

AN EVALUATION OF THE ADEQUACY OF THE AFRICAN CHARTER ON THE RIGHTS OF THE CHILD CONCERNING ECONOMIC CRIMES IN ARMED CONFLICT

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ABSTRACT

Statistics indicate that at least one in every four African children lives in a conflict zone. Six of the ten worst countries for children to grow up in, or live in, are in Africa: the Central African Republic, the Democratic Republic of Congo, Mali, Nigeria, Somalia and South Sudan. It is widely observed that economic crimes continue to disrupt the political, social and economic fabric of society. This is exacerbated where there is armed conflict and armed groups continue to use children as a tool to benefit them through illegal acts that lead to financial advantages. This narrative that has been evident in areas of conflict across Africa creates the need to interrogate the effect of economic crimes. While there is a lot of traction by the African Committee of Experts on the Rights and Welfare of the Child (Committee) towards the protection of children affected by armed conflict, the contextual issue of economic crimes requires close evaluation. To this end, this article looks at economic crimes in armed conflict as a thematic issue and draws on statistics and experiences across Africa. This is followed by a contextualisation of children affected by armed conflict. An evaluation of the Committee's normative framework, jurisprudence and emerging activities is undertaken to draw insights on engaging economic crime. In the final analysis, a model that places the abused child at the centre of any proposed interventions is proposed.

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1. INTRODUCTION

Statistics indicate that at least one in every four African children lives in a conflict zone. Most of these children are to be found in six of the ten countries that are referred to as the worst areas for children to grow up or live in.¹ These countries include the Central African Republic, the Democratic Republic of Congo, Mali, Nigeria, Somalia and South Sudan.² These countries are listed because of the grave violations against children that have been identified there.³

It is widely observed that economic crimes continue to disrupt the political, social and economic fabric of society.⁴ This is exacerbated in situations of armed conflict where armed groups continue to use children to gain economic advantages for them from illegal activities.⁵ This narrative that has been evident in areas of armed conflict across Africa requires an interrogation of the accruing benefits and the possibility of bringing perpetrators to book. In the light of increased traction by the African Committee of Experts on the Rights and Welfare of the Child (Committee) on the protection of children affected by armed conflict, the contextual issue of economic crimes requires a close evaluation.⁶

To this end, this article looks at economic crimes in armed conflict as a thematic issue, drawing on contemporary definitions and the fusion of economic activities with armed conflicts. This is followed by a contextualisation of children affected by armed conflict and the approach of the Committee. At its core, this part unpacks the normative framework of the Committee, evaluates its emerging jurisprudence, and draws insights from its recent activities in respect of the protection of children. The article concludes by proposing a model that places the abused child at the centre of any proposed interventions concerning issues of economic crime and armed conflict. This contribution adopts a desktop based

1 Save The Children (2019) *Stop the war on children Protecting Children in the 21st Century 18*, available at <https://bit.ly/2V2Evll> (visited 20 June 2020).

2 Save The Children (2019) *Stop the war on children Protecting Children in the 21st Century 18* available at <https://bit.ly/2V2Evll> (visited 20 June 2020). The other countries outside Africa include Afghanistan, Yemen, Syria and Iraq.

3 Some of the documented grave violations include abduction of girls, attacks on education and health institutions, and violence. See *Children at War: Six Stories From the Most Dangerous Places on Earth*, available <https://bit.ly/38Alw7y> (accessed 13 March 2021).

4 Goredema C (May 2002) *Measuring the Impact of Economic Crime: Can Indicators Assist* available at <https://bit.ly/3gc6Xua> (visited 23 May 2020).

5 Goredema C (May 2002) *Diamonds and other precious stones in armed conflicts and law enforcement co-operation in Southern Africa*, 1-2 Occasional Paper 57- May 2002, available at <https://bit.ly/2TuZ49B> (visited 23 May 2020).

6 See discussion in part 4 below.

research methodology based on reviews and analysis of available literature on economic crimes, armed conflict and the jurisprudence and activities of the Committee. A conclusion and recommendations follow.

2. CONTEXTUALISATION OF ECONOMIC CRIMES

The general view is that all crimes have economic consequences.⁷ These consequences provide benefits for the perpetrators and remain a burden on the victims.⁸ This means that before an evaluation of the consequences is undertaken, a crime has to be identified as an economic crime in a statute at the national level or in an international treaty that has been duly adopted and ratified by specific States.⁹ Various countries have statutory economic crimes, though they may not be referred to as such. More often than not, these crimes are investigated and prosecuted in a community that is not involved in armed conflict or has a semblance of peace.¹⁰ Moreover, the consequences have to be measured in economic terms.¹¹ Therefore, where such a crime is committed in order to yield material benefits for a perpetrator, it may be deemed an economic crime.¹² These crimes have been known to take place during armed conflict in various ways, and this is illustrated by a wealth of examples.¹³

2.1 A universal definition of economic crime?

Various definitions inform economic crimes largely because of their contextual setting at either the national or international level. It would thus be important to evaluate some of the current definitions or descriptions of economic crime in the development of this article's arguments. It is instructive that, before the definitions

7 Naylor RT (2002) *Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy* Cornell: Cornell University at 14-16.

8 A conclusive evaluation of this is beyond the scope of this article. In this contribution, the children remain the victims of crime by the perpetrators in an armed conflict. This is developed throughout the article.

9 Economic crimes differ according to the priorities in different countries. This is usually represented in the nature of the punishment imposed on convicted persons. For instance, in Uganda the main economic crimes include bribery, corruption, money laundering, and cybercrime, among others.

10 For instance the author is not aware of any cases of economic crime that were prosecuted in areas affected by armed conflict in Northern Uganda or Southern Sudan.

11 Insights into this position can be obtained from the extensive evaluation of economic crime in Larsson B (2001) What is "economic" about "economic crime"?" in *White-Collar Crime Research: Old Views and Future Potentials* by Lindgren SA (ed) 121-136 at 124-130.

12 Goredema C (Amy 2002) *Measuring the Impact of Economic Crime: Can Indicators Assist* available at <https://bit.ly/3gc6Xua> (visited 23 May 2020).

