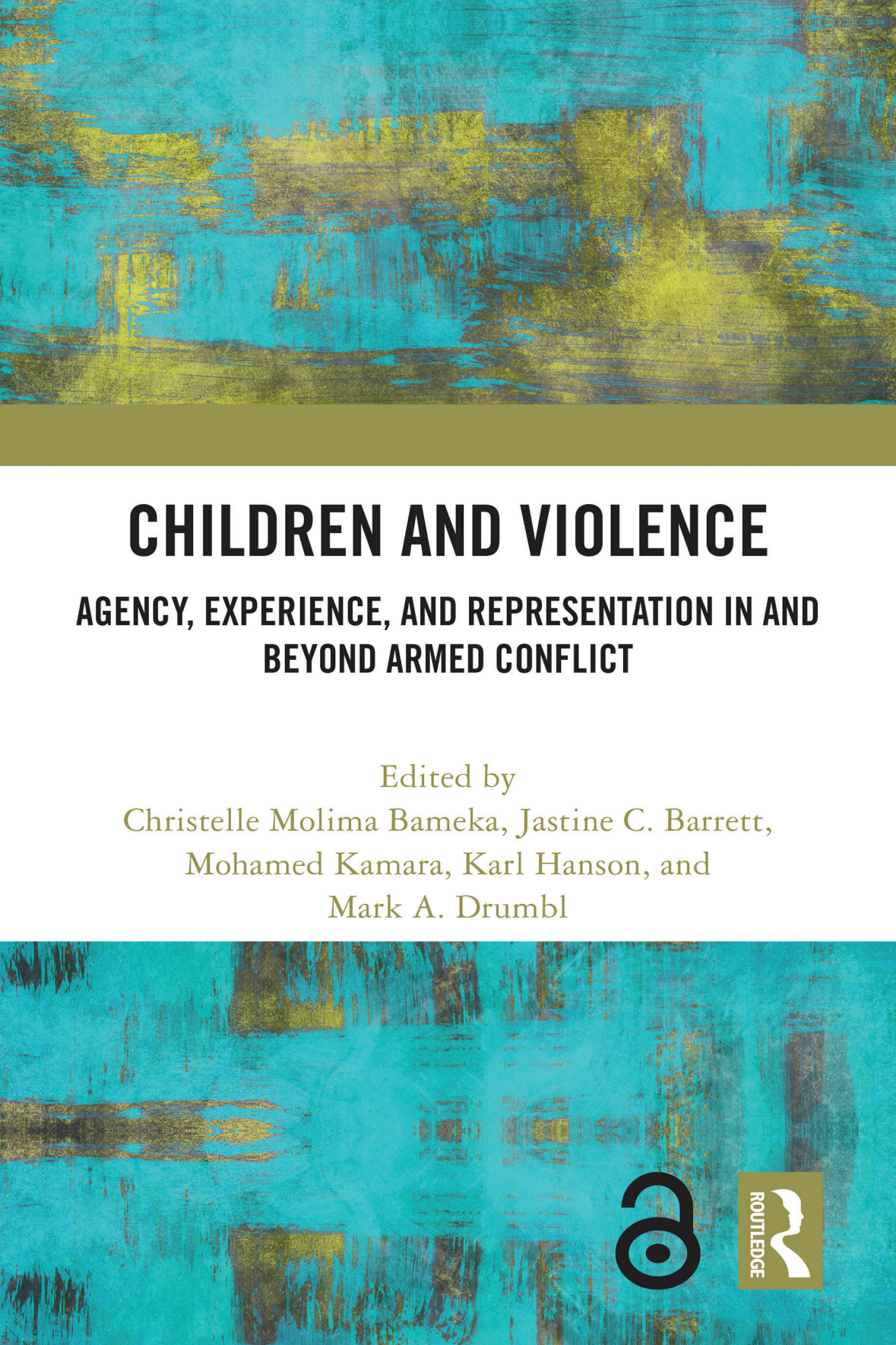




CHILDREN AND VIOLENCE

AGENCY, EXPERIENCE, AND REPRESENTATION IN AND
BEYOND ARMED CONFLICT

Edited by

Christelle Molima Bameka, Jastine C. Barrett,
Mohamed Kamara, Karl Hanson, and
Mark A. Drumbl



‘I highly recommend this important volume, which examines how children are actors in different kinds of fights and struggles. Interconnecting areas of violence that are often fragmented and bringing forward voices from diverse countries, it sheds new light on children’s agency and ability to navigate and shape complex environments.’

Michael Wessells, *Professor Emeritus, Program on Forced Migration and Health, Columbia University, USA*

‘How do children fight? That is, how do young people experience concerted violence, whether it is called armed conflict, cartel criminality, cyberwar, or something else? Seeking answers through multidisciplinary research by authors from around the globe, this rich collection opens paths for an empirically grounded, fully inclusive child rights practice.’

Diane Marie Amann, *Regents’ Professor of International Law, Emily & Ernest Woodruff Chair in International Law and Faculty Co-Director of the Dean Rusk International Law Center, University of Georgia School of Law, USA*

‘This multi-disciplinary, multi-faceted, and multi-regional volume is a welcome contribution to scholarship on child-related violence. It offers important insights on violence in various forms and contexts, ranging from armed conflict, cyber warfare, and trafficking to economic, gendered, and racialized violence, among others. Taken as a whole, the chapters in this edited collection enrich, reframe, and expand debates on the relationship between childhood and violence.’

Hedi Viterbo, *Senior Lecturer (Associate Professor) in Law, Founding Director of the Childhood, Law & Policy Network (CLPN), Queen Mary University of London, UK*



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Children and Violence

This multi-disciplinary volume provides an innovative approach to children and violence, looking beyond the existing literature that focuses on child soldiers in the ‘Global South.’

Harnessing expert contributions from over a dozen countries, the book examines the relationship between children and violence, with a focus on children ensnared in military conflict, embroiled in criminal gangs, and enmeshed in political activism. It analyses how children join fights, how they fight, and what happens to them after fighting officially ends. It addresses cutting-edge issues such as cyberwars, self-defence, intergenerational trauma, gender fluidity, racism, and state surveillance. Throughout, the book underscores the need to respect the agency and dignity of children and youth, to build cultures of juvenile rights, and to think critically of the place of the child amid global power politics and decolonisation. Through accessible writing, and the provision of considerable new data, this book supports advocacy work and will enrich teaching and spark further academic research.

This book will be of great interest to students of International Law, Human Rights, Childhood Studies, International Relations, Peace and Conflict Studies, Post-Conflict Studies, and Security Studies.

Christelle Molima Bameka is Scientific Coordinator of the Law and Society Initiative of the University of Lausanne (Switzerland). She is the author of *Enfants soldats et reinsertion socio-communautaire. Questions de responsabilité pénale en droit international et national congolais* (2022).

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and beyond Armed Conflict

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Jastine C. Barrett, Mohamed Kamara,
Karl Hanson, and Mark A. Drumbl**



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À tous les enfants aux prises avec toutes formes de combats à travers le monde.



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Contents

<i>List of Illustrations</i>	<i>xi</i>
<i>About the Editors</i>	<i>xii</i>
<i>List of Contributors</i>	<i>xiv</i>
<i>Acknowledgements</i>	<i>xvi</i>
<i>List of Common Abbreviations</i>	<i>xviii</i>
<i>List of Selected Treaties and Instruments</i>	<i>xix</i>
1 Introduction	1
CHRISTELLE MOLIMA BAMEKA, MOHAMED KAMARA, AND MARK A. DRUMBL	
SECTION I	
Joining and Leaving Armed Fights	17
2 Safeguarding Futures: Rethinking Preventative Approaches to Protect Minors from Recruitment and Use in Colombia	19
MARÍA PAULA ESPEJO, YADIRA LIZAMA-MUÉ, AND JUAN LUIS SUÁREZ	
3 From Child Soldiers to Struggling Citizens: Children and Youth in a Broken and Uneven Social Contract in Conflict and Post-Conflict Democratic Republic of the Congo	46
SYLVIE BODINEAU	
4 Former Child Soldiers: Persistent Conceptions of Childhood, and the Long Road of Transitional Justice in Uganda	66
KIRSTEN J. FISHER	
5 <i>Sulh</i> as Restorative Justice for Child Soldiers	82
YOUSRA HASONA	

SECTION II

Cross-Overs: Fights beyond Conventional Armed Conflict 103

- 6 Children and Cyberconflict: (Re)assessing Harm and the Capacity of Legal Instruments to Protect 105

MELISSA HOLLOBON, DAVID HUGHES, AND PANTHEA POURMALEK

- 7 Guilty Victims or Not? Non-Punishment of Child Trafficking Victims and Child Soldiers Under International Law 125

SILVIA SCARPA

- 8 Children as Informers and Denouncers 143

BARBORA HOLÁ AND MARK A. DRUMBL

- 9 Afghanistan's *Bacha Posh* Girls: Unspoken Gender-Based Violence and Psychological Trauma within the Broader Context of an Armed Conflict 164

INGEBORG GRUENWALD

SECTION III

Imagining Children and Fights: Representation, Ethics, Aesthetics 179

- 10 Childhood, Victimhood, and Agency in Namina Forna's *The Gilded Ones* and Kim Nguyen's *War Witch* 181

MOHAMED KAMARA

- 11 Tools of War, Tools of State: Stories of the Child Combatant in Global North–South Relations 196

JANA TABAK

- 12 Children Born of Conflict-Related Sexual Violence in Rwanda: In Search of Recognition and Advocacy 213

MYRIAM DENOY

- 13 Child Soldiers and the Right of Self-Defence 229

DAVID M. ROSEN AND SARAH M. ROSEN

- Index* 244

Illustrations

Figures

2.1	Annual distribution of documents released by the Ombudsperson's Office	25
2.2	Number of mentions of the conflict actors in the context of recruitment and use of N.N.A.J.	28
2.3	References to Actors of the Conflict in the documents (Part 1)	29
2.4	References to Actors of the Conflict in the documents (Part 2)	29
2.5	Geographic distribution of Early Warnings mentioning recruitment and use of N.N.A.J. (Periods)	30
2.6	Geographic distribution of Early Warnings mentioning recruitment and use of N.N.A.J. (Actors)	32
2.7	Network of Actors, Departments, and Strategies of Recruitment and Use (Justice & Peace 2001–2005)	35
2.8	Network of Actors, Departments, and Strategies of Recruitment and Use (Conflict 2006–2011)	36
2.9	Network of Actors, Departments, and Strategies of Recruitment and Use (Peace Negotiations 2012–2016)	37
2.10	Network of Actors, Departments, and Strategies of Recruitment and Use (post-Agreement 2017–2022)	38
5.1	General view of the number of child soldiers in Arab countries	83
8.1	'Pavlik Morozov' by Nikita Chebakov, 1952	146
8.2	Pavlik Morozov listed in the Soviet youth pioneer organisation as Pioneer #001	147
8.3	Later Pioneers visiting the place where the body of Pavlik Morozov was found	149
8.4	Post-Communism – Downed statue of Pavlik Morozov	151
8.5	Letter of Denunciation and Reprimand Written by Children	153
8.6	Ivana's StB file (1980–1984) – Cover Page	156

Table

2.1	Total of documents mentioning recruitment strategies and use of children	34
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Common Abbreviations

A.I.	artificial intelligence
C.A.A.F.A.G.	Children Associated with Armed Forces and Armed Groups
C.S.S.R.	Czechoslovakia
D.D.R.	Disarmament, Demobilisation and Reintegration Programmes
D.R.C.	Democratic Republic of the Congo
E.C.H.R.	European Convention on Human Rights
F.A.R.C.	<i>Fuerzas Armadas Revolucionarias de Colombia</i>
I.C.C.	International Criminal Court
I.C.R.C.	International Committee of the Red Cross
I.H.L.	international humanitarian law
L.R.A.	Lord's Resistance Army
N.G.O.	non-governmental organisation
T.J.	transitional justice
U.K.	United Kingdom
U.N.	United Nations
U.N.C.R.C.	United Nations Convention on the Rights of the Child
U.N.G.A.	United Nations General Assembly
U.N.S.C.	United Nations Security Council

Selected Treaties and Instruments

- African Charter on the Rights and Welfare of the Child, 1990
- ‘Cape Town Principles and Best Practices.’ Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, 1997
- Convention against Transnational Organized Crime and the Protocols, 2000
- European Convention on Human Rights, 1950
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
- Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002
- Rome Statute of the International Criminal Court, 1998
- The Paris Principles And Guidelines On Children Associated With Armed Forces Or Armed Groups, February 2007
- The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, February 2007
- United Nations Convention on the Rights of the Child, 1989
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985
- Universal Declaration of Human Rights, 1948
- Worst Forms of Child Labour Convention (No. 182), 1999



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1 Introduction

*Christelle Molima Bameka, Mohamed Kamara,
and Mark A. Drumbl*

1.1 Overview

The effects of armed conflict on children have concerned academic research for many years. Overall, research has clarified the phenomenon of child soldiering, documented its persistence despite considerable dissuasive global efforts, and analysed the way it affects the course of armed conflict. This research has furthermore explored avenues to remediate war-afflicted youth by examining children's experiences during conflict and setting out post-conflict realities for children. Existing studies also gesture towards – though do not much engage with – links between child soldiering and human trafficking, immigration, poverty, youth gang criminality, the surveillance state, race, urban violence, child labour, and terrorism.

Extant research largely has pursued a 'they are not ours' (Hyndman, 2010, p. 251–252) approach by looking at the iconic child soldier figure almost exclusively as a boy from the Global South without also reflecting on the consequences for young people of group violence, collective struggles, and militarisation patterns in the North. This iconography is incomplete. Child soldiering encompasses much more than the imagery of a prepubescent boy from the Global South. Roughly 40% of child soldiers worldwide are girls (Drumbl and Barrett, 2019). Child soldiering, moreover, is an endemically global phenomenon, involving all six continents, and waxes and wanes wherever insecurities grow or recede. Readers may be surprised to learn that: many children soldier outside of Africa (and increasingly so); the most common path to militarised life is not abduction nor forcible recruitment, but for children to come forward with varying degrees of volition and become enlisted; some children are born into armed groups engaged in long-term conflict; children may face greater threats from their 'side' than from the 'enemy', including sexual slavery and forced marriage; the fastest growing volunteer recruitment demographic in Western national armed forces are teenage girls; and many children fulfil functions that do not involve carrying weapons (Drumbl and Barrett, 2019). The solid majority of children associated with armed forces or armed groups worldwide are adolescents (16- and 17-year-olds) who may consider themselves less as children and more as young adults (Drumbl, 2012). It is important to keep in mind that infantilising young people may not only discount their agency but can also have a counterproductive impact on efforts to reintegrate them. Although the terms

2 *Children and Violence*

‘adolescent’, ‘youth’, ‘young people’, and ‘juvenile’ are in constant circulation in colloquial discourse, the international *legal* imagination almost exclusively deploys the term ‘child’. This is telling, in that these linguistic choices tend to distance legal language from general language which is far more nuanced. In this volume, we express some scepticism about the centrality of the binary reductiveness between ‘child’ (under 18 according to Article 1 of the United Nations Convention on the Rights of the Child [U.N.C.R.C.]) and ‘adult’ (18 and over), in which these two categories are bimodally presented in oppositional fashion. Individuation, granularity, experience, and fluidity greatly matter to us as editors.

Despite considerable remedial and preventative efforts, child soldiering endures and recurs. The effects of war on children, for example, currently roil the Russian–Ukraine armed conflict. Media reports show that, in Russian schools, ‘children in nursery grade don uniforms and take part in marching practice. Older kids are being taught how to dig trenches, throw grenades ... [c]hildren as young as seven or eight are receiving basic military training’ (Lister and Krebs, 2023).¹ Programmes are being developed to instil ‘in students “an understanding and acceptance of the aesthetics of military uniforms, military rituals and combat traditions,” according to an Education Ministry document uncovered by the Russian independent media ...’ (Lister and Krebs, 2023). The deportation of children from Ukraine to Russia singularly animates the criminal charges that the International Criminal Court (I.C.C.) has thus far brought against Russian President Vladimir Putin.

As alluded to earlier, research on children and military violence tends to focus on child soldiers enmeshed in armed conflict in the so-called Global South, to wit, the so-called new wars (Kaldor, 1999, 2005). The focus aims almost exclusively at boys presented in extremist images, notably, as passive victims or as incorrigible demons (Denov, 2010; Lee-Koo, 2011). However, such a parsimonious approach fails to acknowledge the complexities inherent in addressing the intersectionality of children and violence. Children engage in many more ‘fights’, so to speak, than militarised fights. Many contributions to this volume expose the reality that, for youth – as perhaps for everyone – the official end of armed conflict is not necessarily coterminous with peace, security, or opportunity. What is more, even in contexts where the ‘end’ of armed conflict ‘begins’ peace, many former youth combatants need to fight for recognition, fight to be seen, and fight to participate in reintegration programmes (even in programmes putatively designed by ‘wise’ adults for the benefit of ‘needy’ children).

This volume makes two innovative moves.

The first move is territorial. This book commences with armed conflict but then gazes beyond the paradigmatic concepts of ‘soldier’ and ‘war’ by engaging a number of questions. What other kinds of collective violence have ensnared children? What can be learned from the involvement of children in armed groups to better understand the involvement of children in other forms of organised ‘fights’? How should theoretical, experiential, and empirical knowledge guide courts and policymakers in addressing violent situations? This book expands the frame of war, armed conflict, ethics, and security studies by interrogating other angles of armed violence, including cyber-warfare and self-defence, and then other kinds

of fights that ensnare and embroil children and youth such as: trafficking; misogyny, transphobia, and racism; youth gang criminality; state-sponsored violence in 'peacetime' (torture, repression, spying, informing on others); the surveillance state; and intergenerational transmission of harm. In the United States, homicides committed by minors have tragically risen by 65% between 2016 and 2022 (Yancey-Bragg, 2024).

This volume's second move is conceptual. It interrogates the reality of child soldiering and of children's experiences with 'fights' from the perspectives of both the South and the North; and, furthermore, it tilts towards assessing implicated children as actors with the capacity for ethical discernment, as demonstrating agency, and having an awareness of virtue and evil. To what extent can expertise gained over the years in Southern countries enhance the responses of *all* countries to analogous challenges outside of extreme militarisation, such as the reintegration of former urban gang members, young people's engagement in violent political struggles, and the return to civilian life of child terrorists and, thereby, diversify the epistemology of 'international' practice? To what extent can expertise gained from Northern countries be equitably and meaningfully shared with the Global South and *vice versa*? And how can this knowledge base contribute to moderating the bimodal global 'victim' or 'demon' imagery?

This book is a multi-disciplinary project that synergises established and emerging scholars and practitioners from law, social sciences, and the humanities. Jurisdictions that are discussed include Colombia, the Democratic Republic of the Congo (D.R.C.), Uganda, Palestine, Israel, Iraq, Yemen, the Soviet Union, Czechoslovak Socialist Republic (Czechoslovakia, C.S.S.R.), Afghanistan, the United Kingdom (U.K.), Guatemala, and Rwanda. This book aims to surface the experiences of children through their own voices. Hence, diverse methodologies are utilised. These include interviews, literary and cinematographic analysis, archival work, narration and storytelling, critical reading of secondary literature and discourse, ethnographic studies, as well as interpretation of images. This book aims for a representational analysis that respects the perceptions that children affected by violence have about themselves and their own identities. Throughout, the authors explain their methodologies and the ethical approaches they have undertaken in terms of their research.

The genealogy of this collaborative volume is interactive. It emerged from a major international conference held at Washington and Lee University in April 2023. Entitled 'Children's Fights: Commonalities and Differences Across Time, Space, and Place', this event showcased voices from a dozen jurisdictions across the Global North and the Global South. Participants conveyed expertise from an array of disciplines and a full gamut of career stages. The harnessing of multiple methodologies led to a rich assembly of ideas and approaches to rethinking childhood(s) and children's rights amid violence. The event considered the many kinds of fights in which children become entangled: armed conflict, liberation struggles, criminalised violence, quests for recognition and status (including gender and racial equality), electoral disputes, and the pursuit of economic security. Following the conference, organisers selected a subset of conference papers to be

more deeply and rigorously developed for inclusion in this book. One additional contribution was invited and added. This book aims to offer an interdisciplinary approach to bring literature on child soldiering into a far wider conversation about violence that engulfs children generally. This book gazes beyond the warscape. We believe that child soldiering cannot be seen, taken, or studied in isolation from other forms of structural, collective, gendered, or racialised violence.

The remainder of this introduction proceeds sequentially.² The next step, in Section 1.2, is definitional, to wit, how do we understand child soldiering? It questions the current terminology that focuses strictly on chronological age and the requirement for an armed conflict. Pivoting from our key research questions, Section 1.3 of this introduction identifies several additional cross-cutting themes which intersperse among the various contributions and bind this volume into a coherent whole. Section 1.4 then offers a summary of each chapter. This is helpful as a glimpse of the overall trajectory of this volume and also to direct readers to individual chapters in which they might have a deeper interest in light of the jurisdictional provenance of each chapter, its specific methodology, or proffered thematic content. The building of a sum that is larger than the parts is further buttressed by each author's referencing of the work of others. Such is the benefit of having assembled authors within a highly generative conference. Finally, Section 1.5 of this introduction looks beyond by gesturing towards research questions and practical applications that we as editors believe warrant further exploration or to which we feel our volume, despite its distinctiveness, could not accord sufficient attention.

1.2 Definitions and Terminology

Who is a child soldier? This volume tracks the current definitions of child soldiering prevalent in international law and policy, namely the main non-binding instruments (Paris Principles, 2007; Paris Commitments, 2007). These instruments shy away from the term 'child soldier', preferring 'a child associated with an armed force or armed group'.³ The Paris Principles did so to underscore the variety of roles that children may assume in armed conflict, which extends beyond traditional 'soldiering' or combat roles, and also to recognise the range of actors that may recruit or use children. According to the Paris Principles:

A 'child associated with an armed force or armed group' refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.

An armed force refers to the national military of a state, whereas an armed group refers to a non-state fighting force (for example, a rebel group). The phrase 'children associated with armed forces and armed groups' is indeed tongue-tying, so United Nations (U.N.) agencies and international activists have expediently turned

to deploy the stilted acronym C.A.A.F.A.G. instead. Yet this, too, is phonetically awkward. It is noteworthy, in a cyclical sense, that a more recent set of political commitments on the topic of children affected by armed conflict – the Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers, fostered by the Canadian government in 2017 – revert to the *ancienne phrase*. The term ‘child soldier’, initially powerful, then faddishly disfavoured in language skirmishes about renaming, now seems to be regaining some traction.

So, the bottom line is this: in this volume, we deploy the term ‘child soldier’ but understand its meaning to reflect the definition as provided by the Paris Principles.

Extant definitions of child soldiering thereby revolve around the fulcrum of *chronological age* and *armed conflict*. We question both of these pivots. These interrogations constitute major threads that run through this entire volume.

First, age: The age of 18 is taken as a bright line. Much hay is made of a single birthday. This leads to *chrono-normativity*. This book questions the focus of childhood studies on chronology. So much of international law and policy is tethered to chronological bright lines, in particular, the classic milestone of the age of 18 as the border between childhood and adulthood as established in Article 1 of the U.N.C.R.C. This leads to definitional boxes and also an accompanying mindset. This mindset fetishises time as the normative *desideratum* of how to think, talk, and conceptualise youth and violence. It also views time as intrinsically linear. Contributions to this volume interrogate the salience of chronology as a measuring stick and divider. They suggest the value in an approach that is somewhat suppler than the current mindset in which those aged 18 or over are overlooked entirely and those under the age of 18 are treated interchangeably as group members rather than individually as persons. Building on this premise, this volume seeks to surface commonalities between persons over and under the age of 18 when it comes to the harms arising from gerontocracy. Contributions unpack *pan-generational* concerns to build a common base of respect for human dignity, *tout court*.

Second, this volume also questions, as previously mentioned, the focus of extant definitions on armed conflict, in other words, children enmeshed in militarised violence. This volume, while recognising the importance of warscapes, also pushes beyond to engage with children caught up in *violence generally*, which includes ‘criminalised’ violence (see notably Scarpa in this volume) as well as structural violence that may root in economic desperation (Bodineau, herein), patriarchy (Gruenwald, herein), loss of identity (Denov, herein), and political repression (Holá and Drumbl, herein). Endemic violence is far broader than armed conflict, armed forces, and armed groups. Although technically different, armed ‘fights’ and other ‘fights’ may deeply interrelate. Criminal syndicates, for instance, may recruit and use children. One example is Mexico, where in attacks waged by the Sinaloa Cartel, social media videos show a young boy and girl holding firearms and wearing camouflage as they are readied to fight (Gutmann, 2023). Recruitment patterns into such syndicates may bear parallels with those operative in the context of armed groups. Armed conflict, moreover, even when ‘formally’ ended may fracture into endemic criminal or low-intensity conflict, as Espejo et al. show in this volume is the case in Colombia. Peace agreements may be heralded as the ‘end’, but often this is just the beginning of the end, or not a veritable end at all, as violence

may become more diffuse, privatised, and decentralised. Just because something falls away from the gaze of international lawyers and policymakers does not mean it ceases to exist. Relatedly, as Gruenwald indicates in the case of Afghanistan, armed conflict may coterminously serve as a context to incubate – or intubate – other forms of violence, notably violence based on gender identity and practices of gender fluidity. What is more, as Hollobon et al. examine, the very notions of ‘armed conflict’ and resultant insecurity are morphing rapidly: their stellar contribution to the ‘digital child soldier’ brings these evolutions into sharp relief.

1.3 Additional Cross-Cutting Themes

In addition to the conversation about chrono-normativity, on the one hand, and violence beyond armed conflict, on the other, several other threads harmonise the contributions to this volume.

1.3.1 Agency

This volume aims to unpack the agency of youth within the frame of endemic violence. How do young people socially navigate the spaces that may be available to them? Surprisingly, young people may demonstrate remarkable grit, ingenuity, autonomy, resilience, and volition – along with vulnerability – in making the most of things. This volume thereby espouses agency as a valuable lens through which to understand behaviour, action, responsibility, and citizenship. It analyses portrayals of agency in multiple forms, including in literature and film (see Kamara in this volume). Denov and Fisher, in separate contributions, demonstrate how in the case of Rwanda and northern Uganda, respectively, children’s ‘fights’ may also extend, in the wake of genocide and crimes against humanity, to the pursuit of recognition, remedy, and visibility. Rosen and Rosen also remind us of the right of self-defence and how children may deploy their agency to defend themselves from attacks, crimes against humanity, and genocide.

Assuredly, children are influenced by environmental factors and fierce situational constraints: poverty, insecurity, lack of education, socialisation into violence and broken families, along with deception and abandonment on the part of adults. We believe it useful to characterise the relationships of children with these factors as ones of push and pull in which children navigate restricted spaces. Hence, we are drawn to the notion of agency, however circumscribed and limited. We understand agency as the ability to make decisions – to do or not to do – at times tactically, at times strategically, at many times desperately and involuntarily, yet sometimes even decidedly.

1.3.2 Reconciliation, Restoration, and Vibrant Cultures of Juvenile Rights

In the wake of violence, how best to rebuild societies that respect dignity, inclusion, and opportunities for young people? How to ensure that children are present? Relatedly, how to deal with the pain, hurt, injuries, and deaths that children suffer and that they themselves inflict upon others, including other children? In tandem with its

emphasis on agency, this volume also inclines towards reconciliatory and restorative methods of justice rather than the prevailing extremes of retribution, on the one hand, and forgetful denialism, on the other, as key elements of transitional justice. Hasona, on this note, unpacks the power of *Sulh*, an Arab form of reconciliation, as a model approach to dealing with violence in which children are both victims as well as victimisers. The book posits that one way to prevent recidivism and reoccurrence in the case of violence and youth is to engender a culture of juvenile rights in which youth are taken seriously, have space for input, and are heard.

Children's rights approaches oscillate between the protective impulse (children are vulnerable and need to be shielded) and the emancipatory impulse (children have evolving capacities and need to be supported, recognised, and encouraged as societal participants). Many children may see their own participation in military, criminal, or political life as emancipatory. It remains crucial not to dismiss or condescend such self-perceptions. One important path forward is to ensure that the best interests of the child principle, enshrined in Article 3 of the U.N.C.R.C., is fully actuated. Valuing best interests means foregrounding the voices of the children themselves. Excessive protectiveness may paradoxically lead to enfeeblement.

1.3.3 International Relations and North-South

A third thread, woven most affirmatively by Tabak in this volume, is the contrast between the presentation of militarised children in the Global North as somewhat heroic and their counterparts in the Global South as dilapidated and abused. This, in turn, creates a problematic double standard. At times these double standards may invert themselves. Gruenwald, for instance, identifies how gender fluidity as a tool of social navigation by girls in Afghanistan is seen in the West as heroic, whereas gender transitions in Western societies are seen – at times transphobically – as controversial. While one of the goals of this volume is not to propound a strict universality – indeed this volume is strongly inclined towards welcoming bottom-up and diverse approaches to engage with children ensnared in violence – we, as editors, believe it important to overcome politicised tendencies in which transnational norm entrepreneurs, generally based in the West, approach children differently due to implicit assumptions about their circumstances based on their geographical location. Insofar as these assumptions may contain vestiges of racialised thinking and colonialism, it is a precondition to developing an inclusive and equitable world-order to air this laundry and overcome positionality and bias. Hence, just as it encourages pan-generational thinking, this volume also hopes to foster an equitable globality and shared humanity in conceptualising children affected by violence.

1.4 Roadmap

Including this introduction, this volume contains 13 chapters constellated into three sections: (I) Joining and Leaving Armed Fights; (II) Cross-Overs: Fights beyond Conventional Armed Conflict; and (III) Imagining Children and Fights: Representation, Ethics, Aesthetics.

Section I: Joining and Leaving Armed Fights

How do children and youth become embroiled in – and eventually exit – armed conflicts? This is a compelling starting point, reflecting as it does classic understandings of child soldiering, but this section innovates by exploring these understandings through original case studies and diverse lenses, including social navigation, agency theory, ethics, prevention, post-conflict justice, and the passage of time.

The opening commissioned chapter of this volume focuses on ‘joining’, to wit, the iterated stages of child recruitment. In Chapter 2, María Paula Espejo, Yadira Lizama-Mué, and Juan Luis Suárez caution against a one-size-fits-all approach to the prevention of recruitment and use. ‘Safeguarding Futures: Rethinking Preventative Approaches to Protect Minors from Recruitment and Use in Colombia’ calls for ‘context-specific prevention strategies with an intersectional approach that includes age, socioeconomic status and gender’. Using data on systemic human rights violations collected by the Ombudsperson’s Office in Colombia, the authors do two things. First, they examine sources of violence in Colombia today with a specific focus on the geographic distribution of illegal armed actors and the strategies they employ for the recruitment and utilisation of minors; and, second, they identify and propose mechanisms that could be deployed to remedy the problem of youth violence that peace agreements have failed to prevent. Of particular concern is the shift in recruitment strategies by armed and criminal groups from ‘hard’ to ‘soft’ tactics which offer or promise at-risk minors social and financial benefits. Espejo, Lizama-Mué, and Suárez conclude by advocating for the adoption of ‘inclusive and participatory methodologies’ that will yield valuable data that can then be utilised ‘for attaining a deeper understanding of the complex relationships between minors and violence’ leading to ‘prevention strategies tailored to adolescents hailing from complex family backgrounds’.

In Chapter 3, Sylvie Bodineau tackles the process of demobilisation and reintegration of child combatants following two major wars in the D.R.C. spanning from 1996 to 2003. Adopting an anthropological lens, ‘From Child Soldiers to Struggling Citizens: Children and Youth in a Broken and Uneven Social Contract in Conflict and Post-conflict Democratic Republic of the Congo’ demonstrates how these erstwhile child combatants navigate their dual status as former soldiers and current citizens in a post-conflict setting that frustrates their aspirations. Significantly, Bodineau asserts that ‘demobilised children refused to occupy a victim position vis-à-vis the programmes meant to protect them’. Posing the question as to how to enable these former child soldiers to conclude their ‘fights’ and become fully fledged citizens in their nation and in the world, Bodineau argues that researchers and policymakers must engage D.R.C. youths as ‘a transitional, hybrid, multiple and fluid category’, while situating their specific situation within the larger context of the African postcolonial dystopia. Bodineau enriches debates around the victimhood and agency of child soldiers or former child soldiers and the need to engage them as *bona fide* human beings.

Kirsten Fisher, much like Bodineau and others in this volume, addresses in Chapter 4 the vexing issue of the reintegration of former fighters in communities from which they had been taken as children and which, as fighters, they helped

terrorise. In a post-conflict situation and the ensuing efforts of rehabilitation, how do societies adequately address the actions of perpetrators (former child soldiers) and the needs of their victims? This is the question Fisher engages in her intervention, ‘Former Child Soldiers, Persistent Conceptions of Childhood, and the Long Road of Transitional Justice in Uganda’. Fisher follows the two-decades-long conflict orchestrated by Joseph Kony’s Lord’s Resistance Army. Reflecting on transitional justice more broadly, Fisher effectively draws attention to the need to consider the passage of time in lengthy transitional justice processes and its intersection with conceptions of childhood and children’s ‘fighting’. This is of particular salience since former child soldiers who return home continue to fight to be recognised not only as victims but also as social actors. Moreover, ‘people and their needs and conceptions of justice change over time’, including former child soldiers who may age out of the transitional justice process. Fisher plays with the fluidity of time. In concluding, she asks that former child soldiers be seen not as permanent children, but as dynamic political subjects whose full participation in the creation and implementation of transitional justice policies is integral to the success of such policies and the well-being of their communities.

Yousra Hasona’s Chapter 5, ‘*Sulh* as Restorative Justice for Child Soldiers’, follows on the heels of Fisher to interrogate the question of the reintegration of (former) child combatants into their respective communities. Invoking examples mainly from Iraq and Yemen following the so-called Arab Spring (2010–2012), Hasona focuses more specifically on *Sulh*, a community dialogue and reconciliation practice deployed in the Arab world in lieu of retributive justice. Hasona contends that restorative justice presents a more suitable modality to address children’s criminal liability while at the same time meeting the needs of victims and community members and restoring relationships among parties. In general, the case for *Sulh* is that it is far more likely than retributive justice practices to prevent recidivism. *Sulh* is a more holistic and culturally adapted approach that emphasises ‘healing, reparation, and the restoration of community relationships’ while acknowledging the need to hold child soldiers accountable for their crimes.

Section II: Cross-Overs: Fights beyond Conventional Armed Conflict

This section focuses on fights beyond conventional armed conflict. It unpacks the diverse array of fights into which children are drawn and which reflect profound challenges to extant understandings of security and stability.

Chapter 6 by Melissa Hollobon, David Hughes, and Panthea Pourmalek opens this section by introducing readers to cyberconflicts and the new threats they pose to children. ‘Children And Cyberconflict: (Re)Assessing Harm and the Capacity of Legal Instruments to Protect’ posits that traditional understandings of ‘armed conflict’, ‘violence’, or ‘child soldiers’ – as well as extant legal frameworks ‘premised upon mitigating the forms of physical harm and destruction that typically result from kinetic conflict’ – are inadequate to conceptualise and address harms emanating from cyberconflicts. The authors use specific examples of a series of cyberattacks in Estonia in 2007 and 2022 to illustrate the many ways cyberattacks can disrupt children’s access to basic goods and services. Another important phenomenon

the chapter unwraps is the notion of the ‘digital child soldier’, which demands innovative thinking. Consequently, these authors advocate for a (re)conceptualisation of and engagement with the particular ways that cyberconflict impacts children. Additionally, and given the increasing interface or interdependence between cyber and kinetic practices in war and violence more broadly, this chapter offers a foundation to revisit extant distinctions between terminologies such as ‘cyber’ and ‘armed’.

Should child trafficking victims and child soldiers be punished for the crimes they commit? If yes, what should be the weight of such punishment? This two-pronged question constitutes the basis for Silvia Scarpa’s contribution to this volume. In Chapter 7, ‘Guilty Victims or Not? Non-Punishment of Child Trafficking Victims and Child Soldiers Under International Law’, Scarpa executes a comparative analysis of two decisions (in 2021 and 2022) of the European Court of Human Rights (involving two Vietnamese child trafficking victims), on the one hand, and the verdict of the I.C.C. in the case of Ugandan former child soldier Dominic Ongwen,⁴ on the other. The gravity of the crimes committed in these separate situations varied dramatically and influenced the application (or non-application) of the non-punishment principle. This comparative study goes to the heart of the debate about children’s agency and victimhood, a key pillar of the present volume. But before analysing these two cases, Scarpa clarifies the conceptual complexities and overlaps relative to child trafficking victims and child soldiers in international law. Ultimately, she suggests that, beyond the varying circumstances that may push and pull a child into trafficking or armed conflict, conceptual overlaps between child trafficking and child soldiering require ‘a deeper and non-binary analysis of the lived experiences of children in complex scenarios’ in order to come up with more salutary policies and legal instruments at both the national and international regulatory levels.

In Chapter 8, ‘Children as Informers and Denouncers’, Barbora Holá and Mark A. Drumbl deploy findings from archival material and oral histories to present the reader with a different category of fighting children from what we have seen so far. Like other chapters in this volume tackling the binary division often erected between childhood and adulthood, Holá and Drumbl embrace age as something that exists in a continuum. The chapter recounts the stories of three child informers and denouncers from behind the Iron Curtain: Soviet pioneer child informer Pavlik Morozov, Czechoslovak youth denouncer Tomáš Frejka, and Czechoslovak child informer Ivana. These were three among countless children weaponised by families, educational institutions, and state apparatuses for propaganda campaigns. What these nefarious practices did in the end, note the authors, is blur the lines ‘between personal and political, between agency and context, and between the walls of home and the borders of the *polis*’. An important feature of this chapter is that Pavlik, Tomáš, and Ivana show how children can quite easily become active agents in a repressive system. Holá and Drumbl caution readers that an uncritical engagement with ‘the imagery and iconography of “childhood” in public life’ could entail the loss of ‘the reality of the nuanced, complex, agentic, and ambiguous lives actually lived by fighting children’.

Ingeborg Gruenwald's beautifully written Chapter 9, 'Afghanistan's *Bacha Posh* Girls: Unspoken Gender-Based Violence and Psychological Trauma within the Broader Context of an Armed Conflict', addresses the violence associated with gender fluidity in Afghanistan (the *bacha posh* practice) within the broader question of gender-based violence. Making the case that violence is a ubiquitous phenomenon that 'takes different shapes and forms', Gruenwald – as Scarpa does in her comparison of child trafficking victims and child soldiers – argues convincingly that *bacha posh* girls should be approached similarly to children involved in situations of armed violence. After all, these girls – like child soldiers – 'engage in precarious practices as a means of survival, essentially gambling for a better life'. Notwithstanding exercises of individual agency, Gruenwald underscores that the practice of gender transition – and the accompanying moral, psychological, and physical trauma it represents – operates in a patriarchal and misogynist culture bedevilled by cycles of armed conflict. Gruenwald concludes her chapter by advocating for international and national legal standards that should ensure respect for women and their rights in society.

Section III: Imagining Children and Fights: Representation, Ethics, Aesthetics

Section III unpacks how children's fights are imagined in popular culture, media, and literature, and how fighting children are represented (and perceive their own identities) in advocacy and inclusion efforts. This final section ramps into a broader discussion of one of the normative goals of this edited book, namely, the cultivation of cultures of juvenile rights to combat gerontocracy and patriarchy.

Mohamed Kamara's Chapter 10, 'Childhood, Victimhood, and Agency in Namina Forna's *The Gilded Ones* and Kim Nguyen's *War Witch*', opens this section. Leaning on concrete examples from the lives and experiences of Dekka in Namina Forna's debut novel, *The Gilded Ones*, and Komona in Kim Nguyen's fourth feature film, *War Witch*, Kamara engages questions relevant to how understandings of childhood colour understandings of victimhood and agency. Arguing that childhood is shared by all living persons, Kamara pushes the reader to see children as 'fully autonomous human beings and not underdeveloped and incapable miniature versions of grown-ups'. In conclusion, Kamara urges all those working on children's issues to be inspired by humanistic literature and film's nuanced portrayal of children as 'complex and round characters', notably in the crafting of ideas, policies, and laws around children.

How to look at wars and whether or not to label them just and rational hinges on where they occur and who fights in them. One of the major culprits of an uncritical conception of war is that it distorts engagement with the realities of the child who participates in it. In Chapter 11, 'Tools of War, Tools of State: Stories of the Child Combatant in Global North–South Relations', Jana Tabak's stellar recounting and analysis of an unfortunate tale of two hyphens – as in junior-soldier (in the U.K., for example) and child-soldier (in Africa, for example) – reveals the political, legal, moral, and policy implications of how transnational human rights entrepreneurs see the 'fighting' child. The disturbing oxymoron and images of physical and moral underdevelopment in child soldiers (tools of war) are erased from that of junior soldiers (tools of state), where, as Tabak notes,

this hyphen serves to make the progression from childhood to adulthood natural and seamless. Discourses about children in armed conflicts in the Global North and in the Global South present antipodal images not only about the child but especially about the discourses themselves and those who promote them. ‘New wars’, which tend to take place in ‘othered’ settings like Africa, Latin America, and Asia – spaces historically associated with infancy, primitivism, and savagery – are portrayed as essentially different from ‘good wars’ undertaken by professional, rational, civilised soldiers from Western arenas. By destabilising ‘the narratives that structure, organise, and authorise the monolithic and modern ideas of the “world-child”’, Tabak decolonises influential understandings of the nation-state, war, and violence, as well as the child’s role in them. The challenge Tabak’s chapter launches, and for which she offers an unambiguous roadmap when she cautions against taking ‘the world-child as the single norm’, is this: how to reconcile the need for ‘some set of universal forms of being and acting’ with the actual heterogeneity of experiences of children in a global world?

Starting from the acknowledgement of the lingering marginalisation, stigma, and discrimination suffered by youth born of genocidal rape in Rwanda within their families, communities, and broader society, Myriam Denov vivifies in Chapter 12, ‘Children Born of Genocidal Rape in Rwanda: In Search of Recognition and Advocacy’, data collected from interviews and focus groups to examine the status and advocacy of this youth community. Significantly, the lives of Rwanda’s *‘enfants de mauvais souvenirs’* (children of bad memories) and *‘enfants de la haine’* (children of hate) ‘bring to light the importance of challenging the constructed binaries surrounding agency and victimhood’. The salience of Denov’s contribution lies in the fact that it reveals not only the perspectives of youth born of conflict-related sexual violence but also their direct role in post-genocide reconciliation and policy-making efforts while highlighting the challenges and opportunities inherent in youth advocacy and engagement in post-genocide Rwanda. In the end, Denov’s meticulous analysis illustrates the complex interconnections among individual experience, national politics, kinship, and community, as well as what it means to be a survivor of the genocide in the context of national reconciliation efforts.

Chapter 13, ‘Child Soldiers and the Right of Self Defence’, by David M. Rosen and Sarah M. Rosen is an apt conclusion to this volume. Rosen and Rosen are guided by the following questions: Do children have the right to defend themselves? If they do, in what individual and organisational frameworks can this right be appropriately and pragmatically exercised? Through an expert analysis of the Holocaust, the Guatemalan Civil War (1960–1996), and the Rwandan (1994) and Yazidi (2014) genocides, these authors make a case as to why narratives about ‘child soldiers as merely vulnerable victims of adult perfidy’ should be abandoned for more nuanced and realistic ones. This chapter focuses specifically on the right of children to participate in armed resistance to mass violence. The inability or unwillingness on the part of the international community to intervene in an effort to prevent mass atrocities, especially genocide, triggers an acute need to consider other kinds of interventions. One such intervention involves children taking up arms to protect themselves and/or their communities, whether or not they are doing so under adult supervision. Even though the Rome Statute of the I.C.C. allows the

invocation of self-defence to avoid criminal responsibility, it does not proactively grant immunity from prosecution to groups and to children participating in self-defence. Positing that ‘the right to self-defence and to resist genocide is both a human right and a child’s right’, and given the context of the ‘new realism’ of genocides that have been allowed to occur in modern times, Rosen & Rosen calls for an expansion of the imminence requirement for self-defence to include the participation of children in organised self-defence practices.

1.5 Concluding by Opening: Peering beyond

In May 2023, one of the editors visited an exhibit at the FOAM in Amsterdam. FOAM is a photography museum. On exhibit the day of that visit was the work of Ernest Cole, a Black South African photographer. Cole was among the first photographers to capture the haunting and horrifying reality of *apartheid* in the daily lives of Black South Africans.

Cole fled South Africa via Nairobi on May 9, 1966. According to a placard at the museum, Cole was forced into exile because of his work photographing Black ‘gangsters’ called *tsotsis*. Many *tsotsis* were young, even children. *Tsotsis*, as noted on the placards, were ‘notorious for organised muggings on the streets of Pretoria’. Many of their muggings targeted Whites. Cole had to leave South Africa because the South African police ordered him to testify against *tsotsis* in open court. His photographs, and what he saw (and experienced) in taking those photographs, were to be seized as legal evidence to convict. Testifying would have been a terribly dangerous thing for him to do. So, he fled.

Cole’s photographs endured. His images of *tsotsis* comprise a chapter in one of his books, *House of Bondage*. He entitled this chapter ‘Heirs of Poverty’. Cole ‘interprets crime as the inevitable result of structural inequality, which is in turn perpetuated by fear’. Cole expands the frame:

Tough talk and marijuana. These are *tsotsis*, youths who have turned to crime rather than work as white men’s garden boys or messengers – the usual jobs available to young blacks. [...] Like an army recruit he [the *tsotsi*] has had his basic training. He is generally an accomplished mugger, thief, and pickpocket, and he is not afraid of jail.

Again accompanying one of his prints, Cole powerfully notes that the ‘line between laughing and crying, between playing and fighting, is very narrow for the boy schooled in the streets’.

Cole photographed *tsotsis* in the heart of 1960’s *apartheid* South Africa. Yet *tsotsis* continued well after *apartheid* fell. A powerful South African movie – simply called ‘Tsotsi’ and made in 2005⁵ – unfurls the poignant and painful experiences of a youth in this space, and the pain he inflicts. Over time, targets of *tsotsi* violence also changed. For these *tsotsi* – and many juveniles like them – the ‘post-conflict’ or the ‘post-injustice’ may be a place in which exploitation, disenfranchisement, and harm continue in different forms and different ways.

Can international law and transnational policy, along with transitional justice, speak to these kinds of structural violence, these kinds of ‘fights’ that implicate children? Or are these best left to the local and national planes? How to integrate the increasingly variegated context – international, regional, national, local – in which law and policy, in the context of children affected by violence, is generated? This is one area this book suggests for additional research.

Is there something to be learned from what is known about child soldiers that could be applied to the context of child criminals, for instance in gangs, and from what is known about child criminals that could help in developing better policies for child soldiers? This volume has taken significant strides in this direction, and we believe there is potential for valuable cross-over (Marshall, 2023). However, what is lacking to date are concrete efforts to actualise this cross-over between these two epistemologies. This volume encourages policymakers to pursue such a task.

One area in which we had hoped to receive contributions but did not see them materialise is in the space of climate ‘fights’: the advocacy of youth in combating the scourge of climate change that will present, and already presents, crucial stability, sovereignty, human rights, and security concerns. Here, connections to theories of intergenerational equity and justice are central. And, once again, perhaps a pan-generational approach would overcome the ‘leave it to the future’ malaise that often afflicts, however well-intentioned, intergenerational thinking. Instead, perhaps, ‘presentation’ from contractarian theory, in which the future is imagined today – spelled out in the present and foregrounded to be addressed, now – could be a more fruitful model.

And, fundamentally, how can adults simply better listen to children? How can children leverage a greater voice? Are children and youth being heard? Or just spoken over? What do youth want and why are adults often too frightened and anxious to actually respond? There is a lot going on here that touches upon constitutionalism (for instance, access to suffrage), economic security, and deflating the shadows of parenthood and hierarchy generally. And what does community mean to children in an age of virtuality, avatars, and artificial intelligence (A.I.)? How can the wants and needs of children, already dimly heard and inadequately documented, form part of the automaticity of A.I. that, increasingly, becomes reflexively applied to ‘solve’ problems?

In the end, as editors we hope for this book to ask novel questions. We aim to push new conversations. We hope to open, rather than conclude, but crucially to end on a note that current efforts to conceptualise the relationship between children and violence are far from definitive.

Notes

- 1 This article also notes that ‘Education Minister Sergei Kravtsov said recently that there are now about 10,000 so-called “military patriotic” clubs in Russian schools and colleges, and a quarter-of-a-million people take part in their work’ and reports the various ways

- (including sewing balaclavas, headbands, amulets, and bandages) in which children are contributing to the war effort in practical ways).
- 2 The 'Children's Fights' conference was held in both English and French. Three presentations were made in French. The editors have translated this introduction herein into French in order to augment readership. This translated version is available at this website: <https://wlu.app.box.com/s/0x295gi4l477qds0h3pwjy78fpge5fu9>. The editors thank Bilguissa Diallo and Domenica Newell-Amato for their work in translating this introduction into French.
 - 3 These Principles and Commitments, which had been endorsed by 112 states by the end of 2022, build upon the 1997 Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa.
 - 4 Ongwen is not the only former child soldier in Uganda convicted of grievous crimes. In 2024, the Ugandan High Court convicted and sentenced Thomas Kwoyelo to 40 years in prison for crimes against humanity.
 - 5 See IMDB entry for 'Tsotsi' at https://www.imdb.com/title/tt0468565/?ref_=fn_all_ttl_1

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Section I

Joining and Leaving Armed Fights



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2 Safeguarding Futures

Rethinking Preventative Approaches to Protect Minors from Recruitment and Use in Colombia

*María Paula Espejo, Yadira Lizama-Mué, and
Juan Luis Suárez*

2.1 Introduction

Reports on children in armed conflicts highlight obstacles to prevention and protection efforts while emphasising the need to recognise child soldiers as more than just victims. After the Machel Report (United Nations General Assembly, 1996), numerous legal initiatives were undertaken to safeguard children (*Rome Statue of the International Criminal Court*, 1998). These took the form of frameworks (“Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups,” 2007), conventions (United Nations, 1989), protocols (United Nations General Assembly, 2000), guidelines and principles (“Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups,” 2007; “Cape Town Principles and Best Practices,” 1997), among others. Scholarly works have also explored these phenomena from various perspectives. Authors like Drumbl (2012, p. 482) emphasise the challenges of reintegrating child soldiers into their communities, underscore their agency as active citizens, and point out the various forms illicit use of children can take during periods of political violence. All of these dynamics inhibit preventative efforts.

Understanding child soldiers presents two key challenges. Firstly, there is a misconception regarding child soldiers as young children carrying large weapons and serving as frontline combatants in African countries. Most child soldiers are adolescents between 15 and 17 years old, only 40% of them are of African origin, and many have roles beyond combat duties. Additionally, documenting the prevalence of child soldiers faces significant obstacles like underreporting and competition among agencies and non-governmental organisations (N.G.O.s) working in the field who do not share their data (Firchow, 2018a, p. 24). Consequently, policymakers’ understanding of the root causes of conflict – such as motivations for joining armed groups and the socio-economic context that drives youth toward violence (Garbarino, Governale, and Nesi, 2020a, p. 4) – including post-conflict involvement in illegal armed groups or gangs, remains insufficient. This chapter

thereby links to research about trafficked children and criminalised children as expertly dealt with by Silvia Scarpa in this volume.

Post-conflict scenarios bring forth fresh challenges as pernicious new groups and actors emerge. Some of these entities are sustained by illegal economies (Vélez and Lobo, 2019, p. 72; Gutierrez, 2020, p. 1008). New groups exhibit high adaptability and dissuasion strategies which keep them from direct confrontation with the National Army and Police forces and thereby render them difficult to combat. In fact, gangs and small armed groups are often where minors begin their criminal journeys, especially minors more vulnerable to structural violence. Furthermore, this chapter explores the inability of peace agreements to prevent youth violence. This is despite including child recruitment in negotiation agendas, notably, due to the shift from armed violence to criminal violence, and the multiplication of new emerging groups that operate within the thin line between being an armed group and an organised crime group.

Furthermore, boys aged between 14 and 17 from low-income households face stigma and discrimination by fellow citizens and some police officers (Alvarado, 2013, p. 230; Callejas Fonseca and Piña Mendoza, 2005, p. 64), creating a binary perception of this group of adolescents as dangerous, poor, or helpless. Such binary categorisations impede the understanding of the big picture and exacerbate the gap between institutions and the very population they aim to safeguard (Espejo, 2021a, p. 8). A need consequently arises for context-specific prevention strategies with an intersectional approach that includes age, socio-economic status, and gender at the very least.

This chapter analyses the use of minors and the accompanying challenges for the prevention of child recruitment and use in post-conflict scenarios. Colombia will be our case study as it meets key characteristics addressed above, namely, the presence of atomised groups involved in illegal economies – including drug trafficking, arms, human trafficking, and illegal mining (Gutiérrez D. and Thomson, 2021, p. 26) – within the context of a transitional period introduced by the Havana negotiations. Our entry ramp is the literature on child recruitment and its challenges in transitional justice periods already identified in the secondary literature (Kiyala, 2018, p. 194; Daly, 2018, p. 656; Fisher, 2013, p. 1; Steinl, 2017, p. 14), the Colombian case, and data from the Ombudsperson's Office in Colombia.

After the introduction, Section 2.2 of this chapter examines the sources of violence in the current Colombian context. It shows how the country's Early Warning System has collected data intending to prevent systemic human rights violations. Section 2.3 comprises the heart of this chapter providing the results of the analysis of the documents provided by the Colombian Ombudsperson's Office, with a specific focus on the geographic distribution of illegal armed actors and the strategies they employ for the recruitment and utilisation of minors. Section 2.4 identifies and proposes effective preventive mechanisms for the problem of the recruitment and use of children in armed conflicts. Section 2.5 concludes. All figures and the table in this chapter were prepared by the authors.

2.2 Background to the Violence and Responses Thereto

2.2.1 *The Colombian Armed Conflict*

The conflict in Colombia follows a centre-periphery logic that has given rise to two contrasting experiences and divergent perspectives concerning the country's needs (Laengle Scarlazetta, Loyola Fuentes, and Tobón Orozco, 2020, p. 1). Despite ongoing violence, monitoring the conflict's evolution and dynamics, and preventing the recruitment and use of minors by armed groups remain imperative (Suárez and Lizama-Mué, 2020, p. 98). Efforts throughout the conflict have been persistent yet unsuccessful. As conflict and violence have transformed over the years, new challenges have arisen and the justice system has not caught up with the mutating scenario to effectively protect minors.

Colombia's violent history is characterised by a dozen peace negotiations and three central transitional processes involving various armed groups resulting in different documents, agreements, or national legislation and policies (Guzmán Campos, Fals-Borda, and Umaña Luna, 2005, p. 1).

The first major transitional period was prompted by the demobilisation of several groups following the 1991 Constitution such as M-19, Movimiento Quintín Lame (M.Q.L.), Ejército Popular de Liberación (E.P.L.), and Partido Revolucionario de Los Trabajadores (P.R.T.). A second transitional period began after the San José de Ralito I and II accords between Autodefensas Unidas de Colombia (A.U.C.) paramilitaries and the Alvaro Uribe Velez administration. This led to the enactment of Law 975 in 2005, also known as Justice and Peace. Law 975 faced significant criticism from national and international human rights organisations due to its perceived inadequate contribution to justice, truth, reparation, and non-recurrence guarantees for victims and society at large (Delgado Barón, 2011, p. 174; Olarte, 2012, p. 195). Debates have surfaced surrounding the actual demobilisation of the A.U.C., as observers consider the A.U.C. a 'narco-paramilitary' group unwilling to relinquish drug trafficking profits while retaining close ties to drug lords and 'parapolitics', namely, politicians financed by drug traffickers from different political parties and different regions in the country who facilitated strategic rural corridors for drug trafficking (Durán-Martínez, 2018, p. 1). The third tranche involves the implementation of the peace accord signed with the *Fuerzas Armadas Revolucionarias de Colombia* (F.A.R.C.) guerrillas on 24 November 2016 at the Teatro Colón in Bogotá after the Havana negotiations (Government of Colombia and FARC-EP, 2016, p. 1). These negotiations were conducted between 2012 and 2016 in Havana, Cuba. The peace accord has received international appraisal for its inclusion of gender, ethnic, and territorial perspectives, adhering to the highest standards of international human rights law and transitional justice (Segura and Mechoulán, 2017, p. 1). However, challenges in Colombia's political climate and institutional capacity to implement the agreements have hindered a smooth path to peace. Furthermore, the agreement, despite aiming to guarantee as many rights as possible to victims,

could be considered too ambitious for real Colombian institutional capacity, especially in rural areas.

New factions of the F.A.R.C. have emerged, along with antecedent armed groups that remain active such as the guerrilla Ejército de Liberación Nacional (E.L.N.), the Autodefensas Gaitanistas de Colombia (A.G.C.), and the Águilas Negras. Additionally, drug-trafficking organisations operate in gray zones,¹ further complicating efforts to protect civilians from systematic human rights violations in rural and urban areas (Espejo, 2021b, p. 157).

Overall, the Colombian case has been classified as a non-international, protracted armed conflict due to its longevity, intractability, mutability, and widespread violations of international humanitarian law (Cárdenas Díaz et al., 2018, p. 23). The conflict's root causes include land disputes, limited political participation and representation, and deep sectarianism fueled by political leaders and traditional parties. Colombia has a backdrop of poverty, inadequate access to basic services, and a complex political culture permeated by illegal groups and their interests that increase further the generalised lack of trust in institutions. This lack of trust results in prevailing inequality, particularly affecting vulnerable populations such as peasants, Afro-Colombians, and indigenous communities (Pizarro Leongómez, 2015, p. 5). These populations are predominantly found in peripheral urban and remote rural areas characterised by high poverty rates and limited state presence (Gordon et al., 2020, p. 697). The conflict has led to devastating consequences, with approximately 9 million victims including 210,000 forcibly disappeared individuals, over 750,000 displaced persons, and numerous massacres across 62% of municipalities. Child recruitment, a typically underreported phenomenon, has resulted in at least 16,238 documented cases between 1990 and 2017 (La Comisión, 2022).

Illegal economies – particularly drug trafficking – along with socio-economic inequality have consistently played crucial roles in perpetuating cycles of violence. These illegal economies pull and push youth toward illegal groups (Espejo, 2021b, p. 157). It is important to note that all armed groups, regardless of their ideological orientation or tactics, have used minors in hostilities. The actors responsible for violence throughout the conflict include guerrillas, paramilitaries, drug cartels/traffickers, criminal gangs, and the Colombian army (Segovia, 2017, p. 1).

2.2.2 Ombudsperson's Office – Role, Efforts, and Timeframe

The Ombudsperson's Office is responsible for monitoring Colombia's human rights guarantees. It operates through 15 delegates and four national directorates. It has regional offices and dedicated teams for each area. In 2001, the Early Warning System (S.A.T. – Sistema de Alertas Tempranas in Spanish) was established amidst Colombia's intense violence. The system issues early warnings² on human rights and international humanitarian law violations concerning the armed conflict.

Since 2017, the 2124 Decree following the peace accord mandated S.A.T. to alert about impediments to peace agreement implementation. Follow-up reports assess institutional responses to warnings and their efficacy in preventing or mitigating risks. S.A.T.'s warnings hold value for international organisations, human

rights entities, and social leaders. However, the Ombudsperson's recommendations lack binding force. They operate as a moral authority without legal or administrative power to hold institutions accountable for action or inaction. Despite the preventive spirit of the warning documents, most of them include recent, current, or ongoing human rights violations. Nonetheless, data within the S.A.T. documents is valuable due to the widespread presence of the team's analysts across the country and their confidential engagement with communities which grants them privileged information.

In analysing S.A.T. documents, this chapter divides the covered period into four-time segments:

1. 2001–2005: Conflict – Justice and Peace Law;
2. 2006–2011: Post-Demobilisation of Paramilitary Groups;
3. 2012–2016: Havana Peace Negotiations;
4. 2017–2022: Post-Agreement Phase.

These divisions help track changes in conflict dynamics, actors, and strategies tied to child recruitment and use. Cardeli et al. utilise Bronfenbrenner's ecological systems theory to explore the personal, social, and cultural factors that contribute to a child's involvement in violent groups (2022a, p. 318). They examine the interactions among the individual child, microsystem (family, peers, and school), mesosystem (interactions within the microsystem), exosystem (government, politics, and social services), and macrosystem (culture and ideology) in the context of minors recruited by Central American gangs and terrorist organisations. Factors such as religion (predominantly Catholic/Christian), culture (*machismo*), socio-economic vulnerabilities, and public policy play a role in understanding children's involvement in violence. The interactions among these systems provide insights into key elements, moments, and actors that can inform effective strategies for preventing child recruitment and use (Imbusch, Misse, and Carrión, 2011, p. 87; Nagle, 2008a, p. 7). We find this a helpful frame for Colombia, as well.

To deepen the upcoming data analysis there are key aspects of Colombian legislation worth mentioning. According to Colombia's Civil Code, article 34: 'The term *boy* or *girl* (children) refers to persons between 0–12 years of age, and *adolescent* to persons between 12 and 18 years of age'. In this chapter, we will use the terms and age groups suggested by the Civil Code. We interchangeably use the terms 'adolescent' and 'teenagers'. The term 'minor' will refer to all those from 0 to 18 years of age, and any other age reference will be to those classified in adulthood (19 and older). Across the chapter, we will refer to age categories to add layers of information that will contribute to expanding the understanding of the different interactions among Bronfenbrenner's theory that will inform our discussion, which is largely focused on adolescents rather than combatant children.

Another key policy for our analysis is the Permanent Directive No. 15 (2016) from the Ministry of Defense. This Directive classifies illegal groups into Organised Criminal Groups³ or Organised Armed Groups⁴ and focuses on transnational crime, not the internal armed conflict. This classification undermines the guarantees of

protection and redress for the victims of systematic human rights violations, as it restricts the acknowledgment of individuals as victims based on the acknowledgment afforded to the perpetrator. Put differently, this directive prioritises the recognition and categorisation of illicit groups over the imperative to safeguard and ensure redress for victims, a principle that has significantly advanced within the legal framework of Colombia, exemplified by the Victims' Law of 2011. An illustration of this phenomenon is evident in the potential obstacles faced by victims associated with dissidents or spoilers of peace agreements – those who refrained from surrendering or actively sabotaged negotiations, demobilisation efforts, and processes related to disarmament and reintegration (D.D.R.) – in gaining inclusion within the Unique Registry of Victims, as they are classified merely as victims of common crime. Consequently, this situation adversely affects statistics concerning insecurity and common criminal activities in urban settings, thereby diminishing or negating the significance attributed to groups such as those discussed in this chapter, especially those addressed as localised groups.

Consequently, we chose our own group categories for our analysis: guerrillas, paramilitaries, strongholds, F.A.R.C. dissidents, and localised armed groups. Another available classification is the one suggested by the International Committee of the Red Cross (I.C.R.C.), but it fails to overcome our reservations concerning the Permanent Directive when it comes to victims' guarantees.

2.3 Data and Methodology

The dataset from the Ombudsperson's Office consists of 1,753 documents, which can be categorised as follows⁵:

Early Warnings (378) and Risk Reports (681) provide information on potential risks and threats in conflict-affected areas of the country. These also offer general recommendations to authorities for mitigating human rights violations.

Notes (558) and Follow-Up Reports (136) provide updated information on previously identified risks, evaluate the implementation of recommendations, identify new risks, and track the situation over time.

Out of the total 1,753 documents, 1,105 (63%) mention recruitment and use of children (N.N.A.J.) with 796 (45%) specifically describing situations related to this issue. The acronym N.N.A.J. is used in the Ombudsperson's Office's data to refer to minors under 18 years of age, children (boys and girls), adolescents, or young people (hereafter, when mentioning N.N.A.J. we refer to any of these categories or all at once). Figure 2.1 illustrates the distribution of documents released from 2001 to 2022 and the occurrence of N.N.A.J. terms therein. Notably, reports mentioning N.N.A.J. recruitment and use were initially low from 2001 to 2008 but steadily increased thereafter to account for over 90% of the institution's communications. The decrease observed from 2019 onwards does not necessarily indicate reduced risk but rather reflects limitations in report production due to the COVID-19 pandemic (see Figure 2.1).

This study uncovers latent patterns of child recruitment and use in the Early Warning Reports released by S.A.T. This is achieved by identifying, collecting,

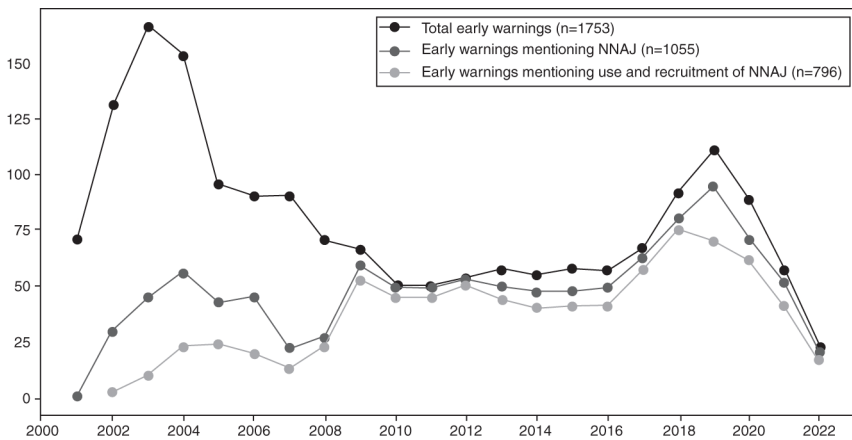


Figure 2.1 Annual distribution of documents released by the Ombudsperson's Office.

and analysing information from reports, including actors involved, locations, risk factors, recruitment strategies, and recommendations for child protection. The research project adopts the data science pipeline developed by Lizama and Suárez (2022, p. 410), which guides researchers through various stages from conceptualisation to research communication. This Natural Language Processing-based approach has been applied in similar contexts (Daughton et al., 2019, p. 9; Suárez and Lizama-Mué, 2021, p. 409; UN Global Pulse, 2019) to extract information from textual data in the context of digital peacebuilding.

