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Girl Child Soldiers in Northern Uganda: Do Current Legal Frameworks Offer Sufficient Protection?

Abigail Leibig *

I. INTRODUCTION

¶1 In recent years, child soldiers have become a well-publicized topic of concern in the international arena. Horrific images of young boys holding guns dominate the publicity campaigns and the public psyche. In reality, the effect of armed conflict on children is a complex and far-reaching problem and children perform many tasks besides serving in combat. The focus on children serving in combat positions overshadows the experiences of many children who are abducted or recruited into armed forces and then forced into serving as domestic and sexual slaves; in many cases, girl soldiers experience these other roles in addition to serving in armed combat. International laws which prohibit the use of child soldiers do not address these experiences. Additionally, many programs designed to prevent the recruitment of child soldiers and aid in their rehabilitation offer insufficient aid to girls.¹ International efforts to condemn the use of child soldiers must explicitly address this failure.

¶2 Currently there are approximately 300,000 child soldiers serving in fifty countries in every region of the world.² One such place is Northern Uganda, where children have been abducted and recruited by both the Lord's Resistance Army and the Ugandan military since 1986. The causes of this conflict are murky, and a peaceful solution seems far off. Meanwhile, terrible abuses of children's rights occur on a daily basis in this troubled corner of the world. Girls' experiences as child soldiers are particularly complex. As Human Rights Watch has found, "In case studies in El Salvador, Ethiopia, and Uganda, almost a third of the child soldiers were reported to be girls. Girls may be raped, or in some cases, given to military commanders as 'wives.'"³ A broad range of human rights offenses are perpetrated against girl child soldiers, but sexual abuse is a dominant complaint in the studies which address the experiences of girl child soldiers. Sexual abuse is integrated into the military culture of armed forces or guerilla groups. Additionally, patriarchal attitudes predominate across the broader societies in which the girls were raised. As Cynthia Price Cohen has noted,

In the world social order, girl children are the lowest of the low, whether they are in rich and developed nations or poor and underdeveloped nations. Although girls

* Abigail J. Leibig, 2005 J.D. Candidate, Northwestern University School of Law; B.A. in English, Barnard College of Columbia University, 2000. I would like to thank Professor Bernardine Dohrn for her input and advice; Professor Douglass Cassel for his guidance; and my family for their continual support.

¹ Jo Becker, Human Rights Watch World Report 2004, *Children as Weapons of War*, available at <http://www.hrw.org/wr2k4/11.htm>

² UNICEF, FACT SHEET: CHILD SOLDIERS 1, available at <http://www.unicef.org/protection/childsoldiers.pdf>

³ Human Rights Watch, *Facts About Child Soldiers*, at <http://www.hrw.org/campaigns/crpfacts.htm>

in almost every country face major obstacles just by virtue of the fact that they are females, generally speaking, the situation is worst for girls in the poorest countries.⁴

¶3 It is not a coincidence that the armed conflicts most affecting children occur in the poorest regions in the world, including Northern Uganda. Girls in Northern Uganda are highly vulnerable to human rights abuses, which makes the lack of international law protecting them all the more critical.

¶4 In 1996, Grac'a Machel wrote for the United Nations a groundbreaking report on the effects of armed conflict on children.⁵ Her examination of children and armed conflict was very broad and addressed the complexities of the issue. She devoted special attention to the gendered aspects of violence in the report. However, subsequent efforts to publicize the issue of child soldiers by non-governmental organizations (NGOs) has led to a narrowing of the issue. Over the last few years, the Coalition to Stop the Use of Child Soldiers created a powerful campaign to stop the use of child soldiers.⁶ This campaign had a large role in the creation of an Optional Protocol to the Convention on the Rights of the Child which raised the age requirement for recruitment of soldiers from 15 to 18.⁷ In structuring its tactical approach, the group focused specifically on the use of children on the front lines of armed conflict rather than the broader impact of armed conflict on children. This group saw potential to effect change through limiting its focus, and was highly successful in raising the minimum age of recruitment. The image of a young child carrying arms provided a startling and horrific image which garnered attention and support for the effort to criminalize use of children in armed conflict. However, there were great drawbacks to this concentrated focus. Attention to the far reaching effects of armed conflict on children was lost as international law developed around the specific issue of children serving in conflict. Girls suffered particularly because of this focused campaign, as their role in armed combat is often compounded by the sexual violence perpetrated against them. Therefore, despite frequent mention of sexual violence against girls in articles and reports published by organizations involved in the Coalition, little was done to create inclusive international laws once the issue had been framed.

¶5 This is a classic issue in the human rights movement. In shaping the parameters of an issue, human rights proponents can create a "hot issue" at a high cost. The issue becomes oversimplified and subgroups are marginalized. The downside of this approach is highly visible through examining the situation of girl child soldiers in Uganda: the great success of the campaign against child soldiers in shaping international law has further marginalized girls who are victimized behind the front lines of conflict. Existing international laws addressing child

⁴ Cynthia Price Cohen, *The United Nations Convention on the Rights of the Child: A Feminist Landmark*, 3 WM. & MARY J. WOMEN & L. 29, 41 (1997).

⁵ Grac'a Machel, *Promotion and Protection of the Rights of Children: Impact of armed conflict on children*, United Nations (Aug. 26, 1996)

⁶ The Coalition's International Steering Committee is comprised of seven organizations: Amnesty International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office-Geneva and World Vision International. See *The Coalition to Stop the Use of Child Soldiers*, at <http://www.child-soldiers.org/coalition/>.

