emphasizes the fundamental role of differentiation in juvenile justice systems and if we consider that this is how juveniles are treated for habitual display of criminal behavior, then the application to child soldiers, with the dual status of victim-perpetrator, seems more than necessary (Steinl, 2017). For these reasons, the obligation to prosecute needs to be reinterpreted in such a way that it can meet the needs of children involved in military conflicts while leaving aside the traditional senses (Steinl, 2017). The above seems convincing when one considers that the main goal of international legislation is to stop impunity, so accountability stands as justification to the duty of prosecution and the leading reason why trials have developed to be the principal and often exclusive reaction to criminal behavior (Steinl, 2017). However, accountability is not necessarily limited to criminal prosecutions and trials, as have already discussed. In the case of child recruitment, it is certainly not the ideal solution and therefore alternative approaches to accountability should come to the forefront and begin to be disseminated so that they can be implemented on the ground (Steinl, 2017).

Prevention is the key to ending violence and the basis for protecting those affected (Kiyala, 2018). According to transitional justice, holding perpetrators accountable, even when we speak for an underage one, combined with a search for factual information will empower victims and perpetrators, while reducing suspicion and fear of reoccurrence or re-victimization (Kiyala, 2018). Some other principles of

transitional justice consist of the handling minors with justice in line with international principles for juvenile justice, as defined by international regulations and United Nations criteria, taking particular account of the status of the accused as children (Kiyala, 2018).

### **Rehabilitation and Trauma Management**

During application, there are some challenges that should be put into consideration, such as the way juveniles are managed, in order to respond to the horrendous acts, they may have committed against innocent residents and the post-conflict psychosocial well-being of them and the victims, in combination with concepts like justice and reconciliation in a devastated post-war landscape (Kiyala, 2018).

Fundamentally, child recruitment is a political issue, likewise the related issues regarding the reintegration of child soldiers (Elettra Pauletto, 2016). No communities in eastern Congo have fully integrated children living peacefully with others, due to the huge political and racial divisions (Elettra Pauletto, 2016). We note that in these contexts the application of Western trauma management practices may be wholly inappropriate, as the over-emphasis on reintegration can be dangerous when referring to societies where war is ongoing and when there is little stress on research concerning the reintegration of minors in such turbulent contexts (Elettra Pauletto, 2016). Society is easily divided because of an attempt to rehabilitate children who have broken the law, as with other issues, such as the distribution of goods, resources and land, while management mechanisms and admission processes continue to be diverse and largely individual (Elettra Pauletto, 2016). The psychological needs of child soldiers differ between dissimilar conflicts, a fact that highlights the importance of psychological interventions during DDR programs along with the ongoing research into the best methods of assisting such children, even when this is fairly difficult because of the great risks in war zones (Wessells, 1998; Elettra Pauletto, 2016). The UN Security Council has tried to sustain peace and reintegration developments (Hilditch, 2023), through the so called Disarmament, Demobilization and Reintegration agendas which involve NGOs such as Save the Children (Nduwimana, 2013), Congo Caritas (Disarmament, demobilization and reintegration in the Democratic Republic of the Congo, 2017), Bonn International Center for Conversion, the Institute for Security Studies, the International Institute for Strategic Studies and the Pearson Peacekeeping Centre (United Nations

Development Program Disarmament, Demobilization and Reintegration of Ex-combatants, 2012) e.t.c.

Most DDR programs are based on a rhetoric that automatically links children who have been involved with an armed group to trauma and most specifically the development of post-traumatic stress disorder (PTSD) (Hill and Langholtz, 2003; Miller and Rasmussen, 2010). On the other hand, the research that was conducted on the moral development and behavioral changes of these children was carried out without subjective evaluations, unless they were clearly marked as such (Betancourt et al., 2008; Hill and Langholtz, 2003). Fortunately, such results do not necessarily apply to all cases of child soldiers, as there are many gaps in research, especially regarding children who were recruited on multiple occasions, rather than just once (Elettra Pauletto, 2016).