To conduct a longitudinal analysis of child recruitment and use in Colombia using the Ombudsperson's S.A.T., we extract the following information from each report: release year, Colombian departments mentioned in the warning, criminal organisations involved in recruiting children and national/territorial institutions addressing the problem (actors), and the actions described in the reports that entice or force children into illegal activities (recruitment strategies). The 1,753 P.D.F. reports were converted into plain text using two Python libraries: (1) pyPDF, a toolkit that allows text and metadata extraction from P.D.F. documents (Fenniak, 2014), and (2) Tesseract-O.C.R. for Optical Character Recognition on the images included in the reports (Hoffstaetter et al., [2010] 2023). Tables and images were transformed into paragraphs while retaining the original sentence structure.

Among the challenges to processing this dataset, we found that the reports lack a predetermined format. Critical sections such as Antecedents, Description of the Risk Situation, or Recommendations are in unlikely order, under different headings, or structure. To ensure the quality and reliability of the information, three data-cleaning steps were taken. First, a spell-checking Python library was used to minimise errors introduced in the conversion from PDF to plain text (Kelly, 2011).

Non-matching terms were replaced with relevant suggestions. Second, entities with similar meanings were interchanged with a common term (e.g., replacing different variations of ‘F.A.R.C.’ with ‘F.A.R.C.-E.P.’). The ultimate step involved lemmatisation to reduce words to their base forms (lemma), enhancing context relevance in analytical models. In this process, words with inflectional endings such as ‘s’, ‘ed’, and ‘ing’ are replaced by their lemma. For example, reference to the verb ‘to build’ might appear as ‘building’, ‘builds’, or ‘built’. All these words will be replaced by ‘build’.

To extract required data points, our analytical approach employs two N.L.P. subtasks: Named Entity Recognition (N.E.R.) and Semi-Supervised Key Phrase Extraction. N.E.R. involves recognising entities placed in the text such as persons, organisations, locations, time expressions, quantities, and monetary values (Goyal, Gupta, and Kumar, 2018, p. 21). We utilise the N.E.R. model in SpaCy, a state-of-the-art Python library optimised for N.L.P. tasks (Honnibal et al., [2014] 2020). This pre-trained model for the Spanish language performs accurately and efficiently, enabling the identification of dates, organisations involved in child recruitment and use, and targeted Colombian departments (“Spanish spaCy Models Documentation, 2022). Key Phrase Extraction focused on identifying recruitment and use strategies. It involved extracting significant phrases from segments/sentences where N.N.A.J. is mentioned alongside recruitment and use. An intermediary step involved the identification of key phrases aligned with strategies, followed by an automatic approach for the remaining segments.

A multimodal network⁶ incorporating actors, departments, and strategies was built to extract information on key nodes and their relationships during different periods of the Colombian conflict analysed in this study. A ‘network’ is a mathematical or computational representation of complex systems where individual components, termed nodes, are interconnected by relationships, named edges or links. In this article, the network encapsulates a methodological approach to analyse and understand the interconnectedness of Actors, Departments, and Strategies based on how they co-occur in the documents released by the Ombudsperson’s Office.

2.4 Results

2.4.1 *The Actors across Time*

Various actors – guerrillas, paramilitaries, strongholds, dissidents, and localised armed groups – employ different strategies for recruiting and using minors. Historical and geographical contexts also influence the tactics of actors to recruit and use minors. This argument will be explored in more detail in forthcoming sections after presenting the different profiles of each group category.

Guerrillas are left-wing armed groups with communist ideologies which emerged during the Cold War. They aim to redistribute socio-economic and political power (Leongómez, 1991, p. 7). Guerrilla groups in Colombia, the F.A.R.C.-E.P., and the National Liberation Army (E.L.N.) are prominent actors in this category. Debates

have arisen regarding the validity of their social justice discourse in light of the casualties and victims resulting from their actions, particularly following the end of the Cold War and the events of 9/11.

Paramilitary groups, in contrast to guerrillas, formed a unified counter-insurgent front comprising various factions across Colombia. However, like guerrillas, they are characterised by large combatant groups and weaponry. The A.U.C., for example, united multiple auto-defence blocks around the country (Guaqueta and Arias, 2011, p. 465); and financed their operations through contributions from targeted wealthy livestock farmers and participation in drug trafficking (Romero Vidal and Ávila Martínez, 2011, p. 149). Collaboration between paramilitaries and the Colombian Army has sparked debates and investigations due to the commission of grave violations of international humanitarian law (Romero, 2003, p. 178).

The Strongholds category encompasses armed groups that emerged after the Justice & Peace process in 2005, such as Los Rastrojos, Águilas Negras, Gaitanistas Self-Defense Forces of Colombia, Los Urabeños, and The Gulf Clan. These groups primarily focus on economic control, notably on drug trafficking and other illicit activities. They often establish close relationships with political families and entrepreneurs at local and regional levels. They exert influence on political outcomes through campaign financing, vote buying, and imposing codes of conduct on the civilian population, in a fashion similar to paramilitaries and guerrillas during the late 20th and early 21st centuries.⁷ Strongholds, as paramilitaries, rarely confront the Colombian Army but are distinguishable because of their operational organisation. We chose Strongholds to name this conglomerate of groups to distance our analysis from the Colombian institutional jargon, as these groups have been labeled as neo-paramilitaries, post-demobilised A.U.C. groups, and Bacrim at their earlier stages (Criminal Bands). All labels bear a political charge that vindicates them as actors part of the Colombian conflict and, in consequence, have effects on their victims' rights.

F.A.R.C. Dissidents comprise a group of small factions that emerged after the Havana Accord between the guerrillas and the Colombian government. This category includes peace accord spoilers and rearmed combatants. There are over 30 new fronts of dissidents across the country that are either independent or under the leadership of Ivan Márquez, Gentil Duarte, or Comando Coordinador de Occidente (C.C.O.). The power struggle between these dissident groups affects rural areas, such as southern municipalities in Tolima, Cauca, and Caquetá, with the civilian population caught in the middle as various factions claim legitimacy as successors to F.A.R.C.

The final category encompasses Localised Armed Groups, which operate within smaller geographical remits and focus on controlling urban-level illegal economies such as drug trade and human trafficking. Actors in this category include La Constru, Los Paisas, La Cordillera, La Terraza, La Oficina De Envigado, and other organised crime groups. These groups maintain links with stronghold groups and international crime organisation such as Mexican cartels. To avoid direct confrontation with law enforcement, their members adopt civilian clothing which makes it difficult to distinguish them as combatants or members of specific groups. This

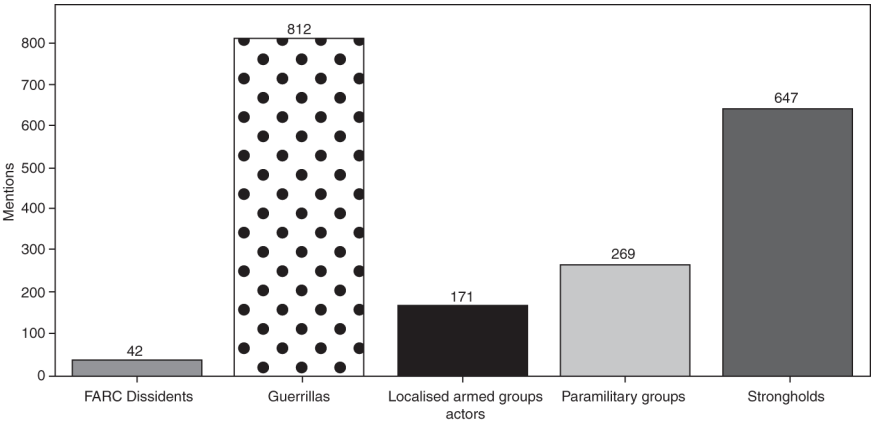


Figure 2.2 Number of mentions of the conflict actors in the context of recruitment and use of N.N.A.J.

category presents the most complexity, as it exists in a gray area between illegal armed groups within the armed conflict and international organised crime.

Figure 2.2 illustrates the distribution of conflict actor references in the Ombudsman’s Office documents from 2001 to 2022. As the conflict evolved, new categories emerged due to group demobilisation, mutation, and the formation of new alliances, such as the emergence of F.A.R.C. Dissidents after the 2016 Peace Agreement. The percentages of mentions in the Early Warning reports are as follows: Guerrillas (42%), Strongholds (33%), Paramilitary groups (14%), Localised groups (9%), and F.A.R.C. dissidents (2%). This distribution reflects the transformation of the Colombian armed conflict and the adaptive strategies of illegal groups in response to events in the country’s recent history. During transitions, governments are urged to show favourable results. Accordingly, the political cost of acknowledging the emergence of new groups can be taken as a lack of state power and control. In consequence, Police, Army, and regional administrations systematically deny and challenge the affirmations of warning documents from S.A.T. stating the presence of illegal armed groups within their territories. Hence, when victims approach institutions, they face challenges to ensure their protection, reparation, and safety.

Figures 2.3 and 2.4 illustrate the changing prominence of group categories over time. Localised groups are noteworthy due to their limited geographical reach and collaboration with Strongholds groups. While localised groups have remained consistently active, other categories have experienced varying levels of decline as shown in Figure 2.4. Notably, only a few instances arise where all groups simultaneously decrease their activity, other than the exceptional case of 2020 attributed to challenges during the COVID-19 pandemic. Each category encompasses multiple groups that emerged in different contexts, meeting specific criteria based on their interests and tactics. These groups employ diverse mechanisms to sustain

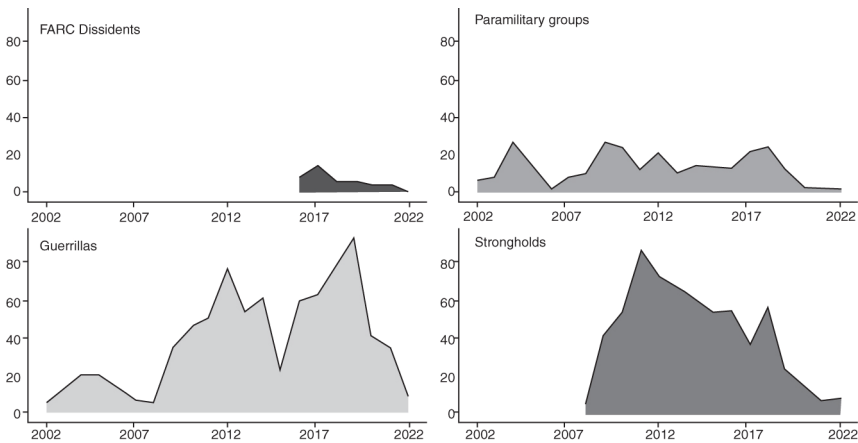


Figure 2.3 References to Actors of the Conflict in the documents (Part 1).

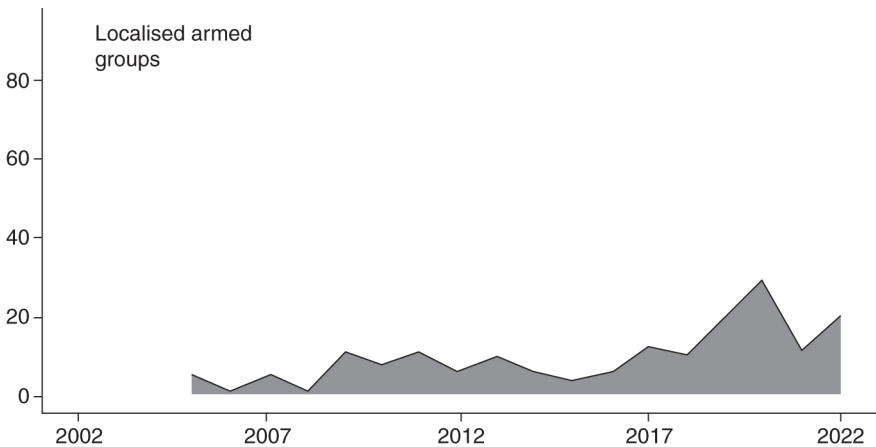


Figure 2.4 References to Actors of the Conflict in the documents (Part 2).

their operations, including collaboration and merging. Figures 2.3 and 2.4 provide empirical evidence of the lifespan of each category, considering negotiations, peace accords, and implementation stages that support our four-period selection.

2.4.2 Recruitment and Use across the Territory

The recruitment and use of minors have spread across various regions in Colombia, as depicted in Figure 2.5, which illustrates the municipalities mentioned in reports indicating detected risks. The node size reflects the number of related documents from the Ombudsperson's Office. Despite the office's focus on preventing

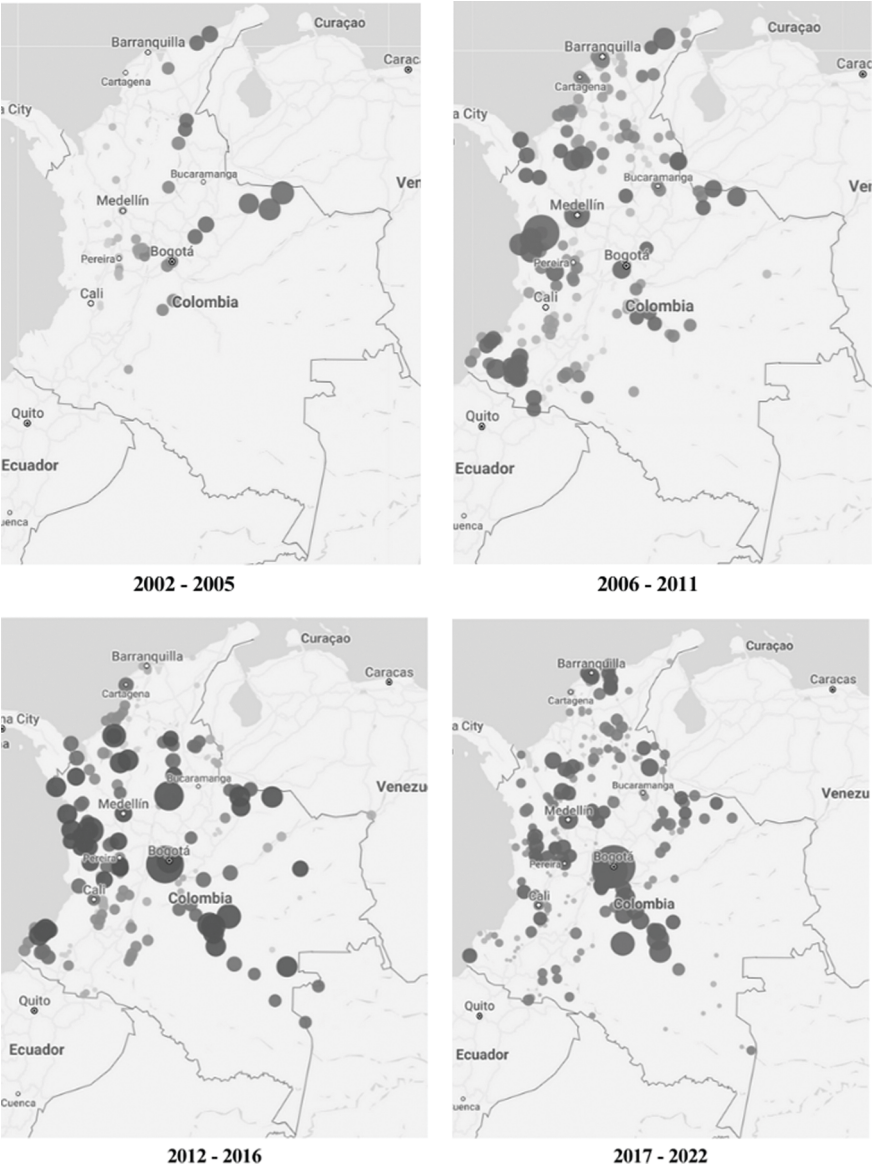


Figure 2.5 Geographic distribution of Early Warnings mentioning recruitment and use of N.N.A.J. (Periods).

international humanitarian law violations, the data reveals an ongoing and persistent recruitment issue unaffected by the provided warnings. While the expansion of areas mapped with the illegal group's presence can be a partial result of the increase of territory covered by the S.A.T.'s team, recruitment remains prevalent throughout the conflict and transitional periods.

Despite the S.A.T expanding its territorial coverage over time, Figure 2.5 illustrates an upsurge in the recruitment and use of N.N.A.J. during both transitional periods: Post-Demobilisation of Paramilitary Groups (2006–2011) and Post-Agreement Phase (2017–2022). Although numerous efforts have been made to thwart this crime, disband illegal armed groups, and engage in negotiations, the phenomenon has proliferated geographically across the country. The most socio-economically vulnerable populations in impoverished regions have been disproportionately targeted.

A critical factor contributing to this issue is Colombia's geography, which has historically facilitated illegal activities. The nation's topography includes the three mountain ranges of the Andes in the southwest, dense rainforests in the southern Amazon regions, and intricate river networks along the Pacific coast. These geographical features, compounded by substantial forced displacement, not only provide concealment for these groups but also isolate communities of survivors in regions with limited access and minimal state presence. Consequently, the civilian population remains at heightened risk due to their increased vulnerability to armed groups.

This scenario suggests three primary implications: First, current prevention strategies may lack effectiveness and fail to target the appropriate demographic, particularly focusing on children instead of adolescents who face higher risks under new recruitment modalities. Second, there is an evident inadequacy or insufficiency within the legal framework to acknowledge, protect, and effectively respond to the adaptive tactics of illegal groups in recruiting and using minors. Lastly, the persistent absence of state presence in rural and dispersed areas impedes the implementation of effective prevention campaigns, programmes, and accessible channels for reporting crimes.

Historically, the peripheral regions have endured most of the armed conflict in Colombia. Peripheral regions experience both direct and structural violence. However, Figure 2.6 demonstrates that armed groups have increasingly utilised minors in populated areas, especially in the central regions, where cities are situated. The urban expansion of child recruitment suggests the diversification of groups and/or changes in recruitment strategies. Therefore, it was crucial to investigate whether the interests and tactics of these groups have shifted following the power redistribution resulting from F.A.R.C.'s demobilisation process and the territorial disputes and influences among Strongholds, Dissidents, and Localised groups that emerged in the wake of the implementation of the peace process.

Despite a decrease in the number of released documents during the pandemic, the post-conflict periods 2006–2011 and 2017–2022 (see Figure 2.5) demonstrate an escalation in the recruitment and use of minors. The loss of manpower, reconfigurations resulting from D.D.R. processes, and the emergence of smaller

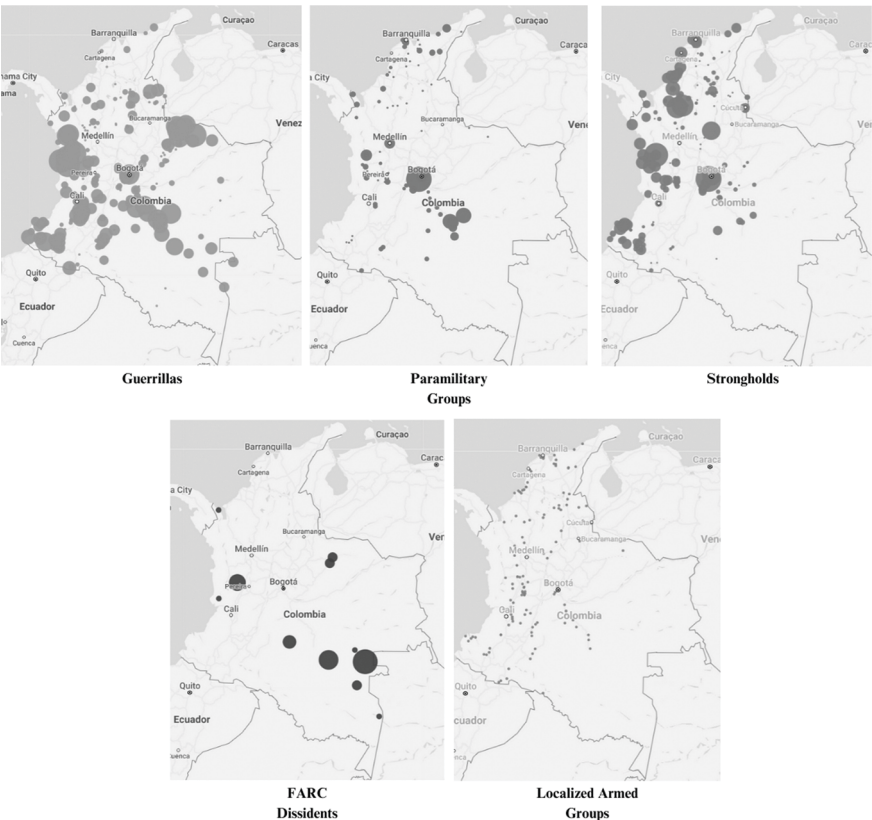


Figure 2.6 Geographic distribution of Early Warnings mentioning recruitment and use of N.N.A.J. (Actors).

groups further increase the risks faced by teenagers and young adults, particularly in impoverished and uncertain contexts like those exacerbated by COVID-19. The rise of Localised and Stronghold groups, also stemming from power reconfigurations following peace agreements, aligns with the fragmentation of child use phenomena nationwide and the broader Latin American trend during periods of transition to gang violence.

The geographic distribution of groups across Colombia, as presented in Figure 2.6, demonstrates that peace accords and negotiations, even when they acknowledge and condemn child recruitment and use, do not necessarily translate to a decrease in the practice. These findings indicate the complexity of the fights that ensnare children as well as the difficulty in ending such fights. Figure 2.6 illustrates the geographical distribution of Early Warnings related to child recruitment and use by various armed actors during the Colombian conflict and post-conflict phases. It is important to note that a single warning document may mention

multiple groups, so the size of the nodes provides a better understanding of the groups utilising minors rather than the spatial coverage on the map.

The Paramilitary, Stronghold, and Localised armed groups have a similar geographical distribution pattern with different node sizes that respond to the nature of their tactics and the scale of operations. These three maps support the claims of a transformation and adaptation of Paramilitary groups across the Colombian armed conflict and transitional justice processes, as well as a possible coexistence and collaboration between the remaining Strongholds and emerging Localised groups.

2.4.3 *Strategies by Actor*

Methodologically, the identification of recruitment and use strategies for N.N.A.J. involved a semi-automatic process. Relevant segments mentioning N.N.A.J., recruitment, and use each were extracted. Keywords related to strategies were identified. A tagging system was developed and then refined on the Ombudsperson's Office archive. Table 2.1 presents the 12 main strategies detected in the documents, the number of documents mentioning each, and some specific examples. Out of 796 documents on recruitment and use, 279 (35%) did not mention strategies. Two key elements are important for the analysis. First, the Colombian case presents several regional particularities, hence, even within the same group (especially for Guerrillas and Paramilitaries) their regional operations adapt to cultural and geographical contexts. Second, multiple strategies can coexist. This means that while in one region of the country girls are being recruited for non-combat activities, teenage girls can be recruited as a vehicle to involve and recruit boy teenagers in another region. Additionally, these strategies adapt to the time and context the conflict is taking place and are the ones identified over two decades. In consequence, some are the mutation of others, for example, *recruitment family quota*, which was vastly implemented by guerrillas in the late 1900s and beginning of the 2000s is not as common a practice as *gifts, promises, and handouts* are nowadays. It is important to highlight that strategies for recruitment adapt to territory, culture, and time. Hence, the terms in Table 2.1 align with the transformation of the Colombian conflict and the emerging communication and status-quo norms like using technology to reach or attract younger generations.

The strategies mentioned in Table 2.1 correspond to the ones employed by all group categories and across the four delimited periods. Networks were modelled to examine influential nodes or entities (Departments, Actors, and Strategies) and the links between them following the methodology explained in the section above. A connection between two nodes is established in the network if the two entities coexist in the same document. Four networks resulted from this analysis that corresponds to the periods delimited in the chapter. Examination of the Colombian conflict and post-conflict confirmed the transformation and complexity of the phenomenon. Node types represented are colour-coded: Departments (purple), Strategies (orange), and Actors (green). Node size indicates influence, with larger nodes having a greater impact. Considering that the early years of S.A.T. operations had a limited presence across the country, as well as a more limited mandate,

Table 2.1 Total of documents mentioning recruitment strategies and use of children

<i>Strategy</i>	<i>Number of documents</i>	<i>Examples</i>
Forced recruitment	228	Recruitment by abduction, arbitrary detention, home invasion, forced disappearance.
Gifts, Promises, Handouts	203	Offer weapons, money, drugs, protection, false job offers, hoaxes, recognition, and social status among their peers, financial aid to families, privileges, and a salary, among others.
Pressure	149	Coercion, harassment, stalking, threats to the families, threats on social media.
Support and creation of criminal gangs	86	Incitement to criminal and illicit activities; instrumentalisation of local gangs; support to organised youth crime.
Persuasion of voluntary incorporation and indoctrination	76	Propaganda; direct invitation; ideological proselytising meetings; volunteering, recruitment campaigns, indoctrination.
Girls and young women as the target of recruitment and use	42	Girls and young women recruited for non-combat activities (cooks, vigilance, informants, etc.), for prostitution, or to have relations with combatants.
Violence	29	Exemplary punishments to civilians, sow terror, exemplary murders.
Instigation to drug consumption and dependency	27	Inducing the consumption of alcohol and drugs, incitement to drug use, and exchange of drugs for favours for the benefit of criminal organisations.
Penetration of educational centres	26	Visits to educational centres in order to recruit young people by means of indoctrination, force, or voluntary 'invitation'; attacks on educational facilities and abduction of N.N.A.J.
Sentimental/sexual relationship with members of the armed groups	23	Sexual and sentimental relations with members of the armed group that ends in recruitment or use of the N.N.A.J.
Recreational activities	15	Organisation of parties, soccer championships, and sports events; clandestine parties called on social media; sponsorship of youth sports teams; organisation of recreational activities targeting youth and children.
Recruitment family quota	11	Request to families to hand over N.N.A.J. to the armed group. Families comply because they are loyal to the group (other family members are part of it), or due to fear of the repercussions.



Figure 2.7 Network of Actors, Departments, and Strategies of Recruitment and Use (Justice & Peace 2001–2005).

focus is placed on period-specific strategies rather than reported cases, actors, or locations. Paramilitaries were prominent prior to demobilisation under Justice & Peace (2005), exhibiting diverse strategies (6 out of 12).

In the period after Justice & Peace and before negotiations with F.A.R.C., warning documents revealed increased group and strategy diversity, including gender-based violence targeting girls, drug consumption induction, and discreet recruitment through recreational activities and persuasion. Some conflict zones, primarily peripheral rural areas (e.g., Amazon and Pacific regions), were highlighted. Guerrillas played a significant role in recruitment strategies but were not the sole actors, insofar as Paramilitaries, Strongholds, and Localised armed groups engaged in recruitment and use as well (Figure 2.8).

The network analysis (Figures 2.7 to 2.10) demonstrates the persistent nature of recruitment and child use across periods, territories, and group categories. Complexity increased with new strategies, new actors, and newly affected departments. The 2012–2016 period introduced strategies such as access to educational centres by means of violence, pressure, or attempts at indoctrination (Figure 2.9). Stronghold groups gained significance, driven by economic interests in illegal goods trafficking while maintaining child use to fulfil their goals. The avoidance of confrontation with legal forces by Stronghold groups may explain their presence in more departments and intermediate cities and capitals. Activity intensified in departments such as Risaralda, Santander, and Bogotá (Figure 2.10), indicating an urbanisation of the armed group dynamics and a shift toward use-related strategies (i.e., offering money and protection) rather than recruitment (i.e., recruitment as family quota).

The network for the post-agreement period (Figure 2.10) includes the most nodes (51) and connections (251). Low-key strategies, such as ‘Gifts, Promises, Handouts’, remained prevalent and became more manipulative and covert. Given

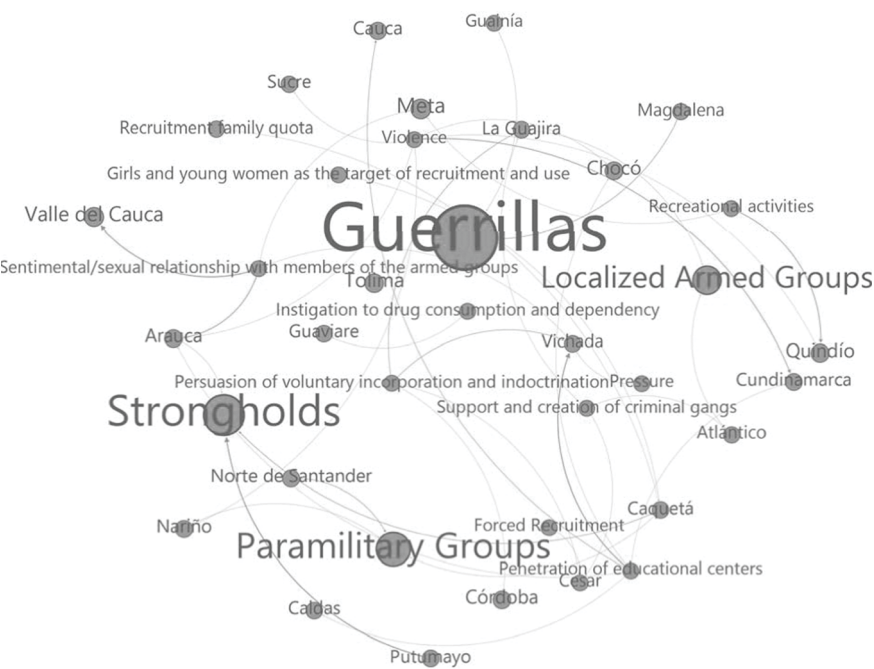


Figure 2.8 Network of Actors, Departments, and Strategies of Recruitment and Use (Conflict 2006–2011).

the high inequality rates in Colombia – the country has a 54.2 value on the Gini Index – youth are susceptible to joining illegal armed groups (Cardeli et al., 2022a, p. 318) particularly Localised groups employing low-key strategies (Figure 2.10) that may pass as voluntary enrollment for some actors like the Police and the Army. Minors starting as messengers or drug transporters often progress to combatant roles in their early adulthood or even during their late teenage years if they do not lose their lives before reaching adulthood. These dynamics enable groups to gain influence in urban areas and exert power over public policy decisions without physically controlling territory as guerrillas had done in the past century, but rather by exercising control socially and politically over the civil population. Several results of the Localised groups end up being catalogued as urban insecurity.

2.5 Discussion

Our discussion comprises two main sections: theoretical insights derived from analysed data, challenges identified, recommended pathways for prevention strategies, and practical proposals for institutions and international agencies/donors. This offers a comprehensive perspective for researchers and stakeholders addressing prevention and non-recurrence in post-conflict settings.

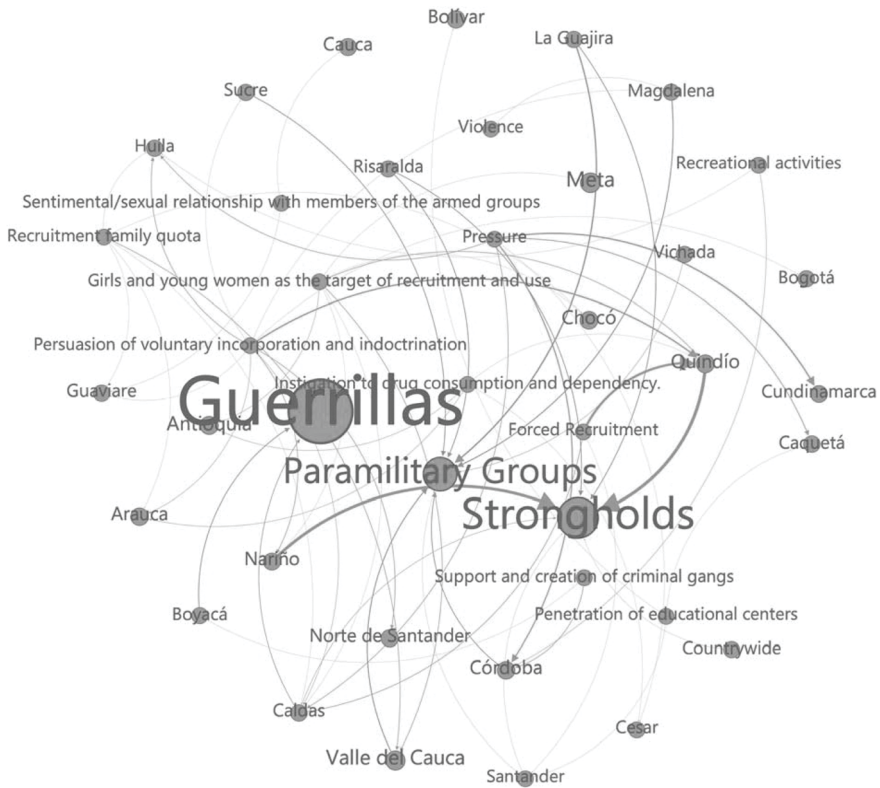


Figure 2.9 Network of Actors, Departments, and Strategies of Recruitment and Use (Peace Negotiations 2012–2016).

The significance of classifying armed groups is crucial, particularly in discerning forces mobilised to combat threats to civil population security. However, we underscore the importance of considering the flip side: how the classification, or outdated scope, induces uncertainty for victims and public servants implementing policies without national consensus on victim identification and entitlements. For instance, in some cases, Colombia's Victims' Unit has only registered cases in the Unique Registry of Victims (R.U.V.) if guerrillas or paramilitaries are responsible (Ferreri Nápoli, 2022, p. 14). It is crucial to recognise human rights violations, analyse group interests, and acknowledge that victims' suffering occurs independently from the perpetrator. The type of perpetrator alone cannot determine the cognisability of injury. To put victims at the centre and to find ways to improve guarantees for the enjoyment of human rights for all populations is vital and entails the moral responsibility to acknowledge the diverse needs to foster reconciliation in post-conflict realities (Espejo, 2023, p. 57).

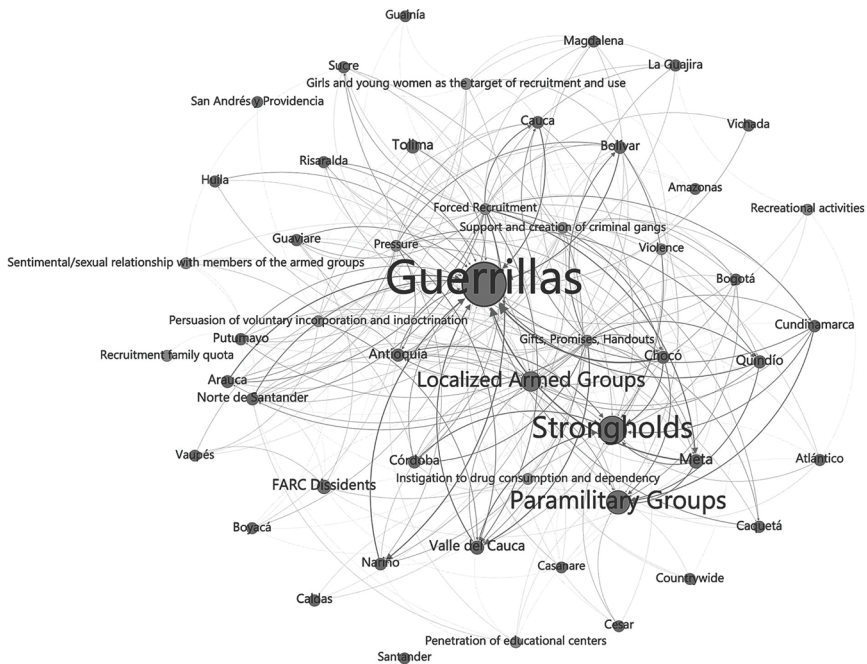


Figure 2.10 Network of Actors, Departments, and Strategies of Recruitment and Use (post-Agreement 2017–2022).

As discussed in the results section, localised groups coexist with strongholds and international criminal organisations which in turn contributes to increased insecurity and violence in Latin America. This phenomenon, observed in Colombia, shares comparative similarities with Central American gangs (Garbarino, Governale, and Nesi, 2020b, p. 15; Nagle, 2008b, p. 10). In Colombia, the blurred lines between armed groups, organised crime, and international crime underscore an acute need to reassess prevention, particularly focusing on teenagers to break violence cycles. This is a central theme of how children's fights are not only armed fights.

To address the issue of younger generations becoming cannon fodder, prevention strategies must involve teenagers in the design and implementation process. Recognising teenagers' agency, needs, and interests is paramount. Co-designing strategies with survivors, informed by academia and social organisations, can create genuinely engaging and feasible programmes. We note similarities with work by Kirsten Fisher in northern Uganda and Myriam Denov in Rwanda (as published in this volume) when it comes to the need for inclusivity. We highlight the need for context-specific strategies that align with ecological systems (Cardeli et al., 2022b, p. 318). Addressing the issue locally, tailoring to regional nuances, and adopting an intersectional approach can yield positive results.

What about insights gleaned from the Ombudsperson's Office's endeavours? Despite scrutinising early warning data, our access to follow-up reports highlighted challenges in securing timely institutional responses preceding the forewarned scenarios. A notable deficiency in institutional communication, coordination, and collaboration arises. We advocate for the incorporation of measures to augment institutional processes and communication within prevention strategies. Another imperative lesson involves a paradigm shift in the methodological approach, signifying that the Ombudsperson's Office can further benefit from its national presence by adopting more participatory methodologies such as the Everyday Peacebuilding Indicators.

Research has established that urban violence and insecurity significantly influence community perceptions of everyday peace indicators (Firchow, 2018b, p. 10). Post-conflict environments amplify the importance of daily life, prompting a reassessment of how peace manifests among various demographics, including minors. This shift in perspective and methodology necessitates collaboration with partners open to transformative approaches. International donors should carefully consider the projects they support so as to ensure alignment with community needs and realities. Additionally, addressing funding competition, which often inhibits information sharing between institutions and N.G.O.s (Firchow, 2018b, 21), is crucial to effectively address targeted population needs and advance efforts to reduce child recruitment and use in conflict contexts.

2.6 Conclusion

In summary, the timeline, geographical distribution, and strategies in Early Warning documents highlight a transformation in how Colombia approaches post-conflict and intends to build a more sustainable peace, as the latest 2016 Peace Accord promotes. Moreover, the findings suggest the country should grant more attention and resources to the criminal context that has systematically reshaped violence and impeded an effective transition to peace and non-recurrence guarantees. Groups have shifted from 'hard' recruitment like abduction to 'soft' tactics, promising protection, gifts, and salaries unlikely in legal contexts, particularly for vulnerable minors.

A notable factor is the discreet growth of Localised armed groups, coinciding with the introduction of 'soft' recruitment strategies that profit on structural violence conditions to avoid raising attention from the Public Force to reach youth in urban contexts and expand the presence and influence of illegal groups across the national territory as shown in Figure 2.10. These groups, dispersed across the country, lack substantial weaponry, blend with civilians to avoid confrontation, operate independently, and are motivated by socio-political influence. Collaboration with Strongholds groups amplifies the influence of Localised groups.

Data analysis reveals a major challenge in prevention mechanisms by the Ombudsperson's Office. Despite issuing warnings for two decades, success is rather limited. A comprehensive analysis of recommendations is hindered by inconclusive data due to changes in form and concepts. Yet, our data indicate Strongholds

and Localised groups pose a significant threat, requiring a unified institutional and legal approach for prevention, intervention, and support of affected youth. Effective strategies must closely consider cultural and social contexts, draw lessons from other Latin American countries, and prioritise the perspectives of recruited children over focusing solely on involved groups (see also Bodineau in this volume). Updating group classifications or the legal guarantees for truth and reparation for victims regardless of the group remains crucial.

In conclusion, our proposal advocates for the adoption of inclusive and participatory methodologies involving key stakeholders and in-field participatory action research to gather data on the actual needs of the most vulnerable populations and regions. This approach is essential for attaining a deeper understanding of the complex relationships between minors and violence, as well as the cultural and behavioural practices that entice youth to engage with illegal groups. Such understanding is pivotal for addressing the needs of minors and adapting group classifications to contemporary challenges. The data derived from this research would be of great value for policymakers and decision-makers, enabling the enhancement of legal frameworks and public policies to effectively combat this phenomenon. Furthermore, it would significantly contribute to the prevention of the illicit use of children and support the ongoing post-conflict reconstruction efforts.

In sum, it is evident that efforts to protect minors from recruitment and exploitation have been insufficient, necessitating an updated discourse and reading on the Colombian armed conflict and its actors. While illegal groups have evolved, the state's response remains anchored in the logic of the late 1990s and early 2000s. The interplay between illegal economies and armed groups has introduced new grey areas, exacerbating the risks faced by minors nationwide. Therefore, it is imperative to implement a paradigm shift that recognises these practical challenges and advocates for prevention strategies tailored to adolescents from complex familial backgrounds in isolated and vulnerable rural and urban territories.

Notes

- 1 There has been an ongoing debate around S.A.T.'s warnings that get constantly challenged by the defence sector that advocates several groups are organised crime or non-related to the armed conflict. This creates a gray zone because victims of these groups are not recognised as such and are not entitled to reparation despite being recruited, displaced, or threatened by their socio-political activity, among others.
- 2 Former 'Informes de Riesgo', Risk Reports in English. The 'Informes de Seguimiento' are what the office called *Notas de Seguimiento* (Follow-up notes) in the early years of the System. The change in names and acronyms for the reports answers an institutional renewal process to meet the legal standards of both national and international human rights protection guidelines and compromises acquired over the years on human rights protection.
- 3 Defined as:

Structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Palermo Convention, in

order to obtain, directly or indirectly, a financial or other material benefit. (See Colombian Ministry of Defense, 2016, p. 7)

- 4 Defined as: ‘Those who, under the direction of a responsible command, exercise such control over a territory as to enable them to conduct sustained and concerted military operations’. See (Colombian Ministry of Defense, 2016, p. 5).
- 5 Five confidential documents were excluded from the present analysis.
- 6 A ‘network’ is a mathematical or computational representation of complex systems where individual components, termed nodes, are interconnected by relationships, named edges or links.
- 7 The document addresses the national risk for social leaders and the civil population during the national elections for Congress and President in 2022 (Defensoría del Pueblo 2022, p. 1).

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3 From Child Soldiers to Struggling Citizens

Children and Youth in a Broken and Uneven Social Contract in Conflict and Post-Conflict Democratic Republic of the Congo

Sylvie Bodineau

3.1 Introduction

Between 1996 and 2003, two wars – known as the ‘*guerre de libération*’ (1996–1997) and the ‘*guerre d’agression*’ (1998–2003) – took place in the Democratic Republic of the Congo (D.R.C.). Sparked by the turmoil of the 1994 Rwandan genocide, the 1996 war erupted in the eastern part of the country and subsequently extended to the whole territory, involving up to 14 nations and several dozen armed militias. Although the presence of youngsters among rebel groups had been sporadic previously, the 1996 ‘*guerre de libération*’ marked the beginning of the systematic and widespread recruitment of child soldiers (known as *kadogo(s)* – meaning ‘small’ in Swahili) in the country.¹

In 1997, local non-governmental organisations (N.G.O.s) and the United Nations Children’s Fund (U.N.I.C.E.F.) began advocating to stop child recruitment and implemented ad hoc projects to support the demobilisation of children across the country. In 2004, following the 2003 Lusaka peace agreements, a national framework to demobilise and reintegrate all child soldiers throughout the country was set up and operated by international and national N.G.O.s supported by U.N.I.C.E.F. This process occurred through the *Programme National de Désarmement, Démobilisation et Réintégration des ex-combattants* (P.N.D.D.R.) (Gouvernement de la République Démocratique du Congo, 2004), which was adopted by decree in May 2004. The P.N.D.D.R. was launched in July 2004 with the aim of demobilising 150,000 people, including 30,000 children. According to the Working Group on Children and Armed Conflict (United Nations 2018b, p. 10), more than 50,000 children have been demobilised and reintegrated into civilian life through this programme since 2004.

Particularly intrigued by the way children’s rights have been ‘vernacularized’ through this process (Merry and Levitt, 2017), I undertook, in the framework of my doctoral research,² an ethnography of a child soldier demobilisation and reintegration programme that ran between 2005 and 2011 under the auspices of a local N.G.O. in a town located in Sud Ubangi province (Bodineau, 2019). This study

involved 62 participants, including 16 former child soldiers who had benefitted from the programme. The research took place two years after the closure of the programme, that is, eight years after the start of the demobilisation process. In 2022, in the framework of a postdoctoral project,³ following a demand expressed by previous young participants in my doctoral research, I initiated a participative arts-based project aimed at documenting the situation of former child soldiers 17 years after their demobilisation and reintegration into civilian life in the same area. In this project, 12 youth co-researchers (six men and six women) were involved, which included nine participants from the first research project conducted in 2013.

The two studies offer a rich view of the journey of these former child soldiers by following partly the same participants over 10 years while using different approaches. In this chapter, I integrate the data from the two projects and focus on how these young men and women from Sud Ubangi transitioned from military to civilian spaces and how they now position themselves as citizens. Section 3.1 of this chapter introduces the theoretical background and framework of the research. Section 3.2 sets out and provides details on the research method. Section 3.3, the chapter's core, spotlights the research findings. It presents the main events recounted by the former child soldiers regarding their militarisation, demilitarisation, and reintegration. The analysis focuses on the ways they exerted agency through navigating and transacting within their environment and their constant fight for a better life through other means. Section 3.4 concludes by framing the situation as indicative of a broken and uneven social contract in post-conflict, post-colonial D.R.C.

In line with this edited volume, the chapter looks beyond the involvement of children in armed forces or groups to explore the continuing struggles of former child soldiers as they transition from military to civilian life in conflict and post-conflict settings.

3.2 Research Background and Framework

Ever since Graça Machel's study on the 'Impact of armed conflict on children' was presented to the United Nations General Assembly in 1996, the recruitment of children by armed forces and groups in times of conflict has been framed as a serious problem of international law and by guidelines and principles pertaining to child protection in humanitarian interventions.⁴ I have highlighted the influence of these practitioners' own goals and values on their representations of child soldiers in my previous publications on the portrayals of child soldiers within the narratives of child protection practitioners in the D.R.C. (Bodineau, 2012; 2014). From a peace and security perspective (and more recently within counterterrorism policies), child soldiers are often viewed as potentially dangerous combatants. However, the 'humanitarian imperative' based on humanism, universalism, compassion, and generosity (Fassin, 2011; Saillant, 2007b; Bornstein and Redfield, 2011), reinforced by a 'children's rights regime' (Pupavac, 2001; Shepler, 2005), urges humanitarian actors to consider child soldiers first and foremost as victims in need of protection, aspects that are also highlighted by Drumbl (2012) and Tabak (see in this volume).

The *Report of the Special Representative of the Secretary-General for Children and Armed Conflict* summarised it as such: '[C]hildren may simultaneously be victims, witnesses and alleged perpetrators of violations, but [...] they must be viewed primarily as victims in all circumstances' (United Nations, 2010, p. 13). On the one hand, humanitarian programmes are guided by a biomedical paradigm interpreting 'violent behaviour as abnormal and instruct[ing] health and social workers to identify and diagnose victims and treat pathological responses' (Boyden, 1994, p. 257). On the other hand, an idealistic perspective that considers community mechanisms as having a capacity for self-regulation 'through the valorisation of mediation for the settlement of conflict' leads humanitarian actors to adopt a community-based approach that expects extended family and community members to welcome child soldiers back home (Eberhard, 1998, p. 8). The victimisation of child soldiers that orients the design of these interventions is often at odds with local understandings of the phenomenon within the communities highly disrupted by conflicts, making the programmes partly ineffective to support children's return to civilian life. On this note, this chapter provides a concrete example of the distortions that generated transnational imagery of child soldiers creates when applied in local contexts. The chapter therefore consolidates one of the main themes of this book, as developed by the editors in the Introduction, and further specifically addressed in chapters by Jana Tabak, Kirsten Fisher, and by David Rosen and Sarah Rosen.

I have found through my doctoral research that demobilised children refused to occupy a victim position vis-à-vis the programmes meant to protect them (Bodineau, 2019). They do so to preserve their own dignity. Struggling to find their way within civilian life after having been demobilised (sometimes against their will), they rarely found decent work and often had to endure unsatisfying social, familial, and conjugal relationships. In such circumstances, echoing the findings of Denov and Lakor in the case of children born of wartime rape in Uganda, these youth even described their time within 'the military' as more satisfying than their current life, despite its coercive nature (Denov and Lakor, 2017). This sentiment has led some to contemplate re-enrolment. Based on their own accounts of their situation 10 years after this research, rather than only focusing on children's rights and vulnerabilities during times of conflict, I argue that it can be relevant to situate their perspective within a larger framework on African youth in postcolonial times: Jana Tabak (see in this volume) arrives at a similar conclusion. From an anthropological perspective, youth is a transitional, hybrid, multiple, and fluid category, qualified by Durham (2000) as a 'social shifter', constructed through a 'plurality of contested arenas' (Werbner, 1996, p. 1). Youth offer a unique insight into social landscapes while articulating spaces of power, agency, and responsibility. Youth shape moralities, identities, and imaginaries, marked by gender and class across the global landscape and local communities (Durham, 2000; Comaroff and Comaroff, 2000). The recent anthropological literature on African youth tends to emerge largely out of studies of conflict and post-conflict situations in which youth occupy a prominent place as agents or victims of political action (Hoffman, 2011; Honwana and De Boeck, 2005). As highlighted by Orock (2013), most of this literature shows youth as an angry and frustrated social category having to

negotiate their life-chances for survival within situations of intense patrimonial 'gerontocratic governance'. Honwana (2014) contends that this situation has given rise to an entire generation of young people living in a state of 'waithood' (state of limbo between childhood and adulthood), '[that] possesses a tremendous transformative potential' (p. 28). Seventeen years after their demobilisation, the former child soldiers from Sud Ubangi no longer find themselves in a constant struggle for survival. However, they still sometimes grapple with feelings of impending failure and strive to attain a more fulfilling existence. They navigate and transact their way through life, advocating for better life conditions. Drawing on Drumbl's (2012) characterisation of child soldiers as 'circumscribed actors' (p. 17) and inspired by the concept of 'social navigation' used by Vigh (2010) to understand their movements, I propose to follow their path as they, as child soldiers, have recounted and documented it.

Both studies on which this chapter draws derive from a critical anthropological perspective. My doctoral research aimed to examine the way in which the global ideal representations of childhood, as conveyed through the rights of the child, were negotiated and actualised in the process of demobilisation and reintegration of child soldiers. The research was based on individual interviews and focus-group discussions involving all categories of stakeholders in the reintegration programme (interveners, beneficiaries, civil society, community members). In this chapter, I focus in particular on the voices of 18 participants who had entered the military as children (of whom 2 were adults at the time of demobilisation and therefore not included in the reintegration programmes protecting children). Of these 18, 15 were part of a non-state armed group and 3 were associated with the national armed forces. Their age when recruited ranged from 12 to 17, with an average age of 13. The durations of their stay in the military ranged from 2½ months to 8 years, with an average of 4½ years.

My post-doctoral research responded to the calls of several former child soldiers from the first study who were interested in participating in a research project that would represent them beyond their identity solely as 'child soldiers' and aim to empower them to advocate for better life conditions. This project aimed to explore their everyday social life through a collaborative model, collecting their voices and opinions through questions they themselves formulated. In contrast to the humanitarian focus on short-term relief efforts and the children's rights regime's tendency to erase the voices of youth in order to emphasise their victimhood, this research also aimed to create a platform for young people to act as co-researchers. They developed and subsequently answered questions about their present status, strategies they have followed to reintegrate into civil society, and the family, conjugal, and social relationships they currently navigate. Additionally, beyond our expectations, the project generated a trusting environment that extended out of the meeting room, in which the youths shared their everyday life events, expressed and discussed their concerns, and eventually supported each other.

Throughout the chapter, depending on the content of the text and the piece of research I refer to, the young participants of these studies are called 'former child

soldiers', 'participants', 'youths', 'young people', 'youngsters', 'co-researchers', 'young interlocutors', 'interviewees', or 'narrators'.

3.3 Method and Analysis

My approach in the two studies was critical and committed to humanitarianism and human rights, in line with Goodale's stance on the need for an 'ecumenical' anthropology of human rights (Goodale, 2006, p. 5). When considering the participants' points of view, I adopted an interpretative lens integrated with a constructivist perspective. This approach posits that phenomena and social facts apprehended in a 'restricted and specialized' way are understandable in the context of those who use them, experience them, and refer to them (Geertz, 1998, p. 3).

In order to establish a relationship between the participants conducive to the sharing of experiences while ensuring the heuristic value of the collected data, in the first research, in addition to a series of individual interviews, I introduced collaborative spaces such as focus-group discussions both during the data collection period and after a first data analysis. In the second project, a co-research system was set up using a participatory media art-based method (with smartphones) allowing creative expression and 'visibilisation' (Truchon, 2016, p. 126), 'as a means of empowerment among marginalised youth and groups of people who do not normally get to speak' (Akesson, 2014, p. 531). This avoided paternalist and discriminatory narratives while putting the participants in a position of power over their own discourse.

The narratives collected during the doctoral research were subject to a diachronic exploration and a synchronic thematic analysis. I traced the 'trajectories' of each of the former child soldiers within and outside armed groups (as well as those of other interlocutors who witnessed their experience and interacted with them). I scrutinised the commonalities and specificities of their experiences. I then articulated them, thereby reconstituting a multi-voiced story of the demobilisation and reintegration programme. In the second research, the data collected and produced by the young people were processed following two steps. First, to fully capture their multiple meanings and generate further thoughts, their four final productions (30-min video recordings) were discussed with them during 'debriefing' sessions. Second, the collective and individual recordings that preceded the production of the fictional stories were coded in an inductive mode after being translated and transcribed.

In analysing the data, I drew inspiration from Ricoeur's 'theory of narrative construction', particularly around the use of life and experience stories (Ricoeur, 1983, 1990, 2004). I examined both the content and structure of the stories to gain deeper insights. This approach enabled me to explore the positionalities of my interlocutors, valuing both past practices and present performative demonstrations. Ricoeur's theory of narrative construction proved especially relevant to this research as it elucidates how narration shapes identity through prompting the narrator to observe him- or herself as an 'other' – rendering the narrating agent accountable – a topic of particular sensitivity when applied to child soldiering. My analysis thus focused on the specificities of participants' discourse, in particular on the ways they

exerted and expressed their agency (and eventually their responsibilities) through the modalities of their narration, in contrast to the ‘vulnerable and disempowered victim’ figure that has been applied to them by the humanitarian regime.

The two studies consider the trajectories of the young participants from the time of their enlistment and their positionality when recounting their past stories and documenting their present situations. This led me to explore their dynamics, particularly their journey toward claiming agency – even whilst under numerous constraints – and ultimately their capacity to make choices. Therefore, in examining their return to civilian life and subsequent circumstances, I positioned their agency as a premise and deployed the concept of social navigation developed by Vigh (2010). Using the metaphor of a navigating boat facing uncertain elements, this concept aims to understand and capture the practical actions of agents within a framework of constantly shifting horizons that interface with social forces. It captures their journey as they evolve in a volatile situation and make choices towards uncertain points.

In the chapter, I translate quotations of the participants’ accounts in English from French, after they had previously been translated from Lingala or Ngwaka to French.

3.4 Trajectories of Former Child Soldiers

While the first *kadogos* noticed in the area were part of the Alliance des Forces démocratiques pour la libération (A.F.D.L.) and came from the eastern part of the country, children from the region were recruited into armed forces or armed groups mostly during the *guerre d’agression*’ (1998–2003) by the *Armée de Libération du Congo* (A.L.C.) – the armed branch of the *Mouvement de Libération du Congo* (M.L.C.) led by Jean-Pierre Bemba, a native of the region – and the *Forces Armées du Congo* (F.A.C.), national armed forces led successively by Laurent-Désiré and Joseph Kabila (father and son).

When telling the story of their experience at the beginning of our first interviews, my young interlocutors recounted it in the form of a journey. Enlistment and demobilisation formed a prominent part of their narrative, constituting key turning points – moments of acute doubts around their future – either because the wars had destroyed their prospects or because the return to civilian life could plunge them back into destitution and social inexistence.

3.4.1 Escaping the ‘State of Childhood’ and Acquiring a ‘Military Spirit’

From the time of the children’s enlistment to their disengagement, trajectories were marked by an aspiration to escape a ‘state of childhood’ that, during the time of conflict, had no space to unfold. Whether voluntary or forced, the vast majority of the youth I encountered argued that their enlistment had been motivated by circumstances of the wars. These circumstances often involved deprivation of access to education and other typical childhood activities, being thrust into positions of responsibility (such as keeping the house while the rest of the family

was on the run or looking for livelihood), and exposure to brutal episodes of violence and loss. Only two of them said they had enlisted out of a desire to become military personnel, to wit, being attracted by the appearance of soldiers on parade and the power these soldiers projected. Youth shared that they enlisted because of insecurity, the disintegration of their family unit, a sense of idleness, or a lack of prospects that led them to despair and even sometimes enrol in the form of a sacrifice. Faced with abuses committed by the A.F.D.L. and the bombing and attacks by the F.A.C. and their allies, violence became legitimised, especially since it was justified by a cause (in particular, that of the M.L.C.). However, none of them justified their enlistment as a form of political engagement. Boundaries between voluntary and forced enlistment were often not clearly delineated.

When they came, they took me. Since I already had this idea [of joining] as I was not comfortable at home... sometimes I was thinking of taking poison and committing suicide. That's why I considered that, at least, I was going to military service and, at worst, die there.

(Interview, 2013)

Once in the armed group, while the youngest were used for domestic services, recruits who were old enough had to undertake training in which they started to acquire a 'military spirit'. This choice wasn't done by the new 'recruits' or dependant on a strict age limit, but arbitrarily done by commanders, depending on their apparent endurance and the need for combatants at the moment. All testified to the harshness of the training conditions meant to 'erase the civilian spirit' and thus erase awareness of danger and fear. 'They were trying to remove from you the civil spirit that you brought with you, so that once you were at war, you could not be afraid and run away. That's the way it was' (Interview, 2013). Several interviewees mentioned the end of the training as a milestone that delineated the moment when they felt there was no turning back or changing their minds. They felt fear and regret for having enlisted, yet pride in wearing the outfit and the sense of belonging that came with it. 'These were really very difficult times. But when it was over, now it was joy because you were given the outfit and you were free, we had become really free' (Interview, 2013). Becoming a fighter confirmed their emancipation from the family unit and sealed their exit from childhood, not solely due to personal desire but also because the military affirmed that generational and gender differences had to fade away and yield to an 'esprit de corps'.⁵

No, in the army, there were no children. There, all military is military; there is no girl, there is no boy, all of you on a footing of equality.

There is love ... fraternal that reigns in the army. Even if there are arguments, in a moment, you will forget.

(Interviews, 2013)

Once their training was completed, and sometimes very shortly after being enlisted, they constantly relocated, following the movements of front lines.

If I started to tell you the story of everything that happened when we were in Lisala, and in Yakoma, and in Gbadolite, in Dongo, in Libenge, in Central African Republic, the wars that passed there, it would take a long time.

(Interview, 2013)

War was hard and took its toll. Over months and years, youth missed their families, comrades died, no pay was provided, and freedom was hampered. Fatigue replaced the joy that had followed the end of their training.

The fight is bad because there were a lot of deaths.

There were times when I started to feel regret and concern in my heart. Especially when, over ten people, eight died, two stayed. I was wondering what had sent me coming here in the bush to die. (...) And there, you start to regret that: 'Ah! If I was a civilian, I was not going to die like that', that was my only regret.

(Interviews, 2013)

3.4.2 Returning to Civilian Life, Not to Childhood

Given what they had gone through, when the demobilisation order came – whether welcomed with relief or resisted for fear of an unknown future – the status that they perceived themselves to have attained bore no resemblance to that of a manipulated victim. Unlike the narrative often portrayed in many child soldiers' autobiographies published in the Global North (see, for example, Badjoko, 2005; Nzita Nsuami, 2010; Barghoorn, 2018 from the D.R.C., or Beah, 2008 from Sierra Leone), which depicts their return as a path to redemption and feeds humanitarian representations calling for the protection of former child soldiers, these individuals saw themselves differently. Most participants hesitated. Their position regarding a potential demobilisation was as hazardous as it had been during their enlistment. Some relied on God or destiny. Others tried to carefully assess the situation, weighing the advantages and disadvantages of military and civilian life and imagining their chances of success. Some kept the possibility to return to 'the military' in mind in the event of failure. But, whatever their intention, all were ultimately forced to comply with the demobilisation order.

I refused first. I refused because I got into the army for a goal [studying]. So I did not accomplish this goal, I was not going to come back.

We said, 'No, no. We can't go back yet! I am already old, why go back to the family again? No, we don't want to!' We doubted.

(Interviews, 2013)

The obligation to exit the armed forces confronted them with the prospect of returning to a subordinate position (under parental authority and civil social order), yet all testified to holding on to the promises made by the demobilisation and reintegration programme. These promises consisted of formal education or vocational training that would provide them with a solid foundation on their return. Their intention was not to return to a state of childhood, as they considered themselves as ex-combatants rather than children. Asked what they considered successful reintegration during a focus-group discussion (2013), the former child soldiers described a stable situation as a head of family settled in the community:

One must be able to have a remunerative job, which can help him buy a parcel, build a house. One must be married, have a wife and children and feel responsible for his children and his wife. You have to leave the parents and be independent from the family, have a home in fact, that's it.

Their journey from military to civilian life demonstrated a desire to move forward as equals to the adults that they considered themselves to have become and with a position of power they thought they had acquired by 'defending their brothers'. This positionality collided with the humanitarian intervention system designed for victims waiting to be saved in a social environment that was more suspicious than welcoming.

3.4.3 Negative Perceptions of the Kadogos in the Communities

In Sud Ubangi, after the flight of the *Forces Armées Zaïroises* (F.A.Z.) in 1997, the area saw the criss-cross of troops from the A.F.D.L., the A.L.C., the F.A.C., the Chadian army, and, in some parts, the *Armée Patriotique Rwandaise* (A.P.R.) chasing Rwandan refugees. The fighting, including repeated bombings of Gemena (Sud Ubangi's capital city), generated displacement and gradually restricted all activities in the area. The conflict created considerable turmoil, with arbitrary and unexpected physical and moral violence aimed at humiliating and degrading individuals. In general, harassment and abuses accentuated the division between civilians and soldiers. Military and civilian worlds were perceived as fundamentally different. 'Military spirit' was identified as shaped by different norms, values, and behaviours. According to civilians, the military world was dominated by the law of the fittest and a sense of superiority, which led soldiers to believe that they could abuse people as they pleased and behave like criminals without bearing any consequences. In this context, the violence perpetrated by the first seen *kadogos* among the A.F.D.L. appeared to the powerless civilians as shocking and revolting. In particular, and further validated by the military authorities, the transgression of the intergenerational order was weakening the social order in place. Children occupied a position of power of life and death over the elders and the chiefs for no other apparent reason than a whim:

Those children had no respect for anyone. One could find you like that, when you say 'hello my son', he refuses; he says 'you are not my father or you are not my mother'. And if you have a baggage that you are carrying, he orders you to start, for example, to climb this tree with the baggage that you have there, knowing that it will be a difficult exercise and he asks you to do it.

(Chef de quartier, interview, 2013)

As a consequence, at the time of their demobilisation, former soldiers (even children) were subject to considerable hostility, expected to be repentant, and to return with a 'civilian spirit'. If, tired of the chaos of the fighting and the loss of their companions, the *kadogos* had, at some point, cherished the hope of a return as heroes, the reality of being imbued with the 'military spirit' in addition to returning empty-handed – unlike the tradition of the *voyageurs*⁶ – youth who left home to improve their fortune, returning with goods – certainly did not work in their favour.

3.4.4 Prospects of a Return to Civilian Life

As mentioned previously, whether they welcomed demobilisation with relief or rejected it at first sight, when forced to exit the armed groups, the former child soldiers came to align their prospects with the promises made by the reintegration programme, in particular that it would provide them the means to become 'grown-ups', that is to say, to find a dignified place in the social order outside the state of childhood. In the context of their return, dignity – which might seem to be a luxury given the conditions of war they experienced – was a central aspect of their accounts in relation to reintegration, most often mentioned along with respect from other members of the community. In their opinion, this sense or status was tied to social success and resulting from honest behaviour that made others 'think well of them', in contrast to the general disregard towards 'the military'.

Their ideal of social success involved family ties, social ties, and sufficient personal economic success to achieve autonomy. On the family side, the balance between the capacities of their families to support their future projects and the degree of subordination that they were ready (or not) to accept conditioned the relationships that were established. Some quickly preferred to move away from the family, while others chose to stay in family homes, at least for a while. The paths they took to access financial autonomy largely depended on the time frame to which they were subjected upon their return: the urgency of autonomy led some of them to prefer short-term solutions, thereby relegating to a later date the prospect of resuming studies or substantial vocational training. In this tumultuous period, the programme's capacity to support them was crucial. Failing to find satisfaction in the programme, most of the children had to find their way through other networks.

As for their social reintegration, given the negative representations that surrounded their return, the youth gradually understood that their acceptance hinged upon the obliteration of any military spirit, in particular through keeping

a low profile while trying to get out of the shackles of dependency to which they saw themselves consigned. As they testified during the second research project (see Sections 3.4.7 and 3.4.9), respect from other community members came with them adopting ‘new manners’ while refusing to be humiliated by dependence and stigmatisation. In addition to acquiring economic independence, it meant displaying peaceful, honest, and generous behaviour, as well as respecting established rules both within their family and their community.