⁷ *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, May 25, 2000, U.N. GAOR, U.N. Doc A/54/RES/263 (entered into force Feb. 12, 2002), available at <http://www.unicef.org/crc/crc.htm> [hereinafter *Optional Protocol on Children in Armed Conflict*]. See also Jo Becker, Human Rights Watch World Report 2004, *Children as Weapons of War*, available at <http://www.hrw.org/wr2k4/11.htm>

soldiers had already failed to address the complexities of the girl soldier experience; new laws created in response to the campaign against child soldiers further exacerbated this gender imbalance.

¶16 The major international convention addressing children's rights is the United Nations Convention on the Rights of the Child.⁸ While this document is progressive in many respects, and goes to great lengths to protect both boys and girls from human rights abuses, girls who are sexually abused under the smokescreen of war tend to fall through the enumerated protections laid out in the Convention.

¶17 Likewise, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict does not specifically address the plight of female child soldiers, but focuses instead on raising the minimum age of lawful participation in armed combat.⁹ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography offers significant protection for girl children from sexual abuse, but fails to tie the sexual abuse of girls to their roles in armed combat.¹⁰ Several other international conventions and treaties address the issues faced by female child soldiers, but only peripherally. The international community must recognize that the prevalence of girl soldiers presents a major human rights abuse, and current international laws and standards are not doing enough to protect these girls. The definition of a child soldier must be expanded to encompass the variety of roles that children serve in the armed forces, including but not limited to holding a gun on the front lines of conflict.

¶18 This paper will first describe the history of the conflict in Northern Uganda and the current state of the region; the paper will then go on to address the experiences of girl child soldiers in Uganda, and outline the specific abuses they suffer at the hands of the LRA, and to a lesser extent, from the Ugandan military; then the paper will present an analysis of the strengths and weaknesses of the international conventions and treaties and Ugandan laws when applied to the situation of girl soldiers in Northern Uganda. In conclusion, this paper will argue that the definition of a child soldier needs to be explicitly expanded in international treaties and conventions to include the broad experiences of girls (and boys) who may or may not serve on the front lines of conflict but nonetheless suffer horrific human rights abuses while in the conscription of armed forces.

II. POLITICAL STATE OF NORTHERN UGANDA

¶19 Uganda has suffered a tumultuous and violent past. The country is comprised of various tribes who have diverse linguistic and cultural traditions.¹¹ During British colonial rule, the colonial government often gave top civil service positions to the Buganda tribe of the central and southern sections of the country, and whose kingdom was centered in Kampala, the official capital of the country.¹² Other tribes tended to be marginalized including the Acholi and Lango people of the north, who found their only means of gaining power was through the military.¹³ In

⁸ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

⁹ Optional Protocol on Children in Armed Conflict.

¹⁰ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, G.A. Res. 263, U.N. GA OR, 54th Sess., Annex II, U.N. Doc A/RES/54/263 (Jan. 18, 2002), available at <http://www.unicef.org/crc/crc.htm> [hereinafter Optional Protocol on the Sale of Children].

¹¹ Government of Uganda, *The History of Uganda*, at <http://www.government.go.ug/static/history.htm>

¹² *Id.*

¹³ *Id.*

1962, Uganda gained its independence from British rule and Milton Obote, the leader of the Uganda People's Congress Party became the first Prime Minister of the country.¹⁴ The King of the Buganda tribe was appointed President.¹⁵ Shortly thereafter, Obote ordered his military forces, commanded by the Army Chief of Staff General Idi Amin, to remove any political opponents, including the King.¹⁶ While the King went into exile in Britain, Obote appointed himself President and had his attorney general rewrite the constitution to consolidate virtually all of the political power in the office of the President.¹⁷

¶10 In 1971, while Obote was attending a meeting in Asia, General Amin staged a coup and overthrew Obote's government.¹⁸ During Amin's eight year "reign of terror," which destroyed the country's infrastructure, an estimated 400,000 Ugandans lost their lives.¹⁹ Particular targets were the Acholi and Lango tribes of the north.²⁰ During this time, Amin started a war with Tanzania in response to the country's support for his dissidents and in an effort to build the morale of his own troops.²¹ Tanzania eventually overpowered Amin's forces, and he was thrown out of power in 1979.²² However, the Tanzanian forces looted the country, creating another wave of chaos in an already-decimated country.²³

¶11 After a succession of unsuccessful administrations in 1979 and 1980, Obote again took power.²⁴ Under Obote's rule Uganda continued to disintegrate.²⁵ In 1985, Obote was overthrown by Tito Okello.²⁶ However, another dissident of Obote was Yoweri Museveni, who led a guerrilla army known as the National Resistance Army.²⁷ The NRA and Museveni fought Okello's forces until 1986 when they gained control of the country's capital, Kampala.²⁸ Museveni had the support of much of the southern region of Uganda, but met with much opposition in the northern region; this opposition continues to this day.²⁹

¶12 Under Museveni's rule Uganda has become one of the more stable countries in East Africa, but much of the economic development is clustered in the southern and central regions of the country. The northern regions bordering Sudan continue to be underdeveloped. After Museveni came to power in 1986, many of Okello's soldiers fled to the north and formed the Ugandan People's Democratic Army.³⁰ Several groups split off from the UPDA, including the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Enter Uganda, at <http://www.enteruganda.com/about/history.php>.

¹⁸ Government of Uganda, *supra* note 11.

¹⁹ "Dictator Idi Amin Dies," BBC News, Aug. 16, 2004, available at <http://news.bbc.co.uk/1/hi/world/africa/3155925.stm>

²⁰ Government of Uganda, *supra* note 11.

