



# **The Protection of Child Soldiers and Their Criminal Responsibility under Ethiopian Law**

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# **The Protection of Child Soldiers and Their Criminal Responsibility under Ethiopian Law**

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**Advisor: Fasil Mulatu Gesesse (LLD)**

**A Thesis Submitted in Partial Fulfilment of the Requirements for the Master of Laws Degree (LL.M) in Human Rights Law at Addis Ababa University Faculty of Law**

**Addis Ababa University  
School of Graduate Studies  
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May, 2022**

## **Declaration**

I, Abel Ketema hereby declare that the thesis '*Protection of Child Soldiers and Their Criminal Responsibility under Ethiopian Law*' represents my original work, with citations and quotations where other people's works have been used. To the best of my knowledge, it has not been submitted before to any other institution for any other purpose.

**Name:** Abel Ketema

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## List of Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
API	Additional Protocol I to the Geneva Conventions
AP II	Additional Protocol II to the Geneva Conventions
Art	Article
CCRC	Committee on the Convention on the Rights of the Child
CIHL	Customary International Humanitarian Law
CJP	Criminal Justice Policy
CJS	Criminal Justice System
COM	Council Of Ministers
CRC	Convention on the Rights of the Child
EHRC	Ethiopian Human Rights Commission
ENDF	Ethiopia's National Defence Force
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of Peoples' Representative
HRO	Humanitarian Organization
IAC	International Armed Conflict
ICC	International Criminal Court
ICL	International Criminal Law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law

IMACR	International Minimum Age of Criminal Responsibility
JJL	Juvenile Justice Law
MACR	Minimum Age of Criminal Responsibility
MOD	Ministry of Defence
NCP	National Children's Policy
NIAC	Non- International Armed Conflict
OLF	Oromo Liberation Front
OPCRC	Optional Protocol to the Convention on the Rights of the Child
POW	Prisoner of War
RFC	Revised Family Code
TPLF	Tigray People Liberation Front
UNICEF	United Nations International Children's Emergency Fund
VERA	Vital Events Registration Agency
WFCLC	Worst Form of Child Labour Convention

## ***Abstract***

*On account of the existence of two armed groups in Ethiopia coupled with the involvement of children in the conflict between the Tigray People Liberation Front and the Federal Government of Ethiopia, the study tries to examine the legal protection of children against recruitment and participation in armed conflict, and the responsibility or otherwise of children participated in armed conflict. Accordingly, the study demonstrates that Ethiopia doesn't have legislation to prevent the recruitment of children by armed groups and terrorist organizations. In other words, although Ethiopia has ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which provides better protection for children, it hasn't been domesticated yet. Analysis of the criminal code also reveals that child soldiers are criminals under Ethiopian law.*

*In the end, the thesis tries to recommend that the new law should be enacted and existing laws be updated in a way that match international standards.*

# Chapter One

## General Introduction

### 1.1 Background of the Study

From its very inception, International Humanitarian Law (hereunder IHL) was intended to govern an armed conflict between or among states. In other words, only international armed conflict (hereunder IAC) was governed by IHL. It was almost after 30 years that internal armed conflicts started to be regulated by IHL<sup>1</sup> with the coming in to force of Additional protocol to the four Geneva conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts<sup>2</sup> (hereunder AP II). Currently, most of the armed conflicts in the world are internal by their nature.<sup>3</sup> This is especially true in most parts of Africa after decolonization.<sup>4</sup>

Though the participation of children in armed conflicts is not a current phenomenon, it has been intensified on account of the proliferation of internal armed conflicts. The global trend and data on child soldiering indicate that roughly there are 300,000 child soldiers around the world of which, Africa accounts for approximately 40%.<sup>5</sup> However, this number is not an exact indication of the reality since fieldwork on this subject is difficult.<sup>6</sup>

The phenomenon of child soldiering has been recognized by the international community which resulted in the endorsement of a range of international norms for the protection of child soldiers. IHL, International human rights law (IHRL), and International criminal law

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<sup>1</sup> *Common Article 3 of the four Geneva conventions deals with internal armed conflict in relation to humanitarian protection for protected persons in an internal armed conflict.*

<sup>2</sup> *Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Jun. 8, 1977, 1125 U.N.T.S. 609 [hereinafter AP II]*

<sup>3</sup> *Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'Children and Justice During and in the Aftermath of Armed Conflict' (2011), One United Nations Plaza, NY, WORKING PAPER 3, 34*

<sup>4</sup> *Rwanda, DRC, Sierra Leone and Uganda are notable examples of countries with long lasted civil wars involving great number of children.*

<sup>5</sup> *Temitayo C. Oyewole, 'The Proliferation of Child Soldiers in Africa: Causes, Consequences and Controls' (2018) LLM thesis, Maastricht University, 8*

<sup>6</sup> *Claude Rakisits, 'Child Soldiers in the DR of the Congo' (2009) 27 RSQ 108, 109*

(ICL) are international laws devised to protect children from participating in armed conflicts. However, these norms on child soldiering are not free from deficiencies. There is a discrepancy among these laws ranging from the category of age and kinds of participation they prohibit to addressing the culpability of child soldiers. Surprisingly, none of these laws expressly defined who child soldiers are. They use age category and mode of participation as an implied definition of child soldiers. A comprehensive definition that compromises the discrepancy among the laws has been provided by the non-binding Cape Town Principle<sup>7</sup>, which states;

*“any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and 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.”*<sup>8</sup>

This definition, though having no force of law, is an innovative approach in the protection of children from participating in armed conflicts. Not only does it rise the age of participation from 15 to 18, it also expands protections for those children whose role in the armed forces or groups is ancillary unlike the accustomed protection from a direct participation.

Coming to the focus of the study Ethiopia has accepted international obligations by signing and acceding to most of the instruments dealing with the issue of child soldiering. According to the FDRE constitution, these instruments are part of the laws of Ethiopia.<sup>9</sup> The involvement of children in armed conflict on the side of the Tigray People Liberation Front (hereunder TPLF) and their recruitment by the Oromo Liberation Front (hereunder OLF Shene), the two terrorist groups as proclaimed by the House of People Representative (hereunder HPR) of the Federal Democratic Republic of Ethiopia (hereunder FDRE) since the last two years, has become an alarm to evaluate the laws in Ethiopia as far as their use in protecting children from participating in armed conflict, and their applicability on criminal child soldiers. Casper calls the participation of children in this kind of internal armed conflict

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<sup>7</sup>UNICEF, *Cape Town Principles and best Practices (1997)*, available; [https://www.unicef.org/emerg/files/Cape\\_Town\\_Principles\(1\).pdf](https://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) (hereunder *Cape Town Principle*), accessed on January 4/2022

<sup>8</sup> *Ibid*

<sup>9</sup> *The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, Federal Negarit Gazeta, 1st Year, No.1(hereunder FDRE Constitution), Article 9 (4)*

an ‘asymmetrical technique of war’ to indicate a technique where a militarily disadvantaged group use the mass, including children against the one with a military advantage.<sup>10</sup> Ethiopia has an international obligation to give meaning to the international norms for their domestic enforcement since its treaty obligations shall not be precluded in situations such as the existence of armed conflict or guerrilla war.

Against this backdrop, this thesis tries to explore the normative frameworks of Ethiopia regarding the protection of children from participation in armed conflicts, and in the case of the commission of crimes by these children, the positions of the laws in determining their criminal liability vis-à-vis other juvenile offenders. This will be made by placing Ethiopian laws alongside other international instruments to which Ethiopia is a party.

## **1.2 Statement of the problem**

Despite the promulgation of international norms and the contribution of scholarly works on child soldiering, there remain normative and theoretical paradoxes. Defining a child soldier is a hard-hitting task as there are different puzzles in any attempt of defining the concept. The term child soldier brings to mind an ironic situation in which an infant is considered a soldier.<sup>11</sup> This seems the reason for the absence of an express definition of a child soldier in the international instruments dealing with the same. The Cape Town Principle, a non-binding instrument gives a comprehensive definition of child soldiers. According to this principle, a child soldier is;

*“any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and 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.”*<sup>12</sup>

The conflicting arguments forwarded by the Universalists and Cultural Relativists concerning child, childhood, and child soldiers resulted in the paradoxical understanding of child soldiering. Universalist claims that any person below 18 years is a child; childhood ends upon the reach of 18 years; and within this demarcated biological age, children are irrational beings

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<sup>10</sup> Waschefort, Casper, ‘Child soldiers and international law: progressing towards “an era of application”’ (2011) PhD Thesis. SOAS 91

<sup>11</sup> David Rosen, *Armies of the Young: Child Soldiers in War and Terrorism* ( Rutgers 2005) 8

<sup>12</sup> *Supra* note 7

lacking the capacity to express free will. The model of developmental psychology is the base of the Universalist approach that influences international laws<sup>13</sup> dealing with child soldiers, and humanitarian organizations.<sup>14</sup>

For the cultural relativist, biological age can't define a child and childhood as they are results of social and cultural construction.<sup>15</sup> The path of life that a child experience in his social and cultural structure determine his transformation to adulthood. Since children are active participants in their culture and society, they are capable of exercising free will and agency during their stay with the armed forces or groups.

Generally, the theoretical arguments on the capacity or otherwise of child soldiers to exercise free choice create a paradox on child soldiering and hinder the commitments to reduce, if not prevent, the problem of child soldiering.<sup>16</sup>

In Ethiopia, video sources from different social media platforms and the news of government Media, sourcing the report of regional police, reveal that 'Shene of the OLF' that is a dissident terrorist group proclaimed by the government, recruits underage children. Making things worse, the armed conflict between the federal government and the TPLF since last years enabled us to witness the participation of children below 18 in the hostility. Ethiopia's obligation derived from human rights instruments, notably, the OPCRC, is onerous for two reasons; increase the protectable age to 18 and impose an additional obligation on the state to regulate the activities of armed groups. For instance; Ethiopia has ratified the OPCRC on 14 May 2014<sup>17</sup>, ACERWC on 02/10/2002<sup>18</sup>, and ILO WFC on 02 Sep 2003.<sup>19</sup> These instruments provide for the protection of children below 18 years from participating in armed conflicts.

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<sup>13</sup> Luliia Kononenko, 'Prohibiting the Use of Child Soldiers: Contested Norm in Contemporary Human Rights Discourse' (2016) 34 *Nordic J Hum Rts* 90

<sup>14</sup> *Supra* note 11, at 3

<sup>15</sup> *Ibid*, at 2

<sup>16</sup> Catarina Martins, 'The dangers of the single story: Child-soldiers in literary fiction and film' [2011] *sage pub* 4

<sup>17</sup> UN Treaty Data Base, available; <https://tbinternet.ohchr.org/layouts/TreatyBodyExternal/Treaty.aspx/> on 20th March 2022

<sup>18</sup> African Committee of Experts on the Rights and Welfare of the Child, ratification table, available at; <https://www.acerwc.africa/ratifications-table/> (Retrieved on 20<sup>th</sup> March 2022)

<sup>19</sup> NORMLEX, ratification by countries, available; <https://www.ilo.org/dyn/normlex/enf/> (Retrieved on 20<sup>th</sup> March 2022)

Laws in Ethiopia, including the FDRE constitution, don't define the term child. The RFC employs the term 'minor' and provides the age of minority as below the age of eighteen years old.<sup>20</sup> However, who is a child from the perspectives of armed conflict and criminal responsibility in Ethiopia? How do Ethiopian laws describe childhood and child soldiers? This investigation is important because; the wider the scope of the definition of a child soldier is; the better their protection would be since the normative language used to describe childhood and child soldier is the key to defining the beneficiaries of legal protection.<sup>21</sup> Investigating these questions is also crucial to identify the approach that influences Ethiopian laws since each approach has a direct effect on the category of person that the laws aim to protect, and on the level of protection.

Taking into account the existing difficulty to conduct field research on this issue in Ethiopia, the thesis is confined to examining the normative frameworks in Ethiopia in protecting children between 15 and 18. The status of these children as victims or perpetrators in the eyes of Ethiopian laws will also be considered in line with international law.