3.4.5 Necessary Transactions – The Reintegration Programme as an ‘Entre-Lieux’

The level of success of their strategies varied depending on their socio-economic and family environment. Indeed, the reintegration programme rarely succeeded in countering inequalities. In the end, while the programme was at the origin of their demobilisation, it was, for most of them, far from being the most efficient support for their reintegration. However, despite its impossibility to offer material benefits as promised, the programme constituted a mediating entity – an *entre-lieux* (in-between-space) (Saillant, 2007a) – where representations of childhood, children’s rights, humanitarian aid, and the social contract in post-conflict met and transacted.

Because the vision conveyed by the programme situated the former child soldiers in opposition to their aspirations – that is to say, as passive victims waiting for protective family care instead of as ex-combatants entitled to some support to reintegrate – tensions emerged. The most salient tensions were manifested through various ways. They claimed for ex-combatant status, as their fellow demobilised adult colleagues who benefited from other kinds of support. They remained silent with regard to the misdeeds they had perpetrated during the conflict in front of a community expecting them to show some repentance. They expected entitlements in the context of a poorly resourced programme. And they engaged in violent behaviour as a means of pressure. After multiple clashes over time, these tensions eased through transactions that were made possible by the relationship between the youth and the programme educators. These educators considered that a *sine qua non* of their function was to establish and maintain a strong and trustful relationship with the enrolled youth. Educators therefore acknowledged the violence perpetrated by the youth as a form of claim, recognising their role as agents. In doing so, they facilitated more constructive dialogue and encouraged a shift in their behaviour towards the community.

Through these transactions, the different actors tacitly shifted their positions. By relinquishing the authority traditionally held by elders in favour of their educational role for children with particular needs, the programme interveners (including educators, host families, master craftsmen, and members of cooperatives who accompanied them) succeeded in guiding the youths towards conformity with social norms. Denying their own responsibilities for creating the circumstances that had led the young people to enlist in armed groups, community (and sometimes family) members refused to consider head-on the impossible choices the children had to face or to engage in an open reconciliation process. However, they did not prosecute the children. They (rather increasingly over time) decreased their

recriminations against them, thereby attempting to heal the wounds of a chaotic past through silence and oblivion. The children could maintain their dignity within the programme's framework since they were treated as agents. They negotiated their status in their own families, or they chose independence and found other family-like ties elsewhere. They perceived the government as obligated to support them in attaining economic and social success in recognition for the services they believed they had rendered to the nation. In the community space, they kept a low profile, finding no way to share their stories that would socially absolve them of their responsibilities. The documentation of their situation 17 years after demobilisation shows that some of them eventually acquired social recognition and acceptance through strategies of inclusion in various social and religious groups and that, as citizens, they continue to assert their rights for the government to fulfil its obligations under a social contract that should ensure their survival and wellbeing.

3.4.6 Work as a Central Aspect of Achievement

The first of the topics youth decided to document in the second research project was 'work', which, in their opinion, conditions all other aspects of their lives, including providing for their family and being independent and respected (including within their own family).

There are advantages. Thanks to this we pay our rent, we educate our children, we eat, we dress, we do everything thanks to this, even family members are taken care of. This is why I love my sewing work.

—When I was doing people's hair, I had added respect... So the advice I would like to give to all of us is to take care of the work. Let no one deceive you.

—It is work that gives value to a person.

(Group recording on work, November 2021)

Participants mentioned the different sorts of activities they were undertaking as artisans, civil servants, or employees. They lamented the poor situation of the labour market in their area, the lack of infrastructure necessary for economic growth, the necessity for most of them to make a living on their own (*se débrouiller*) through farming or small businesses, and to accumulate several jobs, especially the civil servants who receive meagre salaries.

Oh my brother! I became polyvalent because the living conditions at home here in Congo are not easy. If you entrust yourself to only one work, the yield will not be satisfactory. This is how I do field works, sewing, and in the meantime I also administer medical care as a nurse.

(Group recording on work, November 2021)

The group decided to produce a fictional story on the topic. In it, participants recounted the way corruption and consumption infiltrate the labour market through

what they call ‘*operation retour*’, in which job applicants must deliver part of their salary to an intermediary who connects them to an employer. They also mentioned practices of favouritism among family members and acquaintances, sexual harassment of women by men in power, and an economy being fed solely by foreign investments.

3.4.7 Family Unit, as a Hierarchical Space in which Values and Duties are Distributed

As the youth defined it, family consists of parents (married when they can afford a dowry) and their children, extended by relatives, usually living together under the same roof or on a common parcel. They believe that the viability of a family hinges on the capacity of the couple to have children and provide for them. Even if it is traditionally the duty of the father (as chief of the family) to ensure the family’s livelihood while the mother manages household affairs, the co-researchers agreed that the situation of scarcity makes the two parents equally responsible for generating income. Moreover, both parents have to live in harmony and must agree on decisions to be made. Participants also mentioned that the respect earned within the family is linked with the capacity to provide and that there is some hierarchy between men and women, elders and youngsters.

In the family as we live today, we have almost shared the load. She can buy cassava in the morning for a hundred francs, for example, and we eat with the child. Me too, the base is first of all me. Really we help each other. I can get money for her to buy water and she tells me ‘no, I have already bought water’. It’s like that.

(Group recording on work, November 2021)

Oh! Women who sell, it’s hard for them to respect you if you don’t work. And especially if she is the one who provides the money for the food ration at home. If she helps, it will be quite a problem for her to accept that your child [from another union] stays at home (...). And she is the one at home, that means the house belongs to her.

(Group recording on family, December 2021)

The two fictions they produced show that family is the central space where power and values are distributed according to a certain hierarchy, often disrupted by life circumstances, in particular the separation of couples and their inability to provide for all. These aspects are particularly acute for the former child soldiers – men as well as women – who, for the most part, have had several unions, oversee children who are sometimes not theirs, and may have to pay for their children who live elsewhere. Striving to reconcile traditional practices with their present realities, they assert their commitment to fulfilling their responsibilities to provide for their children, even when they do not live under their roof. They also mention past marriages that have not worked, mainly because of their immaturity at that moment and incapacity to agree with their partner.

3.4.8 Lack of Medical Attention as an Example of the Government's Failure to Protect Them

The youth said health was a daily concern for them and their family because of the consequences of the conflict (wounds), the environment (dry season), risks posed by tropical disease (such as malaria or Ebola), their exigent conditions of life (malnutrition, exposure to heavy work, unhealthy environments), and the risks posed by multiple pregnancies:

It all started first with myself, the mum. I entered the hospital, the children also sick, difficult to find food, there was no money too. But in all of this, God had helped us.

(Group recording on Health, January 2022)

In their group videos, the co-researchers recounted their worries – including recurrent strikes of medical staff, scarcity of drugs and medical devices, and the cost of private clinics – and insisted on the government's responsibility to improve the situation. Pointing out that medical services were fully covered as soldiers, they explained how they managed to stay in good health or find medical attention:

You know health is the life of the person. If you think how when you were in the service, you were treated for free, we were comfortable. But after this service, since we left, no one cares about us; we have become like street children or bandit children.

It had happened that when there was a strike at the general hospital, we had to go to the private sector. But I assure you, my sisters, it has reduced our economy; we had to spend a lot of money because we had no choice.

My message to the authorities, it is important that they pay attention to the claims of the nurses and pay them so that things progress normally in the country because people are dying in large numbers as they refused to pay nurses, hospitals closed and people died in large numbers.

(Group recordings on Health, January 2022)

To denounce what they think is highly unfair, the imagined scenarios they produced show patients (accompanied by a relative) passing through the public medical system that requires money (and eventually bribes) at all stages. They also show dubious medical practices on the part of the doctors and nurses to earn money on the back of patients and examples of sexual harassment of women.

3.4.9 Strategies to Become Full Members of the Community

When addressing the topic of community integration, the youth recounted to each other, in great detail, the discrimination they and their children suffered when they were demobilised (in the family, at school, in the street, at work). They proffered examples of constant provocations directed at them. They also recognised the

reality of their bad habits of the past and mentioned the change they engendered from military to civil ‘spirit’.

When I came back, people were very afraid of me. If I greet someone, the person does not accept. If I say hello, I am told ‘hey here is this bandit, this criminal’; but for the moment I returned to the church, I created clubs, I was appointed secretary there at the church [...] I created the association and when these people came to my house and I also visited them in their plots, they concluded that I was not a bandit.

—We live in peace now, but before when I had just returned, I was very naughty to the point that the goat of others could not cross my plot, I killed it.

—Hey! wandering off?

—Yes! There was the military spirit there, but today this spirit is over, I am calm and people are also interested in me.

—Oh!

—Sometimes as the avenue deteriorates, I bring out tools and we fix our avenue. Even the chief of our district is interested in me.

—That’s right!

—Yes! I am now comfortable, not military-minded.

—So if the boss passes, you won’t punch him!

—No, nothing at all. Even I cannot accept that a child goes to the army.

(Group recordings on Community integration, January 2022)

The story they crafted shows some of the issues faced by youth when they tried to reintegrate into their community. It portrays a young man (eldest of his siblings) who returns to his family with his wife from Eastern Congo after having been demobilised. He is denied his right to a parcel on the family plot due to his enlistment. In response, the couple decides to rent their own house, visits the *chef de quartier* to introduce themselves, and becomes involved in church and community associations while facing opposition from some members of the community. At the end of this story (showing what the youths would like to happen), the *chef de quartier* plays a conciliatory role by convening a meeting that involves the young man’s family and the community members. Through this meeting, the allegations made against them are dismissed as other community members are asked to testify to their good behaviour.

3.5 Conclusion: Youth in Conflict and Post-Conflict D.R.C. as a State of Constant Flux

The exploration of the former child soldiers’ journeys through conflict and peace in postcolonial D.R.C. in the above studies demonstrates how young people in this

situation occupy an ‘in-between’ or ‘externalized’ positionality divested of everything valuable (Hoffman, 2011). First, wartime closed off the childhood spaces they once occupied. Then, they found themselves in an ambiguous and disruptive position within the armed groups, despite military assertions that ‘there is no such thing as a child in the military’. Then, the demobilisation and reintegration programme forced them to return back home whilst simultaneously failing to recognise their agency. The programme considered them as powerless victims, a position they refused to occupy. And finally, as young adults, they found no space in the labour market due to a complex patron–client relationship exacerbated by consumption practices, or alternatively only had access to a highly devalued civil servant status with which they felt uncomfortable.

Confronted with this situation, their accounts show how former child soldiers navigated and negotiated their way to establish their status, positionality, and access to benefits. This chapter sets out these experiences. The dramaturgy of their narration in the first study places them at the centre of their journeys in the face of successive hazards with which they had been confronted and displays an agency that is caught between the constraints of the events and the restricted range of their choices. In their retrospective account and through recent documentation of their situation, they evoke a past state of mind that reveals transformation. Hence, their narratives show that they were no longer quite the same. Through their conversations and collaboration during the co-research, while asserting their individual progress into civilian life, former child soldiers ‘formed community’ in emphasising the similarities of their situations in regard to the situation of the country. The fictional stories they produced depict the complexity of their situations, denounce bad practices, and even propose solutions in order to, as fully fledged citizens, advocate for better support from the Congolese government through social contract theory.⁷

Their accounts confirm other longitudinal studies about former child soldiers’ reintegration as a long-term dynamic and interactive process occurring among individual, family, and community, in which recognition of children’s agency and participation is central, as well as bottom-up approaches involving communities. Other aspects, such as the need for long-term and sustainable interventions, holistic and systemic approaches centred on local context (including the recent experience of war and suffering within the communities and their paths of resilience), and the involvement of actors who already play a role of helpers, are consistent with the data shown by the first piece of research (see Akello, 2006; Annan et al., 2009; Betancourt, 2010; Worthen et al., 2010; Özerdem and Podder, 2011; Derluyn et al., 2013; Wessells, 2015; Shanahan and Veale, 2019; Kiconco, 2024). Yet, more research needs to be done following youngsters’ trajectories to better understand how to better deal with their accountability for wrongdoings during the conflict (as much for them as for adult former combatants) and to document how these experiences have reshaped communities affected by war, in which part of the young generation is composed of former combatants.

In line with the theme of this edited volume, the two research projects show children and young people of both sexes from Sud Ubangi, D.R.C., who did not only fight when involved as soldiers during the conflict but who, as young adults,

continue to live in a constant state of struggle and fight. This goes beyond the usual depiction of child soldiers by child rights defenders as ‘profane, a category mistake that disturbs the poetics of “our common humanity”’ (Malkki, 2015, p. 84). Indeed, these studies show that children and youth’s fights might be connected to deeper questions related to the current world, leaving them no space to act as full citizens. As is proposed by this volume, children and youth’s experiences from both the North and South ought to be studied in new ways. It might be both around the space that is (or is not) left to them in society (see Tabak, Rosen and Rosen in this volume), their own participation in policy-making (see Denov, Fisher in this volume), the potentialities of structures and interventions such as transitional or restorative justice processes (see Hasona, Fisher in this volume), and continuities between childhood and adulthood (see Holá and Drumbl in this volume).

Notes

- 1 It is estimated that 30,000–50,000 children were recruited during the two Congolese wars (UNICEF. *Rapport d’Évaluation du Programme 2007–2011 pour les Enfants Associés aux Forces et aux Groupes Armés en RDC, 2011*).
- 2 My doctoral project was undertaken while I was a student at Laval University, Québec, Canada, with the support of two grants issued by the Trudeau Foundation and the Vanier Canada Graduate Scholarship (Government of Canada). It was ethically approved on 20 December 2012 by Laval University ‘Comité sectoriel pluri-facultaire d’éthique de la recherche’ under the reference 2012-244/20-12-2012.
- 3 This postdoctoral research project was supported by a Banting Postdoctoral Fellowship (Government of Canada) and hosted by York University, Toronto, Canada. It was ethically approved by the ‘Comité d’éthique médicale’ of Lubumbashi University on 29 July 2021 under the reference UNILU/CEM/052/2021 and by York University Office of Research Ethics (ORE) on 9 April 2021 under reference e2021–125.
- 4 Machel, ‘Impact of Armed Conflict on Children’ (1996). See also Article 8(2)(b)(xxvi) and 8(2)(e)(vii) Rome Statute 1998; Article 3(a) ILO Convention No. 182: Optional Protocol to The Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (UN 2000); UN Security Council Resolutions 1539 and 1612 on Children and Armed Conflict (2004, 2005): ‘Cape Town Principles and Best Practice’. (UNICEF 1997); The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups (UNICEF 2007), and The Paris Principles (UNICEF 2007).
- 5 See also Gretry, ‘«Okomi Mususu Moto?»: Une Analyse Socio-Anthropologique Des Ruptures et Continuités Entre Les Mondes Civil et Militaire, à Partir Des Fragments de Récits de Vie Des Ex-Enfants Soldats En République Démocratique Du Congo’.
- 6 Traditionally, youngsters often prepare for adulthood and family life by travelling outside the community, gathering resources, and establishing themselves financially before returning with the fruits of their labour. As such, demobilised children’s returning ‘empty-handed’ was viewed by many community members as a personal defeat and instilled suspicion about their integrity.
- 7 At the moment, the fictions produced by the youth have not become public. The group constituted by the 12 former child soldiers from Gemena is now part of a multi-country, three-year research project on ‘Youth futures’, in which they plan to receive training in advocacy and video making in order to use this tool as a way to advocate for a better situation.

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4 Former Child Soldiers

Persistent Conceptions of Childhood, and the Long Road of Transitional Justice in Uganda

Kirsten J. Fisher

4.1 Introduction

The two-decade-long horrific conflict that terrorised, debilitated, and scarred northern Uganda ended more than 15 years ago. In the wake of this conflict that was infamous for atrocities and the abduction and use of child fighters, the region is left with the tasks of healing wounds, seeking justice for the variety of victims of the violence, and reintegrating former fighters into communities that have ambivalent views about them and the acts they committed. In the aftermath of conflict and mass atrocity, important questions about how to justly and effectively deal with the past and usher in peace for the future have been generally regarded as the domain of the field of transitional justice (T.J.) (McAuliffe, 2011, p. 85–166; Macdonald, 2017, p. 286). T.J. includes addressing the actions of perpetrators and the needs of victims, contributing to a process of transformation from a condition of conflict and violations to one of positive peace and reconciliation (Boraine, 2006, p. 17–27). T.J. in northern Uganda has been a topic of discussion and debate since before the conflict ended in 2006 (Branch, 2007, p. 179–198).

Since this conflict was characterised by the abduction of tens of thousands of children by the Lord's Resistance Army (L.R.A.), a rebel group that became composed mainly of abducted young people and that terrorised the same communities from which the abducted children came, how to deal with and reintegrate former child soldiers (F.C.S.) was a big piece of the T.J. puzzle in northern Uganda. Years after the fighting ended, however, the T.J. project in northern Uganda is far from complete and those who were children are no longer: those who are still referred to as 'former child soldiers' are now adults. Discussions about the conceptual difficulties regarding children's protection and responsibility persist and yet those about whom these discussions are being had have 'aged out' of the particular socially understood vulnerabilities and limitations associated with childhood.

This chapter, using the case study of child soldiers who were victimised by and contributed to L.R.A. atrocities, reflects on the intersection of conceptions of childhood, children's 'fighting' in T.J., and the passage of time. It considers how dominant global conceptions of childhood further complicate already difficult discussions about responsibility and post-conflict accountability in a context of

child victim–perpetrators. These complexities have been given academic attention over the previous two decades but are important to reconsider in light of new work on children’s political subjecthood and the need to consider the passage of time in lengthy T.J. processes. Children, particularly F.C.S. who return as young people, fight for recognition once they return home. They fight for recognition of both their victimhood and agency, a combination that can be difficult to understand and reflect in the development of T.J. policy. They fight for subjecthood, to be counted as meaningful political agents, when they return and for years afterwards.

Little attention has been given in the literature to the effects of time on T.J. Over the years, attention has been given to the question of sequencing in T.J. This is particularly true in regard to whether peace must precede ‘justice’ (most often understood as retributive justice) (Kersten, 2016) or in which order T.J. mechanisms should happen (Dancy and Wiebelhaus-Brahm, 2015, p. 321–342). Far less attention has been given to the reality that T.J. is necessarily a long process. Scholarly works that do address time in T.J. advocate for the timeliness of T.J. (or, alternatively, that T.J. should wait for the right conditions), or that we should ‘broaden, deepen, and lengthen our conception of justice so that more survivors might be vindicated by some kind of justice, even if a partial kind of justice’ (Nickson and Braitewaite, 2014, p. 445–463). Some work explores why T.J. measures are often implemented only decades after the events to which they refer and what combination of factors leads to the implementation of T.J. policies at certain moments in time (Mendez, 2023). To advocate for understanding that T.J. is a lengthy process is important. But more so, we need to recognise that the passing of time affects the T.J. process and the individuals and groups for whom T.J. is pursued. Because T.J. is not a short moment in time, T.J. theorising must take into account the fact that people and their needs and conceptions of justice change over time. This is especially the case when we consider individuals who were children when the atrocities happened but who age and grow into adults as they participate in or wait for T.J.¹

Section 4.2 herein explores ways in which conceptions of childhood and children’s agency affect T.J. addressing wrongs committed against and by children. It argues that because the dominant narrative depicts children as lacking agency, children are not seen as political subjects, and therefore children’s roles in T.J. are those of objects of adult subjecthood. This in itself is problematic since children are a significant segment of the population for which T.J. is pursued, but it also has long-term repercussions for the F.C.S. as they grow into adults. This part pairs with contributions to this volume, such as by Myriam Denov, that examine intergenerationality. Section 4.3 offers a brief overview of T.J. in northern Uganda in the years between 2000 and 2023, highlighting that T.J. in northern Uganda was not met rapidly. It explores a variety of mechanisms implemented over the span of decades, focusing on those that address harms committed by and against children. Section 4.4 looks at the current conditions of T.J. in northern Uganda, particularly as it pertains to the social and political inclusion of F.C.S. This section argues that conceptions of childhood may persist with F.C.S., meaning that these conceptions influence the way adult F.C.S. are understood and treated long after they have transitioned out of being children. These sections together argue that, as T.J. is a

lengthy process, T.J. policies that incorporate dominant conceptions of childhood as a time of vulnerability not only affect F.C.S. when they first return home but may continue to colour their experiences and society's attempts to secure positive peace decades afterwards. Section 4.5 concludes by arguing that it is necessary to untether F.C.S. from conceptions of childhood that deny political subjecthood in T.J. policies.

4.2 Conceptions of Childhoods and Child Soldiers

Childhood is socially constructed (Jenks, 2005). This means that understandings of childhood and children vary considerably from culture to culture, and also quite drastically within the history of any particular culture. Childhood is a relatively new concept, and one that seems to track better onto Western social lives than those of the majority world (Fisher, 2013; Beier and Tabak, 2021). With Western conceptions of childhood comes an imposing recognition of vulnerability that seems to overshadow everything else. This conception laid the groundwork for important protections for children in regard to working conditions, family relationships, and the effects of armed conflict. In past decades, international humanitarian and T.J. literature has increased its attention on the effects of war on children (Liu, 2017, p. 3–5), the rights of children to be protected from participation in war, and on accountability for those who commit war crimes against children (Molima, 2023, p. 141–156). All of this work reflects and contributes to global narratives and conceptions of childhood.

Childhood is a period in which young individuals are often denied agency. When agency is exercised by children, it is generally overlooked, minimised, or dismissed. This is often the result of a lack of understanding of the agency children exhibit (the imaginary of childhood) and the need to maintain the narrative of the vulnerable, innocent child. While there has been movement towards seeing children more as agentic beings (James, 2009, p. 34–45; Mollica, 2023), this has not resulted in granting children political subjecthood in peaceful Western democracies or in post-atrocity T.J. environments (Beier, 2015, p. 237–252). In recent decades, attempts have been made to rebuke the narrative of children as non-agentic players in conflict and post-conflict contexts (Drumbl, 2012; Fisher, 2013; McMahan, 2010, p. 27–36; Honwana, 2009, p. 63–68; Bisset, 2019), but there has been resistance to this work and to recognising children as political subjects in ways that will truly acknowledge their agency. Beier tells us that, if “‘agency’ refers to the capacity to act, ‘subjecthood’ bespeaks mastery of one’s own agency or the idea that actions are products of one’s (at least relatively) autonomous choices’ (Beier, 2015, p. 240). The limited admission in T.J. literature that children can make decisions and act with purpose within the confines of the harsh and restrictive conditions of a fighting group has not opened the gates for increased real political participation in the aftermath (Mollica, 2024).

In T.J. contexts, child perpetrators are generally viewed as tools of adults. This may shield children from mechanisms of accountability that could possibly be too harsh (and emotionally charged) a response for their moral and legal

responsibility when their development and the contexts in which they acted are taken into account; however, it also reinforces the dominant narrative of children as passive vessels, lacking capacity, and the objects of adults' subjecthood (Fisher, 2013). There are great inequalities between the worlds of children and adults, and the ideas that sustain these inequalities are deeply held 'even in the most benevolently conceived practices and interventions' (Beier, 2015, p. 245). Practices meant to protect younger individuals are often guided by a culturally informed sense that children are vulnerable and require support and therefore cannot be full political subjects in their own right (see Tabak, and Rosen and Rosen in this volume).

International legal protections for children have developed steadily over the last century. The adoption by the United Nations General Assembly in 1989 of the Convention on the Rights of the Child (C.R.C.) marked what is commonly referred to as a culmination of over 100 years of discourse on international children's rights (Stearns, 2016). Around the same time, the late 1980s and early 1990s, the field of T.J. was developing, primarily as a means to address legacies of mass abuses in political transitions to democracy. It was not long before T.J. was required to contend with children's participation in conflict and mass atrocity, including in Sierra Leone and Rwanda (Barrett, 2019). A Human Rights Watch report (2003) about T.J. in Rwanda reflects the general sentiment of how children can be affected by conflict, with one chapter of the report dividing children as targeted in the genocide, children as victims of combat, and children as tools of violence (Human Rights Watch, 2003). Children were seen as recipients of violence and as objects used by adults in the perpetration of violence. In Uganda, similar debates existed about children's agency and responsibility. These discussions were greatly influenced by the need for peace (and for fighters to be enticed back home) and by Western interventions (international child protection standards and international N.G.O.s) that pushed a non-responsible child narrative. Accompanying the increased protections of young people, then, was a very simplistic understanding of children as vulnerable, non-agentic beings (or individuals with limited agency), who are objects of adult subjecthood and have little to contribute to the political landscape of their communities.

Childhood, as envisioned especially from the Western perspective, is a period in which a person is supposed to grow nurtured and safe (Angucia, 2009, p. 77–95; United Nations General Assembly, 1989, Art. 4–6). Generally, it is seen as a period of play and innocent experimentation. Fewer years on this earth represent less time to learn how to navigate one's environment and to develop into a full moral agent who can determine right from wrong. This narrative leads to the exclusion of children from some T.J. pursuits, such as criminal justice.² International criminal tribunals used to address wrongdoing during transitional periods have taken an exclusionary position: the prosecutor of the Special Court for Sierra Leone (if not the Court's jurisdiction itself) decided that no person under the age of 18 would be indicted by it, and the I.C.C. regards all persons under the age of 18 as beyond its jurisdiction.

The idea that anyone under the age of 18 is to be considered a child and therefore not to be held accountable can be regarded as a newly imported idea to many cultures (Shepler, 2005, p. 197–211; Aptel and Ladisch, 2011, p. 8–9). The criminal responsibility of minors is a contested subject, both nationally and internationally. The reality is that many young persons around the world do in fact assume adult roles in their civilian lives. With these roles come agency, identity, self-esteem, and responsibility. Many child soldiers take on similarly mature roles in the fighting forces, often adopting leadership roles. They also, while at the same time feeling the constraints on their autonomy, exercise and see themselves as exercising limited agency. Arguably, although the traditional ‘African conception seems to grant more of a participatory role to children’, it is overshadowed in T.J. contexts by the dominant global narrative that seeks to protect children at the same time as inadvertently silencing them (Ndfirepi and Shumba, 2013, p. 233–242). What this can mean for T.J. for child soldiers then is the adoption of policies supported by Western conceptions of justice, like the non-responsible child narrative adopted in Sierra Leone and northern Uganda, that do not necessarily reflect local conceptions of justice or of childhood (Fisher, 2013).

Furthermore, the non-responsible child narrative does not necessarily align with the conceptions of justice or childhood held by the young people themselves. Life stories told by F.C.S. in interviews and testimonials about their own experiences do not reflect universally the characterisation of the pure victim who lacks agency. Naturally, F.C.S. highlight the brutality of the conditions of life within the fighting group. They relate their feelings of lacking choice and their fear (Shepler, 2005, p. 205). There is no doubt about the terrible circumstances under which they began life as child soldiers implicated in atrocities and the conditions under which they commit them. There are, however, also other stories regarding life as a child soldier that point to agency and, just as importantly, perceived agency. There are stories of tactics taken to avoid committing harm, including tales of soldiers choosing not to harm a civilian and rather let the civilian victim go free, or how they might trick a commander into believing that they had obeyed an order when in fact they had not. There are stories of decisions to leave or escape. There are stories of actions, and non-actions, taken to protect other soldiers. There are also stories of a sense of belonging and power (Denov, 2010, p. 40), of attempts to win the favour of commanders, sometimes through the infliction of harm on others; stories of young persons in the fighting group brutalising newer, less highly ranked, less protected members of the group (Beah, 2007). And there are stories of soldiers victimising civilians simply because they could and because the civilian population was afraid of them due to their soldier status. Child soldiers also often report a sense of guilt or responsibility (Akello and Reis, 2006, p. 229–243; Honwana, 2006, p. 225–243), and although feelings of guilt or responsibility in no way reveal actual moral or legal responsibility, such feelings do reflect the sense that many of these causal perpetrators do, in fact, regard themselves as moral agents to whom responsibility should attach.

Their stories, along with their feelings of responsibility, suggest that the non-responsible child narrative is difficult for F.C.S. to reconcile with their own

assessment of their individual power and agency. Forcing a universalised non-responsible account on F.C.S. leaves some of them feeling disconnected from their own perceptions and identities as capable agents with voice and agency. Finally, F.C.S. who assumed adult responsibilities during their time as child soldiers often do not want to be relegated to the role of child in civilian life (Dickson-Gómez and Latkin, 2003, p. 303–315). While the intentions might be kind, the ‘not your fault’ narrative is a related instance of denying subjecthood. Adults as protectors decide the narrative and demand that the children accept and internalise it.

Under international (and most national) law, children are owed specific protections that they are no longer accorded once they age out of being children (see Scarpa in this volume). This is an important consideration in the field of T.J., not only because T.J. includes projects that address past harms committed against children, but also because children can be participants in T.J. mechanisms and will be recipients of T.J. successes or failures. While all T.J. decision-making should consider its effects on children (they are members of the current population and the next generation for which future-looking T.J. goals are pursued), there are more specific ways in which stakeholders involved with atrocity-affected children need to recognise and reflect on the requirements and appropriate protections owed to children. This means protecting them from recruitment into armed forces or armed groups if the conflict is ongoing and providing them with extra protections if they choose to participate in accountability or truth-telling mechanisms. Recognising certain vulnerabilities and power inequalities, however, does not require a corresponding negation of subjecthood.

Post-atrocity T.J. environments are unlike the environments of fighting groups or peaceful societies. Even T.J. literature and practice that explore the agency and responsibility of F.C.S. fail, for the most part, to see children as subjects. Even where children’s agency is recognised, their subjecthood – their mastery of their own agency – is denied in post-atrocity peaceful environments despite the greater opportunity for recognition of such subjecthood. T.J. environments operate according to a ‘limiting vision of young people as pre-political beings whose entry into social life must await passage through prefatory developmental stages’ (Beier, 2015, p. 238). So, children, even if they might have had some agency within the fighting groups, are, once returned to civilian life, denied this. Adults occupy subject positions, and ‘essentialized as the protected objects of adult protectors, children constituted on the basis of hegemonic understandings of childhood thus become an enabling condition of adult political subjecthood’ (Beier, 2015, p. 240). While there has been a push to remedy the fact that children are rarely engaged as fully fledged political agents in T.J., what this means practically has often been children telling their stories to adults, or adults relating historical narratives or helping children to relate historical narratives to child audiences. These practices, while giving children some voice in T.J., act to reinforce ‘subtle processes of responsibility delegation without commensurate empowerment or a fuller recognition of children as autonomous political subjects in their own right’ (Beier, 2015, p. 248).

This area of contention is one way in which children’s fights extend beyond the immediate cessation of conflict. Not simply the vulnerable and passive children

depicted in the dominant narrative to whom life simply happens, F.C.S. who returned as young people had to fight for recognition that acknowledged their agency within the fighting group and their ability to act with agency – to be political subjects – upon return. In fact, had they been given the chance, many of these children may have been able to take lessons learned as agentic beings in the fighting group and apply them to the post-atrocity world. Some who held leadership roles in the group, who prided themselves on making significant decisions that affected their own lives and the lives of others, were distressed to note that, once returned to their community, this was not a part of their identity or narrative.³ While the denial of subjecthood to children is in itself a problem, it is also a problem for protracted T.J. processes. T.J. unfolds over an extended period of time and consequently, some T.J. participants can become stuck in time.

4.3 T.J. and the Wheels of Time in Uganda

The civil conflict in northern Uganda spanned from 1986 to approximately 2006 and was, as mentioned above, infamous for atrocities and the abduction and use of children by the L.R.A. The L.R.A. abducted an estimated 50,000 children for use as porters, sex slaves, and child soldiers who were trained and fought the Uganda People's Defence Force (U.P.D.F.) and brutalised communities in the north of the country (UNICEF, 2023). While the L.R.A. persists in a limited capacity and its leader Joseph Kony is still free (Titeca and Costeur, 2015), a period of post-conflict justice has firmly taken root since 2008.⁴

It is hard to say when T.J. initiatives began in northern Uganda; discourses and policies categorised as T.J. have existed in the region since at least 2000, including government policies, local initiatives, and (welcome or unwelcome) international intervention. While a variety of T.J. approaches have been considered and some have been implemented, as in other post-conflict societies Ugandan needs have been debated in terms of demands for justice, but also how 'to balance the demands of justice against the many political, economic, social and cultural contingencies' (Tshimba, 2015, p. 62–85). For the government's part, it claimed pursuit of a variety of T.J. approaches, including seeking to hold accountable those most responsible for the violence while simultaneously encouraging disarmament of armed groups through amnesties. It attempted to promote the reintegration of F.C.S. and promised reparations to civilian victims of the L.R.A. and also to L.R.A. child soldiers. Over the quarter of a century that T.J. has been actively debated and attempted in northern Uganda, the situation has morphed, the victims and survivors have aged and changed, and the needs of the community and of individuals have shifted.

Uganda's foray into T.J. has not taken a straight path. While the fighting and atrocities were ongoing, Uganda grappled with balancing peace and retributive justice. In early 2000, in an attempt to draw fighters (many of whom were abducted child soldiers) home from the bush, the Ugandan government enacted the Amnesty Act, which provided amnesty to any returned armed fighter who 'renounces and abandons involvement in the war or armed rebellion' (Law Reform Commission

of Uganda, 2000). The main supporters of ‘the amnesty initiative were political activists, local and international humanitarian organizations, as well as influential religious and cultural leaders’ (Akello, 2019, p. 249–267). Much of Ugandan civil society supported the Amnesty Act as a means to entice fighters home (Baines, 2003, p. 7; Branch, 2007, p. 179–198). With hopes of ending the conflict, the Act was renewed between 2000 and 2012 (Schenkel, 2023). The Amnesty Act accompanied and was supported by the non-responsible child narrative. The fact that many of the fighters had been abducted and forced to commit their harmful acts helped to support the idea that all child soldiers were not responsible for any of the harms committed. While many in the communities accepted this position, many others could not. One civil society member, Stephen Kisembo (interviewed by the author on January 23, 2007), described the situation as being ‘like forgiveness motivated by intimidation’. In some ways, the situation seemed to demonstrate that whilst some community members recognised agency and subjecthood, the formal mechanisms would not.

In the intervening 15 years since the conflict ended, much has changed, and much has remained the same; some of the most pressing T.J. concerns persist. Contrary to popular sentiment, time does not mend all. Wounds do not simply heal with time if practical needs or justice are not suitably addressed. T.J. is a lengthy process, but the world does not stand still as it unfolds. Respondents to qualitative interviews and discussions in northern Uganda in July/August 2022 and July/Aug 2023 express ongoing needs as including family reunification and ‘knowledge’; material and physical assistance; and accountability and recognition. For example, there are still people who were abducted and remain with the L.R.A.; there are others who were abducted and whose whereabouts are unknown. Pursuant to an interview conducted by the author of Chris Ongon on August 2, 2022, their families want to know where they are or what happened to them. Some returned former fighters have children from whom they have been separated – children who were not born in Uganda and with whom their parents would like to be reunited. As well, individuals mention longstanding physical ailments (embedded bullet fragments, for example). There is also great poverty in northern Uganda. Respondents point to their need for adequate housing and food, school fees for their children, and the stability and freedoms that come from basic economic security. These themes arose in a focus group interview the author conducted on August 3, 2022, of members of the War Victims and Children Networking Group in Gulu, Uganda.

One core issue and challenge of T.J. in northern Uganda that has persisted over the past decades remains particularly prominent: the reintegration of F.C.S. There is increasing concern amongst individuals in northern Uganda that violence may erupt again as a result of inadequate ‘justice’ for F.C.S. Nevertheless, the conceptions of what justice for F.C.S. entails still differ amongst respondents. As Ugandan scholar David-Ngendo Tshimba explains, many years after the attacks on civilian villages ceased, ‘the search for peace still is utterly skewed by the contesting voices echoing “justice” for the past evil deeds’ (Tshimba, 2015, p. 62). Conflicting conceptions of justice existed when policies were adopted, and communities were told how to respond to those who were returning from the

bush. Decades later, the narrative and the amnesty that were not overwhelmingly positively received when first introduced continue to impede the acceptance of now-adult former fighters who want to fully participate in their communities. Time, in and of itself, while it might act to soften harsh feelings, does not solve difficult conceptual challenges concerning responsibility and accountability. If anything, the prolonged lack of accountability and the continued absence of remedy, when there is general sentiment that accountability and remedy are deserved, will only be exacerbated by the passage of time (albeit perhaps not indefinitely).

It was estimated that the L.R.A. was '80% comprised of child soldiers' (Amnesty International, 2011), and therefore, for both moral and practical reasons, amnesty and the non-responsible child narrative were imposed on the community, despite the community being reluctant to fully embrace them in the face of so much devastation. Returned perpetrators walked the streets with amnesty, legally protected against any formal accountability. Through reintegration projects, many of the returned had access to medical care, skills training, and material resettlement packages that were not available to other community members, including other victims of the violence. Despite, or perhaps because of, this lack of accountability and the promulgated laws forbidding the harassment of returnees, F.C.S. often had to contend with cold receptions upon their return. Community members often received fighters, irrespective of age, with ambivalence. F.C.S. were generally welcomed home as lost children and victims of violence simultaneously as they were shunned and reviled. The negative reception can be explained by a combination of factors including the belief, held by some, that the returned were spiritually contaminated by their experience in the bush. Poor reception that incorporates expressions of anger and resentment demonstrates that a narrative that depicts all perpetrators of atrocity under the age of 18 as devoid of any responsibility for harms committed, even those who operated within severely constrained options, is inconsistent with the sentiments and moral codes of many of the community members, at least in the abstract.

As I argued elsewhere, in many post-conflict contexts, there is a tension between conceptions of agency and responsibility that would attribute some responsibility to child soldiers and the non-responsible child narrative that rejects any responsibility for persons under the age of 18. This tension is a serious problem for post-atrocity social reconstruction. It should not, however, be regarded as a challenge to be overcome by educating the society to accept the non-responsible child narrative; rather it should be considered perhaps as a reflection of healthy conceptions of agency and responsibility consistent with others globally, developed over a long history, most of which was not embroiled in war to which child soldiers contribute. If the proposed T.J. instruments do not accord with the conceptions of agency and responsibility held by the population, problems of irrelevance arise (Fisher, 2013, 39). It makes sense that members of communities to which child soldiers return have complicated understandings of their status, needs, and roles within society. The reintegration of F.C.S. is hampered, partly, by conflicting conceptions of what justice entails and the belief that justice has not been done when a society is

presented with the non-responsible child narrative, and it is demanded that these causal perpetrators are welcomed back simply as victims.

Some form of accountability to address the past and to signal some division between that period and now is generally regarded as a requirement of T.J. While it may not be inherent to the human condition to require accountability, we have at least been socialised to demand it. Social reconstruction, which is the condition of building peaceful and prosperous co-existence after violent conflict, then, generally involves measures that directly address the past and account for individual wrongdoing. This position is nearly universally held, given the current condition of human relationships and expectations (Fisher, 2013, p. 104–125). The non-responsible child narrative cuts off any possibility of a dialogue about child responsibility, individual responsibility, or alternative forms of accountability that could reflect diminished responsibility due to coercion or immaturity and vulnerability.

It would seem right that as child soldiers are not generally architects of atrocity, they should not be those in whom international criminal law has the most interest. And yet, if accountability is a moral imperative and of practical value to social reconstruction, their actions should not be ignored and arguably should not simply be uncritically forgiven. Rather, they should be recognised and evaluated as acts committed under unique conditions that contributed to human devastation. It is possible that this could have been done in northern Uganda in a variety of ways that did not simply ask survivors to submerge their desire for some form of accountability. I have suggested in past writing that there is a wide variety of approaches that could have been considered to meet victims' need for justice, from criminal trials for adults and youth (with adequate protections for young offenders), to truth-telling mechanisms that admit the possibility of individual penalty when appropriate, to mediation as accountability. I argued previously that the mediation process could be developed as a neo-traditional form of cultural processes of justice and reconciliation, adapted to incorporate and satisfy accountability and documentation (Fisher, 2013, p. 155). The fact that the approach of the Ugandan government and some powerful local and international actors was to promote amnesty and the universal application of the non-responsible child narrative may have paved the way for the seething resentment that contributes to undermining current social harmony. It also likely contributed to the denial of subjecthood for a segment of the population: F.C.S. When denied agency and responsibility, they also lost the entitlement to be taken seriously then and, arguably, in the future. They were more easily marginalised, even when doing so was an 'act of charity'. While the needs of the community have changed because the violence has (mostly) ended, the characterisation of the individuals who were child soldiers has seemingly stayed static, even if that characterisation is a challenging paradox.

4.4 Adult Former Child Soldiers and the Influence of Conceptions of Childhood

The Amnesty Act and the non-responsible child narrative were adopted in a particular moment in time. Of their two goals (peace and reintegration of former fighters),

the Amnesty Act may have had some influence over the eventual shrinking of the L.R.A. and the negative peace in the region, but time has shown that the reintegration of former fighters has not been particularly successful. Poor reintegration has arguably negatively affected the prospects for positive peace in the region. In this way, the fight to leave the L.R.A. behind them continues for these individuals. Reintegration is still a top priority for many. Many years after they returned home, it is interesting that the narrative and the reintegration projects do not reflect the intervening passage of time. It seems that the reintegration fight is held hostage to a period in time and the non-responsible child narrative. This section argues that old discourses about child soldier responsibility should be supplanted by new ones that recognise the subjecthood of children and the intervening years in which former fighters have grown and lived in the communities.

There remains a general distaste for the lack of accountability for harms committed by returned child soldiers in northern Uganda. As Grace Akello explains, almost 20 years after the first amnesty certificates were issued, ‘Generally, reintegrating amnestied L.R.A. soldiers among survivors seems at odds with the notion of reconciliation. During interviews, survivors preferred fairness and yearned to see TJ meted out, to make returnees accountable for their violence and to see strict punishment for human rights violations’ (Akello, 2019, p. 252). For years, the Amnesty Act was regarded as a peaceful means of bringing out of the bush those who were still fighting in neighbouring regions. Decades later, we see that the results reflect what some feared. With no one held accountable, many of the children who were kidnapped and forced to do horrific things are left carrying the burden of unofficial blame as they are still unable to fully integrate and participate in Ugandan society.

The point of this chapter is not to argue that, had some form of widespread accountability been pursued, the society might have been better able to reintegrate former fighters and promote stronger social cohesion. Of the many counter-arguments available, it is true that paying one’s debt to society does not guarantee a good re-entry into social life. Rather, this section argues that, while this is the approach that was taken, current T.J. in northern Uganda must recognise and reflect that this approach might have frozen F.C.S. in a role of limited subjecthood. It also argues that T.J. in northern Uganda needs to move beyond it. Rather than continuing to try to reinforce the non-responsible child narrative, perhaps it is time to acknowledge that young people *qua* young people are not only owed political subjecthood but that relying on dominant narratives of childhood at early stages of T.J. can lead to F.C.S. being perpetually held in a state of limited subjecthood.

Reintegration was important upon the return of fighters. The fact that they have not been able for decades to successfully reintegrate compounds challenges and leads to the continued stigmatisation of them and their children. The passage of time has exacerbated entrenched social challenges, feelings of hopelessness, prolonged financial and emotional instability, and intergenerational trauma. It is time to acknowledge that this passage of time has significant effects on the current T.J. needs of the community and individuals within it. Even now, the literature on F.C.S. in the post-conflict context talks of ‘lived experiences... upon return’ and ‘reintegration’ (Kiconco, 2021). Senior Legal Counsel in northern Uganda,

Komakech Henry Kilama, reflected – in a conversation with the author in Gulu on August 1, 2023 – upon a U.N.I.C.E.F. report that suggested that F.C.S. could still be considered children into their adulthood if they had been taken and spent part of their childhood in the bush. While the intention was to provide a means by which to bring this vulnerable population under UNICEF's mandate, such approaches essentially stop time for some people. There is little room for recognising that much time has passed since the return, and this being stuck in time can do little to further progress T.J. goals.

Where it might generally be seen as a benefit for F.C.S. when they no longer have youth on their side, in that adults are political subjects when children are not, this growing out of being a child does not necessarily mean growing out of childhood for F.C.S. Whereas most adults see their platforms and their ability to advocate for themselves shift and grow over time, T.J. mechanisms often need to see individuals in simplistic terms that do not permit this morphing and growing in the same way. They see these individuals as 'former child soldiers' with the focus on the 'child' part of the descriptor. Thus, these individuals are often still denied subjecthood, being seen as recipients of T.J. rather than architects of it.

Structures put in place to facilitate children's political participation in meaningful ways usually still adhere to the dominant narrative of childhood: as objects of protection and assisted by adults (Mollica, 2024). Such mechanisms, potentially not even appropriate for children, become according to this narrative obsolete (at least in regard to the same participants) over time. So, while T.J. that takes a long time *could* highlight the subjecthood of former fighters and work to ensure the subjecthood of children in future iterations of T.J. mechanisms in similar situations, in reality it works in the other direction: the lack of subjecthood accorded to children is extended to adult F.C.S. as the T.J. process wears on.

Taking children affected by conflict and the adults they become seriously in T.J. demands theorising and acknowledging the social constructions of childhood. The march of time and the passing of a decade or so affect everyone. However, given the clearly defined distinctions between the social understandings of children and adults (particularly in the majority world), this passage of time would seem to have more significant effects on individuals as they 'move from childhood to adulthood'. But children who are denied conventional childhoods can get stuck in time or can be seen as such in ways that impede these effects.

It is important to reflect that childhood experiences influence the adults that children become. Some T.J. mechanisms seem to forget this when it comes to complex victim-perpetrators. For example, the I.C.C. prosecution of Dominic Ongwen, a former abducted child soldier, seemingly severed his adult self from his child self in order to simplify holding someone to account for the horrific brutality that was committed during the L.R.A. war. In some ways, T.J. mechanisms, and the theory that underpins them, need simplistic conceptions of participants. Therefore, T.J. mechanisms sometimes need to see individuals as being of only one time, either as the children they were or the adults they have become. If they are seen as the adults they have become, they can, like Ongwen, be judged on the nature of adult actions with little regard for the years leading up to these events. If they are

seen as children (or ‘former children’), they are still regarded with an eye to the vulnerabilities and lack of agency associated with early life.

Speaking of ‘former child soldiers’ makes some sense as the label highlights an important identifying element of who they are now. It also, however, misses the mark by both obfuscating the fact that they are now adults, with the distinct imaginaries that that entails, and also that the adults they have become may not reflect how their communities see them – they are adults with adult worries who were greatly affected by their impacted childhoods. The experiences that F.C.S. lived in the bush as well as following their return affected their ability to ‘grow out of childhood’ (the social construct that suggests lack of agency), and they are, therefore, now seemingly stuck in a position or imaginary that still denies them agency and subjecthood.

4.5 Conclusion

Taking seriously the needs of victims of atrocity means acknowledging their perceptions of what justice dictates and working to reconcile intuitions regarding agency and responsibility with morality, reality, and practice. Child soldiers are a category of humans defined existentially by time, by chronology. They are ‘child soldiers’ because of events that began when they were children, and this identity follows them into adulthood. Not only did they fight for their own survival during their time with the fighting group, they fought upon return to civilian life – for recognition of their own agency within the group, to not be seen as faultless passive victims, to be seen in ways they saw themselves, to be seen as members of society with contributions to make. They fight still for successful reintegration and for the political subjecthood they were denied when their identities were frozen as child soldiers. It is time to untether F.C.S. from conceptions of childhood that deny political subjecthood in T.J. policies.

Acknowledgements

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Notes

- 1 For a good account of Rwandan child perpetrators whose eventual prosecutions for their alleged participation in the 1994 Rwandan genocide transpired when ‘they were well into adulthood’, see Jastine C. Barrett’s book *Child Perpetrators on Trial: Insights from Post-Genocide Rwanda* (Cambridge: Cambridge University Press, 2019).
- 2 This is true even though children are not excused from criminal responsibility in Western domestic legal systems. In countries such as Australia, England, Switzerland, and the U.S., the minimum age of criminal responsibility is ten (and as young as seven in the state

- of Florida). In Canada, Israel, Japan, the Netherlands, and Scotland, the minimum age is 12 (for extensive discussion see Scarpa in this volume).
- 3 This could be for a number of reasons: they needed to play victim for the handouts or to maintain the dominant narrative to avoid retaliation, or they needed to keep quiet to avoid harassment for being a F.C.S.
 - 4 This is not to say that there is no violence in the region or no fears of renewed violence. This is an issue to which we will return.

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5 *Sulh* as Restorative Justice for Child Soldiers

Yousra Hasona

5.1 Introduction

Child soldiers are not new in the Arab world. Children have been used as part of the government and non-government forces in jurisdictions such as Iraq and Yemen. However, the proliferation of child soldiering increased significantly following the Arab Spring revolution in 2011. This chapter focuses on this recent time period for this reason. Figure 5.1 provides a general view of the number of child soldiers in Arab countries.¹

To begin with definitions: Paris Principles 2.1 (2007) use the broader term ‘children who are associated with an armed force or armed group’; ergo, child soldiers were defined as

Any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.

(Paris Principles, 2007, point 2.1)

Child soldiers become associated with armed groups through two primary pathways in the Arab world. The first involves forceful abduction—where children are taken from schools or homes. For instance, in 2015, the United Nations (U.N.) received reports of over 1,000 children abducted by I.S.I.S. in Al-Mosul (Report of the Special Representative of the Secretary-General for Children and Armed Conflict, 2016, p. 19), and in 2018, Al-Shabab abducted 1,609 children in Somalia (Report of the Special Representative of the Secretary-General for Children and Armed Conflict, 2019, p. 3).

The second path is voluntary. This path is driven by various factors. Economic hardship and the challenges of life amid armed conflicts lead many children to join armed groups for sustenance and financial support (Achvarina and Reich, 2006; Brett and Specht, 2004). I.S.I.S., for example, offered salaries ranging between \$80 and \$100 for recruited children (United Nations Department of Children and

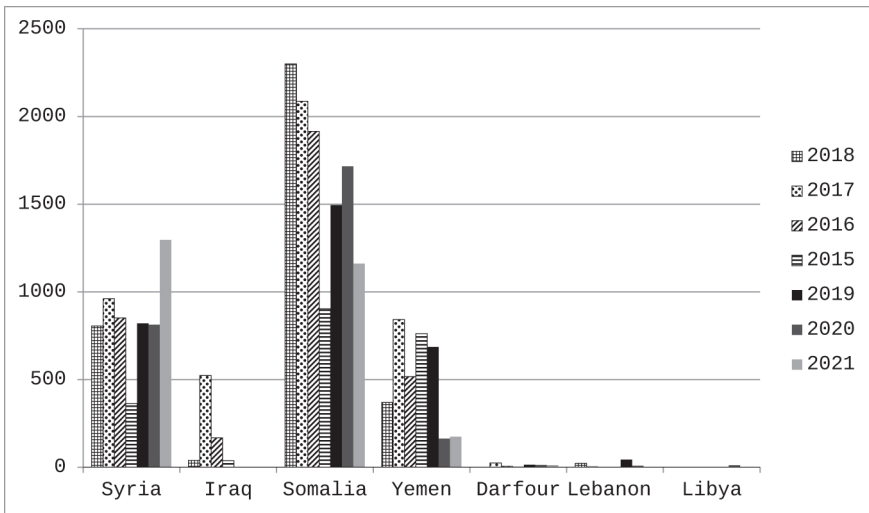


Figure 5.1 General view of the number of child soldiers in Arab countries.

Armed Conflict, 2014, p. 46). Additionally, pervasive violence prompts children to seek protection by joining armed groups, thereby ensuring safety for themselves and their families (Nobert, 2011). The ideological influence of armed groups and conflict parties also plays a part in child recruitment. In Iraq and Yemen, groups like I.S.I.S. and Al-Houthi exploit Islamic ideologies to recruit children by encouraging them to fight the unbelievers (*kfar*) and enticing them with promises of paradise as their reward after death as martyrs (*mujahideen*).

Despite the historical recruitment of children in several Arab countries, the prevailing method of dealing with this issue has been through criminal justice. This often results in the prosecution and detention of children for their actions. These penal policies lack simultaneous strategies for the children's rehabilitation or successful reintegration into the community. This approach contributes to heightened animosity and strained relationships between the children and the community. Stigmatising these children as criminals increases community fear toward them, thereby fostering resentment among the children who feel alienated and imprisoned for years without a clear path to a better future.

This chapter argues that criminal justice may not be the most suitable method to work with child soldiers in such contexts. Due to the sensitivity of child soldiers' situations, a need arises for a different approach that focuses more on restoring the children's relationships with communities and victims through healing and repairing to achieve rehabilitation and reintegration. Consequently, this chapter argues that, instead of criminal justice, restorative justice may present a more effective and appropriate approach to engaging child soldiers. This chapter unpacks *Sulh* as a traditional Arab restorative justice mechanism and identifies it as a modality to

promote a remedial conversation about responsibility while also maintaining the dignity of all stakeholders. In Section 5.2, this chapter provides an overview of the challenges related to child soldiering in certain Arab countries. Section 5.3 sets out various conceptual ways to frame the conduct of children during hostilities and advances an argument in favour of the need for the allocation of some responsibility to minors for their conduct. Section 5.4 introduces the concept of restorative justice as a way to approach responsibility, inclusion, and reintegration and also sets international example of restorative justice practices and the practice of *Sulh* within Arab cultural traditions. Section 5.5 explores in depth the potential application of *Sulh* as restorative justice to address the violence of child soldiers, with specific reference to Iraq and Yemen, and identifies opportunities and challenges in this social and reconciliatory practice. Section 5.6 concludes.

5.2 The Reality of Child Soldiers

5.2.1 The General Issue

During their recruitment, child soldiers' participation in hostilities results in committing different types of atrocities against their communities. For instance, in 2018, the U.N. reported that 2,228 child soldiers were used as fighters in Somalia by Al-Shabab (United Nations Department of Children and Armed Conflict, 2019, p. 27). I.S.I.S. used child soldiers for a variety of roles, like fighting, assassination, execution, and planting I.E.D.s and mines (Benotman and Malik, 2009). The U.N. reported that child soldiers participated in operationalising suicide attacks and prisoner executions (United Nations Department of Children and Armed Conflict, 2018, p. 6). In Yemen, child soldiers were deployed by Al-Houthi or the governmental forces in hostilities and attacks against both Al-Hudaydah and Al-Dureheme (United Nations High Commissioner for Human Rights, 2014b, p. 204).

Overall, the adverse effects of child recruitment do not stop at psychological and physical consequences during the recruitment period but extend to their relationships with the surrounding community, including victims and their families. That said, analysing the degree to which relationships between child soldiers and their communities are affected depends heavily on the local culture. In some areas, the participation of child soldiers may be seen as a source of pride that entails being considered a hero in their community. In others, child soldiers are seen as outcast criminals. Thus, the nature of dealing with child soldiers hinges upon their status within the local culture and community. In Iraq, I.S.I.S. heavily recruited children and used them to commit crimes against the community. As a result, societal anger and hatred toward child soldiers each has increased, and many communities rejected these children and refused to receive them after I.S.I.S. was defeated; many communities view them as a threat to security and peace in Iraq who should therefore be tried, imprisoned, and sequestered from society (Al-Ardawe, 2020; Subhan, 2020; Mousa, 2020). From a different perspective, child soldiers in Sudan are viewed positively and treated as heroes who fought for glory and the protection of their tribes, families, and communities (Al-Zain, 2020).

5.2.2 Prevailing Responses: D.D.R. and Retributive Justice

There are two primary approaches to working with child soldiers in the countries mentioned above. The first is Disarmament, Demobilisation, and Reintegration (D.D.R.) Programmes. Although D.D.R. is one of the standard programmes to deal with ex-combatants to help rehabilitate and reintegrate them socially and economically into communities (United Nations Development Program, 2012, p. 11–13), these programmes face many hurdles. One is the absence of government plans or interventions to support D.D.R. programmes, especially in places where children are broadly used, such as Iraq and Yemen (Al-Oraibi, 2020; Subhan, 2020; Mousa, 2020). Current programmes run by non-governmental organisations (N.G.O.s) are short-term programmes and many still require more funds and resources due to the significant needs and the massive number of children (Al-Oraibi, 2020; Subhan, 2020; Mousa, 2020). In addition, in places like Yemen and Sudan, the idea of D.D.R. is a non-starter in light of the ongoing war and the need to survive (Nagi, 2020; Al-Maliki, 2020; Al-Zain, 2020). Inefficient D.D.R. programmes mean there is a failure to provide comprehensive support for child soldiers. D.D.R. programmes are designed to help former combatants transition back into civilian life by disarming them, demobilising them from armed groups, and facilitating their reintegration into society. In the absence of effective D.D.R. programmes, the critical needs of these children, such as psychological support, education, vocational training, and community acceptance, are not adequately addressed.

The second approach is retributive justice. Owing to the inefficiency or absence of D.D.R. programmes in Arab countries, many countries have resorted to relying on the criminal justice system as the primary approach to addressing the issue of child soldiers. This inclination is particularly pronounced when high social demands are present, especially when it comes to trying children who have participated in armed conflict or committed crimes such as killing or stealing. In the absence of alternative programmes or mechanisms to address these children, the criminal justice system and incarceration become the default solution. Within this context, child soldiers are being arrested instead of rehabilitated and reintegrated. As reported by the U.N. General Secretary in 2018, 902 Iraqi children were in detention due to national security issues related to their relationship with armed groups like I.S.I.S. (United Nations Development Program, 2019, p. 4). In Somalia, almost 375 children are still imprisoned by the Somali National Army and other armed groups (United Nations Development Program, 2019, p. 4). Hence, instead of implementing rehabilitative and reintegration measures, Arab countries resort to placing child soldiers in jail without trial or subjecting them to criminal prosecution under existing laws. This approach, treating them as criminals, not only fails to address the root causes of their involvement in armed conflict but also denies them the opportunity for rehabilitation, resulting in damaged relationships with their communities.

Overreliance on retributivism and the paucity of D.D.R. means that, instead of rehabilitation and reintegration, former child soldiers revert to the use of violence to survive even after they leave jail. This gives rise to the risk of recidivism: these youth become fertile ground for extremist inculturation (Tiwari, 2020; Al-Ardawe,

2020). Many children in Yemen kept their weapons and used them to protect themselves, thereby raising the violence level in the children's lives and leaving them labeled as criminals and fighters willing to join armed groups or criminal gangs in order to survive (Al-Ghafri, 2020; Nagi, 2020). When children are rejected without any opportunity for rehabilitation and reintegration within their communities, their only choice is to keep their weapons and continue fighting with the armed groups, which may lead to new instantiations, for example, of I.S.I.S. in Iraq (Muhammadi, 2020; Al-Oraibi, 2020; Subhan, 2020; Mousa, 2020).

5.3 The Child Soldier, a Victim or a Criminal?

There are two main approaches to addressing children's participation and responsibility in armed violence. The first considers child soldiers as victims; ergo, they cannot be held accountable or prosecuted. The second sees the possibility of holding child soldiers responsible for their crimes in some cases.

5.3.1 The First Approach: Child Soldiers Exclusively as Victims

Many actors, such as the U.N., demand that child soldiers be seen as victims or witnesses in conflict (UNICEF, 2002, p. 30–33). Hence, they cannot be prosecuted for crimes committed following recruitment (Quénivet, 2017; Brits and Nel, 2012). Furthermore, the U.N. Security Council, in resolution No. 2427 of 2018, called for treating children who are separated from armed groups as victims, thus focusing on community and family reintegration. McCarney argues that several international agencies and conventions support this approach by only criminalising adults implicated in child recruitment (McCarney, cited by Veale, 2006, p. 4). Returning to the non-responsibility notion, Point 3.6 of the Paris Principles states, 'Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offenses against international law, not only as perpetrators'. In addition, Grossman (2007) calls for children to be seen exclusively as victims of conflicts, while Derluyn et al. (2015) argue that from child rights law and transitional justice perspectives, child soldiers are seen as victims and as witnesses during conflicts (Derluyn et al, 2015).

Moreover, whether associated voluntarily or compulsorily, children are exposed to continuous physical and psychological violence, which triggers adverse effects on their mental and moral development, especially regarding understanding and distinguishing between right and wrong. This conceptual approach argues that children lack mental intent (*mens rea*). Accordingly, the blanket absence of the *mens rea* will lead to the inability to prosecute children criminally for the crimes committed. Nobert (2011) posits that child soldiers cannot fully understand or anticipate the consequences and outcomes of their actions (p. 18). Additionally, Kabano (2016) argues that child soldiers cannot be held responsible as they lack the free will to commit crimes due to the circumstances under which they were recruited. Furthermore, in many cases, children were compelled to commit crimes

under physical and mental coercion, such as violence, alcohol, threats to safety, and drugs (Nobert, 2011; Musila, 2005).

5.3.2 The Second Approach: It Is Possible to Hold Child Soldiers Accountable

Child soldiers are victims of conflicts and recruitment; however, in some cases, they can be perpetrators (Derluyn et al, 2015). In this regard, Drumbl (2012) calls for a change in the image of child soldiers in the world that moves away from the passive victim position. In many cases, children join armed groups voluntarily without coercion and commit atrocities with discernible control over their actions. Drumbl maintains that this painful reality cannot simply be wished away. He does not encourage penal liability, however, as a response. He instead encourages the development of more sophisticated and respectful approaches. This chapter aligns with this approach. Baines (2009) presents the concept of complex political perpetrators that describe a ‘generation of victims in the setting of chronic crisis who not only adapt to violence to survive but thrive by becoming a perpetrator’ (p. 180). Derluyn et al. (2015) propose the term ‘a circumscribed actor’ to describe child soldiers (p. 4). By this they mean a person with the ability to act or not and the ability to choose a different act. Child soldiers are affected by conflict and, at the same time, affect others around them in good and harmful ways. Using these terms to see child soldiers as individuals with unique personalities is essential. Thus, the push herein is to eliminate labelling child soldiers reductively or binarily as ‘victims or perpetrators’. Actors are suggested to instead work with them according to the surrounding circumstances and idiosyncratic individual context.

Drumbl sees the relationship between the child soldiers and their environment as interactive. For instance, one day, child soldiers might resist committing crimes, but they may commit crimes the next. Hence, to understand why child soldiers act and refrain from acting requires an analytical understanding of the circumstances that pushed child soldiers to commit or refuse to commit atrocities (2012, p. 84–89). Treating child soldiers as individuals rather than as fungible parts of a monolith is key in this regard.

Holding child soldiers accountable for their crimes stems from the idea that giving children total immunity may result in them becoming rejected within their home communities, especially when communities yearn for some sense of accountability. In this context, granting these children total immunity can trigger the possibility of committing worse crimes and denying their victims the justice they seek (Brits and Nel, 2012). Hence, addressing child soldiers’ involvement can result in personal recovery for the children and help facilitate their rehabilitation and reintegration (Marković, 2015; Brits and Nel, 2012). That said, accountability is not necessarily synonymous with penal retributivism.

5.3.3 A Constructive Path Forward

Holding child soldiers accountable for their crimes aims to help children understand the nature of their acts and the harm they have caused others. At the same

time, it is a process that allows victims and communities to understand what these children went through, and the circumstances that led to committing these crimes, which clarifies the picture and helps them accept these children and perhaps ultimately forgive them.

In contrast, implementation of the non-responsibility narrative may result in problematic outcomes:

- 1 It will push armed groups to continue recruiting children and use them to commit crimes, leading to violence and subsequent child recruitment (Veale, 2006; Ursini, 2017).
- 2 The absence of an accountability system for children under civilian and juvenile laws may lead to a parallel system within military law, resulting in children being tried in front of military courts. This produces further violations of their rights in the absence of fair trial guarantees and international standards for juvenile justice (Veale, 2006).
- 3 Many communities against whom child soldiers have committed crimes still view them as criminals and threats, therefore demanding that they be criminally prosecuted (Veale, 2006).

Consequently, granting children immunity may lead to societies' incitement against them, imperiling their safe return and durable reintegration (Veale, 2006; Lafayette, 2013).

In places like Syria and Iraq, child soldiers are seen as dangers. They are thereby kept thoughtlessly in isolated camps or jails (Al-Zain, 2020); moreover, their families often refuse to take them back due to their affiliation with I.S.I.S. (Al-Ardawe, 2020). However, remaining in isolated places will not help in rehabilitating or reintegrating children into their community; in contrast, it will lead to even more isolation and stigmatisation. In this context, Veale (2006) argues that 'it may be in the long-term best interest of former child soldiers and their communities of origin that minors be held accountable' (p. 8). Crucially, this chapter underscores that the accountability process in the post-conflict phase need not focus only on criminal prosecution and punishment; instead, it should seek to achieve justice for victims while strengthening the rule of law (UNICEF, 2002, p. 307–309; Ursini, 2017, p. 1034–1035). It is essential to address the conduct of child soldiers for three main reasons: (1) to help maintain justice for all the conflicting parties, which include the children themselves, the victims, and the wider community; (2) such awareness begins the first step in rehabilitation and reintegration and, subsequently, reconciliation with their communities; and (3) to remove the deleterious stereotype the community has of them. Restoring relationships between the children and the community that were severed due to recruitment is essential. Hence, by opening the community members' eyes to what happened to the children during militarisation and the circumstances in which they committed atrocities, a better chance emerges to forgive and reaccept them. In this vein, this chapter—much like Drumbl (2012), Aptel (2010), and Kiyala (2019)—pushes in favour of restorative justice mechanisms. There is much to

learn in this regard from restorative practices within the Arab world. It is to these experiences that this chapter now turns.

5.4 Restorative Justice in Theory and Practice

Children have been prosecuted under many Arab penal laws. The Iraqi Juvenile Law of 1983 stated that the criminal responsibility age is 9 years old, while the Syrian Law of 1974 sets it at 7, the Sudanese Law of 1983 sets the age at 10, and the Yemeni Law 1992 sets the age for criminal responsibility at 15. As a result, many child soldiers in Arab countries were prosecuted and detained based on the Penal law or counter-terrorism laws.