13 These examples will be discussed, as the context permits, throughout the article.

are engaged, the concept of armed conflict as the article's setting is considered. It may be an international or internal armed conflict.¹⁴ The Uppsala Conflict Data Program attaches various aspects to the meaning of armed conflict.¹⁵ It may be referred to as a

contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year.¹⁶

This definition, however, does not extend to instances where there is no State or government. A case in point is Somalia where the various warring factions are in charge of territories like quasi-governments.¹⁷ Secondly, it does not envisage instances where non-government groups clash – such as ethnic conflicts.¹⁸ Thirdly, protection of the child need not only be informed by the number of fatalities but the extent to which the conflict affects the use of a child rights based approach.¹⁹ This calls for reconciliation of the armed forces using violence.²⁰ To this end, this contribution envisages armed conflict as including internal conflicts, tension and strife. This is based on the protection that the African Charter on the Rights and Welfare of the Child (Charter) accords to the child in situations of conflict, tension and strife.²¹

14 International Humanitarian Law often refers to armed conflicts between States- a situation that has changed with the advent of various internal conflicts.

15 For a detailed engagement, please see Vité S "Typology of armed conflicts in international humanitarian law: legal concepts and actual situations" (2009) 91(873) *International Review of the Red Cross* 69-94 at 74.

16 Melander E (1993) The UCDP Armed Conflict Definition – UNDP, available at <https://bit.ly/3tdSO5o> (visited 4 March 2021).

17 Richards S & Bekele G 'Conflict in the Somali Region of Ethiopia: Can Education promote peace building? Tufts University: Feinstein International Center at 24-36.

18 RULAC reported in 2019 that in the Eastern Democratic Republic of Congo, there are at least 100 active armed groups. This excludes the government as an active participant in an armed conflict. See RULAC: DRC: A Mapping of Non-International Armed Conflicts in Kivu, Kasai and Ituri, <https://bit.ly/2OknbZh> (visited 13 March 2021).

19 This engages the use of the four principles : best interest, participation, non-discrimination, and the right to life, survival and development.

20 The recently adopted General Comment 6 on Article 22 of the African Charter on the Rights and Welfare of the Child adds value to this interpretation and attempts to differentiate between armed conflict, tension and strife. Available <https://bit.ly/3vkCOAu>, section 6.7.

21 See part 4 below.

According to Tupman, economic crime is defined to include financial, white-collar or corporate crime; a crime of the powerful; or smuggling or organised crime; which is against the community. This definition is prescriptive as it sets down examples of various forms of economic crime but largely contextualised as in a corporate or rather professional environment.²² It would follow from this definition that the understanding and scope of economic crime relates to a wide array of different crimes that did not form part of the original concept.²³ For example, the inclusion of corporate and white-collar crime is watered down by instances of economic crime that do not occur in contexts of peace. Further clarity on this position is required: the prescriptive definition projects economic crime in a place with relative peace (without armed conflict). The State decides and categorises economic crimes. One has to look at the characteristics, such as, the absence of violence, a motive for financial gain, an actual or potential loss, and an element of misrepresentation, concealment, deceit or violation of trust.²⁴

Some aspects of armed conflict, like ethnic clashes, may not present the white-collar or corporate crime. As such, this definition does not serve the purpose of deterring economic crime in conflict scenarios. Research shows that the consequences of economic, political, and cultural discrimination may inform minority mobilisation among ethnic communities for armed conflict.²⁵ Other authors argue that 'grievances' are at times used as a cover-up for other factors, such as, the military and economic feasibility of these insurgencies.²⁶ For instance, in Somaliland, the demise of the government led to economic plunder in inter-clan conflicts, yet leading to loss of life.²⁷ A closer look at the administrative framework of these clans reveals a sophisticated hierarchy of a command structure that is adhered to.²⁸ If such a hierarchy is used to demand obedience of the masses in its

22 Tupman W (2015) "The characteristics of economic crime and criminals" in Rider B (ed) *Research Handbook on International Financial Crime* Cheltenham, Edward Elgar Publishing at 1-13.

23 International Monetary Fund (2001), *Financial system abuse, financial crime and money laundering, Background Paper, 12 February 2001*, 3–6, 20, available at <https://bit.ly/2OL5Nwu> (visited 4 June 2020).

24 Pasco GA (2013) *Criminal financial investigations* (2 ed) Boca Raton: CRC Press at 101;

25 Toft MD (2010) *The geography of ethnic violence: Identity, interests, and the indivisibility of territory* Princetown: Princeton University Press, generally.

26 Cederman LE, Wimmer A, Min B "Why do ethnic groups rebel? New data and analysis" (2010) 62(1) *World Politics* 87-119 at 114.

27 Muse HA (2019) "The Political Crisis in Somalia and the Clan System: A Sociological Review of News Media Analyses" (Unpublished Master's thesis, Minnesota State University, Mankato) 14.

28 Muse (2019) 34.

territories, it is only fair that questions are asked around the accountability for the economic benefits derived from engagements (with children) in armed settings.

The foregoing definition creates a basis for further expansion. Nakajima argues that while a link between economic and financial crime is important, the lack of a universal definition of the former affects this development.²⁹ While this is a critical point, it raises issues of the need for jurisdictions to evolve from a national to a regional and perhaps a universal consensus on the meaning of economic crime.³⁰ For instance, the Organisation for Economic Co-operation and Development (OECD) acknowledges that there may be consensus that economic crime leads to a negative influence on development, fiscal sustainability and governance. The challenge is in the lack of consensus on the meaning of the term 'economic crime'.³¹ Nelken argues that the lack of a universal definition has often led to the addition of other crimes that are inherently dangerous. These crimes involve violence or threats attached thereto to be considered economic or financial crimes.³² What is evident from these conversations is a move to subjectively define economic crime in the context of specific crimes.³³ These ingredients are informed by what a jurisdiction decides to constitute economic crime. For instance, such a descriptive approach has seen the inclusion of corruption, money laundering, bribery and embezzlement to constitute economic crimes.³⁴ In the United Kingdom, there has been an emphasis on fraud, intellectual property crime, identity theft and counterfeit currency remittances as a non-conclusive list of economic crimes.³⁵ In the United States, economic crimes include larceny, embezzlement, and other forms of theft; crimes involving stolen property; fraud and deceit; forgery; and

29 Nakajima C "Issues in fighting financial crime" (2007) 27(1) *Economic Affairs* 2-5 at 2. Wellford CF & Ingraham BL "White Collar Crime: Prevalence, Trends, and Costs" in Roberts AR (1994) (ed) *Critical Issues in Crime and Justice* Thousand Oaks: Sage Publications.