### **1.3 Research Questions**

As the topic of this thesis is "The Protection of Child Soldiers and their Criminal Responsibility under Ethiopian Law" the following issues on the legal regime will be raised and resolved as much as possible.

1. What are the normative frameworks devised to protect child soldiers in Ethiopia?
2. Are child soldiers victims or criminals under the criminal law of Ethiopia?
3. Do Ethiopian laws treat child soldiers on equal footing with other juvenile offenders for their responsibility?

### **1.4 Objectives of the Study**

The study has general and specific objectives.

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<sup>20</sup> *The Revised Family Code, Proclamation No. 213/2000, Federal Negarit Gazeta, 6' year Extra Ordinary Issue No, I, Art 215*

<sup>21</sup> *Supra note 13, p. 91*

### **1.4.1 General objective**

The general aim of the study is to examine whether laws in Ethiopia are in place to protect children from recruitment and participation in armed conflicts. The paper also aspires to learn whether child soldiers are treated as criminals or victims under the law.

### **1.4.2 Specific objective**

The thesis has the following specific objectives;

- To study the scope of legal protection in Ethiopia vis-à-vis international instruments
- to examine whether Ethiopia's criminal law treats child soldiers like ordinary juvenile delinquents

## **1.5 Research Methodology**

A qualitative approach to research with a method of legal analysis is found to be the appropriate method to attain the research objectives and address the research questions. The researcher consulted both primary and secondary sources.

### **1.5.1 Primary Source of Data**

Both domestic and international laws dealing with the protection of child soldiers and their criminal responsibility were critically examined. Domestic laws were examined regarding the required standards of international human rights and humanitarian laws to which Ethiopia adheres.

### **1.5.2 Secondary Sources of Data**

To critically evaluate the laws in Ethiopia, interview with key informants in the research area was conducted. Accordingly, officials from the Ministry of Defence (MOD), house of people representative (HPR), and Ethiopian Human Rights Commission (EHRC) were contacted for interview. Books, journals, published and unpublished materials and reports of various organs were also consulted.

## **1.6 Review of Literatures**

In the experience of other countries, different authors have made certain reflections as to the protection of child soldiers and their criminal responsibility. However, most of these articles and publications mainly focus on the situations in their or other countries' perspectives with complete differences in experiencing the Problem of child soldiering as compared with our country.

We may consider some examples of the article written by Begley, ‘the extraterritorial obligation to prevent the use of child soldiers’<sup>22</sup> who based his arguments on the perspective of the obligation of third countries in preventing child soldiering. According to Begley, Article 7 of the optional protocol imposes an obligation of cooperation among states in the protection of child soldiers and this indicates the fact that the issue of child soldiering imposes an extra-territorial obligation.<sup>23</sup> However, this can be taken as a weak argument since he doesn’t support his finding with sufficient legal grounds to convince his readers how such moral obligation, which has been provided in different international instruments, imposes a legal obligation on other states. Others try to address the issue only from the specific country's perspective. We may refer to some of the publications made by the international labour office, ‘Wounded Childhood: The Use of Children in Armed Conflict in Central Africa’.<sup>24</sup> The publication is prepared to study the situation of former child soldiers in countries of West Africa and recommends the need for comprehensive prevention and rehabilitation programs for former child combatants.

The Office of the Special Representative of the Secretary-General for Children and Armed Conflict also published certain documents contextualizing different international human rights instruments and their applicability in line with the issue of child soldiering. We have publications like ‘The Six Grave Violations against Children during Armed Conflict: The Legal Foundation’ (2013); ‘Children and Justice During and in the Aftermath of Armed Conflict’ (2011). In the first publication, the special representative provides the recruitment and involvement of children below 15 and 18 years of age is a violation of IHL and IHRL respectively. The latter is about the protection of child soldiers by different international norms and the criminal responsibility of both the recruiters and child soldiers at the international and regional levels. However, though these instruments are essential in contextualizing the various documents in responding to the needs for the protection of child soldiers, no specific attention is given to the situation in Ethiopia in the documents.

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<sup>22</sup> Tracey B. C. Begley, ‘the extraterritorial obligation to prevent the use of child soldiers’ (2012) 27 *AM. U. INT’L L. REV* 613, 629

<sup>23</sup> *Ibid*, at 631

<sup>24</sup> *International Labour Office, Wounded Childhood: The Use of Children in Armed Conflict in Central Africa’* (2003) 92-2-113700, 7

Others also try to address the issue only from the specific situation of child soldiering, and their criminal responsibility. We may here take two articles written by Chen Reis<sup>25</sup> and Maria Teresa Dutli<sup>26</sup> who based their arguments on the assumption that international norms have provided 15 years as a permitted age for conscription and participation of children in armed conflict so that only children above this age should be prosecuted. Unlike Reis, Dulti explained the possibilities for the prosecution of children below 15 under domestic courts for their mere participation in hostilities due to the absence of POW status in NIAC.

In the domestic sphere, we rarely find articles dealing with the protection of child soldiers and their criminal responsibility. There is an LLM thesis conducted by Abreha Mesele Zinabu<sup>27</sup> at Addis Ababa University in 2014. Zinabu's thesis has focused on ICC's jurisdiction over child soldiers. The jurisdiction of domestic courts, especially Ethiopian courts, and the protection of child soldiers were not within the scope of his study. Concerning the criminal responsibility of child soldiers, there is no domestic literature. Some researches and journal articles dealing with juvenile offenders are available.<sup>28</sup> However, they mention nothing about the applicability of such laws on children associated with hostilities or armed conflicts.

Therefore, the issue of the protection of child soldiers and their criminal responsibility under Ethiopian law has not been studied in Ethiopia. The reason for such a literature gap is without doubt the absence of such phenomenon in Ethiopia in the past. The researcher is of an opinion that this work and the current reality on the ground in Ethiopia will attract different future researchers. Therefore, the paper will fill the informational gaps that exist on the issue at hand and it may serve as an input in future works.

It is also the main task of this paper to refer to the contents and the spirits of the provisions of the different International and regional instruments like the CRC, OPCRC, WFCLC, ACRWC, and other relevant instruments in addressing the issue of the extent to which they

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<sup>25</sup> Chen Reis, 'Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict' (1997) 28 *Colum Hum Rts L Rev* 629.

<sup>26</sup> Maria Teresa Dutli, 'Captured Child Combatants' [1990] *Int'l Rev Red Cross* 287, 421

<sup>27</sup> Abreha Mesele Zinabu, 'Jurisdiction of the International Criminal Court on Child Soldiers: Promoting Impunity?' (2014) LLM thesis, Addis Ababa University

<sup>28</sup> Tesfamariam Berhe, 'the treatment of young offenders in Ethiopian legal system: law and practice in regional state of Tigray' (2013) LLB thesis, Jimma University; Yodit Girma, 'Ethiopian Criminal Justice Policy Analysis: focus of Juvenile Offenders' (2015) MA Thesis in Social work.

recognize the need to protect child soldiers and if there is an indication on their criminal responsibility in these documents. With the same objective, the national legal frameworks including the FDRE Constitution, the criminal code, and other laws of the country will be the principal ingredients in the work of this paper.

### **1.7 Significance of the Study**

As the first legal research on issues of child soldiers in Ethiopia, this research will be of great importance for law and policymakers to enact new legislation or modify the existing one to ensure better protection of children. It will also benefit other future researchers as a source for further in-depth investigation.

### **1.8 Demarcation of the Thesis**

On account of the security situation of Ethiopia to conduct field research on child soldiering, the researcher opted to limit the scope of the thesis to the evaluation of the normative frameworks protecting child soldiers. Concerning the investigation of the criminal liability of child soldiers under Ethiopian law, this thesis gives due emphasis to children between 15-18 years of age.

### **1.9 Limitation of the Thesis**

The absence of previous domestic research in this area has challenged the researcher in the first place. The absence of domestic case laws and lack of willingness by different officials for the interview were the other challenges.

### **1.10 Structure of the Thesis**

The paper has four chapters. The first chapter is the proposal of the thesis. It consists of the background of the study, statement of the problem, the objective, research questions, and methodology. Chapter two highlights a general overview of theoretical and international legal frameworks governing child soldiering. Chapter three discusses the protection of child soldiers and their criminal responsibility under Ethiopian laws. Chapter four summarizes the findings of the study and forwards recommendations for different concerned organs on the measures to be improved.

## Chapter Two

### Protection of Child Soldiers and their Criminal Responsibility under International Law

#### 2.1 Theoretical Perspectives on Child Soldiering

Various researches have been done on the issue of child soldiering from different theoretical perspectives. These researches rest their findings mainly on the maturity or otherwise of child soldiers from which, other subsidiary theoretical arguments stem. For instance; Universalist scholars portray the immaturity of child soldiers due to their age and related mental development to be voluntarily recruited and wilfully commit crimes during their participation in armed conflict. They support their argument with findings of developmental psychology. On the other hand, scholars from the relativist camp emphasize the maturity of child soldiers as shaped by culture and societal expectations that are manifested in their joining of armed groups and defending their country or ethnicity. This claim is based on a structural model of childhood backed by field findings of social Anthropologists. Below is a detailed explanation of the theoretical debates.

##### I. Chronological Age V. Social and Cultural construction

The disagreement on the question of who is a child is one of the reasons that obstruct the global attempt to fight child soldiering. Once an agreement is reached on the definition of a child, it would be easy to deal with the problem of child soldiering, at least normatively, since the whole process of the normative protection rests on the category of person and the nature of participation or recruitment.

Universalists employ a fixed age in their definition of a child in general and child soldiers in particular. Any person below 18 years of age, as per their argument, is a child, and the line up to 18 is a period of childhood manifested by irrationality and innocence.<sup>29</sup> Scientific studies conducted on the development of brain functioning also indicate that though human brain develops through a different stage, such developmental process may not be fully mature until the mid-20s.<sup>30</sup> Furthermore, as part of the brain that regulates decision-making, planning,

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<sup>29</sup> Alice Schmidt, 'Volunteer Child Soldiers as Reality: A development issue for Africa' (2007) 2 *New School ER* 49, 57

<sup>30</sup>The MIT Young Adult Development Project, available at <http://hrweb.mit.edu/worklife/youngadult/index.html/>  
Retrieved on May 14, 2022

judgment and impulse control may remain immature until this age<sup>31</sup>, major decisions that children make in this stage lack critical evaluation of potential risks.<sup>32</sup> It is based on these findings that the Universalists' claim for the mental incapacity of children below 18 to make a risky decision; joining armed forces or groups.

Universalists also claim that the end of 18 years of age marks the commencement of the period of adulthood.<sup>33</sup> In their well-documented field research about 'the role of children in armed conflict', Goodwin-Gill and Cohn Ilene recap this position by underlining that, children should not die in armed conflicts that are results of political decision over which they haven't consented and have no influence.<sup>34</sup> They further argue that the impediment of the pronouncement of the death penalty on these children as provided in IHL, IHRL, and domestic laws of most states indicates that they are psychologically immature to understand the consequences of their action.<sup>35</sup> Singer also forward two interesting arguments why countries should use 18 years for prohibiting recruitment and participation. These are the endorsement of the CRC and implied acceptance of the definition thereof by the majority of UN members and the incorporation of this age in most states' domestic laws as the commencement of majority in the eyes of the law, especially in election laws.<sup>36</sup> Humanitarian Organizations (hereunder HROs) working on children also advocate this claim. Its influence has also been revealed in international human rights instruments as evidenced by the definition of the CRC, OPCRC, ACRWC, and WFCLC.