While it is crucial to address child soldiers' criminal accountability, criminal justice is not the most appropriate method. In this regard, this chapter contends that instead of criminal justice, restorative justice could be used as an alternative approach to address violent acts by child soldiers. Consequently, a space arises to adopt a new approach based on child soldiers' needs, the child's best interest, and international juvenile justice standards (Frostad, 2013; Marković, 2015; Penal Reform International, 2013). On this note, Aptel (2010) argues that there is a need to 'promote diversion, mediation, truth-telling, and reconciliation' (p. 20), while Grossman (2007) calls for adopting rehabilitation and reintegration instead of criminal justice and prosecution (p. 323).

This Part covers two main points. The first delves into the general framework of restorative justice, exploring its definition, objectives, and stakeholders to provide a specific understanding of restorative justice theory. The second section will present restorative practices that dealt with ex-combatants in both the Democratic Republic of Congo (D.R.C.) and East Timor. The third section unpacks the practice of *Sulh*, a form of reconciliation rooted in Arab tradition. *Sulh* aligns with the broader framework of restorative justice. This analysis will encompass its scope, origins, objectives, and existence within the Arab legal framework.

5.4.1 The General Framework of Restorative Justice

Restorative justice is a conflict resolution mechanism that relies primarily on customs and traditions. This endogeneity gives it strength and acceptance among many communities that still depend on customs to resolve conflicts (Veale, 2006; Lafayette, 2013). Restorative justice, as defined by Zaher, involves stakeholders in a specific offence collectively addressing harms, needs, and obligations to heal and make things right (Zaher, cited by Woolford and Ratner, 2008, p. 66). Marshall describes it as a process where parties affected by an offence collaborate to address its aftermath and implications (Marshall, cited by Crawford and Newburn, 2003, p. 22). Its key elements include offender responsibility, victim healing, and restoring relationships. Braithwaite adds that restorative justice is transforming the legal system by involving all parties—perpetrator, victim, and society—in a democratic environment that promotes forgiveness and reconciliation (p. 12–16). According to Walgrave and Bazemore, restorative justice aims mainly to repair the harm caused

by a crime (Walgrave, 2001, p. 18); whether the harm was direct or indirect, the victim is central to this process (Walgrave, 2004). Marshall contends that restorative justice aims to repair harm by restoring relationships between parties through material compensation or symbolic apologies, to achieve reconciliation (Marshall, cited by Crawford and Newburn, 2003, p. 21–23). For Braithwaite (2010), restorative justice addresses injustice resulting from crime, providing mechanisms to deal with this situation, regardless of its form or type. Rather than allowing injustice to persist, it focuses on repairing it. Additionally, he emphasises healing pain within a respectful environment that prioritises human rights and freedom.

In the context of restorative justice, scholars recognise three key parties: the offender, the victim, and the community; however, opinions diverge on the nature and levels of their participation.

Marshall, Sharp, and Braithwaite argue that restorative justice relies on the voluntary involvement of all parties—the offender, victim, and community (see Braithwaite, 2002; Van Ness, et al, 2001). Furthermore, Marshall emphasises that if one party is missing, it cannot truly be considered restorative justice (Marshall, cited by Walgrave, 2004, p. 551–552). Walgrave (2004) takes a different stance. He contends that crime is defined by the harm it causes, not just legal transgression (p. 553). Thus, restorative justice should prioritise harm repair over punishment or offenders' rehabilitation (p. 552). Furthermore, while acknowledging the importance of the offender's presence, Walgrave recognises that in some cases, restorative justice can still be effective without the offender participating (p. 552). In addition, for him, if vulnerable participation was not possible in some cases, restoring coercive participation would not strip the restorative value from the process.

In restorative justice, parties involved in the process agree upon outcomes documented in a signed agreement. These outcomes vary based on the nature of the crime and stakeholders' needs, while also considering proportionality. McCold (cited by Walgrave, 2003) warns against coercively imposing outcomes on offenders, as it undermines the restorative process and resembles retribution. Daly (cited by Walgrave, 2001) suggests that if outcomes lead to unpleasant obligations, restorative justice can be considered a punishment for the offender (p. 17–18). However, even if outcomes are painful or unpleasant for offenders, they aren't necessarily punishment; restorative justice's main priority is healing and repairing victims' harm, restoring relationships, and reintegrating offenders instead of sanctioning the offenders and imposing pain upon them. In this context, Walgrave (2003, p. 62) argues that coercive participation and imposing the outcome on the offender will not necessarily make the process less restorative. Moreover, retributive punishment aims to inflict pain or suffering on offenders based on the punisher's intent; in contrast, restorative justice aims to heal rather than harm (Walgrave, 2001, p. 18–23).

Restorative justice is particularly valuable in addressing violence involving children. International conventions recognise it as an alternative approach for juvenile cases (UNICEF, 2002; Veale, 2006; Marković, 2015). The U.N. Convention on the Rights of the Child emphasises in Article 39 that rehabilitating and reintegrating

children shall be done within a supportive environment that fosters their health, self-respect, and dignity. Similarly, the Paris Principles in Article 3.6 advocate treating child soldiers within a restorative justice framework, consistent with international law and special protections for children. Additionally, the U.N. recognises the value of using restorative justice to address child soldiers. It aims to help children understand the impact of their actions on victims and communities, thus aiding their rehabilitation and integration (United Nations, 2011, p. 37–41). Moreover, the Security Council resolution No. 2427 (2018) emphasises using non-judicial measures for rehabilitating and reintegrating former child soldiers as an alternative to prosecution and detention.

The use of restorative justice in working with child soldiers is based on three main axes (Veale, 2006, p. 7–8; Lafayette, 2013, p. 309):

- 1 Address the responsibility of child soldiers for their actions.
- 2 Repair the harm caused to victims due to these crimes.
- 3 Restore the relationship of child soldiers with victims and communities to rehabilitate and reintegrate them into society.

However, even under restorative justice, there is a need to use a case-by-case approach (Marković, 2015) whereby each child's situation is independently engaged according to the age, sex, personality, and surrounding circumstances (Lafayette, 2013, p. 310–311). This approach helps to engage a deeper understanding of the nature of the acts, the circumstances in which they were undertaken, and how to deal with them. Restoring the broken relationships between child soldiers and their communities is considered a first step in the journey to forgive and accept.

5.4.2 The Use of Restorative Justice Practice with Child Soldiers

1. 'Baraza la Wazee' in Democratic Republic of Congo

The Baraza is a traditional community mechanism in the D.R.C. where community members come together to mediate and settle disputes (Kiyala, 2019; Peace Direct, 2019; Dunn, 2013). Chirezi (FOCHI), a local foundation, aims to restore the Baraza system in D.R.C. to build lasting peace and improve living conditions, especially for child soldiers and women (Malik, 2014; Peace Direct, 2019). The system consists of four groups: the main committee, the youth group, the women's group, and the general group (Peace Direct, 2014). Within this context, FOCI has trained local leaders and women in conflict resolution (Malik, 2014; Peace Direct, 2014; Peace Direct, 2019), and the model has been expanded and adopted by many villages in D.R.C. including Uvira, Walungu, and Fizi (Peace Direct, 2019, p. 49).

The dispute resolution process comprises three stages. The first stage involves entrusting the conflict to a volunteer mediator for dialogue (Dunn, 2013). The second stage involves traditional dispute resolution methods with a committee of four mediators (Peace Direct, 2014; Dunn, 2013). The parties present and defend their case to the Baraza court and receive a decision; in the third stage, apologies, financial compensation, and reconciliation ceremonies may be offered, and a special

reconciliation ceremony is organised if all parties approve the decision (Dunn, 2013; Peace Direct, 2014; Kiyala, 2019). If the decision is rejected, the committee seeks to resolve the conflict through dialog and reconciliation; the rejecting party has the right to appeal the decision before official courts with the assistance of a paid lawyer provided by FOCHI (Dunn, 2013; Peace Direct, 2014).

The Baraza court, sponsored by FOCHI, has successfully resolved over 1,500 cases, directly benefiting over 3,000 people and indirectly affecting 15,000 more (Malik, 2014, p. 13).

2. Community Reconciliation Processes (CRPs) in East Timor

In East Timor, the Community Reconciliation Processes (CRPs) programme aimed to promote reconciliation and peace in the local community, especially with the less harmful and serious crimes committed under Indonesian rule. It used village-based participatory mechanisms and local traditions for conflict resolution, such as mediation and arbitration (CAVR, 2021).

The programme was built upon the practice of *NaheBiti*, which aims to resolve conflict through gatherings of the conflict parties and discussions of the dispute on a special mat (Braithwaite et al, 2012; Babo-Soares, 2004). There are two types of practices: *biti boot* to resolve issues on a broader level and *bitikiik* to resolve personal disputes, both aiming to create harmony and peace in the community in the long term (Babo-Soares, 2004, p 21–22).

The CRPs were voluntarily programmed that used traditional mechanisms and norms to prosecute perpetrators (Burgess, 2006; Pigou, 2004). Many perpetrators admitted their wrongdoings, apologised, and received forgiveness from the community; some also faced minor sanctions but were ultimately welcomed back by the community (Pigou, 2004).

As a part of the programme application, local leaders were involved in preparing for a one-day hearing ceremony as part of the conflict resolution process. The ceremony included various participants such as victims, community members, traditional leaders, and the accused. The local community, including elders and the church, played a key role in the informal level of the procedures, while the formal level involved the state representative granting official permission for the hearing (Braithwaite et al, 2012). The ceremony consisted of opening statements, remarks by local leaders, statements from the accused, testimonies from witnesses and victims, agreement on compensation, and finally, reintegration of offenders into the community through a traditional ritual ceremony (Braithwaite et al, 2012; CAVR, 2021).

The CRP program's main objective under the CAVR was achieving peace through reconciliation among the communities after decades of fighting and war; hence, what motivates people to join and participate actively is their wish to stop fighting and live peacefully (CAVR, 2021)

The CPRs received 1541 cases to be heard in front of the panel. They succeeded in closing 1371 cases in which the offenders successfully reintegrated into the community, while 85 were rejected and sent to the criminal courts to be investigated (CAVR, 2021).

5.4.3 Sulh as a Restorative Justice Practice in the Arab World

1. *Sulh* As a Restorative Justice Practice

As mentioned earlier, restorative justice is deeply embedded in communities' customs and traditions. The Arab world is no exception. Indeed, various practices within Arab culture align with the principles and goals of restorative justice. This section will concentrate on one such practice, known as *Sulh*.

Sulh ('reconciliation') is a customary practice that applies within customary law; it derives from Islamic traditions and customs within the Arab World (Bobseine, 2019; Al-Ramahi, 2018; Safa, 2007). In short, *Sulh* aims to resolve civil, financial, and criminal conflicts, such as family disputes, property disputes, killings, and theft (Bobseine, 2019; Al-Ramahi, 2018; Safa, 2007).

Sulh has certain pragmatic advantages in light of the weaknesses of the state and of the official justice system (such as the length of the formal litigation process and its high cost). Such factors push many people to use tribal and customary justice methods to resolve disputes (Bobseine, 2019, p. 5–10; Al-Dawsari, 2012, p. 8–12).

Sulh depends on the intervention of the family's head, community elders, and tribal *Sheikhs* according to the type and level of the dispute (Bobseine, 2019, p. 5–10; Al-Ramahi, 2018, p. 2–10; Asfura-Heim, 2014, p. 8–14). The primary outcomes of the *Sulh* process can be summarised as follows: (1) protect the individual and collective interest; (2) heal the victim's pain; and (3) restore the relationships among community members. This section now discusses each of these three primary outcomes in turn.

Firstly, it is the protection of the individual and collective interests. One of the most prominent characteristics of the Arab world is the existence and strength of the collective and social relationships within families and tribes (Al-Ramahi, 2018). Assuredly, tribes are still considered a powerful entity in Arab communities, especially in light of the state's weakness and the spread of wars and violence in places like Iraq, Libya, and Yemen (Bobseine, 2019; Asfura-Heim, 2014). As a result, in both peace and wartime, it is seen as a violation toward the whole family or tribe; in such a situation, the tribe steps in to protect the safety and the dignity of both the individual and the community (Bobseine, 2019; Al-Dawsari, 2012). Consequently, the main aim of *Sulh* is to protect the individual and collective safety, dignity, harmony, and solidarity of tribes and their members (Bobseine 2019; Asfura-Heim, 2014).

Secondly, *Sulh* aims to repair the damage and heal the pain victims suffer. Victims have a more influential role in this process than in the official justice system. In *Sulh*, victims participate in the dialogues and present their thoughts, demands, and needs, starting with the occurrence of the crime until its final resolution (Bobseine, 2019; Asfura-Heim, 2014). Usually, the compensation comes in different forms, such as public or private apology, or repairing the damage. However, the most common modality is financial compensation through paying a specific amount of money which the parties agree upon during the *Sulh* process based on the type and nature of the crime (Bobseine, 2019; Al-Dawsari, 2012; Carroll, 2011).

Thirdly, one of the essential outcomes of *Sulh* is to restore the relationships among individuals so as to protect the stability and safety of communities. This process is activated by a number of steps. The first step comes with admitting responsibility for the offender's wrongdoing, which reflects their understanding of the nature of the crime and the harmful consequences on victims and the community (Asfura-Heim, 2014; Al-Dawsari, 2012; Steele, 2008). This step is followed by apologising and compensating the victim for the harm, which helps heal their pain, thus transcending the crime and forgiving the offender (Asfura-Heim, 2014; Al-Dawsari, 2012; Steele, 2008). Additionally, using *Sulh* in the early phases of the conflict helps stanch any escalation, thus preventing revenge and protecting other members from vigilantism that could further impair the social fabric. Moreover, *Sulh* aims to keep communication channels open between the victim and the offender, which helps facilitate dialogue so that all parties may stay in contact with each other (Al-Ramahi, 2018). Hence, *Sulh*, in this regard, aims to keep an open line between the parties to restore and heal the broken relationships between them in the short and long term.

2. *Sulh* within the Arab Legal Framework

Under Arab Penal laws, children, including child soldiers, are eligible to be prosecuted and detained; moreover, criminal law is regulated by an important principle: generality. Hence, the same regulation applies to adults and children, including the use of *Sulh*. Even though *Sulh* is a customary practice, many Arab legislators have used it within criminal laws to help mitigate the pressure of the formal system. In offences and misdemeanours specified by Arab Penal laws, the victim and the offender, using *Sulh*, may agree to resolve the crimes outside the court among themselves and their families, which results in the courts waiving the personal right and looking into public rights only (Nabi, 2019, p. 4247–4248). In this case, *Sulh*'s agreements between the parties are considered a litigation reason according to criminal laws. For instance, articles 194–198 of the 1971 Iraqi Criminal Procedures Law No. (23) stated that the court could accept *Sulh* if the victim requested it at any stage of the case. If the court accepts and approves it, it will have the same effect as the acquittal decision.

In the same way, Egyptian Criminal Procedures Law No (150) of 1950, Article 18 states that the victim can request *Sulh* at any stage of the case. When the court accepts the *Sulh*, the case expires and the punishment is suspended. Article 36 of the Sudanese Criminal Procedures Law 1991 allows the victim to waive the case by using *Sulh*. Also, Article 156 of Syrian Penal Law No (148) of 1949 states that forgiveness from the victim is considered a reason for dropping the public rights lawsuit and suspending the implementation of penalties. Article 157 stipulates that the existence of forgiveness can be inferred through every action that indicates the forgiveness of the victim or the reconciliation (*Sulh*) between the parties to the conflict.

5.5 The Use of *Sulh* with Child Soldiers in Certain Arab Countries

This Part discusses the experiences with *Sulh* as a method of dispute resolution in Iraq and Yemen. It then opens a discussion of commonalities in the use of

Sulh and an assessment of the challenges that inhere in the use of *Sulh*. Through *Sulh*, child soldiers play a positive role instead of being seen as only recipients of D.D.R. programmes or subjects of the criminal justice system. As a result, child soldiers have an opportunity to talk about what they went through during their recruitment, the reasons why they committed crimes, and the fears and hopes that they carry for the future (Muhammadi, 2020; Al-Oraibi, 2020; Subhan, 2020; Mousa, 2020).

Sulh does not mean forgiving the perpetrator without reparation; in contrast, compensation within *Sulh* aims to repair the victims' harm and the damage they have endured. Compensation in *Sulh* can take many forms. It could be a sum of money. It can be moral compensation. Using the general principles of *Sulh*, primarily collective responsibility, child soldiers' families and tribes can cooperate in paying compensation for crimes; in addition, tribal *Sheikhs* and community elders can contribute to help determine the nature and the type of compensation to repair the victims' pain in proportion to the children's age and status (Al-Ase, 2020; Bobesine, 2019; Al-Dawsari, 2012; Carroll, 2011).

5.5.1 Experiences of *Sulh* in Iraq and Yemen

In the province of *Karukuk* in southwestern Iraq, a tendency arose among tribes to achieve reconciliation with regard to child soldiers and children associated with I.S.I.S., especially child soldiers who did not commit murders. Sheikh Raad Al-Ase (2020), one of the Al-Abedd tribal *Sheikhs*, says there is an urgent need to work with child soldiers and ISIS children inside isolation camps. Furthermore, if this intervention is not done, these children risk renewing seeds of hatred and anger in ways that could prompt the disturbing emergence of a new I.S.I.S. In addition, Sheikh Raad Al-Ase believes that if the father of the child belongs to the tribe and there is evidence that the child does not belong to I.S.I.S., a possibility emerges to reintegrate them, even if the child currently is in prison or in an isolation camp. The only case in which it may be difficult to achieve integration is if the child is still in the I.S.I.S. forces.

From Sheikh Raad Al-Ase's personal experience, several challenges thwart successful reconciliation. The first is the victims' refusal to deal in any way with child soldiers. Tribal elders play a critical role in encouraging individuals to participate in this process and concomitantly strengthen their role as part of society. Many tribes also see preventing the re-emergence of I.S.I.S. as the first and most important goal. To achieve this, embracing and integrating child soldiers and ISIS children is necessary to distance these youth from ISIS and prevent their recruitment and use as future fighters (Al-Ase, 2020). The initial refusal shown by the victims to deal with child soldiers began to gradually recede with the expansion of their vision toward the broader interest of the tribes and society, insofar as in this context their private interest became part of the public interest (Al-Ase, 2020).

The process usually begins with tribal elders talking to the victims and their families to urge them to forgive the children and accept their return to society. The second step is represented in compensating the victims and their families,

whether the compensation is financial (here the whole tribe pays it) or moral (such as the child's apology and admission of responsibility for the crimes committed). Finally, the third step is signing the *Sulh* deed by all parties under the supervision of tribal *Sheikhs* to preserve the outputs and prevent the subsequent withdrawal of any party. After signing, the *Sheikhs* inform the official authorities (police, court, and government) of the settled content of these agreements so as to help children integrate into society and get out of prison or detention centres. These agreements constitute an important judges drop criminal cases pending against the child (Al-Ase, 2020).

Sheikh Al-Ase (2020) sees *Sulh* as providing an effective mechanism for resolving the vexing problem of child soldiers and I.S.I.S. children in Iraq (in prisons or detention camps). In his opinion, many tribes in Iraq want to shed the legacy of I.S.I.S. so as to achieve security, peace, and social stability. Therefore, dealing positively and more openly with child soldiers and children of I.S.I.S. has become acceptable to many individuals. However, as he sees it, *Sulh* still needs the Iraqi government's help and support in order to become more broadly effective.

In a second attempt to deal with the issues of child soldiers and I.S.I.S. children within the City of Salah Al-Dean, *Sheikhs* from Al-Jboor and Al-Jmelat tribes worked between 2017 and 2020 to achieve reconciliation between the community and some families of I.S.I.S.'s child soldiers. During this process, the elders first strove to stop the violence to which these families were subjected by the surrounding community. In their work as mediators, the main objective was to create a common ground for dialogue between these families and the members of the community so as to stop the violence and achieve a level of security and stability. Despite their attempts, they were subjected to palpable rejection by society, which sometimes led to the use of violence and weapons against these families. This return violence prompted the start of the *Sulh* process more than once. The *Sheikhs* eventually obtained guarantees from the community that women and children would not be harmed (Subhan, 2020).

The first stage of the operation was represented by a broad and more general participation of the state and societal institutions. In contrast, the second stage focused on confidentiality and privacy in dealing with individuals and families. However, the main objective of the two phases was to reduce the societal rejection of these families and urge communities to accept them and alter the prevailing stereotypes about them so as to reintegrate them. During the two phases, *Sheikhs* used many methods, which relied in particular on nurturing the feelings of the communities and addressing values such as honour, blood ties, mercy, and tolerance to motivate communities to forgive each other and open a new page away from the hatred left behind by I.S.I.S. (Subhan, 2020).

Many tribes in Yemen used *Sulh* and traditional conflict resolution methods to resolve crimes committed by child soldiers. Most of these solutions were based on the tribes' notion of collective responsibility (Al-Gafre, 2020). In contrast to the Iraqi case, child soldiers in Yemen fought to protect their tribes; therefore, societal rejection of them is less aggressive. Tribes in this case are more receptive to

resolving crimes committed by their members (adults and children alike) using traditional means of conflict resolution to protect them (Al-Gafre, 2020).

The process depends mainly on the intervention of tribal elders at the request of the perpetrator, and the perpetrator's family or tribe to conclude a temporary truce with the victim's tribe so as to prevent any escalation of violence between the two parties. The second stage is represented by mediation led by tribal elders to attain common ground between the two parties to resolve the dispute and determine compensation for the victim. The final stage is represented by signing the reconciliation deed in the presence of the Al-jaha, a delegation consisting of elders and tribal leaders of the two parties, to solve the crime and bless the reconciliation (Al-Gafre, 2020).

5.5.2 Challenges and Opportunities: How Can Sulh Be Used?

Working with children within the restorative methods is not new in Arab law, especially juvenile laws. The only difference is the variety of methods used. For instance, Jordanian Juvenile Law No (32) of 2014 adopted the settlement method in Article 13. Meanwhile, Palestinian Juvenile Law No (4) of 2016 adopted mediation in Article 23. In the same respect, Article 113 of the Tunisian Juvenile Law No (92) of 1995 also adopted mediation to work with juveniles. Consequently, enacting special laws and programmes for child soldiers based on restorative justice and the practice of *Sulh* in a number of Arab countries is possible. It must be the first step in creating a legal framework that can offer the legal ground for the concerned parties to use *Sulh* with child soldiers (Bani-Taha, 2021).

Two specific logistical points initially require further elaboration and consideration. The first revolves around the type of crime that may plausibly fall within *Sulh's* jurisdiction. Traditionally, *Sulh*, mediation, and settlement were used only in the case of an offence or a misdemeanour. In such a case, lawmakers and policymakers need to determine that *Sulh* can accommodate different types of more serious crimes depending on the social, security, and legal circumstances (Bani-Taha, 2021).

The second point concerns terrorism. Many child soldiers were affiliated with groups that were characterised as terrorist cells. Accordingly, in addition to the criminal law under which child soldiers were tried, a number of the children also were tried pursuant to anti-terrorism laws. In such a scenario, the prosecution of these children becomes a matter of security, national and international. Hence, deploying restorative justice for these kinds of crimes may prove challenging, especially since many Arab governments lack full independence over their internal policies, particularly when it comes to terrorism. Such policies make it difficult for Arab governments to follow their best option and what is helpful for their communities; instead, they follow and do what is best for the external countries (Bani-Taha, 2021, personal interview).

Looking beyond logistics and technicalities, although *Sulh* can present an effective way to work with child soldiers in Arab countries, four challenges certainly arise:

- 1 The social reticence to acknowledge these children, primarily when the conflict is based on ethnic or sectarian causes. For instance, many Iraqi communities decline to deal, talk, or work with I.S.I.S. children; in places like Mousel, these communities instead demand revenge. Consequently, children are either isolated in special camps away from the communities without solutions or communication with the outside world, or they are prosecuted in the criminal courts (Al-Ardawe, 2020; Subhan, 2020; Muhammadi, 2020).
- 2 The victim's refusal to go through the *Sulh* process with child soldiers or forgive them. For victims, the pain resulting from the crimes often is still fresh. This in turn clouds their decisions and judgment and directs energy toward revenge over reconciliation. Since *Sulh* is a process based on the voluntary participation of the parties, it simply becomes hard to arrange or start it under such reactionary circumstances (Al-Ardawe, 2020; Subhan, 2020; Muhammadi, 2020; Nagi, 2020).
- 3 The ignorance of the phenomenon and its effects. In many Arab countries, the way that governments deal with child soldiers demonstrates the absence of any genuine interest or awareness. These gaps trace to a number of sources, such as state weakness in Iraq or failure in Yemen. The bottom line is that Arab governments may ignore an important issue that can become an existential threat (Al-Gafre, 2020; Al-Ardawe, 2020; Subhan, 2020; Muhammadi, 2020; Nagi, 2020).
- 4 The chaos that accompanies the conflicts phase, where atrocities can be done against anyone without knowing who the offender is and who the victim is. In this kind of situation, restorative justice will be hard to implement without knowing the exact identities of the specific individual crime parties (Al-Badayneh, 2021).

5.6 Conclusion

Restorative justice stands out as one of the most effective approaches for resolving various types of conflicts and crimes globally. Its strength lies in its alignment with local customs and traditions, thereby endowing it with widespread acceptance and respect within diverse communities. When applied to the context of child soldiers, restorative justice has the potential to shift the focus away from prosecuting and detaining them for their actions. Instead, it emphasises rehabilitation and reintegration. This augurs well when it comes to fostering the restoration of their relationships with their communities. Restorative justice recognises the salience of understanding the root causes of children's involvement in armed conflict, prioritising their rehabilitation over punitive measures, and ultimately facilitating their triumphant return to society while, at the same time, considering the needs of the victims. The implementation of *Sulh* as a restorative justice practice in Arab countries like Iraq and Yemen aimed at devising distinctive programmes and laws for child soldiers is a viable prospect.

The application of *Sulh* takes diverse forms and approaches across Arab countries; nevertheless, the foundational principle embeds within numerous Arab legal

systems, thereby encompassing criminal and juvenile laws. These legal frameworks strive to establish alternative pathways within the criminal justice system to address less severe crimes, such as offences and misdemeanours. *Sulh* alleviates pressure on courts and prioritises children's best interests. By incorporating *Sulh* into their legal systems, Arab countries can create tailored approaches that acknowledge the unique circumstances of child soldiers and promote a restorative justice model that prioritises rehabilitation and reintegration while considering the welfare of the children involved. In order to successfully implement restorative justice in addressing the issue of child soldiers, it is crucial to demonstrate a genuine commitment to deal with this phenomenon. Thus, integrating child soldiers into the State's post-conflict recovery and comprehensive plan is imperative.

For effective utilisation of restorative justice, Arab governments should focus on creating mechanisms that seamlessly incorporate restorative justice principles into their broader post-conflict strategies. This integration should be guided by a participatory approach involving the formal system, represented by governmental institutions such as the Ministry of Justice and the Ministry of Social Development, and the informal system represented by the community, national non-governmental organisations, as well as international organisations. The primary objective of employing a participatory approach is to strengthen the community's involvement in regard to issues related to child soldiers. This approach helps establish a communication channel between the community and governmental institutions. It helps align strategies to the needs of the community. Additionally, it enhances understanding of the situation and promotes active participation. This inclusive approach ensures that the community members feel their opinions matter. By fostering collaboration between these formal and informal entities, Arab governments can establish a comprehensive framework for implementing restorative justice principles. This inclusive approach ensures that the perspectives of various stakeholders, including governmental bodies and grassroots organisations, are considered. It also promotes a holistic and participatory response to the rehabilitation and reintegration of child soldiers, contributing to the overall success of post-conflict recovery efforts.

Note

- 1 The author collected this information through a desk review process based on U.N. reports on children and armed conflict from 2018 to 2022. It should be noted that these figures do not reflect accurate statistics on the ground due to the difficulties faced by the U.N. in accessing conflict areas and documenting recruitment cases.

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Section II

Cross-Overs

Fights beyond Conventional
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6 Children and Cyberconflict

(Re)assessing Harm and the Capacity of Legal Instruments to Protect

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6.1 Introduction

In 2021, the United Nations (U.N.) Committee on the Rights of the Child identified emerging risks that children face in cyberspace (UN Committee on the Rights of the Child, 2021). Among these, the Committee cited the threat of cyberattacks. A year later, the United Nations Children's Fund (U.N.I.C.E.F.) published a similarly themed report which considered the risks that offensive cyberoperations pose to children (Pauwels, 2022). Although both reports begin to explore the harms children experience due to cyberoperations, the understandings they advance are speculative. Indeed, as the threat of cyberconflict transcends traditional understandings of how armed conflict and violence impact and implicate children, the resultant harms that children experience from cyberconflict remain under-conceptualized. When analysis lacks specificity, law, and policymakers advance regulatory initiatives through analogy. They adopt discursive frames to liken cyberconflict to armed conflict and thereby posit harm, and collective efforts to mitigate this harm, through the familiar vocabulary of kinetic uses of force.

Such an approach is inherently limited. It leads to exclusions in terms of what children suffer and how children hurt others. While there is state-level consensus that cyberconflict may pose 'potentially devastating humanitarian consequences', the nature of these consequences and the ways that they affect particular sub-groups, like children, go unaddressed (UN General Assembly, Report of the Open-Ended Working Group, 2021). This chapter suggests that when traditional understandings of 'armed conflict', 'violence', or 'child soldiers' are imposed onto contemporary realities, the harms that children experience and cause through cyberconflict are distorted. This is because by assuming the destructive potential instead of the disruptive nature of cyberconflict, the forms of harm that are envisioned by the proffered legal frameworks inadequately envision how children are victimised by cyberconflict and how they can also become victimisers that actively participate in cyberconflict.

This chapter builds upon the foundation developed in the first part of this book to move beyond traditional understandings of 'children's fights'. To do this, it considers the nature of digital threats in terms of how they impact children and how

children may themselves initiate and operationalise such threats. The chapter argues that the prominent legal frameworks, like international humanitarian law (I.H.L.) and international human rights law (I.H.R.L.), are premised upon mitigating the forms of physical harm and destruction that typically result from kinetic conflict. By considering the yet-to-be-fully appreciated ways that cyberconflict affects children, and by calling attention to emerging concepts, like that of the ‘digital child soldier’, this chapter promotes a more inclusive and topical understanding of how conflict impacts children. It asserts that efforts to regulate the relationship between cyberconflict and children need to further understand the precise nature of harms that result from the uncomfortable duality and multifaceted nature of children as victims and victimisers of digital violence. This chapter therefore dovetails with a central theme of this volume, as unwrapped in specificity in chapters by Grunewald, Bodineau, as well as Holá and Drumbl, along with key goals of prevention as distilled by Espejo, Lizama-Mué, and Suárez.

Protection-based agendas have traditionally tailored the forms of protection and regulation that they provide to the nature and specific manifestation of an anticipated harm. Initiatives like the Children and Armed Conflict mandate or a thematic human rights treaty like the Optional Protocol to the Convention on the Rights of the Child are premised on the belief that particular groups face specific threats. Following this (sound) logic, contemporary calls for ‘states parties to take legislative and administrative measures to protect children from violence in the digital environment’ must be informed by the specific forms of harm that cyberconflict poses before they can be truly responsive to such harms (UN Committee on the Rights of the Child, 2021).

The need for such focus is clear. As cyberspace increasingly becomes both a site and a source of contestation, states as well as non-state actors conduct digital attacks. This reality heightens the need to appreciate the humanitarian consequences of these actions and how they distinctly affect and implicate children. However, this poses definitional challenges. Terms such as cyberconflict, cyberattacks, cyberwar, or cyberoperations are often used interchangeably. As the International Committee of the Red Cross (I.C.R.C.) explains, most known cyberattacks are not directly linked to armed conflict. As such this chapter uses the terms cyberconflict and cyberattack to capture the panoply of actions that range from direct digital attacks that form part of a formal armed conflict to adjacent actions and activities that may or may not amount to an armed conflict but nevertheless fuel instability and cause various forms of harm that originate in, emanate from, or are facilitated through the digital sphere. This excludes various forms of harmful online activity that regularly involve children, like cyberbullying or sexual extortion, but lack a discernible nexus to conflict.

We begin with the premise that emerging and future efforts to mitigate the humanitarian consequences of cyberconflict must widen their conceptual scope to better understand the specific harms that result from a cyberattack. The challenge with regulating emerging technologies, particularly in the digital sphere, has always been that technological capacity outpaces regulatory reach (Perkovich and Levite, 2017). But we compound this challenge if attempts to regulate through

interpretative analogies or novel lawmaking insufficiently identify the threat or harm they endeavour to diminish. The forms of harm that follow from cyberoperations are most often different from those that are traditionally the purview of those bodies of international law that govern interstate conflict (Linkater, 2006, p. 338). This contribution suggests that understandings of how cyberconflict impacts and implicates children is cursory, but even these preliminary understandings suggest significant divergences between the forms of harm that children experience and perpetuate within the digital sphere and the forms of harm that instruct common regulatory responses to cyberconflict. Ultimately, we suggest that much greater understandings are needed to better align the lawmaking initiatives that seek to regulate cyberconflict with the actual forms of harm that relate to children within the digital sphere.

To do so, this chapter moves between the abstract and the practical to explore how children are affected by cyberconflict as victims and how children contribute to cyberconflict as actors with agency. Section 6.2 describes the tendency to liken cyberconflict to kinetic war before looking beyond these analogies at the particularised forms of cyberharm that impact children who either passively experience or are actively involved in cyberconflict. It considers how attacks against critical infrastructure—the form of cyberattack that is frequently cited as posing the gravest humanitarian consequences—implicates children as both victims of attacks and authors of attacks. Section 6.3 describes how a traditional understanding of harm shapes international legal responses to transnational threats and violence. It suggests that this prominent conception of harm is limited to physical violence and destruction, restricting legal imaginations and tethering efforts to regulate cyberconflict to a traditional conception of harm that does not capture a complete account of contemporary experiences. In Section 6.4, we assess the increasingly frequent and strident calls to regulate the conduct of cyber operations. We consider whether extant legal instruments sufficiently respond to the insufficiently understood ways that children affect and are affected by cyberconflict and the forms of harm that digital violence is likely to pose to children. Section 6.5 concludes by suggesting that, if cyberoperations do indeed constitute what the 2010 U.S. National Security Strategy described as ‘one of the most serious national security, public safety, and economic challenges’, then the specificities of a cyberattack’s humanitarian consequences and the particularised forms of harm that it produces, must be better understood (United States, 2010, p. 27).

6.2 Beyond Kinetic Warfare: Understanding How Cyberconflict Affects and Is Affected by Children

In recent years, state officials have compared the destructive potential of cyberconflict to Pearl Harbor, Hiroshima, and September 11. Such references to the assumed severity of a looming cyberattack signal urgency. The nature, and implied consequences, of these threats prompted North Atlantic Treaty Organisation (N.A.T.O.) Secretary General Jens Stoltenberg to announce that ‘a serious cyberattack could trigger Article 5 [of the North Atlantic Treaty] where

an attack against one ally is treated as an attack against all' (North Atlantic Treaty Organization, 2019). The Secretary General was responding to the now common belief that within cyberconflict an adversary can impact the informational and critical infrastructure that governmental, economic, social, and military systems deeply rely upon (Maogoto, 2015, p. 64).

Cyberattacks against critical infrastructure are often presented as akin to the threat posed by kinetic uses of force. At the Fourth substantive meeting of the Open-ended Working Group on security of and in the use of information and communications technologies, International Committee of the Red Cross (I.C.R.C.) Senior Arms Control Advisor Véronique Christory cited with concern the threat posed to civilian infrastructure by cyberoperations that target 'power plants, medical facilities, civilian e-governance systems, and private companies' (International Committee of the Red Cross, 2023). Similar assumptions fuelled beliefs that Russia's invasion of Ukraine would herald a new era of cyberconflict during which critical infrastructure would be subject to sustained digital attacks (Giles, 2021). However, while cyberoperations believed to be attributable to Russia or pro-Kremlin groups inside Russia increased in the lead up to the 2022 invasion of Ukraine—and while some observers have described these as amongst the 'most aggressive and destructive in history'—these cyberoperations have not caused the forms of harm that had been envisioned. To date, it seems premature to suggest that cyberattacks 'could achieve what tanks did in the 20th century' (Kostyuk and Gartzke, 2022, p. 113).

A need therefore arises to reassess the very nature of cyberconflict and the destructive potential of cyberattacks (Carvin, 2022). Thomas Rid assesses several of the 21st century's largest cyberattacks, including the series of attacks against Estonia following removal of the Soviet-era Bronze Soldier statue from Tõnismägi Park in Tallinn, the widespread denial-of-service attacks against various governmental websites in Georgia that preceded the 2008 Russian military offensive in South Ossetia and Abkhazia, and the Stuxnet attack at the Natanz uranium enrichment plant in Iran. Rid concludes that there have been no large scale cyberattacks that have caused physical damage comparable to the types of critical infrastructure or industrial systems (for instance, an electrical grid or water supply), that could induce the types of mass harm to a civilian population that common analogies imply (Rid, 2013).

But to say that a cyberattack has neither killed nor destroyed property in ways comparable to an armed attack is not to assume the benign or harmless nature of actions that emanate from the digital commons. While, for example, the cyber dimensions of the Russia-Ukraine conflict have thus far failed to degrade critical infrastructure in ways that would substantiate predictions of a new cyber world war, they do evidence a broader trend. The Microsoft Digital Defense Report found that in 2022 cyberattacks targeting critical infrastructure—usually defined as those sectors and services considered essential for the functioning of a society and economy—rose from 20 to 40 percent of all nation-state attacks detected (Microsoft, 2022, p. 36). Observers confirm that nearly all such attacks against critical infrastructure do not meet 'any plausible threshold for defining them as

“armed conflict,” [a] “use of force” or even [an] “armed attack”” (Lin, 2012, p. 530). Instead of causing the destruction and human suffering commonly caused by kinetic attacks, cyberconflict so far resembles something slower and less sensational. Sometimes likened to terrorism in that the broader effects are often much greater than the immediate impacts, most forms of cyberattack do not target the individual but instead are directed against the systems and networks upon which significant facets of public and private life are dependent (Canetti and Waismel-Manor, 2015, p. 158, 165).

Efforts to address such harms must begin by better understanding them. While the forms of harm caused by cyberoperations will vary and—as noted at the I.C.R.C. Expert Meeting on the Potential Human Cost of Cyber Operations—will affect different sectors and swaths of society in disparate ways, there is strong reason to believe that children face particularised forms of harm (International Committee of the Red Cross, 2018, p. 18). At the broadest level, this is because children today are more digitally connected than any previous generation. This digital reliance extends to all aspects of life, including online communication, education and learning resources, socialisation and connection, and entertainment and play. Insufficient attention has been paid to how cyberconflict affects these activities, to the ways that individuals are impacted, and to how the differentiated forms of harm that result from cyberconflict can extend to children. By beginning to consider the effects of cyberattacks against critical infrastructure, we start to describe how the dual forms of harm that children experience as victim and perpetrator differ from that which is commonly assumed. The consequences of these attacks remain underexplored and demand further study. But we suggest that while they have not summoned the visceral forms of violence that drive many regulatory reactions to cyberconflict, the disruptions that cyberattacks cause to normal life can result in more subtle forms of harm to children. Furthermore, the increasing use of cyberattacks and the prospect of cyberconflict can also more directly implicate children by expanding how they may become active participants in conflict.

6.2.1 Harms Resulting from Disruptions to Normal Life

Cyberconflict and cyberattacks cause particularised forms of harm in digitally connected societies by disrupting normal life. While there has not yet been comprehensive study of how a specific cyberattack has impacted children, the more subtle forms of harm that result from cyberconflict appear to pose distinct physiological, psychological, and developmental impacts. To understand how cyberattacks affect children, it is essential to first understand the outcomes of these attacks and then their subsequent effects. Absent a thorough study of how cyberconflict affects children, exploring past instances of cyberconflict shows that successful cyberattacks often disrupt services that have become integral features of daily life due to society’s reliance on digital technologies. By understanding how such digital disruptions, regardless of their origin, harm children, we can start to address the gaps in knowledge about cyberconflict’s effects.

These effects can result when cyberconflict limits access to basic goods and services, including access to education and healthcare. Such disruptions were observed in 2007 when a series of cyberattacks targeted Estonia amidst a period of political and social tensions with the country's Russian-speaking minority. The attacks featured a three-day 'low-tech' phase, followed by a highly coordinated and more expansive phase lasting an additional three weeks (Tikk-Ringas and Vihul, 2010). Throughout this period, attacks targeted the Estonian government and public institutions. The country's critical infrastructure—including power grids, banking services, water supplies, medical systems, information storage, education system, voting infrastructure, and police and court systems—all required connectivity. The attack severely disrupted governmental and social functions essential for supporting daily life in a country which was among the most digitalised nations in the world. Estonia provides an apposite case study to begin grasping how a similar series of cyberattacks in the 2020s would affect a now comparably internet-reliant society and what particular implications this may hold for children.

The 2007 cyberattacks against Estonia were given the moniker 'Web War 1'. Yet the ways that Estonian infrastructure was systematically and repeatedly targeted were more *disruptive* than *destructive*. These disruptions, though not displaying a more sensationalised form of violence, can harm children in distinct and differentiated ways. A cyberattack that succeeds in limiting access to basic goods and services can cause physiological harm to children when parents and families cannot provide the necessary resources to meet the child's basic needs. Such was the case in Estonia, where the three-week cyberoperation compromised the state's capacity to provide public and emergency services, both due to direct attacks on government systems and an overall loss of internet access. The basic needs of children, particularly those reliant on social welfare, are vulnerable when administered and met through digital systems and processes.

Evidence from other jurisdictions also shows the negative impacts of digital shutdowns on children. Regardless of the shutdown's cause, the resulting lack of connectivity can compromise access to government welfare and social services like income security schemes and food subsidies (Bajoria, 2023). Without access to food security programmes, for example, children's nutritional well-being is harmed (Ettinger de Cuba, 2019, p. 765–773). Stability in family income, which may affect the early development of children in a variety of ways (Zhang, 2023, p. 1186–1200), is also jeopardised for children dependent on digital income support schemes.

Additionally, healthcare and critical medical interventions can be affected. Emergency medical services, including care at emergency departments, are often the only point of accessible and specialised healthcare for children facing existing economic or social barriers (Taylor and Salyakina, 2019, p. 262–271), and children and youth with mental health conditions (Hoge, 2022, p. 1225–1239). Time-sensitive health needs, like infant vaccinations, may also be delayed during internet shutdowns (Mbah and Rogoff, 2018, p. 477). Beyond government-wide attacks like those in Estonia, ransomware and major cyberattacks have directly targeted children's healthcare providers, causing surgery delays, patient reassignments, privacy breaches, and ransomware financial impacts (CBC News, 2023).

Cyberattacks that disrupt internet connectivity can also compromise the state's capacity to provide educational services. The 2022 Report of the Special Rapporteur on the right to education notes that 'internet shutdowns also often have a severe impact on the right to education, impeding learners in accessing online education, taking online exams or applying online for scholarships' (United Nations Human Rights Council, 2022). In the case of the COVID-19 pandemic, learning achievements and mental health of children, particularly those with educational, environmental, and social vulnerabilities, were affected (Whitley and Brown, 2021, p. 1693–1713; Mazrekaj and De Witte, 2023, p. 1–10). A relative lack of digital access was also associated with deterioration in mental health—pointing to digital exclusion in educational contexts as an important cause of harm for children (Metherell, 2022). While different in process, these disruptions could similarly be observed in cyberattacks that sever or disrupt access to education for children. This is particularly the case in a 'post-pandemic' context with increased dependence on hybrid or virtual education. Educational institutions can themselves be the direct target of cyberattacks. In 2017, cyberattacks in the U.S. targeted several school districts, hackers used information stolen during the attack to contact and threaten students with physical harm and the public release of their personal details. During the COVID-19 pandemic, as educational services migrated online in many countries, cyberoperations aimed at schools and educational institutions increased by 25 and 21 percent in Europe and Asia respectively (Pokhrel and Chhetri, 2021, p. 133).

The various disruptions to daily life resulting from a cyberattack can cause notable psychological harms that impact children specifically. Emerging research about the disruptive consequences of a cyberattack reveals that cyberoperations that target infrastructure produce heightened fear, anxiety, despair, and mistrust amongst the affected society (Canetti and Waismel-Manor, 2015, p. 158, 170). While most cyberoperations cannot cause (direct) physical harm or bring about the expected psychological impacts of loss of life and physical destruction, the 'constant assault by unknown, malevolent agents whose agenda is neither clear nor predictable' is itself psychologically burdensome (Canetti and Waismel-Manor, 2015, p. 158, 170). A 2020 study found that amongst a group of student subjects, the emotional response to a cyberattack, including anger and anxiety, was on par with responses to conventional attacks (Backhaus, 2020). The particular form of psychological pressure exerted by cyberattacks on civilians is itself a key mechanism through which the attack is expected to pressure or affect the state.

6.2.2 Expanding the Scope of Participation

Cyberconflict also expands the potential scope of children's *active* participation in conflict, not just as passive victims but also as actual players in violence. As the attacks against Estonian infrastructure persisted, officials quickly accused Russia of waging the ongoing cyberoperation (Myers, 2007). While the question of attribution would formally remain unsettled, the pro-Government Russian youth group Nashi eventually claimed responsibility (Shachtman, 2009). Dubbed 'Kremlin

Kids' by Wired Magazine, Nashi had been created through the youth movement Walking Together to support President Vladimir Putin. Nashi provided an early example of youth participation in cyberconflict. More recently, various extremist groups—from white supremacist and neo-Nazi organisations to non-state armed groups like I.S.I.S. and Boko Haram—have used children to directly participate in their online operations (Bloom, 2019). By opening new spaces for violence, cyberconflict challenges prominent narratives about the use of child soldiers.

Dustin Johnson and Ben O'Bright have advanced the emerging concept of a 'digital child soldier' to describe

any person under the age of 18 who is, by their own volition or by compulsion, a participant in kinetic or non-kinetic cyber conflict activities under the formal or informal guidance, directive, or order of a group or entity with political objectives.

(Johnson and O'Bright, 2018, p. 3)

The traditional duality of child soldier as participant and victim both fall short in capturing the range of ways that children participate in cyberconflict and the particularised harms that result when conflict migrates from the kinetic to the cyber domain. A traditional child soldier may hold the role of combatant, cook, spy, messenger, or porter to name but a few commonly cited examples. The digital child soldier assumes multiple alternative roles and different levels of association with an armed group, as the online space allows for new methods of participation and engagement. The online space changes the proximity of recruitment, participation, and complicates boundaries of association, making these more informal and fluid. These emerging forms of participation open up through novel technological, virtual, and online dimensions. The roles assumed by a digital child soldier include, but are not limited to, conducting online recruitment or online propaganda campaigns, engaging in online communications or dissemination of information amongst members, or engaging in cyberattacks or hacking for the armed or violent extremist group.

The means of participation deployed by a digital child soldier also vary. For youth engaged in hacking and cyberattacks, entry points include gaming, YouTube, or online forums (Pauwels, 2022, p. 13). Those without technical skills, referred to as 'script kiddies', use ready-made scripts or programmes developed by others against a certain target, often without the technical knowledge of how the script will work or understanding the consequences of its use (Daunton, 2023). Additionally, loosely affiliated hacker groups may have greater resources and state support, at times unofficially. For example, the group Killnet, while previously described as only 'script kiddies', has evolved from a cybercriminal group to a participant in pro-Russian hacktivism throughout the Russian invasion of Ukraine (Petkauskas, 2022). In opposition to E.U. sanctions, the group targeted online services in Estonia and Lithuania throughout the summer of 2022 (Petkauskas, 2022).

The digital age has however shifted the dynamics of how child soldiers are recruited, used, or associated with armed groups. The child soldier is traditionally

understood as being in physical proximity to the conflict environment. Alternatively, the digital child soldier, O'Bright explains, may be affiliated or unaffiliated with a state or armed group and may operate either within or beyond the physical territory where the conflict is occurring or the attacks are directed (O'Bright, 2017). In the context of the Russian invasion of Ukraine, child soldiers have been used by Russian separatist groups in a kinetic capacity, for online propaganda, and to spy on social media accounts (Haring, 2019). Additionally, loosely affiliated hacker groups, which likely include teenage members, have also engaged in state-supported cyber operations throughout the Russian invasion that target Ukraine and others to varying degrees, from shutting down websites, to financial hacktivism that targets humanitarian aid, to setting off false air raid sirens (CyberPeace Institute, 2023, p. 15). I.S.I.S. has also used children to conduct online recruitment, disseminate information, and participate in violent propaganda videos (Johnson and O'Bright, 2018, p. 3). While it is difficult to fully comprehend the precise number of children involved in cyberoperations due to challenges of attribution, anonymity, obfuscation techniques, and the global nature of the internet, instances are increasing. For example, in 2017, a Norwegian child, recruited into the I.S.I.S.-affiliated United Cyber Caliphate, participated in the creation of online propaganda, 'kill lists', and threatened a New York nonprofit organisation (US Department of Justice, 2019).

Collectively, these factors challenge the traditional notion of a combatant which is a prerequisite for an individual under 18 years of age to be deemed a child soldier. They also provide a useful point of commencement to understand the forms of harm that are experienced by the digital child soldier. In the most extreme cases, participation may result in direct harm. Junaid Hussain, for example, began hacking as a teen. He eventually became the Islamic State's chief cybercoach, where he planned attacks and conducted online recruitment, including the recruitment of minors (Hamid, 2018, p. 30–35). This case is exceptional as, at the age of 21, he was the first hacker to be targeted and killed by a drone strike due to his role as cyber chief and his involvement in I.S.I.S. recruitment (Hosenball, 2015). Whilst the targeting of individuals involved in waging cyberconflict has been rare, the idea of a 'cyber combatant' or a civilian hacktivist creates new challenges during conventional armed conflict (Delerue, 2014, p. 1–17). Amidst the Russian invasion of Ukraine, there have been reports of children operating surveillance drones (Bell and Semple, 2022). Popular mobile applications that include valuable educational features like video learning lessons and online math classes for children as well as military functions that have been used to report location-tagged troop movements, are easily available (Harwell, 2022). Referencing the use of such technology, the Office of the Commander-in-Chief of the Armed Forces of Ukraine stated that 'now every citizen of Ukraine can join the anti-missile and anti-aircraft defense of our skies' (Tiwari, 2022). This widens the prospect of children using both the educational and militaristic features of this technology or conducting cyberattacks against Russian military websites. There are fears that civilians, including children, who engage in these activities may lose their civilian status as the war continues, as the status of these digital actors remains in legal limbo (Schmitt and Biggerstaff, 2022; CyberPeace Institute, 2023).

Although the use of children and youth in the cyber domain by armed groups will not usually expose them to the severe physical and mental harms of kinetic roles, participating in conflict exclusively through the cyber domain still creates a risk to their wellbeing. It can disrupt psychosocial development, expose them to violence online or offline, encourage radicalisation, or inflict psychological stress and harm. Children who are targeted by or exposed to what has been termed online ‘hate ecologies’ can experience damaging psychological impacts even if the objectives of radicalisation and recruitment are not realised (Meleagrou-Hitchens and Kaderbhair, 2017). Participation in conflict in a digital capacity may expose individuals to online harassment, privacy breaches, and retaliation, including further social isolation and causing deterioration of education and future prospects (Pauwels, 2022, p. 13). Online extremist groups isolate members from social connections to create new insular, online communities, often explicitly targeting young audiences to create one-on-one connections (Rogers, 2018, p. 9). Many children and youth do not yet have fully stable worldviews or political understandings. Hence, exposure to or engagement with violent radicalising content can distort growth patterns and worldview development (Morris, 2016, p. 508; Schmuck, 2021, p. 313–331).

The resulting forms of harm experienced and caused by children, as active participants in cyberconflict or as passive victims, are insufficiently understood. These are likely to become more salient features of an increasingly digital and contested world and as such demand attention. But these issues also demand attention because the ways that a problem is described inevitably influence how it is redressed, and, at present, existing legal frameworks appear ill-suited to the problems that they now seek to solve.

6.3 (Re)Conceptualising Harm in Response to Cyberconflict

The ways that the concept of harm is understood in law matter. Harm, or responses to occurrences of harm, guide legal interventions at both the domestic and international levels. Much liberal thought about the legitimacy of the exercise of state power and the moral limits of an individual’s liberty is contingent upon perceptions of harm. Writing in a criminal law context, Joel Feinberg explains that the duty of legislatures to design laws that restrict the forms of harm that result from ‘crimes against the person’ or ‘crimes against property’ is uncontroversial (Feinberg, 1987, p. 10–11). Yet despite harm’s centrality to legal projects and lawmaking initiatives, the concept of harm is rarely interrogated or given specific meaning. Even John Stuart Mill, whose ‘harm principle’ provides the normative basis to determine when the law may limit individual liberty, fails to explain what constitutes harm (Mill, 1998, p. 14; Brown, 2017, p. 411). While commentators like Feinberg have identified paradigmatic cases that certainly satisfy any conception of harm, the resulting visions of what constitutes harm rarely conceive of activities beyond ‘broken bones and stolen purses’ (Feinberg, 1987, p. 214).

These less-encompassing conceptions of harm are similarly ambiguous within the field of child protection. At the domestic level, notions like the *parens patriae*

doctrine are often premised on a ‘harm threshold’ which is used to evaluate when child protection objectives should trump parental decisions (Taylor, 2024, p. 5–8). Douglas Diekema, a leading exponent of the harm threshold, describes the requisite level of harm needed to reach this threshold as constituting interference with the child’s ‘physical health and vigor, integrity and normal functioning of one’s body, absence of absorbing pain and suffering or grotesque disfigurement, minimal intellectual acuity, and emotional stability’ (Diekema, 2011, p. 128–133). Such a high threshold that favours harm above a best interest of the child-based standard and that is largely grounded in conceptions of physical harm or suffering has been described as constituting a ‘harm consensus’ (Birchley, 2016, p. 111–115).

International law too centres a particular form of harm. When Henry Dunant described what he witnessed in Solferino—an act that prompted the founding of the I.C.R.C. and then the development of I.H.L.—he described the sheer butchery of war: ‘Austrians and Allies trampling each other underfoot, killing one another on piles of bleeding corpses, felling their enemies with their rifle butts, crushing skulls, ripping bellies open with sabre and bayonet’ (Dunant, 1986, p. 19). The subsequent development of what would become I.H.L. sought to balance humanitarian concerns with military necessity and was fuelled by conceptions of harm (Meron, 2000, p. 239, 243). Principles, such as the prohibition on unnecessary suffering sought to curtail excessive actions that triggered harm not justified by military utility (Sassòli and Quintin, 1999, p. 36). Common Article 3 of the Geneva Conventions describes the actions that are prohibited ‘in any time and in any place whatsoever’ and lists violence to life and person, including murder, mutilation, cruel treatment, and torture (Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, art. 3). This prompted Theodor Meron to note that ‘the more offensive or painful the suffering, the greater the pressure for accommodating humanitarian restraints’ (Meron, 2000, p. 243).

The resulting ‘humanization’ of international law was largely a response to the influence of the international human rights movement (Meron, 2000, p. 245). Since the latter half of the 20th century, the development of I.H.R.L. has begun to entrench the premise that law should protect the individual against harms emanating from the state. The preamble of the Universal Declaration of Human Rights recalls that ‘disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind’ (Universal Declaration of Human Rights, Preamble, 1948, 71). As the scope of human rights protection expanded, legal provisions sought harm reduction in fields that range from armed conflict to transnational business practices to climate change. While the subsequent development of human rights law saw the inclusion of various stipulations that transcended a limited conception of physical harm against person or property—notably through the development of social and economic rights—the non-derogable core of most human rights instruments regulates activities that cause direct forms of physical harm, namely the right to life, the prohibition of torture, the principle of legality, and the prohibition of slavery (Farer, 1992, p. 115). Similarly, as Andrea Bianchi underscores, most of the international legal case law invoking *jus cogens* norms

relates to human rights and reactively evokes obligations such as the prohibition of torture or genocide (Bianchi, 2008, p. 491–492).

A similar conception of harm informs international efforts to ensure child protection. The International Labour Organization (I.L.O.), for example, uses ‘harm’ as a standard to assess and regulate the permissibility of certain activities. In instruments like its Minimum Age Convention and the Worst Forms of Child Labour Convention, harm regularly features but the I.L.O. has been criticised for failing to adequately define the concept of harm which is usually understood as simply referring to ‘injury or illness’ (Maconachie and Bock, 2022, p. 259, 264). Those international legal instruments that focus on child protection within armed conflict are also tied to the more limited conception of harm that features in the general, non-child-specific instruments. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, as per its preamble, grounds its protection objectives in I.H.L., again centring the more visceral forms of violence that regularly occupy legal imaginations and international protection agendas (UN General Assembly, 2000).

The moral appeal of preventing such manifestations of harm is clear. Physical harm to persons or property is visceral. It shocks. It activates the collective law-making ambition of the international community who pledge ‘never again’ and send delegations to Nuremberg, San Francisco, Geneva, and Rome to develop the regulatory tools to prevent or to punish persons who cause such forms of harm.¹ The frameworks that result from these initiatives convey a broad ‘global moral consensus’ about the forms of harm that the international community has collectively committed to eradicating (Linklater, 2006, p. 330). But numerous commentators have noted how limited the conception of harm that drives such initiatives is (Ní Aoláin, 2000, p. 43, 56). Randle DeFalco, for example, has shown that within the context of international criminal law (I.C.L.) the interpretation of core crimes and prosecutorial tendencies are grounded in an ‘atrocity aesthetic’ that has emerged from widely held understandings of mass violence that exclusively envisions ‘the commission of gruesome, horrific acts of violence and abuse’ (DeFalco, 2022, p. 3).

While certain international legal instruments do reference broader conceptions of harm, recourse to these instruments is most often triggered by more visceral or visual expressions of such harm. The Convention on the Prevention and Punishment of the Crime of Genocide, for example, defines genocide as acts committed with the intent to destroy a national, ethnical, racial or religious group by, *inter alia*, ‘causing serious bodily or mental harm to members of the group’ (Convention on the Prevention and Punishment of the Crime of Genocide 1948, art. 2(b)). Yet, despite the more expansive inclusion of psychological harm, engagements with the Genocide Convention often neglect actions that do not amount to mass killings or conform with the ferocious forms of violent elimination that many of history’s most indelible atrocities recall.

This prompts arguments that ‘current international legal prohibitions on harm rest on too restricted a conception of ethical responsibility’ (Linklater, 2006, p. 338). Observations about what has been termed international law’s ‘ontologically constrained’ view of violence have also urged a more capacious legal imagination

that includes activities that do not merely cause physical damage to a person or property as commonly conceived (Haataja, 2017, p. 159,173). Writing about the 2007 cyberattacks against Estonia, Samuli Haataja suggests that international legal frameworks governing the use of force fail to appreciate the non-physical forms of harm to non-material entities or processes such as websites and networks (Haataja, 2017, p. 159,173).

This observation builds upon recognitions by law and technology scholars who suggest that the application of existing international legal frameworks starts at too limited a baseline, fixed within the U.N. Charter's prohibition on the use of traditional forms of force (Maogoto, 2015, p. 64). A more encompassing definition of 'digital harm' describes 'the damaging consequences resulting from cyber-events which can originate from malicious, accidental or natural phenomena, manifesting itself within or outside of the internet' (Agrafiotis, 2016a, p. 1, 2). It extends the scope of digital harm to include the primary victim who experiences the direct act as well as secondary and tertiary victims who experience the indirect effects of the expansively understood digital harm (Agrafiotis, 2016a, p. 1, 2). Yet, proponents of a more expansive understanding of digital harm acknowledge that despite growing awareness of the threat of cyberconflict, recognition of the forms of harm that can result from a cyberattack is incomplete (Lavorgna, 2021, p. 411–412). These limitations, in turn, inhibit the international community's collective capacity to respond to and protect against the actual ways that cyberconflict impacts children.

6.4 Assessing the Capacity of Legal Frameworks to Respond to the Forms of Harm that Cyberconflict Poses to Children

Efforts to respond to calls like the Committee on the Rights of the Child's directive that states develop regulatory frameworks to protect children from 'violence within the digital environment', must overcome dual legal neglect. First, the international instruments that have been advanced to regulate cyberconflict largely omit or only make scant reference to the particular vulnerabilities of children. Second, the thematic legal instruments intended to protect children within armed conflict or from associated harms outside of a formal conflict largely neglect the digital sphere. There is a risk, however, that efforts to overcome this neglect by developing the desired regulatory frameworks intended to protect children from cyberconflict will be steered by an incomplete conception of the forms of harm that children experience from cyberattacks.

Attempts to regulate cyberconflict are predominantly driven by two approaches: determinations that existing legal frameworks are suitable and can be applied to regulate certain forms of cyberactivity, or proposals to develop new instruments to fill regulatory gaps. Both methods rely on analogical reasoning (Ratner, 2021, p. 104–113). The resulting analogies provide 'ready-made schemes of thinking' that then guide regulatory efforts to control various forms of cyberactivity (Hertogen, 2018, p. 2). The source of the analogy and the subject to which it is applied are presented as sufficiently similar. This justifies conclusions that existing law is applicable to cyberactivity *or* alternatively that, while relevant

fields of international law are thematically consistent with the challenges posed by cyberconflict, new instruments and rules are needed but these can draw upon existing frameworks to better regulate (Ratner, 2021, p. 104–113). Even though law and legal methodologies are necessarily reliant on analogical reasoning, the quality of the output is contingent on the accuracy of the analogy.

If calls to develop international instruments to regulate cyberconflict and protect children from the pernicious effects of a cyberattack are premised on an incomplete understanding of harm, as Ioannis Agraftotis and others note, ‘this lack of knowledge will result in the deployment of controls incapable of mitigating the overall harm’ (Agraftotis et al, 2018, p. 2). Looking at how cyberconflict affects children, one starts to see that the forms of harm that are experienced often diverge from that which is assumed. Disruptions to daily life from cyberattacks on critical infrastructure, such as during the 2007 Estonian case or the current use of cyber operations in the Russian invasion of Ukraine, can have harmful impacts psychologically, financially, and provoke fear and uncertainty amongst a population. Additionally, cyberconflict presents new spaces of violence, whether as part of a broader armed conflict or through the more frequent use of cyberattacks in peacetime, that present a novel duality, positioning children as both the agents and victims of harm.

Despite these divergences, a traditional conception of harm influences international efforts to regulate cyberconflict at the macro (concepts), meso (frameworks), and micro (rules) levels of analogical reasoning. At the macro-level, conceptual comparisons between cyberconflict and kinetic warfare regularly accompany calls to develop cyberattack-specific protection regimes. Such comparisons are inherent in assertions that the next global atrocity will have digital origins. By framing the threat of cyberconflict through the familiar language of war, by likening a cyberattack against critical infrastructure to the effects of a military strike against, for example, an electrical grid or school, conceptual analogies frame debates about cybersecurity, recalling and then centring the forms of harm associated with kinetic war. But when observing both the result and effects of a cyberattack, it becomes apparent that children face specific harms and that these harms differ from those that commonly result from armed conflict.

The use of these conceptual analogies also influences regulatory conversations at the meso-level. Here, certain fields of international law are identified as providing viable frameworks to advance the regulation of cyberconflict. The fields of law most often proffered to regulate cyberconflict are those that govern the use of force (*i.e.*, the *jus ad bellum*) and the conduct of hostilities (*i.e.*, the *jus in bello*/I.H.L.). The application of these legal frameworks began gaining consensus in 2015 when the U.N. Group of Governmental Experts (G.G.E.) determined that the core principles of I.H.L. apply in cyberspace (Report of the Group of Governmental Experts on Developments in the Field Information 2015, para. 28(d)). While the G.G.E. would subsequently call for further study about when these principles apply to the use of information and communication technologies by states, the G.G.E. notes that, as with I.H.L., these principles are applicable only in situations of armed conflict (Report of the Group of Governmental Experts on Developments in the Field Information, 2021, para. 71(f)). Similarly, proposals to create novel instruments

to regulate cyberconflict, like Microsoft's appeal for a *Digital Geneva Convention* and the creation of a body akin to the Red Cross, draw motivational analogies from these pre-existing legal fields that exist to regulate armed conflict and are accordingly premised upon a traditional conception of mostly physical harm to person and property. Yet, the harms that result from cyberconflict and the ways that these impact children do not align with the archaic vision of violence envisioned within, or even meet the necessary threshold to apply, these frameworks.

But, perhaps, the most explicit embrace of a traditional conception of harm occurs at the micro level of analogical reasoning. Here, specific rules intended to regulate cyberconflict are articulated and proposed by drawing upon identified legal frameworks. Traditional conceptions of physical harm inform the articulation of the proffered rules. Most significantly, in Rule 92, the *Tallinn Manual 2.0* defines a cyberattack as an operation 'that is reasonably expected to cause injury or death to persons or damage or destruction to objects' (Tallinn Manual 2.0, 2017, p. 415). These acts of analogical reasoning and legal transference may provide an apt basis to regulate the most extreme, albeit exceedingly rare, forms of cyberattack. But this is unavoidably incomplete. When it comes to how cyberconflict impacts children, even in the limited context of an attack against infrastructure, an uncomfortable balance emerges between the forms of activity that occupy legal imaginations, the legal tools that are advanced in response to resulting perceptions, and the activities and impacts that most commonly occur. For example, only Rule 138 of the Tallinn Manual 2.0 addresses how existing legal protections extend to the field of child protection. But these considerations are rote. They poorly affirm that existing legal prohibitions on the participation of children in armed conflict extend to the digital sphere to support the trite, and dated, proposition that 'children under the age of fifteen may never be used in the conduct of cyber hostilities' (Schmitt, 2017, p. 524–525).