30 See <https://www.oecd.org/dac/accountable-effective-institutions/efc.html> (visited 13 March 2021).

31 See United Nations Office on Drugs and Crime, Economic and financial crimes: challenges to sustainable development, Document A/CONF.203/7 A/CONF.203/7.

32 Nelken D "White-collar crime" In M Maguire, R Morgan, and R Reiner (eds.) (1994) *The Oxford Handbook of Criminology* Clarendon: Clarendon Press at 355-392.

33 Nakajima (2007) 2-5.

34 Wellford CF & Ingraham BL "White Collar Crime: Prevalence, Trends, and Costs" in Roberts AR (1994) (ed) *Critical Issues in Crime and Justice* Thousand Oaks: Sage Publications.

35 Financial Services and Markets Act 2000, secs 2(2)(d) and 6(3).

offences involving altered or counterfeit instruments.³⁶ In Sweden accounting crime and tax crime are categorised as economic crimes.³⁷

It is important to consider the above-stated categorisations in an armed conflict or a post-conflict society in Africa. These categorisations are important because they illustrate the economic effects of economic crime on a country or a community. In Mozambique, research identifies illicit flow as descriptive of economic crime through high levels of informal economic activity, corruption, poaching, and trade mis-invoicing.³⁸ It is estimated that illicit flows cost the country US\$ 26.4 million in 2016 alone.³⁹ It has to be noted that these effects are a consequence of a country affected by armed conflict.

Informal economic activity is a wide concept that should include the unregulated and illegal economic activities that also take place in areas affected by armed conflict and formal activities that are reaped from the illegal acquisition of wealth from situations of armed conflict.⁴⁰ A similar damning report about South Sudan showed that since December 2013 various ranking army officers were implicated in playing a role in State sanctioned killing; and obtained extensive business interests in the petroleum, mining, security, construction, airlines and telecommunications sectors, among others.⁴¹ The lack of accountability for such ill-acquired wealth presents the irresistible conclusion of obtaining economic benefits from the armed conflict.⁴²

One aspect that arises from these illegal informal activities is that the continued acquiring of economic benefits from armed conflicts grossly affects a State. As indicated earlier, it appears that the classification of a crime as an economic crime is a subjective evaluation by the State due to the economic effects

36 Office of General Counsel, U.S. Sentencing Commission (2020) *Primer on Economic crime victims secs 2B1.1(b)(2) 1*, available at <https://bit.ly/2CsggH1> (visited 20 June 2020).

37 Green SP *Lying, cheating, and stealing: A moral theory of white-collar crime* (2006) Oxford: Oxford University Press; generally.

38 Kukutschka RMB (2018) *Illicit financial flows in Mozambique Transparency International* available at <https://bit.ly/2AWsg39> (visited 20 June 2020).

39 Kukutschka RMB (2018) *Illicit financial flows in Mozambique Transparency International* available at <https://bit.ly/2AWsg39> (visited 20 June 2020).

40 See discussion below on the Democratic Republic of Congo and Southern Sudan.

41 The Sentry (2020) *Making a killing South Sudanese Military Leaders Wealth, Explained*, 19 available at <https://bit.ly/30ZYncP> (visited 20 June 2020).

42 The Sentry (2020) *Making a killing South Sudanese Military Leaders Wealth, Explained*, 41-42 available at <https://bit.ly/30ZYncP> (visited 20 June 2020).

on the State.⁴³ This begs the question: why do such scenarios not call for the categorisation of the foregoing as economic crimes to serve the purpose of bringing perpetrators to justice ?

Since situating economic crimes in armed conflict by the use of a universal definition is an insurmountable task, it is prudent to change the conversation to the use of descriptive aspects based on accruing economic advantages. States can adopt practices like listing crimes that are assessed and regarded as such based on their effects on society. It is prudent to discuss the economic dimension of armed conflicts to aid this discussion.

2.2 Economic crime and armed conflict

Statistics on the cost of economic crimes shows that recently Africa has lost over US\$ 300 billion.⁴⁴ As a result, the informal economic activity which does not contribute to the GDP results in the loss of economic wealth that could be distributed by the government. A comparison of the GDP to the various losses suffered by some countries illustrates this point. In Somalia and Sudan, the fighting cost around 22 per cent of the GDP while Liberia suffered a 90 per cent cost loss.⁴⁵ This has affected the welfare of both children and adults and led to various human rights violations through insecurity,⁴⁶ injuries and fatalities.⁴⁷ Other effects include internal displacement and refugees,⁴⁸ gender based violence⁴⁹ and erosion of social cohesion.⁵⁰

43 See the discussion above that gives various prescriptive and descriptive perspectives on economic crime in part 2.1 .

44 Adeniyi A (2017) *The Human Cost of Uncontrolled Arms in Africa: Cross-national research on seven African countries A report by OXFAM*, 23 available at <https://bit.ly/36Cs6cN> (visited 24 May 2020). According to this Report, other affected countries included Sierra Leone and the Central African Republic.

45 Adeniyi A (2017) *The Human Cost of Uncontrolled Arms in Africa: Cross-national research on seven African countries A report by OXFAM*, 23 available at <https://bit.ly/36Cs6cN> (visited 24 May 2020). According to this Report, other affected countries included Sierra Leone and the Central African Republic.

46 Giroux J, Lanz D & Sguaitamatti D (2010) "The Tormented Triangle: The regionalization of conflict in Sudan, Chad, and Central Africa Republic, Working paper number 47" *Destin Development Studies Institute*, LSE.

47 Project Ploughshares (2015). *Mali (2012 – first combat deaths)* available at <https://bit.ly/2A3KjDO> (visited 24 May 2020).

48 Norwegian Refugee Council *Our country programme in CAR* available at <https://bit.ly/2Xnf4M0> (visited 24 May 2020).

The exploitation of various natural resources, such as, gold and diamonds, copper, cobalt and coltan, has been extensively done in areas where there is armed conflict.⁵¹ Some examples to illustrate this include the extraction of diamonds during the Angola civil war and the current armed conflicts in the Democratic Republic of Congo.⁵² This created a political economy of resource exploitation during the subsistence of armed conflicts.⁵³ Questions arise as to how armed conflict fits into this picture.