A definition of child soldiers, though it has been more than four decades since the issue started to be regulated, is not provided in any of the binding international instruments. Two major international conferences; which were held in Cape Town in 1997, focused on the demobilization and social reintegration of child soldiers in Africa; and in Paris in 2007 with the support of the United Nations Children's Fund (UNICEF) have provided detailed

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<sup>31</sup> Jay N. Giedd et al., 'Brain Development during Childhood and Adolescence: A Longitudinal MRI Study' (1999) 2 *Nature Neuroscience* 861

<sup>32</sup> Neir Eshel et al., 'Neural Substrates of Choice Selection in Adults and Adolescents' (2007) 45 *Neuropsychologia* 1270, 1277

<sup>33</sup> *Supra* note 11, at 134

<sup>34</sup> Cohn, Ilene and Guy Goodwin-Gill, *Child Soldiers: The Role of Children in Armed Conflict* (Clarendon 1994) 8

<sup>35</sup> *Ibid*, at 9

<sup>36</sup> Singer, *Children at war* (Pantheon, New York 2005)7

definitions of child soldiers, though not binding. The Cape Town Principle defines a child soldier as:

*“any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members;” and explicitly including girls recruited for sexual purposes and forced marriage; and affirming that the definition “does not, therefore, only refer to a child who is carrying or has carried arms”*<sup>37</sup>

On the other hand, the Paris Principle came up with a robust definition.<sup>38</sup> It uses the term ‘children associated with armed forces or armed groups’ instead of the paradoxical term ‘child soldiers’. Children associated with armed forces or armed groups means;

*“any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.”*<sup>39</sup>

These two definitions inclined toward the increment to 18 in the ban of the involvement of children in armed conflict as propagated by the Universalist model of childhood.

For Cultural Relativists defining a child based on a chronological age is meaningless as age classes such as “child,” “youth,” and “adult” are dependent on cultural conditions and circumstances.<sup>40</sup> For instance; Boyden illustrates that despite the accustomed use of chronological age as a requirement in schools and workplaces, such requirement is of little, if no, importance to determine social categories and it is no surprise that in many societies people do not celebrate their birth date and are not even aware of their age.<sup>41</sup> Honwana also tells us that childhood and adulthood can’t be drawn by age in isolation of social and cultural

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<sup>37</sup> *Supra note 7*

<sup>38</sup> Mark A. Drumbl, *Reimagining Child Soldiers in International Law and Policy* (Oxford University Press 2012)13

<sup>39</sup> *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, available at; [www.child\\_soldiers.org/child\\_soldiers/Paris\\_Principles,March\\_2007pdf/](http://www.child_soldiers.org/child_soldiers/Paris_Principles,March_2007pdf/). (Paris Principles)

<sup>40</sup> *Supra note 11, at 132*

<sup>41</sup> Jo Boyden, ‘Children, War and World Disorder in the 21st Century: A Review of the Theories and the Literature on Children’s Contributions to Armed Violence’ (2006) *QEH* 138

contexts.<sup>42</sup> Hence, maturity for relativists is determined by the person's active involvement in his culture and household activities, such as marriage and defending his society.<sup>43</sup> If he performs these activities that are deemed to be adults' role in the society, he will be conferred with the title of an adult, that is period of maturity disregarding his age.

## II. Voluntary v. Forced Recruitment

Due to the immaturity of their mental development associated with their age, the conditions of children's recruitment by armed groups and forces are primarily described by HROs and some scholars as 'forced'.<sup>44</sup> Though they don't deny the possibility that children may volunteer, Universalists, however, doubt the true sense of such volunteerism as they are cautious about the fact that other family and societal factor coupled with the ideological and peer pressure may influence their decision.

For Anthropologists, children are active agents in the society and thereby make a free choice in a matter that affect them equal to adults.<sup>45</sup> Research also shows that children exercise tactical agency, as derived from Honwana, to make best out of a bad situation in the sense that if they think that a bad is going to happen on them unless they join armed forces or groups, they use their rational ability to decide.<sup>46</sup> Honwana, for instance, provides ex-child combatants' motivation from Mozambique and Angola to join armed conflict as arising out of the sense of security of possessing a gun and being able to defend oneself and avenge the deaths of relatives.<sup>47</sup> The report of Human Rights Watch also tells us that though the majority of children during in the Liberian war were forcefully recruited, some interviewed children said that they joined voluntarily 'to protect their family, to get food for themselves and others as well as political motives, such as to liberate their people or to fight for my country'.<sup>48</sup>

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<sup>42</sup> Honwana A, *'Child soldiers in Africa'* (University of Pennsylvania Press, Philadelphia 2006) 40

<sup>43</sup> *Ibid*, at 59

<sup>44</sup> Enarda Cuni and Juelda Lamce, *'the Right to Protect Children under International Law: The Case of Child Soldiers'* (2013) 2 *AJ. IDS* 672

<sup>45</sup> *Supra* note 38, at 46

<sup>46</sup> Marci R. Macomber, *'Child Soldiers: Rhetoric and Realities An examination of human rights organisational discourse on the issue of 'agency' and its implications on the best interests of the child'* (2011) MA thesis, School of Global Studies, University of Gothenburg, p. 30

<sup>47</sup> *Supra* note 42, at 129

<sup>48</sup> Human Rights Watch, *'Easy Prey: Child Soldiers in Liberia'* (2004) Human Rights Watch: New York, 26

### III. Passive Victims v. Active Agents

Child soldiers are usually portrayed as vulnerable victims and their agency in conflict has never been considered since it has been provided that their mental capacity is not matured enough to enable them to consent to participate in armed conflict.<sup>49</sup> Children's lack of maturity to consent to participating in armed conflict was reaffirmed by the ICC during the trial of Lubanga where the court ruled that recruitment involves both voluntary and forced enrolment of children below 15 as these children lack the intellectual capacity to give genuine consent.<sup>50</sup> As a result of their immaturity to understand the risk and consequence of their action or decision coupled with the use of drugs, child soldiers can't be criminally responsible.<sup>51</sup> This discourse of depicting child soldiers primarily as victims has changed the perception of the international community and shaped treaties, protocols, and rules that serve as the normative infrastructure for the protection of children in armed conflict.<sup>52</sup>

Scholars from the field of Anthropology raise different criticisms on this position. First, as it's a blind assumption that doesn't consider the root cause of their involvement and their agency, it may bring no durable solution.<sup>53</sup> A detailed explanation of how child soldiers cope with a terrifying situation on the battlefield is provided by Honwana in her research book 'Child Soldiers in Africa'. According to her findings, child soldiers exercise an agency that is the power of adaptability to the situation that put them at risk. She called this agency a tactical agency that is an agency of the weaker. Shreds of evidence that child soldiers exercise agency are; they deceive their superior with false information about the place of birth; they pretended to be stupid to avoid being deployed on a dangerous mission.<sup>54</sup> Hence, she argues that child soldiers are both victims and perpetrators of crimes during their stay with armed forces or groups.<sup>55</sup> Vaele's finding also indicates that the former TPLF's women child combatant disproved the victim narrative as they constructed themselves as having been

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<sup>49</sup> *Supra* note 11

<sup>50</sup> *Prosecutor v. Thomas Lubanga Dyilo, Judgment, ICC-01/04-01/06 (Trial Chamber I), 14 March 2012, 282, Para 618*

<sup>51</sup> Kabano, 'The criminal responsibility of child soldier under international criminal law, Case study: Northern Uganda and Democratic Republic of Congo (DRC)' (2017) 2 *E-JL* 21

<sup>52</sup> *Supra* note 13, at 89

<sup>53</sup> Gibbs, Sarah, 'Post-War Reconstruction in Mozambique: Reframing Children's Experience of War and Healing Disasters' (1994) 18 *Disaster* 268, 288

<sup>54</sup> *Supra* note 42, at 69

<sup>55</sup> *Ibid*

empowered by their experiences as soldiers, not as victims.<sup>56</sup> Utas also explain how ex-combatants in Liberia proudly spoke of the skills and experiences they found in the war and used the same in their civil life where they conduct business and use their war network as brokers.<sup>57</sup>

Some scholars also went further to study how the 'victim narrative' propagated by HROs would harm these children. Drumbl for instance argues that though considering child soldiers as victims and thereby excluding the reach of criminal laws is important, caution must also be taken that the rationales for doing so may be overemphasized.<sup>58</sup> Boyden also reinstates Drumbl's argument in his claim that such tendency would undermine children's resilience and weaken their coping capabilities, and also affects their potential reintegration into society since it generates a representation of children as 'helpless victims' or 'weapons of wars'.<sup>59</sup> They are watertight arguments as wholesome labelling of victimcy, a concept developed by Utas<sup>60</sup> harms child soldiers as they may hide their agency and emphasizing their victimcy to get the support of HROs. This tactic of presenting themselves as victims for the sake of finding the most accessible humanitarian support is what Utas calls a 'Victimcy agency'.<sup>61</sup>

By way of conclusion, the arguments presented from both sides are influential in shaping the outcome of any protection to be given to child soldiers depending on the type of theoretical perspective that a state incorporates into its laws. It is however evident from their argument that it is quite difficult to stick to one single theory of child soldiering as each of them has its strength and shortcomings. For instance; reflecting a Universalist perspective by ignoring the Anthropologists' assertion on child soldiering would have a negative consequence in the long run. For one thing, negating the capacity of child soldiers to decide to join armed groups will undermine their rehabilitating opportunity as their real cause for their recruitment will be hidden so that they may be re-recruited. The other is that if a law takes a blind assumption

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<sup>56</sup> Angela Veale, 'From Child Soldier to Ex-Fighter, a Political Journey: Female Fighters, Demobilisation, and Reintegration in Ethiopia' (2003) 85 *Institute for Security Studies* 64

<sup>57</sup> Utas, M, 'West-African Warscapes: Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman's Social Navigation of the Liberian War Zone' (2005) 2 *Anthropological Quarterly* 403, 407

<sup>58</sup> *Supra* note 38, at 30

<sup>59</sup> Joe Boyden, 'Children under Fire: Challenging Assumptions about Children's Resilience' (2003) 13 *Children Youth and Environments* 16

<sup>60</sup> *Supra* note 57

<sup>61</sup> *Ibid*, at 409

that all children are forcefully recruited and coerced to commit crimes, there flourish an atmosphere of impunity and put the existence of criminal law into a question mark.

By the same token, an outright disregarding of a Universalist's assertion supported by scientific studies of children's mental development is problematic as well. The level of mental development of children makes them vulnerable to different abuses and violations of their rights by adults. One of these abuses is their recruitment by armed forces and groups by ideological, societal, and peer influence. More importantly, we shouldn't forget the reason why there needs the issuing of a separate children's convention. Whatever the type of culture or society they are living in, they may not understand the consequence of participating in armed conflict. Hence, the best solution as per the view of the researcher is to deal with these children on case by case taking into account the level of their maturity, society, and culture the pre and post-conflict situation of their environment, and their character.

## **2.2 International Legal Frameworks Regulating Child Soldiering**

The proliferation of children's involvement in armed conflicts, mostly in civil wars has resulted in the promulgation of normative standards governing this issue. These norms have been incorporated in IHL, IHRL, and ICL, and some of them have got a customary law status.

### **2.2.1 International Humanitarian law**

IHL doesn't define a child other than providing two categories of children; below 15 for armed conflict and below 18 for criminal punishment. Neither does it define child soldiers other than demarcating the category of age and the mode of participation it prohibits from recruitment and participation. Though the fourth Geneva Convention tries to mention children in some of its provisions, its intention was not to accord them a special protection. It is with the coming into force of the two APs in 1977 that IHL started to regulate the recruitment and involvement of children in armed conflicts. These two protocols also expand the jurisdiction of IHL as AP II was made to regulate NIAC, including child soldiering.

### **Additional Protocols to the Four Geneva Conventions**

The issue of child soldiering was first regulated by the two protocols to the four Geneva Conventions though the scope of protection varies based on the nature of prohibited

participation and the legal phraseology used to provide obligation of states and armed groups. For instance; the obligation of parties to the IAC has been provided as follows;

*“The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest”.*<sup>62</sup>

In the case of NIAC, though the adverse party fighting with government has no legalized combatant status, obligation of both parties for the sake of protecting children is provided as follows;

*“Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”.*<sup>63</sup>

Though both protocols impose restrictions on the participation in hostilities of persons under the age of fifteen years, the imposition by AP II is very brief and stricter. There is a clear departure from AP I in two respects. The first is that the obligation imposed on armed forces or groups is absolute. Rather than using the vague phrase 'feasibility', it provides for obligatory language. Unlike the obligation under AP I, it is an obligation of result, not of means.<sup>64</sup> The second departure of this protocol is the scope of the obligation imposed on parties to the conflict. Parties may not be relieved from their obligation by ensuring that they don't recruit children below 15 years of age and by preventing the direct participation of such children in conflict like the AP I. They rather are obliged to protect children from any kind of participation in armed conflict without differentiating the mode of their participation.