6.5 Conclusion

Although much is known about the ways that children experience the forms of harm that result from armed conflict, little child-specific research has been conducted to discern how such impacts translate from kinetic conflicts to cyberconflict. This chapter concludes with a call to further understanding the particular ways that cyberconflict impacts children. Advancing these understandings requires input from legal experts, policymakers, computer scientists, technologists, and child protection advocates to collectively explore the underappreciated ways that children are impacted by cyberconflict. Building upon such knowledge, international law offers an essential means of coordinating responses to, and establishing standards to protect against, cyberconflict's most pernicious impacts. But these efforts have been constrained by legal imaginations that constantly liken cyberconflict to armed conflict, that adapt legal frameworks that are premised upon mitigating physical harm to person or property. Only by embracing a holistic understanding of cyberconflict's impacts can legal and policy responses to cyberconflict address the dual ways that children are harmed and can harm others through digital means.

Analogical reasoning offers an essential method of legal transference when novel challenges emerge that are not explicitly envisioned by existing legal frameworks. But the problem-solving potential of such approaches is contingent on the analogue adequately informing the novel scenario. Within the digital sphere, the ostensible similarities between cyber and kinetic conflicts conceal substantial differences. As cyberconflict's technical potential and real-world consequences have only begun to be realised, appreciating these differences is the first step in responding to them.

Note

- 1 Rome Statute of the International Criminal Court, 1998, arts. 5–8 (the definitions of genocide, crimes against humanity, and war crimes) mostly refer to actions like murder, extermination, enslavement, and torture that directly harms the individual's physical integrity

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7 Guilty Victims or Not?

Non-Punishment of Child Trafficking Victims and Child Soldiers Under International Law

Silvia Scarpa

7.1 Introduction

The aim of this chapter is to trace a comparison under international law between the development—or lack thereof—of a qualified non-punishment principle for child trafficking victims, on the one hand, and child soldiers or children associated with an armed force or armed group (C.A.A.F.A.G.), on the other hand. The chapter is subdivided into four parts. Section 7.2 unpacks definitions of ‘child trafficking’, ‘child associated with an armed force or armed group’ and ‘child soldier’ along with their attendant differences and overlaps such that child soldiers may, under certain circumstances, be approached as child trafficking victims. Consequently, Section 7.3 analyses two cases: the 2021 judgement of the European Court of Human Rights (E.Ct.H.R.) in *V.C.L. and C.N. v. United Kingdom* and the 2021 and 2022 trial and appeals judgement of the International Criminal Court (I.C.C.) in *The Prosecutor v. Dominic Ongwen*. Ultimately, the picture that emerges shows the existence of a very limited and qualified right to non-punishment that may nonetheless certainly apply to child/adult offenders considered as fulfilling the human trafficking definition’s main elements. Section 7.4 concludes by noting that international definitional overlaps, such as between child trafficking and child soldiering, would demand consideration of harmonised human rights standards, as in the case of the qualified right to non-punishment for trafficking victims. The chapter contributes to the volume’s aim of untangling complexities in children and juveniles’ fights by sorting out the definitional imperfection of the above-mentioned existing categories, identifying the legal challenges in binaries such as the ones of ‘victim/perpetrator’ and ‘compulsion/consent’, sorting out the need to draw parallels between child involvement in military groups and organised criminal groups to understand the incompleteness of the violence rendered visible through current approaches and, consequently, calling for further harmonisations and developments in this field.

7.2 Child Trafficking Victims and Child Soldiers: Definitional Complexities and Overlaps Under International Law

Child trafficking was first internationally defined by Article 3(c) of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, in Particular Women and Children, hereinafter the U.N. Trafficking Protocol, annexed to the United Nations (U.N.) Convention against Transnational Organized Crime, as being ‘the recruitment, transportation, transfer, harbouring or receipt of a child [...] for the purpose of exploitation’ (Convention against Transnational Organized Crime and the Protocols Thereto 2000). Therefore, any of the actions—the recruitment, transportation, transfer, etc.—committed for the purpose of exploiting a child constitutes ‘child trafficking’. While the term ‘exploitation’ remains undefined, Article 3(a) of the U.N. Trafficking Protocol clarifies that it ‘shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’. Finally, Article 3(d) of the U.N. Trafficking Protocol specifies that a child is anyone below the age of 18 years.

Notwithstanding criticism, the U.N. Trafficking Protocol’s definition remains one of the key pillars in the global fight against serious forms of exploitation (see *inter alia* Kotiswaran, 2017; Scarpa, 2019b). Furthermore, its replication in other regional legal instruments guarantees a certain ‘global’ legal consistency (Scarpa, 2017, p. 90–91). Indeed, identical definitions of child trafficking are included in Article 4(c) of the Council of Europe (C.o.E.) Convention on Action against Trafficking in Human Beings (hereinafter the C.o.E. Trafficking Convention) and Article 2, paragraphs 1 and 5, of the European Union (E.U.) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. However, Directive 2011/36/EU also includes *inter alia* the ‘exploitation in criminal activities’ among the forms of ‘exploitation’ associated with human trafficking. *Considérant 11* of the Preamble of the Directive further explains this concept by making reference to ‘*inter alia*, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain’. None of these legal instruments distinguishes between a ‘child’ and a ‘juvenile’.

Terminological difficulties also exist in the field of child soldiering (see in this volume Espejo, Lizama-Mué, and Suárez, along with Tabak). In this case, a definitional debate arises between proponents of the label of ‘child soldier’ and opponents who propose instead the one of ‘a child associated with an armed force or armed group’ (Drumbl and Barrett, 2019, p. 3–4). A group of non-governmental organisations (N.G.O.s) and advocacy groups proposed the use of ‘child soldier’ because the connection between ‘innocence and barbarism has shaped the morally intolerable feature of the phenomenon’ tied with the idea of the loss of childhood for the minors involved in this practice (Bodineau, 2014, p. 111–128). However, the concept also conveys ‘an unnatural conflation of two contradictory and incompatible terms’, and it may miss the point on the multiple roles played

by children—including as messengers, spies, soldiers, cooks, porters and sexual slaves—and on the various forms of child recruitment, including by conscription by a State's army, by forced recruitment or by volunteering in a militia group (Rosen, 2005, p. 8).

For this reason, a more widely accepted and recognised concept is the one of 'a child associated with an armed force or armed group', which is included in the 2007 *Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (hereinafter the Paris Principles).¹ This concept refers:

to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in the hostilities.

While I acknowledge that the concept of 'a child associated with an armed force or armed group' (C.A.A.F.A.G.) is more appropriate, I concur with Drumbl and Barrett's assessment (2019). This phrase is 'tongue-tying', and its acronym, C.A.A.F.A.G., is 'phonetically awkward'. Furthermore, the concept of 'child soldier' remains widely used. Hence, I use both.

The two categories of child trafficking victims and child soldiers/C.A.A.F.A.G. overlap to a certain extent. Child soldiers are considered child trafficking victims if they meet the relevant definitional requirements in terms of action and purpose of exploitation. This overlap further complicates the thorny debate on whether children may exercise discretion in joining armed groups and what is the degree of consent exercised in these cases (see in this volume Rosen and Rosen, and also Hasona). The clash between two fundamental principles enshrined in the Convention on the Rights of the Child (C.R.C.)—namely the best interest of the child (Article 3) and the right to participation of children in decisions affecting them on the basis of their age and cognitive development (Article 12)—is also apparent. Indeed, if in child trafficking cases child consent is irrelevant, then for trafficked child soldiers below the age of 18 years—namely those who meet the definitional requirements of child trafficking—consent and voluntary participation would not be relevant definitional elements (Scarpa, 2008, p. 33). This means that both voluntary and non-voluntary child soldiering may amount to child trafficking when its two definitional elements, i.e. action and purpose of exploitation, are met. Differently, Article 8(b)(xxvi) and (e)(vii) of the I.C.C. Statute prohibits the voluntary enlistment, forced conscription and use in combat activities of children and considers them as war crimes in both international and non-international armed conflicts. In the *Lubanga* case, the Trial Chamber considered enlistment, conscription and use as separate offences (see *The Prosecutor v. Thomas Lubanga Dyilo*, 2012, § 609). Chamberlain (2014) sees in this respect three diverse levels of child protection: when consent is considered valid, when it is not a valid defence but it is legally relevant and when for children under the age of 15 years it is considered legally irrelevant, with the latter option guaranteeing the highest level of protection (p. 118).

Moreover, another main difference is determined by the lack of an absolute prohibition of child soldiering in international law. Indeed, international humanitarian law rules on the recruitment of children and their participation in armed conflicts contained in the 1977 Additional Protocols to the 1949 Geneva Conventions,² as well as in Article 38(2) C.R.C., establish 15 years as the minimum age for the recruitment and involvement of children in armed conflicts. Indeed, the Protocol to the C.R.C. on the Involvement of Children in Armed Conflicts (O.P.A.C.) only recently raised the age for compulsory recruitment in States Parties' armed forces as well as for the recruitment and use in hostilities by other armed groups to 18 years of age (O.P.A.C. 2000, Articles 2 and 4).

The definitional complexity is further intensified by the fact that both child trafficking victims and 'forced' child soldiers are also considered children involved in the 'worst forms of child labour'. Indeed, Article 3(a) of the International Labour Organization (I.L.O.) Worst Forms of Child Labour Convention No. 182 broadly defines the worst forms of child labour as including, *inter alia*, 'all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict'. According to Article 3(d), the concept also covers children involved in illicit activities, including drug trafficking. Finally, certain overlaps exist among child trafficking, child soldiering and 'enslavement' as a crime against humanity under Article 7(1)(c) of the Statute of the I.C.C. If committed in a widespread and systematic manner within the framework of an attack carried out by State or non-State actors with full knowledge of the attack, enslavement may in fact constitute a crime against humanity. Article 7(2)(c) of the I.C.C. Statute defines enslavement similarly to how 'slavery' is defined by the 1926 Slavery Convention, namely with reference to the exercise of 'any or all of the powers attaching to the right of ownership over a person'; the I.C.C. Statute's provision adds, however, an inclusive reference to 'the exercise of such power in the course of trafficking in persons, in particular women and children'. This definitional morass certainly presents fights for child soldiers, and its disentanglement would ultimately allow a more nuanced approach to the binary proposition of the 'victim/perpetrator' dilemma.

7.3 Child Trafficking Victims (Presumably) 'Compelled' to Commit Crime and (Former) 'Forced' Child Soldiers: Victims, Perpetrators or Both?

The recent judgements of the European Court of Human Rights (E.Ct.H.R.) in *V.C.L. and A.N. v the United Kingdom* are the first cases examined by the Strasbourg Court regarding child trafficking victims involved in criminal activities and prosecuted as juvenile offenders in the national courts of a State Party. Even if there are no global estimates on the involvement of child trafficking victims in unlawful activities in the United Kingdom (U.K.), including drug trafficking and petty theft, the exploitation of Vietnamese nationals—both adults and minors—in unlawful activities, including, in particular, the growing of cannabis on farms and the selling

of the drug, has recently emerged as a pressing issue (Scarpa, 2008, p. 29). Several hundred Vietnamese nationals who are potential victims of trafficking have recently been referred to the U.K. Home Office. Moreover, the death of 39 Vietnamese migrants in a lorry trailer in Grays in October 2019 generated considerable public attention and consternation.³

Similarly, the case of Dominic Ongwen, a former Ugandan child soldier and commander of the Sinia Brigade of the Lord's Resistance Army (L.R.A.), who was recently prosecuted in The Hague by the I.C.C., was in the spotlight. Ongwen was recruited by the L.R.A. when he was only presumably about 9 or 10 years old (see *The Prosecutor v. Dominic Ongwen* 2023, §§ 27, 30, 31). The L.R.A. is a rebel group led by Joseph Kony that was active in Northern Uganda. It is considered responsible for the abduction and use in armed conflict of at least 20,000 children in the civil war against the Ugandan armed forces that affected Northern Uganda in the period between 1986 and the early 2000s (Human Rights Watch, 2003). More than 1.9 million people are considered to have been displaced by this armed group (Human Rights Watch, 2005).

This section unpacks both judgements, including the legal arguments therein. This analysis gestures towards the question of how to treat overlapping categories such as child trafficking victims and child soldiers; it also considers which weight, if any, the age of the child/juvenile should be given in the assessment of the facts, how considerations related to agency may affect judicial decisions and, finally, how past victimisation is differently regulated in these two distinct legal fields. This discussion also ties to other ongoing cases. One example is Shamima Begum, a U.K. citizen who travelled from London to Syria in 2015 when she was 15 years of age to support the Islamic State (I.S.). Once there, Begum married an I.S. fighter and had three children, all of whom died as infants. The girl, whose parents had migrated to the U.K. from Bangladesh, became stateless as she was stripped of her British citizenship on national security grounds in 2019, and Bangladesh disowned her. She remains in a camp controlled by armed guards in Northern Syria (BBC News, 2024). Begum's lawyer claims, though, that it is likely that at the time of her recruitment she was a child trafficking victim, and she also fulfils the criteria for being considered a child formerly associated with an armed group or a child soldier (Al Jazeera, 2022). Her appeal, based on the ground that she was trafficked as a child from the U.K. to Syria, is currently pending a decision of the U.K. Court of Appeal (The Guardian, 2023).

7.3.1 V.C.L. and A.N. v. the United Kingdom: *The E.Ct.H.R.*, Article 4 E.C.H.R. and the Non-Punishment Principle

V.C.L. and A.N. v. the United Kingdom are the first joined cases in which the E.Ct.H.R. examined a State Party's prosecution of child victims of trafficking implicated in criminal activities in light of Article 4 E.C.H.R. The latter provision only prohibits slavery, servitude and forced and compulsory labour. However, in *Rantsev v Cyprus and Russia*, the E.Ct.H.R. interprets Article 4 'in light of present-day conditions' and states that it prohibits trafficking in human beings

too, without the need to also classify the conduct as slavery, servitude or forced labour (*Rantsev v Cyprus and Russia* 2010, § 282). As a justification for this addition to the list of prohibited conducts, the E.Ct.H.R. considers it sufficient to state that ‘trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention’ (Scarpa, 2019a; De Sena, 2019). While the E.Ct.H.R.’s reasoning and its reference to the nebulous concept of ‘dignity’ fail to offer a solid basis for human trafficking to firmly stand within the scope of Article 4 E.C.H.R., it is nonetheless clear that the human trafficking definition incorporates, *inter alia*, slavery, servitude and forced and compulsory labour as forms of exploitation.

Both applicants in these joined cases are Vietnamese nationals who had entered the U.K. in an irregular way and who had been separately arrested in May and April 2009, in Cambridge and London, respectively, for their involvement in the production of cannabis. V.C.L. was immediately identified as a juvenile, since he indicated to the authorities he was 15 years old at that time. A.N. instead initially indicated an incorrect year of birth and was only subsequently identified as a juvenile, with a presumed age of 17 years. Both applicants initially pleaded guilty upon the suggestion of their lawyers, and they were, respectively, sentenced to 20 and 18 months of detention (see *V.C.L. and A.N. v. the United Kingdom* 2009, §§ 5–29). Both applicants were above the minimum age for criminal responsibility (M.A.C.R.), which is in the U.K. set at the age of 10 years (U.K. Government, n.d.). V.C.L. had been identified as a child trafficking victim by the U.K. Border Agency (U.K.B.A.), but this conclusion was not supported by the Crown Prosecution Service (C.P.S.) that refused to discontinue the prosecution against him. In the case of the second applicant, it was only after his sentence that a social worker concluded that there were ‘reasonable grounds’ to believe that A.N. had been trafficked from Vietnam to the U.K. via the Czech Republic; in the meantime, the U.K.B.A. concluded that he was a trafficking victim and, subsequently, the social worker also agreed with this conclusion (see *V.C.L. and A.N. v. the United Kingdom* 2009, §§ 30–37).

Therefore, both applicants appealed against their convictions, and their appeals were joined. However, on 20 February 2012, the U.K. Court of Appeal concluded that Article 26 of the C.o.E. Trafficking Convention—which contains the principle of non-punishment for victims of trafficking who have been compelled to commit crime as part of their trafficking experience—was not to be interpreted as implying an immunity for trafficking victims from prosecution but as guaranteeing that the C.P.S. may exercise prosecutorial discretion in assessing the evidence and taking a decision on the eventual non-prosecution. The U.K. Court of Appeal, however, reduced the sentences of both applicants, concluding that—given his young age and guilty plea—12 months in detention sufficed for V.C.L.; because of A.N.’s young age, his guilty plea and his very short period of work in the cannabis factory, a four-month detention and training order was appropriate. It is not clear how the British judges ultimately weighed the various elements mentioned in their judgements, namely the young age and guilty plea for V.C.L. and the young age, guilty plea and

short period of involvement in the criminal activity for A.N. Notwithstanding the fact that A.N. was older than V.C.L. and closer to the age of majority, he surprisingly ended up with a far greater reduction of the criminal sentence (see *V.C.L. and A.N. v. the United Kingdom* 2009, §§ 42–52).

Neither applicant was permitted to appeal to the U.K. Supreme Court (see *V.C.L. and A.N. v. the United Kingdom* 2009, §§ 51–52). A.N.'s case was subsequently reconsidered, but the U.K. Court of Appeal refused to modify the final sentence and to allow the U.K. Supreme Court to intervene to clarify certain points of law, including whether the requirement of 'compulsion' to commit a crime included in the non-punishment rule should be deleted in child trafficking cases (see *V.C.L. and A.N. v. the United Kingdom* 2009, §§ 53–65).

In its joined judgement, the E.Ct.H.R. considers the non-punishment principle included in relevant international and E.U. binding anti-trafficking standards—namely Article 26 of the C.o.E. Trafficking Convention, Article 8 of E.U. Directive 2011/36/EU and Article 4.2 of the recent 2014 Protocol to the I.L.O. Forced Labour Convention No. 29 of 1930. Given that the non-punishment principle was not incorporated into the 2000 U.N. Trafficking Protocol,⁴ the first international binding reference to the non-punishment principle for trafficking victims is contained in Article 26 of the C.o.E. Trafficking Convention:

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

This provision is not absolute, given that it refers to the *possibility* for States Parties to apply the non-punishment principle if it is 'in accordance with the basic principles' of their legal system. Moreover, the reference to *compulsion* included in the principle remains undefined (Scarpa, 2008, p. 155). The Convention's Explanatory Report does not shed light on the use of this term; it only adds that such a requirement shall comprise 'at a minimum' situations in which victims subjected to any of the illicit means indicated in the adult trafficking definition—namely

the threat or use of force or other form of coercion, of abduction, of fraud, of deception of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person

—are involved in unlawful activities and that 'such involvement results from compulsion' (Council of Europe, 2005). Therefore, it is apparent that the Explanatory Report details the provision only with reference to trafficking in adults. The issue of whether the element of 'compulsion' applies equally to children and juveniles is not clarified. I believe that this would eventually be problematic, given that it somehow introduces an assessment for minors of the use of improper means, which contradicts the definition of child trafficking. States Parties are therefore left with no indication on how to deal with this thorny issue in their juvenile justice systems.

The non-punishment principle is also incorporated in Article 8 of the E.U. Directive 2011/36/EU, which refers to the entitlement for relevant national authorities ‘not to prosecute or impose penalties’ when trafficking victims were compelled to commit unlawful activities. Finally, a very similar formulation of the principle was included in Article 4.2 of the Protocol of 2014 to the Forced Labour Convention No. 29, which states that:

Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

I agree that, as emphasised by Maria Grazia Giammarinaro in her capacity as the O.S.C.E. Special Representative and Co-ordinator for Combating Trafficking in Human Beings and, subsequently, the U.N. Special Rapporteur on Trafficking in Human Beings, in cases of child trafficking ‘the non-punishment provision will apply when the offence committed by the child was *related to the trafficking*’, without compulsion being taken into consideration.

However, this is not the conclusion reached by the E.Ct.H.R. in the joined cases of *V.C.L. and A.N. v The United Kingdom*. Indeed, the E.Ct.H.R. concluded that the non-punishment principle as specified in these international standards is non-absolute, given the presence of two important qualifying elements: ‘[T]he victim of trafficking must have been compelled to commit the criminal activity; and, where that is the case, the national authorities should be entitled, but are not obliged, to elect not to prosecute’ (see *V.C.L. and A.N. v. the United Kingdom* 2009, § 158). Therefore, the E.Ct.H.R. incorrectly considered relevant the element of compulsion in the case of these two child trafficking victims. On the other hand, the E.Ct.H.R. also recognises that States Parties have a duty under Article 4 ECHR to take ‘operational measures’ that are aimed at guaranteeing the protection of trafficking victims, or supposed victims, from further harm and at facilitating their recovery and that, in certain cases, their prosecution and eventual incarceration may potentially hinder the fullest protection of various victims’ human rights, including their physical, psychological and social recovery; prevention from being re-trafficked; and access to relevant services and re-integration into society (see *V.C.L. and A.N. v. the United Kingdom* 2009, § 159). The E.Ct.H.R. then attempts to establish a high threshold for States Parties to guarantee that the prosecution of victims or supposed victims of human trafficking respects procedural obligations included in Article 4 E.C.H.R. through the indication that an identification assessment based on the Palermo Trafficking Protocol’s definitions of adult trafficking and child trafficking by competent professionals should be immediately conducted when there is ‘a credible suspicion that an individual suspected of having committed a criminal offence may have been trafficked or exploited’, especially in the

case of children (see *V.C.L. and A.N. v. the United Kingdom* 2009, § 160). The E.Ct.H.R. also clarifies that while the prosecutorial institutions are not bound by the qualified expert's trafficking assessment, they shall justify themselves by making a clear reference to the elements included in the human trafficking's definition for reaching a different identification conclusion⁵ (see *V.C.L. and A.N. v. the United Kingdom* 2009, § 162). However, the E.Ct.H.R. failed to supply explicit guidance on how the non-punishment principle should be adapted to juvenile offenders.

The E.Ct.H.R. also did not pay overt attention to the fact that the two applicants were both above the 10-years-old M.A.C.R. rule existing in the U.K. and the internationally recommended one.⁶ Indeed, C.R.C. States Parties are encouraged to increase their M.A.C.R. to 14 or 16 years and recommended to avoid setting M.A.C.R. below the age of 12 years (Committee on Rights of the Child, 2007). Recently, it has been determined that in the national penal systems of states worldwide, M.A.C.R. laws generally vary between the ages of 7 and 16 years, with a median global age being 12 years, but with a certain convergence on raising M.A.C.R. standards to 14 years of age (Cipriani 2009, 157; Goldson, Cunneen, and Russell, et al. 2020). Therefore, the lack of an internationally agreed global M.A.C.R. adds a layer of complexity when applying the non-punishment principle to child trafficking victims compelled to commit criminal activities, and this issue should be taken into consideration, especially in countries with M.A.C.R. standards that are below the internationally recommended ones and for very young juvenile offenders below the absolute minimum of 12 years of age. It may also be presumed that the great variations among M.A.C.R. rules may affect the implementation of the non-punishment principle in different countries.

In conclusion, the E.Ct.H.R. hewed to the well-established path of its consistent jurisprudence for violations of Articles 3 and 8 E.C.H.R. Therefore, given children's special vulnerability and the fact that human trafficking threatens 'the human dignity and fundamental freedoms of its victims', then the measures that States must put in place to protect children against violent acts that may constitute violations of Article 4 E.C.H.R. are, in the E.Ct.H.R.'s view, similar to the ones required for Articles 3 and 8 E.C.H.R. Such measures must be

effective and include both reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge, and effective deterrence against such serious breaches of personal integrity [and] must be aimed at ensuring respect for human dignity and protecting the best interests of the child.

(see *V.C.L. and A.N. v. the United Kingdom* 2009, § 161)

While these aims look appropriate, the E.Ct.H.R. could have also attempted to develop an innovative theory applying the non-punishment principle for child trafficking victims in the realm of Article 4 E.C.H.R. by taking a position on the element of 'compulsion' incorporated in it and by assessing if very low M.A.C.R. standards may be detrimental in its implementation.

7.3.2 The Prosecutor v. Dominic Ongwen: *The I.C.C. Prosecution of a Former L.R.A. Child Soldier for Crimes Committed as an Adult Commander*

Dominic Ongwen is the only senior Lord's Resistance Army (L.R.A.) fighter and commander—originally abducted by the L.R.A. as a child soldier at the age of nine years and who lived most of his life with this ruthless militia group—who surrendered to the I.C.C. and has faced prosecution for the international crimes committed during the civil war in Uganda. As a former child soldier, Ongwen faced charges—based on his role as commander of the Sinia Brigade—for some conduct that he had likely suffered within the L.R.A.

Uganda ratified the I.C.C. Statute in 2002. In December 2003, Ugandan President Yoweri Museveni referred the L.R.A. situation to the Prosecutor of the I.C.C. In Museveni's view, it was important to distinguish L.R.A. combatants who had been 'abducted and brutalised by the L.R.A. leadership', thus being victims themselves and for whom he had promoted the adoption of an amnesty law, from the L.R.A. senior leaders, who should have instead been excluded from such an amnesty and 'brought to justice' (International Criminal Court, 2004). It is worth noting that, on the basis of Article 26 of the I.C.C. Statute, the I.C.C. cannot indict or prosecute anyone who was under the age of 18 at the time of the alleged commission of the crime(s). However, this provision only applies to I.C.C. jurisdiction. It is therefore without prejudice to the eventual possibility of establishing juvenile criminal responsibility for international crimes in national courts. Accordingly, an inconsistency arises between national criminal laws regarding penal responsibility and international criminal law as incorporated in the I.C.C. Statute (Klamberg, 2017, p. 274). Moreover, while neither the Statute of the International Criminal Tribunal for the former Yugoslavia (I.C.T.Y.) nor the Statute of the International Criminal Tribunal for Rwanda (I.C.T.R.) refers to an M.A.C.R., no one under the age of 18 years has been subjected to a trial under either of these two tribunals (Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 2011). In contradistinction, Article 7 of the Statute of the Special Court for Sierra Leone (S.C.S.L.) includes an M.A.C.R. of 15 years of age and incorporates special guarantees for juvenile offenders (Statute for the Special Court of Sierra Leone, 2000). That said, the S.C.S.L. Prosecutor decided to avoid indicting child soldiers because of their dual status as victims of recruitment and use in an armed conflict and as perpetrators of certain war crimes (The New Humanitarian, 2002).

Ongwen and four other senior L.R.A. commanders—Joseph Kony, Commander-in-Chief of the LRA; Vincent Otti, alleged L.R.A. Vice-Chairman and Second-in-Command; Raska Lukwiya, alleged LRA Third-in-Command; and Okot Odhiambo, alleged L.R.A. Deputy Army Commander—were investigated by the I.C.C. Prosecutor. All were targeted in an arrest warrant in 2005. Ongwen surrendered to U.S. troops stationed in the Central African Republic in support of an African Union mission on 16 January 2015. He was subsequently transferred to the Netherlands. The proceedings against Ongwen began on 6 December 2016 (Omeri, 2006, p. 481). Notwithstanding an awkward translation from Acholi of an

interview he released before being transferred to The Hague, in which it seemed that he was willing to submit a guilty plea, Ongwen pleaded not guilty (Omeri, 2006, p. 481–482).

Ongwen's lawyers invoked as a defence mental disease/defect under Article 31(1)(a) and duress under Article 31(1)(d) as grounds for excluding his criminal responsibility. Mental disease/defect is defined by the I.C.C. Statute as a condition 'that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law'; duress instead is determined when a person attempts to avoid a threat of 'imminent death or of continuing or imminent serious bodily harm'. Principles of necessity, reasonableness and proportionality apply to duress, and the threat shall not be caused by the person's own action. However, neither the Trial Chamber nor the Appeals Chamber accepted these grounds.

In February 2021, Ongwen was found guilty by Trial Chamber IX of 61 counts of war crimes—including *inter alia* attacks against the civilian population, torture, murder and attempted murder, pillaging, forced pregnancy and conscription and use of children in hostilities—and crimes against humanity, including enslavement, persecution on political grounds, murder and attempted murder, torture, forced marriage, rape and sexual slavery, committed at or near four internally displaced persons (I.D.P.) camps in Northern Uganda between 1 July 2002 and 31 December 2005 (see *The Prosecutor v. Dominic Ongwen*, Judgement 2021). He was sentenced to 25 years' imprisonment (see *The Prosecutor v. Dominic Ongwen*, Sentence 2021). The sentence was not clement in light of the fact that the Prosecutor had recommended a sentence of 'at least' 20 years of imprisonment, while the defence had proposed 'a sentence of time served' or alternatively 'a maximum sentence of 10 years' (see *The Prosecutor v. Dominic Ongwen* 2021, Sentence, § 15; § 395).

Interestingly enough, the I.C.C. judges indicated in their Sentence that Ongwen's 'personal history' as a child soldier was kept in consideration as one of the factors 'bearing ... on the appropriate gradation of the sentence to be imposed on him', so that they decided not to impose life imprisonment (see *The Prosecutor v. Dominic Ongwen* 2021, Sentence, § 70; §§ 386–397). However, the Trial Chamber does not explain how Ongwen's poignant experience of abduction and child soldiering, which likely includes surviving child trafficking and child enslavement, actually was weighed in its determinative assessment and why the recognition of Ongwen's victimisation as a child did not lead to any recognition of the existence of certain grounds for excluding or at least limiting his mental capacity. This is even more evident given that—as noted by Baines, Clarke, and Drumbl in their Amicus Curiae submission—the Trial Chamber had instead traced 'the linkage between the past as a child soldier and the present as a former child soldier as linear and continuous' such that:

The child soldiering experience was constructed as ongoing and assured; it rendered the children as unwitting victims damaged for life, with their reality today as derivative of their previous suffering. Once a child soldier in fact, always a child soldier in mind, body, and soul.

(Baines, Clarke, and Drumbl, 2021, § 9)

Ongwen's defence filed appeal briefs against both the conviction and the sentence. However, in December 2022, the Appeals Chamber confirmed the trial judgement (see *The Prosecutor v. Dominic Ongwen* 2022, § 1686). Ongwen's case certainly raises multiple ethical and legal issues. Ongwen is the first former child soldier to be prosecuted by the I.C.C., as well as by any other recent international criminal tribunal.⁷ Among the 61 counts of war crimes and crimes against humanity for which he was found guilty, a number involve crimes of which he himself had been a victim. Moreover, as noted by Ongwen's Defence, nobody else has been so far found guilty of so many counts by the I.C.C., and after the one of Congolese warlord Bosco Ntaganda sentenced to 30 years of imprisonment for 18 counts of war crimes and crimes against humanity, Ongwen's sentence is the second longest ever handed down by the I.C.C. (see *The Prosecutor v. Dominic Ongwen* 2021, Defence, § 12). But what if Ongwen were to be considered by the I.C.C. as a former child victim of trafficking whose traumatic and exploitative experience continued into adulthood? Could this alternative conceptualisation of his life experience—with the associated qualified right to non-punishment for crimes he may have been 'compelled' to commit—have determined a more lenient approach by the I.C.C.? Could Ongwen's role as an L.R.A. commander also be read in light of his abduction as a child and indoctrination since age 9 or 10 to serve this brutal militia group? While it's not easy to answer these questions, it is important to be aware of relevant binaries—i.e. child soldier/adult commander *versus* child trafficking victim/adult trafficking victim—and of their clear overlaps, but also of inconsistencies in non-punishment approaches among these different legal conceptualisation. In light of this, the other binary 'compulsion versus consent' also takes in other perspectives. Overall, these issues require a deeper analysis and a better harmonisation among existing standards belonging to multiple branches of international law. Such a process could certainly help in opening a deeper legal debate on how ongoing cases, such as the already mentioned Shamima Begum one, or other ones in the future, should be addressed.

7.4 Conclusion

The non-punishment principle applicable to victims 'compelled' to commit crimes incorporated in some binding European human trafficking standards and in the 2014 Protocol to the Forced Labour Convention is not absolute. Nonetheless, the E.Ct.H.R.'s judgement in *V.C.L. and A.N. v. United Kingdom* demonstrates that the Strasbourg Court applies this principle by combining it with other operational measures aimed at guaranteeing trafficking victims' human rights protection in terms of the presumed victims' early identification. Certainly, the E.Ct.H.R. could have better discussed the 'compulsion' element included in the non-punishment principle with reference to child trafficking victims and incorporated clarifications on the minimum age for criminal responsibility and its inconsistency with the definition of child trafficking and with robust child protective frameworks, including those as embedded in multiple international standards on human trafficking.

The case of Dominic Ongwen, who was abducted by the L.R.A. at the age of nine or ten years and who lived most of his life with this ruthless militia group, shows the disconnect between past victimisation as a child soldier and subsequent commission of grave crimes as a commander of a brigade. Ongwen was sentenced by the I.C.C. to 25 years' imprisonment for crimes against humanity and war crimes he committed as an adult L.R.A. Commander. While the I.C.C. did acknowledge the special circumstances of Ongwen's childhood as one infused with child soldiering, in the end Ongwen's own victimisation at the hands of Joseph Kony and other L.R.A. Commanders largely remained hidden within I.C.C. proceedings. The I.C.C. did not validate any legal nexus between Ongwen's own brutalisation as a child soldier and the grave crimes he committed or himself ordered to commit as a senior L.R.A. Commander. Accordingly, neither mental disease/defect nor duress was found to exclude or limit his criminal responsibility.

The comparison between the two cases made in this chapter attempts to bring to light certain definitional overlaps between the international concepts of child trafficking and child soldiers, as well as with enslavement and the worst forms of child labour, which are not yet well-studied. Notwithstanding overlaps, I underline the lack of a qualified right to non-punishment for child soldiers—as well as for former child soldiers who become adult commanders in a guerrilla group—and the lack of global consensus on an M.A.C.R. standard in the field of international human rights law. Similarly, there are inconsistencies between national criminal laws—where juvenile criminal responsibility for international crimes remains possible—and international criminal law as developed in the I.C.C. Statute—whose Article 26 provides that the I.C.C. cannot indict or prosecute anyone who was under the age of 18 at the time of the alleged commission of the crime. The 'victim/perpetrator' dichotomy is, consequently, challenged based on the personal accounts of Ongwen, and problems connected with full reliance on concepts such as 'compulsion' and 'consent' become apparent. Ultimately, this chapter suggests a deeper and non-binary analysis of the lived experiences of children in complex scenarios, including armed groups and organised criminal groups, to bring to light elements of their victimisation and new definitional and legal perspectives that have so far remained mostly hidden.

Notes

- 1 The Paris Principles, adopted at the 2007 Conference 'Free Children from War' organised by France in cooperation with UNICEF, are endorsed by 110 states worldwide. See: Permanent Mission of France to the United Nations in New York, 'Children and Armed Conflict.' Accessed August 12, 2023. <https://onu.delegfrance.org/children-and-armed-conflicts-10458>
- 2 See: Article 77(2) of the Additional Protocol to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I); Article 4(3) of the Additional Protocol to the Geneva Conventions dealing with the Protection of Victims of Non-International Armed Conflicts (Protocol II). *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*. 8 June 1977, 1125 UNTS 3; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*. 8 June 1977, 1125 UNTS 609.

- 3 In the period 2019–2020, such number amounted to 931, and, despite the outbreak of Covid-19, which halted international travel and determined lock-down measures, between 2020 and 2021, another 634 Vietnamese nationals, including 219 children, were identified as presumed trafficking victims. See: Independent Anti-Slavery Commissioner. 2021. ‘Independent Anti-Slavery Commissioner Annual Report 2020–2021.’ 54. Accessed August 14, 2023, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001925/CCS001_CCS0521518548-001_Independent_Anti_Slavery_Commissioner_ARA_2020-21_Web_Accessible.pdf
- 4 An initial reference was included in an informal note submitted by the United Nations High Commissioner for Human Rights (U.N.H.C.H.R.) at the fourth session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime held in 1999. The U.N.H.C.H.R. subsequently referred thereto in its 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking, such that Principle 7 recognises that:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

See: U.N.H.C.H.R. 2002. *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Addendum*. Geneva: United Nations. UN Doc. E/2002/68/Add. 1. Accessed August 4, 2023. www.ohchr.org/sites/default/files/Documents/Publications/Traffickingen.pdf
- 5 *V.C.L. and A.N. v the United Kingdom*, § 162. The E.Ct.H.R. only refers to some of the illicit means included in the definition of adult trafficking, namely the ‘threat of force or other form of coercion’; the judges’ position is unfortunately unclear on other illicit means, including abduction, the abuse of power or of a position of vulnerability and the receipt of a payment for providing control over a person.
- 6 In *T. v. The United Kingdom* and *V. v. the United Kingdom*, the E.Ct.H.R. had clarified that there is no common M.A.C.R. standard among the C.o.E. Member States such that the attribution of criminal responsibility to the applicants, two boys of 10 years of age, could not be considered in violation of Article 3 E.C.H.R. See: *T. v. The United Kingdom*, European Court of Human Rights. Application No. 24724/94, Judgment of 16 December 1999, § 72; *V. v. The United Kingdom*. Application No. 24888/94, Judgment of 16 December 1999, § 74.
- 7 Indeed, a precedent exists in a hybrid criminal court; in *The Prosecutor v. X*, the East Timor’s Special Panels for Serious Crimes (District Court of Dili) sentenced in 2002 a 14-year-old member of the Sakunar militia for murder in violation of the Indonesian Penal Code. See: Drumbl, Mark A. 2012. ‘*Reimagining Child Soldiers in International Law and Policy*.’ Oxford: Oxford University Press, p. 124.

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8 Children as Informers and Denouncers

Barbora Holá and Mark A. Drumbl

8.1 Introduction

Although home is a shelter for many children and youth, pain might flow within its walls.¹ It is no surprise, then, that many fighting children come from homes that house sorrows that are held into all their tomorrows. Fights at home – within those walls – may fuel fights outside of the home. Outside-fights may simply be different ways to fight home-fights. Celebrated American poet Langston Hughes in his own work, from the Harlem Renaissance, captures the spirit of these fights by noting the pain and sorrow that the four walls of home can hold while at the same time protecting from the wind and the rain.²

So it was with Pavel Morozov, better known by how Soviet authorities named him: Pavlik and then Pioneer Hero #001. Pavlik indeed became celebrated for several generations throughout the Soviet Union (and beyond) as a courageous child, committed to Communism, who denounced his own father to the Joint State Political Directorate (O.G.P.U., the secret police, later known as the K.G.B.) for financial irregularities and grain theft. Pavlik subsequently was murdered, at the age of 13, while picking berries in the Ural woods with his little brother, Feodor, who also was murdered. Pavlik thereafter became a Soviet martyr and ‘a favorite of the Soviet propaganda machine ...’ (Los Angeles Times, 2002).

The official version of events was that Pavlik was killed in 1932 by his own family members as revenge for his having denounced his own father. Pavlik’s martyrdom was constructed by Soviet authorities to encourage children to denounce their parents for perceived wrongdoings (Fitzpatrick, 1996, p. 831).³ Pavlik thereby was used to further one of the central pillars of authoritarianism, that is, to fragment families and to supplant kinship bonds with allegiance to the state. These were endemic practices in Stalin’s Soviet Union just as they were in Pol Pot’s Democratic Kampuchea. In Pavlik’s case, interestingly, the ‘prime mover’ in the construction of Pavlik as a venerated icon was not Stalin, but novelist Maxim Gorky (the first chairman of the Soviet Writers’ Union) (Service 2005).

Pavlik’s ‘story’ has multiple plots and pleats. One of his storylines is that of the child who became an informer and denounced his own father, which he in fact did. That said, Pavlik denounced his father at the behest of his mother. Whereas the officially touted driver of the resentment was the father’s stealing from the socialist

state, the actual motivation was his adultery and abandonment of Pavlik's mother (hence the origins within the four walls, and fights within the family). Another storyline is how Pavlik toggled between fact and fiction and, ultimately, became a fanciful myth. A third and final story emerges, this being the craven manipulation (concoction) of juvenile identity by state authorities to promote profoundly repressive agendas.

In this chapter, we first unwind the fact-fable – the legend – of Pavlik. We do so to interrogate other forms of fights – other than soldiering in armed conflict – in which children and youth become engaged (or marshalled and used by adults) as props to support authoritarian regimes. Similarly, in Communist Czechoslovakia, following the Soviet example, very young children were weaponised by their teachers and state authorities to feed widespread official propaganda campaigns following the Communist takeover in 1948. Czechoslovak children publicly denounced alleged traitors and spies, including their very own family members. We discuss these denunciations – principally evoking Tomáš, a teenager who publicly condemned his father – in the second part of this chapter. Throughout the Communist bloc, children appearing in show trials 'testified against their families'; authorities believed that undesirables (to wit, political opponents) in 'the older generation should be destroyed by the new one and mobilized to act on that belief' (Druzhnikov, 1997, p. 60). We thirdly contrast these public usages and displays (whether real or fabricated) of enthusiastic regime-supporting children with the story of a secret child informer, Ivana, who reported on her classmates to the Czechoslovak Communist secret police (*Státní Bezpečnost*, the StB). Whereas Pavlik's story takes the form of mythical public eulogies, with very little in the way of factual records, and the Czechoslovak child denouncers also proceeded overtly, Ivana's story begins with the meticulously detailed records from her covert informer's secret file as archived by the StB. Following the collapse of Communism in Czechoslovakia – as was the case elsewhere in Eastern Europe – secret police archives were opened to the public (Drumbl and Holá, 2022, 2024). Consequently, 17-year-old Ivana was retrospectively exposed by dint of activist pressures to promote the right to the truth. Ivana was outed as one of the few child informers in Communist Czechoslovakia.

After recounting these three vignettes, this chapter explores the use of children in propaganda and informing networks as forms of violence. While this chapter nests in 20th-century Communism in the Soviet Union and Czechoslovakia, the interface of children with these networks is not unique to these times and places. Indeed, these experiences link to those elsewhere, thereby elucidating the dually manipulated and agentic role of children in a regime's fight for legitimacy and thereby blending with a number of contributions to this volume including those by Mohamed Kamara and Sylvie Bodineau. The point of this chapter is not to particularise (or pathologise) Soviet and Czechoslovak approaches to youth mobilisation, but rather to unpack these as examples of far wider phenomena. We thereby shed light on the imagery and iconography of 'childhood' in public life. The specific historical analysis in this chapter, however, does suggest there is much more to learn about children and violence than offered by literature about 'new wars' in the

Global South and that historical developments in Central and Eastern Europe also offer rich insights. We also touch upon the blurring of lines between the public and private, the political and the personal, the family and the state – and the reciprocal machinating of one by the other. This chapter – in the spirit of this edited volume as a whole – transcends a rigid and binary division between childhood and adulthood solely based on chronological age of 18. Age is instead presented as a continuum, with childhood experiences seen as informing adulthood, and dotted in between by the interstitiality of categories such as youth, adolescent, and juvenile. Indeed, the experiences of children and adults in fights may evince continuities rather than the prevailing (and often totalising) presumption of stark differences.

8.2 From Fairy-Tale to Tragedy

Let us begin with the official propagandised truth about Pavlik. This is his ‘story’ as forged and romanticised by Soviet authorities. This ‘story’ wove its way into many songs, plays, films, even an opera,⁴ on a postage stamp, postcards, biographies, and countless paintings. Pavlik adorned endless school walls and was edified in a large number of statues throughout the Soviet Union. Ships and libraries have been dedicated to him; streets and parks were named after him (Druzhnikov, 1997, viii). The little school he had attended in his hometown of Gerasimovka – a small Ural village 220 miles north-east of Yekaterinburg – became a shrine to which Soviet children made pilgrimages for decades. A plaque marked the spot where he apparently died. The simple wooden house in which he was brought up was re-created. A statue was erected, along with a geometric concrete structure festooned with Maxim Gorky’s words: ‘The memory of him must never vanish’. A 1930s poem sounded a clarion call: ‘Pavel Morozov fought the enemy and taught others how to do it. He addressed the whole village and exposed his father!’ (Timofeychev, 2018). Indeed, ‘to this day’ Pavlik is ‘a household name’ in Russia (Los Angeles Times, 2002).

According to the official story, Pavlik was born into a family of poor peasants. Pavlik was a committed Communist. He was a member of the Young Pioneers (a socialist youth organisation) and supported Stalin’s collectivisation of farms in the 1930s.

Pavlik reported his father, Trofim, to the political police. He officially did so because Trofim was apparently forging documents (conduct passes for dispossessed peasants) and selling them to bandits and enemies of the Soviet state. Trofim became labelled a *kulak*, namely a selfish rich peasant who supposedly stymied collectivisation efforts. *Kulaks* were a despised social group at the time and *kulak* was a euphemism that was used to ostracise and stigmatise. As part of Trofim’s investigation, Pavlik apparently confirmed that Trofim brought home valuables he had received in exchange for selling counterfeit documents (the story later came to include Trofim’s hoarding of grain).⁵ Trofim was convicted of terrorism against the state. This was a broad public order offence and extremely serious in nature. Trofim was initially sentenced to ten years in a labour camp. While there, his sentence was changed to death. And this death sentence indeed was carried out.

The official story goes on. Apparently, Pavlik's family was furious that Pavlik had denounced his own father. On 3 September 1932, Pavlik was stabbed to death. Authorities charged that Pavlik's uncle, godfather/uncle, grandfather, grandmother, and one cousin were responsible. Also murdered was Pavlik's younger brother Feodor. All of the alleged murderers were rounded up by the Soviet secret police and prosecuted. The four-day trial was tense. Thousands of telegrams arrived from all over the Soviet Union urging retribution and vengeance. Herein began the construction, by Soviet authorities, of Pavlik as a murdered martyr. As for the accused? Four were convicted of murder 'because of class antagonisms' (Druzhnikov, 1997, p. 11). All four convicts (Pavlik's grandfather [aged 81], grandmother [aged 80], godfather/uncle [aged 70], and a cousin [aged 19]) were sentenced to death by execution (Druzhnikov, 1997, p. 11, 42). All were shot in a pit. The other uncle was acquitted 'for incomprehensible, though for him fortunate, reasons' (Druzhnikov, 1997, p. 11). Figure 8.1 is a socialist realist painting imagining Pavlik boastfully telling his father and grandfather that he had informed on his father to state officials.

Pavlik soon emerged as a didactic fairy-tale. He was a key tool in the Soviet attempt to break family loyalties and sow mistrust into the four walls of the home by embedding the constant threat of denunciation (Los Angeles Times, 2002). Indeed, '[t]he cult of Pavlik Morozov fed a culture of informants, the lifeblood of a police state' (Los Angeles Times, 2002). Soviet children were exhorted to be like Pavlik. Rather than seeing Pavlik as a scoundrel for betraying his very own father, the official story venerated him as elegantly loyal to the higher order goal of the Soviet state and collective well-being: a paragon of self-sacrifice and commitment



Figure 8.1 'Pavlik Morozov' by Nikita Chebakov, 1952.

Source: Saikov/Sputnik.

to Communism. The virtuous Soviet citizen, after all, was to 'put public interest above private and family loyalties' (Heinzen, 2007, p. 833).

The Soviet state deployed the fable of Pavlik as a cudgel to try to crack intergenerational relations. Child informers and youthful denounciators are, after all, frightening. George Orwell wrote in 1984:

All their ferocity was turned outwards, against the enemies of the State, against foreigners, traitors, saboteurs, thought criminals. It was almost normal for people over thirty to be frightened of their own children. And with good reason, for hardly a week passed in which the Times did not carry a paragraph describing how some eavesdropping little sneak – 'child hero' was the phrase generally used – had overheard some compromising remark and denounced its parents to the Thought Police.

(Orwell, 1984, p. 24)

In the Soviet Union at the time, Druzhnikov (1997, p. 164) remarks that '[c]hild informing was supplementary [to adult informers] in terms of its practical use, but it was crucial for the education of future citizens'. Children 'were expected to unmask class enemies'; it became policy that ... 'a child informs the teacher that he is unhappy with his mother or father, upon which the school files a lawsuit against them' (Druzhnikov, 1997, p. 125). Druzhnikov (1997, p. 127) concludes that '[t]he Pioneer organization [became] a branch of the secret police'. Figure 8.2 is a photo, and an embellishment, of Pavlik.



Figure 8.2 Pavlik Morozov listed in the Soviet youth pioneer organisation as Pioneer #001.

Following the fall of Communism, and indeed in its last years, historians and other academics began to poke into Pavlik's 'official' story. This was a trend throughout all of Eastern Europe as the *anciens régimes* gave way to the *nouveaux régimes* – and the storylines – of neoliberal capitalism. Throughout the region, a thirst emerged to learn the truth about the past while also consolidating the legitimacy of the new governance structure.

In the case of Pavlik, these enquiries, whatever differences may arise among them, converge on one main point: the official story of Pavlik is either entirely, materially, or mostly fiction. Particularly influential among this group is Yuri Druzhnikov, a dissident writer. In 1988 Druzhnikov penned – as *samizdat*⁶ – an *exposé* about these fabrications. This was eventually published in 1996 in English as *Informer 101: The Myth of Pavlik Morozov*. This book takes the reader along a carefully researched – and deeply emotive – refutation of virtually every thread of the official story of Pavlik's life. Druzhnikov relies mostly on interviews with surviving witnesses (Pavlik's now elderly schoolmates, neighbours, teachers, and local officials).⁷ According to Druzhnikov, Pavlik was an urchin and troublemaker. He was never a Young Pioneer. Druzhnikov (1997, p. 42, 115) locates evidence that Pavlik was a small-time hoodlum, and perhaps even mentally challenged. Pavlik's face is not the face in many official photographs (Druzhnikov, 1997, p. ix). Indeed, the one actual surviving photograph shows an emaciated and malnourished kid topped with too big a cap. Druzhnikov intimates that the Soviet secret police – aided by a local informant (another of Pavlik's cousins) and committed Communist – murdered Pavlik and his brother. The objective of the murder was to frighten the village into joining the collective farm.

As for the trial against Trofim, Druzhnikov (1997, p. 9) maintains that much of what passed as testimony was not probative but rather was just verbiage spouted by party activists. Druzhnikov (1997, p. 31) unearths evidence that Pavlik's perjured testimony was essential to convicting Trofim (it was 'the decisive fact'). It seems clear that Pavlik did denounce his father – this seems to be one of the only settled facts (Druzhnikov, 1997, p. 42). Druzhnikov adds:

But Pavlik did not do this for political motives. The real reason behind his denunciation was the burning jealousy of an abandoned woman [Pavlik's mother] determined to take revenge on the husband who had rejected her.

(Druzhnikov, 1997, p. 31)

And as for the trial of the five family members accused of Pavlik's murder, Druzhnikov (1997, p. 1) finds that entire process was 'scripted'. Poignantly, in a bridge to the Czechoslovak show trials we discuss in the next section of this chapter, a 10-year-old boy was dragged into the proceedings:

The judges and the prosecutor even demanded that a small boy testify against his relatives. Ten-year-old Alexi Morozov complied; he had been coached beforehand to demand the death of his grandmother and grandfather.

(Druzhnikov, 1997, p. 10)

In the end, then, Druzhnikov delivers a granular historical analysis of the one murder, the executions, and the backgrounds of the implicated parties. He does so with a view to defrocking the ‘show trial’ nature of all the proceedings against Trofim and subsequently against five of Trofim’s family members. One underpinning note of Druzhnikov’s research is the galvanising presence of ‘show trials’ in Soviet life at the time. These were ‘spectacles for the masses’; ‘grandiose not only in the large audiences they attracted, but also in the number of the accused on trial at any one time’. The state’s transformation of Pavlik into Pioneer Hero #001 enabled it to claim that his murderers were ‘political terrorists [...] [a]ccordingly, the trial was transformed into a political proceeding against the enemies of the Party and socialism’ (Druzhnikov, 1997, p. 51, 60). Figure 8.3, on the theme of heroism, depicts Soviet children visiting the site where Pavlik’s murdered body had been found.

Another researcher, Catriona Kelly, largely concurs with Druzhnikov. In a book she published in 2005 entitled *Comrade Pavlik: The Rise and Fall of a Soviet Boy Hero*, Kelly delves into the official archives of the case (Kelly, 2005). She factually refutes much of the evidence that was used to convict Pavlik’s putative murderers. She notes how the actual truth of Pavlik is belied, and undermined, by the facts of his story continually shape-shifting to suit the times.⁸ Kelly posits that Pavlik was nearly illiterate; a very poor student; ‘[s]upposedly he stank and his hair was always full of lice’ (Service, 2005). Kelly concurs with Druzhnikov that Pavlik’s



Figure 8.3 Later Pioneers visiting the place where the body of Pavlik Morozov was found.

Source: 1991 Anatoly Grakhov/TASS.

mother forced him to denounce his father after the father had deserted the family for another woman.⁹ Kelly disputes, however, Druzhnikov's hypothesis that Pavlik was murdered by Soviet secret police.

Pavlik's 'story', then, is an extreme form of a much more embedded practice. His four walls of home became supplanted with an endless influx of ideology and authoritarianism. His sorrows carried into the tomorrows for many decades beyond his murder. He became a political prop: first for the Communist agenda and then for anti-Communist *revanchisme*. In Pavel's case, his current maligned status is further exacerbated by the fact that one of the most easily despised and scapegoated characters after regime change (or after enemy occupation) is the informing 'snitch'.¹⁰ Even back in the day, Stalin himself had expressed reticence about embracing a snitch who betrayed his own father as a propaganda tool – Stalin intuited that people generally do not like informers.¹¹

Attempts have been brought, in court, to rehabilitate Pavlik's dead family and wash away the taint that the father was a criminal and the boy murdered by his elderly relatives (Los Angeles Times, 2002). These attempts have thus far proven unsuccessful. Post-Communist legislation in Russia permits Russians to seek justice for individuals who had been disappeared or repressed during Stalinism. Yet, despite many cases in which show trial verdicts were quashed following regime change, Russian prosecutors and courts have refused to posthumously rehabilitate the individuals who had been convicted for Pavlik's murder (Los Angeles Times, 2002).

As Russia transitioned from Communism, Pavlik too transitioned from hero to traitor in pop culture and public life. He still remains a subject of public fodder and consumption. New songs in fact have been recorded about him. Alexey Timofeychev (2018) reports that one song, 'by the famous rock group, Krematoriy[,] [depicts] Pavel ... no longer [as] a hero but now a sort of demon – an eternal spirit that travels in Russia from one epoch to another'. Indeed, throughout Russia, statues of Communist icons – including Pavlik Informer 001 (Druzhnikov, 1997, p. 178) – have been toppled, desecrated, removed, shattered, and broken.¹² In a poignant form of what Mariafrancesca Cataldo (2024) labels iconoclasm, newer generations destroy the imagery of the child hero of the past (see Figure 8.4). Still, it is somewhat ironic that among the only monuments ever constructed to venerate informers is one of a child informer (Druzhnikov, 1997, p. 97).

The 'story' of Pavlik redounds well beyond the Soviet Union, former satellite states, and contemporary Russia. It also infuses theoretical discussions about the Convention on the Rights of the Child (C.R.C.). One visceral example is an article by Alain Finkielkraut (1990), a French philosopher, in the prominent French newspaper *Le Monde*, entitled 'La nouvelle statue de Pavel Morozov'. Finkielkraut takes up the imagery of Pavlik for a piece that offers a critique of the manipulation of the C.R.C. to suit the agendas of powerful adults. He parallels this to the use by the Soviets of Pavlik. Finkielkraut's trenchant commentary evidences how Pavlik still serves as an ongoing reference point, as he did for the Russian rock-band, although here the imagery is wryly deployed to cast the C.R.C. as a problematic treaty. Finkielkraut argues that any document that serves to bestow power upon



Figure 8.4 Post-Communism – Downed statue of Pavlik Morozov.

Source: Valery Khristoforov/TASS.

children actually does so for purposes of buttressing the power wielded by the adults who insist on children having rights.¹³

Finkelkraut incidentally gets the ‘facts’ wrong and actually concocts yet another ‘official’ version of Pavlik’s story. According to Finkelkraut, whose version of the story is then taken up by his interlocutor Jean-Pierre Rosenczweig (1990), a leading French children’s rights advocate, Pavlik denounced both of his parents (mother and father) for being bad Communists (Rosenczweig goes even further and says Pavlik did this for ‘quelques roubles de plus’ (i.e. some extra money). These motivations are not borne out by any historical or mythological record (none mention monetary rewards, nor that his mother was ever denounced). So, another spin on the facts emerges. Finkelkraut and Rosenczweig’s narratives make Pavlik seem even worse than he actually was (denouncing his own mother as well!). Finkelkraut uses Pavlik as a prop for his own agenda of scepticism towards contemporary international human rights law. Pavlik is thereby manipulated by an adult intellectual for the purpose of discrediting the C.R.C. And his responsive interlocutor, Rosenczweig, accepts, and further distorts, these facts in his *riposte*. Finkelkraut likens the C.R.C. to a Pavel statue and Rosenczweig, deeply invested in the child protection infrastructure, attempts to defend the treaty.

8.3. Condemnatory Letters from Children

After taking power in 1948, Czechoslovak Communists ushered in a period of ‘Stalinisation’ during which the country sank deeply within the Soviet sphere

of influence. This era, which lasted from 1948 to 1956, was the most repressive period of Communist rule. In many respects, Czechoslovak Communist authorities were inspired by the Soviet example, including its propaganda machinery like the story of Pavlik. Hence, ‘happy children’ enthusiastically and actively supporting the workers’ revolution constituted one of the prime representational images of the time.

In order to consolidate power and increase its legitimacy, the regime also directly used children for malevolent purposes. Children became ensnared in Czechoslovak political show trials in the 1950s, some of which became the largest such spectacles in Eastern Europe. Such show trials were orchestrated and scripted by the Party and the secret police – the StB – from start to finish. Between 1948 and 1954, 95,000 individuals were convicted of serious political offences against the state, such as sabotage or treason, on trumped-up charges or based on harmless conduct (Bursík et al, 2020). Of these, 178 individuals were executed, with many others receiving long-term sentences (Bursík et al, 2020). Czechoslovak children were instructed and incentivised to denounce ‘enemies of the state’, report on their parents, and declare loyalty to the new ideology. This mass campaign, orchestrated by the Communist Party, publicly beseeched harsh treatment and executions of the alleged ‘enemies of the people’, ‘traitors’, and ‘spies’ and did not spare even the youngest. For instance, during one of the first, and ‘biggest’ (Kaplan, 1995), of such trials – the trial against Milada Horáková et al – ‘progressive teachers were required to discuss treasonous behaviour of the saboteurs’ (Formánková and Koura, 2008, p. 67) with their pupils during classes and to emphasise ‘the depraved character of the accused’ (Formánková and Koura, 2008, p. 67). Milada Horáková (a prominent non-Communist politician and female activist at the time) and 12 other opponents of the Communist regime were framed for high treason and espionage. In reality, they did not do anything extraordinary – they were just critical of the regime. The entire process was pre-determined, including the sanctions to be delivered by the Communist Party organs and the StB. The defendants had been compelled, by means of torture and inhuman treatment, to admit to offences they had not committed. All the accused were convicted. Four, including Milada, were executed. The rest received prison terms (see, e.g., Holá, 2024).

All the accused in this joint trial were presented ‘as monsters who wish only for war, as individuals committing the same atrocities as Nazis during WWII’ (Formánková and Koura, 2008, p. 67). Children were compelled to listen to daily propagandist radio reports from the courtroom and assigned ‘essays on the topic of “Traitors of their own nation”’ (Formánková and Koura, 2008, p. 67). Upon the instructions of their teachers, school children drafted and sent letters of condemnation, reprimand, and outrage to the judges of the Court who tried these accused in staged proceedings (see Figure 8.5 as an example). These letters are chilling. They contain ideologically and emotionally charged words meticulously drafted in basic school cursive handwriting. Like Pavlik, these children were dragged into fights over which they never exerted control but could also be deployed for the baleful purposes of controlling others, including elders and adults.

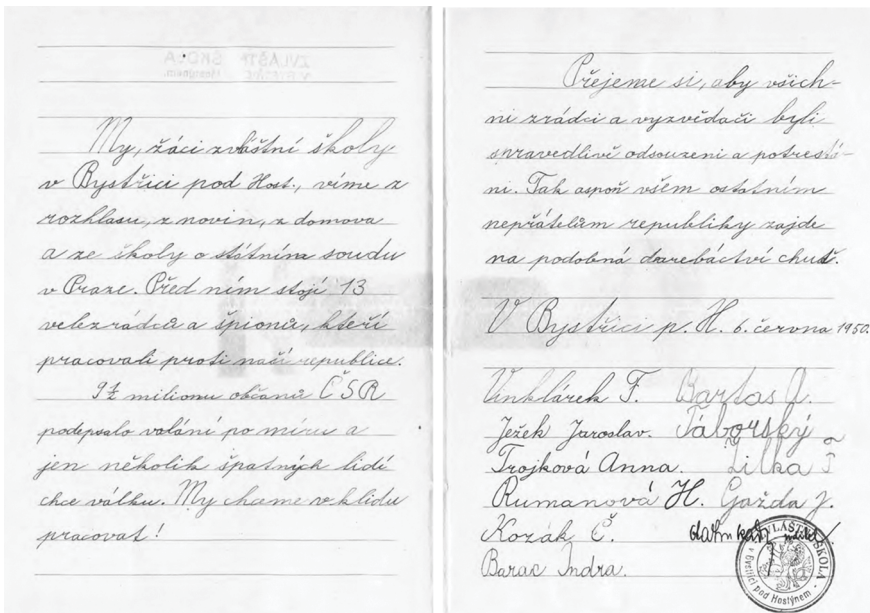


Figure 8.5 Letter of Denunciation and Reprimand Written by Children.¹⁴

Source: Formánková and Koura, 2008.

Day in and day out ‘full baskets’ of letters of denunciations were brought into the courtroom to intimidate the accused and witnesses (Formánková and Koura, 2008, p. 57). The letters were also published in daily newspapers to demonstrate the ‘will of the people’ (Formánková and Koura, 2008, p. 57). In the end more than 6,300 letters of denunciation and reprimand were delivered to the authorities during the Horáková et al trial (Formánková and Koura, 2008, p. 57). Children requested ‘the harshest punishment for the subversives’ and their execution (Formánková and Koura, 2008, p. 67, 70). In others, such as in the letter displayed above, children expressed their wish ‘for all the traitors and spies to be fairly convicted and punished so that all the other enemies of the Republic will lose their appetite for any similar knavery’ (Formánková and Koura, 2008, p. 72–73). In the same way as adults, children promised to be ‘alert and vigilant’, and to be ‘loyal guardians of our country’ (Formánková and Koura, 2008, p. 70).

As in the Soviet Union, fealty to the regime ought to have taken precedence over loyalty to one’s parents and one’s family. The Party wanted to peek into and shatter the four walls of children’s homes. Teachers encouraged and used children to inform on their parents. During classes, teachers enquired (‘inconspicuously’) how the trials were being discussed at home (Formánková and Koura, 2008, p. 69). As homework, children were asked to confront their parents and find out what they thought of the trial and then report that back at school (Formánková and Koura, 2008, p. 69).

Indeed, Czechoslovakia feted its own young pioneer, albeit far more modestly than the Soviets did Pavlik. This was Tomáš Frejka, a youth who publicly and strongly denounced his own father. Tomáš was older than Pavlik (19 at the time, so technically an adult, though in this volume's non-binary approach to age, clearly a youth), was not killed, nor did he end up wildly venerated. Still, his positionality somewhat tracks Pavlik's. Tomáš publicly renounced and denounced his father – Ludvík Frejka, a former Chief of the Economic Department of the President's Cabinet – during another political show trial in 1952. Ludvík was tried together with 13 others, mainly ex-Party and ex-government officials, in a trial officially labelled the 'Trial of the Leadership of the Anti-State Conspiracy Centre Headed by Rudolf Slánský'. Defendants were framed as long-standing agents of imperialism and conspirators against Czechoslovakia. Ludvík 'confessed' to being a U.S. secret service agent and to sabotaging industrial development and economic relations between Czechoslovakia and the Soviet Union. Ludvík, together with ten other defendants, was in the end convicted and executed. The remaining three received life sentences.

Tomáš wrote a powerful, emotional, and terrifying letter, addressed to the President of the State Court where the trial was held. Tomáš' letter was read out during the proceedings and also published in a national newspaper:

Comrade! I demand the ultimate penalty for my father – the death penalty. I have realized that this creature, who cannot even be described as a human being, because he lacks even a trace of emotion and human dignity, has become my greatest and bitterest enemy.

I pledge that I will always work as a loyal communist. I will strengthen my hatred of all our enemies, who want to destroy our life, which is becoming ever richer and happier, and, above all, I will never allow my hatred of my father to die away, so that I can work all the better for the communist future of our people.

(Rudé Právo, 1952)

Tomáš' father was indeed executed on 3 December 1952. Different stories circulated as to why Tomáš drafted the letter. Some say he was forced to do it; others claim his father made him do it so as to ensure a good future for Tomáš (Ulč, 2011). Still others claim Tomáš did it completely voluntarily – he believed in the guilt of his father (Ulč, 1974, 2011). Be that as it may, Tomáš and his public fight denouncing his father and announcing his loyalty to the state is another example of the corrosive practices and propaganda of the Communist regime and the role children and youth can play therein. Tomáš seemed over time to lose his declared loyalty to the regime and his purported rigour to edify the Communist future (Ulč, 2011). In the 1960s, Tomáš emigrated from Czechoslovakia. He received political asylum in the U.S.A., citing persecution and the execution of his father as proof of his refugee status (Ulč, 1974). His flight led to flight.