Armed conflict is informed by the tenacity and resourcefulness of warring groups that have de facto control and can benefit from these resources.⁵⁴ This is, first and foremost, due to poverty that places the victims at the mercy of the armed groups. The perpetrators of the armed conflict impact the populations by involving them in the exploitation and commercialisation, as semi-autonomous participants or through forced labour.⁵⁵ Concerning forced labour, children are often forced to work in the hazardous environments of mining.⁵⁶ Where they cannot do so, they may be subjected to abuse, such as, sexual exploitation and

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- 49 A UN report in 2010 showed that about 45.6 per cent of African women have experienced GBV, compared to 35 per cent globally. See ENCA *Africa leads in gender-based violence* available at <https://bit.ly/2WW6RPC> (visited 24 May 2020).
- 50 Adeniyi A (2017) *The Human Cost of Uncontrolled Arms in Africa: Cross-national research on seven African countries A report by OXFAM*, 23 available at <https://bit.ly/36Cs6cN> (visited 24 May 2020).
- 51 Boekhout van Solinge T (2014) "The illegal exploitation of natural resources" by Tonry M (ed) *The Oxford handbook of crime and criminal justice* Oxford:Oxford University Press 500-528, at 507.
- 52 Boekhout van Solinge (2014) at 507.
- 53 Goredema C (2002) *Diamonds and other precious stones in armed conflicts and law enforcement co-operation in Southern Africa*, 1-2 Occasional Paper 57- May 2002, available at <https://bit.ly/2TuZ49B> (visited 23 May 2020).
- 54 Goredema C (May 2002) *Diamonds and other precious stones in armed conflicts and law enforcement co-operation in Southern Africa*, 1-2 Occasional Paper 57, available at <https://bit.ly/2TuZ49B> (visited 23 May 2020).
- 55 Goredema C (May 2002) *Diamonds and other precious stones in armed conflicts and law enforcement co-operation in Southern Africa*, 1-2 Occasional Paper 57, available at <https://bit.ly/2TuZ49B> (visited 23 May 2020).
- 56 In the DCR, children who are not recruited into an armed group, are vulnerable to forced and exploitative labour in mines, agriculture, and other areas. See the US Department of State, (2016) *Democratic Republic of the Congo: 2016 trafficking in persons report. Office to monitor and combat trafficking in persons* available at <https://bit.ly/2LTA9IE> (visited 23 May 2020).

violence.⁵⁷ The perpetuation of such conflicts is ensured through continued resource exploitation by the armed forces or groups to obtain and maintain political and military support and safe havens for illicit business and military transactions.⁵⁸ It is for these reasons that high-level interventions by the international community do little to stop these conflicts.⁵⁹ The UN Expert Panel on the Illegal Exploitation of Natural Resources in DR Congo stated that the conflict is a self-financing war centred on mineral exploitation.⁶⁰ Furthermore, Mozambique's armed conflict that lasted 30 years witnessed the use of children as labourers in the mines and farms controlled by armed groups.⁶¹

The trafficking of weapons has led to the perpetuation of armed conflict. There is research on the economy of armed conflict, and need not be repeated here.⁶² It suffices to note, that the trafficking of weapons is greatly influenced by the 'agility' and 'effectiveness' attached to specific arms. In Africa, there is the nature of the weapons that are always trafficked, like the AK 47 rifles, that has led to the proliferation of small arms among most armed groups. It is argued that small arms present various advantages, such as, simplicity and durability, portability and concealability, military/police and civilian uses, low cost, wide availability, and lethality.⁶³ For instance, the AK 47 has been an instrument of first choice and last resort among some armed groups for various reasons. It is very light, highly portable, and devastatingly effective in the hands of children or inexperienced

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- 57 Dranginis H (2014) *Interrupting the silence: Addressing Congo's sexual violence crisis within the Great Lakes regional peace process* (2014) Washington, DC: Enough Project. 18 <https://bit.ly/2LUfcxa> (visited 23 May 2020).
- 58 Campbell HG "The War on Terror as a Business: Lessons from Kenya and the Somalia Interventions" (2020)1 *The African Review* 1-40 at 1.
- 59 For instance in Congo, the UN interventions have not prevented States, rebels, criminals, companies, and businessmen from plundering the DRC's natural resources, and thereby sustaining the conflict.
- 60 *Letter dated 15 October 2002 from the Secretary-General addressed to the President of the Security Council, S/2002/1146* para 12 available at <https://bit.ly/2zngpVv> (visited 23 May 2020).
- 61 Boothby N, Sultan A and Upton P *Children of Mozambique: The Cost of Survival A report for Save the Children Federation (USA) (1991)* 15-16 available at <https://bit.ly/3ghQ1IU> (visited 23 May 2020).
- 62 Feinstein A and Holden P (2014) Arms trafficking by Tonry M (ed) *The Oxford handbook of crime and criminal justice* Oxford: Oxford University Press at 444-459 generally.
- 63 The International Committee of the Red Cross (1991) *Arms availability and the situation of civilians in armed conflict: a study presented by the ICRC* 5-6 available at <https://bit.ly/2WYgQUT> (visited 24 May 2020).

users.⁶⁴ In addition to its coveted durability, simplicity and firepower, it can be purchased for as little as six US Dollars or bartered for food.⁶⁵ Subsequent interventions to curb the spread of these arms continue to shift the focus from deserving initiatives, such as, from the alleviation of poverty and structural inequality to disarmament, demobilisation and reintegration.⁶⁶ In addition, the need to perpetuate resource exploitation has led to, or sustained, conflicts in resource rich countries in Africa.⁶⁷

Another business that thrives during armed conflict is human trafficking. In some countries, like Somalia, there is human smuggling of people across the borders through Djibouti to Yemen.⁶⁸ The danger lies in instances where they are either forced to join or join armed groups in Yemen as the only option. This predicament does not offer any substantive options to the persons joining. It is always a matter of time before they join. The cycle of continued trafficking to fuel the ever-increasing armed conflict continues to rise.⁶⁹

3. CONTEXTUALISATION OF CHILDREN AFFECTED BY ARMED CONFLICT

Two broad categories of children are affected by armed conflict: children who are in areas of armed conflict⁷⁰ and those who have transitted to peaceful areas.⁷¹ The

64 Felshman M *Small arms in Africa* available at <https://bit.ly/3ghAN0d> (visited 24 May 2020).

65 The International Committee of the Red Cross (1991) *Arms availability and the situation of civilians in armed conflict: a study presented by the ICRC 7* available at <https://bit.ly/2WYgQUT> (visited 24 May 2020).