Prohibiting only direct participation seems advantageous for children who incidentally come in contact with armed forces or groups. However, in some situations where the difficulty arises to identify the direct/indirect dilemma, children will be the object of attack by an adverse party. This is a case where children transport munitions up to the front line, serve as

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<sup>62</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3, (hereunder AP I) Art. 77(2)*

<sup>63</sup> *Supra note 2, Art. 4 (3), (c)*

<sup>64</sup> *Matthew Happold, 'Child soldiers in international law: the legal regulation of children's participation in hostilities' [2000] NI. LR 39*

spies, and perform other equally risky activities.<sup>65</sup> The ICC also ruled in its Decision on the Confirmation of Charges against Lubanga during the pre-trial stage that scouting, spying, sabotage, or the use of children at checkpoints, as couriers, bodyguards for commanders, or guards of military objects though aren't directly linked to combat<sup>66</sup>, since they are not unrelated to the hostilities, they fall under the category of active participation.<sup>67</sup>

The jurisprudence of the Special Court for Sierra Leone (SCSL) in this issue is also crucial. In its judgment against the former president of Liberia, Charles Taylor, the court ruled that assigning children to guard mines amounts to participation in armed conflict as such mining areas were at risk of being attacked by the adverse party that in turn put children in direct danger of hostilities.<sup>68</sup> To identify the nature of children's participation, the ICC employs the so-called 'exposure test' in the sense that if the indirect participation of children has the potential of exposing them to military attack, it is then categorized as active participation.<sup>69</sup> Hence, the issue of whether the participation of children in armed conflict is active or ancillary is to be determined on a case-by-case basis.

The protocols also extend their protection to those children below 15 and captured by the adverse party while directly participating in armed conflicts. A child below 15 who is captured during an IAC is entitled to careful protection and has the right to stay in a separate section, and the death penalty shouldn't be executed on him.<sup>70</sup> Concerning NIAC, captured children below 15 are entitled to the care and dignity, religious and moral education, and reunion with their families.<sup>71</sup>

Prohibition on the recruitment and direct participation of children below 15 years of age is a customary international humanitarian law. Under Rule 136 it has been provided that even though some states advocate for straight 18 and apply it in their domestic jurisdiction, since it is the common practice of the state that makes a certain law a customary law and due to the

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<sup>65</sup> *Ibid*, at 36

<sup>66</sup> *Prosecutor v. Thomas Lubanga Dyilo, Decision on the Confirmation of Charges* (29 January 2007) ICC01/04-01/06, 90-91, Para. 261-263

<sup>67</sup> *Ibid*, Para. 262

<sup>68</sup> *Prosecutor v. Charles Taylor, Judgment* (18 May 2012) SCSL-03-01-T, 517, Para. 1459

<sup>69</sup> *Supra* note 50, 399, Para. 915.

<sup>70</sup> *Supra* note 62, Art. 77 (3)

<sup>71</sup> *Supra* note 2, Art. 4 (3), (D)

absence of common practice among states, 15 years was provided as a benchmark to prohibit the recruitment of children in both IAC and NIAC.<sup>72</sup>

IHL doesn't expressly provide for the criminal responsibility of child soldiers other than prohibiting their recruitment and involvement. Though the two protocols prohibit the execution of the death penalty on children below 18 at the time of the commission of the crime<sup>73</sup>, it isn't clear whether a penalty other than death may be imposed on child soldiers. Such provisions may also be interpreted along with the provisions prohibiting recruitment and participation of children below 15 as allowing the prosecution and execution of criminal punishments other than the death penalty on children above 15.

### **2.2.2 Child soldiering under International Human Rights Laws**

A definition of a child is provided for the first time in international human rights instruments, though their definition concerning their participation in armed conflict is still missing.

#### **A. Convention on the Rights of the Child (CRC) and its Optional Protocol on the Involvement of children in Armed Conflict (OPCRC)**

A single and comprehensive instrument dealing with the rights of children came into force in September 1990. As provided in section one of this chapter, CRC is shaped more or less by the Universalist approach to childhood. As per Article 1, a child is "every human being below the age of eighteen years unless, under the law applicable to the child, a majority is attained earlier".<sup>74</sup> However, rather than adhering to such a standard definition, CRC creates an anomaly by creating a room where a child of 15 years of age becomes a soldiers. It provides that;

*"States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities".<sup>75</sup>*

As a guardian of children around the globe, the convention was expected to incorporate robust protective provisions. However, it fails to be a protector of children from the effect of

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<sup>72</sup>Henckaerts and Beck, *Customary International Humanitarian Law (Volume 1, Cambridge University Press 2005)* 482

<sup>73</sup> Art. 77 (5) of AP I and Art 6(4) of AP II

<sup>74</sup> *Convention on the Rights of the Child, adopted on 20 November 1989, entered into force on 2 September 1990 (hereunder CRC) Art. 1*

<sup>75</sup> CRC, Art. 38 (2)

armed conflict by creating a double standard. It even lags behind the innovative protection introduced by AP II by using soft obligatory languages and covering only the direct participation of such children. It only retains the provisions of Article 77 of AP I rather than introducing new protective elements as a human rights instrument. Hence; the previously mentioned shortcomings of the protocol are applicable *mutatis mutandis* to the CRC.<sup>76</sup>

However, these shortcomings wouldn't negate its vitality in guaranteeing children's protection. As a human rights instrument, it provides a twofold obligation on member states as far as the protection of child soldiers is concerned. Not only are states expected to refrain from recruiting and participating children below 15 in their armed force, but as the primary duty bearer, they are also duty-bound to protect children from the act of non-state armed groups. Hence, unlike IHL, IHRL obliges states to regulate the activities of armed groups. Interestingly, the CRC has rectified its shortcomings and improved the protection of child soldiers via the adoption of its Optional Protocol on the Involvement of Children in Armed Conflict (hereunder OPCRC), which increased the scope of protection.

Article 1 of the protocol provides that;

*“States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”.*<sup>77</sup>

Inferred from this provision is that the central problem that appeared in the CRC's prohibitive provision, allowing a 15 years child to participate in armed conflict, has been solved by the protocol. However, this provision as well is not without defects. Its first surprising weakness is its lack of mentioning the word 'child' in its provisions taking into accounts its objective of strengthening the protection of children provided by the CRC. Similar to that of the CRC and AP I of the GCs, this protocol impose an obligation of conduct<sup>78</sup> with a weak language of feasibility requirements. The obligation of taking feasible measures is open-ended in the sense that it is difficult to identify its scope, and that states may declare that they had taken all

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<sup>76</sup> *The soft nature of the phrase feasible measure and the absence of protection for indirect participation are some of the shortcomings that can be used here.*

<sup>77</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children into Armed Conflict, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 12 February 2002 (hereunder OPCRC) Art. 1*

<sup>78</sup> *Helle Daniel, 'Optional Protocol on the Involvement of Children in Armed Conflicts to the Convention on the Rights of the Child' [2000] I'L Review of the RC 801*

feasible measures while they hadn't. It would be better if it uses other obligatory phrases such as; necessary measures, must ensure that, and similar phrases.<sup>79</sup> Prohibiting only direct participation is the other weakness that the protocol shares with the CRC and AP I of the GCs.

The other advanced protection the protocol introduced is the prohibition of forced recruitment of children below 18 by armed forces, and any kind of recruitment whatsoever by armed groups. In other words, while it allows states to recruit children below 18 so long as it is voluntary, it totally banned armed groups from recruiting children below 18 and using them in armed conflict.<sup>80</sup> However, as the primary obligations in relation to human rights fall on states, such prohibition on armed groups entails an additional obligation on states to make sure that armed groups in their territory don't recruit and use children below 18.<sup>81</sup> In addition, the age of voluntary recruitment of children provided in the CRC, which is 15 years, is made to be 16 and above as the protocol emphasizes that this age is too low and children below 18 need special protection.<sup>82</sup> It also went farther in obliging states to deposit the minimum age they demarcate, at least greater than 15, for accepting voluntary recruits in their military, and measures of safeguards provided in the protocol to make sure that the recruitment is voluntary.<sup>83</sup> However, the conditions imposed by the protocol for voluntary recruitment are vague and with less possibility of being respected by states. For one thing, economically disadvantaged parents may simply send their children for a promise of reward; the other is that in states such as Africa where there are big governments, the fulfilment or otherwise of these conditions is questionable. In addition, the proof of age requirement needs a custom of birth registration to ascertain the age of the child. However, in most developing countries including Ethiopia, people rarely register events of birth.<sup>84</sup>

Both the convention and the protocol provide for the obligation of member states to take general measures of protection. One of such measures is explicitly criminalizing child soldiering via domestic laws and disseminating the provisions of the convention and its

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<sup>79</sup> *Ibid*

<sup>80</sup> *OPCRC, Art. 2 and 4 (1)*

<sup>81</sup> *Ibid, Art. 4 (2)*

<sup>82</sup> *Ibid, Art. 3 (1)*

<sup>83</sup> *Ibid, Art. 3 (2)*

<sup>84</sup> *See for instance CCRC, Consideration of Reports Submitted by States Parties under Art.44 of the Convention, Concluding Observations: Ethiopia (2015) 69<sup>th</sup> Session, CRC/C/ETH/CO/4-5, Geneva, Para 33*

protocol.<sup>85</sup> The Committee on the CRC (hereunder CCRC) has been issuing different concluding observations on the implementation of the OPCRC. Express prohibition and criminalization of the use of children under 18 years of age in hostilities by armed groups and private military and security companies and the dissemination of the protocol in local languages are some of the recommendations that it forwarded to member states to the OPCRC.<sup>86</sup>

Neither the convention nor the protocol however expressly provides for the criminal responsibility of child soldiers. Notably, the protocol, which specifically deals with the protection of children from armed conflict, remains silent with regard to their responsibility for the crime they commit during their participation. There is also an indication that the protocol considers child soldiers as victims who need treatment for their physical and psychological recovery and social reintegration rather than legal accountability (emphasis added).<sup>87</sup> However, the possibilities for criminalizing children for their criminal acts have been incorporated in different provisions of the CRC with however no reference to child soldiers.<sup>88</sup> In addition, the criminal liability of any child under international law hasn't been regulated by the CRC as it doesn't provide MACR both for international and domestic crimes. The discretion to decide on such age has been left to member states<sup>89</sup> with however a recommendation that such age mustn't be too low.<sup>90</sup> For that matter, the CCRC announced that it considers MACR below the age of 12 years as against international standards and recommends states adhere to this minimum standard and continue to increase it to a higher age level.<sup>91</sup>

However, most provisions dealing with the prosecution of a child sound that CRC favours the rehabilitation of a child than formal institutional care, or prison. The CCRC also affirms this

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<sup>85</sup> See Art. 4 and 42 of the CRC and Art. 4 (2) and 6 of the OPCRC

<sup>86</sup> See for instance CCRC, *Consideration of Reports Submitted by States Parties under article 8, paragraph 1, of the OPCRC, concluding observation, United States of America (2017) 75<sup>th</sup> session, CRC/C/OPAC/USA/CO/3-4, Para. 13 and 27*

<sup>87</sup> OPCRC, Art. 6 (3)

<sup>88</sup> CRC, Article 37, 39 and 40

<sup>89</sup> *Ibid*, Art. 40 (3) (a)

<sup>90</sup> See rule 4 of *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")* (1985) G.A. Res. 40/33, U.N. Doc A/RES/40/33

<sup>91</sup> CCRC, *General Comment No. 10, 'Children's rights in juvenile justice' (2007) 44<sup>th</sup> session, CRC/C/GC/10, Para 32- 33*

position by providing states with the possibility of dealing with children in conflict with the law by applying two types of diversion mechanisms; diversion without resorting to the judicial mechanism and in the course of judicial mechanism.<sup>92</sup> Article 40 (4) clearly obliged the state to provide care, guidance, and supervision orders; counselling; probation; education and vocational training programs, and other alternatives to institutional care to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense.<sup>93</sup> Article 39 clearly obliged member states to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse<sup>94</sup> including child soldiers since they are victims of the situation whether they voluntarily joined or were coerced (emphasis added). The CCRC also provides that to prevent further stigmatization of punishment on children, behaviours, such as vagrancy and runaways should be dealt with protective measures, including support for families, and measures that address the root cause of this behaviour.<sup>95</sup> As the aim of any criminal law is shaping the behaviour of an individual, though the committee doesn't mention participation in armed conflict, this provision can be analogically taken to remind states that child soldiers should be dealt with other protective measures, such as education and family care, and the root cause for their participation must be addressed rather than punishment.