Following the collapse of the Czechoslovak Communist regime in 1989, all the 'despicable criminals' and 'enemies of the people' convicted in political trials – who Communist children so fervently, publicly, and collectively denounced – ended up

rehabilitated and considered ‘heroes’ and ‘resisters’ by the new democratic regime. The Horáková trial was proclaimed a crime scene. One of the prosecutors – by then an elderly woman – ended up convicted of murder on account of her participation therein (Holá, 2024). While the implicated children did not face the scorn that Pavlik’s memory faced in Russia, certainly their iconographic status eroded.

8.4 Child Informers: Not Always So Special

In contrast to Pavlik and Tomáš, Ivana, a child informer, never became a public figure. Neither her image nor her words were ever publicly (ab-)used by authorities. Her secret informing was exposed only once the Czechoslovak StB archives were opened. Ivana informed on her classmates and friends when she had just turned 17 and was in her final year of high school.¹⁵

According to her StB file, the cover of which is depicted in Figure 8.6, Ivana was shy and timid among her peers. She ‘[thought] carefully about everything and [did] not blindly accept others’ opinions’. Although she was not the best public speaker (her teachers believed she lacked self-confidence), she had good grades. In her final year of high school, Ivana placed in the top of her class: she was always meticulously prepared, hardworking, disciplined, and conscientious. According to the school headmaster, Ivana ‘[was] an example to her peers regarding her study and working morale’. Indeed, Ivana was a very active member of the S.S.M. (Communist Party’s Youth Organization) where she chaired multiple committees. She was ‘mature, dutiful, knew her purpose and was a good organizer’. Nature and biology both interested Ivana. She took part in biological competitions and even won district and regional rounds. Her ambition was to continue her studies at the University of Life Sciences.

Ivana’s family seemed to have been functional and supportive. No (major) fights appeared to rage within their four walls. Ivana’s father was a mechanic, a Party member, and active in a regional administration. Her mother was a turner, with no political proclivities nor affiliations. Ivana was the middle-child. She had a younger brother and an older sister. Her parents encouraged her education and activities.

All in all, Ivana seems to have been a model young citizen of Communist Czechoslovakia. She towed the line. She did what the Party expected of her. Indeed, she even went beyond the call of duty. In October 1980, when she was 17, Ivana participated – as all pupils and students were expected (and more or less required) to – in the 1980 Spartakiad, a mass gymnastics event organised every five years to celebrate the liberation of Czechoslovakia by the Red Army in 1945. It was around this time that Ivana first encountered the StB. Ivana’s StB file had however already been opened on 9 July 1980, when she was 16. It is unclear whether they approached her, or she approached them. Regardless, an StB officer found Ivana ‘a suitable type for [their] use in their [operations focusing on] the youths’.

In March 1982, when Ivana was 18, her teenage classmates and friends and their ‘subversive’ activities sparked the StB’s interest. Some of Ivana’s classmates allegedly attended illicit religious gatherings organised by a local priest who failed to report these gatherings to the authorities (as required by the law at the

MINISTERSTVO VNITRA

PRISNE TAJNE!

33360
Registrační číslo

IVANA
Krycí jméno

Registrován dne _____ Ukončen dne _____

Obnoven dne _____ Ukončen dne _____

Archivní číslo _____

745498

MV B. 441. 712

Figure 8.6 Ivana's StB file (1980–1984) – Cover Page.

Source: StB file (No. 745498 MV, Registration No. 33360. Security Services Archive).

time) and thus committed a crime (Plachý, 2003). According to the StB, Ivana's classmates 'behaved inappropriately' and defied expectations of proper socialist conduct because of their interest in (and pursuance of) religious faith. The StB thus approached Ivana for help. And Ivana became the central StB whisperer in this operation.

Ivana extensively discussed with the StB how four of her classmates indeed were religious, owned and cited the Bible, but also listened to underground music and radio stations. Ivana shared how some of them publicly criticised the regime, even joking about the S.S.M., the Party, and the police – information that could ruin someone's life in Communist Czechoslovakia. Ivana confided in (and complained to) the StB that her classmates did not like her because she actively worked for the S.S.M. at her school. She begged the StB to be very careful in their operations such that she would not be revealed. Ivana fretted and fussed that were she to be exposed, she 'would have been verbally attacked'. Ivana also shared with the StB rather unflattering words about the school's headmaster who was, according to her, 'afraid of conflicts' and 'did not want any troubles which would shed bad light on school's reputation' so he 'tended to hide everything'.

Ivana and the StB officers seemed to meet only irregularly and occasionally. At times the StB called Ivana in, while at other times she contacted them on her own initiative. However, according to Czech historian Jiří Plachý, Ivana's information 'was a crucial piece of intelligence which ultimately decided the fate of 12 of her fellow citizens, whose only delict was that they had a different worldview than the official communist ideology' (Plachý, 2003, p. 59).¹⁶ Based on the information Ivana supplied, two of her classmates were expelled from high school and never allowed to graduate. As for the others, their grades were lowered which automatically rendered them ineligible for university admission (Plachý, 2003, p. 65). In contrast, Ivana successfully completed her final exams and in 1982 was accepted to the University of Life Sciences, exactly as she had hoped for (Plachý, 2003, p. 70).

The StB thus clearly valued the information Ivana provided. In April 1982, Ivana was financially rewarded to 'not only appreciate [her] positive attitude towards [our] cooperation, but also to deepen her relationship with the StB and incite further activities'. Based on Ivana's reporting, the StB was also able to advance the criminal investigation of the priest¹⁷ and to open a separate investigation regarding one of her classmates. Ivana thereby bears some parallels with trafficked children, as detailed by Silvia Scarpa in this volume, who while used and victimised by criminal syndicates also may have exercised (limited) agency and acted in ways that may harm others.

Ivana's collaboration with the StB, however, was rather short-lived and ended after she commenced her university studies in 1982. That said, Ivana did approach the StB once again. During this meeting Ivana expressed that, given that she had settled down in Prague, they could once again see each other regularly. She expressed wanting to inform even more. However, this seems to have been the last encounter Ivana had with the StB. The StB did not see any further use for Ivana and closed her informer's file in 1984.

According to Plachý, Ivana was 'probably one of the youngest StB cooperatives ever' since she started working with the StB when she was 17 (Plachý, 2003, p. 70). Little information is available on how widespread and regular youth- or child-informing and collaborating with the StB actually was. No systematic or focused research has yet been conducted to gauge how often the StB employed young informers.¹⁸ According to Czech historian Milan Bárta, in the 1980s, the StB

did use children aged 15–18 in counter-intelligence operations, albeit very infrequently. In such cases, teenagers mostly cooperated voluntarily (Burčík, 2011). It is noteworthy that StB regulations governing its work with informers (i.e. informer recruitment, management, and modes of interaction) did not contain any specific provisions concerning interactions with children or youth.¹⁹

The question remains, then, as to why Ivana actively (and quite successfully) reported on her classmates to the StB. Unfortunately, her StB informer's file does not offer any conclusive answer. Ivana was a teenager, a bit insecure, so perhaps she sought validation and affirmation. Perhaps she was pressured.²⁰ It does seem that cooperation with the StB grew on her, so to speak, as near the end, she took an active part in contacting the StB and it was the StB that terminated the informing relationship. Perhaps Ivana indeed believed in Communist ideology and disapproved of the so-called defective behaviour of her peers. Perhaps Ivana resented her classmates, who did not seem to have particularly fancied her, and so she sought to get even with them. Or maybe she wanted to ensure beyond any doubt that her dream of university studies would materialise. It could also have been all (or some, or perhaps even none) of the above.

In our research on motivations and emotions of adult informers in Communist Czechoslovakia, we identify four predominant drivers that animated ordinary citizens to inform on others to the secret police. These are fear, ambition, resentment, and ideology (Drumbl and Holá, 2024). Similar to Ivana, many adult informers informed due to (individual or situational) insecurities, to navigate their fears, to solidify their future prospects, to settle grudges, or to affirm their loyalty to the state and official ideology. These motivations often overlapped and were highly dynamic. They evolved over time and hinged upon a particular situation and constellation of circumstances, such as who the information pertained to, when it was being asked, and what was being asked.

It seems that Ivana's case did not stand out in this respect. In short, Ivana's file looks and reads very much like many of the adult files we have perused. There is little that is unique about Ivana's patterns of informing and denouncing. There are no indications that the StB preyed on Ivana's youthful vulnerabilities or exerted pressure to make her talk. She seemed to come forward on a couple of occasions on her own volition and initiative. She did not hold back. The uneventfulness of Ivana's informing – coupled with the StB's bureaucratic and regulatory silence on age that refused to assign childhood any differentiated status – suggests that there might not be much that is special about teenage and young secret informers. Herein lies a contrast to Pavlik, as he became an informer public hero because of his youth, though Pavlik's reasons for informing also appear to be score-settling, familial, and remote from any putative national security concern.

8.5 Conclusion

By way of three vignettes – Soviet pioneer Pavlik, child denouncers in Communist Czechoslovakia (notably Tomáš), and secret informer Ivana – this chapter illustrates other kinds of fights in which children can become involved. This chapter unearths

the heterogeneous roles children and youth can play as informers and denouncers to implant, reinforce, and endorse authoritarian power. Each vignette reflects how ideology – in these cases, Communism – sculpted the social and cultural practices to which children were exposed, in which they were immersed, and for whose purposes they were used.²¹ In the end, the distinctions between personal and political, agency and context, and the walls of home and the borders of the *polis* all become blurred.

This chapter sheds light on the manipulation of images of patriotic youth and youth who have fallen from grace, as well as the enduring grip of gerontocracy. The three vignettes demonstrate how images of fighting children may be deployed for a multitude of instrumental reasons. Child soldiers – and by extension fighting children generally – indeed serve as representational fodder for all sorts of ulterior goals pursued by repressive regimes as well as human rights protectors.

The international legal imagination largely constructs child soldiers as ‘faultless passive victims’ to underscore the heinousness of child recruitment and to justify criminal punishment of adult recruiters and enlists (Drumbl, 2012). Drumbl’s identification of this imagery harmonises with Jana Tabak’s notion of the woeful ‘world-child’ as unspooled in this volume. In contrast, Soviet authorities constructed a heroic image of Pavlik akin to Tabak’s formulation of the British ‘junior-soldier’. Indeed, the portrayal of fighting children as heroes has a lengthy history. Here, it is mostly national governments (or rebel groups wishing to become national governments) who disseminate such imagery so as to consolidate power, cultivate legitimacy, sow seeds of loyalty, and advance their public relations. Statues of child resisters to Nazism, Delacroix’s revolutionary painting ‘Liberty leading the people’, underage British soldiers in World War I, South Africa Township Youth, Colombia’s 12-year-old independence hero Pedro Rojas, the Children’s March in the U.S. Civil Rights Movement, school-age climate change activists – all of these movements cast child fighters in glorious ways. In Communist Czechoslovakia, images of enthusiastic children supporting the revolution and socialist building of the egalitarian state served similar functions.

And there is yet another image posited by Drumbl (2012), which is very different but equally controlling: the child soldier/child fighter as a delinquent youth, incorrigible, a rotten apple, as Cain, as marred and indelibly scarred by original sin. This image is frequently deployed to describe criminal youth in contexts where youth depart from official state or social narratives, such as child terrorists, youth gang members, and children who commit school shootings. Interestingly, this demonic image emerges as a public depiction of Pavlik in the post-Communist period. Tomáš, as well, in his own life-cycle drifts from heroic denouncer to derelict malefactor depending on the prevalent political winds. As for Ivana, despite her surreptitiousness, she presumptively moves from honourable citizen upholding the Communist state to the collective fate of most exposed informers, that is, to be perceived with a degree of contempt and disdain once the repressive regime falls (Drumbl and Holá, 2024).

Each of these images is highly politicised and indicative of the power of gerontocratic authorities to manipulate representations of youth. A distortion arises. What

is lost, in the end, is the reality of the nuanced, complex, agentic, and ambiguous lives actually lived by fighting children.

And, on a final note, the three vignettes in this chapter suggest that parallels emerge between children and their adult counterparts when it comes to participation in fights. Kirsten Fisher's observations in this volume about the fluidity of time in contexts of transitional justice for children map onto broader notions of the fluidity of time for determinations of 'borders' between childhood and adulthood. In a sense, excessive reliance on sharp binaries (at the age of 18, for instance) generate their own forms of age segregation and perhaps undesired consequences.²² Indeed, in Ivana's case her status as a child just did not seem to matter. All this suggests, perhaps, that not only is it difficult to clearly cleave childhood from adulthood, but also that considerable dynamism, individuation, and cross-currents exist within the category of childhood itself.

Notes

- 1 The authors would like to thank participants in the 'Children's Fights' Conference, notably Karl Hanson, for helpful suggestions, and Mohamed Kamara and Jastine Barrett for their insights.
- 2 Langston Hughes, 'Walls' (Rampersad and Roessel, 1995, p. 79).
- 3 Denunciation – the voluntary reporting of wrongdoing by citizens to authorities – was affirmed as a social practice by the Soviet regime.
- 4 The opera is by Mikhail Krasesz. It was performed in 1958. It is straightforwardly entitled *Pavlik Morozov*. Druzhnikov recounts that Pavlik stands guard over the kolkhoz wheat, saving it from arsonists. [...] He is accompanied by a choir of peasants who sing, Hail to Pavlik! /He is brave and honest!/Not afraid of the enemies,/Not afraid of his father./Hail to Pavlik, Humble and smart! (Druzhnikov, 1997, p. 116)
- 5 As a general policy, Soviet 'party authorities attempted to create a public environment in which average people would not only respect state property as "the people's wealth," but would actively defend it from those who would abscond with it or enable its theft' (Heinzen, 2007, p. 789, 797).
- 6 Samizdat is a form of dissident activity that involves reproducing and distributing censored and underground publications.
- 7 He also uses secondary sources such as documents, files, and museum collections.
- 8 Pavlik's father's crime morphed in different moments from forging documents to hoarding grain.
- 9 [Pavlik's] father had abandoned his mother and their four boys for another woman in the village. The fatherless family was poor and often without food... The mother was slovenly and consumed by bitterness. It was she who urged Pashka [what friends and family actually called Pavlik] to denounce his father, perhaps in revenge, perhaps in a last-ditch effort to shame the older man into returning to the family. (Los Angeles Times, 2002)
- 10 Druzhnikov (1997, p. 162) describes the disdain in which informers are commonly held.
- 11 Service (2005) notes that other 'youthful heroes' began to overtake Pavlik during the Communist years. One is Zoya Kosmodemyanskaya, who fought the German occupiers and was hanged but remained defiant to the end.

- 12 One bronze version of Informer 001 stood next to the new American embassy in Moscow up to August 1991. One night in the trail of the August 1991 coup the crowd tied him up with a steel cable and pulled him down to the ground with a tractor, as was done with the monuments to Stalin.
(Družnikov, 1997, p. 178)
- 13 Finkielkraut (1990) assuredly offers interesting insights: ‘Des Jeunesses hitlériennes aux gamins-gardiens des grandes révolutions, tous les régimes totalitaires se sont appuyés sur les enfants. Le totalitarisme, c’est le mariage monstrueux de la politique et de l’enfance’.
- 14 Translation into English:

Us pupils of the basic school in Bystřice know from the radio, newspapers, from home and from school about the State Court in Prague. Thirteen traitors and spies, who worked against our republic, are standing trial there. Nine and a half million citizens of Czechoslovakia call for peace while only a handful of bad people wants war. We want to work in peace! We wish for all traitors and spies to be fairly convicted and punished so that all the other enemies of the Republic will lose their appetite for any similar knavery.
(Source: Formánková and Koura, 2008, pp. 72–73)
- 15 In the following text, all information on Ivana (unless otherwise indicated) stems from her StB informer file (No. 745498 MV, Registration No. 33360). This includes all the quotes, which one of the authors translated from Czech to English. For extensive discussion of the authors’ approaches to methodology and archival ethics in the Czechoslovak secret police files, see Drumbl and Holá (2024).
- 16 Quotes are translated by one of the authors from Czech.
- 17 Whilst the priest was investigated, he was never fully tried for his behaviour, as his case attracted international protests and his trial was adjourned. He was relocated to a less attractive position and, until 1989, he remained under StB surveillance (Plachý, 2003, p. 64).
- 18 Phone conversation with Milan Bárta, historian at the Institute for the Study of Totalitarian Regimes, who focuses on the history of the StB and its repressive practices, 15 March 2023.
- 19 See, e.g., Minister of Interior: Directive for Work with Collaborators of the Counter-intelligence (A-oper-I-3), Order, Number 3, Issued 25 January 1978.
- 20 Czech historian Koudelka (1993) reveals that in a surprisingly high number of cases an informer simply ‘said no’, i.e. refused to continue to collaborate with the STB and did not regularly face any repercussions. We come to similar conclusions based on our research in the StB archives (Drumbl and Holá, 2024).
- 21 See Maya Nguyen, presentation at ‘Children’s Fights’ conference (2023), ‘Ideology as social practice: the case of child soldiering in Vietnam’.
- 22 See presentation of Hedi Viterbo at ‘Children’s Fights’ conference (2023), noting how international humanitarian law’s requirement that children be detained and housed separately from adults creates a dichotomy (i.e. age segregation) that, in turn, can be instrumentalised to sever intergenerational bonds.

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9 Afghanistan's *Bacha Posh* Girls

Unspoken Gender-Based Violence and Psychological Trauma within the Broader Context of an Armed Conflict

Ingeborg Gruenwald

9.1 Introduction

In a society where it is impractical to be a woman, where should the line between resilience and repression be drawn? In a society ruled by misogyny, where does a cultural norm become a crime? Afghanistan has been plagued by endemic violence for decades, and although violence does not *define* Afghanistan, its pervasive consequences profoundly affect all those living in the country. Violence is more nuanced than simply consisting of criminal offences. The multi-faceted nature of violence is critical to this volume (see Espejo et al and Hollobon et al in this volume). Going beyond, violence is, moreover, not solely limited to physicality. Violence is an all-encompassing term that pervades various realms and takes different shapes and forms. Ukmuna Manoori writes, in their memoir as life as a *bacha posh*, 'Imagine: you are raised as a *boy*, you grew up with this plan, and then tomorrow someone tells you to dress, move, compose yourself, think, and act like a *girl*. For some, it is simply impossible.' (2014, p. 8). This suggests consequences that transcend the physical realm to touch upon both the gender and the psychological realm. It symbolises gender-based psychological violence inflicted upon young Afghan girls through *bacha posh*, which, although stemming from a historical practice, has now become more widespread as a response to repression under Taliban rule.

This chapter explores the *bacha posh* practice in detail. Section 9.2 introduces *bacha posh* through a variety of literary, linguistic and sociological sources. Section 9.3 contextualises *bacha posh* within the framework of children in armed conflicts. Section 9.4 extends the violence narrative beyond its conventional connotation, uncovering the gender-based violence to which *bacha posh* girls are subject, as well as the psychological trauma resulting from the practice. Section 9.5 reflects on international law's relevance for the *bacha posh* practice. This section—which constitutes the heart of this chapter—contends that the practice of *bacha posh* has implications that go beyond what meets the eye. Therefore, to ameliorate the situation for *bacha posh* girls in Afghanistan, it is crucial first to raise awareness of the practice and its potentially harmful consequences. Subsequently, gradual structural changes coupled with the implementation of robust legal standards—both within Afghanistan and internationally—will be needed. Section 9.6 concludes.

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Noteworthy of mention is the fact that the research methodology employed by this chapter is qualitative in nature. Given the scant amount of information available regarding the practice in question from any single discipline, the strength of the methodology lies in its qualitative interdisciplinarity. For what concerns the *bacha posh* practice, per se, this chapter focuses highly on literary accounts of the practice—which are ultimately the result of extensive field work undertaken by other scholars within Afghanistan. Similarly, regarding the intersection between the *bacha posh* practice and the child soldier narrative, this chapter is built upon the pillars of child soldiering literature. On the other hand, Section 9.4 discusses gender-based violence and psychological trauma. This particular section can be conceptualised as an extended literature review, with a keen interest in grasping the consequences of the *bacha posh* practice in psychological terms. Lastly, Section 9.5—the heart of the chapter—relies heavily on humanitarian accounts, as well as hard law.

9.2 Afghanistan's *Bacha Posh* Girls

'No, Time thou shalt not boast that I do change: Thy pyramids built up with newer might To me are nothing novel, nothing strange; They are but dressings of a former sight' (Shakespeare, 2020, p. 209).

Sonnet 123, composed by William Shakespeare, symbolises the relationship between *time* and *change*. An interesting parallel can be drawn between *Sonnet 123* and Afghanistan as seen through William Podlich's photographic depictions of the country, taken between 1967 and 1968. Podlich captured still images of Afghanistan prior to the Taliban regime, rendering his depiction of the country idyllic. At this juncture, contemplation naturally turns to the transformative influence of time, oscillating between moments of progress and regress. In fact, juxtaposing these historical photographs with modern-day snapshots of the country evokes a sense of unease, highlighting a society's vulnerability to time's degradations.

Podlich's Afghanistan was in no way resemblant to twenty-first-century Afghanistan. On the contrary, Podlich's Afghanistan portrayed women freely roaming the streets of Kabul, predominantly dressed in Western-style clothing. Podlich's Afghanistan was characterised by endless green parks, most of which no longer exist. Most importantly, Podlich's Afghanistan was characterised by joy, a joy which time stole from Afghan citizens as a consequence of decades of armed conflict. As such, a more appropriate depiction of modern-day Afghanistan is offered by Nadia Hashimi in her fictional masterpiece titled *One Half from the East*. In her novel, Hashimi states that 'sometimes, hiding can set you free' adequately portraying the reality that confronts countless Afghan citizens, particularly women, on a daily basis in order to survive within the established patriarchy which pervades all levels of Afghan society (Hashimi, 2016, p. 16).

Within *One Half from the East*, Hashimi depicts modern-day Afghanistan as perceived by Obayada, who offers a raw gendered perspective on the reality of life as a young girl living under the Taliban regime. The novel traces Obayada's journey prior and through adolescence whilst being forcefully nurtured into boyhood as a

young child to have an ephemeral chance at freedom. Obayada had a rough start in life. Her family was forced out of Kabul following a bomb blast which took her father's leg, and consequently the family's livelihood. Moreover, Obayada's family was viewed as being somewhat 'plagued by misfortune' given that the family was composed of four girls, therefore devoid of a male son (Hashimi, 2016, p. 42). For these reasons, once Obayada's family reached the countryside, Obayada—as the youngest of four daughters—was forced to become a *bacha posh*.

The term *bacha posh* in Dari roughly translates to 'dressed as a boy' and implies a condition whereby young girls are forced to act—for all intents and purposes—as boys until the age of puberty is reached (Davis, 2021). At that point, *bacha posh* girls are expected to transition into womanhood (Hashimi, 2016, p. 47). *One Half from the East* brilliantly encapsulates the powerful gender ideology around which Afghan society is structured. However, it also illustrates the formidable coping mechanisms Afghan women have developed to deal with 'norms that decades of war, destruction, and displacement have made more rigid' with every passing year. Essentially, Obayada bears witness to the double-edged dynamics rooted within gender ideologies, thus 'reinforcing norms while simultaneously pushing the creativity of individuals to devise ways to get around them' (Billaud, 2015, p. 3).

9.3 *Bacha Posh* Girls in the Broader Context of Children in Armed Conflicts

At first sight, the experiences of *bacha posh* girls might appear worlds apart from those of child soldiers; upon closer examination, however, the distinction between them narrows. *Bacha posh* girls can, to a certain extent, be seen as the product of decades of armed conflict. Additionally, there are a number of similarities between the experiences of *bacha posh* girls and child soldiers. To better understand this, what follows is a brief overview of Taliban rule in Afghanistan. The Taliban can be seen as a 'Sunni Islamist nationalist and pro-Pashtun movement' which gained momentum during the early 1990s and subsequently took power in Afghanistan in 1996, establishing the 'Islamic Emirate of Afghanistan'. Upon seizing power, the Taliban's first move was to institute a 'strict interpretation of Qur'anic instruction and jurisprudence' which in the Afghan case roughly translated to implementing often merciless policies in regard to the treatment of women, religious minorities and political opponents (D.N.I., 2016).¹ The Taliban's initial glory was short-lived: they were overthrown in December 2001. However, five years in power sufficed for the Taliban to completely restructure the existing regime at the expense of Afghan citizens. Twenty years after the initial Taliban defeat, internal and external frictions caused the Taliban to regain momentum, which culminated with the United States' withdrawal from Afghanistan in August 2021. At this point, the Taliban took control of Afghanistan, causing not only a 'surge in violence and civilian deaths' but also a radical reduction in women's already precarious rights and freedoms (Human Rights Watch, 2022).

Ron L. Hubbard once stated that 'ideas and not battles mark the forward progress of mankind' (Hubbard, 2007 p. 15). His statement is quite fitting for the context of Afghanistan, as decades of conflict have led only to the uttermost degradation of

society. *The Lancet* published a report in 2022 which highlighted the fact that ‘conflict and war are part of daily life for Afghan children’, revealing that ‘71% of children experienced physical violence’ (Shoib et al., 2022). Additionally, decades of economic and security disruptions stemming from the violence have ‘jeopardized the mental health care of children within the country’, yet such an issue is seldom discussed academically (Shoib et al., 2022). The 2021 Taliban seizure of power also ‘aggravated the pre-existing psychological crisis’ as it fuelled the momentum of the cycle of trauma and violence (Shoib et al., 2022).

This premature exposure to violence—in a broad sense—and the loss of agency as a result of such violence is a commonality between *bacha posh* girls and child soldiers. The situation of *bacha posh* girls and child soldiers essentially balances two narratives: the *victimhood* narrative with the *agency* narrative. To what extent do these children have agency? When questioning the motives behind child soldiers’ willingness to join rebel groups or be exposed to violence, the natural questions that arise are: (i) why do such children join? and (ii) to what extent does partaking in armed conflict allow such children to exercise agency? Similarly, the same can be pondered on regarding *bacha posh* girls. To what extent is becoming a *bacha posh* girl a matter of agency? Arguably, just like considerations regarding agency in terms of child soldiers are far from being straightforward, the same can be said about *bacha posh* girls. Moreover, exposure to violence constitutes a similarity between child soldiers and *bacha posh* girls, as do a child’s motives for joining armed conflicts. Children often become child soldiers as a means of survival. The same can be said for girls in Afghanistan who become *bacha posh* girls to fulfil both a personal and family’s means of survival within the established patriarchy.

9.4 Gender-Based Violence and Psychological Trauma

Being subjected to endemic physical violence often conceals the enduring, long-term effects of such violence—the effects that persist, even after the physical violence has ceased. One of the most significant examples of such long-term effects is psychological trauma (Salem et al., 2021). Of the various forms of psychological trauma, the most relevant to the *bacha posh* phenomenon is that which results from gender-based violence experienced by young girls in Afghanistan (Mannell et al., 2018). According to Kleber, traumatic events include those that involve the ‘confrontation with war, violence, disasters, sudden loss, serious illness, and other overwhelming and disturbing events’ (Kleber, 2019). In a similar vein, Freud conceptualised a traumatic situation as an experience characterised by helplessness, brought about by either internal or external factors, and which forces the individual to grapple with a shattering of their basic assumptions, leading to the dissolution of life’s certainties (Freud, 2003, p. 194). If we add a gender dimension to psychological trauma—giving us ‘gender-based psychological trauma’—we can see the relevance for the *bacha posh* girls readily emerges. Obayada’s story can be regarded as a fictional example of gender-based psychological trauma experienced by children through the *bacha posh* practice within the broader context of an armed conflict or post-conflict situation.

As with the initial Taliban takeover, when the Taliban gained control of Afghanistan in 2021, it implemented social policies at the expense of women’s

rights and freedoms. Afghan girls and women were the ones who lost the most from militarisation, as they were ‘discriminated against in many ways for the *crime* of identifying as a girl’ (Amnesty International, 2022). Under the Taliban’s strict implementation and enforcement of Islamic Sharia Law, ‘women are generally banned from going to school or studying; banned from working; banned from leaving the house without a male chaperone; banned from showing their skin in public; and banned from being involved in politics or speaking publicly’ (Amnesty International, 2022). The role of women under the Taliban regime is wholly subordinate to that of their male counterparts. Moreover, rape and violence against women and girls is rife and Afghan women are brutalised both in terms of the law and in nearly every aspect of daily life (Amnesty International, 2022).

When discussing the *bacha posh* practice, it is imperative to maintain a historical perspective. Throughout history, countless women have concealed their gender and disguised themselves as men to ‘navigate entrenched social roles’ (Strochlic, 2018). Women in the past have adopted men’s clothing and acted as men to ‘fight wars, join religious orders, or prosper financially’ (Strochlic, 2018). Hence, the natural conclusion that can be drawn is that when one gender is given so much importance within a society and the other neglected, there will be people willing to ‘pass over to the other side’ (Strochlic, 2018). However, the difference between these historical examples and the *bacha posh* practice is the voluntary nature of the transition. As illustrated in this chapter, *bacha posh* girls are forced to transition. As highlighted by Nordberg, Afghan women endure a brutal reality, where ‘women burn themselves to death using cooking fuel to escape the domestic abuse, and daughters are still a viable, informal currency used by fathers to pay off debts and settle disputes’ (Nordberg, 2015, p. 36). This effectively reduces women to a purely transactional role.

Unsurprisingly, if the expectation of women is that of being merely bargaining chips in patriarchal disputes, women with a voice of their own tend to be seen as provocative, and thus unacceptable within prevailing societal norms. Moreover, within Afghan society, a family with no sons is seen as having a significant void. As Nordberg comments, ‘having at least one son is mandatory for good standing and reputation’ (Nordberg, 2015, p. 16). In a country which lacks rule of law, not having a male heir inevitably translates into a weak and vulnerable portrayal of the family as a whole. This unspoken pressure is projected onto women, whereby the absolute purpose of every married woman is that of quickly bearing a son. In the context of a patrilineal culture, a woman who is unsuccessful in birthing a son is often seen, ‘in the eyes of society and often herself, as fundamentally flawed’ (Nordberg, 2015, p. 71). Therefore, within the context of Afghanistan, having a temporary ‘made-up son’ through the *bacha posh* practice is better than having no son at all (Nordberg, 2015, p. 32). As such, some families reassess their daughter’s gender—without taking into account the daughter’s free will or consent—prior to puberty in order to grant themselves and the child a taste of ephemeral freedom.

However, as previously stated, the *bacha posh* practice can be regarded as a double-edged sword, as once the child reaches adolescence—and puberty inevitably reveals their biological gender—life for the *bacha posh* girl becomes more

challenging and, at times, dangerous too. In purely psychological terms, the practice raises significant concerns, as it can potentially lead to a series of complications. One of the most problematic is the *illusory truth effect* which occurs when rationality is overpowered by familiarity (Newman et al., 2020). This phenomenon relies on the notion that 'repetition increases processing fluency': repeated information is often perceived by the human mind as being more truthful when juxtaposed to new information (Hassan and Barber, 2021, p. 38). Therefore, *bacha posh* girls, who have been indoctrinated into behaving, for all intents and purposes as boys, with all the privileges that come with being boys, 'will be extremely reluctant to identify as women later on in life' (Hassan and Barber, 2021, p. 37).

This is so for two reasons. The first concerns the recognition of privilege, whereby individuals who have lived under privileged circumstances appear to be 'extremely reluctant to give up such privileges' (Hassan and Barber, 2021, p. 38). The second can be attributed to a 'natural process of adaptation which has been ongoing during the formative years of the child's life' (Hassan and Barber, 2021, p. 35). In such circumstances, familiarity tends to prevail over rationality. But what is extremely problematic concerning the practice is the pervasive lack of choice. *Bacha posh* girls find themselves in an uncomfortable position, whereby they are born female, forcefully nurtured into boyhood prior to puberty, and then forcefully encouraged to transition back to their biological gender once puberty is reached. Throughout this psychologically and physically challenging process, not once is the consent or will of *bacha posh* girls taken into account. In fact, 'these girls have a little bit of freedom and then all of a sudden, they have to go back to being women in a country where women have no possibilities' (Hassan and Barber, 2021, p. 37). The confusion and disorientation felt by *bacha posh* girls is convincingly conveyed by Hashimi through Obayada's statement: 'some boys like us don't know what to do when they're changed back. They get confused and act really weird' (Hashimi, 2016, p. 45). This statement is disconcerting, as it highlights the frequently overlooked gender-based psychological trauma experienced by *bacha posh* girls. The complete disregard of the psychological trauma experienced by *bacha posh* girls brings to light another important point: psychological trauma—and consequently mental health—are predominantly Western concepts, thus elucidating the fact that globally, parity of esteem is still a remote aspiration (Harms, 2017).

9.5 Reflections on International Law

The *bacha posh* practice raises a number of issues relevant to international law. Firstly, it highlights the gulf that exists between international law *on paper* and the implementation of and compliance with international law in *practice*. Against the backdrop of a rapidly evolving world order, in 1989 world leaders collectively made a historic commitment in favour of the world's children by adopting the United Nations Convention on the Rights of the Child (UNCRC) with the idea that 'children are not just objects who belong to their parents [...] rather, they are human beings and individuals with their own rights' (U.N.C.R.C., 1989). Of particular interest are Articles 38 and 39. Article 38(2) provides that 'State Parties shall take

all feasible measures to ensure that persons who have not attained the age of fifteen do not take a direct part in hostilities' (U.N.C.R.C., 1989, s.38(2)). Article 39 provides that

State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; [...] or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

(U.N.C.R.C., 1989, s.38(2))

Although Afghanistan ratified the U.N.C.R.C. in 1994, in practice, Afghanistan under the Taliban regime frequently fails to comply with its international obligations.

During the first period of Taliban rule, freedoms were restricted, particularly those of young girls and women. These restrictions stem from the nature of the Taliban regime which is extremely patriarchal, and which places women in a subordinate position to men. Setting aside the numerous other disconcerting elements of Taliban rule, disregard for young people, particularly young girls, is quite alarming. In 2021, '45% of the population in Afghanistan was below the age of 15' and thus entitled to the protections enshrined in the U.N.C.R.C. (U.N., 2021).

Weber wrote that '[T]he generally observable need of any power, or even advantage of life, [is] to justify itself' (1978, 953). Such is the case for international criminal justice *via* international criminal law. At its inception, the ideal propelling international criminal justice is one where 'there should be no "outside-of-law": everyone, regardless of nationality or position should be held accountable for his or her atrocities committed' (Klamberg, 2020). Such a position requires the assumption—which *de facto* reflects on international law—that international criminal justice inevitably embodies a common good which, in itself, allows for a presumption of a harmony of interests uniting states (Klamberg, 2020, p. 623). However, the aforementioned idealistic vision of the international justice system lends itself to be challenged particularly in terms of the cases or situations actively investigated and subsequently prosecuted. Predominantly 'rebels, the vanquished and defeated, rogue States, and scapegoats appear to be in the crosshairs of international criminal justice', thus—in relation to the *bacha posh* practice—raising the question of what is worse: constant or daily microaggressions, or sporadic large-scale acts of violence (Klamberg, 2020, p. 624).

In light of the aforementioned discussion regarding international criminal justice versus international criminal law, the fact that such a pursuit can be regarded as a Western venture, thus with a tendency to punish individuals who have committed crimes of unspeakable violence, becomes apparent. The fact that international criminal law is predominantly concerned with large-scale atrocities, as opposed to daily microaggressions, also emerges. This focus on unspeakable forms of violence can be seen as the result of a Western obsession to impose justice through pre-crafted legal standards, which at times are completely incapable of dealing with intrinsic societal issues present within various countries. Moreover, the Western obsession

with shocking events is also in itself reliant on an intrinsic Western bias, whereby repeated small acts of violence seldom make headlines, whereas mass murders and obscene atrocities tend to captivate people's interest. For the aforementioned reasons, the fact that international criminal justice has never been able to cleanse its 'original sin' becomes apparent (Vasiliev, 2020, p. 1). Despite its aspiration to 'transcend state power, [international criminal justice] remain[s] not just heavily dependent on it but also constrained and directed by it in [the] pursuit of justice' (Vasiliev, 2020, p. 3).

For instance, certain societies, such as the Taliban regime in Afghanistan, rely on extensive rule systems as the foundation of their social structure. Consequently, all social interactions are governed by these rule systems. In contrast, there are other societies where social interactions are more flexible, with fewer regulations in place. This distinction is often overlooked, leading to the emergence of a dual legal standard which has both positive and negative aspects. On the one hand, Western ideals promote law as a superior entity, operating impartially to resolve disputes—thus relying on law's strict principles: (i) consistency, (ii) predictability and (iii) universality (Etherton, 2018). However, this approach disregards the intrinsic diversity present in various cultures and is thus incapable of securing rights for all human beings. On the other hand, there are risks involved with the implementation of individuation within the legal realm. In fact, within such a realm, the more 'finessed the doctrine becomes, the more professionalised the practice, and the more sophisticated the institutions, the more evident is the inability of international criminal law to challenge the persisting power inequalities and address structural injustices of the international order' (Vasiliev, 2020, p.1). Therefore, although international criminal law professes to pursue justice *pro omnibus* on account of the international community, its brand of justice can be regarded—despite attempts which are *bona fide*—as '*erga omnes* and dispensed, among others, vis-à-vis the powers-that-be on which [it] depend[s] for functioning and survival' (Vasiliev, 2020, p. 4).

A further consideration brought to light by the *bacha posh* practice is the idea of a thin line separating coercion and voluntariness. Many young *bacha posh* girls enjoy their lives as young boys due to the privileges and societal status afforded to males under the Taliban regime. Therefore, it might appear that such girls voluntarily want to remain *bacha posh* girls even after puberty. However, this issue is not agentically binary. Rather, it exists within a complex spectrum of shades of grey. The issue is deeply embedded in the initial lack of choice available for these girls in the first place. Living in a country where rules are strictly crafted, enforced and dictated by men causes women to be put at a disadvantage from the outset, thus rendering them second-class citizens at best. Therefore, it logically makes sense that some young women are unwilling to (re)transition to their biological gender and ongoingly prefer to hide their true nature and identity to prosper within society. However, this takes us back to the issue of *consent*. Ultimately, when it comes to the *bacha posh* practice, young girls have no say in their forced temporary transition to boyhood. Likewise, when *bacha posh* girls reach puberty, they are expected to transition permanently into womanhood. Never once—in the context of either

transition—is the girl’s free will or consent taken into account. This is ultimately the major issue that arises from such a tom-boying practice, the lack of consent which implies a lack of choice. Thus, ultimately having ramifications on the *bacha posh* girl’s agency.

Perhaps the most important conclusion that can be drawn from the *bacha posh* practice is that, although Western ideals have a tendency to prevail within the international system, with international law reflecting and flowing from these ideals, a contradiction inheres in the West, as highlighted by its dualist perception of cross-dressing. Nonetheless, prior to discussing the dualist perception of cross-dressing, a stark distinction is in order between what this chapter refers to as cross-dressing and how such practices differ from the concept of transgender narratives and practices, given that the two can oftentimes get conflated. For what concerns the latter—for the purpose of this chapter—Herman’s definition is going to be adopted. Herman defines a transgender person as possessing ‘an alternate gender identity and/or gender expression’ (2009, p. 3). From this baseline definition, we can draw a stark contrast between transgender people and cross-dressing—at least for the purpose of this chapter—particularly in terms of choice. Although transgender people do not necessarily need to undergo medical procedures in order to identify as such, what is required is the wilful recognition of an alternate gender identity. Clearly, this is not the case for *bacha posh* girls, whose forced journey into manhood commences prior to their true understanding of gender identities and gender dynamics. For the aforementioned reasons, the concept of cross-dressing or tom-boying is fitting—in ways in which the transgender narrative is not—in the context of *bacha posh* practice.

Ultimately, *bacha posh* is a practice which involves forced cross-dressing: young girls dress up as boys temporarily to have access to opportunities in countries where such opportunities for young girls and women, in general, are limited (Abbadly, 2022). In the context of Afghanistan, Western authors, scholars and journalists have tended to perceive such a practice as something worthy of recognition, to say the least. However, such recognition, followed by extensive praise, typically occurs in contexts which are radically detached from Western environments. According to Western-imposed moral standards, cross-dressing in such contexts is not only accepted but also celebrated. Conversely, when it comes to cross-dressing, particularly when children are concerned, the Western perspective within its own boundaries is quite different. In fact, it often carries a negative connotation, representing a stark departure from the approval seen elsewhere.

Although cross-dressing as a phenomenon has been increasingly accepted among adults, ‘for many parents, cross-gender play among children can be disturbing given the erroneous pre-conceived notion that ‘cross dressing is linked to deviancy or homosexuality’ (Ulenne, 2005). Moreover, Western ideals may mask the persistence of stereotyped notions such as concerns relating to potential gender dysphoria, which surprisingly grants attention to the mental health of children. In the context of *bacha posh*, however, the Western viewpoint does not appear to be so concerned with the young girls’ mental health. Cynically, one might surmise that, just like in law, proximity plays an important role. In other words, Westerners often

project seemingly liberal ideals on distant societies that operate under completely different dynamics and moral codes. Yet, paradoxically, Westerners often struggle to uphold the very liberal ideals they champion within their sphere.

Stemming from the underexplored gender-based psychological trauma—which can be regarded as a consequence of recurring microaggressions and is ultimately exemplified through the *bacha posh* practice—interesting reflections can be made regarding the role of international law *vis-à-vis* gender. With the resurgence of the Taliban regime in Afghanistan in 2021, growing concern regarding the treatment of women has emerged, given the Taliban regime's re-institutionalisation of gender apartheid (Drumbl, 2004). Although Afghanistan deposited its instrument of accession to the Rome Statute of the International Criminal Court (I.C.C.) in 2003, thus granting the I.C.C. jurisdiction over crimes enumerated within the Rome Statute from 1 May 2003 onwards, Afghanistan does not appear to have been complying with international law standards (Hazim, 2019). Article 7 of the Rome Statute gives the following definition of crimes against humanity:

[...] any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) murder; [...] (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; [...] (j) the crime of apartheid [...] (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
(I.C.C., Rome Statute, 1998)

In his report of 2022 on the situation of human rights in Afghanistan, Richard Bennett, the U.N. Special Rapporteur on Afghanistan, drew attention to the deterioration of human rights and the deeply concerning reality lived by Afghan women and children:

the human rights crisis in Afghanistan has worsened. The systematic violation of the human rights of women and girls has deepened even further, and fundamental freedoms [...] have increasingly been flouted. The authorities have instituted *hudud*² and *qisas*³ punishments, measures indicative of a revival of the policies of the 1990s. The Special Rapporteur is deeply concerned that, increasingly, the Taliban is ruling Afghanistan through fear and repressive policies aimed at suppressing communities, and women in particular. Inclusiveness is negligible; there is very little tolerance for difference, and none for dissent.
(U.N.C.H.R.R., 2023)

This report remains significant in that it has not only increased awareness regarding Afghanistan's departure from its international commitments over the past two decades, but it also highlights Afghanistan's present-day unwillingness to comply with international previously agreed upon standards, which ultimately has sparked a metaphorical earthquake in reactions. Amongst these responses, the international call for gender apartheid to be classified as a crime under international

law is of utmost importance. Were this to come to fruition, the notion of gender in Afghanistan would change; shifting from a symbol of discrimination to becoming a cornerstone of protection.

Ultimately, the *bacha posh* practice in Afghanistan can be understood as a consequence of an entrenched patriarchal and misogynist culture whereby women and girls are completely devoid of autonomy and are considered as second-class citizens at best (Corboz, 2019). Nevertheless, women in Afghanistan have proved to be extremely resourceful in navigating an oppressive society, actively carving out space for change and asserting their agency (Wimpelmann, 2017, p. 7). Although the *bacha posh* practice has been held up as exemplary of women's resilience, the associated challenges and consequences are rarely explored. Whilst this practice offers momentary freedom to young girls, such freedom can be outweighed by the long-lasting psychological trauma that results from the non-consensual gender transition on two occasions. Therefore, to ameliorate the situation for *bacha posh* girls, structural changes—coupled with the implementation of robust international legal standards—need to occur. Until that moment, young girls and women in Afghanistan will be forced to 'move around outside like ghosts, keeping their voices low, footsteps light, and eyes to the ground', thus fuelling an already well-established and enforced patriarchy as a baseline for the current gender apartheid (Hashimi, 2016, p. 135).

9.6 Conclusion

Discussing violence in the context of Afghanistan—a country plagued with endemic violence—presents significant challenges. A risk arises of losing sight of the nuances within conceptual definitions of violence. Afghanistan has suffered from decades of devastation, which have had, and continue to have, physical repercussions on Afghan citizens. But these decades of physical devastation have overshadowed moral violence—a type of violence that transcends physical violence—inflicted upon Afghan citizens, particularly women and children. The *bacha posh* practice is emblematic of this moral violence which transpires within the context of the physical devastation. In a country where being born a woman is the moral equivalent of committing a crime, it is natural for the oppressed to find alternative means of regaining freedom, no matter how ephemeral. This holds true for *bacha posh* girls, who involuntarily sacrifice part of their identity in their pursuit of fleeting freedom. While this practice has received some international attention, such attention has predominantly focused on the portrayal of *bacha posh* girls as a heroic symbol of resilience. However, little to no attention has been paid to the consequences of such a practice on the *bacha posh* girls themselves, thereby rekindling a centuries-old Machiavellian debate on whether the *ends* justify the *means*.

This chapter has brought into focus the psychological trauma stemming from gender-based violence among youth. This chapter has also contextualised the *bacha posh* practice within the broader context of children in armed conflict, drawing parallels between *bacha posh* girls and child soldiers. Notably, connections can be drawn when discussing the agency and innocence of such children and their

navigation of complex and violent realities from such a young age. Despite Afghanistan's formal commitments to international law standards, the contemporary reality underscores Afghanistan's departure from such commitments, to the detriment of women and children. This brings to light the true complexity of the situation as well as the inadequacy of a *one-size-fits-all* legal standard. Hopefully, in the future, no young girl will ever have to hear the words 'if only you were a boy' and thus feel devalued whilst simultaneously enduring involuntary gender transition twice over (Manoori, 2014, p. 67).

Notes

- 1 The Taliban interpretation of Qur'anic jurisprudence can be regarded as being merciless in its treatment of women. However, such an interpretation—particularly for what concerns women—does not apply to all countries whose reliance of Qur'anic jurisprudence is heavy.
- 2 *Hudud* crimes are defined as crimes against God, therefore punishable by mandatory punishments, including the death penalty.
- 3 *Qisas* concerns the principle of retribution, which follows the logic of 'an eye for an eye'.

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Section III

Imagining Children and Fights

Representation, Ethics, Aesthetics



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10 Childhood, Victimhood, and Agency in Namina Forna's *The Gilded Ones* and Kim Nguyen's *War Witch*

Mohamed Kamara

10.1 Introduction

Namina Forna's *The Gilded Ones* is first and foremost the story of Deka and other girls called alakis.¹ They are distinguishable from other human beings by their golden blood. This blood, for which they are exploited and persecuted, connects them to a long line of powerful women, namely, ancient goddesses called The Gilded Ones, who founded the kingdom of Otero (also known as the One Kingdom), which is now governed by their male descendants. Regrouped and trained by older women, Deka and other alakis constitute a formidable fighting force that eventually overthrows the tyrant of the One Kingdom.

Kim Nguyen's fourth feature film, *War Witch*, is about a young girl, Komona, caught in the crosshairs of the struggle for power and access to national resources between government and rebel forces in an unnamed sub-Saharan country, most likely the Democratic Republic of the Congo, the place where the film was shot. Komona's vivid imagination allows her to foresee enemy attacks, which helps her squad to survive some deadly skirmishes. Consequently, Komona is chosen as the personal witch of The Great Tiger, the leader of the armed movement that has forced Komona and many other children to join its war. Komona finally escapes from the group by killing the leader of her squad, who had raped and impregnated her.

As victims of state violence and other forms of structural violence, both Deka and Komona are pushed by external circumstances to leave their homes and take up arms. The violence in *The Gilded Ones* targets everyone, especially women. In *War Witch*, the structural weakness of the state is a catalyst for the actions by the rag-tag army that has coerced Komona into joining its ranks. Because of their gender,² Deka and Komona are exposed to situations to which boys are less likely to be exposed. For example, the fact that they can become pregnant (like Komona) and are far more vulnerable than boys to the toxicity of certain patriarchal traditions (like Deka) places additional pressures on girls. Despite these similarities, there are also important differences between the situations of the two girls. Deka's war is a war of self-defence from start to finish. Even though she knows she needs to fight to survive, she is given a choice by her trainers to fight or not to fight.³ And unlike Komona, she arrives at a point where she wields tremendous power and has the ability to curtail the agency of others (which she refuses to do). Forced to become

a soldier at age 12 (Deka is 16), there is not a moment when Komona wants to be a soldier. She escapes twice. Whereas her first escape is short-lived, the second one—which she plans and executes alone—succeeds. Furthermore, Komona, unlike Deka, becomes a mother to a child born of rape.⁴

Through the lives and experiences of Deka and Komona, I interrogate the notions and realities of childhood, victimhood, and agency as well as their implications for the girls in question and their respective societies. The discussion that follows is divided into four sections, in addition to the conclusion. Section 10.2 looks at what childhood is and what it means to be a child in relation to the concept of adulthood. Section 10.3 examines victimhood as it permeates children's lives within their families and communities even before combat and how this becomes an important catalyst for children's fights. Section 10.4 engages the question of agency as a versatile notion and practice that is at the core of debates about child soldiers. In line with the spirit of this volume, Section 10.5 synthesises the three preceding sections as it shows how, unlike law and policy, humanistic literature and film undertake a more nuanced, complex engagement with the concept of childhood as it relates to victimhood and agency. I use concrete examples from the novel and film under review here to illustrate and buttress my arguments.

10.2 Child and Childhood

Childhood is the only human category or stage of development that every living person has inhabited or traversed. In this sense, it is the most fundamentally universal of identities outside of our common humanity. While childhood unites us, it can also potentially separate us as well. To be sure, we have all been children once, yet we have not all had the same childhood.

Those we refer to as children are often regarded as polar opposites of those we call grown-ups or adults. What does it mean to make these distinctions in law and policy and in real life? If children grow up, can grown-ups also grow down? It is not uncommon to hear that a grown-up is behaving like a child or a child is acting like a grown-up. Whenever we make these observations, we are making judgements about socially expected and acceptable demonstrations (or lack thereof) of physical (biological) and mental (intellectual) maturity as well as individual and social responsibility by one or the other. Furthermore, the fact that we make these observations speaks to the permeability or elasticity, if not the artificiality, of the neat walls that societies have erected between these human stages of development and growth.⁵ Questions about who a child is, what childhood is, and what, if anything, sets childhood apart from other stages of human development are intimately and intricately tied to the questions of the victimhood and agency of the child. There are few situations that test our understanding of childhood and what a child is as much as periods of extreme violence. This is particularly true during times of armed conflict, which produces what we universally label the child soldier, a designation steeped in contradiction.

Oftentimes, we present the militarisation of children as the great destroyer of children's innocence and their childhood. While war may be the most egregious

abuser of the rights of children, child soldiering is but a small part of the victimisation of children. We like to speak of a Paradise Lost or the disappearance of the Kingdom of Childhood. Yet, childhood is not necessarily always a realm of innocence and joy. Like all paradises and kingdoms, many of the childhoods from which child soldiers are snatched or lured already display signs of varying degrees of imperfection. Countless aggressions, micro and macro, along with instabilities and uncertainties already present within families, communities, and nations, could easily render these spaces susceptible to incursion and violation by Trojan horses waiting outside the gates. In short, many children are already victims, mostly of bad decisions by grown-ups, before external demons begin to snatch or lure them away: a fact that is on full display in *The Gilded Ones* and *War Witch*.

An interracial child raised by a single father after her mother died in a pox pandemic, Dekka faces constant discrimination in her hometown from other children and from grown-ups. ‘I have been in Irfut my entire life, born and raised, and I’m still treated like a stranger—still stared and pointed at, still excluded,’ she says, even though she is the ‘spitting image’ of her father (Forna, 2021, p. 4). This discrimination starts even before her birth when her father’s family disowns him for having married Dekka’s mother, a stranger. Dekka’s pre-combat life is tainted by the mistreatment by her entire community, including her father and the boy she loves, Ionas. The two men dear to her join the ranks of her tormentors after she was declared impure by the elders of her community.

Whilst *War Witch* does not delve into Komona’s life before her participation in the fighting in the same way *The Gilded Ones* does into Dekka’s unenviable life before she becomes a soldier, certain assumptions can be inferred about Komona’s pre-military life. The fact that marauding rebels are able to intrude so easily into Komona’s life and destroy so much of it speaks volumes to the precarity of the child’s existence. No amount of love and care from her parents or community can save her or her childhood at the moment armed raiders enter her village. The pre-existing failure of the state preordained that poignant outcome.

10.3 Victimhood

A victim is often someone at the receiving end of some harm perpetrated upon them, usually by an external agent. The harm may be one or a combination of actions that inflict physical, mental, emotional, and other forms of damage on the person. It may be temporary, perpetual, or permanent, and the victim may or may not have the ability or wherewithal to fight for full restitution or reparation. Victimhood may or may not be accompanied by a feeling of hopelessness or resignation. While it may be less likely for someone who has accepted their victimhood as a *fait accompli* to reclaim or reassert their agency, much less exercise it (thus leading to victimhood becoming a mindset), this is not always the case. There are instances where victims embrace their victimhood as a tactic or strategy in order to access certain benefits in society.⁶ This further complicates, even belies, any notion that victimhood and agency are mutually exclusive.

Thanks to the privilege of decision-making granted them by society, grown-ups are usually the ones who initiate and guide wars and other forms of organised violence. They then recruit children into these fights. Moreover, it is often their actions that put children in a position where the only viable option available to them is to re-enact violence amongst themselves or join fighting groups under adult supervision. It is hardly ever the other way around. Famously, William Golding's *Lord of the Flies* (1954) features a group of British boys at war with each other on a tropical island in the absence of adult supervision. But grown-ups do not need to be physically present on the island with the stranded boys for their influence on the boys to be real. The boys come from a society that already taught them, through the justification and glorification of violence and warfare and other practices, all the things they need to know. In short, the band of 'civilised' British boys is merely re-enacting war games they learnt from adult-governed society back home. Children like these boys are already necessarily victims, and grown-ups are automatically, at least morally speaking, responsible for the actions of children. If this is true for the boys in Golding's novel, it is also true for Dekka and Komona.

In addition to mistreatment by her family and larger community simply for being an interracial child, as a girl, Dekka faces victimisation specific to her gender in Otero. In this place, girls are reminded at every turn that women have no agency, no autonomy, that they 'were created to be helpmeets to men, subservient to their desires and commands' (Forna, 2021, p. 4). Dekka—like other girls—is forced to go through certain rites of passage, including the dreaded and invasive Ritual of Purity conducted by men! The Ritual of Purity determines two things: first, that the girls are normal—that is they have red blood—and second, that they are marriageable. Because she has golden blood, Dekka fails the test and faces the Death Mandate, which requires all alaki girls to be put to death. Dekka's special powers make it impossible for her to die, which is advantageous to her tormentors, since they can bleed her for her gold blood as many times as they want.

Komona is 12 years old when armed men enter her poor but peaceful riverine village behind a flurry of gunshots. In a flicker, her childhood and entire world are turned upside-down. Several villagers are mowed down as they run for their lives. Komona is captured and taken away, but not before she is forced to shoot her parents to death. Komona, like the rest of the captive children from her village, serves as a porter before she is given a real gun. The children are made to drink a tree sap called 'magic milk.' 'When I take the magic milk,' Komona says, 'it helps... I don't see the red meat leaving red on the ground.'⁷ She believes the sap also allows her to see 'the demons of the government'—government soldiers—before they actually appear to attack them. A year into her time with the group, Komona is chosen as the personal witch of The Great Tiger, the commandant of her rag-tag army, because of the girl's power to foresee attacks. When Komona is eventually able to leave her group, she is 14 years old, pregnant with a child conceived through rape.⁸

Being victims does not make children *a priori* devoid of agency or absolved of personal or criminal responsibility for their actions. Mark Drumbl identifies four reductive popular images of the child soldier: faultless passive victim, irreparably

damaged goods, hero, and demon and bandit (Drumbl, 2012, p. 7–8). From the completely innocent and clueless victim of adult greed and manipulation to the ‘rough beast’ purposefully slouching ‘towards Bethlehem (Yeats, 1997, p. 189–90),’ the child soldier can be one or all of the above.

10.4 Agency

The 1999 Maputo Declaration on the Use of Children as Soldiers states that

the use of any child under 18 years of age⁹ by any armed force or armed group is wholly unacceptable, even where that child claims or is claimed to be a volunteer.

Yet the reality is not so simple. David Rosen argues that the question of the victimhood and agency of children in situations of war must be engaged from the perspective of place, time, and context (Rosen, 2005; Drumbl, 2012; Derlyun et al., 2015; Talbert and Wolfendale, 2018; Baines, 2008). In *Armies of the Young*, Rosen (2005) considers three cases: The Sierra Leone civil war, the Palestinian uprising, and the Jewish partisan resistance in Eastern Europe during World War II. Rosen cautions that, rather than argue that all children carrying and using arms of war are innocent and clueless entities who are being ‘manipulated by unscrupulous’ adults (Rosen, 2005, p. 1), the issue should be approached with greater nuance, as echoed in the Rosen and Rosen chapter in the present volume. Speaking specifically about Jewish child partisans, Rosen (2005) notes, ‘Most became child soldiers because it was the only way for them to save their lives. Had they remained civilians, they would have been murdered’ (p. 2). However, this is not the case for most child soldiers around the world. In Sierra Leone, for example, ‘the problem of child soldiers grew out of the breakdown and criminalization of the Sierra Leone state,’ not because children were targeted because of their ethnic or religious identity (Rosen, 2005, p. 2). While in both the Jewish and the Sierra Leonean cases, one can argue that children are forced to pick up arms by circumstances they were not responsible for, their motivations for doing so do not necessarily converge.

The Maputo Declaration’s simplistic view of the child soldier and Rosen’s complication of the same go to the heart of the debate about the agency of children in general and child soldiers in particular. Summarising Piaget’s theory of cognitive development, Emma Sorbring and Leon Kuczynski (2019) note that this theory ‘assumes that children are living organisms with inherent capacities to self-regulate, self-organize, and actively engage with their environments’ (p. 1). Sukanya Podder (2017), assuming Piaget’s basic claim about children’s agency, argues that ‘four core properties of human agency structure individual choices and decisions within a social field,’ namely, intentionality, forethought, self-reactiveness, and self-reflectiveness (p. 145–64, 151–52). With specific reference to ex-combatants in post-conflict situations, Podder identifies four types of agency, namely, tactical, rational, moral, and reflective (p. 152).

Arguably, every human being, regardless of their chronological or biological age, is endowed from birth with agency. Growing up in society sees that agency diminished, destroyed, encouraged, or enhanced. Insofar as everyone, by virtue of being human, has agency, no-one's agency can be completely and permanently eliminated by another as long as they are alive and relatively healthy. How people, including children, exercise their inherent agency depends on the social and physical environment they inhabit, their upbringing, as well as their mental and biological constitution. To see children only as victims runs the risk of depriving them of their innate agency, hence their human dignity. Conversely, by acknowledging a child's agency and potential legal culpability, we are also acknowledging their full humanity rather than seeing them as mere instruments in the hands of unscrupulous adults. In many ways, real, active agency is born of self-awareness, that is the realisation of who one is in relation to others within a specific context.

For his part, Frantz Fanon, one of the foremost theoreticians of colonialism and anticolonialism, addresses the question of agency within the context of the struggle for decolonisation. In 'On Violence,' the opening chapter of *The Wretched of the Earth*, he contends that the 'ordering of the colonial world' is 'governed' by violence (Fanon, 1961, p. 5). Regarding the ensuing decolonisation process, Fanon writes:

Decolonization is the encounter between two congenitally antagonistic forces that in fact owe their singularity to the kind of reification secreted by and nurtured by the colonial situation. Their first confrontation was colored by violence and their cohabitation – or rather the exploitation of the colonized by the colonizer – continued at the point of the bayonet and under canon fire.

(Fanon, 1961, p. 2)

Fanon proposes that, given the practice of epistemic and somatic violence by the coloniser upon the colonised and given the unwillingness of the coloniser-oppressor to relinquish the privileges that accrue from colonisation, the decolonisation process, which seeks to dismantle the 'compartmentalised world' erected by the oppressor-coloniser is an inevitable historical event. Since by its very nature and practice, colonisation seeks to diminish or even eliminate the agency of the colonised. Fanon posits that decolonisation allows the colonised to rediscover or reclaim their agency (and in the process their human dignity) and to physically improve their condition: 'Decolonization... focuses on and fundamentally alters, and transforms *the spectator crushed to a nonessential state into a privileged actor*... The "thing" colonized becomes a man through the process of decolonization' (Fanon, 1961, p. 2).

In line with the principle of self-defence at the heart of Rosen and Rosen's work in this volume, Fanonian anti-colonial violence—as an antidote to colonial violence—is liberatory, for it restores to the oppressed their human dignity. Their agency, in other words. The trajectories of Deka and Komona track with Fanon's characterisation of the relationship between the coloniser and the colonised, a relationship governed by the minoritisation, oppression, exploitation, and subsequent

reification of the other. In addition to the gratuitous violence Komona, for example, is forced to perform under adult instigation, both she and Deka resort to their own unique forms of violence as a means of self-emancipation.

The struggle for survival and self-assertion characteristic of the colonial state is replicated in the postcolonial state. In *On the Postcolony*, Achille Mbembe writes about colonialism's *longue durée* effects as one way to understand postcolonial societies: 'postcolonial African regimes have not invented what they know of government from scratch. Their knowledge is the product of several cultures, heritages, and traditions... One part of this knowledge or rationality is *colonial rationality*...' (p. 24–25). Like the colonial regime, the postcolonial regime relies on violence to justify and maintain its legitimacy as well as its grip on national resources, which it distributes as it sees fit. Once these self-arrogated rights and responsibilities become compromised, there is a 'general social breakdown' which 'feeds on a culture of raiding and booty' (Mbembe, 2001, p. 50). At this point, full-blown chaos or war is not far away.

All struggles for survival, autonomy, or liberation start with the recognition of the suppression (actual and attempted) of one's agency and power, usually by others. This realisation is followed by self-discovery, self-valorisation, self-acceptance, and self-expression. It is significant that in both *War Witch* and *The Gilded Ones*, the first instance of the protagonists' agency we encounter is their speaking through the first person 'I.' They are the sole narrators of their experiences. Speech, or the ability to express oneself, is an indispensable prelude to self-affirmation. In *The Human Condition*, Hannah Arendt elaborates the concepts of 'action,' 'speech,' and 'individuality.' Human beings, Arendt (1958) argues, are both equal and distinct; 'equal because they live in a community of mutuality both in terms of time and space and distinct because the need to make themselves understood requires their individual agency' (p. 175–76). Unlike mass-produced and synthetic objects, human beings can never be identical. Accordingly, every person, regardless of age or gender, should be allowed to express their uniqueness, for this is where the power and possibility of individual and societal progress reside. The only way a human being can express individuality, writes Arendt, is through 'speech' and 'action.' Indeed, for Arendt, 'speech and action reveal this unique distinctness' (Arendt, 1958, p. 176).

Both Deka and Komona eventually realise that their power, agency, and autonomy lie mainly in their unique identities, which they embrace and defend in the face of tremendous odds. But in their journey to this point of self-actualisation, they are not alone; they need allies and mentors who acknowledge their individuality and power.

Among Deka's allies in *The Gilded Ones* is Keita, a 16-year-old boy soldier who, like Deka, has also lost his family. In a kingdom that completely denigrates women, the friendship and respect shared by Keita and Deka is particularly instructive. Yet, the most consequential relationship is that between Deka and a 'small and delicate' (Forna, 2021, p. 34) woman whom Deka calls White Hands because of the white gloves she is always wearing. According to Deka, 'White Hands is the most beautiful woman... Small of stature, she has short, tightly curled hair and glowing

skin that gleams a smooth bluish-black, like the night sky at midsummer...' (Forna, 2021, p. 37). For Deka, who has always considered her 'sturdy' frame and 'deep brown' skin (Forna, 2021, p. 8) as ugly, White Hands quickly becomes a paragon for her. She is the one who tells Deka she is an alaki and that there are others like her. White Hands is the strongest link (actually, the unbroken link) between the current generation of alakis and all their gilded foremothers. She is the founder and overseer of the Warthu Bera, the most elite training ground in the empire, also called 'the House of Women' (Forna, 2021, p. 115). White Hands is the one who tells Deka, 'While you cower in misery, those elders sell your gold to the highest bidder so nobles can make pretty trinkets from it. They enrich themselves by your suffering—parasites, quite literally draining the blood from you' (Forna, 2021, p. 41). Thanks to her and other powerful women at Warthu Bera called matrons, Deka and the other girls move from seemingly helpless victims of exploitation and instrumentalisation by the patriarchy and political elite to become conscious and active agents of their own destiny. One of the great manifestations of the girls' innate agency is the simple act of running.

Because girls are supposed to be submissive to men in Otera, women are not allowed to run: 'Our whole lives we have been taught to make ourselves smaller, weaker than men. That's what the Infinite Wisdoms teach – that being a girl means perpetual submission' (Forna, 2021, p. 149). Led by Deka, the girls discover their love of running as well as their capacity for it. Running becomes the first major symbol and act of their liberation from patriarchal stranglehold. 'I've never felt this happy before. Never felt this free,' Deka remarks after realising she can run faster than anyone, including boys (Forna, 2021, p. 135). After this realisation on the part of the girls, they vow to fight for themselves: 'Are we girls, or are we demons? Are we going to die, or are we going to survive?' (Forna, 2021, p. 150). Their slogan becomes: 'outcasts by blood. Warriors by choice.' In this statement, we see two things: a journey from a place of perceived powerlessness sanctioned by family, society, and empire to one of self-actualisation occasioned by self-affirmation. They are (re)appropriating and (re)purposing the name alaki, used to denigrate them, so as to constitute themselves into a formidable fighting force that is reminiscent of the 'Agojie,' the all-woman African fighting force that reached its apotheosis in the 19th century Kingdom of Dahomey.¹⁰

In *War Witch*, Komona tells her story to her unborn child. She is intent on keeping her memory and that of her people alive. She sees this as a duty. Four specific events in Komona's story allow the viewer to track her trajectory from victimised childhood to active agency: her killing of her parents; her relationship with Magician, another child soldier; her killing of the squad leader who raped her; and her decision to keep the child born of that rape.