66 Insights into the various aspects of DDR in addition to the cost can be obtained here: Dudenhoefer A (2018) *Disarmament, Demobilisation and Reintegration is Not Enough 1* Conflict Trends- ACCORD available at <https://bit.ly/2X2dgZX> (visited 24 May 2020). See also Tsegaye S (15 October 2019) *The war on children in Africa: The factors presentation at the Pan African Conference on Children and armed Conflict* available at <https://bit.ly/2Twh2lv> (visited 24 May 2020).

67 Adeniyi A (2017) *The Human Cost of Uncontrolled Arms in Africa: Cross-national research on seven African countries A report by OXFAM*, 14 available at <https://bit.ly/36Cs6cN> (visited 24 May 2020).

68 Tinti P Migrant smuggling Paths from the Horn of Africa to Yemen and Saudi Arabia Institute of Security Studies Report, 18 available at <https://go.aws/2Xpbcdp> (visited 24 May 2020).

69 Tinti P Migrant smuggling Paths from the Horn of Africa to Yemen and Saudi Arabia Institute of Security Studies Report, 18 available at <https://go.aws/2Xpbcdp> (visited 24 May 2020).

70 Workshop Report on Children Affected by Armed Conflict and other situations of violence, Geneva, (14-16 March 2011) available <https://bit.ly/2VRKSZN> (visited 20 April 2020)
Maxted J "Children and armed conflict in Africa" (2003) 9(1) *Social identities* 72 at 72.

latter includes Internally Displaced Persons (IDPs) on account of their movement within the same country⁷² and children who are refugees or asylum seekers.⁷³ These two categories show children who are affected either directly or indirectly by armed conflict.⁷⁴ As has been indicated, the direct effects include conscription as soldiers⁷⁵ or activities that exacerbate these conflicts.⁷⁶ Other direct effects include attacks on schools and hospitals, killing and maiming children.⁷⁷ The indirect effects on both categories of children, show their inability to enjoy the rights to education, health and an enabling environment for them to enjoy their childhood.⁷⁸ Children who are indirectly affected include refugees who struggle to fit into the host communities.⁷⁹ This article emphasises children who are within areas of armed conflict and are affected both directly and indirectly.

According to a global report by Save the Children, in 2016 375 million children were affected by armed conflict.⁸⁰ A look at the detail shows that 1 out of every 6 children was living in areas affected by armed conflict⁸¹ with 16 per cent of these children in Africa.⁸² Recent statistics in a 2019 report shows that 420 million

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- 71 Macted (2003) at 72.
- 72 Shultz JM, Garfin DR, Espinel Z, Araya R, Oquendo MA, Wainberg ML & Wilson FE “Internally displaced “victims of armed conflict” in Colombia: the trajectory and trauma signature of forced migration” (2014) 16(10) *Current psychiatry reports* 475 at 475.
- 73 Nanima RD “The enjoyment of the right to health beyond areas of armed conflict: an evaluation of Kenya’s practice and jurisprudence on refugee children” in Amutabi M (ed) *Africa’s new deal* (2019) at 257-268.
- 74 Kadir A, Shenoda S, Goldhagen J & Pitterman S “The effects of armed conflict on children” (2018) 142(6) *Pediatrics* 1-18 at 1.
- 75 Anwo J, Rembe S & Odeku K “Conscription and use of child soldiers in armed conflicts” (2009) 19(1) *Journal of Psychology in Africa* 75-82 at 72.
- 76 De Silva H, Hobbs C & Hanks H “Conscription of children in armed conflict—a form of child abuse. A study of 19 former child soldiers” (2001) 10(2) *Child Abuse Review: Journal of the British Association for the Study and Prevention of Child Abuse and Neglect* 125-134 at 125.
- 77 Hamilton C & Dutordoir L (2009) *The six grave violations against children during armed conflict: The legal foundation*. New York: Office of the Special Representative of the Secretary-General for Children and Armed Conflict.
- 78 Nanima (2019) 257-268.
- 79 Hart R “Child refugees, trauma and education: interactionist considerations on social and emotional needs and development” (2009) 25(4) *Educational Psychology in Practice* 351-368 at 351.
- 80 Save The Children (2019) *Stop The War On Children* 15 available <https://bit.ly/2YnGovz> (visited 19 October 2019).
- 81 Save The Children (2019) *Stop The War On Children* 15 available <https://bit.ly/2YnGovz> (visited 19 October 2019).
- 82 Save The Children (2019) *Stop The War On Children* 15 available <https://bit.ly/2YnGovz> (visited 19 October 2019).

children are affected by armed conflict with close to 152 million as child soldiers.⁸³ It is worth noting that these numbers have continued to rise since the 1996 Graca Machel Report that stated that about 300 000 children were affected by armed conflict.⁸⁴ It is also documented that 6 of the 10 most dangerous countries for raising a child are in Africa.⁸⁵ The affected countries are Somalia, Nigeria, South Sudan, the Democratic Republic of Congo, Sudan and the Central African Republic.⁸⁶ Notwithstanding the great efforts to mitigate armed conflict and its effects, the trends from 1996 show that these numbers continue to rise from 300 000 in 1996 to 420 million children in 2018.

Both boys and girls are joining as fighters in the Central African Republic, Nigeria and Somalia.⁸⁷ There is a growing practice of 'voluntary recruitment' where children are advised to 'voluntarily' join the armed groups to avert attacks on their communities.⁸⁸ In other areas, such as the Democratic Republic of Congo and Mozambique, there have been reports of using children in mines as sources of labour.⁸⁹ The children are also engaged in other indirect roles, for example, acting as spies, cooks, porters or domestic servants.⁹⁰ These children are also used as human mine detectors and participate in suicide missions.⁹¹ The violations by the perpetrators include abduction, sexual abuse, violence and exploitation.⁹²

The question as to how this relates to economic crime is now answered. In 2016, Africa was home to 40 per cent of forcibly recruited 'child soldiers' with over 3 000

83 Save The Children (2019) *Stop The War On Children* 9 available <https://bit.ly/2YnGovz> (visited 19 October 2019).

84 Note by the Secretary-General, (26 August 1996) A/51/306 *Impact of armed conflict on children* available <https://www.refworld.org/docid/3b00f2d30.html> (visited 30 April 2020).