²¹ *Id.*

²² *Id.*

²³ "Uganda," The Columbia Encyclopedia, Sixth Edition, 2001, available at <http://www.bartleby.com/65/ug/Uganda.html>.

²⁴ *Id.*

²⁵ Government of Uganda, *supra* note 11.

²⁶ BBC News, *Timeline: Uganda*, available at http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1069181.stm

²⁷ *Id.*

²⁸ Government of Uganda, *supra* note 11.

²⁹ Jo de Berry, *Child Soldiers and the Convention on the Rights of the Child*, 575 ANNALS AM. ACAD. POL. & SOC. SCI., 92, 95 (2001).

³⁰ HUMAN RIGHTS WATCH, *STOLEN CHILDREN: ABDUCTION AND RECRUITMENT IN NORTHERN UGANDA* 4 (Vol. 15, No. (7)(A) Mar. 2003), available at <http://hrw.org/reports/2003/uganda0303/uganda0403.pdf> [hereinafter *STOLEN CHILDREN*].

Lord's Resistance Army, led by Joseph Kony.³¹ The LRA's mandate is to overthrow Museveni's government, and the group draws partially on Christian beliefs.³² The Sudanese government supported the LRA, just as Uganda supported guerilla forces attacking Sudan.³³ For much of the 1990s, the LRA was based in Sudan, venturing over the border to wreak havoc and destroy lives in Northern Uganda.³⁴

¶13 As a result, three of the districts which comprise Northern Uganda – Gulu, Kitgum, and Pader (collectively known as Acholi-land) – are in a desperate state today. “Due to the long-running armed conflict, today the infrastructure in Northern Uganda, which was insufficient to begin with, is nearly completely destroyed, as are the economy, trading centres, agricultural production, and livestock herds.”³⁵ Even those children who have not been abducted or recruited by the LRA suffer from the effects of long-term conflict.

¶14 However, in 1999 Sudan and Uganda agreed to stop supporting each other's rebel groups.³⁶ Sudan allowed Ugandan forces to enter Southern Sudan and destroy the LRA bases and camps.³⁷ This military operation is known as “Operation Iron Fist.”³⁸ One of the justifications of the operation was to rescue the thousands of abducted Ugandan children.³⁹ “Since the beginning of the operation, at least 2,000 children have been retrieved, captured or have managed to escape on their own. During this same period however, 5,000 more children have been abducted—more than in any previous year.”⁴⁰

¶15 The infrastructure of the land has suffered from Operation Iron Fist as well.⁴¹ With the LRA forces now operating out of Northern Uganda, the civilians who have already been forced into camps by the Ugandan military, supposedly for their own protection, now cannot venture outside of the camps for fear of death.⁴² Children living in camps or in the villages often travel to “safe” buildings in the largest towns in the area every night – if they were to stay in their villages they would most likely be abducted by the LRA.⁴³ There have been several unsuccessful attempts at peace treaties between Ugandan forces and the LRA, which are made even more difficult because of the lack of formal means of communication between the LRA commanders and the Ugandan military.⁴⁴

¶16 Since its formation in 1987, the LRA has committed many atrocious human rights abuses against children. According to Human Rights Watch, conservative estimates of the number of

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Dyan Mazurana & Susan McKay, *Girls in Fighting Forces in Northern Uganda, Sierra Leone, and Mozambique: Policy and Program Recommendations 4* (June 2003), *available at* http://www.redbarnet.dk/Files/Filer/Krig_Flugt/CIDA_June_03_policypaper.doc [hereinafter *Girls in Fighting Forces*].

³⁶ *STOLEN CHILDREN*, *supra* note 30, at 4.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 5.

⁴⁰ *Id.*

⁴¹ *Girls in Fighting Forces*, *supra* note 35, at 102.

⁴² *Id.*

⁴³ *STOLEN CHILDREN*, *supra* note 30, at 5.

⁴⁴ *Id.*

children abducted by the LRA since 1986 are around 20,000.⁴⁵ UNICEF reported to Human Rights Watch that 4,500 children were abducted in 2002 alone.⁴⁶

¶17 Additionally, there have been reports of the Ugandan military forces recruiting children. Children are most commonly recruited to join Local Defense Units which guard villages or camps.⁴⁷ Yet in reality, once recruited these children often go off to fight the LRA.⁴⁸ While Ugandan officials claim that they do not recruit children, they admit that there are children under 18 who serve as soldiers.⁴⁹ These officials claim that they cannot determine the official age of every child because of the lack of proper birth records in the country, and many children lie about their age because they want to gain the relative economic security of a paid position in the armed forces.⁵⁰

III. FEMALE CHILD SOLDIERS IN NORTHERN UGANDA

¶18 Girls comprise 20 to 30 per cent of the child soldiers recruited and abducted in Northern Uganda.⁵¹ Those who are abducted by the LRA face varied threats, often behind the frontlines of the conflict. However, some are forced to fight the Ugandan military forces or to assist in the abduction of other children.

¶19 The youngest girls are often used as servants by the LRA. Known as *ting ting* (servants), these girls are forced to work in strenuous domestic capacities for long hours everyday.⁵² Brenda O., a girl child soldier, reported to Human Rights Watch:

[The commander] didn't treat me very well. He would order young soldiers to beat me and two of the other *ting ting*. The commander would call us to come and lie down. He would say, 'Do you know why I am beating you?' We didn't know, so the soldiers caned us, fifty strokes. This happened every day. They beat us on the buttocks, but if you cry, they will beat every part of your body and not count the strokes.⁵³

¶20 Once girls reach fourteen or fifteen, many are forced to serve as "wives" of LRA commanders, where they face the threat of rape, sexually transmitted diseases, and unwanted pregnancies.⁵⁴ Some girls have reported that serving as a "wife" brings some privileges such as fewer hours of work per day and better food.⁵⁵ However, other "wives" report horrific sexual abuse and exploitation: Angela P. told Human Rights Watch, "as a wife, I was beaten and sexually abused. As a *ting ting*, I was beaten twice; as a wife I was beaten so many times I

⁴⁵ *Id.*

⁴⁶ *Id.* at 6. Data provided to Human Rights Watch by UNICEF, Feb. 3, 2002.