As an initiation into child soldiery, Komona is made to commit parricide. This gruesome inaugural act haunts her the most throughout her time as a child soldier. Paradoxically perhaps—and in a morbid sense to be sure—this act that would make her a hapless victim and put a seal on her childhood is also the first major demonstration of her agency. She kills her parents out of love for them and for herself. After initially refusing to shoot her parents, she agrees to do so only because

the rebel leader threatens to give her parents a more horrific death (by machete) if she refuses to shoot them.

The relationship between Deka and Keita is replicated in the amity between Komona and Magician. The albino boy, slightly older than Komona, takes the newly recruited girl under his wing after initially treating her like any other captive. Their friendship transforms into true love, with Magician showing respect for the girl, promising not to touch her until he can marry her with a white rooster—as dowry at Komona’s request. Her father had told her she should never say yes to a marriage proposal until the suitor offered her a white rooster, ‘the hardest thing to find in my country.’ This rare creature becomes a symbol of Magician’s love and respect for Komona. The quest he undertakes to locate the bird deepens their bond. Disillusioned with their lives as child soldiers, and upon Magician’s insistence, the two teenagers succeed in escaping. However, The Great Tiger, bent on retrieving his witch, launches an expedition to search for them. Their recapture, which ends in Magician’s death at the hands of their former comrades, lands Komona back in the forest, where she is eventually raped by her squad leader, who had forced her to become his wife. This second major incident in Komona’s life also presents the girl both as a victim and a conscious actor. Here, she refuses the squad leader’s command to kill Magician and even offers herself up to be killed with her lover.

The commander of Komona’s squad, unlike Magician, has no respect for women. He makes Komona his wife and slave. In his desire to erase Komona’s individuality and agency, he tells her that women ‘are all alike.’ He rapes her multiple times. Taking matters into her own hands, and buoyed by her promise to put the ghosts of her parents to rest by giving them a proper burial, Komona plots her escape. However, before escaping, she decides to become ‘a poison rose’ so she can kill her rapist to ensure that ‘the crazy things in his head’ do not somehow get transferred to her child. To execute her plan, Komona deploys a unique resource of her womanhood, to wit, the thing that makes her most vulnerable to men like her rapist. She pretends to want to have sex with her tormentor, who does not know that she has lodged a razor blade into the seed of an avocado inserted into her vagina. As he starts bleeding and howling, Komona finishes him off with a machete and flees into the night and freedom.

Regarding the child she is carrying, Komona wonders, ‘whether God will give me the strength to love you.’ Aware of the origins of the child, but also what awaits him or her in a world of endless cycles of violence, Komona contemplates drowning her baby when the baby is born. Her decision to keep her child becomes the last major act of her agency, in the same way that drowning the child, had she chosen that path, would have done.

10.5 Child-Victim-Agent

Many international human rights instruments invoke the fundamental responsibility that the family, the state, and other entities have for the child. However, some, such as the African Charter on the Rights and Welfare of the Child, which defines the child as ‘every human being below the age of 18 years,’ go further than

this common exhortation. The last article (Article 31) of Part 1 Chapter One of the charter talks about the duties and responsibilities of the child to family, community, nation, continent, and the world. The sub-text and implication here are that the child has responsibility (namely, agency) and can be held morally, socially, and potentially legally accountable for their actions (or inaction when action is needed).¹¹

Mark Drumbl (2012) proposes to engage child soldiers as individuals through ‘a model of circumscribed action.’ According to Drumbl,

A circumscribed actor has the ability to act, the ability not to act, and the ability to do otherwise than what he or she actually has done... . Circumscribed actors exercise some discretion in navigating and mediating the constraints around them... . [and] dispose of an enclosed space which is theirs—the acreage of which varies according to an oscillating admixture of disposition and situation—in which they exercise a margin of volition.

(Drumbl, 2012, p. 17)

Even though they may find themselves in ‘social environments they did not create and within which they are ‘acted upon, they also act upon others’ (p. 17). ‘Oppression,’ Drumbl continues, ‘does not axiomatically void the oppressed’s capacity for decision-making’ (p. 17). Drumbl seems to argue here that there is no way around it; the child soldier does have agency, even if it is on a spectrum. For her part, Erin Baines proposes ‘the concept of complex political perpetrators to describe youth who occupy extremely marginal spaces in settings of chronic crisis, and who use violence as an expression of political agency’ (Baines, 2009, p. 163).

‘At first blush,’ notes David Rosen, ‘the concept of the child soldier seems an unnatural conflation of two contradictory terms’ (Rosen, 2005, p. 3). In general, children are considered far less developed emotionally, physically, and mentally than adults to qualify for recruitment as soldiers. Rosen asks, ‘But where do childhood, youth, adolescence, and adulthood begin and end?’¹² To what extent are these chronological distinctions biological, cultural, and political? This uncertain status of the child and the child soldier makes it problematic to prosecute children for war crimes and other international crimes, especially before international jurisdictions. This is why the International Criminal Court (I.C.C.) could prosecute someone like Dominic Ongwen¹³ only for the crimes he committed as an adult, as if his time as a child, either as a victim or perpetrator, never existed (see Fisher in this volume). Legally, unlike the U.S. military tribunal that tried Omar Ahmed Said Khadr¹⁴ as a child, the I.C.C. lacks the mandate to prosecute children and hold them accountable for crimes committed in combat. How can international and national jurisprudence reconcile, on the one hand, the rights of former child soldiers to a family and a safe and nurturing environment and, on the other, the right to justice of their victims as well as the responsibility of former child soldiers? In other words, how do we navigate and bridge the gap among victimhood, agency, and criminal responsibility where children are concerned? Is such a gap bridgeable?

As he contemplates his actions and those of other child soldiers in his platoon, My Luck, the main character in Chris Abani’s child soldier novella, *Song for Night*,

wonders, 'If we are the great innocents in this war, then where did we learn all the evil we practice? ... Who taught us this?' (Abani, 2007, p. 133). The child is at once a child, a victim, and an agent: three entities that coexist, sometimes uncomfortably so, in one relatively frail body. This is a complex identity that law and policy often ignore, but that humanistic literature and film can engage and represent so well.

The failure of national and international bodies to adequately address the issue of the penal responsibility of child soldiers reveals not only its complexity but also the unwillingness on the part of these bodies to invest time, money, and other resources in the problem. This failure, Christelle Molima Bameka argues, is a byproduct of the ways these bodies have historically approached the problem: 'L'évolution de ce débat montre qu'il a été fortement influencé par la manière dont le droit international a progressivement défini et conceptualisé les notions de combattant, d'enfant et de conflit' (Molima, 2022, p. 14). One of Molima Bameka's arguments in favour of creating a system that recognises the penal responsibility of child soldiers is that the single-minded focus, especially on the part of humanitarian agencies, on the victim status of child soldiers while ignoring the right-to-justice of their victims, ends up making the reintegration of child soldiers into societies less likely to succeed (Molima, 2022, p. 13).

After the adult-controlled world has usurped or failed to protect their right to a good family and education, and above all their 'inherent right to life,' the most enticing and logical choice available to children is self-empowerment, usually through violence. This is a leitmotif in much of the literature on child soldiers. Three examples suffice to illustrate this point. Birahima, the main character in Ahmadou Kourouma's *Allah is not Obligated*, remarks,

When you haven't got no father, no mother, no brothers, no sisters, no aunts, no uncles, when you haven't got nothing at all, the best thing to do is become a child-soldier. Being a child-soldier is for kids who've got fucked all left on earth or Allah's heaven.

(Kourouma, 2006, p. 114)

In *A Long Way Gone*, Ishmael Beah explains the necessary allure of the gun for children like him:

I stood there holding my gun and felt special because I was part of something that took me seriously and I was not running from anyone anymore. I had my gun now... your source of power in these times. It will protect you and provide you all you need, if you know how to use it.

(Beah, 2007, p. 124)

Underscoring the traditional responsibility of the family in ensuring the general well-being of the child and the ensuing negative consequence of the dereliction of that responsibility or the inability to honour it, one of the leaders of the armed group that has abducted Komona and other children exhorts them thusly: 'Respect your guns. They are your mother and your father.'

War, like other violent confrontations in which children participate, provides a space where children's agency and autonomy are paradoxically enhanced, even if they can also be hijacked, exploited, and neutralised by others. The reason for this is that war, no matter how coordinated or organised it may be, creates and thrives on chaos; it disrupts and suspends the social and traditional order in which the child is systematically socially, culturally, and legally marginalised and excluded. William Butler Yeats, in his famous poem 'The Second Coming,' writes: 'Turning and turning in the widening gyre / The falcon cannot hear the falconer; / Things fall apart; the centre cannot hold; / Mere anarchy is loosed upon the world...' (Yeats, 1997, p. 189). The chaos of war permits the questioning of everything: who is the falcon? Who is the falconer? Does the falcon have to (always) listen to the falconer? Why? Children become easily aware of this seismic effect of war on society and the individual. Child soldiers, especially former or demobilised child soldiers, detest grown-ups who treat them like innocent victims of the atrocities they suffered and perpetrated. In *A Long Way Gone*, for example, Ishmael Beah says he hates it when people say, 'it is not your fault' (Beah, 2007, p. 159). This represents an unequivocal rejection of automatic victimhood and a concomitant reassertion of agency on the part of the demobilised child soldier.

Towards the end of *The Gilded Ones*, Dekka sums up her trajectory as follows: 'I was the agent of my own suffering' (Forna, 2021, p. 378). Dekka's repeated executions and resuscitations at the hands of the members of her community are a powerful demonstration of the coexistence of victimhood and agency in the child. More specifically, they are also symbolic of her resilience, her innate agency; brought down so many times, yet able to rise again each time, stronger each time. After initially accepting her society-imposed inferiority, Dekka transitions from a clueless victim into a full-fledged entity, thanks mainly to Warthu Bera, the elite female training ground for alakis, which allows Dekka to embrace her problematic childhood as an inextricable part of her identity. During the many military campaigns she engages in after her training, she deploys violence to liberate herself and others and takes full responsibility for her own actions. As she contemplates the tremendous power she now wields as the commander of her alaki army (which includes boys as partners), Dekka realises the ultimate expression of true agency is the recognition of the agency of others. Instead of using the formidable power of her voice to make others follow her commands sheepishly (which she knows she can do), she chooses to respect their agency, preferring they 'obey of their own volition' (Forna, 2021, p. 392).

Throughout *War Witch*, Komona keeps her moral compass functional. She constantly reminds herself that she is doing 'bad things.' If agency is innate, then remorse, guilt, and regret—all inextricably linked to memory—are some of the most spectacular reminders of its existence. Komona is haunted by ghosts, the ghosts of those killed in the war, but especially of her parents. 'Too many ghosts... inside my head,' she says. The reminder of her past, which comes in the form of these ghosts, tethers Komona to her parents as well as to the traditions and culture

of her community. She realises she will have to bury her parents (and with them the last vestiges of her happy childhood) before she can be free: ‘The ghosts of my parents haunt me... I need to go back to bury them.’ She puts the child in a skiff and returns to her now abandoned and devastated village to symbolically bury her parents. After all, as the African Charter on the Rights and Welfare of the Child stipulates, the child has certain responsibilities to parents. Even though Komona uses the hallucinogenic sap as an antidote to some of the effects of her vivid memory of the terrible things she has done, she knows it is not enough. At the end of her ordeal as a child soldier—porter, killer, sex slave, and now mother at 14—she will continue to be resilient, but she can never shed the trauma she has picked up on her journey as a child-victim-agent: ‘In my head, there are things that even the magic milk can’t erase.’ Komona’s last act is to name her son Magician to honour the memory of her true love.

10.6 Conclusion

Traditionally and historically, children are the members of any given community whose agency and autonomy take the greatest hit mostly from those older than them, including parents, guardians, political and religious authorities, total strangers, as well as older siblings. As perennial minors,

children often go unseen and unheard, and have relatively few visible opportunities to influence society. This is evident, for example, in their limited rights, in their status as semi-citizens, and in the fact that they do not have the right to vote, as well as in their exclusion from paid employment, the trend towards ‘decommodification,’ and compulsory schooling, etc.

(Esser et al., 2016, p. 3)

True autonomy includes the capacity to exercise one’s agency, to act of one’s volition when the opportunity to do so presents itself. Society—family, parents, the state—must ‘appreciate children’s active contribution to the shaping of their social worlds and to society’ and must provide them the opportunities to make their contributions (Esser et al., 2016, p. 1). By considering those we legally and politically label minors as fully autonomous human beings and not underdeveloped and incapable miniature versions of grown-ups, the debate about the childhood, victimhood, and agency of children vis-à-vis their rights and responsibilities in the context of violence, or outside of it, can be more comprehensively and profitably engaged. By narrating their own stories, performing actions both within and outside the arena of armed conflicts, and owning their errors and strengths, both Deka and Komona become powerful embodiments of the usefulness of engaging children as complex and round characters, real-life examples authorities can use to create policies and laws that can humanise the rigid and artificial walls erected among the entities separately referred to as child, victim, and agent.

Notes

- 1 Alaki is a Sierra Leonean Krio word which means cursed and useless. In *The Gilded Ones*, the term refers to girls with golden blood who are considered to be impure, worthless, and unwanted (Forna, 2021, p. 36). They are also called demons.
- 2 See Ingeborg Gruenwald's chapter for a discussion of gender fluidity, as well as Mark Drumbl and Barbora Holá's chapter, which argues that there does not seem to be much of a difference in the treatment of informers based on their gender.
- 3 For a specific focus on the question of self-defence, choice, and fighting children, see Rosen and Rosen in this volume.
- 4 See in this volume Myriam Denov's chapter that offers a fascinating study of the identity and activism of children born of rape.
- 5 Henceforth, when I say child and adult, I am using these terminologies for the sake of convenience, knowing the entities they denote are not always separated by geometrical and impermeable walls.
- 6 See in this volume Kirsten J. Fisher's chapter on former child soldiers and transitional justice. See also Mats Utas's article (2005), "West-African Warscapes: Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman's Social Navigation of the Liberian War Zone." *Anthropological Quarterly* 78, no. 2: 403–30 that has important insights on this question.
- 7 This is a reference to the human bodies mangled as a result of the skirmishes between the fighting forces.
- 8 In *The Gilded Ones*, girls are also victims of rape ('Elder Durkas's temple maidens... are not maidens anymore,' p. 79).
- 9 This has also become known as the Straight 18 standard.
- 10 This elite African force is most recently represented in the Hollywood film, *The Woman King*. See also the Dora Milaje, the all-woman regiment in *Black Panther*. A major difference is that the alaki army is created by women and entirely woman-run, unlike the Abgojie, which was created by the king for his personal protection and who continues to be their overlord.
- 11 For further reading on the adequacy or inadequacy of International Humanitarian Law (I.H.L.) in addressing children's participation in conflict, see the chapters by Maria Paula Espejo et al., Melissa Hollobon et al., and Silvia Scarpa.
- 12 Though the U.N. Convention on the Rights of the Child, for example, claims that childhood is separate from adulthood (Rosen, 2005, p. 3).
- 13 Abducted at around age nine, Dominic Ongwen grew up to be a ruthlessly efficient fighter who rose through the ranks to become one of the loyal strategists and brigade commanders in Joseph Kony's now nearly defunct Lord's Resistance Army (L.R.A.). The first person to be charged for the same crimes of which he was a victim as a child, Ongwen was sentenced to 25 years in prison after being found guilty of war crimes and crimes against humanity by the International Criminal Court in 2021.
- 14 Captured by U.S. forces in Afghanistan in 2002 at age 15, Omar Ahmed Said Khadr, a Canadian citizen, spent 10 years as a detainee at Guantánamo Bay on accusations of terrorist attacks that led to the death of a U.S. army sergeant. Released to the Canadian government in 2012, Khadr was finally released on bail in 2015.

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11 Tools of War, Tools of State

Stories of the Child Combatant in Global North–South Relations

Jana Tabak

11.1 Introduction

Taken by some authors as one of the main symbols of the so-called new wars (Machel, 1996; Singer, 2006), the dominant understanding of the ‘child-soldier’ articulates the relationship between extremes: the extreme violence of the child-soldiering ‘phenomenon’, the extreme brutality of putative new wars, and the extreme fragility of the states where this phenomenon takes place. From this prevailing story, we are none the wiser about children’s experiences while in war, but, among many (im)possibilities, there is one certainty: participating in wars means a disturbing experience, where young people are ‘robbed of their childhood’¹ and are transformed into ‘killing machines’ that do not have a sense of empathy for the civilians (Dallaire, 2010, p. 4). However, differently from this story, depending on what war children are engaged in and who is the recruiter, preparation for military service may be portrayed as something in which to invest in at a very young age. For example, images of British children at Armed Forces Day events in the United Kingdom (U.K.) playing with tanks and guns and practising target shooting tell a completely different story than those situated in the context of what Mary Kaldor (1999) calls the ‘new wars’, which take place in different parts of the world, including the African continent. The documentary *War School: The Battle for Britain’s Children* (2020)² explores the growing peace movement in the U.K. within the context of growing militarisation of British schools for propaganda and recruitment purposes. One particular image calls our attention: a white boy, who is wearing a military uniform and being supported by adult-soldiers, points a weapon towards the viewer. In this case, the British child and his possibility of entering the world of war are not a disturbing experience, but rather it is celebrated as a step towards a (brighter) future as an adult-citizen.

To explore the relationships among children and war – and the place of war in children’s lives – is to destabilise the narratives that structure, organise, and authorise the monolithic and modern ideas of the ‘world-child’ (Tabak, 2020), the nation-state, and war, since it brings to the forefront the supposed untenable linkage between children’s vulnerability and need for protection from the extreme violence of armed conflicts.

This chapter considers the different paradoxical stories of the child combatant in Global North–South relations. On one hand, in the U.K., recruiting children is celebrated as an investment in the future. However, on the other, in some parts of the ‘Global South’, the participation of children in armed conflict is articulated as a symbol of illegitimacy and a threat to the children themselves who are still not competent enough to be authentic soldiers, to their nation-states, and the world as these (*still savage*) children represent unpredictability in that they fail to follow the proper steps prescribed in the model of child development. In the face of these narratives, the question that guides this chapter has to do with (destabilising) order: how do the categories of war, (world-)child, and the soldier inform, and remain, at the same time, shaped by these stories of the child combatant? Specifically, this chapter argues that these stories both constitute and reflect the limits of a kind of world that is made possible through particular understandings of the war and of the child. In other words, war – and, here it is added the world-child (Tabak, 2020) – work as ‘productive forces’ (Bartelson, 2018) that articulate identities, forms of being, interests, and patterns of normality and deviancy. ‘*Making war is therefore also making sense*: war is not only a means of imposing order onto chaos, but also a way of imposing meaning onto an otherwise enigmatic political world’ (Bartelson, 2018, p. 16; emphasis added). As such, not only are these stories of child combatants interpreted and explained according to particular ideas about war and children, but they also invoke responses through familiar repertoires of political action that vary between mechanisms of protection and control of the child-soldier and celebration of the brave soldier to be, which, for their turn, (re) produce the very same limits of the modern world.

To substantiate this argument, this chapter is divided into two main sections beyond this Introduction. The next part starts with discussion of the ‘politics on the line’ (Walker, 2010) – or limits – that flow from and authorise conceptions of war, soldier, and the world-child in order to discriminate and to connect: to include, to exclude, to both include and exclude and, in doing so, to affirm both the possibility and impossibility of particular versions of the war, the soldier, and the world-child. These lines are thus understood as sites and moments of political engagement rather than as simple borders that distinguish one form of being here or now and another form of being there or then. Then, the following section (Section 11.3) explores childhoods that do not necessarily fit into the boundaries of supposed normality: notably, representations of the so-called child-soldiers in the Global South, specifically in Africa, whose most iconic figure is a poor, vulnerable, prepubescent, male who carries a gun larger than his own physical frame. On the other hand, it analyses the representation of the junior-soldier in the U.K., where military service can be understood as an important step in the development of successful children as it signifies rights to power and citizenship, offers the possibility of learning different skills, and supposedly instils courage that adult-citizens need to confront life’s daily challenges. At the end, this part explores how the addition of the hyphen between child and soldier, on one hand, and junior and soldier, on the other hand, – connecting (un)connectable categories – operates in distinct directions.

While the hyphen connecting child-soldier operates as a way of problematising the utmost barrier between being a 'child' and being a 'soldier' once the idea that childhood and war are mutually exclusive, the hyphen uniting junior-soldier works as the 'step-by-step' – or a bridge – that the child needs to follow to become a productive adult. Instead of being mutually exclusive, the spaces of childhood and war are, thus, rearranged and put together as a tool of state and a manifestation of its rationality.

Finally, in the concluding section, based on the analysis of these representations of the child combatant, I follow from Horschelmann's question (2016, p. 29) – 'Is it war or children out of place?' – to argue that neither are out of place but are indeed reproduced according to certain boundaries within which only particular subjects, life experiences, and objects are admitted. In the end, in the name of securing a particular understanding of the world and its (ideal) future, a particular construction of both child and war are put into conversation so that many children are relegated to a 'temporal space' of silence either by illegitimacy and risk or by promise of a progressive future for the nation-state and for the world.

11.2 (Re)Drawing the Limits of the World: Stories of the War and the Child

In 1996, Graça Machel, an expert appointed by the Secretary-General of the United Nations (U.N.) and a former Minister of Education of Mozambique, presented a report to the U.N. General Assembly entitled 'Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children'. In it, she suggested that more than 300,000 under-18s were fighting at that time in 31 conflicts around the world. Machel's main message was very clear: children must not take part in warfare.

The international community must denounce this attack on children for what it is – *intolerable and unacceptable* [...] *The needs of all children are the same: nutritious food, adequate health care, a decent education, shelter and a secure and loving family. Children are both our reason to struggle to eliminate the worst aspects of warfare, and our best hope for succeeding at it.*

(Machel, 1996, p. 6; emphasis added)

Although children have always been present on battlefields (Rosen, 2005), Machel's report, which sets forth the main ideas that constitute the prevailing discourse about the child-soldier, frames it as a new phenomenon closely related to the development of a 'new', far more brutal type of conflict, the so-called new war (Kaldor, 1999), which itself has infused discourse since the Cold War, or, as Gates and Reich (2010) put it, 'in the age of fractured states'. Simply put, the new aspect of these wars is articulated in terms of a blurring of distinctions, such as the one between private and public; the one between what took place within a clearly defined territory of the state and what took place outside of it; the separation of economic activity from public state activities; and the separation between combatants and

civilians, which are characteristic of the (re)production and institutionalisation of both the modern nation-state and modern war by demarcating them by what went before in time and what was outside in space.

Importantly, as Butler (2009) has highlighted, definitions of war are never innocent semantic exercises. Definitions of war germinate normative principles and rules that articulate and authorise lines – or limits – that promote and restrict the use of violence, attribute distinctive rights and duties to soldiers, determine the objects and agents of protection, identify violations of such protections and use of violence, and establish punishment in cases of violation. In this regard, the way the concept of war is used to classify a phenomenon will impact how it is understood – who the actors involved in it are and what they can be and do in terms of what war is and what war does and what war is not and what war does not do. Based on Butler's discussion, Bartelson (2018, p. 12) argues, 'our moral and legal responses to war are always already conditioned by practices of definition and classification'.

Within this conception of war, there is a clear distinction between the ordinary civilian and the soldier, who must be completely different from those who kill for illegitimate reasons, such as murderers and terrorists. The making of 'good soldiers' demands military training to make them overcome inhibitions against the taking of life, but, at the same time, the soldier's capacity to exercise violence and to kill must be controlled, constrained, and channelled. As Zehfuss (2018, p. 144) puts it: 'soldiers must be *forced* to behave appropriately' (emphasis in the original). As such, the idea is that professional soldiers trained by responsible nation-states are good soldiers, and good soldiers make good war – not the 'new war' in fractured states. Military training is, thus, part of the conception of war that allows us to think that a particular kind of violence is legitimate and, in some way, better than others. For example, Graça Machel (1996), following on Kaldor's construction of the 'new wars', defines warfare in postcolonial states in terms of the 'abandonment of all standards' and a 'sense of dislocation and chaos' (p. 9). The Machel Report cites such phenomena as the vestige of state collapse, which has led to armed conflicts, where the distinctions between combatants and civilians are lost, there are especially high levels of violence and brutality, and the use of any and all tactics – including systematic rape, scorched-earth policies, ethnic cleansing, and genocide. As emphasised in the Machel Report, the abandonment of standards has brought about human rights violations against women and children, including the recruitment of children into armed forces and groups (1996, p. 9–10).

In sum, this particular – but universalised – understanding of war articulates who is entitled to wage war, for what reasons and under what circumstances, who is the *legitimate* – or, professional – soldier, and under what conditions relevant audiences are likely to accept some justifications while rejecting others. Bartelson (1995) highlights that the world encompasses a very particular conception of time, which is a succession of events that is always linear and perennially progressive. This belief in progress enables an interpretation of history as a journey towards a better future: a stable, peaceful world. This idea is, for example, operationalised by the (re)production of the conception of war – and the exclusion of other means of violence – as a legitimate political mechanism for creating peace and order, but

also by mechanisms for protecting a universalised model of the child and preparing it to become the adult-citizen, or the world-adult-citizen *per se*. As such, the idea of sameness contained in the norm of the world-child embodies a guarantee of a better future not only for children, but for all humanity.

Within this formulation, the hyphen that connects the concept of the ‘world-child’ stands for a circularity between the limits that articulate the boundaries both of what a ‘normal’ childhood is supposed to be (based on a supposedly universal model for the development of mature citizens), and of a particular version of the world predicated on notions of order, security, and progress. In order to engage more carefully with the way particular accounts of drawing these lines work to shape not only what the world-child is, but also what the international society claims to be the world and its desirable future, this chapter identifies and works with three overlapping and interrelated discourses. These three discourses are articulated and (re)produced through ‘child rights governance’ (Holzscheiter et al, 2019). The first of these includes statements about what could be called a *natural child*, in which ‘objective’ conceptions of children’s social and biological needs are established and universalised. The idea of the natural child is prescribed according to some ‘stages and scripts’ that must be followed by *every* child. Tethered to the very idea of children’s universal needs, the second discourse (re)produces the world-child as being *inherently innocent and vulnerable* and, because of that, the object of *international protection*. The third discourse, for its turn, articulates childhood as meriting investment in the future by expressing concerns about children’s *development* towards becoming productive members of society, the ‘world-adult-citizen’ *per se*. Childhood is, thus, like a piece of blank paper which is to be filled with the path of development that has to be followed by everyone, colouring the world with the crayons that paint and imagine a particular predestined version. As such, the world-child is articulated as an object of international concern as its development process – depending on its script – may be the golden road to make the future come closer to reality or the driver of the disordered reality. Effectively, by developing the child, risks of international instability and insecurity may be parried and the promise of a progressive future for the world protected.

In this account, the world emerges both as a battleground over the nature of childhood and as a conflict between childhoods. At the same time, the conceptions of child and childhood emerge both as a battleground over the nature of the world and as a conflict between possibilities of worlds. At the end of the day, however, possibilities for heterogeneity are marginalised when the three discourses indicated above express and reproduce the bounded temporal-space of the child and, at the same time, authorise the governance of the world’s future. Despite the dispute between (im)possibilities, the conceptual links between the world, mechanisms of child development/protection, and the natural child are thereby articulated and promoted through the world-child as the single norm (Tabak, 2020).

Within this formulation, not only the temporal aspect, but space jointly provides the basis for the political demarcation of childhood. Public spaces, for example, are usually (re)produced as *risky* places for children because they present some kind of danger or threat to the child at the present time or to the good-adult-citizen

the child will become. In contrast to these (public) places, the private, domestic, family sphere, and schools are reaffirmed and re-instituted as the correct and safe places for children. Specifically, in terms of the involvement of children in wars, the question should be, then, why being a combatant is found to be unacceptable for (some) children, while it is not only acceptable, but in fact promoted, otherwise.

The next section of this chapter argues that notions of normality are extrapolated from both representations of the child combatant when they are *infantilised* in diverse and, at times, conflicting ways. On one hand, the discourse of the child-soldier in the 'Global South' infantilises child combatants as a way of reinforcing their perceived status as deficient, irrational, vulnerable, and, accordingly, in need of adult protection and/or control. They are the *tools of war*. On the other hand, the infantilisation of the British junior-soldiers – the children of the motherland – typically signals the need for a familial-like love (Viterbo, 2021). This sort of love implies varied attitudes towards the British recruited children that range from mercy, as well as love, which is translated into practices of strict training and disciplining, guidance, and support in order to prepare/guide them to become 'good soldiers', or, as it is argued here, *tools of state* and of its rationality.

11.3 The Promises and Pitfalls of the Hyphen: The Stories of the Child-Soldier and of the Junior-Soldier

A girl-soldier, recruited at age 13 in Sri Lanka, tells her story:

After the first training I had special training on carrying heavy weapons. We carried them around the playground. One day I had cramps and fever and said I couldn't come. They poured hot water on my body and back as punishment. This left a burn mark.

(Human Rights Watch, 2004, p. 27)

When it comes to images of the child-soldier in the Global South, the frame of the exploited victim prevails. This frame characterises their infantilisation as structured around three themes: protection/rescue, innocence, and degeneracy (Lee-Koo, 2013). As such, not only are child-soldiers constructed as irrational, vulnerable, and passive objects within this international gaze, but their communities and nation-states are pathologised as dysfunctional and are politically delegitimised for their supposed inability to protect their most 'precious resource'. This representation is structured primarily through the stories of forced recruitment or abduction; children being forced to kill or slaughter, especially a family member; children witnessing extreme acts of violence, especially against other children; children being the objects of humiliation, brutal beatings, rape, sexual slavery, slave labour, and hunger; and children unprepared for involvement in combat. As such, a strict correlation between childhood, vulnerability, and victimhood is clearly articulated.

Paralleling these accounts, Roméo Dallaire depicts the child-soldier as an 'end-to-end weapon system' and a 'tool'; what is more, children are 'vulnerable and easy to catch, just like minnows in a pond', while the adults involved are described

as 'evil' (2010, p. 3, 12, 15, 150). Children are, thus, depicted as hapless victims who are essentially irrational and are thus unable to understand or identify the risks of entering combat. Terms like 'used as/for', 'forced to', 'brainwashed', and 'manipulated' appear frequently in these narratives, validating this construct of the child as a person whose agency is completely silenced. Another element that plays a major role in the articulation of the child-soldier as a hapless victim is the use of drugs and how this relates to children's irrationality.

In contrast to the frame of child-soldiers as victims is the representation of the life in the military of the British 'junior-soldier', in which a particular kind of discursive connection between war and children is not necessarily pathological. In the context of the British Army, the youngest recruits are sent to the Army Foundation College in Harrogate, where they will learn all the military skills they need, from map reading to how to handle a weapon and from fitness to education. Once they finish the course at Harrogate, they will be deemed old enough, trained, and ready to join their unit as a soldier in the Regular Army. Last, but not the least, the junior-soldier will also earn a good wage and have the opportunity to make friends for life.³ This narrative takes us back to the story of the world-child's school education as a safe and necessary space for children, where they will learn and follow the steps towards the (ideal) future as adults. In the section 'Meet the troops' on the British Army's website, a girl soldier called Laura, thus, confirms,

I joined at 16 and went to the Army Foundation College in Harrogate to do my basic training (Phase 1). The chance to get qualifications was one of the main things that attracted me to Army life. If you're thinking about joining, I'd say just go for it – the Army is a fantastic career.⁴

If for the child-soldier, its infantilisation authorises practices of exploitation, control, and protection, for the junior-soldier, on the other side, its infantilisation as the promising civilised adult is operated through practices of care, training, discipline, and guidance. Differently from the temporality of the child-soldier, which is premised on the notion of a *temporary emergency* that makes the international response an imperative, is an urgent bid to rescue them so that they may have another chance at a (normal) childhood. The temporality of the British junior-soldier coincides with – or, (re)produces – the temporality of the world-child, which is predicated on an *in-process notion*. The junior-soldier is in the process of learning, and maturing in order to become an adult-soldier in the Regular Army. Within these terms, the junior-soldier/adult-soldier dichotomy is bound up in a gradualistic dualism between time of development and time of stability and accomplishment, which resonates in other related dualisms, such as still immature and dependent versus competent and autonomous.

This section therefore turns to the assumptions and categories that give social coherence to the hyphen that authorises either pathological or celebratory connections between being a child and being a soldier. Following on Berents' suggestion, I analyse the discourse of child-soldier as 'tools of war' through three *frames* identified by Denov (2010) – the victim, the monster, and the redeemed

hero – to unpack ‘assumptions and stereotypes’ and to offer a ‘critical questioning of how we see what is *framed* as victimization or delinquency’ (Berents, 2020, p. 48–49; emphasis in the original). Specifically related to the discourse of the junior-soldier as ‘tools of state’, this chapter considers how particular ideas about war, the child, and the nation-state, particularly, the U.K., make possible not only the involvement of children in war preparedness and armed conflicts, but its celebration once the military recruitment is portrayed as both state and family *investment* in the child. As such, I analyse the representation of the life in the military of the ‘junior-soldier’ through the British Army official recruitment website. The analysis of discourse used here examines data collected from the website, including videos, texts, and images available to the public. It focuses on the linguistic construction of reality and identifying assumptions about childhood, war, and the British state, as well as the connection between them. This analysis reveals how the concept of childhood and war creates a specific understanding of the hyphen that connects junior to soldier, as well as the U.K.’s role in promoting the protection of children and international security.

11.3.1 ‘Lost Childhood’: Child-Soldiers as the ‘Tools of War’

‘ACT to Protect’ – This is the title of the most recent campaign launched, in 2019, by the U.N. Office of the Special Representative of the Secretary-General for Children and Armed Conflict jointly with United Nations Children’s Fund (U.N.I.C.E.F.) to end and prevent the six grave violations⁵ against children in armed conflict situations, including the use and recruitment of children by national security forces and non-state actors. At the launch event, Special Representative Virginia Gamba said,

With more children suffering horrific abuses in war zones across the globe, we desperately need to reinvigorate our efforts to raise awareness about the core of the mandate I represent – the six great violations, and to redouble our common advocacy to ensure action by parties to conflict to give children the protection they deserve.⁶

The emphasis on children’s protection in times of conflict permeates and structures the systematic engagement that the U.N. Security Council has placed on the situation of children affected by armed conflict at the heart of issues affecting international peace and security. As of 1999, when the U.N. Security Council adopted its first thematic resolution on children and armed conflict (Resolution 1261 (1999)), 13 resolutions specifically addressing the same issue have been adopted, the latest one being the U.N. Security Council Resolution 2601, which was passed in October 2021. According to the advisor of the Child Protection Office at the U.N. Department of Peacekeeping Operations:

The entry point in the Security Council agenda was basically the children with guns who were mobilized to use violence and to destabilize some countries. The number of children being used was stunning. Armed groups were exploiting the

most vulnerable as the cheapest form of renewable soldiers. In the immediate time children were being used, but there were also the long-term effects. It's really a loss of the future. If these children are mobilized, lose their prospect of education because they're fighting in war, what are their prospects in the future?⁷

Among the six grave violations, the emphasis on the risk of 'children with guns' is reflected in the campaign launched by the Special Representative together with UNICEF in March 2014, which is specifically devoted to end and prevent the recruitment and use of children by national security forces. This campaign, entitled 'Children, Not Soldiers', received immediate support from member states, the U.N., non-governmental organisation (N.G.O.) partners, regional organisations, and the general public. In the poster campaign,⁸ in which the cartoon character of the child wears real (adult size) military boots and a helmet, the insurmountable barrier between the child and war is presented as a self-evident given. The diversity of child-soldiers' war experiences⁹ is silenced when children, in this particular campaign, are articulated within the static framework of victimhood represented by the cartoon character of a boy who asks 'us' (viewers) to tell the world who they are – that is, 'not soldiers'. For example, the ideological commitment of many of the girl-soldiers of the Mozambique Liberation Front (F.R.E.L.I.M.O.) and how empowered they felt while in war – rather than victimised by the conflict – highlighted by West (2000)¹⁰ are vanished through the particular frame adopted by the U.N. campaign. Specifically related to the relationship between children and violence, Drumbl (2012, p. 16) emphasises that a considerable heterogeneity arises among child-soldiers' experiences in war, which is also silenced through the U.N. narrative – while some of them lie to and manipulate their commanders to avoid killing and refuse to be combatants, others torture, kill, and rape to navigate militarised hierarchies and to survive. The contrast in the U.N. poster campaign between the cartoon character of the child and real warfare, represented by the pair of boots and the helmet, *only* (re)produces the paradox of the child dressed in pieces of military clothing not for fun or play, but in readiness for actual combat (Tabak, 2020). The story being told emphasised child-soldiers' deviancy and their need to be saved by both the (responsible) nation-states and 'us', who must show 'our support'.

Although the characterisation of child-soldiers as an international emergency – or, a threat to international peace and security – is most often taken out of context, the adjectives used to describe child-soldiers' experiences in armed conflicts trend towards 'abhorrent' and 'barbaric', and they especially concern the contemporary wars in Africa. As Moynagh (2011, p. 41) argues,

there is, it seems, a place already prepared in the Western imagination for the African child soldier as a subject of violence in need of human rights intervention and rehabilitation – intervention that threatens to mimic colonial infantilising of Africans as needing the protection of European powers.

The boundaries of this 'place' mentioned by Moynagh (2011), I contend, are articulated by particular frameworks that represent deviant child-soldiers in

the 'new wars', whose life experiences – narrated through static and largely contrasting, but not fixed, images of victim, monster, and redeemed hero (Denov, 2010) – challenge the limits not only of the (ideal) childhood, but also of the (ideal) war, and of the (ideal) nation-state, which is deemed to protect its population, especially, the children.

In contrast to the frame of child-soldiers as victims is constructing them as dangerous and evil beings or simply as monsters, permanently lost in an endless cycle of unrelenting violence and irrationality (Denov, 2010). Despite their small size and 'childish' biological features, the still uncivilised child-soldiers, who have *deviated* from the 'normal' course of development and have been transformed into fierce combatants, are – according to the former French Foreign Minister, Philippe Douste-Blazy – a 'time bomb that threatens stability and growth in Africa and beyond' (*BBC News*, as cited in Denov, 2010, p. 7). In this sense, in a territory that has been overrun by chaotic 'new wars', it is worth noting how the child-soldier is represented not only as being threatened by war and adult abuse, but also as in turn constituting a threat to the stability of the social order and its promise of a peaceful and progressive future as he/she fails to adhere to or follow the steps prescribed in the idealised model of the world-child.

Finally, the image of the 'redeemed hero' is pinned on a group of children, once victims and/or monsters, who have had the chance to overcome extreme violence and great adversity, survive war, cast off the child-soldier burden, and reintegrate into civilian life. Different from the junior 'heroes' of the British Armed Forces, who are trained to 'be the best' and will become soldiers to fight with bravery and honour, the child-soldiers are considered heroes precisely because they survived the circumstances of war, were able to overcome their memories of fighting, and were thus able to 'reset' their 'natural' developmental course as children.

Following on these narratives, it is possible to see how the discourse about the world-child related to normality and deviation simultaneously structures and is articulated by the representation of the child-soldier as an emergency that feeds into the fear of a world *at risk* whose promise of a progressive future is under threat. As such, this discourse immediately elicits the notion of risk management, which is translated into international intervention. As a target of international intervention, flatly, *children are not soldiers*. Within this formulation – either as the objects of exploitation or as the objects of salvation – when receiving 'proper care' and international guidance they are able to recover from war. Child-soldiers are *tools of wars*, in which the distinctions are blurred and the separation from violence and peace are vague.

11.3.2 'Be the Best': British Junior-Soldiers as 'Tools of State'

When at the Army Foundation College, the junior-soldier learns that there is only one destination: 'Be the Best'. The seven pillars that articulate military enlistment as a life *opportunity* are, (i) learning military skills, (ii) education, (iii) sport and fitness, (iv) leadership and initiative, (v) free time, (vi) sports, and, (vii) pay,¹¹ which revolve around the three discourses that articulate the boundaries of the norm of

the world-child. On one hand, the investment in ‘sport and fitness’ and the opportunity for ‘free time’, for example, pave the conversation with the idea of the natural child, that is associated to the idea of childhood as a time for investment in the future through ‘learning military skills’, ‘Education’, and lessons on ‘Leadership and Initiative’ that will guide the soldiers into the sort of people they should be. That is, based on the model of the world-child, the junior-soldier is articulated as still immature and irrational. The junior-soldier pursues a desirable developmental journey towards adulthood: this journey takes place in the Army College.

The U.K. is among the less than 20 nation-states worldwide that still allow their armed forces to legally recruit young people as of the age of 16.¹² Also, the U.K. is the only major military power, the only country in Europe, and the only permanent member of the U.N. Security Council to allow the enlistment from such age (with enrolment from age of 15 and 9 months for some positions). According to the last ‘Biannual Diversity Statistics’ of the British Ministry of Defence (M.o.D.), in 2020–2021, the U.K. enlisted 3,260 under-18-year-olds.¹³ Seven in ten joined the Army, making up a quarter of its intake. Specifically in terms of the Army, more soldiers are recruited at 16 than any other age. In 2020–2021, the Army enlisted 2,410 16- and 17-year-olds, which means 25.8% of the total enlisted intake. On average, in the last five years leading up to 2020–2021, more new enlistees have been 16 than any other age (MoD, Biannual Diversity Statistics, 2021).

Legally, the U.K. is not doing anything wrong: Article 3 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (hereafter, ‘Optional Protocol’), adopted by the U.N. General Assembly in May 2000, states that children who are *15 or over* may be *voluntarily recruited* into the *armed forces of a state*, provided that ‘such recruitment is done with the *informed consent* of the person’s parents or legal guardians’ (emphasis added). In contradistinction, according to Article 4, ‘armed groups, *distinct from the armed forces of a State*, should not, *under any circumstances*, recruit or use in *hostilities* persons *under the age of 18 years*’ (emphasis added).

The Optional Protocol therefore articulates tensions between aspects of children’s agency (depending on their age) associated to what and where war is seen and who the recruiter is: the (civilised) modern nation-state, which claims to monopolise the legitimate use of violence, or the multiplicity of ‘irrational’, ‘chaotic’, and ‘dangerous’ irregular armed groups. While voluntarily enrolling to join a state’s armed forces can be accepted as a rational choice even for a child, joining an armed non-state group in the context of the ‘new wars’ is invariably interpreted as vitiating the child’s best interests and thereby constituting a form of child exploitation and abuse. A diplomat, who at the time of the interview in 2013 was a member of the U.K.’s Permanent Mission to the U. N. and of the Security Council Working Group on Children and Armed Conflict, argued,

That’s where the boundaries come in. We don’t give the right to choose to children under eighteen. It’s the minimum that we can do to enable them to have access to education, to opportunities, and to face a secure environment.

Those boundaries, however, work differently in regard to the military recruitment of British 16- and 17-year-olds by the U.K. forces. The British diplomat's explanation for this difference nests in the unquestionable idea of the U.K. as a responsible nation-state which knows how to protect its own children:

They [children] are never exposed to some kind of danger until they're eighteen. So, it's very mature. They never leave the country. Essentially, it's working in the Ministry of Defence. They might have some military training but they're not going to leave the country or go to a hostile environment.

This affirmation, however, finds some divergence in light of some evidence that about 22 British under-age soldiers who were sent to Afghanistan and Iraq between 2003 and 2010 (Child Soldiers International, 2018).

Such narrative is reflected in the voices of the young recruits in the short video at the M.o.D. website entitled 'A look inside The Army Foundation College: for Junior soldiers aged 16–17', which consists of testimonies of junior-soldiers dressed in their uniform, which tell us their motivations for enrolling in the military as well as their achievements. In the very first scene, soldiers are lined up looking ahead: they have a commitment to the future. Next, they handle their weapons and the camera focuses on a girl soldier, who tells us that although at first her mother hated her idea of her enlisting, she is now very proud of her daughter and would do nothing to stop her. Then, a boy soldier emphasises how great the College is, especially because it has a 'swimming pool, gym, computer rooms, pool tables, even a cinema'. Subsequently, we hear a female in a voiceover as we are shown the image of healthy meals interspersed with images of the shooting training, saying, 'with no bills to pay for as your accommodation is already paid for'. The boy soldier, then, says 'I really enjoy the physical side of the Army', with images of military physical exercises in the background and he concludes, 'you need to get fit to stay in'. At the end, the girl soldier says 'I've made the strongest friends I've ever had (...) I trust them more than the people I've known my entire life', which is reinforced by images of her and her friends smiling, training, and having their meals together.

It is worth noting how this particular relationship between the British children and war is structured and, at the same time, reproduces four fundamental categories of modern society: the modern war as a *civilised* domain organised according to strict rules and distinctions; the soldier as the professional combatant in charge of defending his nation-state and the world; the modern nation-state on the basis of its capacity to make (good) war and protect its own population, specifically, children; and the 'normal' child as someone to be developed and protected by the nation-state.

As still *children*, they need their parents' consent to join voluntarily in the military. In this regard, a special section in the M.o.D.'s website is dedicated to answering the *adults'* possible concerns, as the Army acknowledges, 'To many parents, hearing that your child wants to join the Army is an emotional and daunting prospect'.¹⁴ There is, then, a video filled with the testimonies of several parents of new recruits: although

they recognise that they were all a little bit concerned when their sons and daughters decided to join the Army, at the end, they were very proud of them. It is noteworthy that at the start of the video the parent's comments are accompanied by images of the junior-soldiers smiling while they are either *playing* videogames or at the pool table or *eating*. This reminds us of the world-child norm, articulated through the discourse about the *natural* child, who needs to be happy, well-fed, and playful. That is, even outside the space of the *family home*, children are still protected and well-supported under the state's care (or, control) as they are 'the children of the motherland'. Then, the parents, throughout the video, emphasise how the Army has had a great impact in their children. They all agree it's been 'absolutely fantastic' as they affirm in terms of their own children: 'he's matured immensely'; 'it was very good to see the transition and growth towards a young man'; 'he definitely has changed to better, he's a lot more focused'; 'he can see some future'; 'it helps them build their personality and gives them so much strength'.¹⁵ Again, differently from the trajectory of the child-soldier, the course of development of the junior-soldier towards adulthood has not been violated or lost, but – rather the contrary – learning how to handle a weapon or being involved in war preparedness are ingredients that might give these children, for example, strength, focus, and new friends. As a *responsible* nation-state, the U.K. therefore takes the place of both the *family* once it guarantees the *protection* of the child and *school* once it offers the resources for his/her *development* towards a brighter future as a good adult-world-citizen.¹⁶ Recruiting children becomes not a form of exploitation, but rather of investment in forming better adult-citizens: the junior-soldier is, then, the *tool of state*.

Together, the testimonies of current junior-soldiers reproduce the representation of their experience of hardship, or even danger, during training and service as mentally and physically *challenging* rather than *threatening*. After all, as Zehfuss (2018, p. 139; emphasis added) points out, 'soldiering is represented as a *difficult profession*, it is physically demanding and might require risking one's life [...] because moral courage [...] is equally necessary and difficult to achieve'. While the images of child-soldiers evoke horror, disgust, and pity, the British junior-soldier is a promising candidate for the future opportunities and responsibilities of adulthood.

Within these (good) wars, conducted as they are by (responsible) states to create political order out of the 'new wars' chaos, the British junior-soldier is the *tool of state*. While the threat inherent to child-soldiers, whose bodies have been exploited, is that they might put international peace and security at risk, for the British junior-soldier – whose body has been well-fed, disciplined, and trained – there is no reason to fear. On the contrary: the British junior-soldier is a source of pride as the future national hero: not a redeemed one who survived war, but as a Regular Soldier who will fight with bravery, honour, and heroism for his country and for (a particular kind of) world.

11.4 Conclusion: Keeping the World Safe: Stories of Revulsion and Celebration

By going back to Horschelmann's earlier mentioned question (2016, p. 29) – 'Is it war or children out of place?' – this concluding section contends that how some

stories of the child combatant are tolerated, celebrated, or marginalised constitutes and reflects a particular version (and vision) of the world, which is made visible or articulated through the particular stories about both the child and the war.

Through alternate and different representations of the child combatant, it was possible through the chapter to identify and analyse the political and social conditions that make the encounters between the ideas of war and child engaging or hostile. Although recruitment of children both in the 'global North' and in the 'global South' opens room for critically reflecting on children whose life experiences challenge conventional ideas about childhood which are assumed to be universal, this chapter demonstrates how children's engagement in war, depending on *what* is understood by war, *where* it is seen, and what it promises to secure, can either be perceived as a dangerous threat in need of neutralisation or an achievement to be celebrated and promoted. That is, in the name of securing a particular understanding of the world articulated through understandings of the child, the nation-state, and war, the hyphen between child combatant either works as an insurmountable barrier or as an arrow that points the way towards a successful progression towards adulthood.

The discourse of the world-child as the essentially innocent and inherently vulnerable child in many ways produces child-soldiers as an international *emergency* – a problem which then mobilises resources, international organisation, and other discourses around the child's 'salvation'. Combining vulnerability and risk, the child-soldier – different than the 'professional soldier' – commits *atrocities*, which are conceptualised as an outbreak of the passions and desires of the individual combatant (Osiel, 1999). Depicted as irrational beings, child-soldiers are represented as being exploited as the *tools of war*. As the British diplomat argues,

Especially on the child soldier's issue, you militarize the people who will run your country in the future. You're never going to find security, because your children don't know how to do anything but fight [...] And if you're killing all your children, you'll also have no-one to rule your country once the conflict is over.

(as cited in Tabak, 2020, p. 97)

In contrast, as *tools of state* who will be trained and invested in to 'be the best', the British junior-soldier is rendered as objects of national investment and progress. Combining immaturity and potentiality, the stories about the junior-soldier reveal the existence of 'politics on the line' (Walker, 2010) that generates stories of celebration and pride, which reaffirm the boundaries that articulate the 'universality-within-particularity' (Walker, 2010) of both: to wit, the 'world-child', on one hand, and of war, on the other, as hegemonic social and political forms of being and acting. The story of the future national hero hinges upon the norm of the world-child to be developed in a *proper way* (i.e., through strict military training) articulates, then, the promise of a prosperous future for the U.K. and for the world.

In the end, it is not only the 'governance of conflict through the idea of childhood' (Beier, 2022), but also the governance of childhood through the social category of war that entails the possibility of telling the stories of the junior-soldier as the *tool of state* and of the child-soldier as the *tool of war*. Through the stories of the child

combatant – from their recruitment to their celebration or revulsion – what can be, finally, argued is that any successful attempt to (re)produce the boundaries of the modern world, structured through its uneven distribution of power and by the values that define it, and its promise of a progressive future, must find a way to reconcile – through practices of exclusions/inclusions – some set of universal forms of being and acting – the child and the war, for example – with the actual plurality of experiences of children with the international system.

Notes

- 1 This idea refers to expressions such as ‘children without childhood’, ‘children robbed of their childhood’, and ‘children out of place’ permeate the ways in which the figure of the child-soldier is generally articulated and discussed by international organisations, often with humanitarian missions, non-governmental organisations (N.G.O.s), and the mainstream media.
- 2 The War School documentary is available at: <https://vimeo.com/696977111>. Accessed January 13, 2023.
- 3 Information from the MoD website in the section ‘Junior Soldier Training’. Available at: <https://jobs.army.mod.uk/how-to-join/training/junior-soldier-training/>. Accessed August 25, 2022.
- 4 Available at: <https://apply.army.mod.uk/what-we-offer/regular-soldier>. Accessed August 25, 2022.
- 5 The six grave violations serve as the basis to gather information and report on violations affecting children in armed conflict situations. These violations are, Killing and maiming children; Recruitment or use of children as soldiers; Sexual violence against children; Abduction of children; Attacks against hospitals or schools; Denial of humanitarian access for children.
- 6 Available at: <https://childrenandarmedconflict.un.org/act-to-protect-children-affected-by-armed-conflict/>. Accessed November 5, 2022.
- 7 Interview with advisor of the Child Protection Office at the UN DPKO, June 2017 (Tabak, 2020, p. 98; emphasis added).
- 8 The poster is available at the official UN Office of SRSG for Children and Armed Conflict website: <https://childrenandarmedconflict.un.org/children-not-soldiers/>. Accessed September 13, 2024.
- 9 This diversity is further explored in so many scholarly works that have focused on the experiences of child-soldiers within the armed conflict, such as Peters and Richards (1998), Boyden and de Berry (2004), Rosen (2005), Honwana (2006), Denov (2010), Drumbl (2012), Shepler (2014).
- 10 Harry West’s article ‘Girls with Guns: Narrating the Experience of War of Frelimo’s “Female Detachment”’ is one of the first articles to raise the discussion about the particular meanings given to the social category of the child-soldier and children’s experiences of violence.
- 11 This information is available at the Army Foundation College’s website: <https://apply.army.mod.uk/what-we-offer/regular-soldier/training/afcharrogate>. Accessed August 23, 2022.
- 12 The others are mostly also Commonwealth states (Bangladesh, Canada, India, Pakistan, Papua New Guinea, Tonga, Trinidad and Tobago, Zambia), in addition to Cuba, Dominican Republic, Egypt, El Salvador, Iran, Mauritania, and United Arab Emirates.

- 13 Available at: www.gov.uk/government/statistics/uk-armed-forces-biannual-diversity-statistics-2021. Accessed August 25, 2022.
- 14 The British Armed Forces website has been updated, and the section dedicated to the views of junior soldiers' legal guardians regarding their children's Army experiences is no longer available. Consequently, the quote from the Army addressing the concerns of the junior soldiers' legal guardians is also no longer accessible.
- 15 The British Armed Forces website has been updated, and the section dedicated to the impressions of junior soldiers' legal guardians regarding their children's Army experiences is no longer available. Consequently, the quotes reflecting the legal guardians' excitement about their children's development while training as Junior Soldiers are also no longer accessible.
- 16 Take note that most of the children recruited at Harrogate come from working-class backgrounds. In many instances, military discipline is presented as a substitute for a lack of education and job opportunities. This shows that the link between war and childhood is not necessarily negative as in the case of the 'child-soldier', but can be seen as a part of the journey towards adulthood.

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12 Children Born of Conflict-Related Sexual Violence in Rwanda

In Search of Recognition and Advocacy

Myriam Denov

12.1 Introduction: Genocide, Sexual Violence, and Children Born of Rape in Rwanda

In Rwanda, between April and June of 1994, in a period of roughly 100 days of violence and genocide, an estimated 800,000 Rwandans were killed, including at least 500,000 Tutsi (Des Forges et al., 1999; King, 2010). The nature of the violence was intimate, systematic, and brutal; victims were killed by their neighbours, and government officials handed out lists of ‘opponents’ to be killed, including human rights activists, journalists, and civil servants. Alongside multiple forms of violence, sexual violence was used to terrorise local communities, as a form of gendered power relations and a powerful weapon of genocide and ethnic cleansing designed to destroy individuals, families, and communities (for additional discussion of gendered power relations, see Gruenwald in this volume on Afghanistan). In Rwanda, an estimated 350,000 women and girls were raped or gang-raped, subjected to sexual mutilation and torture, or taken as sex slaves (Sharlach, 2000). While Tutsi women were the primary target for sexual violence, Hutu women who were married to Tutsi men or those who protected Tutsis were also targeted for rape and assault (Nowrojee, 1996). Hutu media outlets broadcasted hate propaganda before and during the genocide against the Tutsi and heightened ethnic tensions by demonising Tutsi women, specifically inciting attacks against them (Nowrojee, 1996). Rape and gang rape of Tutsi women and girls often occurred in public spaces with the intended aim of degrading and humiliating Tutsi women in front of family and community members (Taylor, 1999).

The fallout from such brutal forms of sexual violence has been well-documented. On an individual levels, survivors may suffer from severe physical and psychological trauma, injuries, HIV and other sexually transmitted infections, as well as long-term challenges with sexual and reproductive functioning (Joachim, 2004). On family and community levels, given that blame is often placed on victims of sexual violence for the assault, survivors of sexual violence may be stigmatised and expelled from their families and communities. As a result, survivors may lack the social capital necessary for long-term socioeconomic stability, which can also have an impact on their marriageability (Stark et al., 2016). On a societal level, a culture of silence surrounding sexual violence may prevent accountability, justice, and

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healing (Harvey, 1996). Given these realities, conflict-related sexual violence—a very public act occurring in the public sphere—not only destroys individual dignity and self-worth but also devastates the social bonds between individuals, families, communities, and societies that are essential to healing, repair, and reconciliation in the post-conflict context (Hagen and Yohani, 2010).

For women and girls, forced impregnation and childbirth are also significant consequences of sexual violence. In the context of Rwanda, while the number of children born of conflict-related sexual violence has been impossible to assess, estimates range from 10,000–25,000 children (Hogwood et al., 2017; Zraly et al., 2013). Born into the turmoil of major social upheaval, these children—often referred to in Rwanda as *‘enfants de mauvais souvenirs’* (children of bad memories) and *‘enfants de la haine’* (children of hate)—have become living reminders to mothers, families, and the larger community of the immeasurable suffering they had endured at the hands of these children’s fathers (Nowrojee, 1996).

Despite their inherent connection to sexual violence, children born of conflict-related sexual violence have yet to be considered as a distinct group of war-affected children whose rights have been violated as a result of their mother’s victimisation. According to the United Nations, victims of conflict-related sexual violence include persons who ‘individually or collectively suffered such violence but also [...] children born as a result of pregnancy from rape’ (United Nations (UN), 2014: 3). However, as a group, children born of conflict-related sexual violence have remained outside the scope of past transitional justice processes designed to remedy, restore, and reconcile individuals, families, and communities in post-conflict settings (UN, 2014). Moreover, the voices of children born of conflict-related sexual violence have infrequently been heard within research, policy, and practice. Until recently, little research has explored or addressed the realities and experiences of these children and the struggles and opportunities that these children face in the post-conflict context—particularly from the perspectives of the children themselves.

In response, alongside a Rwandan and Canadian research team, I embarked on a study exploring the lived realities of children born of conflict-related sexual violence in post-genocide Rwanda. The study received ethical approval from two research ethics boards: the first from the Rwandan National Ethics Committee, and the second from the Research Ethics Board of McGill University, Canada.

To garner the direct perspectives and voices of youth, in-depth interviews were conducted between June and August 2016 with 60 youth born of genocidal rape,¹ 29 young women and 31 young men. At the time of data collection, participants born of genocidal rape were either 20 or 21 years old, with the exception of one participant, who was 19.² In addition to interviews, youth born of conflict-related sexual violence took part in a focus group that was facilitated by a youth researcher. A total of seven focus group discussions were held with eight youth participants in each group. The same participants who were invited to be interviewed were also invited to participate in focus groups. While interview questions aimed to better understand the unique life story of each participant, focus group questions centred on the collective challenges and needs of, and sources of support for these

youth. Local researchers conducted interviews in Kinyarwanda, while Canadian researchers used English with simultaneous English-Kinyarwanda translation.

Drawing on these interviews and focus groups, this chapter examines the realities and perspectives of and advocacy by youth born of conflict-related sexual violence in Rwanda. Section 12.2 of this chapter begins by addressing the post-genocide context of Rwanda and the country's efforts to rebuild a nation torn apart by violence. Particular attention is paid to the complexity of the reconciliation process, and the public stories, narratives, and memories of violence are more widely highlighted and shared, alongside those that tend to be more hidden. Section 12.3 then examines the perspectives of youth born of conflict-related sexual violence, highlighting the ongoing marginalisation, stigma, and discrimination reported by these youth within their families, communities, and the broader society. Section 12.4 addresses the ways in which the youth seek to counter and resist the marginalisation and stigma, alongside the challenges and implications of doing so. The chapter not only reveals the perspectives of youth born of conflict-related sexual violence and their role in post-genocide reconciliation and policymaking, but also it highlights the challenges of and opportunities for youth advocacy and engagement in post-genocide Rwanda. Section 12.5 concludes by unpacking the complexity of victimhood in this unique and important population of youth.

12.2 Post-Genocide Rwanda

Upon seizing power and at the end of the genocide, the Rwandan Patriotic Front (R.P.F.) was faced with the monumental challenge of repairing a society deeply divided (Hintjens, 1999). Given the vast scale of Rwanda's violence, its intimate nature, the devastating losses, and lasting scars, the challenge of (re)knitting the social fabric, and the complexity of the reconciliation process is evident. Highlighting this complexity, Zorbas (2004: 30) notes: 'in the wake of violence on a societal scale, finding the right balance between justice and healing, retribution and forgiveness, tribunals and truth commissions, remembering and moving on is a messy if not impossible goal'. Several key mechanisms were put in place to begin this challenging process. In 1995, the U.N. Security Council established the International Criminal Tribunal for Rwanda (I.C.T.R.) in Arusha, Tanzania, to bring to justice perpetrators of mass atrocity during the genocide against the Tutsi. The I.C.T.R. was the first court to define rape in international criminal law and to recognise rape as a means of perpetrating genocide (Kaitezi, 2013). In the *Akayesu* Judgment of 1998, the Trial Chamber held that sexual violence was an 'integral' part of the process of destruction of the Tutsi ethnic group (United Nations, 1998).

Special chambers in domestic courts in Rwanda were created to examine and adjudicate genocide crimes (Gahima, 2013). After two years of criminal proceedings, however, it was clear that the Rwandan justice system was overwhelmed by the genocide caseload (de Brouwer and Ruhebana, 2013). Ultimately, the volume and slow-paced nature of criminal trials failed to meet the urgent need for restitution and security in post-genocide Rwanda (Gahima, 2013). In response to this slowness—and after much public debate—a transitional justice strategy, known

as the *gacaca*, was adopted by the government to deal with the scale of atrocities committed during the genocide against the Tutsi (Gahima, 2013). In 2012, when the *gacaca* process was closed, almost 2 million cases of genocide crimes had been tried, with an 86% conviction rate (de Brouwer and Ruwebana, 2013).

In the aftermath of the genocide against the Tutsi, the R.P.F. outlawed ethnic self-identification, removed ethnicity from national identity cards, and proclaimed that all citizens should unite under a single national Rwandan identity (Lacey, 2004). Currently in Rwanda, the use of ethnic labels is not only socially condemned but also accompanied by penal measures, including jail time, for what is classified as a crime of ‘divisionism’. These changes in law and subsequent public discourse are significant and actively frame the post-genocide culture context both at the formal structural level and at the informal community, relational, and individual level.

The government also established a fund to support genocide survivors through the ‘Fund for Neediest Survivors of Genocide in Rwanda’ (‘Fonds de soutien et d’assistance aux rescapés les plus nécessiteux du genocide’), commonly referred to as F.A.R.G., which supports genocide survivors born prior to 1995.³ The initiatives noted here are certainly not exhaustive, and ongoing efforts in social, legal, and economic realms have been made to promote reconciliation and reparation.

Based on recent government reports, the road to reconciliation has been a long, yet highly successful one. As an example, the Rwanda Reconciliation Barometer (R.R.B.) is a government report (National Unity and Reconciliation Commission, 2020) assessing the status of reconciliation in Rwanda. The R.R.B. seeks to ‘assess how the efforts of the government, developmental partners, civil society and the media, and private businesses have succeeded in bringing about unity and reconciliation among Rwandans since 1994’ (RRB, 2020: X). The latest report in 2020 came 26 years following the genocide against the Tutsi. To collect data for the report, a mixed-method approach was used to garner the views of a total of 12,600 households in all 416 sectors of the country, selected through probability sampling for the quantitative data. Participants for the qualitative data were selected through snowball and purposive sampling techniques. According to the report, the current status of reconciliation in the country is 94.7%. This percentage is an average of all six pillars which are used to gauge current levels of reconciliation including: (1) Understanding the past, present, and envisioning the future, (2) Citizenship, identity, and responsibility, (3) Political culture and governance, (4) Security and well-being, (5) Justice, fairness, and rights, and (6) Social cohesion.

While the R.R.B. suggests widespread reconciliation success, the controversies around the government’s programme of de-ethnicisation, unity, and reconciliation, and its political agendas are well established in the critical literature (see Pottier, 2002; Straus and Waldorf, 2013; Thomson, 2013; Beswick, 2010; Clark, 2014). For example, King (2010) argues that despite the multiple economic and political successes and international commendation, the realities of censorship, power

relations, authoritarianism, and fear have become embedded within the reality of the country's 'reconciliation'. King (2010) writes:

The Rwandan government has made important progress on a number of fronts and is often praised for its role in Rwanda's political stability and economic growth period. Indeed, the image of stability and progress of President Paul Kagame's government dominates international reporting and much of academia as well. Yet Rwanda today is much closer to authoritarianism and dictatorship than to democracy, and there is increasing concentration of power around a small group of former Tutsi exiles from Uganda. Many Rwandans experienced censorship and self-censorship, and fear being charged with the vague offenses of 'divisionism' and 'genocide ideology', which increasingly seems to mean simply disagreeing with the government.

