

PROTECTING THE RIGHT OF CHILDREN IN ARMED CONFLICT - AN APPRAISAL

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Abstract

Globally and at domestic level, government in every society is constituted to perform vital roles and functions capable of improving the welfare of the people. One of such important duties of the state is to formulate policies that will ensure good governance, peace, safety and security of life and properties in all nooks and crannies of the community. The government has the additional duty of enacting laws, legislations as well as statutes that provides basis for maintenance of law and order and by extension offer protection to all categories of persons within the territorial area of such a society. Included in the persons protected or expected to be protected by government and the laws are the children and the protection is not only during the era or time of peace but also in times of war, hostility and armed conflict. This article will review therefore the protection given to children by states and laws as well as instruments or conventions during armed conflict with specific consideration and appraisal of the Nigeria state so as to find out if there is a legal frame work in the country for protection of the child in armed conflict, if there is, what is the procedure and extent, who are the

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stakeholders and what are the expectations of the child; if there is, are the provisions adequate in the light of the prevailing realities and security challenges in Nigeria and if not, what is the way forward towards redefining the subject of protecting the child in armed conflict in Nigeria.

Keywords: | Protection, Children, Armed Conflict]

INTRODUCTION:

When a child is born: he acquires the citizenship of his parents as a citizen of the state.

A Nigerian child under the 1999 constitution, is a citizen of the Federal Republic of Nigeria by virtue of birth.¹ This is more so where any of his parents or any of his grand parents belong or belonged to any community indigenous to Nigeria. As citizens of their states children are entitled to all the rights enjoyed by other citizens without exception including right to life². Their life as well as properties must be protected by the government of the state and other stakeholders both in peace time as well as during war: hostilities and armed conflict.

Children no doubt have been recognized as one of the vulnerable and endangered groups and their is the expectation that they should not only be protected in

1. Section 25 (I) of 1999 CFRN.

2. Section 33 of 1999 CFRN.

times of peace but also during armed conflict. This is because the effects of armed hostilities on children all over the world is not only devastating but inexplicably dehumanizing.

History has it that children were worse hit during the Vietnam armed conflict; the Rwanda and Yugoslav hostilities were also a harvest of reckless abuse of children's rights and their dignity as well as survival; the cases of the armed conflict in Africa states like Liberia, Sierra Leone, Mali, Democratic Republic of Congo (Dr Congo), Iraq and Iran, Syria, Libya have left many sour and untold stories against the children; the armed conflict in Ghazza and Westbank is not an exception as the tango between Israel forces and Afghan led forces have kept the destiny of many children uncertain till date in the area. In Nigeria, the increasing insurgence of armed militias in Nigeria either in pretence as tribal freedom fighters for emancipation of their "units" from the Nigerian federations and others who claim to be environmental activists and other faceless armed groups claiming to be religious rights activists have left Nigerian children to be without hope of a guaranteed life in their fathers' land. Many children have died in Nigeria as a result of activities of groups like the Niger Delta militants, the OPC in the west, the Boko Haram Sect and the Massob in the east. The death of Nigerian children have occurred either during operations of these groups or during their confrontations with state agencies like the "JTF" Joint Task Force: a combination of the

government security outfits like army and the police and other civilian but armed security outfits.

It is because of the obvious effects of these armed activities and conflict and the seeming irresponsibility on the issue of protection of the children particularly in Nigeria that makes this article necessary.

International humanitarian law clearly state that children's rights must be respected during armed conflict.

However according to Kristin Bastard, the ICRC's adviser on Child Protection holds the view that children are always subjected to violence in various ways during armed conflict³.

As for any other civilian, the rights of children must be promoted by governments, agencies of government, national states, international organizations: including UNO, OAU, and other regional groups, ICRC, Amnesty International and other civil societies and Non governmental bodies.

The primary aim of this paper is therefore to argue that the children all over the world including Nigeria suffer a great deal during armed conflict and the respect to their rights as a human being recklessly neglected.

³.Kristin Barstard "Interview on ICRC's Approach to protection of children in armed conflict" [http: www.crechildprotection.com](http://www.crechildprotection.com) (accessed wed 27th March 2013).