⁴⁷ *Id.* at 19.

⁴⁸ *Id.*

⁴⁹ A.E. Mbaine, "Yes We Have Some Soldiers Below 18 Years in our Battalions": An Interview with Army Spokesman Major Shaban Bantariza, CHILD LINK, March 2003 at 9.

⁵⁰ *Id.*

⁵¹ Women's Comm'n for Refugee Women & Children, *Against All Odds: Surviving the War on Adolescents* 17 (May-July 2001) [hereinafter *Against All Odds*].

⁵² STOLEN CHILDREN, *supra* note 30, at 13.

⁵³ *Id.* at 13-14.

⁵⁴ *Id.* at 13.

⁵⁵ *Id.* at 14.

couldn't count."⁵⁶ By one estimation, fifty percent of the children entering rehabilitation centers after they are released or have escaped have sexually transmitted diseases.⁵⁷ Another estimate has found that close to 100% of the girls who are released or have escaped from the LRA have sexually transmitted diseases.⁵⁸ There is some indication that this number has decreased significantly in the past few years since children are now less likely to remain with the LRA for an extensive period of time, thereby limiting their exposure to sexually transmitted diseases.⁵⁹

¶21 If these "wives" are lucky enough to be released by the LRA, or manage to escape, they face significant cultural prejudice from their communities, particularly if they became pregnant and return with children. Those girls or women have lost their "purity" are often rejected by their families or communities. Amnesty International cites a 1997 survey by ACORD which spoke with 36 women who had been raped by LRA or government soldiers – 30 of them had been rejected by their husbands or families.⁶⁰ If they are able to escape, girls also reported being abducted for a second time by their commander husbands.⁶¹ Finally, prostitution has increased in Northern Uganda since the conflict began.⁶² This is presumably a function of women being rejected by their communities after being abducted by the soldiers and having no other means of supporting themselves.⁶³

¶22 This problem of "lost" sexual purity points to the broader patriarchal structure of Ugandan society.

The power inherent in the ownership of the girl-child and women by male LRA soldiers is a twisted and extended form of that which exists in more familiar social settings. Government reports describe a broader patriarchal social context in Uganda in which women and girls have a lower status than males within the family, community, and society at large.⁶⁴

¶23 Girls are treated as a commodity by the LRA soldiers—the commanders are rewarded for fighting and wives serve as a mark of power and prestige.⁶⁵ The leader of the LRA, Joseph Kony, is known to have thirty wives, while other officers might have four.⁶⁶

¶24 Finally, when the LRA troops attack a settlement or village, rape is a commonly-used weapon of terror, intimidation, and control.⁶⁷ In Grac'a Machel's report on armed conflict and children, she found:

Rape is not incidental to conflict. It can occur on a random and uncontrolled basis due to the general disruption of social boundaries and the license granted to

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Uganda Human Rights Comm'n, Ann. Rep. 55 (Jan. 2001 - Sept. 2002).

⁵⁹ *Id.*

⁶⁰ Amnesty International, 'Breaking God's Commands': the destruction of childhood by the Lord's Resistance Army 16 (1997), at <http://web.amnesty.org/library/Index/ENGAFR590011997?open&of=ENG-UGA> [hereinafter Breaking God's Commands].

⁶¹ *Id.* at 15.

⁶² *Id.* at 16.

⁶³ *Id.*

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

soldiers and militias. Most often, however, it functions like other forms of torture and is used as a tactical weapon of war to humiliate and weaken the morale of the perceived enemy. During armed conflict, rape is used to terrorize populations or to force civilians to flee.⁶⁸

¶25 Rape is used to both instill terror in the civilian population, and exert control over those girls abducted and forced to serve as child soldiers for the LRA.

IV. APPLICATION OF CURRENT LEGAL STANDARDS TO GIRL SOLDIERS OF NORTHERN UGANDA

A. *The Convention on the Rights of the Child*

¶26 In analyzing the effectiveness of the current international conventions and treaties which apply to girl soldiers in Uganda, one must start with the center-piece of children's rights, the Convention on the Rights of the Child.⁶⁹ The United Nations adopted the Convention in 1989, and Uganda ratified the Convention on September 16, 1990.⁷⁰ Uganda did not enter any reservations.⁷¹ The Convention on the Rights of the Child is the most widely-ratified human rights convention in the history of the United Nations, with all of the countries in the world ratifying the convention except for the United States and Somalia.⁷²

¶27 The Convention on the Rights of the Child covers the general scope of children's human rights. Several articles address specific human rights abuses that girls face all over the world. Article 2 prohibits discrimination based on gender.⁷³ Article 32 offers children protection from economic exploitation, while Article 34 protects children from sexual exploitation and abuse.⁷⁴ Article 35 protects children from abduction and trafficking.

