



The Violation of Human Rights of Children in Armed Conflict in Kenya A Case Study of Kibera in Nairobi

Florence Wamahiga Githuthu

Background Information

The child soldier's phenomenon ravages many war torn countries throughout the world today. The use of children as active combatants continued through the middle ages and permeates many modern conflicts. In Asia, Europe, Latin America, Africa and the Middle East children continue to take active and support roles in hostilities. Large ethnic conflicts in Africa have seen children drawn into roles as merciless killing machines. The increase in intra-state conflict since the end of the Cold War has created a situation where the vulnerable child had been drawn into armed forces for both government and non-state forces.

It is significant to note that in the recent past, the nature of war has changed dramatically. The reason is that its horrors are no longer being experienced by the fighters only since these wars are being fought not between countries but right within countries and among ethnic groups as it happened in Kenya during the post election violence. Wars are being fought in provinces, in towns and in slums like Kibera, the largest slum area in Kenya found in Nairobi. Kibera happens to be the largest slum in Nairobi, and the largest urban slum in Africa

Child Rights in Kenya

The aim of this article is to explore the child soldier's phenomenon and examine the extent to which the issue might fit into the realm of security. To understand the extent and horror of the issue an examination of the subject matter is required along with an analysis of the failings of traditional security theory to tackle the subject matter. Firstly an examination of the international law and other instruments that are currently in place is put forward to show that children are protected under both international human rights law and international humanitarian law. This entitlement to protection does not always manifest into security for children on the ground in the harsh reality of intra-state conflict. As a result of ineffective implementation of the law an analysis of a method allowing real action to take place is necessary and applicable to the issue.

In the year 1998, the republic of Kenya submitted its first report on the implementation of the convention of the rights of children to the committee on the rights of the child. The republic of Kenya ratified the same on 31st July 1990. The nation has also ratified the African charter on the rights and welfare of the child and other known international instruments that would generally affect the rights of the child such being the international bill of rights and the convention on the elimination of all forms of discrimination against women and children. In addition Kenya ratified the convention against torture on 21st February 1997. This is not to mention that the nation also ratified regional instruments such as the African charter on human rights and people's rights and the Organization of African Union convention governing the specific refugee aspect in the continent of Africa. Approximately there are about sixty four pieces of domestic legislation that deal with various perspectives of child rights in the nation of Kenya. As to whether these are observed and adhered to is a different matter.

The 2007 post election violence happened where people lived, and this took and continues to take a brutal toll on children, denying them basic rights. This is as a result of heavily bombarding and destroying homes, businesses, churches, schools and health care creating a humanitarian crisis where there is still lack of adequate food, shelter, clean water and sanitation, as well as healthcare. As a result, the mental health effects of children in areas of conflict are receiving increasing attention, because the magnitude of the problem, all over the world, not only in Kenya and its implications is becoming recognized. The consequences of violence will have a major influence and long time impact on the health of children for years to come.

The Birth of Kibera

The genesis of kibera can be traced back to Kenya's colonial days when many indigenous people were literally forced out of the residential areas of the city. At that point in time, the present kibera was a mere station of a railway line. This particular act was the origin for the emotive issues of ownership of land which has continued to today. This emotive issue is capitalized by politicians every time there are elections in Kenya, each prospective candidate promising to solve the problem.

In addition, Kibera was actually formed when Nubian hired foreign soldiers from Sudan, who were compulsorily enlisted into the King's African Rifles during World War I, were allowed in as squatters in a forested and sloppy area outside Nairobi after the war. The former soldiers built homes in what they called kibera, meaning "forest" or "jungle." They were never given title to the land they occupied. Thus, Kibera was born and fight over who owns what portion of land began then to today. I consider this to be the genesis not only of Kibera as we know it today but the genesis of the abuse and violation of human rights

By the way, kibera in the capital city of Kenya, Nairobi happens to be the largest slum in East Africa and over one million people reside there. Perhaps it is clear the reason kibera is the author's focus of this particular article. In actual fact this region has numerous United Nations programs dealing with social issues such as poverty, health facilities, roads, water and sanitation, education and human rights to name but a few. The target by the United Nations is vulnerable groups such as women and children.