Essentially this paper argues that there is little or no legal frame work for the protection of children in armed conflict in Nigeria and our leader are so naive to the issue such that they lack the will to even use the International instruments which afford such protection as a standard and template for protecting the children in armed conflict in Nigeria. This attitude of Nigerian leaders no doubt has negatively affected the quest for Child protection in armed conflict which has become an acceptable standard global practice that has been adopted by many countries of the world.

(i) Conceptual Explanations.

The major ideas that need some explanations so that our discussion in this paper will be adequately understood include:

Protection.

The concept of the child (Children).

Notion of right of the child.

Armed conflict.

It should be noted that primarily, the essence of conceptual explanation is to effect meaning to the concept as most ideas are value based and if not properly explained could very easily be misconceived and misinterpreted and hence our line of argument and line of thought as well as reasoning misunderstood. It is to avoid this misunderstanding that conceptual explanation becomes imperative in an

intellectual discourse especially in the legal science where we belong.

Protection:

The word protection fundamentally means the act of protecting a thing including a community and the people living in it including the child or the children. It also means the state of being protected without being limited to it alone but also include the process of providing the basis to ensure safety for people in a given set up.

Protection also refer to the act of being protected within the provisions of law including constitution, statutes and legislations, conventions, treaties as other enactments and instruments.

According to the Cambridge Advanced Learners Dictionary Third Edition, the word protection is defined inter alia as follows:

"the act of protecting or state of being protected".

From the foregoing, it is clear that the word protection used in the practical sense of it means state of being protected.

Legally, it involves a process or procedure towards

4. Cambridge Advanced Dictionary Third Edition <http://www.com> assessed Tuesday 2nd April 2013.

providing safeguard or rescue to a group or to a person or even as case may be to a community. For example, it can be expressed in respect of the efficacy of a legislation that such legislation does not offer adequate protection for many endangered species. What it means by extension is that such enactment is incapable of providing sufficient protection to some persons who are more or less disadvantaged in the community.

Considering the propriety or otherwise of a given policy of a government or an institution or corporate concern like an insurance company, it may be stated that the insurance policy provides or does not provide as case may be the protection that will make a financial payment in case of accidental loss of life or serious injury.

With regards to children, the word protection means the state of protecting this group that are not only recognized as vulnerable but also endangered. Children are vulnerable they can easily be physically, emotionally or mentally hurt, influenced or attacked. Thus, the vulnerability of the child or children depends principally on their peculiar identity of being easily hurt, attacked and influenced physically; emotionally and mentally.

The child and/or the children are also endangered species capable of being wiped out because of their small or few number now alive. Children are attacked

by diseases, ravaged by poverty and the effect of armed conflict can be so greatly devastating on them if no protection is put in place. It is because of this vulnerability and endangered nature of children that protection is not only canvassed for them as standard global practice in peace time but most importantly during armed conflict or hostilities.

The issue of vulnerability is the core basis for protection of children in armed conflict and this has also contributed in the recognition of child's right as a human right within the international arena of human rights movement.

The concept of the child (children)

It is still not clear whether there is a definition that is universally accepted to give exact meaning of the concept of the child. This is because the controversy as to the proper age in which a person shall be to be regarded as a child or classified among the children has not been settled.

This issue creates a theoretic situation in the sense that the meaning ascribed to a child vary from jurisdictions to jurisdictions. It becomes even worse such that within the jurisdiction there may be divergent provisions of laws as to who a child is.

A good example is the definition of the child within the provisions of the Juvenile and Young Persons Law (JYPL) and other laws. Another dimension is the

contention by some that a child is a person within the age of 17 but not above 14 years and the view of others too that a child is one or person who is still dependent on his parents or guardian or his relations for his or her daily needs. The last definition and reasoning tends to insist that it is immaterial the age: that once a person is still dependent on his parents, guardians or relations for his daily needs he or she is a child.

Indeed, the above contention are strong and appear plausible more so where the issue of provision of law is more or less statutory. However, the complexity of this aspect is that in the presence of divergent provisions, it now creates room for lacuna as to which of the age from the various definitions in the statutes shall be used.

It is also difficult to agree that once a person is still dependent on his parents he or she shall be regarded as a child. What the above means is that a person who is 30 years or even above but irresponsible and reckless in life shall be deemed a child because he depends on his parents and cannot stand on his own. This is not a good argument.