¶28 The Convention on the Rights of the Child is also inherently feminist in its linguistic construction. Cynthia Price Cohen has pointed out that the Convention on the Rights of the Child breaks the "linguistic tradition" of using the masculine singular possessive pronoun.⁷⁵ Throughout the Convention, "the child" is used whenever possible; in situations in which it is necessary to use a singular possessive pronoun both "his" and "hers" appear.⁷⁶

¶29 Just as the Convention on the Rights of the Child addresses abuses faced by girls, it also offers specific protection for child soldiers. Article 38 deals with children involved in armed conflict, specifically that (1) states must respect international humanitarian law relevant to the child; (2) children under fifteen must not "take a direct part in the hostilities"; (3) states shall not recruit children under fifteen; (4) states must "take all feasible measures" to protect children affected by armed conflict.⁷⁷ Article 39 requires that states must take "all appropriate measures"

⁶⁸ Machel, *supra* note 5, at para. 94.

⁶⁹ Convention on the Rights of the Child, *supra* note 8.

⁷⁰ Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principle Human Rights Treaties 11, *available at* <http://www.unhchr.ch/pdf/report.pdf> [hereinafter Status of Ratifications].

⁷¹ Office of the United Nations High Commissioner for Human Rights, *United Nations Treaty Collection Declarations and Reservations (as of Oct. 1, 2001)*, at http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm

⁷² Status of Ratifications, *supra* note 70.

⁷³ Convention on the Rights of the Child, *supra* note 8, at art. 2.

⁷⁴ *Id.* at art. 32; art. 34.

⁷⁵ Cohen, *supra* note 4, at 47.

⁷⁶ *Id.*

⁷⁷ *Id.*

to promote recovery and reintegration.⁷⁸ In theory, these provisions should protect against the abuses perpetrated against girls who are abducted or recruited to serve as child soldiers.

¶30 While both sexual exploitation and the recruitment of child soldiers under fifteen are prohibited by the Convention, it has a number of weaknesses. The most glaring evidence of its weakness is that while it is the most widely-ratified convention of the United Nations, the number of children abducted or recruited to serve as soldiers continues to grow every year. Part of this ineffectiveness must lay in the fact that only those states which have ratified the convention are bound to its rules. Guerilla forces, paramilitaries, and other rebel groups are not legally bound by the provisions of the convention. Yet these groups often recruit and abduct child soldiers, as in the case of Northern Uganda.

¶31 Yet another factor which negates the power of the Convention is the lack of enforcement mechanisms. A UN committee reviews reports prepared by the states on their own record of abuses of children's rights. Self-governance is not terribly effective in the field of human rights. Uganda submitted its report to the Committee on the Rights of the Child in 1996, and the Committee responded in October, 1997.⁷⁹ The Committee noted seventeen principal subjects of concern.⁸⁰ One area of concern was the lack of adequate Ugandan legislation to give both girls and victims of sexual exploitation full economic, social and cultural rights.⁸¹ Another principal subject of concern revolved around the violation of Article 38 of the CRC in the northern region of Uganda: the rules of international humanitarian law applicable to children are being violated.⁸² Additionally, the report notes the abductions, killings, and torture of children in the northern region.⁸³ The Committee recommended that all efforts be taken to prevent and combat all forms of discrimination against girls and that the state should improve awareness of the duty to follow international humanitarian law in the north.⁸⁴ The Committee also recommended that Uganda improve its efforts to prevent the killing and abduction of children and the use of children as child soldiers in the north.⁸⁵

¶32 Despite the weaknesses of the Convention on the Rights of the Child, it is a great step forward for children's rights. The Convention offers the most reasonable and realistic method of providing more substantial international protection for girl child soldiers. This could be better accomplished if the Convention added an article addressing the use of rape and sexual violence as a method of intimidation in the abduction and recruitment of girl child soldiers, and labeled this practice a violation of human rights. Currently the convention protects children from these threats by providing a blanket prohibition on sexual exploitation and abuse. While in theory this should protect girl child soldiers, in practice national and international efforts to protect children are going to follow the lead of this highly influential international document. The Convention should explicitly include a prohibition against sexual abuse of girls who are abducted or recruited by armed forces in conflict situations. The one method to accomplish this would be to amend the Convention with an explicit, expansive definition of child soldiers. However, in order to amend

⁷⁸ *Id.*

⁷⁹ Committee on the Rights of the Child: Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: Uganda, 16th Sess., CRC/C/SR.409-410, (Oct. 21, 1997), available at <http://www1.umn.edu/humanrts/crc/uganda1997.html>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

the Convention, each individual state would have to go through the ratification process again. While this method would clearly establish the importance of creating an expanded definition of child soldiers, it would be a cumbersome and time-consuming process. Additionally, some nations might not be inclined to sign the amended Convention. However, if another Optional Protocol was created, this issue would be brought to the forefront of the human rights movement and the current status of the Convention would not be compromised.

B. *The Optional Protocols on the Convention on the Rights of the Child*

¶33 The optional protocols offer further protections for children than the Convention on the Rights of the Child. Yet the two protocols also offer a further illustration of the gendered understanding of children's rights. In a traditional understanding of the human rights perpetrated against children, boys (and some girls) are protected by the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, while girls (and some boys) are protected by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

¶34 The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict focuses particularly on extending the age requirement of child soldiers who participate in direct hostilities to 18.⁸⁶ As described earlier, a coalition of NGOs successfully campaigned for the adoption, ratification, and implementation of this Optional Protocol.⁸⁷ Uganda ratified this protocol in May of 2002, and reserved the right to amend its declaration.⁸⁸ However, this Optional Protocol does not address the plight, or even the existence, of female child soldiers. This is significant for the fact that female child soldiers are less likely to participate in armed conflict, and more likely to be background workers used, quite literally, to "comfort" the senior officers and soldiers. In focusing on those child soldiers who take part in "direct hostilities," this optional protocol further reinforces the male-based definition of a child soldiers.