Moreover, Western management neglects to recognize that in the case of child soldiers, the entire society is impacted by the conflict (Elettra Pauletto, 2016). Additionally, it does not consider the option of placing minors under the care of alternative guardians in safe zones during periods of recurring conflicts, despite the significance of reuniting them with their parents (Elettra Pauletto, 2016). The minors who live in places not protected by UN troops are at risk of re-experiencing recruitment and that is the reason why family reunification is not advisable in those contexts (Elettra Pauletto, 2016).

Much emphasis is placed on children within armed groups rather than those who are not directly involved, because of the perception that bad influences are magnified within those groups (Elettra Pauletto, 2016). However, a juvenile is likely to experience other parts of his or her life as more traumatic, such as domestic violence (Elettra Pauletto, 2016). The above is particularly important for the general understanding of the conditions of war (Panter-Brick et al, 2009). These minors have had various experiences under these circumstances, yet it is the identity of the soldier that characterizes them in practice with regards to reintegration mechanisms (Pauletto, 2016).

### **Suggestions on undertaking child recruitment**

Legislation should ensure that when serious allegations of human rights violations are made against children involved in armed conflict, they are not unfairly

blamed or subjected to procedures that infringe their rights (Kiyala, 2018). This is a measure to protect accused child soldiers from being treated as scapegoats (Kiyala, 2018).

As mentioned earlier some scholars propose using alternative forms of justice when dealing with minors accused of war crimes. These alternatives could include truth commissions or other domestic initiatives (Drumbl, 2012). In order to address the issue of child recruitment, truth commissions should initially focus on studying enrollment patterns and the underlying factors, behind them (Steinl, 2017). This research should pay attention to children who willingly choose to join forces (Steinl, 2017). By prioritizing participation in these studies, we can gain insights beyond just the reasons for their involvement (Steinl, 2017).

In the same way, truth commissions should provide children with the freedom to analyze all the experiences coming from their participation in an armed group, meaning that minors should also be able to report experiences that had a positive connotation for them (Steinl, 2017). To suppress such experiences simply because they stem from their involvement with an armed group, that is generally considered harmful, would generally harm the research around child recruitment and the aim of truth committees (Steinl, 2017). In addition, truth commissions should acknowledge positive experiences of children, such as any kind of resistance towards the victims, acts of kindness and support for each other, as well as general efforts to overcome difficulties (Steinl, 2017). In this way, empowerment of former child soldiers is achieved, allowing them to prevail over the passive identity of the victim (Steinl, 2017).

On the other hand, truth commissions also have to deal with the negative experiences of children, such as crime (Steinl, 2017). The offences should not be treated as unspeakable acts, because this attitude reinforces stigmatization (Steinl, 2017). Truth commissions should recognize that juveniles are capable of violence and study the complete range of their experiences, together with the participation in violence, although it remains vital to apprehend the powerful context in which minors are driven to crime (Steinl, 2017).

Regarding practical implementation, there cannot be only one kind of realistic application (Steinl, 2017). The involvement of child soldiers in armed conflicts and the transition period that follows after a wartime regime to a peaceful regime are

politically and socially specific, and this is the key feature to be taken into account when implementing restorative justice processes (Steinl, 2017).

We could start by implementing a specific national policy design on this issue which would ensure dependability in the treatment of offenders and sufferers (Steinl, 2017). A first suggestion in creating such policy would be to ensure that child soldiers are entirely excluded from prosecution by granting them amnesty, so that the amnesty commission itself could conduct accountability hearings for minors (Steinl, 2017).

Alternatively, amnesty could be linked to the inclusion of another accountability process, such as reparation processes (Steinl, 2017). By the same token, a combination of such approaches could also be applied, like giving minors a choice about the procedure to be followed (Steinl, 2017).

Another complex issue concerns the victims' point of view, because they are unable to choose whether to respond criminally to child soldiers, according to the restorative approach on transitional justice (Steinl, 2017). This is a concerning issue in terms of victims' rights, as it raises debates about whether restorative approaches weaken their rights under international law or whether such approaches can include them (Steinl, 2017). In the end, one could argue that such victims' interests require distinctive attention (Steinl, 2017).