The Cambridge Dictionary of Current English defined the Child (children as case may be) as;

“a boy or a girl from the time of birth until he or she is an adult or a son or daughter of any age”⁵

The problem with this definition is that the Cambridge

⁵. Cambridge Dictionary sixth Edition /assessed 22nd April 2013
www.cambridgedictionary.com.

dictionary failed to state categorically the age in which a person shall be for him or her to be regarded as a child but merely makes a general statement which describes than definite a child from the perspective of period of biological growth from when he was born to the time he becomes an adult. Worse still, the same dictionary concludes by referring a child to be a son or daughter of any age.

In the first arm of the above description, there is no particular age universally accepted as "adult age" and the age differ from jurisdictions to jurisdictions and vary from people to people. In Nigeria: it is generally believed that adult age is synonymous with age of maturity which more often than not is either 18 years or 21 years. This issue of age which is still a source of controversy has been used and is still used in taking certain national actions for instance in the issue of eligibility for election contests and even exercise of right to vote and even in certain appointments. It is however important that serious consideration has to be given to this issue especially when the fundamental concept of protecting the child in armed conflict is discussed.

I will contend in this paper that if the question of protection of the child in armed conflict should be given the attention it deserve, the state and the global community should rather not trivialize the issue by embarking on a fruitless argument on who qualifies to be called a child simply on the basis of age and or the dependent factor alone but should also look at other

ancillary issues like:

- (a) whether from the circumstances, he or she should be protected.
- (b) whether from the circumstances of the conflict he or she is likely to be in danger of being killed, injured or subjected to deprivation which demands protection.
- (c).....whether in the absence of protection, he or she can still have the hope of being reunited with lost relatives
- (d) whether in the circumstances, it is reasonably justifiable to classify him or her as a child contemplating him or her to be a child based on fair assessment of his/her age and assessment in good faith that she or he cannot stand on his/her own.
- (e) whether in the circumstances, it will be reasonably justifiable not to classify him or her as a child and if not, should it be serving the course of human right not to classify him or her as a child but an adult that should be protected for a specific reason.

All the above considerations will help seriously in giving strong and solid base to the concept of protecting the child both in peace time and in conflict.

The above exposition about who is a child is further

corroborated by Geneva Conventions which also failed to define a child or even lay any uniform particular age for the purpose of giving special protection to the child, this is notwithstanding the fact that the concept of children has important place in the four Geneva Convention and the two Protocols Additional to it. The Geneva Conventions only fixed in broad terms two age limits i.e. below 15 years and below 18 years.⁶

From the above deductions from the provisions of Geneva Conventions: it means that where no age limit is fixed or where there are different age limits fixed, the only way to reasonably handle the issue of age must be governed by the degree of development of the physical and mental faculties of the person concerned.

The meaning of the child will also no doubt depend on the legislation applicable in the *territory occupied, but in such cases, it may be preferable to fix the age limit generally below 18 years i.e. after every consideration.*

The Notion of Armed Conflict

The Cambridge Advanced Learners Dictionary defined conflict⁷ as:

"an active disagreement between people with opposing opinions or

6. Central Information Agency Report (CIA) cia.org.com/assessed 26/4/2013.

7. Cambridge Advanced Learners Diction, Third Edition /assessed 26/4/2013.

principles”

It is clear from the above definition that conflict is a fight between two or groups or country as case may be and the fight can be as a result of differences in the opinions held by the persons in the conflict, value incompatibility, unpopular policies as well as beliefs or views.

Conflict can arise in peace time and in war situations. In peace time, the conflict can be in the form of cold war i.e. war without arms, war based on propoganda and other tactis not involving the use of arms.

A conflict is referred to as armed conflict when there is use and involvement of weapons and arms in the conflict.

In armed conflict, certain population including the children is unarmed. For those unarmed, there has to be protection of the group especially the vulnerable and endanger groups in times of armed hostilities hence the need for special protection of children.

The concept of vulnerability of the child.