Despite its problems, Kibera has a unique charm among the 42 tribes and various religions that peacefully co-exist in the 2.5 sq. km. area. "How are you?" are the endless greetings you'll hear from children eager to meet outsiders. Kibera is a fascinating place with raw eye-opening, yet encouraging experiences and so the author chose it for this academic paper as well.

Kenyan birth certificates unfortunately specify that they are not proof of citizenship. While most Kenyan children have a legitimate expectation that their Kenyan citizenship will be recognized at the age of 18, this is denied to Nubian children: Nubians are a small ethnic group that occupies Kibera slums and originated from the Sudan. They cannot be sure that they will be accepted as citizens, as they will be subjected to a long and complex vetting process to have their citizenship recognised. The Kenya National Commission on Human Rights (KNCHR) has described this situation as "institutionalised discrimination" in its 2007 report on, *An Identity Crisis? A Study on the Issuance of National Identity Cards*.

A major difficulty in making the right to nationality effective for Nubian children is that many Nubian parents have difficulty in registering the birth of their children. Many public hospital officials refuse to issue birth certificates to Nubian children—notwithstanding the fact that birth certificates themselves do not convey citizenship as already mentioned above. The fact that many Nubian parents themselves lack valid identity documents as a result of the discriminatory practice of denial of an Identity Card (ID) further complicates their efforts.

Nubian children grow up knowing that they may not have equal access to employment, to the right to vote and work in the formal sector, and may not be able to travel abroad. ID cards are required for nearly all official transactions. Beyond securing employment in the formal sector and voting, the lack of an ID card bars individuals from opening a bank account or seeking a range of public services as would be the case in any country. It also restricts entrance into certain government offices, as well as access to any license, permit or other government document. Another serious problem caused by lack of national ID cards is police harassment: security agents often demand to be shown national IDs to act as a precaution for arrest. That means at the attainment of age eighteen when Kenyan children are ment to be issued with identity cards as a right these particular ones in kibera play and hide seek games with the police and have learnt to bribe for survival.

The violation of Nubian children's rights in denying them recognition of Kenyan citizenship at birth, and the consequential violations of lack of adequate access to housing, education, health care and clean water, were all argued in the case brought by the Institute for Human Rights and Development in Africa (IHDA) against Kenya. The failure to recognise Nubians' nationality also means that the government does not recognise Nubian property rights and treats them as squatters on their own land. Consequently, the government refuses to provide public utilities such as water to Kibera, which houses a large population of Nubians. Furthermore, it fails to provide equal access to education and healthcare, condemning Nubian children to a life of poverty. All housing in Kibera is, technically, "temporary", and residents are not permitted to extend or even put necessary repairs in their houses, an outright abuse of human rights. And for how long, one wonders?

Kibera Location from Nairobi City, Circled in Red

Children's representative Victor Lihanda said in his interaction with the author, "In Kenya, most of us are exploited and lured into forced labour under poor conditions. Some of us live in deplorable conditions, with little or no water and food, with no sanitary service whatsoever. Many are denied the rights to an education, just to mention but a few".

Lihanda did not leave it at that. He suggested some interventions that were to be implemented as follows; there be a sensitization programme on children's rights at school level, organizing forums with media and the community, analyzing the challenges and problems of drug and alcohol sale and use, developing family life orientation programmes and embracing a conducive learning environment for all regardless of one's background. The taking of human life has been strongly condemned by most world religions and philosophies over the centuries. International human rights law has in turn sought to uphold this most increasingly sacred area of rights in a number of treaties. The life of an individual is clearly protected from being arbitrarily taken by the state no matter the circumstances prevailing at the time, war or peace.