The restorative transitional justice approach analyzed so far is considered to achieve the parallel satisfaction of victims' interests, as it encompasses the need for accountability with respect, due to the dual role of juvenile victims (Steinl, 2017). However, what should be done when victims are unwilling to participate in such forms of justice? A strategy that could potentially be pursued so as to encourage some of them would be to offer reparations or to take into consideration their own proposals for alternative justice (Steinl, 2017). If sufferers insist on not participating, restorative transitional justice processes should be prioritized and the emphasis should be shifted from repairing the harm done to the direct victim to the harm done to indirect victims, namely the committers (Steinl, 2017).

Another question that arises is what happens when there are strong pressures to apply criminal sanctions to child soldiers for crimes committed in certain states. One example of settlement could be the application of a regular criminal trial in which

restorative justice procedures are applied (Steinl, 2017). Victim anonymity in such cases is number one concern (Steinl, 2017). This is important both from a restorative transitional justice perspective and an international law perspective, as anonymity is related to the reintegration of child soldiers (Steinl, 2017).

The combination of restorative and social justice is crucial as it is inextricably linked to the formulation of a policy-making, with the aim to frame a multifaceted model of transitional justice, in order to rebuild the fragmented post-conflict social fabric, to bring about all forms of equality, to address the wishes of victims, to take care of perpetrators (besides addressing issues arising from serious human rights violations) and finally to tackle the challenges posed by serious human rights violations (Steinl, 2017). Social and restorative justices are components of transitional justice and when fully implemented, they can reduce violence and eliminate child recruitment (Steinl, 2017). DRC should commit to addressing post conflict injustices and violence through the implementation of restorative justice procedures for child soldiers and the proper trial of adult perpetrators (Kiyala, 2018).

Returning childhood to the children of DRC may remain utopian, as the path to complete reintegration in regimes of ongoing conflict is exceedingly challenging (Elettra Pauletto, 2016). In order to achieve reintegration, it is vital to recognize that conflicts are dissimilar, so psychosocial interventions should be carried out according to children's needs (Elettra Pauletto, 2016). In places where war and trauma are collectively experienced, the implementation of socio-political rehabilitation is imperative, as children's experiences are inherently rooted in social conditions (Elettra Pauletto, 2016).

## **Conclusion**

DRC is one of the best-case studies when considering the issue of child recruitment. Like most African countries, it has been plagued by bloody civil strife and warfare between militias is still active today for reasons not only directly linked to the past, but also to the country's mineral wealth and external interests. The victims of this condition are underage children of all ages, who are being the human fatalities of socio-political pressures and are forcibly brought up in regimes of violence and dismay.

In order to fully grasp the devastating happenings of war and in what extent it

affected DR Congo, we need to proceed with a synopsis of the main historical events. As already thoroughly discussed, DRC suffered two civil wars, which marked the State's history in multiple levels (Ogunnoiki, 2019). The first Congo War started in October 1996 and was accompanied with the escape of refugees from the neighboring State of Rwanda to Congo, after the genocide (Ogunnoiki, 2019). The majority of the so-called Rwandan Hutus found shelter in camps located in eastern DRC, in places like Goma in North Kivu and Bukavu in South Kivu (Ogunnoiki, 2019). This part of the country was controlled by Hutus and their army, some of which were extremists (Ogunnoiki, 2019). The camps in the East were used as a starting point for attacks against the Tutsis who were located in the area and over the borders of Rwanda, while Mobutu who ruled Congo at the time, did nothing to prevent it (Ogunnoiki, 2019). By October 1996, ethnic tension escalated in DRC leading to Laurent Kabila's invasion of Eastern DRC (Ogunnoiki, 2019). Kabila invaded North Kivu in 1996 with his armed forces (AFDL), which were backed by Rwanda, Uganda and Angola and he easily overthrew Mobutu, as Mobutu's regime had already collapsed (Ogunnoiki, 2019). However, Kabila, by betraying his allies, Rwanda and Uganda, consented to his own fall (Ogunnoiki, 2019). More specifically, just like Mobutu, Kabila supported those who carried out the Rwandan genocide, being totally unwilling to as Rwanda commanded (Ogunnoiki, 2019). Thus, in July 1998 he sent away all the Rwandan troops from DRC, causing the beginning of the Second Congo War one month later (Ogunnoiki, 2019). The Second Congo War involved seven African countries and different armed non state actors (Ogunnoiki, 2019). Even though the civil war crisis had ended, it left DRC with ongoing violence and a number of ANSAS still active today, trying to gain control of the State's natural resources, contributing dramatically to the preservation of child recruitment (Ogunnoiki, 2019).