Children are recognized not only as being vulnerable but also regarded as endangered species or group. The Cambridge Advanced Dictionary defined the word vulnerable as:

“able to be easily physically, emotionally or mentally hurt or influenced or attacked”⁸”

Even in peace time, children are easily influenced physically, mentally or emotionally and can be hurt in the process. If they can be hurt, influenced and attacked in times of peace, the possibility of their easily being attacked, influenced physically, emotionally and mentally during armed conflict is high hence the need for their protection. The children can be sexually abused, they can be exploited and subjected to several inexplicable acts that will affect their sensibilities as a person.

Apart from being vulnerable, the child is also described as endangered and by this, it means that children like other endangered species may soon not exist because they are very few now alive. The word endangered means:

“capable of going extinct due to very few number now alive”⁹

Unless the children are protected during armed conflict, there is the possibility of their going out of existence considering the present number of them now

8. Ibid.

9. Ibid.

alive. Children are subjected to many vagaries of nature, infant mortality rate is high due ravaging effects of diseases etc; if they are not adequately protected in armed conflict they can be wiped out in large number because they are defenceless and dependent on others hence the global initiative for a special protection for children in armed conflict and disturbances which is the trust of this paper.

(ii) *Assessing the Provisions of International Humanitarian Law and Instruments on Protection of Children in armed conflict.*

International humanitarian law is the body of law which protects those not or no longer taking part in hostilities. Indeed; IHL regulates the means and methods of warfare.¹⁰

IHL applies in international and non international armed conflict and is binding on both states and armed opposition groups as well as on troops participating in multilateral peacekeeping and peace enforcement operations if and where they take part in the hostilities.¹¹

Indeed humanitarian law as a regime is specifically developed to regulate armed conflicts. It establishes

10. UN DOC ST/SGB/1991/13, Secretary-General's Bulletin, Observance by United Nations Forces of International Humanitarian Law, 6 Aug 1999

11. Ibid.

mechanisms to ensure that the rules aimed at protecting the victims of armed conflict and restricting the means and methods of warfare are respected. Humanitarian law holds individuals responsible for violations of humanitarian laws which they commit or order to be committed.

In addition to prescribing relevant general and specific rules which relate to women, humanitarian law outlines the rules for the protection of children in armed conflicts as they make specific and important protection for the girl child.¹²

Notably, the principal instruments of International humanitarian law are the four Geneva Conventions of 1949 and their two Additional protocols of 1977 i.e protocols 1 and 11. Protocol 1 Additional to the Conventions applies purely in International conflict and Protocol 11 applies for and in non-international conflicts i.e. hostilities within national states.

Of importance is the fact that the four Geneva Conventions dealt mainly on specific issues to include:

1. first Geneva Convention was for the Amelioration of the condition of the wounded and the sick in Armed forces in the field 1949 (Gc1).
2. The second Convention is for the Amelioration

¹².Charlotte Linalsey "ICRC Study on the Impact of Armed conflict on Nome
ICRC Executive Summary, 1999 Vol. I.

o f t h e C o n d i t i o n o f t h e
wounded and shipwrecked members of the Armed
forces at sea 1949 (GC 11).

3. The third Geneva Convention relates to the treatment of prisoners of war (pow) 1949 111 while
4. The fourth Geneva Convention relates to the treatment of civilian persons in times of war. 1949(GC IV).

It is highlighted hereunder that looking at the above Conventions, Conventions 1 and 11 emphasized protection of armed forces definite and categorical protection for the child (children). Thus, it can be inferred that by reference to Convention 111 and IV to prisoners of war and civilian persons, the protection of children can effectively be encapsulated or incorporated in the instruments. This is because children can be prisoners of war and are indeed civilians during armed conflicts. This is irrespective of the fact that the concept of child soldiers is still known to International Humanitarian law though condemned in strong terms. Nonetheless, the Conventions cannot be ruled out as not being children friendly.

It is our view that Conventions 1 and 11 more or less restricted their provisions to the protection of members of the armed forces and by this may appear not have protected the children but they did.

Precisely, Convention 1 provides for protection of the

wounded and the sick members of armed forces who must be those in the field while Convention 11 makes provisions for protection of the wounded and the shipwrecked members of the armed forces. Thus to enjoy protection under the two conventions you must fall into any of the two categories of the armed forces i.e. either you are wounded and sick and in the field or you are wounded and shipwrecked at sea. Children save for child soldiers which is a phenomenon condemned are not and cannot be members of the armed forces whether in the field or at sea.