The right to life is not, however, as inviolable as it might seem at first sight. There are a number of situations where states may deprive individuals of life itself and to which international human rights law does not raise an

objection. The use of the death penalty is one such example. Human rights law does not prohibit the use of the death penalty as a punishment for crimes but does encourage its abolition and seek to limit its use. The use of violence in self-defence lies at the base of other justifications for the taking of human life. Killing is permitted at times of war save for the murder of civilians and prisoners of war. Human rights law thus tries to respond to the myriad of ethical dilemmas raised by the right to life by establishing a range of prohibitions and exhortations.

One of the most alarming trends relating to children and armed conflicts is their participation as active soldiers. Children as young as 8 years of age are being forcibly recruited, coerced and induced to become combatants. Manipulated by adults, children have been drawn into violence that they are too young to resist and with consequences they cannot imagine. The children most likely to become soldiers are from impoverished and marginalized backgrounds or separated from their families. Children from wealthier and more educated families are often left undisturbed or are released if their parents can ransom them back.

Child soldiers are recruited in many different ways. Some are conscripted, others are press-ganged or kidnapped, and still others are forced to join armed groups to defend their families. In many instances, recruits are arbitrarily seized from the streets, or even from schools and orphanages, when armed militia, police or army cadres roam the streets, picking up anyone they encounter. Hunger and poverty may drive parents to offer their children for service; armies may even pay a child soldier's wage directly to the family. And parents may encourage their daughters to become soldiers if their marriage prospects are poor.

Sometimes, children become soldiers simply in order to survive. Indeed, a military unit can be something of a refuge, serving as a kind of surrogate family. Children may join if they believe that this is the only way to guarantee regular meals, clothing or medical attention.

Children are also used as soldiers in support functions such as cooks, porters, messengers and spies. While these may seem to be less harmful, these functions entail great hardship and risk bringing all children under suspicion. Reports tell of forces deliberately killing even the youngest children on the grounds that they were dangerous. For girls, their participation often entails being forced to provide sexual service. While children of both sexes might start out in indirect support functions, it does not take long before they are placed in the heat of the battle, where their inexperience and lack of training leave them particularly vulnerable.

Re Integration of Children in Violent Zones

An urgent priority is to demobilize everyone under 18 years of age from the armed forces and should have been specifically addressed in the new constitution. This issue is so silent. The participation of children must be recognized in all peace agreements so that effective planning can be made for reintegration programmes.

The process of reintegration must help children establish new foundations in life. Re-establishing contact with the family and the community is important for former child soldiers who have grown up away from their families and who have been deprived of many of the normal opportunities for physical, emotional and intellectual development. Providing educational and vocational opportunities for former child combatants may prevent them from rejoining military units, and at the same time improve the economic security of their families. For a former child soldier, an education is more than a route to employment. It can also help to normalize life and to develop an identity separate from that of the soldier. A difficulty to be faced is the likelihood that former combatants may have fallen far behind in their schooling, and may be placed in classes with much younger children. Specific measures may be required, such as establishing special classes for former child soldiers, who can then be reintegrated into regular schools.

The progressive involvement of youth in acts of extreme violence desensitizes them to suffering. This experience makes children more likely to commit violent acts themselves and contributes to their break with society. The lure of ideology is particularly strong in early adolescence, when young people are developing personal identities and searching for a sense of social meaning. Child soldiers may find it difficult to disengage from the idea that violence is a legitimate means of achieving one's aims. The challenge for Governments and civil society is to channel the energy, ideas and experience of youth into contributing in positive ways to the creation of their new, post-conflict society.

Traumatic events such as the ones experienced in the post election violence can have a profound and lasting impact on the emotional, mental, behavioral and physiological functioning of an individual. Depending on one's circumstances psychosocial impacts of violence such the one mentioned above can range from mild stress reactions to problems such as anxiety, depression, substance abuse and Post Traumatic Disorders (PTSD)

Efforts on behalf of the psychosocial needs of children are supported by international consensus, as reflected by in international law.