### **B. African Charter on the Rights and Welfare of the Child**

It can be said that it is the only regional human rights instrument that provides better protection for child soldiers. Unlike the CRC, it doesn't provide an exception to the straight 18 in the definition of a child.<sup>96</sup> Concerning child soldiers, it provides that;

*“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”.*<sup>97</sup>

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<sup>92</sup> *Ibid*, Para 24-29

<sup>93</sup> *CRC, Art. 40 (4) and (3) (b)*

<sup>94</sup> *CRC, Art. 39*

<sup>95</sup> *Supra note 86, Para. 9*

<sup>96</sup> *African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa, Ethiopia, on 11 July 1990, entered into force on 29 November 1999 (hereunder ACRWC) Article 2*

<sup>97</sup> *Article 22 (2)*

The phrase 'necessary measure' was a missing one in the provisions of the CRC and AP I dealing with child soldiers. Unlike the vague requirement of feasible measures, what necessary measures may state take to prevent the recruitment and involvement of children in hostilities is capable of being easily identified. The innovative provision of the charter is Article 22 (3) which interestingly extends the obligation of member states to provide protection and care for children affected by armed conflict to situations of tension and strife.<sup>98</sup> The immediate registration of birth of a child as provided under Article 6 (2) of the convention is also vital in strengthening the protection of children as they are protected based on evidence of their age, and birth certificate.

The charter incorporates a provision for the administration of juvenile offenders that impliedly includes child soldiers. The protective elements of the charter concerning the prosecution of a child are less protective than the CRC. It only provides for the procedural due process of law and fairness during the trial process, and also the child's reformation, reintegration into his or her family, and social rehabilitation should be the essential aim of his treatment both during the trial and detention.<sup>99</sup> Like the CRC, it doesn't specify MACR as it has been given to the discretion of each state concerned.<sup>100</sup> However, the committee of experts to the ACRWC regularly recommends state parties not to set MACR less than 12 as children below such age are less likely to have a moral component of a crime.<sup>101</sup> In addition, the death penalty may not be pronounced on children as defined in the convention.

### **C. ILO's Worst Forms of Child Labour Convention (182)**

Among the rationales behind the adoption of this convention is the need to take immediate and comprehensive action by member states so that children involved in such kinds of labour be removed and given rehabilitative and integrative support.<sup>102</sup> The convention defines a child as anyone below 18 years.<sup>103</sup> It also categorizes the forced recruitment of those below

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<sup>98</sup> Art. 22 (3)

<sup>99</sup> Art. 17 (3)

<sup>100</sup> Art. 17 (4)

<sup>101</sup> *African Committee of Experts on the Rights and Welfare of the Child, concluding observation, South Africa, (2019) Para. 35*

<sup>102</sup> *Worst Form of Child Labour Convention No. 182, Adopted on 17 June 1999 by the General Conference of the International Labour Organisation at its 87<sup>th</sup> session and was entered into Force on 19 December 2000 (hereunder WFCLC) See paragraph three of the preamble*

<sup>103</sup> *Ibid, Art. 2*

18 years for using them in armed conflict as an act of slavery that member states must eliminate by taking all immediate and effective measures.<sup>104</sup> The languages by which the obligations are provided are strong that member states may not easily avoid their obligation.

Recruiting children for use in armed conflict is one of the worst forms of child labour. Hence, member states to this convention are duty-bound to take measures, including the enactment of penal laws and other measures for the prevention of children's participation in such kinds of labour and for their removal and rehabilitation. Generally, forcefully recruited children are considered to be victims that need removal and rehabilitation by member states without the imposition of criminal penalty.<sup>105</sup>

### **2.2.3 International Criminal Law**

International criminal law (ICL) also plays an unprecedented role in the prevention of child soldiering by prosecuting those individuals who recruit and use children below 15 in armed conflict. The international criminal tribunal for former Yugoslavia (ICTY), the international criminal tribunal for Rwanda (ICTR), and the international criminal court (ICC) are the international criminal tribunals that extend the protection of children from recruitment by prosecuting the recruiters.

#### **The Rome Statute of the International Criminal Court (ICC)**

The only permanent international court proscribes the recruitment and participation of children below 15 in armed conflicts; both IAC and NIAC, and categorize this act as a war crime.<sup>106</sup> The ICC is taken as a further step in protecting child soldiers as it makes their conscription and participation in armed conflicts a war crime. Because; other instruments only prohibit such acts or impose an obligation on states to protect children from the horror of armed conflict without placing the consequences of violating the prohibitions. Moreover, the phrase 'actively participate' better indicates both direct and indirect participation of children in armed conflicts based on the 'exposure test'.<sup>107</sup> The other important innovative protection in the ICC is that though children below 15 don't directly participate in armed conflict, their

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<sup>104</sup> *Ibid*, Art. 1

<sup>105</sup> *Ibid*, Art. 7 (2)

<sup>106</sup> *The Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc.A/Conf.183/9 (1998) [hereinafter Rome Statute]. See Article 8 (2) (b, 26) and (e, 7)*

<sup>107</sup> *Supra note 50*

mere recruitment is a war crime.<sup>108</sup> Hence, recruitment of these children during armed conflict to use them for other activities that expose them to military attack triggers the stepping in of the ICC save for the principle of complementarity that makes the court dependent on the unwillingness or inability of domestic courts in handling cases of war crimes. More importantly, the prosecution of Thomas Lubanga for the first time in the established history of the court has enabled it to put its precedential values in the protection of children by prosecuting child recruiters.

The SCSL had also played an important role in the protection of children's recruitment by armed groups. The prosecution of the former president of Liberia, Charles Teylor, was a clear example of the court's commitment, *inter alia*, to fight the problem of child soldiering. The other equally important contribution of the court was its interpretation of elements of war crimes relating to the recruitment and mode of participation of children. Its ruling against Taylor that the involvement of children in activities not directly linked to a conflict may be categorized as active participation if such participation of children put them at direct risk of military attack<sup>109</sup> is of an innovative one in safeguarding children against the horror of armed conflict. The Rome Statute however remains silent as to the responsibility of child soldiers. It even seems that by excluding children below 18 from the jurisdiction of the court<sup>110</sup>, it considers child soldiers as victims of armed conflict.

In a nutshell, despite the theoretical controversies spinning the issue of child soldiering, the international legal frameworks on child soldiering have been on a path of crucial development. The desire that the international community expressed to fight the problem of child soldiering by promulgating AP I and AP II that prohibit the recruitment and involvement of children below 15 in IAC and NIAC respectively and the Rome statute that criminalizes such acts has currently developed itself in human rights instruments and increased in scope so that all the prohibitions are extended to include children below 18. The adoption of the OPCRC marks the remarkable development of the legal norms in the protection of children from the effect of armed conflict.

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<sup>108</sup> *The Rome Statute, Article 8 (2) (b, 26) and (e, 7)*

<sup>109</sup> *Supra note 68; See also Prosecutor v. Alex Tamba Brima and Others, Judgment (20 June 2007) SCSL-04-16-T, 228, Para. 736-737*

<sup>110</sup> *The Rome Statute, Art. 26*

The legal lacuna that international law doesn't fill yet is about the criminal responsibility or otherwise of child soldiers. None of the laws explicitly provide for their responsibility both during IAC and NIAC other than prohibiting and criminalizing their recruitment by adults. The absence of stipulation of MACR in international law is problematic and makes the protection effort a zero-sum game. The fact that the discretion to stipulate such age is given to states coupled with the silence of the international law regarding child soldiers' culpability would pave the way for states to treat these children as inimical to their national security so that they would apply the law strictly. As the CCRC and Committee of experts to the ACRWC note in their concluding observations, the fact that most states, including Ethiopia, have a very low MACR would pose a problem in dealing with these children.

## Chapter Three

### Protection of Child Soldiers and their Criminal Responsibility under Ethiopian Law

#### 3.1 Child and Childhood under Ethiopian Laws

Understanding the notion of a child and the period of childhood and its final phase is a hard-hitting task in Ethiopia as in any place else due to its linkage with culture, societal norms, and values, which are generally relative and can hardly be understood from a Universalist perspective. Therefore, the discussion in this section limited itself to legal perspectives of childhood. The word child is not clearly defined under Ethiopian laws though the FDRE National Children's Policy tries to beat around the bush.<sup>111</sup> However, this and other similar terms, such as 'infant', 'minor' and 'children' are employed in different legal provisions of Ethiopia. The RFC for instance defines a "minor" as a person of either sex who has not attained the full age of eighteen years old<sup>112</sup> and it was provided as a working definition by the government of Ethiopia in its report to the Committee of experts to the ACRWC.<sup>113</sup> From a legal perspective, however, childhood ends up on different age based on different categories of law. For instance; for marriage, sexual consent, and election, a majority will be attained upon the reach of 18 save for some exceptional situations in which adulthood may start earlier as provided in the RFC.<sup>114</sup> However, a child of 9 years old is considered to be major for criminal responsibility though with special treatment as will be discussed subsequently.

#### 3.2 Protection of Child Soldiers under Ethiopian Laws

Similar to international instruments dealing with the prohibition of the recruitment and participation of children in armed conflict, no definition of a child soldier is provided under any of Ethiopian laws. The legal frameworks protecting children from recruitment and participation in armed conflicts in Ethiopia consist of IHL and IHRL international and regional human rights instruments ratified by Ethiopia, the FDRE Constitution, and subsidiary laws. There are also different policies with direct and indirect implications for

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<sup>111</sup> *The Federal Democratic Republic of Ethiopia National Children's Policy, April 2017, p.1*

<sup>112</sup> *Supra note 20, Article 215*

<sup>113</sup> *The Federal Democratic Republic of Ethiopia, the Combined Initial, First, Second and Third Periodic Report on the implementation of the ACRWC in terms of Article 43 of the Charter (2013), p. 29*

<sup>114</sup> *Supra note 20, Article 7 (2)*

children in general and child soldiers in particular. Ethiopia has ratified a number of international and regional instruments protecting children from recruitment and participation in armed conflicts including the API and APII<sup>115</sup>, CRC, OPCRC, WFCLC, and the ACRWC. In addition to imposing an obligation on Ethiopia for their domestication via enabling legislation, these international instruments are also made to be the laws of Ethiopia<sup>116</sup> and standards for the interpretation of the human rights provisions of the FDRE Constitution.<sup>117</sup> Below is a detailed explanation of these legal and policy frameworks.

### 3.2.1 The 1995 FDRE Constitution

As the supreme law of Ethiopia and as a document that endorses international human rights instruments, the constitution is a primary guarantee for protecting children from armed conflict. Though the constitutional principles of equality and non-discrimination guarantee children to enjoy all the rights and protections provided under the constitution on equal footing with adults save for some age-related restrictions such as the right to vote and stand for election.<sup>118</sup> The Constitution also incorporates provisions that specifically aim to protect the rights of children under Article 36 though with no reference to a specific category of children, child soldiers.

It provides for the right of a child not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being.<sup>119</sup> Though the constitution doesn't provide explicit protection for children from recruitment and participation in armed conflicts, the right to be protected from exploitative practices and hazardous works impliedly includes protection from child soldiering as their participation in armed conflict is the exploitative and worst form of labour that affects their education, health or well-being as provided under the WFCLC (emphasis added).