However, our considered opinion is that the two Additional Protocols to the Geneva Conventions takes a clear and dynamic stand by making provisions for protection of victims of armed-conflict, and the word victims interpreted legally appear and seem more and all embracing and no doubt children are not left out.

The starting point of any discussion on protection of children in armed conflict and consideration of provisions of international instruments and conventions is the fact that children like adults -i.e. men and women should be protected not just as civilians but most importantly because they are vulnerable and endangered.

It has been reasoned that the four Geneva conventions and the two protocols additional to them no matter their wordings offer

*special protection to the children*¹³.

Indeed; from the contention of Krystin Bastard, children benefit from two tiered protection under humanitarian law:

1. *The general protection they enjoy as civilians or persons not no longer participating in hostilities and*
2. *The specific protection they enjoy as children.*

*It is pertinent to note that more than 23 articles in the Geneva Conventions and their Additional Protocols refer specifically to children*¹⁴. *These provisions under the articles include rules on death penalty; access to food and medical care; education in conflict zones; detention, separation from their family and participation of children in hostilities. The rights guaranteed by the Convention on the Right of the child almost universally ratified are applied during armed conflict.*

Some of the children apart from being separated from their family members are recruited as child soldiers or detained. Some of them unaccompanied are hastily adopted at the height of an emergency. Such children have parents and family members willing and able to care for them and they can be found if tracing is

13. Krystin Mustard, ICRC Legal Adviser on children protecting children in Armed conflict ICRC Bulletin Vol. 20 2001

14. Ibid.

effective.

Therefore, it is submitted in line with ICRC recommendation¹⁵ that adoption should not be considered if there are reasonable hope of successful tracing of the child and reunification to his/her family in the child's best interest.

Specifically, by Protocols 1 Additional to Geneva Conventions, the children shall be the object of special respect and, shall be protected against any form of indecent assault. The parties in the conflict shall provide them the care and aid they require whether because of their age or any other reason. Attention is invited to use of terms and we view that the use of "shall" makes it mandatory that children shall be protected against indecent assault and therefore obligation on parties to carry out the provision in letter and spirit. The use of the word "special" denotes also the importance and emphasis which the Protocol 1 place on the protection of children.

According to Oxford Advanced Learners Dictionary 4th edition, the word respect means:

"politeness or consideration arising from admiration or regard, admiration felt or shown for a person or thing that has good qualities and achievements".

15. ICRC Bulletin on Rights of children in Armed conflict voll 2007

Further more, the use of the word special by the Protocol 1 before respect puts respects on much higher plane and makes the protection of children all the more important both in letter and in spirit.

There is therefore no doubt as to the fact that the principle of special protection of children during international armed conflict is expressly established. This provision also serves to reaffirm the numerous provisions which contain the detailed rules in favour of children.

Protocol 11 also made a similar provisions in Article 4 for application in non-international armed conflict. It provides that children shall be provided with the care and aid they required.

The implication of Articles 77 Article 4 of Protocols 1 and 11 respectively is that the children are entitled to protection both in international and non-international armed conflict and parties to the protocols are required to keep their obligation by ensuring that adequate protection of the children is guaranteed.

Another important provision for the protection of children is the provision under Article 12 of the fourth Geneva Convention which outlined that in times of peace the parties to the convention and parties to the conflict after the outbreak of hostilities may establish in their own territory and if need arises in the occupied areas hospital and safety zones and localities so

organized for under fifteen, expectant mothers and mothers of children under seven. The parties concerned may conclude agreements on mutual recognition of these zones and localities.

Family is recognized as very essential for the child. This being so, Article 82 of the Fourth Geneva Convention provides that throughout the duration of their internment arising from the hostility members of the same family especially parents and children should be lodged together except when separation of a temporary nature is necessitated for reasons of employment or health.

Indeed, the Conventions (GC) and the Protocols Additional to them encourages the parties to engage in all actions capable of ensuring adequate care, education and maintenance of the child. Article 17, 24 and 50, of the Fourth Geneva Convention made clear provisions for maintenance, education of the children especially the orphaned as well as their removal from troubled areas besieged. These articles make provisions also for protection of children in encircled areas and maternity cases along with the wounded, sick and also for passage of ministers of religions, medical personnel and medical equipment.