"In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflict, states parties shall take all possible measures to ensure protection and care of children who are affected by an armed conflict"- Article 38 , 4 , UN Convention on the Rights of the Child.

“Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care, and aid they require whether because of age, or any other reason” –Article 77, 1, protocol 1, 1977.

Children in IDPs (Internally Displaced People)

Armed conflict has always caused population movements. Children who are forced to flee to neighbouring countries like Tanzania, and Uganda as refugees or who become internally displaced within their own countries are in need of special attention during armed conflict. People are brutally uprooted and forced to flee their homes, exposing them to danger and insecurity. Wherever it occurs, displacement has a profound physical, emotional and developmental impact on children and increases their vulnerability.

During flight from areas of conflict, families and children continue to be exposed to multiple physical dangers. They are threatened by sudden attacks, shelling, snipers and landmines. Often, they must walk for days with only limited quantities of water and food. Under such circumstances, children become acutely undernourished and prone to illness, and they are often the first to die. Girls in flight are especially vulnerable to gender-based violence. Ideally, camps for refugees or the internally displaced should be places of safety, offering protection and assistance. However, old power struggles are often reproduced and traditional systems of social protection come under strain or break down completely. There are often high levels of violence, substance abuse, sexual assault, domestic violence and forcible recruitment. One important aspect of relief that particularly affects women and children is the distribution of resources such as food, water and plastic sheeting. Men are usually in charge of distribution and often abuse their power by demanding bribes and sexual favours. This puts women and adolescent heads of household at particular risk. The UNHCR "Guidelines on Prevention and Response to Sexual Violence" outline practical protection measures such as careful lighting, arrangement of latrines and organizing groups for such tasks as gathering firewood and collecting water.

Children who are displaced but remain in their own countries face perilous circumstances, including a higher risk of dying. Internally displaced persons are people who have been forced to flee their homes in large numbers as a result of armed conflict, internal strife, systematic violation of human rights or natural or man-made disasters, and who are within the territory of their own country. The protection and assistance needs of the internally displaced are similar to those of refugees in nearly all respects, and yet their situation can be worse. While refugees have often moved outside the "war zone", internally displaced people usually remain within or close to the scene of conflict, and they are often likely to be displaced repeatedly.

In contravention of international humanitarian law, the access of internally displaced persons to humanitarian assistance is often impeded by various armed groups. While some organizations have specific mandates to provide assistance to refugees or address human rights violations, at present there is no clear institutional responsibility for the internally displaced.

Unaccompanied Children

Unaccompanied children are those who are separated from both parents and are not in the care of another adult who, by law or custom, has taken responsibility to care for them. As a priority in all emergencies, procedures should be adopted to ensure the survival and protection of unaccompanied children. An overriding consideration should be to try to reunite them with their families. Wherever possible, unaccompanied children should be cared for by their extended family, and when this is not possible, by neighbours, friends or other substitute families, rather than in institutions.

Unaccompanied children are frequently mistakenly regarded as available for adoption. Adoption permanently severs family links. Because of the difficulty of tracing children at the height of a conflict, unaccompanied children should not be considered available for adoption until all efforts to reunite families, including into the post-conflict phase, have been exhausted. This principle is safeguarded by a recommendation adopted in the 1994 Hague Convention on Protection of Children and Cooperation in respect to Inter-country Adoption.

To parents, evacuation of their children may appear to be the best solution, but this is frequently not the case. Evacuation poses a long-term risk to children, including the trauma of separation from the family and the increased danger of trafficking, sexual exploitation or illegal adoption. If evacuation is essential, whole families should move together, and if this is not possible, children should at least move with their primary caregivers and siblings. Great care should be taken to ensure that any evacuation is properly documented, and that arrangements are made for appropriate reception and care of children, for maintaining contact with family members and for early reunification. Guidelines on these criteria are supported by the International Red Cross and Red Crescent Movement, UNHCR and UNICEF as happened during the post election violence in Kibera.