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<sup>115</sup> ICRC, *Treaties, States Parties and Commentaries*, available; <https://www.icrc.org/en/icrc-databases/international-humanitarian-law/> Retrieved on 15/04/2022

<sup>116</sup> *Supra* note 9, Article 9 (4)

<sup>117</sup> *Ibid*, Article 13 (2)

<sup>118</sup> Girmachew Alemu and Yonas Birmeta, 'Handbook on the Rights of the Child in Ethiopia' (2006), Centre for Human Rights, College of Law and Governance Studies, Addis Ababa University, p. 60

<sup>119</sup> *Supra* note 9, Article 36 (1d)

The other provision of the constitution with direct relevance for child soldiers is the principle of the best interest of the child. Its central tenet is that the best interest of the child should be considered by the public and private welfare institutions, courts of law, administrative authorities, or legislative bodies while undertaking actions concerning children.<sup>120</sup> However, as the issue by itself is new, no specific guideline providing a detail explanation of this principle and the manner of its application on children participated in armed conflict has been issued to date. Constitutional referral to international human rights instruments ratified by Ethiopia to interpret its human rights provisions is crucial to take a lesson from the CRC's stipulation and the jurisprudence of the committee concerning the principle of the best interest of the child.

The CCRC has provided that this principle aims to ensure the full and effective realization of the rights provided in the convention and such realization is only attained by the engagement of all actors, to secure the holistic physical, psychological, moral, and spiritual integrity of the child and promote his or her human dignity.<sup>121</sup> It can be interpreted concerning child soldier that any rehabilitation and reintegration measure should be assessed by its importance for the child and the child's capacity to take the measure. As a fundamental guiding principle in the application of children's rights, this principle serves three crucial purposes. Its application would affect the substance of the right; it also serves to interpret legal provisions with more than one interpretation, and it is also a procedural right that regulates any action or decision to be made in line with the interest of a child.<sup>122</sup> The committee also interpret this principle to be related with the child's right to life, to be heard and protection against no-discrimination.

The place the constitution gives for international human rights instruments ratified by Ethiopia is advancement in the protection of child soldiers. These instruments are recognized as the law of the land and interpretative principles concerning human rights provisions of the constitution. The fact that Ethiopia has accepted the OPCRC that contains critical and detailed provisions for the protection of child soldiers in 2014 coupled with the above constitutional provisions provides better protection for Ethiopian children from participating in armed conflict. However, as this is a general recognition of the instruments, there must be

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<sup>120</sup> *Ibid*, Art. 36 (2)

<sup>121</sup> CCRC, *General Comment No. 14, 'on the rights of the child to have his or her best interests taken as a primary consideration'* (2013) 62<sup>nd</sup> session, CRC/C/GC/14, Para 4 and 5

<sup>122</sup> *Ibid*, Para.6

enabling legislations to implement the constitutional provisions as per the standard of the provisions of the protocol, which hasn't been putted in practice yet.

The Constitution also incorporates different procedural guarantees for an accused and detained person, including children. It also specifically provides the manner of treating juvenile offenders without however defining who juveniles are. To fill the definition gap, the criminal code provisions dealing with young offenders will step in. Hence, children between 15 and 18 who conflict with the law should be treated separately from adults (emphasis added).<sup>123</sup>

### **3.2.2 FDRE National Children's Policy (NCP)**

Plenty of national policies that benefit Ethiopia's children are found in different government sectors. However, since these policies do not address the rights of children in a comprehensive manner<sup>124</sup> and children only benefit from them as any Ethiopian citizen, a National Children's Policy which aims to be broader and more inclusive was issued in 2017. The policy tries to address different human rights issues of children, unlike its previous scattered policies. This policy document noted that at the time of its issuance, children below 18 years of age, as a definition used in the document, constituted 52% of the total population of Ethiopia.

The NCP has explicitly set out as its objectives the creation of an enabling environment for the promotion and protection of children's rights via the prevention and elimination of social, economic, and harmful traditional practices and abuses which pose obstacles to their proper upbringing.<sup>125</sup> It is issued based on three fundamental pillars that are crucial for the protection of children in general and child soldiers in particular. Children's development and growth, prevention and protection of children from social, economic, and political hardships, and providing rehabilitation, care, and support for children in difficult circumstances are the pillars on which the whole policy document is organized.

The policy is of great significance for the protection of children against recruitment and participation in armed conflicts. Ethiopia hadn't been experiencing the involvement of

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<sup>123</sup> *Supra note 9, Art. 36 (3)*

<sup>124</sup> *Centre for Human Rights Studies, Addis Ababa University, 'Baseline Study for a Comprehensive Child Law in Ethiopia' (2013) p.67*

<sup>125</sup> *Supra note 111, at 13*

children in armed conflicts and their recruitment by dissident armed groups till the issuance of this policy. This seems the reason why it doesn't reserve many provisions dealing with the effect of armed conflict on children. However, this doesn't mean that the policy is devoid of a provision dealing with armed conflict. In addition, most of its provisions are significant for these children too. For instance; the last two pillars of the policy; prevention and protection of children from social, economic, and political hardships, and providing rehabilitation, care, and support for children in difficult circumstances are directly relevant to protecting child soldiers against the effect of armed conflict as it is a result of either a political, social, or economic problem. The rehabilitation scheme of the policy also tends to consider child soldiers as victims of adult conduct, and focuses on their social and family reunification rather than aggravating their trauma by the strict application of the formal justice system.

The Policy also incorporates various provisions that aim at protecting children against recruitment and participation in armed conflicts. Creating a system of vital events registration for children and ensuring its implementation, protecting children from any form of sexual, physical, and psychological abuse, exploitation of labour and trafficking, and Ensuring speedy trial in cases involving children and a child-friendly justice system are some of the major policy issues that the policy aims to address concerning children's civil rights and protections.

The policy also directly mentions the participation of children in armed conflict and its impact on their physical and psychological development<sup>126</sup> which makes it the first policy or law in Ethiopia to mention the issue of children's participation in armed conflict. It aims to create an enabling environment for the prevention and control of the involvement of children in armed conflict, drug production, trafficking, and other similar illegal activities. However, as a policy is a general guideline that needs specific laws for its implementation, it is not clear, for the time being, what is an enabling environment prevents the recruitment and participation of children in armed conflict and how the policy does create the same. Hence, there must either be an enactment of new laws or a revision of the existing laws for the implementation of this policy. However, the emphasis given by this policy on the importance of a birth registration system<sup>127</sup> can be taken as a move to creating this enabling environment for the prohibition of child soldiering.

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<sup>126</sup> *Ibid*, at 19

<sup>127</sup> *Ibid*, at 9

An extension of this protection is also provided in the policy that mentions the protection of children from involvement in criminal activities and provides rehabilitation and integration service for juvenile offenders as the other policy issues. It is worth mentioning here that any measure that aims to prevent the involvement of children in criminal activity must first address the cause of the criminality of children. If, for instance, children participate in criminal activity due to economic problems, the government must ensure the availability of mechanisms that address their economic problems.

An overall analysis of the children's policy indicates the fact that it mostly focuses on creating a child-friendly environment for their upbringing, protecting them from abuse and exploitations resulting from different natural and manmade social, economic and political disasters, and focusing primarily on their rehabilitation and care and expanding and strengthening child-friendly tribunals.<sup>128</sup> However, the researcher found that unless enabling legislation is enacted for the detailed implementation of this policy on these and other promissory policy issues, they would remain an aspiration. As the baseline study issued by the Addis Ababa University Centre for Human Rights nailed out 'Policies are objectives to be achieved by a government whereas laws are devices for the implementation of the policy objectives. Hence, this policy must be converted into laws to put the protective issues of the policy on the ground.

### **3.2.3 FDRE Criminal Justice Policy (CJP)**

Another policy that affirms the need to protect children both as a witness, victims and perpetrators of crimes has been adopted in 2011. The FDRE Criminal Justice Policy has incorporated different protective policy issues that are of crucial importance for children in general and child soldiers in particular.

It gives due emphasis to the pillar of any instrument of children's rights including the FDRE Constitution, the principle of the best interest of the child. The policy posits that measures to be applied against children in conflict with the law must be examined in their consideration of the best interest and circumstance of such children.<sup>129</sup> Though the extent and content of this principle are not clearly defined in any Ethiopian laws and case laws, it can be inferred, at least from this policy that courts at any level should impose measures on child offenders if

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<sup>128</sup> *Ibid*, at 21

<sup>129</sup> *The Federal Democratic Republic of Ethiopia, Criminal Justice Policy, 2011, p.51*

the measures are for the best interest of the child in the sense that the imposition of the measures outweighs other possible measures.

The policy also provides for the speedy trial of cases involving children by prioritizing the cases involving them where the prosecutor encounters difficulties to deal with ‘all’ criminal cases.<sup>130</sup> The other important issue addressed by the policy in relation to the protection of children is that it affirms the position of the children’s policy in relation to the treatment of children in conflict with the law. It provides that the formal legal machinery shouldn’t be strictly applied against these children as the aim of the CJS in dealing with cases of children in conflict with the law should be ‘rehabilitation and reintegration into communities so that children will have a successful future in the society (emphasis added). To this end, it provides for the use of alternative methods to the sentence of these children unless the crime committed is grave or the alternative method cannot provide a solution given the nature of the crime.

#### **3.2.4 Vital Event Registration Laws**

Registration of birth of a child is a crucial prerequisite for better protection of children from recruitment and participation in armed conflict. Birth registration is ‘the official recording of the birth of a child by some administrative level of the state and coordinated by a particular branch of government’.<sup>131</sup> It has been provided as the right of a child in different human rights instruments. For instance; CRC stipulates that;

*“the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”*<sup>132</sup>

The ACRWC also affirms this entitlement in its stipulation;

*“every child shall be registered immediately after birth.”*<sup>133</sup>

The above provisions indicate that birth registration is both a right and an instrument for the enjoyment of other rights. Among the bulks of rights that a child enjoys as a result of his

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<sup>130</sup> *Ibid*, at 16

<sup>131</sup> UNICEF, ‘Birth Registration Right from the start’ (2002) *Innocenti Digest* no. 9, p. 2.

<sup>132</sup> CRC, Art. 7 (1)

<sup>133</sup> ACRWC, Art. 6 (2)

being within a certain age category and related to this thesis, is the right to be protected from recruitment and involvement in hostilities.<sup>134</sup>

Ethiopia launched its first comprehensive legislation for the registration of the vital event, including birth, in 2012 with a Vital Events Registration and National Identification proclamation No. 760/2012. However, it took four years for the commencement of the registration process as it began on 06 August 2016<sup>135</sup>, two years after the establishment of the Federal Vital Events Registration Agency (VERA) in 2014. Proclamation No. 760/2012 was amended in 2017 by a new Proclamation No. 1049/2017 for making the registration system universal.

Though the existence of the law is an important step to protect child soldiers in Ethiopia, it has different shortcomings that may hinder an effective registration of birth. The requirement for the presence of both parents at the registration facility to register a birth<sup>136</sup> and imposing a penalty for late registration<sup>137</sup> are the shortcomings of these laws. Research indicates that strict Administrative pre-requests have the potential of hindering birth registration efforts as parents or guardians may hesitate to register their child once the deadline is passed.<sup>138</sup> The committee of experts on the ACRWC also provides that attaching penalties for late registration of birth is a barrier that discourages parents from registering their children hence recommends for allowing late registration with no penalty.<sup>139</sup> Hence, any effort in the protection of children in general and child soldiers, in particular, must furnish flexible legislation on birth registration that takes financial problems and social realities into consideration. The absence of a birth certificate resulting from failure to register birth would also open a door for abuse in determining the age of a child as his physical appearance or

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<sup>134</sup> Yihdego M, Amogne A, Desta S, et al. 'Improving the demand for birth registration: a discrete choice experiment in Ethiopia' (2020) 5 *BMJ Global Health*, 5

<sup>135</sup> UNICEF, *Vital events registration kicks off in Ethiopia* (2016) Available: <https://unicefethiopia.org/2016/08/04/vital-events-registration-kicks-off-in-Ethiopia/> (Retrieved on 15/04/2022)

<sup>136</sup> *Registration of Vital Events and National Identity Card Proclamation, Proclamation No. 760/2012, Neg. Gaz. Year 18, No. 58, Article 17 (3) and 24 (2)*

<sup>137</sup> *Ibid*, Art. 18 (3)

<sup>138</sup> Ane B. Fisker, Amabelia Rodrigues and Stephane Helleringer, 'Differences in barriers to birth and death registration in Guinea-Bissau: implications for monitoring national and global health objectives' (2019) 24 *Tropical Medicine and I'L Health* 166

<sup>139</sup> *Supra note 101, Para. 13*

statement<sup>140</sup> may be used to recruit him into armed forces or groups or prosecute him in a court of law.<sup>141</sup>

### 3.2.5 Military Laws of Ethiopia

In the aftermath of the political reform in Ethiopia in early 2018, the HPR has repealed proclamation No. 809/2013, which was the previous military law, in 2019 and introduced a new law that came into force in the same year. Proclamation No. 1100/2019, which was enacted on the 19th day of January 2019, and Regulation No.460/2019 issued by the FDRE Council of Ministers (hereunder COM) on February 21st of 2020 are made to be the military laws of the country. Though these are the general laws enacted and issued by the HPR and COM respectively, there are directives and military manuals issued by the MOD to regulate the internal rules of the military. Hence, the proclamation No. 1100/2019 and Regulation No.460/2019, and other directives and manuals are the legal frameworks governing Ethiopia's military.