The Rules, on maintenance and education of children are further amplified by Article 78 of Protocol 1 and precisely provides for evacuation of children to a foreign country for compelling reasons which their

safety is most crucial.

Apart from the Geneva Conventions and the Additional Protocols, the African Charter also made valid provisions, for the protection of children in armed conflict.

State parties to the Charter are called to take all measures to assist parents and others responsible for the child to ensure that adequate care is given to the child, especially to protect them against harmful and social and cultural practices; respect the children, that no child take direct part in hostilities, protect civilian population especially children in hostilities. Indeed Article 22 of the African Charter dealt essentially with armed conflict and gave state parties mandate to protect the civilians in armed conflict particularly the children. Children are given special protection because of their vulnerability.

In the overall assessment of children's rights to protection both in peace and in armed conflict, the United Nations Charter on Rights of the Child, the ICCPR and even national laws prescribe principles which indicate the fundamental need to protect the children and preserve their rights and the corresponding duties of family, community and government towards protecting them.

The International community recognized the fundamental nature of childhood and the rights

accorded have been provided with technical assistance in bringing strong mechanisms to protect children at all stages and circumstances. The target of International humanitarian law and rights instruments is recognition of the basic rights, of children and adequate protection of children in peace time and in armed conflict.¹⁶

(iii) Evidence of Neglect of Children in Armed Conflict.
In international and non-international armed conflict, the civilians are bound to suffer one neglect or deprivation and the other mainly due to the means and manner in which the warring states and groups execute the war. This is because more often than not, the warring parties go outside the prescribed rules of war and this obviously lead to not only violations of rights of civilians but also result in all manner of acts regarded as war crime. The state parties to international armed conflict and groups in non-international armed conflict owe a serious duty under international humanitarian law and national laws to responsibly protect the civilian population particularly children and women who are most often seen as the most vulnerable. Indeed by the Geneva Conventions and their Additional Protocols, special protection is given to the children as well as women. However, the ease of the children is peculiar because more often than not women combatants even become much more stronger in the field than the males and can even be more destructive than men.

16 Shoreh Monsavieta "Development and Progression the Rights of the child: Global Human Rights instruments ICRSSR 2012 conference proceeding pg 210-212, Malaysia 2012

According to Wikipedia, war crimes are "violations of the laws or customs of war". When the laws of war or the custom of norms of it are violated, there is bound to be absolute neglect and disregard of the civilian population including the children.

This neglect and violations culminating to what is referred to above as war crimes facilitated the establishment of International tribunals as the Nuremberg Tribunals, the Tokyo tribunals of the trial of war criminals. It has also led to the recent establishment by the United Nations Security Council acting under chapter VIII of the UN Charter of International Criminal Tribunal for former Yugoslavia (ICTY) and International Criminal Tribunal for former Rwanda (ICTR).

Most recently, deriving powers from the Rome Statute (adopted at the Hague Convention), the United Nations Security Council established the International Criminal Court (ICC) purposely to try persons who allegedly committed war crimes including crimes against humanity, genocide and others. Indeed by the establishment of ICC, the UN Security Council vested the court with the mandate to try all persons found to be engaging in war crimes in any part of the world. The court started working and took a bold step when it issued a warrant of arrest against Mohammed Omar El Bashir, the president of Sudan, for all war crimes he has committed and still commit against innocent civilians in the war turn Sudan. Although, the ICC's warrant

received criticism from the Arab league and the developing states, the truth remains that. ICC has come to stay as an international reaction to the increasing spate of war crimes all over the world.

Sincerely speaking evidence of neglect of civilians particularly children in armed conflict abound ranging from:

1. Mass murder and genocide against civilians including children as witnessed in Malmedy in 1944; the cases in Vietnam wars; Iraq and Iran war; the wars of Hiroshima and Nagasaki; the Rwanda and Yugoslavia wars; and the recent Liberian crises, the war in Sudan, the war in Democratic Republic of Congo; the turmoil in Syria and other areas in Asia and African states including the hostilities over the declaration of Biafra in 1967 by the secessionist Ibo nation in Nigeria. Children were killed likewise other civilians. The same is the case in Libya which led to collapse of the dynasty of Ghadafi.
2. Mistreatment and inhuman treatment of prisoners of war and civilians. The civilians including children are often treated without decency and respect. Some children are defiled, brutally and sexually assaulted and subjected to irregular sexual violence by troupes as most of the times state parties as well as warring groups fail to separate civilian population from among

the combatants or in the occupied territories. Some children see their parents killed and others are raped and the most bitter experience witnessed in Liberia was where sons were forced to rape their mothers or father forced to rape their daughters and in other cases children saw their mothers being raped to death by soldiers. There were cases of children being subjected to taking up arms in the form of "child soldiers", most of them never underwent any training and hence were massacred like fowls as was the case in Democratic Republic of Congo.:

3. Deprivation in the form of failure to evacuate civilians, lack of provisions of facilities for education, maintenance and lack of hospitals and free zones.

During international armed conflict and non-international conflicts, the civilians including the children particularly suffer deprivation: there is absence of facilities to guarantee the education of children; civilians particularly children are not separated as there are no free zones; maintenance is zero and there is little or no provisions of hospitals to take care of the effect of the war on children, including airborne diseases as a result of pollution of the air by weapons and missiles used in the executions of the war.

The above incidence of neglect of children in armed conflict exist notwithstanding the clear provisions of international humanitarian law which prescribes rules

against such and guarantee protection of the entire civilian population including children without discrimination.

The Four Geneva Conventions and their Additional Protocols provide and lay down rules which guarantees that the civilian population and prisoners of war should be protected and must be treated humanely without distinction based on sex or age.

Until the adoption of Protocol 11, the principle of humane treatment applied to international and non international armed conflicts and from the basis of Article 3 common to the Geneva Conventions which was the only provisions regulating, non-international conflicts.

There is also the principle of distinction which required state parties to the conflict and waring groups to distinguish between civilians and combatants and not to stage direct attacks against civilians: most of the time this principle is not observed and hence the civilians and combatants are not separated including children and this dangerously expose them.

The civilian population including children as a result of uncontrolled method and manner of execution of wars suffer as a .result of environmental hazards as a result of what is released into the air; this is contrary to the laws of war prohibiting parties to the war from engaging in acts that will affect the natural environment and become

an attack to the "safety" of civilians. The use of Chemical weapons and boobytraps and other devices are good examples of use of specific weapons restricted by war instruments. The most notable example are the instruments prohibiting the use of weapons of mass destruction such as the 1925 Gas protocols and the 1993 Chemical weapons Convention. There is also the Amended Protocols 11 to the 1980 Convention on Certain Convention Weapons which prohibited the use of booby-traps and other related devices.

Finally, in principle, children's rights form part of regime of rights called human rights; and human rights law is applicable all times, in peacetime and in situation of armed conflict. Human rights law and humanitarian law complement each other but while humanitarian law bind all parties to an armed conflict (both government and armed opposition groups) human rights law lay down rules which bind government in their relationship with individuals. The traditional view is that non-state actors are not hound by human rights norms; a view which is increasingly being debated.

It is important, that those who violate the rights of children in armed conflict by flouting the rules of war should and cannot be left alone but should be held accountable and responsible for such violation. This is the crux of the entire effort in this paper.

(iv) Place of ICRC and Other Bodies in Protecting the Children in Armed Conflict

The position of International humanitarian law is clear on the need to protect children's rights in armed conflict. This is confirmed by the provisions of the Geneva Conventions and Protocols Additional to them.

Although the humanitarian law prohibited all acts capable of eroding the rights of children in armed conflict, it does not always prevent children from being affected in various ways ranging from

1. Inhuman treatment.
2. Separation without possible opportunity for re-unification with members of family.
3. Sexual violence, defilement, rape, mass murder.
4. Sexual brutality and psychological torture inherent in sons forced to rape their mothers, father forced to rape their daughters or combatants raping mothers to death in face of their children etc.
5. Child Soldering.
6. Lack of educational opportunities, maintenance facilities like hospitals and free zone areas etc.

Owing to the above, the need for organizations and bodies to intervene and partner with one another to save the children in armed conflict (international and non-international conflict) becomes important.