Child Victims

In times of armed conflict, poverty, hunger and desperation may force women and girls into prostitution, obliging them to offer sex for food or shelter, for safe conduct through the war zone or to obtain papers for themselves and their families. The stationing of military troops concentrates large numbers of single men in some

areas, including those serving in peace-keeping missions, and has been a factor in the growth of the commercial sexual exploitation of children.

Sexual exploitation has a devastating impact on physical and emotional development. Unwanted and unsafe sex can lead to unwanted pregnancies or sexually transmitted diseases and HIV/AIDS. Adolescent girls may suffer in silence after the trauma of sexual exploitation, fearing reprisals from those who attacked them or rejection by their families. They may feel a sense of personal humiliation and anguish which causes many of them to withdraw into a shell of pain and denial.

Seeking Justice for Victims of War Crimes

The widespread practice of rape as an instrument of armed conflict and ethnic cleansing must be ended and its perpetrators prosecuted. In the case of the gravest abuses, international tribunals have been established to punish perpetrators of genocide, war crimes and crimes against humanity in the former Yugoslavia and in Rwanda. But in order to fulfill their objectives, the tribunals need greater financial support and more determined political backing. The tribunals established to try accused war criminals in the former Yugoslavia have indicted only eight people on specific charges of rape and assault, despite estimates of up to 20,000 victims. This limited result underscores the difficulties in applying international human rights and humanitarian law to rape, difficulties that are reflected in both the codification and the interpretation of national, and even international, law.

Truth commissions are another important vehicle that can document the incidence and extent of human rights abuses against women and children in conflict situations expose wrongdoing and reinforce personal accountability. National Truth Commissions have been established in a number of countries, such as Argentina, Burundi, El Salvador, South Africa, Uganda and Viet Nam. For victims of human rights abuses during conflict situations, they seek to facilitate healing, reconciliation and the reconstruction of affected families, communities and nations. The Commissions also reassert the fundamental importance and respect for the sanctity of human life and establish the ethical, moral, legal and political accountability of leaders and civil society.

How About the Future?

Protecting children and other civilians from the scourge of violence as well as the menace of landmines will require rapid progress and financial support in four major areas: a ban on landmines; humanitarian mine clearance that will eventually remove the problem; mine awareness programmes that help children to avoid injury; and rehabilitation programmes that help children recover. This should be embraced during, after violence as well as at peace times in any country.

The indiscriminate nature of landmines, the excessive suffering they cause civilians, the immense socio-economic impact and the damage they will continue to cause for years to come have stimulated an international campaign to ban their manufacture and use. In 1992, a global coalition of NGOs established the International Campaign to Ban Landmines. Since then, considerable progress has been made: the United Nations Secretary-General has advocated strongly for an end to the landmine scourge and a number of countries have already taken steps to ban the use, production, trade and stockpiling of such weapons.

Removing the danger of landmines requires a long-term international commitment to humanitarian mine clearance. The relatively new concept of humanitarian mine clearance is different from conventional military approaches. According to the United Nations, humanitarian mine clearance means that an area meets safety standards when it is 99.9 per cent free of landmines. Mine clearance should be adapted so that it can be used and sustained locally. Otherwise it involves violation of child rights besides innocent people being hurt.

Mine awareness programmes help to recognize landmines and suspected mine areas and explain what to do when a mine is discovered or an incident occurs. Effective mine awareness programmes should not merely tell people about the issues, but should try to involve them in the learning process.

References

1. Kenya National Commission of Human Rights (KNCHR)
2. Institute for Human Rights and Development in Africa (IHDA)
3. Truth Justice and Reconciliation Commission of Kenya (TJRC)