As a principle, military service in Ethiopia is voluntary as provided in the proclamation<sup>142</sup> and regulation<sup>143</sup>. However, there may be a situation where Ethiopian nationals who are of age may be compelled to give military service in times of crisis or emergencies.<sup>144</sup> The ministry may periodically issue different criteria that recruits must fulfil to join the military. Membership as recruits in the Military of the FDRE is open only for those who are between the age of 18 and 22 and physically fit.<sup>145</sup> As far as the prohibition of recruitment of children by an armed force of the states is concerned, this law provides better protection that is even better than the OPCRC since the recruitment process is voluntary and only 18 and above can join the military. The OPCRC also encourages such kinds of laws that provide better protection.<sup>146</sup> This protection is also in line with Ethiopia's obligation under the WFCLC that asserts member states to take immediate and effective measures to secure the prohibition and

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<sup>140</sup> UNICEF, 'Birth Registration and Armed Conflict' (2007) Innocenti Research Centre, p. 14.

<sup>141</sup> Interview with Selamawit Girmay, Childrens' rights coordinator at Ethiopian Human Rights Commission (EHRC) on 03/05/2022

<sup>142</sup> FDRE Defence Forces Proclamation, Proclamation No.1100/2019, Neg. Gaz. Year 25, No. 19, Article 5 (1)

<sup>143</sup> FDRE Defence Forces Council of Ministers Regulation, Regulation No.460/2019, Neg. Gaz. Year 26, No. 17, Article 17 (1)

<sup>144</sup> FDRE Criminal code, Proclamation No. 4014/2004, Article 284 and the ff

<sup>145</sup> Supra note 143, Art.17 (1) (d)

<sup>146</sup> OPCRC, Art. 5

elimination of the worst forms of child labour, including recruitment of children for use in armed conflict.

The other issue worth mentioning here is that the laws also extend the protection of children's recruitment in the military by overseeing any illegal action by the member of the defence force, inter alia, during the recruitment process.<sup>147</sup> If, for instance, a child below 18 is recruited in the military due to the intentional or negligent act of the person responsible to recruit, he would be responsible as it's a rigorous offense. However, taking the absence of strong age verification as a reason, no practical disciplinary measures have been taken against officers in charge of the recruitment though sometimes underage children may be recruited.<sup>148</sup>

The FDRE Federal Police laws have also excluded the recruitment of children below 18 in the federal police force of Ethiopia. Federal Police Commission is entrusted with different powers and functions among which, issuing standards on the recruitment of new police members is the one.<sup>149</sup> One of the standard requirements that recruits must fulfil is the age of a person to be recruited. According to the Federal Police Officers Administration COM Regulation, a person must be, inter alia, 18 years of age and completed grade 10th at the time of the recruitment.<sup>150</sup>

Against this backdrop, some remarks about the shortcomings of these laws are worth mentioning. They don't make any provision as to the treatment of children recruited and captured while involved in conflict with the military force. In other words, the law doesn't anticipate the possibility of the ENDF encountering children on the battlefield. This in turn would give discretion to members of the military to treat these children as they wish. The absence of a birth certificate as a mandatory requirement for recruitment of individuals to the military is the other pitfall of the laws as the absence of such a certificate would pave a way

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<sup>147</sup> *Supra note 142, Article 77*

<sup>148</sup> *Interview with Major Getinet Kinde, legal advice and document preparation team leader at the General Directorate of Military Prosecutor in the Ministry of Defence on 06/05/2022*

<sup>149</sup> *Ethiopian Federal Police Commission Establishment Proclamation, 2011, Proclamation No. 720, Neg. Gaz. Year 18, No. 2, Article 6 (7)*

<sup>150</sup> *Federal Police Officers Administration Council of Minister Regulation, 2012, Regulation No. 268, Neg. Gaz. Year 19, No. 1, Article 4 (1)*

for the recruitment of underage children.<sup>151</sup> Though the military guideline requires the furnishing of birth certificate, recruiting team requires a transcript of grade 10th and examines the mental and physical fitness of the recruits due to the absence of a developed birth registration system in Ethiopia.<sup>152</sup> This, in turn, creates loopholes in the protection of children from recruitment for two reason; despite the educational qualification provided as a requirement, a person of at least grade 6 may be recruited in some scenarios, and recruiters may use the absence of birth certificate as a pretext to recruits underage children who completed grade 10th in their early age. Supporting this assertion is that sometimes children below 18, but who are physically fit, maybe recruited as a result of the negligence of the recruiters and due to the absence of a strong age verification procedure.<sup>153</sup> The only post-recruitment filtering mechanism the ministry use is supervising the capacity of the recruits to cope up with the training process.<sup>154</sup> The jurisprudence of the CCRC is also vital here as its recommendation concerning the recruitment of children in the armed force shows the gap in the recruitment process. Appreciating the making of 18 the mandatory age requirement for recruitment, it noted the absence of adequate birth registration as an obstacle to preventing the recruitment of children and recommends Ethiopia take all possible measures to prevent the recruitment of children and strictly enforce the laws.<sup>155</sup>

### 3.2.6 The FDRE Criminal Code

The FDRE criminal code (hereunder the code), in its provision of crimes against international law under title II, provides that the recruitment of children below 18 years to use them participate in armed conflict is a war crime. It provides that;

*“Whoever, in time of war, armed conflict or occupation organizes orders or engages in, against the civilian population, and in violation of the rules of public international law and of international*

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<sup>151</sup> Interview with Selamawit Girmay, Childrens’ rights coordinator at Ethiopian Human Rights Commission, on 03/05/2022

<sup>152</sup> Interview with Major Getinet Kinde, legal advice and document preparation team leader at the General Directorate of Military Prosecutor in the Ministry of Defence, on 06/05/2022

<sup>153</sup> *Ibid*

<sup>154</sup> *Ibid*

<sup>155</sup> CCRC, *Consideration of Reports Submitted by States Parties under Art.44 of the Convention, Concluding Observations: Ethiopia (2006) 43<sup>rd</sup> Session, CRC/C/ETH/CO/3, Geneva, Para. 67 and 69*

*humanitarian conventions: Recruiting children who have not attained the age eighteen years as members of defence forces to take part in armed conflict.’’<sup>156</sup>*

Though it seems its face value that this provision provides strong protection for children, it is however short of fulfilling the minimum standards of protection provided by international human rights instruments ratified by Ethiopia, notably the OPCRC. The first pitfall of this provision is that it doesn't prohibit the recruitment of children by armed groups as the phrase 'as members of defence force' indicates. It should be noted that the CCRC has issued a lot of concluding observations on the need to explicitly criminalize the recruitment of children by armed groups and the use of children in conflict situations.<sup>157</sup> In addition, it doesn't prohibit the recruitment of children by the defence force in times other than during the war, occupation, and armed conflict. Lastly, recruitment of these children per se is impliedly allowed by the code as it prohibits the recruitment of children for using them to participate in armed conflict. Hence, the military can recruit children below 18 for other ancillary tasks.

Generally, different laws and policies that would protect children from recruitment and participation in armed conflict have been issued by the government of Ethiopia through such measure was not their primary aim at the time of their issuance. The remarkable legal norm that would better protect children from recruitment and participation in armed conflict in Ethiopia is the FDRE constitution as all other subsidiary laws stem from it and as it incorporates international children's rights instruments ratified by Ethiopia.

Although there are some positive aspects in the military laws of the MOD regarding the recruitment procedure, it can't be dared however to conclude that these legal frameworks are capable of providing better protection for children against recruitment by armed forces and groups. Ethiopia's ratification of different international instruments dealing with child soldering, notably the OPCRC, and the recognition by the constitution of these laws as parts of the laws of the country may increase one's expectations that Ethiopia has strong legal protections against the recruitment of children. The reality on the ground however indicates the reverse. The existence of the OPCRC, as the critical international instrument providing better protection for children from armed conflict, is not made to be known to the military and the public in general despite the fact that it is part of Ethiopian laws. Though the military

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<sup>156</sup>*Supra note 144, Article 270 (m)*

<sup>157</sup> *CCRC, Concluding observations on the report submitted by Singapore under article 8, paragraph 1, of the OPCRC (2014) 67<sup>th</sup> session, CRC/C/OPAC/SGP/CO/1, Para. 15*

law makes 18 a minimum age for recruitment and all kinds of recruitment are voluntary, it doesn't however incorporate the provisions of the OPCRC in some aspects of child protection, such as dissemination to its members via training and protection of children. Regrettably, the recruitment of children by armed groups isn't criminalized under the FDRE criminal code. Hence, Ethiopia doesn't have laws to protect children from recruitment by a terrorist, paramilitary, and rebel groups. This is against its international duty of protecting the recruitment of children by dissident armed groups as provided in the OPCRC. The OPCRC obliges states to demobilize anyone under 18 who were conscripted or used in hostilities and provide physical, and psychological recovery services, and help their social reintegration. However, though rehabilitation service has been given for child soldiers recruited by TPLF, there are still children who are serving in the rank of OLF Shene. Hence, there is no legal mechanism both for the protection and demobilization of child soldiers in Ethiopia.

### **3.3 The Criminal Responsibility of Child Soldiers under Ethiopian Laws**

It has been clearly provided that the dilemma in relation to the criminal liability or none of child soldiers under international criminal law has no place in the domestic jurisdiction. The reason is pretty clear, the existence of a clearly defined MACR in domestic laws of states unlike international law. MACR is nothing but the age below which the criminal law of the country exercises no personal jurisdiction on a person alleged to commit a crime.

For the applicability of the criminal code, children below 9 years old, also known as infants under the code, are out of the ambit of the criminal law.<sup>158</sup> In other words, MACR in Ethiopia is 9 years old that makes it one of the most punitive criminal laws in the world concerning children.<sup>159</sup> Those children between 9 and 15 years are known as young offenders under the criminal code and are criminally liable.<sup>160</sup> However, the ordinary measures provided in the criminal code are not applicable to them. Children between 15 and 18 are considered to be adults under the eyes of the law.<sup>161</sup> Both the committee of experts to the ACRWC and CCRC have been intensely criticizing the stand of Ethiopia in relation to children in conflict with the law alleging that 9 years as a MACR is very low, and the treatment of children of age 15-18

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<sup>158</sup> *Supra note 144, Art. 52*

<sup>159</sup> *Save the Children Sweden, 'Child protection and child friendly justice: Lessons Learned from Programmes in Ethiopia' (2012), p. 12*

<sup>160</sup> *Supra note 144, Article 53*

<sup>161</sup> *Ibid, Article 56*

as adults is against the international standard and these children are detained with adults.<sup>162</sup> However, the criminal code remains punitive to children in conflict with the law by disregarding those frequent recommendations.