85 Save The Children (2019) *Stop The War On Children* 17 available <https://bit.ly/2YnGovz> (visited 19 October 2019).

86 Save The Children (2019) *Stop The War On Children* 17 available <https://bit.ly/2YnGovz> (visited 19 October 2019).

87 *The Use of Children as Soldiers in Africa A country analysis of child recruitment and participation in armed conflict* available <https://bit.ly/2Ykw9bv> (visited 21 April 2020).

88 *The Use of Children as Soldiers in Africa A country analysis of child recruitment and participation in armed conflict* available <https://bit.ly/2Ykw9bv> (visited 21 April 2020).

89 *Child Labor and Forced Labor Reports- Mozambique* (2018) available at <https://bit.ly/3fUPaH9> (visited 20 June 2020)

90 Save the Children (2020) 'Gender matters' 21 available at <https://bit.ly/2YWDYCC> (visited 20 June 2020).

91 Vermeij L "The bullets sound like music to my ears": socialization of child soldiers within African rebel groups" (unpublished Doctoral dissertation, 2014 Wageningen University) 26 available at <https://edepot.wur.nl/288945> (visited 20 June 2020).

92 *Sexual exploitation and abuse* available <https://bit.ly/2KTWhli> (visited 20 April 2020).

recruitments in the DRC by 2017; and 19 000 recruitments in South Sudan between 2013 and 2017. Over 14 000 children were recruited between 2013 and 2017 in the Central African Republic.⁹³ The ease with which children can be recruited and indoctrinated by armed groups, together with a thriving proliferation of arms make the use of the small arms the plausible conclusion.⁹⁴ These factors work collectively to provide an enabling environment for the continued recruitment of children affected by armed conflict. As long as economic benefits can be identified in this dilemma, one may safely state that armed conflict plays a crucial role in exacerbating economic crime as a descriptive outcome of the activities of perpetrators of armed conflict. It is prudent to evaluate the efficacy of the Charter and the Committee in situations of economic benefits arising from armed conflicts. An evaluation of the normative and jurisprudential framework and activities of the Charter follows.

4. THE COMMITTEE'S NORMATIVE AND JURISPRUDENTIAL FRAMEWORK

The Committee is guided by a normative framework that includes various international human rights instruments, which inform its general and specific mandates.⁹⁵ Moreover, the Committee has produced jurisprudence that inculcates instructive principles that guide the conversation on protecting and promoting the rights of the child. As will be shown, this extends to other activities of the Committee. This part looks at the normative framework, jurisprudence and other activities of the Committee.

4.1 The normative framework

The Charter provides for a regional normative framework to realise the promotion and protection of children. The Charter came into force on 29 November 1999 and currently has 49 ratifications across the African Continent.⁹⁶ The Charter provides

93 See UNICEF (2018) *Thousands of children continue to be used as child soldiers* available at <https://uni.cf/2YY03ki> (visited 20 June 2020). See also Takpiny B (2019) *South Sudan child soldiers attempt to rebuild lives* available at <https://bit.ly/2NjrDTC> (visited 20 June 2020). For the details on the Central African Republic, see Report of the Secretary General to the UN General Assembly, Document A/72/865-S/2018/465, paras 35-45.

94 Felshman M *Small arms in Africa* available at <https://bit.ly/3ghAN0d> (visited 24 May 2020).

95 These include Principles and Guidelines on children associated with Armed Forces or Armed Groups (Paris Principles), the CRC (1989), Optional Protocol to the convention on the rights of the child on the involvement of children in armed conflict (OPAC, 2000), Rome Statute of the International Criminal Court 2187 UNTS 3 and the Convention relating to the Status of Refugees 189 UNTS 137 (1954).

96 ACERWC (2020) Ratifications table available at <acerwc.africa/ratifications-table> (visited 20 June 2020).

for the Committee⁹⁷ that serves both general and specific mandates. Its specific mandate is to promote and protect the rights for, and the welfare of, the child.⁹⁸

4.1.1 The general mandate

The relevant aspects of the general mandate of the Charter are thus:

- (a) To promote and protect the rights enshrined in this Charter and in particular to:
 - (i) collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;
 - (ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;
 - (iii) cooperate with other African, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.
- (b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.
- (c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party.
- (d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.⁹⁹

From the foregoing provision, various principles are evident. These include the promotion and protection of the rights of the child, and monitoring the implementation of the Charter. The other instances include the interpretation of the Charter and the performance of tasks as directed by the General Assembly, the Secretary-General and the organs of the African Union or the United Nations. This is informed by the unqualified definition of a child under the Charter as a person below 18 years old.¹⁰⁰ The lack of qualification can be contrasted with the position in the Convention on the Rights of the Child (CRC) which recognises a child as a

97 The Charter, art 42.

98 The Charter, art 42.

99 The Charter, art 42(a)(ii)

100 The Charter, art 2.

person below 18 years, unless the age of majority can be attained earlier under national law.¹⁰¹ This provision of a child's attainment of majority age earlier eludes the protection that would be available to him or her before he or she attains 18.¹⁰² Protection on issues of access to justice, provision of education, and healthcare for children excludes individuals who attain the age of majority before 18 years.¹⁰³

The general mandate of the Committee is further provided for in Article 46 of the Charter. It states :

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

The general mandate of the Committee extends to matters that may not be provided for. The yardstick is whether the application of other instruments aids the execution of its mandate. The Committee may engage the use of other sources as long as they inform the protection of the child. These instruments have to be *ejusdem generis* to the Universal Declaration of the Rights of the Child and the CRC.

4.1.2 The specific mandate under the Charter

The specific mandate is reiterated in the Charter where it addresses specific or thematic issues. Examples include its specific engagement with child marriages¹⁰⁴

101 Some scholars state that the provision in the CRC is ambiguous and weak, lacking specific protection within the African context concerning child betrothals, child participation in armed conflict and child labour. See Mezmur BD "Happy 18th birthday to the African Children's Rights Charter: not counting its days but making its days count" 2017(1) *Africa Human Rights Yearbook* 125-149 at 129. See The Convention on the Rights of the Child (The CRC), 1577 UNTS 3 (1989) art 1.

102 Grover S "Recognizing children's universal rights: what needs to change in the Convention on the Rights of the Child" (2004) 12 *International Journal of Children's Rights* 259-271 at 260.

103 Some scholars state that the provision in the CRC is ambiguous and weak, lacking specific protection within the African context concerning child betrothals, child participation in armed conflict and child labour. See Mezmur BD "Happy 18th birthday to the African Children's Rights Charter: not counting its days but making its days count" 2017(1) *Africa Human Rights Yearbook* 125-149 at 129. See The Convention on the Rights of the Child (The CRC), 1577 UNTS 3 (1989) art 1.

