

# **PREVENTING THE USE OF CHILD SOLDIERS**

The role of the International Criminal Court in the prevention  
of the recruitment and use of child soldiers.



**JULY 2013**

**Sarah Castéran**

**European Master's degree in Human Rights and Democratization (EIUC, Italy)**

**University of Coimbra, Faculty of law**

**Supervisor : Carla Gomes de Marcelino**

**Word Count : 23.745**

## **Abstract**

*The present research aims to bring an answer to the following question : Can the International Criminal Court effectively prevent the recruitment and use of child soldiers in armed conflicts through the indictment, prosecution and judgement of the war leaders responsible the enrollment of child soldiers in armed conflict ? In order to organize a coherent answer, the research has been divided in three main parts. The first part will deal with the most controversial topic on child soldiers, which is the duality of their status, incessantly balancing between victim and perpetrator. The second part, although mentionning some significant improvements realised by the Special Court for Sierra Leone (SCSL) in the field of child soldiering, will mainly focus on the crime as it is stipulated in the Rome Statute constituting the ICC, but also as it was dealt with in the recently held landmark judgement against a Congolese warlord. Finally, that research could not have been complete without talking about the many obstacles still blocking the ICC's way towards an effective justice as well as the end of impunity, two factors that will ideally lead to the complete prevention and stop of child soldiering.*

## Table of content

<b>1</b>	<b>Introduction.....</b>	<b>3</b>
<b>2</b>	<b>Preliminary chapter: Conceptual and legal frameworks.....</b>	<b>4</b>
2.1	Defining the terms: conceptual framework .....	4
2.1.1	<i>Children</i> .....	5
2.1.2	<i>Child soldiers</i> .....	5
2.2	Defining the laws: International Legal Framework.....	6
2.2.1	<i>International Human Rights Law</i> .....	6
2.2.2	<i>International Humanitarian Law</i> .....	8
<b>3</b>	<b>Child Soldiers: the duality of a status in International law.....</b>	<b>10</b>
3.1	Victims and perpetrators.....	10
3.1.1	<i>Are all children innocent victims?</i> .....	11
3.1.2	<i>Recruitment</i> .....	13
3.2	Children or young adults? The question of age.....	16
3.2.1	<i>The age of a child</i> .....	16
3.2.2	<i>The age of a child soldier</i> .....	20
3.3	Child soldiers and criminal accountability.....	22
3.3.1	<i>Criminal responsibility of child soldiers: The legal standards</i> .....	23
3.3.2	<i>Child soldiers and the morally responsible agency</i> .....	28
<b>4</b>	<b>Preventing the use of child soldiers via the prosecution of their enrollers.....</b>	<b>30</b>
4.1	Protection via prosecution: A judiciary solution to the phenomenon. ....	30
4.1.1	<i>Fulfilling a normative lacuna</i> .....	30
4.1.2	<i>Understanding the elements of the crime</i> .....	34
4.1.3	<i>Defenses and defendants</i> .....	35
4.2	From prosecution to prevention.....	39
4.2.1	<i>Contentious background</i> .....	39
4.2.2	<i>Case study: prosecutor v. Lubanga</i> .....	45
4.2.3	<i>Deterrence</i> .....	51
<b>5</b>	<b>Obstacles to an effective prevention.....</b>	<b>53</b>
5.1	Procedural obstacles.....	54
5.1.1	<i>Agonising lenght of delays</i> .....	54
5.1.2	<i>Lack of enforcement powers</i> .....	56
5.2	The ICC and the narrow practice of its powers.....	58
5.2.1	<i>The solely charge on Lubanga</i> .....	58
5.2.2	<i>An alternative solution: recrutement as enslavement</i> .....	60
5.3	Arms Trade Teaty & ICC: A successful combination?.....	62
5.3.1	<i>Impact of small arms trade on child soldiers' phenomenon</i> .....	62
5.3.2	<i>A new Treaty, and new hope for the fight against child soldiers ?</i> .....	64
<b>6</b>	<b>Conclusion.....</b>	<b>66</b>