The approach by ICRC and its partners is to recognize

the children as part of the civilian population that needs special protection not just for the sake of being a child but because of their vulnerability. As Krystin Bastard, the ICRC child protection Adviser reasoned:

ICRC promotes respect for the rights of children and their dignity and provide assistance to them to alleviate the effects of armed conflict on them.¹⁷

In attempt to assist children victims of armed conflict, ICRC play vital role in the following ways¹⁸

1. In cases of children separated from their families because of armed conflict, ICRC has a mandate to trace families across borders. The body usually registers the child when found at his request or request of the guardian and try to establish contact with the family usually through phone calls and Red cross messages. If contact is established then the ICRC organizes reunification meeting if the child and the family agree.

It is on record that between 2003 and 2006, the ICRC reunified 6,237 unaccompanied and separated children with their families;¹⁹ while a total of 775 were reunified with their parents in 2006;

2. In case of children associated with armed forces

17. "Liberia in war" [http. www.war.crimein Liberia.com](http://www.war.crimeinLiberia.com) accessed 5/5/2013

18. Krystin Bastard, ICRC Bulletin 2007 Vol. 1, "Protecting Children in armed conflict".

19. Ibid.

or group, ICRC sees recruitment of children as a serious issue of concern. The priority of the body is to first prevent recruitment and where they are recruited to give them training courses together with police, armed forces, and arms bearers.

3. In the field ICRC approach groups and troops reminding them on the ban of recruitment of children to execute war by humanitarian law.
4. For children deprived of their freedom, ICRC visits them including juveniles in international and non international armed conflict including those in detention camps and engage in all activities promoting their rights: health care, education and also campaign against illegal detention and facilitate family visits to see children detained and relying on the Geneva Conventions and 1977 Additional Protocol, ICRC promote access to education for children and ensure special protection for them making sure that if any child is to be adopted it must be for the best interest of the child.

Indeed; the United Nations, other regional groups like AU, The Arabs League Council of Europe and OAS states are also encouraged to give focus and protections of the rights of the child in peace time and in war. The AU charter, the American Human Rights Charter and European Charter on Human Rights no doubt made valid provisions for the protection of children

Nigeria and other states are also making frantic efforts to protect the child in peace time and in war times. However Nigeria for now has no enactments giving special protection to children in armed conflict. Even the recent Act on Terrorism prohibiting crimes did not make provisions in this respect.

(V) Conclusion and Recommendation

ICRC has for many years expressed its concern about the right of children in war time. The effort of the ICRC is not unconnected with global best practice which is that children should be given protection in armed conflict.

The focus of this study is therefore to find out the needs of children who are:

1. Endangered by armed conflict.
2. The position of humanitarian law the protection of the child.
3. The place of ICRC and other bodies in the protection of children in international and non international armed conflict.

It is submitted that the children needs care, respect, access to education and indeed separation to free zones or areas and where in captivity, they need facilities health or otherwise and where separated, reunification of family

Our fair view is that humanitarian law should be structured to recognize the children as vulnerable

needing protection at all times.

Finally we cannot conclude without advising that parties to the conflict and opposition groups should ensure that the children are not sexually and violently brutalized or indecently intimidated so as to save them from psychological frustration.

Nigeria is the giant of Africa and as a big brother must encourage other states in the continent to preserve the dignity of Nigerian children. Without mincing words, the children must be protected at peace time and in war situation. The Nigerian government in answer to challenges created by insurgence of many armed groups in Nigeria should as a matter of urgency and national emergency and as state party to the UN Conventions and Instruments including Conventions on Rights of the Child, the African Charter on Rights of the Child, the ICCPR. and having ratified these Conventions should give effect and apply their provisions to ensure that Children are adequately protected in armed hostilities in the Country particularly the endless activities of Boko Haram, Niger Delta Militants and other dreaded militias. There is no gain saying the fact that what the Nigerian government needs at this moment and in the face of the present dilemma and armed radicalism is the strong will and commitment. Unless this is done, the civilian population particularly the Children are in for another mess in this Country.

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7. ***Special Interview by Krystin Bastard ICRC Child Protection Adviser on Special Protection for Children in Armed Conflict.***
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10. ***UN Charter on Rights of the Child.***

11. ***African Charter on Rights of the Child.***
12. ***Juvenile and Young Persons Law (JYPL).***
13. ***Rome Statutes (Establishing the ICC)***