¶35 It has been suggested that since the definition of a child soldier is not laid out in the protocol, then the definition can be expanded to include children who do not participate in combat.⁸⁹ This analysis of the Optional Protocol depends heavily on the international understanding of the definition of child soldiers. As long as the dominant image of a child soldier is a boy holding a gun, the optional protocol will not offer any protection to those children caught behind the frontlines of war. The most effective way to change the international understanding of the definition of a child soldier is to lay it out clearly in an international protocol. Relying on other forms of international law, such as customary law, would take too long to make the necessary impact on this critical issue.

¶36 The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography offers significant protection for children affected by these enumerated threats.⁹⁰ Uganda ratified this protocol in November of 2001, with

⁸⁶ Optional Protocol on Children in Armed Conflict, *supra* note 7.

⁸⁷ The Coalition to Stop the Use of Child Soldiers, *supra* note 6.

⁸⁸ STATUS OF RATIFICATIONS, *supra* note 70.

⁸⁹ Sandrine Valentine, Symposium: Global Human Rights: Panel Remarks: Trafficking of Child Soldiers: Expanding the United Nations Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict, 9 *NEW ENG. J INT'L & COMP. L.* 109, 115 (2003).

⁹⁰ Optional Protocol on the Sale of Children, *supra* note 10.

no reservations.⁹¹ The Protocol recognizes that girls are particularly vulnerable to sexual exploitation.⁹² Yet in specifically laying out offenses which perpetrators can be held liable for, it becomes obvious that female child soldiers are excluded from the understanding of harmful practices. In Article 10, the Convention states:

States parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving sale of children, child prostitution, child pornography and child sex tourism.⁹³

¶37 Child soldiers do not fit into the categories laid out here: in most cases they are not sold, but abducted; they are not prostitutes because they don't receive any material goods in exchange for their sexual servitude;⁹⁴ child pornography and sex tourism are not applicable to child soldiers either. This is yet another example of the failure of the international community to create a body of law to protect female child soldiers. In order for girl child soldiers to be fully protected by international law, their plight must be addressed clearly and specifically in the text of the document.

C. *The Convention on the Elimination of all Forms of Discrimination Against Women*

¶38 The Convention on the Elimination of all Forms of Discrimination Against Women protects women's rights, and consequently can protect girls in a derivative fashion.⁹⁵ Uganda ratified this convention in August of 1985, with no reservations.⁹⁶ The Convention requires signatories to take all appropriate measures to eliminate discrimination against women in rural areas.⁹⁷ The vast majority of female child soldiers are from rural areas of Northern Uganda, and an effort to end discrimination against women could improve the social and economic positions of young women and girls; consequently, they could protect themselves against the threat of abduction or conscription. As described earlier in this paper, girls often occupy the lowest positions in a patriarchal society and are consequently the easiest targets for those looking to exploit. If girls were able to attain a higher status through education and other legal rights, they would be in a better position to protect themselves against exploiters.

¶39 The Convention provides for the right of women to enter into marriage with their free and full consent.⁹⁸ It also prohibits child marriage – article 16(2) states that marriage of a child shall have no legal effect and that the state must take necessary action to establish a minimum age for marriage and make marriage registration necessary.⁹⁹ In theory, if these provisions were enforced the state would have the legal obligation to prevent the marriages of LRA commanders and

⁹¹ STATUS OF RATIFICATIONS, *supra* note 70.

⁹² Optional Protocol on the Sale of Children, *supra* note 10.

⁹³ *Id.*

⁹⁴ While the abducted girls do receive basic goods and shelter, and some may receive additional goods if they have been forced to be the wife of a high-ranked commander, a girl child soldier's ability to fit into the definition of a prostitute is beyond the scope of this paper.

⁹⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter Women's Convention].

⁹⁶ Status of Ratifications, *supra* note 70.

⁹⁷ Women's Convention, *supra* note 95, at art. 14(2).

⁹⁸ *Id.* at art. 16(1)(b).

⁹⁹ *Id.* at art. 16(2).

female child soldiers. Yet in a situation where birth records are hard to come by, state resources are scarce, and the Ugandan army is unable to protect its own people, a requirement for all marriages to be registered seems likely to be ignored. Girl child soldiers are in need of an international legal provision which establishes child sexual abuse, including forced marriages perpetrated in the course of armed conflict as a human rights violation.

D. *The Geneva Conventions and Protocols*

¶40 After World War II, the international community passed the four Geneva Conventions on August 12, 1949.¹⁰⁰ These conventions offered specific protections for civilians, including children, in both international and non-international conflicts.¹⁰¹ In particular, Article 3, common to all four of the conventions, addresses non-international conflicts.¹⁰² Persons who have not taken an active part in hostilities must be treated humanely.¹⁰³ The article prohibits: “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; [and] outrages upon person dignity, in particular humiliating and degrading treatment.”¹⁰⁴ In 1977 two protocols were adopted in conjunction with the conventions which regulated the role of children involved in armed conflict for the first time.¹⁰⁵ Protocol I, Article 77 prohibits the recruitment of children (under 15) for participation in direct hostilities in international conflicts.¹⁰⁶ Protocol II, Article 4(3)(c) prohibits children (under 15) in non-international conflicts from being recruited or allowed to participate, directly or indirectly, in hostilities (including voluntary enlistment).¹⁰⁷ Uganda has ratified both Protocols and the Geneva Conventions,¹⁰⁸ and should be held to its promise to prevent children under 15 from taking part indirectly in the non-international conflict with the LRA.