Participating in armed conflict or joining armed groups is a crime against the internal security of Ethiopia as provided under Article 240 of the criminal code. As the provision employs the general term ‘whosoever’, child soldiers are not immune from the strong arm of the code. In addition, since the code has already provided MACR, the criminal liability of child soldiers is not questionable in the absence of a clear stipulation to the contrary. The only defense available for a child soldier is that he must show the fact that he was forced to join the group.<sup>163</sup> In other words, though no case law is found to indicate the manner of application of the criminal code on children for participating in the conflict with the TPLF or OLF Shene, these children are criminals as per the letter of the law as any young offenders since such act has already been provided as a crime in the criminal code. Hence, child soldiers above 9 can be held criminally liable for their actions under Ethiopian laws.<sup>164</sup> However, a special measure of treatment is the only penalty imposed on these children. Those child soldiers above 15 but below 18 are presumed to understand the consequences of their actions, and the illegality of participating in an organized armed conflict so that the criminal law is applicable to them as an adult though age and mental development may be used while imposing penalty.<sup>165</sup>

The researcher came to know in the course of doing this research that the ENDF has considered children recruited by TPLF as victims and provided them with rehabilitation measures despite the absence of provision allowing so in the criminal code.<sup>166</sup> Since the government took such a discretionary measure on account of the then attention of the international community on the activity of Ethiopia, it may not warrant the repetition of this treatment on other children recruited by OLF Shene. In other words, since it hasn’t been involved in an organized conflict with the ENDF and other forces, and due to the hit and run

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<sup>162</sup> CCRC, *Concluding Observations: Ethiopia, (2001) 26<sup>th</sup> Session, CRC/C/15/Add.144, Para 29 and 76; See also African Committee of Experts on the RWC, concluding observation, Ethiopia (20) Para. 12*

<sup>163</sup> *Supra note 144, Art. 240 (3)*

<sup>164</sup> *Interview with Haymanot Debebe, expert of research on Legal affair at HPR on 03/05/2022*

<sup>165</sup> *Interview with Ato Efreem Wubet, Legal research Directorate Director at HPR on 03/05/2022*

<sup>166</sup> *Interview with Ato Efreem Wubet, Legal research Directorate Director at HPR on 03/05/2022*

nature of the mission given for these children, there is less opportunity for children in its rank to be protected from attack by the Defence force.<sup>167</sup>

Concerning the treatment of child soldiers vis-à-vis other ordinary juvenile delinquents, there is no single provision in the criminal laws that deals with this issue. The criminal law is similarly applicable to all children above the MACR with however; different ranges of punishment taking into account the type of the crime and the circumstance in which it was committed.<sup>168</sup> The circumstance through which child soldiers commit a crime is not by any means similar with other juvenile delinquents. Hence, the only factor that sets child soldiers apart from other children in conflict with the law is their age and the circumstance through which the crime was committed so that lesser punishment may be imposed on these children than other juvenile criminals, but only due to the circumstance of their being a witness of atrocities during their stay with armed forces or groups, not because a special treatment is provided for them in the criminal code.<sup>169</sup>

In general, the criminal code nowhere mentions child soldiers both as victims and perpetrators. However, from the MACR provided in the code and the criminal nature of the act, it is pretty clear that the code treats child soldiers as criminals. It prosecutes them through special legal provisions that take into account their age category, not their status as child soldiers. Their forced or voluntary recruitment is not mentioned as a privilege entitling them of a special treatment. Instead, their age and mental condition would serve as mitigating circumstances reducing the punishment to be imposed on them by the criminal code. This is not in line with Ethiopia's international obligations that dictate for the treatment of child soldiers primarily as victims of armed conflict. Whatever agency they may exercise, these children are still victims of armed conflict due to their age and level of mental development.

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<sup>167</sup> Interview with Major Getinet Kinde, legal advice and document preparation team leader at the General Directorate of Military Prosecutor in the Ministry of Defence on 06/05/2022

<sup>168</sup> Interview with Selamawit Girmay, Childrens' rights coordinator at Ethiopian Human Rights Commission, on 03/05/2022

<sup>169</sup> Interview with Haymanot Debebe, expert of research on Legal affair at HPR, on 03/05/2022

## Chapter Four

### Conclusion and Recommendations

#### 4.1 Conclusion

International discourse on the matters of children's involvement in armed conflict was increasingly brought to the attention of the international community at the end of the 1970s and the beginning of the 1980s. The proliferation of internal armed conflict was the main reason for such renewed interest. As a result, the international community shows its grievance by issuing two Protocols additional to the four Geneva Conventions to protect the recruitment of children below 15 and their participation both in IAC and NIAC. Consequently, the attention given to the problem of child soldiering has increased in scope and resulted in the adoption of different international and regional human rights instruments that increase the protectable age from 15 to 18. Needless to say, the adoption of the OPCRC has evidenced how the international community condemns the use of children in armed conflict. This is because; the protocol is the only international instrument to date that provides a maximum threshold for the protection of children against the effect of armed conflict.

Ethiopia has ratified this protocol and other human rights instruments regulating the issue of child soldiering. As per Article 9 (4) of the FDRE Constitution, these laws are part and parcel of the law of Ethiopia. Hence, they and other domestic laws are the legal frameworks protecting children from recruitment and participation in armed conflict. There are some laws and policies, if properly implemented, that would provide better protection for child soldiers.

As far as the scope of protection of these laws is concerned, the existing laws don't specifically mention the protection of these children as their main objective. In addition, they aren't on par with the international standard of protection provided in the above-mentioned instruments. Although Ethiopia has committed itself to protecting children as per the standard provisions of the OPCRC and the constitution has also made this instrument part of Ethiopian laws and tools of interpretation of the human rights provisions, this protocol hasn't been interpreted in domestic arena via enabling legislations.

The international obligation of Ethiopia concerning the enjoyment of children of their human rights is threefold; the obligation to respect, protect and fulfil. Abstaining from recruiting children in its armed force is one of the obligations that Ethiopia undertakes to respect children's rights. To that effect, MOD provides that the minimum age of recruitment is 18, with however no strict age verification mechanisms in place. The CCRC and Committee of experts to the ACRWC noted in their recommendation that states must furnish adequate birth registration facilities to protect children from age-related abuses. However, due to the absence of a mandatory requirement of a birth certificate, the recruitment procedure of the ministry sometimes resulted in the recruitment of physically matured underage children, which is against the standard of the protocol.

The criminal code also tries to criminalize the recruitment of children below 18 for their participation in armed conflict by making such an act a war crime under Article 270 (m). However, this provision is full of defects. The existence of war or occupation as a requirement to make such recruitment a war crime and the imposition of such obligation only on members of defence forces are the defects of this provision.

Ethiopia's duty to protect the rights of children from infringement by other fellow individuals and non-state armed group needs, inter alia, the taking of measures to prohibit the recruitment of underage children by armed groups. However, nowhere do Ethiopian laws criminalize such acts by armed groups. As mentioned above, though the criminal code vaguely mentioned the recruitment of children by members of the defence force as a war crime, it is silent concerning the effect of such an act on armed groups. As provided under the Rome statute, a war crime is only committed during war or armed conflict. Hence, if their recruitment per se is not criminalized, it can be concluded that OLF shene is not criminal under Ethiopian criminal law for its recruitment of children and use participate in different missions. Surprisingly, the researcher has witnessed in the course of the research that there is an understanding that expressly criminalizing the recruitment of children by armed groups would amount to recognizing the existence and status of such groups. However, it is a recent history that the HPR proclaimed two political groups in Ethiopia as terrorists. Over all, Ethiopia doesn't have domestic legislations to protect children against recruitment by terrorists, dissident armed groups, and paramilitaries. In other words, the OPCRC and other protective international instruments haven't been interpreted in Ethiopia via domestic legislations.

The Committee on the CRC has forwarded two recommendations on Ethiopia concerning the effect of armed conflict on children. In its concluding observation in 2001, it noted its concern on the effect of armed conflict with Eritrea on children and recommended Ethiopia take measures to protect children in the conflict area. Though not provided in the concluding observation, one of the measures that the committee thought to be taken could be their protection from participation in armed conflict. In addition, in its concluding observation in 2006, the committee appreciated the fact that minimum age of military recruitment in Ethiopia is 18 years. However, it also noted that the absence of adequate birth registration, which is not solved yet, would hinder the protection of children from recruitment. These concluding observations are raised here to emphasize that they were given at a time when the recruitment and participation of children in armed conflict wasn't an alarming issue in Ethiopia. However, currently, with the existence of two armed groups in the country that recruits children at least 13 years old, it would be difficult homework for Ethiopia to brief the committee in its current report in the absence of any change to the previous recommendations.

The question 'are child soldiers, victims, or criminals, in the eyes of Ethiopian law?' is to be answered by interpreting different provisions of the criminal code, including MACR and the nature of their act. As MACR under Ethiopian criminal law is 9 years and involved in organized armed rising and civil war is a crime under the criminal code, child soldiers are criminals under Ethiopian law in the absence of a clear provision to the contrary. Hence, a child soldier of 9 years old is criminally responsible as per the letter of the law since raising arms against the government is a crime against the internal security of Ethiopia.

International standards on the treatment of child soldiers, including the OPCRC, favour the rehabilitation of these children rather than their criminalization. As a signatory to these standards, Ethiopia needs to have a legal framework that prioritizes the rehabilitation and reintegration of child soldiers. Different arguments can be raised to support the need to focus on rehabilitation and reintegration than prosecution. First, though it may be argued that these children exercise some sort of agency both before and after being recruited, it can't be denied however that they experience different types of traumas and nightmares. In addition, their agency shouldn't be considered to be identical to adult soldiers as they can easily be influenced or brainwashed by ideology or environmental factors. For instance; concerning child soldiers recruited and deployed by TPLF, the fact that the central government has had no effective control in the region coupled with the difficult economic situation they were in

had resulted in their recruitment. Finally, it should always be noted that government is the primary duty bearer concerning the protection of human rights. When ratifying the CRC and its Optional Protocol, Ethiopia has promised the international community that it will protect children from recruitment. Hence, if children join armed groups and participate in armed conflict, this primarily shows the failure of the government to protect them though there may be voluntariness.

The researcher argues that the failure of a state to protect against the recruitment by armed groups and participation in hostilities of children below 18 shouldn't be excused by prosecuting those who were themselves, victims, in one way or another. More importantly, prosecuting them for their stay with armed groups or participation in armed conflict would escalate their trauma and they may also lose confidence in the legal system. As far as their treatment with other ordinary juvenile offenders is concerned, they are not provided with any mitigating or aggravating reasons for the sole fact of being child soldiers. If a lesser penalty has to be pronounced against them as compared with other children in conflict with the law for similar crimes, it wouldn't be because they were child soldiers, but for other factual considerations, such as their age, mental development, and the trauma they experienced during their stay.

The researcher identified that children who participated in armed conflict on the side of the TPLF have been given rehabilitative measures as an implied recognition of their victimcy. However, since this measure isn't backed by legal provisions, its uniform applicability is doubtful.

## **4.2 Recommendations**

On the bases of the above findings and in-depth discussions under the main body of this thesis, the following areas are identified for possible recommendations for future improvements to provide better protection for children against recruitment and participation in armed conflict. Since the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict is one part of Ethiopia's laws, the following action must be taken by the government of Ethiopia to interpret it in domestic legislation;

1. Taking the existence of two dissident armed groups in Ethiopia and the participation of children during the conflict with TPLF as an alarm, new legislation that criminalizes the recruitment of children by armed groups must be enacted as an extension of Ethiopia's international obligation to protect children from the act of non-state actors. To ensure uniform protection for all children recruited by armed groups, the new law to be enacted must also provide the status of children captured while involved in armed conflict or disarmed from the armed groups.
2. Article 270 (m) of the criminal code doesn't prevent the recruitment of children by members of the defence force. The recruitment of children per se should be criminalized without the requirements for the existence of war and occupation. Hence, an amendment must be made to it.
3. Government must translate this protocol into local languages and increase its accessibility, especially in the military and security sectors manual, institutions working on the rights of children, and academics. Specifically, MOD must examine its laws and guidelines in line with this protocol and must make it part of the military training for its members in the protection and handling of child soldiers. The Ministry must follow a strict recruitment procedure rather than emphasizing the physical fitness of the recruits. More importantly, to prevent age falsification, the recruitment guideline must provide for a mandatory furnishing of a birth certificate.
4. As having a simple age verification tool is crucial to prevent the recruitment of children, the current vital event registration proclamation should be amended to allow the registration of birth of a child by either of the parents and avoid penalties for late registration.

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