



DPI Brief: Child Soldiers and International Law

Legal bases

- Additional Protocols I and II prohibit the recruitment of children.¹
- This is also a rule of customary international law.²
- Prohibition is also found in the Convention on the Rights of the Child,³ the African Charter on the Rights and Welfare of the Child⁴ and the Convention on the Worst Forms of Child Labour.⁵
- Under the Statute of the International Criminal Court, “conscripting or enlisting children” into armed forces or groups constitutes a war crime in both international and non-international armed conflicts.⁶
- This war crime is also included in the Statute of the Special Court for Sierra Leone.⁷
- The recruitment of children is prohibited in several military manuals, including those which are applicable in non-international armed conflicts. It is also prohibited under the legislation of many States.
- In a resolution on children in armed conflicts adopted in 1999, the UN Security Council strongly condemned the recruitment of children in violation of international law.⁸
- In a resolution adopted in 1996 on the plight of African children in situation of armed conflicts, the OAU Council of Ministers exhorted all African countries, in particular the warring parties in those countries embroiled in civil wars, “to refrain from recruiting children”.⁹

¹ Article 77(2) API and Article 4(3)(c) APII.

² See Rule 136 https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule136

³ Article 38(1) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁴ Article 22 <http://pages.au.int/acerwc/documents/african-charter-rights-and-welfare-child-acrwc>

⁵ Article 3

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312327

⁶ ICC Statute, Article 8(2)(b)(xxvi) and (e)(vii)

⁷ Statute of the Special Court for Sierra Leone, Article 4

⁸ http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC_SRES_1261.pdf

⁹ https://www.essex.ac.uk/armedcon/story_id/000322.pdf

Age limit

- Additional Protocols I and II, the Statute of the International Criminal Court and of the Special Court for Sierra Leone put the minimum age for recruitment in armed forces or armed groups at 15, as does the Convention on the Rights of the Child.
- 18 is the age-limit set by the Convention on the Worst Forms of Child Labour. It is also the age-limit used in the African Charter on the Rights and Welfare of the Child.
- Under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, States must ensure that persons who have not attained the age of 18 years are not *compulsorily* recruited into their armed forces, while armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit persons under the age of 18 years.¹⁰

Policy issues for armed groups

Despite their drawbacks, children are fairly easy to recruit, generally respond better to indoctrination than adults, and require less food and lower salaries, thus costing less; furthermore, they are often able to use modern weapons such as assault rifles, and are often somehow protected by the reluctance of adults – and, to an even greater extent, professional soldiers – to harm children. Arguments may also be made that during conflicts where education services are unavailable, the only way to keep a family together will be for the child to fight as well as other family members.

Their disadvantages in terms of discipline and command (quality) are often barely relevant when the armed group's objective is simply to have a large number of combatants: that is, "boots on the ground". Numbers play a vital role when it comes to controlling a territory, operating on several fronts and applying pressure in order to gain a seat at the negotiating table. Another perceived advantage relates to children's relative lack of visibility when scouting an enemy position.

That said, the long-term impact of child soldier recruitment on communities may be huge. As they have often learned no other trade than warfare and may find it difficult to reintegrate into a society that functions differently from a military unit, former child soldiers may place a heavy burden on the well-being of the very community they were previously defending.

¹⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>