While researching this issue, I came across a study by Collier that is highly relevant to the DRC. In summary, these are also my thoughts on the matter. Collier and World Bank (2003) states, inter alia, that when a state is economically devastated, has low and unevenly distributed per capita income and is solely dependent on its exports of primary goods, civil war is likely to break out. The aforementioned combination can be very threatening, as the uneven distribution of the constantly declining incomes can lead to the creation of poor, indignant citizens who are prone to being drawn into violent groups (Collier and World Bank, 2003). It goes without saying that the country is also powerless and unable to contain the violence of the insurgents (Collier



and World Bank, 2003). In such non democratic conditions violence can also unintentionally be caused by the state institutions (Collier and World Bank, 2003). The above-described situation is triggered by the existence of natural sources that finance violent paramilitary groups, while citizens demand for detachment from this situation and better governance (Collier and World Bank, 2003). So, even though nationalism can be the cause of serious conflicts, these conflicts are much more likely to lead to violence if they take place in an economically declining country (Collier and World Bank, 2003).

As a result, the protection of child soldiers is closely tied to political and economic conditions, making state reconstruction crucial. First and foremost, there is an urgent need for DRC to fight corruption that is deeply rooted in its state institutions (Ogunnoiki, 2019). This need is reinforced by the presented data, which shows that not only are ANSAS often favored by the government, but also that government bodies employ children in their armies. In addition, the state should proceed to fully controlling its natural resources, a scenario that will only be achieved through a complete reform of the security sector (Ogunnoiki, 2019).

Starting from the early nineties, international community has tried hard to prosecute war crimes against children (Molima Bameka, 2023). Similarly, programs specifically designed for the reintegration of child soldiers (DDR programs), as well as new methods of dispute resolution, have begun to be implemented in relation to child soldiers accused of crimes against humanity (Molima Bameka, 2023). All these innovations and changes are a result of the sense that law is shaped in practice and strict legal concepts do not apply in real life, even though they are designed to do so (Molima Bameka, 2023). This logic promotes a broader and more diverse interpretation of the law, while enabling academics to explore how international legal norms are shaped by the subjects they are formed for, specifically in relation to child protection issues (Molima Bameka, 2023). Likewise, the concept of social justice implies that even in strict scientific fields, contact with reality may bring about controversies that can lead to a much better understanding of children's rights and the way legislators interpret armed conflict (Molima Bameka, 2023).

Applying international law to child soldiers is possible by treating them as perpetrators of crimes in the normal process (Steinl, 2017). On the other hand, considering their dual status as both perpetrators and victims can be rather challenging

(Steinl, 2017). International legislation must take into account the twofold nature of this issue, despite the significant progress made in eradicating child recruitment.

It is up to us to bridge the gap between the rapidly improving law and its practical application, which will only be completed through studying the root causes of the problem (Nair, 2017) and using these responses to create effective solutions (Dorcas, 2007). In this manner, the international community will establish a robust system at all levels, which can play a serious role in the compliance of armed groups with the law and the better understanding of whether prevention programs are indeed effective, thus contributing to future agendas for helping minors affected by war (Dorcas, 2007).

Alternative forms of resolving disputes that are friendly to minors are also vital, as developed at length above. Diversification in the criminal management of children enhances the likelihood of uncovering diverse forms of child abuse during war, reduces the organic gap in access to justice in a post war context and finally highlights the application of a less discriminatory justice system (Molima Bameka, 2023). If methods such as adopting a child trauma management model beyond the models used in the field of child protection in the West are applied in practice, they will also have an effect within communities experiencing a war crisis, as the number one goal is to return children to a safe and familiar context.



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