¶41 While the Protocol II should be held up as an example of broadening the definition of child soldiers, indirect participation by girls who serve as wives and other domestic positions for military commanders needs to be explicitly addressed in international legal materials. Another pitfall is that, as illustrated earlier in this paper, Ugandan officials have established that birth records are hard to come by in the rural areas of Northern Uganda. Dates of birth are not well-documented and it is easy for military forces to play dumb when accused of utilizing children under 15 (or 18 for that matter).

¹⁰⁰ Geneva Conventions: Convention (I) for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field. Geneva, 12 August 1949; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949; Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, 75 U.N.T.S. 31.

¹⁰¹ *Id.*

¹⁰² *Id.* at art. 3.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, reprinted in *16 I.L.M. 1391*; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, reprinted in *16 I.L.M. 1442*.

¹⁰⁶ Protocol I, *supra* note 105, at art. 77.

¹⁰⁷ Protocol II, *supra* note 105, at art. 4(3)(c).

¹⁰⁸ INTERNATIONAL COMMITTEE OF THE RED CROSS, STATES PARTY TO THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS 7, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/\\$File/Conventions%20de%20GenSve%20et%20Protocoles%20additionnels%20ENG-logo.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/$File/Conventions%20de%20GenSve%20et%20Protocoles%20additionnels%20ENG-logo.pdf).

E. *The Rome Statute of the International Criminal Court*

¶42

The Rome Statute of the International Criminal Courts is a significant advance in international law, and the area of child soldiers is no exception. Uganda ratified the Rome statute in June of 2002.¹⁰⁹ Several articles in the statute offer a true step forward in the protection of girl child soldiers. Article 8(2)(e)(vi) states that rape, sexual slavery, and other forms of sexual violence perpetrated in non-international wars can be considered war crimes and prosecuted in the International Criminal Court.^{110 111} Article 8(2)(e)(vii) states that the conscription of children under 15 into armed forces or the use of children to participate actively in hostilities is a war crime in non-international conflicts, and likewise can be prosecuted in the International Criminal Court.¹¹² These articles offer a feasible means for those who perpetrate crimes against girl soldiers to be brought to justice. In tying sexual violence to the experience of war, the Rome Statute furthers the understanding of the experiences of girl soldiers in the international legal area. While this advance is a bright sign on the horizon, at this time the International Criminal Court currently lacks international legitimacy in the eyes of the United States. While other nations have accepted the jurisdiction of the court, its power will be undermined by the U.S. stance.

F. *The International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*

¶43

The International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour is particularly significant for the fact that it defines child soldiering as one of the worst forms of child labor.¹¹³ Uganda ratified this convention in June of 2001.¹¹⁴ This was the first international legal instrument to legally recognize child soldiering as a form of labor.¹¹⁵ Article 3 states:

For the purposes of this Convention, the term “the worst forms of child labour” comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory

¹⁰⁹ Human Rights Watch, *International Justice: Rome Statute Ratifications*, <http://www.hrw.org/campaigns/icc/ratifications.htm>

¹¹⁰ The Rome Statute of the International Criminal Court, July 17 1998, U.N. Doc. A/CONF. 183/9 art. 8(2)(e)(vi) (entered into force 1 July 2002) [hereinafter *The Rome Statute*].

¹¹¹ These acts of sexual violence had already been specified as war crimes in the case law of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). See *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-A (July 21, 2000); *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T (Sept. 2, 1998).

¹¹² The Rome Statute, at art. 8(2)(e)(vii).

¹¹³ International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 [hereinafter *The Child Labour Convention*].

¹¹⁴ Status of Ratifications, *supra* note 70.

¹¹⁵ Shara Abraham, *Child Soldiers and the Capacity of the Optional Protocol to Protect Children in Conflict*, 10 HUM. RTS. BR. 15, 16 (2003).

labour, *including forced or compulsory recruitment of children for use in armed conflict*.[.][emphasis added]¹¹⁶

¶44 Members pledge to implement programs of action to eliminate the worst forms of child labour.¹¹⁷ By including child soldiers under the definition of slavery, the Convention links the traditional sense of child soldiers with other forms of slavery. While not explicitly stated in the Convention, including child soldiers in a definition of slavery may offer a method for the international community to link child soldiers to other forms of slavery such as the sexual and domestic slavery that girl child soldiers are often forced into. Unfortunately, this Convention hasn't gone that far.

G. *The African Charter on the Rights and Welfare of the Child*

¶45 Uganda ratified the African Charter on the Rights and Welfare of the Child in August of 1994.¹¹⁸ The African Charter, as a regional treaty, does not have as many signatories as the various UN documents, but it does offer significant protection for child soldiers. Article 22(2) uses stronger language than the Convention on the Rights of the Child in prohibiting children from participating in hostilities: "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child."¹¹⁹ "Necessary steps" puts a heavier burden on the ratifying state than the "feasible steps" requirement laid out in the Convention on the Rights of the Child. When required to take necessary steps, a state would be obliged to do whatever is required to correct the situation; if required only to take feasible steps, a state would only have to do what is possible with existing resources. While in practice this distinction may be lost, in theory there is a heavier burden under necessary steps. Article 27 prohibits sexual exploitation, while Article 29 calls for states to take "appropriate" measures to prevent the sale, trafficking and abduction of children.¹²⁰ However, unlike the Convention on the Rights of the Child, the traditional masculine singular pronoun is used interchangeably with "his/her" throughout the text.¹²¹ Yet once again, the particular role of girl child soldiers is being overlooked. In failing to tie the sexual abuses to the provisions protecting child soldiers, the document sidesteps the predicament of female child soldiers.