104 The Charter, arts 1(3) and 21 of the Charter.

and children affected by armed conflict.¹⁰⁵ To this end, the protection of children affected by armed conflict, tension and strife is one example of such mandates. To this specific mandate, this article now turns.

Article 22 provides:

1. State Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
2. State 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.
3. State Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Various principles are discernible from this provision. First, while the Charter is an international human rights law (IHR) instrument, it protects children using both IHR and international humanitarian law (IHL) in instances of armed conflict.¹⁰⁶ The use of IHL and IHR shows a commonality in the protection of the dignity and life of the child.¹⁰⁷ On one hand, IHL uses its principles of distinction, proportionality and precautions to protect the child.¹⁰⁸ On the other hand, IHR uses a rights' based approach to protect the child.¹⁰⁹ This complementary approach enables the application and interpretation of both laws in a manner that protects the children affected by armed conflict.¹¹⁰

105 Article 22.

106 The Charter, art 22 (1). This is similar to art 38(1) of the CRC.

107 Moeckli *D Human Rights and Non-discrimination in the "War on Terror"* (2008) 92 Oxford: Oxford University Press.

108 *The scope of the protection of children in IHL includes general and special protection as members of the civilian population* available <https://bit.ly/2Srq6On> (visited 27 August 2019).

109 For instance with regard to education, see art 11(5) of the Charter, sixth preambular para, art 13(1) for the handicapped children, art 17(1) in juvenile justice, and art 21 with regard to protection from harmful social and cultural practices). Where these rights are threatened during armed conflict, the dignity of the child should be upheld. Moeckli (2008) 92.

110 Moeckli (2008) 92.

Secondly, Article 22 places an obligation on a State to ensure that children are not recruited into armed forces.¹¹¹ In contrast, the CRC limits this protection of children above 15-years-old, a position that reiterates the Charter's straight 18-years-old position.¹¹² The Charter's prohibition of the recruitment and use of children in both international and internal armed conflicts is an adoption of the 'straight 18' position.¹¹³ Thirdly, Article 22 affords protection to the child that is expansive as it extends from places of armed conflict to instances of tension and strife.¹¹⁴ This is in contrast with the CRC and its Optional Protocol that limit the protection to the child affected by armed conflict.¹¹⁵

The question to be answered is on the position of the Charter in relation to economic crime. It is evident from the foregoing that there is no direct link between the Charter and economic crime. However, an indirect link can be identified from the application of the general mandate of the Committee under Article 46 that allows for the use of both International and regional law on human rights that may lead to the protection of the rights of the child. An evaluation of the jurisprudence in this regard is important.

4.2 Emerging jurisprudence

The jurisprudence of the Committee points to low usage of its Communications procedure. Statistics show that since its inception, it has only handed down 10 decisions in contrast with the African Commission on Human and People's Rights that has handed down about 310 decisions.¹¹⁶ It should be noted at the outset that none of the decisions of the Committee point to economic crimes. While this presents a limitation on its own, it does not elucidate the principles handed down. It is rather instructive to look at how the emerging jurisprudence lays down principles that may be used to inform conversations on economic crimes and children affected by armed conflict.

111 The Charter institutes a minimum age of 18 for military service. Art 22 (2).

112 Article 38(2) of the CRC requires States Parties to take feasible measures to ensure that persons below the age of 15 years do not take a direct part in hostilities.

113 Mezmur (2017) 139.

114 The Charter art 22 (3). A draft General Comment on art 22 of the Charter provides for details on the meaning of armed conflict, tension and strife, see paras 64 available at <https://bit.ly/2TpGrUw> (visited 19 May 2020).

115 See art 38 of the CRC.

116 IHRDA (2020) *IHRDA Case law analyser* available at <http://caselaw.ihrda.org/> (visited 19 May 2020). See also ACERWC (2020) *List of Communications* available at <https://www.acerwc.africa/table-of-communications/> (visited 19 May 2020).

Two recent decisions of the Committee call for due diligence by States Parties in ensuring that children enjoy their rights.¹¹⁷ These cases are: *Institute for Human Rights and Development in Africa and the Finders Groups Initiative on behalf of TFA v Cameroon* and *MRGI and another v Mauritania*.¹¹⁸ These two decisions use the due diligence standard to guide States Parties on how to uphold their obligations under the Charter.¹¹⁹ The use of due diligence by a State is assessed by the result it has achieved through legislative and other measures concerning the protection of children.¹²⁰ The use of due diligence requires a State to take steps that are subjective to the violations against the child in question, rather than an objective position that may seem to benefit many children other than the child in question.¹²¹

One may argue that it is usually the non-State actors who violate the rights of children. This is due to their actions in territories that they control.¹²² In some States, non-State actors control territories like quasi-governments.¹²³ Not only does this limit the State's protection of the child but affects the exercise of their obligations concerning children.¹²⁴ Jurisprudence has developed that requires both States and non-State actors with control over territories to ensure the survival, protection and development of the child.¹²⁵ As such, the obligations with regard to the protection of the rights of the child extend to non-State actors in these instances. Some of the examples of grave violations that are carried out include :

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- 117 See *Institute for Human Rights and Development in Africa and Finders Groups Initiative on behalf of TFA v Cameroon* Communication 006/Com/002/2015 and *MRGI and another v Mauritania* Communication 007/Com/003/2015 on the use of due diligence and the best interests' principle.
- 118 See *Institute for Human Rights and Development in Africa and Finders Groups Initiative on behalf of TFA v Cameroon* Communication 006/Com/002/2015 and *MRGI and another v Mauritania* Communication 007/Com/003/2015 on the use of due diligence and the best interests' principle.
- 119 *Mauritania* paras 47-58; *Cameroon* 46-57.
- 120 *Mauritania* paras 47-58; *Cameroon* para 46-57.
- 121 *Mauritania* paras 47-58; *Cameroon* 46-57.
- 122 See the discussion on the child-based approach below.
- 123 Karavias M "Non-State Actors in Control of Territory as Actors of Protection in International Refugee Law" (2014) 47 *Rev. BDI* 487-507 at 488.
- 124 Vervaele J "Foreign (terrorist) fighters: Combatants and/or terrorists or just enemies" in Engelhart M, Vidlicka R (eds.) *Dealing with terrorism Empirical and Normative Challenges in Fighting the Islamic State*, (2019) 35-60 at 38 Berlin: Max-Planck-Gesellschaft zur Förderung der Wissenschaften.
- 125 General Comment 1 (art 30 of the African Charter on the Rights And Welfare of the Child) on "Children of Incarcerated and Imprisoned Parents and Primary Caregivers" 2013, para 25-26.