(King, 2010: 301)

Key critiques in the literature have related to what has been formally and publicly acknowledged within Rwanda's process of reconciliation, as well as what has been left out. King (2010) suggests that acknowledgement—recognising, admitting, or owning something—is a key concept in the study and practice of post-conflict peacebuilding and conflict prevention. Arguably, it is important for reconciliation and restoring relationships, and for transitional justice, and it is essential for building open, inclusive and legitimate political institutions. Acknowledgement is also vital to victims and their long-term well-being and reparation. As an example, a survey of survivors of violence from 11 conflict-affected countries including Afghanistan, Cambodia, Kosovo, and Sudan found that acknowledging experiences through memorialisation was considered a key form of state reparation for violence (Kiza et al., 2006). Acknowledgement, however, is by no means universal. In some post-war contexts, silence and 'forgetting' are said to be cornerstones of reconciliation processes and a form of collective healing. For example, Shaw (2020) argued that in northern Sierra Leone in the aftermath of the war, 'speaking of the war in public often undermines [reintegration] processes, and many believe that it encourages violence' (p. 1). Similarly, Doucet and Denov (2012) show the ways in which war-affected women in Sierra Leone considered forgetting as a positive way of dealing with their painful wartime experiences.

Despite these important cultural and contextual differences, making space for individuals and communities to share their experiences of violence and to have those experiences publicly acknowledged—especially by their own governments—can be important elements of reconciliation (King, 2010). Furthermore, as King (2010) notes, unacknowledged wounds may present important obstacles to peacebuilding. In addition, governments may create unequal space for different memories of violence. In the case of Rwanda, King (2010) has argued that the Rwandan government has selectively highlighted and acknowledged some civilian memories of violence while repressing others. Zorbas (2004) affirms that certain 'silences' have been imposed on Rwanda's reconciliation process, including:

the failure to prosecute alleged [Rwandan Patriotic Army] RPA⁴ crimes, the lack of debate on and the instrumentalization of Rwanda's 'histories', the collective stigmatization of all Hutu as génocidaires, and the papering over of societal cleavages through the 'outlawing' of 'divisionism'.

(p. 29)

In a similar vein, King unpacks the range and variance of acknowledged memories and their implications including what she refers to as 'recognized Tutsi memories' (memories from Tutsi survivors of genocide), 'somewhat recognized Hutu memories' (narratives of Hutu 'rescuers' who helped to hide those trying to escape the genocide, and Hutu 'moderates' killed during the genocide), and 'unrecognized Hutu memories' (Hutu memories of violence perpetrated by the R.P.F.).⁵ As examples of the latter, King (2010) notes that, while several of the Hutu interviewees in her study considered themselves victims of violence, their victimhood remained unacknowledged by the state, they felt excluded from public mourning, and they articulated that they are not allowed space for their stories and memories of violence. Moreover, according to King's participants, the fear of reprisal for challenging unequal space for shared public memory and expression was real. Reflecting the complexity of memory, power, and censorship in Rwanda, one participant noted: 'Rwandans have become liars. We can't say anything because they'll imprison us or kill us' (King, 2010: 304).

While there are multiple populations whose silence and marginalisation have been highlighted and addressed in the literature and scholarship on Rwanda's complex reconciliation process, the realities and voices of children born of conflict-related sexual violence—a group addressed further below—have been less apparent.

12.3 Perspectives of Youth Born of Conflict-Related Sexual Violence: Stigma, Rejection and Marginalisation

Youth born of conflict-related sexual violence in Rwanda continue to live with the lasting consequences of genocide and sexual violence. During interviews, youth participants collectively reported that, as a result of their birth origins, they experienced multiple forms of exclusion, stigma, and rejection, within both the family and community contexts. At the family level, participants reported painful experiences of rejection and stigma that were directly related to having been born of genocidal rape. The lack of love, name calling, insults, as well as ongoing harassment from multiple family members was reported by the majority of participants. These youth described:

I was four years old when my young brother was born. Then my mom was calling me a bastard. Then I was growing in that situation and was feeling not loved.

(male participant)

My aunties from the side of my mom were harassing me saying that I am born from 'Interahamwe' and that I will be a useless person.

(female participant)

I was born in 1995 in a very hard situation. I was living with my mother and my aunt, but later my aunt [evicted] us. . .they were saying that she gave birth to a child from 'Interahamwe' and she had been told to abort [me] and she refused. They were experiencing trauma due to what happened to them during the genocide.

(female participant)

Youth explained that the rejection came from not only the mother's side of the family but also the father's side of the family (whether biological or a step-father), leading to profound feelings of isolation and lack of belonging:

It wouldn't even be your mother's family only [that is rejecting you] but your father's family too. You feel like you belong nowhere.

(male participant)

Stigma, discrimination, and exclusion were not only reported within the family context but also within the broader community. At the community level, neighbours, teachers, and peers reportedly referred to participants as 'Interahamwe', and 'son of a killer'. The youth described the hurt associated with these experiences:

One day when I was with other children who are neighbours, one child called me 'Interahamwe'. What I knew was that Interahamwe were killers during the genocide against Tutsi. So, I went home and told my mother about what happened to me. Instead of talking, she cried a lot.

(female participant)

[T]he part that hurts me the most is being called a son of a killer.

(male participant)

While post-genocide Rwanda outlaws and forbids all forms of ethnic labelling, the youth described how these taboo labels were nonetheless invoked during their daily lives at school, in the community, and at home:

[W]e lived at [place] and I remember that I was in secondary school and it is when I heard many bad things like I was Hutu.... I was confused they were saying that my mother has children who are Tutsis and others who are Hutus, and I didn't know what that was. And it was hard to accept myself. I had a complex. I started feeling ashamed... And hearing people saying that my father is Hutu, he killed people in the 1994 genocide...that was hard.

(female participant)

Youth explained how family and community members continued to associate them with their fathers, and the violence and atrocities that these men had committed:

[My grandmother] is someone you can never feel free with. She always wants you to do the things she wants, not what you want. She always wants me to stay at home, I can't go out... Sometimes, when I do something wrong, she says: 'You do things like your dad'.

(male participant, Rwanda)

Things start with neighbours. If your dad killed people during the genocide and your dad is not here, people are seeing you as if you are him.

(male participant, Rwanda)

The rejection, stigma, and discrimination they experienced, reportedly left the youth with feelings of sadness, isolation, and confusion, and affected multiple aspects of their lives, leaving them with long-term shame and emotional pain.

12.4 Victimhood, Recognition, Advocacy, and Implications

Despite their experiences of discrimination and violence, and the common links made between themselves and their perpetrator fathers, these youth have been generally absent from collective memory, in the official commemoration 'narrative', as well as many survivors' networks of support. Given these realities, many of the youth interviewed sought recognition for their plight within their families, communities, and the broader society. They actively spoke of their desire to advocate for themselves as a group, to attain public recognition as victims of the genocide, and to garner a greater public voice. At the same time, however, engagement in political advocacy by the youth was regarded as neither straightforward nor uncomplicated, but instead accompanied by trepidation and apprehension. The realities of fighting for 'victim' status, recognition, and voice, and the implications of political engagement and advocacy are explored further below.

12.4.1 Advocating for Victim Status

The adoption of the Rome Statute of the International Criminal Court (I.C.C.) in 1998 sought to realign international criminal law as a victim-centred regime, and the I.C.C.'s definition of victimhood holds relevance for children born of conflict-related sexual violence. The I.C.C. has determined that to be considered a legal and direct victim, a person must (1) be a natural or legal person that (2) has suffered personal harm (3) caused by a crime which (4) falls within the jurisdiction of the I.C.C. For indirect victims, the physical or emotional harm must be linked to the harm suffered by a direct victim. For children born of conflict-related sexual violence, the mothers' rapes and forced pregnancies at the hands of the accused

inevitably lead to the conclusion that they are indirect victims. As Provost and Denov (2020) note:

The fact that the harm suffered by children born of war arises out of their mothers' harm can be established, according to several ICC decisions, by the nature of the relationship between the direct and indirect victims. As noted by the court, in every culture, there is no closer personal relationship than that between a mother and her child, which leads to the conclusion that children born of war are indirect victims of the crimes committed against their mothers. (p. 59)

However, while the conclusion that children born of genocidal rape can have the legal status of indirect victims before the I.C.C. is significant, there are nonetheless problems with such a characterisation. First, as an institution with a relatively limited jurisdiction and finite resources, the I.C.C. must exclude many, if not most, who have suffered from legal victimhood. Moreover, Provost and Denov (2020) maintain that within the I.C.C., there is a notable 'ranking' of victims, whereby indirect victims may be devalued within the transitional justice process, resulting in their potential exclusion as legal victims. In addition, acknowledging children born of genocidal rape as indirect victims maintains the notion that their victimhood is derived from their mothers' trauma. As a result, they risk being 'overshadowed' by their mother's victimisation. In this way, emphasising indirect victimhood ultimately risks perpetuating the invisibility and silence surrounding their lives and situation: 'if their needs are not highlighted as independent, children born of genocidal rape will remain near appendages to their mothers and their suffering will be left unaddressed' (Provost and Denov, 2020: 62). While Provost and Denov (2020) maintain that children born of conflict-related sexual violence ought to be considered indirect and more properly, *direct* victims of international crimes, there is currently no legal narrative that embodies their unique reality and experience. Instead, 'these children are, wittingly or unwittingly, surrounded by silence, generally erased in law and society' (p. 68). In a similar vein, Frisso (2024) suggests that the challenges to the recognition of children born of war as victims are linked to the binary perpetrator–victim that characterises the international criminal narrative. More specifically, portraying their mothers as ideal victims and their fathers as evil perpetrators not only negates the victimisation of children born of war but also their subjectivity.

In Rwanda, children born of conflict-related sexual violence are not officially considered 'victims of the genocide' and do not qualify for support from F.A.R.G. given its criteria for financial assistance.⁶ Not only were these children born after 1994, but their patrilineal heritage is typically Hutu, not Tutsi, both of which exclude them from survivor status. The state approach to victimhood thus focuses exclusively on *direct victims* (i.e., those Tutsi who suffered directly from human rights violations), rather than the multi-layered contexts and histories of violence that produce *indirect victims* (i.e., those who suffer human rights violations as a result of their link with a direct victim). However, it should be noted that children

born of conflict-related sexual violence often experience forms of physical violence *directly* as a result of their birth origins and biological links to their perpetrator fathers (Denov et al., 2017, 2020).

Legal definitions aside, young people in this study unequivocally self-identified as victims of the genocide and believed that their current life struggles and challenges were a direct result of genocide and sexual violence. They maintained that their birth origins made their lives *different* from other young people who were not born from conflict-related sexual violence. Although participants were aware that they were not genocide survivors under Rwanda's official definition and categorisation, many of the youth nonetheless viewed themselves as 'victims' of genocide crimes:

We have been victims of the genocide.

Why can't people understand that we are victims?

We [children born of the genocide] have to be able to speak, because we are the victims.

Given their perspectives, youth overwhelmingly called for an official acknowledgement as a group in Rwandan society whose origins are inextricably linked to the genocide. This search for recognition and voice is addressed in the next section.

12.4.2 Seeking Recognition and Voice: Challenges and Implications

Given the far-reaching impact of the genocide on their lives, an official acknowledgement and public recognition was deemed important for the youth in this study. Youth sought the right to belong to a family and community, to receive an education, and to have equal opportunities for socioeconomic advancement. Individually during interviews, and throughout the focus group discussions, the young people noted the lack of formal policies that recognise youth born of conflict-related sexual violence:

First of all, [our community and government] should see us as capable, and give us the same opportunities provided to other children. F.A.R.G. does not recognise us, whereas it pays school fees for genocide survivors' children. So children of my case don't have the same opportunities as the ones provided to the beneficiaries of F.A.R.G., like being offered scholarships, etc.

(Male participant)

Youth identified the need for advocacy to shed light on the unique and ongoing hardships particular to young people born of sexual violence, to break the stigma attached to their identities as '*little killers*', and to create positive social change. Forms of activism through 'standing up' and 'speaking up' were perceived as vital to this process of recognition and redress:

[T]here are many things that speak up for survivors of genocide, there is F.A.R.G. [Le Fond d'Assistance pour Rescapés du Génocide], A.E.R.G. [Association des Étudiants et Élèves Rescapés du Génocide], C.N.L.G. [Commission Nationale de Lutte contre le Génocide] and many other things. We don't have to wait for someone to speak for us. We have to stand up and speak for ourselves. If someone is talking about your history, she or he can't talk about it in details as you do. We have to stand up and speak up. Even the government cannot recognise that we need help if we just sit there and stay silent; we have to be able to speak because we are the victims.

(Focus group participant)

I want us to form a club and to create advocacy. We [youth born of the genocide] need to have all the rights that other children have. We need to know each other because we have the same problems. We need to be united, to understand each other. We also need to write our history.

(Focus group participant)

Youth also called for the creation of laws to prevent stigma and abuse. In addition, given their status as children born of the genocide, participants saw themselves as vital and integral to the process of promoting reconciliation, unity, and fighting 'divisionism':

Society should know that children don't choose the way in which they are born. We [children born of the genocide] wouldn't have chosen this way. Society should learn from us [as to] how a person can accept himself, whatever the problem he/she has gone through. He/she must find a solution and together with all Rwandans we can build our future and our country as well.

(Focus group participant)

I think we have to organise conferences, meetings for grandparents who lived in the divisionism ideology era. [We need] to explain to them how bad it was and the consequences we are facing due to what they did.

(Focus group participant)

As noted by multiple scholars including Zorbas (2004), King (2010), and Thomson (2013), the government's unity campaign has produced official narratives surrounding 'ethnicity', and 'reconciliation' that Rwandans must adhere to. Moreover, King (2010) suggests that there are inherent implications in trying to challenge these narratives. As this woman in Rwanda expressed:

I lost three-quarters of my family during the war...But we don't have the right to say that we lost people...That creates a lot of conflicts. But we keep quiet. Us

[Hutu], we can't say anything. I can't say anything because if I say it they will put me in prison, or punish me in another way, but they also have to give the ability to people to speak and to say what they think.

(King, 2010: 300)

Similar to the woman quoted above, young people in this study were deeply aware of the potential consequences of challenging existing narratives. While they sought change, inclusion, policies, and practices that would call attention to their plight and provide them with the recognition, victim status, and support, they nonetheless worried about the implications of political advocacy and engagement. Like many others, children born of conflict-related sexual violence must not only navigate an imposed and complex political project but are, in many ways, excluded from it (Denov et al., 2020). Moreover, youth were apprehensive and fearful of the implications of them 'speaking out', and how it could affect their lives and futures and that of their families.

12.5 Conclusion: The Complexity of Victimhood for Children Born of Conflict-Related Sexual Violence in Rwanda

Child rights advocates have long been trying to promote a broader, more inclusive, and comprehensive understanding of children, extending beyond the confines of victimhood. As documented by UNICEF (2009: 6), 'young people should be seen...as survivors and active participants in creating solutions, not just as victims or problems'. In this sense, the circumstances of children born of conflict-related sexual violence highlight an important and inherent irony: their desire and their active 'fight' to be recognised as 'victims'. At the same time, however, these youth seek to be heard and supported in their fight for visibility and suggest ways in which this could be accomplished. These youth bring to light the importance of challenging the constructed binaries surrounding agency and victimhood. In fact, the everyday realities of these youth demonstrate the ways in which monolithic and unidimensional understandings of children and youth as either solely victims on the one hand, or active agents and activists on the other, curtail complex and nuanced understandings of young people's lives. Seeking recognition for their victimisation, alongside their advocacy and desire for change, the lives of these youth defy binaries and instead exist in the messy and blurry realities in between.

Similar forms of binaries and categories of victims and victimhood exist in post-genocide Rwanda. In exploring the complexity of reconciliation in post-genocide Rwanda, King (2010) has noted that:

by acknowledging only a select category of memories of violence, the government is failing to address and challenge the social cleavages and exclusion that characterized Rwanda's past and maybe, moreover, fostering exclusion and social cleavages in the present.

(p. 303)

The experiences of youth in this study embody this exclusion as they struggle to belong in a post-genocide context where they are frequently linked to their perpetrator fathers and often regarded as ‘little killers’. At the same time, the lives of children born of conflict-related sexual violence in Rwanda illustrate how difficult it is to separate individual daily experience from national politics, and the critical links between kinship, community, politics, and social structure, complicating what it means to have survived the genocide against the Tutsi and its aftermath. The distinction between the personal level of everyday social life, and the larger politics of post-genocide Rwanda are not easily distinguished, and the challenges faced by children born of conflict-related sexual violence exist at the nexus of the personal and the national, the individual and the structural.

Notes

- 1 Interviews were also conducted with 41 mothers (survivors of sexual violence who gave birth to children born of genocidal rape) and 5 family members of the youth participants. These interviews are not included in this analysis.
- 2 I use the word ‘youth’ throughout this chapter to convey that children born of conflict-related sexual violence were over the age of 18 at the time of the research. The majority of participants were born in 1995 and aged 21 at the time of the interview. However, in a few cases, mothers were abducted and taken to the DRC or to places in Western Rwanda where they were held captive and experienced repeated sexual violence over lengthy periods of time. As such, a few youth participants were born in 1996. In the case of one youth participant, his mother was a victim of sexual violence when a group of Interahamwe returned to Rwanda in 1996. This participant was thus born in 1997 and aged 19 at the time of the interview.
- 3 Law No 81 of 2013 (Law Establishing the Fund for Support and Assistance to the Neediest Survivors of the Genocide Against the Tutsi Committed Between 1 October 1990 and 31 December 1994 and Determining its Mission, Powers, Organisation and Functioning), *Official Gazette*, vol. 45, 11 Nov. 2013 (Rwanda).
- 4 The RPA is the armed wing of the R.P.F. – Rwandan Patriotic Front.
- 5 Reports indicate that the RPF committed widespread killings during the civil war 1990–1993 and during the genocide. Since 1994, the R.P.F. has engaged in killing and other human rights violations in two wars in the DRC (1996–1997; 1998–2003), as well as in massacres in Rwanda, such as at the Kibeho camp for the internally displaced in April 1995 (Des Forges et al., 1999).
- 6 F.A.R.G. support is provided only to individuals who were alive and affected by the genocide between October 1990 and December 1994 (Rwandan Government, 2013), thus leaving children born of genocidal rape, who were born in 1995, ineligible for genocide-related social and financial assistance.

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13 Child Soldiers and the Right of Self-Defence

David M. Rosen and Sarah M. Rosen

13.1 Introduction

Throughout the 20th and 21st centuries, millions of people – men, women, and children – have been killed in genocides and other forms of mass violence. In all these instances, state actors and/or their proxies conducted widespread and systemic acts of murder against vulnerable groups. The scale of these killings raises the fundamental issue of how people – both children and adults – can defend themselves when they face an enemy that targets every person for death, regardless of age or condition. This chapter focuses specifically on the right of children to participate in armed resistance to mass violence such as genocide, crimes against humanity, and ethnic cleansing.¹ This chapter expands upon collective understandings of ethics and agency in the context of children's acts of self-defence and raises questions regarding discourses on victimhood and self-defence. This chapter thereby expands this edited volume's understanding of children's 'fights.' It investigates what 'fighting' looks like when international interventions are lacking, how to approach the concept of resistance, the relationship between fighting and survival in the context of children, and also how international law may conflict with common sense in certain instances. It takes a critical perspective on international law and policy as well as the predicates of transnational norm entrepreneurship (Drumbl, 2012).

In some instances, targets of mass violence indeed have resorted to self-help, namely, organising resistance groups, militias, and other modes of armed responses. Frequently, these resistance groups include youngsters, usually teenagers. But despite the fact that these youngsters are targeted for death, their involvement in self-defence, especially armed self-defence, is regarded as a violation of laws that prohibit recruiting children as soldiers. Armed children are axiomatically understood to be victims of their recruiters, albeit sometimes deviant or monstrous victims, regardless of circumstance. The recruiters themselves are subject to criminal sanctions under international humanitarian law. All this raises the issue of exactly what right children have to defend themselves and, if such a right to self-defence exists, in what individual and organisational frameworks can this right be appropriately and pragmatically exercised. We argue that self-defence and resistance to mass violence can be effective only through organised groups, and that

youngsters' participation in these groups is the exercise of a basic human right, which trumps legal restrictions on the recruitment of child soldiers.

Section 13.2 herein addresses the persistence of mass violence. Section 13.3 sets out the international legal and policy framework when it comes to preventing mass violence and notes critical gaps. Sections 13.4 and 13.5 introduce the notion of group-based collective self-defence in the face of atrocity. Sections 13.6–13.8 identify three specific case-studies of such self-defence: Jewish child soldiers in the Holocaust, youth and the Guatemalan Civil War, and the Yazidi genocide. Section 13.9 concludes by offering some guidelines about the new realism of children who turn to self-defence for survival.

13.2 The Problem of Mass Violence

Mass violence has proven to be an overwhelmingly problematic challenge to the international community. In virtually all incidents of genocide, crimes against humanity, or ethnic cleansing, the international political and legal institutions have been of little or no help to targeted victims. The bitter truth is that episodes of mass violence are only redressed after the fact, with disputable degrees of success, if they are acknowledged at all (Shaw and Waldorf, 2010). This is true of every known episode of genocide of the modern era, from the Turkish genocide of the Armenians, to the Holocaust, to the genocides in Guatemala, in Rwanda, the Yazidis in Iraq, and the Rohingya in Myanmar. The most powerful states, including the U.S., have hesitated to intervene in genocide even where they had the military capability to prevent the slaughter of thousands (Szandzik, 2022, p. 185). As the journalist Josh Rogin recently put it, 'There never is a convenient time to try and stop a genocide' (Rogin, 2022).

Given the hard empirical evidence that demonstrates the international community's inability and/or unwillingness to actually prevent or contain genocide and other forms of mass murder, the question remains: What options are, in fact, open to targeted communities? Since mass violence is invariably a weapon used by the strong against the weak, the available options are limited. Nevertheless, resisting mass violence is arguably a fundamental human right, so available responses need to be examined and evaluated theoretically, empirically, and pragmatically (Kopel, Gallant and Eisen, 2006, p. 1278).

13.3 The Legal Context for Intervention in Mass Violence

The difficulties of responding to mass violence can readily be seen in the context of genocide. Under international law, it is unquestioned that the prohibition of genocide has the status of *jus cogens* (Klaus, 2021; Ventura, 2015). As defined by the Vienna Convention on the Law of Treaties, *jus cogens* is 'a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character' (Vienna Convention, 1969). Accordingly, the prohibition of genocide trumps all other laws, whether

national or international. From this perspective, there are few, if any, international legal obstacles to state intervention to prevent genocide. At the same time, the idea of a legal duty or mandate to intervene in such instances has been very slow to develop.

As early as 1951, the International Court of Justice (I.C.J.) Advisory Opinion on the Genocide Convention validated the idea of a universal duty to cooperate in the prevention of genocide (Klaus, 2021). More recently, the I.C.J. supported The Gambia's standing to bring a claim against Myanmar for the latter's failure to comply with its obligations under the Genocide Convention in the case of the alleged genocide of Myanmar's Rohingya community. The I.C.J. concluded that 'any State party to the Genocide Convention may invoke the responsibility of another State party, including through the institution of proceedings before the Court, with a view to determining the alleged failure to comply with its obligations *erga omnes partes* (a duty owed to all) under the Convention and to bringing that failure to an end' (I.C.J., 2022, para. 112). A similar move was made recently by South Africa in its application to the I.C.J. in the case of Gaza.

In 2005, the United Nations attempted to strengthen the principles of the duty to protect peoples and communities from mass violence. The United Nations General Assembly (U.N.G.A.) resolved that there is a general responsibility to protect (R2P) populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and declared this to be a cardinal responsibility of member states (U.N.G.A., 2005, p. 30). The General Assembly's resolution provides for the U.N. Security Council to intervene under Chapter VII of the U.N. Charter² when member states fail in their obligations to prevent mass violence, but it lays down a complex process that first requires the use of diplomatic, humanitarian, and other peaceful means as a predicate for other modalities of intervention (U.N.G.A., 2005, p. 30). Despite the laudable goals of the resolution, the procedures still functionally privileges the sovereignty of member states over the victims of mass murder. As Frédéric Mégret put it, 'The spectacle of U.N. debacles in the wake of mass violence has done more to discredit the organisation than any of its other failings' (Mégret, 2009, p. 575).

13.4 Communities and Self-Defence

While the international community has woefully failed to intervene in mass atrocities, targeted communities have had to protect themselves. Most communities are aware that genocides and related forms of mass violence generally take place against unarmed civilian populations and that genocides are rarely attempted against an armed population (Kopel, 2003). When a people or a community is at the edge of an abyss, the choices are hard and few. There are no places of safety for children. Some hide. Others take up arms in self-defence as members of armed communal resistance groups. Deborah Mayersen analysed communal self-help in three incidents of genocide – the Yazidis in Iraq in 2012, the Armenians at Musa Dagh during the 1915 Armenian genocide, and the Tutsi at Bisesero during the 1994 Rwanda genocide. All of these are incidents in which a small part of the

larger community under attack was able to engage in armed resistance. Mayersen's analysis shows serious limitations to self-help in the context of genocide, and she argues that those communities that ultimately survived did so because of external rescue (Mayersen, 2020, p. 8). Nevertheless, she shows that 'even in the most desperate of circumstances, vulnerable populations may retain some capacity to mitigate against genocidal outcomes' (Mayersen, 2020, p. 3). In two of the three cases investigated, communal self-help, including armed resistance, bought sufficient time for the victims to be helped by external forces. So, while self-help is hardly a panacea, it is an important, perhaps crucial, component of community survival in episodes of mass violence and widespread atrocities. It is especially important in light of the international community's demonstrated inability and/or unwillingness to prevent this kind of violence. A growing body of scholarship supports the importance both of recognising the empirical evidence of these forms of resistance and of the need to reframe conceptual understandings and approaches to grassroots resistance in both law and policy.

13.5 The Rights of Self-Defence in the Context of Mass Violence

Crimes of mass violence are of such breadth and scale that the ordinary rules of self-defence simply cannot apply. As a general matter, all people – children or adults – have the right to defend themselves against imminent violence. In most domestic criminal law systems, however, this right is limited and is restricted to individual responses to separate and discrete acts of violence. The individual right of self-defence can legally be exercised only when an attack is imminent. It is a legal adage that self-defence cannot be exercised too early or too late (Fletcher, 1988, p. 20). It cannot be used to justify a pre-emptive strike against a potential aggressor, nor can it be used to justify a retaliatory attack once the immediate threat of violence has abated. Once an attack ceases to be imminent, victims must seek help from the principal law enforcement, protective institutions, and safe spaces of society such as the police and the courts. The legal limitations of self-defence are predicated upon the vitality of these institutions and their ability to pursue justice on behalf of victims and provide protection from the aggressor.

But in the context of mass violence, protective institutions and safe spaces frequently disappear or are perversely mobilised to target specific communities and their children. Moreover, such violence is not an individual matter; it is more typical for state agents and/or their proxies to organise and direct sustained campaigns of violence against vulnerable groups, leaving few, if any, safe spaces for children or anyone else – in some cases, demonstrating particular cruelty to children and their families, including the torture and murder of pregnant women and infants, as was the case during the Guatemalan Civil War and the accompanying genocide of Guatemala's indigenous communities (U.N. Press Briefing, 1999). Even when the immediate violence pauses, it often quickly resumes, and no domestic or international civil authority effectively stands between the attackers and the attacked. Indeed, the civil authorities are often the main perpetrators of the violence, and

they strip away any zone of safety for the victims other than the victims' own ability to use armed force.

Imposing the ordinary rules of self-defence in the context of mass violence may have additional and more insidious consequences. Within the ordinary legal paradigm, and using ordinary legal parlance, crimes against humanity are confined to narrow binary delineations of responsibility – victim and perpetrator, plaintiff and defendant, innocent and guilty. These dichotomies, both narrow yet imprecise, do not emerge in a vacuum. Delineations of victim and perpetrator create and maintain narratives surrounding the violence and have tangible impacts on international responses, raising the question that Mohamed Kamara asks in his chapter, to wit, can a person be at once a victim and an agent and a criminal (see Kamara in this volume)? In the wake of the Guatemalan Civil War, Victoria Sanford observed that circumscribed understandings of victimhood were inadequate when addressing the complexity of the violence, especially as experienced by children whose victimisation included the forced participation in further violence against others. In her account, a young man who endured violent coercion and torture at the hands of paramilitary forces ultimately joined their ranks and victimised others to prevent further harm to himself (Sanford, 2003). When ascribing labels of victim and perpetrator in this context, dichotomous understandings of victim and perpetrator become problematic. It is unclear which category he would fall into – and who should make that determination, particularly in a legal context.

Under the threat of state-sanctioned mass violence, victims cannot survive without creating or participating in forms of organised protection and resistance and may resort to violence that falls outside the parameters established by ordinary rules of self-defence. Further, neither self-defence nor resistance to genocide can be organised on an *ad hoc* basis; instead, it requires organised and sustained effort under the constant threat of annihilation. This is often extremely difficult, because vulnerable populations are frequently disarmed. In fact, disarming target populations before the genocidal project begins is the *sine qua non* for mass murder in virtually every situation of genocide (Kopel, 2003, p. 1277). With the systematic destruction of the 'safe spaces' and institutions of society, and the disarmament of local populations, armed resistance groups themselves are often the only safe spaces for children who are the targets of mass violence. And crucially, participation in these resistance groups would not constitute a cessation of victimhood nor an inherent transformation into perpetrator.

The three examples of children defending themselves by joining armed resistance groups discussed here, Jewish partisans in World War II, resistance groups in the Guatemalan Civil War, and Yazidi efforts at self-defence against the Islamic State, share some characteristics, but differ in others. The Jewish children were targeted for certain death in the total genocidal project of Nazism. For the Yazidi, the alternatives for the population targeted by the Islamic State included the mass murder of men and boys or capture for sex slavery for women and girls. In Guatemala's efforts to eliminate the indigenous Maya, economic gain played an important role: Mayan children were often victims of mass murder along with the rest of their families or communities; some, however, were kidnapped and illegally

sold for adoption in the international adoption market (Nolan, 2024). The children in all three situations were potential victims of politically motivated genocide, but the degree and details of these genocides differ slightly, but in all these cases their hope of survival lay in seeking protection within organised armed resistance groups.

13.6 Jewish Child Soldiers in the Holocaust

One of the most paradigmatic cases of children finding refuge in armed groups took place during the Holocaust and World War II (Rosen, 2022). The experience of Jewish children among anti-German partisans offers an alternative narrative to the neat packaging of children under arms as victims of their recruiters. First, and most importantly, during the Holocaust *all* Jewish children were targeted for death. Jewish children in German-occupied Europe were hunted like prey and ran for their lives. For these children, the civilian world was more lethal than the relative safety of armed groups. In the end, about 90 per cent of the Jewish children of Eastern Europe were murdered, and in some places the death toll was even higher. Had it not been for their recruiters, the vast majority of child partisans, like other Jewish children, would likely have met the same fate.³

Though the experiences of Jewish child partisans stand as an alternative to current dystopian meta-narratives of child soldiering, their experiences do not replace these narratives with a utopian one. Rather, their prime narrative arc is one of tragedy and resilience. Partisan life was dangerous, brutal, and filled with cruelty, suffering, trauma, and abuse. It was a world of total warfare in which few, if any, of the laws of war were followed. But in comparison to the absolutely lawless civilian world that countenanced the total annihilation of Jewish children, it could also be a zone of safety, security, and self-empowerment.

The testimonies given by many former child partisans make plain that the key transformational moment in the lives of these children was the moment they were recruited. Many remember their first contact with partisans as a time of jubilation bordering on euphoria. Miriam Miasnik, who was then eight years old, recalled that in her first encounter with young partisans, she asked whether they were afraid of being in the forest. They told her they were unafraid because they had guns. ‘And I thought,’ Miriam remembered, ‘this was absolutely the most wonderful place. Jews having guns to protect themselves. It seemed so unreal’ (Brysk, 2013, p. 35). ‘They stood before us dressed like Cossacks,’ reported Avraham Aviel, ‘... suddenly I felt secure, for this was another world’ (Aviel, 2006, p. 200). Seventeen-year-old Sonia Shainwald Orbuch also describes that, in walking into a partisan camp, she had ‘reached another world’ (Orbuch and Rosenbaum, 2009, p. 81). Meir Eisenstein, who had been hiding under a haystack when he was discovered by a group of Russian partisans, said of his commander, ‘he saved me’ (Kostrichenko, 1969). Lisa Nussbaum Derman, who escaped from the Vilna Ghetto when she was 16, describes her intense feeling of joy the first time she saw a Jewish partisan riding a horse and carrying an automatic weapon. It was, she said, like a scene from Robin Hood (Derman, 1994). The near-utopian fantasy of first contacts would

soon give way to the reality of partisan life, in which the ability to survive was embedded in the practices of war and organised violence. Children learned that survival hinged on their ability to find or create a useful place in this new world.

There was no uniform recruitment policy among partisan groups; recruitment was largely at the discretion of local commanders. Like all guerilla forces, partisan groups needed fighters and were quite flexible as to their age. Partisan units were largely engaged in sabotage, but they were occasionally involved in ambushes and in other clashes and confrontations. The most important criterion was whether individuals could serve as combatants under harsh conditions, and there was great reluctance to recruit non-combatants who did not directly contribute to military goals. This reluctance was often amplified by the severe shortage of arms. Nevertheless, there were some important support roles in addition to the crucial combat roles. Physicians and nurses were highly prized and were sometimes recruited along with their families. Larger partisan groups needed to manage food supplies, deal with food preparation, and tend to horses and livestock requisitioned from local communities. They also needed couriers and spies. All these needs created some space for recruiting some non-combatants, including youngsters. At the same time, the need for flexibility to adapt and survive meant that even people who were primarily non-combatants could sometimes find themselves on military missions.

13.7 The Guatemalan Civil War

Another principal example of this dynamic is the Guatemalan Civil War (1960–1996). The Civil War began as a C.I.A.-sponsored military coup against a democratically elected government at the height of U.S. Cold War anxieties regarding the spread of Communism (Barrett, 2001). Groups of resistance fighters emerged to combat the militarised government and reinstate policies to reappropriate and redistribute land and assets to poor and indigenous communities. As the violence between the state and resistance fighters intensified, the government instituted a scorched-earth policy – predominantly targeting the indigenous Maya people of Guatemala – to destabilise guerrilla groups by devastating their families (Jonas, 2000). As Rachel May has argued, ‘the intensity and breadth of political violence in Guatemala is almost unimaginable in its proportions’ (May, 2001, p. 1). During the course of the Civil War, the violence carried out by the Guatemalan government was transformed from violence directed at guerillas or insurgents into a campaign of state terror directed at the civilian population (May, 2001, p. 27). Government forces carried out mass killings that frequently targeted children (Shirman, 1998). Children were among the direct victims of arbitrary execution, widespread murder, forced disappearances, torture, rape, and other violations of their fundamental rights, even outside the zones of conflict (Campbell, 2001). In addition, the military was responsible for kidnapping children to sell them for adoption (CNN, 2009). It is hardly surprising that children who were directly targeted in this way would seek protection and refuge among the guerilla forces. In her study of child soldiers in Guatemala, Wenche Hauge shows that for children running for their lives, there were ‘no better alternatives’ (Hauge, 2011, p. 93). The children in Hauge’s study

had all seen and experienced disappearances, assassinations, abductions, and massacres of family members as part of the Guatemalan Army's assault on indigenous communities. According to some sources, a common Guatemalan military expression was that 'the child in the womb of the mother was already a guerilla,' so that children, regardless of age and including the unborn, were targets (Manz, 2004, p. 104).

To be sure, the situation in Guatemala was not entirely one in which children sought safety in guerrilla groups. In some instances, Maya youth were further victimised through coercive recruitment by paramilitary groups and violently brutalised by adults within these groups. Yet, children understood that to join a death-squad meant protection from further victimisation. As a young Maya man named Gaspar explains, 'I saw that the world was made up of abusers and the abused and I didn't want to be abused anymore' (Sanford, 2009, p. 23–59). This perspective is reflected in Kamara's observation that the movement from victimhood to agency may be achieved through violence (see Kamara in this volume).

While there were many reasons for rural Maya people to join guerilla forces, a pervasive reason was that they 'could not continue to live without weapons' (Sanford, 2009, p. 105). Both the military oppression and the possibility of victory, especially after news of the Sandinista victory in Nicaragua spread to Guatemala, spurred greater levels of popular resistance and opened up a flood of volunteers (Sanford, 2009, p. 104). What is clear from the Guatemalan experience is that the drive to join guerrilla units, and even paramilitary groups, was part of popular communal and individual resistance to a murderous situation. Looking at the recruitment of children from this perspective makes it abundantly clear that the recruiting of children by resistance groups was not understood to be a matter of exploitation but rather as part of a communal response in which people of all ages considered themselves to be in a common enterprise of self-preservation.⁴

Like the situation in the Holocaust, the Guatemalan case calls into question the separation of children's interests from those of their parents and communities.⁵ These experiences problematise the widely used children's rights mantra 'Adult Wars/Child Soldiers' (UNICEF, 2002). The guerrilla movement was the 'only available alternative to survive' (Hauge, 2011, p. 100). Guatemalan rebel forces were reluctant to absorb children. Their general approach was not to recruit children under age 12 and to limit the degree to which children under age 16 would engage in direct combat (Hauge, 2011, p. 96). But it is clear that the rebel groups could not create an alternative civilian infrastructure and that, for a chance at survival, children had to participate in violence.

13.8 The Yazidi Genocide

The most recent example of a state-sanctioned atrocity that the international community failed to prevent is the genocide against the Yazidi minority in Iraq and Syria, carried out by the forces of the Islamic State of Iraq and the Levant (I.S.I.L.) (see also Hasona in this volume). The Yazidis are a minority religious group in the Sinjar region of northern Iraq. The Yazidis' religious faith is rooted in

the pre-Islamic world of Iraq, and they were regarded by I.S.I.L. as heretics and targeted for extermination. In 2014, I.S.I.L. launched a genocidal assault in which thousands of Yazidi men and boys were massacred, and thousands of women and girls were taken as sex slaves by the Islamic state.

When the Yazidis were attacked, a large number retreated to Mt. Sinjar where they were surrounded by I.S.I.L. forces. They organised a self-defence militia group and hoped to get support from the international community. Although U.S. President Barack Obama authorised some limited airstrikes and air-borne humanitarian aid, this was not enough to roll back the I.S.I.L. offensive (Cooper, Landler and Rubin, 2014). During the course of the killings, Yazidi militias recruited child soldiers. Virtually all of them, it appears, were volunteers. In 2016, Human Rights Watch (H.R.W.) denounced the Yazidi militia for recruiting child soldiers (Human Rights Watch, 2016). The H.R.W. report states, 'the recruitment or use of children under 15 is a war crime.' Under international law, non-state armed groups like the HPG [A Kurdish militia] and YBŞ [A Yazidi armed group] must not, *under any circumstances*, recruit children under 18, or use them in hostilities. Recruitment of children by armed groups is prohibited by international law, even if the children 'volunteer.'⁶ The H.R.W. statement treats the victims of genocide and crimes against humanity who are trying to defend themselves from total extermination in much the same way that it treats any other armed movement, succumbing to the danger of dichotomous delineations of victim and perpetrator. A rule of law which cannot distinguish between rebels trying to overthrow a government and a group of people fighting to fend off total extermination and renders both as equal perpetrators of violence invokes a mythical social order where children can function normally and where adults will not target and murder them, which despite Western protestations, simply does not exist.

Help for the Yazidi, including the children who were fighting for their lives, largely came from the Kurdish militia groups such as the Kurdistan Workers' Party's militia (the P.K.K.), the Peshmerga (the Kurdistan regional militia), and the People's Protection Units (Y.P.G.), a Syrian-based Kurdish militia. Various independent Yazidi units such as the Sinjar Resistance Units (Y.B.S.), the Êzîdxan Protection Force (HPE), and the Êzîdxan Women's Units have banded together into the Sinjar Alliance. Despite the ultimate defeat of I.S.I.L., recent reports indicate that 'the genocidal ideology towards Yazidis, which has been embedded in Iraq for decades, has not been addressed or eliminated.'⁷ The case of the Yazidis makes clear that, sadly, the same lesson is learned over and over again, and the international community is incapable of preventing determined attempts at genocide.

In the aftermath of the Yazidi killings, the international community focused on obtaining 'justice.' In legal terms this means finding some of the key perpetrators and putting them on trial. In May 2021, the U.N. Security Council's Special Adviser and Head of the United Nations Investigative Team issued a report asserting that the U.N. is making a strong effort to bring the principal perpetrators to account (U.N.S.C., 2021). But nothing in this search for justice really addresses the practical inability or unwillingness of exogenous actors to *prevent* crimes of this type. Communities at risk still have little recourse to avoid total catastrophe other than

relying upon a combination of self-help and the aid of other armed forces and groups. For these communities, justice as defined in international legal terms is meaningless.

Increasingly, Human Rights Watch and other human rights and humanitarian organisations play a role in influencing and shaping the international legal definition of childhood and, by extension, the definition of ‘child soldier.’ In general, humanitarian and human rights organisations have adopted the so-called Straight 18 position, which defines childhood as beginning at birth and ending at age 18 (Udombana, 2006, p. 347–355; Sheppard, 2000, p. 37–40). The United Nations and most humanitarian and children’s rights groups routinely define a child soldier as anyone under age 18. These groups generally believe that the laws of war are outmoded. This advocated shift in the age at which soldiers are considered children means that many persons who today are defined as child soldiers would not have been classified as children in years past. Lurking beneath these definitional controversies is a far blurrier and highly contested empirical reality.⁸

These actions by human rights groups are part of their broader effort to redefine childhood globally. Sometimes dubbed ‘norm entrepreneurs,’ such groups have a vested interest in developing and expanding the scope of international law (Finnemore and Sikkink, 1998, p. 887). In fact, the term ‘child soldier’ itself was not created by historians or social scientists as a guide to empirical research and analysis, but is, rather, a legal and moral concept created by humanitarian and human rights organisations, law enforcement, criminal law codes, and political leaders to help secure a set of normative goals. And it has worked. The concept of the child soldier as a deviant category is now so fully embodied in Western discourses that it is virtually impossible to treat it as a socially constructed codification, much less a codification so devoid of nuance that victims who refuse to die passively are categorised as perpetrators (Rosen, 2019, p. 171). As a result, we have lost the ability to recognise circumstances in which it is in children’s best interests to bear arms. The abstract principle of child protection now trumps the lived experience of the actual child.

Interestingly, Human Rights Watch appeared to have been quite reluctant to label the attempted destruction of the Yazidis as genocide. As late as 2020, it stated that ‘some of the crimes perpetrated by I.S.I.S. since 2014... *may* have amounted to crimes against humanity and genocide’ (Human Rights Watch, 2020). This cautious characterisation persisted despite the fact that in 2016 the U.S. and others had made a clear determination that this violence amounted to genocide (Labott and Kopan, 2016). This was the first time the U.S. had made such a determination since the Darfur conflict in 2004, when the U.S. declared that the Government of Sudan and its Janjaweed militia were engaged in genocide. That was the first time in history that the U.S. declared a current ongoing crisis to be a genocide; the decision was influenced by the historic failure of the U.S. to declare the massacre of the Tutsi in Rwanda to be a genocide. The U.S. seems to have finally realised that genocide must be recognised and denounced as it unfolds if intervention is to be effective.

So why did one of the world's major human rights organisations hedge its determination, when it is more typical for human rights organisations to work very hard to cajole governments into action? It is implausible to suggest H.R.W. was not horrified by the mass murder of the Yazidis, yet at the same time it appears to be waiting for a court of law to make this determination, something that can only happen years after the events have taken place. It appears institutionally mired in the norms of international intervention despite the historic record of failure. In the end, however, it remains untenable to expect people fighting for their lives to await *post hoc* legal determinations. They must act in the moment. The extreme conditions created by those engaging in genocide and crimes against humanity demand local armed self-defence by all who are able to participate. In cases like the Yazidis, it is I.S.I.L. that is the villain, not the Yazidi commanders.

13.9 Child Soldiers: The New Realism

Recognising that the language of advocacy falls short in enabling accurate analysis, some critics and scholars have pushed back against the hyperbole of many of these narratives. A new realism about child soldiers has begun to emerge along several lines. Recent longitudinal studies of former child soldiers have stressed the psychological resilience of former child soldiers (Betancourt and Khan, 2008; Betancourt et al., 2013). Other studies have highlighted the moral resilience of children who have participated in conflict. As Jo Boyden has put it, the 'images of young former combatants as moral outlaws on the margins of society may be based more in the moral panics of adults than in lived realities' (Boyden, 1994, p. 360). These studies challenge the traditional narrative of child soldiers as merely vulnerable victims of adult perfidy.

The new realism approach to understanding the recruitment and use of child soldiers suggests several ways of reframing the involvement of child combatants under these circumstances. One approach might be to rethink the imminence requirement for self-defence. International criminal law includes self-defence as a basis for excluding criminal responsibility. This is found in the Rome Statute of the International Criminal Court, which states that a defence against the charge of a war crime exists where 'the person acts reasonably to defend himself or herself or another person. . . against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected' (I.C.C., Rome Statute). We would argue that it is a more than reasonable defence for recruiting and using children where communities are subject to genocide and crimes against humanity. The drawback is that the imminence requirement, if narrowly interpreted, might limit the defence to a specific attack on a town or village. The context of genocide or crimes against humanity requires a broader interpretation of imminence, one which recognises that such crimes are of such a breadth and dimension that self-defence cannot be reduced to a narrowly bounded set of events. Self-defence in this context requires a long-term organisational response that may well involve children exercising their rights within a military framework. A more realistic view of children's right to self-defence should

take into account that the international laws against genocide and crimes against humanity stand in a special category of their own. The right to self-defence and to resist genocide is both a human right and a child's right. This conversation, ideally, would cover not only the individual right of self-defence in the face of genocidal threats, but also spill into broader conversations about the collective right of groups to self-defence under the *jus ad bellum* along with thorny questions of humanitarian armed intervention.

Notes

- 1 Genocide is typically defined as the attempt to destroy, in whole or in part, a national, ethnic, racial, or religious group. Crimes against humanity are widespread or systematic attacks directed against civilian populations.
- 2 Chapter 7 sets out the U.N. Security Council's powers to take action to maintain or restore international peace and security.
- 3 Estimates of the death rate of children vary from 89 to 94 per cent. The Holocaust Encyclopedia, s.v., 'The Plight of Jewish Children,' U.S. Holocaust Memorial Museum, accessed February 11, 2020. <https://encyclopedia.ushmm.org/content/en/article/plight-of-jewish-children>
- 4 In the situations where it was not a communal response, it was still an enterprise of self-preservation. In Sanford's example of coercive recruitment of children by paramilitary groups, children still report acting with agency – participating in violence to protect their own lives when external powers or their families failed to protect them.
- 5 For a general critique of this issue see Martin Guggenheim, *What's Wrong with Children's Rights* (Cambridge: Harvard University Press, 2005).
- 6 HRW conflates different international instruments. Only the Rome Statute actually criminalises the recruitment of child soldiers under age 15. The Optional Protocol to the United Nations Convention on the Rights of the Child (CRC) does provide that children under 18 should not be compulsorily recruited into state armed forces and that armed groups (i.e. non-state forces) are flatly prohibited from recruiting and/or using persons under 18 in hostilities. The Rome Statute of the International Criminal Court criminalises the recruitment and use of under 15's as a war crime (so, too, did the Statute for the Special Court for Sierra Leone). Rome Statute 1998. Article 8(2)(b)(xxvi), relating to international conflicts, prohibits 'conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.' Article 8(2)(e)(vii), relating to conflicts not of an international character, prohibits 'conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.' See also the Statute of the Special Court for Sierra Leone. 2002. Article 4(c) which prohibits 'Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.'
- 7 'Before It's Too Late – A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and Their Need for Immediate Protection. Persecution Prevention Project.' Yale MacMillan Center Genocide Studies Program. 2019. <https://gsp.yale.edu/sites/default/files/files/Before%20Its%20Too%20Late%20Report.pdf>
- 8 To give a simple example, the U.S. allows 17-year-olds to enlist in the military with parental permission. The U.S. military is fully compliant with U.S. laws and all of its treaty obligations. Soldiers under 18 are not allowed to be stationed in war zones, though

compliance has not always been perfect, and during the war in Iraq, some under-18-year-olds served in the war zone. No doubt some humanitarian organisations would accuse the U.S. of recruiting child soldiers, but when they do so they are asserting their moral position against recruiting under-18-year-olds rather than asserting any concrete violation of international law.

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Index

- accountability: childhood 70; child soldiers 75–6, 87 (*see also* non-responsibility narrative); criminal 89; transitional justice 75
- acknowledgment of experiences 217–18
- ACT to Protect campaign 203
- adolescent boys 19–20, 23
- adult-citizens 196–7, 200, 208
- Afghanistan: conflict 174; gender, notion of 173–4; girls 165–6; impact of conflict 166–7; international law 170; prior to Taliban 165; rule systems 171; Taliban regime 164, 167–8, 170; women in 164
- agency 6, 185–9; adult influence 184, 193; *bacha posh* girls 167, 169, 172, 175; child capacity 3; childhood 68; decolonisation 186–7; former child soldiers 67, 70; manipulation, and 185; Maputo Declaration 185; post-conflict 74; prevention strategies 38; struggles, and 187; transitional justice 72; types 185; universality 186; victimhood, and 184–5; war 192
- amnesty 72–4, 76, 134
- apartheid: gender 173; South Africa 13
- Arab Spring 82
- armed conflict: *bacha posh* girls, and 166–7; causes 19; cyberspace, in 106 (*see also* cyberconflict); existing studies 1; low-intensity 5; violence beyond, and 5
- armed force, definition 4–5
- armed groups: classifying 37; digital space 114; exiting 55; ideological influence 83; illegal economies, and 40; joining 19, 82–3, 86, 127; non-state 112, 206, 237; state 206; use of minors 22; voluntary participation 82, 87, 237
- bacha posh* practice: choice 169; coercion and volition 171–2; cross-dressing 172; extent 164; historical perspective 168; meaning 166; privilege 169; puberty 168–9; research 165; survival, as 167; voluntary nature 168
- Cape Town Principles and Best Practices 19
- child: legal language 2; terms 1–2
- child associated with an armed force or armed group (C.A.A.F.A.G.) 4–5, 126–7
- childhood: accountability 70; adult child soldiers 75–8; adulthood, and 77–8, 182–3; age as continuum 145, 160; agency 68, 78; conceptions 68–72; demobilisation, and 53–4; iconography 144, 159; lost 203–5; narrative 77; period 69; reintegration programme, and 56; social construct 68; state of 51–3; universality 182
- child protection: harm 114–16; humanitarian law 47–8, 106, 116, 238; justice 71; United Nations 203–4
- child recruitment: actors across time 26–9; Arab countries 83; data 24–6; Democratic Republic of the Congo (D.R.C.) 46; hard tactics 8, 39; Islamic ideologies 83; methodology 24–6; military 207; networks 33–8; self-defence, and 229; soft tactics 8, 39; strategies by actor 33–6; territorial coverage 29–33; United Kingdom 197
- children: born of conflict-related sexual violence 214 (*see also* children born of conflict-related sexual violence); criminals, as 83; development 190; digital shutdowns 110; innocence 182–3; mental intent 86–7; natural 200–1, 208;

- political subjecthood 66–7, 76–7; self-empowerment 191; victim-agent 189–93
- Children, Not Soldiers campaign 204
- Children and Armed Conflict mandate 106
- children born of conflict-related sexual violence: activism 220–2; belonging 225; complexity 224–5; divisionism 223; formal policies 222; labelling 219; legal status 221; methodology 214–15; perspectives 218–20; protective laws 223; recognition 222–3; rejection 219; stigma 218–20; victim status 220–2
- children's rights 6–7; age 71, 238; born of conflict-related sexual violence 214; criminal responsibility 69; culture of 6–7; demobilisation 46; governance 200, 209–10; legal protections 69; reconciliation 6–7; resistance to mass violence 229; restoration 6–7; self-defence 229; victimhood, and 47–8; victims, as 69; voices, and 49
- child soldiers: approaches 85; *bacha posh* girls, and 166–7; child trafficking victims, and 127; community relationships 84; conceptions 68–72; contradictory term 190; criminal, as 87; dangers, as 88; definition 4–5, 82, 126–8, 137, 238; documenting 19; iconography 1, 19, 197; infantilised 201; junior-soldier, and 198, 201–8; misconceptions 19; monsters, as 150, 152, 202, 205; new realism 239–40; path forward 87–9; popular images 184–5; reality 84–6; reasons for addressing 88; redeemed hero, as 84, 149–50, 159, 185, 202–3, 205; roles 84; stories 201–8; tools of war, as 203–5, 209; victim, as 48, 86–7, 205
- child trafficking victims: child soldiers, and 127; committing crime 128–36; compulsion 132, 136; consent 127; definition 126–8, 137; enslavement 128; informers, and 157; non-punishment principle 131–3; qualified non-punishment principle 125; *The Prosecutor vs. Dominic Ongwen* 134–6; *VCL and AN vs. the United Kingdom* 129–3
- chrono-normativity 5
- civilian life: adapting 48; former child soldiers 53–6; spirit 52, 55
- Colombia: armed conflict 21–2; Civil Code 23; conflict dynamics 23; Early Warning System 22–3; geography 30; history 21; illegality in 20, 22; legislation 23; Ombudsperson's Office 22–4; policy 23–4; regional conflict 30
- colonialism 186–7
- Community Reconciliation Processes (CRPs) 92
- conduct of hostilities (*jus in bello*) doctrine 119
- Convention on the Prevention and Punishment of the Crime of Genocide 116
- crimes against humanity 6, 135–7, 239; definition 173; responsibility 233; state involvement 230–1
- criminal justice: child soldiers 83; default 85, 132; digital regulation, and 106–7; international criminal law 170; mental intent 86–7; penal responsibility of child 191; prosecutions 89; *sulh* 94
- criminal responsibility of minors 70, 239; minimum age 133–4, 137
- cross-dressing 172–3
- cyberattacks 108–9; *see also* cyberconflict; Estonia 110; internet connectivity 111; outcomes 109–10
- cyberconflict: active participation in conflict 111–14; disruption to daily life 109–11; forms of harm 105, 109; impact on children 107–13, 119; reconceptualizing harm 114–17; regulating 107, 117–19; seriousness 107–8; terminology 106; threats 105–6; traditional concept of harm 118–19
- Czechoslovakia: denouncers 144; Ivana 155–8; letters from children 151–5; propaganda directed to children 151; show trials 144, 152–3; Tomáš Frejka 154
- definitions: armed force 4–5; child soldier 4–5, 82, 126–8, 137, 238; child trafficking victims 126–8, 137; crimes against humanity 173; F.A.R.C. dissidents 27; guerillas 26–7; localized armed groups 27–8; paramilitaries 27; restorative justice 89; strongholds 27; victimhood 221; war 199
- demobilisation: after 57; analysis 50–1; civilian life, adapting 48 (*see also* reintegration); method 50–1; opportunities 55–6; research framework 47–50; victimhood 48
- demobilisation and reintegration programme: Arab countries 85–6;

- Democratic Republic of Congo (D.R.C.) 46–7
- Democratic Republic of the Congo (D.R.C.): armed groups 51; constant flux 60–2; post conflict 47; restorative justice 91–2; social contract theory 61; wars 46
- denouncers 153–5; *see also* informers
- digital child soldier: concept 112; harms experienced 113–14; participation means 112; psychological violence 114; recruitment 112–13
- discrimination: adolescent boys 20; Afghan girls 168, 174; former child soldiers 59; intentional 197; youth born of conflict-related sexual violence 218–20
- drug trafficking 20–2, 27, 126, 128
- East Timor 92
- ecological systems theory 23
- enslavement 128, 135
- ethnic cleansing 199, 213, 229–30; duty to protect against 231
- European Union's anti-trafficking standards 131
- F.A.R.C. dissidents: child recruitment 26–36; definition 27; geographical distribution 32
- family; *see also* home: hierarchal space, as 58; traditional responsibility 191
- female child soldiers 1, 192
- fight: armed groups, children as 5; children born of conflict-related sexual violence 220–4; climate 14; constant state 61–2; digital threats 105–6; extension 2–3; home 143; legitimacy 144, 158–9; organized crime 125; recognition 72; resistance 229
- forced impregnation 214
- forceful abduction 1, 34, 66, 82
- former child soldiers: accountability 75–6; accounts 61; adult 75–8; agency 67; childhood to military 51–3; civilian life 53–4; community members, becoming 59–60; data 47; educators, and 56–7; family 58; government protection 59; international prosecutions 136; label 78; mechanisms for justice 75; medical care 59; negative perceptions of 54–5; now adults 66; priority 74; promises 54; prospects of civilian life 55–6; reasons for joining 52; roles 52; trajectories 51–60; victimhood 67; work 57–8
- genocide: after 215–18; international involvement 230; labelling 238–9; Rwanda 213; scale 229; survivors' support 216; universal duty to cooperate 231
- The Gilded Ones* 181; agency 187–8; childhood 182; child-victim-agent 192; victimhood 184
- Global North-South: child recruitment 197, 209; double standard 7, 197; existing studies 1–2; learnings from 3
- Guatemalan Civil War 233, 235–6
- guerrillas: child recruitment 26–36; definition 26–7; geographical distribution 32; Guatemala 236
- harm: analogical reasoning 120; child protection, in 114–16; cyberconflict 105, 109, 111–14; digital 117; international law 115–17; legal concept 114; morality 116; principle 114; reconceptualizing 114–17; regulation, and 118
- health: cyberattacks 110; former child soldiers 59
- Holocaust 234–5
- home: authoritarianism 150; fights 143; ideology 150; *polis*, and 159
- Human Rights Watch 238–9
- human rights: Afghan females 173; concept of child soldier 238; ecumenical anthropology 50; harm 115–16; harm mitigation 106; harmonizing 125; responsibility to child 189–90; transitional justice, and 69
- humanitarian law: child protection, and 47–8, 106, 116, 238; harm mitigation 106
- identity: *bacha posh* girls 169, 174; beyond child soldiers 49; childhood 182; child soldiers 78; delinquent children 159; ethnicity 216; informers 159; leadership roles 72; narratives, and 50–1; victims, as 221–2
- ideology: Arab world 83; armed groups 83; home 150, 159; informers 159
- illegal economies: armed groups, and 40; Columbia 22; United Kingdom 128
- incarceration 85, 132
- informer: child/adult 158, 160; child trafficking victims, and 157; classmates, on 155–8; motivations 158; networks 144; Pavlik's story 143–4; secret child 144, 155–8

- International Committee of the Red Cross (I.C.R.C.) 24, 106
- International Court of Justice (I.C.J.)
Advisory Opinion on the Genocide Convention 231
- International Criminal Tribunal for Rwanda (I.C.T.R.) 134, 215
- international emergency 204, 209
- international law: absolute prohibition 128; *bacha posh* practice 169–74; child recruitment 47; child trafficking victims 125–8; criminal offences 86; cyberconflict 118–19; definition of child soldier 4–5, 238; duress 135; gap in theory and practice 169–70; grave violations 203–4; harm concept 115; humanization 115; legal imaginations 119, 159; mental disease/defect 135; mythical social order 237; rule systems, and 171; victim/perpetrator 137; victim centred, as 220–1; violence, view of 116–17; Western view 170–1
- Iraq: children as dangers 88; DDR programmes 85; ideology 83; incarceration 85; law 89, 94; *sulh* 95–7; use of child soldiers 84
- junior-soldier: Be the Best 205; child soldier, and 197–8; enlistment age 206; hyphen as bridge 198, 201–8; modern society, and 207; modern war 207; parental consent 207–8; pride 208; representations 202–3; stories 201–8; tools of state, as 205–8
- juvenile laws 94, 97
- localized armed groups: child recruitment 26–36; definition 27–8; geographical distribution 32; growth 39; threat 40
- Lord's Resistance Army (L.R.A.) 66, 134
- Machel Report 19, 47, 198–9
- mass violence 230; imminence 239; intervention 230–1; self-defence 232–4; survival 233
- methodological approach 3; conferences 3–4
- militarisation 1, 3, 47, 168, 182, 196
- military: service 196–7; spirit 52, 54
- misogyny 164, 174
- Mozambique Liberation Front 204
- narratives: brave soldier 197; challenging 223; children born of conflict-related sexual violence 220–1; hapless victims 202; junior soldier 202; junior soldier 207; monsters, as 150, 152, 202, 205; normal childhood 200; political action 197; pride 208; redeemed hero, as 84, 149–50, 159, 185, 202–3, 205; victims, as 205
- new realism 239–40
- new wars 2, 12, 144, 196, 205
- non-government organisations (NGOs) 19
- non-punishment principle: child trafficking victims 125, 131–3; qualified 136
- non-responsible child narrative 69–71; problematic outcomes 87; non-responsible child narrative: reintegration, and 74; transitional justice 75
- Optional Protocol to the Convention on the Rights of the Child 106, 116, 206
- Organised Armed Groups 23
- Organised Criminal Groups 23
- othering 50–1
- paramilitaries: child recruitment 26–36; definition 27; geographical distribution 32
- parens patriae* doctrine 114–15
- Paris Principles and Guidelines On Children Associated With Armed Forces Or Armed Groups 19, 86, 91, 127; definition of child soldier 4–5, 82, 127
- participatory action 40
- Pavlik's story: additional version 151; hero, as 150; impact 150–1; investigation 148–50; official 145–8; political prop, as 150; posthumous rehabilitation 150; use 147
- peace agreements: violence, and 5–6
- peremptory norm (*jus cogens*) 230
- postcolonialism 187
- post-conflict: agency and responsibility 74; challenges 20; daily life 39; existing studies 1; transitional justice 66
- prevention strategies 8, 31, 36, 39–40
- professional soldier 209
- propaganda: rape 213; use of children 144, 152–4
- psychological trauma 167–9, 173–4
- rape 213
- reconciliation: acknowledgement 217; memories 218; pillars 216; Rwanda 216; silence 217–18
- reintegration: civilian life 53–4; justice 73–4; negative representations, and

- 55–6; programme as entre-lieux 56–7; strategies 59–60; Uganda 76–6
- resistance: fights, as 229; Jewish child soldiers 234–5; organisation 233
- restorative justice: Baraza la Wazee 91–2; benefits 98–9; child violence 90–1; Community Reconciliation Processes (CRPs) 92; definition 89; Democratic Republic of Congo D.R.C. 91–2; East Timor 92; effective use 99; framework 89–91; parties 90; practice 91–2; principles 91; process 90; responsibility, and 84; theory 89–91; voluntary involvement 90
- retributive justice 85–6
- Rwanda: *gacaca* justice strategy 215–16; genocide 96, 213; justice system 215; post genocide 215–18; victims of genocide 221
- self-defence: acts of 229; armed communal self-help 231; child recruitment, and 229; communities 231–2; legal limits 232; mass violence 232–4; new realist approach 239–40; organisation 233; principle of 186–7; rights 232–4
- social contract theory: post-conflict DRC 56–7, 61
- Soviet Union: denouncers 143; informers 147
- Stalinisation 151–2
- stigma: children born of conflict-related sexual violence 218–20
- strongholds: child recruitment 26–36; definition 27; geographical distribution 32; threat 40
- structural violence: armed conflict, as 5; international policy 14
- sulh*: Arab legal framework, in 94; challenges 97–8; compensation 95; crime types 97; institutional participation 96; meaning 93, 95; outcomes 93–4; protect interests 93; repair damage 93; restorative justice, as 83, 93–8; restore relationships 94; use 94–8
- temporality: child soldier 201–2, 205; junior soldier 202–3; transitional justice 66–7, 72–6
- terrorism: cyberattacks 109; *sulh* 97
- theory of cognitive development 185
- theory of narrative construction 50
- transgender people: *bacha posh* practice, and 172
- transitional justice: accountability 75; alternative mechanisms 75; child perpetrators 68–9; child protection 71; conflict aftermath 66; environments 71; justice 73; northern Uganda 72–5; sequencing 67; time 66–7, 72–6
- tsotsis* (gangsters) 13
- Uganda: conflict 66; missing people 73; poverty 73; transitional justice 72–5
- United Kingdom: child combatants 197; military age 206; responsible state, as 208
- United Nations Convention on the Rights of the Child: adoption 69; Article 1 2, 5; Article 39 90–1; Article 3 7, 127; Article 12 127; Article 38 169–70; Article 39 170; best interests of child 7, 127; child/adult 2, 5; personhood 169–70; rehabilitation 90–1; right of participation 127
- United Nations Trafficking Protocol 126, 131–2
- use of force (*jus ad bellum*) doctrine 118, 240
- victimhood 47–8, 183–5; *bacha posh* girls 167; binary 224; child soldiers 201–2; children born of conflict-related sexual violence 220–2, 224–5; definition 221; direct 220–1; former child soldiers 67; indirect 221
- violence: anti-colonial 186–7; conflict-related sexual 213–14; criminalised 5; endemic 5; gender-based 164, 167–9, 173–4; meaning 164, 174; microaggressions 170, 173
- voice: children born of conflict-related sexual violence 220; youth 14, 49
- voluntary joining 1, 82–3, 87, 236
- war: agency 192; childhood vulnerability 196; definition 199; good soldiers 199; legitimacy 199–200
- War Witch* 181; agency 188–9; childhood 182; child-victim-agent 192–3; victimhood 184
- women: additional situations 181; Afghanistan 164; gender-based violence 167–9; societal roles 168; voice 168
- work: child soldier, as 128; former child soldiers, and 57–8; importance for reintegration 57; labour market 57–8

world-child 196–7, 200; discourses 205–6;
education 202; salvation 209

Yazidi genocide 236–9

Yemen: DDR programmes 85; ideology 83;
law 94; *sulh* 96–7; traditional conflict

resolution methods 96–7; use of child
soldiers 84; violence levels 86
youth: advocacy 220–3; anthropological
perspective 48–9; citizens, as 47, 61–2;
delinquency 159; in-between position 61;
politicalisation 144, 159–60; voices 14, 49



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