H. *National Laws*

¶46 Uganda has made substantial efforts to create laws which protect its children and to follow its international commitments under the previously discussed international treaties. The Constitution of Uganda, promulgated in 1995, protects children from exploitation:

Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be

¹¹⁶ The Child Labour Convention, *supra* note 113, at art. 3.

¹¹⁷ *Id.* at art. 6.

¹¹⁸ African Charter on the Rights and Welfare of the Child, 1990, OAU Doc. CAB/LEG/24.9/49 (entered into force Nov. 29, 1999).

¹¹⁹ *Id.* at art. 22(2).

¹²⁰ *Id.* at art. 27; art 29.

¹²¹ *Id.*

hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.¹²²

¶47 The constitution also offers special protection to orphans and other particularly vulnerable children.¹²³ Children in conflict zones fall under the category of particularly vulnerable children. Finally, the constitution states, “Women shall be accorded full and equal dignity of the person with men.”¹²⁴

¶48 The Children’s Statute was enacted in 1996, six years after Uganda ratified the Convention on the Rights of the Child.¹²⁵ The statute was created as a means to offer higher resource allocation to social services that directly benefit children.¹²⁶ Local Councils are assigned responsibility for ensuring children’s safety and well-being.

¶49 While these national laws protect and promote children’s rights, and offer space for the UN and other NGOs to help protect and promote children’s rights, they seem to have done little to address the problem of female child soldiers.¹²⁷ There has been no focus on children affected by conflict, a particularly vulnerable group.¹²⁸ While some laws protect children from exploitation, there are no specific provisions relating to the girl child. Additionally, allocation of resources by the central government is not in line with the set policies, which results in disharmony.¹²⁹

¶50 In sum, these international and national legal instruments prohibit the recruitment and abduction of child soldiers, as well as sexual abuse of children. While in theory the girl child soldiers of Northern Uganda should have sufficient protection under existing legal frameworks, in practice they fall through the cracks of the framework. Not once is the typical plight of a girl abducted to serve in military or guerilla forces addressed specifically. All of these international laws fail to explicitly protect girl child soldiers from the well-documented harms that they face in conflict situations. This collective weakness is compounded by the ineffectiveness of international enforcement mechanisms or accountability. On a national level, Uganda does not seem to have the resources or ability to combat the LRA and stop the offenses being perpetrated against its children.

¶51 However, there is cause for hope. In recent years, some public bodies have published a broader definition of child soldiers. The Cape Town Principles and Best Practices, developed in 1997 by the NGO working group on the Convention on the Rights of the Child and UNICEF, is not a legal definition.¹³⁰ A child soldier is defined as:

any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks,

¹²² UGANDA CONST., art. 34 (4), available at <http://www.government.go.ug/constitution/detail.php?myId=4>.

¹²³ *Id.* at art. 34 (7).

¹²⁴ *Id.* at art. 33(1).

¹²⁵ The Children’s Statute, Statutory Instruments Supplement No. 20, Uganda Gazette No. 45 Vol. LXXXIX, July 26 1996.

¹²⁶ Save the Children Norway – Uganda, Country Program Report 1988-2001 and Strategic Plan 2002-2005 7 (2002).

¹²⁷ *Id.* at 8.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ UNICEF, Cape Town Annotated Principles And Best Practices On The Prevention Of Recruitment Of Children Into The Armed Forces And Demobilization And Social Reintegration Of Child Soldiers In Africa (April 1997), available at http://www.unicef.org/emerg/files/Cape_Town_Principles.pdf, [hereinafter The Cape Town Principles].

porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.¹³¹

¶52 This definition explicitly mentions the sexual abuse of girls as a form of child soldiering, and speaks against the dominate international understanding of a child soldier being defined by whether he or she holds a weapon.

V. CONCLUSION

¶53 Many challenges face both Uganda and the world community in any effort to halt the conflict in northern Uganda. Economic resources for military actions are scarce in Uganda. There is little interest in wealthy nations such as the United States becoming involved in the conflict. The area is so impoverished that wealthy nations have few economic interests in entering into the conflict. Additionally, and perhaps more importantly, in many wealthy nations there is very little domestic political interest in the conflict, which discourages international aid. However, the conflict in the north has caused many horrific human rights abuses, particularly to the children of the region. International attention and aid are imperative to prevent these abuses. One way to garner such attention would be to highlight the problems facing child soldiers, both boys and girls, by expanding the definition of a child soldier.

¶54 Female child soldiers need to be protected by an explicit statement in some international treaty or convention. In order to accomplish this, the definition of a child soldier needs to be expanded to encompass those children, often girls, who are forced to serve in domestic or sexual capacities for an armed force, not just those children who serve on the front lines of conflict. The Cape Town Principles can serve as a good example of an expanded definition.¹³² Those children who are used by armed forces for support behind the scenes cannot be underestimated. In the case of Northern Uganda, girls forced to work in varying capacities provide the LRA with the support and resources required to sustain a campaign which has lasted for 17 years and shows no sign of stopping. The human rights abuses suffered by these sexually exploited girls (and sometimes boys) who are abducted or recruited by armed forces are just as serious, and just as clearly related to armed conflict, as those boys (and sometimes girls) who are forced to fight on the front lines. The ideal location for this statement would be an optional protocol to the Convention on the Rights of the Child.

¶55 Through a more expansive definition of child soldiers and increased international attention to the plight of girls in conflict situations, there is hope for a better life for the young victims in Uganda and around the world.

¹³¹ *Id.*

¹³² The Cape Town Principles, *supra* note 130.