the recruitment and use of children as soldiers; the killing or maiming of children; sexual violence against children; attacks against schools or hospitals; abduction of children; and denial of humanitarian access.¹²⁶ The point of departure is how to deal with children while being both the perpetrators and non-State actors. Research indicates that children are often brainwashed and forced to commit terrible acts.¹²⁷ This has been reported in the Central African Republic,¹²⁸ the Democratic Republic of Congo¹²⁹ and Uganda.¹³⁰ International law calls for the recognition of the child as a victim first, then as a perpetrator.¹³¹

4.3 Other activities of the Committee

The Committee has undertaken various activities to ensure that the rights of the child are upheld, such as, continental studies and investigative missions by the Committee.¹³² Other initiatives in dealing with children affected by armed conflict have been used. These have included the strategic appointments of technical persons, for example, the appointment of a Special Rapporteur on children affected by armed conflict in Africa,¹³³ of a child protection and senior child protection officer on children affected by armed conflict in Africa,¹³⁴ and of a consultant to spearhead the drafting of a General Comment on Article 22.¹³⁵ These initiatives have elevated the need to deal with the dire state of the child affected by armed conflict. It is argued that since it is children who are involved as victims,

126 Hamilton & Dutordoir (2009) at 64.

127 Colleen K, (2015) *Child Soldiers: An Innocence Lost* <https://bit.ly/2z4tzvm> (visited 12 April 2020).

128 Child Soldiers International, *Child Soldiers Global Report 2008 - Central African Republic*, 20 May 2008, <https://bit.ly/3aTQOpp> (visited 30 April 2020).

129 Rakisits C "Child Soldiers in the East of the Democratic Republic of the Congo" (2008) 27(4) *Refugee Survey Quarterly* 108–122 at 122.

130 Derluyn I, Vandenhole W, Parmentier S & Mels C 'Victims and/or perpetrators? Towards an interdisciplinary dialogue on child soldiers' (2015) 15(1) *BMC international health and human rights* 1-13 at 1.

131 Derluyn, Vandenhole, Parmentier & Mels (2015) at 1.

132 ACERWC (2019) *Study mapping children on the move within Africa* <https://bit.ly/2KRO9SA> (visited 12 April 2020).

133 ACERWC (2020) *Appointment of Special Rapporteurs* available at <https://www.acerwc.africa/special-rapporeurs/> (visited 12 April 2020).

134 ACERWC (2020) *The Secretariat* <https://www.acerwc.africa/the-secretariat/> (visited 22 April 2020).

135 ACERWC (2019) *Thirty-Second Ordinary Session of the African Committee of Experts on the Rights* (2020) Welfare of the Child (ACERWC) paras 32-37 <https://bit.ly/35k17C2> (visited 12 April 2020). The General Comment has since been adopted and it is available at [acerwc.africa/general-comments](https://www.acerwc.africa/general-comments) (visited 4 April 2021).

any attempt to exploit their childhood for economic reasons amounts to abuse, which can still be dealt with as a violation during armed conflict.¹³⁶ These initiatives ensure that the abuse of children is engaged by the Committee and dealt with at all levels. It is clear from the foregoing that the normative framework needs to be extended by the Committee to deal with aspects of economic crime in the context of armed conflict.

5. TOWARDS A MODEL THAT ENGAGES ECONOMIC CRIMES

The Committee needs to develop an approach that places the various challenges of the child in armed conflict at the centre of its interventions. Some legal principles proposed by other scholars are helpful. In their research, Durojaye and Oluduro evaluate the jurisprudence on the rights of women of the African Commission on Human and Peoples' Rights.¹³⁷ They propose that the development of jurisprudence on the rights of women should not engage the 'woman question' but the 'African woman question'.¹³⁸ With regard to this article, the interventions should shift from the general protection of children affected by armed conflict to children who are economically exploited and abused. Once this economically exploited child is placed at the centre of any interventions, initiatives to ensure the protection of this child will be seen in the jurisprudence and the other activities of the Committee.

6. CONCLUSION AND RECOMMENDATIONS

A contextualisation of economic crimes reveals that it is impossible to have a universal definition of economic crimes. A look at a few definitions and practices derived from some definitions reveals a descriptive approach that is informed by its priorities. A universal factor in this narrative is the economic benefit that the perpetrators obtain. Steps towards the criminalisation and prosecution of this conduct will inform the consequences that a State may measure in economic terms. A contextualisation of children affected by armed conflict shows those affected in the areas of conflict and those who flee to other places of safety. The general factor is the existence of both direct and indirect effects that lead to economic benefits for the perpetrators.

A look at the Charter shows that the current normative structure may be used to deal with issues of economic crime as any other thematic aspects that

136 Glossary on Sexual Exploitation and Abuse, 5 <https://bit.ly/2Wi3Wzq> (visited 12 April 2020).

137 Durojaye E and Oluduro O "The African Commission on Human and People's Rights and the woman question" (2016) 24(3) *Feminist Legal Studies* 315-336 at 317-322.

138 Durojaye & Oluduro (2016) at 317.

affect children. Based on the emerging jurisprudence and activities of the Committee, soft law in terms of General Comments, Guiding Notes may be developed. In the interim, while there is no jurisprudence on economic crime coming from the Committee, there are instructive principles that can be used to instil State practices. Practices that deal with instances of economic crime use various principles like due diligence and the best interest of the child, among others. This calls for a top-down approach that requires more engagement with States Parties by the Committee.

The recent activities of the Committee can be propagated to deal with unfortunate instances where perpetrators obtain economic benefits from conflicts. The appointment of strategic persons, like consultants, rapporteurs and senior child welfare officers, can be used to deal with economic enrichment from armed conflict. This would require calling on States to ensure that both State and armed groups that use children for economic benefits in armed conflicts are brought to book. It is important to ensure that States devise models that place the affected child at the centre of proposed interventions. This will be instructive in ensuring that the state of the child in issue is appreciated before accountability is invoked.